REIMAGINING MI'KMAQ-STATE RELATIONS: FACING COLONALISM AT THE
MI'KMAQ-NOVA SCOTIA-CANADA TRIPARTITE FORUM

by

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Abstract

To date, the literature on Canadian Indigenous-state relations has paid little attention to more localized, informal approaches to dispute resolution. Through ethnographic research on the Mi'kmaq-Nova Scotia-Canada Tripartite Forum, my thesis explores past and current Tripartite Forum members' perspectives on how it has impacted relations between the Mi'kmaq and federal and provincial governments. I argue that, on the surface, the Tripartite Forum occupies a critical role in ensuring that government policies better meet the needs of Mi'kmaw communities. At the same time, Tripartite Forum members are required to confront a legacy of colonialism that, for the Mi'kmaq, cannot be solved through the creation of culturally relevant programs and services alone. That often reproduces the very colonizing power relations that the Tripartite Forum is meant to undo. By contrast, Mi'kmaw members of the Tripartite Forum envision a relationship based on the values of equality and sharing that are contained within the peace and friendship treaties signed by their ancestors. Improving relations between Mi'kmaw communities and the Canadian and Nova Scotian States will ultimately require a significant reordering of power beyond the current mandate of the Forum.

List of Abbreviations Used

AANDC   Aboriginal Affairs and Northern Development Canada

CMM   Confederacy of Mainland Mi'kmaq

DIAND   Department of Indian Affairs and Northern Development

NCNS   Native Council of Nova Scotia

NSNWA   Nova Scotia Native Women's Association

UNSI   Union of Nova Scotia Indians

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Chapter One: Introduction

In 1982, after spending 11 years incarcerated for a murder he did not commit,

Donald Marshall Jr., a Mi'kmaw[1] man from the Membertou First Nation was released

from prison. A report from a provincial Royal Commission into the matter, tasked with

uncovering the circumstances leading to Marshall's wrongful conviction was released in

1989. The Marshall Inquiry: Royal Commission on the Donald Marshall, Jr., Prosecution

shone a spotlight on the systemic racism the Mi'kmaq experienced in their encounters

with the criminal justice system. Included in the document were 82 recommendations,

many of which affirmed the need to provide Mi'kmaw communities with access to more

culturally relevant justice services. As legal anthropologist Jane McMillan (2014) argues,

"Marshall's wrongful conviction epitomized systemic discrimination and racism

experienced by Indigenous peoples during the 20th and now 21st centuries" (p. 934).

Following the release of the report, critical questions were raised about the legitimacy of

the Canadian legal system's role in Indigenous communities. According to McMillan

(2011), the Marshall Inquiry report's recommendations "gave the Mi'kmaq tangible ways

to frame their discourses of resistance to state legal domination …" (p. 176). The release

of the Marshall Inquiry report mobilized the Mi'kmaq, inviting them to envision a justice

system based on their own practices and ways of knowing (McMillan, 2012). 25 years

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[1] Mi'kmaw is alternatively spelled as Mi'gmaq, Micmac, and Mi'kmaq. In this thesis I use Mi'kmaq and Mi'kmaw because they are recognized as the preferred spellings of Mi'kmaq residing in Nova Scotia (Paul, 2000). Mi'kmaw is the singular form of Mi'kmaq and also used as an adjective. Micmac was the spelling used by French settlers beginning in the 17th century. Mi'gmaq is the spelling used by the Listiguj First Nation in Quebec.

later the Mi'kmaw Nation continues in its fight to build a future outside of the colonial confines of the Canadian state.

In partial response to the Marshall Inquiry report, a Tripartite Forum was formed as a partnership between the Mi'kmaq, the Province of Nova Scotia, and the Canadian Government in 1991. The Tripartite Forum has its roots in recommendation #22 of the report which advocated for the creation of a forum "to mediate and resolve outstanding issues between the Micmac and government" (Hickman, Poitras, and Evans, 1989, p. 28). The Tripartite Forum was originally designed to resolve issues related to the criminal justice system. However, in 1997, the Tripartite Forum was formalized when the Mi'kmaq Chiefs of Nova Scotia and the federal and provincial governments signed a Memorandum of Understanding that broadened the scope of the work undertaken at the Forum. The Tripartite Forum is meant to facilitate collaboration between the Mi'kmaq and both levels of government and is responsible for developing culturally relevant programs and policies that respond to the unique needs and goals of Mi'kmaw communities in Nova Scotia.

Unmasking Indigenous Struggles: Why Does Nova Scotia Need a Tripartite Forum?

The Tripartite Forum was created during an exceptionally tumultuous period in relations between Mi'kmaw communities and federal and provincial governments. The systemic discrimination documented by the Marshall Inquiry report was, for the Mi'kmaw Nation, symptomatic of a pattern of injustice routinely experienced by Indigenous peoples since the arrivals of settlers to their territories. Donald Marshall Jr.'s experiences within the Canadian legal system and the entangled demands for Mi'kmaw control over justice that followed are a reflection of the broader struggles Indigenous

peoples face as they attempt to assert their autonomy and restructure their relations with the Canadian state.

The cultural and political struggles that Indigenous communities engage in are largely misunderstood by dominant Canadian society. Many Canadians perceive Indigenous rights as providing Indigenous peoples with advantages that are unavailable to others in Canadian society (Ramos, 2007). Settlers often view treaties and land claims as "boundaries" to improved relations. Meanwhile Indigenous peoples consider the lack of understanding and respect for Indigenous histories as the "real" boundary (Dennis, 2015, p.234). As settlers we often deny or minimize how our arrival has impacted Indigenous peoples. Paulette Regan (2011) refers to this construct as the "peacemaker myth", in which we cast our ancestors as:

> benevolent peacemakers- neutral arbiters of British law and justice, Christian messengers of the peaceable kingdom- who collaborated together in various ways to negotiate treaties and implement Indian policy intended to bestow upon Indigenous people the generous benefits or gifts of peace, order, good government, and Western education that were the hallmarks of the colonial project of civilizing 'savages'. (p .83)

The problem with the "peacemaker myth" is that it distorts the history of European settlement and fails to acknowledge the oppression Indigenous peoples continue to experience as a result of colonization. By subscribing to the "peacemaker myth" we falsify history and ignore Indigenous understandings of colonialism. The "peacemaker myth" is perpetuated within the Canadian political system where the perspectives of Indigenous peoples are largely absent from the bureaucracies tasked with drafting policies and legislations for Indigenous communities. As anthropologist Noel Dyck (1991) notes, there seems to be "a recurring

unwillingness on the part of non-aboriginal leaders to address aboriginal issues with the determination, sincerity, and continuity that their resolution requires" (p. 160).

To a large extent, Canadian Indian policy is steeped in a paternalistic ideology that removes decision making from Indigenous communities and their leaders. According to Dyck (1991), Indian policy "has been founded upon one unshakeable premise- the presumed moral and cultural superiority of, first, European and, then, Euro-Canadian society over native peoples" (p. 25). Undeniably, improving relations between Indigenous peoples and Canadian society requires a fundamental shift in how the Canadian state creates policy for Indigenous communities. As the Truth and Reconciliation Commission prepares to release its final report, Canada is entering a new phase in its relations with Indigenous peoples.[2] Tactics of assimilation, such as the Indian Residential School system, which sought to extinguish Indigenous voices, cultures, and traditions no longer have a place within Canadian society. Establishing and maintaining positive relations with Indigenous communities will require respect for Indigenous ways of knowing and an acknowledgment of past harms. According to its mission statement, the Tripartite Forum (2015) is "committed to working and learning together in partnership, in a manner that respects the needs of the Nova Scotia Mi'kmaq". The values of respect and collaboration at the heart of the Tripartite Forum's mission statement are meant to reshape the formation of policy for Mi'kmaw communities and represent a promising new pathway in interaction between Indigenous peoples and federal and

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[2] The Truth and Reconciliation Commission was established in 2010 as part of the Indian Residential School Settlement Agreement. It is mandated with documenting the history of the Indian Residential system and establishing a National Centre for Truth and Reconciliation. The Commission released two volumes and a summary of its final report on June 2, 2015. The full six volume report will be released sometime later in 2015.

provincial governments. Despite the important role co-management could play in the future of Indigenous-state relations, we know very little about the significance of such processes for their members or how they impact relations between the Indigenous participants and the federal and provincial governments.

As a result, my thesis asks the following question: in what ways has the Tripartite Forum impacted relations between the Mi'kmaq and federal and provincial governments? I trace the Tripartite Forum's history and the lived experiences of past and present participants, in addition to its implications for broader political relations between Mi'kmaw communities and the Canadian and Nova Scotian states.[3] I contend that the work of the Tripartite Forum, and participants' perspectives of its efficacy must be examined within a larger set of Mi'kmaw demands for self-determination. I use the Tripartite Forum as a case study to gain insight into Mi'kmaw perspectives on just relations with the Canadian settler state and how federal and provincial governments respond to these objectives.

I argue that, on the surface, the Tripartite Forum occupies a critical role in ensuring that provincial and federal policies better meet the needs of Mi'kmaw communities. At the same time, however, its members are required to confront a legacy of colonialism that, for the Mi'kmaq, cannot be solved through the creation of 'culturally relevant' programs and services. Often, this results in the reproduction of power relations the Tripartite Forum is meant to undo because the federal and provincial governments are

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[3] The Tripartite Forum is a partnership between the Mi'kmaq in Nova Scotia and the federal and provincial governments and as such this thesis focuses on the experiences of Mi'kmaq in this province. I do not address the situation of other Mi'kmaw communities in New Brunswick, Prince Edward Island, Quebec, or in the United States.

unwilling to discuss issues pertaining to Mi'kmaw self-determination. Mi'kmaw

Tripartite Forum members envision a relationship based on the values of equality and

sharing that are contained within the peace and friendship treaties signed by their

ancestors. Improving relations between Mi'kmaw communities and the Canadian and

Nova Scotian states will ultimately require a significant reordering of power beyond the

current mandate of the Forum.

The United Nations Declaration on the Rights of Indigenous Peoples (2008)

advocates for states to "respect and promote the inherent rights of Indigenous peoples"

(p. 2).[4] The declaration begs the question of what responsibilities colonial states have in

their relations with the Indigenous peoples on whose territories they are uneasily settled.

Certainly the rise of Indigenous activism within the international arena brings this

question to the forefront of political consciousness. The Tripartite Forum represents one

possible model of collaboration for nations who are interested in improving their relations

with Indigenous communities. Although similar co-management arrangements involving

collaboration and negotiation between governments and Indigenous peoples exist in other

contexts, the Tripartite Forum differs from them because of its broad mandate and the

fact that it has endured, in varying forms, for over two decades. British Columbia, for

example, has the British Columbia Treaty Process which is tasked with addressing issues

related to Aboriginal rights and title (Woolford, 2004). First Nations across Canada are

also working together with both levels of government in institutions aimed at the co-

management of wildlife and other resources (Spaeder & Feit, 2005). Unsurprisingly,

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[4] The United Nations Declaration on the Rights of Indigenous Peoples was originally adopted in 2007. In
the beginning, the Canadian government was vocally opposed to the document but eventually ratified
UNDRIP in 2010. See Green (2011) for a discussion of the Canadian state's stance on UNDRIP.

these forms of collaboration have begun to generate a great deal of academic and popular debate. Much of the Canadian literature on Indigenous governance and state relations, however, has centered on the analysis of the formal structures of co-management institutions. [5]

If the Tripartite Forum could potentially serve as a model for other regions within Canada and internationally that are grappling with their own legacies of colonialism there needs to be a careful analysis of the advantages and pitfalls of the model. Importantly, the ethnographic approach utilized in this thesis places the perspectives of Tripartite Forum participants at the forefront of my analysis (Dubois, 2005). An ethnographic approach also places the Tripartite Forum within the broader context of colonial relations which, as I demonstrate later on, these historical experiences are critical to Mi'kmaw participants' views of the successes and failures of the Tripartite Forum model.

The Methodological Approach

Between October 2014 and February 2015, I conducted six semi-structured interviews with current and former members of the Tripartite Forum. I met potential participants in meetings and conferences in my capacity as a research assistant and casual conversations about my thesis topic often turned into plans to conduct formal interviews. All of the participants offered suggestions and sometimes contact information for other members they thought I should speak with. The public presence of many Tripartite Forum members also assisted me in contacting potential participants. Using Google I was able to locate contact information and set up interviews via email. Interview participants included Mi'kmaw representatives, provincial civil servants, and other individuals

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[5] See Spaeder and Feit (2005) for a special issue of Anthropologica exploring the rise of Indigenous co-management regimes within Canada.

associated with the Tripartite Forum. The interviews lasted between forty minutes and just over two hours. I spoke with three Mi'kmaw participants, two provincial former civil servants, and one other individual who was involved with the Tripartite Forum. All of the research participants were involved with the Forum for extended periods, some as many as ten years.

Interviews with participants inquired about the history of the Tripartite Forum, their ideas around its purpose or role, the type of projects underway, and their perceptions on its successes and failures. I asked whether they had observed differences in Mi'kmaq-state relations since the Tripartite Forum's inception and what they attributed these changes to. Interview questions prompted participants to recount stories about Tripartite Forum activities that were particularly meaningful or difficult for them and to share their views on Indigenous-settler relations in Nova Scotia. All participants were asked to provide their opinion about what a positive relationship between the Mi'kmaq and federal and provincial level of governments would be comprised of and whether or not they believe the Tripartite Forum had a role in fostering or maintaining such relations.

In addition to interviews, I carried out an analysis of Tripartite Forum documents. I had originally sought to undertake participant observation at Tripartite Forum meetings but was unable to obtain permission to do so. Document analysis is an increasingly popular method for institutional ethnographers and is a useful strategy for gathering further data when participant observation is not possible (Nader, 1969). As Matthew Hull (2012) notes, documents are not simply artifacts of bureaucracies, but are "constitutive of bureaucratic rules, ideologies, knowledges, [and] practices...." (p. 251). As argued by Wright (2011), documents form part of the material culture of organizations that can be

analyzed alongside field data for "key concepts…organizational dynamics and the operations of power" (p.29). The documents emerging from institutional processes can reveal as much about the inner workings of organizations as interviews or observation. Many documents are publicly available on the Tripartite Forum website. I gathered annual reports from 2002-2014 to use in my analysis.

