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Kiera L. Ladner  
*Carleton University*

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# TREATY SEVEN AND GUARANTEED REPRESENTATION

## HOW TREATY RIGHTS CAN EVOLVE INTO PARLIAMENTARY SEATS

KIERA L. LADNER

Most of the Canadian plains region is covered by the “Numbered Treaties” negotiated in the 1870s between the government of the Dominion of Canada, acting for the British Crown, and the nations whose territories encompassed the area. Even at the time that the treaties were negotiated, the various signatories had different assumptions about what they actually meant. During the ensuing century and more that the treaties have existed, their meanings have been reinterpreted. With the repatriation of the Canadian constitution in 1982,

giving treaty rights constitutional status and protection from the Canadian Charter of Rights and Freedoms, the actual guarantees of the treaties have often been interpreted in a manner inconsistent with current government policy and quite possibly in a way that none of the treaty negotiators for the Crown could have imagined, let alone predicted, in the 1870s. Although the Crown’s prime objective was to avoid American-style “Indian wars” by securing promises of peace from the First Nations’ leaders and to negotiate the surrender of lands that could then be parceled out to incoming Euro-Canadian settlers, the texts of the treaties did promise the Indigenous parties sovereignty on their remaining territory, and particularly in the case of Treaty Seven, established that Indigenous leaders should share the responsibility for maintaining peace and order in the region. While it is always difficult to interpret a document in the light of completely altered circumstances, I make the argument that Treaty Seven, at least, may be legitimately interpreted in such a way as to provide for guaranteed representation, at the federal level, for the First Nations that were parties to the treaty.

*Kiera L. Ladner is a doctoral student in political science at Carleton University. Her article “Nit-acimonawin Oma Acimonak Ohci: This Is My Story About Stories” is forthcoming in Native Studies Review.*

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Although a number of studies have been conducted during the past several years suggesting that guaranteed parliamentary representation for Aboriginal peoples is compatible with the Canadian electoral system, others have suggested that such particularistic representation—giving special electoral rights to one particular group—is unconstitutional. The lack of consensus in the existing literature about the constitutionality of guaranteed Aboriginal representation may be because all of the studies have focused on integrating Aboriginal representation within the existing electoral scheme. Like Iris Marion Young, most scholars have conceptualized guaranteed representation as a means to rectify past injustices and inadequacies in the Canadian political system, but if they had examined guaranteed representation as a pre-existing right of Aboriginal peoples from before the repatriation of the constitution they might have arrived at different, more consistent conclusions.<sup>1</sup>

In this paper I argue that guaranteed parliamentary representation can legitimately be derived from the peace and good order clause that appears in the Numbered Treaties. In Treaty Seven (as in all the Numbered Treaties) the peace and good order or “mutual” clause reads as follows:

And the undersigned Blackfeet, Blood, Piegan [sic] and Sarcee Head Chiefs and Minor Chiefs, and Stony [sic] Chiefs and Councilors on their own behalf and on behalf of all other Indians inhabiting the Tract within ceded do hereby solemnly promise and engage to strictly observe this Treaty, and also to conduct and behave themselves as good and loyal subjects of Her Majesty the Queen. They promise and engage that they will maintain peace and good order between each other and between themselves and other tribes of Indians, and between themselves and others of Her Majesty’s subjects, whether Indians, Half Breeds or Whites, now inhabiting or hereafter to inhabit, any part of the said ceded tract; and

that they will not molest the person or property of any inhabitant of such ceded tract, or the property of Her Majesty the Queen, or interfere with or trouble any person, passing or traveling through the said tract or any part thereof, and that they will assist the officers of Her Majesty in bringing to justice and punishment any Indian offending against the stipulation of this Treaty, or infringing the laws in force in the country so ceded.<sup>2</sup>

Because it is impossible to examine the mutual or peace and order clause in each of the western treaties, I have chosen to focus on Treaty Number Seven, covering southern Alberta, which was negotiated and signed by Lieutenant-Governor David Laird, Lieutenant-Colonel James MacLeod, and representatives of the Siksika, North Peigan, Blood, Sarcee, and Stony First Nations at Blackfoot Crossing in September 1877.<sup>3</sup> Since my own research has so far focused only on the Siksika, North Peigan, and Blood First Nations, I have restricted my discussion only to these three signatories, though further research will probably show that the same arguments can be made for the Stony and Sarcee nations as well.

I have examined not only the written words of the treaty but also the intentions and understanding of each party (the Queen in Right of Canada, Siksika, Peigan, and Blood). This provides a fuller understanding of what each party actually meant by this clause in the treaty. This is especially important because all of the historical documents have been written by only one party to the treaty, the one that had the most to gain in the writing of such documents. Not only are there no written documents articulating an “Indian” understanding of the treaty, but problems of translation render the words of the treaty itself suspect as representing the “Indian” point of view.

#### THE PRE-TREATY UNDERSTANDING

By 15 July 1870, when the government of Canada assumed jurisdiction over the North-

West Territories and began treaty negotiations there, its Indian policy had long been established. The Crown, represented first by the colonial authorities and then by the government of the Dominion of Canada, had been negotiating various kinds of treaties with Aboriginal nations in North America for more than two hundred years and had established the conditions by which Indian lands were to be obtained. In the Royal Proclamation of 7 October 1763, King George III declared that all land held by or reserved for the “Nations or Tribes of Indians,” could only be “ceded or purchased” by the Crown. Thus, the Royal Proclamation set in motion a treaty-making process by which the government secured ownership to the land. The Royal Proclamation states that, “if at any time any of the said Indians should be inclined to dispose of said Lands, the same shall be purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for the Purpose.”<sup>4</sup>

Although the Dominion of Canada had acquired the North-West Territories from the Hudson’s Bay Company, Canada did not have title to the land itself, and the Dominion’s “control” of the territories was being threatened by American expansionism. At the end of the American Civil War in 1865, Canada faced an extremely well armed neighbor that was expanding westward at an alarming rate, and whose citizens were “eyeing the fate of the Red and Saskatchewan River districts with interest.”<sup>5</sup> As Leroy Little Bear explains,

The United States was expanding very rapidly westward, and Canada and Britain were trying to slow that expansion down, and they were trying to limit the United States as much as possible. So when the United States was expanding westward, Canada had to run westward, so to speak, and secure British Columbia so that British Columbia would not join or be annexed by the United States. . . . In the race westward, of course, the “come on” item for British Columbia joining Confederation was the building of

the rail road. But then the government says, “Hey we forgot about those Indians out there. We have to secure the peace and goodwill of those Indians.”<sup>6</sup>

Not only did the government have to secure peaceful relations with the Aboriginal nations in the west, they needed their land, land upon which to build the railway and the “national dream.” Thus, the Treaties enabled the building of the Canadian Pacific Railway, and “enable[d] the Government to throw open for settlement any portion of the land which might be susceptible of improvement and profitable occupation.”<sup>7</sup>

