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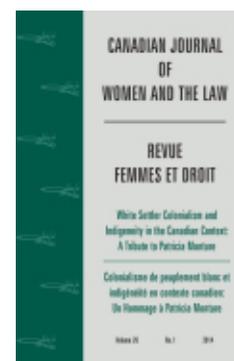
Living Treaties, Breathing Research

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Living Treaties, Breathing Research

Aimée Craft

Dans le présent article, l'auteure remet en cause l'utilisation exclusive des principes juridiques de la common law dans l'interprétation des traités historiques entre les peuples autochtones et les représentants de la Reine. Selon l'auteure, une attention particulière à la langue, à la culture, aux relations et aux valeurs normatives anishinaabe nous permet de mieux comprendre la véritable signification et l'intention des traités. Tout en évoquant son histoire personnelle, l'auteure s'attaque au rôle des tribunaux dans l'identification, l'interprétation et l'application des clauses des traités. Elle tente de fournir un cadre pour relater les négociations de traités de manière plus équilibrée, tout en portant une attention particulière aux valeurs normatives, ou anishinaabe inaaakonigewin (lois), qui étaient au cœur de ces négociations. En triangulant les comptes rendus écrits des négociations, l'histoire transmise oralement et les savoirs, normes et coutumes anishinaabe, l'auteure sonde la manière complexe avec laquelle les règles procédurales et le droit substantif anishinaabe ont déterminé les clauses envisagées par chacune des parties, ainsi que les conflits fondamentaux entre les valeurs normatives et l'entente de fond visant à partager le territoire. Le fait de revoir le Traité 1 selon une perspective anishinaabe approfondit notre compréhension des traités et démontre que le texte écrit du Traité est insuffisant pour bien comprendre ce qui a été négocié par les parties à Fort Stone en 1871.

In this article, the author challenges the exclusive use of common law legal principles for the interpretation of historic treaties between Aboriginal people and the Queen's representatives. It suggests that particular attention to language, culture, relationships, and Anishinaabe normative values allows us to more fully grasp the true meaning and intent of treaties. Interspersed with personal narrative, the author grapples with the role of courts in identifying, interpreting, and applying the terms of treaties. The author aims to provide a framework for retelling a more balanced account of the treaty negotiations, with particular attention to the normative values or Anishinaabe inaaakonigewin (laws), which were central to the negotiations. Employing a triangulation between the written accounts of the negotiations, oral history, and Anishinaabe knowledge, norms, and customs, the author probes the complex ways in which Anishinaabe procedural and substantive norms shaped the terms contemplated by each of the parties, the fundamental conflicts between normative values, and the substantive agreement to share the land. The retelling of Treaty One from an Anishinaabe contextual perspective deepens our understandings of treaties and illustrates that the written text of the treaty provides

an incomplete understanding of what was negotiated by the parties at the Stone Fort in 1871.

Introduction

The young lawyer sat with her mishomis¹ in the living room of his tiny house on the south side of the river—he in his arm chair, she in the hard blue plastic chair, a tipsy TV table between them. She was there to prepare him for his oral testimony in the community's big legal case. They had gone over the questions and the answers many times.

He was relating their creation stories, their views on use of land and resources and their understanding of the treaty. He did it perfectly in her view. He knew this: his nookomis, as a very young girl, had been at the Treaty negotiations. During her life, which spanned over a century, she raised Mishomis and taught him the stories of the making and the meaning of the Treaty.

When Mishomis spoke of the treaty his warm eyes changed. They looked like asiin, rock. He spoke in a tone and pace that was reserved for these stories alone. He always explained things to her in the language and then repeated in English to make sure there was nothing she had missed, nothing she didn't understand.

After going through his evidence again, asking him questions, she put her hand on his arm, looked into his warm brown eyes and said: "Do you feel ready to tell the court about the treaty?" "No" he responded. Embarrassment, panic and confusion rushed through the young lawyer. What had she missed? They had gone over this many times—he wanted to testify in support of the claim! She looked at him with her frowning puzzled look. He said to her: "When the time comes, it will be you who will share this information about the Treaty. You are going to speak about the Treaty. And the white man and the Anishinaabe will listen."

Mishomis is gone, for ten years now. The young lawyer now regrets her naiveté, her lawyer's responses: detailing the court process and explaining that her role as a lawyer was to ask questions of the witness who would in turn provide the facts. What Mishomis was telling her that day was more profound than she had been prepared to hear. He was sharing with her a part of her personal path and the responsibility that she had acquired as his relation. Being the kind and loving man that he was, he did not correct her misunderstanding. He knew that at the right time, the understanding

1. Grandfather.

would sweep over her like a wave, washing away the hesitation to speak with a true and humble voice.

I was cautioned by the Elders many times not to “bring the Treaty to court” or to litigate the meaning of the treaty. As a trained lawyer, I felt that the courts, if approached properly, could be an environment where the truth about treaties could be heard and where justice could prevail. In some cases, truth is heard and justice prevails. In other cases, technicalities, frustrations, positioned approaches, and incompatibilities stand in the way of justice.

Indigenous people have their views about treaties, and yet, to date, perspectives have generally been disregarded by governments and courts.² The Supreme Court of Canada has recognized that treaties are a “solemn exchange of promises made by the Crown and various First Nations.”³ They are to be understood as they would have been construed by the Aboriginal signatories, interpreted flexibly, with the use of extrinsic evidence and with ambiguities being resolved in favour of Aboriginal people.⁴ Yet the application of treaty interpretation principles by Canadian courts has not resulted in a meaningful or complete understanding of Aboriginal–Crown treaties, nor has it achieved the Court’s goal of remedying disadvantage.⁵ In many cases, treaty interpretation has privileged the perspective of the Crown and largely set aside indigenous perspectives in favour of “common understandings.”⁶ Experience dictates that “[r]ights are recognized or denied on the basis of judge’s perceptions.”⁷ On the ground, indigenous harvesters resist attempts to limit their hunting, trapping, fishing, timber harvesting, and other activities that are protected

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2. I use the term “indigenous” openly and broadly to refer to the many indigenous nations of first peoples of Canada. The term “Aboriginal” is used in the context of “Aboriginal peoples of Canada” as defined in *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11. At times, I will use the term “Indian” to reflect the use of the term by certain authors or in certain circumstances, especially historical. Other times I will refer in particular to the Anishinaabe people or nation, a term that I define in footnote 13 in this article.
 3. *R v Sundown*, [1999] 1 SCR 393 at para 24. See also *R v Badger*, [1996] 1 SCR 771 at para 76.
 4. *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, [2005] 3 SCR 388 at para 29.
 5. According to Dickson CJC for the Court in *Mitchell v Peguis Indian Band*, [1990] 2 SCR 85 at 99, “[t]he *Nowegijick* principles must be understood in the context of this Court’s sensitivity to the historical and continuing status of aboriginal peoples in Canadian society . . . It is Canadian society at large which bears the historical burden of the current situation of native peoples and, as a result, the liberal interpretive approach applies to any statute relating to Indians, even if the relationship thereby affected is a private one. Underlying *Nowegijick* is an appreciation of societal responsibility and a concern with remedying disadvantage, if only in the somewhat marginal context of treaty and statutory interpretation.”
 6. For a more complete and critical discussion of the canons of treaty interpretation in Canada, see Aimée Craft, “Treaty Interpretation: A Tale of Two Stories,” Canadian Bar Association <http://www.cba.org/cba/cle/PDF/ABOR11_Craft_Paper.pdf>. See also Leonard I Rotman, “Taking Aim at the Canons of Treaty Interpretation in Canadian Aboriginal Rights Jurisprudence” (1997) 46 *University of New Brunswick Law Journal* 11.
 7. Arthur J Ray, *Telling It to the Judge: Taking Native History to Court* (Montreal and Kingston: McGill-Queen’s University Press, 2011).