Thesis Outline

In the second chapter I explore the existing anthropological literature on Indigenous-state relations in Canada and trace the history of relations between the Mi'kmaq and both levels of government from initial colonization to the Marshall Inquiry. The purpose of this chapter is to provide the reader with an understanding of how the current relationships between Indigenous peoples and the federal and provincial governments have evolved over the course of the past 500 years. In the third chapter I outline the structure of the Tripartite Forum and discuss the implications of translating Mi'kmaw knowledges into policy. I provide a critique of the literature on Indigenous co-management, arguing that not enough attention is being paid to the perspectives of those who participate within these processes. In the fourth chapter I discuss a conflict over Mi'kmaq representation at the Tripartite Forum that occurred in the late 1990s and suggest that such conflicts illuminate how policy environments shape political actors and their identities. Chapter Five features a discussion of Mi'kmaw perspectives on the treaty relationship and how deeply held historical understandings continue to inform current political relations between Indigenous peoples and the state. I conclude in the sixth chapter by considering the broader implications of my research for the study of Indigenous-state relations.

Chapter Two: Colonialism in Mi'kma'ki

The Anthropology of Indigenous-state relations

For many Indigenous peoples, the existence of the Canadian state is a painful reminder of a 500 year process of colonization. Today, the idea that contemporary colonialism continues to pervade relations between Indigenous communities and the state underlies the work of scholars and activists alike (Borrows, 2002; Coulthard, 2014; Sider, 2014; Simpson, 2008). However, early ethnographic accounts of Indigenous communities were largely blind to the impacts of colonialism and ignored the broader social, political, and economic consequences emerging from the arrival of settlers and the displacement of Indigenous communities from their territories (Dyck, 2006; Pinkoski, 2008). In the 1800s, government-hired anthropologists were undertaking salvage ethnography, which was meant to preserve a record of the customs of Indigenous cultures on the verge of extinction (Nurse, 2006). By the 1940s, as it became clear that Indigenous cultures were not on the brink of extinction, anthropologists began to examine the contemporary experiences of First Nations (Dyck, 2006).

In the late 1960s, with the attempted dissolution of the Indian Act, Indigenous political participation reached new heights (Ramos, 2008). As Noel Dyck (2006) notes, "the design and implementation of public policies pertaining to Aboriginal peoples became a vastly more contentious process" (p.83-84). As a result, in the 1970s and 1980s, a series of ethnographies detailing First Nations varied experiences with the Canadian state emerged (Dyck, 2006). These works coincided with broader trends in the anthropological literature which acknowledged that Indigenous cultures were not bounded units but shaped and influenced by experiences of colonialism and the expansion of European empires (Wolf, 1982).

In 1982, existing Aboriginal and treaty rights were formally recognized and affirmed in the Canadian Constitution. Importantly, the Constitution does not define the meaning of an Aboriginal or treaty right; which has resulted in numerous court cases meant to shape the scope of these rights. The meaning and substance of Aboriginal rights is constantly changing. According to eminent Canadian anthropologist Michael Asch (1984), "aboriginal rights can be described as encompassing a broad range of economic, social, cultural, and political rights. Of these the notion of a land base within a separate political jurisdiction is fundamental" (p. 30). The inclusion of existing Aboriginal and treaty rights within the Canadian Constitution has legitimated claims to self-determination and provided Indigenous peoples with political and legal avenues for self-determination (Asch, 1984, p. 37). The recognition and affirmation of Aboriginal and treaty rights ushered in a new era in Indigenous-state relations in Canada. It raised many important questions about the responsibilities of the Canadian state to support Indigenous independence and considerations around the best strategies for communities to implement and practice their rights.

Since the enshrinement of existing Aboriginal and treaty rights within the Constitution, anthropologists are concerned with documenting the struggles of Indigenous communities as they work toward political autonomy. Legal anthropologists in particular, are dissecting a series of Aboriginal rights claims taking place in the Canadian legal system (Blackburn, 2012; Blackburn, 2009; Culhane, 1998). Because these battles most often take place in the courts, there is an emphasis on legal interactions between the state and Indigenous peoples, such as cases related to Aboriginal title and treaty rights. However, as these scholars demonstrate, when Indigenous peoples find

themselves defending their rights in court, these claims take on an adversarial approach, focused on developing certainty around the meaning of Aboriginal and treaty rights rather than moving toward any sustained collaboration between Indigenous communities and the state (Blackburn, 2008; Woolford, 2005).

I am interested in advancing a somewhat different notion of Indigenous-state relations, located in more localized, informal approaches to dispute resolution. Indigenous communities have had diverse historical and contemporary experiences with colonialism and the Canadian and provincial states. Given this diversity, restructuring the colonial relationship will require collaboration unique to a nation's particular history as well as any preexisting treaty obligations. Despite the importance of regional particularities, to date, there has been surprisingly little attention paid to smaller-scale interactions between the both levels of government and Indigenous communities. However, anthropologists are beginning to enter the discussion through research on resource co-management regimes in particular, recognizing that such arrangements impact not only lands and resources, but also the structure of Indigenous-state relations on a broader level (Natcher, Davis, and Hickey, 2005, pg. 240). Co-management regimes take on varying forms and Indigenous motivations for participating in these processes are wide-ranging (Feit, 1989, p. 60). Paul Nadasdy calls on anthropologists to take a critical approach to such processes. Nadasdy (2003) draws attention to the political dimensions and power relations underlying co-management and argues that these arrangements often reproduce the existing power relations that they are designed to transform (p. 10). If co-management represents a new approach to state interactions with Indigenous communities, analyses of such processes should not obscure the historical and

contemporary realities of colonization upon which these relations are built. Accordingly, my thesis locates the Tripartite Forum within a complex set of existing interactions between the Mi'kmaq and a variety of state institutions and practices and is informed by the region's history of colonialism.

From Mutual Cooperation to Attempted Subjugation: Mi'kmaq-settler relations in the Atlantic Region

The Mi'kmaq occupy a vast territory of over fifty thousand square miles that stretches from Cape Breton Island to the Gaspe Peninsula in Quebec (Upton, 1979). The location of Mi'kma'ki along the eastern side of the continent means that the Mi'kmaq were among the first Indigenous nations to encounter European settlers on their territories. Contrary to the notion of terra nullius, Europeans did not arrive to uninhabited territory. When French Breton fishermen arrived in 1504, what they encountered was a well-populated society with a sophisticated political system (Henderson, 1997; Prins, 1996). Traditionally, Mi'kmaw political practices emphasized participatory decision-making (Prins, 1996, p. 33). Although the seven districts of Mi'kma'ki had a great deal of independence, the Grand Council was responsible for coordinating responses to mutual problems among the districts. As Daniel Paul (2000) points out, at Grand Council meetings, "all men and women who wanted to speak were heard, and their opinions were given respectful consideration in the decision making process" (p. 16). While there is no consensus regarding the Mi'kmaw population prior to European contact, estimates range from 6,000 to 100,000 (Upton, 1979, p. 2).
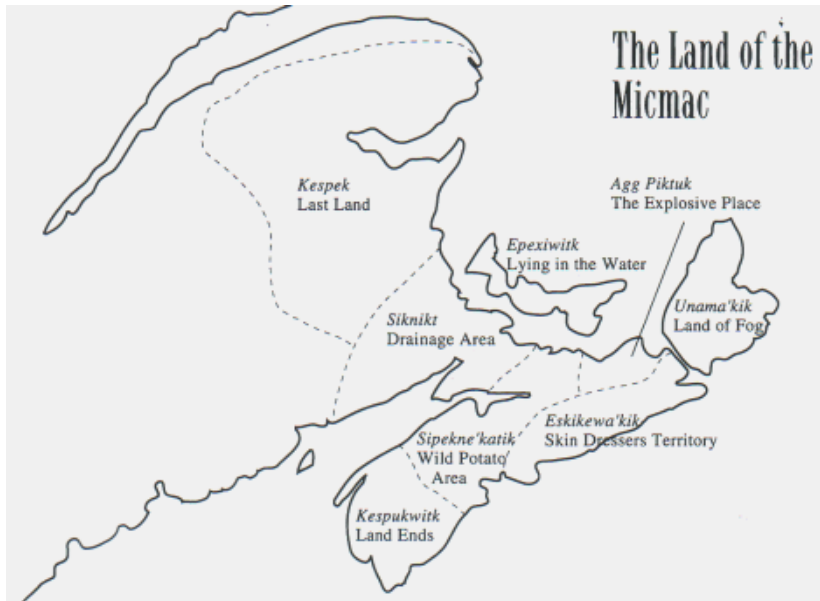
Figure 1: Map of Mi'kma'ki (Daniel Paul N.D)

Figure 2: Mi'kmaw Communities in Nova Scotia (Office of Aboriginal Affairs, 2013)

Over five hundred years of colonization has tremendously disrupted Mi'kmaw

society. However, since the arrival of the first settlers the Mi'kmaq have developed

strategies to resist assimilation and have fought to maintain their autonomy. Although the Mi'kmaq were unable to maintain control of their territory, they have preserved their distinct cultural identity despite systematic attempts to assimilate them into dominant Canadian society. In this section I provide a broad overview of colonization in Mi'kma'ki in order to situate the Tripartite Forum in a history of resistance and accommodation to colonial power.

During the 16th century, the presence of Europeans in Mi'kma'ki was seasonal as tradespeople and fishers spent the summer in camps to facilitate trade and fishing. In the beginning, the Mi'kmaq maintained relatively positive relations with the French and a significant level of autonomy (Upton, 1979, p. 16). In 1610, the Mi'kmaq entered into an alliance with the Catholic Church to ensure their continued authority over Mi'kma'ki (Battiste, 2010, p. 10-11).

In 1713, the Treaty of Utrecht transferred Acadia from the French to the British following a decade of conflict. When England officially gained control over Acadia it ushered in dramatic changes to relations between the Mi'kmaq and settlers. The mutual cooperation established between the Acadiens and Mi'kmaq during the fur trade vanished. The British viewed the Mi'kmaq as an impediment to their settlement of the land and for colonial expansion (Miller, 2000, p. 104). The Mi'kmaq continued to actively affirm their connection to the land and resources and resist further British expansion (Chute, 1999). In an effort to establish alliance with Indigenous peoples in Atlantic Canada and end warring between the groups, the British signed the first peace and friendship treaty in 1725 with the Mi'kmaq, and three other Indigenous nations in the region. Another series of treaties were signed in 1749, 1752, and 1760/61 as the British

were concerned about the continued alliance between the Mi'kmaq and the French (Wicken, 2010). The Mi'kmaq and British had conflicting perspectives regarding the interpretation of the treaties. The purpose of the 1725 treaty was to establish a relationship between the British and Indigenous peoples in Nova Scotia and provide a framework for sharing the land. Anishnaabe scholar John Borrows (2001) argues that peace and friendship treaties "affirm the notion that different peoples should be free to pursue different objectives" (p. 623). According to William Wicken (2002), the 1725 treaty "explicitly acknowledged the co-existence of Mi'kmaw and British law in interactions between the two communities", however disagreements over treaty obligations would begin soon after the document was signed (p. 4).[6] The problem is that how co-existence would function in practice was ambiguous in these treaty agreements (Wicken, 2012). In some ways, not much has changed.

Importantly, unlike the numbered treaties in Western Canada, the Mi'kmaq did not surrender their rights to the land when signing the peace and friendship treaties. Although the treaties were signed in an effort to mediate conflict and warfare between the two parties, English encroachment onto Mi'kmaq territory intensified as the settler population grew. In 1763, the British Crown issued a Royal Proclamation signifying Britain's official claim to what is now North America following the end of the Seven Years War between England and France. The proclamation outlined a framework for the relationship between Indigenous peoples and the colonial population. The proclamation mandated that the Mi'kmaq have land set aside for their exclusive use and that First Nations land could not be settled without the permission of the Indigenous nation

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[6] The 1725 peace and friendship treaty was renewed in 1726. See Wicken (2002).

(Frideres, 2011). In practice, however, the British were focused on settling the area and showed little respect for Mi'kmaw land rights (Poliandri, 2011).

The passage of the Indian Act in 1876 signaled a new era in Indigenous-state relations, where policies aimed at the destruction of Indigenous cultures and the assimilation of Indigenous peoples into dominant Canadian society were consolidated into one piece of legislation (Warry, 2007). Following Confederation, Indigenous peoples were under the responsibility of the federal government. The Indian Act established the current electoral band chief system, undermining traditional forms of Indigenous governance, and allowing the federal government to intervene in Indigenous political affairs (Miller, 2001; Poliandri, 2011). The Mi'kmaq were moved onto reserves as the Canadian government viewed a sedentary lifestyle as a hallmark of assimilation (Upton, 1979). Perhaps, one of the most controversial policies stemming from the Indian Act was the Indian Residential School system, which saw Indigenous children forcibly removed from their families and placed within Christian boarding schools for the purposes of assimilating them into Canadian society between 1870 and 1996 (Milloy, 2001).[7] The premise underlying the Indian Act and its policies was that Indigenous cultures were inferior to Euro-Canadian society and that Indigenous peoples had to be brought under the control of the federal government to ensure that they adopted the norms of the dominant culture.

The Mi'kmaq were not passive participants in the Canadian colonization process. By the 1920's, Mi'kmaw leaders were using the Canadian legal system to assert rights

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[7] Approximately 2000 Mi'kmaw children attended the Indian Residential School at Shubenacadie, Nova Scotia between 1930 and 1967. See Knockwood (1992) for a discussion of the sexual, physical, and mental abuse suffered by survivors of the school.

they argued were guaranteed under the treaties (Wicken, 2012).[8] In the 1940s, the

Mi'kmaq resisted a centralization policy aimed at concentrating the Mi'kmaq population

onto reserves at Shubenacadie and Eskasoni. The purposes of the centralization policy

were to free lands for settlement and encourage the Mi'kmaq to adopt agriculture. The

policy was a dismal failure and abandoned in the 1950s following Mi'kmaq opposition

(Poliandri, 2011).

The White Paper and Indigenous Political Activism

Colonization and the establishment of the Canadian state engendered a

substantially different set of political practices than the consensus-based approaches to

governance used by the Mi'kmaq prior to European settlement. Canadian political power

removed decision-making from Indigenous communities and until 1960 also shut

communities out of the mainstream system by denying them the vote. In 1969, the federal

government tabled the White Paper, a policy that proposed the extermination of the

Indian Act and any special rights for Indigenous peoples. According to the policy brief,

"a policy can achieve no more than is desired by the people it is intended to serve. The

essential role of the government's proposed new policy for Indians is that it

acknowledges that truth by recognizing the central and essential role of the Indians in

solving their own problems" (DIAND, 1969, p. 24). Although DIAND did carry out a

series of consultations with Indigenous leaders, it disregarded their views in the

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[8] In the King V. Gabriel Sylliboy, Grand Chief Gabriel Sylliboy used the peace and friendship treaties as his defense when he was arrested for hunting out of season. He asserted that the treaties guaranteed his right to hunt and fish according to Mi'kmaq laws. Although Sylliboy was convicted, the case demonstrates the important role the treaties play in framing Mi'kmaq understandings of self-determination. See Wicken (2012) for a discussion of the Sylliboy case.

production of the policy brief.[9] Anthropologist Sally Weaver (1981), who conducted an

ethnographic study of the process surrounding the creation of the White Paper, points out

that the policy was developed "under tight secrecy. The policy-makers were ministers,

their advisers and senior civil servants" (p. 7). Despite the government's assertions that

Indigenous peoples needed a place in determining the future directions of their

communities, they fashioned the White Paper without any meaningful Indigenous

participation.

