

Beyond Rights and Wrongs: Towards a Treaty-Based Practice of Relationality

by

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M.A., University of Victoria, 2012

B.A. Hons., University of Regina, 2008

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Supervisory Committee

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Abstract

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This research explores the implications of the distinction between transactional and relational understandings of the Numbered Treaties, negotiated by Indigenous peoples and the Dominion of Canada from 1871-1921. It deconstructs representations of the Numbered Treaties as “land transactions” and challenges the associated forms of oppression that emerge from this interpretation. Drawing on oral histories of the Numbered Treaties, it argues instead that they established a framework for relationship that expressly affirmed the continuity of Indigenous legal and political orders. Further, this dissertation positions treaties as a longstanding Indigenous political institution, arguing for the resurgence of a treaty-based ethic of relationality that has multiple applications in the contemporary context. It demonstrates how a relational understanding of treaties can function as a powerful strategy of refusal to incorporation within the nation state; arguing that if treaties are understood as structures of co-existence rather than land transactions, settler colonial assertions of hegemonic authority over Indigenous peoples and lands remain illegitimate. Furthermore, it examines how a relational orientation to treaties might inspire alternatives to violent, asymmetrical, and hierarchical forms of co-existence between humans and with other living beings. To this end, it takes up the potential for treaties to inform legal and political strategies that are reflective of Indigenous philosophies of relationality, providing applied examples at the individual, intrasocietal, and intersocietal levels.

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Kinanâskomitin to you all.

Dedication

This dissertation is dedicated to those who have experienced the violence and pain of unhealthy relations, to those who are struggling with it now and those who are working to create better conditions for the future.

It is also dedicated to my loves; to my husband Jonah who started this journey with me almost five years ago, our daughter Anna-Marie, who came into our lives early on in this project, and to my baby son, Aden, who joined us for the end of it. You each provide a constant reminder of why we must always try to live our relationships to the best of our abilities. You show me what is important in life, giving profound meaning to my every word, thought, and action. The work that I have done so far and will continue to do, is with you at the very center of my heart and mind.

Introduction

*“Destabilizing and decolonizing the concept of “treaty” then becomes paramount to appreciate what our ancestors intended to happen when those very first agreements and relationships were established, and to explore the relevance of Indigenous views of “treaty” and “treaty relationships” in contemporary times.”*¹

At the close of the book *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized As Nations*, the late Senator Allan Bird is quoted as saying “We are here for a very important reason; it is for our grandchildren so that they may have a good future.”² *Treaty Elders of Saskatchewan* is a compilation and synthesis of interviews with Elders that were conducted throughout the late 1990’s in an effort to ascertain the spirit and intent of the Numbered Treaties as understood by Indigenous peoples. Grounded within oral histories, it is one of the seminal resources available on the Numbered Treaties today.

In many ways, the book’s closing statement represents a starting point for my dissertation as it speaks to the foundational motivations and intentionally forward-looking nature of the discussion that will follow. By taking up this book’s closing call while shifting from an analysis of the spirit and intent of treaties to the development of an applied treaty practice, my thesis emphasizes the living, embodied, and procedural nature of treaties. Furthermore, it reflects the underlying purpose of this dissertation, which is to respond to the calls of treaty Elders to ensure that younger generations understand the importance of treaties and work to keep them alive.

¹ Leanne Simpson, "Looking after Gdoo-Naaganinaa: Precolonial Nishnaabeg Diplomatic and Treaty Relationships," *Wicazo Sa Review* 23, no. 2 (2008): 31.

² Harold Cardinal and Walter Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations* (University of Calgary Press, 2000), 71.

This project has thus grappled with the problematic of what it means to inherit treaty relationships; how do we inhabit relationships that aren't necessarily of our choosing, that are configured from the top down by violence and oppression, and that are negotiated by our ancestors in our collective name?³ How do we work to honor the efforts of our ancestors in a way that respects their vision of what the relationship should look like, while being mindful that we are living in fundamentally different era? At the broadest level, this is the problematic I'm working through in this project. I take up specifically through the question of what it means for Indigenous peoples: what are the conditions that limit our ability to embody treaties as envisioned by our ancestors? Conversely, what are the conditions that can broaden our ability to do so?

In Saskatchewan, much like other regions, treaty Elders have spent countless hours working with Indigenous and settler educational, social, and political initiatives to provide direction on the spirit and intent of treaties. It is in honor of these efforts that Indigenous peoples hold a responsibility not just to learn and transmit these knowledges, but to carry them forward and engage in concrete actions to bring about forms of change that will improve the lives of our children. To this end, this dissertation reflects on how Indigenous peoples can enact the spirit and intent of treaties in our day-to-day actions and interactions. In stark contrast to Pierre Trudeau's understanding of treaties as "forms of contract" between Indigenous people and the Crown,⁴ I regard treaties as relationship agreement between disparate groups of beings and the Creator. If one takes seriously the

³ I am indebted to Corey Snelgrove, PhD Candidate at the University of British Columbia for introducing the language of "the tasks of inheritance" as a way of thinking about this problematic.

⁴ JR Miller, "Compact, Contract, Covenant: The Evolution of Indian Treaty-Making," *Binnema and Neylan* (2007): 86.

notion that treaties are living, breathing agreements, then all parties to these agreements have a responsibility to keep them alive.

As demonstrated in subsequent chapters, many critical assessments of the contemporary relevance of the Numbered Treaties deservedly center around the settler state's poor record of treaty implementation. However, I am of the view that Indigenous peoples also have responsibility to neither dismiss treaty relationships entirely, nor to allow treaties to degenerate into empty rhetoric that is abstracted from the material configurations of our lives. To this end, I seek to explore ways that Indigenous peoples can continually give treaties life by embodying them in our own actions.

To be clear, my understanding of the imperative to 'keep treaties alive' does not mean implementing them through what I will later describe as a piecemeal approach, nor does it mean drawing on the discourse of treaties to advance social or political goals that aren't rooted in a balanced understanding that is informed by the perspectives of treaty Elders. All treaty partners have a responsibility to ensure that when we use the language of treaty, we are doing so in a way that reflects the values and principles inherent in longstanding practices of treaty-making. This is to ensure that we don't inadvertently depreciate the concept of treaty-making by reproducing a narrow and restrictive interpretation. Thus, a central aim of this dissertation is to explore the divergent ways that treaties are represented either as fixed-term transactions affecting the extinguishment of Indigenous rights to the land, or as dynamic frameworks for relationship between settler and Indigenous peoples. This dissertation will demonstrate that this distinction is at the heart of a range of contemporary issues in the Indigenous-state relationship, and that it is a crucial part of any viable discussion of treaty implementation today.

Reviving Treaty Relationality

In December 2012, four women from Saskatchewan, Sylvia McAdam, Nina Wilson, Sheelah Mclean, and Jessica Gordon held a teach-in at Station 20 West in Saskatoon. This gathering was held in response to the federal government's introduction of a large omnibus bill which involved several measures impacting Indigenous peoples and lands in direct violations of treaty relationships. These women would become the founders of Idle No More, one of the largest social action movements since the civil rights movement of the 1960's. Over the following years, Idle No More initiated hundreds of educational initiatives, protests, rallies, memorials, and conversations between Indigenous peoples and settlers. This dissertation is not about Idle No More, but it is about the changing social and political relationship between Indigenous peoples and the Crown. Specifically, this work is about the possibilities and consequences of Indigenous peoples' varying approaches to treaty implementation. It's about Indigenous peoples' longstanding refusal to accept that the practice of inhabiting treaties can be reduced to the annual distribution of \$5, the protection of certain hunting and fishing rights, and the provision of a few other material goods.

Idle No More was not a movement that existed in isolation, but represented a component of a broader Indigenous nationhood movement that, over the past decade, has brought new voices and energy to Indigenous peoples' longstanding assertions of nationhood. Amidst its efforts to resist further colonial violence against Indigenous lands and bodies, this movement has emphasized that the Crown's escalating neglect of its responsibilities under Treaties will no longer be tolerated. While Indigenous peoples have engaged in efforts to address and alter the configurations of the Indigenous-state

relationship since the origins of the treaty rights movement,⁵ the Indigenous nationhood movement has signaled several important shifts in Indigenous political mobilization. First, it has represented a mass expression of discontent with state-sanctioned avenues for change among both Indigenous peoples and settler allies. Second, it has brought about renewed attentiveness to the simultaneously abusive and transformative possibilities of relationships, treaty-based and otherwise. Third, it has involved an epistemic shift whereby Indigenous peoples have increasingly sought to ground our political efforts on our own sources of knowledge and being; or what Kelly Aguirre eloquently describes as, “a move toward once again focusing on those relationships that constitute Indigenous nations and communities, affirming the vitality of their cultural lifeworlds.”⁶

This dissertation explores what this shifting context means for Indigenous approaches to law and politics, and specifically takes up the question of what the revitalization of a relational orientation might mean for the politics of treaty implementation. Here I ask how we might move beyond discussions of the “spirit and intent” of treaties towards forms of political action and organizing that *embody* the spirit and work to *animate* the intent of treaties as understood by Elders and traditional knowledge keepers. How might Indigenous peoples re-direct our efforts inwards to enact our rights and responsibilities under treaty relationships? How can we draw upon treaty-based modes of relating to inspire contemporary methods of engagement and interaction that are grounded in Indigenous visions of relationality rather than western processes?

⁵ John L Tobias, *The Origins of the Treaty Rights Movement in Saskatchewan* (Canadian Plains Research Center. University of Regina, 1986).

⁶ Kelly Aguirre, "Telling Stories: Idle No More, Indigenous Resurgence and Political Theory," in *More Will Sing Their Way to Freedom: Indigenous Resistance and Resurgence*, ed. Elaine Coburn (Fernwood Publishing, 2015), 185.

While Indigenous peoples have an immensely strong oral history of treaties, there remains a disconnect between the theoretical knowledge shared by Elders and the interpretation of treaties that informs our approaches to law and governance today. At the core of this disconnect is that the theoretical knowledge, or the spirit and intent, emphasizes the fundamentally relational nature of treaties (that is, it depicts them as frameworks to govern the interactions of living beings), while in practice there is often a continued reliance on the static, transactional interpretation of treaties (which represents them as mechanisms of extinguishment through voluntary cession and surrender). This is true at times even within Indigenous communities. Throughout, my research seeks to explore how Indigenous approaches to treaty-implementation, including rights-based approaches, are limited by their continued reliance on the transactional interpretation. I take up the important question of how Indigenous peoples can move beyond these treaty myths by embodying a relational understanding of treaties instead.

Practices of treaty-making with settlers have, for the most part, failed to produce generative, positive experiences for Indigenous peoples. These trajectories have instead resulted in misrecognition of the nature of treaty relationships by many settlers and Indigenous peoples. I will clarify at the outset that when I refer to “treaty relationships,” “treaty-based modes of relating,” or “treaty-relationality” I am referring to the diplomatic practices intended to govern relationships that Indigenous peoples have practiced with other living beings since time immemorial. I recognize that practices of treaty-making with settlers began as far back as the 1500’s in eastern Canada, and extend even further back in time for Indigenous peoples, and see practices of treaty-making as worthy of analysis beyond the relatively recent role they have played in creating fundamentally

unequal social and political relations between Indigenous peoples and settlers.⁷ However, when I use the language of “treaties” generally I am referring to the Numbered Treaties negotiated between Indigenous peoples and settlers from 1871 – 1921. In most instances, I am referring to Treaty 4 and while I do also refer at times to other Numbered Treaties, I do not specifically engage in-depth with them.

In contrast to the particular (and disputed) view that treaties consist of a fixed set of rights arising from Indigenous peoples’ voluntary cession and surrender of land, I regard them to be one of Indigenous peoples’ oldest political institutions. Again, by taking up treaties as a political institution, I am referring not exclusively to the Numbered Treaties but rather the ethic of relationality inherent in the long-standing practices of treaty-making Indigenous peoples have engaged in within our traditional ceremonies and relationships with animals, plants, places, and other living beings. In light of their cultural and political significance and enormous transformative potential, I argue that it is imperative that Indigenous peoples do not allow the colonial bastardization of treaties to lead us to reject one of our oldest political institutions. Instead, I argue for a resurgence of treaty relationality as a political project that involves the conceptualization and deployment of strategies for Indigenous peoples to recover and embody treaty-based modes of relating to the world around us. One of the primary challenges surrounding the implementation of treaties is how Indigenous peoples can work towards implementing our own understanding rather than being contained by the imperative of having them properly recognized by the settler state. This research thus offers insight that can assist in

⁷ By “relatively recent,” I am referring to the ways treaties have been inhabited by European settlers, distinguishing them from the pre-confederation treaties between Indigenous nations and settlers, and between Indigenous people and other living beings prior to contact.

the development of individualized approaches to live treaties in the everyday, taking up the question of how Indigenous peoples can enact treaties on our own terms and conditions in multiple realms of life.

This research thus poses the crucial question: ‘What are the transformative possibilities that exist when treaties are understood as fundamentally relational?’ This question has two aims; first, to reveal the limitations of colonial mythologies that position treaties as static, fixed-term transactions and second, to explore the immediate and wide-reaching implications of understanding treaties as agreements about how to relate with one another and with creation. In approaching this question, I explore dimensions of relationality that were expressed in and guaranteed through the signing of treaties as understood by Indigenous peoples. Furthermore, I explore multiple ways that relationality can offer insight into alternate forms of engagement, coexistence, and partnership building. These include personal applications at the level of methodology, pedagogy, policy and practice, but also collective applications, in terms of community governance and in inter-societal relations. In inquiring into these questions, I take seriously the notion that treaty-based modes of relating, when inhabited properly, can offer radical alternatives to violent, destructive, and asymmetrical models of co-existence between individuals, communities, and the worlds we share.

By demonstrating the consequences of human actions that proliferate from static and individualistic orientations, these inquiries necessarily take up questions of gender-based oppression and violence against the living earth. Additionally, as it is primarily concerned with how Indigenous peoples understand the contemporary importance and relevance of treaties and prompts the reader to revisit the various networks of relationship

that constitute us as Indigenous peoples, this project also takes up questions of individual and collective identity construction. Here I intend to bring about reflection about the nature of Indigenous peoples' relationships with knowledge, with ourselves, with our kin, with creation, and with life itself. In doing so, this research endeavors to confront and collapse the dichotomous patterns of thought (man/woman, individual/collective, urban/reserve, human/nature, past/present) that perpetuate exclusionary and marginalizing tendencies in individual, interpersonal, and intergroup relationships. I argue that the continuity and wellness of these relations is central to notions of freedom that exceed state-based understandings of sovereignty, self-determination, or cultural rights. In my view, one of the most important projects for Indigenous peoples today is to ground our political processes and practices on a philosophical orientation that is reflective of our fundamental relationality, and my vision for the politics of treaty implementation is reflective of this imperative.

Background and Context

Over the past two decades, the limits and contradictions of working towards Indigenous political objectives within liberal modes of engagement have received significant attention in the scholarship on decolonization and Indigenous resistance.⁸ Inquiries into the emancipatory potential of political projects that aim to secure recognition of Indigenous rights through state legal and political structures have led to

⁸ Elizabeth A. Povinelli, *The Cunning of Recognition : Indigenous Alterities and the Making of Australian Multiculturalism*, Politics, History, and Culture (Durham N.C.: Duke University Press, 2002); Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014); Stephanie Irlbacher-Fox, *Finding Dahshaa : Self-Government, Social Suffering and, Aboriginal Policy in Canada* (Vancouver: UBC Press, 2009); Taiaiake Alfred, *Wasa'se : Indigenous Pathways of Action and Freedom* (Peterborough, Ont. ; Orchard Park, N.Y.: Broadview Press, 2005).

several conclusions. First, these processes fail to address underlying issues of colonialism; second, they reproduce the configurations of power they purport to oppose; and third, they constrain the space for future-oriented political dialogue and action within Indigenous communities. Canadian legal and political mechanisms such as section 35 of the *Constitution Act, 1985*, have provided varying degrees of protection for Aboriginal and treaty rights in certain contexts, particularly for Indigenous women seeking justice in conditions of oppression.⁹ Yet over time many have found that the solutions put forward by the state have been unable to deliver adequate levels of transformation.

Growing interest in alternative pathways to change has shed light into the liberatory possibilities of revitalizing Indigenous social, legal and political systems in ways that are informed by the responsibilities arising from our various relationships with creation. To this end, Indigenous people and communities, from grassroots to academic, are increasingly moving towards the adoption of political strategies and cultural practices that are grounded in Indigenous visions of freedom and autonomy.¹⁰ At both theoretical and practical levels, Indigenous peoples are increasingly stressing the need to move beyond appeals to the Canadian state's recognition of Indigenous rights of self-determination in advancing our own visions of law and politics. The term 'resurgence' is increasingly used in Indigenous scholarship to describe both individual and collective practices that embody this re-orientation.

⁹ Section 35(1) reads: "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed," entrenching Aboriginal and treaty rights in Canada's constitutional framework.

¹⁰ Leanne Simpson, *Dancing on Our Turtle's Back: Stories of Nishnaabeg Re-Creation, Resurgence and a New Emergence* (Arbeiter Ring Pub., 2011); Lina Sunseri, *Being Again of One Mind: Oneida Women and the Struggle for Decolonization* (UBC Press, 2010); Michelle M Jacob, *Yakama Rising: Indigenous Cultural Revitalization, Activism, and Healing* (University of Arizona Press, 2013); Noelani Goodyear-Ka'opua, Ikaika Hussey, and Erin Kahunawaika'ala Wright, *A Nation Rising: Hawaiian Movements for Life, Land, and Sovereignty* (Duke University Press, 2014).

This is the context in which many Indigenous peoples are moving away from appeals to the state for protection of our rights, and are focusing instead on forms of political action and empowerment that are internal to our communities. Yet as more and more Indigenous peoples emphasize the need to move away from appeals to the state for justice, I've found myself wondering about the implications of such disassociation for Indigenous peoples who see ourselves as inhabiting relations of interdependence with all with all of creation, including other human communities. This refusal to engage with the settler state creates a unique set of questions for Indigenous peoples who inhabit treaty relationships. How might we resist the state's narrow and static understanding of Treaties while continuing to inhabit our treaty relationships as we understand them? How might we embody treaty relationships in a way that is informed instead by our traditional values? How might we aim to avoid legitimatizing the state's understanding of Treaties while also broadening our focus beyond our discontent with settler interpretations? In the process, what might we learn from our own modes of relating that we can apply to contemporary crises between one another, and between humans and the rest of creation?

My research takes up these questions by inquiring into how Indigenous peoples might govern our relations in a way that honours our own autonomy and agency while also working towards community-based strategies of political empowerment and revitalization. Being from a community that is strongly grounded in treaties and places an enormous emphasis on the ongoing value of treaty teachings, I aimed to turn to these resources to deal with the disputes and challenges of co-existence. Treaty First Nations are in the privileged position of already having frameworks in place that can inform our

relationships. The key here is the need to inhabit treaty relationships in a healthy way, which hasn't always been the case with the Numbered Treaties.

While members of Indigenous populations living in areas that are not covered by the Numbered Treaties often interrogate their relevance, such statements are grounded upon the notion that non-treaty Indigenous peoples occupy a distinct legal and political position from those who signed treaties as unlike treaty First Nations, they did not 'cede or surrender' title to their lands. Similarly, descriptions of the "peace and friendship" treaties entered into prior to confederation often define their purpose and intent by way of contrast with the "land cession" or Numbered Treaties. It is certainly true that pre-confederation treaties were negotiated in different legal, political, and cultural climates and were generally driven to a great degree by military and political motivations in contrast to the Numbered Treaties which were more concentrated on the issue of land use. This is a relevant distinction, however it is important that when Indigenous peoples refer to the political, or "peace and friendship" character of pre-confederation treaties as a defining feature, that this distinction isn't invoked to minimize the political character of the Numbered Treaties by way of contrast.

Indigenous nations face challenges in our interactions with the Canadian state that are unique to different times and place. Efforts to understand these distinctions are often articulated through mutually exclusive and periodized framings of land cession treaties and peace and friendship treaties. Perspectives that contrast the "land cession" treaties with the "peace and friendship" treaties are ultimately grounded in the assumption that First Nations who signed the Numbered Treaties sold our land, assented to legal and political domination and therefore have no legitimate claim to title, jurisdiction or

sovereignty over our own affairs. However, such dichotomous treatments of treaty-making may inadvertently reinforce Canadian narratives and categorizations of the history of Indigenous-state relations in a way that eclipses our understandings of how Indigenous nations drew on these important political institutions in many different instances and moments in time. Such distinctions also highlight both the prevalence of the transactional understanding of the Numbered Treaties and the way it has been internalized by many Indigenous peoples.

Furthermore, the impact of the Numbered Treaties on the state's interactions with all Indigenous communities is unequivocal. The negotiation of the Numbered Treaties did not occur in isolation, but was part of a broader web of colonial policies intended to facilitate settlement of the West. The Canadian government's interpretation of the responsibilities it holds and does not hold under treaties has provided much of the rationale for the policies that were implemented through the *Indian Act*¹¹ and other legal and political instruments. For instance, the treaty promise of providing education that would supplement traditional forms of education with western teachings was ultimately implemented by the Crown in the form of the assimilationist and ultimately genocidal residential school system.¹² Claims that treaties are irrelevant to non-treaty Indigenous people overlook the ways in which all Indigenous people have been impacted by gender discrimination, the reserve and pass system, residential schools, bans on Indian spiritual and cultural practice, band systems of governance, and other legislation imposed on Indigenous peoples that were made possible at least in part by state authority and

¹¹ Indian Act (R.S.C., 1985, C. I-5).

¹² Sheila Carr-Stewart, "A Treaty Right to Education," *Canadian Journal of Education/Revue canadienne de l'éducation* (2001): 126.

jurisdiction claimed through treaties. Furthermore, such policies and legislation were justified through ideological discourses of “protection” and “advancement” which were understood by the state as central to treaty-making with Indigenous nations. Thus, all Indigenous peoples have been irreversibly impacted by state policies and processes that have either been shaped by or followed from the state’s interpretation of its rights and responsibilities under treaties, in addition to the hierarchical, paternalistic, and assimilatory framework that the Crown employs with respect to treaties.

And finally, the view that treaties aren’t relevant to those who have never signed them discounts the practices of treaty-making that occurred prior to contact with settlers and that many Indigenous communities engaged in. This is largely because such a view relies on a narrow definition of treaty and reinforces the transactional understanding. Thus, even if a community did not enter into what are now understood to be the “Numbered Treaties” signed between some Indigenous populations and the Dominion of Canada between 1871 – 1921, it is likely that their ancestors still engaged in some form of treaty-making or alternate means of negotiating co-existence in shared spaces in past times. Even in the remote possibility that a community was somehow isolated to the point of not having to share space with any other Indigenous group prior to contact, they would have had practices of co-existence with the rest of creation. The questions of relationality that emerge from discussions surrounding the Numbered Treaties are directly relevant to these practices and traditions.

Treaty Mythologies and Colonial Relations

The Numbered Treaties are a foundational element of the narration underlying what scholars such as Joyce Green refer to as “Project Canada.”¹³ As Green writes, the configurations of the colonial relationship between Indigenous peoples and Canada “are perpetuated by a mythologized history and by judicial and political institutions that proclaim and defend this mythology-cloaked, unhyphenated colonialism.”¹⁴ The selective construction of significant events such as treaties form mythologies that distort our collective consciousness, centering certain interpretations while invisibilizing others.

It is through the story of treaties that the Canadian government legitimates its presence on and claim to title over local lands and waterways. Yet despite the centrality of treaties to Canadian narratives of settlement and development, they play a relatively insignificant role in contemporary Canadian political culture and when they are mentioned, they are most often framed as historical events, or a form of legal contract that surrendered Indigenous title in exchange for a fixed set of rights and benefits. The legal and political configurations of the Indigenous-state relationship are informed by these narratives, eclipsing Indigenous understandings of treaties as relationship agreements..

As the story goes, Indigenous populations ceded and surrendered title to the land to the Crown in exchange for a fixed spectrum of rights and entitlements. This assumption is reflected in the description of treaties offered by Indigenous and Northern Affairs Canada (INAC), which suggests that:

¹³ Joyce Green, *Equality Quest: It’s Time to Undermine the Institutional and Cultural Foundations That Support Inequality*, (Briarpatch Magazine: Briarpatch, 2004).

¹⁴ "Towards a D tente with History: Confronting Canada’s Colonial Legacy.," *International Journal of Canadian Studies* 12 (1995).

At their base, the treaties were land surrenders on a huge scale. A total of 11 Numbered Treaties were negotiated during this period culminating with treaty 11 in 1921. Furthermore, in the eyes of the Federal Government, the act of signing treaty brought Aboriginal people of the Northwest under the jurisdiction of the Dominion of Canada and its laws. The early Numbered Treaties - Treaties 1 through 7 - became the vehicle by which the Department of Indian Affairs implemented existing and future assimilation policies in the Northwest while the latter treaties allowed for the opening of the North and access to valuable natural resources.¹⁵

The perspective that the Numbered Treaties represent surrenders of land is not exclusively held by the federal government. For even some contemporary post-secondary textbooks designed to provide balanced perspectives and critical insight into processes of colonialism continue to position treaties as land transactions.¹⁶ This approach, which sees treaties as exchanges of land and resources for a fixed set of terms, has become the dominant interpretation and representation of treaties in Canadian law and society.

The transactional interpretation of treaties stands in direct contrast to the meaning and intent of treaties described by treaty Elders and documented by Indigenous academics such as the late Harold Cardinal, Sharon Venne, John Borrows, Heidi Stark, Leanne Simpson, James Youngblood Henderson and Robert Williams as well as settler historians and anthropologists such as John Tobias, Arthur Ray, Walter Hildebrandt, Sarah Carter and Michael Asch, each of whom have studied the records of proceedings and recognize that treaties represent the establishment of a legal and political framework intended to govern the co-existence of various communities in a shared space.¹⁷ The

¹⁵ Indigenous and Northern Affairs Canada, "The Numbered Treaties (1871-1921)," <https://www.aadnc-aandc.gc.ca/eng/1360948213124/1360948312708>.

¹⁶ Olive Patricia Dickason and William Newbigging, *A Concise History of Canada's First Nations*, 2nd ed. (Don Mills, Ont. : Oxford University Press, 2010), ix.

¹⁷ As Michael Asch writes "the interpretation provided by the contemporary Elders and leaders of the Indigenous parties to the negotiations more accurately reflects *the shared understanding of both parties* as it is reflected in the record of what transpired than does the representation contained in the written text."

Royal Commission on Aboriginal Peoples (RCAP) explains that while parties to treaty agreed to share the land, they hold contradictory views on the question of extinguishment:

[...] notwithstanding clear words calling for extinguishment in many historical treaties, it is highly probable that no consent was ever given by Aboriginal parties to that result. Aboriginal people, who believe that the Creator set them on their traditional territories and gave them the responsibility of stewardship of the land and of everything on it, are not likely to have surrendered that land knowingly and willingly to strangers. By the same token it would be entirely consistent with their world view and ethical norms for them to share the land with newcomers.¹⁸

Nevertheless, Canada's archive of historical narratives, social and cultural assumptions, and judicial and political decisions coalesce to sustain a set of unifying mythologies about the nature of treaties. While the specific details of this narrative vary from source to source, the taken for granted description of the Numbered Treaties relies upon the notion that two parties entered into an agreement whereby land was exchanged for a fixed set of promises that were not to be altered over time. Based largely on racist and evolutionary doctrines of the era, treaties were not regarded by the Crown as agreements between political equals, but as the mechanisms through which the claims of Indigenous peoples would be reconciled with the overarching sovereignty of the Crown to open the land up for European settlement and development.

These simplistic treaty mythologies have a range of consequences. They perpetuate the notion of political inadequacy or deficiency among Indigenous populations. They provide a sense of security to settler populations surrounding the

Michael Asch, *On Being Here to Stay: Treaties and Aboriginal Rights in Canada* (University of Toronto Press, 2014), 82. (Emphasis original).

¹⁸ René Dussault et al., "Report of the Royal Commission on Aboriginal Peoples, (Ottawa: Minister of Supply and Services, 1996): Volume 2, Chapter 2, Section 3.8.

incontrovertible nature of their citizenship rights and personal property. And they also provide a series of concrete answers for those interested in how Canada claims to have lawfully acquired this land. They give the perception of Indigenous consent to the surrender of our land and sovereignty, positioning the Canadian state as the benevolent savior of those in need of assistance.¹⁹ This representation obscures the genocide of Indigenous populations committed through the *Indian Act* and other violations of Indigenous peoples' basic human rights. Furthermore, these myths guard against Indigenous understandings of treaties, which view them as necessitating a very different social, legal and political arrangement than the status quo.

Most relevant to the current discussion is the way in which treaty mythologies legitimate Canada's otherwise unjust and illegal appropriation of Indigenous lands, permitting its claim to title and the extension of its legal and political jurisdiction. They accomplish this by giving the impression that Indigenous peoples consented to the cession of their lands and to the supremacy of settler orders of law and governance through the signing of treaties. Beyond evidencing the purportedly consensual nature of European claims to sovereignty and jurisdiction over Indigenous peoples, treaty mythologies rely upon a static understanding of treaties that sustain the effect of this consent into the future, ensuring that the terms upon which sovereignty was asserted would sustain themselves over time.

The term "treaty mythologies" does not merely refer to incorrect interpretations of treaties as an isolated event in our historical consciousness, but rather the ways in which ongoing interpretation of treaties as fixed-term transactions functions to continually

¹⁹ Sarah Carter, *Aboriginal People and Colonizers of Western Canada to 1900* (University of Toronto Press, 1999), 118.

reproduce structures of settler colonialism. As Audra Simpson writes, “Settler colonialism is not eventful; it is enduring, it has its own structure and logic and refusal as well, operating like a grammar and posture that sits through time.”²⁰ The contemporary configurations of the exploitative, racist, and colonial relationship between Indigenous peoples and the state are informed by these narratives, as are the policy responses to present-day crises in Indigenous communities. Mythologies of treaties as mechanism of cession and surrender help ensure the continuity of the current structure of the Indigenous-state relationship. They also contain the possibilities for implementation of treaties to the realm of cultural rights, overlooking the legal and political possibilities of a relational understanding of treaties. Therefore, my research is not limited to correcting a singular inaccuracy in the historical record, but focuses instead on the ongoing and long-term dangers of the static and transactional view.

Further, the driving force of my work is the desire to address the impacts of these treaty mythologies internally within Indigenous communities and to theorize ways to ground our social and political structures and actions upon Indigenous understandings instead. For it is through treaties that the state continues to justify its claim to jurisdiction over the land and Indigenous populations, and it is also these same treaties that provide the framework for delegitimizing such claims while also offering an alternative, non-violent and non-hierarchical approach to co-existence. If we follow Simpson’s logic, Indigenous peoples’ longstanding refusal of colonial interpretations, and our unwillingness to simply “let go” of treaties point to the “presumptive falsity of contractual thinking.”²¹ This is why, as treaty Elders tell us, Indigenous peoples must

²⁰ Audra Simpson, "Consent's Revenge," *Cultural Anthropology* 31, no. 3 (2016): 329.

²¹ *Ibid.*

never let go of our treaties, or dismiss them as irrelevant to the current context. Treaties have the potential to cast light on the foundational structure of colonial violence, while also offering culturally-grounded and healthier frameworks for co-existence.

This dissertation assumes that processes of narration and meaning-making serve to sustain the systems of power and oppression that shape the world we live in, and thus it seeks to deconstruct, interrogate and critique dominant narratives to make space for the imagination of alternative ways of living in relation to one another. As Taiaiake Alfred writes “[t]he mythology of the state is hegemonic, and the struggle for justice would be better served by undermining the myth of state sovereignty than by carving out a small and dependent space for Indigenous peoples within it.”²²

Recognition of the ways that treaty mythologies function both to sustain the status quo by depicting treaties as the endpoint for Indigenous legal and political authority while also functioning to contain Indigenous legal and political aspirations that would be made possible under a more relational approach, is the first step in animating the spirit and intent of treaties. Breaking down treaty myths not only helps Indigenous peoples recognize how they have functioned to subjugate us, but it also allows us to begin to open our horizons to new ways animating treaty-based modes of relating in the everyday.

Theorizing Treaty Relations

This research intentionally examines treaties through an approach that departs from the conventional way in which they are typically taken up in the literature; that is, in terms of their role in determining the configurations of the Indigenous-state relationship.

²² Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (Oxford Canada, 2009), 82.

This is a conscious decision, as this project is not intended to explore the comprehensive range of strategies for reconfiguring the Indigenous-state relationship, but to explore the political potential of revitalizing a treaty politic that is informed by Indigenous perspectives and worldviews. I am less concerned with convincing settlers of the legitimacy of Indigenous understandings of treaties as I am with exploring what the substance of a treaty politic defined by Indigenous peoples (and not the state) has been, is and can be. I take seriously the need to be mindful of the politics underlying processes of definition and meaning-making, and prompt the reader to revisit the very definition of treaty itself, the actors involved in treaties, as well as the realms of life in which treaties can be implemented.

There is no scarcity in political analyses of the Numbered Treaties,²³ and various analytical approaches have been well-established in the literature. Over the years, some scholars have adopted a comparative approach, contextualizing the challenges within treaty relationships by comparing and contrasting the different value systems, interpretive frameworks and worldviews of Indigenous and non-Indigenous parties to the numbered Treaties.²⁴ Others have analyzed the contemporary status of treaties in terms of the degree

²³ James Youngblood Henderson, "Sui Generis and Treaty Citizenship," *Citizenship Studies* 6, no. 4 (2002); Robert A Williams, "Linking Arms Together," *American Indian Treaty Visions of Law and Peace* (1997); Sharon Venne, "Treaty-Making with the Crown," *Nation to Nation: Aboriginal Sovereignty and the Future of Canada*. Bird. J. et al, eds (2002); Heidi Stark, "Respect, Responsibility, and Renewal: The Foundations of Anishinaabe Treaty Making with the United States and Canada," *American Indian Culture and Research Journal* 34, no. 2 (2010); Simpson, "Looking after Gdoo-Naaganinaa: Precolonial Nishnaabeg Diplomatic and Treaty Relationships."; Walter Hildebrandt, Dorothy First Rider, and Sarah Carter, *True Spirit and Original Intent of Treaty 7* (McGill-Queen's Press-MQUP, 1996); Cardinal and Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations*.

²⁴ Youngblood Henderson, "Sui Generis and Treaty Citizenship."; Leroy Little Bear, "Jagged Worldviews Colliding," *Reclaiming Indigenous voice and vision* (2000); John Leonard Taylor, "Two Views on the Meaning of Treaties Six and Seven," *The Spirit of the Alberta Indian Treaties* 3 (1987); Venne, "Treaty-Making with the Crown."; Aimee Craft, "Breathing Life into the Stone Fort Treaty: An Anishinabe Understanding of Treaty One," (2016).

to which they have been honored or violated by the state,²⁵ while others have invoked Indigenous visions of law and governance to reconceptualize the settler state's legal obligations.²⁶ Significant work has been spent identifying and articulating common positions on the "spirit and intent" of Treaties to advocate for their protection and implementation under Canadian law.²⁷ Inquiries into Indigenous understandings of treaty have also been accompanied by settler efforts to confront and correct dominant myths surrounding treaties while exploring their own role in treaty relationships.²⁸ At the same time, debate among Indigenous thinkers has questioned the effectiveness and cultural integrity of articulating visions of Indigenous nationhood within appeals to the settler state, grounding their critiques upon the ways that the numbered Treaties have been disregarded by settler societies and on the ways that modern pseudo-treaty processes continue to be used to advance colonial political agendas.²⁹

²⁵ John L Tobias, "Canada's Subjugation of the Plains Cree, 1879–1885," *Canadian Historical Review* 64, no. 4 (1983).

²⁶ Williams, "Linking Arms Together."; Simpson, "Looking after Gdoo-Naaganinaa: Precolonial Nishnaabeg Diplomatic and Treaty Relationships."; John S Long, *Treaty No. 9: Making the Agreement to Share the Land in Far Northern Ontario in 1905* (McGill-Queen's Press-MQUP, 2010).

²⁷ Stark, "Respect, Responsibility, and Renewal: The Foundations of Anishinaabe Treaty Making with the United States and Canada."; Office of the Treaty Commissioner, "Statement of Treaty Issues: Treaties as a Bridge to the Future, (Saskatchewan: Office of the Treaty Commissioner, 1998); Simpson, "Looking after Gdoo-Naaganinaa: Precolonial Nishnaabeg Diplomatic and Treaty Relationships."; Hildebrandt, Rider, and Carter, *True Spirit and Original Intent of Treaty 7*; Cardinal and Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations*.

²⁸ Long, *Treaty No. 9: Making the Agreement to Share the Land in Far Northern Ontario in 1905*; Asch, *On Being Here to Stay: Treaties and Aboriginal Rights in Canada*; Arthur J Ray, Jim Miller, and Frank Tough, *Bounty and Benevolence: A Documentary History of Saskatchewan Treaties* (McGill-Queen's Press-MQUP, 2000); Jill St. Germain, *Broken Treaties: United States and Canadian Relations with the Lakotas and the Plains Cree, 1868-1885* (U of Nebraska Press, 2009); Asch, *On Being Here to Stay: Treaties and Aboriginal Rights in Canada*.

²⁹ James Tully, "Reconsidering the Bc Treaty Process" (paper presented at the Speaking truth to power: A treaty forum, 2001); Johnny Mack, "Hoquotist: Reorienting through Storied Practice," *Storied Communities: Narratives of Contact and Arrival in Constituting Political Community* (2011); Taiaiake Alfred, "Deconstructing the British Columbia Treaty Process [Paper In: Indigenous Peoples in the International Sphere.]," *Balayi: Culture, Law and Colonialism* 3, no. 2001 (2001).

These analyses offer important insight into treaty relationships and represent significant contributions, yet they have also focused primarily on the degree to which the settler state has succeeded or failed in enacting Indigenous visions of treaty promises, unintentionally positioning the state as the active agent and Indigenous peoples as recipients in the treaty relationship. As Jill St. Germain observes in her analysis of the impacts of discourses of ‘broken treaties,’ much of the contemporary discourse on treaty implementation focuses on the realm of policy which accentuates the role of the state as the purveyor of treaty obligations, minimizing Indigenous agency in the process. She writes that the broken treaties discourse “accentuated the central role of the United States and its agents as policymakers, to the detriment of Indian tribes and leaders, who became subjects of rather than participants in the unfolding process.”³⁰ These efforts have also focused primarily on representative levels of government, overlooking the role of everyday citizens within treaty relationships. Thus, Indigenous perspectives on treaties become “claims” against the state rather than Indigenous accounts that stand on their own and have autonomous political significance. Additionally, these approaches to treaties have eclipsed many of the legal and political possibilities inherent in their relational dimension. As Alfred writes, the project of seeking recognition for the true nature of treaties within the structure of the state is inherently limited, as the state structure itself relies upon the perpetuation of treaty mythologies:

To frame the struggle to achieve justice in terms of Indigenous 'claims' against the state is implicitly to accept the fiction of state sovereignty. Indigenous peoples are by definition the original inhabitants of the land. They had complex societies and systems of government. And they never gave consent to European ownership of territory or the establishment of European sovereignty over them (treaties did not

³⁰ St. Germain, *Broken Treaties: United States and Canadian Relations with the Lakotas and the Plains Cree, 1868-1885*, xviii.

do this, according to both historic Native understandings and contemporary legal analysis). These are indisputable realities based on empirically verifiable facts. So why are Indigenous efforts to achieve legal recognition of these facts framed as 'claims'?³¹

Rather than engaging with treaties as 'claims' that stand to impact the state's sovereignty, its political culture, or its responsibilities to Indigenous peoples, I seek to center treaties as legal and political arrangements in and of themselves. My interest is in broadening the conversation beyond what I understand to be an economic development or policy-driven approaches to treaty implementation that has often been engaged in appeals for state recognition of treaty rights. Along the same lines, I am cautious of piecemeal solutions or approaches to treaty implementation.

The piecemeal approach includes understandings of Indigenous politics that interpret specific government policies, efforts or initiatives aimed at ameliorating living conditions for Indigenous peoples as treaty implementation. For instance, perspectives that interpret workforce development and job creation for Indigenous populations as treaty implementation represent a piecemeal approach that can distort the nature of the treaty relationship in a number of ways. First, they shift the conversation from questions of relationship, self-determination and nationhood towards questions of economic parity. Second, they reify narrow interpretations of the written wording of treaties, obscuring the underlying spirit and intent of various dimensions of treaty. Third, they absolve the government of the breadth of its treaty responsibilities by gratuitously labelling any social programs or initiatives as treaty rights, when in fact the federal government's record of treaty implementation is much more dismal. Ultimately, the piecemeal approach utilizes

³¹ Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto*.

the rhetoric of a nation-to-nation relationship building and renewal but leaves existing power relations untouched.

The nature and purpose of this research extends beyond conventional theoretical and analytical approaches to treaties as it is driven by the purpose of Indigenous resurgence and nationhood building. While Indigenous politics scholars have examined both Indigenous efforts to reconstitute Indigenous nationhood through the reclamation of Indigenous governance models, political institutions and community-based initiatives, few scholars have examined these questions in the context of the treaty rights movement. This research builds upon knowledge that emerges from the distinctive origins and continuity of Indigenous legal and political traditions to examine the limitations of state-centric approaches to treaty implementation. Additionally, it centers Indigenous political philosophies as the axis with which treaties are understood and implemented. In doing so, it moves away from the implementation of treaties through institutional models that are inherently governed by western political traditions and instead promotes the redevelopment of Indigenous governance practices shaped and informed by the values and traditions that have sustained Indigenous nations since time immemorial. It invokes traditional Indigenous knowledges and histories to build an understanding of Treaty 4 that is reflective of Indigenous philosophical principles of relationality. It facilitates the reconstitution of community-driven approaches to treaty implementation as an alternative to those that have been implemented by Crown-funded organizations. More importantly, it illuminates culturally-grounded visions of how Indigenous understandings of treaty can be operationalized to inform the ways in which Indigenous peoples constitute our communities into the future.

In my view, the project of theorizing ways to perform an alternate vision of treaties that is grounded on their nature and intent as relationship agreements can represent an empowering shift in Indigenous politics. It has the potential to collapse the settler state's account of treaties but also the transactional model whereby the state is the provider and Indigenous peoples are the recipients of treaty rights. Even more importantly, it engages in a future-oriented practice of self-determination and nationhood as affirmed in the treaty relationship, thus grounding Indigenous mobilization in the diplomatic practices that flow from a fundamentally relational worldview.

Research Methodology

The research conducted for this dissertation is grounded in an Indigenous feminist research paradigm, combining qualitative, feminist, and Indigenous research methods.³² This paradigm is suited to the nature of this research as it provides insight into the multiple and intersecting power relations that exist between people, places, histories and ideas. It is particularly appropriate as it has the potential to challenge the totalizing, individualized, and reductive assumptions that constitute dominant visions of treaties.

In the discourse on Indigenous research methodologies, the concept of relationality has received significant attention as a guiding principle for research conducted with Indigenous peoples. It emerges primarily in discussions on Indigenous epistemologies to describe the fundamentally relational nature of Indigenous ways of

³² Shawn Wilson, *Research Is Ceremony: Indigenous Research Methods* (2008); Margaret Kovach, *Indigenous Methodologies: Characteristics, Conversations, and Contexts* (University of Toronto Press, 2010); Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (Zed Books Ltd., 2013).

knowing and learning. Relationality is also employed to characterize conceptions of accountability in Indigenous contexts, following from the notion that Indigenous worldviews of being situated in relations of interdependence with all of creation give rise to a broad spectrum of relations to account for.

This relational character stands in contrast to individualist conceptions of knowledge production. As Shawn Wilson writes, “the major difference between dominant paradigms and an indigenous paradigm is that those dominant paradigms are built on the fundamental belief that knowledge is an individual entity: The researcher is an individual in search of knowledge, knowledge is something that is gained and therefore knowledge may be owned by an individual.”³³ Indigenous paradigms, on the other hand, are grounded upon the “fundamental belief that knowledge is relational. Knowledge is shared with all of creation. It is not just interpersonal relationships, or just with the research subjects I may be working with, but it is a relationship with all of creation.”³⁴ Given the relational nature of knowledge itself, the concept of relational accountability is intended to capture the full spectrum and multiple dimensions of responsibilities that Indigenous researchers hold towards knowledge and its various sources.

The concept of relational accountability informs the foundational and procedural aspects of research, beginning prior to the commencement of the research in the conception of projects that are community-driven and stand to benefit Indigenous peoples in a substantive way.³⁵ As Wilson writes, relational accountability means that the

³³ Wilson, *Research Is Ceremony: Indigenous Research Methods*, 56.

³⁴ Ibid.

³⁵ Marie Battiste, "Research Ethics for Protecting Indigenous Knowledge and Heritage: Institutional and Researcher Responsibilities," *Handbook of critical and Indigenous methodologies* (2008); Kovach,

research methodology needs to be based in a community context and has to demonstrate respect, reciprocity and responsibility as it is put into action.³⁶ It necessitates attention to the comprehensive ways in which researcher actions implicate the people, places, and ideas we engage with throughout the course of research. In practice, this means that researchers must take every effort to be responsible for our choices and to engage in respectful, culturally grounded and transparent research that is useful to participating communities.³⁷ It involves employing research methods that are relevant and important to community members and that make adequate and ongoing space for community input and guidance on the direction of research.³⁸ It suggests that researchers must be accountable to all of our relations in every realm and stage of our work, from the inception of the project until the presentation and dissemination of findings.

In addition to the selection of research foci, practices of relational accountability should guide methods of data collection, forms of analysis and in the way in which researchers present information.³⁹ They also involve ensuring that measures are in place to protect culturally specific knowledge and that Indigenous communities maintain

Indigenous Methodologies: Characteristics, Conversations, and Contexts, 149; Kristen Jacklin and Phyllis Kinoshameg, "Developing a Participatory Aboriginal Health Research Project: "Only If It's Going to Mean Something", " *Journal of empirical research on human research ethics* 3, no. 2 (2008): 53-67.

³⁶ Wilson, *Research Is Ceremony: Indigenous Research Methods*, 99.

³⁷ Kathleen E. Absolon, *Kaandossiwin : How We Come to Know* (Halifax: Fernwood Pub., 2011); Kovach, *Indigenous Methodologies: Characteristics, Conversations, and Contexts*; Jeff Corntassel and Adam Gaudry, "Insurgent Education and Indigenous-Centered Research: Opening New Pathways to Community Resurgence," (University of Toronto Press Toronto, Canada, 2014).

³⁸ Such methods include storytelling, experiential knowledge, personal narratives, performative inquiry. See Jeff Corntassel, "Indigenous Storytelling, Truth-Telling, and Community Approaches to Reconciliation," *ESC: English Studies in Canada* 35, no. 1 (2009): 137-59; Noenoe K Silva, *Aloha Betrayed: Native Hawaiian Resistance to American Colonialism* (Duke University Press, 2004); Jo-Ann Archibald, *Indigenous Storywork : Educating the Heart, Mind, Body, and Spirit* (Vancouver: UBC Press, 2008).

³⁹ Wilson, *Research Is Ceremony: Indigenous Research Methods*, 99.

control over what is being shared and how it is being framed.⁴⁰ Additionally, relational accountability allows Indigenous concepts and knowledges to stand on their own without reinterpreting them through non-Indigenous frames of reference. Taken together, these considerations have informed my own process I have endeavored to be accountable to the various relations I inhabit in all realms and stages of my work, from the inception of the project until the presentation and dissemination of findings.

Recognizing that predetermined epistemic frameworks aren't applicable to the singularity of each research context and that there are no standardized models that will suit every relationship, researchers are increasingly aiming to developing research paradigms that are Indigenous in character and intent but also unique to the cultural context of different communities. In her seminal contribution to the field of Indigenous research methods, Linda Tuhiwai Smith argues that researchers must take it upon themselves to enact change in the academy by extending their responsibilities beyond normative understandings of accountability and broadening the meaning of the concept.⁴¹ This involves utilizing processes that are reflective of Indigenous ontologies and epistemologies, which are themselves premised upon the interconnectedness of the self and other beings, including those in the physical, dream, and spirit worlds.⁴² Yet as Aileen Moreton-Robinson notes, the significance of Indigenous worldviews and principles of relationality extend well beyond conceptions of accountability and the

⁴⁰ Paul Nadasdy, *Hunters and Bureaucrats: Power, Knowledge, and Aboriginal-State Relations in the Southwest Yukon* (UBC Press, 2004); Kovach, *Indigenous Methodologies: Characteristics, Conversations, and Contexts*; Jacklin and Kinoshameg, "Developing a Participatory Aboriginal Health Research Project: "Only If It's Going to Mean Something"."

⁴¹ Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, 41.

⁴² Vine Deloria, *The World We Used to Live In: Remembering the Powers of the Medicine Men* (Fulcrum Publishing, 2006); Gregory Cajete, *Native Science: Natural Laws of Interdependence* (Clear Light Pub, 2000); Willie Ermine, "Aboriginal Epistemology," in *First Nations Education in Canada: The Circle Unfolds*, ed. Marie; Barman Battiste, Jean (Vancouver, BC: University of British Columbia Press, 1995).

development of research frameworks. She writes that Indigenous peoples “are engaged in an epistemic battle that requires more than defining our research methodologies and conducting research with and for our communities. We have to sustain an Indigenous social research paradigm with its own standards, rules of engagement and epistemological field.”⁴³

Here Indigenous peoples are prompted to reflect upon how we might expand our understanding of relational accountability by drawing on the ways in which our ancestors have historically understood forms of knowledge production, as well as the ways in which they have sought to negotiate and maintain relationships with other living beings. As a Cree and Saulteaux woman from Treaty 4, I seek to employ a methodology that is inspired by an understanding of treaties as relationship frameworks. In doing so, I draw upon relationships as generative interactions through which knowledge is kept alive and re-constituted in a new way by those involved, as opposed to a transaction or exchange of knowledge.

Reflecting my self-location, the theoretical orientation of my methodology also emphasizes the centrality of treaties and of cultural revitalization in processes of decolonization. My approach emerges directly from the treaties it is dedicated to, embodying concepts of respectful dialogue, mutual understanding, reciprocity, and consent underlying treaty relationships. I am particularly inspired by Margaret Kovach’s use of treaties as transgressive pedagogy.⁴⁴ Kovach looks to treaty relationships to inform

⁴³ Aileen M Moreton-Robinson, "Relationality: A Key Presupposition of an Indigenous Social Research Paradigm," in *Sources and Methods in Indigenous Studies*, ed. Jean O'Brien and Chris Andersen (Routledge, 2016), 74.

⁴⁴ Margaret Kovach, "Treaties, Truths and Transgressive Pedagogies: Re-Imagining Indigenous Presence in the Classroom," *Socialist Studies/Études Socialistes* 9, no. 1 (2013).

the development of a personal pedagogy that is both critical and respectful, and is equipped to work through the tensions between different worldviews and temporal states of past, present and future. She explains how treaties can represent an important basis for establishing and maintaining partnerships and relationships by providing a framework for respectful dialogue, mutual understanding, reciprocity, and consent. Her model is important as it views treaties not as topics of education, but as embodying principles of relationality that provide a means of education in and of themselves.

The call to continually expand understandings of relational accountability is changing how researchers engage with Indigenous peoples in many important ways, and serves an important decolonizing function as it allows the contemporary mobilization of Indigenous knowledge to take place within an ethical and epistemological field that is defined by the community itself. However, in Canadian political culture and in many Indigenous approaches to treaty implementation, treaties have been predominantly conceptualized as issues of a collective interest. It is therefore particularly vital for researchers to first decenter the way in which they think about treaties in order to make space for the exploration of strategies to embody them within everyday relationships. Indigenous feminism has offered me many useful analytical tools in this respect.

While Indigenous women's issues have a long history of being cast aside as individual issues that stand in contrast to those of a collective orientation, they run a particularly significant risk of being overlooked within analyses that are grounded in the community interest. A significant part of this dissertation is the way in which treaty-based modes of relating can be invoked and applied in community governance, and I take up examples from a research project that is both directed by and geared towards

providing a benefit to community partners. Thus I am particularly conscious of the need for critical analytical strategies such as Indigenous feminism that remind me to confront the myth of objectivity in research while remaining aware that knowledge is co-constituted and shaped as much by my own values and worldview as they are by those of community partners.

I recognize that in the discourse on Indigenous community-based research, ‘the community’ can also be positioned as taking precedence above all else in the research relationship, removing community boundaries, priorities, objectives, and processes from scrutiny. Yet as Creese and Frisby note in their study of the central methodological dilemmas in community-based research, “every layer of these relationships is saturated with differences in power, access to resources, and control over meaning making.”⁴⁵ They call on researchers to unpack central terms such as community, reciprocity, and reflexivity, among others, and ask what the limitations, tensions and (un)intended consequences are for individuals trying to live up to the ideals associated with these terms. For instance, the very definition of a community is itself open to debate and contestation.

In the context of community-based research, this awareness prompts critical examination of the relationships underlying research partnerships, including those within and between researchers, community members, funders, institutions, and industry and government stakeholders, among others. As Alison Jaggar writes, “most feminist scholars recognize that research is more than the disinterested pursuit of “objective” knowledge, that investigations and outcomes are always value-laden and never morally or politically

⁴⁵ Gillian Creese and Wendy Frisby, *Feminist Community Research: Case Studies and Methodologies* (UBC Press, 2011), 4.

neutral.”⁴⁶ Indigenous feminism’s attention to the intersections of gender, sexual orientation, class, ability, age, and other categories of difference can provide insight into the power relations underlying the researcher-community relationship, and towards those at play within communities as well.

Therefore, in all of this I have remained aware that the interpretation and representation of traditional and cultural knowledge can be contested, contingent and heavily dependent on power relations within communities. I utilize the Indigenous feminist method of taking colonialism, racism, and sexism as simultaneous and mutually reinforcing issues in examining questions of power, difference, and vulnerability both in the Indigenous-state relationship but also in relationships within Indigenous communities. In conducting my research, I sought to uncover not just the “Indigenous perspective” in relation to treaties, but also the multiplicity of Indigenous voices that are also marginalized for various reasons, gendered and otherwise, within our communities.

My approach takes seriously the need for awareness and sensitivity towards gendered considerations and other relations of power in order to broaden the analytical frame traditionally applied to treaty relationships. As Val Napoleon writes “the larger political issues are in dire need of a gendered analysis,” otherwise “an appalling disconnect remains between the political rhetoric and the lives of Aboriginal women.”⁴⁷ An Indigenous feminist approach offers insight into the multidimensional nature of gender, into interactions between individuals and social structures, and between the productive forces of gendered norms, colonial or otherwise. Most importantly, it offers

⁴⁶ Alison M Jaggar, *Just Methods: An Interdisciplinary Feminist Reader* (Routledge, 2015), 458.