by the treaty—they face harassment, charges, and fines. Following the enactment of the *Constitution Act, 1982*,⁸ a body of literature has emerged that is critical of Canadian constitutional Aboriginal law and skeptical of how constitutional legal protection of treaty and Aboriginal rights can be given effect.⁹

Were the treaties meant to be litigated? My response to this question has varied over time. While courts can offer a forum to find remedies when a treaty has been breached, they are not a holistic truth-finding mechanism. They are entrusted with resolving discrete legal questions rather than uncovering the complete understanding of treaties. Given that treaties are living, breathing documents built on the foundations of indigenous laws, courts may not be the ultimate forum for treaty interpretation.¹⁰ There is a lot of work to do outside the courts. First, we need to be clear about our understandings of treaties, and we need to communicate these understandings to our partners. All parties need to understand the culture and the language of the treaty. And as I suggest later in this article, we all need to understand the indigenous laws that were integral to treaty making. By illustrating how Anishinabe *inaakonigewin* (law) was relied upon in the negotiation of Treaty One, we can see how the same words can have different legal significance to different parties. It also shows that beyond words, actions and inactions can have legal significance for the parties, regardless of whether this significance is perceived or shared by the other party.

The Stone Fort Treaty: Treaty One 1871

I asked Mishomis to tell me about the story of Treaty: the whole thing, right from the beginning. And he started with: “When the Creator lowered us here . . . the Anishinaabe.” At his first pause I said that I wanted to hear the Treaty story, not the Creation story. He looked at me with his smiling eyes and said: “This is the beginning of the Treaty story,” and he carried on.

Treaty One was negotiated over nine days in the summer of 1871 at the Hudson Bay Company (HBC) post of Lower Fort Garry, known to many as the Stone Fort.¹¹ The

8. *Constitution Act, supra* note 2.

9. See, for example, the work of Michael Asch, Sa’ke’j Henderson, Patrick Macklem, Kent McNeil, Patricia Monture, Brian Slattery, Mark Walters, and so on.

10. James (Sa’ke’j) Youngblood Henderson, *Treaty Rights in the Constitution of Canada* (Toronto: Thomson Canada, 2007) at 34. Sa’ke’j Henderson argues that “[t]he shared meaning of a specific Treaty relation can be found in understanding and interpreting the wording of a Treaty text from each language. Each category in the Treaty text is embedded with competing historical and legal context as well as the shared intent and purposes of the Treaty parties. This makes finding a clear understanding of the Treaty text challenging.”

11. Many Anishinaabe still refer to the treaty as the Stone Fort Treaty. For ease of understanding, I use the term “Treaty One,” although some of my citations or references may also reference the Stone Fort Treaty.

treaty agreement¹² between the Crown and the Anishinaabe¹³ people of southern Manitoba effectively opened up the west to settlement and expansion. Since the making of Treaty One in 1871, the Anishinaabe and the Crown have disputed the terms, understandings, and obligations that arose out of the treaty. The Crown continues to rely on the written text of the treaty that purports to “give up” the land. The Anishinaabe’s oral version of the treaty relates a promise to share in the land and resources with the settlers.

What transpired over the nine days of negotiations is the subject of some controversy. The record is patchy, and there were disputes during the early implementation of Treaty One because some of the promises were not included in the treaty text.¹⁴ In addition, disputes over the regulation of, and access to, natural resources arose almost immediately and continue to this day.¹⁵ One hundred and forty years later, treaty implementation continues to be the subject of litigation and political tension. The Anishinaabe have disputed that Treaty One is a surrender of their traditional territory, almost since the time pen touched paper.¹⁶ According to the written text of Treaty One, the Anishinaabe of southern Manitoba agreed to “cede, release, surrender and yield up” land (the geographic boundaries of which are

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12. I note also there is no word in the Anishinaabemowin language that I know of that means “treaty,” although some expressions used to refer to a treaty have been communicated to me, including *Tibamagaywin* (an agreement of exchange) (Dave Courchene, personal communication (24 October 2011)) and *Dibamahdiiwin* (Irene Linklater, “Treaty Reconciliation: Kiiway-Dibamahdiiwin” (Paper delivered at the Canadian Bar Association Aboriginal Law Conference, Winnipeg, 28 April 2011) [unpublished]). *Agooiidiwin* (bring together), Harry Bone, personal communication (20 August 2013).
 13. The word Anishinaabe means “the people” in the Anishinaabemowin language. The Anishinaabe consist of three nation groups: the Ottawa, Potawatomi, and Ojibway (Ojibwa, Ojibwe). The Ojibway are also known as the Chippewa (mostly in the United States) or the Saulteaux (a name given to the Ojibway settled near the rapids in Sault Ste Marie). In Manitoba, the Ojibway generally refer to themselves as either Anishinaabe or Ojibway. I will employ the term Anishinaabe. See Charles Bishop, *The Northern Ojibwa and the Fur Trade: An Historical and Ecological Study* (Toronto: Holt, Rinehart and Winston of Canada, 1974); Laura Peers, *The Ojibwa of Western Canada: 1780 to 1870* (Winnipeg: University of Manitoba Press, 1994) at xv-xviii.
 14. Some of these “outside promises” were added to the treaty in 1875.
 15. Although I use the term “natural resources,” I must note that, in the Anishinaabe world view and in particular in the normative relationship between the Anishinaabe and the land, animals, plants, trees, rocks, and other “natural resources,” such “resources” are considered to be living beings to whom the Anishinaabe are related through systems of kinship.
 16. There is debate in the context of historic treaties generally as to whether the “X” signature marks on the treaty documents were actually made by the indigenous “signatories.” The practice of marking an X on the treaty was a fairly recent practice, and many of the Anishinaabe in the east had signed their treaties with totemic marks. Also, many of the same bands that entered into Treaty One had made the Selkirk Treaty some fifty years earlier, employing their totemic marks to indicate their territory and adherence to the treaty. See Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories including the Negotiations on Which They Were Based* (Toronto and Saskatoon: Belfords, Clarke and Company and Fifth House, 1991) at 298. I note also that the Anishinaabe names of all of the chiefs who are listed in the written version of Treaty One have bird names. It is possible that the Anishinaabe treaty negotiators may have been of the bird clan and that their role in the negotiations related to the bird clan’s responsibilities of leadership and ability to speak on behalf of the group.

described in the treaty) in exchange for 160 acres of reserve land per family of five for farming, an annuity payment of \$3 per person,¹⁷ schools, and farm tools. The chiefs bound “themselves and their people strictly to observe this treaty and to maintain perpetual peace between themselves and Her Majesty’s white subjects, and not to interfere with the property or in any way molest the persons of Her Majesty’s white or other subjects.”¹⁸

