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Stage Two: Contact and Co-operation

FOLLOWING CENTURIES of separate social, cultural and political evolution, Aboriginal and non-Aboriginal societies entered into a period of sustained and intense interaction that was to have profound and long-lasting effects on both. Although a few Aboriginal persons were, willingly or unwillingly, taken to Europe over the years, contact occurred almost exclusively on North American soil as transplanted Europeans began to arrive in ever-increasing numbers after the late 1400s.

First contacts between Aboriginal peoples and Europeans were sporadic and apparently occurred about a thousand years ago when Norsemen proceeding from Iceland and Greenland are believed to have voyaged to the coast of North America. There is archaeological evidence of a settlement having been established at L'Anse aux Meadows on the northern peninsula of what is now Newfoundland. Accounts of these early voyages and of visits to the coast of Labrador are found in many of the Norse sagas. They mention contact with the indigenous inhabitants who, on the island of Newfoundland, were likely to have been the Beothuk people, and on the Labrador coast, the Innu.

These early Norse voyages are believed to have continued until the 1340s, and to have included visits to Arctic areas such as Ellesmere and Baffin Island where the Norse would have encountered Inuit. Inuit legends appear to support Norse sagas on this score. The people who established the L'Anse aux Meadows settlement were agriculturalists, although their initial economic base is thought to have centred on the export of wood to Greenland as well as trade in furs. Conflict with Aboriginal people likely occurred relatively soon after the colony was established. Thus, within a few years of their arrival, the Norse appear to have abandoned the settlement and with it the first European colonial experiment in North America.¹

Further intermittent commercial contacts ensued with other Europeans, as sailors of Basque, English, French and other nationalities came in search of natural resources such as timber, fish, furs, whale, walrus and polar bear. Little is known of this very early period of contact. By the late 1400s, explorers were commissioned to find a route to the Orient by sailing west from Europe, thus providing an additional motive for European contact with North American Aboriginal peoples. These subsequent explorations included the voyages of Christopher Columbus to several islands in the Caribbean sea and those of John Cabot, who was seeking a more northerly route. Cabot's voyages began as early as 1494, and by 1497 he landed in a place he referred to as New Found Land.²

These first voyages of natural resource exploitation and exploration developed into initially brief, but then longer, encounters with Aboriginal peoples. By the time of Cartier's visits in the 1530s to the Maritimes, Stadacona (Quebec City) and Hochelaga (Montreal), patterns of trade between the newcomers and the indigenous inhabitants were already becoming established features of the relationship between them.

Europeans initially came armed with assumptions similar to those of the Spanish further south. Thus, the letters patent issued to John Cabot by King Henry VII gave the explorer instructions to seize the lands and population centres of the territories "newly founde" in order to prevent other, competing European nations from doing the same:

And that the aforesaid John and his sonnes...may subdue, occupie, and possesse, all such townes, cities, castles, and yles, of them founde, which they can subdue, occupie and possesse, as our vassailes and lieutenantes, getting vnto vs the rule, title, and iurisdiction of the same villages, townes, castles and firme lands so founde...³

Nonetheless, in general, contacts between Aboriginal and non-Aboriginal peoples in this part of North America were marked less by these European pretensions and open conflict with Aboriginal peoples than by a mixture of mutual curiosity, halting efforts at friendship and some considerable apprehension. Each side struggled to interpret the behaviour and motives of the other in the light of their respective cultural traditions. Frequently this led to negative judgements on both sides. While some Aboriginal groups retreated from contact, others moved quickly to establish firm trading

relationships and to solidify their monopoly on trade with the newcomers.

Relations were established in a context in which Aboriginal peoples initially had the upper hand in population and in terms of their knowledge of the land and how to survive in it. These factors contributed to early patterns of co-operation and helped to overcome the colonial attitudes and pretensions the first European arrivals may originally have possessed. The newcomers, far from their home ports and scattered in a vast land of which they had little practical knowledge, of necessity had to develop friendly relations with at least some original inhabitants.⁴ Political and economic accommodations soon followed.

In the economic realm, both sides benefited from the commerce that took place. Europeans gained access to valuable resources such as fish and furs and also realized to varying degrees their ambitions to gain new territories. Both societies exchanged technologies and material goods that made their lives easier in their common environment. Some Aboriginal nations, too, profited from serving as commercial intermediaries between the Europeans and other Aboriginal nations located further in the interior.

The links between Aboriginal and non-Aboriginal societies in this initial period of contact were primarily commercial and only secondarily political and military. Thus they placed additional pressure on natural resources and contributed to rivalries among all participants in the trading economy. However, by the same token, they did not interfere in a major way with long-standing Aboriginal patterns of pursuing their livelihood and actually tended to build on Aboriginal strengths — hunting, fishing, trapping, trading, canoeing or transportation — rather than undermine them. It is clear that the newcomers badly needed the co-operation of the indigenous inhabitants if they were to realize the objectives that attracted them to North America. Referring to the French, J.R. Miller writes as follows:

From the time of Champlain's voyages till the dawn of the eighteenth century, the French came for fish, fur, exploration, and evangelization. The Indian was an indispensable partner — frequently a dominant as well as a necessary partner — in all these activities. To preserve fish, to gather fur, to probe and map the land, and to spread the Christian message, cooperation by the Indians was essential. For their part the Indians found it acceptable, and occasionally desirable, to humour the newcomers. To a minor degree

the explanation could be found in Indian traditions of sharing and avoiding coercion of others. A more important reason for their toleration of and cooperation with the French was that the newcomers' activities were compatible with the continuation of Indian ways. Fishing boats were no threat, given the rich stocks of fish and the brief landfalls by fishermen. Fur traders were a source of valued goods, and their activities did not require much change in Indian economic activities. Explorers and cartographers were less obviously useful...[b]ut cooperation with them was necessary to maintain the commercial relationship. The same consideration explained the grudging acceptance of missionaries in Indian villages.⁵

Politically, the initial period of contact was also one of mutual recognition, whereby Aboriginal and non-Aboriginal societies appear, however reluctantly at times, to have determined that the best course of action was to treat the other as a political equal in most important respects. As our more detailed accounts will illustrate, however, it was a time when the European powers were developing great ambitions for North America. These ambitions would drive them to claim these lands as their own, to proclaim their exclusive sovereignty over the Aboriginal inhabitants, and to issue instructions either to drive the Aboriginal peoples farther inland or to subdue them entirely, as given in the original instructions carried by John Cabot and other voyagers to the new world.

However, the existence of relatively strong, organized and politically active and astute Aboriginal nations caused the Europeans to recognize in practice, and later in law, the capacity of Aboriginal nations not only to govern their own affairs and to possess their own lands, but also to conclude treaties with them of a type similar to those the European nations were accustomed to making with each other. In the many ensuing struggles between France and Britain, as well as in the later ones between the American colonists and the British, Aboriginal nations were also greatly valued as military allies. Since victory or defeat in any particular military contest might hang in the balance, strenuous efforts were often made by the warring colonial powers either to enlist the support of Aboriginal nations or, at least, to assure their neutrality. Neither support nor neutrality could be demanded at this stage in the relationship, however; it could be achieved only by persuasion and diplomacy.

At this point it is important to state that, by highlighting areas of co-

operation, recognition and mutual benefit, it is not our intention to minimize the hardship, the diseases and the sheer racial and religious prejudice that were also characteristic of the initial period of contact. For example, historical accounts make clear that the newcomers suffered greatly and, indeed, many died from illness, exposure and other challenges presented by a land they regarded at the outset as foreign and inhospitable. Undoubtedly they would have suffered even greater hardships had not the Aboriginal peoples helped them with food, medicines and survival techniques. Much more devastating, though, was the impact of imported diseases on the Aboriginal population, whose numbers are estimated to have declined by at least 50 per cent, if not more, in the first three hundred years of sustained contact.⁶

With declining Aboriginal populations and ever-increasing European immigration to the New World, the numerical balance between the two groups gradually shifted during this first period of relations between them. By the latter part of the 1700s, in fact, it is estimated that Aboriginal and non-Aboriginal people were roughly equal in numbers. On the eastern seaboard the imbalance in favour of the newcomers quickly became pronounced and resulted in the rapid loss of Aboriginal nations' relative autonomy in that area. Many chose to move away from non-Aboriginal settlements to preserve their independence — a tendency that would increase during the next stage in the relationship: displacement.

At this early stage, however, neither society seemed to know what to make of the other. Much debate occurred within each, as well as between them, about the new people they were encountering and their strange habits. Representatives of the Haudenosaunee Confederacy would later say that, as time went on, it was decided that the appropriate relationship was one of some distance:

[W]hen your ancestors came to our shores, after living with them for a few years, observing them, our ancestors came to the conclusion that we could not live together in the same way inside the circle. ...So our leaders at that time, along with your leaders, sat down for many years to try to work out a solution. This is what they came up with. We call it Gus-Wen-Tah, or the two-row wampum belt. It is on a bed of white wampum, which symbolizes the purity of the agreement. There are two rows of purple, and those two rows have the spirit of our ancestors; those two rows never come together

in that belt, and it is easy to see what that means. It means that we have two different paths, two different people.

The agreement was made that your road will have your vessel, your people, your politics, your government, your way of life, your religion, your beliefs — they are all in there. The same goes for ours. ...They said there will be three beads of wampum separating the two, and they will symbolize peace, friendship, and respect.⁷

Interpretations of cultural difference often take the form of racist stereotypes. Nonetheless, and despite the often vast cultural differences between them, not all Europeans shared such xenophobic and self-serving views on the nature of the Aboriginal inhabitants of the newly 'discovered' lands. The diversity of views on the Aboriginal inhabitants of the New World is captured in the famous debate between Bartolomé de las Casas and Juan Ginés de Sepúlveda, which took place in 1550 in the presence of the Holy Roman Emperor at Valladolid, Spain; an excerpt from a dramatization of the debate is reproduced in the accompanying box.

Las Casas was a Roman Catholic priest and ardent advocate of Aboriginal rights who had spent much time in the Spanish colonies in the Americas. Sepúlveda was a respected jurist and imperial official, close to the emperor and his court. At that time, some Spaniards had begun to question the cruelty as well as the legal and philosophical underpinnings of colonial policy. Las Casas was the leader of those opposed to official policy.

As the extract from the Valladolid debate shows, a strong and enduring component of European conceptions of the inferiority of Aboriginal peoples was the conviction that they were heathens — "worshipping stones", as Sepúlveda put it. As a result of this conviction, Europeans determined that it was their religious duty to convert Aboriginal peoples to Christianity. This intolerant view led to sustained efforts at missionary proselytization by the various Christian denominations, efforts that reached their peak during the next stage of relations, when the power imbalance between Aboriginal and non-Aboriginal societies permitted religious campaigns that undermined Aboriginal cultures and social structures.

