

**Stealing Fire, Scattering Ashes:
Anishinaabe Expressions of Sovereignty, Nationhood, and Land Tenure in Treaty
Making with the United States and Canada, 1785-1923**

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*In memory of the Anishinabe who negotiated our treaties in good faith and trust,
may we learn from their vision.*

Abstract

This dissertation seeks to better understand and explain how the Anishinaabe constructed and expressed their sovereignty, nationhood, and land tenure when they negotiated treaties with the United States and Canada from 1785 to 1923. This trilogy of terms often became convoluted in treaty negotiations during which both native Nations and the two states involved brought their own understandings for these terms into the negotiation processes. I analyze approximately fifty-four ratified treaties negotiated between the Anishinaabe and the United States and Canada. Placing Anishinaabe bands at the center, this study examines how and why treaty provisions dealing with land have affected the political and legal status of aboriginal in treaty rights in both states.

Anishinaabe sovereignty was deeply intertwined with conceptions of nationhood and land tenure. A focus on treaty making provides a site where the competing conceptions of these terms held by participating nations must be negotiated. In order to obtain mutual agreements with each other. This dissertation operates from the premise that a re-examination of treaty discourse, when interpreted according to Anishinaabe cultural conceptions and knowledge systems, may help reveal what these peoples ceded or surrendered and what they reserved in these agreements. These findings provide a fresh understanding of bilateral treaty making, which forms the foundation of Anishinaabe-state relations. Furthermore, the insights gleaned from this study may reshape our understandings of Anishinaabe reserved aboriginal and treaty rights and help improve intergovernmental relations.

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Introduction: Rekindling the Fire

You can't understand the world without telling a story. - Gerald Vizenor¹

Nenabozho was being brought up by his grandmother.²

And so by and by he said to his grandmother: "Don't you know of a place where there are some people."

"Yes," he was told by his grandmother. "In yonder direction on the farther shore of the sea are some people."

"I am curious to know if they do not possess fire."

"Yes," he was told by his grandmother; "truly, they do possess some fire.""³

Upon this revelation, Nenabozho requested that he could go and try to fetch some of that fire. His grandmother warned him that it would be a difficult task; one that he would likely not succeed in. But Nenabozho was determined.

Now, this was what he then said afterwards: "I will that the sea shall freeze, as thick as the birch-bark covering of the lodge so let this sea freeze."

It was true that it happened according as he had said.

¹ Laura Coltelli, *Winged Words: American Indian Writers Speak, American Indian Lives* (Lincoln: University of Nebraska Press, 1990), 156.

² Nenabozho, often referred to as *original man*, is the central character (trickster) in many Anishinaabe *aadizookaanan* (stories or legends). He is also referred to as Wenabozho. These spellings come from John Nichols and Earl Nyholm, *A Concise Dictionary of Minnesota Ojibwe* (Minneapolis: University of Minnesota Press, 1995), 118.

³ Truman Michelson, ed. and William Jones, comp., *Ojibwa Texts*, ed. Franz Boas, 2 vols., vol. VII, Part I, *Publications of the American Ethnological Society* (Leiden: E. J. Brill, Ltd., 1917), 7.

“Now, this is the way I shall look,” he said. “I will that I become a hare.”

So accordingly that truly was the way he looked.⁴

Nenabozho had conjured a method for acquiring fire. Across the water, an old man sat constantly working on his net. As this old man had two daughters, Nenabozho thought he would transform himself into a hare, knowing those young girls would take to him in this form. And with this thought, he willed it to be. Then he thought that the lake would freeze, and thus it was so. Nenabozho ran across this lake. He willed those young girls to come find him and to take him into their home. And so it was. These young girls placed Nenabozho by the fire so that he would dry. Yet, their loud giggling alarmed their father, who came to investigate what his daughters were up to.

“Beware!” They were told by their father. “Have you not heard of the manitous⁵ how they were born? Perhaps this might be one of them.”⁶

When he heard these words of caution, Nenabozho knew he needed to act quickly. He willed a spark of that fire to jump onto him, and so it was. And thus, he leaped out the window and began running across the frozen lake. The old man tried to go after him but to no avail. Nenabozho ran and ran and returned home. But he was much on fire. He pleaded to his grandmother to rub this fire off of him, and she did. And so they had fire. Yet, Nenabozho was marked by this quest. His white fur had turned brown, scorched from carrying this fire across the lake. And so Nenabozho proclaimed, “Therefore such shall be the look of the hare in the summer-time.”⁷

⁴ Michelson and Jones, *Ojibwa Texts*, ed. Franz Boas, 2 vols., vol. VII, Part I, 9.

⁵ Manitou comes from the Ojibwe word, *manidoo*, meaning “god, spirit, manitou.” See Nichols and Nyholm, *A Concise Dictionary of Minnesota Ojibwe*, 77.

⁶ Michelson and Jones, *Ojibwa Texts*, ed. Franz Boas, 2 vols., vol. VII, Part I, 11.

⁷ Ibid., 15.

The Theft of Fire illustrates numerous meanings and teachings. This story contains two discernable points. First, it reveals how the Anishinaabe came to obtain fire.⁸ Fire, *ishkode*, is a central element in Anishinaabe worldview. Ishkode is the force of the creation of the Earth, reflected in the Earth's molten core. This relationship of fire to creation is, furthermore, mapped in the sky by the northern lights; *jiibayag niimi'idiwag*.⁹ The northern lights are considered to be reflections of the ancestors' fires, illuminating the path of souls for those traveling to the land of the deceased.¹⁰ Fire can be understood as the heart of the Earth and the heart of the people, demarcated by the morpheme *-ode'*, meaning heart.¹¹ Thus, fire appears as a central element that begins with the creation of the Earth, becomes the heart of the nation and lights the way "home." Fire, then, appears throughout the cycle of creation, or life.

⁸ There have been a number of names with varied spelling for the people who call themselves Anishinaabe and/or Ojibwe. However, as E.S. Rogers notes, "Although the Indian groups now referred to as Chippewa, Ojibwa, and Saulteaux descend from closely related bands that were living in a fairly compact area in the mid-seventeenth century, at no time has there been a single distinctive name for these groups alone" (768). The historical record initially labeled these people as Algonquin and Ottawa. Contemporary records primarily utilize the modern local band names, which refer to specific communities and peoples and not the larger group of the Chippewa/Ojibwe, Mississauga, and Saulteaux. Chippewa is the English rendering of Ojibwe and its usage is primarily in the United States and Southern Canada. U.S. federal records and treaties label these people Chippewa. Canadian sources primarily reference these people as Ojibwe (also spelled Ojibwa and Ojibway). Many of the Southeastern Ojibwe are often referenced as the Mississauga. Saulteaux is primarily found in Canadian references on the Ojibwe that encompass many of the people who were historically labeled as the Outchibous. I have chosen to use "Anishinaabe" as it is the name used by the people themselves and adheres to contemporary scholarly practice. In addition, "Anishinaabe" connotes a broader group than some of these aforementioned terms are associated with. For a list of the various spellings and meanings associated with the Anishinaabe people, see Robert E. Ritzenthaler, "Southwestern Chippewa," in *Handbook of the North American Indians; Northeast*, ed. Bruce G. Trigger (Washington: Smithsonian Institution, 1996), E.S. Rogers, "Southeastern Ojibwa," in *Handbook of the North American Indians; Northeast*, ed. Bruce G. Trigger (Washington: Smithsonian Institution, 1996).

⁹ The English translation of *jiibayag niimi'idiwag* is "they are the northern lights." See Nichols and Nyholm, *A Concise Dictionary of Minnesota Ojibwe*, 73.

¹⁰ See Frances Densmore and Smithsonian Institution. Bureau of American Ethnology., *Chippewa Customs*, Reprint ed., *Publications of the Minnesota Historical Society*. (St. Paul: Minnesota Historical Society Press, 1979), 74. For information on the paths of souls, see Basil Johnston, *Ojibway Heritage* (Lincoln: University of Nebraska Press, 1976), 103-8.

¹¹ While there is no etymological connection between *ishkode* and the morpheme *-ode'* within the linguistic method, folk etymologies (the stories told by speakers based on perceived resemblances and connections) have made this connection.

The centrality of fire within Anishinaabe worldview is illustrated by its importance in ceremonial practices. Fire is a vital component to many ceremonial practices, which begin with the ignition and ends with the extinguishment of fire. Fire also serves as a conduit to the spirit realm both through the smoke it emits and the items it burns. Sometimes it carries the prayers and offering of the Anishinaabe to this realm.¹² However, spiritual practice and discourse are not the only arenas in which fire, both in form and symbol, are invoked. Fire has also served as a powerful metaphor within political discourse, often referencing nationhood or the council or alliance made between nations.

The second discernable feature within this story is the marking of the hare by his theft of fire. On one level, this component of the story serves to explain animal features. It explains why some hares are brown in the summer and white in the winter. However, the effects of Nenabozho's theft of the fire, its mark on the hare, can also inform Anishinaabe political discourse that invokes the symbolism of fire. While fire serves to represent nationhood and treaty-making (alliance formation), the hare illustrates how nations are defined and are in turned marked by their treaties and alliances.¹³ When a nation enters into an alliance or treaty, it retains its separate, distinct identity in the same way that the hare retains his white fur in the winter. Nonetheless, a nation is also marked

¹² For further discussion of the importance of tobacco and offerings, see Densmore and Smithsonian Institution. Bureau of American Ethnology., *Chippewa Customs*, A. Irving Hallowell, *Culture and Experience*, ed. Society Philadelphia Anthropological, *Publications*, V. 4 (Philadelphia,: University of Pennsylvania Press, 1955), Anton Treuer, *Living Our Language: Ojibwe Tales & Oral Histories*, *Native Voices* (St. Paul: Minnesota Historical Society Press, 2001).

¹³ I utilize David Wilkins' definition of a treaty: "A formal agreement, compact, or contract between two or more sovereign nations that creates legal rights and duties for the contracting parties. A treaty is not only a law but also a contract between two or more nations and must, if possible, be so construed as to give full force and effect to al its parts." David E. Wilkins, *American Indian Politics and the American Political System*, *The Spectrum Series, Race and Ethnicity in National and Global Politics* (Lanham: Rowman & Littlefield, 2002), 339. See Chapter one for a fuller discussion of the term "treaty" and Anishinaabe, U.S., and Canadian treaty-making policy and practice.

or shaped by its alliances with other nations in the same way that the hare in this story is marked by his quest for fire, having brown fur in the summer. Interestingly, both the brown and white fur of hares helps them to adapt and blend into their changing environment.¹⁴ Anishinaabe nationhood and the alliances that they established across their national lines operated to achieve the same end: the ability to adapt and blend into an ever-changing environment. Both serve as mechanisms of protection. Understood in these ways, *The Theft of Fire* reveals a worldview that both influences and informs Anishinaabe social, spiritual, and political discourse. As Thomas King reminds us, “The truth about stories is that that’s all we are.”¹⁵

Stories shape how we see and interact with the world. They lend insight into the ways in which we see our communities as well as how we see ourselves within these communities. Stories are heard from a young age and help form the views we carry into adulthood. Anishinaabe scholar Gerald Vizenor has said that “You can’t understand the world without telling a story.”¹⁶ The power of stories is also found in their ability to outline the connections people have to their place, people, and history. Stories define our sovereignty, nationhood, and land tenure. An analysis of Anishinaabe stories provides insight into their worldview and helps explain how this worldview becomes expressed in social, spiritual, and political discourse.

Among the Anishinaabe, there are many stories about original man, Nenabozho, also commonly referred to as Nanabush, who walked the Earth naming creation.¹⁷

¹⁴ Thank you to Jill Doerfler for bringing this point to my attention. Our conversations continuously shaped and informed this dissertation.

¹⁵ Thomas King, *The Truth About Stories: A Native Narrative* (Minneapolis: University of Minnesota Press, 2005), 2.

¹⁶ Coltelli, *Winged Words: American Indian Writers Speak*, 156.

¹⁷ For additional examples and explanations of Nenabozho, see Victor Barnouw, *Wisconsin Chippewa Myths & Tales and Their Relation to Chippewa Life: Based on Folktales Collected by Victor Barnouw*,

Anishinaabe Elder Edward Benton-Banai noted that “after Original Man was placed on the Earth, he was given instructions by the Creator. He was to walk this earth and name all the o-way-se-ug’ (animals), the plants, the hills, and the valleys of the Creator’s gi-ti-gan’ (garden).”¹⁸ Nenabozho’s interactions with places and peoples contain a variety of lessons for the listener. The listener is required to expand their perceptions when they are confronted with stories of a main character whose motivations are contradictory; sometimes self-less and sometimes self-interested. Anishinaabe political scholar John Borrows has observed that “[i]n his adventures, Nanabush roams from place to place and fulfils his goals by using ostensibly contradictory behaviours such as charm and cunning, honesty and deception, kindness and mean tricks.”¹⁹ These seemingly contradictory behaviors encourage underlying values and principles while presenting natural, moral, and cultural sanctions when these stories’ teachings are not adhered to. In addition, Nenabozho stories present the listener with an understanding of why things came to be named in a certain manner, or how certain features occurred, such as land formations, animal traits and human characteristics. These stories translate the history of the Earth and human relationships to the Earth. They not only hold the history of how the Earth

Joseph B. Casagrande, Ernestine Friedl, and Robert E. Ritzenthaler (Madison: University of Wisconsin Press, 1977), Bernard Coleman, Ellen Annette Frogner, and Estelle Eich, *Ojibwa Myths and Legends* (Minneapolis: Ross and Haines, 1971), Hallowell, *Culture and Experience*, George Nelson, Jennifer S. H. Brown, and Robert Brightman, “*The Orders of the Dreamed*”: *George Nelson on Cree and Northern Ojibwa Religion and Myth, 1823, Manitoba Studies in Native History*; 3 (St. Paul: Minnesota Historical Society Press, 1988), Paul Radin, *Some Myths and Tales of the Ojibwa of Southeastern Ontario* (Ottawa: Government printing bureau, 1914), Gerald Robert Vizenor, *Summer in the Spring: Anishinaabe Lyric Poems and Stories*, New ed., *American Indian Literature and Critical Studies Series*; V. 6 (Norman: University of Oklahoma Press, 1993).

¹⁸ Edward Benton-Banai, *The Mishomis Book: The Voice of the Ojibway* (Saint Paul: Red School House, 1988), 5.

¹⁹ John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002), 56.

was shaped and reshaped, but they also convey how the Anishinaabe interact with their place as well as with other people, animals, and spirits.

Lighting the Fire: (Theoretical Significance)

This reading of *The Theft of Fire* illustrates many of the themes and questions this dissertation seeks to address as it analyzes the relationship between sovereignty, nationhood, and land tenure. Sovereignty, as employed in this dissertation, is defined as a nation's lifeway and an inherent presence. I build on Choctow scholar Amanda Cobb's definition, that sovereignty is *both the story or journey itself and what we journey towards*, which is our own flourishing as self-determining peoples."²⁰ Anishinaabe sovereignty was deeply intertwined with their conceptions of nationhood and land tenure. Nationhood, for the purpose of this dissertation, is defined as a collective people who have a shared sense of identity. This notion of nationhood is informed and shaped by the relationships these people have to one another. This dissertation utilizes David Wilkin's definition of nation, as "a social group which shares a common ideology, common institutions and customs, and a sense of homogeneity; controls a territory viewed as a national homeland; and has a belief in common ancestry."²¹ He further argues that "a prerequisite of nationhood is an awareness or belief that one's own group is unique in a most vital sense; therefore, the essence of a nation is not tangible but psychological, a matter of attitude rather than of fact."²² This dissertation examines how Anishinaabe

²⁰ Amanda Cobb, "Understanding Tribal Sovereignty: Definitions, Conceptualizations, and Interpretations," Joint Publication of the *Journal of Indigenous Studies* Issue 1 (Fall 2005/Spring 2006), and *American Studies* 46, no.3-4 (Fall/Winter 2005):125. Emphasis in original. [Hereafter Cobb, "Understanding Tribal Sovereignty: Definitions, Conceptualizations, and Interpretations."]

²¹ Wilkins, *American Indian Politics and the American Political System*, 338. See Chapter Three for a full discussion of the term "nation," as well as Anishinaabe nationhood.

²² Ibid.

nations expressed their nationhood as they entered into treaties with the United States and Canada.²³ Anishinaabe assertions of their sovereignty and nationhood were inextricably tied to their conceptions of land tenure.

Land tenure is a critical component of nationhood as every nation and state has systems, practices, and beliefs in place that shape and regulate how people think about their place, property, and rights. In his analysis of Aboriginal title, James Youngblood Henderson argues that “all land tenure originates in some folk or cultural norms for regulating the holding of land between individuals in any given society.”²⁴ He goes on to find that the meanings of property and ownership are “different in every culture, varying according to custom, tradition, and the relative social status of those who enjoy its privileges.”²⁵ As a result, the meaning of property and ownership differ in every culture, according to the traditions and practices of a particular community. This dissertation examines how Anishinaabe nations asserted their title and rights to their land in their treaty practices and discourse.

A focus on treaty-making provides a site where the competing conceptions of these terms held by participating nations must be negotiated in order to obtain mutual agreements with each other. This dissertation, in particular, seeks to better understand and explain how the Anishinaabe constructed and expressed their sovereignty,

²³ For some general reading on the political and historical relationship between American Indians and the United States, see Francis Paul Prucha, *American Indian Treaties: The History of Political Anomaly* (Berkeley: University of California Press, 1994), Francis Paul Prucha, *The Great Father: The United States Government and the American Indians*, Abridged ed. (Lincoln: University of Nebraska Press, 1986), Wilkins, *American Indian Politics and the American Political System*. For Canada, see Olive Patricia Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times, The Civilization of the American Indian Series; V. 208* (Norman: University of Oklahoma Press, 1992), J. R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada*, Rev. ed. (Toronto: University of Toronto Press, 1991).

²⁴ James Youngblood Henderson, "Unraveling the Riddle of Aboriginal Title," *American Indian Law Review* 5 (1977): 80.

²⁵ Ibid.

nationhood, and land tenure when they negotiated treaties with the United States and Canada from 1785 through 1923.²⁶ This trilogy of terms often became convoluted in treaty negotiations during which both Native nations and the western states involved brought their own understandings for these terms into the negotiation process. Placing Anishinaabe bands at the center, this study examines how and why treaty provisions dealing with land have affected the political and legal status of aboriginal and treaty rights in both states.²⁷

By looking at Anishinaabe treaty-making across tribal and colonial borders, several questions emerge that are critical to addressing the complex issues of sovereignty when multiple, distinct nations lay claim to the same area. Additionally, other questions

²⁶ This dissertation focuses on the time period between 1785 and 1923 because the Anishinaabe signed their first treaty with the United States in 1785 as parties in The Treaty with the Wyandot, Etc. January 21, 1785, 7 *Statute at Large*. 16. In 1923, the Anishinaabe concluded their most recent treaty with Canada. The Ojibway were party to adhesions of Treaty Nine (1905-1906) in 1929 and 1930, however, this dissertation did not examine that treaty due to a lack of access to its supporting record of the treaty negotiations. See The Williams Treaties, and subsequent treaty reports posted by Indian and Northern Affairs Canada at www.aic-inac.gc.ca. This website contains full texts of the treaties, treaty research reports, and bibliographies. See, for example, Robert J. Surtees. Treaty Research Report: The Williams Treaties (1923) [online]. Treaties and Historical Research Centre, Indian and Northern Affairs Canada. Originally published in Ottawa by Indian and Northern Affairs Canada, 1986. Accessed 08-15-08: http://www.aic-inac.gc.ca/pr/trts/hti/Twil/index_e.html. For more information regarding Treaty Nine, see James Morrison. Treaty Research Report: Treaty No. 9 (1905-1906) [online]. Treaties and Historical Research Centre, Indian and Northern Affairs Canada. Originally published in Ottawa by Indian and Northern Affairs Canada, 1986. Accessed 08-15-08: http://www.aic-inac.gc.ca/pr/trts/hti/t9/index_e.html.

²⁷ Brian Slattery argues that "the doctrine of aboriginal rights is a body of Canadian common law that defines the constitutional links between aboriginal peoples and the Crown and governs the interplay between indigenous systems of law, rights, and government (based on aboriginal customary law) and standard systems of law, rights and government (based on English and French law). The doctrine of aboriginal rights is a form of 'inter-societal' law in the sense that it regulates the relations between aboriginal communities and the other communities that make up Canada and determines the way in which their respective legal institutions interact." Brian Slattery, "Making Sense of Aboriginal and Treaty Rights," *Canadian Bar Review* 79 (2000): 198. For additional readings on aboriginal rights, also see Michael Asch, *Aboriginal and Treaty Rights in Canada: Essays on Law, Equity, and Respect for Difference* (Vancouver: University of British Columbia Press, 1997), Peter A. Cumming and Neil H. Mickenberg, eds., *Native Rights in Canada*, 2nd ed. (Toronto: The Indian-Eskimo Association of Canada in association with General Publishing Company, 1972), James Youngblood Henderson, *First Nations Jurisprudence and Aboriginal Rights: Defining the Just Society* (Saskatoon: Native Law Centre, University of Saskatchewan, 2006), Robert Mainville, *An Overview of Aboriginal and Treaty Rights and Compensation for Their Breach*, *Purich's Aboriginal Issues Series* (Saskatoon: Purich Publishing, 2001), Brian Slattery, "Understanding Aboriginal Rights," *The Canadian Bar Review* 66 (1987).

can be raised regarding the relationship of land to nationhood and diplomacy. For instance, how did the Anishinaabe speak about their land? What rights were they reserving in their lands? What rights were they willing to relinquish? Why did multiple Anishinaabe bands, who recognized their own separate distinct interests to tracts of land, sometimes come together to enter into treaties with the United States and Canada?²⁸ What can these alliances teach us about the relationship between nationhood and sovereignty? What responsibilities do these agreements entail for the Anishinaabe, United States, and Canada? What should the relationship between these nations look like today based on these legal binding treaties?

In recent years, scholars have called attention to the importance of understanding Native peoples according to their own cultural constructs and ways of knowing. This project explores Anishinaabe constructions of land tenure by analyzing the treaty record as well as how treaty-making was shaped and informed through social and cultural philosophies and practices. This dissertation operates on the premise that a re-examination of treaty discourse, when interpreted according to Anishinaabe cultural conceptions and knowledge systems, may help reveal what these peoples ceded or surrendered and what they intended to reserve in these agreements for their future

²⁸ I utilize the term band to refer to the divisions between the Anishinaabe collective. Bands were originally constituted by a number of families that lived together and often became known by their locations; their villages. Today, the Anishinaabe continue to divide along band lines yet maintain a shared identity through common ancestry as Anishinaabe people. These separate bands are primarily recognized as separate nations that maintain their own governments and laws. For example, many Anishinaabe nations were recognized by their band names in their treaties and continue to employ these names today (e.g. Turtle Mountain Band of Chippewa Indians and Red Lake Band of Chippewa Indians.). In Canada, many Anishinaabe nations maintain names that pertain to their locations. In addition, “First Nation” is common usage in Canada to refer to Native nations and many Anishinaabe First Nations do not use “band” as part of their official national name.

generations.²⁹ These findings may bring forward a fresh understanding of treaties, which form the foundation of Anishinaabe-state relations. Furthermore, the insights gleaned, it will be argued, may reshape our understanding of Anishinaabe reserved aboriginal and treaty rights today.

The Anishinaabe, while having a collective identity, comprise distinct, separate bands that span a vast geographic region from the Plains to the Great Lakes.³⁰ Within Canada, the Anishinaabe homeland stretches from western Saskatchewan to Southern Ontario. Within the United States, they were spread from Montana to Michigan. The Plains Anishinaabe are primarily found in Montana, North Dakota, Saskatchewan, and western Manitoba. The northern Anishinaabe live between Hudson Bay and the Great Lakes and the Southwestern Anishinaabe reside in Minnesota, Wisconsin, and Upper Michigan. Historically, the Southeastern Anishinaabe often formed strong social, political, and kin ties with the Ottawa and Pottawatomie, some forming a confederacy known as The Three Fires, and primarily live in Michigan.³¹

The Anishinaabe are part of a large language family known as Algonquian. Ives Goddard notes that “The Central Algonquian languages are those members of the Algonquian linguistic family that were spoken aboriginally in the area of the Upper Great

²⁹ I interchange “treaty” with “agreement” throughout this dissertation. However, I do not intend it to equate to the legal usage of “agreement,” for compacts and contracts made between Native nations with the United States after the end of treaty-making in 1871. While these agreements did indeed share similar features with treaties and initially ceded large areas of land, this dissertation does not encompass the agreements between the Anishinaabe and the United States that occurred after 1871. See United States Congress. Abolition of Treaty Making, March 31, 1871. 16 *U.S. Statutes at Large*, 566 (1871).

³⁰ For maps and detailed accounts of location and land cessions of the Anishinaabe, see Helen Hornbeck Tanner and Miklos Pinther, *Atlas of Great Lakes Indian History*, 1st ed., *Civilization of the American Indian Series; V. 174* (Norman: Published for the Newberry Library by the University of Oklahoma Press, 1987).

³¹ Ritzenthaler, “Southwestern Chippewa.”, Rogers, “Southeastern Ojibwa.”

Lakes and the Canadian North, to the east of the Great Plains.”³² Some members of this language family include the Ojibwe, Potawatomi, Menominee, Sauk, Fox, Kickapoo, Cree, Miami, Illinois, and Shawnee. “A single language with numerous dialects is spoken by the Indian groups known as the Ojibwa, Chippewa, Saulteaux, Ottawa, Mississauga, Nipissing, and Algonquin.”³³ While this larger Algonquian language family shaped and informed Anishinaabe identity, it does not mean these various nations always considered each other as family or allies.

Between 1785 and 1923, Anishinaabe nations entered into numerous treaties with the United States and Canada. This dissertation examines approximately fifty-four ratified treaties with the United States and Canada. This dissertation analyzes the treaties between the Anishinaabe and the United States that are listed in *Indian Affairs: Laws and Treaties Vol. 2*, compiled and edited by Charles J. Kappler, under the heading of Chippewa.³⁴ In addition, I examine the Numbered Treaties, The Robinson Treaty, the Manitoulin Island Treaty and the Williams Treaties between the Anishinaabe and Canada.³⁵ Of these fifty-four treaties examined, twenty-eight were comprised of multiple tribal nations. Sixteen involved multiple Anishinaabe bands. Thus, only ten treaties in total were negotiated by a single Anishinaabe band, all of which occurred with the United States. The fact that the vast majority of Anishinaabe treaties were entered into by

³² Ives Goddard, "Central Algonquian Languages," in *Handbook of the North American Indians; Northeast*, ed. Bruce G. Trigger (Washington: Smithsonian Institution, 1996), 583.

³³ Ibid.

³⁴ Kappler, Charles J., comp. and ed. *Indian Affairs: Laws and Treaties*. 2 vols. Washington, D.C.: Government Printing Office, 1904 (*Senate Document* no. 319, 58th Congress, 2d session, serial 4624).

³⁵ My research on Canadian treaties with the Anishinaabe primarily utilizes the treaty records found in Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto* (Toronto: Prospero Books, 2000). I also examine the treaty texts and research reports archived by Indian and Northern Affairs Canada. See http://www.ainc-inac.gc.ca/pr/trts/hti/site/mainindex_e.html. For a fuller list of Canadian-First Nation treaties and land cessions, see Canada, *Indian Treaties and Surrenders, from 1680-1902*, 3 vols. (Toronto: Coles Publishing Company, 1971).

multiple parties illustrates that strategic alliances among nations were utilized to assert land tenure across a multi-national terrain. Yet these assertions of nationhood and land tenure have received little attention in the study of Indigenous nationhood and political organization.

The Anishinaabe historically subsisted primarily on hunting, fishing, sugaring, harvesting wild rice and gathering wild crops. These foods and practices continue to have physical, spiritual, cultural, and economic significance for the Anishinaabe. Both before and after contact and interaction with Europeans, trade networks and alliances shaped and influenced the social, political, and economic spheres of Anishinaabe life. While contact mirrored prior practices across North America, the interactions between the Anishinaabe and Europeans also disrupted and rapidly changed Native peoples lives in North America. Throughout the late seventeenth century, Anishinaabe peoples and nations, pushed by their allies and enemies to the east, continued to move westward. At the same time, other Anishinaabe peoples moved into more southern regions as well. This movement required the Anishinaabe and other Native and colonial nations to establish or renew their political, economic, and social alliances.³⁶

The Anishinaabe nations' presence in Minnesota and Wisconsin became more secure by 1780 as a more or less permanent buffer zone was established between the Anishinaabe and Dakota. By the 1800s, Anishinaabe nations were also successfully pushing their way into what would become their western and northern homelands in present day Saskatchewan and Manitoba. By the 1820s they had moved onto the

³⁶ For maps of Anishinaabe land use and cessions in the United States see Tanner and Pinther, *Atlas of Great Lakes Indian History*. For maps in Canada, see Indian and Northern Affairs Canada, Historic Treaty Information [online]. Treaty Policy Directorate. Accessed 08-15-08: http://www.ainc-inac.gc.ca/pr/trts/hti/site/mainindex_e.html

“southern” plains of North Dakota. Yet, as the western Anishinaabe nations were becoming more territorially secure in these areas, the United States and British North America pursued and competed for the same lands.³⁷

U.S. and Canadian Treaties: An Overview

The Ojibwe Curriculum Committee has found that “[t]he first of these treaties, signed in 1781, and the last, made in 1929, were both with Canada. All of the important land cession treaties with the United States were made in the forty-eight years between 1819 and 1866.”³⁸ The first tract of land purchased from the Anishinaabe occurred along the Niagara River and became the site for a British fort. The Mississauga and other Anishinaabe bands sold this strip of land in 1764, though the sale would not be ratified until 1781 by a formal treaty with the British. Furthermore, in 1781, the British purchased Mackinac Island. Anishinaabe bands in southern Ontario also felt pressure to cede portions of their territory as Britain looked toward their lands as the location to settle American Loyalists and Indian allies after the American Revolutionary War. A number of land cessions occurred until 1830 in Southern Ontario. Anishinaabe nations who found themselves suddenly “within” the United States after the war faced white encroachment onto their lands in the Ohio Valley under the guise of conquest. By 1842, the Indians of Michigan had ceded their lands.³⁹

The United Nation of Chippewa, Ottawa, and Pottawatomie in northern Illinois and southern Wisconsin signed seven treaties between 1816 and 1833 that relinquished

³⁷ Ritzenhaler, "Southwestern Chippewa.", Rogers, "Southeastern Ojibwa."

³⁸ Ojibwe Curriculum Committee, *The Land of the Ojibwe* (St. Paul: Minnesota Historical Society, 1973), 23.

³⁹ Rogers, "Southeastern Ojibwa."

their claims east of the Mississippi. In 1836, the Anishinaabe and Ottawa ceded part of Lower Michigan and the eastern half of Upper Michigan to the United States. By 1857, Canada had acquired the southern peninsula between Lake Huron and Georgian Bay, and most of Manitoulin Island in 1862. Large portions of land were ceded in northern Wisconsin and Minnesota in 1837, though the Lake Superior Anishinaabe retained rights to hunt, fish, and gather in these ceded territories. The Pillager and Mississippi bands sold tracts in central Minnesota to the United States in 1847. Additional treaties were signed with the United States and Canada in the 1850s, and by 1863, the Red Lake and Pembina bands had ceded the Red River Valley to the United States. The last major land cession treaty with the United States was signed in 1866 with the Bois Fort band for land in northern Minnesota.⁴⁰ In 1871, Congress enacted a provision, by way of an appropriation rider, that ended treaty-making with tribes in the United States. However, the United States continued to negotiate with Native nations for land cessions, thereafter referred to as “agreements.”

Between 1868 and 1929, the Anishinaabe would enter into a number of treaties with Canada. During this same year, Canada began negotiating the Numbered Treaties. Treaty One and Two was signed in 1871 with the Plains Anishinaabe and “Swampy” Cree of the Red River Valley. Treaty Three in 1873 was signed with the Anishinaabe of Lake of the Woods. Between 1871 and 1877, the first seven of the numbered treaties had been signed. Canada continued to negotiate treaties with the Anishinaabe until into the twentieth century, with the Williams Treaties.⁴¹

⁴⁰ Committee, *The Land of the Ojibwe*, 24-32, Ritzenthaler, "Southwestern Chippewa.", Rogers, "Southeastern Ojibwa.", Tanner and Pinther, *Atlas of Great Lakes Indian History*.

⁴¹ See, for example, Indian and Northern Affairs Canada, Historic Treaty Information [online]. Treaty Policy Directorate. Accessed 08-15-08: http://www.ainc-inac.gc.ca/pr/trts/hti/site/mainindex_e.html.

The Anishinaabe are historically and today a people who cross many political and geographical borders. Anishinaabe people share many beliefs and practices, yet individual nations are influenced by their particular histories, geographic locations, political relationships, and internal conflicts. Historically, Anishinaabe nations often entered into treaty negotiations together and chose to express their land tenure through a unified voice. At the same time, Anishinaabe people and their treaties expressly recognized the separate, distinct interests each band maintained to the territory under negotiation. The Anishinaabe retained their distinct character as separate nations yet recognized themselves as having alliances across Anishinaabe nations and with other tribal nations. By looking across Anishinaabe nations, this research seeks to ascertain how Anishinaabe people expressed their sovereignty, nationhood, and land tenure in response to different geographical, temporal, and colonial conditions. Anishinaabe peoples often sought recognition and protection of their land tenure with both the United States and Canada by engaging with these states in treaty-making that they hoped would guarantee their status as sovereigns and as proprietors.

An understanding of *The Theft of Fire* can shed light on how the Anishinaabe understood their treaty relationships. In the same ways that fire was at the core of creation and the heart of the people, this dissertation will argue that treaties are the core and heart of political relationships between nations. They are the force of a nation in the promises and obligations they entail, but they also mark a nation by the limitations they contain. Much in the same way that the hare retains his original identity, nations remain distinct, separate political entities. Yet both the hare and the nation are marked by their

Ritzenthaler, "Southwestern Chippewa.", Rogers, "Southeastern Ojibwa.", Jill St. Germain, *Indian Treaty-Making Policy in the United States and Canada 1867-1877* (Toronto: University of Toronto Press, 2001), Tanner and Pinther, *Atlas of Great Lakes Indian History*.

interactions or treaties with others. Thus, as illustrated in *The Theft of Fire*, looking across tribal and nation-state borders can shed light on how the Anishinaabe saw themselves as distinct nations as well as political actors within a larger multi-national alliance or confederacy.

The Fires Burn: United State and Canadian Indian Policy and Practice

While this dissertation focuses primarily on how the Anishinaabe articulated their sovereignty, nationhood, and land tenure in treaty-making, it is also necessarily a comparative study of the two colonial nations who were the other party to these treaties: The United States and Canada. When Europeans first set foot on North America in 1513, between five and ten million Native people lived in what are now the United States and Canada. Roger Nichols, in his comparative study of Indigenous peoples in the United States and Canada, has observed that “[o]ften trade, cooperation, and goodwill coexisted with greed, brutality, and violence.”⁴² This European imperialism was not only felt in North America. Throughout the sixteen and seventeenth centuries, Europeans penetrated parts of New Zealand, Australia, Africa, and South America in their will for empire. The practical histories and events varied, yet similarities existed as well.

The United States and Canada’s European predecessors came from “... an era of growing nationalism, continuing religious quarrels, and bitter economic competition. Highly ethnocentric, they saw themselves and their institutions as the pinnacle of civilization. All four of the early colonizing powers—Spain, France, Holland, and England—had experienced bitter, protracted religious wars and turmoil. Each seemed to

⁴² Roger L. Nichols, *Indians in the United States and Canada: A Comparative History*, First Bison books printing. ed. (Lincoln: University of Nebraska Press, 1999), xiii.

consider itself as clearly superior to its European neighbors and certainly more “civilized” than the native peoples of North America.”⁴³ While the Spanish, British, Dutch, and French had distinct motivations for gaining and retaining a presence in North America, the results proved all too similar. Settlement, trade, and warfare, coupled with European diseases and dislocation, began to transform North America.

European competition for a claim in North America gave rise to and shaped these colonial nations’ policies and practices toward First Nations. The United States and Canadian governments have a shared foundation in British colonial and imperial experience. Thus, the colonial policies and precedents established through centuries of interaction between First Nations and Europeans (often through missionary contact, trade relations, and military encounters) informed and shaped Aboriginal law and policy developed in the U.S. and Canada. Aboriginal law in the U.S. and Canada is rooted in the Royal Proclamation of 1763, which recognized the Aboriginal title of First Nations, stating:

And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them or any of them, as their Hunting Grounds.⁴⁴

The Royal Proclamation, as one of the most significant policies recognizing the nature and scope of Aboriginal title, and one of the foundational documents Federal Indian

⁴³ Ibid., 3.

⁴⁴ *Royal Proclamation*, October 7, 1763, Reprinted at R.S.C. 1985, App. II, No. 1 [Hereafter *The Royal Proclamation*].

policy invoked in United States and Canadian case law and explicitly recognized in section 25 of the *Canadian Charter of Rights and Freedoms*.

The Royal Proclamation rested, however, on the assumption that sovereignty resided in the Crown. Nichols argues that “...when British imperial authorities stressed their sovereignty over the tribes and the ownership of the land, their claims must be understood as being made in competition with the French or the Spanish in the race for North America.”⁴⁵ Indeed, after 1763, Britain engaged in the time honored diplomatic practice of treaty councils. First Nations were dealt with as nations. Yet, Britain’s presumption of sovereignty in the Royal Proclamation would shape the legal philosophies that the United States and Canada would come to share. Jill St. Germain, in her comparative study of Indian treaty-making policy in the United States and Canada, has found that “British concerns, as manifested in both the Royal Proclamation of 1763 and the Quebec Act of 1774, and American reactions to these documents illuminate the future course of Indian policy and Indian treaty-making in the two nations that would come to occupy the North American continent.”⁴⁶

While the United States and Canada had a shared foundation in British imperial policy, the United States diverged from Canada in how this shared past would inform the nation’s present and future. As American colonists revolted from Britain, they quickly developed a national identity that necessitated their separation from their British past. Yet, as St. Germain has found, “National weakness and pecuniary considerations in the early days of independence dictated that the United States make no abrupt changes in Indian policy. National security indicated a conciliatory and cautious approach to the

⁴⁵ Nichols, *Indians in the United States and Canada: A Comparative History*, 130.

⁴⁶ St. Germain, *Indian Treaty-Making Policy in the United States and Canada 1867-1877*, 2-3.

several powerful Indian nations in the adjacent regions, and Americans turned to the practices enunciated in the proclamation for lack of an alternative, not out of newfound principles they had rejected in the revolutionary struggle.”⁴⁷ The young U.S. government was cautious to impose any restriction on its own citizens, as restrictions from Britain had helped fuel the Revolution, other than to place treaty-making in the Federal government. St. Germain has found that “[t]his selective application of British policy in the expanding American West would have lethal consequences, not only for the individuals on the western frontier, but eventually for treaty-making itself.”⁴⁸

United States and British competition fueled these nations’ interest in continuing their treaty policy. Although Britain had relinquished claim to the Old Northwest in the Treaty of Paris in 1783, it continued to occupy the area until these two nations entered into Jay’s Treaty in 1795, with Britain finally abandoning its posts two years later. In addition, Americans were uneasy about their own Indian relations, as many First Nations had aligned themselves with Britain during the war. Both nations continued to compete for Indian allies. Yet, by the late eighteenth century, United States and British North American approach toward Indian affairs would diverge.

Nichols has found that “[w]hile American authorities treated the tribes as defeated enemies and strove to punish them by taking land, the British in Canada used different approaches. First, they strove to persuade the Indians that the king had not abandoned them in 1783 by recognizing American independence and that the English still considered them friends and essential allies.”⁴⁹ He further notes that “[t]hus from 1783 Canada and the United States took different paths in dealing with Indian land cessions. The British

⁴⁷ Ibid., 3.

⁴⁸ Ibid.

⁴⁹ Nichols, *Indians in the United States and Canada: A Comparative History*, 141.

colonial authorities based their policy and actions on the theory of tribal title stated in the Proclamation of 1763, whereas the Americans often acted as though earlier British policies and legislation concerning Indians affairs could be disregarded because of national independence.”⁵⁰

The United States and Canada’s shared British foundations, coupled with their contestation for retaining control in North American, continued to shape policy and practice. In 1791, Britain divided its eastern North American territories into two provinces under the Constitutional Act: Upper Canada (present day Ontario) and Lower Canada (Quebec). Policy and practice in Upper Canada remained predicated on the fear of U.S. invasion and conquest. Land cessions in Canada became motivated by Canada’s need to acquire land for the American Loyalists and Indian allies who had fled from the United States after the war. These land cessions primarily resulted in the agitation of First Nations who had understood these initial agreements as leases of land, not sells, and were frustrated by Canadian and “foreign” Indian settlement.

United States and Canadian desires for land, however, fueled conflict with First Nations. These various competing claims would result in another war in 1812. Yet, when the War of 1812 ended and the United States and Canada reconciled their competing claims, both nations turned their attention to extending their control over First Nations. Nichols has found that “[w]ith the signing of the Treaty of Ghent in 1815, officials in Canada and the United States began their dealing with the Indians from a different perspective.”⁵¹ Yet, both nations proceeded in a similar fashion when it came to land acquisition and the push to assimilate Native peoples into the national fabric.

⁵⁰ Ibid., 143.

⁵¹ Ibid., 162.

In 1819, for example, the United States federal government established the Indian Civilization Fund.⁵² Canadians also began discussing a process to persuade Native people to adopt agriculture. By the 1830s, with the passage of the Indian Removal Act, United States' policy called for the removal of Indians to lands west of the Mississippi River.⁵³ No such policy existed in Canada. While Canada did not carry out a removal policy, U.S. removal practice affected and transformed Canada as numerous Native nations fled removal by migrating north into Canada.

Warfare and conflict marked United States relations to Native nations in the second half of the nineteenth century to a degree that was not replicated in Canada. Nichols has found that “[w]hile the United States and its tribal people fought bloody wars in the decades after 1860, Canada usually avoided major confrontation and bloodshed.”⁵⁴ Yet Canada was not completely devoid of conflict. Nichols argues that “[n]evertheless, the fact is that Canada had only two major crises in its west, and these came primarily from the mixed-race population, the Métis, rather than from the Indian tribes there. In both cases, the so-called Red River War in 1869–70 and the Riel-led Métis uprising in 1885–86, the confrontations resulted from government inattention, high-handedness, and parsimony with the Métis and Indians alike.”⁵⁵

United States and Canadian policy became increasingly paternalistic. During the 1830s, both nations began to construct First Nations as being under their guardianship, set in law in the United States by *Cherokee Nation v. State of Georgia*, Chief Justice John

⁵² United States Congress. Civilization Fund Act, March 3, 1819. 3 *U.S. Statutes at Large*, 516-17 (1819).

⁵³ United States Congress. Indian Removal Act, May 28, 1830. 4 *U.S. Statutes at Large*, 411-12 (1830).

⁵⁴ Nichols, *Indians in the United States and Canada: A Comparative History*, 220.

⁵⁵ *Ibid.*

Marshall defined Indians as “domestic-dependent nations.”⁵⁶ While Canada opposed the U.S. policy of removal, as vindicated in the 1858 Pennefather Commission’s report, this report, nonetheless, promoted the allotment of Indian lands. Indian policy in both nations focused primarily on the assimilation of Native peoples. In 1860, Britain turned control of Indian affairs over to Canada, who carried on this tradition. The United States shifted their policy from removal to a system of permanent reservations in the 1850’s but continued to utilize treaties as the vehicle to acquire land and carry out their policies.⁵⁷ Neither the United States nor Canada were willing to actually enforce the terms of these treaties.

Throughout the second half of the nineteenth century, the United States and Canada both remained focused on the incorporation of Indians into the national polity. Both used boarding school policies and the Church as tools to achieve these ends. Nichols has found that “[a]t the same time, interest in transcontinental railroads brought more whites onto the plains and mountains and [in the United States] led to bitter warfare that swept across the West for the next three decades.”⁵⁸ In 1871, the United States Congress ended treaty-making, though the practice continued in the form of “Agreements” into the twentieth century.⁵⁹ In Canada, in the same year that the United States was abandoning this system, government officials began negotiating the first of the numbered treaties [1-11]. Yet, Nichols has found that “[b]y the end of the nineteenth century the earlier differences that marked the Indian policies of Canada and the United

⁵⁶ *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831) [Hereafter *Cherokee Nation v. Georgia*].

⁵⁷ Prucha, *American Indian Treaties: The History of Political Anomaly*, Prucha, *The Great Father: The United States Government and the American Indians*.

⁵⁸ Nichols, *Indians in the United States and Canada: A Comparative History*, 204.

⁵⁹ United States Congress. Abolition of Treaty Making, March 31, 1871. 16 *U.S. Statutes at Large*, 566 (1871).

States had receded, as the two governments moved toward similar goals and methods. Education, religion, agriculture, segregated reservations, and individual landholdings characterized the broad approach of each.”⁶⁰

Native nations in the United States and Canada were discontent with Indian policy, and this changed little throughout the twentieth century. Both nations sought to politically incorporate Native peoples into the national polity, the United States unilaterally granted Native peoples U.S. citizenship in 1924.⁶¹ Both countries sought to terminate their political relationships with First Nations, the United States in the 1950s with Termination policy and Canada in 1969 with the White Paper.⁶² Both failed miserably. Both the United States and Canada also sought to relocate Native peoples into cities, though Canada did not have the formal programs that existed in the United States in the 1950s.⁶³

During the 1970s, the United States sought to settle Alaskan Native claims through an act.⁶⁴ At the same time, the Nisgha from British Columbia turned to the Canadian courts to secure recognition of their Aboriginal title. Though the Supreme Court ruled against them, in *Calder v. the Attorney General of British Columbia*, the justices voted to accept First Nation’s land claims.⁶⁵ Case law in these two nations has taken different trajectories. While scholarship of previous decades neglected to address the historical realities of treaty-making, there has been a growing focus on the cultural

⁶⁰ Nichols, *Indians in the United States and Canada: A Comparative History*, 242.

⁶¹ United States Congress. Indian Citizenship Act, June 2, 1924. 43 *U.S. Statutes at Large*, 253 (1924).

⁶² Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada*, Wilkins, *American Indian Politics and the American Political System*.

⁶³ Nichols, *Indians in the United States and Canada: A Comparative History*, Wilkins, *American Indian Politics and the American Political System*.

⁶⁴ Nichols, *Indians in the United States and Canada: A Comparative History*, Wilkins, *American Indian Politics and the American Political System*.

⁶⁵ *Calder v. British Columbia (Attorney General)*, [1973] S.C.R. 313.

and legal components of Indian treaties. While most contemporary scholarship addressing Native peoples references their unique political position as sovereign nations who have long-standing treaties with the United States and Canada, there is still a scant amount of work that specifically examines the practices and policies of treaty-making. Treaty-making, though important in both countries, was not a monolithic practice in North America. Treaty-making in Canada almost exclusively focused on land acquisition, while the United States saw treaties as a means to acquire land as well as carry out shifting federal Indian policy goals.⁶⁶

Interestingly, Canadian Aboriginal policy and practice were informed by U.S. treaty practice and, in particular, Chief Justice Marshall's landmark Supreme Court opinions in the 1820s and 1830s.⁶⁷ Yet, Canadian Aboriginal policy and law has also diverged from U.S. federal Indian law in many ways, primarily by entrenching Aboriginal rights in the Canadian Constitution in 1983, continuing treaty-making practices, and moving away from Marshall's nineteenth-century Aboriginal rights theory in recent case law. As a result, scholarship in Canada has often examined the general practice and implementation of treaties. In contrast, American scholarship has often focused on specific eras, primarily analyzing the development of federal policies, the role of translators, government agents, and missionaries. There have only been a few comparative studies of Indian treaty-making policy in the United States and Canada.⁶⁸ Though these works have made significant contributions to the study of treaty-making,

⁶⁶ St. Germain, *Indian Treaty-Making Policy in the United States and Canada 1867-1877*.

⁶⁷ *Johnson v. M'Intosh*, 21 U.S. (8 Wheat) 543 (1823) [Hereafter *Johnson v. M'Intosh*], *Cherokee Nation v. Georgia*, and *Worcester v. Georgia*, 31 U.S. 515 (1832) [Hereafter *Worcester v. Georgia*]. Also see Christopher D. Jenkins, "John Marshall's Aboriginal Rights Theory and Its Treatment in Canadian Jurisprudence," *University of British Columbia Law Review*, no. 35 (2001).

⁶⁸ Nichols, *Indians in the United States and Canada: A Comparative History*, St. Germain, *Indian Treaty-Making Policy in the United States and Canada 1867-1877*.

they have often centered on the policies and motivations of the colonial governments involved. Little attention has been paid to the Native nations who participated in these bilateral and multi-national relationships, thus leaving an incomplete picture of the treaty-making process.

Scorched by the Fire: Historicizing Federal Indian Law

Anishinaabe scholar John Borrows argues that “Indigenous law originates in the political, economic, spiritual, and social values expressed through the teachings and behavior of knowledgeable and respected individuals and elders.”⁶⁹ He further finds that “[t]hese principles are enunciated in the rich stories, ceremonies, and traditions within First Nations. Stories express the law in Aboriginal communities, since they represent the accumulated wisdom and experience of First Nations conflict resolution.”⁷⁰ While these stories and teachings express Anishinaabe law, they are also part of a larger political discourse that can shed light on how the Anishinaabe constructed and, in turn, expressed their sovereignty, nationhood, and land tenure.

U.S. and Canadian law have posed problems for Native peoples by frequently excluding Aboriginal land tenure consideration in pertinent court cases regarding Aboriginal title and treaty rights. Because of the canons of treaty construction, a United States and Canadian legal doctrine which posits that treaties should be interpreted as they would have been understood by those Native nations when the agreements were signed, it

⁶⁹ Borrows, *Recovering Canada: The Resurgence of Indigenous Law*, 13.

⁷⁰ Ibid.

is imperative that we better understand how Native nations constructed their tribal land tenure systems when they negotiated treaties with the United States and Canada.⁷¹

Drawing primarily on the works of Vine Deloria Jr., Felix Cohen, David Wilkins, and Robert Williams Jr., this dissertation asserts that the federal Indian treaty law of United States and Canada, when removed from its historical impetus, has served to diminish or deny the Aboriginal and treaty rights of Indigenous peoples. Yet, I will be argue that the legitimacy of the United States and Canada depends upon their recognition of their treaties with Indigenous peoples and that a re-examination of these foundational documents may lend insight into the relationship and responsibilities which exist between Indigenous peoples and the United States and Canada.

Lakota scholar and activist Vine Deloria Jr. has profoundly shaped the field of Native diplomacy, federal Indian law, and American Indian Studies. Vine Deloria Jr.'s work is highly regarded both within and outside of American Indian communities and has earned him the title of "Dean of all American Indian scholars."⁷² Deloria's scholarship speaks to the many concerns of Native peoples. His work, containing a blend of candor and humor, is central to the field of American Indian studies and has generated widespread response across the academy, the U.S. government, and church organizations for decades.⁷³ This dissertation is primarily informed by Deloria's scholarship that examines the theoretical relationship between history and law. He argues that law had become disconnected from history and that little thought has been given to "the idea that

⁷¹ *Jones v. Meehan*, 175 U.S. 1. (1899) [Hereafter *Jones v. Meehan*].

⁷² Richard A. Grounds, George E. Tinker, and David E. Wilkins, *Native Voices: American Indian Identity and Resistance* (Lawrence: University Press of Kansas, 2003), vii-viii.

⁷³ *Ibid.*

historical incidents may well have determined the context and content of the law...⁷⁴ This sentiment is also echoed by Nathan Margold in the introduction for the *Handbook of Federal Indian Law*, first published in 1942, who posited that “Federal Indian law is a subject that cannot be understood if the historical dimension of existing law is ignored.”⁷⁵ Yet, the historical underpinnings of law are rarely explored in the application of legal precedent.

Lumbee scholar David Wilkins has argued that “Supreme Court cases are the epitome—the most succinct enunciation—of what is termed ‘the law.’”⁷⁶ In his study of American Indian sovereignty and the Supreme Court, Wilkins asserts that law is never free of bias. Though it purports to be rational and neutral, the court is neither of these.⁷⁷ As a result, “[t]hese decisions have not only had a tremendous, often devastating, impact on tribal sovereign status and Aboriginal land title, but they have also contributed significantly to the confusion surrounding the relationships between tribal governments and the U.S. government.”⁷⁸ This confusion about the relationship between Indigenous nations and the U.S. can also be seen in Canada. The creation of a series of legal doctrines, such as plenary power and the trust doctrine, have been interpreted and redefined in various ways to justify westerns nations’ proclaimed authority over Indigenous peoples. Yet, a re-examination of the treaty relationship, where many of these legal doctrines had their origins, can bring forth these doctrines’ original context and intent.

⁷⁴ Vine Deloria, Jr., “Laws Founded in Justice and Humanity: Reflections on the Content and Character of Federal Indian Law,” *Arizona Law Review* 31, no. 2 (1989): 204.

⁷⁵ Felix S. Cohen, *Handbook of Federal Indian Law, with Reference Tables and Index* (Washington,; U. S. Govt. Print. Off., 1942), xiii.

⁷⁶ David E. Wilkins, *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice* (Austin: University of Texas Press, 1997), 2.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*, 3.

The absence of history from law has rendered law a weapon that is often applied to diminish or deny Native rights, despite its original historical impetus and context. Robert Williams, Jr., in his 2005 study of the legal history of racism in America, discusses how law serves as a “loaded weapon.” He opens his examination of the U.S. Supreme Court with a quote from Justice Robert Jackson’s dissenting opinion in *Korematsu v. United States*.⁷⁹ Justice Jackson said:

A military order, however unconstitutional, is not apt to last longer than the military emergency...but once a judicial opinion rationalized such an order to show that it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination... The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition imbeds that principle more deeply in our law and thinking and expands it to new purposes.⁸⁰

Throughout his study Williams invokes this dissenting opinion to discuss how Supreme Court opinions that rely on what he considers racist language depicting Native peoples *lies about like a loaded weapon*. He argues that certain seminal nineteenth-century federal Indian law decisions remain *ready for the hand* of current Justices who continue to employ this language as a means to deny Native peoples their political rights. Furthermore, he finds that court opinions are often read in ways that *expands it to new purposes* and indeed *every repetition imbeds that principle more deeply in our law and*

⁷⁹ *Korematsu v. United States*, 323 U.S. 214 (1944)

⁸⁰ Robert A. Williams, *Like a Loaded Weapon: The Rehnquist Court, Indian Rights, and the Legal History of Racism in America, Indigenous Americas* (Minneapolis: University of Minnesota Press, 2005).

thinking. This expansion of law is dangerous as the courts interpret treaties and Native peoples contemporary treaty rights.

Wilkins' and Williams' attention to the weight of judicial opinions demonstrate the importance of understanding the relationship between law and history. Indeed, law runs the risk, especially when it is removed from its historical context, to lie about like a loaded weapon ready for the hand. Law when divested of history can be expanded to new purposes that are removed from the judicial context that led to their inceptions. This is illustrated in John Marshall's Supreme Court decision in *Johnson v. M'Intosh*.⁸¹ As Wilkins observes, *Johnson* intended to establish how pre-Revolutionary land transactions would be recognized. Setting this problem aside, Marshall proceeded to answer a different question entirely: whether or not American Indians held *title* to their occupied lands.⁸² In his opinion, Marshall argued that title was held exclusively by the United States as a result of the doctrine of conquest, a view later expressed in the Canadian courts. In Marshall's formulation, Indian nations retained mere "rights of occupancy." The Chief Justice supported his opinion by invoking the American national mythology of superior civilization, stating:

But the tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness; to govern them as a distinct people, was impossible, because they were as brave and as high spirited as they were

⁸¹ *Johnson v. M'Intosh*.

⁸² Wilkins, *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice*, 30.

fierce, and were ready to repel by arms every attempt of their independence.⁸³

In this opinion, the court argued that Native nations were “inferior” to “civilized” Europeans and were, therefore, incapable of owning and selling their lands. Furthermore, the court invoked the doctrine of conquest, asserting European domination over tribes. Finally, Marshall created a new rule as a means to legitimize what he called the “actual state of things.” Wilkins concluded that “[t]he ‘rule’ was Marshall’s innovative deployment of the historically fictitious doctrines of discovery and conquest to legitimize the United States’ power over tribes.”⁸⁴ In other words, the European-derived doctrines of discovery and conquest, rooted in fictional notions of Indian savagery and moral inferiority, became U.S. and Canadian law and have, at times, been used to diminish the legal rights of Indigenous nations.

As Williams’ fully discusses in *Like a Loaded Weapon*, Marshall’s legal findings were shaped by his discriminatory ideologies of Indigenous peoples and yet this ideology continues to persist as “good law.” In 1955, Justice Stanley F. Reed’s majority opinion in *Tee-Hit-Ton v. United States* reflected the Supreme Court’s continued use of Marshall’s interpretation of the doctrine of conquest. Reed proclaimed, “Every American schoolboy knows that the savage tribes of this continent were deprived of their ancestral range by force and that, even when the Indians ceded millions of acres by treaty in return for blankets, food and trinkets, it was not a sale but the conqueror’s will that deprived them of their land.”⁸⁵ Justice Reed’s opinion ignored the history of treaty-making between

⁸³ *Johnson v. M’Intosh*, 590.

⁸⁴ Wilkins, *American Indian Sovereignty*, 34.

⁸⁵ *Tee-Hit-Ton v. United States*, 348 U.S. 272, 289 (1955).

Indigenous nations and the United States by invoking conquest as the legal basis for the federal government's usurpation of Indian title.

Deloria perhaps best illustrates this relationship between history and law, stating that "[f]ederal Indian law itself is a mythical creature because it is composed of badly written, vaguely phrased and ill-considered federal statutes hundreds of self-serving Solicitor's Opinions and regulations; and state, federal, and Supreme Court decisions which bear little relationship to rational thought and contain a fictional view of American history that would shame some of our country's best novelists."⁸⁶ Deloria argues that if the history surrounding federal Indian law were brought to the forefront, a much different understanding of law and its relation to Native peoples would be unearthed.⁸⁷ He is critical of law when it is treated as an isolated subject that is perceived to consist of a set of principles represented as *truths*, arguing that "[f]lowing down from this unreachable and perhaps incomprehensible realm of eternal truths are concepts which continue to expand as decades and centuries pass."⁸⁸ From these concepts and their continued expansion, "law develops a language all its own."⁸⁹ This language has been used to exclude Indigenous conceptions of sovereignty and land tenure, conceptions that are difficult to reconcile with colonial assertions of sovereignty and conquest.

Felix S. Cohen also expressed the relationship between law and history. Cohen compiled and edited the *Handbook of Federal Indian Law* while he was employed in the Solicitor's Office of the Department of the Interior, earning him the reputation as "the Blackstone of American Indian Law." This dissertation is theoretically informed by

⁸⁶ Deloria, "Laws Founded in Justice and Humanity: Reflections on the Content and Character of Federal Indian Law," 203.

⁸⁷ *Ibid.*: 220.

⁸⁸ *Ibid.*: 219.

⁸⁹ *Ibid.*: 204.

Cohen's contributions to American legal realism, a form of scholarship that developed theories about the nature of law. The central tenet of legal realism is that law is a social creation and thus is subject to human faults and imperfections. Legal realists have argued that the law in the books rarely determines the results of legal disputes and calls for an interdisciplinary approach to the study and application of law.

