TREATY ANNUITIES AND LIVELIHOOD ASSISTANCE: RE-IMAGINING THE MODERN TREATY RELATIONSHIP*

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ABSTRACT / RÉSUMÉ

This paper briefly examines the rationale, intent and evolution of the treaty annuity as part of historic treaties between the Crown and First Nations in Canada. The annuity payment is shown to be an integral part of an overall treaty objective of providing livelihood assistance for First Nations and their descendants. The author argues that both sides of the treaty relationship understood this, but had different ideas and perceptions about the extent of and process for providing livelihood assistance under the treaty relationship. Government often perceived the annuity and other treaty livelihood assistance to be a temporary means of support in a period of transition towards enfranchisement and self-reliance, while First Nations often perceived the annuity payment as renewal of a nation-to-nation agreement whereby the terms of the relationship could be reviewed and readjusted as circumstances might warrant. The author concludes that a re-examination of the treaty relationship of livelihood assistance and treaties as living and forward looking agreements is necessary to address the socio-economic gap in well-being between treaty First Nations and other Canadians.

Ce document examine brièvement la raison d'être, l'intention et l'évolution des annuités découlant des traités dans le cadre des traités historiques signés par la Couronne et les Premières nations au Canada. On y montre que le paiement des annuités fait partie intégrante de l'objectif général des traités qui est de fournir une aide à la subsistance aux Premières nations et à leurs descendants. L'auteur fait valoir que les deux parties signataires du traité comprennent cet objectif, mais qu'elles ont des points de vue et des perceptions différents concernant le processus utilisé et la mesure dans laquelle cette aide à la subsistance doit être fournie dans le cadre des relations découlant du traité. Le gouvernement a souvent perçu les annuités et autres mesures d'aide à la subsistance découlant des traités comme une aide temporaire durant une période de transition vers l'affranchissement et l'autonomie, alors que les Premières nations estiment souvent que le versement des annuités est le renouvellement d'une entente de nation à nation dont les modalités peuvent être revues et adaptées si les circonstances l'exigent. L'auteur conclut qu'il faut réexaminer l'aide à la subsistance fournie dans le cadre des relations découlant des traités et considérer les traités comme des ententes en évolution si l'on veut combler le fossé socioéconomique entre les Premières nations signataires des traités et les autres Canadiens.

Today, under terms of thirteen historic treaties signed by the Crown and First Nations covering over half of the land mass of Canada, Indian and Northern Affairs Canada still distributes $4.00 or $5.00 annually to each of over 300,000 registered Indians. For the federal government, the annuity payment represents partial fulfilment of on-going treaty obligations in exchange for surrendered Indian title to land – what amounts to a legal obligation of a contractual nature. For First Nations, the written record and oral tradition both indicate that the treaty annuity represented renewal of nation-to-nation agreements to share the land in exchange for assurances of livelihood assistance for themselves and future generations.[1] Increasingly, there have been calls to revisit the historic treaties, not only in terms of modernizing the annuity payment system, but by revitalizing or renewing the treaty relationship based on concepts of livelihood assistance.

This paper shows that both the Crown and First Nations understood livelihood assistance to be a significant consideration leading up to, during and long after initial treaty negotiations, and that the annuity payments were to be a key component of the livelihood assistance provided. The two parties differed significantly, however, on how the intent to provide livelihood assistance was to be satisfied through the on-going treaty relationship. Government assumed that the terms of treaty were fully bound up in unchanging perpetuity in the written text, while First Nations assumed that treaty terms could be reviewed and renegotiated as part of an annual treaty renewal.

That these treaties did not deliver on the original intention of providing livelihood assistance for future generations in exchange for land can be demonstrated simply by the socio-economic disparity that continues to exist today. This disparity is likely to continue, unless solutions are rooted in deep historical understandings of the treaty relationships. To effectively address this disparity requires re-examination of the original treaty intent to provide livelihood assistance, whether for traditional pursuits (hunting, fishing, trapping) or the transition to new means of survival in a changing world (farming, ranching, other economic opportunity). Evidence is presented of both government and First Nation perceptions of the annuity as providing livelihood assistance, followed by evidence of the annuity as continuation of an Aboriginal tradition of relationship renewal, and the First Nation view of treaties as living and evolving agreements. Throughout, the intent is to underscore the importance of both historic and modern-day treaty renewal and the need to come to a mutually acceptable understanding on the question of treaty livelihood assistance.