The Debate at Valladolid

Sepúlveda: The Indians of the New World are, by the rudeness of their nature, natural slaves. Natural law provides a justification for those people motivated by pure generosity who undertake to rule over barbarous peoples. By making the barbarians change their lives, they comply with a duty of mankind to rout out customs contrary to natural laws. As Aristotle teaches us, from the hour of their birth some are marked for subjection and others for rule. They are not slaves by the strength of armies or by the laws of nations, but by their nature. They are persons of inborn rudeness and of inhuman customs. Thus one part of mankind is set aside by nature to be slaves, slaves in the service of masters who are born for a life free of manual labour. Prudent and wise men have been given dominion over them for their own welfare. If inferior beings refuse this overlordship, they may be warred against justly, as one would hunt down wild beasts.

Las Casas: God has deprived [*Sepúlveda*] of any knowledge of the New World. Long before the Indians heard the word "Spaniard", they had properly organized states, states wisely ordered by excellent laws, religion and custom. They cultivated friendships, came together in common fellowship, lived in populous cities. In fact, they were governed by laws that surpass our own at many points. They would certainly have won the admiration of the sage of Athens. Now, we Spanish have ourselves been called wild barbarians by the Romans. They thought we were led to a more civilized life by Caesar Augustus. I would like to hear Doctor *Sepúlveda* in his cleverness answer this question: Does he think that the Roman war against *us* was justified in order to free *us* from barbarism? Did we Spanish wage an unjust war when we defended ourselves against the Romans?...

Sepúlveda: But worshipping stones as God is contrary to natural reason, and thus forbidden by the nature of things. The Indians *cannot* be invincibly ignorant, and they cannot be here so easily excused!

Las Casas: The ultimate intention of those who worship idols is not to worship stone, but to worship the planner of the world. Although they venerate stones, they understand there is something greater than themselves. Thus, they show they have wisdom! It is clear that the

intention of those who worship idols is to honour and adore the true God, whoever he may be.

Source: "On the Just Causes of War: The Debate at Valladolid", dramatization of the debate between Bishop Don Fray Bartolomé de las Casas and Doctor Juan Ginés de Sepúlveda, historiographer to His Majesty Charles V, Holy Roman Emperor, at Valladolid, Spain, 1550 (The Canadian Broadcasting Corporation, "Ideas", 1985).

However, while prejudices and stereotypes abounded, during this first period of relations between culturally divergent Aboriginal and non-Aboriginal societies, there is also evidence of a relationship of mutual respect that developed among those individuals and groups who worked, traded and sometimes lived together over longer periods of time. Outside the salons of Europe and the discourse of élites, ordinary people adopted each other's foods, clothing, hunting or transport technologies as they proved useful. Those brought together by the fur trade often intermarried and, as a result, enriched both cultures. The offspring of these unions would eventually form a new people with a distinct identity, the Métis people. And at the same time as missionaries were seeking to convert Aboriginal peoples to Christianity, there is also evidence that Europeans, especially young men working on the frontiers of contact with Aboriginal peoples, found much not only to admire but also to emulate, especially their quiet determination and independent attitudes.⁸ Indeed, many Europeans were adopted and assimilated into Aboriginal nations.

This stage in the relationship between Aboriginal and non-Aboriginal societies was, in short, a tumultuous and often confusing and unsettled period. While it established the working principles that were to guide relations between them, it also brought substantial changes to both societies that, at times, threatened to overwhelm them. A snapshot of this turbulent and important time is given by the following three accounts.

The first illustrates patterns of contact and trade between the French, on the one hand, and the Wendat and Innu on the other. The second focuses on patterns of political relationship, with particular attention to the seminal Royal Proclamation of 1763. The early history of treaty making between European nations and First Nations is the subject of the third account. Treaties and the rights they reflect remain an important strand in the Canadian constitutional fabric, as do the Aboriginal rights that developed

over time and were referred to in the Royal Proclamation. The principles of relationship first established so long ago continue to have relevance for the relations between Aboriginal and non-Aboriginal people in Canada even today, despite the turbulence and often unsettled nature of our own times.

1. The Innu, the Wendat and the Fur Trade

When Europeans first arrived in northeastern North America they encountered a diversity of indigenous nations belonging to two linguistic families, the Algonquian and Iroquoian. The former included the Mi'kmaq, and the latter included the Haudenosaunee peoples described earlier. The Algonquian-speaking peoples who inhabited the region immediately north of the St. Lawrence and east of the Saguenay River were called Montagnais by the French, but they refer to themselves as Innu ('human being').

The Innu lived and continue to live in the boreal forest zone of the Canadian Shield. It is a region where the small number of frost-free days each year makes agriculture difficult, if not impossible. The Innu economy, therefore, was one of hunting and gathering in which small groups of some 50 people obtained river eels in the fall, porcupine, beaver, moose, and caribou in the winter, and bear, beaver and fowl in the spring. During the summer these groups congregated in larger gatherings of 150 to 300 people at the mouths of rivers flowing into the St. Lawrence to fish, trade, attend festivals, and renew their social and political bonds. Each fall, they broke up to start a new cycle of hunting and gathering in the interior. Because the Innu were organized into mobile forager groups, they lived in small, temporary dwellings — conical lodges covered with large rolls of birch bark.

From the perspective of their own culture the French had difficulty appreciating and comprehending the Innu lifestyle. The Recollet missionary Gabriel Sagard, for example, referred to the Innu in disparaging terms as the "poorest, most wretched and neediest of all", since they seemed obliged to "range the fields and forests in small bands, like beggars and vagabonds, in order to find something to eat".⁹ For their part, the Aboriginal peoples recognized the difference in lifestyles between themselves and the Europeans. Algonquian peoples remarked that their people were like caribou because they were continually on the move, while the French remained stationary like the moose.¹⁰

The sedentary newcomers, who were "tilling the earth at the place where they make their abode" appeared to have more in common with the Iroquoian-speaking peoples further south.¹¹ The Iroquoians living in the region between Georgian Bay and Lake Simcoe called themselves Wendat ('Islanders' or 'Dwellers on a Peninsula'¹²), while the French referred to them as Huron — perhaps an adaptation of the Old French term *hure*, a figurative expression for a rustic or hillbilly.¹³ At the time of European contact, the Wendat Confederacy had a population of more than 20,000 people inhabiting an area of less than 2,000 square kilometres.¹⁴

The Wendat in this early period consisted of four distinct nations living adjacent to one another in large, heavily fortified villages of 1,500 to 2,000 people, as well as in smaller satellite communities surrounded by fields. These settlements were occupied year-round but were moved once every 10 to 15 years. The Wendat organized themselves into matrilineal extended families and, like their Haudenosaunee relatives, lived in longhouses. Although the soil conditions and annual growing season were not ideal for farming, they were sufficient to permit a few important crops. The women tended the fields of corn, beans and squash, while the men hunted, fished, traded, and carried out military and diplomatic missions.

Throughout much of the sixteenth century the Europeans were interested primarily in whaling and the cod fishery. Thus, during this initial phase of contact the fur trade constituted only a modest supplement to these industries and was restricted to the eastern seaboard and the Gulf of St. Lawrence. By the turn of the seventeenth century, however, the Europeans were lingering for extended periods on North American soil and coming into more intensive contact with the Aboriginal peoples, a tendency that accelerated with the arrival of traders and missionaries. This extended contact was to have a profound effect on both societies and would lead to many cultural and political innovations.

Religious and culturally based misinterpretations and misconceptions were inevitable in the earliest periods. According to an oral account recorded in 1633, recalling an incident in the early sixteenth century, the first time the Innu saw a French ship arrive upon their shores they thought it was a moving island. Their astonishment only increased at the sight of men on deck. As was their custom when visitors arrived, the Innu women immediately erected shelters for them while the men ventured out in canoes

to meet the new arrivals. For their part, the French offered them biscuits. The Innu took the biscuits ashore, examined them, tasted them, then threw them into the river, reporting that the Frenchmen drank blood and ate wood — thus naming the wine and biscuits they had seen.¹⁵ Nonetheless, it did not take long for the Innu to recognize that the newcomers had goods that could be adapted to their own requirements.

Initially, the Algonquian and Iroquoian peoples regarded European metal objects and glass beads much as they viewed native copper and quartz crystals, seeing them as sources of supernatural power. In other cases they modified novel goods so that they conformed more closely to their own cultural preferences. For example, many of the European beads were produced through a process of building up successive layers of coloured glass; when given these polychrome beads, the Wendat ground off the dark blue and white outer coatings to reveal the desired red layer underneath. The scarcity of some symbolically charged items, as well as the utilitarian nature of others, made them particularly desirable.

By the early seventeenth century the Innu were routinely using copper kettles and iron axes as replacements for bark baskets, clay pots and stone adzes. Some individuals also adopted woollen garments and purchased dried peas and sea biscuits. Since the Innu were seasonally nomadic, they were not in a position to accumulate large quantities of European goods; hence, there was little desire to maximize the trade. Nevertheless, many goods were accumulated for the purpose of giving them away, whether to relatives, neighbours or allies, thereby enhancing the prestige of the givers.

Europeans also realized many benefits in the early contact experience. For example, the North American practice of pipe smoking was enthusiastically appropriated by sixteenth-century Europeans, at first for purely medical reasons. According to prevailing European ideas of that era, smoking seemed to dry out superfluous 'humours', thereby adjusting imbalances caused by inappropriate diet and climate. By the first decade of the seventeenth century tobacco had become a panacea prescribed for every malady from flatulence to the plague. Within a short time the tobacco trade became the economic lifeline of Jamestown, Virginia, the first permanent English settlement in the New World.

Although some European traders obtained Aboriginal clothing, canoes,

snowshoes and other items for themselves, the most sought after goods were beaver pelts. They could be sold in Europe as the raw material for felt hats, then in vogue among the middle class and the nobility. The traders were especially interested in procuring pelts that had already been worn as clothing for fifteen to eighteen months. Wearing them during the winter wore off the long guard hairs, thereby rendering them most valuable for the manufacture of high-grade felt. For Aboriginal people, hunting the then-abundant beaver and selling used clothing was an economical means of obtaining European goods.

The fur trade thus served as an additional incentive for the Innu to gather along the St. Lawrence. Once the trade became firmly established, however, the sheer volume of furs required by French trading companies to cover their costs resulted in the expansion of the trade to other Aboriginal groups further inland. Because of their seasonal rounds and strategically located summer camps, the Innu enjoyed a middleman status between the French traders who came to Tadoussac at the mouth of the Saguenay and other Algonquin trappers in the interior. The furs obtained north of the St. Lawrence were not only greater in number but also of superior quality to those collected to the south. This was one of the factors that pushed the French to establish ties with the Innu, rather than with groups such as the more southerly Mohawk who lived in what is now New York state.

