

"NO BASIS FOR ARGUMENT":
THE SIGNING OF TREATY NINE
IN NORTHERN ONTARIO, 1905-1906

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To obtain a proper appreciation of Indian Treaties, one should read them in historical context. If the Treaties' provisions are read as symbolic promises of more comprehensive services to be adapted to changing circumstances, they take on a very different meaning than if they are read as plain statements meaning precisely and exactly what they say (Brown and Maguire 1979: 33).

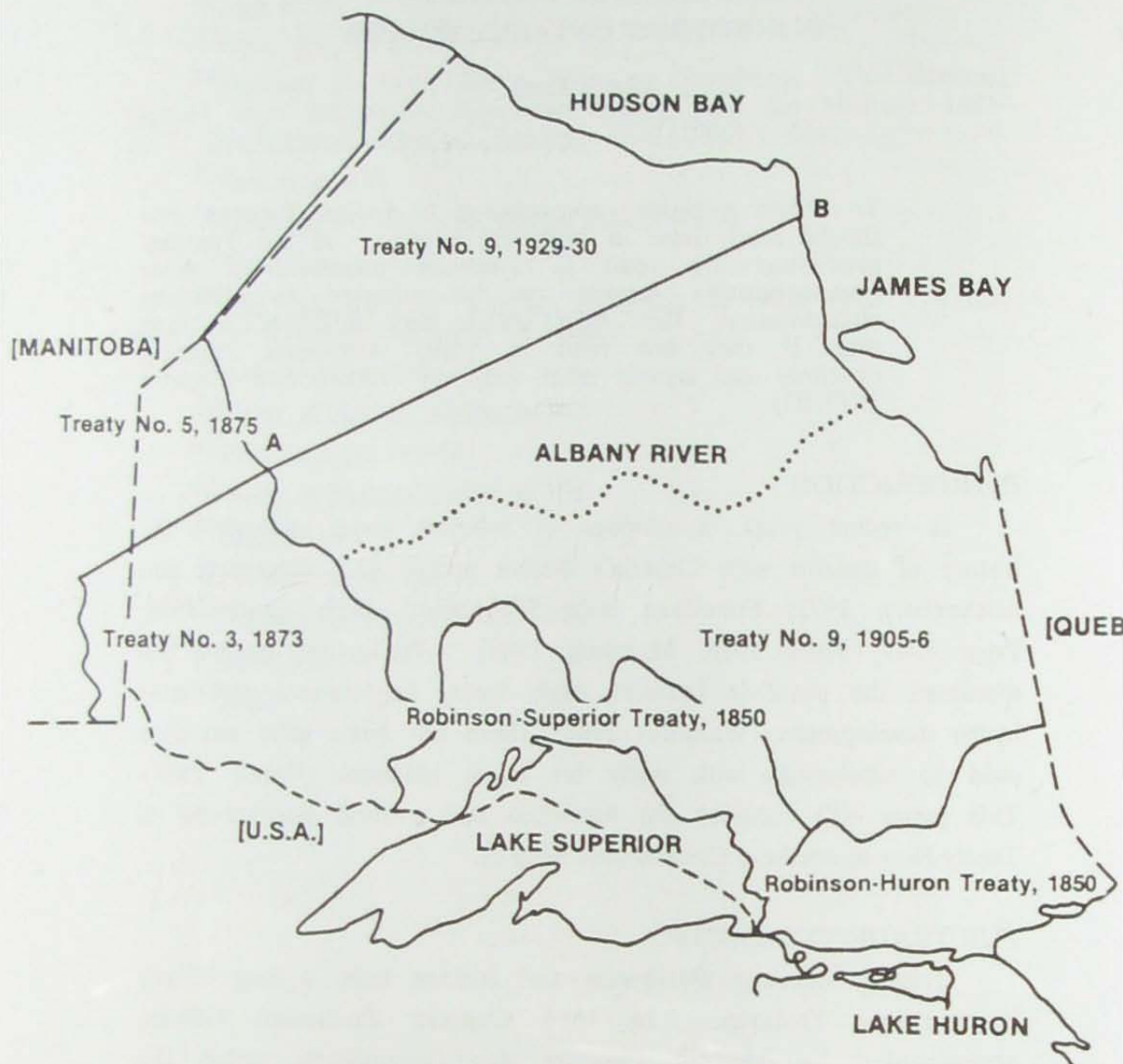
INTRODUCTION

In recent years, a number of scholars have addressed the history of treaties with Canada's Native people (e.g. Cumming and Mickenberg 1972; Fumoleau n.d.; Richardson 1975; Smith 1981; Price 1987; Titley 1986; Morrison 1988). While one author has discussed the parallels between early treaty negotiations and later hydro development (Waldram 1988), there has been little attention paid to similarities with early fur trade alliances (Foster 1987). This paper will consider the historical and cultural background of Treaty Nine in northern Ontario (See Map 1).

FUR TRADE "COMPACTS"

Treaties between Europeans and Indians have a long history in northern Ontario. In 1668 Captain Zachariah Gillam, accompanied by Medard Chouart des Groseilliers, sailed the "Nonsuch" to James Bay and wintered at a place he called Charles Fort (Rupert House or Waskaganish, Quebec). Gillam claims to have made a treaty of peace and friendship with the local Indians, and to have purchased title to the Rupert River area (Rich 1960:

MAP NO. 1: NORTHERN ONTARIO TREATY AREAS



62-3; Moriarity 1979). Similarly, Groseilliers is alleged to have "taken possession of Nelson River" in 1672 (Rich 1960: 139).

The Company must have had doubts about the validity of such acquisitions, judging from its instructions to Governor John Nixon in 1679. Nixon was told to continue making treaties with the Indians, in order that

it might be understood by them that you have purchased both the lands and rivers of them, and that they had transferred the absolute propriety to you, or at least the only freedom of trade (Rich 1960: 109, emphasis added).

Similarly John Oldmixon, writing in 1708, claimed that the Hudson's Bay Company

made such Compacts with the Captains or Kings of the Rivers and Territories where they had settlements, for the Freedom of Trade there, exclusive of all others, that the Indians could not pretend they had encroach'd upon them (1931: 400-401, emphasis added).

The Company expected that these treaties--none of which has survived--would "in future times ascertain to us all liberty of trade & commerce and a league of friendship & peaceful cohabitation" (Ray and Freeman 1978: 61).

Unfortunately, we have no real evidence from the Indians about what these treaties meant to them. Chouart des Groseilliers' colleague, Pierre Esprit Radisson, considered the Indians to be mere opportunists. He claimed that

for the presents they have need of they would give themselves up this Day to God if they had knowledge of him and tomorrow they would give themselves to the Devil for a pipe of Tobacco and they would even deliver up their In heritage [sic] for the like things. And they received their presents for takeing Possession[.] [W]hosoever hath known those Savage Nations doth understand the Same things (Rich 1960: 63).

His statement should not be taken literally; it indicates that the Indians valued European goods and did not understand the exchange of gifts to imply anything more than good intentions.