One of the witnesses to the Treaty One negotiations, former Toronto *Globe* reporter Molyneux St. John, wrote to Deputy Superintendent of Indian Affairs William Spragge two years following the negotiations, expressing the imperfect understanding between the Commissioner and the Indians about what had been negotiated into the treaty:

There is no difference of sentiment amongst them [the Indians] on this point however remote from one another, their demands and assertions are alike; in every case the cry has been the same and there is not a shadow of doubt that when they left the Grand Council at the Stone Fort, they were firmly impressed with the idea that the demands which they had made had been with a few exceptions, granted . . . When Treaty One was under negotiation the spokesmen of the several Indian Bands enumerated the gifts and benevolence which they required from Her Majesty’s Representative in return for the surrender of the Indian Country. Some of these were accorded; some refused but in the natural desire to conclude the Treaty, His Excellency the Lieutenant Governor and Mr. Commissioner Simpson assumed, as it afterwards proved too hastily that their distinctions and decisions were understood and accepted by the Indians . . . So the Treaty was signed, the Commissioner meaning one thing, the Indians meaning the other.¹⁹

While the Crown has generally proceeded on the basis that Treaty One was a surrender of land, the record of the negotiations shows that, from the Anishinaabe perspective, the substantive agreement was to enter into a relationship of mutual assistance and care, in which land was to be shared with the white settlers. According to oral accounts of the treaty and supported in the written record of the negotiations, the chiefs, on behalf of their people, entered into an agreement with the Crown in order to ensure *mino-bimaadiziwin* (good life) for themselves, their children, generations to come, and all people.²⁰ Elder Elmer Courchene explains that

17. This amount was increased to \$5 per person per year in 1875.

18. *Treaty No 1, 1871* (Ottawa: Edmond Cloutier, Queen’s Printer and Controller of Stationery, 1957) [*Treaty One*].

19. Molyneux St John to William Spragge (24 February 1873) Library and Archives Canada, RG10, vol 3598, file 1447, C10, 104 [emphasis added].

20. The Anishinaabe are taught to seek out *mino-bimaadiziwin* (good life). This is a multi-layered teaching that relates the proper ways to conduct oneself as an Anishinaabe person. Leanne Simpson explains *mino-bimaadiziwin* as “a way of ensuring human beings live in balance with the

our “ancestors entered into sacred treaties to protect our land, our languages and our culture. They also agreed to share this land and its resources with all newcomers.”²¹ They knew that white settlers were coming into the territory and that their use of the land would be impacted by settlement and agriculture.

Many arguments have been suggested that would effectively set aside the treaty, including that the treaties were invalid contracts. The Canadian law of treaty interpretation has dismissed these approaches. Similarly, indigenous laws have forbidden the treaties from being set aside.

Acting in Relationship

“I love everyone” is what Mishomis would always say. No matter who I brought to his house or who was along for a car ride, he would tell them that he loved them. When I asked him why he loved everyone so much he said simply “bimaadiziwin—that is life, I am happy to live and therefore I love everyone.”

Treaties are solemn agreements between peoples. In order to interpret and implement a treaty, we look to its spirit and intent and consider what was contemplated by the parties at the time the treaty was negotiated. Both parties’ understandings of the treaty need to be taken into account in its interpretation. While courts have set out to find a “common understanding”²² between the parties, one cannot assume that the parties shared their understandings of the treaty or that they came to a “common understanding” of it. Even if a “common understanding” of a treaty existed, it might have been limited to an agreement to share the land—and it might have been that each party had a different understanding of what sharing the land actually entailed.

According to the first Treaty Commissioner for Manitoba, Dennis White Bird, there are two possible understandings of treaty. One can look at the written text and the legal context. This perspective often results in limiting the terms of the treaty. Alternatively, one can consider indigenous understandings that are based on custom, transfer of knowledge, oral history, sacred laws, or “in terms of capturing the agreement itself.”²³ He explains that treaties need to be interpreted as living

natural world, their family, their clan, and their nation and it is carried out through the Seven Grandfather teachings, embedded in the social and political structures of the Nishnaabeg.” See Leanne Simpson, “Looking after Gdoo-naaganinaa: Precolonial Nishnaabeg Diplomatic and Treaty Relationships” (2008) 23:2 *Wicazo Sa Review* 29 at 32.

21. Elmer Courchene, “Share the Land,” Treaty Relations Commission of Manitoba <<http://www.trcm.ca/learning.php>>.
22. *R v White and Bob* (1964), 50 DLR (2d) 613, aff’d [1965] SCR vi, 52 DLR (2d) 481 at 648-9, confirmed in *Simon v The Queen*, [1985] 2 SCR 387 at para 49 and in *R v Sioui*, [1990] 1 SCR 1025 at 1035..
23. Former Manitoba Treaty Relations Commissioner Dennis White Bird, “What Is the TRCM?” Treaty Relations Commission of Manitoba <<http://www.trcm.ca/learning.php>>.

documents: “These are very much living treaties—they live from one generation to the next . . . capturing the life of the Treaty.”²⁴ To understand what was negotiated at the time of the treaty, and to construct what it should mean today, requires an independent understanding of the perspectives that the parties brought to the treaty.²⁵ This view includes an understanding of the normative values and laws of the indigenous people who made the treaty.

I suggest that we may not need to entirely reject Western methods for interpreting treaties but that these methods must stand alongside indigenous interpretation principles, which include assessing the indigenous legal foundations on which treaties were made. It is not acceptable to consider the subsequent interpretation and implementation of the treaty only in terms of Canadian common law. The Anishinaabe laws underlying the negotiations and the subsequent formation of Treaty One must be recognized and considered in the interpretation and implementation of the treaty.²⁶ This perspective has, to date, been generally disregarded by the Crown and courts. According to John Borrows,

[w]e do not have to abandon *law* to overcome past injustices . . . we only have to relinquish those *interpretations of law* that are discriminatory . . . Working out the fuller implications of treaties between Indigenous peoples and the Crown is a way out of the impasse created by the rejection of other legal theories. Treaties have the potential to build Canada on more solid ground.²⁷

There is an expanding view that indigenous legal traditions should be given weight, not only by virtue of their recognition as part of Canadian common law but also *proprio vigore* (of their own force).²⁸ Some indigenous scholars and practitioners have approached treaty re-interpretation from an indigenous legal perspective,²⁹

24. *Ibid.*

25. Leanne Simpson calls for this type of work: “Destabilizing and decolonizing the concept of ‘treaty’ then becomes paramount to appreciate what our ancestors intended to happen when those very first agreements and relationships were established, and to explore the relevance of Indigenous views of ‘treaty’ and ‘treaty relationships’ in contemporary times.” Simpson, *supra* note 20 at 31.

26. Support for this work is found in Arthur Ray, Jim Miller, and Frank Tough, *Bounty and Benevolence: A History of Saskatchewan Treaties* (Montreal and Kingston: McGill-Queen’s University Press, 2000) at 69 (“[t]reaty-making involved an unequal meeting of two property systems. Unfortunately, this aspect of the process has not received much attention, and it is poorly understood, in part because the terms describing ownership, land use, and occupancy are used in an imprecise way in the historical records and scholarly literature. Furthermore, conflicting scholarly theories about the nature of Aboriginal tenure systems add to the confusion”). See also John Borrows, *Canada’s Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 20-1.