Cohen's scholarship within this field of thought primarily focuses on the function of language. He argues that history is critically important to law when looking at the function and application of language. He states, "When the vivid fictions and metaphors of traditional jurisprudence are thought of as reasons for decision, rather than poetical or mnemonic devices for formulating decisions reached on other grounds, then the author, as well as the reader, of the opinion or argument, is apt to forget the social forces which mold the law and the social ideals by which the law is to be judged."⁹⁰ Cohen called for a recitation of the historical circumstances that led to the decisions rendered by Justices, arguing for a broader understanding of the creation and impact of law.⁹¹ He also cautions against understanding law solely based on the language of the courts.

Deloria, Cohen, Borrows, Wilkins and Williams all recognize that law when removed from its historical circumstances can be a dangerous weapon. Wilkins argues that "[t]he Supreme Court's utilization of 'the law' served not only as an instrument of 'civilization,' but also as the federal government's most vital and effective 'instrument of empire building.'"⁹² This instrument of empire building has served to diminish or

⁹⁰ Felix S. Cohen, "Transcendental Nonsense and the Functional Approach," *Columbia Law Review* 35, no. 6 (1935).

⁹¹ Jill E. Martin, "Special Feature: The Miner's Canary: Felix S. Cohen's Philosophy of Indian Rights," *American Indian Law Review* 23 (1998).

⁹² Wilkins, *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice*, 15. Wilkins argument is shaped by Robert A. Williams, Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York: Oxford University Press, 1990), 6.

outright deny Indigenous peoples' rights as sovereigns and proprietors in both the United States and Canada. These leading political and legal scholars inform this dissertation in an effort to deconstruct U.S. and Canadian assertions of sovereignty, claims that depend upon law being removed from history. By putting forward Anishinaabe conceptions of land tenure, this dissertation seeks to probe the historical and legal records that have often been used as a loaded weapon against Indigenous assertions of sovereignty.

Tending the Fire: Methodology

In order to understand how the Anishinaabe constructed their land tenure in the nineteenth century, this dissertation employs ethnohistorical methodologies that help one to “understand culture on its own terms and according to its own cultural code” by engaging materials and methods across multiple disciplines.⁹³ My training in American Studies and American Indian Studies combines methodologies and materials intersecting the disciplines of Political Studies, Anthropology, and History in order to develop an understanding of Anishinaabe land tenure in operation throughout the treaty era.

I closely examined materials pertaining to Anishinaabe political thought and practice, traditional stories and teachings, and cultural beliefs and language. This dissertation primarily utilizes stories collected by Fox Anthropologist William Jones. Jones gathered a vast amount of material from the Anishinaabe along Lake Superior between 1903 and 1905 in Minnesota and southern Canada. Jones spent two seasons

⁹³ The American Society for Ethnohistory. Accessed 08-15-08: <http://ethnohistory.org>.

among the Ojibwe of Lake Superior, conducting field work, which culminated in the publication of two volumes of work.⁹⁴ Stories have a spirit. As such, they continue to live and grow. They have many versions that continue to exist and be told and read in Anishinaabe communities. It is my belief that the Anishinaabe storyteller's who relayed these stories to Jones did so with the intention that these stories would continue to grow and that later generations of Anishinaabe would continue to look to these stories for insight and understanding of who were are as Anishinaabe people. This dissertation also utilizes the stories recorded by contemporary Anishinaabe storytellers Edward Benton-Banai and Basil Johnston. While this dissertation relies on the written record, it has nonetheless been shaped and informed by contemporary Anishinaabe oral history.

I attempt to use Anishinaabemowin (the Anishinaabe Language) when possible and appropriate. However, I refrain from inserting Anishinaabe words for such concepts as sovereignty, nationhood, and land tenure. While such use of Anishinaabemowin is both appropriate and can provide additional insight into Anishinaabe conceptions of these important political concepts, it would require an extensive study of Anishinaabemowin to determine which words were being used by whom and at what times. Anishinaabemowin, like other features of Anishinaabe culture, is a living language and, therefore, the words for sovereignty, nationhood, and land tenure continue to adjust and adapt to the meaning Anishinaabe people attribute to these terms. To provide a cursory account of these words would be a disservice to both this work and more importantly to Anishinaabe people.

⁹⁴ Jones planned to publish them with a discussion of grammar and vocabulary; however, he was unable to complete this task due to his untimely death. Franz Boas and Truman Michelson finished the final translations and published them with the stories in 1917. For additional information on Jones, see P.E. Goddard, "Review: Publications of the American Ethnological Society. Edited by Franz Boas. Vol. VII Pt. I William Jones. Ojibwa Texts. Edited by Truman Michelson," *The American Journal of Philosophy* 41, no. 2 (1920). M. R. Harrington Franz Boas, Juul Dieserud, George Grant MacCurdy, and G. Frederick Wright, "Anthropologic Miscellanea," *American Anthropologist* 11, no. 1 (Jan-Mar 1909).

While I hope to incorporate such a study in future projects, an analysis of Anishinaabemowin is outside the scope of this project. When employing Anishinaabemowin, I use the double vowel orthography to maintain consistency with *A Concise Dictionary of Minnesota Ojibwe*.⁹⁵ Nonetheless, there are a number of writing systems in use among Anishinaabe speakers and scholars. I, therefore, have retained the original spelling for Anishinaabe names and words found in primary and secondary sources.

I analyzed government records relating to Anishinaabe peoples and treaty-making that are housed at the National Archives and Records Administration in Washington, DC and the Library and Archives Canada in Ottawa to better understand how the Anishinaabe maintained and expressed their land tenure. Many of these records are hand-written. While I attempted to utilize the transcribed versions that exist in addition to the hand-written, I was unable to locate typed transcripts for every treaty journal. While I have sought to transcribe and cite these sources with accuracy, many of these sources proved difficult to read. Thus, I have noted any quotations from these records that were illegible. In addition to the treaty record, I have also utilized the historical records pertaining to the Anishinaabe located at the Library of Congress, the Minnesota Historical Society, the Newberry Library, the National Anthropological Archives and the National Museum of the American Indian Cultural Resource Center with the Smithsonian Institution throughout the dissertation to demonstrate the social and cultural practices employed by the Anishinaabe throughout the treaty era.

Incorporating the historical records that addressed the cultural and social practices of the Anishinaabe helps to situate the treaty and supporting records within a broader

⁹⁵ Nichols and Nyholm, *A Concise Dictionary of Minnesota Ojibwe*.

understanding of Anishinaabe conceptions and practices of land tenure. This data and the ethnohistorical methodology reveal how the Anishinaabe were defining for themselves, and expressing in their relations with others, such important political concepts as sovereignty, nationhood, and land tenure. This approach not only provides a means for interpreting historical documents but also shapes the theoretical framework of this dissertation by utilizing traditional Anishinaabe stories as a lens to understand their historical and contemporary political struggles, as seen with *The Theft of Fire*.

The Theft of Fire, when applied to the contemporary political experiences facing the Anishinaabe, can shed light on how law serves as an effective instrument of empire building, as a loaded weapon, and as developed from a language all its own. Yet, this story can also demonstrate that, with a consideration of how law functions, perhaps this weapon can be used by the Anishinaabe to illuminate their rights as sovereigns within the confines of the U.S. and Canadian courts. Borrows, in his study of Aboriginal-Crown relations, reapplies this story to contemporary circumstances to be both a caution and, perhaps, a calling for the application of western (or common) law as a tool for Native peoples.

The Anishinaabe are enduring a long, hard winter freeze: *Peebon*. *Peebon* represents the Canadian courts whose interpretations of Aboriginal rights have left the Anishinaabe in a frozen state, looking for a means to bring warmth to the people. Nenabozho searches for a fire that might rekindle his own peoples' fires, which are now mere embers. He comes across a fire, the common law of Canada, and yet, as Nenabozho approaches this fire, he is cautious.

Nanabush stalks the land and looks for ways to steal fire. He approaches the common law warily. He might get burned. With suspicion that comes from experience, he knows the danger of trying to take something of value from that which can harm him greatly. Yet he is both brave and foolish, and so he tries. ...While Nanabush steals fire, Peebon's chilling pervasiveness continues to be felt. Nanabush's solitary actions may not be enough to permit a thaw.⁹⁶

Borrow's reapplication of this story, *The Theft of Fire*, to the contemporary struggles faced by Native peoples as they approach the courts in search of refuge demonstrates the underlying dangers that exist within law. The employment of this western law can leave its mark on the people in the same way that the hare was marked by his quest to obtain fire. Yet, it may also provide new avenues for Native peoples, much in the same way that the theft of fire led to the Anishinaabe obtaining this valuable resource. Nonetheless, for this law to be beneficial in any way requires an examination of the historical events that led to its creation.

Various legal scholars, as illustrated above, recognize that history is a vital component to understanding federal Indian law and determining Native peoples' legal rights. These legal rights are largely the result of the historical treaties and agreements between Indigenous peoples and colonial nation-states, such as the United States and Canada. Scholar Charles Wilkinson argues, "[t]he field of Indian law rests mainly on the old treaties and treaty substitutes. To understand them one must reach back to Aboriginal sovereignty and forward to the epochal changes that have occurred since in law and

⁹⁶ Borrows, *Recovering Canada: The Resurgence of Indigenous Law*, 73.

civilization.”⁹⁷ While much attention has been focused on federal Indian policies and law, a focus that is of great importance for Native peoples in their struggles for recognition and protection of their sovereignty, Wilkinson argues, “... the inquiry usually returns to these unique documents and their unique promises.”⁹⁸ Therefore, this study focuses on “these unique documents,” treaties, and attempts to place these documents in their historical and cultural perspective.

Feeding the Fire: Reconceptionalizing the “Nation” in the Fields of American and American Indian Studies

While American Studies originated out of the celebratory tradition of American exceptionalism,⁹⁹ the field continues to re-imagine itself while reflecting the social, economic, and political shifts occurring within the local, national, and global spheres.¹⁰⁰ A focus on the Anishinaabe allows for a study of nationhood that can advance as well as interrogate our understandings of this term. One of the key functions of post-nationalist American Studies is to interrogate constructions of race, class, gender, and sexuality, with a focus on the constructions of nation and citizen. Consequently, according to John Carlos Rowe, the question becomes “how the new (post-nationalist) American Studies would find a distinctive, interdisciplinary, scholarly, and teaching role for the specialty without slipping again into a rhetoric that privileged national identity. How could the new

⁹⁷ Charles F. Wilkinson, *American Indians, Time, and the Law: Native Societies in a Modern Constitutional Democracy* (New Haven: Yale University Press, 1987), 120.

⁹⁸ Ibid.

⁹⁹ Barbara Brinson Curiel et al., "Introduction," in *Post-Nationalist American Studies*, ed. John Carlos Rowe (Berkeley: University of California Press, 2000), 5.

¹⁰⁰ George Lipsitz, *American Studies in a Moment of Danger, Critical American Studies Series* (Minneapolis: University of Minnesota Press, 2001).

American Studies take ‘nation,’ ‘nationality,’ and ‘nationalism’ as phenomena that are simultaneously fictional and real?”¹⁰¹

Shelly Fisher Fishkin, in her 2004 ASA presidential address, asked, “What would the field of American Studies look like if the transnational rather than the national were at its center?”¹⁰² This dissertation considers instead what the transnational looks like when Native nations, rather than the United States or Canada, are at the center. Or at least share the center. More specifically, it examines how the transnational looks when the Anishinaabe are at the center. How do we then understand sovereignty? Land tenure? Nationhood? These differing political concepts challenge as well as contribute to how American Studies understands both U.S. nation-formation as well as how the creation of the United States reshaped other nations. In addition, Anishinaabe expressions of land tenure challenge western constructions of property, which continue to be played out in state, provincial, and federal courtrooms today.

By placing the Anishinaabe at the center, we are inherently forced to turn to the transnational. The Anishinaabe, during the treaty era, were entering into intra-national alliances between Anishinaabe bands as well as international treaties with other Indigenous nations and colonial nations, namely the United States and Canada. The Anishinaabe were aware of how treaty practices were being carried out across their bands and utilized this knowledge to their advantage whenever possible. Through their engagement across bands, the Anishinaabe were able to discuss various issues such as how much land was retained, the amount they were paid, and which hunting and fishing

¹⁰¹ Curiel et al., "Introduction," 6.

¹⁰² Shelley Fisher Fishkin, "Crossroads of Cultures: The Transnational Turn in American Studies- Presidential Address to the American Studies Association, November 12, 2004," *American Quarterly* 57, no. 1 (March 2005): 21.

rights were preserved. Thus, various bands informed one another's political thoughts and practices. In addition, the Anishinaabe often used treaty-making, especially along the border regions, to protest U.S. and Canadian border constructions that affected the internal affairs of these nations.

American Studies scholarship, with its turn to the transnational, has often focused on the construction and effect of borders between colonial nations rather than examining the unique effect of borders between colonial and tribal nations. American Indian Studies scholarship, on the other hand, has paid special attention to Indigenous nation formation and the construction of borders in its analysis of the political, cultural and social consequences of imperialism. These understandings directly challenge colonial nation-formation and legal constructions of Indian title that have served to legitimize colonial expansion through land acquisition. Therefore, an examination of Indigenous nation formation can directly inform an understanding of "nation" by advancing the critique of nationalism as well as probing the issues of nation-formation, border studies and transnationalism.

Post-colonial theory initially focused on critical analyses of European imperialism, but more recently American Studies scholars have found it useful to analyze the U.S. as an imperial power. This study joins that conversation by considering how Anishinaabe people asserted their land tenure in treaty negotiations. This dissertation argues that treaty-making operated as a means for Anishinaabe people to seek recognition and protection of their title and rights, a title and right that should be recognized under United States and Canadian legal doctrines for understanding and interpreting treaties with Native nations.

While a great deal of scholarship has focused on the U.S./Mexico border, relatively little attention has been paid to the U.S./Canadian border. Jill St. Germain's comparative study of U.S.-Canadian Indian treaty policy touches upon many of the roles the border played in both Indigenous and Canadian treaty practice.¹⁰³ David McGrady's study on the nineteenth-century Sioux along the U.S.-Canadian border does indeed take up the question of borderlands people. He finds that "[b]orderlands people, unlike those living in other areas deep within the territorial limits of a newcomer state, interacted with two different settler societies. They were confronted by—among many things—two different sets of government policies regarding Western lands and Western Indians..."¹⁰⁴ As a result of the unique effects of the border, McGrady argues that "[s]tudying borderlands experiences offers a fresh perspective on the ways in which aboriginal peoples responded to settler societies."¹⁰⁵

While borderlands as a geographic space offers new insights into how Indigenous peoples responded to the imposition of European settlement, borderlands have also been understood as a theoretical space. The definition of borderlands focuses on "a social, cultural and economic interface between aboriginal peoples and others," while the term has also been utilized to describe "the boundary, the territory on both sides of it, and the set of relationships between aboriginal peoples and others that its presence made possible."¹⁰⁶ This dissertation utilizes both understandings of borderlands as a site of inquiry to understand how the Anishinaabe were shaping and expressing their sovereignty, nationhood, and land tenure throughout their treaty relations with the United

¹⁰³ St. Germain, *Indian Treaty-Making Policy in the United States and Canada 1867-1877*.

¹⁰⁴ David G. McCrady, *Living with Strangers: The Nineteenth-Century Sioux and the Canadian-American Borderlands* (Lincoln: University of Nebraska Press, 2006), 6.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid., 2-3.

States and Canada. In addition, this dissertation looks at what it means for the Anishinaabe to become a *bordered* people, with treaties imposing a fixed boundary to be demarcated on paper, leading to its mark on the land. While the Anishinaabe had recognized boundaries long before colonial treaty-making, the formation of reservations dramatically reconfigured Anishinaabe nation-formation and practice. Yet, Anishinaabe have also recognized that these borders, both physical and theoretical, were and continue to be permeable. As such, the borderland Anishinaabe have also utilized the border, and their strategic position along the borderlands to assert their sovereignty, nationhood, and land tenure.

This dissertation adds to an understanding of border studies, as Anishinaabe people have lived in a world where new boundaries of nation and state, language and culture, have drastically altered their ways of life. It takes leave from the previous scholarship that questions the effect of borders by instead analyzing how borders were first constructed and then revised. Transnational scholarship has instead often focused on the construction and effect of borders between colonial nations rather than examining the unique effect of the borders between colonial and tribal nations. Even less attention has been paid to how Native peoples' social, political, and cultural constructions of nationhood inform and directly challenge colonial constructions of nationhood and borders. An examination of Native nation-formation and assertion of sovereignty advances critiques of the nation-state.

While American Studies has influenced and been informed by transnationalism and border studies, American Indian Studies scholarship has primarily focused on a critical examination of the geographical and political position of tribal nations and their

relationship to the colonial nation they reside within. The fact that tribal nations are geographically contained within colonizing nations pervades all aspects of their contemporary situations. An examination of this unique position of tribal nations, as nations-within-nations, provides crucial interventions to the field of American Studies.

The 2006 ASA call for papers asked, “Does our primary focus on U.S. American Studies provide the arena for transnational, multi-national and international linkages?” This dissertation seeks to demonstrate that the answer to this question is yes, or at least it can by intersecting the theory and methodologies of American Studies with those of American Indian Studies. This intersection can provide new questions and sites of inquiry about the function and formation of international linkages. In her book, *Writing Indian Nations*, Maureen Konkle argues that American Indian Studies “...points to a distinction between America as geographic space and the United States as a political entity.”¹⁰⁷ Konkle states, “Native people’s connection to land is not just cultural, as it is usually, and often sentimentally, understood; it is also political—about government boundaries, authority over people and territory.”¹⁰⁸ It is this distinction, that of America as a geographic space and the United States as a political entity, that can put forward a different set of questions of sovereignty, nationhood, and land tenure. This dissertation will explore how an understanding of this difference between geographic space and nationhood inform how we think about important political concepts such as nation and title.

America as a geographic space has a long history of multi-national and international linkages. Choctaw scholar LeAnne Howe argues that “America is a tribal

¹⁰⁷ Maureen Konkle, *Writing Indian Nations: Native Intellectuals and the Politics of Historiography, 1827-1863* (Chapel Hill: University of North Carolina Press, 2004), 2.

¹⁰⁸ Ibid., 3.

creation story, a tribalogy." ¹⁰⁹ Her work explores these multi-national linkages. She goes on to explain, "As numerous as Indian tribes, creation stories gave birth to our people, and it is with absolute certainty that I tell you now: our stories also created the immigrants who landed on our shores." ¹¹⁰ While Howe situates this theory within Native communities, as each Native community has its own distinct tribalogy, this study posits that the application of tribalogy within American Studies can serve as a framework for the field to recognize and reconcile America as having a creation story. Howe further asserts, "It is this eloquent act of unification that explains how America was created from a story." ¹¹¹ The cooperation between nation-states and Indigenous nations, established through the practice of treaty-making, required the exchange of ideologies and understanding for concepts such as nationhood, land tenure, and diplomacy. We cannot understand the transcendence of borders if we do not understand how and why they were constructed to begin with. To understand America and Canada as a geographic space, as opposed to exclusively a political space, will bring forth a new set of creation stories or histories.

Amy Kaplan, in her 2003 ASA presidential address, suggested that "critical approaches [within the discipline of American Studies] may contribute to insisting on limited sovereignty for the one nation-state that claims its exemption from those limits." ¹¹² Yet, a nation's sovereignty is inherently limited by the political obligations it assumes to the nations with whom they enter into treaties. All nations are limited in their

¹⁰⁹ LeAnne Howe, "The Story of America: A Tribalogy," in *Clearing a Path: Theorizing the Past in Native American Studies*, ed. Nancy Shoemaker (New York: Routledge, 2002), 29.

¹¹⁰ Ibid.

¹¹¹ Ibid., 30.

¹¹² Amy Kaplan, "Violent Belonging and the Question of Empire Today: Presidential Address to the American Studies Association, Hartford, Connecticut, October 17, 2003," *American Quarterly* 56, no. 1 (2003): 12.

sovereignty by their responsibilities to each other, and while some nations have chosen to ignore these limitations, American Indian Studies demonstrates how Native peoples saw and continue to see their alliances as living relationships that need to be nurtured and protected. By understanding treaties as living relationships, American Indian Studies calls on American Studies to understand how a nation's sovereignty is limited by their political relationships with other nations. As Lumbee scholar Robert Williams suggests, "Recovering this shared legal world is crucial to the task of reconstructing our contemporary understandings of the sources and nature of the rights belonging to Indian peoples...."¹¹³ This dissertation extends Williams' argument by asserting that this recovery will not only reshape our understanding of Native peoples' rights but, furthermore, can inform us of how a nation's sovereignty is inherently limited. American Indian Studies not only insists on the limited sovereignty of the United States and Canada, it demonstrates the necessity of these limitations for the survival of all.

Chapter Outline

Chapter one, *Breathing Promises, Binding Relations: Anishinaabe Conceptions of Treaty-Making*, lays out Anishinaabe understanding of treaty-making. This chapter opens with the story of the woman who married a beaver, which illustrates that for the Anishinaabe the key principles of treaty-making were respect, responsibility, and renewal. It then contrasts Anishinaabe conceptions of treaty-making with the United States and Canada's policies and practices surrounding treaties. This chapter concludes with a discussion of how the Anishinaabe conceptualized and understood the treaty

¹¹³ Robert A. Williams, Jr., *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800* (New York: Routledge, 1999), 9.

process and informs how they articulated and asserted their sovereignty, nationhood, and land tenure in their treaties with the United States and Canada.

Chapter Two, *Invoking Creation, Inheriting Earth: Anishinaabe Expressions of Sovereignty and Land Tenure*, analyzes Anishinaabe conceptions of sovereignty and nationhood throughout the treaty era, conceptions inextricably linked to Anishinaabe expressions of land tenure. A growing body of scholarship looks internally at the cultural characteristics of Indigenous sovereignty. This chapter is in dialogue with that scholarship and demonstrates that though sovereignty was a European concept, it was also an idea intrinsic to the Anishinaabe and was expressed throughout their treaty negotiations with the United States and Canada. This chapter goes on to establish how Anishinaabe expressions of sovereignty were manifested in their creation story, their name, and their treaty-making practices. In doing so, this chapter asserts that the Anishinaabe expressed their sovereignty throughout the treaty era as a means to articulate their rights as sovereigns and proprietors in the face of colonial expansion, rights that have continued meaning for the Anishinaabe today.

Much of the federal Indian law and Aboriginal rights discourse has primarily centered on the *political* dimensions of sovereignty. This political lens pays attention to the *external* recognition of sovereignty instead of the *internal* force that defines it. This framework has often focused on the relationship between sovereignty and nationhood, recognition of sovereignty in the international arena, and the political relations established between nations resulting from their interactions. Chapter Three, *Stealing Fire, Scattering Ashes: Anishinaabe Expressions of Nationhood*, examines how Anishinaabe constructed and asserted their nationhood throughout their treaties with the

United States and Canada. This chapter looks at whether these distinct groups had a vested, shared interest that overlapped or, as is contended, whether multiple tribal nations express distinct interests to separate lands that happened to comprise the total area under negotiation in a particular treaty. This chapter examines how treaty-making, as a site for acquiring or relinquishing land and constructing borders by multiple nations, complicates the problem of land tenure between nations with different systems and values.

Chapter Four, *Rising Waters, Revenging Wrongs: Anishinaabe Acts of Sovereignty*, analyzes how the Anishinaabe exercised their sovereignty throughout the treaty era by placing levies on trade ships that cut through their territories. They did this by posting signs, actively protesting any passage through their lands until treaties were negotiated, and destroying colonists' property that lay within Anishinaabe borders. This chapter argues that the Anishinaabe utilized treaty-making as an avenue to assert their sovereignty, nationhood, and land tenure. Yet, when the United States and Canada failed to first enter into a treaty with Anishinaabe nations before entering their lands, or did not fulfill their treaty obligations, the Anishinaabe sought other means to assert and make known that they were the sovereigns and proprietors of their lands.

This dissertation concludes with an examination of the trust, or fiduciary, relationship between Anishinaabe nations and the United States and Canada.¹¹⁴ This relationship has its origins in treaty-making. This study concludes that federal Indian relations in the United States and Canada should be re-oriented to incorporate and support Anishinaabe treaty principles of respect, responsibility, and renewal.

¹¹⁴ The trust relationship "broadly entails the unique legal and moral duty of the federal government to assist Indian tribes in the protection of their lands, resources, and cultural heritage." Wilkins, *American Indian Politics and the American Political System*, 339.

Conclusion: Rekindling the Fire

I began this introduction with a story because stories are central to the transmission of cultural values and Indigenous epistemologies. In addition, these stories transmit life lessons that teach us how to interact with one another and the world we live in. In this way, stories are powerful. I conclude by returning to a prominent symbol within the opening story, *The Theft of Fire*. I assert that a re-examination of treaties can bring forward important lessons beyond a nation's limitations and international relationships. Rebecca Tsosie and Wallace Coffey, in arguing that "Indian oratory is an essential component of our struggle to interpret our treaties and reclaim our lands and resources," find that:

[w]ithin this oratory is a legacy from our Ancestors, a legacy that they wanted to transmit to the future generations... This legacy also includes important lessons about the meaning and significance of land and treaty rights to our Indian people. The lands and resources that our Ancestors fought for were the foundation of Indian peoples' survival then, and they are the foundation of our survival now.¹¹⁵

This important motivation for re-examining these treaty documents to bring forward a new understanding of just what our ancestors fought for, the foundation of our survival, indeed is connected to the importance of fire that opened this conversation.

...many years ago, seven major nee-gawn-na-kayg' (prophets) came to the Anishinaabe. They came at a time when the people were living a full and peaceful life on the northeastern coast of North America. These prophets

¹¹⁵ Rebecca Tsosie and Wallace Coffey, "Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations," *Stanford Law and Policy Review* 12, no. 2 (2001): 204.

left the people with seven predictions of what the future would bring. Each of these prophecies was called a Fire and each Fire referred to a particular era of time that would come in the future. Thus, the teachings of the seven prophets are now called the Neesh-wa-swi'ish-ko-day-kawnn' (Seven Fires) of the Ojibway.¹¹⁶

The seventh prophet that came to the people long ago was said to be different from the other prophets. He was young and had a strange light in his eyes. He said, "In the time of the Seventh Fire a Osh-ki-bi-ma-di-zeeg' (New People) will emerge. They will retrace their steps to find what was left by the trail. ...The task of the New People will not be easy. If the New People will remain strong in their quest, the Waterdrum of the Midewiwin Lodge will again sound its voice. There will be a rebirth of the Anishinaabe nation and a rekindling of old flames. The Sacred Fire will again be lit."¹¹⁷

Indeed, as Tsosie and Coffey state, treaties hold the key to what our ancestors were fighting to retain for future generations. It is our job to *retrace their steps to find what was left by the trail*. Revisiting the documents surrounding treaty negotiations can provide insight into how the Anishinaabe were constructing their sovereignty, nationhood, and land tenure. This insight can shed light on just what they were retaining for future generations in these agreements. The recovery of the original spirit and intent of these treaties may indeed lead to the *rebirth of the Anishinaabe nation and a*

¹¹⁶ Benton-Banai, *The Mishomis Book: The Voice of the Ojibway*, 91.

¹¹⁷ *Ibid.*, 91-3.

rekindling of old flames. These insights may very well provide a new direction for the Anishinaabe, one that will allow for *the Sacred Fire [to] again be lit*.

Chapter One: Breathing Promises, Binding Relations: Anishinaabe Conceptions of Treaty-Making

In 1904, Kagige pinasi,¹¹⁸ a Fort Williams Anishinaabe Chief, recounted the story of *The Woman Who Married A Beaver* to Fox anthropologist William Jones.¹¹⁹ In this story, a young girl blackened her face and went to fast.¹²⁰ After awhile a man approached her and asked her to come live with him. She agreed and eventually married him. The man was very rich and had many great things, therefore the young woman was never in need. In time, they had four children and continued to live without need. The family was always well fed and clothed.

Now and then by a person were they visited; then they would go to where the person lived, whereupon the people would then slay the beavers, yet they really did not kill them; but back home would they come again. Now the woman never went to where the people lived; she was forbidden by her husband. That was the time when very numerous were the beavers, and the beavers were very fond of the people; in the same way as people are when visiting one another, so were (the beavers) in their mental attitude toward the people. Even though they were slain by (the people), yet they really

¹¹⁸ Kagige pinasi (Forever Bird) is also referred to as John Pinesi (Penessi, Penassie). For biographical information about this Anishinaabe chief from Fort Williams, Ontario see, Michelson and Jones, *Ojibwa Texts*, ed. Franz Boas, 2 vols., vol. VII, Part I, xvi-xvii.

¹¹⁹ Truman Michelson, ed. and William Jones, comp., *Ojibwa Texts*, ed. Franz Boas, 2 vols., vol. VII, Part II, *Publications of the American Ethnological Society* (New York: E. J. Brill, Ltd., 1919).

¹²⁰ Densmore and Smithsonian Institution. Bureau of American Ethnology., *Chippewa Customs*, 70-1, Basil Johnston, *Ojibway Ceremonies*, Bison book ed. (Lincoln: University of Nebraska Press, 1990), 41-56. For an account of a young Ojibwe woman's fasting experience, see Maude Kegg and John Nichols, *Portage Lake : Memories of an Ojibwe Childhood* (Minneapolis: University of Minnesota Press, 1993), 22-25.

*were not dead. They were very fond of the tobacco that was given them by the people; at times they were also given clothing by the people.*¹²¹

Her children and husband would often go to the homes of the Anishinaabe, but they always returned. They brought back many gifts such as kettles, plates, knives, and tobacco, the very things used by the Anishinaabe when they ate beavers. Her husband told her that he and their children greatly loved the Anishinaabe and always enjoyed visiting them. She never left her home but heard these many things from her husband. Instead, she always remained, tidying their home. Then one day she realized that she was in a beaver lodge. She then knew she had married a beaver.

Eventually, the woman's husband passed away, and she returned to her own people. She lived many years and continually told this story of what happened when she was married to a beaver.

And she was wont to say: "Never speak you ill of a beaver! Should you speak ill of (a beaver), you will not (be able to) kill one."

*Therefore such was what the people always did; they never spoke ill of the beavers, especially when they intended hunting them. Such was what the people truly know. If any one regards a beaver with too much contempt, speaking ill of it, one simply (will) not (be able to) kill it. Just the same as the feelings of one who is disliked, so is the feeling of the beaver. And he who never speaks ill of a beaver is very much loved by it; in the same way as people often love one another, so one is held in the mind of the beaver; particularly lucky then is one at killing beavers.*¹²²

¹²¹ Michelson and Jones, *Ojibwa Texts*, ed. Franz Boas, 2 vols., vol. VII, Part II, 255.

¹²² *Ibid.*, 257.

This story of the woman who married a beaver carries with it many lessons for the listener. It serves, first of all, to prepare young children for the encounters they may have when they engage in fasting or a vision quest. This story, as Bruce White has argued, also details an intermediary role that a woman plays in her marriage to another.¹²³ Yet, a striking feature of the story is its attention to the cooperative or reciprocal relationship that exists between the Anishinaabe and the beavers. White notes, “Further, it is a basic description of and commentary on the cooperative arrangements that many Ojibwa people believed existed between different kinds of beings in the world.”¹²⁴ By living among the beavers, the woman learned the importance of Anishinaabe offerings of tobacco and gifts to the beavers’ well being. The exchange of gifts—the beaver’s life in exchange for tobacco and housekeeping items—also maintains the pleasant and mutually beneficial relationship between the Anishinaabe and the beavers. The ongoing success of this relationship is dependent on the Anishinaabe’s practice of returning the bones of the beaver to the water, as this allows the beavers to come back to life and return home. The woman learned these lessons while she lived with the beavers and passed them on to the Anishinaabe when she returned home to her own people.

What is of particular interest is how this relationship and agreement is, in many respects, comparable to treaties. It can be argued that a treaty relationship is in place between the Anishinaabe and beavers. The beavers offer themselves up to the Anishinaabe as food, and in exchange the Anishinaabe agree to return the bones of the beaver and make offerings so that the cycle can continue. Importantly, as this story

¹²³ Bruce White, "The Woman Who Married a Beaver: Trade Patterns and Gender Roles in the Ojibwa Fur Trade," *Ethnohistory* 46, no. 1 (Winter 1999).

¹²⁴ White further notes that “Ojibwa people who hunted, fished or gathered plants had to be aware of their reciprocal obligations with the natural world and give back something to the animals, fish, or plants from which they harvested.” Ibid.: 111.

indicates, this treaty is predicated on *mutual respect* between the beavers and the Anishinaabe. The necessity for respect is illustrated by the woman's warnings that the Anishinaabe are never to speak ill of the beaver.¹²⁵ She stated that their relationship to the beaver is like their relationship to one another: just like the Anishinaabe love one another, the beaver greatly loves those Anishinaabe who speak well of them. Those who speak kindly of the beaver will find great success in trapping one. Thus, the beavers, in turn, respect the Anishinaabe by greatly loving them and giving themselves up to the Anishinaabe for food.

Another key principle in this treaty between the Anishinaabe and beavers is *responsibility*. Each has a responsibility to the other: their relationship is reciprocal and predicated on trust. The Anishinaabe have a responsibility to make offerings to the beavers, enabling them to live without want.¹²⁶ They also have a responsibility to return the bones of the beaver back to their homes to allow for the beaver's continuation. In turn, the beavers have a responsibility to "visit" the Anishinaabe, which allows the Anishinaabe to also live without want. Finally, this treaty is founded in the principle of *renewal*. Both the Anishinaabe and the beaver alike must carry out the principles of respect and responsibility for the treaty to continually remain in effect. Each time the Anishinaabe offer gifts to the beavers, the beavers in turn offer themselves by allowing their physical bodies to be trapped. When their bones are returned to the water, this treaty is renewed.

¹²⁵ White notes, "The beaver story shows that reciprocity was necessary to keep the system operating. Without gifts and respect, animals would not be so helpful to humans. They would hold themselves back and would not allow themselves to be used by people. Without gifts and respect, the system would cease to function." See Ibid.

¹²⁶ For further discussion on how gifts function in treaty-making, see Cary Miller, "Gifts as Treaties: The Political Use of Received Gifts in Anishinaabeg Communities, 1820-1832," *American Indian Quarterly* 26, no. 2 (2002).

By thinking about this story as a treaty, we can understand more fully the values and proper or ideal behavior necessary for two nations to engage in an alliance with one another, a relationship that depends upon *respect, responsibility, and renewal*. Robert Williams states, “In American Indian treaty visions of law and peace, a treaty itself was a special kind of story: a way of imagining a world of human solidarity where we regard others as our relatives.”¹²⁷ The Anishinaabe must respect the beavers. They have a responsibility to engage in the reciprocal process of offering gifts and returning the beavers bones to the water, which ensures renewal. These acts must be carried out every time for the treaty to remain in effect. These principles of respect, responsibility, and renewal, illustrated in this treaty between the Anishinaabe and beavers, are foundational in Anishinaabe political thought and practice. The Anishinaabe utilized these principles in their treaty practices with the United States and Canada as a means to establish just and mutually beneficial relationships. This chapter argues that the Anishinaabe articulated their sovereignty, nationhood, and land tenure through the invocation of these original principles and values of treaty-making.

A comprehension of Anishinaabe interpretations of treaty-making, grounded in the values of respect, responsibility, and renewal sheds light on how the Anishinaabe conceptualized the key legal doctrines that came out of this process. Based on the canons of treaty construction, Anishinaabe understandings of these doctrines should be given their full weight and merit today. A return to the values of respect, responsibility, and

¹²⁷ Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*, 83-4.

renewal can provide new directions for federal Indian law that has often constrained Indigenous peoples' rights and left them with an ever-shifting status.¹²⁸

"Our Hearts and Our Brains are Like Paper; We Never Forget": Treaty Councils and the Written Text

The Anishinaabe have long had to reckon with what it means to live in a multicultural and multinational world. Long before the arrival of Europeans, Anishinaabe nations were participating in social, economic and political alliances that required engagement across national borders, kin ties, and epistemologies.¹²⁹ Nonetheless, as Vine Deloria and Raymond DeMallie have found, "There has always been a question whether treaty-making was a process familiar to Indian tribes or whether it was newly introduced by Europeans and inadequately understood by the Indians." Deloria and DeMallie recognize that treaty-making was a long-standing tradition among Native peoples. They argue, "As far back as we can trace the practice we find that Indians were quite familiar with diplomatic negotiations and had their own forms for making agreements."¹³⁰ Indigenous diplomatic practices are evident throughout the treaty record as Native peoples brought their own understandings of treaty-making into the process.¹³¹ The use of

¹²⁸ For additional information on this, see David E. Wilkins, "The Manipulation of Indigenous Status: The Federal Government as Shape Shifter," *Stanford Law and Policy Center* 12, no. 2 (Spring 2001).

¹²⁹ See Kathy Davis Graves, Elizabeth Ebbott, and League of Women Voters of Minnesota., *Indians in Minnesota*, 5th ed. (Minneapolis: University of Minnesota Press, 2006), William W. Warren, *History of the Ojibway People*, Reprint ed. (St. Paul: Minnesota Historical Society Press, 1984).

¹³⁰ Vine Deloria, Jr. and Raymond J. DeMallie, eds., *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775-1979*, 2 vols., *Legal History of North America V. 4* (Norman: University of Oklahoma Press, 1999), 6.

¹³¹ William Nelson Fenton, *The Great Law and the Longhouse: A Political History of the Iroquois Confederacy, The Civilization of the American Indian Series; V. 223* (Norman: University of Oklahoma Press, 1998), Lewis Henry Morgan and Herbert Marshall Lloyd, *League of the Ho-Dé-No-Sau-Nee or Iroquois*, A new ed. (New York: B. Franklin, 1966), Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815*, *Cambridge Studies in North American*

the pipe, the exchange of wampum, and the practice of gift-giving are well-documented Indigenous political practices that continued into their relations with European nations and later the United States and Canada.¹³²

Indeed, Nell Jessup Newton et al., argue that “[t]he initial ‘treaties’ between the Americans and the Indian tribes were not written documents, but instead were formal diplomatic ceremonies lasting several days and marked by the exchange of presents, ceremonial objects, and solemn promises of friendship.”¹³³ Even in the early formation of the United States, little attention was focused on a written agreement.¹³⁴ Legal scholar Brian Slattery similarly finds that, in Canada, “[h]istoric treaties were profoundly influenced by Indian concepts, procedures and ceremonial and differed in a number of ways from treaties typical among European states.”¹³⁵ He notes that “normally they were oral rather than written agreements. An Indian treaty typically took the form of a spoken exchange of proposals and responses, often marked by special rituals and usually taking place in several sessions extending over a number of days, leading to a firm understanding between the parties on certain matters.”¹³⁶ While initial treaty-making relied heavily on U.S. and Canadian adherence to Indigenous political protocols with little aim toward a written document, these colonial nations were able to formalize this

Indian History (Cambridge ; New York: Cambridge University Press, 1991), Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*.

¹³² Colin G. Calloway, *New Worlds for All: Indians, Europeans, and the Remaking of Early America*, Johns Hopkins Paperbacks ed. (Baltimore, MD: Johns Hopkins University Press, 1998), Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*.

¹³³ Felix S. Cohen, *Cohen's Handbook of Federal Indian Law*, 2005 ed. (Newark, NJ: LexisNexis, 2005), 20.

¹³⁴ Prucha, *American Indian Treaties: The History of Political Anomaly*, 26, Alden T. Vaughan, *Early American Indian Documents: Treaties and Laws, 1607-1789* (Washington, D.C.: University Publications of America, 1979).

¹³⁵ Slattery, "Making Sense of Aboriginal and Treaty Rights," 208.

¹³⁶ Ibid.

process in ways that supported their own shifting political goals and standards.¹³⁷

Thus, at the turn of the nineteenth century, the shift toward a written treaty, first found with the Delaware in 1778, was standard U.S. and Canadian practice.¹³⁸

The Anishinaabe did not conceptualize the treaty exclusively as the written document. Instead, the treaty consisted of the entire council proceedings coupled with the events that preceded and followed. Raymond DeMallie has considered this discernment of the treaty process in his research on treaty councils. While he specifically focuses on the Dakota, his findings have broader implications and can inform our understanding of Anishinaabe treaty practices as well. DeMallie argues that “[f]or the Indians the council was the traditional way of making peace or negotiating with another people.”¹³⁹ Native peoples had historical diplomatic practices of negotiating and working to attain consensus when building or maintaining social and political alliances. Therefore, when First Nations entered into these practices with European nations, they commonly understood the purpose. Nonetheless, DeMallie argues, “If the council as a diplomatic forum was commonly understood by both whites and Indians, the concept of the treaty was not.” He finds that “[f]or plains Indians, the council was an end in itself. What was important was the coming together in peace, smoking the pipe in common to pledge the truthfulness of all statements made, and the exchange of opinions.... Thus, from the Indians’ point of view, the council *was* the agreement.”¹⁴⁰

¹³⁷ Prucha, *American Indian Treaties: The History of Political Anomaly*, Prucha, *The Great Father: The United States Government and the American Indians*, Slattery, "Making Sense of Aboriginal and Treaty Rights."

¹³⁸ Prucha, *American Indian Treaties: The History of Political Anomaly*, 26.

¹³⁹ Raymond DeMallie, "Touching the Pen: Plains Indian Treaty Councils in Ethnohistorical Perspective," in *Major Problems in American Indian History*, ed. Albert Hurtado and Peter Iverson (Lexington: D.C. Heath and Company, 1994), 345.

¹⁴⁰ Slattery, "Making Sense of Aboriginal and Treaty Rights," 345-6. Emphasis in original.

Prucha also recognizes this critical distinction, arguing that “[t]he meeting itself was the significant event, and for the Indians the exchange and acceptance of wampum strings and belts confirmed the decisions at the council.”¹⁴¹ Indeed, the word “treaty,” while currently understood as a contract between two or more nations, historically had an alternate meaning and usage: “a ‘treaty’ in that sense was the ‘act of negotiating,’ the discussion aimed at adjustment of difference or the reading of an agreement, and by extension the meeting itself at which such negotiations took place.”¹⁴² While the United States and Canada may have utilized the term “treaty” in its varied meanings, they primarily still saw the written document as the final and binding agreement.

Anishinaabe perceptions of the council as the treaty conflicted with U.S. and Canadian practice, perceiving the council, gift exchange, and dialogue as a prerequisite to acquiring the desired signatures of First Nations leaders. While these colonial nations were primarily interested in extinguishing Indian title by having Native peoples sign their name to a treaty, “touching the pen,” the written document rarely represented their vast expressions of sovereignty, nationhood, and land tenure articulated within the council. As DeMallie has found, “[f]or individual Indian leaders, touching the pen apparently signified that they were validating all they had said at a council; in many cases the record of the treaty proceedings makes it clear that the Indian leaders did not realize their signatures committed them to *only* those statements written in the treaty.”¹⁴³

¹⁴¹ Prucha, *American Indian Treaties: The History of Political Anomaly*, 26.

¹⁴² Prucha argues: “The language of the Continental Congress and its contemporaries makes it clear enough from the context which sense of the word it meant. The documents are full of such terminology as ‘holding a treaty’ with the Indians, ‘inviting Indians to a treaty,’ providing military support and purchasing presents ‘for a treaty,’ or greeting Indians as they arrived ‘at a treaty.’” *Ibid.*, 25.

¹⁴³ DeMallie, “Touching the Pen: Plains Indian Treaty Councils in Ethnohistorical Perspective,” 346. Emphasis in original.

An Anishinaabe chief of Treaty Three expressed the importance of oral negotiations in the process of establishing a treaty with the Dominion government of Canada, stressing that “you must remember that *our hearts and our brains are like paper; we never forget.*”¹⁴⁴ The commissioners were aware of the Anishinaabe’s ability to remember everything said during these negotiations to memory.¹⁴⁵ This is reflected in the negotiation records when Canadian Treaty Commissioner S. J. Dawson cautioned the other Commissioners to use great care in their words. He recalled his experience with a Fort Frances Anishinaabe chief that had repeated verbatim everything Dawson had stated two years previously.¹⁴⁶ Anishinaabe Chief Metawaa’s words at the 1833 treaty with the United States echoed the sentiments of the Treaty Three Chief. He stated, “We have heard the words of our Fathers. They are good and we will hearken unto them. They shall abide in our memories.”¹⁴⁷ The action of the Anishinaabe to recall the statements made in previous councils shows that they, as DeMallie suggests, interpreted the entire council proceedings as the treaty.

¹⁴⁴ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 69. Emphasis added. For additional information on Treaty Three, see Wayne E. Daugherty. Treaty Research Report: Treaty Three (1873) [online]. Treaties and Historical Research Centre, Indian and Northern Affairs Canada. Originally published in Ottawa by Indian and Northern Affairs Canada, 1986. Accessed 08-15-08: http://www.ainc-inac.gc.ca/pr/trts/hti/t3/index_e.html

¹⁴⁵ While it was recognized that Native people maintained the ability to remember everything stated throughout the negotiations, oral history still has not been given its due weight in the courts. See, for example, John Borrows, “Listening for a Change: The Courts and Oral Traditions,” *Osgoode Hall Law Journal* 39 (1997).

¹⁴⁶ Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times*, 276.

¹⁴⁷ *Ratified Treaty No. 189 Documents Relating to the Negotiation of the Treaty of September 26, 1833, with the United Chippewa, Ottawa, and Potawatomi Indians*, Documents Relating to the Negotiation of Ratified and Unratified Treaties with Various Tribes of Indians, 1801-69, National Archives Microfilm Publications, Record Group 75, Microcopy No. T-494, Roll 3:F66 [Hereafter NAMP RG 75, M T-494 Roll]. Records of the Bureau of Indian Affairs, National Archives and Records Services, Washington, D.C. Also see President’s message, January 9 and December 15, 1834; *Treaty of September 26, 1833 with the Chippewas, Ottawaes, and Potawatomes*; Indian Treaty Files (SEN 23B-C2): 23rd Congress; Records of the U.S. Senate, Record Group 46; National Archives, Washington, DC. [Hereafter Indian Treaty Files (SEN #): RG 46]

This distinction between the council as the treaty in contrast to the written document alone has led to various disputes about what was understood by the First Nations as they engaged in treaty-making with the United States and Canada.¹⁴⁸ The written treaties did not always faithfully reflect the terms verbally agreed to by the participating nations. This became evident to First Nations when the government response did not mirror the promises made throughout the negotiations.¹⁴⁹ While the Anishinaabe did not see the written document exclusively as the treaty, they nonetheless became aware of its importance to U.S. and Canadian government officials. The Anishinaabe responded to this distinction of what constituted the treaty by utilizing the written format in conjunction with their long-standing practice of recording to memory everything said throughout the council.¹⁵⁰

The record surrounding the 1846 treaty between The United Nation of Pottawatomie, Ottawa, and Ojibwe with the United States demonstrates one way that the Anishinaabe responded to colonial preference for a written document.¹⁵¹ Superintendent of Indian Affairs Major Thomas H. Harvey had met with the United Nation in June of 1845 to discuss the prospect of treaty that would enable the United State to remove the United Nation from their reservation on the Osage River. The United Nation was dissatisfied with this offer and aware of the importance of the written document for the

¹⁴⁸ This point is elaborated on in Chapter Four, specifically regarding Treaty One and Two and “Outside Promises.”

¹⁴⁹ Slattery, “Understanding Aboriginal Rights,” 730.

¹⁵⁰ *Ratified Treaty No. 247 Documents Relating to the Negotiation of the Treaty of June 5 and 17, 1846, with the Chippewa, Ottawa, and Potawatomi Indians*, NAMP RG 75, M T-494 Roll 4, President’s message, July 9, 1846; *Treaty of June 5 & 7, 1846 with the Potawatomes, Chippewas, and Ottawas*; Indian Treaty Files (SEN 29B-C2): RG 46. Also see Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*.

¹⁵¹ Unlike the 1833 treaty, this treaty refers to the United Nation of Chippewa, Ottawa, and Potawatomi Indians as the Potawatomi Nation. See Treaty with the Potawatomi Nation, 1846, June 5 and 17, 1846: 9 *U.S. Statutes at Large* [Hereafter Stat.] 853, Treaty with the Chippewa, etc., 1833, September 26, 1833: 7 Stat., 431.

United States, they sent Major Harvey back to Washington with a written “talk” that outlined their response. This “talk” focused primarily on the United Nations’ request for one million acres of land held by the Kansas Indians, as opposed to the lands proposed by the President, as well as their proposal for adjustments to the amount and duration of their annuities.

In November of 1845, a delegation for the United Nation went to Washington to inquire about the President’s response to their written “talk,” U.S. treaty commissioners argued that the United Nation had not been invited to Washington, and they asserted that the United Nation had refused to enter into a treaty with the President. Chief Obto-gee-shick responded to the commissioner’s recitation of their recent treaty negotiations, stating: “We have never refused him anything. When Major Harvey came to ask for our land we did not refuse, we told him it was the last piece we had to sell—take it—there is our price. We gave him a paper—it is all written down. We want our great Father’s answer to that paper.”¹⁵² The United Nation recognized that the United States placed weight on the written document. Therefore, they had their requests to the President written down. When the United Nation felt that treaty commissioners had misrepresented the events surrounding a previous attempt to negotiate a treaty, they again called on this written document to assert their interests.

In order to control the tone and direction of the negotiations in Washington, the United Nation presented a formal written response to the Commissioners.¹⁵³ They had

¹⁵² Dashes in text changed to em-dashes for readability. *Ratified Treaty No. 247 Documents Relating to the Negotiation of the Treaty of June 5 and 17, 1846, with the Chippewa, Ottawa, and Potawatomi Indians,*” NAMP RG 75, M T-494 Roll 4:F300.

¹⁵³ Ibid., F304. Miamese said “Our views have been put on paper and will be presented by Mr. Elliot. We have taken time to consider what our great father has said as you told us to do. And what Mr. Elliot will read to you is our reply-”

this response read for them by Mr. Elliot and set up measures to ensure that what was stated accurately reflected their words. Chief Obto-gee-shick declared: “The answer he is going to give you for us comes from our hearts—the half breeds will listen to what he says.”¹⁵⁴ While the United Nation requested Mr. Elliot to present their written response, they ensured that he represented their interests by confirming the accuracy of his statements through bi-lingual “half breed” Anishinaabe present at the treaty.¹⁵⁵

Though the United Nation left Washington without any resolution, Commissioners assured the Anishinaabe that U.S. officials would negotiate a treaty with the United Nation that summer. Recognizing the importance of written documentation for the United States, the United Nation not only formally wrote their response to U.S. treaty commissioners, they also asked for personal copies of the written treaty. When the negotiations concluded in June, Chief Ne-bea-me stated: “You must make us a strong paper & a good paper with the name of our great Father to it and give us one of them that we may keep it ourselves.”¹⁵⁶ The United Nation was not alone in requesting copies of their written treaty.¹⁵⁷

The Anishinaabe in Lake of the Woods, recognizing the importance of the written document for the Canadian government, also requested a written copy of Treaty Three. They expressed that they wanted their copy to be written on parchment so that the treaty would not be “rubbed off.”¹⁵⁸ This insistence on a copy that would withstand time was

¹⁵⁴ Em-dashes added for readability. Ibid., F304.

¹⁵⁵ Many interpreters were not only bilingual but were fluent in multiple languages. The treaty record, however, rarely provides any information on the language skills of the interpreters.

¹⁵⁶ *Ratified Treaty No. 247 Documents Relating to the Negotiation of the Treaty of June 5 and 17, 1846, with the Chippewa, Ottawa, and Potawatomi Indians*,” NAMP RG 75, M T-494 Roll 4:F333

¹⁵⁷ Also see the records surrounding Treaty Three discussed below and in Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*.

¹⁵⁸ Ibid., 72.

important for the Anishinaabe of Lake of the Woods, who saw their treaties as foundations for a long-standing relationship with Canada that carried responsibilities for both parties. These responsibilities, though not always recorded in their entirety, were thought by the Anishinaabe to be included in this written agreement. In addition to insisting on a copy of the written treaty, an Anishinaabe chief at the negotiations for Treaty Three also requested the names of all the Canadian officials. He stated: “I would wish to have all your names in writing handed over to us. I would not find it to my convenience to have a stranger here to transact our business between me and you. It is a white man who does not understand our language that is taking it down. I would like a man that understand our language and our ways.”¹⁵⁹ The Anishinaabe were able to hold treaty officials responsible for their promises and commitments by requesting and recording their names.

The actions of the United Nation and Treaty Three Anishinaabe indicate that they recognized the United States and Canada’s preference toward a written document. The Anishinaabe understood a treaty to be comprised of all the commitments made throughout the treaty council, not merely those contained in a written document recorded in English. They sought to mediate the impact of these written documents in shaping the record of their negotiations by requesting personal copies of their treaties. In addition, they sought to control the accuracy of these records, insisting that they be written down by someone who understood their language and ways.

The United States and Canada attempted to reconcile these distinct understandings of treaty-making and resolve the issues that came out of these different perceptions by creating special canons of construction under which a treaty must be

¹⁵⁹ Ibid., 71.

interpreted and construed.¹⁶⁰ While the United State and Canada have not always applied these canons in court cases, they are favorable for First Nations when they are adhered to. This legal doctrine posits three distinguishing factors for interpreting Indian treaties:

(1) a cardinal rule in the interpretation of Indian treaties is that ambiguities in treaty language are to be resolved in favor of the Indians; (2) since the wording of treaties was designed to be understood by the Indians, who often could not read and were not skilled in the technical language often used in treaties, doubtful clauses are to be resolved in a nontechnical way, as the Indians would have understood the language; and (3) treaties are to be liberally construed to favor Indians.¹⁶¹

In addition, the reserved rights doctrine, building from the canons of construction, holds that all rights not expressly ceded by a tribe in a treaty are reserved while the abrogation doctrine asserts that Congress's intent to infringe upon tribal rights must be clear and unambiguous.¹⁶² Native scholars David E. Wilkins and K. Tsianina Lomawaima point out that "[e]ach of these 'canons' theoretically stands for a system of fundamental rules and maxims that the Court agrees to recognize and use in its interpretation of written

¹⁶⁰ For additional information on the origin and application of the treaty canons of construction, see "Interpretation of Treaties" for further discussion of canons of construction, in Cohen, *Cohen's Handbook of Federal Indian Law*, Cohen, *Handbook of Federal Indian Law, with Reference Tables and Index*, 120. Also see Cohen, *Cohen's Handbook of Federal Indian Law*, Philip P. Frickey, "Marshalling Past and Present: Colonialism, Constitutionalism, and Interpretation in Federal Indian Law," *Harvard Law Review* 107, no. 2 (December 1993), Wilkins, *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice*, Charles F. Wilkinson and John M. Volkman, "Judicial Review of Indian Treaty Abrogation: "As Long as Water Flows, or Grass Grows Upon the Earth"- How Long Is That?," *California Law Review* 63, no. 3 (May 1975).

¹⁶¹ Wilkins, *American Indian Politics and the American Political System*, 339.

¹⁶² Cohen, *Cohen's Handbook of Federal Indian Law*, 26. Also see *Choctaw Nation v. United States*, 318 U.S. 423 (1943), *Choate v. Trapp*, 224 U.S. 665 (1912), *Worcester v. Georgia*, *U.S. v. Winans*, 198 U.S. 371 (1905), *Choctaw Nation v. Oklahoma*, 397 U.S. 620 (1970), *United States v. Shoshone Tribe*, 304 U.S. 111 (1938), *Jones v. Meehan*, and *Winters v. United States*, 207 U.S. 564 (1908).

instruments.”¹⁶³ However, they find that “[t]his sense of ‘canon’ as an authoritative rule does not always hold up in the area of Indian law. As we have seen with other doctrines of federal Indian policy and law, each canon has an opposite corollary that may be cited by the courts when it suits the justices’ purposes.”¹⁶⁴ Nonetheless, the courts have also applied these canons to uphold First Nations’ treaty rights.

The United States Supreme Court in the 1899 *Jones v. Meehan* decision outlined these canons of construction:

In construing any treaty between the United States and an Indian tribe, it must always (as was pointed out by the counsel for the appellees) be borne in mind that the negotiations for the treaty are conducted, on the part of the United States, an enlightened and powerful nation, by representatives skilled in diplomacy, masters of a written language, understanding the modes and forms of creating the various technical estates known to their law, and assisted by an interpreter employed by themselves; that the treaty is drawn up by them and in their own language; that the Indians, on the other hand, are weak and dependent people, who have no written language and are wholly unfamiliar with all the forms of legal expression, and whose only knowledge of the terms in which the treaty is framed is that imparted to them by the interpreter employed by the United States; and that the treaty must therefore be construed, not according to the technical

¹⁶³ David E. Wilkins and K. Tsianina Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law* (Norman: University of Oklahoma Press, 2001), 141.

¹⁶⁴ *Ibid.* For example, when a statute is clear then the canons will not be applied. See *South Carolina v. Catawba Indian Tribe*, 476 U.S. 498, 506 (1986), which states that “[t]he canons of construction regarding the resolution of ambiguities in favor of Indians, however, does not permit reliance on ambiguities that do not exist; nor does it permit disregard of the clearly expressed intent of Congress.”

meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians.¹⁶⁵

While this statement by the court is full of Eurocentric thought and racist notions of civilization prominent in the late nineteenth century, this initial expression of the canons of construction sought to resolve the different understandings of treaties that existed between the United States and Native Nations.

A Canadian court, in *Sioui v. the Province of Quebec*, cited the 1899 *Jones v. Meehan* decision.¹⁶⁶ Citing the above passage, the court argued in favor of Huron claims to treaty rights, arguing they too must “adopt a generous and liberal interpretation.”¹⁶⁷ The court went on to argue: “The Indian people are today much better versed in the art of negotiation with public authorities than they were when the United States Supreme Court handed down its decision in *Jones*. As the document in question [the Treaty with the Huron] was signed over a hundred years before that decision, these considerations argue all the more strongly for the courts to adopt a generous and liberal approach.”¹⁶⁸

The canons of construction, when they are invoked, seemingly work in favor of Native interpretations of treaty-making. However, Cohen has pointed out that “[a]lthough an interpretation of a treaty should be made in the light of conditions existing when the treaty was executed, as often indicated by its history before and after its making, the exact situation which caused the inclusion of a provision is often difficult to ascertain.”¹⁶⁹ The canons of construction promote and rely upon an examination of the historical record

¹⁶⁵ *Jones v. Meehan*, 10-11.

¹⁶⁶ *R. v. Sioui*, [1990] 1 S.C.R. 1025

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ Cohen, *Handbook of Federal Indian Law, with Reference Tables and Index*, 38.

to ascertain what Native people intended when they engaged in treaties with the United States and Canada. Deloria recognizes the importance of this historical record, stating:

We can conclude that an Indian treaty, in addition to being a formal document either ratified by Congress or unratified but nevertheless negotiated in good faith, should include the narratives of the negotiations and any prior or subsequent form of negotiation conducted according to traditional Indian procedure. By adopting this expanded understanding of the Indian treaty, one can illuminate the obscure phrases and promises contained in the written document.¹⁷⁰

Journal records surrounding Anishinaabe negotiation with the United States and Canada are brimming with Anishinaabe conceptions of treaty-making and what these agreements entail. As Deloria has observed, “By looking at what the Indians said in their formal speeches during negotiations, one can determine what the Indians saw as important and what parts of the treaty should be taken seriously as a meeting of the minds.”¹⁷¹

While the historical record can shed light on the important aspects of a treaty for First Nations, it can also illuminate the aspects of a treaty that remain ambiguous. In *Choctaw Nation*, the U.S. Supreme Court found that to determine the meaning of ambiguous terms, the court should “look beyond the written words to the history of the treaty, the negotiations, and the practical construction adopted by the parties.”¹⁷² The canons of construction have been applied by the courts in various cases that examined

¹⁷⁰ Deloria and DeMallie, eds., *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775-1979*, 8.