⁴⁷ Val Napoleon, "Aboriginal Feminism in a Wider Frame," *Canadian Dimension* 41 (2007): 44.

insights into the possibilities for dialogue, education and praxis within treaty relationships while illuminating their underlying power dynamics and abusive or oppressive potential. Indigenous feminists highlight the embedded role of researchers in processes of knowledge production, and help us remain mindful of the potential for our research to legitimize or further invisibilize the everyday forms of violence or exclusion that may occur in community-based contexts. They emphasize the need to evaluate the way questions are posed and knowledge is used, and to disrupt taken-for-granted assumptions and power relations from the outset of the research.

As Mishuana Goeman has noted, “many fields of inquiry have yet to engage with, much less exhaust, the rich contributions of Indigenous feminisms.” Goeman argues that integrating Indigenous feminist methodologies into a multitude of rigorous conversations, and “moving beyond an additive or lip-service model of Native feminist inclusion into multiple fields,” can help “new questions and methods arise that restructure questions around the political, cultural, and social.”⁴⁸ Goeman’s recommendations highlight the need for Indigenous studies scholars to integrate Indigenous feminist methodological tools and considerations from the outset of our research in order to begin thinking about gender and sexuality in the design of our central questions, terms and theoretical premises, rather than as an afterthought.

Exploration of the research questions through an Indigenous feminist approach has helped identify and deconstruct the neocolonial underpinnings of many supposedly progressive perspectives that discuss treaty implementation. Smith suggests that decolonizing research is not strictly about tools or methods, but about one’s approach and

⁴⁸ Mishuana Goeman, "Indigenous Interventions and Feminist Methods," in *Sources and Methods in Indigenous Studies*, ed. Jean; Andersen O’Brien, Chris (New York: Routledge Press, 2017), 192.

relation to knowledge. Radical transformation and reflexivity on the part of the researcher, along with an awareness of the “roles that knowledge, knowledge production, knowledge hierarchies and knowledge institutions play in decolonization and social transformation” are central to conducting research with a decolonizing lens.⁴⁹ Employing a decolonizing approach has helped me critically evaluate the power relations, ideologies and assumptions that shape the various positions on treaties that I engaged with in the research. It also helped me remain mindful and reflexive of my own positionality in relation to the topics being discussed.

In the aim of drawing on my own resource base, my research involves qualitative analysis of previously underutilized transcripts of interviews with Elders conducted in Treaty 4 territory from the 1970’s to the present day. In conducting this research, I reviewed thousands of pages of interviews with Treaty 4 Elders that were commissioned by the Office of the Treaty Commissioner (OTC) for the development of educational resources such as Harold Cardinal and Walter Hildebrandt’s book *Treaty Elders of Saskatchewan*.⁵⁰ In reviewing these transcripts, I gave particular attention to the nature of the intended relationship being established through treaties. These sources also include interview transcripts for treaty research reports that were commissioned by the Federation of Saskatchewan Indian Nations (FSIN), treaty table meetings, treaty forums, and other unpublished interviews conducted with treaty Elders that I received permission to use for the purposes of this dissertation. This research has also involved a comprehensive review

⁴⁹ Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, xii.

⁵⁰ Cardinal and Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations*.

of relevant secondary literature pertaining to Indigenous governance efforts more broadly, and treaty relationships in particular.

While there is a significant body of literature on treaty relationality and education, many discussions on the intentions and possibilities of treaties have become generalized in a way that abstracts these ideas from their local sources and eclipses their constitutive relationships. This research was informed by academic literature on treaties, but the concepts and ideas that I present were also heavily grounded in relation to my homelands and ancestors. I reviewed primary sources on treaties such as Alexander Morris' transcripts of Treaty 4 and the RG10 files in the Saskatchewan Archives, as well as Provincial Archives of Manitoba files, which include correspondence, field notes, records and transcripts surrounding treaty-making and implementation. I looked at settler legal and political historical narratives on treaties, focusing not on the fixed terms recorded by the Crown, but instead on what the dialogue, contexts, and priorities raised by Indigenous peoples could reveal in terms of the intended nature of the Treaty relationship. I was also attentive to the contemporary ways in which Indigenous organizations utilize and represent oral histories on treaties, documenting the aspects of treaties that have a tendency to either be privileged or discounted in representations of treaties.

For the community-based work referenced in Chapters 4 and 5 of this research, I was part of a team of researchers that reviewed oral records, written archival and historical sources, and previously documented teachings of Elders and knowledge. This research also involved a community governance gathering and several community meetings that helped elucidate the process of looking to treaties as the grounds for contemporary political movements. Within this project, I examined relevant literature

pertaining to Indigenous governance efforts more broadly, and Saulteaux governance and political principles in particular. Specifically, this has involved the examination of materials pertaining to Saulteaux political thought and practice, traditional stories and teachings, and cultural beliefs and language. From the outset of this community-based research project, members of the research team were given permission from the Zagimē Chief and Council to utilize the materials gathered throughout the course of the research initiatives for our own research projects.

History and Meaning Making

In examining these historical trajectories, I recognize that history is a contested and arbitrary narrative that is often written by and in the interest of dominant power relations. This is particularly true in contexts of colonialism, where the written historiography of the colonizer takes precedence, or functions to entirely eclipse the oral histories of Indigenous populations. As Linda Tuhiwai Smith has argued, Indigenous peoples have had to contend with western understandings and presentations of history, which are often deeply Eurocentric and overlook the experiences of Indigenous peoples in their construction of history.

Throughout this dissertation, I prompt the reader to revisit dominant understandings of history and to consider the contributions of those whose voices have been silenced. Yet historical representations and processes of meaning-making are also subject to power relations within Indigenous communities. It is thus important to note that revisionist versions of colonial histories do not necessarily represent a unified understanding of Indigenous knowledge and experiences. Indigenous histories may also

be interpreted through reference to European values, perspectives and worldviews that have been internalized. As Noenoe Silva has written “the untruths and half-truths of history have harmed the descendants of the colonizer along with the colonized, although in different ways.”⁵¹ For instance, those who are tasked with synthesizing, distilling and presenting Indigenous oral histories may interpret those records without an awareness of the underlying philosophies in which they are embedded, distorting their original meaning or intent. Furthermore, even efforts to center Indigenous understandings of treaties may unintentionally reinforce European perspectives on the nature of the treaty relationship such as the transactional understanding. For instance, when Indigenous peoples focus our energy on articulating a historical understanding of treaties that emphasizes the specific terms of treaties as understood by our ancestors, our actions may have the unintended effect of reifying those terms in such a way that detracts from the fluid, dynamic nature of the intended relationship itself.

Furthermore, as feminists such as Emma Perez have demonstrated, efforts to center histories of marginalized populations are often shaped by the discursive structures of the ‘colonial imaginary’ which continue to overlook categories of gender and sexuality. This is because the construction and representation of history is a highly politicized process that reflects the perceptions and cultural values of a community. In studies of colonialism, many authors have critiqued the way in which popular histories of settlement and development have been written almost exclusively by settlers, marginalizing the experiences of Indigenous peoples in dominant (mis)representations of

⁵¹ Silva, *Aloha Betrayed: Native Hawaiian Resistance to American Colonialism*, 4.

history.⁵² Less attention has been paid to the power relations underlying the formation of cultural memory in Indigenous contexts, particularly with respect to the role of gender and sexuality. Yet feminist analyses have demonstrated that both the production and representation of cultural memory are configured by and invoked in the interest of a variety of power relations, gendered and otherwise.⁵³ As J. Kēhaulani Kauanui has argued, because struggles over the meaning of precolonial cultural practices are so deeply marked by gender and sexuality, the recovery of pre-colonial knowledge about identities, roles and relationships must specifically be accompanied by analyses of decolonization that focus on gendered oppression.⁵⁴

The process of “regenerating” or “revitalizing” past knowledge and ways of being involves centering that which has been marginalized, reconstructing that which has been fragmented, and communicating that which has been silenced. By creating sites of interrogation around the hegemonic claims of colonial ideology, morality and history, memory can provide the foundation for a decolonial critique. Perhaps even more importantly, it offers the chance to embody radically different ways of being in contemporary contexts.

As Indigenous peoples, our traditional modes of relating with places, stories, values, principles, and teachings represent a form of cultural memory that can be distinguished from other forms of ‘knowledge of the past’ as they are integral to our

⁵² Green, "Towards a Détente with History: Confronting Canada's Colonial Legacy.."; Silva, *Aloha Betrayed: Native Hawaiian Resistance to American Colonialism*; Sunera Thobani, *Exalted Subjects: Studies in the Making of Race and Nation in Canada* (University of Toronto Press, 2007).

⁵³ Marianne Hirsch et al., "Gender and Cultural Memory," *Signs* 28, no. 1 (2002); Cheryl McEwan, "Building a Postcolonial Archive? Gender, Collective Memory and Citizenship in Post-Apartheid South Africa " *Journal of Southern African Studies* 29, no. 3 (2003); Jill Didur, "Unsettling Partition: Literature, Gender," *Memory* (2006).

⁵⁴ J Kēhaulani Kauanui, "Native Hawaiian Decolonization and the Politics of Gender," *American Quarterly* 60, no. 2 (2008): 283.

individual or collective identities.⁵⁵ The formation of cultural memory involves more than remembering and transmitting knowledge; it also involves making determinations of what knowledge is relevant to the identity of a cultural group and what can be forgotten. It is an active and ongoing process in which we are all implicated, though the process is far from neutral. Such is the process of looking to past modes of relating such as those embodied in treaties and making determinations about which aspects or dimensions of those practices are relevant to the contemporary context.

The process of identifying select knowledge and practices as integral to cultural identity has been a central component of the treaty rights movement, both in the approach assumed by national Indigenous organizations throughout constitutional talks, but also in the methods used for individuals and collectives to advance treaty rights claims under s.35 of the *Constitution Act*.⁵⁶ For instance, the culturalist criteria developed by the courts to adjudicate the existence of Aboriginal and treaty rights under s.35 requires claimants to link any practices claimed as a right to their pre-contact Indigenous culture, while demonstrating that it was and still is a distinctive part of their cultural identity. In the process, practices from a pre-contact past can become subject to a higher level of essentialism and rigidity in order to evidence their centrality and continuity within cultural communities.

Under the criteria set out by the courts, traditional practices must be invoked selectively and strategically in order to have the best chance of receiving protection against their infringement. The formation of a unified cultural memory is shaped not only

⁵⁵ As Jan Assmann argues, while “knowledge is endlessly progressive, memory involves forgetting. It is only by forgetting what lies outside the horizon of the relevant that it performs an identity function.” Jan Assmann, “Communicative and Cultural Memory,” in *Cultural Memories* (Springer, 2011), 113.

⁵⁶ *Constitution Act*, 1982, Schedule B to the Canada Act 1982 (Uk), 1982, C 11.

by such strategic essentialism but also by gendered notions of cultural authenticity, which determine whose experiences or interpretations of tradition count as significant and whose do not. The experiences of Indigenous women deemed to be sufficiently 'cultural' (those who understand traditional knowledge and values with a level of depth that erases the need for critique) are accounted for, while those deemed to be 'culturally deficient' (those whose interest in engaging in critical conversations is dismissed as a product of physical or intellectual exposure to outside contamination) are discounted as peripheral or as unrepresentative of a common view. Moreover, approved accounts of culture are often those which do not politically disturb males organizational priorities. Women's experiences of gendered oppression, particularly those that are depicted in ways that disrupt contemporary gender norms, are then excluded. These criteria function to maintain boundaries surrounding who is authorized to contribute to the production of cultural memory, which memories are invoked as integral to cultural identity, and the degree of permissible space for critique of these processes. Such conditions can either facilitate or limit the transformative potential of political projects grounded on traditional ways of being. In regards to treaties, the knowledge shared by Elders can also be invoked selectively as a way of privileging select political priorities at the expense of others. These cautions are important to remain mindful of as they stand to inhibit the breadth of ways that treaty-based modes of relating can inspire change relative to matters that aren't typically understood to be part of treaty implementation mandates. On the other hand, broad visions of the applicability of treaties can function to prompt us to revisit and in some cases complicate the inner workings of dominant interpretations.

Once memory is invoked, no matter how complete or accurate it is, the way in

which it is represented is also marked by issues of power and hegemony.⁵⁷ The relationship between gender and memory therefore extends beyond issues of selective or incomplete depictions of history, but also relates to the ways in which these representations create conceptual boundaries around gender and Indigeneity that get reproduced on the contemporary political terrain of decolonization. For instance, consider the ways that the absence, complementarity, or fluidity of gender roles in pre-contact society is invoked to attribute patriarchy exclusively to colonialism and thus show the lack of need of a contemporary gendered analysis in Indigenous contexts. Aside from failing to take seriously the everyday forms of oppression and violence that Indigenous women and GLBTQ2 people experience, an additional consequence of the pre-contact gender equality argument is that Indigenous governments, policy-makers and theorists then regard patriarchy as a phenomenon that has only existed during the time period of colonialism. The need for critical theories of gender and sexuality is then postponed or disregarded entirely, a consequence of which is the subsequent failure to produce political strategies that properly address issues of gendered and patriarchal violence and oppression, while simultaneously stigmatizing Indigenous people who engage state remedies to heteropatriarchal violence and related rights abuses.

As this dissertation relies heavily on historical interpretations of treaties and at times endeavors to revisit the history of treaties, I am particularly mindful of the need to maintain a critical consciousness surrounding both the process of recalling cultural memory but also the ways in which history can be re-constructed, deployed and politicized through reference to the political priorities of contemporary contexts. As

⁵⁷ Hirsch et al., "Gender and Cultural Memory," 6.

Saliha Belmessous writes in her book *Empire by Treaty: Negotiating European Expansion, 1600 – 1900*, “it is not the purpose of historical scholarship to impose present concerns upon the past, but when the past continues to impose itself upon the present, historians should take notice.”⁵⁸ This dissertation does not seek to articulate a comprehensive history of treaties from an Indigenous perspective, but it does involve engagements with the historical origins of conflicting understandings of treaties that inform the ways in which both settlers and Indigenous peoples approach treaty implementation today. In doing so, I aim to center Indigenous knowledges while acknowledging their diversity and also engaging critically with them in order to mitigate the forms of selective, exclusionary or essentialist traditionalism that can accompany the production and representation of history. I hope that my efforts will assist in nuancing and complicating the analytical lens typically applied to treaty relationships, and will provide broad insight some of the ways that past modes of relating can inform healthier means of co-existence between living beings today.

Chapter Overview

The first part of this dissertation is a conceptual project, which involves re-evaluating and challenging treaty mythologies to make room for a broader and more robust understanding. This section explores the shift from thinking about treaties as fixed-term transactions to thinking about them as frameworks to govern relationships. In Chapter 1 I explore the trajectory of the Indigenous-state relationship leading up to and

⁵⁸ Saliha Belmessous, *Empire by Treaty: Negotiating European Expansion, 1600-1900* (Oxford University Press, 2014), 15.

following the negotiation of treaties in an attempt to explore the origins of different perspectives on treaty-making and to elucidate how the Crown's assumptions and assessments of Indigenous populations informed its understanding of the nature of treaties. In this, I also demonstrate how the transactional approach has emerged from and sustained the view that Indigenous peoples' political orders were inherently inferior or deficient. Chapter 2 explores the need for an approach to treaty implementation that is grounded upon Indigenous understandings of treaties rather than Crown ones. Chapter 3 explores three dimensions of treaties that speak to their relational nature; that is, the sacred dimension of treaties, their nation-to-nation dimension, and their perpetual, living nature.

As my research is not limited to a theoretical exploration of a relational understandings of treaties and is also focused on the possibilities for implementation with meaningful political consequences, the remaining chapters look at concrete examples of the practical or applied significance of this shift in thinking in Indigenous contexts. While the questions I explore in these sections originated as my dissertation research, the ideas I was exploring were in many ways developed through reference to community based projects that elucidate the practical or applied significance of my research. Thus, subsequent chapters explore the ways in which the treaty-based ethic of relationality that was developed in the first section can be applied at multiple levels, ranging from the interpersonal, to the intrasocietal, to the intersocietal level. Chapter 4 and 5 look at how a relational understanding of treaties can be invoked in the realm of community governance through reference to a SSHRC funded research project with the Zagimē First Nations. I worked on this project as a doctoral research fellow under the direction of Dr. Heidi

Kiiwetinepinesiik Stark (PI) along with Dr. John Borrows (Collaborator) and another graduate student, Rita Merrick (MA Fellow), all from the University of Victoria. At the invitation of the Zagimē First Nations, this research team participated in a project to assist in the community's efforts to reconstitute their governance structures. Chapters 4 and 5 of this dissertation invoke these experiences in a discussion of the process of how looking to treaties can inform Indigenous peoples' efforts to constitute ourselves collectively. Chapter 4 looks at the constitution of governance structures within the community, while Chapter 5 discusses how treaties can inform the relationships between communities. Chapter 6 shifts the focus to the interplay between individuals and communities, and looks at how treaties can offer inspiration in navigating these intersections.

Finally, this dissertation concludes with a number of interventions into the resurgence of treaty relationality, highlighting important considerations to help ensure that strategies for activating treaties in the 21st century are implemented critically and cautiously. These interventions are intended to help ensure that the empowering and transformative potential of treaty relationality is maximized while its oppressive potential is minimized. Thus, the conclusion explores the association between gender and relationality, the temporal project of applying treaties in contemporary times, and the contextual nature of the current discussion.

Chapter 1 – Negotiating Relationships Through the Creation of the Numbered Treaties

In settler historical records, the Numbered Treaties signed between the Crown and Indigenous peoples are represented as some of the largest land transactions in the world. These encompass the regions between the Lake of the Woods to the Rocky Mountains, (including territory across present day Alberta, British Columbia, Manitoba, Ontario, Saskatchewan, and the Northwest Territories). As the quintessential Canadian creation story connotes, the negotiation of the numbered Treaties facilitated the extinguishment of Indigenous claims to the land and brought Indigenous peoples and territories under the legal and political jurisdiction of the newly confederated Canadian nation state. It's a story rife with colonial frontiers featuring the encounters of heroic pioneers endeavoring to overtake Indigenous peoples and their territories. The main characters of this story are the skilled negotiators, glorified for their ability to surmount vast intellectual and cultural chasms to facilitate the extension of imperial rule, the mapping of infinite horizons, and the breaking of uncultivated ground. Absent from the story is Indigenous agency in negotiating treaties; Indigenous peoples were either saved from our famine and disease-stricken existence; eager to be offered the gift of civilization; tricked, manipulated, conquered, or simply lacking the intellectual capacity to understand the treaties we were entering into. In each configuration, the political agency of Indigenous peoples and especially Indigenous women, is absent from these narratives. And while these stories find their roots in a past period, they are re-told over time in the name of Canada's collective interest.

This chapter explores the historical origins of treaty mythologies that depict treaties as transactions of land in exchange for a fixed set of terms. It traces the trajectory

of the Crown's approach to treaties to demonstrate how a transactional understanding has functioned to advance settler political orders over time at the expense of Indigenous ones. The transactional approach is juxtaposed with a relational understanding of treaty-making, which Indigenous peoples have maintained over time. It demonstrates that a transactional approach is reinforced by the Crown's longstanding assumption that Indigenous populations occupy a lesser legal and political status than settlers, arguing that this assumption continues to define the configurations of the Indigenous-state relationship to the present day. Finally, this chapter positions the distinction between transaction and relation as a historically-rooted and ongoing disparity that continues to impact the exercise of Indigenous legal and political orders today.

Containing Indigenous Law and Governance in the Prairie West

Indigenous nations have exercised powers of law and governance since time immemorial. Yet since early encounters with European newcomers, Indigenous political systems have been minimized on account of their difference from western conceptions of governance. These assessments both informed and were reinforced by the Crown's transactional understanding of the nature of treaty-making. Despite their variations, the orders of governance practiced by Indigenous peoples generally share the common feature of having extended from the relationships with Creation we have inhabited from prior to the arrival of Europeans and others to North America and into the present day. As described by Treaty 4 Elders:

Long before the coming of the white people to this land, the Indian nations had self-government and sovereignty over all of the land; the minerals on the ground and in the ground; and all other resources which were in the ground; the waters,

the fish in the waters; the growths which come up through the waters; the furbearing creatures; the large game animals; the small game and furbearing animals; the large and small fowl; all of the wood resources; the air of the four winds and all that is in the air. We, the Indian people as nations governed ourselves. The Indian people governed themselves through head-chiefs and headmen. There was no separation between government and religion. Our supreme being was in our government and our government was in our supreme being. From this we developed over the ages: principles; responsibilities; accountabilities; traditions; customs; philosophies; doctrines; practices; institutions; spiritual values; moral conducts; inter-Indian nations' protocol.⁵⁹

In the decades preceding the negotiation of the Numbered Treaties, Indigenous legal and political orders were scarcely acknowledged in western law and politics. Like many early colonial interpretations of Indigenous peoples, the British Crown viewed Indigenous populations in the prairie west to be devoid of legitimate governance structures, or at least forms of governance that were comprehensible within the western world. The notion of political absence or deficiency among Indigenous peoples is reflected both in early Crown correspondence, which details a colonial angst and uncertainty among settlers venturing into the prairies. As Captain William Butler wrote to Lieutenant-Governor Archibald in 1871, “law and order are wholly unknown in the region of Saskatchewan, in so much, as the country is without any executive organization, and destitute of any means of enforcing the law.”⁶⁰ Similarly, Edward McKay wrote to Alexander Morris in 1873: “The whole country and people are in a restless state, the laws against liquor and poison are utterly ignored, in consequence of being no executive Govt.”⁶¹ These remarks refer both to the absence of settler orders of

⁵⁹ Treaty Four Elders, Elder’s Document on Treaty #4 by the Saulteaux, Cree and Assiniboine Nations, 1983, transcript.

⁶⁰ Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto* (Belfords, Clarke, 1880), 77.

⁶¹ Provincial Archives of Manitoba, “Mg12 B1 Box 1 #164 Reel M134 (Morris Papers, Lieutenant Governor’s Collection).

government, as well as an assumed absence of Indigenous legal and political authority in the region.

To evidence the purportedly inferior nature of systems of law and governance exercised by Indigenous populations, early Crown representatives relied on western theoretical concepts and categories which overlooked the foundations of Indigenous ways of being and relating. Generally, this resulted in superficial or descriptive assessments of cultural traits. While historical and anthropological accounts taken during early contact were deeply attentive to the material culture, religious beliefs and rituals, practices of hunting, gathering, warfare, and family relations amongst Indigenous populations, they rarely demonstrated a comprehensive level of recognition or awareness of Indigenous legal or political systems.

Settler interpretations of Indigenous peoples had a tendency to compartmentalize the complex configurations of Indigenous lives into categories such as the 'religious' (myths and legends, ceremonies, medicine), the 'social' (family and kinship relations, birth, death, marriage, and divorce, gender relations, organization of clans, communities, and camp circles), the 'cultural' (material culture, construction of tipis, clothing, aesthetics, tools) and 'the political' (roles and responsibilities of chiefs, warriors, and soldiers; legal customs, council meetings, and practices of war and hunting). These classifications facilitated comparative reviews of cultural differences amongst Indigenous populations and of Indigenous difference with Europeans. The notion that Indigenous ways of knowing and being could be compartmentalized into mutually exclusive categories drastically minimized the significance of the interconnectedness of Indigenous life, an oversight which functioned to obscure the legal and political dimensions inherent

in Indigenous peoples' relationships with one another and with the land. Each of these categories was further narrowed by specific criteria established by western normative orders, which were ill-suited to understand the realities of Indigenous life.

When Indigenous legal and political orders were recognized, the nature of Indigenous political structures was interpreted through reference to dimensions that were intelligible to newcomers. Characteristics of law and governance which differed from European institutions were interpreted as evidence of a lower order of civilization within Indigenous societies. The legitimacy of Indigenous peoples' governance structures was minimized by settlers because of the relative absence of social hierarchies, forms of property ownership, centralized structures of government, fixed rule, or other features of political institutions that mirrored the west. This both distorted and positioned Indigenous peoples' legal and political status as inferior due to their dissimilarity with western systems. For instance, in 1804 a former employee of the North West Company named Peter Grant stated:

The Sauteux [sic] have, properly speaking, no regular system of government, and but a very imperfect idea of the different ranks of Society, so absolutely necessary in ail civilized countries [...]. There are no established laws to reinforce obedience; all is voluntary, and yet, such is their confidence and respect for their chiefs, that instances of mutiny or disobedience to orders are very rare among them. Those "great men" being considered as "Fathers" to their respective tribes, claim, as the Patriarchs of old, the same authority over their followers as fathers naturally have over their children [...] In the administration of justice they are very remiss, the judgment is often left to the option of the offended party. Murder is about the only crime in which the public take any concern, and even in this case, the chiefs or leading men seldom interfere, but leave the matter to the decision of the nearest relations of the deceased, who seldom fail to revenge the crime."⁶²

⁶² Peter Grant, "The Sauteux Indians," in *Les Bourgeois De La Compagnie Du Nord-Ouest: Recits De Voyages, Lettres Et Rapports Inedits Relatifs Au Nord-Ouest Canadiens*, ed. L.R. Masson (Quebec: L'Imprimerie Generale A. Cote et cie, 1890).

While Grant clearly observed the existence of leadership structures, forms of political representation, and systems of justice within Indigenous communities, his vision was obscured by the perceived lack of institutionalized (i.e. written or codified) laws, governing structures, class-based hierarchies, and mechanisms to enforce justice. Because these were seen as central concepts in dominant discussions of law and politics, their absence evidenced a deficiency in Indigenous communities rather than offering possible alternative ways to think about political life. While the consequences of such assessments were wide-ranging, most relevant to the current discussion is the way in which they impacted European interpretations of Indigenous rights.

In the courtrooms of the early colonial era, Indigenous peoples' legal and political status was informed by racist and Eurocentric assessments of Indigenous inferiority in relation to settlers. These tendencies date back to some of the first Indian law decisions delivered in the 1800's by Chief Justice John Marshall in *Johnson v. M'Intosh*, *Cherokee Nation v. Georgia*, and *Worcester v. Georgia*, which introduced several major concepts that informed the subsequent direction of Canadian law and policy.⁶³

Johnson v. M'Intosh (1823) invoked the doctrine of discovery to introduce the notion of Aboriginal title subject to underlying federal sovereignty, writing that Indigenous peoples were “the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their discretion, but their rights to complete sovereignty as independent nations were necessarily diminished [...]”⁶⁴

While Chief Justice Marshall acknowledged that Indigenous peoples “were the

⁶³ *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).

⁶⁴ *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823), 574.

sovereigns of their respective portions of the territory” Indigenous sovereignty was diminished to rights of occupancy under the *Doctrine of Discovery*.⁶⁵ Specifically, Chief Justice Marshall justified the notion that Indigenous peoples did not hold property rights to the land through the assertion that the “character and religion” of Indigenous peoples was inferior to the “superior genius of Europe.”⁶⁶

Cherokee Nation and *Worcester* (1831) established the federal government’s exclusive jurisdiction over Indian tribes as well as its protectorate relationship with them. In *Cherokee Nation v. Georgia*, the Marshall court upheld discriminatory assessments of Indigenous peoples’ legal and political status by asserting that the Cherokee nation was not a foreign nation with full sovereignty, likening them instead to a domestic dependent nation that existed in a guardian-ward relationship with the United States. In this case, the court recognized the Cherokees as “a State”, given that the “The numerous treaties made with them by the United States recognise them as a people capable of maintaining the relations of peace and war; of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community.”⁶⁷ However, given that the Cherokee “occupy a territory to which we assert a title independent of their will” and exist “in a state of pupilage,” their relationship to the United States was characterized as that “of a ward to his guardian.”⁶⁸ In *Worcester v. Georgia*, the court found that the Cherokee constituted a distinct independent political community, however as they agreed through treaties to be under the protection of the United States they lost their right to treat or ally

⁶⁵ *Ibid.*, 545.

⁶⁶ *Ibid.*

⁶⁷ *Cherokee Nation V. Georgia*, 30 U.S. (5 Pet.) 1 (1831).

⁶⁸ *Ibid.*, 30.

with other nations. The court wrote “The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed [...].”⁶⁹ While Marshall’s articulations of Indigenous political status can be understood in relation to broader concerns around American federalism and detail a number of other characteristics of Indigenous political status that should be read and understood alongside these framing, I am interested in the ways these particular statements and framing are drawn from this decision to inform Canadian jurisprudence.

The theory of Indigenous rights established in the Marshall trilogy reinforced a number of these concepts and rationales that function to both recognize the legal and political status of Indigenous peoples, while also positioning them as inferior to European powers. In these cases, treaties simultaneously represented evidence of the political capacity of Indigenous nations, as well as a source of their political subjugation. These early legal principles and the doctrines that they rely upon are still salient in many ways in the contemporary jurisprudence on Indigenous rights and title in both Canada and the U.S.⁷⁰ The court’s interpretation of the doctrine of discovery in particular, along with the rationalizations, concepts, categories, and criteria that undergird it, has continued to

⁶⁹ *Worcester V. Georgia*, 31 U.S. (6 Pet.) 515 (1832).

⁷⁰ For instance, Wilkins and Lomawaima explain how McIntosh’s articulation of the doctrine of discovery supports a distorted, historically inaccurate, and legally fictitious view of Indigenous-state relations that suggests that the federal government holds expansive title to Indigenous lands David Eugene Wilkins and K Tsianina Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law* (University of Oklahoma Press, 2001), 54.

inform the nature of Indigenous settler-relations in Canada over time.⁷¹

Additionally, while European settlers saw some degree of political organization within Indigenous communities, the patriarchal nature of their own political norms left them blind to the significant role that women played in the governance of Indigenous communities. As Aimee Craft notes, dominant records surrounding treaties either “blend the roles of male and female in our understanding of governance and Treaties – or we absent the role of women.”⁷² Craft notes that treaties represented in many ways “a procedural beginning of the imposition of patriarchy” as the treaty commissioners insisted upon a negotiation process that was exclusively open to male representatives of Indigenous communities.⁷³ While the patriarchal ideology of settlers has been felt since first contact, treaties represented one of the earliest systematic impositions of patriarchal and hierarchical norms within Indigenous communities. This erased or eclipsed the voices of Indigenous women and minimized their agency within communities.

While settlers invoked references to the Queen to describe treaties in terms that were relatable to Indigenous peoples given the high level of power and authority that Indigenous women held within their communities, these were strictly symbolic references. Thus, women occupied a symbolic place of importance, particularly relative to the establishment of new relationships while having their political roles overlooked by the Crown. As Morris made clear in his efforts to have the Cree and Saulteaux respond to his proposals, women were seen by Europeans as lacking the capacity to speak on behalf

⁷¹ For instance, the court in *Sparrow*'s claim that “there was from the outset never any doubt that sovereignty and legislative power, and indeed the underlying title, to such lands vested in the Crown” relied on the court’s decision in *Johnson V. M’Intosh*, 21 U.S. (8 Wheat.) 543 (1823). *R. V. Sparrow*, [1990] 1 Scr 1075, 1990 Canlii 104 (Scc).

⁷² Aimee Craft, “The Role of Indigenous Women in Treaties and Traditional Governance,” *UM Today*, March 16, 2015.

⁷³ “Breathing Life into the Stone Fort Treaty: An Anishinabe Understanding of Treaty One.”

of their communities:

I see they are old men; the winds of many winters have whistled through their branches. I think they must have learned wisdom; the words of the old are wise; why then, we ask ourselves – and this is our trouble – Why are your Chiefs dumb? They can speak. One of them is called “Loud Voice.” He must have been heard in the councils of the nation. Then I ask myself, why do they not answer? It cannot be that you are afraid; you are not women.⁷⁴

In the above quote, Morris describes his understanding of the characteristics of political leaders by way of contrast with the attributes of women, which make them unfit for such public occasions. Thus, while settlers minimized Indigenous peoples’ political agency leading up to and during the negotiation of treaties, they did so especially with regards to the political status of Indigenous women.

Background: Settling Indigenous ‘Claims’ Through Treaties

The presumption that Indigenous peoples exercised a subordinate legal and political status to that of settlers not only pre-dated the signing of treaties in Canada, but also informed the perception of Indigenous populations that the Crown brought to treaty negotiations. Development of the west was an integral part of Canada’s evolving economic future, yet while the Crown claimed dominion over Indigenous lands in the prairies with the transfer of Rupert’s Land and the Northwest Territories from the Hudson’s Bay Company (HBC) to Canada between 1868 – 1870, it could not open the land up to settlement and development until it negotiated ‘surrenders’ of Indian lands. Under the *Royal Proclamation of 1763*,⁷⁵ settlement of lands by non-Indigenous peoples

⁷⁴ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 109.

⁷⁵ Royal Proclamation, 1763, R.S.C., 1985, App. Ii, No. 1.

was prohibited until the negotiation of treaties covering the region in question. The *Royal Proclamation* established many of the foundational principles underlying the Crown's legal and political relationship with Indigenous nations, including principles for treaty making and the formal recognition of Indigenous rights.⁷⁶ A key component of the *Royal Proclamation* was the need to protect Indigenous peoples from being taken advantage of or cheated out of our land by unscrupulous European settlers. In order to guard against this, the proclamation prohibited private individuals from buying Indigenous lands, reserving the right of purchase for the Crown or an authorized agent at a public meeting or assembly to be held for that purpose. These criteria defined the Crown's understanding of the treaty-making process with Indigenous populations as transactions of land in exchange for money or other goods. While the proclamation reserved unceded land for Indigenous populations, it also assumed that this land was already under the Dominion of Great Britain.

From the outset, the Crown regarded treaties as the mechanisms through which they might secure a sense of finality and permanence over the land question; once negotiated, the Crown could proceed with developing the territories and opening them up to settlement. While the proclamation offered theoretical affirmations of Indigenous rights and of a nation-to-nation relationship between Indigenous peoples and the state, the Indian policy that followed in Canada was predominantly shaped by the goal of extinguishing Indigenous title and assimilating Indigenous peoples into the dominion of Canada.⁷⁷

⁷⁶ John Sheridan Milloy, *Indian Act Colonialism: A Century of Dishonour, 1869-1969* (National Centre for First Nations Governance, 2008), 2.

⁷⁷ *Ibid.*, 3.

Prior to the 1868 transfer, the HBC claimed the exclusive jurisdiction to trade and exercise limited political and judicial authority over Rupertsland and parts of the Northwest Territories as a result of a trading charter granted by the British Crown in 1821. As this dissertation will explain further in subsequent chapters, Indigenous nations have continually protested the legitimacy of this purported ‘sale’ of land, arguing that it was not the HBC’s to sell.⁷⁸ When the HBC Charter expired in 1859, the Company continued to exercise jurisdiction in the North-West up until 1870. When admitting the HBC charter territory to Canada under s.146 of the *Constitution Act, 1867*, the British government stipulated that the transfer of land was subject to the ‘settlement’ of Indigenous claims to lands, effectively creating a constitutional obligation for the Crown to engage in negotiations with Indigenous nations through treaties or other means.⁷⁹ Crown interpretations of Indigenous peoples’ complex and longstanding relationships with the land as mere “claims” that could be “settled” emerged from an atomistic, anthropocentric and static worldview. This perspective viewed humans and the land as isolated units that were independent from one another rather than existing in relation to one another.

The notion that treaties represented mechanisms through which Indigenous peoples’ relationship to the regions in question could be extinguished was also grounded on a number of assumptions regarding the nature of treaties; first, that treaties represented a transaction of land in exchange for specific terms; second, that Indigenous peoples’

⁷⁸ Kent McNeil argues that doubts have been raised regarding the authority of Charles II to confer such extensive rights on a private trading company, as well as the extent of the territory covered by the Charter. Kent McNeil, *Native Rights and the Boundaries of Rupert's Land and the North-Western Territory* (University of Saskatchewan Native Law Centre Saskatoon, 1982), 2.

⁷⁹ *Ibid.*, 37.

willingness to share the land through treaty would inevitably constitute consent to the overarching authority to the Crown; and third, that only one sovereign entity could exist in the territory, and this would undoubtedly be a European entity given the subordinate political status of Indigenous populations.

Consequent to the Crown's understanding of treaties as land transactions, the negotiation of the Numbered Treaties played a central role in legitimatizing the legal and political foundations of the settler colonial project. Additionally, the negotiation of treaties was undoubtedly driven by economic motivations as the Canadian state sought to consolidate, extend, and protect its interests. Treaties were negotiated as colonial authorities desired access to land or supply routes that would advance settler objectives and priorities, representing mechanisms for the fledgling Canadian state to exploit new territories for its collective benefit. As noted by Arthur Ray "Without question, the pace of economic development determined the government's agenda [...] in the beginning, it wanted to obtain only those lands required for railway construction and agricultural colonization in present-day northwestern Ontario and the prairies."⁸⁰ Ray also argues that Indigenous peoples' motivations in entering into treaty negotiations were at least in part driven by economic considerations, as they sought to adapt to the decline of the mercantile fur trade and the changing economic developments that were taking place in western Canada.⁸¹

While the fur trade required Indigenous peoples to engage with western economic systems, some scholars have noted that Indigenous populations were still able to retain

⁸⁰ Arthur J Ray, *Indians in the Fur Trade: Their Role as Trappers, Hunters, and Middlemen in the Lands Southwest of Hudson Bay, 1660-1870: With a New Introduction* (University of Toronto Press, 1998), 211.

⁸¹ *Ibid.*, xxiv.

greater control over the terms of their relationships (both with settlers and with the lands and animals).⁸² For instance, Huseman and Short note that the material bases for Indigenous cultures remained largely intact during the fur trade despite economic development and outside cultural influences. In their view, the social and cultural relations between Indigenous peoples and traders were characterized by a structure of interdependence rather than domination. They write that “prior to the treaty, [Indians] had no experience of land or animals as a commodity.”⁸³ Political economists such as Harold Innis have also argued that the prevalent way in which European goods became part of the Indian economy made them increasingly dependent on Europeans as a result of the disappearance of various species of animals.⁸⁴ However, other scholars have noted that while Indigenous participation in the fur trade had a distinct economic motivation, it was an understanding of economy that was embedded in an entirely different worldview and that emphasized survival over economic prosperity.⁸⁵

The proposition that treaties were primarily driven by economic motivations reinforces a transactional understanding of treaties by invoking Indigenous participation in the fur trade as evidence of our familiarity with western economic systems and implying that Indigenous peoples consciously understood and consented to a vision of treaties as economic mechanisms. Furthermore, it eclipses the legal and political dimensions of treaties, overlooking the ways in which they emerged from Indigenous

⁸² Jennifer Huseman and Damien Short, "A Slow Industrial Genocide': Tar Sands and the Indigenous Peoples of Northern Alberta," *The International Journal of Human Rights* 16, no. 1 (2012): 52.

⁸³ *Ibid.*, 217.

⁸⁴ Harold Adams Innis, *The Fur Trade in Canada: An Introduction to Canadian Economic History* (University of Toronto Press, 1999), 109.

⁸⁵ Jacqueline Peterson and John Anfinson, "The Indian and the Fur Trade: A Review of Literature," in *The Prairie West: Historical Readings*, ed. R Douglas Francis and Howard Palmer (Edmonton: University of Alberta, 1992), 84.

orders of law and governance as well as the associated implications that arise from such an understanding today.

From the perspectives of some (but not all) Indigenous peoples, the option of making treaty held appeal in light of the conditions that were increasingly being imposed on them, conditions in which they had not consented to but that impacted them nonetheless.⁸⁶ Faced with a rapidly decreasing food supply, heightened instances of disease, continued incursions onto their territories, appropriation of the land and exploitation of its resources by settlers as a consequence of the federal government's aggressive immigration campaign advertising the purportedly vast, unpopulated, and fertile grounds of western Canada, many Indigenous peoples looked to treaties as mechanisms to negotiate more sustainable measures of co-existence with newcomers and enter into relationships where they could obtain aid in times of need while maintaining political authority over their lands.

The records of treaty Elders indicate that a central motivation of our ancestors was to enter into an arrangement that would ensure our livelihood; as my own community's late Chief, my *câpân* (great-grandfather) Victor Starblanket indicated, "the treaties were supposed to be the basis and source of our livelihood [...] if they were properly implemented [...] there's no need to mention that they are improperly implemented today."⁸⁷ Yet he also indicated that conceptions of livelihood included balancing the need to adapt to the changing conditions brought on by the presence of

⁸⁶ John Leonard Taylor, *Treaty Research Report: Treaty Four (1874)* (Treaties and Historical Research Centre, Indian and Northern Affairs Canada Ottawa, Ontario, 1985); Library and Archives Canada, "Rg 10, Vol. 4009, File 249,462, Pt. 1; Canada, "Canada Sessional Papers, No. 13 (Keewatin, 1898): 14; Provincial Archives of Manitoba, "Mg12b2 #181; "Mg12 El, No. 6565; Canada, "Canada Sessional Papers, No. 4 (Indian Affairs, 1884): 97.

⁸⁷ Victor Starblanket, interview by Harold Cardinal, Treaty No. 4 Elders' Forum, Sept 15, 1997, Wapiimoostosis Reserve, Lebret, Saskatchewan, transcript, 56.

settlers with the desire to maintain traditional values and practices, “I think that the old people recognized that there was going to be changes in the future and that we had to prepare ourselves for the future and try to modernize our lives, our living conditions because we couldn’t be fully dependent on hunting and fishing and trapping around in this area.”⁸⁸ While Indigenous peoples sought to learn new ways to ensure our survival in changing circumstances, the intent was that we would also teach settlers about our ways in a reciprocal relationship. Treaties represented a way for Indigenous peoples and settlers to enter into a relationship where care and assistance would be provided in times of need.

Indigenous peoples’ motivations behind, during, and after the fur trade cannot be uniformly characterized as there were multiple and varying contexts in which Indigenous peoples engaged in trade with settlers. However, one aspect of the fur trade that is relatively uncontested is that near the end of the 1800’s, it was slowly becoming less profitable for both settlers and Indigenous populations. As Wotherspoon and Satzewich explain, the Crown’s approach to treaty relations with Indigenous peoples was grounded on its own fluctuating needs as determined by shifting processes of accumulation of capital.⁸⁹ While the state’s early approach to Indian affairs was vested upon the maintenance of Indigenous peoples’ relationship with the land to sustain the fur trade, the shift from mercantile to industrial capitalism required the separation of Indigenous peoples from the land and its conversion to private property in order to make it available for settlement, development and new forms of exploitation. Inherent in the Crown’s

⁸⁸ Ibid., 55.

⁸⁹ Vic Satzewich and Terry Wotherspoon, *First Nations: Race, Class and Gender Relations*, vol. 6 (University of Regina Press, 2000), 18 - 28.

earliest understandings of treaty-making was the assumption that treaties represented mechanisms through which Indigenous peoples would relinquish our “claims” to land in exchange for monetary or other material terms.

According to oral records, Indigenous populations in the Treaty 4 region would not allow settlement until an agreement was reached about how to share the land. Until treaties were signed, capitalist expansion and settlement would be inhibited by the Crown’s inability to enforce its legal and governmental jurisdiction over Indigenous populations. As Sharon Venne wrote in her piece *Understanding Treaty 6*, “All over the West following 1870, Indigenous Peoples prevented surveyors and other people – including the builders of the telegraph – from coming into their territory without a treaty. The Indigenous people were protecting their jurisdiction. If the Crown wanted to have access to their territories, the Crown would need an agreement from the Indigenous peoples.”⁹⁰ Venne elaborates that the protocols surrounding entry into Indigenous territory would be the same manner as Indigenous peoples dealt with others entering their jurisdiction: “There was a protocol (correct code of conduct) to be followed. The Chiefs requested that the Crown and its settlers not enter the territory without concluding an agreement. It was the Indigenous peoples who had the jurisdiction in this area and told the Crown that their jurisdiction must be respected [...]”⁹¹

Federal government officials urged settlement of the west as Indigenous populations continued to block access to certain regions as the presence of railway,

⁹⁰ Sharon Venne, "Understanding Treaty 6: An Indigenous Perspective," *Aboriginal and Treaty Rights in Canada* (1997): 184.

⁹¹ *Ibid.*

telegraph, and survey crews ascended.⁹² In April of 1874, Alexander Morris communicated concerns surrounding western expeditions to Alexander MacKenzie, describing what he considered to be the warlike nature of the Indians, and insisting that it could be remedied through the negotiation of treaties and implementation of fixed land rule.⁹³ He also wrote to the Minister of Justice in May 1874 regarding his fear of trouble over a boundary survey that was to be conducted, reiterating his prior statement that “a treaty covering Qu’Appelle Lakes region is of great importance.”⁹⁴ Not only were treaties desired by Crown officials to mitigate the potential for war, land access would also enable construction of the railroad, they would encourage settlement and immigration to the province, which was lacking due to the animosity plaguing the region, and they would also discourage incursions from the south.

While Indigenous populations had functioning systems of law and governance that included rights and responsibilities which derived from our pre-existence in these lands, these were seen as so primitive that we could not hold independent title or sovereignty. Such assessments served the purpose of positioning Indigenous peoples as dependent upon the protection provided by Crown orders of law and governance for our security while providing colonial powers with a sense of legitimacy and necessity in extending their legal and political authority. In the process, Indigenous peoples’ pre-

⁹² Sarah Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy* (McGill-Queen's Press-MQUP, 1990), 55.

⁹³ Provincial Archives of Manitoba, “Mg12b2 #112 (Ketcheson Collection).”

⁹⁴ “Mg12b2 #116 (Ketcheson Collection).MG12B2 - Ketcheson Collection #116 May 29, 1874. These were not the first instances in which government officials expressed such concerns. In 1871, HBC district manager W.J. Christie wrote to Lieutenant-Governor Archibald regarding lack of governance structures in the west, citing the need to guard the natural resources from southerners and to protect Indigenous and settler populations. Similarly, in the fall of 1873 Alexander Morris wrote to Alexander Campbell, minister of the interior, citing the lack of government in the Prairie West as evidence of the need for treaties in the region. “Mg12 B2, No. 69, October 23, 1873.

existing relationships with the land were reduced to a mere 'interest' arising from prior occupancy that could only be cleared through treaty-making.

Making Treaty 4

By April of 1874, tensions mounted in the Treaty 4 region as no Crown representatives had arrived and incursions onto traditional Indigenous territories continued at a rapid pace. Sarah Carter indicates that by the spring of 1874, the Cree were reported to be growing particularly concerned as they feared “that no treaty is to be made with them, but that settlers are slowly moving west, occupying their country, killing their game and burning the woods and prairies.”⁹⁵ It should be noted that upon entering into treaty negotiations, Indigenous people had not been informed of the legislation being developed that would soon be unilaterally imposed on them and that would assume the form of the *Indian Act*. Carter has argued that by not communicating anything about this legislation, Crown representatives at treaty negotiations seriously misrepresented the nature of the relationship Aboriginal peoples were entering into.⁹⁶

Between 1871 – 1921, Indigenous nations negotiated eleven treaties with the dominion of Canada in order to identify the terms and conditions upon which they would share the land with newcomers. On September 12th 1874, Treaty 4, also known as The Qu’Appelle treaty, was negotiated between the Canadian Government on behalf of the Imperial Crown and representatives of Indigenous Nations from the geographical regions

⁹⁵ Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy*, 55.

⁹⁶ Carter, *Aboriginal People and Colonizers of Western Canada to 1900*, 118.

that are now known as Saskatchewan, along with small portions of present-day Manitoba and Alberta.

The negotiation of Treaty 4 followed a long tradition of treaty-making with other living beings and human populations. Practices of treaty-making pre-dated the arrival of Europeans, helping to mediate the relationships between various Indigenous populations and other living beings in shared spaces. Elder Danny Musqua explains that, “We had peace and friendship treaties between our brothers, the Cree, our relationship to the Cree over 500 years. Into that relationship came the Assiniboine Indian people for almost 300 years. We had land use agreements between ourselves and we respected those terms and agreements along that use of territory and that land. And so when we came to the table in 1874 and 1876 and beyond, we came with that kind of understanding that the use is what we want to convey to the Crown.”⁹⁷ Elder Musqua explains the nature of land use agreements that existed between Indigenous populations prior to contact in greater detail, “when I say the use of that land, we had agreements between one another, hunting territories that we shared, trapping lands that we shared, gathering lands that we shared, medicinal lands that we shared, co-opted peace territorial lands that we designated for shelter and safety for our people. That’s how they set out things between one another. They understood use, they understood the means by which land was used.”⁹⁸ His insights demonstrate that treaty agreements created shared jurisdictions over various spaces and geographies by delineating their intended use. Yet these frameworks of co-existence between human communities were not exclusively concerned with the nature of human

⁹⁷ Danny Musqua, Treaty No. 4 Elders’ Forum, May 22-24, 1997, 1997, Nekaneet Recreation Centre, Saskatchewan, transcripts, 10.

⁹⁸ *Ibid.*, 5-6.

interactions, but also with the ways in which humans would co-exist *in relation to the rest of creation*.

The premise of shared land use emerges from a worldview that sees Indigenous peoples as inhabiting relationships of interdependence with, rather than authority or ownership over creation. Elder Musqua's insights demonstrate that the vision of treaties that Indigenous peoples brought to Treaty 4 was informed by an understanding of treaties as frameworks to determine how the land would be shared, including the ways in which it would continue to be used by Indigenous peoples and be used in new ways by both parties. Treaties were not intended to spell out every facet and configuration of the relationship between newcomers and Indigenous peoples, as no treaty could possibly account for every possible change to come, but to provide a framework that would allow both parties to govern that relationship as it changed and progressed over the years. Thus, Indigenous understandings of treaties contrasted in significant ways to the Crown's transactional understanding as Indigenous peoples understood treaties as primarily constituting a procedural agreement.

On the other hand, the Crown continued to regard treaties as an exchange of land for a fixed set of terms. In his research report on Treaty 4, John Taylor notes that while the subject of land was not usually raised at all by treaty commissioners, land surrender was a prominent written term of every treaty and the primary purpose for which the Crown made them. Taylor also explains that the question of land took a unique turn at the Treaty 4 negotiations, as Indigenous spokespeople focused four of the six days of discussion around their own concerns about the purported "sale of land" from the HBC to the Crown. He notes that while "Morris might have used the occasion to explain what he

meant about Indian title and its extinguishment by treaty [...] He did not.”⁹⁹ While Morris stated at the outset of treaty negotiations that he was there to talk to Indigenous peoples about the land, there was virtually no mention of an exchange, surrender, or cession of land. On Taylor’s view, Indigenous spokespeople “seemed to be asking that they should not start the treaty negotiations from the assumption that the Company had sold their country to the Crown.”¹⁰⁰ Taylor’s assessment is confirmed by the records of negotiations; as the discussions surrounding the ‘sale’ of land from the HBC to the Crown indicate, Indigenous peoples found the very notion of an exchange or sale of land to be abhorrent and inconsistent with our worldviews.

Indeed, when Crown representatives came to the Qu’Appelle Valley to negotiate Treaty 4, Indigenous negotiators refused to begin treaty discussions before addressing the ‘sale’ of Rupert’s Land and the North-West Territories to the dominion of Canada, arguing that the land was not the HBC’s to sell as it held no jurisdiction over these territories. The Indigenous populations in the Treaty 4 region distrusted the HBC for the proprietary role it asserted over the land, which had recently manifested in surveys it had attempted to conduct along with the ‘sale’ of land to the Crown.¹⁰¹ In fact, Indigenous negotiators regarded the action as theft; as a Treaty 4 spokesperson, the Gambler, indicated “I cannot manage to speak upon anything else [...] The Company have stolen

⁹⁹ Taylor, *Treaty Research Report: Treaty Four (1874)*, 20.

¹⁰⁰ *Ibid.*, 13.

¹⁰¹ As Elder Musqua asks, “How can you get title when you didn't even own the land[?] Or how can you even ascertain the right to sell that land when you didn't even have the agreement with the First Nations that were there to get that land [...] Look, you have to tell us how this man was able to sell that. Under what right, under what authority did he have the right to sell that land to the Crown. And under what right did the Crown have the authority or the right to buy that land off of him, when they are just going to make a deal with us now to get some of kind of agreement on the use of that land.” Musqua, "Treaty No. 4 Elders' Forum," 13-15.

our land [...] Let this be put to rights; when this is righted I will answer the other.”¹⁰²

When asked what the company stole, the Gambler responded “The earth, trees, grass, stones, all that which I see with my eyes.”¹⁰³

The Gambler continued on to explain that “The Company have no right to this earth, but when they are spoken to they do not desist, but do it in spite of you.”¹⁰⁴ These concerns demonstrate that Indigenous parties to Treaty 4 had concerns both surrounding the way the HBC regarded its relationship with the land, but also its relationship with Indigenous populations. The Cree and Saulteaux questioned the notion that their land could be transferred from one entity to another without their involvement. While Morris saw the Indians’ concerns surrounding the HBC as distinct issues from treaties, the issues relating to the HBC’s conduct were precisely the sort of questions to be discussed in negotiating treaties as they spoke to European notions of land tenure and the sense of ownership over the land that the HBC exhibited. To Indigenous peoples, these issues regarding land use were directly relevant to treaty negotiations, as they spoke to questions surrounding jurisdiction, the use of land and the nature of the relationship between parties.

In response to the concerns expressed by Indigenous peoples, Crown treaty negotiator Alexander Morris sought to minimize the association between the HBC and the Crown, continuously emphasizing the that the Crown had “nothing to do with the company” and had no responsibility for the actions of the HBC.¹⁰⁵ To avoid having these

¹⁰² Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 99-101.

¹⁰³ *Ibid.*, 102.

¹⁰⁴ *Ibid.*, 104.

¹⁰⁵ *Ibid.*, 105.

issues detract from or prolong the process of treaty making, Morris sought to delay further discussions surrounding the sale of land to the HBC, promising to look into the issue and return the following year to convey the status of the land to Indians.¹⁰⁶

Morris' overemphasis on the material gifts being offered and haste to secure consent resulted in little opportunity to discuss the notion of land and what exactly was being exchanged. In fact, this was a conscious omission; as he noted of Treaty 4 in an 1877 letter "...disturbing results will follow throughout entire Indian treaties if claim of Hudson's Bay Co. To one twentieth of the land within them is raised; at Qu'Appelle positions of Company and hostility of Indians cost four days discussion..."¹⁰⁷ According to the transcripts of the proceedings at Qu'Appelle, the question of land was only discussed in reference to the location on which negotiations were to occur, however no reference was made to the notion of land surrender, or clarification regarding what portions of the land were to be shared.

In his correspondence surrounding the negotiation of treaties, Treaty 3 Commissioner Simon Dawson noted his reticence to even discuss the land question at treaties, writing that:

I think a treaty with [the Indians] should, in the first instance, be confined to this one point, namely, RIGHT OF WAY. This they expressed their willingness to accord many years ago, but the question of relinquishing land for settlement was always taken by them en delibere. In this latter respect, what they are afraid of is, that settlers would interfere with the fisheries, from which they derive their chief means of subsistence, and I think it would, in the first instance, be imprudent to introduce settlement in the particular section which they occupy. The first great point is to get the communication opened, and the first treaty should be confined,

¹⁰⁶ And that's what was happening to the Commissioner at that time. And so tells them that we will come back next year, we will go and get an understanding on this land, and we will then convey to you the status of that land, and the monies that are there. So then they get an agreement to come and to have an understanding on that land, so they go. And so they began to talk about the articles of the treaty, the articles that are on that document. Musqua, "Treaty No. 4 Elders' Forum," 15-16.

