
Thematic section

Living Together with the Land: Reaching and Honouring Treaties with Indigenous Peoples

Sylvie Poirier *Université Laval*

Clinton N. Westman *University of Saskatchewan*

Introduction

Canada is founded on an act of sharing that is almost unimaginable in its generosity. The aboriginal peoples shared their food, hunting and agricultural techniques, practical knowledge, trade routes and geographic knowledge with the needy newcomers.

James Tully (2008, 244–245)

Our treaty obligations are solemn commitments,
not policy options.

Michael Asch (2014, 164)

Our sovereignty does not come from a document. Our sovereignty comes from an abundance of healthy, responsible, respectful relationships with all our relations.

Leanne Betasamosake Simpson (2015, 22)

From the earliest contacts to the present, treaties, including the complex processes of their negotiation and implementation, have not only been at the heart of the relationship between Indigenous Peoples and the Canadian state but have played an important part in the foundation of the latter. This is a reality that few non-Indigenous people in Canada know about or acknowledge, as James Rodger Miller (2009) rightly points out in his historical retrospective of treaties. Throughout the centuries and political regimes, including the colonial regime, these treaties have taken various forms. The commercial treaties of the seventeenth century were followed in the eighteenth century by treaties of peace and friendship among sovereign nations, of which the Treaty of Niagara (1764) is perhaps the most eloquent example.¹ As early as the beginning of the nineteenth century, settlers' advance, the need for land and the advent of colonial rule resulted in the negotiation and signing of several historical treaties, including the 11 numbered treaties (1871–1921). Indigenous Peoples later had to deal with the shock of the Indian Act, forced settlement

on reserves and compulsory attendance at residential schools before the new revival and mobilisations of the 1960s (Alfred 1999, 2005; Coulthard 2014; Kapesh 1976, 1979; Manuel and Derrickson 2017). Then in 1975 came the first modern treaty: the James Bay and Northern Quebec Agreement (JBNQA), which was negotiated and signed between the Cree nation and the Canadian and Quebec governments. Modern treaties and the modalities of their negotiation and implementation are still in force today, notably under the Comprehensive Land Claims Policy (1976).²

Thus, of all the forms of relationship between Indigenous people, the Crown and non-Indigenous people in Canada, treaty relationships have existed from the beginning. From east to west and from north to south, the nature and forms of treaty relationships and their impact on people's relation to the land have varied according to regions and historical specificities, as demonstrated by the contributions to this issue. Nevertheless, Indigenous Peoples have rarely deviated from their original position – from the earliest trade negotiations down to today's modern treaties. They have always been willing to share the land on the condition that they maintain their sovereignty, their political and territorial self-determination, and, therefore, their identity and dignity. This position was obviously undermined by colonial rule and the usurpation of their lands. The fact remains that more than 250 years after the Treaty of Niagara, after all the violence, the suffering, the ruptures, the dispossessions and, most importantly, the betrayal of treaties by the various governments, Indigenous Peoples continue to demand recognition of their rightful place and their political and territorial self-determination. Despite the setbacks and the violence endured, they continue to show persistence, resistance, and political and cultural imagination (Poirier 2010), constantly adapting their claims to the policies, discourses and ideologies of the state and the dominant society, while also reimagining the terms of their relationship to them. From the

very beginning to the battles still being waged with the different levels of government (federal, provincial, municipal) for the recognition of their titles and rights, in the dialogues of the deaf and the false dialogues (Tully 2016) that often characterise current negotiation processes, Indigenous Peoples' main ally has most certainly been the land. It remains their most faithful partner.

From the perspective of the Canadian state and its legal system, the first question underpinning treaties is this: How can the pre-existence of Indigenous societies be reconciled with Crown sovereignty?³ This formulation can certainly be contested, and even reversed, as authors like Michael Asch and others have suggested (see Asch 2014; Nadasdy 2017, 59).⁴ It would then read as follows: How can the sovereignty of the Canadian state be reconciled with the pre-existing and current sovereignty of Indigenous Peoples? This question, which is already inextricably complex if only due to the lack of consensus on the very definition of the concept of *sovereignty*, gives rise to many others: How can we (re)think coexistence and (re)imagine treaty relationships in a way that respects the life projects of all parties? How can we reconcile, at the ontological, political, legal and cultural levels, the gap between Indigenous and non-Indigenous conceptions of the land? These different conceptions in turn generate different understandings of the central terms of political modernity, but also of treaties, including sovereignty, autonomy, governance, power, authority, property, borders and, of course, the land.⁵ In this respect, Indigenous claims represent an unprecedented invitation to “provincialize” (Chakrabarty 2000) the terms of political modernity, to rethink the terms of encounter and dialogue, and thus to envision a real decolonisation (Alfred 2005; Coulthard 2014).

