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POSTDOCTORAL STUDIES

David Leech

AUTEUR DE LA THÈSE / AUTHOR OF THESIS

Ph.D. (Political Science)

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School of Political Studies

FACULTÉ, ÉCOLE, DÉPARTEMENT / FACULTY, SCHOOL, DEPARTMENT

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TITRE DE LA THÈSE / TITLE OF THESIS

Caroline Andrew

DIRECTEUR (DIRECTRICE) DE LA THÈSE / THESIS SUPERVISOR

CO-DIRECTEUR (CO-DIRECTRICE) DE LA THÈSE / THESIS CO-SUPERVISOR

EXAMINATEURS (EXAMINATRICES) DE LA THÈSE / THESIS EXAMINERS

Linda Cardinal

Dale Turner

Claude Denis

George Sioui

Gary W. Slater

Le Doyen de la Faculté des études supérieures et postdoctorales / Dean of the Faculty of Graduate and Postdoctoral Studies

Strength through Sharing: Mi'kmaq Political Thought to 1761

by

David J Leech, BAH, M.A.

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the Faculty of Graduate and Postdoctoral Studies
in partial fulfillment of
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Abstract

We stand witness at the dawn of the 21st century to increasing tensions between Aboriginal people in Canada, and the Canadian state, largely as a result of conflict over natural resources. Do these conflicts imply that we are unable to understand each other? Does the meaning of our words get 'lost in translation' as it crosses the space between us? If this is so, then how can we envision dialogue between the two craft depicted in the Kaswentha, when – from a Canadian perspective – we don't understand the words each of us is using? When we don't understand the meaning of 'sovereignty' from the perspective of an Aboriginal participant in the dialogue, how can we understand what possibilities of cooperation are open to us?

The Mi'kmaq, in their own traditions and 'worldview', clearly articulated their own understanding of 'sovereignty' based on their traditions of political thought and action. Through their economic, legal, spiritual, political and 'environmental' articulations, the Mi'kmaq projected their understanding of 'sovereignty' into the creation of relationships with the French, Jesuit and English immigrants which arrived on their shores. Through an analysis of these articulations, we gain a new appreciation for Mi'kmaq sovereignty – one founded on the concept of *sharing*. The three pillars of continuity, responsibility – for themselves and their 'extended European kin' – and relationship-building characterized this *shared* space within which the Mi'kmaq founded their relationship with their blue-eyed 'kin'.

In all of its aspects – environment and land; spiritual, political and legal; and economic – Mi'kmaq sovereignty was about the paths and passes that allowed them to build relationships with others. Indeed, in its content and structure, Mi'kmaq sovereignty was, and is, *shared sovereignty* – an idea that opens our minds to a new way of understanding the political landscape of 21st century Mi'kma'ki. Drawing on this concept of *shared sovereignty*, ideas with respect to the co-management of natural resources are discussed. These ideas draw to a conclusion the thesis, and open avenues for further research and reflection on the place of Aboriginal political thought in the foundations of political culture in Canada.

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In this final thanks, we bring our minds together, and agree to open our hearts and minds to what follows. I look forward to the discussion and dialogue which we may one day share with others.

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Introduction – A Dialogue Between Two Worlds

The literature regarding the self-government of Aboriginal peoples revolves around the concepts understood in the occidental word ‘sovereignty’¹. Indeed, *sovereignty* is the pivotal notion around which other concepts like identity and citizenship are or become constructed. A review of the same literature highlights a lack of shared understanding by Aboriginal and occidental actors and scholars of the notion of ‘sovereignty’.

While authors like Cairns and Kymlicka argue for accommodation of aboriginal peoples within the current liberal institutions of Canada and the theories upon which they depend, it might be argued that a true relationship between Canada and First Nations must find meaning beyond accommodation. Indeed, what is required is a language² of communication between two systems of thought – a bilingual or bi-cultural language of mutual respect, recognition and responsibility³. This bilingual or bi-cultural language was characteristic of early relationships between the Dutch, English, French and inhabitants of Turtle Island.

¹ James Tully, Strange Multiplicity: Constitutionalism in an Age of Diversity (Cambridge, UK: Cambridge University Press, 1995), Alan Cairns, Citizens Plus – Aboriginal Peoples and the Canadian State (Vancouver, British Columbia: UBC Press, 2000), Tim Schouls, John Olthuis and Diane Engelstad, "The Basic Dilemma: Sovereignty or Assimilation," Nation to Nation: Aboriginal Sovereignty and the Future of Canada, eds. Diane Engelstad and John Bird (Concord, Ontario: Anansi, 1992), Michel Morin, L'usurpation De La Souveraineté Autochtone (Montreal: Boreal, 1997), Taiaike Alfred, Peace, Power, Righteousness – an Indigenous Manifesto (Toronto, Ontario: Oxford University Press, 1999) as examples.

² By language, I mean the conceptualization and articulation of the norms within a community. Law, in this case, is a good example of ‘language’, since law is the codification of shared community values and norms.

³ James Tully, Strange Multiplicity: Constitutionalism in an Age of Diversity (Cambridge, UK: Cambridge University Press, 1995).

The use of wampum belts characterized early dialogue between those that arrived on Turtle Island from Europe and the Aboriginal inhabitants they encountered. Among these belts, signifying the language of relationships, can be found the Kaswentha.

Glorious in its simplicity, the Kaswentha, or Two-Row Wampum, is more than just a treaty⁴. It has achieved a special place in the consciousness of Aboriginal peoples across Canada as a symbol of the relationship between the first peoples of this land, and those that arrived later. It speaks in a significant and enduring manner, therefore, to the broader thematic of relations between Aboriginal peoples and the Canadian state in a significant and enduring manner.

There are many places to begin when examining the Kaswentha and its meaning for Aboriginal-Canadian relations. Indeed, the Kaswentha speaks to the environment, to relations between peoples, to diplomatic relations – to many aspects of life on Turtle Island. The importance of its meaning here is that it speaks to the space that exists between us and the way in which we articulate our values across that space. It tells us about the words we can use to speak to each other – standing as we are, in our own histories, and relating to each other as nations sharing the same land. This land, Turtle Island, can be evoked in the image of a river. The river – our future together – weaves us together in a common sense of belonging.

Placed on this river are two canoes – one Aboriginal and one European. Each of these two canoes travels along the river under its own power, with its own background, its own

⁴ In its original understanding, the Kaswentha depicted an Aboriginal canoe, and a European ship. For the purpose of the thesis, I will portray the Kaswentha as a depiction of two canoes – each equal to the other in the river that they are traveling along.

laws, its own economics, social and spiritual structures, and political realities. Between these two canoes are *the words that come before all else between us* – evoked by the Haudenosaunee as the respect, equity and empowerment that flows between Aboriginal and non-Aboriginal peoples. These words are the site of relationship-building, the language that expresses the intercultural ties that bind us together.

The subject of intercultural relations between Aboriginal peoples and the Canadian state has received increased attention in the latter part of the 20th century, and continues to grow in importance. In Canadian political science, authors such as Alan Cairns, James Tully, and Thomas Flanagan have each brought their scholarship to bear on a dialogue about the place of Aboriginal people in Canada. They have also created a solid foundation upon which a discussion about relations between first and second nations⁵ can take place. Their voices have been joined by others, like Harold Cardinal, Taiaiake Alfred, and Kiera Ladner, who write about this relationship from a non-occidental perspective. Ladner's approach is of particular interest because it explicitly positions itself as a departure from previous Eurocentric approaches to studying 'aboriginality' – approaches that have relegated the 'savages' of the 'new world' to the annals of ethnology and anthropology.

This thesis builds on the approaches of authors like Cairns and Tully, while establishing – like Ladner – a critical distance from this same literature. It represents an attempt to give a voice to the political traditions of indigenous peoples within Canadian political science. In its content and approach, it offers a response to Couture's despondent observation that

⁵ Those that came to 'Turtle Island' after migration brought the first peoples to its shores.

“rarely is the prerequisite effort made to understand the alien tradition *on its own terms*, through the categories of its proper language, and thus for what it really is in all its profundity and complexity”⁶. This thesis *is* an attempt to understand – from a non-Aboriginal perspective – the profundity and complexity of one aspect of Aboriginal political thought - sovereignty.

Writing from the perspective of a non-Aboriginal presents a particular challenge. Central to this challenge is a need to respect and reflect Aboriginal voice(s), without assuming it (them). This has required an attempt to achieve the “transformation of consciousness” argued for by Henderson, a transformation essential to the process of validating “indigenous world view(s) and knowledge in its own right, without the interference of Eurocentrism”⁷. In so doing, the goal here is to avoid the ‘symbolic violence’ which arises from imposing Eurocentric rules on our understanding of Aboriginal political traditions⁸. Instead, by creating a space for Aboriginal voice(s), it is my intent to honour the integrity of those voices.

This is true in both content and form. As Richard Daly succinctly observes, “in the present era, as we divest ourselves of empire-think, we are gaining new appreciation of the fact that understanding is prone to fallibility and that, as social scientists, we have to take ever-greater pains to improve our data and to verify and contextualize our

⁶ Joseph E. Couture, “Explorations in Native Knowing,” The Cultural Maze: Complex Questions on Native Destiny in Western Canada, ed. J. Friesen (1991), 62.

⁷ James Youngblood Henderson, The Mikmaw Concordat (Halifax, Nova Scotia: Fernwood, 1997), 24.

⁸ See, for example, Pierre Bourdieu and Loic J.D. Wacquant, An Invitation to Reflexive Sociology (Chicago: University of Chicago Press, 1992).

conclusions”⁹. Great care was taken here to work with a methodology that reflects the situated nature of the knowledge in question, in order to respect that it has its own agency within that context. As a researcher from the ‘outside’, I have thus attempted to place myself in dialogue with the knowledge I am seeking to understand, rather than imposing myself upon it. It is in this spirit that an attempt was also made to respect the form of Aboriginal political thought, by including a story at the outset of each chapter. This story, composed by my daughter Mikhaila in dialogue with myself, illustrates the importance of story and story telling to Aboriginal people.

I have also sought to research a point in time when the dialogue between Aboriginal and non-Aboriginal was conducted between autonomous peoples. Influenced by my scholarship¹⁰, I was propelled towards history in an attempt to find a window on the past – a window through which the voices of speech actors in the past could be heard as clearly as possible. My goal was to find a point in time when the quality of the dialogue clearly reflected the values and beliefs of the Aboriginal participants – a time when these participants lived a moment of continuity between their past(s) and future(s). This moment will not only tell us something of the political and legal history of the Aboriginal people in question, it might also give us insight into Canada’s own political foundations.

The impetus to search for an Aboriginal perspective comes not only from disciplinary preoccupations. It is also important because we have, I think, acknowledged that the

⁹ Richard Daly, *Our Box Was Full: An Ethnography for the Delgamuukw Plaintiffs* (Vancouver: UBC Press, 2005), 10.

¹⁰ I am particularly indebted to Linda Cardinal for opening my eyes to the importance and richness of the past, and the influences that the present exert on our understanding of that (or those) past(s).

courts are not enough. While we have seen great progress made by Aboriginal people in the courts, every success in the courts is a small loss of tradition – a loss of the relational practice so essential to Aboriginal sovereignty¹¹. Every gain for Aboriginal people in the courts diminishes the hospitality that they originally showed to Europeans, and erodes the absolute inviolable ‘right’ and un-seceded ‘responsibility’ that they have for their own social, political, economic and spiritual autonomy. The courts arbitrate conflicts, they do not build relationships.

The *Marshall* case is an excellent illustration of this shortcoming. As Ken Coates notes, “while the *Marshall* decision gives the Mi’kmaq and Maliseet new opportunities, it lacks the authority, clarity, and all-party support necessary to truly represent a foundation for a completely new relationship”¹². Gains in the courts are also fragile – subject to appeal, reversals and the ongoing political and economic dominance of the Canadian state. If “the non-Aboriginal population resists, complains, and protests, it has the political, economic, and social clout to smother otherwise significant First Nations’ gains. Legal contests involve combatants; negotiated settlements ultimately involve partnerships”¹³.

The courts have succeeded in adjudicating some of the more visceral elements of the relationship between Canada and the First Nations of Turtle Island. They have not, however, prevented violent encounters like Oka, Burnt Church or Ipperwash, nor have

¹¹ The same can be said of the Maori in New Zealand. While they have been successful in negotiating greater political autonomy and rights, they have also placed themselves in a position where more and more of their rights are guaranteed only by the New Zealand courts – and the Crown – and not by their *own* political and legal traditions.

¹² Ken Coates, *The Marshall Decision and Native Rights* (Montréal, Québec: McGill-Queen’s University Press, 2000), 187-88.

¹³ *Ibid.* 199-200.

they resolved the residual tensions arising from these clashes between ‘us’ and ‘them’. Canadian political and legal systems have made some progress in accommodation and risk mitigation, without *real* progress at the social, economic and spiritual levels. We seem to lack the ability to understand each other and build a lasting relationship between equals¹⁴. We do not, in other words, have the ability to build a dialogue across the cultural gap that separates us.

The weakness of Canadian political science has been in *hoping* that the tools we find within the frameworks of our discipline are sufficient to intellectually understand the failures of the judiciary and political system to re-habilitate the relationship between Canada and First Nations. The argument proposed here - without the pretence of a bromidic sermon – is that we simply do not understand the intellectual content of Aboriginal political thinking – thinking that we need to understand in order to build a relationship. This relationship can only be understood as a dialogue between different cultures, where hybridization is acknowledged, the perspectives are plural, and a space is created where plurality and diversity are celebrated¹⁵.

In Chapter 1, I will present an overview of the current literature regarding ‘Aboriginal sovereignty’ on Turtle Island. Through this analysis, it will become apparent to the

¹⁴ Henderson is more forceful in his argument. He argues that discussions about a third level of government “whether called inherent or delegated, values the colonizers’ freedom over the collective right of Aboriginal self-determination...there has been no understanding of how to create the capacity of any people to decide how to order their political relations to others”. James Youngblood Henderson, "Empowering Treaty Federalism," *Saskatchewan Law Review* 58 (1994), 316-17.

¹⁵ Raul Fornet-Betancourt, cited by Linda Martin Alcoff, "Schutte's Nietzschean Postcolonial Politics," *Hypatia* 19.3 (2004). Fornet-Betancourt provides a revision and enlargement of his Ph.D. Thesis in Raul Fornet-Betancourt, *Philosophie Der Befreiung : Die Hänomenologische Ontologie Bei Jean-Paul Sartre* (Frankfurt: Materialis Verlag, 1983).

reader that much commendable scholarship has been produced on the subject, offering, for the most part, ideas which reflect an occidental structuring of the logic of sovereignty. Political institutions, social ties, economic dimensions and wholistic spirituality all make requisite appearances on the lists of authors – both indigenous and non-indigenous. While many of these academic efforts provide us with valuable insight into the current understanding of ‘Aboriginal sovereignty’, none provide us with a synthesis of the ideas which make up this concept. The challenge is posed, then, of how to achieve an understanding of ‘Aboriginal sovereignty’ in terms which reflect the logic inherent in the political thought and action of people themselves – an understanding that encompasses as many of the dimensions of this concept as are accessible to us.

Chapter 2 presents the methodology adopted for this thesis in an attempt to answer the challenge presented above. Building on the work of Quentin Skinner and the Cambridge School, an approach is presented to ‘uncover’ the meaning of sovereignty in the Mi’kmaq nation. This approach is based on the notion that all articulations – written, spoken and acted – are expressions of the political thought animating the world within which those articulations gain their meaning. Treaties are presented as an ideal prism through which these articulations can be understood. The treaties signed in 1760/61 by the Mi’kmaq and British Crown are, it is argued, an ideal window through which to analyze and synthesize the Mi’kmaq worldview, thus presenting an understanding of sovereignty from a Mi’kmaq point of view. The chapter concludes with a presentation of the steps necessary to accomplish the analysis suggested by the methodology.

It is essential, then, in following this approach, to first gain a strong understanding of the specific historical circumstances which set the context within which the Mi'kmaq actors' 'speech acts' gain meaning. Chapter 3 presents this context, commencing with a presentation of the physical landscape, flora and fauna of Mi'kma'ki. A history of Mi'kma'ki – Acadia – is presented, divided into two periods: pre- and post-Utrecht. The period before the signing of the Treaty of Utrecht in 1713 provides us with an understanding of the arrival of the French, and their relationship with the Mi'kmaq, while the history of post-Utrecht Acadia provides us with a more detailed understanding of the political, legal, economic, social, 'environmental' and spiritual dimensions of Mi'kma'ki. This discussion leads to the conclusion that the Mi'kmaq were, in 1760, a resilient nation that adopted European technology and adapted it to their own needs and traditions. It is clear, from this presentation, that the Mi'kmaq were able to project their understanding of their own worldview into the Treaties of 1760/61 as an autonomous signatory.

Chapter 4 takes the Treaty of 1761 signed between the Mi'kmaq and the English Crown at the "Governor's Farm Ceremony" on the 25th of June 1761 as the springboard for an analysis of the Mi'kmaq conception of sovereignty. The logic for the analysis presented in this chapter is provided by the Mi'kmaq creation story. Based on the historical articulations of the Mi'kmaq prior to the Treaty, the four principal aspects of Mi'kmaq sovereignty are presented – environment/land; spirituality; politics and law; and economic trade relations. Chapter 4 concludes with a summary of the essential elements of Mi'kmaq sovereignty, concluding that it was, and is *shared sovereignty*.

Building on these conclusions, Chapter 5 presents a discussion of the possibilities opened up by a new understanding of Mi'kmaq sovereignty. A particular emphasis is placed on the application of these ideas for building environmental co-management regimes that embrace the contributions of indigenous peoples. The possibility that these conclusions may apply to other nations – particularly the nations of the Haudenosaunee and the Nadoueks – is discussed, principally to broaden the application of the results presented in Chapter 4. Chapter 5 concludes with some observations regarding future research, suggesting that the approach adopted here, and the conclusions presented in this research might open interesting avenues for reflections on the contribution of indigenous nations to the founding of Canada's political culture.

With knowledge of what lies ahead, then, we can now turn our minds to the problem at hand – looking at the literature in search for a definition of 'Aboriginal sovereignty'.

Chapter 1

In the beginning, I did not want to build a canoe¹. Instead, I wanted to build a plane, a big plane. I could be famous! But I had no choice. So, to start, I had to find people to help me. I thought that I would have a lot of choice, but this was not so. I looked all over the country, but there were only three people who could help. These three people were professionals. When I met the three, they were willing to help me, but they needed tools. I thought, as they were professionals, that they would have tools. Since they were from other provinces, however, they had not thought to bring their tools. Yes, truly strange!

If I was to travel in my mind, it would certainly be by canoe. No other means of transportation can get me to where I am going, wherever that might be. Before deciding my route, I must learn how to build my canoe, and then set out to find my materials. This process of canoe building takes time, and can only be learned from a practiced canoe maker. These crafts people are fewer than in the past, and are more difficult to locate (you try to look up "canoe maker" in the Yellow Pages!) than before. Still, I found that person, and they had the know-how, without having the specific tools to work the wood and shape the canvass. Strange, it is true, that I should bring the tools, and they the know-how. Together, we certainly could craft a fine canoe to carry my thoughts to new places.

.....

History is an ongoing process without beginnings or ends, and that one reason for situating us in it is to keep us in mind that this is so ...².

Political scientists have long understood the importance of authority and power in shaping the political present, past and future. Those people, after all, who have the power and authority to write history, contest the law, and shape political debates mould the abilities of others to do the same. In the Canadian context, the emergence and

¹ Each chapter in the thesis will begin with part of a story, recounting the construction of a canoe, and its subsequent voyage. The first paragraph of each story fragment was composed by Mikhaila Leech, and the second – as a reflection on the first – by the author. The inclusion of these story fragments is intended to respect the importance of stories to indigenous peoples, and link the chapters through one continuous narrative. The intention of the story is to reflect the process of research and writing in the construction of the canoe, and its travels. There is no attempt made by the author to take on an indigenous ‘voice’ in the story, or to mimic this ‘voice’. Indeed, the story is structured by the imagination of Mikhaila, instead of relying on the narration of a past voyage, a form under which an indigenous elder might more likely construct the story. The image of the canoe is used throughout the thesis, reflecting the Kaswentha, or two-row wampum belt. This belt depicts two canoes travelling in parallel down the same river, an apt representation of the relationship between two nations – indigenous and European. The goal of this thesis is not to examine the relationship between the canoes, but to attempt to understand the ‘content’ of the indigenous canoe – a ‘content’ which reflects the indigenous view of sovereignty.

² J.G.A. Pocock, "The Historian and the Political Theorist," CPSA, Quebec City, Québec, July 29-31, 2000.

solidification of British Imperial institutions submerged French and Aboriginal histories, laws and politics in a sea of foreign practices. As with many colonial experiences, French and Aboriginal cultures were forced - to different degrees - to live in a legal and political history which was not their own.

The latter part of the twentieth century saw increasing pressure placed on Canadian political, social and economic systems to be more aware of and sensitive to the specific cultural requirements of its founding partners. The "Quiet Revolution" propelled French-Canadian - later Quebecois - culture onto the pages of Canadian history books, and into the institutional fabric of the country. Later, in reaction to the 1969 White Paper, Aboriginal Canadians coalesced around the fight for their survival, faced by continued pressures for assimilation into the mainstream. This context has been further made complex by the openness of Canada to multiculturalism, and the resulting enrichment of Canadian political culture.

Central to the contentions of French-Canadian and Aboriginal actors and authors has been the right to live in their own legal and political histories and the rejection of the monism inherent in Canadian political foundations and culture. What these actors and authors have demanded is not the right to return to the past, but the recognition of their histories as part of the foundation of what Canada is, and can become. The emergence and potential of plural political and legal histories has forced the acknowledgement that, "alternative histories are contesting for authority; not simply alternative accounts of the same events, but alternative cultural codes which give conflicting accounts of what

authority is, how it is generated in and transmitted through time, and how time and history are themselves structured by authoritative systems set up by humans existing in them ...”³. Recovering alternative political and legal histories has generated increased interest in historiography and its relationship to political science.

In Canada, where political scientists have recently begun to enlarge our understanding of political history, and have continued to question the political foundations of our country, the importance of the relationship between the currents of political science and history have become evident once again. For example, research has been undertaken by authors such as Peter J. Smith, Janet Ajzenstat and Jean-Pierre Wallot to challenge the Hartz-Horowitz “orthodoxy” that has shaped our understanding of Canada’s political foundations⁴. This has stimulated a dialogue between Canadian political scientists about the importance of civic republicanism in Canada and the entrepreneurial foundations of Quebec’s political culture. From much of what has been revealed in emergent debates about the political foundations of Canada, we have gained not only new insights into the history of our own polity, but we have also made clear the political nature of the history of politics. As Canadian political scientists, then, we are faced with the dilemma of how to know that what we know about our history is all there is to know, or whether our own visions of Canada limit our understanding.

³ J.G.A. Pocock, "Law, Sovereignty and History in a Divided Culture: The Case of New Zealand and the Treaty of Waitangi," *McGill Law Journal* 43 (1998), 486.

⁴ See Jean-Pierre Wallot, "Révolution Et Réformisme Dans Le Bas-Canada (1733-1815)," *Annales historiques de la Révolution française* 213 (1973), Janet Ajzenstat and Peter J. Smith, eds., *Canada's Origins: Liberal, Tory or Republican?* (Ottawa: Carleton University Press, 1995), and David Smith, *The Republican Option in Canada, Past and Present* (Toronto, Ontario: University of Toronto Press, 1999) as examples.

The question of political history – or political historiography – is rendered more complex when we are trying to understand the meaning of history in another culture. How can we understand, to invoke the canoe image used at the outset of this chapter, the words and meanings used to describe a canoe which we have not built or even ridden in? Will we know stem from stern or gunwale from thwart? As a metaphor for Aboriginal meaning, the canoe serves as a useful image of the struggle by Canadian political science to grapple with non-occidental understandings of the world. This cross-cultural challenge reveals a lack of heuristic, hermeneutic, linguistic, legal, political or social signposts with which we can understand the meaning of Aboriginal articulations of their own political and legal histories.

Englishman, although you have conquered the French, you have not yet conquered us! We are not your slaves. These lakes, these woods and mountains, were left to us by our ancestors. They are our inheritance; and we will part with them to none. Your nation supposes that we, like the white people, cannot live without bread – and pork – and beef! But you ought to know, that He, the Great Spirit and Master of Life, has provided food for us, in these⁵.

How can we understand this statement? If we were to argue, for example, that Minavvana was laying out arguments about the sovereignty of his people, how would we know that references to pork and bread were socio-cultural markers, and not simply dietary remarks? If we accept that he was asserting the sovereignty of his people on their behalf, how can we decode the meaning of his statement in the context in which it was uttered? Furthermore, is it possible to make comments about the possible intentions that he had in uttering this statement? Was he trying to raise the consciousness of his

⁵ Minavavana, Ojibwa Leader, 1760-1776 in Jonathan Hart and Joan Holmes, "We Have Never Parted with Such a Power' - Assertions of First Nations' Sovereignty and the Right to Trade and Travel in the Seventeenth and Eighteenth-Century Great Lakes Region," Unpublished, (2000), 25.

European auditors to effect their perceptions of the Ojibwa, or was he effecting change in the Ojibwa conventions of projecting sovereignty?

These questions can only begin to be understood *if* we have a way of uncovering historical meanings in the contexts of their utterance. The contexts and/or conventions around which the meanings of these terms become clear are largely understudied in the context of both historical and contemporary Aboriginal thought. Indeed, although historical conventions and contexts are understudied in terms of Aboriginal political thought, so too does there seem to be little understanding in contemporary Aboriginal political thought about the contexts and conventions which give meaning to pivotal terms in current political discourse. Most of what we have learned has come through collision, contest and conflict, not study, reflection or understanding.

Since the publication of Harold Cardinal's *Unjust Society* in 1969, Aboriginal and non-Aboriginal scholars have contested the place of Aboriginal peoples *within* and *alongside* Canada. Aboriginal peoples have concurrently made effective use of the courts in Canada to advance arguments about their political, social and economic rights⁶. In the 1990s, tired of unfulfilled promises⁷, Aboriginal people also began to physically confront

⁶ For a greater elaboration of the impacts of these cases on self-government in Canada, see Thomas F. Isaac, *Aboriginal Law Cases, Materials, and Commentary*, Second ed. (Saskatoon, Saskatchewan: Purich Publishing, 1999).

⁷ As examples, see Paul's *We Were Not Savages* and Adam's *Prison of Grass*. Of course, this transition from patience to anger may have occurred long ago. Thayendenega, a Mohawk, stated in 1794, "Brother! We have borne everything patiently for this long time past; we have done everything we could consistently do with the welfare of our nations in general – notwithstanding the many advantages that have been taken of us ... our patience is now entirely worn out". Taiaiake Alfred, *Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism* (Toronto, Ontario: Oxford University Press, 1995), 68. Certainly, Cairns notes that many "Aboriginal voices are angry – the time for waiting, for talk, for research should be behind us. The implicit – often explicit – message is that *now* is the time for

Canada: Oka, Ipperwash and Burnt Church stand as examples of this - often violent - confrontation. In all of its forms, this confrontation on the northern part of Turtle Island has arisen as a difference in the fundamental values which these peoples ascribe to and receive from the views they hold of the world in which they live. This confrontation represents, in other words, the collision of two distinct worldviews on one landscape.

Of particular interest within this collision of ideas is the desire of Aboriginal peoples to re-possess their own legal, social, economic and political histories⁸. **The notion of sovereignty has been central to this repossession process.** Indeed, the notion of sovereignty has been essential to Aboriginal peoples in reclaiming their legal, social, economic and political histories. It is precisely these histories upon which Aboriginal people advance their claims against the Canadian state, and from which Aboriginal people propose to found their relationship with Canada.

As a central concept, then, how is 'Aboriginal sovereignty' understood in the literature? What understandings do writers in Canada – from a predominantly political science perspective – have of the Aboriginal 'canoe'? What kind of coherent picture of Aboriginal sovereignty emerges from the literature? It is to this question that we now turn our attention.

action". Alan Cairns, *Citizens Plus – Aboriginal Peoples and the Canadian State* (Vancouver, British Columbia: UBC Press, 2000), 6.

⁸ See Alfred, Boldt and Long, Youngblood Henderson, Miller, Simpson and Paul from the Aboriginal perspective and, Morin, and Mancall and Merrell from the non-Aboriginal perspective for examples of this re-possession of history.

Aboriginal Sovereignty in the Canadian Context

In discussions regarding the problematic of Aboriginal sovereignty, and its centrality to reflecting clearly on other issues – be they social, legal, economic or political – several important questions are raised: 1) how is the notion of sovereignty conceptualized in a manner which is sensitive to an Aboriginal perspective?; 2) how do current legal debates and decisions use the concept of sovereignty in thought and action (interpretation)?; and 3) how is the notion of Aboriginal sovereignty considered in terms of understanding the relationship between Canada and Aboriginal peoples in Canada?

The answers to these questions help us to group the literature into three larger bodies of work: 1) reflections on the dimensions of Aboriginal sovereignty – the authors in this ‘body of work’ are not necessarily of Aboriginal ancestry, but do attempt to understand the Aboriginal values inherent in the literature; 2) reflections on how law has interpreted Aboriginal sovereignty in Canadian courts; and 3) reflections on how political scientists in Canada have considered ‘sovereignty’ as a means to examine the relationship between Aboriginal peoples and Canada. This review of the literature will help us understand how the concept of Aboriginal sovereignty is presented in the literature, and what elements authors present in their analyses.

Reflections on Dimensions of Aboriginal Sovereignty

Writings on the Aboriginal dimensions of sovereignty draw on many sources: law, spirituality, oral tradition, politics, social values and ethics. Recently, Aboriginal peoples in Canada have questioned and challenged the notions implicit and explicit in the concept of sovereignty from many perspectives. From these challenges, we can draw a number of

elements important to the idea of Aboriginal sovereignty. These elements describe the non-territorial dimensions of Aboriginal sovereignty, stressing the relationship to the land through spirituality. The spiritual dimensions of Aboriginal sovereignty are also described, as are their importance to the foundation of Aboriginal institutions that serve to honour and protect this sovereignty. The role of trade is described in defining and asserting Aboriginal sovereignty. Finally, the theme of continuity is explored briefly.

An example of the reflection on Aboriginal sovereignty as a result of the presence of Aboriginal people in Canada is presented by Reg Whitaker in "Sovereignities Old and New: Canada, Quebec and Aboriginal Peoples"⁹. Whitaker argues that the non-territorial aspects of Aboriginal sovereignty provide a clue to resolving the political impasse between Canada and Quebec regarding Quebec's sovereignty – an impasse "that results in a confrontation of sovereignties, Canadian and Quebecois, each claiming exclusivity, while contesting the same ground"¹⁰.

The first of Whitaker's arguments is that Canada has never truly possessed a "true sovereignty" because of our attachment to our imperial heritage and our subsequent sub-sovereign attachment to the United States. Whitaker is critical of the current theorization of sovereignty, arguing that we have turned sovereignty debates into a technocratic liberalism of rights and powers in our search for an "imagined community". He argues that this liberalism has displaced the economic dimensions of sovereignty in favour of a political project of 'cultural sovereignty' – literally a search for the symbolism of

⁹ Reg Whitaker, "Sovereignities Old and New: Canada, Quebec and Aboriginal Peoples," Studies in Political Economy 58.Spring (1999).

¹⁰ Ibid., 69.

recognition. This, in turn, has been articulated as a project of ‘territorial sovereignty’ in which the sovereignties of Canada and Quebec are mutually exclusive. As a result, Canada “embodies in its structures and practices the very ambiguities and discontinuities characteristic of the post-modern era”¹¹. In a sense, this makes Canada the ideal context within which to study sovereignty in a post-colonial and post-national manner¹².

Whitaker’s response to the impasse arising from incompatible Canadian and Québécois sovereignties is to argue that by reflecting on Cree¹³ visions of sovereignty, we can uncover the presence of a less known tradition of associational or federative sovereignty¹⁴. This vision questions the exclusionist visions of sovereignty and looks for multiple and overlapping loyalty within a federated state. The success of the Cree in fighting for recognition has also led to the challenge of the Weberian definition of the modern state for which the essential characteristic is the “monopoly over the legitimate exercise of force within a given territory”¹⁵. Taking this argument to its logical conclusion implies that authority and the force of law can be shared by state and non-state actors whose territories and responsibilities are overlapping¹⁶.

¹¹ Ibid., 75.

¹² This is supported by Michael Keating’s arguments, presented March 8, 2001 in his conclusion to the Grande Conférence Desjardins entitled « Par-delà la souveraineté ». In fact, Keating argues that Canada has fallen behind in reflecting on democracy and nationalism in a world of post-sovereignty. A translation of the arguments presented in his speech can be found in Michael Keating, *Le Devoir* 2001.

¹³ Whitaker is referring to the James Bay Cree of Quebec who inhabit the northern parts of the Province of Quebec.

¹⁴ Susan Dodds makes a similar argument with regards to property rights in Australia. Dodds observes that the “biases which hindered recognition of the sovereignty of indigenous peoples are perpetuated in contemporary property theory and hence bias available theoretical responses to contemporary demands for justice over land rights ...” See Susan Dodds, “Justice and Indigenous Land Rights,” *Inquiry* 41 (1998), 199.

¹⁵ Whitaker, *Op Cit*, 87.

¹⁶ The resistance strategies of the Cree with respect to the Great Whale hydroelectric projects also challenge the spatial and geographical definitions and limits of political space (local, regional, national and international). Indeed, Rousseau shows that the Cree are easily able to ‘shift scale’ in their resistance to the

As Whitaker argues, this does not diminish the importance of land to the Aboriginal notion of sovereignty. Oren Lyons articulates the strength of this connection, observing that “they call us Indian, but Indian means indigenous. It means that we are the protectors of the land and all life in it”¹⁷. This reinforces the ‘responsibility’ of Aboriginal sovereignty to the land, and its dependence on the land for its power. For example, the Gitksan and Wet’suwet’en hereditary chiefs articulate their sovereignty by declaring that “territory is a marriage of the Chief and the land. Each Chief has an ancestor who encountered and acknowledged the life of the land. From such encounters come power. The land, the plants, the animals and the people all have spirit – they must be shown respect. That is the basis of our law”¹⁸. This connection between sovereignty and a spiritual connection to the land is also articulated in Haudenosaunee philosophy through the Great Law of Peace (Kaienerekowa) and the *Words that Come Before All Else* (Ohen:ton Karihwaterhkwen)¹⁹.

Whitaker, Lyons and Kickingbird reinforce the importance of spirituality to Aboriginal sovereignty. In Whitaker’s words, sovereignty is not a secular political concept, but a

Quebec government and Hydro Quebec. This reinforces the challenges that Aboriginal thinking poses to occidental conceptions of scale and territory. See Jean Rousseau, "The New Political Scale of Citizenship in a Global Era: The Politics of Hydroelectric Development in the James Bay Region," Carleton University, 2000. Indeed, it is possible to see a move in Aboriginal thinking towards non-territorial or personal conceptions of sovereignty, shifting the focus away from the state and towards the community and individual. See Jean Laponce’s work on personal federalism for a more detailed description of what this notion entails.

¹⁷ Oren Lyons, "Spirituality, Equality, and Natural Law," *Pathways to Self Determination: Canadian Indians and the Canadian State*, eds. Leroy Little Bear, Menno Boldt and J. Anthony Young (Toronto, Ontario: University of Toronto Press, 1984), 11.

¹⁸ Gisday Wa and Delgan Uukw, *The Spirit in the Land: Statements of the Gitksan and Wet’suwet’en Hereditary Chiefs in the Supreme Court of British Columbia 1987-1990* (Gabriola, British Columbia: Reflections, 1992), 7.

¹⁹ See Haudenosaunee Environmental Task Force, *Words That Come before All Else* (Cornwall Island, Ontario: Native North American Travelling College, 1999).

“gift from the Creator ...[that] can neither be given or taken away” nor for which the “basic terms [can] be negotiated”²⁰. Oren Lyons posits that the “primary law of Indian government is the spiritual law. Spirituality is the highest form of politics, and our spirituality is directly involved in government. As chiefs we are told that our first and most important duty is to see that the spiritual ceremonies are carried out. Without the ceremonies, one does not have a basis on which to conduct government for the welfare of the people”²¹. Kickingbird builds on this argument, suggesting that there are two potential sources of authority in Aboriginal thought: “[s]overeignty is inherent; it comes from within a people or culture. Some people feel that sovereignty, or the supreme power, comes from spiritual sources. Other people feel that it comes from the people themselves”²². This assertion echoes the principles of ancient constitutionalism in locating the source of political authority and law – in this case sovereignty – in both the community and the Creator.

Of central importance to the spiritual aspects of sovereignty as articulated by these authors is their connection to the Creator through the land²³ and through the land to the

²⁰ Whitaker, *Op Cit*, 86.

²¹ Oren Lyons, "Spirituality, Equality, and Natural Law," Pathways to Self Determination: Canadian Indians and the Canadian State, eds. Leroy Little Bear, Menno Boldt and J. Anthony Young (Toronto, Ontario: University of Toronto Press, 1984), 5. This is reinforced by Andrew Delisle: "The federal government tells us that our spiritual values have no place in politics, but if we are going to build a truly Indian society, spirituality must be involved in everything we do, including our government". Andrew Delisle, "How We Regained Control over Our Lives and Territories: The Kahnawake Story," Pathways to Self Determination: Canadian Indians and the Canadian State, eds. Leroy Little Bear and Menno Young Boldt, J. Anthony (Toronto, Ontario: University of Toronto Press, 1984), 141.

²² Kirke Kickingbird, "Indian Sovereignty: The American Experience," Pathways to Self Determination: Canadian Indians and the Canadian State, eds. Leroy Little Bear, Menno Boldt and J. Anthony Young (Toronto, Ontario: University of Toronto Press, 1984), 3. Here, Kickingbird defines sovereignty as "the supreme power from which all specific political powers are derived".

²³ There is an important difference between the use of 'land' and 'territory' in this thesis. In its use here, land refers to the physical and spiritual landscape or "environment" within which the individual, group or

people. An individual is in possession of their sovereignty when they act responsibly towards the earth, respecting the words of the Creator through ceremony and practice. Individuals may then delegate their sovereignty to the community, and the community to nation. At each level in the political hierarchy, the Creator is present in different ceremonies. This means, in terms of Aboriginal sovereignty, that sovereignty flows from the individual/community/nation and from the Creator at the same time. The ability of Chiefs to exercise this sovereignty is dependent on their ability to carry out the ceremonies and respect Mother Earth.

Recent research related to Aboriginal notions of sovereignty, has also shown that trade and commerce have a central role in demonstrating the political independence and interdependence of Aboriginal nations. Hart and Holmes, in particular²⁴, provide us with a sense of the importance of trade to Aboriginal peoples in defining their nations in international trade with other Aboriginal peoples and the Dutch, English and French. It is clear that trade and commerce played a central role in defining the sovereignty of Aboriginal peoples. It also played a critical role in Aboriginal assertions of sovereignty.

Hart and Holmes provide several enlightening citations worth repeating here:

*We have the power to go where we please, to conduct who we will to the places we resort to, and buy and sell where we think fit*²⁵.

nation subsists. Territory refers to the socially, economically or politically accepted limits which are placed on the use of the land by an individual, group or nation according to tradition or agreement.

²⁴ See also Barbara A. Gray, "The Effects of the Fur Trade on Peace: A Haudenosaunee Woman's Perspective," International Conference on Fur Trade and First Nations, Akwesasne, Michael Mitchell, "An Unbroken Assertion of Sovereignty," *Drumbeat: Anger and Renewal in Indian Country*, ed. Assembly of First Nations (Toronto, Ontario: University of Toronto Press, 1989). The recent case brought to the Supreme Court by Michael Mitchell indicates the continued importance of traditional trade practices for Aboriginal assertions of sovereignty.

²⁵ Otreouti, Onondoga Sachem, 1703, in Jonathan Hart and Joan Holmes, "'We Have Never Parted with Such a Power' - Assertions of First Nations' Sovereignty and the Right to Trade and Travel in the Seventeenth and Eighteenth-Century Great Lakes Region," Unpublished, (2000), 5.

*That the Indians were a free People subject to no Power upon Earth, that they were faithful Allies of the King of England, but not his Subjects – that he had no right whatever to grant away to the States of America, their Rights or properties without a manifest breach of all Justice and Equity, and they would not submit to it. They added, that Many Years ago, their ancestors had granted permission to the French King to build trading houses; or Small Forts on the Water Communication between Canada and the Western Indians, in the Heart of their Country for the Convenience of Trade only without granting an Inch of Land*²⁶.

According to Hart and Holmes' analysis of historical documents, Aboriginal people asserted themselves through trade in a way that was foreign to Europeans. Hart and Holmes argue that the relationships of trade established between Aboriginal people and Europeans were often read by the Europeans as conferring onto them a "patriarchal authority which, to Europeans, implies a much more pervasive control than First Nations were prepared to acknowledge"²⁷. Indeed, far from taking away from their sovereignty, trade reinforced the ability of Aboriginal people, to decide with whom they would have relationships. Trade helped, therefore, to define who Aboriginal people were.

Sovereignty is also used in Aboriginal writing to describe pre-contact conditions of political development which are continued in the colonial period. Indeed, this theme of "continuity" appears in almost all writing on Aboriginal sovereignty. Georges Erasmus and Joe Sanders, for example, argue that before the arrival of Europeans, "First Nations possessed and exercised absolute sovereignty over what is now called the North American Continent"²⁸. Michel Morin concurs with this assertion, arguing that the

²⁶ Aaron Hill speaking to British General Allen Maclean, 1783, in Hart and Holmes, *Ibid.*, 23.

²⁷ Hart and Holmes, *Ibid.*, 6.

²⁸ Georges Erasmus and Joe Sanders, "Canadian History: An Aboriginal Perspective," Nation to Nation: Aboriginal Sovereignty and the Future of Canada, eds. Diane Engelstad and John Bird (Concord, Ontario: Anansi, 1992). See also Patrick Macklem, "Normative Dimensions of the Right of Aboriginal Self-

actions of diplomats and reflections of authors in the field of international law from the 16th to 18th centuries acknowledged Aboriginal independence. It is only the subsequent actions by colonizers that limited and reduced the sovereignty of Aboriginal peoples in North America²⁹. These actions were countered by the resistance of Aboriginal people – militarily, politically and legally – a resistance which signified the importance of continuity for Aboriginal peoples even in the face of colonization.

As indicated above, the use of sovereignty in Aboriginal writing and reflection is not without its detractors. Menno Boldt and Anthony Long express concern that Aboriginal leaders use the notion of sovereignty as a means of thwarting external intrusions into their social and political structures and territory. According to Boldt and Long, using sovereignty in such an instrumental manner risks imperilling the traditional customs, values, institutions and social organization of Aboriginal people. Indeed, “these values will not be preserved if the concept of sovereignty is inconsistent with their cultural legacy”³⁰. Taiaiake Alfred draws the same conclusions, arguing that “sovereignty” is a social creation, and that the “unquestioned acceptance of sovereignty as the framework for politics today reflects the triumph of a particular set of ideas over others – and is not

Government', *Aboriginal Self-Government: Legal and Constitutional Issues*, "Minister of Supply and Services Canada, (1995). For an overview of Native North American sovereignty in the United States context, see chapter 2 in Dan Russell, *A People's Dream: Aboriginal Self-Government in Canada* (Vancouver, British Columbia: UBC Press, 2000).

²⁹ Michel Morin, *L'usurpation De La Souveraineté Autochtone* (Montreal: Boreal, 1997). For more examples of the vibrancy of Aboriginal societies before contact, see Daniel N. Paul, *We Were Not Savages: A Mi'kmaq Perspective on the Collision between European and Native American Civilizations* (Halifax, Nova Scotia: Fernwood Publishing, 2000), and Peter C Mancall, "Native Americans and Europeans in English America, 1500-1700," *Volume I: The Oxford History of the British Empire*, ed. Nicholas Canny (Oxford: Oxford University Press, 1998).

³⁰ Menno Boldt and J. Anthony Young, eds., *The Quest for Justice: Aboriginal Peoples and Aboriginal Rights* (Toronto, Ontario: University of Toronto Press, 1985), 335.

more natural to the world than any other man-made object”³¹. Although we will come back to Alfred below, it is important to underline the possibility that the word “sovereignty” may reinforce the system of colonialism from which Aboriginal people are attempting to escape³². This is so because occidental concepts of sovereignty appear as discontinuous with Aboriginal traditions and histories.

The above discussion reveals how important Aboriginal sovereignty is to articulating other social, political, economic and spiritual aspects of ‘Aboriginality’. A number of the important structural aspects of Aboriginal sovereignty are revealed above. Non-territoriality, and the importance of spirituality are underlined as fundamental to Aboriginal sovereignty. These concepts reinforce the importance of the connection to land present in notions of Aboriginal sovereignty. In the absence of territorial definitions of sovereignty, the practice of trade and commerce appears to assume a more central place in the definition of Aboriginal sovereignty. Underlying all of these concepts is the principle of continuity – the idea that Aboriginal concepts of sovereignty pre-date contact with Europeans and have survived to this date.

While these structural aspects of Aboriginal sovereignty can be gleaned from the above reflections on Aboriginal dimensions of sovereignty, several gaps are apparent. The inability to fully articulate the importance of non-territorial aspects of sovereignty - such as fishing and hunting - weakens the linkages between the spiritual aspects of sovereignty

³¹ Taiaike Alfred, *Peace, Power, Righteousness – an Indigenous Manifesto* (Toronto, Ontario: Oxford University Press, 1999), 62.

³² Indeed, the stated goal of the thesis is to examine the political theory of sovereignty from an indigenous perspective. The historical process which led to the uptake and use of this term in contemporary political debate is beyond the scope of the work proposed here.

and the connection of Aboriginal people to the land. Furthermore, the continuity of these practices is assumed, not argued, in the literature, effectively taking the historical foundations out from under them. Indeed, in the way that it is presented by the authors above, it seems that Aboriginal sovereignty is a spiritual tradition which appears in the political realm only when expedient. This understanding does not reveal the rich historical practices which animate the notions of sovereignty present in the legal interpretations of Aboriginal sovereignty in Canadian courts.

Reflections on Law

Of particular interest here is the use of Aboriginal notions of sovereignty in Canadian legal writings³³ and court decisions. A review of the legal literature and legal decisions regarding Aboriginal sovereignty allows us to identify several key aspects of sovereignty. In particular, the courts have underlined and reinforced the aspects of continuity and practice in the meaning of Aboriginal sovereignty.

Recent works on legal pluralism³⁴ and critical legal pluralism³⁵ have revealed the importance of seeing law as a site of normativity, and inter-normativity. Law is, in other words, a site where the meanings of cultural and social norms can enter into negotiation,

³³ For an overview of the relationship between law and sovereignty, see as examples, John Borrows, "A Genealogy of Law: Inherent Sovereignty and First Nations Self-Government," Osgoode Hall Law Journal 291 (1992), Michel Morin, L'usurpation De La Souveraineté Autochtone (Montreal: Boreal, 1997), and Sydney Haring, White Man's Law. Native People in Nineteenth Century Canadian Jurisprudence (Toronto, Ontario: University of Toronto Press, 1998). For examples of reflection on law, tradition, and the formation of identity, see Bruce Miller, The Problem of Justice: Tradition and Law in the Coast Salish World (Lincoln, Nebraska: University of Nebraska, 2001) and Claude Denis, We Are Not You: First Nations and Canadian Modernity (Peterborough, Ontario: Broadview Press, 1997).

³⁴ See, for example, J.G. Belley, "Law as Terra Incognita: Constructing Legal Pluralism," Canadian Journal of Law and Society 12.2 (Fall) (1997).

³⁵ See, for example Martha-Marie Kleinhans and Roderick Macdonald, "What Is a Critical Legal Pluralism?," *Ibid.*

both revealing and defining their meanings. Indeed, in the post-Charter era, law and judicial interpretation *may* actually play a role in extending and deepening the conditions for exchange, debate and discussion about issues of social and judicial importance to Canadians³⁶. Law and its interpretation in the courts appears, therefore, as an interesting (albeit ironic) site to reflect on the norms of Aboriginal people represented in the law and contested by Aboriginal participants in the legal system. Indeed, in the broader reflection on post-colonial relationships, law and the courts appear as particularly informative and original sites for revealing the meaning of the cultural codes represented to them by their participants.

James Youngblood Henderson argues that treaties between the Crown and the Mi'kmaq demonstrate the existence and recognition of Aboriginal sovereignty at their signing. According to Henderson, the eighteenth century treaties between the Crown and the Mi'kmaq represented an agreement between two sovereign nations to form a new legal order which "both affirmed the existing Mikmaw order and generated new legal rights and obligations"³⁷. These legal rights and obligations created what Henderson refers to as a system of "personal (not territorial) jurisdiction". As an example of this personal jurisdiction, it was specified in the 1726 ratification treaty that a Mi'kmaq committing "any robbery or outrage" in a British settlement would be punished under Mi'kmaq law.

³⁶ The pre-supposition arises from contrasting the arguments of F.L Morton and Rainer Knopff, The Charter Revolution and the Court Party (Peterborough, Ontario: Broadview Press, 2000) with those presented by Martine Perreault and Linda Cardinal, "Le Droit Au Choix Et Le Choix Du Droit: L'expérience De L'ontario Coalition for Abortion Clinics Et Le Jugement Morgentaler," Canadian Journal of Political Science XXIX.2 (1996), Miriam Smith, "Nationalisme Et Politique De Mouvements Sociaux: Les Droits Des Gais Et Lesbiennes Et L'incidence De La Charte Canadienne Au Québec," Politiques et Sociétés 17.3 (1998).

³⁷ James Youngblood Henderson, "First Nations Legal Inheritances in Canada: The Mikmaq Model," The Manitoba Law Journal 23 (1996), 721.

This effectively extended Mi'kmaq law and jurisdiction into "British territory" and kept British law and jurisdiction out of Mi'kmaq territories³⁸.

Clearly, from the perspective of an Aboriginal legal scholar like Henderson, the treaties between the Crown and the Mi'kmaq establish legal pluralism, and confirm the continued sovereignty of the Mi'kmaq with regards to non-territorial rights and practices. The courts have, however, been slow in acknowledging or adapting this view of history. Indeed, as Michel Morin cautions us, the use of history in the courts has been inconsistent, and almost exclusively at the pleasure of the Crown. Morin argues that with respect to Aboriginal or treaty rights, the courts have used history in a discretionary manner in order to maintain the supremacy of the Canadian legal system³⁹. Morin's message is not that history shouldn't play a role in determining treaty and Aboriginal rights. Instead, underlying his argument is a warning that particular historiographies should not become so entrenched in law that they diminish the rich vocabulary of Aboriginal law existent in the pre-colonial era. This reinforces the need to understand the notions of Aboriginal sovereignty presented by the Mi'kmaq in their treaties as a function of their own traditions, not as a function of the colonial legal system to which they have since become subjected. This also underlines the importance of understanding the continuity of sovereignty – a continuity reflected in the practice of Aboriginal law existent prior to contact.

³⁸ Ibid., 723.

³⁹ Michel Morin, "Quelques Réflexions Sur Le Rôle De L'histoire Dans La Détermination Des Droits Ancestraux Et Issus De Traités," *Revue Juridique Thémis* 34 (2000), 34.

The notions of Aboriginal sovereignty ‘accepted’ by the courts have, since 1982, varied a great deal⁴⁰. In *Sioui* (1990), for example, Justice Lamer observes that “I consider that, instead, we can conclude from the historical documents that both Britain and France felt that the Indian nations had sufficient independence and played a large enough role in North America for it to be a good policy to maintain relations with them very close to those maintained between sovereign nations”⁴¹. In *Sparrow* (1990), the notions of Aboriginal sovereignty were interpreted in a much more restrictive manner: “...It is worth recalling that while British policy towards the native population was based on respect for their right to occupy their traditional lands, a proposition to which the *Royal Proclamation of 1763* bears witness, there was from the outset never any doubt that sovereignty and legislative power, and indeed the underlying title, to such lands is vested in the Crown ...”⁴². In both *Sioui* and *Sparrow*, the political and legal meaning of Aboriginal sovereignty is questioned. Justice Lamer’s assertion that the English and French had maintained relations with the ‘Indian nations’ *very close* to those that would have been maintained between truly sovereign nations points to an acceptance by the Crown that Aboriginal sovereignty was qualified simply as a result of the arrival of Europeans in this land. Furthermore, *Sparrow* established that Aboriginal rights were

⁴⁰ For analysis of these decisions, Thomas F. Isaac, *Aboriginal Law Cases, Materials, and Commentary*, Second ed. (Saskatoon, Saskatchewan: Purich Publishing, 1999), Thomas Isaac, *Aboriginal and Treaty Rights in the Maritimes – the Marshall Decision and Beyond* (Saskatoon, Saskatchewan: Purich Publishing, 2001). 1982 is chosen as a date because it was then that the courts began to look at law in light of the Charter – section 35, in particular. Since 1982, the courts have taken a more active role in helping to define Aboriginal rights and obligations.

⁴¹ *R. v. Sioui*. 3 Canadian National Law Reporter 127. Supreme Court of Canada, 1990.

⁴² *R. v. Sparrow*. 3 Canadian Native Law Reporter 160. Supreme Court of Canada, 1990.

subject to the Crown's regulation where this regulation "can be justified based on the basis of conservation or other grounds of public importance"⁴³.

Following *Sioui* and *Sparrow*, a number of cases deal specifically with treaty rights – rights that are can be read in light of their contribution to the Crown's interpretation of Aboriginal sovereignty. *Horseman*, for example, re-affirms the jurisdiction of the Crown and the non-absoluteness of treaty rights, but places the onus on the Crown to prove that treaty rights have been extinguished in a specific case⁴⁴. *Van der Peet* established ten factors that must be considered by the courts when establishing Aboriginal rights, including the recognition of rights that have continued since pre-contact and are integral to the Aboriginal nation claiming the right⁴⁵. The ten factors articulated by Chief Justice Lamer in *Van der Peet*, are applied in the *Adams* decision and *Marshall No. 1*⁴⁶. *Adams* is of particular interest because it established that "although a link to land may be crucial to support Aboriginal rights, a link to a particular piece of land and associated Aboriginal title is not necessary for a claim of Aboriginal rights"⁴⁷. This appears to reinforce the courts' previous findings that while the territorial sovereignty of Aboriginal people had

⁴³ Thomas Isaac, Aboriginal and Treaty Rights in the Maritimes – the Marshall Decision and Beyond (Saskatoon, Saskatchewan: Purich Publishing, 2001), 56. In *Sparrow*, the court accepted the argument that the sovereignty of the Musqueam Indian Band had been extinguished by the foundation of the province of British Columbia in Canada. This is based on the notion that the federal and provincial governments exhaust the total 'amount' of jurisdiction available in Canada. See *Ontario (Attorney General) v. Canada (Attorney General) (the References Case)*. 3 Dominion Law Reports 509. Provincial Court, 1912 where it was stated that "there can be no doubt that under this organic instrument the powers distributed between the Dominion on the one hand and the provinces on the other had cover the whole area of self-government within the whole area of Canada...". See Thomas F. Isaac, Aboriginal Law Cases, Materials, and Commentary, Second ed. (Saskatoon, Saskatchewan: Purich Publishing, 1999), 517.

⁴⁴ *R. v. Horseman*. 1 Supreme Court Record 901. Supreme Court Record, 1990.

⁴⁵ *R. v. Van Der Peet*. 2 Supreme Court Record 507. Supreme Court of Canada, 1996.

⁴⁶ *R. v. Marshall (Marshall No. 1)*. 3 Supreme Court Recorder 456. Supreme Court of Canada, 1999.

⁴⁷ Thomas Isaac, Aboriginal and Treaty Rights in the Maritimes – the Marshall Decision and Beyond (Saskatoon, Saskatchewan: Purich Publishing, 2001), 63.

been extinguished (by the Crown), the ‘sovereignty of their practices’ had not necessarily been extinguished.

The importance of *Delgamuukw* cannot be underestimated for the purposes of understanding Aboriginal sovereignty. Two aspects of *Delgamuukw* are important to retain. The first is the recognition that oral history should be considered “on an equal footing with the types of historical evidence that courts are familiar with”⁴⁸. This requirement opens up the possibility of introducing into legal debate Aboriginal notions of sovereignty – as Aboriginal people perceive them. This possibility had not existed until *Delgamuukw*. Of equal importance is the culmination in *Delgamuukw* of the duty of the Crown to consult with Aboriginal people where regulations, activities or decisions of the Crown might have an impact on Aboriginal or treaty rights⁴⁹. While the extent of this duty varies according to the ‘importance’ of the issue, it nonetheless reinforces the role of Aboriginal nations in controlling sovereignty over their practices⁵⁰.

Finally, *Badger* provides some important indications of the courts’ intentions with regards to interpretations of Aboriginal sovereignty. Although the case is interesting in

⁴⁸ *Delgamuukw v. British Columbia*. 3 Supreme Court Record 1010. Supreme Court of Canada, 1997.

⁴⁹ This has been reinforced by recent Supreme Court decisions in British Columbia.

⁵⁰ See also *R. v. Marshall (Marshall No. 2)*. 3 Supreme Court Recorder 533. Supreme Court of Canada, 1999 where the court states that “if the consultation does not produce an agreement, the adequacy of the justification of the government’s initiative will have to be litigated in the courts”. This is true as much of the historical context as it is of the present. As Nathalie Oman argues, “[r]ather than acquiescence to the sovereignty of Canadian system over their people, these Gitksan and Wet’swet’en understood their participation in the (*Delgamuukw*) court case to constitute a generous offer to forge a reciprocal understanding with members of the Court, and through them, non-Native Canadians generally”. Nathalie Oman, “Sharing Horizons: A Paradigm for Political Accommodation in Intercultural Settings,” McGill University, 1997, 133.

itself⁵¹, the four principles of treaty interpretation elaborated by the court are key. These principles will have a direct application in the Marshall case, and are therefore worth recapitulation:

1. A treaty represents an exchange of solemn promises between the Crown and Indian nations and the nature of this agreement is sacred.
2. The honour of the Crown is always at stake when dealing with Indian people, and it is always assumed that the Crown intends to fulfil its promises. The integrity of the Crown must be maintained when interpreting statutes or treaties that affect Aboriginal and treaty rights. The appearance of “sharp dealing” is not to be sanctioned.
3. When interpreting a treaty or document, any ambiguities or doubtful expressions in the wording must be resolved in favour of the Indians. Any limitations that restrict Indian treaty rights must be narrowly construed.
4. The onus of proving extinguishment of treaty rights lies with the Crown. Strict proof of the extinguishment is required, as is a clear and plain intention to do so⁵².

These four principles appear to indicate a court intent on broadening the powers of oral history in litigation, and on the honour of treaty making *and* treaty keeping. This has great potential to broaden the importance of historical meanings of concepts like sovereignty to Aboriginal people in future litigation. Indeed, the trend in litigation appears, then, to counter arguments regarding the colonialism of court decisions. The possibilities of legal pluralism are more evident in the judgements following *Delgamuukw*, creating greater opportunity for Aboriginal voices and meanings in the court system. It is arguable, then, that the courts have consistently improved the conditions for litigation under which concepts like sovereignty are articulated in the way that they were originally intended according to the ‘sacred agreement’ of a treaty.

⁵¹ The Supreme recognized the right of Aboriginal people in the Treaty 8 area to hunt for food on private land that was unoccupied. If a parcel of land within the area of Treaty 8 is unoccupied and not being put to visible use, then members of Treaty 8 had a right to use it for hunting. This is an interesting reversal of the *terra nullius* idea.

⁵² *R. v. Badger*. 1 Supreme Court Record 71. Supreme Court of Canada, 1996.

Indeed, the courts have demonstrated that treaties can play a crucial role in revealing and giving full meaning to Aboriginal sovereignty.

Notable about the cases cited above is the centrality of natural resource use and protection in contesting the Aboriginal meaning of sovereignty. While ideas such as the “noble savage”, or the “First environmental citizen” are problematic⁵³, there is little doubt that the current Aboriginal discourse on sovereignty is presented as one of closeness to nature, and protecting natural resources. As elucidated by the Haudenosaunee⁵⁴, *The Earth is our Mother*⁵⁵. It is this vision of sovereignty, as presented by authors such as J.G.A. Pocock, that is recurrent and appears more ‘faithful’ to Aboriginal conceptions of sovereignty⁵⁶.

This post-Charter trend may indicate the reversal of the colonial legacy traced by Morin in *L’usurpation de la souveraineté autochtone*. Indeed, the courts appear to be retracing their footsteps into history. Although territorial sovereignty is not being considered by the courts, the relative sovereignty of ‘aboriginal practice’ is now directly in the courts’ sights. In certain legal decisions courts appear to be prepared to accept alternative visions of historiography in ways which accept the visions of Aboriginal peoples. As

⁵³ In particular because the idea of the “noble savage” was inspired by the writings of Rousseau, Michel de Montaigne and Baron de Lahontan. The evolution of this concept is succinctly traced Shepard III Krech, *The Ecological Indian: Myth and History* (New York: W.W. Norton and Company, 1999).

⁵⁴ The six-nations confederacy of the Mohawk, Seneca, Oneida, Onondoga, Cayuga and Tuscorora peoples.

⁵⁵ This is the first principle of the Naturalized Knowledge System, described in greater detail in David J Leech, "The Naturalized Knowledge System: A Methodology for Community Development," University of Ottawa 2000.

⁵⁶ For different perspectives on this idea, see Juanita Perley, "The Nutritional Value of Natural Foods Native to Turtle Island and Our Abenaki Nation," Maliseet First Nation, Tobique, New Brunswick, (2002), J.G.A. Pocock, "Law, Sovereignty and History in a Divided Culture: The Case of New Zealand and the Treaty of Waitangi," *McGill Law Journal* 43 (1998), and Oren Lyons, "Spirituality, Equality, and Natural Law," *Pathways to Self Determination: Canadian Indians and the Canadian State*, eds. Leroy Little Bear, Menno Boldt and J. Anthony Young (Toronto, Ontario: University of Toronto Press, 1984).

Morin suggests in the article cited above, there is a need to understand the 'rich vocabulary' of these visions in a manner which makes the treaties a way of reading meaning into the past instead of freezing the past in the meanings of today.

The above discussion highlights how the courts have articulated the concept of 'Aboriginal sovereignty'. Out of the legal literature and legal decisions regarding Aboriginal sovereignty we can elucidate several key aspects of Aboriginal sovereignty. In particular, the courts have allowed greater room for oral histories in their deliberations, placing these oral histories on an equal footing with 'traditional' forms of evidence. Providing a greater role in court proceedings for Aboriginal oral histories reinforces the traditions of Aboriginal people and recognizes a distinct culture which has retained its authority for Aboriginal people through colonial times.

In many instances, the judgements of the court have centered on the continuity of practices relating to the management and use of the natural environment. Logging and eel fishing are but two examples of this type of practice given qualified recognition by the courts. What is missing in legal literature and the decisions of the courts, however, is an analysis of whether the continuity of sovereignty implies the continuity of Aboriginal law as well. While sentencing circles, and some forms of restorative justice do acknowledge this possibility, this acknowledgement appears marginal to the discussion above. Indeed, no comprehensive analysis has been made with respect to the limits of Aboriginal practice as they are defined by Aboriginal people participating in the Canadian legal systems. The question remains, then, of how the limits imposed by the

courts (as was the case in *Marshall*) on the scope of these practices also impose limits on the argument of continuity implied in Aboriginal sovereignty.

Reflections on Aboriginal-Canadian Relations

Central to recent reflections in the literature is the relationship between Aboriginal people and Canada – a relationship that has evolved significantly since first contact. In particular, continuity of culture is highlighted as an important aspect of Aboriginal sovereignty in these reflections. The role of institutions is also central to the reflection of many authors regarding the respect for, and honouring of, sovereignty articulated in treaties signed between the Crown and Aboriginal peoples. Finally, some consideration is given to the role of language and symbol in articulating Aboriginal sovereignty in a plural society like Canada.

Four main authors in ‘Canadian’ political science have recently reflected on the relations between Aboriginal people and Canada in a substantial manner: Alan Cairns, James Tully, Will Kymlicka and Taiaiake Alfred. Although other authors have made contributions to this discussion, these four have had the most substantial input since the initiation of the Royal Commission on Aboriginal Peoples⁵⁷.

Alan Cairns reflects on relations between Aboriginal peoples and Canada through the lens of citizenship. Cairns founds his arguments for a Canada-Aboriginal relationship

⁵⁷ The Royal Commission on Aboriginal Peoples (also known as RCAP) delivered its final report in 1996. The deliberation, research and hearings leading up to this report, and the response to the report by Aboriginal and non-Aboriginal thinkers makes RCAP a turning point in reflection on Aboriginal-Canadian relations. Cairns appears to concur with this assessment in *Citizens Plus* when he states that the “*Report* (RCAP) and its attendant research almost certainly qualify as the most exhaustive analysis ever undertaken of indigenous peoples in Canada, possibly in the world.” Royal Commission on Aboriginal Peoples, Report of the Royal Commission on Aboriginal Peoples (Ottawa: The Commission, 1996), 4.

based on the notion of “citizens plus”. This notion recognizes ‘Aboriginality’ as a product of different histories and experiences of ‘Canada’, but focuses on the creation of a unifying citizenship within which Aboriginal and Canadian citizens might have different responsibilities and rights. In this sense, *Citizens Plus* is characteristic of Cairns’ need to understand the impacts of a changing constitutional world on the central institutions of Canada – namely identity and citizenship⁵⁸.

To retain from Cairns’ *Citizens Plus* is the importance of the search for commonality and the recognition of interdependence in the relationship between Canada and its Aboriginal peoples. “In sum, to exaggerate our solitudes at the expense of a recognition of our moral and factual interdependence is a recipe for poor policy in the short run and profound regrets in the long run”⁵⁹. Cairns is underlining both the fact that the rise of Aboriginal nationalism and identity is part of the greater fragmentation of Canadian society, and the need of the state to respond to this fragmentation in new ways.

Indeed, Cairns’ compass points in one direction: the need to maintain Canadian citizenship as the social and political ‘glue’ that holds Canada together. While he is advocating a differentiated citizenship for Aboriginal peoples, because of their status as ‘first nations’, he nonetheless maintains the need for *Canadian* citizenship as the

⁵⁸ Among the vast numbers of contributions of Cairns, see Alan Cairns, Charter Versus Federalism: The Dilemmas of Constitutional Reform (Montréal, Québec: McGill-Queen’s University Press, 1992), Alan Cairns, Citizens Plus – Aboriginal Peoples and the Canadian State (Vancouver, British Columbia: UBC Press, 2000), Alan Cairns, "The Fragmentation of Canadian Citizenship," Belonging: The Meaning and Future of Canadian Citizenship, ed. William Kaplan (Montreal, Quebec: McGill-Queen's University Press, 1993), Alan Cairns, Reconfiguration: Canadian Citizenship and Constitutional Change: Selected Essays by Alan C. Cairns, ed. Douglas Williams (Toronto, Ontario: McClelland and Stewart, 1995).

⁵⁶ Alan Cairns, Citizens Plus – Aboriginal Peoples and the Canadian State (Vancouver, British Columbia: UBC Press, 2000), 8.

recognition of our interdependence. In this sense, he echoes Charles Taylor's notion of 'deep diversity', essentially arguing that Aboriginal Canadians, as all Canadians, must have different means (in this case rights) to relate to a common Canada – in this case citizenship.

Of critical importance for this thesis, is Cairns' assertion that citizenship must be *shared*. Consistent with this vision of Canadian-Aboriginal relations, Cairns agrees that Aboriginal people have a different experience of the colonial relationship than the colonizers do. To embrace this difference, however, stresses difference and independence – antitheses to Cairns' arguments for sharing and interdependence. Cairns posits that "claims for land, sovereignty, or compensation for malperformance of the federal government trusteeship role are not based upon an appeal to a common citizenship, but on histories of maltreatment, non-recognition, absence of treaties, and so on",⁶⁰.

For Cairns, then, shared citizenship sets the conditions and delimits the possibilities for Aboriginal sovereignty. By extension, any Aboriginal definition of sovereignty must be consistent with the current institutional structure – federalism and constitutionalism in particular. By the thrust of Cairns' arguments, however, it is possible to conclude that he foresees the growth of Canadian citizenship with the introduction of elements of Aboriginal sovereignty. Finally, Cairns' work does invite reflection on the effects of introducing different conceptions of sovereignty on the institutional stability of Canada.

⁶⁰ Ibid., 167.

Cairns bemoans the lack of theorization present in proposals for self-government, autonomy, and a litany of other Aboriginal proposals.

Cairns rejects as divisive all other 'labels' or symbols for relations with Aboriginal people vying for our attention – nation to nation, Kaswentha⁶¹, third order of government, Aboriginal rights, and the inherent right to self-government. In the manner that Cairns uses the notion of shared citizenship, citizenship becomes both an institution and symbol for a sharing of cultural sovereignties implicit in the respective experience of Aboriginal and 'other' Canadians.

Tully also embraces the difference of experience – like the difference expressed in the symbols and language of the Kaswentha and the *Spirit of Haida Gwaii* – as a means of imaging our relationships with the others with whom we share the country. Tully's work⁶² is one of the most comprehensive post-imperial theorizations of these relationships, and therefore provides an important prism through which to consider the question of Aboriginal sovereignty. His use of the symbolism of the *Haida Gwaii* is not incidental, as it forms an important basis for Aboriginal reflection on sovereignty both in terms of modern day political institutions and in terms of the continuity of tradition. In this case, the *Haida Gwaii* is a traditional Haida canoe, paddled by different characters, representing the different historical and cultural perspectives of those peoples found in

⁶¹ Also known as the Two-Row Wampum. Tully and Ransom would not agree with Cairns' interpretation of this 'symbol' of the foundations for the relationship between Aboriginal people and Canada.

⁶² I will consider two of Tully's works here: James Tully, "A Just Relationship between Aboriginal and Non-Aboriginal Peoples of Canada " Aboriginal Rights and Self Government: The Canadian and Mexican Experience in North American Perspective, eds. Curtis Cook and Juan D. Lindau (Montreal, Québec: McGill-Queens University Press, 2000), James Tully, Strange Multiplicity : Constitutionalism in an Age of Diversity (Cambridge, UK: Cambridge University Press, 1995).

the canoe (Canada). This symbolism is used to evoke the shared nature of sovereignty, as it is perceived from the perspective of sovereignty held by each of the paddlers.

Mindful of the demands of post-imperialism, Tully powerfully asserts that the history of colonialism “provides a profound narrative in terms of which they understand their task today and imagine a future when they will be free and equal to the peoples that have dominated them for half a millennium”⁶³. The responses of Aboriginal peoples to colonialism are threefold in the immediate post-colonial period. These are, respectively, de-colonization, self-rule and a just relationship. Tully identifies with the third of these responses, aspiring to offer a “first approximation of a sketch that might mediate our differences” in order to initiate intercultural dialogue towards a ‘just relationship’⁶⁴.

Tully offers two useful interrelated ‘frames’ within which to consider the foundations for such a dialogue. The first of these is based on an argument that Canada should be considered as two confederations: 1) a treaty confederation of Aboriginal nations with the Crown; and 2) a constitutional confederation of provinces and the federal government. To Tully, this is the only means of affirming the status of Aboriginal nations as equal, co-existing and self-governing nations *with* Canada. Tully makes it clear that treaty relationships are the alternative to colonial relationships because treaties are based on reciprocity and consent and “provide the normative prototype of the just relationship they

⁶³ James Tully, "A Just Relationship between Aboriginal and Non-Aboriginal Peoples of Canada " Aboriginal Rights and Self Government: The Canadian and Mexican Experience in North American Perspective, eds. Curtis Cook and Juan D. Lindau (Montreal, Québec: McGill-Queens University Press, 2000), 39.

⁶⁴ Ibid. 40. Of course, it is worth noting that Tully argues for the accommodation of Aboriginal ideas into a western framework – an argument he advances on the strength of western systems to accommodate values without revision.

aim to achieve by their struggles”⁶⁵. Treaties, then, are an institution that protects and honours the continuity of Aboriginal sovereignty.

The second frame offered by Tully is that of ‘hidden constitutionalism’. In *Strange Multiplicity*, Tully devotes considerable attention to the rise of modern constitutionalism, the challenges presented to modern constitutionalism by the demands of diversity and plurality and the possible responses of ancient constitutionalism to these challenges. In the surge of difference brought on by post-imperialism, ‘common constitutionalism’ can be viewed as an emergent alternative. This ‘common constitutionalism’ is founded on the three conventions of mutual recognition, continuity and consent⁶⁶. It is particularly in the language of mutual recognition, continuity and consent that both Aboriginal and non-Aboriginal people contest the ‘justness’ of actions by the other, thus fulfilling the two public goods of belonging and critical freedom.

It is based on these three conventions of mutual recognition, continuity and consent that we can attempt to re-consider the meaning of Aboriginal sovereignty. As the work of Alfred continues to demonstrate, the convention of mutual recognition allows us to see Aboriginal nations as independent and self-governing at the time of contact. Indeed, once we grasp this convention, it is clear that both the Europeans and Aboriginal peoples viewed each other as independent self-governing nations. At the signing of treaties, “...like the Europeans negotiators, Aboriginal people did not view this as a founding moment ... but as a long link in a chain of multinational institutional agreements that

⁶⁵ Ibid. 41.

⁶⁶ James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge, UK: Cambridge University Press, 1995), 116.

stretched long before the newcomers arrival ...”⁶⁷. The convention of continuity means that we must recognize that Aboriginal sovereignty continued as a part of the ‘incorporation’ of Aboriginal people into the Canadian political landscape. Finally, the convention of consent demands that we must always consult before making changes to the political landscape⁶⁸ – a condition that was not met when European conceptions of sovereignty were imposed on Canada.

Treaties can be seen as a form of mutual consent between peoples, thus ensuring the continuity of peoples’ customary ways and forms of government and their transition into new forms of constitutional association with others⁶⁹. This, in turn recognizes continuity of nationhood in the post-contact period. In this way, treaties “give rise to a conventional association of inter-dependence and protection, but not to discontinuity or subordination to a single sovereign”⁷⁰. Sovereignties can co-exist, overlap, and mutually support each other in this form of common constitutionalism.

If we follow Tully’s call to imagine what a just relationship means within a framework of common constitutionalism, we can see possibilities for recognition of traditional forms of ‘Aboriginality’, in constant ‘aspectival’ negotiation. This could include forms of Aboriginal sovereignty which are foreign to us (and to our political systems) but which

⁶⁷ Ibid. 122.

⁶⁸ ‘Quod omnes tangit ab omnibus approbetur’ – ‘what touches all should be agreed to by all’.

⁶⁹ James Tully, Strange Multiplicity: Constitutionalism in an Age of Diversity (Cambridge, UK: Cambridge University Press, 1995), 125.

⁷⁰ Ibid. 126. These arguments are based on the rejection of the *res nullius* argument – the argument that the lands in North America were available to Europeans because they were unoccupied by other nations. This was based on Locke’s arguments that North American Aboriginal were not self-governing but living in a state of nature. For a brief but clear refutation of this argument, see James Tully, “Property, Self-Government and Consent,” Canadian Journal of Political Science XXVIII.1 (March) (1995), 126-127.

can be understood from the perspectives of all other paddlers in the *Spirit of the Haida Gwaii* in the same way as non-Aboriginal forms of sovereignty could be recognizable by Aboriginal paddlers. This approach would recognize the reality and value of asymmetrical understandings of sovereignty in all of the paddlers.

It seems, then, that Tully's common constitutionalism is a useful way in which to reflect on meanings of Aboriginal sovereignty, principally because it values traditional meanings – continuity of culture – thus calling us to seek those meanings as equal, co-existing and self-governing nations and to bring those meanings forward into a constitutional association today. Treaties, as an intercultural form of negotiation⁷¹, appear as an ideal site in which the meaning of Aboriginal sovereignty will be articulated as a means of initiating intercultural dialogue. This reinforces the possible usefulness of treaties as a moment of illumination of the meaning of Aboriginal sovereignty.

Kymlicka places intercultural dialogue within the possibilities of a multicultural liberalism⁷². Aboriginal claims to and meanings of sovereignty would have to be accommodated within Kymlicka's typology of rights-based claimants. This typology divides rights-based groups into 1) those that have claim to self government (national minorities); 2) those who have claim to polyethnic right; and 3) those that may claim to group representation – in institutions. This typology is founded on the recognition of

⁷¹ James Tully, "A Just Relationship between Aboriginal and Non-Aboriginal Peoples of Canada " Aboriginal Rights and Self Government: The Canadian and Mexican Experience in North American Perspective, eds. Curtis Cook and Juan D. Lindau (Montreal, Québec: McGill-Queens University Press, 2000), 54.

⁷² I am focusing principally on Will Kymlicka, Liberalism, Community and Culture (Oxford U.K.: Clarendon Press, 1989), Will Kymlicka, Multicultural Citizenship: A Liberal Theory of Minority Rights (Oxford U.K.: Oxford University Press, 1995).

societal cultures⁷³, since cultural membership is a primary good for all individuals and since it is from within culture that we articulate and evaluate our beliefs.

Critical to Kymlicka's liberal theory of citizenship is a liberal conception of justice based on individual equality and opportunity⁷⁴. Although Aboriginal people certainly qualify as national minorities with the right to claim self-government, Kymlicka simply accepts that this is an equality right for the here and now. He does not, in other words, consider the historical circumstances under which Aboriginal cultures were made vulnerable⁷⁵ and 'incorporated' into Canada. Although Kymlicka does afford Aboriginal peoples the ability to take special measures to protect their culture, he does so only by deliberately placing to the side the conditions of Aboriginal 'incorporation' into Canada (i.e.: history), thus deliberately marginalizing the Aboriginal experience of injustice and colonialism. In other words, Kymlicka's approach fails in regards to Aboriginal people because it allows only those Aboriginal rights which maintain equality with all other Canadians in the current context.

If we re-read Kymlicka's typology as recognizing that self-governing national minorities may not have ceded their sovereignty, or that their sovereignty may have been ceded to

⁷³ Kymlicka states "The sort of culture that I will focus on is a societal culture – that is, a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres. These cultures tend to be territorially concentrated, and based on a shared language". Will Kymlicka, Multicultural Citizenship: A Liberal Theory of Minority Rights (Oxford U.K.: Oxford University Press, 1995), 76.

⁷⁴ Ibid. 76-77. For another consideration of Aboriginal sovereignty from the perspective of formal and substantive equality, see the second chapter of Patrick Macklem, Indigenous Difference and the Constitution of Canada (Toronto, Ontario: University of Toronto Press, 2001).

⁷⁵ Made vulnerable by loss of their sovereignty due to conquest, cessation to another power, or being overrun by another societal culture.

another/taken by another in an unjust manner, then it is possible to see Aboriginal sovereignty in a different light⁷⁶. For example, this places greater emphasis on the need to reflect on equality throughout the history of a relationship, and to reflect on the conditions of ‘incorporation’ to which a particular Aboriginal nation was subject. This, in turn, places greater emphasis on the historical meaning of Aboriginal sovereignty, because it is under these terms of Aboriginal sovereignty articulated in the meeting of two equals (where both their histories are recognized) that Aboriginal people *should* be entering into a relationship of equality with other groups of rights-based claimants. Indeed, Kymlicka’s approach to Aboriginal rights proves to be discontinuous with the experience of Aboriginal peoples in Canada.

