Negotiating Affirmative Repair: Symbolic Violence in the British Columbia Treaty Process

Andrew John Woolford

The Canadian Journal of Sociology, Volume 29, Number 1, Winter 2004, pp. 111-144 (Article)

Published by University of Toronto Press
DOI: https://doi.org/10.1353/cjs.2004.0015

Note on Society/Réflexion sur la société

Negotiating Affirmative Repair: Symbolic Violence in the British Columbia Treaty Process

Andrew Woolford

Amidst the current proliferation of new struggles and the continuation of protracted conflicts between long-warring enemies, "reconciliation" has become a pressing concern for many (Barkan, 2000; Brooks, 2000; Dwyer, 1999; Tavuchis, 1991; Torpey, 2001). For those partial to the discourses of "conflict resolution" and "alternative dispute resolution" the goal is one of imagining creative new options for peace that allow those locked in a seemingly intractable dispute to make the transition to a new relationship. The South African Truth and Reconciliation Commission (TRC), for example, has provided both hope and a model for addressing interethnic conflict, demonstrating that a society rife with crimes against humanity and political and economic oppression can begin to emerge from these conditions by reckoning with its unsavory past (Minow, 1998; Tutu, 1999). As well, dispute resolution techniques such as mediation and restorative justice have developed a new language of peacemaking intended to encourage parties to move away from their hardened "positional" views toward malleable "interests" that can be made amenable to the equally flexible interests of opposing parties (Bush and Folger, 1994; Fisher and Ury, 1991; McEvoy and Mika, 2002). At this reconciliatory historical juncture, which overlaps with (and is perhaps in part a reaction to) what has been referred to as the "age of genocide" (Alvarez, 2001; Power, 2002) these processes are held up as examples of the human capacity to construct creative visions of justice.

Yet, despite our best efforts to create processes that allow human creativity to flourish, the project of historical repair is often circumscribed by the

pragmatics of the present.[1] Indeed, the prevailing economic and political rationalities of those in possession of various forms of social power often permeate reparative discussions, and this presents strategic challenges for those demanding moral reckoning or material redistribution in the face of historical injustices. Such is the case in modern-day British Columbia, where a process to negotiate treaties between the First Nations of the region and the provincial and federal governments is underway, guided by the dual goals of "justice" and "certainty" — that is, justice in terms of addressing First Nations long-standing land claims, and certainty in terms of the desire to create political and economic stability within the province. This article provides examples of how these two discourses are mobilized within the British Columbia Treaty Process, and examines the symbolic violence enacted by the non-Aboriginal governments in attempt to forward a rigid notion of certainty that limits the possibilities for "justice."[2] Based on this examination, an exploration of what a "transformative" justice might look like is initiated and contrasted with the current trajectory of the treaty process, which appears headed toward what will be described as, borrowing from Nancy Fraser (1997), a remedy of "affirmative repair."[3]

The B.C. Treaty Process

Unlike other parts of Canada, the majority of the land in British Columbia was not obtained through treaty settlements that mark the transfer of Aboriginal

1. This is hardly a new development. As Weber (1946: 220, 298–9) notes, formal rationality often sits in contrast to substantive justice. Whereas the former is oriented toward norms rationally established in accordance with pre-defined ends, such as the maintenance of a particular political-economic system, the latter is ."..oriented toward some concrete instance or person."
2. These observations are drawn research conducted between 1997 and 2002. During this time I attended public negotiation sessions, public consultation meetings, public information sessions, meetings of the First Nations Summit, as well as treaty table "working groups" designed to deal with the specific contents of proposed treaties (e.g., fish and wildlife). In addition, 55 semi-structured interviews were conducted with treaty negotiators, government representatives, First Nation community members, British Columbia Treaty Commissioners, public members of local and province-wide consultation committees, and representatives from the First Nations Summit and the Union of British Columbia Indian Chiefs.
3. Although the focus of this paper is the B.C. Treaty Process, the issues of justice and certainty are present in other Canadian land claims negotiations, as are the tactics used by negotiators to privilege their notion of certainty and promote "affirmative repair." See, for example, Colin Samson's (1999) discussion of the "Colonial Magic" of comprehensive land claims, Paul Rynard's (2000) comparison of the Nisga'a and James Bay agreements, and, more generally, the work of Taiaike Alfred (1999).

lands to the Crown.[4] Because of this, the spectre of Aboriginal title has haunted the provincial government's claim to jurisdiction over B.C.'s lands and resources.[5] In addition to the expropriation of their lands, First Nations in B.C. also faced the same assimilative policies that were imposed on Aboriginal peoples all across Canada: the residential schools that forced Aboriginal children from their homes and into institutions in which their culture was "trained" out of them (see Haig-Brown, 1988); the laws prohibiting Aboriginal cultural practices such as the "potlatch" that were perceived to be a threat to "civilization" (see Cole and Chaikin, 1990); and the laws preventing them from taking legal actions to pursue their land claims (see Mathias and Yabsley, 1991). These harms, in addition to the land claims struggle, have since animated First Nation justice demands in British Columbia.

In the past few decades, courts in Canada and B.C. have meted out decisions that acknowledge the continued existence of Aboriginal title.[6] These legal decisions favourable to First Nations' justice claims combined with the protest activities of Aboriginal groups to create a situation of "uncertainty" with regard to the Crown's claim to unencumbered title to B.C. lands.[7] Moreover, this uncertainty impacted negatively on the economic climate of the province, as investors became increasingly reluctant to risk their capital in the province when they faced the prospect of court injunctions or road blockades interrupting resource development activities (see ARA Consulting Group, 1995; Grant Thornton Management Consultants, 1999; KPMG, 1996; Mitchell-Banks, 1998; Price Waterhouse, 1990; Slade and Pearlman, 1998). It was the economic consequences of uncertainty, as much as anything else, that at last brought the provincial government to the treaty table in the early 1990s.[8]

---

4. In the mid-to-late 1850s, treaties were signed between governor James Douglas and the First Nations located around the Southern tip of Vancouver Island; however, this practice was short-lived (see Fisher, 1977 and Tennant, 1990). The only settlements reached after this point were Treaty 8, which was signed in 1899 and includes First Nations in the Northeastern corner of British Columbia (see Ray, 1999), and the Nisga'a treaty, which was ratified in 1998 outside of the B.C. Treaty Process.
5. Traditionally, the provincial and federal governments have argued in the courts that at the time of contact First Nations societies were unorganized and nomadic, thus making the lands of the province "*terra nulius*," or unoccupied land, which according to the British doctrine of discovery made these lands available for colonial expropriation.
6. Some of the most important of these decisions include *Calder v. Attorney-General of British Columbia* (1973), *R. v. Sparrow* (1990) and *Delgamuukw v. British Columbia* (1997).
7. These protest activities, such as road blockades, were heightened in the 1980s and early 1990s as First Nations effectively employed them to disrupt resource extraction activities within the province (see Blomley, 1996).
8. The federal government launched its own comprehensive treaty process soon after *Calder v. Attorney-General of British Columbia* (1973). This case was technically a defeat for the Nisga'a, but the reasons for judgement given by the Supreme Court Justices did recognize that Aboriginal

The B.C. Treaty Process was established through the report of the B.C. Claims Task Force, which began its work in 1991. The formation of this task force marked a decided break with previous efforts to address the land question in British Columbia. Instead of imposing justice upon First Nations peoples through monological processes whereby white adjudicators assessed the "needs" of First Nations communities,[9] processes that inevitably resulted in renewed Aboriginal discontent, the B.C. Claims Task Force brought together three First Nations representatives with representatives from the provincial and federal governments to fashion a mutually agreeable process for dealing with land claims and governance issues. The procedural dimensions of treaty-making devised by these representatives were intended to encourage non-coercive and equitable communication between First Nations and non-Aboriginal government actors at the treaty tables. The guidelines for treaty-making included a list of 19 principles that were agreed to as the "bible" of the negotiations. As well, an independent body, the B.C. Treaty Commission (BCTC), was established to serve as the "keeper of the process" to ensure that all of the parties lived up to these 19 principles.

However, the principles are, in fact, overly vague, allowing the parties a considerable amount of leeway with respect to how they fashion their participation in the process. Moreover, the BCTC is equipped with few powers other than that of "moral suasion" for policing the parties' faithfulness to these negotiation guidelines.[10] In addition, the report did little to address the significant power differential that exists between the parties, as the funding made available to the First Nations did little to narrow the gap between them and the resource-rich provincial and federal governments.[11] Perhaps the greatest challenge to the negotiation process, however, is that the parties appear to lack any clear agreement as to the purpose of treaty-making: are treaties needed to bring justice or certainty? Are negotiations intended to address the past or the future? Lacking an agreed upon common purpose, the parties often find

---

title is not something granted by the Crown but rather pre-exists European settlement. This acknowledgement influenced the federal government to take First Nations' land claims more seriously, something the province itself has resisted until recently.

9. Examples of these processes include the Joint Review Committee (1876 –1878), which before its dissolution toured the province to assess First Nations needs, and the McKenna-McBride Commission, which held hearings with First Nations over a period of three years (1913 –1915) before it submitted its report to the federal and provincial governments.
10. Moral suasion only allows the BCTC the power to try to convince the parties to obey the principles. The BCTC has no adjudicatory power.
11. Moreover, the federal and provincial governments refuse to negotiate with First Nations who launch land claims lawsuits or engage in claims-related road blockade activities, thus denying First Nations their two traditional points of leverage when dealing with the non-Aboriginal governments.

themselves engaged in competitive negotiations that veer away from the interest-based creativity idealized by the architects of the treaty process.