¹⁷¹ *Ibid.*, 11.

¹⁷² *Choctaw Nation v. United States*, 318 U.S. 423 (1943), 432.

ambiguous terms in treaties and related legislation.¹⁷³ For example, in the 1999 *Minnesota v. Mille Lacs* Supreme Court opinion, the court upheld Anishinaabe treaty rights relying, in part, on the canons of construction.¹⁷⁴ The court cited *Choctaw Nation* holding that they must “look beyond the written words to the context that frames the Treaty...”¹⁷⁵ They found that, “In this case, an examination of the historical record provides insight into how the parties to the Treaty understood the terms of the agreement. This insight is especially helpful to the extent that it sheds light on how the Chippewa signatories to the Treaty understood the agreement because we interpret Indian treaties to give effect to the terms as the Indians themselves would have understood them.”¹⁷⁶

Although the canons of construction may be favorable for First Nations when applied, it still raises the significant question of what Native peoples were intending when they entered into treaties with the United States and Canada. As Cohen has pointed out, it can be difficult to ascertain just what the Native nations and treaty commissioners intended, the canons provide the courts a frame for looking beyond the written text.¹⁷⁷ Anishinaabe conceptions of treaty-making, founded on the principles of respect, responsibility, and renewal are central to an understanding of Anishinaabe intent.

¹⁷³ For example, see *McClanahan v. Ariz. State Tax Comm’n*, 411 U.S. 164 (1973), *Choctaw Nation v. Oklahoma*, 397 U.S. 620 (1970), *Carpenter v. Shaw*, 280 U.S. 363 (1930), and *Winters v. United States*, 207 U.S. 564 (1908).

¹⁷⁴ *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999). For more information about this case, see James M. McClurken and Charles E. Cleland, *Fish in the Lakes, Wild Rice, and Game in Abundance: Testimony on Behalf of Mille Lacs Ojibwe Hunting and Fishing Rights / James M. McClurken, Compiler ; with Charles E. Cleland ... [Et Al.]* (East Lansing, Mich.: Michigan State University Press, 2000). For additional information about Anishinaabe treaty rights reserved in their 1837 and 1842 treaties with the United States, see Robert H. Keller, “America’s Native Sweet: Chippewa Treaties and the Right to Harvest Maple Sugar,” *American Indian Quarterly* 13, no. 2 (Spring, 1989), Larry Nesper, *The Walleye War: The Struggle for Ojibwe Spearfishing and Treaty Rights* (Lincoln: University of Nebraska Press, 2002), Ronald N. Satz, *Chippewa Treaty Rights: The Reserved Rights of Wisconsin’s Chippewa Indians in Historical Perspective* (Madison: Wisconsin Academy of Sciences, Arts and Letters, 1991).

¹⁷⁵ *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999), 1200.

¹⁷⁶ *Ibid.*, 1200-1201.

¹⁷⁷ Cohen, *Handbook of Federal Indian Law, with Reference Tables and Index*.

“Our Treaties Were Meant to Last Forever”: The Treaty as a Living Relationship

The treaty process, mirroring long-standing diplomatic practices, was seen as a way to develop international alliances with colonial nations.¹⁷⁸ Tsosie and Coffey have found that “[o]ur ancestors recognized themselves as distinctive cultural and political groups, and that was the basis of their sovereign authority to reach agreements with each other, with the European sovereigns, and then the United States.” They argue that “[i]n each of these instances, our Ancestors exercised governmental authority to protect their lands, resources, peoples and cultures.”¹⁷⁹ As Tsosie and Coffey point out, indigenous treaty-making was primarily focused on the protection of land, resources, and peoples. Anishinaabe elder Mervin Huntinghawk echoed these sentiments in 1998. He asserted, “our treaties were meant to protect our rights to the land and to provide a base for a lasting relationship with the Crown. They represent political arrangements which we gave to the Crown in order to regulate how we shared our land and resources in nation-to-nation relations.”¹⁸⁰ His statement illustrates how the treaty process was not a new practice, instead acknowledging that the practice was “given” to the Crown by the Anishinaabe. Huntinghawk, in his discussion of the treaty-making process, connected treaty elements with a longer tradition of diplomacy employed by the Anishinaabe in their relations with other Native nations.¹⁸¹

¹⁷⁸ Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*.

¹⁷⁹ Tsosie and Coffey, "Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations," 196.

¹⁸⁰ Mervin Huntinghawk, "Since Time Immemorial: Treaty Land Entitlement in Manitoba," in *Sacred Lands: Aboriginal Worldviews, Claims, and Conflicts*, ed. Jill Oakes, et al., *Canadian Circumpolar Institute Occasional Publications Series No. 32* (Edmonton: Canadian Circumpolar Institute Press 1998), 41.

¹⁸¹ *Ibid.*

While Huntinghawk's comments illustrate contemporary perceptions among the Anishinaabe, these views of the treaty process provide a lens for interpreting the political discourses and practices employed by the Anishinaabe in the treaty era. In many cases, the Anishinaabe called on their long-standing diplomatic practices that shaped and set the tone of the treaty negotiations.¹⁸² Additionally, Huntinghawk's comments that "our treaties were made to last forever" evidences that the Anishinaabe saw and continue to see the treaty as a living relationship, not merely an agreement fixed on paper.¹⁸³ This living relationship continues to be dependent on the principles of respect, responsibility, and renewal.

Throughout the treaty era, the Anishinaabe echoed these three principles. For example, an Anishinaabe Chief from Treaty Three discussed the principles of responsibility that is rooted in notions of reciprocity. He stated, "We are the first that were planted here; we would ask you to assist us with every kind of implement to use for our benefit, to enable us to perform our work; a little of everything and money. We would borrow your cattle; we ask you this for our support, I will find whereon to feed them. The waters out of which you sometimes take food for yourselves, we will lend you in

¹⁸² For numerous examples of Anishinaabe use of the pipe in their treaty practices with the United States see *Documents Relating to the Negotiation of Ratified and Unratified Treaties with Various Tribes of Indians*, 1801-69, National Archives Microfilm Publications, Record Group 75, Microcopy No. T-494, Roll 1-10. Records of the Bureau of Indian Affairs, National Archives and Records Services, Washington, D.C. [Hereafter *Documents Relating to the Negotiation of Ratified and Unratified Treaties with Various Tribes of Indians*, NAMP RG 75, M-T494 Rolls 1-10]. For Canadian treaty records illustrating Anishinaabe use of the pipe, see Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*. The Anishinaabe also utilized the pipe and other sacred items in their diplomatic practices with other Native nations. See John Tanner and Louise Erdrich, *The Falcon: A Narrative of the Captivity and Adventures of John Tanner*, Penguin Nature Library. (New York, N.Y., U.S.A.: Penguin Books, 1994), Treuer, *Living Our Language: Ojibwe Tales & Oral Histories*, Thomas Vennum, *The Ojibwa Dance Drum: Its History and Construction*, Smithsonian Folklife Studies No. 2 (Washington, D.C.: Smithsonian Institution Press : For sale by the Supt. of Docs., U.S. G.P.O., 1983), Warren, *History of the Ojibway People*.

¹⁸³ Huntinghawk, "Since Time Immemorial: Treaty Land Entitlement in Manitoba," 41.

return.”¹⁸⁴ This Treaty Three Anishinaabe Chief first asserted Anishinaabe sovereignty that was connected to their placement in North America. This established their claim to the land. He then made specific requests of the Canadian government, offering in return the use of Anishinaabe lands and resources. His words demonstrate that the Anishinaabe saw the treaties as vehicles for building relationships vested in reciprocal responsibilities. The Canadian government would be responsible for aiding the Anishinaabe and, in turn, the Anishinaabe would be responsible to aid Canada.

Anishinaabe intent for treaty-making was often generated by their desire to establish relationships with the United States and Canada based on peace and friendship. Anishinaabe Chiefs echoed this sentiment at the negotiations surrounding Treaty Three with Canada. One Chief stated, “You have come before us with a smiling face, you have shown us great charity- you have promised the good things; you have given us your best compliments and wishes, not only for once but for ever.”¹⁸⁵ Respect and kindness towards one another were critical to establishing treaty relationships. This Chief continued, “[L]et there now for ever be peace and friendship between us.”¹⁸⁶

The principles of respect and renewal were interdependent for the Anishinaabe of Lake of the Woods. They closed the negotiation councils by reminding the commissioner of the lasting effect of this treaty which carried with it responsibilities to each other, dependent on continuous renewal. Anishinaabe Chief Mawedopenais expressed: “and now, in closing this Council, I take off my glove, and in giving you my hand, I deliver over my birth-right and lands, and in taking your hand, I hold fast all the promises you

¹⁸⁴ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 63.

¹⁸⁵ Em-dash added for readability. *Ibid.*, 72-3.

¹⁸⁶ *Ibid.*, 73.

have made, and I hope they will last as long as the sun goes round and the water flows, as you have said.”¹⁸⁷ Chief Mawedopenais emphasized that each nation had a responsibility to the other, each acquiring treaty rights from this agreement. Likewise, Governor Morris recognized the responsibility that treaties carried, proclaiming, “I accept your hand and with it the lands, and will keep all my promises, in the firm belief that the treaty now signed will bind the red man and the white together as friends for ever.”¹⁸⁸

Yet, treaty promises were not always kept by the United States and Canada.¹⁸⁹ These nations were often slow in fulfilling certain aspects of the treaties. The Anishinaabe often petitioned their treaty partners, pressing them to uphold the promises and responsibilities they had to one another. The United Nation, while negotiating with commissioners in Washington in 1845, expressed their understanding for the responsibilities treaties carried. When the United States failed to fulfill previous treaty stipulations, the United Nation attempted to remind the United States of their responsibility, explicitly stating, “There were two contracting parties to that treaty. The United States and ourselves. And it was not a treaty until both parties agreed to it. We were told that it could not be altered without the consent of both. We have never agreed to alter it.”¹⁹⁰

The United Nation continued to assert the importance of their previous treaties with the United States arguing, “This is one of the troubles that has brought us here. You

¹⁸⁷ Ibid., 75.

¹⁸⁸ Ibid.

¹⁸⁹ It can be questioned whether the Anishinaabe always upheld their promises however, I have not found anything in the historical record that suggests otherwise. In addition, it should be noted that the United States and Canada acquired the desired land and resources that they negotiated for. Many treaties carried promised of peace and friendship and while the Anishinaabe often sought to uphold peace between the nations, unfulfilled treaty promised did often lead to Anishinaabe protest. This is further discussed in Chapter Four.

¹⁹⁰ *Ratified Treaty No. 247 Documents Relating to the Negotiation of the Treaty of June 5 and 17, 1846, with the Chippewa, Ottawa, and Potawatomi Indians*, NAMP RG 75, M T-494 Roll 4:F308.

now say that our Great Father cannot give us money to build our farm houses, and shops where we now are.” The United States argued that they could not fulfill their treaties responsibilities to the United Nation until the Tribe removed. The United Nation, having already been removed from the Platte Purchase in Missouri to their current location in Iowa and frustrated with U.S. attempts to remove them again to Kansas, continued, “But the treaty calls for these things and he [the President of the United States] said when we saw him that all the stipulations of the treaty should be fulfilled.”¹⁹¹

The United Nation summarized the distinct understanding of treaty-making maintained by these three separate polities when they stated, “We wished to act up to our treaties: but it seems he has changed his mind, since the last great treaty was made. Now he wants us to remove: and because we will not go to a country where we cannot live; because we will not give him our last tract of land for six cents an acre; we will not make ourselves still poorer forever than we now are, you say, he thinks we are not wise.”¹⁹² When the United States and Canada did not adhere to their treaty promises, the Anishinaabe often expressed their treaty-making principles of respect, responsibility, and renewal, as a means to re-orientate their relationship with the United States and Canada.

An Anishinaabe Chief at the Treaty Three negotiations perhaps best expressed the importance of treaty-making for the Anishinaabe.¹⁹³ He stated, “We would not wish that anyone should smile at our affairs, as *we think our country is a large matter to us*.”¹⁹⁴ He pushed for Lieutenant-Governor Alexander Morris to agree to the terms set out by the

¹⁹¹ Ibid.

¹⁹² Ibid., F306.

¹⁹³ These words were likely spoken by Principle Chief Ma-we-do-pe-nais. Chief Powhassan was another principle speaker however and the treaty journal only notes that these words were spoken by a Chief.

¹⁹⁴ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 60. Emphasis added.

Anishinaabe. Morris's response is quite telling of how Canadian treaty commissioners understood treaty-making in relation to the Anishinaabe. Morris responded, "I quite agree that this is no matter to smile at. I think that the decision of to-day is one that affects yourselves and your children after...."¹⁹⁵ While these decisions did indeed affect the Anishinaabe and their children, these commitments also affected the Canadian government and its citizens. This agreement carried responsibilities for both sides, a point that Morris did not seem to reflect upon. The responsibilities the Canadian government had towards the Anishinaabe did not cease with a signature on paper and the payment of treaty annuities. The Anishinaabe, recognizing that treaties would affect their people for generations, understood that these relationships would need to be continuously renewed.

The Anishinaabe, in their treaties with the United States, also expressed the importance of these agreements for the future of these nations. For example, Mississippi Band of Anishinaabe Chief Hole-in-the-Day (the younger), in a conference with Governor of Minnesota Alexander Ramsey in October of 1863 stated, "What we speak of to-day are subjects of the greatest importance to us; they are matters of life and death to us."¹⁹⁶ Hole-in-the-Day and his people, distraught by the 1863 treaty signed in Washington, recognized that this treaty would have lasting ramifications for his people. He stated, "[W]hen we look at the treaty, we have only about a stone's that is good for

¹⁹⁵ Ibid.

¹⁹⁶ President's message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.47, RG 46. Also see *Ratified Treaty No. 327 Documents Relating to the Negotiation of the Treaty of October 2, 1863, with the Red Lake and Pembina Chippewa Indians*, NAMP RG 75, M T-494 Roll 6. For biographical information on this Chief, Hole-in-the-Day (the younger) and his father, see Charles Alexander Eastman, *Indian Heroes and Great Chieftains*, Dover Books on the American Indian (Mineola, N.Y.: Dover, 1997). Also see Anton Steven Treuer, "The Assassination of Hole in the Day" (Doctoral Thesis, University of Minnesota, 1997).

anything, and we see no way of bettering ourselves.”¹⁹⁷ Hole-in-the-Day was so troubled by what this treaty would entail for his people that he declared, “I am willing to sacrifice myself for my band, and die for them.”¹⁹⁸ Building a relationship vested in Anishinaabe treaty principles was a way for the Anishinaabe to ensure their survival in a rapidly changing world.

Treaties were not static agreements, but were contingent on the fulfillment of the obligations they carried. These obligations necessitated a constant renewal of friendship and peace through their fulfillment. Anishinaabe nations, when entering into a treaty with the United States and Canada, frequently built off of their previous agreements. For example, when the United States sought to negotiate an additional treaty with the United Nation in 1846, they were reminded that their previous responsibilities that would not be nullified by the success or failure of reaching a new agreement. The United Nation, in their written response stated, “We have not come here because we wanted to sell our Country: but we have met you because our Great Father has been asking us for it for years. We have named our price, and we have no other price. If our Great Father is pleased it is well; if not, our women and children will feel glad, and, therefore, will be happy. They do not want to remove.”¹⁹⁹ The United Nation, though disinterested in removing, recognized that their survival in an ever-changing multi-national terrain was dependent on their ability to establish and maintain a peaceful relationship with the United States, but only if certain stipulations they put forward were met. They continued their speech by declaring that “Our Great Father has been knocking at the door of our

¹⁹⁷ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.47, RG 46.

¹⁹⁸ Ibid.

¹⁹⁹ *Ratified Treaty No. 247 Documents Relating to the Negotiation of the Treaty of June 5 and 17, 1846, with the Chippewa, Ottawa, and Potawatomi Indians*, NAMP RG 75, M T-494 Roll4:F311.

wigwams for six years. We have opened the door. If he does not come in we will close it and we do not want him to knock again.”²⁰⁰

The United Nation was willing to engage in a relationship with the United States, but held fast to its own demands. If a new treaty was not to be concluded, the United Nation reminded the commissioners that their previous treaties needed to be fulfilled; “But if our Great Father does not want to make a treaty, on our terms, we hope he will see that all our old business is arranged.”²⁰¹ The United Nation used this moment to remind the Commissioners that they came to the President not to sell additional lands but to express his need to fulfill their previous treaty stipulations. They carefully noted that the inability of reaching a new agreement did not void previous agreements. These agreements carried with them a relationship based on trust. That trust did not end with the completion of a written document, it merely began with it. Treaties established these relationships of trust, however, it was the responsibility of all parties involved to maintain that relationship.

Anishinaabe Chief Ma-ghe-ga-bo also expressed the principle of renewal at the 1837 treaty negotiations with the United States. He stated, “If you offer us money and goods we will take both. You see me count upon my fingers (counting six) Every finger counts ten. For so many years we wish you to secure to us the payment of an annuity. At the end of that time our grandchildren, who will have grown up, can speak to you for themselves.”²⁰² Ma-ghe-ga-bo’s words demonstrate that this agreement, within

²⁰⁰ Ibid.

²⁰¹ Ibid.

²⁰² *Ratified Treaty No. 223 Documents Relating to the Negotiations of the Treaty of July, 29, 1837, with the Chippewa Indians*, NAMP RG 75, M T-494 Roll 3:F559. Also see President’s message, December 19, 1837; *Treaty of July 29, 1837 with the Chippewas*; Indian Treaty Files (SEN 25B-C4): RG 46. For additional information on the 1837 treaty, see McClurken and Cleland, *Fish in the Lakes, Wild Rice, and Game in Abundance: Testimony on Behalf of Mille Lacs Ojibwe Hunting and Fishing Rights* / James M.

Anishinaabe understandings of treaty-making, did not exclusively depend on the stipulations the Anishinaabe put forward at that time. This treaty would need to be revisited in sixty years for Ma-ghe-ga-bo's grandchildren to be able to speak for themselves.

The story of *The Woman Who Married a Beaver* illustrates Anishinaabe principles of respect, responsibility, and renewal critical in treaty-making. The Anishinaabe expressed these principles when they negotiated treaties with the United States and Canada. The canons of construction have opened the path for a reorientation of federal Indian law by providing an interpretive framework for the courts to expand their interpretations of First Nations' treaty rights. Nonetheless, federal Indian law is primarily rooted in the doctrine of tribal sovereignty and the trust (or fiduciary, in Canada) relationship. While these doctrines are critical to the field of federal Indian law and had their inception in treaty-making, the courts have not consistently applied the canons of interpretation to the treaties and agreements. Throughout their treaty negotiations with the United States and Canada, the Anishinaabe articulated their understandings of these important legal doctrines grounded in Anishinaabe treaty principles.

The Doctrine of Discovery, The Royal Proclamation of 1763, and the Contest of Sovereignty

Federal Indian law in the United States and Canada has often served to diminish, if not outright deny, First Nations' sovereignty through narrow definitions and applications of the tribal sovereignty doctrine. This "diminished" sovereignty has been

Mcclurken, Compiler ; with Charles E. Cleland ... [Et Al.], Satz, *Chippewa Treaty Rights: The Reserved Rights of Wisconsin's Chippewa Indians in Historical Perspective*.

utilized by the United States and Canada to relegate Native land tenure to a mere “right of occupancy.”²⁰³ Both the United States and Canada drew upon the Doctrine of Discovery and the Royal Proclamation of 1763 to assert their sovereignty, and in turn title, to North America.²⁰⁴ While treaties initially served to reconcile issues of sovereignty and legitimacy, federal Indian law has instead sought to locate U.S. and Canadian sovereignty and legitimacy not in treaties but instead in a doctrine and proclamation that persists on claiming sovereignty to North America through “discovery” and “conquest.”²⁰⁵ Yet, Anishinaabe understandings of the Royal Proclamation and their dismissal of the notions of conquest inherent in the Doctrine of Discovery unearth a broader understanding of the tribal sovereignty doctrine, an understanding that recognizes Native sovereignty, nationhood, and land tenure. The tribal sovereignty doctrine, therefore, must be reconstituted in federal Indian law to adhere to Native understandings of sovereignty, the Royal Proclamation and Native dismissal of European conquest.

Upon becoming aware of the New World and its inhabitants, Europeans created discourses regarding the world and humans’ place within it. These discourses allowed Europeans to develop moral justifications for the dispossession of native peoples, initially through the Spanish legal document, the *Requerimiento*, “which was to be read to the

²⁰³ Sovereignty is not the same thing as land ownership. Yet, these important political concepts shape and inform one another. As such, the United States and Canada supported the diminishment of Indian land ownership through declarations of Native nations’ diminished sovereignty. For additional information on early conceptions of Native land ownership, see Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge: Belknap Press of Harvard University Press, 2005).

²⁰⁴ For example, see *Johnson v. M’Intosh* and *St. Catharine’s Milling and Lumber Company v. The Queen*, [1887] 13 S.C.R. 577. Also see, Slattery, “Making Sense of Aboriginal and Treaty Rights,” Brian Slattery, “The Hidden Constitution: Aboriginal Rights in Canada,” *The American Journal of Comparative Law* 32 (1984), Slattery, “Understanding Aboriginal Rights.” For a better understanding of Canadian constructions of Aboriginal title, see Kent McNeil, *Emerging Justice?: Essays on Indigenous Rights in Canada and Australia* (Saskatoon: Native Law Centre, University of Saskatchewan, 2001).

²⁰⁵ Ibid.

indigenous groups of the New World as they were contacted by Spanish explorers.”²⁰⁶ The *Requerimiento* delineated a history of the world and required Indigenous peoples to accept Spanish rule and the word of God.²⁰⁷ This manifesto, which used military threat to force Native peoples to submit themselves to Spain’s authority, became the legal foundation for the colonization of the Western Hemisphere. The compilation of subsequent debates regarding the nature of Native peoples, carried out by Spanish theologians, formed the doctrine of discovery, which came to be cited as European monarchs’ legal justification for claiming land title in the New World. This doctrine has multiple definitions, but it has been primarily cited to render the aboriginal title of Native peoples as a mere “right of occupancy.”²⁰⁸ European nations, including England, France, and Spain, that established colonies in North America justified their claims to territory through the doctrine of discovery.²⁰⁹ This “international law,” with its obvious discriminatory applications, was generally respected by European nations and was cited as recently as 2005 by the United States Supreme Court in *City of Sherrill, New York v. Oneida Indian Nation of New York*.²¹⁰

²⁰⁶ For a discussion of these legal discourses, see Vine Deloria, Jr. and David E. Wilkins, *Tribes, Treaties, and Constitutional Tribulations*, 1st ed. (Austin: University of Texas Press, 1999), 3-5.

²⁰⁷ Lewis Hanke, *Aristotle and the American Indians* (London: Hollis and Carter, 1959), 19.

²⁰⁸ In *Johnson v. M’Intosh*, Chief Justice John Marshall concluded that Indians did not have full title, instead having an “impaired” title that they could not convey to anyone. For a discussion of this case, see Wilkins, *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice*. For a discussion of the Discovery Doctrine and its impacts on tribal sovereignty, see Michael C. Blumm, “Retracing the Discovery Doctrine: Aboriginal Title, Tribal Sovereignty, and Their Significance to Treaty-Making and Modern Natural Resources Policy in Indian Country,” *Vermont Law Review* 28 (2004). For a discussion of Indian title, see Michael Asch, “First Nations and the Derivation of Canada’s Underlying Title: Comparing Perspectives on Legal Ideology,” in *Aboriginal Rights and Self-Government*, ed. Curtis Cook and Juan D. Lindau (Montreal: McGill-Queen’s University Press, 2000), Felix S. Cohen, “Original Indian Title,” *Minnesota Law Review* 32 (1947).

²⁰⁹ Deloria and Wilkins, *Tribes, Treaties, and Constitutional Tribulations*, 4.

²¹⁰ *City of Sherrill, New York v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005). In an 8-1 decision, the United States Supreme Court found that land repurchased by the Oneida Nation were not immune from state and local taxation. This opinion countered historic precedent that held state and local governments could not impose taxes on reservation lands.

Brian Slattery has found, “At various points, Papal Bulls, early discoveries or explorations, symbolic acts, or feeble coastal settlements were invoked by European nations to support pretensions to vast territories they neither occupied nor controlled.”²¹¹ While these claims had little grounding in fact or reason, the remnants of these theological debates that posited Native peoples as inferior have had extensive implications for Native nations.²¹² These Old World discourses produced a corpus of texts positioning Native peoples in opposition to European civilization, and these texts and the assumptions undergirding them shaped (and continue to inform) North American public imagination.

A number of theories in circulation throughout the early seventeenth century posited that Native peoples did not claim any property rights. These theories asserted that Native peoples were lawless and without civilization or government as a means to justify the right of settlers to occupy Indian lands.²¹³ Yet, as historian Stuart Banner points out, “Such statements were nonsense, often springing from the imaginations of armchair travelers seeking to sell sensational books, who were drawing not on their own observation but upon the long tradition of depicting wild, primitive people, inhabiting distant parts of the earth.”²¹⁴ While such statements were recognized by anyone in North America with first-hand experience with Native peoples as falsities, within this tradition Native nations were depicted as without civilization, law, or order.²¹⁵

²¹¹ Slattery, “The Hidden Constitution: Aboriginal Rights in Canada,” 362.

²¹² Ibid.

²¹³ Banner, *How the Indians Lost Their Land: Law and Power on the Frontier*, 18. See Chapter One “Native Proprietors” for a more detailed discussion on the various discourses in circulation about Native property rights and how these theories contrasted with the practices in place by early colonists.

²¹⁴ Ibid.

²¹⁵ Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*. For a discussion of the development of this tradition see the first chapter, entitled “National Mythologies and American Indians,” 14-39.

In practice, European nations who early established colonial outposts in America found their relations with Native nations to be essential to their survival in North America.²¹⁶ Interaction with Native peoples allowed Europeans to navigate new terrains while establishing critical social relations, economic partnerships, and political alliances. Consequently, European nations began to strategically leverage their alliances with Native nations in order to optimize the colonial governments' positions of political and economic power in North America. Concurrently, European investment in North America generated a discourse that portrayed the New World as holding vast, empty lands ready for colonization. Notions of cultural and racial superiority overrode narratives of alliance and peace with Native peoples as European colonists began coercively appropriating Native lands through any measures available.

When war broke out with France in the 1750s, Britain was forced to reflect on its relationships with Native nations, many of whom sided with France. It became increasingly clear to Britain that France, with the help of their Native allies, would be able to push Britain out of North America. Thus, Britain sought to reorganize their relationship with Native nations, many of whom had become increasingly frustrated with Britain's inability to control their citizens, whose endless trespassing continually created conflict for Native nations.²¹⁷ At the end of the Seven Years' War (1756–1763), the British Crown outlined a policy regarding its rule in the territories it claimed.²¹⁸ The

²¹⁶ Ibid., 20.

²¹⁷ Banner, *How the Indians Lost Their Land: Law and Power on the Frontier*.

²¹⁸ *The Royal Proclamation*.

Royal Proclamation of 1763 sought to resolve these issues, establishing three clear changes in Indian policy that had been in discussion since the 1750s.²¹⁹

The Royal Proclamation of 1763 defined the territorial boundaries between the colonies and Indian country, drawing a boundary line and establishing “Indian country.” The Proclamation stated, “[A]ny Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which have not been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.”²²⁰ In addition the Proclamation called back all settlement west of that line, citing the “great Frauds and Abuses” committed by Europeans in purchasing or settling on Indian lands. The Proclamation forbid these activities, asserting, “And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and License for that Purpose first obtained.”²²¹ Britain and its colonial governments failed to enforce these elements of the Royal Proclamation.

Nonetheless, one aspect of the Royal Proclamation did, importantly, reshape British-Indian relations. The Royal Proclamation outlined the “legal” procedures whereby land could be obtained from Indians (arguing that only the Crown, not the colonies themselves, could negotiate with tribes). The Proclamation recognized Britain’s preemptive right to purchase Indian lands, stating that “if at any Time any of the Said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only

²¹⁹ For further discussion, Slattery, “The Hidden Constitution: Aboriginal Rights in Canada.” Banner, *How the Indians Lost Their Land: Law and Power on the Frontier*. St. Germain, *Indian Treaty-Making Policy in the United States and Canada 1867-1877*.

²²⁰ *The Royal Proclamation*.

²²¹ *Ibid*.

for Us, in our Name, at some public Meeting or Assembly of the said Indians.”²²²

The Royal Proclamation called for, and in effect, resulted in a transformation of Indian policy in North America.

The Royal Proclamation of 1763 became a foundational document in federal Indian law in both the United States and Canada.²²³ This proclamation has been referred to as “one of the major events of British imperial history”²²⁴ and “a ‘fundamental document’ in First Nations and Canadian legal history.”²²⁵ As Brian Slattery has argued, “The interest of the document is not purely historical, for its main terms have never been generally repealed in Canada.”²²⁶ The Royal Proclamation, while critical for understanding a number of doctrines, it is best understood as the moment the Crown asserted its will or Sovereignty to North America. Yet, As John Borrows points out, “First Nations were not passive objects, but active participants in the formation and ratification of the Royal Proclamation.”²²⁷

Borrows, in his examination of First Nations’ perceptions of the Royal Proclamation, argues that the Proclamation, coupled with a subsequent agreement ratified at Niagara in 1764, constitute a virtual treaty. As such, the Royal Proclamation should fall under the canons of construction, requiring the United States and Canada to interpret the Royal Proclamation based on how Native peoples understood it at the time it was

²²² Ibid.

²²³ It may be argued that the Royal Proclamation did not have the same impact in U.S.-Indian relations that it did in Canada, and this is true. Nonetheless, the Royal Proclamation, while not as frequently cited and called upon to justify U.S. sovereignty as it is in Canada, did greatly re-shape U.S.-Indian relations primarily in the arena of federal Indian law. A major question and component of *Johnson v. M’Intosh* focused on the Royal Proclamation.

²²⁴ Banner, *How the Indians Lost Their Land: Law and Power on the Frontier*, 92.

²²⁵ John Borrows, “Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government,” in *Aboriginal and Treaty Rights in Canada*, ed. Michael Asch (Vancouver: University of British Columbia Press, 1997), 155.

²²⁶ Slattery, “The Hidden Constitution: Aboriginal Rights in Canada,” 369.

²²⁷ Borrows, “Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government,” 155.

negotiated. In order to ascertain how Native peoples understood the principles of the proclamation and its effects on their sovereignty can be unearthed by an examination of the various sources that contain First Nations' perceptions of the proclamation.²²⁸

Native nations' asserted that their sovereignty was unextinguished. This view was supported in the Articles of Capitulation drawn up at the end of the Seven Years War even though First Nations had no direct input in the drafted agreement. Borrows argues, "The capitulation agreement represented the promise that First Nations territory was not to be reduced, nor was First Nations sovereignty to be subsumed, by alliance with either the French or the English. Both the French and the English wanted to maintain the cooperation of First Nations because of the military and economic power that First Nations continued to possess."²²⁹ While French and British policy seemed to respect Indigenous sovereignty and land tenure, the practice of European colonists often did not throughout the eighteenth century.

The Royal Proclamation sought to resolve Indian/Colonist conflict and "attempted to convince First Nations that the British would respect existing political and territorial jurisdiction by incorporating First Nations understandings of this relationship in the document."²³⁰ Therefore, the Crown took paradoxical positions in the Royal Proclamation. They declared their "Sovereignty" and "Dominion" over First Nations' territories. This assertion of sovereignty derived from notions of discovery, as later court cases would assert. Yet, as Banner points out, "If the Crown was the true owner of all the Indians' land, there would have been no reason for the imperial government to prohibit

²²⁸ Ibid.

²²⁹ Ibid., 159.

²³⁰ Ibid.

private purchasing.”²³¹ Instead, Banner argues “the actual proclamation, of course, looked quite different. It reminded colonists that the Indians *did* own their land, and set down strict rules governing the transfer of ownership from tribes to the Crown.”²³² Yet, the assertions of Crown sovereignty through the Proclamation would have lasting effects in Indian–British (and later U.S. and Canada) relations.

John Borrows argues, “The different objectives that First Nations and the Crown had in the formulation of the principles surrounding the Proclamation is the reason for the different visions embedded within its text. Britain was attempting to secure territory and jurisdiction through the Proclamation, while First Nations were concerned with preserving their lands and sovereignty.”²³³ Borrows has found that the Royal Proclamation was presented to Native nations at Niagara for their affirmation, thus having the attributes of a treaty. Declarations and promises were made by all parties at Niagara that extend beyond the written document. The oral statements and the exchange of wampum encompassed First Nations approval of the Proclamation “...which encompassed more than a system of land allotment, including express guarantees of First Nation sovereignty.”²³⁴

In addition, Borrows has found that “[t]he people of the Algonquin and Nipissing nations met with British superintendent of Indian affairs at Oswegatchie and were persuaded to be messengers in inviting other First Nations to attend a peace council at Niagara in the summer of 1764. Representatives of these two nations traveled throughout the winter of 1763–4 with a printed copy of the proclamation, and with various strings of

²³¹ Banner, *How the Indians Lost Their Land: Law and Power on the Frontier*, 110.

²³² Ibid. Emphasis in original.

²³³ Borrows, “Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government,” 161.

²³⁴ Ibid., 162.

wampum, in order to summons the various First Nations to a council with the British.”²³⁵ This treaty was concluded in the summer of 1764 and “was regarded as ‘the most widely representative gathering of American Indians ever assembled,’ as approximately two thousand chiefs attended the negotiations. There were over twenty-four Nations gathered with ‘representative nations as far east as Nova Scotia, and as far west as Mississippi, and as far north as Hudson Bay.’”²³⁶ Borrows also argues that the principles of this relationship were founded on peace, friendship and respect, each nation recognizing the autonomy of the other. First Nations a number of times presented these belts and copies of the Royal Proclamation over the next century as they asserted their understanding of the Proclamation, an understanding that incorporated the agreement at Niagara. Borrows asserts that a re-examination of the Royal Proclamation that includes the Treaty of Niagara and First Nations perspectives makes it clear that Native nations did not perceive the Proclamation as the Crown’s assertion of sovereignty over First Nations or their lands.

This chapter builds upon Borrows argument, asking on what grounds has the United States and Canada, disconnecting the Treaty at Niagara from the Royal Proclamation, been able to assert their sovereignty to North America. It extends Borrows’ argument that the Royal Proclamation should be read in conjunction with the Treaty of Niagara under the canons of construction. This dissertation argues that the tribal sovereignty doctrine (and the other doctrines the United States and Canada have used to read this doctrine, primarily Discovery and the Royal Proclamation), having given rise through treaty-making, should be read under the canons of construction. Tribal

²³⁵ Ibid.

²³⁶ Ibid., 163.

sovereignty should be understood as Native peoples understood it at the time of treaty-making.

“You Have Not Yet Conquered Us”: Anishinaabe Assertions of Sovereignty and the Dismissal of Conquest

After the conclusion of the Seven Years War, Great Britain’s struggles to obtain control of the New World no longer rested primarily with other European nations. The Proclamation established regulations regarding Indian lands as a means to address the much greater concern: how was Britain going to control and govern half a continent from the other side of the Atlantic Ocean. Great Britain soon realized the answer in the form of colonist rebellion and revolution. American colonists were re-imagining themselves in the New World. The Royal Proclamation fueled colonist desires to break away from Great Britain. Colonists saw themselves as a people organized and regulated by the law of nature, not British law and rule.²³⁷ They formulated discourses that slowly disconnected them from their origins in Britain. American radicals intensified their opposition to British usurpations of American rights through an examination of the relationship between property and self-governance. Colonists turned to Enlightenment discourses regarding natural law to affirm and assert their rights to self-rule. These discourses mobilized American opposition to British rule.²³⁸ Threats to Great Britain’s security in North America were coming increasingly from its own colonists, whose

²³⁷ Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest*, 243.

²³⁸ Ibid. Also see Banner, *How the Indians Lost Their Land: Law and Power on the Frontier*, St. Germain, *Indian Treaty-Making Policy in the United States and Canada 1867-1877*.

desires to break away from Britain were ignited by the constraints that the Royal Proclamation had imposed on them.²³⁹

American cultural discourses concurrently positioned Native peoples as “savage,” while political discourses selectively recognized the sovereignty of First Nations, applying whichever discourse supported the idea that land purchases made by colonists were lawful and supported colonists claim to independence. Robert Williams argues that “these divergent discourses on Indian legal status and rights were all derivative of the larger and more direct question ... regarding the rationalization of the land-acquisition process on the colonial frontier.”²⁴⁰ Ultimately, however, colonial legal theory which sometimes asserted the sovereignty and property rights of Native peoples was overridden by American cultural discourses that fabricated legal justifications for U.S. and Canadian assertions of sovereignty. In the newly independent United States, Native nations were sometimes recognized as sovereign nations in the political arena but were now rarely represented in cultural discourses as sovereign entities and instead came to be seen as inconveniences that needed to be removed.²⁴¹

The practical realities and practices on the ground that recognized the status of First Nations competed with national mythologies that deemed Indians as “savages” and justified land acquisition through Discovery. The early republic was conscious of its need to deal with Native nations as sovereign political entities.²⁴² Nonetheless, as decades passed and treaties continued to be made in the west, national mythologies of conquest, at

²³⁹ Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest*, 243.

²⁴⁰ Ibid., 287.

²⁴¹ Ibid. Also see Chapters Three and Four of Banner, *How the Indians Lost Their Land: Law and Power on the Frontier*.

²⁴² Banner, *How the Indians Lost Their Land: Law and Power on the Frontier*. Wilkins and Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law*.

times, overrode earlier discourses that recognized Native sovereignty because it supported the sovereignty of the young nation. Therefore, there were numerous and divergent discourses in circulation for Chief Justice John Marshall to employ when questions of American sovereignty entered into the fledgling United States Supreme Court in the early nineteenth century.²⁴³ This became evident as traces of these many competing theories regarding both the rights of Native nations and the rights of the United States found their way into his judicial opinions.²⁴⁴

Wilkins and Lomawaima argue that “The Supreme Court is the ultimate arbiter of U.S. law, and like the law itself, has a history. Enmeshed in contemporary politics, swayed by social trends, constituted of individual personalities, the Court has evolved over generations of judicial interpretation and reinterpretation.”²⁴⁵ They further elaborate that “...certain personalities have dominated judicial interpretation of American Indian law, and none has been so instrumental as Chief Justice John Marshall, who served from 1801 to 1835.”²⁴⁶ Chief Justice John Marshall would be the first Justice to address “Indian title” in a Supreme Court decision.

While state courts had grappled with questions of Indian property throughout the first decade of the nineteenth century, the United States Supreme Court would not be presented with a discussion of the nature of Indian land ownership until *Fletcher v. Peck*

²⁴³ For scholarly examinations on the life and work of Chief Justice John Marshall, see Charles Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Lawrence: University Press of Kansas, 2000), R. Kent Newmyer, *John Marshall and the Heroic Age of the Supreme Court, Southern Biography Series*. (Baton Rouge: Louisiana State University Press, 2001), Jean Edward Smith, *John Marshall: Definer of a Nation*, 1st ed. (New York: H. Holt & Co., 1996).

²⁴⁴ See, for example, *Cherokee Nation v. Georgia*, *Johnson v. M’Intosh*, and *Worcester v. Georgia*. For additional information on the Cherokee cases, see Jill Norgren, *The Cherokee Cases: Two Landmark Federal Decisions in the Fight for Sovereignty* (Norman: University of Oklahoma Press, 2004).

²⁴⁵ Wilkins and Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law*, 53.

²⁴⁶ *Ibid.*

in 1810.²⁴⁷ Marshall briefly addressed “Indian title” in this case, spending only two sentences on the subject. In a dispute surrounding whether Georgia or the United States owned unpurchased Indian lands, both sides argued that Indians had only the “mere right of occupancy.” Marshall said that “[t]he majority of the court is of opinion that the nature of the Indian title, which is certainly to be respected by all courts, until it be legitimately extinguished, is not such as to be absolutely repugnant to seisin in fee on the part of the state.”²⁴⁸ Thus, Marshall declared that Georgia was the fee simple owner while Indians had “Indian title.” Marshall did not elaborate on what that Indian title entailed, but for the first time “[t]he newer view [among Americans] of Indian property rights, not yet even two decades old, had been officially adopted by the Supreme Court.”²⁴⁹ While *Fletcher* is the first Supreme Court case that entailed a discussion of Indian ownership, it was not until 1823, in *Johnson v. M’Intosh*, that the Marshall court would devote significant attention to the question.²⁵⁰

In *Johnson*, the court’s principal question was whether the Indian title held by the plaintiffs (Joshua Johnson and Thomas Graham) would be recognized by the courts or if that same title, purchased from the United States by the defendant (William M’Intosh) would be considered valid. This question should have been resolved easily, as the Royal Proclamation had clearly forbade individual land purchases from tribes after 1763, thus invalidating the Plaintiffs claim for his title to be “recognized” by the United States, regardless of the nature of Indian property rights. Instead, Marshall proceeded to answer

²⁴⁷ *Fletcher v. Peck*, 10 U.S. 87 (1810).

²⁴⁸ *Ibid.*, 143. For a detailed discussion of this case, see Banner, *How the Indians Lost Their Land: Law and Power on the Frontier*, 168-78, C. Peter Magrath, Robert Fletcher, and John Peck, *Yazoo: Law and Politics in the New Republic; Case of Fletcher V. Peck* (Providence,: Brown University Press, 1966).

²⁴⁹ Banner, *How the Indians Lost Their Land: Law and Power on the Frontier*, 174.

²⁵⁰ *Johnson v. M’Intosh*.

a different question entirely: whether American Indians held title to their occupied lands.²⁵¹ Banner asserts, “Marshall’s expansion of *Johnson v. M’Intosh* into a treatise on Indian property rights has been a long-standing puzzle for commentators, but when *Johnson* is placed in the context of the legal disputes that preceded it, the reason becomes clear. Marshall must have had an eye on all the cases involving the validity of state grants of preemption rights.”²⁵²

In order to support the validity of state grants to lands that had not yet been purchased by First Nations, Marshall argued that title was exclusively held by the United States as a result of the doctrine of discovery, Indian nations retaining mere rights of occupancy. Initially, Marshall’s opinion recognized that discovery was a law between European nations, stating: “The principle was, that discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession... The exclusion of all other Europeans, necessarily gave to the nation making the discovery the sole right of acquiring the soil from the natives and establishing settlements upon it.”²⁵³

Yet, Marshall expanded the doctrine of discovery beyond its scope: a preemptive right to purchase Indian land. In his discussion surrounding the relationship between the discovering nation and Native nations, he claimed that “In the establishment of these relations, the rights of the original inhabitants were, in no instance, entirely disregarded;

²⁵¹ For additional details on this case, see Wilkins, *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice*, 30.

²⁵² Banner, *How the Indians Lost Their Land: Law and Power on the Frontier*, 180. For a detailed discussion of this case, the Court, and the political atmosphere surrounding Marshall’s decision, see Lindsay Gordon Robertson, *Conquest by Law: How the Discovery of America Dispossessed Indigenous Peoples of Their Lands* (New York: Oxford University Press, 2005).

²⁵³ *Johnson v. M’Intosh*, 573.

but were necessarily, to a considerable extent, impaired.”²⁵⁴ This new formulation of the discovery doctrine, and indeed previous treaty-making, Marshall began to shift the meaning and application of the doctrine. He argued, “They were admitted to be the rightful occupants of the soil, with a legal as well as a just claim to retain possession of it, and to use it according to their own discretions, but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it.”²⁵⁵

While the Royal Proclamation was the first time that Britain would assert a claim of sovereignty to North America, Marshall was legalizing this assertion of U.S. sovereignty (inherited from Britain) and extending its parameters. He declared, “While the different nations of Europe respected the right of the natives, as occupants, they asserted the ultimate dominion to be in themselves; and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil, while yet in possession of the natives. These grants have been understood by all, to convey a title to the grantees, subject only to the Indian right of occupancy.”²⁵⁶ With these two critical sentences, Marshall secured thousands of western land titles that were predicated on grants issued for lands that had not yet been purchased from Native nations.²⁵⁷ By recognizing “the Indian right of occupancy”

²⁵⁴ *Ibid.*, 574.

²⁵⁵ *Ibid.*

²⁵⁶ *Ibid.*, 574.

²⁵⁷ Banner, *How the Indians Lost Their Land: Law and Power on the Frontier*, 182-3. Also see Robertson, *Conquest by Law: How the Discovery of America Dispossessed Indigenous Peoples of Their Lands*.

Marshall also locked out individual Americans from being able to usurp Indian lands, instead requiring that the United States government must extinguish this “right of occupancy”.

Marshall had seemingly resolved the question he had set out to answer: whether state grants of preemption would retain the force of law. He had expanded the discovery doctrine to accomplish this task. However, “[h]e then went on to justify this conclusion, in what are today the most frequently quoted passages from the opinion.”²⁵⁸ Marshall suddenly posited that the root of land title came from *conquest*. He argued, “Conquest gives a title which the Courts of the conqueror cannot deny, whatever the private and speculative opinions of individuals may be, respecting the original justice of the claim which has been successfully asserted.”²⁵⁹ He held that “It is not for the courts of this country to question the validity of this title, or to sustain one which is incompatible with it.”²⁶⁰ In order to justify this assertion, Marshall pulled on national mythologies that posited Native peoples as nomadic and without law or civilization. He declared, “But the tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness; to govern them as distinct people, was impossible, because they were as brave and as high spirited as they were fierce, and were ready to repel by arms every attempt on their independence.”²⁶¹ Marshall, utilizing a discourse of conquest, concluded that colonial usurpation of Indian title was the inevitable consequence.

²⁵⁸ Banner, *How the Indians Lost Their Land: Law and Power on the Frontier*, 185.

²⁵⁹ *Johnson v. M’Intosh*, 588.

²⁶⁰ *Ibid.*, 589.

²⁶¹ *Ibid.*, 590.

Yet, it is clear that many Native peoples rarely saw themselves as a conquered people. Various First Nations threatened warfare with the United States when it attempted to seize land under the doctrine of conquest. Furthermore, Native nations asserted their sovereignty at the Treaty of Niagara when the Royal Proclamation was under discussion. While numerous Native nations had sided with the French against the British, they did not consider their sovereignty to be extinguished by the loss of the war to Britain in 1760. This was recognized by one British colonial official who stated, “The Six Nations, Western Indians [Anishnabe, etc.] & c. having never been conquered, Either by the English or French, nor subject to the Laws, consider themselves as free people.”²⁶²

Anishinaabe assertions of sovereignty and their dismissal of conquest were also echoed by Anishinaabe chief Minavavana after having allied with France. He asserted “Englishman, although you have conquered the French, *you have not yet conquered us*. We are not your slaves.”²⁶³ Instead Minavavana pulled on Anishinaabe conceptions of sovereignty and land tenure, seen as derived from the Creator.²⁶⁴ He argued, ““These lakes, these woods and mountains, were left to us by our ancestors. They are our inheritance; and we will part with them to none.””²⁶⁵ Minavavana not only declared Anishinaabe sovereignty, a conception often expressed through this spiritual discourse

²⁶² E. B. O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New-York*, vol. 7 (Albany: Weed, Parsons and Co., 1856), 665. Cited in Borrows, “Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government,” 157.

²⁶³ Wilbur R. Jacobs, *Wilderness Politics and Indian Gifts: The Northern Colonial Frontier, 1748-1763* (Lincoln: University of Nebraska Press, 1966), 75. Emphasis added.

²⁶⁴ I use the word *Creator* to indicate *Gichi-Manidoo* or *Gizhe-Manidoo*. It may be argued that these Anishinaabe terms cannot be adequately expressed through the use of the term Creator. While this may be true, I utilize this term for readability and to mediate the language used by the Anishinaabeg, Canadians, and Americans participating in treaty-making even though they all brought their own understandings of this being into their practices and discourses. Nichols and Nyholm translate *Gichi-Manidoo* to mean “Great Spirit, God.” They translate *Gizhe-Manidoo* as “God.” *Gizhewaadazi* has been translated to “be kind, be generous,” thus, *Gizhe-Manidoo* may also translate to the “kind spirit.” See Nichols and Nyholm, *A Concise Dictionary of Minnesota Ojibwe*.

²⁶⁵ Jacobs, *Wilderness Politics and Indian Gifts: The Northern Colonial Frontier, 1748-1763*, 75.

that posits Anishinaabe land tenure as an “inheritance.” He elaborated on this sovereignty, declaring that Anishinaabe participation in the trade did not diminish their sovereignty. He stated that “[Y]our nation supposes that we, like the white people, cannot live without bread, and pork, and beef! But, you ought to know, that He, the Great Spirit and Master of Life, has provided food for us, in these spacious lakes, and on these woody mountains.”²⁶⁶

After affirming Anishinaabe sovereignty and land tenure, Minavavana returned to his initial statements, delineating Anishinaabe understandings of warfare and conquest. He said:

‘Englishman, our Father, the king of France, employed our young men to make war upon your nation. In this warfare, many of them have been killed; and it is our custom to retaliate, until such time as the spirits of the slain are satisfied. But, the spirits of the slain are to be satisfied in either of two ways; the first is the spilling of the blood of the nation by which they fell; the other, by covering the bodies of the dead, and thus allaying the resentment of their relations. This is done by making presents.’

‘Englishman, you king has never sent us any presents, nor entered into a treaty with us, wherefore he and we are still at war; and, until he does these things, we must consider that we have no other father or friend among the white man, than the king of France...’²⁶⁷

²⁶⁶ Ibid.

²⁶⁷ Ibid.

Minavavana's speech clearly demonstrates that the Anishinaabe did not see themselves as a conquered people. Instead, he argued that the Anishinaabe and the British were still at war until the British appeased their slain by presenting gifts (a long-standing practice among the Anishinaabe for laying the deceased to rest).²⁶⁸

Indeed, Minavavana echoed the principles of treaty-making found in the story of *The Woman Who Married a Beaver*. Minavavana asserted the need for respect by both parties. He stated that the British should not equate their conquest of France with conquest of the Anishinaabe, arguing for a respect of Anishinaabe sovereignty and land tenure. Furthermore, he displayed respect to Britain by following his previous statements regarding Anishinaabe sovereignty with a declaration of peace. He said, ““You have ventured your life among us, in the expectation that we should not molest you. You do not come armed, with an intention to make you, you come in peace, to trade with us, to supply us with necessities, of which we are in much want. We shall regard you therefore as a brother, and you may sleep tranquilly, without fear of the Chipeways. As a token of our friendship we present you with this pipe, to smoke.””²⁶⁹ Minavavana declared that he would regard this Englishman as a brother. The principle of responsibility was also echoed by Minavavana as he insisted on the need for Britain to appease the slain Anishinaabe by “covering the bodies of the dead.” These accounts of Native sovereignty and dismissal of conquest continued throughout and after the Revolutionary War. U.S.

²⁶⁸ For further discussion on how gifts function in appeasing the deceased, See Miller, "Gifts as Treaties: The Political Use of Received Gifts in Anishinaabeg Communities, 1820-1832." For additional information on how gifts function in diplomacy, see Charles E. Cleland, *Rites of Conquest: The History and Culture of Michigan's Native Americans* (Ann Arbor: University of Michigan Press, 1992), Gilles Havard, Phyllis Aronoff, and Howard Scott, *The Great Peace of Montreal of 1701: French-Native Diplomacy in the Seventeenth Century* (Montreal: McGill-Queen's University Press, 2001), Harold Hickerson, "The Feast of the Dead among the Seventeenth Century Algonkians of the Upper Great Lakes," *American Anthropologist* 62, no. 1 (February, 1960), David Murray, *Indian Giving: Economies of Power in Indian-White Exchanges* (Amherst: University of Massachusetts Press, 2000).

²⁶⁹ Jacobs, *Wilderness Politics and Indian Gifts: The Northern Colonial Frontier, 1748-1763*, 75.

attempts to assert their right by “conquest” just after war was met with forceful resistance from Native peoples.

Even Chief Justice John Marshall had to recognize that this claim to title via conquest had no factual grounding. In many ways, Marshall attempted to revise much of what he had said in *Johnson* when he revisited the discussion of the rights of Native nations in his 1832 *Worcester v. Georgia* decision. In *Worcester*, Marshall painted a different picture of discovery than he did in *Johnson*. He argued that “America, separated from Europe by a wide ocean, was inhabited by a distinct people. Divided into separate nations, independent of each other and of the rest of the world, having institutions of their own, and governing themselves by their own laws. It is difficult to comprehend the proposition, that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the lands they occupied; or that the discovery of either by the other should give the discover rights in the country discovered, which annulled the pre-existing rights of its ancient possessors.”²⁷⁰

Marshall used the opportunities presented in *Worcester* to modify his initial statements on discovery, found in *Johnson*. He described discovery as “an exclusive principle which shut out the right of competition among those who had agreed to it; not one which could annul the previous rights of those who had not agreed to it. It regulated the right given by discovery among the European discovers; but could not affect the rights of those already in possession, either as aboriginal occupants, or as occupants by virtue of a discovery made before the memory of man.”²⁷¹ In this explanation of the discovery doctrine, Marshall recognized that discovery merely granted a preemptive right

²⁷⁰ *Worcester v. Georgia*, 542-3.

²⁷¹ *Ibid.*, 544.

of purchase, stating that “[i]t gave the exclusive right to purchase, but did not found that right on a denial of the right of the possessor to sell.”²⁷²

Marshall was careful not to overtly overturn his opinion in *Johnson*. He recognized Native nations’ right to sell their lands, yet did not do so in any way that would conflict with the “right of occupancy.” While Marshall utilized the *Worcester* opinion to revisit the meaning of discovery, his primary intention was to revisit the discussion of the political status of Native nations explored the year prior in *Cherokee Nation*.²⁷³ He recognized the national status of Indians without discussing the relationship of nationhood to land tenure. Marshall argues, “The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as undisputed possessors of the soil, from time immemorial.” He elaborated, writing that:

The very term ‘nation,’ so generally applied to them, means ‘a people distinct from others.’ The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties. The words ‘treaty’ and ‘nation’ are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have

²⁷² Ibid.

²⁷³ *Cherokee Nation v. Georgia*. Also see Norgren, *The Cherokee Cases: Two Landmark Federal Decisions in the Fight for Sovereignty*.

applied them to Indians, as we have applied them to other nations of the earth. They are applied to all in the same sense.²⁷⁴

Marshall continued to recognize Native peoples' "right of occupancy" outlined in *Johnson* by acknowledging their right to sell their lands. In this way, Marshall's opinion in *Worcester* recognized tribal sovereignty but still rendered Native peoples as mere tenants of the land. Marshall affirmed Native political status as nations without revisiting the critical question of land ownership.

Wilkins and Lomawaima, in their analysis of the doctrine of discovery, posit that, "One version of the European notion of a doctrine of discovery proposes that explorers' 'discovery' of land in the Americas gave the discovering European nation—and the United States as successor—absolute legal title to, and ownership of, American soil."²⁷⁵ They further say, "This popular and debilitating definition of discovery reduces Indian tribes to mere tenants, whose legal claims to their aboriginal homelands are secondary to the claims of the 'discoverers.'"²⁷⁶ They call this notion of discovery an "expansive" definition. They note that "As recently as 1986, a federal district court recognized the European expansive doctrine of discovery as 'a legal fiction,' meaning that despite its use in popular language it has no foundation in law. Nevertheless, the expansive doctrine and an even more extreme definition of discovery meaning 'absolute' title remain entrenched doctrines within federal Indian policy and law."²⁷⁷

The Anishinaabe, throughout their treaty relations, asserted their sovereignty and rights to their lands. As the doctrine of tribal sovereignty has its origins in treaty-making,

²⁷⁴ Ibid., 500-501.

²⁷⁵ Wilkins and Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law*, 19.

²⁷⁶ Ibid.

²⁷⁷ Ibid., 19-20.

and further since Anishinaabe understandings of the Royal Proclamation and dismissal of the discovery and conquest doctrines were also evident throughout treaty-making, federal Indian law must expand to include and account for Native peoples understanding of this critical political concept. Based on the canons of construction, tribal sovereignty, the Royal Proclamation, and the Discovery Doctrine should be interpreted today as Native peoples throughout the treaty era understood them.

Treaty-Making as the Apparatus for Recognizing Sovereignty, Nationhood, and Land Tenure

United States and Canadian assertions of sovereignty, discovery, and conquest ignore what treaty-making initially entailed for these countries. The sovereignty of Indigenous nations was recognized by various European nations, and later the United States and Canada, through hundreds of treaties.²⁷⁸ These nation-to-nation agreements recognized Indigenous nations as sovereigns (governing entities) and as proprietors (land owners). The fledgling United States and Canada were dependent on treaty relations with Indigenous nations to legitimize their own status as nations as well as to justify their territorial claims. Felix Cohen states the obvious when he found that “[t]he Indian tribes were recognized as powers capable of making treaties before the United States was.”²⁷⁹ This statement holds true for Canada as well. European nations, and their successors

²⁷⁸ Cohen, *Cohen's Handbook of Federal Indian Law*, 17, Prucha, *The Great Father: The United States Government and the American Indians*. Also see, Deloria and DeMallie, eds., *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775-1979*, Prucha, *The Great Father: The United States Government and the American Indians*.

²⁷⁹ Cohen, *Handbook of Federal Indian Law, with Reference Tables and Index*, 274.

found their relations with Indigenous nations to be imperative for their survival in North America.²⁸⁰

The European presence in the New World was initially sparse and they were met by large native populations who wielded ample military force.²⁸¹ Thus, initial European survival in North America demanded the recognition of Native peoples as sovereign nations. The English colonists, much like the Dutch, Spanish, and French, were forced to deal with Indians as nations, recognized through the act of treaty-making.²⁸² Treaties solidified alliances between Native peoples and Europeans and served to regulate trade, provide protection for one another, and recognized boundaries and jurisdictions. In addition, these treaties, particularly with the formation of the United States and Canada, served to recognize the sovereign capacity of colonial nations and legitimate their land acquisition.²⁸³ Mohawk scholar Taiaiake Alfred recognizes this motivation for treaty-making. He states that “North American settler states (Canada and the United States, with their predecessor states Holland, Spain, France, and England) gained legitimacy as legal entities only by the expressed consent through treaty of the original occupiers and governors of North America.”²⁸⁴ These treaties, at least theoretically, provided a legitimate legal foundation for the colonial nation within the international

²⁸⁰ Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*, 20.

²⁸¹ Deloria and DeMallie, eds., *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775-1979*, 6.

²⁸² Cohen, *Cohen's Handbook of Federal Indian Law*, 17. Also see, Deloria and DeMallie, eds., *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775-1979*, 6.

²⁸³ Dorothy V. Jones, *License for Empire: Colonialism by Treaty in Early America* (Chicago: University of Chicago Press, 1982), Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest*.