This central role of treaties in the foundation and history of the Canadian state and the persistence of Indigenous claims easily explains why many social science and humanities disciplines have explored these realities and issues. Since at least the 1970s, and at an accelerated pace since the early 2000s,⁶ all these questions, reflections and debates surrounding treaties and the relations of coexistence, recognition and reconciliation between Indigenous Peoples, the Canadian state and the majority society have been the subject of a vast literature by Indigenous (in increasing numbers) and non-Indigenous authors (see, for instance, Alfred 1999, 2005; Asch 1997, 2014; Asch, Borrows and Tully 2018; Borrows 2010, 2019; Borrows and Coyle 2017; Clammer, Poirier and Schwimmer 2004; Coulthard 2014; Davis 2010; Eisenberg et al. 2014; Hill 2008; Manuel and Derrickson 2017; Simpson 2008). In the contemporary neocolonial and neoliberal context of Canada, one can rightly ask to what extent

and in what way treaties contribute to increasing the power, self-determination and identity of Indigenous Peoples or, on the contrary, to increasing their alienation, bureaucratisation, assimilation and dispossession (see, among many others, Nadasdy 2003, 2017; Samson 2016). This “double bind,” to use Gregory Bateson's (1972) formulation, obviously presents a constant challenge for Indigenous Peoples. It also requires their constant vigilance, especially since they have learned, through more than a century of experience and all too often at their own expense, that “the word of the white man” and his “good faith” (Morales 2017) are far from reliable. Nevertheless, with each new generation, Indigenous people continue to face these challenges by reimagining, based on the teachings of their oral traditions, the terms of their engagement with the state and the majority society, and, of course, with and toward the land.

Given the legal, political, ontological and cultural complexities generated by treaty relationships, and given the rich and abundant scholarly and critical literature from multiple disciplines on treaties in Canada and on ways of (re)thinking the relationship between the state and Indigenous Peoples, the overall contribution of this issue of *Anthropologica* seems modest but is nonetheless highly relevant. Among its key contributions is to bring together scholars working in Quebec and English Canada, and among First Nations speaking both French and English as second (or first) languages, within the same analytical field of view.

In this issue, the authors adopt a resolutely ethnographic and anthropological perspective. The two guest editors and the non-Indigenous authors (Scott, Éthier, Thom, Tipi and Asch) have developed long-standing relationships of close collaboration with the First Nations concerned. Each contribution focuses on a specific First Nation to show how treaty relationships are deployed on the land but also how they are entangled with the land, with governments (federal and provincial) and among neighbouring First Nations. The four cases presented here – three from Quebec and one from British Columbia – offer eloquent demonstrations of Indigenous territorialities' contemporary existence as “entangled territorialities” (Dussart and Poirier 2017) engendered by the often difficult and conflictual coexistence between western (and state) value regimes, legal orders, and land tenure systems and Indigenous ones. These entangled territorialities also derive from treaties and are generated by overlapping territories and claims.

The title of this issue, “Living Together with the Land,” is inspired by the Cree concept of *witaskewin*, which was formulated by the Elders in their reading of the terms of historical treaties – particularly Treaties 4,

6, 8 and 10 (Cardinal and Hildebrandt 2000, 39; see also Asch 2014). While Cardinal and Hildebrandt translate *witaskewin* as “living together on the land,” we slightly changed the formulation to “living together *with* the land” to convey the notion that the land is a partner and active agent in treaty relationships.

This Plains Cree word – really an “assemblage of concepts” – is certainly “a tiny imagist poem” (Sapir 1921, 244), with political, philosophical and cosmological implications. It is thus worth discussing our retranslation in slightly more detail.⁷ The land (*askiy*) is where people may come together to live in unity with one another and with the land itself.

Here is a grammatical breakdown:

[wi-t-askiy-ew-win]

wi- (particle: “with”)

-t- (infix to maintain flow and alteration between consonant and vowel sounds)

askiy (“earth”)

-ew- (third person verb form)

-win (nominaliser suffix; grammatically, a word ending in *-win* is always an inanimate noun)

In effect, the land is also a party (“*wi-*”) to the relationship. As mentioned above, this is not a question of animacy, at least grammatically speaking (see Wolfart and Ahenakew 1998), but an ontological assertion nonetheless. Through the pipe and other sacred mediators, the land becomes a partner and witness to the treaty.

The Saskatchewan Cree Elders who informed Cardinal and Hildebrandt insisted that this term is the appropriate way of talking about the treaty relationship. *Witaskewin* is a relational commitment, not something that was regulated, surveyed or handed out. It is an authentic relationship with the true and full earth that allows for true and full declarations of political authority and legitimate reciprocal exchanges. These aspirations have most frequently – and most successfully – been expressed in an idiom of treaty promises.

Reflections on Historical Treaties

In 2017, the authors of this essay co-convened a multi-session panel at the Canadian Anthropology Society (CASCA) annual conference with the participation of several of the current issue’s contributors. While the original panel sessions featured extensive discussions on historical treaties and treaty implementation in Canada (both pre- and post-Confederation) and New Zealand, most contributors to this issue focus on the negotiation or implementation of modern treaties. Indeed, the only articles addressing historical treaties are those by Thom and Asch.

In many parts of Canada, rights to land and livelihood as upheld by historical treaties are an important reference point for contemporary discussions of engagement with land. For example, the numbered treaties are a major touchstone in the identity and political aspirations of First Nations in Canada’s Prairie provinces. Further underpinning the ontological connection to both historical and contemporary politics, the treaty itself is sacralised through ritual and is recognised by First Nations people as a sacred agreement to enter into kin-like relations and to share the land.

