

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Mike Restoule, Patsy Corbiere, Duke Peltier, Peter Recollet, Dean Sayers and Roger Daybutch, on their own behalf and on behalf of all members of the Ojibewa (Anishinabe) Nation who are beneficiaries of the Robinson Huron Treaty of 1850

Plaintiffs (Moving Parties and
Responding Parties by Cross-Motion)

and

**THE ATTORNEY GENERAL OF CANADA, THE ATTORNEY GENERAL OF
ONTARIO and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Defendants (Responding Parties and
Moving Parties by Cross-Motion)

and

The Red Rock First Nation and The Whitesand First Nation

Third Parties

AFFIDAVIT OF HEIDI STARK

(Affirmed October 11th, 2016)

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**I, HEIDI KIIWETINEPINESIIK STARK, of the city of Victoria, British Columbia.
AFFIRM AS FOLLOWS:**

1. I am an Assistant Professor of Political Science with a specialization in Indigenous Politics at the University of Victoria with an office at DTB A351, 3800 Finnerty Road, Victoria, BC., V8P 5C2. I have been retained by Nahwegahbow Corbiere Firm on behalf of the beneficiaries of the Robinson Huron Treaty of 1850 (“Robinson Huron Treaty Anishinabek” or “RHT Anishinabek”) to provide an expert report on Anishinaabe treaty-making with the Crown, including diplomacy and governance as well as the identification of Anishinaabe laws, as indicated in stories and otherwise, that have bearing on the meaning and effect on the annuity and augmentation terms in the Robinson Huron Treaty.

Qualifications

2. Attached hereto and marked as Exhibit “A” is my *Curriculum Vitae*, of which the following is a summary:
 - a. I am a Turtle Mountain Ojibwe (Anishinaabe) woman and a member of the Bizhiw (Lynx) Clan. I have a B.A. in American Indian studies (2001) from the University of Minnesota. Following the completion of a B.A. I attended a Masters of Anishinaabe Philosophy with the Seven Generations Education Institute located in Fort Frances, Ontario from 2001-2003. I completed all coursework except the thesis. Courses included: Biskaabiiyang (Returning to our way of life, decolonization), Anishinaabe Inendamowin (Indigenous Philosophies), Anishinaabe Inaadiziwin (Anishinaabe Psychology), Gidakiiminaan (Relationships to land), Anishinaabemowin (language as a way of life), and Anishinaabe Izichigewin (Anishinaabe protocols). These courses were taught by renowned and highly respected Anishinaabe elders Annie Wilson, Jim Dumont, Edward Benton-Banai, and Tobasonakwut Kinew. These courses focused on Anishinaabe ways of knowing, drawing out the rich philosophies contained within Anishinaabe stories, teachings, practices and relationships with creation (encompassing land, water, animals, plants and other beings). I did not complete the thesis component as I began a doctoral program in 2002. I continued to study Indigenous stories as a source of law and means for ascertaining Indigenous political thought espoused in treaty negotiation in my courses and research. I received my Ph.D. in American studies from the University of Minnesota in 2008.
 - b. I was an instructor at the University of Minnesota-Duluth (UMD), in American Indian studies, from July 2007-2008. Upon completion of my Ph.D., I was an Assistant Professor of American Indian studies at UMD, teaching courses in American Indian Psychology, American Indian Experiences to 1900, Indian-White Relations, American Indian Diplomacy, and American Indian Politics: Law, Sovereignty and Treaty Rights, that took up questions of Indigenous treaty-making, Indigenous legal orders, and Indigenous philosophy and worldview.
 - c. As an Assistant Professor of Political Science at the University of Victoria I have taught classes pertaining to Indigenous legal orders, Indigenous diplomatic traditions in the nineteenth century, and Indigenous political philosophy for Political Science, Law and Indigenous Governance.

- d. My doctoral dissertation took up the question of how the Anishinaabe understood their treaties with the United States and Canada, focusing on the major political concepts expressed throughout this important process: sovereignty, nationhood, and land tenure. I have further developed this research in my manuscript *Unsettled: Anishinaabe Treaty-Relations and US/Canadian State-Formation*, which is under contract with the University of Minnesota Press. Portions of this work have been published in peer-reviewed journals such as *American Indian Quarterly*, *American Indian Culture and Research Journal* (AICRJ) and forthcoming in *Theory and Event*. Portions of this work have also been published as chapters in refereed books, such as The Right(s) Relationship: Reimagining the Implementation of Historical Treaties, edited by John Borrows and Michael Coyle, (Toronto: University of Toronto Press). This work interprets the past as a means to guide Anishinaabe, Canadians and Americans in how to live today by ascertaining how and which Anishinaabe legal orders shaped and informed the visions for living together put forward by Anishinaabe leaders as they negotiated treaties.
- e. I co-edited an anthology, *Centering Anishinaabe Studies: Understanding the World Through Stories* (February 2013), with Jill Doerfler and Niigaanwewidam James Sinclair that outlines the theoretical and methodological possibilities found within stories. This anthology focuses on Anishinaabe (Ojibwe) Studies and the ways in which stories might serve as a center for the field.
- f. I successfully secured a SSHRC Insight development grant for \$75,000 to work in collaboration with the Zagime First Nation (previously known as Sakimay First Nation) to draw out Anishinaabe governance principles rooted in Anishinaabe law, found in Anishinaabe stories, teachings, and practices. The research invoked traditional Anishinaabe knowledge and political principles that constitute Anishinaabe legal orders to build an understanding of Anishinaabe governance and organizational structures. The community forums and community report we are currently drafting will aid in the facilitation of the reconstitution of community-driven alternatives to the systems of governance that have been implemented in Indigenous communities by Aboriginal Affairs and Northern Development Canada (AANDC), primarily through the *Indian Act*.
- g. I produced an expert report “Noodawaawaashkeshiwe: Anishinaabe Cultural Concepts Pertinent to Deer Hunting,” co-authored with Jason Manidoonoodin Schlender and was qualified as an expert witness for Case 3:74-cv-00313-bbc, *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. State of Wisconsin* detailing Anishinaabe law pertinent to ascertaining regulations related to harvesting rights retained in their 1837 treaty with the United States. 40pgs. (Testified at trial July 2013)
- h. I have co-taught three Anishinaabe law camps with John Borrows, Lindsay Borrows and Hannah Askew. This includes a four-day law camp for Osgoode Law students in collaboration with the Chippewas of Nawash Unceded First Nation, Neyaashiinigiimün, ON, September 10-13, 2015 and

September 15-18, 2016 and four- day law camp for Windsor Law Faculty and Dean in collaboration with Walpole Island First Nation, Walpole Island, ON, April 14-17, 2016. During these camps, we outline the sources and scope of Anishinaabe law, share Anishinaabe stories in order to unearth Anishinaabe legal principles and detail methodologies for drawing out Indigenous law.

- i. I am currently working with the Zagime First Nation on the development of a report detailing Anishinaabe law and treaty principles as interveners in the Energy East Pipeline to be submitted to the National Energy Board. In addition, I was asked by Chief and Council to assist in their development of a Hunting Council and a Water Council by detailing Anishinaabe legal orders in relation to hunting and water governance, a project that is currently in progress. As part of this work, I participated in a four-day gathering with the Zagime First Nation focused on Anishinaabe legal orders contained in stories, teachings and practices pertaining to hunting and water in Grenfell, SK, August 22-25th 2016.
3. Attached as Exhibit “B” is my Terms of Reference. Attached as Exhibit “C” is Acknowledgment of Expert’s Duty (Form 53).

Summary of Conclusions

4. Based on my general knowledge, background and experience as set out above, as well as on my review of specific historical documents, I have reached the following conclusions:
 - a. Anishinaabe law, drawn from stories, aims to illuminate methods for living, which requires the establishment of respectful relationships that bind people together as kin with obligations and responsibilities to one another in order to ensure survival in an ever-shifting world. These stories delineate pathways for establishing mutually beneficial relationships and for restoring balance and harmony to relationships that have become impaired.
 - b. Anishinaabe laws flow from many sources, which influence and give shape to Anishinaabe jurisprudence. These include 1) sacred law, 2) natural law, 3) deliberative law, and 4) positivistic law.
 - c. Stories are an important source from which to draw out Anishinaabe law. They provide meaning to the world the Anishinaabe live in, teach the Anishinaabe how to relate to one another, and help the Anishinaabe understand their place in creation. By utilizing these stories and the important philosophies contained within them, the Anishinaabe were able to draw out and develop laws that ensured they were relating to the land, animals, flora, fauna, manidoog (spirits) and others as human beings in respectful ways that account for mutual responsibilities to one another.
 - d. A central aim of Anishinaabe stories is to unearth frameworks for *how* human beings should act and live with one another.
 - e. The Anishinaabe understand treaties as establishing relationships rooted in the principles of respect, responsibility and renewal.
 - f. As illustrated in the story of the Theft of Fire, nations and peoples are marked by their intentions and engagements with others. Stories of Nenabozho’s (mis)adventures demonstrate that Anishinaabe political thought

is deeply grounded in notions of interconnectivity and relationality. Anishinaabe law seeks to shape how the Anishinaabe relate to others and the world around them by detailing their interdependence and encouraging the establishment of respectful relationships that account for ongoing responsibilities to one another.

- g. Nenabozho stories, in detailing how animals came to attain certain physical attributes or how the land came to take her current form, reinforce the understanding that humans' actions and engagements create transformative and lasting impacts. These stories emphasize and strengthen the understanding that relationships must be based on accountability, responsibility and action.
- h. While the augmentation clause may be a special feature in its explicit articulation and form, when one looks to the Anishinaabe legal principles that ordered treaty relationships, this feature is consistent with broader expectations that these relationships were and remain living relationships founded in respect and creating ongoing obligations and responsibilities to one another.
- i. The Robinson Huron Anishinaabe would have anticipated their relationship with the Crown would continue to sustain their people. The establishment and maintenance of relationships was rooted in the understanding these relationships would derive benefits for all parties involved. Just as the Anishinaabe continue to value their relationships with beavers and derive mutual benefits through the enactments of their obligations to one another, the Anishinaabe also understood their treaty relationship with the Crown as one that would bring mutual benefit to both parties.
- j. By using their sacred laws, the Anishinaabe were engaging in a process that incorporated the Creator and all of creation in their political practices. In doing so, the Anishinaabe were simultaneously recognizing their sovereignty (and thus responsibilities to their lands) as being derived from the Creator and bringing the newcomers into these pre-existing relationships by 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. Anishinaabe treaty relationships with the Crown would have ensured these responsibilities would continue to be met.
- k. For the Anishinaabe, treaty relationships were sought as a means to carry forward the vision of the Creator to provide for the Anishinaabe while also expanding their alliances by bringing the Crown into a formal relationship that would enable mutual use of the land in accordance with the sacred laws of creation. Shingwakonce spoke against greed and promoted the principle of generosity and mutual responsibility in restoring respectful relations.
- l. In order to understand Anishinaabe interpretations of treaties, it is imperative to account for the pre-existing relationships and legal frameworks that informed and gave meaning to these treaties.
- m. Treaty making became an important practice for both establishing relationships as well as addressing harms incurred in these relationships, enabling the remediation of wrongs and restoration of peace and justice. Treaties enabled the Anishinaabe to expand their kin networks, which were

valued as essential for survival in an ever-transforming world. A fulfillment of one's obligations and responsibilities was seen as essential to productive relationships and productive relationships were seen as essential for the shared survival of human beings bound together in a deeply interdependent world.

- n. Treaty making was an important venue and process for the Anishinaabe to articulate methods for relating to one another. The good life and wealth were measured by the relationships that Anishinaabe could count on, especially in times of hardship. The explicit inclusion in the Robinson Huron Treaty of the possibility for an increase of their annuities if the Crown derived benefit from Anishinaabe lands is consistent with Anishinaabe modes for living together.
- o. The Robinson Huron Anishinaabe urged the Crown to repair the harms they had suffered and restore their relationship, calling for a treaty. They outlined the care and friendship they had provided to the whites when they first came into Anishinaabe territory and were weak and few in number. They called for the Crown to exercise reciprocity and generosity in their relationship with the Anishinaabe.
- p. Treaty-making allowed for renewal. The Anishinaabe used treaty negotiations to express the grievances they had in their relationships with the United States and Canada. Treaties became a mechanism for these nations to come together, attempt to settle their disputes, and forge new or renewed relationships.
- q. Principles for restoring impaired relationships include 1) *the importance of listening and bearing*, 2) *admitting and acknowledging wrong doings*, and 3) *restoring respectful relationships to ensure the end of harm and the reinstatement of reciprocity*.

Treaty with the Hoofed Nation: A Framework for Restoring Relationships

- 5. In *The Gift is in the Making*, Anishinaabe storyteller Leanne Simpson recounts the story of the Treaty with the Hoofed Nation.¹ The Anishinaabe² had taken their

¹ Leanne Simpson, *The Gift Is in the Making: Anishinaabeg Stories*, The Debwe Series (Winnipeg: Highwater Press, 2013).

² 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 it's 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 E.S. Rogers, "Southeastern

relationships with the Hoofed Nation for granted. They had neglected their responsibilities and obligations to these relatives. They had failed to act respectfully. After some time, the Hoofed Nation decided to leave the territory. As one season transitioned into another, the Anishinaabe began to realize they had not seen their Hoofed Relatives for nearly a year. They began to worry and with the passing of some time, decided they should send out their fastest and strongest runners to find the cause for this absence. They soon learned that the Hoofed Nation had left their territory because the Anishinaabe had been disrespectful. They felt the Anishinaabe no longer honored their relationship with the Hoofed Nation. Determined to restore this relationship, the Anishinaabe petitioned the Hoofed Nation to meet in council. Simpson notes, "After some negotiation, the people learned that the Hoof Clan had left their territory because the Nishnaabeg were no longer honoring them. They had been wasting their meat and not treating their bodies with the proper reverence. The Hoof Clan had withdrawn from the territory and their relationship with the Nishnaabeg. They had stopped participating."³

6. The Anishinaabe listened. They listened to these grievances. They listened to the stories and teaching that the Hoof Clan shared. They spent many long days listening. They acknowledged their errors and mistakes; they discussed remedies, and negotiated the best approaches to restoring their relationship. They each thought about what they could do to restore their relationship.
7. The Anishinaabe agreed to honor and respect the lives of their Hoofed relatives, taking their bodies only when needed and using the flesh wisely. They promised to protect their relatives and the homelands that sustained them. They committed to sharing the meat provided by their Hoofed relatives, ensuring nobody went without. And they promised they would rely on other food sources when times were tough for their Hoofed relatives. And they ensured they would demonstrate their respect and reverence, offering tobacco and holding ceremonies to honor the Hoofed Nation. In exchange, the Hoofed Nation agreed to return to the territory of the Anishinaabe, committing to give up their lives when the Anishinaabe were in need.⁴
8. This story of the Anishinaabe (Ojibwe) treaty with the Hoof Nation provides critical insights into Indigenous law and diplomacy. Like many Indigenous stories, this story describes Anishinaabe life as precarious. The people failed to honor their relationships with their Hoofed relatives. They were no longer upholding their obligations and responsibilities. Their failure to honor these relationships, to carry out their obligations in good faith, had a detrimental impact on their relatives, causing the Hoofed ones to leave. This produced grave results for the Anishinaabe who struggled to survive the harsh winters that characterized life on the prairies and around the Great Lakes without the sustenance provided by their Hoofed relatives. Recognizing the errors of their ways, the Anishinaabe sat in council with leaders of the Hoofed Nation. They listened carefully. They acknowledged their wrongdoings

Ojibwa," in *Handbook of the North American Indians; Northeast*, ed. Bruce G. Trigger (Washington: Smithsonian Institution, 1996); Robert E. Ritzenthaler, "Southwestern Chippewa," *ibid.*

³ Simpson, *The Gift Is in the Making: Anishinaabeg Stories*, 11.

⁴ *Ibid.*, 9-12.

and they worked diligently to rectify these wrongs and ensure they would not persist. Perhaps one of the oldest recorded stories of reconciliation, the Treaty with the Hoop Nation illustrates essential principles for restoring impaired relationships such as 1) *the importance of listening and hearing*, 2) *admitting and acknowledging wrong doings*, and 3) *restoring respectful relationships to ensure the end of harm and the reinstatement of reciprocity*.

9. An analysis of stories as law can posit more than an alternative methodological approach for the study of Anishinaabe law. Anishinaabe law, drawn from stories, aims to illuminate methods for living, which requires the establishment of respectful relationships that bind people together as kin with obligations and responsibilities to one another, ensuring survival in an ever-shifting world. These stories delineate pathways for restoring balance and harmony to relationships that have become impaired. The Anishinaabe, like other Indigenous nations, do not have the luxury of walking away from their relationships (unlike their Hooped relatives). Their survival was and remains dependent on these relationships. A recurring element of Anishinaabe stories is the importance of establishing, restoring and renewing relationships and fulfilling responsibilities and obligations to others.

Anishinaabe law

10. As legal scholar Aharon Barak notes “the world is filled with law. Every human behavior is subject to a legal norm... Wherever there are living human beings, law is there. There are no areas in life which are outside of law.”⁵ Anishinaabe law predates the arrival of Europeans, ordered historical diplomatic practices and has continued meaning and application in Anishinaabe governance and cultural practices.
11. Anishinaabe legal scholar John Borrows notes “many Indigenous people believe their laws provide significant context and detail for judging our relationships with the land, and with one another. Yet Indigenous laws are often ignored, diminished, or denied as being relevant or authoritative in answering these questions.” As Borrows delineates in his extensive study of Indigenous legal traditions, law is an important organizing force and “pivots around deeply complex explicit and implicit ideas and practices related to respect, order, and authority.”⁶
12. Anishinaabe law can best be understood through an examination of legal traditions. For the purpose of this report, I draw on Borrows’ definition of a legal tradition. “A legal tradition... is a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in society and the polity, and the proper organization and operation of a legal system, and about the ways law is or should be made, applied, studied, perfected and taught.”⁷ Anishinaabe laws flow from many

⁵ Aharon Barak, “Judicial Philosophy and Judicial Activism” (1992) 17 *Tel Aviv University Law Review* 483.

⁶ See John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002); *Drawing out Law: A Spirit's Guide* (Toronto: University of Toronto Press, 2010); *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010). John Borrows is a leading scholar in Indigenous, Constitutional, and Environmental law. He is a member of the Chippewas of Nawash First Nation.

⁷ *Recovering Canada: The Resurgence of Indigenous Law*, 7.

sources, which influence and give shape to Anishinaabe jurisprudence.⁸ In analyzing the sources and scope of Indigenous legal traditions, Borrows finds “Understanding their communities’ legal foundations can lead to a better appreciation of their contemporary potential, including how they might be recognized, interpreted, enforced, and implemented. The underpinnings of Indigenous law are entwined with the social, historical, political, biological, economic, and spiritual circumstances of each group.”⁹ He goes on to note, “they are based on many sources, including sacred teachings, naturalistic observations, positivistic proclamations, deliberative practices, and local and national customs.”¹⁰ Anishinaabe law finds its source in sacred law, natural law, deliberative law, positivistic law, and customary law. It is important to note that these are not discrete categories and at times these sources overlap and inform one another.

13. Similar to other legal traditions, Anishinaabe laws can be regarded as sacred law. This is especially true if these legal traditions stem from the Creator, creation stories, ancient teachings, and spiritual principles. Borrows finds “Within Indigenous legal traditions, creation stories are often one source of sacred law. These accounts contain rules and norms that give guidance about how to live with the world and overcome conflict. Their reach can be quite expansive because they contain instructions about how all beings should relate to specific territories.”¹¹ These laws, because of their expansive application across creation, are often less flexible than laws flowing from other sources. Treaties are understood as flowing from this source. They are revered by the Anishinaabe as sacred agreements because they brought the Creator into their relationship with the Crown and also brought the Crown into their relationships with creation.
14. Anishinaabe law has also been shaped by Anishinaabe engagement with creation. Natural law is an important source of Anishinaabe legal traditions as it “attempts to develop rules for regulation and conflict resolution from a study of the world’s behavior. Law in this vein can be seen to flow from the consequences of creation or the ‘natural’ world or environment.”¹² Natural law is astutely aware of and recognizes the interconnectivity of creation. For example, the story of the Hoof Nation details the consequences of failing to recognize the interconnectivity and dependence on creation for humankind’s survival. A natural law drawn from this story is that an animal’s life will only be requested when this is necessary and will be respected and honored by ensuring the animal’s body is used wisely and without waste.

⁸ See for example Larry Nesper, "Negotiating Jurisprudence in Tribal Court and the Emergence of a Tribal State: The Lac Du Flambeau Ojibwe," *Current Anthropology* 48, no. 5 (October 2007); Matthew L. M. Fletcher, *American Indian Tribal Law*, Aspen Elective Series (Austin: Wolters Kluwer Law & Business, 2011); Nicholas J. Reo, "The Importance of Belief Systems in Traditional Ecological Knowledge Initiatives" *The International Indigenous Policy Journal* 2, no. 4 (2011).

⁹ See Borrows, *Canada's Indigenous Constitution*, 23-4.

¹⁰ See *ibid.*, 24.

¹¹ *Ibid.*, 25.

¹² *Ibid.*, 29.

15. Deliberative law is another important source for Anishinaabe legal traditions. Indeed deliberation, talking with one another, is a crucial aspect of assuring law has continued application and meaning for the people it seeks to guide. “The deliberative nature of many Indigenous laws means they can be continuously updated and remain relevant in the contemporary world. When Indigenous people have to persuade one another within their traditions, they must also do so by reference to the entire body of knowledge to which they have access, which includes ancient and modern understandings of human rights, due process, gender equality, and economic consideration.”¹³ Deliberation is also critical for creating and maintaining frameworks for peaceful and respectful co-existence, not only with creation, but also within a legally pluralistic state. “Thus, since deliberative Indigenous laws draw upon historical and current legal ideas, they can also more explicitly take account of (and even incorporate where appropriate) legal standards from other legal systems.”¹⁴ By bringing the Crown into their relationship with creation via the treaty process, the Anishinaabe remained committed to working in cooperation with newcomers, recognizing the interconnectivity of all their respective actions as well as the value of sharing knowledge.
16. Positivistic law is another important source within Anishinaabe law. Positivistic law is comprised of the “proclamations, rules, regulations, codes, teachings, and axioms that are regarded as binding or regulating people’s behavior.”¹⁵ For example, the Anishinaabe Nation in Treaty #3, “with approval of the elders and validation in traditional ceremony” proclaimed *Manito Aki Inakonigaawin* law on October 3, 1997. This law declared:

“Saagima Manito gave to the Anishinaabe duties and responsibilities for their traditional lands; and

By Treaty with Her Majesty, The Anishinaabe Nation in Treaty #3 shared its duties and responsibilities and protected its rights; and

Developments and activities are affecting the environment of Treaty #3 territory and the exercise of rights of the Anishinaabe; and
The Anishinaabe law of respect requires those who may affect the environment of Treaty #3 territory or the exercise of rights of the Anishinaabe to consult with the Nation... ”¹⁶

Proclamations such as the *Manito Aki Inakonigaawin* are an important means for Anishinaabe to encourage and enforce the sacred and natural laws that undergird these laws.

¹³ Ibid., 35.

¹⁴ Ibid., 35.

¹⁵ Ibid., 35-36.

¹⁶ “*Manito Aki Inakonigaawin*,” Proclaimed by the National Assembly on the 3rd of October, 1997, Copyright 1997, Grand Council Treaty #3. <http://www.gct3.ca/about/laws-policies/> [accessed September 24, 2016].

