Small 't' treaty Relationships Without Borders: Bear River First Nation, Clam Harvesters, the Bay of Fundy Marine Resource Centre and the World Forum of Fisher Peoples

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Abstract: Tully, Asch and Borrows assert that while treaties are subject to colonialism, certain political worldviews in treaty making become a starting point for processes of reconciliation and the fulfillment of treaty obligations between settler Canadians and Indigenous peoples. Underlying this proposition are principles of mutual recognition and sharing of the land and resources. In this article, I borrow James Tully's concept of small 't' treaty relations to demonstrate how informal relations between L'sitkuk, clam and other fish harvesters around the world have the potential for regenerating these principles of mutuality as opposed to current formal treaty negotiations that are subjected to what I argue and refer to as political/knowledge ethos.

Keywords: treaties rights, negotiations, Indigenous–settler relations, political/knowledge economy, L'sitkuk, livelihood fisheries

Résumé : Selon Tully, Asch et Borrows, bien que les traités soient assujettis au colonialisme, certaines visions politiques dans l'élaboration des traités peuvent être un point de départ pour les processus de réconciliation et le respect des accords entre les colonisateurs canadiens et les peuples Autochtones – notamment des principes de reconnaissance mutuelle et de partage des ressources de la terre. Dans cet article, j'emprunte le concept de James Tully de relations de traités avec un petit 't' pour démontrer comment les relations informelles entre L'sitkuk, pêcheurs de palourdes et autres pêcheurs autour du monde ont le potentiel de régénérer ces principes de mutualité, qui contrastent avec les négociations formelles courantes de traités, soumises pour leur part à un éthos de la politique du savoir.

Mots-clés : traités, négociations, relations entre Autochtones et colonisateurs, économie politique du savoir, L'sitkuk, pêche de subsistance

Introduction

Over the past few decades, jurisprudence on Indigenous or Aboriginal treaty rights to natural resources in Canada has prompted a broad range of scholarship, including Indigenous scholarship, to investigate the political and economic relationships within treaty making between Indigenous peoples and state governments (or with the "Crown"). Moreover, notable scholars such as James Tully (2009, 2010), Michael Asch (2012, 2014) and John Borrows (2005, 2006) contend that, while treaties have been subject to coloniality, Indigenous/political worldviews in forming the treaties frame a starting point for building reconciliatory relations and renewed obligations between Canadians and Indigenous peoples (also see David Leech 2006). In this article, I borrow James Tully's (2010:251) concept of "small 't' treaty partnerships" (treaty relations) to examine this proposition by exploring some of the historically informal social and economic relations between settlers and Indigenous peoples in Mi'kmaki (Mi'kmaq ancestral homelands). I trace such informal relations in a case study of L'sitkuk—meaning where the waters flow high or cuts through, known today as Bear River First Nation—with other fish harvesters and with clam harvesters in particular, coordinated by the Bay of Fundy Marine Resource Centre (MRC) through multi-sited learning networks locally, nationally and internationally. Then, in examining small 't' treaty relations against current formal treaty negotiation and implementation processes across Canada with a particular focus on Mi'kmaki, I argue that current formal treaty negotiation processes, which include historical and new treaties, are often captured by a political and knowledge economy that serves only to recolonize state and Indigenous relations. This follows with a concluding discussion about how struggles to access fishing livelihoods as small t- treaty relations hold more potential for transforming Indigenous–settler (inter-cultural) relations than current treaty negotiation processes.

Treaty Making as a Beginning Point

The implementation of Indigenous treaty rights are currently being contested or negotiated between Indigenous and state governments in Canada, based on treaty agreements signed at various phases throughout Canadian history: pre-Confederation treaties with the Mi'kmaq, Maliseet and Passamaquoddy; the post-Confederation numbered treaties; and, modern day treaty processes in British Columbia and more recently, in the North (Asch 2014; Barsh 2002; Borrows 2005; Leech 2006; Tully 2009, 2010). At the heart of these negotiations is the issue of access and governance rights over natural resources within Indigenous ancestral homelands. However, it was the *Delgamuukw* Supreme Court of Canada judgement of 1997 that rendered instructions for the federal government to negotiate and reconcile "Aboriginal Title" to the land with Indigenous peoples (First Nations) that gave way to current treaty negotiation processes (new modern day treaties, as well as the implementation of historic treaties) (Borrows 2010; Leech 2006; Tully 2009). Emerging from research on these processes is the proposition that historically, treaty making was rooted in mutual principles of recognition, equality and obligation between Indigenous peoples and the Government of Canada or the Crown. Furthermore, these principles have the potential to serve as a contemporary framework for processes of reconciliation and obligation between Indigenous peoples and Canadians (or settlers) outside of political processes (Asch 2014; Borrows 2010; Leech 2006; Tully 2009).