By the first decade of the seventeenth century the French were granting trading monopolies to wealthy merchants in hopes of promoting year-round European settlement in the St. Lawrence region. This necessitated good relations with the Innu who controlled trade at Tadoussac. In 1600, Pierre de Chauvin left 16 men to spend the winter; only five survived, despite the generous help of the Innu. Several years later, François Gravé Du Pont took three Innu to spend a winter in France, where they were treated with equal generosity. To maintain cordial trade relations, the French offered to assist the Innu in their hostilities with the Mohawk, a decision that was to lead to decades of enmity between the French and the Haudenosaunee Confederacy.

When the French built a post at Quebec in 1608, the Innu welcomed the additional protection from Mohawk raids, and the French saw it as an opportunity to safeguard their interests from competing groups of traders and as a means of promoting free use of the St. Lawrence by their

indigenous trading partners. The post was also to serve as a springboard for expeditions into the interior. The Innu, likely in an effort to maintain their middleman position in the fur trade, prevented Samuel de Champlain from travelling up the Saguenay River. The following year, however, they encouraged him to accompany them up the St. Lawrence and Richelieu rivers on a joint raiding expedition against the Mohawk. Unfortunately for the Innu, this allowed the French to establish closer ties with another Aboriginal nation that had joined the raiding party, the Wendat. Their interior location meant that from this point on, much of the trade bypassed Tadoussac, leaving many Innu to return to their traditional lifeways in the hinterlands.

Aware of the advantages of trade with a populous and relatively sedentary society located deep in the interior and away from competing traders, Champlain aspired to bring the Wendat into the fur trade. By that time the Wendat had already become the hub of the intertribal trading network in the Great Lakes region. Although the beaver had become virtually extinct in Wendat territory by 1630, they were nevertheless able to obtain a sufficient number of furs from their trading partners in return for corn surpluses and European goods. The furs were then traded to the French in return for iron knives, awls, axes, copper and brass kettles, and glass beads. For many years, a flotilla of 60 canoes and 200 men from Huronia came to Quebec via the French, Mattawa, Ottawa and St. Lawrence rivers. As many as 15,000 pelts were traded annually. This commerce appears to have strengthened Wendat social organization, enhanced the power of hereditary chiefs, and generally enriched their culture. It also brought substantial profits for the French.

Enhanced contact through the fur trade also had destructive consequences, however, the most serious being epidemics of European origin which, by the 1630s, were decimating the Innu and beginning to affect the Wendat. Less obviously destructive, at least in the short term, was the impact on traditional Aboriginal societies of missionary proselytization. Recollet missionaries had already attempted to persuade the Innu to turn to farming, convert to Christianity, abandon 'uncivilized ways', and settle in European-style villages. However, the extensive seasonal movements of the Innu and their frequent changes in group affiliation made it difficult for missionaries to accomplish this task.

After his attention focused on Huronia, Champlain insisted that there would be no trade without missionaries. The Recollet missionaries in Wendat territory refused, however, to live with 'pagan' Wendat families, erecting cabins on the outskirts of Wendat settlements instead. The Jesuits who arrived a few years later believed that conversion was best achieved by keeping Indigenous peoples away from the vices of European settlements. They therefore pursued a different course from their predecessors, living among the Wendat and learning their language. During this period many Aboriginal people regarded the missionaries as shamans, interpreted their baptismal rites as curing rituals, and generally tolerated their presence for fear of jeopardizing trade and political alliances with the French.

To the Jesuits their mission was akin to a war against satanic forces and was intended to reap a rich harvest of souls. In their battle, the missionaries were armed with formidable intellectual weapons, since all had studied and taught a variety of academic subjects for at least six years in prestigious French colleges. What ensued was a remarkably sophisticated philosophical discourse, in which some of the most educated men of Europe engaged in long arguments deep in the Canadian wilderness with shamans and village elders equally adept at debating metaphysical issues from their own cultural perspective.

Although the benefits of trade were easily understood on both sides of the cultural divide, belief systems were an entirely different matter. European intellectualism and religious intolerance led to many misunderstandings. For example, confronted with a Wendat understanding of the afterlife, Father Jean de Brébeuf felt obliged to exclaim, "God of truth, what ignorance and stupidity!"¹⁶ Responding to Paul Le Jeune's inquiries on the same subject, an Innu elder retorted, "Be silent; thou hast no sense; thou askest things which thou dost not know thyself."¹⁷ At issue was the composition and fate of the soul. Steeped in the traditions of classical philosophy and Christianity, the Jesuits argued that only human beings had a soul, and that the soul itself was a single entity that could not be separated into parts. The Wendat, on the other hand, along with other Aboriginal peoples, believed that other animate beings and even inanimate objects also had souls. Moreover, they also held that each human being had at least five different souls, not just one.

Recognizing that Indigenous peoples were interested in French technology

and regarded legerdemain as a sign of spiritual power, the Jesuits employed written texts, iconographic imagery, magnets, magnifying glasses, clocks and even their ability to predict eclipses in an effort to provide empirical demonstrations of their own supernatural superiority. The Wendat were also made aware that converts were given more gifts by the French, offered better prices for their beaver pelts and, eventually, supplied with firearms.

Wendat religion, similar to the views of other Aboriginal peoples, permeated all aspects of life and made no distinction between the secular and the sacred. Upon conversion to Christianity, therefore, Wendat converts were obliged to give up more than their Wendat religion. They also gave up much of what had given them their overall sense of identity as Wendat. As the number of converts rose, this had profoundly negative consequences for Wendat social and political cohesion. For example, converts were led to believe that even after death they could not rejoin their fellow villagers in the land of the souls, but would end up instead in the Christian Heaven illustrated in Renaissance woodcuts.

Thus, by the 1640s tensions between Christian converts and Wendat traditionalists resulted in factionalism, further undermining a confederacy already weakened by the loss of much of its population to European diseases. In 1649, the Mohawk and Seneca nations took advantage of the debilitated and divided Wendat people, attacking their settlements and dispersing them from their traditional homelands. Many Wendat fled to the west and established themselves in lands now part of Michigan and Ohio; others moved east to the settlement at Lorrette near Quebec City; still others were adopted into Iroquois villages in what is now New York state.

In summary, there is little doubt that contact between Aboriginal and non-Aboriginal peoples in the late sixteenth and early seventeenth centuries was mutually beneficial in many important ways. The cultures of both groups were altered, and unique forms of commercial and political association were developed that will be discussed in subsequent chapters. Contact also had tragic consequences with long-term effects, however, many of which are still felt in modern Canadian society.

It is also clear that the patterns of relationship varied significantly from one Aboriginal group to another. Since Algonquian and Iroquoian nations, for

example, had different modes of subsistence and social organization and unique and well established patterns of political and trade relations before European contact, it is not surprising that they experienced the effects of contact differently. Pursuing different strategies of accommodation and compromise, the many diverse Aboriginal nations on the northern half of the continent that came into contact with non-Aboriginal peoples did not all experience the effects of that contact in the same way.

2. The *ROYAL PROCLAMATION OF 1763*

As illustrated by the extract from the letters patent issued to John Cabot cited earlier in this chapter, both France and Great Britain initially had far-reaching plans for imperial adventures in North America that took little account of the rights of the Aboriginal inhabitants. Nonetheless, as the history of French relations with the Innu and Wendat shows, in the early days of colonization the French were usually compelled to seek Aboriginal nations as trading partners and military allies, in that way recognizing the autonomy and independence of the Aboriginal nations with which they sought association.

This paradoxical blend of imperial pretension and cautious realism was reflected not only in the actions they took in relation to Aboriginal societies, but also in official documents of the era. A good example is the royal commission issued in 1603 by the French Crown to Sieur de Monts, giving him the authority to represent the King within a huge territory running along the Atlantic coast from modern New Jersey, north to Cape Breton Island and extending indefinitely inland.

Excerpt from the Royal Proclamation of 1763

And whereas great Frauds and Abuses have been committed in the purchasing Lands of the Indians, to the great Prejudice of Our Interests, and to the great Dissatisfaction of the said Indians; in order therefore to prevent such Irregularities for the future, and to the End that the Indians may be convinced of Our Justice, and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of Our Privy Council, strictly enjoin and require, that no private Person do presume to make any Purchase from the said Indians of any Lands reserved to the said Indians, within those Parts of Our Colonies where We have thought proper to allow Settlement; but that if, at any Time, any of the said Indians should be inclined to dispose of the said Lands, the same shall be purchased only for Us, in Our Name, at some publick Meeting or Assembly of the said Indians to be held for that Purpose...

Source: Brigham, *British Royal Proclamations* (cited in note 27), volume 12, pp. 212-218. This is the most accurate printed text of the Proclamation, and it is reproduced in full in Appendix D of this volume. A less accurate version is reproduced in the Revised Statutes of Canada 1985, Appendix II, No. 1. The original text, entered on the Patent Roll for the regnal year 4 George III, is found in the United Kingdom Public Record Office, c. 66#3693 (back of roll).

The document makes no attempt to disguise its imperial ambitions. It gives de Monts the power to extend the King's authority as far as possible within the stated limits and to subdue the local inhabitants. Nevertheless, in the same breath, it acknowledges the independent status of indigenous American peoples and recognizes their capacity to conclude treaties of peace and friendship. The commission portrays treaties as a principal means for enlarging the King's influence in America and mentions the possibility of "confederation" with the Indigenous peoples. De Monts is told to uphold and observe such treaties scrupulously, provided the Indigenous peoples and their rulers do likewise. If they default on their treaty obligations, De Monts is authorized to resort to war in order to gain at least enough authority among them to enable the French to settle in their vicinity and trade with them in peace and security.

Aboriginal nations viewed their relations with the French from a different

perspective. While outlooks varied from nation to nation, as a rule Aboriginal peoples tended to characterize these relations at the outset more in terms of friendship and alliance and less in terms of sovereignty or protection in the European sense.¹⁸ As demonstrated by our earlier discussion of the Haudenosaunee Great Law of Peace, this was in keeping with their own traditions and clan- and family-oriented approach to nation-to-nation matters. For example, in 1715 when the British tried to persuade the Mi'kmaq to swear allegiance to the British Crown after the French cession of Acadia, the Mi'kmaq replied that the French Crown could not have ceded away their rights since they had always been independent peoples, allies and brothers of the French.

Likewise, in 1752 the Abenakis pointedly informed a representative of the governor at Boston as follows:

We are entirely free; we are allies of the King of France, from whom we have received the Faith and all sorts of assistance in our necessities; we love that Monarch, and we are strongly attached to his interests.¹⁹

Evidently, the reality of relations between Aboriginal and European nations in these early periods was remarkably complex, fluid and ambiguous. Thus, while the French, for instance, clearly wanted to assert some form of sovereign control over neighbouring Aboriginal peoples, in practice they often had to settle for alliances or simple neutrality. And while Aboriginal nations sometimes wished to assert their total independence of the French colony, in practice they often found themselves reliant on French trade and protection and increasingly overshadowed by European armed might.