Sir John A. Macdonald, one of the “Fathers of Confederation” and Canada’s first prime minister, envisioned a Canada stretching from sea to sea. Thus his government needed treaties that would ensure geographic unity, assert ownership over the land, and clear the way for colonists, all aspects of Macdonald’s “national dream.” At the same time, however, the Aboriginal peoples of the North-West still represented a considerable military threat to the new Dominion’s ambitions, and Macdonald also needed treaties of “Peace and Friendship” with the powerful Aboriginal nations. The ongoing Indian wars south of the border were examples of what Canada did not want, while events closer to home underlined the need to conclude peace. The Riel Rebellion in Manitoba in 1869, in which the Metis or “Half Breed” community successfully demanded a recognition of its rights from the new Dominion of Canada; the Cypress Hills Massacre in 1873, in which American whiskey traders in Saskatchewan murdered a group of Assiniboines, sparking the formation of the North-West Mounted Police to maintain order; the arrival of Sitting Bull and his followers in the Cypress Hills following the defeat of Custer in 1876; and the impressive retreat of the Nez Percé toward the Canadian border in 1877 all alarmed the Canadian government. Warnings from missionaries such as the Reverend George McDougall, who told of escalating violence toward whites, or Father Constantine Scollen,

who wrote that “the Sioux Indians, now at war with the Americans, have sent a message to the Blackfoot Tribe, asking them to make an alliance offensive and defensive against all white people in the country,” also prompted Macdonald’s government toward the treaty process.<sup>8</sup>

According to John Leonard Taylor, the treaties offered the Canadian government an alternative to the American experience, settlement “without the danger of the Indian wars experienced in the United States.” Taylor found that “events in the United States provided an example of what settlement could mean to Indians. Destruction of game, loss of territory, disease, and wars with American troops made the period a desperate one for the Indians of the Western United States.”<sup>9</sup> Canadian Indians knew what had happened to American Indians and how Louis Riel had been forced to flee from Red River as well as of worsening fur trade relations and declining resources. Both the Indians and the government entered into treaty negotiations with some urgency in 1871, hoping to avoid similar confrontations or destitution:

“Peace, order, and good government,” the phrase from the British North America Act that defined the powers of Canada’s federal government, could apparently be served by negotiating treaties with the Aboriginal nations of the North-West. Specifically, however, the government wished to get title to the land for as little as possible, to bring the Indians under Dominion control on reserves where they would not wreak havoc on prospective Euro-Canadian settlers in the West, and to deliver them up to be “instructed, civilized and led to a mode of life more in conformity with the new position of this country, and accordingly [made into] good, industrious useful citizens . . . [who would] do without assistance from the government.”<sup>10</sup> This desire to establish peace and order—on Euro-Canadian terms—is evident in an 1875 letter to the Reverend George McDougall from Lieutenant Governor Morris, requesting McDougall to proceed in telling the Crees about the upcoming treaty

negotiations and to urge them to establish peace with other Indians and whites.<sup>11</sup>

Just as the Canadian government wanted a treaty, most of the Aboriginal (Indian and Metis) inhabitants wanted a treaty with the Crown. One could argue that the Blackfoot Confederacy wanted a treaty with *ninawak*, the Queen, or Chief Woman, but not every Blackfoot leader was an avid supporter of a treaty or even considered such a thing prior to 1877. For instance, Edward Yellowhorn, Peigan elder and son of the last traditional chief, said that when the North-West Mounted Police first arrived in Blackfoot territory they wanted to negotiate a treaty, but Bull Head (Peigan Chief who, according to Yellowhorn, died that winter) refused and told the police that he would not give them any of his land, and that they would be permitted only to winter in his territory that year.<sup>12</sup>

Nonetheless, both oral and written accounts attest that the Blackfoot Confederacy welcomed the North-West Mounted Police and accepted their help in maintaining peace and order.<sup>13</sup> The majority of the Blackfoot leaders, particularly Crowfoot, soon agreed to “stop killing each other and not to kill white people that came into their territory.”<sup>14</sup> After a few “fairly peaceful” years, however, the situation began to worsen as the buffalo population declined, traditional enemies such as the Crees and Metis encroached upon Blackfoot territory, and Euro-Canadians trickled in and settled on Blackfoot lands.<sup>15</sup> As Leroy Little Bear suggests, the problem was quite simple: diminishing buffalo and First Nations intrusions into each other’s hunting territories meant “there is more chances you’re going to run into your enemy. Which would mean that there is sure to be battles, there is sure to be fights because they are going to want to protect their territory. What do we need to do? Make peace. See, so the Indian mind was talking about peace and good order and so on.”<sup>16</sup>

Thus, the Blackfoot chiefs at all levels of the Confederacy looked toward the North-West Mounted Police and the Queen they represented for assurances that past promises

would be kept and that peace would be maintained. They held numerous discussions with the police, missionaries, and the commander of the Canadian militia in which they discussed the problems arising in their territory and their desire to negotiate with the Queen measures to restrict other groups' access to their land as well as other matters concerning peace and justice.<sup>17</sup>

The entire council of the Blackfoot Confederacy met to discuss the worsening situation and possible remedies including both war and peace. As a result of one such meeting, Jean L'Heureux drew up and sent a petition to Lieutenant Governor Morris on their behalf. This petition addresses Blackfoot grievances, requests that intruders be kept out of their territory until a treaty is made, and urges the representatives of the Queen to negotiate a treaty that would ensure peace by limiting "the invasion of our Country" and keeping traditional enemies and Americans out.<sup>18</sup> This petition, according to Hugh Dempsey, illustrates that the Blackfoot were "more concerned about Crees and Metis slaughtering buffalo in Blackfoot hunting grounds and white men building in their best wintering grounds than they were about the need for a treaty."<sup>19</sup> Concerns about territorial intrusion and depleting resources continued to echo in correspondence and discussions between missionaries, such as Father Constantine Scollen, and government officials, particularly Morris and Laird, well after the negotiation of Treaty Seven in September 1877.<sup>20</sup>

The correspondence demonstrates that the Blackfoot were seeking assistance in maintaining peace and order in their territory and often mentions the promise or treaty that Edward Yellowhorn referred to as having been made by the North-West Mounted Police. Although some of the writers mention willingness on the part of the Blackfoot to share or even cede their land, the accuracy of this "documentation" is questionable as it contradicts other written accounts and much, if not all, of the Blackfoot oral history.<sup>21</sup> Evidence is fairly conclusive that the Blackfoot sought

to negotiate a treaty that would lead to peace within Blackfoot society and within the entire Blackfoot territory. The North-West Mounted Police would keep out settlers, enemies, and American traders.

#### THE TREATY PERIOD

Thus, while the government entered into the treaty negotiations in 1876 to obtain a land surrender, the majority of the Indians had no intention of surrendering any of their land but rather of gaining police assistance in keeping the Crees and Metis out and in restricting buffalo hunting and the use of poison.<sup>22</sup> While the true intentions and the understandings of both parties to the treaty will continue to be questioned, negotiated, and mediated, the treaty was, in the words of the Reverend J. McDougall,

a most notable event pregnant with far-reaching consequences. [Notwithstanding the intentions and interpretations of each] the aboriginal man with his traditions unchanged through the centuries [sic] met face to face representatives of another old but ever-changing race to negotiate in peace and friendship their future relations in this new land.<sup>23</sup>

According to John Taylor, "the government view of the treaty was that of an instrument of land surrender with provisions for a *quid pro quo* in terms of annuities, reserves of land, and other traditional items."<sup>24</sup> Those sources written by agents of the government place very little emphasis on the peace and order clause. In fact, "the making of this treaty, which completed the series of treaties extending from Lake Superior to the slopes of the Rocky Mountains," was basically seen as a land surrender by the Dominion government in 1877.<sup>25</sup> Nonetheless, although most of the treaty text detailed what the government would give the Indians for their traditional territories, the representatives of the Crown at least mentioned and explained (albeit

ambiguously) the mutual clause to their Indian counterparts.

