Eighteenth-Century Treaties: The Mi'kmaq, Maliseet, and Passamaquoddy Experience

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This article identifies the known treaties made by the Mi'kmaq, Maliseet, and Passmaquoddy with the British in eighteenth-century Nova Scotia. It argues that in the last twenty years, treaty research has been driven by litigations arising from the application of Section 35 of the 1982 Constitution. In this article, the treaties are placed in the context of Aboriginal adjustment to European contact and settlement, and Aboriginal preference for the French in their struggle with the British to control the region. Treaties made in the years 1759–1761 were ultimately successful in ending Native-newcomer conflict, and they are now the principal documents on which First Nations and government alike rely in resolving questions of treaty rights and obligations. Even so, treaty research in Atlantic Canada remains a work in progress.

Cet article identifie les traités connus conclus entre les Mi'kmaqs, Maliseets et Passmaquoddys et les Britanniques au dix-huitième siècle en Nouvelle-Écosse. Il fait valoir qu'au cours des vingt dernières années, les recherches sur les traités ont été poussées par des litiges provenant de l'application de l'article 35 de la Constitution de 1982. Dans cet article, les traités sont placés dans le contexte de l'adaptation des Autochtones au contact et à l'établissement des Européens, et la préférence des Français par les Autochtones dans leur lutte contre les Britanniques pour contrôler la région. Les traités conclus dans les années 1759 à 1761 ont fini par réussir à mettre fin au conflit entre les Autochtones et les nouveaux venus. Ils constituent désormais les principaux documents sur lesquels se fondent les Premières nations et le gouvernement pour résoudre les questions de droits et d'obligations issus des traités. Malgré ça, les recherches sur les traités dans le Canada atlantique restent un travail en cours.

Introduction

As every schoolchild learns, Wolfe defeated Montcalm on the Plains of Abraham in September 1759. Almost exactly a year later, Montreal fell and the so-called British conquest of French Canada was complete. It is worth remembering these salient dates because they provide bookends for the treaties made by the First Nations people of what is now Atlantic

Canada. On 23 February 1760, the Maliseet of the St. John River made a treaty in Halifax, and shortly thereafter, on 10 March, the sakama or chiefs of three Mi'kmaq communities—Shubenacadie, Richibucto, and LaHave—made similar treaties. All agreed to live peacefully and to trade at government operated truckhouses. These treaties of February and March 1760 were but the first of a series made in Halifax over a one-and-a-half-year period and became the foundation treaties of the British-First Nations relationship. They were not the only treaties made by these parties—there were others both earlier and later—but it is my argument that these were the ones that count, both historically and, since 1982, constitutionally.

The irony is that, before 1982, we in the scholarly world knew scarcely anything about these treaties. One of the few historians to examine Mi'kmaq and Maliseet treaies with the British, R.O. MacFarlane, wrote in the *Canadian Historical Review* in 1938 about treaties made in New England in the 1690s and subsequently in Nova Scotia, but he ended in 1760 with a scant three sentences about the Halifax series, which seemed from his perspective more or less inconsequential.[1] The widely used text *Native Rights in Canada*, edited by Peter A. Cumming and Neil Mickenburg in the 1970s, provided us with copies of the Maritime Treaties, but it did not include even a reference to treaties made in Halifax in 1760 and 1761.[2] Similarly, a semi-scholarly book, *Our Land the Maritimes*, published in 1980 to argue the case for Aboriginal title, gave a supposedly comprehensive list of treaties without referring to the 1760–61 series.[3] Not surprisingly, in 1983, when the Department of Indian and Northern Affairs published a pamphlet entitled *Maritime Treaties in Historical Perspective*, only three of the Halifax series made it into print. Wayne Daugherty, the in-house historian who edited the collection, took the view that "Perhaps the only significant treaty remaining extant is that of 1779 which was never in any way abrogated." [4] While he knew of the Halifax treaties, he implied that they were abrogated, leaving him pretty much in step with the prevailing wisdom at the time that the Canadian Constitution was repatriated and section 35 gave constitutional recognition to Aboriginal treaty rights in Canada.

1 R.O. MacFarlane, "British Indian Policy in Nova Scotia to 1760," *Canadian Historical Review* 19 (1938): 154–67.

2 Peter A. Cumming and Neil Mickenberg, *Native Rights in Canada* (Toronto, 1972; reprint, 1980).

3 Gary P. Gould and Alan J. Semple, eds., *Our Land: the Maritimes* (Fredericton, 1980).

4 W.E. Daugherty, *Maritime Indian Treaties in Historical Perspective* (Ottawa, 1983), esp. 65.

Simply put, our present knowledge of these significant treaties is the product of research conducted over the past fifteen to twenty years, sparked mostly by the litigation process. Circumstances have forced us to find out about them, as both governments and Native litigants have carried their respective cases into court, arguing the existence or the non-existence of treaty rights. It is significant, I think, that a highly respected elder and hereditary Mi'kmaq chief has testified in one of those cases that there is no oral history of the Halifax treaties.[5] There is a memory of treaties only in general, not in particular, which goes a long way to explain why Aboriginal defendants in cases going back to the 1920s relied on the few treaties that were readily available in printed form, notably the Treaty of 1752, a copy of which had been published by the Nova Scotia Archives in 1869.[6] In fact, this treaty, likewise little studied and imperfectly understood, remained the popular mainstay of defense attorneys until the mid-1990s. Please note that I am not blaming anyone for this, least of all the Aboriginal defendants, given that scholars and even Canada's ministry dedicated to Native affairs, had only a cursory knowledge, if any knowledge at all, of the Halifax treaties of 1760 and 1761.