THE ANNUITY AS LIVELIHOOD ASSISTANCE

Treaty-making for the Crown was essentially an exercise in imperialism – whether to open up new lands for settlement or to access natural resources or otherwise secure a right-of-way. Once government made up its mind to clear title to land that was thought to be useful for settlement or access to resources, its priority was to do so as quickly and cheaply as possible. However, while the welfare of the Aboriginal people living on these lands may often appear to have been a secondary consideration,[2] the evidence is also clear that livelihood assistance was a significant consideration for government and First Nations alike.

There were many factors at play in the policy shift from larger one-time treaty payments to smaller annual payments, beginning with the pre-confederation treaties in 1818. A significant, and perhaps primary, motivation was as a cost cutting measure: to limit or negate the initial expense at a time when it was felt that First Nations would either assimilate or otherwise disappear in time.[3] It was also argued, however, that annual payments would better address Aboriginal welfare needs than one-time payments, which were not seen to have any lasting benefit.[4] This more humanitarian motivation would also come to be closely linked to the pre-confederation "civilization program" which saw the annuities used to pay for such items as schools, houses and agricultural equipment, as well as to promote a number of agricultural settlements in Upper Canada.[5] Furthermore, annuity payments had been part of treaty-making in the United States since at least 1794, and First Nations who were later treated with in Upper Canada seemed well aware of the terms that were offered on the American side. Lastly, annuities were a natural extension of a longstanding precedent of Aboriginal annual relationship renewal and gift diplomacy that had been adopted by colonial governments to establish or maintain military alliances (Jones 1988; Friesen 1999).

There is considerable evidence, beginning in about the mid-nineteenth century, of First Nations' expectations that the treaties, including the annuity amount, would provide sufficient on-going government livelihood support in exchange for their lands. Chiefs were pragmatic about their people's future in a changing world. They required assurances that they could hunt, fish and trap on their lands as they had always done, but also insisted on treaty terms sufficient to help those who chose to settle down and farm: Chief Peau de Chat during the Robinson Treaty negotiations of 1849 asked government to pay for a schoolmaster, a doctor, a blacksmith, a carpenter, a magistrate and an agricultural instructor; Ojibwa Chief Wa-sus-koo-koon during Treaty 1 negotiations in 1871

requested that a house be built and furnished and a plough and cattle be provided for each Ojibwa who decided to farm; and Saulteux Chief Ma-we-do-pe-nais during Treaty 3 negotiations in 1873 justified a list of twenty written demands as necessary "…so that we may be able to support our families as long as the sun rises and the water runs."[6]

There are many examples throughout the nineteenth century of government officials characterizing the annuities as important economic support for Aboriginal livelihood. Treaty Commissioner Simpson had characterised the annuity during Treaty 1 negotiations as a "bounty" which would give the Aboriginal signatories an economic advantage over the white settlers. Lieutenant Governor Alexander Morris explained during Treaty 3 negotiations that the terms of the treaty were to "put into their hands the means of providing for themselves and their families at home…"[7] Morris often spoke of the well-being of children, and of "children's children" during negotiations, which was a powerful expression that future generations would be looked after under the treaty relationship. Some examples of this language include: "I only ask you to think for yourselves, and for your families, and for your children and children's children," "…the promises we have to make to you are…not only for you but for your children born and unborn," "it is for you now to act…whether or not you will…let your children grow up and do nothing to keep off the hunger and the cold that is before them," "…I would like your children to be able to find food for themselves and their children that come after them," and "I have told you that the money I have offered you would be paid to you and to your children's children."[8] It was the annuity that most outwardly represented these assurances.