According to Morris, who relied primarily on Laird's first hand experience to create the most notable written account of the negotiation of Treaty Seven, the commissioners explained to their "captive" Indian audience that they

could not agree to exclude the Crees and Half-breeds from the Blackfoot country; that they were the Great Mother's children as much as the Blackfeet and the Bloods, and she did not wish to see any of them starve. Of course the Crees and Half-breeds could be prosecuted for trespassing on their reserves. In this the Indian Act secured them. The local government had passed a law to protect the buffalo. It would have a tendency to prevent numbers from visiting their country in the close season. But to altogether exclude any class of the Queen's subjects, as long as they obeyed the laws, from coming into any part of the country, was contrary to the freedom which she allowed her people, and the Commissioners would make no promise of this kind.<sup>26</sup>

With this, the commissioners, at least according to written history, excluded from the treaty all that the Blackfoot were seeking.<sup>27</sup> Morris also (indirectly) indicates what the peace and order clause did not mean to the representatives of the Crown.

The Blackfoot sought protection of their lands and their lifestyle, but the government instead offered up the same peace and order clause that had appeared in the previous Numbered Treaties. As Laird explained, this treaty made the whites and Indians "brothers" under laws that had to be obeyed by both if they wished to remain as "brothers" and if the Indians wished to keep the North-West Mounted Police as friends and not foes. Lieutenant-Colonel MacLeod similarly alluded to the meaning of this particular clause, stating, as he often had in the past, "the police will continue to be your friends, and be always glad to

see you. On your part you must keep the Queen's laws, and give every information to them in order that they may see the laws obeyed and offenders punished."<sup>28</sup>

The idea of peace and friendship that was advocated by the Queen's representatives was different from that articulated by the Blackfoot prior to the negotiation of the Treaty. Instead of viewing "peace and good order" in terms of "protecting" the Blackfoot and their territory, the government saw peace in terms of colonization and laws made by Parliament, applicable to all, and enforced by the North-West Mounted Police, possibly with the assistance of tribal leaders when a Blackfoot person was suspected of breaking the law. In fact Treaty Seven was more restrictive than government officials had been as recently as 1874, when David Laird, as minister of the Interior, had written Morris suggesting that Aboriginal nations, particularly the Metis, should be allowed to form their own government "within reasonable limits," as long as they "treat[ed] everyone fairly."<sup>29</sup> Although written histories claim that the Blackfoot understood and agreed to the terms of the treaty in full, this is not so. Morris claims that the majority of the Chiefs spoke of their gratitude toward the North-West Mounted Police and their desire to have these friends stay in their territory on the same basis as before. Beyond this it is doubtful that the Indian adherents to the treaty understood it in anything like the same manner that the Euro-Canadians did.

In a letter Father Scollen asked Colonel A. G. Irvine of the North-West Mounted Police, "Did these Indians, or do they now, understand the real nature of the treaty made between the Government and themselves in 1877? My answer to this question is unhesitatingly negative, and I stand prepared to substantiate this proposition."<sup>30</sup> This lack of agreement on the meaning of the treaty resulted in part from problems of translation, the nonexistence of a Blackfoot equivalent for terms like "square mile," deliberate misrepresentation by representatives of the Crown, and the fact that the Blackfoot had a

completely different world view from the Euro-Americans.<sup>31</sup> Nor were the Treaty Seven Commissioners completely clear or truthful about their intentions, as can be seen in the following statement by Laird: "In a very few years the buffalo will probably be all destroyed, and for this reason the Queen wishes to help you live in the future in some other way. . . . The Commissioners would strongly advise the Indians to take cattle . . . at least as long as you continue to move about in your lodges."<sup>32</sup> Laird never had in mind a pastoral herding life in which the Blackfoot Confederacy replaced the buffalo with domestic cattle—such a statement had no reference to reality. As Blackfoot political scientist Andrew Bear Robe put it,

the Treaty 7 negotiations of 1877 between the treaty commissioners and the Indian nations that signed that treaty talked about the need for peaceful co-existence and secondly, to let the Queen's white children come live on Indian lands. There was no talk about ending "the Indian way of life" which surely included the continuation of some form of Indian sovereignty and jurisdiction.<sup>33</sup>

The Blackfoot Confederacy did not discuss "white man's law," Indian sovereignty, jurisdiction over Blackfoot territory, and paternalistic government practices and structures because the people assumed that they would continue to live as they had since "time immemorial."<sup>34</sup> Thus, the leaders of the Blackfoot Confederacy agreed to live in "peace and good order," a condition in which all people would live in peaceful co-existence, respecting others' ways of doing things. White people would have to respect the "Indian way of life," as the Blackfoot did not expect to give up their sovereignty nor their control of their territories. Many chiefs expected white settlers to respect and adapt to their ways, just as the Blackfoot had to Euro-Canadian ways, when the new way did not contradict or hobble their own.<sup>35</sup>

The Blackfoot also saw the promise to maintain "peace and good order" and to abide by

the Queen's laws as a continuum with the past. According to Edward Yellowhorn it was the North-West Mounted Police that offered up this clause at the treaty negotiations, and it was with them that the Blackfoot agreed to establish and maintain "peace and good order." This idea was echoed in other interviews, particularly by Dorothy Yellowhorn, who suggested that this promise had been broken many times by the Police.<sup>36</sup> These ill-defined promises, however, did not mean that the Blackfoot peoples agreed to stop living by their own laws or to supplant their own traditions with those of the incoming society. As James MacLeod wrote Lieutenant Governor Morris in 1875, the Mounted Police had been successful in suppressing the whiskey traders, but the Blackfoot people's had no intention of cooperating with police attempts to prevent them from trading with whomever they wished or to stamp out polygamy and horse raiding.<sup>37</sup> Rather, as Dempsey suggests, the Blackfoot respected Canadian laws only when they were compatible with and not contradictory to Blackfoot traditions. The Blackfoot Confederacy broke incompatible laws not to defy the Canadian authorities but to uphold tribal law.<sup>38</sup>

Thus, the leaders of the Blackfoot Confederacy, with no context for interpreting the intent of distant authorities in Ottawa or for knowing that their promises would not be honored in a manner consistent with the "spirit and intent" of the treaty, assumed that the treaty meant they would continue to live as they had since the North-West Mounted Police had arrived. According to Father Scollen, in fact, their friendly relationship of mutual co-existence with their "benefactors," the North-West Mounted Police, induced Blackfoot leaders to agree to the treaty. As Scollen states, "It may be asked: If the Indians did not understand what the treaty meant, then why did they sign it? Because previous to the treaty they had always been kindly dealt with by the Authorities, and did not wish to offend them . . ." <sup>39</sup> Neither the Blackfoot, nor the Cree (in their treaties), promised to give up their right to live in mutual coexistence according to their



own ways, or for that matter to control their territory. Rather, the "mutual clause" may be construed to have meant to the Blackfoot Confederacy that the Indian and Euro-Canadian parties to Treaty Seven would coexist peacefully as sovereign entities with their own independent spheres of jurisdiction, assisting the others in maintaining peace and good order when required and permitted by their own traditions.