²⁸⁴ Taiaiake Alfred, "Sovereignty," in *A Companion to American Indian History*, ed. Philip Joseph Deloria and Neal Salisbury, *Blackwell Companions to American History* #4 (Malden: Blackwell Publishers, 2002), 460-1.

arena while pre-empting other European countries from laying claim to the territories recognized within treaties.²⁸⁵

While a nation's sovereignty is not dependent on its recognition from outside sources, a nation's ability to *exercise* sovereign rights within the international arena is directly affected by such recognition or lack of recognition. It is quite common for nations to refuse to "recognize" one another based on a nation's governmental structure, political agendas, domestic activities, or economic needs. "That nation's sovereignty, however, is no less real because other nations refuse to recognize its existence. The key is whether the people within the nation support its existence."²⁸⁶ Nonetheless, international recognition increases a nation's stature and ability to interact with other nations. This reality was present in a fledgling United States and Canada that was dependent on its relations with Indigenous nations to support its own economic and political stature in the international arena. Yet, this recognition was not the only impetus for colonial nations to enter into treaties.

Historian Frederick Hoxie discussed the centrality of treaties for the European presence in the Americas. He says that "[f]rom the time of Columbus, questions of ownership, sovereignty, and legitimacy stalked the nations who came here and colored their relations both with each other and with the continent's native people" and contends that treaties became the instrument for resolving these questions of "sovereignty and legitimacy."²⁸⁷ While treaties initially served to recognize and legitimate the status of

²⁸⁵ Deloria and DeMallie, eds., *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775-1979*, 6.

²⁸⁶ Kirke Kickingbird et al., "Indian Sovereignty," in *Native American Sovereignty*, ed. John R. Wunder, *Native Americans and the Law* (New York: Garland Publishing, 1996), 3.

²⁸⁷ Frederick E. Hoxie, "Why Treaties?," in *Buried Roots and Indestructible Seeds*, ed. Mark A. Lindquist and Martin Zanger (Madison: University of Wisconsin Press, 1994), 92-3.

colonial nations within the international arena, these documents became one of the foundational claims for Indigenous peoples in their ongoing relations with colonial nations. Indeed, treaties have become one of the markers Native scholars and activists invoke to assert the *recognized* sovereign status of Indigenous nations. Correspondingly, Maureen Konkle has maintained that “[o]ne of the major impediments to the successful incorporation of Native peoples [into the national body] over time has been the existence of treaties Europeans made with them from the beginnings of settlement.”²⁸⁸ These contractual documents recognized the separate, distinct status of Indigenous nations and became part of the legal framework of North America.²⁸⁹

Treaties are binding legal documents that are the “Supreme Law of the Land.”²⁹⁰ Wilkins defines a treaty as “a formal agreement, compact, or contract between two or more sovereign nations that creates legal rights and duties for the contracting parties.”²⁹¹ While Indigenous treaties pertain to peoples and lands contained within their colonizing nation, these agreements are of the same weight as international treaties; confirmed in various treaty provisions.²⁹² Felix Cohen argues in his foundational 1942 *Handbook of Federal Indian Law*, “That treaties with Indian tribes are of the same dignity as treaties with foreign nations is a view which has been repeatedly confirmed by the federal courts and never successfully challenged.”²⁹³

International law was predicated upon the recognition of treaties as diplomatic agreements between nations. It was through the colonial enterprise of territorial

²⁸⁸ Konkle, *Writing Indian Nations: Native Intellectuals and the Politics of Historiography, 1827-1863*, 3.

²⁸⁹ Cohen, *Handbook of Federal Indian Law, with Reference Tables and Index*.

²⁹⁰ U.S. Constitution, (September 17, 1787) art. I-VII, art. vi. For an electronic version of the United States Constitution, see Library of Congress, “Primary Documents in American History: The United States Constitution.” Retrieved 08-14-2008, <http://www.loc.gov/rr/program/bib/ourdocs/Constitution.html>.

²⁹¹ Wilkins, *American Indian Politics and the American Political System*, 339.

²⁹² Cohen, *Cohen's Handbook of Federal Indian Law*, 27.

²⁹³ Cohen, *Handbook of Federal Indian Law, with Reference Tables and Index*, 33-4.

expansion and land acquisition that international law was defined.²⁹⁴ Barker notes that “[t]he two primary vehicles that served for the articulation of international legal precepts about nationhood, and so of the sovereignty with which such a character was defined, were the national constitution and the treaty.” She finds that “custom within international law emerged around the treaty as a mechanism for both the exercise of nationhood and the recognition of national sovereignty.”²⁹⁵

Contemporary Indigenous scholars have argued “...that sovereignty emanates from the unique identity and culture of peoples and is therefore an inherent and inalienable right of peoples to the qualities customarily associated with nations.”²⁹⁶ These qualities are often associated with territory, jurisdiction, and an internal governing body. While sovereignty and nationhood are inextricably linked, it is important to note that sovereignty, in theory, is the supreme power or authority that makes up the nation. Because sovereignty and nationhood are interdependent, the recognition or lack or recognition of a nation’s sovereignty and its associated rights has often been acknowledged or denied through the contested definitions of what constitutes a nation.²⁹⁷

²⁹⁴ Felix S. Cohen, "The Spanish Origin of Indian Rights in the United States," *Georgetown Law Journal* 31, no. 1 (1942), David E. Wilkins, "A Constitutional Conundrum: The Resilience of Tribal Sovereignty During American Nationalism and Expansion: 1810-1871," *Oklahoma City University Law Review* 25, no. 1 & 2 (Summer & Spring 2000), Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest*.

²⁹⁵ Joanne Barker, "For Whom Sovereignty Matters," in *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination*, ed. Joanne Barker, *Contemporary Indigenous Issues* (Lincoln: University of Nebraska Press, 2005), 4.

²⁹⁶ *Ibid.*

²⁹⁷ This raises the question of how *nation* is defined, apart from these precepts of sovereignty. The Oxford English Dictionary (OED) defines a nation as “a people or group of peoples; a political state. A large aggregate of communities and individuals united by factors such as common descent, language, culture, history, or occupation of the same territory, so as to form a distinct people.” The OED elaborates that early usage of the term primarily correlated notions of race and common descent to the term while later usage tends to focus on territory, political cohesion, and independence. While *nation* is often interchanged or seen as closely related to terms such as *land*, *country*, and most often, *state*, it is important to recognize that these terms each have a precise meaning. Thus, *nation* commonly refers to a group of people, often with reference to being a cultural or ethnic entity while *state* connotes a political entity. Though the term *nation* is sometimes conflated with *nation-state* it is important to recognize that a *state* is a set of institutions that

David Wilkins nicely enunciates the varied understandings of nation and state. He defines a nation as:

A social group which shares a common ideology, common institutions and customs, and a sense of homogeneity; controls a territory viewed as a national homeland; and has a belief in a common ancestry. A prerequisite of nationhood is an awareness or belief that one's own group is unique in a most vital sense; therefore, the essence of a nation is not tangible but psychological, a matter of attitude rather than of fact. A nation may constitute part of a state, be coterminous with a state, or extend beyond the borders of a single state.²⁹⁸

Like sovereignty, Wilkins recognizes that this notion of a nation is intangible, arguing that the status of a group of people as a nation is more “a matter of attitude rather than of fact.” With this observation, Wilkins touches upon the shared relationship between sovereignty and nationhood: each is an internal process that comes from within a people.

Native peoples were organized as nations long before the arrival of Europeans. Native nations often entered into alliances with each other, while at other times they waged war on one another, but always with each recognizing themselves as separate, distinct peoples. Through the act of entering into treaties, nations recognized one another's status as such. Thus, the existence of hundreds of treaties between First Nations and European nations, a practice followed by their United States and Canadian predecessors, demonstrates that Indigenous peoples were recognized as nations who wielded sovereignty. Barker has noted that “because nationhood and sovereignty were

rule or govern people in a definitive territory. Thus, the *nation-state* connotes a group of people who reside within a territory and are governed by a set of institutionalized rules.

²⁹⁸ Wilkins, *American Indian Politics and the American Political System*, 338.

interlocked through the entire apparatus of treaty-making, the recognition of one implied the recognition of the other.”²⁹⁹

While federal Indian law in the United States and Canada has at times recognized Native peoples’ status as nations, this recognition still begs the question of how Anishinaabe peoples conceptualized and, in turn, expressed their nationhood (and the rights and responsibilities that come with it) in their treaty negotiations. An examination of Anishinaabe expressions of nationhood throughout the treaty era can provide key insights to the reserved rights and responsibilities that came out of these agreements, many of which remain in effect today.

Conclusion

Treaty-making was often advantageous for First Nations who chose to enter into these contractual agreements. Throughout the treaty negotiation process, First Nations expressed and sought to retain their own ideas of nationhood and land tenure while establishing or renewing political, economic, and military alliances across a multinational terrain. These assertions of Indigenous nationhood and land tenure disrupt colonial narratives of discovery and conquest by challenging the colonial legal constructions of nation and land tenure that have served to legitimize colonial expansion through land acquisition. Thus, an examination of Indian treaty-making can be an especially fruitful site for understanding how Native conceptions of sovereignty, nationhood and land tenure challenge, critique, and contribute to broader understandings of the distinct aboriginal and treaty rights reserved by First Nations.

²⁹⁹ Barker, "For Whom Sovereignty Matters," 4.

Yet, Anishinaabe conceptions of nationhood and treaty-making have often been excluded from contemporary interpretations of these legal documents. Indeed, treaty-making has often been seen as a European practice that was new to Native peoples. However, Native peoples have a long history of treaty-making, participating in social, economic and political alliances with other Native nations across national borders, kin ties, and epistemologies. The ability to partake in a council, or to burn a fire, enabled these types of relationships. Native peoples built on their treaty-making practices with Indigenous nations in their dealings with European nations, and later, the United States and Canada. This is most notably reflected in the use of the pipe and presentations of offerings (or gifts) within treaty negotiations. European nations that sought to establish and maintain political and economic alliances with First Nations often found themselves needing to engage with and employ Native cultural practices and discourses. As both the United States and Canadian governments were born out of a long history of British colonial and imperial experience, their policies and precedents were established through centuries of interaction between First Nations and Europeans (often through missionary contact, trade relations, and military encounters) that informed and shaped how federal Indian policy and practice developed in the U.S. and Canada.

Both the United States and Canada understood the necessity of recognizing Indian title and subsequently extinguishing this title to acquire Indian land, each seeing treaties as the standard practice for carrying out this task. Treaties were fundamental to the formation of colonial nations because treaty-making served as one of the main legal practices through which the existence of colonial nations as sovereign states was legitimized. For example, the U.S. and Canada were able to stress to European nations

that they were sovereign states because they had acted as such by making treaties with First Nations. Yet, these assertions only had weight because these First Nations had already been recognized through the European states' own treaty-making practices.

While treaties are critical to the legal foundation of the colonial nation-state and continue to have legal force today, the dominant public has often perceived them as "... ancient relics of the past that have long since been forgotten and which certainly have no relevance to modern society."³⁰⁰ Histories of early Native–European relations have at times depicted North America as a vacant land, while other histories that recognized the existence of Native peoples often describe them as making a meager living off the earth. Coates states that "[t]his image served the interests of the dominant society very well, for it justified a history of conquest, occupation, and land confiscation."³⁰¹ Stuart Banner finds that while histories of British colonial Indian policy often depict land acquisition as occurring through force, "[s]ome of these very same histories, however, include accounts of land purchases, transactions that at first sight are hard to square with a belief in a right of conquest."³⁰² Indeed, even histories that have been written with little regard for Native perceptions of or participation in history have not been able to escape the reality that much of the land was acquired through purchase. At times corrupt, at times forceful, at times illegal, much of the land was still acquired through purchase—a *purchase that came with a promise*. Wilkinson maintains that "These old laws [treaties] emanate a kind of morality profoundly rare in our jurisprudence. It is far more than a sense of guilt or

³⁰⁰ Senator Daniel K. Inouye, speaking of the American perceptions of treaties. Deloria and DeMallie, eds., *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775-1979*, ix.

³⁰¹ Ken Coates, "The 'Gentle' Occupation: The Settlement of Canada and the Dispossession of the First Nations," in *Indigenous Peoples' Rights in Australia, Canada, & New Zealand*, ed. Paul Havemann (Auckland Oxford University Press, 1999), 142.

³⁰² Banner, *How the Indians Lost Their Land: Law and Power on the Frontier*, 3.

obligation, emotions frequently associated with Indian policy.” He notes that “[r]eal promises were made...and the Senate of the United States approved them, making them real laws.”³⁰³ Treaties continue to be good law in both the United States and Canada. These agreements carry with them promises made between nations, nations bound in relationships with one another as a result of these documents. Thus, an understanding of what was expressed and retained throughout these agreements has practical implications for Native peoples today in their struggle to protect their aboriginal and treaty rights.

In order to ascertain what Anishinaabe nations intended to reserve in their treaties and the types of relationship they sought to forge with the United States and Canada, it is imperative to examine how Anishinaabe nations constructed and articulated their sovereignty, nationhood, and land tenure. These important political concepts and how the Anishinaabe understood them are foundational for understanding what these long-standing promises entail today.

Chapter Two: Invoking Creation, Inheriting Earth: Anishinaabe Expressions of Sovereignty and Land Tenure

“And some earth he took, using it to create the human being. Truly did he accomplish the work of creating a man. Speaking to him, he said: “In this place do you remain.”” —Bois Fort Anishinaabe recounting when Nenabozho and his younger brother created man³⁰⁴

³⁰³ Wilkinson, *American Indians, Time, and the Law: Native Societies in a Modern Constitutional Democracy*, 121.

³⁰⁴ Michelson and Jones, *Ojibwa Texts*, ed. Franz Boas, 2 vols., vol. VII, Part I, 549.

Out of nothing he made rock, water, fire, and wind. Into each one he breathed the breath of life. On each he bestowed with his breath a different essence and nature. Each substance had its own power which became its soul-spirit.

From these four substances Kitche Manitou created the physical world of sun, stars, moon, and earth.

To the sun Kitche Manitou gave the powers of light and heat. To the earth he gave growth and healing; to waters purity and renewal; to the wind music and the breath of life itself...

Last of all he made man. Though last in the order of creation, least in the order of dependence, and the weakest in bodily powers, man had the greatest gift- the power to dream. —Basil Johnston³⁰⁵

When Ah-ki' (the Earth) was young, it was said that the Earth had a family. Nee-ba-gee'-sis (the Moon) is called Grandmother, and Gee'-sis (the Sun) is called Grandfather. The Creator of the family is called Gi'tchie Man-i-to' (Great Mystery or Creator).

The Earth is said to be a woman. In this way it is understood that woman preceded man on the Earth. She is called Mother Earth because from her come all living things. Water is her life blood. It flows through her, nourishes her, and purifies her.

³⁰⁵ Johnston, *Ojibway Heritage*, 12-13.

On the surface of the Earth, all is given Four Sacred Directions—North, South, East, and West. Each of these directions contributes a vital part to the wholeness of the Earth. Each has physical powers as well as spiritual powers, as do all things.

When she was young, the Earth was filled with beauty.

The Creator sent his singers in the form of birds to the Earth to carry the seeds of life to all of the Four Directions. In this way life was spread across the Earth. On the Earth the Creator placed the swimming creatures of the water. He gave life to all the plant and insect world. He placed crawling things and the four-leggeds on the land. All of these parts of life lived in harmony with each other.

Gitchie Manito then took four parts of Mother Earth and blew into them using a Sacred Shell. From the union of the Four Sacred Elements and his breath, man was created.

It is said the Gitchie Manito then lowered man to the Earth. Thus, man was the last form of life to be placed on the Earth. From this Original Man came the A-nish-i-na'-be people. —Edward Benton-Banai³⁰⁶

Anishinaabe understandings of their creation, recorded in stories, songs, birch bark scrolls, rock paintings, and teachings, were foundational to Anishinaabe political thought and practice throughout history. Creek scholar Craig Womack asserts that “...traditional stories teach the origins not only of the material culture but of the

³⁰⁶ Benton-Banai, *The Mishomis Book: The Voice of the Ojibway*, 2-3.

worldview, values, and religious beliefs of the nation.”³⁰⁷ Womack further notes that “...there is always an interrelationship between the political and the spiritual.”³⁰⁸ Creation was a critical component of the rich socio-political discourses that embodied and sustained Anishinaabe understandings of sovereignty, nationhood, and land tenure. The Anishinaabe primarily articulated these important political concepts through the delineation of their creation and placement in North America. They largely asserted their sovereignty and land tenure through the discourse of their creation when they engaged in treaty-making with the United States and Canada.³⁰⁹

Many Native peoples recognize that their nationhood is derived from a divine or Supreme power. Sac & Fox scholar Dagmar Thorpe observes that “it was recognized that the Creator was the source of our lives and everything contained within the geographical boundaries of our homelands.”³¹⁰ Many decisions were made with guidance from the Creator through prayer and ceremony. The Anishinaabe understood sovereignty, nationhood, and land tenure as being derived from the Creator.³¹¹ This understanding of origin is critical to its application, because as Thorpe states, “If we follow the original instructions given to our people, then no one has the right to seize, define, or diminish the sovereignty of our people because this sovereignty comes from a higher power.”³¹² This relationship between the Creator and Anishinaabe sovereignty became entrenched in

³⁰⁷ Craig S. Womack, *Red on Red: Native American Literary Separatism* (Minneapolis: University of Minnesota Press, 1999), 53.

³⁰⁸ Ibid.

³⁰⁹ *Documents Relating to the Negotiation of Ratified and Unratified Treaties with Various Tribes of Indians*, NAMP RG 75, M T-494 Rolls 1-10.

³¹⁰ Dagmar Thorpe, "Sovereignty, a State of Mind: A Thawika Citizen's Viewpoint," *American Indian Law Review* 23 (1998/1999): 482.

³¹¹ *Documents Relating to the Negotiation of Ratified and Unratified Treaties with Various Tribes of Indians*, NAMP RG 75, M T-494 Rolls 1-10.

³¹² Thorpe, "Sovereignty, a State of Mind: A Thawika Citizen's Viewpoint," 482.

Anishinaabemowin (the Anishinaabe Language) and invoked in political practices and discourses throughout the treaty-making process.

The foundation of Anishinaabe sovereignty and land tenure can be seen in creation stories that indicate the Anishinaabe were formed out of the earth. It was in combining the earth with the breath of *Gizhe-Manidoo* (the Creator) that the Anishinaabe were created and then placed on their lands.³¹³ The connection between Anishinaabe sovereignty and land tenure to their creation is illustrated through an understanding of the term, *Anishinaabe*. This word contains a rich history of the people, with various definitions and stories that demonstrate the Anishinaabe's relationship to their place. Elder Edward Benton-Banai declares that *Anishinaabe* means "from whence lowered the male of the species."³¹⁴ This interpretation is in direct reference to when the Anishinaabe were lowered through a hole in the sky (*bagone-giizhik*) and placed on their homelands. Elder Moses Tom echoes Benton-Banai's interpretation. He explains that *Anishinaabe* refers back to the time when original man stood beside the Creator.³¹⁵

The name applied by a people to define themselves is clearly connected to their identity. Thus, by employing a word that delineates their relationship to the Creator, this reveals that their identity is intrinsically connected to their sovereignty. Joanne Barker says that "...indigenous identity is foundational to the structure, exercise, and character of sovereignty."³¹⁶ Anishinaabe identity directly informs Anishinaabe sovereignty. Because the Anishinaabe understand themselves as being placed on their lands by the Creator and their sovereignty as deriving its force from this placement, each time they

³¹³ Benton-Banai, *The Mishomis Book: The Voice of the Ojibway*.

³¹⁴ Ibid., 3.

³¹⁵ Dennis Jones, "The Etymology of Anishinaabe" *Oshkaabewis Native Journal* 2, no. 1 (1995): 46.

³¹⁶ Barker, "For Whom Sovereignty Matters," 17.

reference themselves through the word *Anishinaabe*, each time they utter it, the Anishinaabe recognize and invoke their rights to nationhood and land tenure. Thus, how the Anishinaabe saw themselves, as a nation of people with a right to their place derived and recognized by the Creator, shaped and informed their political thought and practices in treaty-making.

As a Creator-derived source, Anishinaabe declarations of their rights as sovereigns and proprietors were often expressed through an allegoric discourse of spirituality. Governor Alexander Ramsey recognized this during the 1863 treaty negotiations between the United States and the Red Lake and Pembina Anishinaabe when he recorded his concern about being able to conclude a treaty. He stated that “[t]he prospect began to grow dim, that a title derived from sources so metaphysical and supernal, and fortified by claims so exalted and traditions so sublime, could be bought by any such terrestrial dross as money and blankets.”³¹⁷ Ramsey seemingly recognized the spiritual dimensions of Anishinaabe sovereignty and land tenure. But, because their sovereignty was articulated via spiritual discourse, little attention has been paid to exactly what the Anishinaabe were declaring in their treaty speeches, an understanding of which can ultimately inform contemporary social, political, and legal perceptions of tribal sovereignty. An examination of Anishinaabe constructions of sovereignty can unearth what the Anishinaabe sought to protect and reserve in their treaties.

Towards a Cultural Conception of Sovereignty

³¹⁷ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.24, RG 46.

Sovereignty is arguably the most critical force of First Nations today. It is foundational for Indigenous nations as they face political, economic, legal and social struggles.³¹⁸ The concept “sovereignty” is European in origin, deriving from intimate and imbricate European theological and political discourses. While the word first came into use in the fourteenth century, Vine Deloria Jr. has argued that sovereignty is “an ancient idea.” It is an idea that precedes the fourteenth century European usage. He states that “[a]lthough originally a theological term it was appropriated by European political thinkers in the centuries following the Reformation to characterize the person of the King as head of the state.”³¹⁹ “Sovereignty” underwent transformation with sixteenth- and seventeenth-century European political theorists. While the concept still referred to an authority that was absolute, the rise of nation-states and governmental systems of divided powers re-orientated conceptions of sovereignty. These new conditions gave birth to debates regarding the placement of power. Some theorists argued that sovereignty was a characteristic of a nation while others posited that power came from the people, who collectively willed authority to the state.³²⁰

European philosopher Jean Bodin employed the notion of sovereignty to establish political stability for the nation-state. This sovereignty was absolute, and “it vested

³¹⁸ Wilkinson, *American Indians, Time, and the Law: Native Societies in a Modern Constitutional Democracy*, 55. Also see Erich Steinman, “The Contemporary Revival and Diffusion of Indigenous Sovereignty Discourse,” in Joint Publication of the *Journal of Indigenous Studies* Issue 1 (Fall 2005/Spring 2006), and *American Studies* 46, no.3-4 (Fall/Winter 2005): 89.

³¹⁹ Vine Deloria, Jr., “Self-Determination and the Concept of Sovereignty,” in *Economic Development in American Indian Reservations*, ed. Roxanne D. Ortiz (Albuquerque: University of New Mexico Native American Studies, 1979), 22.

³²⁰ See, for example, Alexander Hamilton, James Madison, and John Jay, *The Federalist: A Collection of Essays Written in Favour of the New Constitution, as Agreed Upon by the Federal Convention, September 17, 1787: In Two Volumes*, 2 vols. (New-York: Printed and sold by J. and A. McLean ... 1788), John Locke and Peter Laslett, *Two Treatises of Government; a Critical Edition* (Cambridge: University Press, 1966), Jean-Jacques Rousseau, *The Social Contract* (New York,: Carlton House, 1939), Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, University of Chicago Press ed. (Chicago: University of Chicago Press, 2005).

undivided and unlimited powers in the Crown by divine right.”³²¹ Along with Bodin, political theorists John Locke and Jean Jacques Rousseau provided alternative understandings of sovereignty. Locke (1632–1704) placed power in the people of a nation, who granted a central government with authority to govern while simultaneously reserving individual rights in the people, rights that could not be usurped. This understanding of sovereignty was much in line with Rousseau’s social contract theory, who stated that sovereignty “is the General Will or common interest which binds people together.”³²² These European conceptions of sovereignty laid the foundation for its contemporary understandings in U.S. and Canadian political thought and practices.

Although the term sovereignty originated in Europe, what it describes has been recognized as an idea that is intrinsic to all peoples and cultures. Thus, contemporary understandings of sovereignty reference the unique trait of a nation that enables their self-governance.³²³ First Nations recognized and exercised their sovereign powers both internally, through established governing systems for regulating social, political, and economic practices, and externally, through political alliances, agreements and treaties with other Indigenous nations, long before Europeans arrived.³²⁴ They continued these practices with European nations as a means to protect their lands and resources while establishing social, economic, and political allies.

³²¹ Wilkinson, *American Indians, Time, and the Law: Native Societies in a Modern Constitutional Democracy*, 54.

³²² Kickingbird et al., "Indian Sovereignty," 2.

³²³ See, for example, Joanne Barker, *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination, Contemporary Indigenous Issues* (Lincoln: University of Nebraska Press, 2005).

³²⁴ See, for example, Bruce G. Trigger, *Natives and Newcomers: Canada's "Heroic Age" Reconsidered* (Kingston: McGill-Queen's University Press, 1985), White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815*, Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*.

Many scholars have looked to Native understandings of sovereignty and found that this concept is innately connected to every nation's lifeways. As a Shawnee elder explains, "It was understood that we recognized all peoples' right to their own existence. We recognized the right of each nation to live according to the instructions given to them [by the Creator.]"³²⁵ Thus, while sovereignty may be European in origin, the ideas associated with this concept recognizing self-governance have had a long-standing presence across and within Indigenous nations that preceded European arrival to North America.³²⁶

The reality that many Native peoples recognize that their sovereignty and land tenure are intimately connected to their relationship with the Creator has led scholars to interrogate cultural understandings of this concept. At the forefront of this movement was Vine Deloria Jr., who calls for scholarship that looks at the cultural components of sovereignty. Deloria argues, "Sovereignty, in the final instance, can be said to consist more of continued cultural integrity than of political powers and to the degree that a nation loses its sense of cultural identity, to that degree it suffers a loss of sovereignty."³²⁷ The examination of the cultural integrity of sovereignty has provided for more Native-centered perspectives of nationhood and sovereignty to be put forward, perspectives that are ultimately connected to cultural identity.³²⁸ By looking to Native cultural norms and values, Indigenous conceptions arise that integrate the cultural dimension of sovereignty. These conceptions have allowed scholars to look beyond

³²⁵ Thorpe, "Sovereignty, a State of Mind: A Thawika Citizen's Viewpoint," 481.

³²⁶ Tsosie and Coffey, "Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations," 196.

³²⁷ Deloria, "Self-Determination and the Concept of Sovereignty," 27.

³²⁸ See, for example, Taiaiake Alfred, *Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism* (New York: Oxford University Press, 1995), Daniel Heath Justice, *Our Fire Survives the Storm: A Cherokee Literary History, Indigenous Americas* (Minneapolis: University of Minnesota Press, 2006).

external limitations placed on Indigenous sovereignty from the nation-state and instead to look at internal definitions that focus on the “cultural integrity” of the term.

Since the concept has relevance to a multitude of nations and states, the definitions and applications of sovereignty vary. Joanne Barker, for example, notes that “[t]here is no fixed meaning for what *sovereignty* is— what it means by definition, what it implies in public debate, or how it has been conceptualized in international, national, or indigenous law. Sovereignty—and its related histories, perspectives, and identities—is embedded within the specific social relations in which it is invoked and given meaning.”³²⁹ While this point is critical to understanding sovereignty and its myriad applications in discourse, policy, and law, various scholars have nonetheless articulated a variety of working definitions that demonstrate how the concept is understood and utilized. Sovereignty in contemporary understandings has often been applied to mean that nations are autonomous and independent, self-governing, and generally free of external interference.

One of the central variables common in many definitions of sovereignty is the idea that it is an inherent presence. Sovereignty cannot be granted to a people, rather it derives from within the collective will of the community. Chickasaw scholar Amanda Cobb argues that “[a]t base, sovereignty is a nation’s power to self-govern, to determine its own way of life, and to live that life—to whatever extent possible—free from interference.”³³⁰ Her emphasis on the right of a people to live in accordance with their own ways is prevalent across Indigenous understandings of sovereignty. Lumbee political scholar David Wilkins similarly asserts that “[t]ribal sovereignty is the intangible and

³²⁹ Barker, “For Whom Sovereignty Matters,” 21.

³³⁰ Cobb, “Understanding Tribal Sovereignty: Definitions, Conceptualizations, and Interpretations”: 118.

dynamic cultural force inherent in a given indigenous community, empowering that body toward the sustaining and enhancement of political, economic, and cultural integrity.”³³¹ Wilkins’s definition demonstrates that sovereignty cannot be bestowed upon a people by another nation but must come from within.

Because sovereignty is “intangible” and an inherent “dynamic cultural force,” it is crucial that Indigenous peoples define for themselves a vision of their own nationhood and sovereignty, as well as the practical implications that come with this term.³³² By looking to their own epistemologies and practices, Native peoples put forward definitions of sovereignty that are distinct from United States and Canadian legal and political definitions of First Nations that have operated to diminish Native sovereignty and self-government. In response to the external pressures placed on the definitions and applications of Native sovereignty, Wallace Coffey and Rebecca Tsosie urge a reappraisal of the tribal sovereignty doctrine, asserting that sovereignty should reflect the definitions held by Native nations, accounting for cultural understandings of this term.³³³ Cultural sovereignty, for them, is the right of Indigenous nations to exercise their own cultural values and practices in shaping their collective future. Coffey and Tsosie state:

By understanding the philosophical structure of native cultures, we can appreciate “sovereignty” as a cultural as well as a political phenomenon.

In many ways, political sovereignty for Native peoples has become an *external* phenomenon that posits the overriding sovereignty of the federal

³³¹ Wilkins, *American Indian Politics and the American Political System*, 48.

³³² Vine Deloria Jr.’s scholarship has explored this concept. See, for example, Vine Deloria, Jr., *We Talk, You Listen; New Tribes, New Turf* (New York: Macmillan, 1970), 114-37. Also see Robert Allen Warrior, *Tribal Secrets: Recovering American Indian Intellectual Traditions* (Minneapolis: University of Minnesota Press, 1995). See especially Chapter Three for an analysis of intellectual sovereignty and the work of Vine Deloria Jr.

³³³ Tsosie and Coffey, “Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations.”

government and the centrality of American citizenship for Native peoples.

Cultural sovereignty is an *internal* phenomenon: the “heart and soul” of the Indian nation is located *within* Indian people, as communities and as individuals.³³⁴

Coffey and Tsosie propose two distinct definitions of sovereignty: (1) cultural sovereignty, an indigenous definition that derives from within; and (2) political sovereignty, the external recognition and limitations placed on indigenous peoples ability to exercise their sovereignty as nations-within-a-nation.³³⁵ They employ cultural sovereignty as a means to recognize and put forward Native conceptions of sovereignty that are not limited by outside forces. Indeed, it is up to Native peoples to define for themselves what sovereignty entails for their daily lives. These definitions must come from within each individual community, grounded in their own political traditions.³³⁶

Other scholars like Taiaiake Alfred have encouraged Native nations to discontinue the use and application of the term instead of re-orienting how we think of sovereignty. Alfred asserts that the state (namely the United States and Canada) has taken various positions on Native sovereignty: from outright denial to a theoretical acceptance that still renders an Indigenous nation’s rights as contingent within the framework of federal Indian law. Therefore, he argues that the term is inappropriate for Native nations. He wonders why few people have questioned how “a European term and idea” became so

³³⁴ Ibid.: 203. Emphasis in original.

³³⁵ Vine Deloria Jr. and Clifford M. Lytle, *The Nations Within: The Past and Future of American Indian Sovereignty* (Austin: University of Texas Press, 1984). See Chapter One and Chapter Two for discussion of status of American Indians as nations-within. For a discussion of the historical and political relationship between Canada and First Nations, see Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times*.

³³⁶ This idea is echoed by Thorpe. She states, “If we are to look for a Native understanding of sovereignty, this can be understood within the way of life from which each of us emerges.” Thorpe, “Sovereignty, a State of Mind: A Thawika Citizen's Viewpoint,” 481.

entrenched and imperative to the political agenda of Native peoples. Alfred further argues that “fewer still have questioned the implications of adopting the European notion of power and governance and using it to structure the postcolonial systems that are being negotiated and implemented within indigenous communities today.”³³⁷

While aspects of sovereignty are indeed tied to western notions of power, many scholars also recognize that this term comes with political power. Thus, they have argued against the outright rejection of this term. Instead, given that “sovereignty” has such powerful legal importance in both federal Indian relations and within the international community, this dissertation argues that First Nations can utilize this term and its surrounding discourse as a crucial instrument to strengthen external recognition of Native political autonomy.³³⁸

Scholars have put forward a bevy of useful definitions of sovereignty focused on its cultural integrity and have explored its application across Indian Country. Thorpe’s words perhaps best summarize the current state for Native nations who continue to employ this concept. She suggests, “Sovereignty must be defined as the continuation of our ways of life within the present context of the contemporary world. As Native nations, we must provide an environment within our communities that sustains and nurtures our lives as we were instructed and, at the same time, develops the skills and knowledge for survival in the contemporary world.”³³⁹ Sovereignty must entail an understanding of this

³³⁷ Alfred, "Sovereignty," 465. Also see Barker, "For Whom Sovereignty Matters," 25. Barker argues that the term sovereignty “fails to interrogate the ideological bases on which it has emerged and functioned as a category.”

³³⁸ See Cobb, “Understanding Tribal Sovereignty: Definitions, Conceptualizations, and Interpretations.” for additional responses to Alfred’s article.

³³⁹ Thorpe, "Sovereignty, a State of Mind: A Thawika Citizen's Viewpoint," 483.

concept's past usage while still having meaningful applications for Native peoples in the present and flexibility for the future.

For Native peoples to be able to employ this term in a manner that can serve both their internal and external responsibilities and relationships requires a reconfiguration of what sovereignty means. While the growing body of scholarship on cultural sovereignty has sought to do just that, it has been limited by its broad focus on "Indigenous" sovereignty. This scholarship has been able to theoretically suggest ways for understanding the cultural conceptions of sovereignty but has rarely looked to individual First Nations to see how this concept manifests itself in specific communities. Anishinaabe political traditions demonstrate that the Anishinaabe had clear conceptions of sovereignty and recognized the rights and responsibilities that came with this political concept. A reinterpretation of the vision the Anishinaabe put forward for creating a multinational space by looking internally to culturally-informed definitions of sovereignty and externally to how this idea was expressed in their international relations. This multinational space included the United States and Canada without relinquishing Anishinaabe rights as sovereigns and proprietors. Employing the political language of sovereignty, nationhood, and land tenure, the Anishinaabe can engage in a dialogue with the United States and Canada that is dependent on a shared language while still retaining control of how this language functions.

Understanding Sovereignty as a Process

The Anishinaabe sought to engage in a shared political language throughout their treaty relations with the United States and Canada. They often expressed their sovereignty and land tenure through cultural constructions that were relevant to Anishinaabe understandings of these political concepts. Anishinaabe sovereignty and rights to their lands were outlined in their creation stories and they inscribed this ideology onto themselves through the use of the word *Anishinaabe* as a self-identifier. The Anishinaabe expressed this intersection of one's self with sovereignty and land tenure throughout their diplomatic practices and discourse, most notably seen when they engaged in alliances with other nations. Anishinaabe leaders carried out these practices when they engaged in treaty-making with the United States and Canada by demarcating the origin of their sovereignty, nationhood, and land tenure.

Sovereignty is deeply intertwined with a nation's sense of self. Vine Deloria Jr. articulates this sentiment, finding, "Sovereignty revolves about the manner in which traditions are developed, sustained, and transformed to confront new conditions."³⁴⁰ Sovereignty and identity continually undergo transformation to meet the needs of the people collectively in all nations. This notion of sovereignty as interconnected with identity allows for an understanding that extends beyond its restrictive legal-political context. Instead, sovereignty can be seen as a process or a journey. Deloria echoes these sentiments, stating, " 'Sovereignty' is a useful word to describe the process of growth and awareness that characterizes a group of people working toward and achieving maturity."³⁴¹ In this sense, sovereignty grows, shifts, and adjusts with the people. It is dependent on the group for understanding their identity of self and nation. Amanda Cobb

³⁴⁰ Deloria, "Self-Determination and the Concept of Sovereignty," 27.

³⁴¹ Ibid., 28. For an analysis of Vine Deloria's scholarship, discussing sovereignty as a collective process, also see Chapter Three of Warrior, *Tribal Secrets: Recovering American Indian Intellectual Traditions*.

argues that “the briefest look at today’s international affairs will illustrate that a nation’s sense of its sovereignty and its ability to exercise those powers is deeply intertwined with its sense of self.”³⁴² She finds that this emotional character of sovereignty is what makes the term difficult to define with precision but is also what gives the term its force.³⁴³

Through this connection to identity and self, sovereignty becomes a process rather than a stagnant notion. This process is carried through by the Anishinaabe each time they invoke their language, each time they refer to self and each other as *Anishinaabe*, each time they tell the stories connected with this word. It is echoed in their political discourse and practices, as they recognize the relationship between the Creator and Anishinaabe sovereignty. “By casting sovereignty not only in terms of process, but more particularly in narrative terms, sovereignty becomes the ongoing story of ourselves—our own continuance. Sovereignty is *both the story or journey itself and what we journey towards*, which is our own flourishing as self-determining peoples.”³⁴⁴ Through this understanding of sovereignty, we can learn how a people understand themselves as a nation through their stories and their journeys. Contemporary Anishinaabe understandings of sovereignty, and in turn how this inherent right is put into practice, both inform and are informed by their historic relationships to this concept.

How Anishinaabe understood their sovereignty during the treaty era underwent transformation and growth, as it had been doing since time immemorial. Each time the Anishinaabe entered into a political practice with another nation, each time they told their children the stories of their creation, each time the Anishinaabe uttered the place names

³⁴² Cobb, “Understanding Tribal Sovereignty: Definitions, Conceptualizations, and Interpretations”: 118.

³⁴³ Ibid.

³⁴⁴ Ibid., 125. Emphasis in original.

that delineated their relationship to their land, Anishinaabe sovereignty was transformed. Each individual's personal connection to their place and practices informed both their own relationship to, as well as the collective's understanding of, sovereignty, nationhood, and land tenure. Yet, in many ways this process of transformation is about growth and adaptation without exclusively altering previous understandings of sovereignty. These, instead, co-exist with newer views of this concept. More importantly, initial conceptions of sovereignty serve as the foundation for the relationship the Anishinaabe have to this concept and resonate throughout Anishinaabe political practices and diplomatic speeches during the treaty era.

An examination of Anishinaabe treaty practices and discourse demonstrate the relationship between Gizhe-Manidoo (Creator) and Anishinaabe sovereignty. Throughout treaty-making, the Anishinaabe and U.S. and Canadian treaty commissioners alike invoked the Creator in their speeches and practices, demonstrated by the invocation of the Creator to open treaty councils, the use of pipe ceremonies to recognize and incorporate the Creator, the appeal to the Creator for guidance in these political decisions, and by reminding participants of the moral weight of treaty-making. There was little distinction between the spiritual or religious sphere of life from the political sphere. This is especially true throughout the treaty era as Anishinaabe practices continually intertwined social, spiritual, and political beliefs and relationships. The Anishinaabe expressed their sovereignty and land tenure through a discourse of their creation and placement on the earth.

Invoking the Creator: Weather and the Will Toward Treating

Treaty commissioners for the United States and Canada recognized the importance of adhering to Anishinaabe cultural practices and discourse throughout treaty-making as a means to acquire satisfactory results. They frequently opened their treaty speeches with a thanksgiving to the Creator, as is evident in the August 11, 1827 treaty with the United Nation of Pottawatomie, Odaawa, and Ojibwe when Commissioner Lewis Cass began by stating, “We thank the Great Spirit that he has given us a clear sky and opened the paths for us to meet together.”³⁴⁵ Commissioners often referenced the weather in these initial comments as an indication of the Creator’s will toward the treaty.

The Anishinaabe and treaty commissioners utilized a discourse of the Creator to persuade one another toward treaty commitments as well as to remind one another of the moral responsibilities these commitments carried. The Anishinaabe invoked the presence and role of the Creator in treaty-making to assert that the words spoken by all must be done in open with an awareness that they be heard by the Creator, placing a moral aura around the treaty and participants. The Anishinaabe and the treaty commissioners recognized that, according to Anishinaabe political thought, the Creator displays his mood toward treaty proceedings through the weather patterns.³⁴⁶ Good weather was a signal of the Creator’s happiness toward the meeting while bad weather demonstrated unclear minds, bad thoughts, and an overall inability of the various groups involved to meet on good terms.

³⁴⁵ *Ratified Treaty No. 148 Documents Relating to the Negotiation of the Treaty of August 11, 1827, with the Chippewa, Menominee, and Winnebago Indians*, NAMP RG 75, M T-494 Roll 2:F5. Also see President’s message, January 28, and March 7, 1828, and February 28, 1829; *Treaty of August 11, 1827 with the Chippewas, Minominess, and Winnebago*; Indian Treaty Files (SEN 20B-C2): RG 46. A similar statement was made at the negotiations for Treaty Four in Canada. See Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 90.

³⁴⁶ Within Anishinaabemowin, the language is gender neutral. This use of “his” is merely due to the gender constraints of the English language.

The U.S. treaty commissioner at the July 29, 1829 treaty with the United Nation followed this protocol, adding, “We come to you with a pure heart, and we hope you will open your ears to us, and that there will be no bad birds flying about to interrupt what we say; for sometime past, clouds have been flying in every direction, but we hope before we part there will not be one to be seen, and that we shall take fast hold of your hands.”³⁴⁷ This allegoric discourse set the tone and direction of the treaty. Throughout treaty-making, commissioners referenced “bad birds,” people who spoke against a treaty and were thought to have ulterior motives to disrupt treaty negotiations, to dispute any opposition to a treaty. Through this reference to the weather and the hope for the clouds to part, the commissioner drew from Anishinaabe political discourse to urge any bad thoughts and words to dissipate. While the speeches of the treaty commissioners could be read as paternalistic and even patronizing (and indeed many times they were), the speeches also indicate that the commissioners had some understanding of Anishinaabe spiritual and political discourse.

Commissioner George Porter, in the September 26, 1833 treaty with the United Nation, also used an invocation of the Creator to set the tone and direction of the treaty. He urged the United Nation to:

open your ears & listen to what I gave to communicate to you—open your hearts and receive it. We bless the Great Spirit my children for a clear sky and bright sun, we think the Great Spirit has been kind to his red & white children, that he has allowed them to assemble here. The day is auspicious

³⁴⁷ *Ratified Treaty No. 155 Documents Relating to the Negotiation of the Treaty of July 29, 1829, with the United Chippewa, Ottawa, and Potawatomi Indians*, NAMP RG 75, M T-494 Roll 2:F9. Also see President’s message, December 22, 1829; *Treaty of July 29, 1829 with the Chippewas, Ottawaes, and Potawatomes*; Indian Treaty Files (SEN 21B-C1): RG 46.

of good results. We are happy to observe my children, that you have not listened to the bad birds which have been flying around you, but have come up to the council of your own free will.³⁴⁸

Commissioner Porter employed Anishinaabe discourse to assert that the weather was an indication of the Creator's blessing and support of their meeting. He also reminded the Anishinaabe that they were both the children of the Great Spirit, placing a measure of responsibility on the United Nation to come to terms with the United States.

Commissioner William Clark, in the August 19, 1825 treaty at Prairie du Chien also used this form of invocation to urge that a treaty be made between the various parties. Utilizing much of the same rhetoric as other commissioners, Clark recognized the clear sky present and "rejoiced" that they had all been able to arrive in peace and safety. Clark connected safe travel with the Creator's will for a treaty, further evident when Clark stated, "we hope he [the Creator] has opened your ears & will prepare your hearts for the good work before us."³⁴⁹ The invocation of the Creator, then, served to eradicate bad feelings between the groups and placed a moral responsibility for all participants to "prepare" their hearts for "the good work" before them. The commissioners, aware of the reverence the Anishinaabe had toward the Creator, adhered to and utilized Anishinaabe political practice and discourse in order to set the mood for the treaty proceedings. Whether treaty commissioners really believed in the discourse and practice they

³⁴⁸ *Ratified Treaty No. 189 Documents Relating to the Negotiation of the Treaty of September 26, 1833, with the United Chippewa, Ottawa, and Potawatomi Indians*, NAMP RG 75, M T-494 Roll3:F62.

³⁴⁹ *Ratified Treaty No. 139 Documents Relating to the Negotiation of the Treaty of August 19, 1825, with the Sioux, Chippewa, Sauk and Fox, Menominee, Iowa, and Winnebago Indians and part of the Ottawa, Chippewa, and Potawatomi of the Illinois Indians*, NAMP RG 75, M T-494 Roll 1:F723. Also see President's message, January 10, 1826; *Treaty of August 19, 1825 with the Sioux, Chippewas, Saak, Fox, Winnebagos, Minominees, Ottawas, Potawatomes, and the Iowas*; Indian Treaty Files (SEN 19B-C3): RG 46.

participated in or merely acted as if they believed, these two mindsets were indistinguishable in practice.

Treaty commissioners also used the rhetoric of the Creator when the proceedings were not indicating a successful treaty. When the United Nation declared during the September 26, 1833 treaty that they did not want to remove to lands beyond the Mississippi and that no further discussion would alter their minds, Commissioner Porter responded with a reference to the weather. He stated, “The day is dark & gloomy and unsuitable for wise council. There is no clear sky nor bright sun.”³⁵⁰ He claimed that the United Nation’s unwillingness to treat was merely the result of unsuitable conditions. When the United Nation was still unwilling to engage in conversation about their removal two days later, Governor Porter further elaborated on this practice: “We have heard that some bands are not yet ready to come into the council. They wish more time to deliberate. The weather is unpropitious. The Great Spirit seems to be angry. Last night, you heard the Thunder and saw the Lightening.”³⁵¹ The treaty record indicated that the weather was indeed “bad.” Nonetheless, the Commissioner’s correlation of the weather conditions to the mood of the Creator demonstrates that he recognized that, at least for the United Nation, there was a correlation between the weather and the Creator’s will towards making a treaty. In addition, he utilized the role that the Creator played in the United Nation’s decision-making to push for land cessions. Commissioner Porter’s employment of this rhetoric demonstrates that he was at least aware that the Anishinaabe understood that the Creator had a role in the treaty process and attempted to use this knowledge strategically.

³⁵⁰ *Ratified Treaty No. 189 Documents Relating to the Negotiation of the Treaty of September 26, 1833, with the United Chippewa, Ottawa, and Potawatomi Indians*, NAMP RG 75, M T-494 Roll3:F72.

³⁵¹ *Ibid.*, 73.

For the Anishinaabe, the correlation between the weather and the Creator's will demonstrates that they saw the Creator as having authority in their political decisions, further evidenced by the words of Red Lake Anishinaabe Chief Little Rock in the 1863 "Old Crossing" treaty. He stated, "I hope, my friend, that my voice will be heard afar. I invoke the Master of Life, and hope he will listen to me, while I speak about the inheritance he has just given me. I hope he will listen to me, my father, I have set the value, and what I think is the worth of the land you are forever coveting from us."³⁵² Chief Little Rock's words demonstrated that he recognized his right and title to the land originated from the Creator, speaking of the land as an "inheritance." Furthermore, he invoked the Creator to hear the dealings regarding his land that Little Rock was reluctantly ceding to the United States. This practice of speaking openly and invoking the Creator to witness the actions of the Anishinaabe in their treaty practices illustrates that they recognized that their rights to engage in treaty practices came from the Creator. Simply put, Anishinaabe sovereignty and land tenure originated from the Creator. Therefore, anything they did that was dependent on their sovereignty and land tenure must involve and be witnessed by the Creator. While these speeches often focused on the Creator as a witness to the events, there were also numerous occasions when the Anishinaabe and treaty commissioners alike also invoked the Creator for guidance.

Chief Che-e-kuk, at the negotiations of Treaty Four with Canada in 1874, iterated this role that the Creator had in the treaty proceedings.³⁵³ He stated, "My ears are open to

³⁵² President's message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.30, RG 46.

³⁵³ For additional information on Treaty Four, see John Leonard Taylor. Treaty Research Report: Treaty Four (1874) [online]. Treaties and Historical Research Centre, Indian and Northern Affairs Canada. Originally published in Ottawa by Indian and Northern Affairs Canada, 1985. Accessed 08-15-08: http://www.ainc-inac.gc.ca/pr/trts/hti/t4/index_e.html

what you say. Just now the Great Spirit is watching over us; it is good, He who has strength and power is overlooking our doings. I want very much to be good in what we are going to talk about, and our Chiefs will take you by the hand just now.”³⁵⁴ Chief Che-e-kuk’s words revealed that the Anishinaabe saw the Creator as playing a key role in the outcome of treaty proceedings. As Anishinaabe sovereignty and land tenure were both derived from the Creator, the Creator must be incorporated into any political dealings that involve their sovereignty and land tenure.

Incorporating the Creator: The Sacred and Moral Weight of Treaty-Making

Anishinaabe political thought, which recognized sovereignty and land tenure as creator-derived, also informed treaty practice, primarily in the use of the pipe. The use of the pipe in treaty-making served to both incorporate the Creator as well as establish a commitment between the various parties to the treaty. Commissioner Porter, during the 1833 treaty with the United Nation, seemingly recognized the bond created between the United States and the United Nation through the act of smoking the pipe. He stated, “We have smoked together. We are all all friends. Our hearts are one and united. We love one another. No evil feelings exist among us.”³⁵⁵ Porter utilized Anishinaabe political practice, specifically the act of smoking the pipe, as a means to enter into or renew a relationship these nations had with one another. This was a relationship sanctified by smoking the pipe.

³⁵⁴ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 116.

³⁵⁵ *Ratified Treaty No. 189 Documents Relating to the Negotiation of the Treaty of September 26, 1833, with the United Chippewa, Ottawa, and Potawatomi Indians*, NAMP RG 75, M T-494 Roll3:F63.

When Commissioner Alexander Morris arrived at the North-West Angle to establish a treaty with the Lake of the Woods Anishinaabe in 1873, they immediately approached him. In his reports for Treaty Three, Morris recorded, “they asked leave to perform a dance in [his] honor, after which they presented to [him] the pipe of peace.”³⁵⁶ By offering the sacred pipe to the Commissioner, the Anishinaabe of Lake of the Woods were carrying out a treaty practice that recognized both the political and spiritual relationship the treaty agreement would have in the lives of the Anishinaabe. Anishinaabe elder Melvin Huntinghawk further addressed this relationship. He stated:

our treaties were entered into by using the sacred ways of our First Nations people, that is, the sacred pipe, sacred tobacco, sacred sweetgrass, and sacred power of our Mother Earth. Our treaties were made to last forever: As long as the sun shines, the river flows, and the grass grows. ...The importance of these negotiations by the First Nations was marked by the pipe ceremonies.³⁵⁷

By using their sacred ways, the Anishinaabe were engaging in a process that incorporated the spiritual realm and included the Creator in their political practices. In doing so, the Anishinaabe were simultaneously recognizing their sovereignty (and thus rights to their lands) as being derived from the Creator and also including the Creator in any dealings or transactions that pertained to this “inheritance.” This was critical because of the responsibility Anishinaabe people had both to the Creator and to their lands. The Anishinaabe express this throughout the treaty era.

³⁵⁶ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 47.

³⁵⁷ Huntinghawk, "Since Time Immemorial: Treaty Land Entitlement in Manitoba," 40-41.

Lumbee scholar Robert Williams, in his analysis of American Indian treaty visions of law and peace in the Encounter era, has found that “[w]hen smoked in the context of treaty negotiations, the pipe evoked a vision of a universally conceived society in which different peoples were connected to each other as relatives.”³⁵⁸ Intersecting spiritual practices with political acts allowed the Anishinaabe to develop political relationships that carried the additional obligations and commitments of kin relations. The pipe ceremony was the enactment of divinely attained sovereignty. This language of diplomacy carried into nineteenth-century treaty practices of the Anishinaabe, as the treaty reports reflect. Thus, colonial nations that sought to establish and maintain political and economic alliances with Anishinaabe nations often found themselves engaging with and employing Anishinaabe cultural practices and discourses that were simultaneously spiritual and political.

At the 1825 Treaty of Prairie du Chien, for example, the treaty commissioners recorded that the pipe was smoked and “after passing it round to each individual the ashes were thrown into the council fire.”³⁵⁹ This treaty was designed to establish peace between various American Indian nations and was mediated by the United States. Many of these nations had a history of intense warfare between themselves that had steadily increased as white encroachment onto their lands pushed their people further west. By smoking the pipe, they were all agreeing to attempt to come to terms with one another. This act sought to clear away their previous bad feelings toward one another, an idea conveyed by the Dakota Chief Wabasha when he said, “My Fathers—I am pleased at the

³⁵⁸ Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*, 50.

³⁵⁹ *Ratified Treaty No. 139 Documents Relating to the Negotiation of the Treaty of August 19, 1825, with the Sioux, Chippewa, Sauk and Fox, Menominee, Iowa, and Winnebago Indians and part of the Ottawa, Chippewa, and Potawatomi of the Illinois Indians*, NAMP RG 75, M T-494 Roll 1:F726

prospect of peace: and was glad to smoke the pipe and throw the remains into the fire—when the peace is made I hope it will be a lasting one.”³⁶⁰ His sentiment was echoed by a Ho-Chunk Chief, who stated, “I will tell my brethren that the road has been made straight & that the remains of the pipe has been burned.”³⁶¹ The burning of the ashes signified that all bad feelings would dissipate with the smoke of the remains of the pipe. The act of smoking the pipe together helped to put everyone at ease and erase previous tensions and ill feelings. Through this form of prayer, the participants were recognizing the role of the Creator in the outcome of their political practices. Smoking the pipe sanctioned kind behavior between one another and showed a commitment to coming to terms with each other.

Treaty commissioners recognized this ceremonial practice, at least to an extent. When Alexander Morris went to Qua’appele Lake to negotiate a treaty between Canada and the Anishinaabe and Cree of the region in 1874, the Anishinaabe and Cree spoke at great lengths about what was “in the way” of them making a treaty. O-ta-ka-o-nan (the Gambler) expressed his concern for the commissioner’s motivations.³⁶² Canadian Treaty Commissioner Alexander Morris had been staying at the house of a trader from the Hudson’s Bay Company (HBC). The Anishinaabe and Cree were distraught by the HBC’s surveys of land and disputed their claim to Anishinaabe lands. O-ta-ka-o-nan argued to Morris, “You were rather slow in giving your hand” referencing shaking

³⁶⁰ *Ratified Treaty No. 139 Documents Relating to the Negotiation of the Treaty of August 19, 1825, with the Sioux, Chippewa, Sauk and Fox, Menominee, Iowa, and Winnebago Indians and part of the Ottawa, Chippewa, and Potawatomi of the Illinois Indians*, NAMP RG 75, M T-494 Roll 1:F728.

³⁶¹ *Ratified Treaty No. 139 Documents Relating to the Negotiation of the Treaty of August 19, 1825, with the Sioux, Chippewa, Sauk and Fox, Menominee, Iowa, and Winnebago Indians and part of the Ottawa, Chippewa, and Potawatomi of the Illinois Indians*, NAMP RG 75, M T-494 Roll 1:F729.

³⁶² For more information on Treaty Four, see John Leonard Taylor. Treaty Research Report: Treaty Four (1874) [online]. Treaties and Historical Research Centre, Indian and Northern Affairs Canada. Originally published in Ottawa by Indian and Northern Affairs Canada, 1985. Accessed 08-15-08: http://www.ainc-inac.gc.ca/pr/trts/hti/t4/index_e.html

hands.³⁶³ Morris replied, “I held out my hand but you did not do as your nation did at the Angle [referring to Treaty 3]. When I arrived there the Chief and his men came and gave me the pipe of peace and paid me every honor.” He then went on to say, “I was not slow in offering my hand, I gave it freely and from my heart....”³⁶⁴ Morris utilized the fact that the Anishinaabe and Cree did not offer the pipe as a means to cement their friendship and invoke the Creator. He argued that the Anishinaabe and Cree were the ones that caused this meeting to be full of tension, with many things in their way of speaking, not his hesitancy to shake hands. His words illustrate that the treaty commissioners, as well as the Anishinaabe, were aware of the meaning of this practice. The Anishinaabe drew on their political practice and discourse to invoke the Creator and express their sovereignty and land tenure. U.S. and Canadian treaty commissioners adhered to these practices and used Anishinaabe political discourse and practice to their advantage to shape or shift treaty negotiations.

The Anishinaabe engaged their allies in kin relations through the act of smoking the pipe. The invocation of the Creator in speech and practice also served to place a moral weight on the agreements and promises expressed by each group. The Anishinaabe invoked this relationship with the Creator to place importance in the matters at hand. Anishinaabe Chief Mash-i-pi-nash-i-wish at the 1795 Treaty of Greenville stated: “Listen! The Great Spirit above hears us, and I trust we shall not endeavor to deceive each other. I expect what we are about to do shall never be forgotten as long as we exist.... Remember, we have taken the Great Spirit to witness our present actions; we will

³⁶³ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 97.

³⁶⁴ Ibid.

make a new world, and leave nothing on it to incommode our children.”³⁶⁵

Mash-i-pi-nash-i-wish’s words reveal how the Anishinaabe would, at times, call upon the presence of the Creator to discourage the abuse of words by the parties involved.

Indeed, Williams finds that Indigenous visions of law and peace were articulated throughout the treaty process as a means to create a shared understanding between the various participants. He argues that “[t]he parties to a treaty had to agree to create and sustain a *nomos*, a normative universe of shared meanings—‘a present world constituted by a system of tension between reality and vision.’ The smoking of the calumet of peace sought to resolve this tension by invoking the larger forces at work in the affairs of human beings.”³⁶⁶ This shared vision placed responsibilities on all the parties involved. It required every nation involved to transform or adapt their relationship to their own sovereignty because each nation’s ability to exercise their sovereignty was being “limited” by their commitments made to one another.

The Anishinaabe were able to recognize that their title originated from the Creator by summoning the past. In addition, they were able to place a moral weight on the promises made throughout the treaty process by calling upon the future. The past and future were simultaneously invoked by following spiritual protocols throughout their diplomatic practices, such as offering tobacco or gifts. Williams finds that “... the respect attached to the peace pipe in Indian diplomacy elevated the temporal agreement represented by a treaty to the realm of a sacred object.”³⁶⁷ The treaty entered into the sacred realm because by employing these spiritual ceremonies Native peoples were

³⁶⁵ Quoted in Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*, 99.

³⁶⁶ Ibid., 47.

³⁶⁷ Ibid.

recognizing that their sovereignty and nationhood derived from the Creator. In this way, for the Anishinaabe, the pipe ceremony functioned to recognize and incorporate the Creator into their political affairs. Simultaneously, by invoking the origins of their sovereignty from the Creator, the Anishinaabe were recognizing that their rights to engage in these political practices derived from their sovereignty and nationhood. Therefore, the pipe ceremony and thus, the invocation of the Creator, served to make Anishinaabe sovereignty present and known to the nations they engaged with.

Consulting the Creator: Guiding and Witnessing the Treaty Process

The Anishinaabe invoked the Creator with pipe ceremonies throughout their treaty negotiations as a means to assert their sovereignty and land tenure. In addition, the Anishinaabe sought guidance from the Creator in council as they determined whether to cede their lands to the United States and Canada. U.S. and Canadian treaty commissioners also employed this spiritual discourse as a means to urge the Anishinaabe to support the treaty, a strategy evident in the negotiations surrounding Treaty Four. Lieutenant Governor Alexander Morris, urging the Anishinaabe and Cree to agree to the treaty, stated, “It is for you to think of the future of those who are with you now, of those who are coming after you, and may the Great Spirit guide you to do what is right.”³⁶⁸ This was a critical approach for Canadian and U.S. treaty officials because invoking the Creator served to remind the Anishinaabe of their moral responsibility to co-exist with these new nations.