27. Borrows, *ibid* at 20.

28. See especially John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002); Borrows, *supra* note 26.

29. See, for example, John Borrows, “Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government” in Michael Asch, ed, *Aboriginal and Treaty Rights in Canada:*

referring to treaties as a vision of law and peace within a burgeoning system of intercultural diplomacy,³⁰ indigenous people viewed the treaty as an agreement to adopt settlers and to enter into a kinship relationship of respect, responsibility, and renewal founded on trust and maintained by the parties.³¹ Defined by an obligation to share in the bounty of Mother Earth, the treaty is considered to be a covenant³² that cannot be breached and cannot be voided, regardless of action or inaction: “The Creator’s law does not allow for any breach whatsoever. Failure to comply had consequences, and no matter how severe the failure, the promise never becomes null and void; the consequences just keep getting greater and greater.”³³

In particular, looking to Anishinaabe procedural and substantive norms helps us to better understand the Anishinaabe perspective about what was agreed to in the treaty negotiations. It may also help us understand where the parties differ in view and where there is potential for *rapprochement*, based on respect for varying understandings. In essence, we need not seek out perfect common understandings nor displace either side’s perspective. Accepting that there are varying and possibly competing interpretations may allow for movement towards potential implementation solutions.

Understanding Each Other

I told Mishomis that I wanted to understand Anishinaabe inaaakonigewin; Anishinaabe law. How long would it take? Would he be my teacher? He explained that he couldn’t teach me all of it, that others would play

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- Essays on Law, Equality, and Respect for Difference* (Vancouver: UBC Press, 1997) 155; Sharon Venne, “Understanding Treaty 6: An Indigenous Perspective” in Asch, *ibid*, 173.
30. Robert A Williams Jr, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800* (New York: Routledge, 1999) at 12.
31. Heidi Kiiwetinepinesiik Stark, “Respect, Responsibility and Renewal: The Foundations of Anishinaabe Treaty Making with the United States and Canada” (2010) 34:2 *American Indian Culture and Research Journal* 145 at 156. Harold Johnson, *Two Families: Treaties and Government* (Saskatoon, SK: Purich, 2007).
32. See also Office of the Treaty Commissioner, *Treaty Implementation: Fulfilling the Covenant* (Saskatoon: Office of the Treaty Commissioner, 2007) at 4-5 (“[t]he treaties with the Crown are sacred covenants, made among three parties—the First Nations and an undivided Crown, as sovereign nations, and the Creator. In their view, a permanent relationship of mutual respect and sharing was thus established. The unwavering conviction of the Treaty First Nations is that the treaties include not only the written texts recorded by the Crown and the oral agreements made at the time of each treaty, but also their very spirit and intent, and that the treaties govern every aspect of their relationship with the Crown, and, through the Crown, with all non-First Nations peoples. In this view, the treaties are holistic in their relevance to all dealings between the Parties and have political, legal and sacred status. It is through these agreements with the Crown that the First Nations gave their consent to sharing their territories with newcomers from overseas and their descendants, and that a unique and eternal relationship between the First Nations and the Crown was forged”).
33. Johnson, *supra* note 31 at 29.

a big role. I wondered if there would be limits placed on what I could learn because I was a woman, I was young, I was a lawyer. He told me to start on the land (aki)—to look at the land and to ask it some questions—this is where I would find out most of what I needed to know about law. Then he said: “Maadingwaam nindaanis. Sleep well my girl.” It was time to dream.

There is relatively little published material on the Anishinaabe perspective of the Treaty One negotiation. More importantly, what has been published does not generally take into account the Anishinaabe law that informed the treaty, even if it seeks to illustrate the Anishinaabe perspectives on the treaty. In my research, I started from the premise that Anishinaabe law is all about relationships—relationships among and between ourselves and relationships with other animate beings.³⁴ These relationships give rise to rights, obligations, and responsibilities.³⁵ My understanding of Anishinaabe law (or Anishinaabe *inaakonigewin*) is drawn primarily from secondary sources, including written cultural, ethnographic, and ethnohistorical evidence. This evidence includes Anishinaabe *emic* scholarship, including Basil Johnston’s collection of writings and recent scholarly works by Anishinaabe scholars such as John Borrows, Darlene Johnston, and Leanne Simpson.³⁶ I also relied on ethnographic materials from the nineteenth century (from the period just prior to the Treaty One negotiations) produced by Johann Georg Kohl, William Warren, and Frances Densmore as well as A. Irving Hallowell’s work with the Northern Ojibwe (Anishinaabe) in the 1930s.³⁷ Some references are drawn from the personal account of John Tanner, who lived among the Anishinaabe in the early nineteenth century.³⁸

In some cases, I rely on personal understandings that have been communicated to me by Anishinaabe Elders. Researching current Anishinaabe normative values

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34. John Borrows, *Drawing Out Law: A Spirit’s Guide* (Toronto: University of Toronto Press, 2010) at 8.
 35. Rights, obligations, and responsibilities are exercised both individually and collectively by the Anishinaabe. See, for example, Aimée Craft, *Breathing Life into the Stone Fort Treaty* (LLM thesis, University of Victoria, 2011) chapter 3 [unpublished].
 36. Basil Johnston, *Honour Earth Mother: Mino-Audjaudauh Mizzu-Kummik-Quae* (Cape Croker, ON: Kegegonce Press, 2003); Basil Johnston, *Ojibway Heritage* (Toronto: McClelland and Stewart, 1976); Borrows, *supra* note 26; Borrows, *supra* note 28; Borrows, *supra* note 29; Darlene Johnston, *Respecting and Protecting the Sacred* (Ipperwash, ON: Ministry of the Attorney General: Ipperwash Inquiry, 2006); Simpson, *supra* note 20.
 37. Johann Georg Kohl, *Kitchi-Gami: Life among the Lake Superior Ojibway* (St Paul, MN: Minnesota Historical Society Press, 1985); William W Warren, *History of the Ojibway People*, 2nd edition (St Paul, MN: Minnesota Historical Society Press, 2009); Frances Densmore, *Chippewa Customs* (Washington, DC: United States Government Printing Office, 1929). A. Irving Hallowell, *Contributions to Ojibwe Studies: Essays, 1934-1972*, edited and with introductions by Jennifer SH Brown and Susan Elaine Gray (Lincoln and London: University of Nebraska Press, 2010) and Williams Barrens, as told to A Irving Hallowell, *Memories, Myths and Dreams of an Ojibwe Leader* (Montreal and Kingston: McGill-Queen’s University Press, 2009).
 38. John Tanner, Edwin James, and Charles Daudert, *The Narrative of John Tanner “The Falcon”: His Captivity—His Thirty Years with the Indians* (Kalamazoo: Hansa-Hewlett, 2009).

allows us to access the potential interpretations of the Anishinaabe normative values, legal principles, or Anishinaabe *inaakonigewin* (law) that influenced the making of the treaty. It also helps consider what the Anishinaabe understood the treaty to mean in substance.