European accounts of early contacts with the Indians of western James and Hudson Bays refer to Indian leaders as kings, captains and lieutenants (Bishop 1984; Judd 1984). But it is clear, despite such foreign titles, that the British adapted their practices

to Indian custom. Oldmixon explains that the "Compacts were render'd as firm as the Indians could make them, by such Ceremonies as were most sacred and obligatory among them" (1931: 401, emphasis added). Governor Nixon was instructed that any compacts were to be symbolized by "some act wch by the Religion or Cumstome of their Country should be thought most sacred & obliging to them for the confirmation of such Agreements (Ray and Freeman 1978: 61, emphasis added). The British flag was recommended as a symbol of this bond:

So wee have caused Iron marks to be made of the figure of the Union Flag, wth wch wee would have you burn Tallys of wood wth such ceremony as they shall understand to be obligatory & sacred. The manner whereof wee must leave to your prudence as you shall find the modes & humours of the people you deal with, [sic] But when the Impression is made you are to write upon the Tally the name of the Nation or person wth. whom the Contract is made and the date thereof, and then deliver one part of the Stock to them, and reserve the other. This wee suppose may be suitable to the capacities of those barbarous people, and may much conduce to our quiet & commerce, and secure us from foreign or domestick pretenders" (*Ibid*: 61).

Drawing largely on data from York Factory on western Hudson Bay, Arthur Ray and Donald Freeman describe eighteenth-century fur trade gift-giving ceremonies whose purpose "was to formally establish, or renew, alliances of friendship between the participants" (1978: 55). Indian leaders' canoes flew British flags as a symbol of their status (Ray and Freeman: 55; Judd 1984: 89); guns were fired at the fort to honour their arrival (Foster 1987: 188). Pipes of tobacco were shared, and then Indian and European leaders exchanged formal speeches. Indian trading captains were given suits of clothing, and gifts of food and alcohol; in return, the HBC factor was given a token gift of furs. After more smoking and speeches, the winter's furs were bartered for the Company's trade goods (Ray and Freeman 1978: 56-57). Indian "doctors" and their wives were presented with medicines. Lavish gifts were given to the trading captains before they departed (Ray and Freeman: 55, 59). The trade and ceremonies took only a few days, and then the Indians were gone. Along the

coast of James Bay, Indian goose hunting captains were also given feasts and presents, in return for which they helped provision the posts (Judd 1984: 87; Bishop 1984: 37ff).

Ray and Freeman note that Indian trading captains and HBC factors used speeches during the pipe smoking ceremony to "come to general terms regarding the rates of exchange." Indian leaders asked the trader to "pity" them and give them "good measure," and spoke of the hardships of the past winter (Ray and Freeman, 1978: 63, 66-77). Bruce White, drawing on documents from the Lake Superior fur trade, concludes that when Indians asked for "pity" they meant that they expected to receive help from a more powerful person if they were ever in need (1984: 187). Mary Black-Rogers explains that "pity" implies "the receipt of needed articles or benefits" (1986: 368).

During the period before 1821, when there was intense competition between rival trading companies, the Indians had to be treated generously for fear they would trade with the opposition. The HBC adjusted its gift-giving and its standard of trade in response to this competition (Ray and Freeman 1978: 200-217), and the Indians became astute traders and negotiators. In addition, the Company attempted to form a military alliance with the Indians whenever attacks by the French were expected (Bishop 1984: 38; Glazebrook 1954: xv-xvii).

Following the merger of the HBC and the North West Company in 1821, monopoly conditions diminished the need (from the traders' perspective) of gift-giving and status recognition (Francis and Morantz 1983: 169).¹ HBC posts were, nevertheless, havens of rigueur for the Indians' sick or elderly (Brown 1980: 19; Foster 1987: 192-3).

It is clear that certain ceremonies to mark the significance of important alliances were known to the Indians of northern Ontario and had been employed by Europeans for some two centuries prior to 1905.²

THE POST-CONFEDERATION TREATY PROCESS

In 1870, after two hundred years, the Hudson's Bay Company's exclusive charter came to an end. Obtained from King Charles II in 1670, its owners had become--in the eyes of the English--"true and absolute Lordes and Proprietors" of Rupert's Land, the Hudson Bay drainage, with exclusive trading, mineral and fishing rights (Rich 1960: 52ff); the Company did not actually exercise much authority over the Indians (Foster 1987: 194). Under the terms of the Rupertsland's transfer to Canada, the federal government assumed responsibility for "Any claims of Indians to compensation for lands required for purposes of settlement" (Bowsfield 1977: 291). The Company was allowed to obtain (or retain) title to all its posts, including Fort Albany, Marten Falls, Osnaburg, Moose Factory, Hannah Bay, Abitibi, New Brunswick House--all in the area not yet surrendered by the Indians through a recognized treaty (Bowsfield 1977: 294-295).

By the late nineteenth and early twentieth centuries, fur traders and missionaries alike were facing new economic conditions in northern Ontario (Ray 1984; Long 1986: 151ff). And so were the Indians. The federal government granted some relief to destitute Indians and also subsidized mission day schools in James Bay during the decade before Treaty Nine was signed (Long 1985: 144; Long 1978a).³

Indians living immediately north of the Canadian Pacific Railway had begun to feel acute distress, and had petitioned officials of the federal government for help. They complained about interference of their livelihood by non-Natives (who now had easy access to their hunting grounds), and asked for treaty money, reserve land and liquor control (Long 1978b; Morrison 1986). These petitions--from Lake Pogamasing in 1884, Brunswick Lake in 1899, Biscotasing in 1901, Osnaburgh in 1901 and 1904, and Abitibi in 1905--prodded the government of Canada into action; they also belie the statement that "In no instance was a treaty [in Ontario] instigated by an Indian group" (Brown and Maguire 1979: 28).⁴

The Dominion of Canada's treaty-making practices grew out of the British colonial experience and, in particular, a series of proclamations in the 1760s. The first post-confederation or "numbered" treaties--Treaty One in 1871 through Treaty Eleven in 1921--followed the five principles established by the earlier Robinson treaties of 1850. Public meetings were convened, in accordance with the Royal Proclamation of 1763. The lands were to be "surrendered" by the Indians to the Crown; reserve lands were set aside for their exclusive use; annuities were paid to each Indian; and hunting and fishing rights were retained in the ceded area until such time as it was sold, leased or occupied. The amount of the gratuities paid on signing the numbered treaties varied from three dollars to twelve dollars, and in some cases Chiefs and Headmen received extra allowances; thereafter, perpetual cash annuities were to be paid. In seven of the treaties, reserves were based on one square mile per family of five; in the others, the ratio was one fourth that size. Most provided for distribution of farming equipment, ammunition, and twine. Suits of clothing, flags and medals were often included and, in some instances a medicine chest. All of the numbered treaties promised schools (Cumming and Mickenberg 1972: 65ff, 115-6, 124-125).

