TREATY 1 IN CONTEXT: UNDERSTANDING SPIRIT AND INTENT

KARINE DUHAMEL

Dr. Karine Duhamel is Anishinaabe-Métis and lives in Winnipeg, Manitoba. She served as Director of Research for the National Inquiry into Missing and Murdered Indigenous Women and Girls, and continues to work as an independent consultant examining how Indigenous and colonial histories resonate and impact Indigenous Peoples today.

INTRODUCTION

2021 marks the 150th anniversary of Treaty No. 1, an agreement made by the Government of Canada with the Anishinabek and Swampy Cree of southern Manitoba in 1871. While the narrative around treaties often calls upon a contractual understanding of the treaty, the relationships formed in 1871 were in fact a reflection of a profound preoccupation and understanding by First Nations of their rights with respect to land, governance and freedom in a rapidly changing world.

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THE PROMISE AND RESPONSIBILITY OF TREATY

Treaties were not new to First Nations on the continent in the 19th century. In fact, long before Europeans came to North America, treaties existed among different Indigenous nations to preserve peace and to confirm how territories and resources might be cared for. These agreements were founded upon understandings about the world were informed by a strong sense of giftedness and responsibility related to culture, law, language, history and way of life.

Foundational gifts given by Creator were the basic elements from which creation grew. In a literal way, the people lived and continue to live in a world

made of gifts.[1] According to the Creation stories of many nations, humans were the last to be created and relied upon the natural world. But the natural world needed humans too, therefore creating a condition of interdependence that included important rights and responsibilities for the people.[2] For instance, Anishinaabe Elder Francis Nepinak describes oceans, lakes, and rivers as the veins of a human body, the plants as the hair of the body, and the ground as its flesh.[3] As a sacred responsibility and a sacred trust, First Nations did not consider land to be a static entity to be bought or sold.

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For instance, the Dish with One Spoon wampum agreement, made between Haudenosaunee and Anishinaabe nations in 1701, was based on three basic principles that emphasized responsibility and interdependence, rather than ownership. The principles including taking only what is needed, leaving something for everyone else, and keeping the land clean for this and future generations.[4] Agreements such as this one were founded on principles that could be articulated over generations and required careful interpretation and attention to changing needs, as well as renewal and trust. The principled nature of such agreements meant that no fine print was necessary; the relationships established, nurtured and protected, often in kinship terms, informed the interpretation of the treaty, alongside traditional understandings about the world itself.

TREATY MAKING IN A CHANGING WORLD

It was within the context of these understandings, and a rapidly changing world, that First Nations sought to confirm their rights to territory. Treaty No. 1, concluded in 1871, followed on the heels of other treaty negotiations in Canada between the colonial government and Indigenous peoples – between 1760 and 1923, the British Crown signed 56 land treaties with Indigenous Peoples – but it was the first of eleven Numbered Treaties concluded between 1871 and 1921.

1 Basil Johnston, *Ojibway Heritage: The Ceremonies, Rituals, Songs, Dances, Prayers and Legends of the Ojibway* (Toronto: McClelland and Stewart, 1976), 13. Cited in Aaron Mills, Karen Drake, and Tanya Muthusamipillai, "An Anishinaabe Constitutional Order," in *Reconciliation in Canadian Courts: A Guide for Judges to Aboriginal and Indigenous Law, Context and Practice*, ed. The Honourable Justice Patrick Smith (Ottawa: National Judicial Institute, 2017), n.p.

2 Ibid.

3 For this and more Elders' perspectives on this relationship, see *Ka'esi Wahkotumahk Aski: Our Relations With the Land*, D'Arcy Linklater, Harry Bone, and the Treaty & Dakota Elders of Manitoba, eds. (Winnipeg: Treaty Relations Commission of Manitoba, 2014.)

4 Borrows in Aimée Craft, *Breathing Life into the Stone Fort Treaty: An Anishnabe Understanding of Treaty One* (Vancouver: UBC Press, 2013), 24; see also Hill in C. Maracle, *Grandfather of All Treaties* (Toronto, Ontario: Vtape, 2015).

First Nations in what became Manitoba had been advocating for a treaty for decades, and accelerated their efforts as more and more settlers began to arrive. For instance, in 1857 and again in 1859, Anishinaabe Chief Peguis wrote to the Aborigines' Protection Society and to the publication *The Aborigines' Friend and Colonial Intelligencer*, both based in the United Kingdom, for support to secure a "fair and mutually advantageous treaty" for Anishinaabe in the territory.[5] A few years later, Peguis and his son, Henry Prince, published an "Indian Manifesto" in the settler newspaper The Nor'Wester, insisting on annual payments for those cultivating Indigenous lands.[6] In these efforts, First Nations affirmed their direct relationship with the Crown and their traditional responsibilities as the foundations for how to proceed.