Central to this argument are two main historical and conceptual underpinnings of mutuality: sovereignty or nationhood and the consensual sharing of the land and resources. Asch (2014) and Borrows (2005) further argue that to reject that treaties were founded on a nation-to-nation basis as a premise for renewed reconciliation and obligation processes, is to accept that settlers are residing on lands acquired through conquest and discovery. However, these legal and political concepts become problematic in two ways. First, treaties are not initiated or required when people and land are discovered or under conquest. Second, conquest or discovery loses purchase against the fact that states and Indigenous people chose to make treaties. Therefore, it can only be concluded that treaty processes (pre- and post-Confederation) were premised on a mutual recognition of sovereignty and nationhood between state governments and Indigenous people (Asch 2014:100–133; Borrows 2005:159–164; Leech 2006:7–42). Thus, it would also stand to reason that the concept of mutual sharing of the land and resources, as well as an expectation for mutual protection would follow (see Noble 2008a). Building on this concept of mutual sharing, scholars further contend that the treaties represent a mutual, consensual co-existence between Indigenous peoples and settlers (Asch 2014; Borrows 2005; Leech 2006).

In his public lecture *Back to the Future*, Asch asserts that the arrangement in post-Confederation treaties was that:

> we would live together, sharing the land, and they [Indigenous] would be protected from our excesses by the fact that they would have a direct relationship with the Queen (through the Governor-General). In return, we would do our best to ensure that our presence on these lands was of benefit to them. And, I suggest, their consent to it is reasonable, for it was a fair place to begin a relationship that originated in our intent to settle permanently on these lands. [Asch 2012:16]

Similarly, in his doctoral dissertation, *Strength Through Sharing: Mi'kmaq Political Thought to 1761*, David Leech (2006) argues that:

> the Mi'kmaq would have understood that both they and the English lived in their own distinct areas, but that they shared the same landscape, and therefore shared the same kinds of responsibilities in respecting and preserving Mi'kma'ki [Mi'kmaq homelands]. The English agreed to respect Mi'kmaq jurisdiction over the land by discussing any planned settlements or land developments with them and by allowing the Mi'kmaq to hunt, fish and fowl on the lands where English settlers had established themselves. The Mi'kmaq for their part, agreed to allow the English to share the land with them, and to leave unmolested the English developments and land improvements that already existed. [343]

It is important to understand that before making treaties with the English, the Mi'kmaq people had over 100 years of experience in living with settlers and, in particular, with the Acadian French. It is in this context I explore the concepts of mutual co-existence and the sharing of natural resources in the evolution of informal treaty or, small 't' treaty relations.

Historical Small 't' treaty Mi'kmaq and Settler Relations

There is much historical evidence that the Mi'kmaq and settlers living in a part of the Mi'kma'ki homelands, now known as Nova Scotia, mutually engaged in political, social, cultural and economic relations. The extraordinary relationship between the Acadian French and Mi'kmaq during the 1600s, up until the infamous *Acadian Expulsion* ordered in 1755 by the British colonial government,

is noteworthy. Prior to British political and economic interests in the region, both Acadians and Mi'kmaq had trade relations with each other and with New England, where an intercultural relationship existed. As the Mi'kmaq gained new technological skills such as the use of guns for hunting, hook and line for fishing, utensils for cooking and clothing etcetera, the Acadians became skilled in Mi'kmaq hunting practices, the use of traditional medicines and so forth. Even intermarriages were not out of the ordinary. (Barsh 2002:17–26; Leech 2006:99–169; Whitehead 1991:77–182).

By the mid-1700s, these relations were subject to constant war between the French and English. Though the Acadian population was small, the British sought to make treaties with the Mi'kmaq in attempts to deter Mi'kmaq loyalties to the French and as a way to secure control over economic trade in the region. The Acadian–Mi'kmaq relationship was enough of a perceived threat to the English that, despite earlier treaties made with the Mi'kmaq, the British military issued a scalp bounty proclamation on Mi'kmaq men, women and children. Shortly thereafter, the British colonial government ordered the *Acadian Expulsion.* During these catastrophic colonial events, however, the Mi'kmaq and Acadian bond remained strong. For example, the Mi'kmaq hid Acadians who managed to either intentionally escape the expulsion or were inadvertently left behind. Even once the expulsion was lifted, some of those who took refuge with the Mi'kmaq chose to stay with them (Leech 2006; Whitehead 1991).