Yet look where we are today. The 1999 Supreme Court of Canada decision in favour of Donald Marshall Jr. was based on treaty rights found in these very Halifax treaties. It is fair to say that almost every treaty rights case now heard in the Atlantic region deals extensively, if not exclusively, with the Halifax treaties. Litigation has not only forced research on these treaties, it has produced results that justify regarding these treaties as forming the essential foundation of the modern treaty relationship.[7] To Canadians outside the Atlantic region, these treaties must seem old, and relative to the numbered treaties of the West, they are. Indeed, what we are dealing with here are the oldest of Canada's treaties with the Aboriginal peoples of this land. But, as stated above, they are equally the fresh young offspring of fairly recent historical scholarship, discovered, revealed, and scrutinized closely only in the last fifteen or so years. In fact, given their novelty, at least to the scholarly community, it seems sensible to view research on the Maritime treaties as a work in progress rather than as a work accomplished. There may be satisfaction that the courts have found

5 Stephen Augustine in testimony in *R. v. Stephen Marshall et al*., Nova Scotia Provincial Court, 2002.

6 Thomas B. Akins, ed., *Selections from the Public Documents of Nova Scotia* (Halifax, 1869).

7 William C. Wicken has initiated the necessary historiographical debate about the meaning and significance of these treaties in his provocative *Mi'kmaq Treaties on Trial: History, Land, and Donald Marshall Junior* (Toronto, 2002).

some practical utility in the research that has been done to date, but that should not signal an end to the research. That, essentially, is the point of this article. On the basis of what we have learned, we can say with some confidence that the Halifax treaties are foundation documents. But we are also learning more every day. This paper attempts to accomplish two things: to explain briefly where we are; and also to suggest where we may be going with treaty research in the Atlantic region.

The British were relative latecomers by the time they got to know the Mi'kmaq, Maliseet, and Passamaquoddy in the eighteenth century. These Atlantic Aboriginal peoples had possibly met Europeans before the time of Columbus, or certainly not much later. We generally date first contact to c. 1500, by which time Basque, Portuguese, Spanish, French, and English ships were all fishing on the Grand Banks. Jacques Cartier described people whom we presume were Mi'kmaq when he explored Chaleurs Bay in 1534. They were eager to trade their furs, which suggests an already established relationship with Europeans.[8] Over the next two hundred years, the Mi'kmaq, Maliseet, and Passamaquoddy developed a close relationship with the newcomers, especially the French, becoming their friends, trading partners, allies, and, through intermarriage, in some cases their kinsmen. This all occurred before the British, who acquired Acadia from France in 1713, embarked on their own outreach to the Aboriginal inhabitants. Years of interaction with European fishers, traders, missionaries, settlers, and imperial forces shaped the Native perception of outsiders and reshaped their own lives and cultures.

The Contact Experience

The Mi'kmaq inhabited the coastline of present-day Nova Scotia, Prince Edward Island, eastern New Brunswick, and the part of the Gaspé that drains into Bay Chaleurs.[9] It was the Mi'kmaq who first came into contact with the fishermen from western Europe who discovered the abundant cod stocks of the banks off Newfoundland and the Gulf of St. Lawrence

8 H. P. Biggar, ed., *The Voyages of Jacques Cartier* (Ottawa, 1924), 49–56.

9 Reuben Gold Thwaites, ed., *The Jesuit Relations and Allied Documents; Travels and Explorations of the Jesuit Missionaries in New France, 1610–1791*, 73 vols. (Cleveland, 1896–1901), I: 69–71; Marc Lescarbot's Map of Newfoundland, Gulf of St. Lawrence, and New France (c. 1611), in Marc Lescarbot, *History of New France* (1617), trans. W. L. Grant, 3 vols. (Toronto, 1907–14), II; Chrestien Le Clercq, *New Relations of Gaspesia*, trans. and ed. William F. Ganong (Toronto, 1910), 192; Daugherty, *Maritime Indian Treaties in Historical Perspective*; Françoise Passchier, *Le Système Économique Micmac: perspective ethnohistorique au XVII^e siècle* (Montreal, 1985), 40; and Olive Patricia Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times* (Toronto, 1992), 65, 73, 229.

in the late fifteenth century. A hundred years later, Mi'kmaq use of Portuguese and Basque words in a pidgin trading language suggests very early contact with Iberian and Basque fishermen.[10] While we know little of the first century of contact, it is apparent from what Mi'kmaq leaders later said that their numbers diminished greatly, presumably from exposure to European diseases. Before contact, perhaps six to twelve thousand Mi'kmaq hunter-gatherers who utilized stone, bone, and wooden implements might have subsisted on local resources. In the seventeenth and eighteenth centuries, when missionaries and officials reported first-hand, their numbers ranged from about two to three thousand, distributed to make the best use of food resources of the region and organized into family or extended family groupings or bands. Each community grouping was identified with a specific territory, usually a section of coast, a river valley, or bay.[11] They shifted their places of residence seasonally to make the best use of food supplies, sometimes breaking up into smaller groups and at others reassembling at a favoured village site, but in doing so they generally remained within their respective traditional territory. A 1760 source indicates that there were about fourteen such community groups at that time.[12]