Stories as a Source of Law

17. Stories are an important source from which Anishinaabe law can be drawn. Stories shape how people see and interact with the world. They lend insight into the ways in which people see their communities as well as how they see themselves within these communities. The power of stories is found in their ability to outline and clarify the connections people have to their place, their people, and their history. Indigenous stories outline relationships; the relationships people have to one another and the relationship they have to self. N. Bruce Duthu has said:

Our oral tradition encompasses diverse stories, but within them are recurrent themes, chief among them the idea of relationships. Stories carry us through time and reveal our relationships to our historical selves, to others around us, and to the natural and supernatural world. The meanings attached to these stories, like the relationships they explore, are dynamic, increasingly complex, and often surprising.¹⁷

Stories are how people make sense of the world. As Anishinaabe scholar Gerald Vizenor reminds us, "You can't understand the world without telling a story."¹⁸

18. There are a multitude of stories among the Anishinaabe, contained in various forms, that all work toward the same end: to provide meaning to the world the Anishinaabe live in, teach the Anishinaabe how to relate to others, and help the Anishinaabe understand their place in creation. Lessard, et. al. notes that "We come into existence... as embodied beings, processing the partial fragments of sensory experience (sounds, images, smells, touches), sorting them into patterns of consequence, patterns of meaning. Narrative- or 'story'- is one of the primary vehicles through which we sort, arrange, and produce those patterns."¹⁹ It is through lived experiences, through interaction with all of creation that people come to produce the stories that aid in making sense of the world. By utilizing these stories and the important philosophies contained within them, the Anishinaabe were able to draw out and develop laws that ensured they were relating to the land, animals, flora, fauna, manidoog (spirits) and other human beings in respectful ways that account for their responsibilities to others.

19. Stories, like treaties, codify relationships. N. Bruce Duthu finds, "Stories carry us through time and reveal our relationships to our historical selves, to others around us, and to the natural and supernatural world. The meanings attached to these

¹⁷ N. Bruce Duthu, "Incorporative Discourse in Federal Indian Law: Negotiating Tribal Sovereignty through the Lens of Native American Literature," *Harvard Human Rights Journal* 13 (Spring 2000): 141-2.

¹⁸ Laura Coltelli, *Winged Words: American Indian Writers Speak*, American Indian Lives (Lincoln: University of Nebraska Press, 1990), 156.

¹⁹ Hester Lessard, Rebecca Johnson, and Jeremy Webber, "Stories, Communities, and Their Contested Meanings," in *Storied Communities: Narratives of Contact and Arrival in Constituting Political Community*, ed. Hester Lessard, Rebecca Johnson, and Jeremy Webber (Vancouver: UBC Press, 2011), 7.

stories, like the relationships they explore, are dynamic, increasingly complex, and often surprising.”²⁰ Stories are how the Anishinaabe make sense of the world. They function as road maps, guiding people towards exploration, discovery, and meaning.

20. For the Anishinaabe, some of their earliest interactions with creation are contained in narratives about Nenabozho.²¹ His interactions with the various places and peoples of creation contain a variety of lessons for the listener, who is required to expand their perceptions when confronted with stories of a main character whose motivations are seemingly contradictory- sometimes self-less and sometimes self-interested. Nenabozho’s contrary behaviors encourage underlying values and principles yet each listener is encouraged to make sense of the story for themselves and to infer meaning that will be applicable to their own behaviors, actions, and engagements.²² These stories, as components of Anishinaabe political thought that guided the development and maintenance of relationships in the nineteenth century, can illuminate modes for living together in fundamentally different ways.
21. Stories detail relationships. They teach people how to conduct themselves and how to make sense of their actions vis-à-vis others.²³ Julie Cruikshank found that “such narratives depict humans, animals, and other nonhuman beings engaged in an astonishing variety of activities and committed to mutually sustaining relationships that ensure the continuing well-being of the world.”²⁴ Anishinaabe stories encourage using care in engaging others. These stories posit that actions have consequences.
22. For example, when the Anishinaabe are gifted by an animal, by the animal giving its life for the Anishinaabe, they must use care in how they harvest the animal. The Anishinaabe have a relationship to the animals and thus they also have correlative duties and responsibilities to them. Borrows, in analyzing Anishinaabe legal traditions notes:

In an Anishinabek legal context, *rights and responsibilities are intertwined*. ...W.N. Hohfeld observed: ‘[A] duty is the invariable correlative of that legal relation which is most properly called a right or claim.’ An 1894 legal citation reads:

²⁰ Duthu, "Incorporative Discourse in Federal Indian Law: Negotiating Tribal Sovereignty through the Lens of Native American Literature," 141-2.

²¹ 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. When employing Anishinaabemowin, I use the double vowel orthography to maintain consistency with *A Concise Dictionary of Minnesota Ojibwe*.²¹ 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.

²² Johnston, *Ojibwe Heritage*, 122-123.

²³ See, for example, Heidi Kiiwetinepinesik Stark, "Respect, Responsibility, and Renewal: The Foundations of Anishinaabe Treaty Making with the United States and Canada." " *American Indian Culture and Research Journal* 34, no. 2 (2010).

²⁴ Julie Cruikshank, *The Social Life of Stories: Narrative and Knowledge in the Yukon Territory* (Lincoln: University of Nebraska Press, 1998), xii.

‘A duty or a legal obligation is that which one ought or ought not to do. “Duty” and “right” are correlative terms. When a right is invaded, a duty is violated.’ This is the case with Anishinaabek law. Wherever a potential right exists, a correlative obligation can usually be found, based on individual’s relationship with the other orders of the world.²⁵

He further notes:

The Anishinaabek have strong legal traditions that convey their duties relative to the world. These are steward-like concepts (*bimeekumaugawin*) and apply to their use of land, plants, and others. Principles of acknowledgement, accomplishment, accountability, and approbation are embedded in the Anishinaabek creation epic and associated stories.²⁶

23. These stories often detail the earth’s creation and the placement of beings on this earth. They recount humans’ dependency on plants and animals for their survival. Borrows concludes: “The Ojibway’s acknowledgement (*gaamiinigooyang*) of a Creator and an appreciation of their reliance on their relationship to the world are the first principle of *bimeekumaugawin* within Ojibway society. As these traditions progress, the second principle of *bimeekumaugawin* emerges: how to accomplish (*gikinoo’amaadiwin*) the Creator’s vision in setting life in motion. The stories convey the manner in which plants, animals and humans should relate to and respect one another. . . .They talk of principles that must be followed so that all the orders of creation can live together in peace and friendship. The tradition goes on to explore the third principle of *bimeekumaugawin*: accountability (*gwayakochigewin*). As with the pipe, ceremonies are often performed in conjunction with these stories to communicate to the Creator, and to acknowledge before others how one’s duties and responsibilities have been performed. . . .Finally, the traditions talk about the consequences of living in accordance with, or contrary to, these principles.”²⁷
24. Stories, in teaching people how to relate to one another can also be understood as law. Law, of course, is an important organizing force within virtually all societies. “However,” Anishinaabe legal scholar John Borrows notes, “ there are many definitions and disagreements about what constitutes law. . . .Its effect can simultaneously produce peace and chaos, depending in whose name it is administrated and from whose perspective it is processed.”²⁸ And yet law plays an important role in each person’s life as it seeks to guide how humans should relate to and interact with one another. Stories are emphatically a source of law as they lay out critical principles for how the Anishinaabe order their world and relate to others.
25. What constitutes story, however, evades definition and containment. As Leslie Marmon Silko notes, “many individual words have their own stories. So when one is

²⁵ Borrows, *Canada's Indigenous Constitution*, 79.

²⁶ Ibid.

²⁷ "Indigenous Legal Traditions in Canada," (Law Commission of Canada, 2006), 43-44.

²⁸ John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010), 7.

telling a story and one is using words to tell the story, each word that one is speaking has a story of its own too."²⁹ As a single word is capable of carrying many stories, once it is uttered into the air or onto the page, it is imbued with a life force- just as the Anishinaabe were when the Creator blew the breathe of life into the first human.³⁰ Because words have power, Anishinaabe stories caution how words are used.

Stealing Fire: Stories as a Source for how to Live Together

26. Nenabozho was being brought up by his grandmother.³¹

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."³²

Upon this revelation, Nenabozho said he would go and try to fetch some 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."

²⁹ Leslie Marmon Silko, *Yellow Woman and a Beauty of the Spirit: Essays on Native American Life Today* (New York: Simon and Schuster, 1996), 50.

³⁰ Edward Benton-Banai, *The Mishomis Book: The Voice of the Ojibway* (Saint Paul: Red School House, 1988).

³¹ For this report, I closely examined materials pertaining to Anishinaabe political thought and practice, traditional stories and teachings, and cultural beliefs and language. Though I draw from many sources, I primarily utilize stories collected by Meskawki 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. His collection contains stories that are known and told across many Anishinaabe communities and can be found in a number of other published sources in other forms. Jones spent two seasons among the Ojibwe of Lake Superior, conducting fieldwork, which culminated in the publication of two volumes of work. 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. Federick Wright, "Anthropologic Miscellanea," *American Anthropologist* 11, no. 1 (Jan-Mar 1909).

³² 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.

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.³³

27. Nenabozho had conjured a method for acquiring fire. Across the water, an old man sat working on his net. As the old man had two daughters, Nenabozho thought he would transform himself into a hare, knowing the young girls would take to him in that form. And with this thought, he willed it to be. He willed the two girls to find him at the shores, wet, knowing they would take him into their home. And so it was. The girls placed Nenabozho by the fire so that he could dry. But, 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 manitous³⁴ how they were born? Perhaps this might be one of them.”³⁵*
28. 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 leapt out the window and began running across the lake, willing it to freeze again. The old man pursued him but to no avail. Nenabozho ran quickly and soon returned home. But he was still on fire. He pleaded to his grandmother to rub the fire off of him, and she did. And thus they had fire. Yet, Nenabozho was marked by this quest. His white fur had turned brown, scorched from carrying the fire across the lake. And so Nenabozho proclaimed, *“Therefore such shall be the look of the hare in the summer-time.”³⁶*
29. *The Theft of Fire* encompasses numerous meanings and teachings. The story contains two discernible points. First, it reveals how the Anishinaabe obtained fire. Fire, *ishkode*, is a central element in Anishinaabe worldview. *Iskode* is the force of the creation of the Earth, reflected in its molten core. The relationship of fire to creation is, furthermore, mapped in the sky by the northern lights; *jübayag niimi’idiwag*,³⁷ which are considered to be reflections of the Anishinaabe ancestors’ dancing around their fires, illuminating the path of souls for those traveling to the land of the deceased.³⁸ Fire can be understood as the heart of the Earth and of the people, demarcated by the morpheme *de*, meaning heart or center.³⁹ Thus, fire appears as a central element

³³ Michelson and Jones, *Ojibwa Texts*, ed. Franz Boas, 2 vols., vol. VII, Part I, 9.

³⁴ Manitou comes from the Ojibwe word, *manidoo*, meaning “god, spirit, manitou.” See Nichols and Nyholm, *A Concise Dictionary of Minnesota Ojibwe*, 77.

³⁵ Michelson and Jones, *Ojibwa Texts*, ed. Franz Boas, 2 vols., vol. VII, Part I, 11.

³⁶ *Ibid.*, 15.

³⁷ The English translation of *jübayag niimi’idiwag* is “they are the northern lights.” See Nichols and Nyholm, *A Concise Dictionary of Minnesota Ojibwe*, 73.

³⁸ 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.

³⁹ While there is no etymological connection between *ishkode* and the morpheme *de* within the linguistic method, folk etymologies (the stories told by speakers based on perceived resemblances

that begins with the creation of the Earth, becomes the heart of the nation and lights the way “home.”⁴⁰ Fire, then, appears throughout the cycle of creation, or life.

30. The centrality of fire within Anishinaabe worldview is illustrated by its importance in ceremonial practices. Fire is a vital component in many ceremonial practices, which begin with the ignition of the fire and end with its extinguishment. Fire also serves as a conduit to the spirit realm both through the smoke it emits and the items it consumes. Fire has the power to carry the prayers and offerings of the Anishinaabe to this realm.⁴¹ However, spiritual practice and discourse are not the only arenas in which fire, both in form and symbol, are invoked. Fire has also functioned as a powerful metaphor in political discourse.

31. Within Anishinaabe political discourse, fire was employed as a symbolic representation for a variety of concepts including nation, council, and alliance.⁴² This usage is evident in the various names applied to the allied Ojibwe, Odawa, and Potawatomi: The Three Fires Confederacy, the Council of Three Fires, People of the Three Fires, and The United Nation(s) of Chippewa, Ottawa, and Potawatomi.⁴³ Each nation represents a fire- the use of “Three Fires” demarcates their political alliance. This application of the symbol of fire to connote both a nation as well as an alliance between nations- often established through a treaty or diplomatic accord

and connections) have made this connection. Anton Treuer notes “The relationship between the words *ode*’ (his heart), *oodena* (village), *doodem* (clan), and *dewe’igan* (drum) has caused considerable confusion among some scholars, who have occasionally claimed that one of these words was derived from another when in fact they simply share the same root morpheme *de*. *Ode*’ (the heart) is the center of the body. *Oodena* (the village) is the center of the community, and *doodem* (the clan) is the center of spiritual identity. *Dewe’igan* (the drum) is the center of the nation, or it’s heartbeat.” See Anton Treuer, *The Assassination of Hole in the Day* (St. Paul, MN: Borealis Books, 2010), 15.

⁴⁰ Home is used here to mean the land of the deceased.

⁴¹ For further discussion of the importance of tobacco and offerings, see A. Irving Hallowell, *Culture and Experience*, ed. Society Philadelphia Anthropological, Publications, V. 4 (Philadelphia: University of Pennsylvania Press, 1955); Densmore and Smithsonian Institution. Bureau of American Ethnology., *Chippewa Customs*; Anton Treuer, *Living Our Language: Ojibwe Tales & Oral Histories*, Native Voices (St. Paul: Minnesota Historical Society Press, 2001).

⁴² Fire has been employed in Anishinaabe political discourse to represent both the nation itself as well as the act of entering into a treaty. The rhetorical symbol of fire has been used to reference the treaty council, while fire has also been utilized in its physical form during the treaty council. 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, Rolls 1-10, 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).

⁴³ For more information of the Three Fires Confederacy, see James A. Clifton, George Leslie Cornell, and James M. McClurken, *People of the Three Fires: The Ottawa, Potawatomi and Ojibway of Michigan* ([Grand Rapids, Mich.]: Grand Rapids Inter-Tribal Council, 1986); Patty Loew, *Indian Nations of Wisconsin: Histories of Endurance and Renewal* (Madison: Wisconsin Historical Society Press, 2001); R. David Edmunds, *The Potawatomis, Keepers of the Fire*, 1st ed. (Norman: University of Oklahoma Press, 1978); Donald L. Fixico, "The Alliance of the Three Fires in Trade and War, 1630-1812," *The Michigan Historical Review* 20, no. 2 (Fall, 1994).

with one another- was expressed in the 1846 treaty negotiations between the United States and the “United Nation of Chippewas, Odawa, and Pottawatommie.”⁴⁴

32. The Ojibwe, Odawa, and Potawatomi leaders represented themselves as bound together by the obligations and responsibilities that defined their relationship. However, they also asserted that they could not exclusively be understood as a unified people. During treaty negotiations, they reminded the US treaty commissioners that the President “cannot collect them,” referencing his inability to make them one people. United Nation leaders stated, “It used to be that we had but one fire but he [the President] disturbed us. *He put out that fire and scattered the ashes.* He cannot collect them.”⁴⁵ The Ojibwe, Odawa, and Potawatomi laid blame on the President for disrupting their alliances, proclaiming that they could not be united again. Yet, they qualified this statement, arguing that if the President agreed to their terms of the treaty then he would “see how many fires will burn;” fire operating as a critical component of Anishinaabe political thought, in this instance functioning as an allegory for both the individual nations and the council these nations would gather in to meet the agreements of this treaty.⁴⁶

33. The second discernible feature in the story is the marking of the hare’s fur by his theft of fire. On one level, this component of the story serves to explain one of the hare’s main features. It explains why some hares are brown in the summer and white in the winter. However, the effect of Nenabozho’s theft of the fire, its mark on the hare, also informs Anishinaabe political discourse. While fire can serve 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.⁴⁷ When a nation

⁴⁴ *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.

⁴⁵ *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. *Emphasis Mine*

⁴⁶ *Ibid.* Interestingly, The United Nation of Ojibwe, Odawa, and Potawatomi were referenced in the treaty simply as the Potawatomi, with the treaty records stating that this was their “national character.” The treaty record does not indicate why the United Nation of Ojibwe, Odawa, and Potawatomi became identified as the Potawatomi. Perhaps this name was used because a large number of Potawatomi made up the United Nation. However, this collective identity could have been utilized for another reason. The word Potawatomi, *boodewaadamii* within the Anishinaabe language, means “those who keep the fire.” Thus, this collective identity may have been utilized to denote the political alliance across these three nations, their making of a fire. See William W. Warren, *History of the Ojibway People*, Reprint ed. (St. Paul: Minnesota Historical Society Press, 1984), 32.

⁴⁷ 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 all its parts.” David E. Wilkins, *American Indian Politics and the American Political System* (Lanham: Rowman & Littlefield, 2002), 339. Treaty-making is a long-standing practice among the Anishinaabe, having its origins preceding contact with European nations. Anishinaabe nations entered into numerous treaties with other Indigenous nations, often formalized through the exchange of wampum, pipes, drums, and other ceremonial items. For additional information see Leanne Simpson, “Looking after Gdoo-Naaganinaa: Precolonial Nishnaabeg Diplomatic and Treaty Relationships,” *Wicazo Sa Review* 23, no. 2 (Fall 2008).

enters into a diplomatic accord, 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 or shaped by its alliances with other nations in the same way that the hare in this story is marked by the quest for fire, having brown fur in the summer. Not surprisingly, both fur colors enable hares to adapt and blend into their changing seasonal environment. Anishinaabe nationhood and the alliances that they established operated to achieve the same end: the ability to adjust and integrate into rapidly shifting political, economic, and cultural environments. Both serve as mechanisms of protection. The Anishinaabe entered into treaty relationships knowing they would mark their nations, bound by their obligations and responsibilities, but in turn these treaties would also bring new gifts to the Anishinaabe that could improve their lives and enable the Anishinaabe to better adjust to their ever-changing environment.

34. Fire serves as more than a metaphor. Instead, the stories and teachings pertaining to fire inform and comprise Anishinaabe political thought. Understood in these ways, *The Theft of Fire* evidences a worldview that both influences and informs Anishinaabe social, spiritual, and political discourse. As Nenabozho shows, intentions and engagements shape outcomes. He is not only transformative, changing form and willing things to happen just so; he is also transformed, marked by his actions. Stories of Nenabozho's (mis)adventures demonstrate that Anishinaabe political thought is deeply grounded in notions of interconnectivity and relationality. Anishinaabe law seeks to shape how Anishinaabe relate to others by detailing Anishinaabe interdependence and encouraging the establishment of respectful relationships that account for mutual responsibilities to one another.
35. Stories have the power to reveal the political thought and values of the nations narrating them. As N. Scott Momaday eloquently notes, "We have no being beyond our stories. Our stories explain us, justify us, sustain us, humble us, and forgive us."⁴⁸ Stories, like *The Theft of Fire*, lay out the relationships the Anishinaabe have with elements of creation, such as fire, and serve as a lens to interpret Anishinaabe political discourse expressed throughout their treaty negotiations. Anishinaabe diplomacy is not only a set of political actions, practices and protocols, it is also a story, a narrative. Anishinaabe diplomacy is carried out through the stories told, the customs practiced, and the commitments fulfilled. The historical record of Anishinaabe treaty-making lend insight into what was said, the promises and commitments made between the various parties, and it also sheds light on the hopes and aspirations these nations had for their people in establishing these relationships.
36. Treaty making is in many ways the site for building relationships, where nations expressed how to live together in mutual benefit. A reinterpretation of the treaty record, through an analysis of the narratives that were developed out of and in relation to these international accords reveals the different visions for how to live together and among creation by the Anishinaabe, Canada, and the United States. Central to these stories is competing conceptions of relationships. For the

⁴⁸ N. Scott Momaday, *The Man Made of Words: Essays, Stories, Passages* (New York: St. Martin's Press, 1997).

Anishinaabe, the establishment of mutually beneficial relationships that delineated obligations and responsibilities to one another were crucial for thriving in a precarious world that was continuously being transformed.

37. Nenabozho is a transformative figure.⁴⁹ This is made evident in stories outlining his interactions with creation. His actions transform the landscape and have varied impacts for those he encounters. Narratives of his exploits contain insights into the fundamentally transformative nature of beings- blurring the lines between human and non-human, political, spiritual and metaphysical. This is evidenced, for example, in the opening story about the hare stealing fire. He was marked by this action.⁵⁰ Nenabozho's actions affected all hares from that day forward, as their white fur would become brown in the summer as a result of their ancestor's act of carrying fire on his back. Nenabozho stories, in detailing how animals came to attain certain physical attributes or how the land came to take her current form, reinforces the understanding that humans' actions and engagements create transformative and lasting impacts. These stories affirm that relationships must be based on accountability, responsibility and action.
38. Much like the Theft of Fire, stories about Ojig (the Fisher) also detail how Anishinaabe engagement with creation and other beings was transformative and contained potential to bring forward gifts that would enable the Anishinaabe to thrive. One day, while out hunting, Ojig's daughter asked the great hunter if they could do anything to bring warmth to the land. They were freezing and suffering through a long and difficult winter. Ojig reflected on this important question and brought the other animals together to deliberate. They realized warmth must be in the Sky World and made attempts to break through the sky. Gwiingwa'aage (the wolverine) was able to break through the sky and with Ojig, worked to make the hole in the sky larger in order to bring more warmth to the earth. In this pursuit Ojig was struck by the arrows of the Sky People and fell back to earth. Gizhe Manidoo (the Creator) had seen Ojig's selfless act to help all those on earth. "Honouring her for her work, the Creator picked up Ojig and placed her in the stars for trying to help everyone on earth. So, while a lot of people look up in the sky and see the Big Dipper, the Nishnaabeg look up and see Ojig, the great hunter. Every winter Ojig is struck by the arrow and falls over on her back but during the summer she rolls onto her feet to bring warmth back to her people."⁵¹ The gift, and the selfless attributes that enabled the acquisition of warmth over the earth are marked in the night sky. This treaty relationship with the star nation, renewed with the return of summer's warmth and encoded in the Ojig constellation reinforces the importance of selflessness and acting for the betterment of others. Ojig is honoured and recognized for the gift she brings to all living beings on earth.

⁴⁹ Jo-Ann Archibald, *Indigenous Storywork: Educating the Heart, Mind, Body, and Spirit* (Vancouver: UBC Press, 2008), 5.

⁵⁰ Michelson and Jones, *Ojibwa Texts*, VII, Part I, 7.

⁵¹ Simson, *The Gift Is in the Making: Anishinaabeg Stories*, 64. Also see Tobasonakwut Kinew's discussion of Gwiingwa'aage, quoted in Michael Waasegijig Price, "Anishinaabe Star Knowledge," *Winds of Change*, 2002, Vol.17, Issue 3, pg.51-56.

39. How the Anishinaabe engaged others in their diplomatic accords was deeply informed by the stories that gave meaning to what it meant to be Anishinaabe. Anishinaabe stories provide a methodology for reading and interpreting the historical treaty record and a theoretical lens for understanding the critical political terms and issues expressed by the Anishinaabe as they negotiated their treaties. The treaty record is replete with allegoric language, providing numerous challenges in examining these documents for Indigenous conceptions of treaty making and the relationships that flow from these agreements. Anishinaabe stories provide insight into their worldview and helps explain how this worldview was expressed in treaty discourse and shaped understanding of treaties.
40. Stories transform, they unearth new possibilities, they look to the past to inform the present and provide direction for the future. Stories told by Anishinaabe leaders- i.e. their diplomatic speeches, during treaty negotiations with the United States and Canada- illuminate alternate ways of being, a potential path for mutually beneficial partnerships that focus on questions of how one might act. A central aim of Anishinaabe stories is to unearth frameworks for *how* we should act and live with one another.
41. Stories are windows into the worldview of those narrating them. Understanding the meaning of treaties and the relationships they created and renewed requires looking beyond the written text. It is not enough to consider the historical context in which these treaties were negotiated. Though both the written text and historical context can be illuminating and important indicators for the original intent and understanding that Indigenous nations maintained about these relationships, these sources alone leave an incomplete picture. The philosophies and laws contained within stories framed treaty relationships and must be given consideration. It is essential to consider the philosophies and laws that ordered Anishinaabe relationships in the 19th century and were expressed by the Anishinaabe in their treaty negotiations with the Crown.