    The release of the White Paper was a defining moment for Indigenous political

activism. According to sociologist Howard Ramos (2008), resistance to the White Paper

"marked the birth of contemporary Indigenous mobilization" (p. 801). Esteemed Alberta

Cree activist Harold Cardinal wrote a scathing critique of the White Paper, in which he

blasted the federal government's failure to adequately involve Indigenous peoples in the

process. But for Cardinal (1969), the process surrounding the White Paper was only one

example of a systemic Indigenous alienation from governance following the

establishment of the Canadian state:

> These faceless people in Ottawa…have sat at their desks eight hours a
> day, five days a week, for over a century, and decided just about
> everything that will ever happen to a Canadian Indian. They have laid
> down the policy, the rules, the regulations on all matters affecting
> native peoples…Their ignorance of the people whose lives and
> destinies they so routinely control perpetuates the stereotype image
> they have developed of the native people. (p. 7-8)

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[9] In 2011, the Department of Indian Affairs and Northern Development officially changed its name to
Aboriginal Affairs and Northern Development Canada.

In Mi'kma'ki, the policy brief coincided with the creation of the Union of Nova Scotia

Indians, which originally represented all thirteen bands in Nova Scotia (Larsen, 1983).

In the early 1970s, UNSI initiated a tripartite process with the province and

DIAND. The purpose of this tripartite process was to ensure that the Mi'kmaq were

adequately informed and involved in the creation of policy. A Mi'kmaw political leader

remembers the rationale behind the original tripartite process as follows:

> In all our communities it didn't take long to realize that we Mi'kmaq people
> should be doing our own thing…In about 1973 we started hearing a number of
> Chiefs and executive members saying that the province and the federal
> government Indian Affairs Department had some great sit downs talking about
> Mi'kmaq people in Nova Scotia…When the Chiefs heard this was going on
> between the two governments with no Mi'kmaq involved in those discussions
> then they decided we have to do something. (Personal communication, February
> 18, 2015)

This early version of tripartite discussions was a relatively informal process where the

Mi'kmaq could bring issues of concern to the federal and provincial liaisons. The

tripartite process folded after a few years and did not provide the Mi'kmaq with sustained

and meaningful collaboration on policy issues (Personal communication, November 26,

2014). However, the fact that the federal and provincial governments were willing to

meet with UNSI symbolized the mounting political influence of the Mi'kmaq in the

period following the White Paper. Two decades later, Donald Marshall Jr.'s wrongful

conviction and the public uproar that accompanied it would put pressure on both levels of

government to rethink how they carried out relations with Mi'kmaw communities.

Chapter Three: Engaging Mi'kmaw Knowledges

When I first decided to undertake a study of the Tripartite Forum, I was particularly interested in its stated promise to incorporate Mi'kmaw knowledges within the programs and policies it developed (Tripartite Forum, 2006). On the surface, as I have noted, this intention marks a profound shift from how Indian policy was created thirty years earlier. This chapter begins by outlining the current structure of the Forum. I then consider how the broader political environment shapes the inclusion of Indigenous knowledge inclusion within co-management regimes. Following the release of the Marshall Inquiry report, the Mi'kmaq were advocating for control over justice within their communities through the creation of an independent justice system. Instead, negotiations at the Tripartite Forum led to an increase in culturally relevant programs that exist within the framework of the Canadian justice system. The disjuncture between Mi'kmaw aspirations for community-controlled justice and the policy changes the federal and provincial governments were willing to undertake demonstrates that, despite increased collaboration between the three parties, Tripartite Forum outcomes are designed to fit with current federal and provincial justice policies.

The Structure of the Forum

The Tripartite Forum is an institution responsible for advancing the well-being of Mi'kmaw communities in Nova Scotia. The purpose of the Tripartite Forum is to "strengthen relationships and resolve issues of mutual concern affecting Mi'kmaw communities" (Tripartite Forum, 2015). The Tripartite Forum e seeks to build a "foundation for prosperous and vibrant Mi'kmaq communities through partnership, commitment, and respect" (Tripartite Forum, 2015). Central to its' mandate is

collaboration between the Mi'kmaq, the Province of Nova Scotia, and the Government of Canada. The parties work together to address issues facing the Mi'kmaq in Nova Scotia. The Tripartite Forum's office is located on the Millbrook First Nation outside of Truro, Nova Scotia. Tripartite Forum committees hold their meetings throughout Mi'kmaw communities in the province. That provincial and federal civil servants are required to enter Mi'kmaw space to attend Tripartite Forum meetings is of symbolic importance. Furthermore, in theory, it increases the likelihood that community members have access to the Tripartite Forum.
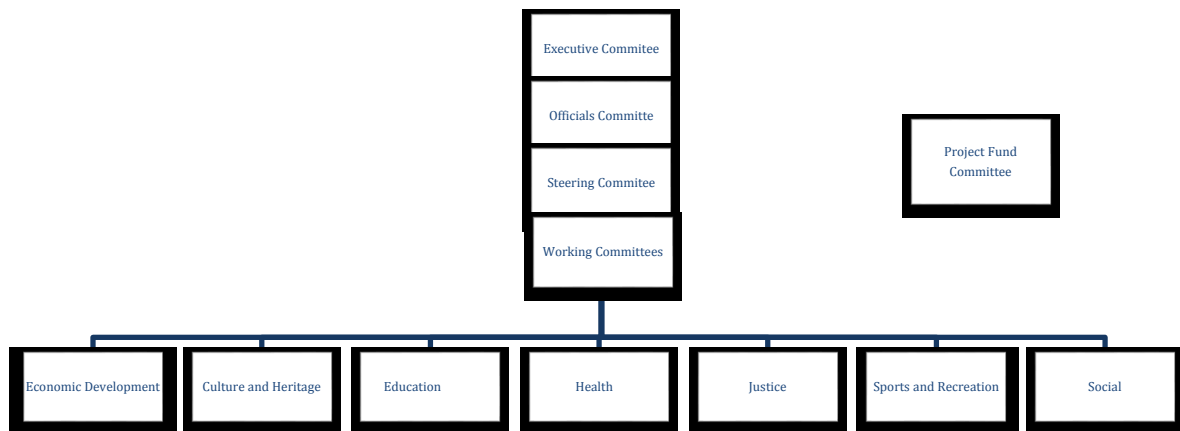

Figure 3: Tripartite Forum Organizational Chart

The Tripartite Forum has a hierarchical structure with five committee levels with various responsibilities. The working committees are the basis of the Tripartite Forum and are seen as its "grass roots" (Tripartite Forum, 2014, p. 9). The working committees identify issues facing the Mi'kmaq in their respective areas through research and

community engagement. The working committees then discuss the issues and develop solutions. They create yearly work plans designed to address key areas of concern. The membership of the working committees includes representatives from the three Tripartite Forum parties (the Mi'kmaq, Province of Nova Scotia, and Government of Canada), as well as experts and technicians with knowledge in the area. Currently, there are seven working committees in the areas of: culture and heritage, economic development, education, health, justice, social, and sports and recreation (Tripartite Forum, 2014).

The Tripartite Forum's Steering Committee provides direction and support to the working committees, and ensures that positive working relationships are maintained between the three parties within each committee. The Steering Committee is composed of liaisons from three Mi'kmaq political organizations: the Confederacy of Mainland Mi'kmaq; the Union of Nova Scotia Indians; and the Nova Scotia Native Women's Association, in addition to the Mi'kmaq, provincial, and federal Tripartite co-chairs (Tripartite Forum, 2014, p. 8).

The Officials Committee oversees the working committees, approving the working committees' mandates and acts as a liaison between the working committees and the Executive Committee. The Officials Committee carries out the activities mandated by the Executive Committee (Tripartite Forum, 1997a, p. 2). Furthermore, the Officials Committee is able to table new working committees. The Officials Committee is required to hold meetings twice a year. Officials Committee members include: Tripartite's Executive Chair; the thirteen Mi'kmaq Chiefs, the Executive Director of CMM; the Executive Director of UNSI; the President of NSNWA; the Chief Executive Officer of

the Nova Scotia Office of Aboriginal Affairs; and various senior members of the federal and provincial governments (Tripartite Forum, 2014, p. 7).

The Executive Committee is the highest level of authority at the Tripartite Forum and responsible for setting its direction and overseeing all of the committees. According to the Terms of Reference, the Executive Committee mandates "the agenda, issues, parameters, and direction of the Forum" (1997a, p. 2). The Executive Committee members' are Tripartite's Executive Chair; the thirteen Chiefs; the Grand Chief of the Mi'kmaq Nation; the National Chief of the Assembly of First Nations; the Provincial Minister of Aboriginal Affairs; and the Minister of Aboriginal Affairs and Northern Development Canada (Tripartite Forum, 2014, p. 7). The Executive Committee is mandated by the Terms of Reference to meet on a yearly basis.[10] Despite the similarities in membership between the Officials and Executive committees, the Officials Committee is more involved in the routine activities of the working committees, while the Executive Committee is responsible for directing the overarching goals of the Tripartite Forum.

Following a review of the Tripartite Forum in 2006, the Forum created the Fund for Social and Economic Change to assist in funding and managing projects developed by the working committees (Tripartite Forum, 2015). The Project Fund committee members are three working committee co-chairs, one from each of the three Tripartite Forum parties, as well as the Mi'kmaq, provincial, and federal Steering Committee co-chairs. Tripartite's Executive Chair is a non-voting committee member (Tripartite Forum, 2014). The Project Fund meets on a quarterly basis to decide on project funding (Tripartite Forum, 2014, p. 8).

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[10] I have been unable to confirm when the Tripartite Forum's Executive Committee last held a meeting.

Although the Tripartite Forum's membership includes many high level political officials, the majority are concentrated within the Executive and Officials' committees. The working committees are required to receive approval from the higher-level committees to carry out their work plans. Many participants expressed concerns that the approval process was cumbersome and time consuming. I asked one Mi'kmaw participant to share their perspective on the efficiency of the Tripartite Forum's structure,

> *JY: How were decisions made when you were there?*
> P: Painfully. So let's say [the development] of a court worker [program]. The justice committee would negotiate among itself, the feds are there, the province is there, the Mi'kmaq are there. The program itself, the court worker program, what it would entail, how many workers, the budgets, what dollars would be and once we finished the negotiation at the subcommittee it would then go to the officials. Once that was accepted it went to the Ministers at the executive committee. So basically you have three levels. Mind you it was very inclusive, you got everyone involved but it took steps to do it. It was cumbersome, it was lengthy but in the end I have to say we got a lot of work done. (Personal communication, November 26, 2014)

The Tripartite Forum's hierarchical structure means that approval is required from the Officials and Executive Committees before the working groups can begin projects. One major hurdle is that the Executive Committee is only required to meet once annually so the working committees have only one opportunity to propose projects and seek approval during the year. The Executive Committee is populated by individuals with high levels of political power. At the same time, members of all committees participate on a voluntary basis and are kept busy by their other commitments. Given time constraints and the geographical distance between committee members, it would be quite difficult for the Executive Committee to meet more than once per calendar year. Despite the lengthy time for project approval, the members at the upper committees are able to make decisions

regarding funding and project development. This political power is fundamental to

obtaining the funding and policy changes required to improve services for the Mi'kmaq.

It is also important to bear in mind that membership on the committees' changes

frequently, particularly at the Executive and Officials' Committees where the majority of

members are elected officials such as federal and provincial ministers as well as the

chiefs. Although the Tripartite Forum has a formalized structure, the membership is

dynamic and Mi'kmaq participants felt that political will to address Indigenous issues

fluctuated. The Tripartite Forum is heavily dependent upon the broader political climate

and the commitment respective federal and provincial governments have to addressing

issues facing Indigenous peoples. According to one Mi'kmaw participant,

> Different federal governments came in, different provincial government
> came in and it was like a breath of fresh air or it was like, 'oh my god
> they want nothing to do with First Nations issues and they're just looking
> at this thing like, 'oh god we are not giving any attention to that.' So for
> example, when Savage[11] was premier we had huge support for Tripartite,
> he was very engaged with Tripartite and totally supportive and great
> dialogue and I guess a political respect for First Nations…he gave it his
> 100%. Subsequent governments we'd see come in and it was like, 'oh
> god what are we going to do?' It would be a nightmare or we'd get an
> Aboriginal Affairs minister and it was just like, 'I'm not a partner with
> First Nations.' They wouldn't say that but their attitude and their
> personality it was very clear that it was going to be an uphill battle.
> (Personal communication, January 7, 2015)

It is clear that people's perceptions of the Tripartite Forum's value are influenced by time

and space. Participant's experiences are shaped by the current membership of the Forum

as well as the political climate at that point in time.

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[11] John Savage was the leader of the Nova Scotia Liberal Party and Premier of Nova Scotia between 1993
and 1997.

Perspectives on Policy

Policymaking is a process of cultural production, reflecting the cultural and political values of contemporary states. According to Shore and Wright (2011), policy is an "organizing principle" of society, regulating both "the spaces and subjects they seek to govern" (p.2). For anthropologists, policy formation raises numerous questions about the relationship between power and governance processes. Policies can be used as vehicles for social justice or to maintain structures of power and the status quo (Shore & Wright, 2011). Indigenous communities have been alienated from participating in the creation of the state's Indian policy agenda (Brownlie, 2003). The historical legacy of the Indian Act and failed policies such as the Indian Residential School system continue to negatively impact Indigenous-state relations today. Political alienation has resulted in a lack of Indigenous knowledges and practices within Canadian policy. Today, Indigenous communities are mobilizing and demanding that all levels of government recognize their right to determine their own futures (Borrows, 2002; Cornell, 1990; McMillan et al. 2013; Simpson, 2008). The political activities and demands of Indigenous communities are resulting in dramatic changes in Indigenous-state relations within Canada; governments are now beginning to recognize the need to negotiate and collaborate with Indigenous peoples (Woolford, 2005).