We know considerably less about the Native people of the St. John valley and the Passamaquoddy basin (on the present New Brunswick-Maine border). When the Champlain-DuMont expedition established the first French settlement at the mouth of the St. Croix River in 1604, the Natives who helped them may have been Passamaquoddy. But, from Champlain's subsequent writings, we know that, in his opinion, all the Native people from the St. John valley westward as far as the Kennebec River in Maine belonged to a single nation, whom he identified as the Etchemin. The Maine state archaeologist, Bruce Bourque, has taken the position that Champlain was right, and that the pressure of English settlement in the seventeenth century, coupled with the vigorous diplomacy of the French in New France, explains the fragmentation of the Etchemin and their resettlement in southern Quebec and western New Brunswick.[13] Without question, by the 1690s, when France held the St. John valley as

10 Peter Bakker, "Basque Pidgin Vocabulary in European-Algonquian Trade Contacts," in *Papers of the Nineteenth Algonquian Conference*, ed. William Cowan (Ottawa, 1988), 7–15; and Bakker, "A Basque Etymology for the Word 'Iroquois'," *Man in the Northeast* 40 (1990): 89–93.

11 "Villebon's Last Journal sent to Count Pontchartrain," [Oct. 27, 1699] in *Acadia at the End of the Seventeenth Century*, ed. John Clarence Webster (Saint John, 1934), 125.

12 Col. Frye to Governor, 7 March 1760, printed in *Boston Post-Boy*, 7 April 1760.

13 Bruce J. Bourque, "Ethnicity on the Maritime Peninsula, 1600–1759," *Ethnohistory* 36, no. 3 (1989): 257–84.

its last official toehold in Acadia, it was a mix of Maine and New Brunswick Natives who made up the offensive arm of France's military effort in the region. After France ceded Acadia to the British, the Aboriginal people were thereafter identified with their respective geographic locations—the Penobscot, the Passamaquoddy, and the St. John River. They were all small groups, closely related to one another. The Passamaquoddy numbered under one hundred. The St. John River group, called the Maliseet by some and the Wulastukwyuk by themselves, numbered between five and six hundred by their own estimate at mid-eighteenth century. While the Passamaquoddy were entirely coastal and marine oriented, the people of the St. John River were well adapted to the river itself, skilled at traversing its waterways with birchbark canoes, and experienced as fur traders by Champlain's time.

All these First Nations people governed themselves simply, in decentralized polities that were perfectly adequate to their needs. Philip Bock and Ralph Pastore, who have written reliable accounts of early Mi'kmaq society, note that it was their common language and culture that defined the Mi'kmaq as a people, rather than a uniform, structured tribal polity.[14] Community organization most closely resembled a band structure in which family relationships provided cohesion. Community members shared in hunting and gathering, and were largely non-specialized. A band had one or more chiefs (sakamow or, in the plural, sakama) who were chosen internally, and a number of headmen whose function was largely shaped by their roles as hunters and warriors. The sakamow's role was in many ways symbolic and persuasive rather than coercive—the group relied on general discussion and consensus in its decision-making. A village or band council defined the principal governing structure, but, as the early missionary Biard and other early writers indicate, councils made up of the headmen of several bands met periodically to discuss common concerns. In 1607, an aged chief, Membertou, seems to have been recognized as a leader, although early accounts suggest that there was no established hierarchy. In inter-village councils, as in purely local decision-making, coercion was rejected in favor of consensus, which was difficult and sometimes impossible to achieve.[15] There was thus no uniform Mi'kmaq political

14 Philip Bock, "Micmac," in *Handbook of North American Indians*, vol. 15, *The Northeast*, ed. Bruce G. Trigger (Washington, 1978), 109–22; and Ralph Pastore, "Aboriginal Peoples and European Contact," in *The Atlantic Region to Confederation: A History*, eds. Phillip A. Buckner and John G. Reid, (Toronto, 1994), 35–37.

15 For an early description of Mi'kmaq government, see Father Biard's 1616 account in Reuben Gold Thwaites, ed., *The Jesuit Relations and Allied Documents* (Cleveland, 1897), III: 87–91.

position, and political actions could be diverse. While the origins of the present Grand Council and Grand Chief remain controversial, there is little in the historical record before 1760 to suggest that any such centralized body or authority existed or that inter-village councils met on a regular basis.[16] Because they could not discover a central authority, the British had to treat with the Mi'kmaq as they found them, and all the treaties identify chiefs or sakama according to their bands or communities.[17] To achieve a comprehensive treaty with all the Mi'kmaq, the British needed separate treaties with all approximately fourteen bands, and they only came close to doing this in the years from 1759 to 1761.

Static descriptions of Aboriginal society and polity are only useful in a very general way. They may idealize actual circumstances but fail to capture the historical change that characterized Aboriginal life as Natives adjusted to European contact and settlement. Most historians today believe that the Mi'kmaq, Maliseet, and Passamaquoddy were active agents in this process of cultural adjustment. In using the term "agency," they mean that Aboriginal people were not passive "victims" of history, but rather they made reasoned choices based on a rational understanding of their self-interest, as they met Europeans and learned of their ways. Of their own volition, the region's Native people abandoned many of the aspects of their Stone Age culture, transformed their economy, and considerably altered their manner of living after first contact. Aboriginal social and cultural practices were dramatically altered by their adoption of European technologies—iron knives and hatchets, copper kettles, guns, and sailing vessels among the most significant[18]—and their conversion to Christianity in the seventeenth century. French Catholic missionaries modified Native beliefs and practices, and, with French traders, prepared

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A discussion of the limited power of chiefs is found in Le Clercq, *New Relations of Gaspesia*, 234–47. For reference to an intervillage council as described by the French priest Jean Louis Le Loutre, see Council Minutes, 9 Sept 1754, in *Selections from the Public Documents of the Province of Nova Scotia*, ed. Thomas B. Akins (Halifax, 1869), 215–19.