Often proponents of the treaty process claim that it is designed to achieve both justice and certainty; however, the combination of these two goals is problematic since the form that certainty takes will have significant repercussions for justice. The BCTC argues that the treaty process should not be directed toward an "absolute" or "final" certainty in the sense that treaty relationships are carved in stone; instead, in their view, the concept of certainty should seek to produce a "reasonable certainty" that includes "predictable procedures for revision and amendment" (BCTC, 2000: 24). However, for the non-Aboriginal governments, certainty refers to a "... legal technique that is intended to define with a high degree of specificity all of the rights and obligations that flow from a treaty and ensure that there remain no undefined rights outside of a treaty" (Stevenson, 2000: 114). This restrictive notion of certainty, which requires an exhaustive definition of the rights of First Nations in the post-treaty environment, may not provide First Nations with the flexibility they feel is necessary for them to adapt to possible changes in the natural and social worlds (e.g., the depletion of fish stocks or a future Supreme Court decision stating that Aboriginal rights include a commercial interest in wildlife or water). But this First Nation desire for flexibility conflicts with the expectation of the non-Aboriginal governments, as well as the expectation of businesses with direct or indirect interests in treaty-making, that these negotiations will put an end to the persistent questions concerning the rightful ownership of and jurisdiction over lands and resources in B.C. For this reason, these groups typically seek a more comprehensive notion of certainty than that forwarded by the BCTC — often to the point of bracketing all discussion of justice with respect to past harms committed against First Nations peoples, claiming that these issues are a potential distraction to and outside the purview of the treaty-making process.

Treaty-Making and Affirmative Repair

Nancy Fraser's (1997) model of the "dilemmas of justice" provides a useful starting point for addressing the challenges faced when dealing with the past. Fraser argues that injustices experienced by subaltern collectivities are often both of a socio-economic and cultural-symbolic nature.[12] Thus, the ideal program for combating these injustices would appear to be one which at the same time attempts to gain redistribution and recognition for the subaltern group. However, as Fraser notes, the problem with this "simultaneous" struggle

12. For a critique of Fraser's work see Blum, 1998; Yar, 2001; and Young, 1997.

is that strategies of redistribution and strategies of recognition often contradict one another. While redistribution claims often attempt to uproot an unequal economic system and lay to rest societal differences, recognition claims typically aim to concretize previously ignored identities and thereby establish the cultural specificity of a group (Fraser, 1997: 16). In this sense, a strategy of redistribution intends to de-differentiate groups from one another whereas a strategy of recognition attempts to differentiate them (Phillips, 1997: 148).[13]

To address this issue, Fraser constructs oppositions within each remedy to gauge the forms that redistribution and recognition may take. She suggests that these remedies can range from "affirmative" to "transformative" strategies. In the case of redistribution, an affirmative strategy would attempt to correct the inequalities that arise from the organization of social relations without challenging these relations, while a transformative approach would engage in a "deep restructuring of the relations of production" (Fraser, 1997:27). Similarly, in the case of recognition, an affirmative strategy would attempt to affirm and revalue the identity of the previously ignored social group while a transformative strategy would deconstruct identity *en masse* and thereby disrupt societal practices of valuing particular cultures above others.

According to Fraser, problems arise in the simultaneous pursuit of affirmative strategies of recognition and redistribution. Affirmative strategies of redistribution seek to correct economic injustices without significantly disrupting the regular operation of the economy. This is achieved through "surface reallocations" of economic opportunities and benefits designed to allow the wronged party to participate "equally" in the mainstream economy (Fraser, 1997). An affirmative strategy of recognition, on the other hand, provides surface recognition to the essentialized identity of the wronged party. In combination with affirmative redistributive measures it feeds into, and even constructs, the perception that redistributive measures are being provided for a specific group that is seeking special privileges above and beyond those of the "majority." Thus, rather than destabilizing cathected differences between identity groups, an affirmative strategy of recognition potentially exacerbates previously established group resentments by reifying these differences (Fraser, 1997: 29).

---

13. Fraser refers to groups seeking both recognition and redistribution in the face of injustice as "bivalent collectivities." These are groups that are "differentiated as collectivities by virtue of *both* the political-economic structure *and* the cultural-valuational structure of society" (Fraser, 1997:19). First Nations can be understood as "bivalent collectivities" since First Nations peoples have experienced injustices which are simultaneously cultural (e.g., forced assimilation) and socio-economic (e.g., dispossession of lands). For example, Chief Kim Baird (1999: 101–2) of the Tsawwassen First Nation asks that the provincial and federal governments both repair the inequity that has left many Tsawwassen people in poverty, and recognize and respect the distinct cultural differences between members of their First Nation and other Canadians.

Fraser posits that transformative remedies to socio-economic and cultural-symbolic injustices are less problematic when pursued simultaneously. However, it is this aspect of her model that presents the greatest difficulties when considering remedies for the injustices experienced by First Nations Peoples.[14] While her idea of a transformative approach to redistribution may be consistent with some First Nations' notions of sharing the means of subsistence and a common stewardship over the land and resources, the "deconstructive" remedy Fraser offers in response to cultural-symbolic injustices would appear to threaten the very existence of First Nations as distinct entities. In her more recent work, however, Fraser has argued that she is not suggesting that collective identities need to be done away with altogether; instead, she emphasizes the need for a deconstruction of the valuation structures that serve to malign certain collectivities (Fraser, 2000a). She calls for a "status model" of recognition that recognizes "the status of group members as full partners in social interaction" (Fraser, 2000b: 23). Moreover, she adds, "this in turn requires removing obstacles to participatory parity in whatever form they arise, including the failure to recognise group difference" (Fraser, 2000b: 26 –27). This clarification of Fraser's approach, which focuses on the nature of the harm suffered by a marginalized group, requires that we examine the specific circumstances of the misrecognition experienced by First Nations in British Columbia in order to address the ways in which these peoples have been devalued and excluded from social participation. Thus, based upon the sociocidal[15] and assimilationist policies aimed at eliminating First Nations cultures in Canada, it can be suggested that transformative recognition would not occur through the deconstruction of Aboriginal notions of group identity that promote a universal sameness.[16] Rather, this recognition would need to acknowledge the historical existence of First Nations groups. However, it need not reify Aboriginality in a manner that prompts an authoritarian movement within the group toward an imagined notion of an unchanging cultural authenticity. Instead, as is discussed in the concluding section of this article,

---

14. Indeed, in a footnote Fraser (1997: 39, n. 45) states with regard to her concept of "transformative remedies" that "[w]hether this conclusion holds as well for nationality and ethnicity remains a question. Certainly bivalent collectivities of indigenous peoples do not seek to put themselves out of business of groups."
15. The term "sociocide" is borrowed from the work of Keith Doubt (2000) to describe practices directed toward destroying or eliminating functioning societies.
16. I concur with Kymlicka (1995) that the moral requirements addressing the needs of First Nations in Canada are distinct from those for immigrants to this country, who chose to come to a new society defined by cultural norms and expectations different from their home societies. Since the injustices experienced by First Nations are tied to their position as the original inhabitants of this land, First Nations justice demands are necessarily based on a claim of cultural difference.

transformative recognition can aspire toward an acknowledgement of a First Nation as a dynamic yet persistent entity that exists in relationship with and as an important counterweight to the logic of Western cultures.

Before investigating this idea of transformative recognition further it is first necessary to examine the strategies employed by non-Aboriginal government representatives within the treaty process to shape the outcomes of the process toward what will be referred to as "affirmative repair"; that is, toward treaty settlements that do not substantially alter prevailing societal patterns of economic production and cultural valuation. It will be argued that the non-Aboriginal governments' negotiation strategies represent a form of "symbolic violence" enacted through the process of treaty-making. Bourdieu (1990: 127) defines symbolic violence as: "gentle, invisible violence, unrecognized as such, chosen as much as undergone, that of trust, obligation, personal loyalty, hospitality, gifts, debts, piety, in a word, of all the virtues honoured by the ethic of honour. " This is a notion of violence in which those to be dominated are encouraged to participate in their domination by performing an act of "mis-recognition" rather than challenging the arbitrary imposition of the dominant worldview (Bourdieu, 1991).[17] The goal of symbolic violence, then, is to persuade the "other" to embrace the interests of the dominant group(s) by constructing the parameters for rational action in a way that makes it difficult to discuss, or even to "think," matters outside of these limited parameters.

Symbolic Violence in the B.C. Treaty Process

a) Procedural Symbolic Violence

Justice is the process, not the result. If the process is fair, they will feel they received justice. The BCTC process strives to ensure the basic elements of fairness in the process (BCTC representative).[18]

---

17. In this sense, Bourdieu's explication of the struggle to define what is "common sense" bears a resemblance to Gramsci's (1971) idea of hegemony in that it attempts to explain how dominated groups play an active role in their domination. It is important to note that the powerful are always successful in their attempts to inflict symbolic violence. Resistances are always present to oppose attempts to circumscribe the spectrum of debate, and this is certainly the case in treaty negotiations where First Nations often actively disrupt the symbolic violence of non-Aboriginal governments by expounding their alternative worldviews. However, the symbolic violence effected through the logic of "certainty" has proven to be extremely potent, with many First Nations beginning to view the key to their own survival through the lens of achieving a specific brand of economic certainty.
18. Interview transcript, 10/13/01. All quotations in italics are drawn from interview transcripts or field notes. Interviewees are referred to as 'representatives' without identifying their position in order to protect their anonymity.