It is important to point out that, during the years of the Acadian Expulsion from 1755 to 1763, the British and Mi'kmaq entered into the 1760 and 1761 *Peace and Friendship Treaties,* which were upheld by the Supreme Court of Canada in 1999 (known as the Marshall Case) as a treaty right to fish for a livelihood. However, since entering into these treaties, Mi'kmaq–settler relations eroded by a colonial capitalist political and knowledge economy, coupled with racism. Instead of regenerating a mutual treaty relationship, the Mi'kmaq, like other Indigenous people across Canada, became subject to institutionalized discrimination and racism with the application of a series of contradictory policies of assimilation and segregation. In recent decades, this systemic discrimination and racism have played out in violent clashes between Indigenous and state actors, as we witnessed at Oka, Barriere Lake, Ipperwash (Leech 2006; Pom 2008) and, more recently, in the Elsipogtog anti-fracking protests in New Brunswick (CTV News 2013). The aftermath of the Marshall Case decision was no exception. There were violent conflicts between the Department of Fisheries and Oceans (DFO) and the Burnt Church First Nation (Esgenoôpetitj), and between fishermen and Indigenous harvesters in Burnt Church and other areas in Mi'kmaki, including Nova Scotia (Pictou and Bull 2009; Stiegman 2009; Stiegman and Pictou 2012).

The Marshall Case (and no doubt the violence that ensued) set the pretext for what is being portrayed as a formal treaty negotiation process in Nova Scotia, known as the "Made in Nova Scotia Process" (Stiegman and Pictou 2012). Fifteen years later, there is still no resolution on how to implement a livelihood fishery as a treaty right, with the exception of assimilating First Nations fishing into the current DFO regulatory regime through fishery agreements based on privatization and corporatization. L'sitkuk has been critical of this process and chose instead to focus on its food fishery, while working toward a livelihood by building relationships and networks with other fish harvesters using various local, national and international learning networks. The MRC, which was co-founded by L'sitkuk in 1997 just two years before Marshall, continues to play a central role in coordinating these networks and in providing a space for honest and intercultural dialogue. In fact, the MRC was often perceived as a "safe" place to talk, without the risk of interference or political backlash of government and corporations. (Pictou and Bull 2009; Stiegman and Pictou 2012; Wilson 2008).

At the height of the Marshall Decision, there was an attempt by more than 600 fishermen to blockade the Yarmouth harbour from Mi'kmaq harvesters. This crisis was averted through a "taking circle"—an Indigenous dialogical practice—facilitated by former Chief Frank Meuse. It was through this process that fishermen started to recognize their intergenerational way of life was very similar, if not connected to, the intergenerational way of life of Indigenous people. L'sitkuk continued to engage in dialogue with ground-fishermen, lobster fishermen and clam harvesters through projects such as Turning of the Tide (a study tour project), the Canadian Costal Learning Communities Network (CLCN)—a tele-learning and community exchange project—and various other learning projects coordinated by the MRC in response to state policies of corporatism and privatization. These initiatives became the catalyst for a L'sitkuk short term experimental fishery with the support of lobster fishermen in 2008 as an alternative approach to DFO's assimilationist approach of using fishing agreements (Stiegman 2009; Stiegman and Pictou 2012; Wilson 2008). A wonderful irony about the experimental fishery is that L'sitkuk achieved this with the help of Acadian fishermen. Also, L'sitkuk joined neighbouring fishing communities in preventing a mega quarry development, albeit the American quarry company Bilcon is suing the

Nova Scotia government under NAFTA for reneging on this venture (Pictou and Bull 2009; CBC News 2008; 2015). Nevertheless, although treaties had been long violated, one can argue that it was the re-emergence of the 1760 and 1761 Peace and Friendship Treaties that prompted a renewal of informal small 't' treaty relations between L'sitkuk and its neighbouring communities.

Of course, building relations are not without their trials and tribulations (also see Noble 2008a, 2008b), as we witnessed in the aftermath of the Marshall Case. Asch (2014), Borrows (2005, 2006) and Tully (2009, 2010) all speculate about how fears and negative reactions to treaty relations and Indigenous systems are bound by centuries of colonial hegemony and remain a challenge for engaging in genuine dialogue. Tully (2012) speaks to how a genuine and intercultural dialogue takes time and requires not one set of cultural values subsuming the other but rather contrasting and comparative worldviews:

> This comparative method of genuine dialogue is that it does not aim to develop a meta-norm or meta-language that transcends the multiplicity of traditions of political thought and provides a standard of judgment from one standpoint only. It aims to provincialize this imperious disposition in theory and practice. The "fusion of horizons" of traditions that critical comparison, understanding and judging brings about is the mutual fusing or juxtaposition of the family of criss-crossing horizons *immanent* in living practices of governance here on earth; their comparative strengths and weaknesses relative to a range of places, scales, needs and standards; and, relative to the specific political problem the dialogue is addressing (the risks and vulnerabilities of globalization) ... Comparative immanent critique replaces singular transcendental critique. [23]

Tully's comparative intercultural dialogical concept describes the cross cultural approach employed by MRC in facilitating learning projects and meetings between L'sitkuk and other fish and clam harvesters (small 't' treaty relations). This learning approach encompassed dialogical engagement by providing a "safe" place and allowing time for these relationships to develop. However, it should also be noted that not only did L'sitkuk members participate in the organization's learning initiatives of the organization, but they also served as members on the board. Further, I later served as part of the associate staff for the MRC, and as a member of the World Forum of Fisher Peoples (WFFP) Coordinating Committee. Perhaps it was a combination of these circumstances that framed L'sitkuk's small 't' treaty relations outside the formal treaty negotiation process. In the next part of this article, I explore the informal relations that evolved between L'sitkuk, local clam harvesters and their ally, WFFP, in struggles against the privatization of several clam beaches in 2007.

Bear River First Nation, Clam Harvesters and MRC Multi-scalar Small 't' treaty Relations

L'sitkuk is centred in the traditional territory of Kespukwitk (Land's end, or End of flow), now called Southwestern Nova Scotia, and has a long history of interacting with settlers and neo-colonial governments since the founding of Port Royal in 1604 (Stiegman and Pictou 2012). However, archaeological sites of clamshell middens dating back thousands of years mark the practice of clam harvesting by the Mi'kmaq. Over the past 400 years, clams also became a source of food for settlers. Clam harvesting as a livelihood dates back to the mid-1800s and many clam livelihood harvesters today are second- and third-generation clam diggers (Sullivan 2007; Wiber and Bull 2009).

The MRC had been working with clam harvesters in response to a private depuration company, Innovative Fisheries Products Limited, and its exclusive access to beaches closed due to contamination and pollution. The problem was (and continues to be) that company harvesters not only have exclusive access to the closed areas but also access to any remaining open areas, which pits company harvesters against independent harvesters. However, in 2004, the company's poor labour standards and monopoly over clam prices gave way to a protest by both company and independent harvesters. True to private property law, legal authorities protected the company with injunctions which ended the protest. The company even went so far as to threaten to take away protesters' homes, including those of the MRC staff, by legal means.

Already facing poverty, in frustration clam harvesters ended the protest to avoid risking any further financial hardship (Wiber and Bull 2009; Wiber et al. 2010). However, in the fall of 2006, the Nova Scotia Department of Fisheries and Aquaculture (NSFA) announced it would be granting 10-year leases to the Innovative Fisheries Products Limited for access to 14 clamming beaches. This was of great concern to both L'sitkuk and the clam harvesters because there was no process to address their concerns. Through the efforts of the director of the MRC, a meeting was coordinated at the Municipality of Digby in January of 2007, at which federal and provincial government employees reluctantly participated. Nevertheless L'sitkuk members and clam harvesters finally had an opportunity to express their con-

cerns. The clam harvesters pointed out that there is a natural way to depurate clams and restore beaches. In order to be able to sustain their livelihood, they also demanded that the pollution be cleaned up and become a priority. L'sitkuk's concern was not only that there had been no legal consultation on the privatization of these beaches, but that these leases also pre-empted L'sitkuk food fishery and any potential claims to the clam livelihood fishery as a treaty right.

An important unifying issue for L'sitkuk and clam harvesters is that they both condemned the privatization of a public resource in a place where they had a relationship for generations. Local municipalities and other citizens supported both clam harvesters and L'sitkuk. L'sitkuk's concerns were also taken up and presented to federal and provincial governments by the Nova Scotia Assembly of Chiefs. However, despite these concerns and collaborative protests, NSFA proceeded to issue the clam beach leases in May of 2007 to the company (Stiegman and Pictou 2012; Sullivan 2007; Wiber and Bull 2009; Wiber et al. 2010).

Following the initial NSFA announcement of the leases, a coalition issued a press release in December of 2006 outlining the concerns of clam harvesters, L'sitkuk, local municipalities and the WFFP, which was disseminated worldwide (MRC 2006). In response, L'sitkuk and the clam harvesters received "the wholehearted support of all the traditional fisher folk from along the West Coast of South Africa" who were demonstrating against industrial commercial fishing rights "at the expense of traditional fisher folk" (personal correspondence with Naseegh Jaffer, director of Masifundise 2006). Masifundise, a small-scale fishing organization, that has become a common thread interwoven into L'sitkuk and clam harvester relations, represents these South African traditional fishers.