16 My analysis of the historical evidence supports the view taken by Bock, "Micmac," *Handbook of North American Indians*, 15: 109–24; and Pastore, "The Sixteenth Century: Aboriginal Peoples and European Contact," *Atlantic Region to Confederation,* 35–7.

17 "Remarks on the Indian Commerce Carried on by the Government of Nova Scotia in the Year 1760, 1761 and Part of 1762," 15 April 1763, C.O. 217/20. Colonial Office records [C.O.] are in the Public Record Office, London. Microfilm copies used in this essay are in the Harriet Irving Library [HIL], University of New Brunswick.

18 Alfred Goldsworthy Bailey, *The Conflict of European and Eastern Algonkian Cultures, 1504–1700*, 2nd ed. (Saint John, 1935; Toronto, 1969), 46–65; and Charles A Martijn, ed., *Les Micmacs et la mer* (Quebec, 1986), esp. 225–32.

the way for a close working relationship with French officials.[19] Mi'kmaq, Maliseet, and Passamaquoddy became part of the French alliance system from the late seventeenth century until the collapse of French power in the region after the Seven Years' War (1755–63). As the fur trade shifted westward, marginalizing the earliest Native participants, they came to rely on frequent visits to French forts for ammunition and supplies, now expected as gifts where before they were earned in trade. Reciprocally, the French military came to rely on Native allies in defending the region against imperial rivals, notably the British. Despite the British takeover of Nova Scotia in 1713, the continuing presence of powerful French forces at Louisbourg from 1720 to 1758 gave First Nations continued leverage in their dealings with the British. The French presence and Native alliance explains why Britain faced such difficulty in winning general Native adherence to treaties, why treaties were often broken within weeks of being signed, and why treaties endured only after French power in the region had been destroyed.[20]

Eighteenth-Century Treaties

The British in Nova Scotia dealt with Aboriginal people in ways quite different from the French approach. While treaty-making was part of the historical tradition of both Aboriginal peoples and European colonizers, the British insistence on written treaties was novel. British treaty-making practices varied throughout their North American colonies (at least until the 1760s) simply because there was no prescribed imperial policy on the matter, and no standard form for treating with Native people. This is a point that Canadians examining Nova Scotia treaties should keep in mind—the proper eighteenth-century context is north-south, reflecting British experience in colonies stretching from Georgia to New England. British treaty-making in Nova Scotia, as in all other colonies, was contingent on circumstances and shaped by necessity. In all the colonies, treaty-making evolved, and treaties took various forms and served various purposes, such

19 John Clarence Webster, *The Career of the Abbé Le Loutre in Nova Scotia with a Translation of his Autobiography* (Shediac, 1933), 1–50; Micheline D. Johnson, "Pierre Maillard," *Dictionary of Canadian Biography* (Toronto, 1974), III: 415–19; and Micheline Dumont-Johnson, *Apôtres ou Agitateurs: La France missionaires en Acadie* (Trois-Rivières, 1970), 23–45.

20 Olive Patricia Dickason, "Amerindians between French and English in Nova Scotia, 1713–1763," *American Indian Culture and Research Journal* 10, no. 4 (1986): 31–56; Dickason, *Louisbourg and the Indians: A Study in Imperial Relations, 1713–1760* (Ottawa, 1976), 109–25; Yves F. Zoltvany, "The Frontier Policy of Philippe de Rigaud de Vaudreuil, 1713–1725," *Canadian Historical Review* 48 (1967): 227–50; and Stephen E. Patterson, "Indian-White Relations in Nova Scotia, 1749–1761: A Study in Political Interaction," *Acadiensis* 23, no. 1 (Autumn 1993): 23–59.

as to reconcile Native people to British settlement, establish or preserve peace, open up trade, or detach them from imperial rivals such as France. There was no single way to make a treaty. In New York, the British relied extensively on the diplomatic skills of the Iroquois and the famous Covenant Chain to develop relationships with numerous First Nations of the interior.[21] With large Indian nations of the southern interior, such as the Cherokee and the Creeks, Britain maintained a careful policy of respect for territory and sovereignty. In the settled colonies along the Atlantic coast, on the other hand, colonial governments sought to integrate or assimilate Native peoples and bring them within the framework of British law. Massachusetts, for example, created a system of reservations under the control of appointed trustees or guardians to replace the traditional sachems and self-governing structures of the Mashpee, Wampanoags, and Massachusetts Indians.[22] Nova Scotia followed none of these models in particular, but followed all of them in the general principle of doing what seemed appropriate for time and place.

Initially, Nova Scotia was influenced by Massachusetts in its treaty-making. The first treaty, drafted in Boston and ratified at Annapolis, was the only general treaty offered to any Mi'kmaq, Maliseet, or Passamaquoddy headmen who would sign. It never succeeded in winning the approval of all Native groups in the region and, reflecting the competing French influence, failed in the long run to maintain the peace as it was supposed to.[23] Thereafter, the British made separate treaties with the Maliseet and the Mi'kmaq, and, as they learned more about Mi'kmaq political structure, offered separate treaties. Each treaty must therefore be understood in its historical context of time and place. In 1749, the British had short-term success with the Maliseet and Passamaquoddy, but with only one Mi'kmaq group from Chignecto. In 1752, they tried again with the Mi'kmaq, but again made a formal treaty with only one, the Shubenacadie band. Despite British efforts to win over others, it took until the

21 Francis Jennings, "The Constitutional Evolution of the Covenant Chain," *Proceedings of the American Philosophical Society* 115 (1971): 88–96; and Jennings, *The Ambiguous Iroquois Empire: The Covenant Chain Confederation of Indian Tribes with English Colonies from its Beginning to the Lancaster Treaty of 1744* (New York, 1984).