In the Prairie provinces, and in other regions where historical treaties (perhaps especially the numbered treaties) were signed, the term *treaty* is frequently used to express an identity claim (see Figure 1). In general, *treaty Indian* is still an important category, overlapping in meaning with terms like *Status Indian* under the Indian Act. It is used in opposition not only to Euro-Canadians but also to categories of Indigenous Peoples such as *non-treaty Indian* (generally referring to First Nations people from outside the region), *Nonstatus Indians* and particularly Métis people. While boundaries between First Nation and Métis status have been flexible at certain times or in certain contexts (for example, around the signing of and early adhesions to Treaty 8 in northern Alberta), by definition, Métis and Nonstatus Indians as categories were not party to the historical treaties.⁸ By taking treaty, one established for oneself the legal identity of Treaty/Status Indian, thereby becoming legible to the state. Historically, Indigenous people have sometimes referred to this process as “becoming a Treaty” (see Bella Beaver, quoted in Reddekopp 1997, 18). Such identity claims – as in “I’m Treaty” or “I’m a Treaty” – continue to be important today. In other regions, the emphasis might be on legal Indian status rather than on treaty affiliation or lack thereof. Statements of this kind highlight the importance of historical agreements in recognising a place on the land for contemporary individuals and as an organising principle for their political and social orientations and aspirations.

Treaties and agreements between Indigenous Peoples and Canada, France, Britain and/or the United States are part of a longer historical trajectory, as these peoples were already participating in sacred covenants or agreements with one another. As Blood Tribe (Kainaiwa) member Les Healy told the Royal Commission on Indigenous Peoples,

The concept of treaty, *inaistisinni*, is not new to the Blood Tribe. *Inaistisinni* is an ancient principle of law invoked many times by the Bloods to settle conflict, make peace, establish alliances or trade relations with other nations such as the Crow, the Gros



Figure 1: “Proud to be Treaty in a cowboy way” (Clint Westman 2005).

Ventre, the Sioux, and, more recently, the Americans in 1855 and the British in 1877. *Inaistisinni* is a key aspect of immemorial law, which served to forge relationships with other nations. *Inaistisinni* is a sacred covenant, a solemn agreement, that is truly the highest form of agreement, binding for the lifetime of the parties. So solemn is a treaty that it centres around one of our most sacred ceremonies and symbols, the Pipe. (RCAP 1996, vol. 2, ch. 2, s. 3.3; quoted in Asch 2014, 75)

For the Blood Tribe and other Blackfoot speakers, such a solemn agreement or sacred covenant served to reflect natural laws and to create kin-like relations between former adversaries, as well as to reaffirm kinship with the land itself.

As Crowfoot, Chief of the Blackfoot (today’s Siksika Nation), stated on signing Treaty 7 in 1877 at Blackfoot Crossing,

While I speak, be kind and patient. I have to speak to my people, who are numerous, and who rely on me to follow that course which in the future will tend to their good. The plains are large and wide. We are children of the plains, it is our home, and the buffalo has been our food always. I hope you will look upon the Blackfeet, Bloods and Sarcees as your children now, and that you will be indulgent and charitable to

them. They all expect me to speak now for them, and I trust the Great Spirit will put into their breasts to be a good people ... The advice given to me and my people has proved to be very good. If the Police had not come to this country, where would we be all now? Bad men and whiskey were killing us so fast that very few, indeed, of us would have been left to-day. The Police have protected us as the feathers of the bird protect it from the frosts of winter. I wish them all good, and trust that all our hearts will increase in goodness from this time forward. I am satisfied. I will sign the treaty. (Morris 1880, 272; quoted in Dempsey and Dempsey 2014, 322)

Crowfoot here refers to the Blackfoot Confederacy’s relationship with the land (“children of the plains”) and the need for a kin-like relationship (“as your children”) with the Crown and newcomers. Using comparisons to the natural world (to the herds of bison and the winter feathers of a bird), Crowfoot outlines how the treaty is a commitment to protect and provide for the sovereign’s children. While some other leaders, as in the case of Treaty 8 negotiations, were more sceptical than Crowfoot about the potential for establishing relations of ritual kinship with newcomers, such references remained common throughout the period of negotiating numbered treaties,

in part because the treaty commissioners themselves adopted these idioms to explain their own intentions.

Interestingly, Crowfoot and other leaders seldom refer to land cessions in their remarks. A significant gulf exists between oral promises (referred to in oral historical traditions as well as in some ancillary treaty documents focusing on a kin-like relationship of sharing) as against the written text of the treaties focusing on legal aspects of land surrender. Indeed, concurrently with signing the numbered treaties, Canada was also developing and implementing the Indian Act, creating a legal regime that was particularly punitive in the southern parts of the Prairie provinces and that has run counter to the treaty relationship in important ways to this day. Additionally, contemporary readers familiar with police-Indigenous relations in western and northern Canada might be surprised to read Crowfoot's positive assessment of the police. Nevertheless, Crowfoot's understanding of the police as the most salient arm of the Crown is quite consistent with current critical understandings of the state and its monopoly on violence. Policing and law enforcement remain areas where reconciliation and relational thinking are most urgently required.