Treaties as Relationships

42. In 1904, Kagige pinasi, a Fort Williams Anishinaabe, recounted the story of *The Woman Who Married a Beaver* to Meskwaki anthropologist William Jones.⁵² In this story, a young girl blackened her face and went to fast.⁵³ After awhile a man approached her and asked her to come live with him. She agreed and they eventually married. Her husband was very rich and had many impressive things; therefore the young woman was never in need. In time, they had four children and continued to

⁵² Kagige pinasi (Forever Bird) is also referred to as John Pinesi (Penessi, Penassie). For biographical information about this Anishinaabe chief from Fort Williams, ON, see Truman Michelson, ed. and William Jones, comp., *Ojibwa Texts*. Publications of the American Ethnological Society, vol. 7, pt. 1, ed. Franz Boas (New York: E. J. Brill, 1919), xvi–xvii.

⁵³ Basil Johnston, *Ojibway Ceremonies*, Bison book ed. (Lincoln: University of Nebraska Press, 1990), 41-56; Densmore and Smithsonian Institution. Bureau of American Ethnology., *Chippewa Customs*, 70-1. 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.

live without want. The family was always well fed and clothed. Jones recorded “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 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.”⁵⁴

43. 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. One day she realized that she was in a beaver lodge. She knew then she had married a beaver.

44. Eventually, the woman’s husband passed away, and she returned to her own people. She lived many years and often told the 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.”⁵⁵

45. *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 with other beings when they engage in fasting or a vision quest. This story, as Bruce White has noted, also details the intermediary role that a woman can play in her marriage.⁵⁶ Yet a striking feature of the story is its attention to the 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.”⁵⁷ By living among the beavers, the woman learned the importance of Anishinaabe offerings of

⁵⁴ Michelson and Jones, *Ojibwa Texts*, 255.

⁵⁵ Michelson and Jones, *Ojibwa Texts*, 257.

⁵⁶ Bruce White, “The Woman Who Married a Beaver: Trade Patterns and Gender Roles in the Ojibwa Fur Trade,” *Ethnohistory* 46, no. 1 (Winter 1999).

⁵⁷ 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.

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 depends on the Anishinaabe also carrying out their responsibilities. In this case, renewal is facilitated through cultural practices and legal orders that entail 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.

46. What is of particular interest is how this relationship and agreement are, in many respects, comparable to treaties. This story recounts the forging and functioning of a treaty relationship between the Anishinaabe and beavers. A treaty 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, this treaty is predicated on *mutual respect* between the beavers and the Anishinaabe. The necessity of respect is illustrated by the woman's warnings that the Anishinaabe are never to speak ill of the beaver.⁵⁸ She stated that their relationship to the beaver is like their relationship to one another: just as 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.
47. Another key principle in this diplomatic accord between the Anishinaabe and beavers is *responsibility*. Each party has a responsibility to the other: the relationship is cooperative and predicated on trust. The Anishinaabe have a responsibility to make offerings to the beavers, enabling them to live without want.⁵⁹ 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, giving themselves as food, which allows the Anishinaabe to live without want.
48. Finally, this treaty is founded on the principle of *renewal*. The Anishinaabe and the beaver alike must carry out the principles of respect and responsibility for the treaty to remain continually 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.

⁵⁸ 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." Ibid.

⁵⁹ 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).

49. These early treaties between Indigenous peoples and the Animal and Star nations are perhaps the oldest recorded treaties; they are contained in stories that lay out many foundational principles of treaty making. These principles would inform Anishinaabe political thought and practice as the Anishinaabe negotiated treaties with the United States and Canada. By thinking about this story as a treaty, it is evident that the values and proper behavior necessary for two or more nations to engage in creating alliances with one another entails a relationship rooted in 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.”⁶⁰ The 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.
50. The Anishinaabe have long had to reckon with what it means to live in a multicultural and multinational world. Beyond recognizing a collective identity, the Anishinaabe comprise distinct, separate bands that span a vast geographic region from the Great Lakes to the Plains.⁶¹ Historically and today the Anishinaabe are a people who share many beliefs and practices, yet individual bands are influenced by their particular histories, geographic locations, political relationships, and internal conflicts. 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.⁶²
51. Nonetheless, as Vine Deloria and Raymond DeMallie state, “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.” But the overarching body of evidence shows that treaty making was a long-standing tradition among Native peoples. Deloria and DeMallie declare that, “As far back as

⁶⁰ Robert A. Williams, Jr., *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800* (New York: Routledge, 1999), 83-4.

⁶¹ 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. 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). Some bands were brought together in treaty making and/or vis-à-vis a variety of policies and statutes and are dealt with by the United States as a single nation (e.g., White Earth Nation). In Canada, many Anishinaabe nations maintain names that pertain to their locations or reference the Chiefs or Spokesman that represented their band in negotiations with the Crown. 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.

⁶² See Kathy Davis Graves, Elizabeth Ebbott, and League of Women Voters of Minnesota., *Indians in Minnesota*, 5th ed. (Minneapolis: University of Minnesota Press, 2006); Warren, *History of the Ojibway People*.

we can trace the practice we find that Indians were quite familiar with diplomatic negotiations and had their own forms for making agreements.”⁶³ Indigenous diplomatic practices are evident throughout the treaty record as Native peoples brought their own understandings of treaty making into the process.⁶⁴ The use of the pipe, exchange of wampum, and 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.⁶⁵

52. Nell Jessup Newton et al. argue “the 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.”⁶⁶ Even in the early formation of the United States, little attention was focused on a written agreement.⁶⁷ Legal scholar Brian Slattery similarly finds that, in Canada, “historic treaties were profoundly influenced by Indian concepts, procedures and ceremonial [sic] and differed in a number of ways from treaties typical among European states.” He notes, “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.”⁶⁸ Although initial treaty making relied heavily on US and Canadian adherence to Indigenous political protocols with little aim toward a written document, these colonial nations were able to formalize this process in ways that supported their own shifting political goals and standards.⁶⁹

⁶³ 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.

⁶⁴ 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); Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*; Fenton, *The Great Law and the Longhouse: A Political History of the Iroquois Confederacy*; 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 Indian History (Cambridge ; New York: Cambridge University Press, 1991).

⁶⁵ Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*; 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).

⁶⁶ Felix S. Cohen, *Cohen's Handbook of Federal Indian Law*, 2005 ed. (Newark, NJ: LexisNexis, 2005), 20.

⁶⁷ Francis Paul Prucha, *American Indian Treaties: The History of Political Anomaly* (Berkeley: University of California Press, 1994), 26; Alden T. Vaughan, *Early American Indian Documents: Treaties and Laws, 1607-1789* (Washington, D.C.: University Publications of America, 1979).

⁶⁸ Brian Slattery, "Making Sense of Aboriginal and Treaty Rights," *Canadian Bar Review* 79 (2000): 208.

⁶⁹ Francis Paul Prucha, *The Great Father: The United States Government and the American Indians*, Abridged ed. (Lincoln: University of Nebraska Press, 1986); *American Indian Treaties: The History of Political Anomaly*; Slattery, "Making Sense of Aboriginal and Treaty Rights."

53. The Anishinaabe did not conceptualize the treaty exclusively as a written document. Instead, they understood that the treaty consisted of the entire council proceedings coupled with the events preceding its development and following its implementation. DeMallie has thoroughly addressed this more holistic view of the treaty process in his research on treaty councils. Although he specifically focuses on the Dakota, his findings have broader implications and can inform an understanding of Anishinaabe treaty practices. DeMallie argues, "For the Indians the council was the traditional way of making peace or negotiating with another people."⁷⁰ 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 fully understood their purposes. 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 "for 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."⁷¹
54. Anishinaabe leaders expressed the importance of oral negotiations to the process of treaty making. For example, during the negotiation of Treaty Three, which concerned Anishinaabe lands in present-day Ontario with a small portion in southeastern Manitoba, one chief stressed to the Crown, "you must remember that *our hearts and our brains are like paper; we never forget.*"⁷²
55. The treaty process, mirroring long-standing diplomatic practices, was seen as a way to develop international alliances with colonial and settler nations.⁷³ Rebecca Tsosie and Wallace Coffey state, "our 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, "In each of these instances, our Ancestors exercised governmental authority to protect their lands, resources, peoples and cultures."⁷⁴ Furthermore, they point out that Indigenous treaty making was primarily focused on the protection of land, resources, and peoples.

⁷⁰ 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.

⁷¹ *Ibid.*, 345-46.

⁷² The chiefs were often not identified in the negotiation records. 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)," Treaties and Historical Research Centre, Indian and Northern Affairs Canada, http://www.ainc-inac.gc.ca/pr/trts/hti/t3/index_e.html (accessed 15 August 2008). Originally published in Ottawa by Indian and Northern Affairs Canada, 1986.

⁷³ Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*.

⁷⁴ 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): 196.

56. Anishinaabe elder Mervin Huntinghawk echoes these sentiments, “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.” His statement illustrates how the treaty process was not a novel practice. It was a practice “given” to the Crown by the Anishinaabe. Huntinghawk, in his discussion of the treaty-making process, connects treaty elements with the longer tradition of diplomacy employed by the Anishinaabe in their relations with other Native nations.⁷⁵
57. Although 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 to shape and set the tone of the treaty negotiations.⁷⁶ Additionally, Huntinghawk’s comments that “our treaties were made to last forever” evidences that the Anishinaabe saw the treaty as having forged a living relationship not merely an agreement fixed on paper.⁷⁷ This living relationship continues to be dependent on the principles of respect, responsibility, and renewal.
58. Throughout the treaty making process, the Anishinaabe echoed these three principles. For example, an Anishinaabe leader from Treaty Three discussed the principle of responsibility that is rooted in notions of reciprocity: “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 return.”⁷⁸ The Anishinaabe leader made specific

⁷⁵ 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.

⁷⁶ For numerous examples of Anishinaabe use of the pipe during their treaty practices with the United States see Documents Relating to the Negotiation of Ratified and Unratified Treaties with Various Tribes of Indians, NAMP RG 75, M T-494, Rolls 1–10. Records of the Bureau of Indian Affairs, National Archives and Records Services, Washington, DC. 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 Warren, *History of the Ojibway People*; 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).

⁷⁷ Huntinghawk, "Since Time Immemorial: Treaty Land Entitlement in Manitoba," 41.

⁷⁸ 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.

requests of the Crown, 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 for assisting Canada.

59. Anishinaabe intent for treaty making was often generated by their desire to establish relationships with the Crown based on peace and friendship. Anishinaabe leaders echoed this sentiment at the negotiations surrounding Treaty Three with Canada. One leader 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.”⁷⁹ Respect and kindness toward one another were critical to establishing treaty relationships. The Anishinaabe leader continued, “Let there now for ever be peace and friendship between us.”⁸⁰
60. The principles of respect and renewal were interdependent for the Anishinaabe. During the Treaty Three negotiations, the Anishinaabe closed the negotiation councils by reminding the commissioner of the lasting effect of the treaty, which entailed mutual responsibilities, dependent on continuous renewal. Anishinaabe leader Mawedopenais expressed it this way, “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 have made, and I hope they will last as long as the sun goes round and the water flows, as you have said.” Mawedopenais emphasized that each nation had a responsibility to the other, with each having acquired rights from the agreement. Likewise, Lieutenant-Governor Alexander Morris seemingly 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.”⁸¹
61. An Anishinaabe leader at the Treaty Three negotiations perhaps best expressed the importance of treaty making for the Anishinaabe when he stated, “We would not wish that anyone should smile at our affairs, as *we think our country is a large matter to us.*”⁸² He pushed for Lieutenant-Governor Alexander Morris to agree to the terms set out by the Anishinaabe. Morris’s response is quite telling. It shows 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.”⁸³ Although these decisions did affect the Anishinaabe and their children, these commitments also affected the Canadian government and its citizens. Treaties carried

⁷⁹ Em dash added for readability. Ibid., 72-3.

⁸⁰ Ibid., 73.

⁸¹ Ibid., 75.

⁸² Principle Chief Ma-we-do-pe-nais likely spoke these words. Chief Powhassan was another principle speaker, however, and the treaty journal only notes that a chief spoke these words; emphasis added.

⁸³ 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..

responsibilities for both sides. The responsibilities the Canadian government had toward 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 renewed continuously.

62. Treaties were not static agreements from an Anishinaabe perspective but were contingent on each nation meeting the obligations they carried. These commitments necessitated a constant renewal of friendship and peace through their fulfillment. Anishinaabe leader Ma-ghe-ga-bo also expressed the principle of renewal at the 1837 treaty negotiations with the United States by stating, "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."⁸⁴ Ma-ghe-ga-bo's words demonstrate that this agreement, within Anishinaabe understandings of treaty making, required ongoing renewal.
63. Treaties created relationships among nations. They established relationships of trust. Within Anishinaabe political thought, that trust did not end with the completion of a written document, it merely began with it. However, it was the responsibility of all parties involved to maintain the relationships established through treaty making. The sustainability of these agreements was dependent upon each nation adhering to the principles of respect, responsibility, and renewal.
64. The story of *The Woman Who Married a Beaver* illustrates Anishinaabe principles of respect, responsibility, and renewal that are critical in treaty making. The Anishinaabe expressed these principles when they negotiated treaties with the United States and Canada. Treaty making was contingent upon trust. 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..."⁸⁵ Throughout their treaty negotiations with the United States and Canada, the Anishinaabe articulated a notion of trust that infused Anishinaabe treaty principles. An understanding of Anishinaabe interpretations of treaty making, grounded in the three principles of respect, responsibility, and renewal, can shed light on how treaty relationships were expected to be put into practice.

⁸⁴ *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, 19 December 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 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); 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).

⁸⁵ Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*, 133.

65. *The Woman Who Married a Beaver* is a powerful story of transformation that sheds light on how the Anishinaabe understood treaty making. 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 and resource use for annuities. These agreements connected people. Treaties were a vision for what a multinational society could entail.
66. The treaty record demonstrates that Anishinaabe understandings of the treaty relationship were built upon their foundational principles of respect, responsibility, and renewal. Anishinaabe often saw treaty making as the way to build relationships that worked toward this ideal. In 1873, an Anishinaabe leader in the negotiations for Treaty Three said to Canadian Treaty Commissioner Alexander Morris, “If you give what I ask, the time may come when I will ask you to lend me one of your 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.”⁸⁶
67. This notion of intertwining families and teachings, of creating shared relationships, echoed time and again by the Anishinaabe in their treaty relationships, sheds light on how they envisioned nations could come together to develop long-lasting relationships based on the principles of respect, responsibility, and renewal. Anishinaabe leaders echoed these important principles in their negotiations with the United States and Canada throughout the nineteenth century and there is strong evidence that supports these principles also operated in the establishment of the Robinson Huron treaty. Lieutenant-Governor Alexander Morris, who negotiated many of the numbered treaties detailed above, noted the importance of the Robinson treaties in shaping the course of the treaties that followed, specifically the feature of annuities, reserves and retained rights to use their aboriginal territory as they always have. He reported “A special feature of the Robinson Treaties, was the adjustment of a claim made by the Indians to be paid, the amount received, by the Government, for the sale of mining locations.”⁸⁷ While the augmentation clause may be a special feature in its explicit articulation and form, when one looks to the Anishinaabe legal principles that ordered treaty relationships, this feature is consistent with broader expectations that these relationships were and remain living

⁸⁶ 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.

⁸⁷ *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: Belfords, Clarke & Co., 1880), 16.

relationships founded in respect and created ongoing obligations and responsibilities to one another.

68. Just as the Crown would derive benefit from their engagements and interactions with Anishinaabe lands long after the completion of the treaty negotiations, so too did the Robinson Huron Anishinaabe anticipate their relationship with the Crown would continue to sustain their people. The establishment and maintenance of relationships was and remains rooted in the understanding these relationships would derive benefits for all parties involved. Just as the Anishinaabe continue to value their relationships with beavers and derive mutual benefits through the enactments of their obligations to one another, the Anishinaabe also understood their treaty relationship with the Crown as one that would bring mutual benefit to both parties.
69. Indeed, Robinson indicates as much in his report, noting "...I inserted a clause securing to them certain prospective advantages should the lands in question prove sufficiently productive at any future period to enable the Government without loss to increase the annuity. *This was so reasonable and just that I had no difficulty in making them comprehend it.*"⁸⁸ The Anishinaabe would readily grasp the importance of just and reasonable obligations to one another as their understanding of the world was ordered by stories that continuously highlighted the importance of productive, mutually beneficial relationships and detailed often unfavorable consequences when the central principles for relating to one another were not observed

Treaty Relationships ordered by pre-existing relationships with Creation

70. According to Anishinaabe elder and knowledge holder Edward Benton-Banai "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." He goes on to explain, "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."
71. Detailing how the earth came to take her form, Benton-Banai continues, "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."⁸⁹

⁸⁸ Ibid., 18-19. Emphasis Mine.

⁸⁹ Edward Benton-Banai, *The Mishomis Book: The Voice of the Ojibway* (Saint Paul: Red School House, 1988), 5

72. Basil Johnston also details the creation of the earth. He notes “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.” Also recognizing the order of humankind in the creation, Johnston states, “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.”⁹⁰
73. Anishinaabe understandings of their creation, recorded in stories (such as those above), songs, birch bark scrolls, rock paintings, and teachings, were and remain foundational to Anishinaabe legal and political thought and practice. Creation was a critical component of the rich discourses that embodied and sustained Anishinaabe political and legal thought and shaped their engagement with others. As Creek scholar Craig Womack notes, “...there is always an interrelationship between the political and the spiritual.”⁹¹ But what is this interrelationship? And how does this interrelationship shape and inform treaty relationships?
74. Much of Anishinaabe law is informed by sacred teachings that illustrate the interconnectivity of creation; encouraging particular ways of relating to creation. The historical record pertaining to Anishinaabe treaties with the United States and Canada captures some of these sacred elements. It is noted in the journal of the proceedings to the 1837 treaty, “the usual ceremonies for opening a council with the Indians, having been duly observed, Governor Dodge addressed them...”⁹² The usual ceremonies involved the exchange of gifts such as tobacco and the smoking of the pipe. The use of the pipe, exchange of wampum, and 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.⁹³

⁹⁰ Basil Johnston, *Ojibway Ceremonies*, Bison book ed. (Lincoln: University of Nebraska Press, 1990), 2-3

⁹¹ Craig S. Womack, *Red on Red: Native American Literary Separatism* (Minneapolis: University of Minnesota Press, 1999), 53.

⁹² *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. Available at <http://digital.library.wisc.edu/1711.dl/History.IT1837no223>. Also see president’s message, 19 December 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. McClurken, Compiler ; with Charles E. Cleland ... [Et Al.]; Satz, *Chippewa Treaty Rights: The Reserved Rights of Wisconsin's Chippewa Indians in Historical Perspective*.

⁹³ Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*; Calloway, *New Worlds for All: Indians, Europeans, and the Remaking of Early America*.

75. Even in the early formation of the United States or initial treaties with the British Crown, little attention was focused on a written agreement.⁹⁴ Many of these important Indigenous legal and diplomatic traditions continued into the nineteenth century. By using the pipe and opening the treaty proceedings with ceremony, the Anishinaabe not only brought Gichi-Manidoo (the Creator) into the proceedings, but also brought in all of Creation. Throughout the proceedings the Anishinaabe Chiefs spoke of the Creator and the Earth. For example, Sha-wa-nig-wa-nabe noted, "My Father, What I have to say to you, place it strongly in your heart. The Master of life and the Spirit of the Earth listen 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, and when the chiefs were put upon it, it became very strong."⁹⁵
76. The use of pipe and other diplomatic traditions incorporated the Creator into the treaty negotiations. Therefore, treaty relationships had to also account for pre-existing relationships and responsibilities across Anishinaabe aki (the Earth) that were impacted by these agreements. The use of the pipe in treaty making served to incorporate the Creator as well as establish a commitment between the various parties to the treaty.
77. For example, 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."⁹⁶ 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."⁹⁷
78. By using their sacred laws, the Anishinaabe were engaging in a process that incorporated the Creator and all of creation in their political practices. In doing so, the Anishinaabe were simultaneously recognizing their sovereignty (and thus responsibilities to their lands) as being derived from the Creator and bringing the

⁹⁴ Prucha, *American Indian Treaties: The History of Political Anomaly*, 26; Vaughan, *Early American Indian Documents: Treaties and Laws, 1607-1789*.

⁹⁵ *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: Available at <http://digital.library.wisc.edu/1711.dl/History.IT1837no223>. Pg.20

⁹⁶ 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.

⁹⁷ Huntinghawk, "Since Time Immemorial: Treaty Land Entitlement in Manitoba," 40-41.

newcomers into these pre-existing relationships by 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.

79. 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.”⁹⁸ Intersecting spiritual practices with political acts enabled the Anishinaabe to develop political relationships that carried the additional obligations and commitments of kin relations. This language of diplomacy was carried into nineteenth-century treaty practices of the Anishinaabe, as the treaty journals 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 driven by Anishinaabe laws of creation.
80. Anishinaabe chiefs, for example, recognized the importance of accounting for pre-existing relationships in the 1837 negotiations. This was done in a number of ways. For example, Aish-ke-bah-ge-ko-zhay (Flat Mouth) stated, “They [Chiefs from the Chippewa River] have granted a privilege to some men of cutting timber on some of their lands; for which they are paid in tobacco, & ammunition for hunting. They wish you not to break their word with these people- but to allow them to continue to cut timber.”⁹⁹
81. But pre-existing relationships were also recognized in more nuanced ways. For example, Aish-ke-bah-ge-ko-zhay (Flat Mouth) stated:
- My Father, Your children are willing to let you have their lands, but they wish to reserve the privilege of making sugar from the trees and getting their living from the Lakes and Rivers, as they have done heretofore, and of remaining in their country. It is hard to give up the lands. They will remain and cannot be destroyed- but you may cut down the trees, and others will grow up. You know we cannot live deprived of our Lakes and Rivers. There is some game on the lands yet; and that that reason also, we wish to remain upon them, to get a living. Sometimes we scrape the trees and eat the bark. The Great Spirit above, made the Earth and causes it to produce, which enables us to live.¹⁰⁰
82. Later in the negotiations, Aish-ke-bah-ge-ko-zhay repeated this important point, stating, “You know that without the lands and the rivers and the lakes, we could not live. We hunt and make sugar, and dig roots upon the former, while we fish and

⁹⁸ Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*, 50.

⁹⁹ *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. Available at <http://digital.library.wisc.edu/1711.dl/History.IT1837no223.p.26>

¹⁰⁰ *Ibid*, pg.25

obtain rice and drink from the latter.”¹⁰¹ Aish-ke-bah-ge-ko-zhay’s speeches not only speak to Anishinaabe recognition of our dependence on the Creator and creation for our ability to live, but also recognizes that the earth was a gift from the Creator. By acknowledging Gichi-Manidoo, both through diplomatic practices such as smoking the pipe and in speeches delineating Gichi-Manidoo’s role in producing resources upon the Earth, the Anishinaabe brought their pre-existing relationships with the land, animals, flora and fauna into the treaty.