The French policy of cultivating the friendship and alliance of Aboriginal peoples was replicated, with less success, by the burgeoning British colonies to the south. Like New France, these colonies would have preferred to be in a position to dominate and control their Aboriginal neighbours. However, they often had little alternative but to solicit Indigenous peoples as trading partners and as allies in the struggles with France. So, as with French-Aboriginal relations, treaties were a common and important feature of British relations with indigenous North American peoples. And as illustrated by the earlier account of the Haudenosaunee, treaties and other formal acts between Aboriginal and European nations were usually conducted in accordance with an adapted form of the

ceremony appropriate to the Aboriginal nation concerned. The treaty relationship is discussed further later in this chapter.

There was one important difference between British and French practice in this context that would have long-term effects on the overall relationship between Aboriginal and non-Aboriginal peoples in this part of North America. The French colony, whose population remained small, was planted along the shores of the St. Lawrence River, in an area no longer inhabited by the Iroquoian peoples of Stadacona and Hochelaga. Thus, there was no need for the French to obtain lands from their Aboriginal neighbours. By contrast, from an early period the British colonists found their Aboriginal neighbours in possession of lands they wanted themselves for purposes of expanding their settlements and economic activities.

In the opening stages of British settlement in North America, this collision of interests resulted in warfare and led to the forcible dispossession of Aboriginal nations in Virginia and New England. Many Aboriginal nations allied themselves with the French or retreated before the advance of the British colonists. Over time, however, and to avoid further hostilities, a policy developed whereby lands required for settlement would ordinarily be secured from their Aboriginal owners by formal agreement. Thus, treaties specifically involving land cessions by Aboriginal nations soon became a common feature of the British-Aboriginal relationship.

Relations between the British colonies and Aboriginal peoples during this period were complex and diverse, with strong elements of contradiction and paradox that often defy understanding even today. This is one reason the history of relations between them is so crucial to understanding contemporary disputes between Aboriginal and non-Aboriginal peoples. Nevertheless, by 1763, when New France was ceded to the British Crown in the Treaty of Paris, Aboriginal/English relations had stabilized to the point where they could be seen to be grounded in two fundamental principles.

Under the first principle, Aboriginal peoples were generally recognized as autonomous political units capable of having treaty relations with the Crown. This principle was established at an early stage of British settlement. It is reflected, for example, in royal instructions to the governor of Nova Scotia in 1719:

And whereas we have judged it highly necessary for our service that you should cultivate and maintain a strict friendship and good correspondence with the Indians inhabiting within our said province of Nova Scotia, that they may be induced by degrees not only to be good neighbors to our subjects but likewise themselves to become good subjects to us; we do therefore direct you upon your arrival in Nova Scotia to send for the several heads of the said Indian nations or clans and promise them friendship and protection in his Majesty's part; you will likewise bestow upon them in our name as your discretion shall direct such presents as you shall carry from hence for their use.²⁰

This provision recognizes the autonomous status of Indian peoples, organized in nations or clans, with their own leaders, and envisages the establishment of treaty relations. This inference is spelled out in revised instructions sent to the Nova Scotia governor in 1749, which directed him explicitly to enter into a treaty with the Indian people, promising them the Crown's friendship and protection.²¹

A second principle emerged from British practice. This acknowledged that Aboriginal nations were entitled to the territories in their possession unless, or until, they ceded them away. Although this proposition may seem self-evident, it was not always so from the colonists' self-interested perspective, and it required periodic restatement. It was articulated, for example, by royal commissioners appointed by the Crown in 1664 to visit the New England colonies. The commissioners had the power, among other things, to hear Indian people's complaints of ill-treatment.²² One of the matters considered by the commissioners was a Massachusetts law providing that Indian people had a just right to any lands they possessed, so long as they had improved these lands "by subduing the same".²³

The latter restriction — reminiscent of preacher Gray's views (quoted in Chapter 4) that "these savages have no particular property in any part or parcel of that country" and supported by biblical citations — suggested that Indian title would be recognized only over lands that had actually been cultivated or otherwise 'improved' in the European fashion. Under this proviso, the traditional hunting and fishing grounds of Indian peoples would not have qualified. The royal commissioners censured this provision, commenting that it implied that Indian people "were dispossessed of their land by Scripture, which is both against the honor of God & the justice of the

king." In conclusion, the commissioners reaffirmed the title of Indian peoples to all their lands, both 'improved' and 'unimproved', stating broadly, "no doubt the country is theirs till they give it or sell it, though it be not improved."²⁴

When New France fell to British forces and was ceded to the Crown in 1763, Great Britain was confronted with the twin problems of winning the friendship and trust of France's former First Nations allies and dealing with the mounting dissatisfaction of some of its own indigenous allies over incursions by American colonists on their lands. Although the war with France was over, there was a grave danger that a new war with First Nations might break out. The British government decided that the best course was one of conciliation, as an official memorandum sent by Lord Egremont makes clear:

Tho'...it may become necessary to erect some Forts in the Indian Country, with their Consent, yet His Majesty's Justice & Moderation inclines Him to adopt the more eligible Method of conciliating the Minds of the Indians by the Mildness of His Government, by protecting their Persons & Property & securing to them all the Possessions, Rights and Priviledges they have hitherto enjoyed, & are entitled to, most cautiously guarding against any Invasion or Occupation of their Hunting Lands, the Possession of which is to be acquired by fair Purchase only...²⁵

Events quickly proved that the fears of conflict were far from groundless. During the summer of 1763, a widespread war — led by the Odawa chief, Pontiac — erupted over unresolved grievances, engulfing the American interior. This underscored the need for a sound, comprehensive and enforceable Indian policy. In response, the British government adopted the somewhat unusual measure of issuing a royal proclamation declaring in resounding terms the basic tenets of British policy toward the Indian nations. At the same time it made provision for the territories recently ceded to Great Britain by France and Spain. By giving the Proclamation widespread publicity throughout the colonies, it was hoped to reassure Indian peoples of the good intentions of the British government.

This document, issued on 7 October 1763, is a landmark in British/Indian relations (see Appendix D). It has been described by Mr. Justice Hall of the Supreme Court of Canada as the Indian Bill of Rights. "Its force as a

statute", he writes, "is analogous to the status of Magna Carta which has always been considered to be the law throughout the Empire. It was a law which followed the flag as England assumed jurisdiction over newly discovered or acquired lands or territories."²⁶

The Proclamation is a complex legal document, with several distinct parts and numerous subdivisions, whose scope differs from provision to provision. It resists easy summary, but it serves two main purposes. The first is to articulate the basic principles governing the Crown's relations with Indian nations. The second is to lay down the constitutions and boundaries of several new settler colonies, one being the colony of Quebec.

The basic viewpoint informing the Proclamation's Indian provisions is summarized in the preamble as follows:

And whereas it is just and reasonable, and essential to Our Interest and the Security of Our Colonies, that the several Nations or Tribes of Indians, with whom We are connected, and who live under Our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to, or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds...²⁷

This passage portrays Indian nations as autonomous political units living under the Crown's protection while retaining their internal political authority and their territories. These territories should not be granted or appropriated by the British without Indian consent. The preamble thus incorporates the two basic principles of British/Indian relations referred to earlier.

Paradoxically, however, it refers to Indian lands as being "such Parts of Our Dominions and Territories". In short, Indian lands were, from the perspective of the Royal Proclamation, already Crown lands, despite their prior occupation by Aboriginal nations. Thus, while setting out new rules for Indian land cessions, the Proclamation also seems to adopt the discovery doctrine, discussed in Chapter 4. The implications of this paradoxical approach to Indian lands are discussed further in Chapter 9, in the context of the Indian Act.

In any event, the King goes on in the Proclamation to refer to the "great Frauds and Abuses" perpetrated in the past by individuals engaged in doubtful land speculation involving Indian lands, "to the great Prejudice of

Our Interests, and to the great Dissatisfaction of the said Indians". The King expresses his determination to prevent such irregularities in the future, so that "the Indians may be convinced of Our Justice, and determined Resolution to remove all reasonable Cause of Discontent". To implement this policy, the King forbids private individuals to purchase any lands from the Indians and lays down a procedure requiring the voluntary cession of Indian lands to the Crown in a public assembly of the Indians concerned. The land cession is thus to be effected by mutual agreement or treaty.

In short, the Proclamation portrays Aboriginal nations as autonomous political units living under the Crown's protection and on lands that are already part of the Crown's dominions. Aboriginal nations hold inherent authority over their internal affairs and the power to deal with the Crown by way of treaty and agreement. In a word, it portrays the links between Aboriginal peoples and the Crown as broadly 'confederal'.

Relations between the Crown and Aboriginal peoples differed from those between the Crown and its settler colonies. This difference is reflected in the structure of the Proclamation, which deals in a separate part with the constitutions of Quebec and several other new colonies. Here, the King directs the colonial governors to summon representative assemblies as soon as circumstances permit. The governors are given the power, together with their councils and assemblies, to make laws "for the Public Peace, Welfare, and Good Government" of the colonies. In the meantime, and until representative assemblies can be called, the inhabitants of the colonies "may confide in Our Royal Protection for the Enjoyment of the Benefit of the Laws of Our Realm of England", a provision that seemed, in Quebec, to repeal the existing laws derived from France. For this purpose, the governors were authorized to set up courts of public justice to hear both criminal and civil cases, "according to Law and Equity, and as near as may be agreeable to the Laws of England".

These provisions established the basic constitutional framework of the colony of Quebec. They did not interfere with the separate provisions dealing with Indian nations. On the contrary, the segmented structure of the Proclamation reflected the established practice under which Aboriginal nations were treated as distinct entities, with internal constitutions and laws differing from those of the settler colonies and holding particular relations with the Crown through local representatives.

This state of affairs is reflected in royal instructions to the governor of Quebec a few months later. The King states:

And whereas Our Province of Quebec is in part inhabited and possessed by several Nations and Tribes of Indians, with whom it is both necessary and expedient to cultivate and maintain a strict Friendship and good Correspondence, so that they may be induced by Degrees, not only to be good Neighbours to Our Subjects, but likewise themselves to become good Subjects to Us; You are therefore, as soon as you conveniently can, to appoint a proper Person or Persons to assemble, and treat with the said Indians, promising and assuring them of Protection and Friendship on Our part, and delivering them such Presents, as shall be sent to you for that purpose.²⁸

The King directs the governor to gather information about these bodies of Indians, "of the manner of their Lives, and the Rules and Constitutions, by which they are governed or regulated", thus recognizing their particular governmental structures and laws. The instructions go on to state: "And You are upon no Account to molest or disturb them in the Possession of such Parts of the said Province, as they at present occupy or possess".²⁹

There was a basic difference between the constitutions of Aboriginal nations protected by the Crown and the constitutions of the settler colonies. The latter stemmed largely, if not entirely, from explicit grants, in the form of royal charters, proclamations, commissions, instructions, or acts of Parliament, as supplemented by basic unwritten principles. By contrast, the constitutions of Aboriginal nations sprang from their own internal arrangements and philosophies and were nourished by their inherent powers as self-governing nations. These powers were modified over time by relations with the Crown and by certain customary principles generated by Aboriginal/Crown practice. Nevertheless, through all these changes, Aboriginal constitutions retained their original roots within the communities concerned.