This is a government to government process. Each party is equal. The procedures and protocols of First Nation processes must have equal standing to those of the government of Canada (BCTC Chief Commissioner, Miles Richardson).[19]

In both of these statements, one can observe the reliance on the dialogical rationality of opposing parties to forge just agreements through fair and equal negotiations. The second statement, however, advises that the procedural basis of justice must be founded on equality — an equality that permits each party to incorporate their own cultural specificity into the process. This is what Tully (1995 and 2000) refers to when he stresses the importance of the parties entering the process as "equals."[20] Unfortunately, although each of the parties prior to entering the B.C. Treaty Process played a role on the B.C. Claims Task Force, and therefore had a hand in designing the process, this equality of condition has not been a clear principle of treaty-making to date in B.C. Instead, the parties begin negotiations with a terrible disparity in resources and power, which limits the ability of First Nations to influence the process and to establish their own protocols. Ovide Mercredi, the former Grand Chief of the Assembly of First Nations, offers a very bleak view of this disparity: "*wherever we are forced to get involved in these tables we are forced to assimilate. Tables are not about culture. First Nations are forced to assimilate every step of the way*."[21]

The belief that "good faith" negotiations can provide access to just settlements is confronted by the obstacles standing in the way of approximating what Habermas refers to as the "ideal speech situation."[22] Interactions within the ideal speech situation ideally assist the parties in seeking consensus on normative issues, but these interactions must be based on principles of fairness, equality and uncoerced discussion (Baert, 1998). In effect, parties are required to forego their instrumental (means/ends) and impersonal motivations, and embrace, in contrast, a "communicative" rationality characterized by truthful, sincere interactions directed toward mutual understanding (Ratner et al., 2002). Of course, when negotiations of this nature are taking place between governments operating at an impersonal level, the likelihood of systems-level, instrumental motivations dominating the discussions increases, making sincere

19. Statement made to the First Nations Summit, 12/1/99.
20. For parties to participate in the process as "equals" is very different from the liberal discourse of equality. Whereas the latter speaks to an equality at the individual level, the former recommends an equality of this order between collectivities.
21. Ovide Mercredi speaking at a "Round Table on Interim Measures" organized by the David Suzuki Foundation and the Laurier Institute, 10/23/00.
22. It should be noted that by constructing the notion of an *ideal* speech situation Habermas is merely suggesting an ideal against which we measure agreements (Habermas, 1984, 1990; Ryan, 1999; Trey, 1992).

and truthful interaction less likely. This is particularly true of the non-Aboriginal governments involved in treaty-making, both of whom are heavily bureaucratized and have internalized situational constraints that prevent them from participating in the open, interest-based negotiations necessary for communicative interaction. These constraints reflect the broader concerns of governance, such as the need to integrate policies concerning treaty-making with the goals and objectives of other government departments (e.g. forestry, fisheries) as well as macro-level economic and social concerns. But these limitations raise questions about the procedural claims of the B.C. Treaty Process.

Let's not go through the fallacy of having this wonderful treaty process that's going to be interest-based and everyone is going to be able to bring forth everything that they want and we are going to have these great discussions and come up with a creative new idea. Why say that if you are going to come in and say we have to have these things and this can't change? (BCTC representative).[23]

The key to any negotiations is you have to consider your interests and express them honestly. Interests — not positions. That's what we talk about reconciling. Every party has things they won't compromise on. We have to realize the interests we represent and where we won't compromise. (provincial representative).[24]

The preceding quotations present contrasting visions of "interest-based negotiations," a model participants in the treaty process often claim to be following. In the first, the speaker, a former member of the BCTC, expresses a view of interest-based negotiations, drawn from the work of Fisher and Ury (1991), that suggests that "interests" are malleable and allow for creative problem-solving, as opposed to "positions" that are unmovable. The commissioner's criticism, from this standpoint, is that the parties' attachment to unmovable positions contradicts the public presentation of the treaty process as one in which the parties will look creatively at their interests, and at how these interests might be met through compromises reached with the other parties to the negotiations.

However, in the second quotation, from a provincial government representative, we see how government actors are able to reinterpret the meaning of interest-based negotiations to situate their behavior within the rubric of this negotiative approach. Here, negotiating in an interest-based manner is seen as being "honest" about one's positions, making them known to the other party so that they can move on to other issues. By attaching their actions to the valued normative criterion of honesty, the symbolic objective of this statement is to disguise the instrumental, positional basis of the non-Aboriginal government's negotiation policy. In this sense, non-Aboriginal government

23. Interview transcript, 9/8/00.
24. Statement made to the Tsawwassen Consultation Group, 10/12/00.

involvement in treaty negotiations seems neither "sincere," since they are unwilling to negotiate their positions, nor "truthful," in the Habermasian sense, since, despite their claim to honesty, they arrive at the table with fixed mandates, leading First Nations to suspect that treaty negotiations are merely a charade (Ratner et al, 2002).

One could rightfully ask: is it not expected that "positions" will come to the fore in any set of political negotiations? However, the difficulty with this claim takes two forms. First, as stated above by the former B.C. Treaty Commissioner, the rhetoric of the negotiation process suggests that the parties are supposed to be participating in a creative negotiation process that seeks to open up avenues of compromise and agreement rather than close off possibilities through hard positions. Second, the characterization of this process as a "political" one is a matter of some debate. While the non-Aboriginal governments have claimed from the beginning that these are political negotiations, by which they mean that they are discussions between governing bodies with respect to their future relationship, many First Nations have presented an alternate interpretation of what political negotiations entail, arguing that these negotiations are about effecting historical repair for past harmful actions.

Rather than seek a mutual understanding of terms and goals, non-Aboriginal government actors instead often seek to redefine the situation in a manner complementary to the strategic goals contained within their "mandates." These mandates are devised and approved at the upper echelons of government and passed down to negotiators who are responsible for negotiating within the parameters of these documents. Mandate changes or adaptations require federal or provincial negotiators to engage in a lengthy process of negotiating within their own governments.

If there is a problem at the tables it is because the negotiators for the government can only negotiate what they have authority to negotiate. And the usual problem at the tables is they do not have the mandate to negotiate the things that the First Nation wants them to negotiate (BCTC representative).[25]

Thus, discussions between the parties are hamstrung from the beginning by the inability of the non-Aboriginal government negotiators to truly "speak." Since they are only able to act in a manner consistent with their mandate, they cannot engage in a truly dialogical process of seeking mutual understanding.

In this way, the process risks becoming a vehicle for the substantive goals of the more powerful party, which in this case is the non-Aboriginal governments. By putting forward their unmovable positions "honestly," the non-Aboriginal governments place limits upon the negotiations since they are the

25. Interview transcript, 10/13/01.

ones in a position to redistribute resources and powers of self-governance. To operate "rationally" within this negotiative context, First Nations actors must respond by seeking means to force the government away from these mandated positions, either through turning non-Aboriginal government arguments against themselves,[26] or by taking strategic actions to press the non-Aboriginal governments to come closer to meeting First Nation demands.[27] Thus, positional and strategic negotiations often become the norm. Moreover, demands for "justice," for substantive results that correspond to the magnitude of past crimes, appear more and more unrealistic because they fundamentally contradict the positions the non-Aboriginal governments have "honestly" put forth. In effect, given the fact that the non-Aboriginal governments are the parties who control the resources to be distributed in treaty-making, these mandated positions aspire to the status of preconditions that will lay the parameters for reasonable discussion in a fashion that is unilaterally imposed rather than cooperatively agreed upon.

This attempt to structure the conversation is but one example of the pitfalls associated with relying primarily on proceduralism as a means to achieving justice. If the substantive justice objectives of the procedural apparatus are not explored at an early stage to provide the procedure with a clear direction, process alone is too susceptible to the symbolic violence of the dominant party or parties. Indeed, the process becomes directed instead by the underlying and often unspoken "justice" objectives of the party who is able, through the use of "symbolic violence," to define the limits of the discussion. In the B.C. treaty process, First Nation demands that speak to historical injustices, that speak to settlement options that are outside of non-Aboriginal government mandates, are quickly portrayed as being unrealistic, naïve, or underprepared for the hard work of negotiations.

First Nations negotiating a full and final agreement have an intense challenge facing them in their communities. They have to reconcile dreams of settlement with a cold and prickly reality check (provincial representative).[28]

This "reality check" is an attempt to achieve recognition for arbitrary, yet formalized, societal power relations (Bourdieu, 1990, 1987). At every turn, Aboriginal negotiators run up against this "cold" reality and are provided with the very limited choice of achieving minor redress through a procedure that

26. Such techniques involve using arguments about potential government cost-savings or reduced administrative responsibilities that might stem from settled treaties to suggest that there is a government and/or business interest in meeting First Nation demands.
27. Legal and direct action strategies have typically been used to press non-Aboriginal governments into considering forms of justice outside of their mandates.
28. Statement made to the North Shore Consultation Group, 03/01/00.

ultimately re*affirms* and reproduces "reality" as defined by the non-Aboriginal governments, or carrying on in their current state of deprivation while pursuing their ideal conceptions of justice.

b) Utilitarian Symbolic Violence

One of the primary areas of disagreement in the negotiations revolves around the issue of compensation. Compensation refers, quite simply, to monies provided for harms and losses that cannot be addressed through restitution.

First Nations quite often want us to acknowledge something up front, and I think there is a real legal concern on the part of vulnerability about some bald faced statement that acknowledges something up front (federal representative).[29]

Compensation may be an issue of terminology. We view that we do supply substantial funding, but we do not call that compensation. According to our lawyers, this is a specific issue with meaning in the courts. But treaty settlements in urban areas will be weighted more heavily in terms of a cash component (FTNO Director, John Watson).[30]

By defining the issue of compensation as strictly a legal issue outside the purview of treaty-making, the non-Aboriginal governments are able to avoid the moral reckoning that, for First Nations, is implicit in the term compensation.[31] But it is hard to imagine any language that could both acknowledge First Nations' experiences of injustice based on the historical infringement of their Aboriginal title and expropriation of their lands, and satisfy the non-Aboriginal governments' concern that they not be held legally liable for damages that could well exceed their ability to pay.

In contrast, First Nations will often speak of compensation as recompense for what they have lost combined with a public acknowledgement of the harm done to them.