#### UNDERSTANDING THE TREATIES

The peace and good order clause in Treaty Seven meant something different for all parties involved. Regardless of what was stated or implied by the government agents at the negotiations, the government did not view the mutual clause (or the entire treaty) in the same manner as did the Aboriginal nations. The government viewed all the treaties as the first step in settling the West, and in "protecting," "civilizing," and "assimilating" the Indians. For them the "mutual clause" represented the Indians' promise to remain peaceful, to obey Canadian laws, and to allow the government to exercise its authority and jurisdiction over the entire country.<sup>40</sup>

On the other hand, the Siksika, Peigan, and Blood nations did not know of the Crown's intentions but viewed the treaty as a continuation of past relations, as a means of securing government assistance in dealing with declining buffalo populations and outside hunters, and as a means of getting trade goods, helping them adjust to a new way of life, and sharing their land with relatively few farmers and ranchers.<sup>41</sup> The Indians did not view the treaty as a surrender of their land in exchange for recognition of "treaty rights." They would instead establish (most likely through treaties) peace with all others, and they would share their territory (with the very few white people they expected) in accordance with their ways, while respecting and abiding by the Queen's ways wherever possible.

Despite the many different views of the peace and order clause, no one seems to have

suggested a right to guaranteed electoral representation, an idea that emerged in Canadian politics only recently. The Canadian government expected to maintain a Euro-Canadian version of peace and order in the whole country, as Morris implied during negotiations of Treaty Six at Fort Pitt.<sup>42</sup> This government assumption, however, contradicts the oral histories of the Aboriginal peoples and even the actions of the Dominion government in 1885, calling upon the Aboriginal populace to play a role in maintaining peace and good order in their respective territories.

Furthermore, during the treaty negotiations, although there were many different issues raised by individual members and the constituent bands and nations of the Blackfoot Confederacy, there is no recollection of anyone's alluding to guaranteed parliamentary representation. For the most part, it seems that the Indigenous nations intended to retain their sovereignty and not interfere with the Euro-Canadian government or settlers so long as they did not interfere with them. Thus, the clause represents a promise for the Siksika, Peigan, and Blood to uphold peace and order within their own territories, including the territory they had agreed to share, and between themselves and others. The government promised to maintain peace and order in the remainder of the country while respecting aboriginal laws and ways of being and seeing. Many Blackfoot present at the signing of Treaty Seven expected the government and any settlers to use resources according to Blackfoot customs, such as paying the Blackfoot for wood. They expected non-Natives to respect, obey, and abide by Blackfoot traditions, just as the Blackfoot would live under the Queen's law insofar as it did not interfere with their own ways. While the treaties established a relationship of peace and friendship and made promises of government assistance, neither party renounced its sovereignty, and the leaders of the Blackfoot Confederacy accepted the responsibility for maintaining peace and order in the territory they agreed to share. The leaders of these

peoples took the added responsibility to “maintain peace and good order between . . . themselves and others of Her Majesty’s subjects, whether Indians or whites, now inhabiting or hereafter to inhabit any of the said ceded tracts . . .”<sup>43</sup>

Although members of the Blackfoot Confederacy upheld “peace and order” every day, it is not clear that any individual or group ever attempted to hold any Euro-Canadian accountable within traditional Blackfoot territories, although the Blackfoot had the right to do so. The government of Canada and some segments of the public recognized this right during the North-West Rebellion in 1885, when they contemplated enlisting the Blackfoot Confederacy, including the Sarcees, to fight against the “rebellious” Plains Cree and Metis. According to Little Bear, this occurred

basically because the Blackfoot have agreed not to go out and fight but we [the government] may need them to go and fight. Because the Crees are their traditional enemies, let’s let them fight against each other. We’ll tell them that it won’t affect your Treaty. That’s the thinking behind that. . . . When they’re looking at peace and order, they’re looking at the larger picture. And saying that we’ve signed an agreement, and in that agreement we both said that we were going to keep peace and order. Those guys there are not behaving, so you have a responsibility.<sup>44</sup>

Except for using Sioux and Sarcee scouts, runners, and informants, however, the government did not employ Indians, particularly those of Treaty Seven, against the Cree and Metis.<sup>45</sup> Macdonald was unsure if “a body of Blackfeet [sic] under white command [could] be trusted,” and he was concerned about the fear that would be sparked among settlers if large numbers of well armed Indians were allowed to ride freely across the plains to the scene of combat. Finally, however, Macdonald ruled out the military assistance of the Blackfoot because although they were enemies

of the Cree, the Confederacy had divided over the Rebellion.<sup>46</sup>

As a result, the government required Indians not involved in the Rebellion to pledge their loyalty to the Queen or accept soldiers stationed on their reserves to ensure they did not join the uprising.<sup>47</sup> The government used the treaties to justify these actions, as did the chiefs who pledged their loyalty.<sup>48</sup> Hugh A. Dempsey notes that it is unlikely the chiefs were actually pledging loyalty to the Crown, rather, “at all times [Crowfoot] was unswervingly loyal, not to the government, but to his own people. This was the only reason for remaining at peace.”<sup>49</sup>

While the government made some limited use of the “peace and good order” clause in 1885, I believe that this is the only time that the clause was invoked to give Indians a role in reestablishing or maintaining peace and order off their reserves. Nonetheless, the interpretation of the clause providing Aboriginal nations with a role in maintaining peace and order is significant.

The government was attempting to resolve the North-West Rebellion as quickly and as cheaply as possible, and without the loss of Euro-Canadian lives. Indians were inherently expendable in the colonial scheme of things because they were defined as a “vanishing” or “dying” race. Hence the government gave no thought to setting a precedent for twentieth century interpretations of the treaty. The Indians did not vanish, however, and they continue to exist today in a paternalistic and colonial paradigm.

Although I lack information about the origins of the “peace and good order” clause, James Youngblood Henderson suggests that at the time of its first appearance in Treaty One, before the formation of the North-West Mounted Police, it was intended by the Colonial Office of the imperial government to give responsibility for controlling the territories covered by each treaty to the Indians in order to ensure that they remained the allies of the Crown against the Americans. The Indians offered a less costly, and perhaps more efficient,

way of controlling territory not yet open to Euro-Canadian settlement than did the systems of control utilized by the United States or by the Hudson's Bay Company.<sup>50</sup> But while the government may have viewed this as a temporary measure, since the Indians did not vanish or die out, the treaty of 1877 is still a working agreement, though one that has yet to be fully understood and implemented. Such an understanding is not simple, however, especially if one is applying the "Dickson Doctrine," standards established by the Canadian courts that hold that treaties must be interpreted as meaning whatever they could reasonably have been expected to mean to the Indians at the time of signing.<sup>51</sup>

The Blackfoot Confederacy did not believe that they were ceding their land, their control over their territory, or their sovereignty. Regardless of what the government had intended and what policies and practices were implemented subsequent to the signing of Treaty Seven, the Siksika, Peigan, and Blood, and other signatory nations retained their sovereignty and their ability and right to govern themselves according to their laws. They also accepted the added responsibility for helping to maintain peace and good order throughout their traditional territory. The onslaught of Euro-Canadian settlers and the demise of the buffalo meant that the Blackfoot Confederacy was never really able to practice this shared power, but the Canadian government acknowledged it to some extent during the North-West Rebellion.