¹⁰⁷ Provincial Archives of Manitoba, Mg12 B2, No.220.

as I have said, simply to right of way. By combining it with the land question, surveys of townships for settlement, reserves for the Indians, and so forth, complications might arise which would prove embarrassing.¹⁰⁸

While Morris avoided the topic of land in Treaty 4, Commissioner Dawson's descriptions of Treaty 3 proceedings suggest that he made some effort to provide explanation of the implications of concepts of cession and surrender. He writes that in negotiating Treaty 3, the Indians "took some time to deliberate over the provisions of the treaty and asked me occasionally to explain certain passages, more especially those in relation to the reserves."¹⁰⁹ Dawson's records make clear that a principle concern of Indigenous parties was the question of land, and the fact that they requested elaboration on questions of reserves suggests that reserves were not necessarily a straightforward concept or even one that fit within their worldview. Yet Indigenous people repeatedly attempted to ensure that Treaty 4 would address the issue of land use; as evident in the Gambler's statement that "[...] I wish that the Company would keep at his work the same as he did; that I want to be signed on the paper."¹¹⁰ On my reading, the Gambler is referring to the Indigenous peoples' desire to have the HBC employees restricted to their trading posts or place of work, rather than encroaching onto surrounding territories without Indigenous consent.

In the FSIN's *Elders' Interpretations of Treaty Four - A Report on the Treaty Interpretation Project*, it was understood that the Elders "believed that their ancestors had made only a limited cession of their land rather than the absolute surrender forever

¹⁰⁸ Simon James Dawson, *Report on the Line of Route between Lake Superior and the Red River Settlement* (Hunter, Rose, 1868), 28.

¹⁰⁹ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 327.

¹¹⁰ *Ibid.*, 110.

described in the treaty text.”¹¹¹ Yet even the language of “limited cession” may be unrepresentative of the nature of relationship that was intended. Chief Francois Paulette describes the alien nature of the concept of ceding land in the context of Treaty 8: “In my language, there is no word for 'surrender'. There is no word. I cannot describe 'surrender' to you in my language, so how do you expect my people to [have] put their X on 'surrender'?”¹¹² These insights into Indigenous understandings of treaties call into question the nature of the transactional interpretation as they suggest that the Crown’s written records were not representative of the agreement that Indigenous parties consented to.

Treaty 4: Aftermath

Following the negotiation of Treaty 4, there was a particularly strong degree of debate over the nature of the proceedings that had taken place as the distinction between the transactional and relational understandings of treaties manifested in practice. While the Crown saw Treaty 4 as the fixed set of material terms recorded by treaty commissioners, Indigenous populations saw it as the establishment of an initial framework that would inform the subsequent development of a relationship with newcomers. As described in the RCAP report,

They believed what the king's men told them, that the marks scratched on parchment captured the essence of their talks. They were angered and dismayed to discover later that what had been pledged in words, leader to leader, was not recorded accurately. They accepted the monarch, but only as a kind of kin figure, a distant 'protector' who could be called on to safeguard their interests and enforce treaty agreements. They had no notion of giving up their land, a concept foreign to Aboriginal cultures.

¹¹¹ Taylor, *Treaty Research Report: Treaty Four (1874)*.

¹¹² Dussault et al., "Report of the Royal Commission on Aboriginal Peoples," Vol. 2, Ch. 2, 3.8.

The significance of oral agreements to Indigenous peoples is disregarded in the Crown's interpretation, which relies primarily on terms outlined in the written text. From the perspective of Treaty 4 signatories, verbal commitments had been made in addition to written promises. This is evidenced in 1912 letter written by my nation's namesake, Chief Star Blanket, son of Wa-pii-moose-too-sus, a Treaty 4 signatory: "When I was in middle life the Government of the Great White Mother sent some wise men to ask us to give them much land. A large camp of Indians was made near Qu'Appelle and there the Government and Indians after much talking signed a treaty, on paper and *much was promised as well* (emphasis added)." ¹¹³

As John Milloy notes of the difference between the written and oral accounts of treaties, "For Morris, it was the immutable nature of the text that gave it its inherent value, not just its indelibility, all snug and secure in its tin box. It exists separate from the treaty-makers, impersonally, outside, and beyond their lives after."¹¹⁴ Milloy explains that the written version of the text has, since the negotiation of treaties, been regarded by the Crown to be the authoritative, unquestionable record of the agreement. For the Crown, the written record was the treaty, and the terms that were outlined on the written record would be fixed in time. As Milloy notes, the fixed and immutable nature of written terms was evident in Morris' presentation of the treaty on the final day of negotiations, where he told the Indians:

Since we went away we have had the treaty written out, and we are ready to have it signed ... and after we leave we will have a copy written out on skin that cannot be rubbed out and put in a tin box, so that it cannot be wet, so that you can keep it

¹¹³ Library and Archives Canada, Rg 10, Vol. 4068 File 422,752, October 1912, Letter from Chief Star Blanket to the Governor General.

¹¹⁴ John S Milloy, "Tipahamatoowin or Treaty 4?: Speculations on Alternate Texts," *Native Studies Review* 18, no. 1 (2009): 95.

among yourselves so that when we are dead our children will know what was written.¹¹⁵

However objective and timeless Morris interpreted the treaty to be, written records are not anything beyond the writer's perceptions of intentions; as Milloy notes, "they are intensely personal and time-bound in that they reflect, in the first instance, Morris' understandings, and then the meanings brought to them by future readers far removed in time and circumstance from the document's moment and place of creation."¹¹⁶ However, Morris both recognized and sought to account for the inevitable instance where there would be disagreement over the terms of the treaty, offering appendices to the treaty in the form of short hand notes taken at the various conferences. Of these, he noted in his dispatch: "It is obvious that such a record will prove valuable, as it enables any misunderstanding on the part of the Indians, as to what was said at the conference to be corrected."¹¹⁷

The steps that Morris undertook to prevent doubt from being cast on his record suggest that it is not merely the terms of the treaty which are regarded by the Crown as "fixed" but also the process of interpreting of the treaty. For even prior to the signing of Treaty 4 the Crown pre-empted the possibility of discussion, change, debate, or revision. The appendices to the negotiation of Treaty 4 acted as the government's insurance policy to ensure that once the transaction was complete, any outstanding claims could be addressed through reference to the record of proceedings.

This contrasts directly with a relational understanding of treaties as existing in

¹¹⁵ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 122.

¹¹⁶ Milloy, "Tipahamatoowin or Treaty 4?: Speculations on Alternate Texts," 96.

¹¹⁷ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 83.

relation to creation, different periods in time, and different generations. As Sarah Carter notes, “the prevailing notion among Indians of the Treaty 4 region was that the negotiations in 1874 were merely a preliminary measure to the negotiation of a treaty the following year.”¹¹⁸ The government’s response to this proposition can be seen in a letter sent to Indian Agent Angus McKay, notifying him that “Some of the Indians in the neighborhood of Qu’Appelle pretend to think that the treaty of 1874 was only a preliminary measure. Should you find that this idea is really entertained by any of them you will endeavor to disabuse their minds of it.”¹¹⁹ Similarly, in a 1875 letter from Christie to the Minister of the Interior, Christie indicated that Treaty 4 Indians “feel treaty made as preliminary to a treaty...many do not desire to settle and farm till forced to by extermination of buffalo...Indians asked for increased annuities, provisions, store, \$12 for each new child, instructors, implements, medicines, exemption from war [...]”¹²⁰

In the years that followed the signing of treaties, archival documents and oral records indicate that implementation of Treaty 4 was prolonged as Indian leaders resisted collecting their annuities, instead presenting a list of additional demands as if to continue treaty negotiations. Consistent with the Crown’s understanding of treaties as fixed-term transactions, Christie warned that refusal to accept annuities would constitute their breaking of the terms of the treaty signed the previous year, and as the treaty was a covenant, it was impossible to comply with new demands.¹²¹ For their part, the failure of settlers to honor the nature and outcome of treaties in accordance with a relational

¹¹⁸ Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy*, 73.

¹¹⁹ Library and Archives Canada, “Rg 10, Vol. 3632, File 6379, McKay to Meredith, August 18, 1876.

¹²⁰ Provincial Archives of Manitoba, M783 Mg12b1 #1102.

¹²¹ *Ibid.*

understanding of treaties was an ongoing source of dissatisfaction amongst Indigenous populations in years to come.¹²²

John Tobias notes that following the negotiation of Treaty 4 up until around 1905, Indigenous leaders sought to continue treaty negotiations with the Crown with the intent of ensuring their survival and way of life. These included discussions surrounding annuities, ammunition, supplies, instruction in new technologies, and the creation of a large Indian territory.¹²³ The Provincial Archives of Manitoba and Saskatchewan Archives contain an entire body of correspondence from Treaty 4 signatories following treaty negotiations that evidence this claim.¹²⁴ These appeals to the Crown are recorded in archival records, oral histories and material histories.¹²⁵ Furthermore, they are depicted in Indigenous visual records such as the treaty pictograph shown in Figures 1 and 2 which was drawn by Chief Pasqua to communicate his understanding of the treaty relationship to the Crown.¹²⁶ While the interpretation of Pasqua's pictograph is a work-in-progress and is being conducted in accordance with cultural protocols by the descendants of Chief Pasqua, historians and scholars have advanced several broad theories surrounding its meaning and intent.

Scholars have theorized that Chief Pasqua gave the pictograph to an English traveler to give to the Queen or at the very least, to then Prime Minister John A.

¹²² In a letter to then Minister of Interior Alexander Campbell, Lieutenant Governor of the N.W.T. Alexander Morris illustrated contention over the recently signed treaty One "...the Manitoba Post treaty was never a proper one; a number of promises were made in connection with treaty No. 1 which are not included in the treaty and there is a dispute as to character of provisions." "M783 Mg12b1 #67.

¹²³ John L Tobias, Ahchuchwahauhatohapit, in *Dictionary of Canadian Biography* (University of Toronto).

¹²⁴ Canada, "Rg 10, Vol. 4068 File 422,752, October 1912, Letter from Chief Star Blanket to the Governor General."; Provincial Archives of Manitoba, M783 Mg12 B1 #1110 ; M783 Mg12 B1 #921.

¹²⁵ Bob Beal, "An Indian Chief, an English Tourist, a Doctor, a Reverend, and a Member of Parliament: The Journeys of Pasqua's Pictographs and the Meaning of Treaty Four," *The Canadian Journal of Native Studies* 27, no. 1 (2007).

¹²⁶ Pasqua's pictograph was first brought to my attention by Paula Acoose of the Zagimē First Nation.

Macdonald.¹²⁷ This is merely one example of the many ways that Indigenous people have sought to engage directly with the Crown on treaty matters, often circumventing Canadian government representatives such as Indian Agents. Despite the responsibilities being offloaded to Canada and the provinces, many Indian leaders have resisted these transfers of responsibility and appealed to the original parties to the treaty relationship.

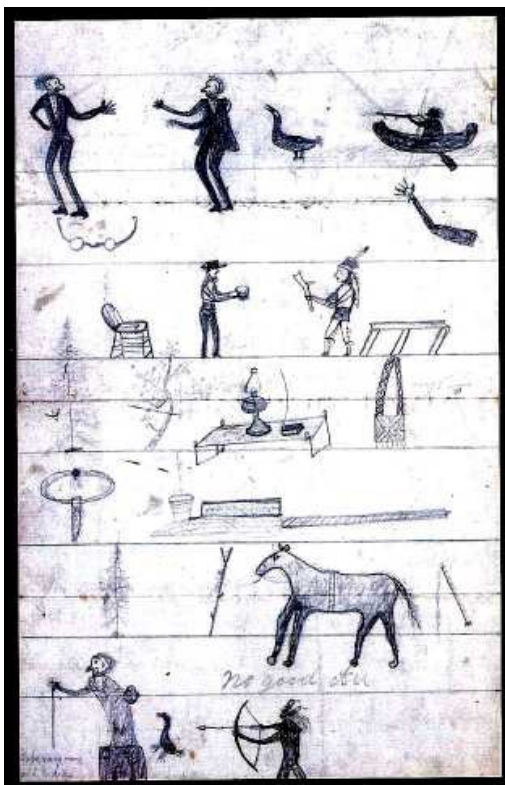


Figure 1

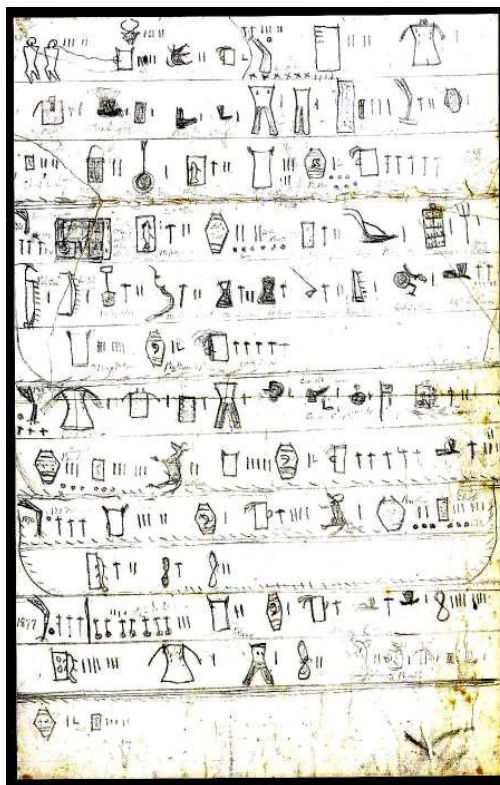


Figure 2

The first panel of Pasqua's treaty pictograph (Figure 1) has been described depicting the process of negotiating treaties, featuring two persons (one with his hands

¹²⁷ Beal, "An Indian Chief, an English Tourist, a Doctor, a Reverend, and a Member of Parliament: The Journeys of Pasqua's Pictographs and the Meaning of Treaty Four," 145; Blair Stonechild, "Recovering the Heritage of Treaty Number Four," in *Plain Speaking: Essays on Aboriginal Peoples & the Prairie*, Ed. Patrick Douaud & Bruce Dawson, Regina: Canadian Plains Research Centre (2002).

held out, likely representing treaty commissioners, and the other with his back turned away, possibly representing Indigenous negotiators who were, as Morris described “rejecting the queen’s hand”).¹²⁸ The panel then depicts an image of an Indigenous person in a canoe hunting with an outstretched hand below it, possibly referring to the notion that Indigenous peoples agreed to enter into treaties to ensure our ability to carry on our ways of life such as hunting and fishing. Other parts of the pictograph include a European person presenting gifts to an Indian who has the barrel of his gun facing down, which commonly suggests a gesture of peace.¹²⁹

The pictograph does not exclusively feature Indigenous practices of hunting and survival; but also includes references to western forms of knowledge, including glasses, a table lamp, and a book, possibly reflecting Indigenous peoples’ desire to learn to read and write while retaining our traditional ways, as evidenced by images of hunting, a peace pipe, and to the medicine bag. The treaty panel also features two types of trees, the first an evergreen and the second a deciduous tree. Beal notes that the pine tree “was a frequent metaphor during the treaty process between the British and the Indian nations of the east in the 18th century.”¹³⁰ In particular, by using the image of the tree “the Indians were making the point that for them a treaty relationship was not a static thing (as it tended to be for the British) but something that needed constant nourishment to survive and thrive.”¹³¹ Additionally, the depiction of two separate types of trees may be reflective of the fact that Indigenous peoples intended to maintain our rights to use the full expanse

¹²⁸ Beal, "An Indian Chief, an English Tourist, a Doctor, a Reverend, and a Member of Parliament: The Journeys of Pasqua's Pictographs and the Meaning of Treaty Four," 123.

¹²⁹ Ibid., 124.

¹³⁰ Ibid., 125.

¹³¹ Ibid.

of Treaty 4 territory, from the plains to the parklands. This panel also includes an image of a horse tied to a stick, with the annotation “no good” beneath it. This may refer to notion that treaties were not meant to restrict Indigenous peoples movements or traditional ways of life.¹³²

The second panel (Figure 2) represents a record of items with the years 1873 to 1877 listed alongside them; while some have interpreted it as a record of provisions, Pasqua did not sign Treaty 4 until 1874 therefore he would not have received treaty supplies under it until then. Interestingly, the record of what appears to be at the beginning of each year begins with an outstretched arm; the first year the arm is pointing upwards, while each subsequent year the arm is pointing downwards. The images on the previous panel that depict an arm extended to “shake hands” also appear to be pointing upwards. It is possible that the downwards pointing arm may have represented that the parties did not shake hands in subsequent years; that Indigenous peoples tried but were unable to engage in processes to renew the relationship. Whether or not this is an accurate interpretation, it is clear that Pasqua was signaling that the relationship had changed in some way in subsequent years. These pictographs have extraordinary significance as they demonstrate that Indigenous peoples were not solely concerned with the material terms of treaties, but also had concerns surrounding the nature of the relationship that was agreed to, and how it was (or was not) being adhered to. Further, the clear emphasis placed on the living nature of the treaty relationship, and on the need for renewal, is of great importance.

Pasqua’s pictograph suggests that his concerns surrounding treaties related both to

¹³² Ibid., 127.

the provisions included in treaties but also the nature of the relationship that was established. He was not alone in this respect.

By April 15th 1886, roughly a year and a half after the signing of Treaty 4, the Crown's disregard for its treaty commitments had evolved into a well-established pattern.¹³³ Indigenous leaders initially attempted to address the treaty relationship with Crown representatives on multiple occasions, seeking assistance in the face of hunger and other crises, or seeking aid in the challenges encountered in the early years of farming. While the Crown interpreted these acts as efforts to modify or amend the terms of treaties, Indigenous peoples appealed to treaties as they provided evidence of the sort of relationship of mutual care and assistance that had been promised. For instance, Indigenous peoples drew on the intended nature of the treaty relationship in their correspondence and in visits with Governor Generals and other representatives of the Crown following the signing of treaties.

When the Marquis of Lorne toured the western Prairies, over 1400 Saulteaux, Cree and Assiniboine were assembled, with "speeches and dancing [that] lasted five or six hours."¹³⁴ The main speaker at Fort Qu'Appelle was Saulteaux headman Louis O'Soup, who was highly critical of the conduct of the Crown following treaties.¹³⁵ The

¹³³ Such concerns were raised by Mr. Cameron, representative of the Huron West riding in Ontario, in his speech to the House of Commons: "The reports of the Department for the last four or five years are eloquent with statements of wrongs done to the Indian, of promises broken, of violated treaties made with the Indian, of gross injustice done to the Indian, of shameful official misconduct on the part of those appointed to administer Indian affairs in the North-West, of lying, cheating and robbing the Indian." Cameron accused the Government of breaking faith with the Indians, and went on to list an abundance of claims from various Indian representatives regarding treaty promises that had been inadequately fulfilled, or not fulfilled at all. Malcom Cameron, "Report of the Debates of the House of Commons of the Dominion of Canada, 2nd session, 5th parliament, Vol. XVI (1884): 719.

¹³⁴ Sarah Carter, "Your Great Mother across the Salt Sea: Prairie First Nations, the British Monarchy and the Vice Regal Connection to 1900," *Manitoba History*, no. 48 (2004).

¹³⁵ Louis O'soup, in *Dictionary of Canadian Biography* (Toronto: University of Toronto Press, 1998), 804-07.

major message delivered by O'Soup and other leaders in attendance, such as Star Blanket, Loud Voice, O'Soup, Yellow Quill, Kanocees, and Day Star was that they could not make a living under the treaty and wanted to "reform" the configurations of the relationship.¹³⁶ Indigenous peoples invoked kinship terms to evidence the nature of the relationship that was intended to be established through treaties.

For their part, the Crown representatives also drew on the rhetoric of relationship, particularly kin relations, to evidence the Queen's purported commitment to and concern for Indigenous peoples. As Sarah Carter observed, kinship terms and metaphors were used to symbolize notions of sharing, generosity and nurturance. In particular, Carter writes that, "The ideal symbol of the concept of kinship was the relationship of an individual with his or her mother with whom the strongest bond exists."¹³⁷ While settlers interpreted these references to a mother-child relationship symbolically, Carter notes that Indigenous peoples sought to draw such parallels as a way of guaranteeing their sovereignty and a future livelihood.¹³⁸ By drawing on kinship relations, Indigenous peoples were able to elucidate the nature of the intended relationship that would exist with newcomers. Yet while Crown treaty negotiators and representatives made frequent references to notions of care and concern for one another in discussing the treaty relationship and in listening to Indigenous concerns, there is little evidence that these considerations manifested at the level of state policy and practice.

¹³⁶ O'Soup stressed: "While prairie was open I could clothe myself but now that the buffalo are driven away I can not do so. The clothing you see on the people round all comes from \$5 [annuity] and in 2 or 3 months it will all be gone—Your heart you would melt if you saw these people in the winter. I have got no shoes nor mittens ... Take this to your heart and think it over. And how do you think these people can live on 1½ pound of flour a day ... According to treaty a yoke of oxen going to keep 100 people alive. Will they break up land enough to keep them alive?" Quoted in Sarah Carter "Your Great Mother across the Salt Sea: Prairie First Nations, the British Monarchy and the Vice Regal Connection to 1900."

¹³⁷ Ibid.

¹³⁸ Ibid.

Instead, Governor Lorne replied to the concerns expressed by Treaty 4 delegates by emphasizing the Queen's love for Indigenous peoples: "I want them to know for certain that having made so long a journey it shows the Queen's love who always loves her red children and was very sorry seven years ago to learn that they were hungry. She heard in her Grandfather and Great Grand-father's time that many of them were hungry that they were sick and suffered from small pox ... therefore the Queen was very sorry and wished they should be made happier in her life time."¹³⁹

Yet at the same time as Crown representatives drew on the rhetoric of kin relations to express their symbolic commitment to Indigenous populations, this was eclipsed by the ways that the transactional view manifested in practice. The Crown in fact condemned Indigenous understandings of kin relations and relations as a distraction from the pursuit of western capitalist values and ideals. As Carter writes, in response to Indigenous grievances Governor Lorne dismissed their concerns as resultant from misplaced priorities, stating that "hands were not given by Manitou to fill pipes only but to work [...]"¹⁴⁰ Thus while the Crown drew on the language of relationship (with kin relations or with god) in order to cultivate and maintain a sense of symbolic fraternity and allegiance, its approach to treaty implementation imposed a hierarchical dynamic and sought to naturalize ideals of individualism and self-sustainability within Indigenous communities, as evidenced by the *Indian Act's* status and membership guidelines, the residential school system, the reserve system, and other regulatory mechanisms.

¹³⁹ Library and Archives Canada, "Rg 10, Vol. 3768, File 33,642, Notes of Lord Lorne's Meeting at Fort Carlton, 1881: 3-4.

¹⁴⁰ Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy*, 116.

The Crown's disregard of its commitments under the treaties has persisted throughout the years as one of the most controversial aspects of the numbered Treaties. While the Crown has in many ways acknowledged treaties as establishing a relationship between Indigenous peoples and newcomers, it has continually relied on its own understanding of what the configurations of the relationship should be. Its interpretation has continually depicted treaties as mere transactions, as exchanges of goods and services for land. This position is based upon the notion of finality, with treaties representing an agreement that would ensure the end of a relationship of equality and the entrenchment of a relationship of hierarchy and domination.

As European settlement in the Prairies increased and the interactions between Indigenous and non-Indigenous peoples increasingly represented a source of tension and uncertainty, to the Crown treaties represented a mechanism that would resolve these issues through the establishment of distinct and separate communities of Indigenous and non-Indigenous peoples. The transactional interpretation is reflective of a colonial yearning for a separation from Indigenous peoples maintained through hierarchical notions of civilization that required one of two things: 1) Indigenous peoples' removal, erasure, or separation from settler populations; or, 2) their adoption of settler lifestyles and characteristics and eventual assimilation. On this view, treaties were not conceived by the Crown as providing for the co-existence of difference, but the inevitable erasure or transformation of the way of life deemed to be of lesser inherent value.

Interpreting Treaty 4

It is not unusual that negotiations between groups with fundamentally different worldviews, social structures, relationships to land and creation, conceptions of human priorities and so on, would have differing visions of the intended nature of their mutual interactions. As Milloy notes, this is particularly true with respect to the formulation of meaning that takes place “in the context of translation across the boundaries of culture and through subsequent generations,” which describes the process of treaty interpretation exactly.¹⁴¹ To overcome these barriers, the parties had to rely upon “the trustworthiness, good intentions, and good faith of the other treaty partner and the ability to understand one another better through time.”¹⁴² However, far from learning to understand each other better and working out the specifics of the relationship over time, the Crown has for the most part privileged its own understanding at the expense of Indigenous ones. As the RCAP notes, “One of the fundamental flaws in the treaty-making process was that only the Crown's version of treaty negotiations and agreements was recorded in accounts of negotiations and in the written texts. Little or no attention was paid to how First Nations understood the treaties or consideration given to the fact that they might have had a completely different understanding of what had transpired.”¹⁴³

For Indigenous peoples, the negotiation of Treaty 4 followed a long tradition of treaty-making as a form of land-use arrangement. The specific dimensions of what these relationship frameworks were intended to entail will be explored in greater detail

¹⁴¹ Milloy, "Tipahamatoowin or Treaty 4?: Speculations on Alternate Texts," 96.

¹⁴² Dussault et al., "Report of the Royal Commission on Aboriginal Peoples," pt. 1, vol. 1, ch. 6, 162.RCAP Vol 1 Pt 1 Ch 6 p.162

¹⁴³ Ibid., vol. 1 pt. 6, 163.

throughout this dissertation. The intent of this chapter has been to introduce the differing visions and expectations that parties brought to treaties in the aim of illustrating the origins of the distinction between relation and transaction and in the interest of showing the political purposes that this distinction has served over time. In discussing the different parties' interpretations of treaties, then, I am not concerned with debating the specific material items that were recorded by the Crown, as deciphering an authoritative record of items risks merely contributing to a fixed and static understanding and overlooks the nature of the treaty relationship itself. The significant question here is thus not what the differences in understanding of treaty terms are, so much as what function and purpose these differences serve.

Thus far, this chapter has demonstrated that the Crown has since early contact, sought to dismiss Indigenous peoples' legal and political authority in the interest of extending its own jurisdiction. I have argued that the strategies employed by the Crown to pursue this goal have shifted from efforts to minimize the significance of Indigenous law and politics, towards efforts aimed at outright extinguishment. The impact of this legacy has been to strip Indigenous narratives of political significance, thus rendering our interpretations unintelligible or illegitimate in Canadian legal and political systems. Indigenous understandings of treaties then represent the "spirit and intent," or the "cultural" vision of treaties, recognized only by way of contrast with the authoritative settler record, which determines their legal and political effect. Just as Morris' record of treaties has been understood in Canadian discourse as the most authoritative representation of proceedings, the Canadian courts' interpretations of treaty terms have in many ways defined their nature and scope in dominant society. The settler practice of

treaty implementation has been guided by judicial assessments of the state's responsibilities to Indigenous populations. In this realm, Indigenous rights under treaties are often taken up as they were prior to treaty negotiations; that is, as "interests" or "claims" that must be balanced or reconciled with the interests of greater Canadian society.

In settler society, treaty interpretation has not generally occurred in a proactive way, but instead in the adjudication of disputes over the nature of treaty rights. The first significant case on Indian title came in 1888 in *St. Catharine's Milling and Lumber Company v. The Queen*. In *St. Catharine's*, the Judicial Committee of the Privy Council accepted the *Marshall* court's use of the doctrine of discovery, affirming a Supreme Court ruling that Aboriginal title involved a usufructory right of occupancy that was "dependent on the goodwill of the Sovereign."¹⁴⁴ *St. Catharines* therefore acknowledged the existence of Indian title to their land but diminished it as "subject to an ultimate, underlying title in the Crown", who also had the "exclusive right to extinguish" it.¹⁴⁵ Paradoxically, in negotiating Treaties with Indigenous populations, the Crown both recognized and denied the existence of Aboriginal title to the territory: As John Taylor notes in his research on Treaty 4:

The land cession treaties made between the Crown and various groups of Indians in Canada implied the recognition of an aboriginal title to the territory occupied by the Indians concerned. Although Indian title was undefined, it was clearly regarded by the Government as something less than ownership. The basic purpose of the land cession treaty was to "extinguish" Indian title to a specified area in order to clear any obstructions to the Crown's title.

¹⁴⁴ *St. Catharines Milling and Lumber Co. v. R.*, 13 Scr 577, 1887 Canlii 3 (Scc), 617.

¹⁴⁵ Christopher Jenkins, "John Marshall's Aboriginal Rights Theory and Its Treatment in Canadian Jurisprudence," *UBC L Review* 31, no. 1 (2001): 19..

While the Crown recognized that the pre-existence of Indigenous peoples gave them certain rights to occupancy and possession of the land, these were seen to be of a lesser status than Crown title. In this case, the courts adopted a guardian-ward approach to the Crown's interactions with Indigenous peoples, reducing treaty rights to "the qualified privilege of hunting and fishing."¹⁴⁶ The court in *St. Catharine's* also noted that the Crown's duties under treaties did not give rise to any legally binding obligations. If the Crown did provide protection for Indigenous rights, it would "not be because of any legal obligation to do so, but as a sacred political obligation, in the execution of which the state must be free from judicial control."¹⁴⁷ Furthermore, any rights acknowledged by the courts could still be abrogated by the Crown.

The approach taken by the courts in *St. Catharine's* demonstrates that the Crown has interpreted its responsibilities under treaties as political rather than legal. When the Crown has sought to interpret treaties in legal settings, it has done so primarily through reference to the common law rather than Indigenous law. Few of the early judicial cases that dealt with treaties integrated the perspectives of Indigenous peoples, but centrally dealt with questions of Aboriginal rights within overarching discussions of the Crown and provincial interests in treaty territories.

Most commonly treaties have been taken up in the courts retroactively, when Indigenous peoples have been charged or prosecuted for carrying out an act that they claim to be a treaty right. The courts have developed a series of requirements for Indigenous peoples to secure protection for a treaty right, including but not limited to

¹⁴⁶ *St. Catharines Milling and Lumber Co. V. R.*, 13 Scr 577, 1887 Canlii 3 (Scc).

¹⁴⁷ *Ibid.*, note 649.

those outlined in the distinctive culture test.¹⁴⁸ Typically, the courts aim to identify whether a practice being claimed as a right qualifies as a treaty right and is eligible to receive protection under Canadian law. There has been a relative absence of court decisions that take up Canada's responsibilities under treaties in a proactive and forward-looking way. Furthermore, the courts have tended to focus on identifying a fixed set of treaty terms in accordance with a transactional understanding, rather than focusing on the nature of the relationship agreement that was intended by Indigenous peoples.

The restrictive effects of literal interpretations of treaties have been recognized by the courts and by a number of scholars of Indigenous law, history and politics. As Sharon Venne has observed, "the written text expresses only the government of Canada's view of the treaty relationship: it does not embody the negotiated agreement."¹⁴⁹ Even the written versions of treaties have been subject to considerable interpretation, and they may be scantily supported by reports or other information about the treaty negotiations." Venne's perspective is echoed in the work of Michael Asch, which compares the written text of treaty to the Crown records surrounding the negotiations of Treaty 4 and ultimately determines that "the interpretation provided by the contemporary Elders and leaders of the Indigenous parties to the negotiations more accurately reflects *the shared understanding of both parties* as it is reflected in the record of what transpired than does the representation contained in the written text."¹⁵⁰ This disconnect has far reaching impacts in Indigenous politics today; as Peter Kulchyski notes, "The difference between literal readings of the treaty, involving interpretations of the treaties based on documents

¹⁴⁸ See *R. V. Van Der Peet*, [1996] 2 Scr 507, 1996 Canlii 216 (Scc).

¹⁴⁹ Venne, "Understanding Treaty 6: An Indigenous Perspective," 173.

¹⁵⁰ Asch, *On Being Here to Stay: Treaties and Aboriginal Rights in Canada*, 82.

associated with treaty, and readings of treaty based on the ‘spirit of the treaty’ adduced from the oral accounts of Elders, remains a key theme in Canadian Aboriginal politics generally.¹⁵¹

While the federal government views treaties as legal contracts of land cession and surrender in exchange for specific terms and benefits, the written agreement provides little insight into the nature of the relationship that was to be established. As scholars such as Leanne Simpson, Heidi Stark, John Taylor, Robert Williams, John Borrows, and others have argued, ceremonies such as the exchange of gifts, the verbal exchange of promises and the smoking of the pipe also represented significant parts of the establishment of the relationship.¹⁵² Thus Venne has argued that to properly understand the relationship between treaty Peoples and the Crown, one must consider a number of factors beyond the treaty’s written text. Historian John Long has also pointed out the need to recognize that crucial details about the nature of the treaty involved promises that emerged within negotiations but were not included in written documents. For instance, Long views treaty text as “the parchment,” which is distinct from “the agreement” which partners entered into.¹⁵³ Heidi Stark refers to the treaty as the council, the meeting, the ceremony, the dialogue and the meeting itself.¹⁵⁴ Looking to the dialogue, protocols and context surrounding treaties can provide more insight into the process of entering into

¹⁵¹ Peter Kulchyski, *Like the Sound of a Drum: Aboriginal Cultural Politics in Denendeh and Nunavut*, vol. 1 (Univ. of Manitoba Press, 2005), 124.

¹⁵² Williams, "Linking Arms Together."; Taylor, *Treaty Research Report: Treaty Four (1874)*; Stark, "Respect, Responsibility, and Renewal: The Foundations of Anishinaabe Treaty Making with the United States and Canada."; Simpson, "Looking after Gdoo-Naaganinaa: Precolonial Nishnaabeg Diplomatic and Treaty Relationships."; John Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government," *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality and Respect for Difference* (1997).

¹⁵³ Long, *Treaty No. 9: Making the Agreement to Share the Land in Far Northern Ontario in 1905*.

¹⁵⁴ Stark, "Respect, Responsibility, and Renewal: The Foundations of Anishinaabe Treaty Making with the United States and Canada," 149.

and living in treaty, the laws and orders of governance that were expressed through treaty-making, and the intended nature of the relationship that was being established. It can also help highlight the contradictions between the government's promises and contemporary actions.¹⁵⁵

John Borrows has also argued that literal interpretations of treaties can function as a containment strategy that overlooks the nature of the intended relationship. For instance, he argues that the *Royal Proclamation* represents only part of a treaty between Indigenous peoples and the Crown, and the rest of the treaty is contained in the 1764 Treaty of Niagara, which include conditions that "underpin the Proclamation and that lie outside the bare language of the document's words," which assert a more comprehensive view of Indigenous self-government.¹⁵⁶ Borrows suggests that the principles outlined by Indigenous peoples as part of the Treaty of Niagara have often been overlooked in conventional legal interpretations as a way of undermining the contemporary exercise of Indigenous rights. Over time, as the Crown's power and the number of settlers increased, the promises of co-existence and Indigenous self-determination outlined in the *Royal Proclamation* and the Treaty of Niagara have been severely minimized or overlooked entirely by the Crown.

While the courts have recognized the importance of looking to oral histories when deciding on the terms of a treaty, they still employ an overarching frame of analysis that

¹⁵⁵ Asch, *On Being Here to Stay: Treaties and Aboriginal Rights in Canada*, 162.

¹⁵⁶ Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government," 155.

presumes the nature of the Indigenous-state relationship to be that of a fiduciary nature, and that takes for granted the transactional nature of treaties.¹⁵⁷

While the courts have made some effort to craft principles that are geared towards integrating Indigenous perspectives on the spirit and intent of treaties into their interpretations, the underlying intent of these interpretive principles is geared towards establishing a common understanding of treaties as a fixed set of terms. As the court in *Marshall* noted, “the goal of treaty interpretation is to choose from among the various possible interpretations of common intention the one which best reconciles the interests of both parties at the time the treaty was signed.”¹⁵⁸ While the Canadian courts have sought to develop principles of interpretation that are sensitive to Indigenous perspectives, these are deployed to identify the substance of a treaty within an overarching relationship that is already presumed to be valid. Yet the courts continue to rely on the assumption that treaties represent a transaction of some form, focusing their efforts on the question of “what was being exchanged, and in exchange for what?” rather than reflecting critically on the nature of the relationship being established.

Focusing on the material items or translating oral terms into a fixed set of rights misses the entire point of treaty-making, which was to establish a relationship that would be dynamic, evolving, and responsive. The courts have not accounted for Indigenous understandings of the nature of the intended relationship in such a way that leads them to revisit the assumption that treaties represented mechanisms of extinguishment. While looking beyond the literal interpretation of treaties can be helpful, it does not address the

¹⁵⁷ In interpreting the terms of a treaty, the court has recognized that “...verbal promises made on behalf of the federal government at the times the treaties were concluded are of great significance in their interpretation.” *R. V. Badger*, [1996] 1 Scr 771, 1996 Canlii 236 (Scc), para. 55.

¹⁵⁸ *R. V. Marshall*, [1999] 3 Scr 456, 1999 Canlii 665 (Scc), para. 78.

power imbalance that is inherent in the “transactional” approach, which presumes a hierarchical, paternalistic, and protectorate relationship.

Furthermore, as agreements between parties with different legal and political orders, the intended nature of specific treaty relationships, and questions surrounding the terms of sharing the land that were agreed upon must not just be interpreted through Canadian legal systems, but also from the legal perspectives of the Indigenous peoples in question in order to determine whether voluntary surrender was even a possibility that would have been consistent with their legal order. Yet this question has never been taken up critically in Canadian law; as Robert Hamilton points out in his article “The ability of Indigenous peoples to voluntarily enter into agreements with the Crown that have the effect of extinguishing title has never been questioned; rather, it has always been considered possible for a native people to cede aboriginal lands to the Crown by treaty.”¹⁵⁹ As Kent McNeil observes, “Although Canadian law allows for the surrender of Aboriginal title to the Crown, this does not mean that it is surrenderable under Aboriginal law.”¹⁶⁰ McNeil highlights the need for treaty interpretation to be guided not just by Canadian law (even if incorporating an “Indigenous perspective”) but by the laws of the Indigenous peoples who are also party to the treaty.

As Leroy Littlebear observes of Indigenous conceptions of the relationship between humans and creation, Indigenous law would not have permitted the notion of transferring land to the Crown: “In summary, the standard or norm of the aboriginal peoples' law is that land is not transferable and therefore is inalienable. Land and benefits

¹⁵⁹ Robert Hamilton, “After Tsilhqot’in Nation: The Aboriginal Title Question in Canada’s Maritime Provinces,” *UNBLJ* 67 (2016): para 48.

¹⁶⁰ Kent McNeil, “Extinguishment of Aboriginal Title in Canada: Treaties, Legislation, and Judicial Discretion,” *Ottawa L. Rev.* 33 (2001).

therefrom may be shared with others, and when Indian nations entered into treaties with European nations, the subject of the treaty, from the Indians' viewpoint, was not the alienation of the land but the sharing of the land."¹⁶¹ In Kent McNeil's article *Extinguishment of Aboriginal Title in Canada: Treaties, Legislation, and Judicial Discretion*, he notes that the view that treaties did not represent a transfer or exchange of land, but a sharing agreement is confirmed unanimously by the Elders interviewed as part of the focus group sessions for the RCAP, the interviews for the *Treaty Elders of Saskatchewan* book, and *The True Spirit and Original Intent of 7* book, among other renowned works.¹⁶² In particular, he cites Cardinal & Hildebrandt's observations that "At the focus sessions [that the authors held with Elders], when the 'extinguishment clauses' of the written treaty texts were read, translated, and explained, the Elders reacted with incredulity and disbelief. They found it hard to believe that anyone, much less the Crown, could seriously believe that First Nations would ever have agreed to 'extinguish' their God-given rights."¹⁶³ A transactional approach regards treaties as mechanisms of extinguishment of Indigenous rights to the land, however a relational approach recognizes that such an arrangement would have involved the extinguishment of our kinship relations with Creation, something which Indigenous peoples' worldview and legal orders would not have permitted.

As explained by the RCAP, "notwithstanding clear words calling for extinguishment in many historical treaties, it is highly probable that no consent was ever

¹⁶¹ Leroy Little Bear, "Aboriginal Rights and the Canadian 'Grundnorm'," in *Arduous Journey: Canadian Indians and Decolonization*, ed. JR Ponting (Toronto: McClelland & Stewart, 1986), 243.

¹⁶² McNeil, "Extinguishment of Aboriginal Title in Canada: Treaties, Legislation, and Judicial Discretion."

¹⁶³ *Ibid.*, 58.

given by Aboriginal parties to that result.”¹⁶⁴ Further, in *Treaty Making in the Spirit of Co-existence*, the RCAP emphasized that this lack of consensus on the nature of treaty obligations casts doubt on the legality of approaches that presume the extinguishment of title through treaties: “In light of divergent understandings of extinguishment clauses and the jurisprudence on treaty interpretation ... it cannot always be said with certainty that the written terms of an extinguishment clause will determine the clause’s legal effect.”¹⁶⁵

Further, the courts in both *Sparrow*¹⁶⁶ and *Delgamuukw*¹⁶⁷ determined that the extinguishment of Aboriginal rights, either through treaty or other means, must demonstrate a “clear and plain intention” to extinguish the right. The oral history surrounding treaty negotiations and Morris’ express avoidance of the land question call into question the validity of the purported extinguishment of title to the land through the signing of Treaty 4, as not only were Indigenous parties to the treaty not made aware of the full implications of the surrender of their territorial rights, the topic was expressly avoided by treaty commissioners. Establishing clear and plain intent would undoubtedly have required significant dialogue surrounding the land question in order to translate European concepts into terms that were cognizable within Indigenous worldviews, as well extensive conversation surrounding which tracts of land were to be surrendered.¹⁶⁸ Not only did this conversation not occur, it was continually avoided by commissioners.

The interpretive mechanisms used by the Crown evidence the assumptions and logics that function to contain broader interpretations of treaties, as well as their modern

¹⁶⁴ Dussault et al., "Report of the Royal Commission on Aboriginal Peoples," Vol. 2, Ch. 2, 43.

¹⁶⁵ “Treaty Making in the Spirit of Co-Existence: An Alternative to Extinguishment (Ottawa: Minister of Supply and Services, 1995): 17.

¹⁶⁶ *R. V. Sparrow*, [1990] 1 Scr 1075, 1990 Canlii 104 (Scc), note 6 at para. 1099.

¹⁶⁷ *Delgamuukw V. British Columbia*, 1991 Canlii 2372 (Bc Sc), note 1 at para. 180.

¹⁶⁸ See Justice Morrow’s rationale in *Re Paulette Et Al. And Registrar of Titles (No. 2)*, 1973 Canlii 1298 (Nwt Sc), 33.

day implications. They also evidence the ways in which Indigenous legal and political orders continue to be minimized within the current configurations of the Indigenous-state relationship. Furthermore, the effect of the transactional mindset is that question of rights and extinguishment eclipse the underlying processes and principles that are intended to constitute the treaty relationship. By taking land cession and surrender as a given, they position Indigenous interpretations of treaties as “perspectives” on the “spirit and intent,” attributing them with cultural, but not legal and political meaning. The late Elder Ivan McNab highlighted the ways in which Canadian law serves as a containment strategy with respect to treaty relationships:

They always tell us when we sit down to start talking about treaties we have to step outside of the box. I'd invite you guys to step outside of the law for a while and look at it, take a look at it and see who [...] is it serving. Is this law serving the Indian people, is it serving the treaties? I don't think so. So how are we going to make that connection between bringing those tentacles together to respect the treaty, to respect your ancestors who signed that treaty and my ancestors who signed that treaty? How are we going to be able to do that? How are we going to be able to step outside of that box and look at it objectively and make some calls on it, and say these have to be done.¹⁶⁹

While treaties have continued to be recognized symbolically in Canadian law and policy as the founding agreements that made settlement and the creation of Canada possible, Canada has largely excluded Indigenous peoples' interpretations of treaties from the development of law and policy for much of its history. When the Canadian courts have sought to include Indigenous perspectives on the spirit and intent of treaties, they have done so within a pre-determined frame of reference that assumes treaties represented a transaction of land exchanged for a fixed set of terms. The terms that have

¹⁶⁹ Ivan McNab, Exploratory Treaty Table Justice Symposium, Oct 28 - 30, 2002, Saskatoon, Saskatchewan, transcript, 219.

received the greatest recognition by the Crown as treaty rights include the protection of specific cultural practices. The reduction of treaty partners' broad range of rights and responsibilities to questions of culture distracts from the legal and political implications that become evident from a more relational understanding, and which will be explored in subsequent chapters. Elder Ivan McNab's call to "step outside of the box" with respect to treaty interpretation prompts further inquiry into the limitations of the transactional approach, and also invites Indigenous peoples to open our horizons to different ways of living in relation, including ones that are grounded upon the intended nature of treaties when understood as land-sharing agreements.

Conclusion

In all of the documents, oral records, and interviews that were reviewed in this research, one of the overarching themes that was continually re-emphasized was that the government's narrow and colonial interpretation of treaties lies at the root of the contemporary issues faced by Indigenous peoples today. This chapter has demonstrated how, from prior to their origins, the Crown has sought to overlook or cast doubt on the legitimacy of Indigenous legal and political orders, emphasizing the necessity and overarching supremacy of western law in Crown engagements with Indigenous peoples. Further, this perceived deficiency in law and governance and the discriminatory assumptions that inform Indigenous-state relations have persisted to the present day.

Treaty mythologies and the assumptions that follow from them are reflected in Canadian law and policy, which concretizes such myths into Canada's legislative and judicial structure and removes them from scrutiny as they then represent part of the

foundations that Canadian institutions base their very existence upon. In order to avoid having to depart from the existing structure of the settler state, Indigenous understandings of treaties are taken up as issues of “culture” rather than as issues with substantial legal and political ramifications. Even when efforts are made to give weight to Indigenous understandings of treaties in Canadian legal and political institutions, they are still interpreted through western frames of reference rather than through Indigenous legal and philosophical frameworks. The conversation surrounding treaty implementation in Canada is thus inevitably contained to questions of how best to implement the spirit and intent of treaties within the existing configurations of the Indigenous-state relationship, rather than thinking about treaty implementation in such a way that would involve revisiting the configurations of the relationship itself.

The possibilities for implementation of the treaty relationship, and the roles and responsibilities that it gives rise to are heavily dependent on the way in which it is interpreted. The varying ways in which treaties are interpreted, and even the frames of reference through which they are taken up, can serve either to sustain or to challenge the configurations of the colonial relationship. The limitations of understanding treaties as transactions become particularly evident when contrasted with the nature of treaty relationships as understood by Indigenous peoples. For these reasons, as Indigenous peoples we need to “think outside of the box that government has set up for us” when it comes to treaties.¹⁷⁰ Indigenous peoples should also be mindful of ways we may be “boxing ourselves in” by internalizing the transactional perspective and approaching

¹⁷⁰ Chief Perry Bellegarde, Exploratory Treaty Table Justice Symposium, October 28 - 30, 2002, Saskatoon, Saskatchewan, transcript, 13.

treaty implementation through the articulations of “claims” that seek protection for treaty rights by the Canadian state.

The following chapter turns to the politics underlying treaty implementation in the contemporary context. It identifies the need for strategies of treaty implementation that collapse interpretations of treaties as transactions and invoke them instead as frameworks for relationship. Further, it argues that the imagination of strategies for implementing treaty-based models of relationship in various realms of life must take place through a process that is led by Indigenous peoples and accounts for the breadth of issues in Indigenous communities today.¹⁷¹

¹⁷¹ As Vice-Chief Lawrence Joseph suggested “If any government thinks they can just do it piecemeal, fragmented, they 're dreaming. We want to be able to be part of a process that we can call our own. Lawrence Joseph, Exploratory Treaty Table Justice Symposium, October 28 - 30, 2002, transcript, 36.

Chapter 2 - The Resurgence of a Treaty-based Ethic of Relationality

*Don't give up any of our rights. Make it a challenge to recapture what was promised to our Elders.*¹⁷²

*It seems like we're helping the white man break our own treaty.*¹⁷³

The last chapter of this dissertation contextualized the distinction between transactional and relational understandings of treaties, arguing that the Crown has since its origins regarded treaties as transactions of land in exchange for a fixed set of rights. I further argued that this approach emerged in large part from a failure to engage with and acknowledge the importance of Indigenous legal and political orders. The intent of reviewing Crown assumptions underlying treaty negotiations and interpretations was to demonstrate the inherent limits resulting from such assessments and to illustrate how a transactional way of thinking serves to contain the full potential of treaties. Further, it minimizes the legal and political effect of Indigenous understandings of treaties. It is important to note that transactional interpretations are not exclusively employed by settler populations, but have in many instances been internalized and deployed by Indigenous populations in efforts to secure protection against rights infringements and in our treaty advocacy efforts.

All too often, Indigenous peoples find ourselves thinking of treaties as broken, as a form of deceit or theft, and while these arguments are certainly justified, they tend to eclipse the ways in which treaty-based modes of relating can also provide the inspiration

¹⁷² Norman Sunchild, Treaty No. 6 Elders' Meeting, November 12-14, 1997, Jackfish Lake Lodge, transcript, 7.

¹⁷³ Norman Henderson, Treaty No. 6 Elders' Meeting, November 27-28, 1997, La Ronge, Saskatchewan, transcript, 7.

for strong and mutually beneficial relationships. While the state has in many ways regarded treaties as ‘finished business,’ in that they are assumed to have achieved their stated purpose of extinguishing Indigenous claims to the land, it is particularly important that Indigenous peoples do not internalize this interpretation and allow it to lead us to dismiss or lose sight of their importance. This means that we must take concerted efforts to critically reflect upon the ways in which our own understandings of treaties as Indigenous peoples have been changed and contained by colonial narratives of treaty-making.

The current chapter explores the politics of Indigenous peoples’ approaches to treaty implementation, contemplating the implications of constructions of contemporary Indigenous political identities that are either grounded upon or in opposition to the ways in which treaties have been interpreted by the state. It argues that as Indigenous peoples, much of our time has been spent either opposing the Crown’s interpretation, or seeking to navigate the systems it has set up for us, and that both of these projects have distracted from our ability to inhabit treaties in accordance with our own understanding of what they represent.

I argue that while critiques of the Crown’s interpretation of treaties are necessary, Indigenous people should not allow the Crown’s poor record of treaty implementation to lead us to dismiss treaties entirely. Instead, we should be thoughtful about the way in which we are invoking them and the contexts in which they are being employed. Specifically, I argue for a resurgence of treaty relationality as an alternative to the static, transactional understanding that is being reproduced in many of our own advocacy efforts. I consider the role of treaties relative to the revitalization of notions of Indigenous

identity that are grounded in a relational orientation. At the same time, I take up the complicated question of how to assert a treaty politic that recognizes but does not revolve exclusively around the wrongs that have been committed under treaties, and instead is defined by Indigenous understandings of treaties and visions of their potential.

Legislating Indigeneity

The colonial regulation of Indigenous peoples' identities began early on in the Indigenous-state relationship, finding its source in racist and Eurocentric ideology that aimed to subordinate Indigenous knowledges, spirituality and cultural practices to legitimize colonial power, and was reinforced through Indigenous peoples' physical exclusion from newly formed colonies and through the direct classification and regulation of identity that shaped the configuration of Indigenous peoples' lives. This subordination only intensified with the implementation of more insidious and comprehensive governmental and bureaucratic initiatives after negotiation of the numbered Treaties.

The most extreme disciplinary elements of early colonial legislation can be seen in the *Indian Act's* regulatory and assimilatory mechanisms such as status and membership guidelines, the residential school system, the reserve system, mobility restrictions, and regulations surrounding the exercise of cultural and spiritual traditions. These and other strategies sought to naturalize ideals of individualism and self-sustainability within Indigenous communities, attributing our failure to adapt to changing political and economic contexts to our primitive social and political status. The church appealed to Indigenous peoples' relationship with the Creator to instill Christian notions

of guilt, sin and depravity as a way of directing the cause of our suffering onto ourselves.

Contemporary Indigenous identity politics have thus been shaped not just by our political homogenization under liberal multicultural ideology, which has prompted Indigenous peoples to engage in efforts to distinguish ourselves from other minority groups in Canada, but also in response to the ongoing, invasive and extreme efforts to divest us of our ways of knowing and being. Over time, the state has continued to play an integral role in authoring and adjudicating Indigenous identity and granting itself the power to determine which Indigenous peoples warrant state-recognized or rights-bearing identities. Judicial efforts to define Indigenous cultural authenticity, and the rigid categorization and systematic assessment of injuries and levels of harm such as those involved in standardized remedies for the racist practices of the state, have only intensified the regulatory production of Indigenous identity.

These external forces have also functioned to produce regulatory regimes internally as Indigenous peoples have become caught in processes of self-monitoring and regulation. As Elizabeth Povinelli writes, “Indigenous persons must desire and identify in a way that just so happens, in an uncanny convergence of interests, to fit the national imaginary [...] if Indigenous persons slip, if they seem to be being opportunistic, to be speaking to the law too much or not enough or in a cultural framework the court recognizes of its own, they risk losing the few judicial and material resources the state has made available to them.”¹⁷⁴ Indigenous peoples seeking to advance legal and political claims through state institutions have often been bound to assert our identities in narrow and essentialist ways so that they are intelligible to settlers and viewed as legitimate. The

¹⁷⁴ Elizabeth A Povinelli, "The State of Shame: Australian Multiculturalism and the Crisis of Indigenous Citizenship," *Critical Inquiry* 24, no. 2 (1998): 580.

Canadian judiciary's originalist interpretation of Aboriginal and treaty rights has only reinforced the need for Indigenous people to express our claims to self-determination in terms that reflect colonizing orders of classification. At times, this has involved emphasizing the aspects of our identities that find their origins in and demonstrate continuity with a pre-contact past, and downplaying those elements that are viewed as too modern to be authentically Indigenous.

Treaties and Decolonial Thought

As Indigenous peoples have become increasingly familiar with the limitations and constraints of state-sanctioned political engagements including appeals for the recognition of Aboriginal and treaty rights, many have begun to focus our efforts on identifying the limitations of these processes. In the context of treaties, this has involved analyses that highlight the harms and injustices that have been committed under treaties, and that take up the futility of implementing treaties in light of the asymmetrical power relations between Indigenous peoples and the state that date back to their initial negotiation. Critical engagement with the state's record of treaty implementation is certainly a worthwhile project; as Michael Asch notes, "reporting on the disjuncture between promises and implementation can influence governments to act in conformity with the commitments that settlers made."¹⁷⁵ However, it is also important that we do not allow such critique to have the effect of positioning treaties as irrelevant to or distinct from contemporary nation-building projects.

As Jill St. Germain observes, the "broken treaties" tradition of treaty

¹⁷⁵ Asch, *On Being Here to Stay: Treaties and Aboriginal Rights in Canada*, 162.

interpretation perpetuated by early scholars such as John Tobias can give the impression that treaties are in effect meaningless given state habits of breaking them.¹⁷⁶ This line of thought positions treaty-making processes as ended, or at the very least irrelevant as it provides a “persuasive rationalization for relegating treaties and treaty relations to the dustbin.”¹⁷⁷ St. Germain suggests that this tradition is a consequence of a preoccupation with adherence to fixed terms, and points to the need to assess treaties beyond the realm of policy, encouraging an appreciation of Indigenous partners as active agents rather than passive subjects in the treaty relationship.¹⁷⁸ In her view, a relational understanding of treaties has the potential to demonstrate that treaties continue to matter to our contemporary political contexts and that Indigenous peoples need to see ourselves as active participants in defining the configurations of our relationships. The ‘broken treaties’ tradition may have the unintended effect of alienating Indigenous peoples from our own modes of relating as well as reifying a static focus on fixed treaty terms.

