

“THE DEPARTMENT IS GOING BACK ON THESE PROMISES”: AN EXAMINATION OF ANISHINAABE AND CROWN UNDERSTANDINGS OF TREATY

Brittany Luby

University of British Columbia
Vancouver, British Columbia
Canada, V6T 1Z4
brittany.luby@gmail.com

Abstract / Résumé

Indigenous interpretations of treaty are often gleaned from Euro-Canadian documents like Crown publications and correspondence. In her analysis of Treaty #3, Brittany Luby challenges the assumption that Anishinaabe sources are strictly oral and that engaging Anishinaabe perspectives requires an ethnographic (re) reading of Euro-Canadian documents. Using Anishinaabe written sources like Paypom Treaty and petitions to the Crown, Luby examines the Anishinaabe as legal agents and active writers. She highlights that Anishinaabe negotiators—much like Euro-Canadian Commissioners—participated in Treaty #3 to maintain fisheries, protect mineral deposits, and guarantee territorial sovereignty. By explicating treaty participants’ conflicting understandings of “rights” and “use,” Luby demonstrates that no single document accurately outlines the terms and conditions of Treaty #3.

On glane souvent les interprétations autochtones des traités en consultant des documents tels que des lettres et des publications d’État. Dans son analyse du Traité n° 3, l’auteure s’oppose à l’hypothèse selon laquelle les sources Anishinaabe sont strictement orales et la compréhension du point de vue des Anishinaabe exige une (re)lecture ethnographique des documents euro-canadiens. En utilisant des sources écrites Anishinaabe telles que le traité de Paypom et les pétitions adressées à la Couronne, l’auteure examine les Anishinaabe comme des mandataires et des rédacteurs actifs. Elle met en évidence que les négociateurs Anishinaabe, de la même manière que les commissaires euro-canadiens, ont participé au Traité n° 3 pour conserver les pêches, protéger les gisements minéraux et garantir la souveraineté territoriale. En expliquant la compréhension conflictuelle des notions de « droits » et d’« usage » chez les participants au Traité, l’auteure démontre qu’aucun document unique ne présente avec exactitude les conditions générales du Traité n° 3.

I. Maajitaamagan¹/ Introduction

It was late October, “the falling leaves moon,” in 1873. Kah-gkee-way, a treaty participant, clung to his mother’s dress and watched as the waabiwayaan—Treaty Commissioners Alexander Morris, Joseph Alfred Norbert Provencher, and Simon James Dawson—paddled into Ne-ong-gah-sing. They had a funny name for a point of land: Northwest Angle, Lake of the Woods. Great White Mother sent them to make homes for more White men. Kah-gkee-way’s mother explained that the “Government Men” travelled from far away to meet with his people on their land.

For days, Kah-gkee-way watched “Red Coats [...] with guns on their shoulders” march between canvas tents while treaty commissioners and district chiefs negotiated Treaty #3.² According to the terms of the written treaty, the Anishinaabe surrendered all title to their lands in northwestern Ontario and southeastern Manitoba—approximately 14,245,000 hectares—to Her Majesty the Queen. In return, the Anishinaabe received Crown-sanctioned rights and benefits, including, but not limited to: reserve lands, cash, an allowance for hunting and fishing tools, and farming assistance.³ Treaty Commissioners fulfilled their mission to obtain land for agriculture, infrastructure, and timber. Yet, although the Canadian officials and the Anishinaabe leaders signed the same document on 3 October 1873, they did not understand it in the same way and Kah-gkee-way grew up uncertain as to whether the Anishinaabe ceded their territories. As Kah-gkee-way’s daughter relayed his history, “I *guess* they signed all of Canada over to the whitemen”⁴ (*italics mine*). Throughout the twentieth century, participants like Kah-gkee-way and Anishinaabe treaty signees reported their frustration over federal policies that removed or reduced Indigenous control over Treaty #3 territories. They maintained—as do their descendants—that Treaty #3 was a land sharing agreement.

Early accounts of treaty negotiations in Canada emphasize Indigenous participants’ unfamiliarity with the treaty process – thus pitting “naive” Indigenous negotiators against “practiced” Crown agents.⁵ However, more recent scholars such as Arthur Ray, Frank Miller, and Frank Tough have decisively shown otherwise by arguing that long-standing diplomatic protocol, established between Indigenous treaty participants and the Hudson’s Bay Company, influenced Indigenous expectations in the case of Saskatchewan.⁶ Others looking at Treaty #7 have pointed to errors in translation between English and Indigenous languages to account for Indian “misunderstanding” of the treaty process. Despite such revisions, treaty histories continue to fall short as authors separate Indigenous testimonies from government records, isolating Indigenous perspectives from Canadian history to the sub-field known as Native history. Treaty #3 offers an interesting opportunity to compare Anishinaabe and Euro-Canadian perspectives as both parties left written records of treaty.

This paper examines the case of Treaty #3 and presents both Anishinaabe and Euro-Canadians as *competent* legal actors, and argues that Anishinaabe and Euro-Canadian treaty makers understood treaty concepts differently. Unlike the Anishinaabe, Crown representatives saw treaty as a foundation for se-

curing the territory and resources fundamental to the expanding Canadian state. Building upon work of Treaty 7 Elders and Tribal Council with Walter Hildebrandt, Sarah Carter, and Dorothy First Rider in *The True Spirit and Intent of Treaty 7* (1996), I demonstrate how federal action after treaty reflected Euro-Canadian understandings of treaty as a tool of colonization as opposed to Anishinaabe perspectives of treaty as a resource-sharing agreement in the Treaty #3 district.

By focusing on Treaty #3 exclusively, I reject synthesizing tendencies in which historians speak of the “treaties of Canada” instead of “Canada’s treaty with the Anishinaabe.” While treating all Indigenous treaties collectively makes Canadian treaty history more digestible, it fails to acknowledge Indigenous interpretations of shared historical moments. What follows is an account of treaty that highlights Anishinaabe perspectives, rather than a narrative of state growth. Moreover, examining Treaty #3 as an independent territory reflects Crown recognition of territorial distinctions *at the time* (1873).

I will examine the nature of treaty, meanings of land cession and sovereignty from Anishinaabe and Euro-Canadian perspectives using both Anishinaabe and Euro-Canadian sources. Contrary to what some historians have argued, Indigenous people did leave written records highlighting their understanding of treaty. This is not to discount the great strides made by legal scholar John Borrows in revaluing Indigenous records of treaty, using material culture—particularly the two-row wampum belt—to reinterpret the Royal Proclamation of 1763 as a guarantee of Indigenous sovereignty.⁷ For Treaty #3, Anishinaabe sources include Paypom Treaty as written by Joseph Nolin. Nolin was a Red River Métis hired by Lake of the Woods District Chiefs to record the 1873 negotiations. Paypom consists of notes from his personal diary.⁸ Various petitions to the Crown and Department of Indian Affairs written by Treaty #3 Chiefs are also used. Using Anishinaabe sources from Treaty #3 helps to combat both the perception that Indigenous peoples were ignorant of the treaty process and the notion that treaty-making in Canada can be understood as a uniform whole.

Euro-Canadian sources include an anonymous newspaper account in the *Manitoban*; Treaty Commissioner Alexander Morris’ official report of 14 October 1873; Chapter 5 from Morris’ book, *The Treaties of Canada with the Indians*; Paypom Treaty; and internal correspondence from the Department of Indian Affairs. By examining Anishinaabe and Euro-Canadian sources in tandem, it becomes evident that both Anishinaabe and Euro-Canadian participants thought about treaty and did so in quite different ways.