83. Many Anishinaabe nations look to the rich creation stories and the philosophies contained within these stories to serve as guiding posts in the development of Anishinaabe law. For example, On September 9th 1998, the Anishinaabe of Kabapikotawangag Resources Council, which services six Anishinaabe First Nations surrounding Lake of the Woods signed a formal protocol regarding the earth with the Great Lakes Indian Fish and Wildlife Commission, which represents eleven Anishinaabe nations within the borders of Minnesota, Wisconsin, and Michigan.¹⁰² This agreement, known as the Anishinaabe Akii Protocol, “recognized the bond between Ojibwe people from the United States and Canada due to common origins, traditions and clan and considers them ‘brothers and sisters of the Sovereign Anishinaabe Nation,” in essence cutting through national, state and provincial boundaries that seem to separate the Anishinaabe Nation.”¹⁰³
84. The Anishinaabe Akii protocol reaffirms Anishinaabe “sacred trust to protect the natural environment and resources for all peoples and generations yet unborn,” stating, among other things, that “we hereby covenant and agree to work jointly and actively in: the conservation, control, and prudent use of the land, air, water, and all resources including the rock, soil. Minerals, fish, flora, fauna, and all other life within our traditional territory.”¹⁰⁴ For Anishinaabe, aki is an encompassing term for earth, recognizing the interconnectivity of all of creation. This term is also relational. Indeed, the protocol begins by stating “knowing that our sacred grandfather, Saagima Manitou, placed us here upon grandmother earth under the sky; in the forest hills and valleys, in the lakes, rivers, and islands of our ancestors.” The

¹⁰¹ Ibid, Pg.27

¹⁰² See Sue Erickson, “GLIFWC hosts northern Anishinaabe relatives,” *Mazina’igan: A Chronicle of the Lake Superior Ojibwe* (Summer 2008), p. 1, p. 17. Available at <http://glifwc.org/publications/mazinaigan/Summer2008.pdf> Also see Sue Erickson, “GLIFWC brings home gifts for the spirit: Protocol between Kabapikotawangag Resource Council and GLIFWC bands proposed,” *Masinaigan*, Fall 1997, p.2; Sue Erickson, “Anishinaabe Akii Protocol signed at Madeline Island Treaty Conference: Solidarity between U.S. and Canadian Ojibwe confirmed,” *Masinaigan* Fall 1998/Winter 1999, p.5-6; Dylan Jennings, “No borders for Anishinaabeg: Manoomin, education highlight Treaty 3 visit,” *Mazina’igan: A Chronicle of the Lake Superior Ojibwe*, Spring 2016 pg.1 and pg. 3. For additional information about the Great Lakes Indian Fish and Wildlife Commission, see glifwc.org.

¹⁰³ Sue Erickson, “GLIFWC hosts northern Anishinaabe relatives.” *Mazina’igan* (Summer 2008), p.1. Available at <http://www.glifwc.org/publications/mazinaigan/Summer2008.pdf>

¹⁰⁴ “Sky, Land, and Water of the Anishinaabe: The Anishinaabe Akii Protocol” signed September 9th 1998 at Madeline Island by Tom Maulson, chairman, on behalf of the Great Lakes Indian Fish and Wildlife Commission and by Chief Wesley Big George, chairman, on behalf of the Kabapikotawangag Resource Council.

Anishinaabe have a relationship to aki, delineated in Anishinaabe creation stories through our placement on the land by Gichi-Manidoo or Saagima Manitou (the Creator).¹⁰⁵

85. The rich stories among the Anishinaabe demonstrate an awareness of, and indeed seek to teach about, the interconnectivity and interdependence within and across aki, the earth. Nenabozho stories outline Anishinaabe interactions with creation and how these interactions transform all those involved; land, animals, Anishinaabe, etc. These stories also describe how Anishinaabe relationships with others are generated through action.¹⁰⁶ As beings engage with one another, they transform and are transformed. The names the Anishinaabe maintain for much of the landscape outline these interactions, containing vibrant stories about how the Anishinaabe relate to aki.¹⁰⁷ Thus, this Anishinaabe Akii protocol not only reflects their responsibilities to the land, but also to the plants, animals, spirits, etc. They have relationships, often established through treaty and diplomacy, with the land and animals. These early treaties are contained in stories that lay out not only many of the foundational principles of treaty making, but detail how humans are supposed to relate to aki- the earth.¹⁰⁸
86. While Anishinaabe law encourages the expansion of relationships, the Anishinaabe also had to consider how they would honor the treaty relationships and constitutive obligations and responsibilities they had to creation when they were negotiating treaties with the Crown and US. Anishinaabe leaders had to consider whether the establishment of treaties with the United States and Canada would impact these relationships with creation. As noted by an Anishinaabe Chief while negotiating Treaty One, “the land cannot speak for itself. We have to speak for it.”¹⁰⁹
87. While the land, animals, aadizookaanag etc. constantly speak to humans if they are willing and capable of listening, as this chief’s words connote, humans have a responsibility to give voice to the land; they must acknowledge they have heard the land by acting accordingly. Through treaty the Anishinaabe did so in a number of important ways. One way was through the invocation of creation. Anishinaabe asserted their sovereignty through an expression of creation. They spoke of the land as an inheritance from the Creator. For example, Anishinaabe Chief

¹⁰⁵ For additional information on Anishinaabe creation see Benton-Banai, *The Mishomis Book: The Voice of the Ojibway*; Johnston, *Ojibway Heritage; Ojibway Ceremonies; The Manitous: The Spiritual World of the Ojibway*, Native Voices (St. Paul: Minnesota Historical Society Press, 2001).

¹⁰⁶ *Ojibway Heritage; Ojibway Ceremonies; The Manitous: The Spiritual World of the Ojibway*; Michelson and Jones, *Ojibwa Texts*, VII, Part I; *Ojibwa Texts*, ed. Franz Boas, 2 vols., vol. VII, Part II, Publications of the American Ethnological Society (New York: E. J. Brill, Ltd., 1919).

¹⁰⁷ Keith H. Basso, *Wisdom Sits in Places: Landscape and Language among the Western Apache* (Albuquerque: University of New Mexico Press, 1996); Benton-Banai, *The Mishomis Book: The Voice of the Ojibway*.

¹⁰⁸ Heidi Kiiwetinepinesiik Stark, "Respect, Responsibility, and Renewal: The Foundations of Anishinaabe Treaty Making with the United States and Canada," *American Indian Culture and Research Journal* 34, no. 2 (2010); "Marked by Fire: Anishinaabe Articulations of Nationhood in Treaty-Making with the United States and Canada," *American Indian Quarterly* 36, no. 2 (Spring 2012).

¹⁰⁹ Aimee Craft, *Breathing Life into the Stone Fort Treaty: An Anishinaabe Understanding of Treaty One* (Saskatoon: Purich Publishing 2013), 94.

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 make a new world, and leave nothing on it to incommode our children.”¹¹⁰

88. Chief Hole-in-the-Day also spoke of the Creator in treaty negotiations, reminding U.S. Treaty Commissioner Henry Dodge, “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.”¹¹¹ One reason Anishinaabe leaders shaped their speeches in this way was to mitigate United States and Canadian claims of sovereignty, demarcating their relationships to aki through a declaration of their relationship as a right to the lands, resources, and so on that was distinct from the claims of the state. Indeed Anishinaabe noted in these speeches that these newcomers had been placed on lands across the great sea.¹¹²
89. However, this invocation of the Creator is essential to understanding how Anishinaabe comprehend their relationship to aki, a relationship that is often narrowly constructed through the western language of sovereignty. The Anishinaabe term often utilized to express sovereignty is *ezhi-ogimaawaadizid*. This word has at its root the term *ogimaa*, which roughly translates as a leader. Anishinaabe legal scholar John Borrows, drawing on the definition provided by Mary Black, has defined the word *ogimaa*, as “those who I am responsible for.”¹¹³ Utilizing Borrow’s definition of *ogimaa*, the Anishinaabe term often utilized to express sovereignty, *ezhi-ogimaawaadizid* would translate roughly as “to act in a way that recognizes those who I am responsible for.” This is a productive way to think about Anishinaabe sovereignty that recognizes that their relationships to others and to Anishinaabe aki entail responsibilities. While this is a useful term and concept for understanding how Anishinaabe articulated their sovereignty in their treaty relationships, there is another term to consider, one that is directly connected to Anishinaabe creation.
90. At its very essence, the Anishinaabe word for sovereignty is *Anishinaabe*. Who the Anishinaabe are as a people, how they see themselves is the very essence of their sovereignty. The term Anishinaabe references the creation of the people. It discusses how the Creator lowered the people to the earth. This act of creation was invoked again and again by Anishinaabe leaders to assert their sovereignty and relationships

¹¹⁰ Quoted in Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*, 99.

¹¹¹ *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.

¹¹² Heidi Kiiwetinepinesiik Stark, “Nenabozho’s Smartberries: Rethinking Tribal Sovereignty and Accountability,” *2013 Michigan State Law Review* 339.

¹¹³ Public talk and personal correspondence with John Borrows. Mary Black, “Ojibwa Power Belief System,” in Fogelson and Adams, eds., *The Anthropology of Power* (New York: Academic Press, 1977), 147.

to aki in treaty negotiations- relationships carrying responsibilities that were inherited from the Creator.

91. Another reason Anishinaabe leaders across Anishinaabe aki time and again spoke about their relationships to the land through a discussion of their placement on these lands by Gichi-Manidoo was to recognize and account for pre-existing responsibilities to the land. These responsibilities are created out of their relationships; their relationships to the land, to the animals, the plants, etc. In the same way that the Anishinaabe are encouraged to pursue their individual gifts (andobawaajigen, seek your dream or purpose) and exercise a high degree of personal autonomy while simultaneously recognizing their connection and relationship to the Anishinaabe collective, acting in ways that allow personal growth that are rooted in collective well-being, Anishinaabe also understand themselves as merely one part of creation and deeply connected to and interdependent upon the larger collectivity known as Creation.
92. Indeed some people translate the word Anishinaabe to mean the humble people or the pitiful people. Anishinaa means “just for nothing” or “without purpose,”¹¹⁴ to connote that the Anishinaabe were the last of creation to be made and because they are not born knowing their purpose in life and therefore, must seek out a vision.¹¹⁵ Thus, treaties were not just made between nations but also necessarily incorporated all of creation, as this collective creation would be impacted and transformed by the actions of Anishinaabe. The web of relationships in existence across Anishinaabe aki brought all these entities into the treaty relationship.
93. Treaties created relationships.¹¹⁶ When Anishinaabe entered into treaties with the United States and Canada, Americans and Canadians became relatives of the Anishinaabe. These relationships were bound not by blood, but instead by ink. But both blood and ink carry little weight among the Anishinaabe. It is words that have force. Words can possibly be seen and understood as a law of creation as it was the breathe of Gichi-Manidoo, the Creator, when combined with the earth that made the Anishinaabe. Thus, any word the Anishinaabe utter is intimately connected not only to the act of our creation, but also to the one we call the kind-hearted spirit, Gizhe-Manidoo. For the Anishinaabe, human beings’ breath is an extension of the Creator’s.
94. Throughout the treaties, Anishinaabe acknowledged they were speaking clearly and freely so all of creation could hear them, recognizing their relationship to and interconnectedness with creation. 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, “Now, my friend, I am going to show you how we came to occupy this land. The Master of Life placed us

¹¹⁴ Nichols and Nyholm, *A Concise Dictionary of Minnesota Ojibwe*.

¹¹⁵ Dennis Jones, "The Etymology of Anishinaabe " *Oshkaabewis Native Journal* 2, no. 1 (1995).

¹¹⁶ Stark, "Marked by Fire: Anishinaabe Articulations of Nationhood in Treaty-Making with the United States and Canada."

here, and gave it us for an inheritance.”¹¹⁷ He continued, “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 importance.”¹¹⁸

95. 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 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.”¹¹⁹
96. 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 negotiating treaties, involved and affected all of creation. In uttering these agreements, which simultaneously established and renewed relationships, the Anishinaabe not only brought Anishinaabe aki into their relationship with the US and Canada but also brought the US and Canada into their relationship with aki. The Anishinaabe spoke not only for the land, but also for the newcomers to this land. They vouched for these newcomers. In doing so the Anishinaabe became responsible for Americans and Canadians, for how they would relate to aki. The Anishinaabe brought them into their long-standing relationships with aki and thus took on a responsibility for how they would relate with all of creation.
97. Anishinaabe leaders also echoed responsibilities to creation that would order the Robinson Huron treaty relationship with the Crown when a delegation of chiefs went to Montreal to express their grievances with the Governor-General in 1848. Chief Shingwakonce invoked the Creator to delineate the relationship of the Anishinaabe to their territory. He stated, “You ask why we claim these lands as ours? We answer because the Great Spirit, the Indian’s God, placed us in possession of them long before the white man ever came to this continent. Our ancestors then roved these forests independent of famine or want- because they had the animals of the woods for their food, and their furs for dress.” Shingwakonce utilized this forum to express the failure of their relationships with the newcomers. He noted, “But when the greedy white man first came to them, a stranger, he showed to our

¹¹⁷ 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.

¹¹⁸ 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.

¹¹⁹ 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.

ancestors many goods which he had brought with him over the big water of the rising sun and which were very tempting to our fathers.”

98. Shingwakonce detailed the impacts and transformations these new relationships brought to the Anishinaabe. He continued “When the Great Spirit placed us here—even before the whites came to this continent... the Indian was living in ease; but now, wherever we turn our eyes, we behold nothing but poverty, sorrow, and trouble; and worst of all, the miners are intruding upon our lands, without securing us a compensation.” Shingwakonce expressed how the Anishinaabe’s relationship with creation was impacted by the actions of miners, stating, “The Great Spirit, we think, placed these rich mines on our lands for the benefit of his red children, so that their rising generation might get support from them when the animals of the woods have grown too scarce for our subsistence. We will carry out, therefore, the good object of our Father, the Great Spirit- We will sell you these lands, if you will give us what is right- at the same time, we want pay for every pound of minerals that has been taken off of our lands, as well as for that which may hereafter be carried away.”¹²⁰ For the Anishinaabe, remediation of this relationship would enable them to carry forward the vision of the Creator to provide for the Anishinaabe while also expanding their alliances by bringing the Crown into a formal relationship that would enable mutual use of the land in accordance with the sacred laws of creation. Shingwakonce spoke against greed and promoted the principle of generosity and mutual responsibility in restoring respectful relations.

99. In invoking creation, in defining themselves as those last to be placed within creation, the Anishinaabe recognize that they were brought into a complex web of relationships operating across aki. Anishinaabe leaders throughout their treaty negotiations recognized that how they relate to aki must reflect this. While their relationships to creation enable the Anishinaabe to engage the land, animals, plants and aadizookaanag in meaningful ways that nourish them physically and spiritually, these relationships carry responsibilities. As the last placed within creation, the Anishinaabe could not and can not now act in ways that would violate those relationships that came before their placement on the land, that were already in existence across creation. Indeed some say that the term Anishinaabe means the second people, connected to the word niizh meaning two. Anishinaabe at one time were not relating to creation in a way that accounted for these pre-existing relationships. They had created great imbalance and the earth was flooded. When the earth was created anew, the animals stood up for the Anishinaabe, they vouched for the Anishinaabe and said they would teach them how to relate to creation. This is one of the origin stories of the Anishinaabe clan system.¹²¹ The animals created a relationship with Anishinaabe and took responsibility for their actions.

100. In order to understand Anishinaabe treaties it is imperative to account for the pre-existing relationships and legal frameworks that informed and gave meaning to these treaties. In order to do so, attention must be paid to Anishinaabe governance and

¹²⁰ NAC RG10 Vol. 173, p.100436-100437. Anderson to Civil Secretary, 9 October 1848.

¹²¹ See Benton-Banai, *The Mishomis Book: The Voice of the Ojibway*; Johnston, *Ojibway Heritage; Ojibway Ceremonies; The Manitous: The Spiritual World of the Ojibway*.

legal traditions that gave shape and meaning to Anishinaabe treaty relationships. By looking to the broader philosophies and legal traditions that informed these treaty relationships with the Crown, a new set of questions regarding treaty rights is brought forward. If consideration is given to how Anishinaabe relationships with creation shaped treaties, for example, then space must be made for Indigenous peoples to honor these pre-existing relationships with creation. The Anishinaabe sought to ensure that their legal traditions that are rooted in the rich understanding interconnectivity and interdependence on all of creation would not only be given space to flourish but also inform how Anishinaabe relate to others.

101. The ability for Anishinaabe legal traditions to flourish was and is made possible through equitable relationships. Throughout treaty negotiations, the Anishinaabe asserted that meaningful reconciliation requires redress for previous failures in relationships with others. Indeed, the story of the treaty with the hoof nation makes this point clear in detailing essential principles for restoring respectful relationships.

102. Renowned Anishinaabe storyteller Basil Johnston recounts a similar story of a time the deer, moose, and caribou had vanished from the land. The Anishinaabe suffered in their absence and sought to restore their previous quality of life. The Anishinaabe, with the help of the other animals whose lives had also been altered with the disappearance of the moose, deer and caribou, searched for the vanished animals. They discovered the deer were with the crow and organized a large war party to rescue the deer.

103. Days of battle ensued between the Anishinaabe and the crow. At no time throughout the battle did the deer attempt to escape. They instead simply watched with curiosity. The Anishinaabe were discouraged by the deer's indifference and called for a truce. The Anishinaabe leaders addressed the deer, asking "Why are you unconcerned with our efforts to rescue you from your enforced confinement? We have endured hardship, and risked death on your behalf. Still you appear indifferent." The chief of the deer replied, 'you have assumed wrongly that we are here against our wishes. On the contrary, we choose to remain here and are quite content. The crows have treated us better than you have ever treated us when we shared the same country with you.'¹²²

104. The Anishinaabe were astonished to hear this and asked how they had offended the deer. "The deer chief spoke quickly and sadly. 'You have wasted our flesh; you have despoiled our haunts; you have desecrated our bones; you have dishonoured us and yourselves. Without you we can live. But without us, you cannot live.'" The Anishinaabe asked how they could remedy this relationship. "Know that our seeming indifference was not ill will. How shall we atone for your grief? Tell us,' said the Anishinaabe chief. Again the deer chief spoke. 'Honour and respect our lives, our beings, in life and in death. Do what you have not done before. Cease doing what offends our spirits.'" The Anishinaabe agreed to remedy their relationship and honor the deer, moose and caribou. The crows released these animals who then willingly returned to their homeland with the Anishinaabe. These relationships with the

¹²² *Ojibway Heritage*, 56.

animals are also recounted and honored in ceremony and through many of the cultural traditions and practices of the Anishinaabe, who see the animals as their elder brothers.¹²³ Throughout their treaties with the Crown, the Anishinaabe would invoke these familial relationships to encode treaty partners as kin bound by obligations and responsibilities.¹²⁴

105. Treaty making became an important practice for both establishing relationships as well as addressing harms incurred in these relationships, enabling the remediation of wrongs and restoration of peace and justice. Treaties enabled the Anishinaabe to expand their kin networks, which were valued as essential for survival in an ever-transforming world. Indeed, most stories maintained among the Anishinaabe contain two prominent features: transformation and relationships. Throughout Anishinaabe stories, the engagement between people, animals, the land and other beings inevitably produced transformation. Transformation often brought new gifts and opportunities to those transformed. It is often through the establishment, restoration and renewal of relationships that productive transformations were cultivated. Even as treaty relationships failed to be implemented in accordance with their original intent and spirit, the Anishinaabe would utilize these important forums to remediate harms in their efforts to restore balance and harmony in their relationships. Anishinaabe stories, such as the two aforementioned versions of the treaty with the Hoofed Nation, detailed the hardships that would result from failing relationships.

106. Stories, such as the flood and the origins of the clan system detailed below, reminded the Anishinaabe of the risks in failing to carry out respectful relationships. These stories also highlight how the animals stood up for the Anishinaabe and vouched for them, promising to teach the Anishinaabe how to live sustainably with one another and all of creation. In entering into treaties with the Crown, the Anishinaabe vouched to teach the newcomers how to live in accordance with the pre-existing obligations and responsibilities that order how humans can move across and engage creation. A fulfillment of one's obligations and responsibilities are essential to productive relationships. For the Anishinaabe, their stories detail how productive relationships are essential for the shared survival of human beings bound together in a deeply interdependent world.

Modes for behaving and relating to one another

107. In his book *The Manitous*, Basil Johnston recounts the story of Maudjee-kawiss, one of the original Anishinaabe ancestors whose task it was to patrol the boundaries of the Anishinaabe homeland. This occupation provided Maudjee-kawiss with the opportunity to see the people who lived in the adjoining lands and to learn their customs, traditions, and practices. In his travels north, Maudjee-kawiss encountered the land of the Bear Nation.

108. From afar, Maudjee-kawiss observed the customs of the Bear Nation, who were gathered in a conference. Maudjee-kawiss was particularly intrigued by a sash that was draped over the arm of the principal speaker of the Bear Nation. This principal

¹²³ Ibid.

¹²⁴ Craft, *Breathing Life into the Stone Fort Treaty: An Anishinabe Understanding of Treaty One*.

speaker continually pointed to the symbols and images embroidered on the sash throughout the duration of his speech. Maudjee-kawiss had never seen this device and was curious about the purpose it served. Maudjee-kawiss approached the principal leaders of the Bear Nation and indicated that he had come in peace. As Johnston recounts:

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.¹²⁵

109. The leaders of the Bear Nation consulted with one another to determine whether to allow Maudjee-kawiss to enter into their territory. While the elders were in council to determine their response to Maudjee-kawiss' request to enter their lands, Maudjee-kawiss sat with some of the leaders and enquired what purpose the sashes served. A principal spokesman explained to Maudjee-Kawiss that they 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."¹²⁶ Maudjee-kawiss, enamored with the sash, wrestled it from the speaker's hand and took off running. This led to his pursuit. A great warrior of the Bear Nation was first to catch up with him, but Maudjee-kawiss swiftly struck the warrior, killing him. As the Bear people arrived on the scene where the warrior had been slain, they cried out for vengeance. But others cautioned this approach, instead calling for restorative justice:

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.¹²⁷

110. 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 an Ogimaa (chief or leader) of the Bear Nation, Maudjee-kawiss recognized the great responsibility this new duty would entail. Maudjee-kawiss asked the elders of the Bear Nation for time to think about this diplomatic proposal. He assured the Bear Nation that he was not rejecting their invitation to join their nation but that he wanted to discuss the impact this commitment would have for his own family and nation, as his acceptance would

¹²⁵ Basil Johnston, *The Manitous: The Spiritual World of the Ojibway* (St. Paul: Minnesota Historical Society Press, 2001), 21.

¹²⁶ *Ibid.*, 21-22.

¹²⁷ *Ibid.*, 23.

necessitate his prolonged absence. Maudjee-kawiss recognized that a newfound commitment to the Bear Nation would not sever his responsibilities and obligations to his own nation.

111. The Bear Nation gave the sash to Maudjee-kawiss, upon his request, 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 of using sashes to record important events, such as their treaties and alliances with other nations.¹²⁸

112. The story of Maudjee-kawiss makes readily available an Anishinaabe narrative regarding restorative justice. Maudjee-kawiss diligently patrolled the boundaries of the Anishinaabe homeland, indicating that Anishinaabe nationhood is inseparable from the people's relationship to and protection of the land. Through the very actions he took to assert and maintain the integrity of territorial boundaries, Maudjee-kawiss revealed that these borders were nonetheless permeable. Indeed, it was Maudjee-kawiss' position in the border regions that led to his encounters with other nations, encounters that usually provided him welcome opportunities to learn about and from these nations, and more importantly, to develop relationships with neighboring nations that were essential for survival across this multinational terrain. Yet in the instance of his encounter with the Bear Nation, Maudjee-kawiss' transgressive behavior led to bloodshed, which necessitated a sophisticated diplomatic course of remediation.