If everybody sits down and looks into their heart of hearts, if they knew everything that happened to First Nations peoples, they would know deep down that it was wrong. So I think if they knew the truth they would say, "That was wrong, so what are we going to do about it?" (Tsleil-Waututh First Nation representative).[32]

---

29. Interview transcript, 5/3/01.
30. Statement made to the First Nations Summit, 6/16/00.
31. Until recently, the non-Aboriginal governments refused to negotiate "compensation," preferring politically neutral terms such as "fiscal component" to describe the monies to be redistributed through treaties. However, the British Columbia government has now agreed that compensation may be "explored" in treaty negotiations. It is not yet clear whether or not this is a serious willingness to explore this important issue.
32. Interview transcript, 12/15/00.

Here, the appeal is to the moral sensibilities of non-Aboriginal peoples and the assumption is that with increased knowledge about the injustices placed upon First Nations peoples, non-Aboriginal people in B.C. will want to do what is morally right — to provide appropriate recompense. First Nation representatives often suggest that they require public recognition of their suffering as a means to re-claim and re-valorize a despised and maligned public identity, allowing them to re-establish their cultures not only through the funds provided by treaty settlements, but also through the acknowledgement that the past hardships were the result of external imposition, and not due to the failings of First Nations cultures. However, this is a moral demand that non-Aboriginal governments feel unable to meet due to the risk of future liability and the impact this risk might have on their desire for "certainty."

The utilitarian and instrumental visions of certainty proposed by the non-Aboriginal governments in the current context of treaty negotiations portray questions of compensation and Aboriginal title as "messy" and troublesome. The non-Aboriginal governments suggest that by bracketing these issues and other moral visions of justice, we can ensure that more effective and efficient negotiations will take place. As well, the current poverty and desperation of Aboriginal communities is pointed to as another pressing reason for engaging in pragmatic discussions. All of these arguments endeavor to establish a particular vision of treaties as functional tools for providing newfound certainty to all involved.

Treaties are, for a large part, a business deal. They are underlayed by all of these conceptual questions, but they are essentially a business deal... I don't think this is about justice in the sense of reparations through the process. I think there is a hope it will contribute to putting those things behind us simply because it will make for healthier communities that have satisfied some of their contemporary needs (federal representative).[33]

I think non-Aboriginal people mostly just want it to be over. They see it in many ways like a real-estate transaction — "who gets what? How much is it worth? And, let's get on with the rest of our lives" (federal representative).[34]

In both of these statements, the emphasis is placed upon the utilitarian benefit of completing treaties, while questions of justice or reparation are ignored or cast aside. They construct the treaty process as a pragmatic exchange between parties who are firmly immersed in a shared reality, rather than as groups with competing legitimate visions of justice.

---

33. Interview transcript, 8/29/00.
34. Interview transcript, 5/3/01.

c) Universalist Symbolic Violence

When weighing questions of how to address long-standing, structurally imbedded injustices, a key axis of debate is the question of whether repair requires that the maligned group receive opportunities and benefits similar to those available to the dominant group (sameness), or whether the distinctness of the maligned group needs to be recognized by the societal mainstream (difference). This debate occurs across several sites of injustice, taking hold in the discourses of anti-sexism (see Benhabib et al., 1994; Bryson, 1992; Pateman, 1989), anti-racism (see Zack, 1997), anti-homophobia (see Abelove et al., 1993; Jagose, 1997), and post-colonialism (Ashcroft et al., 1995).

Running parallel to the sameness/difference axis of debate is another concerning the divide between universalistic and particularistic theories of justice. Moral propositions founded on a universalist position contend that justice, whether defined in terms of procedural or substantive criteria, inhabits a space beyond any of the social and cultural cleavages that separate us as human beings. The project of the universalist is to tap into this space in order to arrive at just solutions that meet universal criteria. Particularistic views of justice, in contrast, protest against any attempts at the universal prescription of the contents of procedural or substantive justice. For the particularist, the content of justice can only be approximated within the specific context of the conflict and, for the more radical adherents to this perspective, this approximation of justice is always unfixed, partial, and open to future deconstructive challenges (see Derrida, 1992).

The importance of these debates extends well beyond the academic circles in which they occur and has tangible implications within everyday justice processes such as treaty-making. Indeed, the gap between visions of sameness and visions of difference, and the gap between visions of universal justice and visions of particular justice, often appears unbridgeable in the rhetoric of the participants in and opponents of the B.C. Treaty Process. But in circumstances where the First Nations in B.C. have been denied sameness through their social and economic marginalization, as well as denied difference through the devaluation of their distinct cultures and forced assimilation, resolution of these two interlocked divides is essential.

What does equality mean? Anything different from the status quo is said to be unequal. This is seeking total assimilation. ...Assessing the needs of the Tsawwassen First Nation must be the starting point (Tsawwassen First Nation representative).[35]

35. Interview transcript, 7/30/99.

This thing is race-based. You have begun a process of a race-based system of government. We can't understand or figure it out. It's undone a few decades of movement toward equality (Tsawwassen Consultation Group member).[36]

The first quotation should not be understood as a rejection of all forms of equality but rather as a rejection of a vision of equality that effaces difference. Generally, First Nations engaged in the B.C. Treaty Process are seeking forms of economic and social equality within Canadian society; however, they prefer that this equality take a form that also recognizes their specificity as the original cultures of this region. In this sense, their vision fits the model of bivalency described by Fraser (1997) in that they desire that both the redistribution of resources and recognition of cultural differences be included in any settlement package. For them, it is not contradictory to demand simultaneously that repair come in forms of both sameness and difference. But for many of the non-Aboriginal participants in the process, these simultaneous demands present a paradox — one that threatens the mythical vision of the Canadian "just society." Their understanding of equality is based on maxims such as "one law, one people" and they are unsure of the consequences treaty-making might have for their cultural values. They often ask: What form of governmental representation will non-Aboriginal persons living on reserve land receive? What rights and privileges will First Nations governments have above those of local municipal governments? Will First Nations be on par with the provincial or federal governments in certain areas of jurisdiction? Will First Nations continue to uphold and respect Canadian democratic values after treaty settlement?

The uncertainty presented by First Nations' calls for both sameness and difference presents a challenge to mainstream visions of justice. This is because the legitimacy of mainstream visions of justice rests on their ability to be universalized, to transcend particular circumstances and to apply to and protect all citizens. For this reason, the portrayal of these visions as assimilative offends the idealized "fairness" of this vision.[37] Consider, for example, the

36. Statement made at meeting, 11/18/99.

37. Another vision of justice as fairness that non-Aboriginal individuals bring to the treaty table is that of "proportionality." This argument is typically stated in the following manner: "If First Nations represent 5% of the population of B.C., why don't settlements redistribute 5% of the lands?" When confronted with this argument of proportional fairness, First Nations individuals often respond by declaring, "All of the lands belong to our peoples so why should we settle for just 5%?" This positional debate, however, stands in stark contrast to traditional First Nation understandings of boundaries as being fluid and permeable. Moreover, from the standpoint of a critique of affirmative reparations, the problem with arguments such as these is that they increase the likelihood of future conflict rather than reconciliation. The proportionality argument serves to further essentialize the classification of First Nations in rigidly delineated ethnic terms

following exchange between an Aboriginal woman and a non-Aboriginal Regional Advisory Committee (RAC)[38] member at a Lower Mainland RAC meeting:

It's very unsettling to listen to people here talk about First Nations receiving special treatment. Was residential school special treatment? Was being placed on a reserve special treatment? Our lives are always dictated. We are being judged all of the time. Where were you when we were being dragged to residential school? (Observer at Lower Mainland RAC meeting).[39]

All of that was wrong, but the way to fix it is not to put in another set of differences. Martin Luther King died for equality — we got close and now we're going back again. Where was society when I was hauled to jail for not being able to pay custody? (Lower Mainland RAC member).[40]

Here, in the second statement, the specific experience of injustice imposed on First Nations is viewed as an obstacle to the ideal of fairness. The speaker concludes by providing a personal anecdote of the hardships that individuals sometimes have to suffer in the pursuit of this ideal. In his mind, injustices imposed on a singled-out group cannot be resolved by developing "special" reparative circumstances. In this regard, difference, in and of itself, is seen as a societal problem that must be corrected through the universalization of the principles of fairness and equality.[41] But unrecognized in this desire for universalization is that the particular values of a specific culture are being universalized. The ideological goal of justice arguments such as these is to elevate the interests and beliefs of a specific group to an abstract level of broad social acceptance.[42]

---

by creating an equation that links land ownership to ethnic group representation in the population. As well, there exists no clear calculus for arriving at such an equation. For example, questions would certainly arise with regard to the percentage of Aboriginal heritage that marks one as being First Nation and whether or not non-status Aboriginal persons figure in the equation.

38. Regional Advisory Committees (RACs), such as the Lower Mainland Regional Advisory Committee (LMRAC), and Local Advisory Committees (LACs), such as the Tsawwassen Consultation Group, are non-Aboriginal government established bodies comprised of non-Aboriginal community representatives. RACs typically discuss issues pertaining to several negotiation tables in a region, while LACs are restricted to discussing non-Aboriginal interests at a single negotiation table.
39. Statement made at LMRAC meeting, 12/9/99.
40. Statement made at LMRAC meeting, 12/9/99.
41. See, for example, Bellett (1999:B3) in which Delta Councillor, Vicki Huntington, states: "But I'm concerned too about how we might come out of it (treaty negotiations). Are we all going to be equal before the law — all with the same rights as Canadian citizens — or are we forever going to be different?"
42. For discussion of the connection between ideology and universalization see Eagleton (1991: 56–58) and Marx and Engels (1974).