Cumming and Mickenberg make several observations about the numbered treaties. First,

the Chiefs did bargain with the Government over the provisions of the treaties and, in so doing, were able to gain certain concessions...[although] it is clear that the Indians were not in an equal bargaining position with the Government. (Cumming and Mickenberg 1972: 123, emphasis added)

Secondly, they note that it is

questionable whether the Indians realistically had any option of rejecting the treaties offered by the Government...western Canada [in particular] was undergoing very rapid changes and the Indians were experiencing widespread malnutrition, starvation, and disease. Given these conditions, the ready acceptance by the Indians of the treaties is understandable (Cumming and Mickenberg 1972: 124)

TREATY NINE: THE SIGNED DOCUMENT

They were to make certain promises and we were to make certain promises, but our purpose and our reasons were alike unknowable. What could they grasp of the...elaborate negotiations...? Nothing. So there was no basis for argument. (Scott 1906: 578, emphasis added).

As we have seen, some Indians living north of the height of land (which separated the Robinson treaties watershed from that of Hudson and James Bays) had begun petitioning the federal government for aid as early as 1884, since the Canadian Pacific Railway had actually passed over their lands and made their territory more accessible to non-Native trappers, prospectors and surveyors. Plans for a second transcontinental railway prompted the federal government to notify the province of Ontario (whose northern limit was then set by the Albany River) in 1902 of its intention to enter into a treaty with the Indians living south of the Albany River and north of the Robinson Treaties. Complications arising from Treaty Three, signed in northwestern Ontario in 1873, had resulted in a unique 1894 agreement between the two governments which provided that "any future treaties with the Indians...shall be deemed to require the concurrence of the government of Ontario" (Smith 1987; Titley 1986: 60-61; Zlotkin 1985: 276-277).

In June of 1905 the provincial and federal governments reached agreement in principle on the terms of a new treaty, the ninth since Confederation. The province would reimburse the government of Canada for an initial gratuity of eight dollars paid to each Indian and, thereafter, for a perpetual annuity of four dollars per person. Ontario also agreed that reserve lands be assigned to the Indians on the basis of one square mile for each family of five, although the province would be relieved of survey costs and no reserve could contain a "site suitable for the development of water-power exceeding 500 horse-power." The federal government would bear all the costs of the treaty negotiations (Long 1978c).

The treaty set out, in complex legal language (and in English), what the Indians lost and what they gained or retained by agreeing to the treaty. According to the treaty document which was signed, the Indians agreed to "cede, release, surrender and yield...for ever, all their rights, titles and privileges whatsoever, to the lands"--no matter where situated, including lands in Quebec and the Northwest Territories. They retained "the right to pursue their usual vocations of hunting, trapping and fishing" on these surrendered lands--but this was "subject to such regulations as may from time to time be made by the government of the country" and excluded any areas which might become required for "settlement, mining, lumbering, trading or other purposes." The Indians received or retained reserves, as earlier noted, but the Crown assumed a protective role in dealing with any settlers; this land could be alienated for the Indians' benefit but only with their consent. In addition to the gratuity and annuities payable to everyone, as mentioned above, each chief would receive a flag and a copy of the treaty (in English). The federal government agreed to pay teacher salaries and provide school accommodations--as it might deem "advisable." The Indians promised to "strictly observe" the treaty, be good and loyal subjects, "obey and abide by the law," "maintain the peace," and assist in bringing "justice and punishment" to any Indian offender (Canada 1964).

The terms of the written treaty were fixed beforehand and, if that document is examined by itself, it appears that the Indians' only options were to accept or reject it. Since the vast majority of Indians readily accepted treaty annuities and their leaders did "sign" after limited discussion, we might conclude that people who could not understand English, were illiterate (in English) and had no legal counsel (Linklater 1978), were manipulated. From this viewpoint, the Indians emerge as victims of the state, which controlled the agenda of the treaty negotiations.

Some beneficiaries of the treaty undoubtedly feel these sentiments today when they receive their now meager four dollar

treaty annuity. It is true that their grandfathers were unable to negotiate a higher amount, although they certainly attempted to do so during the negotiation of the adhesion of 1929-30 (e.g. Cain and Awrey 1929: 24). But if we stop to consider that the Cree and Ojibwa traditionally conducted business orally, were accustomed to signifying their leaders' status with flags, and sealing alliances by exchanging gifts, sharing food and smoking tobacco--key elements of the treaty negotiations--our attention must focus instead on what really was discussed, not what the Commissioners were authorized to discuss and not what the Indians "signed."

When Treaty Nine is examined in its historical and cultural context, however, the Indians emerge from the pages of history as actors⁵ who continued to shape their own lives (as they still do today). They could not control every aspect of the treaty, nor could they foresee how inflation would erode the value of their treaty annuity. But they did make every effort to ensure that nothing of importance was lost, that key aspects of their existence were confirmed and maintained, and that maximum benefits obtained. We must now examine the evidence for an oral agreement.

THE ORAL AGREEMENT: DOCUMENTARY EVIDENCE

...under tribal protocols the negotiation itself was the 'treaty' and no final document was necessary. (Barsh and Henderson 1982: 63)

At Fort Albany, the Indians were apparently assembled in the spring at the request of rival churchmen, an Anglican minister and an Oblate priest. The Rev. (later Bishop) R.J. Renison explained that the meeting would be "a new kind of prayer meeting" and reports that his flock "all came with prayer and hymn books." An election was held, characterized by denominational competition (at least in the eyes of the clergy). According to Renison, the Indians had their own preconceived notions of what the treaty would mean:

It was said among the wigwams that the Chief of every band would wear a red coat, that he would never work,

that he would eat at the table of the Hudson's Bay Factor, that his credit would be good for any amount and that his wife would wear a hat (1957: 63).

Renison's testimony must be critically examined; he was not present for the actual treaty signing--he was in California--and his autobiography seems to confuse Treaty Nine's benefits with those of earlier treaties. But he did spend many years in James Bay and was undoubtedly correct in stating that "it was difficult...to persuade [the Indians] that the world was going to be any different" after the treaty was signed (1957: 61-3, 73). The James Bay Indians saw the treaty in terms of tangible benefits. The clergy, persons of great power whom they respected, and who also stood to benefit, (through government subsidy of their schools and hospitals), acted as interpreters.

A few months after these preparations, the Treaty Commissioners arrived at Fort Albany by canoe, their flags flying. It was 9:30 in the morning, 3 August 1905. the post's guns fired a salute and the dogs barked a welcome (Renison 1957: 65). In the afternoon a meeting was held with ten Indian "chiefs and headmen." Tobacco was distributed (Scott 1906: 578) and it is recorded that the "explanations that had been given at the other points [i.e. Osnaburgh, Fort Hope, Marten Falls and English River] were repeated." Two Indian spokesmen expressed "the pleasure that they felt upon being brought into treaty and the satisfaction they experienced on receiving such general treatment from the Crown" (Scott et al. 1905: 289, emphasis added). Then the treaty was "signed"; ten male elders (including representatives from the more northerly Attawapiskat and Winisk River watersheds) supposedly made the mark of an "X," although some of these men apparently knew how to write their names in syllabics and one of them may have written the address below. Treaty money was distributed; it was the first time the Indians had touched currency (Scott 1906: 579; Anderson 1961: 105). A copy of the treaty, a flag and a silver-and-enamel medal were presented to the Chief.