113. Within Anishinaabe practice, a victim of warfare could not be laid to rest unless certain acts had been carried out. This typically involved either the assailant "covering the dead" with elaborate gifts, or the wronged nation avenging the victim's death.¹²⁹ A third practice that would allow the deceased to be laid to rest was the adoption of the assailant into the deceased's kinship network. This is precisely the diplomatic strategy first elaborated by the Bear Nation in response to their interactions with Maudjee-kawiss. Through the establishment of a kin relationship, Maudjee-kawiss took the place of the warrior he killed, fulfilling both diplomatic and socio-spiritual customs that require the appeasement of the deceased. In doing so, Maudjee-kawiss became a member of the Bear nation. Kinship systems, restored and enhanced in this case through adoption, allow for bordering nations to cultivate

¹²⁸ 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 (1960): 81-107; and David Murray, Indian Giving: Economies of Power in Indian-White Exchanges (Amherst: University of Massachusetts Press, 2000).

¹²⁹ For further discussion on how gifts function in appeasing the deceased, see Cary Miller, "Gifts as Treaties: The Political Use of Received Gifts in Anishinaabeg Communities, 1820-1832," American Indian Quarterly 26, no. 2 (2002): 221-245.

productive obligations toward one another through socio-familial structures that transcended political and territorial lines.

114. While Maudjee-kawiss was adopted into the Bear nation, his Anishinaabe affiliations--along with all responsibilities thereof--were not severed. Instead, he returned to his people to solicit their consent and approval of this union. He recognized that his adoption into the Bear nation would not only place significant obligations on himself, it would also inaugurate broader kinship obligations between the Bear Nation and the Anishinaabe. Indeed, Maudjee-kawiss' adoption established no less than a material alliance between the Anishinaabe and the Bear nation. In addition, this diplomatic engagement allowed for the exchange of political thought and practice, as reflected in the exchange of sashes. In essence, the adoption of Maudjee-kawiss into the Bear nation and their gift of sashes as recording devices to the Anishinaabe was a treaty. This treaty would entail moral, social, and political obligations and responsibilities to one another.
115. The kinship-based and diplomacy-oriented mode of restorative justice proposed by the Bear Nation is instructive in interpreting the treaty speeches of Anishinaabe leaders. Anishinaabe nations often entered into treaty negotiations together and utilized these forums to express how nations and peoples relate to one another. A fluid set of evolving relationships controlled what happened on the ground. The Anishinaabe utilized their long-standing diplomatic practices that sought to establish and renew relationships to integrate newcomers into the Anishinaabe polity.
116. Throughout their treaty negotiations, Anishinaabe leaders articulated the importance of establishing and preserving relationships. The Anishinaabe resisted United States and Canadian constructions of nationhood that sought to fix and define Anishinaabe national character and rights. Anishinaabe leaders expressed their own notions of nationhood and diplomatic traditions that remained flexible and inclusive. They sought to recognize and incorporate their ever-shifting web of relationships that shaped how peoples related to one another and creation.
117. Anishinaabe political identity was layered in the nineteenth century and shaped their expressions of nationhood with the United States and Canada. The Anishinaabe were broken into distinct Anishinaabe bands and villages, yet they also recognized themselves as members of the larger Algonquian collective.¹³⁰ In addition, the clan system shaped Anishinaabe political identity. This system of kinship carried with it certain responsibilities and obligations that facilitated alliances across national boundaries. The clan system remained a critical component of Anishinaabe political identity in the nineteenth century and shaped relationships to the territory, determining who could access resources and exercise rights. Furthermore, Anishinaabe nations had long established alliances with their neighbors, who were at

¹³⁰ For further discussion, see Helen Hornbeck Tanner, "Ojibwa," in *Encyclopedia of North American Indians: Native American History, Culture, and Life from Paleo-Indians to the Present*, ed. Frederick E. Hoxie (New York: Houghton Mifflin Company, 1996).

times culturally and politically distinct nations. These relationships were often facilitated around practices that reinforced kinship, such as marriage and adoption.¹³¹

118. Kinship practices assisted in the development of shared access to areas of land as well as political, economic, and social alliances. The clan and other social systems allowed Anishinaabe people to operate across national borders, both political and territorial. In his examination of the social construction of space and identity in the Great Lakes in the seventeenth century, Anishinaabe historian Michael Witgen found that as Algonquian 'national' identities took shape, "they remained flexible and even interchangeable."¹³² He states that "[t]he flexibility of social identities that connected these people to one another made the Algonquian country literally like a web. Real and fictive kinship, established through trade, language, and intermarriage, intersected and crisscrossed over a vast space. These ties made it possible to hunt, fish, and harvest rice, corn, and sugar, but access to these resources shifted across time with trade and kinship."¹³³ Relationships and kin responsibilities ordered Anishinaabe life. Anishinaabe national political autonomy coalesced around a land tenure system that allowed for extended kin to access territories and resources. Kinship, often 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.

119. Throughout their treaty negotiations, Anishinaabe leaders articulated the importance of relationships, recognizing the political autonomy of each nation while simultaneously acknowledging their pre-existing and ever-expanding social relationships that dictated territory and resource access across national lines.

120. Throughout the treaty era, the Anishinaabe often expressed their nationhood and land tenure through attention to *relationships*. Numerous Anishinaabe and other Native nations came together to enter into treaties as these agreements would affect their pre-existing relationships. The Anishinaabe detailed the dynamic, living relationships that dictated how Anishinaabe nations and their citizens operated across the land and water. For example, in August 1825 numerous Indigenous Nations assembled at Prairie du Chien "to establish boundaries for the purpose of promoting peace among those tribes of Indians."¹³⁴ The United States had an interest in preventing warfare and establishing boundaries between these various nations because peace between these nations would encourage U.S. settlement west, as expansion had been slowed by U.S. citizens' fear of these "warring tribes."

¹³¹ 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 Harold Hickerson, *The Chippewa and Their Neighbors: A Study in Ethnohistory*, ed. George and Louise Spindler, Studies in Anthropological Method (New York: Holt, 1970).

¹³² Michael Witgen, "The Rituals of Possession: Native Identity and the Invention of Empire in Seventeenth-Century Western North America," *Ethnohistory* 54, no. 4 (Fall 2007): 641.

¹³³ *Ibid.*, 646-7.

¹³⁴ *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.

121. General Clark explicitly connected warfare with a lack of boundaries.¹³⁵
122. The Anishinaabe, and indeed the other Indigenous nations joined at this conference, responded in numerous ways to Clark's desire to establish boundaries with many leaders focusing on the importance of generosity and relationships.
123. 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."¹³⁶ White Cloud focused attention on the relationships that operated across territory, noting their obligations and responsibilities to one another outweighed the importance of dictating territorial borders. Indeed, Anishinaabe leaders often utilized treaty negotiations to express how nations and peoples should relate to one another.
124. The Anishinaabe recognized a nexus of relationships to the land, water and "resources" that determined how individuals and nations moved through these territories. 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 [Game]¹³⁷—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

¹³⁵ Clark 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." The 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. Nonetheless, in the same ways that kinship promoted alliances across national lines, 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. *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. 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).

¹³⁶ *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.

¹³⁷ Transcription uncertain; might be "Same."

(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.”¹³⁸

125. The Menominee Chief, Grisly Bear, spoke about kinship obligations when he discussed his claim to land. “But it’s so small that we can’t turn round without touching our neighbors,” he observed. “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.”¹³⁹ 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 remained the focus of many leaders as they articulated *how* people related to the land and one another.

126. 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. A Ho-Chunk chief responded to this request by stating “[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.”¹⁴⁰ The Ho-Chunk chief elaborated on how kinship had enabled these autonomous nations to operate as one. He stated:

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.*¹⁴¹

This critical attention to how people relate to one another provides insight into the expectations the Anishinaabe held regarding how the Crown would relate to them as treaty partners.

127. Anishinaabe stories, much like these chiefs words, delineate the importance of relationships and of taking care of others in time of need. Many Anishinaabe stories highlight the importance of generosity and gift giving, with generous characters often being bestowed honours and gifts for their kindness. For example, Nenabozho gifts

¹³⁸ *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.

¹³⁹ *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.

¹⁴⁰ *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.

¹⁴¹ *Ibid.* Emphasis added.

the painted turtle with his shell for helping Nenabozho procure fish to eat.¹⁴² Another story details how the Anishinaabe are gifted the powerful medicine of water lilies in reciprocity for letting the young star come live with their people in the form of this beautiful flower, as she so deeply wanted live among the Anishinaabe.¹⁴³ Another story describes a time of hardship experienced by Nenabozho, who requests the west wind help him find food. In aiding Nenabozho, the West Wind provides the closest animal, zhigaag (skunk) with a strong odor to make him easier to locate. The skunk permits Nenabozho to take his life in order to sustain himself. In gratitude, Nenabozho bestows the strong scent onto the skunk's descendants to provide protection.¹⁴⁴ Mandaamin (corn) is gifted to the Anishinaabe after a young man treats Mandaamin with extreme kindness and generosity, caring for his grave the same way he did for his beloved grandmother. In time, corn grew from the grave, with Mandaamin gifting the Anishinaabe with this food for this true act of kindness.¹⁴⁵

128. Treaty making was an important venue and process for the Anishinaabe to articulate modes for relating to one another. The good life and wealth were measured by the relationships that Anishinaabe could count on, especially in times of hardship. The explicit inclusion in the Robinson Huron Treaty of the possibility for an increase of their annuities if the Crown derived benefit from Anishinaabe lands is consistent with Anishinaabe modes for living together. Anishinaabe leaders continually expressed modes for the Crown and Anishinaabe to live together in a mutually beneficial relationship through the establishment of a treaty. For example, Provincial geologist Alexander Murray reported in December 1847 that Chiefs Keokonse and Naoquabo “expressed a desire to remain as they had ever been loyal subjects of the Crown, and in good fellowship with their white neighbors and hoped that such a title would be given to them to a sufficient portion of country to maintain themselves and their children, as could never again be interfered with.”¹⁴⁶

129. These leaders sought to establish relationships that would mutually sustain both nations, retaining for themselves and their descendants sufficient portions of their territory in exclusivity while also opening up portions of their lands for the mutual benefit of both. The Crown would benefit from resource development and share in this wealth in the form of annuities with the Anishinaabe. As seen in the following story of Nenabozho and his brother, the Anishinaabe valued and cherished relationships rooted in respect and generosity. Proper standards for living together entailed equitable distribution of goods to ensure all parties did not just survive, but thrived. Much like the modes for relating to others expressed by Anishinaabe chiefs and their kin and allies in their treaty negotiations, Robinson Huron Anishinaabe leaders lived in a world that valued generosity and sharing and would diligently seek

¹⁴² Simson, *The Gift Is in the Making: Anishinaabeg Stories*, 83-84.

¹⁴³ Ibid., 71-72.

¹⁴⁴ Patronella Johnston and Francis Kagige, *Tales of Nokomis* (Don Mills, Ont.: Musson Book Co., 1975), 5-7.

¹⁴⁵ Johnston, *Ojibway Heritage*.

¹⁴⁶ RG10 Vol. 168, p99701-02. Alexander Murray to Provincial Geologist W.E. Logan, 29 December 1847.

to mitigate and remove impositions to these relationships that would impair acts of sharing, whether that be in the form of game and fish or treaty annuities.

Living Up to the Principles for Relating to One Another

130. The Anishinaabe have many stories that express the importance of living up to and fulfilling responsibilities. For example, one story describes when Nenabozho and his brother Pakwis agree to share their winter food supply. Pakwis asked Nenabozho whether he would be willing to use his fish supply first and then they would follow by using Pakwis' fish supply. However, once Nenabozho's supply ran out, Pakwis became stingy with his food. Despite having agreed to share his own supply after they consumed all of Nenabozho's fish, Pakwis would only give Nenabozho the scraps from the meal. After multiple attempts to encourage his brother to follow his word, Nenabozho grew frustrated and went out hunting.
131. While Nenabozho was out hunting one day, he came upon a man who knew what had transpired between these brothers. He told Nenabozho that he had come to bless him and gave him instructions to ensure his family would have something to eat. He was told to cut a piece of ice from the lake and carry it home, ensuring not to look back when he heard voices taunting him. He was told to place the ice in a hollow near his home. The next morning he woke to find he was blessed with many gifts.
132. Pakwis soon ran out of his food supply and found himself and his family to be starving and in search of food. He asked Nenabozho where he had come across his food supply and Nenabozho generously explained how the man in the woods had gifted him. Pakwis went into the woods and also came across this man, who gave him the same instructions he had given to Nenabozho. "He did not go far, before he heard a voice behind him saying, "Thief, thief, knock him down! Where is he going with that cake of ice?" Pakwis did not heed his instructions and instead turned around twice on his journey home. He left the ice outside his door but again failed to follow the instructions he was given and gave in to his urge to check on the ice. "In the morning he went out again, but he found only some very small fish. He cleaned these and had to use them all winter, for that is all he got until spring. Thus he was taught never to cheat his brother Nenbojo [Nenabozho] again."¹⁴⁷
133. Failure to follow proper behaviors for relating to and living with one another brought consequences. As outlined in the story of Nenabozho and his brother, failure to fulfill your obligations and responsibilities to others would ensure hardship and struggle in your own time of need. Nenabozho had petitioned his brother multiple times to live in accordance with his responsibilities and obligations. Again Pakwis was given the chance to change his ways when the man in the woods gifted him with the cake of ice that had transformative qualities. But he failed to heed the warning to not turn back when a voice called out to him. He had failed to follow the instructions provided and so found only very small fish to sustain him or his family for the duration of the long winter.

¹⁴⁷ Johnston and Kagige, *Tales of Nokomis*, 199.

134. The Robinson Huron Anishinaabe also called on the Crown to honor their commitments and responsibilities. A delegation of leaders from Sault St Marie that included Shingwakonce and Nebeenagoching went to Montreal in late June of 1849 in order to petition Lord Elgin to rectify and restore the Crown's relationship with the Anishinaabe. Their eloquent speech, published in the *Montreal Gazette*, details the failure of the Crown to act in accordance with treaty principles of respect, responsibility and renewal. The Anishinaabe called for a treaty to rectify and restore this relationship, stating, "Father, Listen to the voice of a people who are now but the remnant of a nation once numerous and powerful, of a nation whose seats were large while yours were small. Of that nation which, in times past, England's Sovereigns sought as allies." These leaders reminded Lord Elgin of their generosity and kindness. They stated, "Father, when your white children first came into this country, they did not come shouting the war cry and seeking to wrest our lands from us. They told us that they came as friends to smoke with us the pipe of peace; they sought our friendship, we became brothers. Their enemies were ours, at that time we were strong and powerful, whilst they were few and weak. But did we oppress them or wrong them, No! and they did not attempt to do what now is done, nor did they tell us at some future day you would."

135. The Chiefs reminded Lord Elgin that relatives do not use power, force, or might against their relatives. They then noted, "Father, time wore on and you have become a great people, whilst we have melted away like snow beneath an April sun; our strength is wasted, our countless warriors dead, our forests laid low, you have hunted us from every place as with a want, you have swept away all our pleasant land, and like some giant foe you tell us willing or unwilling you must now go from amid these rocks and wastes, I want them now! I want them to make rich my white children whilst you may shrink away to holes and caves like starving dogs to die. Yes Father! Your white children have opened our very graves to tell the dead, even they shall have no resting place."

136. The Chiefs reminded Lord Elgin that the Anishinaabe had met them in friendship. They questioned, "Was it for this we first received you with the hand of friendship, and gave you the room where on to spread your blanket?" The Chiefs later drove this point home again by describing their astonishment to be asked the previous spring what right they have to claim these lands. They replied "These lands were our fathers and their fathers, fathers lie buried, you must know it as ever Red Skin does know it, that long, long before your White Children crossed the waters of the rising sun to visit us. The Great Spirit, the Red Man's God, had formed this land and placed us here, giving it to his Red Children as their inheritance. Can you lay claim to this land? If so, by what right?"

137. The Chiefs again used this moment to detail principles for living together. They asserted, "for when you first came among us, your children were few and weak...but you came not as an enemy, you visited us in the character of a friend, you have lived as our guest and your children have been treated as our brothers." The chiefs recounted the commitments made by the whites, promising to be kind and just, then asked "but where is your justness if you allow your White Children to plunder our

lands and drive us from them against our wishes? Where is your kindness or justice?" They asked "where are the treaties?"¹⁴⁸

138. The Robinson Huron Anishinaabe called on the Crown to repair the harms they had suffered and restore their relationship, calling for a treaty. They outlined the care and friendship they had provided to the whites when they first came into Anishinaabe territory and were weak and few in number. They called for the Crown to reciprocate in their relationship with the Anishinaabe.

139. Reciprocity was an important principle highlighted in many Anishinaabe stories. For example, a prominent story among the Anishinaabe recounts Nenabozho's relationship with the wolves. When Nenabozho came upon a pack of wolves, he recounted his kinship relationship with them, as the elder wolf was his brother. Nenabozho, knowing their skill in acquiring game to feed upon, requested to join them on their journey. This particular story recounts many of Nenabozho's poor behaviors and mistreatment of the wolves, using them for his own selfish interests and benefit and doing little to help or support the group. Nonetheless, kinship obligations made the elder wolf reluctant to refuse aid to Nenabozho in procuring food and shelter. Instead, elder wolf allowed one of Nenabozho's nephews to remain with him. The combination 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. The Great Water Lynx killed Nenabozho's nephew.

140. One may draw from the longer story that Nenabozho's relentless hunger coupled with his nephew's skill in acquiring game may have lead to a depletion of the game animals. At minimum, the listener can infer that Nenabozho was being greedy, utilizing his relationship with the wolves for his own selfish gain. Even if these actions were out of step with Anishinaabe principles and values, Nenabozho was implicated in a network of kin responsibilities. 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, Nenabozho sought revenge, attempting to slay the Great Water Lynx and ultimately flooding the earth. This story details the consequences that come from being careless, especially in relationships. Nenabozho's carelessness brought consequences. Nenabozho and his nephew failed to correct their actions after being forewarned so the Great Water Lynx acted. Yet, the Great Water Lynx's actions in taking Nenabozho's nephew also brought consequence. Nenabozho cared deeply for his nephew, and his death needed to be avenged. However, Nenabozho in avenging his nephew, caused the waters to rise, ultimately flooding the earth. "Perhaps it is true that I have done wrong (which may never be repaired)," he thought.¹⁴⁹

141. The flood, like fire, can be understood in numerous ways. Water has the power to renew or destroy, and is a crucial element in Anishinaabe worldview. Upon the

¹⁴⁸ Montreal *Gazette*, 7 July 1849, pg. 2

¹⁴⁹ Michelson and Jones, *Ojibwa Texts*, ed. Franz Boas, 2 vols., vol. VII, Part I, 261-71. Midasuga'j at Bois Fort likely told this story sometime between 1903-1905.

creation of the earth from the force of fire, the earth was only rock. Then three women in the form of the oceans and seas, lakes and rivers, and precipitation brought water to the earth. The fourth woman brought water into the body of the people, declaring it would precede birth and enable life. Thus, within Anishinaabe worldview, water is the source of all life. Underwater rivers and reservoirs are understood as the veins of mother earth. Yet, the Anishinaabe also understand water to have force, cautioning the need to offer tobacco when traveling by waterways or when the Thunder beings are traveling overhead.¹⁵⁰ The flood demonstrated the force of water and can be understood as being simultaneously destructive and cleansing. The rising waters consumed everything in its path. Nonetheless, the flood also enabled Nenabozho to create the world anew.¹⁵¹

142. Treaty making was a long-standing practice that predated the arrival of Europeans. Anishinaabe diplomatic traditions sought to establish and renew relationships with the intention of expanding kin and allies. The Anishinaabe extended these practices to Americans and Canadians, bringing these newcomers into their pre-existing relationships with creation. These pre-existing relationships with creation ordered how the Anishinaabe engaged with others and the land, water, animals, plants and spirits. The Anishinaabe drew upon their philosophies and legal orders for relating to others in establishing kin and allies.

143. The Anishinaabe outlined the nexus of relationships operating across Anishinaabe territory that dictated resource access, passage and settlement in their treaty negotiations. These relationships were multifarious and shaped the political traditions relied on in negotiating treaties with the Crown. Anishinaabe utilized their treaty negotiations with the Crown as a venue to relay Anishinaabe modes for relating to one another and all of creation (land, water, animals, plants, etc.) The Anishinaabe employed a variety of tactics to assert the need for the United States and the Crown to establish or restore their relationships. The Anishinaabe actively protested unwarranted or unwelcomed travel through their lands. Additionally, the Anishinaabe regulated the rights to use their lands, determining the conditions under which colonial and Indigenous nations could access their territories. Anishinaabe assertions of these regulatory frameworks were rooted in a web of relationships often served as the impetus to bring various nations to the treaty table. Anishinaabe protests and dissatisfaction with their relationships with the Crown and the US provides insight into Anishinaabe understandings of treaty relationships and the responsibilities they entail.

144. Upset that their lands were being occupied without consent, the Anishinaabe of Treaty One and Two employed a number of methods to assert proper modes for relating to others. Treaty Commissioner Wemyss M. Simpson reported, "...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

¹⁵⁰ Theresa S. Smith, *The Island of the Anishnaabeg: Thunderers and Water Monsters in the Traditional Ojibwe Life-World* (Moscow, Idaho: University of Idaho Press, 1995).

¹⁵¹ Benton-Banai, *The Mishomis Book: The Voice of the Ojibway*.

compensation.”¹⁵² The Anishinaabe warned certain settlers “not to cut wood or otherwise take possession of the lands upon which they were squatting.”¹⁵³ Treaties were seen as an opportunity to establish or restore relationships.

145. 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.”¹⁵⁴

146. This was not the first time that Anishinaabe in this area had requested a treaty as a means to promote relationships grounded in the principles of respect, responsibility and renewal. In the fall of 1870, the Anishinaabe in Manitoba applied to the Lieutenant Governor for a treaty.¹⁵⁵ 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.¹⁵⁶ Anishinaabe motivations for a treaty were fueled by their claim that the terms of the Selkirk treaty had not been fulfilled.¹⁵⁷ 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 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.¹⁵⁸

The actions carried out by the Plains Anishinaabe and Cree demonstrate one response utilized by Anishinaabe leaders to encourage the remediation of previous grievances and the establishment of a reciprocal relationship that recognized humankind’s interdependence.

¹⁵² 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.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid., 25.

¹⁵⁶ 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.

¹⁵⁷ Ibid., p.5.

¹⁵⁸ Canada, Department of Indian and Northern Affairs. *Annual Report*, 1871, p.10. Also see Jill St. Germain, *Indian Treaty-Making Policy in the United States and Canada 1867-1877* (Toronto: University of Toronto Press, 2001), 39.

147. Encroaching settlers often became a major impetus for the Anishinaabe to call for a treaty. United States and Canadian government officials were often unwilling or unable to prevent their citizens from trespassing on Anishinaabe lands. 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 venue to discuss *how* people relate to one another. Failure to establish or engage in relationships based in the principles of respect, responsibility, and renewal were met with protest.

148. The Anishinaabe of Treaty Three utilized the treaty negotiations as a means to assert their desire to settle the previous violations of their relationships with the Crown. In this way, treaties became forums for remediation. 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.”¹⁵⁹ 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. For the Anishinaabe, a relationship could not move forward without this cloud of previous grievances being resolved.

149. One Anishinaabe chief expressed his view that the people were of one mind, positing, “what the Commissioners called ‘small matters’ were great to them, and were what they wished to have settled.”¹⁶⁰ 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.”¹⁶¹ The Anishinaabe were all too willing and ready to lay out the nature of unfulfilled promises. 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 prior to establishing a relationship with the Anishinaabe permitting this behavior.¹⁶²

150. 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 proper modes of relating to one another and the land (and water, animals, plants etc.). The Lieutenant Governor employed Anishinaabe diplomacy. He stated, “Wood and water were the gift of the

¹⁵⁹ 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.

¹⁶⁰ *Ibid.*, 56.

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*, 57.