Coming to a shared understanding of the "true spirit and original intent" of treaties is a pressing policy problem with major implications for land use and reconciliation (Treaty 7 Tribal Council et al. 1996; see also Cardinal and Hildebrandt 2000). For example, two of the key issues in contemporary treaty relationships involve compensation and consultation for industrial activities permitted on Crown lands where Treaty First Nations hold rights to hunt, fish and gather. Post-1982, it is the courts that have served as the most important venues for such discussions about the meaning of treaty rights off-reserve.

How have Treaty First Nations used the treaty promises to secure jurisdiction and law-making authority over their own lands (that is, on-reserve) and citizens? Here, less progress has occurred. In some jurisdictions (for example, within the Northwest Territories), nations that signed historical treaties have long been considered eligible as negotiation partners in modern treaties; in other jurisdictions, this has generally not been the case.⁹ To a lesser degree than comprehensive claims negotiations perhaps, specific claims negotiations have the potential to provide lands, resources and new political recognition to First Nations, frequently because of their insistence on historical treaties as the basis for contemporary relations and commitments. This is the case for some treaty land entitlement claims, such as a series of Treaty 8 adhesion claims in northern Alberta since the 1990s; recent compensation amounts for these claims,

as expressed in land, cash and infrastructure, may rival those seen in some comprehensive claims settlements (Westman 2017a). Other specific claims, alleging wrongful surrender of reserve lands for agricultural settlement (among them, those of the Kainaiwa and Siksika), could also be subject to significant compensation were they to reach settlement or the courts. But again, settling such specific claims would not provide new law-making authority for First Nations.

Non-binding mechanisms exist for articulating and clarifying the contemporary meanings of treaty relationships. See, for example, the Office of the Treaty Commissioner in Saskatchewan or the largely moribund treaty bilateral discussions in Alberta. Nevertheless, the claims processes and the courts seem to have been the most politically significant mechanisms.

Understanding historical treaties necessitates recognising the space between the written text and the accompanying oral promises, as well as considering the promises that courts have held in interpreting the text. By taking a treaty perspective on historical land and rights questions, and by thinking relationally about current events in lands covered by historical treaties, we can gain new insights on the possibilities of a future together with one another and with the land. At the same time, fulfillment of historical treaty promises continues to challenge contemporary politics.

The Social Life of Treaties: A Relational Approach to Treaties

By definition, a *treaty* is an agreement between peoples/sovereign nations to settle a conflict, restore peace and seal an alliance, among other objectives. In the case of Indigenous Peoples in settler colonial states like Canada, treaties are aimed at reaching an agreement for coexisting on and sharing the land – an agreement whereby Indigenous Peoples can allegedly develop and implement their own societal project and exercise a form of political and territorial autonomy and self-determination. For many Indigenous and non-Indigenous people, treaties between the Canadian state and Indigenous Peoples have the potential to provide an "ethical relational basis" for this living together with the land (see Asch 2014). Aaron Mills (2017) describes the Anishinaabe conception of treaties as "a total relational means." He writes,

Treaties aren't legal instruments; they are frameworks for right relationships: the total relational means by which we orient and reorient ourselves to each other through time, to live well together and with all our relations within creation ... they are at once political, social, economic spiritual, and ecological.

They're how we constitute ourselves as communities of communities, across our differences. (225)¹⁰

Other First Nations and Indigenous authors most certainly identify with this Anishinaabe perspective, which is also shared by many non-Indigenous researchers.

Thus, many authors agree that treaties between governments and First Nations, whether historical or modern, cannot be reduced to legal instruments or to a form of contract but must be seen rather as a political alliance, even as a sacred covenant among peoples, and as a moral and ethical commitment to one another – but also to the land, to non-human beings, to ancestors and to future generations. This concept, however, comes into conflict with those conveyed and promoted by governments and the majority society. [Martin Papillon and Audrey Lord \(2013, 345\)](#) nicely summarise the divergent positions and perspectives of Indigenous Peoples and the Canadian state regarding treaties: “While Indigenous peoples see them as the foundation of a new relationship with the state, governments conceive them still today primarily as a land transaction that helps to clarify and, above all, to limit the scope of ancestral rights to the land.”

In Canada, historical and modern treaties, along with their declaration, negotiation and implementation, have always been characterised and driven by conflicts of interpretation, but also by conflicts of an ontological nature. Indeed, the groups involved have different conceptions of both *treaty* and *land*. In the processes of communication and negotiation, we witness what Viveiros de Castro calls “an uncontrolled equivocation” (quoted in [Blaser 2009, 11](#)). In other words, the groups involved are not talking about the same thing (the treaty and the land), but they do not know it. [Asch's \(2014\)](#) book on the numbered treaties gives a telling example of such equivocation. Treaties alone seem to condense all the “gaps” (as understood by [François Jullien \[2009\]¹¹](#)) between western and Indigenous conceptions of the spirit of a treaty, the implications of an alliance between sovereign peoples, and the land and the relationship to it, but also the meaning of key concepts such as autonomy, power and authority (see [Éthier, Ottawa and Cocoo, this issue](#)). At all these levels, conceptual (and ontological) divergences are glaring and often even seem incommensurable and irreconcilable. And yet, across Canada, negotiations are under way and agreements are being signed. Although some are confident that treaties can help restore some justice to Indigenous Peoples while respecting their differences, others are more pessimistic, or they at least issue serious warnings – and probably rightly so.¹² Nevertheless, what governments and the majority society are struggling to know and acknowledge is that Indigenous Peoples stake

their future, their identity and their life projects in treaties; in them, they stake their responsibility to the land, to ancestors and to future generations. For this purpose, they are prepared to accept long, arduous and often frustrating negotiations ([Éthier, Ottawa and Cocoo; Tipi and Boivin, this issue](#)), as well as to endure structural and ontological violence ([Scott; Thom, this issue](#)).