Taiiaki Alfred takes a different perspective, arguing that ‘sovereignty’ is an occidental concept that reinforces the colonial hold on Aboriginal people⁷⁷. Alfred’s own use and struggle against this concept is evident in the shift in position he makes between his first and second books (1995-1999). In *Heeding the Voices*, Alfred suggests that Aboriginal sovereignty is not state sovereignty but community sovereignty, because where “the state-based nationalist project is geared toward displacing the existing state in the creation of a new one, community sovereignty nationalism accepts the state’s present

⁷⁶ I am indebted to Dale Turner for his interpretation of Kymlicka. See Dale Turner, "Liberalism's Last Stand: Aboriginal Sovereignty and Minority Rights," Aboriginal Rights and Self-Government: The Canadian and Mexican Experience in North American Perspective, eds. Curtis Cook and Juan D. Lindau (Montreal, Québec: McGill-Queens University Press, 2000).

⁷⁷ I will consider Taiiaki Alfred, Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism (Toronto, Ontario: Oxford University Press, 1995), Taiiaki Alfred, Peace, Power, Righteousness – an Indigenous Manifesto (Toronto, Ontario: Oxford University Press, 1999).

existence and attempts an accommodation that preserves the integrity of both the challenging ethnic group and the state itself”⁷⁸.

In *Peace Power Righteousness*, Alfred further refines this idea, arguing that sovereignty is acceptable when speaking to Canada and the United States, because it is a concept that they understand. When referring to internal governance, however, Alfred advocates using the word “tewatatowie”, a Mohawk word that means “we care for ourselves”⁷⁹.

When asked to define the meaning of “tewatatowie”, Kenneth Atsenhainton Deer, spokesperson for Kahnawake, states:

*To me it's the Mohawk people using our terminology to express our self-determination – how we will exist, how we will relate to each other and to other people. We will make those decisions, and we will make decisions that affect our culture, our language, and how we teach our children. It's about decisions on survival; everything is based on survival*⁸⁰.

Alfred also distinguishes these notions from ‘independence’, since it is impossible for the Haudenosaunee to be ‘independent’ of Canada or the United States, and still honour the meaning of the Kaswentha⁸¹. Sovereignty, then, is not independence, but interdependence.

⁷⁸ Taiaiake Alfred, *Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism* (Toronto, Ontario: Oxford University Press, 1995), 15.

⁷⁹ Macklem makes the same distinction in Chapter four of Patrick Macklem, *Indigenous Difference and the Constitution of Canada* (Toronto, Ontario: University of Toronto Press, 2001).

⁸⁰ Kenneth Atsenhainton Deer in Taiaiake Alfred, *Peace, Power, Righteousness – an Indigenous Manifesto* (Toronto, Ontario: Oxford University Press, 1999), 110. This is echoed by Robert Warrior: “We first see that the struggle for sovereignty is not a struggle to be free from the influence of anything outside ourselves, but a process of asserting the power we possess as communities and individuals to make decisions that affect our lives”. Robert Allan Warrior, *Tribal Secrets: Recovering American Indian Intellectual Traditions* (Minneapolis, Minnesota: University of Minnesota Press, 1995), 124.

⁸¹ This is because the Kaswentha binds the Haudenosaunee to Canada and the United States in a relationship founded on the principles of peace, power and righteousness.

Returning to our discussion of law above, this definition sounds very much like sovereignty of practice or tradition. Indeed, Alfred's scholarship is founded in the retrieval of traditional concepts for use in modern Aboriginal governance. He argues this, in part, because these concepts have been in continued existence since the founding of the Haudenosaunee⁸². He also uses these concepts because they are practical in that they speak a language which Haudenosaunee understand. His *Peace Power Righteousness* manifesto is a call to recognize the language of the colonizer, and to reject it in favour of Aboriginal meaning for Aboriginal people. In this context, understanding the traditional and historical meaning of sovereignty will be very important. Indeed, it may prove that some other word like *tewatatowie* may be the best way to convey the meaning of sovereignty of practice for Aboriginal peoples.

Relationships and interdependence serve as themes in the discussion of Aboriginal sovereignty – both as a challenge to, and opportunity for, diversity and post-colonial reflection in Canada. Some writers have considered the richness of Aboriginal traditions, symbolic languages and histories to construct models for intercultural dialogue or equality. The focus has largely been on the continuity of culture *within* Canada as a means of discussing Aboriginal sovereignty. In practice, the discussion of cultural continuity has been limited in scope to the politics of recognition. Implicit here is an acceptance that current political institutions, as they are conceived of in the theory and practice of a liberal Canada, are acceptable to Aboriginal people as a means of establishing their place in Canada.

⁸² The date of the founding of the Haudenosaunee Confederacy is August 31, 1142.

What appears missing in these reflections are the spiritual and 'non-territorial' aspects of Aboriginal sovereignty, and how they are connected to the continuity of practice. A definite tension is apparent in the literature between the definition of Aboriginal 'sovereignty' and the possible practical limits that this definition might impose on the territorial sovereignty of Canada. How Canada is 'imagined' in the works presented above is defined and thus limited by the histories and expectations of the 'Canadian imagination'. There is, in other words, a tension between the desire to 'define' Aboriginal sovereignty, and the attempt to reconcile this definition with Canadian sovereignty. By its very nature, this tension tends to result, in most 'mainstream' literature, in the reduction of Aboriginal sovereignty to something that is consistent with Canada's historical and legal 'imagination'. Clearly, what is missing here are Aboriginal conceptions of continuity as they are defined in terms of their own experiences, practices and institutions.

Summing Up Reflections

An analysis of the literature presents certain elements of Aboriginal sovereignty which writers have underlined. The first of these elements is the linkage in Aboriginal conceptions of sovereignty to the land. 'The land' is a source of spiritual and material sustenance that is both the origin of sovereignty and the ultimate responsibility for sovereign individuals, communities and nations. The connection to land is maintained not through territoriality – a distinction of critical importance – but through the practices which sustain the spiritual (ceremonies) and material (fishing and hunting or trade) elements of sovereignty. As a result, Aboriginal sovereignty is connected primarily to practices that sustain a connection to the land.

The literature also points to continuity as central to the recognition of Aboriginal sovereignty. Continuity is underlined in the literature for two reasons. The first of these is that continuity recognizes Aboriginal societies as independent, self-governing nations prior to the arrival of Europeans. In this sense, continuity affirms the assertion of Aboriginal people that they have their own legal, social, economic and political histories. Secondly, continuity describes the conditions under which Aboriginal people saw these histories being recognized through the continuation of practices in the post-contact period. In a treaty context, for example, trade and commerce agreements recognized the continuity of these historical practices into the future. Continuity, then, underlies the claims made by Aboriginal people (as nations) against the Canadian state (in the case where a treaty was not honoured) and underlies the language affirming their place within the Canadian experience.

The importance of continuity is not simply pragmatic. It is also a fundamental value within an Aboriginal worldview. Connection to the land on an ongoing basis secures not only survival – through hunting, fishing and fowling – but also provides an important connection to the spirits that inhabit the landscape. Continuity underlies the economic, cultural, spiritual, social, political and legal survival of any Aboriginal nation. It is, therefore, important at a fundamental or philosophical level, as well as being part of the discourse of Aboriginal Treaty rights and litigation.

These first two aspects of Aboriginal sovereignty are linked to spirituality. Spirituality is both a source of and responsibility for sovereignty. The spiritual aspects of Aboriginal sovereignty link practices (like fishing and hunting) to the land. Spirituality, while it represents a non-material aspect of sovereignty, is in itself a historical practice. This is because the ceremonies carried out by individuals, communities and nations – ceremonies that represent and reinforce sovereignty – happen at specific times of the day, month or year. The spiritual elements of sovereignty do not exist in a ‘dreamtime’, but can be articulated in a concrete manner.

Concepts of Aboriginal sovereignty also articulate the institutions that are of importance to sustaining this sovereignty. Sovereignty is the source of government for Aboriginal people, the source of responsibility for Chiefs and the source of belonging (citizenship) for members of the nation. Practices like hunting and fishing, and the spiritual aspects of sovereignty are also institutions⁸³ in this sense, because they promote and honour the continuity of practices necessary for the maintenance of Aboriginal sovereignty.

Finally, language and symbolism form an important part of Aboriginal conceptions of sovereignty. Many Aboriginal languages have developed their own expressions for ‘sovereignty’ – expressions which symbolize the meaning and practice of sovereignty for these people. Additionally, symbols like the Kaswentha or the *Spirit of the Haida Gwaii* are used to evoke the meaning of Aboriginal sovereignty in relation to the sovereignties of other peoples sharing the same land. This aspect of Aboriginal sovereignty is fundamental because it allows us to understand the ways in which the meaning of

⁸³ By institution, I mean any structure that creates or reinforces sovereignty.

Aboriginal sovereignty is communicated to and shared with others. This communication and sharing underlies the possibilities and conditions of intercultural dialogue with Canada.

The problem remains, however, that no author has approached the study of Aboriginal sovereignty in a manner which understands it as a synthesis of these elements. Indeed, while it is possible to draw the individual ideas discussed above about Aboriginal sovereignty from the literature, and begin to articulate their interconnectivity, it is clear that current discussions of Aboriginal sovereignty rest in part on assertion, in part on interpretation and in part on researched argumentation. Furthermore, our understanding of continuity – a fundamental aspect of Aboriginal sovereignty – is incomplete, because it is not sufficiently understood from the perspective of those to whom the continuity is important (Aboriginal people) in a context where its expression is defined only in the terms of this continuity.

Beyond the theoretical importance of understanding Aboriginal sovereignty lies a pragmatic reality. Aboriginal sovereignty has become a pivotal notion in arguments made by Aboriginal actors for self-government, land claims, co-management agreements and lawsuits. Increasing tensions, particularly in the Southern parts of Canada, between Aboriginal actors and local Canadian and state actors have revealed the fundamental differences in the ways Aboriginal and non-Aboriginal peoples conceive of their sovereign rights and responsibilities. This tension is equally apparent in contemporary

debates about the recognition of Aboriginal peoples, their role in Canada's history, and the legitimacy of their claims against the Canadian state.

What appears missing in both contemporary and historical approaches to Canadian politics, then, is an Aboriginal articulation of sovereignty that synthesizes the elements presented above in a manner that represents and honours the principal of continuity. Indeed, *continuity* of sovereignty appears as the central point around which theorizations of Aboriginal sovereignty must turn⁸⁴. Any theorization which is also unable to understand the claim of continuity advanced by Aboriginal people is unable to understand the specific history and language from which these people are advancing their claims. For the purposes of this thesis, then, our reflection on Aboriginal sovereignty must be grounded in the recognition of continuity. In a sense, we must determine when the meaning of the continuity of sovereignty was articulated (the '**moment of continuity**'), how it was articulated, and what the meaning of Aboriginal sovereignty was at the time of that articulation.

The importance of understanding Aboriginal sovereignty in a comprehensive manner raises an important general question – one that this thesis will attempt to refine and answer in a specific manner. This question is: **What are the elements of Aboriginal sovereignty articulated by Aboriginal actors at the 'moment of continuity' and how can these elements be understood as the expression of a 'whole' set of beliefs?** This

⁸⁴ Continuity, and its antithesis – discontinuity - are considered in Bruce Clark, Native Liberty, Crown Sovereignty – the Existing Aboriginal Right of Self-Government in Canada (Montréal, Québec: McGill-Queen's University Press, 1990).

necessarily leads us to the important issue of identifying an appropriate methodology for exploring this question.

Chapter 2

We looked for weeks and weeks and finally found someone to sell us tools. He was old, and had a very, very small store. It was so small, in fact, that he told us we were only the tenth to buy from him. We selected our tools, and left. The tools we bought were an axe (to cut the wood), some glue (to glue the wood together), a clamp (to hold the wood while we were gluing) and some nails made from copper. With the help of the professionals, it took us one month to build the canoe. After the canoe was finished, I needed to choose a colour. I chose red, with a bit of green. Now, we needed wood. We were told not to purchase wood from the store, but to find it in the forest. We went, therefore, into the forest. It was the closest forest to us, because we did not want to have to spend the night in the woods. Still, it took us months to find the wood we needed, and to cut it. With the wood we had cut, we started to build our canoe.

A search for tools ...the search can be long, and often difficult. Scouring the academic landscape can often result in a small accidental (occidental) discovery – one that yields all that is required for the canoe we are constructing. As we trade tools with others – as there is supposed to be ‘give’ and ‘gift’ in all academic discussion – we reflect on what else it is we need to complete our project. From there, we can get to here: looking for the material we need to start building our project together. Still, it is a challenging proposition, because we are loathe to stray from the pathways and passes that are known to us already. Regardless, we start out in the direction that seems most reasonable, knowing full well that the distance we must go will take us far from home. Yes, we will be words and worlds away from our place. Once we have returned, however, we can start to build a canoe that is our own.

.....

As our discussion in Chapter 1 reveals, we do have some understanding of what *might* constitute the individual parts of Aboriginal sovereignty. What is certainly clear, is that considerable thought has been given to the issue of Aboriginal sovereignty, due in part to its critical importance in the dialogue and negotiations between Aboriginal nations and the Canadian state. What is equally clear, however, is that no comprehensive understanding of Aboriginal ‘sovereignty’ exists in the current research and writing on the subject. Certainly, no understanding of Aboriginal ‘sovereignty’ from the perspective

of Aboriginal political thought exists at this time within the literature. The goal of this research, then, is to fill that gap and determine the meaning of Aboriginal sovereignty from an Aboriginal perspective.

The value of gaining this understanding through research is two-fold. The first, as we have discussed earlier, is the pivotal role that Aboriginal definition(s) of sovereignty have in describing and defining the relationship between the first nations of Turtle Island and the Canadian state. Indeed, dialogue between the Canadian state and the first peoples which have shared their land with Canada is contingent on a full understanding of what meaning(s) Aboriginal peoples bring to the concept of 'Aboriginal sovereignty'. The meaning of 'Aboriginal sovereignty' links us both to the present and to the past – forming a continuity between the 'here and now', and the 'there and then'.

We should also look for the meanings of the content of 'sovereignty' because it adds to our understanding of the sophisticated political language used by Aboriginal peoples on Turtle Island pre- and post-contact. Contained within this language would have been the concepts articulating the boundaries/limits of cultural, social, economic and political dimensions required to keep the nation's integrity "healthy". This notion takes us beyond the limitations imposed in an attempt to understand 'Aboriginal sovereignty' from the viewpoint of a position which is restricted by the occidental definition of sovereignty.

As an example, if we were to ask a contemporary "traditionalist" Mohawk what the best expression of their sovereignty was, they may well suggest that the Ohen:ton

Karihwatchkwen¹ best sums up their responsibilities as a sovereign people. Another might suggest that the Kaswentha or the Kayaneren'tsherakowa² encompasses all of the meanings that should be in the use of the word "sovereignty". In neither of these two articulations, however, is the word "sovereignty" actually present. Clearly, however, these are the terms used in the "speech act" used to articulate "sovereignty".

We return to the question then of *how*, at a specific moment in history when the political and legal histories of an Aboriginal nation are laid open to inspection - a moment of historical clarity – it is possible to discern and describe the meanings that these political and legal histories bring to the concept of sovereignty? This is the challenge posed in this chapter – that of finding an appropriate methodology for recovering the meaning of 'aboriginal sovereignty' at a point of *continuity* – a meaning which is pertinent to and flows from the specific political and legal history of a specific Aboriginal nation.

The search for meaning – how we get there, and the challenges we face

How can we uncover the meaning of one instance of Aboriginal sovereignty which is pertinent and faithful to the meaning attributed to this instance by the Aboriginal nation to which it 'belongs'? In order to understand this question, we must first grapple with what it is that we are looking for. If, as it is underlined above, we are looking for the meaning of 'sovereignty' when the word itself is not even present, how do we know that what we are studying and researching is what we intended to?

¹ The Thanksgiving Address.

² Respectively, the Great Law of Peace and the Two-row Wampum.

Even from the brief suggestions above, we can see that Mohawk 'sovereignty' encompasses a broad range of ideas: environmental responsibility; social stability; inter-nation and intra-nation relationships; economic and spiritual values; political structures and protocols; and much more. Indeed, in our search for an Aboriginal definition of sovereignty, it is most pertinent to speak of a broad collection of ideas which sums up an expression of the social, political, spiritual, economic and environmental health of the community³.

In essence, then, we are looking for an expression of a particular worldview – a worldview which expresses and sums up the values of the society from which it comes. In light of the challenge to understand the interconnectivity of all of the components of Aboriginal sovereignty without prejudging the form and or content of that concept, it is also wise to start with as broad an understanding as possible. At this point, then, in our search for the meaning of Aboriginal sovereignty, we will start with the conception that the worldview of a particular Aboriginal nation, when it is well understood/understandable and followed/follow-able – in a 'healthy' state, in other words – is the best possible expression of Aboriginal 'sovereignty' to which we have access.

Worldviews do not, however, simply exist in a state of overt expression for us to observe.

It is not possible, as we have seen in the previous chapter, to review the literature and

³ As an example, see Licker's Life Indicators Wheel in F. Henry Lickers, "Can't See the Forest for the Trees: A Native American's Perspective," *Biodiversity: Toward Operational Definitions - the 1995 Plum Creek Lectures* (University of Montana-Missoula: University of Montana-Missoula, 1997). See also Juanita Perley, "The Nutritional Value of Natural Foods Native to Turtle Island and Our Abanaki Nation," Maliseet First Nation, Tobique, New Brunswick, (2002).

find a synthesis of the worldview of Aboriginal people in Canada. Neither is it possible to find the synthesis of the worldview of a particular Aboriginal nation in Canada, like the Mohawks or the Mi'kmaq. If we understand, however, that a worldview is the expression of a set of values contained within a society, then we do have at least one avenue open to us in uncovering the meaning(s) of these values – the meaning(s) of language.

Indeed, language is a key resource for us to understand the values that a particular society projects to itself and others. Language is, in this context, more than simply words found in books or letters or diaries. It is, instead, a series of articulations and speech act performances⁴, where the individual articulation or performance reflects the values of the society. By understanding the thought underlying these articulations and performances, we will be opening to observation the worldview of those actors who are responsible for the articulations in which we are interested. In the sense that these articulations touch on political concepts, what we are attempting to understand is the political thought of the speech actors in question. Indeed, we are seeking to understand political thought at its most primal level.

If we are truly interested in understanding the original meaning of Aboriginal 'sovereignty', then we are necessarily embarking on a historical enterprise. The role that we are taking on – that of a political historian – requires some understanding. We must also understand what it is to look for 'meaning', particularly as we take on the task of seeking meaning in a time and language which is not our own. I will address the former

⁴ This approach draws on the discipline of linguistics for its *inspiration*.

of these two issues here, leaving the discussion with respect to meaning for the latter part of the chapter.

The historian of political ideas

What does it mean that we are taking on the role of political historian? What are we interested in, and what is it that we are doing? In our search for the meanings of articulations and speech act performances, how do we conceive of the relationship between these acts, and the political thought we are attempting to understand? In concrete terms, how do we make the connection between the words of Aboriginal speech actors, and the political thought reflected in their conceptualization of 'sovereignty'?

The answers to these questions begin with our willingness to understand the idea of political thought as an aspect of social behaviour which we can study and comprehend. As an individual interacts with other members of their society and participates/interacts with the institutions that buttress that society, they engage in a social behaviour which reflects, reinforces, or alters their own modalities of political thought. This, in turn, has the potential to affect changes in the social behaviour and political thought of their society at large. Ethic, morale, and justice are evoked in this context as examples of social behaviour that are intrinsic to and linked to political thought. In this sense, understanding social behaviour is also understanding political thought.

While political thought might be reflected in social behaviour, it is also a deeply reflective and intellectual pursuit. In this “intellectuality”, humans attempt to better understand the environment in which they are located, and their experience of this environment⁵. Political thought, then, is a codification of the meaning/s present in society. Indeed, political thought is based in action and in intellectual reflection on the individual and collective experiences of the society in question. Phenomenology and reflection on reason could quite easily find themselves at home in this experientially-based political thought.

We can conclude, then, that if we are interested in the meaning of the articulations of a particular speech actor, that we are necessarily interested in the substance of their political thought – their social behaviour and experiential/environmental reflections. In a historical context, then, we are interested not necessarily in the philosophy of historical thought, but rather in a method of understanding the meaning of a specific utterance in the context and conventions from which it arose. What we are interested in is a *history of political thinking*.

Of course, we should be wary of a technique for understanding the history of political thinking that purports to offer **the** meaning of a particular utterance. After all, articulations about political thought can be subject to the whims or fashions of politics. What is now ‘interesting’ in the academic world is likely to be influenced by the society

⁵ J.G.A. Pocock, "The History of Political Thought: A Methodological Enquiry," Philosophy, Politics and Society, eds. Peter Laslett and W.G. Runciman (Oxford: Basil Blackwell, 1967), 185. This is also raised by John Gunnell in John G. Gunnell, The Orders of Discourse: Philosophy, Social Science and Politics (Lanham, Maryland, USA: Rowman & Littlefield Publishers, Inc., 1998), p. 164.

in which the thought is emergent. Indeed, since "...there is no one set of assumptions from which alone it is proper to approach the history of political thought, there must consequently be an indefinite number of approaches which we may make ... and these are determined less by ourselves, independently choosing a line of enquiry, than by the social and intellectual traditions in which we conduct our thinking"⁶. As political historians, then, we cannot imagine ourselves to be engaged in the search for *the definitive meaning*, but rather a meaning which appears reasonable given the tools and resources which we have at our disposal.

As an historian of political ideas, the availability of resources also begs some consideration. If we can agree that we are not searching for the definitive meaning of a particular speech act, we should also see that there are no particular speech acts that can reveal definitive meaning. At best, we may be able to *see meaning as*, even if we cannot be fully sure that the meaning we *see as* is *known as* definitive⁷. It is best, then, to ensure that our sources are very broad, in order to appreciate the broadest number of possible meanings available to us. Indeed, we are searching for a more 'popular' history of political thinking in which *any* speech actor may play a part in revealing threads in the tapestry of political thinking evident in their society⁸. For example, Margaret Atwood may reveal to the historian of the future as much, if not more, about the political thought of the 1960s in Canada than Charles Taylor or Pierre Trudeau.

⁶ J.G.A. Pocock, "The History of Political Thought: A Methodological Enquiry," Philosophy, Politics and Society, eds. Peter Laslett and W.G. Runciman (Oxford: Basil Blackwell, 1967)184.

⁷ Further elaboration of these ideas can be found in Havercroft's essay on Wittgenstein, Jonathan Havercroft, "On Seeing Liberty As," The Grammar of Politics: Wittgenstein and Political Philosophy, ed. Cressida J. Heyes (Ithica, NY: Cornell University Press, 2003).

⁸ J.G.A. Pocock, Politics, Language and Time - Essays on Political Thought and History (New York: Atheneum, 1971)..

The challenge of this approach is in the abstraction of meaning from articulations which may be made by *any one* speech actor. It is the role of the political historian to “ascertain in which language and on which level a given controversy was conducted or a given thinker developed [their] ideas”⁹. Of course, articulations are in themselves abstractions of the social context/conventions in which they are produced – abstractions from which the historian attempts to further draw broader meaning(s). This is further complexified as the political thought of a given society over a period of time, “will provide on inspection to exist on a number of different levels of abstraction, varying with the character of the problems which it is intended to solve”¹⁰.

It appears then, that the task of the political historian may be to determine the level of abstraction of thought that did take place in any particular speech act. The historian will then attempt to find consensus in this abstraction – to seek out a single “meta narrative” at a higher level of abstraction¹¹. Indeed, this is the approach adopted in the research for this thesis – linking the speech acts of a broad range of actors together in order to seek out the highest possible abstraction of societal thinking – that of a worldview. In so doing, we must be careful to *re-present* the context in which words which interest us are used, avoiding any temptation instead, to *construct* that context based on our own ideas.

⁹ J.G.A. Pocock, "The History of Political Thought: A Methodological Enquiry," Philosophy, Politics and Society, eds. Peter Laslett and W.G. Runciman (Oxford: Basil Blackwell, 1967), 200.

¹⁰ Ibid. 188. This observation resonates with Habermas' discussion of levels of public discourse.

¹¹ This is discussed by John Gunnell in his chapter on “interpretation” in John G. Gunnell, The Orders of Discourse: Philosophy, Social Science and Politics (Lanham, Maryland, USA: Rowman & Littlefield Publishers, Inc., 1998). Gunnell is concerned that the search for historical context pushes an interpreter to abstract to a higher level – a level which often resonates more closely with their own thought than with the ‘natural’ context in which the articulation was made.

The danger in this approach is, of course, that we might yet be “the prisoner of a method which condemns [us] to explain political thought only in so far as it can be presented as systematic political theory or philosophy”¹². We risk judging any articulation which seems outside the “meta narrative” to be exceptional or atypical. It also means that we risk being ‘stuck’ studying the abstraction of thought, and not the process which produced the abstraction itself¹³, when this process is of equal importance. These risks are minimized if we adopt a method for understanding speech acts which accounts for both the meaning of statements, and the intended meaning of their authors.

The field of political historiography has been evolving in order to respond to the perceived need to broaden the approaches to historical research. Certainly, historiographical approaches in political science now include the study of a variety of idioms or “languages” in which political argument might be conducted (common law, for example). The study of political historiography has also broadened the sources from which it can draw its conclusions. Trade documents, legal decisions, photographs, drawings, personal belongings, parliamentary debates and personal letters all become sources of information for those studying the history of political thinking. These sources establish the context and assist us in understanding the conventions of language use for the particular time that we are interested in.

¹² J.G.A. Pocock, "The History of Political Thought: A Methodological Enquiry," Philosophy, Politics and Society, eds. Peter Laslett and W.G. Runciman (Oxford: Basil Blackwell, 1967)189. This is what Wittgenstein would have referred to as “aspectival blindness”. See Jonathan Havercroft, "On Seeing Liberty As," The Grammar of Politics: Wittgenstein and Political Philosophy, ed. Cressida J. Heyes (Ithica, NY: Cornell University Press, 2003).

¹³ J.G.A. Pocock, "The History of Political Thought: A Methodological Enquiry," Philosophy, Politics and Society, eds. Peter Laslett and W.G. Runciman (Oxford: Basil Blackwell, 1967) 190.

So what to do when the language and time of the nature and range of things are not our own? How, in other words, do we understand the language of an Aboriginal speech actor, when we are not Aboriginal ourselves? Are there specific challenges in our attempts to understand the illocutionary intentions of the speech actors in which we are interested and their utterances?

Claude Denis raises these challenging questions in *We Are Not You*, offering some possible avenues for reflection on the process of re-describing Aboriginal meaning from the perspective of a non-Aboriginal academic¹⁴. First, and foremost, notes Denis, “the circumstances of aboriginal peoples could not but be improved if whitestream society acquired a better understanding of aboriginal ways and discovered, in fact, that it has something to learn from them”¹⁵. Beyond this, however, is the benefit of generating an understanding which will facilitate cross-cultural communication, through empathetic readings and re-readings of aboriginality from an occidental perspective¹⁶.

Certainly, Denis establishes the benefits of attempting an occidental re-description of Aboriginal values and beliefs. Though his initial claim to agency is that of a non-aboriginal academic, whose interpretive capacities are thus limited, the conclusion to his work gives more lateral for others attempting a similar enterprise¹⁷. Through his research and reading of the trial of Joseph Peters, Denis arrives at the conclusion that “in between

¹⁴ Claude Denis, *We Are Not You: First Nations and Canadian Modernity* (Peterborough, Ontario: Broadview Press, 1997), 44-49, 151-158.

¹⁵ Ibid.47.

¹⁶ Ibid. Denis concurs with Turpel in this regard. See Mary Ellen Turpel, "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences," *Canadian Human Rights Yearbook 1989-1990* (Ottawa: University of Ottawa Human Rights Research and Education Centre, 1990).

¹⁷ Claude Denis, *We Are Not You: First Nations and Canadian Modernity* (Peterborough, Ontario: Broadview Press, 1997), 44 – 45.

the stark opposition between bright light and pitch dark, between easy intercultural translation and stone silence, the initiation of Joseph Peters tells me that difficult communication, weak communication is possible based on the possibility of recognition, of ‘seeing the connections’¹⁸. Indeed, even when reading between cultures, and across time, it is possible to imagine what the shoes of the other might be like, in order to arrive at re-descriptions of Aboriginality that Aboriginal people would recognize and understand as faithful to their own¹⁹.

Through careful research, and understanding the conventions in which the nature and range of things possible in a given utterance are clear, we can have access to the meaning of a speech act in which we are interested. Kiera Ladner’s Doctoral thesis provides useful guidance in tackling this challenge, arguing that an indigenist methodology, built around the “(interpreted) perspective of the people themselves” is the most appropriate strategy for what Cruickshank presents as the balancing of academic responsibilities with the ‘telling of a story’²⁰. If we return, then, to the analogy of the canoe, we must first seek out a means of understanding the conventions of language used by the people in that canoe, and the context in which the articulations we wish to analyze are performed.

¹⁸ Ibid.158.

¹⁹ Ibid.157.

²⁰ This is analogous to Daly’s presentation of a Gitksan or Wet’suwet’en feast, where “the point of view presented by the specific host family is hooked into, and tested against, the experience, interests, and point of view of the guest families and the wider society”. See Richard Daly, Our Box Was Full: An Ethnography for the Delgamuukw Plaintiffs (Vancouver: UBC Press, 2005)., 22, Kiera Ladner, "When Buffalo Speaks: Creating an Alternative Understanding of Traditional Blackfoot Governance," Carleton University, 2001, 39 and Julie Cruickshank. "Notes and Comments," Canadian Studies Review 75.3 (1994), 408.

This, then, is our intent here: to examine language as a series of performances – performances in which an Aboriginal speaker is ‘acting out’ their culture/history/spirituality through language. Through our understanding of the Aboriginal conventions in which a specific Aboriginal actor inscribes their speech act, we can gain access to the meaning which interests us as *interpreters* of the political thinking of a particular Aboriginal society. Specifically, if we can understand these conventions and the context in which the speech act takes place, we can understand meaning intended by the Aboriginal author/s which we are studying.

It is with this in mind that we can identify the methodology which is most appropriate for us as interpreters of the intent and meaning found *in* the utterances of Aboriginal speech actors.

A few ‘words’ on finding meaning

Emergent innovations in historiography have placed the Cambridge School in the forefront of contextualist and conventionalist approaches to understanding the meaning of historical articulations. This methodology, pioneered by Pocock, Dunn and Skinner focuses on the meaning of language both in its sense and its intent. The Cambridge school focuses on the contextual meaning and illocutionary force of historical articulations in order to establish both the meaning of the words in those articulations and the meaning of the authors in writing those words.

If followed in an orthodox manner, the Cambridge School would require that certain conditions be fulfilled in order to apply this method. These are:

1. The historical articulation – the speech act in question – must be “from” an accessible context, and the context must be evident;
2. Material relating to the context and conventions of the society in question must be accessible to the historian of political thought;
3. Ideally, the context and conventions of the society to which the speech acts refers/gets its meaning should be established using primary materials – speeches, oral histories, letters, diaries etc;
4. Ideally, the illocutionary intent/force of the text should be corroborated by primary documentation;
5. It should be clear whether the speech act/articulation in question is typical/atypical/revolutionary for the period in question – whether it is, in other words, clear that the speech act in question is reflective of a dominant paradigm, or a paradigm shift; and
6. In the case of bi-cultural or multi-cultural articulations (where individuals’/groups’ articulations represent more than one culture) the speech act in question should articulate the webs of knowing of both societies in question. For example, any attempt to understand the articulation of a particular issue standing between Aboriginal people and the Canadian State must not rely on government documents alone.

While the approach of the Cambridge School is valid and useful for the analysis of historical articulations of speech actors, where those articulations are accessible, instances where the speech actors are ‘invisible’ pose a challenge. In the case of the Mi’kmaq, for example, their speech acts were not recorded literally, but were ‘translated’ by French, English and Jesuit transcribers. We do not, then, have direct access to the speech acts of the Mi’kmaq, and can not *strictly* adhere to the approach of the Cambridge School.

Despite this limitation, we can still apply the spirit of the Cambridge School, and fulfill the five other conditions listed above by adopting a slightly broader hermeneutical

approach. This is the approach argued for by Mark Bevir in *The Logic of the History of Ideas*. For Bevir, an “historical meaning is a hermeneutic meaning or an abstraction based on a number of hermeneutic meanings, where a hermeneutic meaning is an individual viewpoint”²¹. Central to Bevir’s approach is the notion that hermeneutic meanings express accurately the sincere, conscious and rational beliefs of the author of a given utterance. It is here that Bevir would have historians begin in trying to understand what meaning a particular utterance had to its author²². From there, Bevir suggests that historians should adopt both synchronic and diachronic explanations for the beliefs expressed on a particular utterance.

Of particular interest to us here are synchronic explanations, which, “make sense of individual beliefs by relating them to wider webs of belief, and that make sense of the wider webs of belief by relating them to intellectual traditions”²³. These webs of belief are in themselves arrived at against the background of inherited traditions²⁴. This is reinforced by his argument that to “... fix the hermeneutic meaning of a given utterance, we have to refer to the authors’ linguistic community understood as a part of the occasion of its being made ...”²⁵. Bevir agrees, then, with the approach of the Cambridge school, that the meaning of historical articulations are rooted in the broader intellectual beliefs of those making the articulations.

²¹ Mark Bevir, *The Logic of the History of Ideas* (Cambridge, U.K.: Cambridge University Press, 1999), 77.

²² *Ibid.*, 129.

²³ *Ibid.*, 29.

²⁴ *Ibid.*, 219.

²⁵ *Ibid.*, 64.

This hermeneutic approach is based on the notion that language – in particular, words – is underpinned by webs of knowing. These webs of knowing - the individual and collective experiences of a society - give meaning to words, and these words are used in accordance with the traditions of use associated with these words. As pressure is placed on these webs of knowing, the meanings of words, and their usage changes to reflect the changes in conventions and context in which the word is used. These meanings and changes give us evidence of how the political thinking of a given society is evolving over time. Since change is an occurrence in any society, “it is of some importance to be able to interpret thoughts by placing it in the tradition of discourse to which it rightfully belongs”²⁶. The importance of this practice is underlined by examining the core subjects of political philosophy in the 21st century – subjects that have not changed since their emergence in Greece.

It follows, then, that a society’s *political* thought is built up by abstraction of technical vocabularies from different aspects of its social and cultural traditions and, “by the development of a specialized language in which to explain and defend the use of the former as a means of discussing politics”²⁷. These technical vocabularies are based on the webs of knowing specific to the Aboriginal people *in* whose utterances we are interested. For our purposes, this makes the link between language, thinking and social/political paradigms evident.

²⁶ J.G.A. Pocock, The Ancient Constitution and the Feudal Law - a Study of English Historical Thought in the Seventeenth Century (New York: W.W. Norton & Company Inc., 1967), 200.

²⁷ Ibid.196.

Nathalie Oman points to a similar foundation of meaning in language, drawing on Wittgenstein's *Philosophical Investigations* to argue that we are 'trained' to be human by participating in a series of pre-existing practices, "the grammar of which informs our ways of experiencing the word"²⁸. This resonates with the spirit of the Cambridge School, itself grounded in the work of Wittgenstein, and opens the possibility of founding our methodology in a broader hermeneutic approach. This approach will focus on the meaning of language in its historical context, offering a meaning of that language through contextualization and "conventionalization".

James Tully, a practitioner of the Cambridge School, provides us with several excellent examples of how this broader hermeneutic approach can be followed here. The most striking example of his work remains *Strange Multiplicity*, where Tully evokes the image of the *spirit of Haida Gwaii*, a carving created by Bill Reid. Early in *Strange Multiplicity*, Tully evokes the importance of language in voice, admiring the beauty of Reid's creation:

The *spirit of Haida Gwaii* evokes a boundless sense of wonder. It is the mystical. I want to walk in silence around its overflowing spirits, letting their endless perspectives and interrelations awaken the play of my imagination from its dogmatic slumber. I know its meaning is unfathomable, and my words are unworthy. Mine is a crude voice over a multiplicity of voices who, if one could only learn to look and listen, speak for themselves²⁹.

²⁸ Nathalie Oman, "Sharing Horizons: A Paradigm for Political Accommodation in Intercultural Settings," McGill University, 1997, 24.

²⁹ James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge, UK: Cambridge University Press, 1995), 22.

Tully points out the importance of listening to the voices of the participants in the *Haida Gwaii*, thus underlining the speech acts of those participants, and drawing our attention to the autonomy of those speech actors in question. We do not need to furnish meaning for those voices, they arise out of their own linguistic and epistemic origins.

Approaching the understanding of language from this perspective follows an application of Wittgenstein's "method of dissolving philosophical problems, not by presenting yet another solution, but by a survey which brings to critical light the unexamined conventions that govern the language games in which both the problem and the range of solutions arise"³⁰. This approach looks to language, and language games, as a source of information about the conventions which underpin the use of language in question. From this source, then, we can draw information about possible meanings of language and the possible intentions of the speech actor in their articulations³¹.

In *Strange Multiplicity*, Tully completes a survey of the language employed in the current debate over recognition of Aboriginal peoples. By tracing other meanings in the "broader language of constitutionalism", Tully shows that schools of modern political theory have "elbowed aside entire areas of language ... which provide the means of recognizing and accommodating cultural diversity"³². In essence, Tully's point is that language contains a diversity of meanings, none of which is better or worse than the other. Instead, the

³⁰ Ibid., 35.

³¹ Tully adopts the same approach in James Tully, "Wittgenstein and Political Philosophy," *The Grammar of Politics, Wittgenstein and Political Philosophy*, ed. Cressida J. Heyes (Ithaca, NY: Cornell University Press, 2003). Understanding this approach is facilitated by K. T. Fahn, *Wittgenstein's Conception of Philosophy* (Berkeley, California: University of California Press, 1969).

³² James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge, UK: Cambridge University Press, 1995), 37.

meaning of language constantly shifts depending on the aspect from which one views it. “Like *The spirit of Haida Gwaii* or a constitutional association, language is aspectival: ‘a labyrinth of paths. You approach from *one* side and know your way about; you approach the same place from another side and you no longer know your way about’”³³. Gaining access to different aspects of the use of language by speech actors is, therefore a prerequisite to gaining a reasonable understanding of the meaning of that language.

In attempting to understand the ‘rules’ which speech actors follow in their use of language, we are faced with a challenge. Understanding meaning is not a simple exercise of reading and understanding, particularly when the context of the speech act is temporally and culturally distant from our own. This is particularly true if we are interested in drawing out the meaning of a general term – such as sovereignty – in order to determine its broader meaning within its proper context. In order to draw out these meanings, we need to distinguish why certain articulations are used in a particular instance “by describing examples with similar or related aspects, drawing analogies or disanalogies of various kinds, finding precedents and drawing attention to intermediate cases so that one can pass easily from familiar cases to the unfamiliar and see the relations between them”³⁴.

Tully’s approach to understanding the meanings of language provides us with an opening to amend the approach of the Cambridge School in order to meet the methodological

³³ Wittgenstein *Philosophical Investigations*, s. 18 in *Ibid.*, 104.

³⁴ *Ibid.*, 108.

needs of this research³⁵. The first of these addresses the need for a breadth of sources. In order to determine the meaning of articulations, it is important that we attempt to understand the use/mis-use/use-change of these terms so that we can see the intersections between their various uses. This will allow us to get a sense of how the term is anchored in the grammar of the 'language game/s' in question, and how this is founded on the webs of knowledge of the persons involved in the speech acts that interest us.

This same broad approach also provides us with a way to cope in a situation, such as this, where we do not have direct access to the speech acts of those we are interested in understanding. By examining a broad range of sources, we can maximize the number of opportunities to see the speech acts 'reflected' in the transcriptions of other writers. By observing, for example, a consistent set of articulations regarding Mi'kmaq concepts of diplomacy as they are reflected in the English accounts of their negotiations, we can begin to draw the kinds of 'analogies and disanalogies' that Tully is referring to. If these same concepts are also reflected in the writings of the French and Jesuit missionaries, then we have greater certainty that we are 'witnessing' the articulations of the Mi'kmaq in as clear a manner as possible. It is in this way that we can understand the speech acts of the Mi'kmaq throughout the period we are interested in.

³⁵ While the principal focus here has been *Strange Multiplicity*, it should be noted that Tully also applied this approach to understanding Locke's conception of property theory in James Tully, "The Struggle of Indigenous Peoples for and of Freedom," *Political Theory and the Rights of Indigenous Peoples*, eds. Duncan Ivison, Paul Patton and Will Sanders (Oakleigh, Australia: Cambridge University Press, 2000). He applies the findings of his research in *Strange Multiplicity* in a number of places, including James Tully, "Reconsidering the B.C. Treaty Process," *Speaking Truth to Power: A Treaty Forum*, ed. British Columbia Treaty Commission (Ottawa, Canada: Minister of Public Works and Government Services Canada, 2001) and in James Tully, "A Just Relationship between Aboriginal and Non-Aboriginal Peoples of Canada " *Aboriginal Rights and Self Government: The Canadian and Mexican Experience in North American Perspective*, eds. Curtis Cook and Juan D. Lindau (Montreal, Québec: McGill-Queens University Press, 2000).

From these amendments, we can conclude that the most appropriate methodology for use in this research *is* a modified form of the Cambridge School approach. Indeed, the approach is founded in a methodology for which the meaning of language – hermeneutics – is central. This broader hermeneutic approach has, at its heart, an acceptance of sources that reflect the speech acts we are interested in. These ‘meaning-reflective’ sources stand in the place of access to direct articulations of speech actors, since these articulations are not available to us. It is from these sources that we can re-describe the meaning of sovereignty to Mi’kmaq speech actors.

It is worth noting that this approach is neither anthropological nor linguistic. We are interested here in the meaning of words according to the linguistic conventions and social context in which the words are used. Semantics, morphology, orthography, phonology, and pragmatics are to be left to those adept in technical linguistics – to another context. Indeed, the focus here is on a method which allows us as researchers to determine meanings in the history of political thinking.

Treaties as a source of meaning

Where, then, do these articulations become clearest? To answer this question, we again turn to the Cambridge School for guidance, and the work of J.G.A. Pocock in particular. His article, “Law, Sovereignty and History in a Divided Culture: The Case of New

Zealand and the Treaty of Waitangi”³⁶ can serve as a springboard for thinking about this question. His reading of the Treaty of Waitangi is grounded in his assertion that law and history play a vital role in reflecting on the terms of a relationship established between two peoples. His approach emerges from the recognition that where two or more legal systems encounter each other – through a treaty – laws and histories are interpenetrating.

Specifically, Pocock’s problematic is defined in the New Zealand context in much the same way as the Canadian problematic. Aboriginal people in New Zealand are using the courts to advance their claims under the auspices of the Treaty of Waitangi, successfully broadening the scope and impact against New Zealand and the Crown. Indeed, the Treaty of Waitangi expresses in its entirety the relationship between the Maori and the Crown. Although the Treaty was not signed with “the Maori” – because no such entity existed – such a large number of the *Iwi*³⁷ had signed it after its negotiation in 1840 as to make it the central document defining the relationship between Maori and Pakeha. As such, the Treaty of Waitangi is central to the use by Maori people of the New Zealand court system to define their identity both within and against the Crown. This allows Pocock to examine the New Zealand case through a single lens and to present his analysis of Marori-Pakeha relations at a very broad – or high – level.

Pocock concludes that the reading of law, in the New Zealand context of the Treaty of Waitangi, presents the most powerful tool to unraveling the alternative meanings of Maori and Pakeha history. Pocock argues that when we engage in attempting to read

³⁶ J.G.A. Pocock. "Law, Sovereignty and History in a Divided Culture: The Case of New Zealand and the Treaty of Waitangi," McGill Law Journal 43 (1998).

³⁷ Iwi is the Maori world for tribe.

alternative versions of the law as they relate to the same principles – sovereignty, in both his case and the case presented here – that we are adopting a bi-cultural or bi-lingual approach to reading the law. He advocates a bi-cultural or bi-lingual approach both as a method to reflect on the meaning of Maori history and to understand how Pakeha can live in relation to it. Specifically, this bi-cultural/lingual approach, when applied to the meaning of a historical treaty, can reveal the meaning of Aboriginal sovereignty expressed by and accepted by the ‘contracting parties’.

Pocock’s approach reveals treaties as both a point of revelation and continuity in terms of Aboriginal meanings³⁸. Treaties, as they are viewed in this thesis, are the ‘moments of continuity’ where the Aboriginal meanings of sovereignty can be revealed. These treaties are the ‘moments of continuity’ because they are signed between ‘contracting partners’ that are equally capable of articulating their own legal, social, economic and political histories. In articulating their terms of continuity, Aboriginal people are affirming their past practices, and agreeing how these practices will continue to be respected and honoured through future practices.

Treaties, then, are a point of revelation because they allow us to understand the way in which crucial terms like sovereignty were articulated by both parties to the treaty. A treaty expresses the terms upon which the mutual legal histories of the Aboriginal nation/s and the Crown founded their relationship in terms of the continuity (or

³⁸ This is affirmed in William Fenton, "Structure, Continuity, and Change in the Process of Iroquois Treaty Making," The History and Culture of Iroquois Diplomacy: An Interdisciplinary Guide to the Treaties of the Six Nations and Their League, ed. Francis Jennings (Syracuse, NY: Syracuse University Press, 1985). Fenton, like Alfred, bases his analysis on the structure and role of the Haudenosaunee Condolence Ceremony.

dis/continuity) of their respective norms. Treaties also allow us to frame part of our analysis in terms of rights and responsibilities – terms that respond to both of the Aboriginal and non-Aboriginal legal systems present in the compact articulated in the treaty. A treaty, as a point of illumination on the terms of continuity established by both parties, is an appropriate site to determine the ‘original’ meaning of Aboriginal sovereignty in that treaty context.

This approach is important because it recognizes that we need a frame of reference for reflecting on the terms of ‘Aboriginality’ that is appropriate to that experience itself. “The problems to which writers see themselves as responding may have been posed in a remote period, even in a wholly different culture. The appropriate context for understanding the point of such writers’ utterances will always be whatever context enables us to appreciate the nature of the intervention constituted by their utterances”³⁹. By choosing an appropriate Aboriginal frame of reference, we not only have access to the meanings which are reflected in this frame, but we also avoid an analysis of Aboriginal concepts that are part of or reinforce the colonialism from which our analysis is attempting to ‘escape’.

Peter Mancall’s argument regarding the relations between Native Americans and British settlers is evocative of this challenge. Mancall, indeed, shows how shifting frames of reference allows us to understand relations between Native Americans and English

³⁹ Quentin Skinner, *Visions of Politics, Vol. I: Regarding Method* (Cambridge, U.K.: Cambridge University Press, 2002), 116.

settlers from the perspective of trading partners⁴⁰. This moves us away from a historical record based on the conquest of heathen savages and occupation of empty lands by the English towards a vision of history based on the equal contributions of Aboriginal and non-Aboriginal peoples to the early culture of modern-day North America. Mancall's approach not only changes our understanding of written history, but challenges us to understand this history from the perspectives other than British Imperial colonialism⁴¹.

The approach proposed here allows us to perform this shift to a frame of reference that is appropriate to Aboriginal peoples' understanding of history and can also be understood in terms of the Crown's history. This approach allows us to understand a treaty as a point of illumination – where two histories and laws encounter each other in a 'compact' of equals. This approach – adopting the Cambridge School approach to our needs here – is the best available methodology to reveal the meaning of sovereignty present at this point of illumination. Returning to the discussion above, it is through the treaty that we, in this case, are able to gain knowledge of the webs of knowing present in the Aboriginal society in question. The treaty therefore becomes our *point of access* to the history of political thinking for the society in question. A treaty is, in other words, an access point to the Aboriginal political and legal histories in which we are interested.

⁴⁰ See Peter C Mancall, "Native Americans and Europeans in English America, 1500-1700," Volume I: The Oxford History of the British Empire, ed. Nicholas Canny (Oxford: Oxford University Press, 1998). For a reflection on history in Canada with regards to the place of Aboriginal people and their role in the future of Canada, see Jocelyn Létourneau. "L'avenir Du Canada: Par Rapport À Quelle Histoire?," Canadian Historical Review 81.2 (June) (2000). Létourneau argues that the idea of considering Aboriginal people in Canada as "founding peoples" or First Nations is not the best approach to understanding or building a role for aboriginality in Canada's future. Instead, she argues that the challenge is to reinscribe aboriginality into the 'here and now' as a structural element of Canadian-ness. Ibid, 250-51.

⁴¹ This kind of shift also underlies the work of Gilles Pacquet and JP Wallot in their reflections on the contributions of French Canada to Canadian political culture, and Smith and Ajzenstat's reflections on the role of civic republicanism in founding the same. These reflections have effectively questioned the hold of Louis Hartz's and Gad Horowitz's visions of the political foundations of Canada, articulated in the 1950s and 60s, respectively.

While I would not suggest that the approach used here is the only way in which the history of political thinking/thought can be understood⁴², it is one which focuses primarily on understanding the meaning of given historical utterances. The question remains then, how we understand the words that describe our canoe, and the meaning bound up in these words? How do we accomplish the shift of frame of reference referred to above in the case of Aboriginal treaties? Further, how do we find a time and place in the Canadian context where/when we can apply the approach of the Cambridge school to draw out the meaning of Aboriginal sovereignty?

The Dialogue in Question – the Canadian Context

Father, It appears that you wish all the Indians who are on the Beautiful River [the Ohio River] to withdraw; you know that is a Republic composed of all sorts of Nations, and even many of those who live near you have settled there. ... This island belongs to the Red Man (Nations noires); it is the Master of Life who had places them on it, for he hath located those who are White on the other side of the sea⁴³.

In Canada – on Turtle Island – the treaty context is more complex than in Pocock's New Zealand. There does not exist a single treaty that summarizes or underpins the relationship between the Crown and Aboriginal peoples. Although the Kaswentha⁴⁴ exists as a metaphor – from an Aboriginal perspective – for this relationship more broadly,

⁴² One can look at the wampum belts used in Haudenosaunee diplomacy, or the field of critical legal pluralism for other examples of means to gain access to the webs of knowing of a particular society.

⁴³ Cayuga official, 1750 in Jonathan Hart and Joan Holmes, "'We Have Never Parted with Such a Power' - Assertions of First Nations' Sovereignty and the Right to Trade and Travel in the Seventeenth and Eighteenth-Century Great Lakes Region," Unpublished, (2000).

⁴⁴ The Two-Row Wampum, often evoked as the symbol of the nation-to-nation relations which exist between first peoples and the European nations that immigrated to Turtle Island. The most prominent use of this symbol was contained in the final report of the Royal Commission on Aboriginal People (RCAP) in 1996.

we have no Treaty of Waitangi through which one meaning of Aboriginal sovereignty for all Aboriginal nations in Canada will become clear. Instead, we have a tapestry of nations treated historically or in modern times, and a large number of nations who have no treaties or have treaties that have not been respected. For the purposes of the research conducted here, one treaty context has been chosen in order to reveal the meaning of sovereignty in that treaty⁴⁵. Specifically, the treaties of 1760/61 between the Mi'kmaq and the Crown will be analyzed in order to draw out the meaning of sovereignty expressed by the Mi'kmaq at this time of 'revelation'.

The question remains, how to apply the general rules discussed above to the specific context of a treaty in the Canadian context? A number of 'conditions' become apparent – 'conditions' which can provide us guidance in adopting the approach discussed above to the specific research interests here:

1. We need a treaty which was signed by both Aboriginal people(s) and the Crown which lays out their mutual agreement to cooperate;
2. We need a treaty which was signed under conditions permitting the Aboriginal people to act as independent signatories. The Aboriginal signatories must be in a relationship of equals, where they can retain or assign part of all of their sovereignty to the other signatory of the treaty;
3. We need access to both the written form of the treaty as it is retained in archives, and the oral form as it is (usually) maintained in the memory of the Aboriginal nation. Where this oral form is not directly available, we must have some form of written account of the Aboriginal perspective on the treaty in question;
4. We need access to the historical context of the treaty from both the Aboriginal and Crown perspectives; and
5. The treaty must serve as a current site upon which Aboriginal people and the Crown are contesting their respective histories. This serves to reinforce the argument that this treaty represented a fair and equal articulation of the notions of

⁴⁵ I will argue later that the choice of treaty for this research is particularly important, simply because the treaty in question is now becoming a 'rallying point' for other First Nations across Canada advocating for recognitions of their particular political and legal histories.

sovereignty to both signatories. It also shows an opening to a bi-cultural/bilingual reading of law and history.

Where these conditions are met, the methodology proposed above can be applied in the same way that Pocock applies it to the Treaty of Waitangi.

The first challenge in applying this methodology is to collect all of the information required for the analysis. The written treaty, letters pertaining to its ratification and application, and analysis of the treaty are required, as are historical records and analysis pertaining to the context in which the treaty was signed. Where possible oral histories, or written versions of these histories should also be analyzed for their content. Once this information has been collected, the analysis can focus on these documents. In the case of this research, particular attention is given to the actions and meanings of the Mi'kmaq signatories of the Treaties of 1760/61.

Based on an analysis of the historical documentation available to us, it will be possible to draw out the essential elements of Aboriginal sovereignty expressed in the treaties of 1760/61. These elements can then be synthesized to represent the specific vision of Aboriginal sovereignty represented by the Mi'kmaq speech actors in these treaties. First though, we should understand why the Treaties of 1760/61 are an appropriate 'place' to apply our methodology.

The Treaty of 1760/61

Why chose the Treaty of 1760/61 signed between the Mi'kmaq and the Crown? Three principal reasons are apparent. The first is that these treaties fall within the period where relations between Aboriginal nations and European nations were conducted between equals in international law⁴⁶. This fulfills our requirement that the treaty to be studied should be one where each 'contracting partner' is equally capable of retaining or assigning sovereignty to the other. These treaties also represent a perceived shift in allegiance by the Mi'kmaq from the French to the English Crown. Indeed, the interest of the Crown in negotiating these treaties implies that the English recognized that they did not simply 'acquire' Aboriginal nations by defeating the French in this region. Instead, the alliance with the Mi'kmaq was to be acquired in same manner as the English might establish an alliance with a European nation.

The second reason why this treaty was chosen is because it represents the culmination of a series of treaties signed by Aboriginal nations in the Atlantic region during the period⁴⁷. The first of these treaties was signed in 1676 at Casco Bay, and was followed by a treaty in 1726 to end the Wabanaki-New England War of 1722-1725. This treaty was later re-negotiated in 1749, 1752, and finally 1760/61. In this sense, the Treaty of 1760/61 represents the culmination of relationship building between the English Crown and the Mi'kmaq.

⁴⁶ This is based on the arguments made by Morin in Michel Morin, L'usurpation De La Souveraineté Autochtone (Montreal: Boreal, 1997)..

⁴⁷ For more detail about this period of time, see William Wicken, Mi'kmaq Treaties on Trial – History, Land, and Donald Marshall Junior (Toronto, Ontario: University of Toronto Press, 2002)..

Finally, for the purposes of conducting empirical research, the historical context of the treaties of 1760/61, the analysis of their terms – both in the written form and their oral traditional form as understood by the Mi’kmaq - and their impact on historiography are very well documented as a result of the *Marshall* case. Three hundred and eighty-four research documents were generated during the trial period by the defense and Crown sides of the case, representing thousands of pages of documentation. Three significant academic books have been written as a result of the *Marshall* case⁴⁸. As a result, the documentation relating to the trial leading up to and including the decision of the Supreme Court provide us with substantial documentation on the historical context of the treaties and the meanings of the treaties to both the Crown and the Mi’kmaq. Similar documentation has been collected as a result of the *Stephen Fredrick Marshall* logging case in New Brunswick.

The *Marshall* case is also very significant to Aboriginal people in Canada, because of its applicability to the resource rights/responsibilities of Aboriginal people across Canada⁴⁹. Furthermore, the *Marshall* decision marks an important evolution in the courts’ interpretations of treaties. The importance of this is recognized in the strong emphasis

⁴⁸ They are Ken Coates, *The Marshall Decision and Native Rights* (Montréal, Québec: McGill-Queen’s University Press, 2000), Thomas Isaac, *Aboriginal and Treaty Rights in the Maritimes – the Marshall Decision and Beyond* (Saskatoon, Saskatchewan: Purich Publishing, 2001), and William Wicken, *Mi’kmaq Treaties on Trial – History, Land, and Donald Marshall Junior* (Toronto, Ontario: University of Toronto Press, 2002). A further interesting text on the relationship between the Crown and the Mi’kmaq during the 1760’s can be found in Jennifer Reid, *Myth, Symbol, and Colonial Encounter: British and Mi’kmaq in Acadia, 1700-1867* (Ottawa, Ontario: University of Ottawa Press, 1995). Reid uses religion and the history of religion to re-examine this relationship.

⁴⁹ Coates observes that “[m]any First Nations leaders and some government officials assume that *Marshall* will apply more widely – to minerals, tourist sites, and land. Negotiations may result in the implicit acceptance that the *Marshall* decision applied quite widely”. Ken Coates, *The Marshall Decision and Native Rights* (Montréal, Québec: McGill-Queen’s University Press, 2000), 188.

place by the Supreme Court on the “honour and integrity of the Crown”⁵⁰. Bell and Buss succinctly state that “the most intriguing and perhaps most significant aspect of the framework for treaty interpretation found in *Marshall* is the recognition of implied treaty rights arising from the general historical objectives of the treaty relationship”⁵¹.

The *Marshall* decision is also having an impact on the reflection of other Aboriginal and non-Aboriginal people about broader questions of Aboriginal-Canada relations⁵².

Finally, *Marshall* also represents the culmination of the use of oral histories in the court. This point is of fundamental importance because the Supreme Court relied heavily on the unwritten elements of the Treaty of 1760/61 in their decision, implying that where the written treaty was ambiguous or in conflict with the oral Aboriginal understanding of the same, that the court would err on the side of the Aboriginal meaning. The documentation generated as a result of *Marshall* makes available most of the information that is necessary to analyze and reveal the meaning of Aboriginal sovereignty expressed in the Treaty of 1760/61.

⁵⁰ This leads Russel Barsh and James Youngblood Henderson to refer to *Marshall* as Canada’s *Roe v. Wade* – “a judicial decision so controversial that it tests the capacity of a democratically elected government to respect the rule of law”. Russel Barsh and James Youngblood Henderson. “Marshalling the Rule of Law in Canada: Of Eels and Honour,” Forum Constitutionnel 11.1 (1999), 1. They are reacting to the statement of the Supreme Court in 1999 that “This appeal should be allowed because nothing less would uphold the honour and integrity of the Crown in its dealings with the Mi’kmaq people to secure their peace and friendship, as best the content of those treaty promises can now be ascertained”. *R. V. Marshall (Marshall No. 1)*. 3 *Supreme Court Recorder* 456. *Supreme Court of Canada*, 1999.

⁵¹ Catherine Bell and Karin Buss. “The Promise of Marshall on the Prairies: A Framework for Analyzing Unfulfilled Treaty Promises,” Saskatchewan Law Review 63 (2000), 699.

⁵² See, as examples, see Ibid. 63 and Bryce Edwards. “Toward a Bilateral Fiduciary Relationship: Recognizing Mutual Vulnerability in *R. V. Marshall*,” University of Toronto Faculty of Law Review 59.1 (Winter) (2001).

It is important to note that there were several ‘versions’ of the Treaty of 1760/61⁵³. As the English negotiated and concluded treaties with the Maliseet, the Abenaki nations, and the Mi’kmaq, they signed and ratified a treaty with each ‘group’ of signatories⁵⁴. With the Treaty of 1760/61, nine separate signings were conducted with different Mi’kmaq villages⁵⁵. Wicken contends that these nine treaties differed little in their substance and that they altered very little the commitments of 1725, 1749 and 1752⁵⁶. It would appear, then, that any of these nine treaties would reflect the commitments of the Mi’kmaq and English to each other, therefore exposing the articulation of Mi’kmaq values.

The Governor’s Farm Ceremony, held on June 6, 1761 appears most interesting to us in this context, because it offers substantial remarks by both the English officials and Mi’kmaq Chiefs present at the signing. Indeed, not only does this version of the treaty offer us the ‘official written text’ signed by both parties, it also offers us additional comments by both parties, providing us with further contextual and conventional information. While we are not interested in the legal effect of the treaty in question, the remarks addressed by each party to the other give us some understanding of the meaning

⁵³ References can be found for treaties with the St. John and Passamaquoddy Tribes (February 23, 1760); the Richebucto Tribe (March 10, 1760); the LaHave Tribe (March 10, 1760); the Chibennacadie and Muscadoboit Tribes (March 10, 1760); the Jedaick Tribe (June 25, 1761); the Pogmouch Tribe (June 25, 1761); the Mermichi Tribe (June 25, 1761); the Mesiquash Indians (July 8, 1761); the Pictouk and Malegomich Tribes (October 12, 1761); and the LaHave Tribe, concluded at Halifax (November 9, 1761). I will be using the Pogmouch, Mermichi and Jedaik treaties (June 25, 1761).

⁵⁴ The ‘group’ may have been composed of a number of villages of one nation – such as the Maliseet – or one chief on behalf of a particular region. The signatories to any one ‘version’ of the Treaty would have been determined by the season and location of the meetings and signing, and the ‘affiliation’ of a particular community to the French or English. We have evidence, for example, that the commitment of several Abenaki leaders to ‘peace and friendship’ with the English in 1693 was revoked once the French-allied Abenaki convinced their Brothers to remain at war with the English. See William E. Daugherty, Martime Indian Treaties in Historical Perspective (Ottawa: Department of Indian and Northern Affairs Canada, 1983), 6-9.

⁵⁵ William Wicken, Mi’kmaq Treaties on Trial – History, Land, and Donald Marshall Junior (Toronto, Ontario: University of Toronto Press, 2002), 191.

⁵⁶ Ibid. 191.

of the clauses of the treaty as they were understood by both the English and the Mi'kmaq. The oral account of meaning imputed to the treaty by the Mi'kmaq signatories is equally important to the written text.

It is difficult, if not impossible, to argue that the English and the Mi'kmaq perfectly understood each others' interpretation of the treaty. Wicken contends that "that the different languages used by the British and Wabanaki in 1726 limited their ability to form a perfectly mutual understanding of each article of the treaty"⁵⁷. This limited mutual understanding was reinforced, Wicken argues, by the ambiguity of certain clauses pertaining to the 'dominion' of the King over Acadia and the 'submission' of the Mi'kmaq to his authority. It is certain, based on repeated contact, that the Mi'kmaq and English societies' knowledge about each other would have increased in the intervening years between 1726 and 1761⁵⁸. This much is evident in the tenor and structure of the language used by Governor Belcher in his presentation to the Mi'kmaq of the English understanding of the treaty. Speculation as to the degree to which this is true is outside the limits of the analysis presented here. Again, we are not concerned here with whether each party understood each other as perfectly as we might hope, but rather with the meaning and intention which the Mi'kmaq communicated in their acceptance of the clauses found in the Treaty of 1760/61.

⁵⁷ Ibid.88.

⁵⁸ This much is evident in the tenor and structure of the language used by Governor Belcher in his presentation to the Mi'kmaq chiefs of the English understanding of the treaty and its implications. He makes reference, for example, to the 'links in a chain' as those securing protection and allegiance by allies. It is difficult to ascertain whether this was reference to the Silver Covenant Chain which was very present in the relations between the English and the Haudenosaunee. What is clear, however, is that the Governor is using the type of symbolic language common in diplomatic negotiations between Aboriginal nations and their allies. It is not clear that the English and Mi'kmaq understood each other any better than they had in 1726. Wicken argues, in fact, that quite the opposite is true. See Ibid.192.

Next steps – Applying the Method

The English Crown and the Mi'kmaq both appear to have been independent and equal authors in the meaning of the public declaration of friendship and peace which is the Treaty of 1760/61. Certainly, both had strong diplomatic practices, and were in 'full possession' of their social, spiritual, economic and political 'faculties'. Both had the desire to see their own political and legal histories reflected in a document designed to stabilize their relations, and expressly conceived to perpetuate the values expressed there. Reflections on whether or not this treaty was ultimately successful in 'protecting and preserving' the legal and political history of either party is beyond the scope of the analysis here. It is significant, as discussed above, that the Mi'kmaq have identified this treaty as an expression of their own understanding of their legal and political history. If nothing more, this validates the Treaty as a true 'window' unto these meanings – a point in which the legal and political history/histories of the Mi'kmaq are illuminated.

Using this Treaty as our point of analysis, we cannot stray from the documents that we have, or speculate about values that may or may not have been omitted from the document in question. We must, in other words, accept that the language illuminated by the treaty expresses fully the meaning that the Mi'kmaq – and indeed, the English – could and did bring to that articulation.

It is in using the historical resources available to us, then that we can begin to explore the meaning to which we have access through the language of the Treaty of 1760/61. There are two simple steps to the process, steps which we will follow here. The first step is to establish the possible range of communications used at a particular time in history, communications which respect the conventions of that time and the specific occasion in which they are used⁵⁹. This step establishes the specific social, spiritual, political and historical etc; conventions within which any specific articulation gains its meaning.

In order to assess the full range of communications available to the Mi'kmaq in the context of the Treaty of 1760/61, we must complete a review of the political, social and economic forces at play in Acadia leading up to this time period. Two aspects of this period are of interest to us here. We are, first and foremost, interested in the specific political, social and economic context of the Mi'kmaq in the time prior to and immediately following contact with Europeans. A review of ethnographical and anthropological research gives us access to information about Mi'kmaq social relations, political structures and economic patterns, as well as their relationship with the land. This information, when complemented with historical research touching on the development of European settlements in Acadia then provides us with an opportunity to see if and to what extent Mi'kmaq practices were altered by their contact with the French, and English.

⁵⁹ Quentin Skinner, Visions of Politics, Vol. I: Regarding Method (Cambridge, U.K.: Cambridge University Press, 2002).87.

This review of the historical context allows us to determine how the Mi'kmaq were acting *in* their negotiations leading up to the Treaty of 1760/61, and what conventional meanings that the Mi'kmaq would have intended *in* their agreement with the English. If, for example, we determine that the Mi'kmaq maintained their political institutions throughout the time period leading up to the Treaty, then it is not likely that they would have *meant* to dismantle these institutions *in* agreeing to the submission of the English in 1760/61. Once we have established the conventions through this review – presented in Chapter three of this thesis – we will turn to the second step in our approach.

The second step will involve examining specific speech acts and determining their meaning(s) based on the conventions identified⁶⁰. This step is accomplished through detailed historical research, relying solely on primary sources – diaries, letters, reports, narratives and official government documents⁶¹. Particular speech acts – regarding the political institutions of the Mi'kmaq, for example – will be examined across the time period starting in 1500, leading up to the Treaties of 1760/61. From this overview, we can 'gather together' the speech acts of relevance to each part of the Mi'kmaq's articulation of their conception of sovereignty, and establish the political, social, economic and spiritual 'resources of meaning'⁶² to which these speech acts point. From this we can attempt to ascertain what meaning(s) the Mi'kmaq intended *in* inscribing them into the Treaty of 1760/1761.

⁶⁰ Skinner provides us guidance in *Ibid.* 87.

⁶¹ These primary documents have been sourced from archives in Paris, London, Boston, Halifax, and Ottawa. Documents have also been sourced from museums and collections in Eastern Canada and the North Eastern United States.

⁶² This is what I describe earlier as "webs of knowledge" or "webs of knowing".

One important caveat must be stated before proceeding. Although we are using the Treaty of 1760/61 as our ‘window’ to the meaning of Aboriginal sovereignty, it is ‘only’ our springboard to further research into the meaning of the Treaty to the Mi’kmaq. The analysis presented here, in other words, will take its cues from the content of the Treaty, but will not focus on the Treaty as the only source of meaning of relevance to us. If, for example, the Treaty touches on law, we can use this as our signal to investigate further the meaning that the Mi’kmaq intended to communicate *in* their agreement to the Treaty. As such, this research *will not* involve a clause-by-clause analysis of the meanings of individual words found in those clauses. Instead, it will take the Treaty as a series of signals that a particular meaning was/ or some particular meanings were intended by the Mi’kmaq. By examining the ‘webs of knowing’ which inform the signals present in the Treaty, we can ascertain the meaning(s) intended by the Mi’kmaq in their articulation of their conception of sovereignty.

In the next chapter, then, we will examine the historical context and conventions which reflect and structure the webs of knowledge specific to the Mi’kmaq – knowledge that is evident in the language of the Treaty of 1760/61. The Treaty is our access point to the meaning/s that the Mi’kmaq intended in entwining their political and legal histories into those of the English. It is from examining these collected meanings of the Mi’kmaq that we will begin to understand their meaning of sovereignty.

Chapter 3

It was then, according to our agreement that the professionals left, since we had finished the canoe. Then I did what I needed to ... started my voyage. My trip was very long. I went from here (Nova Scotia) all the way to Quebec City. I tried to pack as least amount possible and the lightest. I left on the 1st of March and estimated that my trip to Quebec would be three weeks long, meaning that I should arrive in Quebec at the end of March. I left from Halifax, and went by the Atlantic Ocean to Cape Breton, where I stayed for some time. After leaving there, I went to Prince Edward Island, where I stayed again. After leaving Prince Edward Island, I went to Rivière-au Renard in New Brunswick. From there, I went along the St. Lawrence River to Quebec. Then I visited family in Ontario, and in Quebec. While I was there, I did many things: walking, shopping etc. After little time, I had to return home to Halifax.

It is thus that our voyage begins. Our tools collected, we are sent out alone to discover the travels of our mind. Here, we can discover the landscape upon which our canoe will voyage. We travel to the places that we need to know, and collect the information that we need about those places. It is in those places that our story will begin to take shape – where our canoe can travel along the waves and currents of the river which we share. Bow, stern, thwart, stem and keel – all these words take their places, fitting into the shape which my canoe takes around me. The places that are now familiar mark the way along the river, and point to a direction that takes us away. And home again.

.....

Let us return to our principal concern here: understanding the history of the area and peoples involved in the signing of the Treaty of 1760/61 so that the meanings brought forward into the language of the treaty can accurately be understood in their own terms. By looking, in other words, at the history of Mi'kma'ki/Acadia and the Mi'kmaq/Europeans in this area, we can understand how the language of the Treaty reflected the political and legal history of its signatories. It is this political and legal history, particularly from the perspective of the Mi'kmaq in which we are interested.

Many approaches to the histories in which we are interested have been written¹. From amongst these approaches and themes, we must choose those that are most appropriate to our needs for this thesis. It should be clear that neither a history written only from the Mi'kmaq perspective nor a history written from a European perspective would be satisfactory. What is required is an approach which places the Treaty of 1760/61 in its proper historical contexts – local, regional and colonial. We must also adopt an approach which allows us to use our knowledge of the functioning of Mi'kmaq society and the Mi'kmaq polity. While little exists in terms of written history in this regard, we do have access to this information through contemporary analysis provided by Mi'kmaq scholars and historians that have worked with them over the past decades. We also have access to a body of literature – anthropological and ethnographical – authored by academics from the 1950s – 1970s which gives us a indication, through stories and material culture evidence of how the Mi'kmaq would have understood the changes in their world which lead to the signing of the Treaty of 1760/61.

These two broad approaches are necessary to satisfy the needs for analysis presented in the next chapter. For the purposes of this analysis, we will begin with a history of the region of Acadia/Mi'kma'ki. This 'history' (as one of many) will focus on the events

¹ John G Reid, "1686-1720: Imperial Intrusions," The Atlantic Region to Confederation: A History, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), Stephen E Patterson, "1744-1763: Colonial Wars and Aboriginal Peoples," The Atlantic Region to Confederation: A History, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), Olive Dickason, "Louisbourg and the Indians: A Study in Imperial Race Relations 1713-1760," History and Archeology 6 (1976), William Wicken, Mi'kmaq Treaties on Trial – History, Land, and Donald Marshall Junior (Toronto, Ontario: University of Toronto Press, 2002), James Youngblood Henderson, The Mikmaq Concordat (Halifax, Nova Scotia: Fernwood, 1997), Charles A. Martijn, Les Micmacs Et La Mer (Montréal: Recherches amérindiennes au Québec, 1986), and Harald E.L. Prins, The Mikmaq: Resistance, Accommodation, and Cultural Survival (Forth Worth, TX: Harcourt Brace College Publishers, 1996) as examples.

which lead the British and Mi'kmaq to sign treaties in the 1760s. This 'history' can be divided in two large periods of time – the time leading up to the signing of the Treaty of Utrecht (1713), and the events between that time and 1761. For the period leading up to the Treaty of Utrecht, a general historical account will be provided. This pre-Utrecht period is useful to provide the context for a more specific examination of the post-Utrecht period which provides the specific context we will need for the analysis in Chapter 4.

This post-Utrecht examination of Mi'kma'ki will examine the specific social, political and economic culture of the Mi'kmaq in order to give us a overview of 'logic' behind Mi'kmaq interactions with the French and then the British. This will facilitate our understanding of the perceptions that the Mi'kmaq might have had regarding their interactions with Europeans, and explain (to the greatest degree possible), how they might have understood the terms of the Treaty of 1760/61 as it reflected their specific political and legal histories. Particular attention will be paid to the political organization of the Mi'kmaq, their 'primal economy', and their 'legal consciousness'.

Because the connection between the land and the people is so important, it is critical that we **first** have an understanding of the physical dimensions of Acadia-Nova Scotia. These dimensions, such as the climate, ecology and geography of Acadia-Nova Scotia will be particularly helpful in understanding Mi'kmaq perceptions of and relations to the land around them. It will also give us some sense of the distances between peoples, the sense of desolation and the landscape in which our story unfolds. It is there, with an understanding of the river that those two canoes traveled down, that we begin.

Mi'kma'ki described

A number of useful works exist to help us understand the ecology of Acadia in the 17th and 18th centuries. From primary sources, we can draw on the accounts of Nicholas Denys², who traveled extensively and described vividly the landscape which he traveled through. We can also turn to the accounts of the Jesuits who documented their travels extensively³. We can also draw some information from the foods being consumed, and the description of weather events in diaries, letters and official correspondence⁴. We also have access to a Mi'kmaq history of the area authored by Ruth Holmes Whitehead⁵. For our purposes here, secondary analysis of these documents is most useful. The work of Simmons⁶, Dickason⁷, Hoffman⁸, and Wicken⁹, for example, provide us ample information based on these primary sources.

² Nicholas Denys, The Description and Natural History of the Coasts of North America (Acadia), ed. W.F. Ganong (Toronto: 1908). This was initially published by Denys in 1671. For an account of Denys's life, see Bernard Poitner, "Nicholas Denys: The Chronology and Historiography of an Acadian Hero," *Acadiensis* I (1971), 54-70.

³ See, for example, Pierre Biard's relations in the first three volumes of Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents: Travels and Explorations of the Jesuit Missionaries in New France, 1610-1791 (Cleveland: Burrows, 1897). See, also Fr. Chrestien Le Clerq, New Relations of Gaspe: With the Customs and Religion of the Gaspeian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910).

⁴ We have, for example, the diaries and accounts of the voyages of Samuel de Champlain, the Secombe Diaries and works such as Richard Hakluyt, ed., The Principal Navigations Voyages Traffiques & Discoveries of the English Nation, vol. 6 (London and Toronto: Dent, 1927).

⁵ Ruth Holmes Whitehead, The Old Man Told Us, Excerpts from Micmac History: 1500-1950 (Halifax: Nimbus Publishing, 1991).

⁶ M. D. Davis Simmons, L Griffiths and A Muecke, Natural History of Nova Scotia, 2 vols. (Halifax: Nova Scotia Museum, 1984). This document was updated in 1996 by the Nova Scotia Museum of Natural History.

⁷ Olive Dickason, "Louisbourg and the Indians: A Study in Imperial Race Relations 1713-1760," History and Archeology 6 (1976), 9 -206.

⁸ Bernard G. Hoffman, "The Historical Ethnography of the Micmac of the Sixteenth and Seventeenth Centuries," University of California, 1955.

⁹ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994.

This section is subdivided into descriptions of the landscape of Mi'kma'ki – the physical landscape of climate and topography. The latter part of this section will focus on 'life on the land' – the 'brothers and sisters' of the Mi'kmaq – the plant, animal and aquatic life which sustained the economic, social and cultural dimensions of Mi'kma'ki.

The Land

Mi'kma'ki includes what we now call Newfoundland, Saint-Pierre and Miquelon, the Magdelaine Islands, Cape Breton, Nova Scotia, Prince Edward Island, the Eastern Coast of New Brunswick and the Gaspé Peninsula. The focus of the discussion below will be on the area now known as Nova Scotia – including Cape Breton Island – thus the emphasis will be placed there.

Simmons et al. indicate that there are five ecological zones in Nova Scotia, each of which represents a distinct agglomeration of life – flora and fauna – and landscape. These zones – the Atlantic Coast, the Triassic Lowlands, the Atlantic Interior, the Carboniferous Lowlands and the Avalon Uplands - share climatic conditions that have been relatively stable since the fifteenth century. Dzikowski's classification focuses on climactic zones, dividing the area of Nova Scotia into nine zones¹⁰. Although there is evidence of a trend towards cooler temperatures between 1450 and 1850 – with a particularly remarkable cooling between 1550 and 1690 – Wicken suggests that “contemporary climatic data has

¹⁰ P. Dzikowski, "Nova Scotia Agroclimatic Atlas," Nova Scotia Department of Agriculture and Marketing, Nova Scotia Department of Agriculture and Marketing, (1985). Much of the information provided here is distilled in Nova Scotia Museum of Natural History, *Natural History of Nova Scotia* (1996), 97-103.

some applicability for understanding differences between south and north as well as between coastal and inland areas”¹¹.

Located on the Northern part of mainland Nova Scotia, the Northumberland Shore (see Figure 1 below) enjoys warm summers and falls, but has a relatively delayed spring, and very cold winters (see Figure 2 for regional temperatures). Sheltered from the southerly and easterly storm winds, this part of Nova Scotia has the lowest precipitation levels (see Figure 3 for regional precipitation levels). Due to its shallow and sheltered nature, the Northumberland Strait warms quickly in the summer and cools quickly in the winter, offering less of a moderating effect than the coastal waters of the Annapolis Valley or Western Nova Scotia. Located below and to the East of the Northumberland Shore is the climatic zone of Northern Nova Scotia. Encompassing part of the highlands, this area receives high amounts of snowfall, and has the coldest winter temperatures, balanced by warm summers.

Cape Breton Highlands receives the highest levels of precipitation in Nova Scotia, with cool temperatures in the summer and the winter. Eastern Nova Scotia also experiences high levels of precipitation, and relatively cool temperatures which are moderated by the Nova Scotia Current. Western Nova Scotia also receives high levels of precipitation but enjoys warmer temperatures than Eastern Nova Scotia. To the south, Annapolis Valley has the warmest temperatures and lowest precipitation levels on Mainland Nova Scotia.

¹¹ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 24-25.