While the peace and order clause was probably not properly translated nor fully explained at the treaty negotiations, the wording of the clause is, for the most part, compatible and consistent with the Indian view. In Treaty Seven, the Blackfoot promised to make and keep peace with all others living within the Confederacy's traditional territory, a pledge consistent with the idea that this was a peace treaty to ensure peaceful relations between "friends" or "brothers" who would share land, trade goods, and responsibilities but not sov-

ereignty. Blackfoot promises to "obey and abide by the law" have to be understood in the context of the negotiations and the reality of the time. Oral histories show that the Indian signatories did not fully understand the universal coverage of white law or that their laws would be supplanted by it. The Blackfoot would respect the Queen's law whenever possible, as they had been doing and newcomers to their territories would respect their laws. The Blackfoot Confederacy also promised to help enforce that law ("they will assist the officers of Her Majesty in bringing to justice and punishment any Indian"), clearly assuming a shared responsibility for maintaining peace and order with the North-West Mounted Police.

Determining exactly what the understanding means today is even more problematic because according to a paper prepared for and distributed by the research branch of the Department of Indian Affairs and Northern Development (DIAND) the federal government has agreed that, "if the Treaty promises 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."<sup>52</sup> While it would be easier to claim that the treaty is merely what appears on the page, this is not the Indian view of the treaty, and the Indians have been upheld by the Supreme Court of Canada.

Most of the people interviewed for this paper reported that the treaties were never finalized, and although their promises could never be retracted or lessened, they should continue to adapt to change. The statement: "so long as the sun shines, [grass grows] and the rivers flow" does not actually appear in the Numbered Treaties, though it, or a similar version, appears constantly in the speeches of Indians and non-Indians alike, and it is actually included in the 1855 treaty between the Blackfoot Confederacy and the United States government.<sup>53</sup> According to Henderson,

however, this statement is representative of Indian reality and philosophical traditions. It is the “natural context that they are talking about; they knew and experienced that. . . . Those aren’t metaphors, those were the actual ways that they talked for the environment . . . and themselves—living with nature and not making a distinction, a theory, of self.”<sup>54</sup>

The Indigenous peoples were speaking from their own reality, their own understanding of the world around them, one very different from the western ways of the dominant society. If we understand the “Rivers Flow” statement as a crucial expression of Indian philosophy rather than a rhetorical flourish, it mandates that the treaties, like the river, are not constant but something in an ever changing cycle of life. The water in the river one moment was not the same the next moment. In dry years the river was shallow while in other years it flooded. What was constant was that this ever changing river continued to flow and modify or adapt itself, as was needed, to a changing reality. Before the building of huge twentieth century dams Alberta’s Indigenous people believed no person could make a river do what it did not want to do. Thus the huge floods of 1995 came as no surprise to many elders. The rivers are just reasserting themselves.

Many Blood, Peigan, and Siksika people consider that much like a river, the treaty continues to exist and will continue to exist for as long as can be envisioned, even though many promises, like the rivers, have been dammed. But like the river, Treaty Seven should change with time to meet the needs of the people, the same people (human and non-human beings) for which this land was created. Promises such as those concerning keeping peace and good order have to be interpreted to reflect the situation today: The North-West Mounted Police no longer exist and their successors are no longer solely responsible for maintaining peace and order on the Prairies, and the traditional territories of the Blackfoot Confederacy are “occupied” by “settlers” who do not respect

traditional laws, traditional ways of being, or the sovereignty of First Nations. Other clauses in treaties have been modernized in this spirit. For instance a clause in Treaty Six promising a “medicine chest” to each group has been interpreted as guaranteeing free health and dental care to all status Indians across Canada, regardless of which, if any, treaty covers the individual.

While the “river analogy” provides a basis for change, the belief that the treaty was never finalized provides an alternate argument for updating the treaty promises. This belief is common throughout “Blackfoot Country,” partly because Crowfoot, purposely, never marked his “X” to it and because the Numbered Treaties merely allow for the sharing of Indian lands, remaining silent on most other matters.<sup>55</sup> Thus, the existing treaties could either be modernized to deal with such issues as the sharing or imposition of jurisdiction and sovereignty (for example through guaranteed Parliamentary representation), or new treaties could be drafted to deal with such issues.<sup>56</sup>

Nonetheless, as Bear Robe states, even if the treaties are not revisited, they are still living documents that include usable rights that, as in the case of self-government, have lain dormant.

Since the Indian treaties in Canada are all silent as to the matter of continuing political and sovereign relations between the Indian Nations and the British sovereign, the contemporaneous right to First Nation [Parliamentary representation] may be an “existing” treaty right pursuant to section 35 of the Canadian Constitution.<sup>57</sup>

Thus, even though the peace and order clause is silent about particularistic representation, it does not mean that there is no treaty right to guaranteed representation. This parallels the more familiar argument that the peace and order clause can be construed to suggest a treaty right to self-government, as there is no mention of the Dominion government

supplanting the sovereign governments of the Indian nations. While there is no mention of guaranteed representation, there is mention of a responsibility to maintain peace and good order throughout traditional Blackfoot territories, a responsibility at present carried out by the federal and provincial governments and their various agencies, which implicitly exclude First Nations. The Blackfoot Confederacy is now prevented from exercising a responsibility specifically reserved to it by the treaty.

#### IMPLICATIONS FOR THE PRESENT

The Blackfoot Confederacy never viewed the treaty as relinquishing their sovereignty or their jurisdiction within their traditional lands but rather in terms of sharing and as a means of securing help in dealing with the demise of the buffalo and the advent of Euro-Canadian settlers. For many, including Crowfoot, the treaty offered hope for the future, a vision of the future different from the starvation predicted by many elders. It was a dream in which the Queen would look after them and teach them her ways.

James Youngblood Henderson reiterated the importance of the peace and good order clause:

It's very important that you understand that in the oral tradition it's the last thing that you agree upon [that] is most important. Because none of the other agreements are binding if you don't agree with the last clause. So if you're a literate person in English you go, "What's number one?" . . . But in an oral tradition, it's the last story that you agree to that bundles the whole negotiations up. And that last thing that they, [the Indians], agreed to is that they'd be in control of all the ceded territory. So their governments would remain just like they were, except they would have a little more responsibility than they would ordinarily have over their people. . . . And there is nothing in the Treaties about how the white people are going to govern them-

selves. . . . They aren't going to govern anything—if you just read the Treaties.<sup>58</sup>

While one might argue that this interpretation of the mutual clause does not seem compatible with the government view of the treaties one could as easily argue that the government view could be construed to support this conclusion. In the early 1870s (both before and after the creation of the North-West Mounted Police) the Dominion of Canada was searching to establish peace and good order in their newly acquired and "unoccupied" resource-rich hinterland. Ottawa wanted to avoid the mistakes made by the United States or the Hudson's Bay Company, and govern at minimal cost. Thus they entered into treaties of "mutual" peace, friendship, land surrender, and assistance with the Indigenous nations.