Following [Asch \(2014\)](#) and [Mills \(2017\)](#), it seems relevant here to further explore the implications of a relational approach to treaties. First, like objects ([Appadurai 1988](#)), treaties have a social life and generate a multiplicity of meanings, interpretations, expectations and hopes. Treaties have a social life insofar as they carry relational qualities, capacities and potentialities that concern and engage humans, institutions and the land. This is a social life that brings Indigenous and non-Indigenous regimes of value and historicity into coexistence and, therefore, into dialogue. This social life of a treaty expresses and deploys itself diachronically and in different stages: the processes of treaty negotiation; the declaration and terms of the treaty as well as the spirit of the treaty; the dynamics of treaty implementation over the long term; the modifications and amendments to the treaty, including the modalities of resolution of the conflicts generated by the treaty; and so on (see also [Coyle 2017](#)). Each of these stages requires the time, energy and expertise of a range of Indigenous and non-Indigenous actors. Once signed, treaties become key actors in the relationships between governments, industries, Indigenous people and the land; they play a major role in the formation, transformation and deployment of these relationships. Once ratified, treaties are the starting point of a relationship, not an end in themselves ([Papillon and Lord 2013, 345](#); see also [Scott, this issue](#)). Their future and deployment are fraught with potentialities, uncertainties and indeterminacy. While this perspective is uncomfortable, to say the least, for the moderns (and the state) accustomed to operating in the mode of control and certainty, it fits well with Indigenous political and ontological relational orders.¹³

Second, a relational approach to treaties must consider the land not as a passive entity but rather as a full-fledged actor in the process of treaty negotiation and implementation. It is in this sense that [Clinton Westman \(2017b\)](#) states with regard to Treaty 8: “The spirit of the land becomes a partner and witness to the treaty.” This dimension reveals a major ontological conflict between western and Indigenous conceptions of the land. Indigenous people maintain a relationship of reciprocity, sharing and responsibility with the land and its non-human inhabitants – a relationship conceived in the long term according to the principle of ancestry and on the basis of a relational ontology ([Poirier 2013](#);

Scott 2017; see also Scott, this issue) or an “ontology of care” (Pasternak 2017). By contrast, the Canadian state maintains a utilitarian relationship with the land viewed as a surface to be exploited – a relationship conceived in the short term on the basis of a naturalistic ontology. It is difficult, then, to reconcile these two conceptions of the land, which rest on divergent ontologies and regimes of value and historicity.¹⁴

Third, a relational approach to treaties concerns all non-Indigenous people. Indeed, such an approach involves the land, Indigenous Peoples, institutions and the different levels of government, but also clearly all non-Indigenous people. Since the inextricable question of the coexistence between Indigenous and state sovereignties is far from being resolved at the political, legal and constitutional levels, it evidently cannot be simply ignored or swept under the rug. We have all heard the expression “We are all treaty people.” This observation must be taken very seriously the moment it is recognised that the presence and activities of non-Indigenous people on Canadian land have been made possible by treaties and by the great generosity of Indigenous Peoples, as James Tully (2008) points out in the quotation at the beginning of this essay. Thus, it appears that non-Indigenous people are accountable to Indigenous Peoples and are party to existing and future treaties. As Jean-Olivier Roy (2018) observes,

Like Indigenous people, non-Indigenous people must engage in a profound process of identity rebuilding with respect to their own colonial identity. This would make it possible to better understand the stakes of future treaties, to consider them as a gain (in terms of their identity) and not as a loss (economic, territorial), and, in the long run, to also become citizens of treaties, of agreements concluded and to be concluded, and to commit to honouring them.¹⁵

Finally, it seems to us important to make one last comment regarding both conflicts of interpretation (and ontological conflicts) and a relational approach to treaties. This is the gap, already highlighted by several authors, between the modern legal and state order and Indigenous legal orders. The modern western order is based first and foremost on individual rights, to which it gives pride of place. For their part, Indigenous legal orders rest more on collective rights, which are coupled with obligations and responsibilities to the group, to the land and its non-human inhabitants, to ancestors, and to previous and future generations. This rights/obligations couple is in fact inseparable, and in this respect, the rule of law (*droit*) of the moderns has much to learn from

Indigenous orders. This gap is also highlighted by Colin Scott (this issue) when he distinguishes between the institutional order of the state and the relational order of Indigenous people (see also Mills 2017). This distinction is reflected in the divergent conceptions of treaties: As an opportunity to build relationships based on coexistence, shared responsibility and partnership on the side of Indigenous Peoples, as well as a contract centred on “rights” discourse on the side of the state.