Given that the annuity was understood by government officials in the context of livelihood assistance, how the money was spent was of considerable concern throughout the nineteenth century as part of treaty implementation. The annual reports are full of commentary on how the annuity money was being used, or should be used, and how government policy and practices should direct the spending of annuities. There are consistent entries that indicate whether, in the opinion of the agent, the annuity was spent wisely on items that could assist with attaining a livelihood, especially over the winter months. Annuities were sometimes specifically targeted to programs of agriculture or education, and could be used communally to pay for such items as teacher's salaries, livestock, saw or grist mills or church related purposes. At other times, the annuity was thought of in terms of support for traditional economies. In some cases, government proved reticent to sign treaties at all in areas where it was felt that First Nations could continue to live off the land with a minimum of interference, and in other cases government was practical in its support of a hunting economy in the treaty terms, even if that seemed counter-intuitive to its assimilationist policies.[9]

For all the language of metaphor of the treaties lasting as long as the sun shines and the rivers flow, there is considerable evidence that government often thought of the annuity and other treaty benefits as temporary livelihood assistance in a period of transition towards self-reliance and enfranchisement. Under government's policy of assimilation, reflected in legislation passed between 1857 and 1876, individuals were considered wards of the state until enfranchised, either voluntarily or mandatorily, and the process of becoming full Canadian citizens included being able to live without treaty-based assistance. Beginning with the *Gradual Civilization Act* of 1857, applicants for voluntary enfranchisement, which were extremely rare, had to meet certain criteria designed to ensure that they would be able to live without government or treaty assistance, such as be formally educated and free of debt. Government, for much of the nineteenth century, allowed individuals on a case by case basis to leave treaty to take up Métis scrip, which was a one-time allotment of land or money. This practice, however, was questioned when government began to fear growing poverty by those not covered by treaty-based assistance. An Indian agent's report of the Scrip Commission's consideration of withdrawals in the Treaty 6 area assured that "…none but those who would support themselves and families in the future were discharged [from treaty]."[10]

There is occasional mention in the Indian Affairs Annual Reports of the necessity of the annuity, or for advances made against the annuity, to carry certain families over winter. Often, however, the annuity was seen more as part of an overall livelihood strategy that could include the selling of grain or cattle, traditional pursuits and seasonal employment. A $5 annuity in 1871 could have bought approximately 100 pounds of flour or 30 pounds of beef,[11] and an annuity of $5 for a family of five in the early 1880s was equivalent to about one month's wages as either an Aboriginal farm labourer[12] or saw-mill worker.[13] There is further evidence from Treaty Elder testimony that the annuity had an important economic significance for families and communities well into the 1950s (FSIN 2000, 14).

In fact, the oral evidence from Treaty Elders is remarkably consistent in the view that promises of livelihood assistance were a primary consideration during treaty negotiations. A continuing right of livelihood is one of five guiding principles of the understandings of treaty that came out of extensive Elder testimony outlined in the book *Treaty Elders of Saskatchewan* (Cardinal and Hildebrandt 2000, 36). Likewise, the Treaty and

Aboriginal Rights Research group's years of interviews with Elders in Alberta revealed an overarching belief that the treaties concerned first and foremost peoples' livelihoods (Hickey, Lightning, and Lee 1999, 103-60; Vader 2000, 91). The authors of *The true spirit and original intent of Treaty 7* concluded: "That they would be taken care of was the theme reoccurring throughout the elders' testimony" (Treaty 7 Elders and Tribal Council 1996, 120-1).[14]

THE ANNUITY AS TREATY RENEWAL

Gift giving was a central tenet of First Nation traditional diplomatic practices of relationship renewal, and formed the basis of many of the relationships forged between First Nations and newcomers, whether military alliances or fur trade relations. By the time annuities were introduced into the Upper Canada treaties of 1818, there had long been an established practice of gift diplomacy. After 1812, these diplomatic practices turned into formal distributions of annual presents made at specified times and locations as a means of maintaining and honouring military alliance. The annual presents and the annuities were mostly recognized as serving two distinct purposes, but were often made up of the same types of goods (Leslie and Baldwin 2006, 66, 91), and could even on occasion be distributed at the same time and location (Morrison 1996, 126). What is important here is that the concept of an annual payment fit well within a trend that saw the continuation of an Aboriginal tradition of treaty or relationship renewal.

Evidence that the annuity payments followed a tradition of gift diplomacy is even more prevalent for the post-confederation numbered treaties. Prior to the treaties, fur traders and First Nations had negotiated social protocols and practices of gift exchange that were deeply rooted in Aboriginal concepts of renewal and reciprocity. Many of the fur trade practices would in turn come to inform the treaty relationship. When the government purchased the Hudson's Bay Company Charter in 1870, it also inherited the company's responsibility for providing relief to Aboriginal families in times of need. The fact that many of the numbered treaties were negotiated around the question of government responsibility for looking after First Nations harkens back to these fur trade relations. As fur traders often advanced goods on credit to assist certain families over winter, so government officials often advanced goods against future annuities, also to assist families over winter.[15] In this way, the treaties continued and further formalized for First Nations what had been on-going relations of mutual benefit that had evolved out of the fur trade.