Other non-Aboriginal persons involved in the treaty process fear that differential treatment directed toward correcting past wrongs will result in the imposition of new injustices; that is, that the wrongs of the past will be addressed by creating new wrongs, this time imposed on those who did not directly play a role in the initial injustices. In their view, these earlier injustices have been "superseded" and compensation for the past will only result in a new round of injustices.[43]

We need equality. All of this is smoke and mirrors unless there is equality. You're going to end up with division. We've been involved in this for years and years. And we (fishermen) are the only people having their jobs negotiated away (LMRAC member).[44]

If you take our jobs then do it in a fair way so we aren't left with nothing like Aboriginals once were. No one else in this room is having their jobs expropriated. The government did not compensate fishermen properly in Nisga'a. All I ask is that you give us some dignity (LMRAC member).[45]

The plight of fishermen is particularly revealing in this regard. For many years they have been permitted to build their livelihoods on the basis of non-Aboriginal governments ignoring Aboriginal rights and title. Now, as the fisheries in the province continue to deteriorate, and as First Nations seek to further establish themselves in this traditional industry, those who have fished their entire lives feel that their personal security is under threat. This example demonstrates that it is not just Aboriginal visions of justice that are delimited by the B.C. Treaty Process. Indeed, many non-Aboriginal persons who work in the natural resource sector and who live in rural communities complain that their voices are not heard within the treaty process, and suspect that treaty settlements will be achieved at the expense of their jobs and well-being.

It is through issues such as these that the treaty process comes up against what Max Weber (1946: 122) refers to as the "ethical irrationality of the world." In attempting to right past wrongs, new ones potentially arise and present new obstacles to peace and security. The "ethic of ultimate ends," which endeavors to repair the past, therefore comes to be replaced by an "ethic of responsibility" that considers the available options for addressing injustices within the present socio-political reality. In this manner, certainty begins to appear to be the most realistic goal available to the parties through treaty settlement, and justice seems more and more like a minefield full of unknown hazards. Moreover, especially in the non-Aboriginal worldview, the "justice

43. See Waldron (1998) for an argument about the "superseding" of historical injustice. Kymlicka (1995) develops this argument further in the Canadian context, suggesting that First Nations are due reparation not for what they have lost, but for the inequalities they currently face. See Poole (2000) for a thoughtful discussion of both authors.
44. Statement made at LMRAC meeting, 12/9/99.
45. Statement made at a Delta Public Meeting, 11/30/00.

of certainty" takes the form of a universal sameness (as economic actors) that provides all with the common benefit of being able to move forward in their relationships.

These issues spill over into debates about universal versus particular standards of justice. The non-Aboriginal vision of justice as sameness is based on several universal principles, such as equality, fairness, and utility. But the particularity of First Nation demands often stand in conflict to these universal principles.

What First Nations were really saying to government was that European-based, western views on everything from rights through to land tenure are contingent. "They are your views and they are no better than our views. If you are going to sit down and negotiate with us you are going to have to accept that all of the foundational beliefs that you have developed, the legitimacy they have gained, and the manufacture of consent that occurs around them, are the products of a certain set of cultural assumptions." And the government thinks, "You want us to come to the table and put all of these assumptions on the table? Oh my God! This could turn the world inside-out" (provincial representative).[46]

In this statement, non-Aboriginal government notions of bureaucratic rationality are challenged by the specificity of First Nations' worldviews. Furthermore, it should be added that First Nations' visions of justice do not represent a single, easily-identified particularism that is simply contrary to European universalism. Instead, there is a multiplicity of First Nations' realities and visions of justice, each with varying degrees of separateness from the principles of European universalism. The cacophony of these visions, part of the ethical irrationality of the modern world, often leads governments to throw up their hands and to seek a pragmatic, universal vision of justice. Again, it makes the option of prioritizing certainty more attractive.

Sidestepping the challenges of addressing particular visions of justice potentially leads to a series of graver problems. As Poole (2000: 6) writes, "[j]ustice is not merely a matter of imposing a pre-existing principle of justice, it must respond to voices from outside the tradition in which the principle of justice was formed." However, recognition of particularity in a manner that simply reifies the group's identity and provides the group with limited material redistribution threatens to foster resentments rather than reconciliation. To achieve the latter goal it is necessary that the universal notions of justice propagated at the treaty table be understood as particular notions, unfixed and open to deconstructive challenge. Only then could a dialogue take place that would permit a tolerance for and interaction amongst multiple notions of justice (i.e., both affirmative and transformative).

---

46. Interview transcript, 2/1/01.

d) Temporal Symbolic Violence

A final form of symbolic violence evident in the process of treaty-making occurs with regard to the temporal objectives of treaties: Are the negotiating parties seeking to repair the past or to improve the future? Few involved in the B.C. Treaty Process actually treat these as two separate questions. The essential difference in visions is one of emphasis. For First Nations, the path to a better future runs clearly through discussions about the past — about the hardships suffered and their impact on First Nations societies. They argue that an acknowledgement of past injustices, through material redistribution and symbolic recognition, is a necessary step if First Nations are going to "heal" their communities and arrive at the better "future" stressed by the non-Aboriginal governments. But for the latter, all of this discussion about the past is nothing more than a quagmire in which the treaty process could sink if weighted with the baggage of historical injustices.

I really believe it (the past) is a powerful reminder of why the treaty process is so important. It is important to be educated about the historical, legal and cultural context of treaty-making. British Columbia's perspective, however, is that while there are legal and historical reasons for being here, the fundamental reason is to look at the future. The past is mired in uncertainty (provincial representative).[47]

This statement acknowledges the importance of the past, but argues that it is a distraction from the fundamental goal of certainty. This is not an uncommon statement for a provincial or federal government representative to make, reflecting the non-Aboriginal governments' interpretation of the B.C. Claims Task Force's (1991) theme of "creating future relationships." This theme, as it is presented in the Task Force report, by no means precludes discussion of the past. However, since the non-Aboriginal governments only agreed to the recommendations of this report, and not the historical overview provided therein, they have been able to firmly hold to the position that treaty-making is a "political" process and therefore they are not required to acknowledge the historical existence of, or their post-contact infringement upon, Aboriginal title. As a consequence, they are able to avoid discussions of the past and to direct the conversation toward issues of pragmatic importance to achieving certainty. This avoidance, however, often causes deep offence amongst First Nations representatives as they see this as a continuation of Canada and B.C.'s policies of disrespecting Aboriginal cultures. In their view, the position held by the non-Aboriginal governments severs the relationship between the present

47. Statement made in response to a main table presentation made by the Tsawwassen First Nation, 7/30/99.

and the past, and by bracketing the latter, it silences any discussion of the responsibility or culpability of the non-Aboriginal governments for the injustices experienced by First Nations.[48]

The issue of past versus future visions of justice invokes two related concerns: apology and compensation. First, it is not uncommon for a First Nation to request that an apology be made to their community in the course of treaty negotiations to acknowledge the negative impact non-Aboriginal government actions have had on their lives. This symbolic gesture is seen as extremely important in light of other apologies that have been made both within and outside of Canada for injustices that, in the eyes of Canadian Aboriginal persons, are less severe than what they have experienced.

The federal government has apologized to the Japanese, they have apologized to others they have done wrong to, who aren't even part of the short history of this country. They can apologize to them, and certainly they deserve it, but they can't do it for us. Certainly it is part of our healing to have some acknowledgement that they did some grievous wrongs to our people. ...And I think that would go a long way for all of us. First Nations people would be able to say, "Okay, it will never happen to us again, now we can look forward" (Squamish First Nation representative).[49]

Once you know that you have an agreement it's much easier to deal with those types of things (apologies). If those things are preconditions to negotiations it's much more difficult: "I won't negotiate with you unless you apologize" is much more difficult than, "now that we have reached this agreement what we need to make this work for us and our people is that you include an apology" (federal representative).[50]

First Nation communities harbour feelings of profound distrust towards non-Aboriginal governments. For First Nation communities, a show of honour on the part of the non-Aboriginal governments is necessary for them to believe that they will not experience new harms, nor continue to suffer the same injustices, under treaties. Thus, for them, an apology is a promise offered by the non-Aboriginal governments, stating that assimilative actions of the sort carried out in the past, will not be carried out in the future (Tavuchis, 1991). But an apology is not a simple act in the context of treaty-making. The non-Aboriginal governments, regardless of whatever personal feelings government representatives may hold with regard to the rightness or wrongness of past actions, feel that the risk of liability being attached to an apology is too great. For this reason, symbolic acts of this nature cannot be employed as tools for

48. See Cuneen (1999: 129) for similar arguments regarding the Australian government and the past.
49. Interview transcript, 11/10/00.
50. Interview transcript, 8/17/00.

moving talks forward,[51] unless delivered for a non-treaty matter such as residential schools.[52]

Apologies are only likely to be delivered, if at all, after the major elements of the treaty have been delineated. This is the only time that an apology, from the perspective of the non-Aboriginal governments, would be safe. However, this raises the question of whether the sincerity of an apology is less meaningful to the person or group wronged when it is delivered without risk. Will a carefully constructed and conveniently delivered apology have the same positive impact on Aboriginal/non-Aboriginal relations as one offered sincerely and without thought to the consequences? Tavuchis (1991) suggests that group-to-group apologies are seldom about sincerity or sorrow; rather, they concern the creation of a public record of injustice. However, this limitation on public apology may prove inadequate in instances where apologies are provided to Aboriginal peoples who have distinct cultural traditions that emphasize concepts of shame and dignity. In these circumstances, convenient and carefully worded apologies may not meet up to the ritualized standards of the community in question (Miller, 2001).