³⁶⁸ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 93.

U.S. treaty commissioners also utilized this discourse. Commissioner Geroge Porter, in the 1833 treaty with the United Nation, expressed the President's interest that they remove beyond the Mississippi. Porter then assured the United Nation that he did not want to tell them what to do but desired instead for them to decide for themselves. To place additional weight on a decision that would encompass every part of Anishinaabe life, Porter stated, "smoke with one another, let the words which I have spoken sink deep into your hearts—ask the Great Spirit for his council and determine whether you will listen to the advice of your Great Father as uttered by us and sell your Lands in this country and remove to another."³⁶⁹ Porter seemingly recognized and adhered to the Anishinaabe political practice of involving the Creator in decisions involving the surrender of Anishinaabe land.

Yet this tactic at times backfired for commissioners, who thought these councils would lead to an acceptance of the treaty. At times, the Anishinaabe received guidance from the Creator that countered the motivations of the United States. This occurred for Porter when the United Nation remained disinterested in selling their lands and removing. They argued, "Should you keep us five days our words will be the same and remain unbroken—we have taken council from the Great Spirit and he has told his red children not to sell their lands."³⁷⁰ Whether or not Porter believed the Anishinaabe received counsel from the Creator to not sell their lands, the Anishinaabe refused Porter's urging that they sell their lands and remove.

³⁶⁹ *Ratified Treaty No. 189 Documents Relating to the Negotiation of the Treaty of September 26, 1833, with the United Chippewa, Ottawa, and Potawatomi Indians*, NAMP RG 75, M T-494 Roll3:F64.

³⁷⁰ *Ratified Treaty No. 189 Documents Relating to the Negotiation of the Treaty of September 26, 1833, with the United Chippewa, Ottawa, and Potawatomi Indians*, NAMP RG 75, M T-494 Roll3:F71.

Attempting to reconcile his advice that the Anishinaabe seek the Creator's guidance with U.S. motivations to acquire the United Nation's land, Porter shifted his tactics. He recommended that the United Nation seek further guidance from the Creator yet left room for them to counter the advice of the Creator. He urged, "Invoke the aid of the Great Spirit to enable you to arrive at just conclusions on this momentous question—" but this time also advising the United Nation, "consult your own judgments."³⁷¹

A few days into the negotiations, the United Nation invoked the Creator again to express their nationhood. As three separate but confederated nations, the United Nation justified their position as a collective polity. They explained, "The Great Spirit considers us one, and that our three fires should always act together." Unlike the exchange days earlier, this position met U.S. interests, and Porter replied to the United Nation's invocation of the Creator in an accepting way. He insisted, "We believe that the Great Spirit will give good advice to his red children."³⁷²

Any alteration to Anishinaabe land tenure required the involvement and consent of the Creator. U.S. and Canadian treaty commissioners adhered to Anishinaabe political discourses and practices throughout the treaty process, recognizing this requisite to be able to negotiate effectively with the Anishinaabe. Importantly, through the invocation of the Creator, the Anishinaabe expressed their rights and title to their lands and recognized that their rights and title to their lands derived from the Creator. As such, the Anishinaabe, throughout their treaty negotiations, expressed the importance of making treaties in a public setting where the Creator would hear their words. In addition, this

³⁷¹ *Ratified Treaty No. 189 Documents Relating to the Negotiation of the Treaty of September 26, 1833, with the United Chippewa, Ottawa, and Potawatomi Indians*, NAMP RG 75, M T-494 Roll3:F72.

³⁷² *Ratified Treaty No. 189 Documents Relating to the Negotiation of the Treaty of September 26, 1833, with the United Chippewa, Ottawa, and Potawatomi Indians*, NAMP RG 75, M T-494 Roll3:F74.

practice also served to place a moral weight on the treaty process. This was evident during the August 5, 1826 treaty negotiations with the United States. Anishinaabe Chief Peeshiokke stated, “I will not lie. That sun that looks upon me, and these your red children around me, are witnesses. Fathers, the Great Spirit knows what you say. So does our Great Father.”³⁷³ By invoking both the Creator and the President as witnesses, Peeshiokke reminded the treaty commissioners of the necessity to speak honestly.

Chief Hole-in-the-Day also employed this approach in treaty negotiations, reminding U.S. Treaty Commissioner Henry Dodge that “The Great Spirit who placed us on this Earth hears both you and me. He put us upon it to live.” He further stated, “And I call the Great Being to witness what I say. We agree to what has just been done, & are satisfied with it.”³⁷⁴ Recognizing the role of the Creator in Anishinaabe land tenure, Chief Hole-in-the-Day let it be known to all present and to the Creator that the Anishinaabe agreed to the treaty. In doing so, Hole-in-the-Day places a moral weight on the treaty, reminding both parties that the Creator has witnessed the promises and commitments made between these nations.

Chief Little Rock, in the 1863 “Old Crossing Treaty” between the United States and the Red Lake and Pembina Anishinaabe, perhaps most eloquently illustrated this point. He stated, “I want the earth to listen to me, and I hope also that my grandfather may be present to hear what I have to say, and I invoke the Master of Life to listen to the words I have to speak. I hope there is not a single hole in the atmosphere in which my voice shall not be heard. My friend, the question you have laid before us is of great

³⁷³ *Ratified Treaty No. 145 Documents Relating to the Negotiation of the Treaty of August 5, 1826, with the Chippewa*, NAMP RG 75, M T-494 Roll 1:F859. Also see President’s message, February 24, 1827; *Treaty of August 5, 1826 with the Chippewas*; Indian Treaty Files (SEN 19B-C7): RG 46.

³⁷⁴ *Ratified Treaty No. 223 Documents Relating to the Negotiations of the Treaty of July, 29, 1837, with the Chippewa Indians*, NAMP RG 75, M T-494 Roll 3:F564.

importance.”³⁷⁵ Indeed, the questions that faced the Anishinaabe and the United States and Canada during the treaty process were of grave importance: In what way would these nations live with one another? What outcome would these decisions have for their respective people? But equally important, What kind of people or what kind of nations were they bound to be?—Honorable nations? The invocation of the Creator reminded all participants of the ethical obligations that came with political commitments.

The Anishinaabe also invoked the Creator in an attempt to maintain kind feelings and relations between the contracting parties when the Anishinaabe refused to sell their lands. Red Lake Chief May-dwa-gun-on-ind utilized this approach when he felt his people would suffer as a result of the proposed treaty. Seeking to keep peace between the Anishinaabe and the United States, he stated, “The Master of Life has listened to our words. He has listened to us, and has granted that we should part from here as friends—that on our side of the earth should be perpetual friendship.”³⁷⁶ The Chief employed the Creator to remind Governor Ramsey of the ethical implications of his actions. Ramsey, throughout the treaty negotiations, had reminded the Anishinaabe of the fate the followed the Dakota people for going against the United States and threatened a similar fate for the Anishinaabe. Chief May-dwa-gun-on-ind attempted to refute the treaty while trying to retain peaceful relations with the United States. He invoked the Creator before explaining why he had to reject the treaty. He stated, “Now I want to tell you, my father, it is

³⁷⁵ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.18, RG 46.

³⁷⁶ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.41, RG 46.

impossible. There would not be enough that my children should be benefited by it. Now I am ready to return to my home. There shall be no bad thoughts on either side.”³⁷⁷

Though these appeals to the Creator may seem unrelated, they demonstrate that the Anishinaabe recognized that their sovereignty and land tenure stemmed from their creation and placement on the land. Whether the Anishinaabe asserted their sovereignty through the delineation of their creation, appeals to the Creator for guidance, or invocation of his presence to recognize the obligations that came with treaty-making, the Anishinaabe continually recognized the involvement of the Creator in their political dealings. For the Anishinaabe, the spiritual, social, and political aspects of their lives were not separate. These spheres of life were entangled and dependent on one another. Thus, in order to understand how the Anishinaabe asserted their sovereignty and land tenure throughout the treaty process requires an examination of the numerous ways in which Anishinaabe conceptions of creation and the Creator shaped their political discourses and practices.

“The Master of Life Gave It To Us For an Inheritance”: Anishinaabe Assertions of Sovereignty and Land Tenure

Anishinaabe conceptions of sovereignty were intimately connected to Anishinaabe identity. In turn, Anishinaabe identity influenced Anishinaabe conceptions of land tenure. These intersections are eloquently articulated by Red Lake Chief Little Rock in the 1863 “Old Crossing” treaty negotiations with the United States. He asserted, “My grandfather made my heart, and he also made my mouth, that all the land and the

³⁷⁷ Ibid.

inheritance may listen to my voice when I speak his words.” He returned to this point later in his speech, stating “We have made reference to the Master of Life; we speak of him again. He is present now, and hears what we have to say.”³⁷⁸ Little Rock’s words are derivative of the intersections among Anishinaabe conceptions of creation, sovereignty, and land tenure. The Anishinaabe, made from the earth and the Creator’s breath, are connected to the land through their body. As Little Rock spoke from his heart and breath, placed in him by the Creator, the Creator and the earth could hear his words. Anishinaabe creation delineated a relationship between all beings, the Anishinaabe just one of many. Little Rock recognized that Anishinaabe actions, such as selling their lands, involved and affected all of creation.

Anishinaabe Chief Sha we nig wa nabe echoed these sentiments, in the July 29, 1837 treaty with the United States. He stated, “My father, What I have to say to you, place it strongly to your heart. The Master of life, and the Spirit of the Earth listens to us. The Master of life made the Earth, the grass and the trees that grow upon it, and the animals that roam over it. When the Great Spirit made the Earth, he placed the Red Men upon it; & when the Chiefs were put upon it, it became very strong. Some of these chiefs are now here, and others are coming. They do not wish to act precipitately.”³⁷⁹ This Chief recognized and expressed the connection between creation and Anishinaabe action. He delineated the creation of earth and the Anishinaabe’s placement on it. He connected this understanding of creation with the assertion that the Anishinaabe could not act on any question regarding their land without all the chiefs present to discuss this matter.

³⁷⁸ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.28, RG 46.

³⁷⁹ *Ratified Treaty No. 223 Documents Relating to the Negotiations of the Treaty of July, 29, 1837, with the Chippewa Indians*, NAMP RG 75, M T-494 Roll 3:F555.

While Anishinaabe articulations of their sovereignty throughout the treaty era receive little attention today, likely resulting from the allegoric nature of these assertions, they had reason to assume that U.S. and Canadian treaty officials understood Anishinaabe conceptions of sovereignty and land tenure expressed through this language of creation. Treaty commissioners also employed this language throughout their early treaty relations. Commissioner Thomas McKenney, at the August 5, 1826 treaty with the United States, spoke about the Great Spirit to explain why the Commissioner would not do business on Sundays. He stated, “This is the day of the Great Spirit. On this day your white brothers towards the rising sun do no business—But worship the Great Spirit—” He discussed the Great Spirit in a way that demonstrates that Commissioners recognized, or at least expressed to the Anishinaabe, that they had similar understandings of a Creator and a shared conception of creation. Speaking of the Great Spirit, the Commissioner stated “...[he]—who made the sun and the moon, and the stars: the Rivers and the Mountains—and who also made man—you know the God we mean—it is he who strikes fire in the sky, and shakes it with thunder...” McKenney directly connected his conception of the Creator to treaty practice. He argued that “[i]t is he who loves the man who loves peace; the man who is honest—and sober—and who will not tell a lie. The day you see is sacred.”³⁸⁰ While this idea of a single day of prayer greatly differed from Anishinaabe spiritual beliefs that incorporated the Creator into every aspect of life, the fact that Commissioners expressed a correlation between God and creation of the Earth illustrates why the Anishinaabe may have thought their expressions of sovereignty and land tenure through spiritual terms would be understood by all the parties.

³⁸⁰ *Ratified Treaty No. 145 Documents Relating to the Negotiation of the Treaty of August 5, 1826, with the Chippewa*, NAMP RG 75, M T-494 Roll 1:F867.

Indeed, the various speeches of the white treaty commissioners indicated that Anishinaabe creation and placement in North America was not in conflict with U.S. and Canadian political and spiritual thought. At the 1825 treaty at Prairie du Chien, General Clark encouraged the various tribes present to end their warfare with each other by asserting that their creation and placement in North America bound them to one another. He stated, “The great spirit made you all of one colour & placed you all upon this land you ought to live in peace together as brothers of one great family.”³⁸¹

While the Anishinaabe employed political discourses and practices as a means to assert their sovereignty throughout the treaty era, the Anishinaabe also expressed their sovereignty through concrete rights and practices. Much of this attention focused on the land. Anishinaabe leaders continually articulated their rights to and the value of their lands throughout treaty negotiations with foreign powers. The Anishinaabe were keenly aware of colonial interest in lands and utilized treaty-making, a tool often used by colonial nations to acquire land, as a venue to assert their own conceptions of land tenure. The relationship between sovereignty and land was inextricably connected for the Anishinaabe in complex ways, as seen through the use of the term *Anishinaabe*. Thus, analogies to land and relations to the land often spoke to the proprietary rights of the Anishinaabe but could also be employed to discuss the broader rights of the people: a people made of this land.

Throughout the 1863 negotiations, Anishinaabe leaders articulated their land title by delineating what sovereignty meant for the Anishinaabe. Red Lake Chief Little Rock, dissatisfied with Treaty Commissioner Alexander Ramsey’s offer of compensation for

³⁸¹ *Ratified Treaty No. 139 Documents Relating to the Negotiation of the Treaty of August 19, 1825, with the Sioux, Chippewa, Sauk and Fox, Menominee, Iowa, and Winnebago Indians and part of the Ottawa, Chippewa, and Potawatomi of the Illinois Indians*, NAMP RG 75, M T-494 Roll 1:F724.

the passage of American citizens through Anishinaabe lands, described Anishinaabe conceptions of land tenure. He stated, “Now, my friend, I am going to show you how we came to occupy this land. The Master of Life placed us here, and gave it us for an inheritance.”³⁸² Little Rock extended this conception of land tenure beyond Anishinaabe placement by the Creator. He continued, “You can see far towards the east where our grandfather comes from. Our grandfather’s tracks are perfectly plain and visible, not only here, but they strike away off to the west.”³⁸³ Anishinaabe land tenure, as expressed by Little Rock, was literally marked on to the earth, seen in the movement and use of the land by the Anishinaabe.

Little Rock recognized that the U.S. government had great interest in Anishinaabe land, having approached the Red Lake and Pembina bands previously seeking a land cession treaty. Little Rock sought to clearly express Anishinaabe conceptions of their land tenure. He stated, “Whenever I look around I see, and I suppose you see it also—I see gold glittering on the soil we inherit. This land belongs to us.”³⁸⁴ Little Rock explicitly referenced the value of Anishinaabe land by employing a discourse that prescribed land value in recognizable terms to U.S. officials. In stating “I see gold glittering on the soil,” Chief Little Rock asserted his awareness of the value of his land while strategically forcing Ramsey to in turn acknowledge this value.

Furthermore, Little Rock disputed Ramsey’s claims that Anishinaabe lands were not injured by the passage of American and British trade ships. He declared, “You told us they were not of much importance to us. The Master of Life gave us the river and the

³⁸² President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.18, RG 46.

³⁸³ Ibid.

³⁸⁴ Ibid.

water thereof to drink, and the woods and the roads we depend on for subsistence, and you are mistaken is you think we derive no benefits from them.”³⁸⁵ Little Rock continued, emphasizing that “The Master of Life gave it to us for an inheritance.”³⁸⁶ Much like the creation stories delineating Anishinaabe relations to land, Chief Little Rock discussed how land title was derived from the Creator. He spoke of the land as “an inheritance.”

Red Lake Chief Little Rock concluded his assertion of Anishinaabe land tenure by highlighting the relationship between himself and the land. He stressed, “My heart, it is made of silver, and the earth that I tread on is silver also.”³⁸⁷ Chief Little Rock clearly described the earth as part of his body, signifying the connection between his existence and the land. Chief Little Rock was able to demarcate Anishinaabe sovereignty and title to the land by demonstrating the connection between the land and self.

Little Rock later elaborated on this connection between the land and his heart. He explained, “My friend, the reason that I have spoken in the way I have, comparing my heart to a piece of bright metal, is this: That I am without crime; and I have always desired to secure for myself and all our bands perpetual peace and friendship with the whites.”³⁸⁸ Little Rock followed this contention by demarcating Anishinaabe land tenure. He stated, “About the road and that river which flows in that direction, which the Master of Life has given me, there is where I get my living. My dependence is upon that prairie. The Master of Life has placed upon these prairies animals from which I live. Their meat is my food, and their skins are my clothing. It seems now that the white man is passing

³⁸⁵ Ibid.

³⁸⁶ Ibid.

³⁸⁷ Ibid.

³⁸⁸ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.20, RG 46.

backward and forward, and wrestling these prairies from our hands, and taking this food from my mouth.”³⁸⁹ Little Rock stressed that Anishinaabe land tenure originated from the Creator. In addition, the Creator placed the animals on the land that enabled Anishinaabe survival. Little Rock also utilized this conception of creation to express his dissatisfaction with U.S. disregard for Anishinaabe land tenure.

Governor Ramsey responded to Little Rock’s decree of Anishinaabe sovereignty and land tenure with a nearly explicit declaration of the Doctrine of Discovery within a narrative that rationalized conquest. His words are quoted in detail:

In the history of our race we also recognize the Master of Life. We have no doubt the Master of Life placed them upon the soil where we find them. He also placed other tribes upon the soil in the regions adjacent to them. Many of these Indian tribes have evidently forgotten the lessons which the Great Spirit impressed upon them, and because they have not listened to his voice have come to trouble. We cannot tell what are the motives of the Great Spirit, but, for some reason which we know to be wise and good, he has brought another race with different habits and different ideas from their around and about them. It is possible they may not be making the best use of the lands which the Great Spirit has given them. They have broad lands here, occupied by about a thousand men, that the system of cultivation and settlement adopted by the white race would support a thousand times, and perhaps ten thousand times, that number. They were great hunters when the Master of Life placed them here, but they were very destitute of many things necessary to their comfort, and

³⁸⁹ Ibid.

even to their subsistence, and the Master of Life placed around them a race, made and brought to them guns, powder, shot, lead, blankets, cloth and a hundred things which they could not make themselves, and without which they would perish from starvation and cold. It is probable that the Great Spirit had in view the mutual advantage of both races in bringing them together. They have lands here which many of them never see, and which, if occupied by white men, would yield them abundant food, blankets, and whatever else they needed. So while he [the Great Spirit] takes away some of the animals on which their ancestors subsisted, he sends in their place a people ready to furnish them all they need for their subsistence, the means of greatly improving their condition, and through us he opens an opportunity for them to accept these new comforts, these gifts of the Great Spirit. They cannot help seeing the hand of the Master of Life in this.”³⁹⁰

Chief Little Rock refuted Ramsey’s narrative by stating a clear distinction between Anishinaabe sovereignty and title with that of American claims to sovereignty and absolute title. He countered, “The Master of life, when he put you here, never told you that you should own the soil; nor, when the Master of Life put me here, did he tell me that you should own the soil. I see that place that was made for you on the other side of the great sea.”³⁹¹ Through this declaration, Chief Little Rock explained that Anishinaabe title was derived from their inheritance of this land from the Creator. In addition, he also recognized that American settlers, too, had inherited land, a land he

³⁹⁰ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.19, RG 46.

³⁹¹ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.23, RG 46.

argued that was “on the other side of the great sea.” Chief Little Rock’s words demonstrate how the Anishinaabe were conceptualizing their sovereignty throughout the treaty era. By acknowledging American title across the sea, Chief Little Rock placed Anishinaabe and American title on equal footing, each deriving from the same source and thus of the same weight, in order to deny American claims to Anishinaabe lands.

Little Rock referred to the Creator throughout his negotiations with Governor Ramsey to defend Anishinaabe land tenure and dispute American claims to their lands. He directly addressed the unwarranted and unwelcomed passage of American citizens through Anishinaabe lands by laying out how their incursions were disrupting Anishinaabe land tenure. He stated, “And now that which he has given to his children for an inheritance has been shaken to the winds. You have trodden it under you feet.”³⁹²

Little Rock directly followed his protest of American dismissal of Anishinaabe land tenure with an invocation of creation. While Little Rock had previously expressed Anishinaabe land tenure as derived from the Creator, he further posited that the Anishinaabe’s inheritance of that land originated in the moment of creation of the earth.

My friend, at the time I speak of they put four doors (pointing to the four cardinal points) for my great-grandfather’s house. They put persons to guard the doors—a guard at each door. This is what was spoken by my great-grandfather at the house he made for us. He was the one who spoke it. And these are the words that were given to him by the Master of Life:
‘At some time there shall come among you a stranger, speaking a

³⁹² Ibid.

language you do not understand. He will try to buy the land from you, but do not sell it; keep it for an inheritance to your children.³⁹³

Little Rock explicitly outlined Anishinaabe conceptions of creation. He spoke of this “inheritance,” arguing that “[a]t the time that I speak of there was a big stake planted with a torch at the end, so that there should be perpetual light over that soil, and it is that light that the great-grandfather has spread over the land.”³⁹⁴ This delineation of creation is reflected in the creation story outlined by Basil Johnston: “To the sun Kitche Manitou gave the powers of light and heat.”³⁹⁵ Little Rock’s reference to the cardinal directions is recounted in the creation story laid out by Edward Benton-Banai. He noted that “[o]n the surface of the Earth, all is given Four Sacred Directions—North, South, East, and West. Each of these directions contributes a vital part to the wholeness of the Earth. ...Gitchie Manito then took four parts of Mother Earth and blew into them using a Sacred Shell. From the union of the Four Sacred Elements and his breath, man was created.”³⁹⁶ Little Rock explicitly connects this moment of the creation of the earth, and the subsequent creation of the Anishinaabe from the earth, to the moment that the Anishinaabe inherited the land from the Creator. In addition, Little Rock emphasized that it was in this inception of the earth that the Creator warned the Anishinaabe of “a stranger” that would try to buy their land and protested against this action.

While Little Rock clearly outlined Anishinaabe conceptions of land tenure to dispute American claims to Anishinaabe lands, Ramsey returned to his previous notions

³⁹³ Ibid.

³⁹⁴ Ibid.

³⁹⁵ Johnston, *Ojibway Heritage*.

³⁹⁶ Benton-Banai, *The Mishomis Book: The Voice of the Ojibway*.

of discovery and conquest, this time explicitly narrating American notions of Manifest Destiny. He claimed:

Tell him that we know very well that the Great Spirit originally placed them here, and our ancestors on the other side of the ocean. But the Master of Life saw they were in want of many things; ...and he sent a new race over here to supply their necessities. ...For some wise reason which we cannot comprehend, the Great Spirit is pressing these white people all over the country. We cannot help it; no one can help it; it is the work of the Great Spirit.”³⁹⁷

Ramsey strategically recognized Anishinaabe articulations of land tenure while subsequently denying Anishinaabe protests of U.S. incursions on their lands by claiming that U.S. title to the land was also the will of the Creator. Ramsey conveniently argued that no one could help this U.S. encroachment onto Anishinaabe lands, arguing that “it was the work of the Great Spirit.” The Anishinaabe protested Ramsey’s claim.

Throughout the negotiations surround the “Old Crossing” treaty, the Red Lake and Pembina Anishinaabe protested unwarranted passage through their lands and delineated their land tenure.

The Lake of the Woods Anishinaabe, in their treaty negotiations with Canadian treaty officials, also articulated their land tenure through the invocation of the Creator, closely mirroring Little Rock’s conception. Anishinaabe Chief, Ma-we-do-pe-nais, in the negotiations surrounding Treaty Three, expressed Anishinaabe conceptions of land tenure. He declared, “All this is our property where you have come. ...This is what we

³⁹⁷ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.25, RG 46.

think, that the Great Spirit has planted us on this ground where we are, as you were where you came from. *We think where we are is our property.*”³⁹⁸ Ma-we-do-pe-nais also expressed Anishinaabe sovereignty as creator-derived. He stated, “I will tell you what he said to us when he he³⁹⁹ planted us here; the rules that we should follow-us Indians—He has given us rules that we should follow to govern us rightly.”⁴⁰⁰ Ma-we-do-pe-nais reminded Lieutenant Governor Alexander Ramsey that the British came from somewhere else, just as Little Rock had reminded Ramsey that Americans came from across the sea.

The Anishinaabe expressed their sovereignty throughout the treaty era, primarily focusing on their rights to their lands. These rights were vested in the Anishinaabe from the Creator. The Anishinaabe expressed this source of Anishinaabe sovereignty, and thus land tenure, during their treaty negotiations through a spiritual discourse. They were also invoked and recognized through the use of ceremonial practices that did not sever the political from the spiritual or cultural. Anishinaabe conceptions of sovereignty and the rights associated with this characteristic challenged colonial claims to absolute sovereignty and title.

Conclusion

Coffey and Tsosie, in their examination of cultural sovereignty, recognize that “[t]he central and overriding aspect of traditional epistemologies concerns the

³⁹⁸ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 59. Emphasis added.

³⁹⁹ Double print of “he” in the original.

⁴⁰⁰ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 59.

relationship between Indian people and the land.”⁴⁰¹ They assert that the relationship that Native people have to their lands extend beyond the means of physical survival. “Land also ensures the cultural survival of Indian people as distinct groups and nations.”⁴⁰² Indeed, Anishinaabe nations throughout the nineteenth century recognized the central importance that land had to their social, cultural, and political survival.

The Anishinaabe continually asserted their sovereignty throughout treaty negotiations with the United States and Canada. These articulations of sovereignty were inextricably connected to Anishinaabe assertions of land tenure. Anishinaabe sovereignty had its origins with the Creator. At the inception of Creation, the Anishinaabe “inherited” the land and were given rules for how to govern themselves. Anishinaabe conceptions of creation lay out the responsibility that the Anishinaabe have to the land. All parts of creation functioned in harmony.⁴⁰³ Anishinaabe treatment of the land directly correlated to their own well-being, as people made of the earth.

Furthermore, the Anishinaabe recognized the importance of invoking the Creator in their land dealings. The Anishinaabe also appealed to the Creator for guidance in decisions about a treaty and invoked him to remind the involved parties of the moral weight that treaty-making entailed. Treaty-making served as a vehicle for the Anishinaabe to assert their sovereignty and land tenure in the face of U.S. and Canadian will to empire. The Anishinaabe resisted U.S. and Canadian-placed limitations on their sovereignty and land tenure. They continually articulated these important political concepts through a cultural understanding of sovereignty.

⁴⁰¹ Tsosie and Coffey, "Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations," 204.

⁴⁰² Ibid.

⁴⁰³ Benton-Banai, *The Mishomis Book: The Voice of the Ojibway*.

An understanding of this internal definition of sovereignty put forward by the Anishinaabe in their treaty negotiations with the United States and Canada, demonstrates that the Anishinaabe never saw themselves as a “conquered” people and never thought that their sovereignty had been transferred to colonial nations upon their so-called “discovery” by whites. Instead, Anishinaabe nations understood their sovereignty as derived from the Creator and their land as an “inheritance.” These nineteenth-century conceptions of sovereignty should be read next to contemporary Anishinaabe conceptions and applications of sovereignty to better enable Anishinaabe nations to develop a better relationship with all of creation. Explicating Anishinaabe understandings of sovereignty can bring forth an understanding for how Anishinaabe land tenure was expressed and reserved in their treaty relations.

Anishinaabe conceptions of sovereignty and land tenure did not exist apart from their understanding of nationhood. Sovereignty and nationhood are inextricably linked to each other, as sovereignty is the force or supreme power or authority that makes up a nation. In turn, land tenure is often, if not always linked to nationhood. These important political concepts were intimately connected to Anishinaabe understandings of creation. While Anishinaabe sovereignty and land tenure were laid out in the creation of the earth, Anishinaabe nationhood would be marked out by the movement of the animals and the development of the clan system, as I will discuss in the next chapter.

Chapter Three: Stealing Fire, Scattering Ashes: Anishinaabe Expressions of Nationhood

At one time the earth was flooded.⁴⁰⁴ As the water rose, Nenabozho and various animals floated on a log (or raft). The animals dove down for earth, the muskrat finally succeeding in bringing some earth to the surface, out of which Nenabozho could create the earth anew.⁴⁰⁵

‘So therefore shall we now be able to create the earth,’ he said to them. So it was then that he breathed upon the earth, and by degrees it grew in size, larger he made it. Now, such was what he did. When he knew that it was grown larger, then this he said: ‘Pray, Wolf, do you see how big this earth is,’ he said to the Wolf that he had employed.

Thereupon truly away went (the Wolf), and then afterwards back home he came.

‘(This,) indeed, shall not be the size of the earth,’ he thought. ‘Too small it will be.’ And so what he did next was to have it larger, whereat again he spoke to (the Wolf): ‘Pray, do you see again how big it is,’ he said to him.

Thereupon truly off (the Wolf) started again. Lo, somewhat longer was he absent; then back was he come again.

⁴⁰⁴ While the timeframe in which this flood occurred, whether it occurred metaphorically or literally, is open for debate. Basil Johnston, in *The Manitous*, explicitly connects this flood story with the time the glaciers receded. See Basil Johnston, *The Manitous: The Spiritual World of the Ojibway, Native Voices* (St. Paul: Minnesota Historical Society Press, 2001).

⁴⁰⁵ This portion of the flood narrative precedes the portion of the narrative cited above, in Jones text. The flood narrative has also been recorded in various other texts, most notably Benton-Banai, *The Mishomis Book: The Voice of the Ojibway*.

Whereupon (Nānabushu) said to them: 'Now, come, go you ashore,' he said to all the various game-folk. And so it was true. So, then, now he had saved the lives of the game-folk. Now, back home came the one he had employed. 'Ay, too small it will be,' he said to him. 'Though you have been gone two days, yet it will not be (big) enough to contain all that are to live in times to come,' he said to him.

Thereupon again off started (the Wolf). And then he awaited his coming for the space of four days. When the four days were ended, then (the Wolf) arrived. 'Truly far have I been.'

'No,' he said to him: 'too short a time have you been gone. It will not be large enough,' he said to him. And then he created some more of it; when four days were ended, 'Pray, now, do you see again how large it is,' he said to him.

Thereupon truly off started (the Wolf). When again (the Wolf) had gone, then (Nānabushu) waited for his coming again. Oh, for a long while was he gone. Then he came back. 'Truly far have I been,' he said to (Nānabushu).

Thereupon, 'Ay, too short a while have you been gone.' He said to him. 'Larger yet will we make this earth.' Thereupon again he worked upon it, to the end that it might be larger he did his work.

Thereupon truly, after four days were ended, then again away started (the Wolf). And so again (Nānabushu) waited for his coming; for a moon was (the Wolf) away. 'Perhaps now he is gone forever,' was his

thought of him. But it was not time for him yet to be gone forever; so when he had been gone for a moon, then back he came. “Truly very far have I been,’ said (the Wolf).

‘Ay, but not for so short a time do I wish you to be absent,’ Nānabushu said to him. ‘Not so very few will the number be of them who shall live here on earth,’⁴⁰⁶ he said to him. ‘In time many will they be who shall live here on earth,’ he said to him. When they had created more of it, it was to the end that it might be larger that they worked.

Thereupon again away went (the Wolf).

And then (Nānabushu) waited for his coming again, as long as a full cycle of seasons was (the Wolf) gone. When for a winter he had been gone, then back he came.

“Therefore it is now almost as large as it will be. It is not yet so large as it should be. Again will I make it larger.’ And when he had made some more of it, ‘Now again do you look,’ he said to him.

Then again off started (the Wolf).

And so when (Nānabushu) waited again for his coming, then for another cycle of seasons was (the Wolf) absent, and then it came to pass that for two full rounds of seasons was (the Wolf) gone. And then he waited for him, but he was not destined to come back. And this was what he thought: ‘He is gone,’ he thought. And so in vain he waited for him; but (the Wolf) was gone forever, at which he said: ‘Pray, you, O Raven! Do you fly round over (this earth) to find out how large it is,’ he said to him.

⁴⁰⁶ Meaning the people. [footnote in text].

Thereupon truly then up (the Raven) rose on the wind. And so gone was he when he started flying away, and it was needless of (Nānabushu) to wait for him; for a long while he vainly watched for him, for one full round of seasons had he been gone when he came flying back home. ‘Rather large, O Nānabushu! is this earth,’ he was told.

‘It is now almost big enough, but to the end that it yet may be larger will I make it,’ he said to him. Thereupon truly more of the earth did he make. After four days were ended, he then again spoke to the Raven.

Whereupon truly again up flew the Raven. And then again did he fly roundabout the earth.

Thereupon again for him did Nānabushu wait. For as long as two cycles of the seasons was (the Raven) gone; as time went on, there was no sight of him coming back, continuing so till he had been gone a long while; a long time afterwards he came back again, And this was what he said to him: ‘Well, let it be still larger.’ Thereupon truly, after he had been creating it for four days more, ‘Well, now, this time, again go you and see,’ he said to the Raven. Again he waited for him, but this time he was gone forever. In vain he waited for him. ‘That then, no doubt, will be the extent of this earth,’ he said to the (animal-folk). And now, ‘(I) fear that this will float away,’ he said. ‘Therefore in order that it may be heavy will

I make it so that it shall never be moved.’ (As told to William Jones by
Wâsagunäckank; Bois Fort, MN)⁴⁰⁷

This story of the recreation of the earth provides insight into Anishinaabe conceptions of nationhood and the relationship that nationhood has to land tenure. As Nenabozho recreates the earth, he sends the animals out to measure it. He continues to expand the size of the earth, finding that its initial size would not be adequate for the people who will come to occupy it. “Not so very few will the number be of them who shall live here on earth,” stated Nenabozho. This story can be understood as an Anishinaabe delineation of their territory. The animals are measuring the territory of the Anishinaabe peoples. This conception of nationhood, expressed through the movement of animals across the land, is critical for understanding how the Anishinaabe expressed their nationhood and land tenure throughout their treaty negotiations with the United States and Canada. Anishinaabe people construct themselves along national lines through band formations. However, Anishinaabe identity is also informed and shaped through clan identity. The clan system operates across national boundaries and serves as a mechanism for developing alliances between Anishinaabe nations and other First Nations.

Many Algonquian speaking peoples have a record of this story, in various forms. Indeed, Nenabozho, in his multiple incarnations, exists in the recorded and oral traditions of several Algonquian speaking peoples. This shared recollection of Nenabozho and his shaping and reshaping of the earth provides a lens for understanding how nationhood was constructed between and across these various nations.

⁴⁰⁷ Michelson and Jones, *Ojibwa Texts*, ed. Franz Boas, 2 vols., vol. VII, Part I, 153-59.

This chapter specifically examines Anishinaabe conceptions of nationhood and their relationship to land tenure. It argues that kinship and other socio-political systems enabled Anishinaabe nations to operate across national lines and build political alliances with other Anishinaabe bands and Native nations when they entered into treaties with the United States and Canada. These intra-national and international alliances led some treaty commissioners to dismiss or disregard the complex articulations of Anishinaabe nationhood and their relationship to land tenure. Instead, treaty commissioners either chose to pay little attention to these complex political formations or conflated them to equate a single group with “common ownership” of the land in question. In order to ascertain Anishinaabe conceptions of nationhood and how kinship and socio-political systems facilitated international and intra-national alliances, this chapter opens with an examination of the Anishinaabe clan system. This chapter then turns its attention to the historical record to ascertain how Anishinaabe conceptions of nationhood were expressed throughout the treaty era and recorded in treaty journals.

Towards a Native Conception of Nationhood

Between 1785 and 1923 Anishinaabe nations entered into approximately fifty-four ratified treaties with the United States and Canada. Of these fifty-four treaties, twenty-eight were comprised of multiple tribal nations. Sixteen involved multiple Anishinaabe bands. Thus, only ten treaties were negotiated by a single Anishinaabe band, all occurring with the United States. The fact that the vast majority of Anishinaabe treaties were entered into by multiple parties illustrates that strategic alliances among multiple nations were utilized to assert land tenure across a multinational terrain. Yet

these assertions of nationhood and land tenure have received little attention in the study of Indigenous nationhood and political organization.

Anthony Wallace, in a 1957 article examining political organization and land tenure among Northeastern Indians, addressed key concerns facing the field of anthropology and its lack of attention to indigenous political organization. He stated in now outdated language that “[t]he study of primitive political organization has been greatly retarded by the ethnocentric notion... that ‘primitive’ societies, because they are not organized like European ‘states,’ have no political organization worthy of the name. The complementary estimation of kinship as the organizing principle for primitive life, and the increasing complexity and fashionableness of kinship system studies, has further reduced the interest of anthropologists in political organization.”⁴⁰⁸ In the fifty years since Wallace raised these concerns, there has been a dramatic increase in scholarship about and by Native peoples covering a range of topics including political organization.

While scholars across disciplines have paid greater attention to the study of Indigenous political organization, nationhood has primarily received its attention either within the domains of political science and law, or more recently in the field of literary criticism.⁴⁰⁹ Much of the scholarship in political science and law has paid particular attention to U.S. and Canadian legal rulings about nationhood (e.g. the Marshall Trilogy) or political organization in the twentieth century, with a growing body of scholarship paying needed attention to the post-Indian Reorganization Act era in the United States. While this work is especially critical for understanding how indigenous peoples’ ability

⁴⁰⁸ Anthony Wallace, "Political Organization and Land Tenure among the Northeastern Indians, 1600-1830," *Southwestern Journal of Anthropology* 13, no. 4 (Winter, 1957).

⁴⁰⁹ Jace Weaver, Craig S. Womack, and Robert Allen Warrior, *American Indian Literary Nationalism* (Albuquerque: University of New Mexico Press, 2006). Also see Womack, *Red on Red: Native American Literary Separatism*.

to exercise their nationhood and sovereignty has been redefined and limited by the colonizing nation-state, it has paid little attention to how Native peoples conceptualized nationhood from within their own communities, as opposed to in response to the nation-state.

Taiaiake Alfred, in *Peace, Power, Righteousness*, examines the various political struggles facing Indigenous peoples in their quest to regain self-determination. He points out that “[p]olitics matters: the imposition of Western governance structures and the denial of indigenous ones continue to have profoundly harmful effects on indigenous people. Land, culture, and government are inseparable in traditional philosophies; each depends on the others, and this means that the denial of one aspect precludes recovery for the whole.”⁴¹⁰ Alfred asserts that “[a]bove all, indigenous nationhood is about reconstructing a power base for the assertion of control over Native land and life. This should be the primary objective of Native politics.”⁴¹¹ Yet, Indigenous nationhood, as a means to reconstruct a power base for the assertion of control of Native land and life, must emanate the values and beliefs of the people it collects.

Alfred recognizes that “[t]raditional indigenous nationhood stands in sharp contrast to the dominant understanding of ‘the state’: there is no absolute authority, no coercive enforcement of decisions, no hierarchy, and no separate ruling entity.”⁴¹² He asserts that this critical distinction is tied to the conception of sovereignty. He astutely defines how nationhood is conceptualized by Mohawks, asserting that “... ‘Mohawk’ and ‘nationhood’ are inseparable. Both are simply about *being*. Being is who you are, and a

⁴¹⁰ Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (New York: Oxford University Press, 1999), 2.

⁴¹¹ Ibid., 47.

⁴¹² Ibid., 56.

sense of who you are is arrived at through your relationships with other people—your people. So who we are is tied with what we are: a nation.”⁴¹³ Creek scholar Craig Womack similarly asserts that “[a] key component of nationhood is a people’s idea of themselves, their imagining of who they are.”⁴¹⁴ Alfred differentiates this concept of nationhood from sovereignty, asserting that “[n]ow, sovereignty—the authority to exercise power over life, affairs, territory—this is not inherited. It’s not a part of being, the way our form of nationhood is. It has to be conferred, or granted—it’s a thing that can be given and thus can be taken away.”⁴¹⁵

While western notions of sovereignty have long been tied to notions of power and authority, the main contentions Alfred has with the use of this concept by indigenous peoples, Anishinaabe conceptions of sovereignty derive from creation, and authority is vested in the Creator. An examination of Anishinaabe assertions of sovereignty, as argued in the previous chapter, is critical to understanding Anishinaabe notions of nationhood. Anishinaabe sovereignty, like Alfred’s conception of nationhood, is about *being*. Yet, *being* is informed by the stories, traditions, and practices that give meaning to what it is to be Anishinaabe. Anishinaabe conceptions of sovereignty and nationhood must be understood in relation to Anishinaabe creation.

Within the field of anthropology, political organization has expanded from its initial conflation with kinship systems toward an examination of peoplehood.⁴¹⁶ This

⁴¹³ Ibid., 65. Emphasis in original.

⁴¹⁴ Womack, *Red on Red: Native American Literary Separatism*, 14.

⁴¹⁵ Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto*, 65.

⁴¹⁶ For further discussion on Peoplehood, see Jeff J. Cornntassel, "Who Is Indigenous? 'Peoplehood' and Ethnonationalist Approaches to Rearticulating Indigenous Identity," *Nationalism and Ethnic Politics* 9, no. 1 (2003), Tom Holm, J. Diane Pearson, and Ben Chavis, "Peoplehood: A Model for the Extension of Sovereignty in American Indian Studies," *Wicazo Sa Review* 18, no. 1 (2003), Edward H. Spicer, *Cycles of Conquest: The Impact of Spain, Mexico and the United States on the Indians of the Southwest, 1533-1960* (Phoenix: University of Arizona Press, 1962), Robert K. Thomas, "The Tap-Roots of Peoplehood," in

concept has sought to understand the relationship between nationhood and what Alfred refers to as “*being*.” The concept of peoplehood has its foundation in the work of Cherokee anthropologist Robert K. Thomas. Tom Holm et al. notes that “[h]e deliberately chose the term ‘peoplehood’ to transcend the notions of statehood, nationalism, gender, ethnicity, and sectarian membership.”⁴¹⁷ Thomas built upon Edward Spicer’s definition of “enduring peoples” that conceived of Indian identity as distinct from ethnic groups. His conception centers on indigenous relationships to land, spiritual bonds and language.⁴¹⁸ Thomas expands this concept to include what he called “sacred history.”⁴¹⁹ Within the concept of peoplehood, language, sacred history, religion and land are understood as interwoven and dependent on one another. Tom Holm et al. in turn elaborated on Thomas’s initial conception of peoplehood to explain the ways that this concept can serve as a model for Native peoples.⁴²⁰ Some scholars, including Jeff Corntassel, have looked to this model as a means to rearticulate Indigenous identity in relation to nationhood. While an important contribution, this scholarship has primarily focused on the global question of “who is indigenous?” with little attention paid to Native conceptions of nationhood.⁴²¹

Getting to the Heart of the Matter: Collected Letters and Papers, ed. Daphne J. Anderson (Vancouver: Native Ministries Consortium, 1990). Anthropologist Ruth Landes studied the political organization of Anishinaabe people but predominately focused this study on leadership and the relationship that various leaders had to the national polity. She also examined Anishinaabe kinship, particularly examining the nucleus family relations. Ruth Landes, *Ojibwa Sociology, Columbia University Contributions to Anthropology*; V. 29 (New York,: AMS Press, 1969).

⁴¹⁷ Holm, Pearson, and Chavis, "Peoplehood: A Model for the Extension of Sovereignty in American Indian Studies," 11.

⁴¹⁸ Spicer, *Cycles of Conquest: The Impact of Spain, Mexico and the United States on the Indians of the Southwest, 1533-1960*.

⁴¹⁹ Thomas, "The Tap-Roots of Peoplehood."

⁴²⁰ Holm, Pearson, and Chavis, "Peoplehood: A Model for the Extension of Sovereignty in American Indian Studies."

⁴²¹ Corntassel, "Who Is Indigenous? 'Peoplehood' and Ethnonationalist Approaches to Rearticulating Indigenous Identity."

While there of course have been numerous studies beyond those aforementioned, few scholars have taken up the question of how kinship and other Native social systems have operated *alongside* Native political organization as opposed to kinship being the *exclusive* organizing principle of nationhood. Anishinaabe nationhood throughout the treaty era was shaped and constructed by the stories, ceremonies, and practices that ordered Anishinaabe life. Kinship facilitated Anishinaabe nationhood and enabled this ordering to be carried out at the individual, local, national, and international level. Yet, the primary foundation of Anishinaabe nationhood, like sovereignty, was found in Anishinaabe conceptions of creation. This conception of creation informed and framed many, if not all, Anishinaabe stories, ceremonies, and practices.

Anishinaabe scholar John Borrows articulates the foundational role that stories, ceremonies, and practices play in Anishinaabe conceptions of nationhood. He finds that “Indigenous law originated in the political, economic, spiritual, and social values expressed through the teachings and behavior of knowledgeable and respected individuals and elders.”⁴²² He further notes that “[t]hese principles are enunciated in the rich stories, ceremonies, and traditions within First Nations. Stories express the law in Aboriginal communities, since they represent the accumulated wisdom and experience of First Nations conflict resolution. ... They can be communicated in a way that reveals deeper principles of order and disorder, and thereby serve as sources of normative authority in dispute resolution.”⁴²³ While Borrows is specifically discussing Indigenous law in this instance, his reflection on the roles that stories play in revealing the deeper principles of order and disorder bring to light how Anishinaabe stories, which inform

⁴²² Borrows, *Recovering Canada: The Resurgence of Indigenous Law*, 13.

⁴²³ Ibid.

ceremonial, social, and political practices, give rise to nationhood through principles of order and disorder.

Anishinaabe conceptions of nationhood are therefore expressly linked to Anishinaabe constructions of their identity, much in the same ways that sovereignty is informed by one's sense of themselves. Womack argues that "[t]hat concept of nationhood itself is an intermingling of politics, imagination, and spirituality."⁴²⁴ He explains that "[n]ationhood is affected by imagination in the way that the citizens of tribal nations perceive their cultural and political identity. Nationhood recognizes spiritual practices, since culture is part of what gives people an understanding of their uniqueness, their difference, from other nations of people."⁴²⁵

Anishinaabe nationhood and political identity are shaped by the stories that convey their values and beliefs and lay out the relationship that the Anishinaabe have to creation. Womack recognizes this power of stories to shape Indigenous nationhood, stating that "...oral traditions—legends and myths, if you will—performed in their cultural contexts have always been nationalistic and are told for the purpose of cultivating a political consciousness."⁴²⁶ Womack argues that the purpose of Creek stories is to instill a sense of Creekness. In the same way, Anishinaabe stories serve to inculcate Anishinaabe peoples with a sense of Anishinaabeness. This sense of Anishinaabeness serves as the base for Anishinaabe conceptions of nationhood. This is illustrated in the opening stories that lay out creation and expansion.

⁴²⁴ Womack, *Red on Red: Native American Literary Separatism*, 60.

⁴²⁵ Ibid.

⁴²⁶ Ibid., 61.

*Operating Across National Lines: The Clan System, Kinship, and
Inter/Intra-national Alliances*

William Jones collected multiple versions of the opening story regarding the creation and expansion of the earth. Jones collected a version of this (re)creation story from Kagige pinesi (John Pinesi) from Fort William, Ontario.⁴²⁷ Jones titled this version “The Scattering of the Animals and the Regulation of Nature.”⁴²⁸ This account varies slightly from the previous version recorded from Wâsagunäckank, yet the distinctions illustrate the various meanings that this story entails.

And so they remained there on the island, and Nānabushu breathed all over the island; and all the while larger grew the earth. Now, that was what he was doing for a long while. And when the sixth day was up, he then employed a caribou. ‘I would have you go round this earth.’

So away started the caribou. It was very old when it returned.

Then next he employed a wolf, and the wolf was very old when it came back. And then the game-folk that he had had on board were becoming very numerous, and the people too were themselves now increasing in number; and (the same was likewise true) of the birds. So Nānabushu called the game-folk by the names by which they were to be known; and also the birds that fly in the air, he named them by what they were to be called; and (it was) also the same with the fishes. And they also decreed how many moons there should be in one year, and also the

⁴²⁷ I chose to use the word “(re)creation” here to connote that the earth had already previously been created and that Anishinaabe people also maintain an oral and written tradition surrounding the initial creation of the earth that preceded the flood and (re)creation of turtle island.

⁴²⁸ Michelson and Jones, *Ojibwa Texts*, ed. Franz Boas, 2 vols., vol. VII, Part I. This story was told to Jones by John Pinesi at Fort William, Ontario.

number of directions from which the winds would blow, that from the vault of the sky in eight directions would the winds blow. So this was what he said: ‘So therefore, have I now finished the creation of everything from which the people will derive life.’

And that was the time they scattered to all parts of the earth.

While the first version that opens this chapter can be read as the measurement of territorial boundaries, this second version illustrates that this story has also been understood as the time when the animals were scattered across the earth, thus providing insight for the listener of where to find the resources from which “the people will derive life.” These two versions of this story when read together illustrate how both the territorial boundaries of the Anishinaabe people were demarcated on the earth as well as how resources (in the form of animals, birds, and fish) were spread across Anishinaabe territory. Thus, a mapping of the wolves, caribou, various fish and birds, can lend insight into the boundaries of Anishinaabe territory. While the movements of these animals have shifted throughout time, what is important to note from this story is that Anishinaabe peoples did have conceptions of their territorial boundaries, boundaries that were explicitly recorded in various stories. This understanding of territoriality, or how a nation becomes bound, imbedded in Anishinaabe stories, provides insight into Anishinaabe conceptions of nationhood.

A second feature of these stories that is critical for an understanding of Anishinaabe nationhood and land tenure lay in the animals themselves. The animals that Nenabozho sent out to measure the land were the same animals that had been floating on

the log (or raft) with him when the earth was flooded. These animals became crucial for the formation of the Anishinaabe clan system. This point is perhaps best understood through a third version of this story recorded by Nicholas Perrot in the later part of the seventeenth century.⁴²⁹

Perrot recorded the Anishinaabe (re)creation story, referencing Nenabozho as the Great Hare.⁴³⁰ In this version, the animals are referred to as the first beings, who “withdrew into the places which each kind found most suitable for obtaining therein their pasture or their prey.”⁴³¹ When these first beings died, Perrot explains, “the Great Hare caused the birth of men from their corpses, as also from those of the fishes which were found along the shores of the rivers which he had formed in creating the land.”⁴³² The people were born from these animals.

Heidi Bohaker, in her examination of the Anishinaabe clan system during the seventeenth century, notes that “[t]his story explains the origin of *nindoodemag*. people took as their identity that which they shared with their apical, or first, other-than-human ancestor. And, Perrot notes, by extension they gave the name of the *nindoodem* to their villages, in reference to ‘the animal which has given its people their being.’”⁴³³ Thus, this story can also be seen as a delineation of Anishinaabe nations to various geographic locations. Bohaker asserts as much, stating, “This oral tradition, recorded in the mid- to

⁴²⁹ Emma Helen Blair, *The Indian Tribes of the Upper Mississippi Valley and Region of the Great Lakes* (Cleveland The Arthur H. Clark Company, 1911). Nicholas Perrot was a fur-trader and interpreter in the Upper Country from 1665-1684. He also undertook several expeditions between 1685-1701 as an interpreter and ambassador for New France.

⁴³⁰ Nenabozho takes the form of a hare in a number of stories, as seen in the aforementioned *The Theft of Fire*.

⁴³¹ Blair, *The Indian Tribes of the Upper Mississippi Valley and Region of the Great Lakes*. 37. In Perrot’s version collected, it is a fox who runs the length of the land.

⁴³² Ibid., 37.

⁴³³ Heidi Bohaker, “*Nindoodemag*: The Significance of Algonquian Kinship Networks in the Eastern Great Lakes Region, 1600-1701,” *William and Mary Quarterly* 63, no. 1 (January 2006).

late seventeenth century, connects the inhabitants of a village with a particular other-than-human progenitor and with distinct geographic locales.”⁴³⁴

The story of the animals measuring the land can be understood as them literally running the length of the earth, but this story can also be understood as the dispersal of Algonquian peoples, grouped by their clans. Within the Anishinaabe language, *Anishinaabemowin*, the word for clan, *-doodem*, was cited by Henry Schoolcraft (a student of the Anishinaabe language and culture) as “Do Daim, the Chippewa term for village, that is, local group.”⁴³⁵ Anthropologist Ruth Landes cited *-doodem* as derivative from *odena*, meaning village (town in contemporary usage).⁴³⁶ Harold Hickerson also made the connection of village and clan in his ethnohistorical study of the Anishinaabe.⁴³⁷ Hickerson concluded that “[t]hese statements are highly suggestive of a condition in force at one time, but no longer, that the totem, or clan, was indeed the village, or local group, and vice versa.”⁴³⁸ This sentiment that the clan system was the village is supported in the research of Bohaker.

Hickerson asked what the Jesuits, in his examination of the *Jesuit Relations*, meant by “nation”? He found that “even with the imperfect knowledge the French had at that time of the upper Lakes area, a number of ‘nations’ is clearly perceived, *each occupying its own territory*.”⁴³⁹ Hickerson argued that few of the people referenced in the *Jesuit relations* exist today or have for the last one to two centuries.⁴⁴⁰

⁴³⁴ Ibid.: 32.

⁴³⁵ Harold Hickerson, *The Chippewa and Their Neighbors: A Study in Ethnohistory*, ed. George and Louise Spindler, *Studies in Anthropological Method* (New York: Holt, 1970), 47.

⁴³⁶ Ibid.

⁴³⁷ Ibid.

⁴³⁸ Ibid., 47.

⁴³⁹ Ibid., 43. Emphasis in original.

⁴⁴⁰ Ibid.

Hickerson's observation that these people no longer exist fails to take into account that Native nationhood, or perhaps more specifically Anishinaabe nationhood, took forms that was perhaps not easily understood by outside observers. Hickerson hinted at this by equating Jesuit perceptions of nations, nationhood based around the clan system, with the contemporary operation of the clan system among the Anishinaabe. He argued that "One feature that is striking about these 'nations' listed by the Jesuits and other early vintage is that the majority of them bear the names of animals, or referent to animals, some in the form of nicknames."⁴⁴¹ Hickerson further noted that "Hence, one is tempted to look upon those early groups, once separate from one another politically but linked through ritual practice and common stores of legends and myths, and in many instances prone to confederate... as clans." Yet, this analysis from Hickerson rests on the notion that the clan system replaced Anishinaabe political organization. While the clan system helped to facilitate political confederacies across national lines, it did not replace Anishinaabe political organization. Instead, the clan system operated alongside Anishinaabe political organization.

Hickerson concluded by saying that, "I will not at this point go into detail on the eventual fate of many of these groups, which I may now suggest were quasi-independent totems, or clan groups, except to say that, with a few notable exceptions, namely the Missisauga and perhaps some Amikwa (Amikouai), they gradually became absorbed through a process of merging that began on a large scale in 1670 by the Saulteur, later called Chippewa. By the nineteenth century, all but the Missisauga had lost independent status."⁴⁴² However, these group designations survived in the clan system, that operated

⁴⁴¹ Ibid., 44.

⁴⁴² Ibid., 44-45.

and continue to operate in Anishinaabe communities.⁴⁴³ Hickerson argues, “These groups are no longer local, nor have they been for two centuries and more; but scattered among multifarious village, band, and reservation communities the length and breadth of the vast Chippewa area....”⁴⁴⁴ Anishinaabe nations were not organized around a single clan by the nineteenth century. The clans, as Hickerson points out, had become interspersed across Anishinaabe nations. However, this did not mean that the clans did not continue to obtain an “independent status” of their own nor did it mean that all Anishinaabe people had emerged into one polity.

The clan system, along with other socio-political systems, created and encouraged kinship across nations. For the Anishinaabe, Bohaker found that “[T]hey conceived of themselves as related to and having kin obligations toward those who shared the same other-than-human progenitor being.”⁴⁴⁵ For example, someone of the bear clan saw themselves as related to all others whom belonged to the bear clan. This system of kinship carried with it certain responsibilities and obligations that helped the Anishinaabe work across national boundaries. Hickerson noted this obligation to clan relatives, finding, “... that totem mates considered themselves related even when blood relationships could not be traced (fictitious ancestor), and thus could not marry.”⁴⁴⁶ Kin obligations thus extended to the clan system.

⁴⁴³ Hickerson recognized this critical point. He stated “In the mid-nineteenth century, William Whipple Warren, A Chippewa historian and spokesman, himself half-Chippewa, described, in detail, ritual, political, and other functions of clans, which he also called ‘totems.’” Ibid., 46.

⁴⁴⁴ Ibid., 45.

⁴⁴⁵ Bohaker, “*Nindoodemag*: The Significance of Algonquian Kinship Networks in the Eastern Great Lakes Region, 1600-1701.” Bohaker, p.26

⁴⁴⁶ Hickerson, *The Chippewa and Their Neighbors: A Study in Ethnohistory*, 46.

As members of a shared clan were considered relatives, they had responsibilities and obligations to one another.⁴⁴⁷ Bohaker writes, “*Nindoodemag* shaped marriage and alliance patterns and facilitated long-distance travel; access to community resources was also negotiated through these networks.”⁴⁴⁸ She further elaborates that “*nindoodemag* operated as an important component of Anishinaabe collective identities, fulfilling similar social and political functions.”⁴⁴⁹ The importance of the clan system in creating alliances across national borders is illustrated in the records surrounding political and geographic events, the Anishinaabe asserting their clan identity in numerous ways. Bohaker asserts, “Through iconography Anishinaabe peoples communicated their collective sense of selves. ... Anishinaabe peoples inscribed images of icons and symbols on sacred scrolls, treaty documents, ceremonial and everyday objects, and their own bodies by tattooing and painting.”⁴⁵⁰

The clan system was and remains an important part of Anishinaabe social, spiritual, and political life. The clan system and the stories and practices connected to these animals ordered Anishinaabe life. It informed what it meant to be Anishinaabe, which was in turn reflected in Anishinaabe conceptions of nationhood. Yet, the clan system did not operate alone as an organizing principle for nationhood during the treaty era. The clan system was crucial for how Anishinaabe nations carried out political practices and alliances as kinship obligations laid out in the clan system facilitated alliances across nations. Nonetheless, by the nineteenth century, two important factors demonstrated that the clan system was not the exclusive organization of Anishinaabe

⁴⁴⁷ For further detail of how these responsibilities were carried out in the seventeenth century, see *Ibid.*, 47.

⁴⁴⁸ Bohaker, “*Nindoodemag*: The Significance of Algonquian Kinship Networks in the Eastern Great Lakes Region, 1600-1701,” 26.

⁴⁴⁹ *Ibid.*: 29.

⁴⁵⁰ *Ibid.*: 30.

nationhood. First, marriage regulations made it inevitable that the nation would be comprised of multiple clans. Indeed, the clan system was successful in creating intra-national and international alliances for this reason. And second, late eighteenth- and nineteenth-century treaties contained the signatures of members of multiple clans who marked the symbol of their clan onto the treaty. This is important in that it demonstrates that the nation was not exclusively a single clan and notes that the clan system continued as a vital function in Anishinaabe political practice even though it was not the exclusive identity that shaped Anishinaabe conceptions of nationhood.

Bohaker states that "... Anishinaabe peoples had an entirely different method for organizing their sociopolitical world than the Europeans they encountered. A crucial component of this world, as expressed through *nindoodemag*, centered on kin."⁴⁵¹ There has been a limited scholarship on the Anishinaabe clan system. While the clan system remained a critical component of Anishinaabe identity in the nineteenth century, marriage restrictions likely shifted the demography and geography of clans, though to this day some Anishinaabe communities still are predominated by one or more clans. While particular Anishinaabe bands were no longer exclusively or predominately associated with a single clan, the clan system continued to function in social, political and spiritual practices.