The ‘broken treaties’ tradition of treaty interpretation isn’t the only approach that has critically interrogated their utility and significance in the contemporary lives of Indigenous peoples. For other authors, their critiques of treaties have focused not on the Crown’s records of treaty implementation, but on the issues and dynamics surrounding their negotiation. This includes analyses that take up the myriad linguistic and cultural barriers that existed between Indian and government representatives during the negotiation of the Numbered Treaties.¹⁷⁹

¹⁷⁶ Tobias, "Canada's Subjugation of the Plains Cree, 1879–1885."

¹⁷⁷ St. Germain, *Broken Treaties: United States and Canadian Relations with the Lakotas and the Plains Cree, 1868-1885*, xix.

¹⁷⁸ *Ibid.*, xviii..

¹⁷⁹ Scholars have elucidated the vast linguistic and cultural barriers between treaty parties by pointing out that the interpretation of key terms provided from English into the First Nations languages is inaccurate. For instance, there is no word in Blackfoot for 'reserve.' They simply say 'our lands' or 'Native

In *Prison of Grass*, Howard Adams describes treaties as instruments of colonization which legitimized the construction of prisons in the form of reserves, with Indigenous peoples receiving little or nothing in return.¹⁸⁰ In his view, true negotiations were impossible due to language barriers and the asymmetry in power between Indigenous and non-Indigenous peoples.¹⁸¹ Furthermore, Adams emphasizes the relative lack of power of Indigenous peoples at the time of treaty negotiations, citing the presence of state military forces, Indigenous peoples' lack of familiarity with the English language and contract law, and Indigenous economic dependence on settlers. These critics have emphasized the coercive nature of treaty negotiations, describing them as arrangements forced on Indigenous peoples in times of crises, disease and starvation.

For Adams, the consequence of the treaties is that "Indians later accepted them as a kind of legal Bible which they felt gave them special right and privileges. This attitude persists with most Indians today [...] When Indians hold the treaties as sacred testaments, the process of colonization is indeed complete."¹⁸² Authors such as Adams have centered their analyses on the asymmetry between the collective benefit that settler society gains from treaties, and the harms that they both concealed and justified.

And yet other scholars have argued that regardless of whether or not Indigenous people historically exercised more power vis-à-vis the Crown in the past, the contemporary power differential creates a host of problems that stand in the way of their implementation. For instance, Glen Coulthard identifies a number of issues inherent in

lands.' Similarly, the Blackfoot have no world for treaty: "the event is simply referred to as *istist aohkotspi* or *iitsinnaihtsiyo'pi* (the time when we made a sacred alliance)" Hildebrandt, Rider, and Carter, *True Spirit and Original Intent of Treaty 7*, 4.

¹⁸⁰ Howard Adams, "Prison of Grass," *Saskatoon: Fifth House Publishers* (1975).

¹⁸¹ *Ibid.*, 63.

¹⁸² *Ibid.*, 67.

calls to 'honour the treaties' within the current dynamics of settler colonialism:

[...] in our current reality the colonial relationship is structured by profound dependency, inequality and hierarchy; in such a situation the analogy of "sharing the river" no longer holds true, nor does it make much sense as a model to aspire to. Two problems emerge when we try and apply the nation-to-nation framework -- for example to the 17th-century Haudenosaunee Two-Row wampum treaty -- to the power relations we face today. First, they assume a moral equivalency between the colonizer and the colonized that simply doesn't exist. And second, they assume the legitimacy of the ship -- of the state's economic, legal and political institutions that have destroyed the river and eroded the riverbank. Under such conditions, "recognizing" the legitimacy of the colonial ship's right of travel is an impossibility and we need to start orienting our struggles toward a different goal.¹⁸³

Coulthard's perspective raises many important points surrounding the difficulty of implementing treaties through the existing configurations of the Indigenous-state relationship, highlighting the ways in which the foundational values and structures of the Canadian state would need to be fundamentally altered in order for treaty implementation to take place. John Milloy has similarly taken up the contemporary power differential between Indigenous peoples and the Crown in his analysis of the vast cultural differences that prevent the reconciliation of competing interpretations of treaties. He analyzes not just the differences inherent in the oral and written accounts of treaties, but also the larger discourses flowing through the broader set of narratives accompanying the negotiation of Treaty 4. Milloy ultimately finds that the differences in how both parties approach treaties are so foundational and persistent, that the project of coming to a shared understanding is impossible.¹⁸⁴ He notes that even in initial treaty negotiations, the Crown's proposals were virtually unchangeable, and that it was Indigenous peoples who

¹⁸³Harsha Walia, January 21, 2015, <http://rabble.ca/columnists/2015/01/land-relationship-conversation-glen-coulthard-on-indigenous-nationhood>.

¹⁸⁴ Milloy, "Tipahamatoowin or Treaty 4?: Speculations on Alternate Texts," 110.

had to set aside their concerns and scale back their demands.¹⁸⁵

The establishment of a relationship that more closely reflects Indigenous understandings of treaties, for both Coulthard and Milloy, would require the Crown to voluntarily relinquish a great deal of power. This is not only unlikely to happen any time soon but is also undesirable as it would not result in the establishment of a true treaty relationship, which requires respect, reciprocity, consent, and a more symmetrical distribution of power. As Coulthard's analysis of the politics of recognition demonstrates, recognition that is granted or endowed by the state to Indigenous peoples fails to alter the colonial power dynamics underlying the Indigenous-state relationship as it overlooks its inherently hierarchical structure.

As Coulthard argues through reference to Frantz Fanon's theorizations, the dialectical progression to reciprocity in relations of recognition is not possible in the absence of Indigenous peoples' struggle for freedom and independence.¹⁸⁶ Rather, what is required for true transformation of the relationship is a form of praxis that occurs through the colonized's rejection of state recognition and through a turn towards self-recognition or affirmation. Thus, the establishment of a non-hierarchical relationship cannot be a gift given by the state, as Indigenous peoples would still represent the recipients and it would not be enough to transform the relationship into a reciprocal one. Rather, it is through internal self-recognition that freedom becomes possible. Thus, the crux of our work as Indigenous peoples should involve transforming the perception of the Indigenous-state relationship that we have internalized, and working instead on cultivating a healthier and more empowering vision of our own individual and collective

¹⁸⁵ Ibid., 99.

¹⁸⁶ Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*.

identities. The revival of our cultural practices and the strengthening of identity through these cultural practices, as both Coulthard and Alfred suggest, represent a crucial feature of emancipatory politics.¹⁸⁷

When we bring this discussion across to the realm of treaty implementation, it highlights the limitations of assessing the contemporary relevance of treaties through reference to the degree to which they have or have not been enacted by the Crown. This dissertation isn't focused on a critique of Crown records of treaty implementation, nor with convincing the Crown to honour its commitments. It is, however, concerned with how Indigenous peoples can honour our own rights and responsibilities relative to the world we inhabit. It therefore depends in crucial ways upon Indigenous peoples' ability to affirm our own cultural practices, including our traditional modes of engagement and co-existence such as treaties. However, we must also be conscious about how it is we affirm our own cultural practices, to ensure that we are not doing so in a way that constrains our own understandings of treaties and inadvertently reinforces the transactional understanding through efforts to oppose it.

While critiques of the Crown's approach to treaties can serve a useful purpose in certain contexts, Indigenous people must also be careful to ensure that these do not lead us to discard treaties entirely as there are many potentially useful and beneficial ways that they can inform our contemporary political imperatives. For instance, practices of treaty-making can provide an important source for Indigenous peoples to draw out traditional notions of relationality, law, governance, diplomacy, and accountability, among other principles. These, in turn, can ground our contemporary political movements upon

¹⁸⁷ Ibid.; Alfred, *Wasa'se : Indigenous Pathways of Action and Freedom*.

resources and practices that are reflective of Indigenous worldviews, rather than our opposition to the state.

Furthermore, rather than regarding treaty implementation as a process that necessitates recognition of the legitimacy of state institutions, Indigenous understandings of treaties can achieve precisely the opposite; that is, challenging treaty mythologies of cession and surrender can call into question the state's claims to sovereignty and jurisdiction over Indigenous lands. By invoking our own standards of what treaties represent as a prerequisite to political engagements, we can garner awareness surrounding the true nature of treaty-making and critique the state's purported approaches to treaty implementation by way of contrast. Thus, a relational approach to treaties can also be used to critique modern day approaches to engagement with the state. It can also foreground a model for respectful dialogue, negotiation and renewal as inspired by Indigenous understandings of treaties, while delegitimizing processes of integration, manipulation and assimilation through which the state approaches modern treaty and land-claims agreements.

At a community level, some of the Elders' perspectives reviewed in this research expressed concern that the relevance of treaties is lost on the younger generations of leaders particularly because they have been continually abrogated by the state. As the late Elder Isabel McNab indicated: "I heard from young people that have just been elected, they said treaties, what have they ever done for us, they haven't done a damn thing for us. Look at how we are, we're still poor [...]." ¹⁸⁸ While this perspective is certainly warranted, it also subscribes to a transactional view of treaties by implying that if the

¹⁸⁸ McNab, "Exploratory Treaty Table Justice Symposium," 88.

state is going to disregard treaties, then Indigenous people should too. Invalidating our own treaties merely reverses the transaction into a negative exchange where Indigenous peoples are put in the position of disregarding our roles and responsibilities as treaty partners. As Cardinal and Hildebrandt note, this is not the position of treaty Elders in Saskatchewan, for whom “what is at issue is not whether or not treaties exist, but whether a mutually acceptable record of them can now be agreed upon and implemented.”¹⁸⁹ Furthermore, it minimizes Indigenous agency in relation to the state, suggesting that the state is the purveyor and Indigenous peoples are mere recipients in the treaty relationship. As Friesen and Tobias maintain, Indigenous peoples were not passive victims but had a significant amount of agency and power in negotiating treaties.¹⁹⁰ Discontinuing the fight for treaty rights in would mean disregarding the work of our ancestors in creating treaties, and having our understanding of treaties defined exclusively by the ways in which they have been interpreted under Canadian law.

Harold Cardinal explains that while there is “much to quarrel with in the treaties as they were signed,” they remain important “not so much for their content as for the principles they imply in their very existence.”¹⁹¹ He writes that the treaties represent the Indian “Magna Carta,” in that they inform the legal order that all partners agreed to live under as well as the associated rights and responsibilities of both settlers and Indigenous populations. As Cardinal has argued, so long as Indigenous peoples refuse to give up treaties, the process of colonization will never be complete. While he acknowledges

¹⁸⁹ Cardinal and Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations*, 59.

¹⁹⁰ Jean Friesen, “Magnificent Gifts: The Treaties of Canada with the Indians of the Northwest 1869-1876,” *Transactions of the Royal Society of Canada* 1 (1986); Tobias, “Canada’s Subjugation of the Plains Cree, 1879–1885.”

¹⁹¹ Harold Cardinal, *The Unjust Society: The Tragedy of Canada’s Indians* (MG Hurtig, 1969), 30.

many limitations inherent in both the process of negotiating treaties and in the content of written treaties, he explains that it is precisely because of their sacred nature that many Indigenous peoples will never let them go, “The treaties are important to us, because we entered into these negotiations with faith, with hope for a better life with honour. We have survived for over a century on little but that hope.”¹⁹² Because of they were made under the laws of the Creator, they cannot be unilaterally abrogated by either party. To Cardinal, treaty rights are an important part of Indigenous nationhood, particularly in terms of what they represent in terms of our own laws:

We cannot give up our rights without destroying ourselves as a people. If our rights are meaningless, if it is inconceivable that our society have treaties with the white society even though those treaties were signed by honourable men on both sides, in good faith, long before the present government decided to tear them up as worthless scraps of paper, then we as a people are meaningless. We cannot and will not accept this. We know that as long as we fight for our rights we will survive. If we surrender, we die.¹⁹³

While treaties have been minimized under Canadian law, they continue to have enormous significance under Indigenous legal orders. The imperative to keep treaties alive also has a distinct political and material basis; as Cardinal explains, “We can brook no argument that the treaties are not relevant to the present. They are related in a very distinct way to the hunting, trapping and fishing rights of our people because, even today, a large portion of the Indian people still depend upon these rights for their livelihood.”¹⁹⁴ Cardinal’s perspective highlights the ways that treaty rights can provide protection against further government incursion into the few practices that Indigenous peoples continue to exercise (albeit restricted) rights to. Elder Isabel McNab suggested that doing away with or

¹⁹² Ibid., 24.

¹⁹³ Ibid., 26.

¹⁹⁴ Ibid., 31.

renegotiating treaties would demonstrate a lack of respect for our ancestors, but would also involve relinquishing the rights that Indigenous peoples are able to exercise under treaties: “the old men that fought for treaties, would be turning over in their graves if they heard you and what you're saying. If you renegotiate the treaties I said, you think you have nothing now, I said. You'll have nothing in the future.”¹⁹⁵

None of the perspectives reviewed in this section deny the fact that treaty rights provide some degree of protection to Indigenous peoples, rather they suggest that treaties as interpreted by the state will never bring about the levels of change required to reconfigure the Indigenous-state relationship to such a degree that would bring it into line with the spirit and intent of the treaty relationship envisioned by Indigenous peoples. Thus, their critiques are less concerned with the specific terms of material items being exchanged, and more concerned with the nature of the relationship itself.

Perhaps the most important question that emerges from the analyses reviewed in this chapter is what Indigenous peoples might give up or lose in the process of presenting our political imperatives in terms of treaty rights “claims” against the state. Yet we might also ask ourselves, if we decide to eschew a treaty-based politic, what aspects of our individual and collective identities are we giving up in the process? Rather than dismiss treaties entirely, it might be more worthwhile to emphasize the distinction between the way they have been inhabited by the state, and the way they ought to be inhabited. From there Indigenous peoples can think carefully and strategically about how it is they are being invoked to ensure we are not reproducing a fixed, transactional approach within our own theorizations. The remainder of this chapter looks at the relation between how

¹⁹⁵ McNab, "Exploratory Treaty Table Justice Symposium," 88.

Indigenous peoples engage with historical injustices such as the violence committed under treaties in the construction of our contemporary political identities, and how this impacts our ongoing ability to draw on our traditional practices of nationhood and governance in ways that are autonomous from state-driven notions of rights and self-determination.

Colonial Violence and the Construction of Indigenous Political Identity

In recent years, there has been a resurgence of Indigenous organizing and activism grounded in our ancestral values, land-bases, knowledges and spirituality. Conventional definitions of the concept of resurgence describe it a form of awakening or revival after a period of dormancy. In Indigenous contexts it also carries a particular cultural and political meaning, referring to a course of action geared towards the revitalization of our traditional lifeways. The specific objectives of resurgence are unique to different individuals and communities but can generally be understood as involving the regeneration of Indigenous peoples' worldviews and ways of being, the revitalization of our traditional legal, political and organizational principles, the autonomy to make choices about our future, and the ability to protect our traditional territories. While these are broad goals that necessitate significant structural change, many scholars and activists have suggested that resurgence is an incremental process that begins with the self before extending out to the family, community and nation.¹⁹⁶ With this in mind, we can conceptualize the initial stage of a politic of resurgence as the process of confronting and

¹⁹⁶ Simpson, *Dancing on Our Turtle's Back: Stories of Nishnaabeg Re-Creation, Resurgence and a New Emergence*; Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto*; Jacob, *Yakama Rising: Indigenous Cultural Revitalization, Activism, and Healing*.

healing from the subjective aspects of colonialism through a form of consciousness raising and a renewed appreciation for one's cultural foundations.

Revolutionary theorists have explored the way in which colonialism operates at the level of the self, suggesting that a foundational element of colonialism is the production of colonized subjects and implementation of modes of colonial thought, desire and behavior that allow for their continued domination.¹⁹⁷ Fanon explains that most colonized people are incapable of authentic upheaval as they have internalized the inferior views that are cast upon them by the colonizer and have begun to identify with the colonial mindset due to its pervasiveness within educational systems, history, the arts, and other realms of life.¹⁹⁸ As described above, the first transformative aspect that occurs within a politic of resurgence therefore involves deconstructing and challenging the subjective dimension of colonialism through the affirmation of our cultural identities, histories and traditions.¹⁹⁹

Indeed, Fanon directs colonized people to the self-affirmative cultural practices that they can engage in to empower themselves, while pointing out that liberation strategies founded upon the recognition of difference or the affirmation of colonized identities are limited as they constitute a mere opposition to or reversal of racist stereotypes rather than a genuine form of empowerment. Other theorists have similarly warned against the limited potential of identity politics as a basis for the empowerment of

¹⁹⁷ Frantz Fanon, "Black Skin, White Masks [1952]," *New York* (1967); Paulo Freire, *Pedagogy of the Oppressed* (Bloomsbury Publishing, 2000); Albert Memmi, "The Colonizer and the Colonized. 1957," *Trans. Howard Greenfeld. Boston: Beacon* (1991); Alfred, *Wasa'se : Indigenous Pathways of Action and Freedom*.

¹⁹⁸ Freire, *Pedagogy of the Oppressed*; Adams, "Prison of Grass."; Fanon, "Black Skin, White Masks [1952]."; Memmi, "The Colonizer and the Colonized. 1957."; Ngugi Wa Thiong'o, *Decolonising the Mind: The Politics of Language in African Literature* (East African Publishers, 1994).

¹⁹⁹ Fanon, "Black Skin, White Masks [1952]."; Memmi, "The Colonizer and the Colonized. 1957."; Alfred, *Wasa'se : Indigenous Pathways of Action and Freedom*; Freire, *Pedagogy of the Oppressed*.

marginalized groups, arguing that the affirmation of identity is important but should not distract from larger struggles against the structural realm of colonialism.²⁰⁰

As Hardt and Negri observe, “Revolutionary politics has to start with identity but cannot end there.”²⁰¹ They explain that marginalized peoples must engage in processes of self-transformation beyond the articulation of subordinated identities.²⁰² Rather than resting on a fixed identity, revolutionary politics should be based on movement and self-transformation to avoid getting stuck in an *oppositional* politic and move in the direction of an *alternative* politic. They argue that extending one’s vision beyond that which we oppose, and towards alternative theorizations can help liberation movements break free of the power relation of colonialism and modernity.²⁰³ Furthermore, as Wendy Brown, Dian Million and others have demonstrated, while the articulation of subordinated or “wounded” identities might have a healing dimension, it does little to contribute to the development of political projects that advance Indigenous empowerment or liberation.

This chapter has reviewed several different perspectives on treaty implementation, many of which deservedly associate the genocide, historical trauma, theft and injustice that Indigenous peoples have experienced over past hundred and fifty years with the state’s failure to implement its treaty commitments. Such approaches evidence a sense of woundedness that colors many peoples’ assessment of the significance of treaties in contemporary times. Yet as Dian Million’s exploration of the relationship between historical trauma and the construction of political identities among marginalized

²⁰⁰ See Eva Marie Garrouette, *Real Indians: Identity and the Survival of Native America* (Univ of California Press, 2003).

²⁰¹ Michael Hardt and Antonio Negri, *Commonwealth*. Harvard, (Harvard University Press, 2009), 326.

²⁰² *Ibid.*, 333.

²⁰³ *Ibid.*, 102.

populations demonstrates, the ways in which Indigenous peoples engage with these experiences has a direct impact on the direction and emancipatory potential of our political movements.

In *Therapeutic Nations: Healing in an Age of Indigenous Human Rights*, Million explores the political potential of “wounded” subjectivities, arguing that when Indigenous peoples construct our identities through reference to historical trauma, we inadvertently collapse the “rich diversity of Indigenous polities” into a unified subject of the colonial “trauma victim.”²⁰⁴ She notes that the emphasis on historical trauma results in issues of a broad political, social, and economic nature to be understood and addressed at the level of policy, a process which “valorizes and brings from the heart of colonization one particular experience that is identified and analyzed as the crime that most enables restitution.”²⁰⁵ As a poignant example, she notes how Canada failed to implement every RCAP recommendation except for one: the recommendation to establish institutions and programs in the name of *healing* (emphasis original).²⁰⁶ For instance, over time, the RCAP’s recommendations surrounding self-determination and breathing life into Treaties has devolved into imperatives geared towards addressing the impacts of intergenerational injury and harm through truth-telling processes directed at healing the wounds inflicted by colonialism.

Scholars have also demonstrated that such processes have a direct impact on the construction and direction of Indigenous political movements; as Million along with others such as Wendy Brown have argued, political movements founded upon Indigenous

²⁰⁴ Dian Million, *Therapeutic Nations: Healing in an Age of Indigenous Human Rights* (University of Arizona Press, 2013), 6.

²⁰⁵ *Ibid.*, 100.

²⁰⁶ *Ibid.*

peoples' historical experiences of injustice are limited in their liberatory potential. In her 1995 essay "Wounded Attachments," Brown explores the formation of politicized identities among historically marginalized peoples, demonstrating that they act not just as contestation of the terms of liberalism, capitalism and colonialism, but also as a production of these forces. She explains that the politicization of identities through oppositional discourses and efforts to reverse the blaming of the self for suffering that was historically facilitated by dominant power structures often ends up reinscribing the ongoing power and presence that colonialism has in our lives. As Alfred writes, many decolonization discourses are limited for this reason as they continue to center the sources of oppression themselves: Indigenous peoples "cannot allow [colonization] to be the story of our lives, because it is a narrative that in its use privileges the colonizer's power and inherently limits our freedom, logically and mentally imposing a perpetual colonized victim way of life and view on the world."²⁰⁷

When Indigenous peoples constitute ourselves through opposition to forces of colonialism rather than that which we aspire to be, we inadvertently allow our own identities to continue to be produced by external sources, rather than our own philosophical traditions. Indeed, Indigenous peoples' ability to theorize in a way that is not reliant on western traditions of thought is severely constrained when we focus the weight of our resources and capacities on addressing the sources of injury rather than actualizing our own political norms and objectives. Brown describes this tendency as beginning with the problematic of freedom itself, writing that freedom "is neither a philosophical absolute nor a tangible entity but a relational and contextual practice that

²⁰⁷ Alfred, *Was'a'se : Indigenous Pathways of Action and Freedom*, 25; Memmi, "The Colonizer and the Colonized. 1957," 152.

takes shape in opposition to whatever is locally and ideologically conceived as unfreedom.”²⁰⁸ Thus Indigenous political aspirations become informed by colonialism (through efforts to challenge, counter or deconstruct it), rather than by that which we collectively desire to be or to achieve.

Brown invokes Nietzsche to explain that identities structured in part by resentment function only to resubjugate themselves as their focus on the pain of the past eclipses their ability to construct themselves in a present or forward-looking way. Reaction, as Nietzsche argues, constitutes a negative form of action, acting as a substitute for power or for self-affirmation that reinforces political “incapacity, powerlessness and rejection.”²⁰⁹ Predicated on its critique of power and political action, politicized identity becomes invested in its own impotence and suffering, which it requires for its own continuity.²¹⁰ In the context of treaty implementation, the potential for collective political movements that are grounded upon resistance to the Crown’s violent and oppressive enactment of treaties can therefore be limited in their ability to affect significant change as they function to reinscribe subjugating power relations and the concepts and discourses that they rely upon (i.e. the transactional approach to treaties). Collective political movements that are grounded upon a community’s values and political aspirations under treaties, on the other hand, have much greater potential to advance the advancement of an internal and culturally-grounded political consciousness.

Brown argues that the emancipatory potential of many oppositional projects fail to achieve their stated objectives as they do not lead to meaningful engagement around

²⁰⁸ Wendy Brown, "States of Injury: Power and Freedom in Late Modernity," (1995): 6.

²⁰⁹ Ibid., 69.

²¹⁰ Ibid., 65.

collective political beliefs or values. By forming one's political claims around a site of blame for past injuries and ongoing powerlessness, the reason for the pain is converted into "a politics of recrimination that seeks to avenge the hurt even while it reaffirms it, discursively codifies it."²¹¹ For these reasons, Brown observes that grounding identity-based claims upon the logics of pain might contain or subvert the intention of emancipatory political projects. Furthermore, they can lead to loss of futurity, which produces a general political stagnation.²¹² Millon also argues that the articulation of "wounded" identities restricts the capacity for forward-looking political discourse, as the imperative to seek justice and heal for abuses is countered by damages wreaked by political powerlessness.²¹³ In her view, invoking the rhetoric of woundedness, abuse, and oppression to try to seek justice can be paralyzing as struggles for justice and self-determination are not the same and cannot necessarily be achieved through the same avenues for change.²¹⁴

These insights help differentiate between the various objectives that are articulated within contemporary treaty politics; some involve seeking justice and retribution for obligations that have been neglected under treaties, while others are hopeful that if implemented properly, treaties could bring about significant healing in Indigenous communities and change to the Indigenous-state relationship, while yet others look to treaties as an affirmation of Indigenous nationhood and source of inspiration for our contemporary political orders.

²¹¹ Ibid, 22.

²¹² Ibid, 49.

²¹³ Millon, *Therapeutic Nations: Healing in an Age of Indigenous Human Rights*, 20.

²¹⁴ Millon writes that "the international law that enables Indigenous trauma to appeal for justice is the same sphere in which we articulate political rights as politics with rights to self-determination" which, on her view, are not "necessarily compatible projects." Ibid., 3.

Brown's analysis helps demonstrate the ways in which Indigenous political theories have the potential to reinforce the power dynamics we are contesting by centering our political aims primarily in opposition to the forces that we seek to reject. She also argues that a strict focus on past suffering along with the desire to turn away from state orders of classification and regulation may result in the replication of deterministic and elitist forms of knowledge production to authenticate our own imperatives and present them to one another and to external sources. In these contexts, Indigenous peoples' worldviews, tradition, and cultural knowledge can become objectified and regulated even as they are invoked to construct and reinforce boundaries in our engagements with western legal and political systems. Brown further explains that fixing the terms of political identity both reinforces the domination of the colonial system and reproduces its disciplinary functions internally. She writes that politicized identity is "potentially reiterative of regulatory, disciplinary society in its configuration of a disciplinary subject" as it "ceaselessly characterizes, classifies and specializes."²¹⁵

Rather than treating diverse traditions as living and evolving ideas and practices that are open to dialogue and reinterpretation, rigid forms of oppositionalism to external forces can thus can inscribe normative orders within Indigenous communities that are closed off from discussion surrounding their meaning and purpose. For instance, the assumption that treaty based-approaches are necessarily established upon and working within western intellectual grounds narrows the space to engage in critical dialogue surrounding the power relations and internal logics of oppression that are at play in treaty politics, and limits the possibility of engaging in conversations surrounding effective

²¹⁵ Brown, "States of Injury: Power and Freedom in Late Modernity," 49.

ways of implementing Treaties on our own terms. This severely restricts the scope of dialogue and theorization around how self-determination may be conceived of in a way that is both reflective of our traditional practices and that allows for change and adaptation to present and future contexts.

Brown's analysis highlights the need for Indigenous peoples to remain mindful of the limits of constructing our political imperatives exclusively through responsiveness or opposition to dominant regimes. Continual opposition to state-based approaches to treaties reinforces their primacy as the dominant way for treaties to be inhabited, lending legitimacy to settler myths of cession and surrender. This is also true when Indigenous populations that haven't signed treaties invoke treaties as evidence of their own ongoing title. As I argued in the introduction to this dissertation, when Indigenous communities evidence the unceded nature of the territories they inhabit through reference to the fact that they have never surrendered their lands through treaties, they inadvertently reinforce the view that treaties represent transactions of land cession. This limits the possibility for a comprehensive understanding and analysis of the sources of suffering, which is that treaties have been interpreted and implemented in a way that has functioned to justify violence and dispossession of Indigenous peoples.

Critiques of colonial violence and abuses, including those committed under the guise of treaties, can have a crucial role in elucidating the logics of oppression responsible for our suffering, but we must be cautious not to allow the state's interpretation of treaties to direct the entire configurations of our political movements. Thus, it is important that Indigenous peoples balance our efforts to critique and deconstruct treaty mythologies with equal focus on our internal political interests and

goals. Instead of writing off treaties entirely, we would be better served to identify the limits of specific understandings of treaties, such as the transactional approach, and ensure that we are not inadvertently reproducing those internally within our communities.

If Indigenous peoples' ideals of freedom are constituted in attempts to oppose or critique the negative experiences we have had in our treaties with settlers, we must be careful that we don't begin to position treaties themselves as the sources of our oppression. This would limit our capacity to theorize strategies of self-determination and autonomy that are grounded upon a healthy understanding of treaties. Indigenous approaches to treaty implementation should certainly account for past experiences of injustice, and while the project of seeking justice for colonial violence through treaties may have clear limits, it is also important to remember that this project is distinct from the ways that treaties can represent an affirmation of Indigenous nationhood and how they can inform the revitalization of our traditional governance practices. We might also take care to reflect upon and identify aspects of treaties that are meaningful while leaving violent and oppressive ways of inhabiting treaties aside. The fact that the current configurations of power preclude a nation-to-nation relationship should not deter Indigenous peoples from contemplating a more relational vision of treaties as the grounds for our own community politics, allowing us to employ governance frameworks that presume a moral equivalence among all living beings and are informed by the natural laws that were intended to be sustained through practices of treaty-making.

A potential strategy to help us think about treaties in a future-oriented and productive way may involve shifting the character of political discourse away from a focus on the Crown's record of treaty implementation and towards the question of what

treaties mean to us as Indigenous peoples. Brown proposes that one way of overcoming the limits of identity-based investments involves converting the language of ‘being’ to that of ‘desire,’ which can invite a shift away from liberal articulations of self-interest and towards the reconfiguration of collective political pursuits. Along a similar vein, Million’s emphasizes the importance of asking the forward-looking question “What will our nation be?” in conceptualizing the composition of community governance.²¹⁶ While Million is referring to practices of social and political imagination, she is also speaking to the importance of enacting the transformations we envision for our communities through processes that are relevant and important for us as Indigenous peoples.

Million demonstrates that Indigenous philosophies of relationality are distinctly political, and can contribute to a vision of nationhood by constituting political identity not through opposition to colonial violence, but through doing what we’ve always been doing as Indigenous peoples. She powerfully states, “it is in the practice of Indigenous philosophy and its differently performed politics that we produce and find self-determination performing into strength those practices that do vex and move nation-states in these new times.”²¹⁷ Million, then, is not dissuaded by the asymmetrical power relations between Indigenous peoples and the state, and sees significant transformative potential in the ways that our traditional practices of relating with one another constitute a vision of nationhood that can upset and transform nation-states while even more importantly, reorienting our political orders within Indigenous communities. In the context of treaties, I would argue that the theoretical foundations for our political orders already exist in the oral histories and accounts of the spirit and intent of treaties that

²¹⁶ Million, *Therapeutic Nations: Healing in an Age of Indigenous Human Rights*, 145.

²¹⁷ *Ibid.*, 180.

treaty Elders have shared with future generations. However, Indigenous people have yet to imagine ways in which we can enact the spirit and intent, or use it to ground our political processes independent from efforts that require state recognition of the treaty relationship.

As the previous chapter demonstrated, Indigenous peoples have never been passive recipients in the treaty relationship, but have since their negotiation sought to revisit and renew them. Over time, there have been differences in the ways that this project has been taken up. As Tobias notes, while treaty Chiefs initially sought to negotiate revisions of treaties or continue dialogue surrounding treaty terms in the years following their negotiation, over time the treaty rights movement evolved in response to changing colonial policies. Those who were part of the treaty rights movement in the early 1900's sought to protest assimilatory policies, residential schools, bans on traditional ceremonies, the reserve system, and other specific policies.²¹⁸ Yet along with the rise in Indigenous forms of resistance was also accompanied by more concentrated colonial efforts to quell Indigenous political mobilization. Over time, Indigenous peoples increasingly found ourselves turning to the courts to gain protection against or remedies for rights infringements. By the 1950's and 60's many Indigenous regional, provincial and territorial groups were organized in Canada to protest sub-standard living conditions on reserves, the appropriation of Indigenous lands, restrictions on Indigenous cultural and political actions, and environmental destruction caused by development and energy initiatives. Around this time, Indigenous peoples across North America were once again engaging in more direct action to object to colonial oppression, including gendered

²¹⁸ Tobias, "Ahchuchwahauhhatohapit."

oppression, and uniting Indigenous peoples in this opposition. Indigenous resistance to the denial of Indigenous peoples' fundamental human rights and specific Aboriginal and treaty rights would ultimately result in the entrenchment of Aboriginal and treaty rights in s.35 of the *Constitution Act*.

In 1982, the repatriation of the *Constitution Act* confirmed the constitutional status of treaties, initiating a heightened degree of attention dedicated to the political potential of the Numbered Treaties as questions surrounding Aboriginal and treaty rights, self-government and representation gained currency within constitutional discussions. A wave of political and academic efforts took up the possibilities of restructuring existing systems in ways that would allow for the implementation of treaty relationships between governments. Theories on treaty federalism and treaty constitutionalism conceived of a governmental system defined by the nation-to-nation configuration of treaty relationships envisioned by Indigenous parties to treaty.²¹⁹ While the treaty federalism discourse did the important work of theorizing how Indigenous political orders could be integrated with Canadian ones, the limited prospects of changing the structural configurations of the Indigenous-state relationship became increasingly apparent over time. Even after being formally recognized in the *Constitution Act* and becoming entrenched in Canadian law and policy, there has been a host of issues that have plagued the translation and interpretation of Treaties in the Canadian courts.

Judicial interpretation of s.35 and recognition of Indigenous rights of self-governance has resulted in shifts in Canadian policy that have opened up some space

²¹⁹ Kiera Ladner, "Treaty Federalism: An Indigenous Vision of Canadian Federalisms," in *New Trends in Canadian Federalism*, ed. Francois; Smith Rocher, Miriam (2003); James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge University Press, 1995); James Youngblood Henderson, "Empowering Treaty Federalism," *Sask. L. Rev.* 58 (1994).

(even if only limited) for Indigenous nations to free themselves from some aspects of the Indian Act. Yet while conversations surrounding s.35 of the *Constitution Act* initially took up the question of whether the recognition of Aboriginal and treaty rights would result in significant change to the treaty relationship and include a right to self-government, over time these discussions devolved into more limited visions of Aboriginal and treaty rights.

Indigenous governance bodies such as the FSIN have previously engaged in efforts to implement the spirit and intent of treaties through the establishment of treaty-based structures of governance that would move outside the *Indian Act* and develop a governance framework grounded upon a nation-to-nation understanding of treaties. While they were initially able to arrive at an Agreement-in-Principle that theoretically acknowledged the spirit and intent of treaties, these negotiations were ultimately unsuccessful as federal and provincial governments were unable to break away from existing policy boundaries. In other words, they wanted to avoid the establishment of a multi-tiered treaty-based governance system; as Janique Dubois notes, “it became increasingly difficult for the parties to let go of the colonial vocabulary that has informed Canada’s relationship with First Nations.”²²⁰ The discrepancy was most apparent around issues of jurisdiction, as the parties agreed in principle that treaties were agreements between self-determining peoples and that a treaty-based governance system would thus involve a multi-tiered structure, “they did not fully embrace what this entailed in practice.”²²¹ The failure to move away from the existing configurations of the

²²⁰ Janique Dubois, ““We Are All Treaty People”: Assessing the Gap between the Dream and the Reality of Treaty-Based Governance in Saskatchewan,” *Nouvelles pratiques sociales* 27, no. 1 (2014): 43.

²²¹ *Ibid.*, 44.

Indigenous-state relationship speaks to the state's ongoing reticence to commit to treaty implementation in a way that would involve concrete political change, and its ongoing failure to take seriously the political nature of treaties generally. While Indigenous, federal and provincial governments have managed to work together to propagate the message that "we are all treaty people" through billboards, educational materials and public speaking initiatives, the spirit and intent of treaties remains just that; an essence or hypothetical intention, but never a concrete practice.

It might be worthwhile, then, to think about Indigenous efforts to enact and embody the spirit and intent of treaties as a resurgence of treaty relationality, as it involves imagining and employing concrete strategies to put theory into action in the everyday. An ethic of resurgence may help affect the shift away from treaty rights "claims" and towards a community-driven politic where Indigenous peoples and other living beings draw upon our own philosophical resources and are active agents, rather than passive victims in determining the configurations of our futures. Such a focus on the collective is not intended to harden boundaries or cultivate an internal unity or sense of homogenous political norms, but instead to invite conversation and critique around competing collective imaginations. This could strengthen the capacity for dialogue and engagement with a variety of perspectives within the collective, allowing the space for individual contestation and involvement in community politics while cultivating a more inclusive and participatory atmosphere for political engagement. Employing an ethic of treaty relationality in contemporary contexts can help broaden Indigenous peoples' collective political efforts while grounding them in our traditional modes of relating if it is shaped around strengthening our communities from within rather than strictly through

contrast with the way treaties have been neglected by the state. Furthermore, it has enormous potential at the interpersonal level by helping to inspire “everyday” strategies of inhabiting healthier relations with one another and the world we live in.

Conclusion: The Resurgence of Treaty Relationality

Treaties can provide an important model of co-existence for Indigenous peoples to ground our understandings of governance on the practices we’ve already been engaged in for thousands of years, rather than articulating our visions of governance as “claims” that require Indigenous peoples to shape our political identities through terms imposed by the settler state. When treaties are written off because of the way they have been inhabited by settlers, we stand to center the transactional approach even further by labelling treaties as finished business and by reproducing notions of boundedness and hierarchy between communities. Conversely, if we understand treaties as relationship frameworks, but ultimately forfeit these practices of living our interrelatedness because of the way they have been misconstrued in our engagements with settlers, we stand to lose some of our most important frameworks for living-in-relation. Further, this continues to give the state the authority to determine or delimit the ways in which we theorize about the future, and can lead Indigenous peoples to overlook the important possibilities that treaty-based modes of relating can offer the development of alternative political arrangements. While critical analyses of the Crown’s record of treaty implementation can help deconstruct and challenge the power relations underlying colonialism, Indigenous people also require an organizing framework that can help us work towards the restoration of our ways of life through political action and discourse that is meaningful to

our communities. To this end, treaties can provide enormous inspiration if Indigenous peoples act upon them not on the basis of what they mean to settlers, but what they mean to us.

Thinking about treaty implementation through a relational understanding can allow Indigenous peoples to assert our political goals in ways that are reflective of our fundamental interdependence rather than strictly thinking about treaties through reactive or oppositional strategies. Instead, a relational understanding of treaties can facilitate the resurgence of our customary ways of relating with other communities and the world we live in. It offers significant promise for informing a renewed vision of the distinct responsibilities of treaty partners at personal and collective levels and for transforming contemporary social and political relations within and between groups. It serves a radical function for Indigenous peoples by providing culturally specific grounds upon which to engage in processes of resurgence and mobilize politically towards visions of decolonial freedom. At the same time, it recognizes our relationships of interdependence with one another and the world we live in, and serves an important mediating function by providing an example of how to balance contradictory impulses, resolve disputes and engage in respectful and reciprocal interactions between diverse entities in the natural world.

The resurgence of a treaty based ethic of relationality necessarily involves the revitalization of our ability to practice the relationships with people, places and practices that were disrupted through colonialism. Renewal of these connections requires us to confront the impacts of colonialism and engaging in resistance to its contemporary manifestations, however the resurgence of treaty relationality also involves broadening

our focus beyond the realm of decolonization. While the discourse of decolonization serves an important diagnostic purpose, resurgence involves strengthening the political capacities of our communities on our own terms. Perhaps the most transformative part of employing a relational understanding of treaties is the process of reorienting our understandings of law and politics within Indigenous communities rather than the immediate outcome.

As we begin to engage in more harmonious and balanced relationships with one another, we can rebuild our customary forms of governance, education, law, and institutions in other realms of life. Within these spaces, Indigenous people have the opportunity to theorize understandings of freedom and autonomy that are reflective of our own philosophical traditions.²²² Thus, the process of determining how we can ground our contemporary notions of law and politics upon treaties can also contribute to the development of localized frameworks and vocabularies for theorizing and articulating Indigenous visions of freedom. The erasure and silencing of Indigenous peoples is an integral component of colonialism, and reasserting our presence as well as our suppressed knowledges and histories plays an important regenerative role within our communities.²²³ The resurgence and politicization of suppressed knowledges can thus subvert colonial oppression on many levels and challenge the stories and myths that legitimate colonialism.

To work towards the resurgence of an ethic of relationality, Indigenous people can direct our attention to the significant role that our everyday interactions play in

²²² John Borrows, *Freedom and Indigenous Constitutionalism* (University of Toronto Press, 2016).

²²³ Silva, *Aloha Betrayed: Native Hawaiian Resistance to American Colonialism*; Memmi, "The Colonizer and the Colonized. 1957."; Fanon, "Black Skin, White Masks [1952]."; Goodyear-Ka'opua, Hussey, and Wright, *A Nation Rising: Hawaiian Movements for Life, Land, and Sovereignty*.

defining and pursuing our political objectives and priorities. A focus on the everyday positions treaty relations as a dynamic and ongoing processes that are constantly changing, comprise a multiplicity of relations and are open to dialogue and interpretation. While treaty implementation certainly requires change to macro structures of power, it can be engaged in small but meaningful ways in various realms of life. It can help conceptualize practices of living-in-relation as an ongoing way of life rather than something to be accomplished all at once, directing our attention to the ways we can embody treaty principles within the existing relationships we inhabit.

While approaches to treaty implementation can vary substantially depending on the ways in which they are interpreted and invoked, moving beyond a transactional approach towards a more relational interpretation gives rise to a much broader range of ways of keeping treaties alive in contemporary contexts. The next chapter introduces several dimensions of treaty relationality in order to describe the spiritual, social, economic and political implications of the distinction between a relational and transactional understanding. However, it also seeks to further the proposition that when conceptualized as a protocol that can be used to maintain respectful relationships amongst and between living beings, treaties can provide an important reference point for contemporary Indigenous political movements.

Chapter 3 – Dimensions of Treaty Relationality

Thus far this dissertation has suggested that the Crown's interpretation of treaties as land transactions lies at the root of the myriad socio-political issues faced by Indigenous peoples today. Furthermore, it has articulated the need for treaty implementation strategies that are grounded upon philosophies of relationality rather than a transactional mindset. Yet what does an understanding of relationality as expressed in treaties entail? This chapter seeks to provide insight into Indigenous conceptions of relationality by drawing on the perspectives of treaty Elders to elucidate the values that were traditionally used to inform treaty relationships between living beings. These values are integral to the establishment of contemporary institutions that can better the lives of Indigenous peoples, and thus provide an important foundation for the imagination of healthier ways of inhabiting our relationships today.

Looking to the nature of the treaty relationship as understood by Indigenous peoples involves exploring Indigenous oral histories and traditions of treaty-making in such a way that doesn't minimize their legal and political ramifications. It involves breaking down the literal and figurative boundaries that treaty mythologies have erected, and creating space for Indigenous perspectives on the nature of the treaty relationship to inform the development and change of policy and law. As Chief Dennis Whitebird stated:

These are the boundaries, the imaginary boundaries where we're kept in an institution. We have our own little concentration camp, being the reserve, and we have our responsibilities, which we cannot go beyond otherwise we're conflicting with provincial authority. We're conflicting with federal authority. I think that there's got to be an open mind somewhere in order for us to succeed.”²²⁴

²²⁴ Dennis Whitebird, Exploratory Treaty Table Justice Symposium, Oct 28 - 30, 2002, Saskatoon, Saskatchewan, transcript, 170.

In my interpretation, Chief Whitebird is referring to the confinement of Indigenous authority that exists due to ongoing jurisdictional disputes that inhibit our ability to govern over our own affairs as agreed in the treaty relationship. Indeed, many treaty Elders argue that to address contemporary social and political issues, we must begin by returning to the foundations of the treaty relationship itself. As Elder Musqua points out in a discussion surrounding the role of treaties in restructuring the justice system “there is a process, there is a place by which we can appear to begin that process, and that's through the treaties, understand those treaties more intricately.”²²⁵ My understanding of Elder Musqua's statement is that treaties can be used to address a range of issues but in order to look to them to inform contemporary processes, we must understand them in a deeper way.

The transactional view limits the application of treaties by confining them to the written terms kept by the Crown. Yet treaties have the potential to identify values and precepts that we can use to inform our engagements with the Crown and with others, so that we do not get swept away in discussions that take the configurations of the colonial relationship as a given. By looking to the intended nature of the treaty relationship, it becomes possible to think about the values they embody so that we can then contemplate how to bring those forward to the contemporary context. To attempt to ascertain the intentions underlying treaties, I have sought to contemplate the meaning inherent in metaphors and phrases that are commonly used by Indigenous peoples to describe them. As Neal McLeod has observed, much of the meaning of treaties is inherent in the

²²⁵ Danny Musqua, Exploratory Treaty Table Justice Symposium, Oct 28 - 30, 2002, Saskatoon, Saskatchewan, transcript, 450.

metaphors and symbolism used by Indigenous peoples in the late 1800's, and interpretations that don't include any metaphorical thinking do not account for the worldview of the Elders and Chiefs who negotiated treaties.²²⁶ When these metaphors, analogies and descriptions are taken into account in dominant representations, they are often interpreted in a way that lends legitimacy to a transactional understanding. This chapter involves a relational interpretation of three dimensions of treaties that are commonly described by treaty Elders and knowledge keepers. Taken together, these aspects of treaties demonstrate that they constitute not just a framework for a spiritual and social relationship, but also a process for the maintenance of a legal and political relationship as well.

Treaties as Sacred Covenants

The overarching, most significant dimension inherent in a relational understanding of treaties is their sacred nature; that is, that they are agreements made under the laws of creation, are reflective of the interrelatedness of the whole of creation, and are processes intended to govern the interactions and interplay of different elements of creation. In other words, they are relational in that they are only made possible *in relation to creation*. While the transactional approach represents treaties as agreements between settlers and Indigenous peoples that are intended to facilitate the exchange of land, a relational approach recognizes treaties as tripartite agreements between the Crown (on behalf of newcomers), First Nations, and the Creator to outline terms of co-existence

²²⁶ Neal McLeod, "Rethinking Treaty Six in the Spirit of Mistahi Maskwa (Big Bear)," *Canadian Journal of Native Studies* 19 (1999): 72.

of living beings in shared spaces.²²⁷ The relational character of treaties is perhaps best understood within a worldview that recognizes the fundamental interconnectedness of humans with the land, waterways, animals, plants, the spirit world and the rest of creation, past and present.

The “sacred” dimension of treaties is often represented as evidence of the fixed and inviolable nature of agreed-upon terms. As Justice Lamer in *Sioui* wrote in relation to the question of the extinguishment of treaty rights: “It must be remembered that a treaty is a solemn agreement between the Crown and the Indians, an agreement the nature of which is sacred: *Simon, supra*, at p. 410, and *White and Bob, supra*, at p. 649. The very definition of a treaty thus makes it impossible to avoid the conclusion that a treaty cannot be extinguished without the consent of the Indians concerned.”²²⁸ Such language interprets the sacred nature of treaties as evidence of their permanence and constancy, yet while treaties were intended establish continuous relations, they were also intended to be dynamic and evolving over time.

While acknowledging their sacred nature, judicial interpretations continue to position treaties as relations between human communities, subject primarily to human (western) laws. Indeed, Crown interpretations of Treaties generally overlook the ongoing role of the Creator in treaty-making, and how the laws of the Creator were meant to inform an ongoing process for engagement. While dominant histories often reference the spiritual ceremonies and protocols involved in treaty-making to illustrate their cultural

²²⁷ Cardinal and Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations*, 32.

²²⁸ *R. V. Sioui*, [1990] 1 S.C.R. 1025.

meaning and significance, the sacred nature of treaties has distinct legal and political significance as well that is all too often overlooked.

Throughout the Treaty 4 proceeding, Indigenous peoples drew on their relationship with the Creator not as a way of merely indicating the finite nature of treaty terms, but rather as a way of clarifying the sacred and legal nature of the relationship being entered into. For example, Che-e-kuk (the Worthy One) observed during negotiations, “My ears are open to what you say. Just now the Great Spirit is watching over us, it is good. He who has strength and power is overlooking our doings. I want very much to be good in what we are going to talk about, and our Chiefs will take you by the hand just now.”²²⁹ Treaties are viewed by Indigenous peoples as sacred agreements because they brought the Crown into their relationships with creation. Such references to the Creator’s presence in negotiations made it clear that Indigenous peoples entered into treaty discussions with an awareness that any agreements between humans were subject to the laws of the Creator. As described earlier in this dissertation, the Crown employed the language of kinship to describe the nature of the relationship that would be established between Indigenous peoples and settlers, however the Crown failed to understand how Indigenous peoples regard non-human living beings as our kin as well, thus overlooking the role of the rest of creation in treaties.

When understood as agreements made under the laws of the Creator, treaty-based modes of relating point to the limits of efforts to govern human relations apart from creation, and challenge atomistic and anthropocentric understandings of humans as distinct from, superior to, and in a position of dominance over the natural world. A

²²⁹ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 116.

relational understanding emphasizes Indigenous peoples' perpetual position of interdependence with the living earth, and demonstrates instead that human actions and interactions must always be informed by the laws of the Creator as well as human laws.

Given that the relationship to creation was of central importance to individual and community wellness and survival, it was first and foremost that relationship which had to be protected against interference from newcomers. Oral histories indicate that Indigenous negotiators foregrounded the need to account for pre-existing relationships in the 1874 negotiations. As Cardinal and Hildebrandt observe, “[The Elders] emphasized that the First Nations’ first and foremost objective in the treaty-making process was to have the new peoples arriving in their territories recognize and affirm their continuing right to maintain, as peoples, the First Nations relationships with the Creator through the laws given to them by him.”²³⁰ Indeed, in negotiating Treaty 4, Indigenous peoples sought explicit acknowledgment from Crown negotiators that their relationships with creation would not be jeopardized, but also that the ways of life involved in protecting this relationship would remain intact. Elder Musqua recalls his Grandfather (Kakakaway or Light Standing Ready) asking Alexander Morris during treaty negotiations “What about the things that I eat what about the way that I speak? [...] What about the way that I govern myself? What about that? What about the lands that I hold sacred to me?”²³¹ Elder Musqua clarified that his grandfather was talking about his hunting territories, the fishing territories, and the gathering territories, and all those things that were sacred to the survival of the people. To these questions Morris replied: “kaween, kaween, kaween

²³⁰ Cardinal and Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations*, 7.

²³¹ Musqua, "Treaty No. 4 Elders' Forum," 18 - 20.

doose, Nono, no, no, no my son, I don't want your food. I don't want those things that are sacred to you which is your water. [...] We don't want that.”²³²

As Elder Musqua's records indicate, the relationship with the Creator represents more than the ability to continue spiritual practices and traditions, but also materializes in the ways of life that flow from that relationship. The late Elder Dolly Neapetung emphasized the need to keep this way of life alive, “the Creator gave us ways to live, and we must take care never to lose them and to keep using them.”²³³ Treaties thus emphasize principles of continuity in Indigenous spirituality, but are also intended to ensure that Indigenous peoples would sustain the ways of life given to them by the Creator. Maintaining relations with the Creator includes continuing to live a way of life that is governed by the laws of creation, along with the ability to carry out our various responsibilities as humans to the rest of creation. Thus, we must regard the laws of the Creator as continually informing the process of living through treaties. For instance, the concept of *wahkohtowin* emphasizes recognition and respect for the relationships we inhabit with all living beings. As Elder Gladys Wapass-Greyeyes explained, “*wahkohtowin* is a term like you can be related to one another and you can be related to the nature, the natural laws around you.”²³⁴ The laws of *wahkohtowin* govern all relations, and are thus inherent in the nature and intent of treaties as understood by Indigenous peoples; as Elder Alma Kytwayhat observed,

what our ancestors did, they smoked the pipe together and they held hands together, just as the plants, the treaties, by the roots connecting one another holding hands inside Mother Earth's body. To us that's a symbol of relationship,

²³² Ibid., 18-20.

²³³ Dolly Neapetung, Exploratory Treaty Table Justice Symposium, October 28 - 30, 2002, Saskatoon, Saskatchewan, transcript, 173-76.

²³⁴ Gladys Wapass-Greyeyes, Exploratory Treaty Table Justice Symposium, October 28 - 30, 2002, Saskatoon, Saskatchewan, transcript, 221.

wahkohtowin. Your ancestors came over here to our ancestors to relate to them, to develop a relationship, and today we're still struggling. We talk about let's work together, let's get along together so that we will be able to live with one another in this country, on this Mother Earth."²³⁵

The teachings of *wahkotowin*; described by Elder Amelia Potts as encompassing relationships, love, compassion and understanding, stand in contrast to the individualism of western society. As Elder Potts explained, "an example would be people helping each other without money, you helped and if you didn't have any -- you helped until you had nothing. As long as you had something you helped your relations."²³⁶ She explains that concept of *wahkohtowin* is a central value in maintaining the relationships that strong Indigenous nations are grounded upon, "Relationships are important. They're what binds the group, the Indian nation, and they're no longer present."²³⁷ *Wahkohtowin* contains important principles that can help facilitate our learning about the values that inform our relationships, and illuminate personal and collective roles and responsibilities to individuals and places that we share our existence with.

Additionally, harmony and balance are maintained through *miyo-wicehtowin*, the principle of having and maintaining good relations with others. As Harold Cardinal and Walter Hildebrandt explain, the term directs Cree peoples "as individuals and as a nation to conduct themselves in a manner such that they create positive or good relations in all relationships, be it individually or collectively with other peoples."²³⁸ The doctrines of *wahkohtowin* and *miyo-wicehtowin* include the guiding principles that surround the bonds

²³⁵ Alma Kytwayhat, Exploratory Treaty Table Justice Symposium, Oct 28-30, 2002, Saskatoon, Saskatchewan, transcript, 459.

²³⁶ Amelia Potts, Exploratory Treaty Table Justice Symposium, Oct 28 - 30, 2002, Saskatoon, Saskatchewan, transcript, 187.

²³⁷ *Ibid.*, 185.

²³⁸ Cardinal and Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations*, 14.

of human relationships, and act as essential means of restoring peace and harmony in times of personal and community conflict.²³⁹

The laws of creation are intended to facilitate harmony among living beings, and thus require Indigenous peoples to acknowledge our interdependence and inter-relatedness with all others. This involves a commitment to recognize our mutual strengths and work with others across difference. As Elder Jacob Bill indicated,

[...] our people across the nation, our Indian people, they were put on this earth to get, to live harmoniously with the abundance that Mother Earth provides. This is where relationships are great because as we sit here, we are all related, it all stems from that harmonious living. We all come from the same, from the Creator. Standing alone we cannot do things by ourselves, we always have to depend on the Creator because that's how we were put on this earth. These are the blessings that we get from the Creator on the things that we ask for as different races. We should not work against each other, we have to come together to try to work together, share ideas, working together, that's the key factor because of the fact where we come from. One of the natural laws states not to look down upon another race or another person because this is, that's part of that, is that when we do that, it's only us that's going to suffer on that, if we do look upon, as a lower, putting somebody down.²⁴⁰

By looking to the spectrum of laws informing them, treaties can provide significant insight into harmonious and peaceful measures of co-existence. Under the laws of the Creator, harmony and order is defined and operates through relationships. Treaty Elders also emphasize the importance of living in a place of care for others, explaining that respect, honesty, kindness, and sharing are all paramount to maintaining good relations. The practice of sharing the land through treaty-making is itself reflective of values of sharing and caring for one another. As Chief Whitebird explained, “in terms of that nationhood, I think that our Elders and our ancestors knew that there was -- that

²³⁹ Ibid., 15.