22 See, for example, "An Act for the better rule and government of the Indians in their several places and plantations," Province Laws, 1693–94, ch. 17, *The Acts and Resolves Public and Private of the Province of the Massachusetts Bay* (Boston, 1869), I: 150–51. Additional legislation can be found in *ibid*., vol. II (1874), 363–6; vol. III (1878), 306–7; and vol. IV (1881), 163–64.

23 For a detailed discussion of the treaty process of 1725–1726, see Stephen E. Patterson, "Anatomy of a Treaty: Nova Scotia's First Native Treaty in Historical Context," *UNB Law Journal* 48 (1999): 41–64.

1759–1761 period before effective, lasting treaties were made between the British colonizers and the various communities of the Mi'kmaq people. None of these was a treaty of general application.[24]

Despite the pragmatic nature of British Indian policy, it was nevertheless the Crown's wish that governors treat with Native people. Not long after the British acquired Nova Scotia from France in the Treaty of Utrecht (1713), the Crown instructed Governor Phillips to treat with the Aboriginal people of the colony, and successive governors received similar orders. For example, Governor Hopson, appointed in 1752, was told:

> And Whereas His Majesty has judged it highly necessary for His Service that You should cultivate and maintain a strict Friendship and good Correspondence with the Indians Inhabiting within the said Province of Nova Scotia, that they may be induced by Degrees not only to be good Neighbours to His Majesty's Subjects, but likewise themselves to become good Subjects to His Majesty. You are therefore directed upon Your Arrival in Nova Scotia to send for the several Heads of the said Indian Nations or Clans, and enter into a Treaty with them, promising them Friendship and Protection on His Majesty's part, and if you shall judge proper, bestowing upon them in His Majesty's Name such presents as you shall judge proper.[25]

The instruction was a general one that changed little over time, and reflected a rather broad intention of imperial policy makers in London to integrate Native people gradually into the social and economic matrix of established colonies. One can see this gradual approach applied in the way that Native people were asked to submit to British authority. In the first treaty (1725–26), Natives submitted to the British monarch "in as ample a manner as we have formerly done to the most Christian King [of France]." By contrast, the later treaties of 1760 and 1761 required "submission to His Majesty in the most perfect, ample and solemn manner." The change of wording reflected the imperial policy of gradual integration and more, as it also very much demonstrated the substantial shift in the power relationship between Natives and British colonizers. In 1726, the British were a minority presence in the region, overwhelmed

24 For a detailed discussion of the several treaties mentioned here, see Stephen E. Patterson, "Indian-White Relations in Nova Scotia, 1749–1761: A Study in Political Interaction," *Acadiensis* 31, no. 1 (Autumn 1993): 23–59.

25 C.O. 218/4, 241, 247, 256–57.

numerically by Natives and Acadians in Nova Scotia and a French military presence on Cape Breton, their northern doorstep. In 1760, on the other hand, French military power in the region had been crushed, and the Natives, who had chosen the wrong side, found themselves without allies and suddenly in a vulnerable minority position. Not surprisingly, the weight of circumstance made a "perfect" submission more likely. As it turned out, what began as a necessary relationship in due course produced substantial evidence of harmony and cooperation, and at least a measure of political and economic integration.

Table 1 lists all of the known formal treaties made by civil officials and Aboriginal peoples of Nova Scotia in the period 1725 to 1779. While this list is as complete as possible at present, we would do well to keep an open mind given the success that scholars have had in the last fifteen years in finding treaties that had eluded earlier generations of researchers. One area in particular holds immediate promise. In the several months preceding the first treaties in Halifax in February–March 1760, headmen from all the region's Aboriginal communities presented themselves to British military officers wherever they could be found, seeking peace and asking for supplies, for which many of them were now desperate given the collapse of French power in the region. In fact, within a month of the fall of Quebec, the first of them began coming in to Fort Frederick at the mouth of the St. John River, and others either to Louisbourg or Fort Cumberland (the old Fort Beausejour), all with a common intent. Military officers treated with these people and individually sought advice from Halifax before sending them there for the formal treaties that we have identified as the Halifax series. The important point is that what happened at the forts represents an important ingredient in the treaty-making process. Furthermore, we may yet find copies of preliminary treaties made in 1759 and early 1760, before the Halifax meetings began. Thus far, what we have are military reports of "treaties" made on these occasions—the actual treaty documents have not yet surfaced.

British military officers had the authority, in time of war, to settle terms and receive the surrender or capitulation of enemy forces. This happened at Fort Beausejour in 1755 and Louisbourg in 1758, where French commanders recognized the futility of resisting the overwhelming military power brought against them. At Louisbourg, the commander surrendered all of Cape Breton Island and Isle St. Jean (P.E.I.), and troops in both places were withdrawn to France. But there remained throughout Nova Scotia numerous pockets of resistance, especially north of the Bay

Table 1. Treaties of 1725–79.