Frequent fog and moderate precipitation levels characterize the Bay of Fundy's climate. Like the Atlantic Coastal region, Fundy is under a strong coastal influence, producing a long, cool summer and a mild winter. Due to the effects of the ocean, Fundy often experiences fog, and enjoys moderate precipitation levels. The Atlantic Coast is also subject to a strong influence from the ocean, which creates the conditions for the coolest summer and warmest winter temperatures in Nova Scotia. While this 'coastal effect' only extends inland a few kilometers, it is particularly marked in the extreme southwest.

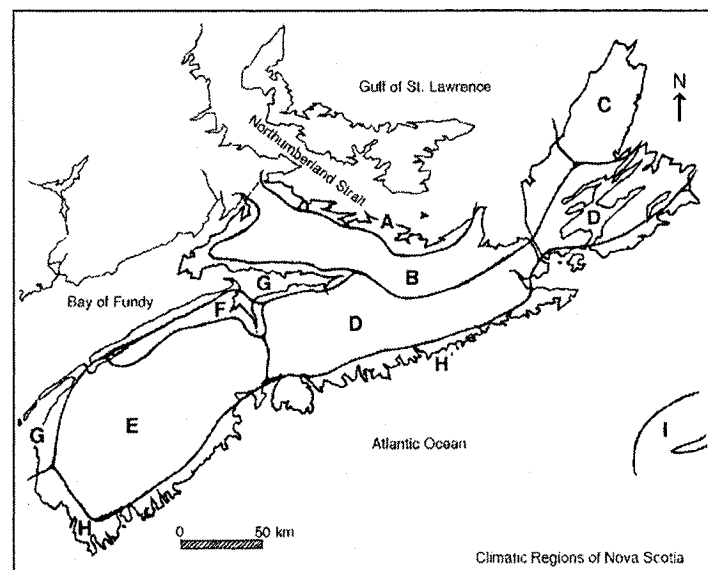


Figure 1: Climatic Regions of Nova Scotia. A: Northumberland Shore. B: Northern Nova Scotia. C: Cape Breton Highlands. D: Eastern Nova Scotia. E: Western Nova Scotia. F: Annapolis Valley. G: Bay of Fundy. H: Atlantic Coastal. I: Sable Island.

In these areas, during winter, “the air mass dominance is shared by cold continental arctic air and the moister maritime polar air, with the prevailing winds being west or northwest”¹². High winds and cloud cover prevail during the season, and the area is often subject to unsettled weather, with variable precipitation and temperature ranges. Relief is

¹² Nova Scotia Museum of Natural History, *Natural History of Nova Scotia* (1996), 98.

slow to come in the spring, as the coastal effects and “the passage of Midwest or Atlantic coast storms” often bring “cold air alongside the warmer maritime air”¹³. Summer in the area is brief, arriving sometime in June. The coastal influence moderates heat and humidity in the area, and the remnants of tropical storms or hurricanes are not often

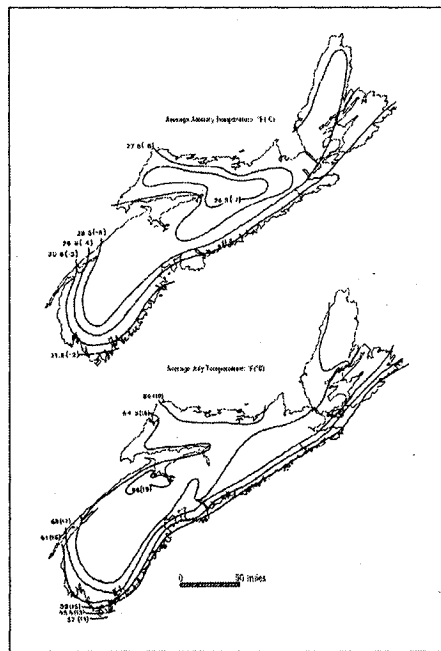


Figure 2: Regional Temperatures

severe. The fall, however, often brings heavy rains and the remnants of tropical storms to Nova Scotia. Warm offshore water stretches out the summer temperatures into the fall.

With these temperatures, the growing season in Nova Scotia ranges from nearly 210 days per year in the west to less than 190 days in the central and eastern parts of the region.

Mean temperatures fall below freezing between late November and mid-December throughout the region, and return to above-zero temperatures around mid-March in the south-west and April in the north. One-third more precipitation falls on the area during

¹³ Ibid. 98.

the cold half of the year as compared to the warm half. Rainfall and snowfall ranges from less than 1250 mm along the Northumberland Strait to 1600 mm in the Cape Breton Highlands Plateau. While snowfall tends to vary as much as 30 to 40 percent from the annual mean every year, the Cape Breton Highlands Plateau receives the highest amounts of snow in the region.

Due to the coastal influence, the presence of high relative humidity, and the prevalence of fog in some areas, the region of Nova Scotia receives relatively less sunshine than other parts of continental Canada. While areas inland experience 2054 hours (Ottawa) or 2038 hours (Toronto), this region's hours of sunshine range from 1799 at Nappan to 1949 at Shearwater. These figures represent 40 and 44 percent of possible annual sunshine hours respectively.

Life on the Land

William Wicken provides an overview of the changes to flora and fauna in the area of Nova Scotia, offering us a "selected overview of assumptions made by environmental historians"¹⁴. Based on the research of these historians and ecologists¹⁵, we can see how the environment and ecology of the area was not appreciably changed until 1760¹⁶. This argument is qualified by two important caveats: that the landscape would have been

¹⁴ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 41.

¹⁵ Works by authors such as Cronon, Crosby, and White. Wicken points out that there "are no major historical overviews of Nova Scotia's environment between 1600 and 1760". See Ibid. 41. Wicken refers to P.A. Bentley and E.C. Smith, "The Forests of Cape Breton in the Seventeenth and Eighteenth Centuries," Proceedings of the Nova Scotian Institute of Science XXIV (1956), 1-15 as an example of a "partial view" of this time period.

¹⁶ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 89.

changed by Native peoples¹⁷ and that the Europeans would have transformed the food chains which sustained local populations¹⁸. The transformation of food chains would have taken place through increased predation – more mouths to feed – and the implantation of ‘exotic species’¹⁹ into the local ecosystems.

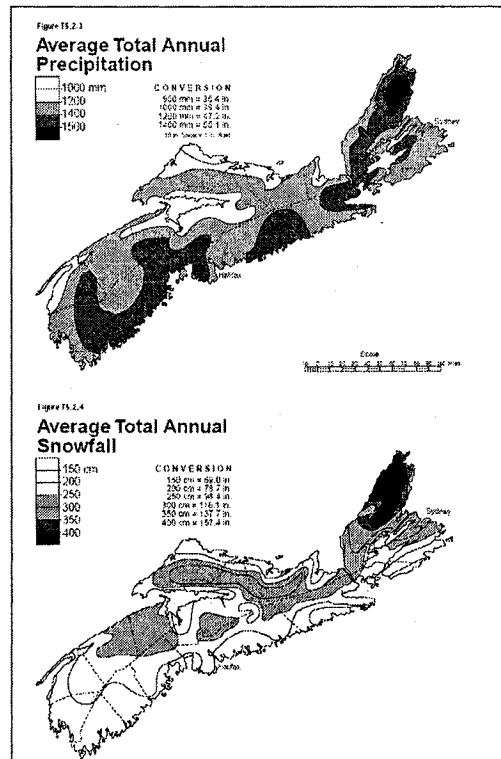


Figure 3: Regional Precipitation Rates

Wicken breaks his examination of changes to flora and fauna into five categories: vegetation communities, waterfowl, terrestrial animals, fish, marine mammals. An overview of these categories, and the changes brought to them by the presence of the

¹⁷ Wicken points to William Cronon, *Changes in the Land: Indians, Colonists and the Ecology of New England* (New York: Hill and Wang 1983), 12-13. See also Shepard III Krech, *The Ecological Indian: Myth and History* (New York: W.W. Norton and Company, 1999).

¹⁸ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 42.

¹⁹ Ibid. 43. See also Alfred W. Crosby, *Ecological Imperialism: The Biological Expansion on Europe, 900-1900* (Cambridge; New York: Cambridge University Press, 2004), 146-194.

Mi'kmaq, French and English will give us a sense of how the landscape was populated and changing in the seventeenth and eighteenth centuries.

Forests and marshes formed the most important vegetation communities for the inhabitants of Acadia. Forests provided wood for shelter, fishing, boats and the habitat for food sources – animals, plants and berries. Forest changes occurred either naturally, likely through lightening strikes²⁰, or through deliberately set fires. Insufficient information exists to indicate whether or not the Mi'kmaq practiced 'controlled burns' in the pre-contact period, although this was the case with native peoples to the south and west²¹. It is clear that the practice existed in the 1700s, as indicated by the 1765 survey of the Saint John River completed by Charles Morris. He wrote that the native peoples along the river had burned timber adjoining the Long Reach river and Grand Lake²². John Wentworth, Lieutenant-Governor of Nova Scotia later wrote that the native people had previously set fires, "on the meadows which, lightly running over, consumed the dead herbage and produced better feed for the Moose Deer"²³.

²⁰ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 44 and William A. Patterson and Kenneth E. Sassman, Indian Fires in the Prehistory of New England, Holocene Human Ecology in Northeastern North America, ed. George P. Nicholas (New York; London: Plenum Press, 1988). Patterson and Sassman's research points out that forest fires started by lightning were less frequent in coastal areas, and that in the event of their (uncommon) occurrence, that they were not extensive.

²¹ See Shepard III Krech, The Ecological Indian: Myth and History (New York: W.W. Norton and Company, 1999) for a discussion thereof. Wicken points out that there is not universal agreement regarding this practice. He points to Gordon Day, "The Indian as an Ecological Factor in the Northeastern Forest," Ecology 34 (1953), 334-338 as a supporter of the existence of this practice and Emily W.B. Russell, "Indian-Set Fires in the Forests of the Northeastern United States," Ecology 64 (1983), 78-88 as a detractor from this argument.

²² Public Records Office, Colonial Office (London) 217: 388v-89, A Report of Survey of the River St. John's, 1765.

²³ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 44. See Public Archives of Nova Scotia (Halifax) RG 1: 49, Wentworth to Principal Officers and Commissioners of His Majesty's Navy - 20 March 1790, 1790.

Records also indicate that drought brought fires to the forests of Acadia. Wicken notes references to droughts in 1762, 1785, 1789 and 1792²⁴. Although specific reference to fire is made only in 1762²⁵ and 1792²⁶, it is clear that there is a link between the two, as indicated by Wentworth's letter of August 29, 1800, where he observes that the, "extreme drought which has prevailed since the 20th of May, excepting two little showers of an hour each has dried the earth and shrubs near the town [Halifax], that they have become combustible and have been on fire near three weeks past ... The present fire exceeds any yet known in this country"²⁷. The English and French also set fires in Acadia. The English stationed at Louisbourg between 1745 and 1749 lit several fires "to destroy the Mi'kmaq population"²⁸, and Monseieur la Varenne noted that the forests that he had traveled through were "totally consumed by fire" to the point where it was impossible to build a shelter²⁹.

Europeans also used the forests to build fishing structures – stages and lodgings. Nicolas Deny complained in 1764 that "there are places where so many have been cut away that no more are left and it is necessary to go after them three, four, five and six leagues away, and sometimes farther"³⁰. They also used wood for construction, tools and for warmth during the winter. Wicken notes that during the 1720s, with a population of roughly 400

²⁴ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 46.

²⁵ Charles Morris indicates in 1762 that fires had occurred in Horton Township – near Minas - fifty years prior. Public Archives of Nova Scotia (Halifax) RG 1: 37, A Description of the Several Towns in Nova Scotia - 7 January, 1762, 1762.

²⁶ Colonial Office (London, UK) 217 /64: 15, Wentworth to Henry Dundas - 25 October 1792, 1792.

²⁷ Colonial Office (London, UK) 217 /37: 270-70v, Wentworth to John King - 29 August 1800, 1800.

²⁸ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 45.

²⁹ M de La Varenne, "A Letter from Louisbourg, 1756," *Acadiensis* 10 (1980), 117. He indicates that he had traveled through more than thirty leagues of burned forest.

³⁰ Nicholas Denys, *The Description and Natural History of the Coasts of North America (Acadia)*, ed. W.F. Ganong (Toronto: 1908), 281-82.

men, Louisbourg used 280 cords of wood to supply its firewood needs during the winter³¹. It is likely, then, that the areas around larger settlements were stripped of wood in much the same way that Deny describes. This time period also saw the arrival of the first wave of 'invasive species' in Acadia from Europe. Wicken notes that English grasses began to displace the native grasses of Acadia, and that ragweed arrived from Scotland, becoming "a menace to farmers' fields"³².

Apart from the forests, marshes also became a significant source of raw material for local populations. Grasses used for thatched roofs and for feeding livestock were abundant in Acadia's marshlands, as was eelgrass³³. Although documentation of these marshlands is not to be found for the areas of Acadia which were not settled by Europeans³⁴, Wicken identifies evidence of their presence in Cap Fourchu, the Chebogue River, the Tusket Islands, Cape Sable, Port Mouton, and Mouscadabouet³⁵. Documentation is readily available, however for locations in the Bay of Fundy, where the shores of the basin, and the rivers and creeks that flow into it, were home to an abundance of marshes. Charles Morris, Surveyor General of Nova Scotia indicated that there were 15,000 acres of marsh

³¹ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 47.

³² Ibid. 47, 48. See also George Patterson, A History of the County of Pictou, Nova Scotia (Montreal: Dawson Brothers, 1877), 20-21.

³³ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 48.

³⁴ The east coast of Nova Scotia, for example, where there was little settlement until the 1760s.

³⁵ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 49.

in the Minas Basin and 71,000 acres in Chignecto Bay³⁶. Wicken also points to evidence of smaller marsh areas along the Northumberland Strait³⁷.

Waterfowl were attracted to these marshes and their beds of eel grass in great quantity and variety³⁸. Geese, cranes, ducks, teal, herons, snipe, crows, sandpipers "and so many of other kinds of birds that it is astonishing" found their way to the salt marshes and mild climate agreeable³⁹. Indeed, a French observer noted that at Cape Sable there was "a great quantity of ocean birds, more than you can imagine, and all winter ... geese, ducks ... who are in the marshes because they freeze little here"⁴⁰. Following the same migratory routes as they do today, Saint George's Bay on the Northumberland Strait and Port Mouton on the Atlantic coast were noted for their migratory birds⁴¹, as was Mouscadabouet for its ducks⁴². Wicken also points to Chezzetcook Inlet, Cole Harbour and the Bay of Islands as possible habitats for migrating waterfowl⁴³.

³⁶ Charles Morris, "A Plan of Minas Basin and Cobequid Bay - 1761," Report of the Canadian Archives for 1904 (Ottawa: Archives of Canada, 1905) and Charles Morris, "A Plan of the District of Chignecto - 1761," Report of the Canadian Archives for 1904 (Ottawa: Archives of Canada, 1905).

³⁷ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 49. He points out that sources only point to marshes in Saint Georges Bay and River Philip, but concludes that they were probably more widespread than that. See Nicholas Denys, The Description and Natural History of the Coasts of North America (Acadia), ed. W.F. Ganong (Toronto: 1908), 171.

³⁸ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 50.

³⁹ Nicholas Denys, The Description and Natural History of the Coasts of North America (Acadia), ed. W.F. Ganong (Toronto: 1908), 141.

⁴⁰ Archives nationales (Paris) C11D /10, Mémoire Au Sujet De L'acadie - Mars 1712, 1712.

⁴¹ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 50.

⁴² Ibid. 50.

⁴³ Ibid. 51. Based on M. D. Davis Simmons, L Griffiths and A Muecke, Natural History of Nova Scotia, 2 vols. (Halifax: Nova Scotia Museum, 1984).

Like the waterfowl, terrestrial animals were abundant in Acadia in the seventeenth and eighteenth centuries. Beaver, fox, marten, muskrat, otter and the snowshoe hare were included amongst the small fur-bearing animals, while the caribou and moose were the two principal herbivore species. The black bear and lynx were the most prominent large predators. Of these, the snowshoe hare was the most abundant due to its short gestation period. Collapsing every eight to ten years – for unknown reasons – the hare's predators are the lynx, red fox and owl, indicating their likely presence in this region as well.

The beaver and muskrat were more populous in the areas of Nova Scotia where large concentrations of fresh water were available, likely in the western part of the region⁴⁴. While the otter is the principal aquatic predator of the beaver, black bears or lynxes become predators once they are on land. Bears and lynxes move over large areas of land, although this is less so for the lynx than the bear. The black bear is an omnivore, eating mostly vegetable matter, and foraging for berries in the summer months. The lynx's diet is composed of only meat. Of the two varieties of lynx indigenous to the region, the *loup-cervier* prefers to eat hare, hunting in the climax (mature) forests of the area. The second lynx – the bobcat – has a much more variety in its diet, including mice, porcupines, rats, squirrels, snakes and lizards, leading it to seek out its food in a wide range of habitats, including swamps and successional forests⁴⁵.

Two herbivores, the caribou and moose, are indigenous to Nova Scotia. Documentation from the early nineteenth century suggests that the caribou spent the summer months in

⁴⁴ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 52.

⁴⁵ Ibid.52.

northern Nova Scotia – the Cobequid Hills – and that they migrated south in the winter months, searching for food⁴⁶. It appears that caribou populations in the southwest of Nova Scotia were scarce in the late eighteenth century, due to the fires that had destroyed the area around the Minas Basin⁴⁷ in the first half of the century. Like the deer, the moose feed from successional forests⁴⁸, implying that greater disturbances to the mature or climax forests would increase their foraging ranges. Moose require forty to sixty pounds of food daily, explaining why they do not spend the summers in groups, fanning out across their territory in order to seek a sufficient caloric intake to carry them through the fall and winter.

Wicken demonstrates that documentation from the period before 1800 indicates where wildlife was concentrated in Nova Scotia. In the “first half of the eighteenth century, this included the Tusket River, Cape Sable Island, Mirligueche, La Heve, lands adjacent to the Baye de toutes iles, and Port Toulouse. Cape Sable Island was noted for moose, bear and lynx, while the Bay of Islands was renowned for beaver and moose hunting and La Heve for its beaver population”⁴⁹. Even with the impacts of forest disturbance caused by settlers and Mi’kmaq, the principal species still appear to be abundant and in healthy balance during the seventeenth and eighteenth centuries.

⁴⁶ Ibid.53. See also Public Archives of Nova Scotia (Halifax) RG 1 /380: 113-17, General Observations on the Northern Tour, 1801.

⁴⁷ Public Archives of Nova Scotia (Halifax) RG 1: 37, A Description of the Several Towns in Nova Scotia - 7 January, 1762, 1762.

⁴⁸ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi’kmaq Society, 1500-1760," McGill University, 1994, 54.

⁴⁹ Ibid. 54, 55.

Despite their active exploitation, fish were also still present in quantity and variety. Although alterations to the landscape, such as shoreline farming at Chebouctou and Mirligeuche, put pressure on fish populations, they remained an important source of food and export/trade for local populations. Two types of fish are discussed by Wicken. The first and only indigenous catadromous fish – those that migrate to salt water in the fall, spawn in seawater, and return to fresh water in the spring – in Nova Scotia is the eel. Evidence suggests that eel moved up river in the early weeks of May in the eighteenth century⁵⁰. This is reinforced by French official documents and Deny's writing⁵¹. Eel appears to be plentiful in the area of the Tusket River, where local Acadians claimed that "they often catch 30 Barrels of eels in a night in the Brook they live on"⁵².

The second kind of fish discussed by Wicken are the anadromous fish indigenous to Nova Scotia - alewives, bass, herring and salmon. These fish migrate annually up freshwater streams to spawn. Again, records – from the Annapolis Basin - indicate that these fish began to migrate around mid-March. "First came smelt, then herring at the end of April, and alewives, salmon and sturgeon in May"⁵³. It appears that fish populations were prodigious through to the late eighteenth century. In 1762, "the harbour and river

⁵⁰ Ibid. 57. Wicken notes that the exact timing of spawning and migration may have changed since the seventeenth and eighteenth due to water temperature changes. It is important to recollect that the ambient temperatures were cooler during the seventeenth and eighteenth centuries – due to a global cooling trend – and that this may have caused migration to happen at a later time during the season. Wicken suggests that this cooling trend may have been offset by deforestation and it accompanying sedimentation in rivers or by drought conditions which are noted through the eighteenth century.

⁵¹ Archives nationales (Paris) C11D/4: 85v, Memoire Des Coste De L'acadie - Le 12 Octobre 1701, 1701.

⁵² Public Archives of Nova Scotia (Halifax) RG 1 /380A, Titus Smith's Account of His Western Tour, 1802.

⁵³ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 58. Evidence for this observation is drawn from Marc Lescarbot, History of New France, trans. W.L. Grant, 3 vols. (Toronto: The Champlain Society, 1907-1914), 236 and Nicholas Denys, The Description and Natural History of the Coasts of North America (Acadia), ed. W.F. Ganong (Toronto: 1908), 124.

of Ministgush (Port La Tour) on the southwestern coast yielded 2,000 barrels of alewives, while in the early nineteenth century, 30,000 barrels of herring were exported by the town of Annapolis⁵⁴. So abundant were the fish that Hollingsworth notes that fish were spawning in any river of 'considerable size' in Nova Scotia in the late eighteenth century⁵⁵, and Wicken notes that populations of these fish often reached 100 billion for each species⁵⁶.

Seals and Walruses were also indigenous to Nova Scotia. Pierre Biard, Jesuit Father in Acadia observed seals mating on islands near Port Royal in 1616⁵⁷. Seals were also observed in the Seal Islands, the Tusket Islands, Cape Breton, the Magdelaine Islands and at Malpec on the western end of Ile Saint Jean (Prince Edward Island). Walruses, though no longer present in the area, were observed in the Madgelaine Islands as late as the mid-eighteenth century⁵⁸. Wicken also notes that in 1591, "a Breton syndicate killed approximately 1500 walruses during a two month period, suggesting a minimum number living on the islands' shoreline during the autumn months"⁵⁹. These hunting practices, and changes in the climate of Nova Scotian waters may explain why walruses are no longer present in this traditional habitat.

⁵⁴ Wicken (1994) at 59.

⁵⁵ S. Hollingsworth, The Present State of Nova Scotia with a Brief Account of Canada and the British Islands on the Coasts of North America (Edinburgh: William Creech, 1787).

⁵⁶ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 58.

⁵⁷ Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents: Travels and Explorations of the Jesuit Missionaries in New France, 1610-1791 (Cleveland: Burrows, 1897), 79.

Gamaliel Smethurst, A Narrative of an Extraordinary Escape out of the Hands of the Indians, 1761, Collections of the New Brunswick Historical Society, ed. W.F. Ganong, vol. 2 (Saint John, New Brunswick?: 1905), 385.

⁵⁹ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 61. See David Beers Quinn, England and the Discovery of America, 1481-1620 (New York: A.A. Knopf, 1974), 318-319.

Mi'kma'ki in perspective

It is clear from secondary analysis and primary sources that the environment and landscape of Nova Scotia were vibrant, healthy and abundant in the seventeenth and eighteenth centuries. Although the growth of European populations was beginning to have impacts on the flora in the areas immediately surrounding their larger settlements, and consequent impacts on the fauna of the region, subsistence was still possible for Mi'kmaq, Acadian, and English settlers throughout the seventeenth and eighteenth centuries.

This abundance of resources was to attract European fishing fleets to Acadia, and would provide the raw materials and the necessary landscape features to allow for the establishment of towns for European settlers. The Mi'kmaq, on the other hand, relied on these resources for subsistence, for trade, and for diplomacy with their traditional allies and their new 'kin' in Mi'kma'ki. Contact with the land, the connection between society, politics, law, culture and the local landscape were key to Mi'kmaq survival and independence as a people. Although things were to change in the twentieth century, the use of natural resources and the landscape by the Mi'kmaq remained relatively continuous and unchanged throughout the seventeenth and eighteenth centuries⁶⁰.

We will return to the importance and use of the natural world by the Mi'kmaq below. It is important, however, to first establish the historical conditions and events which gave rise to pressures on Mi'kmaq society, politics, economics and law. For the moment, we

⁶⁰ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 63.

will leave behind the natural environment in favour of the 'local historical contexts' created by the women and men of Mi'kma'ki in the seventeenth and eighteenth centuries. It is to this story we now turn.

One 'history' of Acadia (amongst many) to Utrecht

This is the story of a small part of the world which went largely ignored by European powers until the 1700s. While the Dutch, French and English were busily settling the Thirteen Colonies that would become the United States, and the French and English were clashing over their possessions in New France and the areas along the St. Lawrence, Acadia was largely an afterthought. After all, Acadia was a harsh and unforgiving land, forested and, though with exceptions, not yet farmable. If not for the abundant fishing resources, which drew most of Europe's attention towards Newfoundland and the issue of permanent fishing settlements, Acadia was little more than an exchangeable piece of property, parts of which passed back and forth between British and French ownership.

Clearly, however, Acadia was not *Terra Nullius*, nor would any of the French or British residents in Acadia have argued as much. What was Acadia like in the 1600s? Even as early as 1600, Europe had incorporated the East Coast into its economy, as a source of both fish and revenue from furs⁶¹. Due in part to a lack of food, and the religious ideals of its peoples, Europe became dependent on the fishery resources off the coasts of Acadia. This forced the fishery in Acadia to become a central issue in European politics

⁶¹ N.E.S. Griffiths, "1600-1650: Fish, Fur, and Folk," The Atlantic Region to Confederation: A History, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), 40.

and diplomacy by the mid 1600s⁶². It was within the context of fishing that the fur trade became an economic sideline around the 1580s⁶³.

The responses by England and France to the growing importance of the fisheries and the fur trade in Acadia were conditioned by their own internal political structures, issues and cultures. While in England political debate centered around the extent to which the King's power was to be limited⁶⁴, the French Crown was constantly challenged for its legitimacy. French authority was also largely decentralized, resulting in tensions between Crown and country which did not exist to the same extent in England. As a result, the French Crown took a much more active role in the development of its colonial projects, often using offices, like that of intendant, to bring its provinces under their control. The French Crown, "also sought to control colonial expansion to a very much greater degree than the English monarchs"⁶⁵. The French Crown was also, therefore, involved in the creation of colonies, the expansion of commercial interests there, and the recruitment of human and financial capital to ensure their growth and subservience.

The English Crown, on the other hand, had largely secured its position as a result of the Tudor dynasty, establishing itself as the "unquestioned authority for the government of England and Wales"⁶⁶. Apart from Ireland, local authorities submitted themselves to the authority of the Crown. The only debate was the degree to which the Crown was required to consult Parliament before acting. As such, the colonial enterprise of England

⁶² Ibid. 47.

⁶³ Ibid. 50.

⁶⁴ Ibid. 43-44.

⁶⁵ Ibid. 43.

⁶⁶ Ibid. 44.

was one in which localities, like those in North America, saw themselves as part of one larger project – that of the English Imperial Crown.

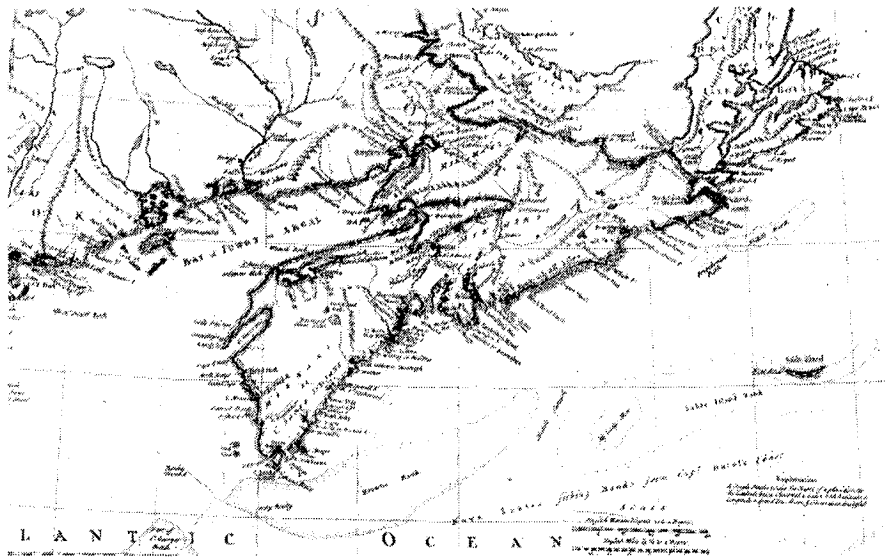
These differences may go some way to explaining why French and English colonialists tended to be of very different backgrounds. While the fisheries in Acadia and Newfoundland initiated the attraction of merchants to northern North America, large-scale involvement of the merchant classes was largely restricted to English interests in the region. Indeed, the individuals involved in French colonies in Acadia tended to be of military background, while those in the English colonies tended to be of a commercial background⁶⁷. This makes clear why French development in the region was subject to the whims and interests of the Crown, while the development of English interests was a product of competition⁶⁸.

As a result of – and occasionally in spite of – these differences, the European influences were marginal in Acadia in the 1500s and 1600s. Despite the presence of fishing resources, the English and French were still largely preoccupied with their own civil wars and conflict in the European theatre. As long as their attentions were still largely turned towards Europe, France and England paid little attention to Acadia. Settlement and local development in Acadia was more a result of the individuals involved and the local ecology than it was English or French economic or colonial policies. That Acadia was largely overlooked by the French and English explains the development of a unique local culture, and a strong relationship between the emerging French colony of Acadia.

⁶⁷ Ibid. 53.

⁶⁸ Ibid. 53.

Indeed, while contact between Europeans and indigenous peoples was no longer a novelty for either, the 1500s and 1600s can be described as an era of accommodation and adaptation. As James Axtell has noted, the “adaptation [of artifacts] is less often as sign of capitulation than of capitalization”⁶⁹. Capitalization seems to have been the greatest force determining Mi’kmaq actions during this time, as they borrowed new technology where it was most useful, and kept traditional practices where they seemed most appropriate. Although disease was a preoccupation for the Mi’kmaq⁷⁰, “the sixteenth century was a time of controlled technological change, a time when the Europeans were a source of much that was new but not yet, apparently, the source of any overwhelming challenge to Amerindian powers”⁷¹. This process of capitalization is reinforced by the



Map 1: Nova Scotia and Cape Breton Island⁷²

⁶⁹ James Axtell in *Ibid.* 51.

⁷⁰ *Ibid.* 51-52.

⁷¹ *Ibid.* 51.

⁷² Map of Nova Scotia, and Cape Breton Island with the Adjacent Parts of New England and Canada, (London, UK: Sayer, R and Bennett, J., 1775).

importance accorded by Mi'kmaq and Acadians to intermarriage. These inter-cultural and inter-national bonds secured the growth of a strong relationship between the Mi'kmaq and the French.

Tied as they were to their localities, and to the resources from which they gained their livelihood, the Acadians and Mi'kmaq turned towards the south and New England as market for their resources. Although discouraged by the French, this linkage between Boston and Acadia was to become a long-standing irritation between the French and local merchants in Acadia for the ensuing centuries. This determination and independence of the local populations would remain a characteristic of Acadians and the Mi'kmaq.

“Acadia by 1650 was a French colony of some 400 or 500 people. While by no means comparable in numbers to the settlements of Europeans in either New England or New France, it was a colony with its own distinctive patterns of social cohesion”⁷³.

Resiliency, innovation and adaptation were characteristics of the Acadians. Although heavily invested in the fur trade, and engaged in a global market of furs, the Acadians were also innovative and successful in their agricultural efforts. This was particularly so around the area of Port Royal, located on the shores of the Baie Francaise.⁷⁴ In 1653, Nicolas Denys⁷⁵ recorded that there “are numbers of meadows on both shores ... and two islands which possess meadows ... There is a great extent of meadows which the sea

⁷³ N.E.S. Griffiths, "1600-1650: Fish, Fur, and Folk," *The Atlantic Region to Confederation: A History*, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), 60.

⁷⁴ The Baie Francaise later became known as the Bay of Fundy.

⁷⁵ Nicolas Denys (1598 or 1603 – 1688) was Cape Breton's (then known as Ile Royale) first permanent French settler. He recorded early European development in the region, and recorded extensively information regarding his interactions with the Mi'kmaq.

used to cover and which the Sieur d'Aulnay had drained. It bears fine and good wheat... below and above this meadow ... they have again drained other lands which bear wheat in much greater abundance than those which they cultivated around the fort"⁷⁶. The dyking and development of alluvial agricultural land was key to Acadian survival, and was to ensure a self-sustaining colony with surpluses to trade within two generations⁷⁷.

If local relations between the French and the Mi'kmaq were peaceful in the mid 1600s, it was largely due to the lack of French presence in the region. The French were scattered across the region thinly. For example, the Pentagoet trading post, located at Fort Pentagoet⁷⁸, contained 32 Etchemin wigwams and two European buildings⁷⁹. This is consistent with the Recollet Christien Le Clerq's observations during his travels throughout Acadia⁸⁰. The absence of a French demographic presence was reinforced by conflict within the Acadian community itself, thus stalling development and immigration to the area⁸¹. Daigle notes that by the late 1660s, the 40 or 50 Acadian families present in the region formed the foundation for Acadia, to which very few would be added

⁷⁶ Denys in William F. Ganong, ed., The Description and Natural History of the Coasts of North America (Acadia) by Nicholas Denys (Toronto: The Champlain Society, 1908).

⁷⁷ N.E.S. Griffiths, "1600-1650: Fish, Fur, and Folk," The Atlantic Region to Confederation: A History, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), 60 and Jean Daigle, "1650-1686: 'Un Pays Qui N'est Pas Fait'," The Atlantic Region to Confederation: A History, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), 68.

⁷⁸ Near what is now known as Bangor Maine, on the mouth of the Penobscot (Pentagoet River). See Alaric Faulkner, From Pentagoet to the Old Canada Road: Finding and Delimiting Habitations of Downeast Maine (Sainte-Foy, Québec: Centre interuniversitaire d'études québécoises, 1999).

⁷⁹ Alaric and Gretchen Faulkner in Jean Daigle, "1650-1686: 'Un Pays Qui N'est Pas Fait'," The Atlantic Region to Confederation: A History, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), 65.

⁸⁰ See Le Clerq in William F. Ganong, ed., The Description and Natural History of the Coasts of North America (Acadia) by Nicholas Denys (Toronto: The Champlain Society, 1908), 159-206. Also cited in Jean Daigle, "1650-1686: 'Un Pays Qui N'est Pas Fait'," The Atlantic Region to Confederation: A History, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), 65.

⁸¹ Jean Daigle, "1650-1686: 'Un Pays Qui N'est Pas Fait'," The Atlantic Region to Confederation: A History, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), 66.

afterwards⁸². Indeed, the only subsequent growth in the Acadian population would be from high rates of birth⁸³.

A small population likely led to the strengthening of relations between Acadian and New England traders. The grandiose plans that Jean Talon, intendant of New France, had for establishing a system of trade between France, French North America and the French West Indies, came to naught, due to a lack of traders “substantial in business matters”⁸⁴. As a result, French traders overlooked the Acadians, leaving them to their own devices. This increased the interest of Acadians for trade with the New Englanders⁸⁵. This, in turn, reinforced the independence of Acadians from ‘official France’. This trend was underscored by the refusal of some Acadians to provide information regarding their families, offspring and ‘industry’ to French officials during the census of 1671⁸⁶. It also increased the dependence of Acadia on New England for finished goods, a dependence which continued through the late 1600s⁸⁷.

During this same period of 1654 to 1670, the English began to take a more active interest in Acadia. Likely in part due to their trading with the Acadians, and their desire to control incursions by the native populations into ‘their’ colonial interests, the English

⁸² Ibid. 66.

⁸³ Ibid. 76. The Acadian population, according to records from the time, jumped from 440 to over 900 between 1671 and 1686.

⁸⁴ Archives nationales (Paris) C11A 7: 81, De Meulles Au Ministre, 12 Nov. 1683, 1683.

⁸⁵ It was as early as the late 1600s that trade with New Englanders caused changes in the Acadians’ language. ‘Vous “too”’ and ‘Pas “yet”’ were adopted into the language at this time. See Thomas Hutchinson in Jean Daigle, “1650-1686: ‘Un Pays Qui N’est Pas Fait’,” *The Atlantic Region to Confederation: A History*, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), 70.

⁸⁶ Archives nationales (Paris) G1: 466, Recensement (De Port Royale) Par Laurent Molins, 1671.

⁸⁷ Jean Daigle, “1650-1686: ‘Un Pays Qui N’est Pas Fait’,” *The Atlantic Region to Confederation: A History*, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), 74.

sought to exert some influence over Acadia and to control the French influence on natives. In a peculiar but successful set of assaults, Robert Sedgwick, an English naval captain, attacked and plundered most of the colony's settlements between July and September 1654⁸⁸. Although the legal and diplomatic claims made subsequent to the attacks somewhat overstate the implications of these raids, the British laid claim to the area, resulting in greater contact between the English and Acadians than between the Acadians and French 'officialdom'⁸⁹. England consequently renamed the area "Nova Scotia"⁹⁰ and handed control of the area to Thomas Temple, William Crowne and Charles de Saint-Etienne de La Tour⁹¹.

The growth of English interests in the area were made easier due to the chaos reigning in the French colony in the 1650s. The drowning death of Charles de Menou d'Aulnay⁹² in 1650, "set three individuals in opposition to each other, all of whom had a strong interest in the matter of who would take over the debt-laden governor's control of the colony"⁹³. Of the three, Emmanuel Le Borgne – chief creditor to the d'Aulnay family – was to be the greatest impediment to the English. Le Borgne, originally from the port of LaRochelle, directed his anger not only against the English, but also against the Acadian

⁸⁸ Ibid. 66.

⁸⁹ Ibid. 66.

⁹⁰ A name given to the area by King James in 1621, when he signed a grant in favour of Sir William Alexander for all of the lands "between our Colonies of New England and Newfoundland, to be know as New Scotland". New Scotland is pronounced as 'Nova Scotia' in Latin.

⁹¹ Jean Daigle, "1650-1686: 'Un Pays Qui N'est Pas Fait'," The Atlantic Region to Confederation: A History, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), 66.

⁹² d'Aulnay arrived in Acadia in 1632 with his cousin Isaac de Razilly – commander of the expedition in order to take control of Acadia from the English under the terms of the Treaty of St.Germain-en-Laye. After the death in 1635 of Razilly, d'Aulnay fought Charles La Tour in order to secure effective control of Acadia, which he was successful in doing by 1645.

⁹³ Jean Daigle, "1650-1686: 'Un Pays Qui N'est Pas Fait'," The Atlantic Region to Confederation: A History, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), 65.

colonists⁹⁴. His were attempts to reimburse the merchants of LaRochelle for the initial investments that they had made in the colony, payments which were long over-due in part due to the indebtedness of d'Aulnay and his predecessors.

The lack of return on investments by French merchants in Acadia did little to stimulate merchant interest in further economic development in Acadia. Indeed, it is possible that this lack of interest further necessitated the involvement of the French state in Acadia, and reinforced the disinterest of merchants to trade in that area. It also further reinforced the independence of the Acadians, who saw very little of the English or French governments during this time. "A generation grew up to consider the necessity for reaching accommodations with their English neighbours, and with the representatives of whatever regime prevailed, as the key to their survival in North America. This pragmatic attitude, often perceived as dangerously independent by European visitors and administrators, was a product of the realization that the European powers attached little importance to the particular interests of the Acadians"⁹⁵.

Until 1670, Acadia –Nova Scotia was a place of unrest and uncertainty. Located on the fringes of French and English colonial interests, it received little attention, politically, socially or financially. Even when the Treaty of Breda (1667) returned Acadia to French control, it was not until three years later that the British crown directly ordered Temple to pass control over the settlements of the area to the new French Governor, Granfontaine⁹⁶.

⁹⁴ Ibid. 67.

⁹⁵ Ibid. 67.

⁹⁶ 'Ordre du roi d'Angleterre au colonel Temple de restituer l'Acadie a la France', 8 March 1669 in Ibid. 68.

A series of attacks by the Dutch in 1674 pushed some Acadian families to move along the north and east coasts of the Bay of Fundy away from Port Royal. This spread the Acadian population, and further extended the ties of kinship between Acadian families and the local native peoples.

It is important to note the growth of the presence of the Catholic church in Acadia. As the Acadian population expanded and spread around the basin of the Bay of Fundy, the number of French priests and missionaries increased to serve these populations. By the end of the 1680s, priests were located in the St. John Valley, Port Royal, Chedabucto, Pentagoet, Les Mines and Beaubassin. At Port Royal, Louis Petit and an unknown member of a women's religious order established a girl's and boy's school. The presence of missionaries was to become a significant issue in the relationship between native populations and the English into the 18th century. Indeed, the church was to play a pivotal role in prolonging the conflict between the English and French and Mi'kmaq in Acadia.

By the end of the 1680s, the Acadians had further reinforced their political and social independence from the French crown. They had become self-sufficient in regards to agricultural production, and had started to spread their influence throughout the region due in large part to their prodigious rates of reproduction. While they remained dependent on New England traders for finished goods, they had recognized the importance of their ties to the English and Massachusetts. The New Englanders, and the English, had started to recognize the importance of the area as a source of natural

resources and tradable items. The growth of trade between Acadia and New England would begin to draw those wanting to trade their furs from the St. Lawrence Valley south and east, and would serve to increase the interaction between native peoples and the church, European merchants, military and colonial forces.

The future of Acadia was by no means secure at the end of the 1680s, lacking as it was in official institutions and a significant merchant population⁹⁷. Indeed, Acadia, “might be valued for fish or for [its] strategic location, but hardly as [a] jewel in any imperial crown”⁹⁸. After 1686, this importance of Acadia as a strategic location would place it directly in the sights of both the British and French crowns. The threat of and subsequent wars between England and France forced both crowns to assert their hold on Acadia – Nova Scotia. Reid notes that, “with increasing imperial intervention, the patronizing attentions of military and civil officials ceased to be a mere amusement or annoyance to the residents (of Acadia) and became an active element in the shaping of their future”⁹⁹. From the Acadian perspective, they had passed from being neglected by the French and English metropolis to becoming far too much a part of their strategic visions for the region.

Despite the build-up of French and English military forces in Acadia, tensions between England and France were somewhat mitigated by the signing of the Treaty of Whitehall in 1686. This treaty, signed between King Louis XIV and the Catholic and pro-French James II, recognized the permanency of both colonies in Acadia as they were at the

⁹⁷ Ibid. 77.

⁹⁸ John G Reid, "1686-1720: Imperial Intrusions," Ibid. 78.

⁹⁹ Ibid. 79.

time¹⁰⁰. Certainly, there was a reduction in the number of seizures of New England vessels by the French navy. However, the treaty did little to settle the issues of boundaries and territory between France and New England. Despite the fact that the treaty outlawed trading by New England with the French in Acadia, this 'tradition' persisted. An attack by New England against the Chedabucto in 1688 proved that New England's "fishing interests were intolerant of French competition, even in Acadian waters"¹⁰¹.

In 1688, "New England ethnocentrism"¹⁰² provoked full-scale conflict between New England and the Abenaki, who inhabited the disputed territory between New England and Acadia¹⁰³. Further complexity was added to the situation in 1689 when the James II was deposed by his daughter Mary, and William of Orange. William was a Protestant, and anti-French. This 'Glorious Revolution' pushed aside the guarantees of the Treaty of Whitehall and led to the declaration of war against the French in May 1689. This war, for "both Native and non-Native alike ... would not only bring a direct military threat but ... also jeopardize the strategies of co-existence that had emerged in the course of the seventeenth century"¹⁰⁴.

The 1690s saw a series of devastating and successful raids by both New Englanders and the French against their respective settlements. Most, if not all settlements had been

¹⁰⁰ Ibid. 80.

¹⁰¹ Ibid. 81.

¹⁰² Ibid. 81.

¹⁰³ What we would now call northern Maine.

¹⁰⁴ John G Reid, "1686-1720: Imperial Intrusions," *The Atlantic Region to Confederation: A History*, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), 81.

attacked, occupied and subjected to vandalism and most Acadians and New Englanders had suffered inhuman treatment at the hands of their Crowns' enemies. Weary of the conflict, some of the Abenakis sued for peace with the government of New England in 1693¹⁰⁵. Although Daugherty refers to this as a document of surrender¹⁰⁶, the clauses of that treaty were to serve as a blueprint for future treaties of peace and friendship between the English and Native peoples of Acadia – Nova Scotia¹⁰⁷. The treaty successfully brought some of the Abenakis to the aid of the English. This is evident in 1696, when Benjamin Church led a force of New Englanders and Native allies against Beaubassin, successfully capturing, burning and pillaging the settlement.

The signing of the treaty with the Abenakis provoked a certain amount of concern among the French. Fortunately however, as Daugherty notes, “a large number of Abenakis, led by a sagamore named Taxous, wished to continue the war. The French, of course, made every effort to aid him in his cause”¹⁰⁸. Father Thury, a French missionary priest played on Taxous' ‘vanity’. He convinced Taxous that the peace-oriented Madockawando, the Penobscot sagamore who had signed the treaty, was insulting him. According to Daugherty, the, “irate Taxous, denounced the treaty and appealed to the Abenakis to resume the war. At a feast given by Villieu¹⁰⁹ at Passadumkeag, Taxous and his

¹⁰⁵ Daugherty also notes that the Abenaki were interested in re-establishing their trading relationship with New England, an interest underlined by the inability of the French to deliver presents and supplies to them. William E. Daugherty, Martime Indian Treaties in Historical Perspective (Ottawa: Department of Indian and Northern Affairs Canada, 1983), 7.

¹⁰⁶ *Ibid.* 7.

¹⁰⁷ *Ibid.* 9.

¹⁰⁸ *Ibid.* 9.

¹⁰⁹ Sieur de Villieu was Lieutenant to Governor Villebon and a veteran soldier.

followers so intimidated the peace party with taunts and ridicule that they agreed to return to the war path”¹¹⁰.

Initial English successes had been reversed by 1696-97 by a series of French forays. The French successfully rid Newfoundland of the English, leading the Board of Trade¹¹¹ to inform “William III simply that the French were now ‘Masters of the whole island’”¹¹². By September 1697, the strife, cost and destruction of eight years of war was set aside by the English, their European allies, and the French in the signing of the Treaty of Ryswick. This was not, however, to be a permanent peace, signed as it was under the influence of the “exhaustion of all the belligerent powers”. This meant that the ‘peace’ “had the flavour of a truce rather than a lasting settlement, and it dealt with colonial affairs simply by restoring the status quo ante bellum”¹¹³.

The destruction caused by eight years of war was compounded by the failure of the harvest in Acadia in 1698, thus reinforcing the dependence of the inhabitants of Acadia on New England’s resources and merchants. The Native allies of the English and French had paid in lives lost and the disruption of their harvest and hunting patterns during the war. This changed the migration patterns of the Mi’kmaq, forcing them to cross the

¹¹⁰ John Clarence Webster, Acadia at the End of the Seventeenth Century: Letters, Journals and Memoirs of Joseph Robineau De Villebon, Commandant En Acadie, 1690-1700, and Other Contemporary Documents, Monograph Series vol. 1 (St. John, N.B.: The New Brunswick Museum, 1934), 14-15 and William E. Daugherty, Martime Indian Treaties in Historical Perspective (Ottawa: Department of Indian and Northern Affairs Canada, 1983), 10.

¹¹¹ Who had assumed responsibility for trade and the colonies in 1696. See Ian Kenneth Steele, Politics of Colonial Policy: The Board of Trade in Colonial Administration, 1696-1720 (Oxford: Clarendon Press, 1968).

¹¹² Public Records Office, Colonial Office (London, UK) 195 2: 71, Board of Trade to the King, 21 January, 1697, 1697.

¹¹³ John G Reid, "1686-1720: Imperial Intrusions," The Atlantic Region to Confederation: A History, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), 84.

Cabot Strait more often for the purposes of hunting¹¹⁴. Contact with Europeans was also having a detrimental effect on the culture and traditional practices of the Native peoples of Acadia. Declining the offer of the sieur de Villieu to establish a trading house in 1701, an Abenaki elder decried the situation of his people. Speaking through the missionary Antoine Gaulin, he declared, "I see my brothers, for example those of the St. John river, not praying any more because of drunkenness, and that the level of illegitimate births is such that we hardly know each other any more. Even my kindred on the Kennebec, since they have been trading with the English, have lost their senses and do not pray because they are always drunk"¹¹⁵.

In Europe, the French and English continued to argue regarding the border of Acadia and the issue of fishing rights in Acadian waters. These disagreements were matched in New England and Acadia by the declarations and intentions of both colonies¹¹⁶, leading Lieutenant Governor Stoughton of Massachusetts to speak out regarding the "fatal and irreparable hurt and damage' that would result from 'any concession to the French in their unjust and unreasonable pretensions now made'"¹¹⁷. On the international stage, in 1700 King Charles II of Spain died, leaving the crown to Philip V, who was the grandson of Louis XIV of France. This ushered in an era of alliance between France and Spain, and raised concerns in England of an eventual combination of the two crowns under

¹¹⁴ Ibid. 87.

¹¹⁵ Public Archives of Nova Scotia (Halifax) RG1 /4: 39, Letter of Antoine Gaulin, 24 October 1701, 1701.

¹¹⁶ John G Reid, "1686-1720: Imperial Intrusions," *The Atlantic Region to Confederation: A History*, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), 87.

¹¹⁷ Public Records Office, Colonial Office (London, UK) 5/860/37, Stoughton to Board of Trade, 24 October 1698, 1698.

Philip¹¹⁸. The resumption of war in 1702, was provoked by France's invasion of the Spanish Netherlands. This war, the War of the Spanish Succession, was to last until 1714.

Renewed war in Europe had profound effects on the populations of Acadia – Nova Scotia and New England. It also forced the alignment and re-alignment of Native peoples – the Mi'kmaq and Maliseet with the French¹¹⁹, and the Abenaki with neither. In New England, the government of Massachusetts had negotiated with the Abenaki for peace. In June of 1701, at their conference at Casco Bay, the Abenakis asked that the English "will give us notice of the likelihood of war between the French and English" and declared that they desired, "to Keep ourselves free, and not be under the Command of any party"¹²⁰. The neutrality of the Abenaki was tested and broken during the war, evidenced by the dispatch of 40 Abenakis from Penobscot by Saint-Castin to aid the Mi'kmaq at the sides of the French in 1711¹²¹.

This war, like the previous, also saw a series of attacks and counter-attacks by the English forces of New England and the French forces against their respective settlements. Again, local population bore the cost of these attacks. Strategically speaking, the French

¹¹⁸ John G Reid, "1686-1720: Imperial Intrusions," *The Atlantic Region to Confederation: A History*, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), 88.

¹¹⁹ The Governor of Port Royal reported in 1703 that he had 100 Native (Mi'kmaq) fighters at his disposal. See Reid at 89.

¹²⁰ Massachusetts Archives (Boston) 30: 467, Memorial of Heads and Propositions, 3 June 1701, 1701. See also Kenneth M. Morrison, *The Embattled Northeast: The Elusive Ideal of Alliance in Abenaki-Euramerican Relations* (Berkeley: University of California Press, 1984), 146-57.

¹²¹ Bernard-Anselme d'Abbadie de Saint-Castin (the fourth baron). His father was a French officer in Acadia, and a member of the aristocracy. His mother was a full-blooded Penobscot, and an Indian Princess – Matilda, daughter of Madockawando, Chief of the Penobscots. See Francis Parkman, *Count Frontenac and New France under Louis XIV* (London; Toronto: Musson Book, 1877?).

and English raids and counter-raids were inconclusive¹²² during this period. Trade between Acadia and New England persisted, creating scandal in Boston¹²³. This 'illegal trade' was widespread, and there is even evidence that Governor Joseph Dudley of Massachusetts was involved¹²⁴ in ensuring that supplies continued to reach Acadians.

On the 2nd of October in 1710, Daniel d'Auger de Subercase – the French commander of Port Royal – surrendered to Francis Nicholson, who was a seasoned military officer and former Lieutenant Governor of Virginia. Nicholson wasted no time in changing the name of Port Royal to Annapolis Royal, in honour of Queen Anne. On the 12th of October 1710, Nicholson proclaimed to all those people living within the bounds of Acadia and Nova Scotia that these territories were possessions of the British Crown. This was a right, in the words of Nicholson and his Council of War, to which the Crown had “an undoubted right of inheritance as well as conquest”¹²⁵. Although this claim was dubious given the relinquishment of these claims in the treaties of 1632, 1667 and 1697, it nonetheless gave England a strong foothold in southern Nova Scotia. It was also symptomatic of English success on the battlefield in Europe¹²⁶.

Although English control of Annapolis Royal was challenged in 1711, all hostilities ceased after signing of the Treaty of Utrecht in April 1713. France retained fishing rights

¹²² John G Reid, "1686-1720: Imperial Intrusions," *The Atlantic Region to Confederation: A History*, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), 89.

¹²³ In 1706, Samuel Vetch, formerly a Scottish military officer and then a trader in Boston, was accused of trading illegally with the Acadians and the Mi'kmaq. See Ibid. 89-90.

¹²⁴ Ibid. 90.

¹²⁵ Public Records Office, Colonial Office (London, UK) 5/9/73, Proclamation of Nicholson Et Al., 1710.

¹²⁶ See William E. Daugherty, *Martime Indian Treaties in Historical Perspective* (Ottawa: Department of Indian and Northern Affairs Canada, 1983), 14.

in Newfoundland, and control over Ile Royale (Cape Breton) and Ile Saint-Jean¹²⁷, but relinquished control over 'Nova Scotia otherwise known as Acadie in its entirety'¹²⁸. The definition of Acadia would become a point of contention in the years to come, as the only precision offered in the treaty was that of a reference to 'its ancient boundaries'¹²⁹. These boundaries, and the exact nature of the maritime jurisdiction of England and France would serve as a source of friction until the 1760s. Despite this vagueness, France and England peaceably implemented the treaty in Acadia – Nova Scotia and Newfoundland.

What was sure in 1713 was that a new political reality faced New Englanders, Acadians and the Penobscot, Passamaquoddy, Maliseet and Mi'kmaq peoples. The arrival of British rule in Nova Scotia and Acadia signaled the onset of new pressures on the Acadians. Faced by demands to swear allegiance to the English Crown, Acadians were faced with the choice of staying – as loyal British subjects – or leaving for Cape Breton (Ile Royale) or Ile Saint-Jean. Few left¹³⁰, and those that remained largely refused to swear allegiance to the English crown¹³¹. Some Acadians in Minas attempted to placate the English by arguing that they had not had to swear allegiance during the previous

¹²⁷ Later known as Prince Edward Island.

¹²⁸ Treaty of Friendship between France and Great Britain, 11 April 1713 in Clive Parry, ed., The Consolidated Treaty Series, vol. 27 (Dobb's Ferry, N.Y.: Oceana Publications, 1969), 485.

¹²⁹ Treaty of Friendship between France and Great Britain, 11 April 1713 in *Ibid.* 485.

¹³⁰ Thirty-seven families did leave, of which three quarters lived around Annapolis Royal. This low response frustrated French officials, and confounded them. Indeed, the French had offered land grants and provisions to the Acadians, with little effect. See John G Reid, "1686-1720: Imperial Intrusions," The Atlantic Region to Confederation: A History, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), 98.

¹³¹ See Aldridge's comment that the Acadians refusing to swear allegiance were 'a Pack of Notorious Villains in General and not to be Trusted if they had taken five thousand Oaths'. See Public Records Office, Colonial Office (London, U.K.) 217 2/7, Captain Christopher Aldridge to Francis Nicholson, 15 January 1714, 1714.

English occupation of the area¹³². Others wrote to Saint-Ovide, Governor of Louisbourg, pledging their ongoing allegiance to the French crown.

Native peoples in Acadia had also suffered due to the constant state of war in Acadia. They had become particularly vulnerable to the imperial powers¹³³, and had suffered greatly in regards their cultural 'dislocation' and economic decline¹³⁴. The Maliseet suffered in very much the same way, without having retained the same residual military importance that the Mi'kmaq had. All of these Native allies had proven themselves capable of independent reflection and action, and had become invaluable allies, or terrifying enemies, to their European counterparts. It was clear that the French and English were not likely to have survived their first centuries in Acadia without the support and generosity of their Native allies.

What had become equally clear to the Native, Acadian and English inhabitants of Nova Scotia – Acadia, was that little or no attention had been paid to the interests of local populations by either imperial government during the war leading up to Utrecht. The Treaty itself had not been a product of local interests, but of European brinksmanship¹³⁵. Indeed, for "all the peoples of the region, the war years had demonstrated the capacity of imperial disputes to disrupt and endanger their ways of life, and the imperial pressures continued to be felt even after the Treaty of Utrecht"¹³⁶. This would not change in the

¹³² John G Reid, "1686-1720: Imperial Intrusions," *The Atlantic Region to Confederation: A History*, eds. Phillip A Buckner and John G Reid (Toronto: University of Toronto Press, 1998), 99.

¹³³ *Ibid.* 103.

¹³⁴ *Ibid.* 102-103.

¹³⁵ *Ibid.* 94.

¹³⁶ *Ibid.* 102.

eighteenth century as the French and English empires strengthened their hold on the region through military, religious/moral and economic initiatives, initiatives that would ultimately diminish the independence of all of the peoples living in Acadia – Nova Scotia.

The Treaty of Utrecht to 1763

Acadia was to see a great number of changes in the period between the signing of the Treaty of Utrecht, and the departure of the French from North America after the Treaty of Paris in 1763. For our purposes here, this 50-year period was also determinant in terms of the relationship between the Mi'kmaq and the English Crown. Indeed, the conclusion and signature of peace in 1760/61 between the English Crown and the Mi'kmaq set in motion a series of irrevocable changes that would begin to colonize this once powerful nation. Disease, trade, religion and war were all to play their parts in changing the face of Mi'kma'ki¹³⁷. Although extensive cultural change did not happen in Mi'kmaq society until the early 20th century¹³⁸, the framework for these changes was laid during this post-Utrecht period.

The process of treaty-making between the English and the Mi'kmaq was ongoing throughout this period of time. Treaties signed in 1725, 1749 and 1752 established and re-affirmed terms that would ultimately appear in the Treaty of 1760/61¹³⁹. While the

¹³⁷ I will not discuss the effects of disease on the Mi'kmaq since Wicken argues that its effects were not significant on the Mi'kmaq as a whole. See William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 184 – 205.

¹³⁸ See Ibid. 16 and William Wicken and John G Reid, An Overview of the Eighteenth-Century Treaties Signed between the Mi'kmaq and Wuastukwiuk Peoples and the English Crown, 1725-1928 (1993), 159-205.

¹³⁹ There is also a resonance with the Treaty of 1693 signed between the colony of Massachusetts and the Abenaki Nation.

treaty signed in 1760/61 represents the culmination of alliances, agreements, and treaties, and the resolution of uncertainties, tensions and mistrust, it also stands as a testament to the political and legal traditions of both signatories. That a certain pattern and presence of particular clauses is evident in all these treaties, we can be assured that the Mi'kmaq and British fully understood *what they* were committing themselves to, and *what they* felt their 'bretheren' had agreed to. We can also be certain that the clauses of the treaty represent the resolution of a long series of negotiations at the council tables, around fires, on ships, in war rooms, in communities, at Court and on the battlefield.

We cannot at all be sure that the Mi'kmaq understood what the English felt they were agreeing to, nor can we be sure that the English understood what the Mi'kmaq felt they were in agreement with. While the actions of the English were later to illustrate what they felt the treaty gave them – in terms of rights and responsibilities – the story of Mi'kmaq understanding is more complex and subtle. Clarity is brought to this understanding through the historical context leading up to the treaty, the ceremony at the one of the signings¹⁴⁰ and our knowledge of the ways in which the Mi'kmaq perceived, presented and preserved their knowledge of the world around them – Mi'kma'ki.

The story that evolves in Acadia after the signing of the Treaty of Utrecht is important in helping us reconstruct the political and legal patterns which underlie their understanding of this moment of continuity – between their past and their future(s). There are elements to these patterns which are of particular importance here. These elements can, for the

¹⁴⁰ For example Public Records Office, Colonial Office (London, U.K.) 217 18: 277r-83r, Governor's Farm Ceremony, 25 June 1761, 1761.

sake of presentation, be grouped into four thematic areas – political and legal traditions and relations; economic and social relations with allies; connections to the land and environmental practices; and spirituality. Each of these will be examined as they pertain to the period between 1714 and 1761. While the focus here is predominantly on the Mi'kmaq understandings of these elements, English and French perspectives will be introduced where appropriate.

Political and Legal Traditions and Relations

How did the Mi'kmaq political and legal structures envision concepts like “ally” or “enemy”, the process of treaty-making, law and order, punishment, diplomacy and dialogue with their allies? What was the context in which this thinking and structure manifested themselves between 1714 and 1761? In order to begin to answer these questions, it is important to look at how the Mi'kmaq structured their polity, and understood their own relationships to their law and legal traditions. It is important to note that I am using the concepts of the law and legal traditions very broadly – to express, in a sense the ‘legal consciousness’ of the Mi'kmaq¹⁴¹.

The political structures of the Mi'kmaq existed at the community and national levels. Much of what we know about these structures comes from oral tradition, and is corroborated by French and English documentation. Oral traditions indicate that there were three leaders in each village, each with distinct roles. The *sakamow* (chief) was responsible for ensuring that the families in his village were prepared and equipped to

¹⁴¹ See McMillan's PhD Thesis for a detailed description and discussion thereof. Leslie Jane McMillan, "Koqqwaja'ltimk: Mi'kmaq Legal Consciousness," University of British Columbia, 2003.

hunt, that orphans and widows were provided for, and that any disputes were resolved¹⁴². The *sa'ya* (spiritual leader) provided the principal connection between the village and the spiritual world, often advising the community on the reasons for certain occurrences and the 'appropriate responses' to those occurrences¹⁴³. It is possible, according to tradition, that these two roles could be assumed by one person. The *keptin* (war chief) held an impermanent position, taken up only during war time.

Kinship was central to political organization amongst the Mi'kmaq¹⁴⁴. Indeed, superior personal ability and kinship affiliations served as the primary criteria for establishing leadership within communities. This implies that more extensive kinship ties increased the ability of the *sakamow* to maintain alliances and affiliations with others within their communities and between their community and others. Virginia Miller suggests that superior intelligence, generosity, courage and aggressiveness in war, and superior hunting abilities were also hallmarks of a great *sakamow*¹⁴⁵. Anthropological evidence suggests that *sakamows* maintained their authority through collaboration, not through coercion¹⁴⁶.

¹⁴² William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 128. Wicken indicates that the term 'sagamow' first appeared in Marc Lescarbot's "Relation derniere" Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents: Travels and Explorations of the Jesuit Missionaries in New France, 1610-1791 (Cleveland: Burrows, 1897), 1:73. In Mi'kmaq, "sakamow" means "the most oldest, and the most wisest".

¹⁴³ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 129. See Pierre-Antoine-Simon Maillard, An Account of the Customs and Manners of the Micmakis and Muscugeets Savage Nation, Now Dependent on the Government of Cape Breton (London: S. Hooper and A. Morley 1758), 41.

¹⁴⁴ Leslie Jane McMillan, "Koqqwaja'ltimk: Mi'kmaq Legal Consciousness," University of British Columbia, 2003, 37. See also Bernard G. Hoffman, "The Historical Ethnography of the Micmac of the Sixteenth and Seventeenth Centuries," University of California, 1955.

¹⁴⁵ Virginia P. Miller, "Social and Political Complexity of the East Coast: The Micmac Case," The Evolution of Maritime Cultures on the Northeast and Northwest Coasts of America, ed. Ronald J. Nash, vol. 11 (Vancouver, British Columbia: Simon Fraser University, Department of Archaeology, 1983), 47.

¹⁴⁶ Biard in Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents: Travels and Explorations of the Jesuit Missionaries in New France, 1610-1791 (Cleveland: Burrows, 1897), III:89.

Sagamows expanded this influence through polygamy, enabling them to redistribute to a larger number of people contributions made to them¹⁴⁷.

Nicolas Denys alludes to the importance of oration as one of the *sakamow*'s skills.

Forming alliances, convincing fellow community members to join them in war or peace, and establishing territorial divisions for hunting and fishing would have been possible only through great oratory skills. Denys writes that:

In order to keep alive the memory, and preserve the tradition from father to son, their history of their ancestors, and the example of their fine actions and of their greatest qualities, something of which would otherwise be lost on them, and would deprive them of a knowledge of their relationships, which they preserve by this means; and it serves to transmit their family alliances to posterity. On these matters they are very inquisitive, especially those descended from the ancient chiefs. This they sometimes claim for more than twenty generation, something which makes them more honoured by all the others¹⁴⁸.

This observation is corroborated in the diaries of Lieutenant Edward Chappell, as he noted that "whatever power he (the chief) may possess, arise more from the ascendancy acquired by his mild and conciliating manners, than from any respect which the Indians pay to the office itself"¹⁴⁹. These mild and conciliating manners were expressed partly through the act of redistribution. Indeed, the greater the *sakamow*, the poorer he was. Through his generosity – his 'great heart', a *sakamow* was able to set an example for his community, and lead through this example. Le Clerq most clearly illustrates this:

¹⁴⁷ Leslie Jane McMillan, "Koqqwaja'ltimk: Mi'kmaq Legal Consciousness," University of British Columbia, 2003, 38 and Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents: Travels and Explorations of the Jesuit Missionaries in New France, 1610-1791 (Cleveland: Burrows, 1897), II:101.

¹⁴⁸ Nicholas Denys, The Description and Natural History of the Coasts of North America (Acadia), ed. W.F. Ganong (Toronto: 1908), 410.

¹⁴⁹ Lt. Edward Chappell, Voyage of His Majesty's Ship Rosamon to Newfoundland and the Southern Coast of Labrador: Of Which Countries No Account Has Been Published by Any British Traveler since the Reign of Queen Elizabeth, London (J. Mawam, 1818), 82.

The occupation of this chief was to assign the places for hunting, and to take the furs of the Indians, giving them in return whatever they needed. This man made it a point of honour to be always the worst dressed of his people, and to take care that they all were better clothed than he. He held it as a maxim, as he told me one day, that a rite and a great heart like his, ought to take more care for others than for himself because good hunter as he was, he always obtained easily everything which he needed for his own use, and that as for the rest, if he did not himself live well, he should find his desire in the affection and hearts of his subject. It was as if he wished to say that his treasures and riches were in the hearts and in the affections of his people¹⁵⁰.

A *sakamow's* 'mantle' was often passed from father to son, although there are instances where sons did not meet the expectations of their elders and were therefore replaced in the line of succession by another¹⁵¹. Wicken points to the example of Etienne Chegoueo, "who had been born at Cap Sable and moved to Port Royal after marriage" becoming leader of the Mi'kmaq in the region¹⁵². The practice of challenging a 'sitting' *sakamow* was not uncommon, and was, "likely an effective social control mechanism"¹⁵³. Where the *sakamow's* oldest son was not chosen to be his successor, and the *sakamow* had no other male children, his sister's eldest son was the next choice, reinforcing the importance of kinship lines.

McMillan identifies two 'lower classes' in Mi'kmaq society – commoners and slaves.

Commoners could increase their voice and recognition in the community through

¹⁵⁰ Le Clerq in Bernard G. Hoffman, "The Historical Ethnography of the Micmac of the Sixteenth and Seventeenth Centuries," University of California, 1955, 512.

¹⁵¹ A son could be delegated to carry messages to another community in order to test their readiness. See Public Records Office, War Office (London, UK) 34/12: 99v-100, Capt. Roderick Mackenzie to J. Belcher, March 28, 1761, 1761.

¹⁵² William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 132.

¹⁵³ Leslie Jane McMillan, "Koqqwaja'ltimk: Mi'kmaq Legal Consciousness," University of British Columbia, 2003, 40.

affiliation and age¹⁵⁴. Slaves were usually captives of a particular community, often captured during wars or raiding parties¹⁵⁵.

Women are attributed strong spiritual power in anthropological records¹⁵⁶. This power appears to be in particular relation to menstruation and hunting success. During their menses, women were isolated in a hut, and assisted by elder women in order to avoid bringing them into contact with inappropriate food sources¹⁵⁷. It was feared that if women didn't follow these rules their powers would jeopardize hunting success. The Wallises note that only "a bad girl or woman would eat beaver while menstruating; for the smart beaver, discovering this, would not allow itself to be captured by a man who had permitted it to be eaten by his unclean daughter or wife"¹⁵⁸. Whether this amounted to little more than a social control, or a real fear, it did demonstrate the belief that women, like men, had specific powers which rendered them unique in their contribution to Mi'kmaq life. Indeed, Hoffman and Le Clerq both identify the importance of women, particularly as they gained in age, grew in knowledge of the use of herbs and medicines, and had the opportunity to become shamans¹⁵⁹.

¹⁵⁴ Bernard G. Hoffman, "The Historical Ethnography of the Micmac of the Sixteenth and Seventeenth Centuries," University of California, 1955, 577.

¹⁵⁵ Leslie Jane McMillan, "Koqqwaja'ltimk: Mi'kmaq Legal Consciousness," University of British Columbia, 2003, 41.

¹⁵⁶ See Bernard G. Hoffman, "The Historical Ethnography of the Micmac of the Sixteenth and Seventeenth Centuries," University of California, 1955 in particular.

¹⁵⁷ *Ibid.* 277.

¹⁵⁸ Wilson D Wallis and Ruth Sawtell Wallis, The Micmac Indians of Eastern Canada (Minneapolis: University of Minnesota Press 1955), 108.

¹⁵⁹ Fr. Chrestien Le Clerq, New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 229-233 and Bernard G. Hoffman, "The Historical Ethnography of the Micmac of the Sixteenth and Seventeenth Centuries," University of California, 1955, 312.

Elders were also accorded great respect and weight in the political decision-making process. Led by the *sakamow*, the Council of Elders made decisions regarding all aspects of the community and its functioning¹⁶⁰. Samuel Holland recorded a meeting with sixty Mi'kmaq in Cape Breton who were waiting for "an old man more than 120 years of age who they say is the Eldest of the Tribe upon whose counsel they set great value"¹⁶¹. It was this Council that the *sakamow* relied on for direction and support in his decisions. It is important, however, to note that the political decisions arrived at by the Council and the *sakamaw* were not binding on all families, meaning that individuals could still seek their own private revenge against the English.

According to Wicken's analysis, European records give little information regarding the number and distribution of *sakamow* at any given time. There often appear to be contradictions between correspondence and the affiliations listed on treaties. It appears, for example, that in 1722 Jacques Necout was *sakamow* of Minas, while the Treaty of 1726 indicates that the *sakamow* of Minas is Anotine Amquaret. Wicken draws the conclusion, based on historical records, that Necout and Amquaret were both *sakamow* for Minas and Piziquit, respectively¹⁶². We can draw two conclusions from this information: firstly, that the geographical terminology used by Europeans and missionaries led to oversimplification of their understanding of Mi'kmaq political

¹⁶⁰ Leslie Jane McMillan, "Koqqwaja'ltimk: Mi'kmaq Legal Consciousness," University of British Columbia, 2003, 36 and William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 133.

¹⁶¹ Holland in William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 133. See Daniel Cobb Harvey, Holland's Description of Cape Breton Island and Other Documents (Halifax: Public Archives of Nova Scotia 1935), 68.

¹⁶² William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 131.

understanding, and secondly, that it is likely that other areas of Mi'kma'ki had more than one *sakamow*¹⁶³.

Mi'kma'ki was divided into seven regions, each region having a regional chief – or 'Captain' – which could speak on their behalf at the Grand Council – the *Sante Mawi'omi*¹⁶⁴. While the origins of this council are disputed¹⁶⁵, Wicken argues that it was formed six hundred years ago "as a defensive measure in response to the invasion of Mi'kmaq territory by Haudenosaunee (Iroquois) warriors"¹⁶⁶. All *sakamow* participated in the meetings of the Grand Council, which was led by the *Kijsakmow* (Grand Chief), the *Kjikeptin* (the Grand Captain) and the *Putus*, who was the keeper of the treaties of friendship and alliance made with the council¹⁶⁷.

Wicken points out that oral tradition indicates that annual meetings were held at both the district and Grand Council levels¹⁶⁸. The Grand Council had at one time held their annual meetings at Pubnico Point in southwestern Nova Scotia, but later moved them to Cape Breton – possibly sometime after 1749¹⁶⁹. Wicken speculates that this move may have been as a result of pressures placed on their polity by conflict with New England¹⁷⁰.

¹⁶³ Ibid. 132.

¹⁶⁴ This can also be interpreted as "Holy Gathering". The importance of the seven regions is derived from the Creation story discussed later in this chapter.

¹⁶⁵ See, for example, Patricia Nietfeld, "Determinants of Aboriginal Micmac Political Structure," University of New Mexico, 1981, 471-75.

¹⁶⁶ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 135.

¹⁶⁷ Ibid. 135.

¹⁶⁸ Ibid. 135.

¹⁶⁹ This is the timeframe established by Speck, according to oral traditions collected by him in the early 1900s. See Frank G. Speck, "The Eastern Algonkian Wabanaki Confederacy," *American Anthropologist* 17.3 (1915), 499, 506.

¹⁷⁰ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 136.

Meetings after 1749 were held in Cape Breton or Antigoniche. Biard notes in 1616 that the meetings of the Grand Council were typically held in the summer, and were for the purpose of discussions “about peace and war, treaties of friendship and treaties for the common good”,¹⁷¹.

The Grand Council would have been responsible for maintaining peace and good relations with the allies of the Mi’kmaq, particularly the Native peoples to the west. The Wabanaki Confederacy was the most important of these alliances, and included the Maliseet, Passamaquoddy, Penobscot and Abenaki peoples of the east¹⁷². Frank Speck argues, based on oral testimony, that the Mi’kmaq were allied with the Wabanaki Confederacy, but were not members. Although this cannot be corroborated¹⁷³, evidence of cooperation between the Mi’kmaq and the members of the Wabanaki Confederacy does exist. Wicken points to cooperation between the Mi’kmaq, Maliseet and Penobscot during the conflict with New England in the 1690s, and the assistance of Penobscot warriors with Mi’kmaq attacks on Port Royal in 1710 and Canceau in 1720 and 1721, as examples of this cooperation. He also indicates that there are fewer examples of cooperation after the signing of the treaty of 1725/26¹⁷⁴.

¹⁷¹ Biard, “Relation of 1616” in Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents: Travels and Explorations of the Jesuit Missionaries in New France, 1610-1791 (Cleveland: Burrows, 1897), 3:89.

¹⁷² William Wicken, “Encounters with Tall Sails and Tall Tales: Mi’kmaq Society, 1500-1760,” McGill University, 1994, 138.

¹⁷³ Ibid. 139. See Frank G. Speck, “The Eastern Algonkian Wabanaki Confederacy,” American Anthropologist 17.3 (1915), 505-507.

¹⁷⁴ William Wicken, “Encounters with Tall Sails and Tall Tales: Mi’kmaq Society, 1500-1760,” McGill University, 1994, 140.

There is also evidence that the Mi'kmaq treated with peoples to their north and west. Speck indicates that the largest of these alliances was that between the Wabanaki, the Mi'kmaq, northeastern Algonkian peoples, and the Mohawks of Kahnawake and Kahnasetake. Mediated by the Odawa, this alliance met every three years at Kahnawake. The first concrete evidence of this alliance is a letter dated 1721, sent to New England authorities, protesting the spread of colonial development into Abenaki territory. "The letter's signatories were the principal Abenaki and Maliseet villages, the Mi'kmaq, the Kahnawake and Kahnasetake, Houdenasaunee, the Algonquins, the Hurons, the Montagnais from the north shore of the Saint Lawrence River, the Papinachois and other neighbouring nations ..."¹⁷⁵.

The Mi'kmaq also appear to have fought wars with the Haudenosaunne in the early seventeenth century¹⁷⁶, and the Maliseet somewhere between 1616 and 1670¹⁷⁷. Conflict also erupted between 1644-45 with the Montagnais, and late in the 1650s with the Inuit on the Labrador coast¹⁷⁸. War was not fought in order to gain territory, but to exact revenge for murdered relatives¹⁷⁹, usually against English mariners and soldiers.

Sakamows would often appeal to other villages for assistance, but in the absence of this

¹⁷⁵ Ibid. 141.

¹⁷⁶ Ibid. 143.

¹⁷⁷ Wicken indicates that evidence for this conflict is lacking, but points to allusions to this war in Pierre-Antoine-Simon Maillard, An Account of the Customs and Manners of the Micmakis and Muscugeets Savage Nation, Now Dependent on the Government of Cape Breton (London: S. Hooper and A. Morley 1758), 19-20.

¹⁷⁸ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 144.

¹⁷⁹ Ibid. 145, Marc Lescarbot, History of New France, trans. W.L. Grant, 3 vols. (Toronto: The Champlain Society, 1907-1914), 263, and Leslie Jane McMillan, "Koqqwaja'ltimk: Mi'kmaq Legal Consciousness," University of British Columbia, 2003.

assistance nevertheless carried out limited attacks or raids on vessels from New England¹⁸⁰.

Native assailants took scalps or prisoners as their war prizes, often presenting them to women whose husbands or children had been killed by their enemies¹⁸¹. The taking of prisoners was also common among the Mi'kmaq. Although there are indications that prisoners were killed or disfigured to serve as warnings to others, they most often served as slaves or as means to trade for Mi'kmaq prisoners held by the English¹⁸². For example, William Pote was told by his Mi'kmaq captor, "if it had been my fate to have been with his Nation he believed I should be Redeemed in a very short Time. By Reason there was Six or Seven of their Nation then prisoners in Boston, which he told me they would Endeavour to Exchange as Soon as there was any possibility of their being Exchanged"¹⁸³. Taking prisoners, then, can be viewed as an extension of the kind of intercultural communication that was practiced between the Mi'kmaq and English during the Eighteenth century.

Indeed, we can appreciate that the Mi'kmaq had a highly developed and complex political system, which preserved and animated their legal consciousness. 'Laws' were not formally written in the way we understand them today, but were part of the oral traditions that governed community and individual behaviour – within the family, with

¹⁸⁰ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 146.

¹⁸¹ Ibid. 148.

¹⁸² Ibid. 148-149.

¹⁸³ William Jr. Pote, Journal of Captain William Pote Jr. During His Captivity in the French and Indian War from May 1745 to August 1747 (New York: 1896), 24.

other families, other communities and other nations. By weaving the traditions of leadership, kinship, and generosity into their own legal and political behaviours, the Mi'kmaq were performing a kind of 'cultural communication' with those with whom they shared Mi'kma'ki.

Wicken argues that the Mi'kmaw view of the world enabled them to practice balance between themselves and the other animate beings around them, including humans. He suggests that 'reciprocity' animated the actions of Mi'kmaq, leading them to engage in the accumulation of a form of primal 'social capital' through the practices of sharing and redistribution. *Sakamows*, we will remember were motivated by this 'big hearted' practice. This form of reciprocity enabled the Mi'kmaq to maintain relationships – within their own social groups, and between themselves and others¹⁸⁴. "At a tabagie, for example, a hunter shared the game he had killed with other members of his village. As host, we ate very little but insisted that others partake. By giving, the hunter enhanced his own prestige. He also gave, however, in the expectation of receiving from others when his hunting was less successful. By doing so, he ensured social peace and enhanced his family's ability to survive in the future"¹⁸⁵. Stories abounded of the retribution which would follow from neglecting to practice reciprocity¹⁸⁶.

¹⁸⁴ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 156.