Even more controversial within discourses of treaty-making is the second element of past versus future visions of justice: compensation. Although many First Nations will seek restitution of lands, resources and cultural objects through treaty negotiations, there will also be cash disbursements paid to First Nations through treaty settlements. The intention behind these cash settlements is that they will help "make up for"[53] some of the injustices that occurred in the past, but the non-Aboriginal governments neither wish to catalogue the injustices that are to be addressed through cash settlements nor do they want to refer to these monies as "compensation."

Non-Aboriginal government arguments against trying to assign monetary value to historical injustices typically run as follows:

From a nuts and bolts perspective, if you start looking at compensation for past takings, then you start thinking, "How do we even quantify that?" "... How do we justify spending a lot of money to count up what we can't even count anymore?" (provincial representative).[54]

In so many ways, compensation looks backwards. If you have got to make a choice about where to allocate scarce resources, would you put the money toward the future, and the children? Or would

51. For discussion of the use of apology in negotiations and the role it can play in helping parties get beyond an impasse see Cohen, 1999; Fisher and Ury, 1991; Levi, 1997; Schneider, 2000; Taft, 2000; and Tannick and Ayling, 1997.
52. See Serafini (2000). The federal government offered an apology to the Nu-chah-nulth for administering the residential school system and for the impact these schools had on Nu-chah-nulth culture.
53. Provincial representative speaking to Sechelt representatives at main table, 8/11/99.
54. Interview transcript, 6/1/01.

you put it toward the past? Just calculating potential damages is going to be money spent on accountants and lawyers (provincial representative).[55]

By employing arguments such as these, non-Aboriginal government representatives acknowledge that a host of wrongs have been visited on First Nations peoples in British Columbia. However, the scope and magnitude of these injustices is transformed into a rationale for circumventing issues of compensation. Rather than deal with compensation on the symbolic and moral level on which First Nations try to engage the governments, non-Aboriginal government representatives shift the focus to that which can be quantified. The implication is that that which cannot be counted cannot be provided reparation. Thus, the magnitude of the non-Aboriginal governments' past crimes is used as a means to make First Nations demands seem unreasonable and to once again limit the spectrum of negotiable topics to the concrete and pragmatic.

With regard to the use of the term "compensation," First Nations involved in treaty-making argue that compensation should be a matter of negotiation within treaty talks. They cite the recommendations of the B.C. Claims Task Force (1991), and, in particular, the second recommendation, which states that any party can place any issue on the table for negotiation. However, the federal and provincial governments have thus far been reluctant to discuss this issue.

When you look at the issue of compensation, for example, for First Nations that equals a big part of justice. And governments haven't even allowed it to be put on the table. So we can't even explore interests in what we are really looking for in justice? B.C. and Canada say, "No, we are forward looking, we are forward looking." ."..What is heard is basically," "When you see what the cash settlement is you will have to factor into it whether or not that is enough to compensate you for past wrongs — but we are not going to talk about it." "That's the informal word on the negotiation table" (Tsawwassen First Nation representative).[56]

Compensation is due when somebody has done something that is a breach of law, or where there is a compensatory obligation. The Crown has never accepted the First Nations' view that we stole the land. The view was that Her Majesty conferred the establishment of Crown land and the Supreme Court has said that, and they refer to Aboriginal interests existing on Crown land (federal representative).[57]

The polarization of these two views presents a huge hurdle for treaty negotiations. The divide between these two visions of justice is even greater in urban settings where "compensation" has meaning beyond providing recognition of the wrongs committed by the governments of Canada and B.C. against the First Nations of British Columbia. For First Nations in an urban setting, the land and resources they could potentially claim have been largely

55. Interview transcript, 6/1/01.
56. Interview transcript, 6/26/00.
57. Interview transcript, 5/3/01.

developed or exploited, leaving them with little foundation on which to build a local economy. The Memorandum of Understanding (1993) on treaty cost-sharing negotiated between Canada and B.C., states that any urban lands redistributed in treaty are to be valued at current market prices. In densely populated urban areas like Vancouver, where the price of property is extremely high, the addition of a small parcel of land to a treaty settlement package could then account for a significant portion of the final agreement.[58]

The non-Aboriginal governments, however, feel that they risk too much in terms of potential legal liability if the term "compensation" is used within treaty-making. For example, if treaty negotiations were to fail, but through the process non-Aboriginal governments were to acknowledge that a need for compensation exists, First Nations could then take their land claims to the Supreme Court on much more solid footing. In this manner, the term compensation introduces a great deal of *uncertainty* into the treaty discussions, and the Federal government, in particular (on the advice of its Department of Justice), has remained adamant that this term must remain off the table. In the context of the Musqueam negotiations, which are currently stalled at an early stage of the process because the Musqueam refuse to accept a Framework Agreement that does not list "compensation" as one of the issues of debate, the parties have examined alternative language. As well, representatives for the province, Canada and the First Nations have met to discuss language that might provide the same acknowledgement of past wrongs that is implied by the term compensation, but which will not make the non-Aboriginal governments legally vulnerable.

Indeed, this remains one of the key differences of vision separating the two parties. Whereas First Nation visions of justice are firmly entrenched in the past, and look to the B.C. Treaty Process to address this history and to effect repair, the non-Aboriginal governments envision treaty-making as a means for delivering B.C. into the future, offering the province less cumbersome and problematic options for governance. In addition, both parties possess different ideas of what reconciliation will entail. First Nations see reconciliation as built on "healing" and renewed trust that derive from a solemn promise that the past will not repeat itself. In contrast, non-Aboriginal governments envision reconciliation in the establishment of improved, cooperative relationships carefully detailed in treaty documents. For them, this represents an element of

58. Many First Nations representatives suspect that the governments base their settlement offers on a *per capita* formula that provides $40,000 to $60,000 (in cash, land and resources combined) per First Nation member. If such a formula does exist, and indications from offers made in the B.C. Treaty Process thus far suggest that it does, this places severe limitations on the land demands of urban First Nations since any land they receive through treaty will take up a significant proportion of their final settlement.

finality, in that clear processes will be established for dealing with any conflicts that arise in the newly established relationship. But for many First Nations, this finality contradicts the vision of the future, which is delicately entwined with the visions of the past they hold — that it is impossible for the leaders of today to negotiate away the Creator-granted rights of future generations.

In light of these differences, the procedural guidelines of treaty-making appear inadequate for ensuring a fair and open discussion amongst competing worldviews. The power imbalances that are present — the differing levels of economic and symbolic capital possessed by each of the parties — create conditions whereby government visions of affirmative repair are able to assert themselves as rational, as common-sense, as doxic. This occurs not necessarily through outright demands and displays of raw force, but rather through the subtle persuasion of symbolic violence discourse that presents the non-Aboriginal governments' mandates as "realistic," while Aboriginal demands for compensation and for the recognition of past injustices are viewed as problematic.

Conclusion: The Problem of Affirmative Reparation

The certainty language that we used in Nisga'a is quite interesting. It speaks to the fact that we envision a treaty settlement as the full and final settlement, and it recognizes the past. And while it has been difficult for some of the participants in the process to hear the language of certainty, the more you talk about it, the more it starts to be clear that it does in itself convey a reconciliation (provincial representative).[59]

Zygmunt Bauman (1999) speaks of the "political economy of uncertainty." In this environment dominated by unknown and little understood forces such as "recession," "fall in market demand," "downsizing" and "globalization," individuals are left less "certain" about the future of their livelihoods. Add to this the predominance of "risk" (Beck, 1992; Ericson and Haggerty, 1997), whereby dangers formerly relegated to the lower echelons of society now seem ever-present and of potential detriment to all social classes, and one can understand the lure of the promise of certainty.

The appeal of certainty is felt particularly in economic matters. In British Columbia, various economic reports have estimated a significant loss of investment, jobs and wealth in the province all in part due to the reigning *uncertainty* surrounding land claims (KPMG, 1996; Grant Thornton Management Consultants, 1999). These reports suggest that businesses and investors wish to see certainty achieved in a manner that permits them more security in

59. Interview transcript, 6/1/01.

their projects and which places fewer administrative obstacles in the way of their business operations. When asked about certainty, business representatives draw on empirical data citing lost investment dollars and a significant "B.C. Discount" — an undervaluing of the price of B.C.'s lands and resources due to the uncertainty over land claims. It should be noted, however, that land claims are not the only factor impacting the financial health of British Columbia. For example, taxation levels, government regulatory policies, market downturns in Asia, and lower global prices for natural resources are all said to negatively affect profits in B.C. Nonetheless, land claims reflect an area of risk over which governments and businesses can exhibit a modicum of control through the signing of economically rational treaties, something that cannot be said for business risks such as price fluctuations. Under these conditions, the security and predictability suggested by the term "certainty" appear more attractive than ever — to the point where certainty itself seems equivalent to justice. It is as though by establishing a new relationship in clear and concise terms we can overcome our past differences and move forward into a better future.

It is in this environment that the symbolic violence of affirmative reparations is employed. First Nations are encouraged to think in terms of what is practical and realistic — with practicality and reality defined in terms of the interests of government and business. This entails negotiating within the contours of the provincial and federal mandates and recognizing that the non-Aboriginal governments are not going to step outside of these pragmatic principles. It also entails First Nations planning how they will regulate and administer their post-settlement lands, a requirement non-Aboriginal governments stress continuously throughout the negotiations. In this light, First Nations are provided "treaty-related measure" monies to explore how they will manage their forestry operations, how they will regulate local fisheries, how they will implement taxation, along with many other matters of governance. While these considerations seem on the surface to be practical preparations for post-treaty economic participation, they also represent an attempt to immerse the First Nation in the consuming logic of the modern economy, encouraging the First Nation to position itself in a manner amenable to this economic order rather than as an alternative to it.