Tribe, Band, or District	Date	Treaty Extant?
Maliseet/Cape Sables[1]	15 Dec 1725	yes
Mascarene promises[2]	15 Dec 1725	yes
Cape Sables et al.[3]	26 June 1726	yes
Doucett promises[4]	26 June 1726	yes
Maliseet/Chignecto[5]	14 Aug 1749	yes
Shubenacadie[6]	22 Nov 1752	yes
Maliseet/Passamaquoddy[7]	23 Feb 1760	yes
Richibucto[8]	10 Mar 1760	yes
La Have[9]	10 Mar 1760	yes
Shubenacadie-Musquodoboit[10]	10 Mar 1760	direct ref. to
Shediac[11]	25 June 1761	yes
Cape Breton[12]	25 June 1761	direct ref. to
Miramichi[13]	25 June 1761	yes
Pokemouche[14]	25 June 1761	direct ref. to
Missiguash[15]	8 July 1761	direct ref. to
Pictou & Malogomich[16]	12 Oct 1761	direct ref. to
La Have [2d chief][17]	9 Nov 1761	yes
Maliseet et al.[18]	Sept 1778	yes
Miramichi[19]	Aug 1779	yes
Shediac, Miramichi, Restigouche[20]	22 Sept 1779	yes

[1] C.O. 217/38.
[2] C.O. 217/38.
[3] C.O. 217/38, C.O. 217/4, and C.O. 217/5.
[4] C.O. 217/38.
[5] Thomas B. Akins, ed., *Selections from the Public Documents of the Province of Nova Scotia* (Halifax, 1869), 572.
[6] C.O. 217/40.
[7] C.O. 217/18.
[8] C.O. 217/145. The chief was Michael Augustine. Also the proclamation of 11 March 1760 stated, "Whereas treaties or Articles of Peace & Friendship have been concluded and made between this Government and the tribes of Indians of St. John's River, Passamaquoddy and part of the Micmacs (the remainder being daily expected in) inhabiting this Province."
[9] The chief was Paul Laurent. Andrew Brown Collection, transcription from original at the British Library is in Nova Scotia Archives and Records Management [NSARM].
[10] Both the council minutes and the governor's correspondence show that on the same day as the Richibucto and La Have signing, Chief Claude René of the Shubenacadie-Musquodoboit "made a peace on the same terms," although the treaty is not in the records. RG1, vol. 188, NSARM; Gov. Lawrence to Board of Trade, 11 March 1760, C.O. 217/17, 58–63.
[11] C.O. 217/18. Claude Atonash of the Shediac band was one of four chiefs who signed on this date. The recorded treaty is followed by this: "NB Treaties of the above tenor and contents was signed

by the Chief of each tribe seperately." An original copy of the Shediac treaty, perhaps the one given to Chief Atonash, is in the archives of the Harriet Irving Library, University of New Brunswick.

[12] C.O. 217/18. The unidentified chief was probably Jeanot Pequide Ona Louet identifed in Whitmore to Amherst, 1 Dec 1759, Public Record Office, War Office files [W.O.] 34/17.

[13] C.O. 217/18. A copy of the treaty signed by Joseph Sabecholuet is in RG1, vol. 165, NSARM. A printed copy appears in Thomas B. Akins, ed*., Selections from the Public Documents of the Province of Nova Scotia* (Halifax, 1869).

[14] C.O. 217/18. The Pokemouche chief was Etiene Apshobon.

[15] Council Minutes report this treaty signing, but lack a copy of the treaty. "The treaty was then reciprocally signed by the Commander-in-Chief and the Indian Chief," who was Joseph Argimaut, 8 July 1761, RG 1, vol. 188, NSARM.

[16] Pictou and Malogomich [Merigomish] Treaty Record, RG1, vol. 165; Council Minutes, 12 Oct 1761, RG 1, vol. 188, NSARM. The chief was Janneouit Pectougawash.

[17] LaHave Treaty, 9 Nov 1761, RG1, vol. 430; Francis Muis, Chief. Lieutenant Governor Belcher reported to the Legislature on 24 Mar 1762 "that Treaties of Peace have been concluded between this His Majesty's Government and every District of the Tribes of Indians amongst us." *Journals of the House of Assembly* (1761–64), II: 53–4.

[18] Manawagonish Conference and Oath of Allegiance, 24 Sept 1778, "Selections from the Papers and Correspondence of James White," *New Brunswick Historical Society Collections* (Saint John, 1893), I: 316–17.

[19] Miramichi Treaty of 28 July 1779, Haldimand Papers, B119, BM21, 779: 37–42, British Library, microfilm copy, reel 54, HIL.

[20] Treaty of 1779, Windsor, John Julien, chief of Miramichi, and others from Shediac to Restigouche signed. C.O. 217/54, 221–23.

of Fundy, where small French military units operated to assist Acadians, Mi'kmaq, and Maliseet. Even in the Nova Scotia peninsula, Acadians and their Native allies carried on an irregular warfare that included privateering in the Canso Strait and along the north shore of the colony, and occasional overland raids on the outskirts of British settlements.[26]

To deal with this problem, the British built forts or took over French outposts and sent regular troops and colonial rangers to search for pockets of resistance. Separate missions searched southwestern Nova Scotia and the Petitcodiac and St. John River valleys.[27] By the time that Quebec fell, the British had constructed Fort Frederick at the mouth of the St. John, which was garrisoned by New England troops under Colonel Arbuthnot of Massachusetts, when French-speaking refugees from Quebec and Maliseet headmen began arriving to surrender. Their professed desperation was a measure of how completely dependent they had become on French supplies of food and ammunition. A sergeant who kept a diary wrote that on 12 November fifteen Natives came looking for food, and on the next