Despite theoretical equality as parties to the treaty, and an oral recognition of Anishinaabe sovereignty, written Euro-Canadian sources depict a hierarchal relationship in which Anishinaabe rights are determined by the Crown. Differing interpretations of treaty rights will be exposed through a discussion of Anishinaabe land dispossession, the loss of guaranteed mineral rights, and forced subjugation to the Crown. Organized thematically, not chronologically, such an examination of Indian administration is essential to understanding the Euro-Canadian history of colonialism and the ways in which Euro-Canadian opinions clashed with Anishinaabe interpretations of treaty after 1873. The reproduction of Euro-

Canadian interpretations of Treaty #3 through public histories is explored at length as emblematic of the continued subjugation of Anishinaabe understandings of treaty by the dominant population since 1873.

II. Anishinaabe Aki⁹ versus Land Cession

According to Anishinaabe tradition, the Anishinaabe did not surrender territorial interests in resources with the signing of the treaty, but agreed to share their resources with incoming Euro-Canadians. In his written account of his treaty-making experiences, Treaty Commissioner Alexander Morris notes that he was reprimanded by Treaty #3 signatory Chief Thomas Lindsay (Pow-wa-sung) for claiming universal usufructuary rights to Anishinaabe territories.¹⁰ Faced with Morris' suggestion that the Great Spirit made wood and water for the Red and White man alike, Lindsay responded, "What was said about the trees and rivers wasn't quite true, but it was the Indian's Country, not the White man's."¹¹ Lindsay suggested that the Great Creator may have created trees and rivers for humankind generally, but the trees and rivers in question belonged to the Anishinaabe. He thus denied Euro-Canadian claims to resources within Treaty #3 territories.

Additional records of Anishinaabe voice, however, emphasize their willingness to "lend" Anishinaabe resources to Euro-Canadian residents. During the 1873 treaty negotiations, signatory Chief Sakatcheway reportedly said that "[t]he waters out of which you sometimes take food for yourselves, we will lend you in return."¹² Sakatcheway's words were translated into English by an unknown author and published in the *Manitoban* newspaper on 18 October 1873. In 1880,



Figure 1: Chief Lindsay

Alexander Morris republished the article in *The Treaties of Canada with the Indians of Manitoba and the North-West Territories*. "Lend" suggests that Euro-Canadian use will be conditional. Sakatcheway did not use the Euro-Canadian terms "cede," "surrender," or "relinquish" – not because he failed to understand them or could not articulate the equivalent in Anishinaabe. Rather, Sakatcheway emphasized Euro-Canadian contingent usufructuary rights over territorial claims. He did not sign over the totality of Anishinaabe waters; instead, he simply promised use of the water for the sustenance of Euro-Canadian residents.

Despite claims of land cession embedded in Treaty #3 as published by the Canadian federal government, Euro-Canadian affirmations of continuous Indigenous resource use complement the oral sources. Treaty Commissioner Simon Dawson recalled that "as an inducement to the Indians to sign the treaty, the commissioners pointed out to them that [...] they would forever have the use of their fisheries."¹³ Dawson explicitly upheld Anishinaabe owner-

ship over their fisheries. Additionally, Dawson's account suggests that the Anishinaabe rights to use off-reserve fishing territories were not surrendered. There is no indication that fisheries were to be located exclusively on reserve; rather, the Anishinaabe appear to have continued rights to their fishing territories regardless of their location. The silences in Treaty #3 as published by Canada also support First Nations claims. As legal historian James Youngblood Henderson points out, there are no words of consideration or purchase price in the document.¹⁴ The Report of the Royal Commission on Aboriginal Peoples (henceforth RCAP) later confirmed Henderson's point, indicating that the terms of extinguishment—or a discussion of their meaning—are absent from journalistic and autobiographical record.¹⁵

Post-treaty documents sent by the Anishinaabe to the Crown provide written evidence that the Anishinaabe understood Treaty #3 as a guarantee of shared resources. In 1892, the Lake of the Woods Chiefs of the Rat Portage Agency petitioned the Crown, protesting the unequal balance of interests like (1) non-Native fishing licences that depleted shared fish stocks, (2) non-Native hydroelectric projects that flooded out Anishinabek manomin fields, and (3) Crown failure to provide "provision allowances" in return for territorial access. They wrote:

At that time [Treaty #3 negotiations] the Governor [Morris] was at the Angle and pointing towards the East, taking the name of the Queen to witness, he said that all the promises would be kept. Taking hold of [a] pan he said that we would eat of the same pan as brothers – How is it now that the Department is going back on these promises and upset down the pan?¹⁶

Two symbolic gestures are at work in the above account of Morris's actions at treaty. The East is a sacred direction for the Anishinaabe and is loaded with metaphorical value. Anishinaabe elder Lillian Pitawanakwat explains, "The east is where we come from. It represents [...] the spring of life. It is where we begin our journey."¹⁷ By pointing east, Morris symbolically confirmed the beginning of a relationship, a journey as partners between the Anishinaabe and non-Anishinaabe. Morris may have been unaware of the implications of his gesture. Perhaps he pointed east to England, the home of the Queen, or he just unconsciously employed a "loaded" gesture – "loaded" because his gesture "packed a lot of cultural punch." So, even if Morris didn't mean to make a promise, he did so in the eyes of Anishinaabe participants. His movement had value. Years later, Treaty #3 Chiefs *consciously* incorporated Morris' gesture into their petition for rights. Regardless of Morris' intention, the 1892 petition indicates that Treaty #3 negotiators identified his bodily movement as a treaty promise.

The pan metaphor reinforced the interpretation that the treaty would create and cement a relationship between the Anishinaabe and Canadians based on partnership. Morris claimed that Euro-Canadians and Anishinaabe would "eat of the same pan." Anishinaabe participants knew that food was taken from the land. Morris thus suggested that both Euro-Canadians and Anishinaabe would be nourished by the same land. To Anishinaabe eyes and ears then, Morris'

words and actions promised a sharing of resources and guaranteed mutual benefit from these resources.

Given the Crown's treaty goals—facilitating expansion westward after Confederation—it is not surprising that Treaty #3 as published by Canada emphasized land cession over shared territories. After the initial preamble, the document clarified the Queen's intentions with regard to the land: "it is the desire of Her Majesty to open up for settlement, immigration and such other purpose [...] a tract of country."¹⁸ Treaty #3, then, explicitly extinguished the land rights of the Anishinaabe, who "do hereby cede, release, surrender and yield up [...] all their rights, titles and privileges whatsoever, to the lands."¹⁹ Crown preoccupation with land acquisition was clarified by an exacting description of ceded territories, using boundary lines, waterways and latitude to demarcate claimed territories.²⁰ In return for ceded lands, the Crown agreed to lay aside Indian reserves.

Commenting on the creation of reserve lands, legal scholar Sidney Haring suggests that "Indians were being prepared for a position on the margins of Canadian society, working as farmers and laborers, living on small reserves [,] and subject to the regular incursion of settlers."²¹ Legal and provincial actions after Treaty #3 support his claim. Consider *St. Catherine's Milling Case* (1888), Canada's earliest landmark title litigation that denied Anishinaabe participation in determining resource allocation and use. The case resulted from a federal-provincial dispute over Anishinaabe lands in Treaty #3, as Ontario disputed the lumber company's federal permit to a timber berth on Anishinaabe lands and resources purportedly ceded by the treaty. Anishinaabe claims were considered secondary to federal and provincial concerns. The Judicial Committee of the Privy Council in Britain ruled that most of the 14,245,000 hectares of territory covered by treaty belonged to Ontario, not the federal government. Privy Council argued that section 109 of the *British North America Act of 1867* guaranteed Ontario (indeed, each province) the entire beneficial interest of the Crown to all lands within its boundaries. Further, the Privy Council asserted that Aboriginal title was a privilege granted by the Crown, citing the *Royal Proclamation of 1763*: Indians have "a personal and usufructuary right, dependent on the will of the Sovereign."²² The Anishinaabe possessed "a mere right to occupancy."²³ Canada therefore had to bargain with the province to get Ontario to agree to transfer the Indian Reserves to Canada be held in trust. As a result of the *St. Catherine's Milling Case*, provincial rights subsumed Anishinaabe rights. Given that the Privy Council denied Indian territorial rights to lands transferred to the federal government, the Anishinaabe were effectively dispossessed of their territories within fifteen years after treaty.