According to Henderson, such treaties secured peaceful relations with the Native populace, but they were also an attempt to control "uninhabited" territory at minimal cost. Thus, while the imperial Crown's prime objective was to arrange peaceful land surrenders with the First Nations and avoid "Indian wars," the peace and good order clause confirmed Native peoples in temporary control of their lands and resources to ward off claims from the US, to secure Euro-Canadian access to resources and, in time, to give way to the new settlers. Henderson claims that, apparently, the Colonial Office of the imperial government "devised a prototype of all colonial documents, that also is no less of authority in British law than the grants to the House of Commons, the House of Lords or the Courts." In fact the peace and good order clause may have originally have been intended to function as did the Peace, Order, and Good Government clause (Indians already had Good Government) in the British North America Act of 1867. Both are overriding clauses that provide the foundation upon which to govern. As Wilton Littlechild points out, however, this may be interpreted as Indians agreeing to abide by Canadian law. Nonetheless, he says that "our people will still say no, we agreed to obey and abide by our law."<sup>59</sup>

It looks as if the Crown agreed to have the chiefs and minor chiefs either share the responsibility for, or be solely responsible for, maintaining peace and good order, if only among their own peoples and as a temporary measure. The leaders of the Blood, Peigan, and Siksika nations had the shared responsibility of maintaining peace and good order throughout their “ceded” (shared) territories. The Crown “granted” this responsibility, presumably as a temporary measure and possibly one meant to be shared with the North-West Mounted Police and, to a small extent, the Dominion government.<sup>60</sup>

Like a river, however, the prairies have been changed and altered. Settlement occurred, colonial governing structures (i.e., provinces) were created, the North-West Mounted Police disbanded and were recreated as the Royal Canadian Mounted Police, treaty promises were broken, and the federal government’s Indian policy was implemented. Nonetheless, this clause still holds true, even though it has long been forgotten. Many Blackfoot still retain their interpretation of the responsibilities outlined in the treaty—including the responsibility to maintain peace and good order in their traditional territories—and continue to argue that much of what the government has done has been against the spirit and intent of the treaty.

Despite the fact that the promise outlined in the last clause in Treaty Number Seven was never fully implemented, the Blackfoot Confederacy retain their sovereignty and their responsibility to maintain peace and good order throughout their respective traditional territories. Given that their lands are now “occupied” and the North-West Mounted Police are no longer responsible for the maintenance of peace and good order, this promise cannot be viewed as it was at the time of the treaty, but the promise still stands, even though its exact implications are unclear.

The peace and good order clause really makes two major promises to the Blackfoot Confederacy. The first implies they will keep their sovereignty while the second promises

that the chiefs and minor chiefs will share the responsibility to maintain peace and order. While the first of these has often been construed as the recognition of an inherent right to self-government, the promise entails more than that. It is a recognition of sovereignty, and a recognition of the Indigenous signatories’ understanding that they would go on living according to their laws, customs, and traditions without interference from the Queen, except to help them adapt to a new way of life and to assist them wherever required. Aboriginal nations still retain sovereignty within the reserve, but outside the reserve sovereignty and jurisdiction, though limited by promises made in the treaty still exist in some form. According to Henderson,

The chiefs and headmen delegated limited authority to the proper legislative authority or federal government over alcohol and to the “Government of the ceded country” in harvesting of natural resources in the shared or ceded land. . . . [The hunting, trapping and fishing rights] section shows that First Nations knew how to delegate authority to other governments. Lacking such affirmative language, no implied authority exists in the Crown. As the treaties illustrate, the imperial Crown authority over First Nations and the shared territory is derivative, not inherent.<sup>61</sup>

While the “mutual clause” may be seen as a recognition of sovereignty and the right to self-government (possibly on and off reserve), the clause also entails promises to share in the responsibility to maintain peace and good order throughout the ceded or shared territories. While we can partially reconstruct what this meant in 1877, the exact meaning of the clause today is difficult to determine. It is no longer possible for the chiefs and minor chiefs to assist the North-West Mounted Police, and the traditional ways of the Blackfoot Confederacy cannot be recreated. Nevertheless, the “mutual clause” guarantees Aboriginal signatories the right and responsibility to share in

maintaining peace and good order, a right held by the respective nations and exercised by the leaders. This treaty right could be implemented in a plethora of ways, but implementation must adhere to the spirit and intent of the promise as well as the treaty in its entirety.

Although establishing bilateral nation-to-nation relationships between the Crown and the leaders of the Blackfoot Confederacy would be the ultimate manner in which to implement the right, this is highly unlikely, as is allowing the Indigenous leaders to enforce traditional laws amongst the non-Native populace or even their own peoples. A more plausible alternative would be the construction of a system of particularistic representation that respects the nature of the nation-to-nation relationship and the spirit and intent of the Treaty. This need not exclude other possible plans of implementation, such as developing self-government or partnerships in the administration of justice, or the co-management of resources.<sup>62</sup>

What the treaty guarantees is not explicit parliamentary representation but rather a suitably modernized way for the Blackfoot Confederacy to share in the maintenance of peace and good order. Parliamentary representation is a plausible mechanism for the respective communities to share responsibility. This could also be achieved through the creation of a separate but parallel parliament or even the recreation of the Senate, turning it from an appointed body from the dominant culture to a council of the signatories of the Numbered Treaties or possibly all Aboriginal peoples.

Parliamentary representation is desirable because the true governing body of today is the federal government or, in some cases, the provincial government, not the North-West Mounted Police that implemented the laws in the 1870s. Since dominant society has failed to respect the laws or ways of the Indigenous peoples today, as was suggested in the early interpretations of the treaties, a new relationship that respects Indigenous ways has to be constructed. Although one may argue that participation in an "alien" parliament is con-

trary to the promise of sovereignty and a nation-to-nation relationship, this does not have to be the case. Sovereign nation states have participated, as nations, in shared structures of governance. There are numerous examples of political confederacies (including the Blackfoot Confederacy and the Iroquois Confederacy) that existed long before colonization, and sovereign nation-states such as Britain participate in various forms of "alien" governmental structures including the European Parliament, the United Nations, and the Commonwealth. A system of differentiated parliamentary representation could be structured that respected Aboriginal nations within Canada and re-established nation-to-nation relationships with the Canadian nation-state. A system that recognizes the existence of nations and enables the Siksika, Blood, and Peigan, and Tsuu T'ina and Stoney nations to share in the responsibility for maintaining peace and order, particularistic representation would be a contemporary adaptation of Treaty Seven. The recognition of nationhood, sovereignty, shared responsibility, and a nation-to-nation relationship must be the underlying principles of a system of guaranteed representation.