As mentioned earlier, different understandings can result in and from different consequences and normative behaviour. Proper treaty interpretation requires that the interpreter take into account the different understandings that may be associated with the same event or phenomenon. Basil Johnston finds that in the Anishinaabe worldview, differences of opinion are not necessarily confrontational or oppositional but, rather, are explained by saying that “Kitchi-Manitou has given me a different understanding.”³⁹ One of the keys to unlocking the Anishinaabe understanding of Treaty One is to canvass how Anishinaabe laws and normative expectations influenced how and under what terms the treaty was made.⁴⁰ While the written record of the treaty negotiations, including primarily the Crown negotiator’s speeches and the newspaper accounts, have often been canvassed to reflect the intent and perspective of the Crown in the Treaty One negotiations, few attempts have been made to understand the Anishinaabe perspective of the Treaty One negotiations, with the exception of some documented oral history.⁴¹

Considering the written and oral record from the Anishinaabe perspective and, in particular, by considering Anishinaabe procedural and substantive norms, one can draw out the potential differing or competing understandings of what was agreed upon at the time of treaty, based on divergent perspectives and systems of law. The reliance of the parties on Anishinaabe procedural norms during treaty negotiations allowed substantive obligations and responsibilities to inform the Anishinaabe understanding of the treaty. In the context of Treaty One, the use of Anishinaabe procedural laws helped secure the negotiations and open the door to a “gathering of spirit.”⁴² The application of certain Anishinaabe protocols or procedural laws have resulted in substantive obligations. For example, procedural law was invoked to confirm legal principles of non-interference in each other’s affairs, respect for each other’s territory and jurisdiction, and commitment to the sacred nature of agreements made in ceremony.⁴³ In addition, substantive elements of Anishinaabe *inaakonigewin* (law) formed the understanding of what was being negotiated at the

39. Johnston, *Honour Earth Mother*, *supra* note 36 at 148.

40. It also requires a consideration of past practices of treaty making between indigenous nations, with fur traders and with the Crown, prior to the negotiation of Treaty One. See, for example, Aimée Craft, *Breathing Life into the Stone Fort Treaty: An Anishinaabe Understanding of Treaty One* (Saskatoon: Purich, 2013) ch 1.

41. See, for example, Doris Pratt et al, *Untuwe Pi Kin He—Who We Are: Treaty Elders’ Teachings*, volume 1 (Winnipeg: Treaty Relations Commission of Manitoba and Assembly of Manitoba Chiefs, 2011).

42. Charlie Nelson, personal communication (21 July 2011).

43. Craft, *supra* note 40 (considers some of the key procedural and substantive norms that applied to the making of Treaty One).

time of the treaty. To the Anishinaabe, the treaty was a sacred relationship between them and the Crown, involving the Creator. The treaty allowed for a peaceful and mutually beneficial sharing of the land between the Anishinaabe and the white settlers. It was negotiated on the basis of kinship and on a basis of equality among all people.

If we accept that canvassing different legal understandings is an important part of understanding the roots of different perspectives about the treaties, how do we then get to understand what the law was at the time of treaty making? Researching the past is not as simple as researching the records of a particular time period. It requires complex understandings on how to research the historical record, written and oral, and question its authenticity and reliability. The researcher needs to look beyond the time frame and understand what cultural, geographical, and contextual influences may be relevant. Further, relying on primary sources requires the researcher to acknowledge perceived and actual bias, take into consideration the potential for misunderstanding and make independent and cross-referenced assessments of the reliability and accuracy of the sources. It then requires the researcher to blend what was historically documented with current and existing understandings that are rooted in an indigenous worldview and supported by indigenous knowledge keepers and informants.

One approach to researching the Anishinaabe perspective is to triangulate between the written record; oral histories; and indigenous knowledge, norms, and customs. This is the method I employed in attempting to understand the procedural and substantive Anishinaabe *inaakonigwein* (law) that was used to make Treaty One.

Using the written accounts of the Commissioner's speeches,⁴⁴ the written summaries of the proceedings recorded by third parties, treaty-era correspondence from Chiefs to Crown officials,⁴⁵ historical newspaper accounts,⁴⁶ minutes of

44. See, for example, Morris, *supra* note 16 at 11 (according to Morris, the goal of his report was to "preserve, as far as practicable, a record of the negotiations on which they were based, and to present to the many in the Dominion and elsewhere, who take a deep interest in these sons of the forest and the plain, a view of their habits of thought and speech, as thereby presented, and to suggest the possibility, nay, the certainty, of a hopeful future for them." Morris's book includes important correspondence from before and after the negotiations as well as accounts of his discussions with Indian Chiefs, which add to the interpretation of the treaty.

45. Post-treaty making, correspondence from Anishinaabe leaders highlighted their understanding of the terms of the treaty. Many of the Chiefs wrote or met with government officials to express their dissatisfaction with outside attempts to regulate their natural resource use. Complaints arose in relation to Treaties One and Two for the lack of implementation of the "outside promises," which had been recorded in a memorandum attached to the Commissioner's treaty report but were not implemented. Protestations and complaints were made by the Chiefs and in some cases they refused to take annuity payments or to select reserves.

46. See, for example, *The Manitoban* (1871) Provincial Archives of Manitoba (as transcribed by the Manitoba Treaty and Aboriginal Rights Research Centre (TARR), 1970) (the newspaper account of the Treaty One negotiations (July-August 1871). The *Manitoban* account, as transcribed, consists of nearly forty pages of text and was originally published in four consecutive weekend editions of the paper (22 July 1871, 29 July 1871, 5 August 1871, and 12 August 1871) [*The*

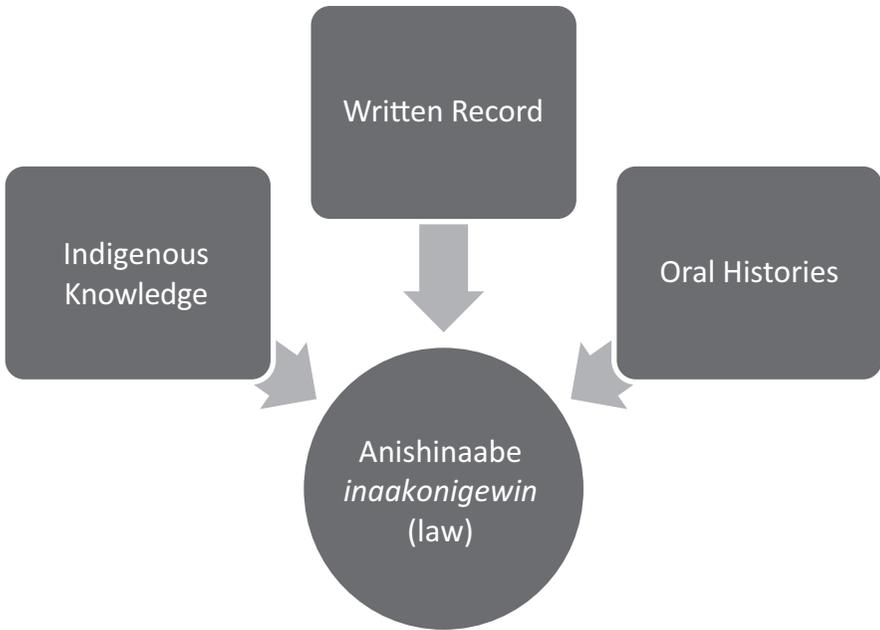


Figure 1: Triangulation Method for Treaty Interpretation

pre- and post-treaty meetings, and recorded oral history allows us to start to gather an impression of what was being negotiated at the time of the treaty.