Following court assertions of Anishinaabe's limited usufructuary right to reserve lands in the *St. Catherine's Milling Case*, Ontario began dispossessing the Anishinaabe of their lands as established by the treaty. The province repeatedly insisted that the established reservations were larger than the Anishinaabe required and hindered the settlement of Euro-Canadians. In 1913, Canada agreed to the cancellation of the *Sturgeon Lake Reserve*, 160 kilometers west of present-day Thunder Bay. Six thousand acres of Anishinaabe re-

serve lands became Quetico Public Park, forest preserve, health resort and fishing ground. Compensation and/or replacement lands were not offered by Canada or Ontario for what journalist Bryan Phelan called “the greatest tourist recreation resort and fishermen’s paradise on the continent.”²⁴ Two years later, in 1915, the Department of Indian Affairs encouraged Rainy River Anishinaabe to surrender all reserves except one. According to ethnohistorians Tim Holzkamm and Leo Waisberg, the Rainy River bands lost almost 90% of their land base through surrender – over 43,000 acres.²⁵ The provincial government of Ontario thus accomplished a nearly complete removal of Anishinaabe reserves from the best farming land in the region. Since the protection and jurisdiction over Indian peoples and reserved lands were vested in a government supportive of settler interests, national policies eventually came to support the removal of the Anishinaabe from valuable lands.²⁶ Treaty promises that farming reserves would remain in the permanent possession of the Anishinaabe were ignored by the Crown.²⁷ Euro-Canadians broke the treaty as understood by the Anishinaabe, but successfully fulfilled the Crown goal “to open up for settlement, immigration and such other purpose [...] a tract of country.”²⁸

Divergent interpretations of territorial interest in the land between Anishinaabe and Euro-Canadian parties are further exemplified by the discussion of minerals in Paypom Treaty. Legal scholar Robert Bartlett claims that Treaty #3 did not merely reserve to the Anishinaabe a tract subject to Aboriginal title, but promised the benefit of (that is, a right to keep, dispose of, or develop) all minerals on lands reserved for the Anishinaabe.²⁹ Commissioner Morris confirmed Anishinaabe rights to reserve minerals: “They asked if the mines would be theirs; I said if they were found on their reserves [,] but not otherwise.”³⁰ A short-hand reporter’s account in the *Manitoban* documented Morris’s same promise.³¹ Anishinaabe recordings of Treaty #3 converge with Euro-Canadian documents regarding the mineral promise. Paypom Treaty reads, “If some gold or silver mines be found in their reserves, it will be to the benefit of the Indians.”³² Interestingly, the written terms published by the Crown do not compromise the minerals promise. Provision is made for commercial exploitation of minerals on “surrendered” Anishinaabe lands. In reference to “surrendered” lands, Treaty #3 as published by Canada reads:

Her Majesty further agrees with Her said Indians that they [...] shall have the right to pursue their avocations of hunting and fishing [...] saving and excepting such tracts as may, from time to time, be required or taken up for settlement, mining, lumbering or other purposes by Her said Government of the Dominion of Canada, or by any of the subjects thereof duly authorized.³³

Indeed, Treaty #3 as published by Canada purports to protect Anishinaabe interests, guaranteeing that reserve land may only be sold or leased “for the use and benefits of said Indians, with the consent of the Indians.”³⁴

Government action, however, contradicted treaty commissioners’ promises. As early as 1890, Chief Lindsay responded to the unauthorized removal of gold from Sultana Island, part of Rat Portage Reserve, on Lake of the Woods,

Ontario. He argued against Keewatin Lumber Company's proprietary claim, since "We were promised at Treaty that if we discovered any valuable minerals on the Reserves the land would be sold with our consent and the money placed to our credit."³⁵ Clearly, Lindsay assumed, in accordance with the published terms of Treaty #3, that Anishinaabe interests to on-reserve minerals were not surrendered by the treaty. It was not until 1899 that the Ontario Court of Chancery ruled that on-reserve minerals in Ontario had passed to the province under section 109 of the Constitution Act (1867).³⁶ The Supreme Court of Canada later upheld this decision in *Ontario Mining Co. v. Seybold*.³⁷ By associating exploitation with limited federal authority to promise reserve lands and resources to the Anishinaabe, court rulings in the 1890s diffused the blame for Crown failure to uphold both the spoken and published terms of Treaty #3. Federal action prior to 1899, however, reflected Crown failure to guarantee the terms of treaty.

III. Asema³⁸ Agreements versus Paper Promises

Anishinaabe frustration at the use of Canadian law to deprive them of benefits is understandable given their understanding of sacred obligations created by treaty. In Anishinaabe diplomatic traditions, before meetings could begin, both parties had to show their commitment to the process by smoking the peace pipe.³⁹ Department of Indian and Northern Affairs' historian Jean-Pierre Morin explains that "this ceremony signified that treaties were more than agreements between two groups. They were sacred obligations for all involved."⁴⁰ The sacred aspect originates in Anishinaabe spirituality, as tobacco smoke is understood as a line of communication with the Great Creator. Nanabush (or Waynaboozhoo), a powerful spirit, showed the Anishinaabe how to smoke tobacco to seal the peace between nations. Good intentions were assured by the tobacco smoke that came from the pipe, as the negotiating parties' thoughts and prayers were carried up to the Creator.⁴¹ Evidence of Morris' participation in the pipe ceremony is found in his letter from Government House at Fort Gary to Minister of the Interior Alexander Campbell, on 14 October 1873. He writes, "They asked me leave to perform a dance in my honor, after which they presented to me the pipe of peace."⁴² That Morris smoked the pipe indicates an understanding of its diplomatic importance; however, it is unlikely that he understood its sacredness. Nevertheless, Morris's gesture validated oral treaty promises from the Anishinaabe point of view. What is clear is that the Anishinaabe negotiators conducted ceremonies that both sanctified and guaranteed treaty in Anishinaabe legal traditions.