²⁴⁰ Jacob Bill, Exploratory Treaty Table Justice Symposium, October 28 - 30, 2002, Saskatoon, Saskatchewan, transcript, 783.

there was new people that were going to come on to our land from what I hear from the Elders, and I think that they knew that they were coming, and they knew that we had to share, and for us that is a major -that is one of our values is to share and to care. I think these are all values that I have heard throughout my practice in exercising my rights with our Elders.”²⁴¹ Such values are modelled upon the workings of the natural world, which shares its bounty with humans and cares for us by providing us with the necessities of life. The principle of sharing can be used to inform our contemporary approaches to treaty implementation; while the Elders maintain that treaties did not represent a transactions or sale of land, they generally agree to the notion that treaties represented a relationship of sharing the land. It also evidences our nationhood; as nations, we were able to assent to sharing the land with another nation. It speaks to the notion of shared sovereignty, can be regarded as an aspiration to inform more just relations today.²⁴² As the RCAP notes, “Aboriginal nations have accepted the need for power sharing with Canada. In return, they ask Canadians to accept that Aboriginal self-government is not, and can never be, a 'gift' from an 'enlightened' Canada. The right is *inherent* in Aboriginal people and their nationhood and was exercised for centuries before the arrival of European explorers and settlers. It is a right they never surrendered and now want to exercise once more.”²⁴³ Having emerged from the relations of sharing inherent in the natural world, the principle of sharing can also be used to inform healthier relations between humans and creation once again.

²⁴¹ Whitebird, "Exploratory Treaty Table Justice Symposium," 167.

²⁴² Royal Commission on Aboriginal Peoples Canada, "People to People, Nation to Nation: Highlights from the Report of the Royal Commission on Aboriginal Peoples, (Minister of Supply and Services Canada, 1996).

²⁴³ Ibid.

Similarly, Elder Wapass-Greyeyes describes how four sacred elements (fire, rocks, water, and the wind) were used in signing the treaties, and that these describe notions of care inherent in our relationship with Creation. She notes how each of the elements has a spirit that takes care of us; the Fire spirit “is there to warm us up, to be there [...] when we burn our sweetgrass.”²⁴⁴ The rock is the element that represents our grandfather’s spirit, that “sits in the bottom of the ocean, the rivers, the lakes and the valleys. That’s the spirit that listens to us and hears our every word” and carries our history and knowledge.²⁴⁵ The water is the life-giving element, the veins of Mother Earth. The birds, animals, the fish utilize that water to maintain a healthy existence, as it washes all the toxins out of our systems.²⁴⁶ And the spirit of the wind, blows away pain and hurt, and carries our prayers to the Creator: “If you feel so bad and hurting and you can’t talk to anyone or you’re sad, you’re lonely, go out there, or you’re angry at somebody or someone or something, before you say anything that might hurt other people’s feelings, walk out there, ask that spirit of the wind to blow away all that bad feeling, that hurt feeling, but don’t be afraid to ask for that spirit to leave good feelings within you.”²⁴⁷ Each of these elements teaches us about principles inherent in the natural order that help to maintain relationships, and how to live in a place of care for one another in perpetuity.

Other values inherent in the sacred nature of the treaty relationship can be seen in the ceremonies and protocols used during treaty negotiations. As Chief Willie Littlechild explains:

if I understand it correctly, the pipe was used at treaty time, and that pipe holds values and principles, and that’s what should be reflected in the -- in the doctrines

²⁴⁴ Wapass-Greyeyes, "Exploratory Treaty Table Justice Symposium," 231.

²⁴⁵ *Ibid.*, 591.

²⁴⁶ *Ibid.*

²⁴⁷ *Ibid.*, 231-32.

that you refer to, wahkohtowin, pastahowin, and I'll give you just four very quick values and principles that at least the way I was raised that the pipe represents. The values and principles of honesty, that's one of them, because honesty is reflected in the pipe stem. You'll never see a crooked pipe stem in an Indian pipe. It's always straight and that represents the honesty. Kindness, when the sweetgrass was used at treaty time, if you were to put your hand as you know above the smoke of the sweetgrass, that's how kind we were supposed to be. Sharing and strength are two others that I won't dwell on, but those are the values and principles as I understand it should be reflected in the treaty relationship [...]²⁴⁸

The visions of relationality that Indigenous negotiators brought to treaties positioned the possibilities of co-existence between humans as flowing from our relationships to creation. Looking to creation for direction in our interactions with other human beings means looking at the properties of the ecosystems we inhabit to gain a sense of how different parts of the natural world sustain and nourish one another.

When we understand the self as shaped by the relations we inhabit; that is, as dependent upon and situated within relations of interdependence with the living earth, we are invited to rethink the very nature of our existence in the world, and provided with guidance around living in accordance with our traditional notions of law and governance. Indeed, treaty Elders teach us that if we're going to talk about and live by the treaty, we have to look to our natural laws as part of that relationship today. By looking to creation, we can gain important lessons about how to account for these various relations as we aim to co-exist across difference, as it can teach us how we impact and are implicated in the lives of those we share our existences with. As Elder Pauline Mercredi explained "Some of the teachings in terms of respect is you never walk by anyone who needs help. If you can help them, you have to help them [...] respect, love and honour, those types of things

²⁴⁸ Willie Littlechild, Exploratory Treaty Table Justice Symposium, Oct 28 - 30, 2002, Saskatoon, Saskatchewan, 146.

were very prevalent in terms of how people got things done in the community. We have to respect each other. In the eyes of the Creator, we are all brothers and sisters and, again, respect, honour, respect one another, respect yourself, health, love, care and care for all.²⁴⁹

Awareness of our interconnectedness within networks of creation challenges the western notion of humans as autonomous, self-created and self-sustaining beings, and helps shed light on alternative ways of thinking about our roles and responsibilities to other human communities and to creation. Recognition of our interconnectedness and of the moral equality of all living beings also helps us look to the living earth to learn about the actions needed to inhabit relations properly. It means looking at the way that that animals share the territory with one another, with the other beings, and how these all depend upon one another for their wellness and survival.

The living earth's ability sustain itself cannot be attributed to any single living being or species as neither plants, humans, or animals can sustain ourselves in isolation. It is only through a process of mutually supporting and nourishing one another that the natural world is able to continue to exist.²⁵⁰ As humans living under the laws of the Creator, our role is to understand the order in that relationship, and then try to model our human relations upon them as was accepted through treaties. From observing the living earth we learn about harmony, balance, sharing, living in a place of care, interdependence, reciprocity, non-interference, equality, symbiosis, all things that we can bring across to our human relationships.

²⁴⁹ Pauline Mercredi, Exploratory Treaty Table Justice Symposium, October 28 - 30, 2002, Saskatoon, Saskatchewan, transcript, 340 - 41.

²⁵⁰ James Tully, Reconciliation Here on Earth, in *Environment, Sustainability and Society* (Dalhousie University, Halifax, NS2014).

As one of the main goals of treaties was to bring newcomers into Indigenous peoples' pre-existing relationship with the Creator and to ensure the integrity of that relationship into the future, it is also our role as treaty partners to approach our contemporary actions and interactions through this relationship with the Creator, continually and critically reflecting about human actions and interactions in relation to our roles and responsibilities relative to creation.

Nation-to-Nation Agreements

While the previous section explained that treaties are relational in that they are made possible through Indigenous peoples' relationships with creation, I also described them as tripartite agreements between groups of living beings under the laws of the Creator. Thus, their relational character also derives from the fact that they are made possible through relationships between living beings as well. The perspective that the spirit and intent of treaties was to establish a relationship agreement is generally acknowledged by Indigenous people and settlers alike, however it is the perceived nature of this relationship that is subject to debate.

For this reason, treaty Elders are often heard emphasizing that treaties represent nation-to-nation agreements. The phrase nation-to-nation is not intended to describe the co-existence of multiple First Nations within an overarching Canadian nation, but rather a framework where multiple political entities exist in a shared space with equivalent levels of political authority in relation to one another. The key here is the retention of Indigenous nationhood and the notion of non-subordination in our relations with settlers, which follows from the view that in entering into treaties, Indigenous peoples would

retain the ability to govern our own affairs. This chapter explores the nation-to-nation character of treaties through a two-part discussion that explores both the concept of nationhood and the concept of non-subordination.

Nationhood

The static or transactional approach to treaties often positions them as a mechanism for social and economic, but not political equality. It assumes that while Indigenous peoples had the necessary degree of political authority to negotiate treaties, they nonetheless held a political status that was inferior to that of Europeans. This notion of political absence or deficiency among Indigenous peoples is described in Chapter 1. Yet on any set of criteria, western or otherwise, treaties constitute political arrangements, in that they represent the establishment of a relationship through which conflicting political interests and forces are negotiated, both spatially and temporally.

Indigenous nations made it clear through the negotiation of treaties that we had no intent to relinquish our legal and political jurisdiction over the land. As Elder Jimmy Roberts indicated in regards to the intentions of treaty signatories, “He was reluctant because in this time and age now, we refer to it as sovereignty. He didn’t want to give up his sovereignty. In so much that they had control of the land, that they had control of the resources, the trap lines, whatever their livelihood was based on.”²⁵¹ Rather than a surrender of legal and political orders, treaties represented a desire to extend our networks of relationship and bring newcomers into them. As the previous section of this chapter explained, Indigenous peoples’ jurisdiction emerges from our relationship with

²⁵¹ Jimmy Roberts, Treaty No. 6 Elders’ Meeting, November 27-28, 1997, La Ronge, Saskatchewan, transcript, 23.

creation, but as we don't own land, treaty-making represented a way of negotiating relationships of dual jurisdiction in shared spaces. Rather than a hierarchical or side-by-side relationship, the intent of treaties is sometimes represented by treaty Elders as "the expansion of the circle." In other contexts, treaty advocacy groups have adopted the language of "inter-national agreements" to describe treaties, or represented them as expressions of the "sovereign character" of First Nations. For instance, the FSIN takes the position that "The treaties, through the spiritual ceremonies conducted during negotiations, expanded the First Nations sovereign circle, bringing in and embracing the British Crown within their sovereign circle. The treaties, in this view, were arrangements between nations intended to recognize, respect and acknowledge in perpetuity the sovereign character of each of the treaty parties, within the context of rights conferred by the Creator to the Indian Nations."²⁵² While these different concepts used to describe Indigenous nationhood each have their own connotation and limits,²⁵³ I believe that they are similarly invoked in an effort to emphasize the pre-existing and continuing nature of Indigenous nationhood and act as a reminder that treaties provided a guarantee that Indigenous peoples' ability to govern ourselves would not be interfered with.

Certainly, the negotiation of treaties suggests that the Crown recognized Indigenous peoples as nations with some level of social, political and military means, and at least the requisite political authority to negotiate treaties. As John Taylor notes "although their political structure differed from that of European nations [...] The treaties recognized and confirmed the existence of the Indian political entities with whom

²⁵² Cardinal and Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations*, 41.

²⁵³ Stephanie Nohelani Teves, Andrea Smith, and Michelle Raheja, *Native Studies Keywords* (University of Arizona Press, 2015). See entry on 'Sovereignty'.

agreements were made.”²⁵⁴ While Indigenous populations were treated as political entities with the authority to relinquish our claim to the land, we were not treated as independent nations with underlying jurisdiction over the land or the ability to govern our own affairs.

Yet in negotiating the Numbered Treaties, Morris certainly recognized Indigenous peoples as having political systems with several features that were comparable to those of the West. For instance, in negotiating the Numbered Treaties, Morris drew several comparisons that highlighted similarities between Indigenous and settler governments: “but you must recollect that if *you* are a council there is another great council that governs a great Dominion, and they hold their councils the same as you hold yours.”²⁵⁵ Additionally, in the negotiation of Treaty 4, Morris attempted to draw on the same sources of political authority that were identified by treaty Chiefs; that is, the Creator.

When questioned about the Queen’s ability to grant land to the HBC, he argued that “the lands are the Queen’s under the Great Spirit.”²⁵⁶ Similarly, in the negotiation of 7, Lieutenant-Governor Laird drew on the same sources of authority “The Great Spirit has made all things- the sun, the moon, and the stars, the earth, the forests, and the swift running rivers. It is by the Great Spirit that the Queen rules over this great country and other great countries.”²⁵⁷ These references mirrored Indigenous peoples’ understanding of political authority derived from our relationship with Creation. For instance, treaty chiefs such as Ma-we-do-pe-nais observed in the negotiation of treaty 3 that “[t]he sound of the

²⁵⁴ Taylor, *Treaty Research Report: Treaty Four (1874)*, 24.

²⁵⁵ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 60.

²⁵⁶ *Ibid.*, 102.

²⁵⁷ *Ibid.*, 267.

rustling of the gold is under my feet where I stand; we have a rich country; it is the Great Spirit who gave us this; where we stand upon is the Indians' property, and belongs to them."²⁵⁸ Along the same lines, in negotiating 7, Medicine Calf further explained that Indigenous peoples' political status was not determined by our relationship with the Queen, but by our relationship with the Creator "The Great Spirit, and not the Great Mother, gave us this land."²⁵⁹ Despite using these metaphors himself to establish rapport and a common understanding with Indigenous peoples, the Crown neglected to subsequently take seriously the significance of the political authority that Indigenous peoples held under the laws of the Creator. This is largely because Indigenous peoples' forms of governance were seen as inferior to those of the West as they failed to replicate European systems of governance. Furthermore, Indigenous peoples were also seen as less civilized due to our non-Christian forms of spirituality.

While Morris recognized some common ground in, at a bare minimum, the religious beliefs of Indigenous peoples and the Crown, Indigenous populations were still positioned as inferior as their religious values and beliefs did not manifest themselves in a way that mirrored the West: "There is a common ground between the Christian Churches and the Indians, as they all believe as we do, in a Great Spirit. The transition thence to the Christian's God is an easy one [...] Let us have Christianity and civilization to leaven the mass of heathenism and paganism among the Indian tribes; let us have a wise and paternal Government faithfully carrying out the provisions of our treaties, and doing its utmost to help and elevate the Indian population, who have been cast upon our care, and

²⁵⁸ Ray, Miller, and Tough, *Bounty and Benevolence: A Documentary History of Saskatchewan Treaties*, 79.

²⁵⁹ Hildebrandt, Rider, and Carter, *True Spirit and Original Intent of Treaty 7*, 243.

we will have peace, progress, and concord among them in the North-West.”²⁶⁰ Any perceived similarities between Indigenous and settler religious beliefs provided the groundwork for assimilatory efforts and created an avenue for the subsequent implementation of western laws and policies on Indigenous populations.

Jill St. Germain has theorized that settler governments may have invoked the absence of Christianity to evidence the need for civilizing initiatives as it offered “a vital rationalization for what otherwise might be suspected as an unwarranted eviction of the Indians from their own lands.”²⁶¹ To legitimize Crown claims to jurisdiction and title over Indigenous territories, Indigenous legal and political structures had to be deemed of a lesser status to those of colonizers. The delegitimatization of Indigenous political orders occurred through several strategies, including those that invoked racist and evolutionary discourses of civilization to minimize the existence of Indigenous nationhood and justify the extension of Crown authority.

Colonialism both past and present has relied upon the distinction between traditional and modern that underlies notions of progress, development, and civilization to provide the ideological justification for the extension of settler laws and regulations on Indigenous peoples and their lands. The standard of civilization is based on a temporal distinction that casts Indigenous peoples as inhabiting a primitive state that is earlier on an evolutionary scale, in comparison to the more advanced or ‘modern’ existence of western states. As Veracini writes, “Disposing of legitimate indigenous sovereignty, that is, ‘lasting’, and fantasizing about permanently subordinating the survival of the

²⁶⁰ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 296.

²⁶¹ St. Germain, *Broken Treaties: United States and Canadian Relations with the Lakotas and the Plains Cree, 1868-1885*, 103.

indigenous collective to the agency of an enlightened exogenous one are probably the most fundamental tropes of all settler colonial narratives.”²⁶² This distinction renders European forms of sovereignty as the only legitimate form of governance, and locks Indigenous prerogatives in the past by seeing us as uncivilized, primitive, and inhabiting a different period in time than settlers.²⁶³ It also positions Indigenous peoples as dependent on the goodwill of settlers to bring us into a more advanced period to ensure our survival.

Yet even though such standards of civilization have been widely discredited, the socio-political structures, such as the laws and government policies that were built upon them continue to impact Indigenous peoples in concrete ways. As Borrows has observed, discriminatory customs such as the doctrine of discovery continue to undergird Aboriginal and treaty rights jurisprudence in Canada to the present day.²⁶⁴ Yet as he also notes elsewhere in his discussion of the “originalist” tendencies in constitutional interpretations of Indigenous rights, “It is time to reject archaic and misguided customs and traditions that lie at the heart of Canadian constitutional law, particularly when they rest on Indigenous peoples’ legal inferiority. The reasons for considering Aboriginal peoples to be constitutionally inferior have been discredited and should have long since

²⁶² Lorenzo Veracini, *The Settler Colonial Present* (Springer, 2015), 74.

²⁶³ Scholars such as João Urt have argued that the Western system of states’ reliance on linear conception of time functions to occlude indigenous sovereignty to sustain itself. Urt writes “the very idea of ‘Indigenous Peoples’ is [...] a category that has emerged from the confrontation of a colonised people, which already lived in a particular space, and a coloniser people, who arrived subsequently.” To deny the existence of Indigenous sovereignty, settlers characterized the original inhabitants of this land under umbrella categories such as ‘Indian’ or ‘Indigenous’, imposing a homogenous identity that “erased the polities of the colonized.” Such characterizations reinforce binary and essentialist characterizations of Indigenous peoples as inhabiting a different state of existence and earlier period than colonizers, which in turn functions to conceal their polities. João Nackle Urt, “How Western Sovereignty Occludes Indigenous Governance: The Guarani and Kaiowa Peoples in Brazil,” *Contexto Internacional* 38, no. 3 (2016).

²⁶⁴ John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (University of Toronto Press, 2002), 369.

disappeared. It would be incongruous if such approaches continued under the guise of originalism.”²⁶⁵

While the Canadian courts have suggested that treaties are not to be interpreted in a contractual, static way,²⁶⁶ they continue to deny Indigenous peoples’ political authority, privileging the western European model of sovereignty which assumes that only one singular entity can exercise legal and political authority over a territory. Yet as agreements between two nations, treaties created a bi-lateral model of governance between human communities under the laws of the Creator. As Chief Whitebird explained, “This is very much still our land, and the people that still live on this land are - I think these are our citizens. And I want to go back to nationhood. As nations we have our people who are our citizens, and I always tell our people don't call them band members. They're not band members. We're not a band. We're not. We're a nation.”²⁶⁷

Non-Subordination

In describing the intended nature of the relationship established through treaties, the late Elder Jimmy Myo explained "at the time of the treaties that were negotiated or dealt with, at that time we said we will both be equal, we will both get benefit from this land, both of us equally. But right after the treaties things started to change right away.

²⁶⁵ "(Ab) Originalism and Canada's Constitution," (2012): 370. Canada’s Royal Commission on Aboriginal Peoples has also rejected the doctrine of discovery because it is “legally, morally and factually wrong.” Dussault et al., "Report of the Royal Commission on Aboriginal Peoples," Vol. 1, Pt. 16, 696.

²⁶⁶ In *Marshall*, the court wrote that the “treaty rights of aboriginal peoples must not be interpreted in a static or rigid way. They are not frozen at the date of signature. The interpreting court must update treaty rights to provide for their modern exercise. This involves determining what modern practices are reasonably incidental to the core treaty right in its modern context.” *R. V. Marshall*, [1999] 3 *Scr* 456, 1999 *Canlii* 665 (*Sc*), para. 78.

²⁶⁷ Whitebird, "Exploratory Treaty Table Justice Symposium," 169.

The government changed the law and made an *Indian Act*.²⁶⁸ His insights speak to the asymmetry resulting from the Crown's failure to carry out the relationship that was agreed upon, emphasizing that they were intended to ensure a framework of non-subordination and mutual benefit between parties.

The principle of non-subordination was evidently a priority for Indigenous peoples during the negotiations of Treaty 4, as Indigenous representatives refused to engage in discussions surrounding treaties until the Crown commissioners agreed to meet them halfway between their respective encampments. Alexander Morris writes "In the morning four Indians, two Crees and two Saulteaux, waited on the Commissioners and asked that they should meet the Indians half way, and off the Company's reserve, and that the soldiers should remove their camps beside the Indian encampment, that they would meet the Commissioners then and confer with them; that there was something in the way of their speaking openly where the marquee had been pitched."²⁶⁹ The practice of "meeting halfway" was described by Alexander Morris as a prerequisite to negotiations. A similar practice was adopted by the Indigenous peoples in the negotiation of Treaty 6, as the late Elder Pete Waskahat recalled:

When the Queen's representative came to Fort Edmonton, the Chiefs did not go where the treaty Commissioner's ships were docked. They met him half way from that location. From there he waited for them they met half way from that point from Fort Edmonton. Why the Chiefs did that was because if they had gone all the way to where the commissioner resided, it would appear that the Chiefs were submitting to every expectation of the treaty Commissioner's wishes. And so the two sovereigns, the White people, and the Indigenous or Cree people, they met half way, and when they arrived at the location where they were to negotiate treaty."²⁷⁰

²⁶⁸ Jimmy Myo, Exploratory Treaty Table Justice Symposium, Oct 28 - 30, 2002, Saskatoon, Saskatchewan, transcript, 144-45.

²⁶⁹ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 94.

²⁷⁰ Peter Waskahat, Treaty No. 6 Elders' Meeting, November 1997, transcript, 4.

The desire to physically meet halfway did not merely emerge from a preference over geographical location, but was symbolic of the commitment to establish an intellectual, spiritual and political midpoint. It required both parties to respect the sovereign authority and position of the other. Neither party was expected to assume the position of the other and sacrifice their own, rather they each had to recognize one another's position and establish terms surrounding the relationship that would be agreeable to both parties. This approach suggests that Indigenous populations saw treaties as mechanisms that would allow them to share the land while maintaining a relationship of legal and political equality with settlers. As demonstrated in the previous section, this relationship of non-subordination is not merely between humans, but between humans and all of creation as well.

While many Indigenous peoples were historically willing to share the land with newcomers, the very fact that they would not share the land without entering into treaties is evidence that they wanted to have input into the nature of the land-sharing agreement. The principle of living in a nation-to-nation framework was intended to continue to inform the relationship between Indigenous peoples and settlers over time. What Indigenous peoples were consenting to through treaties was not the sale of their land, but the establishment of a framework that would allow for the sharing of rights and responsibilities between Indigenous peoples and the Crown.

As Peter Russell explains, the fundamental conflict in the underlying objectives of parties to these treaties is that of the perceived political status Indigenous peoples were consenting to. He contrasts the Aboriginal objective of establishing permanent boundaries and a nation to nation political relationship with the European objective of

using treaties as temporary instruments of pacification to protect the foothold their people had established in the new world before advancing farther and increasing the area of their occupation. He writes “while the native peoples might agree to conceding parts of their territory to white settlement, their leaders did not intend to surrender their peoples’ freedom or accept their subjugation to the Europeans’ political authorities. From the outset, however, the Europeans assumed an overarching political sovereignty over the native peoples and their lands.”²⁷¹

Russell further suggests that the turning point in the treaty relationship occurred when the equilibrium of power between settlers and Indian peoples broke down, making the conflicting objectives and assumptions underlying treaties visible. According to Russell, treaties were required only until the superior military force and predominant numbers of Europeans enabled their absolute authority. Thus, while there may have been a point where Indigenous peoples and Europeans engaged in a form of interaction that more closely resembled a nation-to-nation basis, the balance of power quickly shifted to more asymmetrical grounds following treaties. The nation-to-nation character of treaties was intended to ensure that this would inform the ways in which Indigenous peoples and the state would engage with each other in perpetuity, not merely during the signing of treaties.

The static or transactional approach to treaties often positions them as a mechanism for social and economic equality, and while economic security is certainly part of the intent of treaties, Indigenous peoples intended to ensure that this was achieved

²⁷¹ Peter H Russell, *Recognizing Aboriginal Title: The Mabo Case and Indigenous Resistance to English-Settler Colonialism* (University of Toronto Press, 2005), 45.

through the maintenance of legal and political authority over their own communities and territories. In other words, while treaties were intended to provide assistance in times of need, economic parity was intended to be achieved through the retention of our systems of law and governance, not through their sacrifice. As Elder Myo observed, “If I could convince the government to do what I want them to do, I would say let’s start where our Elders begin when they made the treaties with the non-Indian people. We would start from there. We would share this land equally, that’s not saying you make the money and I take part of it, no [...] what we want from you is to let us go, let us make our own living.”²⁷² Elder Myo’s insights explain that treaties have been implemented to benefit settlers disproportionately, but also that a nation-to-nation relationship was not intended to facilitate economic wellness as something given or endowed by settlers, but through the ability to make our own living.

It widely recognized by Indigenous peoples that we took treaties to ensure the continuity of our way of life while agreeing to share the land with newcomers. As the late Elder Ernie Crowe indicated, “The treaties are based on sharing of the land. But there's one stipulation my people put to the Commissioner and that stipulation was I will agree to share my land with you under one condition, one condition. That I maintain my way of life.”²⁷³ However, the phrase “way of life” is rarely interpreted by the Crown as including protection for our legal and political systems. At the minimum, “way of life” is typically interpreted as our ability to hunt, gather, and harvest, and at a maximum, it is interpreted as embodying a limited spectrum of self-government responsibilities, akin to those of a

²⁷² Myo, “Exploratory Treaty Table Justice Symposium,” 466.

²⁷³ Ernie Crowe, Treaty No. 4 Elders’ Forum, Sept 15, 1997, Wapiimoostosis Reserve, Lebret, Saskatchewan, transcript, 28.

municipality. The proper foundations, function, and exercise of Indian governments have been overlooked and sustained in many ways through these narrow interpretations of treaty relationships. The late Elder Gordon Oakes explained that Indigenous peoples “had self-government before the coming of the white man. The buffalo provided every need that a nation would require and that was our self-government flowing from there. Today we have no land base to sustain ourselves. [...]”²⁷⁴ Thus, Indigenous peoples’ relationship with the living earth is a more suitable concept to describe our autonomy and ability to sustain ourselves as a people, as opposed to the notion of sovereignty or self-government. Inherent in the maintenance of our way of life is a land base to sustain ourselves, but also a vibrant and healthy land base that can sustain the life of animals and other living beings as well.

Treaty Elders are frequently heard saying that treaties represent a nation-to-nation relationship. Yet inherent in the structure of a nation-to-nation relationship is the notion of political non-subordination. The transactional interpretation attributes Indigenous peoples with a secondary status based on the assumption that they required the protection of the Crown. The idea here is that Indigenous peoples’ reliance on the benefits involved in treaties necessarily implies that they assented to land cession as part of the terms of the exchange. However, the nation-to-nation framework was intended to create conditions whereby each party would benefit from the relationship with the other, through learning, sharing and providing assistance in times of need. The nation-to-nation framework

²⁷⁴ Gordon Oakes, Treaty No. 4 Elders’ Forum, May 22 - 24, 1997, Nekaneet Recreation Centre, Saskatchewan, transcripts, 76.

demonstrates that in order to exist in conditions of mutual reciprocity and assistance, one party should not be understood as occupying a lesser status than the other.

As Long as the Sun Shines, the Grass Grows and the Rivers Flow

“hâw, êkos êkwa, êwak ôma k-ês-âsotamâkok, kâkike, iskoyikohk pîsim ka-pimohtêt, iskoyikohk sîpiy ka-pimiciwahk, iskoyikoh maskosiya kê-sâkikihki, êkospi isko ka-pimohtêman ôma k-ês-âsotamâtân”²⁷⁵

The third dimension of treaty relationality that I take up in this chapter relates to their temporal character; that is, that they represent a living relationship between past, present and future. The above quote from Elder Jim Kâ-Nîpitêhtêw translates to “Indeed, thus now the promises which I have made to you, forever, so long as the sun shall cross the sky, so long as the rivers shall run so long as the grass shall grow, that is how long these promises I have made to you will last.” Among treaty First Nations, variations of this metaphor are commonly used to describe the essence of treaties. It is often invoked to remind one another of the ongoing significance of treaties and to indicate that they were intended to live on for generations to come, not as mere events in the historical record, but as frameworks that can help govern many aspects of the relationship between Indigenous peoples and settlers. Inherent in this metaphor is the notion of perpetuity, renewal, and animacy, in that treaties represent a living and ongoing relationship. Thus, the third dimension of relationality that is inherent in treaties is the way in which they embody a living, sustained, and evolving relationship between past, present and future.

²⁷⁵ Freda Ahenakew, *The Counselling Speeches of Jim Kâ-Nîpitêhtêw/Ana Kâ-Pimwêwêhahk Okakêskihkêmowina* (Univ. of Manitoba Press, 2014), 112-13.

The previous sections of this chapter provided an overview of two dimensions of the relational nature of treaty frameworks as described by treaty Elders. Yet this relationality is often consigned to the past, to a time prior to contact, containing the possible ways that Indigenous peoples can embody our own ways of being in contemporary contexts. What does it mean to keep Treaties alive? How can treaties be understood as dynamic relationship agreements oriented by different living beings, territories and experiences of inhabiting spaces? Furthermore, how can they transcend settler understandings of a divided past, present and future, and be understood as continuous and relational? The current chapter explores the last dimension of a relational of treaties through reference to two concepts that are inherent in their temporal character; that is, notions of continuity and of renewal.

Continuity

The First Nations of Treaty 4 have always used, occupied and exercised jurisdiction over the territories that are now known as Saskatchewan, Manitoba and Alberta in accordance with our relational obligations to the lands, waterways, animals and resources. Indigenous polities are grounded upon traditional modes of relating with the living earth and with ancestors and future generations. In the face of incursion onto our territories, treaty-making provided a means of co-existence that was intended to keep these polities alive while envisioning new futures. Treaties are thus oriented not by a separation between the past, present, and future, but through a sense of simultaneous change and continuity in Indigenous peoples' relationships with Creation. Newcomers could come and go, communities formed, changed, split off, amalgamated, and one could belong to many networks simultaneously, yet the responsibilities we hold towards

creation continue to represent the constant source of our sovereignty. As Cardinal and Hildebrandt note, “it is this very special and complete relationship with the Creator that is the source of the sovereignty.”²⁷⁶ The FSIN further elucidates this understanding of sovereignty as oriented through our interdependence with other living beings:

“The nature of our sovereignty arises from our relationship with the land. In our relationship with the land, we believe that all Creation is interrelated and interdependent. Therefore, all Creation that lives on Mother Earth are the children of Mother Earth. Our languages reflect this reverence for Mother Earth in our reference to *Kikawinaw Askiy*. It is this relationship of First Nations to all life that forms that forms the basis of our stewardship and sovereignty.”²⁷⁷

One of the central considerations that was raised recurrently by Indigenous representatives at the negotiation of Treaty 4 surrounded the implications of treaties upon future generations. Signatories were concerned with the livelihood of their generation, but were also concerned with establishing living agreements that their descendants could draw upon as well. To illustrate this intent, they employed metaphors that defined the nature of treaties by drawing on references to creation. As the late Gordon Oakes observed,

The Elders were very scared about that english word, forever. They decided they would rather rely on their grandfather spirit of the sun. . . . They were afraid that the word forever would last for a hundred years or so. They decided that the Treaties would last so long as the sun continues to travel, so long as the rivers would flow, so long as the grass shall grow, that the treaties would last for that period time and that was the treaty agreement. 'There are children still not yet born, they too shall live under the treaties', The Elders had said ... ²⁷⁸

²⁷⁶ Cardinal and Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations*, 11.

²⁷⁷ Federation of Saskatchewan Indian Nations, *Treaty Implementation Principles* (Saskatoon, Saskatchewan: Federation of Saskatchewan Indian Nations, 2008), 3.

²⁷⁸ Oakes, "Treaty No. 4 Elders' Forum."

As living agreements, treaties represent a form of political arrangement that is continuous, dynamic, and always growing. They embody an arrangement where multiple different pasts coalesce to create better conditions in the future, representing both a continuity and a new beginning, but certainly not an ending. The use of the sun, water, rivers, grass, and even in some treaties, the rocks and mountains had the effect of illustrating a conception of being that did not align with the settler conception of time. It emphasizes an understanding of human relations as oriented through experiences of living in relation to specific places. So long as those places continued to exist and sustain the whole of creation, so too would other living beings.

As the first peoples to occupy these territories, Indigenous peoples were given the land by the Creator and hence were given original title and jurisdiction over our lands and territories.²⁷⁹ The FSIN notes that as *Nistameyimakanak*, “the first born or the ones who received our ways” we were given our laws and political institutions by the Creator, and have a responsibility to preserve them even in the face of new contexts and challenges.²⁸⁰ Treaties thus represent a means of embodying pre-existing ways and applying them to the birth of new relationships, of seeing one’s existence defined by multiple sources, including relationships with the land, with one’s family, broader communities, and newcomers. Our responsibilities also transcend “the present” as they are defined by multiple states of being; for instance, we inherit responsibilities to carry forward the knowledge of our ancestors, to learn from it, grow, and pass it on to our children. We inherit stewardship responsibilities that were given to us by the Creator, and have a

²⁷⁹ Cardinal and Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations*, 57.

²⁸⁰ Federation of Saskatchewan Indian Nations, *Treaty Implementation Principles*, 5.

responsibility to sustain life for our descendants who have yet to come. We are never exclusively oriented by “the present,” as our existence emerges from the relations that have come before us and has a direct impact on those who have yet to come. As Menno Boldt writes, “[The chiefs who negotiated the treaties] strained to peer over the horizon of their time to see what their future needs for survival and well-being as Indians would be in the emerging world.”²⁸¹

Many of the challenges encountered in treaty implementation emerge from the conceptual boundaries imposed by a static, transactional view that interpret treaties through a linear conception of time. Positioned as a thing of the past, as a finality that made possible the conditions of the present, Indigenous peoples can begin to lose sight of legacies of treaty-making that preceded contact with settlers, as well as the relevance and applicability of treaties to current and future contexts. Depicted in Canadian cultural and legal discourses as mechanisms of cession and surrender, treaties begin to be associated with loss and discontent, as an endpoint for Indigenous polities rather than as possible grounds for our contemporary political movements. While treaties are recognized as giving rise to certain cultural rights arising from a past time, their political dimension remains out of sight. This dilemma follows from legacies of colonial oppression that positioned Indigenous worldviews and lifeways as subordinate to the modern and purportedly more civilized ways of western culture.

²⁸¹ Menno Boldt, *Surviving as Indians: The Challenge of Self-Government* (University of Toronto Press, 1993), 40.

Renewal

Divided notions of past and present give the impression that treaties are historical events, that they represent an agreed-upon and fixed set of terms, and are now finished business. This positioning prevents Indigenous peoples from revisiting the configurations of the Indigenous-state relationship in a substantial way, assuming that it is no longer open to change or renewal and will exist in its current form ‘in perpetuity.’ And while the previous section of this chapter described treaties as continuous, perpetual agreements, there is an important difference between interpreting perpetuity as involving a static and fixed notion of constancy, and between understanding perpetuity as representing animacy and renewal. Let us return to the metaphor that was described at the outset of this section, described this time by Elder Oakes:

When the treaties were negotiated, during the 1800s', the Elders at the time measured by the sun, and the rivers that were flowing, grass grows. And the reason they did this was that they could see this and that was their belief, but also an underlying reason at that time was they didn't want to go by what was written on paper or the written documents, because that could have disappeared by now. [...] The reason they done that, too, was also that the sun would always be there and the rivers and the grass, they would grow every year. But this was for the benefit of the unborn and the future generations that they could also see these.²⁸²

Inherent in this metaphor are many teachings about the living, cyclical nature of the inner workings of the living earth. For instance, the idea of the sun shining embodies notions of movement, strength, and endurance. The sun follows the same cycles every day, rising in the morning, staying its course during the day and setting in the evening. No matter how difficult its journey, or how much it might be overshadowed by rain, clouds, snow or fog, it is still there helping to sustain us.²⁸³ It teaches us about persistence in the face of

²⁸² Oakes, "Treaty No. 4 Elders' Forum," 26.

²⁸³ Wapass-Greyeyes, "Exploratory Treaty Table Justice Symposium," 585.

adversity, about adapting to various conditions, and about the cycles that we must go through to sustain ourselves. This metaphor also speaks to Indigenous peoples' roles and responsibilities within treaty relationships, reminding us that only the Creator can stop the sun from shining, the grass from growing, and the rivers from flowing. Because treaties were made under the laws of the Creator, we must never turn our backs on them, even when their relevance is clouded or out of sight. Much like the cyclical processes of renewal inherent in the living earth, treaties represent a relationship with what came before us and what has yet to come, for the benefit of unborn, future generations. Thus, rather than thinking about the process of living in and renewing treaties so that they can ensure the wellbeing of treaty partners, our attention is shifted to questions of substance and the precise terms that were agreed upon. In the process of trying to determine the literal substance of terms, the underlying meaning and intention of those terms, along with their broad range of potential applications, gets eclipsed.

Locating treaties in a past time reinforces a focus on the written records of terms that were purportedly agreed upon, containing the discussion of treaty implementation to debate over the nature of how these terms should be adapted to the modern context. As the court wrote in *Van der Peet*: “the whole emphasis of Treaty No. 8 was on the preservation of the Indian's traditional way of life. But this surely did not mean that the Indians were to be forever consigned to a diet of meat and fish and were to have no opportunity to share in the advances of modern civilization over the next one hundred years. Of course, the Indians' hunting and fishing rights were to be preserved and protected; the Indians could not have survived otherwise.”²⁸⁴

²⁸⁴ *R. V. Van Der Peet*, [1996] 2 Scr 507, 1996 Canlii 216 (Scc), para. 188.

While the courts have recognized the need for a generous and liberal interpretation of treaties that considers the perspectives of Indigenous peoples, they still shape their interpretation through the “interests of both parties at the time of signing.”²⁸⁵ The static interpretation of treaties freezes the nature of the Indigenous-state relationship at the moment of treaty-making, locking it in the past as a way of ensuring the present and future of settler colonialism. Yet as Menno Boldt writes, “to apprehend the treaties in terms of the sum of the specific provisions is to miss entirely the chiefs’ spirit and intent when they negotiated the treaties.”²⁸⁶ On this view, focusing on a fixed set of terms that are narrowly derived from a literal reading of treaties defeats the fundamental purpose of treaties, which was to establish a dynamic and ongoing framework to govern relations in various contexts.

Transactional interpretations of treaties often emphasize the material items that would be offered to Indigenous peoples in exchange for sharing the land. However, Indigenous oral records emphasize the importance not of a one-time exchange of material goods, but of the continuity of principles that would govern the relationship with settlers. As Elder Waskahat recalled:

A long time ago those Elders knew of individuals who were capable of giving prophecies. From those sources, the Elders knew that the Whiteman was coming, and that he was going to want to use the land, and that he would come to speak with us. Now this is what the seventeen Alberta Bands talked about when they first formed. This spiritual advisor long ago had advised to prepare for the coming of the Whiteman and he said that the Whiteman will bring certain things that you never had before and he said, he will use those items to develop a friendship with you. There you saw the merchants camped along the Saskatchewan river. There he brought a gun, tobacco, tea, knives, sugar, many things that the Indigenous person never had before. That is what he is going to advance first to gain your friendship. Think for yourselves what would last forever that cannot be breached

²⁸⁵ See *R. V. Marshall* for a list of nine principles of treaty interpretation. *R. V. Marshall*, [1999] 3 *Scr* 456, 1999 *Canlii* 665 (*Sc*), 78.

²⁸⁶ Boldt, *Surviving as Indians: The Challenge of Self-Government*, 41.

by the Whiteman because he's going to be very strong. That's when they sat and decided that they would advance the way of prayer as guidance. They used the sun, water, our Mother the Earth, and the mountains. Those they decided to use as symbols to record the promises, as to how the nature of the relationship would be with the Whiteman [...].²⁸⁷

All too often, efforts to ascertain the “Indigenous understanding of treaty” and bring them forward end up reifying a static interpretation of treaties by focusing on the specific wording of promises recorded by Crown negotiators. Efforts to adapt treaty promises to the modern context do this unintentionally, for they first must identify an originary interpretation to contemplate how to then translate them to the modern context. Oversight of Indigenous understandings of Treaties has thus been a consequence of the Crown’s literal interpretation of the written terms of treaties, and its attempt to translate them into the categories of specific cultural practices rather than reflecting on the nature of the relationship that would be required to account for both Indigenous and Crown perspectives.

For instance, when discussing the medicine chest clause of Treaty 6, the Elders explain that they were talking about an entire way of life, not a specific set of items. The medicine chest clause can either be interpreted as literally consisting of a medicine chest with specific implements, or it can be interpreted in relation to the nature of the relationship Elders were describing when raising the issue of medicine. As the late Elder Jimmy Myo explained:

[...] when the white man came we started having a lot of different diseases. People were dying because these diseases were new to us, and when the Queen’s representative came and made treaties with us, the old man that was talking there [...] told them [...] “I have everything right now. See the buffalo. I have medicine. I have an old lady that will help cure my disease. I have a medicine man, a doctor, that will cure my disease. Are you going to replace them? These

²⁸⁷ Waskahat, "Treaty No. 6 Elders’ Meeting," 1-2.

things that I have were given to me by God, such as the law that was given to me by God. Do you think you will be able to replace them?"

A static, fixed interpretation privileges the specific items that were discussed, rather than the nature of the relationship that was being talked about. Yet as Elder Myo clarified, Indigenous parties to treaty discussed the need for Indigenous peoples to be able to maintain a relationship with the Creator that has given them the knowledge, resources and capacity to practice our own laws and medicines. This is merely one example; we can draw similar distinctions from many other aspects of treaties, such as kinship metaphors, which when interpreted literally can be far less meaningful than when interpreted as describing the intended nature of the relationship between parties. When juxtaposed against the transactional view, a relational understanding of many treaty principles demonstrates the vast range of possibilities for treaty implementation that have yet to be animated in contemporary and future contexts.

Neglect of the present's relationship with the past and future can drastically inhibit our ability to understand the breadth and depth of our responsibilities to one another and to imagine alternative ways of enacting them. Looking to the original spirit and intent of treaties can thus help address many contemporary issues in the Indigenous-settler relationship, particularly those that stem from the privileging of western philosophical orientations and the narratives of settlement and development that they give rise to.

Treaties are not merely comprised of the material exchange of goods and services as the transactional view would suggest, but rather are intended to provide a framework to guide the nature of the Indigenous-settler relationship in perpetuity. However, this

section has demonstrated how metaphors can be used either to fix the configurations of the colonial relationship in time, or open treaties up to a broader and more robust interpretation that challenges the transactional approach. Understood in a fixed way, the material terms that were recorded by the Crown have the potential to continue to offer little benefit to future generations in perpetuity; however, when interpreted relationally, the principles of engagement that were established can be understood as providing for a sustainable way of sharing the land while maintaining our way of life within various contexts in perpetuity. While the material realities, ways of life, customs and traditions of Indigenous peoples would continue to change following the signing of treaties, the framework for relationship that they established can easily be adapted to a number of circumstances through ongoing processes of renewal and re-imagination.

Conclusion

The previous chapter of this dissertation argued that the Crown's interpretations of Indigenous perspectives functions to further reinforce a static, transactional understanding that is primarily concerned with their implications in terms of the substance of treaty rights. However, the current chapter has demonstrated that Indigenous understandings are in fact more focused on the ongoing process of living through treaties. These dimensions speak to the interconnected nature of the treaties, to the overarching importance of the laws of the Creator, to the principle of non-subordination and to the notion of continuity. By revisiting these common metaphors used to describe treaties, the limits of understanding treaties as transactions and the broader range of possibilities inherent in a relational understanding begin to become apparent. This framework can also

inform the process for inhabiting treaty-based modes of relating in contemporary contexts.

The dimensions of relationality described in this chapter are neither new or revolutionary; they should come as no surprise to anyone who is familiar with Indigenous understandings of the spirit and intent of treaties. However, they provide an important reference point for discussions surrounding how to animate treaty-based modes of relating in the present. While adapting them to contemporary contexts is not a seamless process, there are many ways that Indigenous peoples can keep treaty-based practices alive and ground our visions of law and governance upon the values and laws inherent in treaties. To this end, this chapter has identified three dimensions of a treaty-based ethic of relationality:

- First, treaties are relational in that their very existence is only made possible through the jurisdiction Indigenous peoples exercise under the overarching laws of creation. As such, under a relational understanding treaties continue to be made possible through humans' relationships with creation and we must continue to account for creation in substantial ways within the treaty relationship today.
- Second, treaties are relational in that they exist in the interaction of nations; they are not “things” that exist independently of ongoing and equal involvement of parties that agree to them. Treaties represent a nation-to nation framework in that they were intended to ensure that Indigenous peoples would continue to engage with newcomers over matters that impact us and our territories within a relationship of non-subordination.

- Third, treaties are relational in that they are cyclical. Similar to the daily and seasonal cycles that the sun, grass, and rivers follow, treaties are intended to undergo similar cycles of renewal and rebirth as they are not intended to exist in a fixed and immobile state, but are to be constantly renewed in relation to the conditions of the time as a way of continually improving the quality of life of treaty partners in different contexts.

These three dimensions represent broad categories, and within each of them there are important principles that elucidate the nature of our relatedness. However, interpreting what these dimensions mean and embodying them in practice is not always straightforward. There is an important difference between *understanding* our place in the world as situated within relations of interdependence with all of creation, and *living* in a way that carries out our responsibilities within these relationships. As the following chapters will demonstrate, embodying a relational understanding of treaties in the everyday involves giving them legal and political weight by overcoming western constraints. Many First Nations are already engaging in this important work. The following chapters provide concrete examples of the ways in which a relational interpretation of treaties can be applied at different levels and in various realms of life to demonstrate the breadth of impacts of the shift to a relational understanding.

Chapter 4 – Treaties and Indigenous Governance

Thus far, I have argued that transactional understandings of treaties have contributed to the marginalization of Indigenous legal and political systems. Furthermore, I have demonstrated the need for Indigenous peoples to look to our own understandings of treaties as an important resource for inspiring healthier and culturally-grounded modes of relating. I have also proposed that this shift in thinking has important implications at multiple levels and in multiple realms of life. In the following two chapters, I seek to demonstrate how a relational understanding of treaties can have a significant impact in terms of how a community governs itself. Both chapters take up the ways in which Indigenous people can work towards Indigenous resurgence through a relational orientation; that is, through frameworks that reflect our position within relations of interdependence with all of creation, such as treaty-based modes of relating. Throughout, I argue that this requires Indigenous peoples might think outside of western frames of law and governance in how we constitute ourselves collectively and in relation to the world around us. In both chapters, I examine the question of how Indigenous peoples can look to treaties as one of many sources that constitutes our political communities. The current chapter focuses on the internal governance of collectives, while Chapter 5 focuses on how treaties can inform a collective's external governance principles.

While each of these chapters raise considerations that can be generally applied to collectives, I provide examples through reference to the research process I undertook with the Zagimē First Nations. This helps demonstrate the practical applicability of the

treaty-based process that draw upon a relational understanding of treaties.²⁸⁸ While looking to several sources of traditional knowledge, Zagimē is grounding the reconstitution of their governance structures in part through their status as partners to Treaty 4.

At the same time, I explain how it is much more difficult to ascertain principles of law and governance through a transactional understanding of treaties, which overlooks their meaning under Saulteaux law. When understood relationally, treaties can be looked to as a manifestation of Saulteaux law and governance. This, in turn, can offer important insight into Indigenous legal and political philosophies which can promote the redevelopment of Indigenous governance practices that are shaped and informed by the values and traditions that have sustained Indigenous nations since time immemorial. Additionally, a relational understanding of treaties can clarify the nature of Indigenous peoples' relationship to settlers and to the Canadian state.

Because the breadth of the governance research that was conducted with Zagimē extends beyond the purview of this dissertation and because much of the research involves knowledge and history that is specific to Zagimē, this chapter does not re-iterate its exact content. It does, however, draw on examples from the research project within a broader series of reflections on the process of looking to treaties as one of many sources that can provide insight into traditional legal and governance practices. Thus, the focus of this chapter is largely procedural, demonstrating how the process of looking to a relational understanding of treaties was significant in and of itself. This approach has the

²⁸⁸ These are the author's reflections on the work that I have done as a research assistant with the Zagimē First Nations along with a number of other researchers and Indigenous peoples. They are my own impressions and should be read as such.

broadest applicability to other individuals and communities seeking to understand both their traditional legal and governance practices as well as the nature of their relationship to settlers and the Canadian state.

Background

As previous chapters demonstrated, early colonial policies sought to erode Indigenous sovereignty and absorb Indigenous peoples into the Canadian polity in the years following treaties. Perhaps no single policy had a greater impact on Indigenous governance than the *Indian Act, 1876*. As Borrows and Rotman argue, “the coercive implementation of the *Indian Act* and the associated onslaught of ‘civilizing’ programs such as residential schools and child welfare policies tested the ability of Aboriginal people to perpetuate their traditional governance.”²⁸⁹ The *Indian Act* consolidated earlier colonial legislation and imposed western governance structures on Indigenous nations, forcibly displacing and at times explicitly outlawing Indigenous political institutions.

While the *Indian Act* positioned Indigenous governing authorities as delegated, treaties recognize self-governance as an inherent right. Indigenous resistance to the *Indian Act* other colonial impositions ultimately resulted in the entrenchment of Aboriginal and treaty rights in s.35 of the repatriated *Constitution Act*. Since 1982, the Canadian government has recognized Indigenous self-government as an existing Aboriginal right under s.35 of the Canadian constitution and as a right that finds expression in treaties. According to Indigenous and Northern Affairs Canada (INAC),

²⁸⁹ John Borrows and Leonard Ian Rotman, *Aboriginal Legal Issues: Cases, Materials & Commentary* (LexisNexis, 2012), 1.

“recognition of the inherent right is based on the view that the Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their lands and resources.”²⁹⁰

Nonetheless, the Canadian government is only willing to recognize Indigenous self-governance to the extent that Indigenous nations exercising this right operate within the framework of the Canadian Constitution. Indeed, INAC explicitly states “The inherent right of self-government does not include a right of sovereignty in the international law sense, and will not result in sovereign independent Aboriginal nation states. On the contrary, implementation of self-government should enhance the participation of Aboriginal peoples in the Canadian federation, and ensure that Aboriginal peoples and their governments do not exist in isolation, separate and apart from the rest of Canadian society.”²⁹¹

While the Canadian government views the maintenance and preservation of distinct Indigenous “culture” as representing an acceptable imperative, its understanding of Indigenous governance continues to be geared towards the integration of Indigenous peoples into the Canadian state as it suggests that the form and exercise of Indigenous legal and political authority must be consistent with the foundational structure of Canadian systems. Thus, while Indigenous people may exercise self-government in certain areas, Canada has sought to ensure that this occurs in such a way that is consistent with an overarching Canadian political culture. However, as described in Chapter 2,

²⁹⁰ Indigenous and Northern Affairs Canada, “The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government, (2010).

²⁹¹ Ibid.

Indigenous peoples from grassroots to academic levels are increasingly turning away from state-based forums to gain recognition of their rights and are instead focusing on community-grounded initiatives for the reclamation and restoration of Indigenous governance. Such communities are looking to Indigenous traditions and culture as the foundations of our systems of law and governance rather than seeking to construct them in such a way that replicates western models of governance.²⁹²

The Zagimē First Nations are engaged in these efforts as they seek to ground the reconstitution of their governance structures in Treaty 4 and in their traditional legal and political principles. The Zagimē First Nations are a predominantly Saulteaux, (sometimes referred to as the Plains Ojibwe or Anishinaabe) community comprised of four reserves that are situated in south-east Saskatchewan, including the Zagimē, Šihšip, Little Bone and Minoahchak Reserves. Historically, the Zagimē Band was part of the Fort Ellice Band led by Waywayseecappo, who signed an adhesion to Treaty 4 in 1874. This community has been working on the revitalization of their constitution for some time now, but has found it rather difficult to affect significant change when aiming to infuse Indigenous values and principles into western institutions such as *Indian Act* models of governance. While Zagimē has engaged in previous efforts to overhaul their governance structure through a First Nations Governance pilot project sponsored by INAC, they were dissatisfied with the draft constitution as it became clear that it did not reflect Saulteaux

²⁹² Taiaiake Alfred and Jeff Corntassel, "Being Indigenous: Resurgences against Contemporary Colonialism," *Government and Opposition* 40, no. 4 (2005); Goodyear-Ka'opua, Hussey, and Wright, *A Nation Rising: Hawaiian Movements for Life, Land, and Sovereignty*; Irlbacher-Fox, *Finding Dahshaa : Self-Government, Social Suffering and, Aboriginal Policy in Canada*; Jacob, *Yakama Rising: Indigenous Cultural Revitalization, Activism, and Healing*; Leanne Betasamosake Simpson, *As We Have Always Done: Indigenous Freedom through Radical Resistance* (2017); Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*.

values. This research partnership represented an effort to shift the focus of their work and start from a community-driven foundation that looked to Elders and ceremonies for direction. Much like treaties, these intergenerational forms of knowledge have enormous political significance but are often overlooked in dominant discussions of law and politics.

Our role as researchers was to review archival and historical research as well as the teachings shared by Elders and knowledge keepers to assist Zagimē in identifying traditional philosophies, values and principles to inform the reconstitution of their governance structures. As part of this research, we also held a community gathering to bring together Saulteaux Elders, knowledge keepers, language speakers and community members together to engage in broad discussions about governance.

Throughout the course of the research, it became clear that the identification of traditional legal and governance principles would involve two important conceptual exercises; the first would be to look outside or revisit the way in which we had a tendency to think about governance in the western sense and the second would be to apply this broader way of thinking about law and politics in our research. While we looked at multiple records, histories and practices, an important source of information consisted of the body of records and knowledge bases surrounding practices of treaty-making. Thus, while part of the project involved uncovering and reviewing archival documents and community histories, another significant part was the process of engaging with the resources that Indigenous peoples already have in place such as treaties, but looking at them in a different manner than they are typically understood. This allowed us

to take them up in a way that recognizes the legal and political significance of aspects of treaties that aren't commonly regarded as political, such as their relational dimensions.