26 Gov. Lawrence to General Amherst, 17 Sept 1759, W.O. 34/11, 12–13.

27 "Major Morris Report—1758," "The Aspinwall Papers*," Collections of the Massachusetts Historical Society*, 4th series (Boston, 1871), IX: 234.

day twenty more appeared with their priest.[28] Colonel Arbuthnot received their surrender, administered oaths of allegiance, and wrote to Halifax for orders. The minutes of the Nova Scotia Council for 30 November 1759, report the following:

> His Excellency likewise represented that some of the Chiefs of the St. John's Indians had also arrived at Fort Frederick, and had Taken the Oath of Allegiance to His Majesty and promised to Live in Peace and Friendship with this Government. From which Circumstance His Excellency apprehended that some Overtures for further Cultivating a good harmony and Understanding with them might be favourably received.
>
> The Council having taken this matter into Consideration, Advised that Colonel Arbuthnot should be directed to give them Encouragement to come to Halifax where they may be sure of having a favourable Reception, and an Opportunity of extending their Trade, by the Establishment of Truckhouses amongst them, under such Regulations as shall be agreed upon.[29]

As ordered, Arbuthnot brought Maliseet headmen to Halifax and stayed with them while they made a formal treaty there.

As it turned out, the Maliseet surrender at Fort Frederick was simply the first of several similar surrenders and oaths of allegiance that characterized the encounter of Natives and British troops everywhere in the region. Natives in general surrendered first to British military officers and promised future allegiance to the British Crown, matters that were therefore settled before they ever discussed other terms with Halifax officials. While the record of these surrenders and oaths has never before been brought together, enough remains to permit reconstruction of the process. Almost simultaneously with the Maliseet surrender, the first Mi'kmaq were making their submission. Just before Louisbourg fell to the British, Native warriors under Father Maillard escaped and made their way to the north shore near Merigomish and Pictou, where about four hundred of them, and perhaps an equal number of Acadians, continued to carry on an irregular warfare against British ships in the Northumberland Strait. This is where they were in the fall of 1759, when a small British force sailing out of Louisbourg arrived and forced their "capitulation,"

28 "Dairy of Sergeant John Burrell," *Acadiensis* (Saint John 1905), 292–93.

29 Council Minutes, 30 Nov 1759, RG 1, v. 188, 110–12, NSARM.

to use the language of the British officer in charge. Several Native chiefs returned with him to Louisbourg, where they accepted terms from General Edward Whitmore, the commander there.[30]

Again, the military records from Louisbourg have so far yielded no copy of a treaty, yet General Whitmore makes clear that there was a written agreement. He identified Jeanot Pequid OuaLouet, the chief of the Cape Breton Mi'kmaq, as one of several chiefs who had "taken the Oaths of Allegiance to his Britannick Majesty and promised to be faithfull good Subjects in all time to Come." [31] On another occasion, he wrote that "Several of their Chiefs came in here and articles were agreed on and Signed by Them and Me in Form." [32] The prevailing view at Louisbourg was that the Natives had surrendered because they wanted bread and had "no prospect of relief."[33] General Whitmore was astounded to learn that they also asked for guns and ammunition, claiming that "the French always Supplyed Them with these Things and They expect that we will do the Same." What the British later discovered was that the self-sufficiency of Native people depended on a close working relationship with Europeans because guns, powder, and shot had become the mainstay of Native hunting over the previous hundred years.

What was happening at Forts Frederick and Louisbourg had its counterpart at Fort Cumberland on the Isthmus of Chignecto. Colonel Joseph Frye of Massachusetts was in charge when, in early 1760, a French priest, some Acadians, and several Mi'kmaq headmen came in and subscribed to articles of peace. Among the first were the sakama of the Richibucto and La Have communities. As Frye explained, "I have received their Submissions for themselves and Tribes, to His Britannic Majesty, and sent them to Halifax for the Terms by Governor Lawrence." Frye referred to his preliminary agreements with the Mi'kmaq as "treaties," and informed the governor at Halifax that more would follow because, as he was informed, there were as many as fourteen Mi'kmaq chiefs.[34] Frye's

30 "Articles of Capitulation at Pictou and Malogomiche" [Merigomish], 20 Nov 1759, *Boston Evening Post*, 31 March 1760. See also the entry for "Pierre Maillard," *Dictionary of Canadian Biography* (Toronto, 1974), III: 415–19.

31 Whitmore to General Amherst, 1 Dec 1759 and 22 Jan 1760, W.O. 34/17, 46–47, 53–55.

32 Whitmore to General Amherst, 14 Nov 1760, W.O. 34/17, 195–97.

33 *Boston Gazette and Country Journal*, 10 December 1759.

34 Extract of a letter from Col. Frye to his Excellency the Governor, dated Fort Cumberland, Chignecto, 7 March 1760, printed in *Boston Post-Boy*, 7 April 1760.

successor continued to receive Mi'kmaq "submissions," and to send chiefs on to Halifax for the full treaty terms.[35]

However we might interpret the initial agreements made by Native headmen with military officers throughout Nova Scotia, they were clearly part of the treaty process. Whether they were treaties in themselves is a question yet to be resolved, and one that will probably satisfy all interested parties only if further research produces actual copies. Simply viewed as part of the context of the Halifax treaties, they nevertheless illustrate the shifting balance of power in the region and the wartime circumstances that brought Native headmen to seek accommodation with the British. As commander-in-chief of all British forces in North America, General Amherst was required to assess any possible threats to British military supremacy. By the spring of 1760, he was convinced that Natives and Acadians posed no significant threat to British control of the region, and that provincial forces were adequate to meet the defence needs of Nova Scotia.[36] The fall of Montreal later that year confirmed this assessment.[37]