The Commissioners hosted a feast consisting of tea, pork and bannock (Scott 1906: 580) and the Indians presented them with a formal address, written in Cree syllabics (*Ibid.*: 582; Scott *et al.* 1905: 289):

From our hearts we thank thee, O Great Chief [King Edward VII], for thou hast pitied us and given us temporal help. We are very poor and weak. He (the Great Chief) has taken us over, here in our own country, through you (his servants) [the Commissioners].

Therefore from our hearts we thank thee, very much, and pray for thee to Our Father in heaven. Thou hast helped us in our poverty.

Everyday we pray, trusting that we may be saved through a righteous life; and for thee we will ever pray that thou mayest be strong in God's strength and by His assistance.

And we trust that it may ever be with us as it is now; we and our children will in the church of God now and ever thank Jesus.

Again we thank you (commissioners) from our hearts.

On Sunday, their paylists packed away for the trip along western James Bay to Moose Factory, the Commissioners noted that both churches--Anglican (then Church of England) and Roman Catholic--were well attended (Scott *et al.* 1905: 289). They received an unexpected visitor, however, when Charles Wabano, just arrived from Attawapiskat, was told by his priest (F.X. Fafard, O.M.I.) that the Commissioners "might have some money for him." After receiving his gratuity, the young man reportedly "took a crucifix from his breast, kissed it swiftly, and made a fugitive sign of the cross. 'From my heart I thank you,' he said" (Scott 1906: 582-583). Today the coastal Cree still refer to an official of the Department of Indian Affairs and Northern Development as shuniiyan okimaw (money boss).

Duncan Campbell Scott, one of two Commissioners representing the federal government, frankly admitted that the Indians did not understand the document that their leaders had signed. Privately, in an article published the following year in *Scribner's Magazine*, he confessed,

They were to make certain promises and we were to make certain promises, but our purpose and our reasons

were alike unknowable... The simpler facts had to be stated, and the parental idea developed that the King is the great father of the Indians, watchful over their interests, and ever compassionate (1906: 578).

Scott considered Charles Wabano to be a "wild fellow" and an example of "the Indian at the best point of a transitional state, still wild as a lynx, with all the lore and instinct of his race undimmed" (*Ibid.*: 582-3). He may have typified the Cree (but see Renison 1957: 45-46); he was certainly unlike the mature Indian leaders Scott had encountered on the upper reaches of the Albany River two weeks earlier. We must backtrack, to Osnaburgh and Fort Hope, before continuing our journey to Moose Factory.

The official record states that, at Osnaburgh, the Commissioners told their Ojibwa listeners "that any point on which they required further explanations should be freely discussed." The blind Chief Missabay expressed his concern that "if they signed the treaty, they would be compelled to reside upon the reserve...and would be deprived of...fishing and hunting privileges." He was assured, however, that there was no cause for concern since the Indians' "present manner of making their livelihood would in no way be interfered with." Missabay and eight other representatives subsequently agreed to sign the treaty

as they believed that nothing but good was intended. The money they would receive would be of great benefit to them, and the Indians were all thankful for the advantages they would receive from the treaty (Scott *et al.* 1905: 286).

Elsewhere, Scott admits that further explanations were given. The Indians were told they "were not expected to give up their hunting grounds...but they were to be good subjects of the King, their great father." Missabay summarized his understanding of the treaty:

We know that you are good men sent by our great father the King to bring us help and strength in our weakness. All that we have comes from the white man and we are willing to join with you and make promises which will last as long as the air is above the water, as long as our children remain who come after us (Scott 1906: 578).

Similarly, at Fort Hope, Chief Moonias was suspicious of the King "offering to give us benefits for which we can make no return." Father Fafard explained that, through the treaty, the Indians were "giving their faith and allegiance to the King, and...giving up their title to a large area of land of which they could make no use" (Scott *et al.* 1905: 287; Scott 1906: 578).

Yesno confused the Commissioners' offer with the more generous benefits (cattle, seed and farming implements) of his Treaty Three neighbors. The Commissioners explained that the Ojibwa at Fort Hope

could not hope to depend upon agriculture as a means of subsistence; that hunting and fishing, in which occupations they were not to be interfered with, should for many years prove lucrative sources of revenue. The Indians were informed that by signing the treaty they pledged themselves not to interfere with white men who might come into the country surveying, prospecting, hunting or in other occupations; that they must respect the laws of the land in every particular, and that their reserves were set apart for them in order that they might have a tract in which they could not be molested, and where no white man would have any claims without the consent of their tribe and government (Scott *et al.* 1905: 288).

When the Commissioners continued their journey from Fort Albany to Moose Factory, local Indians received positive comments concerning the introduction of law and order; this likely meant protection from "Whites"--especially liquor control and safeguarding of their traplines. Local resident, John Dick is said to have favored the establishment of a residential school at Moose Factory, but his own children apparently did not attend; orphans and motherless or fatherless children constituted the chief clientele of the school in its early years. The treaty money was singled out as being "very much needed by many who were poor and sick" (Scott *et al.* 1905: 290). Bishop George Holmes explained the treaty to his congregation in St. Thomas Anglican church on the evening of Tuesday, 8 August 1905, and the Indians selected ten male elders to meet the Commissioners the following day (ADM 1893-1906); six signed in syllabics, four made the mark

of an "X." A number of "halfbreeds" were excluded from the Treaty (Long 1985).

At both Fort Albany and Moose Factory, the Commissioners commented on the mission hospitals operated by the churches. The Treaty Nine party included a doctor, who inoculated the Indians, performed emergency procedures and prepared reports on the Indians' health (Meindl 1905, 1906; Scott 1906: 582), but the signed treaty document was silent on the subject of medical care (unlike the medicine chest clause in Treaty Six.)⁷

The Commissioners also visited New Post, upriver from Moose Factory, before suspending their work until the following year; most of the Indians were now dispersed on their traplines for the winter, and it was too late to deal with those at Abitibi. From arrival at Osnaburg on 11 July, to departure from Abitibi on 1 September, the 1905 tour had lasted just fifty-three days. Some 1,617 Indians had received gratuities amounting to \$12,936 and an estimated 40,000 square miles had been acquired--1¢ for every 20 acres--in return for reserves totalling 524 square miles--1% of the Indians' traditional lands (Scott *et al.* 1905: 10-11).