Verbal evocation of the Great Creator further exemplified Anishinaabe understandings of treaty making as a sacred process. Chief Mawedopenais concludes treaty stating, "now you see me stand before you all: what has been done here to-day has been done openly before the Great Spirit [the Creator, a spiritual being akin to God] and before the nation."⁴³ By evoking the Great Spirit and sealing negotiations with tobacco smoke, the Chiefs made treaty with the Crown and with greater spiritual powers. Treaty thus shifted from the realm of contract to covenant. To explicate some basic differences: a contract involves

an act of services whereas a covenant requires trust in an ongoing relationship; a contract is a secular dealing whereas a covenant is a sacred dealing; a contract takes people as witnesses (and therefore expires when the witnesses do) whereas a covenant takes a spiritual being, often God, as a witness (and therefore lasts in perpetuity). By making treaty with the Great Spirit as witness, treaty was understood by the Anishinaabe as an ongoing agreement with no expiration date; it was to last “as long as the sun goes round.”⁴⁴ Morris appears to have emulated Anishinaabe notions of the sacred covenant. He said, “We have asked in that spirit, and I hope you will meet me in that spirit, and shake hands with me-day [sic] and make a treaty.”⁴⁵ In alignment with the cultural dimensions of Anishinaabe diplomacy which allotted to the Great Creator a symbolic power to solidify treaty, Euro-Canadian commissioners worked to forge alliances with Indigenous groups who would commit to “covenant” terms for “as long as the sun rises and the water flows.”⁴⁶

Foreign displays of pomp and circumstance influenced Anishinaabe understandings of treaty as a sacred agreement. RCAP’s final report suggests that “outward symbols, like flags, the red coats, treaty medals, gifts and feasts were also part of the rituals.”⁴⁷ Two feasts are noted in Euro-Canadian treaty records, in which Morris provides meat for the Anishinaabe nation. Early in the negotiations, Morris presented an ox to the people that “was cut up and boiling in fifty pots.”⁴⁸ To conclude treaty, “the Governor presented an ox to the nation, and after it had been eaten a grand dance was indulged in.”⁴⁹ Through these exchanges, Morris attempted to ensure good nation-to-nation relations. While Morris and the commissioners participated in ceremonies, the meaning of these ceremonies in Euro-Canadian worldviews was temporal.⁵⁰ By the time of Treaty #3, Euro-Canadians considered treaty an earthly matter to be governed by secular wants and needs. Treaty ceremony was more of a lavish spectacle than a spiritual commitment. This does not mean that Canada did not want Treaty #3 to endure. Canada had little interest in Anishinaabe reviving their claims to territory. By entering into a secular contract instead of a sacred covenant, however, Euro-Canadians established radically different understandings of the treaty relationship than that held by their Anishinaabe partners.

Euro-Canadian ideas about the nature of treaties further influenced varying understandings of treaty as sacred and/or temporal. Historian Patricia Seed traces the etymology of “treaty” in English. As in other European languages, “treaty” derives from a word meaning to deal with a person face to face. Therefore, treaty resulted from inter-personal contact. In Anglo-Saxon England, as legal scholar Peter Tiersma explains, “Legal language was almost entirely oral; any writing was simply a record or evidence of the spoken event.”⁵¹ Professor of Law John H. Wigmore suggests that writing was foreign to Germanic peoples and that early contracts were solidified through ceremony. For example, symbols like the wand, glove, or knife were used to indicate the parties’ commitment “with an efficacy independent of written tenor.”⁵² What is unique about “treaty” in English is that “the word ‘treaty’ also signified writing.”⁵³ During the Anglo-Saxon period (5th Century A.D. to the Norman Conquest of 1066), “written

documents were *evidentiary* of the oral testimony rather than *operative* or *dispositive* legal documents in the modern sense.⁵⁴ It was not until the end of the High Middle Ages that written documents took precedence over verbal contracts in the common law.

By the 1200s, the proliferation of the seal furnished freemen with a means to authenticate contract. The seal rendered a document indisputable as to the terms of the transaction and gradually dispensed with the summoning of witnesses.⁵⁵ The introduction of the parol evidence rule formalized the transition from written records as *evidentiary* legal documents to *operative* documents. The parol evidence rule declares that a written memorial of a transaction is not disputable by the parties as to the terms. While legal historians have yet to agree on a “start date,” Wigmore suggests that the modern rule of indisputability was established for realty transactions in the 1600s.⁵⁶ Tiersma uses a similar time frame for his argument, linking the establishment of the parol evidence rule to the Statute of Wills of 1540, which stated that transfers of real property had to be in writing. The preference for writing over oral testimony in realty transactions was reaffirmed by the Statute of Frauds in 1677, whereby transfers had to be signed by the testator in the presence of witnesses.⁵⁷ Such a long-established partiality for written records allowed Euro-Canadians to disregard verbal agreements between the Crown and the Anishinaabe. Relying on Anglo-originated ideas of the law, “[c]olonial governments could and did claim that by physically writing their names on the document, native signatories agreed to the treaty.”⁵⁸ The use of tobacco failed to alter Euro-Canadian definitions of contract. To be fair, the use of pen and signature failed to alter Anishinaabe definitions of contract, too. Treaty #3 was—and continues to be—a real meeting of two foreign cultures.

IV. Anishinaabe Dibenindizo⁵⁹ versus Crown Subjects

While ceremonial use of the peace pipe and evocations of the Great Creator seemed to indicate sacred obligations for the Anishinaabe, on the ground



Figure 2: Treaty #3 Annual Meeting, gathering at Assabaskashing Reserve on Lake of the Woods, ON.

realities promised sovereignty to Anishinaabe negotiators. Within the Anishinaabe worldview, treaties were intended to evolve “in a context of mutual respect and shared responsibility.”⁶⁰ Signatory Chief Sakatcheway voiced the desire for an equitable relationship between the

Crown and Anishinaabe nations. As a requirement of the treaty, he demanded an educational exchange of Euro-Canadian and Anishinaabe youth “for you [Euro-Canadians] to teach what is good, and after they have learned to teach us [Anishinaabe].”⁶¹ Grand Council Treaty #3 suggests that the object of the exchange was to develop an insider’s understanding of the outsider’s worldview and to build stronger relationships with acquired knowledge. Education was not limited to learning in a schoolhouse; education was understood in a flexible way that included the adoption of worldviews by Anishinaabe youth through day-to-day socialization.⁶² It was reasonable to assume fair play: Morris assured the Anishinaabe that the Crown would respect and honor treaty agreements in perpetuity. Additionally, the Crown implicitly recognized Anishinaabe political clout at the time of treaty: the Crown sent representatives to Anishinaabe territory. The promise of exchange and recognition of Anishinaabe territorial authority seemed to indicate the Crown’s recognition of an equitable relationship.

Anishinaabe leaders understood that Treaty #3 united them as a freely associated state of Great Britain and not as part of any colony or dominion.⁶³ As Henderson explains, “Treaty federalism united independent First Nations under one Crown, but not under one law.”⁶⁴ While Treaty #3 established English criminal jurisdiction within the Euro-Canadian settlements, it accepted Anishinaabe assertions of Indian controlled reserves. An unidentified Chief stated, “Now I will want nothing to be there [on reserve] that will disturb the peace, and will put everyone that carries arms [...] outside.”⁶⁵ Here, the Chief asserted the operation of Anishinaabe law on reserve territory and claimed the right to expel unwanted persons: Chiefs on-reserve were to determine both reserve membership and member rights. Paypom Treaty mentions Crown forces, but does not identify whose order is being preserved. It reads, “The Queen will have her policemen to preserve order and wherever there is crime and murder the guilty must be punished.”⁶⁶ The quotation explains the policemen’s function (“to preserve order”), but it does not specify whose order is being preserved or under whose law criminals are to be punished. That both parties agreed suggests that each believed that their law was legitimate. Consequently, Anishinaabe records that recognize the Crown’s presence do not jeopardize Anishinaabe jurisdiction over ceded territories. Euro-Canadian interpretations of the same quotation, however, could be read as an assertion of federal control over ceded territories. The British North America Act (BNA) stipulated that federal forces would operate in areas outside provincial jurisdiction.⁶⁷ Where Anishinaabe interpreters may have read the quotation as favorable to their sovereignty, Euro-Canadians may have understood it as an expansion of the BNA Act and therefore federal authority in newly acquired Crown territories.