In This Issue

Across Canada, the place occupied by treaties in the lives of First Nations varies significantly from one territory to the next and gives rise to a diversity of situations: First Nations who have signed a treaty, whether historical or modern (Scott and Thom, this issue); First Nations engaged in negotiations for the signing of a modern treaty (Éthier, Ottawa and Cocoo; Tipi and Boivin; Thom, this issue); First Nations who, for various reasons, refuse to engage in such negotiations and take other political and legal avenues to assert their inherent rights (Pasternak 2017); and, First Nations who have not signed a treaty but live next to treaty signatories (Éthier, Ottawa and Cocoo; Thom, this issue). Added to this are the many situations of overlapping territories and claims (Éthier, Ottawa and Cocoo; Thom, this issue). All of this contributes to creating complex, difficult and often conflictual situations, particularly on the lands and in the lives of the First Nations concerned. On claimed and ancestral lands, First Nations have never evolved in a vacuum but have constantly engaged, over the generations and in changing conditions, in reformulating and (re)imagining their interactions and relationships with the state and its institutions, with neighbouring First Nations, and with non-Indigenous people and industries with interests in those lands.

As regards treaty relationships, each of the four contributions gives a convincing example of the complexity of today’s entangled territorialities, of the coexistence between the state and Indigenous orders, and of the dynamics of the latter, notably with respect to land tenure systems, questions of territorial delimitation, hunting, trapping, fishing and gathering activities, knowledge and land transmission processes, and forms of authority and power. This issue also includes some contrasting examples. For instance, when the Cree of Eeyou Istchee (Scott, this issue) signed the JBNQA more than 40 years ago, two neighbouring First Nations, the Atikamekw Nehirowisiwok (Éthier, Ottawa and Cocoo, this issue) and the Innu (Tipi and Boivin, this issue), initiated a long negotiation process under the Comprehensive Land Claims Policy, which to this day has not resulted in final agreements.

In his contribution, Scott provides a telling example of the social life of an ever-evolving treaty. His long-standing involvement with the Cree of Eeyou Istchee gives him a unique perspective on this. Scott shows how, since the signing of the JBNQA, the Cree of Eeyou Istchee have not only gained political and economic autonomy but have persistently negotiated either amendments to the original treaty or complementary agreements. The Cree of Eeyou Istchee certainly present a unique case in Canada. As signatories to the first modern treaty, they provide a lens into the evolution of treaty relationships over the past four decades. Far from being satisfied with the initial terms of the treaty and encouraged by a new balance of power, the Cree have sought to increase their governance over the land by pursuing relations of negotiation with the three levels of government and, in some cases, by giving the lie to the state's objectives of "certainty" and "finality" that have often been associated with treaties. As Scott explains, they have thus negotiated 24 complementary agreements since the signing of the JBNQA.

The power of the Cree of Eeyou Istchee is not denied; nevertheless, a downside exists to the omnipresence of treaty relationships in all spheres of Cree life, as Scott concedes. Regarding treaty relationships, Scott emphasises the constant vigilance that the Cree of Eeyou Istchee have had to exercise to overcome various forms of structural and ontological violence and to maintain their relational order – which is to say relationships of respect and reciprocity with governments and their representatives as much as with the land and non-human beings. In the face of neoliberalism and of the imperatives of capitalism and modernity, this is undeniably a difficult challenge, but it is a challenge that applies to all First Nations. Over the past 40 years, the Cree of Eeyou Istchee have acquired, through this modern treaty, a negotiating power and political and economic room for manoeuvre not yet enjoyed by the Atikamekw Nehirowisiw and Innu nations – the next two examples presented in this issue. In fact, when the JBNQA was signed without them being consulted, these two neighbouring First Nations saw their ancestral titles and rights extinguished on part of their lands.

For its part, the Atikamekw Nehirowisiw nation has been engaged, since the late 1970s, in a comprehensive claims process with both levels of government. In their contribution, Benoit Éthier, Gérald Ottawa and Christian Cocoo present a convincing description of the "creative resistance" with which the Atikamekw Nehirowisiwok have approached this negotiation process. They show how, over the decades, the nation has acquired greater

knowledge and confidence in the art of dialogue and translation by promoting the Atikamekw concepts of power, rights and responsibilities at the foundation of their relational normative order and their conception of the land. The authors point out that although the rules of negotiation, including the "sunset clause," the "burden of proof" and the "debt obligation,"¹⁶ were enacted by the neocolonial state, the Atikamekw Nehirowisiw nation's engagement in the negotiation process has contributed to strengthening their identity, their relationship to the land and their political thought. The perpetuation of their normative order, the "creative resistance" they have shown, as well as the efforts they have made to uphold their responsibilities toward *Nitaskinan* (ancestral territory) and family territories and to ensure the transmission of knowledge can also be seen as defeats of the colonial state, as breaches of its own sovereignty.

Neither the lengthy and difficult negotiations, the unequal power relationships, the structural and ontological violence, the lack of "good faith" on the part of governments, the increased bureaucratisation of land governance, nor the fact that Quebec continues to reap the benefits from the resources (forestry, hydroelectricity, tourism) of the unceded land of the Atikamekw Nehirowisiwok have overcome the determination of this First Nation. The same goes for the Innu nation, presented in this issue by Sukrân Tipi and Hélène Boivin.