Of course, reliance on any of the versions of the negotiations must take into account the specific challenges of bilingual and bicultural translation.⁴⁷ Other limitations include gaps in the records resulting from the priority and weight placed on particular events or words and the particular perspective, background, and biases of each writer. There is a gap in the written resources, which are written primarily from a colonialist's perspective. As Robert Williams, Jr., describes in his work *Linking Arms Together*, there are

Manitoban]. For ease of reference, I will be referring in the notes to both the date of the publication and also the page number of the TARR transcription.

47. In some cases, translators acted as important intermediaries in securing the treaties. For example, James McKay, a translator in Treaties One through Six negotiations was recognized by the Crown treaty negotiators as being influential and persuasive in the making of the early-numbered treaties. See JR Miller, *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada* (Toronto: University of Toronto Press, 2009) at 162. Prior to assisting with the negotiation of the numbered treaties, McKay had been employed by the Hudson Bay Company and had become a successful business man in the Red River settlement.

only partial fragments and signs of indigenous North American legal traditions at work in the history of Indian responses to Western colonial domination. Because the conqueror writes history in the colonial situation, the cultural archives maintained by the conquering society frequently neglect to record or adequately document the many different and distinct visions of law that have contributed to the traditions of resistance forged by the colonized peoples.⁴⁸

For example, the *Manitoban* account of Treaty One, although somewhat helpful in relaying parts of the Indian Chiefs' speeches, perspectives, and negotiating positions, betrays the reporter's European/colonial perspective and illustrates the difficulties that arise when using interpreters in bilingual and bicultural negotiation.⁴⁹ Thus, what has been recorded or "transcribed" in the *Manitoban* is a biased account of what was said and seen through the lenses of the interpreters and the reporter. Unfortunately, summaries of the Indian Chiefs' speeches are condensed into nondescript passages or portrayed as insignificant, which leads the reader to question the editorial decisions that were made. For example,

[a] good deal of parley ensued, in the course of which the Indians made new and extravagant demands, while the Commissioner and His Excellency reasoned with them, and refused to give way any more . . . Another meeting and more speechifying—the Indians continuing their extravagant demands as before.⁵⁰

Nonetheless, this documented account of the Treaty helps uncover some of the aspects of the negotiations. In particular, the descriptions of some of the protocols, actions, and words that were part of the Treaty One negotiations correspond to oral accounts of the negotiations.

My analysis also relies on the oral histories of Treaty One.⁵¹ Anishinaabe understandings are generally not written⁵² but, rather, recorded through oral transmission.⁵³ Historically, understandings, stories, and laws were physically recorded via birch bark scrolls, wampum belts, pictographs, and petroforms. In some cases, these interpretations have been transmitted to me personally, and in other cases it has

48. Williams, *supra* note 30 at 12.

49. See, for example, DJ Hall, "'A Serene Atmosphere?' Treaty 1 Revisited" (1984) 4:2 *Canadian Journal of Native Studies* 321. Hall lists all of the speakers, both on the Crown and Anishinaabe side of the negotiations, as notes to the Appendix.

50. *The Manitoban*, *supra* note 46 at 37.

51. Ray, Miller, and Tough, *supra* note 26 at 83 ("[t]he oral version of a treaty, features of which are verified by a variety of extrinsic written records, is crucial in understanding the contemporary meaning of treaty rights").

52. Note that exceptions exist and are becoming more common. See, for example, Pratt et al, *supra* note 41.

53. See, for example, Johnston, *Ojibway Heritage*, *supra* note 36; Edward Benton-Banai, *The Mishomis Book: The Voice of the Ojibway* (Minneapolis, MN: University of Minnesota Press, 2010).

been audio or video recorded and/or published in written form, including a recent volume on treaty perspectives, as told by Manitoba Elders.⁵⁴ These historical accounts, both written and oral, coupled with Anishinaabe worldviews and ethnographies, have allowed me to better draw out the Anishinaabe perspective, using ethnohistorical methods.⁵⁵

In order to consider the Anishinaabe understandings of treaties from the perspective of Anishinaabe *inaakonigewin* (law), particular language is essential: “Language includes ways of knowing, ways of socializing, and nonverbal communication . . . Indigenous languages have spirits that can be known through the people who understand them, and renewing and rebuilding from within the peoples is itself the process of coming to know.”⁵⁶ Language is an important part of the culture and interaction. The individual, outside of the social and collective, is incapable of creating law—it is necessarily interactive and culturally rooted. Jeremy Webber explicitly considers the cultural underpinnings of law and suggests that the language that we use to conceptualize and analyze the normative content is itself infused with normative content.⁵⁷ Webber’s reflection is particularly important in the context of indigenous legal systems because of the prevailing notion that indigenous laws are contained in language. Language itself (including translations) impacts on understandings and legal commitments.

Cultural, social, and linguistic perspectives are critical to the analysis of the Treaty One negotiations. They help illustrate the application of different legal systems, the overlap between them, and the potential variations in terms of the legal significance of some of the elements of the treaty negotiations. One should attempt to understand the concepts as articulated in their original language and to convey Anishinaabe principles using *Anishinaabemowin* words.⁵⁸ Even the use of English words must be pondered and carefully chosen. For example, I used the expressions “making” or “negotiating” the treaty rather than “signing” the treaty, which more accurately reflects the solemnity and spirit of the agreement that was negotiated between the Anishinaabe and the Crown.⁵⁹

54. Pratt et al, *supra* note 41.

55. See generally the work of scholars such as Jennifer SH Brown, Laura Peers, Julie Cruikshank, and particularly Jennifer SH Brown and Elizabeth Vibert, eds, *Reading beyond Words: Contexts for Native History*, 2nd edition (Peterborough, ON: Broadview Press, 2003).

56. Marie Battiste, “Research Ethics for Protecting Indigenous Knowledge and Heritage: Institutional and Researcher Responsibilities” in Norman K Denzin, Yvonna S Lincoln, and Linda Tuhiwai Smith, eds, *Handbook of Critical and Indigenous Methodologies* (Thousand Oaks, CA: Sage, 2008) 497 at 504.

57. Jeremy Webber, “The Grammar of Customary Law” (2009) 54 McGill Law Journal 579 at 605.

58. My mother tongue is French. I am fluent in English and have basic Spanish knowledge. I am also a student of the Anishinaabemowin language. My understanding is much better than my ability to speak, but I consider it a lifelong project to improve and enhance my knowledge and use of the language and all the insight and perspective that comes with it.

59. D’Arcy Linklater, “After Treaty,” Treaty Relations Commission of Manitoba <<http://www.trcm.ca/learning.php>>.

In addition to particular attention to language, I considered the actions (and in-actions) of the parties at the time of the treaty. In his legal ethnohistory methodology, Mark Walters advocates for the consideration of symbols and representations particular to a context.⁶⁰ Particular attention must be paid to descriptions of who spoke at the negotiations, details about their manner and dress as well as other factors that may have particular significance. For example, Chief Ayee-ta-pe-pe-tung, “a tall old brave, who was naked all but the breach-cloth, and had his body smeared with white earth . . . spoke well, and in a very talkative and vehement manner, constantly flourishing an eagle’s wing which he holds.”⁶¹ Chief Ayee-ta-pe-pe-tung spoke to the Queen’s negotiators about his “ownership” and his view that rather than owning it, he was *made of the land*.⁶² Other Chiefs relayed their view that they had a sacred responsibility towards the land and that the future of the land was intimately linked to the future of Anishinaabe children: “The land cannot speak for itself. We have to speak for it; and want to know fully how you are going to treat our children.”⁶³ Chief Ayee-ta-pe-pe-tung explained that his land was a gift from creation and that he could not give an answer, as the future of his grandchildren was dark, based on the proposal before him. The description of how Chief Ayee-ta-pe-pe-tung was dressed, how he spoke, and the way he relayed certain concepts allows us to better understand what was being communicated at the negotiations.