Governor Morris’s recognition of an unidentified Chief’s refusal to allow Anishinaabe youth to participate in Crown warfare further indicated Anishinaabe separation from the dominion. The Chief stated, “If you should get into trouble with the nations, I do not wish to walk out and expose my young men to aid you in any of your wars.”⁶⁸ In this quotation, the Chief presented Treaty #3 territory

as an affiliated state, with interests that differed from those of the federal state. This instance provides affirmation of the political separation of the Anishinaabe from their co-signatories; the Crown maintains the right to enlist its subjects but is denied the right to enlist the Anishinaabe. On a more basic level, as legal scholar Leonard Rotman suggests, “The very nature of the treaty-making process indicated the autonomy of the parties, since a nation did not need to treat with its own subjects.”⁶⁹

What the Anishinaabe and Euro-Canadian understanding of treaty did share, at least in principle, was the notion of creating mutually beneficial relationships between the Crown and the Anishinaabe. However, despite the theoretical equality for Anishinaabe participants, and the implicit recognition of Anishinaabe sovereignty, written Euro-Canadian sources depict a hierarchical relationship in which non-Native rights and benefits were to be determined by the Crown. For instance, Governor Morris homogenizes Indian identity through his repeated use of the indefinite “Indians.” While Chief Mawe-do-pe-nais is identified by name, subsequent inter-national relations are with the “Indians.”⁷⁰ Moreover, the Chiefs are regularly lumped together. For example, Morris writes: “The Chiefs hear my proposal”; “the Chiefs [...] were of one mind”; “the Chiefs were summoned.”⁷¹ There is no sense of the number of Chiefs present until the signature portion of Treaty #3. Morris seems insensitive to his non-White Treaty partners’ individuality; they are the “Other.” He presents a body of Indians too large and too similar to one another to count and/or identify. This stylistic tendency shows a disregard for divisions other than those meaningful to colonial power.

The signature practices of the treaty were also revealing of the way in which Anishinaabe identity was subsumed to colonial powers. Names with important meaning were broken down into syllables to facilitate European pronunciation in Governor Morris’ *The Treaties of Canada with the Indians*. Names on Treaty #3 as published by Canada were also spelled out phonetically and signed by Anishinaabe participants with an “X.” By contrast, land sharing agreements in Rainy River indicated a greater degree of respect between signatories as evidenced by the use of totem symbols in 1875. In a document laying out reserve lands Mawedopenais (therein Mawedobeness), a treaty signee ratified the agreement with his totem symbol.⁷² This contract between the Anishinaabe and Colonel Dennis, Surveyor General, recognized what may be conflated with caricature as a valid marker of identity. Syllabic spellings anglicized and indeed devalued Anishinaabe identity markers. Arguably, Anishinaabe participants at the time of treaty would have valued their totem more than an anglicized version of their name as a representation of self. While Euro-originated methods of writing were recent introductions to Anishinaabe culture, totem symbols were utilized since at least the 1600s to signify kin networks, or one’s identity through the patrilineal line.⁷³ Failure to acknowledge Anishinaabe Chiefs’ independent identity in Treaty #3 as published by Canada reflects their relationship to the Crown as understood by Euro-Canadians. Indeed, to deny Mawedopenais the use of totem is to deny his method of representing the authority to consent. In the 1892 Petition by Lake of the Woods Chiefs in the Rat Portage Agency, Governor

Morris identified Treaty #3 Anishinaabe as “brothers.” While Anishinaabe parties would have interpreted “brothers” as “partners,” the term became meaningless through the written hierarchal aspect of treaties.⁷⁴ Treaty #3 Anishinaabe needed to be properly governed by the Queen.

Tensions between Anishinaabe understandings of recognized sovereignty at treaty and Euro-Canadian interpretations of subjugation through treaty became evident after 1873. Richard Bartlett suggests that the gradual settlement of the North West Territories created a need for a consolidation of all legislation. The Indian Act of 1876 allowed for consolidation of all laws pertaining to Indian inhabitants under the same federal authority, the Department of Indian Affairs. The many different Aboriginal groups recognized by Treaties 1 to 11 (as well as Indigenous peoples without treaties) were thereby subjected to the political system of indirect rule.⁷⁵ Indian Act legislation attempted to replace traditional governments; all real power and authority was removed from the Chief's position as managerial control over Anishinaabe reserves was invested in the Department of Indian Affairs.⁷⁶ The Act was also designed to foster assimilation. Policy change (e.g. distribution of treaty monies) and extralegal harassment by Indian Agents deterred Midewiwin practices and beliefs; Christianity was actively promoted as a civilized alternative to Anishinaabe religion.

In 1908 Treaty #3 Chiefs protested the Department of Indian Affairs' decision to distribute treaty monies locally to each Band instead of collectively at Assabaskashing Reserve on Lake of the Woods. In a letter to the Honorable Frank Oliver, Superintendent General of the Department of Indian Affairs, Chief Powassin and six other treaty participants wrote that “at these gatherings our children meet with relatives who they may not meet again throughout the year.”⁷⁷ General meetings allowed families to reconnect and facilitated the transmission of socio-cultural knowledge from Anishinaabe elders to the youth. Anishinaabe Chiefs expressed fear that local distribution of treaty monies would disrupt community relations and practices, demanding the reinstatement of payment at general meetings: “To this change, in which we had no voice, we strongly protest and would still wish that the payment [...] be made again [...] as was done for the past thirty years.”⁷⁸ While the “divide and conquer” nature of local distribution is not immediately apparent, inter-departmental correspondence emphasized the assimilative goals of policy change. Responding to the protest, David Laird, Indian Commissioner at Winnipeg, condemned general meetings as pagan festivities. After identifying the protest as “a ruse of old Chief Pow-wa-was-win,” a Midewiwin practitioner, Laird wrote: “Neither do I think the big gatherings are for their good, but on the contrary, it does them much harm, both morally and physically.”⁷⁹ Ostensibly, the Indian Office had a Christian interest in deterring collective payment. General meetings and correlated Midewiwin ceremonies undermined Euro-Canadians' ability to use treaty to define Anishinaabe land use and Anishinaabe actions on the land in return for Crown-sanctioned benefits. Additionally, the creation of Indian Bands limited Anishinaabe opportunities for political mobilization by creating practical barriers to group discussion. Local payment worked to prevent Anishinaabe de-

fence of treaty rights in a territory where, as Anishinaabe protestors noted, “journeying [...] is not easy.”⁸⁰

The desire to limit Anishinaabe sovereignty as guaranteed by Treaty #3 culminated in the Department of Indian Affairs’ decision to target and punish Midewiwin practitioners. In a letter to the Secretary of the Department of Indian Affairs (1905), R.S. McKenzie, Kenora’s Indian Agent, wrote “I told him [Powassin] that if it was found out that he was urging the Indians to hold these Feasts and dances that he might be deposed of his Chiefship [sic].”⁸¹ An original signatory of Treaty #3, Powassin was denied both the right to live under Anishinaabe law on-reserve and the recognition of his status as Chief by the Indian Act. Six years later, in 1911, a letter from Treaty #3 Chiefs to Reverend John Semmens, Inspector of Indian Agencies, suggests that the Anishinaabe were being punished for traditional beliefs: “How [sic] we want to inform you that our Chief and another one of us is in jail for the Grand Medicine Affair.”⁸² Punishment and coercion thus ensured the socio-political dominance of Euro-Canadians on Anishinaabe soil.⁸³

Assimilative goals were proclaimed as late as 1971 in Indian Department documents. A 1971 publication reads, “the Indian Act represents special legislation taking precedence over provincial legislation which the Parliament of Canada considers essential to the needs of Indian people [...] as a means of promoting their advancement.”⁸⁴ Through the Indian Act, the Dominion was able to circumvent the effect of treaty. With the Indian Act in place, treaty became incompatible with the rule of parliamentary supremacy.⁸⁵ Legal scholar Tsvi Kahana explains that

“[t]he British North America Act set the division of powers between Parliament and the provincial legislatures where each legislature was supreme such that, within its jurisdiction, no other institution had the power to declare its laws unconstitutional.” In a parliamentary democracy like Canada, the Parliament is supreme and no other governmental institution has the power to abate its laws.⁸⁶ Dissatisfied citizens have limited opportunity to create change; they can only pressure Parliament for political change.⁸⁷ By making Indians wards of the state, the Indian Act undermined Anishinaabe challenges to laws that violated treaty.