In response to the actual granting of leases in May of 2007, I wrote the following poem.

Ancient food for future generations...

My heart is overflowing
with Grandma Sarah
teaching us to dig clams
and as she wraps all of our harvest
in foil over the heated coals
beneath the sand
I knew this was for
my lifetime...
And those life times
before and after me
where shell heaps
bare the answers to our existence
in both life and death....
The clam... the beautiful clam
hidden within its intergenerational
purple blue shell:
the food of life
ancient food for future generations....
Oh my brother...
So contented as you walk slowly
the back roads...
with your clam hack
and full bucket of clams
So serene and quiet
this walk of ancient paths
you carrying
so quietly
the ancestral knowledge
which the rest of us –
were too self-absorbed
in the fast pace of tomorrow
thus not able to learn or feel
with our hearts, today....
I see you there
with your shucking knife
and for a second
trying to teach me....
As your ancient laughter
of fathers and grandfathers
before you...
ring loud to this day
in my heart of all hearts
as I struggled to learn
this art now floating along
bay shores and inlets...
and continue to do so...
Today....

(Pictou 2007)

Almost a year later (October 2008), on the eve of a decision on a legal appeal launched by industrial corporate fisheries—in response to a successful court case upholding the rights of traditional fisher folk in South Africa—this poem was read as part of a solidarity building campaign involving poetry, storytelling and music. Fortunately, the court upheld its initial ruling in favour of traditional fisher harvesters. I would note here that this was a story shared with me by the director of the Masifundise, who is also my colleague and former co-chair of the WFFP. It was with great honour and respect that I received this news in a restaurant somewhere in Rome while attending a food sovereignty forum in 2009. After we heard the story, we both sat overwhelmed with tears at the realization that this represented something much bigger than us.

Given MRC's experience with closed dialogue or what Tully (2012) would refer to as "false dialogue" with

governments and corporate companies, the MRC always encouraged alternative cultural production, which became a focal point of a two-year learning communities project situated in L'sitkuk and rooted in Indigenous talking circle practice. Participants included small-scale fish harvesters, a youth, members of L'sitkuk and activists from several communities. It was in this context that Terry Wilkins, an intergenerational clam harvester, shared his songs that were later complied into an audio CD titled *The Clammer*. I offer a couple of excerpts of Terry's lyrics here:

> Environment protocol is gonna damn well take it all
> From the poor man as he falls
> Freedom, born and raised, is a lifetime, not a phase
> For now and all my days "a fisherman."
> I am the fisherman, lowly digger of the clam
> With my people do I stand, to say "I am"
> We are "The fishermen," lowly diggers of the clam
> With our people we do stand, The Fishermen.
>
> (Wilkins 2011, "I am the Fisherman" song lyrics. Original quotation marks)

> If you listen you will hear, forest language oh so clear
> Be as one and then will know, which direction one should go
> Ancient Spirits they are there, use their speak for all to hear
> I feel their voices in the air, Beautiful is everywhere.
>
> (Wilkins 2011, "River of Stones" song lyrics)

These are only but a few of the initiatives coordinated by the MRC. The MRC also facilitated tele-learning sessions for the CLCN on subsistence harvesting and clamming, as well as an international tele-learning session on small-scale fishing issues with Masifundise, in which both L'sitkuk and Masifundise fish harvesters participated. In October 2008, the MRC was also instrumental in supporting WFFP in its collaboration with other civil society organizations, to produce a *Civil Society Statement on Small-Scale Fisheries* in Bangkok, which was presented to the International Committee on Fisheries (ICSF 2008). More recently, the MRC coordinated a participatory learning exchange between lobster, clam and Indigenous harvesters, and representatives of the WFFP organization, to strategize how to participate in the formation of an international instrument to protect the rights of small-scale fishers which was being negotiated with COFI (MRC 2012). It was at this event that the seed was planted for a Canadian position paper supporting small scale and Indigenous fish harvesters worldwide, and where Terry Wilkins's songs, like my poem, came full circle as he sang for the participants, who included the director of Masifundise.

So, how do principles of mutual co-existence and sharing of land and resources upon which treaties were founded continue to become eroded? And how does renewed mutuality become apparent only in small 't' treaty relations built in struggle, such as those of L'sitkuk and the clam harvesters? As a counter distinction to small-t treaty relations, I now explore how mutuality becomes eroded in formal treaty negotiation processes within the context of a political and knowledge economy or what I refer to as political/knowledge economy.