The increased participation of Indigenous organizations in policy work has been criticized by Indigenous community members with claims that these organizations are "in bed with the government" (Ladner, 2008, p.237). Many Indigenous scholars have resisted collaborative approaches, arguing that a revitalization of traditional governance structures is the primary pathway toward decolonization (Adams, 1975; Alfred, 2005; Monture-Angus, 2003). A notable exception to this line of thinking is Dale Turner (2006), who

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believes that engaging with the legal and political institutions of the state is critical to

achieving Indigenous self-determination. Exploring the ways in which collaborative

processes such as the Tripartite Forum might improve Indigenous-settler relations in

Canada is an important area of inquiry. From an anthropological perspective, these

institutions provide a lens through which one can explore ideas of "good relations" and

discover whether Indigenous participation in policy formation produces substantive

changes in Indigenous-state relations or continues to reproduce existing power

imbalances that have long characterized the colonial relationship (Coulthard, 2008).

What's the Point of All This Talking?: Mi'kmaw Knowledge and the Tripartite Forum

In 2006, the Tripartite Forum released a strategic direction document for the

purpose of developing a "way forward" for the working committees. The document

included two "strategic principles" that are meant to guide the committees in developing

their plans of action. According to the report, the Tripartite Forum's first principle is

"ensuring that all our work is grounded in the history, culture, and language of the

Mi'kmaq Nation" (2006, p.1). The document refers to the Mi'kmaw concept of

L'Nui'ta'simk which translates as "the Mi'kmaq way of thinking or doing" (Tripartite

Forum, 2006, p.1). The report notes the importance of grounding the work of the

Tripartite Forum within "Mi'kmaq cultural realities" (Tripartite Forum, 2006, p. 3). But,

what exactly is Mi'kmaw knowledge? Mi'kmaw scholar Marie Battiste and James

Youngblood Henderson define Indigenous knowledge as follows,

> the expression of the vibrant relationships between the people,
> their ecosystems, and the other living beings and spirits that share
> their lands. These multilayered relationships are the basis for
> maintaining social, economic, and diplomatic relationships
> through sharing with other people (2000, p.42).

Central to their definition is the concept of relationships. Contained within knowledge are the ideas and theories people have about their surroundings. Mi'kmaw knowledge, in my view, refers to people's goals and aspirations regarding the future direction of their communities. It is important to ask in what ways the thoughts and perceptions of the Mi'kmaq have been incorporated, or not, within Tripartite Forum activities. Using Roseberry's (1994) concept of "points of rupture", in the following section I examine how the Mi'kmaq have attempted to use the Tripartite Forum as a vehicle to reinsert their worldviews within programs and policies for their communities, to varying degrees of success.

Co-Management and the Uses of Indigenous Knowledge

Over the past few decades, a seemingly endless parade of co-management programs has sprung up across the country. The purpose of these co-management programs is to incorporate Indigenous communities and their knowledge within resource management (Nadasdy, 2003, p.367). How exactly Indigenous knowledges will be incorporated into governmental policies is a major area of concern for anthropologists (Li, 2005; Smith, 2005). Julie Cruikshank (1998) for instance, wonders if Indigenous knowledge systems can truly be incorporated within western scientific paradigms and asks what might get lost in translation (p.52). There are, of course, serious causes for concern. Despite, the examples of harmonious collaboration presented by their proponents, co-management programs bring with them serious moral and ethical responsibilities for their participants (Lowenhaupt Tsing et al., 2005). In the Canadian context, co-management policies often require Indigenous communities to work with members of the federal and provincial governments. In these cases, processes carry the

weight of over five hundred years of colonialism. For many Indigenous communities, systemic denials of their rights and systems of knowledge by the Canadian state have had devastating consequences (Miller, 2000). Simply achieving the level of trust necessary to build healthy and productive relationships between co-management participants represents a major hurdle to achieving success.

Anthropologists have, however, focused their gaze too narrowly in their analyses of co-management processes. Paul Nadasdy (2003), for instance, explores a co-management agreement between the Kluane First Nation, and federal and provincial governments. Nadasdy asserts that because the co-management process is premised on state definitions of knowledge, it actually serves to disempower the Kluane First Nation. Nadasdy goes on to argue that the Kluane participants have little say in how the process unfolds, "to the extent that they accept the existing rules, it is difficult for them to question the legitimacy of these processes" (2003, p.9). Meanwhile, other anthropologists emphasize the positive aspects of co-management. Tara Goetze, like Nadasdy, is interested in the political dimensions of co-management. Examining a resource co-management agreement between five Nuu-chah-nulth First Nations and the government of British Columbia, Goetze turns her analytic focus toward how co-management can redefine relationships between participating parties. Using the concept of "empowered co-management", Goetze (2005) argues that if decision-making is a collaborative process, co-management arrangements can improve relations between First Nations and the state (p.247-248).

Nadasdy and Goetze present two opposing understandings regarding the value of co-management arrangements in the anthropological literature. In undertaking the

research for my thesis I found that neither perspective can fully elucidate Mi'kmaw

perceptions of the Tripartite Forum. Perhaps this is because the Tripartite Forum is highly

permeable to the uneasy nature of Mi'kmaq-state relations outside of the Forum. In some

ways the Mi'kmaq feel the Tripartite Forum has been tremendously productive, in other

ways they argue it has failed them. Certainly, the Mi'kmaw representatives I spoke with

have been required to make difficult decisions in situations where they were presented

with limited options from federal and provincial governments. Both Mi'kmaw

perceptions and the decisions made reveal the complexities of their relations with the

state, both within and outside of the Tripartite Forum.

Meeting in the Middle: Rethinking Concepts of Power

The release of the Marshall Inquiry report marked a pivotal turning point in

relations between the Mi'kmaq and both levels of government. The province of Nova

Scotia was at the center of a political scandal. The Marshall Inquiry report laid bare

systemic racism within the criminal justice system, with the report's commissioners

stating that Marshall's wrongful conviction was "due, in part at least, to the fact that

Donald Marshall Jr. is a Native" (Hickman, Poitras, & Evans, 1989, p. 1) A former

provincial civil servant who sat at the Tripartite Forum recalls the political climate at the

outset of the Tripartite Forum "…after Donald Marshall the province looked pretty

bad…I sensed that people were feeling they had to come to the table in good faith and

improve matters" (Personal Communication, October 27, 2014).

For the Mi'kmaq, the Inquiry was a profound acknowledgement that the Mi'kmaq

had their own distinct worldview and practices that could not simply be absorbed within

mainstream Canadian institutions (McMillan, 2002, p.193). Within Mi'kmaw

communities there was a great deal of momentum and excitement at the possibility of systemic and structural changes in the Canadian and Nova Scotian state's attitudes toward Indigenous peoples. According to McMillan (2002), "armed with the findings of the Inquiry, and using the recommendations to define their direction, the Mi'kmaq launched into a period of heightened cultural production as they strived to build their own justice system" (p.193).

The Mi'kmaq were clear that dominant government programs and policies were not working for them and this assertion pervaded discussions between the parties at the Tripartite Forum. The emergence of this discourse against the status quo is what William Roseberry (2004) refers to as a "point of rupture". He explains that "points of rupture" are "areas where a common discursive framework cannot be achieved" (p.366). Castillo (2001) takes Roseberry's analysis a step further, arguing that in "points of rupture" Indigenous peoples claim the right to "establish the dialogue" (p.234). The Tripartite Forum would be a vehicle for the Mi'kmaq to set the terms of discussion. What was the source of contention presented by the Mi'kmaq? The Mi'kmaq felt that the Marshall Inquiry did not go far enough, they wanted their own separate justice system that was rooted in their own ways of knowing (Paul, 1991, p.8). A former provincial participant recalls this discourse,

> JY: Are there any issues that stuck out for you from your time there?
> P: There was discussion at various times of having Aboriginal institutions. That wouldn't have worked because you wouldn't have the numbers, the population is so small and it's also outside the justice system. I respected [name omitted] for promoting a separate justice system for Mi'kmaq. My whole thing was no, what we have to do is make the Nova Scotia justice system that applies to everybody in Nova Scotia, Mi'kmaq included, make it more responsive in all respects and [name omitted] agreed with me. It may have been the view on the part of the Mi'kmaq people that it should

have been a separate justice system for the Mi'kmaq. (Personal Communication, October 29, 2014)

For many Mi'kmaq, the Canadian criminal justice system is seen as an alien institution and a symbol of modern-day colonization (McMillan, 2011). It is unsurprising that Tripartite Forum discussions would involve some conflict and tension regarding the development of an independent Mi'kmaq justice system. The civil servant points out that provincial and federal members agreed that a Mi'kmaq justice system was not a viable goal for the Tripartite Forum. The effectiveness of the Tripartite Forum in developing new ways of approaching issues such as justice is constrained by pre-existing notions as to what is possible in the eyes of the federal and provincial counterparts. For example, it appeared that the provincial civil servant was quite certain that a separate justice system for the Mi'kmaq was not plausible in the current environment. The federal and provincial governments were more interested in making accommodations within the existing justice system rather than negotiating or collaborating on new frameworks or institutions for justice within Mi'kmaw communities. This represents a fundamental disjuncture in how both governments and the Mi'kmaq view justice in Mi'kmaw communities. This case highlight the difficulties Tripartite Forum members face in achieving consensus when the parties are approaching the issue from dramatically different points of view.

Despite disagreements concerning the direction of justice for the Mi'kmaq, both Mi'kmaq and government members felt that the Tripartite Forum had the capacity to serve as a space to educate federal and provincial governments on the

issues facing Mi'kmaw communities. Here, a Mi'kmaw participant notes the following:

> I think Tripartite was really important for educating the province and feds on the issues on the ground… the issues that were facing First Nations at the table because I think a lot of them, they just didn't, you know they live in their bureaucratic world and they have no understanding of the reality of First Nations and the communities. I think Tripartite really supported that dialogue of saying, 'this is what that recommendation means to the community, this is what is happening in that community everyday. I think we were able to effectively do that…I think a lot of it was unawareness…They're so far removed from the reality. (Personal Communication, January 7, 2015)

The role of Mi'kmaw members, as described above, mirror what Anishnaabe philosopher Dale Turner (2006) calls "word warriors". Words warriors are members of Indigenous communities who uphold the intellectual traditions of their nations, but are able to engage in the political and legal practices of dominant society (p.72). For Turner (2006), participation within the dominant political landscape does not undermine Indigenous sovereignty; in fact he argues that greater participation is vital to ensuring that Indigenous communities shape the future of policy (p.93). Another important issue highlighted by the participant is the disjuncture between how bureaucrats perceive Indigenous communities and the lived experiences of community members. As mentioned above, policy was usually created with minimal or no input from Indigenous peoples until the 1990s. The Tripartite Forum was a vehicle for educating government officials on the needs of the Mi'kmaq as expressed by community members themselves. The important role of this knowledge translation was reflected in the logic that guided selection of committee members,

> I think it was really important that you picked people who knew the reality of the issue they were discussing…if you picked a First Nations person who's a First Nation on paper per say. In other words they have a band card but never lived in the community, never practiced their culture….Let's say somebody went in there who might work in health but they may not be passionate about the issue or they may not know the realities of the issue. (Personal Communication, January 7, 2015)

This quote also highlights a potential source of conflict relating to people's ideas of Mi'kmaw identity. Here we see a division not only between status and non-status but also between those who live on- and off-reserve. However, this is more of a distinction between the lived experiences and knowledge that comes with living in an Indigenous community than a remark on the concept of a legitimate Mi'kmaw identity or colonial definitions of Indigenous identity.

The majority of other co-management processes throughout Canada are focused on a particular issue, for example resource management (Nadasdy, 2003). The broad mandate of the Tripartite Forum and the working committees is unique to the Forum's model. The Officials Committee is able to strike a new working committee as issues emerge. The Tripartite Forum instituted numerous programs and policy changes to better serve the needs of Indigenous communities. Although the development of a Mi'kmaq controlled justice mechanism was a priority after Marshall, the Mi'kmaq were also concerned by a lack of culturally responsive programs across the board. A Mi'kmaw elder who was associated with the Tripartite Forum explains,

P:one of the reasons we began setting up this Tripartite Forum and the reason it has those tables was we were trying to make sure the province's policies and programs could also be applied to Indians on reserve, to get away from that 'oh, you're a federal responsibility.'
JY: And have the communities been involved in creating those policies?
P: Oh yeah, they've worked very hard at a lot of those provincial policies and pointing out, 'this part of your policies don't work with us, you can't apply that.' So it gets changed. (Personal communication, February 18, 2015)

The provision of services to Mi'kmaw people living on reserve is complicated by the federal government's fiduciary responsibility toward Indians. Section 91(24) of the Canadian Constitution assigned the federal government the primary responsibility for Indians and lands reserved for Indians (as defined under the Indian Act) (Stevenson, 2002, p.39). As David Hawkes notes, "in the view of province, this relationship gives rise to a federal obligation to pay for most or all programs or services for on-reserve status Indians, with the province often acting as a paid delivery agent" (1999, p. 22). [12] Although the Mi'kmaq may be able to access provincial services, the relevance of these programs for the realities of their communities still remains a major concern. Tripartite is, in this case, an important space for knowledge sharing.

The Tripartite Forum was also a site for knowledge *production.* The research reports document Mi'kmaw perspectives and can be used to legitimate the need for new programming and funding. Over the course of twenty-five years, the Tripartite Forum generated over a dozen reports aimed at developing better policy approaches for Mi'kmaw communities.[13] In July 1991, one of the first tasks of the original Tripartite

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[12] The meaning of fiduciary responsibility has led to a series of arguments between the federal and provincial governments over the provision of services, particularly in the areas of healthcare and child welfare. See Blackstock (2012); Frideres (2011).

[13] For a list of research reports generated by the Forum see:
http://www.tripartiteforum.com/info/documents.php

Forum was to commission a needs assessment study looking at justice in Mi'kmaw communities. The study collected the perceptions of the Mi'kmaw community members regarding its experiences with the courts and police (Clairmont, 1992, p.i). In total, 622 Indigenous people were interviewed, on- and off-reserve. The participants included community members and Mi'kmaq political leaders (Clairmont, 1992, p.1). The report was "policy-oriented" and focused on identifying strategies for improving the experiences of Mi'kmaq people encountering the criminal justice system. According to one former Tripartite Forum member a key objective of the report was answering the following questions: "what do people think are their needs? And what are their priorities?" (Personal Communication, October 21, 2014). Of course, whether or not the recommendations contained within the series of reports are implemented and sustained is another matter. I asked one participant to offer an assessment of the implementation of Tripartite Forum reports,

> I would say they were very well implemented. Did they all come at one point in time? No but once you get them there and once you get people coming to meetings and talking about them and looking at them and trying to see how they can be further developed you've made a lot of progress. We've got all those programs on the slate and all of them are subject to discussion. (Personal Communication, October 21, 2014)

I followed up by asking whether or not such programs would have been created if the Forum had not been in place, "it would have never happened without Tripartite Forum, there is no question about it" (October 21, 2014).