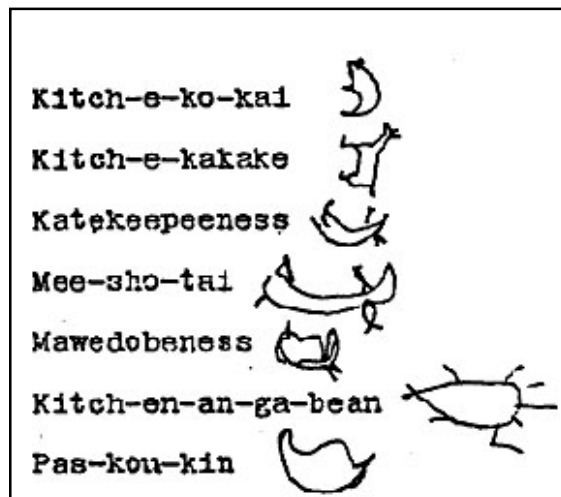


Figure 3: Signature page from Rainy River Reservation Tract Agreement of 1875

The limitation of basic rights is especially disconcerting considering the Crown's guaranteed benefits to the Anishinaabe during negotiations.

V. Popular Historical Perpetuations of Euro-Canadian Treaty Interpretations or Gikino'amaagewinini Dadibaajimo⁸⁸

Despite the circulation of Anishinaabe and Euro-Canadian sources emphasizing Anishinaabe agency in the treaty-making process, the concept of unilateral agreement between First Nations and the Crown has become ubiquitous to the point of cliché. *Canada in the Making*, a government sponsored website designed for students and teachers of Canadian studies, claims that “[w]hile many Aboriginal nations were sceptical of dealing with the new federal government, they had little choice.”⁸⁹ Government authors assert that many nations were “on the verge of extinction” and risked the “loss of their culture and way of life.”⁹⁰ Apparently, treaty-making was about survival. This is problematic insofar as it eliminates Native agency; the Anishinaabe were purportedly without choice, yet the Crown's failed attempts to negotiate a treaty from 1871 to 1873 suggests that Anishinaabe had a firm understanding of their rights. Commissioner Simpson was unable to secure treaty for two years as Anishinaabe Chiefs made “new and extravagant demands” in light of the discovery of gold and silver mines in the area.⁹¹ In 1873, Treaty #3 almost collapsed another time as Governor Morris refused to meet Grand Council's fiscal demands. Historians Janet E. Chute and Alan Knight suggest that the intervention of Commissioner Dawson's Shebandowan contacts, Blackstone and Rat McKay, as well as the Lac Seul Chief, prevented the indefinite postponement of treaty and the eruption of Native violence on the frontier.⁹²

Euro-Canadian claims of unilateral decision-making also create a myth of treaty-making as a moral obligation. Treaty becomes a duty based on Crown conscience rather than a legally binding or enforceable document. In *Canada in the Making*, the alcohol clause is linked to Crown morals: “Aboriginals had to promise they would keep the peace [...] and keep liquor off reserves. Europeans viewed liquor as a corrupting influence on Aboriginal peoples.”⁹³ Here, the elimination of Anishinaabe agency becomes obvious when compared to treaty recordings. An unidentified Chief insisted on the insertion of the prohibition clause – not the Crown. He exclaimed, “Shall any one insist on bringing it [fire water] where we are, I should break the treaty.”⁹⁴ Not only is the alcohol clause an Anishinaabe demand, but its textual origins indicate Anishinaabe understanding of a bilateral agreement. The Chief reserved his right to break treaty. To emphasize Crown morals over the will of the parties negates the role of Anishinaabe negotiators in the treaty-making process. What was once an equitable and sacred relationship has become entangled with contemporary notions of Native inferiority.

Failure to address the Euro-Canadian terms of treaty is another interesting gap in the literature, as the validity of cession claims depends on Euro-Canadian compliance with promises, obligations and the rendering of services.⁹⁵ His-

torical works on the treaty published before 2000 do not present the treaty as a joint agreement. What are emphasized are Aboriginal rights and benefits allotted by the Crown. Emphasized as well are Euro-Canadian political goals in treaty negotiations. The Crown treats with the Anishinaabe to open up settler lands. Syntactically, the Anishinaabe have yet to treat with the Crown. This tendency is exemplified by Richard Barlett who insists throughout *Indian Reserves and Aboriginal Lands in Canada* that “the Indians of northwestern Ontario were treated with.”⁹⁶ Historians need to review treaties in the context of rights for each side of the treaty-making. Sharon Venne identifies the theoretical dangers of one-sided arguments: “To discount or deny the treaty rights of non-indigenous people is to make illegitimate foreign peoples occupancy on Great Turtle Island.”⁹⁷ RCAP re-asserts Venne’s claim: “The fact remains, however, that Canada has inherited the treaties that were made and is the beneficiary of the lands and resources secured by those treaties.”⁹⁸ Canada today is rooted in historical treaties; to deny their international foundations is to favor nineteenth-century notions of “Indians” as colonial subjects. Contemporary accounts of bilateral agreements promote unilateral understandings of the past. To better understand what happened at treaty historians must recognize alternate realities – Native and non-Native alike.

VI. Giizhiitaa⁹⁹ / Conclusion

As echoed throughout the Treaty #3 region and formally documented by ethnohistorians Tim Holzkamm and Leo Waisberg:

It is important to note that no single document completely covers all terms of the Agreement known as Treaty No. 3. Works on treaty history should not give only one perspective. All records of the negotiations, and recollections of the participants, must be considered to develop a full understanding of the terms that are part of Treaty No. 3.¹⁰⁰

Anishinaabe and Euro-Canadian understandings of the treaty-making process differed substantially. Both parties, however, forwarded demands linked to goals of a “better” future in which the “Other” – Anishinaabe or Euro-Canadian – became an increasingly significant factor. The Anishinaabe position was designed to guarantee the physical and cultural survival of Anishinaabe people,



Figure 4: Chief Powassin Mending His Canoe

as demonstrated by their refusal to relinquish proprietary rights and their assertion to remain a sovereign nation. Euro-Canadian attempts to secure Anishinaabe territory, by contrast, sought land and resource security for incoming settlers.

Euro-Canadian understandings of Treaty #3 and subsequent actions suggest that treaty was not a sacred agreement between two parties, but simple purchase. The Anishinaabe were deprived of their rights – rights that Treaty #3 negotiators worked to protect in return for sharing Anishinaabe land and resources in an ongoing relationship with Euro-Canadians. Governments successfully ignored treaty promises by enacting laws to the contrary. Increased attention and sensitivity to the Anishinaabe thought-world will help us to break from presentations of Indian-White binarism as powerlessness/powerful. By validating First Nations sources, we can better understand treaty-making history as a struggle for power between worlds, shifting the historical focus from whether treaty rights exist to how best to recognize treaty rights.