Treaty Negotiations within a Political/ Knowledge economy

Tully (2009, 2010), Borrows (2005) and Asch (2001, 2012, 2014) all speak to how treaty relations were continually eroded by colonialism. Asch (2014:145–146) makes a case in point when he references the famine that caused the deaths of Indigenous people living in the prairie region during the late 1800s. He argues that, in some cases, colonial governments intentionally induced the famine. In a very profound way, Tully (2009) sums up the impact of treaty violations over generations and how Indigenous peoples in Canada have responded:

> The relationships between Aboriginal peoples and non-Aboriginal Canadians have varied over the last four centuries, from mutually beneficial association to war, dispossession and extermination; from consensual negotiations between equal nations to the coercive imposition of a structure of domination. Whenever relations have passed from consent to coercion, Aboriginal peoples have refused to submit and resisted in a number of ways: tactical compliance in residential schools and prisons, substance abuse and suicide on reserves, open confrontation and battle, and legal and political challenges. [225–226]

The erosion of treaty relations is also irrevocably apparent by the mere fact that there have been numerous legal challenges launched by Indigenous peoples in recent decades. However, as the Marshall Case decision of 1999 demonstrates, despite many successful legal decisions where treaty rights are recognized, it is within modern processes of reconciling those rights with state governments that economic rights become a focal point; and thus, the principles of mutual relations become undermined (Tully 2010). In this sense Leech (2006) argues that:

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

This legal failure of re/implementing the treaties (Asch 2001, 2014; Leech 2006; Tully 2009, 2010) is why Borrows (2005, 2006) argues for an Indigenous legal system to be part of Canada's legal plurality; and it is why in her keynote address on *Protecting Knowledge, Traditional Resource Rights in the New Millennium*, Erica-Irene Daes (2000) proposed that the selection of which laws to use in Indigenous legal struggles is critical: many legal systems merely pay lip service to national and international law.

There is no doubt that the commodification of rights or the extrapolation of economic rights from Indigenous rights is indicative of globalization and what continues to be at play within treaty negotiations in Mi'kmaki (Choudry 2007; Stiegman and Pictou 2012; Tully 2009). Therefore, I contend that "political economy" or "capitalist logic" (Stengers 2012) is an overarching issue in determining how treaty negotiations are conducted. Related to global political economy is also a knowledge economy (Asch 2001; Choudry 2007; Stengers 2011, 2012). Robinson (2006:24–25) asserts that:

> Universities are centers for the production and reproduction of knowledge and culture. As all social institutions, they internalize the power relations of larger society to which they belong. Over the past decades, and in tandem with the spread of capitalist globalization, we have witnessed relentless pressures worldwide to commodify higher education, the increasing privatization of universities and their penetration by transnational corporate capital. If the university is to pull back from such a course it must fulfill a larger social function in the interests of broad publics and from the vantage point of a social logic that is inevitably at odds with the corporate logic of global capitalism.

It is in this context that I refer to political and knowledge economies together as a *political/knowledge economy*. Treaty negotiations are captured by political/knowledge economy in three central ways: competing worldviews, national and international legal hierarchies, and communicative processes of negotiation.

The title of Brian Noble's (2008b) work, *Owning as Belonging/Owning as Property: The Crisis of Power and Respect in First Nations Heritage Transactions with Canada*, in itself speaks to these competing worldviews between Indigenous governments and the polity of state governments. "Owning as belonging" is a principle grounded in a holistic Indigenous worldview of relationality that encompasses reciprocal relations between humans, and between humans and their natural environment. In this sense, owning is premised on a concept of ecological stewardship and is interdependent with social, political, economic, spiritual and cultural relations (Borrows 2005, 2010, 2012; Leech 2006; Noble 2008a, 2008b). John Borrows, who is of Anishinabek/Ojibway/Chippewa descent refers to this ecological interdependency as *Aki-noomaagewin*, Earth's teachings or Laws of the earth (2012). A similar concept is the Mi'kmaq *Netukulimk*, that encompasses the practice of taking only what you need (Barsh 2002; Leech 2006; Stiegman and Pictou 2010). "Owning as property" on the other hand, is rooted in Euro/Canadian or Western worldviews of rights in nature as property, and interest in accumulating wealth, which is an underlying principle of national and international law (Noble 2008a, 2008b; Tully 2011; Robinson 2006).