The question that remains, however, is which members of the Mi'kmaw Nation have access to the Tripartite Forum? Access is certainly an issue at the Tripartite Forum. Many Mi'kmaw community members I spoke with informally about my research were

unsure of the role of the Tripartite Forum within their communities, and were interested in discussing what the Tripartite Forum does. Although working committee meetings are held within Mi'kmaw communities and open to community members, one Mi'kmaw participant suggested that people are not likely to attend these meetings. According to the participant, there is a perception that bringing issues to one of the Chiefs will lead to a quicker resolution (Personal communication, November 26, 2014). The Tripartite Forum process can be lengthy with issues requiring negotiation and problem solving through the working committees, Steering, Officials, and finally the Executive. Given that band councils provide many of the programs and resources available on reserve Chiefs would likely be able to deal with community issues directly. There is a certain level of comfort and familiarity as the majority of Mi'kmaw communities are quite small. Chief and Council are most likely known to their community members as legal statute requires that Chief and Council are members of the band.

Another important point concerning access is the ability of the Mi'kmaq to effectively translate community concerns to political officials. Paul Nadasdy (2003) argues that co-management processes influence Indigenous peoples to think and act in ways that reflect the norms of the dominant Canadian political system. However, I think the process of translation underway at the Forum is more nuanced. Although the Mi'kmaq need to use the language of the state, this does not necessarily reflect their incorporation into the dominant political system. Instead I understand it is a strategy to advance their goals. One non-Mi'kmaq Tripartite Forum member echoes this sentiment as he reflects on a particularly memorable Mi'kmaw leader,

One in particular who was an outstanding leader and I regarded him like the Martin Luther King of the Tripartite Forum. A person who doesn't give in to his principles but was always looking and seeing how he could match up perspectives and so forth. He always knew where he was going and it was always toward greater independence of Aboriginal people. He never gave in on that one bit but he had a way of advancing his interests that didn't alienate anyone… The charismatic leader was an incrementalist. He didn't want a new world tomorrow. He said 'let's do this', he was incessant. He realized that's the way you do. You don't scare the shit out of people. You get them thinking in terms of solving problems and then if you believe in your cause and you think you're right and he had that view and he turned out to be right. (Personal communication, October 21, 2014)

Acts of resistance can occur within spaces that are traditionally understood as sites of co-optation. This type of opposition is what Scott (1985) refers to as an example of "everyday forms of resistance" (p. 29). Although decidedly less dramatic and smaller in scale than a rebellion, such strategies are equally aimed at advancing the goals of the subaltern group. Although the Mi'kmaw leader mentioned above may appear to concede to the state, the key word is incrementalist. The leader used the Forum as a stepping-stone to Mi'kmaw independence, a goal he recognized as much larger than anything occurring within the Forum. While participation at the Tripartite Forum might require Mi'kmaw participants to be skilled in the language and norms of the Canadian state, it does not mean that their inclusion has undermined the ultimate goal of Mi'kmaw nationhood. At the same time, if participation at the Tripartite Forum requires the Mi'kmaq to conform to the processes of political bureaucracy, it represents an ongoing inequality between federal and provincial states and Mi'kmaw governance processes which the Tripartite Forum has been unable to address.

Overall the anthropological literature on state and Indigenous relations tends to view co-management processes as examples of the co-optation of Indigenous knowledges

by the state (Nadasdy, 2003). This obscures the important role knowledge sharing can play in improving relations between the state and Indigenous communities. The examples above suggest that the exchange of knowledge occurring within the Tripartite Forum is perceived by Mi'kmaw Forum members as having increased awareness among civil servants of the challenges facing Mi'kmaq in Nova Scotia. Through the Tripartite Forum, the federal and provincial governments have been required to concede that the Mi'kmaq have their own cultural norms that must be recognized which has led to the creation of more culturally relevant programs and services. The Mi'kmaq, however, continue to assert their right to self-determination, as they demonstrated with demands for an independent justice system.

Chapter Four: Being Mi'kmaq at the Tripartite Forum

Who has the right to claim Indigenous identity? It is a question being confronted

in courtrooms and in communities.[14] Certainly, Indigenous nations have processes for

determining group membership. However, the Canadian state has its own way of

deciding membership under the Indian Act. Indian status is, as Frideres (2011) notes, "a

legal term that reflects certain rights and responsibilities for the Indigenous population as

well as for provincial and federal governments" (p.29). At this point in time, the federal

government considers their fiduciary obligation to correspond only to status-Indians

(Frideres, 2011).[15] Who is considered Mi'kmaq at the Tripartite Forum? Further, what

consequences follow particular definitions of Mi'kmaw identity? This chapter explores

how the boundaries of Mi'kmaw identity are shaped through the Tripartite Forum.

Analyzing a conflict over representation that occurred at Tripartite in the late 1990s, I

explain how internal conflicts over Mi'kmaw political representation at the Forum

reinforced colonial definitions of Indigenous identity.

The Collapse of the Forum

When the Tripartite Forum was formed in 1991, the Mi'kmaq were represented by three

regional tribal organizations: the Union of Nova Scotia Indians, the Confederacy of

Mainland Mi'kmaq, and the Native Council of Nova Scotia. UNSI represented Mi'kmaw

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[14] In December 2014, the Eastern Woodland Metis Nation began a petition vying for the Nova Scotia provincial government to recognize that there are Metis in Nova Scotia. Members of the Mi'kmaw nation have pointed out that groups claiming Metis status in the province have not been recognized within the courts or by other Metis communities. See Battiste (2013).

[15] The question of whether or not Metis and non-status Indians have a right to the same services and programs offered to Status Indians is currently before the courts. In a federal court of appeal decision, the court ruled that the Metis should be considered Indians while status for non-status Indians should be decided on a case-by-case basis. The federal government appealed the decision and it will be heading to the Supreme Court of Canada. I discuss this case in greater detail later in the chapter. See Andersen (2014) for a discussion of issues relating to the recognition of Metis in Canada.

communities in Unama'ki: Wagmatcook, Waycobah, Membertou, Eskasoni, and Chapel

Island as well as the mainland communities of Sipekne'katik and Acadia. CMM

represented Millbrook, Paq'tnkek, Bear River, Pictou Landing, Horton, and Annapolis

Valley (Wicken, 2002). The NCNS, meanwhile, advocated for the interests of off-reserve

and non-status Mi'kmaq (Native Council of Nova Scotia, 2015). In 1996, the Forum

collapsed following a dispute over Mi'kmaw representation. The key source of

contention was the number of members being claimed by NCNS. NCNS claimed to have

30,000 members, while the Chiefs asserted that the real number was closer to a thousand

(Personal Communication, November 26, 2014). The Chiefs felt that NCNS was trying to

claim they represented all off-reserve Mi'kmaq in Nova Scotia, while the Chiefs argued

that they were responsible for their band members living off-reserve (Personal

Communication, November 26, 2014).[16] At a meeting of the Tripartite Forum's

Executive Committee in 1996, the Chiefs raised the issue of Native Council's

membership and questioned the legitimacy of their participation on the Forum's

executive committee (Personal Communication, November 26, 2014). The sticking point

was that the Native Council leader was not an elected leader and had no official

membership list (Personal Communication, February 18, 2015). For the Chiefs, who the

Native Council represented was unclear and the organization refused to produce a list of

their membership. The parties could not reach an agreement over the nature of Native

Council's role at the Tripartite Forum. The issue became so contentious that the Chiefs

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[16] From a legal standpoint, off-reserve status Indians are represented by the First Nation of which they
maintain band membership. Off-reserve Indians are able to vote in band elections and access on-reserve
services.

ended up walking out of the meeting and the Forum entered a hiatus period that would last the following year.

Internal Conflict and the Politics of Being Mi'kmaq

The establishment of the Tripartite Forum was a groundbreaking shift in the development of programs and policies for the Mi'kmaq in Nova Scotia, bringing with it the promise of a more equitable approach to program planning and delivery. At the outset a great deal of excitement and hope surrounded the Tripartite process and the contributions it could make. As one former member from the provincial government put it, "we were all learning a new language, we were learning to work together…I think the level of excitement and collaboration was very high" (Personal Communication, October 27, 2014). However, as anthropologists have demonstrated, the production of new relations between Indigenous peoples and the state can also reshape relations within Indigenous communities (Friedman, 1992; Canessa, 2012; Dombrowski, 2014).

The structure of the Tripartite Forum is meant to address the concerns of three groups: the Mi'kmaq, the Government of Nova Scotia, and the Canadian Government. The underlying ideological assumption is that the three participating parties can speak to and represent the interests of their respective groups. For example, the Mi'kmaw members of Tripartite are there not only in their individual capacity but also to serve as a voice for the Mi'kmaw Nation. They are meant to communicate the needs and aspirations of the Mi'kmaq in Nova Scotia to the other (often non-Indigenous) members of their committees. At stake is the assurance that the policies and programs created through the Forum will best respond to the realities of Mi'kmaq communities.

For the Mi'kmaq, like other Indigenous nations in Canada, conflicts over representation can be traced to the existence of state imposed Indian status. As Bonita Lawrence (2003) notes, "the Indian Act is much more than a body of laws that for over a century have controlled every aspect of Indian life. As a regulatory regime, the Indian Act provides ways of understanding native identity, organizing a conceptual framework that has shaped native life in ways that are now so familiar as to almost seem natural" (p. 3). The Indian Act has resulted in a large number of Indigenous peoples who are not entitled to status, regardless of their connections to an Indigenous community or self-identification (Palmater, 2011). Among the enduring impacts of Indian status are the divisions created between Indigenous peoples and disagreements over inequitable access to resources and political influence (Warry, 2007, p.103). Disputes between native Mi'kmaw political organizations representing on and off-reserve communities are not uncommon. All three tribal organizations in the province are passionately committed to social justice and improving the wellbeing of the communities they represent. Competition over resources available to Indigenous communities creates tensions between Indigenous organizations (McMillan, 2002).

The conflict between the Chiefs and the Native Council emerged when, according to one Mi'kmaw participant, the Council "wanted to be treated by the federal and provincial governments as equal to the Chiefs, and the Chiefs said, hold on a minute we represent the Mi'kmaq status Indians" (Personal Communication, January 7, 2015). The participant's version of the disagreement between the Chiefs and Native Council demonstrates that the conflict was not only about *who* should represent the Mi'kmaq at Tripartite but also over who was *going to be* represented. As one participant recalls,

"there was definitely disagreement on who should represent and what is the nature of representation. There were different interests represented, different organizations, and different notions of how Tripartite should focus" (Personal Communication, October 21, 2014). Conflicts over rightful representation within Indigenous communities are shaped by the nature of Canadian Indian policy. Indigenous political leaders work within an imposed system that legislates Indian identity and the rights and resources that flow from Indian status. When access to resources are challenged legal statuses mandating inclusion and exclusion are reified as identity in politics.

In Gerald Sider's study of identity among the Lumbee and Tuscarora Nations, he argues, "Native American peoples have been forced to claim and continually negotiate not only their public identity but their public presence" (2003, p.8). Similarly, the Mi'kmaq have engaged in centuries of struggle to be recognized by the broader society as a distinct cultural group with the right to maintain their unique ways of being. Conflict over representation between status Mi'kmaq and members of non-status and off-reserve communities is very much a "reflection…of the position of native peoples" in Canadian society (Dombrowski, 2004, p.369). When placed within this broader historical context we begin to see why the issue of Mi'kmaw political representation at Tripartite emerged as an important point of discussion in all of the interviews conducted for this research. The Chiefs of all thirteen Mi'kmaq First Nations in Nova Scotia resolved not to participate in a tripartite process unless they were recognized as the legitimate leaders of the Mi'kmaq (Personal Communication, October 21, 2014). The question that remained was, who were the recognized members of the Mi'kmaw Nation?

In 1997, the Tripartite Forum was restored following the hard work and determination of a number of its members. When I asked one of these members why they felt it was so important to resurrect the process, the participant stated that it was "because we found [the] Tripartite Forum very, very productive. There was a lot of things accomplished, a lot of things done" (Personal Communication, November 26, 2014). The Chiefs agreed to participate if they were the primary representatives for the Mi'kmaq. Meanwhile the tribal organizations would continue in an advisory capacity at the Officials Committee. The Forum reemerged as a more bureaucratized version of the original. Both levels of government and the 13 Mi'kmaq Chiefs signed a Memorandum of Understanding outlining the goals of the Forum. Interestingly, the document includes a definition of Mi'kmaq on the first page, which states that, "for the purpose of the Tripartite Forum, Mi'kmaq is inclusive of all members who are represented by the Thirteen Saqmaq of Nova Scotia, as documented within their respective band lists" (Tripartite Forum, 1997b, p.1). This clause created a clear delineation of whose interests would be represented at the Tripartite Forum, those of status Mi'kmaq. Meanwhile, issues relating to non-status Indians would fall outside the scope of the Tripartite Forum's mandate. Although one participant stated that there was still a place for Native Council at the Officials Committee, at the time of writing Native Council is no longer listed as one of the participating organizations on the Tripartite Forum's organizational chart (Tripartite Forum, 2014).[17]

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[17] The Mi'kmaq Native Friendship Centre which provides services to urban Indigenous peoples (both status and non-status) residing in Halifax have members sitting on two Tripartite Forum working committees: Justice and Economic Development. However, concerns remain over whether the Tripartite Forum is adequately meeting the needs of the Indigenous population in Halifax.

Maintaining Colonial Constructions of Indigenous Identity

How might the Tripartite Forum have been shaped differently by including NCNS as a legitimate political player at the Executive Committee? Anthropologist Fredrik Barth (1969) argues that, "categorical ethnic distinctions do not depend on an absence of mobility, contact and information, but do entail social processes of exclusion and incorporation whereby discrete categories are maintained despite changing participation and membership in the course of individual life histories" (p. 9). Here, Barth emphasizes how relations among distinct groups transform ethnic boundaries. The categories of status and non-status are products of colonization and imposed from the outside. However, they are categories which legitimate or block access to particular rights and in this process Indigenous communities are required to assume these categories to secure resources. In the case of the Tripartite Forum, the construction of Mi'kmaw identity and belonging is mediated by state definitions of Indigeneity. The inclusion of NCNS would have meant that a portion of funding would be redirected for programs off-reserve. A former provincial member commented that the Tripartite Forum is plagued by a lack of funding (Personal communication, October 29, 2014). It is unlikely that the Tripartite Forum would have been able to meet the demands of all Indigenous peoples in Nova Scotia. This possibility illuminates an important concern for Indigenous communities, with the already scant availability of programs for reserve communities, some Mi'kmaw people are fearful that resources would be stretched thinner if non-status Indians are eligible for the same rights provided to those with status (Ayers, April 22, 2014). This view is informed by past experiences, in particular with Bill C-31 in 1985. Bill C-31 reinstated the status of Indigenous women who had married non-Indigenous men. Approximately 123,000 individuals received status following the passage of the bill (Frideres, 2011,

p.30). Clatworthy (2013) found that, in the case of the Brokenhead Ojibway Nation, an increase in the population of status Indians put tremendous pressure on bands to deliver services and programs to their new members and threatened existing community members' access to resources. Mi'kmaq scholar Patti Bedwell-Doyle affirms that a similar strain on resources occurred in Mi'kma'ki (Ayers, April 22, 2014).