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.¹⁶³

151. The Anishinaabe continued to stress the importance of addressing past grievances as essential to the renewal of a treaty. 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.”¹⁶⁴ 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.”¹⁶⁵

152. When settlers moved through Anishinaabe lands they would be required to establish relationships with the Anishinaabe that adhered to the principles of respect, responsibility and renewal. When they failed to do so or acted in ways that violated Anishinaabe laws of creation, they would be met with protests. These protests, which served to remind settlers of whose lands they were moving across, also served to encourage alternate modes for relating to one another.

153. The Robinson Huron Anishinaabe would also use protest to assert the need for rectifying their relationship with the Crown. Failure to solidify a treaty relationship and continued encroachment on Anishinaabe lands left little recourse for the Anishinaabe beyond direct action. A party of Anishinaabe including Shingwakonse and Nabenagoching headed to Mica Bay intent on “forcibly dispossessing the agent of that company of the works and premises and obliging them to leave.”¹⁶⁶ Anishinaabe direct action was soon recast as criminal activity, with a number of the leaders involved facing criminal charges. Nonetheless, this direct action also encouraged the Crown to restore a mutually beneficial relationship with the Anishinaabe.

154. Treaty-making allowed for renewal. The Anishinaabe used treaty negotiations to express the grievances they had in their relationships with the United States and Canada. Treaties became a mechanism for these nations to come together, attempt to settle their disputes, and forge new or renewed relationships. Treaty-making, much like the flooding of the earth, carried elements of destruction and renewal. Treaties provided a space for renewal as nations came together to repair and renew their relationships. Perhaps by looking to this treaty history, it is easier to see the destruction caused by the rising waters of colonialism. But much remains below, even if submerged. Reflecting on how Nenabozho responded to these rising waters provides insight.

155. While the waters are rising, as the result of Nenabozho's actions he makes his way to a raft (a log in some versions of this story). He is joined by a number of animals who take turns diving into the depths of the ever-rising water in order to fetch some earth. Many attempt and fail until finally Nenabozho asks the tiny muskrat to dive for earth. He is gone for a long time but eventually floats up to the surface, having

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ NAC RG7 G20 Vol. 48, No.5235. Endorsement

drowned for his efforts. But clenched in his little paw is a small amount of earth. Nenabozho is able to use this earth to make the land anew. In doing so he is careful to consider those to come, the many who have yet to be born. He sent out runners to measure the earth and continues to expand it until they are unable to return, thus ensuring he has considered the future generations.

156. In many ways this act both of diving for earth and recreating land are acts of resurgence. Resurgence can be seen then as the act of diving down into the depths in order to bring to the surface bits of earth to make the land anew. This story reminds the Anishinaabe to remain rooted in their foundational philosophies and principles, just as the new earth was rooted in the earth of the lands that came before. The Anishinaabe cannot bring up all the land as it was. This land is submerged under the water. This story echoes a recurring principle across many Anishinaabe stories: actions cannot be undone, but balance can again be restored. The earth and the relationships upon her can be molded anew. In remolding the earth (relationships) consideration must be given to those yet to come, making sure enough room has been made for them. Space must be created to allow for growth.

157. Treaty negotiations provided the Anishinaabe space for resurgence as their ancestors delved deep into their philosophical waters to unearth and bring to the surface Anishinaabe political and legal orders that shaped and informed Anishinaabe modes for relating to others and across creation. Anishinaabe ancestors spoke at length about their relationships to land, rooted in their creation stories, and outlined what these relationships should look like. Anishinaabe political discourse evidenced the people saw themselves as deeply interconnected peoples. Their obligations and responsibilities to their lands and their kin necessitated an engagement with newcomers to their lands.

158. Anishinaabe stories about restoring balance shaped how the Anishinaabe envisioned remedies, not just for treaty-specific violations, but for what it meant to co-exist. The Anishinaabe remained rooted in their foundations, just as the new earth was rooted in the earth of the lands that came before. But the Anishinaabe understood that they could not bring up all the land as it was. This land is submerged under the water. In their desire to renew relationships, the Anishinaabe delved deep into their philosophical waters to unearth and bring to the surface Anishinaabe conceptions of treaties, aiming to establish and restore relationships rooted in principles of respect, responsibility and renewal.

Conclusions

Principles for Treaty Relationships

1. Anishinaabe law sought to shape how the Anishinaabe related to others by detailing Anishinaabe interdependence and encouraging the establishment of respectful relationships that accounted for Anishinaabe responsibilities to others. Anishinaabe law focused on *how* people should act. A central aim of Anishinaabe stories was to unearth frameworks for *how* Anishinaabe should act and live with others. These stories, and the legal orders that were drawn from them, shaped and informed Anishinaabe diplomatic practices in the 19th century. Thus, stories are essential

methodological and theoretical tools for ascertaining Anishinaabe understandings of their treaty relationships with the Crown.

2. The Anishinaabe understand treaties as establishing relationships rooted in the principles of respect, responsibility and renewal. Anishinaabe law, drawn from stories, illuminated methods for living, which required the establishment of respectful relationships that bound people together as kin with obligations and responsibilities to one another in order to ensure survival in an ever-shifting world. These stories delineated pathways for restoring balance and harmony to relationships that had become impaired.
3. The Robinson Huron Anishinaabe anticipated their relationship with the Crown would continue to sustain their people. The establishment and maintenance of relationships was and remains rooted in the understanding these relationships would derive benefits for all parties involved. Just as the Anishinaabe continue to value their relationships with beavers and derive mutual benefits through the enactments of their obligations to one another, the Anishinaabe also understood their treaty relationship with the Crown as one that would bring mutual benefit to both parties.

Expectations of Treaty Responsibilities

4. Treaty making was an important practice for establishing relationships as well as addressing harms incurred in these relationships, enabling the remediation of wrongs and restoration of peace and justice. Treaties enabled the Anishinaabe to expand their kin networks, which were valued as essential for survival in an ever-transforming world. For the Anishinaabe, the fulfillment of one's obligations and responsibilities were seen as essential to productive relationships. In turn, productive relationships were essential for the shared survival of human beings bound together in a deeply interdependent world.
5. Treaty making was an important venue and process for the Anishinaabe to articulate modes for relating to one another. The Anishinaabe measured their wealth in their relationships. Their ability to invoke kin obligations enabled the Anishinaabe to move across their vast territory and ensured they could draw on these relationships in times of hardship. Relationships ordered the Anishinaabe world. Anishinaabe legal orders were predominately focused on establishing or restoring relationships.
6. The explicit inclusion in the Robinson Huron Treaty of the possibility for an increase of their annuities if the Crown derived benefit from Anishinaabe lands is consistent with Anishinaabe modes for living together. Furthermore, the Anishinaabe would have understood the augmentation of the annuities as obligatory. In the same way that Nenabozho had trust in the ability to call on the wolves for assistance, so too would the Anishinaabe have assumed they would be able to invoke their relationship with the Crown in their times of need. In addition, the Anishinaabe would have understood their relationship with the Crown as entailing mutual benefits that would have improved their lives beyond moments of hardship. Anishinaabe stories detail numerous mutually beneficial relationships in which the gifts given to the Anishinaabe shaped and continue to constitute integral aspects of their lives. For example, this is seen in the stories that describe how corn and water lilies came to the

people. These gifts were integrated into the lives of the Anishinaabe in order to respond to their daily needs for food and medicine.

7. The Robinson Huron Anishinaabe called on the Crown to repair their relationship with the Anishinaabe by restoring their responsibilities and obligations. They outlined the care and friendship they had provided to the whites when they first came into Anishinaabe territory and were weak and few in number. They called for the Crown to reciprocate. The expectation that the Crown would act justly toward the Anishinaabe was a central principle for relationships. Justice entailed reciprocating in friendship and generosity to your diplomatic partners. The Robinson Huron Anishinaabe had long-standing relationships with creation and other nations that were founded on principles of responsibility, generosity and mutual care, contained in their rich stories.

Augmentation of Annuities

8. In establishing and renewing relationships with the Crown, the Anishinaabe spoke of the wealth they derived from their lands in the form of game and fish, spiritual sustenance and emotional and physical well-being. They directly correlated opening their territory to development by the Crown as a means to continue to be sustained by their lands, this time in the form of annuities, as the advent of settlers were already dramatically impacting their well-being and ability to sustain themselves across their lands as they had prior to the arrival of the newcomers. The Anishinaabe sought a relationship with the Crown that would ensure mutual benefit for both parties. Accordingly, the Anishinaabe would have understood this agreement to entail equitable division of the wealth generated from activities across their territory.
9. Anishinaabe law outlines principles for relationships with one another rooted in the principles of respect, responsibility, and renewal. Distinction between gross sales and net sales would have been considered in relation to Anishinaabe principles for modes of relating which entailed respect, responsibility, renewal, generosity, and justice. Respect requires the implementation of responsibilities and obligations in good faith and in trust. The story of Nenabozho and his brother, is one of many stories that can assist in determining how the Anishinaabe would have understood their relationship with questions pertaining to annuities. Much like the man in the woods that gifted Nenabozho with fish, Anishinaabe law delineates trust as an essential quality for the fulfillment of a substantial gift. Nenabozho's trust in the man in the woods and his adherence to this man's instructions that he not look back resulted in Nenabozho procuring a large quantity of fish for his family. In the same way, the Robinson Huron Anishinaabe leaders expressed the mines were gifts from the Creator that would sustain their people when the animals became scarce. Anishinaabe law asserts generosity will yield greater gifts to the gifter. This principle underlies many Anishinaabe ceremonial practices. Thus, the Anishinaabe would have understood the treaty in general, and the annuity augmentation in particular, as obligations and responsibilities the Crown would fulfill justly. The Anishinaabe would have assumed the Crown's determination of revenue would be done according to principles of justice, friendship and generosity.

10. Similar to determining revenue, the Anishinaabe would have understood treaty relationships as being rooted in responsibilities and obligations to one another. The Anishinaabe have and continue to fulfill their obligations to the Crown in sharing their territories with Canadian citizens. They would have anticipated the Crown would fulfill her obligations to the Anishinaabe in accordance with the principles that guide respectful, just relationships. The Anishinaabe laws that gave shape and meaning to treaties were centered on *how* peoples relate to one another. Thus, the Anishinaabe would have understood the treaty in general and the annuity clause in particular to mean the Crown will treat the Anishinaabe as the Queen's children and brothers and sisters of Canadians, a family that has kin obligations to share in the wealth generated across their shared territory.

11. Anishinaabe law also calls for these relationships to be enacted through principles of renewal. The principle of renewal expressed in the story of the woman who married a beaver and echoed by Anishinaabe leaders in their diplomatic speeches would entail adjustments to one's responsibilities and obligations in according with the vision of treaties as living relationships. As living relations, not contracts codified and frozen in time, treaties would entail consideration of the obligations and commitments to be treated as living relationships. Like the hare whose fur is marked by Nenabozho's engagement with the fire, the Anishinaabe understood their treaty relationships would enable them to better adjust to their ever-changing environment and provide protection.

Shared Territory and Interdependence

12. Just as the Anishinaabe echoed in their diplomatic speeches, treaties were venues to establish and maintain mutually beneficial relationships. The retention of rights to hunt and fish across their territory lends further support to the interpretation that Anishinaabe understood these agreements not as cessions of land but instead as additions of relatives. In addition, Robinson repeatedly told Anishinaabe leaders that they would be able to continue to use the land and would be deprived of nothing. As such, the Anishinaabe would have understood the treaty as establishing shared territories in which both parties would mutually benefit from the gifts and development on these lands.

13. Anishinaabe stories and the laws they contain outlined the world as interdependent and interconnected. These stories demarcate how the Anishinaabe came to acquire the gifts maintained by the people. The Anishinaabe and the stories they maintain honour and remember those who act with generosity and kindness towards others. For the Anishinaabe, value is placed on *how* they relate toward others.

SWORN BEFORE ME at Victoria, British Columbia, on October 11, 2016)
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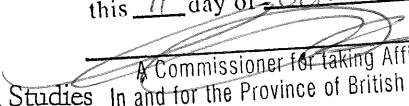
- 2008 Ph.D. in American Studies
University of Minnesota, Twin Cities
Dissertation title: *Stealing Fire, Scattering Ashes: Anishinaabe Expressions of Sovereignty, Nationhood, and Land Tenure in Treaty Making with the United States and Canada, 1785-1923*
Thesis Advisor: David E. Wilkins
Committee Members: Patricia Albers, John Borrows, Brenda Child, LeAnne Howe, and John Nichols
- 2001 B.A., American Indian Studies, University of Minnesota, Twin Cities, May 2001
Senior Thesis: *The Detrimental Effects of Transracial Adoption: American Indian Children, the ICWA, and Family Preservation.*
Advisor: David E. Wilkins

Field of Study: Indigenous Comparative Politics and Diplomacy & Treaty and Aboriginal Rights

ACADEMIC POSITIONS

- 2011-Present Assistant Professor of Political Science
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- 2008-2011 Assistant Professor of American Indian Studies
University of Minnesota-Duluth
- 2007-2008 Instructor, tenure track position in American Indian Studies
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This is Exhibit "A" referred to in
the affidavit of Heidi Stark
sworn before me at the City of Victoria
this 11 day of October 2016


Commissioner for Taking Affidavits
In and for the Province of British Columbia

FELLOWSHIPS / SCHOLARSHIPS / AWARDS

- 2009-2010 Ford Foundation Postdoctoral Fellow, National Academies
- Fall 2009 Institute for Advanced Study Faculty Fellowship, University of Minnesota
- 2009 National Center for Institutional Diversity (NCID) Exemplary Dissertation Award,
University of Michigan
- 2006-2007 Chavez/Eastman/Marshall Dissertation Fellowship, Dartmouth College
- 2006-2007 Ford Foundation Dissertation Fellowship, Honorable Mention, National Academies
- 2006-2007 Pre-Doctoral Dissertation Fellowship Award in American Indian Studies, Michigan
State University, (Declined)
- 2006-2007 The Charles H. Christensen Graduate Award, University of Minnesota
- June 2006 Native American Visiting Student Award, Smithsonian Institution
- Fall 2004-2005 Ford Foundation Minority Pre-Doctoral Fellowship, National Academies
- 2003 Ford Foundation Minority Pre-Doctoral Fellowship, Honorable Mention, National
Academies
- 2003 Graduate Research Partnership Program, University of Minnesota
- 2002 Community of Scholars Program Summer Institute, University of Minnesota

GRANTS

- 2014-2016 Insight Development Grant, Social Science and Humanities Research Council, project title: *Sakimay First Nation Governance*. \$74,519
- 2012-2013 Internal Research Grant, University of Victoria Faculty Research Grant: \$6,950
- 2011-2012 Imagine Fund Annual Award, Office of the Senior Vice President for Academic Affairs and Provost, University of Minnesota, (Declined), project title: "*Stealing Fire, Scattering Ashes: Anishinaabe Treaty-Relations and U.S./Canada State-Formation, 1785-1923.*" \$5,000
- 2010-2011 Chancellor's Diversity Initiative Grant, University of Minnesota-Duluth, Project Title: "*Indigenous Nationalisms: The Contested, Litigated, and Attempted Erasure of American Indian Nations.*" \$13,765
- 2010-2011 Imagine Fund Annual Award, Office of the Senior Vice President for Academic Affairs and Provost, University of Minnesota, project title: "*Stealing Fire, Scattering Ashes: Anishinaabe Treaty-Relations and U.S./Canada State-Formation, 1785-1923.*" \$4,000
- 2008-2009 Chancellor's Diversity Initiative Grant, University of Minnesota-Duluth, Project title: "*The Stories We Tell: Law and Literature in Indian Country.*" \$10,000
- 2007-2008 Chancellor's Diversity Initiative Grant, University of Minnesota-Duluth) Project Title: "*Anishinabek Law and the Story-telling Tradition.*" \$2,500
- August 2006 Committee on Institutional Cooperation (CIC) Graduate Student Fellowship in American Indian Studies, Newberry Library, Project title: "*We Think Our Country is a Large Matter to Us*": *Expressions of Anishinaabe Land Tenure in Treaty-Making*" \$1,500
- July 2006 Canadian Studies Graduate Student Fellowship Program, Canadian Embassy, Project title: "*We Think Our Country is a Large Matter to Us*": *Expressions of Anishinaabe Land Tenure in Treaty-Making.*" \$4,400
- May 2006 Doctoral Dissertation Research Grant, Graduate School, University of Minnesota, Project title: "*We Think Our Country is a Large Matter to Us*": *Expressions of Anishinaabe Land Tenure in Treaty-Making,*" \$2,500.
- Summer 2005 Graduate School Summer Dissertation Award, University of Minnesota, Project Title: "*Treating with the Dead: The Anishinaabeg and the Feast of the Dead,*" \$3,500

PUBLICATIONS

Books:

- 2010 *American Indian Politics and the American Political System*, 3rd Edition, co-authored with David Wilkins, (Lanham, MD: Rowman & Littlefield, October 2010), 352 pages.

Edited Books:

- 2013 *Centering Anishinaabe Studies: Understanding the World Through Stories*, co-edited with Jill Doerfler and Niigaanwewidam James Sinclair, (East Lansing, MI: Michigan State University Press, February 2013) pg. 259-278.

Refereed Journal Articles

- 2013 "Nenabozho's Smartberries: Rethinking Tribal Sovereignty and Accountability" in *Michigan State University Law Review*, 2013 Mich. St. L. Review, 339-354.

- 2012 "Marked By Fire: Anishinaabe Articulations of Nationhood in Treaty-Making with the United States and Canada." in *American Indian Quarterly*, Vol. 36, No. 2 Spring 2012, p.119-149 reprinted in Tribal Worlds: Critical Studies in American Indian Nation Building, edited by Brian Hosmer and Larry Nesper, (Albany, NY: SUNY Press, May 2013)
- 2012 "The Trans/National Terrain of Anishinaabe Law and Diplomacy" co-authored with Joseph Bauerkemper, *Journal of Transnational American Studies*, vol. 4, no.1 (2012), pg 1-21
- 2010 "Respect, Responsibility, and Renewal: The Foundations of Anishinaabe Treaty-Making with the United States and Canada." *American Indian Culture and Research Journal*, Special Edition: New Interpretations of Naïve Cultural Preservation, Revitalization, and Persistence, vol.34, no.2 (2010) p.145-164.
- 2005 "The Bases are Loaded: American Indians and American Studies, It's Not Just a Game." With Carter Meland, LeAnne Howe, and Joseph Bauerkemper. Commentary by David W. Noble. Joint publication of the *Journal of Indigenous Studies* (Fall 2005/Spring 2006, Issue 1) and *American Studies* (Fall/Winter 2005, V. 46, No. 3-4) p. 391-416.

Book Chapters (Refereed):

- 2013 "Bagijige: Making an Offering," co-authored with Jill Doerfler and Niigaanwewidam James Sinclair in Centering Anishinaabe Studies: Understanding the World Through Stories, co-edited with Jill Doerfler and Niigaanwewidam James Sinclair (East Lansing, MI: Michigan State University Press, February 2013), pg xv-xxvii and 7 one-page section introductions.
- 2013 "Transforming the Trickster: Federal Indian Law Encounters Anishinaabe Diplomacy," in Centering Anishinaabe Studies: Understanding the World Through Stories, co-edited with Jill Doerfler and Niigaanwewidam James Sinclair (East Lansing, MI: Michigan State University Press, February 2013) pg. 259-278
- 2006 "Flying the Coup: Historical and Procedural Elements of the Indian Child Welfare Act." with Kekek Jason Stark. Outsiders Within. Co-Edited by Jane Jeong Trenka, Julia Chinyere Oparah, & Sun Yung Shin. South End Press. October 2006, p.125-138
- 2005 "Indian Voters: Awakening A Sovereign Capacity?" co-authored with David E. Wilkins in Dara N. Bryne, ed. The Unfinished Agenda of the Selma-Montgomery Voting Rights March (John Wiley & Sons, 2005), p. 123-133

Expert Witness Report

- 2013 "Noodawaawaashkeshiwe: Anishinaabe Cultural Concepts Pertinent to Deer Hunting," co-authored with Jason Manidoonoodin Schlender for Case 3:74-cv-00313-bbc, *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. State of Wisconsin*. 40pgs. (Testified at trial July 2013)

Encyclopedia Entries:

- 2008 "Sovereignty", in Encyclopedia of United States-American Indian Policy, Relations, and Law. CQ Press, Congressional Quarterly Inc. October 2008

Book Reviews:

- 2015 Elder Brother and Law of the People, Robert Alexander Innes. (Winnipeg: University of Manitoba Press, 2013), in *Native American and Indigenous Studies Journal*, Forthcoming
- 2011 Ojibwe in Minnesota, The People of Minnesota Series, Anton Treuer. (St. Paul, Minnesota Historical Society Press, 2010), in *American Indian Culture and Research Journal*, 35:4 (2011), 266-67
- 2009 Lines Drawn Upon the Water: First Nations and the Great Lakes Borders and Borderlands, Edited by Karl Hele. (Waterloo: ON, Wilfrid Laurier University Press, 2008) in *American Indian Culture and Research Journal*, Vol. 33, No. 2 (2009).
- 2008 American Indians and the Law, N. Bruce Duthu. (New York, NY: Penguin Books, 2008) in *American Studies*, Vol. 49: 3/4 (2008).
- 2008 Mihesuah, Devon Abbott. So You Want to Write about American Indians? A Guide for Writers, Students, and Scholars. (Lincoln: University of Nebraska Press, 2005) in *Indigenous Nations Journal*. Vol. 6, No. 1, Spring 2008
- 2006 Alfred, Taiaiake. Wasase: Indigenous Pathways of Action and Freedom. (Peterborough, Ontario: Broadview Press, 2005) *Social Science Journal*. Vol. 43, No. 3, 2006.

Newspaper Articles:

- 2013 "Commentary on the Purpose and Function of a Constitution" *Anishinaabeg Today*, September 4, 2013
- 2011 "Refocusing Our Values," co-authored with David E. Wilkins, *Indian Country Today*, July 10, 2011.

Creative Work:

Paths of Seduction. A play co-written with Joseph Bauerkemper, Jill Doerfler, and Billy Frey. Directed by LeAnne Howe. Performed at the Regis Center for the Arts, Minneapolis. May 1, 2004

Forthcoming Peer Reviewed Chapters and Articles:

"Changing the Treaty Question: Remediating the Right(s) Relationship" in *The Right(s) Relationship: Reimagining the Implementation of Historical Treaties* edited by John Borrows and Michael Coyle, University of Toronto Press, (Forthcoming)

"Stories as Law: A Method to Live By" in *Historical Methodologies and Methods in Indigenous Studies* edited by Chris Andersen and Jean M. O'Brien, Routledge Press, (Forthcoming)

"Criminal Empire: The Making of the Savage in a Lawless Land" for special issue of *Theory and Event*, (Forthcoming)

Work in Progress:

"Toward a Relational Paradigm: Four Points for Consideration (Power, Gender, Mobility, Technology)," co-authored with Gina Starblanket for *Reconciliation and Resurgence: Dialogues on the work of James Tully, Michael Asch and John Borrows*, edited by James Tully and John Borrows, to be submitted

to University of Toronto Press, (in progress).