The Royal Proclamation seemed to have the effect of introducing English law into the colony of Quebec, thus sweeping away the original laws of the province. This drastic effect was largely reversed by the Quebec Act of 1774, which restored the "Laws and Customs of Canada" in all matters relating to property and civil rights. This provision allowed the modern civil

law system of Quebec to develop. The act also repealed the Royal Proclamation's constitutional provisions relating to Quebec.³⁰ However, the act did not affect the Indian provisions of the Proclamation, which remained in force.

Looking back, we can see that the vision embodied in the Royal Proclamation of 1763 was coloured by the imperial outlook of Great Britain. Nevertheless, it is also possible to see it as having certain points of correspondence with the traditional Haudenosaunee image of the tree of peace. This image was expressed by the Onondaga sachem, Sadeganaktie, during negotiations with the English at Albany in 1698:

...all of us sit under the shadow of that great Tree, which is full of Leaves, and whose roots and branches extend not only to the Places and Houses where we reside, but also to the utmost limits of our great King's dominion of this Continent of America, which Tree is now become a Tree of Welfare and Peace, and our living under it for the time to come will make us enjoy more ease, and live with greater advantage than we have done for several years past.³¹

There is no question that the political arrangements entered into by the Crown and the Aboriginal nations with which it was associated were unique for the times. While reminiscent in many ways of the established practices of European nations among themselves, in important respects the arrangements reflected the unusual and unforeseen circumstances in which Aboriginal and non-Aboriginal societies found themselves on the North American continent. As shown by the account of first contact with the Innu and Wendat, policy was often made on the spot in response to the concrete conditions encountered by two different societies sharing a common environment and with shared commercial and military aspirations.

The *Royal Proclamation of 1763* was itself yet another creative response to the actual conditions in North America. It should not be surprising to learn, then, that treaties between the Crown and Aboriginal nations were also just such a creative and mutually adaptive process for regulating their overall relationship. Not all treaties were the same, and not all were made at the same time or for the same purposes. Nonetheless, all have some common characteristics — especially from the perspective of the Aboriginal nations that entered into them. It is to this aspect of the relationship that we now

turn.

3. Early Patterns of Treaty Making

Treaties between the Aboriginal and European nations (and later between Aboriginal nations and Canada) were negotiated and concluded through a treaty-making process that had roots in the traditions of both societies. They were the means by which Europeans reached a political accommodation with the Aboriginal nations to live in peaceful co-existence and to share the land and resources of what is now Canada.

The treaties negotiated over the years are not uniform in nature. In this section, we refer briefly to the treaty-making experience of Aboriginal and European societies before they began to treat with each other and then discuss the types of treaties that emerged in the seventeenth and eighteenth centuries. In Chapter 6, later in this volume, the account of treaty making continues with a description of some major treaties signed in the nineteenth and early twentieth century in Ontario and western and northern Canada. In both accounts, we seek to clarify differences in perspective between treaty nations and the Crown with respect to the substance of the treaties and the nature of treaties as instruments of relationship.

3.1 Prior Traditions of Treaty Making — Confederacies in North America

When the Europeans arrived on the shores of North America they were met by Aboriginal nations with well-established diplomatic processes — in effect, their own continental treaty order. Nations made treaties with other nations for purposes of trade, peace, neutrality, alliance, the use of territories and resources, and protection.

Since interaction between the nations was conducted orally, and the peoples involved often had different languages and dialects, elaborate systems were adopted to record and maintain these treaties. Oral traditions, ceremonies, protocols, customs and laws were used to enter into and maintain commitments made among the various nations.

Aboriginal nations formed alliances and confederacies that continued into

the contact period, with treaties serving to establish and solidify the terms of the relationship. Protocols between nations were maintained conscientiously to ensure that friendly and peaceful relations prevailed.

The Wendat Confederacy, for instance, dates to 1440 and was made up of four Huron clans that were culturally and linguistically related and already shared similar political institutions. The Wendat Confederacy was a great trading alliance that carried on extensive trade with neighbouring nations such as the Algonquin, Montagnais and Ojibwa.

Confederacies often facilitated interaction among member nations and united them for political and military purposes, as well as curbing intertribal aggression and settling grievances. With respect to the Huron, for example,

The suppression of blood feuds was supervised by a confederacy council made up of civil headmen from the member tribes, which gathered periodically for feasts and consultations, judged disputes, and arranged for reparations payments as the need arose. ...There is no evidence that the member tribes of a confederacy were bound to help one another in case of attack or to aid each other in their wars; often the foreign policies of the member tribes were very different from one another. Nevertheless, the confederacies did serve to restrain violence among neighbouring tribes and to this degree promoted greater security for all their members.

...Once formed, these confederacies were strengthened by the demands of the fur trade, and became mechanisms for dealing with European colonists.

...While the forging and maintaining of these confederacies are evidence of great political skill, the confederacies themselves were extensions of political institutions already existing at the tribal [nation] level and did not require the formulation of new principles of political organization. These developments encouraged more emphasis on ritualism to promote political and social integration.³²

Among nations occupying overlapping territories, confederacies were formed in part to protect boundaries on all sides³³ and to regulate resource use within the common area. This was the case for the plains nations, which used large territories for their hunting economies and whose alliances created relationships based on mutual respect and non-interference. One

nation could not interfere in the internal affairs of another but might intervene at the request of a member nation.

Thus, while confederacies oversaw the external affairs of nations, they respected the internal autonomy of their members. They fostered trade and communications networks that were later adapted for trading purposes with the Europeans. Confederacies shaped treaty arrangements as well.³⁴

Concepts of treaty making were reflected in the languages of the Indian nations. The term used to describe the concept of treaty usually comes from the long history of laws and protocols applied to relations between the Indian Nations. In the Ojibwa language, for example, there is a difference between *Chi-debahk-(in)-Nee-Gay-Win*, an open agreement with matters to be added to it, and *Bug-in-Ee-Gay*, which relates to 'letting it go'. The Lake Huron Treaty of 1850, according to the oral tradition of the Ojibwa, was to be 'added to'.³⁵

3.2 Prior Traditions of Treaty Making — The European Experience

As the political power of the church dwindled and feudal aristocratic hierarchies crumbled, the leaders of the emerging nation-states struggled for survival and trade by making alliances among themselves. Many European treaties of this early nation-building period were constitutive in nature — that is, they secured recognition of the independence and sovereignty of nations both from one another and from the pope.

In a process of national consolidation that also involved trading territories and establishing new boundaries, Europe was reorganized from one vast network of small communities, linked by the marriages of princes or nobles and obedience to one church, into a group of large and legally distinct states linked mainly by treaties. The treaties of Westphalia (1648) and the Pyrenees (1659), for example, recognized France and Spain as separate kingdoms with agreed upon borders, while the Treaty of Utrecht (1713) relinquished the succession claims of the French, Spanish and British sovereigns to each other's throne.

European jurists began to systematize their understanding of treaty law in

the seventeenth century, drawing on Roman legal treatises as well as a growing body of European diplomatic precedents. From Roman law they adopted the essential principle *pacta sunt servanda* — treaties shall be honoured in good faith.

From the struggle to build new, independent nations and the spirit of Renaissance humanism, Europeans drew the conclusion that all nations were to be treated as equal in status and rights, regardless of differences in their wealth, culture or religion. Since all nations were equal, it followed that treaties must be entered into freely, could be terminated only by mutual consent, and could not affect any third parties. Since European nations wished to protect their newly won independence, jurists decided that treaties should be given the interpretation that is least restrictive of the parties' sovereignty.

Although both Aboriginal and European nations had used treaties to facilitate arrangements with neighbouring states and nations before sustained contact with each other, they drew upon different traditions of treaty making, reflecting substantial differences in political theory. As will become evident, these were to colour the subsequent history of relations between Europeans and Indigenous peoples in the Americas. The legacy of these differences continues to the present day.

3.3 Pre-Confederation Treaties in Canada

The earliest treaty making between Aboriginal and non-Aboriginal peoples in Canada was undertaken in the context of small groups of settlers living on a small portion of the land mass of the continent and involved such matters as trade and commerce, law, peace, alliance and friendship, and the extradition and exchange of prisoners. It took place in a time of intense diplomatic and military competition among European powers to claim territory, trade and influence in North America. In this context, economic and strategic ties with Indian nations became important, for the Europeans needed treaties to justify their competing territorial claims and to garner allies for their struggle. As long as their colonies were small and vulnerable, they eagerly entered into treaties with due consideration to the terms, and according to such protocols, as Indian nations wished.

The principal alliances of the French with the Innu (Montagnais), Algonquin

and Wendat (Huron) were economic and military in nature. As we have described earlier, the basis for the economic alliance was the fur trade, which developed as a mutually beneficial enterprise. Trade, friendship and alliance were the foundations upon which this new relationship was built.³⁶

The military aspect of the alliances originated with the French helping their allies in conflicts with the Haudenosaunee in return for commercial privileges. The French, however, soon came to rely heavily on their partners to counter British expansionism.³⁷ In this case, the interests of the French and their allies were common, because the expanding territorial aspirations of the burgeoning settler population of New England were also a threat to Aboriginal interests.

Less numerous than the Aboriginal people and...the British settlers, the French could do nothing without the support of the Indian nations from which they drew their strength. And this strength rested on the ability of the French to exercise their leadership so as to maintain consensus about their objectives. Onontio [the Aboriginal name for a viceroy of New France] could not force his allies to make war, and indeed, those allies often opted for peace or neutrality, against the wishes of the French. [translation]³⁸

These alliances were concluded and renewed through formal protocols involving oral pledges and symbolic acts and were sometimes recorded on wampum, but they were usually not written down. Like written treaties, however, the alliances created reciprocal obligations for the parties. These obligations were accepted through protocols such as gift giving, which acted as a form of ratification of the obligations outlined orally.³⁹

Although these agreements addressed matters of economic and military alliance, the first written treaties were signed in the interests of making or renewing peace between nations at war. Thus the first written treaties between the French and the Haudenosaunee, in 1624, 1645 and 1653, were essentially non-aggression pacts that had little lasting success. French conflicts with the Haudenosaunee, which began in 1609, would last until 1701, when both parties, along with the Aboriginal members of the French alliance, signed the Great Peace of Montreal, which established Haudenosaunee neutrality in any conflict between England and France.