Prior to the removal of the Native Council from the Executive Committee, one Mi'kmaw Forum member recalls the province's plan to meet with Native Council to determine whether or not they were a "legitimate group". According to the same participant, the Premier decided not to meet with NCNS after the Chiefs stated that they would not be involved with the Tripartite Forum if the Native Council was included (Personal communication, January 7, 2015). Interestingly, the participant did not mention the federal government's position on the matter, suggesting that they may have remained silent on the issue. According to another Mi'kmaw participant, although the federal and provincial governments were not opposed to NCNS's participation in the Tripartite Forum, they agreed to restructure the Forum without tNative Council (Personal communication, November 26, 2014). The decision was, however, convenient for the federal state, ultimately allowing them to avoid a political quagmire relating to the rights held by non-status Indigenous people which, given the present legal context, might have emerged from NCNS's continued participation at the Forum. Since 2001, the federal government has been engaged in a legal battle over whether the non-status Indians should be recognized as Indians under the Indian Act. Although the Federal Court ruled in favour of the Congress of Aboriginal Peoples and related plaintiffs, the federal government is appealing the decision to the Supreme Court (Chartrand, 2013).

The Tripartite Forum was unable to resolve tensions between status and non-status Mi'kmaq and responded by removing NCNS from the process. A process designed to resolve disputes between parties avoided an issue that is fundamental to Mi'kmaw identity and rights. Lawrence (2003) argues that, "the regulation of native identity has been central to the colonization process…Systems of classification enable settler governments to define who is 'Indian' and control access to native land" (p. 3). The dispute over NCNS's participation in the Forum is not simply an example of internal conflict. Issues related to Indian status are a consequence of the state's continued power to control and define Indigenous identity. The Tripartite Forum's failure to engage with the issue of status is an example of its inability to confront the structural underpinnings of colonialism.

The Changing Face of the Tripartite Forum

According to Eric Wolf, anthropologists must pay closer attention to the "heterogeneity in cultural systems and to explore the ways in which this differentiation produces a politics of meaning and cultural construction and not merely automatic repetition of inherited forms" (1994, p.7). What Wolf is pointing to are the transformational impacts of conflicts that often require people to consider and articulate what it means to belong to a particular group. For the Mi'kmaq, the struggle over political representation at the Tripartite Forum and the subsequent yearlong hiatus, created an opportunity to reexamine the Tripartite Forum model and consider their aspirations moving forward. In some ways, the crisis of representation and the resulting decision to institute the Chiefs as the representatives of the Mi'kmaq resulted in the

growth of the Forum. It was a chance for the Mi'kmaq to renegotiate the terms of the Forum and bring them in line with the goals of the Mi'kmaq Chiefs.

In 1997, the Mi'kmaq Chiefs entered into negotiations with the provincial and federal governments over the reestablishment of the Tripartite Forum. According to a Mi'kmaw participant, there was political will from all three parties to resurrect the process. The participant felt that everyone recognized the importance of having a forum for collaboration among the Mi'kmaq, the Province of Nova Scotia, and the Federal government (Personal Communication, November 26, 2014). Disputes between First Nations and federal and provincial governments often involve lengthy and costly court battles, the Tripartite Forum represented another possible pathway to resolving longstanding issues between Indigenous peoples and both levels of government. Although all three parties have a vested financial interest in avoiding the Canadian judicial system, the Tripartite Forum has not completely eliminated legal disputes. For the Mi'kmaq, the court system is able to produce constitutional and legislative changes and is the primary recourse for challenging federal and provincial governments.

The Terms of Reference and Memorandum of Understanding were produced and led to a more formal approach than that developed in 1991. The original forum was focused on justice but expanded during the course of negotiations. The scope of the issues covered in the Forum increased. The number of working committees grew from three in the areas of human rights; policing; and justice to ten different tables that included: justice, treaties, self-government, natural resources, health, social, education, economic development, sports and recreation, and culture and heritage. The Chiefs decided on the working committees topics, based on issues they felt required

governmental collaboration. The government members agreed to expand the areas of discussion (Personal communication, November 26, 2014).

As demonstrated in this chapter, policy environments shape political actors and their identities. Media representations of Indigenous politics often highlight "factionalization" among Indigenous leaders and reinforce stereotypes that Indigenous peoples are unable to govern themselves (Proulx, 2011, p. 158). In this chapter I have demonstrated how internal conflicts over Mi'kmaq representation at the Tripartite Forum emerge from existing colonial legislation governing Indigenous identities.

Chapter Five: Tribulations and Treaties at Tripartite

On October 1st, 2008, at the Legislative House in Halifax, Grand Chief Ben Sylliboy signed the Mi'kmaq of Nova Scotia Nationhood Proclamation in the presence of Chiefs, Elders, and government officials. October 1st is also Treaty Day in Nova Scotia, an annual holiday meant to reaffirm a commitment to the relationship laid out in the peace and friendship treaties signed by the Mi'kmaq and the British Crown. Treaty Day asks us to reflect on the successes and failures of five hundred years of Mi'kmaq and settler co-existence in this territory and consider strategies for moving forward.

In a press release distributed on the same day as the Proclamation, Membertou Chief Terrance Paul, co-chair of the Assembly of Nova Scotia Mi'kmaq Chiefs, stated that, "the Proclamation represents our commitment to develop a system of governance that empowers our people and unites our communities toward a common purpose- to enhance the quality of life and wellbeing of our people" (Kwilmu'kw Maw-klusuaqn, 2008). The Mi'kmaq Nationhood Proclamation is an expression of sovereignty and reflected the political goals of the Mi'kmaq as they work toward self-determination.

In the previous chapter, I demonstrated how colonial definitions of Indigenous identity mediated the participation of various groups within the Tripartite Forum. Rather than acting as a site of decolonization, the Forum upheld and maintained state constructions of Mi'kmaw identity. In this chapter I widen the scope of my analysis, exploring the capacity of the Tripartite Forum to deal with broader political and legal questions that underpin Mi'kmaq-state relations. I argue that instead of creating a rightful process of collaboration between the federal and provincial governments and the

Mi'kmaw Nation, the Tripartite Forum served as a site of contestation over the meaning and substance of respectful relations.

"Oh My God! The Mi'kmaq Have Treaty Rights!": Dealing with the "Big, Big Issues"

In a 2011 article entitled Settlement's Secret, Mohawk Anthropologist Audra Simpson, writing about colonization, contends that, "Indigenous peoples did not lay down and die, they persist, and in doing so, they defy all expectations, working resolutely to assert their nationhood and sovereignty against a settler political formation that would have them disappear or integrate or assimilate" (2011, p. 212). The story of Indigenous resistance to colonization is still being written as it is still ongoing and changing. As a result, the nature of Indigenous-state relations is also a constantly changing arena. Many times, structural changes to the relationship between Indigenous peoples and the Canadian state occur within the courtroom as First Nations are required to pursue the recognition and protection of their rights through legal remedies (Asch, 1997). The Supreme Court ruling R. v Marshall, 1999 affirmed and upheld the 1760-1 Peace and Friendship Treaties and the Mi'kmaq right to earn a moderate livelihood from fishing.[18] The Marshall Decision was deeply significant for the Mi'kmaq and propelled communities in their fights for treaty implementation (Prosper et al., 2011). At the same time, the Marshall Decision led to crisis within the Tripartite Forum because committees were unable to deal with the significance of the ruling and its application to policies. The Marshall Decision posed a challenge for the Forum because, for the Mi'kmaq, treaty recognition was a further affirmation of their right to self-determination. One

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[18] Donald Marshall Jr., who was the focus of the Marshall Inquiry, was charged for fishing eels illegally in 1993.

consequence of the Marshall Decision was a series of opposing discourses around

Mi'kmaq rights that threatened to undermine the Tripartite Forum. Outside of the Forum,

disputes between Mi'kmaq and settler fishermen were leading to violent conflict. In the

context of resource management, the Mi'kmaq understood Marshall as signifying their

entitlement to manage their own resources. Meanwhile, the federal government felt that

the Mi'kmaq were still subject to legislation and laws of settlers.[19]

Two years prior, in 1997, the Tripartite Forum established a treaty working

committee According to one Mi'kmaw participant, the treaty working committee was one

of the "rights tables" created to mediate disputes around Mi'kmaq treaty rights (Personal

communication, November 26, 2014). From the beginning, the federal and provincial

representatives sitting at "rights tables" were viewed by the Mi'kmaq as lacking the

political will and mandates required to obtain any systemic change in the recognition and

application of their treaty rights (Personal communication, November 26, 2014; Personal

communication, January 7, 2015). One Mi'kmaw participant described the treaty working

committee as "an education process", stating that, "people weren't really coming to the

table" (Personal communication, January 7, 2015). Mi'kmaw participants felt that federal

and provincial governments did not utilize the treaty table because they preferred a legal

approach to negotiating treaty rights (Personal communication, November 26, 2014). I

asked a Mi'kmaw participant why he felt that the state preferred using the courts,

"because I think there were still camps of prosecutors with them that still felt very

strongly that Mi'kmaq rights were not legally valid…at the time they still believe they

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[19] In November of 1999 the Supreme Court issued a clarification to the Marshall Decision, stating that the Mi'kmaq right to fish did not supersede federal conservation efforts. See Coates (2000) for a fulsome discussion of the clarification and Mi'kmaq and non-Aboriginal reactions to R. v. Marshall.

could win Mi'kmaq rights cases" (Personal communication, November 26, 2014). Until R. v. Marshall, Canadian jurisprudence had largely avoided the issue of Mi'kmaq treaty rights. Although R. v. Denny upheld the right of the Mi'kmaq to harvest for food in waters adjacent to reserve land, it did so on the basis of an Aboriginal right rather than a treaty right (Wildsmith, 2001, p. 214). Legal scholar Bruce Wildsmith (2001) argues that from the state's perspective, the peace and friendship treaties were either "terminated by hostilities….or at best only applicable on reserve lands" (p. 215). The state was not interested in implementing treaty rights. Treaties, both in theory and practice, threaten the sovereignty of the Canadian state. A treaty is symbolic of a nation-to-nation relationship between its signatories (Asch, 2013). Unlike the numbered treaties signed in the west, the peace and friendship treaties signed by the Mi'kmaq did not surrender the land. Talks around treaty implementation would have called the state's juridisction of the land into question. The Mi'kmaq perceived the ineffectiveness of the Treaty Working Committee and a lack of participation by federal and provincial governments' as a reflection of the state's lack of respect for the Mi'kmaq and their treaty rights. As one Mi'kmaw member put it, "at the very minimal shouldn't Tripartite at least be a place where we can have dialogue, we can get the heads up, we can have some kind of respect?" (Personal communication, January 7, 2015). The state's behaviour was antithetical to the spirit of collaboration and respect touted in the Forum's mandate.

The Mi'kmaq had been lobbying since 1976 to negotiate their Aboriginal rights and title with the provincial and federal governments (Kwilmu'kw Maw-klusuaqn, 2005, p.1). The federal and provincial governments' unwillingness to engage in treaty talks at the Tripartite Forum was seen as the latest attempt to circumvent or ignore discussions of

Mi'kmaw title. However, when the Marshall Decision came down in 1999, the federal and provincial governments were required to concede that Mi'kmaq rights did exist. It was an important moment for the Mi'kmaw Nation. One Mi'kmaq participant recalls the uncertainty the Marshall case created for the state,

> it absolutely changed the game hugely. All of a sudden, 'oh my god, the Mi'kmaq have treaty rights! Their treaties are good! Oh no, we are going to have to go to the table with them.' You know that was a reality, it was like, 'ok how are you guys going to implement?' And they needed to do something, especially when they had the courts saying, not only do these people have rights but you have to consult with them, you have to sit down with them. (Personal communication, January 7, 2015)

As the participant points out, one of the key issues emerging from the Marshall Decision was determining how Mi'kmaq rights would be implemented. These discussions created a great deal of contention at Tripartite Forum meetings. Although the Mi'kmaq were encouraged by the court's affirmation of their treaty rights, many members felt that treaty rights were too controversial to discuss at the Tripartite Forum (Personal communication, February 18, 2015). In particular, the Chiefs believed they needed to be involved in any discussions of Mi'kmaq treaty rights, they felt that these issues required a safe space (Personal communication, January 7, 2015). The discussions began to affect relationships within the Forum as well its ability to generate programs and services for community members. As one participant pointed out, "when we added those three tables: treaty, self-government, and natural resources to Tripartite it wasn't working…there was controversy" (Personal communication, November 25, 2014).

At an Officials Committee meeting on February 9th, 2000, members decided to undertake a review of the Tripartite Forum. The purpose of the review was to assess the appropriateness of the Tripartite Forum to address issues related to Aboriginal title, land

claims, and treaty resource management (Tripartite Forum, 2001, p.1). The report

advocated for the removal of issues related to title and treaty implementation, and focus

its work "on deliverable services at the community level" (Tripartite Forum, 2001, p.3).

On January 10, 2001 the Chiefs, the Minister of AADNC, and the Minister for Aboriginal

Affairs Nova Scotia agreed to begin a negotiation process that would focus on Mi'kmaq

title and treaty rights. This negotiation process would come to be known as the Made-in-

Nova Scotia Process (Tripartite Forum, 2001, p.2).

The Made-in-Nova Scotia Process

On June 7, 2002, the thirteen Mi'kmaq Chiefs of Nova Scotia, the province, and

the Federal government entered into an Umbrella Agreement to negotiate constitutional

rights related to Aboriginal treaty rights and title (Office of Aboriginal Affairs, 2002, p.

2). The umbrella agreement recognized the "differing views with respect to the legal

status and effect of Mi'kmaq Treaties and the existence, scope, extent, and beneficiaries

of Mi'kmaq rights and title" (Office of Aboriginal Affairs, 2002, p. 3). Furthermore, the

agreement acknowledged "the continuing treaty relationship of the parties" (Made-in-

Nova Scotia Process, 2002, p. 3). After the review, the Tripartite Forum focused solely

on programs and services for Mi'kmaq communities and the broader legal and political

questions around Aboriginal rights were moved to the Made-in-Nova Scotia Process.