In 1906 the Commissioners resumed their deliberations, beginning at Abitibi on 4 June, and visiting Matachewan, Mattagami, Flying Post, Chapleau, New Brunswick House, and Long Lake, departing there on 10 August. Liquor control was a concern at Abitibi, and Indian leaders were given letters of authorization to assist them in enforcing sobriety (Scott 1905-6, 8 June 1906). At Mattagami an Indian spokesman "thankfully accepted the benefits offered by the treaty." Similarly at New Brunswick House the Indians indicated that they were "perfectly satisfied with what they were to receive under the treaty" (Scott *et al.* 1906: 300-301; emphasis added).

The Chief at Long Lake expressed his pleasure that the new treaty adherents would be "placed on an equal footing" with their neighbors "who had been receiving annuity money for years" under the Robinson-Superior Treaty of 1850. He also mentioned the needs of the sick and destitute (*Ibid.*: 301, emphasis added). His complaints about the Hudson's Bay Company, however--"to the

effect that the Indians would like the price of furs at the H.B.C. to be higher & the price of goods lower, & that they should be permitted to trade where they pleased"--were "curiously twisted" by the interpreter to say that "the Chief was very pleased with the way that the H.B.C. treated the Indians & was glad that the H.B.C. & the Government were working together!" None of this was mentioned in the official record (Scott (1905-6, 9 August 1906)--which gives some indication of the bias in interpreting and reporting.

The Indians' questions during the treaty deliberations, like their earlier petitions, focussed on maintaining control over their traditional means of survival, receiving tangible aid and assistance, and being protected from interference by non-Natives (including such destructive influences as alcohol).

We can see many parallels between the rituals for establishing and maintaining early fur trade alliances and those of late nineteenth-century treaty-making. Common features included the sharing of food and tobacco, speech-making, status recognition of chiefs, distribution of medicines, the British flag, and indications of sacredness. Missing were any gifts of alcohol (forbidden in treaty deliberations since 1794) and the distribution of clothing (although some of the other numbered treaties did have this feature). The distribution of cash was seemingly an added feature, but was really just another gift. Similarly, the treaty medal was not really a new item⁶--medals had been used for hundreds of years in North America (Fredrickson 1980: 23).

The literature of treaty-making, however, was unique--"signing" the document and receiving a copy of the treaty. Before 1905-6, the only other occasion when James Bay Indians signed their names, except perhaps in syllabic messages (Scott 1906: 581-2; Long 1986: 198), was at Christian wedding services when the bride and groom and witnesses recorded their names in the register (see AO 1851-1906). When Cree and Ojibwa leaders affixed their marks to Treaty Nine, a document which they could not read and had not been properly explained, they were clearly affirming their consent **not** to the text of the written treaty, but

to the subjects which were discussed and seemingly agreed upon--the oral agreement(s) which they consider to be Treaty Nine. The notion of a fixed standard (the annuity) was also an innovation; in the fur trade, these were changeable--particularly during times of competition (Ray and Freeman 1978).

With so many parallels, we might expect that the arrival of the Treaty Commissioners in 1905-06 must have struck a chord in the Indians' minds, reminding them of ceremonies which had been practiced for over two centuries to establish or re-establish an alliance with Europeans--a compact which was always renewable in response to changing conditions (Foster 1987).

Without yet considering Indian oral tradition, an impressive quantity of documentary evidence has been assembled which indicates what Treaty Nine entailed for the Indian participants. The Indians would receive advantages and benefits: schools, modern medical care,⁷ protection (from non-Native trappers and liquor), freedom from interference on reserves, and treaty money. They would retain their traditional hunting grounds (on the Cree see Flannery and Chambers 1986), would not be "confined" to their reserves, and their means of livelihood would be unaffected. In return, the Indians agreed to be loyal subjects of the Crown, not interfere with the (unspecified) activities of whites, respect the laws, and surrender any useless land.

The Indians used adjectives such as poor, weak, sick and destitute to describe themselves, and asked for pity. They expressed feelings of gratitude, friendliness and trust, and spoke of the treaty in terms of generosity, assistance, strength and everlasting promises. Treaty Nine signified a new relationship, a broad moral contract with a powerful new person--the Crown. At Moose Factory (Scott *et al.* 1905: 290), as at Fort Albany, the deliberations had strong Christian overtones; the Indians evidently trusted the advice of powerful non-Native religious leaders.

The records of the oral agreement conflict with the text of the signed treaty on several points. The written treaty is a complex legal document; with the oral agreement, some simple facts were stated and the idea of a parental relationship was

encouraged. In the treaty document, there is a surrender of 99 percent of the Indians lands, while the oral agreement at Osnaburg states that hunting grounds are not surrendered and at Fort Hope only the useless land is lost; there is no evidence that the Indians consented to a "surrender"--any land transfer might more properly be called an "acquisition" by the Crown. The signed treaty states that harvesting (hunting, fishing, trapping) is subject to regulation by Canada; at Osnaburg and Fort Hope the oral agreement guarantees no interference. The government's treaty grants privileges; the Indians' treaty safeguards rights.

We are still left without any real understanding on some key issues. What did it mean for the Indians to be loyal citizens and obey the law? For the state, of course, this was justification for future unilateral alteration of its relationship with the Indians. Thus Duncan Campbell Scott, the Treaty Commissioner who rose to prominence in the Indian Affairs Department and was a key figure in drafting the 1918 Migratory Birds Convention Act (which restricted Indian hunting in contravention of the oral promises), took the view that treaty rights were merely "privileges" which the Indians "enjoyed at the pleasure of the Crown" (Gottesman 1983: 76). The Indians, particularly those living further north, had little understanding of Canada's laws. But they probably never imagined that those laws could override the treaty promises; this is the essence of the notion of 'citizens plus'--"in addition to the normal rights and duties of citizenship, Indians possess certain additional rights as charter members of the Canadian community" (Hawthorn 1966: 13). Nor do we have any clear understanding of the distinction between reserve and non-reserve lands (but see Davey 1985: 9; Morrison 1986: 59).

INDIAN ORAL TRADITION

My experience with Cree narratives of early encounters with traders (Long 1988) and missionaries (Long 1986, 1987, 1989) has convinced me that these oral traditions are valid historical sources--although they must be carefully interpreted. Indian oral tradition does more than supplement our understanding of isolated

events; it explains how Native people understand their relationship with Euro-Canadian society today (Long 1988: 233).

Unfortunately, in contrast to research into treaties in western Canada (Fumoleau 1975, Price 1987), little systematic formal research has been conducted into Indian oral traditions concerning Treaty Nine, either by academics or by Indian organizations (but see Beardy 1982-3). Evidence given by Cree elders to the 1978 Royal Commission on the Northern Environment hearings at Moose Factory, and at elders meetings held in 1987, indicates the importance and potential of these sources.