It is this latter part of the project that I take up in this chapter. I demonstrate how a major requirement of the shift in thinking about treaties as relationship frameworks has involved re-evaluating the ideas, institutions, individuals, and issues that we see as having political importance. This helped us confront the ways in which our own assumptions and criteria as researchers have been heavily shaped by western influences. From there, we were better able to identify other sources of knowledge including the governance principles existing in the everyday life of the community, and those that have been practiced intergenerationally such as treaties. These exercises served the important methodological purpose of identifying practices of law and governance inherent in treaty relationships.

Making Space for Indigenous Legal and Political Principles

In western political discourse, scholars have spent centuries debating the nature of what subject matter is understood to be political and what is not. No single definition of proper political institutions exist, as attempts to distinguish political from non-political phenomena comprise a long and complex tradition. Yet while the nature of what we understand to be law and politics changes from generation to generation, contemporary perceptions rely in many ways on inherited concepts and categories. As Sheldon Wolin observes, “The designation of certain activities and arrangements as political, the characteristic way that we think about them, and the concepts we employ to communicate our observations and reactions – none of these are written into the nature of things but are

the legacy accruing from the historical activity of political philosophers.”²⁹³

Contemporary questions and debates surrounding Indigenous law and politics are also informed by these legacies.

Western understandings of governance have not only influenced settler peoples and institutions, they have also shaped the ways in which many Indigenous peoples understand our own legal and political status and relationship to the state. In this research project, the identification of traditional governance principles thus required us to critically reflect upon the predispositions and assumptions that have resulted from the proliferation of western concepts and categories, with specific attention to how they have impacted Indigenous peoples’ understandings of our own systems of governance. With an awareness of the conceptual limitations imposed by western understandings, we became more acutely aware of the need to look outside these horizons to begin to identify the principles that are foundational for Indigenous governance.

A preliminary part of the project of revitalizing or regenerating traditional forms of governance was therefore to reflect upon how it is we understood the term and what the forces were that have shaped and influenced what we regarded as governance. This served several purposes; first, to gain a general understanding of what it was we were discussing and what exactly the community was hoping to achieve and second (and perhaps most importantly), to open our imaginations to new ways of thinking about governance which, in turn, offered new strategies for thinking about decolonization and cultural regeneration.

²⁹³ Sheldon S Wolin, *Politics and Vision: Continuity and Innovation in Western Political Thought* (Princeton University Press, 2009), 6.

In other words, it became clear that the revitalization of traditional forms of ‘governance’ involved much more than rejecting the systems of governance imposed through the *Indian Act*, it also involved re-evaluating our understanding of the term ‘governance’ itself, recognizing how this understanding has changed and been influenced over time, and engaging in dialogue about what it might represent in the future. In doing so, we became better poised to begin to re-think governance through reference to an entirely different spectrum of concepts. This section describes how throughout the course of this research project, revisiting my own understanding of four different dimensions of governance (institutions, individuals, ideas, and issues) helped me to work towards drawing out the values and principles inherent in treaty-based modes of relating.²⁹⁴ I have structured the following chapter through reference to these four dimensions, detailing how I sought to re-evaluate my understanding of each of them and providing examples of what the process of revisiting each revealed.

Institutions

In dominant conversations on law and politics, there is a tendency to focus on the role and function of formal political institutions, establishments, policies, and practices. In historical research, governance is often described in even more static terms as we lose much of the social and environmental context that shaped and influenced the behaviors or processes being described. Thus, a consequence of thinking about governance through reference to fixed structures or institutions is that many dimensions of life with political

²⁹⁴ This approach follows from the framework introduced in the following article: John Borrows, "Fourword/Foreword: Issues, Individuals, Institutions, Ideologies" (2002), *Indigenous Law Journal* 1: vii-xviii.

significance, particularly those that are in flux, are eclipsed or minimized. Thinking differently about governance therefore involved re-assessing the concept of ‘legal or political institution.’ This helped identify both the limitations of western institutions, and the possibility for alternate or more culturally-grounded institutions upon which to inform governance structures.

Significant change in the realm of law and governance does not just require the infusion of Indigenous values and principles into western institutions such as *Indian Act* models of governance, but requires change to the very structure of those institutions themselves. This is because, at its core, the *Indian Act* is grounded upon the Canadian state’s desire to control Indian politics, land, property, resources, and economic development. The structure of imposed institutions is geared towards fostering dependency on the Canadian state, promoting assimilation into mainstream society, fostering individualism amongst Indigenous peoples, and most importantly, foreclosing the possibility for the maintenance and transmission of Indigenous tradition and culture. The very design of *Indian Act* institutions of governance is intended to reduce the autonomy of Indigenous peoples over our own affairs and to separate politics from culture. Thus, the degree to which change to community governance is possible within them is inherently limited.

Throughout the course of this research, the possibility for robust forms of change became more apparent when we began to think beyond the parameters of static, fixed political systems or sets of rules. Here we found ourselves reflecting on ‘informal’ institutions; those customs, relations, cultural practices or norms that exist and are maintained outside of formal political avenues. This shift in thinking helped us identify

dimensions of life with political significance that are often overlooked in dominant discussions of law and politics. By re-thinking what it was that we understood to be a legal or political institution, we could begin to draw out the governance principles that already existed in the day to day lives of community members. It also helped deconstruct and collapse the idea that politics has to be separate from other parts of life.

In western interpretations, the cultural practices and ceremonies that Indigenous peoples engage in are often understood as distinct from, or perhaps an accompaniment to, formal law and politics. While Indigenous political institutions are embedded in culture and spirituality, cultural practices are themselves rarely recognized as institutions. This perceived separation is evident in the Crown's interpretation of the sacred nature of treaties is described in the previous chapter. While the use of the pipe was seen by the Crown to be a custom that accompanied negotiation of the treaties, settlers also failed to realize the legal and political significance of the use of the pipe, which created distinct obligations under the laws of the Creator. The ceremonies that we engage in as Indigenous peoples, and our engagements with the Creator do not just guide our discussions of governance, they represent important sources of law *in and of themselves*. As Elder Musqua observed "The Creator has structured everything for us to follow. He has given us the laws, he has given us the ceremonies to practice those laws, and has seen the teachings of the old people on the understanding of those laws [...]."²⁹⁵ Coming together in the form of community gatherings and ceremonies to seek direction on the future of the people, engaging in discussions about making a better future for generations to come, supporting one another, singing, praying, grieving, telling stories and share

²⁹⁵ Musqua, "Exploratory Treaty Table Justice Symposium," 410.

wisdom; all of these interactions give Indigenous people direction about how to live well together. This is the understanding of governance that our ancestors exercised in negotiating the Numbered Treaties. They looked to the living nature of what we have around us as a way of illustrating the intended nature of the relationship with newcomers. Thus, the laws inherent in the natural order of creation do not merely *inform* social and political institutions; they *are* the institutions that have directed Indigenous peoples in how to govern ourselves from the ground up since time immemorial. Along the same lines, re-thinking the nature of what we understood to be an institution helped us reflect upon the political significance of the relations that we participate in on a daily basis such as our familial relationships. Within the realm of the family, there are important teachings that can be drawn out of each stage of life, from conception until old age and beyond. Re-thinking institutions thus involved reflecting on the networks of relations that Indigenous peoples already inhabit, including those at the family level.

Furthermore, it was far more productive to conceptualize of institutions as interactions that were dynamic and contingent, rather than fixed systems or patterns. In other words, we looked at the ways that traditional customs, practices, or rituals were constituted in relation to social and environmental factors as this allowed us to draw out the values that informed these interactions. For instance, most of the records of pre-contact Saulteaux life taken by westerners provided a static snapshot of Indigenous ways of being. However, as pre-contact ways of being were largely mobile, dynamic, evolving, and fluid, static representations did little to help identify the meaning and significance of the practices being described. It became more useful, then, to understand the values and principles underlying people's interactions with one another and with different

environmental contexts. Looking to interactions instead of institutions, or understanding interactions *as* institutions, helped us see the ways that customs changed and evolved rather than being fixed or encoded in a formal sense. Seen in this way, governance represents more of an ethic that is adapted to various contexts than a set of uniform policies or regulations.

Looking to ceremonies and cultural practices as a series of interactions with other living beings and with creation helped us position ourselves to draw out their underlying teachings and worldviews while also recognizing that pre-contact values and beliefs differ from one person to another. Without a sense of their underlying meaning, institutions can easily become reduced to procedural items to be checked off a list and their significance to the present can become less visible. When we stopped seeing traditional practices in terms of isolated categories such as “the spiritual, the political” and so on, and began to see them as interrelated, we became better equipped to draw out important lessons and teachings about how our ancestors sought to maintain good relations, how they sought to maintain community wellness in changing conditions, and how they sought to constitute themselves individually and collectively in different contexts. In other words, re-thinking institutions allowed our understanding of law and politics to be informed by a broader range of sources, be it relationships with the Creator, the natural world, or with one another.

Individuals

The second part of thinking outside of western frameworks of law and politics involved reconsidering the actors who we recognized to be implicated in community governance. This involved consciously reflecting on questions such as “who do we recognize as

occupying roles that have political significance? Who are those that we recognize as taking part in political initiatives and actions, who are the stakeholders and individuals affected by political decisions?” By shifting our focus away from elected leadership as the sole practitioners of political activity, or, in a historical sense, when we moved away from the roles of chiefs, warriors and spiritual leaders and began to pay more attention to the everyday roles and responsibilities of community members and other living beings, we were able to ascertain a broader range of values and principles to bring across to our understandings of governance. We were also able to engage with individuals other than humans, looking to the animals, birds, waterways, lands, ancestors, spirits, and Creator as political actors. In doing so, we also broadened our vision of governance by thinking of a political community as something that is far greater than bounded and static notions of membership or citizenship that exist in the present.

Prior to the imposition of the *Indian Act*, many Indigenous social and political units were smaller and more decentralized, and individuals took on much greater responsibility for the governance of their lives. Yet one of the consequences of imposed systems of band governance has been a reduction in freedom, autonomy, and jurisdiction over the matters of collective concern. This in turn has led to a loss of political involvement amongst community members, minimizing the importance of individual roles and responsibilities in defining and pursuing political objectives and priorities.

Additionally, the patriarchal nature of imposed systems tends to overlook the degree of political authority that women traditionally exercised in making community decisions. This is particularly true with respect to treaties and the records and histories of

treaty-making that were kept by settlers.²⁹⁶ Even contemporary analyses of the Numbered Treaties scarcely deal with questions of gender and sexuality in relation to the agreements that were made. The works of Sharon Venne and Harold Johnson are notable exceptions. Venne emphasizes the need to recognize the jurisdiction that women exercised in the treaty-making process in order to understand the nature of the treaty relationship. She notes that references to the Queen as a mother figure were used by treaty negotiators to establish common ground with Indigenous peoples. The Queen was invoked by Crown representatives to reassure Indigenous peoples that in negotiating treaties, she had their best interests at heart; as the Queen was a woman, Indigenous peoples expected that she would know “the role and importance of the laws of the Creator.”²⁹⁷ Indeed, because of their ability to give life, women’s intimate understanding of creation gave them jurisdiction over the land and waters. Harold Johnson explains the roots of this authority:

Women understand the earth. They are both female, capable of generating, of carrying, and bringing forth life. We are all part of the great mystery of life, and women carry that mystery. [...] They have an understanding that comes with the ability and experience of giving life. They know more than we do, and they know it intuitively.²⁹⁸

Thus, while women may not have played roles that were apparent to the Crown’s treaty negotiators, their knowledge and experience was certainly honored within Indigenous communities. In the oral interviews reviewed as part of this research, several of the

²⁹⁶ As John Chalmers notes in his study of treaty No. 6, “Not until 1950, at Rocky Mountain House, do the names of any women appear on the treaty, when four affixed their marks.” John W Chalmers, “Treaty No-6,” *Alberta History* 25, no. 2 (1977): 25.

²⁹⁷ Sharon Venne explains how the centrality of women within Indigenous societies helped the treaty commissioners conclude Treaty 6: “The fact that Great Britain had a Queen made it easier for the Indigenous peoples to accept the request for ‘land to be set aside for settlement.’” Venne, “Understanding Treaty 6: An Indigenous Perspective,” 192.

²⁹⁸ Harold Johnson, *Two Families: Treaties and Government* (Purich Publishing, 2007), 83-84.

Elders also spoke to the central role of women in the treaty relationship. As Elder

Kytwayhat said:

Woman was involved. The women had a spiritual role in the process. It was a woman that came across, that sent her commissioner to our people to negotiate Mother Earth. And that is our understanding as women in our culture, in First Nations' culture. The woman identifies, relates to Mother Earth, for Mother Earth bears life and gives fruit to life and provides for that life. The woman's role in the treaties is very powerful, that is what was our belief is, we respected the woman because she is powerful."²⁹⁹

Understanding the role of women at the time of treaty-making helped to put the nature of the treaty relationship into perspective. Women's jurisdiction over the land and waters meant that treaties could never have represented cessions or surrenders of land by male chiefs in the negotiation of the treaty. Venne explains that one of the reason that Indigenous women did not participate in the treaty-making process was to protect their jurisdiction and possessory rights, "Women never signed the treaties: they never signed away possession of the lands to the Crown. This is the main reason that the Elders and Chiefs can say with such authority that the land was never sold in the treaty process."³⁰⁰

In relation to the process of negotiating treaties, Elder Kytwayhat clarified that while "the women never said a word," this did not mean they did not play an active role,

our grandmothers, our mothers were asked, our ancestors, to be there for the support, the spiritual strength that they have in relation to Mother Earth [...] us women, us grandmothers, are the identity of Mother Earth because we are the

²⁹⁹ Kytwayhat, "Exploratory Treaty Table Justice Symposium," 15. At the same symposium, the late Elder Lloyd Brass also echoed Elder Kytwayhat's understanding the power exercised by women, "Our women were held in high esteem. They were very powerful in the communities, the old grandmothers were very powerful. Whatever the chief wanted to do with the war party, or go hunting far away, go and ask the grandmother (inaudible) say yes or not. That's how powerful. Could not move unless they said okay." Lloyd Brass, Exploratory Treaty Table Justice Symposium, October 28 - 30, 2002, Saskatoon, Saskatchewan, transcript, 397.

³⁰⁰ Venne further explains that "Women can pass on authority of use to the man, but not the life of the earth. When a man hunts, the women come along and claim the meat. If a woman is the Chief's wife, she distributes the choice meat in the village after the hunt, because the women own the meat and the hide." Venne, "Understanding Treaty 6: An Indigenous Perspective," 191.

givers of life. We are the bearers of life. We relate to everything in the creation. Everything to us has a spirit, everything to us is alive.³⁰¹

Because of their position in relation to Creation, women provided important direction in teaching natural laws to children and to the community; as Elder Musqua stated, “The women taught our children about family law, the law of the community and the law of the nation and the laws of the land.”³⁰² If treaties were intended to provide for the continuity of our legal and political orders, then the central role that women historically played speaks to the leadership role that women should take in contemporary systems of law and governance under treaties.

Additionally, when discussing the role of individuals in community governance and treaty implementation, the importance of honoring the wisdom of Elders was heavily emphasized in the research. In an OTC symposium on justice and the treaty relationship, the late Elder Lloyd Brass explained that historically “Elders were used to make decisions for the chief and council. Elders are very intelligent people, they will never lie to you, they will never deceive you as they have grandparents and -- they are grandparents of many children. You think that they're going to come in there to make a bad decision, to make their children's life difficult? Never. They're going to make decisions for the benefit of all.”³⁰³

The practice of looking to the wisdom and experience of those who came before us directs humans to appreciate the knowledge we have all been given by the Creator, allowing this knowledge to inform contemporary decision-making. Elder Musqua

³⁰¹ Kytwayhat, "Exploratory Treaty Table Justice Symposium," 459.

³⁰² Musqua, "Exploratory Treaty Table Justice Symposium," 1510.

³⁰³ Brass, "Exploratory Treaty Table Justice Symposium," 1579.

explained how respect for the knowledge of our Elders traditionally informed processes of community governance, “because the oldest person in a circle is the one that comes before us and has learned the most and gained the most experience living under the Creator’s law, he or she is the one who leads the group, and who should be regarded as the authority.”³⁰⁴ Furthermore, the position of Chief itself was customarily filled by a person with wisdom and experience. As Elder Musqua explains, “all leaders are told, we are taught for the first 40 years of our life to raise these children, to put away all public interest, to put aside all public work, so that we would raise these children up. And you will see that in our, in the older days, our leaders were in their 40’s and well into their ‘50s before they took on the responsibility of raising, you know, of leading a community, because they had to learn first of all the spiritual laws and the human laws and everything else about raising these children, about the teachings of the old people. And then when they’ve learned that, then they were given assignments to be either one that they can do, they can be leaders or headmen.”³⁰⁵ This practice follows from an appreciation of knowledge that came before us, and recognition of the importance of processes of continuity and renewal that occur through relationships.

Appreciation for the knowledge of those who came before us begins in the home, in childbirth and how we raise our children. As Elder Musqua observed “from the time you are born as a child, you are told how to behave and what to think and what are family laws [...] All of our teachings, all of our disciplines all gear ourselves to live normally, to be useful, respectful law-abiding members of our family and of our community [...] we take the responsibility of showing that child how to be a good human being. And it’s a

³⁰⁴ Danny Musqua, Treaty Table Meeting 9 - Justice, Oct 8, 1997, 30.

³⁰⁵ Ibid., 42.

total responsibility of not only the mother, the father, the brother and the sisters, but of the community.”³⁰⁶ If children are brought up from an early age to understand the implications of their actions on other living beings, they gain a greater sense of accountability and responsibility towards others. This understanding of wisdom that derives from the realm of the family is echoed by Leanne Simpson in her discussion of treaty relations that exist within families. Simpson compares breastfeeding to a form of treaty, writing that the relationship between infant and mother must be one of balance, and negotiating treaty is about patience and persistence.³⁰⁷ In familial relationships, infants teach parents about unconditional love based on sacrifice and the needs of others, children teach us about truth and life untainted by social norms and conventions, and the need for safe environments that are non-judgmental, caring, gentle, and nurturing. In the contemporary context, such perspectives reminded us that matters impacting the rights and responsibilities that Indigenous people hold under treaties and under the laws of Creation must continue to demonstrate respect for the wisdom of all individuals, particularly those who came before us but also those who have recently come into this world and who have yet to come.

By contemplating governance as a set of living and evolving ideas and practices that take place at multiple scales and in many realms of life, we were able to gain a better understanding of the legal and political practices inherent in a variety of relations. This shift also attributed community members with a greater degree of political agency to shape the governance of their communities. Reflecting on which individuals should be

³⁰⁶ Ibid., 42-42.

³⁰⁷ Simpson, *Dancing on Our Turtle's Back: Stories of Nishnaabeg Re-Creation, Resurgence and a New Emergence*, 106.

involved in community governance highlighted the significance of community involvement, consultation and consensus-based approaches to decision-making.

The importance of consultative and consensual decision-making processes are reflected in the negotiation of Treaty 4, where the absence of many Indigenous peoples arose repeatedly as a barrier to negotiations. As Cree spokesperson Kamooses stated, “Brothers, I have one word and a small one, that is the reason I cannot finish anything that is large. You do not see the whole number of my tribe which is away at my back, this is the reason I am so slow in making ready.”³⁰⁸ Kamooses highlighted the value that was traditionally placed on community dialogue and consensus in making important decisions surrounding the future. As Treaty 3 Commissioner Simon Dawson recorded of the Saulteaux, “if the matter should be one of importance, affecting the general interests of the tribe, they neither reply to a proposition, nor make one themselves, until it is fully discussed and deliberated upon in Council by all the Chiefs.”³⁰⁹ In the negotiation of Treaty 4, Saulteaux leader Che-e-kuk further clarified that even though those who were absent were from different cultural groupings, he regarded them all as related and thus he must be aware that the decisions of those who were present would impact the lives of those who were absent and they must therefore have the opportunity to speak for themselves: “You see the Qu’Appelle Lake Indians that you wished to see, you hear me speak but there are many far away, and that is the reason I cannot speak for these are my children who are away trying to get something to eat; the Crees my child is not here, the

³⁰⁸ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 116.

³⁰⁹ Dawson, *Report on the Line of Route between Lake Superior and the Red River Settlement*, 28.

Saulteaux my child is not here, the Young Dogs are not here, the Stonies my children are not here, this is not the number that you see [...].”³¹⁰

The need to arrive at a consensus between cultural groups also delayed negotiation of Treaty 4; while the Crees and Saulteaux from Fort Pelly were ready to discuss the terms of treaties early on, the Saulteaux of the Qu’Appelle District had concerns that they sought to address prior to entering into negotiations. Furthermore, they sought to cultivate a united front amongst the Chiefs. As Morris wrote, “ [the Saulteaux from Qu’Appelle] kept the Chiefs Loud Voice and Cote under close surveillance, they being either confined to their tents or else watched by soldiers and threatened if they should make any overtures to us.”³¹¹ Throughout negotiations, when one group of Indigenous peoples tried to prevent others from meeting with treaty commissioners alone, Morris repeatedly interpreted this as jealousy amongst them: “They were very jealous of each other, and dreaded any of the Chiefs having individual communications with me, to prevent which they had guards on the approaches to my house and Mr. Dawson’s tent.”³¹² On another occasion, he noted that “Divisions and local jealousies have taken possession of the Indian mind. The difficulties are the inability of the Indians to select a high or principal chief from amongst themselves, and as to the matter and extent of the demands to be made.”³¹³

While Morris interpreted Indigenous peoples’ actions as jealousy, or attempts to coerce or intimidate one another, he neglected to consider the possibility that they might

³¹⁰ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 116-17.

³¹¹ *Ibid.*, 38.

³¹² *Ibid.*, 48.

³¹³ *Ibid.*, 54.

also represent a different form of decision-making. In order to reach a general consensus, it was necessary for groups to engage in considerable dialogue and debate in order to enter into negotiations in a shared frame of mind. Consensus-based processes required more time to engage in deliberations. Loud Voice illustrated this as he explained the need to delay further negotiations to Commissioner Morris, “I would not be at a loss, but I am, because we are not united – the Crees and the Salteaux [sic] – this is troubling me. I am trying to bring all together in one mind, and this is delaying us. If we could put that in order, if we were all joined together and everything was right I would like it. I would like to part well satisfied and pleased [...] It is this that annoys me, that things do not come together. I wish for one day more, and after that there would not be much in my way.”³¹⁴

This statement reflects an appreciation for individual autonomy and agency within and between groups; however, it also reflects an awareness of the interconnectedness of all living beings, as the action of one individual or group inevitably stood to have an enormous impact upon those who live in shared spaces.

In a contemporary context, revisiting the individuals who are perceived to be political actors can thus help communities create governance processes that are dialogical, accessible, attentive to the value in different perspectives and to the particular contributions of women and Elders, and geared towards creating a consensus. These steps can help to bring about greater involvement in decisions that stand to impact the community. When individuals feel as though their concerns matter to those they share their lives with, they may feel a greater sense of representation and desire to become involved in the politics of their community. Rather than working towards political

³¹⁴ Ibid., 112.

aspirations exclusively through formal channels, political actions could instead be understood as incremental, dynamic and ongoing processes that are constantly changing and comprise a multiplicity of everyday relations. This shift in thinking can help make processes more inclusive but also more accountable, as it can help integrate the multiplicity of voices and perspectives that our actions might impact. Furthermore, this awareness can facilitate heightened consideration for those whose voices have been silenced or marginalized, as well as those who don't have human voices, such as the elements of creation that we have a responsibility to listen to and advocate for.

Ideas

The next part of revisiting dominant understandings of law and politics involved identifying what ideas or ideologies the community sought to draw upon to inform their systems of governance. That is, what were the worldviews, theories, frameworks, and concepts that they wanted to draw upon in pursuing their political priorities? These questions are directly linked to the previous section, which saw us re-evaluating the individuals involved in governance. Reflecting on the community's ideas about governance involved being attentive to the ideas that were important at a grassroots level, and not just those of political representatives. It involved identifying which ideas were seen as authoritative or foundational in community life. Conversely, it also involved identifying which ideas were seen as insignificant or marginal and thus excluded from consideration.

Ideas are reflective of the ways in which individuals view the world and their role within it. When grounded upon a worldview that sees humans as embedded in relations of interdependence with all of creation, the nature and scope of governance becomes

quite different than when it is grounded upon individualistic, human-centered, or self-interested ideas. Ideas are thus not just important at a conceptual level, but play a significant role in the establishment and direction of political institutions. The re-evaluation of underlying ideas or ideologies can create significant opportunities for change if people are given the opportunity to participate in political dialogue and engagement that draw on their own ideas. Alternative opinions or ideas can help stimulate productive discussions or debates, allowing political processes to be informed by community dialogue and decisions to be arrived at through consensus. Such processes stand in contrast to the institutionalization of static ideas, which has the potential to reinforce fundamentalist positions or to insulate power differentials within communities from critique.

In re-evaluating the ideas that the community sought to draw upon in informing the reconstitution of their governance structures, it was also important to reflect critically on the ways in which cultural values and beliefs tended to be invoked, represented, and applied. As more and more communities seek to revitalize systems of law and governance by drawing on our traditional knowledge, it is important that we pay attention to the process through which we are interpreting and implementing that knowledge. As Winston Walkingbear observed, “when I look at Saskatchewan and the different treaty regions and the different communities, each of those have a system already there that is there. We don't need to re-invent it. It is there, but the process of how you revitalize that is what is really important.”³¹⁵ Thus, drawing out traditional governance practices

³¹⁵ Winston Walkingbear, Exploratory Treaty Table Justice Symposium, Oct 28 - 30, 2002, Saskatoon, Saskatchewan, transcript, 749.

involved looking inward to the ideas inherent in the teachings of our ancestors and in our historical modes of relating with creation.

For instance, some of the most prominent, overarching themes that stood out throughout the course of this research project were ideas of love, respect, and kindness. Many of the knowledge holders and Elders shared that an essential part of maintaining good relations was to love and appreciate one's relatives, both near and distant, past, present and future. They spoke to the need to sustain the old ways of love and respect, as well as the importance of drawing on the wisdom of those who came before us. These practices of love and reciprocity represent important forms of governance themselves, yet their significance can often get overlooked in dominant discussions of law and politics.

Many of the Elders perspectives reviewed in this research described the contemporary impacts of losing sight of those ways of being, particularly among younger generations. The loss of ways of love and respect can be attributed to the impacts of colonialism and the internalization of more individualistic values. Elder Dolly Neapetung also emphasized the need to follow the path we were given as Indians. She said that the path we were given as Indians was good and strong, and it's when others started making rules that everything got confusing and distorted, "if we combine the things that we talk about, that were given to us, and we combine them with white man's laws this is where young people get lost [...] a lot of the young people don't know how to greet each other any more and they just walk by each other without even acknowledging Elders or each other."³¹⁶ In *Earth Elder Stories*, Alexander Wolfe also attributes these changes to the influences of western culture, recalling predictions shared by his late grandfather, which

³¹⁶ Neapetung, "Exploratory Treaty Table Justice Symposium," 892 – 94.

suggested that Indian people would begin to neglect the ways of respect as a result of the introduction of the habits and ways of the whiteman. “After the whiteman comes,” said the predictions, “the Indian will look like an Indian, but he will not know the ways given to him by his Creator – the ways that teach him to be a caring and sharing person.”³¹⁷

The centrality of love to the maintenance of healthy relationships was apparent in the negotiation of Treaty 4, and was raised by the Gambler in an effort to explain that even when there are differences or disagreements between groups or individuals, love remains central to healing the relationship: “This Company man that we were speaking about, I do not hate him; as I loved him before I love him still, and I also want that the way he loved me at first he should love me the same [...]”³¹⁸ Ideas of love and respect are thus apparent in an understanding of treaties that sees them as expressions of interrelatedness and interdependence. The understanding that we are in a position of interdependence with rather than superiority over the rest of creation gives rise to an understanding of the self as exercising responsibilities and accountability within relationships, as well as a sense of humility, respect, and responsibility towards those we share our lives with.

Ideas of respect, responsibility, love and care inform the practices to be taken in order to live with creation in a good way, and can also be brought across to govern and denote limits on human actions. In many of the interviews with treaty Elders surrounding the spirit and intent of treaties, one of the most prominent dimensions of governance that people spoke to was the relational nature of life and the way in which that relationality or

³¹⁷ Alexander Wolfe, *Earth Elder Stories: The Pinayzitt Path* (Fitzhenry & Whiteside, 1988), 28.

³¹⁸ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 110.

interdependence forms the foundation of all other aspects of life. This interconnectedness with creation embodies directives that can inform community governance, so as to ensure that community engagement, administration, and decision-making processes are informed by but also geared towards fostering ideas of love, respect, and responsibility, fluidity, inclusiveness, and mobility that are inherent in our interrelatedness.

Issues

In contexts of colonialism, the intellectual horizons of western philosophical traditions impact the development and direction of political institutions in shared spaces. These are not merely conceptual barriers, as what we understand to be a political issue is intricately linked to the process of what gets taken up at a community level as a legitimate political question, problem or project. Our assessment and interpretation of political issues helps determine what considerations and whose voices a community wants to have a presence in spaces where political problems are discussed and decisions are made. Definitions of political space also have the effect of excluding or marginalizing matters that are seen as outside of the realm of community politics, such as those that are purportedly ‘social’, ‘individual’ or ‘family’ issues, or those issues that are seen to be outside of the jurisdiction of band governments.

In many ways, the issues that can be addressed at a band-level are contained by Canadian jurisprudence and legislation such as the *Indian Act*. The *Indian Act* imposes political structures that mirror western governance systems, rather than ones informed by Indigenous legal and political traditions and values. While perspectives on the *Indian Act* are varied and complex, its impact on how Indigenous peoples understand and approach ‘politics’ at a community level is undeniably extensive. As Daugherty and Madill note,

both the “political structures and political cultures of Aboriginal communities across the country have, for generations, been created and distorted by the imposition of *Indian Act* government systems.”³¹⁹ Specifically, it has historically placed central emphasis upon issues of citizenship, electoral politics, property and land management. Additionally, the jurisdictional powers of band governments, including their relationships to federal and provincial governments, contains the nature of which political issues can and cannot be addressed at a community level. As Cassidy and Bish note, the ambiguity surrounding the jurisdiction of Indian governments in Canada has a number of impacts on their capacity to address community issues “there is no overall consensus on any of [the] elements of jurisdiction [...] One result is that the practical, day-to-day operations of Indian governments are sometimes problematic, and the governing needs of Indian peoples are sometimes improperly met.”³²⁰ Band governments are then challenged to meet the day-to-day needs of their membership, with little jurisdiction or authority over broader, long-term, or more structural political issues. Yet deeper forms of change require not just superficial alterations in the relationship between Indigenous peoples and the provincial and/or federal government, but also involve fundamental reconceptualization of our current understandings of political authority, jurisdiction and representation. Thinking differently about these structures allowed us to broaden our understanding of the sorts of political issues that can be taken up at a community level.

While initiatives that are funded by the federal government have a tendency to prioritize issues that are important to their current political objectives, the issues that are

³¹⁹ Wayne F Daugherty and Dennis Madill, *Indian Government under Indian Act Legislation, 1868-1951* (The Branch, 1980).

³²⁰ Frank Cassidy and Robert L Bish, *Indian Government: Its Meaning in Practice* (IRPP, 1989), 29.

important in Indigenous communities on a grassroots level can get eclipsed in the process. Yet there are important political issues that exist within individual and day-to-day experiences that a community can draw upon when attempting to re-conceptualise their governance structures. Looking to the everyday lives of diverse relations helped us draw out the values and principles that might otherwise be overlooked when politics is contemplated strictly in terms of the mandates and actions of elected officials. Furthermore, thinking about politics in terms of the 'everyday' can help individuals feel as though the issues that they experience are important and worthy of consideration even if they aren't shared by all members of the community.

As Sarah Hunt argues, we must take care not to disconnect the day-to-day issues in Indigenous communities from 'broader' political issues. While dominant approaches to governance tend to focus on issues that are of a 'collective orientation', the everyday forms of legal and state violence that Indigenous peoples, and particularly women face are often positioned as smaller-scale social issues; in other words, they do not register as clearly as political issues.³²¹ Hunt seeks to collapse this distinction by encouraging Indigenous people to revisit our understanding of those manifestations of violence that we consider to be of political importance. On her view, if we understand violence against women to be as important as violence against the land, we can begin to theorize new ways to embody an ethic of care towards one another, as we do with the rest of creation. Hunt's analysis shows the continuously evolving ways in which Indigenous women's rights are still being subsumed as part of, constructed as subsidiary to, or denied as valid in the face of the "broader" political issues. She frames this disconnect as arising, at least

³²¹ Sarah Hunt, "Violence, Law, and the Everyday Politics of Recognition" (paper presented at the Annual Meeting of the North American Indigenous Studies Association, Washington DC, 2015).

in part, from the substantial space given to political thinkers who have masculinist conceptions of what is politically significant.³²² The dichotomous treatment of individual and collective issues will be taken up in greater length in the next chapter of this dissertation, this is merely one example of the ways in which certain political issues can become privileged at the expense of others.

Looking to the records of treaty negotiations can help remind Indigenous people of the political issues that our ancestors saw as important in making decisions about the community, while demonstrating that these issues were not mutually exclusive. For instance, basic wellness and survival were certainly important goals, however they were intended to be achieved within a framework that also guaranteed the maintenance of Indigenous jurisdiction and autonomy. Issues such as education, health care, protection of the land, animals, water, and mineral resources, and other areas were all considered to be of simultaneous importance in treaty negotiations. While the federal government today refuses to acknowledge many issues as relevant to treaties, such as the provision of educational services, these were central issues of importance to Indigenous peoples in treaty negotiations. Looking at a broad range of issues rather than focusing narrowly on ‘political issues’ as they would be understood in the western sense can help identify the political nature of many dimensions of life that would have been discounted under western criteria of governance, including those inherent in the laws of creation and those that are inherent in treaty relationships.

Furthermore, treaties elucidate the ‘living’ nature of law and governance, emphasizing the importance of being able to create and utilize frameworks of governance

³²² Ibid., 3.

that can be adapted to the needs of future generations. This will ensure that contemporary governance structures are responsive to issues that might appear in different contexts and at a later point in time. As the possibility for organic processes of change to occur within our communities has been inhibited in many ways by colonial regulation, the regeneration of traditional governance structures involves reclaiming the ability to practice a more relational, fluid, dynamic, and mobile understanding of governance.

Relations as Constitutive

As we revisited each of these dimensions of governance, the overarching theme that emerged was that the modes of relating with creation, the spirits, land, waterways and other living beings past and present constitute important forms of governance to which we can look to ascertain important values and principles. When these relationships are inhabited in accordance with traditional ways of knowing and learning, vital lessons and practices of co-existence can be drawn out and brought across to human interactions. Understood in this way, the revitalization of governance principles and related knowledge is centrally located within everyday relationships.

Overall, re-evaluating our understanding political institutions, individuals, ideas, and issues helped open up the space to reflect upon the possible configurations of governance structures in a way that was more attentive to the significance of relationships. Importantly, it helped us think much differently about the term constitution itself, dislodging western understandings of the term and directing us towards questions such as “what are the relations that constitute the community? What do these relationships mean to the community?” Attention to these various networks of

relationship helped identify the values, roles, responsibilities, and obligations inherent within them in the interest of reflecting upon the community's constitution in a broad and robust way.

Several scholars in the field of Indigenous and Canadian governance have identified how Indigenous understandings of constitutionalism are distinct from western understandings of the term. Kiera Ladner has described the Mi'kmaq constitutional order as an unwritten set of customs, conventions, oral documents including stories, songs, and ceremonies and written documents such as wampum and pictographs.³²³ This order defines distinct political, economic, educational, property and legal systems, but in a way that is radically different from western constitutional orders as these systems are informed by the Mi'kmaw worldview and intellectual traditions, which at their core, are fundamentally relational. While western constitutional orders also represent forms of relationship, they entail relationships of jurisdiction and ownership, which is much different from a relationship of relationship and management; Ladner writes "This distinct constitutional order is not based on a declaration of the sovereignty of a Crown, claims of absolute ownership, or the existence of a hierarchical regime that exercises and enforces through coercion what remains of the Crown's sovereignty. Instead the Mi'kmaq constitutional order was intentionally constructed over generations by the Mi'kmaw people as an expression of their relationship with the world around them and as a means of maintaining peace and friendship among all beings (human and non-human) of Mi'kma'ki."³²⁴ In other words, the Mi'kmaq constitutional order is not an expression

³²³ Kiera Ladner, "Up the Creek: Fishing for a New Constitutional Order," *Canadian Journal of Political Science/Revue canadienne de science politique* 38, no. 4 (2005): 937.

³²⁴ *Ibid.*, 939.

of power, authority or jurisdiction over other living beings, but an expression of a relationship between individuals, creation, and the territories they share. Yet despite these differences, the Mi'kmaq constitution still entails responsibilities that govern the relationships Mi'kmaw people inhabit, with roles divided territorially among districts, further divided among communities and then into family zones or territories. Furthermore, relations were governed by principles and laws that had been constructed by the Mi'kmaw, both ancestral and contemporary.³²⁵ As these rights and responsibilities were recognized and affirmed through treaties, and were never negotiated or ceded to the Crown, the Crown's claims to jurisdiction over Mi'kmaw people and lands is illegitimate and the Mi'kmaw remain outside of federal and provincial jurisdiction.

Broadening the discussion beyond the language of constitutionalism, and instead reflecting on the relations and engagements that constitute the community helped point us to the laws and principles governing their relationships with knowledge (within languages, stories, ways of knowing and learning), relationships with one another (with young ones, neighbors and Elders), their relationships with creation (within our ceremonies, spiritual names, stewardship responsibilities) and so forth.

Treaties are one such relation that we can see as constitutive in the sense that they are another means of living well together. They also delineate the roles and responsibilities inherent within relationships, clarify the nature of obligations that individuals and collectives hold towards one another, establish processes of renewal and teach us how to maintain peace and alliance in the face of differences and conflict. American Indian scholar Robert Williams' analysis of treaties as constitutions has

³²⁵ Ibid., 940.

demonstrated how thinking differently about the purpose and sources of a constitution can help identify the political principles inherent in treaty relationships. Williams explains that we are constituted both individually and collectively by those with whom we choose to gather, create, and maintain relationships with. He proposes that if we think of a constitution not as a written document of law but as a ‘body of values, customary practices, and traditions basic to the polity,’ we can begin to identify an entirely different set of governance principles that are grounded upon treaty-based visions of law and peace.³²⁶ In fact, he argues for an understanding of treaties as multicultural constitutions, suggesting that treaty relationships themselves create a unique set of constitutional principles.

Williams proposes that treaties represent a form of political relationship that entail the sorts of behaviors and practices that would be expected of close relatives. As Williams notes “because a treaty connected the two sides as relatives, the treaty partner who grew stronger over time was under an increased obligation to protect its weaker partner.”³²⁷ For instance, treaty partners undertook a sacred commitment to share resources, provide one another with aid and assistance, and protect each other from harm no matter what circumstances might befall them.³²⁸ These expectations can be seen in the response that treaty signatories had to Crown actions following the signing of treaties when they requested annuities, provisions, and farming implements that had been promised to assist them in times of need. As treaties established a familial relationship,

³²⁶ Williams, "Linking Arms Together," 98-99.

³²⁷ *Ibid.*, 104.

³²⁸ *Ibid.*, 105.

each party has a duty to provide aid and assistance to the other, particularly when one party has more available resources.

Understanding treaty relations as constitutive emphasizes the principle of strength through unity. While treaties don't seek to absolve differences amongst individuals and groups, their intent is to grow stronger through an appreciation of those differences. On Williams' view, acknowledgment of the equal value of all beings in the face of diversity and conflict enabled, "the two sides to realize the divinely revealed truth of their oneness."³²⁹ Williams also highlights the principle of renewal, which suggests that treaty partners aim to continually renew their bonds to make mutual survival more assured. Thus, in addition to notions of care, assistance, generosity, unity, and respect for difference, another important constitutional principle inherent in treaties is the significance of acts of creation and renewal. While treaties are often employed to create inter-societal relations, if we understand them as an extension of kinship practices and thus an important part of the constitution of the self, they can also help to identify many of the values and practices which inform our modes of co-existence with Creation, with our families and within our communities.

The process of revisiting the dimensions of governance described in the previous section involved thinking differently about the relations that constitute us both within and outside of our immediate networks. Historically, the immediate extended family was the primary network of social, political and cultural organization in Saulteaux society.³³⁰ It is important to note, however that Saulteaux understanding of familial relations are much

³²⁹ Ibid., 103.

³³⁰ Laura Peers and Jennifer SH Brown, "'There Is No End to Relationship among the Indians': Ojibwa Families and Kinship in Historical Perspective," *The History of the Family* 4, no. 4 (1999): 531.

broader than the western concept of the nuclear 'family,' comprising a wider set of kin relations among humans, animal and spiritual beings.³³¹ The extended family was typically comprised of several immediate family units, usually consisting of a number between five and sixteen persons.³³² Broader extended family groups, linked by marital and parental ties, also formed more extensive networks upon which people could rely for practical purposes or in times of need.³³³

Clan systems helped delineate familial responsibilities over different elements of creation, and represented a form of inter-societal relationship building and maintenance. Leanne Simpson describes how traditionally, Anishinaabe systems of governance were based on the clan system which connected families to particular animals and territories, and which led to the negotiation of treaties between clan leaders and animal nations.³³⁴ These treaties provided a relationship framework through which humans and fish would gather regularly to talk, tend to their relationship, renew life, and ensure that their responsibilities to one another were being honored.

A major consequence of a transactional understanding of treaties is that functions to sever the networks of relations with families, animals and lands that once constituted us collectively. This eclipses the ways in which the maintenance of healthy relationships with family and animals is still a vital part of living a good and sustainable life. Yet the limitations of western notions of membership and citizenship can prompt us to look beyond these constructed boundaries in exploring possible ways to constitute ourselves

³³¹ Ibid.

³³² Ibid., 532.

³³³ Ibid.

³³⁴ Simpson, "Looking after Gdoo-Naaganinaa: Precolonial Nishnaabeg Diplomatic and Treaty Relationships," 33.

both individually and collectively in the contemporary context. Kin relations can serve as one such basis for other forms of political arrangements, including the establishment and maintenance of treaty relationships.

Heidi Stark has also drawn out constitutional conventions from treaties that speak to Indigenous visions of living well together in the world. She writes that the early treaties between Indigenous people and animal nations are perhaps the oldest recorded treaties, and are contained in stories about how Indigenous peoples sought to co-exist with other living beings. However, to draw out these principles treaties must be understood as relationships, and as a vision for what a multinational society could entail.³³⁵ She invokes a story about a woman who married a beaver and demonstrates that when this relationship is understood as a form of treaty between the Anishinaabe and beavers, we can more fully understand the values and proper behavior necessary for two or more nations to engage in creating alliances with one another.³³⁶ Stark draws out the fundamental principles of respect, responsibility, and renewal from this treaty, highlighting how they have continued to inform Anishinaabe political thought and practice in treaties with the US and Canada and remain pivotal in contemporary legal and political struggles. Her analysis is unique as it demonstrates that humans are not merely constituted politically by our status as treaty partners with other humans, but also by our treaties with and associated responsibilities towards the rest of creation. This reminds us that none of us are constituted exclusively by one relation; rather that we must maintain

³³⁵ Stark, "Respect, Responsibility, and Renewal: The Foundations of Anishinaabe Treaty Making with the United States and Canada," 157.

³³⁶ *Ibid.*, 147.

an intersectional perspective that accounts for the multiple networks of relations that we inhabit.

Jim Tully has also described the treaty process as a form of constitutionalism whereby Aboriginal people participate in the creation of constitutional norms governing Indigenous-Crown relations.³³⁷ Tully writes that a constitution can be understood as an activity or intercultural dialogue in which diverse sovereigns negotiate the principles that will govern their relationship over time. Thus, he also sees a constitution as an ongoing and active process that takes place within relationships. In his view, treaty constitutionalism embodies three conventions: mutual recognition, continuity, and the notion of consent, or imperative to reach consensus in areas of divergence. When respected, these conventions provide a non-violent framework for resolving disputes and coordinating the interaction of diverse groups of people. He notes that when Indigenous peoples claim injustice they appeal to these three conventions, arguing that “their status as nations has been misrecognized, their powers of self-rule discontinued, and their consent bypassed.”³³⁸ However, these conventions can also be used to legitimate violence against Indigenous peoples, as settler governments “argue that they have recognized Aboriginal peoples appropriately, that they consented to discontinue their powers or that consent can be ignored in this case.”³³⁹ Recognition of these constitutional principles can help elucidate the ways in which treaties can simultaneously function as instruments of violence and oppression, but also how they can represent important alternatives for intercultural dialogue and association.

³³⁷ Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity*, 117.

³³⁸ *Ibid.*, 138.

³³⁹ *Ibid.*

Each of these scholars demonstrates the ways in which treaties are constitutions between disparate living beings in shared spaces. They recognize that individuals are not constituted in isolation but through our engagements with other living beings, with our relations in various realms of life and even in our relations with knowledge and spirituality. The process of identifying the principles inherent in our own constitutions involves determining the values and priorities that are intended to govern the relations of multiple parties who live together in the world. At a community level, drawing out constitutional values and principles involved determining the expectations and the values that the community seeks to live by as, at its core, a constitution is merely an outline of principles about community values and priorities.

Throughout this research, contemplating the ways in which the self is constituted through kin relations and other networks such as those established through treaties helped us draw out many of the responsibilities and limits of human actions and interactions with the rest of the world. These insights can inform the way in which communities such as Zagimē might decide to engage with governments and other collective entities in the contemporary context. Additionally, it can inform Zagimē's expectations of how it wants to be engaged with by those external to the community.

As this chapter has demonstrated, looking to treaty-based modes of co-existence with Creation and other living beings helped elucidate the importance of notions of care, non-subordination, shared jurisdiction, assistance in times of need, generosity, reciprocity, renewal, unity, interdependence, autonomy, respect for and appreciation of difference, and respect for the contributions of all living beings, among other principles which could be used to inform a community's constitution. While some of these

principles may seem inconsistent or even contradictory, part of the richness of treaty-based notions of law and peace is that they overcome many of the dichotomies that limit our thinking about politics; they show that individuals can be simultaneously in relationship and autonomous from one another, that a community can have values that unify it while also appreciating and cultivating differences amongst individuals. They provide a framework for non-hierarchical, dialogical, consensus-based processes where multiple sovereigns or authorities can co-exist. They also provide important alternatives to the status quo, offering more fluid and dynamic notions of political engagement, citizenship, representation, and decision-making. These insights were all made possible when we dislodged the notion that constitutions represent fixed, codified documents, and made space for more holistic approaches which, much like treaties, are centrally concerned with the nature of the relationship.

Reflections & Outcomes

In general, the outcomes of this research project were largely procedural in nature, in that the researchers identified many of the values and principles that could help inform a process and structure for constitutional renewal. In light of the emphasis on notions of movement, relationality and adaptability that emerged throughout the research, we ultimately suggested that a value-based constitution may be a suitable option for Zagimē, rather than a codified set of policies for community governance. By outlining the values that the community wanted to live in accordance with and strive towards maintaining, members of Zagimē strengthened their ability to draw on these values to inform their political positions and make decisions in a number of different contexts. As opposed to

the static, fixed nature of western policies, governance then became a dynamic, flexible endeavor that involved foregrounding the community's goals and aspirations. To this end, we suggested that the community might consider not using a written document but instead using an image or alternate expression of values as its constitution. Drawing on an image or other expression would involve continually re-narrating the teaching of it and deliberating about the meaning and application, thus maintaining flexibility and emphasize the living nature of governance. Such an image could be accompanied by a written document to use as a guide or point of reference when applying the constitution.

Other recommendations involved the possibility of utilizing a tiered, or distributive governance structure rather than a hierarchical one. Within this structure, the Elders and knowledge holders would have the responsibility of reminding the rest of the leadership about the values and principles that should direct and guide the decisions of specific councils. Chief and council would represent the administrative arm of government, and there would also be a younger generation of council in training to facilitate mentorship and experiential learning and ensure that the institutional and cultural memory is passed on. Such a structure would draw on the unique knowledge of community members, women, Elders, youth, and others. It would be reflective of clan systems, allowing responsibilities to be balanced between individual and kin relations. Furthermore, it would reflect the living and embodied nature of governance, engaging more community members and also allowing for greater participation in community politics. It would be more reflective of oral traditions of knowledge transmission, emphasizing the importance of inter-generational and life-long learning as well as the importance of cultural memory.

Given the emphasis on dialogue and consent as guiding principles in traditional forms of governance, we also recommended that contemporary structures of governance may want to follow a employ a deliberative, dialogical process of community engagement and decision-making. This would facilitate the move away from western systems of governance whereby citizens elect representatives to make decisions on their behalf, towards a structure where the community maintains powers of governance and decision-making, electing representatives to carry out the direction given to them by the community. Such a process reflects an understanding of law and governance as living and relational; in order to keep it alive the community must continue to enact its own practices of governance regardless of how it is received by outside entities. Further, it embodies notions of non-interference and respect for individual autonomy and agency.

Conclusion

When Indigenous peoples deconstruct and look outside western understandings of governance, we can begin the important project of identifying new sources of law and politics such as the possibilities for treaty-based modes of relating to provide us with guidance on how to structure our human relations. While dominant understandings of governance as existing within the realm of state structures, encoded in formal laws, and enacted primarily by political authorities have made it challenging to identify and appreciate the dimensions of governance that are inherent in treaties, thinking from a relational foundation can help mitigate these tendencies by drawing our attention to the relations that constitute the community. Furthermore, they can facilitate conversations surrounding the ways in which members of the community would like to relate to one

another. Treaty-based frameworks have much to teach us about healthy, generative ways of living in relation to one another. They can inform visions of freedom grounded upon the simultaneous importance of continuity and movement/change. Furthermore, they invite the appreciation of difference and can inform processes that are accessible and engaging of all community members, drawing both on the wisdom of the past and visions of the future.

This chapter has demonstrated that the project of looking to treaties to inform community governance is certainly not as straightforward as thinking about them as relationship frameworks. It also involves critically evaluating the ways in which western ideas about politics have impacted Indigenous peoples' understanding of our own intellectual traditions and influenced our ability to conceptualize ways to regenerate them in the future.

When scholars attempt to identify Indigenous legal and political principles through reference to western concepts and categories they can be unintentionally distorted or minimized. Perhaps this serves the purpose of making them more accessible or of making it easier to think about ways of implementing them within our current systems. However, Indigenous peoples' legal and political orders are inevitably narrowed and contained by the process of translating them into western categories. This process also implies that our structures can't stand on their own, without being interpreted through a western analytical lens. It holds up western ideas of law and politics as universal, which blinds us to their limitations. As a result, both Indigenous peoples and settlers can avoid confronting and deconstructing the categories and criteria themselves, which makes us overlook the conceptual limitations we are imposing on ourselves and

never prompts us to broaden our horizons.

A preliminary part of this project therefore involved reflecting on the forces that have shaped and influenced what we regarded as governance. This allowed us to look outside or revisit western intellectual traditions while looking towards relational philosophical traditions. As we became open to new ways of thinking about governance, we were better positioned to identify legal principles and resources that would otherwise be obscured or eclipsed by western understandings of law and governance. This allowed us to have a greater appreciation for the legal and political significance of all realms of life, such as past practices that have been impacted by colonialism, but also those that contemporary Zagimē community members are already enacting in their everyday lives.

Critically evaluating our own assumptions and criteria around law and governance involved thinking differently about how we understand political institutions, individuals, ideas, and issues. It also involved asking what these pillars mean for the community—what did they want their institutions to be? Who were the individuals they wanted to be involved in the governance of their communities? What were the ideas they wanted to inform their governance? What issues are important to them? These questions helped us think beyond western conceptions of governance and employ a philosophical orientation that was much more consistent with Saulteaux worldviews of being situated within relations of interdependence with all of creation. It also helped us begin to see the “political nature” of many dimensions of life that would have been discounted under western criteria of governance, including those inherent in transactional understandings of treaties. This approach had an important subversive element as it helped mitigate the gendered, hierarchical, and anthropocentric biases that are inherent in western

conceptions of governance. It had a remedying effect as it helps counteract the false mythology of political absence or deficiency described earlier in this dissertation. And it had an important emancipatory dimension as it liberated us from the need to engage western sources, institutions and concepts in conceptualizing possible ways for Indigenous peoples to constitute ourselves politically, giving rise to strategies to help us think about notions of governance that were removed from western philosophical foundations. While this chapter has primarily focused on the ways that a collective can constitute its internal forms of governance, the following chapter applies this same process to describe the ways in which a collective can govern its intersocietal or external relations with governments and third parties.

Chapter 5 – Treaties and Inter-Societal Engagement

Beyond the community level, treaties can be used to inform even broader frameworks for relationship; that is, how a collective can govern its relations with external groups or 3rd parties. A relational perspective suggests that Treaty 4 was intended to represent the establishment of a series of principles that would inform the process of inter-societal engagement between the Crown and Indigenous peoples. Furthermore, the intent was for these principles to be flexible, dynamic, and adaptable to future contexts. Treaty 4 therefore has much to offer contemporary conversations surrounding how a community governs its interactions with other governments and collectives.

This chapter describes some, but certainly not all of the ways in which treaties can inform contemporary relationships between Indigenous communities, and between Indigenous peoples, governments, and 3rd parties. Again, it draws on the work conducted with Zagimē but shifts the focus outwards to illuminate the potential for treaties to inform the political identity and approach of collectives in their external relations. It demonstrates that treaties can inform a community's external relations in a number of ways; first, they can help ground Indigenous peoples' positions vis-à-vis the Crown and other entities in our understanding of the specific relationship that was agreed to through treaties. For instance, the transactional understanding of treaties as mechanisms of cession and surrender serves to inform and sustain the current paternalistic, hierarchical relationship between Indigenous peoples and the Crown. An understanding of treaties as relationship agreements that embody the dimensions of relationality outlined in Chapter 3 of this dissertation, on the other hand, can inform an engagement process between communities that positions Indigenous peoples as having greater agency and authority

over our own governance. Additionally, it positions Indigenous peoples as holding a broader range of jurisdiction in interact in relation to the environments we inhabit and those we share them with.

At the same time, a relational understanding of treaties offers alternatives to state-led forms of engagement such as *Indian Act* engagement processes or the duty to consult, which are grounded upon the assumption that Indigenous title and jurisdiction was extinguished through treaties. Furthermore, treaties can provide a model to inform the process of engaging in external relations; that is, they can elucidate how our ancestors have historically approached decisions that involved their relations with other communities. From there, contemporary communities can engage in dialogue surrounding what aspects of these processes they would like to mirror, and what they might like to do differently in engaging with other collectives today.

Treaties and Jurisdictional Questions

The question of who exercises and who ought to exercise jurisdiction over the territories covered by treaties lies at the root of many of the issues in treaty implementation today. As described throughout this dissertation, one of the most overarching, significant aspects of treaties is that they were intended to ensure the continuity of Indigenous peoples' relationship with the Creator and to live in accordance with the legal orders we have been given by the Creator. The records of Treaty Elders make clear that our ancestors had no intent to relinquish our legal and political jurisdiction over the land or our people. Rather than a surrender of legal and political orders, treaties represented a desire to extend Indigenous networks of relationship and

bring newcomers into them. In order to do so, we sought to negotiate relationships where multiple jurisdictions could co-exist in shared spaces. These frameworks of co-existence do not exist in isolation, but are informed by our relationship with creation, from which a number of rights and responsibilities flow.