American Indian Politics and the American Political System, 4th Edition, co-authored with David Wilkins, (in progress, under contract with Rowman & Littlefield)

Unsettled: Anishinaabe Treaty Making and US/Canada State Formation (in progress, under contract with University of Minnesota Press)

PRESENTATIONS

Invited Presentations:

- 2016 "Constituting Indigenous Governments: A Case of Ma'i Aupuni or a Path to Na'i Aupuni?" Program Committee Sponsored Roundtable chaired by Noelani Goodyear-Ka'opua for the Native American and Indigenous Studies Association, Honolulu, Hawaii, May 18, 2016.
- 2016 "Criminal Empire: The Making of the Savage in a Lawless Land," invited presentation and paper workshop for *Cruel and Unusual: A Research Symposium on Studies of Legal Violence*, Concordia University, Montreal, Quebec, April 11-2, 2016.
- 2016 "Reconciliation and/or Resurgence: Emerging Research Pathways" two-day Roundtable participant, National Centre for Truth and Reconciliation, Winnipeg, Manitoba, March 9-11, 2016.
- 2015 "Colonial Criminalities: The Making of the Savage in Lawless Lands" Invited keynote for the Women's Networking Brunch sponsored by the Committee on Gender and Sexuality Studies, American Studies Association Annual Meeting, Toronto, Ontario. October 7-11, 2015.
- 2015 "Toward a Relational Paradigm: Four Points for Consideration (Power, Gender, Mobility, Technology)" co-presented with Gina Starblanket for Reconciliation and Resurgence: Dialogues on the work of James Tully, Michael Asch and John Borrows, First Peoples House, University of Victoria, Victoria, British Columbia, September 18-19th
- 2015 "Treaties," for Treaties and Alliances Panel and Discussion, University of Victoria Native Student Union Resurgence Week, Victoria, British Columbia, February 26, 2015
- 2015 "Rethinking Treaty Remedies through the lens of Relationships," for Treaty Right(s): Rethinking Indigenous Treaties, Victoria, British Columbia, January 16-17, 2015
- 2014 "What do we mean when we say treaties are sacred?: An Anishinaabe Perspective" for Academic Forum, invited presentation for the National Treaties #1-11/Treaty Alliance Gathering, Fort Qu'Appelle, Saskatchewan, August 11-14, 2014
- 2013 "Transforming the Trickster: Encounters with Federal Indian Law", invited presentation of Centering Anishinaabeg Studies for the department of American Indian Studies and the Institute for Advanced Study, United States, Minnesota, Minneapolis, 8 November 2013
- 2013 "Inheriting the Earth: Rethinking Treaty Responsibilities", invited paper for the 2013 Indigenous Law Conference: Nd'Nakweshkodaadimin: A Gathering of Anishinaabe

Scholars, United States, Michigan, East Lansing, 24 October 2013

- 2013 "Remedies and the Great Lakes Treaties with the Anishnabeg", invited paper for the 25th Annual Indigenous Bar Association, Canada, Ontario, Orillia, 8 October 2013
- 2013 "Anishinaabeg Land Management Regulatory Practices in the Past and Present," for panel "Our Land, Our Laws: Indigenous Land Use and Land Management," Invited presentation for Canadian Bar Association National Aboriginal Law Conference, Victoria, BC, 12 April 2013
- 2013 "Rising Waters: Resistance and Resurgence as a Path for Reconciliation," invited talk for UVIC Community Law Conference, University of Victoria, 15 March 2013
- 2012 "Human Rights and Reparative Justice" Invited Symposium Presentation for "Indian Tribes and Human Rights Accountability Symposium" with the Michigan State University School of Law, 4 Oct. 2012
- 2012 Invited Keynote: "Storied Nations: Indigenous Diplomacy and the Creation of the US and Canadian State" present at the UVIC Indigenous Graduate Student Research Symposium, University of Victoria, 22 Feb. 2011
- 2011 "Binding Relations: US/Indigenous Treaty-making and Competing Conceptions of Sovereignty," presented for In-Court Seminar, United States District Court, District of Minnesota, 4 May 2011
- 2011 Invited Comment, "Radicals in their Own Time: Four Hundred Years of Struggle for Liberty and Equal Justice in America" by Michael Lawrence, Michigan State University School of Law, 24 January 2011.
- 2010 "Discovery and Diplomacy," Faculty Panel Discussion, Lewis and Clark Traveling Exhibit, University of Minnesota-Duluth, 11 Feb. 2010
- 2009 "Respect, Responsibility, and Renewal: Anishinaabe Conceptions of Treaty-Making," invited lecture for the Native American Law Student Association (NALSA), William Mitchell College of Law, St. Paul, MN, November 2009.
- 2008 "To Quiet the Spirits of Their Fathers: Anishinaabe Pillaging, Protests, and Depredations in Treaty-Making as Acts of Sovereignty," presented for College of Liberal Arts Research Thursdays, University of Minnesota-Duluth, 4 Dec. 2008
- 2008 "(De)Constructing Borders: Native Nations Treaty-making with the United States and Canada," presented for the Alworth International Brown Bag series, Alworth Institute for International Studies, University of Minnesota-Duluth, 2 Oct. 2008
- 2005 "Naming Ceremonies in Native Alternative Schools," presented at the National Education Association's Joint Conference on Concerns of Minorities and Women, Los Angeles, CA. June 2005

Conferences and Public Lectures:

- 2016 “The Liminal Spaces of Law: Domesticating Indigenous Political Authority in the 19th Century” for panel “The Gender of Settler Governance: Native and Indigenous Affect and Bodies on the Line Part 1,” Native American and Indigenous Studies Association, Honolulu, Hawaii, May 21, 2016
- 2014 “Criminal Acts: Sovereignty, Indigeneity, and *The Transit of Empire*,” invited paper for panel “Indigeneity, Sovereignty and Criminality: Engaging *Transit of Empire* Part 1,” Native American and Indigenous Studies Association Annual Meeting, Austin, Texas. 30 May 2014.
- 2013 “Invoking Creation, Inheriting Earth: Anishinaabe Expressions of Sovereignty” Invited paper for panel “Intersections and Edges of Indigenous Sovereignty in North America,” Canadian Historical Society Association Annual Meeting, Victoria, BC 5 June 2013
- 2013 Discussant for “Workshop: Anti-Racist and Indigenous Politics in Canada: Divergence and Convergence- Political History of Race and Indigeneity in Canada,” Canadian Political Science Association Annual Meeting, Victoria, BC 4 June 2013
- 2013 Roundtable speaker for “Mentoring Café: Careers Outside of Political Science Departments: Alternatives,” Canadian Political Science Association Annual Meeting, Victoria, BC 5 June 2013
- 2013 Discussant for “Workshop: International Relations and Indigenous Politics- Indigeneity and IR,” Canadian Political Science Association Annual Meeting, Victoria, BC 6 June 2013
- 2013 “Making the Case for Justice for First Nations: Using International Human Rights Law” Invited Commentary for “Singing a New Song: Creating a Renewed Relationship” Parish of St. John the Divine Parish and Community Conference, Victoria, BC, 27 April 2013
- 2012 “Dismantling Instruments of Empire Building: Legal Creation Stories of the State Encounter Anishinaabe Diplomacy,” presented at the American Studies Association Annual Meeting, San Juan, Puerto Rico 15 Nov. 2012
- 2012 “Storied Nations: Law as Creation Stories of the Nation-State,” presented at the Native American and Indigenous Studies Association Annual Meeting, Ucasville, CT 5 June 2012
- 2011 “Rights or Responsibilities?: The Discourse of Rights in Anishinaabe Treaty-Making” presented at the American Political Science Association Annual Meeting, Seattle, WA 3 Sept 2011
- 2011 “Treaties in Trust: Anishinaabe Understandings of ‘Protection’ in the Treaty Era & the Trust Doctrine,” presented at the 6th Annual Vine Deloria Jr. Symposium, Northwest Indian College, Bellingham, WA, 8 July 2011
- 2011 “Balancing Protection and Personal Autonomy: Anishinaabe Conceptions of Children and the Law,” presented at the Native American and Indigenous Studies conference, Sacramento, CA. 20 May 2011

- 2010 "Nenabozho and the Wolves: Rethinking Reserved Rights through Anishinaabe Stories," presented at the annual meeting of the American Society for Ethnohistory, Ottawa, ON, Canada, October 2010.
- 2010 "Redefining Reserved Rights: U.S. and Canadian Law and the Diminishment of Aboriginal and Treaty Rights," presented at the Native American and Indigenous Studies conference, Tucson, AZ, 20 May 2010
- 2009 "Recognizing Relations, Regulating Resources: Anishinaabe Conceptions of Reserved Rights in Treaty-Making" presented at the Native American and Indigenous Studies conference, Minneapolis, MN, 22 May 2009
- 2008 "We Do Not Need Any Line:" Anishinaabe Nationhood, Treaty-Making, and the (Re)Construction of Borders" presented at the annual meeting of the American Society for Ethnohistory, Eugene, OR, November 2008
- 2008 "This Land Belongs to Us: Articulations of Anishinaabe Sovereignty in Treaty-Making with the United States and Canada," presented at the American Studies Association Annual Meeting, Albuquerque, NM, October 2008 (unable to attend, paper read by chair of session) Originally presented as "'All This is Our Property Where You Have Come:' Expressing an Anishinaabe Land Tenure, 1785-1923," at the annual meeting of the Organization for American Historians, Minneapolis, MN. March 2007.
- 2008 "The Principles of Respect, Responsibility, and Renewal: Re-Examining the Trust Relationship in Federal Indian Law," presented at "The State We're In: Creative and Critical Approaches to Minnesota History at 150" Minnesota Historical Society conference, Collegeville, MN, May 2008.
- 2008 "Stealing Fire, Scattering Ashes: Anishinaabe Expressions of Nationhood in Treaty-Making," presented at the Native American and Indigenous Studies conference, Athens, GA, 10 April 2008
- 2007 "'The Woman Who Married A Beaver:' A Re-examination of Anishinaabe Land Tenure in Federal Indian Law and Aboriginal Rights," presented at the annual meeting of the American Society for Ethnohistory, Tulsa, OK. November, 2007.
- 2007 "To Pillage and To Plunder: Anishinaabe Acts of Sovereignty," presented at the annual Northern Great Plains History conference, Duluth, MN. October 2007
- 2007 "To Pillage and To Plunder: Anishinaabe Acts of Sovereignty," presented at the Native American and Indigenous Studies conference, Norman, OK. May 2007
- 2006 "Strategic Alliances: Anishinaabe Border Constructions and the Myth of 'Common Ownership' in the Treaty Era," presented at the annual meeting of the American Society for Ethnohistory, Williamsburg, VA. November 2006
- 2006 "Nations Within: Native Peoples, Treaties and the (De)Construction of Borders," presented at the American Studies Association Annual Meeting, Oakland, CA. October 12-15 2006

- 2006 ““This Land Used to Belong to the Sioux.” Red Lake and Pembina expressions of land tenure in the 1863 Old Crossing Treaty,” presented at the CIC American Indian Studies Graduate Student Consortium Conference, Bloomington, Indiana. April 2006
- 2005 “Our Country is a Large Matter to Us”: Expressions of Anishinaabe Nationhood in the Negotiations of Treaty Three,” presented at the annual meeting of the American Society for Ethnohistory, Santa Fe, NM. November 2005
- 2005 “Politicizing the Spiritual: The Role of *Aadizookaanag* and *Jiibewag* within Anishinaabe Political Thought,” presented at the CIC American Indian Studies Graduate Student Consortium Conference, Madison, WI. April 2005
- 2005 “Making America: Sovereignty, The United States, and Indigenous First Nations,” for panel titled “There is No American Studies Without American Indian Studies” presented at the Mid America American Studies Association Annual Meeting, Minneapolis, MN. April 2005
- 2005 “Coloring the Academy: Reflections on the Challenges and Rewards of Mas(s)Color.” Roundtable discussion, Mid America American Studies Association Annual Meeting, Minneapolis, MN. April 2005
- 2004 “*Biindigodaadewin* ‘To Enter Each Others’ Lodge:’ Ojibwe Spiritual Practices, Political Thought and Alliance Formation,” presented at the annual meeting of the American Society for Ethnohistory, Chicago, IL. October 2004
- 2004 “*Gaa-Ani-Minwaadiziwaad*: Learning to Live Through Stories,” presented at the Mid America American Studies Association Annual Meeting, Lawrence, KS. April 2004
- 2003 “Treating the Spiritual: Anishinaabe Political Strategies, Spiritual Practices, and Treaty Three,” presented at the annual meeting of the American Society for Ethnohistory, Riverside, CA. November 2003
- 2003 “The Socialization of Stories: The Role of Stories in Rearing Ojibwe and Dakota Children,” presented at the CIC American Indian Studies Graduate Student Consortium Conference, Chicago, IL. April 2003
- 2001 “American Indians Serving in State Legislatures: Negotiating the balance between tribal sovereignty and state jurisdiction,” presented at the University of Minnesota Research Symposium, Minneapolis, MN. August 2001. Also presented at the International McNair Scholars Undergraduate Student Conference, San Juan, Puerto Rico. October 2001
- 2000 “Ojibwe Language Revitalization: Approaches to bringing language back to the people,” presented at the University of Minnesota Research Symposium, Minneapolis, MN. August 2000

Community Gatherings

- 2016 Anishinaabe Law Camp, Instructor (along with John Borrows and Hannah Askew) for four-day law camp for Windsor Law Faculty and Dean in collaboration with Walpole Island First

- Nation, Walpole Island, ON, April 14-17, 2016.
- 2016 Sakimay First Nations Community Gathering, Energy East Pipeline and Anishinaabe Law project, made community presentations, community meetings in Grenfell, Regina and Yorkton, SK, March 17-20, 2016.
- 2015 Manoomin Wild Rice Chiefs Gathering, participant, Great Lakes Indian Fish and Wildlife Commission, Odanah, WI, October 23-24, 2015
- 2015 Anishinaabe Law Camp, Instructor (along with John Borrows, Lindsay Borrows, and Hannah Askew) for four-day law camp for Osgoode Law students in collaboration with the Chippewas of Nawash Unceded First Nation, Neyaashiinigmiin, ON, September 10-13, 2015
- 2015 Sakimay First Nations Community Gathering Anishinabek Governance Research Project, coordinated gathering and made community presentations, First Nations University, Regina, SK, April 23-26th 2015
- 2015 Feast and Gathering with Sakimay First Nations, made community presentations, Grenfell, SK, February 14, 2015

Community Research Reports (In Progress)

“Anishinaabe Law and the Energy East Pipeline” for Sakimay First Nations as Interveners to the National Energy Board.

I am currently completing this report, which draws on the community gatherings in March 2016 as well as historical research. The current plan is to present this report in another set of gatherings with Saulteaux Elders and knowledge holders to ensure it accurately reflects community legal traditions and principles before presenting to the NEB. The NEB has not yet released when the next round of hearings will take place. I have hired Rita Merrick to serve as the Research Assistant on this project. I have also consulted with Kekek Jason Stark (lawyer for the Lac Courte Orielles Band of Lake Superior Ojibwe) and will run drafts of the report through John Borrows for his reflections. This work is contracted with Sakimay First Nation and will need to receive their permission for any components published, which we have not yet discussed.

“Sakimay First Nation Governance” for Sakimay First Nations

As part of my SSHRC grant, I am the principle investigator working with John Borrows (Law), Gina Starblanket (PhD fellow under grant) and Rita Merrick (MA fellow under grant) to develop a research report for Sakimay First Nation on Anishinaabe Governance. We have already held a number of community gathers and meetings. We will be drafting the final report this late summer for submission to Chief and Council. In addition, we are developing an electronic database for the Sakimay First Nation which is comprised of numerous historical and contemporary documents, government reports, community studies, transcriptions of gatherings, events and elder interviews. Rita Merrick and Gina Starblanket has conducted extensive research, including an exhaustive review of the documents held by the Office of the Treaty Commission (who has granted us permission to use unpublished reports and documents). Gina Starblanket will be presenting portions of this work at the Native American and Indigenous Studies Association (NAISA) in May 2016. I will also be presenting some of this work on a plenary panel considering constitutional reform at NAISA. We anticipate a number of publications arising from this work in the future.

“Manoomin (Wild Rice) Regulations and Resource Management” for the Great Lakes Indian Fish and Wildlife Commission (GLIFWC)

I previously worked extensively in the development of a SSHRC Partnership Development Grant with GLIFWC pertaining to the development of Anishinaabe Resource Regulations. While that grant was below the cutoff for funds, this community driven project was nonetheless seen as a vital work for GLIFWC. Therefore, they secured funds for some of this work to be completed. We are currently focusing exclusively on the revision of Wild Rice Regulations. I have been contracted to engage in both historical research and community interviews with knowledge holders and elders.

Guest Lectures

- 2015 Guest Lectures “Indigenous Political Theory” for CSPT 501 Contemporary Cultural Social and Political Thought; “Indigenous Diplomacy and Narrative” for Poli 363 Indigenous Politics in Canada (Gina Starblanket), “Anishinaabe Creation and Treaty-making” for IGOV 550 Indigenous Self-Determination (Jeff Corntassel).
- 2014 Guest Lectures “Indigenous Politics in Canada” IST 200, Camosun College (Todd Ormiston) “The History of Treaty-Making in Canada”, IS 200: Introduction to Indigenous Studies (Dawn Smith) “Indigenous Research Methods,” Poli 339: The Empirical Analysis of Politics Spring 2014 (Feng Xu); “Anishinaabe Creation and Treaty-making” for IGOV 550 Indigenous Self-Determination (Jeff Corntassel); “US-Indigenous Treaties” for IST 243 Comparative Indigenous Issues, Camosun College (Todd Ormiston).
- 2013 Guest Lectures, “Methods and Approaches to Indigenous Research” for Poli 505 Problems of Political Analysis (Marlea Clarke); “Indigenous Research Methods,” Poli 339: The Empirical Analysis of Politics Spring 2013 taught by Dr. Feng Xu, Guest Lecture “What it means to research and write about Indigenous Communities” IED 510 taught by Onowa McIvor.
- 2012 “American Indian Treaty Making Practices” lecture to First Year Cohort and “American Indian Nations and the Federal Governments Trust Responsibility” lecture to Second Year Cohort, Masters of Tribal Governance and Administration, University of Minnesota Duluth, October 2012; Guest Lecture, “Anishinaabe Treaty Making” for Val Napoleon, “Law 340: Indigenous Lands, Rights and Governance” University of Victoria Faculty of Law, February 2012
- 2011 “An Overview of Tribal Governments and Tribal Courts” for AmIn 1020 American Indian Experiences 1900-Present, Instructed by Dr. Jill Doerfler, University of Minnesota- Duluth, Spring Term 2011
- 2010 “An Overview of Tribal Governments and Tribal Courts” for AmIn 1020 American Indian Experiences 1900-Present, Instructed by Dr. Jill Doerfler, University of Minnesota- Duluth, Spring Term 2010
- 2008 “Treaty-making in the United States and Canada and Anishinaabe Land Rights” for AmIn 3410 Fur Trade in Canada and the United States, Instructed by Dr. Jill Doerfler, University of Minnesota-Duluth, Fall Term 2008.
- 2007 “A History of Federal Indian Policy and Its Relation to Social Work” for SW 5335 American Indians and Social Policy, Instructed by Muskadee Montano, University of Minnesota-Duluth, Fall Term 2007; “Federal Indian Policy 1950-Present” for Native Nationalisms, Instructed by Dale Turner, Native American Studies, Dartmouth College, Winter Term 2007
- 2005 “Federal Indian Policy in the United States” for Ojibwe Culture and History, AmIn 3701 Instructed by Dennis Jones, American Indian Studies, University of Minnesota, Spring Term 2005
- 2004 “Ojibwe Language Revitalization” for America’s Diverse Cultures, AmSt 3113. Instructed by

Christina Berndt, American Studies, University of Minnesota, Fall Term 2004
2003 “United States/Canadian Indigenous Comparative Politics” for Law, Sovereignty, and Treaty Rights, AmIn 4501 & Pol. 4310. Instructed by Dr. David Wilkins, American Indian Studies, University of Minnesota, Summer Session 2003

COURSES TAUGHT:

Political Science, University of Victoria

- Poli 433: Global Indigenous Nationalisms
- Poli 363: Indigenous Politics in Canada
- Poli 319: US/Canadian Comparative Indigenous Politics
- Poli 313C: Indigenous Politics in the United States
- Poli 463: US/Canadian Comparative Indigenous Law and Policy
- Poli 263: Politics of Indigenous Peoples

Law, University of Victoria

- Law 343/Poli 533: Indigenous Politics

Indigenous Governance, University of Victoria

- IGOV 595: Indigenous Resurgence IGOV/UHIP exchange with the University of Hawai'i
Indigenous Politics program in Honolulu, Hawaii, March 2015, Faculty
participant/mentor
- IGOV 550: Indigenous Peoples and Self-Determination

American Indian Studies, University of Minnesota-Duluth

- AmIn 3595: Global Indigenous Nationalisms
- AmIn 1010: American Indian Experiences to 1990
- AmIn 1120: American Indians in the Twentieth Century
- AmIn 3905: American Indian Diplomacy: Treaties, Compacts and Agreements
- AmIn 4333: Introduction to Federal Indian Law
- AmIn 2110: American Indian Politics: Law, Sovereignty, and Treaty Rights
- AmIn 3106: Indian-White Relations
- AmIn 3750: American Indian Psychology

American Indian Studies, University of Minnesota-Twin Cities

- AmIn 1000: American Indian Peoples in the United States
- AmIn/Poli 4525: Federal Indian Policy
- AmIn/Poli 4501: Law, Sovereignty, and Treaty Rights

RELATED PROFESSIONAL WORK

2003/2004 Doula, Turtle Women's Doula Program, American Indian Family Center, St. Paul, MN

I worked for American Indian women provided pre-natal, labor, and post-partum support. Primarily worked with teen mothers providing education about pregnancy and birth.

2002/2004 Mentor, American Indian Family Center, St. Paul, MN

I worked with American Indian youth providing council and support. Primarily worked to encourage healthy lifestyle choices, family preservation,

and education.

- 2001/2002 Cultural Resource Specialist Research Assistant, Seven Generations Education Institute; Fort Frances, Ontario, Canada
Worked as a research assistant for Anishinaabe elder Edward Benton-Banai to incorporate indigenous knowledge into renewable energy curriculum.
- 2002/2002 Teaching Specialist, American Indian Studies, University of Minnesota
Aiding with instruction of Beginning Ojibwe, AmIn 1101 & 1102; Intermediate Ojibwe, AmIn 3103 & 3104; and Ojibwe Culture and History, AmIn 3701.
- 2001 Youth Prevention Worker, Ain Dah Yung, St. Paul, MN
I worked with American Indian youth in homeless shelter by supervising activities that promoted healthy lifestyle choices through American Indian cultural values and practices.