¹⁸⁵ Ibid. 156. See also Biard in Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents: Travels and Explorations of the Jesuit Missionaries in New France, 1610-1791 (Cleveland: Burrows, 1897), 2:79, Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents: Travels and Explorations of the Jesuit Missionaries in New France, 1610-1791 (Cleveland: Burrows, 1897), 3:95, Marc Lescarbot, History of New France, trans. W.L. Grant, 3 vols. (Toronto: The Champlain Society, 1907-1914), III:222 and Fr. Chrestien Le Clerq, New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 245.

¹⁸⁶ Silus Rand, "The History of Usitebulajoo: A Tale of Animal Times," Legends of the Micmacs, 44-61.

This reciprocity was extended to others as well. It was common practice for travelers to take from food caches as they traveled through others' territories. Courtesy was expected, however. Titus Smith notes that a Native traveling through another community's hunting ground "might kill any game he met with if he was in want of provisions but he usually informed the proprietor of what he had done and offered him the skin; which the proprietor usually refused of his acknowledgement of his right"¹⁸⁷. The cost of failing to inform 'proprietors' of one's presence on their lands was usually the lack of success in hunting. The animate creatures being hunted for food could be scared away through such a lack of courtesy. It was also possible that a sacred site could be disturbed, or a ceremony interrupted, leading to negative effects for 'the collectivity'¹⁸⁸.

Generosity, reciprocity and courtesy were extended to allies through the ceremonies and practice of peace and treaty making. The exchange of presents was a symbolic gesture of sharing between people, and implied respect, reciprocity and shared responsibility. Gifts, wampum and tobacco formed essential elements in these exchanges¹⁸⁹. There is evidence that the English misunderstood the value of this practice, thereby failing to open discussions properly and establish relationships the Mi'kmaq could understand or associate with. As Wicken notes, failure "to be sufficiently generous was interpreted as disapproval by the receiver and could be used as a pretext for war. Indeed, the opposite

¹⁸⁷ Public Archives of Nova Scotia (Halifax) RG 1 /380: 113-17, General Observations on the Northern Tour, 1801.

¹⁸⁸ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 158.

¹⁸⁹ See Olive Dickason, "Louisbourg and the Indians: A Study in Imperial Race Relations 1713-1760," *History and Archeology* 6 (1976), 34.

side of reciprocity was war and occurred because other parties had failed to maintain reciprocal relations with the Mi'kmaq"¹⁹⁰.

We can see, then, that the entire success of the Mi'kmaq polity, its legal 'consciousness' and its conceptualization of diplomacy is founded on the simple concept of 'big heartedness'. This 'big heartedness' was sorely tried by the English in the period after 1713. Indeed, with the English and French vying for the attentions and the reciprocity of the Mi'kmaq, the Mi'kmaq were torn between two European powers who had very little 'institutional' understanding of how to communicate with their Native allies. As the history prior to 1713 had demonstrated, they had also been thrown into contact with the Acadians, with whom they had developed strong bonds at the community and kinship levels.

Through family, trade and alliance, the Mi'kmaq tested and practiced their traditional forms of communication with others. It is in these areas which the Mi'kmaq distinguished themselves as loyal allies, shrewd negotiators and feared enemies. Of particular interest for us here are the trading/economic and political relationships that the Mi'kmaq formed with the emergence of British 'rule', the continuation of French 'friendship' and ongoing 'accommodation' with the Acadian populations of Mi'kma'ki. It is to an account of these relationships that we now turn.

¹⁹⁰ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 158.

'Friends, Rulers and Neighbours' in Mi'kma'ki – Economic and Social Relations

The French and English had very different approaches in their relationships with Native peoples in North America and elsewhere. Few facts about the Mi'kmaq were known by the French, for example, but theories regarding their 'humanity' abounded. Dickason argues that the French were convinced that they could convert the Native peoples of New France into Frenchmen. The French "were naively convinced that the Indians, from having been deprived of the light of Christianity, would quickly recognize the superiority of the French social structure..."¹⁹¹. This belief was consistent with the broader beliefs held by Europeans regarding the 'Indians'.

The central question animating debate in Europe from the fifteenth century had been whether or not 'Indians' were human and could be Christianized. Alexander VI promulgated the Papal Bull *Inter caetera* on May 4, 1493, arguing that 'Indians' could indeed be Christianized, and that this mission should be pursued ardently, regardless of cost or risk¹⁹². This edict did not resolve matters, as the debate continued. In 1510, John Major published a justification for the conquest and submission of 'Indians' as slaves. Major, a Scottish professor, based his concept of a 'just war' – *bellum justum* – on Aristotle's theory that the "imperfect may be subject to the perfect and the superior must rule the inferior"¹⁹³. Clement VII reinforced Major's arguments, authorizing the use of

¹⁹¹ Olive Dickason, "Louisbourg and the Indians: A Study in Imperial Race Relations 1713-1760," *History and Archeology* 6 (1976), 9.

¹⁹² *Ibid.* 18.

¹⁹³ *Ibid.* 18.

force to Christianize the 'Indians'¹⁹⁴. In 1537, Pope Paul III somewhat calmed the debate, arguing that the 'Indians' were not to be treated as,

Dumb brutes created for our service ... (but) ... as truly men ... capable of understanding the Catholic faith ... The said Indians and all other people who may later be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property, even though they may be outside the faith of Jesus Christ ... nor should they in any way be enslaved¹⁹⁵.

This position was consistent into the seventeenth century, having been reaffirmed by Pope Urban VIII in 1639¹⁹⁶. It was also consistent with the tone of the treaty – known as the Mi'kmaq Concordat – signed by the Holy See with the Grand Council sometime around 1620¹⁹⁷.

How questions of liturgy and religion were played out in imperial doctrine is outside the scope of this thesis. However, it is important to acknowledge that the French approach to relations with the Mi'kmaq would have been somewhat influenced by the Church and the position of Rome. Certainly, while the English treated Native peoples as an impediment to development, the French spent enormous amounts of money and effort on building

¹⁹⁴ "Whereupon we trust that as long as you are on earth you will compel and with all zeal cause the barbarous nations to come to the knowledge of God, the maker and founder of all things, but also by force and arms, if needful, in order that their soul may partake of the heavenly kingdom". Pope Clement VII to Charles V, sovereign of New Spain, March 23, 1530. See Henry Harrisse, Bibliotheca Americana Vetustissima: A Description of the Works Relating to America (New York: George P Philes 1866), 273.

¹⁹⁵ Lewis Hanke, Aristotle and the American Indians: A Study in Race Relations in the Modern World (Chicago: H Regnery 1959), 19.

¹⁹⁶ Olive Dickason, "Louisbourg and the Indians: A Study in Imperial Race Relations 1713-1760," History and Archeology 6 (1976), 19.

¹⁹⁷ See James Youngblood Henderson, The Mikmaq Concordat (Halifax, Nova Scotia: Fernwood, 1997) for further details.

trading and military alliances with the Mi'kmaq¹⁹⁸. This approach was to continue until the 1760s and the departure of France from the shores of Mi'kma'ki.

It is clear from records that while the French took the initiative in developing relations with the Mi'kmaq, and met regularly with their leaders, the English were constantly reacting to Mi'kmaq actions. Between 1690 and 1725, 1744 and 1752, and from 1753 to 1760, the English and Mi'kmaq were continually at odds. Even in the intervening years, when Mi'kmaq-English relations were stable, English and Mi'kmaq officials met infrequently. Much of the distrust created by the English arose due to their dispossession of Native peoples' lands, and their demands that the Native people swear allegiance to the Crown. Much of the success of the French was due to their skill and practice of gift giving as part of a broader diplomatic strategy.

Mi'kmaq and the French government: Relations, trade and ceremony

As noted above, the Mi'kmaq social and political structures remained strong and continued to underpin the functioning of the Mi'kmaq throughout this period. Their political relations with others were founded on the alliances they made and the treaties they signed with these powers. Documentation regarding the treaties and alliances they had with the French is scarce, thus making "concrete evidence of a Mi'kmaq perspective on alliances and treaties"¹⁹⁹ very difficult to find.

¹⁹⁸ Olive Dickason, "Louisbourg and the Indians: A Study in Imperial Race Relations 1713-1760," *History and Archeology* 6 (1976), 15.

¹⁹⁹ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 376.

What is certain is that the War of Spanish Succession, and the subsequent signing of the Treaty of Utrecht brought significant changes to French policy in Acadia. France lost the mainland of Nova Scotia to the English Crown, and was left with only Cape Breton. French officials decided to protect their remaining maritime resources – including access to the fisheries – by constructing Louisbourg. Between its construction and its capture by the English in 1745, France spent close to three and a half million livres on the construction and fortification of Louisbourg²⁰⁰. Between 1745 and 1749, Louisbourg was occupied by the English. Louisbourg returned to French control under the terms of Treaty of Aix-La-Chapelle. The fort was reinforced between 1749, and the capture of Louisbourg by the English, again, in 1758.

The construction of Louisbourg signaled a redirection of France's efforts in the region away from its land resources towards the sea. Instead of sending small detachments of French troops to assist its Native allies in attacks against New England, French officials concentrated their efforts on the construction and fortification of Louisbourg. While this approach contributed to the creation of a successful commercial and military centre at Louisbourg, it was at the cost of preparing French soldiers for conflict with England. Indeed, instead of learning the skills necessary for 'gaining an upper hand' in conflict in Acadia, the French soldiers were forced to limit their activities to building fortifications and structures at Louisbourg²⁰¹.

²⁰⁰ See Dale Miquelon, *New France 1701-1744: 'a Supplement to Europe'* (Toronto: McClelland and Stewart 1987), 111.

²⁰¹ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 385.

Despite their sincere efforts to build relationships with the Mi'kmaq, the French still treated them with suspicion and concern. Correspondence from French officials indicates that they viewed their Mi'kmaq allies as animals, and French "officers were appalled by Mi'kmaq behaviour in war"²⁰². According to the French, the Mi'kmaq drank excessively, mistreated their prisoners and abandoned their allies in mid-campaign. The French were, however, unable to discipline the Mi'kmaq, thus placing them in a position of conflict between the desire to treat them as subjects and the desire to treat them as allies "and particularly to stop the enterprises that the English can make"²⁰³.

The choice of words by Philippe Pastour de Costebelle²⁰⁴ in 1707 is telling of French impressions of the Mi'kmaq. He wrote that the Mi'kmaq were "free in the woods like wolves and bears"²⁰⁵. For the French, wolves and bears lived outside their palisades and settlements, and were thus regarded with fear: "these animals were evil, a barrier to civilization and thus had to be killed"²⁰⁶. The bear was feared and valued by the Mi'kmaq, because of its strength. As Wicken states, in the Mi'kmaq "world, where hunting was a constant part of life, individual action and courage were valued ... so long as the Mi'kmaq were hunters and fishermen, they remained outside French society and

²⁰² Ibid., 386.

²⁰³ Archives nationales (Paris) B 22: 152, Memoire Du Roy À Brouillon, 23 March 1701, 1701.

²⁰⁴ In 1713, Costebelle became the first Governor of Île Royal (Cape Breton).

²⁰⁵ Archives nationales (Paris) C11C /5: 128v, Costebelle Au Ministre, November 10, 1707, 1707.

²⁰⁶ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 387. He points to the depiction of bears and wolves by a Jesuit priest, who traveled through the area in the late seventeenth, early eighteenth century as an example of what "educated French minds" thought of these animals. See Charles Bécard, Codex Du Nord Amériquin: Quebec 1701 (Montréal: Media-Teq & Parti-pris 1981), figures 155, 157 and 166.

immune from attempts to control their actions because their sense of power was influenced by forces beyond the influence of French colonial rule”²⁰⁷.

This reinforces the preserved sense of independence of the Mi’kmaq, and their ability to maintain distance from French officialdom. Reaction to the Treaty of Utrecht belies a sense of anger amongst the Mi’kmaq. Presenting the surrender of Nova Scotia by France to England, officials from the Colony of Massachusetts encounter angry replies from the Abenaki, Maliseet and Mi’kmaq delegates present. The Mi’kmaq responded to the officials that the French King could give as he wanted but,

... for me, I have my land that I gave to no one and that I will never give. I wish always to be the master. I know the limits and when someone wishes to live there, he will pay. When the English take some wood, fish or hunt game, there is enough for all, I will not stop this²⁰⁸.

This Mi’kmaq were equally assertive in their response to the Governor of Ile Royale, Saint-Ovide, when he explained France’s surrender of Mi’kmaq land to the English:

But learn from us, that we are on this earth that you tread and on which you walk, before the tree which you see began growing, it is ours and nothing can ever force us to abandon it²⁰⁹.

It is perhaps this independence that ‘forced’ the French to court the Mi’kmaq to the extent they did. Certainly, French officials extended diplomatic and trade courtesies to the Mi’kmaq that exceeded those of the English. The French, after all, were almost kin to the Mi’kmaq by the eighteenth century. French officers and soldiers, like Saint-Castin, had married into local Native populations. Despite the fact that French officials did not

²⁰⁷ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi’kmaq Society, 1500-1760," McGill University, 1994, 388.

²⁰⁸ Rales, "Rales to Vaudreuil, September 9, 1713 " *Bulletin des recherches historiques* 37 (1931), 289.

²⁰⁹ *Ibid.* 290.

fully trust these 'acculturated' individuals, they still entrusted them to lead war parties, and to bring gifts to local Native populations.

Much of the distrust for people like Saint-Castin arose from the ambiguity of their actions with respect to the English. Living as he did at quite some distance from the principal French settlements, and trading with Native, Acadian, French and English merchants, Saint-Castin was forced to take a 'middle road' between English, French and Native interests. Courted by both the English and French, such 'gentlemen' were integrated into neither colony, existing instead in a constant state of 'in between-ness'²¹⁰. They were, therefore, both of value and of venture in the eyes of French officials. In contrast, French officials did trust Acadian traders, parish priests and missionaries as their most faithful agents and as intermediaries between themselves and the Mi'kmaq. We will return to the question of missionaries below, as they "came closest to appreciating the importance of working within native cultural frameworks"²¹¹ and served, therefore, as the best 'intercultural diplomats' available to the French.

What the French had developed was a strong sense of Mi'kmaq diplomacy through gift giving. At annual meetings²¹², French officials would get together with Mi'kmaq to give gifts and exchange information with each other. Presents were given to each *sakamow* and to members of the community, and a feast was provided by French officials. Axes,

²¹⁰ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 391-395.

²¹¹ Olive Dickason, "Louisbourg and the Indians: A Study in Imperial Race Relations 1713-1760," *History and Archeology* 6 (1976), 29.

²¹² Annual meetings were not always possible, meaning that presents did not reach each community each year. Records do indicate that meetings happened annually between French officials and Mi'kmaq at Louisbourg from 1715 until the fall of Louisbourg in 1745.

tools, shirts and blankets were included in the list of presents given to the Mi'kmaq until 1720²¹³. Records indicate that after 1731, presents such as black powder, shot and rifles were given as annual presents²¹⁴.

The Governor and his entourage would have been present at the meetings, accompanied by servants, officers, a priest and an interpreter. The priest would have maintained harmony and led a mass each morning²¹⁵ and would have assisted the interpreter in conveying messages back and forth between the French and the Mi'kmaq. The interpreter was a key figure in all of the discussions. As Saint-Ovide wrote in 1717, "conferences end before they begin which leaves the Indians in a bad humour"²¹⁶. Ritual and respect guarded the process animating the discussions. Discussions were not held on days when people arrived²¹⁷, they were structured by speeches, and concluded with a general feast "to which the Governor contributed flour, butter, prunes, salted bacon, peas, and molasses"²¹⁸. Alcohol was provided by the Governor to toast King's health.

French financial records indicate that contact with the Mi'kmaq increased in the period after 1730. This increase was partly as a result of the expansion of missions, particularly from 1736 to 1739, resulting from attempts to "increase the prestige of the new

²¹³ These were discontinued after 1720 due to complaints from Abbé Courtin, who indicated that very few people had use for these goods. See William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 399.

²¹⁴ See Ibid.. 402 for a listing of the amounts given in 1731 and from 1732-1742.

²¹⁵ Ibid. 405.

²¹⁶ Archives nationales (Paris) C11B 3: 28v, Saint-Ovide Et Soubras Au Conseil, November 13, 1717, 1717.

²¹⁷ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 406.

²¹⁸ Ibid. 408.

missionaries and fix the Mi'kmaq living in the region in one permanent location”²¹⁹. As Wicken concludes, we do not know exactly how, when and why the meetings always occurred, but we do know that this contact was year-long²²⁰. We also know that “more extensive communications” between the Mi'kmaq and French occurred during the 1730s than had occurred beforehand. Notwithstanding the redirection of French military interests towards the sea, and the protection of naval interests – including those along the Saint Lawrence – French officials made overt and consistent political efforts to maintain their friendship with, and influence over the Mi'kmaq.

Indeed, the French continued to maintain strong contacts with the Mi'kmaq – even those within the territory that had been ceded to the English under the terms of Utrecht. The French may have wished the return of Acadia to their control, or they may simply have had plans to frustrate English control over the area. Independent of their longer term goals, the French efforts frustrated English plans and extended the duration of French influence over the area even after their retreat to Louisbourg.

Behind English Walls – Mi'kmaq – English Relations from 1710-1760

Prior to 1713, the English had tried to assert control over Mi'kma'ki between 1628 and 1632, 1654 and 1670, and between 1690 and 1696 without success. Only the signing of Utrecht recognized – in European circles – that control of Nova Scotia rested with the English Crown. The English were not, however, as interested in building relations with the Mi'kmaq as they were in bringing them under control and supervision. Contact with,

²¹⁹ Ibid. 409.

²²⁰ Ibid. 411.

and correspondence regarding the Mi'kmaq by the English officials tended only to come in response to Mi'kmaq aggression against English settlements and resources.

Richard Philipps, Governor of Nova Scotia, spent only four of his thirty-two years as Governor in Nova Scotia. Between 1717 and 1749, he spent twenty-eight years in England, allowing an Executive Council to govern for him. Created in 1720, this council was composed of military officers and merchants, and reported directly to the Board of Trade²²¹ in England, which in turn reported directly to the Privy Council. This Board exerted little influence over colonial affairs until 1748, when the Earl of Halifax was appointed President of the Board²²². For Nova Scotia, "the change in the Board's leadership is graphically illustrated in the foundation of Halifax in June 1749, a project directed by the Earl"²²³. The establishment of Halifax, of course, further aggravated relations between the English and the Mi'kmaq.

The English government attempted to spread its control over the area, establishing regiments in Port Royal and Canceau. Plans by Philipps to establish posts at Minas and Chignecto never came to fruition, due in part to resistance from local populations²²⁴. Ironically, English interests and the assertion of English control over the area were complicated by the government of Massachusetts. Although some effort was made to support English interests at Port Royal, Massachusetts interests lay in the protection of their merchants, and their fishing vessels operating in the area of Nova Scotia. The

²²¹ The Board of Trade was an administrative body formed in 1696 by the King.

²²² William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 413.

²²³ Ibid. 413.

²²⁴ Ibid. 414.

actions of Massachusetts officials strained relations with the Mi'kmaq, particularly when Mi'kmaq were taken as hostages to Boston, without the knowledge of British officials in Halifax. Although the Executive Council and the Lieutenant Governor did not condone or endorse the actions of the Governor of Massachusetts, the consequences of the Governor's intrusions into Nova Scotia's geopolitics were borne by Nova Scotia's government.

The anger and actions of the Mi'kmaq against English interests in the region did nothing to improve English perceptions of the Mi'kmaq. Like the French, the English mistrusted the Mi'kmaq. In 1749, the Governor of Ile Royale, Desherbiers, wrote to Cornwallis²²⁵ that "it is sad to have men of honour being exposed to the surprises of these (Mi'kmaq) people"²²⁶. This was certainly the sentiment of English officials prior to signing the Treaty of 1725. Hibbert Newton, member of the Nova Scotia Executive Council, and Captain John Bradstreet had proclaimed that

... we value the Indians so very little and knew how little their word was to be depended on that we took no notice of them, nor never shall, till they come in with a method whereby we may be very well assured by hostages and other good pledges at their good behaviour²²⁷.

²²⁵ Edward Cornwallis was the sixth son of Charles, fourth Baron of Cornwallis, and Lady Charlotte Butler, daughter of the Earl of Arran; his grandfather, the Duke of Ormonde. He was Governor at Halifax from 1749 until 1752, when he petitioned and received relief, returning to England.

²²⁶ Public Records Office, Colonial Office (London, U.K.) 217 /40: 152v, Desherbiers À Cornwallis, October 15, 1749, 1749.

²²⁷ "The proceeding of Hibbert Newton Esq. and Capt. John Bradstreet with Mr. Saint-Ovide" in William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 419. See "Nova Scotia Papers," Gay Papers, F.L. Gay Collection (Boston, Mass: Massachusetts Historical Society, 1725), vol. IV., August 1725.

This belief persisted, and led Cornwallis to note in 1749 that “force will prevail” in relations with the Mi’kmaq²²⁸.

The English did make efforts to establish a trading relationship with the Mi’kmaq, and had intentions to present gifts to *sakamaws* in much the same way the French had²²⁹.

Although first mention was made of their intent to distribute presents in 1714, it was not until 1721, however, that the gifts arrived from England, and there is no evidence that the practice was carried on thereafter on a regular basis²³⁰. The English also attempted to encourage English to marry Mi’kmaq – to strengthen their bonds of kinship across cultures. The English did not, however, succeed in securing the strength of bond with the Mi’kmaq that they had intended. A lack of information about Mi’kmaq society, treaty-making protocol, the importance of regular present-giving and contact with the Mi’kmaq meant that the English were at a disadvantage. Compounded by the lack of interest and financial support from the Board of Trade in London and intrusions by Massachusetts, English efforts were constantly operating in the shadow of the more durable, extensive and culturally appropriate relationships “which bound the French Crown and its subjects to the Mi’kmaq people”²³¹.

It was perhaps the inability of the English and the Mi’kmaq to communicate with each other that created a climate of ongoing political instability, tension and conflict which

²²⁸ Public Records Office, Colonial Office (London, U.K.) 217 /9: 110, Cornwallis to Board of Trade, October 17, 1749, 1749.

²²⁹ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi’kmaq Society, 1500-1760," McGill University, 1994, 421.

²³⁰ Ibid. 421.

²³¹ Ibid. 422.

was to characterize the era of 1713-1760. A regional war from 1722 to 1725 – Drummer’s War – pitted the Mi’kmaq and the Wabanaki Confederacy against the English. This war once again saw limited military attacks by the Native nations against fishing vessels, and the capture and imprisonment of Mi’kmaq families, and was resolved only in 1725. The Treaty of 1725, signed by the Penobscot at Boston on behalf of the Mi’kmaq and Wabanaki Confederacy was ratified by Mi’kmaq *sakamows* and elders on June 4, 1726.

Peace reigned in the region until 1744, when the English and French once again went to war with each other, drawing in their respective Native allies. This conflict, known in Europe as the War of the Austrian Succession, and in North America as King George’s War, was to last until 1748. Although sporadic fighting occurred in North America, the greatest cost to life was to happen on the battlefields of Europe. Notable, however, was the capture of Louisbourg in 1745 by a force from New England, convened by William Shirley, the Governor of Massachusetts, and commanded by William Pepperell of Maine. The French, embarrassed by this loss, attempted to retake the fortress, but were unable to do so. It was not until the signing of the Treaty of Aix-La-Chapelle in 1748 that Louisbourg was returned to France, much to the frustration of the English who had paid in lives and energy to capture this jewel in the French North American crown.

The *sakamow* of the Maliseet and Mi’kmaq *sakamow* from Chignecto reaffirmed the Treaty of 1725 at a meeting with the English in September 1749. Not all Mi’kmaq were in agreement with this reaffirmation, however. The Mi’kmaq of the Eastern coast openly

expressed their concerns about the English²³², and were further aggravated by the establishment of Fort Edward and Fort Cumberland. Further tensions prompted more attacks by the Mi'kmaq against the English, attacks that were encouraged by the French at Louisbourg²³³. Despite the negotiation and ratification of a treaty by the two nations in September 1752, hostilities continued for another seven years. Not until the fall of Fort Beausejour in 1755, and of Louisbourg in 1758, did the pendulum swing in the direction of the English. Finally, in 1760/61, the Mi'kmaq signed treaties with the English, bringing to an end the hostilities that had defined English-Mi'kmaq relations since 1713.

The English did attempt to come out from behind the walls of their fortifications and towns in the eighteenth centuries, but with little success. The Mi'kmaq maintained their strong relationship with the French, and treated with the English only as necessary. The process of treaty-making did initiate contact between two nations, but did little to resolve the fundamental differences between them. The English, however, did not have the benefit of the longstanding relationship with the Mi'kmaq that the local Acadian populations and the Catholic missionaries did. It is to those relationships that we will now briefly turn.

²³² The document in question was interpreted differently by the English and the Mi'kmaq. To the Mi'kmaq, it was viewed as a letter of protest. The French translator, Maillard or LeLoutre re-interpreted that (likely intentionally) as a declaration of war on the English. Of course, the French would have liked an open declaration of war by the Mi'kmaq on the English, thus leaving in doubt the faithfulness of the translation made from Mi'kmaq to French and English. Stephen Augustine indicated to me that the "declaration of war" was a translation of "even a worm (nesgoat) would defend itself" in the original Mi'kmaq text. See Public Records Office, Colonial Office (London, UK) 217 9: 116r-16v, Mi'kmaq of Cape Breton and Antigonish to Cornwallis, 1749.

²³³ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 426.

Fur, fish and Christianity – the Mi’kmaq, trade and spirituality

Politically and socially, the Mi’kmaq and Acadians had established a strong relationship. This relationship continued through the seventeenth and eighteenth centuries, through contact, trade, and skirmishes with the English. By 1737, the Mi’kmaq population between the Canard River and Grand Pre was 1/20th of the Acadian population in the same area, while forty years previous, it had been double that of the Acadians.

Settlements established at Chignecto (1671), Minas (1682), Cobequit (1697) and Pizquit (1703) brought the Mi’kmaq and Acadians into contact at a growing number of places²³⁴.

Statements made by Mi’kmaq leaders throughout the early part of the eighteenth century indicate that payment was required for settlement on their lands. In no way had they surrendered control over their territories, nor would they allow Acadian settlers to simply take up residence. “Indeed, records suggest that Acadians did not establish new settlements without the consent of neighbouring Mi’kmaq people”²³⁵. At the outset, joint occupation of the land was possible because the Acadians and the Mi’kmaq had very different land use patterns. The Acadians, for their part, were agricultural, and cared little for the forests where the Mi’kmaq hunted. As settlement expanded, and the Acadians had a more dramatic impact on the landscape, their land use patterns and those of the Mi’kmaq came into greater conflict.

This conflict arose out of differing perceptions of the land and its use. As Acadian populations grew, they sought to bar the Mi’kmaq from their lands, reserving the territory

²³⁴ Ibid. 228.

²³⁵ Ibid. 229.

for the 'neat and tidy' agricultural plots that were socially valued by Europeans²³⁶. In French and English understandings of the land, the forest was a dark and evil place, "...associated ... with dark uncontrolled emotions, chaos and savagery and was considered to constitute an obstacle to European expansionism"²³⁷. The Mi'kmaq saw the land as a space of joint tenure, where the farmer was guardian of the resources present therein on behalf of the collective. This often brought the Mi'kmaq and Acadians into conflict when the Mi'kmaq 'harvested' cattle from Acadian lands to provide food for their families.

Social relations also altered over this time period, as the Acadian population grew. When communities had been small, regular contact was possible between all Acadians and the Mi'kmaq. As populations grew, and the fur trade increased in significance, "contact was regularized through local traders and missionaries"²³⁸. The gap between the two populations was increased as missionaries built churches closer to Mi'kmaq populations, thus further decreasing the contact necessary except for trade. This appears to be confirmed through the decrease in the number of acts recorded at Port Royal after 1735. As the centre of local French government, records at Port Royal would have included most official acts regarding relations with the Mi'kmaq. Between 1722 and 1735, 31 acts are recorded, with 28 of them registered after 1725. Between 1725 and 1755, there are

²³⁶ Ibid. 231.

²³⁷ Ibid. 231. See also Keith Thomas, *Man and the Natural World: A History of the Modern Sensibility* (New York: Pantheon Books 1983), 193-195 and Donald Geoffrey Charlton, *New Images of the Natural in France: A Study in European Cultural History, 1750-1800* (Cambridge: Cambridge University Press 1984), 42.

²³⁸ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 234.

no acts involving the Mi'kmaq, indicating a sharp decrease in contact between the two peoples.

Wicken argues that religious and colonial officials sought to maintain and increase the social distance between the Mi'kmaq and Acadian populations. This distancing was 'necessary' due to differences in sexual mores, clothing styles and even differences in their understanding of Catholicism²³⁹. Further troubles were caused by the alcohol purchased by Mi'kmaq from Acadian villages during trade. Trade, in fact, was thumbed as the culprit in 'disrupting the peace' of Abbe Maillard's mission and "undoing attempts to mold the Mi'kmaq into practicing Christians"²⁴⁰. Le Loutre and Maillard both recommended that the Mi'kmaq communities be located far from the Acadian settlements in order to remove the temptations and conflicts resulting from trade between the two populations²⁴¹. The solution to contact was likely made more facile with the expulsion of the Acadians in 1755.

Mi'kmaq military actions against the English also caused tensions with the Acadians. The Mi'kmaq were concerned about the conquest of Port Royal, and were determined to prevent further expansion by the English²⁴², particularly in the area around the Bay of Fundy. The Mi'kmaq prevented the Acadians from trading with the English, as witnessed in 1724 when almost 80 'Natives' from the Saint John River and Chebenacadie

²³⁹ Ibid. 237.

²⁴⁰ Archives nationales (Paris) C11B /2: 41v, Conseil De La Marine, December 4, 1716, 1716. Also, Public Archives of Nova Scotia (Halifax) RG 1 /21: 50-51, Order with Advice and Consent of the Executive Council, October 20, 1743, 1743.

²⁴¹ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 240.

²⁴² Ibid. 242.

stopped Acadians from trading with two English boats²⁴³. The Mi'kmaq would also take from the Acadians what was necessary for their attacks against the English, and prevented – through fear – the Acadians from revealing to the English what their military intentions were²⁴⁴. Tensions between the Acadians and Mi'kmaq were not assuaged by the English who demanded that the Acadians pay indemnities to English traders who had had their goods stolen by the Mi'kmaq²⁴⁵.

Of course, the Acadians were not the only inhabitants of coastal Nova Scotia with a European heritage. Other settlements existed along the east coast, although there is insufficient information regarding their exact size and location²⁴⁶. New England privateers often raided these communities, burning homes and taking captives to Boston²⁴⁷. This was resolved by the Treaty of Utrecht which facilitated further settlement along the eastern coast of Nova Scotia. Early settlers relied on the same resources as the Mi'kmaq – hunting and fishing for survival. Later expansion of these settlements led to increased agricultural production and trade in furs, fish and livestock increased²⁴⁸. Unlike the Acadian communities, however, these European communities maintained strong kinship ties with the Mi'kmaq, and did not insist on maintaining a 'social distance'. A small population and isolation from principal Acadian settlements, coupled with reliance on the same resources, would have encouraged strong social bonds between

²⁴³ MacMechan, ed., *Original Minutes of Her Majesty's Council at Annapolis Royal, 1720-1739* (Halifax: Public Archives of Nova Scotia 1908), 58.

²⁴⁴ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 243.

²⁴⁵ MacMechan, ed., *Original Minutes of Her Majesty's Council at Annapolis Royal, 1720-1739* (Halifax: Public Archives of Nova Scotia 1908), 13.

²⁴⁶ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 246.

²⁴⁷ *Ibid.* 247.

²⁴⁸ *Ibid.* 249.

these two populations. Indeed, there is strong evidence of hunting, trading and marital links between the communities persisting well into the eighteenth century²⁴⁹, creating healthy, vibrant metis communities.

These metis people, the Acadians and the Mi'kmaq were also accustomed to meeting and trading with New England fishermen. The expansion of the fishery in the eighteenth century did, however, cause concerns amongst the Mi'kmaq. An Englishman, present at the raid of the Canceau fishery by Mi'kmaq and Abenaki peoples wrote that:

... the Indians spoke very good French, and told the English they only came for the Merchandise and such things as would suit them on shoar(sic); for the Land was theirs, and they would not suffer any English to live upon it, as for the Vessels and Fish they would not meddle with either²⁵⁰.

Although encounters between the Mi'kmaq and fishermen were sporadic, the 'free flow of alcohol' promoted tensions between these peoples, and "could lead to violent altercations"²⁵¹.

Trade was also, of course, an important feature of communication between the Mi'kmaq and their neighbours. As discussed earlier, much of the initial trade between the Mi'kmaq and Europeans had happened as a result of European fishing vessels arriving off the Grand Banks and the shores of Nova Scotia and Newfoundland. This initial trading in fish and game led to the introduction of the fur trade as a 'sideline'. Most of the initial interest by Europeans had been for the fishing grounds off the shores of

²⁴⁹ Ibid. 254-255.

²⁵⁰ *Boston Newsletter*, September 19, 1720.

²⁵¹ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 268.

Newfoundland. However, sometime during the early parts of the sixteenth century, fishing vessels began to move south towards Nova Scotia²⁵². This means that contact between the Mi'kmaq and European fishermen would have occurred in the first half of the sixteenth century. By 1565, for example, Canceau was a fishing site for both the Europeans and the Mi'kmaq, meaning that annual contact between the two peoples was a certainty.

Evidence from the late sixteenth century shows that fur trading had become a part of the Mi'kmaq – French trading pattern. Etienne Bellenger, a trader from Le Havre, traveled to Mi'kma'ki in 1583, returning to France later that year with 600 beaver pelts, and an 'unspecified' quantity of deer, elk, seal, martin and otter furs and skins²⁵³.

By the seventeenth century, Europeans were actively trading with the Mi'kmaq, exchanging hatchets, kettles, guns, clothing, tobacco and spirits for furs. Wicken indicates that it was Basque fishermen and traders who had the most extensive contact with the Mi'kmaq²⁵⁴. A language which mixed Basque and Algonquin evolved to aid communication between the Basque and the Native peoples around the Gulf of St. Lawrence²⁵⁵. Trade relations between the Mi'kmaq and Europeans intensified and were regularized through the seventeenth and eighteenth centuries.

²⁵² Ibid. 168.

²⁵³ Ibid. 172.

²⁵⁴ Ibid. 178.

²⁵⁵ Ibid. 178.

By the eighteenth century, trade between the Mi'kmaq, Acadians, French and New England merchants was extensive. Even after the capture of Port Royal in 1710, trade continued between the Acadians and New England. Patterns of trade in the area evolved with the establishment of Louisbourg in 1714. Trade was no longer conducted directly with France, but between Nova Scotia and Ile Royale. Mi'kmaq and Acadian traders were in an advantageous situation, located between the French in Ile Royale and the English in New England. Although it is not possible to make definitive statements regarding the destination of Acadian and Mi'kmaq furs²⁵⁶, it is likely most beaver pelts were probably exported to New England, since better prices could be obtained there for fur.

Until 1720s, most Acadian trade was directed to New England. With the growth of Louisbourg, this pattern changed, with more trade being directed towards Ile Royale. By 1742, the population of Louisbourg had grown to 5600²⁵⁷. With part of their merchandise going to the English in Massachusetts, and part going to the French on Ile Royale, the Acadians were often caught between loyalties to both countries. Maintaining the independence they had gained in the century before, they continued to trade with both English and French and also with the Mi'kmaq. As noted above, Mi'kmaq attacks on the English often resulted in Acadians paying indemnities for damages and lost goods. Increased attacks on vessels from New England resulted in increased Massachusetts-sponsored protection of these traders. This increased contact between armed English

²⁵⁶ Ibid. 292.

²⁵⁷ Archives nationales (Paris) G1 /466: 77, Recensement De L'île Royale, 1742.

vessels and Acadian vessels, occasionally resulting in confiscation and seizure of Acadian goods and boats²⁵⁸.

Acadians were interested in avoiding increased conflict between themselves and the English, often offering their resources and knowledge to the English to act as intermediaries with the Mi'kmaq. There were even occasions in 1724, 1745 and 1753 when Acadian traders bought English prisoners from the Mi'kmaq in order to release them to the English, in the hopes of smoothing over relations between all three nations²⁵⁹. Acadian trade interests were shifting, however, and this was to have an affect on their long-standing contacts and ties to the Mi'kmaq. New traders were emerging in the Acadian economy, traders without kinship ties to or trading experience with the Mi'kmaq. A growth in agriculture and agricultural trade also accentuated tensions between the Acadians and the Mi'kmaq. Indeed, both socially and economically, the Acadians and Mi'kmaq began to grow apart.

It is in this context that the presence and role of missionaries grew in importance. The number of missionaries in Mi'kma'ki had decreased from the late seventeenth century into the early eighteenth, and of those present, very few administered to the Mi'kmaq. Early missionaries to the Mi'kmaq were not members of a particular religious order, and therefore relied on their parishioners or on the Crown for financial support. This exposed them to greater influence by colonial officials, who were a source of support and

²⁵⁸ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 306.

Archives nationales (Paris) C11D /9: 65, Extraits Des Nouvelles De L'acadie Raportee Par Le Pere Felix Missionaire Recollets De L'acadie, 1724, and William Jr. Pote, Journal of Captain William Pote Jr. During His Captivity in the French and Indian War from May 1745 to August 1747 (New York: 1896), 49.

advice²⁶⁰. These missionaries were also stretched incredibly thin, responsible as they were for the religious needs of the Mi'kmaq, Abenaki and Maliseet peoples.

In 1704, the Bishop of Quebec transferred control over the Wabanaki mission to the Jesuits²⁶¹. Subsequent attempts to establish missions to minister to the Mi'kmaq were frustrated by conflict between the English and the French and the constant under-funding of their work. The signing of the Treaty of Utrecht changed this situation, and brought resources and 'focus' to the purpose of making the Mi'kmaq believers of Christianity and faithful to the (French) Crown. An initial mission was established at what is now known as Antigoniche in 1714 or 1715 – a location that was changed to Maligoueche in 1725 after local *sakamows* had been consulted and approved of the change of location. In 1722, a second mission was added on the Chebenacadie River, just below its confluence with the Stewiacke River.

A significant change to the religious landscape would accompany these new missions: the construction of permanent churches. Prior to that time, missionaries had held mass in huts that resembled those of the Mi'kmaq. While this meant that missionaries represented less of an intrusion into Mi'kmaq ways of living, it also meant that there was little distinction to be made between the missionaries and the spiritual leaders or shaman of the Mi'kmaq. Additionally, the Mi'kmaq did not share the same exposure to the

²⁶⁰ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 323.

²⁶¹ Ibid. 325.

‘sacred’ grounds and objects that European practitioners would have associated with a physical and permanent church²⁶².

Despite the fine churches built at these two missions²⁶³, the work of the missions was hampered by a lack of missionaries. Antoine Gaulin - who had been in Mi’kma’ki since 1699 – was the only priest serving the Mi’kmaq between 1714 and 1725, often traveling for extended periods of time and over great distances to reach Mi’kmaq communities. By 1728, ill health, weariness and constant harassment by English officials forced Gaulin to request relief from the Governor of Ile Royale, Saint-Ovide. Gaulin became parish priest located at Minas, and later retired to Canada in 1732.

The English were wary of French missionaries. Although the Treaty of Utrecht had guaranteed freedom of religious practice to the Acadians, the English feared collusion between the missionaries and French colonial authorities in the direction of Mi’kmaq aggression towards English interests. The English increased their control over the movement and replacement of French missionaries in 1742, ruling that all replacements were to be approved by the Executive Council²⁶⁴. The reluctance of English officials to allow new French missionaries into Nova Scotia was compounded by a lack of willing candidates. Age, linguistic and cultural barriers kept many qualified candidates from becoming missionaries to the Mi’kmaq²⁶⁵.

²⁶² Ibid. 330 – 333.

²⁶³ The Commander of the New England force which destroyed the Catholic Church and presbytery on the Penobscot River in 1722, noted that both buildings were well built and finished. See Ibid. 334.

²⁶⁴ Ibid. 337.

²⁶⁵ Ibid. 338.

Missionary work amongst the Mi'kmaq stabilized with the arrival in 1734 of Abbe Vincent, in 1735 Pierre Maillard and in 1737 Jean-Louis Le Loutre²⁶⁶. The latter two were to be the 'mainstays' of missionary work with the Mi'kmaq until after the fall of Louisbourg. Unlike their predecessors, Le Loutre and Maillard lived among the Mi'kmaq, with the former tending to the needs of mainland Nova Scotia, and the latter responsible for the Mi'kmaq of Cape Breton and Antigoniche²⁶⁷. Le Loutre's work was further complicated with his additional tasks – responsibilities as Priest for the Acadians at Cobequit and Tatamagouche until 1742, and as missionary to the Mi'kmaq of Ile Saint-Jean between 1738 and 1743. Le Loutre's assignment as Priest was unusual, as it was more common to keep parish work and missionary work separate, to reflect, and possibly increase the growing distance between the Acadian and Mi'kmaq populations.

Maillard and Le Loutre faced very unfamiliar surroundings in their missionary work to the Mi'kmaq. Mi'kmaq understanding of Christianity and the Church would have been different, and their understanding of the role of a missionary would have been based on the social and political perceptions engendered by earlier efforts at 'Christianization'. Le Loutre believed, however, that the Mi'kmaq could be converted. Indeed, he agreed with contemporary theologians that the Mi'kmaq were in fact descendents of Noah that "despite years of isolation from the Church, had retained some knowledge of God's Word"²⁶⁸. Despite this confidence, the Mi'kmaq continued to practice their longstanding spiritual rituals, including burial of their dead with presents and artifacts required for the

²⁶⁶ Who replaced Abbé Vincent.

²⁶⁷ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 340.

²⁶⁸ Ibid. 348.

afterlife. On the other hand, it appears that some Mi'kmaq did adopt the outward vestiges of Christianity, practicing baptism, and agreeing to serve as godparents to young children.

It is possible that the Mi'kmaq adopted Christianity in its public guise without rejecting or neglecting their traditional spiritual practices. Wicken points to Nancy Farriss' research on the Yucatan Maya as evidence from an analogous situation that can be used to help understand the situation of the Mi'kmaq²⁶⁹. Indeed, the experience with the Maya would suggest that the Mi'kmaq kept their 'private' spirituality – rites and rituals respecting the hunt, kinship, death etc. – to themselves, and allowed the missionaries to effect change on only their 'public' spirituality. New people, new experiences and new challenges would have led the Mi'kmaq to seek new spiritual understandings of the world around them. Missionaries and Christianity would certainly play a role in this adaptation.

The role of Christian missionaries amongst the Mi'kmaq extended beyond the spiritual. Missionaries served an important political role, representing the King to the Mi'kmaq, and serving as intermediaries between the Crown and the Mi'kmaq. To the Mi'kmaq, the missionaries posed no economic threat, unlike the traders, farmers and fishermen that

²⁶⁹ Nancy Farriss, Maya Society under Colonial Rule: The Collective Enterprise of Survival (Princeton NJ: Princeton University Press, 1984), 287-299. The same arguments are made about the Mi'kmaq situation in Russel Lawrence Barsh and Joe B Marshall, "Mi'kmaw (Micmaq) Constitutional Law," The Encyclopedia of Native American Legal Tradition, ed. Bruce Elliot Johansen (Connecticut: Greenwood Press 1998), 192 – 209, J. Brian Hanington, "The Apostle of the Micmacs," Every Popish Person: The Story of Roman Catholicism in Nova Scotia and the Church of Halifax, 1604 - 1984 (Halifax: Archdiocese of Halifax, 1984), J.Y. Sakej Henderson, Justice for the Indian People (Sydney, Cape Breton: Mi'kmaq Resource Centre, 1980?), and James Youngblood Henderson, Mi'kmaw Tenure in Atlantic Canada, Eskasoni Draft - Work in Progress (Sydney, Cape Breton: Mi'kmaq Resource Centre, 2003).

inhabited and visited their lands. To the French, the missionaries were viewed as appropriate conduits through which the will of the Crown could be done.

Missionaries therefore served to communicate messages between French colonial authorities and the Mi'kmaq, to ensure that presents were received by communities, to take census records, and to translate between Mi'kmaq *sakamaw* and the French. They also served as 'spies', informing French officials of Mi'kmaq political and military interests and their contact with the English. In addition, Missionaries served as communication conduits and 'cultural translators' for the Mi'kmaq. Mi'kma'ki was, after all, in the midst of great social and physical change in the eighteenth century due to increased agriculture, harvesting for trade. The Mi'kmaq understood and appreciated that the missionaries 'knew' the world of the European, and were able to assist them in navigating their way through this new 'order'.

Missionaries served as letter writers, responding to overtures for peace, advancing complaints regarding English actions or requesting that prisoners be returned²⁷⁰. They also translated and read English colonial responses to Mi'kmaq leaders, and assisted the Mi'kmaq in understanding whether written European agreements were true to their verbal understanding. These actions, although helpful to the Mi'kmaq, would ultimately have been aimed at asserting French control and sovereignty over the Mi'kmaq²⁷¹. To the missionaries, striking a balance between the spiritual needs of the Mi'kmaq and the political needs of the Crown would have been challenging. Where the needs of the

²⁷⁰ See William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 362 – 363.

²⁷¹ Ibid. 364.

Church and the needs of the State did not coincide, missionaries became active agents, often acting outside the view of colonial authorities, but still within the long reach of France's imperial arm.

The ability of missionaries to shape Mi'kmaq actions to be in line with the desires of the French crown was limited by a number of factors. The decentralization of decision-making, for example, meant that even if a *sakamow* and his Council were in favour of a particular action, individual members of the tribe were not necessarily bound by this decision, and could act otherwise. Local concerns - such as overfishing by English vessels - were not always congruous with broader French colonial interests.

Missionaries helped convince the Mi'kmaq that English overfishing was 'evil', turning the Mi'kmaq against these fishing vessels, thus threatening the peace between New England and Ile Royale, a peace upon which French officials had built a successful trade between the two.

It does appear that missionaries were able to restrict cruelties by the Mi'kmaq against English captives into the eighteenth century. While Maillard might have argued that the torture of prisoners was against Christian beliefs, he was also reflecting the interests of French colonial officials. These officials wanted to have as many English prisoners as possible to trade against French and Acadian captives being held by the English at Boston²⁷².

²⁷² Ibid. 372.

Despite these successes, it appears that missionaries had little direct influence over the Mi'kmaq. They certainly acted as intermediaries, bending wherever possible the will of the Mi'kmaq to coincide with that of the French. Because of Mi'kmaq spiritual beliefs, the missionaries were able to find parallels in the spiritual beliefs of the Mi'kmaq and the Church, thus reflecting the harmony between the two. Neither system, however, was able to impose itself on the other, reflecting the strength and resilience of Mi'kmaq society and spirituality. This resilience had served the Mi'kmaq well through the seventeenth and now the eighteenth century. It was rooted in the connection between the land, the people and their traditions, a connection to which we will now turn to in this final piece of the post-Utrecht puzzle.

Seasons of Change and Chase – Mi'kmaq Connections to the Land

As noted above, Mi'kmaq culture, society, politics and spirituality changed little from the seventeenth into the eighteenth century. While trade, religion and conflict between European powers was having an impact on the landscape of Mi'kma'ki, the Mi'kmaq maintained their distance and determination to be independent. The growth of the Acadian and English impact on the landscape was having an impact on the ability of the Mi'kmaq to procure the foodstuffs necessary for survival. This precipitated the adaptation of European technologies and an increased reliance on European goods – guns and shot for example.

It is difficult to establish the exact nature of the connection between the Mi'kmaq and the land, although we do have 'hints' that allow us to characterize the closeness of this relationship. Our first steps in understanding this relationship begin with the creation

story of the Mi'kmaq. Indeed, the story of the arrival of the Mi'kmaq on Turtle Island, and the 'birth' of Glooscap helps us to understand the structure of the Mi'kmaq 'worldview', expressed/reflected in their conceptualization of their place in Mi'kma'ki.

There are three principal concepts/characters introduced in the Mi'kmaq creation story. The first is Gisoolg. Gisoolg is the Great Spirit Creator, who is the maker of everything. In the Mi'kmaq language, Gisoolg means 'you have been created' or 'the one²⁷³ credited for your existence'²⁷⁴. How Gisoolg came into being is not explained by the Mi'kmaq. The importance here is that the Great Spirit, Gisoolg, created everything.

The giver of light, heat and shadows²⁷⁵ is Nisgam, the sun. Owing its existence to Gisoolg, Nisgam is credited with the creation of the people on the earth. Nisgam is Gisoolg's helper and has the responsibility of watching over the Mi'kmaq. Nisgamitj is the grandfather.

Finally, the area of the land upon which this story takes place is called Ootsitgamoo. In the Mi'kmaq language, oetsgitpogooin means "the area of surface upon which one stands", and oetsgitjinoo refers to "the person or individual who stands upon this surface" or "the one who is given like upon this surface of land"²⁷⁶. Ootsitgamoo, then, refers to the surface of land over which the Mi'kmaq can travel over or have traveled over during

²⁷³ It is underlined in many of the versions of this story that it is not important whether Gisoolg is a He or a She.

²⁷⁴ Stephen Augustine, "Micmac Creation Story," Museum of Civilization, (?), 2.

²⁷⁵ Spirits.

²⁷⁶ Ibid. 2.

their existence. Gisoolg is responsible for the creation of Ootsitgamoo, which was placed in the centre of the circular path of Nisgam, the sun.

After the creation of the animals, birds and plants, Gisoolg caused a bolt of lightning to hit the surface of Ootsitgamoo. This bolt of lightning formed the image of a human body on the surface of the earth – the basic element of the Mi'kmaq world. With another bolt of lightning, Gisoolg gave life to this human form thenceforth known as Glooscap. While Glooscap was alive, s/he could not move, as s/he was stuck to the ground and could only watch the animals, trees, and plants around him/her, and Nisgam travel through the sky every day.

While Glooscap was unable to move, s/he was lying on his/her back. Glooscap's head faced the east – Oetjigoabaniag or Oetjibanooq – where the sun rose from. In the Mi'kmaq language, these words mean “where the sun comes up” and “where the summer weather comes from” respectively²⁷⁷. Glooscap's feet pointed towards the west, known in the Mi'kmaq language as Oetgatsenoog, Oelgoesenoog or Etgesnoog²⁷⁸. Glooscap's right hand was pointed towards the south, or Ongoetasnoog.

With a third blast of lightning, Glooscap was freed by Gisoolg, and was at last able to stand on his/her feet. Once standing, Glooscap turned around in a circle seven times. S/he looked toward the sky and gave thanks to Gisoolg for his/her life, and to the earth and gave thanks to Ootsitgamoo for offering itself up for his/her creation. S/he then

²⁷⁷ Ibid. 3.

²⁷⁸ These words means, “the direction of the setting sun”, “where the sun settles into a hallow” or “where the cold winds come from” respectively. Ibid. 3.

looked inwards and gave thanks for Nisgam, the giver of life, for giving him/her a soul and spirit. Glooscap then gave thanks to the four directions of east, north, west and south. S/he gave thanks to all of the seven directions.

In this creation story, it follows that Glooscap travels in the direction of the setting sun until s/he came to the ocean, and then southwards until s/he could see two oceans on either side of the narrowing land. S/he then returned to the place where s/he was created, and traveled north to the land of ice and snow, whereupon s/he decided to return to the east where s/he decided to stay. This is where Glooscap came into existence.

The story does continue, with the introduction of Nogami (grandmother), Netaoansom (sister's son – or nephew) and Neganogonismgooseesgo (mother). These three teach Glooscap wisdom, strength and knowledge of the world around him/her. The importance of the story is underlined by Stephen Augustine, as he notes that,

... among the Micmac people, the number seven is very meaningful. There are seven distinct areas which encompasses an area of land stretching from the Gaspé coast of Quebec and includes New Brunswick, Prince Edward Island and Nova Scotia. The most powerful spirit medicine is made from seven barks and roots. Seven men, representatives from each distinct area, or the Grand Council Districts sit inside a sweat-lodge, the Micmacs pour water over seven, fourteen and then twenty-one heated rocks to produce hot steam. A cleansing or purification takes place. A symbolic rebirth takes place and the men give thanks to the Spirit Creator, the Sun and the Earth. They also give thanks to the first family, Glooscap, Nogami, Netaoansom, and Neganogonismgooseesgo. In all, seven spirit entities.

These seven directions form the foundation of the Mi'kmaq consciousness or worldview²⁷⁹.

The importance of this connection between the land – including animals – and the people is further reinforced in examining the subsistence practices of the Mi'kmaq during the seventeenth and eighteenth centuries. Indeed, one of the challenges of tracking Mi'kmaq subsistence practices during the 1600s and 1700s is the fact that migrations “were influenced by the rhythms of fish and animal life and as these populations constantly changed, settlements also moved. Reflecting this pattern are Mi'kmaq place names which do not refer to a specific land surface, but rather to the fish or animals population an area”²⁸⁰. Wicken points to “Nemagakunuk”, the original name for Ketch Harbour, which means “a good fishing place” in the Mi'kmaq language as an example of this connection.

Notwithstanding this challenge, we can see from historical records that Mi'kmaq subsistence patterns were cyclical and remained relatively consistent throughout the seventeenth and eighteenth centuries. The movement of families followed the availability of certain species. In the early spring – the start of fish spawning – families moved to the rivers throughout Mi'kma'ki. Fishing happened during the day with the aid of weirs, and during the evening with the assistance of torches²⁸¹. At night, ducks, trout,

²⁷⁹ This is reinforced in the original seal of the Mi'kmaq Grand Council, based on a petroglyph located in Kejimikujik National Park in Nova Scotia. See Russel Lawrence Barsh and Joe B Marshall, "Mi'kmaw (Micmaq) Constitutional Law," The Encyclopedia of Native American Legal Tradition, ed. Bruce Elliot Johansen (Connecticut: Greenwood Press 1998), 193.

²⁸⁰ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 63.

²⁸¹ Ibid. 64.

sturgeon and salmon were also sought. Oysters and mussels may also have served as an important element in the Mi'kmaq diet in coastal areas, such as the Strait of Canso²⁸².

During the summer months, these families would have lived along rivers close to the sea, eating fish, small mammals, berries and groundnuts²⁸³. During the seventeenth and eighteenth centuries, the Mi'kmaq returned to agricultural practices that they likely acquired from their contact with the Maliseet and Abenaki peoples before French contact, or from their contact with Acadian farmers²⁸⁴. Peas, beans, cabbage and corn supplemented the Mi'kmaq diet, given the apparent decline in hunting success experienced by the Mi'kmaq in the early 1700s²⁸⁵. These agricultural practices varied across the region, depending on the fertility of the soil. The soil on Ile Royale, for example was not conducive to farming, whereas Ile Saint Jean and the southern part of mainland Nova Scotia were fertile and ideal for farming. While agriculture was a supplement to Mi'kmaq subsistence, it did not disrupt or replace traditional practices or food sources²⁸⁶.

²⁸² See Nicholas Denys, The Description and Natural History of the Coasts of North America (Acadia), ed. W.F. Ganong (Toronto: 1908), 109, 354, 435-36 and William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 64.

²⁸³ Nicholas Denys, The Description and Natural History of the Coasts of North America (Acadia), ed. W.F. Ganong (Toronto: 1908), 396-398.

²⁸⁴ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 67. The Mi'kmaq had also had contact with the Haudenosaunee who were an agrarian people, planting beans, corn and squash.

²⁸⁵ Archives nationales (Paris) C11D 4: 77, Brouillan Au Ministre, November 6, 1701, 1701.

²⁸⁶ William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 68.

In the early fall, families moved upriver and inland, fishing for eels that were moving upstream. The meats from fishing were smoked and stored for future use²⁸⁷. With the arrival of colder weather, the Mi'kmaq would disperse from their summer villages into the forest for hunting. While this practice varied according to the length and duration of winter, and the abundance of food, it was practiced by all Mi'kmaq during the coldest months of the year. Moose, caribou, seals, beaver, otters and bear were the mainstay of Mi'kmaq hunting during the winter²⁸⁸. The specific species hunted and trapped by the Mi'kmaq varied from region to region, and hunters would follow their 'preferred' species for many miles inland if necessary. Hunters were assisted by dogs, as they were "highly cherished in Mi'kmaq society and ... there was not a hunter who did not have seven or eight of them"²⁸⁹.

Winters tested the endurance of even the best hunters. Snow conditions, temperature variations and storms had a direct influence on the success of hunters, and historical records are replete with observations regarding the near-starvation conditions of the Mi'kmaq in the spring. It is likely that the Mi'kmaq were accustomed to this pattern of abundance and starvation since it had become part of their ongoing connection to the land since its creation by Gisoolg.

²⁸⁷ Public Archives of Nova Scotia (Halifax) RG 1 380A, Survey of Western Nova Scotia, 1801.

²⁸⁸ Wicken also adds that eels were a principal part of the Mi'kmaq diet in winter, as they could be caught in large quantities in the muddy bottoms of lakes and coves. See William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 76.

²⁸⁹ Ibid., 73 from Nicholas Denys, The Description and Natural History of the Coasts of North America (Acadia), ed. W.F. Ganong (Toronto: 1908), 430 – 431.

The reliance of the Mi'kmaq on waterways for food led them to become capable sailors and 'canoemen'. With the canoe, they could travel virtually anywhere inland, and they developed an extensive network of routes throughout the region²⁹⁰. While travel in the winter was longer and more difficult, it was still possible by overland routes. Larger canoes were used on the ocean, and were likely replaced by small Basque or French procured shallops during the sixteenth century²⁹¹. Travel was facilitated through the use of maps created by the Mi'kmaq.

The ability to travel throughout the region with ease, to hunt and fish for survival year-round, and knowledge of the landscape obtained through travel enabled the Mi'kmaq to maintain their independence during the years after the signing of the Treaty of Utrecht. It is possible that greater European populations, and a growing incompatibility of land use, may have changed Mi'kmaq connections to specific landscapes. It did not, however, appear to have had an impact on their connection to the land. Like the period before, the Mi'kmaq adapted European technology to some aspects of their hunting and fishing practices, but maintained their connection to the land in the way they had since time immemorial.

The Mi'kmaq were tied to marine resources and they spent up to nine months of the year on the seashore or river banks of their territory. It was along these shorelines and river

²⁹⁰ See Joan Dawson, *The Mapmakers Eye: Nova Scotia through Early Maps* (Halifax: Nimbus Publishers and the Nova Scotia Museum, 1988), 133-135. Wicken repeats some of Dawson's analysis in his PhD thesis: William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 80 – 86.

²⁹¹ Wicken notes that these shallops may have been purchased or hijacked by the Mi'kmaq. See William Wicken, "Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760," McGill University, 1994, 86.

banks that they would come into contact and conflict with the English. These shorelines and river banks also became the site of peace negotiations and treaty signings between the Mi'kmaq and English in the eighteenth century. Traditional subsistence patterns and continued use of and connection to the land not only continued to structure the functioning of Mi'kmaq society, it also created the conditions for contact and communication with the English. The life and death of the landscape would, in other words, continue to shape the relationship between the Mi'kmaq and the world around them. This connection was pivotal and would remain pivotal leading up to the signing of Treaties in 1760/61.

Canoes, Conundrums and Continuity – the Mi'kmaq and Mi'kma'ki at 1760

In examining the history of Mi'kma'ki through the seventeenth and eighteenth centuries, we are faced by a number of challenges. Reliance on the observations of Europeans, and inferences from these records diminish the certainty of our statements. Gaps of information enable us to make observations only about changes, and not about the mechanisms of these changes. Letters, diaries, archeological work and maps are the key sources of information upon which we rely in order to understand – to return to the image of the canoe – the canvas skin of our canoe.

Notwithstanding these challenges, we do have sufficient information to draw a portrait of the evolution of Mi'kma'ki through the two centuries of constant contact between the Mi'kmaq and Europe's 'explorers', traders, officials, missionaries and officers. Much of this work has been facilitated due to intense interest in the Mi'kmaq generated by the

Marshall and Stephen Frederick Marshall cases, and the potential applicability of those decisions to other First Nations across Canada.

Mi'kma'ki was undergoing great changes over the sixteenth, seventeenth and eighteenth centuries. Although initially disregarded by the colonial powers, fishing, fur, and the strategic location of Mi'kma'ki between the French and New England would draw increasing interest and interventions by European Crowns to the region. By 1760, from an English perspective, Nova Scotia was a well established English colony.

For its Mi'kmaq inhabitants, much had changed in Mi'kma'ki, and much had 'remained the same'. Through their constant connection to the land, extensive networks and alliances with local peoples, traders and colonial officials, and an unswerving connection to their own political, spiritual and cultural practices, the Mi'kmaq remained resilient through the seventeenth and eighteenth centuries. For reasons of expediency and necessity, they had layered discussions with English colonial officials over their traditional relations with the French and Acadians. Much of this would change after the departure of the French Crown from Canada in 1763 with the signing of the Treaty of Paris. In 1760/61, however, signing a Treaty with the English was an 'exercise' which the Mi'kmaq viewed as a continuation of their historical relations with Europeans, and likely as a symbol of continuity into the future.

The signing of the Treaties in 1760/61 would reflect the legal and political traditions of the Mi'kmaq – the reliance on negotiated alliances, diplomacy and trade as a means of

building relations with their European kin. These legal and political traditions were reflected in, and solidified through, the social relations that the Mi'kmaq maintained with all of their allies – in diplomacy and trade. The treaties would also reflect the strong connection that the Mi'kmaq continued to maintain with the land – their land – in Mi'kma'ki. Mi'kmaq spirituality permeated this relationship, and underpinned the nature of the connection the Mi'kmaq had with the world around them.

What is eminently clear is that the Mi'kmaq maintained a strength and resilience which enabled them to sign the Treaties of 1760/61 as equals of the English. From earliest contact through to this time, the Mi'kmaq maintained strong social, political, legal, economic and spiritual practices. While they adapted to the presence of the French, and then the English in Mi'kma'ki, they did not compromise their practices or beliefs. They maintained strong governance structures which enabled them to sustain their government structures and institutions in the face of external forces. They also maintained their cultural and economic practices – sustaining their language and livelihood through exchanges within their nation, and with their extended kin from Turtle Island and overseas. Economics and trade played a key role, then, in maintaining the social practices of the Mi'kmaq, and making their survival possible. Their social, political, and economic practices continued to protect and promote their way of seeing the world. These practices continued to be underpinned by an evolving syncretism of traditional spirituality and Catholicism.

It is possible to see that through exchange and trade the Mi'kmaq did adopt new technology, practices and beliefs. This dialectic of evolution had been ongoing prior to the arrival of Europeans – in the encounters of the Mi'kmaq with other aboriginal peoples – and continued long after the arrival of the first French in 'Acadie'. What is evident, however, is that the technology of others was adapted to Mi'kmaq practices in ways that fit into their traditional beliefs and practices. Though this approach – adapting others' practices into their way of seeing the world - the Mi'kmaq maintained a resilient worldview throughout the 16th, 17th and 18th centuries.

This resiliency enabled the Mi'kmaq to retain their position of influence and 'authority' in Mi'kma'ki despite the arrival and growth of the English. While the arrival of Europeans represented new influences and brought new pressures to bear on all aspects of the Mi'kmaq worldview, it was not cataclysmic. It did not, in other words, represent a great rupture with the past. Instead, it was a point of continuity – a transition – during which the Mi'kmaq were able to maintain their worldview and create the space within which their new European kin could learn to respect the traditions and practices that the Mi'kmaq had sustained for centuries in Mi'kma'ki. Through trade and exchange, diplomacy, cultural exchange, legal plurality and spiritual syncretism, the Mi'kmaq were able to maintain and reinforce their place on the northeastern part of Turtle Island. They were also able to create a space in which bi-cultural – with the French included, tri-cultural – communication was facilitated and cooperation was made possible. This space was created by and 'governed' by Mi'kmaq practices and beliefs. The Mi'kmaq were

not, in other words, inclined to, or in any way in need of, offering any kind of 'submission' to an external power.

This is the context within which the Mi'kmaq carried out their "speech acts", thereby articulating their worldview and conception of sovereignty. What remains to be discovered then, is just how the Mi'kmaq would articulate their spatial and temporal understanding of the world around them, as these articulations evolved to meet new challenges from the 'extended kin' arriving from Europe. As this understanding is abridged and associated with the social, political and economic relations the Mi'kmaq maintained amongst themselves and with other nations, we will be able to understand the strength and shape of the Mi'kmaq canoe. Finally, we will also get a sense of the institutions which helped give and reinforce the shape of the canoe in Mi'kmaq hands.

Understanding how the Mi'kmaq formed and synthesized their worldview, and how this was articulated in the Treaty of 1760/61, is the challenge that we must turn our attention to. The Mi'kmaq context for the time leading up to the signing of the treaty is our guide, and the Treaty itself our paddle. Together – you as reader, and I as writer - we will soon try to understand the canoe from the perspective of its architect.

Chapter 4

So, I started packing for the return trip. When I left by canoe, in peace, I thought of the many things that I had seen and the people I had met on my trip. When I had arrived in Cape Breton, I met a woman named Julie, who had shown me the Island. We had taken many walks together in the beautiful forests. On Prince Edward Island, I was taken by another guide to see many places which were beautiful, like the red sands, and many other things – so many things that it might take hours to recount. I also remembered Rivière-au-Renard in New Brunswick – a small and pretty place where I had seen many things. There, I had also met a very, very nice woman named Marie-Josée. Like Julie, she had shown me around the place where she lived. Of course, we saw foxes. I also remembered how, along the Saint Laurent, I had stopped at a place to see the whales. I saw whales underneath my canoe, and one whale surfaced to breathe so closely to my canoe that I could reach out and touch her.

History makes the places that we travel to personal. We meet people, their names become familiar, and their lives become the map works for our travels. Places – with names upon the landscape – come alive with stories, people, and times. Their words become our guides, and share with us a world that lives beyond our canoe. Funny how we struggle to build our own canoe, in our own way, and travel in our own direction, just so we can 'discover' what exists outside the very canoe we have built! This is what we came to learn about – the canoe which travels with us – stroke for stroke, our kin. We see the same things through the river that we travel, and yet we see them so differently. Now, through the words that we share, we can reach out as if to touch the other canoe, and discover what lies within.

.....

As we saw in Chapter 3, the words and actions of the English Crown, the French Crown, and the first peoples of Acadia were written in their own social, economic, spiritual, and political contexts. For the Europeans arriving in the 16th and 17th centuries and those that remained in the 18th, London and Paris took on a greater and greater role in determining this context. For the native peoples of Acadia, this European context must have had a growing importance as the English and French began to take more interest in the resources and strategic importance of their lands. In spite of the growth of the European presence, however, we also know that the Mi'kmaq remained in possession of their own sense of economic, political, and spiritual traditions and practices. Indeed, the

Mi'kmaq remained resilient, capable of articulating and defending their worldview in relation to and against the European invaders.

Indeed, as the analysis of Chapter 3 concludes, the Mi'kmaq remained a resilient people as a result of their ability to continually broker new relationships with their neighbours and 'extended kin'. The French and English were only the most recent nations to arrive on the 'horizons' of Mi'kmaki. From the perspective of the 1760s, the Mi'kmaq may well have felt that the English – as the last remaining European nation in Mi'kma'ki – were making progress towards understanding the ways of the land and the people.

Certainly there had been tensions between the Mi'kmaq and the English, but these tensions had been mitigated and calmed by an ongoing process of 'Peace and Friendship' negotiations beginning in the late seventeenth century. Even as they signed the Treaties of 1760/61, the Mi'kmaq would have been working within the economic, social, political, legal and spiritual 'spaces' that they had created with the English in order to facilitate their bi-cultural relationship.

Strong Mi'kmaq political institutions and practices were bolstered by a robust trading network which enabled the Mi'kmaq to exchange their goods and become actors in the global economy. This trading network was secured by a strong connection to the land which enabled the Mi'kmaq to procure the goods necessary for survival, re-distribution and trade with others. Exchange with others enabled the Mi'kmaq to re-affirm and enrich their cultural practices – maintaining their language, social structures and customs as they traveled through Mi'kma'ki and beyond. Their connection to the land was built on a

respect for the natural world, itself rooted in the strength of Mi'kmaq spirituality. These observations confirm the conclusions reached earlier: the Mi'kmaq signed the Treaties of 1760/61 as equals of the English, with the resolve that the maintenance of their social, political, cultural, economic, legal and spiritual practices protected and promoted their resiliency as it had in the past.

In this chapter, we face the task of understanding the Mi'kmaq worldview – the sum of Mi'kmaq beliefs and practices – based on the actions and articulations of Mi'kmaq 'speech actors' in the 17th and 18th centuries. This 'excavation' of meaning is not simply intended as an exercise of understanding, however. What we are interested in, specifically, is the way(s) in which the Mi'kmaq conceived their *sovereignty*. As a 'collection' of ideas about the manner in which the Mi'kmaq related to the world around them – including the landscape and their European kin – 'sovereignty' is a pivotal term upon which discussions of inter-cultural dialogue, resource sharing and nation-to-nation relations can be constructed or understood. In this chapter, then, we expect to gain an understanding of Mi'kmaq *sovereignty* according to the traditions and meanings of the Mi'kmaq nation.

In order to 'dis-cover' this/these meaning/s, we will turn back to a point of illumination where these meanings are clear. We are, therefore, interested in the meaning that the Mi'kmaq would have intended to communicate in agreeing to ideas they believed were contained in the Treaties of 1760/61. In particular, we will focus on the Treaty signed on June 25, 1761 – the 'Governors Farm Ceremony' - as a language resource with which we

can understand the values and beliefs that the Mi'kmaq intended to sustain in their relationship with the English¹.

Two important challenges are apparent before we begin. The first regards the sources of meaning – how we will determine the conventions available to the Mi'kmaq signatories to the Treaty of 1760/61 and understand the context in which those conventions gain their meaning. How can we determine the intent of these agents *in* writing the Treaty as they did? What are the challenges to our research, and the limits placed on our analysis by the limited information authored *by the Mi'kmaq* regarding the Mi'kmaq in the seventeenth and eighteenth centuries?

The second challenge lies in the structure of the analysis to be presented here. This challenge is resolved by examining the content and structure of the worldview which is to be presented and discussed here. Indeed, it is precisely from within this worldview that the structure for the discussion presented here becomes evident. First, however, we will turn to the question of sources, and the historical events leading to the Treaty of 1760/61.

Words and Meanings – The Rivers' Sources

It is useful to briefly re-visit the methodology used in the research for this thesis. Based on the method of the proposed in Chapter 2, the goal of the analysis presented below is to uncover the meaning of Mi'kmaq speech actors as they 'act out', through speech, their social, political, economic, legal, and spiritual intents. As argued in chapter 2, revealing these intents will enable us to examine the ideas as an 'ensemble' which illuminates the

¹ For the sake of clarity, I will refer to the "Treaty of 1760/61" for the remainder of this chapter. Although there were a series of treaties signed, the focus of my analysis is one instance in particular.

political theory and the history of political thinking of the Mi'kmaq. Our window onto the Mi'kmaq worldview is the Treaty of 1760/61. The Treaty will serve as a point of departure, pointing us in the directions which are apparent therein. In order to reveal the meaning of different ideas found within the Treaty, an extensive search of the documentation available to us is required. It is from the historical articulations captured in the diaries, letters, documents and newspapers of the period of 1500 - 1763 that we will be able to try to fully understand the *Mi'kmaq* perspective on their intentions in 1760/61. As argued earlier, it is within these intentions that the Mi'kmaq worldview is exposed for understanding and analysis.

As noted in Chapter 3, the sources we have available to us regarding the Mi'kmaq from the 1600s to 1760 are limited. Certainly, the *Jesuit Relations*, and the journals of Nicholas Denys provide us the best information from the time regarding the Mi'kmaq². Ruth Whitehead's work entitled *The Old Man Told Us*, also provides us with 'excerpts from Mi'kmaq history' which are of interest to us. Much of these sources are put into context in the Hoffman thesis, and the anthropological/ethnographical work of Prins³.

We also have access to a wealth of information through the letters and diaries of English and French travelers, government officials, traders and captives during the period leading up to the 1760s. Many of these documents have been sourced from government records, museums and archives in London, Paris, Boston, Nova Scotia and New Brunswick. The

² I am indebted to the Mi'kmaq Resource Centre at UCCB and Diane Chisholm for her tireless assistance in finding this material.

³ Harald E.L. Prins, *The Mikmaq: Resistance, Accommodation, and Cultural Survival* (Forth Worth, TX: Harcourt Brace College Publishers, 1996).

Council of Mainland Mi'kmaq also has documents which pertain to *Marshall* and *Stephen Frederick Marshall and Bernard* cases, documents which have served to contextualize the Mi'kmaq meaning of the Treaty of 1760/61.

These documents serve as basis for the analysis presented below. They form the evidence to 'decode the meaning intentions' of the Mi'kmaq as they were expressed in the Treaty of 1760/61. This 'decoding' is not without its challenges, however. The principal obstacle between us and understanding the Mi'kmaq understanding of the treaty is the lack of direct evidence from the Mi'kmaq actors involved. As noted above, most of our evidence is drawn from English or French documentation – referring to the expressions of the Mi'kmaq in translation. Even those documents which are purported to be communications from a Mi'kmaq leader were 'filtered' in their transcription – often by a French missionary. We have, in other words, no first hand written accounts by Mi'kmaq from the time period in question. The nearest we can come to these accounts are the oral renditions provided to Silus Rand⁴.

These challenges are not unusual, however. By examining the documentation available to us – documentation that represents a long period of time – we are able to see certain patterns in the interaction between the Mi'kmaq, French, English and Acadians. These patterns enable us to 'read between the lines'⁵ – to draw out the 'contributions' of the Mi'kmaq to contemporary discourse – the correspondence and journals of European authors in the seventeenth and eighteenth centuries. From this information, and the

⁴ Silas Tertius Rand, "Speech of Silas Rand," *The Christian Messenger* 15.1 (1855).

⁵ I have drawn this idea from feminist literary theory. See, for example, the work of Adrienne Rich.

information drawn from the few Mi'kmaq sources that we have 'in translation', we can understand both the meaning and intent of Mi'kmaq actors and their articulations.

Understanding the Treaty of 1760/61

What are the elements of the Treaty of 1760/61 evident at the Governor's Farm Ceremony? How can we understand the specific context of the treaty which is the subject of examination here? What do we know about the clauses contained in the document which is the "window onto the social and political networks linking individual communities inhabiting the Atlantic region"⁶? How do we give meaning to Wicken's beautiful observation that the "delegates who had signed the 1726 treaty live and breathe, shape and reshape their world in ways that will also form the world that the British live in"⁷?

Before delving into the specific clauses of the treaty, it is first useful to revisit the specific context in which the agreements found therein came into being. By 1761, the end of French rule in 'Canada' had become a reality for the English. After investing heavily in the Seven Years War⁸, England had had the better of the smaller French forces in North America. The French had lost Louisbourg in July 1758, Quebec City in September 1759, and Montreal in June 1760. Despite this, however, complete English military control over North America was not assured, due in large part to the seemingly 'uncontrollable' Aboriginal populations. These nations resisted the English to the west of Montreal, and

⁶ William Wicken, *Mi'kmaq Treaties on Trial – History, Land, and Donald Marshall Junior* (Toronto, Ontario: University of Toronto Press, 2002), 57. Wicken is referring here to the Treaty of 1726. The Treaty of 1761, as contended earlier, offers us the same kind of window onto the political, social, economic and even spiritual aspects of the Mi'kmaq and their communities.

⁷ Ibid. 58.

⁸ Known in North America as the French and Indian War.

along the west of the Appalachians, and throughout 'Acadia'. As "adept 'forest fighters'", the Mi'kmaq and their allies constantly engaged and endangered English forces and local populations⁹.

As noted previously, the Mi'kmaq frustrated English assertion of control over Acadia by maintaining their strong relationship with the French. They had supported the French in their conflict with the English between 1755 and 1758, including the siege of Beausejour in 1755, and the fight for Louisbourg. Records indicate that as many as 800 native people gathered at Louisbourg in 1757 in anticipation of an English attack¹⁰, which only came the year following. Continuing a tradition that had been set many years previous, the Mi'kmaq also continued to lead daring attacks on New England ships, often with the encouragement of French missionaries¹¹. In August 1759, these attacks led to the capture of seven New England vessels, with their crews and cargoes. The crews were released and sent home with one vessel, but the six other vessels and their cargo were kept, enraging Edward Whitmore, the senior English military official at Louisbourg.

Whitmore sent Captain Henry Schomberg to Malogomich, the community from which the attacks were being launched. Schomberg was instructed to "root out the troublesome nest of 'pirates'"¹² who lived at Malogomich. Schomberg and his forces encountered considerably more Mi'kmaq and French than they expected, placing them at a numerical

⁹ William Wicken, Mi'kmaq Treaties on Trial – History, Land, and Donald Marshall Junior (Toronto, Ontario: University of Toronto Press, 2002), 191.

¹⁰ Ibid. 193, based on accounting records from 1757 at Fortress Louisbourg.

¹¹ See, for example, the attacks by Mi'kmaq in 1759 against seven vessels. These attacks were likely encouraged by Abbe Pierre Maillard, a French missionary who had fled south from Louisbourg in 1758 with a group of Mi'kmaq and Acadians.

¹² William Wicken, Mi'kmaq Treaties on Trial – History, Land, and Donald Marshall Junior (Toronto, Ontario: University of Toronto Press, 2002), 193.

and military disadvantage¹³. Schomberg, perhaps in order to save his own existence, struck a conciliatory tone with the Mi'kmaq and French, suggesting that even though Quebec had fallen and the French army was in flight, that not all was lost. Indeed, the English King was so conciliatory, that Schomberg assured the Mi'kmaq that they would 'enjoy all their possessions', their property, their religion and their freedom¹⁴.

Two Englishmen were left at Malogomich as hostages in order to guarantee the safe return of the Chiefs. With Schomberg's assurances, an unspecified number of Mi'kmaq Chiefs traveled to Louisbourg to discuss peace with Whitmore. These discussions led to an agreement in December 1759 between Whitmore and the Mi'kmaq. While this agreement was never recorded, it was the first step for the Mi'kmaq in what was to become the process leading up to the Treaty of 1760/61. At the same time as these discussions were ongoing at Louisbourg, the Nova Scotia Council initiated negotiations with the Maliseet and Passamaquoddy. This latter dialogue was to lead to signed treaties – treaties which provide us with much insight into the kind of agreement that Whitmore and the Mi'kmaq would have struck in 1759.

While their control over North America remained uncertain, the English wanted to ensure the neutrality of nations like the Mi'kmaq. They also wanted to placate the Mi'kmaq, and further strengthen their economic relationship with the Mi'kmaq. The true motivations for furthering the interdependence of the Mi'kmaq and the English might be open to speculation, but it is clear that the English had designs on expanding their

¹³ Ibid. 194.

¹⁴ Ibid. 195.

presence in Nova Scotia and Acadia. In 1749 with the founding of Halifax, followed by Fort Lawrence in 1750, and Lunenburg in 1753, the English had indicated that they were willing to disregard the tradition of consulting with the Mi'kmaq before establishing new settlements. This 'policy' served only to frustrate and upset the Mi'kmaq.