An analysis of the different perceptions of the annuity adds to an already large body of literature demonstrating that First Nations saw the treaties quite differently than government. For government, the treaties were once-for-all land transactions that bound both parties to certain on-going obligations. These obligations were fixed in place by the written terms of the treaty. First Nations' traditions did not include such a concept of obligations being bound-up in the unchanging words on a page. For First Nations, the treaties were sacred agreements made in the presence of the Creator, which could also not be broken once they were made. This, however, did not mean that the agreements could not be adjusted as circumstances might warrant.

For First Nations the treaty terms were fluid, rather than fixed, and there was an expectation that terms could be discussed and reviewed as part of an annual treaty renewal (Leslie and Baldwin 2006, 170).[16] There are numerous references, for example, of First Nations refusing to accept the annuity payment.[17] In 1884, Indian Inspector Wadsworth wrote about the usual practice of grievances being voiced during annuity payment periods: "it is the occasion in the year upon which they feel bound to mention them [grievances], as again receiving the money is looked upon by them as a ratification of the treaty."[18] The refusal to accept the annuity, in these terms, was thus a refusal to ratify the treaty at a given time. There is further linguistic evidence that the Ojibwa term for treaty had the meaning of an "open contract" (Morrison 1996, 157), and that the Cree word for treaty had the meaning to "weigh and measure" the relationship (Vader 2000, 46).

THE ANNUITY TODAY

So what does all of this mean in a modern context? Of course, as much as the annual payment may be perceived as an important symbolic renewal of a relationship and as outwardly representative of all of government's treaty promises, there are those who find the distribution of $4.00 or $5.00 a year to be demeaning if not unethical (Vanraes 2008; Cuervo 2008). There have been a number of calls to revisit the treaties and to revitalize or modernize the historic treaty relationship. The Royal Commission on Aboriginal Peoples (RCAP) report, for example, noted that the annuity payment was regarded by First Nations as a formal opportunity to discuss and renew the relationship each year, and argued that the treaties need to be flexible enough to address new concerns of an evolving relationship. Among the RCAP recommendations was the establishment of a formal process of treaty revitalization that included reconsideration of the "…treaty promises of wealth

transfer" (Canada 1996, 77). Jean Allard and John Richards have both argued in separate research papers that a large individualized annuity benefit, instead of block transfers to First Nations, would empower individuals and establish greater accountability of First Nation governance (Allard 2000a, 2000b; Richards 2003, 2006). Allard had proposed an increase of the annuity amount from $5 to $5,000, while Richards proposed halving this amount to $2,500. This view of annuity modernization, however, would have to take much more into account than a simple indexation of the amount. An analysis of the consumer price index and wholesale price index shows that $5 in 1871, when Treaties 1 and 2 were signed, is worth approximately $100 in today's currency (Stewart Clatworthy, pers. comm., 2008).

CONCLUSION

The modern significance of a historical analysis of the treaty annuity is twofold. First, it speaks to the extent of livelihood assistance intended by the treaties. Government clearly viewed the annuity as a significant economic expenditure and benefit, and First Nations were ultimately led to believe that the annuity and other treaty terms would represent a significant benefit for themselves and for future generations. Sadly, that the annuity and other treaty terms have not been effective as livelihood assistance is clear from the disparity that exists today between treaty First Nations and other Canadians. Secondly, an analysis of the annuities demonstrates a different treaty perspective. Evidence is strong in both the historical written record and Elder oral testimony that, from the First Nation perspective, the treaties were part of a living and evolving relationship, where treaty terms were not bound by the written word but could be reviewed and renegotiated from time to time. Today, the lack of a common understanding of the treaties has led to deep feelings of mistrust that impact virtually all aspects of the modern relationship. A re-imagining of the modern treaty relationship must not only recognize and respect the initial intent of the treaties to provide livelihood assistance, but also allow for interpretation of the treaties as living and forward-looking agreements.