While the clan system shaped Anishinaabe identity, Anishinaabe peoples also had other communal identities.⁴⁵² People became known by other connections than the clan system. For example, Anishinaabe nations also became identified by the geographical features of their location. Bohaker states, "In addition to their *nindoodemag*, Anishinaabe

⁴⁵¹ Ibid.: 31.

⁴⁵² Ibid.: 36.

peoples had a sense of themselves as members of a small, extended family band who wintered together, as well as a large group of people who inhabited the same region or area (quarter) during the summer season.”⁴⁵³ Anishinaabe identity was shaped by their national identity as well as their relationships with other nations, primarily carried out along kin lines.

Kinship assisted in the development of shared areas of land as well as political, economic, and social alliances. Bohaker, in her study of the clan system, goes on to argue, “It is tempting to equate *nindoodem* identity expressed in these examples with a village, place, or people as a simple mark of distinction. However, given the complex spiritual world in which Anishinaabe peoples lived and their origin stories that lack Western notions of a human-animal divide, the concept of *nindoodem* transcends physical realms. The Great Lakes region is a political space that accommodated and still accommodates a more inclusive category of personhood.”⁴⁵⁴ This category of personhood was initially developed and can be understood through Anishinaabe conceptions of creation. Anishinaabe stories, traditions, and practices built from and informed initial conceptions of creation that structured and organized Anishinaabe relationships to the earth, animals, “other than humans” (e.g., *manidoowag* and *aadizookaanag*) and other people.

The clan system, like the numerous other inclusive categories, allowed the Anishinaabe to operate across national borders both political and territorial. Anishinaabe nations often functioned across these borders when it met their political goals in treaty-

⁴⁵³ Ibid. For a discussion of Sault Ste. Marie as one such gathering site that tied various groups to one another, also see Hickerson, *The Chippewa and Their Neighbors: A Study in Ethnohistory*, 39-41.

⁴⁵⁴ Bohaker, “*Nindoodemag*: The Significance of Algonquian Kinship Networks in the Eastern Great Lakes Region, 1600-1701,” 37.

making. In addition to the clan system, Anishinaabe nations had long established alliances with their neighbors, who were at times culturally and politically distinct nations. These relationships were often facilitated around practices that reinforced kinship, such as marriage and adoption.⁴⁵⁵ Bohaker notes that, “These alliances and networks offer important insights into the relationship between geographic space and collective identity; these insights can be understood by observing how people made use of and traveled through the land.”⁴⁵⁶ She finds that “[i]n the eastern Great Lakes region, the question of who had access to which land and to which resources, who could pass freely through a given space, and who was subject to taxes or tolls was answered by a complex nexus of kinship connections and alliances. People respected ownership and proprietorship rights of other groups.”⁴⁵⁷ While Anishinaabe conceptions of nationhood created a sense of unified identity bound to the group, the clan system and other kinship systems allowed Anishinaabe identity to be layered by a nexus of relationships that transcended national lines.

Bohaker maintains that “[t]hough Anishinaabe peoples recognized and respected the rights of specific groups to particular places and resources, degrees of access and claims to those places and resources were mediated through kinship networks and alliances.”⁴⁵⁸ The clan system becomes one way to regulate access and claims to places and resources. Kinship, whether based on the clan system or another form of identity, allowed Anishinaabe peoples to operate across political and territorial boundaries. While

⁴⁵⁵ For additional information regarding how these relationships were facilitated, with particular attention to the practice of the Feast of the Dead that tied various groups to one another, see Hickerson, *The Chippewa and Their Neighbors: A Study in Ethnohistory*.

⁴⁵⁶ Bohaker, “*Nindoodemag*: The Significance of Algonquian Kinship Networks in the Eastern Great Lakes Region, 1600-1701,” 42.

⁴⁵⁷ Ibid.

⁴⁵⁸ Ibid.

kinship networks facilitated alliances across national lines and informed Anishinaabe conceptions of nationhood, kinship was informed and shaped by the codes and conduct that equally ordered Anishinaabe nationhood: the stories, traditions, and political practices.

Patrolling National Boundaries: Constructing and (Re)constructing Anishinaabe Nationhood

Basil Johnston, in *the Manitous*, relates a narrative that surrounds Maudjee-kawiss, known as the beginning (or first) son and Nenabozho's brother.⁴⁵⁹ This narrative nicely demonstrates how Anishinaabe political and social identities, and thus kinship obligations, come to be layered. Much in the same way that the clan system functioned to lay out the social and political responsibilities that Native nations had to one another across the multinational terrain of the Great Lakes and Plains, this story demonstrates how kinship served to create political obligations across national lines.

Once Maudjee-kawiss entered into maturity and had lived out his responsibilities to look after his younger sibling, he patrolled the boundaries of the Anishinaabe homeland.⁴⁶⁰

‘With his reputation as a warrior, no one dared enter the homeland of his people to challenge Maudjee-kawiss or to risk incurring his wrath. Though keeping the borders safe was a full-time occupation, patrolling gave Maudjee-kawiss an opportunity to see the peoples who lived on lands

⁴⁵⁹ Johnston, *The Manitous: The Spiritual World of the Ojibway*.

⁴⁶⁰ Ibid., 20.

that adjoined the Land of the Anishinaubaek, learning about their customs, traditions, and practices.’

... ‘In his first venture north, he traveled until he came to a land where the trees were thin and scarce and the sun never set. He didn’t know it, but he was in the Land of the Bear Nation and had arrived just when the nation’s leaders were gathered in a conference.’

... ‘Maudjee-kawiss, an accomplished linguist, explained why he was in the Land of the Bear Nation and asked the leading men and women for permission to visit their land and to hunt and fish to feed himself while he was in their country. He hoped the Bear Nation would grant him permission and extend to him the same kind of welcome and hospitality that people of other nations had shown him. While in their land, Maudjee-kawiss would respect and abide by all their customs and laws and act as a guest.’

The leaders of the Bear Nation consulted one another to determine whether to allow Maudjee-kawiss to enter into their territory. Meanwhile, “an old man, whom Maudjee-kawiss took as the principal spokesman,” explained the meaning and purpose behind the beaded and quilled sashes that these chiefs wore, which had caught Maudjee-Kawiss’ attention. The chief explained that the sashes were the “historical records of the Bear Nation and that the symbols engraved on the sashes reminded the speakers of everything that was important to the people: ideas, beliefs, stories, rituals,

codes. Festivals, and the succession of events.”⁴⁶¹ Maudjee-kawiss, enamored with the sash, stole it and took off running. This led to his pursuit and one warrior caught up with Maudjee-kawiss. Maudjee-kawiss swiftly killed this great warrior among the Bear Nation.

The cries of the Bear people were sharp, deafening. ‘Kill him! Cut him up! Who’ll be the first?!’ And they closed in slowly, not rushing.

But louder, shriller still was the cry ‘Kegoh! [Don’t] Kegoh!’ uttered by the elders and repeated by the rest. The advancing warriors stopped, and the calls for the death of Maudjee-kawiss ended.

Instead of killing the stranger, even though he had wronged the family of the warrior and deserved death, the eldest elder proposed that the family of the deceased adopt Maudjee-kawiss. With the reluctant consent of the slain warrior’s family to adopt the Anishinaube warrior, the elders and leaders officially invited Maudjee-kawiss to be their new war leader, their new champion, and a member of their nation.⁴⁶²

By bringing Maudjee-kawiss into the Bear Nation, instead of killing him, he would carry certain responsibilities both to the family he had wronged and to the Bear Nation as a whole. Upon receiving the invitation to become a member of the Bear Nation, Maudjee-kawiss recognized the great responsibility this new duty would entail.

Because this was a difficult matter to settle and it meant that he would have to sacrifice some of his freedom, Maudjee-kawiss asked the elders of

⁴⁶¹ Ibid., 21-22.

⁴⁶² Ibid., 22-23.

the Bear Nation for time to think about their proposal. In asking for time, he assured his hosts that he was not rejecting their invitation. But he wanted to go home first to discuss the duties with his family and the elders, since acceptance would entail even longer absences from his mother, grandmother, and ancestral home. Even if he were to accept leadership of the Bear Nation, he would not sever his ties with his people.⁴⁶³

The Bear Nation gave the sash to Maudjee-kawiss to take home to his people, as he greatly coveted the sash. Maudjee-kawiss returned to his family and discussed his possible chieftainship. In addition, he told them of this sash and greatly urged the people to adopt this practice.

Johnston concludes by detailing how this story was connected with the origin of wampum belts and other recording devices among the Anishinaabe. However, this account can also provide insight into Anishinaabe conceptions of nationhood and land tenure. Maudjee-kawiss patrols the borders of the Anishinaabe nation. However, his position in the border region leads to his contact with other nations. His encounter with the Bear Nation as well as his inappropriate behavior, leads to bloodshed. Within Anishinaabe practice during the nineteenth century, a victim of warfare could not be laid to rest unless certain acts had been carried out, usually either the assailant “covering the dead” with elaborate gifts or by the wronged nation seeking revenge. A third practice that could allow the deceased to be laid to rest was for the adoption of the assailant into the other family or nation, as is seen with Maudjee-kawiss. Kinship systems, seen here in the

⁴⁶³ Ibid., 23.

form of adoption, allowed for bordering nations to create responsibilities to one another through kinship that transcended political and territorial lines.

In addition, as seen with Maudjee-kawiss, while he takes on obligations and responsibilities toward the Bear Nation, this does not supercede or sever his relationship and obligations to the Anishinaabe nation. Furthermore, the reference here to a Bear Nation can be read as literally a nation comprised of bears, or as a nation of peoples who are of the bear clan. Either of these interpretations provide insight into how stories served to lay out proper behavior and moral codes. Thus, this story illustrates how kinship facilitated the creation of alliances across political and territorial lines.

These expressions of nationhood are insightful to the contemporary struggles facing the Anishinaabe as the United States and Canada seek to limit and control how Anishinaabe nations exercise their nationhood. While no nation's conception of itself is ever fixed, an understanding of nineteenth-century expressions of nationhood can provide insight into what exactly Anishinaabe nations were trying to attain in their treaty relations with the United States and Canada. Anishinaabe conceptions of nationhood, however, differed from those of the United States and Canada. As a result of these different conceptions of nationhood, treaty commissioners sometimes conflated distinct groups into one. This was most evident in U.S. and Canadian misunderstanding of Anishinaabe political organization, when negotiators often assumed that one person could lead or control the whole. This greatly conflicted with Anishinaabe notions of leadership that

placed choice in the individual who was encouraged to act for the whole but ultimately controlled his or her own fate.⁴⁶⁴

Anishinaabe constructions of nationhood and how it played into leadership are evidenced in the words of Flatmouth as he sought to convey an understanding of Anishinaabe nationhood to U.S. treaty commissioners at the 1837 treaty negotiations. He stated, “My father, I shall say but little to you at this time. I am called a Chief. I am not a Chief of the whole nation, but only of my people or tribe. I speak to you now only because I see nobody else ready to do so. I do not wish to take any further steps about what you have proposed to us, until the other people arrive, who have been expected here. They have not yet come; and to do so before their arrival, might be considered an improper interference, and unfair towards them.”⁴⁶⁵

Numerous Anishinaabe nations were brought together for the 1837 treaty with the United States. The United States’ desires to a particular area of land motivated their interest to deal with these nations as a collective. Furthermore, the United States sought to deal with one national body and since the nations involved all recognized themselves as Anishinaabe people, the United States hoped they could be dealt with as one group. Flatmouth spoke against this notion of a single body, telling the commissioners that he was only the leader for his “people or tribe.” He further stated that he could not speak about the matters at hand until the other nations arrived as it could be construed as interference in their affairs. His words demonstrate that each band or nation was recognized by other Anishinaabe nations as having authority over their own affairs.

⁴⁶⁴ For a discussion on the distinctions between indigenous and western political systems, see Russell Barsh, “The Nature and Spirit of North American Political Systems,” *American Indian Quarterly* x, no. 3 (1986).

⁴⁶⁵ *Ratified Treaty No. 223 Documents Relating to the Negotiations of the Treaty of July, 29, 1837, with the Chippewa Indians*, NAMP RG 75, M T-494 Roll 3:F550.

Flatmouth elaborated on the distinctive rights of each nation and explicitly connected these rights to land. He asserted that “[t]he residence of my band is outside of the country which you wish to buy from us. After the people who live in that country shall have told you their minds, I will speak. If the lands you wish to buy were occupied by my band, I would immediately have given you my opinion.”⁴⁶⁶ Flatmouth’s words demonstrate that though these bands had a shared identity as Anishinaabe peoples, they also had distinct separate interests and rights as specific nations. He did not have the ability to speak about the land under debate because his nation resided outside of that territory.

While Flatmouth’s band may have had the rights to resources within that area or the ability to move through that area, these rights were dictated along a number of kin and socio-political relationships. His opinion and beliefs mattered because his nation would be affected by this cession of land, although he did not have the exclusive right to determine whether that land, or the resources within it could be ceded to the United States.⁴⁶⁷ Flatmouth’s speech demonstrates that while kinship facilitated access to resources and networks across nations, it was not the exclusive organizing principle of nationhood. If kinship had been the exclusive organizing principle, then Flatmouth, as an Anishinaabe person who had kin relationships to the other Anishinaabe bands, would have been able to speak to the questions raised by the U.S. treaty commissioner. If the lands under questions were the exclusive jurisdiction of his own people, then he would have immediately responded. However, they were not, so Flatmouth declared, “After listening to the people who we are expecting, and who will speak to you, I will abide by

⁴⁶⁶ Ibid.

⁴⁶⁷ Many Anishinaabe have understood the 1837 treaty to be exclusively a cession of timber.

what they say, and say more to you myself.”⁴⁶⁸ Flatmouth’s words are demonstrative of Anishinaabe expression of nationhood and land tenure in response to U.S. and Canadian treaty interests that often conflated or dismissed Anishinaabe constructions of nationhood and the rights and responsibilities that come with nationhood.

Throughout the treaty era, the Anishinaabe often expressed their nationhood and land tenure through a variety of means. Various Anishinaabe and other Native nations came together to enter into treaties. As a result, their separate, distinct interests were often dismissed or conflated. Yet, as seen in the words of Flatmouth, Anishinaabe bands were often careful to assert the separate interests of each nation when they entered into joint treaties. Concurrently, these alliances were often successful because the allied nations continuously asserted themselves as “one mind” in the face of U.S. and Canadian interests. However, these bands were also cautious to recognize the separate, distinct rights of each group. Furthermore, when a joint treaty no longer served the interests of the participating bands they often asserted their desires for separate treaties. These moments are equally informative about how the Anishinaabe were constructing and asserting their nationhood and land tenure.

“We are all one mind”: Negotiating Single Treaties with Multiple Nations

Throughout treaty negotiations with the United States and Canada, various nations were brought together to enter into a single treaty. Nonetheless, these various groups saw themselves as distinct, separate nations. Robert Surtees, in his treaty research report for the Robinson Treaties of 1850 between Anishinaabe bands and Canada,

⁴⁶⁸ Ibid.

recognized this important point. He argued that “[t]he Indians were not unified, however. Certainly there were some relations among those who occupied the long shoreline of the two upper Lakes, but the population of some 3,000 persons was nonetheless divided into about two dozen fairly distinct bands. Each had its own band organization with its own chief; and each group restricted its operations to a clearly defined area.”⁴⁶⁹

Nonetheless, Canada and the United States alike preferred to negotiate for tracts of land, tracts that often fell under the jurisdiction of numerous nations. The treaty record is replete with examples of the United States and Canada’s interest in dealing for land in the later treaty periods. While initial treaty-making revolved around the nations brought to the table, with the primary desire to establish “peace and friendship,” as U.S. and Canadian interests turned toward land acquisition, they often pursued treaties as a means to extinguish Indian title and sought to bring the native nations that had an interest in the desired land into the treaty. Morris, in his report surrounding Treaty One and Two, stated that “[h]e [Mr. Simpson] then sent messengers at once to all the Indians within certain bounds, asking to meet him here on the 25th day of July.”⁴⁷⁰ This fact has led some scholars to assume that these various bands held the land “in common.”

Indeed at times, various Native nations did assert overlapping interest to territories, but more often than not, First Nations were brought together to negotiate because their mutual interests in the tract of land under question were not held in

⁴⁶⁹ Robert J. Surtees. Treaty Research Report: The Robinson Treaties [online]. Treaties and Historical Research Centre, Indian and Northern Affairs Canada. Originally published in Ottawa by Indian and Northern Affairs Canada, 1986. Accessed 08-15-08: http://www.ainc-inac.gc.ca/pr/trts/hti/Trob/index_e.html, 3-4.

⁴⁷⁰ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 27.

common but instead were separate portions of land that fell within the boundaries of land desired by the U.S. or Canada. Thus, when various nations were brought together, they were often careful to assert the distinct interests of one another.

Anishinaabe interests in recognizing the individual rights of each band often delayed treaty-making. They often refused entering into negotiations until all parties were present. Canadian Treaty Commissioner Wemyss M. Simpson encountered this when he sought to negotiate Treaty One and Two with the Plains Cree and Anishinaabe. He stated in a letter to the Secretary of State in November 1871 that “At this preliminary conference Henry Prince [Chief of the Swampies and Chippewa] said that he could not enter upon any negotiations, as he was not empowered to speak or act for those bands of Indians not then present.”⁴⁷¹ Only one band was present and they refused to discuss the potential for a treaty until the other interested parties arrived.

Treaty commissioners sometimes mistook Anishinaabe refusal to negotiate as the result of internal tensions and conflict between Anishinaabe nations. Simpson, in the aforementioned letter regarding Treaty One and Two, believed that internal jealousy delayed the negotiations. He argued, “Amongst these, as amongst other Indians with whom I have come in contact, there exists great jealousy of one another, in all matters relating to their communications with the officials of Her Majesty; and in order to facilitate the object in view, it was most desirable that suspicion and jealousy of all kinds should be allayed.”⁴⁷² Suspicion and jealousy were also the reported delays that faced Treaty Three. However, the treaty journal for Treaty Three indicates that this “jealousy” was perhaps more involved than tribal tensions.

⁴⁷¹ Ibid., 35. Letter from Wemyss M. Simpson regarding Treaty One and Two.

⁴⁷² Ibid., 38.

Alexander Morris, in his report surrounding Treaty Three, wrote, “The principal cause of the delay was divisions and jealousies among themselves.”⁴⁷³ However, he went on to state, “The nation had not met for many years, and some of them had never before been assembled together. They were very jealous of each other, and dreaded any of the Chiefs having individual communications with me, to prevent which they had guards on the approaches to my house and Mr. Dawson’s tent.”⁴⁷⁴ While Morris read these actions, or at least reported them as, jealousy, it becomes clear in the communications throughout the treaty negotiations that jealousy was not the cause of delay. Instead, the various nations delayed negotiations and set up guards as a means to remain unified and act with “one mind.” This unified front made it more difficult for Canadian treaty commissions to utilize the various bands’ separate interests to divide them and weaken their bargaining power. This is evident, even to Morris, who in his treaty journal accounts tribal divisions and jealousy to the bands’ inability to select a higher chief, as many of the principle chiefs had passed away, reporting his fear that negotiations will have to be broken off if a conclusion was not reached quickly. It is not surprising that Morris would correlate any division or dispute as a mere matter of jealousy. He referenced the numerous nations involved as “the nation.” Thus, he saw or at least sought to deal with them as a single polity and not as numerous distinct nations who have a collective identity as Anishinaabe people yet still retained distinct, separate rights as individual nations.

Throughout the negotiations, it became evident in the words of Anishinaabe chiefs that the delay in negotiations resulted primarily from them agreeing on the terms

⁴⁷³ Ibid., 47.

⁴⁷⁴ Ibid., 47-8 & 54.

and conditions in which they were willing to negotiate the treaty. The Anishinaabe bands asserted their demands that had been agreed upon in council. Chief Ma-we-do-pe-nais stated "... in regard to the money that you have promised us yesterday to each individual. I want to talk about the rules that we laid down before. It is four years back since we have made these rules. The rules laid down are the rules that they wish to follow—a council that has been agreed upon by all the Indians."⁴⁷⁵ Chief Ma-we-do-pe-nais then laid out the demands of the council and assured the commissioners that all the nations were in agreement. Another chief followed by also stating, "We have now laid down the conclusion of our councils by our decisions. We tell you our wishes are not divided. *We are all of one mind*" who then presented a paper of their written demands.⁴⁷⁶

Presenting a unified front was critical for the Anishinaabe to maintain their power in the negotiations process. Morris was aware of this and sought to break down this united front. Governor Morris stated that he would have to report that the Anishinaabe refused to make a treaty, evidenced by their high demands.⁴⁷⁷ However, the Anishinaabe refused to be intimidated, with one chief replying, "You see all our chiefs before you here as one mind. We have one mind and one mouth. It is the decision of all of us; if you grant us our demands you will not go back sorrowful; we would not refuse to make a treaty if you would grant us our demands."⁴⁷⁸ Governor Morris attempted to disrupt this unity by stating, "I have learned that you are not all of one mind. I know that some of your interests are not the same—that some of you live in the north far away from the river; and

⁴⁷⁵ Ibid., 58.

⁴⁷⁶ Ibid., 60. Emphasis added.

⁴⁷⁷ Ibid., 62-63.

⁴⁷⁸ Ibid.

some live on the river, and that you have got large sums of money for wood that you have cut and sold to the steamboats; but the men in the north have not this advantage.”⁴⁷⁹

Morris reported that the council broke up and that he doubted whether an agreement could be made. He stated that “[t]he Rainy River Indians were careless about the treaty, because they could get plenty of money for cutting wood for the boats, but the northern and eastern bands were anxious for one.”⁴⁸⁰ He concluded that he would only treat with the interested parties willing to accept his terms, “leaving out the few disaffected ones.”⁴⁸¹ Morris was willing to alter his conceptions of Anishinaabe nationhood if it better served his interests. He recognized that the Anishinaabe consisted of a number of nations who, though having a collective identity based on shared language, stories, practices, and kin, also were a people whose individual nations had distinct interests based on their geographical location, history, group desires, and more. Anishinaabe nations were aware of this. They, too, chose the political path that was most advantageous for themselves. Alliances across Anishinaabe nations often allowed the Anishinaabe to present a unified front against the massive forces of the United States and Canada. However, when these alliances countered Anishinaabe desires, they sought separate treaties.

“We are buying it as a whole”: United States and Canadian Interest in (Re)Constructing Anishinaabe Nationhood.

⁴⁷⁹ Ibid.

⁴⁸⁰ Ibid., 65.

⁴⁸¹ Ibid.

Anishinaabe desire for separate treaties were often motivated by the same desires that drove Anishinaabe nations to assert “one mind.” Whether Anishinaabe nations chose to assert a unified front or desired a separate treaty, the cause was often the same: Anishinaabe nations recognized that they had separate, distinct interests and that they could not speak for the other bands. This can be seen in the negotiations surrounding the October 2, 1863 “Old Crossing” treaty with the Pembina and Red Lake bands of Anishinaabe.

Much like Treaty One and Two and Treaty Three, treaty negotiations with U.S. Treaty Commissioner Alexander Ramsey concerning the Red River Valley were delayed as the Pembina band had not yet arrived. However, this delay was not met with invocations from Ramsey of jealousy between the bands. Instead, he reported that, “... it was determined to postpone the opening of negotiations till they came in, as I deemed it important, for obvious reasons of policy and convenience, to unite both communities in one treaty, and avoid, if possible, the separate negotiations to which it was found they were inclined.”⁴⁸² Indeed Ramsey throughout the negotiations pushed for a single treaty. The Red Lake and Pembina bands responded to U.S. desires by refusing to interfere in one another’s business.

Pembina Chief Red Bear asserted that his band and the Red Lake band should be understood as distinct groups. He stated that “I want to wait until the Red Lakers get through.”⁴⁸³ Ramsey responded with encouragement for a treaty, under whatever means. He stated, “This is the first time he has said to me he wished to do business separate from

⁴⁸² President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.7, RG 46.

⁴⁸³ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.32, RG 46.

the Red Lakers. I should prefer that they would work jointly with the Red Lakers; but I don't care how they go at it, so they do something, and do it at once.”⁴⁸⁴ As Pembina Chief Little Chief expressed that they would not take up business until the Red Lake band had concluded, Ramsey responded by expressing that the United States was interested in buying a piece of land and wanted to know the costs for the whole. He stated that “[w]e do not recognize any order of precedence in this thing. We are buying it as a whole, and want to know what they offer in order to know what to do about it.”⁴⁸⁵

U.S. interests in dealing with the separate nations together pertaining to specific tracts of land countered Anishinaabe interest in non-interference of other Anishinaabe nations and their rights to their own lands. Little Chief expressed as much to Ramsey, stating that “[t]he reason that I have not spoken heretofore is that I thought I would be in the way of the Red Lakers.”⁴⁸⁶ He assured Ramsey that his nation would also engage in negotiations once the Red Lake nation had finished. Governor Ramsey acceded to their desires for separate treaties and met with the Red Lake and Pembina nations individually.

Interestingly, in negotiations with the Pembina band, Ramsey, inquiring about the boundaries between the two nations, learned that until recently the Pembina had “held the country in common with the Red Lake Indians; but when they assembled at the Grand Forks last year to make a treaty, they had agreed upon a dividing line.”⁴⁸⁷ While these negotiations did not discuss the relationship that facilitated this shared territory, kinship

⁴⁸⁴ Ibid.

⁴⁸⁵ Ibid.

⁴⁸⁶ President's message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.33, RG 46.

⁴⁸⁷ President's message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.36, RG 46.

likely encouraged equal access to the area.⁴⁸⁸ These divisions likely proved beneficial for each band, as Ramsey met the Pembina with accusations surrounding depredations that the Red Lake band was able to disconnect themselves from, as I will discuss in Chapter Four. However, the Red Lake band had problems of their own, as division arose between Chief Moose Dung and May-dwa-gun-on-ind regarding whether to enter into a treaty at all. While the Red Lake Anishinaabe shared a collective national identity, this by no means ensured that internal divisions would not arise in the treaty process. Rarely, if ever, was full consensus attained on whether and how to proceed in a treaty with the United States and Canada.

U.S. and Canadian interest in making a treaty for a piece of land as opposed to dealing with individual bands was met by many responses. Some bands used this to their advantage, aligning their demands and presenting a unified front. Others sought separate treaties and refused to negotiate as one body. In some cases, U.S. and Canadian treaty officials encouraged the bands presenting a unified voice. In the July 29, 1837 treaty, Governor Dodge reported "... that so many bands of their nation, & from such remote parts of it, had never before, he believed met together, & that he wished them now to advise with each other, and unite and act together, as one people." Recognizing the separation of bands, he continued "that altho' they were of different bands, they belonged to the same great nation, and their interests were in common..."⁴⁸⁹ Dodge conflated the collective identity of Anishinaabe people to equate to a single, unified nation. Indeed, Anishinaabe recognized their connections as a people, yet they also expressed their

⁴⁸⁸ Patricia Albers and Jeanne Kay, "Sharing the Land: A Study in American Indian Territoriality," in *A Cultural Geography of North American Indians*, ed. Thomas Ross and Tyrel G. Moore (Boulder: Westview Press, 1987).

⁴⁸⁹ *Ratified Treaty No. 223 Documents Relating to the Negotiations of the Treaty of July, 29, 1837, with the Chippewa Indians*, NAMP RG 75, M T-494 Roll 3:F557.

distinctions. The Wind references “the different tribes of my nation”⁴⁹⁰ while Flatmouth references “my people, & those of the whole nation, and all others present.”⁴⁹¹ The complex nexus of kinship relations allowed Anishinaabe people to operate across national lines, but it often also motivated the United States and Canada to consolidate Native peoples and interests into a single body when it served their interests.

The Anishinaabe and Odaawa nations that were party to the Treaty of 1836 with the United States nicely articulated the distinction between kin relations and nationhood in a letter to the President. The United States wanted to relocate the Anishinaabe among another band of their relations, the Chippewa west of Lake Superior. To this, they responded,

The Chippewas of that remote northern quarter, are separate from us, by an average distance of about [nine hundred miles], all of which is [however] occupied by Chippewas. They hold separate government over their respective villages, have separate interests, and are excluded wholly from the benefits of the treaty, as they [possessed] no part of the land sold it would be injustice to them, to [] or [] that they should [resign] for our residence, a part of their large country, on the headwaters of the Mississippi without an adequate compensation for it. Besides which, they are in an impoverished situation having barely the means of procuring their subsistence by hunting from year to year.⁴⁹²

⁴⁹⁰ *Ratified Treaty No. 223 Documents Relating to the Negotiations of the Treaty of July, 29, 1837, with the Chippewa Indians*, NAMP RG 75, M T-494 Roll 3:F551.

⁴⁹¹ *Ratified Treaty No. 223 Documents Relating to the Negotiations of the Treaty of July, 29, 1837, with the Chippewa Indians*, NAMP RG 75, M T-494 Roll 3:F550.

⁴⁹² *Ratified Treaty No. 201 Documents Relating to the Negotiation of the Treaty of March 28, 1836, with the Ottawa and Chippewa Indians*, NAMP RG 75, M T-494 Roll 3:F371. Also see President’s message,

The Anishinaabe and Odaawa conclude their letter by encouraging the United States to negotiate with the Anishinaabe bands west of Lake Superior for the purchase of land for them to relocate to.⁴⁹³

“We do not need any line”: Nationhood and the “Fixing of Borders”

Nationhood is often, though not always, connected to territorial boundaries. The United States and Canada had an interest in establishing and fixing the borders of various First Nations, often emphasizing that fixed boundaries would resolve numerous conflicts that occurred “on the ground.” Yet, as Anishinaabe conceptions of nationhood differed greatly from the United States and Canada, the motivations of these two states to establish and fix Anishinaabe boundaries unearths these different notions of nationhood. These attempts to set Anishinaabe boundaries often resulted in tribal assertions of their kinship relations with other nations that would be affected by these arbitrary lines. These expressions demonstrate how kinship operated across national lines while simultaneously binding the nation in their obligations to others.

In August 1825 numerous First Nations were assembled at Prairie du Chien “to establish boundaries for the purpose of promoting peace among those tribes of Indians.”⁴⁹⁴ United States motivation for facilitating the Treaty of Prairie du Chien was conveyed in the words of General Clark as he opened up the proceedings that brought together numerous nations that had been primarily engaged in warfare with one another

April 1, 1836; *Treaty of March 28, 1836 with the Ottawas and Chippewas*; Indian Treaty Files (SEN 24B-C6); RG 46. All words placed in brackets indicate that the transcription is uncertain.

⁴⁹³ *Ratified Treaty No. 201 Documents Relating to the Negotiation of the Treaty of March 28, 1836, with the Ottawa and Chippewa Indians*, NAMP RG 75, M T-494 Roll 3:F372.

⁴⁹⁴ *Ratified Treaty No. 139 Documents Relating to the Negotiation of the Treaty of August 19, 1825, with the Sioux, Chippewa, Sauk and Fox, Menominee, Iowa, and Winnebago Indians and part of the Ottawa, Chippewa, and Potawatomi of the Illinois Indians*, NAMP RG 75, M T-494 Roll 1:F712.

(particularly the Anishinaabe and the Dakota). Clark stated, “Children, Your great Father has not sent us here to ask anything from you—we want nothing, not the smallest piece of your land, not a single article of your property—we have come a great way to meet you for your own good and not for our benefit.”⁴⁹⁵

Contrary to Clark’s words, the United States had an explicit interest in preventing warfare and establishing boundaries between these various nations. The establishment of boundaries would expedite U.S. land acquisition by parceling land and providing a map that the U.S. could utilize to gain land in the cession treaties that would follow. In addition, establishing peace between these nations would encourage U.S. settlement west, as expansion had been slowed by U.S. citizens’ fear of these “warring tribes.” Indeed, this is somewhat evidenced in Clark’s following words. He argued, “Your Great father has been informed that war is carried on among his red children. The Socs Foxes & Chippewa on the one side and the Sioux on the other; and that the wars of some of you, began before any of you now living were born.” He went on to argue, “Your great father thinks there is no cause for a continuation of war between you. There is land enough for you to live and hunt on and animals enough for your support.”⁴⁹⁶ While the United States was motivated by their desires for westward expansion, the 1825 Treaty at Prairie du Chien was in many ways dramatically different from other treaties of this time and lends insight into U.S. motivations for “fixing” boundaries between Native nations as well as Anishinaabe response to this colonial imposition.

⁴⁹⁵ *Ratified Treaty No. 139 Documents Relating to the Negotiation of the Treaty of August 19, 1825, with the Sioux, Chippewa, Sauk and Fox, Menominee, Iowa, and Winnebago Indians and part of the Ottawa, Chippewa, and Potawatomi of the Illinois Indians*, NAMP RG 75, M T-494 Roll 1:F724.

⁴⁹⁶ *Ibid.*

General Clark, early in his opening speech connected warfare with a lack of boundaries. He argued, “Your hostilities have resulting in a great measure from you having no defined boundaries established in your county your tribes do not know what belongs to them & your people thus follow the game into the lands claimed by other tribes.”⁴⁹⁷ However, much of the warfare that had been carried out between these nations resulted from having clear and explicitly defined boundaries. The Anishinaabe did not have an extensive shared identity with the Dakota based on kinship, language, and customs. Some Anishinaabe and Dakota nations had kin relationships that were facilitated primarily through adoption and marriage, much like the story of Maudjee-kawiss. Indeed, Anishinaabe and Dakota nations often entered into temporary peace agreements in some of the winter months to allow for hunting across a “shared” or border region.⁴⁹⁸ Nonetheless, warfare was an active means for nations to increase their land base and push their neighbors, in this case, westward. In the same ways that kinship would allow for the establishment of alliances across national lines, kinship obligations to the deceased perpetuated Native warfare across this region and often disrupted social, spiritual, economic, and political alliances across these nations. Thus, warfare between these tribes had less to do with hunting excursions into neighboring territories and more to do with kin responsibilities. Indeed, Anishinaabe and Dakota nations often entered into temporary peace agreements in some of the winter months to allow for hunting across a “shared” or border region. However, Clark attempted to argue that “[t]his cause will be

⁴⁹⁷ *Ratified Treaty No. 139 Documents Relating to the Negotiation of the Treaty of August 19, 1825, with the Sioux, Chippewa, Sauk and Fox, Menominee, Iowa, and Winnebago Indians and part of the Ottawa, Chippewa, and Potawatomi of the Illinois Indians*, NAMP RG 75, M T-494 Roll 1:F726.

⁴⁹⁸ Albers and Kay, "Sharing the Land: A Study in American Indian Territoriality."

removed by the establishment of boundaries which shall be known to you & which boundaries we must establish at this council fire.”⁴⁹⁹

The Anishinaabe, and indeed the other tribal nations joined at this conference, responded in numerous ways to Clark’s desire to establish boundaries. During the second day of negotiations, many chiefs chose not to respond. Nonetheless, Anishinaabe Chief The Wind responded to Clark’s request by stating, “I wish to live in peace—But in running marks round our country or in giving it to our enemies it may make new disturbances and breed new wars.”⁵⁰⁰ Another Anishinaabe chief, Shimgaubaw’ Assin, echoed this sentiment.⁵⁰¹ Governor Cass responds to these chiefs concerns for establishing boundaries by asserting the President’s willingness to ensure peace between these nations with force if necessary.

Some Anishinaabe chiefs were willing to demarcate boundaries for their lands. Pee-a-guck, an Anishinaabe chief from St. Croix River, outlined his boundaries, stating, “This is the land I claim for myself & my children.”⁵⁰² He followed his speech by presenting a map on birch bark that delineated his peoples’ territory. Yet, others were not willing to acquiesce to U.S. impositions on Anishinaabe nationhood that sought to establish fixed boundaries. White Cloud, an Iowa chief, stated, “My Fathers, I claim no

⁴⁹⁹ *Ratified Treaty No. 139 Documents Relating to the Negotiation of the Treaty of August 19, 1825, with the Sioux, Chippewa, Sauk and Fox, Menominee, Iowa, and Winnebago Indians and part of the Ottawa, Chippewa, and Potawatomi of the Illinois Indians*, NAMP RG 75, M T-494 Roll 1:F726.

⁵⁰⁰ *Ratified Treaty No. 139 Documents Relating to the Negotiation of the Treaty of August 19, 1825, with the Sioux, Chippewa, Sauk and Fox, Menominee, Iowa, and Winnebago Indians and part of the Ottawa, Chippewa, and Potawatomi of the Illinois Indians*, NAMP RG 75, M T-494 Roll 1:F727.

⁵⁰¹ *Ratified Treaty No. 139 Documents Relating to the Negotiation of the Treaty of August 19, 1825, with the Sioux, Chippewa, Sauk and Fox, Menominee, Iowa, and Winnebago Indians and part of the Ottawa, Chippewa, and Potawatomi of the Illinois Indians*, NAMP RG 75, M T-494 Roll 1:F728-9. He stated “My Fathers have taken a great deal of trouble to collect their Red children together and to keep them in peace. But I am afraid it will not be good. The Young men are bad & hard to govern tho there are some respectable chiefs among them.”

⁵⁰² *Ratified Treaty No. 139 Documents Relating to the Negotiation of the Treaty of August 19, 1825, with the Sioux, Chippewa, Sauk and Fox, Menominee, Iowa, and Winnebago Indians and part of the Ottawa, Chippewa, and Potawatomi of the Illinois Indians*, NAMP RG 75, M T-494 Roll 1:F731.

land in particular. The land I live on is enough to furnish my women & children—I go upon the lands of our friends the Socs & Focs—we alternate go upon each others land—why should we quarrel about land when we get enough on what we have.”⁵⁰³ His words demonstrate the complex relationship that existed between nationhood and land tenure that did not easily fit into U.S. desires to establish boundaries. White Cloud specifically connected land rights to common ancestry, stating, “The Socs Foxs Winnebagos Menomines Chippawas & Pattawatomies are links of the same people—I speak for them as well as for myself My Fathers you see people here apparently of different nations but we are all one. You Socs, Foxes, Winnebago & Menomines—we are one people—we have but one council fire & eat out of the same dish.”⁵⁰⁴ White Cloud utilized the kinship relationships in operation across these nations to resist U.S. interference.

Pumpkin, another Iowa chief, elaborated on the words of White Cloud, stating, “My heart is in the right place—I live with my relations the Socs & Foxes—I have no reason to deny my Brethern.”⁵⁰⁵ He followed up these words by presenting a map drawn by White Cloud. The record does not discuss this map with any detail. This map may encompass the land of these various nations or could be particular claims of the Iowa nation. However, White Cloud and Pumpkin’s speeches are followed by speeches from Winnebago Chief Co-ra- mo nse, who declare that some portions of land are held in

⁵⁰³ *Ratified Treaty No. 139 Documents Relating to the Negotiation of the Treaty of August 19, 1825, with the Sioux, Chippewa, Sauk and Fox, Menominee, Iowa, and Winnebago Indians and part of the Ottawa, Chippewa, and Potawatomi of the Illinois Indians*, NAMP RG 75, M T-494 Roll 1:F723.

⁵⁰⁴ *Ratified Treaty No. 139 Documents Relating to the Negotiation of the Treaty of August 19, 1825, with the Sioux, Chippewa, Sauk and Fox, Menominee, Iowa, and Winnebago Indians and part of the Ottawa, Chippewa, and Potawatomi of the Illinois Indians*, NAMP RG 75, M T-494 Roll 1:F735.

⁵⁰⁵ *Ratified Treaty No. 139 Documents Relating to the Negotiation of the Treaty of August 19, 1825, with the Sioux, Chippewa, Sauk and Fox, Menominee, Iowa, and Winnebago Indians and part of the Ottawa, Chippewa, and Potawatomi of the Illinois Indians*, NAMP RG 75, M T-494 Roll 1:F735-6.

common and claimed by multiple groups present and that it would be difficult to divide it.⁵⁰⁶ Co-ra- mo nse followed this speech up with a brief discussion of individual ownership of lodges and gardens and elaborates that the rivers were common property of all these nations and were not the exclusive use of only one.⁵⁰⁷ While he spoke of their common rights to areas, access and regulation of these territories were negotiated through alliances across these nations. These nations simultaneously had distinct, separate interests in land as well as “shared territories.”⁵⁰⁸ Land tenure was a complex set of practices and regulations carried out at the individual, local, national, and international level. This is evident in the varied assertions of land tenure laid out throughout the treaty era. The Anishinaabe recognized and expressed the rights of an individual or family to a specific tract of land, group rights, and areas that were “shared” with numerous nations, along with other articulations of land tenure.

Across and within Native nations, multiple forms of ownership and usufructuary rights existed and access was determined through a nexus of relationships. This was exemplified in the words of Gambler, an Odaawa chief, who spoke about the Three Fires confederacy. He stated, “We Three nations Chippewa Pottawatomies and Ottawas have but one council fire—My Fathers You spoke about Lands we travel about in search of

⁵⁰⁶ *Ratified Treaty No. 139 Documents Relating to the Negotiation of the Treaty of August 19, 1825, with the Sioux, Chippewa, Sauk and Fox, Menominee, Iowa, and Winnebago Indians and part of the Ottawa, Chippewa, and Potawatomi of the Illinois Indians*, NAMP RG 75, M T-494 Roll 1:F736. Co-ra mo nse states, “I have a small section of country of which I wish to tell you. It is where I was born & now live. It commences at our valley on Lake Winnebago. The lands I claim are mine & the nations here know it is not only claimed by us but by our Brothers the Socs & Foxed Menomines Iowas Illinois & Sioux they have owned it in common—it would be difficult to divide it- it belongs as much to one as the other—“ (at 737) “My Fathers I did not know that any of my relations had any particular Lands- it is true everyone owns his own lodge & the grounds he may cultivate—I had thought the Rivers were the common property of all Red Skins & not used exclusively by any particular nation.” (Underlined sections were difficult to read thus this transcription may be in error).

⁵⁰⁷ *Ratified Treaty No. 139 Documents Relating to the Negotiation of the Treaty of August 19, 1825, with the Sioux, Chippewa, Sauk and Fox, Menominee, Iowa, and Winnebago Indians and part of the Ottawa, Chippewa, and Potawatomi of the Illinois Indians*, NAMP RG 75, M T-494 Roll 1:F736.

⁵⁰⁸ Albers and Kay, “Sharing the Land: A Study in American Indian Territoriality.”

[Game]⁵⁰⁹—we also have lands. I never yet heard from my ancestors that any one had an exclusive right to the soil—my chiefs are now in council on that subject and their minds will be made known to you. You (addressing Gov. Cass) know the situation of our Lands & that it would be difficult to divide them- you know we have always listened to your council.”⁵¹⁰ When pressed on which territories each claimed, the Native nations gathered at Prairie du Chien were able to elaborate on their territorial boundaries. Dispute primarily rested along border regions, buffer zones between the various nations, that were accessed by both nations.⁵¹¹ The difficulty in establishing boundaries expressed by chiefs throughout the Prairie du Chien negotiations perhaps more so rests in the system of fixing boundaries on maps that ignored the kinship and socio-political systems in place that enabled various Native nations to exercise a land tenure that, though highly regulated, was flexible to the obligations and responsibilities that kinship carried across national boundaries.

The Menominee Chief, Grisly Bear, spoke about kinship obligations when he discussed his claim to land. He stated, “But it’s so small that we can’t turn round without touching our neighbors. But we travel about a great deal and go where there is game among the Nations around—who do not restrain us from doing so.”⁵¹² His words demonstrate that the Menominee recognized that their neighbors could prevent them from accessing game and resources, but they did not. Kinship and socio-political obligations were addressed throughout various treaty negotiations when the treaty of Prairie du Chien

⁵⁰⁹ Transcription uncertain; might be “Same.”

⁵¹⁰ *Ratified Treaty No. 139 Documents Relating to the Negotiation of the Treaty of August 19, 1825, with the Sioux, Chippewa, Sauk and Fox, Menominee, Iowa, and Winnebago Indians and part of the Ottawa, Chippewa, and Potawatomi of the Illinois Indians*, NAMP RG 75, M T-494 Roll 1:F737.

⁵¹¹ Albers and Kay, "Sharing the Land: A Study in American Indian Territoriality."

⁵¹² *Ratified Treaty No. 139 Documents Relating to the Negotiation of the Treaty of August 19, 1825, with the Sioux, Chippewa, Sauk and Fox, Menominee, Iowa, and Winnebago Indians and part of the Ottawa, Chippewa, and Potawatomi of the Illinois Indians*, NAMP RG 75, M T-494 Roll 1:F739.

was referenced. However, the kinship and socio-political obligations that motivated some tribal nations to allow access into their territories also served to prevent access into their lands and often led to warfare, most prevalently seen with the Dakota.

The establishment of a line between the Anishinaabe and the Dakota at Prairie du Chien did not end all previous troubles, as U.S. treaty commissioners had suggested it would. Various Anishinaabe chiefs raised concerns regarding these boundaries and their relations with the Dakota after the Treaty of Prairie du Chien was signed. During the August 5, 1826 treaty negotiations, an unnamed chief stated, “I, and these for whom I speak, thank you Father that the line between us and the Sioux is Established. The Sioux also, rejoice that this difficulty is settled. Father The tomahawk is buried by us in the ground.”⁵¹³ This chief also went on to state, “But I find it hard to bury it in my heart.”⁵¹⁴ The chief further discussed the treatment faced by his people at the hands of the Dakota, distraught that a young warrior had his gun broken in his face on his own land by a Dakota. Another chief followed by stating, “Father When I was at the city beyond the Hills, much was said about peace. But between the Sioux and us, there seems to be no peace.”⁵¹⁵ He continued, “We all reflect much on the line.”⁵¹⁶ His words demonstrate that the United States desire to fix Anishinaabe and other Native nations’ boundaries had not achieved its desired outcome. Making lines onto the land would not eradicate tribal tensions nor resolve their grievances against the United States and Canada.

Other chiefs at this 1826 treaty negotiation expressed their hope in the creation of these boundaries. Chief Maw-zaw-zid stated, “Father We thank our Great Father, that he

⁵¹³ Unnamed Chief, *Ratified Treaty No. 145 Documents Relating to the Negotiation of the Treaty of August 5, 1826, with the Chippewa*, NAMP RG 75, M T-494 Roll 1:F861.

⁵¹⁴ Ibid.

⁵¹⁵ Ibid.

⁵¹⁶ Ibid.

has been pleased to put our lands in a body. So are the hearts of those rejoiced, whom we call our enemies.”⁵¹⁷ Chief Maw-zaw-zid explicitly connected his hope in these boundaries with Anishinaabe relations with the United States. He continued, “We bid the advancement and prosperity of the American nation, welcome to our country. We hope the Great Spirit will put strength into their arms, that they may put them out and take us by the hand.”⁵¹⁸ Maw-zaw-zid’s words, however, may be more indicative of his hope and desire in the treaty relationship his nation was establishing with the United States. Anishinaabe interest in the creation and maintenance of an alliance or mutual beneficial relationship with the United States likely motivated many nations to acquiesce to or placate U.S. interests in fixing boundaries. Kinship would continue to allow the Anishinaabe to operate across these national lines as it had before.

Much like the Treaty of Prairie du Chien, U.S. Treaty Commissioners Cass and McKenney urged the establishment of permanent boundaries between the Anishinaabe and Menominee in the treaty of August 11, 1827. They stated that “We want to do this, that they may know their own country & that there may be no dispute between them nor between their children, nor between their children’s children...”⁵¹⁹ They went on to declare that “[w]e wish therefore that a few of the old Chiefs of each nation would meet each other & talk the matter over & settle where the line shall be. The same great Spirit made you all & put you on the same island together & you ought to be able to agree about the division.”⁵²⁰ A Ho-Chunk chief responded to this request by laying out his

⁵¹⁷ *Ratified Treaty No. 145 Documents Relating to the Negotiation of the Treaty of August 5, 1826, with the Chippewa*, NAMP RG 75, M T-494 Roll 1:F862.

⁵¹⁸ *Ibid.*

⁵¹⁹ *Ratified Treaty No. 148 Documents Relating to the Negotiation of the Treaty of August 11, 1827, with the Chippewa, Menominee, and Winnebago Indians*, NAMP RG 75, M T-494 Roll 2:F5.

⁵²⁰ *Ibid.*

conception of creation and its relationship to nationhood and kinship. He argued that “[s]ince the Great Spirit first placed us upon this earth, the Menomonies our brothers, the Chippeways & ourselves have always hunted together peaceably. We hope still to do so.”⁵²¹ While kinship did not always serve as the exclusive organizing principle of political organization and nationhood, its ability to transcend national lines also enabled these international alliances to cement into a more permanent collective group identity. The Ho-Chunk chief elaborated on how kinship had enabled these nations to operate as one. He stated that:

The Father of Life made the Earth for the Indian to roam upon—that the Chippeways & Menomonies & Winibagoes might wander wherever they pleased. Since the time that we can first remember the fires of the Chippeways & Menomonies & Winibagoes have been one fire—We have always held each other by the hand. We appeal to the ancient traders to say whether they have not at all times hunted upon our land, whether they have not found us hunting together as brothers. And we hope that we, the Menomonies, Chippeways, & Winebagos will continue to live together like three brothers as we have hither to lived. *We do not need any line.*⁵²²

The confederacy of numerous nations is perhaps best understood through an examination of the United Nation of Chippewa, Ottawa, and Pottawatomie. Their treaty negotiations with the United States unearth how political identity became layered through the formation of confederacy.

⁵²¹ *Ratified Treaty No. 148 Documents Relating to the Negotiation of the Treaty of August 11, 1827, with the Chippewa, Menominee, and Winnebago Indians*, NAMP RG 75, M T-494 Roll 2:F17.

⁵²² *Ibid.* Emphasis added.

Stealing Fire, Scattering Ashes: Anishinaabe Confederacy and the Myth of “common ownership”

The story, *The Theft of Fire*, which opens this dissertation, lends critical insights into how alliances and confederacies mark a nation. Nenabozho was being brought up by his grandmother.

And so by and by he said to his grandmother: “Don’t you know of a place where there are some people.”

“Yes,” he was told by his grandmother. “In yonder direction on the farther shore of the sea are some people.”

“I am curious to know if they do not possess fire.”

“Yes,” he was told by his grandmother; “truly, they do possess some fire.”⁵²³

Upon this revelation, Nenabozho requested that he could go try to fetch some of that fire. His grandmother warned him that it would be a difficult task that he would likely not succeed in. But Nenabozho was determined to go.

Now, this was what he then said afterwards: “I will that the sea shall freeze, as thick as the birch-bark covering of the lodge so let this sea freeze.”

It was true that it happened according as he had said.

“Now, this is the way I shall look,” he said. “I will that I become a hare.”

So accordingly that truly was the way he looked.⁵²⁴

⁵²³ Michelson and Jones, *Ojibwa Texts*, ed. Franz Boas, 2 vols., vol. VII, Part I, 7.

So Nenabozho had conjured a method for acquiring this fire. There across the water, an old man sat constantly working on his net. As this old man had two daughters, Nenabozho thought he would transform himself into a hare, knowing those young girls would take to him in this form. And with this thought, he willed it to be. Then he thought that the lake would freeze and thus it was so. Across this lake he ran. He willed those young girls to come find him and to take him into their home to have this bunny as their plaything. And so it was. These young girls placed Nenabozho by the fire so that he would dry. Their loud giggling alarmed their father, who came to investigate what his daughters were up to.

*“Beware!” They were told by their father. “Have you not heard of the manitous how they were born? Perhaps this might be one of them.”*⁵²⁵

When he heard these words, Nenabozho willed a spark of that fire to jump onto him and so it was. And thus, he leaped out the window and began running across the frozen lake. The old man tried to go after him but to no avail. Nenabozho ran and ran and returned home but was much on fire. He pleaded to his grandmother to rub this fire off of him and she did. And so they had fire. Yet, Nenabozho was marked by this quest. His white fur had turned brown, scorched from carrying this fire across the lake. And so Nenabozho proclaimed, “Therefore such shall be the look of the hare in the summer-time.”⁵²⁶

The Theft of Fire can shed light on Anishinaabe assertions of nationhood as well as how they perceived the practice of treaty-making. As outlined in the introduction, a critical feature of this story is the marking of the hare by the theft of fire. On one level, this component of the story serves to explain animal features. It explains why hares are

⁵²⁴ Ibid., 9.

⁵²⁵ Michelson and Jones, *Ojibwa Texts*, 11.

⁵²⁶ Ibid., 15.

brown in the summer and white in the winter. However, the effects of Nenabozho's appearance as a hare and the marks left as a result of his theft of the fire inform Anishinaabe political discourse that invokes the symbolism of fire. While fire serves to represent nationhood and treaty-making, the hare illustrates how nations are defined and are in turn marked by their treaties and alliances. As a nation enters into an alliance or treaty, they retain their distinct identity in the same way that the hare retains his white fur in the winter. Nonetheless, a nation is also marked or shaped by its alliances with other nations in the same way that the hare in this story is marked by his quest for fire, having brown fur in the summer. Understood in these ways, *The Theft of Fire* reveals a worldview that both influenced and informed Anishinaabe social, spiritual, and political discourse throughout the treaty era.

The symbol of fire has been utilized within Anishinaabe political discourse to reference both the nation and a council. The symbolism of fire to connote a nation can be seen in the application of the name "Three Fires Confederacy," referencing a confederacy consisting of the "Chippewas, Odawa, and Pottawatommie." Each nation is seen as a fire, hence the use of "Three Fires" to demarcate their alliance. This reflection of fire as a nation as well as an alliance (obtained through a treaty with one another) between nations was expressed in the 1846 treaty negotiations between the United States and the "United Nation of Chippewas, Odawa, and Pottawatommie." While the United Nation indeed represented themselves as an alliance across Native nations, they simultaneously recognized that they could not exclusively be seen as a single people. During the treaty negotiations, they stated that the President "cannot collect them," referencing his inability to make them one people. But the United Nation argued that if they received the lands

they were asking for then the President would “see how many fires will burn,” fire operating in this instance as an allegory for both nation and the council these nations would collect in to meet the agreements of this treaty.

The United Nation of Chippewas, Odaawa, and Pottawatomie chose to be known as the Pottawatomie, with the treaty stating that this was their national character. While this use of Pottawatomie as their collective name might be read to mean that they chose to employ this name because a large number of Pottawatomie made up the United Nation, the word Pottawatomie has also been understood to mean “the people of the fire.” Thus, the United Nation may very well have chosen to utilize this name to simply denote their political alliance, their making of a fire. In this way, much like the hare, they retain their identity as distinct, separate nations, reflected by the white fur on a hare in the winter. But they are also marked by their alliance with each other, much like the hare bears the mark of the fire in the summertime.

The United Nation continually evoked kinship as the mechanism that facilitated their ability to unite as the Three Fires. An Ottawa chief, in the 1829 treaty with the U.S., stated that, “You have heard what our eldest brother there... has said. He is a chippewa, I am an Ottawa—What he has said we all agree to, we are of the same opinion—our nations are one body.”⁵²⁷ This chief recognized their distinct identities as “Chippewa” and “Ottawa” and referred to “our nations” in the plural, yet he also referenced these other nations through kinship terminology. Anishinaabe Chief Way-mick-say-go laid out their motivation for confederating in the negotiations for another treaty with the United States in 1833. He stated that “[w]e have united our hearts and made our tongues one,

⁵²⁷ *Ratified Treaty No. 155 Documents Relating to the Negotiation of the Treaty of July 29, 1829, with the United Chippewa, Ottawa, and Potawatomi Indians*, NAMP RG 75, M T-494 Roll 2F:24.

that there may be no confusion, and that our words may be the better understood by you.”⁵²⁸ He reinforced their unity, expressing that “[t]he Potawattamies & Ottowas are our younger brothers—We are all united.”⁵²⁹

The United Nation utilized their unity to assert their land tenure in the face of U.S. policies of removal. During the 1833 treaty, Ap-te-ke-zhick spoke on behalf of the United Nation, asserting that “[y]ou tell us the country is good beyond the mississippi toward the setting sun, and that game is plenty. Your red children support themselves principally by the chase. We are glad to hear it.”⁵³⁰ However, Ap-te-ke-zhick shifted the negotiations, stating, “[w]hen our Great father however heard that we wanted to sell our lands and remove from our country, your red children are afraid that he opened his ears to a bad bird—all your red children were not together, and did not consent that such word should be sent to our Great Father.”⁵³¹ Ap-te-ke-zhick states that the United Nation did not collectively agree to be removed from their lands. He went further, connecting the United Nation’s refusal to remove to the Creator.

Ap-te-ke-zhick relayed that the United Nation, after two days of council, had made up their mind not to enter into a treaty. He asserted that “[o]ur hearts were troubles and we looked to the Great Father who made the Earth for advice, and he disposed us to make the answer to the proposition of our Great father the President, that we cannot now sell our Country.”⁵³² He expressed that the United Nation was in a state of poverty and feared that if they removed a “great evil” might happen to them. Ap-te-ke-zhick stated

⁵²⁸ *Ratified Treaty No. 189 Documents Relating to the Negotiation of the Treaty of September 26, 1833, with the United Chippewa, Ottawa, and Potawatomi Indians*, NAMP RG 75, M T-494 Roll3:F67.

⁵²⁹ *Ibid.*

⁵³⁰ *Ratified Treaty No. 189 Documents Relating to the Negotiation of the Treaty of September 26, 1833, with the United Chippewa, Ottawa, and Potawatomi Indians*, NAMP RG 75, M T-494 Roll3:F68.

⁵³¹ *Ibid.*

⁵³² *Ibid.*

that “[h]ere the Great Spirit allows us to live in peace amongst ourselves, with the white man and all. We are happy here.”⁵³³ He urged the treaty commissioners to pay the United Nation their annuities from previous treaties and to close the council. Again utilizing kinship as the principle that facilitated peace among the nations, Ap-te-ke-zhick argued that “[t]he Potawattamies, Ottawas & Chippeways and the Whitemen are like four brothers—all united—They love each other.”⁵³⁴ He advised the commissioners to fulfill their treaty promises and believe the words of the United Nation.

The treaty commissioners advised the United Nation to reconsider their proposition and offered them more time to consider the offer. Puck-gwok-a-nin-na further expressed the unity between these nations, stating, “I am an Ottawa. Listen to me. I can never go contrary to what my older brothers the Potawattamies may do. There is no difference of opinion amongst us.”⁵³⁵ Commissioner Porter utilized this opportunity to shift the tone and direction of the negotiations. Pulling on the kin obligations in operation across the United Nation, Porter expressed that “[i]t is a matter of great pleasure to the commissioners that the chiefs and Headmen of the Chippeways, Ottawa and Potawattamies are of one mind. We are happy to see them acting together like a band of brothers.”⁵³⁶ He connected this sentiment to their relations with the United States, stating that “And it is a matter of still greater gratification to us, that you hold us fast by the hand.”⁵³⁷ This shift in tone led the principal speakers to start identifying the distinct interests of particular nations, questions which lands the U.S. were trying to acquire.

⁵³³ Ibid.

⁵³⁴ Ibid.

⁵³⁵ *Ratified Treaty No. 189 Documents Relating to the Negotiation of the Treaty of September 26, 1833, with the United Chippewa, Ottawa, and Potawatomi Indians*, NAMP RG 75, M T-494 Roll3:F73.