The contributions of Éthier, Ottawa and Cocoo, and Tipi and Boivin bear witness to another reality, namely, that the very process of territorial negotiation, in which the First Nations concerned must demonstrate ancestral occupation of the land, is becoming a major lever for the documentation, enhancement and transmission of local knowledge and language and for the consolidation of intergenerational relationships. In this context, the main local actors – in particular, families, Elders, schools and band councils – are mobilised in transmission initiatives that involve entire communities.

Like the Atikamekw Nehirowisiw nation, the Pekuakamiulnuatsh First Nation (Innu of Lac Saint-Jean or Mashteuiatsh) has been engaged for more than 40 years in a process of territorial negotiation, now as part of Regroupement Petapan.¹⁷ A modern treaty is in fact expected to be signed in the short term. In their contribution, Tipi and Boivin trace the main outlines of the Pekuakamiulnuatsh's ancestral occupation of the land, as well as the recent history of the process of negotiation with the two levels of government. But above all, they give an eloquent example of the colossal work carried out by the Pekuakamiulnuatsh First Nation in documenting their territoriality, knowledge and language. Among the

many documentation initiatives undertaken over the decades, the most recent is the Peshunakun multidisciplinary research project initiated in 2008. The authors' presentation of the Peshunakun project's objectives, stages and methodology allows the reader to appreciate the human investment involved. The focus is placed on the territoriality of the Pekuakamiulnuatsh from the perspective of the relationship between their language, *Nehluewn*,¹⁸ the topography of the land, places and toponyms. This highlights the very anchoring of Innu (or Ilnu) identity in space. The importance accorded to toponyms as vectors of knowledge and memories in turn allows for evoking ancestors and for identifying the traditional family territories used for hunting, trapping, fishing and gathering. The outcome of the Peshunakun project reveals a richness and a nearly inexhaustible semantic, historical, mnemonic and identity potential in a context marked by the Pekuakamiulnuatsh's political affirmation and aspiration to self-determination via the signing of a treaty.

Brian Thom's article takes us to the land of the Coast Salish on south-eastern Vancouver Island. This case study is one of the most significant examples of the legal and political complexity engendered by the social and geographic proximity of signatory and non-signatory nations and of the question of overlapping claims. Thom recalls that the state concepts of fixed "borders" and of sharply and permanently delineated territories have contributed to the problem of overlapping claims and to the perpetuation of colonial power relations.¹⁹ First Nations that are signatories to the historical Douglas Treaties (1850–1854) live side by side on this land with others who have not yet signed treaties but are engaged in the negotiation of a modern treaty. In this context, the analysis compellingly reveals the complex legal and socio-cultural entanglements that arise from treaty relationships at the level of overlapping territories, of inter-tribal relations and of the contemporary definition and implementation of treaty rights. Thom also reminds us that the Coast Salish continue to implement their own conceptions of community and territoriality – conceptions that are more extensive and flexible than those imposed by the Canadian state and the Indian Act.

Several questions come to mind on reading Thom's essay. How have the rights arising from the Douglas Treaties, including hunting and fishing rights, and the interpretation thereof evolved since these treaties were signed? How do courts define these rights in light of the First Nations' claims and of the principles of their customary systems? How do we reconcile treaty rights with those arising from the traditional normative systems

in the contemporary context? The strength of Thom's argument lies in the fact that it draws on a few concrete examples of Indigenous "offenders" who were brought to justice, and it brings into dialogue the terms of the treaty, the principles of Indigenous political and legal orders, and their respective interpretations by judges. The Indigenous principles highlighted by Thom are as follows: sharing and cooperation among communities and First Nations; a certain flexibility in affiliation and in the exercise of hunting and fishing rights on various lands; and, bilateral and extended kinship networks that provide access to different lands. The Canadian state and its justice system often struggle to recognise these principles insofar as they are difficult to reconcile with the principles of political modernity (fixed borders, individual rights and so forth). However, as Thom argues, if the Indigenous normative principles of sharing and cooperation and their implementation enjoyed greater legal and political recognition, they could help solve some of the problems linked to overlapping claims and to the exercise of ancestral rights.²⁰

Conclusion

The contributions to this thematic issue show that Indigenous Peoples engaged in treaty relationships, whether or not they have concluded agreements, are working on two fronts simultaneously. On the one hand, they strive to negotiate and reach agreements with governments in order to assert and enforce their rights; on the other, they seek to maintain their identity and responsibility to the land, to ancestors and to future generations. These two objectives require mature political thought insofar as, among other things, they belong to different orders – namely, the institutional order and the relational order. The challenge is also to avoid bureaucratisation of the relationship to the land on the terms of the state and the majority society while ensuring transmission of knowledge and political thought to the younger generations.

In this struggle between David and Goliath, those who hold power and the monopoly of violence, namely, colonial governments and corporations, have no interest in showing imagination and initiative in their political thought and action. In fact, more often than not, it is up to Indigenous people to propose innovations in the terms and deployment of treaty relationships. In the processes of negotiation and treaty relationships, the state and the majority society would benefit from trusting Indigenous normative orders and recognising their legitimacy. Yet whether or not they are recognised by the state, Indigenous orders simultaneously perpetuate and reinvent

themselves, as the contributions to this issue demonstrate. This persistence entails various forms of resistance to Canadian sovereignty.