The British view of treaties was that once a treaty was signed it would

remain in effect — more or less in a steady state — until definite action was taken by one or both sides to change it. In contrast, the Iroquoian view was that alliances were naturally in a constant state of deterioration and in need of attention. Wampum belts, given and received to confirm agreements, depicted symbols of the dynamic state of international relationships.

The path and the chain were recurring symbols of relationship in Iroquois treaty making. Speeches recorded by colonial officials in their accounts of treaty councils made frequent reference to clearing obstructions from the path and polishing the covenant chain that bound the treaty participants together in peace.⁴⁰

According to Iroquois oral tradition, a belt consisting of two rows of coloured wampum (discussed in the previous chapter) recorded a treaty between the Mohawk and Dutch colonists in 1613,⁴¹ as well as subsequent agreements concluded with the French and the British. A description of the Two Row Wampum, symbolizing peace and friendship, appeared in *Indian Self-Government in Canada*, the report of a special parliamentary committee. It read, in part:

There is a bed of white wampum which symbolizes the purity of the agreement. There are two rows of purple, and those two rows have the spirit of your ancestors and mine. There are three beads of wampum separating the two rows and they symbolize peace, friendship and respect.

These two rows will symbolize two paths or two vessels, travelling down the same river together. One, a birch bark canoe, will be for the Indian people, their laws, their customs and their ways. The other, a ship, will be for the white people and their laws, their customs and their ways. We shall each travel the river together, side by side, but in our own boat. Neither of us will try to steer the other's vessel.⁴²

Although the minutes of councils recorded by colonists often mentioned the point at which belts and strings of wampum were passed across the council fire, the wampum themselves were seldom described in sufficient detail to make it possible to identify a link between a specific string or belt and a particular historical occasion.⁴³ The first full description of Iroquois treaty processes in which presentation of wampum formed a central part of the protocol dates from 1645.⁴⁴ The familiarity of French participants with the

reciprocal behaviour required in the course of ceremonies where wampum was presented indicated that wampum protocols were well established by this time.

The Silver Covenant Chain is another wampum belt that figured large in the history of relations between colonists, the Iroquois and Iroquois allies. The belt shows two figures, one dark and one white, joined by a strand of purple shells on a white ground. The colonists and the Indians are said to be joined by a silver covenant chain that is sturdy and does not rust but requires periodic 'polishing' to remove tarnish and restore its original brightness.

References to the Covenant Chain became prominent in treaty history after the negotiation of accords at Albany in 1677, signifying "a multiparty alliance of two groupings of members: tribes, under the general leadership of the Iroquois, and English colonies, under the general supervision of New York. As in the modern United Nations, no member gave up its sovereignty."⁴⁵

For the Iroquois and their allies, the covenant chain terminology, the recollection of an honourable relationship between nations, and reminders that friendship requires attention and care continued as part of their diplomatic discourse long after the particular alliances memorialized in the wampum belt had dissipated.

The complexity of Aboriginal/European diplomacy during this period is further exemplified by the Mi'kmaq treaties. It is believed that Jacques Cartier made the earliest recorded contacts with Mi'kmaq leaders in 1534. At first, the Catholic church (along with some private traders granted monopoly rights) managed diplomacy with Aboriginal nations on behalf of France's Catholic king, just as it did for Catholic Spain in much of South America. This led to the baptism of the influential Mi'kmaq leader Membertou in 1610 and to an alliance or treaty between the Catholic church and the Mi'kmaq Nation, apparently recorded on wampum. The importance of these events is upheld by Mi'kmaq oral tradition and lies at the root of the continuing faith of the Mi'kmaq in Catholicism.

As the English colonies gradually dislodged France from the east coast and the future province of Quebec, the British Crown replaced the French sovereign in a new round of alliances. To the south, English colonists were entering into treaties with Aboriginal nations in the early seventeenth

century in Virginia, Massachusetts Bay and Pennsylvania. By 1725, this evolving treaty network was extended, through treaties negotiated by representatives of the colony of Massachusetts, to the southern-most members of the Wabanaki Confederacy — an alliance that stretched from Maine to the Maritimes and included members such as the Penobscot, Passamaquoddy, and Wuastukwiuk (Maliseet) nations.⁴⁶ The Mi'kmaq were allies of the Confederacy with strong political, economic and military links to it. In the negotiation of the 1725 treaty, which addressed matters of peace and friendship, representatives of the Penobscot acted as spokespersons for other nations. Representatives of the Mi'kmaq then ratified the treaty in several subsequent councils between 1726 and 1728.

The treaty-making tradition between representatives of the British Crown and the Mi'kmaq continued in the middle decades of the 1700s, following a pattern in which some matters addressed in earlier treaties were reaffirmed while changing conditions gave rise to agreement on new issues. Thus, after the British established themselves in Halifax in 1749, new treaty discussions began, and in 1752 an important treaty was signed by the influential Mi'kmaq chief, Jean Baptiste Cope. This treaty is notable for its provisions concerning liberty of trade and British promises to establish a truck house for that purpose. The parties also agreed to come back on an annual basis to discuss matters of mutual concern and to come to new agreements — a provision that has been revitalized in contemporary times by the Mi'kmaq, who invite representatives of the Crown and of the governments of the day to join them for Treaty Day celebrations on the first day of October each year. Issues of trade, such as the actual establishment of truck houses and the prices of fur and other items, would figure prominently in a further series of treaties signed in 1760-61.

It appears that European and Aboriginal interpretations of their agreements, whether written or not, differed on some key issues. The two principal ones were possessory rights to the land and the authority of European monarchs or their representatives over Aboriginal peoples. In general, the European understanding — or at least the one that was committed to paper — was that the monarch had, or acquired through treaty or alliance, sovereignty over the land and the people on it. The Aboriginal understanding, however, recognized neither European title to the land nor Aboriginal submission to a European monarch.

As Chief Justice Marshall of the U.S. Supreme Court wrote in 1823 (see Chapter 3), the European nations embraced the principle "that discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession."⁴⁷ This doctrine also gave the discovering European nation the exclusive right "of acquiring the soil from the natives."

The European doctrine of discovery resulted in an impairment of the rights of Indigenous peoples. Although they continued to be regarded as "the rightful occupants of the soil", with "a legal as well as a just claim to retain possession", they ceased to be free to dispose of the soil to "whomsoever they pleased" and were compelled to deal with the European power that had, at least in European eyes, 'discovered' their land. Indigenous nations, however, did not regard the arrival of European traders, adventurers, diplomats or officials as altering in any way their sovereignty or their ownership of their territories.

Examples of these divergent understandings abound. Thus, while the French symbolically erected crosses emblazoned with the coat of arms of their monarch, and later drew up deeds of possession for Aboriginal lands, a Wendat chief clarified to the governor in 1704 that "this land does not belong to you...it belongs to us and we shall leave it to go where we may please, and no one can object." [translation]⁴⁸ In 1749, a Mi'kmaq chief made a declaration of principle to the English, who had presumed the right to occupy mainland Nova Scotia under the Treaty of Utrecht.

This land, over which you now wish to make yourself the absolute master, this land belongs to me, just as surely as I have grown out of it like the grass, this is the place of my birth and my home, this is my native soil; yes, I believe that it was God that gave it to me to be my country forever.
[translation]⁴⁹

Such differences in interpretation were rooted in the respective historical and cultural backgrounds of the participants. For example, the Aboriginal conception of land and its relationship with human beings was based on the concept of communal ownership of land and its collective use by the human beings, animals and trees put there by the Creator. While people could control and exercise stewardship⁵⁰ over a territory, ultimately the land belonged to the Creator — who had given the land to the people, to care for

in perpetuity — and was thus inalienable. French views, by contrast, were grounded in that country's feudal history, in which the suzerain, or ruler, not only had a form of land ownership but also had political authority over his vassals.

These incongruities could co-exist without creating conflict because, for the most part, the parties were unaware of the significant differences in interpretation. Indeed, the deep differences in world view may have gone unexpressed simply because they were so fundamental and so different. Europeans may have been literally unable to conceive of the possibility that they were not discoverers who brought light into a dark place, faith into a heathen place, law into a lawless place. Indigenous nations equally could not conceive that their nationhood or their rights to territory could be called into question. They naturally had no concept that their land had been 'undiscovered' before Europeans found their way to it.

There was also a considerable discrepancy between official communications and the dialogue with Aboriginal nations. According to Lajoie and Verville, the French claim to sovereignty over the land and its people

was confined to their discourse, a discourse destined for their European competitors, recorded only in the accounts and petitions they sent to their principals in the mother country and that they took good care to withhold from the Aboriginal people. Nor was it revealed in their practices.⁵¹

The reality is that the French were members of an alliance of independent nations and were economically and militarily dependent on a co-operative relationship. They had no sovereign power beyond the areas of French settlement. To attempt to exert such powers in practice, or to express clearly that they were not just using the land but appropriating it, would have endangered their alliance and might, if the message was understood, "have sufficed to get the small contingent of French colonists hurled into the sea."⁵²

The European claim to sovereignty over the land and the people may have appeared in the written terms of the treaty,⁵³ but it is not clear that this claim was communicated orally. To the contrary, it would appear that the Aboriginal signatories were unaware that such concepts were embodied in

written treaties. Land use arrangements between European powers and Aboriginal nations in the early contact period were arrived at orally and, later, through written documents that the Aboriginal parties may not have comprehended fully at the time.

A letter from a representative of the Penobscot nation to the lieutenant governor of Massachusetts, for instance, concerning the ratification of the 1725 Boston-Wabanaki Treaty, spoke of a significant divergence between the oral agreement as understood by the Penobscot and the contents of the written treaty:

Having hear'd the Acts read which you have given me I have found the Articles entirely differing from what we have said in presence of one another, 'tis therefore to disown them that I write this letter unto you.⁵⁴

As well, French-speakers in attendance at the treaty ratification indicated that the aspects of the treaty concerning political and legal submission were not articulated. Rather it was emphasized that the Aboriginal participants had "come to salute the English Governor to make peace with him and to renew the ancient friendship which had been between them before."⁵⁵

Although the political discourse between Europeans and Aboriginal nations was based on mutual respect and recognition of their powers as nations, the discourse between the colonial powers embodied their claim to sovereign authority over the Aboriginal nations. It is apparent that Aboriginal people did not infer or accept a relationship of domination, nor did the Europeans, in practice, try to impose one in this early period of interaction. Indeed, their discourse and alliances with the Aboriginal nations were based on principles of equality, peace and mutual exchange.

3.4 Understanding Treaties and the Treaty Relationship

We have noted that differences in the interpretation of treaties have arisen because of differing cultural traditions, for example, with respect to the relationship of humankind to the land. Divergent understandings extended to other matters as well.