⁵³⁶ *Ratified Treaty No. 189 Documents Relating to the Negotiation of the Treaty of September 26, 1833, with the United Chippewa, Ottawa, and Potawatomi Indians*, NAMP RG 75, M T-494 Roll3:F74.

⁵³⁷ Ibid.

The United Nation would continue to speak through a unified voice yet they simultaneously recognized that the nations had separate interests in the various tracts of land they held. The United Tribe followed similar patterns across other Anishinaabe nations that came together to speak with “one mind.” When the negotiations turned to specific questions regarding land, the United Nation refused to speak on behalf of the other nations. For example, Ma-che-o-tak-way stated that “[o]ur wigwams are the greatest way off. We will agree to whatever our brothers will do in the business about which we are here in council.”⁵³⁸ When divisions arose surrounding the desire to treat, Governor Porter had to deal with two separate bodies: the “Prairie Indians” and the “Wood Indians.” At this treaty in Chicago in 1833, the Chippewa, Ottawa, and Pottawatomies ceded some five million acres of land and removed west of the Mississippi. Unfortunately, this would not be the last time that the United States would seek to acquire the lands of the United Nation and remove them.

In November of 1845, chiefs from the United Nation delegation went to Washington to meet with the President of the United States James Polk. They were interested in learning about their previous treaty annuities, which they had yet to receive. In relation, they also went to Washington to receive word from the President regarding a treaty proposed to their people a few months earlier. The President had previously approached the United Nation, through Major Harvey, to propose their removal to lands west of the Southern Pottawatomie.⁵³⁹ Yet, the United Nation refused this offer and instead sent back a written “talk” regarding the terms under which they would agree to

⁵³⁸ *Ratified Treaty No. 189 Documents Relating to the Negotiation of the Treaty of September 26, 1833, with the United Chippewa, Ottawa, and Potawatomi Indians*, NAMP RG 75, M T-494 Roll 3:F75.

⁵³⁹ *Ratified Treaty No. 247 Documents Relating to the Negotiation of the Treaty of June 5 and 17, 1846, with the Chippewa, Ottawa, and Potawatomi Indians*, NAMP RG 75, M T-494 Roll 4:F299.

remove, primarily focusing on their desire to be relocated to lands held by the Kansas Indians.

The commissioners who met with the United Nation in Washington utilized the point that the United Nation approached the United States in an attempt to control much of the negotiation process. They opened the negotiation by stating, “The Land you like and ask him to give you, in exchange for your, does not belong to him. It belongs to the Red men the Kansas Indians.”⁵⁴⁰ The commissioners asserted that “[w]e see little hopes of a happy negotiation that would please both parties....the President did not invite you to come to Washington. You came of your own accord.”⁵⁴¹

The United Nation informed the commissioners that they had come to Washington to receive word pertaining to the proposal they sent to the President regarding a treaty. The commissioners voiced the President’s position, stating, “When your Great Father received that talk from Major Harvey he looked serious. He felt deeply for you. He did not say that the Pottawatomie were a bad people but he thought they were not a wise people. They talked wildly.”⁵⁴² The commissioners used this point to lay out the terms under which the President was willing to sign a treaty, proposing conditions already refused by the United Nation. The commissioners addressed a variety of concerns the President had for the United Nation, claiming he was primarily worried that they were on poor land that could not sustain their people. He argued that the game was sparse and neighboring Sioux were causing continued problems for the United Nations. They continually stressed that the United Nation only held their land temporarily and removal

⁵⁴⁰ Ibid.

⁵⁴¹ Ibid.

⁵⁴² *Ratified Treaty No. 247 Documents Relating to the Negotiation of the Treaty of June 5 and 17, 1846, with the Chippewa, Ottawa, and Potawatomi Indians,*” NAMP RG 75, M T-494 Roll 4:F301.

was imminent. The commissioners emphasized that white encroachment coupled with the state of Iowa extending its law over them would continue to pose problems for the United Nation if they did not remove.

Through Richard S. Elliot, a previous Council Bluffs Indian sub-agent, the United Nation presented a written response to the treaty commissioners that stated, “We were surprised by many parts of your talk. Our Great Father does not understand us.”⁵⁴³ The United Nation argued that they did not see the terms offered by the President as fair terms, asserting that the lands offered to them were unsuitable for their needs. They stressed that these lands were called a Prairie wilderness even among the whites and urged the commissioners that if the land was so good why did the President not send his white children there instead. They argued, “Our women and children cannot live on grass and air alone.”⁵⁴⁴

The United Nation also questioned why, if the President looked “serious” when he received their talk, had he delayed his response. They declared, “[W]e determined to come here because we knew of no other way to settle our troubles”⁵⁴⁵ The United Nation continued to counter the various claims raised by the commissioners, who were primarily interested in securing this treaty as a means to simultaneously acquire land and carry out removal policy. The United Nation asserted that the various comments made regarding the stipulations of their previous treaty, primarily that they only had temporary ownership to their lands, were not what they had agreed to. The United Nation informed the

⁵⁴³ *Ratified Treaty No. 247 Documents Relating to the Negotiation of the Treaty of June 5 and 17, 1846, with the Chippewa, Ottawa, and Potawatomi Indians,*” NAMP RG 75, M T-494 Roll 4:F305.

⁵⁴⁴ *Ratified Treaty No. 247 Documents Relating to the Negotiation of the Treaty of June 5 and 17, 1846, with the Chippewa, Ottawa, and Potawatomi Indians,*” NAMP RG 75, M T-494 Roll 4.

⁵⁴⁵ *Ratified Treaty No. 247 Documents Relating to the Negotiation of the Treaty of June 5 and 17, 1846, with the Chippewa, Ottawa, and Potawatomi Indians,*” NAMP RG 75, M T-494 Roll 4:F306.2.

commissioners that their previous treaty at Chicago stated the President would protect them from white encroachment, that he would not allow state rights to interfere with the United Nation, and that the United Nation were granted annuities that they have never received, all being violations of there treaty. They said they came to Washington to settle these matters.

This 1846 treaty, then, reveals more about how the United Nation resisted U.S. desires for westward expansion, carried out through removal policy. The United States was only willing to negotiate a treaty with the “Pottawattamies” as a single polity. The response of the United Nation to U.S. desires to re-construct or dismiss their existing political organization gets at the complex networks that shaped and informed Anishinaabe conceptions of nationhood in the nineteenth century. Treaty commissioners had stated to the United Nation that

Your Great Father will not make a treaty with one part of the Pottawattamies...your delegation are great chiefs but it only represents one of two large bands of Pottawatamies. You cannot therefore make a treaty for all. But you can make a treaty now if you choose which will bind your band and which will bind all the bands when it is approved by all. Your Great Father wishes all to approve it. He wishes to unite you all again as one nation so as to have but one grand council fire for all the Pottawattamies.⁵⁴⁶

⁵⁴⁶ *Ratified Treaty No. 247 Documents Relating to the Negotiation of the Treaty of June 5 and 17, 1846, with the Chippewa, Ottawa, and Potawatomi Indians,*” NAMP RG 75, M T-494 Roll 4:F302.

The treaty commissioners went on to argue that “all must approve it and then it will be a treaty, not before.”⁵⁴⁷ The United Nation, in response to the argument that they only represented a part of their people, asserted, “It is true that all the Pottawattamies were represented by their delegates at Council Bluffs last summer but Major Harvey held his talk with our people. Our brethren from the Osage River were only spectators in the open council. They sat on one side but they heard what we said. They came up their on the invitation of Major Harvey but they did not take part in his business with us.”⁵⁴⁸

The United Nation pointed out, “You say ‘but one large band is represented on this occasion.’ To this we reply that the people who made the treaty of Chicago are at Council Bluffs. The bones of our great chief Mr. Caldwell are there. Our people at home know and we know that no other people have a right to sell the lands east of the Missouri.”⁵⁴⁹ They explained that they did indeed represent the people who made the treaty at Chicago and thus the people holding the lands of interest to the President.

But of greater interest to an analysis of nationhood is the United Nation response to the United States’ desire to unite all the Pottawatomies. The United Nations stated, “You say that our Great Father wishes to unite all the Pottawatomies. It used to be that we had but one fire but he disturbed us. He put out that fire and scattered the ashes. He cannot collect them.”⁵⁵⁰ The United Nation laid blame in the President for disrupting their alliances across nations, arguing that they could not be united as one again. Yet, the United Nation qualified this statement, insisting that “but if he will make a treaty as we

⁵⁴⁷ Ibid.

⁵⁴⁸ *Ratified Treaty No. 247 Documents Relating to the Negotiation of the Treaty of June 5 and 17, 1846, with the Chippewa, Ottawa, and Potawatomi Indians,* NAMP RG 75, M T-494 Roll 4:F305.

⁵⁴⁹ Ibid.

⁵⁵⁰ *Ratified Treaty No. 247 Documents Relating to the Negotiation of the Treaty of June 5 and 17, 1846, with the Chippewa, Ottawa, and Potawatomi Indians,* NAMP RG 75, M T-494 Roll 4:F310-11.

have said he will see how many fires will burn. We will go to the lands we ask and make a fire.”⁵⁵¹

The commissioners responded to this expression of unity and laid out how they envisioned the Pottawatomie as “one people.” They explained to the United Tribe that “[y]our Great Father wants to make this treaty with you, as you are the most important Band of the Pottawattomies. ...After you make a Treaty your Great Father will inform the other Bands what you have done. *Then the ashes of all the old fires can be collected.* You can collect them, and you can make a new fire, and have but one fire.”⁵⁵² They insisted that the separate bands were like the states of the Union and that the United Nation should act first, being a large nation that the U.S. hoped the other nations would follow.⁵⁵³

Anishinaabe nations sought to assert and protect their rights to their nationhood and land throughout their treaty negotiations. Even as the geographic borders of these lands shift, Anishinaabe, and here the United Nation specifically, responded to colonial pressures to relinquish their lands by naming their own price, setting their own terms. While the United Nation established an alliance across their respective nations, they recognized that they could not be brought together as a single people with additional Pottawatomie nations. They stated that the President “cannot collect them” but that if they received the lands they were asking for, then the President would “see how many fires will burn,” fire operating as an allegory for both the nation and the council that these

⁵⁵¹ Ibid.

⁵⁵² *Ratified Treaty No. 247 Documents Relating to the Negotiation of the Treaty of June 5 and 17, 1846, with the Chippewa, Ottawa, and Potawatomi Indians*,” NAMP RG 75, M T-494 Roll 4:F319. Emphasis added.

⁵⁵³ *Ratified Treaty No. 247 Documents Relating to the Negotiation of the Treaty of June 5 and 17, 1846, with the Chippewa, Ottawa, and Potawatomi Indians*,” NAMP RG 75, M T-494 Roll 4:F320.

numerous nations would establish to burn as one. This strategic alliance allowed for the United Nation, when they finally signed a treaty June 17th of 1846, to secure lands purchased from the Kansas Indians by the United States, six months after they went to Washington.

While the United Nation, through their political alliance, was able to secure lands in Kansas and place pressure on the President to live up to his previous promises, they continued to recognize their distinct, separate nations with varied relationships to their place. Thus, when it came time for their removal, large portions of the Anishinaabe and Odaawa bands chose not to remove. And while they all chose to unite as one nation for the particular needs surrounding their treaty negotiations with the United States and continuously recognized their connections to one another, neither before nor after did these nations see themselves as exclusively one people with a “common ownership” to their lands.

Conclusion

Anishinaabe nationhood was informed and shaped by their extensive kinship networks. These kinship networks facilitated alliances across national lines. Yet, kinship was not the exclusive organizing principle. Anishinaabe creation shaped and molded their construction of sovereignty and nationhood. Anishinaabe notions of their own creation fashioned their conceptions of sovereignty, derived from the Creator. Anishinaabe comprehensions of the creation of the earth produced the foundation for their nationhood. As the animals measured the earth, they delineated the territory that would comprise the Anishinaabe nation. The people were born from these animals, giving rise to the clan

system. While this system may have initially shaped the nation, by the nineteenth century the clan system did not operate as the exclusive formation of the nation.

Anishinaabe nationhood was shaped and ordered by their stories, ceremonies, and practices that had their roots in creation. As Anishinaabe nationhood shifted to meet the particular needs of the people, their stories, ceremonies, and practices reflected this. While the Algonquian-speaking people are thought to have once comprised a single people, reflected in their shared language, their dispersal across the land, like the dispersal of the animals, lead to a re-conception of nationhood. Yet, the initial creation of the Anishinaabe continued to shape and inform how their nationhood operated. Kinship, coupled with a shared identity framed by language, stories and practices, allowed Anishinaabe nations to facilitate alliances across national lines with other Anishinaabe and Native nations. These alliances became critical for the Anishinaabe in the nineteenth century as they sought to assert their sovereignty and nationhood in the face of U.S. and Canadian expansion through land acquisition. Yet, Anishinaabe nations also continued to express the distinct interests vested in each nation, respecting the separate rights and responsibilities that belonged to each nation.

As the United States and Canada continued to seek land and expand westward, Anishinaabe nations continued to assert their sovereignty and nationhood. When the U.S. and Canada refused to recognize these rights or uphold their treaty commitments, Anishinaabe nations exercised their sovereignty, nationhood, and land tenure by stopping or regulating passage through their lands. Anishinaabe nations not only asserted their sovereignty, nationhood, and land tenure throughout the treaty era, they acted on these important political concepts.

Chapter Four: Rising Waters, Revenging Wrongs: Anishinaabe Acts of Sovereignty

Nanabushu Slays Toad Woman, The Healer of the Manitous

Upon Nenabozho's nephew's death at the hands of the Mizhi-Bizhiw (Great Water Lynx), Nenabozho sought revenge. He waited along the sandy beach for the Mizhi-Bizhiw to come out and sun bath, upon which time Nenabozho shot him. As Nenabozho ran, the water pursued him. He thought that the earth might flood but the water began to recede.

And so from there he intended yet to seek (for his nephew). And so while wandering about weeping, he once heard somebody going along singing:

"From the ends of the earth do I come with the sound of my rattles, sa."

"From the ends of the earth do I come with the sound of my rattles, sa."⁵⁵⁴

... "O my grandmother! for what reason are you singing?"

"Oh, a snare is really to be laid for Nānabushu. And this bast which I carry upon my back is the thing to be used for the purpose. It was Nānabushu who really shot the chief of the big lynxes."

"O my grandmother! pray, why is a snare to be set for Nānabushu?"

"Oh, well! It is for the arrow of Nānabushu, which is now sticking out of (the chief of the big lynxes). ...

"O my grandmother! pray, what was that you were singing about?"

⁵⁵⁴ In text note: "Other translations of the song would be: "From the beginning of the world has the sound of my voice been heard; From the ends of the earth is the sound of my coming heard." The second rendition is preferred to the first, but the one given in the story is preferred to all."

“Oh, why, we are ministering to the chief; and this is what I sing when I am attending him...

“O my grandmother! how was it that (the chief) angered Nānabushu?”

“Why, he actually took his nephew away from him. Very fond was Nānabushu of his nephew. It was on that account (the chief) angered him, which was why he was shot (by Nānabushu).”

“Now, pray why should he be so treated by the chief of the big lynxes as to be deprived of his nephew by him? By no means a small Manitou is he who goes by the name of Nānabushu.”

... What did Nānabushu do but club her to death. “Well, what a fool this wretched old woman (was)!” Ah! Nānabushu then set to work flaying her, from every part he removed the skin. After he had finished flaying her, very small then Nānabushu made himself. What should he do but get into the toad-skin to wear it, in every respect did he fit into it. Slightly here on the hip he tore it. After he had got into it, then he bound the rattles to his heels, and put the bast upon his back. Ah! as Nānabushu went leaping along, he then began to sing:

“From the ends of the earth do I come with the sound of my rattles, sa.”

“From the ends of the earth do I come with the sound of my rattles, sa.”....

Presently our grandmother was approaching nigh to the wigwam. Oh, in the doorway what should he behold but the skin of his nephew then being used for a flap over the entry-way. And there still were left upon it some

of the teeth (of his nephew). Sorrowful Nānabushu! then did tears pour from his eyes. ...

(Thus) he sang. Presently he rose to his feet when he went over to the chief of the big lynxes. Ah, when he went over to sit beside him, square in his side was the arrow sticking out. ...Now with care (Nānabushu) seized the arrow, which he worked back and forth into him. Ah! when Nānabushu sprang to his feet, he thus tore up that toad-skin of his, whereupon they tried in vain to catch him there. “Alas! it was to kill this chief of our that Nānabushu came.”

And then from its place he tore off his nephew’s skin as he went. Oh, thereupon, as the flood came, as the water rose, then he fled, seeking to find his raft. ... Nānabushu (saw that) now under water were the mountains. Why, for a great while did the water rise.

.... “Perhaps it is true that I have done wrong (which may never be repaired),” he thought.⁵⁵⁵

Nenabozho had allied with his kin, the wolves, for his own selfish advance. The wolves were successful hunters, and Nenabozho was able to call on their kin obligations to procure food and shelter. Though he did little to aid or support the group, their longstanding kin ties made the elder wolf reluctant to dismiss Nenabozho outright. Instead, he allowed one of Nenabozho’s nephews to remain with him. The combination

⁵⁵⁵ Michelson and Jones, *Ojibwa Texts*, ed. Franz Boas, 2 vols., vol. VII, Part I, 261-71. This story was likely told by Midasuga’j at Bois Fort sometime between 1903-1905.

of the wolf's skill with Nenabozho's relentless hunger had resulted in them over hunting the resources. Nenabozho dreamt of his nephew's demise, but the wolf's careless neglect to follow the warning ultimately allowed the dream to be fulfilled. Nenabozho's nephew was killed by the Mizhi-Bizhiw (the Great Water Lynx).

The kin obligations that had necessitated the wolves to assist Nenabozho in procuring food and shelter also required Nenabozho to avenge the death of this nephew. Thus, as the opening story indicates, Nenabozho sought revenge, ultimately slaying the Mizhi-Bizhiw and flooding the earth. This story, *Nanabushu Slays Toad Woman*, demonstrates the complex consequences that result from the decisions and actions a person carries out. Nenabozho and his nephew's coupled hunting practices had resulted in a depletion of the deer. This depletion had caused an imbalance across the earth, and the Mizhi-Bizhiw sought to correct this. Yet, the Mizhi-Bizhiw's actions also brought consequence. Nenabozho cared deeply for his nephew, and his death needed to be avenged. Thus, Nenabozho avenged his nephew, killing the Mizhi-Bizhiw. Yet this action resulted in the flooding of the earth.

The flood can also be understood in numerous ways. While the rising water consumed everything in its path, the water was also cleansing. Water has the power to renew or destroy, and is a crucial element in Anishinaabe worldview. Upon the creation of the earth from the force of fire, the earth was only rock. Then water was brought to the earth in the form of the oceans and seas, lakes and rivers, and precipitation. In addition, water was brought into the body of the people preceding birth and enabling life. The flood allowed for Nenabozho to create the world anew.

Actions always have consequences, at times positive, at other times negative. While the choices we make and the actions we carry out come with repercussions, as Nenabozho illustrates, there are often times numerous motivations for the choices each person makes. These choices and their subsequent consequences are often layered. This was evident for Anishinaabe nations throughout the treaty era.

As laid out in the previous chapters, Anishinaabe often utilized their treaty negotiations with the United States and Canada as a vehicle to assert their sovereignty, nationhood, and land tenure. While the Anishinaabe primarily utilized treaty-making as a means to establish a relationship with the United States and Canada and to assert their sovereignty, nationhood, and land tenure, treaties often required cessions on both sides. As the United States and Canada grow politically, economically, and militarily, they were able to wield more power in treaty negotiations. Nevertheless, the Anishinaabe continued to assert and exercise their sovereignty and land tenure.

The Anishinaabe protested as United States and Canadian citizens encroached on or traveled through Anishinaabe lands. These protests further demonstrate that the Anishinaabe had clear conceptions of their sovereignty, nationhood, and land tenure. Not only did the Anishinaabe articulate these important political concepts throughout their treaty negotiations, they continually exercised them in their interactions and conflicts with the United States and Canada.

The Anishinaabe employed a variety of tactics to assert and regulate their land tenure throughout the treaty era. They actively protested the unwarranted or unwelcomed travel through their lands. Additionally, the Anishinaabe regulated the rights to use their lands, determining the conditions under which colonial and tribal nations could access

their territories. Anishinaabe assertions of land tenure often served as the impetus to bring various nations to the treaty table. However, the Anishinaabe were not able to assert their land tenure and sovereignty and escape unscathed in the face of colonial desires for expansion. While the practices of Anishinaabe land tenure were carried out across Anishinaabe nations throughout the treaty era, this chapter primarily examines the events surrounding Treaty One and Two in 1871 and Treaty Three in 1873 between various Anishinaabe Nations and Canada, and the 1863 “Old Crossing Treaty” with the Red Lake and Pembina Bands of Anishinaabe with the United States, in order to lay out how Anishinaabe exercised their sovereignty and land tenure.

“A Territory of which They Believe Themselves to be Sole Lords and Masters”:

Anishinaabe Protests as Assertion of Land Tenure

Anishinaabe regulations of land tenure can be seen in the events leading to Treaty One and Treaty Two with the Dominion of Canada. Plains Anishinaabe and Cree exercised their sovereignty and land tenure by obstructing Canadian settlement on their lands. They exercised their nationhood by asserting the need for a treaty between themselves and Canada. After confederation in 1867, Canada sought to increase their land holding and immediately looked toward Rupert’s Land to enlarge its empire. Rupert’s Land was a vast tract of territory on the Hudson Bay watershed that was under the administration of the Hudson’s Bay Company (HBC). The HBC, which possessed exclusive trading rights to the vast North-West Territories, had been granted a charter in 1670 by King Charles II, yet the advance of North American settlement and American

threats began eroding the Company's hold over their domain.⁵⁵⁶ Thus by 1860, three-way negotiations began between Britain, Upper Canada, and the HBC.⁵⁵⁷ However, all three parties to the negotiation of Rupert's Land and the North-West Territories had failed to confer with or include the First Nations of the region.

The First Nations with a vested interest in this area were neither informed nor consulted about Canadian interest in transferring this land from the HBC to the Dominion government. Wayne Daugherty, in his treaty research report for Indian and Northern Affairs Canada, finds that:

Yet twelve years previously [in 1857] the explorer Stephen Hind had cautioned 'There is a strong and growing feeling among the few who have turned their attention to such matters, that in the event of an organic change occurring in the Government of the country, the 'native' or half-breed population should not be neglected or thrust on one side.'⁵⁵⁸

This disregard for Aboriginal land tenure ignited the Red River Rebellion of 1869–1870, which was primarily carried out by the Métis.⁵⁵⁹ Thus, when the Honorable William McDougall attempted to cross into the Red River colony during the winter of 1869, he was met by an armed party of Métis who refused him entry.⁵⁶⁰

⁵⁵⁶ Wayne E. Daugherty. Treaty Research Report: Treaty One and Treaty Two (1871) [online]. Treaties and Historical Research Centre, Indian and Northern Affairs Canada. Originally published in Ottawa by Indian and Northern Affairs Canada, 1983. Accessed 08-15-08: http://www.ainc-inac.gc.ca/pr/trts/hti/tl-2/index_e.html, 2. [Hereafter Daugherty. Treaty Research Report: Treaty One and Treaty Two (1871)].

⁵⁵⁷ St. Germain, *Indian Treaty-Making Policy in the United States and Canada 1867-1877*, 6.

⁵⁵⁸ Daugherty. Treaty Research Report: Treaty One and Treaty Two (1871), 3.

⁵⁵⁹ The Métis are a distinct population comprised of a "mixed" population that integrate European and Indian traditions and cultural practices that is unique to Métis people. For additional information on the Métis, see Jacqueline Peterson and Jennifer S. H. Brown, eds., *The New Peoples: Being and Becoming Métis in North America, Manitoba Studies in Native History I* (Winnipeg: University of Manitoba Press, 1993).

⁵⁶⁰ Daugherty. Treaty Research Report: Treaty One and Treaty Two (1871), 3-4.

The Anishinaabe, like the Métis, were discontent with the Canadian government for disregarding Aboriginal land tenure considerations. As the Hudson's Bay Company had never extinguished Indian title, and the Selkirk treaty pertaining to this area was under dispute, the Anishinaabe took a variety of measures to secure Canadian recognition and protection of their land tenure.⁵⁶¹ Lieutenant Governor Alexander Morris reported, "They were full of uneasiness, owing to the influx of population, denied the validity of the Selkirk Treaty, and had, in some instances obstructed settlers and surveyors."⁵⁶² The Anishinaabe and Cree exercised their sovereignty and land tenure by regulating passage through their territories and access to their resources. By regulating entry and use and by obstructing settlement, the Anishinaabe and Cree forced Canadian citizens to recognize and acquiesce to their land tenure.

Upset that their lands were being occupied without compensations, the Anishinaabe of Treaty One and Two employed a number of methods to assert their land tenure. Treaty Commissioner Wemyss M. Simpson reported that "...the Indians were anxiously awaiting my arrival, and were much excited on the subject of their lands being occupied without attention being given to their claims for compensation."⁵⁶³ The Anishinaabe warned certain settlers "not to cut wood or otherwise take possession of the lands upon which they were squatting."⁵⁶⁴ Anishinaabe protests left an uneasy feeling among immigrants who wanted to seek lands but were fearful of Anishinaabe

⁵⁶¹ The Selkirk treaty was signed between Lord Selkirk and Anishinaabe and Cree bands in 1817 extinguishing their claims within the Red River colony. However, Anishinaabe and Cree disputed this treaty. See Daugherty. Treaty Research Report: Treaty One and Treaty Two (1871), Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*.

⁵⁶² Ibid., 25-26.

⁵⁶³ Ibid., 37.

⁵⁶⁴ Ibid.

reactions.⁵⁶⁵ Simpson reported that “[t]he Indians, it appeared, consented to their remaining on their holdings until sufficient time had been allowed for my arrival, and the conclusion of a treaty; but they were unwilling to allow the settlers the free use of the country for themselves or their cattle.”⁵⁶⁶ Lieutenant Governor of Manitoba and the North-West Territories Adams G. Archibald, in correspondence, laid out the circumstances motivating treaty negotiations.

With this anxiety and uneasiness among the Indians, with a feeling of danger on the part of emigrants seeking lands and ready to commence work, but subjected to enforced idleness by the danger of entering against the will of the Indians, you will easily understand that I awaited with much anxiety and hailed with much pleasure the arrival of Mr. Simpson.⁵⁶⁷

Canadian citizens promoted a treaty between the Dominion and the Plains Anishinaabe and Cree, hoping to gain rights to the area. Simpson indicated in his report that a main cause for uneasiness among the settlers arose from “the often-repeated demands of Indians for a treaty with themselves....”⁵⁶⁸ The response of First Nations to the presumptuous takeover of Rupert’s Land, coupled with Anishinaabe and emigrant interests for a treaty, pressured the Dominion government to pursue this diplomatic forum with First Nations. Morris remarked that “[i]n view of the anxiety and uneasiness prevailing, these gentlemen [Simpson, Dawson, Pither, and McKay] were of opinion ‘that it was desirable to secure the extinction of the Indian title not only to the lands within

⁵⁶⁵ Canada, Department of Indian and Northern Affairs. *Annual Report*, 1871, p.11.

⁵⁶⁶ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 37.

⁵⁶⁷ Canada, Department of Indian and Northern Affairs. *Annual Report*, 1871, p.11.

⁵⁶⁸ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*.

Manitoba, but also to so much of the timber grounds east and north of the Province as were required for immediate entry and use....”⁵⁶⁹ Canadian citizens and government officials alike realized that they would not be able to ignore or dismiss Anishinaabe sovereignty and land tenure. Unwarranted and unwelcomed Canadian encroachment, attempted settlement and access of Anishinaabe recourses would be met with consequence.

This was not the first time that Anishinaabe in this area had requested a treaty as a means to settle disputes surrounding their land tenure. In the fall of 1870, the Anishinaabe in Manitoba applied to the Lieutenant Governor for a treaty.⁵⁷⁰ When Lieutenant Governor Adams G. Archibald assumed his post in 1870, the Anishinaabe sent delegations, headed by Anishinaabe Chief Henry Prince, to seek formal arrangements with the Dominion government regarding their land tenure. However, Archibald delayed negotiating a treaty to allow time to ascertain which First Nations had claims to the area.⁵⁷¹ Anishinaabe motivations for a treaty were fueled by their claim that they had never been paid for lands surrendered in the Selkirk treaty.⁵⁷² In the Spring of 1871, the Anishinaabe again pressed for a treaty. Archibald reported:

They have sent repeated messages enquiring when the Treaty was to come off, and appeared very much disappointed at the delay. They have interfered with emigrants, warning them not to come on the ground outside the Hudson’s Bay Company survey and lately they have posted up

⁵⁶⁹ Ibid., 26.

⁵⁷⁰ Ibid., 25.

⁵⁷¹ Archibald stated in a letter to Secretary of State Joseph Howe, “till the truth could be ascertained, it would be useless to enter on negotiations with any one tribe to obtain a cession of its claims when it might turn out that the same lands were claimed by a different tribe. The negotiations would then either prove abortive or entail upon us the payment of a double tribute for the extinguishment of claims for the same land...” in Daugherty. Treaty Research Report: Treaty One and Treaty Two (1871), 5-6.

⁵⁷² Ibid., p.5.

a written notice on the door of the church at Portage La Prairie, warning parties not to intrude on their lands until a Treaty is made.⁵⁷³

The actions carried out by the Plains Anishinaabe and Cree demonstrate how they actively protested unregulated access into their territories. By asserting their title to their lands and placing regulations on how these lands could be used, Anishinaabe and Cree land tenure practices served as the impetus for Canadian interests for a treaty, resulting in Treaty One and Two signed in 1871. Indeed, Treaty Commission Simpson was warned by Mr. Archibald and Manitoba residents who “appeared to think that no time should be lost in meeting Indians, as some assurances had already been given to them that a treaty would be made with them during the summer of 1871...”⁵⁷⁴ Archibald recognized the importance of this treaty and the precedent it would establish in Canadian treaty-making policy and practice, being the first of the numbered treaties. He reported to Secretary of State Howe:

I look upon the proceedings, we are now initiating, as important in their bearing upon our relation to the Indians of the whole continent. In fact the terms we now agree upon will probably shape the arrangements we shall have to make with all the Indians between the Red River and the Rocky Mountains. It will therefore be well to neglect nothing that is within our power to enable us to start fairly with the negotiations.⁵⁷⁵

⁵⁷³ Canada, Department of Indian and Northern Affairs. *Annual Report*, 1871, p.10. Also see St. Germain, *Indian Treaty-Making Policy in the United States and Canada 1867-1877*, 39.

⁵⁷⁴ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 37.

⁵⁷⁵ Canada, Department of Indian and Northern Affairs. *Annual Report*, 1871, p.12-13, Lieutenant-Governor Archibald to Secretary of State Howe, July 22nd 1871.

However, as Daugherty found in his report of Treaty One and Two , “[t]he treaties had no sooner been signed than difficulties arose, first with regard to administration.”⁵⁷⁶ The Anishinaabe and Cree maintained that the terms of the treaty had not been fulfilled. James McKay wrote to Lieutenant Governor Archibald regarding these claims, pointing out the difficulty in maintaining friendly and trusting relations with the Indians if the government did not fulfill their treaty commitments.⁵⁷⁷ Archibald laid the blame on Treaty Commissioner Simpson, who replied later in the year that he could not be responsible for federal officers failing to fulfill the treaty provisions. He, furthermore, justified the delay in fulfilling treaty provisions regarding agricultural equipment by stating that “[t]hese things, however, were promised to be given to them only when they adopted the habits of white men and settled on their respective portions of their bands reserve.” He argued, “No Indian has yet applied to me for agricultural implements.”⁵⁷⁸ Treaty obligations remained unfulfilled throughout 1872.

In 1872, Alexander Morris was appointed as the Lieutenant Governor and urged Ottawa to fulfill the treaty promises.⁵⁷⁹ Joseph Provencher replaced Simpson as Indian commissioner in 1873. Morris, Provencher, and Lindsay Russell formed a three-member board that took up the task of administering the treaties.⁵⁸⁰ While confusion over administration seemed to have been settled, another concern loomed over Canada’s treaty relations with the Plains Anishinaabe and Cree. Treaty Commissioner Simpson failed to include a number of the promises made during negotiations in the final version of the treaty sent to Ottawa. The Anishinaabe and Cree were discontent with both the Canadian

⁵⁷⁶ Daugherty. Treaty Research Report: Treaty One and Treaty Two (1871),14.

⁵⁷⁷ Ibid.

⁵⁷⁸ Ibid.

⁵⁷⁹ Daugherty. Treaty Research Report: Treaty One and Treaty Two (1871), 15.

⁵⁸⁰ Ibid.

government's failure to meet these "Outside Promises," as they came to be known, and with the overall poor administration of the treaty.

Plains Anishinaabe and Cree actively asserted their discontent with the Canadian government for failing to carry out their treaty commitments. Several bands refused to accept their annuity payments in order to draw attention to their claims regarding Outside Promises. In addition, the Anishinaabe and Cree procured John Schultz, a local Member of Parliament, to assist them in protesting the unfulfilled provisions of their treaty. He wrote to the Secretary of State Howe, laying out their complaints. Schultz wrote "that the treaty now in print is not as they understood it at the time when it was signed in 1871. He further suggested that a delegation of Indians come to Ottawa to discuss the issue with the government."⁵⁸¹ However, Simpson prevented the Anishinaabe and Cree from going to Ottawa.⁵⁸²

There was no question that "Outside Promises" had been made. Canadian treaty commissioners did not dispute this fact. Instead, the questions focused on what these promises entailed. The Canadian government was presented with numerous accounts, and Simpson indicated these promises in his report to Howe in 1871. Schultz sent an affidavit signed by the St. Peters Band that laid out their understanding of the promises made at the Treaty. Molyneux St. John, who had been present at the signing of Treaty One and Treaty Two, also sent a lengthy memorandum to the Department of Indian Affairs laying out his memory of the "Outside Promises."⁵⁸³ He wrote:

When Treaty No. 1 was in process of negotiation the Spokesmen from the several Indians Bands enumerated the gifts and Benevolences which they

⁵⁸¹ Daugherty. Treaty Research Report: Treaty One and Treaty Two (1871),15-16.

⁵⁸² Simpson told them that they could not go to Ottawa without permission. Ibid.

⁵⁸³ Ibid.

required from Her Majesty's Representatives in return for the surrender of the Indian Country. Some of these were accorded; some refused, but in the natural desire to conclude the Treaty, His Excellency the then Lieutenant Governor and Mr. Commissioner Simpson assumed, as it afterward proved, too hastily, that their distinctions and decisions were understood and accepted by the Indians.⁵⁸⁴ ... So the Treaty was signed, the Commissioner meaning one thing, the Indians meaning another.⁵⁸⁵

With the closure of the proceedings, it became evident that there were misunderstandings between the two parties. At the conclusion of the treaties, on behalf of the treaty commissioners, St. John, Commissioner Simpson, and the Hon. James McKay signed a list of articles that had been mentioned but were not included in the treaty. St. John wrote, "This list expressed our understanding of the matter, but it by no means covered the understanding or expectations of the Indians, and from that time to the present we have not visited any band, parties to that Treaty; without the untrustworthy nature of the Commissioner's and Governor's promises being thrown in our teeth."⁵⁸⁶

While it was evident that Outside Promises had been made, a point that both parties recognized, the Canadian government did not resolve the question of Outside Promises until 1875, issuing an Order in Council that the memorandum from St. John, Simpson, and McKay be considered part of Treaty One and Treaty Two. Daugherty found that "[t]he government also stated that it could not admit to any claim outside of

⁵⁸⁴ St. John noted in his letter that a Clergyman, a speaker on the part of the Commissioner, supplemented the articles listed by the Anishinaabe with additional articles he said he was authorized to mention. Though he was immediately interrupted by Simpson, little could be done to entirely disallow these additions. See Daugherty. Treaty Research Report: Treaty One and Treaty Two (1871), 17.

⁵⁸⁵ Daugherty. Treaty Research Report: Treaty One and Treaty Two (1871), 16-17.

⁵⁸⁶ Daugherty. Treaty Research Report: Treaty One and Treaty Two (1871), 17.

the treaty and memorandum, but did concede that there had been a misunderstanding.”⁵⁸⁷ The Canadian government, in addition to accepting the memorandum as part of Treaty One and Two, increased annuity payments. The government utilized these payments to argue that any Indian receiving the increased annuity was relinquishing any claim against the government regarding the Outside Promises. However, this did not end Plains Anishinaabe and Cree claims against the Canadian government regarding the interpretation and fulfillment of Treaty One and Two.

Plains Anishinaabe and Cree continuously exercised their sovereignty, nationhood, and land tenure as Canada competed to acquire and assert its own sovereignty, nationhood, and land tenure. These competing claims often resulted in Canadian citizens presumptuously attempting to settle on and utilize Anishinaabe and Cree land and resources with little to no regard for Anishinaabe sovereignty and land tenure. Plains Anishinaabe and Cree recognized that the world they had once known had dramatically changed and that they would need to find a method to coexist in the ever-changing place. Yet, they also recognized and more importantly asserted and exercised their sovereignty, nationhood, and land tenure that had informed their lives since creation. Therefore, they actively refuted Canadian colonial claims and instead argued for a treaty that would reconcile these competing claims. When Canada failed to live up to their treaty commitments, Plains Anishinaabe and Cree continued to assert their understanding of what these promises entailed and urged Canada to live up to their agreements.

⁵⁸⁷ Daugherty. Treaty Research Report: Treaty One and Treaty Two (1871), 18.

*“It Was the Indians’ Country, not the White Man’s”: Competing Claims of
Sovereignty and Land Tenure*

Encroaching settlers often became a major impetus for the Anishinaabe to seek out treaty relations. United States and Canadian government officials were often unwilling or unable to prevent their citizens from trespassing on Anishinaabe lands. The Anishinaabe carried out a number of practices to assert their land tenure and sovereignty in the face of illegal use and settlement on their lands, as is reflected in the treaty-making process itself. Treaty-making became a means for the Anishinaabe to assert their discontent regarding the use of their lands without their permission. Treaty-making also became a site for the Canadian and United States governments to assert their “displeasure” with the Anishinaabe for asserting their land tenure and regulating access to their territories. The Anishinaabe often exercised their land tenure by carrying out a number of protests in the form of taxing trade ships, destroying property, and blockading passage.

Anishinaabe regulations of land tenure and the protest of movement through their lands can be seen with the Anishinaabe of Treaty Three. The Dominion of Canada was interested in finishing a road, commonly referred to as the Dawson route, which would cut through the lands of the Anishinaabe of Lake of the Woods. Route Surveyor S. J. Dawson commented that the Anishinaabe “would be keenly alive to any imagined slight in opening a highway, without regard to them, through a territory of which they believe themselves to be sole lords and masters.”⁵⁸⁸ In order to complete this route and secure peace with the Anishinaabe, the Privy Council of Canada issued a joint commission who were authorized to enter into a treaty with the Anishinaabe.

⁵⁸⁸ St. Germain, *Indian Treaty-Making Policy in the United States and Canada 1867-1877*, 38.

Historian Olive Patricia Dickason argued that the Anishinaabe of Treaty Three “made it clear as early as 1859 that ‘the country is theirs, and they do not abandon any of their rights by permitting the government surveyors to pass.’”⁵⁸⁹ The Anishinaabe adamantly protested unauthorized movement through their territories and expressed their desire to be compensated when such movement took place. Treaty commissioners met with the Lake of the Woods Anishinaabe in 1871 and presented gifts to them for past claims of passage through their territories. Treaty Commissioners Simpson, Dawson, and Pither commented in their correspondence to Howe that they had repeatedly met with Anishinaabe in the area and that larger numbers than usual had collected in anticipation of negotiations.⁵⁹⁰ As noted in the 1871 Annual Report to the Governor General of Canada:

In anticipation of the movement of troops across the country lying between Thunder Bay and Manitoba, in 1870 agents were employed to visit the Indian Tribes along the route, to conciliate them by presents, and to assure them that while a peaceful right of way for troops and emigrants only was required, the Government would be prepared, at a convenient season, to compensate them for their friendly co-operation, and to cover by a Treaty any lands which they might be willing to part with and the Government deemed it politic to acquire.⁵⁹¹

However, the Anishinaabe of Lake of the Woods, though agreeing to allow troops to pass unmolested in exchange for compensation, were not ready to formally engage in treaty

⁵⁸⁹ Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times*, 280.

⁵⁹⁰ Canada, Department of Indian and Northern Affairs. *Annual Report*, 1871, p.9.

⁵⁹¹ Canada, Department of Indian and Northern Affairs. *Annual Report*, 1871, p.3.

negotiations. Commissioners returned in 1872, but the Lake of the Woods Anishinaabe were not willing to entertain negotiations until 1873.

The Anishinaabe utilized the treaty negotiations as a means to assert their land tenure as well as their desire to settle the previous violations of their tenure. The Anishinaabe opened the proceedings with expressions of pleasure in meeting the commissioners. This initial welcome was immediately followed by one speaker who reminded the Commissioners that “[p]romises had many times been made to them, and, as the speaker said, unless they were now fulfilled they would not consider the broader question of the treaty.”⁵⁹² Dawson responded to this statement, asserting “[w]e made to the Indians the proposals we were authorized to make, and we have carried out these proposals in good faith. This was three years ago. What we were directed to offer we did offer, but the Indians thought it was too little, and negotiations were broken off.”⁵⁹³ The commissioner continued to attempt to place Anishinaabe attention on the present questions at hand. Nonetheless, the Anishinaabe continued to employ the treaty negotiations as a vehicle to settle their past grievances.

One Anishinaabe chief expressed his view that the people were of one mind, positing that “what the Commissioners called ‘small matters’ were great to them, and were what they wished to have settled.”⁵⁹⁴ Dawson challenged Anishinaabe grievances, stating that all these questions had previously been discussed “...but if he had made any promises that remained unfulfilled, he would be happy to learn their nature.”⁵⁹⁵ The Anishinaabe were all too willing and ready to lay out the nature of unfulfilled promises.

⁵⁹² Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 55.

⁵⁹³ Ibid., 56.

⁵⁹⁴ Ibid.

⁵⁹⁵ Ibid.

The aforementioned chief reported that boats in the waters and houses on the lines were theirs and that the Anishinaabe should be compensated for Canadian use of their lands. The Anishinaabe asserted that they had not been paid for their wood or for the Dawson Route itself. They questioned the right of the Government to use their lands.⁵⁹⁶

Mr. Dawson retorted that he had already paid them for cutting wood. Morris followed Dawson's claims by asserting that there was a common right for both Indians and non-Indians alike to use the wood and waterway free of charge. Morris' comments ignited a dispute with the chiefs regarding who had rights over the land, water and resources. The Lieutenant-Governor attempted to lay claims in the land by employing Anishinaabe language of diplomacy. He stated, "wood and water were the gift of the Great Spirit, and were made alike for the good of both the white man and red man," attempting to close off any further conversation regarding previous agreements.⁵⁹⁷

The Anishinaabe were undeterred and reiterated their first question regarding this unsettled dispute. The aforementioned chief asserted that "...he and his young men were determined not to go on with the treaty until the first question was disposed of."⁵⁹⁸ He asserted, "What was said about the trees and rivers was quite true, but it was the Indian's country, not the white man's."⁵⁹⁹ The chief's assertions of Anishinaabe land tenure reflected Anishinaabe expressions of nationhood as they spoke about their lands in a collective form. While individual property and usufruct rights were regulated through strict cultural protocols within individual bands, some of these bands chose to approach treaty negotiations with other nations, namely Canada, through a unified voice.

⁵⁹⁶ Ibid., 57.

⁵⁹⁷ Ibid.

⁵⁹⁸ Ibid.

⁵⁹⁹ Ibid.

While the Anishinaabe continued to assert their land tenure and proprietary rights throughout the negotiation process, Morris refused to address the Anishinaabe's previous grievances separately from the treaty. He argued "...that unless they would settle all the matters, the big and the little, at once, he would not talk."⁶⁰⁰ Morris continued, "We are all children of the same Great Spirit, and are subject to the same Queen. I want to settle all matters both of the past and the present, so that the white and red man will always be friends."⁶⁰¹

Though Morris refused to settle Anishinaabe claims against the government in separation from the new treaty, the Anishinaabe had been relatively successful in asserting sovereignty and land tenure. Both Dawson and Morris reported the necessity to treat with the Anishinaabe in these territories because the Anishinaabe had clear concepts of property rights and were keenly aware of their interests. If too much time passed without treating, Dawson feared there would be conflicts, stating:

it is fortunate, too, that the arrangement has been effected, as the Indians along the lakes and rivers were dissatisfied at the use of the waters, which they considered theirs, having been taken without compensation, so much so indeed that I believe if the treaty had not been made, the Government would have been compelled to place a force on the line next year.⁶⁰²

Morris declared throughout his reports that he desired negotiations to result in a treaty, and he was aware of the need to be cautious in his negotiations. Anishinaabe protests of unregulated movement through their territories highlights how Anishinaabe land tenure practices were not only expressed and exercised by the Anishinaabe throughout the treaty

⁶⁰⁰ Ibid.

⁶⁰¹ Ibid., 58.

⁶⁰² Ibid., 51.

era but were seemingly recognized by the colonial nations who engaged in treaties with them.

Canadian treaty officials realized that Canadian passage through Anishinaabe land required compensation. Canada had issued a commission to enter into a treaty with the Anishinaabe of Lake of the Woods in order to establish the Dawson Route. The Anishinaabe had actively protested movement through and usage of their lands. They continued to protest Canadian encroachment on their land tenure throughout their negotiations surrounding Treaty Three. The Anishinaabe articulated their sovereignty and land tenure as a gift and “inheritance” from the Creator. This inheritance placed a responsibility on the Anishinaabe to care for this gift. As Canadian citizens and government officials attempted to assert their own sovereignty and land tenure to North America, the Anishinaabe actively sought to protect their land, utilizing Treaty Three as a means to assert their sovereignty, nationhood, and land tenure and to protest unwelcomed passage through land.

To Quiet the Spirits of Their Fathers: Protests Among the Red Lake and Pembina Anishinaabe

Much like their kin north of the border, the Anishinaabe south of this 49th parallel also continuously asserted and exercised their sovereignty and land tenure. The Red Lake and Pembina bands placed tolls on trade ships as a means to both assert and exercise their land tenure. Yet, much like Nenabozho’s revenge for his nephew’s death, these acts of sovereignty would have consequence for the Anishinaabe and the United States alike. The Red Lake and Pembina Anishinaabe voiced and exercised their land tenure long

before the negotiations for the 1863 treaty with the United States. Indeed, Anishinaabe protests were what induced the United States to enter into a treaty with these bands. Alexander Ramsey, in his report surrounding the 1863 “Old Crossing” treaty, as it became known, laid out U.S. motivations to treat with the Pembina and Red Lake Anishinaabe. Ramsey elaborated that Anishinaabe protests of movement throughout their lands, which he argued resulted from their lack of “supervision,” were also an impetus to treaty-making. He stated that “[f]inally, in view of the unruly disposition manifested by these Indians in consequence of their isolation from the control of the government, it seemed to me of great importance that they should be brought into more intimate relations with its representatives and more directly under its supervision.”⁶⁰³

Though Ramsey continually asserted throughout the negotiations that the United States was not interested in land, instead wanting only a “right of way,” he ultimately pushed for land cessions. He reasoned that “...it was apparent that such a necessity would very soon be pressed upon the government from another quarter, by the rapid advance of settlement throughout the valley of the Red river.” Like many other treaties, the United States remained interested in expansion and the acquisition of Indian land. In addition to this will of empire, the United States was equally motivated to treaty as a result of the threats the Anishinaabe presented to U.S. expansion.

The act of placing tolls on trade ships crossing through Native lands had been carried out for over a century by Native peoples across North America as a means to assert their territorial rights. J.R. Miller notes that “[p]articularly well suited groups, such as the Algonkin of Allumette Island in the Ottawa River, used their position and power to

⁶⁰³ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.8, RG 46.

exact tolls from canoe brigades, including those of traders, who passed through their territory.”⁶⁰⁴ Charles H. Lee, in his historical account of Pembina County, recorded that “[t]he Indians had protested against the use of the river for steamboats complaining that the boats drove away the game and killed the fish, while the whistle made such an earthly noise that it disturbed the spirits of their dead and their fathers could not rest in their graves.”⁶⁰⁵ The disturbances from the steamboats led the Anishinaabe along the Red River to set up levies on the boats that passed through. Lee found that “[t]hey demanded four kegs of yellow money to quiet the spirits of their fathers or that the boats be stopped.”⁶⁰⁶ These four kegs of yellow money likely refer to whiskey, which was occasionally used within Anishinaabe ceremonies that pertained to laying the deceased to rest.

The Anishinaabe often levied taxes on the trade ships coming down the Red River, disrupting U.S.-British trade relations. Anishinaabe regulation of their territory proved consequential for the United States and Britain. Ramsey reported that he met with Mr. Dallas, governor of the Hudson’s Bay Company, after the conclusion of the Old Crossing Treaty, “...who expressed the greatest satisfaction that an arrangement had at last been effected with the Indians on the route, which would not only put an end to the annoyances which had heretofore proved a serious check upon the commercial intercourse between the British and American settlements, but remain a great obstacle to the development of the important enterprises above referred to.”⁶⁰⁷ Moreover, the

⁶⁰⁴ Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada*, 37.

⁶⁰⁵ Lee, Charles H. “The Long Ago.” *The Semi Weekly Mountaineer Press*, Walhalla, N.D.. Reprinted in *Pembina and Turtle Mountain Ojibway (Chippewa) History*. Edited by Charlie White Weasel, 210.

⁶⁰⁶ Ibid.

⁶⁰⁷ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.12, RG 46.

response of American citizens to Red Lake and Pembina Anishinaabe regulations of their land provoked the United States to negotiate for safe passage through Anishinaabe lands.

Anishinaabe regulation of passage through their territories, exercised through taxing and raids, was met with outcries from the American communities settled along the Red River who feared these acts could lead to warfare. Only one year prior to the Red Lake and Pembina treaty, certain bands of the Santee Dakota had declared war on the United States, commonly referred to as the Dakota Conflict of 1862.⁶⁰⁸ As Nell Jessup Newton et al. find, “Frontier hysteria following the conflict created a backlash against other tribes. The Winnebagos, who had not participated in the conflict, were forced from Minnesota along with the Dakota. Anti-Indian sentiment also contributed to the Sand Creek Massacre, in which the Colorado Volunteers slaughtered at least 150 Cheyenne and Arapaho who had gathered near Denver to make peace with the United States.”⁶⁰⁹ The aftermath of the Dakota Conflict (or Dakota War) was far reaching, and this was evident in the 1863 treaty negotiations with the Red Lake and Pembina bands of Anishinaabe.

Governor Ramsey opened the negotiations with a speech that was seemingly aimed at inducing the Anishinaabe to recall the Dakota Conflict and its outcome for Dakota people. Ramsey stated, “The bad and treacherous Sioux, your enemies and ours, by despising his counsels, have got themselves into trouble...they have called down upon

⁶⁰⁸ Cohen, *Cohen's Handbook of Federal Indian Law*, 70. Gary Clayton Anderson, *Little Crow, Spokesman for the Sioux* (St. Paul, MN: Minnesota Historical Society Press, 1986), Kristian Berg et al., *Dakota Conflict* (St. Paul: KTCA/Video, 1993), 1 videocassette (VHS) (60 min.).

⁶⁰⁹ Cohen, *Cohen's Handbook of Federal Indian Law*, 70.

themselves a vengeance which will surely be visited upon them.”⁶¹⁰ While the Dakota War was precipitated by U.S. treaty violations, trader conflict, and failing reservation and assimilation policy, it ended in grave consequences for the Dakota. The tribe’s treaties were abrogated, and the Dakota were forcefully exiled from their Minnesota homelands. By the time Ramsey had made this speech, over 300 Dakota had been sentenced to death. Though President Abraham Lincoln pardoned many of these men, 38 Dakota had already been hanged for their participation, resulting in the largest mass execution in United States history. While Ramsey induced the Anishinaabe to recall these recent events, he also positioned the Dakota as mutual enemies of the United States and the Anishinaabe. In doing so, Ramsey simultaneously posited that Anishinaabe acts of regulating passage were a threat to the United States, a threat that may potentially require a similar response that the Dakota had received from the U.S. Ramsey’s speech also created the space for the Anishinaabe to speak against the actions of the Dakota, marking them as mutual enemies, and to repair their relationship with traders and U.S. citizens.

Ramsey established an impression on the Anishinaabe by reminding them of what happened to the Dakota when they had fought against the United States. He argued:

The Great Spirit has already avenged, in a measure, the wickedness and perfidy of the Sioux; for whereas, a little more than a year ago, they had pleasant homes, blankets to keep them warm, and provisions to fill their bellies, and money to buy what they needed for themselves and families, they have now been driven forth, wanderers and outcasts in strange lands,

⁶¹⁰ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.15, RG 46.

stripped of everything, among tribes who do not want them in their country— without homes, without land of their own, many of them without food, clothing, ammunition, or even lodges. I mean, of course, the Sioux of the Mississippi, those who were engaged in the outrages last fall. Worse things are yet in store for them.⁶¹¹

Ramsey laid out the conditions facing the Santee Dakota, many of whom had traveled north into Canada to escape the reprisal of the United States government. Many Anishinaabe had first-hand experiences with the Santee Dakota who had traveled through Anishinaabe territory en route to Canada. McGrady finds that “[a] significant amount of trade between the Sioux, the Métis, and mixed-bloods was conducted in the months following the Dakota conflict.”⁶¹² He further states that “American army officials claimed, not only that Métis and British traders supplied Sioux with arms and ammunition, but also that they encouraged further hostilities in an effort to protect their trade.”⁶¹³

During the 1860s, Dakota people moved into the plains of North Dakota and Manitoba. They had to engage in delicate negotiations and take advantage of the U.S.-Canadian border to secure access to Anishinaabe lands and cross into territory under separate colonial control. McGrady argues, “In the months following the Dakota Conflict Sioux leaders wasted no time in contacting and attempting to obtain the goodwill of the HBC and the mixed-blood population of Rupert’s Land. At the same time they were immediately aware that they had entered an area, not only claimed by a different colonial

⁶¹¹ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.15, RG 46.

⁶¹² McCrady, *Living with Strangers: The Nineteenth-Century Sioux and the Canadian-American Borderlands*, 24.

⁶¹³ *Ibid.*, 27.

government, but also occupied and effectively controlled by different Aboriginal peoples.”⁶¹⁴ McGrady further states that “Dakota leaders responded quickly by opening discussions with the Ojibwas to allow them rights to temporary access to Ojibwa land. In May 1863, for example, Little Crow arrived with his band at Pembina and spoke of going to Fort Garry. While in Pembina he opened negotiations with the Red Lake, Lake of the Woods, and Pembina Ojibwa.”⁶¹⁵

Dakota motivations extended beyond trade and safe passage. Both Dakota and Anishinaabe people responded in multifarious ways to the Dakota war. Some Dakota went into exile in Canada, eventually persuading the government to establish a reserve for them. McGrady argues “However, the Dakota Conflict also produced refugees who traveled to Red River and wished to remain there permanently. Many leaders, therefore, sought to gain rights of residency from the local aboriginal people... The Mdewakanton leader H’damai noted, for instance, that he and his three sons had arrived at Turtle Mountain during late 1862. He gave the local Ojibwas four horses and five sacred pipes, and, in exchange, ‘(t)he chief warrior of the Ojibway gave the Turtle Mountain to me and my people.’”⁶¹⁶

The Dakota Conflict of 1862 brought to surface the numerous problems that plagued U.S.-Indian relations. It shed light on the problems that arose from reservation and assimilation policy, poor or failed implementation of treaty promises, and the continual encroachment of American citizens onto Indian land. Red Lake and Pembina Anishinaabe regulation of passage through their territories, too, disrupted American notions of absolute sovereignty, and challenged U.S. jurisdictional and territorial domain.

⁶¹⁴ Ibid., 28.

⁶¹⁵ Ibid.

⁶¹⁶ Ibid., 29.

Ramsey sought to utilize the U.S. response to the Dakota as a means to quiet Anishinaabe assertions of their land tenure. He, in addition, utilized the fact that some Anishinaabe had aided the Dakota to further threaten the Anishinaabe both for disturbing trade ships and their “participation” in the Dakota war.

Ramsey stated that “[t]hose that sympathize with them, or aid them in any way, will be attended to in good time. The conduct of the Sioux was without any excuse or apology. If they had wronged, they had only to represent them to their Great Father, who would have promptly redressed them.”⁶¹⁷ Ramsey’s speech operated to invoke the “protectorate” relationship that the President was thought to have with his Indian allies. The United States had pledged in numerous treaties to protect Native peoples from the incursions of American citizens. However, when the United States failed to uphold their treaty obligations to the Dakota, much of which precipitated the Dakota War of 1862, Ramsey placed responsibility on the Dakota. He argued that “[t]he Sioux have not only behaved badly, but they have destroyed all confidence in their faith. They have shown that treaties and pledges, however solemn, have no binding force with them.”⁶¹⁸ Ramsey immediately connected yet simultaneously countered Dakota “behavior” with that of the Anishinaabe. He expressed his happiness to meet with the Anishinaabe, asserting that they “...have never violated the solemn faith of treaties, and because, whatever other difficulties have arisen, no white man’s blood has been shed by a Chippewa.”⁶¹⁹ Ramsey expressed the desire of the President that Native peoples and Americans should “live together” and maintain friendly relations, all the while reminding the Anishinaabe of how

⁶¹⁷ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.15, RG 46

⁶¹⁸ Ibid.

⁶¹⁹ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.15-16, RG 46.

the American population had drastically increased in the area and greatly outnumbered their bands.

Ramsey then immediately transitioned into the President's displeasure with the Anishinaabe for interfering with U.S. trade. Ramsey stated, "Their Great Father was deeply pained to learn that peaceable merchants passing up to the British settlements were stopped on the way and despoiled of their goods; and once or twice again their steamboats on the Red river had been interrupted and a levy made upon it. He fears that if this is not arranged trouble will grow out of it beyond his power to prevent."⁶²⁰ He argued that "[n]ow, this is a trade which cannot and must not be interrupted."⁶²¹ Instead, Ramsey asserted that the President sent him to arrange an understanding with the Anishinaabe to allow passage through their lands. Ramsey promoted a treaty to prevent further troubles. Yet, he was careful to assure the Anishinaabe that the President did not want their lands unless they wanted to depart with it: "He simply wishes that his people should enjoy the privilege of traveling through their country on steamboats and on wagons unmolested."⁶²²

Ramsey went on to say, "Your Great Father thinks that the passing of steamboats and carts through the country does not harm you in any way. It does not deprive you of anything; you have no steamboats nor carts; you lose nothing by it; you can still hunt and fish throughout your country as usual."⁶²³ Ramsey implicitly connected Anishinaabe regulation of passage through their territories with the United States' response to Dakota's declaration of war. He maintained that "...your Great Father does not want to deprive you of any of this by force or violence. He is willing to give you something to

⁶²⁰ President's message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.16, RG 46.

⁶²¹ Ibid.

⁶²² Ibid.