This lack of imagination and political will on the part of colonial governments, as well as the absence of a “fair dialogue” between parties for the negotiation of reconciliation on the basis of renewed institutions and principles (Tully 2016),²¹ deprive all citizens of an innovative societal project that could be shared with Indigenous Peoples and the land – a project in which the latter would no longer be approached as a mere surface to be exploited and violated but rather as a partner. The critical works of Indigenous and non-Indigenous researchers and thinkers aimed at rebuilding on new foundations the relationship between Indigenous Peoples and the state are fuelling the politics of hope.

Sylvie Poirier, *Department of Anthropology, Université Laval, Quebec City, Quebec, Canada.*
Email: Sylvie.poirier@ant.ulaval.ca.

Clinton N. Westman, *Department of Archaeology and Anthropology, University of Saskatchewan, Saskatoon, Saskatchewan, Canada.* Email: clint.westman@usask.ca.

Notes

- 1 This treaty was signed following the Royal Proclamation of 1763.
- 2 A total of 26 modern treaties have been concluded since the implementation of the Comprehensive Land Claims Policy. An estimated 99 First Nations are at negotiation tables across Canada. Today, most of these so-called modern treaties also incorporate law-making authority in key areas, a constitutionally recognised administrative arrangement designated as self-government.
- 3 This question was first formulated by Chief Justice Lamer in *R v Van der Peet* (1996) and was reiterated in *Delgamuukw* in connection with section 35(1) (it has since been cited by several authors, including Tully [2008, 224] and Asch [2014]): “The reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown” (Chief Justice Antonio Lamer; *Delgamuukw v British Columbia* 1997, para. 186).
- 4 For Asch, as for others, Canadian sovereignty is illegitimate in that it was based from the outset on the now discredited colonial doctrine of *terra nullius* (Asch 2002; see also Pratt 2004).
- 5 On all these issues, see also Paul Nadasdy’s (2017) recent book *Sovereignty’s Entailments* on the Yukon First Nations who signed a “modern treaty.”
- 6 The 1996 *Report of the Royal Commission on Aboriginal Peoples* and the 2015 report of the Truth and Reconciliation Commission (*Honouring the Truth, Reconciling for the Future*) have certainly contributed to this renewed interest.
- 7 Asch and Westman seem to have operationalised Cardinal and Hildebrandt’s use of this term independently of one

another in slightly different, but largely consistent, ways (see Westman 2016).

- 8 Historically, Métis rights and interests were frequently dealt with through “scrip” processes oriented to individuals. Métis land, programming and livelihood issues are largely tied up in litigation, in spite of a series of promising court judgments.
- 9 Modern treaties (again specifically those in the Northwest Territories) may also include Métis as signatories.
- 10 On the relational paradigm, see also Starblanket and Stark (2018).
- 11 François Jullien (2009, 159) writes that “considering the plurality of cultures from the perspective of the *gap* makes them appear as so many open, inventive possibilities, the richness of which can be exploited” (original emphasis).
- 12 This is the position of Colin Samson (2016) for the Labrador Innu and of Paul Nadasdy (2017) for the Yukon First Nations – nations that have recently signed modern treaties. These two authors show how by adopting/adapting “modern” or state forms of governance and bureaucracy via a treaty, the latter acts as a sort of Trojan horse that allows the colonial project to continue.
- 13 Recall, for example, that in the ontological worlds of the Cree and of several First Nations, key symbols or metonyms for treaty and other sacred agreements include the pipe and tobacco, both of which are accorded the status of animacy in Cree speech events, potentially denoting more-than-human encounters.
- 14 See also Julie Depelteau’s (2019) thesis on these different conceptions of the land, based on an in-depth analysis of the texts produced by the Atikamekw Nehirowisiw nation and by the federal and Quebec governments as part of the territorial negotiations.
- 15 He adds, “The recent version of the oath of citizenship commits immigrants to honouring these treaties, when in fact the dominant population still does not do so” (Roy 2018). See also Roy (2019).
- 16 Added to these rules is the imposition of the coloniser’s language throughout the entire negotiation process, in this case French, even though the Atikamekw language remains the mother tongue of 96 percent of the Atikamekw Nehirowisiwok.
- 17 Regroupement Petapan brings together the Innu First Nations of Mashteuiatsh, Essipit and Nutashkuan. Its mission is to negotiate and sign a draft treaty agreement with the governments of Canada and Quebec.
- 18 A language that unfortunately is hardly spoken anymore.
- 19 Leanne Betasamosake Simpson (2015, 19) writes regarding the concept of borders: “Borders for indigenous nations are not rigid lines on a map but areas of increased diplomacy, ceremony, and sharing.”
- 20 On the issue of overlapping claims, Thom’s analysis is similar to that of Sylvie Vincent (2016) regarding Algonquin worlds.
- 21 Martin Hébert (2019, 393) writes regarding this issue, “Despite the recurrence of the theme of reconciliation in Canadian social discourse since at least the mid-1990s, there is still a profound deficit of imagination in envisioning a future wherein it would be possible to act on the structural conditions that reproduce the marginalization of Indigenous peoples.”

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