This is the nature of affirmative repair. However, as Nancy Fraser's suggests, reparative schemes that offer merely affirmative remedies to the problem of justice are unlikely to resolve the social tensions resulting from injustice. Affirmative reparation provides a "surface reallocation" of material goods and opportunities to participate in the mainstream economy. This redistribution is tied, however, to an affirmative strategy of recognition that provides limited recognition through a multi-culturalist framework. In such a framework, the distinctiveness of the Aboriginal group is essentialized and portrayed as one

amongst many ethnic differences. This characterization prioritizes the divergences between Aboriginal and non-Aboriginal communities without problematizing the nature of the relationship between these two groups or examining how non-Aboriginal cultures came to devalue and marginalize the cultures and identities of First Nations. In the moral universe of affirmative reparation, the essentialized identity of the First Nation "other," combined with the affirmative redistribution of material goods and economic opportunity, presents itself to the liberal mindset of the ordinary citizen as a relationship of special treatment whereby one group, based upon their ethnic identity, receives privileges that contradict accepted discourses of equal rights and responsibilities.[60]

The symbolic violence of affirmative repair also operates to try to prevent transformative visions of justice from entering into the treaty discussions. It is at this point that we must move beyond Fraser's model to consider the specific justice demands of First Nations in B.C. It has already been mentioned that the nature of the assimilationist assault on First Nations in Canadian society requires a form of recognition that acknowledges the historical existence and values the cultural complexity of First Nations societies. In a country where First Nations cultures have been derided as animalistic, and their societies dismissed as nomadic, it is not enough simply to deconstruct these, as well as European, identities to arrive at a fluid and unfixed notion of personal identity. This does not mean, however, that we need to simply accept a fixed, and potentially authoritarian, communitarianism that constructs cultures as entirely separate and discreet entities. Moreover, it is a mistake to assume that all First Nations aspire to such a rigidly determined notion of group identity; indeed, some First Nations understand their "groupness" in a manner that is at once palpable and fluid, that persists through time while it also changes and adapts to its changing environment.

In more concrete terms, we can get a sense of this fluid notion of groupness in concepts brought to the treaty table by First Nations such as "shared territories" (referring to overlapping jurisdictions that belong to more than one group), intermarriages (as a means for connecting groups in a relationship), co-management of lands, joint ventures for mutual benefit, as well as a holistic sense of stewardship over the land. By way of illustration, the Tsleil-Waututh

60. Affirmative reparation can also present problems internally for a First Nation. The limited affirmative repair effected through earlier attempts to address the land claims issue typically acknowledged an essentialized notion of Aboriginality, distributed surface reallocations of material resources and political power, and placed these in the hands of a comprador First Nations elite. This elite was then able to establish control over the First Nation and ensure benefits for their family members, ignore the needs of women and youth, and/or commit any number of corrupt acts (see Charleson, 1999).

First Nation recognizes that a return to pre-contact control over their traditional lands is impossible, and has instead proposed an "integrated treaty-management approach" to treaty negotiation. The key document in which they explain this approach, *Our Land to Share* (2000), recalls a time when boundaries between Aboriginal groups were less fixed, when a sharing of resources between neighbours was the norm, and when marriages between different peoples was a means for them to create relationships and provided opportunities to adapt to other cultures. Based on these historical experiences, the Tsleil-Waututh negotiators propose a model of treaty-making that does not simply involve the selection of land for Tsleil-Waututh jurisdiction and economic control; rather, they recommend partnerships between the First Nation and the non-Aboriginal residents, municipal governments and businesses of the North Shore of Vancouver. Their goal is to secure sufficient lands for the continued subsistence of the Tsleil-Waututh people, but in a manner that allows for a sharing between peoples. In this sense, their proposal has what we might call, returning to Fraser, transformative potential. Not only does it refuse the reification of their group identity through the parceling of the land into bounded properties, it also imagines a transformation of economic relationships whereby groups would operate on principles of sharing and equal participation rather than outright competition.

The non-Aboriginal governments at the treaty table viewed this proposal as a "non-starter." For them, this fluid notion of sharing was contrary to their understanding of economic certainty because, for one, lacking boundaries of clear jurisdiction it threatened to require more cumbersome processes of consultation that would waylay economic activity in Tsleil-Waututh traditional territories. In this respect, the government's insistence on a program of affirmative repair is what threatens to reify a Tsleil-Waututh group identity rather than a desire within the group for rigid self-definition.

[The governments want] to put a nice strong fence around what a First Nation is. An approach that we have taken is that there would be an opportunity for the Tsleil-Waututh to participate in different ways throughout the whole of the traditional territory, whether it be management of resources, participating in development, or co-managing a park, or looking after smaller parcels of First Nation land. And the response to that was that we could only deal with settlement lands and all of the rest of it would fall outside of treaty. ...And that certainly wouldn't work for the First Nation. (Tsleil Waututh representative).[61]

Thus, by refusing to consider this unfixed understanding of Tsleil-Waututh territory and identity the non-Aboriginal governments also acted to keep a creative and potentially transformative vision of the future relationship between Aboriginal and non-Aboriginal peoples off of the treaty table.

---

61. Interview transcript, 10/24/00.

First Nations still may in the end succeed in having transformative visions of justice recognized at the treaty table, but this will be an uphill battle. Alternatively, they may succeed in implementing transformative visions of justice after receiving the distributions of affirmative repair, but to do this they will need to surmount the essentializing tendencies of the treaty process, as well as the potential resentments of their non-Aboriginal neighbours.[62] However, a more promising route would be for visions of justice such as that offered by the Tsleil-Waututh to be given greater consideration within a less restrictive treaty process. Simply dismissing these visions as "pie in the sky," "unrealistic," or "misguided" represents a failure to engage in an open conversation about the possibility of reconciliation (Asch, 2001). In this respect, the focus of this paper is not to promote one specific transformative reparative option for revising the relationship between Aboriginal and non-Aboriginal persons within British Columbia. More modestly, it calls for an opening of the treaty process so that transformative visions of redistribution and recognition can be taken into account.

References

Abelove, Henry, Aina Barale, Michele, and David M. Halperin,
1993 *The Lesbian and Gay Studies Reader*. New York: Routledge.

Alfred, Taiaiake
1999 *Peace, Power, Righteousness: An Indigenous Manifesto*. Don Mills, ON: Oxford University Press.

Alvarez, Alex
2001 *Governments, Citizens and Genocide: A Comparative and Interdisciplinary Approach.* Indianapolis: University of Indiana Press.

ARA Consulting Group
1995 *Social and Economic Impacts of Aboriginal Land Claim Settlements: A Case Study Analysis*. Victoria: Queen's Printer.

Asch, Michael
2001 "Indigenous Self-Determination and Applied Anthropology in Canada: Finding a Place to Stand. " *Anthropologica*, XLIII: 201–207.

Ashcroft Bill, Griffiths, Gareth and Helen Tiffin (eds.)
1995 *The Postcolonial Studies Reader*. London: Routledge.

Baert, Patrick
1998 *Social Theory in the Twentieth Century.* New York: New York University Press.

Baird, Kim
1999 *Speaking Notes of Chief Negotiator Kim Baird.* Main Table Meeting, Tsawwassan First Nation Community Hall, July 30th.

62. See Carroll and Ratner, 2001 for a critique of the stark contrast Fraser draws between affirmative and transformative justice. Carroll and Ratner argue that it is possible for affirmative repair to lead to a later stage of transformative repair.

Barkan, Elazar
2000 *The Guilt of Nations: Restitution and Negotiating Historical Injustices*. New York: W. W. Norton & Company.

Bauman, Zygmunt
1999 *In Search of Politics*. Stanford, California: Stanford University Press.

BCTC
2000 *What's the Deal with Treaties: A Lay Person's Guide to Treaty Making in British Columbia*. Vancouver: British Columbia Treaty Commission.

Beck, Ulrich
1992 *Risk Society: Towards a New Modernity.* Tr. by Mark Ritter. London: Sage Publications.

Bellett, Gerry
1999 "Treaty Talks 'Critical' for Urban Bands: B.C.'s top negotiator says the outcome of negotiations with the Tsawwassen has national implications" *The Vancouver Sun*, Monday, October 25: B5.

Benhabib, Seyla, Judith Butler, Drucilla Cornell, and Nancy Fraser (eds.)
1994 *Feminist Contentions.* New York: Routledge.

Blomley, Nicholas K.
1996 "'Shut the Province Down': First Nations Blockades in British Columbia, 1984–1995" *BC Studies*. 111, Autumn: 5–36.

Blum, Lawrence
1998 "Recognition, Value, and Equality: A Critique of Charles Taylor's and Nancy Fraser's Accounts of Multiculturalism" *Constellations*. 5 (1): 51–68.

Bourdieu, Pierre
1987 "The Force of Law: Toward a Sociology of the Juridical Field" *Hastings Law Journal,* 38: 805– 853.
1990 *In Other Words: Essays Towards a Reflexive Sociology*. Stanford, California: Stanford University Press.
1991 *Language and Symbolic Power.* Translated By G. Raymond and M. Adamson. Cambridge, MA: Harvard University Press.

British Columbia Claims Task Force
1991 *The Report of the British Columbia Claims Task Force.* Vancouver: British Columbia Land Claims Task Force.

Brooks, Roy L. (ed.)
1999 *When Sorry Isn't Enough: The Controversy Over Apologies and Reparations for Human Injustice*. New York: New York University Press.

Bush, Robert A. Baruch and Joseph P. Folger
1994 *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*. San Fancisco: Jossey-Bass Publishers.

Bryson, Valerie
1992 *Feminist Political Theory: An Introduction*. Basingstoke: Macmillan.

Calder v. Attorney-General Of British Columbia
1973 34 D.L.R. (3d) 145 (also reported: [1973] S.C.R. 313, [1973] 4 W.W.R. 1).