Although particularistic representation might at first consideration appear to be prohibited by the Canadian Charter of Rights and Freedoms, as a treaty right, it is entrenched in the Constitution. The Canadian Constitution not only affirms treaty and aboriginal rights in Section 35, but it also provides in Section 25 that the Charter "shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal people of Canada . . ."<sup>63</sup> Thus Aboriginal people are "citizens plus," whose "special" rights are constitutionally shielded from other citizens and protected against the Charter's sphere of influence. Although a treaty right to guaranteed parliamentary representation—or even the treaty promise of a mutual responsibility for peace and good order—is not explicitly recognized in the Constitution, neither are other treaty rights enumerated

constitutionally. The argument of this paper has been that guaranteed representation is a plausible and practical way of activating a major Treaty Seven promise that has lain dormant since 1877.

Based upon the concept presented above, one can justifiably state that a treaty right to parliamentary representation is constitutionally permissible, as it is a constitutionally entrenched right. This conclusion is not revolutionary or unsubstantiable, as several scholars and all of the national Aboriginal political organizations have asserted that guaranteed representation is a treaty and Aboriginal right. Even the Royal Commission on Electoral Reform and Party Financing attempted to construct such an argument when they reported that

Since Section 25 of the Charter places Aboriginal people in a special constitutional position, there is no valid reason to believe the establishment of such a right to direct representation through a well crafted process whereby they could vote in Aboriginal constituencies would not survive any challenge in the courts that sought to demonstrate that this right had a negative impact on the equality rights of other Canadians.<sup>64</sup>

I have not attempted to suggest how such a system of representation could be constructed or how the rights of the signatories to Treaty Seven should affect other Aboriginal nations and individuals in Canada. I have, however, endeavored to show how, in the context of today's conditions, the Treaty Seven clause acknowledging that the mutual responsibility for peace and good order of the "shared" or "ceded" territories lay with both the Aboriginal and Euro-Canadian adherents can be construed as leading to guaranteed parliamentary representation for Aboriginal peoples in Canada.

#### NOTES

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entary Representation," School of Canadian Studies, Carleton University, 1996. I thank Pauline Rankin, Maureen Davies, and the two anonymous reviewers who provided helpful insights and comments on versions of this project. I gratefully acknowledge the contributions of those people who provided the information and guidance needed to complete this project—particularly James (Sakej) Youngblood Henderson. I take full responsibility for any mistranslation, misrepresentation, or misunderstanding.

1. Committee for Aboriginal Electoral Reform, "The Path to Electoral Equality," in Royal Commission for Electoral Reform and Party Financing, *What Canadians Told Us: Public Hearings and Written Submissions*, Vol. 4 (Ottawa: Minister of Supply and Services Canada, 1991), pp. 228-96. See also, Roger Gibbins, "Electoral Reform and Canada's Aboriginal Population: An Assessment of Aboriginal Electoral Districts," in *Aboriginal People and Electoral Reform in Canada*, ed. Robert A. Milen (Toronto: Dundurn Press, 1991), pp. 153-84, and Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990).

2. Western Treaty No. 7, GAD reference number IT313, National Archives, Ottawa. For the complete text and an exhaustive discussion of the treaty see also Treaty 7 Elders and Tribal Council, *The True Spirit and Original Intent of Treaty 7* (Montreal and Kingston: McGill-Queens University Press, 1996).

3. In this paper I have used the name "Blackfoot" to refer to the Blackfoot Confederacy, composed of the Siksika or Blackfoot, the Kainai or Blood, and the Pikuni or Peigan (US spelling Piegan) nations. I have used "Siksika" to refer to the specific nation within the confederacy.

4. Royal Proclamation of 1763, in David W. Elliott, "Aboriginal Title," in *Aboriginal Peoples and the Law: Indian, Metis, and Inuit Rights in Canada*, ed. Bradford W. Morse (Ottawa: Carleton University Press, 1991), pp. 53-54.

5. George Brown and Ron Maguire, *Indian Treaties in Historical Perspective* (Ottawa: Research Branch, Department of Indian and Northern Affairs, 1979), p. 29.

6. Leroy Little Bear, interview, by author, Calgary, 29 August 1995.

7. Alexander Morris, *The Treaties of Canada with the Indians of Manitoba, the North-West Territories and Kee-Wa-Tin* (Toronto: Willing and Williamson, 1880), p. 44.

8. John McDougall, *George Millward McDougall, the Pioneer, Patriot and Missionary* (Toronto: William Briggs, 1888), p. 198; Constantine Scollen to Alexander Morris, 8 September 1876, in Morris, *Treaties of Canada*, *ibid.*, p. 248; see also, Alexander



Morris to Constantine Scollen, 24 October 1876, in *Scollen Papers*, Provincial Archives of Alberta, Edmonton. For more discussion of Canadian government fear of Aboriginal unrest, see Hugh A. Dempsey, *Crowfoot: Chief of the Blackfeet* (Edmonton: Hurtig Publishers, 1972), pp. 92-93, and Treaty 7 Elders, *True Spirit and Intent* (note 2 above), pp. 224-29.

9. John Leonard Taylor, "Canada's North-West Indian Policy in the 1870s: Traditional Premises and Necessary Innovations," in *The Spirit of the Alberta Indian Treaties*, ed. Richard Price (Toronto: Institute for Research on Public Policy, 1979), pp. 3, 11.

10. J.A.N. Provencher, Indian Commissioner, 31 December 1873, in Brown and Maguire, *Indian Treaties* (note 5 above), p. 34.

11. Alexander Morris to the Reverend George M. McDougall, 9 August 1875, M732 Box 1, Folder 2, McDougall Family Fonds, Glenbow Museum, Calgary.

12. Edward Yellowhorn, interview, by author, Peigan Reserve, 28 July 1995. While there is no evidence that the North-West Mounted Police were offering to negotiate a treaty similar to the "Numbered Treaties" at this time, they were attempting to get the leaders of all First Nations to agree or promise to abide by the law, and not to fight with other First Nations. Such a promise in accordance with Blackfoot traditions would constitute a treaty, and as such is referred to as a treaty today by many elders.

13. W. McKay to Richard Hardisty, September 1874, M477, #550, Hardisty Family Fonds, Glenbow.

14. Hugh A. Dempsey, interview, by author, Calgary, 31 July 1995.

15. Hugh A. Dempsey, *Crowfoot: Chief of the Blackfeet* (Edmonton: Hurtig, 1972), pp. 81-82.

16. Little Bear interview (note 6 above).

17. John McDougall, *Opening the Great West: Experiences of a Missionary in 1875-1876* (Calgary: Glenbow-Alberta Institute, 1970), pp. 14-16. See also, E. Selby Smyth, "Report to the Minister of Justice," in *Sessional Papers of Canada*, 1876 No. 7, p. xxix; Canada, North-West Mounted Police Records (Ottawa: National Archives, 1873-1877), RG18 series.

18. Jean L'Heureux to Alexander Morris, 20 March 1876, in 13 September 1875, MG12B1, #1265 Alexander Morris Papers, Provincial Archives of Manitoba, Winnipeg (hereafter PAM).

19. Hugh A. Dempsey, *Treaty Research Report: Treaty Seven* (Ottawa: Treaties and Historical Research Centre, Indian and Northern Affairs Canada, 1987), p. 35.