⁶²³ Ibid.

satisfy your reasonable demands, and to take away any pretext for trouble in the future. He is willing to buy the right for his white children.”⁶²⁴

The Anishinaabe present had clearly recognized the threats raised by Ramsey. Chief Red Bear insisted that he had not been involved in any crime, and the negotiations seem to indicate that he grew frustrated with Governor Ramsey, who insistently connected Anishinaabe depredations with their need to relinquish land. Ramsey told the interpreter to tell them that “by selling it they insured their own peace and security, and an annual supply of money, goods, and other things which they were now in want, while they deprive themselves of nothing of any value to them.” Ramsey followed this suggestion for land cession with a speech stating his disappointment that the Anishinaabe had not admitted and apologized for their participation in depredations on traders and steamboats.⁶²⁵

Little Rock also addressed Ramsey’s disappointment regarding the levies that Anishinaabe placed upon the ships. He stated, “Now about committing depredations and stealing: you are aware that the Great Spirit has given us the animals for our support. When your young men steal anything, you make them pay for their depredations. That is the way we look upon those white men who drove away the animals and the fish the Great Spirit has given us for our support. Do you suppose we are ignorant that the amount of money you offer us is a mere handful and would not go but a little ways towards paying for what I think you alluded to.”⁶²⁶

⁶²⁴ Ibid.

⁶²⁵ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.20, RG 46.

⁶²⁶ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.21, RG 46.

“No Power on Earth to Stop It” : The Waters Rise

While the Anishinaabe remained strong in their assertion of their land tenure and rights to place levies upon the ships, their speeches reflect the impact that the execution of 38 Dakota men by the United States had on them. Little Rock urged Ramsey to take away any threat of punishment before the Anishinaabe were willing to entertain a treaty. He insisted, “If you will take away that which I hate (i.e., the imputation of crime and liability to punishment incurred by their depredations, and the prospect of subjection to the restraints of civilized law), you shall have an answer immediately.”⁶²⁷ Little Rock argued that the Anishinaabe had made up their mind not to enter into a treaty unless this condition was met. Ramsey understood the request from Red Lake Chief Little Rock, noting in his treaty journal that the Anishinaabe did not want to be held accountable for the previous “troubles.” He too realized the connection to the Dakota, recording that these remarks were likely inspired by “...a recollection of the trial and execution of the Sioux.”⁶²⁸

Though Ramsey was aware of what Chief Little Rock was demanding, Little Rock utilized this opportunity to express Anishinaabe notions of justice. He argued that “my father never made a deep hole in the ground that he might take me and lock me up in it. This is a thing that I hate. And another thing my father never did: he never put a stick with a cord attached to it around my neck for any mischief I have done.”⁶²⁹ Little Rock urged that he should not fall under U.S. jurisdiction for any offenses committed by

⁶²⁷ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.24, RG 46.

⁶²⁸ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.23, RG 46..

⁶²⁹ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.24, RG 46.

himself or his people. Ramsey conceded that the Anishinaabe would not be punished for their previous actions. However, when Anishinaabe treaty demands became greater than Ramsey was willing to accord, he returned to the issue of “depredations.”

Ramsey explicitly tied the reprieve of depredations with a treaty. Furthermore, he stated that if a treaty was not arranged, the Anishinaabe would be “held accountable” for regulating passage through their lands. He argued, “...I told them that if they did not make a treaty they would be held answerable for the wrongs they had done; but that in the event of an arrangement being made, all the past would be blotted out; that the arrangement I wished to make with them came from the Great Father, who foresaw that unless an arrangement should be made, troubles will come upon them.”⁶³⁰ Little Rock knew what Ramsey was insinuating.

Chief Little Rock continued to press Ramsey to relieve the Anishinaabe of any punishment for past “offenses.” He beseeched, “If you will promise us that you will not erect in this land what I call a *bad tree* (meaning the gallows) for any of you people, or make a dark hole in the ground, with a lock to lock us in (a dungeon), we shall come to an understanding.”⁶³¹ Ramsey pledged that he would make a satisfactory treaty with the Anishinaabe. However, Little Rock remained concerned, stressing his fear that the United States would nonetheless persecute the Anishinaabe as they had the Dakota. He urged, “And if you will promise to keep everlasting peace and friendship—for I am afraid your war-club is raised behind me, ready to fall upon me...if you will promise us these things,

⁶³⁰ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.28-9, RG 46.

⁶³¹ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.29, RG 46.

then I will be ready with an answer.”⁶³² Ramsey noted in the proceeding that the Anishinaabe had heard that U.S. troops were heading in their direction. Though Ramsey stated the troops were serving as an escort, he realized this likely raised questions for the Anishinaabe regarding the intent of the U.S.

Ramsey utilized the fear of punishment to his advantage throughout the negotiation process, continually reminding the Anishinaabe of the United State’s military strength. Ramsey expressed the United State’s interest in “wiping out” all the past troubles between the Anishinaabe and British and American traders and citizens. He also conveyed an interest in rectifying Anishinaabe dissatisfaction with unregulated passage through their land in order to prevent further disputes. Ramsey maintained that a treaty would remove any reason for the United States to pursue punishing previous “offenses” and would allow for perpetual peace and friendship.⁶³³

However, again when treaty negotiations resulted in Anishinaabe assertions of their land tenure and sovereignty, Ramsey sought to shift the direction of the proceedings. Chief Little Rock laid out the land the Anishinaabe were willing to cede to the United States and the price they asked for this land. Perhaps because the Anishinaabe were well aware of the value of their land and asked for prices above what Ramsey had hoped to secure the land for, Ramsey contested Anishinaabe claim to the land in question. He inquired, “What do they mean by proposing to sell me a country which does not belong to them? To my certain knowledge the Sioux are on the Sheyenne more than they are.”⁶³⁴ Ramsey sought to diminish Anishinaabe sovereignty and land tenure by

⁶³² Ibid.

⁶³³ Ibid.

⁶³⁴ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.31, RG 46.

contesting their claim and placing title with the Dakota. Interestingly, Ramsey again evoked the Dakota to alter the direction of the treaty negotiations. While Dakota had sought aid from and refuge among many Anishinaabe after the Dakota War of 1862, conflict between the two nations continued in some areas. McGrady finds that “Although difficult to document, conflict between the Dakotas and Ojibwas continued after the Dakotas negotiated their entry into Rupert’s Land. The newspaper in Red River reported early in 1864, for example, that one Dakota had been killed by an Ojibwa and that more trouble was expected.”⁶³⁵ McGrady qualified this statement, arguing that most of this conflict came from the Anishinaabe from Red Lake, not the Anishinaabe or Cree in Rupert’s Land. He further notes that many of the Red River Anishinaabe had intermarried with Dakota. Kinship relations would allow smoother negotiations between Dakota and the Anishinaabe in the Red River area. While not all Pembina likely befriended the Dakota, and not all the Red Lake Anishinaabe despised them, the varied relationships and responses that Anishinaabe had toward the Dakota complicated the “Old Crossing” treaty negotiations. At least some of the Pembina Anishinaabe had indeed aided the Dakota and some Red Lake Anishinaabe despised them. Both positions would color how the Anishinaabe responded to Ramsey’s continued threats.

Ramsey evoked the punishment inflicted upon the Dakota after the war of 1862 and then disputed Anishinaabe land tenure, arguing the country belonged to the Dakota. Both had caused a stir among the Anishinaabe present. Whether the Pembina aided the Dakota or not, they knew the land was theirs. Pembina Chief Red Bear, seemingly disgusted with Ramsey’s insinuation that the land belonged to the Dakota, replied “I do

⁶³⁵ McCrady, *Living with Strangers: The Nineteenth-Century Sioux and the Canadian-American Borderlands*, 29.

not want to say anything to you; but I want to find fault with you because things do not go right.”⁶³⁶ Perhaps giving up any intention to keep the negotiations on seemingly friendly terms, Ramsey became more insistent. He, while still arguing the U.S. only wanted a “right of way,” now spoke of the need for the Anishinaabe to compensate those whom they placed levies on or destroyed property. He asked, “Now, what are they going to do about it?”⁶³⁷ Ramsey went further yet. Ramsey stated, “Tell Red Bear this. He and his friends are better friends to the Sioux than to the whites. They harbor the Sioux, and the gold that was red with the blood of the whites was traded in their country. While our men and women were murdered in cold blood by the Sioux, the assassins were received and harbored in the lodges of the Pembina Indians and half-breeds, and the gold and horses which the Sioux had stolen were traded in their camps.”⁶³⁸

Ramsey had opened the negotiations days earlier, reminding the Anishinaabe of the “vengeance” that would continue to fall upon the Dakota for going to war with the United States. He then loosely equated Anishinaabe “depredations” to Dakota warfare, insisting that the Anishinaabe must sign a treaty with the United States if they were to remove any threat of punishment from the President. Now Ramsey managed to bring these threats together by insisting that the Pembina had not only “harbored the Sioux,” but also became rich from the spilt blood of American citizens. Ramsey even managed to utilize Red Bear’s denial that he harbored the Dakota to refute Anishinaabe land tenure. He argued:

⁶³⁶ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9), p.31, RG 46.

⁶³⁷ Ibid.

⁶³⁸ Ibid.

He does not harbor them? They are in his country, on friendly terms with his people-receiving all their supplies from his country. If he cannot keep them out, why do they come here to make a fuss about a country which they don't own, but which is occupied by our enemies?...If they cannot keep the Sioux out of their country, but are obliged to pay them tribute and furnish them with ammunition to use against the whites, what are they doing here? Why do they not send the Sioux here to treat for the country? Both the Pembina and Red Lake Indians are coming here to sell a country that the Sioux own more than they do, and ask ten times as much as it would be worth if they owned it themselves.⁶³⁹

Ramsey now posited that a treaty must be entered into to both settle previous depredations and to account for Anishinaabe participation in the Dakota war. Ramsey stated, "They must wash their hands of the blood that has been spilt by the ammunition they have furnished the Sioux, and of the robberies committed by their own people."⁶⁴⁰ Yet, the Anishinaabe were fully aware of their rights to their lands and were unwilling to let Ramsey make these correlations without protest.

Red Lake Chief Little Rock asserted Anishinaabe claim to the lands, explaining how they removed the Dakota from the area under dispute. He asserted, "My friend, I want to tell you about that tract of country you spoke of, occupied by a tribe that speak a different language. My friend, I want you to fully understand how we came to own this land. Yes, my friend, you told the truth: this land used to belong to the Sioux, and so did the (Red) lake. While the Sioux were in quiet possession of that country my ancestors had

⁶³⁹ President's message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.32, RG 46.

⁶⁴⁰ Ibid.

not laid down the tomahawk. We drove them, as it were, towards the Rocky mountains; and when we had driven them off, then we claimed the land as our own.”⁶⁴¹ Little Rock further demonstrated their undisputed claim to the area. He argued, “Talk about the Sioux owning that land more then we do! We can show you our camps all along the Sheyenne river; we hunt down there always. It is so still; we still own that land, and we never want to shake hands with the tribe you have mentioned. It is only because you have driven them away in confusion that we cannot now reach them.”⁶⁴² Little Rock argued that even the Dakota would recognize Anishinaabe claim to the area if they were present.

Little Rock’s assertions of Anishinaabe land tenure successfully closed off any dispute Ramsey could raise to their rights to the area. He, therefore, changed course again, insisting that the U.S. government was only interested in a “right of way” for the Pembina, claiming that the Red Lake band had expressed an interest in selling their lands. Ramsey continued to argue that he had come there to settle their troubles, again referring to the taxes levied on trade ships. He insisted, “I told them that the roads and rivers must be unobstructed. They must be traveled over. There is no power on earth to stop it.”⁶⁴³ Ramsey not only insisted that this travel was unstoppable but also posited that “progress” would continue, and that any who would not go with it must stand aside. Yet he continued to assert that the United States had no interest in Anishinaabe lands, merely a right of way.

⁶⁴¹ Ibid.

⁶⁴² Ibid.

⁶⁴³ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.33, RG 46.

Ramsey however realized the contradiction in recognizing the need to purchase a “right of way” and yet insisting that Anishinaabe did not have the right to regulate passage through their lands through taxes. He indicated this in his treaty report, justifying why he purchased the land and not merely the right of way. He stated, “Besides, as these Indians had assumed the right to levy contributions of goods as a toll, or tax, upon merchants or steamboats passing through the country, the formal purchase of a right of way would have implied that such a right did not already exist, and thus have sanctioned an assumption on their part, and inaugurated a precedent on ours....”⁶⁴⁴

Ramsey also sought to discount Anishinaabe claims that they could regulate passage, stating to the Anishinaabe that the President wanted to purchase a right of way, not because the Anishinaabe had any right to prevent passage, but instead “...because he wished to prevent them getting into trouble.”⁶⁴⁵

Ramsey explicitly connected “behavior” to land title. He argued that “[t]he bad conduct of the Sioux had created a prejudice in the minds of a great many whites against all Indians, and the people and the chiefs who formed the council of the Great Father had all begun to place a lower estimate upon Indian titles than heretofore. There was a growing disposition to disregard their claim to own the soil which they did not use themselves.”⁶⁴⁶ Pembina Chief Red Bear responded that it was not his fault that his people had to harbor the Dakota, arguing that the U.S. drove the Dakota to them.⁶⁴⁷

⁶⁴⁴ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.8, RG 46.

⁶⁴⁵ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.33, RG 46.

⁶⁴⁶ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.34, RG 46.

⁶⁴⁷ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.36, RG 46.

Throughout the treaty negotiations, Anishinaabe chiefs countered U.S. dismissal of their land tenure with declarations of their land tenure and awareness of the value of this land to both themselves and the U.S. The Anishinaabe stated the amount they were willing to cede their lands for. However, when Ramsey attempted to counter their offer, arguing the U.S. had no interest in their lands for at least another fifty years, Red Lake Chief Little Rock responded that he knew their land was not worthless and that the Anishinaabe were only willing to cede this land "...for the purpose of putting behind them all the past, and stand without crime whatever."⁶⁴⁸ He argued that their asking price was more the fair for the land they were willing to cede.

Continued resistance from Ramsey to meet the demands of the Red Lake Anishinaabe sparked a dispute between Red Lake chiefs regarding the direction they should take. While the influential chief Moose Dung supported a treaty, Chief May-dwa-gun-on-ind did not. He continually questioned the low offer, stating that he must consider what would be best for his tribe.⁶⁴⁹ In addition, the chiefs sought to clarify events of the past, to explain their actions.

Ramsey refused to engage the Anishinaabe. Instead he questioned how they were going to explain their previous acts of taxing the trade ships to the President if they did not cede their land? He argued that "The Great Father is required to compensate the injured parties for the damages inflicted by the Indians on their property."⁶⁵⁰ Chief May-dwa-gun-on-ind again attempted to portray what occurred, positing that the

⁶⁴⁸ President's message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.38, RG 46.

⁶⁴⁹ President's message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.40, RG 46.

⁶⁵⁰ President's message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.42, RG 46.

Anishinaabe continually sent word that they would not meddle with the Dakota. Yet, Ramsey continued to connect Anishinaabe regulation of their land tenure as a hostile act against the United States. Ramsey argued, “Tell him that all that is out of the question; the Great Father has treated them very gently about a great wrong committed by them. He has sent to them at great expense, and now he wants an answer. The wrong is done, and there must be compensation one way or the other.” Ramsey’s approach demonstrated the conflicting perspective maintained between the U.S. and the Anishinaabe.

Ramsey worked to establish Anishinaabe regulations of their land as pillaging while the Anishinaabe maintained that their actions were appropriate because they were responding to white encroachment on their lands. Throughout the negotiation process, Anishinaabe chiefs asserted their land tenure, positing that the land was their inheritance from the Creator and belonged to the Anishinaabe. They went into long, detailed speeches regarding their land tenure and its relationship to the Creator. Chief May-dwa-gun-on-ind reminds Ramsey of this, baffled that Ramsey continued to seek retribution. He stated, “*This is where you have me at a loss. What I said of the Master of Life you ought to accept.*”⁶⁵¹ Ramsey continued to discount Anishinaabe rights to regulate passage through their lands, again marking these moments as acts of violence. He argued that there were witnesses who could testify that the goods were turned over only upon the threat of violence. Yet, this focus on the method used to obtain taxes served merely as a distraction from real questions regarding whether the Anishinaabe had the right to regulate passage, and indeed they did.

⁶⁵¹ Ibid. Emphasis in original.

Little Rock sought to illustrate this important point that the Anishinaabe owned their land and had the right to regulate it by focusing on how the passage of boats impacted Anishinaabe use of their land. He argued that “[m]ay be you are speaking about the boat that used to be on the river while our young men used to look to that river for their support. They used to look there for their living, but the steamboat drove it away.”⁶⁵² Little Rock demonstrates that the trade ships affected Anishinaabe use of their land and resources. As such, their young men regulated passage through their territories, seeking recompense for damages done to their land. Indeed, Little Rock’s words demonstrated that Anishinaabe believed that it was the British and American citizens that were carrying out depredations and that the Anishinaabe should be compensated. Chief Broken Arm recognized that the Anishinaabe and the U.S. (through Ramsey) had different perspectives regarding the past events. He questioned how they could come together when they had each marked out roads from which they would not vary.

Ramsey’s position was predicated upon a refusal to acknowledge Anishinaabe rights to regulate their land. He commented, “I have marked a road by which, if your people will follow it, they can escape from past troubles and keep out of future difficulties. There is a blot upon their character which they have refused to wipe out.”⁶⁵³ Ramsey indicated that this blot on their character could only be removed by entering into a treaty in order to compensate the “injured,” otherwise he argued that if the Anishinaabe did not make compensation then “...the Great Father must get it in such a way as he thinks proper.”⁶⁵⁴ Furthermore, Ramsey correlated the future actions the President would

⁶⁵² President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.43, RG 46.

⁶⁵³ Ibid.

⁶⁵⁴ Ibid.

take as just, instead placing blame on the Anishinaabe for not taking “advantage” of the opportunity he presented to them. He stated, “For whatever consequences may happen to them, they cannot now blame me or the Great Father. I have done the best I could for them. Their Great Father has been at great expense and trouble to help them out of their difficulties. They refuse his kindness, and the responsibility must now rest wholly upon them.”⁶⁵⁵ Upon this speech by Ramsey, Chief May-dwa-gun-on-ind rose, shook hands with Mr. Ramsey, and walked away without saying a word.

While Chief May-dwa-gun-on-ind was willing to walk away from the treaty negotiations and risk the consequences, Moose Dung was not so quick. He knew that the Dakota people, whether their declaration of war was just or not, suffered immensely at the hands of the United States. The United States had a military presence that could back the word of the President. Treaty commissioners were often escorted by a military troop, and this treaty was no different. Ramsey was escorted, either ironically or fittingly, by mounted troops under the command of General Sibley who had just returned from the expedition against the Dakota. Moose Dung reasoned that “[a]s long as I have lived to attain to my present age, It has always been my aim to procure peace and a friendly understanding, and whenever there was anything wrong I have always worked with all my might to set it right. Father, when I think of the past and of the future, how sorry I should be if I should not be able to swallow in the future what would happen if we did not accept your offer. ...It may be I shall be loth to accept what you offer, but I will do my best to come to a friendly understanding.”⁶⁵⁶

⁶⁵⁵ Ibid.

⁶⁵⁶ President’s message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.44, RG 46.

Ramsey responded favorably to Moose Dung's conclusion to treat. He stated, "I have always had confidence in the Chippewas, and last year, when the Sioux committed such horrible offences, and destroyed themselves, many others thought the Chippewas also would be bad. I said they would not, and constantly stated they would not throw away all o the good name they had so long been endeavoring to acquire. I know their Great Father has the kindest feeling for them, and if their treaty, which they complain of, is hard on them, he will make it as easy as possible."⁶⁵⁷ The "Old Crossing" treaty concluded with the Pembina and Red Lake Anishinaabe ceding large portions of their land. In addition, the annuities gained from this sell were primarily utilized to "compensate" the traders and U.S. citizens who had been taxed when they passed through Anishinaabe lands.

The Anishinaabe had asserted and exercised their sovereignty and land tenure, yet these actions had consequences. As illustrated in the opening story, actions and consequences become layered. The United States attempted to lay claim to Anishinaabe sovereignty and land tenure. These presumptuous actions carried the consequence of Anishinaabe protests and active regulation of their land. The Anishinaabe stopped trade ships coming down the Red River Valley and levied tolls. When the water levels became low and the trade ships became grounded on Anishinaabe land, the Anishinaabe "raided" these ships. These ships had impacted Anishinaabe access to their game and resources and disturbed their ancestors. In order to bring back balance and lay their ancestors to rest, the Anishinaabe (obligated by their kin obligations to the land, animals, and spirits) protested unwelcomed passage and taxed the ships.

⁶⁵⁷ President's message, January 7 & 8, 1864; *Treaty of October 2, 1863 with the Red Lake & Pembina bands of Chippewas*; Indian Treaty Files (SEN 38B-C9): p.47, RG 46.

However, just as Nenabozho's actions would lead to the flooding of the earth, Anishinaabe regulation of their land tenure would also bring unforeseen consequences. In the wake of the Dakota conflict, the United States, through Ramsey, responded to Anishinaabe assertion and exercise of their sovereignty and land tenure with hostile threats of imprisonment, war, or death. Anishinaabe had to work diligently to assert their sovereignty and land tenure in the face of U.S. threats. While the Anishinaabe lost large portions of their treaty annuities to end U.S. threats, they ultimately signed the "Old Crossing" treaty with the United States. As such, their treaty would carry consequences for the Anishinaabe and the United States alike. Each made commitments to the other. This treaty created an obligation that these nations would have to one another.

Conclusion

Treaty-making, much like the flooding of the earth, carried elements of destruction and renewal. The United States and Canada throughout the nineteenth century attempted to construct, assert, and exercise their sovereignty, nationhood, and land tenure. These competing claims were met with Anishinaabe protest. Anishinaabe protested movement through their territories by posting signs, regulating access, and placing levies or tolls. These actions show how Anishinaabe were carrying out practices of their land tenure throughout the treaty era. Furthermore, these strong declarations of Anishinaabe land tenure often provided avenues for the Anishinaabe to air their dissatisfaction in their relations with colonial nations.

Treaty-making, like the flood, also allowed for renewal. The Anishinaabe of Treaty One and Two and the Red Lake and Pembina Anishinaabe used treaty negotiations to express any grievances they had in their relations with the United States and Canada. In addition, treaty-making became a site for the Anishinaabe to reconcile their sovereignty, nationhood, and land tenure with the younger claims asserted by the United States and Canada. Treaties allowed for these nations to come together, attempt to settle their disputes, and forge renewed relationships.

Conclusion: To Know the Future of Our People

Waynaboozhoo and the Search for His Father:

His father looked to the East from his seat in the West. He was surprised to see his son still under the giant trees. His son seemed to him a beautiful and strong being. He was amazed and proud that his son had the strength and determination to travel so far just to see him. He knew that his son must have sacrificed many of his own desires in order to journey so far. But he was saddened because he knew that there was one last thing he had to do in order to fulfill the Creator's plan. He had to fight his son. He knew though, that in his conflict with his son that they would cause an end to all the conflict between fathers and sons yet to come on the Earth...

To Waynaboozhoo, his father seemed like a giant. His greatness was immense. His presence emanated a power. Waynaboozhoo sensed that his father was more of the Spirit World than he was of this world. He

then understood that as a person, he was more of the physical world than of the world of his father. He understood, too, that in order to receive the answers to all his questions he must fight his father.

There are many descriptions of what followed. It is said that the fight between Waynaboozhoo and his father took them many places. Many people say that where they struggled, they overturned the Earth and laid everything flat as are the pa-pa-shkwag' (deserts) to this very day. The fight may have raged four days or four years. Time was lost during the struggle...

[T]hey both realized that each had such a power of his own that it would be wrong to destroy one another. In later days, Indian people remembered this and in their conflict with neighboring tribes they would never destroy an enemy. To destroy one part of the Creation would be to destroy it all.

His father spoke out: "My son you have surprised me! I admire you [sic] bravery and courage. I know you have many questions that have burned at your heart for a long time. I will answer all that you ask..."

"You are half spirit and half man. The Creator has instructed me to send you to live among the people of the Earth, even as one of them. You are to be the guiding force to the men, women, and children that will follow you. You are to give them examples and teachings to make their lives happier and more meaningful. Give them examples of bravery, foolishness, humor, generosity. Give them examples of all things."

As his last act, Waynaboozhoo's father reached for the pouch that hung by his side... Out of the pouch, Mud-ji'-kee'-wis pulled an O-pwa'-gun (Pipe) that was made of red stone and wrapped in Mush-ko-day-wushk' (Sage).

"My son, I want you to take this Pipe and keep it with you until the time comes when it is needed by the Earth's people. This pipe is a symbol of peace and goodwill among all peoples and nations for all time." — Edward Benton-Banai⁶⁵⁸

Nenabozho has the power to transform. He can alter his appearance and in many stories appears as a hare. He is simultaneously a trickster and a hero. He is someone to be cautious of and to be revered; someone to emulate and yet, also someone whose mistakes serve to teach the Anishinaabe proper behavior. Nenabozho's actions continuously alter the landscape and animals he encounters. Actions have effect. The stories of Nenabozho's adventures serve to constantly remind the Anishinaabe that the choices they make, the ways in which they treat one another, other people, animals, and spirits shape, alter, and modify their world.

The story *Waynaboozhoo and the Search for His Father*, like many Nenabozho stories, contains the power of transformation. Nenabozho sets out on a journey to resolve his concerns and questions about his father. The quest transforms his relationship with his father as well as the relationship between all fathers and sons to follow. In addition, the story illustrates that, at times, conflict is necessary. While neither Nenabozho nor his father want to fight one another, they both recognize that it cannot be avoided. Their fight

⁶⁵⁸ Benton-Banai, *The Mishomis Book: The Voice of the Ojibway*, 48-50.

will minimize conflict in the future for all who hear the story. Many lessons of transformation can be gleaned from this story of Nenabozho and his search for his father.

Neither Nenabozho nor his father can escape the necessity to fight one another. Their actions illustrate the cost of violence and warfare. Violence is destructive. It has the power to transform. Violence, as this above story demonstrates, can alter the land. Nenabozho's fight with his father can still be seen on the earth, in the form of the deserts. In the same way, Anishinaabe-Dakota warfare can still be seen on the land both physically as well as in the form of stories and place names.⁶⁵⁹ Nenabozho and his father's fight remind Anishinaabe people that this kind of destruction comes at a cost. This story serves to discourage the Anishinaabe from destroying others, instead reminding them that we are all a part of creation. As a means to limit violence and destruction, Nenabozho brought the gift of the pipe to the Anishinaabe.

The pipe has the power of transformation. The pipe can mend relationships, solidify agreements and ensure that people come together in a moral and respectful way. The Anishinaabe utilized the pipe in their diplomatic agreements with other Native nations. This practice was carried into their treaty practices with the United States and Canada. The pipe enabled the creation of relations between peoples. Thus, the pipe altered how nations saw and treated one another, often binding people together in kinship. The Anishinaabe utilized the pipe in treaty-making as a means to modify their relationships with the United States and Canada, initiating a relationship founded in

⁶⁵⁹ For example, places like Red Lake received its name from historic warfare between Anishinaabe and Dakota. For various accounts of Ojibwe-Dakota warfare, see Warren, *History of the Ojibway People*. For the ways in which land is marked by what occurs on it in stories and place names, see Keith H. Basso, *Wisdom Sits in Places: Landscape and Language among the Western Apache* (Albuquerque: University of New Mexico Press, 1996).

respect, responsibility, and renewal. Indeed, they employed the pipe to create a relationship of trust.

A Story of Transformation

Stories have the power to transform. They transform how we see and understand the world we live in. They teach us how to relate to ourselves. They show us how to behave towards others. Stories have the power to create. As the opening story of Nenabozho and the gift of the pipe illustrates, stories teach us how to build relationships. Stories encourage and teach the Anishinaabe how to transform their world. Without this vital lesson, the Anishinaabe could not survive. Life cannot remain stagnant, without motion, without transformation. Stories teach the Anishinaabe that life is continuously in motion; growing, changing, adapting. Stories teach the Anishinaabe how to live. Leslie Marmon Silko perhaps best summarizes the importance of stories to the livelihood of people in *Ceremony*. She states:

I will tell you something about stories,

They aren't just entertainment.

Don't be fooled.

They are all we have, you see,

All we have to fight off

illness and death.

You don't have anything

if you don't have stories.⁶⁶⁰

Without stories we are nothing. Our worlds, our relationships, our survival is a story. Anishinaabe survival in an ever-changing world required the ability to change and adapt. The Anishinaabe had to continuously transform their relationships with the land, animals, other people, and spirits. Their survival necessitated it.

The dissertation I have written is a story of how the Anishinaabe constructed and expressed their sovereignty, nationhood, and land tenure. These important political concepts are not stagnant, they are always undergoing transformation. What is evident in the stories herein is that the moment the Anishinaabe stop modifying and adapting their notions of sovereignty, nationhood, and land tenure to meet the circumstances of their changing world, is the moment that these political concepts cease to function for the people. These concepts are interrelated, continuously informing and reshaping one another. Importantly, the telling of this story can allow for transformation. It can perhaps transform how Anishinaabe and non-Anishinaabe people alike understand the original commitments and agreements established between the Anishinaabe with the United States and Canada. The culmination of this dissertation should, by example, illustrate that the Anishinaabe never saw their sovereignty, nationhood, and land tenure as being impaired or diminished by their treaty relationships with other nations. Instead, treaty-making served as a forum to develop a nexus of relationships that sought to create a multi-national space in an ever-changing world. Treaty agreements between the Anishinaabe with the United States and Canada can still serve as a map for transforming Anishinaabe-State relations today. Treaties are stories- stories with the power to ever-transform.

⁶⁶⁰ Leslie Silko, *Ceremony* (New York: Fire Keepers/Quality Paperback Book Club, 1994), 2.

I opened this story of Anishinaabe treaty-making with *The Theft of Fire* because it illustrates many of the themes and questions this dissertation sought to address.⁶⁶¹ The only way to understand how the Anishinaabe understood and expressed their ever-changing notions of sovereignty, nationhood, and land tenure was to look to stories of transformation. Nenabozho's quest for fire exemplified the necessity and impacts that come with transformation. His grandmother warned him that this would be a difficult journey. Yet, Nenabozho recognized the importance that fire would have for the Anishinaabe and was determined to complete this task. In order to achieve this mission, Nenabozho transformed himself into a hare. This transformation was critical to his success in obtaining fire. However, Nenabozho was marked in his quest for fire. His fur was scorched by carrying the embers across the lake to bring it to the Anishinaabe. As a result of his actions, the Anishinaabe obtained fire. Nonetheless, the hare's fur would bare the mark of this journey, turning brown in the summer. Both the lives of the Anishinaabe and hares would be *altered* by Nenabozho's journey. These changes would help both the Anishinaabe, and hares, to adapt to their ever-changing environments.

Nenabozho's theft of fire not only transformed the lives of the Anishinaabe and hares, but it also serves to teach the Anishinaabe how to employ these lessons in the various circumstances that they face. Anishinaabe scholar John Borrows' work nicely demonstrates how these stories can be reapplied to the contemporary struggles and challenges that face Anishinaabe nations.⁶⁶² As discussed in the introduction, Borrows' examines how Nenabozho's theft of fire can teach us critical lessons about the dangerous and challenging journeys we take today. Borrows resituates Nenabozho's theft of fire in

⁶⁶¹ See Introduction for a detailed version of this story. Also see Michelson and Jones, *Ojibwa Texts*, ed. Franz Boas, 2 vols., vol. VII, Part I.

⁶⁶² Borrows, *Recovering Canada: The Resurgence of Indigenous Law*.

contemporary Canada. Nenabozho must steal this fire, not from an old man across the lake, but from Supreme Court justices. Nenabozho is successful in obtaining fire but his actions come with a risk. He may be burned by the law. And yet, this may be the spark that the Anishinaabe need to rekindle their fire. This is the struggle that comes with transformation. What we need may also be the very thing that marks us. We must be careful not to allow transformation to sever our connections and understandings of the original intent and nature of treaty relationships. Federal Indian law today has dramatically transformed Anishinaabe-State relations. Yet, in this transformation something was lost along the road.

As Edward Benton-Banai reminds us, we must retrace our steps to find what was left by the trail in order to rekindle this fire.⁶⁶³ I argue that by revisiting the historical record surrounding treaty agreements between the Anishinaabe and the United States and Canada can shed light on the original intent and vision that the Anishinaabe had for their future generations. The principle chiefs and negotiators were keenly aware of the need to transform Anishinaabe relationships with the United States and Canada. They understood that the world was rapidly changing and Anishinaabe survival was dependent on building long-lasting relationships. These relationships were facilitated through the act of making treaties. The story of the woman who married a beaver illustrates that the Anishinaabe understood treaty relationships as being based on the principles of respect, responsibility, and renewal. Treaty agreements are living, and thus, they are ever-growing. These principles allowed for the continued growth and transformation of these relationships. The Anishinaabe recognized, as they negotiated their treaties with the United States and

⁶⁶³ Benton-Banai, *The Mishomis Book: The Voice of the Ojibway*.

Canada, that these relationships would have continuous effect on the generations to follow.

The Woman Who Married a Beaver is a powerful story of transformation that sheds light on how the Anishinaabe understood treaty-making.⁶⁶⁴ The young girl is literally transformed into a beaver. Through this change, she learns how important the principles of respect, responsibility, and renewal are for a healthy and beneficial relationship to continue between the Anishinaabe and the beavers. She brought these lessons back to the Anishinaabe when she returned to her people. These principles were and remain foundational to the development and sustainability of mutually beneficial relationships. Treaty-making was about making relationships. They were not mere agreements that ceded one thing in exchange for another. Treaties bound nations to one another. They carried commitments that did not end with the exchange of land for annuities. These agreements connected people. Treaties were a vision for what a multi-national society would entail.

Anishinaabe visions for a multi-national society required the Anishinaabe to look forward- to consider what would be best for the generations to come. Yet, these agreements also necessitated the Anishinaabe to look backward- to their long-standing diplomatic practices, to their own constructions of their sovereignty, nationhood, and land tenure, and to the teachings and practices that carried the lessons for how to transform and modify relations. Treaty-making required the Anishinaabe to understand where they stood in the present while looking back to their teaching and traditions and forward to the generations to come. Time, like treaties, is living. History is in motion. It is always being

⁶⁶⁴ For a detailed account of this story, see Chapter Two. Also see Michelson and Jones, *Ojibwa Texts*, ed. Franz Boas, 2 vols., vol. VII, Part II. Michelson and Jones, *Ojibwa Texts*.

transformed, recreated, and reinterpreted. How we understand our past has the power to transform our present and our future. In the same way, our goals for our future inform and shape how we understand our past and how we behave and act in our present.⁶⁶⁵

By understanding where we want to be in the future, coupled with an understanding of where we have been in the past, we learn how to live in the present. This sense of stories shaped Anishinaabe treaty practices. Many Native nations had prophecies that told of the coming of Europeans.⁶⁶⁶ These prophecies often contained lessons for how Native peoples should respond to these newcomers. The Anishinaabe were no different. They too had prophecies about the “light-skinned race,” a vision of what the future may contain, that shaped and informed how these nations responded to Europeans, Americans, and Canadians.⁶⁶⁷ While the potential of the future shaped Anishinaabe actions in the present, so did their prior diplomatic practices with Native and European Nations. Anishinaabe long-standing diplomatic practices and discourses were utilized throughout their treaty negotiations with the United States and Canada.

For the Anishinaabe to be able to negotiate treaties in good faith with an eye toward their peoples’ continuation required the Anishinaabe to look back to their creation. Anishinaabe creation shaped and informed their treaty practices. This creation shaped how the Anishinaabe understood and expressed their own sovereignty, nationhood, and land tenure. They would not separate their understanding of sovereignty from their own creation. To do so would invalidate their claim to sovereignty, invested in

⁶⁶⁵ For additional information on American Indians and notions of time, see Peter Nabokov, *A Forest of Time: American Indian Ways of History* (New York: Cambridge University Press, 2002).

⁶⁶⁶ Peter Nabokov, *Native American Testimony: A Chronicle of Indian-White Relations from Prophecy to the Present, 1492-1992* (New York, N.Y.: Penguin, 1992).

⁶⁶⁷ Benton-Banai, *The Mishomis Book: The Voice of the Ojibway*.

them from the creator. As Amanda Cobb reminds us, “Sovereignty is both the story or journey itself and what we journey towards...”⁶⁶⁸ Anishinaabe sovereignty was always undergoing growth. Anishinaabe conceptions of their sovereignty were continuously being modified to meet the needs and challenges facing the nation’s future. Previous notions of sovereignty were not being thrown out but instead were being expanded upon. Anishinaabe notions of sovereignty were layered; from creation forward. Sovereignty remained grounded in Anishinaabe creation and yet was also continuously transforming to meet the needs and conditions facing the Anishinaabe. This construction of sovereignty was distinct from United States and Canadian notions of sovereignty.

U.S. and Canadian notions of sovereignty have undergone dramatic change since its fourteenth century applications. Nonetheless, The United States and Canada rarely recognize sovereignty as a process or journey, instead it is seen as absolute and fixed. They understand sovereignty as something that can be measured but not modified (unless of course they are diminishing another nation’s sovereignty). Both nations have sought to remove their contemporary definitions and applications of sovereignty from their colonial past. And yet, their sovereignty, or at least their claims to nationhood, is deeply intertwined with this colonial past. The United States and Canada were originally able to claim their separate, sovereign status from Britain as a result of their treaty commitments with Native Nations. This fixed understanding of sovereignty leaves little room for transformation.

Anishinaabe sovereignty is embedded in and expressed through the discourse of creation because sovereignty is inextricably linked to our stories of ourselves- our identity. How the Anishinaabe saw themselves shaped their sovereignty, nationhood, and

⁶⁶⁸ Cobb, “Understanding Tribal Sovereignty: Definitions, Conceptualizations, and Interpretations”: 125.

land tenure. Identity is evidenced in what we call ourselves, whom we call “our people,” and how “our people” interact with their world. Anishinaabe sovereignty is expressed in what they call themselves, *Anishinaabe*. What it means to be *Anishinaabe* is embedded in their stories of creation. Sovereignty is inextricably connected with conceptions of nationhood. Anishinaabe nationhood is evidenced in whom the Anishinaabe identify as their people. Nationhood is understood through the stories we tell about “our people.” These stories of our people are often, if not always, connected with the relationships we have to our place. Anishinaabe people could not separate themselves from their relationship to their land. Their land tenure is demonstrated in how they interact with their world. Their very beings were formed from the earth. Anishinaabe sovereignty and nationhood was constructed through their relationships with this land. Therefore, throughout their treaty negotiations the Anishinaabe expressed their sovereignty, nationhood, and land tenure as a measure to transform their relationships with the United States and Canada.

Anishinaabe identity is a key component of their constructions of nationhood. As Taiaiake Alfred reminds us, “[b]eing is who you are, and a sense of who you are is arrived at through your relationships with other people- your people. So who we are is tied with what we are: a nation.”⁶⁶⁹ For the Anishinaabe, this is most evident in the clan system. The clan system created relatives across families and communities. The clan system created a web of relationships that shaped and informed Anishinaabe nationhood. While the clan system was not the defining feature of Anishinaabe nationhood in the nineteenth century, it did allow the Anishinaabe to facilitate alliances across national lines. This ability to operate across borders was critical for the Anishinaabe to transform

⁶⁶⁹ Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto*, 65.

and expand their relationships with other nations. This transformative power is illustrated in both the story of the animals measuring the land and Maudje-kaawis patrolling Anishinaabe borders.⁶⁷⁰

In the story of the animals measuring the land, the animals originally stood together. Yet, they each journeyed outward to measure the earth in order to ensure that it will be large enough for the Anishinaabe. In their individual journeys these animals developed a relationship to the land; a journey that transforms who they are and where they will reside. This story illustrates the migration of the animals and the Anishinaabe people and can be seen in the prominence of specific animals and clans in certain geographic areas. While these animals' identities and nationhood were altered and shaped by their travel, they nonetheless remained connected to the other animals. They still recognized their shared origins and initial relationships. Similarly, Anishinaabe conceptions of nationhood became modified by their particular geographic locations and distinct histories. And yet these nations also had a shared sense of self and nationhood that transcended national lines. Anishinaabe nationhood was comprised of their individual and collective stories. This impact of kinship to transform and alter nationhood can be seen in the story of Maudjee-kawiss.

Maudjee-kawiss' journey patrolling the borders of the Anishinaabe reinforces his sense of Anishinaabe nationhood by defining who his people are and are not. And yet his interactions with other nations also inform and shape his identity and sense of nationhood. When he encounters the bear nation, their wampum belts intrigue him. His

⁶⁷⁰ See Chapter Three for a detailed version of these stories. The story of Maudjee-kaawis is detailed in Johnston, *The Manitous: The Spiritual World of the Ojibway*. For a detailed account of the story of the animals measuring the earth, see Michelson and Jones, *Ojibwa Texts*, ed. Franz Boas, 2 vols., vol. VII, Part I. Also see Blair, *The Indian Tribes of the Upper Mississippi Valley and Region of the Great Lakes*.

envy leads him to kill a member of the bear nation. This ultimately results in Maudjee-kawiss being adopted into the bear nation. While he is made a relative of the bear nation, he does not sever his relationship with his own nation. His relationship with the bear nation does however reshape Anishinaabe nationhood. In his relationship with the bear nation he learns about how to record important information, events, and agreements in the form of wampum belts. This gift from the bear nation is brought to his own people and shapes and informs their own diplomatic practices and political relationships. These stories recorded how and instructed the Anishinaabe about how to transform their relationships with others.

The stories of Maudjee-kawiss and the animals measuring the earth also informed Anishinaabe land tenure. Anishinaabe nationhood was expressed throughout their treaty negotiations as a nexus of relationships that dictated their land tenure. The relationships that the Anishinaabe maintained among one another and with other nations regulated Anishinaabe land tenure, indicating who could access Anishinaabe territories and resources. These stories illustrate how relationships function to transform Anishinaabe land tenure. The animals' scattering laid out the territory of the Anishinaabe and described the geographic locations these animals would be more common. The story of Maudjee-kawiss illustrated the need to create positive alliances and make relatives with their neighbors while ensuring the protection of Anishinaabe borders and land tenure. Maudjee-kawiss exemplified how the Anishinaabe could settle disputes with neighboring nations that would result in each having responsibilities and obligations to the other.

Anishinaabe relationships to their world were, and are, always changing, and yet continually remain grounded in creation. For example, the Anishinaabe may modify their

spear fishing practices to include contemporary technologies and yet they continue to recognize their own creation and relationship to these species by making offerings of tobacco; a practice that at its core remains connected to creation.⁶⁷¹ Tobacco may even be offered in the form of cigarettes and yet the practice and intention, while transforming to contemporary conditions, continues to serve as a reminder and recognition of Anishinaabe creation.

Anishinaabe nations looked to their creation to construct their sovereignty, nationhood, and land tenure. However, when the United States and Canada failed to recognize or respect these important political expressions, the Anishinaabe sought to again reshape and transform their relationships with these young nations. The Anishinaabe actively protested any unwarranted or unwelcomed passage through their lands or access to their resources. The ability for U.S. and Canadian citizens to move through Anishinaabe land or utilize their resources was dependent on an existing relationship of respect, responsibility, and renewal. When the nations involved failed to meet these three principles then their relationships were modified. The Anishinaabe placed levies on trade ships, they refused to let American and Canadian citizens cut wood or utilize the river systems, and prohibited passage through their lands. The Anishinaabe recognized themselves as sovereign people, comprised of as nations that had their own systems of land tenure. They regulated this land system through a nexus of relationships that continually modified and transformed Anishinaabe sovereignty, nationhood and land tenure.

⁶⁷¹ Lorraine Norrgard et al., *Ojibwe Waasa Inaabidaa: We Look in All Directions* (Duluth, MN: WDSE-TV, 2002), videorecording.

The complexity of kinship, the base of these relationships, is nicely elucidated in the story of *Nenabozho Slays Toad Woman*.⁶⁷² Nenabozho is distraught by the death of his nephew, the wolf. His kinship obligations to his nephew necessitate him to avenge the wolf's death. Yet, his actions are not without consequence. His relationship to his nephew and the responsibilities that come with this relationship ultimately result in the transformation of the world. Nenabozho seeks revenge by killing the Great Water Lynx and his actions ultimately lead to the earth flooding. This story demonstrates how our relationships transform our worlds. In addition, this story illustrates the complexities of relationships founded in respect, responsibility, and renewal. When these principles are not adhered to, then these relationships are transformed, whether willingly or not. Transformation becomes inevitable.

Nenabozho and his nephew were warned that their actions of over-hunting were disrupting the balance of resources on the lands. They were urged to discontinue this irresponsible practice. Yet, they did not respect and heed this warning. This lack of adherence resulted in the wolf's death. However, transformation did not end here. Our relationships, like sovereignty, nationhood, and land tenure, are inextricably linked and intertwined within one another. Thus, transformation results in a domino effect. While Nenabozho and his nephew had an obligation to adhere to agreements in place surrounding hunting, they also had a network of kin obligations that led Nenabozho to avenge his nephew's death. This act of revenge led to the death of the Great Water Lynx. His death caused the waters to rise. These actions cannot be fully understood without being placed in context with one another. In the same way, sovereignty, nationhood, and

⁶⁷² For a detailed account of this story, see Chapter Four. Also see Michelson and Jones, *Ojibwa Texts*, ed. Franz Boas, 2 vols., vol. VII, Part I.

land tenure are best understood in relation to one another. They continually transform one another.

Nenabozho Slays Toad Woman exemplifies, again, the intricacies of transformation. Stories, teachings, and practices ordered Anishinaabe life. Furthermore, these stories and traditions laid out the principles that Anishinaabe people could look to in their relations with other nations. When the United States and Canada failed to recognize the sovereignty, nationhood, and land tenure of the Anishinaabe or neglected to uphold their treaty promises, these actions had consequences. The Anishinaabe responded in various ways to their ever-changing relationships with the United States and Canada. At times, they utilized additional treaty negotiations to re-assert their sovereignty and land tenure. Other times, the Anishinaabe regulated their land tenure by placing levies on ships and protests U.S. and Canadian access to their lands and resources. The Anishinaabe continually sought to transform these relationships in one way or another. Anishinaabe treaty-making relied on the principles of respect, responsibility, and renewal as a means to negotiate relationships of trust. These relationships would be foundational for the future of Anishinaabe nations. The transformation of these relationships did not cease when the treaties were signed. Anishinaabe-State relations have continued to be modified.

Transforming Trust

Treaty-making established a relationship of trust. Robert Williams has asserted, “By recognizing the central principle of Encounter era Indian diplomacy that a treaty is a relationship of trust, we begin the complex process of rendering a more complete accounting of the importance of Indian ideas and values in protecting Indian rights under U.S. law.” He further states, “The trust doctrine was not the exclusive by-product of the Western legal tradition brought to North America from the Old World. This central protective principle of Indian tribal rights under our law has deep roots in Encounter era Indian visions of law and peace.”⁶⁷³ Therefore, an understanding of the parameters and applications of the trust relationship should require an incorporation of Native peoples’ understanding of this important political relationship when it came into existence during the treaty era.

This sentiment is furthered by Tsosie and Coffey, who argue, “The ‘trust doctrine’ should reflect our Ancestors’ understanding of their relationship to the United States government, including their commitment to having their separate political existence affirmed by the United States, and their belief that the treaties entailed a series of moral duties between two groups that pledge to live in peace with one another and act in good faith.”⁶⁷⁴ The trust relationship was initially born out of this pledge to live in peace and act in good faith. This doctrine has been foundational to federal Indian law in the United States and Canada (also referred to as the fiduciary responsibility). Wilkins and Lomawaima, in their examination of the trust doctrine, note, “[c]ommon to many, but not all, definitions of ‘trust’ is the notion of federal *responsibility to protect or enhance* tribal assets (including fiscal, natural, human, and cultural resources) through policy decisions

⁶⁷³ Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*, 133.

⁶⁷⁴ Tsosie and Coffey, "Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations," 204.

and management actions.”⁶⁷⁵ To fully understand the trust relationship requires a re-examination of the treaty record. I argue that the trust relationship grew out of these nation-to-nation agreements. As such, the canons of construction should be applied to the trust doctrine, calling for the recognition of how Native peoples understood this relationship when they engaged in treaties with the United States and Canada.

Throughout the treaty era, the United States and Canada pledged their protection to Native nations. While some legal scholars have come to read this pledge for protection as a declaration that Native nations were in a subordinate position to the United States and Canada, the treaty record demonstrates that Native peoples did not understand protection in this way. Even under federal Indian law, protection has been understood as not involving a “surrender of their national character.” Justice Marshall found in *Worcester* that “the very fact of repeated treaties with them recognizes it; and the settled doctrine of the law of nations is, that a weaker power does not surrender its independence—its right to self government, by associating with a stronger, and taking its protection.”⁶⁷⁶ Marshall further elaborated, “The Indians perceived in this protection only what was beneficial to themselves- an engagement to punish aggressions on them. It involved, practically, no claim to their lands, no dominion over their persons. It merely bound the nation to the British Crown, as a dependent ally, claiming the protection of a powerful friend and neighbour, and receiving the advantages of that protection, without involving a surrender of their national character.”⁶⁷⁷

⁶⁷⁵ Wilkins and Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law*, 65. Emphasis in original.

⁶⁷⁶ *Worcester v. Georgia*.

⁶⁷⁷ *Ibid.*, 552.

Nonetheless, the trust doctrine has been defined and applied in ways that, at times, extend beyond these initial declarations of good faith and protection. At other times, the United States and Canada have too narrowly construed the responsibilities that the trust relationship carries with it. A critical question that often surrounds the trust doctrine has been whether this relationship carries with it a legal or merely a moral force. The treaty record is replete with declarations of protection from the United States and Canada. An examination of this record can bring forth both Native and colonial understandings of protection expressed throughout the treaty era.

The treaty record surrounding the aforementioned 1846 treaty between the United Nation of Pottawatomie, Odaawa, and Ojibwe with the United States perhaps best illustrates the myriad ways trust and protection were expressed throughout the treaty era. In order to urge the United Nation to remove, the United States declared they would provide protection for the United Nation. In response to U.S. assertions that the United Nation must remove in order to receive this protection, the Anishinaabe expressed their understanding of the trust relationship between themselves and the President, who had promised the United Nation protection in prior treaties. In response to the commissioner's assertions that removal would allow the President to protect the United Nation from white settlers, the United Nation stated, "You say the whites are crowding on us. This is not our fault. We suppose our Great Father has power to make his white children respect his promises and he has already assured us that we shall not be forced to remove from our lands. Why then should we fear our White neighbors?"⁶⁷⁸ Their response demonstrates that the United Nation understood protection as the President's promise to protect the

⁶⁷⁸ *Ratified Treaty No. 247 Documents Relating to the Negotiation of the Treaty of June 5 and 17, 1846, with the Chippewa, Ottawa, and Potawatomi Indians,* NAMP RG 75, M T-494 Roll 4:F308.

Anishinaabe from American citizens, that the President pledged to make American citizens respect his treaty promises.

In addition to protection from American citizens, the United Nation understood this relationship as also entailing their protection from state interests and interference. The United Nation asserted, “You say ‘the state of Iowa is about extending her laws’ over us. We are not alarmed at this. We are told there is no such state, and cannot be, unless our Great Father creates it. Surely he would never do this to break his word with his red children.”⁶⁷⁹ The United Nation expressly connected state interference as a violation of their treaty. They reminded the commissioner, “If any other government be created over us, it will be a violation of our treaty. We protest against this. We want to hold our lands as they were guaranteed to us.”⁶⁸⁰

The United Nation drew on a number of their treaties to demonstrate the various applications for these protections. In addition, they noted that these protections had been renewed in their prior treaties. The United Nation stated, “You say the Sioux are our neighbors and murder our people. Did not our Great Father promise at Chicago to protect us against the Sioux? Did he not send Maj. Cummins to our country four years ago to renew the promises? Did he not send Dragoons for two years? Why then cannot he protect us? He has done it once; why cannot he do it again? Or why did he withdraw that protection if not to force us from our lands?”⁶⁸¹ The United Nation reminded the commissioner that if he rescinded his protection, then the United Nation would be forced to neglect their responsibility to maintain peace with the Sioux. They stated, “But we are

⁶⁷⁹ Ibid.

⁶⁸⁰ Ibid.

⁶⁸¹ *Ratified Treaty No. 247 Documents Relating to the Negotiation of the Treaty of June 5 and 17, 1846, with the Chippewa, Ottawa, and Potawatomi Indians*,” NAMP RG 75, M T-494 Roll 4:F309.

not afraid of the Sioux. Our Great Father told us not to fight with them, and we did as he told us. But if the Sioux murder our people, we will tell our young men to dig up the hatchet. We will make the grass red with their blood. We have told our Great Father this before.”⁶⁸² Thus, protection within Anishinaabe understandings entailed U.S. protection from American citizens, State interference, and treaty violations. Yet, this trust relationship also required good faith and justice.

The United Nation, in their recitation of their trust relationship with the President echoed the principles of respect, responsibility, and renewal. The United Nation repeated what the President said to them as they met in Washington. “He said to our Interpreter ‘Tell the Chiefs and braves that I am glad to see them and I will listen to all they have to say with the greatest pleasure. I am the friend of the red man, and all within our territory shall have full and entire justice done to them so far as I have the power to do so. Tell the Pottawatomie Chiefs that they must banish all fears of being forced from the lands they now occupy: these lands were made theirs by treaty and they shall be protected in their peaceable possession.’”⁶⁸³

The President, as recounted by the United Nation, went on to state, “‘Tell them, also that every promise made to them by my predecessors shall be [] carried in to effect. When the treaty of Chicago was concluded I was not here: but whatever promise was made to them by their Great Father shall be *with good faith* and great pleasure redeemed by me now. It is my determination to carry out, in letter and spirit, every treaty stipulation made between our Government and the Indians within our borders. Justice shall be done to them, and I trust to secure the confidence and affection of all our red brethren in such

⁶⁸² Ibid.

⁶⁸³ *Ratified Treaty No. 247 Documents Relating to the Negotiation of the Treaty of June 5 and 17, 1846, with the Chippewa, Ottawa, and Potawatomi Indians*,” NAMP RG 75, M T-494 Roll 4:F311.

effectual manner as shall forever keep the tomahawk buried between them and our people. Tell them again that we never had any intention of driving them from the lands they now occupy.”⁶⁸⁴

Nonetheless, the President connected these statements with his promotion for removal, stating, “If they decide to exchange them for other lands better adapted to their habits and wants, we will gratify them if we can agree upon the terms. But they must be perfectly satisfied with the change: they shall never be forced to it.” Regardless of the President’s desire to remove the United Nation, this account by the United Nation illustrates how they understood their trust relationship with the President of the United States.

The treaty record demonstrates that protection did not entail a diminishment of Anishinaabe sovereignty, nationhood, and land tenure. Protection consisted of a set of agreements between the Anishinaabe and the United States and Canada. It necessitated these states to compel their own citizens to adhere to treaty agreements. Federal Indian law has often debated the origins of the trust relationship and the responsibilities it dictates. I argue that the trust doctrine should be interpreted today as Native peoples understood it when they engaged in treaty-making. These understandings can be gleaned from an examination of the speeches and commitments made throughout treaty negotiations. Anishinaabe understanding of the trust relationship built from their foundational treaty principles of respect, responsibility, and renewal. Treaty-making sought to establish relationships of trust, sealed with the smoking of the pipe. This gift from his father to Nenabozho served to minimize conflict between peoples.

⁶⁸⁴ *Ratified Treaty No. 247 Documents Relating to the Negotiation of the Treaty of June 5 and 17, 1846, with the Chippewa, Ottawa, and Potawatomi Indians,*” NAMP RG 75, M T-494 Roll 4:F309. Emphasis added.

*The pipe represented all relationships, man to Kitche Manitou, man to the cosmos, man to the plant world, man to the animal world, man to man, man to his state, and quality of life and being and existence... Considered in its totality, the smoking represented man's relationships to his maker, to the world, to the plants, to the animals, and to his fellow men; in another sense, it was a petition and a thanksgiving.*⁶⁸⁵ —Basil Johnston

To Know the Future of Our People

Returning to the Seven Prophecies of the Anishinaabe detailed throughout this dissertation, Edward Benton-Banai discusses the Fourth Fire:

The Fourth Fire was originally given to the people by two prophets. They came as one. They told of the coming of the Light-Skinned Race.

One of the prophets said, 'You will know the future of our people by what face the Light-skinned Race wears. If they come wearing the face of nee-kon'-nis-i-sin' (brotherhood), then there will come a time of wonderful change for generations to come. They will bring new knowledge and articles that can be joined with the knowledge of this country. In this way two nations will join to make a might nation. This new nation will be joined by two more so that the four will form the mightiest nation of all. You will know the face of brotherhood if the Light-skinned Race comes carrying no weapons, if they come bearing only their knowledge and a handshake.'

⁶⁸⁵ Johnston, *Ojibway Heritage*, 134, 35.

The other prophet said, ‘Beware if the Light-skinned Race comes wearing the face of ni-boo-win’ (death). You must be careful because the face of brotherhood and the face of death look very much alike. If they come carrying a weapon... beware. If they come in suffering... they could fool you. Their hearts may be filled with greed for the riches of this land. If they are indeed your brothers, let them prove it. Do not accept them in total trust. You shall know that the face they wear is the one of death if the rivers run with poison and fish become unfit to eat. You shall know them by these many things.’⁶⁸⁶

This fourth prophecy was followed by three more if the “Light-skinned Race” came wearing the face of death. Yet the last three fires lead the way back to this fourth fire, iterated in the eight and final fire. Thus, if the Anishinaabe are able to complete the seventh fire, there will be a rebirth of the Anishinaabe nation. Benton-Banai argues, “‘It is at this time that the Light-skinned Race will be given a choice between two roads. If they chose the right road, then the Seventh Fire will light the Eight and Final Fire—an eternal fire of peace, love, brotherhood and sisterhood.’”⁶⁸⁷

The Anishinaabe, throughout their treaty negotiations with the United States and Canada, sought to create a relationship based on the principles of respect, responsibility, and renewal. These foundation principles of treaty-making would pave the way toward the “Eight and Final Fire—an eternal fire of peace, love, brotherhood and sisterhood.”⁶⁸⁸

A Treaty Three Anishinaabe chief echoed this intent for treaty-making, stating, “If you give what I ask, the time may come when I will ask you to lend me one of your

⁶⁸⁶ Benton-Banai, *The Mishomis Book: The Voice of the Ojibway*, 89-93.

⁶⁸⁷ Ibid., 93.

⁶⁸⁸ Ibid.

daughters and one of your sons to live with us; and in return I will lend you one of my daughters and one of my sons for you to teach what is good, and after they have learned, to teach us.”⁶⁸⁹ This exchange is critical for developing a long lasting relationship based on the principles of respect, responsibility, and renewal.

Robert Williams articulates the importance of recovering American Indian understandings of treaties as he stresses “our own survival in our multicultural world may well depend on our learning to understand the responses of indigenous tribal peoples to the challenge of achieving justice among different peoples. We must learn what it means to link arms together, according to American Indian treaty visions of law and peace.”⁶⁹⁰ This dissertation has attempted to take up this challenge by examining how the Anishinaabe expressed their visions for law and peace when they negotiated treaties with the United States and Canada. There is much more work to be done to be able to fully grasp and realize what these visions would look like today. Yet, this dissertation seeks to tell a story, one that will inevitably contain power to transform.

You can't understand the world without telling a story.- Gerald Vizenor⁶⁹¹

⁶⁸⁹ Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto*, 63.

⁶⁹⁰ Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*, 13.

⁶⁹¹ Coltelli, *Winged Words: American Indian Writers Speak*, 156.

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