What is problematic about these contrasting worldviews is that, while relationality encompasses interdependency, property rights become independent and privileged by a political/knowledge economy to the detriment of the environment and natural resources (Choudry 2007; Stengers 2011, 2012; Tully 2009). Furthermore, national and international human and Indigenous rights become subordinate to the property rights of corporations (Choudry 2007; Shamir 2005; Watson 2011). The L'sitkuk and clam harvesters' struggle against the privatization of beaches is clearly indicative of privileging corporate property rights to a natural resource. And although transnational corporations give the appearance of more accountability under the guise of "corporate responsibility" for human and Indigenous rights, a capitalist logic is maintained because any accountability demanded of corporations and state governments is usually non-binding and voluntary (Daes 2000; Shamir 2005; Tully 2009, 2011). For this reason, Irene Watson (2011:508) argues that the sudden shift by industrial countries, Canada included, to accept the *United Nations Declaration on the Rights of Indigenous Peoples*, was because the "Declaration poses no threat to the sovereignty of nation-states and no possibility of the recognition of Indigenous peoples' sovereignty." It is within these contexts of national and international legal hierarchies that treaty processes become eroded by a political/knowledge economy. One does not have to look

too far to locate Canada's main role in global capitalism as one advocating for privatizing natural resources. For example, Canadian mining companies have displaced Indigenous people from lands within Canada and throughout many parts of the global south with the support of the Canadian government though free trade agreements and other domestic and foreign policies (Gordon 2010). Diabo (2012) argues that current processes of treaty negotiations serve to incorporate this capitalist logic under the disguise of treaty rights. Tully (2011:19) refers to this process as the "tragedy of privatization" in that any democratic possibility becomes diminished.

Now what do these competing worldviews and multiscalar legal hierarchies mean for communicative processes within what is portrayed as formal treaty negotiations? Tully (2010:245) argues that hegemony is difficult to confront because "local treaty negotiations are part of a larger neo-liberal global strategy to open the traditional territories of Indigenous peoples to resource exploitation by multinational corporations." Further, Watson (2011:508) contends that non-binding declarations fail

> to enable or open up space for a dialogue on coexisting sovereignties—that is, state and Aboriginal sovereignties. So while the states of Australia, New Zealand, the United States and Canada continue unchallenged by the international order of things, the hegemony and Indigenous subjugation within them remain unchanged.

Within these dominant hegemonies of a political/knowledge economy, treaty negotiations no longer undertake principles of mutuality founded in historic treaty making (Asch 2012, 2014; Tully 2009, 2010). Instead, treaty is reduced to being

> more like a contract than a partnership. It is about specific clauses rather than an open-ended relationship implied by the word "sharing". Largely, the intent of a treaty in their view is to subsume the political [and economic] rights of Indigenous peoples within existing Canadian polity as through the delegation of powers to First Nations under the authority of senior governments. (Asch 2001:204)

These politics of recognition by dispossession or assimilation within capitalist systems are not new (Choudry 2007; Stiegman 2009; Stiegman and Pictou 2012). Nancy Fraser (2000) encapsulates the contradiction of recognition within globalization:

> This move from redistribution to recognition is occurring despite—or because of—an acceleration of economic globalization, at a time when an aggressively expanding capitalism is radically exacerbating economic inequality. In this context, questions of recognition are serving less to supplement, complicate and enrich redistributive struggles than to marginalize, eclipse and displace them. I shall call this *the problem of displacement*. (109)

Therefore, the Indigenous worldview of mutual relations and sharing as part of treaty making and as a living obligation to the treaty itself, becomes eroded and subjugated (Asch 2014; Borrows 2005; Leech 2006). Asch (2001:249–250) refers to this erosion as a transition from an "I–Thou" to an "I–It" relationship. Thus, formal treaty negotiations driven by property (natural resource) rights become a finality or what could be considered a divorce from the relationship. Nowhere is this more evident than in Canada's *Results Based* or *Assessment of Negotiations Questionnaire* (Schertow 2012) for negotiations with First Nations:

> Treaties must provide finality and certainty with respect to an Aboriginal group's claimed Aboriginal rights, as well as clarity with respect to Aboriginal, federal and provincial/territorial jurisdictions and responsibilities ... The *certainty technique* means the legal model used in a treaty to ensure that any pre-existing Aboriginal rights related to the subject matters addressed in the treaty, such as lands and resources, do not continue, from the effective date forward, to have independent legal effect outside of the terms of the treaty. [2]

So where do treaty relations move from here? As the Marshall Case decision demonstrates, recognition by courts, even the highest court of the land, does not translate into implementation through formal negotiations, which some argue is, in fact, a re/colonization (Choudry 2007; Diabo 2012) or ongoing internal colonization, and is "why so many First Nations refuse to enter into treaty negotiations and so many indigenous people refuse to ratify agreements negotiated by their leaders" (Tully 2010:242). Yet, Tully (2009) and Asch (2012, 2014) contend that we cannot give up on negotiations because to do so would result in a continued violation of the principles of mutuality on which the treaties were founded.