The use of certain common terms in the negotiations is a good starting point for understanding how the same words can carry different normative consequences during a process where the parties were operating with the knowledge of two different legal systems. For example, the use of the term “mother” to refer to the Queen was employed extensively in the Treaty One negotiations. In order to understand the value and meaning attributed to this word by each of the parties, I conducted interviews in the context of a gathering on women’s teachings held at Sagkeeng First Nation in Manitoba in June 2011. This empirical research consisted of a series of interviews with Anishinaabe Elders and knowledge keepers that focused on Anishinaabe normative obligations of mothers towards children. The interviews canvassed a range of obligations and responsibilities of the mother as a parent. The purpose of the research was to better understand the normative meanings—rights, obligations, and responsibilities associated with the kinship relationship between a child and mother. The research drew on the written record of the negotiations and the extensive references to the Queen as a mother by both sides. Another key component of the analysis was to canvass the oral history of the treaty to confirm that the Queen was referred to in this kinship terminology at the treaty

60. Mark D Walters, “‘Your Sovereign and Our Father’: The Imperial Crown and the Idea of Legal-Ethnohistory” in Shaunnagh Dorsett and Ian Hunters, eds, *Law and Politics in British Colonial Thought: Transpositions of Empire* (New York: Palgrave MacMillan, 2010) 91.

61. *The Manitoban*, *supra* note 46 at 19.

62. *Ibid* at 25.

63. *Ibid* at 35.

negotiations.⁶⁴ A third component of the analysis was to refer to indigenous forms of kinship relationships and to consider the particular implications of mother and child kinship from an Anishinaabe perspective.

Using these sources and methods of analysis showed that while both the Commissioners and the Anishinaabe referred extensively to the Queen as a mother, they may not have intended the same thing by their same words. The Commissioners understanding of normative values or law related to that kinship relationship was rooted in British common law. Different normative behaviour would have been assigned to the Queen by the Anishinaabe, based on Anishinaabe norms and laws. The triangulation between the written record, oral history and indigenous knowledge applied in the context of Treaty One shows that the Queen, as a mother, would be expected to treat the Anishinaabe with kindness, listen to their needs and requests, treat all of her children equally, and help them lead *mino-bimaadiziwin*.⁶⁵ The expectation that she would agree to Chief Shee-ship's request to "grant me wherewith to make my living" and her express wish to have her Red children "happy, contented . . . to live in comfort" met the normative expectations of the relationship from an Anishinaabe perspective. This statement significantly departs from a British common law perspective where children were considered to be the property of parents and unable to exercise autonomy or decision making until the age of majority. Anishinaabe "children were highly respected *people*, valued for their insights, their humour, and their contributions to families and communities at each stage of their lives. Children were seen as Gifts, and parenting was an honour."⁶⁶ The significance of this distinction is directly relevant to considerations of autonomy and sovereignty in the context of treaty implementation.

I expect that many of the hypotheses that I put forward would greatly benefit from additional field work with Treaty One First Nations Elders, oral historians, traditional knowledge informants, and law keepers on the subjects of the treaty and Anishinaabe *inaakonigewin* (law) itself. Further research would include a review of the archival records for the period immediately pre- and post-treaty⁶⁷ as well as more work within the Anishinaabe communities of southern Manitoba to further draw out the oral history accounts of Treaty One.

Just as there are many ways of being indigenous, there are many ways of approaching indigenous legal traditions. I agree with John Borrows that "[w]hen working with Indigenous legal traditions one must take care not to oversimplify

64. For a complete and compelling discussion on the role of oral history in the courts, see Bruce Granville Miller, *Oral History on Trial: Recognizing Aboriginal Narratives in the Courts* (Vancouver: UBC Press, 2011).

65. See note 20 in this article.

66. Leanne Simpson, *Dancing on Our Turtle's Back: Stories of Nishnaabeg Re-Creation, Resurgence and a New Emergence* (Winnipeg: Arbeiter Ring, 2011) at 122-3.

67. French missionary records that existed in relation to the Anishinaabe communities have, to my knowledge, not yet been reviewed in relation to Treaty One.

their character.”⁶⁸ The work described earlier in this article is founded on the assumption that Anishinaabe *inaakonigewin* (law) is culturally and collectively influenced. My goal is to be respectful and considerate of the diversity of opinions on Anishinaabe *inaakonigewin* (law) and to consider, from my perspective and my teachings, the things that I understand to be law. Marie Battiste clearly states that “[t]here is no singular author of Indigenous knowledge and no singular method for understanding its totality.”⁶⁹ I acknowledge that this work was not able to achieve a complete understanding of the Anishinaabe legal perspective, which would require an extensive oral history project of the treaty and Anishinaabe *inaakonigewin* (law). How will that research be done? We come back to the questions of how to research ourselves, how to speak truth, and how to do our work with integrity. We wonder: “have we got it right” and “will we ever know?” Rather than placing a rigid standard of correctness on ourselves, we need to be asking these questions throughout, we need to be checking in with the Elders and our communities,⁷⁰ we need to be following our practices that help us seek guidance, and we need to be humble and do what we can on behalf of the people while not overstepping anyone.

The Past Echoes to Today

I asked Mishomis if our ancestors who made treaty were thinking of us when they negotiated the treaty. He reminded me how Anishinaabe think ahead for the children, grandchildren, great-grandchildren, and beyond that even. Seven generations ahead they would consider. He turned to me and he said: “But you have to remember to think seven generations back when you’re making your decisions. Those ancestors are part of your life today, just like you were a part of their life back then.”

Some may wonder why a perspective rooted in the past is relevant to understanding our treaty obligations today. Countering this idea, Linda Tuhiwai Smith argues that “reclaiming history is a critical and essential aspect of decolonization.”⁷¹ Other indigenous scholars such as Vine Deloria, Taiaike Alfred, and others may question the effectiveness or appropriateness of providing what may be perceived as an “explanation to the other side,” preferring rather to work within our communities to

68. Borrows, *supra* note 26 at 24.

69. Battiste, *supra* note 56 at 500.

70. By communities, I refer to our indigenous communities, our families and extended families, our academic community, our peers, and our Elders. John Borrows, “Address” (Remarks delivered at the Indigenous Peoples and Governance Conference: Breaking Out of Colonialism, Indigenous Peoples and Governance Program, 17-20 April 2012) [unpublished].

71. Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (Dunedin, NZ: University of Otago Press, 1999) at 30.

enhance our understandings of ourselves in order to decolonize.⁷² Leanne Simpson has suggested that although, “[o]n the surface, documenting indigenous knowledge is a seemingly benign way of attempting to recover indigenous knowledge,” she worries about the knowledge being separated from its keeper and protector, translated into English, which limits the interpretation to a language that stems from a different worldview from what is being communicated orally by indigenous people. According to Simpson, the knowledge is “separated from the land, it’s separated from knowledge holders, from the methodologies for transmission that provide the rigour to ensure its proper communication. In short, it’s removed from all of the context and all of the process that provide its meaning.”⁷³

These are important considerations, and they must be balanced with the responsibilities of our generation. Simpson also writes: “[n]ow, nearly two hundred years after surviving an attempted political and cultural genocide, it is the responsibility of my generation to plant and nurture those seeds [of our culture and political systems] and to make our Ancestors proud.”⁷⁴ How do we honour our obligations and responsibilities in a way that maintains their integrity while working with them in order to fulfil our roles, obligations, and responsibilities, however they have been assigned? How do we communicate this knowledge without betraying their intention or allowing them to be distorted or disrespected as they have been in the past and continue to be today? How do we achieve the balance to acquire that knowledge, interpret its meaning, and work within intellectual structures to try to make room for indigenous ways of thinking that are uncompromised and unapologetic? How do we breathe life into our stories? The answers to these questions are not always clear or definitive. They are part of the process.

Based on this way of viewing research, we are then faced with the daunting task of fulfilling our obligations and responsibilities. These obligations and responsibilities are sometimes handed down by our families, other times are a result of our relationships with knowledge holders, and other times are handed down to us in ceremony and in dreams. Some we can talk openly about. Others are for ourselves. These are our gifts—the gifts we are given and the gifts that we carry. Whether their source is hereditary, democratic, or divine, the obligation is sacred. Our gifts inform our methods of understanding and communicating. In essence, our gifts are at the root of our methodology.

72. See Taiaiake Alfred, *Wasáse: Indigenous Pathways of Action and Freedom* (Peterborough, ON: Broadview Press, 2005); Taiaiake Alfred, *Peace, Power and Righteousness: An Indigenous Manifesto*, 2nd edition (Don Mills, ON: Oxford University Press, 2009). See generally the work of Vine Deloria.

73. Leanne Simpson, “Can Traditional Knowledge Survive in the Modern World?” (Ryerson University’s 2008 Ethics Speaker Series, delivered at the Arts and Letters Club, Toronto, 9 March 2008) at 13:43, IC Magazine <<http://intercontinentalcry.org/can-traditional-knowledge-survive-in-the-modern-world/>>.

74. Simpson, *supra* note 66 at 15.

My role and tasks have been set for me. I am to communicate the Anishinaabe story of the treaty—at least as much as possible—or at least I have to try. At times, I think that it may be impossible. Other times I think that I might miss the mark. When I am uncertain, I seek guidance. Some would be surprised at the form in which this guidance comes, while others would know and expect this guidance. The Elders have often shared that Anishinaabekwe (the women) are responsible for the treaty stories. In various ways, I have been tasked with relating the truth about Treaty One. I am learning to embrace the responsibility of the research that was entrusted to me. I am ready to explain the treaty through the lens of Anishinaabe *inaakonigewin* (law). Armed with the gifts I carry, I aim to balance what I have read, what I have been taught by the Elders, what I have learned in ceremony, and what I have yet to learn. There is no doubt that for me, this is the way that I was made to research.

Conclusion

Mishomis, I wish you were here so I could tell you about my bawaadan—my dream. It was about a medicine bag. In my bawaadan, I am responsible for a medicine bag but I know it doesn't belong to me. I struggle to keep its contents from spilling out. Does this represent the responsibility that I feel towards the sacredness of Anishinaabe law and the Treaty? Does it speak to my hesitations to share the knowledge that has been shared so openly with me over the years? I wonder, is the content of the medicine bag better left hidden or is it seeking to come out?

By returning to understandings that may have informed the treaty negotiation, we can serve the dual goal of understanding ourselves better and working towards collectively shedding the baggage of years of conflicting interpretation and implementation. The non-indigenous society's "actions have impeded indigenous peoples' ability to develop and express their distinctive understandings, not least by placing their languages and lands under heavy pressure. There is reason to make space."⁷⁵ Treaties occupy an important political, spiritual, and intellectual space for indigenous people in Canada and in the dialogue between indigenous people and "the rest of Canada." Treaty stories, as told today, relate often to the lack of funding for First Nations, the denial of services such as health and education, and the imposition of ways of life on indigenous people (for example, residential schools). These are the stories that are told in the media and that should concern all Canadian citizens. Simply telling the stories about how the treaty promises have not been fulfilled misses the mark. We often tell these stories in a way that is void of an actual understanding

75. Webber, *supra* note 57 at 616.

about what the treaty is and what it means. The treaty stories that are undertold explain the origin of the treaties; they tell of the particular circumstances that lead to agreements being reached; and they share important insights into the values, norms, principles, and laws of indigenous people.

The treaties are an integral part of the fabric of our Constitution. They form the bedrock foundation of the relationship between the treaty Nations and the government of Canada. It is from the treaties that all things must flow in the treaty relationship. Treaties represent the common intersection both historically and politically between nations. They have created a relationship that is perpetual and unalterable in its foundation principles. The treaties are the basis for a continuous intergovernmental relationship.⁷⁶

In order to interpret and implement treaties as meaningful agreements, different and differing understandings need to be considered and addressed. While the task of implementation may prove challenging, it is a challenge that is firmly rooted in our history, given that many of us have lived in a way that has given meaning to treaties, despite disagreement. It is a pressing Canadian concern to attempt to reconcile Crown and Anishinaabe understandings in order to give effect to the treaty relationship and the spirit and intent of the treaties.

Understanding the treaty requires depth, consideration, and knowledge. To understand the treaty is to know more than the written text. By looking to the Anishinaabe understanding of the treaty they made with the Crown, rooted as it was in procedural and substantive norms derived from Anishinaabe *inaakonigewin* (law), we demonstrate how these norms shaped the Anishinaabe position in ways that were manifest in the treaty negotiations themselves. Although the treaty parties may have understood that they each had differing perspectives, each was guided by its own understandings, including its own legal tradition and jurisdiction, which informed the negotiation of the treaty. Understanding the treaty negotiations and treaty promises in this way shapes and confirms a different or competing understanding of what was agreed to at the time of the treaty.

It is not enough to understand the Crown's objectives and perspectives leading up to the treaty and the historical record surrounding the treaty, recorded from the Crown's standpoint. The political, social, economic, and geographic contexts suggest that multiple rationales and perspectives were at play in the making of Treaty One. Anishinaabe concepts of sharing, kinship, and responsibility towards the land are equally important in understanding the approach to the treaty. A balanced and full understanding of the treaty requires an understanding of the Anishinaabe relationship to the land and the sacred commitment to share—this understanding and this commitment both informed the substance of the treaty relationship.

My approach to treaty research attempts to breathe life into the story of Treaty One. Adopting a framework of considering treaties as resting in indigenous law, I

76. Office of the Treaty Commissioner, *supra* note 32 at vii. See also Henderson, *supra* note 10.

blend historical method (including approaches of cultural history, ethnohistory, and oral history), social and cultural anthropology, and legal interpretation that analyzes primary documents, which helps tell the story of the treaty. I triangulate between the written record, oral history, and indigenous knowledge, norms and customs to glean commonalities that illustrate the application of Anishinaabe *inaakonigewin* to the making of Treaty One. While it is not possible to go back in time to relive the negotiations, there is benefit in understanding how and why the parties negotiated, even if the entire and conclusive substance of this agreement cannot be fully discovered.