From an Aboriginal treaty perspective, European rights in the Americas — to the use of lands and resources, for example — did not derive legitimately from international law precepts such as the doctrine of discovery or from European political and legal traditions. Rather, the historical basis of such rights came about through treaties made with Aboriginal nations. In this view, the terms of the treaties define the rights and responsibilities of both parties. It is as a result of the treaties that Canadians have, over time, inherited the wealth generated by Aboriginal lands and resources that Aboriginal nations shared so generously with them. Thus, although the term 'treaty Indians' is commonly (if somewhat misleadingly) used to refer to members of Indian nations whose ancestors signed treaties, Canadians generally can equally be considered participants in the treaty process, through the actions of their ancestors and as the contemporary beneficiaries of the treaties that gave the Crown access to Aboriginal lands and resources.⁵⁶

In the tradition of Indian nations, treaties are not merely between governments. They are made between nations, and every individual member of the allied nations assumes personal responsibility for respecting the treaty. This is why, for example, the *putu's* — or treaty-keeper — among the Mi'kmaq would read the wampum treaties to the people every year, so that they would behave properly when travelling through the territories of their allies.

Treaties among Indian nations specified the ceremonies, symbols and songs that would be used by individuals to demonstrate, at all times, their respect for their obligations. Among Europeans, the average citizen took no part in making treaties and knew little about the treaties that had been made. It was left to heads of state and governments to remember, and implement, national obligations.

To the Aboriginal nations, treaties are vital, living instruments of relationship. They forged dynamic and powerful relationships that remain in effect to this day. Indeed, the spirit of the treaties has remained more or less consistent across this continent, even as the terms of the treaties have changed over time.

Canadians and their governments, however, are more likely to look on the treaties as ancient history. The treaties, to Canada, are often regarded as

inconvenient and obsolete relics of the early days of this country. With respect to the early treaties in particular, which were made with the British or French Crown, Canadian governments dismiss them as having no relevance in the post-Confederation period. The fact remains, however, that Canada has inherited the treaties that were made and is the beneficiary of the lands and resources secured by those treaties and still enjoyed today by Canada's citizens.

A final source of misunderstanding about treaties lies in the fact that the relationship created by treaty has meaning and precedent in the laws and way of life of the Indian nations for which there are no equivalents in British or Canadian traditions.

One aspect of treaty making that is little understood today is the spiritual aspect of treaties. Traditional Aboriginal governments do not distinguish between the political and the spiritual roles of the chiefs, any more than they draw a sharp demarcation line between the physical and spirit worlds. Unlike European-based governments, they do not see the need to achieve a separation between the spiritual and political aspects of governing:

Everything is together — spiritual and political — because when the Creator...made this world, he touched the world all together, and it automatically became spiritual and everything come from the world is spiritual and so that is what leaders are, they are both the spiritual mentors and the political mentors of the people.⁵⁷

This integration of spiritual and political matters extends to treaty making, where sacred wampum, sacred songs and ceremonies, and the sacred pipe are integral parts of making the commitment to uphold the treaty. In affirming these sacred pacts, the treaty partners assured one another that they would keep the treaty for as long as the sun shines, the grass grows and the waters flow.

What sacred pacts, symbols and things of concrete value did the Crown bring to treaty making? The Crown's representatives gave their word and pledged to uphold the honour of the Crown. The symbols of their honour and trustworthiness were the reigning king or queen in whose name the treaty was being negotiated and with whose authority the treaty was vested.

Missionaries were a testament to the integrity of the vows that were made and witnesses to the promises that were to be kept. Outward symbols, like flags, the red coats, treaty medals, gifts and feasts were also part of the rituals.

While European treaties borrowed the form of business contracts, Aboriginal treaties were modelled on the forms of marriage, adoption and kinship. They were aimed at creating living relationships and, like a marriage, they required periodic celebration, renewal, and reconciliation. Also like a marriage, they evolved over time; the agreed interpretation of the relationship developed and changed with each renewal and generation of children, as people grew to know each other better, traded, and helped defend each other. This natural historical process did not render old treaties obsolete, since treaties were not a series of specific promises in contracts; rather they were intended to grow and flourish as broad, dynamic relationships, changing and growing with the parties in a context of mutual respect and shared responsibility.

Despite these differences, Europeans found no difficulty adapting to Aboriginal protocols in North America. They learned to make condolence before a conference with the Six Nations, to give and receive wampum, to smoke the pipe of peace on the prairies, to speak in terms of 'brothers' (kinship relations), not 'terms and conditions' (contract relations). Whatever may have come later, diplomacy in the first centuries of European contact in North America was conducted largely on a common ground of symbols and ceremony. The treaty parties shared a sense of solemnity and the intention to fulfil their promises.

The apparent common ground was real, but under the surface the old differences in world view still existed, largely unarticulated. Fundamentally, the doctrine of discovery guided the European understanding of the treaties. They were to legitimize European possession of a land whose title was already vested in a European crown. The indigenous understanding was different. Indigenous territories were to be shared; peace was to be made and the separate but parallel paths of European and indigenous cultures were to be followed in a peaceful and mutually beneficial way.

4. Conclusion

As the accounts in this chapter have illustrated, the relationship that developed in this initial period of contact was far from perfect. It was prompted less by philosophy than by pragmatism and was often coloured by profound, culturally based misunderstandings as well as by incidents of racism and outright hostility between Aboriginal and non-Aboriginal people. For these and other reasons, the overall relationship was not uniform in shape throughout the period or in all locations. Nevertheless, it had certain features that are important to highlight.

In the political realm, it was a relationship established between representatives of European and Aboriginal nations. Despite their clear imperial ambitions, in practice the colonizing European powers recognized Aboriginal nations as protected yet nonetheless autonomous political units, capable of governing their own affairs and of negotiating relationships with other nations. In the case of the British Crown in particular, it also included the important recognition that Aboriginal nations were entitled to the territories in their possession, unless these were properly ceded to the Crown.

In the economic realm, the relationship was characterized by considerable interdependence, a complementarity of roles and some mutual benefit. This is not to say that there was no change in pre-existing Aboriginal patterns, for clearly there was substantial change. The new economy drew Aboriginal people into the production of staples for markets using technologies derived from European techniques or resulting from North American innovations. This led to over-exploitation of resource as well as exposure to the boom and bust cycles typical of staples economies. In these respects the new economy diverged from the Aboriginal tradition of more balanced harvesting of natural resources, typical of Aboriginal hunting and gathering economies. Nevertheless, the fur trade and other natural resource harvesting of the time was part of a commercial economy that was more compatible with maintaining traditional Aboriginal ways of life than was the economy of expanding settlement and agriculture that was to replace it. It was an economy of interdependence from which both sides derived benefits through the exchange of foods, clothing, manufactured goods and technologies.

Nor were European and colonial societies immune from the effects of the new economy developing in North America. Fish became plentiful and new

products — tobacco, potatoes and corn, to name a few — were introduced to European and colonial markets along with an abundant supply of furs that influenced European fashion and lifestyles, making fur affordable and accessible to the middle classes for the first time.⁵⁸ Commercial activity in Europe was stimulated, with banks, joint stock companies and trading consortiums developing rapidly to raise the capital necessary for North American ventures. Colonial societies profited from this economic expansion, establishing firmer roots in North American soil and leading the way into the interior of the vast continent in search of new opportunities, which repeated the contact and co-operation phase as more Aboriginal peoples were drawn into the colonial economic orbit.

Although practical accommodations between Aboriginal and non-Aboriginal societies were reached in the initial contact period, it does not necessarily follow that Aboriginal and European participants had the same perspective on the agreements reached between them. Fundamental differences in outlook between western and Aboriginal societies, rooted in the previous period of separate social, political and cultural development, continued into the period of early contact, influencing the interpretation of events and agreements on both sides. This led inevitably to misunderstandings, many of which continue to have repercussions today.

European attitudes of superiority and imperial ambitions often posed challenges to Aboriginal peoples' perception of the nature of the overall relationship, but Aboriginal peoples' relative strength and adaptive capacity permitted them to maintain these ties on a rough basis of equality well into this stage of contact and co-operation. The most pervasive and sustained attack on the respectful, egalitarian, nation-to-nation principles of the relationship was yet to come, however.

As the 1700s drew to a close, there were increasing signs of a shift in the relationship. Indeed, the *Royal Proclamation of 1763* itself, despite its status as a key document recognizing Aboriginal nations as autonomous political units with rights to the peaceful possession of their lands, shows signs of ambivalence. Its opening paragraph refers to Aboriginal nations but also uses the lesser term "Tribes of Indians". Moreover, while there is reference to the Indian interest in the land ("lands not having been ceded to, or purchased by Us"), there is also reference to the provision that they "should not be molested or disturbed in the Possession of such Parts of Our

Dominions and Territories..." — phrasing that implies that the British claimed sovereign title to lands, including those inhabited by the Indians.

The paradoxes and unresolved issues of this period of contact and co-operation could not remain hidden long. Indeed, in the next stage, displacement, they burst out into the open. The relationship between Aboriginal and non-Aboriginal peoples was changing. Confronted with a powerful and growing colonial society, the strength of Aboriginal nations was in decline. The colonial society was ready to test its strength in ways that would have profound implications for the relationship that had served both Aboriginal and non-Aboriginal peoples fairly well up to that point.

Notes:

1 See Robert McGhee, "Contact Between Native North Americans and the Medieval Norse: A Review of the Evidence", *American Antiquity* 49/1 (January 1984), pp. 4-26.

2 J.R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada*, revised edition (Toronto: University of Toronto Press, 1989), p. 24.

3 R. Hakluyt, *Voyages Touching the Discovery of America* (1582) (London: Hakluyt Society Publications, 1850), pp. 21-22, quoted in L.C. Green and Olive P. Dickason, *The Law of Nations and the New World* (Edmonton: University of Alberta Press, 1989), p. 19.

4 This did not prevent Europeans from being drawn into existing conflicts (an example was Champlain's alliance with the Algonquin and Montagnais against the Iroquois) or Indian nations becoming partisans in wars among European nations. For further details on French-Aboriginal relations in this period, see Andrée Lajoie and Pierre Verville, "Treaties of Alliance between the French and the First Nations under the French Regime", research study prepared for the Royal Commission on Aboriginal Peoples [RCAP], in Andrée Lajoie, Jean-Maurice Brisson, Sylvio Normand and Alain Bissonnette, *Le statut juridique des autochtones au Québec et le pluralisme* (Cowansville, Quebec: Éditions Yvon Blais, forthcoming); and Denys

Delâge, “Epidemics, Colonization, Alliances: Natives and Europeans in the Seventeenth and Eighteenth Centuries”, research study prepared for RCAP (1995). For information about research studies prepared for RCAP, see *A Note About Sources* at the beginning of this volume.