UNIVERSITY ACADEMIC SERVICE

- 2015-Present Associate Director, Centre for Indigenous Research and Community Led Engagement (CIRCLE); previously named Centre for Aboriginal Health Research (CAHR)
- 2013-Present Member, Indigenous Academic Advisory Council
- 2013-Present Advisor to the Dean of Social Sciences, Indigenous Programming
- 2014-2015 Co-Chair, Indigenous Strategic Planning Committee
- 2013-2015 Indigenous Studies Advisory Committee (previously I.S. Program Committee)
- 2013-2015 Indigenous Studies Undergraduate Major Program Development Committee
- 2014-2015 Graduate Committee and Salary Committee, Political Science department committees, University of Victoria
- 2011-2015 Provost Diversity and Equity Steering Committee, University of Victoria
- 2014 Faculty Mentor, Le,nonet Program, Office of Indigenous Affairs, University of Victoria
- 2014 Search Committee, Director of Indigenous Academic and Community Engagement
- 2013-2014 Indigenous Student Award Committee
- 2013-2014 Speakers Series, Political Science department committee, University of Victoria
- 2011-2013 Social Science Representative, Indigenous Studies Program Committee, University of Victoria
- 2011 Faculty Mentor TD Canada Bank Indigenous Student Career Transition Project, Fall 2011
- 2011 Anthony Dawson Justice Award Committee, Office of Indigenous Affairs, University of Victoria, Summer
- 2009-2011 Development of a Masters in Tribal Administration and Governance at the University of Minnesota-Duluth, in consultation with tribal leaders across the Great Lakes and Midwest, May 2009-December 2010
- 2009-2011 Ani-gikendaasoyang Advisory Board, University of Minnesota-Duluth,
- 2008-2011 American Indian Learning Resource Center Building Advisory Committee, University of Minnesota-Duluth, December 2008-2011
- 2010 College of Liberal Arts (CLA) Research Committee, University of Minnesota-Duluth, Fall 2010
- 2008-2010 College of Liberal Arts (CLA) Student Affairs Committee, University of Minnesota-

- 2008-2009 Duluth, September 2008-December 2010
Anishinaabe Student Organization Faculty Advisor, University of Minnesota-Duluth, October 2008- May 2009
- 2007-2008 CLA Academic Affairs Committee, University of Minnesota-Duluth, September 2007-May 2008

ACADEMIC/PROFESSIONAL SERVICE

- 2014-Present Member, Indigenous Advisory Council for the Franz Boas Papers Project, (a \$2 million Social Science and Humanities Research Council Partnership Grant, partners include the American Philosophical Society, the University of Nebraska Press, Musgamagw Dzawada'enuxw Tribal Council, University of Victoria, and University of Western Ontario)
- 2012-2015 Elected member of Nominations Committee, Native American and Indigenous Studies Association, June 2012-2015
- 2011-2015 Created and co-facilitate Indigenous Studies Workshop for faculty and graduate students at the University of Victoria, Fall 2011-2015
- 2014 Article Referee, *Canadian Journal of Political Science*, June. *UBC Law Review*, February
- 2013 Review and Incorporate culturally relevant data in reports produced by the Great Lakes Indian Fish and Wildlife Commission to help aid their efforts to produce culturally sound resource guides for Tribal citizens and state citizens engaged in harvesting activities.
- 2013 Article referee, *Native American and Indigenous Studies Journal*, July
- 2013 SSHRC External Reviewer for Insight Grant application, Spring
- 2012 Article referee, *Native Studies Review*, Fall
- 2012 Book Manuscript Reviewer, University of British Columbia Press, Summer
- 2012 Participant, American Indian Studies Workshop, University of Minnesota, Fall 2012
- 2012 Truth and Reconciliation Commission, Regional Conference, Attendant, Victoria, BC, April 2012
- 2011 Article Referee, *American Indian Culture and Research Journal*, Summer/ Spring
- 2010 Article Referee, *Wicazo Sa*, Fall
- 2002-2011 Participant, American Indian Studies Workshop, University of Minnesota, 2002-2011
- 2004-2005 Mid-America American Studies Graduate Student Representative, American Studies, University of Minnesota, January 2004-May 2005
- 2004-2005 Graduate Student Assembly Representative, American Studies, University of Minnesota, September 2004-May 2005
- 2000-2002 Secretary, Ojibwe Language Society Non-profit Organization, Minneapolis, MN, September 2000–August 2002

COMMUNITY SERVICE

- 2012-2015 Anishinaabemowin Language Table, campus and community wide language table, Spring 2012-present
- 2010-2012 Board Member and Chair, American Indian Community Housing Organization (AICHO), 2010-2012; Secretary from February 2009-2010
- 2010-2011 Mooningwanekaaning Minis Anishinaabeg Maawanjiiding Planning Committee (Madeline Island Anishinaabeg Gathering Planning Committee) May 2010-May 2011
- 2002-2006 Board Chair, Nawaye Center School, Minneapolis, MN, September 2002–April 2006

PROFESSIONAL MEMBERSHIP


2008-Present Native American and Indigenous Studies
2003-Present American Studies Association
2013-2014 Canadian Political Science Association
2003-2013 Mid-America American Studies Association
2011-2012 American Political Science Association
2002-2011 American Society for Ethnohistory
2006-2010 Association for Canadian Studies in the United States

LANGUAGES

Good ability to speak, read, and write in the Ojibwe language. Passed University of Minnesota Proficiency Exam in Ojibwe language, which tests speaking, writing, reading, and ability to transcribe and translate the language, May 2001

This is Exhibit " B " referred to in
the affidavit of Heidi Stark
sworn before me at the City of Victoria
on October 20 16

Schedule B - Terms of Reference for Dr. Heidi Kiiwetinepinesiiik Stark


A Commissioner for taking Affidavits
In and for the Province of British Columbia

A. Ontario Rules of Civil Procedure, s. 53.03(2.1)

In compliance with the Ontario *Rules of Civil Procedure*, s. 53.03(2.1), the Expert's Report shall contain the following information:

1. The expert's name, address and area of expertise.
2. The expert's qualifications and employment and educational experiences in his or her area of expertise.
3. The instructions provided to the expert in relation to the proceeding.
4. The nature of the opinion being sought and each issue in the proceeding to which the opinion relates.
5. The expert's opinion respecting each issue and, where there is a range of opinions given, a summary of the range and the reasons for the expert's own opinion within that range.
6. The expert's reasons for his or her opinion, including,
 - a) a description of the factual assumptions on which the opinion is based,
 - b) a description of any research conducted by the expert that led him or her to form the opinion, and
 - c) a list of every document, if any, relied on by the expert in forming the opinion.
7. An acknowledgement of expert's duty (Form 53) signed by the expert.

B. Background to the Litigation

a. Robinson Huron Treaty (RHT) Action

NC Firm commenced a legal action in the Ontario Superior Court of Justice in Sudbury (File No. C-3512-14) on behalf of the beneficiaries of the Robinson Huron Treaty of 1850 ("Robinson Huron Treaty Anishinabek" or "RHT Anishinabek"), to pursue a claim for annuities, against the Crown in right of Canada (Canada) and the Crown in right of Ontario (Ontario).

The following 21 bands ("RHT First Nations") have beneficiaries within their populations and are collectively successors to the signatories of the Robinson Huron Treaty of 1850: Atikameksheng Anishnawbek, Aundeck Omni Kaning First Nation, Batchewana First Nation of Ojibways, Dokis First Nation, Henvey Inlet First Nation, Magnetawan First Nation, M'Chigeeng First Nation, Mississauga #8 First Nation, Nipissing First Nation, Ojibways of Garden River First Nation, Sagamok Anishnawbek, Serpent River First Nation, Shawanaga First Nation, Sheguiandah First Nation, Sheshegwaning First Nation, Thessalon First Nation, Wahnapiatae First Nation, Wasauksing First Nation, Whitefish River First Nation, Wikwemikong Unceded Indian Reserve No. 26, and Zhiibaahaasing First Nation.

These 21 RHT First Nations have authorized the following representative plaintiffs to pursue this litigation, namely: Mike Restoule, a member of Nipissing First Nation; Patsy Corbiere, a member and Chief of Aundeck Omni Kaning First Nation; Duke Peltier, a member and Chief of the Wikwemikong Unceded Indian Reserve No. 26; Peter Recollet, a member of Wahnapiitae First Nation; Dean Sayers, a member and Chief of Batchewana First Nation; and Roger Daybutch, a member of Mississauga #8 First Nation. The claim does not include, and the representative plaintiffs do not purport to represent, the Temagami First Nation.

The title of the action is as follows:

Mike Restoule, Patsy Corbiere, Duke Peltier, Peter Recollet, Dean Sayers and Roger Daybutch, on their own behalf and on behalf of all members of the Ojibewa (Anishinabe) Nation who are beneficiaries of the Robinson Huron Treaty of 1850, Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA, THE ATTORNEY GENERAL OF ONTARIO and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, Defendants

The claim is for a variety of relief, including compensation, an order for an accounting and a declaration that the Crowns are in breach of an obligation in law, under the Robinson Huron Treaty of 1850, based on the principle of the Honour of the Crown and the doctrine of fiduciary obligations, to increase the annuities to which the beneficiaries are entitled under the treaty, both in the past and going forward.

Formal notice of the claim was given to both Crowns in September 2012. The Statement of Claim herein was issued shortly thereafter. The pleadings have been completed:

- The Plaintiffs' Statement of Claim was issued on September 9, 2014, attached;
- Canada filed its Statement of Defence to the RHT Action and Crossclaim against Ontario, attached;
- Ontario has filed its Statement of Defence, attached; and
- RHT also filed Replies to Ontario and Canada's defences, attached.

Though the pleadings raise a number of issues, the RHT Action will proceed by way of summary judgment/expedited summary trial ("summary proceeding") with respect to part of the Claim and will not address all of the issues in the Claim.

b. Red Rock and Whitesand Actions

A similar claim was filed in Superior Court in Thunder Bay in 2001, by two bands,

Red Rock (File no. 2001-0673) and *Whitesand* (File no. 2001-0674) initiated as separate claims in 2001 and consolidated in 2004. The claims are under the Robinson Superior Treaty, which contains a similar augmentation clause in its written text. Pleadings have been completed in those cases and discoveries are in progress. Ontario has issued a third party claim in the RHT Action, against Red Rock and Whitesand First Nations.

It is proposed that there be parallel proceedings for the RHT Plaintiffs' case and the Third Parties (Red Rock and Whitesand) case, by way of identical (summary judgment) motions to be heard simultaneously. The defendants would answer both cases. Evidence that is common to both and specific to each plaintiff group would be presented.

c. Summary Judgment/Expedited Summary Trial and Issues to be Determined

As aforesaid, the RHT Action will proceed by way of summary judgment/expedited summary trial ("summary proceeding") with respect to part of the claim in the Statement of Claim.

Main Issue: The main issue to be determined is whether, since 1850 the Crown has been and remains legally obligated under the Robinson Huron Treaty of 1850 to increase the annuity under the Treaty from time to time if the territory subject to the Treaty produced or produces an amount which would enable it to do so without incurring loss, and that the size of the increase of the annuity is not limited to an amount based on one pound per person.

Particular Issues that May be Addressed: The plaintiffs acknowledge that in addressing this motion, any of the parties may address and seek determination of particular issues, including:

- (a) the meaning and legal effect of the phrase "such further sum as Her Majesty may be graciously pleased to order" in the written text of the Treaty;
- (b) whether the revenues that are to be taken into account in determining whether "the territory subject to the Treaty produced or produces an amount which would enable it to do so without incurring loss" are restricted to Crown revenues from the territory;
- (c) whether gross or net revenues are to be taken into account in determining whether "the territory subject to the Treaty produced or produces an amount which would enable it to do so without incurring loss";
- (d) what principle or principles govern the determination of the amount of the increased annuities;
- (e) whether the provision that "the amount paid to each individual shall not exceed the sum of one pound provincial currency (\$4) in any one year, or such further sum as Her Majesty may be graciously pleased to order" should be indexed for inflation.

Issues that will not be Addressed: There is agreement that none of the parties will

seek adjudication on the technical defences in this summary process (i.e., defences based upon statutes of limitation, *res judicata*, *laches* and acquiescence), nor will the parties seek adjudication on the attribution of liability as between Canada and The Attorney General of Ontario and Her Majesty the Queen in Right of Ontario (“Ontario”). The parties also agree that they do not want the issue of quantum to be before the court in this summary process.

C. The Nature of the Opinion being Sought -- Expert Opinion on Anishinabe Treaty-Making with the Crown

An expert opinion is required on the issues in this summary proceeding on Anishinabe treaty-making with the Crown, including diplomacy and governance as well as the application of Anishinabe laws through stories. The opinion shall be in the form of an affidavit.

D. Historical Background

a. Relationship between the Crown and First Nations, Including the RHT Anishinabek, the Royal Proclamation of 1763 and the Niagara Treaty of 1764

The historical context includes the Crown – First Nations relationship, from its earliest beginnings and how it evolved in the period leading up to the Robinson Huron Treaty of 1850. During this period there were a number of significant economic and military events, including the French and Indian War, Pontiac’s War, the American Revolution and the War of 1812, all of which shaped the nature of the relationship. There were also a number of important policy events, including the *Royal Proclamation of 1763* and the Niagara Treaty of 1764, which formed a framework for the RHT of 1850.

The *Royal Proclamation of 1763* is an edict of the British Crown, issued on October 7th, 1763, by King George III. It established Crown policy regarding Indians and Indian lands. Under the *Proclamation*, Indian lands were reserved, protected and could not be alienated to anyone except upon surrender to the Crown. The *Proclamation* and subsequent instructions, regulations and policies also established procedures for dealing with Indians and Indian lands in the treaty process. If First Nations were inclined to dispose of their lands they could only be purchased by the Crown at a public meeting of the Indians called for that purpose; and the procedures had to conform to the customs and usages of the Indians.

The Niagara Treaty of 1764 was entered into between the Crown and First Nations, at a Treaty Council, convened by Sir William Johnson, at Niagara in the summer of 1764. While the Proclamation was an edict of the Crown, the Treaty of Niagara was an agreement between the Crown and Indian Nations. The Ontario Court of Appeal, in the *Chippewas of Sarnia* case, [2001] 1 C.N.L.R. 56, described the Niagara Treaty in the following terms:

¶ 54 After setting out its policy in the Royal Proclamation, the Crown took extraordinary steps to make the First Nations aware of that policy and to gain their support on the basis that the policy as set down in the Royal Proclamation would govern Crown-First Nations relations. In the summer of 1764, at the request of the Crown, more than 2,000 First Nations chiefs representing some twenty-two First Nations, including chiefs from the Chippewa Nation, attended a Grand Council at Niagara. Sir William Johnson, the Crown representative, who was well known to many of the chiefs present, read the provisions of the Royal Proclamation respecting Indian lands and committed the Crown to the enforcement of those provisions. The chiefs, in turn, promised to keep the peace and deliver up prisoners taken in recent hostilities. The singular significance of the Royal Proclamation to the First Nations can be traced to this extraordinary assembly and the treaty it produced. [See Note 5 below]

¶ 55 The First Nations chiefs prepared an elaborate wampum belt to reflect their understanding of the Treaty of Niagara. That belt described the relationship between the Crown and the First Nations as being based on peace, friendship and mutual respect. The belt symbolized the Crown's promise to all of the First Nations who were parties to the Treaty that they would not be molested or disturbed in the possession of their lands unless they first agreed to surrender those lands to the Crown.

¶ 56 The meeting at Niagara and the Treaty of Niagara were watershed events in Crown-First Nations relations. The Treaty established friendly relations with many First Nations who had supported the French in the previous war. It also gave treaty recognition to the nation-to-nation relationship between the First Nations and the British Crown, Indian rights in their lands and the process to be followed when Indian lands were surrendered.

b. The Anderson and Vidal-Anderson Commissions

In the decade before the Robinson Huron Treaty of 1850, the discovery of minerals and mining explorations in the lands around Lakes Huron and Superior, led to conflicts with the Anishinabek peoples in the area. Commissions were mandated to investigate the claims of the Ojibewa Indians (Anishinabek) on the north shores of Lakes Huron and Superior, including one led by T.G. Anderson in 1848, and another led by T.G. Anderson and Alexander Vidal in 1849. The Commissions validated the claims of the Anishinabek and recommended that a treaty be entered into with the Anishinabek.

c. The Robinson Huron Treaty of 1850

William Benjamin Robinson was mandated by the Crown to pursue treaty

negotiations with the Anishinabek north of Lakes Huron and Superior. A Treaty Council was held in early September 1850, which resulted in two treaties, the Robinson Superior Treaty (RST), signed on September 7, 1850, and the Robinson Huron Treaty (RHT), signed on September 9, 1850, both at Sault Ste. Marie, in the Province of Canada.

Under the written terms of the RHT, the chiefs and principal men are to receive as consideration, among other things, a lump sum payment of 2000 pounds of good and lawful money of Upper Canada, plus a perpetual annuity. The annuity clause in the RHT provides as follows:

the further perpetual annuity of six hundred pounds of like money, the same to be paid and delivered to the said Chiefs and their Tribes at a convenient season of each year, of which due notice will be given, at such places as may be appointed for that purpose...

The written terms of the RHT also provide for the augmentation of the perpetual annuity, as follows:

The said William Benjamin Robinson, on behalf of her Majesty, who desires to deal liberally and justly with all her subjects, further promises and agrees, that should the Territory hereby ceded by the Parties of the second part at any future period produce such an amount as will enable the Government of this Province, without incurring loss, to increase the annuity hereby secured to them, then and in that case the same shall be augmented from time to time, provided that the amount paid to each individual shall not exceed the sum of one pound Provincial Currency in any one year, or such further sum as Her Majesty may be graciously pleased to order; and provided further that the number of Indians entitled to the benefit of this treaty shall amount to two-thirds of their present number, which is fourteen hundred and twenty-two, to entitle them to claim the full benefit thereof. And should they not at any future period amount to two-thirds of fourteen hundred and twenty-two, then the said annuity shall be diminished in proportion to their actual numbers.

In his report to Col Bruce, Superintendent General of Indian Affairs, after the Treaty Council, Robinson provided the following rationale for the augmentation clause:

Believing that His Excellency and the Government were desirous of leaving the Indians no just cause of complaint on their surrendering the extensive territory embraced in the treaty and knowing there were individuals who most assiduously endeavoured to create dissatisfaction among them, I inserted a clause securing to them certain prospective advantages should the lands in question prove sufficiently productive at any future period to

enable the Government without loss to increase the annuity. This was so reasonable and just that I had no difficulty in making them comprehend it, and it in a great measure silenced the clamor raised by their evil advisors.

d. Subsequent Events: Transfer of Indian Affairs from British Control to Province of Canada; Confederation; Augmentation of the RHT Annuity and Federal Provincial Arbitrations

When the Robinson Huron Treaty was concluded in 1850, Indian Affairs was still a matter within the direct control of the British Crown. This changed in 1860 when control over the management of Indian Affairs was delegated to the Province of Canada. The jurisdictional situation changed again in 1867 with Confederation, when Indians and lands reserved for Indians was made a matter of federal jurisdiction, while most Crown lands were transferred to the provinces.

The Robinson Treaties annuities were augmented once in 1874 to the current level of one pound, which is equivalent to \$4.00.

There was a federal-provincial dispute over which level of government was obligated to pay for the pre-confederation Robinson Treaties annuities. The matter went to arbitration and the Judicial Committee of the Privy Council.

The annuities have not been increased since 1875.

Note: in this document, "Crown" means either the British Crown or the Crown in right of Canada or the Crown in right of Ontario, depending on the circumstances.

E. Scope of Expert Report and Issues to which this Expert Report Relates

a. Description of Issues to which this Expert Report Relates

The Expert will address the main issue identified above and the particular issues, focusing primarily on particular issues (a) and (d). It is important to note that in addressing these issues, the Expert should not feel constrained by the written text of the treaty. As Justice Binnie of the Supreme Court of Canada indicated in *R v Marshall*, [1999] 3 S.C.R., at paragraphs 10, 11 and 12, any oral terms, conduct and historical and cultural context may be examined to determine how the parties may have understood the treaty.

The Expert should be mindful of the principles of treaty interpretation, as succinctly set out by Justice Cory of the Supreme Court of Canada, at paragraph 41 of *R. v. Badger*, [1996] 1 S.C.R. 771:

At the outset, it may be helpful to once again set out some of the applicable principles of interpretation. First, it must be remembered that a treaty represents an exchange of solemn promises between the Crown and the various Indian nations. It is an agreement whose nature is sacred. See >R. v. Sioui, [1990] 1 S.C.R. 1025, at p. 1063; >Simon v. The Queen, [1985] 2 S.C.R. 387, at p. 401. Second, the honour of the Crown is always at stake in its dealing with Indian people. Interpretations of treaties and statutory provisions which have an impact upon treaty or aboriginal rights must be approached in a manner which maintains the integrity of the Crown. It is always assumed that the Crown intends to fulfil its promises. No appearance of "sharp dealing" will be sanctioned. See Sparrow, *supra*, at pp. 1107-8 and 1114; R. v. Taylor (1981), 34 O.R. (2d) 360 (Ont. C.A.), at p. 367. Third, any ambiguities or doubtful expressions in the wording of the treaty or document must be resolved in favour of the Indians. A corollary to this principle is that any limitations which restrict the rights of Indians under treaties must be narrowly construed. See Nowegijick v. The Queen, [1983] 1 S.C.R. 29, at p. 36; Simon, *supra*, at p. 402; Sioui, *supra*, at p. 1035; and >Mitchell v. Peguis Indian Band, [1990] 2 S.C.R. 85, at pp. 142-43. Fourth, the onus of proving that a treaty or aboriginal right has been extinguished lies upon the Crown. There must be "strict proof of the fact of extinguishment" and evidence of a clear and plain intention on the part of the government to extinguish treaty rights. See Simon, *supra*, at p. 406; Sioui, *supra*, at p. 1061; Calder v. Attorney-General of British Columbia, [1973] S.C.R. 313, at p. 404.

b. Expert Report

The Expert shall provide an expert report in the form of an affidavit on Anishinabe treaty-making with the Crown, including diplomacy and governance as well as the application of Anishinabe laws through stories. The expert shall address the issues identified above; more particularly, she will provide an opinion on the following:

- i. Identify the foundational principles for treaty-making between the Crown and Anishinabe peoples, including the RHT Anishinabek?
- ii. Identify Anishinabe laws, as indicated in stories or otherwise, that have a bearing on the meaning and effect of the annuity and augmentation terms in the Robinson Huron Treaty?
- iii. Was the promise to augment the annuity from time to time intended to be binding on the Crown, or was the promise limited to one pound per person per year?
- iv. What was meant by the phrase "such further sum as Her Majesty may be graciously pleased to order" in the written text of the Treaty, and how would the RHT Anishinabek have understood the term?
- v. From the perspective of the RHT Anishinabek, did they understand the treaty promise to pay and augment the annuity to be non-obligatory on the part of the Crown? In other words, was it within the contemplation of the RHT Anishinabek that the Crown would refuse to augment the annuity beyond one pound if the territory subject to the Treaty produced or produces an amount

- which would enable it to do so without incurring loss?
- vi. What principle or principles govern the determination of the amount of the increased annuities, in light of Anishinabe laws and the historical and cultural context? What were the expectations of the RHT Anishinabek regarding conduct of the Crown? Were the RHT Anishinabek supposed to ask for an increase, or any particular level of increase, before it was given?
 - vii. In light of the annuity and augmentations clauses, did the RHT Anishinabek intend to completely surrender and extinguish their economic and territorial interests in the RHT territory, or did they intend to retain interests related to the production of revenues from resource within the RHT territory?

c. Research Materials and Timeline

In pursuing this mandate, the Expert will research, consider and review, as he deems appropriate, all relevant materials, historical information and records.

The Expert will deliver a draft report by September 15, 2016, and a final report by September 30, 2016.

This is Exhibit " C " referred to in the affidavit of Heidi Stark sworn before me at the City of Victoria this 11 day of October 20 16

Court File No: C-3512-14

[Signature]
A Commissioner for taking Affidavits
In and for the Province of British Columbia

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Mike Restoule, Patsy Corbiere, Duke Peltier, Peter Recollet, Dean Sayers and Roger Daybutch, on their own behalf and on behalf of all members of the Ojibewa (Anishinabe) Nation who are beneficiaries of the Robinson Huron Treaty of 1850

Plaintiffs (Moving Parties and Responding Parties by Cross-Motion)

and

THE ATTORNEY GENERAL OF CANADA, THE ATTORNEY GENERAL OF ONTARIO and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants (Responding Parties and Moving Parties by Cross-Motion)

and

The Red Rock First Nation and The Whitesand First Nation

Third Parties

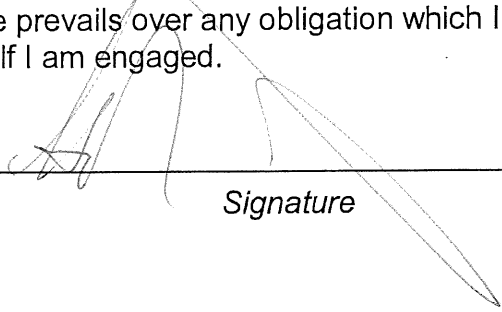
ACKNOWLEDGEMENT OF EXPERT'S DUTY

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1. My name is Dr. Heidi Kiiwetinepinesiik Stark. I live at Victoria, in the PROVINCE of BRITISH COLUMBIA.
 2. I have been engaged by or on behalf of THE PLAINTIFFS, MIKE RESTOULE, ET AL to provide evidence in relation to the above-noted court proceeding.
 3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and

(c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.

4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date: October 11, 2016



Signature