NOTES

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FOOTNOTES

[1] Certainly the view of many Treaty Elders is that First Nations agreed to share the land, not give it up or sell it. One common view is that First Nations, as stewards of the land, could not sell something that they did not own. Other Elders have stated that the question of land never came up in negotiations over what were fundamentally considered treaties of peace. Of course, the fact that government often made assurances that First Nations could hunt, fish and trap on their lands as they had done before treaties were signed is in itself a form of land sharing.

[2] For evidence of government's inaction in responding to First Nations' requests for treaty as a means of livelihood assistance, until such time as the land was deemed to be of value for settlement or natural resource use, see Richard Daniel, *The spirit and terms of Treaty 8* (1999) and Denis Madill, *Treaty research report: Treaty Eight* (1986).

[3] In 1819, Lieutenant Governor Peregrine Maitland reasoned that if government could privately sell some of the land received through treaty at auction, using a method that included a mortgage with a ten percent down payment, the interest from the down payments could then be used to finance the annuity (Leslie and Baldwin 2006, 36, 166; Gates 1968, 159; Surtees 1983, 30, 174-5; Surtees 1994, 112-3; Joan Holmes and Associates 2003, 63-4, 110-1; Miller 2000, 117).

[4] Colonial Secretary Lord Bathurst took this position in 1816 (Leslie and Baldwin 2006, 166).

[5] Annuities began to be credited to band accounts in 1829, along with money from the sales and leases of Indian lands, where it was partly used to help establish settlements at Coldwater, the Narrows, St. Clair and Munceytown (Leslie and Baldwin 2006, 48; Joan Holmes and Associates 2003, 45-50, 112).

[6] These primary source quotes were taken from Leslie and Baldwin (2006, 72, 123-4, 146 respectively).

[7] These primary source quotes were taken from Leslie and Baldwin (2006, 169-170, 149 respectively). See also Ray, Miller, and Tough (2000, 78) for evidence of the suggestion that annuities would secure a livelihood for signatories.

[8] All of these quotes were taken from Alexander Morris (1880); the first was from Treaty 3 negotiations (61), the next two were from Treaty 4 negotiations (96, 117), and the last two were from Treaty 6 negotiations (204, 211).

[9] See, for example, Kenneth S. Coates, *Treaty research report: Treaty no. 10.* In 1884 Deputy Superintendent General Vankoughnet argued, in the context of applicable game laws, that if First Nations were prevented from hunting for subsistence purposes, they would then have to be fed by government (Joan Holmes and Associates 2007, 47). See also Tough (1996, 90) for the view that annuities were "a means to maintain Indian labour in a commercial hunting economy."

[10] Mitchell, Report of Indian Agency – Treaty No. 6, Saddle Lake, N.W.T. (1887, 93); see also Tough (1996, 120).

[11] Hudson's Bay Company post records, Red River, as indicated in Leslie and Baldwin (2006, 134).

[12] Ogletree, Report of the Manitoba Superintendency, Portage la Prairie Agency (1881, 61).

[13] McColl, Report of the Office of the Inspector of Indian Agencies, Manitoba Superintendency (1883, 137). Arthur Ray has shown that in 1870 a hunter with a family could equip himself for the year for about $20-$25, the equivalent to an annuity for a family of four or five (Ray 1990, 200).

[14] See also evidence of Treaty 4 Elders' testimony in Taylor, *Treaty research report: Treaty Six* (1985).

[15] The HBC commonly provided hunters in the autumn with goods on credit that were collectively referred to as "winter outfits," including ammunition, nets, fishing line, twine, traps, knives, etc. (Ray 2009).

[16] There is also evidence of a "renewal ceremony" that existed within the fur trade, whereby a calumet (pipe) was either left at a fort by the First Nation trading captains or Chiefs to indicate contentment, or taken with them to indicate the opposite (Ray, Miller and Tough 2000, 9, 20; Miller 2007, 70).

[17] Poundmaker, Piapot and Big Bear all refused annuities in the early 1880s in an attempt to draw attention to renegotiation of treaty terms (Morin 2007, 133-5; Tobias 1991, 232). See also Vader (2000, 56), for Beardy and the Duck Lake Indians' refusal to take annuities in 1879. Further, there are at least 15 instances in the Indian Affairs Annual Reports alone of First Nations and Chiefs refusing to accept annuities, and constant attempts to renegotiate aspects of the Treaty.

[18] Wadsworth, Report of Treaty No. 6 (1884, 154).

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