So, why follow such a policy? Wicken observes that "Nova Scotia offered merchants and political officials a means to enrich themselves in a way they never could in Massachusetts or Great Britain. Here was a land for the taking"¹⁵. Regardless of whether this is true, it is possible that the English intended to slake the anger of the Mi'kmaq, and make them 'better' allies. It is equally possible that through deliberate ambiguity the English intended to marginalize the Mi'kmaq influence on eighteenth century Nova Scotia by 'writing' them out of the way.

The Mi'kmaq certainly appear to have believed that the promises and provisions of the 1726 treaty still held true in 1761. They believed that the English would consult with them if they wanted to expand their settlements, and they believed that their fishing and hunting practices could continue in support of trade with the English at their truckhouses. Wicken argues that the Mi'kmaq would have also expected Doucett's promises of 1726 regarding the protection of their hunting, planting and fishing grounds to be honoured¹⁶. Only history would bear out the truth with respect to English intentions in signing treaties with the Mi'kmaq in 1760/61. What is important, however, in terms of the analysis

¹⁵ Ibid. 208. This was particularly true after the deportation of the Acadians in 1755.

¹⁶ Ibid. 209.

presented here is that the core clauses of the 1760/61 treaty changed very little from the clauses included in the Treaty of 1726¹⁷.

Interpreting the Treaty

As noted above, the analysis of the treaties should follow a logic which comes from within the Mi'kmaq belief system. As discussed in Chapter 3, the foundation for this belief system – or worldview – comes from the Creation Story. In the Creation story, Glooscap gives thanks to *seven* directions after s/he is liberated from the earth.

Understanding and analyzing these seven directions can provide us with a logic and order to the analysis of the Mi'kmaq worldview presented below.

Glooscap first gives thanks to the sky, all that is contained in the earth and his/her inward self – the spirit or soul within. For these three directions – those that are 'internal' to Mi'kma'ki – we can argue that the earth represents the land itself – Mi'kma'ki. The sky – across which the sun travels each day – represents the community, government and laws of the Mi'kmaq. Just like the sun, community, government and values – codified in laws – animate and nourish the Mi'kmaq, binding them together in their human community on the land. Finally, the inward self to which Glooscap gives thanks represents the spirituality which joins the Mi'kmaq to their brothers and sisters on the land.

¹⁷ Wicken argues as much. Ibid. 192. There is also continuity between these treaties and the Treaty signed at Casco Bay in 1676.

Glooscap then gives thanks to the four directions. In facing the east, west, north, and south, s/he draws our attention to the colours and significance of those directions¹⁸. They can be described as follows:

1. As we perform a sunrise ceremony, we face the rising sun to the east. The yellow glow of the sun illuminates our faces. We are reminded of Glooscap, and those that take leadership in our communities;
2. If we look behind us towards the west, we see the black of darkness. The west represents the youth of our communities – their vision and spiritual and physical strength;
3. To our left, the north, we see the white snow. The north reminds us of our brothers, and brings us to think of health and sharing in our communities; and
4. To our right, the south brings us the colour red. It reminds us of the wisdom of the elders.

It might be said that these four directions are the ‘life compass’ of the Mi’kmaq, reminding them of the points of significance in their moral, spiritual and intellectual lives. We might also associate them with external directions, offering a reminder of the respect that the Mi’kmaq must have for the youth, elders, health/healing and vision of their leaders as relationships are built with ‘extended kin’ from outside Mi’kma’ki. Through respect of this ‘life compass’, the Mi’kmaq are guided in their daily actions.

These four directions also bring to Mi’kma’ki – from within and without – all that is needed to sustain the Mi’kmaq. They can be said to represent the diplomatic relations which extend outwards from the internal political structure of the Mi’kmaq. These ‘external relations’ – which reach both towards the future, and reflect the past – represent the relations which the Mi’kmaq built with their ‘extended kin’ who came to Mi’kma’ki from elsewhere. Mi’kmaq diplomacy was critical to the success of the trade/economic

¹⁸ I am indebted to Stephen Augustine for his insight in regards to these compass points.

and social relationships that the Mi'kmaq built with others – neighbouring Aboriginal peoples, the French, the English, and the Holy See.

In analyzing the directions to which Glooscap gives thanks, we see an implicit order of importance which we will follow in presenting the treaties. The land, and the relationship of the Mi'kmaq to the land, serve as the foundation upon which Mi'kmaq experience of Mi'kma'ki and the spiritual worlds are formed. The spiritual nature of the landscape follows from the way in which the Mi'kmaq understand their relationship to Mi'kma'ki. The values, laws and government of the people unite the Mi'kmaq on the landscape, and provide them with an external articulation of their values. This external articulation of what is within, and permeates the world around, is shared with others through trade and social relations with newcomers – kin from other places.

If we follow this, we can group and order the analysis of the Treaty around four principal areas: environment/land; spirituality; politics and law; and economic trade relations ¹⁹.

Each of these groups will be explored based on the pertinent clauses and the historical documentation which gives meaning to their articulation. The same categories will group the reciprocal promises accompanying the treaty with the relevant Treaty clauses. This

¹⁹ This approach is similar to that of F. Henry Licker's work on Naturalized Systems. Licker's "Life Indicators Wheel" is an excellent tool for understanding the necessary balance within a community to maintain community health. Arguably, "community health" is an analogy for 'sovereignty'. See F. Henry Lickers, "Can't See the Forest for the Trees: A Native American's Perspective," *Biodiversity: Toward Operational Definitions - the 1995 Plum Creek Lectures* (University of Montana-Missoula: University of Montana-Missoula, 1997).

will provide not only the text of the Treaty but also some ‘first glimpses’ of the Mi’kmaq responses to its content²⁰.

For each of the ‘thematic’ sections below, the pertinent clauses of the Treaty will be presented *in italics*. Where pertinent, sections of the Mi’kmaq reciprocal promises will be presented *in italics, and enclosed in a box*. The words of particular interest are **bolded** so that they are evident to the reader. This will be followed by the contextualization of the meaning of these clauses. At the end of each section, the principal meanings of each of the thematic areas will be discussed – a synthesis of which will be presented at the end of this chapter.

Land and Use of the Land

*And I do promise for myself and my Tribe that **I nor they shall not molest** any of His Majesty's Subjects or their Dependents **in their Settlements already made or to be hereafter made**, or in carrying on their Commerce, or in any thing whatever within this the Province of His said Majesty or elsewhere.*

“Our not doubting your Sincerity has chiefly been owing to your Charitable, merciful and bountifull behaviour to the poor French wandering up and down the Sea Coasts and Woods without any of the necessaries of Life; Certain it is that they, as we, must have wretchedly perished unless relieved by your humanity, for we were reduced to extremities more intolerable than Death itself.”

²⁰ It should be noted that the English do make reciprocal promises as part of the Governor’s Farm ceremony. However, since the focus here is on Mi’kmaq understanding of the treaty, the focus is solely on the Mi’kmaq’s reciprocal promises.

*“You are now Master here; such has been the will of God, He has given you the Dominion of those vast Countries, always crowning your Enterprises with Success. You were, before these Acquisitions, a very great People; but we now acknowledge you to be much more powerfull, tho’ less Great, in the extensiveness of your possessions, that in the uprightness of your Heart, whereof you have given us undoubted and repeated proofs, Since the reduction of Canada. You may be confident that the moderations and lenity wherewith we have been treated, has deeply imprinted in our Hearts a becoming sense of gratitude. These good and noble Sentiments of yours, towards us in our distressed and piteous Circumstances have **emboldened us to come out of the Woods, our natural Shelter, from whence we had previously resolved not to stir, until the Establishment of Peace between both Crowns, whatever Hardships we might have suffered.**”*

*“We felt ourselves in consequence, forcibly **drawn to Halifax to acquaint the Representative of the King,** now only with the resolutions we had taken in his favour, arising from his kindness to us, but also to let him understand that the many proofs he has given us of the goodness of his Heart at a time and in a Conjunction in which we could not hope for such favourable treatment have so intirely captivated Us that we have no longer a will of our own. His will is ours.”*

*“As long as the Sun and the Moon shall endure, **as long as the Earth on which I dwell shall exist in the same State you this day see it,** so long will I be your friend and Ally, submitting myself to the Laws of your Government, faithful and obedient to the Crown,*

Whether things in these Countries be restored to their former State or not; I again Swear by the Supreme Commander of Heaven and Earth, by the Sovereign disposer of all things that have life on Earth or in Heaven, that I will for ever continue in the Same Disposition of mind I at present am in.”

These clauses open to us an opportunity to reflect on and analyze the ways in which the Mi'kmaq viewed their relationship to the land and the environment in which they lived. Many aspects of Mi'kmaq beliefs about their land and environment will be covered in other sections below. The importance of fishing and hunting in Mi'kma'ki as the basis for a thriving economy and system of trade and the spiritual importance of land and the natural resources of Mi'kma'ki for the Mi'kmaq will be discussed. These later discussions will highlight the importance of the land and environment for the Mi'kmaq.

In this section we will conduct a focused examination of the relationship that the Mi'kmaq had to Mi'kma'ki, and the way in which they viewed their tenure in the 'new world'. The primary resources available to us reveal two principal themes around which aspects of the Mi'kmaq attachment to the land can be discussed. The first can be referred to as 'land and environment use' – encapsulating traditional knowledge; seasonal land use patterns; the extent of Mi'kmaq land use; and the paths and passes which defined their knowledge of the land.

The second theme refers specifically to the perception of territory amongst the Mi'kmaq, both in terms of their relationship to the land, and the relationship of the English to their lands. Based on an examination of both themes, it becomes apparent that the use of land by the English tended to focus on exclusion. Mi'kmaq land use, on the other hand, favoured a balance of shared land use with a strong sense of responsibility for their land – the land they shared with the English.

Mi'kmaq and the Use of Mi'kma'ki

The Mi'kmaq made extensive use of the land, giving them a comprehensive understanding of the coasts, rivers, lakes and forests of Mi'kma'ki. The appearance of “savages” in Gosnold’s account of his trip along the coast of Maine in 1602 gives us some indication of this understanding. Of these ‘savages’²¹ “one or two more had also a few things made by some Christians, these with a piece of Chalke described the Coast thereabouts, and could name Placentia of the New-found-land”²². It is obvious, from Gosnold’s account, that the First Peoples of the East were familiar with much of the coast, and traveled it for hunting, fishing and trading.

Cartier makes note of one group of people he meets in his travels of 1534 who travel away from their homes to hunt and fish. The location where Cartier meets these ‘men’ who are “of an indifferent good stature and bignesse, but wilde and unruly”, is not their “habitation, but they come from the maine land out of hotter countreys, to catch the saide

²¹ Most likely Nausets of the Pockanoket tribe. See David B. Quinn and Alison M. Quinn, eds., The English New England Voyages, 1602-1608 (London: The Hakluyt Society, 1983), 113.

²² Ibid. 117. Gosnold makes active use of the knowledge of the coasts conveyed to him by his hosts. Brereton’s account of this voyage also points to evidence of First Peoples who have traveled and traded widely along the eastern seaboard.

seales and other necessaries for living”²³. It is Cartier’s understanding that the peoples he meets during his travels along the shores of Acadia are the owners of these lands. In one encounter, a Chief “made a long Oration unto us, shewing us the crosse we had set up, and making a crosse with two fingers, then did he shew us all the Countrey about us, as if he would say that all was his, and we should not set up any crosse with his leave”²⁴.

While Cartier’s understanding of the exact message conveyed by this Chief may not be entirely accurate, he is making an interesting reference to the welcome given by the people to Cartier. Indeed, it is evident that while the people of Mi’kma’ki were welcoming, they also intended to make it known that the newcomers were visiting *First Peoples’* lands. Far from landing in *terra nullius*, the French arrived in a land peopled with well-established societies with their own trade networks, resource-use patterns and diplomatic protocols.

Mi’kmaq tenure was enduring. Even in 1749, the year Halifax was established, and the presence of the English seemed fixed, the First Peoples of Nova Scotia remained constant in their occupation and use of the landscape. In a letter to the Duke of Bedford, dated July 27, 1749, the Board of Trade notes that a “Nation or Tribe of Indians, called the Abeniqui have constantly resided upon the River St John’s in the Heart of His Majesty’s Province of Nova Scotia”²⁵. It is also evident, even during the negotiations for and

²³ Edmund Goldsmid, ed., The Principal Navigations, Voyages, Traffiques and Discoveries of the English Nations, Collected by Richard Hakluyt, vol. 13 (Edinburgh: E.&G. Goldsmid, 1889), 82.

²⁴ Ibid. 95.

²⁵ Public Records Office, Colonial Office (Great Britain), 218,3: 71r-72v, Lords of Trade to Bedford, 1749, 143.

signing of the Treaty of 1760/61, that the Mi'kmaq were still widely connected to the coasts and interior of their country – a connection that the English had not yet made.

Wide use of the coasts and land also made the Mi'kmaq extremely knowledgeable regarding travel through the interior. Jacques de Meulles' voyage to Acadia in 1685-86 makes this clear. At one point in his travels, he observes, "If I had not perceived, as if my a miracle, those two little Indians, I should have continued along the coast as I had been directed, and should have covered two or three times the distance and been in greater danger"²⁶. The Sieur de Fronsac's actions in support of de Meulles' voyages further uncovers Mi'kmaq awareness about the landscape. De Meulles notes that Fronsac "went and consulted with all the Indians, but particularly the oldest, about my journey. They all told him that I could not reach Baye Verte this year because it was already beginning to freeze quite hard, and that I should find all the coves, and especially Bay Verte, completely frozen over"²⁷. It is evident from this account that the Indians of Acadia had their 'finger on the pulse' of the land, and were aware of the seasonal changes to travel routes, both on a longer term basis, and on an ongoing basis. It is also clear that the Mi'kmaq 'belonged' to the land²⁸.

As is evident from Cartier's journals, knowledge of the landscape also gives the Mi'kmaq access to the resources of the land. Denys' description of the coasts of Acadia also makes this obvious. In his observations of the shoreline near Halifax, he makes note of

²⁶ Jacques de Meulles, "Account of the Voyage of M. De Meulles to Acadie," *Acadiensia Nova*, ed. William I. Morse, vol. 1 (London: Bernard Quaritch Ltd., 1935), 100.

²⁷ *Ibid.* 100.

²⁸ They would further argue that all people 'belong to the land'.

the small rivers which flow into the ocean, stating that the “Indians are there in great number because of the hunting, which is good in the interior of the country, where are mountains all abounding in Moose”²⁹. This knowledge would have complemented access to and respect for the spirit world – both key to the hunting success of the Mi’kmaq³⁰.

LeClercq provides us with some of the most detailed information regarding use by the Mi’kmaq of their knowledge regarding the resources around them for fishing and hunting. In this excerpt from LeClercq’s *New Relation*, we see how the Mi’kmaq hunted for moose:

The hunters, knowing the place on the river where it is accustomed to resort when in heat, embark at night in a canoe, and, approaching the meadow where it has its retreat, browses, and usually sleeps, one of them imitates the cry of the female, while the other at the same time takes up water in a bark dish, and lets it fall drop by drop, as if it were the female relieving herself of water. The male approaches, and the Indians who are on the watch kill him ...³¹

LeClercq’s *New Relation* is also important because it signals to us the link between knowledge of the land and resources, and social standing within the community. As he writes, “Our Indians have, apart from war, no occupation more honourable than hunting; and they acquire no less glory and reputation from the number of Moose and Beavers which they capture, and which they kill in the chase, than

²⁹ Nicholas Denys, *The Description and Natural History of the Coasts of North America (Acadia)*, ed. W.F. Ganong (Toronto: 1908), 157.

³⁰ See William F. Ganong, ed., *The Description and Natural History of the Coasts of North America (Acadia) by Nicholas Denys* (Toronto: The Champlain Society, 1908), 418 for the consequences of not respecting the spirits of the land.

³¹ Fr. Chrestien Le Clerq, *New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians*, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 276.

from the number of scalps which they take from the heads of their enemies”³².

LeClerq’s observation is oversimplified, but it underlines why knowledge of the land – knowledge so important for success in the hunt – might be of critical importance to the Mi’kmaq.

One further observation regarding Mi’kmaq knowledge of the land is of note.

During the 1738 Conference between the English, the Norridgewalk and the Penobscot, Loron makes reference to marking the land in order to indicate the agreed-upon extent of English settlements. When asked by the Governor whether they are satisfied with the ‘order’ of the English settlements, Loron replies “Yes Sir, we are well pleased: we have set up a mark, we have Spotted a tree for a Monument for our Selves and further Generations”³³. In the same way that the Mi’kmaq share the land among themselves according to natural boundaries – such as rivers – they also agree to share the land with English using similar natural markings on the landscape.

The seasonal nature of land use by the Mi’kmaq is also of interest to us. In 1692, Governor Villebon writes, “I had frequent visits from the Indians of the neighbourhood until the snow was firm enough for them to take to the woods for their hunting”³⁴. At the

³² Ibid. 274. See also Public Records Office, Colonial Office (Great Britain), 5,866: 53: 70-79, Bannister to Lords of Trade, 1715, 87 for a description of the willingness of the First Peoples to defend their hunting grounds. Indeed, it is argued that defending hunting lands is one of the primary reasons for war amongst these peoples. This argument is not entirely sustained by the evidence available to us.

³³ Public Records Office, Colonial Office (Great Britain), 5,881: 11r-21r, Conference with the Penobscot & Norridgewalk Indians, 1738-06-28 to 1738-07-06, 1738, 19.

³⁴ John Clarence Webster, Acadia at the End of the Seventeenth Century: Letters, Journals and Memoirs of Joseph Robineau De Villebon, Commandant En Acadie, 1690-1700, and Other Contemporary Documents., Monograph Series vol. 1 (St. John, N.B.: The New Brunswick Museum, 1934), 34.

Boston Conference of 1725, the 'Eastern Indians' observe that they are concerned for their families at home, given that it is November. Speaking about the state of their negotiations with the English, they state "we are not Impatient but the Indians, that we left waiting for our return lye open to the weather, and we are afraid they will be Impatient, It being the custom of the Indians to go far up in the Countrey hunting in the winter time"³⁵.

Reference to the 'seasonal geography' of the Mi'kmaq is important for us here because it highlights the organic relationship they would have had with the land and its resources. The 'mental map' held by each Mi'kmaq would have varied according to the seasons, and the changes brought about by long- and medium-term changes to the climate in which they lived. This in turn would have meant that the imprint of the Mi'kmaq on the landscape would have been in constant evolution. From season to season, and year to year, the Mi'kmaq would have traced their existence in Mi'kma'ki across the landscape according to their use of its resources. Mi'kmaq geography was, in other words, reflective of an interdependence between human, nature, climate and landscape.

Indeed, examining the ways in which geography was perceived by the Mi'kmaq provides us with an opportunity to observe one fundamental difference between their use of the land, and that of the Europeans. A memorial of 1701 from the Council of the Province of Massachusetts to the King provides a useful illustration of this difference. "The Line of our Frontier against/them is upwards of two hundred miles in length, and the Fre[nch

³⁵ "Nova Scotia Papers," Gay Papers, F.L. Gay Collection (Boston, Mass: Massachusetts Historical Society, 1725), vol. IV., 184

or] Indians in the late War found none, or little difficulty to come [from] Canada down the Rivers either in their Canoes or on the Ice in [the] Winter Season and infest our Northern & Western Towns where they can have a more easie access than to Albany, and 'tis not [to be] thought by that they will again make use of such advantage"³⁶. As the Council highlights, no manner of drawing artificial boundaries or lines across the landscape will prevent the Indians from having access to their settlements. Clearly, the hunting and transportation land use patterns of the First Peoples are also reflected in their use of the land for 'diplomatic' activities – such as war. English geography does not at all 'fit' with this indigenous sense and use of the land.

By 1754, the Board of Trade seems to be more sensitive to this difference. In their correspondence with Governor Lawrence, they present the need to develop a strategy for frustrating the Indian attacks against Halifax. To this end they ask Lawrence to "give Us Information of # all such particular relative to the Numbers, Strength, and Situation of these Indians, as you judge necessary for forming such a Plan, but also of the Places of their Settlement, and the Paths or Passes, whether by Land or Water, by which they convey themselves from different parts of the Province with the greatest facility to the Neighbourhood of Halifax in order to track their Attacks ..."³⁷. The notion of *paths or passes* is of particular pertinence here, as it is very much in line with the broader geographical perception of Mi'kma'ki held by the Mi'kmaq.

³⁶ Public Records Office, Colonial Office (Great Britain), 5,862: 85(ii): 261-63, Massachusetts to the King, 1701, 106.

³⁷ "Treaty, or, Articles of Peace and Friendship Renewed, 1753," Nova Scotia Executive Council, (1754), 15v – 16r.

LeLoutre underlines this in his correspondence with Governor Lawrence later in the same year. In presenting the proposals of the Mi'kmaq to Lawrence, LeLoutre makes the point that "they agree not to molest those English that they meet who are using the principal roads, but as for those that turn away to go into the woods, as did recently the detachment from Chigabenakady, which they regard as an offence, they will be treated as enemies"³⁸. The Mi'kmaq clearly feel that they have extended a right to the English to cross their lands, but only by way of the roads which had been built for that purpose. In a sense, they are forcing the English to conform to their understanding and use of the landscape. As we will see below, this was still possible in the 1760s, due to the limited ability of the English to assert their laws and 'ways of being' outside English settlements.

It is by ways of *paths and passes*³⁹ that the Mi'kmaq maintain their autonomy. These paths and passes are the means for the Mi'kmaq to reach trading places, access distant hunting areas, fight wars and travel for treaty negotiations. They are, in other words, the means by which the Mi'kmaq assert their belonging to the land and their understanding of how the land is to be shared with the French and English. The idea that fences could be erected around land to the exclusion of all others would have been entirely foreign to the Mi'kmaq⁴⁰. This was, however, what the Mi'kmaq saw the English doing to Mi'kma'ki. It was for this reason that the Mi'kmaq felt compelled to explain to the English how it was that the land would be shared – to the exclusion of neither nation.

³⁸ Ibid., 92. Translation by author.

³⁹ Including rivers, lakes, and coast lines.

⁴⁰ The Mi'kmaq did make use of temporary caribou and deer fences to herd these animals during hunting, but the fences were removed once their purpose had been served.

Mi'kmaq 'Territory' in Mi'kma'ki

As discussed earlier, the Mi'kmaq looked to their Chiefs to decide where certain extended families would be able to hunt. This land use decision-making was concomitant with the spiritual role of according responsibilities to these families to look after the land⁴¹ to which they had been assigned. Until the arrival of the English, and their apparent intent to divide Nova Scotia for use by English citizens, the Mi'kmaq had seen little reason to feel that their way of caring for their land, or the land's way of caring for them, needed to be questioned. This was to change over the seventeenth and eighteenth centuries, provoking adaptation strategies on behalf of the Mi'kmaq.

As we saw above, Cartier's journal makes mention of the people he met that had signaled to him that the land was theirs⁴². It is unclear exactly what the intent of their gestures were, but we get a clearer picture in the eighteenth century. For example, in response to the English request in 1714 that they swear allegiance to the King, the Penobscot reply "I will have nothing to do with proclaiming a foreign King in my country ... I do not like also that you tell me that my land is of the government of Port Royal"⁴³. It is clear that the Mi'kmaq felt that Mi'kma'ki was the land of their people. They did not insist on 'ownership' over the land – as the English might have understood it – but felt that the land was under their stewardship and care and they were under *its* stewardship and care.

⁴¹ These lands were also assigned because it was the best place for the earth to look after the families in question.

⁴² Or that it was sacred ground.

⁴³ Public Archives of Nova Scotia (Nova Scotia), RG1,6: 19, Answer of the Penobscot, 1714.

There are many other examples where this is apparent⁴⁴. A few of these provide us with exceptional clarity regarding Mi'kmaq notions of 'land ownership'. In 1720, for example, the Mi'kmaq react strongly to hearing of English demands that the Acadians swear allegiance to the King or leave Acadia. "But learn from us", they declare, "that we were born on this earth that you march with feet, before even the trees that you see beginning to grow and leave the earth, It is ours and nothing can ever force us to abandon it"⁴⁵. When the English build Halifax in 1749 without any notice to the Mi'kmaq, the response is equally direct:

This place where you are, the place where you live, the place where you are building a fortification, the place where you want now to establish yourself, the place of which you want to make yourself the absolute master, this place belongs to me. Me, the Indian, I come out of this earth like (a blade of) grass. I have been born there the son [and] from father to son. This place is my land, I swear it. It is God who has given me this land to be my homeland forever... My King and your King together distribute these lands, and it is because of that that they are presently at peace ...⁴⁶.

There are good reasons why the Mi'kmaq feel, even as late as the 1760s, that the land is still directly connected to them. French documentation, published in 1748 give us a hint of why this is so. "From Canceau until Mouschkodaboutet the country is only inhabited by the Indians who hunt in the woods until Chigabenacdie; and fish in all the rivers ..."⁴⁷.

This document alludes to the distinct spheres of use and occupation of the land by the

⁴⁴ See, as examples, "Lettres Des Sauvages À Monsieur Le Général Phillips, 1720-10-02," Collections De Manuscrits Contenant Lettres, Mémoires Et Autres Documents Historiques Relatifs À La Nouvelle-France Recueillis Aux Archives De La Province De Québec Ou Copiées À L'étranger, vol. 3 (Québec: A. Coté et Cie., 1884), 47; James Phinney Baxter, ed., Documentary History of the State of Maine, vol. 23 (Portland, Maine: Tower, Fred L., 1916), 84; "Eastern Indians' Letter to the Governor, 1721-07-28," Maine Historical Society Quarterly (1974); and Public Archives of Nova Scotia (Nova Scotia), RG-1,14: 20, Armstrong to Newcastle, 1732.

⁴⁵ National Archives of Canada (Ottawa), MG18,E29, Speeches of the Indians, 1720.

⁴⁶ Public Records Office, Colonial Office (London, UK), 217,9: 116r-16v, Mi'kmaq of Cape Breton and Antigonish to Cornwallis, 1749, 131B.

⁴⁷ Archives nationales (Paris), C11D,10, Sur L'acadie, 1748, 1.

English and the Mi'kmaq. Indeed, it points to the fact that the interior of the country was entirely the 'domain' of the Mi'kmaq – well out of reach of the English. While the English and Mi'kmaq undoubtedly had different understandings of this situation, it nonetheless represented the emergence of two different systems of land tenure in Acadia.

By the turn of the eighteenth century, the language referring to the distinct territorial uses of the Mi'kmaq and English has become part of the treaty-making dialogue between the two nations. In a memorial presented to the English in 1699, the 'Eastern Indians' "renounce all claim challenge or pretensions whatsoever, to and of the Lands rights ...within or belonging to all and every of the former Settlements and propertys of y^e English ... having unto the s^d Indians their own planting grounds up in the Countrey and such liberty of hunting fishing and fowling in these parts as formerly and liberty to build Wigwams as formerly for their shelter where they may make a stay for any time, and to make use of Firewood from off any unimproved lands as their needs may require"⁴⁸. Here, we get a sense that English land is largely restricted to what lies within their settlements. Indeed, the Mi'kmaq would have seen the English lands almost as little islands, scattered around the perimeter of their lands.

This is reinforced by the communications of French colonial officials from the same time period. For example, in Governor Villebon's instructions of 1696 to St. Cosme, priest of Minas, he orders that provisions be kept at Pentagoet for "Indians from distant parts",

⁴⁸ Massachusetts Archives (Massachusetts), 30: 447r-48r, Eastern Indians to Bellomont, 1699, John Clarence Webster, Acadia at the End of the Seventeenth Century: Letters, Journals and Memoirs of Joseph Robineau De Villebon, Commandant En Acadie, 1690-1700, and Other Contemporary Documents., Monograph Series vol. 1 (St. John, N.B.: The New Brunswick Museum, 1934), 447v.

adding that it “is to be noted that the Indians of Pentagoet are not included in this distribution of provisions, because they are in their own territory and should be able to maintain themselves without assistance”⁴⁹. Villebon thereby acknowledges that Pentagoet sits within the territory of the Indians residing there. The distinction between English and Mi’kmaq lands is also reinforced by Shute’s letter to Rale in 1718, as discussed above. Shute appears to confirm what the Mi’kmaq would have understood – that it was only within English towns where English law applied⁵⁰. *Cum sueris Romae, Romano vivito more.*

The corollary argument to this is also evident to the English as late as 1762. In the minutes of the War Council meeting of July 26 that year, the Council acknowledged that “at this Time the necessity of drawing all the Troops together at Halifax, had stripped the new Settlements so effectually of Protection, that, Except the very small Garrisons at Annapolis, St. John’s River, and Fort Cumberland, not amounting on the whole to One hundred Men, there was no Protection to any of the Settlements, the Interior part of the Country being intirely destitute of any”⁵¹. Although the primary concern of the English in 1762 was the number of Acadians remaining in the province, they nonetheless admit to having little or no presence in the interior of the country.

⁴⁹ John Clarence Webster, Acadia at the End of the Seventeenth Century: Letters, Journals and Memoirs of Joseph Robineau De Villebon, Commandant En Acadie, 1690-1700, and Other Contemporary Documents., Monograph Series vol. 1 (St. John, N.B.: The New Brunswick Museum, 1934), 105.

⁵⁰ Massachusetts Historical Societu (Boston, Massachusetts),5: 112-19, Shute to Rale, 1718, 114.

⁵¹ Public Records Office, Colonial Office (Great Britain), 217,19: 53r-54v, Council of War Minutes, 1762, 54.

Taken as a whole, this evidence supports the argument that even as late as 1760/61, the Mi'kmaq would have seen the English presence in Mi'kma'ki as limited to established settlements. Certainly, the Mi'kmaq would have been adapted to the presence of the English, embracing their technology – where appropriate – and exploiting trading opportunities to build and expand their relationships with others. They would not, however, have agreed that the underlying title to the land had changed hands, nor would they have felt that the English had assumed responsibility for the lands other than those directly under their control.

This view is confirmed at the Portsmouth Conference of 1717 by Quanamus and Nimpcoot, speakers for the 'Eastern Indians'. They observe that "These young men desire to be known to be Right heires of Sacco River, but are very desirous to have the English to come there and live and settle againe"⁵². Again, the 'Eastern Indians' do not claim *ownership over* the land, but they are its natural heirs and want to have this legacy protected. In fact, the question of land *ownership* may not even have been raised by the English.

This possibility is suggested by a Penobscot signatory to the Treaty of 1727. This signatory – Loron – describes his dialogue with the Governor as follows:

He began by asking me, what brought me hither? I did not give him for answer – I am come to ask your pardon; nor, I come to acknowledge you as my conqueror; nor, I come to make my submission to you; nor, I come to receive your commands. All the answer I made was that I was come on

⁵² James Phinney Baxter, ed., Documentary History of the State of Maine, vol. 23 (Portland, Maine: Tower, Fred L., 1916), 75.

his invitation to me to hear the propositions for a settlement that he wished to submit to me.

...Thereupon, he said to me – Let us observe the treaties concluded by our Fathers, and renew the ancient friendship which existed between us, I made him no answer thereunto. Much less, I repeat, did I, become his subject, or give him my land, or acknowledge his King as my King. This I never did, and he never proposed it to me. I say, he never said to me – Give thyself and thy land to me, now acknowledge my King for thy King, as thy ancestors formerly did.

He again said to me – But do you not recognize the King of England as King over all his states? To which I answered – Yes, I recognize him King of all his lands; but I rejoined, do not hence infer that I acknowledge thy King as my King, and King of my lands. Here lies my distinction – my Indian distinction. God hath willed that I have no King, and that I be master of my lands in common.⁵³

At the conference held on Arrowsick Island in 1717, Wiwurna clearly represented the position of the ‘Eastern Indians’ with respect to land title, and the presence of English settlers in Mi’kma’ki. He declares that he will respect the King “if we are not Molested in the Improvement of our Lands”, to which the Governor replies, “They shall not be Interrupted in the Improvement of their Lands; and the English must not be Molested by them in theirs”⁵⁴. Later in the same conference, Wiwurna is equally direct regarding the Mi’kmaq view regarding the status of English settlements. “This Place was formerly Settled and is now Settling at our request: And we now return Thanks that the English are come to Settle here, and will Imbrace them in our Bosoms that come to settle on our Lands”. At the same time, he declares that they “Desire there be no further Settlements made. We shan’t be able to hold them all in our Bosoms, and to take care to Shelter

⁵³ Colin Calloway, ed., Dawnland Encounters: Indians and Europeans in Northern New England (Hanover, New Hampshire: University Press of New England, 1991), 116-117.

⁵⁴ "Proceedings of the Arrowsick Conference," A Conference of His Excellency the GOVERNOUR, with the Sachems and Chief Men of the Eastern Indians (George Town, Arrowsick Island: Governor's Printer, Boston, 1717), vol., 6.

them, if it be like to be bad Weather, and Mischief be Threatened”⁵⁵. Wiwurna is presenting a very clear message: that the English are welcome on their lands, but only in limited numbers – numbers which are to be determined by the Indians themselves.

When English settlements exceeded the limits agreed to by the Chiefs, tension arose between the two nations. In 1736, for example, the Penobscot present their grievances to the English, of which “... One is the peoples Settling at S^t Georges they Crowd nearer to us that what was proposed by Us and Mr. Waldo at which we are Very uneasy ...”⁵⁶.

When asked by the Governor of Massachusetts what “Line of Settlement” that they have proposed regarding St. Georges, the Indian Speaker responds, “I thought we had said that before ... We are easy the English should come to the floating-water at the falls. this we are Content with, but not so as to affect the Title of Land, for we can’t be content with any Settlements further than the falls ... for if that Settlement should be allowed it will draw on Warr and blood-shed”⁵⁷. This discussion is consistent with the French note in 1727 that the Abenaki have made it a condition of their treating with the English that the English cease to encroach on their lands⁵⁸.

Despite their resiliency, the Mi’kmaq *are* forced to adopt new ‘tools’ in maintaining access to their lands in the face of the expansion of English settlements. It is worthy of note, for example, that the Mi’kmaq make what amounts to a land claim against the

⁵⁵ Ibid., vol.7.

⁵⁶ James Phinney Baxter, ed., Documentary History of the State of Maine, vol. 23 (Portland, Maine: Tower, Fred L., 1916), 237.

⁵⁷ Ibid. 238.

⁵⁸ See Archives Nationales, Archives des colonies (France), C11A,49: 124r-26r, Beauharnois Au Ministre, 1727. See also Public Records Office, Colonial Office (Great Britain), 5,866: 53: 70-79, Bannister to Lords of Trade, 1715, 74. It is useful to remember that the Penobscot and the Mi’kmaq would have seen agreements flowing out of the treaties as conditions that they had dictated to the English.

English in 1752. An unnamed Mi'kmaq Chief indicates that his proposal was "That the Indians should be paid for the Land the English had settled upon in this Country"⁵⁹. This is followed in 1755 by Paul Laurent's request. Laurent, a Mi'kmaq Chief, asks that the English reserve lands for his people's exclusive use, "... for Fishing, Shooting and Hunting ..."⁶⁰. The Mi'kmaq also ensure that their fishing and hunting lands are not being used by others, notably the Acadians⁶¹.

These actions are taken, according to Thomas Pichon – also writing in 1755, because the Indians are "the owners of all the land, and, owing to the methods employed by the English ... find themselves hemmed in, with insufficient territory for their own use"⁶². This concern is echoed in de la Varenne's letter of 1756⁶³. Indeed, although the Mi'kmaq did not give up their lands, or lose them to the English in battle, they did understand that the English had an unquenched thirst for land in Mi'kma'ki. They maintained that the land was still theirs, and that the English were invited there on Mi'kmaq terms to share the resources the land offered, but only on a limited basis.

This 'basis' appears to have been a rising concern amongst the Mi'kmaq in the 1750s and 60s. The unilateral construction of Halifax was a portent of things to come – a signal, perhaps, that the undoing of Glooscap's warning about the coming of the blue eyes had

⁵⁹ Public Archives of Nova Scotia (Nova Scotia), RG-1,186: 250-54, Nova Scotia Executive Council Minutes, 1752-11-22, 1752, 214.

⁶⁰ Public Archives of Nova Scotia (Nova Scotia), RG1,187: 178-80, Summary of Discussion with Paul Laurent, Halifax, 1755.

⁶¹ See Public Records Office, War Office (Great Britain), 34,12: 95r-95v, Mackenzie to Claude, 1761.

⁶² John Clarence Webster, Acadia at the End of the Seventeenth Century: Letters, Journals and Memoirs of Joseph Robineau De Villebon, Commandant En Acadie, 1690-1700, and Other Contemporary Documents., Monograph Series vol. 1 (St. John, N.B.: The New Brunswick Museum, 1934), 89.

⁶³ Kenneth Donovan, "M. De La Varenne, "A Letter from Louisbourg", " Acadiensis 10 (1980), 117.

not been permanent. Regardless, the Mi'kmaq still maintained their traditional land practices, and continued to work with the English, in the hopes that these Europeans would learn the ways of Mi'kma'ki, and understand the responsibilities they had during their tenure in Mi'kmaq territory.

The Treaty of 1760/61 – Environment and Land

Mi'kmaq optimism regarding English land use and land rights/responsibilities was continually challenged in the post-Utrecht era. It might therefore strike us as ironic that so little should be said about land in the Treaty of 1760/61. It is perhaps because the Treaty did little to alter the status quo, that the Mi'kmaq and English are so quiet with respect to land. Indeed, from the Mi'kmaq perspective, land would not have been mentioned in the Treaty, because it was not an issue – the land of Mi'kma'ki was their land. The English were welcome, as we have seen above, to *share* the land with the Mi'kmaq, but only on the terms dictated by the rightful heirs of the land.

From the Mi'kmaq perspective, the English would have had little 'claim' to anything outside their settlements. While the establishment of Halifax was of concern to the Mi'kmaq, it was not yet a generalized problem. The English had little presence on Mi'kmaq lands, and there was little to indicate that this would change. The Mi'kmaq continued to use their traditional trade routes, their traditional hunting grounds, and their traditional pathways and passes. Indeed, the Mi'kmaq continued to *share* the land with each other, and their 'extended kin' as they had in the past. They maintained not an 'ownership over' but a connection to the land that enabled them to understand *land sharing* as part of their worldview.

This is supported by Loron's comments regarding his discussions in 1727 with the English governor. Indeed, the Governor had not mentioned land let alone asked the Penobscot to give up their land. This confirmed the sentiment that it was the English who had surrendered to the Mi'kmaq, giving them little or no right to set the conditions for their submission. Instead, they were – from the Mi'kmaq perspective, and in reality – very much at the mercy of the First Peoples in Mi'kma'ki. This 'mercy' was – fortunately for the English – founded on the idea of sharing the land and resources it contained in order to 'allow' the land to carry out its stewardship of the people.

The Treaty of 1760/61 would not have altered Mi'kmaq perspectives regarding their use of the land, their relationship to its resources, and the 'underlying title' of Mi'kma'ki. The land continued to be held in common by the Mi'kmaq, and its use was determined by the Chiefs according to their traditions. Although the English were 'appearing' in greater numbers in Nova Scotia, their populations were concentrated in and near settlements around the perimeters – the coastlines – of Mi'kma'ki. Whenever they moved inland, the Mi'kmaq felt that they still had the right and responsibility to decide the extent of these settlements.

English populations did not impede Mi'kmaq movement through Mi'kma'ki, and for the most part, did little to disturb the Mi'kmaq way of life. Certainly, the Mi'kmaq had to adopt new political tools in order to manage English growth on Mi'kmaq lands. The greatest challenges faced by the Mi'kmaq were the land use practices of the English

which appeared to be wholly different than those of the Mi'kmaq. Indeed, the English sought to exclude Mi'kmaq use of lands which the English had improved – convinced that the Mi'kmaq had given them away or sold them for this use – while the Mi'kmaq sought simply to *share* the land and its resources equitably with the English. In fact, the Mi'kmaq embraced *shared usage* of the land with the English – as they had with others for centuries – reflecting their belief that the land was hospitable to all that respected it.

It is here that we see what would later become the greatest challenge to English-Mi'kmaq relations: land and resource sharing. In 1760/61, while the warning signs were certainly present, the Mi'kmaq would have felt that the English were present in Mi'kma'ki under Mi'kmaq rules and 'management'⁶⁴. English settlements were still subject to Mi'kmaq approval, and therefore adhered to the traditional practices of assignment by the Chiefs. Mi'kmaq land tenure and environmental beliefs were certainly challenged by the English, but the Treaty of 1760/61 would still have been seen as a point of continuity for the Mi'kmaq – where their traditional land use practices were still respected by the English and protected through their relationship together on the land.

Part of our understanding about the relationship the Mi'kmaq had to the land comes from their understanding of spirituality and religion. Indeed, to the Mi'kmaq, the land was imbued with the spirits that allowed them to survive and thrive on Mi'kma'ki. It follows, then, that we should now turn our attention to an analysis of the spirituality and religion of the Mi'kmaq.

⁶⁴ A 'management structure' provided by the rule of law flowing from the Creation Story.

Spirituality

*And I do promise for myself and my Tribe that **I nor they shall not molest** any of His Majesty's Subjects or their Dependents in their Settlements already made or to be hereafter made, or in carrying on their Commerce, **or in any thing whatever** within this the Province of His said Majesty or elsewhere.*

*"There is one thing that binds me more strongly and firmly to you that I can possibly express and that is in your indulging me in the **free Exercise of the Religion in which I have been instructed from my Cradle.**"*

*"You confess and believe, as well as I, in Jesus Christ the eternal Word of Almighty God. I own **I long doubted whether you was of this Faith.** I declare moreover that I did not believe you was baptized; I therefore am overwhelmed with great Sorrow and repentance that I have too long given a deaf ear to my Spiritual director touching that matter, for often has he told me to forbear imbruing my hands in the Blood of a people who were Christians as well as myself. But at present I know you much better than I did formerly, I therefore renounce all the ill Opinions that have been insinuated to me and my Brethern in times past against the Subjects of Great Britain."*

Searching for the frame(s) of reference within which Mi'kmaq spirituality and religion can be understood in the treaty clauses above presents us with several challenges.

Indeed, of the different aspects of the Mi'kmaq worldview discussed in this chapter, spirituality and religion offer some of the greatest challenges to non-native ways of viewing the world. In this regard, the documentation available to us – provided by the reflections of Jesuits, French and English missionaries, and the officials of both governments – are biased against Mi'kmaq spirituality and their understanding of Catholicism.

Notwithstanding this bias, it is possible to glean from the documents that are available to us a set of references from which we can understand the 'limits' of Mi'kmaq articulations with respect to spirituality and their understanding of the Catholic religion. As in the preceding section, this discussion will enable us to better comprehend how the Mi'kmaq would have understood the Treaty of 1760/61 to represent their understanding of the world.

Based on the sources and references available to us for this work, two principal paths of reflection become apparent. The first of these refers to the *practices* of Mi'kmaq spirituality. Of particular interest to us are an examination of the core spiritual beliefs of the Mi'kmaq and their understanding of their relationship to the Holy See and Catholicism. These themes are linked to the second path of reflection – examining the importance of *space* in the Mi'kmaq understanding of spirituality. This idea of space embraces both the individual points of significance on the landscape, as well as the broader connection to the landscape as a whole, and the space that the Mi'kmaq created with the English in which spiritual syncretism became possible. A brief discussion of

sacred spaces will form the foundation for our understanding of the Mi'kmaq sense of the spiritual.

Our understanding of the meaning of *practices* and *spaces* to Mi'kmaq spirituality will enable us to understand the range of articulations available to the Mi'kmaq who signed the Treaty of 1760/61. It will reveal to us how the ideas of practices and places converged in the landscape of the Mi'kmaq – Mi'kma'ki – and how their understanding of this landscape influenced their perspective of the relationship that they and their French and English 'kin-friends' had to each other and to the land.

Mi'kmaq spiritual practices

Our earliest records touching on Mi'kmaq spirituality come from the *Jesuit Relations*, which, understandably, present an unfavourable picture of these “superstitions”⁶⁵.

Christien LeClercq offers that similar “criminal maxims and ridiculous observations are still to-day in force among our Gaspesians, who observe in the impostures of their jugglers⁶⁶ all of the empty observations and superstitions which the Romans recognized of old in the ministry of their diviners”⁶⁷. While LeClercq may lack respect in his account of the spirituality of the Mi'kmaq, he does nonetheless offer some insight into the beliefs of the Mi'kmaq.

He observes, for example that “these Indians imagine that certain ones among them have communication with the Devil, from whom they hope to learn that which they wish to

⁶⁵ Indeed, the title of the Chapter in LeClercq's *Relations* is “On the Superstitions of the Gaspesians”.

⁶⁶ Medicine men.

⁶⁷ Fr. Chrestien Le Clercq, *New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians*, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 215.

know, or to obtain that which they ask. They believe that in all their maladies there is, in the part afflicted, a Devil, or germ, which these barbarians, whom we call jugglers, have the power to make come out ... They imagine also that their jugglers can know from their Devil, whom they call Oüahich⁶⁸, the best places for hunting ...”⁶⁹. Here, LeClercq is underlining the special role that medicine men would have had among the Mi’kmaq, and the special skills that they had in understanding the spirits which inhabited all living beings and the places around them.

What he misses, however, is that *all* Mi’kmaq would have had a respectful relationship with the *manitu*, which is the life-force or soul that inhabits all forms of people, animals and plants. The *manitu* is one of the three elements of all living things, which also includes *ktinin* or body – that decays after death – and *wtansaléuimka*, the guardian ‘angels’ which assist all living things through life⁷⁰. Indeed, the Mi’kmaq were taught to respect the all of the life forces that they would come into contact with during their lives: respect for the spirits of beavers; respect for the spirits of berries; respect for the spirits of different rocks; and respect for each other⁷¹. These are but examples of the fundamental respect that each Mi’kmaq child would have learned during their education.

⁶⁸ Ganong notes that this word may be the same as the Mi’kmaq word *Oaitj* (or *Oaitch*), which means “smart fellow”. See *Ibid.* 90.

⁶⁹ Public Records Office, Colonial Office (Great Britain), 5,83: 37r-39r, Thomas Gage to Earl of Halifax, 1763, Fr. Chrestien Le Clercq, *New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians*, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 216. See also Nicholas Denys, *The Description and Natural History of the Coasts of North America (Acadia)*, ed. W.F. Ganong (Toronto: 1908), 417. This process can be likened to the negotiation of life. The Mi’kmaq fear the loss of the memories (‘senses’) of their ancestors.

⁷⁰ For further elaboration, see James Youngblood Henderson, *The Miknaw Concordat* (Halifax, Nova Scotia: Fernwood, 1997), 15.

⁷¹ It is ironic that Aitken’s Plan of 1755 advocated the location of missionaries at forts not for the conversion of Indians, but to improve the morals of the soldiers and traders, so that the English would gain greater respect amongst their Indian allies. See Wilbur R. Jacobs, ed., *The Appalachian Indian Frontier: The Edmond Atkin Plan of 1755* (Lincoln, Nebraska: University of Nebraska Press, 1967), 1755.

Spirits, and 'access' to the spirits of the world were therefore the domain of no special group of people. Instead, all individuals owed respect to all of these *manitu*, and were responsible for taking care that no disrespect came of any of the *manitu*. LeClercq is clear in his account of this practice of respect and care. In this longer excerpt, LeClercq enumerates some of the ways in which the *manitu* are respected:

The bones of the beaver are not given to the dogs, since they would lose, according to the opinion of the Indians, the senses needed for the hunting of the beaver. No more are they thrown into the rivers, because the Indians fear lest the spirit of the bones of this animal would promptly carry the news to the other beavers, which would desert the country in order to escape the same misfortune.

They never burned, further, the bones of the fawn of the moose, nor the carcass of martens; and they also take much precaution against giving the same to the gods; for they would not be able any longer to capture any of these animals in hunting if the spirits of the martens and of the fawns of the moose were to inform their own kind of the bad treatment they had received among the Indians⁷².

The Mi'kmaq would also give thanks for the harvest of plants, by leaving tobacco⁷³ for the *manitu* there present. If thanks was not given, only the *form* of the plant would be available to them, and not the special qualities for which they were harvesting it – qualities which were a 'gift' of the *manitu*⁷⁴.

The role of spirits is also evident in other aspects of Mi'kmaq spirituality. Champlain describes for us the mortuary rituals of the First Peoples of Mi'kma'ki in great detail. He

⁷² Fr. Chrestien Le Clerq, New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 225.

⁷³ See Ibid. 298 on the uses of tobacco.

⁷⁴ See James Youngblood Henderson, The Mikmaq Concordat (Halifax, Nova Scotia: Fernwood, 1997) for further elaboration on this practice.

describes the process of mourning, the role of the family and the treatment of the body of the deceased. Although Champlain's account differs somewhat from LeClerc's, there is nonetheless an account from both of the importance of the *manitu* as it carries on after the death of the body and its decay. LeClerc's account appears to be clearest. He describes the great care given to the deceased burial, noting that it "is adorned with branches of fir and sprigs of cedar, and finally they add thereto everything which the deceased has been accustomed to use... It is only a very short time ago that, in the Isle of Tisniguet⁷⁵ ... we found a grave built in the form of a box, containing a quantity of skins of beavers and moose, some arrows, bows, wampum, beadwork, and other trinkets. These had been buried by the Indians with the dead person, in the thought which possessed them, that the spirits of all these articles would bear him company and do him service in the Land of Souls"⁷⁶.

This further illustrates the respect for the *manitu* of individual Mikmaw. As LeClerc notes, the Mi'kmaq "in common with all the other Indians of New France, have believed up to the present that there is in every thing, even in such as are inanimate, a particular spirit which follows deceased persons into the other world, in order to render them as much services after death as they had received therefrom during life"⁷⁷. There is further evidence that spirits inhabited the landscape, provided to us by Nicholas Denys in 1672. In his travels across what is now known as Lunenburg Bay, he is intrigued by a small

⁷⁵ Heron Island, located in the South-western part of the Bay de Chaleur. According to Ganong, the island is named *Tesanegek* or *Tesneguk* by the Mi'kmaq at the time of his research (1910).

⁷⁶ Fr. Chrestien Le Clerq, New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 303.

⁷⁷ *Ibid.* 209. LeClerc uses these ideas to substantiate his argument that the Mi'kmaq believed in immortality.

island which his interpreter informs him is never landed on by the Indians. In response to his queries about the reasons for this, Denys is told that “when a man set foot upon this island instantly a fire would seize upon his privy parts, and they would burn up”⁷⁸.

Our final evidence of the importance of spirits on and in the land also comes from Denys’ description of Acadia in 1672. In his accounts of the medicine men, and cures for ailments, he observes that the healers made mention that “it was the *Manitou* that had possession of him, that he [the sick man] had passed through several places where he had not rendered the accustomed homage”⁷⁹. These incidences reinforced the importance of respect for the *manitu* that inhabited the world around the Mi’kmaq. It also underlined the fundamental importance that respect for and *gifts to the manitu* had for the Mi’kmaq.

This fundamental respect for the *manitu* translated directly into the practices of hunting. Indeed, as LeClercq notes, it was believed that some individuals among the Mi’kmaq had access to knowledge about where hunting would be best, and how they might best go about hunting that which they had need of. LeClercq makes particularly pertinent observations about the importance of ‘dreaming’ to the Mi’kmaq. He notes that they “are still so credulous about dreams that they yield easily to everything which their imagination or the Devil puts into their heads ...”⁸⁰.

⁷⁸ Nicholas Denys, The Description and Natural History of the Coasts of North America (Acadia), ed. W.F. Ganong (Toronto: 1908), 153.

⁷⁹ Ibid. 417-418.

⁸⁰ William F. Ganong, ed., The Description and Natural History of the Coasts of North America (Acadia) by Nicholas Denys (Toronto: The Champlain Society, 1908), 227. See also the story of Ejououloumoïet, who recounts to LeClercq his dream of hunting moose and beavers. William F. Ganong, ed., The Description and Natural History of the Coasts of North America (Acadia) by Nicholas Denys (Toronto: The Champlain Society, 1908), 174. This presentation is fairly accurate. During the chase, the Mi’kmaq first dream the animal that they will hunt. They then sing to the animal, and when they have killed it, they

What LeClercq is ignorant of in his observations is that the Mi'kmaq seek access to these dreams to interact with the spirits around them by following practices such as fasting. He notes at one point in his chapter on the 'superstitions' of the Mi'kmaq that he "had seen one of these widows who remained three days without eating, with as much cheerfulness as if she had the best fare in the world. I said everything I could to her to make her break her Lent, for it is this that they name this abstinence, but it was in vain ... her children murmured against me because I solicited their mother to abandon the customs of their ancestors ..."⁸¹. Indeed, the use of fasting, and of sweat lodges was greatly misunderstood by all of the contemporary observers of Mi'kma'ki.

Denys, for example, gives us a fairly detailed presentation regarding the construction and use of a sweat lodge. He points to the use of the sweat lodge as a means of preventing all nature of ailment from occurring⁸², an approach which appears to be very effective. Indeed, Denys notes that the Indians "were not subject to the gout, gravel, fevers or rheumatism"⁸³, pointing to the use of herbs and the sweat lodge. Certainly, while the sweat lodge is useful for health, it also clears the mind and allows its users to have communication with the spirit world. The use of the sweat lodge is, in other words, a practice of spirituality, as much as it is anything else.

offer a gift of thanks. The animal, in turn, provides food, medicine, shelter, clothes, tools and the means to travel. Stephen Augustine, Personal Communication with Stephen Augustine, Ottawa, December 13, 2005.

⁸¹ Fr. Chrestien Le Clerq, New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 228.

⁸² See Ibid. 416.

⁸³ Ibid. 416. This is substantiated by LeClercq in Fr. Chrestien Le Clerq, New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 241.

Indeed, the practices of spirituality are everywhere around the Mi'kmaq. They permeate the political, economic, legal and environmental spheres of Mi'kma'ki in ways that are not perceptible to the French or English. We have seen, for example, the reference by Biard⁸⁴ to the role of the *Sagamore* in dividing up the land for use amongst the people. He also notes that "It is the right of the head of the nation ... to distribute the places of hunting to each individual. It is not permitted to any Indian to overstep the bounds and limits of the region which shall have been assigned him in the assemblies of the elders. These are held in autumn and in spring expressly to make this assignment"⁸⁵. Careful translation of Biard's re-description of land use is required here. Indeed, when Biard makes reference to "bounds and limits", he is not referring to physical limits. Instead, he is articulating the Mi'kmaq belief that one could go anywhere one pleased, *so long as they did not disturb the way of living of an other*⁸⁶. What Biard and his contemporaries miss, however, is the important spiritual dimension of this role.

In fact, while the *Sagamore* was assigning lands for fishing and hunting at a regional level, and the same was being done by the 'Grand Captain'⁸⁷ at the national level, each was assigning *responsibilities for and connections to* the land as well⁸⁸. As underlined above, the use of the land, and access to the resources which provided for sustenance of the Mi'kmaq, was as much a responsibility for the care of the *manitu* therein as it was a right to have food. In dividing and assigning the lands for use by families, the *sagmore*

⁸⁴ Reuben Gold Thwaites, ed., *The Jesuit Relations and Allied Documents*, vol. 30 (New York: Pageant Book Company, 1959), 89.

⁸⁵ See *Ibid.* 3:75. Further detail is provided in James Youngblood Henderson, *The Mikmaq Concordat* (Halifax, Nova Scotia: Fernwood, 1997), 97.

⁸⁶ I am indebted to Stephen Augustine for his assistance in the analysis of Biard.

⁸⁷ The Grand Chief of the Mi'kmaq.

⁸⁸ These connections are echoed in, and reinforced by the ceremonies and songs or stories which build on the legacy reflecting a family's link to the land.

was, therefore, also fulfilling a crucial kind of spiritual role – a role which persisted into the eighteenth century uninterrupted by the arrival of the French and the English.

Another example of Mi'kmaq spirituality, which eluded the Europeans, was the significance they attributed to their creation story. Indeed, the creation story, and the role of its 'characters' – such as *Kisukwl*, *Niskam*, and *Kluskap* – form a central tenet in Mi'kmaq spirituality. This story, and its messages constitute the core teachings of Mi'kmaq spirituality and provide guidance regarding the role of members of families, how to act, and how to respect the spirit world which was all around them. LeClercq makes passing mention to the importance of the creation story, alluding in particular to the importance of *Niskam* (the sun). LeClercq notes that the Indians “swear by the sun, which they have worshipped as their deity, by their children, by their fathers, and by everything which they esteem most dear and most important ...”⁸⁹. He also makes reference to one of the most esteemed jugglers he encounters, and his desire to be baptized “in order to enter with the others in the ‘Wigwam of Jesus’, that he might pray to the God of the Sun”⁹⁰. The reverence for *Niskam* and the other 'characters' of the creation story is almost invisible in the sources to which we have access here. What is clear, however, is that these 'characters' are of key spiritual importance to the Mi'kmaq.

⁸⁹ Fr. Chrestien Le Clerq, New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 252. He also makes notes about the sunrise ceremony of the Mi'kmaq, carried out each day by elders of the community. See Fr. Chrestien Le Clerq, New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 144. On the importance of the sun, see also Fr. Chrestien Le Clerq, New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 143.

⁹⁰ Fr. Chrestien Le Clerq, New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 221.

LeClercq's comments regarding the juggler are also enlightening in that they demonstrate a 'spiritual bridge' being created between the traditional beliefs of the Mi'kmaq and the teachings of the Jesuits and Catholicism. LeClercq's guide, Ejougouloumoüet⁹¹, approaches him one morning after his morning prayers, "believing that I had some revelation, or had received the gift of prophecy"⁹² and asks him for his predictions for what would happen that day. Ejougouloumoüet continues, "'Thou speakest to God,' said he to me, 'thou teachest the way of the sun, thou art a Patriarch, thou art clever, and it must be believed that he who has made everything will have granted thy prayer'"⁹³. Indeed, what Ejougouloumoüet's words demonstrate is the adaptation by the Mi'kmaq of Catholicism to serve their own spiritual needs. It appears that the Mi'kmaq have successfully 'negotiated' the syncretism of their own traditional spirituality with a locally-adapted Catholicism.

Much of this evidence points towards the Mi'kmaq Concordat that was entered into by the Mi'kmaq and the Holy See sometime around 1620⁹⁴. We can see in the evidence available to us, that this agreement with the Vatican still held sway into the 1700s.

LeClercq, for example, observes that some of the Mi'kmaq are imitating the role of the missionary. In 1676-77, he observes, as "our Indians perceive that much honour is accorded to the missionaries, and that they have given themselves in respect and reverence the title of Patriarch, some of these barbarians have often been seen meddling

⁹¹ "He comes searching".

⁹² Fr. Chrestien Le Clerq, New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 173.

⁹³ Ibid. 173.

⁹⁴ The exact date of the agreement is unknown, and is currently the subject of research by the Mi'kmaq. See James Youngblood Henderson, The Mikmaw Concordat (Halifax, Nova Scotia: Fernwood, 1997) for a full explanation of the Concordat and its meaning to the Mi'kmaq.

with, and affecting to perform, the office and functions of missionary, even to hearing confession, like us, from their fellow country-men”⁹⁵. Here, LeClercq is drawing our attention to the belief that the under the agreement of the Concordat, the captains (Chiefs) – as spiritual leaders – shared the role of Catholicizing the Mi’kmaq equally with the Priests.

This is supported by the observations of one Grand Captain who exhorted the priests to learn their language. “By the immortal God, Fathers, endeavour to quickly learn our language”, the Grand Chief exclaims, “in order that, after having employed you as teachers, I also, like you, may go forth as a public exhorter and instructor; and by our united labors the entire population of New France may be brought to Christ”⁹⁶. These observations also clarify the nature of the relationship that the Mi’kmaq felt they had with their priests and the French, and with Catholicism – their Catholicism.

We have seen above, from Lescarbot’s notes of 1607, that Membertou saw himself as the “equal of the King and of all his lieutenants”⁹⁷. We also see from the *Jesuit Relations*, that this sentiment was shared by other Mi’kmaq Chiefs. Indeed, when Poutrincourt announced that the French King was young and unmarried, one Chief remarked that

⁹⁵ Fr. Chrestien Le Clerq, New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 229. He also notes that Mi’kmaq women follow the same pattern, “usurping the quality and the name of *religieuses*”. Fr. Chrestien Le Clerq, New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 229-233.

⁹⁶ Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents, vol. 30 (New York: Pageant Book Company, 1959); Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents, vol. 30 (New York: Pageant Book Company, 1959) 2:225-27 and Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents, vol. 30 (New York: Pageant Book Company, 1959), 3:205.

⁹⁷ Marc Lescarbot, History of New France, trans. W.L. Grant, 3 vols. (Toronto: The Champlain Society, 1907-1914), 355.

“Perhaps I may let him marry by daughter: but according to the usages and customs of the country, the King must give me some handsome presents ...”⁹⁸. Not only did Membertou see himself as the political equal of the King, but also as his spiritual equal.

Catholicism, then, did not arrive in Mi’kma’ki to the ignorance of the Mi’kmaq. Instead, it was welcomed as part of Mi’kmaq spiritual traditions, according to the vision of Grand Chief Messamouet, relative to Membertou. Messamouet had traveled to France, spoke French, and was aware of the debates ongoing within Catholicism regarding ‘Indian’ populations in North, South and Latin America. It was also Messamouet that led the first group of Mi’kmaq to meet with Champlain in 1604. It is fitting, therefore, that it was Messamouet who brought his vision forward as a way of preserving the Mi’kmaq from the slavery and genocide that had characterized the contact of European Catholic and Indian nations to the South⁹⁹. His vision, simply put, was that the Holy See was the bearer of the third cross – the third of three crosses that had been given to the Mi’kmaq by *Nákúset*, the spirit of the sun, at the beginning of the Ice Age¹⁰⁰. By allying themselves with the Holy See, the Mi’kmaq could become a Christian nation, equal to any other European Crown which sent its emissaries to Mi’kma’ki¹⁰¹. Although there is a danger of reading too much into this interpretation of the foresight of the Mi’kmaq, it is

⁹⁸ Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents, vol. 30 (New York: Pageant Book Company, 1959), 1:177.

⁹⁹ Again, Messamouet would have learned of these problems during his studies in France. He would also have been fully aware of Kluscap’s warning about the arrival of the blue eyes. Details regarding this can be found Frank G. Speck, "Some Micmac Tales from Cape Breton Island," The Journal of American Folklore 28.107 (1915), 59.

¹⁰⁰ See Henderson’s account of this traditional knowledge in James Youngblood Henderson, The Mikmaq Concordat (Halifax, Nova Scotia: Fernwood, 1997), 16. See LeClerc’s description of this in Fr. Chrestien Le Clercq, New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 146-47.

¹⁰¹ See James Youngblood Henderson, The Mikmaq Concordat (Halifax, Nova Scotia: Fernwood, 1997), 82-86.

symbolic of their openness to Catholicism, and their willingness to give it a place in their spiritual universe.

By the time that LeClercq made his observations in 1767-77, the Mi'kmaq understanding of the Concordat, and their practice of its principles was widespread. Indeed, LeClercq refers to the Mi'kmaq as the "Gaspeian Cross-bearer Indians" in the title of his *New Relations*. His description of one elderly and well-respected Mi'kmaq woman is telling in this regard: "She was of the Cross-bearer nation, as it was easy to see by her own cross, which she had placed in the most honourable part of her wigwam, and which she had beautified with bead-work, wampum, painting, and porcupine quills. The pleasing mixture thereof represented several and separate figures of everything which was in her devotions"¹⁰². This importance of the cross is also described by Ejougouloumoüet, who claims he would rather abandon all else "rather than abandon the Cross which I have received from my ancestors by title of inheritance and by birth-right"¹⁰³. The cross is but one example of how Mi'kmaq spirituality incorporated the Catholicism brought to them by the Holy See. This Catholicism was not mediated by the French Crown, but came directly from the Vatican through French-speaking priests¹⁰⁴.

LeClercq continues his description of the 'holy woman' discussed above, and her use of the cross, in a particularly interesting manner. "She placed it usually between her and the French, obliging them to make their prayers before her cross, whilst from her side she

¹⁰² Fr. Chrestien Le Clerq, *New Relations of Gaspesia: With the Customs and Religion of the Gaspeian Indians*, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 232-233.

¹⁰³ Ibid. 176.

¹⁰⁴ Henderson is clear in this regard. See James Youngblood Henderson, *The Mikmaq Concordat* (Halifax, Nova Scotia: Fernwood, 1997).

made her own prayers, according to her custom, before her King of Hearts and other divinities”¹⁰⁵. This beautifully illustrates the notion that the Mi’kmaq approached Catholicism from a different direction than the French, and had their own version of Catholicism that flowed from their traditional spirituality. Despite LeClerc’s claim that the Mi’kmaq lived without religion¹⁰⁶, the Mi’kmaq had both religion and spirituality. Indeed, their religion – Catholicism – complemented and reinforced the strength of their spirituality.

That the Mi’kmaq had their own sense of Catholicism is best illustrated in later discussions between the Mi’kmaq and the English regarding the use of the Bible. Indeed, when the English made overtures in order to have the ‘Eastern Indians’ “embrace the true Christian Religion”¹⁰⁷, the Mi’kmaq likely understood something much different than was intended. When the English make overtures of this kind at Casco Bay in 1701, the Indian answer is telling: “It much Surpizeth us that you should propose any thing of Religion to us, for we did not think any thing of that nature would have been mentioned. Furthermore nothing of that nature was mentioned when the peace was concluded between all nations. Futhermore the English formerly neglected to instruct us in Religion which if they had, then offered it to us, we should have embraced it ... but now being instructed by the French we have promised to be true to God in our Religion, and it is this we profess to Stand by”¹⁰⁸.

¹⁰⁵ Fr. Chrestien Le Clerq, New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 233.

¹⁰⁶ Ibid. 233.

¹⁰⁷ Public Record Office, Colonial Office (Great Britain), 5,787: 390-91, Minutes of the Massachusetts Council, 1700-07-09, 1700, 55.

¹⁰⁸ Public Records Office, Colonial Office (Great Britain), 5,862: 101(i), Heads and Propositions, 1701, 300.

At the Arrowsick Conference of 1717, the exchange between the English and the 'Eastern Indians' is even more specific regarding the unique nature of Mi'kmaq Catholicism. Wiwurna, speaking for the 'Eastern Indians' responds to the English offers, "As to the Ministers Instructing us", arguing that "All People have a love for their Ministers, and it would be strange if we should not love them, that come from GOD. And as to the Bibles your Excellency mentioned, We desire to be Excused on that Point. GOD has given us Teaching already, and if we should go from that, we should displease GOD"¹⁰⁹. The English are surprised at this assertion, as is evident in Governor Shute's letter of 1718 to the Jesuit Priest Rale: "Must it not seem strange, even to yourself, that a people whom you pretend to have instructed in the Christian religion, and even proselyted thereunto, should disclaim the holy scriptures, which contain the entire rudiments of the Christian religion ..."¹¹⁰.

The English are "surprised" by what the Mi'kmaq would have taken as common practice. They did not need the Bible to learn the way of Catholicism. They had learned directly through their own traditions, and from their original contacts with the Holy See. The process that they had engaged in – called the "Beautiful Trail"¹¹¹ – had unfolded as it should have according to Messamouet's vision. It was codified by the wampum belt representing the Concordat, and practiced widely by the Mi'kmaq. The Mi'kmaq saw

¹⁰⁹ "Proceedings of the Arrowsick Conference," A Conference of His Excellency the GOVERNOUR, with the Sachems and Chief Men of the Eastern Indians (George Town, Arrowsick Island: Governor's Printer, Boston, 1717), vol., 7.

¹¹⁰ Massachusetts Historical Society (Boston, Massachusetts), 5: 112-19, Shute to Rale, 1718, 115.

¹¹¹ See James Youngblood Henderson, The Mikmaq Concordat (Halifax, Nova Scotia: Fernwood, 1997), 82.

their spiritual leaders – the Chiefs – as equal to the spiritual leaders of the Europeans, and thus demonstrated the respect deserved of people of that station in life. They practiced the teaching of a unique Catholicism amongst their own people, as the Concordat had acknowledged. Finally, they held a profound spiritual respect for the spirit world, which inhabited the landscape around them, and animated their own existence within Mi’kma’ki.

The spirituality that imbued all elements of Mi’kma’ki is also a key element in Mi’kmaq ontology. As we have seen above, all of the plants, animals and the elements of the world around the Mi’kmaq have spirits – *manitu* – and are therefore of a sacred nature and related as kin. Indeed, although special importance is accorded to certain spaces, like those reserved for burial or for the meeting of the Grand Council, all spaces have a spiritual quality. In the same way, then, that the Mi’kmaq would have felt a connection to the animals and plants around them, they would also have exercised great respect and care for the places and spaces around them. This care would have been reflected in the pride they had for the riches of the country, and the abundance of the natural world around them.

This can be seen when LeClercq complains about his Mi’kma’ki. To his complaints, the Mi’kmaq respond “Thou reproachest us, very inappropriately, that our country is a little hell in contrast with France, which thou comparest to a terrestrial paradise ... I beg thee now to believe ... that we are very content with the little that we have”¹¹². This same

¹¹² Fr. Chrestien Le Clerq, New Relations of Gaspesia: With the Customs and Religion of the Gaspeian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 104.

Mikmaw adds that if France is such a paradise, then why "...venture thyself with such risks, in any season whatsoever, to the storms and tempests of the sea in order to come to a strange and barbarous country which thou considerest the poorest and least fortunate of the world? Besides, since we are wholly convinced of the contrary, we scarcely take the trouble to go to France, because we fear, with good reason, lest we find little satisfaction there, seeing, in our own experience, that those who are natives thereof leave it every year in order to enrich themselves on our shores ..."¹¹³. Clearly, the Mi'kmaq consider Mi'kma'ki to be a great country, and they cannot understand why the French would not agree.

Mi'kmaq respect for the land around them was an extension, then, of Mi'kmaq spirituality, and was also part of the unique Catholicism they practiced. Their attachment to these practices, and to the landscape, is well documented. For example, in response to Major Caulfield's proposal that "they would be left always the liberty of their religion" in his letter of 1715, the Penobscot answer that, "As religion, I will be happy to be left free. I will never change it"¹¹⁴. Father Germain's letter of 26 February 1760 further confirms this. Claiming that the Mi'kmaq had only agreed to peace with the English because the French had abandoned them – due to the fall of Quebec – he claims that the Indians are sincere in their desire for peace "because ... they appear never to want to lose their religion unless in an extremity"¹¹⁵.

¹¹³ Ibid. 104-105.

¹¹⁴ Public Archives of Nova Scotia (Nova Scotia), RG1,6: 19, Answer of the Penobscot, 1714, 86.

¹¹⁵ Archives nationales, Archives des colonies (France), C11A,105: 43r-44r, Germain to Vaudreuil, 1760, 43r-44r.

The Mi'kmaq, for their part, would have understood that their religion was indeed understood and protected. In preparation for the negotiation of the Treaty of 1725, after all, the English had decided to propose that the Mi'kmaq should "According to his Majestys Directions Enjoy the Exercise of their Religion: But Shall not have any other Missionarys amongst them than Such as his Majestys Government Shall approve of ..."¹¹⁶. Indeed, Mascarene's promises of 1725 had contained the assurance that "the Indians Shall not be molested in their persons ... by His Majestys Subjects or their Dependents nor in the Exercise of their Religion provided the Missionaries residing amongst them have Leave from y^e Governour or Commander in Chief ... for So doing"¹¹⁷. To the Mi'kmaq, this would have appeared to affirm and continue the tradition of collaboration between the European Crowns and the Mi'kmaq in ensuring the practice and promotion of Mi'kmaq Catholicism in Mi'kma'ki.

The practices of Mi'kmaq spirituality were the foundations upon which their understanding of the world was built. The spiritual practices held by the Mi'kmaq were validated by the arrival of the first missionaries, and the vision of their connection to Mi'kmaq spirituality. Independent of their attachment to the French Crown, these first missionaries had built the basis for a kind of Mi'kmaq Catholicism which was an extension of the Mi'kmaq creation story. Mi'kmaq Catholicism, founded on their traditional spirituality, ensured protection from the dangerous religions of the French and English Crowns. It guaranteed survival not only for Mi'kmaq spirituality, but also for

¹¹⁶ Archives nationales (Paris), C11D 9: 65, Extraits Des Nouvelles De L'acadie Raportee Par Le Pere Felix Missionaire Recollets De L'acadie, 1724, 106.

¹¹⁷ Public Archives of Nova Scotia (Halifax), RG 1 21: 50-51, Order with Advice and Consent of the Executive Council, October 20, 1743, 1743.

the beliefs which were so fundamental to maintaining the Mi'kmaq nation and the land in which and for which it had a sacred trust.

The Treaty of 1760/61 – Spirituality

As we can see in the discussion above, Mi'kmaq spirituality and religion were foundations upon which the Mi'kmaq nation was built. It is not surprising, therefore, that the Mi'kmaq would have seen spirituality as a fundamental value to be reflected in the Treaty of 1760/61. While we *do not* see religion directly in the text of the Treaty, it is clearly part of the Mi'kmaq understanding in the agreement. They are clear, in the Ceremony at the Governor's Farm, that the liberty to practice their religion is part of their agreement with the English, and therefore part of their responsibilities and rights as a sovereign nation¹¹⁸.

The Mi'kmaq would have been reassured by the Governor's comments at the Ceremony marking the Treaty signing. He assures the signatories that "Your Religion will not be rooted out of this Field (of English liberty). Your Patriarch will still feed and nourish you in this Soil as his Spiritual Children"¹¹⁹. Indeed, it appears that the English will respect Mi'kmaq Catholicism and traditional beliefs, and do nothing to convince them to stray from the "beautiful trail".

¹¹⁸ The religion in question is that in which they have been instructed since their birth. See Public Records Office, Colonial Office (London, U.K.), 217,18: 277r-83r, Governor's Farm Ceremony, 25 June 1761, 1761.

¹¹⁹ Ibid., 184.

This is reinforced in 1763, when the Mi'kmaq Chief Francis Muis of Lahave, goes to the Council at Halifax requesting "that they might have a Priest sent to them, as they had been without one ever since the Death of Mr. Malliard"¹²⁰. The English appear to have a similar understanding of the meaning of the Treaty in regards to freedom of religion. The English assure Chief Muis that the Lieutenant Governor would "endeavour to procure them a Priest, and that as soon as a proper one could be obtained, he should be sent to them"¹²¹.

The Mi'kmaq, despite their initial doubts, also seem to see hope for the English in regards to their spirituality and religion¹²². Indeed, they were ready to accept that the English might be willing to *share* the same faith that they had been practicing since the creation of Mi'kma'ki. It is clear in the reciprocal promises that the Mi'kmaq speaker is using his understanding of Christianity as the measure of English 'success' at being Christians. While the ambiguity created by this statement is left unresolved, it is apparent that the Treaty allowed the Mi'kmaq to see that they had projected and protected their spirituality and religion in their relationship with the English. They had created a new spiritual *space* within which Catholicism and traditional spirituality could co-exist and become inter-woven.

¹²⁰ Public Archives of Nova Scotia (Nova Scotia), RG-1,188: 406-07, Nova Scotia Executive Council Minutes, 1763-08-22, 1763, 407.

¹²¹ Ibid., 407.

¹²² They were very clear that they doubted whether the English were of their faith. See Public Records Office, Colonial Office (London, U.K.), 217,18: 277r-83r, Governor's Farm Ceremony, 25 June 1761, 1761.

Indeed, they had projected and protected both their spiritual traditions, and the Catholicism brought to them by the Holy See through a deliberate effort of syncretism. It is in this way that the Mi'kmaq accepted that Catholicism *shared* a natural place of their own spirituality. Catholicism, in this sense, did not represent a rupture with the past, but a confirmation of the traditions and values of the Mi'kmaq. It was a "beautiful trail" that they had walked during their relationship **with** the French. It was possible, furthermore, that they could continue to walk this "trail" **with** their more recent, English kin. In fact, at least in their discussions of 1760/61, it was obvious that the spiritual traditions and values of the Mi'kmaq were to be respected and protected by the English in the *shared* spiritual *space* which they had created with their 'extended kin'. Arguably, syncretism was an inherent strength of Mi'kmaq spirituality.

The strength of the relationship between spirituality and responsibility for the land was reinforced in the political and legal traditions of the Mi'kmaq. These traditions were central in projecting and protecting these core values in the relationships that the Mi'kmaq formed with other 'kin', including the English. Understanding how the Mi'kmaq structured their political system, the ways in which they practiced diplomacy, and the role and place of Mi'kmaq law in Mi'kma'ki are key to our understanding of the Mi'kmaq worldview projected in the Treaty of 1760/61. As a consequence, we will now turn our attention to this aspect of the Mi'kmaq understanding of the world.

Politics and Law

As a legal and political document, it is evident that the Treaty of 1760/61 will reveal to us a great deal of information about those aspects of the Mi'kmaq worldview. Indeed, we

will learn much about both the internal working of the Mi'kmaq political system and the way in which the Mi'kmaq related to those who arrived on their shores.

*The following Treaties of Peace and Friendship were this Day concluded and Signed by the Honourable Jonathan Belcher Esquire, President of His Majestys Council and Commander in Chief of this Province on behalf of His Majesty, And the **Chiefs of the Tribes of the Mickmack Indians, called Merimichi, Jediack, Pogmouch and Cape Breton Tribes, on behalf of themselves and their people.***

***Treaty of Peace and Friendship** concluded by the Honourable Jonathan Belcher Esq. President of His Majesty's Council and Commander in Chief in and over His Majesty's Province of Nova Scotia or Accadia etc with Claude Atonash Chief of the Jediack Tribe of Indians at Halifax in the Province of Nova Scotia of Acadia.*

Claude Atouach from Shediac

*I Claude Atonash for myself and the Tribe of Jediak Indians **of which I am Chief**, Do acknowledge the jurisdiction and Dominion of His Majesty King George the Third, over the Territories of Nova Scotia or Accadia, and we do make Submission to His Majesty in the most perfect, ample and Solemn manner.*

*And I do promise for **myself and my Tribe that I nor they shall not molest any of His Majesty's Subjects** or their Dependents in their Settlements already made or to be*

hereafter made, or in carrying on their Commerce, or in any thing whatever within this the Province of His said Majesty or elsewhere.

And if any Insult, Robbery or Outrage shall happen to be committed by any of my Tribe, Satisfaction and Restitution shall be made to the person or persons injured.

That neither I nor my Tribe shall in any manner entice any of His said Majesty's Troops or Soldiers to desert, nor in any manner assist in conveying them away, but on the contrary will do our utmost endeavours to bring them back to the Company, Regiment, For or Garrison to which they shall belong.

*That if any Quarrel or Misunderstanding shall happen betwixt myself and the English, or between them and any of my Tribe, **neither I nor they shall take any private Satisfaction or Revenge, but will apply for redress according to the Laws established in his said Majesty's Dominions.***

That all English prisoners made by myself or my Tribe shall be set at Liberty and that we will use our utmost endeavours to prevail on the other Tribes to do the same if any prisoners shall happen to be in their Hands.