The Mi'kmaw participants I spoke with regarded the division of rights and

programs as a positive change that would reduce conflict within the Tripartite Forum and

make it more productive. One Mi'kmaw participant provided this analogy to describe the

split, "it's like a patient who has a severe leg infection, so how do you save the patient?

Do you try and treat it or do you cut off the leg?...To save the programs and

services….we need to cut off the leg of rights" (Personal communication, November 25, 2014). Mi'kmaw participants were optimistic about the direction of the Made-in-Nova Scotia Process. One participant was clear that, "extinguishment of title and rights would not be talked about. No matter what kind of agreement we come up with, the extinguishment of our lands and our rights will not be part of it. Our lands and our rights will continue" (Personal communication, February 18, 2015).

Anthropologists have raised skepticism about treaty negotiations. Carole Blackburn (2005) argues that treaty negotiations are " a form of governmentality that helps regulate a population, mediates between Aboriginal rights claims and the demands of global capital and produces effects of state sovereignty" (p. 586) Blackburn is suggesting that treaty negotiations may reproduce the colonial relations Indigenous peoples hope to resolve through these processes. I agree with Blackburn's proposition that treaty negotiations may not foster the transformative change that Indigenous peoples desire. The Province of Nova Scotia's "Negotiation Goals" suggest that developing certainty around the limits of Mi'kmaq rights is one of their key focuses in the Made-in-Nova Scotia Process. According to the province's website, the Made-in-Nova Scotia Process (2013) is a,

> commitment to work to resolve Mi'kmaq rights issues through negotiation
> in a spirit of reconciliation…As negotiations progress the Province
> remains guided by three Negotiation Goals: enhanced legal clarity on
> rights issues, improved and stable relations, and reduced economic and
> social disparity. (para. 2)

The language used by the province emphasizes the definition and clarification of rights. Many Mi'kmaq people have raised concerns about the process. In 2013, two Mi'kmaw community members protested the process in an 11-day hunger strike. Shelley Young

and Jean Sock were concerned that the Made-in-Nova Scotia Process would result in the extinguishment of the peace and friendship treaties. They also argued that there had been a lack of transparency regarding the proceedings and lack of community involvement. The Chiefs agreed that there had not been enough community consultation but that perceived threats to the peace and friendship treaties were "misunderstandings" (Howe, 2013, para. 1-3). The Made-in-Nova Scotia Process is based on Canadian negotiation principles rather than Mi'kmaw governance traditions which creates confusion and skepticism over the true intentions of the process. In 2013, as a result of the hunger strike, the Kwilmu'kw Maw-klusuaqn who are responsible for representing the Mi'kmaq in Made-in-Nova Scotia Process negotiations held a series of community consultations to address the concerns of community members.[20] Despite the concerns raised by Mi'kmaw activists, attendance at the community forums was low. Overall, the consensus was that the Kwilmu'kw Maw-klusuaqn needed to communicate more effectively and regularly with community members regarding the negotiations (Kwilmu'kw Maw-klusuaqn, 2013a).

Although the Tripartite Forum was unequipped to deal with issues concerning Aboriginal title and treaty rights, the collaboration it fostered was an important building block in the development of the Made-in-Nova Scotia Process. I asked one Mi'kmaq participant whether the Made-in-Nova Scotia Process would have happened without the Tripartite Forum,

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[20] Kwilmu'kw Maw-klusuaqn was created in 2004 to support the team negotiating on behalf of the Mi'kmaq in the Made-in- Nova Scotia Process. The main role of Kwilmu'kw Maw-klusuaqn is to conduct research for negotiation team and communications and community consultations. Kwilmu'kw Maw-klusuaqn means "searching for consensus".

No and I don't say that to mean it needed it…but I think it was a natural evolution to sort out how things work, to see how things could work. It was almost like an experience that had to happen to tell you, 'alright guys, you wouldn't know that legal and Aboriginal rights issues could really hurt the everyday dialogue on simple program delivery until you went through it… I don't think people realized how much it would effect it. So without that experience and knowledge you wouldn't be where you were today with the Made-in-Nova Scotia Process. (Personal communication, January 7, 2015)

Anthropologist Elizabeth Furniss (1999) writes about the "social separation" that exists between Indigenous peoples and settler society. Furniss argues that, although Indigenous and non-Indigenous people do interact, there exists "an order defined by two essentialized, presumably 'natural', and opposing social categories: Indian and white" (p. 8-9). Indeed, both provincial Tripartite Forum members I spoke with noted that their involvement with the Forum was one of their earliest experiences working with the Mi'kmaq. As I mentioned above, the 1980s were a low point in relations between Mi'kmaw communities and both levels of government. The Tripartite Forum represented a new era in Mi'kmaq-state relations in Nova Scotia. Beyond the programs and services it created, it paved a new path, one that emphasized collaboration and cooperation among all three parties. There were still tensions and disagreements among the parties but they continued to return to the table and work together.

The discussions around treaty obligations do not center solely on Aboriginal rights, the Mi'kmaq use the peace and friendship treaties as a framework for respectful relationships with federal and provincial governments. As I will demonstrate in the next section, for the Mi'kmaq, the treaty relationship remains the fundamental principle framing how they view their relationship to the state. The government's willingness to

uphold the Mi'kmaw vision of the respectful relations is a serious source of contention at Tripartite.

The Crux of the Forum: Misunderstandings of Peace and Friendship

The Tripartite Forum's logo is the Mi'kmaq eight-pointed star. The logo is based on a petroglyph found in Bedford, Nova Scotia in 1983 and is believed to be over five hundred years old. The star represents the seven districts of Mi'kma'ki and the eighth point is for the Crown. The Mi'kmaq began using the eight-pointed star when they started entering into treaties with settlers as a representation of their alliance with Great Britain (Tripartite Forum, 2014). The star represents the equality of the treaty signatories and the Tripartite Forum's use of the symbol suggests that the institution is meant to embody a similar commitment to equality. According to the Tripartite Forum's description of the logo, "all discussions will be guided by the spirit and intent of the treaties and the treaty relationship" (Tripartite Forum, 2014). What this statement fails to account for are the numerous, and often divergent, ways in which people understand the spirit and intent of the treaty relationship and its role in the work of the Tripartite Forum.

Mi'kmaq Forum members emphasized that Tripartite's activities should be grounded in a nation-to-nation relationship that recognizes the equality of all parties in decision-making processes. This perspective is reflected in a Mi'kmaw participant's view on the purpose of the Forum,

> *JY: What is the Mi'kmaw vision?*
> P:For me, it is the treaty relationship. Even though it is programs and services it is the Mi'kmaq people working in partnership and collaboration, in peace and friendship with the Crown. To me a treaty relationship is equal parties agreeing to work through disputes. (Personal communication, November 26, 2014)

Many members of the Mi'kmaw Nation continue to hold a strong treaty entitlement standpoint.[21] The Mi'kmaq have never surrendered their rights and maintain their claim to the land. According to a Mi'kmaq Elder formerly involved with the Tripartite Forum, "it's still Mi'kmaq land. Even though you changed the name of it to Nova Scotia it is still part of Mi'kma'ki" (Personal communication, February 18, 2015). If Tripartite Forum negotiations are to be "guided by the spirit and intent of the treaties", from a Mi'kmaw perspective this would require a significant reordering of state power that would need to occur on a broader political scale. Specifically, both levels of government would have to recognize the rights of Indigenous peoples to practice self-governance.

The state has been reluctant to meaningfully recognize the autonomy of Indigenous nations. According to Fleras and Elliot (1992),

> Aboriginal and federal perspectives on self-government are diametrically opposed…proponents of self-governance underline their right to govern themselves, within the framework of Canadian society and as equals with Ottawa and the provinces. Aboriginal rights to authority over land are not delegated but intrinsic and natural, reflecting inherent rights that remain intact. Central authorities, by contrast, envision self-government as a municipal-administrative arrangement in which Aboriginal functionaries would carry out federal responsibilities transferred to them under provincial supervision (p.72).

In the Tripartite Forum 2013-2014 Annual Report, the Federal Minister of Aboriginal Affairs, Bernard Valcourt, emphasized the collaborative work undertaken by the Forum. Valcourt stated that,

> the Government of Canada continues to pursue opportunities that improve the overall well-being and economic prosperity of Aboriginal people in Nova Scotia, by working in partnership to further develop full participation in political, social, and economic fabric of the province, and the country. (Tripartite Forum, 2014, p.4)

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[21] Since 1986, October 1st has been celebrated as Treaty Day, a holiday meant to "commemorate the unique and special relationship that exists between the Mi'kmaq and Her Majesty" (Ginnish, 2015).

The former Premier of Nova Scotia, Darryl Dexter echoed Valcourt's message of integration, albeit more subtlety, saying that through the Tripartite Forum, "we are making real progress in addressing shared priorities, including healthy living, recognition of Mi'kmaq culture and the importance of Mi'kmaq economic leadership and participation" (Tripartite Forum, 2013, p.3). The ministers' statements reflect an integrationist stance to Indigenous-state relations that is commonly held by the federal and provincial governments. Whereas the Mi'kmaq pursue the respect for treaty relations and the entrenchment of their nation as an autonomous political entity in their dealings with the federal and provincial states at the Tripartite Forum, for both levels of government the Forum is a mechanism for negotiating how the Mi'kmaq can be more collectively included within the Canadian state.

Debates over autonomy versus integration figure prominently in the activities of Tripartite Forum working committees and reveal the competing visions civil servants and Mi'kmaw Tripartite Forum members hold regarding just relations between the parties. As a former provincial member stated,

> I think that it was a good multilevel response to Mi'kmaq issues in Nova Scotia. In my view people were attracted to Aboriginal forums…from a variety of standpoints…Others were attracted to it because they felt that there was a treaty entitlement. This would be more the Mi'kmaq side that they needed to claim what was rightfully theirs through treaty and that this was the start of a process to do that. Others, and I put myself in that category were concerned about the lack of culturally responsive programs for Mi'kmaq… (Personal communication, October 29, 2014).

The above statement implies that the Mi'kmaq were seeking something beyond the scope of culturally responsive federal and provincial programming that would result in significant transformations to political power. However, according to the same

participant, there was a sense that conversations regarding Mi'kmaw autonomy were pointless to enter into, "where they would deviate the odd time would be when we started getting off in the area of self-governance, there was never a sense of tension. We just couldn't go there" (Personal communication, October 29, 2014).

Although federal and provincial Tripartite Forum members acknowledge that relationship building is a vital component of the Forum's mission, they viewed the integration of more culturally appropriate approaches to existing services as the Tripartite Forum's primary purpose (Personal communication, October 29, 2014). Indigenous peoples are understandably wary of the integrationist perspective, given its potential to undermine strategies aimed at gaining autonomy (Corntassel & Witmer, 2008). Contrary to the Tripartite Forum's intended focus on partnership and collaboration, the federal and provincial governments' notion that integration could adequately address Mi'kmaw concerns ignores the reality that the Mi'kmaq were explicit in their demand for control over justice following the Marshall Inquiry (McMillan, 2002). Both federal and provincial governments emphasize the cultural difference of the Mi'kmaq while simultaneously stripping them of political difference.

On the surface, the mere existence of a venue such as the Tripartite Forum appears to be an indication that the Canadian government is open to Indigenous claims for autonomy. This approach seems to be markedly different from past policies of genocide and then assimilation (Dyck, 1992). The federal and provincial governments may have been willing to acknowledge that the Mi'kmaq were culturally different and required alternative policies and programs. Questions regarding sovereignty were not part of the Tripartite Forum's agenda and were moved to the Made-in- Nova Scotia Process.

Why did the Forum's members think it was not useful to discuss Mi'kmaw self-governance? It is necessary to rethink what the state *is* and consider some of the assumptions people have about the idea of the state and the power it holds. First, we cannot take for granted the state's legitimacy because its legitimacy is called into question all the time (Nugent, 2007). As anthropologist John Comaroff (1998) puts it, "colonial governance is a process of becoming: as both a verb and a noun, as a state and a statement, as an aspiration made real in varying proportions" (p.346). As Indigenous peoples work towards self-governance, the federal and provincial states must also reimagine the strategies it uses to maintain its own legitimacy to govern. Both governments must find ways to appease Indigenous claims for self-recognition without undermining the colonial order.

Here I propose, following William Roseberry (1994), that we understand the hegemony of the Canadian state "not as a finished and monolithic ideological formation but as a problematic, contested, political process of domination and struggle" (p.77). In Canada, the Federal government has responded to threats to its legitimacy with processes of recognition. According to Glen Coulthard (2014), the politics of recognition are "recognition-based models of liberal pluralism that seek to "reconcile" Indigenous assertions of nationhood with settler-state sovereignty via the accommodation of Indigenous identity claims in some form of renewed legal and political relationship with the Canadian state" (p.3). Although Coulthard focuses on land claim settlements, economic development, and self-government agreements, there are similarities between these processes and the promises the Tripartite Forum model seeks to carry out. The "accommodation of Indigenous identity claims" is made through the development of

'culturally responsive' programs and policies. The issue with these forms of recognition is that they rarely require any significant redistribution of power. They remain colonial in nature because they do not question the sovereignty of the state (Coulthard, 2014). It is about recognition *within* instead of *alongside* the Canadian state.

The Forum's mandate stipulates that its discussions are guided by the treaty relationship but it fails (or chooses not) to *recognize* Mi'kmaw understandings of the treaties. When I asked one participant to describe the treaty relationship, he stated "it's a sense of equality" (Personal communication, November 26, 2014). The federal and provincial governments' emphasis on culturally appropriate programming reproduces existing power inequities between the Mi'kmaq and the state by limiting the scope of the work that the Tripartite Forum can carry out. While the Federal government may be willing to engage with Tripartite Forum in the creation of programs and services, it is reluctant to use the Forum as a mechanism to work in collaboration with the Mi'kmaq to carry out significant restructurings of policy. The government can ultimately decide what issues they do or do not engage with the Mi'kmaq on. This contradicts the Mi'kmaw vision of equality. I will use the case of income assistance policy reform for on-reserve band members to illustrate the shortcomings of the Tripartite Forum model from the Mi'kmaq perspective.