20. Morris, *Treaties of Canada* (note 7 above), p. 249.

21. Dempsey, *Treaty Research Report* (note 19 above), pp. 34-41.

22. George McDougall to Alexander Morris, 23 October 1875, MG12B1, #1136, Alexander Morris Papers, PAM.

23. McDougall, *Opening the West* (note 17 above), p. 58.

24. Taylor, "Canada's North-West Indian Policy" (note 9 above), p. 40.

25. Morris, *Treaties of Canada* (note 7 above), p. 245.

26. *Ibid.*, p. 258.

27. Hugh A. Dempsey, "One Hundred Years of Treaty Seven," in *One Century Later: Western Canadian Reserve Indians Since Treaty 7*, ed. Ian A. L. Getty and Donald B. Smith (Vancouver: University of British Columbia Press, 1978), p. 21.

28. Morris, *Treaties of Canada* (note 7 above), pp. 267, 275.

29. David Laird to Alexander Morris, 28 March 1874, MG12A1, #G-4(NM), Alexander Morris Papers, PAM.

30. Constantine Scollen to A.G. Irvine, 13 April 1879, No. 14924, Indian Affairs Archives, Ottawa.

31. See the discussion on translation problems in Treaty 7 Elders, *True Spirit and Intent* (note 2 above), pp. 123-34.

32. Morris, *Treaties of Canada* (note 7 above), pp. 268-69.

33. Andrew Bear Robe, *Treaty Federalism—A Concept for the Entry of First Nations into the Canadian Federation* (Gleichen: Siksika Nation Tribal Administration, 1992), p. 19.

34. Dila Houle, interview, by author, Peigan Reserve, Alberta, 27 July 1995.

35. See both written and oral histories. According to Morris, Blood War Chief Medicine Calf (or Button Chief) asked Laird to add to the treaty a clause that would require all inhabitants of their territory (including the North-West Mounted Police) to pay for the timber that they used, a practice well established in Blackfoot customs by 1877 (although the North-West Mounted Police had never obliged). Morris, *Treaties of Canada* (note 7 above), p. 270. See also, Dempsey, *Crowfoot* (note 14 above), pp. 99-100.

36. Edward Yellowhorn interview (note 12 above); Dorothy Yellowhorn, interview, by author, Peigan Reserve, Alberta, 28 July 1995.

37. James MacLeod to Alexander Morris, 15 March 1875, MG12B1, #962, Alexander Morris Papers, PAM.

38. Dempsey interview (note 14 above).

39. Scollen to Irvine (note 30 above).

40. Alexander Morris, *Nova Britannia or Our New Canadian Dominion Foreshadowed: Being a Series of Lectures, Speeches and Addresses* (Toronto: Hunter, Rose and Co., 1884), p. 170.

41. Scollen wrote of the Blackfoot Treaty, "although they had many doubts in their mind as to

the meaning of the treaty, . . . they hoped that it simply meant to furnish them plenty of food and clothing, and particularly the former, every time they stood in need of them." Scollen to Irvine (note 30 above).

42. Although this view is not recorded elsewhere, it seems to have been the government's intent. Morris, *Treaties of Canada* (note 7 above), p. 206.

43. Western Treaty No. 7, rpt. Treaty 7 Elders, *True Spirit and Intent* (note 2 above), p. 236.

44. Little Bear interview (note 6 above).

45. R. Burton Deane, "Report of Superintendent Deane, NWMP-Headquarters, December 31, 1885," in *Report of the Commissioner of the North-West Mounted Police, 1885* (Ottawa: MacLean, Roger and Co., 1886), p. 63.

46. John A. Macdonald to Edgar Dewdney, 10 April 1885, in "CPR Telegrams Relating to the Riel Rebellion: March-April 1885," partially catalogued collection, p. 105, Glenbow Museum Calgary; Dempsey interview (note 14 above).

47. Deane, "Report" (note 45 above), p. 64.

48. Crowfoot to Sir John A. McDonald [sic], 11 April 1885, in *CPR Telegrams* (note 46 above), p. 107.

49. Dempsey, *Crowfoot* (note 14 above), p. 193.

50. James (Sakej) Youngblood Henderson, interview by author, Saskatoon, 19 July 1995.

51. As Henderson explains, "the Courts have come up with a canon of construction [the Dickson Doctrine] that says that if you can't figure out what the intent of the Crown was and you can't figure out what the Indians' intent was, then as a judicial value . . . of interpretation you have to give a broad, fair, and liberal interpretation to the words from the vantage point of the Indians at the time of signing." Henderson interview, *ibid.* The Supreme Court decision of *Simon v. The Queen* (1986), written by Justice Dickson, states: "Such an interpretation accords with the generally accepted view that Indian treaties should be given a fair, large and liberal construction in favour of the Indians. . . . It seems to me, however, that treaties and statutes relating to Indians should be liberally construed and doubtful expressions resolved in favour of the Indian. In *Jones v. Meehan* (1899), it was held that Indian treaties must be construed not according to the technical meaning of their words, but in the sense that they would naturally be understood by the Indian." *Simon v. The Queen*, in Morse, *Aboriginal Peoples and the Law* (note 4 above), p. 821.

52. Brown and Maguire, *Indian Treaties* (note 5 above), p. 34. See also Royal Commission on Aboriginal Peoples, *Final Report, Restructuring the Relationship*, vol. 2 (Ottawa: Canada Communication Group, 1996): 13-18.

53. Dempsey, *Treaty Research Report* (note 19 above), pp. 35-36; George F.G. Stanley, "As Long as the Sun Shines and Water Flows: An Historical Comment," in *As Long as the Sun Shines and Water Flows: A Reader in Canadian Native Studies*, ed. Ian A. L. Getty and Antoine S. Lussier (Vancouver: University of British Columbia Press, 1983), p. 11. See also, Morris, *Treaties of Canada* (note 7 above), p. 208.

54. Henderson interview (note 50 above).

55. According to both written and oral history Crowfoot purposely failed to touch the pen as the Treaty Commissioners marked his "X." Houle interview (note 34 above); see also Scollen to Irvine (note 30 above).

56. Bear Robe, *Treaty Federalism* (note 33 above), p. 11. These ideas are consistent with the recommendations pertaining to "Historical Treaties" in *Restructuring the Relationship* (note 52 above) vol. 2: 9-94, particularly 49-58.

57. *Ibid.*, p. iii.

58. Henderson interview (note 50 above).

59. Wilton Littlechild, interview by author, Hobemma, Alberta, 18 August 1995.

60. According to Henderson, "when the King says that he's going to recognize that the Chiefs and Headmen are going to control this territory, he's given them a grant that's equal to anything they have in England, and anything that any of the colonies have." Henderson interview (note 50 above).

61. James (Sakej) Youngblood Henderson, "Implementing the Treaty Order," in *Continuing Poundmaker and Riel's Quest: Presentations Made at a Conference on Aboriginal Peoples and Justice*, ed. Richard Gosse, James Youngblood Henderson, and Roger Carter (Saskatoon: Purich Publishing, 1994), pp. 54-55.

62. See *ibid.*, pp. 52-62.

63. Canada, *The Constitution Acts 1867 to 1982* (Ottawa: Department of Justice Canada, 1989), pp. 64-67.

64. Royal Commission on Electoral Reform and Party Financing, "Equality and Efficacy of the Vote," in *Reforming Electoral Democracy*, vol. 1 (Ottawa: Minister of Supply and Services Canada, 1991), p. 183.