*And I do further promise for myself and my Tribe, that we **will not either directly or indirectly assist any of the Enemies of His Most Sacred Majesty King George the Third, his Heirs or Successors, nor hold any manner of Commerce, Traffick, nor***

*intercourse with them; but on the contrary will as much as may in our power **discover and make known to His Majesty's Governor** any ill designs which may be formed or contrived against His Majesty's Subjects.*

*And for the more effectual Security of the due performance of this Treaty and every part thereof, I do promise and Engage that a certain Number of persons of my Tribe which shall not be less in number than Two persons shall on or before the Thirteenth Day of September **reside as Hostages** at Fort Cumberland or at such other place or places in this Province of Nova Scotia or Acadia as shall be appointed for that purpose by His Majesty's Governor of said Province; which Hostages shall be exchanged for a like number of my Tribe when requested.*

*And all these foregoing Articles and every one of them made with the Honourable Jonathan Belcher Esquire President of His Majesty's Council and Commander in Chief of His Majesty's Province or Nova Scotia or Acadia, **I do promise for myself and in behalf of my Tribe** that we will most strictly keep and observe in the most solemn manner.*

In Witness whereof I have hereunto put my Mark at Halifax in Nova Scotia this Twenty fifth Day of June One Thousand Seven Hundred and Sixty one and in the First Year of His Majesty's Reign.

*“You are now Master here; such has been the will of God, He has given you the Dominion of those vast Countries, always crowning your Enterprises with Success. You were, before these Acquisitions, a very great People; but we now acknowledge you to be much more powerfull, tho’ less Great, in the extensiveness of your possessions, **that in the uprightness of your Heart**, whereof you have given us undoubted and repeated proofs, Since the reduction of Canada. You may be confident that the moderations and lenity wherewith we have been treated, has deeply imprinted in our Hearts a becoming sense of gratitude. These good and noble Sentiments of yours, towards us in our distressed and piteous Circumstances have emboldened us to come out of the Woods, our natural Shelter, from whence we had previously resolved not to stir, until the Establishment of Peace between both Crowns, whatever Hardships we might have suffered.”*

*“Your Generous manner, **Your good Heart**, your propensity to Clemency, make us hope that no mention will ever be made of any Hostilities that have been committed by us against you and Yours. The Succours so seasonably given us in our greatest wants and necessities have been so often the Subject of our Thoughts that they have inspired us with the highest Sentiments of gratitude and Affection.”*

Within the category of politics and law, a number of themes become apparent. Broadly speaking, these themes can be grouped under the idea of “political and legal institutions”

– the structures and practices that dictated Mi’kmaq political and legal life. There are a number of sub-themes that are also apparent in the articulations of the Mi’kmaq. The Mi’kmaq place great importance is on the role and importance of chiefs. It is also possible to make extensive observations on the Mi’kmaq practices of diplomacy – both in war and peace.

From the documentation available to us, we can also make observations about the role of trade in diplomacy and its connection to land and hunting, and the significance of law and legal process for the Mi’kmaq. We can also analyze the idea of jurisdiction in politics and law. Based on an analysis of political and legal institutions, diplomacy, trade and law, we can obtain a more complete image of the articulations by the Mi’kmaq with respect to politics and law. We will also get a sense of how the Mi’kmaq built on the natural strengths of their political system in order to build a shared political space which they could share with the French and English. In order to tackle this challenge, it is perhaps best to turn first to the very expansive concept of ‘diplomacy’. To this we can tie the ideas of war, peace, treaties, trade and connection to the land.

Diplomacy

In the earliest of references, we can see that the Mi’kmaq are interested in establishing ‘diplomatic’ relations with the French. Cartier notes in 1534 that he came upon men “who went on shore making a great noise, beckoning unto us that wee should come on land, shewing us certaine skinnes upon pieces of wood ... they seeing us flee, prepared two of their boats to follow us, with which came also five more of them that were comming from the Sea side, all which approached neere unto our boate, dancing, and

making many signes of joy and mirth, as it were desiring our friendship”¹²³. Regardless of their provenance, the Mi’kmaq appear willing to meet and trade with the strange-coloured travelers in their odd-looking boats. This is re-affirmed almost two hundred years later, in 1712 by John Abbett, a petitioner to the Province of New Hampshire. He describes the exchange of goods between an Indian and Benjamin Gatchel at Le Have, thus underlining the common place nature of these exchanges, and the describing the pattern of interaction between the Mi’kmaq and English fishermen.

This first contact of Cartier was a portent of things to come in Aboriginal-European relations. The French and English were clearly reliant on the Aboriginal people in Acadia for assistance in relaying messages to other communities – a task which they readily offered to perform¹²⁴. Aboriginal people also provided information – even on their own settlements. In 1607, Marc Lescarbot recounts that near Canso, he encountered savages: “We gave them food and drink, and while taking this they told us all that had happened in the past year at Port Royal, which was our destination”¹²⁵. The Mi’kmaq, like other Aboriginal peoples in Acadia, were trusted messengers for the Europeans, whose sea routes were often much longer and unsure than the overland routes of the natives¹²⁶.

¹²³ Edmund Goldsmid, ed., The Principal Navigations, Voyages, Traffiques and Discoveries of the English Nations, Collected by Richard Hakluyt, vol. 13 (Edinburgh: E.&G. Goldsmid, 1889), 90.

¹²⁴ Marc Lescarbot, History of New France, trans. W.L. Grant, 3 vols. (Toronto: The Champlain Society, 1907-1914), 310 Speaking of Captain du Pont, who awaited Champlain at Port Royal, “The savages offered to make their way to him through the woods, promising to arrive in six days, and to forewarn him of our coming ...”. This is also evident in the Letters of Joseph Robineau de Villebon, Commandant of Acadia from 1690 – 1700.

¹²⁵ Ibid. 309. Marc Lescarbot (1570 – 1629+) is known as the first historian of Acadia, having authored *Nova Francia: A Description of Acadia, 1606*. A lawyer, Lescarbot traveled to Acadia in 1606-07.

¹²⁶ See also Villebon’s letters to Count de Pontchartrain, Minister of Marine in France. On the 13th of February 1692, he notes, “I wrote my dispatches so that the Indian might be sent back without delay; he set

With the ability of the Aboriginal peoples to traverse the landscape easily, and their knowledge of their neighbours¹²⁷, Aboriginal peoples were recognized for their ability as negotiators. The *Jesuit Relations* of 1645-46 note that Ouandagareau's qualities had caused him to be chosen "with the Captain of Tadoussac and the Captain of the Bay des Chaleurs, as a mediator of the peace between the Bestiamites, who inhabit the lands on the North side ... and the Savages of our coasts and those of Acadia"¹²⁸. It is perhaps this position as mediator that leads the 'Eastern Indians'¹²⁹ to tell the Lieutenant Governor of Massachusetts in 1701, "We thank you that you will give us notice of the likelihood of a War between the French and the English, and we desire to keep our Selves free and not to be under the Command of any party ..."¹³⁰. While the Mi'kmaq were not always willing or able to maintain neutrality in conflicts, they maintained the 'right' to take the position which they felt best served them.

At the end of the signing of a Treaty of Friendship in 1701, a symbolic and fascinating moment is created by the English Lieutenant Governor of Massachusetts. He proposes to

out on the 14th". John Clarence Webster, *Acadia at the End of the Seventeenth Century: Letters, Journals and Memoirs of Joseph Robineau De Villebon, Commandant En Acadie, 1690-1700, and Other Contemporary Documents.*, Monograph Series vol. 1 (St. John, N.B.: The New Brunswick Museum, 1934), 35. MacKenzie's letter to Claude in 1761 also attests to the important role that the Mi'kmaq played in providing information to the English. "I am well pleas'd with the Information you send me as to the Vessels The Acadians are building, and you may be assured, that you will be well Rewarded for any services you do to the English". Public Records Office, War Office (Great Britain), 34,12: 95r-95v, Mackenzie to Claude, 1761, 191v.

¹²⁷ See Villebon to Count de Pontchartrain, Minister of Marine in France. Fort Pontchartrain du Detroit – later known as Detroit - was also named for this Minister.

¹²⁸ Reuben Gold Thwaites, ed., *The Jesuit Relations and Allied Documents*, vol. 30 (New York: Pageant Book Company, 1959), 139.

¹²⁹ 'Eastern Indians' is the term most often used by the officials of New England to refer to the First Nations living to the east and the north of Massachusetts. These were the Abenaki, Passamaquoddy, Maliseet and Mi'kmaq. See William Wicken, *Mi'kmaq Treaties on Trial – History, Land, and Donald Marshall Junior* (Toronto, Ontario: University of Toronto Press, 2002), 75.

¹³⁰ Public Records Office, Colonial Office (Great Britain), 5,862: 101(i), Heads and Propositions, 1701, 3.

his counterparts among the 'Eastern Indians' that "for a perpetual remembrance of our good agreement, each party should raise a heap of stones", to which the Indians respond "We do well agree to it, and we understand it better than Signing of a writing". After this, "... all the Indians and their Children made up their heap in a roundish pyramide..."¹³¹. These two pyramids of stone, erected on the "two Brothers point" are reminiscent of the Kaswentha – the two-row wampum of the Haudenosaunee¹³². They very much symbolize how the Mi'kmaq most likely saw their relationship(s) with the English – as one of two equal nations together on the same piece of land. This nation-to-nation relationship is reinforced through trade, and ultimately reflected in the Treaty of 1760/61¹³³.

The pyramids of stone are but one example of the diplomatic use of mnemonics by the Mi'kmaq. The use of wampum and wampum belts was the most significant tool for communication between nations and communities¹³⁴. There is evidence of this in 1646 during the negotiations between the Bestiamites and the Aboriginal peoples of Acadia – most likely the Mi'kmaq or Malecites. It is also evident in 1701, in discussions between the 'Eastern Indians' and the Government of Massachusetts: "The Indians have sent us to make a path from Merry meeting to thy place and them presented a Belt of Wampum

¹³¹ Ibid., 6.

¹³² Indeed, in 1752, the English respond to the Mi'kmaq proposal for peace by making reference to a chain: "... each one of us will put our Names to the Agreement that shall be made between us and we hope to brighten the Chain in our Hearts and to confirm our Friendship every year". See Public Archives of Nova Scotia (Nova Scotia), RG-1,186: 250-54, Nova Scotia Executive Council Minutes, 1752-11-22, 1752, 218.

¹³³ See Public Archives of Nova Scotia (Nova Scotia), MG-1,258: 86-91, Nova Scotia Executive Council Minutes, 1760-02-18, 1760 as an example. There is also reference in the Treaty to the hedges and walls built around the Mi'kmaq and English laws and rights.

¹³⁴ This is further confirmed by Sebastien Rale in a letter to his brother, 12 October 1723, Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents: Travels and Explorations of the Jesuit Missionaries in New France, 1610-1791 (Cleveland: Burrows, 1897), 67:187.

which he stretched out fairly at length on the Floor saying we have made the path fair and smoothly as thy belt of wampum”¹³⁵. The Penobscot also make reference to their use of Wampum in bringing together the tribes of ‘Eastern Indians’ present at the Boston conference of 1725. In 1751, in an effort to call the Norridgewalk¹³⁶ into conference with the English, the Penobscot offer: “The Belt we will carry again, if the Gentlemen will agree to it. We will strive to get them here”¹³⁷. Reference is also made to the exchange of wampum as a gift during the meeting between the Governor of Massachusetts, the Penobscot, and Norridgewalk Indians in 1738.

One of the most explicit references to wampum is made during ‘St. George’s Conference’. During this meeting, the governments of Massachusetts and Nova Scotia are reaffirming the principles of the Treaty of 1725 with the ‘Eastern Indians’ – including the Penobscot, the Passamaquody, and the Norridgewalks. The commissioners for Nova Scotia and Massachusetts ask, “Why are not the Norridgewocks here, as they were invited by the Belt sent them from this Government”¹³⁸. Even the English have taken up the practice of using wampum belts, and they realize that they are the most effective and appropriate communication tool in their diplomatic efforts with the Aboriginal peoples in Acadia and the northern part of the thirteen colonies.

¹³⁵ Public Records Office, Colonial Office (Great Britain), 5,862: 101(ii), Minutes of the Massachusetts Council, 1701-12-27 to 1701-12-29, 1701. They later continue that “We make the path that we may have new pass Between us to hear how things go ...”.

¹³⁶ The Norridgewalk Abenaki lived along the Kennebec River in Maine.

¹³⁷ James Phinney Baxter, ed., Documentary History of the State of Maine, vol. 13 (Portland, Maine: Fred L. Tower Company, 1916), 418.

¹³⁸ *Ibid.* 415. Note that the belt appears to have gone to the French governor, and that it was actually the Natives that were the messengers of the belt.

It is worth noting that the English were not the only ones to adapt to the different diplomatic process in use. By 1760, the Mi'kmaq had adjusted to the English peace-making process of attending conferences in Halifax – likely one of the few places where the English felt ‘at home’. Traveling this far isolated sachems from their consensual networks – their families and clans – that would normally have been part of the diplomatic process during the times of recess. The Mi'kmaq were not willing to do this without some assistance however, and they applied to the English for support. The Executive Council of Nova Scotia granted food to a group of Mi'kmaq sachems that had come to meet with them in February of 1760. The Mi'kmaq sachems declared that “they left many of their People ... at Jedore, but that the Men were obliged to remain their with their Families, in order to Subsist them by Killing Muce &c., as they had no kind of Provisions: That if the Government would send down Provisions to Support the Women and Children, in the Absence of the Men, They would forthwith come up to conclude a Peace”¹³⁹. By 1760, the Mi'kmaq clearly understand how to secure the necessary support to participate in English-style treaty meetings in Halifax.

It appears that during the 1700s there is a ‘convergence’ of diplomatic practices regarding wampum and treaties. The Penobscot allude to this convergence of wampum and treaties in the process for bringing together the tribes of ‘Eastern Indians’ present at the Boston conference of 1725. These belts, “are lodged with our Chiefs” concludes Loron – speaker for the Indians – “w^{ch} is equivalent to a Writing or Articles under their Hands”¹⁴⁰.

¹³⁹ Public Archives of Nova Scotia (Nova Scotia), RG1,188: 128-32, Nova Scotia Executive Council Minutes, 1760-02-16, 1760, 131.

¹⁴⁰ James Phinney Baxter, ed., Documentary History of the State of Maine, vol. 23 (Portland, Maine: Fred L. Tower, 1916), 188.

In 1752, during a conference to reaffirm the treaty of 1749 with the 'Eastern Indians', the government of Massachusetts also makes this clear: "The Commissioners presented to Louis, a belt of Wampum; and told him to carry that belt to Penobscott, and lodge it with the Treaty; that it was to bind fast together all that had been agreed upon at this conference"¹⁴¹. The same officials also leave the Norridgewalk with a string of Wampum "to draw in all the Tribes of Indians into a general peace with the English"¹⁴².

Evidence suggests that the Aboriginal peoples treating with the English began to see treaties as equal in purpose to wampum belts. Loron, speaker for the Penobscot and Norridgewalk in 1738, addresses concerns regarding the price of Beaver and the cost of goods when trading with the English. He argues that "what makes it Difficult is the Prices of Beaver are not the same now as in Mr. Dummers time. We have brought the Treaties with us as to the Regulations of Trade". Records of this exchange then note that "he exhibits them to his Excellency and Complains they are not observed"¹⁴³. This is done much in the same way that a wampum belt would be laid between two parties, and 'polished' in order to remind the parties of their engagements on a particular issue¹⁴⁴.

¹⁴¹ "Treaty with the Eastern Indians, 1752-10-13 to 1752-10-21," Collections of the Maine Historical Society, vol. 4 (Portland, Maine: Maine Historical Society, 1856), 184.

¹⁴² *Ibid.* 184.

¹⁴³ Public Records Office, Colonial Office (Great Britain), 5,881: 11r-21r, Conference with the Penobscot & Norridgewalk Indians, 1738-06-28 to 1738-07-06, 1738, 18.

¹⁴⁴ Indeed, the Aboriginal use of wampum belts and their 'convergent' meaning with treaties seems to be apparent even as early as 1701. Massachusetts' commissioners report to the 'Eastern Indians' that "there comes new and express orders from our Comon Father the great King William, by which we are commanded to come unto you in the Country to renew & keep fresh in memory the afores^d Treaty as Brethren & Friends to rejoice with you ...". Public Records Office, Colonial Office (Great Britain), 5,862: 101(i), Heads and Propositions, 1701, 1. The use of Wampum is also evident at the Arrowsick Conference of 1717.

The Mi'kmaq, Penobscot and Norridgewalk also actively use the language of diplomacy in their negotiations and discussions with the English. Two types of examples are telling. In 1701, during discussions between the government of Massachusetts and the 'Eastern Indians', the speaker for the Indians declares, "We are much beholding to your Honour for that you have of late considered us, and then Sampson took a pack of Beaver from another Indian held the same in his hand and said, What we now say and do proceeds from our hearts If there should happened to be War between England and France we would have all calm & quiet in this Land. If there should be War between England and France we would not have it affect us Then laid down the pack of Beaver containing ten Skins"¹⁴⁵. This pack of Beaver clearly represents a message to the English by the Mi'kmaq regarding the importance of fair trade, and the desire to continue trade regardless of conflict between the English and French. It serves, therefore, as a symbol of peace and friendship offered by the speaker on behalf of his people.

Later, in 1714, a Norridgewalk speaker is protesting the price of beaver at the truckhouses: "The Indians are very much grieved that the Price of Beaver is so Low that its very Little Worth and Desire the Gov^t to putt forth the Price what it shall be sold at and they will be content". The speaker then "laid down a pack of Beaver saying it was his Letter from the Sagamores that sent him"¹⁴⁶. This pack of beaver can be seen as a symbol to communicate the dissatisfaction of the speaker's tribe with the English and the prices at their truckhouses. As a mnemonic device, it serves to transmit a diplomatic

¹⁴⁵ Public Records Office, Colonial Office (Great Britain), 5,862: 101(ii), Minutes of the Massachusetts Council, 1701-12-27 to 1701-12-29, 1701.

¹⁴⁶ James Phinney Baxter, ed., Documentary History of the State of Maine, vol. 23 (Portland, Maine: Tower, Fred L., 1916), 52.

message to the English – a message from his government to the government of the English regarding the fairness of trade between them.

The second type of example of using the language of diplomacy, which can be seen during the negotiations for the 1725 treaty, arises when the English press to settle the boundaries between Indian and English land. The Indian speaker replies, “We are ready to hear what you have further to say – By what you have said you seem well inclined to Peace. If We should proceed further as to the Boundaries of Lands we should goe beyond our Instructions”¹⁴⁷. In this case, the Indian speaker is evoking a “bundle of words” that was given to him by his people, within which he was to remain during the negotiations¹⁴⁸. To go beyond this “bundle of words” would be to risk credibility in his home community. This is evident even during the discussions at Arrowsick Island in 1717, when the principal speaker for the ‘Eastern Indians’, Wiwurna is replaced by Querebennit “because he had behaved himself [in his demands] so improperly” the day before¹⁴⁹. It is also evoked in 1738 by the Penobscot, where Wiwurna objects to the Governor’s prodding, responding that “I must Speak as the People directed”¹⁵⁰.

¹⁴⁷ James Phinney Baxter, ed., Documentary History of the State of Maine, vol. 23 (Portland, Maine: Fred L. Tower, 1916), 200.

¹⁴⁸ The same concept is repeated in 1752 at the Fort St. George talks between the government of Massachusetts and the Penobscot and Norridgewalk. When the Commissioners ask whether the St. John’s Indians would support the decisions of their spokesperson, he responds, “They ordered me to come here to see, to hear, and to carry back what you said at this Treaty.” “Treaty with the Eastern Indians, 1752-10-13 to 1752-10-21,” Collections of the Maine Historical Society, vol. 4 (Portland, Maine: Maine Historical Society, 1856), 173. Indeed, he is performing the role of carrying a bundle of words back to his people from the English, based on the discussions.

¹⁴⁹ “Proceedings of the Arrowsick Conference,” A Conference of His Excellency the GOVERNOUR, with the Sachems and Chief Men of the Eastern Indians (George Town, Arrowsick Island: Governor’s Printer, Boston, 1717), vol., 10.

¹⁵⁰ Public Records Office, Colonial Office (Great Britain), 5,881: 11r-21r, Conference with the Penobscot & Norridgewalk Indians, 1738-06-28 to 1738-07-06, 1738, 20.

Based on the examples above, there appear to be parallels in the diplomatic process adopted by the Mi'kmaq and the Six-Nations Confederacy of the Haudenosaunee¹⁵¹.

Among the illustrations of this process is the conference at Arrowsick Island in 1717. In this situation, the English arrive at the conference, and are welcomed by the 'Eastern Indians'. After exchanging greetings, the English offer the reasons for their desire to meet. Presents are given to the Indians, who then request leave to consult amongst themselves: "We are not now prepared to answer what your Excellency has said to us; But shall wait on your Excellency again to Morrow"¹⁵². It is only after this time apart that the Indians are prepared to offer a response to the English. This is one example of a pattern that repeats itself through the seventeenth and eighteenth centuries.

The consistent practices of exchange between the Aboriginal peoples of Acadia, and the English and French suggest there was a set protocol for diplomatic exchanges. This protocol is recorded as early as 1616 by Biard¹⁵³, who notes that "they set themselves up for brothers of the King, and it is not expected that they will withdraw in the least from the whole farce. Gifts must be presented and speeches made to them before they condescend to trade: this done, they must have the Tabagie. i.e. the banquet"¹⁵⁴.

¹⁵¹ We might draw this conclusion from General Nicholson's exchange with Querrebuit, a speaker for the 'Eastern Indians' at the Portsmouth Conference of 1714. Nicholson: "As them whether they expect the Ceremony of the Western Indians of Oversetting the Kettle and burying the Hatchet attended with the dance of Peace". Querrebuit: "It is very well soe to doe. All their people use that Ceremony". James Phinney Baxter, ed., Documentary History of the State of Maine, vol. 23 (Portland, Maine: Tower, Fred L., 1916), 71.

¹⁵² "Proceedings of the Arrowsick Conference," A Conference of His Excellency the GOVERNOUR, with the Sachems and Chief Men of the Eastern Indians (George Town, Arrowsick Island: Governor's Printer, Boston, 1717), vol., 5. The Haudenosaunee would refer to this as the "smokey fire" process.

¹⁵³ Pierre Biard. Jesuit missionary, born at Grenoble, France, 1576; died at Avignon, 17 November, 1622. In 1608, he was appointed to take charge of the Jesuit mission to Acadia.

¹⁵⁴ Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents, vol. 30 (New York: Pageant Book Company, 1959), 81.

Although Biard is less than complimentary of the process, he acknowledges it as a necessary part of his exchange with the Aboriginal people.

Despite his scorn, Biard also touches on two important parts of Aboriginal diplomatic process: the use of presents, and trade¹⁵⁵. When Edmond Aitkin was commissioned by the Board of Trade to devise a plan for Anglo-Indian relations in North America in 1755, he astutely noted that, "...Presents, besides those to be delivered from the King at making the new Treaty, be annually distributed by the Commissioners among the Indian Chiefs of each Nation at the Visitations, purchased out of the Provincial Fund. In doing which great regard should be had to their respective importance"¹⁵⁶. Indeed, the English were slow to come to the realization that the exchange of gifts was an important part of diplomatic protocol for Aboriginal peoples in Acadia¹⁵⁷.

The French had long used presents as part of the diplomatic process with the Mi'kmaq, Maliseet and other Aboriginal peoples of Acadia. Cartier may have been the initiator of this process in 1534: "Their boates were about 40, and the persons what with men, women, and children two hundred, which after they had hanted our company a while, they came very familiarly with their boats to the sides of our ships. We gave then knives,

¹⁵⁵ Public Records Office, Colonial Office (Great Britain), 217,9: 63r, Bedford to the Lords of Trade, 1749.

¹⁵⁶ Wilbur R. Jacobs, ed., *The Appalachian Indian Frontier: The Edmond Atkin Plan of 1755* (Lincoln, Nebraska: University of Nebraska Press, 1967), 83. Aitkin was a trader from South Carolina (1720 – 1750) and Member of the Council in South Carolina.

¹⁵⁷ The English had acquired the skill by 1721. In a letter from Versailles to Louisbourg, Sainte-Ovide observes that the Governor of Port Royal "has tried to attract the Mickmack Indians with large quantities of presents and that some young men have taken them". Archives Nationales, Archives des colonies (France), C11B,5: 340r-41r, Conseil De Marine Novembre 1721, 1721, 340r. By 1761, they were clear in their intent to make present-giving a regular part of their diplomatic exchanges with the Mi'kmaq. "He (Governor Cornwallis) will give them presents which shall be renew'd Yearly at a meeting of the Tribes ...". Public Records Office, War Office (Great Britain), 34,12: 106r-08v, Forster to Amherst, 1761.

combes, beads of glasse, and other trifles of small value, for which they made many signes of gladnesse, lifting their hands up to heaven dancing and signing in their boates”¹⁵⁸. In October 1692, Villebon notes that he “addressed them [the Indians at Nashwaak] and then dismissed them until spring, when the Kennebecs are to come to receive the presents sent from by His Majesty. I had also to regale these people and exhort them, after the snow had melted, to join me for an advance into the enemy’s country”¹⁵⁹. These presents were meant to ‘secure to the interest’ of the French the Aboriginal nations which they wished to retain as allies.

This is indeed expressly the intent of Commandant Villebon’s ‘harangue’ to the Kennebecs assembled at Fort St. Joseph on the St. John River on April 27, 1692. “I present you, on his [the King] behalf, the gifts you see which were intended for you; and, as he considers you as those who expose themselves most readily and are continually on the warparth, he has commanded me to deliver them to your leading Chiefs to be distributed among their people, and to the Indians of this region who united with you in making war”¹⁶⁰. Presents are given to those who ally themselves with the King and his purpose, and the French understand that this is expected of them as allies.

The ‘Eastern Indians’ seem to indicate that generosity was one of the expectations they had of their European allies. At the Arrowsick conference in 1717, the Sachems present

¹⁵⁸ Edmund Goldsmid, ed., The Principal Navigations, Voyages, Traffiques and Discoveries of the English Nations, Collected by Richard Hakluyt, vol. 13 (Edinburgh: E.&G. Goldsmid, 1889), 93.

¹⁵⁹ John Clarence Webster, Acadia at the End of the Seventeenth Century: Letters, Journals and Memoirs of Joseph Robineau De Villebon, Commandant En Acadie, 1690-1700, and Other Contemporary Documents., Monograph Series vol. 1 (St. John, N.B.: The New Brunswick Museum, 1934), 33.

¹⁶⁰ *Ibid.* 37.

declare, “Your Excellency was pleased to say that we must be Obedient to KING GEORGE, which we shall if we like the Offers made us”¹⁶¹. This is reinforced in a letter from Lt. Governour Doucett to Colonel Phillips, probably written in early 1718: “...it is Your endeavours to obtain Presents for the Indians. The Chief [of the Malisset] of them being here with me to tell me, that if I expected them to be Our Friends, they expect presents, as was every year made to them by the French King”¹⁶². This would be a natural extension of the belief amongst the Mi’kmaq (for example) that the greatest Chief was the one that distributed goods and presents the most. This concept of the “big hearted” Chief was strong amongst the Mi’kmaq¹⁶³, and they would have had similar expectations of King George who was the Chief of the English. Good leaders, in other words, secured their leadership and the allegiance of others by re-distributing what they had to the point where they had nothing¹⁶⁴.

Marc Lescarbot provides us with a telling example of the practice of present-giving, in his notes of 1607. He writes, “This Membertou told us at our first meeting thither that he wished to make a present to the King of his copper mine, since he saw that we held metals in high regard, and since Sagamores must be honourable and liberal one toward the other ... Now, though the present which he wished to make to his Majesty was a

¹⁶¹ "Proceedings of the Arrowsick Conference," A Conference of His Excellency the GOVERNOUR, with the Sachems and Chief Men of the Eastern Indians (George Town, Arrowsick Island: Governor's Printer, Boston, 1717), vol., 6.

¹⁶² Public Records Office, Colonial Office (Great Britain), 217,2: 237v-38r, Doucett to Phillips, 1719, 1.

¹⁶³ See, for example, LeClercq's explanation of Mi'kmaq hospitality in Fr. Chrestien Le Clerq, New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 245.

¹⁶⁴ Biard notes that the tradition when a Chief visited another Chief was for the visiting Chief give presents to his host, “but it is with the expectation that the host will reciprocate, when the guest comes to depart...” Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents, vol. 30 (New York: Pageant Book Company, 1959), 89.

matter whereof his Majesty takes no heed, nevertheless it came from him with good heart, and should be prized as though the thing itself were of greater value”¹⁶⁵. As Lescarbot underlines, present giving was a practice which the Mi’kmaq saw as key to their relationship building with others.

It was also a key practice in making and keeping memory. As a mnemonic device, presents could represent an event which was important to a particular community. For example, the *Jesuit Relation* of 1668-69 provides a compelling account of the ceremony of “resuscitating a Captain”¹⁶⁶ – of naming a new Captain in the place of the deceased. During this ceremony the proper name of the Captain replaces the name of the person being adopted as the new leader. After the ceremony, in which the old name is conferred onto a new person, he is clothed, and feasted, presents are given. The *Relation* records that “[a]fter the speech, the relatives of the former Captain made the customary presents to all the Nations present ... to make them remember that he who had formerly been called Negaskaouat was now called Teykorimat”¹⁶⁷. Gift giving not only represented exchange, but also the making and keeping of memories within and between nations.

While the exchange of gifts was certainly an expectation of the Mi’kmaq, so too was the establishment of fair trading relations with the English. Indeed, trade was central to relationship-building between the Mi’kmaq and their European allies. This was already

¹⁶⁵ Marc Lescarbot, *History of New France*, trans. W.L. Grant, 3 vols. (Toronto: The Champlain Society, 1907-1914), 355.

¹⁶⁶ The Haudenosaunee have a similar process called the “condoling of a Chief”, in which the old name is passed to a new person.

¹⁶⁷ Reuben Gold Thwaites, ed., *The Jesuit Relations and Allied Documents*, vol. 30 (New York: Pageant Book Company, 1959), 227. The nations assembled were the French, the Algonquins, the Montagnais, the Gaspeziens, the Abnakiouis, the Etechemins, the Poissons blancs, the Nipissiriniens, and the Hurons.

evident in the exchange between Cartier and the Aboriginal peoples he met in 1534: “We being advertised of their coming, went to the point where they were with our boates: but so soone as they saw us, they began to flee, making signes that they came to trafique with us, shewing us, such skinnes as they cloth themselves withall ...they also came on land, and brought some of their skinnes, and so began to deale with us, seeming to be very glad to have our iron and other things ...”¹⁶⁸.

There are many references to the importance of trade in relations between the English and the ‘Eastern Indians’. This is certainly underlined in the comments by Governor Dudley of Massachusetts in 1714, when he observes that he would be “wanting in my Duty to her Majesty & all her good Subjects in these Province; if I should not earnestly advise that the Trade & Commerce with them be forthwith established & carried on with them by approved Agents & Factors at the publick Charge”¹⁶⁹. The consequences of not establishing trade with the Indians is clear to Governor Dudley: “No Trade with them will forthwith End in a Rupture & the Indians deserting us & Going entirely over to the French”¹⁷⁰.

The Executive Council of Nova Scotia came to the same conclusion one year later.

William Shirreff, Secretary to the Executive Council of Nova Scotia, notes in a letter to the Board of Trade that the unreasonable prices imposed by private traders in Boston

¹⁶⁸ Edmund Goldsmid, ed., The Principal Navigations, Voyages, Traffiques and Discoveries of the English Nations, Collected by Richard Hakluyt, vol. 13 (Edinburgh: E.&G. Goldsmid, 1889), 90. Note that they were so keen to trade that they gave everything to the French to the point that they were naked. They promised to return the day after to continue trading with the French.

¹⁶⁹ Massachusetts General Court Records (Massachusetts), 9: 373-75, Massachusetts General Court Minutes, 1714-05-27, 1714, 375.

¹⁷⁰ *Ibid.*, 375.

“hath Caused of Indians as also Most part of the Inhabitants frequently Complain and Retire from Thence with their furs and other Marchandize to Cape Breton”¹⁷¹.

Lieutenant Governor Thomas Caulfield reinforces Shirreff’s message, observing that, “The Penobscot, St. John’s and Cape Sables Indians trade chiefly along their several coasts with fur and feathers, but never come here (Annapolis Royal) except when driven by necessity, alleging as their reason that there are no king’s magazines here, as in the time of the French and as there is now at Cape Breton. Believes it would be of great advantage to establish such a magazine not only for the sake of trade, but as a means of winning the Indians to the British interest ‘by kindly using of them, on w^{ch} formation of their friendship is wholly founded’”¹⁷².

The importance of trade is apparent in the treaties of 1725, 1749 and 1760/61. What is particularly of interest in these references is the importance of government-run trading posts – referred to as truckhouses. Again, the French acknowledged the importance of trade conducted by the government as early as at 1654, in King Louis’ letters patent to Nicolas Denys as Governor and Lieutenant General in Canada: “We make very express prohibition and refusal to all merchants, masters and captains of vessels, and other of our native subjects of the said country, of whatsoever state or condition they may be, to carry on the fur trade with the Indians of the said country ... without his express leave and permission...”¹⁷³.

¹⁷¹ Public Records Office, Colonial Office (Great Britain), 217,1: 120: 329r-29v, Shirreff to Lords of Trade, 1715, 329.

¹⁷² Public Archives of Nova Scotia (Halifax, Nova Scotia), RG 1,15, Caulfield to Board of Trade, 1715-11-01, 1715.

¹⁷³ Nicholas Denys, The Description and Natural History of the Coasts of North America (Acadia), ed. W.F. Ganong (Toronto: 1908), 66.

In what is likely one of the first treaties registered with the Board of Trade by the Government of Massachusetts, in 1693, the Governor declares that “all Trade and Commerce which hereafter may be allowed betwixt the English and Indians shall be under such management and Regulations as may be Stated by an Act of the General Assembly, or as the Governour of s^d Province for the time being with the advice and consent of the Council shall see cause to direct and limit”¹⁷⁴. It is clear that the English feel it is best to have trade with the Indians managed by the government.

The Massachusetts General Court minutes of February 10, 1714 confirm, in fact, that both sides prefer this. “Since w^{ch} Time we have been visited by the Principal of the sev^{ll}. Tribes; And all their Errands & Desire & just Expectations is of an established Trade at certain Places near them, Where all Prices may be regulated & sett”. While it is clear that this arrangement is to the liking of the Aboriginal people, it is also much to the advantage of the English, who are concerned regarding the behaviour of their Indian allies when they are in English settlements. “It is now Demonstration to us by a late Instance, that the Stragling of the Indians amongst our People is certain to End in Drunkenness, & Quarelling which will bring a new War if not prevented by a distant Trade in the Frontiers, Where your Officers & Truckmasters may answer for such Disorder”¹⁷⁵.

What is important in all of these instances is that both Aboriginal peoples and the English wanted a government to government trading relationship. Both the English and the

¹⁷⁴ Public Records Office, Colonial Office (Great Britain), 5,751: 64r-65r, Treaty of 1693, 1693, 74 v.

¹⁷⁵ Massachussets General Court Records (Massachusetts),9: 345-47, Massachusetts General Court Minutes, 1714-02-10, 1714, 346.

Aboriginal peoples tied trading to diplomacy and the 'health of their relationship'. There is also ample evidence that the Mi'kmaq are willing to use trade to subvert their relationship with the English and the French. Despite French laws to the contrary, in 1672, Nicolas Denys finds a location where clandestine trade is occurring. He notes, "... there occurs a river by which the Indians come in canoes in the spring to bring their furs secretly to the fishermen, to whom this is not permitted, but who nevertheless give them tobacco and brandy in exchange"¹⁷⁶. This appears to confirm that the Mi'kmaq are willing to use trade to exert their autonomy both as a condition of alliance and as a disruption of alliance¹⁷⁷.

Trade had become such an important means of communication and contact between the Europeans and the Aboriginal peoples of Acadia, that Captain MacKenzie's letter of March 3, 1762 to Governor Jeffrey Amherst focuses almost solely on the trade concerns they had with the French and the Indians. By this time, trade has become the sole lens through which the relationship with the English is viewed by the Aboriginal inhabitants of Nova Scotia. Indeed, the trading relationship between the Mi'kmaq and the English – and the continued trade between the Mi'kmaq and French – represents a governance structure which paralleled the political relationship between the nations¹⁷⁸.

¹⁷⁶ Nicholas Denys, *The Description and Natural History of the Coasts of North America (Acadia)*, ed. W.F. Ganong (Toronto: 1908), 172.

¹⁷⁷ This is also evident in Shirreff's correspondence to the Board of Trade in 1715. Public Records Office, Colonial Office (Great Britain), 217,1: 120: 329r-29v, Shirreff to Lords of Trade, 1715.

¹⁷⁸ This is further complicated by the fact that the French continue to try to keep the Mi'kmaq in their 'interest' after the fall of Louisbourg. Thomas Fortye and David Allgeo report to Governor Amherst in July 1762, that the Merchants of Quebec are still trading with the Mi'kmaq – or so claims a Chief they meet. "He further informs us that the Merchants of Quebec have Supplied them with all kinds of Necessary's and that they Treat for all their Pelleteries &ca". See "Mackenzie À Amherst," *Les Cahiers Société Historique Acadienne* 3.avril-juin (1970), 317.

Trade, then, serves as a counterpart to the treated relations between the English and the Mi'kmaq. Lieutenant Governor Belcher signals the importance of the relationship between trade and diplomacy in his message to the Council and House of Representatives of Nova Scotia in 1762. Only two years after the signing of the Treaty of 1760/61, Belcher notes that, "the principal Complaints, and many Breaches of Treaties ... having most frequently arisen from impositions in Commerce, it may be highly worthy our Consideration by what methods we may best secure this Trade from Abuse and Frauds ..."¹⁷⁹. The treaties are, of course, more than simply expressions of the trading relationship between the Mi'kmaq and the English. They also establish the bonds and responsibilities of each partner in the relationship to the other.

These treaties serve two roles here. The first, and less significant – in this context – is the fact that the treaties represent a political relationship between the English and the Mi'kmaq. The importance of these treaties is underlined by Governor Dudley in 1714. "Gentlemen, at your last Meeting I Laid before you the Articles of Pacification with the sev^{ll} Tribes of 'Eastern Indians' ... The Principal Article whereof is The Restoring those Indians to a true & certain Friendship & Confederacy with us ..."¹⁸⁰. Governor Belcher of Nova Scotia echoes these same sentiments in 1762: "As it is of no inconsiderable importance to the Province and its rising Settlements, that Treaties of Peace have been concluded between His Majesty's Government and Every District of the Tribe of Indians amongst us, So you will readily judge with me, that every reasonable Method ought to be

¹⁷⁹ Public Records Office, Colonial Office (Great Britain), 217,19: 31r-31v, Belcher's Message to Council and Assembly, 1762, 31.

¹⁸⁰ Massachusetts General Court Records (Massachusetts),9: 345-47, Massachusetts General Court Minutes, 1714-02-10, 1714, 346.

purposed for preserving this Peace inviolate, and fixing their Affections and Attachments, from the Sense and experiences of Protection, Integrity & Friendship”¹⁸¹.

As noted earlier, part of the significance of these treaties for the English lay in their desire to maintain a balance of power in the region. Unlike the French, which the English had deported in 1755 in order to restore this balance, the Mi’kmaq were clearly a ‘fixture’ of the landscape that the English would have to reckon with before the secured final control over the whole of Acadia. From the early 1690s, through to the signing of the Treaty of 1760/61, the English were in a constant process of the renewing, renegotiating and restoring treaty-based relationships with the ‘Eastern Indians’ – Mi’kmaq, Penobscot, Norridgewalk etc. Treaties are discussed throughout this period, and rise to the level of regional significance in 1725, 1749, and 1760.

The second, and most important meaning of treaties for our purposes here, is the ways in which the Mi’kmaq remembered and kept the treaties for their people. There are two principal ways in which this manifests itself – at the individual and at the collective level. We are given the first example of this in 1607 by Lescarbot. He meets a Mi’kmaq Sagamore, named “Membertou”, who appears to retain an important role like that of a Captain amongst the Mi’kmaq. Lescarbot notes, “This Sagamos is already a man of great age, and saw Captain Jacques Cartier in that country, being already at that time a married man and the father of a family”¹⁸². This Sagamore later recounts to Lescarbot the

¹⁸¹ Public Records Office, Colonial Office (Great Britain), 217,19: 31r-31v, Belcher’s Message to Council and Assembly, 1762, 31.

¹⁸² Marc Lescarbot, *History of New France*, trans. W.L. Grant, 3 vols. (Toronto: The Champlain Society, 1907-1914), 354.

importance of his relationship to the French¹⁸³. At the level of personal relations, then, the Mi'kmaq Sagamores retain the memory¹⁸⁴ of meetings with the French, and are the 'keepers' of the relationship.

At the community or national level, this kind of institutional memory is also quite evident. At the Boston conference in 1714, for example, the speaker for the Penobscot declares, "I have something to repeat of the Passage when the Indians last waited on yo^r Ex^{cy} at Piscatqua¹⁸⁵. The Indians do not understand why when there has been so long Peace there has been no more correspondence wth us. We are very desired that Friendship should be reposed for Ever betwixt us and the English as was in our Grand Fathers Days..."¹⁸⁶. There is evidence here of both institutional memory and a system to monitor English diplomatic initiatives to the Penobscot. These functions were evidently part of the governance structures of Eastern Indian peoples, and formed part of their own self awareness.

This is also reinforced in 1752, during the reaffirmation of the Treaty of 1749 by the Penobscot, Norridgewalk and English. Both of the Aboriginal nations make references to

¹⁸³ Lescarbot later recounts the story of a medicine man he meets near the mouth of the St. John River, who claims that "before two years' time either they (the Aboriginal people) must kill off the Normans, or the Normans them." Lescarbot indicates that "we laughed at him, and told him that we were going to bring our long-boat opposite their fort to them one and all to sack" ...see Ibid. 357.

¹⁸⁴ Biard makes mention of the prodigious memory of the 'savages' in 1616: "They have a very good memory for material things, such as having seen you before, of the peculiarities of a place where they may have been, of what took place in their presence twenty or thirty years before, etc;". Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents, vol. 30 (New York: Pageant Book Company, 1959), 73.

¹⁸⁵ Massachusetts Archives (Massachusetts), 30: 439-42, Renewed Submission of the Eastern Indians, 1699.

¹⁸⁶ James Phinney Baxter, ed., Documentary History of the State of Maine, vol. 23 (Portland, Maine: Tower, Fred L., 1916), 52.

the promises of 'Mr. Dummer's Treaty'¹⁸⁷, particularly in reference to the use of the land by the English. As they note at several points in the conversation, "we again say, that we will follow Mr. Dummer's Treaty"¹⁸⁸, reinforcing the continuity of political memory between 1725 and 1752¹⁸⁹. This point is made clearer later in the negotiations when the English offer to read the articles of 1749 to the Penobscot and Norridgewalk, to which they reply, "There is no need of it; we remember it well"¹⁹⁰. Even though a relatively short period of time has elapsed between the Treaty of 1749 and these discussions, the oral nature of Aboriginal society is underlined, as is their capacity to remember and recall the different elements of the Treaty.

If the memory and remembering of treaties and relations with the English by the Mi'kmaq are clear, it is because the system and organization of Sagamores and clans is strong. Biard gives us the first detailed account of the role and character of the Sagamore within the society of the 'savages'. He describes the political organization of the various communities, the role of the Sagamore, the division of 'land area' according to river, and the consensual nature of decision-making amongst the Aboriginal peoples. It is clear

¹⁸⁷ The treaty signed in 1725. During discussions the summer prior, Loron, spokesperson for the Penobscot states clearly that "Gov^r Dummer's treaty says we shan't loose a Foot of Ground". See James Phinney Baxter, ed., Documentary History of the State of Maine, vol. 13 (Portland, Maine: Fred L. Tower Company, 1916), 416. The English appear not to have this capacity, as their response to Loron is "Our Governour knows nothing of this matter, but we will inform him of it". James Phinney Baxter, ed., Documentary History of the State of Maine, vol. 13 (Portland, Maine: Fred L. Tower Company, 1916), 416. The other explanation for this response is the difference between the oral understandings of the treaty by the Penobscot and the written understanding of the English.

¹⁸⁸ "Treaty with the Eastern Indians, 1752-10-13 to 1752-10-21," Collections of the Maine Historical Society, vol. 4 (Portland, Maine: Maine Historical Society, 1856), 174.

¹⁸⁹ There is also reference by the Penobscot to the Treaty of 1725 during their meetings with the English in 1736. "Our respect to Love & peace is so great, that we are loath to break friendship tho we ourselves are broak in upon". James Phinney Baxter, ed., Documentary History of the State of Maine, vol. 23 (Portland, Maine: Tower, Fred L., 1916), 237.

¹⁹⁰ "Treaty with the Eastern Indians, 1752-10-13 to 1752-10-21," Collections of the Maine Historical Society, vol. 4 (Portland, Maine: Maine Historical Society, 1856), 176.

from Biard's *Relation* that the Aboriginal peoples he encounters are well organized, have clearly defined roles with respect to leadership, and follow these rules to the benefit of social harmony and balance¹⁹¹. This harmony and balance is kept by the Sagamores in resolving small conflicts¹⁹² and in assigning hunting grounds to ensure that all of their community members have food and clothing to survive¹⁹³.

The role of the Sagamore in seeking consensus is still evident in 1714 at the Portsmouth Conference. Querrebuit states that, "they had a Council among themselves before they came hither otherwise they had not been here and they speak the minds of their people"¹⁹⁴. In the negotiations leading to the Treaty of 1725, the ability of Sagamores and communities to organize is evident. In this longer excerpt from the Boston Conference, Loron – acting as speaker for the 'Eastern Indians' – makes clear the extent and nature of this process. He specifies that a number of tribes were represented at the conference, and, "not only those Tribes but the Eastern Tribes so far as Cape Sables have join'd with us in this affair, And all these Tribes have left it to us to act for them in a Treaty of Peace". The process leading to this collaboration was initiated by the Penobscot who, "sent Belts to those Tribes, & they sent their Belts to the Penobscot Tribe

¹⁹¹ He notes the great "respect and love among them; which was a great grief to us when we turned our eyes upon our own shortcomings". "Treaty of St-Germain-En-Laye, 1632-03-29," Mémoires Des Commissaires De Sa Majesté Très-Chrétienne Et De Ceux De Sa Majesté Britannique, vol. 2 (Amsterdam and Leipzig: 1755), 93.

¹⁹² Ibid. 93. For other insight into the brokering skills of the Sagamore, see Father LeJeune's account in Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents: Travels and Explorations of the Jesuit Missionaries in New France, 1610-1791 (Cleveland: Burrows, 1897), 6:243.

¹⁹³ Fr. Chrestien Le Clerq, New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 235.

¹⁹⁴ James Phinney Baxter, ed., Documentary History of the State of Maine, vol. 23 (Portland, Maine: Tower, Fred L., 1916), 71.

for a Confirmation of their Agreeing to what shall be Concluded, w^{ch} Belts are lodged with our Chiefs...¹⁹⁵.

This level of coordination among communities and Chiefs is also evident at the 1752 conference at St. George's Fort¹⁹⁶. Quinoius, speaker for the Norridgewalk, confirms that there had been extensive consultation in their communities before they had come to meet with the English: "We had a meeting in great Council some time ago, and our brethren, the Indians of our Tribe, advised us to come here"¹⁹⁷. Indeed, the conference at St. George's Fort was, as mentioned above, a demonstration of many of the institutional capacities of the Mi'kmaq and the 'Eastern Indians'.

One of the institutional characteristics highlighted in 1752 is the consensual nature of Aboriginal treaty-making. This is underlined in the Diary of Sergeant John Burrell, an English soldier in Nova Scotia. In May of 1760, he makes the following entries: "Sunday ye 18th ye Indian King maid grate Pease... Friday ye 30 more Indians for pease... Monday ye 2d [June] a Grate number of Indians came in from Passamaquody... Saturday ye 28th ye Grate King of ye Indians Came into ye Garrison for to make a Grate peace with ye English"¹⁹⁸. The making of treaties with the Aboriginal peoples required many

¹⁹⁵ James Phinney Baxter, ed., Documentary History of the State of Maine, vol. 23 (Portland, Maine: Fred L. Tower, 1916), 188.

¹⁹⁶ The English are 'sensitive' to this as early as 1714. In the records of the Portsmouth Conference, Governor Dudley announces, "You are all sensible of our Errand hither and that wee are in some danger of a General Combination of the Indians throughout the Continent against us ...". James Phinney Baxter, ed., Documentary History of the State of Maine, vol. 23 (Portland, Maine: Tower, Fred L., 1916), 65.

¹⁹⁷ "Treaty with the Eastern Indians, 1752-10-13 to 1752-10-21," Collections of the Maine Historical Society, vol. 4 (Portland, Maine: Maine Historical Society, 1856), 172.

¹⁹⁸ Sergeant John Burrell, "Diary of Sergeant John Burrell, 1759-05-09 to 1760-11-30," Acadiensis 5 (1905), 293.

participants over a period of time¹⁹⁹. This also underlines the diffusion of decision-making power amongst the Mi'kmaq and the Passamaquody (Maliseet) peoples.

This is also underlined by Colonel Frye's letter the Governor of Nova Scotia, dated March 7, 1760. In his letter, he details his discussions with the French priest, Mr. Manach and the Indians he is bringing to Frye for peace negotiations: "I have likewise received the submission of two other chiefs...; and was in hopes (which I mentioned to Mr. Manach) I had no more treaties to make with savages. But he told me I was mistaken, for there would be a great many more here upon the same business, as soon as their spring hunting was over; and upon my enquiring how many, he gave a list of 14 chiefs ... they were all of one nation, and known by the name of *Micmacks*; that they were very numerous, amounting to near *three thousand souls*..."²⁰⁰.

The same is true, of course, for the making of war. There are three instances of war which interest us here – two by the Mi'kmaq and one by the English. The first, in 1715, amounts to little more than the commencement of hostilities by the Mi'kmaq against the English. This is recounted by Mr. Peter Capon who is commissioned by Major Thomas Caulfield, Lt. Governor at Annapolis Royal to investigate the seizure of English vessels by the Indians. In his diary of August 31, 1715, he writes at length: "To Pubmacoup where went ashore & made inquiry about y^c Sloops y^c Indians had taken from y^c

¹⁹⁹ This is recognized as early as 1616 by Biard in his description of the role of the Sagamore. "It is principally in the Summer that they pay visits and hold their State Councils; I mean that several Sagamores come together and consult among themselves about peace and war, treaties of friendship and treaties for the common good". Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents, vol. 30 (New York: Pageant Book Company, 1959), 89.

²⁰⁰ "Indians in Acadie, 1760," Collections of the Massachusetts Historical Society, vol. 10 (New York: Johnson Reprint Corporation, 1809), 115.

fishermen and was told y^t y^e 2 Sloops y^t came from Boston to See after their fishing Sloops, to one Sloop along with them, and y^e [?] Indians had returned before The Inhabitants Said y^e Reason y^e caused y^e Indians to seize the Vessells was, that Some of y^e fisherment had [?]y^e Indians, that their were great Tumults in Great Brittain, and Warr expected to be proclaimed Speedily [?] which y^e Indians resolved to begin first²⁰¹.

In response to this kind of attack and seizure, the English 'return the favour' of declaring war on the Mi'kmaq in 1722. While the details of this declaration are of less interest here, the fact of the declaration is in itself interesting. Indeed, it does acknowledge a certain sense of cohesion and concerted effort amongst the Mi'kmaq who had recently made overtures of peace to the English. These Mi'kmaq have "since that, without any Cause of Offence given; treacherously and basely made an unjust, barbarous and unexpected War upon his Majesty's Subjects"²⁰². The English recognize the ability of the Mi'kmaq to act as one nation in their declaration of war, and acknowledge a political and military capacity/organization within Mi'kmaq society.

If the English had any lingering doubts regarding the ability of the Mi'kmaq to act as one, these were settled in 1749 with their apparent declaration of war against the English²⁰³. Recorded by l'abbé Maillard on behalf of the Mi'kmaq of Cape Breton and Antigonish, this declaration shows a concerted reflection on the grievances of the Mi'kmaq against

²⁰¹ Massachusetts State Archives (Massachusetts),38A: 11-15, A Journall of a Voyage to Cape Britton, 1715, 11.

²⁰² "Treaty, Annapolis Royal, 1723," New England Courant Jan. 7, 1723 1723.

²⁰³ Public Records Office, Colonial Office (London, UK), 217,9: 116r-16v, Mi'kmaq of Cape Breton and Antigonish to Cornwallis, 1749. As discussed earlier, the Mi'kmaq did not intend this as a declaration of war, but as a letter of protest.

the English. While its content is undoubtedly influenced by the translation and transcription of the French Jesuit Maillard, it is nonetheless an indication of the institutional capacity of the Mi'kmaq to act as a nation. This act goes to the heart of the consensual nature of political decision-making in the Mi'kmaq polity.

As the Mi'kmaq asserted the consensual nature of polity through their treaty- and war-making, they also alluded to the social dimensions of the relationships they understood themselves to be building through these treaties. References to family and clan structures are constant in the language of the First Nations of Acadia. Although the French and English shared a common 'familial' vocabulary with the Mi'kmaq, their use of the language was very different. The reference to 'Our King, the Father' for the English evoked concepts of social hierarchy that placed the King at the head of the family, responsible for decision-making and care of those underneath him. For the Mi'kmaq, a 'Father' was someone who had responsibility to look after those in his care, but who did not have decision-making power. An 'Uncle' or 'Elder Brother' would have evoked, for the Mi'kmaq, a person with decision-making authority.

This is corroborated by the Kennebec in their response to Commandant Villebon's 'harangue' of April 27, 1692: "... as we had not been able to engage in war all summer, we were resolved to make a great expedition over the snow so that thou shouldst know that when we came here this spring, as thou hast bidden us do, it was our desire to give quarter to the English. We now have more strength than we need, since our great Father

is thinking of us; and all thy nephews will show thee this summer that they are men”²⁰⁴.

Here, the Kennebec make reference to the French King’s ability to command his troops to support their efforts against the English. While the King is a ‘great Father’ to the Kennebec, he is clearly an ‘Uncle’ to his troops whom he can direct.

The importance of ‘clan language’ is also in the forefront during the conference between the ‘Eastern Indians’ and the Commissioners for the Province of Massachusetts in 1701. In response to the Kings’ offer of protection, the Indians respond, “In case any Nation should make War upon us we do not desire that our Uncle King William (which Title we esteem equal to Father) should loose any men on our account until we have tried what we can do for our own defence”²⁰⁵. The importance of this language is sustained by Lescarbot’s notes of 1607 regarding his meeting with Membertou, a well-respected Sagamore. After his offer of a present to the King, he notes that, “... he considers himself the equal of the King and of all his lieutenants, and often said to M. de Poutrincourt²⁰⁶ that he was his great friend, brother, companion, and equal, showing this equality by joining together the fingers of each hand which we call the index or pointing finger.”²⁰⁷

²⁰⁴ John Clarence Webster, Acadia at the End of the Seventeenth Century: Letters, Journals and Memoirs of Joseph Robineau De Villebon, Commandant En Acadie, 1690-1700, and Other Contemporary Documents., Monograph Series vol. 1 (St. John, N.B.: The New Brunswick Museum, 1934), 37.

²⁰⁵ Public Records Office, Colonial Office (Great Britain), 5,862: 101(i), Heads and Propositions, 1701, 298. This response is also interesting in that it illustrates an insistence on the part of Membertou, that they maintain the right to defend themselves in the case of conflict.

²⁰⁶ Jean de Biencourt, Seigneur de Poutrincourt (1557-1615). Poutrincourt was one of the founders of Port Royal, and Lord of Acadia.

²⁰⁷ Marc Lescarbot, History of New France, trans. W.L. Grant, 3 vols. (Toronto: The Champlain Society, 1907-1914), 355.

Finally, in 1761, at the signing of the Treaty with the Mi'kmaq of Chignecto, Chief Joseph Argimant indicates that his submission to the King of England "was not made by Compulsion, but that it was free and voluntary and with his whole Heart, and that he should always esteem King George the Third as his good Father and Protector"²⁰⁸.

Although it is less clear what Argimant meant in his 'submission'²⁰⁹, it is clear that he sees a clan-like relationship with the King²¹⁰, where the King has responsibilities to him without decision-making power over him.

The other elements of Mi'kmaq polity which can be drawn from references to Chiefs and their organization are jurisdiction and connection to the land. There is, in other words, a connection between the landscape of Acadia, and the use thereof by the Mi'kmaq, that manifests itself in the participation of Chiefs in the diplomatic process with the French and English. There are two principal ways in which this manifests itself. The first is connection between the Chiefs, the land and their jurisdictions. Although the French and English misinterpreted the meaning of this connection, they did draw attention to it in their writings. Biard, for example, notes that the "Sagamies divide up the country and are

²⁰⁸ Public Archives of Nova Scotia (Nova Scotia), RG1,188, Nova Scotia Executive Council Minutes, 1761-07-08, 1761, 255.

²⁰⁹ Governor Lawrence offers his understanding of the intentions of the Mi'kmaq overtures of 'submission' as being inclined towards establishing a "lasting friendship and intercourse". See Public Archives of Nova Scotia (Nova Scotia), MG-1,258: 86-91, Nova Scotia Executive Council Minutes, 1760-02-18, 1760, 87. This is certainly reinforced by the Lords of Trade's letter to the King of November 2, 1761. In a draft of instructions to the Governors of Nova Scotia, New Hampshire, New York etc., it is noted that the peace and security of English North America "does greatly depend on the Amity and Alliance of the several Nations or Tribes of Indians bordering upon said colonies". See E.B. O'Callaghan, ed., Documents Relative to the Colonial History of the State of New-York, vol. 7 (Albany, N.Y.: Weed, Parsons, 1856), 478. It is also possible to interpret this as meaning 'submission' in the same way that one would submit to the authority of a Chief. The submission was good in as much as it secured affiliation which was maintained through presents.

²¹⁰ See also Doucett's letter to Colonel Philips where the Maliseet had indicated that, "they should not only be good Subjects to King George, but esteem him as their Father". Public Records Office, Colonial Office (Great Britain), 217,2: 237v-38r, Doucett to Phillips, 1719, 1.

nearly always arranged according to bays or rivers”²¹¹. This organization is echoed in the Province of Massachusetts, and recorded in the 1697 ‘renewed Submission of the Eastern Indians’. The minutes record that the Sagamores present “...Did, then and their by their Submissions and Agreements under their hands and Seals for themselves and each of them respectively and in the name and ye free consent of all the Indians belonging to the Several Rivers ...”²¹².

This understanding of ‘First Nation geography’ is adopted by the English as their principal means in identifying the nations with whom they are treating. In 1714, the Governor of Massachusetts and New Hampshire, Joseph Dudley, records attendance at the meeting in this manner: “I shall now proceed”, he declares, “to take your names & number with the Rivers you belong to, that I may know to whom I speak ...”²¹³. It is possible that the English may have misunderstood the political geography of Acadia by superimposing land use on political jurisdictions as way of understanding the authority and decision-making of First Nations chiefs. Regardless, they did recognize that political jurisdictions were tied to land use – through residence, hunting and planting²¹⁴.

²¹¹ Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents, vol. 30 (New York: Pageant Book Company, 1959), 89.

²¹² Massachusetts Archives (Massachusetts), 30: 439-42, Renewed Submission of the Eastern Indians, 1699, 439.

²¹³ James Phinney Baxter, ed., Documentary History of the State of Maine, vol. 23 (Portland, Maine: Tower, Fred L., 1916), 66.

²¹⁴ There appears to be an oblique allusion to this connection in 1726, during the ratification of the Treaty of 1725 by other First Nations. In the clause referring to the molestation of Indians, “planting on their planting Ground” is added to the list of the activities in which they will be protected. This is a slight alteration from the original text of the Treaty, perhaps reflecting the particular geographical preoccupations of the signatories. See Public Records Office, Colonial Office (Great Britain), 217,4: 321, Doucet's Promises, 1726, 821.

There is also evidence that links season, land use and diplomacy together. Commandant Villebon's letters offer several instances in which this connection is made. He notes that in December 1691, he "had frequent visits from the Indians of the neighborhood until the snow was firm enough for them to take to the woods for their hunting"²¹⁵. The season – or changes in the natural landscape – provide a framework within which meetings can happen and relationships can be built. The same notion is underlined by the Kennebec, who indicate to Villebon that "We should have assembled here last autumn after the receipt of thy letter, if the season had not be so severe. This was one reason which prevented us ..."²¹⁶.

While the weather and climactic change did place restrictions on diplomatic exchange, human activity – hunting, fishing and planting – also had an influence on all nature of diplomacy. The clearest example of this follows from the exchange between Villebon and the Kennebec. After exhorting the Kennebec to follow him in 'war' against the English, Villebon sets a meeting date and place to begin the campaign: "All the others went overland to Pentagoet after I set the rendezvous at Pentagoet for May 25th because they wished to sow their crops before going to war"²¹⁷. This is an equal concern in 1760, when several delegates to the conference between the English and the Mi'kmaq were held up because the men were occupied with subsistence practices – hunting moose.

²¹⁵ John Clarence Webster, Acadia at the End of the Seventeenth Century: Letters, Journals and Memoirs of Joseph Robineau De Villebon, Commandant En Acadie, 1690-1700, and Other Contemporary Documents., Monograph Series vol. 1 (St. John, N.B.: The New Brunswick Museum, 1934), 34.

²¹⁶ Ibid. 37.

²¹⁷ Ibid. 37.

They could not reach Halifax unless provisions were sent to their families in order to provide for their families during their absence²¹⁸.

Geography, land use and the environment all have an impact on the 'performance of political activities' by the Mi'kmaq and the other First Nations of Acadia and New England. Indeed, it is crucial to underline the importance of the landscape to the political aspects of Mi'kmaq life and society. Communication, negotiations and decision-making are all influenced by the environment, human activities within the ecosystem, and the geography of Acadia.

One final area that is a constant reference of the Mi'kmaq and other First Nations of the Acadia is that of 'hostages'. The exchange of hostages is a feature of diplomacy from the earliest treaties of the Abenaki with the Province of Massachusetts²¹⁹, through to the Treaty of 1760/61 with the Mi'kmaq. In 1693, the hostage protocol was clear. A number of Abenaki are "to abide and remain in the custody of the English, where the Governour shall direct as Hostages of Pledges for our fidelity and true performance of all and every the foregoing articles reserving liberty to exchange them in some reasonable time for a like number, to the acceptance of the Governour and Council of sd Province so as they be persons of as good account and Esteeme amongst the Indians as those which are to be exchanged"²²⁰. While part of the reason for the exchange of hostages is to secure 'true

²¹⁸ See Public Archives of Nova Scotia (Nova Scotia), RG1,188: 128-32, Nova Scotia Executive Council Minutes, 1760-02-16, 1760, 131.

²¹⁹ Indeed, there had been a long standing practice between the Mi'kmaq and the Maliseet.

²²⁰ Public Records Office, Colonial Office (Great Britain), 5,751: 64r-65r, Treaty of 1693, 1693, 65. A 'hostage clause' survives through to the Treaty of 1760. See, for example, Public Records Office, Colonial Office (Great Britain), 217,18: 18r-31r, Treaty with Passamaquoddy and Maliseet, 1760, 24v.

performance' of the articles of the Treaty, it is also possible that the Abenaki wanted to learn English. An exchange of hostages would have allowed both parties to learn about each others' language, customs, political practices etc. This would have been conducive to improving relations between the English and the First Nations they were treating with.

This hostage protocol is also part of the process of trade between Europeans and the Mi'kmaq. Benjamin Gatchel traded with the Indians at Le Have, where he "went ashore in a Canoe, bringing an Indian on Board with him, and leaving a white man in his Room and Traded with the Indian ..." ²²¹. While this instance is less significant due to its temporary nature, it does underline the willingness of the Mi'kmaq to place their people in the care of the English in order to secure the trust of these trading partners and allies. This exchange lends credence to the argument that the Mi'kmaq understood the need to establish relations which were founded in mutual recognition – that they were entering into a dialogue and exchange built by two equal partners. Despite the comments and observations of Europeans regarding the 'savage' and 'barbaric' ways of the First Nations, the Mi'kmaq understood and practiced a complex form of diplomacy at the individual and societal level.

Indeed, the Mi'kmaq polity, and the institutions through which it was sustained, were more complex and evolved than the English were able to comprehend. For example, while the English likely felt that each Chief had a distinct geographical 'power base', the situation was, in fact, much more intricate. A Chief, drawing on his ability to keep

²²¹ Nathaniel Bouton, ed., Documents and Records Relating to the Province of New-Hampshire, from 1686-1722, vol. 2 (Manchester, New Hampshire: Clarke, John B., 1868), 637.

authority through his generosity, would also be tied to other communities through family and clan. These social structures were less evident to the English, but played a significant role in decision-making, peace-making, war-making – all functions of diplomacy. What is clear is that the Mi'kmaq clearly felt they had a strong, functional political system²²².

Protocol, representation, memory and practice were key elements of this diplomatic system – elements we will see represented in the Treaty of 1760/61. While the English did not fully appreciate the dimensions of the Mi'kmaq polity, they did see evidence of a legal framework within which the Mi'kmaq operated. To be clear, they did not fully understand or appreciate the basis and functioning of this legal system, but they did record evidence of it, and acknowledged it to be part of their relationship with the Mi'kmaq. It bears some examination, therefore, before we turn to look at this aspect of the Treaty of 1760/61.

Law

As discussed in the previous chapter, Mi'kmaq law had a number of dimensions. This 'law' had two principal aspects: norms and processes. The norms of the Mi'kmaq – codes of conduct, spiritual and social values etc. – underpinned the structure and content of the Mi'kmaq legal world. These values are made evident to us by the processes

²²² See "Proceedings of the Arrowsick Conference," A Conference of His Excellency the GOVERNOUR, with the Sachems and Chief Men of the Eastern Indians (George Town, Arrowsick Island: Governor's Printer, Boston, 1717), vol., 6. At the Arrowsick Conference of 1717, Wiwurna factually states that "We have had the same Discourse from other Governours, as from your Excellency: and we have said the same, to them; Other Governours have said to us that we are under no other Government but our own".

through which the Mi'kmaq maintain their norms in action – through negotiation, retribution and clemency.

The dimensions of law that are evident to us with respect to Mi'kmaq legal norms and practices relate to trade, marriage, and revenge. Each of these dimensions would most certainly have had individual and social implications, and corresponding mechanisms of resolution or punishment. While the Mi'kmaq may have practiced 'restorative' justice for some issues, the records we have relate to what are largely 'retributive' instances of justice.

The most frequent reference is to revenge killings made by one nation or community against another. Champlain makes reference to this in his diaries of 1604-05. He provides an account of meeting some Indians at Port Royal "who informed us that at the place whence they came, which was Norumbega, an Indian, who was one of our friends, had been killed out of vengeance because another Indian, Iouaniscou, and his people had killed some Indians from Norumbega and Kennebec"²²³. This revenge killing formed part of the way in which justice was meted out on those who killed another. Murder, in other words, was repaid by murder.

These revenge killings happened at the individual and community level. When an individual was killed by another member of the same nation, the individual's family or

²²³ H.P. Biggar, ed., The Works of Samuel De Champlain, vol. 1 (Toronto: The Champlain Society, 1922), 246.

clan avenged their death with the death of a member of the murderer's family or clan²²⁴. If the murder was committed by someone outside of the nation, then it was a community responsibility to avenge the death. Champlain's account concerns the latter of the two situations, as he later describes the reaction of the community to the revenge killing. He writes, "Whilst the women and girls were lamenting, the Indian named Membertou made a speech to his companions upon the death of the deceased, inciting each to take vengeance for the wickedness and treachery committed by the subjects of the Bessabes, and to make war on them as soon as possible. All promised him to do so in the spring",²²⁵.

Biard provides an even clearer description of the process of justice to be followed in the instance of wrongdoing: "The great offenses, as when some one has killed another, or stolen away his wife, etc., are to be avenged by the offended person with his own hand; or if he is dead, it is the duty of the nearest relatives; when this happens, no one shows any excitement over it, but all dwell contentedly upon this word *habenquedouic*, 'he did not begin it, he has paid him back: quits and good friends'. But if the guilty one, repenting of his fault, wishes to make peace, he is usually received with satisfaction, offering presents and other suitable atonement"²²⁶. LeClercq confirms this in his *Relations* of 1776-1677, adding that arbitration is "often carried out by command of the elders, who assemble in council upon the subject, and often by the private authority of

²²⁴ They did not necessarily have to kill the murderer.

²²⁵ H.P. Biggar, ed., *The Works of Samuel De Champlain*, vol. 1 (Toronto: The Champlain Society, 1922), 147.

²²⁶ Reuben Gold Thwaites, ed., *The Jesuit Relations and Allied Documents*, vol. 30 (New York: Pageant Book Company, 1959), 95.

individuals, without any trial of the case being made, provided that it is evident the criminal deserved death”²²⁷.

The system of justice used by the First Nations appears to have been very functional. Bannister observes in a letter to the Board of Trade, dated July 15, 1715, that even trespassing would be “esteem’d a Sufficient Ground for War”. But, he continues, “So easily were they appeas’d that upon resigning the offender into their Hands, or doing publick Justice in him, the War together with their Animosities cease, which Shows there was no Natural Inveteracy”²²⁸. The First Nations are very conscious of the effectiveness of their justice system, and guard it jealously. In 1701, in response to English warnings that England and France may soon be at war, the ‘Eastern Indians’ respond that they would be glad to know of hostilities and that they will endeavour to prevent members of their communities from joining the French. They state, “... if any damage happen to be done upon the English by the Indians ... we desire the English would not believe it, till they have Sent to us for information, and we promise to make inquiry into the matter and if they belong to us we will endeavour to do you Justice for if we should not, we should all become equally guilty”²²⁹.

The First Nations of Acadia maintain their right to apply their own system of justice throughout the 17th and 18th centuries. At the Arrowsick conference of 1717, the ‘Eastern

²²⁷ Fr. Chrestien Le Clerq, New Relations of Gaspesia: With the Customs and Religion of the Gaspesian Indians, ed. W.F. Ganong (Toronto: Champlain Society, 1910), 237.

²²⁸ Public Records Office, Colonial Office (Great Britain), 5,866: 53: 70-79, Bannister to Lords of Trade, 1715, 73.

²²⁹ Public Records Office, Colonial Office (Great Britain), 5,862: 101(i), Heads and Propositions, 1701, 299.

Indians' assert that, "If any wrong happens to us we will not avenge our selves, but apply to your Excellency for Redress. If any Foreign Indians come upon us, We shall Acquaint your Excellency, but hope by our Young Men to defend ourselves"²³⁰. Here, the First Nations explicitly assert the continuity of their justice system, and defend their right to continue its use in their relations with other First Nations. Apart from the treaties, this is one of the clearest expressions of a proposal for legal pluralism between the English and First Nations legal systems. It is apparent that the First Nations do not see law as absolute – in the sense that one legal system necessarily excludes the other – but rather as relational. Law, as asserted in the treaties, is part of the larger political relationship between the First Nations and the Europeans.

Even Governor Shute's letter of 1718 to the Jesuit Priest Rale is clear as to the extent of his legal jurisdiction, asserting only "*Cum sueris Romae, Romano vivito more*. If the Indians or French come into our towns, they must observe the laws of the land, and especially those referring to the Sabbath or Lord's-day, and the preservation of the peace, drunkenness, or the like..."²³¹. The English, then, are sensitive to the fact that their laws can only be enforced in their towns. What goes on outside those settlements *may* have been beyond their legal reach.

The English themselves appear to endorse this reading of the situation in 1736. Lt. Governor Armstrong applies to the Chiefs of the village in the Harbour Tibogue for the

²³⁰ "Proceedings of the Arrowsick Conference," A Conference of His Excellency the GOVERNOUR, with the Sachems and Chief Men of the Eastern Indians (George Town, Arrowsick Island: Governor's Printer, Boston, 1717), vol., 6.

²³¹ Massachusetts Historical Society (Boston, Massachusetts), 5: 112-19, Shute to Rale, 1718, 114.

extradition of those involved in the murder of a man aboard the Brigantine Baltimore. The Lt. Governor supplicates, "You may, Comfortable to the said Treaty [1725], to use your Dilligence & utmost Endeavours to Cause Restitution to be made of the things Stolen, & to Deliver up the said Tedumart & such other of your Tribe as are anywise guilty or Concerned in this Affair, that the Case may be fairly Examined According to the Treaty ..."²³². By appealing to the First Nation's legal system for redress, the English are endorsing its efficacy and giving credence to the existence of parallel systems of law in English and First Nation's communities.

The Treaty of 1725 does appear to make this much clear. It states that, "If any Controversy of difference at any time hereafter happen to arise between any of the English & Indians for any real or supposed wrong or Injury done on either side, no private Revenge shall be taken for the same, but proper Application shall be made to His Majesty's Government upon the place for remedy or Redress thereof in a due course of Justice ..."²³³. This clause does not in any way abrogate the First Nations system of law, but endorses the relational protocol between the European and First Nations systems. It again underlines the notion that First Nations in Acadia saw English law as a means of building relations with the English – as a bridge between two functioning legal systems.

²³² Public Archives of Nova Scotia (Nova Scotia), RG-1,14, Armstrong to Chief of Cape Sable Indians, 1736, 1.

²³³ "Nova Scotia Papers," Gay Papers, F.L. Gay Collection (Boston, Mass: Massachusetts Historical Society, 1725), vol. IV., 174r.

There are other instances when First Nations law is evident in the documentation. Evidence regarding the performance of marriage²³⁴ is present in the “Journal of a Captive” (1745-1748). This evidence, and evidence of regulations pertaining to the authority of young men, rites of passage, trade, death and burial suggests a structured and ‘healthy’ judicial system present amongst the Mi’kmaq. Indeed, they indicate that the legal system of the Mi’kmaq was well anchored in their customs and practices, and was stable, resilient and flexible.

The Treaty of 1760/61 – Politics and Law

As the above discussion illustrates, the Mi’kmaq had available to them a wide range of political and legal practices, customs and institutions which they could draw upon to define their own visions of politics and law. Based on the ‘range of expressions’ available to the Mi’kmaq, we now have a framework for understanding the intended meaning of the pertinent clauses of the Treaty of 1760/61. Indeed, the political and legal dimensions of Mi’kmaq sovereignty are revealed to us in a clear and concise manner.

In all of the treaties signed between the English and the ‘Eastern Indians’, the signatories and their national and/or ethnic origins were carefully identified. This treaty was no exception. The chiefs of three Mi’kmaq communities are identified – the Mirimachi, Shediak and Pogmouch²³⁵. It was signed on June 25, 1761 at Halifax as part of the ongoing process of signing treaties with the various communities of the Mi’kmaq nation. The specific version used here refers to the Shediak Tribe, of which Claude Atonash was

²³⁴ Isabel Calder, ed., *Colonial Captivities, Marches and Journeys* (New York, New York: Macmillan, 1935).

²³⁵ Pokemouche, New Brunswick.

the representative. The recognition of Chief Atonash, and his relationship to the Tribe at 'Shediak', would have signaled Mi'kmaq intent to preserve their specific political structures and processes.

The English were interested in maintaining the 'peace and friendship' they had with the Mi'kmaq and the other tribes of the 'Eastern Indians'. As discussed earlier, the hold of the English over Nova Scotia/Acadia was still tenuous in the 1760s. In order to re-balance their grip over the area, they had forcefully expelled the Acadian population in 1755²³⁶, and wanted desperately to have peace with the rogue Indians who had attacked their communities, vessels and forts without (seemingly) being provoked.

It is likely that the Mi'kmaq saw this Treaty as no different than the treaties they had signed in 1726 or 1749. Indeed, this would have been in keeping with the use by the Mi'kmaq of wampum belts – particularly their use as a mnemonic for the agreements they kept with the English. It is conceivable, then, that they saw the signing of this Treaty as a reaffirmation of a relationship that had existed for some time. In the same way their people brought out wampum belts when meeting with allies in order to 'polish' them off – to 're-quicken' the words which animated their relationship – in signing the Treaty they were strengthening the relationship through discussion, dialogue and re-affirmation. Key to this process of treaty-making would have been the notion that it was the English who had surrendered to the Mi'kmaq²³⁷

²³⁶ With later expulsions in 1756 through to 1759. The last Acadians to leave southern Nova Scotia arrived in France in early 1760.

²³⁷ See Colin Calloway, ed., Dawnland Encounters: Indians and Europeans in Northern New England (Hanover, New Hampshire: University Press of New England, 1991), 115, for example.

The Mi'kmaq, in keeping with their impressions of their European allies²³⁸, were most likely frustrated and amused by the inability of the English to understand and effectively use wampum belts. It may have seemed that the English had no memory – that they relied on little pieces of parchment to record their understanding of the treaties, and that there seemed to be little continuity between these pieces of parchment. Wampum, on the other hand, could be woven into a belt, and enlarged or altered whenever an agreement had evolved. What was certain, though, was that the English were open to meeting and hearing the Mi'kmaq understanding of their previous agreements with the English. Often, they did not accept or appreciate the Mi'kmaq perspective, but they were at least willing to listen.

The presence – in this case of three communities of Mi'kmaq – signaled the collective willingness of the Mi'kmaq to enter into an agreement with the English²³⁹. Most likely, this was because the Mi'kmaq wanted to develop a trading relationship with the English, so that they could replace the source of manufactured goods which had disappeared with the departure of the French. Indeed, Chiefs like Atonash would have only reluctantly engaged in peace-making with the English since the English were still at war with the traditional allies of the Mi'kmaq – the French. It is likely, therefore, that Atonash agreed to listen to the English submission only because of the departure of the French from Cape

²³⁸ See Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents, vol. 30 (New York: Pageant Book Company, 1959), 75. Biard notes that the First Nations he encounters are “droll fellows, and have a word and a nickname very readily at command, if they think they have any occasion to look down upon us ... they greatly underrate us, regarding themselves as our superiors”.

²³⁹ William Wicken, Mi'kmaq Treaties on Trial – History, Land, and Donald Marshall Junior (Toronto, Ontario: University of Toronto Press, 2002), confirms this at 202. It is also reinforced by the sheer number of treaties signed in 1760/61.

Breton. Atonash would likely have represented several villages in this collective desire to accept the English submission to the Mi'kmaq²⁴⁰.

The Mi'kmaq would have understood that one of the reasons for the Treaty of 1760/61 was to confirm that they were in a relationship with England, in accordance with the conclusion of the Seven Years War – known as the French and Indian War in North America. Certainly, some of the Mi'kmaq had sided with the French during this war, and felt that the loss of Louisbourg in 1758 and Quebec in 1759 was a signal that they no longer had an opportunity to ally themselves with anyone but the English. They would no longer have the opportunity to barter between the English and French to 'obtain a better arrangement'. Indeed, they felt abandoned by the French²⁴¹.

The Mi'kmaq did not come to this realization as a matter of resignation. Instead, they approached the English in the way they always had – listening to their proposals in order to see if they were reasonable. Certainly, the Chiefs of the Pogmouch, Miramichi and Shediak tribes would have been 'summoned' to Halifax, but they did not go in order to capitulate or surrender. They were there to listen to the Englishman's proposal for a settlement to the conflict between their nations²⁴². They explicitly retained the right to accept or reject the proposals of the English for 'peace and friendship', just as they had retained those rights with respect to their other European and First Nations allies. This is underlined by the signatories of the treaty who state that the "... good and noble

²⁴⁰ See Ibid. 202.