The late John Fletcher of Moose Factory was six years old when Treaty Nine was signed, and eighty-nine when he testified before the Royal Commission. Speaking through an interpreter, he stated that the treaty negotiations entailed several promises from the King's representatives and, "though this was not written in the Treaty," a retrospective insight, "these kinds of verbal promises were considered by us before we signed the Treaty" (emphasis added). The Indians' children would (have the option to) be educated in schools and the federal government would "pay all expenses." There would be free medical treatment, including medicine. Indians would receive (treaty) money and assistance. They would share in the benefits of any resources extracted from the region. Their hunting rights would "never be taken away," their "way of life" would not change and they would not lose their culture. The Moose River was used as a metaphor for the treaty's everlasting benefits and promises. "It seems to me, as a witness to the signing of the Treaty," he concluded, "that some of these promises have been forgotten" (OCCC 1986: 36).

James Wesley of Kashechewan was seventy-two years old when he appeared before the Royal Commission. He reports that one of the Treaty Commissioners "held a Bible in his hand to show the seriousness of their intentions." The Indians were promised "a sawmill, housing, schooling, medical services, doctors, gardening tools, vegetable seeds, and livestock, etc." if they lived on their reserve and they would have full control over trespassers on the reserve. They were very cautious about agreeing to the treaty,

and "hoped that these people would not rule over them" but were given only one hour to discuss the matter. At the end of one hour the Treaty Commissioners asked them to indicate, by a show of hands, whether they were finished. "This resulted in what appeared to be a unanimous decision to agree." A feast was held "to honour this agreement" and gifts were distributed. The Treaty was intended to show "that the Whiteman had good intentions." One of the Treaty Commissioners solemnly stated, "As long as you see the sun shining, the river flowing and the grass growing, these things will be remembered as a promise." But the Indians soon encountered difficulties from interfering game wardens on their traditional lands (Wesley *et al.* 1978: 2-5).

Chief Willie Stevens of Kashechewan told the Royal Commission that the Cree "never really realized what the Whiteman was doing to us. They have broken the Treaty.... The Department of Indian Affairs did not do very much to help our people in those days." Members of one family actually "starved to death because of the Whiteman. The White people refused to share their shelter and food, as we had shared with them" (*Ibid.*: 5-6).

James Wesley's statement makes ambiguous references to "trading of Indian land" and "ask[ing] for the land" (*Ibid.*: 2). John Fletcher mentions a "surrender" of the land (OCCC 1978: 36). It is difficult to determine, with such a small sample of oral tradition, whether these concepts are retrospective. It must also be emphasized that the narrators' idioms have been translated into English--not just here, but in the Commissioners' reports--and these isolated references must be understood in the context of the narratives which contain them. John Fletcher contradicts his notion of "surrender" in two other statements: the Indians were asked to act as a custodian of the land, and the Treaty Commissioners' claimed that they only wished to "share this land with your people" (OCCC 1978: 36, emphasis added). Similarly, James Wesley's statement is contradicted by Chief Willie Steven's reference to sharing and not understanding the written treaty.

Clearly, the Indians' understanding of a land surrender requires further research.

For the Indians, the treaty appears to have been a broad moral contract, out of which additional benefits--which Indian Affairs may consider to flow from the Indian Act or from government policy as a matter of generosity, not obligation--naturally arose later as specific treaty rights. At Moose Factory, for example, when the Indians only received four dollars in 1906, they asked the paymaster why the amount was reduced; they were told that the other four dollars would be put in the bank for them (personal communication with the late Oliver Dick). The treaty implied that Indian Affairs officials, in particular, and non-Native Canadians in general would be helpful. Yet some families are known to have starved because of unsympathetic Indian Affairs officials as this narrative, told by Charlotte Kooses and recorded by Sarah Preston, indicates:

We were living at old Fort Albany at that time [c. 1931].... It was in the spring and many people had flu. The Indian Agent told my father to leave town...to go to the bush or they will take all their small children away from them. So they left for the bush. They got twenty-five pounds of flour, one pound of tea, two pounds of lard. That's what this guy gave them. No sugar. There was ten of us to live on twenty-five pounds of flour. That lasted about one and a half weeks. Then my mother got sick with flu. And by April my brothers and sisters couldn't move out of hunger. There was an early thaw and then the river froze again so we couldn't go down the river. My mother died and three of my brothers died.... (Blythe *et al.* 1985: 35-36)

As we saw earlier, assistance to the sick, starving and elderly was part of the fur trade compact. The Indians expected this to continue with the new treaty relationship--as we saw above in their 1905 address at Fort Albany, which spoke of "help" which would "ever be...as it is now" (Scott *et al.* 1905: 289, emphasis added). Chief Willie Stevens was expressing his outrage at violation of the spirit of an agreement nearly three centuries old.

During 1987 the author, with assistance from Archie Wesley, John B. Nakogee, Mary Lou Iahtail, Louis Nakogee Jr. and Alex Metatawabin, attended meetings with elders in Kashechewan, Attawapisakt and new Fort Albany to begin recording their knowledge of the oral promises made at old Fort Albany in 1905.⁸ In each case, the elders sat around a table, the purpose of the meeting was explained briefly in Cree, and they were encouraged to speak in Cree without interruption (except to switch tapes). In all, some twelve hours of narrative were recorded from twenty-nine elders,⁹ and each received a gift of cigarettes or groceries. A great volume of information was recorded and, although it has now been translated into English by Daisy Turner of Moose Factory, this material will have to be fully analyzed and reported separately. It can be reported, however, that the elders at Kashechewan know which "signatories" could read and write in the Cree syllabics, even though they made the mark of an "X" on the treaty. (Mushkegowuk Council, tapes of Kashechewan elders, 17 November 1987). Marius Spence of Fort Albany explained why all the Xs looked the same: an official from the treaty party held the pen and made the mark, with the Indian leaders merely touching the top of the pen (Mushkegowuk Council, tapes of Fort Albany elders, 1 December 1987).

Comparing the treaty document with what little we know of Cree oral tradition, we can confirm the contradictions already noted above: it is not clear whether the Indians understood that there was a land surrender; they expected that they would share the resources (Moose Factory and Kashechewan) and act as custodian (Moose Factory); they would also retain their right to hunt, their way of life and culture (Moose Factory).

We also see some new contradictions. The treaty document contains limited educational benefits (such schools and teachers as the Crown may deem suitable), while the oral tradition maintains that free schooling was guaranteed (Moose Factory and Kashechewan). Similarly, the document makes no mention of health care, while Indian tradition considers free medical care to be a treaty right (Moose Factory and Kashechewan) and a

continuing feature of the fur trade compact. Although the document makes no mention of these features, oral evidence includes the promise of economic development--a sawmill, housing, livestock (Kashechewan)--and social assistance (Kashechewan).