Carroll, W. K. and Ratner, R. S.
2001 "Sustaining Oppositional Cultures in 'Post-Socialist' Times: A Comparative Study of Three Social Movement Organizations" *Sociology*, 35 (3): 605–629.

Charleson, Karen
1999 "Finger-Pointing and Feuding Hinder Aboriginal Advances," *Vancouver Sun*, Saturday, March 25: A23.

Cohen, Jonathan R.
1999 "Advising Clients to Apologize" *California Law Review*, 72: 1009–69.

Cole, Douglas and Chaikin, Ira
1990 *An Iron Hand Upon the People: The Law Against the Potlatch on the Northwest Coast*. Vancouver: Douglas & McIntyre.

Cuneen, Chris
1999 "Criminology, Genocide and the Forced Removal of Indigenous Children from their Families" *The Australian and New Zealand Journal of Criminilogy*, 32 (2): 124–138.

Delgamuukw v. British Columbia
1997 3 S.C.R. 1010 (S.C.C.).

Derrida, Jacques
1992 "Force of Law: The 'Mystical Foundation of Authority'" pp. 3–67 in D. Cornell, M. Rosenfeld, and D.G. Carlson (Eds.) *Deconstruction and the Possibility of Justice*. London: Routledge.

Doubt, Keith
2000 *Sociology After Bosnia and Kosovo: Recovering Justice*. Lanham, Maryland: Rowman and Littlefield.

Dwyer, Susan
1999 "Reconciliation for Realists" originally published in *Ethics and International Affairs*, 13 (access date: November 6, 2001) http://www.pwias.ubc.ca/programs/descothe/papers/marchak/contents.htm

Eagleton, Terry
1991 *Ideology: An Introduction*. London: Verso.

Ericson, Richard and Kevin Haggerty
1997 *Policing the Risk Society*. Oxford: Clarendon Press.

Fisher, Robin
1977 *Contact and Conflict: Indian-European Relations in British Columbia, 1774–1890*. Vancouver: University of British Columbia Press.

Fisher, Roger and William Ury
1991 *Getting to Yes: Negotiating Agreement Without Giving In*. New York: Penguin Books.

Fraser, Nancy
1997 *Justice Interruptus: Critical Reflections on the "Postsocialist Condition*." New York: Routledge.
2000a "Rethinking Recognition" *New Left Review*, 3, May-June: 107–120.
2000b "Why Overcoming Prejudices is Not Enough: A Rejoinder to Richard Rorty" *Critical Horizons*, 1 (1) February: 21–28.

Gramsci, Antonio
1971 *Selections from the Prison Notebooks (Selections).* Tr. By Q. Hoare and G. N. Smith. New York: International Publishers.

Grant Thornton Management Consultants
1999 *Financial and Economic Analysis of Treaty Settlements in British Columbia*. Victoria: Queen's Printer for British Columbia.

Habermas, Jürgen
1984 *The Theory of Communicative Action: Reason and the Rationalization of Society*, Volume I, Beacon Press, Boston.
1990 *Moral Consciousness and Communicative Action.* Tr. by C. Lenhardt and S. W. Nicholsen. Cambridge, MA: MIT Press.

Haig-Brown, Celia
1988 *Resistance and Renewal: Surviving the Indian Residential School.* Vancouver: Tillacum Library.

Jagose, Annamarie
1997 *Queer Theory: An Introduction*. New York: New York University Press.

KPMG
1996 *Benefits and Costs of Treaty Settlements in British Columbia: A Financial and Economic Perspective*. Vancouver: KPMG.

Kymlicka, Will
1995 *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Clarendon Press.

Levi, Deborah L.
1997 "Note: The Role of Apology in Mediation" *New York University Law Review*, 72: 1165–1210.

Marx, Karl and Frederick Engels
1985 *The German Ideology*. New York: International Publishers.

Mathias, Joe and Gary Yabsley
1991 "Conspiracy of Legislation: The Suppression of Indian Rights in Canada" *BC Studies* Special Issue 89, Spring: 34–45.

McEvoy, Kieren and Harry Mika
2002 "Restorative Justice and the Critique of Informalism in Northern Ireland" *British Journal of Criminology* 42: 534–562.

Memorandum of Understanding
1993 *Memorandum of Understanding Between Canada and British Columbia Respecting the Sharing of Pre-Treaty Costs, Settlement Costs, Implementation Costs and the Costs of Self-Government* June, 21.

Miller, Bruce G.
2001 *The Problem of Justice: Tradition and Law in the Coast Salish World*. Lincoln: University of Nebraska Press.

Minow, Martha
1998 *Between Vengeance and Forgiveness: Facing Genocide and Mass Violence*. Boston: Beacon Press.

Mitchell-Banks, Paul
1998 "How Settlements Will Affect Access to Natural Resources" pp. 111–138 in Roslyn Kunin (ed.), *Prospering Together: The Economic Impact of the Aboriginal Title Settlements in B.C.* Vancouver: Laurier Institute.

Pateman, Carol
1989 *The Disorder of Women*. Stanford, Calif.: Stanford University Press.

Phillips, Anne
1997 "From Inequality to Difference: A Severe Case of Displacement? " *New Left Review*, 224, July/August: 143–53.

Poole, Ross
2001 "Justice or Appropriation? Indigenous Claims and Liberal Theory" *Radical Philosophy*, 101, May/June: 5–17.

Power, Samantha
2002 "*A Problem From Hell*": *America and the Age of Genocide*. New York: Basic Books

Price Waterhouse
1990 *Economic Value of Uncertainty Associated with Native Land Claims in B. C.* Vancouver: Price Waterhouse.

R. V. Sparrow
1990 File No.: 20311.1988: November 3; 1990: May 31.

Ratner, R. S., Carroll, William K. and Andrew Woolford
2002 "Wealth of Nations: Aboriginal Treaty-Making in the Era of Globalization" pp. 217–248 in John Torpey (Ed) *Politics and the Past: On Repairing Historical Injustices* Lanham, MD: Rowman & Littlefield.

Ray, Arthur J.
1999 "Treaty 8: A British Columbia Anomaly" *BC Studies* 123, Autumn: 5–58.

Ryan, Phil
1999 "Discourse, Democracy (and Socialism?): A Reading of Habermas's Between Facts and Norms" *Studies in Political Economy*, 60, Autumn: 121–138.

Rynard, Paul
2000 "'Welcome In, But Check Your Rights at the Door': The James Bay and Nisga'a Agreements in Canada." *Canadian Journal of Political Science*, XXXIII (2) June: 211–243.

Samson, Colin
1999 "The Dispossession of the Innu and the Colonial Magic of Canadian Liberalism" *Citizenship Studies*, 3 (1): 5–25.

Schneider, Carl D.
2000 "What it Means to be Sorry: The Power of Apology in Mediation" *Mediation Quarterly*, 17 (3) Spring: 265 –280.

Serafini, Shirley
2000 *Apology to the Nuu-chah-nuulth Concerning Indian Residential Schools by the Government of Canada*. (access date: January 21, 2001) <http://www.turtleisland.org/news/apology.htm>.

Slade, Harry and Paul Pearlman,
1998 "Why Settle Aboriginal Land Rights" pp. 45 –84 in Roslyn Kunin (ed.), *Prospering Together: The Economic Impact of the Aboriginal Title Settlements in B.C.* Vancouver: Laurier Institute.

Stevenson, Mark L.
2000 "Visions of Certainty: Challenging Assumptions" paper presented at *Speaking Truth to Power: A Treaty Forum*. Vancouver: British Columbia Treaty Commission.

Taft, Lee
2000 "Apology Subverted: The Commodification of Apology" *Yale Law Journal*, 109, March: 1135–1160.

Tannick, Marshall H. and Teresa J. Ayling
1996 "Alternative Dispute Resolution by Apology: Settlement by Saying 'I'm Sorry'" *Hennepin Law*, July-Aug, (access date: January 21, 2001) <http://www.mansfieldtanick.com/art_19.htm>.

Tavuchis, Nicholas
1991 *Mea Culpa: A Sociology of Apology and Reconciliation*. Stanford. California: Stanford University Press.

Tennant, Paul
1990 *Aboriginal Peoples and Politics*. Vancouver: University of British Columbia Press.

Torpey, John
2001 "'Making Whole What has been Smashed': Reflections on Reparations" *The Journal of Modern History*, 73, June: 333–358.

Trey, George E.
1992 "Communicative Ethics in the Face of Alterity: Habermas, Levinas and the Problem of Post-Conventional Universalism" *Praxis International*, 11 (4): 412–27.

Tsleil-Waututh First Nation
2000 *Our Land to Share: A Future for the People of the Inlet: A Comprehensive Approach to Settling an Urban First Nation Treaty in British Columbia.* December, Vancouver: Tsleil Waututh First Nation.

Tully, James
1995 *Strange Multiplicity: Constitutionalism in an Age of Diversity.* Cambridge: Cambridge University Press.
2000 "Introduction" paper presented at *Speaking Truth to Power: A Treaty Forum.* Vancouver: British Columbia Treaty Commission.

Tutu, Desmond M.
1999 *No Future Without Forgiveness*. New York: Doubleday.

Waldron, Jeremy
1998 "Superseding Historic Injustice" *Ethics*, 103: 4–28.

Weber, Max
1946 *From Max Weber: Essays in Sociology*. Tr. by H. H. Gerth and C. Wright Mills (eds.). New York: Oxford University Press.

Yar, Majid
2001 "Beyond Nancy Fraser's 'Perspectival Dualism'" *Economy and Society*. 30 (3): 288–303.

Young, Iris Marion
1997 "Unruly Categories: A Critique of Nancy Fraser's Dual Systems Theory" *New Left Review*. 222, March/April: 147–60.

Zack, Naomi (ed.)
1997 *Race/Sex: Their Sameness, Difference, and Interplay*. London: Routledge.