²⁴¹ See Archives nationales, Archives des colonies (France), C11A,105: 43r-44r, Germain to Vaudreuil, 1760, 45v.

²⁴² See William Wicken, *Mi'kmaq Treaties on Trial – History, Land, and Donald Marshall Junior* (Toronto, Ontario: University of Toronto Press, 2002), 84 regarding 1726, and at 195 regarding 1760/61.

Sentiments of yours, towards us ...have emboldened us to come out of the Woods, our natural Shelter, from whence we had previously resolved not to stir, until the Establishment of Peace between both Crowns, whatever Hardships we might have suffered”²⁴³.

Governor Belcher was undoubtedly viewed by the Mi’kmaq as an agent of the King in Nova Scotia. The Mi’kmaq, as an individual nation, or as a part of the Wabenaki Confederacy – the ‘Eastern Indians’ – were familiar with the British hierarchy, and had treated with English officials since the latter part of the seventeenth century. They would have understood that Belcher was the ‘Chief’ English official in Nova Scotia. It is not clear whether the Mi’kmaq understood how Belcher was chosen, or how he maintained his authority.

What is likely, though, is that the Mi’kmaq understood Belcher’s authority as extending only to the English citizens and French residents of Acadia. This is supported by Loron’s statements regarding the 1726 Treaty: “[Dummer] again said to me – But do you not recognize the King of England as King over all his states? To which I answered – Yes, I recognize him King of all his lands, but I rejoined, do not hence infer that I acknowledge thy King as my King, and King of my lands. Here lies my distinction – my Indian distinction. God hath willed that I have not King, and that I be master of my lands in

²⁴³ Public Records Office, Colonial Office (London, U.K.), 217,18: 277r-83r, Governor’s Farm Ceremony, 25 June 1761, 1761.

common”²⁴⁴. Here it is important to underline the fact that the Mi’kmaq did not see the English as having political, economic or social control over Nova Scotia/Acadia. In as much as their physical and political spheres overlapped, the Mi’kmaq and English shared decision-making power and authority. More importantly, the Mi’kmaq would have seen English as **sharing** a responsibility for their country, but only in the areas the English occupied with the consent of the Mi’kmaq.

The fact that the treaty ceremony and signing happened at Halifax is also significant. The establishment of Halifax in 1749 signaled the intentions of the English to ‘take over’ the land in Nova Scotia. As far as the Mi’kmaq would have been concerned, this was an abrogation of the Treaty of 1726, in which they felt they had secured the commitment of the English to consult them for permission to build new or extend existing settlements in Mi’kmaq territory. It is clear that the Mi’kmaq would have in no way submitted themselves to the English, since they understood the opposite to be true. Examining the Loron’s account of the 1727 agreement at Casco Bay, this is evident.

It is therefore questionable that the Mi’kmaq would ever have engaged in the language of submission – except in as much as they understood the treaty to represent the submission of the English. Certainly, the Mi’kmaq would have had respect for, and expectations of the King of England. As ‘Father’ the King would have certain obligations towards his ‘children’ the Mi’kmaq. This would not, however, have implied any control by the King

²⁴⁴ See Panaouaskeyen (1991) “Indian Explanation of the Treaty of Casco Bay, 1727” in Colin Calloway, ed., *Dawnland Encounters: Indians and Europeans in Northern New England* (Hanover, New Hampshire: University Press of New England, 1991), 117.

over the Mi'kmaq. As Loron indicates, the Mi'kmaq would respect the King and his laws in his lands, not in theirs.

Even if the Mi'kmaq respected the King, and his servants in Nova Scotia, they would still have requested the kind of security for their Chiefs that they had come to expect from the English. It is not likely that the Mi'kmaq saw this process as one of 'hostage' keeping by the English, so much as a process of cultural exchange. An opportunity was being offered, after all, for the Mi'kmaq to get to know these foreign English kin without having to leave their own lands. They would also have had an opportunity to teach the English their language, for a more effectual dialogue between the two nations.

As discussed above, it is also clear that exchange of individuals formed part of the diplomatic dialogue that had been established between the Europeans and the Mi'kmaq. Based on past experience, the Mi'kmaq would always have retained control over who of their people lived amongst the English, and they likely saw no reason for this to change. Again, this would have been made even easier because locations such as Fort Cumberland were part of Mi'kmaq lands – perhaps lands that had been assigned to a particular extended family – and therefore already home to at least one family. For this family to have some of its members live near the English, where they had access to news and trade would certainly have seemed a reasonable proposal.

The Treaty of 1760/61 was not, from the Mi'kmaq perspective, a military alliance. It is unlikely that the Mi'kmaq would have or could have committed to being at peace –

permanently – with the English. It should be remembered that the Chiefs present at the ceremony would have been obliged to convince their family members and community members that the agreement with the English was fair and worth adhering to. As part of their role as interlocutors, the Chiefs would certainly have agreed with the English that they would protect their alliance with the English by convincing those opposed to the Treaty of its inherent value. Indeed, the Mi'kmaq would *not* have agreed to English requests that they act as 'spies' against the enemies of the English. They would have continued to practice their traditional role of leading by the strength of their voices.

The Chiefs would not have been able to give the English any more than their personal assurances that they would do all in their power to convince their fellow Mi'kmaq of the need to respect the Treaty and the English. In accordance with the role of Mi'kmaq law, individuals could not be bound by their Chiefs – they could only be convinced, and lead in certain directions. Although the Chiefs *did represent* their communities, they could not and would not legally bind each and every individual in their communities to respect the Treaty. If an English citizen committed a grievance against a Mi'kmaq, it was still expected that Mi'kmaq law and legal practices would apply. Ironically, the best assurance the English could secure for Mi'kmaq adherence to the Treaty would have come from their ability to 'control' the behaviour of their own English citizens.

Finally, while desertion was a grave concern for the English²⁴⁵, it is not clear that the Mi'kmaq would have done any more than assure the Governor of their willingness to *talk* to those deserters they encountered. As they would have seen it as their responsibility to help feed these deserters when they were found wandering on their lands, it is also likely that the Mi'kmaq would have gladly encouraged them to return home.

What is clear is that the Treaty was a re-affirmation by the Mi'kmaq of the *shared* political space that they had created in order to interact with the English. Autonomous action, balanced with careful diplomacy, allowed the Mi'kmaq to retain their distance from the English, while also creating a relationship based on ongoing negotiation and exchange. Through this process of negotiation and exchange, the Mi'kmaq had successfully created a space apart from their own internal political processes, in which they could work with the English in ensuring that both were engaged in a respectful 'kinship'. The treaty making process stands as an excellent example of this *shared* political process. The 'institution' of treaty-making included elements of Mi'kmaq and English practices – the use of wampum, and written treaties, as examples – and endured as a *space* in which the English and Mi'kmaq met in an ongoing bi-cultural dialogue.

Law

The possibility of *shared* space was also present in the legal norms and processes of the Mi'kmaq. It is clear from the sections most pertinent to law that the Mi'kmaq would have seen their laws and legal system protected by the Treaty of 1760/61. After all, the

²⁴⁵ Wicken indicates that as many as 160 soldiers had left Fort Frederick by early May 1760 in order to return to their homes in New England. See William Wicken, *Mi'kmaq Treaties on Trial – History, Land, and Donald Marshall Junior* (Toronto, Ontario: University of Toronto Press, 2002), 198.

clauses contained in the Treaty simply re-affirmed the formula that the Mi'kmaq knew well, and understood the English to have accepted. This formula, simply stated, was that the Mi'kmaq would continue to apply Mi'kmaq law and legal processes on their lands. This would have included traditional forms of 'restitution' in the case that a person or persons were injured in any manner.

It is plausible that the Mi'kmaq would also have accepted English practices and their codification into law on English lands – in their towns. Within these English settlements, they would have been 'forced' to respect the Sabbath, and to follow regulations that determined how the settlement functioned. In fact, with respect to certain issues – such as the sale of alcohol to their people – the Mi'kmaq likely thought it would be very advantageous if they could simply convince the English to respect English laws and regulations.

As with their other commitments, the Chiefs who were signatories to the Treaty would have agreed to use their influence to ensure that any English being held captive were returned home. It is worth noting that the Chiefs did not indicate that they *were* holding prisoners, but only that they would not enslave any if this occurred. Again, they agreed only to use their influence in order to convince other communities to do the same.

From the forgoing discussion, it is easy to see how the Mi'kmaq would have seen the Treaty as a point of legal and political continuity. In no way were they forced to give up their laws or political practices. Indeed, they likely understood that the English, in their

submission to the Mi'kmaq, were accepting Mi'kmaq legal and political practices as the norm for Mi'kma'ki. It is clear that the English did not understand the Treaty in this way, but this had no bearing on Mi'kmaq politics and law. It is also likely that the Mi'kmaq understood full well that the relationship between Mi'kmaq and English law existed in a *shared* space maintained by the treaty-making process.

The Treaty of 1760/61 reaffirmed the laws and practices of the Mi'kmaq, even in the face of the threat posed by the 'blue eyes' who came from the ocean. It appeared, from the talk of English officials, that they were willing to respect Mi'kmaq practices, and that they endorsed the political structures that brought Mi'kmaq messengers and Chiefs forward to listen to their peace proposals. Although the English had difficulty understanding the role of the Chief, they did nothing to challenge or discredit them amongst the Mi'kmaq. Indeed, they seemed to be able to adopt Mi'kmaq diplomatic processes – using wampum belts, for example – in their struggle to find a place in Mi'kma'ki.

This evidence points to a political, diplomatic and legal structure that remained resilient throughout the immediate post-contact period. The practices and traditions of the Mi'kmaq, as discussed above, were respected and maintained in this agreement. Mi'kmaq law and politics were easily woven into the fabric of their relationship with the English, particularly since the English had capitulated to them. From a Mi'kmaq perspective, the English still had a few things to learn about living in Mi'kma'ki, but their

ability to adapt to local practices showed promise – promise for a relationship of two kin-nations *sharing* Mi’kma’ki in peace and cooperation.

The ability of the Mi’kmaq to *share* their place – Mi’kma’ki – with the English was built upon the diplomatic skills the Mi’kmaq had used for centuries to relate with their neighbours. In part, this success was founded on the ability to create shared ‘space’ in which the Mi’kmaq could exchange and share with their allies. The skills involved in building a *shared* space were a fundamental part of the Mi’kmaq ‘way of doing diplomacy’. They had been honed over centuries of practice with their neighbours on Turtle Island, and had become part of their worldview. Indeed, one could argue that the creation of *shared* political and legal institutions was an inherent part of Mi’kmaq politics and law. A primary tool for building this shared ‘space’ was trade – a tool which built on the connection the Mi’kmaq had to their land. We now turn our attention to this aspect of the Mi’kmaq worldview, bringing us full circle to the words which began our discussion above.

Economics and Trade

And I do promise for myself and my Tribe that I nor they shall not molest any of His Majesty’s Subjects or their Dependents in their Settlements already made or to be hereafter made, or in carrying on their Commerce, or in any thing whatever within this the Province of His said Majesty or elsewhere.

And I do further promise for myself and my Tribe, that we will not either directly or indirectly assist any of the Enemies of His Most Sacred Majesty King George the Third,

his Heirs or Successors, nor hold any manner of Commerce, Traffick, nor intercourse with them; but on the contrary will as much as may in our power discover and make known to His Majesty's Governor any ill designs which may be formed or contrived against His Majesty's Subjects.

And I do further engage, that we will not Traffick, Barter or Exchange any Commodities in any manner but with such persons, or the Manager of such Truckhouses as shall be appointed or established by His majesty's Governor at Fort Cumberland or elsewhere in Nova Scotia or Acadia.

Within the category of economics and trade, we can find two broad areas of reference which are useful in our interpretation of the Treaty of 1760/61. The first of these areas is what we might refer to as 'economic fundamentals' – the basic elements of the primal economy of the Mi'kmaq²⁴⁶. These fundamentals include the centrality of fishing, hunting and fowling to the Mi'kmaq, their connection of these activities to land and sea, and the importance of 'sharing' in Mi'kmaq economics.

The fundamentals of Mi'kmaq economy and trade underlie the second broad area of reference for us – that of trade. Within this second area, we see played out two key ideas – relations and autonomy. While these might be expected to be in opposition to each other, creating a dynamic of tension, this is not the case here. Instead, in a

²⁴⁶ By 'primal economy', I am making reference to the economic practices which are fundamental to Mi'kmaq cultural, economic and political survival.

complimentary way, these two forces pushed the Mi'kmaq towards economic pluralism, and the creation of a new economic space within which they could relate to the English.

Economic Fundamentals

As noted in the previous chapter, the Mi'kmaq lived in a world of natural abundance. Different species of fish, fowl and beast provided the Mi'kmaq with the means to survive, and to trade with other nations – 'First' and 'Second' – in order to grow and adapt to an evolving socio-economic and political climate. Trade with other nations allowed the Mi'kmaq to build relations, create the peaceful conditions in which their society could thrive, and maintain their influence over a larger geographic area than that which they occupied. It is in this context that the Mi'kmaq and other First Nations of Acadia sought to identify and protect their ability to fish and hunt, despite the spread of English settlements and the growth of the English population.

The centrality of fishing, hunting and fowling to Mi'kmaq existence is evident through the seventeenth and eighteenth centuries. Biard's relation of 1616 provides us some insight into the importance of the natural world to the survival of the First Nations which he encounters. While his comments are not universally applicable, they do characterize the importance of fishing and hunting to the Mi'kmaq:

Their food is whatever they can get from the chase and from fishing: for they do not till the soil at all²⁴⁷... Now, for example, in January they have seal hunting: for this animal although it is aquatic, nevertheless spawns upon certain Islands about this time. Its flesh is as good as veal; and furthermore they make of its fat and oil, which serves them as sauce

²⁴⁷ Some of the Mi'kmaq were agricultural, as can be seen in the discussions leading to the Treaty of 1725. See James Phinney Baxter, ed., Documentary History of the State of Maine, vol. 23 (Portland, Maine: Fred L. Tower, 1916), 202.

throughout the year; they fill several moose-bladders with it ... and in these you see their reserve casks. Likewise in the month of February and until the middle of March, is the great hunt for Beavers, otters, moose, bears (which are very good), and for the caribou ... If the weather then is favourable, they live in great abundance, and are as haughty as Princes and Kings; but if it is against them, they are greatly to be pitied, and often die of starvation ... In the middle of March, fish begin to spawn ... Among these fish the smelt is the first ... after smelt comes the herring at the end of April: and at the same time bustards, which are large ducks ... Two bustard eggs are fully equal to five hen's eggs. ... From the month of May up to the middle of September, they are free from all anxiety about their food; for the cod are upon the coast, and all kinds of fish and shellfish; and the French ships with which they traffic Water game abounds there ... there are a great many wild pigeons, which come to eat raspberries in the month of July ... Now our savages in the middle of September withdraw from the sea, beyond the reach of the tide, to the little rivers, where the eels spawn, of which they lay in a supply; they are good and fat. In October and November comes the second hunt for elks and beavers; and then in December Comes a fish called by them *ponamo*, which spawns under the ice. Also then the turtles bear little ones, etc. These then, but in a still greater number, are the revenues and incomes of our Savages; such, their table and living, all prepared and assigned, everything to its proper place and quarter. Never had Solomon his mansion better regulated and provided, than are these homes and their landlords²⁴⁸.

Biard underlines a number of important features of the economic system of the Mi'kmaq.

The Mi'kmaq make full use of the range of animals available to them for food, both when they are available, and through careful storage, for when there are periods of hunger.

Also, despite the thorough knowledge and use of the animals and plants that are around them, the Mi'kmaq are still susceptible to environmental conditions – their 'outcome' being directly tied to the weather in Mi'kma'ki. Finally, it is clear that the Mi'kmaq trace out their use of the land – the space which they inhabit and through which they define themselves – through the seasonal nature of their hunting and fishing.

²⁴⁸ Reuben Gold Thwaites, ed., The Jesuit Relations and Allied Documents, vol. 30 (New York: Pageant Book Company, 1959), 77-83.

The landscape, then, has a primordial influence on their way of seeing the world. Seasonal displacement, the availability of food, and the dietary requirements of the Mi'kmaq form the context in which relationships with others – First Nations and 'second nations'²⁴⁹ – are negotiated and re-affirmed.

The connection of the Mi'kmaq to the land is evident in many other sources. Nicholas Denys makes this connection as early as 1672, in his description of the area running from Liscomb Harbour to Ship Harbour²⁵⁰: “This bay has nearly four leagues of depth, and there are several rivers which discharge into it. These are small and are only, as it were, large brooks, [though] by them the Indians go and come. The Indians are there in great number because of the hunting, which is good in the interior of the country, where are mountains all abounding in Moose”²⁵¹. Here, the geography is described according to its resources, and the use of those resources by the Mi'kmaq.

In negotiating for the Treaty of 1725, as another example, the Mi'kmaq and Penobscot make it clear that their peoples will only be free in the late spring to ratify the treaty. In responding to the English request to know when they might be available to sign, the 'Eastern Indians' respond, “[a] little after Planting time, for now as soon as We return, the Indians will goe a hunting for the Winter, and in the Spring they will be imployed in Planting so that after Plant will be the most proper time which will be about the Tenth of

²⁴⁹ The Europeans arriving in Mi'kma'ki.

²⁵⁰ What Denys refers to as the “Baye de Toutes Isles”.

²⁵¹ Nicholas Denys, *The Description and Natural History of the Coasts of North America (Acadia)*, ed. W.F. Ganong (Toronto: 1908), 157.

May next”²⁵². As this implies, the natural economy of Mi’kma’ki directed and limited the actions – economic, social and political – of the Mi’kmaq.

It is no surprise, therefore, to see the pattern of treaty-making, peace-making and war-making developed around the primal economy of the Mi’kmaq. For all of their difficulties in communicating with and understanding the Mi’kmaq, this at least the English understood: that the relationship-building in Acadia would be seasonal, and determined by the hunting, fishing and planting of their First-Nations brothers and sisters. The Mi’kmaq, for their part, are clearly interested in having this pattern respected and prolonged.

If we look at the Treaty of 1725, for example, we can see that the Mi’kmaq have these practices recognized and protected within the Treaty. While they cannot come to agreement with the English with respect to the extent of lands ‘sold’ to the English, they do agree to the idea that they should “have free Liberty of hunting and fishing &c any where but in the Inclosures, or Lands that are fenced in”²⁵³. The protection of these ‘rights’ appears to be maintained through the period up to and after the Treaty of 1760/61²⁵⁴.

²⁵² James Phinney Baxter, ed., Documentary History of the State of Maine, vol. 23 (Portland, Maine: Fred L. Tower, 1916), 202.

²⁵³ Ibid. 202.

²⁵⁴ Indeed, see Public Archives of Nova Scotia (Nova Scotia), RG-1,186: 250-54, Nova Scotia Executive Council Minutes, 1752-11-22, 1752, 217. In the 1752 agreement between the Mi’kmaq and the English, the English state that “We will not suffer that you be hindered from Hunting or Fishing in this Country, as you have been used to”.

Belcher's Proclamation of 1762, for example, declares that with regards to the lands laid before him "as the Claims and Possessions of the said Indians, for the more special purpose of hunting, fowling and fishing, I do hereby strictly injoin and caution all persons to avoid all molestation of the said Indians in their said Claims"²⁵⁵. Belcher further states that "if any Person or Persons have possess'd themselves of any part of the same to the prejudice of the said Indians in their Claims before specified or without lawful Authority, they are hereby required forthwith to remove, as they will otherwise be prosecuted with the utmost Rigour of the Law"²⁵⁶.

Belcher makes a connection in his declaration that is key to the Mi'kmaq – the connection between their economic practices, and the land or sea required to carry out these activities. Mi'kmaq Chief Alkimou makes this connection in his letter to Captain Hussey at Halifax, dated January 19, 1755: "We are sending Francois Arsenau to get from you the letter which you promised us, which should be your assurance that the Government will grant us a domain for hunting and fishing, that neither fort nor fortress shall be built upon it, that we shall be free to come and go wherever we please"²⁵⁷. In forwarding Alkimou's 'demands' to Lt.-Governor Lawrence, Hussey appears to have understood the message of the Mi'kmaq, as he suggests that the Mi'kmaq are willing to negotiate for peace, "... could they believe that the Government would grant them a piece

²⁵⁵ Public Records Office, Colonial Office (Great Britain), 217,19: 27r-28r, Belcher's Proclamation, 1762, 27v.

²⁵⁶ *Ibid.*, 27v.

²⁵⁷ John Clarence Webster, Acadia at the End of the Seventeenth Century: Letters, Journals and Memoirs of Joseph Robineau De Villebon, Commandant En Acadie, 1690-1700, and Other Contemporary Documents., Monograph Series vol. 1 (St. John, N.B.: The New Brunswick Museum, 1934), 84.

of land to hunt and fish on, which they might enjoy as their own property and on which no Fort or Fortress is to be built...²⁵⁸.

While it is clear that Belcher and Hussey understand the importance of *land* to the Mi'kmaq, it is less clear that they understand the nature of the *connection* between the Mi'kmaq and Mi'kma'ki. Biard's testimony is clearer in this regard, affirming the importance of land as the *source* of the Mi'kmaq economy. The clearest reference to this connection is made in the discussions in 1760 regarding the prices of goods and merchandise to be offered by the English for trade with the Mi'kmaq. Two Mi'kmaq, Roger Morris and Claude Renée, arrive at the meetings late, with good reason: "The said Indians declared that they left many of their People, to the number of about Seventy at Jedore, but that the Men were obliged to remain there with their Families, in order to Subsist them by Killing Muce &^c"²⁵⁹.

Capt. Roderick MacKenzie²⁶⁰ appears to be clearer about this connection in his correspondence to Joseph Claude, Mi'kmaq Chief at Ristigouche. In his attestation to the benevolence of the English King towards the Mi'kmaq, he offers that the King "... will cause Those Acadians whom you complain of, to quit your Hunting and Fishing Places and to make you satisfaction"²⁶¹. This turn of phrase, although not Mi'kmaq in origin, is nonetheless closer to the Mi'kmaq view – that it is the hunting and fishing that connects them to a place, and not a place which they need for hunting and fishing. The former

²⁵⁸ Ibid. 85. See also SFM 65 at 380, where the 'Eastern Indians' argue "we want our Land to hunt on ...".

²⁵⁹ Public Archives of Nova Scotia (Nova Scotia), RG1,188: 128-32, Nova Scotia Executive Council Minutes, 1760-02-16, 1760, 131.

²⁶⁰ Commander of the Highland Regiment at Fort Cumberland.

²⁶¹ Public Records Office, War Office (Great Britain), 34,12: 95r-95v, Mackenzie to Claude, 1761, 191.

indicates a connection to the land, the latter simply a need for land. Indeed, the Mi'kmaq use of the resources of Mi'kma'ki was as much about their need to sustain relationships to the land as it was about survival.

Although chronologically after the Treaty of 1760/61, the Board of Trade's memorandum to the King of December 15, 1763 makes the distinction clear. In response to a request to grant land to the Sieur de Stumpel²⁶² on the St. John River in Nova Scotia, the Board proposes that the Governor be directed to do so. This proposal is carefully worded, providing that "an Instruction may be given to Your Majesty's Governor of Nova Scotia to direct a Survey to be made of a Tract of 20,000 Acres on the said River S^t John or between that and the River S^t Croix in such a situation as the Petitioner shall Chuse, taking care that it shall not be upon any Lands occupied by the Indians or used as their hunting Grounds ..."²⁶³. The distinction may appear to be minor, but it is a reflection of the connection to the land that Chiefs Morris and Renée had made two years earlier.

This connection between the Mi'kmaq, their economic practices and the land is key. What is of particular interest to us here is the importance of this connection, and its nature – in this case, one of non-exclusive use and enjoyment. Indeed, the Mi'kmaq appear to endorse the same re-distributive practices as their Chiefs with respect to the land and its resources. There are two concrete references to this practice which are of note for us here. The first is in Marc Lescarbot's notes from 1607. On his encounter with a Captain Savalet from St. Jean de Luz, he makes the following observations: "He

²⁶² The Board identifies this petitioner as an Officer in the Hanoverian Service.

²⁶³ Public Archives of Nova Scotia (Nova Scotia), MG1,258: 20-21, List of Indians, 1763, 129.

was at times troubled by the savages encamped there, who too boldly and impudently went on board his ship, and carried off what they listed. To stop this he threatened them that we should come and put them, one and all, to the sword if they did him injury. This frightened them, and they did not do him so much harm as they would otherwise have done. However, every time that the fishers arrived with their boats laden with fish, these Indians chose whatever they thought good ...”²⁶⁴.

Although it is not possible to impute any ill intent to the ‘savages’ to which Savalet refers, this is clearly Lescarbot’s European understanding of their actions. It is possible to argue, though, that the Aboriginal peoples to which Savalet is referring may have seen the resources of the land and sea as communal in nature. This appears to be confirmed in the narrative of a Canada-based merchant, who places himself at the mercy of the Mi’kmaq during his voyage from the Bay of Chaleur to Fort Cumberland. While traveling on the land, they arrive at an abandoned village, where they find the ‘wigwams’ empty. “In another hut we found some fish and dried geese: I took two of the geese, and paid five shillings sterling to one of the savages, who said he knew the person they belonged to. I did this, that the savages might entertain a good opinion of their new allies the English. The savages took fish without ceremony, as their custom is to go into huts, and help themselves to anything they can find – to eat and drink, without saying one word ...”²⁶⁵.

²⁶⁴ Marc Lescarbot, History of New France, trans. W.L. Grant, 3 vols. (Toronto: The Champlain Society, 1907-1914), 362-63.

²⁶⁵ Gamaliel Smethurst, A Narrative of the Extraordinary Escape out of the Hands of the Indians (1761-1764) (London: J. Bew and A. Grant, 1764), 16.

This Mi'kmaq understanding of the land and the animals and plants with which they shared Mi'kma'ki is certainly consistent with the "big hearted" nature of Mi'kmaq Sagamores. Sharing food and material goods was a valued part of Mi'kmaq culture, and it would most likely have extended into all parts of their interactions with other human cultures. In the same way that presents formed a basis for political relationships, sharing formed a basis for a relationship founded in the 'primal economy' of the Mi'kmaq. The Mi'kmaq were not reluctant to share the resources of Mi'kma'ki with the French or the English. Indeed, the Mi'kmaq would have argued that their brothers and sisters²⁶⁶ were placed on Mi'kma'ki by the Creator, and were therefore no more theirs to give or take than they were those of the English or French.

These fundamentals – a relationship to the land formed through 'hunting, fishing and fowling', and a belief in the communal/shared nature of the resources found on Mi'kma'ki – formed the basis for a relationship with the European nations. Extending their relationships to the English through trade was an attempt by the Mi'kmaq to create an 'economic space' in which they could relate to the English. In this way, trade could be viewed as a formalized process of mutual sharing to the benefit of both nations.

MacKenzie's letter to Chief Claude echoes this sentiment, and the connection between trade and the Mi'kmaq economic system. In referring to Fort Cumberland, where he was stationed, MacKenzie offers that "[t]here is a Trading house established here for the good of your nation, and it will be your advantage to bring all the Peltry you can"²⁶⁷. Both the English and the Mi'kmaq, then, viewed trade as an extension of the Mi'kmaq economic

²⁶⁶ The Mi'kmaq would have viewed the plants and animals around them as their brothers and sisters, in accordance with the creation story.

²⁶⁷ Public Records Office, War Office (Great Britain), 34,12: 95r-95v, Mackenzie to Claude, 1761, 191.

system. Although MacKenzie may likely have been using words such as ‘good’ and ‘advantage’ in a manner that was more paternalistic than philosophical, he nonetheless made the connection between the Mi’kmaq economy, their desire to trade, and the space in which trade was to contribute to founding a relationship between the nations sharing Nova Scotia/Mi’kma’ki.

Trade, then, served as a natural extension of the Mi’kmaq economy, and their desire to build relationships to their ‘brothers and sisters’, the English, through an exchange of sharing. As a distinct economic space through which the Mi’kmaq attempted to build relations and assert autonomy, trade serves as an important window for us to the range of articulations available to the Mi’kmaq with respect to their economic beliefs and practices. By examining this aspect of the Mi’kmaq worldview, we can have a clearer view of the economic and trade clauses of the Treaty of 1760/61.

Trade

The language of both autonomy and relationship-building is present in Mi’kmaq views on trade. In as much as they saw trade as part of their diplomatic relationship with the English, they also saw diplomacy as part of the trade dynamic that filled the space between their nation and that of the English. Building on earlier discussions regarding the importance of trade to Mi’kmaq-English diplomacy, our specific interest here is how the Mi’kmaq used the language and practice of trade to articulate their view of both their position with respect to the English, and the nature of the relationship that bound them together.

The Mi'kmaq would likely have seen their trade with the French and English as an extension of the ongoing commerce and exchange they had with other First Nations in Mi'kma'ki and beyond. We have clear evidence that the French built on existing networks of Aboriginal trade as early as 1606, as recorded by Sir Ferdinando Gorges during his discussions with Abenaki²⁶⁸ Indians: "In this Lake are seven great Ilands: toward the farthese end there falleth in a River, which they call Acaconstomed, where they passe with their Boates thirtie daies journey up, and from thence they goe over Land twentie daies journey more, and then come to another River, where they have a trade with Anadabis²⁶⁹ or Anadabijon, with whom the Frenchmen have had commerce for a long time."²⁷⁰

Even the Jesuits are conscious of the importance of trade, and understand that they must build their mission around the hunting and trade practices of the First Nations. We see an example of this in the *Relation of 1668-69*, where the Jesuits note that the French travel about twelve leagues into the Saguenay during the winter in order to trade. They conclude that they must also travel there in order to provide their services to both the French and the Aboriginal peoples: "[a]nd this Savages and French alike could be aided by the indefatigable care of those two Missionaries"²⁷¹. Certainly, this pattern would have been reproduced across Acadia, as the French sought out places to trade with the Mi'kmaq, Maliseet and Abenaki peoples.

²⁶⁸ This document represents the source of what is the first geographical summary of the Eastern Abenaki territory, presented by Abenaki who had been brought to England. David B. Quinn and Alison M. Quinn, eds., *The English New England Voyages, 1602-1608* (London: The Hakluyt Society, 1983), 470.

²⁶⁹ A Montagnais Sagamore.

²⁷⁰ David B. Quinn and Alison M. Quinn, eds., *The English New England Voyages, 1602-1608* (London: The Hakluyt Society, 1983), 471.

²⁷¹ Reuben Gold Thwaites, ed., *The Jesuit Relations and Allied Documents*, vol. 30 (New York: Pageant Book Company, 1959), 219.

These First Nations were also clearly interested in trading with the Europeans. Biard's comment in his *Relation of 1616* indicates that the First Nations knew how to attract traders to their trading places: "... and the French ships with which they traffic, and you may be sure they understand how to make themselves courted ..."²⁷². The importance of trade is immediately apparent in the earlier treaty discussions and negotiations. In 1701, for example, the 'Eastern Indians' speak to the Friendship which the King has offered them "which we do from our hearts agree to, and from this day forward it shall be for ever talked of amongst us, and we also desire that all former Injuries and Mischiefs that have been committed on either side may be for ever buried under ground. We are also thankful for the good Settlement of Trade for us, and we pray that we may have Goods sold to us at a cheap rate, and that no Rum may be Sold the Indians"²⁷³.

Later, in the same negotiations, the 'Eastern Indians' respond to English concerns that they will be induced to trade with the French. The exchange between the Commissioners for the English and 'Eastern Indians' succinctly clarifies the importance of trade. The English make the following proposition: "That we are likewise to note unto you our Jealousies concerning the French by whom you have been so often seduced, that through their false reports you may not again be deceived, but rather call to remembrances those times when by a full confidence and love we were useful unto each other, which same Trust you may see we are again endeavouring to restore, not only by a Free Trade and Supplying of you with ... all other things you may need as such prices as the French

²⁷² Ibid. , 81

²⁷³ Public Records Office, Colonial Office (Great Britain), 5,862: 101(i), Heads and Propositions, 1701, 298v.

(who cheat you) cannot do whereby you may be the better enabled to keep your promises ... in cutting down trees in the path so for ever Stopping the way to Quebec, Since we shall for your Safety furnish you whatever you want ...”²⁷⁴. To this, the ‘Eastern Indians’ decline to close their relations with Quebec, adding that “there will be little necessity of going to the French Since we may be so well Supplied with what we want from the English”²⁷⁵.

The note by the ‘Eastern Indians’ regarding Rum is significant. Not only are the Sagamores present at the negotiations cognizant of the problems caused by alcohol in regards to the behaviour of their fellow Indians, they are also conscious of the fact that alcohol is a means to ‘coerce’ them into trade. In his letter to Governor Clinton, Col. William Johnson²⁷⁶ notes that the Lord Intendant of Quebec accepts the use of alcohol, objecting that the alternative is that they go elsewhere to trade. Johnson notes that “I take it their view in this, is as much (if not more) for preventing any Communication between us, & said Indians, as for engroceing the Trade, & they could not have fallen upon a better Scheme to Accomplish it”²⁷⁷.

Johnson points to alcohol as a dangerous tool used by the Europeans to draw First Nations into trade – used by both the French and the English. He also points to the important connection between trade and communication. Indeed, the experience of trade

²⁷⁴ Ibid., 298v. It is even interesting that the English are using imagery borrowed from the ‘Eastern Indians’.

²⁷⁵ Ibid., 298v.

²⁷⁶ Later Sir William Johnson, Indian Agent.

²⁷⁷ Almon W. Lauber, ed., *The Papers of Sir William Johnson: Period of Peace, 1749-1755*, vol. 9 (Albany, New York: The University of the State of New York, 1939), 68.

is critical to the impressions that First Nations form of Europeans. As the narrative of an anonymous trader notes in 1761, this “should be a standing caution to our Indian traders, to deal honestly with them, otherwise they may bring on a public calamity”²⁷⁸. This is particular true of private traders, thus adding credence to arguments that the trade with First Nations should be managed by the government.

Bartram, Evans and Weiser note, for example, that the managed trade at Oswego is “an excellent regulation for preventing the traders from imposing on the *Indians*, a practice they have been formerly too much guilty of, and which has frequently involved the *English* colonies in difficulties and constantly tended to depreciate us in the esteem of the natives, who can scarcely be blamed for judging of a nation by the behaviour of those with whom they have the most intercourse, a judgment I am sorry to confess that has (till lately) tended much to the making them in favour rather of the French than English. I speak of private persons, not of the respective governments”²⁷⁹. Poor trade practices, then, led the First Nations to seek relationships with those that respected their wishes, and did not try to take advantage of them.

Trade is important as the most frequent point of ‘intercourse’ and communication between the English and their First Nations allies. It is therefore particularly telling that the Lords of Trade acknowledge Doucet’s letter to them recounting the negotiation and signing of the Treaty of 1725 by further encouraging his efforts: “Their Lords are glad to

²⁷⁸ Gamaliel Smethurst, *A Narrative of the Extraordinary Escape out of the Hands of the Indians (1761-1764)* (London: J. Bew and A. Grant, 1764), 17.

²⁷⁹ John Bartram, Lewis Evans and Conrad Weiser, *A Journey from Pennsylvania to Onondaga in 1743* (Barre, Massachusetts: Imprint Society, 1743), 66.

find by your said Letter that you have concluded a Peace with the several Indians Tribes lately at War with you which they hope will be lasting and that you will take care that the said Indians in their Intercourse with His Majesty's Subjects under your Command may meet with such kind Treatment as to give them no cause of Complaint. This in their Lordships' Opinion will be the surest means of continuing a good Correspondence with them"²⁸⁰.

Of course, the English and French are not blind in their use of trade in building relations with their First Nations allies. They understand that there are two principal reasons for trading with the First Nations of Acadia: to prevent them from allying with their European competitor – the English or French – and to force them to rely on the English for necessary goods. An example of the former can be found in a letter from the French Governor of Acadia to Versailles in 1706: “It is certain that if measures are not taken to transport to Acadia all the things of which the Indians may have need, they will go to search for these things to the English, and in consequence they will ally with them to make war against the French”²⁸¹. All parties – English, French and First Nation – are conscious of the importance of trade to the strategic balance of power in the region, and have their interests set on building relationship which bring greater favour to their position.

²⁸⁰ Public Records Office, Colonial Office (Great Britain), 217,5: 3-5, Annapolis Royal Ratification, 1726, 28r.

²⁸¹ Archives Nationales, Archives des colonies (France), C11D,5: 259r-65r, Extrait Des Lettres De L'acadie De L'année 1706, 1706, 263v.

This same letter of 1706 also sheds light on the latter reason for trade – bringing the First Nations to a dependency on European trade. The French Governor notes that the “Indians like the French much more than the English because these last want to dominate them, instead of which the French accustom themselves to their manner of living. In this way, given that we furnish them with the merchandise without which they do not know how to live, One can always count upon them”²⁸². Governor Belcher intimates that his approach is much the same in 1760. When speaking of the “Traffick with the Indians” of Nova Scotia, he notes that Gerrish, Commissary for this commerce, “has lately laid before me his Accounts with a Memorial, setting forth the necessity of a Fund to carry on this Commerce, which has been calculated to give such advantages in favour of the Indians, as by shewing them how much it will be in their interest, may induce them to become firmly attached to a friendly intercourse with his Majesty’s Subjects, and as this Trade will be much in their favour, a loss must accrue”²⁸³.

For good or bad, then, it is clear that trade would have been a key point of contact, communication and interaction between the Mi’kmaq and the French, and then the English. It is at this point of contact, where bargained sharing symbolized exchange and relationship-building, that the Mi’kmaq sought out opportunities to better their relations with their allies – both materially and politically. When trade was fair – and goods sold at a cheap rate – relations were good. When they were less ideal, the Mi’kmaq sought relations with their other European allies. It was for this reason that ‘Eastern Indians’

²⁸² Ibid., 264r – 265v.

²⁸³ Public Records Office, Colonial Office (Great Britain), 217,18: 81r-86r, Belcher to Lords of Trade, 1760, 84v.

refused to close down their trade routes to Quebec in 1701²⁸⁴. Even when the Treaty of 1760/61 was being negotiated and signed, it is reasonable to assert that the Mi'kmaq would not have seen their trade with the English as *exclusive*. Indeed, the Maliseet and Passamaquoddy only agreed *not* to trade with the enemies of King George, leaving the way open to many other trading relationships that they did not explicitly forgo in their discussions with the English.

Good trade then, was a key ingredient for the Mi'kmaq in forming peaceful relations. Poor trading conditions brought conflict and trouble. The connection between good trade and peace is very clear in the discussions and negotiations between the English and their First Nations allies. At the Portsmouth Conference in 1714, for example, the Governor expresses this connection, speaking through a translator: "Last year we Established a peace which we hope will be Perpetual and since that they have by Messengers several times desired, that they might see us Eastward and wee are here accordingly; And they are to tell us what further may be done to make them clean to Her Majestie and the English interest more that they do. Let them Know wee are here to hear what may be greivous to them in the Trade or otherwise and amend it and to make the peace secure and lasting"²⁸⁵. Querrebut, speaker for the 'Eastern Indians' responds that "When Ever I came here It was for a general good and pray your Excellencys favour, that they may have Several Trading Houses more Eastward not one particular mans but several"²⁸⁶.

²⁸⁴ Public Records Office, Colonial Office (Great Britain), 5,862: 101(i), Heads and Propositions, 1701.

²⁸⁵ James Phinney Baxter, ed., Documentary History of the State of Maine, vol. 23 (Portland, Maine: Tower, Fred L., 1916), 70.

²⁸⁶ Massachussets State Archives (Massachusetts),38A: 11-15, A Journall of a Voyage to Cape Britton, 1715, 70. The minutes of the Nova Scotia Executive Council of November 30, 1759 appear to confirm that this becomes a matter of policy. Colonel Arbuthnot, stationed at Fort Frederick, is directed to send the St. John's Indians – who have petitioned him for peace – to Halifax for negotiations. These negotiations will

Lieutenant Governor Caulfield's letter to the Board of Trade confirms that the English in Nova Scotia feel that trade is of the same importance and serves the same ends as their counterparts in Massachusetts and New Hampshire. One year after the Portsmouth Conference, Caulfield notes that he is need of a 'Kings Magazine' at Annapolis Royal, in order to encourage the Indians to trade there, and not in Cape Breton with the French. These stores, he adds, "would provide a great Advantage both in Respect of Trade, as well y^c: of [?] means to bring them over to our Interest, by kindly using of them, on w^{ch}: foundation their friendship is wholly founded, and great Advantage would Accrue thereby to y^c: Crown in particular, and countrey in general"²⁸⁷.

Indeed, English officials in Massachusetts had recognized the importance of trading places and spaces as a location/area through which peaceful relations with the 'Eastern Indians' could be formed and maintained. Governor Bellomont's resolution of July 1700 makes this clear: "... That a Trading house with a suitable Fortification be erected in such place in Casco bay where the Governour or Cammander in chief with the advice & consent of the Council shall think most proper. That a Smith be kept at the s^d. Trading house, and that the Indians have the Fire armes and hatches amended and repaired from time to time at a reasonable charge.... That this Government do Support the whole charge of the carrying on & maintaining of what is herein before proposed and directed ..."²⁸⁸.

determined how to extend the Indian trade "by the Establishment of Truckhouses amongst them ...". See Public Archives of Nova Scotia (Nova Scotia), RG-1,188: 110-12, Nova Scotia Executive Council Minutes, 1759-11-30, 1759, 112.

²⁸⁷ Public Archives of Nova Scotia (Halifax, Nova Scotia), RG 1,15, Caulfield to Board of Trade, 1715-11-01, 1715, 44.

²⁸⁸ Public Record Office, Colonial Office (Great Britain), 5,787: 390-91, Minutes of the Massachusetts Council, 1700-07-09, 1700, 390.

Indeed, this reflects the intent of the *Act for Regulating of Trade with the Indians*, passed by the Province of Massachusetts in 1694: “nor shall any powder, shot, lead, or any kind of ammunition (more that may be necessary for their hunting) ... be traded with or delivered to any Indian or Indians ...”²⁸⁹.

In the *Royal Instructions to British Colonial Governors (1670-1776)*, instruction 664 directs that “[y]ou are to encourage the Indians upon all occasions so THAT they may apply themselves to the English trade and NATION rather that to any other of Europe”²⁹⁰. Finally, in 1760, Governor Lawrence of Nova Scotia implies that the Mi’kmaq agree that peace with the English must be founded on good trading relations. Lawrence alerts the House of Assembly that a treaty had been concluded with the Indians of St. Johns and the Passamaquoddy, based on a system of *publicly funded* trading houses. He adds that the “Micmacs have likewise already made overtures ... and I am Persuaded are very Sincerely disposed to Establish a lasting friendship and intercourse with His Majesty’s Government”²⁹¹.

While trade is intended to create the conditions for peace, it is also an economic space in which the conditions for cross-cultural understanding can be created. The English see this as a unidirectional process – of acculturating the Indians to the English – but the principal of a cultural exchange in both directions is equally possible. The report of the Board of Trade remarks that “It has already been observed that the concluding a Peace

²⁸⁹ Province Laws (Massachusetts): 172-73, An Act for Regulating of Trade with the Indians, 1694-5, 172.

²⁹⁰ Leonard Woods Labaree, ed., *Royal Instructions to British Colonial Governors, 1670-1776*, vol. 2 (New York: Octagon Books, 1967), 464.

²⁹¹ Public Archives of Nova Scotia (Nova Scotia), MG-1,258: 86-91, Nova Scotia Executive Council Minutes, 1760-02-18, 1760, 87.

with the Indians was absolutely necessary to the progress of the Intended Settlement of the Province, and that the Settling a Tariff and encouraging them to Trade with us upon more advantageous Terms than they had at any time from the French, would not only Secure the new Settlements, but be the means of familiarizing the Indians to the Inhabitants, their manners & Customs...²⁹².

It was possible, of course, that in any situation where the two cultures came into contact, even if for the purposes of peaceful 'intercourse and communication', conflict could arise. William Phips, in instructing the Chevalier la Tourasse, acting President of the Council of Port Royal, asserts that "In regard to trade with the Indians, you shall not furnish them with powder or lead, lest they make war on the English. Make them swear that the small quantity in their possession shall be used only in hunting ..."²⁹³. Evidently, trade was seen as a way to provide the means for war, even where it did not create the grounds for the same.

Poor trading practices *do create* the grounds for tension, however, throughout the 1700s. Colonel Nicholson, Governor of Nova Scotia observed to the Board of Trade in 1715 that the "Indians are very Cross and we are affraid they will make war They say ye English Cheats them"²⁹⁴. Likewise, in 1738, the Penobscot and Norridgewalk complain to the Governor of Massachusetts that they do not like the treatment they are receiving from

²⁹² "Treaty, or, Articles of Peace and Friendship Renewed, 1753," Nova Scotia Executive Council, (1754), 164.

²⁹³ Public Archives of Nova Scotia (Nova Scotia), RG-1,188: 137-40, Nova Scotia Executive Council Minutes, 1760-03-10, 1760.

²⁹⁴ Public Records Office, Colonial Office (Great Britain), 217,2: 39r, Nicholson to Lords of Trade, 1715, 39.

their truckmaster: “The Prices of Goods rise higher in proportion than beaver. the Truckmaster do’s not treat the poorer Sort of Indians kindly, if they come with a few feathers &c. to truck he will throw them away and bid them go trade with the French: at the other Truck-houses a pipe and Tobacco or some refreshment is allow’d but no such as George’s”²⁹⁵. The Abenaki are clear about the nature of their concerns, asking the English to be paid for their beaver in paper money instead of in trade for other goods. In response to the Governor’s query as to why this is, Loron replies, “Because We can tell better if we are Cheated”²⁹⁶.

The Abenaki are very concerned about the price of beaver, and suggest that the Treaty of 1725 is not being followed. Loron is clear: “The English were the first movers of Peace, and it was Agreed that after the Peace was Concluded, the Prices of things should be Settled and the Indians have good Penny worths ... in the Articles we were promised that nobody Should Sell Cheaper than the Truckmaster, but we cannot have things so Cheap of them as others, which we should be glad were Ordered otherwise, because some would be pleased if any misunderstanding should happen herein, and therefore we should be glad if there were another Truckmaster at Georges”²⁹⁷. Several days later, in the same discussions, Loron reiterates that the ‘treaties as to the regulations of trade’ “are not observed”²⁹⁸.

²⁹⁵ Public Records Office, Colonial Office (Great Britain), 5,881: 11r-21r, Conference with the Penobscot & Norridgewalk Indians, 1738-06-28 to 1738-07-06, 1738, 14r.

²⁹⁶ Ibid., 14v.

²⁹⁷ Ibid., 12v.

²⁹⁸ Ibid., 18v.

From the perspective of the Abenaki, the English refusal to offer fair prices for goods in trade for beaver is equivalent to their breaking of the Treaty – thus implying a possible return to a state of conflict between the two nations. The Abenaki, in the same way that the Mi'kmaq and the Maliseet would have, were advocating the creation of a 'trading space' in which the letter and spirit of the treaties they had signed with the English were honoured. From the First Nation's perspective, the English had submitted to them, and were therefore not only honour-bound but also obliged to meet the terms of their agreements.

Ironically, the English government points to the practices of private traders as the most disruptive of the peace between them and the Mi'kmaq and Maliseet. Governor Lawrence's message to the House of Assembly in 1760 underscores this: "... you may rightly Conceive from the Treaty itself the Necessity of a Law to prevent Such Pernicious Practices from a Private Commerce with these People as have too often interrupted the Harmony and good Understanding between them and the neighbouring Colonies which Justice and Prudence Call upon Us to maintain and Preserve in this Crisis"²⁹⁹. While private commerce may well have been a source of discontent and tension between the Mi'kmaq and the English³⁰⁰, it was the obligation of the English Crown, in particular, to live up to the terms of their submission to the Mi'kmaq.

²⁹⁹ Public Archives of Nova Scotia (Nova Scotia), MG-1,258: 86-91, Nova Scotia Executive Council Minutes, 1760-02-18, 1760, 86.

³⁰⁰ See Bartram, Evans and Weiser in John Bartram, Lewis Evans and Conrad Weiser, A Journey from Pennsylvannia to Onondaga in 1743 (Barre, Massachusetts: Imprint Society, 1743), for example.

Although self-serving in nature, Benjamin Gerrish's memorial to Governor Belcher regarding the opening of private trade in Nova Scotia is interesting. He writes, "That notwithstanding the proposed Licencys there will be many little Traders who have not much Regard to reputation, who will make the Indians drunk and the take from them more that they have a right to, depending that these Indians know not how to make any sufficient proof in Courts of Law, and who will be prompted to take revenge somehow or other, and embroil the Province in mischiefs ..." ³⁰¹. In arguing that privatized trade will also cause prices to rise, Gerrish suggests that the Indians will go to their neighbours to trade at public truckhouses, and that "our Friendship with them may be lost. Tho' t may be supos'd they have now no power to hurt us by open War as Canady is reduced; we cannot yet be sure that Canady will not be restor'd at Peace, when they may have the same Power they have now and being irritate by the illusage they may have met with be more cruel and revengefull that ever ..." ³⁰². While Gerrish is trying to protect his monopoly over trade, he is also playing on 'popular' concerns in trying to stir sympathy to his cause. His memorial may be self-serving, but it is an accurate reflection of the concerns of any English settlers outside of Halifax.

Another aspect of trade of interest to us here is the use of hostages as a means to secure the safety of traders, and – indirectly – as a means of cultural exchange. This has been discussed at some length earlier ³⁰³, but deserves emphasis. Two additional aspects to the

³⁰¹ Public Records Office, Colonial Office (Great Britain), 217,19: 159v-62r, Gerrish to Belcher, 1761, 159.

³⁰² Ibid., 160.

³⁰³ For an example of a hostage protocol discussed above, see Nathaniel Bouton, ed., Documents and Records Relating to the Province of New-Hampshire, from 1686-1722, vol. 2 (Manchester, New Hampshire: Clarke, John B., 1868).

'exchange' of hostages should be added. The first is the practice of slavery³⁰⁴. Indeed, some First Nations took captives, and made them perform menial labour for extended periods of time. In the *Relation of 1645-46*, the Jesuits make particular note of one case: "Here follows the beginning of it. A young slave, aged about 23 years, an Esquimau by nation, taken in war thirteen years ago, served as a menial to a family of slaves. This poor captive falls sick in his master's cabin ... He has recourse to the Father, summons him, and is assisted ... Having observed this, his master, who was on the point of going away, tells us in the presence of several Savages that he could not take his slave at the same time with himself, without placing him in obvious danger of dying in his shallop; that he gave him to us, and conveyed to us all the right that he had over him; that we should take care of him, and he should always be ours, if he returned to health"³⁰⁵. A similar account of slavery is provided by Henry Grace, taken at Minas, and held captive from 1750 to 1756 by the Mi'kmaq. In 1756, he is purchased by a Frenchman, and made to work for him until just prior to the fall of Quebec to the English. In a manner of speaking, both of these incidents underscore the willingness of First Nations – in the latter example, the Mi'kmaq – to practice a trade in humans.

Ransom is another means of 'exchange' practiced by the 'Eastern Indians'. In 1691, Joseph Villebon, Commander of Acadia, sends a letter to the Governor of Boston. In it, he says, "I send you as well a young girl and two Englishmen, ransomed by Madame

³⁰⁴ It should be noted that 'slavery' here is understood in very different terms from that to which we are accustomed in the 21st century. It is perhaps best to understand this term to mean "servant".

³⁰⁵ Reuben Gold Thwaites, ed., *The Jesuit Relations and Allied Documents*, vol. 30 (New York: Pageant Book Company, 1959), 135.

Damours from the Indians”³⁰⁶. This practice is frequent, and underlines the danger of living in Mi’kma’ki – even as late as 1760/61. It also serves to reinforce the importance of hostage exchange as a part of trade and diplomacy. Hostages did not live in captivity and could be exchanged with the agreement of both parties. They represented, in the domain of trade, a symbol of exchange and relationship-building.

Trade, seen as formalized mutual generosity, is an extension of the diplomatic relationship-building that the Mi’kmaq would have engaged in. It was also, as alluded to above, a way in which the Mi’kmaq would have asserted their autonomy and independence. By looking at both the extent of their trading, and the ease with which they adopted and adapted new technology, we can see how trading served the Mi’kmaq in keeping an openness to other nations – other than the English – through trade.

This autonomy is asserted by two principal means. The first of these is the maintenance by the Mi’kmaq of the freedom to trade at the locations they choose and with whom they choose. Above, we have considered Deny’s account of illicit trading by the Mi’kmaq at the mouth of the Pomquet River³⁰⁷. This factor is also described earlier by Lescarbot, who encounters Frenchmen from St. Malo working for M. de Monts. These Frenchmen “complained that the Basques, contrary to the king’s prohibition, had bartered with the savages and carried off more that six thousand beaver pelts”³⁰⁸. This is an excellent

³⁰⁶ John Clarence Webster, Acadia at the End of the Seventeenth Century: Letters, Journals and Memoirs of Joseph Robineau De Villebon, Commandant En Acadie, 1690-1700, and Other Contemporary Documents, Monograph Series vol. 1 (St. John, N.B.: The New Brunswick Museum, 1934), 32.

³⁰⁷ See Nicholas Denys, The Description and Natural History of the Coasts of North America (Acadia), ed. W.F. Ganong (Toronto: 1908), 172.

³⁰⁸ Marc Lescarbot, History of New France, trans. W.L. Grant, 3 vols. (Toronto: The Champlain Society, 1907-1914), 310.

example of what Captain Hussey describes eighty-three years later as the “complete liberty to go and trade where and with who they think proper”³⁰⁹. This same sentiment is echoed in the ‘Eastern Indians’ discussions with the Government of Massachusetts, when the Indian speaker asserts that they will not stop their trading with Quebec: “In case we Should Stop up our roads to Canada, many of our Brethren would be hindered from coming over to us, besides many amongst us care not to be deprived of the liberty of going whither they please”³¹⁰.

In 1741, we see that the Mi’kmaq continue to trade off-shore with the French, despite efforts by the English to restrict this activity. As one report notes, “We anchored on the 6 August. For the first time, we saw on the shore the next day an Indian of the Micmac nation and a French person. They came in birchbark canoes to the great canoe: this is what the Indians called the vessel of the King. They drank and ate, and were given powder and some shot, for some pieces of wild game that they brought”³¹¹. Later, in the same account, the author notes that they “saw in different places where we had anchored many inhabitants who came to us carrying some refreshments. We also saw at different times many Micmac Indians who brought us wild meat. They drank and ate and were given some powder and shot”³¹². Clearly, the Mi’kmaq are continuing their off-shore trade with the French, thereby maintaining their relationships with them and frustrating English efforts to monopolize the relationship between the Mi’kmaq and Europeans.

³⁰⁹ John Clarence Webster, Acadia at the End of the Seventeenth Century: Letters, Journals and Memoirs of Joseph Robineau De Villebon, Commandant En Acadie, 1690-1700, and Other Contemporary Documents, Monograph Series vol. 1 (St. John, N.B.: The New Brunswick Museum, 1934), 85.

³¹⁰ Public Records Office, Colonial Office (Great Britain), 5,862: 101(i), Heads and Propositions, 1701, 298.

³¹¹ "Relation D'un Voyage De Paris En Canada, 1741-10-14," Rapport De L'archiviste De La Province De Québec Pour 1947-1948 (Québec: Rédempti Paradis, 1948), 25-26.

³¹² *Ibid.* 26.

Even as late as 1761, when the treaties have been signed by the English and the Mi'kmaq – treaties in which the Mi'kmaq agree not to trade with the French – there is evidence that they continue trading relations with other nations. William Forster's letter to General Amherst indicates that he suspects as much. In response to a proposal by two merchants from Boston, to carry on an Oil and Cod fishery at the Bird Islands, Forster suggests that "This scheme appears to me, to be chiefly calculated by these Gentlemen to carry on, by means of the Acadians, an illicite Trade with the Micmac Indians of this Province, with who them are well acquainted, and to deprive the Government here of the power of keeping the Indians in Subjection and Dependence..."³¹³.

It is also evident in 1762 that Merchants from Quebec are trading at Restigouche. A Mi'kmaq Chief informs Thomas Fortye and David Allgeo that "the Merchants of Quebec have Supplied them (he and his company) with all kinds of Necessary's and that they Treat for all their Pelletries & ca: with them ..." ³¹⁴. Although this was not in contravention of the treaties the Mi'kmaq had signed with the English, it does demonstrate that the Mi'kmaq asserted their right to keep open old patterns of trade despite their agreements with the English. This, in turn, suggests that the Mi'kmaq had very open, non-exclusive ideas about trading relationships. Indeed, Mi'kmaq assertions to trade with whomever they pleased did not constitute actions *against* the English.

³¹³ Public Records Office, War Office (Great Britain), 34,12: 106r-08v, Forster to Amherst, 1761, 108. The same concerns are expressed by Roderick MacKenzie to General Amherst, in his letter of March 3, 1762. See Mémoire Des Commissaires De S.M. Très-Chrétienne Det De Ceux De S.M. Britannique, vol. 1 (Amsterdam and Leipzig: 1755), 314.

³¹⁴ E.B. O'Callaghan, ed., Documents Relative to the Colonial History of the State of New-York, vol. 4 (Albany, N.Y.: Weed, Parsons, 1854), 317.

Instead, it represented further opportunities for the Mi'kmaq to broaden the relationships they already had, and to sustain greater numbers of relationships with the nations that inhabited the lands in and around Mi'kma'ki. Trade was a passport for the Mi'kmaq – a passport to other economies, cultures, and nations³¹⁵.

In some instances, the Mi'kmaq used the second means of asserting their autonomy in trade – taking direct control over their trade. Marc Lescarbot makes an early allusion to this control in 1607: “we visited the lodges of the Sagamos Chkoudun , wherein we saw some eighty or a hundred savages ... who were making a feast with the flour which the said Chevalier had bartered for their old lousy skins; for they gave him only those whereof they had no desire”³¹⁶. In this instance, the Mi'kmaq Chief appears to be in control of the quality of the goods traded with the French, much to his advantage.

In 1720, the Mi'kmaq Captain John Alden meets at Menis is somewhat more direct. At Menis, “with his sloop aforesaid Eleven Indians with one Peter Nunquadden their Chief came to him and demanded fifty livers for liberty to trade saying this Countrey was theirs, and every English Trader should pay Tribute to them”³¹⁷. This instance is clearly an exception – perhaps an exaggeration – and ends tragically with the plundering of the trader's ships, and the loss of a significant amount of goods. However, it does serve as a striking example of Mi'kmaq assertion of their right to manage with whom they trade,

³¹⁵ The Treaty of Utrecht is clear in this regard. See Charles Jenkinson, ed., A Collection of All the Treaties of Peace, Alliance, and Commerce between Great Britain and Other Powers, vol. 2 (London: 1785). This is further reinforced in Public Records Office, Colonial Office (Great Britain), 217,9: 63r, Bedford to the Lords of Trade, 1749.

³¹⁶ Marc Lescarbot, History of New France, trans. W.L. Grant, 3 vols. (Toronto: The Champlain Society, 1907-1914), 356.

³¹⁷ Public Records Office, Colonial Office (Great Britain), 217,4: 18: 151, Deposition of John Alden, 1720, 151.

and where they trade. They controlled, in other words, the right to build relations with whomever they wished.

This same desire to have control over their relationships with other nations is expressed clearly in the Conference with the Penobscot and Norridgewalk in 1738. When Loron explains that they wish to use money in their trade with the English, he is arguing for equal control over the trade process: "... We can't hurt the Truckmaster, when we carry a Pack of Beaver, he tells us it weighs so much and we are to have so much for it in Truck at such Prices and thats all"³¹⁸. When the Governor of Massachusetts replies that "You can't read nor write and are much more exposed to be cheated by money than Goods in truck"³¹⁹, Loron responds, "We trade with the French for money & can sell it"³²⁰. The Mi'kmaq are strengthening their autonomy to trade with others by trading their goods with the English for currency. This, in turn, provided the Mi'kmaq with the flexibility to trade with whomever they wish, including the French.

The Mi'kmaq asserted this openness in a number of ways. We have seen examples above of instances where they asserted this 'right' on their own land, and left the door open to dialogue and to trade relations with other nations. The French, Acadians, Canadiens, and New Englanders were all potential trading partners for the Mi'kmaq, as were the Montagnais, Penobscot, Maliseet, Passamaquoddy, and the Haudenosaunee. We have also seen examples of the Mi'kmaq traveling widely – possibly for trade and diplomacy.

³¹⁸ Public Records Office, Colonial Office (Great Britain), 5,881: 11r-21r, Conference with the Penobscot & Norridgewalk Indians, 1738-06-28 to 1738-07-06, 1738, 14.

³¹⁹ Ibid., 14.

³²⁰ Ibid., 14.

One of the earliest – and best – examples of this is found in Gabriel Archer’s account of Gosnold’s Voyage to ‘North Virginia’, undertaken in 1602. This account provides us with the description of a Basque shallop crewed by eight Mi’kmaq, who are familiar with and trade down the coast from Newfoundland to Massachusetts³²¹. This account, of some length, provides an excellent portrait of the Mi’kmaq they meet:

The fourteenth, about six in the morning we descried Land that lay North, &c. the Northerly part we called the North Land, which to another Rocke upon the same lying twelve leagues West, that wee called Savage Rocke, because the Savages first shewed themselves there, five leagues towards the saide Rocke is an out Point of woodie ground, the Trees thereof very high and straight, from the Rocke East North-east. From the said Rocke, came towards us a Biscay shapplo with saile and Oares, having eight persons in it, whom we supposed at first to bee Christians distresses. But approaching us neere, wee perceived them to bee Savages. These coming within call hayled us, and wee answered. The after signes of peace, and a long speech by one of them made, they came boldly aboard us being all naked, saving about their shoulders certaine loose Deere-skinnes, and neere their wastes Seale-skinnes tyed fast like to Irish Dimmie Trousers. One that seemed to be their Commander wore a Wastecoate of blacke worke, a paire of Breeches, cloth Stockings, Shooes, Hat, and Band, one or two more had also a few things made by some Christians, these with a piece of Chalke described the Coast thereabouts, and could name Placentia of the New-found-land, they spake divers Christian works, and seemed to understand much more than we, for want of Language could comprehend...³²².

There are a number of interesting pieces of information to be gleaned from Archer’s account. The first is that the Mi’kmaq are trading over a wide geographical area, evidently making contact with English, French, Acadians and the First Nations that inhabited Eastern North America. This is critical because it points to wide networks of communication between the Mi’kmaq and other nations – communication that was maintained through trade and commerce. The skill of the Mi’kmaq as sailors, and their

³²¹ See Quinn, David B. Quinn and Alison M. Quinn, eds., The English New England Voyages, 1602-1608 (London: The Hakluyt Society, 1983), 112.

³²² *Ibid.* 116-117.

knowledge of the local seacoast, most likely outstripped the knowledge and abilities of their European allies. The ability to traverse long distances in short periods of time eluded the English, and was part of the skill of the First Nations in maintaining extensive trading and diplomatic networks over large geographical areas.

Lescarbot's account of his meeting with Sagamos Chkoudun draws attention to the rapidity with which the First Nations traversed long distances. With the Sagamos, whom he meets at the mouth of the St. John's River – on the French Bay³²³, are a number of other nations. He reports, "A good portion of the said savages came from Gaspé, which is at the mouth of the great river of Canada. They told us that they had come from their homes in six days, whereat I was much amazed, seeing the distance it is by sea; but they greatly shorten their journeys, and make long voyages by means of the lakes and rivers ..."³²⁴. It is almost certain that the alliances that had been formed with First Nations in the Gaspé were built on the contacts established through trade, and formalized through diplomacy.

It is clear, then, that First Nations traveled widely and traded widely. Henry Grace's account of his slavery traces a journey across North America as far south and west as the Cherokee Nation. This voyage is punctuated by accounts of hunting and trade along the route, and of the encounters and interactions with First Nations and Europeans encountered during the trip. Grace's story, although it is undoubtedly dramatized for the benefit of his audience, nonetheless illustrates the ability and willingness of the

³²³ Bay of Fundy.

³²⁴ Marc Lescarbot, *History of New France*, trans. W.L. Grant, 3 vols. (Toronto: The Champlain Society, 1907-1914), 357.

Mi'kmaq to travel and trade widely. Exercising their ability to carry out trade in this way was one of the means by which the Mi'kmaq asserted their independence to trade with other nations, building the economic and social spaces within which relationships could be built.

Another interesting facet of Archer's account is the technological adaptability of the Mi'kmaq. The fact that they can sail a Basque shallop over such long distances is a testament to their skills as sailors – skills which allowed them to adapt to the changing economic and trade climate in which they were living. The dress of the Mi'kmaq leader is also of interest to us, as it demonstrates that the Mi'kmaq were able to adopt European technology while adapting it to their own cultural and social needs. This is also underlined by Brereton's account of the same meeting with the Mi'kmaq sailors in 1602.

Brereton is much more interested in the material culture of the Mi'kmaq he meets in Massachusetts. He notes that “standing faire alongst by the shore, about twelve of the clocke the same day, we came to an anker, where eight Indians, in a Baske-shallop with mast and saile, and iron grapple, and a kettle of Copper”³²⁵. Of interest here is the copper kettle, which the Mi'kmaq would have procured through trade with the French or English. Many of these copper kettles would have been cut and converted to ornaments and weapons, but some were obviously maintained for the purposes of cooking. Again, through trade the Mi'kmaq obtained material from other nations which they then adopted and adapted for their needs.

³²⁵ David B. Quinn and Alison M. Quinn, eds., The English New England Voyages, 1602-1608 (London: The Hakluyt Society, 1983), 145.

Biard's *Relation* provides us with a later account of this 'technological adaptability' amongst the Mi'kmaq. He observes that "in Summer, they often wear our capes, and in Winter our bed-blankets, which they improve with trimming and wear double. They are also quite willing to make use of our hats, shoes, caps, woolens and shirts, and of our linen to clean their infants, for we trade them all of these commodities for their furs",³²⁶. The Mi'kmaq and their neighbouring First Nations saw the advantages brought to their daily life in the technology imported by the Europeans into Mi'kma'ki. However, they adopted and improved European technology for their use, based on their knowledge of the climate, and their cultural and economic practices.

Flexibility and resiliency characterized the assertion by the Mi'kmaq of their autonomy through trade. The practices of relationship-building and the assertion of autonomy complemented each other as the Mi'kmaq attempted to maintain a world distinct from the worlds of those whom they shared Mi'kma'ki with. Indeed, through flexibility and resiliency, the Mi'kmaq pushed to create and maintain an economic space through which nation-to-nation relationships could be developed and sustained.

A Distinct Economic Space

There are a number of ways in which the Mi'kmaq worked to create this distinct economic space. Three principal means stand out in the achievement of these ends: through arguments with the English for fair trade and value for their goods; through the deliberate structuring of trade as a public activity to be regulated by governments; and

³²⁶ Reuben Gold Thwaites, ed., *The Jesuit Relations and Allied Documents*, vol. 30 (New York: Pageant Book Company, 1959), 75-77.

through the use of trade as a 'passport' between worlds. It is through these means that the Mi'kmaq re-ensured their ability to remain flexible and resilient despite the growing presence of the English on their land.

In 1701, we see evidence of a dialogue about the prices of goods. Responding to the requests for goods by the Abenaki, the government of Massachusetts declares "to them that Supplys Should be Sent them as soon as could be, withal informing them that Goods were now dearer than at Some other times, and that the price of Beaver is much fal'n, directing them to get as many Moose hides, Bear Skins and Small Furs as they could"³²⁷.

Complaints by the First Nations in Acadia about the prices of beaver are clearly articulated seven months later, in discussions held at Sagadahoe. The speaker for the 'Eastern Indians' complains that "We have not enough for our Beaver. ... We have not above halfe so much for our beaver as formerly"³²⁸. When the Governor responds that "It is not worth a quarter so much in Europe. It is out of fasion much, but it may be better hereafter, by and by it will be well again"³²⁹, the 'Eastern Indians' respond that "We are always Promis'd Beaver will rise, but we think never"³³⁰.

So much concerned were these First Nations by the prices of beaver, that it formed the basis of the discussions in 1738. This 1738 conference was held to deliberate over and reinforce the provisions of the Treaty of 1725. The arguments for a fair and 'cheap' trade

³²⁷ Public Records Office, Colonial Office (Great Britain), 5,862: 101(ii), Minutes of the Massachusetts Council, 1701-12-27 to 1701-12-29, 1701, 303.

³²⁸ Public Records Office, Colonial Office (Great Britain), 5,862: 125(ii), Memorial of Sagadahoc Conference, 1702, 381.

³²⁹ Ibid., 381.

³³⁰ Ibid., 381.

by the Penobscot and Passamaquoddy were consistent and firm. Several days into the discussions, Loron intervenes: “We desire to know if your Excellency has resolved as to the Regulation of Trade, if it may be better managed: that it may be determined at what Season of the Year the Beaver may be look’t upon as good, that so the Prices may be governed accordingly: It is best the Prices of Cloaths and well as Beaver should be regulated. And it is good we should know it”³³¹. The Penobscot and their allies are arguing not only for better prices, but for a better space in which they can negotiate as partners in exchange with the English.

Certainly, by 1752, the English understand the importance that was attached to the economic space they shared with the Mi’kmaq. The Governor, in response to proposals from the Mi’kmaq, states that “the Governour will put up a Truck house of Merchandise there, where you may have everything you stand in need of at a reasonable price, and where shall be given unto you the full Value for the peltries, Feathers, or other Things which you shall have to sell”³³². This response reproduces almost exactly the spirit of the request made to the Nova Scotia government in 1760 by the Passamaquoddy. The Governor replies that truck houses would be established “agreeable to their desire” and “at other Places if it should be found necessary”. Moreover, the Governor adds that “great care should be taken, that the Commerce at the said Truckhouses should be managed by Persons on whose Justice and Treatment, they might always depend”³³³.

³³¹ Public Records Office, Colonial Office (Great Britain), 5,881: 11r-21r, Conference with the Penobscot & Norridgewalk Indians, 1738-06-28 to 1738-07-06, 1738, 18.

³³² Public Archives of Nova Scotia (Nova Scotia), RG-1,186: 250-54, Nova Scotia Executive Council Minutes, 1752-11-22, 1752, 217.

³³³ Public Archives of Nova Scotia (Nova Scotia), RG-1,188: 119-23, Nova Scotia Executive Council Minutes, 1760-02-11, 1760, 122.

It is clear, as well, that the English agreed the climate established at the truck houses would depend on the agreement of both parties. Only two days after the conference described above, the Executive Council made it known that they were of the “Opinion that the Prices of the several sorts of Goods to be furnished to the Indians, together with the Price of their Peltries, should be established at a certain reasonable Rate: That the Indians should attend the Council to Morrow, in order to their being consulted of the Rates proposed”³³⁴. The Mi’kmaq and their allies have expected to have a safe, trustworthy and ‘cheap’ place to trade with the English. They would also have expected that the rates of trade would have been established together in consultation. Indeed, they would have likely understood that the English could not establish the rates without full endorsement of the Mi’kmaq.

Trade generated the economic space in which two nations – the English and the Mi’kmaq – would have built trust and agreement. This space was created as a public space, to be regulated and controlled by governments – at least initially – working together for the good of their own peoples. As early as 1693, the English are committed to making trade a matter of public policy. The Governor of Massachusetts proposes that “all Trade ... which hereafter may be allowed betwixt the English and Indians shall be under such management and Regulations as may be Stated by an Act of the General Assembly, or as the Governour of sd Province ... shall see cause to direct and limit”³³⁵. This language is

³³⁴ Public Archives of Nova Scotia (Nova Scotia), RG1,188: 124-26, Nova Scotia Executive Council Minutes, 1760-02-13, 1760, 126.

³³⁵ Public Records Office, Colonial Office (Great Britain), 5,751: 64r-65r, Treaty of 1693, 1693, 64.

repeated in Treaty of Ryswick in 1697, and becomes part of the ongoing language of treaty-making between the English and the Mi'kmaq.

We can measure the significance of this in the exchange between the 'Eastern Indians' and the Governor of Massachusetts in 1702 at Sagadahoc. When pushed to regulate the prices of beaver in a more equitable manner, the Governor responds that it is the fault of the European markets, and that he has little control over the matter. Indeed, he even complains that he does not like when the prices of beaver are low either: "we are hurt too by it's being cheap"³³⁶. The Indian's response to the Governor's self-declared ineffectiveness is "You can Govern the matter better than it used to be"³³⁷. The Mi'kmaq expect that the Governor will be more proactive in setting prices, since trade is happening in a government-created and government-regulated space. A space, it bears repeating, that is the creation and responsibility of both the English and Mi'kmaq nations.

Trade creates the space in which a nation-to-nation relationship is founded, but is in constant competition with other systems. We have seen the impacts of private trade on intercultural relations, and we can expect that the Mi'kmaq would have valued the public system of trade as being in their best interest. After all, at the nation-to-nation level, they could have influence on the conditions under which trade would happen – the preconditions for the relationship between them and the English. Competition also comes from the Merchants of Quebec, who maintain trade with the Mi'kmaq as late as

³³⁶ Public Records Office, Colonial Office (Great Britain), 5,862: 125(ii), Memorial of Sagadahoc Conference, 1702, 381.

³³⁷ *Ibid.*, 381.

1762³³⁸. These merchants represent a different kind of competition for the English-Mi'kmaq trade market, and suggest the presence of plural systems of governance present on the same land. Private trade, and the private mercantile system both challenged the public domain within which the Mi'kmaq had created the role of their nation vis-à-vis the English.

In addition to the negative experience which the Mi'kmaq would likely have had at the hands of private traders, accepting private trade would have evacuated the responsibilities they had for the public economic space which they had helped to create. They would, in other words, have lost the public space they had crafted, and into which their beliefs and views were projected in a relationship with the English. Creating and sustaining a public space for trade was a prime concern amongst the Mi'kmaq, and a matter for treaty-making with the English. Respect, resiliency and relationship-building laid the foundations for the creation and sustenance of this economic space.

The Treaty of 1760/61 – Economics and Trade

As we have seen from the discussion above, the Mi'kmaq strongly valued the connections they had to the land which they *shared* with their brothers and sisters – those whom they hunted for food and trade, and those with whom they partook the abundance of the land through sharing and trade. From earliest contacts, through to the signing of the Treaty of 1760/61, the Mi'kmaq maintained the rights and responsibilities of an independent people who sought relationships with others around them for mutual benefit.

³³⁸ An account of this trade can be found in the letter of Thomas Fortye and David Allgeo to Amherst dated July 14, 1762. See "Mackenzie À Amherst," Les Cahiers Société Historique Acadienne 3. avril-juin (1970), 317.

The relationships the Mi'kmaq built with the English were founded on a tradition of exchange, trade and economic diplomacy that the Mi'kmaq had practiced for many years prior to the arrival of Europeans in Mi'kma'ki. As late as 1763, the Mi'kmaq exercised their responsibilities and rights as a trading nation, with a profound respect for the values the land to which they were tied represented for them. Indeed, trade was an extension of the Mi'kmaq connection to the land and its abundance, and a means of sharing the benefits of that relationship with others. Connected to the land, and supported by spiritual practices, trade and exchange represented an economic space that the Mi'kmaq *shared* with the English, and their other 'extended kin'. The primal economy of the Mi'kmaq would have been respected, projected and protected through their relationships with the English.

It is based on this 'range of expressions' that the Mi'kmaq would have understood all aspects of economics and trade represented in the Treaty of 1760/61 with the English. When the Mi'kmaq offered the English protection from molestation, they were principally concerned with protecting the *shared* economic spaces they had constructed with the English. After all, contact with the English would principally have been at their settlements. It was, therefore, in the interest of the Mi'kmaq to ensure that these places were as safe as possible for their people. It is also reasonable to speculate that the Mi'kmaq would have agreed to this clause only because it was reciprocal to the same promise made first by the English regarding the Mi'kmaq.

Protecting the English from ‘molestation’ by their fellow Mi’kmaq would have defended, then, the places where the Mi’kmaq were in contact with the English for the purposes of trading and exchange. As discussed above, these places formed part of the economic space in which the relationship to the English was being nurtured. It was in this shared space that the Mi’kmaq had easiest access to English goods and technology, both of which had proven useful to them in the past.

It is likely for this reason that ‘commerce’ is particularly mentioned in the Treaty. Trade was an extension of Mi’kmaq economic practices and was, therefore, of value to the Mi’kmaq in maintaining their own way of life. The creation of shared economic spaces – through trade – was critical to Mi’kmaq survival, hence its integral role in the Mi’kmaq worldview. Indeed, although commerce is mentioned specifically, the Mi’kmaq would have understood that their connection to the land – through hunting, shooting and fishing – would also have been respected by the English in this clause. Again, Mi’kmaq agreement to this kind of clause likely came only in reciprocation to English promises of the same respect for the daily activities of Mi’kmaq citizens.

[Section VII, Part I] And I do further promise for myself and my Tribe, that we will not either directly or indirectly assist any of the Enemies of His Most Sacred Majesty King George the Third, his Heirs or Successors, nor hold any manner of Commerce, Traffick, nor intercourse with them;

As discussed above with respect to politics and law, the Chiefs would not have been able to commit anyone but themselves to this kind of clause. What is likely is that they agreed to continue to work with other nations that had grievances with the English in order to convince them of the need for peaceful trading relations. The Mi'kmaq would see it to their general advantage if the English in Nova Scotia, the French, the New Englanders and all of the First Peoples of Mi'kma'ki could live in peace. This would bring stability to their land, and put an end to the conflicts that interrupted their trading routes along the eastern coast of Turtle Island.

It is unlikely that the Mi'kmaq would hold the same understanding as the English of which nations were the “enemies” of King George. The Mi'kmaq had already indicated that they had no intention of blocking the passage of their people to Quebec³³⁹, and it is likely that they would have continued trading with other nations, even if those nations had specific grievances against the English. Of course, so long as the English continued to provide trading conditions that were favourable to the Mi'kmaq, the Mi'kmaq would have no reason to trade anywhere else.

For example, although the price of beaver is not specifically mentioned in the text of the Treaty, the English governor offers that Mi'kmaq “Traffick will be weighed and Settled in the Scale of Honesty, and Secured by severe punishment against any attempts to Change the just Balance of that Scale”³⁴⁰. The Mi'kmaq would have felt assured that

³³⁹ Public Records Office, Colonial Office (Great Britain), 5,862: 101(i), Heads and Propositions, 1701, 298v.

³⁴⁰ Public Records Office, Colonial Office (London, U.K.), 217,18: 277r-83r, Governor's Farm Ceremony, 25 June 1761, 1761.

their trading relationship with the English was bringing them the greatest possible benefits. They would also have felt confident that the English were respecting their 'end of the bargain' within the trading relationship.

As further reassurance, the English appeared willing to respect and sustain the public trading space they had built with the Mi'kmaq. The Mi'kmaq would have understood that the English would establish truckhouses wherever and whenever they requested them to do so. Indeed, this was one of the responsibilities the English had agreed to in exchange for the right to share the land in Mi'kma'ki with its rightful heirs. In a sense, then, this clause supports the agreement that the English would continue to maintain public places of trading for the purpose of exchange with the Mi'kmaq. The English, in other words, committed to maintaining the institutions that enabled the preservation of a *shared* economic space – where economic dialogue was carried out.