Indigenous peoples' legal and political jurisdiction over matters impacting our traditional territories has historically been limited by the assumption that the Crown exercises exclusive and overarching sovereignty in the territories covered by Treaty 4. While a limited spectrum of rights has been afforded to Indigenous peoples under Canadian law, these rights are given legitimacy by their recognition from the broader Canadian nation, even if they are characterized by our distinct status or from our status as treaty signatories.

A relational understanding of treaties calls into question a whole spectrum of jurisdictional considerations that have never been addressed under treaties. While the transactional understanding positions treaties as one-time events, or "finished business," a relational approach sees treaties as frameworks that affirmed the continuity of Indigenous jurisdiction over decisions and actions that impact the land. Thus, contemporary projects occurring within the region covered by the treaty, not exclusively reserve land, also fall within Indigenous jurisdiction under the treaty. While Indigenous peoples agreed to share the land with newcomers, many of the technicalities of this shared jurisdiction have yet to be worked out in detail, as demonstrated in the discussion in Chapter 1 which explained that there was an expectation on behalf of treaty signatories that what occurred at Fort Qu'Appelle was a preliminary arrangement to the continued development of the treaty relationship.

A relational understanding of treaties raises a number of jurisdictional issues that impact how a community understands its external governance. The first is the fact that Indigenous peoples understood treaties as an affirmation of the continuity of our governance structures *throughout the territories covered by treaties*, not solely on reserves. Canada established reserves of land dating back to the mid-1600's as sites to encourage religious conversion and civilization and continued this practice regardless of the presence of treaty agreements. The principles inherent in the dimensions of treaty relationality outlined in Chapter 3, including the notion of shared jurisdiction, were intended to apply to the interactions of treaty partners within and outside of reserved lands.

With this in mind, the external relations of treaty partners should not merely be informed by the treaty with respect to matters that impact on-reserve population. The treaty relationship also involves those who live in urban areas or other geographies but whose livelihood and wellness nevertheless depends upon the health of surrounding land and animals. Treaty partners' interests in and responsibilities towards creation extend beyond the boundaries of reserve land, as we traditionally enjoyed and continue to occupy the breadth of territory covered under the treaty. As more and more Indigenous peoples live off reserve, it is vital that these populations continue to be able to live under the treaty as well. Thus, when treaties are understood relationally, the geographical and physical boundaries that have been imposed upon Indigenous people are dislodged to make space for an understanding of treaty rights and responsibilities as existing in relation to people, not delineated by bounded spaces.

The next jurisdictional issue that is raised by treaty Elders includes the strong

consensus that Indigenous peoples only agreed to share the land up to the depth of a plow.³⁴⁰ The late Senator Joseph Crowe explained that treaty negotiators did not have the authority to offer to share anything below the topsoil: “Some of our relatives live underneath, underneath the topsoil. [speaking in Cree] They live there, under the ground, the bears, the rabbits, what have you. That's those animals are what we say our relatives. [speaking in Cree] those four-legged ones.”³⁴¹ Elder Jimmy Myo further explained that the intent of sharing the land up to the depth of a plow was to allow settlers to farm the land: “This is what the Elders, my father used to listen to the Elders. That we did not give our land away, we did not sell our land; we only, it was only about six inches, the depth of a plow, a foot or six inches, that we allowed the white people to use for their agricultural. The bottom, anything in the bottom there, was still to be negotiated and it hasn't been negotiated, like Gordon³⁴² said.”³⁴³ To illustrate the fact that mineral rights were never addressed in treaties, Elder Musqua has explained the depth of land that was discussed during treaty negotiations by either showing his hand about six inches apart and parallel to the ground or he would show his fist with the thumb and small finger pointing out to demonstrate the depth he was referring to, explaining

“That seems like about 6, maybe 8 inches [...] But that's what we were told, that's what my grandfather said, those gifts of minerals, timber were never on the table, those gifts of mineral resources, timber resources, water resources, they were never on the table. That little parchment they brought to us, there was not mention on it about giving of these resource. That leather parchment that they bought to us. There was no mention on that parchment there, there was nothing written on

³⁴⁰ Joseph Crowe, Treaty No. 4 Elders' Forum, Sept 15, 1997, Wapiimoostosis Reserve, Lebet, Saskatchewan, transcript, 49; Douglas Rabbitskin, Treaty No. 4 Elders' Forum, May 22-24, 1997, 1997, Nekaneet Recreation Centre, Saskatchewan, transcripts, 42; Jimmy Myo, Treaty No. 4 Elders' Forum, May 22 - 24, 1997, 1997, Nekaneet Recreation Center, Saskatchewan, Written transcripts, 17; Oakes, "Treaty No. 4 Elders' Forum," 22.

³⁴¹ Crowe, "Treaty No. 4 Elders' Forum," 49.

³⁴² Referring to Elder Gordon Oakes.

³⁴³ Myo, "Treaty No. 4 Elders' Forum," 17.

that document about mineral rights.”³⁴⁴

In light of the outstanding nature of the question of minerals and resources, ongoing dialogue is necessary to come to an understanding on issues of jurisdiction over natural resources. As Elder Musqua explains “We still have to deal with the mineral acquisition and the water use of this land.”³⁴⁵ Furthermore, many treaty Elders have expressed concern surrounding the unlawful nature the *Natural Resources Transfer Agreement* (NRTA) of 1930, which transferred control of Crown lands and resources to the provinces. As Elder Oakes stated, the “1930 transfer agreement, that should never [have] happen[ed]. Because the federal government they didn't have no authority to give [the minerals and resources] to these provinces.”³⁴⁶ Since the passage of the NRTA, Indigenous peoples have argued that it contradicts our understanding of the treaty, that the provinces are reaping a disproportionate degree of benefit from the land and resources at Indigenous peoples’ expense, and also that the provincial legislation on water and resource and wildlife management, among other issues, have seriously derogated our rights under the treaty. Further, the NRTA has violated a crucial aspect of the framework for relationship that was established in negotiating treaties; that is, that Indigenous populations intended to engage in future dealings with the Crown, not provincial entities.

Living “a good life”

As this dissertation has demonstrated, treaty Elders maintain that one of the central purposes of treaties was for Indigenous peoples to be able to live ‘a good life’ in

³⁴⁴ Musqua, "Treaty No. 4 Elders' Forum," 10.

³⁴⁵ Ibid., 20-21..

³⁴⁶ Oakes, "Treaty No. 4 Elders' Forum," 24-25.

the face of hardships and changing circumstances. By entering into them Indigenous peoples sought to ensure that in times of need or change, newcomers would help rather than interfere with their ability to ‘live a good life.’

Under a treaty-based framework, contemporary interactions with other collectives, governments and third parties that stand to impact treaty partners should demonstrate how the proposed actions, engagements or developments enhance the good life of all their relationships. In contemporary contexts, many industry actors approach engagements with Indigenous communities by highlighting the benefits of proposed actions in terms of social and economic development. Indeed, many Indigenous people also emphasize the need for economic benefits under the treaties, particularly in relation to revenues that are gained from use of the land. For instance, Elder Gordon Oakes indicated in relation to natural resource development and treaties:

Where I come from there is a lot of gas. We don't get nothing, that reserve. But white people in that area, they get some money. They call surface rights. [...] We don't get nothing from the gas wells over there. [...] we have to make those treaties work for us. I mean when I said to work for us, we don't want to see Indian reserves to run out of the food on their table. Because this land is a rich land. A rich land this land. That was belonged to us one time.³⁴⁷

Many treaty Elders have similarly pointed out the asymmetrical socio-economic circumstances between Indigenous and non-Indigenous parties to treaty as a key concern. They contrast the disproportionately high levels of poverty faced by Indigenous peoples in contemporary contexts with the wealth that is accrued by federal and provincial governments along with 3rd parties such as resource development corporations. In doing so, they highlight that this asymmetry in wealth is largely a consequence of the federal

³⁴⁷ Ibid.

government's understanding that it gained overarching rights to the land through the negotiation of treaties. Certainly, economic wellbeing is a significant element required to lead and sustain 'a good life.' This was emphasized in discussions over annuities, where some Elders said that the annuities were a fixed amount while others stated that annuities were intended to be renewed and adjusted regularly as part of the treaty relationship. This is the understanding shared by Elder Gordon Oakes, who stated that: "the Crown was to reconsider the value of the annuity and to adjust it as might be required so as to ensure the payment was appropriate."³⁴⁸ Beyond questions surrounding the amount of annuities, treaty Elders stress that the importance of the annual treaty meeting between Indigenous peoples and the Crown was not strictly limited to the distribution of money, but was also related in very significant ways to the reaffirmation of the treaty relationship between the parties.

Economic prosperity is thus part of but not the sole consideration of what living a 'good life' under treaties entails. In negotiating Treaty 4, Indigenous signatories expressed concern not solely for the economic benefits and promises but were also concerned with the full range of present and future environmental, cultural, political, and spiritual implications of the agreement. While economic prosperity is one element of living a good life, it is not the entire picture, particularly when it poses risks to the ability for relationships in other realms of life to flourish. Senator Allan Bird described the temporary and insignificant nature of money relative to the wealth of the natural world:

They were sitting around a campfire. He threw the five dollar bill, the five dollar bill into the campfire. The farmer or this white person was yelling, you know, because he was sad to see his money burn up. So the Indian person said do you

³⁴⁸ Commissioner, "Statement of Treaty Issues: Treaties as a Bridge to the Future," 52.

see that, I mean, your money will burn but the land will not burn away. So there is a, our land is being exploited and destroyed”³⁴⁹

Similarly, in a treaty meeting to engage in policy discussions on annuities, Albert Angus offered the following perspective on the insignificance of monetary considerations relative to the overarching treaty relationship:

I think we are missing the point. We are not trying to make an added interpretation to the five dollars that was promised. There are enough other promises in treaty where we are going to assure livelihood. All those promises are not rooted from that five dollars.” The five dollars was quite incidental to the major promises that they made that there was no starvation, would have medical care, education, there would be choices to livelihood, a sure way of life would be assured. That is the fundamental basis of treaty. I think we are putting more interpretation on the \$5 than is needed. As Elder Jimmy Myo says we don’t want to be millionaires from this, we just want the treaty to be followed, the spirit and intent.³⁵⁰

Contemporary governments often frame their approach to renewing the treaty relationship in terms of bringing about socio-economic parity between treaty partners. The natural resource industry also has a tendency to highlight benefits of proposed projects to Indigenous communities in terms of the potential for education, training, employment and contracting opportunities. And while important, these approaches fail to demonstrated how proposed engagements will contribute to the maintenance of a good life for all members of a collective’s relations, including the land, water, animals, birds, and present and future generations of humans. While many contemporary political initiatives may result in economic benefits and skills development for Indigenous peoples, the social, environmental, and spiritual risks may in some contexts outweigh the potential benefits.

³⁴⁹ Senator Allan Bird, “Montreal Lake First Nation, Treaty 6, (Lac la Ronge, Saskatchewan 1997): 9.

³⁵⁰ Albert Angus, Treaty Table Meeting 12 - Policy Discussion on Annuities, November 26, 1997, transcript, 19.

Furthermore, oral histories demonstrate that Indigenous parties to treaty held a conception of ‘a good life’ that was grounded in a concern not just for the present wellness and survival of community members, but of the desire to ensure a good life for generations to come. Thus in making decisions, they contemplated how their actions would impact the lives of future generations. The drive to live “a good life” as a governance principle involves conceptualizing the impacts of contemporary actions and interactions on future generations. In doing so, contemporary communities can ask themselves how their engagements with governments and 3rd parties stand to enhance the quality of life of their membership in the present and future. Drawing on treaties can provide contemporary treaty partners with an example of how our ancestors made decisions about the future by balancing the need for economic self-sufficiency with the need to maintain their existing relationships and ability to live a good life.

While treaty signatories did not hide that they were in a state of distress due to the increase in disease and the decline of traditional sources of sustenance, they also made it clear that they were not prepared to give their lands in return for the establishment of this relationship. Thus, while the exchange of gifts symbolized the establishment of a relationship of reciprocity, the Chiefs who entered into treaties did not intend for this to occur at the expense of their nationhood, their jurisdiction or their rights, which are all integral to the maintenance of ‘a good life.’ Instead, treaties affirmed shared jurisdiction over matters of mutual concern, ensuring that Indigenous peoples would make decisions with newcomers in accordance with the laws of creation. This involved the establishment of principles for ensuring a good life of all those we have responsibilities towards, including those generations who have yet to come. Much like Treaty 4 spokesperson

Kamooses, we might also ask ourselves and those we engage with whether it is “true that my child will not be troubled for what you are bringing him?”³⁵¹ We can ask ourselves how proposed engagements or projects can contribute to the maintenance of ‘a good life’ for all our relations, including our relationships with other living beings in creation, in present and future contexts.

The drive to live “a good life” is also echoed in the call of treaty signatories to ensure that their way of life would be sustained. One of the central priorities in determining use of the land was to ensure that Indigenous peoples’ traditional way of life would not be interfered with, that the relations inherent in that way of life would remain intact. The Canadian courts have recognized that one of the primary aims of Indigenous signatories in negotiating treaties was the retention of their way of life.³⁵² However, the courts have not adequately accounted for the fact that Indigenous peoples’ way of life includes the ability to continue practicing our own orders of law and governance. As described in previous sections, Indigenous peoples entered into Treaties to ensure our ability to maintain the freedom to maintain our relationships to land in accordance with the laws of Creation. The continuation of these relationships is also integral to the maintenance of ‘a good life.’ Thus, treaties include, as Elder Neapetung explained, “the right to also gather our medicines and go out into those gathering lands as we have always done in our traditional times. And take them so that we can heal one another and take care of one another as the old people did and taught us to [...] I understand that our

³⁵¹ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 118.

³⁵² *Grassy Narrows First Nation V. Ontario, 2014 Sc 48, [2014] 2 S.C.R. 447*, para. 8. “The trial judge found that the Ojibway Chiefs who were key players in the negotiation of treaty 3 were in no rush to make a deal. They were under no immediate threat, as settlers were only passing through their territory, not settling on it. They were only prepared to cooperate if they could retain their way of life, particularly their traditional hunting, fishing and trapping activities.”

young people and our people now have to get permits to do these to go and gather our traditional medicines and our traditional foods that were there, given to us by the Creator and they were promised to us under treaty.³⁵³ Elder Neapetung further described that the inability to access our traditional foods and medicines prevents our ability to live the good life we used to have:

Even in the things that we eat and the way that we eat today. Even in that we are sick from those things. We have sicknesses because of the things that we now eat. Because we never ate that way before. We used to live off the land and life off the fruit of the land. We ate the wild meat and ate the fruits and berries that were there and we were healthy because of it. Today we are sick because of that.³⁵⁴

While Canadian law recognizes Indigenous relationships to land and seeks to provide them with a limited degree of protection, it interprets these relationships as rights of use and enjoyment of land as property entitlements.³⁵⁵ This contrasts to Indigenous understandings of our relationship to land as constituting an “overarching collective responsibility to protect, nurture, and cherish the earth as the giver of life.”³⁵⁶ As the RCAP notes, “Aboriginal rights with respect to ancestral territory are understood by Aboriginal peoples as particular expressions of this more general and fundamental responsibility to the earth.”³⁵⁷ Yet while observing such distinctions between Canadian and Indigenous legal understandings of rights and relationships to land, the RCAP does not see these differences as irreconcilable. In fact, it notes that treaties provide the framework for these legal orders to co-exist without one subsuming the other.

³⁵³ Neapetung, "Exploratory Treaty Table Justice Symposium," 105.

³⁵⁴ *Ibid.*, 107.

³⁵⁵ Dussault et al., "Treaty Making in the Spirit of Co-Existence: An Alternative to Extinguishment " 2.

³⁵⁶ *Ibid.*

³⁵⁷ *Ibid.*

If we exercise a relational conception of the world and our place in it, then our understanding of living ‘a good life’ is only made possible through the maintenance of ‘good relations.’ Peace, harmony and fulfillment at the level of the self is only made possible through the wellness of our relations, and treaties can offer an important way of maintaining good relations with those around us. Additionally, the considerations expressed by treaty partners surrounding the maintenance of ‘a good life’ can inform the ways in which communities enter into relationships today.

Some might argue that the drive to “live a good life” is too broad and ambiguous to be regarded as a governance principle. Yet the notion of maintaining a good life involves aspirations of balance, harmony, self-sustainability and autonomy as well as sharing, support and reliance from others when necessary. It speaks to the values that the community agrees to live by but also the expectations it holds of other treaty partners in intragroup engagements. By agreeing to ‘meet halfway’ in the establishment of a new relationship, Indigenous peoples signaled that the relationship should be one of non-subordination where both parties have the opportunity to govern their own affairs. The nature of the intended relationship follows from an underlying respect for and appreciation of the equal value of all living beings, an appreciation for various contribution that each party brought to the table, and an ethic of non-interference. Thus, inherent in Indigenous conceptions of ‘a good life’ was the notion of egalitarianism, non-hierarchy, and respect of individual roles and responsibilities.

While understandings of “the good life” may vary from community to community; we can be certain of one thing: under the laws of the Creator, no human may own the land. As Elder Neapetung explained, “we don't, as one individual among

ourselves own the land. We as a group own this land. God gave us this land. We own it all as a people, as a nation. Not one individual among us can sell that land because it is what the Creator gave us as a people. The land is ours, we cannot give it away nor sell it.”³⁵⁸ This observation makes it clear that whatever the configurations of the relationship between Indigenous peoples might be, under Indigenous law it cannot involve a structure of shared or divided ownership.

Yet here is where the question becomes even more complicated; if Treaty 4 provided a framework for co-existence to ensure the continuity of both Indigenous and European legal orders, how are fundamental differences in these legal orders resolved? For instance, if Indigenous peoples do not share the conception of land as property that seems to be so fundamental to liberal visions of freedom and prosperity, to what degree can we expect these seemingly incommensurable but equally significant aspects of our respective understandings of ‘the good life’ to co-exist? These are questions without straightforward solutions but what is clear, however, is that there is an empowering and liberatory element when Indigenous communities do not feel compelled to shape our own imperatives through reference to western understandings of freedom, but instead act in accordance with our underlying philosophies and the legal orders that they give rise to.

To Engage with Open Ears, Mind, and Heart

In the negotiation of Treaty 4, many references were made to the need for parties to have “good” or “open” minds, hearts, and ears when speaking to one another. As anthropologist Amelia Paget wrote of Indigenous peoples on the prairies, “Their manner

³⁵⁸ Neapetung, "Exploratory Treaty Table Justice Symposium," 103.

one to another was always most considerate, their natural dignity making this treatment of each other very easy. They made excellent listeners, and never interrupted each other. This was especially noticeable at their council meetings and feasts. Each Indian would be given his own time to state his ideas upon the subject under discussion, and as his remarks were made standing, fully three or four minutes would elapse after he was seated before the next Indian arose to speak.”³⁵⁹

The principle of maintaining “a good heart and mind” refers to the need to maintain honesty, truth, and integrity within the communications and engagements of treaty partners. Contemporary engagements that do not embody these values, that are dishonest or otherwise deceitful, would represent a violation of the laws of creation with require Indigenous peoples to strive towards the maintenance of good relations. Awareness of the presence of the Creator described in previous chapters helps provide a reminder of the need to be honest and truthful in communicating and dealing with one another.

Additionally, having an open heart and mind means taking steps to bring the Creator into community engagements. This demonstrates the desire to speak the truth openly and honestly and offer gratitude to the natural and spirit world. It also highlights the expectation that other parties will listen with open hearts and minds, so as to ensure a sense of reciprocity in communication. These protocols are not merely internal, and can also inform contemporary community engagements with external entities. Aspiring to engage with open minds, ears, and hearts can be difficult to achieve when communicating across difference, and particularly when communicating with entities that have been

³⁵⁹ Amelia M Paget, *The People of the Plains*, vol. 11 (University of Regina Press, 2004), 124.

responsible for committing such high degrees of violence against Indigenous peoples and lands, in both historical and ongoing contexts. However, these principles can be invoked not merely as protocols that Indigenous peoples aspire to follow in our engagements with others, but as the standards we require others to follow in their engagements with us.

In the negotiation of Treaty 4, when there was an outstanding issue standing in the way of discussions such as the Cree and Saulteaux's concerns surrounding the HBC's growing incursion onto territories outside of their post or the survey of lands that had been conducted without their consent, Indigenous peoples indicated that they could not speak openly. For instance, when treaty Commissioners were asked to meet Indigenous peoples half way between their respective camps, they indicated "that there was something in the way of their speaking openly where the marquee had been pitched."³⁶⁰ Conversely, when ready to talk treaties, the Indians demonstrated their willingness to move discussions to treaty terms by indicating that their 'minds were open' to discussing the topic. As Kamooses indicated on the afternoon of the sixth and final day's conference, "To-day we are met together here and our minds are open. We want to know the terms of the North-West Angle treaty."³⁶¹

Furthermore, the Indians' asked that the Commissioners listen to their concerns with open ears. As Che-e-kuk indicated when describing the absence of many Indians from treaty negotiations as a factor that prevented him from continuing discussions "Now I am going to tell you, and you say your ears are open [...] I am only telling you this, I think I have opened my mind."³⁶² Reciprocally, when signaling that he was attentive to

³⁶⁰ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 94.

³⁶¹ *Ibid.*, 120.

³⁶² *Ibid.*, 116-17.

the concerns or intentions being expressed, Morris made several references to the fact that his “ears are open,”³⁶³ explaining that open and honest communications between parties was integral to reaching an understanding “[...] it is good for men to try to understand each other, and to speak openly, if they do that and both are earnest, if their hearts are pure, they will and can understand each other.”³⁶⁴

Even when concerns were not fully addressed in conversations, there was an expectation that parties would leave the discussions with a good heart and return to continue discussions. As the Gambler indicated to Morris at the end of the Fifth Day’s Conference, while parties had not yet reached agreement on matters of concern “This Chief [...] he says he came from afar, he had a good mind for coming, and he takes the same good mind away with him.”³⁶⁵ The Gambler also highlighted the importance of maintaining ongoing dialogue, observing that “Saturday we met, we spoke to each other, we met at such a time as this time, and again we said we would tell each other something; now, then, we will report to each other a little again.”³⁶⁶

The principle of engaging with open minds, ears, and hearts can help inform the protocols that Indigenous expect governments and external entities to follow in their engagements with us. This can help ensure that we honour our own protocols and require respect and integrity from those who seek to deal with us. As Glen Coulthard notes, “our cultural practices have much to offer regarding the establishment of relationships within and between peoples and the natural world built on principles of reciprocity and

³⁶³ Ibid., 116-21.

³⁶⁴ Ibid., 99.

³⁶⁵ Ibid., 114.

³⁶⁶ Ibid., 110.

respectful coexistence.”³⁶⁷ Coulthard argues that rather than seeking to engage with the state through liberal modes of recognition, “we should be recognizing ourselves and [then seeking to] make contact with all who would engage us in a constructive manner.”³⁶⁸ Following from the principle of having “open ears” communities such as Zagimē who look to treaties as a way of informing their external governance can expect government and third parties to make every effort not just to listen to the community, but to demonstrate that they understand the community’s priorities and concerns and are committed to continuing dialogue over matters of shared concern until they can account for Indigenous prerogatives in a substantive way.

Consultation & Consent

*“This is hopefully the start of an on-going process so that this relationship, the treaty relationship can be discussed openly on a continuous basis and not revisited only once every 125 years which is obviously quite wrong”*³⁶⁹

During the negotiation of Treaty 4, the Sauteaux continually foregrounded the expectation that their consent must be secured surrounding matters that affect them, particularly those that impact their rights and responsibilities to the land. For instance, in regards to a survey of the land that had been conducted by the HBC without the consent of Indigenous peoples, one of the Sauteaux spokespeople, the Gambler, indicated that “The survey. This one (pointing to an Indian) did not say so, and this Sauteaux and he was never told about it. He should have been told beforehand that this was to have been done and it would not have been so, and I want to know why the Company have done so.

³⁶⁷ Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*, 48.

³⁶⁸ *Ibid.*

³⁶⁹ David Arnot, Treaty No. 6 Elders’ Meeting, November 27-28, 1997, La Ronge, Saskatchewan, transcript, 27.

This is the reason I am talking so much about it.”³⁷⁰ As Morris repeatedly attempted to steer the conversation away from questions surrounding the land and towards the terms of items being exchanged, the Gambler was persistent in his position, noting “If the Queen’s men came here to survey the land. I am telling you plainly. I cannot speak any other thing till this is cleared up.”³⁷¹ In fact, in Morris’ transcripts of treaty negotiations, the Gambler re-iterated at least five times that he would not discuss treaty terms until they reached an agreement surrounding the actions and mandate of the HBC.³⁷²

When pressed to explain his concerns further, the Gambler explained that the Indians were concerned about the survey that had been conducted without their consent, that the HBC had sold the Northwest Territories and Rupertsland to the Crown, that the HBC was trading beyond its posts, and that it was incrementally claiming more land as its own.³⁷³ Morris’ transcripts confirm that treaty commissioners were aware that the Cree and Saulteaux concerns arose from a lack of consultation, writing “they objected to the reserve having been surveyed for the Hudson Bay Company, without their first having been consulted, and claimed that the 300,000 paid to the Company should be paid to them.”³⁷⁴

The Gambler did not merely seek to express dissatisfaction with the company, he wanted to ensure that Morris would incorporate his words into meaningful action: “The Company is not to carry anything out into the country, but are to trade in the Fort. This is

³⁷⁰ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 103.

³⁷¹ *Ibid.*, 100.

³⁷² *Ibid.*, 100-11.

³⁷³ *Ibid.*, 102. As the Gambler noted, “I cannot manage to speak of anything else. It is this I am speaking. All the Indians know how the Company set their land in order long ago. The Company is making it more and that is the reason I am speaking.”

³⁷⁴ *Ibid.*, 82.

what we want signed on the paper; then we will talk on other subjects.”³⁷⁵ This process evidences the Indigenous peoples’ expectation that they would maintain the ability to consent or dissent to matters being discussed, and that they intended to maintain their jurisdiction over affairs of mutual concern. It speaks to the need not just to be heard, but also have one’s concerns addressed in negotiations. This was particularly apparent with matters relating to the land.

As parties to Treaty 4, the Zagimē First Nation’s ability to consent to proposals that impact its rights and responsibilities to other living beings, including the lands and waterways, remains central to its self-determination and to the integrity of the treaty relationship. Furthermore, dialogue should begin prior to the commencement of project planning and development. This was made clear in treaty negotiations, when the Gambler raised the issue of the land being surveyed without the consent of the Cree and Sauteaux: “The Cree does not know, the Sauteaux does not know. It was never known when this was surveyed, neither by the Cree nor the Sauteaux.”³⁷⁶ Highlighting the need for communication prior to any proposed changes in their relationship with the HBC, the Gambler explained further:

This is my chief, the Queen never told this man. If this had been told [to] him, I would not have said what I said just now. [...] These Indians you see sitting around report that they only allowed the store to be put up. That is the reason I was very glad when I heard you were coming. The Indians were not told of the reserves at all. I hear now, it was the Queen gave the land. The Indians thought it was they who gave it to the Company, who are now all over the country. The Indians did not know when the land was given.³⁷⁷

³⁷⁵ Ibid., 111. The Gambler also further explained: “[...] I wish that the Company would keep at his work the same as he did [when first established]; that I want to be signed on the paper. I want you to put it with your own hands. After he puts that there it is given to the Indians, then there will be another article to speak about. The Indians want to the Company to keep at their post and nothing beyond. After that is signed they will talk about something else.”

³⁷⁶ p.100

³⁷⁷ p.104

Previous sections of this dissertation have demonstrated that treaties were intended to constitute a nation-to-nation relationship grounded upon the principle of non-subordination. Inherent in the configurations of this relationship, and in the process of treaty-making itself, is the principle of consent to matters impacting Indigenous peoples and the land. The principle of free, prior and informed consent is also a right recognized under the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*. In its calls to action, the TRC called specifically upon the corporate sector to apply the principles, norms, and standards outlined in the UNDRIP to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This would include, but not be limited to “meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.”³⁷⁸ In accordance with its status as a partner to Treaty 4, Zagimē can expect the federal governments and third parties to engage with it on a nation-to-nation basis, honouring the principles of international law in its engagements and communications surrounding proposed developments.

Under Canadian law, treaties have most commonly been taken up in cases where Canadian legislation has come into conflict with treaty rights.³⁷⁹ As described in previous chapters, many of these cases have been retroactive, in that they have sought to determine whether infringement of a treaty right has taken place, and if so, whether the infringement

³⁷⁸ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Truth and Reconciliation Commission of Canada, 2015), 306.

³⁷⁹ Robert J Miller, *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies* (Oxford University Press, 2010), 133.

was justifiable. In analyzing the Crown's proactive responsibilities with respect to treaty rights and the land, the Supreme Court has ruled that Indigenous peoples must be involved or at the very least, consulted with respect to Crown or 3rd party actions that stand to impact their lands. The duty to consult is a constitutional obligation that arises "when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it."³⁸⁰ The duty to consult also arises in the context of treaty rights; in the case of a treaty the Crown, as a party to the treaty, will always have knowledge of the existence of the right, therefore the question turns directly to the degree to which the proposed Crown conduct would adversely affect the treaty right.³⁸¹

As the court in *Mikisew* stated in its analysis of treaty 8, treaties give rise to both procedural rights (consultation) as well as substantive rights (e.g. hunting, fishing, and trapping rights).³⁸² The court in *Mikisew* also clarified that the negotiation of treaties did not replace the duty to consult: "What occurred at Fort Chipewyan in 1899 was not the complete discharge of the duty arising from the honour of the Crown, but a rededication of it."³⁸³ The scope of content of what is required in consultation to uphold Crown honor depends on the strength of the right and the seriousness of the "potential adverse impact on the title or right claimed."³⁸⁴ Additionally, the court has ruled that the duty to consult

³⁸⁰ *Haida Nation V. British Columbia (Minister of Forests)*, [2004] 3 Scr 511, 2004 Scc 73 (Canlii), 35. *Haida Nation* at para. 35.

³⁸¹ *Mikisew Cree First Nation V. Canada (Minister of Canadian Heritage)*, [2005] 3 Scr 388, 2005 Scc 69 (Canlii), para. 54.

³⁸² *Ibid.*, para. 57.

³⁸³ *Ibid.*, para. 54.

³⁸⁴ *Haida Nation V. British Columbia (Minister of Forests)*, [2004] 3 Scr 511, 2004 Scc 73 (Canlii), para. 39.

must be engaged at the earliest stage of planning, must be ongoing, and “cannot be postponed to the last and final point in a series of decisions.”³⁸⁵

Additionally, as the court in *West Moberly* argued, treaty rights cannot be assumed to be subject to, or inferior to, the Crown’s right to take up land for mining or other purposes. This would be inconsistent with First Nations’ understandings at treaty that “they would be as free to make their livelihood by hunting and fishing after the treaty as before,” and that the treaty would not lead to a “forced interference with their mode of life.”³⁸⁶ Entering into a consultation process without a full and clear understanding of what the treaty means to Indigenous people is likely to involve a process that is neither reasonable or meaningful: “A consultation that proceeds on a misunderstanding of the treaty, or a mischaracterization of the rights that the treaty protects, is a consultation based on an error of law, and cannot therefore be considered reasonable.”³⁸⁷ Yet the enactment of treaty relationships requires much more than the integration of Indigenous perspectives on treaties. As Borrows notes, “Since Aboriginal rights are formed through inter-societal law they are mutually modified by both Indigenous and common law perspectives.”³⁸⁸ He further explains that due to *the Sui Generis*, or unique nature of Aboriginal rights, they must be “responsive to the liberties and limits” found within Indigenous and common law systems.³⁸⁹ Indigenous understandings of the Crown’s responsibilities under Treaty 4 thus extend beyond the project of integrating Indigenous

³⁸⁵ *The Squamish Nation Et Al V. The Minister of Sustainable Resource Management Et Al*, 2004 Bcsc 1320 (Canlii), para. 74 & 86.

³⁸⁶ *West Moberly First Nations V. British Columbia (Chief Inspector of Mines)*, 2011 Bcca 247 (Canlii), para. 150.

³⁸⁷ *Ibid.*, 151.

³⁸⁸ John Borrows, "Aboriginal Title and Private Property" (paper presented at the The Supreme Court Law Review: Osgoode’s Annual Constitutional Cases Conference, 2015), 104.(2015, 104)

³⁸⁹ *Ibid.*

perspectives into measures of consultation and accommodation. They involve challenging the interpretation of treaties that takes for granted the Crown's claim to underlying title and exclusive sovereignty over the land, and reconceptualizing what the implementation of treaties might involve under Indigenous legal orders as well.

Taking shared jurisdiction seriously means respecting the notion that treaties were intended to provide a framework where multiple legal and political orders could co-exist in the territories covered by treaties. Furthermore, Indigenous peoples' relationships with our traditional territories are not exclusively protected by Canadian law, but also by our own laws and the legal obligations established through the negotiation of Treaty 4. Canada has committed in recent years to renewing its relationship with Indigenous peoples in concrete and substantive ways that include giving greater weight and substance to Indigenous legal orders. As part of the final report of Canada's *Truth and Reconciliation Commission* (TRC), the Commission included 94 "Calls to Action" aimed at repairing the relationship between Indigenous peoples and Canada. The Commission notes in its definition of reconciliation:

"A critical part of this process involves repairing damaged trust by making apologies, providing individual and collective reparations, and following through with concrete actions that demonstrate real societal change. Establishing respectful relationships also requires the revitalization of Indigenous law and legal traditions. It is important that all Canadians understand how traditional First Nations, Inuit and Metis approaches to resolving conflict, repairing harm, and restoring relationships can inform the reconciliation process."³⁹⁰

Furthermore, the commission calls upon federal, provincial, territorial, and municipal governments to "repudiate concepts used to justify European sovereignty over Indigenous

³⁹⁰ Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, 16-17.

peoples and lands, such as the Doctrine of Discovery and *terra nullius*, and to reform those laws, government policies, and litigation strategies that continue to rely on such concepts.”³⁹¹ This includes the duty to consult, a requirement that is grounded upon the assumption that the Crown has underlying title and sovereignty over Indigenous lands. The Commission also calls for the reconciliation of Aboriginal and Crown constitutional and legal orders, in order to “ensure that Aboriginal peoples are full partners in Confederation, including the recognition and integration of Indigenous laws and legal traditions in negotiation and implementation processes involving Treaties, land claims, and other constructive agreements.”³⁹²

Yet as Robert Miller observes, notions of reconciliation that involve reconciling Indigenous legal orders with presumed Crown sovereignty are inherently limited, as they do not substantively deal with issues of power and distract from the obligations that treaty partners have as relations.³⁹³ Such obligations can be drawn out in a more comprehensive way by revisiting the nature of the treaty relationship itself, and ensuring that the responsibilities of treaty partners are understood through the common law as well as Indigenous legal concepts.

As parties to Treaty 4, Indigenous people have rights and responsibilities under treaties which require us to act in a way that is consistent with having undertaken a responsibility to share the land, while continuing to enact its stewardship responsibilities as given by the Creator. As Menno Boldt writes, “Indians had a spiritual attachment to the land, which grew out of their total and immediate dependence upon it for survival.

³⁹¹ Ibid., 199.

³⁹² Ibid.

³⁹³ Miller, *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies*, 161.

They considered the land and its fruits to be a sacred trust from the Creator for the welfare of all living things, present and future [...] the treaty was an instrument for fulfilling this sacred obligation to the Creator, to their ancestors, and to generations yet to come. Another implicit understanding of the chiefs who marked the treaties was that they were autonomous peoples, and that the treaties affirmed the continuity of their autonomy.”³⁹⁴ The protection of our pre-existing relationships with the land and creation are thus central to the continued jurisdiction that we exercise over our traditional territories under the treaty relationship.

As described in previous chapters, treaties are understood as flowing from the laws of the Creator. They are understood by Indigenous peoples as sacred agreements because they brought the Crown into their relationships with creation. Hence, the principles governing treaty relationships are determined by the spiritual foundations and principles upon which treaties were negotiated. As these treaties are ongoing and of a perpetual nature, contemporary engagements with government and third parties continue to be guided by laws and principles that follow from the relationships of interconnection with all of Creation that Indigenous communities such as Zagimē inhabit. These laws are informed by sacred teachings that illustrate the interconnectivity of all living beings, outlining particular ways of remaining accountable to creation. Zagimē’s responsibility to maintain its relationships with land and others in accordance with these laws and principles is integral to its ongoing wellness and survival. For instance, by looking to the natural laws inherent in Creation, we learn about interdependence, reciprocity, non-interference, equality, symbiosis, all things that we can bring across to our human

³⁹⁴ Boldt, *Surviving as Indians: The Challenge of Self-Government*, 41. Boldt *Surviving as Indians* p.41

relationships. These teachings stand in contrast to western conceptions of humans as self-constituting and autonomous subjects, and help shed light on alternative ways of thinking about our roles and responsibilities to other human communities and to creation. Drawing on treaties as a framework for relationship allows Zagimē to employ a method of engagement through which they can continue to honor the overarching supremacy of the laws of the Creator, rather than privileging human laws.

Treaties can provide an important framework for collectives to their engagements with settler governments and 3rd parties in a way that is not solely informed by western legal and political processes. A relational understanding of treaties suggests that Indigenous peoples should ground our approach to inter-societal governance in part (but not solely) upon the legal and political principles expressed in the spirit and intent of treaties. This approach is significant as it gives rise to a higher and more in-depth level of criteria for engagement. These criteria, in turn, can elucidate the narrow parameters of methods of engagement that follow from a transactional view and that take Crown sovereignty for granted. Furthermore, a relational understanding of treaties does not merely give rise to a more involved process of engagement between humans, but also a more cautious and responsible process of engagement with other living beings. While partners to Treaty 4, the inter-societal relations of treaty partners are not exclusively governed by their treaties with the land, the Creator, and other human communities, but also by the rights, relationships, and responsibilities that pre-date contact with settlers.

Third parties

Within this research, looking to the nature of the treaty relationship offered significant insight into the principles that should inform methods of engagement with third parties in contemporary Indigenous-state relations. As described in previous sections, dialogue surrounding the negotiation of Treaty 4 centered heavily on the Hudson Bay Company's mandate and its jurisdiction. As one of the earliest examples of a 3rd party that Indigenous peoples engaged with and that impacted their relations with the Crown, records of initial treaty discussions relating to HBC provide important insight into contemporary intergroup relations. In particular, they provide important insight into the intentions of Indigenous peoples' relative to the role of industry within the broader treaty relationship.

While Morris saw Indigenous peoples' concerns surrounding the HBC as issues that were distinct from treaties, conversations surrounding the actions of the HBC took up the bulk (4 of 6 days) of treaty negotiations. To Indigenous peoples, these issues regarding land sharing and land use were precisely the sorts of topics to be taken up in treaty discussions, as they spoke to the intended framework for relationship that would be established between parties. As described in Chapter 1, Indigenous populations in the Treaty 4 region distrusted the Company for the proprietary role it claimed over territories outside of its trading posts. When confronted over issues such as the HBC's purported sale of land and its failure to consult Indigenous populations in conducting surveys over the land, Morris attempted to both distance the HBC from the Crown, while also assuring Indigenous peoples that the HBC would be subject to the laws of the Crown. For instance, Morris indicated that "the Company has its master, the Queen, and will have to obey the

laws as well as the others.”³⁹⁵ The Gambler also affirmed Indigenous peoples’ expectations that the HBC would be accountable to the Crown for its actions, indicating that “This is the reason I waited for the Queen’s messengers to come here because [...] I knew they would set everything in order.”³⁹⁶ Furthermore, the Gambler utilized metaphors that illustrated the ways that the HBC was interfering with Indigenous peoples’ pre-existing ways of relating:

Look at these children that are sitting around here and also at the tents, who are just the image of my kindness. There are different kinds of grass growing here that is just like those sitting around here. There is no difference. Even from the American land they are here, but we love them all the same, and when the white skin comes here from far away I love him all the p.101 same. I am telling you what our love and kindness is. This is what I did when the white man came, but when he came back he paid no regard to me how he carried on.”³⁹⁷

As demonstrated in previous sections of this dissertation, Treaties were intended to ensure that new parties would be held accountable under their own laws, while also bringing newcomers into Indigenous peoples’ pre-existing ways of relating. The Gambler’s comments make it clear that the conduct of the HBC was unacceptable, as he also continually referenced the expectation that the Crown would use its power to address such behavior. For instance, the Gambler’s statement that “I know that you will have power and good rules and this is why I am glad to tell you what is troubling me” also illustrates the expectation that in the event of conflict and disputes, there should be adequate dialogue between parties to seek a resolution. Thus, the Gambler continually sought to engage in dialogue to address these concerns in the face of Morris’ attempts to dismiss them as

³⁹⁵ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 105.

³⁹⁶ *Ibid.*, 103.

³⁹⁷ *Ibid.*, 100-01.

irrelevant to his mandate. The desire to engage in dialogue as a method of conflict resolution is also evident in the Gambler's previous statement that "The Company have no right to this earth, but when they are spoken to they do not desist, but do it in spite of you. He is the head and foremost."³⁹⁸

Conversations surrounding the HBC also made it clear that Indigenous populations not only expected that the actions of 3rd parties would be regulated by the Crown, but that they also had full intention of maintain their own authority and jurisdiction in relation to the acts of third parties; as the Gambler indicated that they had not authorized the survey or sale of land, only the trading that was intended to occur at the posts "These Indians you see sitting around report that they only allowed the store to be put up."³⁹⁹ This follows from the broader expectation described in Chapter 2 that treaties established a nation-to-nation relationship whereby Indigenous populations would retain jurisdiction over matters impacting the land. Thus, any actions on the part of third parties would be analyzed in accordance with the governing frameworks of impacted communities. As previous sections have demonstrated, this framework for relationship was not just intended to apply to the negotiation of treaties, but it was also intended to exist in perpetuity, or as the infamous saying goes, as long as the sun shines, the grass grows, and the waters flow.

Conclusion

This chapter has demonstrated how treaties, when understood as frameworks for relationship, can be drawn upon to inform inter-societal governance principles. If we take

³⁹⁸ Ibid., 104.

³⁹⁹ Ibid.

seriously the notion that treaties represent frameworks to govern the relationship between Indigenous peoples and newcomers, then the question of how to embody the spirit and intent of treaties as Indigenous peoples involves reflecting on how to ground contemporary engagements in what we understand the nature of that relationship agreement to look like. As Indigenous peoples, living our traditional laws is not dependent upon their recognition by the Crown, but involves looking to our values and principles to inform our contemporary actions and interactions. Treaties can be invoked to inform how the community continues to enact its own jurisdiction and legal principles in its engagements with external parties. In particular, a relational understanding of treaties can help identify their procedural dimensions and draw out ways in which they can inform the interactions and relations of groups in the contemporary context.

This chapter has argued that when understood as frameworks for relationship, treaties can bring to light a broad range of spiritual, social, environmental, economic, legal and political considerations in intergroup interactions that are eclipsed when they are narrowly understood as transactions. These include, but are not limited to the following observations:

- Indigenous peoples have never surrendered our inherent authority and jurisdiction to the Crown and thus retain title to our ancestral lands under the treaties, unless ceded intentionally and consensually through other means.
- The nation-to-nation character of treaties delegitimizes engagement processes that are grounded upon paternalistic, hierarchical understandings of the relationship between Indigenous people and the Crown, including those that are grounded upon racist, evolutionary, and discriminatory doctrines and rationales.

- The jurisdictional questions regarding land use ‘beyond the depth of a plow’ and other issues that were left outstanding following the initial dialogue surrounding Treaty 4 in 1874 imply that Indigenous peoples retain jurisdiction over the minerals and resources.
- Indigenous jurisdiction under the treaties is not limited to on-reserve locations, but also extends to the overall region covered by treaties and over our future membership, including future generations.
- The legal orders established through treaties must give equal weight to Canadian and Indigenous legal perspectives, as informed by the laws of the Creator.

These considerations can inform the relationship between the Canadian state and Indigenous communities, but also offer a framework that can help inform the development, maintenance and renewal of intergroup relations with other living beings and human communities. They are not limited to the interactions between Indigenous communities and the Crown or industry, but have a broad range of applications in a community’s relations with other groups. For instance, they can inform the development of relationship or engagement protocols in many realms of life, such as the development of partnerships with educational institutions or other parties. Essentially, they can inform any the development of any partnerships wherein the community wants to provide its own guidelines surrounding protocol, engagement and communication.

Turning to treaties to inform external governance processes allows communities such as Zagimē to honor their own jurisdiction and responsibility over their own territories as guaranteed in the signing of treaties. Treaty 4 affirms Indigenous peoples’

responsibility to exercise decision-making authority over any actions that stand to impact the land in accordance with our own standards and criteria. These include considerations regarding the how proposed actions will impact those animals and the unborn. In contemporary intergroup engagements, Indigenous collectives can utilize these processes to inquire into how their decisions impact not just their present day human constituency but also how they impact other elements of creation now and into the future. They ask themselves how their actions impact those who cannot speak, such as the living earth, and what the associated risks will be for generations yet to come. This approach is incredibly significant as it honors Indigenous peoples' knowledge of treaties, centering our political actions around their own position as the traditional inhabitants of the land.

However, there are also many questions relating to intergroup relations that have never been addressed under treaties, and these can also inform how a community chooses to understand its external governance. In Chapter 1, I described issues surrounding the unlawful sale of land from the HBC to the dominion of Canada. During the negotiation of Treaty 4, Morris claimed he would inquire into the sale of Rupertsland from the HBC to the dominion of Canada and explain to the Indians where the HBC got the authority to sell the land. In other instances, Indigenous peoples were explicitly ignored or dismissed when inquiring into this question. For instance, Elder Musqua explains that in 1875, "Waywaysecappo, The Man Standing Pretty, is given the task to go to Fort Ellice, to get an understanding of the status of Rupert's Land. He gets no answer, he's shunned and he is totally avoided [...] there is no answer about what the status Rupert's Land is, and we're still waiting."⁴⁰⁰ The notion that treaty parties would meet the next year to continue

⁴⁰⁰ Musqua, "Treaty No. 4 Elders' Forum," 20.

talking about land use further reinforces the notion that what occurred at Fort Qu'Appelle in 1874 was preliminary to the negotiation of the actual treaty the following year. Yet the failure of the Crown to engage in ongoing processes of dialogue and renewal has left many questions relating to jurisdiction, land use and title outstanding. As Elder Gordon Oakes stated in regards to the role of the Treaty Commissioner, "the work that you are doing, you are not here to bring about something new, you are there to complete the work that wasn't even done and that was initiated during the signing of treaty. So you have to put yourself in that frame of mind."⁴⁰¹

Previous chapters of this dissertation have demonstrated the ongoing lack of consensus between Indigenous peoples and the Crown in relation to the question of whether treaties did or did not affect an extinguishment of Indigenous peoples' relationship with the land (or title, in western law). As the RCAP has observed, the outstanding nature of this divergent understanding "requires that the parties meet in a spirit of partnership to complete their incomplete agreement" as a way of determining "how the parties should deal with the issues arising from lack of consensus."⁴⁰² In the meantime, the Commission has indicated that "the Crown should not assert that the Aboriginal title of the treaty nations has been extinguished unless there was clear consent."⁴⁰³ The main aspect of treaties that both parties agree upon is that they represent some sort of agreement to share territory between treaty nations and the newcomers as represented by the Crown. Thus, throughout ongoing treaty negotiations, principles of sharing in good faith should continue to guide the relationship.⁴⁰⁴ Unless any further

⁴⁰¹ Oakes, "Treaty No. 4 Elders' Forum," 11.

⁴⁰² Dussault et al., "Report of the Royal Commission on Aboriginal Peoples," Vol. 2, Ch. 2, 3.8.

⁴⁰³ Ibid.

⁴⁰⁴ Ibid.

agreement is made that should suggest otherwise, Indigenous peoples retain the ability to maintain our relationship with the land in accordance with our own principles of law and governance.

Many aspects of the precise distribution and sharing of power that would occur under the treaty were intended to be negotiated over time, as part of an ongoing process that has not yet occurred. So long as outstanding disparities in understanding remain unaddressed, I argue that Indigenous communities may be best served to continue to act in ways that are informed by our understanding of the spirit and intent of treaties; that is, that they are relationship frameworks that affirm the continuity of our title and jurisdiction. Until the outstanding issues surrounding title are addressed, partners to treaty should not base their interactions with the Crown upon the assumption that our relationship to the land has been extinguished, lest we wish to violate the intentions of our ancestors.

In the previous two chapters, I have referred extensively to the collective interest in exploring the promissory features of the shift towards a relational understanding. However, my focus on community governance does not imply a narrow interest in the collective interest, for I am also aware that the embodiment of healthier, more sustainable forms of relationship grounded upon treaties inherently involves a willingness to address violent, repressive or exclusionary practices within a community. Thus, in discussions of how treaties can inform the ways in which Indigenous peoples constitute ourselves collectively, we must also be cautious not to treat ‘the community’ as representative of a constellation of shared interests, assuming a sense of cohesion among the objectives, priorities, and protocols of its membership. The following chapter explores the need for a

community's external governance practices to be reflective of the specific cultural and political traditions, as well as the priorities, expectations, and values of the breadth of perspectives held by individuals within the community itself.

Chapter 6 – Relational Accountability and the Interplay of Individual and Collective Interests

As previous chapters of this dissertation have demonstrated, the drive to revitalize Indigenous epistemologies and worldviews that are reflective of our fundamental interconnectedness with all of creation is increasingly leading Indigenous people to look to traditional modes of relating such as treaties to inform our contemporary political processes. However, throughout this dissertation I have also advanced the position that treaties are not just relevant to collectives or representative forms of government, but to the ways in which we engage with one another on an individual level as well. Thus, following from the previous two chapters' heavy focus on the constitution of collective political interests, this chapter refocuses the scale of the conversation to a personal level, exploring how treaty-based modes of relating can be used to inform the development of individual political identities, but also the process of how individuals and collectives can remain accountable to one another across our differences.

In this dissertation, I have proposed that when understood as relationship agreements, treaties can be used to draw out governance principles that account for our relationships with creation, with other living beings and with past, present and future generations. However, as the discourse on treaties is so strongly associated with the collective interest, I am also highly aware of the need for critical analytical strategies to help ensure accountability to differences within communities. In this chapter, I argue that Indigenous feminism can prove vital in expanding dominant conceptions of relational accountability, considering Indigenous feminist contributions to the discourse on relationality, their attention to process and critically-informed praxis, their commitment

to challenging dichotomous ways of thinking about individual vs. collective interests, and their emphasis on centering marginalized subjectivities.

Relationality and the Constitution of Individual Subjectivity

Under a transactional view, treaties are understood as historic agreements between collective entities that implicate their constituencies but that primarily involve a series of commitments by governments. They are represented as agreements of which Indigenous peoples are the beneficiaries and only a select few chiefs and political leaders have a responsibility for enacting on behalf of their constituencies. Canadian legal and political interpretations have further reinforced the association between treaties and collective rights, an association which has, at times, been reproduced by Indigenous peoples within our own mobilization efforts.⁴⁰⁵

A relational understanding collapses the notion that treaties are singular transactions that only have relevance to the collectives who signed them. Instead, it positions treaty-based modes of relating as relevant to all of us, as this shift in thinking is both something that stands to impact us all but that we can each learn a great deal from. As Leanne Simpson notes, “treaties are not just for governments, they are for the citizens as well. The people also have to act in a manner that is consistent with the relationships set out in the treaty negotiation process”⁴⁰⁶

⁴⁰⁵ Joyce Green, "Constitutionalizing the Patriarchy: Aboriginal Women and Aboriginal Government" (paper presented at the Constitutional Forum/Forum constitutionnel, 2011).

⁴⁰⁶ Simpson, "Looking after Gdoo-Naaganinaa: Precolonial Nishnaabeg Diplomatic and Treaty Relationships."

When conceptualized as a framework for relationship, treaties can attribute individuals with the agency to play a meaningful role in the relationships they inhabit, as they are based on the notion of non-hierarchical, dialogical, continuous and consensual interactions. Treaty-based modes of relating understand all those involved as having equivalent moral but also political standing, with each individual having something to contribute to the relationship. Thus, inherent in treaties is an appreciation of the value that exists within and across difference. They provide a framework that allows multiple self-determining parties to engage in mutually beneficial and reciprocal relationships with one another while remaining autonomous.

In her paper entitled *Treaties, Truths, and Transgressive Pedagogies*, Margaret Kovach proposes that when understood relationally, treaties can inspire a pedagogy that can help individuals engage from and across different worldviews and temporal states. Rather than limiting treaty teachings to a part of educational curriculum, she proposes that treaties can be embodied in interpersonal engagements that negotiate seemingly contradictory worldviews, political processes and economies.⁴⁰⁷ Drawing on an understanding of treaties as living, mutually agreed upon protocols used to create and regulate respectful relationships between Indigenous and settler peoples, Kovach proposes a treaty philosophy as a form of ‘ambidextrous consciousness’ that involves moving back and forth between Eurocentric and Indigenous worldviews. Rather than understanding these dual ways of and being as contradictory, “a treaty philosophy does not argue against the contradictions that define the tensions of freedom.”⁴⁰⁸ Rather, a

⁴⁰⁷Kovach, "Treaties, Truths and Transgressive Pedagogies: Re-Imagining Indigenous Presence in the Classroom," 123.

⁴⁰⁸ Ibid., 114.

treaty philosophy problematizes and disrupts normative practices to find ground amidst these tensions and contradictions. Further, treaties can remind individuals of the centrality of truth telling, continuous dialogue, and an awareness of the relationship between past, present and future which in turn can inform their personal practice.

While Kovach's proposals are intended to refer to the development and practice of educational pedagogies, the treaty-based principles that she describes can easily be abstracted to inform the practice of many different forms of engagement and relationship building. She focuses primarily on the transformative potential of a treaty-based, relational process of working through differing worldviews as an educator; however, there are also many additional values and practices that can be drawn out of treaty-based modes of relating and applied to the development of personal practice. Furthermore, her analysis provides an important example of the ways in which we can look to treaty relationships beyond the realm of collective rights, and to draw out principles that can be operationalized by individuals in their own pedagogy.

Negotiating the Individual/Collective Dichotomy

Recognizing the interdependence that individuals share can help expand the scope of our individual and collective responsibilities towards one another and the natural world. However, this requires broadening our vision of the actors who we understand treaties to be relevant to, which in turn means overcoming the conceptual barriers imposed by the perceived division of individual and collective issues. Overemphasis on the individual vs. collective question has perhaps distracted from the nature of the

relationships that were established through treaties as well as the roles and responsibilities within them.