In the spring of 2011, the federal government announced sweeping policy changes to social assistance programming for reserves across the country. The new guidelines would require on-reserve welfare rates to match provincial standards and was non-negotiable (AADNC, 2013, para. 3; Burchells LLP, 2013, para. 4). First Nations were vocal in their opposition to the changes for a variety of reasons. First, the policy change

was made unilaterally and without proper consultation. Secondly, provincial welfare

recipients have access to a wide variety of services that those on-reserve do not

(Assembly of First Nations Chiefs in New Brunswick, 2013, para. 4). The Assembly of

Nova Scotia Chiefs released a brief stating their opposition to the changes, arguing that

the Federal government "failed to recognize the impacts on the budgets of Mi'kmaq

families on assistance" (Kwilmu'kw Maw-klusuaqn, 2013b, para. 2). Maritime First

Nations sought a judicial review of the changes, arguing that AADNC's legislation was

"an abuse of power and unreasonable because it was taken without studying the full

impacts of the decision and would cause significant harm to welfare recipients…and it

breached the First Nations' right to procedural fairness because they were not

meaningfully consulted about the decision" (Burchells LLP, 2013, para. 5). The Canadian

Government argued that this was a policy decision and therefore outside the scope of the

court's jurisdiction. The Federal Court disagreed, concluding that AADNC had not

meaningfully consulted with First Nations and opened the door for a legal challenge

(Burchells LLP, 2013, para. 7-8). The Canadian Government appealed the decision and

won at the Federal Court of Appeal. At the time of publication, the Chiefs were preparing

their submission to the Supreme Court to have the case heard.

     For the Mi'kmaq, the social assistance debate was a contemporary example of the

Federal government's violation of the values and intent of the treaty relationship. The

Tripartite Forum's Social Working Committee was suspended as a result of the strife

caused by AADNC's decision (Tripartite Forum, 2014, p. 18). Tripartite Forum members

expressed concern that AADNC did not attempt to use the Forum as a mechanism to

collaborate on the issue of social reform. One former Mi'kmaw member expressed his

view that the federal government breached its treaty obligation in crafting the policy changes,

> One party does not unilaterally impose on another party. So the feds, when AADNC began to unilaterally impose social reforms on First Nations that is not in the spirit of a treaty relationship. That's a hierarchical top down approach. Not the equality that was envisioned in the treaties. We see that as a violation of the relationship so if you attack me I'm going to attack you. So the court is thankfully the way that people attack these things. But the Tripartite Forum was designed on that treaty principle: equal relationships, cooperation, and collaboration. (Personal communication, November 26, 2014)

The participant points out that the federal government has a profoundly different interpretation of the responsibilities that are created through a treaty relationship. For Indigenous peoples honouring treaties is fundamental to achieving reconciliation between First Nations and the settler state. According to Mohawk scholar Taiaikake Alfred (2005), "the only possibility of a just relationship between Onkwehonwe and the Settler society is the conception of a nation-to-nation partnership between peoples, the kind of relationship reflected in the original treaties of peace and friendship…" (p. 156). While the Tripartite Forum mandate states that its discussions are guided by the treaty relationship, what the social reform case demonstrates is that for the Mi'kmaq, the issues federal and provincial governments refuse to negotiate at the Tripartite Forum also inform their perspectives on the successes and failures of the process. The same participant offered a further comment regarding income assistance legislation,

That is a perfect example of what the Tripartite Forum is unable to do. The parties have to resort to the courts right? I mean social reform has been talked about for years and years and then the federal government decided one day that they are simply going to implement these changes without consultation. Like it or not, take it or leave it and they never utilized the Tripartite Forum or at least it seems to me they didn't. So the only option the Chiefs had was to litigate it. To me that is a failure of the Tripartite Forum system but I think it is also a failure of leadership. The federal and provincial people should have…maybe they don't have the same vision of the Tripartite Forum as the Mi'kmaq do. (Personal communication, November 26, 2015)

One Mi'kmaw Elder who was involved with Tripartite called into question the

government's willingness to meaningfully engage Mi'kmaq communities,

JY: What are some of the issues Tripartite hasn't been able to make a difference in that you find important?
P: Well I'd like to say one of them is that they have a bad habit of looking away when they should be paying attention, taking an interest, they always look away, not our business.
JY: Can you think of an example?
P: The Chiefs took AADNC to court for not consulting them with them about changes to social reforms….One of the biggest issues raised by the Chiefs was, 'don't do that to us. Involve us if you're going to make changes so we know what is going on and be prepared for it'. (Personal communication, February 18, 2015)

These quotes illustrate Coulthard's proposition that a process based upon the politics of

recognition "remains colonial insofar as it remains structurally committed to the

dispossession of Indigenous peoples of…our self-determining authority" (2014, p.151).

Michael Asch (2014) points out, "we seek to ensure that whatever affirmation and

recognition we give to 'Aboriginal and treaty rights,' they are ultimately

subordinated to law and custom as we have defined them" (p. 105). The issue is

that through the Tripartite Forum, the federal and provincial governments

delineate what types of accommodations it will or will not provide. The Federal

government's actions are opposed to the spirit and intent of the treaty relationship as envisioned by the Mi'kmaq people.

Over the past few decades, there has been a surge in processes, such as the Tripartite Forum, that are designed to improve relations between federal and provincial governments and Indigenous communities (Timpson, 2009; Woolford, 2005). The rationale behind many of these strategies is that increased Indigenous participation in state decision-making will rebalance power among parties through a recognition of Indigenous knowledges, aspirations, and practices in the creation of policy (Goetze, 2005, p.247). However, to a large extent these strategies rely on a high level of political will rather than systemic structural change to how the government operates. The issue is that political will can be uncertain and fleeting. Ultimately, the federal and provincial governments can decide what issues it chooses to bring for discussion at the Tripartite Forum. The case of social reform and the failure of the Federal government to engage the Mi'kmaq in policy change reflect a set of wider colonial relations within which the work of the Tripartite Forum takes place.

Co-management and processes like the Tripartite Forum are institutions built from a legacy of historical wrongs and obligations which must be confronted if they are expected to build meaningful collaboration between Indigenous peoples and both levels of government. In this chapter I have explored Mi'kmaw perspectives on the peace and friendship treaties and how these beliefs impacted the activities of the Tripartite Forum. I have demonstrated that the Mi'kmaq hold very different understandings of the treaty relationship than the federal state. Just relations require federal and provincial levels of government to share in Mi'kmaw understandings of the treaties. The Tripartite Forum

provides a space for the Mi'kmaq to assert their cultural difference and vie for the Canadian and Nova Scotian states to recognize and accommodate this difference. However, the removal of Aboriginal and treaty rights issues to the Made-in-Nova Scotia Process has meant that issues of self-determination have been separated from issues related to cultural recognition. According to sociologist Avril Bell (2008), "for Indigenous peoples cultural survival and political self-determination are intertwined imperatives" (p. 851). It remains to be seen whether or not the Made-in-Nova Scotia Process will foster self-determination in a way that is meaningful to the Mi'kmaw Nation. However, in the meantime, we should be striving for treaty recognition and implementation within all institutions, including the Tripartite Forum.

Chapter Six: Conclusion

On January 14th, 2015, political leaders, civil servants, police agencies, and legal experts gathered at an event planned by the Tripartite Forum in Membertou to honour the 25th anniversary of the release of the report on the Royal Commission on the Donald Marshall Jr., Prosecution. The event also marked the release of the Marshall Review, a research report that explores the impacts of the Marshall Inquiry and assesses the implementation of the 82 recommendations. In the two-day symposium that followed, participants discussed progress in the justice system as well as the continued challenges the Mi'kmaq experience in their encounters with the Canadian legal system. I asked one Mi'kmaw participant to offer his opinion on the symposium, "well, there was a lot of good discussion of the issues…We kept saying to them, 'let's get cracking on these.' There were really no promises" (Personal communication, February 18, 2015). Dialogue and discussion are important but they are insufficient at improving relations between the Mi'kmaq and federal and provincial governments if they are not followed with meaningful action and political commitment. Although the Tripartite Forum might facilitate dialogue, nothing I have heard from the past and current members I spoke with suggests that there has been much systemic change since the Tripartite Forum first began its work amid a backdrop of mistrust and animosity following the release of the Marshall Inquiry report.

The Tripartite Forum has produced concrete gains as many federal and provincial policies and services have been modified in an attempt to more effectively respond to the needs of Mi'kmaw communities. As I have shown, however, the majority of these projects emerge from an integrationist perspective and are constrained by preexisting

departmental policies and procedures. Repairing Mi'kmaq-settler relations will require

more than a series of culturally relevant programs and services and the fundamental

issues are not being addressed at the Tripartite Forum. In particular, the Mi'kmaq

continue to assert their right to self-determination.[22] In this thesis, I argued that the

Mi'kmaq envision a relationship with federal and provincial governments that is

premised upon the treaty principles of respect and equality. Unfortunately, the

perspectives of Mi'kmaw Tripartite Forum members suggest that the innovation and

political will required to uphold these values are lacking among federal and provincial

governments.

The Tripartite Forum has been important for bringing together Mi'kmaw political

actors with federal and provincial governments. However, these processes are not a

starting point for discussion, they bring with them the consequences of 500 years of

colonialism. Although Mi'kmaq and non-Indigenous Tripartite Forum members that I

spoke with for this research agreed that relations between Mi'kmaw communities and

federal and provincial governments had improved in the wake of the Tripartite Forum,

there is more work to be done. The loss of political will and the capacity to sustain

meaningful engagement are challenges facing the Tripartite Forum. As I noted earlier,

federal and provincial governments decide which issues they are willing to address at the

Tripartite Forum. Meanwhile controversial issues, such as social assistance, continue to

work their way through the Canadian juridical system. This demonstrates a continued

reluctance on the part of the federal government to view the Mi'kmaw Nation as an equal

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[22] The many Idle No More protests held throughout Mi'kma'ki in 2012 and 2013 were powerful
expressions of Mi'kmaw sovereignty. The Idle No More Movement began in 2012 as a response to federal
legislation that threatened Aboriginal and treaty rights. See McMillan, Young, & Peters (2013) for a
discussion of the Idle No More Movement in Mi'kma'ki.

partner entitled to meaningful consultation regarding Indian policy. In spite of the positive relationships that are being built, other sources of conflict between the Mi'kmaq and federal and provincial governments continue to stifle reconciliation.

Another crucial theme running through this thesis is that the federal and provincial political willingness to engage with the Mi'kmaq has been historically contingent rather than constant. By tracing the history of the Tripartite Forum I have shown how federal and provincial engagement with the Forum changes over time. To fully understand co-management processes, studies must pay careful attention to how these institutions transform over time. One participant was concerned that the Tripartite Forum might be reaching its "decline, a decay" which he attributed to a lack of "political will" (Personal communication, November 26, 2014). However, the federal election could mean a change in government and perhaps a renewed commitment to improving relations with the Mi'kmaw Nation. Furthermore, it will be interesting to see whether the upcoming release of the Truth and Reconciliation Commission's final report on the Indian Residential School system and its condemnation of the current state of Indigenous-state relations might reinvigorate the Tripartite Forum.

Many people I spoke with were encouraged by the Made-in-Nova Scotia Process and hopeful that it would result in the implementation of Aboriginal and treaty rights for the Mi'kmaq. At the same time, I think the existence of the Made-in-Nova Scotia Process has also disempowered the federal and provincial governments to make innovative strides in their policies. There is now an artificial divide between policy issues and issues related to Mi'kmaw self-determination and rights which is worrisome. The effectiveness of the Tripartite Forum rests on its ability to create inventive policies that incorporate Mi'kmaw

knowledges *and* promote the self-determination of the Mi'kmaw Nation. Discussions at the Tripartite Forum should embody the spirit of self-determination. The federal and provincial governments need to be more open to substantively changing policies and ceding power to the Mi'kmaq.

Despite a shaky history and some substantial challenges, the Tripartite Forum is still here and is an institution unique to Nova Scotia. However, the disputes between the Mi'kmaq and federal and provincial governments are not exclusive to the region and Indigenous-state relations across the country are fraught with conflict. Improving relations between Indigenous communities and the Canadian State are challenges facing the entire country. However, these issues extend beyond the borders of Canada. Many settler societies such as Australia, New Zealand, Argentina, Chile, and the United States have similar histories of colonialism and are experiencing many of the same contemporary challenges in their relations with Indigenous peoples. As various jurisdictions attempt to confront the problem of colonialism, co-management institutions are becoming increasingly popular. This study will appeal to Indigenous leaders, policy-makers, and governments who are interested in instituting similar models.

Proponents of co-management regimes and other forms of Indigenous-state negotiation frameworks depict these processes as acts of reconciliation, with AADNC (2015) referring to modern treaty implementation as "reconciliation in action" (para.2). However, it could only be reconciliation in action were the federal and provincial governments to express new ways of thinking about participation and relationships. As Andrew Woolford (2005) demonstrated in his excellent critique of the British Columbia Treaty Commission, Indigenous and non-Indigenous participants often have competing

perspectives regarding the purpose of such processes and that, in particular, Indigenous

peoples in British Columbia are concerned with the reparation of historical injustices. As

I have demonstrated in this thesis, Mi'kmaw participants raised similar concerns

regarding the Tripartite Forum's ability to redress historical wrongs committed within

Mi'kma'ki. This speaks to the extent that Canada's history of colonialism continues to be

lived out in the daily experiences of Mi'kmaw people. One contribution this thesis has

made to the study of Indigenous-settler relations is highlighting the importance of the

historical particularities of the region within analyses of such processes.

While this thesis has contributed to the literature on Mi'kmaq-state relations, it

has also illuminated several areas requiring further research. This research has focused on

the perspectives of Tripartite Forum members yet we still know very little about

community members' perceptions of Tripartite. Given that the Tripartite Forum is

responsible for improving the well-being of Mi'kmaw communities, it is important to

further explore the issues of access to which I spoke briefly in Chapter Three.

Another emerging area of inquiry is how relations between the Mi'kmaq and

federal and provincial Tripartite Forum members vary among the different committees.

Certainly, the relationships developed between committee members have an important

role in determining the productivity of the committee. How exactly do participants in the

Tripartite Forum build positive working relationships within their committees? What are

the strategies used in times of conflict? Further investigation into dispute resolution and

relationship building strategies utilized at the Tripartite Forum would be particularly

helpful for other jurisdictions interested in adopting a model of co-management similar to

that of the Tripartite Forum.

By conducting this research, my aim was to understand whether Tripartite Forum members perceived the Tripartite Forum as having improved relations between the Mi'kmaq and the federal and provincial governments. To date, the literature on Indigenous co-management has largely focused on structural analyses of the institutions. I have turned my attention to the perspectives of those involved in them. By doing so, I have shown how Indigenous participants' have conflicting views regarding the values of co-management. This is an important contribution as it broadens the debate around co-management, highlighting how there are positive and negative aspects of these institutions which exist simultaneously.

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