Notes

1. Maajitaamagan translates from Ojibwa to English as “It begins.”
2. Nah-wah-gki-shi-ekkwé-o-beek [Helen Everson], “Red Coats,” in *MAY-WHIN-SHAH-TI-PAH CHI-M-WIN* [Indian Stories of Long Ago] (Alexandria, MN: Echo Printing Company, circa 1980), 52.
3. Crown of the United Kingdom, 4 October 1873, *Treaty 3 Between Her Majesty the Queen and the Saulteaux Tribe of the Ojibbeway Indians at the Northwest Angle on the Lake of the Woods 1873*.
4. Nah-wah-gki-shi-ekkwé-o-beek, 53.
5. Arthur J. Ray, Frank Miller, and Frank Tough’s *Bounty and Benevolence* (2006) demonstrates that (and skilfully argues against) treaty literature until the 1980s showcased a paternalistic government safeguarding Indian futures. For further readings, please see: Arthur J. Ray, Frank Miller, and Frank Tough, *Bounty and Benevolence* (Kingston: McGill-Queen’s University Press, 2002), 203 – 208.
6. The following First Nations participated in Treaty #7: Kainai Nation (Blood), Pikani First Nation (Peigan), Siksika Nation (Blackfoot), Tsuu T’ina Nation (Sarcee), Stoney First Nation, Assiniboine Nation. *Ibid.*
7. John Borrows, “Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government,” *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference*, ed. Michael Asch (Vancouver: UBC Press, 1997) 164 – 165.
8. Ojibwa Chiefs of Treaty 3, 4 October 1873, Paypom Treaty.
9. Anishinaabe Aki translates from Ojibwa to English as “First Peoples’ Land.”
10. Chief Lindsay, Chief of Northwest Angle, is not identified by name in

Alexander Morris's *The Treaties of Canada with the Indians of Manitoba and the North-West Territories*. The quotation was attributed to him by Grand Council Treaty #3, who successfully identified unnamed Chiefs in Morris's account using oral histories. Powassin has been referred to as Chief Lindsay throughout this paper, as he adopted Christianity and self-identified as Lindsay. Information provided by hereditary Chief Ogemah of Dalles 38C, Chief Lindsay's great-great-grandson. Chief Ogemah, interview with author, 28 February 2008.

11. *Manitoban News* (18 October 1873), qtd. in Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories* (1880), (Calgary: Fifth House Publishers, 1991), 57.
12. *Manitoban News* (18 October 1873) qtd. in Morris, 73.
13. Tim Holzkamm and Leo Waisberg, *We Have Kept Our Part of the Treaty: The Anishinaabe Understanding of Treaty #3* (Kenora, ON: Grand Council Treaty #3, 3 October 1998), 6.
14. James Youngblood Henderson, "Empowering Treaty Federalism," in *Aboriginal Legal Issues: Cases, Materials and Commentary*, 2nd Ed., eds. John J. Borrows and Leonard I. Rotman (Markham, ON: LexisNexis Canada Inc. 2003), 116.
15. Ministry of Supply and Services, "Report of the Royal Commission on Aboriginal Peoples, Looking Forward, Looking Back, Vol. 1 (RCAP)," in *Aboriginal Legal Issues: Cases, Materials and Commentary*, 2nd Ed., eds. John J. Borrows and Leonard I. Rotman (Markham, ON: LexisNexis Canada Inc. 2003), 103.
16. See Holzkamm and Waisberg, 3.
17. Lillian Pitawanakwat, "Four Directions Teachings," Canadian Culture Online Program of the Department of Canadian Heritage, <http://fourdirectionsteachings.com> (27 March 2008).
18. Crown of the United Kingdom, Treaty 3. Please note that Jill St. Germain forwarded a similar claim, writing that "diplomacy was largely temporary, often with time limits [,] and had none of the sacred elements that underlay North American Aboriginal diplomacy" (41). See: Jill St. Germain, *Indian Treaty-Making Policy in the United States and Canada, 1867 – 1877* (Toronto: University of Toronto Press, 2001).
19. Crown of the United Kingdom, Treaty 3.
20. *Ibid.*
21. Sidney Haring, *White Man's Law: Native People in Nineteenth-Century Jurisprudence* (Toronto: Osgoode Society, 1998), 12.
22. King George III, 7 October 1763, The Royal Proclamation of 1763.
23. Bloor Street Law Office, St. Catherines Milling & Lumber Co.v. The Queen (1888), Bloor Street Virtual Law Office, <http://www.bloorstreet.com/200block/rstctch.htm> (accessed 26 March 2008). See also Arthur J. Ray, "Aboriginal Title and Treaty Rights," *The Oxford Companion to Canadian History*, eds. Gerald Hallowell (Don Mills, ON: Oxford University Press, 2003).
24. Bryan Phelan, "First Nations Denied Economic Promise of Treaty #3: Histo-

- rians' Perspective," in *Kenora Enterprise* (Kenora, ON: Kenora Enterprise in co-operation with Grand Council Treaty No. 3, 31 September 2001), 6. For a detailed discussion of Indian removal from Sturgeon Lake, see also David T. McNab, "'Principally Rocks and Burnt Lands': Crown Reserves and the Tragedy of the Sturgeon Lake First Nation in Northwestern Ontario," in *Aboriginal Resource Use in Canada: Historical and Legal Aspects*, eds. Kerry Abel and Jean Friesen (Winnipeg: University of Manitoba Press, 1991), 157 - 172. See also David McNab, *Circles of Time: Aboriginal Land Rights and Resistance in Ontario* (Waterloo: Wilfred Laurier Press, 1998), 89 - 100.
25. Holzkamm and Waisberg, 18.
 26. Richard H. Bartlett, *Indian Reserves and Aboriginal Lands in Canada: A Homeland, A Study in Law and History* (Saskatoon: University of Saskatchewan Native Law Centre, 1990), 5.
 27. Treaty No. 3 as published by Canada reads, "And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for farming lands, due respect being had to lands at present cultivated by said Indians." See Crown of the United Kingdom, Treaty #3.
 28. Crown of the United Kingdom, Treaty 3.
 29. Bartlett, 107.
 30. Morris, "Letter from Government House (14 October 1873)," 50.
 31. The reporter quoted Governor Morris as follows: "If any important minerals are discovered on any of their reserves the minerals will be sold for their benefit." Qtd. in Morris, 70.
 32. Ojibwa Chiefs of Treaty 3, 4 October 1873, Paypom Treaty.
 33. Crown of the United Kingdom, Treaty #3.
 34. Ibid.
 35. Chief Thomas Lindsay to Hon. Edgar Dewdney, Superintendent General of Indian Affairs, 4 August 1890, National Archives Canada, RG 10, v. 3696, f. 15410.
 36. Bartlett, 108.
 37. Ibid. 108.
 38. Asema is a type of tobacco normally used for smoking. It is one of the four most sacred plants used by the Anishinaabe.
 39. Morin, 20.
 40. Ibid. 20.
 41. Edward Benton-Banai, *The Mishomis Book: The Voice of the Ojibway* (Hayward, WI: Red School House, 1988), 80.
 42. Morris, "Letter from Government House (14 October 1873)," 47.
 43. Morris, "Introduction," 45.
 44. *Manitoban News* (18 October 1873), qtd. in Morris, 67.
 45. Ibid. 67.
 46. Morris, "Introduction," 45.
 47. Ministry of Supply and Services, RCAP, 123.
 48. *Manitoban News* (18 October 1873), qtd. in Morris, 58.
 49. Ibid. 76.
 50. Morin forwards a similar claim, noting that "diplomacy was largely tempo-