Mi'kmaq Economics and Trade – Sustaining Relations in Mi'kma'ki

The Treaty of 1760/61 formalized the Mi'kmaq trading relationship with the English. The Mi'kmaq maintained their economic system, and ensured that the English lived up to their responsibilities as tenants in Mi'kma'ki. In this sense, they were not only protecting their own economic practices – and thus their relationship to the land – but also the trading relationship they had built with the English. It was through this relationship that they could continue to **share** the resources of the land with their new-found kin from England.

By securing and strengthening their trading relationship with the English, the Mi'kmaq were guaranteeing a continued connection to the land, and a source of goods for their families and communities. In a sense, they were not only securing that which sustained them in their traditional way of living – including their responsibilities to respect and protect the land – they were also sustaining the relationship that was growing between them and the English through trade. The Treaty of 1760/61 provided much-needed sustenance for the Mi'kmaq, and their relations with the English. This sustenance *had* been and would *continue* to be, founded on the creation of shared economic spaces within which the Mi'kmaq could interact with their kin.

From an economic and trade perspective, then, the Treaty of 1760/61 secured Mi'kmaq sovereignty through the negotiation of a distinct, *shared*, economic space in which relationships with others – in this case the English – could be built and sustained. In this sense, the agreement expressed in this Treaty is significant not only because the Mi'kmaq would have seen their own understanding of economics and trade expressed therein, but also because it reveals the critical importance of creating places of *sharing* and exchange as part of this sovereignty.

Conclusions – The Treaty of 1760/61 and Mi'kmaq 'Consciousness'

The Treaty of 1760/61 represented the culmination of almost 100 years of formalized discussions between the English and Mi'kmaq. From the political, legal, economic, spiritual and territorial perspectives, it represented a point at which the Mi'kmaq could reflect on their traditions as they moved forward in their relationship with the English. In

all senses, the Treaty represented an accurate picture of Mi'kmaq law and politics, economics and trade, spirituality and land use practices.

The Treaty represented a diplomatic success for a Mi'kmaq national political system which still functioned as it had for many generations. It was a system founded on its memory and diplomatic functions. Wampum belts were used to communicate with other nations, to symbolize agreements or treaties, and to recall the meanings of these agreements. The process of recalling agreements, discussing their meanings and re-quickening the words which explained these agreements was ongoing. Even the English had adopted the use of wampum and wampum belts as part of their diplomatic process with their First Nations allies.

The Mi'kmaq also saw the English slowly adopt the exchange of presents as part of the relationship-building and maintenance process. Together, as part of this process, the Mi'kmaq and the English had agreed to maintain a pluralistic legal system. This system was underpinned by Mi'kmaq law, but also accepted the presence of English norms and codes within English settlements. The English may not have fully understood the idea of legal pluralism in Mi'kma'ki – mostly because they had underestimated the capacity of the Mi'kmaq for this practice – but the Mi'kmaq actively sustained both systems in practice. The Mi'kmaq would also have seen the Treaty as respecting and protecting this pluralistic approach to law.

Mi'kmaq political and legal structures, and the Mi'kmaq legal consciousness, were resilient throughout this time period. Building on the strength of their traditions and practices, they had survived and met the challenges the French had represented to them. They were prepared to meet the English as equals, and to accept their submission to them in order to provide for English survival in the new world.

In this climate, trade was of fundamental importance to the Mi'kmaq. Not only was it a means for securing a livelihood and providing sustenance for Mi'kmaq families, it was also key in creating and maintaining the space within which the English-Mi'kmaq relationship took shape and was strengthened. The Mi'kmaq had proven themselves capable of adopting European technology to enhance their trading practices with other nations, and they continued to broaden and strengthen these practices in the seventeenth and eighteenth centuries. From first contact, the Mi'kmaq had demonstrated an eagerness to trade with the French and English, helping to shape the trade protocol which structured this process of 'formalized sharing'.

Before the departure of the French, the Mi'kmaq used trade as a passport – traveling their trade routes back and forth between the two European nations in order to secure the best price for their beaver pelts and furs. By taking part in trade with the French and English, the Mi'kmaq became active participants in the global economy – actively resisting market-based pricing while arguing for fair market value for their goods. In a sense, the Mi'kmaq were one of the original participants in the indigenous movement for fair trade.

The Mi'kmaq also successfully tied their economic system to the right to hunt and fish and fowl wherever they needed to. This primal economy – connecting the land, food and economic well-being of their people – determined the timing of diplomatic meetings, trading and war parties. The Mi'kmaq were able to maintain this relationship between land, environment and life-style, and even brought the English to respect it as part of their relationship. The Mi'kmaq continued to use the land, and care for it, while adopting European technologies where they were consistent with their own practices and beliefs.

Mi'kmaq land-use practices, as an extension of their spiritual beliefs, were still very much alive in the seventeenth and eighteenth centuries. These spiritual beliefs had been secured through an agreement with the Holy See in the early part of the seventeenth century through the Mi'kmaq Concordat. Christianity was viewed not as a rupture with their traditional spirituality, but as an extension thereof. It enabled the Mi'kmaq to see their Chiefs – acting as spiritual guides – as equal to the King of England, and therefore vested with the task of assigning land rights and responsibilities. In this role, the Chiefs assured their economic and spiritual well-being while also protecting the land and its resources for future generations.

For thousands of years, the Mi'kmaq had crossed their lands with ease and expertise. European technology allowed them to extend their trading routes even further, bringing them into contact with larger markets where their products could be traded for better prices. The ability of the Mi'kmaq to employ the paths and passes of their homeland underlined their knowledge of the landscape – a knowledge based on experience and

sharing with others. Because they did not own the land, but shared it with other members of their nation, their relationship with the land was not limited to a specific territory, but rather to the land as a whole. Acting out of respect for the *manitu* found therein, the Mi'kmaq were able to secure access to the foods they needed for survival, and the raw materials which they could trade with others.

Following the rivers and lakes of Mi'kma'ki, the Mi'kmaq drew a very different relationship to the land than the French or English. The land remained theirs, and was shared with the English according to Mi'kmaq traditions and practices. The English had their settlements, but these were on the periphery of Mi'kma'ki. Furthermore, the Mi'kmaq had the right – and the responsibility – to determine how further expansion of English settlements was to happen. Well into the eighteenth century, the Mi'kmaq continued to travel across, live on, and share their land as they had for centuries. The discussions leading up to the Treaty of 1760/61 would have reaffirmed these practices, and maintained Mi'kmaq lands – all of the lands outside English settlements – as theirs to use and care for.

Mi'kmaq political, legal, economic and spiritual practices overlapped and converged on the landscape of Mi'kma'ki. These traditions were resilient, adopting English customs where appropriate and useful, and adapting to the presence of the English *without* compromising their own beliefs. Indeed, while they adopted English technology, the Mi'kmaq also adapted it to their way of seeing the world. While concerns about the English could be heard like unknown rapids on the river ahead, the Treaty of 1760/61 did

little but confirm what the Mi'kmaq took as true – that the English had submitted to them, and that they would eventually learn to live in Mi'kma'ki as proper human citizens.

The Treaty of 1760/61 was, then, truly a moment of continuity for the Mi'kmaq. Their way of seeing the world and living in it remained unchanged. They agreed to weave the political and legal histories of the English into their own – within the shared political, economic, social, legal and spiritual spaces they created with the English – so that both of their communities could continue to live together in Mi'kma'ki just as brothers should. They focused their efforts – to return to the metaphor used at the outset of this chapter – on the space between their canoe and that of the English. They founded this space on shared trading, social and economic exchange, and respectful cooperation.

The three corner-stones of continuity, responsibility – for themselves and their new European kin – and relationship-building characterized the shared space which the Mi'kmaq charted out between themselves and the English. These three pillars strengthened not only their own respective canoe, they also created the paths and passes necessary for them to traverse the space between their canoe and that of the English. The three elements ensured a relationship with the English which respected Mi'kmaq political, legal, spiritual and economic practices – practices which traversed the landscape, much like the rivers and streams upon which they depended for their life upon the land.

The Treaty of 1760/61 and Mi'kmaq Sovereignty

Above, we have examined extensively the context and meanings which the Mi'kmaq would have intended in accepting the English submission of 1760/61. Certainly, this process of 'meaning excavation' has revealed a great deal about the ways in which the Mi'kmaq would have understood the world around them, the ways they brokered their relationships with the land, their kin, and their neighbours, and the ways in which they used this brokering to secure their own traditions and practices. From this excavation, we have also seen the form, content and intended meaning of Mi'kmaq sovereignty 'described' for us.

What, then, are the elements of this sovereignty?

The first element is the linkage between sovereignty and land – as distinct from territory. Certainly, the Mi'kmaq do have a sense of territory. This is expressed in the way in which their chiefs assign hunting lands for extended families, and in the manner they control and limit the expansion of English settlements. In Mi'kmaq terms, however, territory is used to delimit the area of connection of a particular family on the land, not to exclude others from the use of that land. The Mi'kmaq understanding of sovereignty, then, would have included a sense of relationship with the land. This relationship was maintained through proper management practices so that the resources of the land could be **shared** equitably amongst all.

In this sense, Mi'kmaq sovereignty of the land was inclusive in nature. It was 'designed' to ensure survival and growth of the families and clans which formed the nation. The Mi'kmaq attempted to extend this practice of sharing to the English as they grew in numbers – with some initial success. The Mi'kmaq sense of the landscape was developed based on the hunting, fishing and trading practices they carried out with their neighbours. It is well articulated in the descriptions of Mi'kmaq paths and passes across the landscape³⁴¹ and in the Mi'kmaq creation story.

To speak of Mi'kmaq sovereignty of Mi'kma'ki is to speak about the practices which tied the Mi'kmaq to the land, and how the resources of the land were shared. Fishing and hunting were key amongst these practices, as were the ceremonies which signified their respect for the land they used and maintained for future generations. Indeed, spirituality was another fundamental aspect of Mi'kmaq sovereignty revealed in the analysis of the context and intended meaning of the Mi'kmaq signatories to the Treaty of 1760/61.

As seen above, Mi'kmaq spirituality was based on the respect the Mi'kmaq had for Mi'kma'ki, for their brothers and sisters which provided for them³⁴², and the proper protocol to maintain the health of the land and their people. All of these aspects of Mi'kmaq spirituality were interconnected. What is most interesting is the approach the Mi'kmaq took in their relationship with Catholicism. The Mi'kmaq Concordat signified a strategic weaving of traditional Mi'kmaq spirituality and Catholicism into a spiritual tapestry that was unique to Mi'kma'ki. Whether guided by pragmatism and strategy, or

³⁴¹ This 'paths and passes' approach was to later conflict with the English land tenure system which was exclusive.

³⁴² The plants and animals which they cultivated, collected and hunted for sustenance.

by the visions of Messamouet, the openness of the Mi'kmaq spirituality to Catholicism's 'other' was key to its survival, and the maintenance of traditional spiritual practices. Mi'kmaq spirituality and its resiliency were fundamental elements, then, of the Mi'kmaq exercise of sovereignty. It is by **sharing** some common religious beliefs with their European kin – in a search for syncretism – that the Mi'kmaq avoided spiritual domination and cultural conquest.

The significance of sharing resources with the natural world, and the landscape with their brothers and sisters, extended into the political realm. Chief amongst the values of Mi'kmaq leaders was the 'big heartedness' they showed to others. Indeed, it is this core value that allowed Chiefs to maintain their influence within their clans and communities. The institutions – such as those of gift-giving, hostage and wampum belt exchange – were key elements in the political system of the Mi'kmaq. These elements were protected and promoted – thus ensuring continuity – through the maintenance of the traditional political system of the Mi'kmaq, and role of Chiefs as leaders and spiritual guides. Again, the Mi'kmaq **shared** their political processes and protocols with their European kin – processes and protocols which both the French and English adopted more or less successfully.

By 1760/61, the Mi'kmaq may have felt that the English were learning the Mi'kmaq way of exchanging information – through the use of Wampum belts – and that they were also respecting the political structures of the Mi'kmaq. What is certain is that the Mi'kmaq expected the law of Mi'kma'ki to be observed and upheld by both nations. Adopting

legal pluralism as a practice was one way in which the Mi'kmaq were successful in achieving this. In a sense, the Mi'kmaq saw their law and English law overlapping in certain spheres – in English towns, for example – while parallel in others. Certainly, the Mi'kmaq had no interest in enforcing English law in disputes between English subjects, but they would certainly uphold Mi'kmaq law if English subjects caused an offense against a Mi'kmaq citizen. Legal pluralism – or **shared** law – was critical, therefore, to the protection and promotion of Mi'kmaq sovereignty.

In their contact with other nations, Mi'kmaq sovereignty was also protected and promoted by means of trade. Through the creation of **shared** spaces of exchange and commerce with the English, the Mi'kmaq were able to construct a made-in-Mi'kma'ki place, where they not only had access to other markets and finished products in exchange for the products of their primal economy, but they also had the means to create a distinct place in which the values of both nations could be shared. Through trade, and its connection to the land and the values inherent therein, the Mi'kmaq shared their cultural, economic, material, spiritual and societal values. Sharing the resources of the land, and **sharing** through trade, formed another element of Mi'kmaq sovereignty.

It is also important to underline that the Mi'kmaq saw continuity as a key component of their sovereignty. They were interested in promoting the continuity of their political and legal institutions, their economic systems, their spirituality, their relationship to the land and the health of the land. Sharing their language, practices, and protocols was key to this continuity. Mi'kmaq sovereignty was also open to the continuity of the values,

practices and protocols of others who wanted to share Mi'kma'ki with them. Mi'kmaq sovereignty was constructed around building relationships with others – within communities, between communities, and between nations. It was not *exclusive*, but inclusive.

In all of its aspects – environment and land; spiritual, political and legal; and economic – Mi'kmaq sovereignty was about the paths and passes that allowed them to build relationships with others. Indeed, in its content and structure, Mi'kmaq sovereignty was, and is, *shared sovereignty* – an idea that opens our minds to a new way of understanding the political landscape of 21st century Mi'kma'ki. It is to this reflection that we will now turn our attention.

Chapter 5

It was a truly wonderful voyage. I would like to start all over and re-build my canoe with my friends, the professionals, and take my trip once again. Once I thought about all of my experiences, I began to think again. Even if I had built my plane, and become popular, I would not have had the opportunity to take this adventure, and share it with you.

At home, we remember. Why did we travel so far? What did we learn? We learned about building new relationships. We learned just how far our canoe will take us, and where others' canoes begin. We learned to see the river in a different way, and how we can share the river together. Humility is where we started, and in humility, we reflect on the experience we shared with so many others. Again? Yes, we would do it again ... not for fame, or accolades, but for the hospitality, sharing and relationships we have built through our travels, and knowledge we can bring to other similar travels in the future. Take what you need, it is ours to share.

.....

Mi'kmaq Sovereignty – Mutual Respect, Sharing/Hospitality, and Responsibility

As we have seen in Chapter 4, Mi'kmaq sovereignty was founded on an openness to dialogue and cooperation – both grounded in mutual respect, sharing/hospitality and responsibility. Indeed, relationship-building was key to the sovereignty of the Mi'kmaq, and formed the foundation for their relationships with the French and English that arrived in Mi'kma'ki between the 16th and 18th centuries. Relationship-building underpinned the legal, political, spiritual, economic and land-use practices of the Mi'kmaq. Arguably, continuity, shared responsibility and relationship-building were pillars of Mi'kmaq sovereignty.

In law, for example, the Mi'kmaq maintained their own legal system, while agreeing to respect English law in English settlements. They also agreed to allow English law to prevail where English citizens were involved in a dispute, even if that dispute was outside

an English settlement. The Treaty of 1760/61 reflected this agreement, and 'institutionalized' a form of legal pluralism in Mi'kma'ki.

Much the same can be said with regards to then Mi'kmaq understanding of their political system. The Mi'kmaq expected that both political systems would remain intact, and would co-exist within Mi'kma'ki. The English had their King and their Governor, the Mi'kmaq their Chiefs and Grand Chief. They developed a language and protocol to respect both political systems, and they negotiated ways to relate these systems to one another. The English, for example, adopted the use of the wampum belt to signify the desire to treat with the Mi'kmaq, and to underline specific agreements. They also adopted the practice of giving presents. The Mi'kmaq, for their part, kept written copies of the English treaties to signify the importance of these documents, and their understanding thereof. The enduring importance of these treaties underscores their symbolic importance as elements of the inter-cultural dialogue between the two nations¹.

Through their exchange of goods, the Mi'kmaq created a distinct shared economic space within which they could project and protect their social and cultural values. They also used trade to maintain their use of, and connection to, the land which they relied upon for sustenance and survival². The ability of the Mi'kmaq to help create and maintain this

¹ For further discussion of the importance of treaties to Canadian federalism, see James Tully, "A Just Relationship between Aboriginal and Non-Aboriginal Peoples of Canada " Aboriginal Rights and Self Government: The Canadian and Mexican Experience in North American Perspective, eds. Curtis Cook and Juan D. Lindau (Montreal, Québec: McGill-Queens University Press, 2000), 41.

² Jonathan Hart and Joan Holmes argue that it "was through this constant assertion by First Nations that European and North American governments in the seventeenth and eighteenth centuries came to recognize and acknowledge the aboriginal right of First Nations to travel and trade across the imprecise boundaries that the colonial powers had unilaterally drawn between their own spheres of influence". See Jonathan Hart and Joan Holmes, "'We Have Never Parted with Such a Power' - Assertions of First Nations'

space, within which they constantly negotiated an economic relationship with the English, evokes the notion of shared responsibility, referring in part to the agreement that both partners in the exchange would honour their responsibilities to trade fairly and to the benefit of both³. It is through this exchange and shared responsibility that both partners could begin to build trust and interdependence in their relationship. The Mi'kmaq approach to economic relations with the English was founded, then, on the same principle of dialogue and relationship-building already present in their political and legal thought.

A similar approach was adopted by the Mi'kmaq with respect to religion and spirituality. The Mi'kmaq adopted syncretism as their approach in building a relationship between their traditions and the religions of their French and English kin. This relationship was built on the mutual respect present in English-Mi'kmaq 'spiritual relations'. Since the English had recognized the role of Mi'kmaq Chiefs, the Mi'kmaq most likely felt that the English also understood the spiritual role of Chiefs. This respect and recognition was returned by the Mi'kmaq towards the Priests sent to them by the Holy See. Again, the space existed between the Mi'kmaq and the English in which religion and spirituality played a role in communicating cultural values between the two nations. This space was created by Mi'kmaq openness towards Catholicism, and their development of a hybrid spirituality.

Sovereignty and the Right to Trade and Travel in the Seventeenth and Eighteenth-Century Great Lakes Region," Unpublished, (2000), 2.

³ This is similar to the concept of 'equity', discussed by F. Henry Lickers in F. Henry Lickers, "Can't See the Forest for the Trees: A Native American's Perspective," *Biodiversity: Toward Operational Definitions - the 1995 Plum Creek Lectures* (University of Montana-Missoula: University of Montana-Missoula, 1997).

The land and environment of Mi'kma'ki were inseparable from the spirituality which permeated the landscape. As in spirituality, then, it is no surprise to see a relationship between the Mi'kmaq and English – on the land – underpinned by relational concepts. The Mi'kmaq would have understood that both they and the English lived in their own distinct areas, but that they shared the same landscape, and therefore shared the same kinds of responsibilities in respecting and preserving Mi'kma'ki. The English agreed to respect Mi'kmaq jurisdiction over the land by discussing any planned settlements or land developments with them, and by allowing the Mi'kmaq to hunt, fish and fowl on the lands where English settlers had established themselves. The Mi'kmaq, for their part, agreed to allow the English to share the land with them, and to leave unmolested the English developments and land improvements that already existed.

Through the Treaty of 1760/61, and the treaties that had come before, the Mi'kmaq reaffirmed their connection to and responsibility for Mi'kma'ki, and secured the recognition of this responsibility from the English. The Mi'kmaq stressed the importance of – and arguably secured – the agreement of the English to share the land of Mi'kma'ki on Mi'kmaq terms. Under these terms, the Mi'kmaq would have seen that their relationship with the English was based less on the ownership of the land and more on 'where they were on the land together, and how they were cooperating on that land'. The borders around them were fluid and permeable⁴, and respected through the recognition of their mutual responsibilities for the natural resources they shared. Sharing the landscape,

⁴ The principles of this 'permeability' are discussed briefly in Jonathan Hart and Joan Holmes, "'We Have Never Parted with Such a Power' - Assertions of First Nations' Sovereignty and the Right to Trade and Travel in the Seventeenth and Eighteenth-Century Great Lakes Region," Unpublished, (2000); and in more detail in Richard White, The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815 (Cambridge: Cambridge University Press, 1991).

and establishing a relationship based on shared responsibilities, enabled the Mi'kmaq to establish an initial relationship with the English based on continuous use, shared benefit and responsibility.

As a relational concept, then, Mi'kmaq sovereignty was grounded in the idea of sharing – land, economics, law, spirituality and political responsibility – it was truly **shared** sovereignty. The Mi'kmaq worldview, taken as an expression of their sovereignty, served as a useful way to create dialogue between two cultures. This is, in large part, because the worldview of the Mi'kmaq is itself founded on the idea of relationship-building and *shared* sovereignty. Arguably, the strength and resiliency of the Mi'kmaq flowed from their ability to skillfully and respectfully create shared spaces within which their sovereignty could successfully co-exist with other modalities of the same notion.

Given what we have learned from our analysis of the Mi'kmaq worldview, how can the idea of *shared sovereignty* contribute to our understanding of the means to create dialogue between Aboriginal peoples and the Canadian state⁵? Two pathways are opened for our reflection. The first pathway for reflection leads us to examine the symbolic, or mnemonic value of *shared sovereignty* as a means to create inter-cultural dialogue. Here, the role of wampum, and the wampum belt will be illuminating for us. This 'discussional' approach will be followed by a more 'programmatic' analysis, which will focus on the co-management of natural resources. As we will see, the symbolic form of

⁵ The term 'state' will be used throughout this chapter to represent the institutions, practices and values of Canada. It is being used as a caricature for something which is, I acknowledge, much more subtle and complex – composed of many actors, and levels of government.

envisioning shared sovereignty underpins the policy-oriented form, which itself suggests new avenues for intellectual reflection.

Beaver meets Glooscap

There is no symbol more evocative of the idea of ‘relationship’ within First Nations as the wampum belt. As a mnemonic device, the wampum belt serves not only as a remembrance of a particular agreement or treaty, but also as a remarkably powerful symbol of the relationship formalized within that treaty. Of these belts, the most recognizable in Canadian political science is the Two-Row Wampum⁶ - symbolic of the relationship between the Haudenosaunee and the Europeans who settled on their lands. Tully, Alfred, Cairns and Ladner have referred to the Kaswentha in their work, and the Royal Commission on Aboriginal Peoples evoked it as representative of the nation-to-nation relationship that could exist between Canada and First Nations⁷.

Building a relationship founded on the three ‘organizing principles’ evident in Mi’kmaq shared sovereignty – mutual respect, sharing/hospitality and responsibility – between the Mi’kmaq and the Canadian state, is by no means a simple task. It has been done in the past, however, and can be done again. It would not be unique in the world. The relationship between the Crown of New Zealand and the Maori peoples, while under more strain recently, remains secured in the recognition that both parties continue to live

⁶ Also known as the Kaswentha or Guswentha.

⁷ See James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge, UK: Cambridge University Press, 1995); Taiaiake Alfred, *Peace, Power, Righteousness – an Indigenous Manifesto* (Toronto, Ontario: Oxford University Press, 1999); Alan Cairns, *Citizens Plus – Aboriginal Peoples and the Canadian State* (Vancouver, British Columbia: UBC Press, 2000), Kiera Ladner, "Treaty Federalism: An Indigenous Vision of Canadian Federalisms," *New Trends in Canadian Federalism*, eds. Francois Rocher and Miriam Smith, 2nd ed. (Peterborough Broadview, 2003).

in their distinct, yet intertwined legal and political histories on the same land⁸. The approach to co-management suggested above would not be entirely unique in Canada either. Umbrella agreements in the North, the Nishga'a Treaty, and the Nunatsiavut Claim in Labrador are recent examples where the Canadian government and First Nations have created opportunities for shared responsibilities for resource management, education and health care. These examples underline the normative argument that Aboriginal and Canadian sovereignty should be compatible and overlapping.

Nevertheless, in Canada, experience with a system of truly shared sovereignty is elusive. Intellectually, then, further reflection is required to understand how the ideas underlying Mi'kmaq sovereignty might resonate with a broader exercise in Canadian-Aboriginal relationship-building. What, in other words, can Glooscap teach the beaver – who will stand in for Canada? In part, the answer is carried by the Eagle, atop the Great White Pine. The Eagle, guardian of the Haudenosaunee, sees the history of the six nations from his perch, and understands the message of Deganiwida – a Huron⁹ named the Peace Maker – who brought the Great Law of Peace to the People of the Longhouse¹⁰. Deganiwida, carrying his message of peace in a white stone canoe to the People of the Longhouse, convinced the Tadodahoh to put aside his warring and violent ways, in favour of peace, unity and a 'good mind'. From the teachings of a Huron, then, the

⁸ J.G.A. Pocock, "Law, Sovereignty and History in a Divided Culture: The Case of New Zealand and the Treaty of Waitangi," *McGill Law Journal* 43 (1998).

⁹ Georges Sioui replaces "Huron" with the preferred "Nadoueks" to describe his peoples. See Georges Sioui, "Nadoueks Et Algonquiens: La Première Civilization Du Canada," Brown Bag Lunch Series, Institute for Canadian Studies, University of Ottawa, March 10, 2005 .

¹⁰ "People of the Longhouse" is a rough translation from the Iroquoian. I have also seen it translated as "People who build houses".

Haudenosaunee learned the way of peace, and re-founded their political, social, economic and spiritual practices on the idea of strength through relationship-building.

Key to our understanding of this approach is the Kaswentha¹¹. Also known as the Two-Row Wampum, the Kaswentha is often used as the symbol of nation-to-nation relations between Aboriginal nations on Turtle Island and the Canadian state¹². As such, it stands as a permanent mnemonic symbol of the translation of values between two different social and political systems¹³. While this belt is often referred to on its own, its deeper meaning is only apparent within its proper context. This context is shaped by four other belts: the Hiawatha; the Silver Covenant Chain; the belt representing the Treaty of Peace and Friendship; and the Ever-Growing Tree. Together, these belts give us some indication of why the Kaswentha serves as such a powerful symbol of inter-cultural dialogue.

The first belt of importance here is the Hiawatha Belt, dated to approximately 1550. The Hiawatha belt symbolizes the agreement of the first five nations of the Haudenosaunee to form a confederacy. In examining the belt, there are a number of elements of importance. The first is the presence, at the centre, of the great white tree of peace. This symbol represents the great tree of peace under which all of the weapons of the confederacy were

¹¹ Also referred to as the Guswentha. For a substantial discussion of the Kaswentha and cultural 'hybridity', see Karen Roach, "The Guswentha Principle – Haudenosaunee Relationship Theory from Creation Story to Present Day," Carleton University, 2004.

¹² Indeed, the principle conclusion of the Royal Commission on Aboriginal Peoples was that the two peoples should work in a nation-to-nation effort to re-build their relationship. See Royal Commission on Aboriginal Peoples, Report of the Royal Commission on Aboriginal Peoples (Ottawa: The Commission, 1996).

¹³ For a discussion of the pictorial and metaphorical aspects of first peoples' thinking, see Joseph E. Couture, "Explorations in Native Knowing," The Cultural Maze: Complex Questions on Native Destiny in Western Canada, ed. J. Friesen (1991), 64.

interred, in order to avoid conflict and bloodshed. The tree also symbolizes the central council fire of the confederacy, and by extension the Onondoga Nation – keepers of the fire and faith of the confederacy.

To the west of the central council fire is the Seneca nation, one of the elder brothers. This nation, evoked in the box furthest to the left, is the Keeper of the Western Door. They are balanced on the far East by the Keepers of the Eastern Door – the Mohawks. Between these brothers and the Onodoga lie the younger brothers – the Cayuga and Oneida. The Tuscorora, despite their formal accession to the confederacy in 1780, are not yet represented on the Hiawatha Belt¹⁴. The boxes are linked to each other, and the Onondoga by a horizontal line of beads. This line extends beyond the Mohawk and Seneca, thus signifying the openness of the confederacy to other members¹⁵. Political, social and kinship meanings are thus communicated through this belt.

In 1643, the Haudenosaunee agreed to allow the Dutch to tie up their boats at Haudenosaunee wharves. This agreement was symbolized in the start of the “Covenant Chain”, literally the chain binding the Dutch nation and those of the Haudenosaunee Confederacy together in peace and friendship. Initially depicted as an “iron chain”, this symbol of nation-to-nation relations was ‘polished’¹⁶ into the “Silver Covenant Chain” in

¹⁴ Indeed, this is used as evidence by some to point to the slow and deliberate evolution of belts, a testament to the enduring value they have gained in Aboriginal societies. Some Haudenosaunee scholars point to the small lines leading from the Seneca and Mohawk nations towards the ends of the belt as indicative of an openness to other nations within the confederacy.

¹⁵ This openness is evident in the Great Law itself in wampum 83 – 88. See North American Indian Traveling College, Traditional Teachings (Cornwall Island, Ontario: North American Indian Traveling College, 1984), 54.

¹⁶ “Polishing” a wampum belt refers to the process of reviewing and revising an agreement symbolized by a belt. Traditionally, this would have involved placing the belt between the parties ‘contracted’ by the belt in

1664. This latter chain was intended to represent the new-found relationship between the Haudenosaunee and the British Empire. It was meant to be evocative of the indestructible link between Aboriginal people and European nations – referring both to each nation individually, and to their relationship with each other.

Two other belts are of significance to the Haudenosaunee. The significance of these belts reinforces (by extension), the importance of the Kaswentha, and are therefore critical to understanding the importance of the Kaswentha as an enduring symbol of the relationship – *through translation of meaning* – between Aboriginal Canada and European Canada.

The first of these belts represents the Treaty of Peace and Friendship between the Haudenosaunee and the newly-formed United States of America. This belt depicts thirteen people linked in their midst by two other individuals linking the chain to a longhouse.

Anthropologists and Haudenosaunee historians¹⁷ have indicated that the thirteen “taller figures” represent the thirteen colonies of the nascent United States. Between them, in the centre of the belt are the elder brothers – the Seneca to the West, and the Mohawks to the East – each guarding their respective doors. These elder brothers are protecting, or serving as a link between the thirteen colonies and the longhouse – representing the

order to examine each line of beads in the belt. These lines, taken individually, often underscored important aspects of the agreement symbolized by the belt as a whole. When these lines of beads, and the aspects of the agreement they symbolized became ‘tarnished’, they needed polishing in order to re-affirm or alter their meaning.

¹⁷ See, as examples: Cadwallader Colden, The History of the Five Indian Nations Depending on the Province of New York in America (Ithaca, N.Y: William Bradford, 1727); Daniel Richter, The Ordeal of the Longhouse: The Peoples of the Iroquois League in the Era of European Colonization (Williamsburg, Virginia: University of North Carolina Press, 1992); and William Fenton, The Great Law and the Longhouse: A Political History of the Iroquois Confederacy (Norman: University of Oklahoma Press, 1998).

peoples of the Haudenosaunee. Concretely, this represents the agreement of the Haudenosaunee to cede significant amounts of territory to the United States, with the proviso that the Haudenosaunee could continue to hunt and fish freely on these lands “so long as the sun shines, the grass is green and the water flows down from the mountain”¹⁸.

The same belt also sets out the reservations for the six nations of the Confederacy, and formed the link between the Haudenosaunee and the “Council of Thirteen Fires”. This belt is significant in that it inserts into the language of the United States’ domestic politics the language and symbolism of the Haudenosaunee¹⁹. In a sense, it is a complicit acknowledgement of continuity between the British colonial powers and the American colonial authorities that replaced them. The belt represents, then, the continuity of symbolism in the relationship then forming between the first peoples and the European nations of North America. This continuity is that much more important given the violent and revolutionary rupture between the United States and the British Empire.

The final belt of significance to be discussed here is the “Ever-Growing Tree”. This belt is simple in that it evokes the continued evolution of the Haudenosaunee Confederacy, and thereby echoes the open-endedness of the Kaswentha. This image, evocative of the Great White Pine, signifies the ongoing development of the Confederacy in a manner

¹⁸ R. v. Secretary of State for Foreign and Commonwealth Affairs, Ex Parte Indian Association of Alberta, Union of New Brunswick Indians, Union of Nova Scotia Indians, Note from Appeal Committee of the House of Lords. 3 Canadian Native Law Reporter 195 1982. Lord Denning quotes from a 1794 New Brunswick treaty with the Mi’kmaq.

¹⁹ In 1987, the US Senate passed a resolution acknowledging the historical importance of the Great Law and the Haudenosaunee polity in the drafting of the Constitution of the United States. See Elizabeth Tooker, “The United States Constitution and the Iroquois League,” *Ethnohistory* 35.4 (1988), 305-336; Donald A. Jr. Grinde, *The Iroquois and the Founding of the American Nation* (San Francisco: The Indian Historian Press, 1977); and Bruce Johansen, *Forgotten Founders: How the American Indian Helped Shape Democracy* (Boston: Harvard Common Press/Gambit, 1987).

consistent with the Great Law. It reinforces the intention of the nations of the Haudenosaunee to direct the Confederacy using the principles of the Kayaneren'tsherakowa – the Great Law of Peace – to guide them.

Peace, continuity and growth are embodied in these belts, each belt representing the symbolic engagement of Haudenosaunee to be partners with the European nations on Turtle Island. Each, in their own way, also evokes the spiritual, political, economic and social meanings the Haudenosaunee brought into their dialogue with these “immigrant nations”. In terms of their symbolism and their mnemonic “value”, understanding these belts is somewhat akin to holding a mirror to Haudenosaunee societies. The image in the mirror is similar to that observed in the case of the Mi'kmaq.

Within the mirror, we see the complex language of economic, political, spiritual and social meanings that the Haudenosaunee brought to the agreements which formed the basis of these belts. The belts, themselves, serve as a valuable resource in understanding the history and law of the Haudenosaunee – a resource equivalent to the words spoken to evoke the meaning of these belts. It is within this context that the Kaswentha attains its full meaning as a symbol of intercultural dialogue.

Upon first examination, the Kaswentha appears to be a simple belt – with two parallel rows of white beads crossing the purple beaded background. Three rows of purple beads separate the rows of white. The belt depicts two canoes traveling in parallel along a

river²⁰. One canoe represents the first peoples of Turtle Island, while the other represents the Europeans nations which share the land with them. The three rows of purple beads that separate the ‘two canoes’ point to the central or founding document of the Confederacy – the Great Law of Peace – the Kayaneren’tsherakowa. This “constitutional” element of the confederacy permeates the remainder of Haudenosaunee symbolism. Indeed, the three elements of the Great Law – respect, equity and empowerment (at a community level) or peace, power, righteousness²¹ (at a national level) – are repeated throughout the evolution of the Kaswentha.

As we ‘excavate’ the meanings of the Kaswentha, it becomes readily apparent that it represents a complex series of ideas. In order to understand the Haudenosaunee ‘canoe’ depicted in the belt, the reader must know the story of Hiawatha, and understand the importance of the Creation Story. Without these, and knowledge of the Silver Covenant Chain, the Hiawatha belt, the Ever-Growing tree and the Treaty of Peace and Friendship, the Haudenosaunee ‘canoe’ is empty. This, in turn, evacuates the meaning of the three beads between the canoes, which are symbolic of the pillars upon which the Great Law is founded – the Law which breathes life into all of these symbols. For readers, however, it is here that the great value of the Kaswentha lies – as a symbol of a peaceful relationship

²⁰ Ransom suggests that the allusion is to a Dutch ship and a Haudenosaunee birch bark canoe. See James W. Ransom and Kreg T. Ettenger, "Polishing the Kaswentha': A Haudenosaunee View of Environmental Cooperation," *Environmental Science & Policy* 4 (2001), 222.

²¹ See Taiaike Alfred, *Peace, Power, Righteousness – an Indigenous Manifesto* (Toronto, Ontario: Oxford University Press, 1999). Ransom refers to the three central concepts of the Great Law as peace, good mind and strength, James W. Ransom and Kreg T. Ettenger, "Polishing the Kaswentha': A Haudenosaunee View of Environmental Cooperation," *Environmental Science & Policy* 4 (2001), 222. "Righteousness, Health and Power" are found in Paul A. Wallace, *White Roots of Peace* (Santa Fe, New Mexico: Clear Light Publishers, 1994), 39-40. "Peace, power and righteousness" were used by Chief Jake Swamp in his presentation to the Royal Commission on Aboriginal Peoples at Akwesasne on May 3, 1993. Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples* (Ottawa: The Commission, 1996).

“based on a coexistence of power in a context of respect for the autonomy and distinctive nature of each partner”²². It is here, then, that we should focus our attention.

The mnemonic value of the Kaswentha is in its focus on the space between the two canoes, and on the river shared by both nations. Ransom supports this view, arguing that as “in the past, when our two societies would come together to face a common enemy or scourge, the key to success in forming partnerships lies in focusing on the river that we travel, not on the vessels and their differences”²³. A message about relationship-building – a common theme woven through the belts of the Haudenosaunee – is at the heart of the Kaswentha²⁴. While both ‘canoes’ retain their own shape and construction²⁵, the space between the two is negotiated and re-negotiated by both partners as equals in a relationship formed and re-formed by their travel down the river together.

Like the Haudenosaunee, the Mi’kmaq also developed several uses for the wampum ‘bead’ and belt²⁶. While the anthropological and ethnographical descriptions of these

²² Taiaike Alfred, *Peace, Power, Righteousness – an Indigenous Manifesto* (Toronto, Ontario: Oxford University Press, 1999), 52. For a discussion of this relational approach, see Jon Parmenter, “L’arbre De Paix: Eighteenth-Century Franco-Iroquois Relations,” *French Colonial History* 4 (2003), 63-80.

²³ James W. Ransom and Kreg T. Ettenger, “Polishing the Kaswentha’: A Haudenosaunee View of Environmental Cooperation,” *Environmental Science & Policy* 4 (2001), 222.

²⁴ This theme is further developed in David J Leech, “The Naturalized Knowledge System: A Methodology for Community Development,” University of Ottawa 2000 and Henry Lickers, “Talking to My Granddaughter,” *Earthkeeper* (1991); Henry Lickers, “Akwasasne: Challenge of the St. Lawrence,” *World Affairs. Canada Quarterly* (1992); Henry Lickers, “Traditional Ecological Knowledge or *Brains on a Shelf*,” Mohawk Council of Akwasasne, (1992); F. Henry Lickers, “Can’t See the Forest for the Trees: A Native American’s Perspective,” *Biodiversity: Toward Operational Definitions - the 1995 Plum Creek Lectures* (University of Montana-Missoula: University of Montana-Missoula, 1997).

²⁵ The structure of the canoe is reminiscent of a longhouse, in the sense that the ribs and cross planks evoke the intersection of law and tradition, much in the same way as the horizontal and vertical poles of the longhouse do. The intersection of law and tradition gives the nation strength and resilience. I have witnessed allusion to this expression in the Haudenosaunee, Cree and Mi’kmaq in Canada, the Bri Bri in Costa Rica, and the Maori in New Zealand.

²⁶ Speck presents a number of synonyms for “wampum”, including “white string” and “old dark string” (Penobscot); and “man’s (Indian’s) stones” (Mi’kmaq of Cape Breton). Wallis and Wallis suggest the

belts are not abundant, they do provide us with some indication of the belts' meaning and use in Mi'kmaq society. Speck concludes that the use of wampum amongst the Mi'kmaq was less developed, but provides reassurance that the belts had several functions – notably for purposes of adornment, ceremony and marriage proposals. Speck notes that “it was employed in council procedures, as pledge, message bearer, reminder, and even mildly as fetish”²⁷. As with other First Nations, wampum was used by the Mi'kmaq as a mnemonic device to assist in preserving and communicating the memory of specific events, agreements and ceremonies.

What is most interesting about wampum and the Mi'kmaq lies in the origins of its use. Both Speck and Wallis and Wallis point to the Iroquoian origins of wampum. It is Speck who is most succinct in this regard, observing the similarities in the Iroquois and Mi'kmaq mythologies of the provenance of wampum - similarities which “one can hardly fail to notice”. In fact, Speck argues, the “Iroquois seem not only to have lent the ceremonial uses of the wampum string and belts to their less advanced Algonkian neighbors, but to have exerted a didactic influence upon their traditions”²⁸. This is significant because it places the form and use of wampum among the Mi'kmaq squarely within a tradition of relationship-building. Indeed, Mi'kmaq understanding of wampum

word *ankuwamk* or “meeting” which they contrast “with the separation involved in fighting”. Frank G. Speck, “The Functions of Wampum among the Eastern Algonkian,” Memoirs of the American Anthropological Association VI.1 (1919), 5 and Wilson D Wallis and Ruth Sawtell Wallis, The Micmac Indians of Eastern Canada (Minneapolis: University of Minnesota Press 1955), 222.

²⁷ Frank G. Speck, “The Functions of Wampum among the Eastern Algonkian,” Memoirs of the American Anthropological Association VI.1 (1919), 32.

²⁸ Ibid. 11-12. These observations are repeated on pages 7 and 15. Speck makes further observations on the borrowing by the Mi'kmaq of Iroquois mythology on page 12, and constructs an argument regarding the manner in which this transference took place on pages 67-71.

and its functions is set within the context of the cross-cultural contact between nations prior to the arrival of Europeans on Turtle Island.

According to some uses, then, the wampum belts of the Mi'kmaq are symbolic of their relationships to other nations. They are, therefore, reflections of the values the Mi'kmaq considered part of their sovereignty. Speck cites a number of examples which illustrate the relational aspect of wampum use. Among these examples is a wampum collar retained by the Penobscot as a memorial of the treaty of friendship between the Penobscot, Passamaquoddy, Maliseet, Mi'kmaq, Iroquois (Mohawk), Eastern Chippewa, Ottawa, and Flatheads²⁹. In one specific case, as Grand Chief John Denys explained to Speck, "from the earliest times Mohawk warred against Micmac ... At the close of the first overtures for peace a belt of wampum was sent by the Mohawk to the Micmac chief, symbolizing their new relationship"³⁰.

For our purposes here, the Concordat belt with Holy See is the most interesting belt of the Mi'kmaq. Its historic and mnemonic value have been extensively researched, notably by James Youngblood Henderson³¹. Simply put, the belt symbolizes the agreement entered into by the Mi'kmaq and the Vatican in 1610. It evokes the memory of a conscious

²⁹ See plate I, figure *a* in *Ibid.* 20.

³⁰ Wilson D Wallis and Ruth Sawtell Wallis, *The Micmac Indians of Eastern Canada* (Minneapolis: University of Minnesota Press 1955), 225. See Frank G. Speck, "The Eastern Algonkian Wabanaki Confederacy," *American Anthropologist* 17.3 (1915), 492 – 508; Frank G. Speck, "Some Micmac Takes from Cape Breton Island," *The Journal of American Folklore* 28.107 (1915), 59-69; and Frank G. Speck, "Penobscot Tales and Religious Beliefs," *Journal of American Folklore* 48 (1936), 1 – 107.

³¹ See James Youngblood Henderson, *The Mikmaq Concordat* (Halifax, Nova Scotia: Fernwood, 1997). Bushnell incorrectly identifies the belt as simply a "present to the Church' at the time of burial of some native convert". See David I. Bushnell, *Native Cemeteries and Forms of Burial East of the Mississippi* (Smithsonian Institution, Bureau of American Ethnology, 1920). Bushnell does provide a physical description of the belt, which is "nearly 6 feet 6 inches in length and about 4 ½ inches in width, made up of 15 rows of beads, each row consisting of 646 beads, or 9,690 in all". See Bushnell at 81.

decision by the Mi'kmaq to weave their traditional spiritual values together with the Catholic religion in a unique hybrid – a space in which both spiritualities could co-exist. There are a number of elements represented on the belt that are of particular interest. The belt is divided into two halves, with the Mi'kmaq represented on the right side of the belt, and the Vatican on the left. In the centre, two figures represent the black robe and the Grand Chief of the Mi'kmaq “with a big heart”³². The Mi'kmaq figure is carrying the rights and responsibilities of the nation, retaining their laws and traditions. Both figures are holding onto a cross, placed between them, as equals. These figures represent the continuity of Mi'kmaq traditions, laws and language – a continuity founded on mutual respect.

A church with an open door, and a set of keys are depicted on the Vatican's side of the belt. The church represents the openness of the Catholic Church, and the voluntary nature of conversion to Catholicism. The keys symbolize the protection offered to the Mi'kmaq by the Vatican against all other enemies. These are reciprocated on the Mi'kmaq side of the belt by the calumet – symbolizing peaceful relations – and the battle axe – evoking the strength of the Mi'kmaq used to protect the church, and convert others to Catholicism³³. In a sense, these characters represent the willingness of both the Vatican and the Mi'kmaq to bring their resources to bear on maintaining and deepening the relationship recorded in this belt. Sharing – also represented on the belt by the hunter

³² Taken together, the figures combine to take a hieroglyphic form similar to that of “chief” or “saviour”. James Youngblood Henderson, *The Mikmaq Concordat* (Halifax, Nova Scotia: Fernwood, 1997), 88.

³³ See R.M Leavitt and D.A. Francis, eds., *Wapapi Akonutomakonol. The Wampum Records. Wabanaki Traditional Law as Recounted by Lewis Mitchell in 1897* (Fredericton Micmac-Maliseet Institute, University of New Brunswick, 1990), 17 and 19. Henderson cites Thwaites' record of the Great Chief's commitment to “have the others baptized, otherwise, he will wage war against them”. Reuben Gold Thwaites, ed., *The Jesuit Relations and Allied Documents: Travels and Explorations of the Jesuit Missionaries in New France, 1610-1791* (Cleveland: Burrows, 1897), 1:3-4.

with his bow – was key to reinforcing the respect established by both partners at the centre of the belt.

As a whole, the belt represents a desire by both the Vatican and the Mi'kmaq to develop and strengthen their relationship, building on a foundation of respect and sharing. To the Mi'kmaq, the introduction of new ideas into their spirituality represented an opportunity to enrich their spiritual discourse – an opportunity the Mi'kmaq embraced readily³⁴. The relationship evidenced in this belt reflected the traditional responsibilities of both partners, as well as the new responsibilities they took on as a result of their accord. The acknowledgement of these responsibilities strengthened both partners, and their relationship with one another.

Represented together on one belt, we can conclude that the worldview's of both the Mi'kmaq and the Vatican were in dialogue – a dialogue built on the values depicted in the Concordat. Indeed, mutual respect, sharing/hospitality and responsibility laid the foundation for a *relationship* between the Mi'kmaq and the Vatican. It is clear, through this belt and the others of which we have record, that when the Mi'kmaq projected their sovereignty into an accord with another nation, the concept of *relationship* was foremost in their minds. It is this theory of *relationship* we see expressed in the Mi'kmaq concept of shared sovereignty.

If we apply our appreciation of the Mi'kmaq approach to defining and acting out their 'sovereignty' to understanding a current, post-colonial approach to building relations

³⁴ James Youngblood Henderson, The Mikmaq Concordat (Halifax, Nova Scotia: Fernwood, 1997), 91-92.

between Canada and the Mi'kmaq, we can also comprehend how the symbolic language and mnemonic role of the wampum belt enables us to 'think along' the 'programmatic' or policy-based pathway leading from this discussion. The focus here will be on the issue of resource management, since it has formed the basis of most recent conflicts between First Nations and the Canadian state. The Mi'kmaq experience has confirmed the importance of natural resources as a site of conflict – and hopefully, cooperation – between the two legal and political perspectives.

Mi'kma'ki in the 21st Century – Relations through Resources

Any watcher of the Canadian news in the latter part of the twentieth century will recognize the importance that natural resources has played in the relationship between Aboriginal people and the Canadian state. Natural resources – wood, fish, land, and water – have served as more than a backdrop for this relationship. Ipperwash, Oka, Burnt Church also stand as examples of one extreme form of communication on the landscape between the worldviews possessed by both parties in the discussion. They also serve, regrettably, as examples of conflict between two worldviews which appear unable to enter into dialogue with each other.

It is somewhat facile to observe that things have changed in Mi'kma'ki since the Treaties of 1760/61 were signed. Certainly, any of the fears the Mi'kmaq might have seen evidenced in the establishment of Halifax in 1749 – fears they may have felt were extinguished by their later treaties – became a permanent concern as English populations continued to grow unabated. By the early 20th century, the Mi'kmaq had not only lost

most of traditional land base, they had also lost access to it, at least in the eyes of the governments of Canada and the Atlantic Provinces, for the purposes of hunting, fishing and fowling.

It wasn't until Donald Marshall Jr. issued his challenge to the fishing restrictions imposed by the Canadian government that we saw a reversal in Mi'kmaq access to resources.

Certainly, Marshall's interest in access to resources was spurred on by the *R. v. Sparrow* judgment of the Supreme Court of Canada, handed down in 1990. This decision acknowledged the right of Aboriginal people to fish for subsistence or ceremonial purposes. In response to this decision, the federal government initiated the Aboriginal Fisheries Strategy (AFS), which coastal aboriginal communities agreed to accept communal fishing licenses. The catch limit for each community was to be established through negotiations with the federal government. Two communities, Membertou and Afton, argued that signing such an agreement allowed the federal government to undermine their treaty and aboriginal rights.

Sparrow had demonstrated two things to the Mi'kmaq of Membertou and Afton. First, it indicated that the federal government was unwilling to make changes to Aboriginal fishery rights and responsibilities unless ordered to do so by the Supreme Court³⁵. It also opened an interesting possibility for the Mi'kmaq – the possibility of restoring their traditional access to fishery resources based not on notions of 'ceremony' or 'subsistence', but based on the right to engage in a commercial fishery. Mi'kmaq access

³⁵ William Wicken, *Mi'kmaq Treaties on Trial – History, Land, and Donald Marshall Junior* (Toronto, Ontario: University of Toronto Press, 2002), 8.

to a commercial fishery would not only have restored the rights and responsibilities evident in the Treaties signed with the Crown, it would also provide a significant stream of revenue and employment for communities that had long struggled with economic problems.

It is for this reason that Marshall decided to test the resolve of the federal government by engaging, in August 1993, in the *sale* of eels that he had *caught* without the ‘appropriate’ permissions. Marshall and two others were charged with “fishing and retaining fish ‘without being authorized to do so under the authority of a license issued pursuant to Maritime provinces Fishery Regulations, or the Aboriginal Communal Fishing Licenses Regulations’”, and for selling eels, “without having obtained ‘a license issued for the purpose of commercial fishing’”³⁶. Having been charged, Marshall’s strategy was to focus on commercial fishing as a *treaty* right, instead of an ‘Aboriginal right’ because the proof for the latter would have been too difficult to establish in the courtroom³⁷.

What followed was a series of decisions in provincial and appellate courts which upheld the conviction of Mr. Marshall³⁸. Finally, on the 17th of September 1999, the Supreme Court of Canada upheld the appeal and acquitted Marshall. Public and media ‘outcry’

³⁶ Decision of Judge John D. Embree, 27 June 1996, at 1-3, cited in Ibid. 4.

³⁷ The standard of proof for an ‘Aboriginal right’ is that the practice in question (in this case eel fishing for the purpose of sale) would have had to have pre-existed the arrival of Europeans in Mi’kma’ki. In Wicken’s assessment, “the archeological record does not yield the kind of proof that courts demand”. See Ibid. 7.

³⁸ Mr. Justice John D. Embree ruled against Mr. Marshall on 27 June 1996. His decision, at the provincial level, was appealed to the Nova Scotia Court of Appeal, which issued its decision on the 26th of March, 1997. This decision was appealed to the Supreme Court of Canada, which heard oral arguments on the 5th of November 1998, and rendered its decision on the 17th of September 1999. The court went on to issue an unprecedented ‘clarification’ on November 17, 1999, confirming the foundations and findings of its first decision.

resulted in a further *clarification* of the ruling by the court in November 1999. Apart from the significance of the decision for fishing and subsistence rights of the Mi'kmaq, it also established an important clarification of how treaties should be interpreted by the courts. In essence, the Court argued that even when the *text* of the treaty – in this case, the Treaty of 1760/61 – appeared to be unambiguous, the Court could *and should* cast a wider net in its research of the meaning of that treaty. The reliance by the Court on extrinsic evidence to establish the *actual* meaning of the treaty clarified the decisions of *R. v. Horse* and *R. v. Sioui* with regards to ambiguity in the treaty. Indeed, the Court stated that extrinsic evidence should be used even in the absence of ambiguity in the clauses of the treaty, in order to ensure that the Aboriginal perspective was heard.

In their decision to uphold the 'honour and integrity' of the Crown in *Marshall*, the Justices of the Supreme Court recognized the importance of the Treaty, and the negotiations leading up to its ratification, as the expression of the meanings brought by the Mi'kmaq to their relationship with the English. In a sense, by honouring the integrity of the Crown in upholding the Treaty of 1760/61, the Supreme Court was also reaffirming and upholding the honour and integrity of the distinct legal and political history of the Mi'kmaq. An important distinction should be made here. The Mi'kmaq were *not* seeking a new recognition of their rights and responsibilities as a sovereign people. In fact, they were asking that the courts recognize and uphold the rights and responsibilities they had already recognized by signing the Treaties of 1760/61 in the first place. The Mi'kmaq were, in other words, not asking for a *new* relationship with the

Crown, but rather a confirmation of what they already knew their relationship should have been for the past 240 years.

In 1999, then, the Mi'kmaq received confirmation in the language and law of their colonizer that their understanding of their relationship to the Crown was in fact intact and valid. Irony aside, the *Marshall* decision opened up the possibility of examining the meaning of sovereignty – *Mi'kmaq* sovereignty – as it was expressed and understood by the Mi'kmaq in 1760/61. It also reaffirmed that this sovereignty was not extinguished upon the arrival of the English and signature of the Treaty, but that it had been preserved, or made continuous by the agreements signed by the English, the Mi'kmaq, Maliseet and Passamaquoddy. Contrary to the Coates' argument, the Mi'kmaq could once again see the Crown as a member of their kin – as an extended part of their family with whom they had a relationship founded on their shared experience on the land called Mi'kma'ki.

How, then, could the Crown – Canada – and the Mi'kmaq continue their relationship anew? How can the understanding gained from the research presented here be used to rebuild the relationship between Mi'kma'ki's First and Second Nations? How can the notion of Mi'kmaq sovereignty, as a relational concept, be used to build relationships and dialogue where these have been suppressed/oppressed by more than 200 years of colonialism? How can the Mi'kmaq and Canada enter into a post-colonial relationship that restores continuity?

Shared Sovereignty – Shared Resources

As argued above, the most fertile ground for this discussion is in the field of natural resources management. The *Marshall* decision, although a positive step in the right direction, did little to provide the Mi'kmaq with a solid footing in the commercial fisheries, nor to provide guidance with respect to Mi'kmaq access to other natural resources. The recent decisions of the Supreme Court in the cases of *R. v. Marshall*³⁹ and *R. v. Bernard* have confirmed the limitations of applying *Marshall I* and *Marshall II* (*clarification*) to other natural resources. Despite initial optimism, the Mi'kmaq have now faced the conclusion that the Court may have opened a door in *Marshall*, but that the Canadian government was not going to walk through it without a great deal of prodding.

The unwillingness of the Canadian government to cross that threshold with the Mi'kmaq is even more difficult to comprehend given the importance of natural resources as a site for conflict on a global scale. Thomas Homer-Dixon has made it clear in his work that environmental conflict will continue to grow as a source of conflict between nations, peoples and states⁴⁰. From both the legal and political perspective, then, natural resources serve as both the site for the greatest potential conflict, and the greatest potential cooperation between the Mi'kmaq and the Canadian state. The question remains, how to bring the Mi'kmaq understanding of sovereignty forward into the 21st

³⁹ Stephen Frederick Marshall, 2005 SCC 43.

⁴⁰ See Thomas F. Homer-Dixon, *Environment, Scarcity, and Violence* (Princeton N.J: Princeton University Press, 1999). The use of co-management as a means to reduce environmental conflict is discussed in Alfonso P. Castro and Erik Nielsen, "Indigenous People and Co-Management: Implications for Conflict Management," *Environmental Science and Policy* 4 (2001), 229-239. David Natcher suggests that approaches adopted to date are inadequate in this regard. See David C. Natcher, "Land Use Research and the Duty to Consult: A Misrepresentation of the Aboriginal Landscape," *Land Use Policy* 18 (2001), 113-122.

century – to apply the concepts of mutual respect, sharing/hospitality and responsibility to natural resource management?

In the field of natural resource co-management, the need to manage natural resources and the need to build relationships can both be addressed⁴¹. But why *co*-management instead of management by the government of Canada in consultation with the Mi'kmaq? While this has not been tested in the courts with respect to the Treaty rights of the Mi'kmaq, the Mi'kmaq certainly signed the Treaties of 1760/61 with the expectation that they would continue to share in decision-making about the location and expansion of English settlements. Arguably, in fact, the Mi'kmaq would most likely have argued that it was the responsibility of the English to seek permission from Mi'kmaq authorities whenever they wanted to locate a new settlement or expand an existing settlement in Mi'kma'ki. Indeed, this practice had been followed by the English, with the notable exception of Halifax, throughout the period leading up to the Treaties' signings.

It is also true that the Mi'kmaq advanced their sovereignty as a relational concept within which the notion of 'sharing' took prominence. While retaining their own economic, legal and political practices, the Mi'kmaq also acknowledged the importance of creating shared spaces through trade, legal plurality and ongoing Treaty discussions and reaffirmations. Within those shared spaces, the English and Mi'kmaq worked out ways in which their cross-cultural differences could be negotiated, their knowledge shared, and

⁴¹ For a synopsis of the issues involved in co-management, see B.B. Faust and R.C. Smardon, "Introduction and Overview: Environmental Knowledge, Rights, and Ethics: Co-Managing with Communities," *Environmental Science and Policy* 4 (2001), 147-151.

honour and integrity could be built for each through a long-term relationship founded on responsibility.

Co-management, then, seems an appropriate mechanism through which shared sovereignty can be 'operationalized' in the field of natural resources management⁴². It is also a concept based on the intellectual argument presented by the legal and political histories of the Mi'kmaq. How then, can we apply the concepts of mutual respect, sharing/hospitality and responsibility to the concept of co-management? More specifically, what principles should underlie the approach to co-management in order to respect the Mi'kmaq worldview of shared sovereignty? Let us turn our minds to this question now, examining each concept individually, and how they fit together as a whole.

Mutual respect comes from building understanding through communication, consensus-building, and mediation. Honour and integrity are maintained and strengthened through mutual respect. All of the processes – legal, political and administrative – that form part of a co-management scenario, must respect the cultural, linguistic and spiritual (as examples) norms of both the Mi'kmaq and the Canadian state⁴³. Dialogue and negotiation form the basis of decision-making, and neither party can proceed in a manner

⁴² Claudia Notzke suggests that this approach might even lead to a constitutionally entrenched right for co-management of natural resources for Aboriginal peoples in Canada. See Claudia Notzke, "A New Perspective in Aboriginal Natural Resource Management: Co-Management," *Geoforum* 26.2 (1995), 187-209. Powell underlines the idea that this approach can also be used to manage cultural resources. See Judith Powell, "Expanding Horizons: Environmental and Cultural Values within Natural Boundaries," *International Journal of Heritage Studies* 6.1 (2000), 49-65.

⁴³ Of course, in some instances (like fisheries), non-native fishing populations should participate actively in this co-management. See Anthony Davis and Svein Jentoft, "The Challenge and the Promise of Indigenous Peoples' Fishing Rights – from Dependency to Agency," *Marine Policy* 25 (2001), 223-237. For the importance of these other groups, see also Melanie Wiber, Fikret Birkes and et al, "Participatory Research Supporting Community-Based Fishery Management," *Marine Policy* 28 (2004), 459-468.

that affects the other, without the other's agreement. When tensions arise, mediation will be used to resolve any issues which risk the foundation of the relationship between the Mi'kmaq and the Canadian state. Discussions leading to the formation of a co-management scheme should be held in 'places of meaning' – places that the Mi'kmaq identify as markers of their sovereignty on the landscape.

Mutual sharing and hospitality extends to a number of aspects of building successful relationships around co-management of natural resources. Principal among the features of this part of the relationship is the sharing of knowledge between the Mi'kmaq and Canadian state. In this case, the Mi'kmaq knowledge of the landscape⁴⁴ – regarding the location and population of certain species – will be assessed as part of a shared knowledge base⁴⁵, which also includes the findings of western scientific approaches. In this shared knowledge base, scientific data and traditional knowledge data will be pooled to provide a profile of the resources which are to be used and protected⁴⁶.

In the cases where certain species are of particular importance to the Mi'kmaq, the Canadian state will bring to bear the expertise of its personnel in providing research skills

⁴⁴ The importance of local knowledge in resource management is underlined by Craig C. Thorburn, "Changing Customary Marine Resource Management Practice and Institutions: The Case of Sasi Lola in the Kei Islands, Indonesia," World Development 28.8 (2000), 1461-1479.

⁴⁵ Developing an integrated knowledge base for forestry management is discussed in Melanie Karjala, "Criteria and Indicators for Sustainable Forest Planning: A Framework for Recording Aboriginal Resource and Social Values," Forest Policy and Economics 6 (2004), 95-110. Karjala presents a case study of this approach in M. Karjala and Stephen M. Dewhurst, "Including Aboriginal Issues in Forest Planning: A Case Study in Central Interior British Columbia, Canada," Landscape and Urban Planning 64 (2003), 1-17. See also Rod et al. Kennet, "Indigenous Initiatives for Co-Management of Miyapunu/Sea Turtle," Ecological Management & Restoration 5.3 (2004), 159 – 166.

⁴⁶ The difficulties and benefits of using indigenous knowledge in resource management are discussed in Anne Ross and Kathleen Pickering, "The Politics of Reintegrating Australian Aboriginal and American Indian Indigenous Knowledge into Resource Management: The Dynamics of Resource Appropriation and Cultural Revival," Human Ecology 20.2 (2002), 187 – 214.

and other resources to make community-directed research possible. The community will provide volunteers to assist in the research and/or rehabilitation of the resource being co-managed. Both partners in the relationship will engage in supporting the other, and lending their social power and networks to the protection and promotion of both their relationship, and the resources they are co-managing. Financial resources will flow from the state to the Mi'kmaq in order to finance the development of community-based management plans and enforcement mechanisms.

Both the Canadian state and the Mi'kmaq will take responsibility for their own peoples, and for the success of the co-management scheme developed through their discussions⁴⁷. With the best information available, they will apply the results of research to improving the health of the resources being co-managed. They will also respect and recognize the contributions of each partner in the research and application phases of their partnership. It is particularly important that the contribution of elders and community researchers be recognized in all publications and discussions about this project. Not only will this recognize the authorship of all participants in the project, it will also bring greater credibility to the Mi'kmaq and to the Canadian state.

The partnership established through this process of relationship-building will ultimately have a capacity-building impact on both the Mi'kmaq and the Canadian state. A sense of long-term 'empowerment' will permeate all aspects of the Mi'kmaq community involved in the co-management scheme. This will, in turn, improve the ability of both partners to

⁴⁷ This is highlighted in Cathy Robinson and David Mercer, "Reconciliation in Troubled Waters? Australian Oceans Policy and Offshore Native Title Rights," *Marine Policy* 24 (2000) 349-360.

continue to strengthen their partnership, and improve their ability to manage the protection and harvesting of the resources they are administering.

These elements must form the three pillars of the relationship between the Mi'kmaq and the Canadian state. When a basic level of respect is in place, mutual sharing and hospitality is very good, and the potential for long-term mutual responsibility is also strong, then the 'kindling of kinship' is present. At this time, a relationship becomes self-reinforcing, as mutual responsibility builds greater respect, which in turn builds greater sharing and hospitality. Through this relationship, each partner will be able to recognize and respect the values they hold in common, through which they can in turn continue to strengthen their relationship. Within this relationship, intercultural dialogue is respected and reinforced through the development of a shared set of meanings – linguistically, socially and politically.

Underlying these concepts is the fundamental importance of developing shared legal, economic and political jurisdictions while maintaining parallel structures of governance⁴⁸. In the spirit of the Mi'kmaq Concordat, each partner would recognize the structures and processes of the other, and respect the differences between these structures. These differences would be mediated through the establishment of 'shared spaces' of institutional cooperation⁴⁹. In law, for example, the Canadian government and Mi'kmaq

⁴⁸ The importance of traditional institutions as a basis for resource management is discussed by Leah Sophie Horowitz, "Integrating Indigenous Resource Management with Wildlife Conservation: A Case Study of Batang Ai National Park, Sarawak, Malasia," *Human Ecology* 26.3 (1998), 371-403.

⁴⁹ Although not without challenges, this has been the approach developed in New Zealand, under the Treaty of Waitangi. See P.A. Memon, B. Sheeran and T. Ririnui, "Strategies for Rebuilding Closer Links between Local Indigenous Communities and Their Customary Fisheries in Aotearoa/New Zealand," *Local Environment* 8.2 (2003), 205-219. Some of these challenges are identified in Todd et al. Taiepa, "Co-

could establish a tribunal process, in which law makers and judges from both nations are equally represented⁵⁰. This tribunal could listen to grievances from either party, and propose remedies and legal adjudications that respect both parties to the Treaty of 1760/61. Regular meetings between the Mi'kmaq Grand Council⁵¹ and Members of the House of Commons and Senate of Canada would facilitate the process of mediation and consensus-building between the two nations. A special 'market' in which the Canadian Crown would continue to honour the spirit of Mi'kmaq sovereignty with respect to a shared public economic space – perhaps a special Mi'kmaq 'marketing board' – would also be part of this institutional framework.

One of the more challenging issues that would come before both nations is that of land management. With the continued growth of pressure on current ecosystem resources⁵², there is little doubt that discussions with respect to the sharing of land resources will strain the mutual respect, sharing/hospitality and responsibility of both nations. Steps could be taken in the right direction, however, in developing schemes to share the resources of historical importance to the Mi'kmaq. On Crown Lands, for example, the Mi'kmaq might have access to the resources which are of value to them, to the exclusion of others. Sub-surface mineral and resource rights would have to be negotiated with the Canadian government in order to respect the spirit of the Mi'kma'ki.

Management of New Zealand's Conservation Estate by Maori and Pakeha: A Review," Environmental Conservation 24.3 (1997), 236-250.

⁵⁰ This would be similar to the cooperation between the Maori and New Zealand. The Waitangi Tribunal was established in 1975 under the Treaty of Waitangi Act 1975.

⁵¹ The Sante' Mawio'mi.

⁵² Most evident in the fisheries and in forestry.

Responsibility for particular fishing areas could be shared with the Mi'kmaq, and a "Mi'kmaq fishery" program could be established⁵³. Here, lessons might be learned from multiple-use conflict resolution approaches used in the Canadian Arctic⁵⁴. This program, established in accord with Mi'kmaq management practices, would allow the Mi'kmaq to practice fishing in a culturally appropriate manner. The Canadian government might have to reduce pressure on the fisheries by increasing its policy of buying-out non Mi'kmaq fisheries licenses for example. This approach would respect the spirit and strength of Mi'kmaq sovereignty.

While the importance of natural resource co-management is paramount for the Mi'kmaq, the notion of shared sovereignty is also applicable at a nation-to-nation level between the Canadian state and the Mi'kmaq. It also has great *potential* for applicability between the Canadian state and the broader constituency of First Nations across Canada. Indeed, if we consider the historical arguments presented by Georges Sioui, we can see that the Nadoueks were at the heart of this way of thinking, allowing for the possibility of this approach to the Huron-Wendat, the Wyandot, the Erie, Neutrals, Tobacco Peoples and the Susquehannas⁵⁵. It is possible, without risking over-generalization, to argue that the relational understanding of sovereignty held by the Mi'kmaq, the Haudenosaunee and the

⁵³ As an example, see R.J. Rutherford, G.J. Herbert and S.S. Coffen-Smout, "Integrated Ocean Management and Collaborative Planning Process: The Eastern Scotian Shelf Integrated Management (Essim) Initiative," *Marine Policy* 29.75-83 (2005), 75-83.

⁵⁴ Fikret et al. Berkes, "The Canadian Arctic and the Oceans Act: The Development of Participatory Environmental Research and Management," *Ocean & Coastal Management* 44 (2001), 451-469.

⁵⁵ Georges Sioui, "Nadoueks Et Algonquiens: La Première Civilization Du Canada," Brown Bag Lunch Series, Institute for Canadian Studies, University of Ottawa, March 10, 2005. See also Georges Sioui, *Pour Une Histoire Amérindienne De L'amérique* (Quebec: Université de Laval, 1999).

Nadoueks was similar, and formed a cornerstone of early English/French/Dutch – Aboriginal relations.

This conclusion has immediate practical implications, and begs us to embark on further reflection about the nature and content of Aboriginal history, and its relation to that of Canada. In the present, and the immediate future, Canada could take the logic from this intellectual argument to create a framework for governance which ‘marries’ the federal tendencies already present in Canada with the shared sovereignty perspective discussed here. The Charlottetown Accord of 1992 was prescient in this regard, showing a willingness at the political level to embrace the past, honouring the integrity of the Crown in its relationship to its extended Aboriginal kin across the country. With the intellectual arguments presented here, and those in the Royal Commission on Aboriginal Peoples, it is perhaps time to re-visit the arguments for a third level of government which reflects and respects the distinct place of Aboriginal legal, political, social and spiritual histories on the Canadian landscape.

Such a venture would only be possible if we recognize the arguments made here about shared sovereignty. Overlapping legal, political, social and spiritual institutions must complement the explicit agreement of both parties to share the land in an equitable manner. “Reserves” do nothing but perpetuate the colonial legacy of Canada. They detract from the post-colonial possibilities open to Canada and the First Nations of Canada. Dependency, broken treaties, and dishonour can be put to rest if we accord respect, hospitality and responsibility to one another. If we focus on the space between

our two canoes, and the dialogue we can create there, then the direction of our travel down the river can be more calm, certain and constructive. This appears challenging, certainly. But it *is* within us – our histories, our distinct legal, social, economic, political and spiritual selves are our greatest promise.

Certainly, these ideas are tentative and preliminary. They represent initial explorations into conceptualizing shared practices and institutions that can re-create the conditions in which Mi'kmaq 'shared sovereignty' and Canadian sovereignty can co-exist in a respectful manner; in a manner that honours the sharing and hospitality of the Mi'kmaq; and in a manner that makes both nations responsible for the success of the endeavour.

These ideas may seem novel or 'revolutionary' to some. Indeed, the idea – as suggested at the outset of this thesis – is to turn the orthodoxies of Mi'kmaq-Canadian relationships on their heads, and seek a new way of conceptualizing a twenty-first century relationship which reflects the distinct legal and political histories of both the English Crown and the Mi'kmaq. This idea is not just about governance; it is about the relationships of governance. These relationships are not just 'created' in a spirit of desire to cooperate, but rather to honour the integrity of the social, political, and legal traditions of the Mi'kmaq. The challenge, in other words, is to re-establish continuity so that the Mi'kmaq can once again have the right, and responsibility, to live in their own history.

This reflection on co-management, and its possible applicability in the management of natural resources also suggests the need for further reflection on the importance of shared management, and the role of Aboriginal ideas in affecting the 'landscape of Canada'.

While this thesis has engaged in an extensive analysis of the political history of the Mi'kmaq, it has also cast light on the impacts of Mi'kmaq shared sovereignty on the French and English. The Mi'kmaq approach, at least at the outset, helped to shape the political, social, economic and cultural 'approach' of the English in Canada and the institutions established under English presence. Indeed, the analysis presented in the discussion above suggests that the Mi'kmaq still have a place in re-founding the political landscape of Canada. This idea opens us to further research and intellectual reflection.

Promises of the Past – Promise for the Future(s)

As noted above, the intellectual force of the arguments presented here also begs us to re-examine our pasts. Analyzing the role and influence of Aboriginal political thought in founding Canada's political culture and institutions can bring new perspectives to our understanding of Canada's history, and the forces that shaped our nation. Although we now recognize and better understand Aboriginal history⁵⁶, Canadian political scientists still face the complex task of studying the extent to which the political and legal histories of First Nations in Canada have influenced the fundamental values that structure our political culture. We lack, in other words, a true understanding of how First Nations' political thought shaped the culture and institutions of Canada's Second Nations.

Examining the influence of First Nations political thought on the foundation of Canada is crucial as it clarifies the relationship between the past and the present, and recognizes the authorial role that Aboriginal people can play in establishing the future of Canada. It

⁵⁶ In Canada, Georges Sioui has been one of the 'pioneers' of this work. He argues that the current histories of Aboriginal peoples in Canada continue to be colonized by inappropriate misperceptions. Correcting these misperceptions and inaccuracies can be a 'liberating' force for Canada and Canadians.

gives, in other words, a shared power to both Aboriginal and non-Aboriginal peoples alike to be the authors of a meta-narrative that includes both of our histories, and builds a future where these histories are recognized. This meta-narrative can create the framework within which cross-cultural understanding and dialogue occur. This, in turn, establishes the *possibility* of a just relationship between these founding cultures⁵⁷.

Two important ideas brought forward in this research serve as a basis for further research into the political foundations of Canada. The first is that the Mi'kmaq saw sovereignty as a relational concept, which served as a means to create shared territorial, economic, political, legal and social spaces in order to interact with their extended kin, Aboriginal and European. The second is the fact that the English adopted parts of the diplomatic language and practices of the Mi'kmaq in order to assume their responsibilities in these shared spaces. Both of these ideas lend support to the argument that the First Nations of Canada were willing to create political, social and economic opportunities for the sharing and exchange of ideas, ideas that the Europeans showed early inclinations to adopt.

These ideas can be further researched, and augmented through the collection of relevant historical, anthropological and ethnographical material relating to the structures and values inherent in Haudenosaunee and Mi'kmaq political thought. Written and oral records will provide information with which we can understand the ideas and values

⁵⁷ Borrowing from Charles Taylor's concept of "shared horizons" and the tactics employed by the Gitksan and Wet'suwet'en in their attempts to establish intercultural understanding with Canadian governments, Nathalie Oman takes a preliminary step in developing a series of context-sensitive principles for intercultural negotiation founded in different approaches to cross-cultural communication. Oman demonstrates the complexity of this negotiation, embracing contingency and subjectivity. Nathalie Oman, "Sharing Horizons: A Paradigm for Political Accommodation in Intercultural Settings," McGill University, 1997.

shaping the political consciousness of the Haudenosaunee and Mi'kmaq peoples. It will also provide us with more information about how the Haudenosaunee and Mi'kmaq projected these values onto their relationships with other nations, including those of the Europeans arriving in their midst.

Through an examination of the treaty-making process⁵⁸, the influence of Aboriginal ideas on the nascent institutions of Canada can be examined. Based on the methodological guidance from the historiographical writings of authors such as Quentin Skinner, R.G. Collingwood, David Carr and Georges Sioui⁵⁹, and from political scientists such as Kiera Ladner⁶⁰, I would argue that we can analyze *how* the political ideas of the Haudenosaunee and Mi'kmaq were *translated* into the foundations of Canadian political institutions and culture. Ladner's Doctoral thesis provides useful guidance, arguing that an indigenist methodology, built around the "(interpreted) perspective of the people themselves" is the most appropriate strategy for what Julie Cruikshank presents as the

⁵⁸ The focus of this examination will be on the treaty-making process, a process within which both Aboriginal and non-aboriginal interlocutors negotiated how the interpenetration of their political and legal histories should take place. Treaties are suggested by J.G.A. Pocock as a site where the legal and political histories of both signatories are revealed. J.G.A. Pocock, "Law, Sovereignty and History in a Divided Culture: The Case of New Zealand and the Treaty of Waitangi," *McGill Law Journal* 43 (1998).

⁵⁹ While there is no way to know that historical records are accurately translated, the approaches proposed by Skinner, Carr, Collingwood and Sioui offer us strategies for tackling this challenge. These approaches build on the traditional tools of the historian such as cross-checking and the consideration of multiple sources, relying on our 'historical imagination' to make particular constructions of the past. Quentin Skinner, *Visions of Politics, Vol. I: Regarding Method* (Cambridge, U.K.: Cambridge University Press, 2002); David Carr, *Time, Narrative, and History: An Essay in the Philosophy of History* (Bloomington: Indiana University Press, 1986); Georges Sioui, *Pour Une Histoire Amérindienne De L'amérique* (Quebec: Université de Laval, 1999); R.G Collingwood, "The Principles of History: And Other Writings in Philosophy of History," eds. W.H. Dray and W.J. van der Drussen (New York: Oxford University Press, 1999).

⁶⁰ The challenges of cross-cultural research have been the subject of sustained research in ethnography and anthropology. The texts in Maranhao and Streck point to these challenges, and the strategies used to address them effectively. Tullio Maranhao and Bernhard Streck, eds., *Translation and Ethnography - the Anthropological Challenge of Intercultural Understanding* (Tuscan, Arizona: Arizona University Press, 2003).

balancing of academic responsibilities with the ‘telling of a story’⁶¹. Adopting this approach provides an opening to the use of oral histories as well as the written documentation used in this research.

This further research is situated within the ongoing research and reflection in Canadian political science regarding the political foundations of Canada. Undertaken by authors such as Peter J. Smith, Janet Ajzenstat and Jean-Pierre Wallot, this reflection challenges the Hartz-Horowitz “orthodoxy” that has shaped our understanding of Canada’s political foundations. This has stimulated a dialogue between Canadian political scientists about the importance of civic republicanism in Canada and the entrepreneurial foundations of Quebec’s political culture. To expand and enrich this dialogue, we should also consider the influence of First Nations’ *thinking* on the foundations of the Canada built by the country’s Second Nations⁶².

If we can bridge the gap between colonial Canada, and post-colonial Canada, then we can find a way forward – a way where both First Nations and Second Nations can learn to share the same river again. Once this is *again* true, then both First and Second Nations can *once again* live in histories that are interpenetrating. Orthodoxies will be turned on their heads, and new orthodoxies will emerge. If we can honour the integrity of both

⁶¹ This is analogous to Daly’s presentation of a Gitx̱san or Wet’suwet’en feast, where “the point of view presented by the specific host family is hooked into, and tested against, the experience, interests, and point of view of the guest families and the wider society”. Richard Daly, *Our Box Was Full: An Ethnography for the Delgamuukw Plaintiffs* (Vancouver: UBC Press, 2005), 22. See Kiera Ladner, “When Buffalo Speaks: Creating an Alternative Understanding of Traditional Blackfoot Governance,” Carleton University, 2001, 39 and Julie Cruickshank, “Notes and Comments,” *Canadian Studies Review* 75.3 (1994), 408.

⁶² This is in contrast to Jocelyn Létourneau’s argument that Aboriginal people should not be considered “founding peoples”. See Jocelyn Létourneau, “L’avenir Du Canada: Par Rapport À Quelle Histoire?,” *Canadian Historical Review* 81.2 (June) (2000).

Aboriginal and European worldviews, the orthodoxies that arise from the undoing of colonialism can be re-written based on a respect for the intellectual traditions of both peoples.

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