5 Miller, *Skyscrapers Hide the Heavens* (cited in note 2), p. 40.

6 Estimates of the Aboriginal population at the time of initial contact and its subsequent decline were discussed in Chapter 2.

7 Haudenosaunee Confederacy, oral presentation, *Minutes of Proceedings and Evidence of the Special Committee on Indian Self-Government*, issue 31 (31 May-1 June 1983), p. 13.

8 Miller, *Skyscrapers Hide the Heavens* (cited in note 2), pp. 44, 45.

9 Gabriel Sagard-Théodat, *Histoire du Canada et voyages que les Frères Mineurs Recollects y ont faicts pour la conversion des infidèles* (Paris: 1636), trans. H.H. Langton, University of Toronto Library, manuscript 7, p. 321, quoted in James Axtell, *The Invasion Within: The Contest of Cultures in Colonial North America* (New York: Oxford University Press, 1985), p. 44.

10 Eleanor Leacock, “Seventeenth-Century Montagnais Social Relations and Values”, in *Handbook of North American Indians*, volume 6, “Subarctic”, ed. June Helm (Washington: Smithsonian Institution, 1981), p. 190.

11 Paul le Jeune, in Reuben Gold Thwaites, ed., *Travels and Explorations of the Jesuit Missionaries in New France, 1610-1791: The Jesuit Relations and Allied Documents* (Cleveland: The Burrows Brothers Company, 1896-1901), volume 29 (1898), “Iroquois, Lower Canada, Hurons, 1646”, p. 221 [translation].

12 Their own name for themselves alludes to their position as people of Turtle Island. Turtle Island is a term used by many First Nations people to refer to North America. In some origin stories, the continent itself was formed, and is said to be supported still, on the back of a turtle. In other traditions, the physical features of the continent at its extremities are likened to the feet, interior land formations are comparable to the shell, and the groupings of people on distinct territories are similar to the markings on the back of a turtle. The term is favoured by many First Nations people because

it signifies the perception of the land as a living entity and is a reminder of the co-operative relationships that support life.

13 Bruce G. Trigger, *The Huron: Farmers of the North*, second edition (Toronto: Harcourt Brace Jovanovich College Publishers, 1990), p. 12.

14 Trigger, *The Huron*, p. 19. See also Georges E. Sioui, *For an Amerindian Autohistory, An Essay on the Foundations of a Social Ethic* (Montreal and Kingston: McGill-Queen's University Press, 1992), p. 87.

15 Thwaites, *Travels and Explorations of the Jesuit Missionaries* (cited in note 11), volume 5 (1897), "Quebec: 1632-1633", pp. 119-121.

16 Jean de Brébeuf, in Thwaites, *Travels and Explorations*, volume 10 (1897), "Hurons: 1636", p. 147 [translation].

17 Paul le Jeune, in Thwaites, *Travels and Explorations*, volume 6, "Quebec: 1633-1634", p. 181 [translation].

18 See Lajoie et al., *Le statut juridique des autochtones* (cited in note 4).

19 Quoted in Cornelius J. Jaenan, "French Sovereignty and Native Nationhood During the French Regime", *Native Studies Review* 2/1 (1986), p. 100.

20 Text in Leonard W. Labaree, ed., *Royal Instructions to British Colonial Governors, 1670-1776* (New York: Appleton-Century-Crofts, 1935; reprinted, Octagon Books, Inc., 1967), volume 2, ¶673, p. 469. This provision remained in force with minor variations until at least the 1770s.

21 Labaree, *Royal Instructions*, p. 469.

22 Text in E.B. O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 11 volumes (Albany: Weed Parsons & Co., 1856-1861), volume 3, pp. 64-65.

23 Text in William H. Whitmore, ed., *The Colonial Laws of Massachusetts* (Boston: City Council of Boston, 1889), p. 160.

24 Text in Nathaniel B. Shurtleff, ed., *Records of the Governor and Company of the Massachusetts Bay in New England, 1628-1686*, 5 volumes (Boston: Press of William White, 1853-54), volume 4, part II (1661-74), p. 213 [spelling modernized].

25 Egremont to the Lords of Trade, 5 May 1763, in Adam Shortt and Arthur G. Doughty, ed., *Documents Relating to the Constitutional History of Canada, 1759-1791*, second edition (Ottawa: King's Printer, 1918), part 1, pp. 128-129. Lord Egremont was the secretary of state for the southern department and as such was responsible for the North American colonies.

26 *Calder v. Attorney-General of B.C.*, [1973] Supreme Court Reports 313 at 394-395. This passage was quoted with approval by Lord Denning, M.R., in *R. v. Secretary of State for Foreign and Commonwealth Affairs, ex parte Indian Association of Alberta and others*, [1982] 2 All England Law Reports 118 at 124-125, who also stated (p. 124), "To my mind the royal proclamation of 1763 was equivalent to an entrenched provision in the constitution of the colonies in North America. It was binding on the Crown — so long as the sun rises and the river flows'."

27 Text in Clarence S. Brigham, ed., *British Royal Proclamations Relating to America*, volume 12, Transactions and Collections of the American Antiquarian Society (Worcester, Mass.: American Antiquarian Society, 1911), pp. 212-218. See Appendix D to this volume.

28 Instructions to Governor Murray of Quebec, 7 December 1763, article 60; text in Shortt and Doughty (cited in note 25), volume I, p. 181 at 199.

29 Instructions, article 61, p. 199.

30 14 George III, chapter 83 (U.K.), sections 8 and 4.

31 Quoted in Donald A. Grinde, Jr. and Bruce E. Johansen, *Exemplar of Liberty: Native America and the Evolution of*

Democracy (Los Angeles: University of California, American Indian Studies Center, 1991), pp. 11-12, citing "Propositions made by the Five Nations of Indians" [Albany, 20 July 1698], Indian Boxes, box 1, Manuscript Division,

New York Public Library.

32 Bruce G. Trigger, *The Children of Aataentsic: A History of the Huron People to 1660* (Montreal and Kingston: McGill-Queen's University Press, 1976), pp. 162, 163, 842.

33 Karl N. Llewellyn and E. Adamson Hoebel, *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence* (Norman, Oklahoma: University of Oklahoma Press, 1941). See also John Henry Provinse, "The Underlying Sanctions of Plains Indian Cultures", thesis, University of Chicago, 1934; John C. Ewers, *The Blackfeet: Raiders on the Northwestern Plains* (Norman, Oklahoma: University of Oklahoma Press, 1958); and John C. Ewers, *The Horse in Blackfoot Indian Culture, With Comparative Material From Other Western Tribes* (Washington, D.C.: U.S. Government Printing Office, 1955).

34 Raymond W. Wood, *Contrastive Features of Native North American Trade Systems*, University of Oregon, Anthropological Papers, volume 4 (1972), pp. 153-169.

35 James Morrison, "The Robinson Treaties of 1850: A Case Study", research study prepared for RCAP (1994).

36 Delâge, "Epidemics, Colonization, Alliances" (cited in note 4).

37 Lajoie and Verville, "Treaties of Alliance" (cited in note 4).

38 Delâge, "Epidemics, Colonization, Alliances" (cited in note 4), references omitted.

39 Lajoie and Verville, "Treaties of Alliance" (cited in note 4).

40 Michael K. Foster, "Another Look at the Function of Wampum in Iroquois-White Councils", in *The History and Culture of Iroquois Diplomacy: An Interdisciplinary Guide to the Treaties of the Six Nations and Their League*, ed. Francis Jennings, William N. Fenton, Mary A. Druke, and David R. Miller (Syracuse: Syracuse University Press, 1985), p. 110.

41 See the presentation by Onondaga scholar Oren Lyons in RCAP

transcripts, Akwesasne, Ontario, 3 May 1993. Transcripts of the Commission's hearings are cited with the speaker's name and affiliation, if any, and the location and date of the hearing. See *A Note About Sources* at the beginning of this volume for information about transcripts and other Commission publications.

42 House of Commons, Special Committee on Indian Self-Government, *Indian Self-Government in Canada, Report of the Special Committee* (Ottawa: Queen's Printer, 1983), back cover.

43 Foster, "Another Look at the Function of Wampum" (cited in note 40), pp. 100, 112.

44 See "Treaty of Peace Between the French, the Iroquois, and Other Nations". Written originally in French and Latin, the text was translated into English and published in Thwaites, *Travels and Explorations* (cited in note 11), volumes 27 and 28. The account is reprinted in Jennings, *Iroquois Diplomacy* (cited in note 40), pp. 137-153.

45 Francis Jennings, "Iroquois Alliances in American History", in *Iroquois Diplomacy*, p. 38.

46 Bill Wicken and John G. Reid, "An Overview of the Eighteenth-Century Treaties Signed Between the Mi'kmaq and Wuastukwiuk Peoples and the British Crown, 1725-1928", research study prepared for RCAP (1993). Indeed, the treaty relationship involving the Wuastukwiuk people began well before 1725, stretching back to the late 1600s and including their presence at a treaty signing in 1713.

47 *Johnson v. McIntosh*, 8 Wheaton 543 (1823) at 573 and following.

48 Delâge, "Epidemics, Colonization, Alliances" (cited in note 4).

49 Olive Patricia Dickason, "Louisbourg and the Indians: A Study of Race Relations of France 1713-1760", *History and Archaeology* 6 (Ottawa: Parks Canada, 1976).

50 Stewardship is used here to underscore the Indian nations' rootedness

in the land. As we saw in our discussion of the Blackfoot Confederacy in Chapter 4, the Indian nations saw themselves as having a profound connectedness with the land, animals, water and plants, as evidenced by their creation stories (which feature long-ago marriages of human and other beings).

51 Lajoie and Verville, "Treaties of Alliance" (cited in note 4).

52 Lajoie and Verville, "Treaties of Alliance".

53 Many of the early written treaties contained no such references, however.

54 Loron Sagourrat to Dummer (no date), in *Documentary History of the State of Maine*, volume 23 (Portland: 1916), p. 208, quoted in Wicken and Reid, "An Overview of the Eighteenth-Century Treaties" (cited in note 46).

55 "Traité de paix entre les anglois et les abenakis, 1727", in *Collection de manuscrits*, volume 3 (Quebec City: 1884), p. 135, quoted in Wicken and Reid, "An Overview of the Eighteenth-Century Treaties".

56 The term is misleading to the extent that it implies uniformity, for in fact treaties were signed with different Aboriginal nations at different times and with substantially different provisions.

57 Sakorarewate (Tom Porter), "Men Who Are of the Good", *Northeast Indian Quarterly* (1988), pp. 8-12.

58 For a discussion of the contribution of Amerindian crops to the world's food economy, see Jack Weatherford, *Indian Givers: How the Indians of the Americas Transformed the World* (New York: Ballantine Books, 1988), pp. 59-78.