- rary, often with time limits [,] and had none of the sacred elements that underlay North American Aboriginal diplomacy” (20).
51. Peter Meijes Tiersma, “The Resurgence of English,” *Legal Language* (Chicago: University of Chicago Press, 1999), 36.
 52. John H. Wigmore, “A Brief History of the Parol Evidence Rule,” *Columbia Law Review* 4:5 (May 1904), 340.
 53. Patricia Seed, “Treaty Nations Compared: Economic and Political Consequences for Indigenous People in Canada, the United States, and New Zealand,” in *Native Settlers, Now and Then: Historical Issues and Current Perspectives on Treaties and Land Claims in Canada*, ed. Paul W. DePasquale (Edmonton: University of Alberta Press, 2007), 21.
 54. Tiersma, 36
 55. Wigmore, 342.
 56. Ibid. 345.
 57. Tiersma, 37.
 58. Seed, 22 and 25.
 59. Anishinaabe dibenindizo translates from Ojibwa to English as “First Peoples are independent.”
 60. Ministry of Supply and Services, RCAP, 123.
 61. *Manitoban News* (18 October 1873), qtd. in Morris, 63.
 62. Holzkamm and Waisberg, 43.
 63. Youngblood Henderson, 112.
 64. Ibid.
 65. *Manitoban News* (18 October 1873), qtd. in Morris, 73.
 66. Ojibwa Chiefs of Treaty 3, 4 October 1873, Paypom Treaty.
 67. Dickason, 225.
 68. *Manitoban News* (18 October 1873), qtd. in Morris, 69.
 69. Leonard I. Rotman, “Taking Aim at the Canons of Treaty Interpretation in Canadian Aboriginal Rights Jurisprudence,” in *Aboriginal Legal Issues: Cases, Materials and Commentary*, 2nd Ed., eds. John J. Borrows and Leonard I. Rotman (Markham, ON: LexisNexis Canada Inc. 2003), 109.
 70. Morris, “Letter from Government House (14 October 1873),” 47 – 52.
 71. Ibid. 49.
 72. Col. Dennis, Surveyor General, with Chiefs Kitch-e-ko-kai, Kitch-e-kakake, Mawedobeness, Katekeepeness, Mee-sho-tai, and Kitch-en-an-ga-bean, and Pas-kou-kin to The Department of the Interior, 18 November 1875, National Archives Canada, RG 10, v. 2314, f. 62509-4.
 73. For further reading on the significance of totem, please see: Heidi Bohaker, “Nindoodemag: The Significance of Algonquian Kinship Networks in the Eastern Great Lakes Region, 1600 – 1701,” in *William and Mary Quarterly LXIII*, no. 1 (January 2006): 23 – 52.
 74. Aboriginal understanding of kinship and non-Native uses of kinship are explored in detail by Howard Adams in “Ossification of Native Society.” See Adams, 265.
 75. Bartlett, 25.

76. Harold Prins, *The Mi'kmaq: Resistance, Accommodation, and Cultural Survival* (Fort Worth, TX: Harcourt College, 1996), 382.
77. The document is signed "Powasson Chief" on the bottom left of page 2. Six illegible signatures follow. In addition to Powasson, it is clear that there is one signee from Gull Bay and another from Shoal Lake.
78. Library and Archives Canada, RG 10, v. 6892, f. 487/28-3, PT. 1., Department of Indian Affairs, "Letter to Frank Oliver, Superintendent General of the Department of Indian Affairs, Ottawa."
79. Library and Archives Canada, RG 10, v. 6892, f. 487/28-3, PT. 1., Department of Indian Affairs, "Letter to Superintendent General of the Department of Indian Affairs, Ottawa."
80. Library and Archives Canada, RG 10, v. 6892, f. 487/28-3, PT. 1., Department of Indian Affairs, "Letter to Indian Agent's Office, Kenora ON (24 March 1908)." Library and Archives Canada, RG 10, v. 6892, f. 487/28-3, PT. 1., Department of Indian Affairs, "Letter to Frank Oliver, Superintendent General of the Department of Indian Affairs, Ottawa."
81. R.S. McKenzie, Kenora Indian Agent, "Letter to the Secretary of the Department of Indian Affairs (3 October 1905). Transcribed document mailed to author by Tim Holzkamm on 27 March 2008.
82. Treaty No. 3 District Chiefs, "Letter to Rev. Mr. Semmens, Inspector of Indian Agencies (29 July 1911)," Transcribed document mailed to author by Tim Holzkamm on 27 March 2008.
83. Religious suppression by the Department of Indian Affairs (DIA) was not unique to the Treaty #3 District. Indeed, the DIA worked to suppress Indigenous ceremonial practices across Canada. In *Severing the Ties that Bind: Government Repression of Indigenous Religious Ceremonies on the Prairies* (Winnipeg: University of Manitoba Press, 1994), Katherine Pettipas examines the DIA's prohibition on the Sun (or Thirst) Dances as well as ceremonial giveaways after 1895. DIA restrictions on the ceremonial distribution of property, however, were rooted in colonial law. As early as 1885, the Canadian government had outlawed potlaches on the Northwest Coast. For further reading on potlatch law, please refer to: Douglas Cole and Ira Chaikin, *An Iron Hand Upon the People: The Law Against the Potlatch on the Northwest Coast* (Toronto, ON: Douglas and McIntyre, 1990) and Tina Loo "Dan Cranmer's Potlatch: Law as Coercion, Symbol, and Rhetoric in British Columbia, 1884 – 1951," *Canadian Historical Review* 73, no. 2 (1992): 125 – 65.
84. Department of Indian Affairs and Northern Development, *Discussion Notes on the Indian Act* (Ottawa: Indian Affairs Branch, 1971), 1.
85. Sebastien Grammond, "Aboriginal Treaties and Canadian Law," *Queen's University Law Journal*, 58 (1994), 60.
86. Given the notwithstanding clause in the Canadian Charter (1982), I maintain that parliament is still supreme in Canada.
87. Tsvi Kahana, "Supremacy of Parliament," in *Constitutional Keywords*, University of Alberta Centre for Constitutional Studies, <http://>

- www.uofaweb.ualberta.ca/ccs/keywords.cfm?keyword=62 (accessed 26 March 2008).
88. Gikino'amaagewinini dadibaajimo translates from Ojibwa to English as "Teacher tells a story."
 89. Canadiana.org (formerly Canadian Institute for Historical Micro reproductions), "Aboriginal Treaties and Relations," in *Canada in the Making*, Canadiana.org, http://www.canadiana.org/citm/themes/aboriginals_e.html (15 March 2010).
 90. Canadiana.org, http://www.canadiana.org/citm/themes/aboriginals_e.html (15 March 2010).
 91. Phelan, "First Nations Denied Economic Promise," 7.
 92. Janet E. Chute and Alan Knight, "Taking up the Torch: Simon J. Dawson and the Upper Great Lakes' Native Resource Campaign of the 1860s and 1870s," in *With Good Intentions: Euro Canadian and Aboriginal Relations in Colonial Canada*, eds. Celia Haig-Brown and David A. Nock (Vancouver: UBC Press, 2006), 115.
 93. Canadiana.org, http://www.canadiana.org/citm/themes/aboriginals_e.html (15 March 2010).
 94. *Manitoban News* (18 October 1873), qtd. in Morriss, 71.
 95. See James Youngblood Henderson, "Empowering Treaty Federalism," for a detailed exploration of Euro-Canadian treaty obligations.
 96. Bartlett, 43.
 97. Sharon H. Venne, "Treaties Made in Good Faith," in *Natives and Settlers Now and Then: Historical Issues and Current Perspectives on Treaties and Land Claims in Canada*, ed. Paul W. DePasquale (Edmonton: University of Alberta Press, 2007), 5.
 98. Ministry of Supply and Services, RCAP, 122.
 99. Giizhiitaa translates from Ojibwa to English as "It finishes."
 100. Holzkamm and Waisberg, 1.

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