Tully (2009) and Borrows (2010) remind us that, theoretically, Indigenous and non-Indigenous people all have treaty rights based on mutual consent and thus, as Canadians, we are all treaty partners. Otherwise, settler Canadians would have to accept that they are, as noted previously, on unceded territory without Indigenous consent. However, within these political and legal analyses, there is also a gradual dialectical transition

from the problem of a political/knowledge economy or hegemony within formal treaty negotiations, to informal or small 't' treaty relations within both the academy and broader society. Asch (2012) puts forth an argument for renewed treaty obligations to academia and Canadians in general. Quoting John Tait, Borrows (2005:11) also makes a distinction between abstract and real life learning. "We do not learn about the good from abstractions but rather from encountering it in real life, in the flesh and blood of a real community and real people" (see also Tully 2009).

In the context of globalization, Tully and Stengers contend that reclaiming or generating "a weaving of new relations" (Stengers 2012:9) is required from within both the academy and a broader "democratic citizenship" (Tully 2011:2). Appeals for a counter-hegemonic citizenship or "globalization from below" are rooted in a political ecology which is a response to the environmental degradation caused by neo-liberal globalization (Daes 2000; Shamir 2005; Santos and Rodríguez-Garavito 2005 Stengers 2012; Tully 2009, 2010, 2011). Further, in its attempts to de-capture the global south and north from its grasp, globalization from below forms a critical response to a Western capitalist hegemony (also see Choudry 2007; Robinson 2006). It is in these multi-sited and multi-scalar contexts that small 't' treaty relations hold the most potential. Certainly the struggles of L'sitkuk, clam harvesters and the WFFP together represent a regenerative mutuality or a "weaving" of new relations that could only develop outside a political/knowledge economy in which formal treaty negotiations are embedded.

Conclusion

Tully (2009, 2012) and Borrows (2005) contend that processes for reclaiming or rebuilding treaty relations require a genuine intercultural dialogue between Indigenous people and Canadians (and state governments). However, a genuine dialogue is not without great challenges because of the hegemonies of a political/knowledge economy in which formal treaty negotiations are embedded. Further, both Indigenous and other citizens of Canada internalize these hegemonies (Tully 2010:242). So, how possible is it for Indigenous and other Canadians, as treaty partners, to break free of this internalized colonization to regenerate and build mutual treaty relationships?

Tully, Asch, Borrows and Leech all demonstrate how principles of mutual co-existence and sharing relations form the founding premise for treaty making and the expectations for ongoing treaty relations. However, the political/knowledge economy of colonial capitalism has undermined those relations and, therefore, the treaties themselves, thus, resulting in legal challenges by Indigenous peoples. And even though there have been many successful court cases recognizing treaty rights, implementing those treaty rights becomes problematic because they undertake a political/knowledge economy of property rights as a means to access to natural resources for profit. This is clearly how a treaty right to a livelihood fishery in Mi'kmaki became undermined by DFO fishing agreements and clam beaches were privatized under the guise that they were being cleaned up. Asch (2014) contends that one way to regenerate broader treaty relations is by decolonizing our history to include the perspective of Indigenous peoples and to renew our obligations as treaty partners on founding principles of mutual co-existence and sharing. Borrows (2005, 2006) presents a strong argument that these principles of relationality were already practiced in Indigenous societies and as a part of treaty making.

The informal relations between the Acadian French and Mi'kmaq attest to mutual social, political, cultural and economic co-existence. Therefore, reclaiming historical interpretation is unarguably a necessary first step. Then, whether a renewal of treaty relations based on mutual co-existence and sharing is achieved through the existing democratic polity or through social justice activism that is "organized around the lifeways the partners share and affirm" (Tully 2010:251), small 't' treaty relations open up the possibility for transforming the political/knowledge economy driving current formal or "official" treaty negotiations.

L'sitkuk, local clam and fish harvesters, and fisher folk from around the world were able to build mutual relationships as part of a struggle against the austerities in the fishing sector as a result of the 1760 and 1761 Peace and Friendship Treaties upheld by the Supreme Court of Canada. The MRC played a central role in providing space for these relations built on reconciliation and an obligation to develop an honest and genuine intercultural dialogical approach. This gave way to multi-scalar relations (including sharing poetry and songs) and building local, national and international networks in the struggle for a livelihood fishery. Therefore, it can be argued that while treaties have long been violated, they still hold the potential to prompt a renewal of small 't' treaty relations for transcending regional, national and international boundaries of political/knowledge economy.

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