As a result of the perceived dichotomy between individual and collective rights, women's issues have often been positioned as peripheral to or inconsistent with the "broader" Indigenous political movements. "Broader," in this context, refers to those movements that purport to have a collective orientation and be unencumbered by feminist analyses. Yet the emphasis on collectivity rather than relationality has itself been an outcome of Indigenous efforts to navigate rights frameworks. As Emma Larocque has written "perhaps unavoidably, Native leaders have had to overemphasize collective rights to make the point that such rights are even culturally feasible."⁴⁰⁹ However, Larocque also notes that the notion of "collectivity" was in many ways invented through the creation of reserves and a legalized collective identity via the *Indian Act*.⁴¹⁰ The overemphasis on collective interest described by Larocque has eclipsed the ways in which treaties primarily concern the nature of relationships between living beings, not between static groupings of humans.

The previous chapter introduced several ways in which treaty-based modes of relating can inform notions of collective accountability. There I invoked some of the ways in which our ancestors have historically sought to negotiate and maintain relationships with other living beings. At the same time, given that interpretations and representations of culture are so commonly represented as collective interests, I am also interested in the need to take concerted efforts to think about how to remain accountable

⁴⁰⁹ Emma LaRocque, "Re-Examining Culturally Appropriate Models in Criminal Justice Applications," in *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference*, ed. Michael Asch (1997), 87.

⁴¹⁰ *Ibid.*

to individuals within communities. As the identification and representations of cultural practices are notoriously gendered in ways that disadvantage women,⁴¹¹ there is also a vital need for attention to the power relations at play within processes that draw upon cultural traditions such as practices of knowledge production and ways of creating and maintaining relationships.

Beyond the ways in which treaties can inform the constitution of collective political identities, they also offer an important opportunity to expand collective conceptions of accountability by thinking about how individuals and collectives might remain accountable to one another in light of the myriad power relations that exist within communities. It's not always easy to remain accountable to multiple different and perhaps even contradictory interests. However, we must be cautious not to allow some of our responsibilities to eclipse others, and need frameworks that can help us simultaneously inhabit many relations that we are accountable to.

By looking to treaties, Indigenous people are able to draw on the ways in which our ancestors have historically sought to negotiate and maintain relationships with other living beings, and look at the practices they employed to remain accountable to the various relations they inhabit. Treaties provide an important model as they remind us that we can inhabit various relations simultaneously, and that all of these constitute us in important ways. The following section of this chapter will explore the ways in which treaties can inform notions of accountability that are more expansive than western

⁴¹¹ Joyce Audry Green, "Exploring Identity and Citizenship: Aboriginal Women, Bill C31 and the Sawridge Case" (University of Alberta, 1997); LaRocque, "Re-Examining Culturally Appropriate Models in Criminal Justice Applications."; Kauanui, "Native Hawaiian Decolonization and the Politics of Gender."

understandings of the term in an effort to demonstrate some of the ways in which Indigenous peoples can draw on our own rich body of resources to inform the interplay of individual and collective interests.

While a collective focus is central to the revitalization of cultural traditions such as treaty-based modes of relating, placing such a large degree of emphasis on “the community” interest, and defining our imperatives under treaties by way of contrast with the individualism of western forms of governance may have the unintended effect of reproducing binary ways of thinking about the individual vs. collective interest which can function to contain accountability to diverse subjectivities within Indigenous communities.

Accountability to Difference within Collectives

To ground contemporary notions of accountability in a treaty-based framework, we can begin by looking to the nature of treaty relationships themselves and reflecting on their spirit and intentions, asking ourselves about the visions of relationship that our ancestors brought to treaties. For instance, principles of accountability can be drawn out by reflecting on the question of what their primary considerations were in making treaties? To what and whom did signatories demonstrate a concern for? In other words, what aspects of life did they see themselves as being accountable for? How did they seek to enact their roles and responsibilities? These questions highlight the ongoing need for attention not just to our responsibilities to other humans, but to our responsibilities to creation and to other living beings, past, present and future. Treaty relationality can thus provide an important and culturally-relevant way for Indigenous peoples to ground our

understandings of accountability, given that treaty-based modes of relating have historically provided the framework for mutually beneficial and sustainable relationships between human communities, and between humans and the rest of creation. However, this involves thinking about treaties while shifting our attention from a focus on rights to questions of relationship.

Treaties provide an important example of how we can model our human interactions upon the networks of relations that exist within the natural world, as this is where Indigenous peoples have historically looked to gain direction for human interactions. By gaining an awareness of the complex systems of interdependence, symbiosis, and mutual survival that are inherent in the rest of creation, humans are able to observe how the various parts of the natural world play different roles while working together to nourish and sustain one another. As Coulthard writes, Indigenous peoples' senses of place situate us as an "inseparable part of an expansive system of interdependent relations covering the land and animals, past and future generations, as well as other people and communities" from which a number of ethico-political norms follow.⁴¹² From observing the living earth, we can gain a greater sense of accountability by contemplating our roles and responsibilities in relation to all living beings.⁴¹³

As they were intended to provide a framework to bring newcomers into pre-existing relationships with creation, treaties embody notions of accountability by design. In allowing settlers to share the land, Indigenous peoples undertook a responsibility for teaching newcomers about the ways in which we relate to creation, and the Crown

⁴¹² Glen Coulthard, "Place against Empire: Understanding Indigenous Anti-Colonialism," *Affinities: A Journal of Radical Theory, Culture, and Action* 4, no. 2 (2010): 82.

⁴¹³ Deloria, *The World We Used to Live In: Remembering the Powers of the Medicine Men*; Keith H Basso, *Wisdom Sits in Places: Landscape and Language among the Western Apache* (UNM Press, 1996).

undertook specific responsibilities to Indigenous peoples and for the newcomers that it would bring. treaty relationships therefore provide for the creation of a method of engagement where parties can simultaneously embody mutual and distinct obligations in relation to one another, within an overarching framework that they each agree to honour.

In the discourse on treaty relationality, the authors highlight the need for a commitment to long-term relationship building between treaty partners. With their perpetual nature and their emphasis on long-term relationship building, renewal, and change, treaties can help inspire the development of modes of engagement that are enduring, dynamic, mobile, and responsive to the changing needs of treaty partners, rather than trying to apply a fixed-in-time set of terms or principles to a short period in time. This can help ensure that there is adequate time for the establishment and implementation of an accountable, informed, and consultative engagement framework, rather than sacrificing process in the interest of immediate and measurable outcomes.

Furthermore, a long-term understanding of accountability modeled after treaties allows space for each sequential stage of engagement processes to be informed by dialogue with community members, resulting in a more flexible design that allows for change as the overall relationship between parties evolves. It also allows for growth and renewal, with each subsequent stage building on what was learned previously to work towards overall objectives. A long-term, transparent process can help communicate expectations and establish community trust, understanding and engagement in the process. It also allows for the consultation and participation of a broader range of individuals in community governance, as roles can be distributed among individuals with different areas of expertise. This allows for greater accountability to knowledge, as we

can engage in the appropriate protocols and practices to ensure that the knowledge being drawn upon is used in a responsible way. Further, the emphasis placed on dialogue, consultation, and consent in the negotiation of the Numbered Treaties speaks to the need to remain accountable to the grassroots level through community-led processes that are attentive to the diverse knowledge and experiences of community members. This can give rise to a more consultative framework that draws on a diverse range of voices to shape community engagement processes, including grassroots activists, youth, Elders and knowledge keepers and citizens.

With a relational, rather than linear conception of existence treaties can also facilitate an understanding of accountability to generations past, present, and future. Not only are Indigenous peoples accountable to the knowledge of those that came before us, but also those who have yet to come. In the same way that our ancestors approached treaty-making, we must remain aware of our responsibility to ensure a healthy and sustainable existence for future generations. As Elder Jacob Bill suggests, Indigenous peoples must turn to treaties as a way of reviving our lives and relationships for the benefit of future generations. Using the metaphor of a fire, he notes “ [...] just like that little flicker, that little flame's going out, that's the way the treaty looks, but now that we are sitting here it seems like we need a big flame so we can revive our lives and our relationship, just like we're trying to revive this life so that our young people will have a good life for a long time, for many generations to come. That's why we are here, that's what the Elders seen a long time ago [...]”⁴¹⁴ Elder Bill’s insights speak to the notion of accountability to future generations. Part of our treaty obligations includes the need to

⁴¹⁴ Bill, "Exploratory Treaty Table Justice Symposium," 105-06.

make decisions and maintain relationships that will benefit future generations; conversely, if treaties aren't honoured and we allow the 'flame' of healthy ways of relating to burn out, future generations will feel the repercussions of our actions today.

For their ability to inspire new ways of grounding accountability within the interconnectedness of all living beings and different periods in time, treaties can provide important directive in how to remain accountable to those who are absent or who do not have a dominant voice within community relationships, yet who are nonetheless impacted by the actions of their relations. As practices of treaty-making remind us, our decisions also have an impact on those who lack representation and voice such as the land, water and other living beings, generations yet unborn, or those who occupy marginal locations within communities. Without adequate attention to these relations, it is possible for the rhetoric of relationality to be invoked in a way that insulates or invisibilizes some power dynamics from critique. It is therefore vital that we approach the revitalization of treaty-based modes of relating in a cautious and critical way, so as to ensure that our understandings of relationship-building and accountability include a willingness to take account of the multiplicity of power dynamics and consequent forms of violence that can be either challenged or reproduced within collectives.

Even when adopting an expansive understanding of relational accountability that accounts for one's relations to communities, to creation, and to past, present and future, a commitment to critically reflect upon processes of accountability requires a number of shifts in thinking. It requires reconceptualization of the relationship between the self and others and reconsideration of the actors involved in treaty implementation. It requires exploration of the 'everyday' character of treaties, which involves challenging the

individual vs. collective dichotomy and bringing the scale of treaty implementation to a personal level. It means reconceptualizing what it is we understand to be politically significant in order to take account of a broader range of issues that impact and shape the pursuit of knowledge. Finally, it involves the development of concrete strategies to employ theory critically in practice. In the next section, I argue that the long genealogy of feminist thinkers, and specifically Indigenous feminists, who have attended to the development of processes and personal practices geared towards challenging various intersecting forces of oppression within knowledge production and mobilization, can contribute a great deal to these projects.

Relationality and Indigenous Feminism

The development of notions of accountability that are grounded in treaty-based modes of relating and that are responsive to the varying needs and experiences of individuals within communities can be advanced through the use of critical analytical strategies such as Indigenous feminism, with its attention to marginalized subjectivities and to the intersections of race, class, gender, sexual orientation, age, and ability. Indigenous feminists' willingness to resist hegemonic and dichotomous ways of thinking, along with their experience redefining issues, acknowledging the diversity of individual experience, overcoming disciplinary boundaries, and negotiating disparate worldviews can help guide some of the paradigm shifts necessary to think within and work through an expansive ethic of relationality. Indigenous feminism can prompt us to nuance and complicate terms such as community, tradition, and culture, and interrogate the possibilities, limitations, tensions and consequences of these concepts. An Indigenous

feminist methodology invites the recognition and appreciation of difference and the negotiation of conflicting and seemingly irreconcilable epistemologies and worldviews. Finally, Indigenous feminism provides concrete strategies to develop critically-informed praxis between the theory on relational accountability and the ways in which these principles can be employed in the everyday. This section explores the potential for Indigenous feminism to contribute to the development of a framework of relational accountability that makes space for a greater range of voices and experiences within collective processes.

As this chapter has demonstrated, dominant understandings of treaties have a tendency to position them as collective issues that stand in contradistinction to issues of a purportedly individual orientation, such as the so-called ‘women’s issues.’ Thus, one of the major challenges and opportunities inherent in the development of a treaty-based practice at the individual level involves narrowing the scale of treaty implementation and redefining the way in which we understand treaties in order to allow them to inspire change in the ways we relate to one another. A relational treaty-based methodology invites the recognition and appreciation of difference and the negotiation of conflicting and seemingly irreconcilable epistemologies and worldviews. This section explores the potential for Indigenous feminism to contribute to the development of a treaty-based framework of accountability that resists the individual vs. collective dichotomy as well as binary ways of thinking about the ‘personal’ and the ‘political’ in order to make space for a greater range of voices and experiences within community governance.

Indigenous feminists have a long legacy of working against the individual vs. collective dichotomy in Indigenous politics. Prior to the era of constitutional negotiations,

Indigenous representative organizations either blended the needs of men and women into a pan-Indigenous discourse of Aboriginal and treaty rights, or absented the needs of women entirely. Malestream Indigenous organizations blocked Indigenous women from having their own representation during constitutional talks, concerned that it would erode their political power and complicate their political agenda. The status Indian lobby organizations demonstrated especially strong hostility against Indigenous women who sought to retain or regain Indian status, or who insisted on a mechanism for Indigenous women's voices to be considered in negotiations.⁴¹⁵ Indigenous feminist analysis demonstrated that much of the power held by Indigenous governments emerged from the consolidation and defense of patriarchal power and privilege, rather than the exercise of legitimate representative authority.

A number of Indigenous women drew attention to the ways in which legacies of colonialism had resulted in the concretization of patriarchal systems of band government and male privilege within Indigenous communities. These women challenged the culturalist claims that some communities invoked to legitimate exclusionary and oppressive policies, and finally, they discredited the prioritization of self-government over women's rights and interests. These Indigenous feminist interventions represent some of the first public invitations for Indigenous governments to confront conditions of patriarchy within their communities and to consider the ways that homogenous constructions of Indigenous identity, far from remedying the oppression faced by Indigenous peoples, were in some cases contributing to or amplifying that suffering, particularly in relation to women.

⁴¹⁵ Green, "Constitutionalizing the Patriarchy: Aboriginal Women and Aboriginal Government."

Over time, Indigenous women continued to engage in various forms of critical activism and analysis in order to contest patriarchal and heteronormative constructions of Indigeneity. Indigenous feminists have taken particularly great care to demonstrate that there are not only explicit distinctions in Indigenous peoples' experiences of colonization, but also that there are also important differences in the forms of oppression faced by Indigenous women and GLBTQ2 people. Along the way, Indigenous feminists have had to continually voice our concerns with the caveat that we are in solidarity with the "broader" political issues, be it the treaty table, the land question, or self-government.

While more and more Indigenous people shift the focus of our political efforts away from the rights frameworks that gave rise to the originary debates around gender and Indigeneity, many of us are left wondering how we might bring these crucial conversations into contexts of Indigenous resurgence to ensure that the revitalization of Indigenous ways of knowing and being remains attentive to the diversity of Indigenous peoples' experiences. While homogenous and essentialist constructions of Indigeneity may have been understood by some to be a useful strategy for collectives to mobilize politically in the era of rights and recognition, Indigenous feminist analyses remind us that this imagined cohesion should not overshadow issues of importance to women and marginalized people. Indigenous feminists question the labelling of issues, priorities and objectives as either community or individual matters, and challenge their compartmentalization. As Joyce Green has argued, there is no inherent contradiction between the two in either western or Indigenous conceptions of the relationship between individuals and communities.⁴¹⁶ While the concept of relational accountability

⁴¹⁶ Green, "Exploring Identity End Citizenship: Aboriginal Women, Bill C31 and the Sawridge Case," 151.

emphasizes the need to remain accountable to community partners, a broad understanding of accountability also necessitates attention to those whose voices may not occupy central positions within these communities, including our collective accountability towards the so-called “women’s issues.”

Because treaties are so heavily associated with the collective interest, it is particularly important that those who ground their understanding of accountability in treaties critically reflect on whether they are remaining accountable to all their relations, not just to actors who hold powers of definition, representation, and voice within communities.

Rather than seeing difference as a threat to collective or community needs, Indigenous feminism has the potential to enable Indigenous studies scholars to nuance and complicate what it is we understand to be a community imperative. As Mishuana Goeman writes, Indigenous feminism engages in politics of refusal of the “whitestreaming of Indigenous women’s politics and organizing” that creates a practice that pays attention to the particularities of community needs on the ground.⁴¹⁷ At the same time, Indigenous feminism also engages in a refusal of the “malestreaming” of Indigenous politics. Indigenous feminist analysis attends to the diversity of experiences of Indigenous peoples, and that is equipped to critically interrogate how colonialism interacts with gender, class, race, ethnicity, age, and ability to take account of the diversity of experiences and knowledge that exist within communities. As a method that lies at the intersection of the disciplines, Indigenous feminism by definition finds itself negotiating seemingly contradictory imperatives and worldviews, and since its origins

⁴¹⁷ Goeman, "Indigenous Interventions and Feminist Methods," 187.

has had to challenge dichotomous ways of thinking that position the needs and interests of some members of collectives above others.

I am of the opinion that Indigenous inquiry will be advanced rather than threatened by efforts to remain accountable to the diversity of Indigenous knowledges. Indeed, the feminist method of beginning “from the problems of the marginalized, who are often disadvantaged by gender as well as other factors” can help draw our attention to the political, cultural, economic, and social underpinnings of key issues and questions in treaty relationships, while also raising questions of accountability.

Indigenous feminist modes of analysis can ensure that accountability to a community is balanced with the collective interest. Indigenous feminists inquire into issues that may result in critique of the community, and can raise a broader number of social and political considerations while also bringing a broader range of voices, perspectives and experiences into conversation with one another. The intersection of objectives, priorities, needs, and worldviews that are seemingly irreconcilable can often result in the negotiation of new spaces for exploration and inquiry. Furthermore, Indigenous feminism can center Indigenous women’s agency by highlighting their resistance to the multiplicity of power relations which exist within communities. It can help uncover and transmit marginalized knowledges and voices and integrate them into our collective consciousness, as it takes the diversity of Indigenous peoples’ lives and experiences seriously and sees them all as politically significant.

While Indigenous studies scholars are increasingly integrating considerations of gender and sexuality into their analyses of colonialism and resurgence, we are only

beginning to recognize the need to engage feminist analyses as part of the purportedly 'broader' political issues.

An Indigenous feminist lens can provide the theoretical and practical tools to illuminate and deconstruct the ways in which the production and representation of Indigenous modes of relating can be highly gendered. Indigenous feminism calls upon individuals to be willing to evaluate and take ownership of their role in the reproduction of oppressive social forces; to confront dualisms, highlight intersections, and both prompt substantive and foundational changes to processes of knowledge production. Furthermore, it can help us remain mindful that heteropatriarchy must be dismantled from many angles, from internal to external strategies, from grassroots to formalized networks, from the everyday to the long-term, and from the interpersonal to institutional level.

Conclusion

This chapter has introduced the potential for treaty-based modes of relating to inform the constitution of principles of accountability that can help collectives remain attentive to individual difference within communities. It has elucidated strategies for helping conceptualize treaties as a form of practice that can be embodied in the 'everyday'. These considerations are by no means static, everyone will have their own application of this ethic of relationality within their own lives and that broad applicability is part of the richness of the shift in thinking about treaties as relationship agreements. Rather than prescribing specific predetermined actions, it allows for a more robust

application to the multiplicity of relationships that we inhabit. A relational treaty-based methodology invites the recognition and appreciation of difference, the negotiation of conflicting and seemingly irreconcilable epistemologies and worldviews, and the rejection of hegemonic and dichotomous ways of thinking.

The latter part of this chapter has argued that in working towards a more expansive conception of treaties as relationship agreements, Indigenous feminism provides an important reminder that we must account for the many power relations that exist between communities, but also within communities themselves. In an era of Indigenous resurgence, it is particularly important to have the adequate tools for challenging new forms of heteropatriarchy that emerge in responses to colonialism and in efforts to work towards the revitalization of Indigenous ways of knowing and being.

Rather than seeing it as a threat, understanding Indigenous feminist activism as integral to the responsible mobilization of Indigenous cultural traditions can allow Indigenous people to incrementally carve out greater space for the multiplicity of Indigenous peoples' contributions to their communities to be appreciated without asking anyone to compromise aspects of their identity in the process. In other words, we can cultivate environments where individuals can be Indigenous and feminist at the same time; where they can confront patriarchy and colonialism in concert; where they can engage in practices of resurgence without having to subscribe to heteronormative productions of Indigeneity. Understanding the various manifestations of gender within processes of knowledge production can help advance the notion of relational accountability by elucidating the need to account for a broad range of identity-based differences. Indigenous feminist modes of analysis can help make space to engage in

critical conversations as we negotiate this terrain, and to keep these discussions going in the everyday.

Reflections and Conclusions: The Limits and Conditions of Living a Treaty-based Practice of Relationality

Broadly speaking, this dissertation has sought to demonstrate that as more and more Indigenous peoples seek to move away from western philosophical and political processes in constituting ourselves, either individually or collectively, we can look to our own resources as these are more reflective of a relational way of seeing and being in the world. I have sought to demonstrate that treaties represent an important reference point when attempting to draw out such philosophies of relationality.

I have proposed that Indigenous peoples can look to treaty-based modes of relating to provide the models for governing relations at multiple levels and in multiple realms of life. In doing so, I have highlighted the potential for renewed awareness of our roles and responsibilities within relationships to help us reorient the ways that humans interact with each other and our environments in past, present and future contexts. I have drawn on Indigenous philosophies of relationality to help illuminate the limits of individualistic, hierarchical, anthropocentric, and exploitative ways of being, while advancing the specific notion of treaty relationality to inspire an alternative conception of how humans might govern and organize ourselves in relation to one another and to the living earth. I have invoked these promissory applications as evidence for the need for a resurgence of a treaty-based ethic of relationality. Throughout, I have sought to explain how these possibilities are inhibited by a transactional understanding of treaties, both in the way that treaties have been conceptualized by the state but also by the ways in which Indigenous peoples have at times reproduced a transactional logic in our own assessments of treaties.

Yet even while engaging with the violent implications of the transactional approach, the conversation has primarily centered around the promises and potentials that treaties hold when understood in a relational way. Thus, I would like to round out the conversation by briefly reflecting upon and providing an overview of several considerations relating both to the risks and possibilities inherent in this move towards a relational paradigm. In this concluding section, I will reflect upon some factors that stand to impact the resurgence of a practice of treaty relationality. Here I am interested in identifying considerations that can help us be mindful of the ways in which relational discourses such as those grounded upon treaties can serve to either advance or constrain political movements, as well as the ways they can be invoked to either confront or insulate the violation of individual and collective wellbeing in the name of treaty implementation. These cautions generally relate to risks that emerge when discourses of relationship are taken up in such a way that reinforces essentialist, fundamentalist, and/or dichotomous ways of thinking.

Alongside the transformative possibilities of a renewed conception of relationship, it is also important to remain mindful of the ways in which the discourse of relationship can be invoked to mask or legitimate oppressive practices. This distinction can draw our attention to the ways in which we might violate our responsibilities within relationships through neglect or oversight, or through explicitly destructive and abusive forms of interaction. With an eye for this dual potential, we can become more cognizant of the various ways in which we all stand to reproduce or challenge forms of violence in our day to day actions. For instance, many people recognize that they inhabit treaty relationships, but continue to tacitly or explicitly contribute to the violation of the

commitments that they entail. Or, they claim a deep connection to particular geographies with little awareness of the ways in which their actions might contribute to harming those same spaces. In other words, acknowledging a relationship between self and other doesn't necessarily translate to the full range of actions that are required to inhabit those relationships properly. Furthermore, the very process of drawing out our responsibilities within relationships is itself subjective and highly politicized, with the potential to implicate others in ways that they find disempowering. While being committed to the regeneration of a relational way of being is relatively straightforward at a theoretical level, enacting this commitment on the ground in our day to day lives gives rise to many complex questions and contradictions. Further dialogue and work is needed to continue to complicate and advance the discourse of relationality as it continues to grow, both in regard to the considerations that will be raised in this conclusion and beyond.

Gender and Relationality

The first consideration I raise follows from the last chapter but takes up the broader ways that the notion of treaty relationality stands to implicate Indigenous women. While the role of Indigenous feminism was discussed in the previous chapter, the general association between gender and relationship merits further consideration. The revitalization of traditional notions of relationality can function to center women due to their association with creation and perceived role as those who are primarily responsible for maintaining healthy relationships within Indigenous communities.⁴¹⁸ Yet as discussed

⁴¹⁸ Kim Anderson writes that in the women's circle, emphasis was placed on the types of work that were imperative for the survival of the community, including activities that were essential to building and maintaining community: "personal and family relationships were paramount, and the women held

in previous sections of this dissertation, the association between women and relationship can also function to minimize and/or eclipse Indigenous women's political agency by labelling women's theorizations as either individual concerns, or as concerns that relate to family health and wellness. Critical dialogue around women's experiences is thus a particularly important part of projects that aim to explore the political significance of bringing forward treaty-based ways of relating with one another and our environments.

The project of re-conceptualizing systems of law and governance upon relational grounds can be incredibly empowering for many women. It can facilitate an appreciation of the political significance of our everyday relations by calling into question the public/private and individual/collective rights dichotomies and demonstrating that there are important legal and political principles that can be drawn out of our everyday interactions.⁴¹⁹ Furthermore, it can bring forward greater awareness of women's political agency by demonstrating that Indigenous women's role within the family and community has important implications beyond the domain of cultural maintenance and transmission, and by drawing out the distinctly political nature of women's everyday relations and interactions.

important responsibilities in these areas." She explains further that given the interdependence of land-based communities, relationship building was "vital to the well-being of the collective, and as the keepers of relationships, women held important roles." Kim Anderson, *Life Stages and Native Women: Memory, Teachings, and Story Medicine*, vol. 15 (Univ. of Manitoba Press, 2011), 111-12.

⁴¹⁹ As Sarah Hunt and Cindy Holmes have argued, the day-to-day forms of resurgence that take place within the relationships that we inhabit can provide some of the most important sources of strength and solidarity as we work towards decolonization and resistance to gender-based violence. Relationships are also emancipatory as they provide alternatives to engagements with the settler state and its institutions. By looking to their own partnerships, families and friendships, Hunt and Holmes elucidate the many strategies for addressing violence against women that emerge from practices of allyship, solidarity-building, advocacy, and political organization within their interpersonal relationships. Their work provides important insight into the everyday, on the ground ways in which relationships can be transformative for Indigenous women. Sarah Hunt and Cindy Holmes, "Everyday Decolonization: Living a Decolonizing Queer Politics," *Journal of Lesbian Studies* 19, no. 2 (2015).

In *Two Families: Treaties and Government*, Harold Johnson writes that the knowledge and expertise of women is integral to the balance that is required for a healthy treaty relationship. As women have been subordinated through the Crown's interpretation of treaties, re-centering the knowledge of women will help restore an equilibrium, "Women's understanding has been ignored, and we need as many ways of knowing as possible if we are going to see into the future and prepare for the next seven generations."⁴²⁰ Thus the unique knowledge and experience of women is integral to the future direction of Indigenous peoples and communities:

They know about giving life. Men are only capable of destroying it. We kill our plan and animal relatives as well as each other. But life needs death. Life and death are balanced in the cycles of the earth and time. Everything dies, is supposed to die, was born to die. Men and women, the takers and givers of life, must be in balance [...]⁴²¹

Johnson's perspective is important as he describes how the health and wellbeing of our communities revolves around the need to maintain balance, which requires respect for the perspectives and experiences that men and women have to offer. Johnson links the health of women to the health of the community as a whole: "They need to be strong and healthy so that our children are strong and healthy, so that our future is assured."⁴²² He interrogates the origins of patriarchy in Indigenous communities, linking abuse of the earth to abuse of women: "I wonder, *Kiciwamanawak*, did disrespect for the earth begin at the same time as disrespect for women?"⁴²³ This question raises important considerations, emphasizing that treaties were made under the laws of creation and that

⁴²⁰ Johnson, *Two Families: Treaties and Government*, 83.

⁴²¹ Ibid.

⁴²² Ibid., 84.

⁴²³ Ibid.

women represent such an integral part of creation that respect for women and for mother earth are both requirements for living together under the treaty. Furthermore, it suggests that implementation of treaties requires both correction of how women are treated and how we treat the living earth. Yet, his perspective also implies that treaty implementation requires not just symbolic recognition of the power of women, but also recognition of the central leadership role that women must play in the governance of our communities under treaties in the contemporary context.

When invoked in an essentialist fashion, Indigenous women's association with nature and creation, and man's association with science and rationality puts women in the contradictory position of being primarily responsible for the maintenance of healthy relationship while having less agency on how to address those relationships in the public sphere. Furthermore, when Indigenous women do invoke the discourse of relationship in the public sphere, these works are often seen as less authoritative than those of men. For instance, there are many Indigenous women who have adopted a relational approach to reveal the limits of western conceptions of law and politics, and/or who have proposed alternative frameworks that are grounded in Indigenous worldviews. However, these analyses have a tendency to be interpreted as "women's issues", often positioned in contradistinction to those issues of a collective orientation. As Leanne Simpson writes:

Too often within Indigenous politics, a hierarchy of issues is set up flagging land issues with urgency. Land claims, treaty violations, blockades, and political negotiations are positioned as righteous work, while issues regarding children, families, sexual and gender violence, and bodies are positioned as less important – issues that can wait until we have the land back. There is also a gendered nature to this work and this assumption. Men working on land and political issues are positioned as theorists and leaders. Women working on child welfare issues or gendered violence are marginalized and then dismissed and ignored as Indigenous feminists or community organizers.⁴²⁴

⁴²⁴ Simpson, *As We Have Always Done: Indigenous Freedom through Radical Resistance*, 53.

Simpson emphasizes how women's theorizations and work are often interpreted as "women's issues" when they deal with issues relating to safety, survival, and family and community relations. Laura Peers notes that this tendency dates back to the classic historical and anthropological depictions of Indigenous life, in which "women's work is generally presented as quite separate from men's, as being largely restricted to the "private" sphere of the home, rather than intersecting with the "public" sphere of politics, war, religion, and society at large, which is considered to be men's territory.⁴²⁵ And while Indigenous women certainly do play crucial roles in maintaining the cultural and familial ties within communities, we also make important interventions in the fields of law and politics, illuminating, disrupting, and providing alternatives to colonial and heteronormative systems of power and privilege.

Dian Million demonstrates how despite being dismissed as domestic or family issues, Indigenous women have fought to transform the very meaning of the term nation, "not necessarily the nations called into being by a human rights will to self-determination, but as the Indigenous nations they already understood themselves to be."⁴²⁶ To this end, Indigenous women have geared their efforts towards the establishment of strong community governance as a strategy to bring about healing, rather than prioritizing human development approaches to healing, which are entrenched in a vision of personal development and transformation. However, women have not always received proper recognition for these efforts; rather than being understood as exercising a vision for the governance of their communities, Indigenous women's

⁴²⁵ Laura Peers, "Subsistence, Secondary Literature and Gender Bias: The Saulteaux," *Women of the First Nations: Power, Wisdom and Strength* (1996): 39.

⁴²⁶ Million, *Therapeutic Nations: Healing in an Age of Indigenous Human Rights*, 124.

political actions have had a tendency to be interpreted in holistic terms and deferred to community health projects or reduced and confined to conversations about “gender rights” and “sexual equality.”⁴²⁷ Indigenous women’s activism sought to bring about the “the overall health and well-being of their communities,” through the use of many approaches, but primarily by drawing on Indigenous philosophies of relationality to inform their practice as nations:

They worked toward an Indigenous symbolic that does not see the polity organized around a white male subject or a female Indigenous one. They moved to transform the order. Indigenous women articulate a polity imagined in Indigenous terms, a polity where everyone – genders, sexualities, differently expressed life forms, the animals and plants, the mountains – are already included as the subjects of the polity. They are already empowered, not having to argue for any “right” to recognition; they form that which is the polity, that which is respected and in relation.⁴²⁸

Million demonstrates that Indigenous philosophies of relationality are distinctly political, that are not just issues that impact the familial or social realm of life, but that they have significant application to community politics. In recent years, there has been a growing academic interest in the transformative possibilities that treaty relations hold for reimagining social and political relations within Indigenous communities and between Indigenous and non-Indigenous peoples. The work of scholars such as Aimee Craft, Maggie Kovach, Heidi Stark, Leanne Simpson, Sylvia McAdam, and others have brought the relational character of treaties to the fore of contemporary approaches to law and politics.⁴²⁹ Of particular interest is the degree to which it is Indigenous women who are

⁴²⁷ Ibid., 129.

⁴²⁸ Ibid., 132.

⁴²⁹ Stark, "Respect, Responsibility, and Renewal: The Foundations of Anishinaabe Treaty Making with the United States and Canada."; Sylvia McAdam, *Nationhood Interrupted: Revitalizing Nêhiyaw Legal Systems* (Purich Publishing Limited, 2015); Kovach, "Treaties, Truths and Transgressive Pedagogies: Re-Imagining Indigenous Presence in the Classroom."; Simpson, "Looking after Gdoo-Naaganinaa: Precolonial

calling for reorientation of the ways in which we invoke treaties to inform community governance. These works also make important interventions in the fields of Indigenous law and politics, illuminating, disrupting, and providing alternatives to colonial and heteronormative systems of power and privilege. The multiplicity and vitality of their voices demonstrates the extensive length and breadth of contributions that Indigenous women have made in exploring the incredibly transformative possibilities that relationship can offer Indigenous law and politics. It is in recognition of their efforts that I aim to honor their work, but also to consciously trouble the tendency for Indigenous women's scholarship to be seen as less authoritative to those of men in these fields.

Although Indigenous women comprise the central subjects in discussions of relationship, our scholarship is often discredited as autobiographical or as too personal if we ground it too heavily in those same relations. When women invoke personal experiences our work is read as anecdotal while men's perceived distance from the realm of relationships allows their scholarship to be read as neutral and empirically evidenced. In fact, when men enter into discussions that aim to draw out the political significance of their familial, spiritual, or communal relations, they are widely applauded for their innovative and groundbreaking contributions.

Indeed, men retain a greater degree of authoritativeness when writing on these same topics and the relevance of their analyses of relationship to broader political projects is generally presumed. Beyond being relevant, they are often considered to be revolutionary for taking up and addressing the same colonial, anthropocentric, and patriarchal relations that Indigenous women have been disrupting at length for many

Nishnaabeg Diplomatic and Treaty Relationships."; Craft, "Breathing Life into the Stone Fort Treaty: An Anishinabe Understanding of Treaty One."

years, and for illuminating the political significance of relationships, something women have been arguing for since the earliest origins of feminist organizing.

For the concept of relationship to truly represent a source of critical consciousness, it is also important to examine the full extent of its gendered implications. This means contemplating the different ways that the discourse of relationship implicates Indigenous men and women, depending on the how their responsibilities within relationships are invoked and the context in which they are applied. As we reflect on the possibilities for relationship to represent a source of knowledge and direction for change, it is vital that we remain mindful of the potential for both men and women to either reproduce or challenge gendered hierarchies and dynamics in our own works.

In my view, the discourse of relationality has the potential to disrupt and complicate the ways that Indigeneity gets constructed along gender lines, both in western representations of Indigenous culture as well as in decolonial efforts to reframe Indigeneity. A relational approach is well-suited to demonstrate that gender classifications are not biologically or spiritually determined but are social and cultural productions shaped in relation to colonial and decolonial projects. If we understand relationality as an analytical lens through which we recognize difference as socially and culturally produced rather than allowing the discourse of relationship to essentialize these differences in ways that confine our movements, we stand to cultivate a greater range of grounds for Indigenous identity and a broader spectrum of modes for engaging in acts of resurgence.

As greater numbers of Indigenous people and settlers are drawing on Indigenous notions of relationality to inform their works, it is particularly important to continue

nuancing conversations around gender and relationality as these subjects continue to occupy greater space across the disciplines. Indigenous scholars are demonstrating the need to critically evaluate rhetoric about gender, culture, and tradition that emerge in discussions of Indigenous law and relationality, demonstrating how Indigenous legal sources can be engaged in a way that either forecloses or that opens up space for thinking about power and gender.⁴³⁰ Yet there remains much work to be done in this area, and it is our hope that readers who are inspired by the possibilities of relationality think carefully about the politics, gendered and otherwise, underlying the process through which ‘traditional modes of relating’ are identified and invoked. Such precautions will contribute to the important project of ensuring that Indigenous women are not merely central subjects in the politics of relationship, but also active agents in these conversations.

Temporal Considerations

Treaty implementation embodies a number of temporal complexities that are worth examining in greater detail. The very language of the “spirit and intent” of treaties embodies its own temporal considerations; invoking the spirit, or essence of treaties that was arises from a past time, and that was intended to be carried forward into the future. In this respect, treaties are never “finished business,” but are an ongoing process, or framework for relating that is informed by a set of principles negotiated by involved parties. However, in order to ascertain the process of drawing out and applying a treaty-

⁴³⁰ See Emily Snyder, Val Napoleon, and John Borrows, "Gender and Violence: Drawing on Indigenous Legal Resources," *UBCL Rev.* 48 (2015): 593-654; John Borrows, "Aboriginal and Treaty Rights and Violence against Women," *Osgoode Hall LJ* 50 (2012): 699-738.

based ethic of relationality in contemporary contexts, as I have done in many ways throughout this dissertation we necessarily have to look to the past and identify certain principles and precepts, a project which nearly always runs the risk of originalism and essentialism.

Within many Indigenous communities, there is already a tendency to distinguish our philosophies and worldviews from those of the West through reference to past cultural values and practices. Yet it is particularly important that when invoking ways of relating from the past to provide insight into current contexts, that we are remaining flexible in their re-interpretation and adaptation to avoid the pitfalls of static and fundamentalist mentalities. Instead of aiming to bring forward fixed versions of past ways of relating, a relational understanding of treaties can inform a model of politics whereby a multiplicity of spaces and times can inform the present. This, in turn, can help to avoid the forms of strategic essentialism that can emerge in efforts to safeguard Indigenous cultural practice against further incursion from the West.

In light of the universal threats that colonialism has presented to Indigenous cultural knowledge, efforts to circumvent, challenge or subvert the continued interference or incursion of western culture commonly involve grounding our contemporary movements in a pre-contact past to gain a better understanding of what our traditions looked like in a more robust form, before they were impacted by the violences of colonialism. At the same time, to gain protection for them in the modern context Indigenous peoples have had to carefully frame these versions of the past within the language of the present. Thus, efforts to live an Indigenous life within a modern context can find themselves falling victim to static and essentialist performances of tradition. As

Mark Rifkin writes “To be authentic means to preserve forms of tradition that emanate from the past in pristine ways; that performance of stasis is the condition of possibility for being accorded status as proper Indians. Such enactments of aboriginality explicitly and implicitly serve as the basis for (grudging, partial, and circumscribed) governmental acknowledgment of Native sovereignty. From this perspective, being recognized as Indian means tagging a version of pastness that disavows the “complexities” of Native life [...]”⁴³¹ At times these requirements are institutionalized, such as when Indigenous peoples seek to advance claims for treaty rights that meet the criteria outlined by the Canadian courts, such as those articulated in the distinctive culture test which require Indigenous peoples to evidence the distinctiveness, integral nature, and continuity of the practices being claimed as a right with pre-contact time periods.

Furthermore, the static, transactional understanding of treaties relies upon a linear understanding of time and a division between past, present, and future that freezes the Indigenous-state relationship at the time of treaty-making in order to ensure that this relationship could not be revisited in the future. This mode of thinking reinforces binary and essentialist treatments of tradition and modernity, emphasizing the incompatibility between past ways of relating and the conditions that shape modern life.

The dichotomous treatment of tradition and modernity that is inherent in the transactional approach to treaties can also contain Indigenous visions of treaty implementation by suggesting that past practices or relationships must be sacrificed, or ‘given up’ in exchange for the ability to engage with the modern world. For instance, the notion that Indigenous peoples consciously decided to give up their rights to the land in

⁴³¹ Mark Rifkin, *Beyond Settler Time: Temporal Sovereignty and Indigenous Self-Determination* (Duke University Press, 2017), 6.

exchange for a modern way of life is a common interpretation of the livelihood references in treaties. Consider the OTC's suggestion that, "We must also recognize the importance to Canadian society of having First Nations people enter the modern economy and actively seek to foster their socio-economic inclusion, so that the livelihood promises in the treaties are fully implemented."⁴³² While many treaty Elders describe the motivations of Indigenous parties to treaty as including the desire to learn new skills and technologies from one another, translating Indigenous understandings of livelihood through the language of the 'modern economy' drastically narrows their purpose and intent, reducing the range of relationships and conditions required to maintain spiritual and physical well-being to the ability to participate in economic activities.

When Indigenous peoples internalize dichotomous ways of thinking about the past/present, or traditional/modern, it can function to contain our political aspirations. It is therefore particularly important that Indigenous peoples don't unintentionally or intentionally reproduce dichotomous ways of thinking about tradition and modernity in our own efforts to embody treaty-based modes of relating. As described by treaty Elders, treaties themselves embody the notion that Indigenous peoples should have the ability to learn new practices and knowledge bases without having to relinquish our traditional ways. Treaties are intended to provide a framework where these can not only co-exist, but flourish simultaneously. As Rifkin proposes, Indigenous peoples can move beyond the modern/traditional binary by neither allowing ourselves to be consigned to the past, or belonging to the present as the latter, he argues, is inevitably defined by settler conceptions of time. Instead, he demonstrates that Indigenous temporal orientations can

⁴³² Office of the Treaty Commititioner, *Treaty Implementation: Fulfilling the Covenant* (Saskatoon: Office of the Treaty Commissioner, 2007), 58.

subvert the settler state's way of apprehending time, including our histories, chronologies, and the policies and mappings that flow from them. He argues that Indigenous temporal orientations open up "the potential for conceptualizing Native continuity and change in ways that move beyond the modern/traditional binary; that do not take non-native frameworks as the self-evident basis for approaching Indigenous forms of persistence, adaptation and innovation [...]"⁴³³ Rifkin highlights the importance of attending to Indigenous conceptualizations, articulations, and impressions of time that do not easily fit within a framework explicitly or implicitly oriented around settler needs, claims, and norms – a pluralization of time that facilitates Indigenous peoples' expressions of self-determination."⁴³⁴

Indeed, the relational foundations of treaty-making contrast with one of the central claims of modernity; that is, the notion that scientific rationality provides the most valid way of understanding and engaging with the environment. A relational understanding interrogates this claim by foregrounding Indigenous peoples' perpetual position of interdependence with the living earth, and demonstrating that our actions and interactions must always be informed by our responsibilities to creation, past present and future. Not only does relationality provide the grounds for a comprehensive critique of colonialism, it also provides alternative models for sustainable and mutually beneficial relationships with our environments and with those that we share our lives with, past, present and future. Neglect of the present's relationship with the realities of the past and the future can drastically inhibit our ability to understand the breadth and depth of our responsibilities to one another and to imagine alternative ways of enacting them. The

⁴³³ Rifkin, *Beyond Settler Time: Temporal Sovereignty and Indigenous Self-Determination*, 3.

⁴³⁴ *Ibid.*, 4.

violent impacts of modern human interactions with the earth are in part an effect of losing sight of the relational way of being with the environment that has sustained life on earth for thousands of years. But it is also the result of losing sight of our relationship with the future, focusing strictly on the present and its reliance on science, innovation, and economics in understanding the role of the living earth.

It is precisely a relational way of being that has the potential to challenge and move beyond dichotomous treatments of the past/present or tradition/modernity. By adopting a relational worldview, we are better positioned to see the continuity between past, present and future while also recognizing tradition as dynamic, contingent, and context dependent. By conceptualizing Indigenous cultural knowledge and practices as constantly evolving and adapting to new contexts, a relational approach can direct our attention to the values and precepts underlying Indigenous modes of relating rather than getting caught up with defining and replicating the specific configuration of past practices. It can serve the important purpose of helping to conceptualize Indigenous traditions, customs and knowledges as an interaction of lessons and teachings with different contexts. Finally, it collapses the perceived disconnect between the ‘everyday’ and ‘long term’ forms of political action by identifying the ways that the former can inform the latter.

Relational understandings of knowledge are a key feature of Indigenous intellectual traditions, and can perhaps most easily be seen in oral traditions of knowledge generation and transmission. As Saulteaux oral historian Alexander Wolfe recalls, the purpose of oral traditions is to keep teachings and wisdom alive, rather than locking them in a past time or place: “[The oral tradition] was used by the grandfathers to preserve a

way of life through remembering the stories which make up not only the history of a family but the history of a nation. These stories are very important because they contain a philosophy of life that is adaptable to any time and any place.”⁴³⁵ By looking to traditional teachings as dynamic relations of knowledge rather than static ideology or dogma, we can draw out and re-interpret the philosophies underlying them while also recognizing that interpretations of knowledge differ between and within communities. This can help us broaden the space for dialogue surrounding past values and practices, which in turn can help us imagine a broader spectrum of ways to apply them in the present and future.

Rather than seeing traditional practices as existing in opposition to, or as needing to be reframed to align with modern conditions, a relational orientation may allow us to gain greater appreciation for possible ways of enacting our cultural values in the everyday. It can allow space for the embodiment of an understanding of Indigeneity that does not fit neatly into settler categories of history or time, but is oriented by many different relationships and multiple periods in time. A relational orientation can help us move beyond dichotomous thinking about the past and present by helping us become open to the possibility that being Indigenous and living our modes of relating doesn't involve making a choice between living in a traditional or modern world.

To keep treaties alive, it is important that we don't interpret them strictly as a fixed set of terms that was established in the past, but that we also think about ways of re-interpreting and applying them in the present. Colonial mythologies that represent treaties as a thing of the past, or as historical events that are disconnected from the present, blind

⁴³⁵ Wolfe, *Earth Elder Stories: The Pinayzitt Path*, xxi.

contemporary generations of settlers to their ongoing significance and applicability. Such representations disregard the ongoing relevance of treaties, eclipsing their potential for inspiring alternative frameworks for co-existence. A fluid understanding of the relationship between past, present and future can help elucidate the epistemological and cosmological alternatives that modernity has sought to foreclose through the conceptual separation of humans and nature, but also the separation of past, present, and future.

In my view, it is most useful to understand Indigenous modes of relating as presenting a *challenge* to modernity that calls into question its hegemonic claims and highlights the destructive and oppressive nature of its inherent logic by way of contrast, while also creating specific opportunities to bring forward the values and precepts underlying our traditional laws and values within contemporary contexts. Rather than getting discouraged by the seeming futility of enacting past practices in the present, we might instead understand these practices as the embodiment of values and beliefs that were given life in the past in relation to particular contexts, that have lived on in spite of efforts explicitly aimed at their erasure, and that can continue to be given life anew.

Contextuality

The last consideration that I would to raise is the context-specific nature of the visions of relationality I have discussed in this dissertation. While I drew on specific examples that may have applicability to other contexts, my observations and analyses emerged from my own location and commitments as a Cree and Saulteaux woman who has spent much of my experience as a scholar grappling with the tensions between

Indigenous philosophies and western legal and political frames, particularly as they arise in discourses around treaty implementation.

Throughout this dissertation I have described the resurgence of treaty relationality as the regeneration of a politic that is ultimately grounded in our interconnectedness with creation. This relationship with creation is not abstract or metaphysical, it involves a very real, material relationship with specific locations and practices. It involves the renewal of an ethical and ontological orientation that is informed by relationships to particular places and geographies.⁴³⁶ In *Being Indigenous: Resurgences Against Contemporary Colonialism*, Alfred and Corntassel define Indigeneity as a fundamentally place-based existence: “Indigenous peoples are just that: Indigenous to the lands they inhabit, in contrast to and in contention with colonial societies.”⁴³⁷ As a central component of being-in-relation, the relationship between Indigenous peoples and the land is also distinctly related to the contemporary possibilities of applying an ethic of relationality grounded upon treaties. Thus, I have not sought to prescribe a specific set of actions or practices that follow from philosophies of relationality, as the ways in which different people and communities choose to understand and enact their roles and responsibilities towards other and towards the territories and geographies that they inhabit will differ from place to place.

The “grounded” dimension of treaty relationality highlights the context-specific nature of seeking to negotiate and sustain relationships in specific geographies and with

⁴³⁶ Matthew Wildcat et al., "Learning from the Land: Indigenous Land Based Pedagogy and Decolonization," *Decolonization: Indigeneity, Education & Society* 3, no. 3 (2014); Glen Coulthard and Leanne Betasamosake Simpson, "Grounded Normativity/Place-Based Solidarity," *American Quarterly* 68, no. 2 (2016); Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*.

⁴³⁷ Alfred and Corntassel, "Being Indigenous: Resurgences against Contemporary Colonialism," 597.

different elements of Creation. Revitalizing Indigenous legal orders certainly means recognizing the legal and political significance of Indigenous peoples' relationships to creation and to the land and implementing measures to restore and protect the integrity of those relationships. But the question of how best to do so will be answered in unique ways and in accordance with their own legal and political orders.

For some people, embodying an understanding of treaties as relationship frameworks could mean living in a way that continually asserts the position that treaties did not cede title and that they involve a nation-to-nation relationship under the laws of the Creator. Living in accordance with the notion that treaties represent frameworks for relationship involves engaging Indigenous histories and knowledges to develop an ethic of treaty relationality that is reflective of one's own position within treaty relationships. From there, different strategies for implementation can be conceptualized depending on the priorities and aspirations of the individual and community, dependent on what they want the treaty to represent in the contemporary context. For some, this could mean foregrounding Indigenous laws above Canadian law, or finding ways to account for multiple legal orders in the governance of the community. For others, it could mean asserting the position that title was never ceded and continues to exist, and acting in accordance with this position. It could mean looking to the relational nature of treaties as more expansive criteria upon which to gauge the efforts of partners in (dis)honouring their obligations, engaging with the Canadian state in a way that holds it accountable for its actions. Alternatively, it could mean engaging in forms of direct action until the state is willing to engage in the work required to renew the treaty relationship, to address

outstanding jurisdictional questions and be willing to take on more of its responsibilities under treaties.

While I raised a number of considerations throughout this dissertation which I saw as relevant in working towards the resurgence of treaty-based modes of being, I was not aiming to provide a definitive or prescriptive set of strategies for implementation. I acknowledge that the applicability and relevance of these considerations may vary from person to person and that there are many additional considerations that merit exploration but that lie beyond the focus of this dissertation. As treaties themselves are inherently dynamic and context-specific, I sought to veer away from fixed or fundamental assessments. In my view, the emancipatory potential of proposals that prescribe specific, pre-determined processes for decolonization and resurgence are inherently limited by their presumed universality and lack of consideration of context-specific variables. I recognize that Indigenous knowledge and traditions exist in relation to specific contexts, that relational practices take different shapes and forms in varying contexts, and I encourage readers to take or adapt what is useful and leave the rest.

Yet within these variations, I offer several general conclusions. The promissory features of a treaty-based framework of accountability are directly contingent on the way in which treaties are interpreted, represented, and invoked. When treaties are conceptualized as relationship frameworks, they can be applied to our everyday relationships on many levels and in multiple realms of life. Conversely, when understood as transactions of cession and surrender, treaties can function to perpetuate and in fact legitimize the configurations of violent and oppressive relationships. While the transactional position regards treaties as one-time events and focuses primarily on the

material outputs of treaties, a relational view is more concerned with the nature of the relationship being established. It is only by exploring and understanding this relationship, and seeing treaties as living agreements, that we are able to draw out principles to bring across to other contexts.

A relational view of treaties can reinforce the way in which Indigenous peoples honour and seek to enact our own nationhood, both internally and in our interactions with others. It can facilitate the resurgence of our customary ways of relating with other communities and the world we live in. With a more robust understanding of how our ancestors historically sought to enact a relational philosophy and worldview in their interactions, Indigenous people can begin to see a nation-to-nation approach not just as more desirable, but as more reflective of the intended nature of our treaty relationship. Additionally, it can provide us with a more ethical foundation upon which to engage with state on our own terms, to protect what Johnny Mack refers to as our “storied foundations” rather than letting them get subsumed by imperial narratives.⁴³⁸ Confidence in our own understanding of what a treaty relationship should look like reminds us that our grounds for political engagement exceed far beyond liberal modes of engagement and that treaties represent more than a set of rights that we can lay claim to, even if this stance is not recognized by the state. Treaties represent a way of moving beyond an oppositional narrative or one that seeks recognition of our rights, but rather provides the foundation for assertions of our political autonomy and will that are also grounded upon our interconnectedness.

⁴³⁸ Mack, "Hoquost: Reorienting through Storied Practice."

Indigenous understandings of relationality with one another, with animals and the environment, and with past and future generations are subversive as they call into question the hegemony of western thought.⁴³⁹ They have an important emancipatory dimension as they liberate us from the need to engage western sources, institutions and concepts in constituting ourselves politically while giving rise to strategies that help us think about law and politics in ways that are autonomous from western philosophical foundations. Perhaps even more importantly, Indigenous modes of relating can be incredibly empowering as they provide a framework for social and political mobilization that is grounded in a worldview that sees humans as interconnected with all of creation, past, present and future. At the same time, they evidence the continuity and generative capacity of Indigenous peoples' ways of being in the face of ongoing efforts aimed at their assimilation, restriction or re-configuration within the confines of western thought.

The relational model embodied in treaties offers significant promise for informing a renewed vision of the responsibilities of treaty partners at personal and collective levels and for transforming contemporary social and political relations within and between groups. It serves a radical function for Indigenous peoples by providing culturally specific grounds upon which to engage in processes of resurgence and mobilize politically towards visions of decolonial freedom. It provides an important frame of analysis for deconstructing colonial power relations, which is often absent in the literature on treaties. It can help transcend dichotomous ways of thinking within and across difference. At the same time, it recognizes our relationships of interdependence

⁴³⁹ See Rolando Vázquez, "Towards a Decolonial Critique of Modernity. Buen Vivir, Relationality and the Task of Listening," *Capital, Poverty, Development, Denktraditionen im Dialog: Studien zur Befreiung und interkulturalität* 33 (2012).

with one another and the world we live in, and serves an important mediating function by providing an example of how to balance contradictory impulses, resolve disputes and engage in respectful and reciprocal interactions between diverse entities in the natural world.

For Indigenous peoples, the implementation of treaty-based modes of relating can represent a powerful strategy of decolonization and empowerment. As Canada's sovereignty needs to be continually authenticated by Indigenous consent under the guide of treaties, Indigenous peoples' refusal to recognize these treaty mythologies as true can seriously disrupt what Alfred describes as "the most important form of power the state possesses;" that is, its legitimacy.⁴⁴⁰ Delegitimizing the regime is made possible by refusing to comply with colonial narratives that stand in contradiction to our own truths. At the same time, Indigenous peoples can honour our values and worldviews by embodying a different and much more radical understanding of these same treaties as a means of revitalizing our personal practice, as well as our own systems of law and governance. We demonstrate that treaties are not one time transactions or finished business, that when read correctly they continue to evidence the illegitimacy of the Canadian state's claim to sovereign authority by showing that what Indigenous peoples consented to was in fact a very different framework of co-existence. In doing so, we remind one another that Canada's claim to legal and political jurisdiction over Indigenous peoples and lands remains contingent on a series of ongoing mythologies that we do not, and will in fact never, subscribe to. Finally, a relational orientation can help us embody the living nature of Indigenous ways of being, affirming not just our cultural but also our

⁴⁴⁰ Alfred, *Wasa'se : Indigenous Pathways of Action and Freedom*, 55.

political resiliency in the face of ongoing and ever-evolving colonial forces, making possible the ongoing imagination of strategies of renewal based on the interplay of pre-colonial pasts and decolonial futures.

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