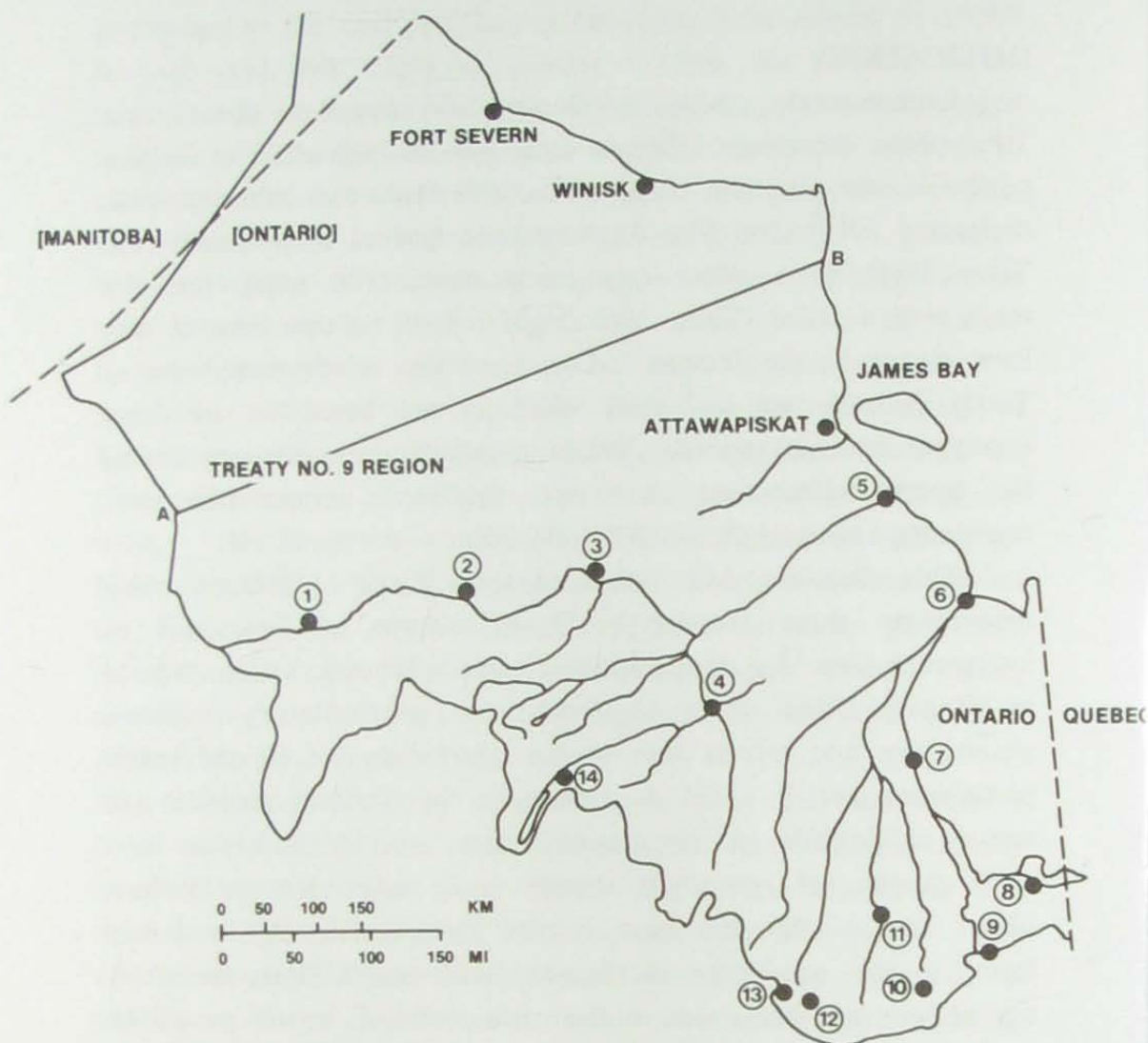
IMPLICATIONS

Unfortunately, there is simply no consensus about what Treaty Nine represents. Simple facts like the admission of Indians north of the Albany River in 1905 and the arbitrary line, designated AB¹⁰ (See Map 2), have been ignored by historians (e.g. Titley 1986: 65). More importantly, those who imply that the treaty was a fraud (Titley 1986: 69) fail to indicate what it may have meant to the Indians. The agreement which they know as Treaty Nine is an oral one, which is not based on the legal document that was signed. Indian questions and statements during the treaty deliberations show that they were actors who were negotiating a compact (Foster 1987: 199-20).

This discussion has looked at three kinds of sources, which amount to three treaties. These can be conceptualized as intersecting sets:¹¹ the document usually known to non-Natives as Treaty Nine (set A), and the contradictory minutes, observations and reports kept by the non-Indian (set B) and Indian participants (set C). Set A survives in the National Archives and serves as a guide to government action. Set B is known to a small number of specialists; strange as it may seem to Indians, likely none of this has been handed down orally (or in written form) to the non-Native participants' descendants since the treaty signing was a minor event in their lives. Set C is still passed on orally from generation to generation by descendants of the original participants, for whom Treaty Nine was a major milestone.

It should now be clear that this treaty cannot be properly understood without considering its historical and cultural context. Treaty Nine was signed in 1905-06, but it followed more than two centuries of making and renewing alliances between Natives and non-Natives--compacts between equals. As Foster notes (1987: 183), the sense of betrayal felt by Indians today can be traced to

MAP NO. 2: TREATY COMMISSIONERS' VISITS 1905-1906
(adapted from RCNE 1985: plate 35)



1905:

- | | | |
|------------------|----------------|------------------|
| 1. Osnaburgh | 2. Fort Hope | 3. Marten Falls |
| 4. English River | 5. Fort Albany | 6. Moose Factory |
| 7. New Post | 8. Abitibi | |

1906:

- | | | |
|-----------------|-------------------------|---------------|
| 8. Abitibi | 9. Matachewan | 10. Mattagami |
| 11. Flying Post | 12. New Brunswick House | |
| 13. Chapleau | 14. Long Lake | |

their perception that a compact which had been established three centuries ago and renewed in 1905-06, has been misunderstood, ignored and violated by officials of the Crown.

In 1969, Pierre Trudeau's Liberal government enraged Indian people by suggesting--after extensive "consultations"--that their special relationship with the Crown should be terminated. Under the guise of "equality," Trudeau stated "perhaps the treaties shouldn't go on forever. It's inconceivable I think that in a given society, one section of the society have a treaty with the other section of society." The policy was officially dropped and, following the Nishga case in 1973, Trudeau began to acknowledge Indian claims (Weaver 1981: 179). Mistrust continued to characterize Indian's view of the government, and Brian Mulroney's Conservative government has only confirmed this by calling for a "Buffalo Jump" program to reduce federal costs (Graham 1987: 247-8).