But from the perspective of Canadian officials, treaty making was a means to an end – the settlement of the West and a broad national policy that depended on a rail line for economic growth. Government officials sent to negotiate the terms of Treaty No. 1 in 1871 were primarily intent on securing the title as economically and quickly as possible through extinction of title to both lands and to resources, rather than renewing relationships. As Governor Archibald wrote, to Secretary of State Joseph Howe:

> *We were all of [the] opinion that it would be desirable to procure the extinction of Indian title, not only to the lands included within the Province [of Manitoba], but also to so much of the timber grounds east and north of the Province, as were required for immediate entry and use…*[7]

Parties therefore approached the negotiations from very different perspectives – perspectives which would forever inform their interpretation and understanding rights in Manitoba, and elsewhere.

MAKING TREATY AT STONE FORT

Over 1,100 First Nations men, women and children gathered around Lower Fort Garry, or the Stone Fort, in July of 1871, but the government's intentions for what was to come were not laid bare. Instead, oratories by government officials, recorded in newspapers in Manitoba at the time, called upon the language of familial responsibilities and relationship which would have assured First Nations of fair treatment, if honoured. In his opening remarks, Archibald assured the attendees that Queen Victoria, whom he referred to in kinship terms as the "Great Mother," wanted to deal fairly with them as any loving, kind and protective mother would.[8] First Nations listening to him understood mothers through an Indigenous lens, as figures who encour-

5 Laura Peers, "The Ojibwa, Red River and the Forks, 1770-1870," in *The Forks and the Battle of Seven Oaks in Manitoba History*, Robert Coutts and Richard Stuart, Robert Coutts and Richard Stuart, eds. (Winnipeg: Manitoba Historical Society, 1994), 198.

6 Ibid.

7 Arthur J. Ray, James Miller & Frank Tough, *Bounty and Benevolence: A History of the Saskatchewan Treaties* (Montreal: McGill-Queen's University Press, 2002), 64.

8 Sarah Carter, Your Great Mother Across the Salt Sea': Prairie First Nations, the British Monarchy and the Vice Regal Connection to 1900, Manitoba History 48 (Autumn/Winter 2004-2005), n.p. See also Craft, *Breathing Life…*

aged children to make their own decisions about how they wished to live. Archibald said as much, explaining that the Great Mother desired Indigenous peoples to adopt agriculture, but she would not force them to make drastic changes and would ensure the lands be kept for First Nations "as long as the sun shall shine."[9]

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Protocols also worked to generate trust with those gathered. For instance, Anishinaabe Elder Florence Paynter of Sandy Bay First Nation in Manitoba describes the use of the pipe in Treaty ceremonies as a way of signalling the Creator's presence and approval of the agreement – making the agreement impossible to renege.[10] Moreover, for cultures founded upon the oral transmission of teachings, the oral promises provided by Archibald would have represented the heart of the agreement, rather than the document itself. Finally, the exchange of significant gifts, including the gifting of a treaty medal that depicted First Nations' retention of lands and way of life with the symbol of a handshake, on equal plane with Europeans, would have convinced those in attendance that the agreement would be honoured "as long as the sun shines, grass grows and rivers flow", within a relationship based on respect and equality.[11]

TREATIES AND THE NEXT 150

Treaty No. 1 was signed on August 3, 1871, at Lower Fort Garry, after 8 days of tense negotiation. First Nations pushed back in important ways, from decades prior and during the negotiations, on restrictions to their freedom of mobility and their use of lands and resources. Despite these efforts, they were cajoled, threatened and bullied into signing an agreement they could not read.[12] Evidence that the written terms did not match understandings reached can be seen by what happened next, when as early as 1875, a second treaty was negotiated with the same groups to try to reconcile differences arising from the negotiations.

Archibald would later echo this sentiment back to Howe while reporting on the Treaty 1 negotiations: "I look upon these proceedings, we are now initiating, as important in their bearing upon our relation to the Indians of the whole continent."[13] Indeed – the signing of the treaties ushered in a new era for First

9 Ibid.

10 Ibid.

11 Ibid.

12 For more on this, see Craft, Breathing Life; see also Alexander Morris, *The Treaties of Canada with The Indians of Manitoba and the North-West Territories* (Toronto: Fifth House Books, 1991).

13 Morris, *The Treaties of Canada...*, p. 32.

Nations, who were increasingly limited to reserves, severed from their traditional lands, and ultimately, made the subject of Draconian legislation whose terms seemed to directly contravene the promises made. In addition, the blueprint created by Treaty No. 1 and built through a narrow interpretation of treaties in the time since, has impacted relationships, livelihood, and community and individual wellness in ways that are difficult to quantify.

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We live in a world made of gifts, and those principles, key in understanding treaty in 1871, are as important today as they were then. How might treaty principles, properly understood through the perspective of kinship and responsibility, restructure the approach to the next 150 years? As Cree scholar Harold Johnson explains, what we do next, with respect to the treaties and to our relationships, will set the course for the future: “We will both be part of whatever future we create, *kiciwamanawak*.”[14]

14 Harold Johnson, *Two Families: Treaties and Government* (Saskatoon: Purich Publishing Limited, 2007), 85. “Kiciwamanawak” means “cousin” in Cree, and speaks to Johnson’s point about how non-Indigenous people became relatives through Treaty.

Paul Kane, *Établissement de la Rivière Rouge*, 1848. Image gracieuseté des Archives et collections spéciales de l’Université du Manitoba. ►