There is fear of another attempt at a "termination" policy, as funds for post-secondary education are capped and proposed changes in policy are announced without adequate consultation. In Ontario, a forum for tripartite self-government negotiations in education exists under the Declaration of Political Intent (DPI) (Spiegel 1988: 107; Long and Bolt 1988: 241-5). The DPI is controversial by its very nature because it side-steps the issue of constitutionally-protected treaty obligations and treaty renovation (i.e. re-drafting the written treaty to reflect the Indians' understandings and present-day needs); on the other hand, the DPI process, by recognizing that resolving historical treaty issues will be a complex, time-consuming task, theoretically allows for resolution of pressing contemporary self-government concerns. Unfortunately, these talks have been stalled for two years by unproductive discussion of abstract concepts. Unlike the treaty process, which provided for grassroots participation, Ontario's tripartite forum has generally hindered community-level involvement by largely dealing with unrepresentative and uninformed Native political bodies instead of communities and their educational leaders.¹²

Terms of reference established for the DPI negotiations state that there will be no artificial ceiling on education expenditures established at the outset. But the parameters for Canada's self-government policy clearly say that there will be no increase in funding--a contradiction which Canada has failed to explain, and hence there is little confidence in the integrity of the process. Canada's intransigence, which amounts to violation of the spirit of the treaty in the eyes of Indian people, shows how inseparable historic treaty concerns are from most contemporary issues affecting northern Ontario's Native people today.

CONCLUSION

When the Treaty Commissioners finished their 1905 journey, they announced that they had half-finished the task of acquiring 90,000 square miles south of the Albany River and another 40,000 to the north. Scott and his colleagues optimistically reported:

Throughout all the negotiations we carefully guarded against making any promises over and above those written in the treaty which might afterwards cause embarrassment to the governments concerned. No outside promises were made, and the Indians cannot, and we confidently believe do not, expect any other concessions than those set forth in the documents to which they gave their adherence (Scott *et al.* 1905: 292).

This claim is contradicted by the Commissioners' own official reports, by Scott's subsequent admission in Scribner's Magazine that the treaty was simplified and by the Indians' oral tradition. The Commissioners were closer to the truth when they finished their task in 1906 and observed that the Indians generally wished to demonstrate "their loyalty to the government"--and as proof cited their willingness to accept "the benefits conferred upon them by the treaty" (*Ibid.* 1906: 302); this notion of alliance and gift-giving was consistent with the two centuries of fur trade tradition preceding Treaty Nine.

Commissioner Scott was a gradualist who believed that the Indian problem in James (and Hudson) Bay would not be solved for at least four hundred years, and would then be accomplished

through racial and cultural assimilation (Scott 1906: 582). Writing was Scott's main interest (Titley 1986: 204) and it was this very passion which preserved many details of what English-speaking participants understood to have transpired during the negotiations of Treaty Nine. Scott, the man of "narrow vision" (Titley 1986) and an architect of the Migratory Birds Convention Act (Gottesman 1983), unwittingly portrayed the Indians as intelligent actors and negotiators at a key moment in their history and essentially confirmed the Indians' own versions of that history.

Further research into Indian oral history should help us better understand how Treaty Nine was understood by the Cree and Ojibwa of northern Ontario. Treaty Nine Commissioners recognized that on that momentous treaty tour of 1905-6 they were received by their Indian hosts with great "cordiality and trust" (Scott *et al.* 1905: 291). That trust was violated. Redress and renewal of the historic compact with Native peoples, lies easily within the reach of Canadians today:

The question is not one of guilt, present or past. The question is one of continuing injustice, and the distinctive feature of the injustices, past and present, done to indigenous peoples is the fact that these injustices were committed against peoples. These peoples are still with us, and the nations that committed these injustices are still with us in one form or another. The injustices continue, and they are within the power of remedy (Berger 1985: 181-2).

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NOTES

¹With the establishment of permanent missions in northern Ontario after the late 1830s (Long 1986: 70ff), churchmen also employed feasts--including the eucharist (a symbolic feast)--and gift-giving to celebrate visits of dignitaries and other important occasions, and to symbolize denominational alliances or loyalties (Anderson 1854: 177, 198; Long 1986: 190-193).

²The few instances of serious Indian-European conflict in the James Bay region can be traced to violations of such compacts (Bishop 1976; Francis and Morantz 1983: 159).

³The Indians would have been totally unaware of the source of this support, as they were later unaware that Ontario paid their treaty annuities.

⁴Only one of these petitions mentions a land surrender; written by the HBC clerk at Osnaburgh, a non-Native author, it claimed that the Indians were "desirous of releasing our rights in the lands" (Long 1978b: 7).

⁵Morrison (1986: 7-11) notes that those Indians living close to the transcontinental railway were weakened by disease in the years prior to signing Treaty Nine.

⁶Eyler (1979: 55) notes that the economical Treaty Nine medals were actually badges.

⁷Although it lies outside of the Treaty Nine region, Lac Seul was visited by the Commissioners on their way to Osnaburgh. While at Lac Seul they made clear their opposition to Native medical practitioners (Vanasse 1907).

⁸During the 1950s, old Fort Albany was abandoned and the Indian population formed two communities. Kashechewan is a largely Anglican community on the north bank of the Albany River, while new Fort Albany is a largely Roman Catholic community situated on the south shore and on Sinclair Island.

⁹The elders were James Wesley, Hosea Wynne, Willie Stephen, Labius Reuben, Willie Reuben, Isaac Wesley, Simeon Friday, the late Fred Lazarus and Silas Wesley (Kashechewan); Paul Koostachin, Abraham Metat, Marius Spence, Luke Spence, Emelda Nakogee, Annie Gull, Nancy Wheesk, Emile Wheesk, Jane Edwards, Philip Tookate, Frederick Spence, Louise Kamalatisit and Joseph Sutherland (Fort Albany); Janet Nakogee, James Carpenter, John Matinas, Gabe Spence, Mary Spence, Elizabeth Wesley and Janet Nakogee (Attawapiskat).

¹⁰The Commissioners claim to have obtained the surrender of 40,000 square miles north of the Albany River in 1905-1906 from "those resident in the area lying north of the river (to a straight line AB roughly drawn from the Northeast Angle of Treaty Three in a north-easterly direction to a point on James Bay approximately midway between the mouth of the Attawapiskat river on James Bay and that of Winisk river on Hudson bay" (Cain and Awrey 1929: 20-21). Thus, Indians from what were later the Attawapiskat and Weenusk Bands signed the Treaty at Fort Albany in 1905. The adhesion of 1929-30 is excluded from this discussion because the Commissioners' reports (Cain and Awrey 1929, 1930) give little indication of the Indians' understanding of the treaty.

¹¹Set A contains the legal documents signed by government and Indians in 1905-06. Set B contains supplementary documents such as the Commissioners' reports, the Treaty doctor's reports, etc. (see the bibliography in Morrison 1986); the intersection of sets A and B consists of those items on which both sources agree (e.g. the route followed, the amount of the gratuities, the personnel involved). Set C contains the Indians' oral traditions concerning the agreement which they know as Treaty Nine. Sets C and A intersect only when it comes to the identities of the Indian signatories and their actual "signatures." Sets B and C intersect in the notion of promises that last "so long as the grass grows and the water runs" (Scott 1906: 578), although the documents restrict its application to the treaty annuities while the Indians understood this to apply to all of the Commissioners' promises, and in references to the treaty doctors; health care is not mentioned at all in Set A.

¹²This information is based on the author's experience and perceptions while in the employ of the Mushkegowuk Council.

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