But we do not really need Amherst's assessment to determine that the Mi'kmaq, Maliseet, and Passamaquoddy were tired of war and sincerely wanted peace and accommodation with the British. After the British triumph over France, what the resourceful Natives wanted from the British was largely what the French had given them. After 250 years of adaptation to the European presence and European technology, Aboriginal people wanted guns and powder so that they could hunt. They wanted sugar, molasses, dried beans and peas, stroud blankets, Virginia tobacco, and rum. They wanted Catholic priests to continue to live amongst them and minister to their spiritual needs. At least, this is what they said when they came forward to make their treaties with the British. This is the context in which we should understand the treaties of the 1759–61 period. Native people did not ask to revert to a pre-contact existence or be left alone. Rather, they sought an accommodation with the British that would allow them to live as the people that they had become, changed in many ways by 250 years of experience with Europeans, but equally attached to cultural values and practices that had helped define them for generations. Yet, by submitting to military officers in the way that they did, Natives answered the fundamental question of peace or war before any of them

35 Roderick Mackenzie to [Col. Forster], 16 Dec 1760 and 28 Mar 1761, W.O. 34/12, 69, 95–96.

36 General Amherst to Gov. Lawrence, 5 Apr 1760, in Akins, ed., *Selections from the Public Documents of Nova Scotia*, 471–73.

37 Amherst to Whitmore, 12 Dec 1760, W.O. 34/17, 210.

went to Halifax for terms. After years of expressed loyalty to the King of France, Natives understood what oaths of allegiance meant, and some took immediate action to demonstrate it by providing the British with intelligence on French military movements.[38] Native chiefs who went on to Halifax reinforced their submission in the opening paragraph of each Peace and Friendship treaty made there, but that did not change the fact that their willingness to make peace and guarantee their future loyalty to Britain was previously settled and no longer remained negotiable. Before the treaty discussions began in Halifax, therefore, the main issue was already resolved.

1760–1761

The Halifax treaties were made over a period of less than two years, beginning with the Maliseet and Passamaquoddy Treaty of 23 February 1760, and followed by a series of treaties with various Mi'kmaq chiefs, beginning on 10 March 1760. They are enduring legally valid treaties governing the relationship between the Aboriginal people of Nova Scotia and the British Crown. The first treaty, made with the Maliseet and Passamaquoddy, provides the context for the rest, although it was in certain respects quite distinctive. Colonel Arbuthnot of Fort Frederick arrived in Halifax with two chiefs, exactly as requested by the council. On 11 February 1760, the governor introduced them to the council and "demanded of them, whether they were fully Authorized and impowered by their tribes so to Treat and agree upon Terms of Peace and Friendship in the name and behalf of the said tribes." They replied that they were fully empowered, and agreed that they would renew their treaty promises made in 1725, as ratified in 1726 and renewed in 1749. The governor explained that there must also be a new article by which they would promise not to "hold any Correspondence or Commerce" with any of his Majesty's enemies, specifically the French, and they quickly agreed. They initially demurred when told that they must also leave hostages at Fort Frederick to ensure their compliance with the treaty, but consented when told that the hostages could come and go, and would be kindly treated. Finally, the governor asked them if they had anything to propose, to which they responded that they would be happy to have a truckhouse located at Fort Frederick where they might trade their peltry for "necessaries."[39] The proposal was not phrased as a demand and, in fact, reflected what they

38 Report of Capt. Hill, W.O. 34/17, ff. 83.

39 Council Minutes, 11 February 1760, RG 1, vol. 188, 119–23, NSARM.

had already been told by Colonel Arbuthnot—the truckhouse was first proposed by the governor's council two months before, and the chiefs now indicated that they wished to take the British up on their offer.

Two steps remained before the treaty was finished. First, the council prepared a draft and ordered it translated into French, an indication that they were relying on French interpreters in their dealings with the Natives. And second, they drew up a list of the kinds of trade items that the Natives would offer at truckhouses and then met with them to ensure that the prices allowed for each were appropriate.[40] On 23 February, the chiefs and the council formalized the treaty in a ceremony in the council chambers. The treaty was explicit in repeating verbatim the promises made by the Maliseet and Passamaquoddy in the treaties of 1725, 1726, and 1749, along with the names of the ratifiers in Halifax and at the mouth of the St. John River. Following the renewal section, the Natives acknowledged that they had "violated" their earlier agreements, but now pledged peace. Furthermore, they renewed "the Acknowledgement of the Allegiance of the said Tribes and their engagements to a perfect and constant Submission and Obedience to His Majesty King George the Second his Heirs and Successors." They likewise promised that no member of their tribes would "hold any Correspondence or Commerce with any such His Majestys Enemies in any way or manner whatsoever," but rather they would confine all trade to truckhouses established by the Nova Scotia government at Fort Frederick or elsewhere.[41]

Representatives of the Mi'kmaq arrived in Halifax even before the Maliseet-Passamaquoddy Treaty was completed. In fact, as early as 9 January, council received five Mi'kmaq who had come in with "overtures of peace," and told them that they and "their tribes" would be "amicably received and further treated with for establishing a firm and lasting peace."[42] By 29 February, Governor Lawrence had a letter from Colonel Frye at Fort Cumberland introducing Michel Augustine and Paul Laurent, who brought word "that the several tribes of Mickmacks were unanimously resolved to make a treaty of peace and Friendship." The council minutes record that the articles of the Maliseet-Passamaquoddy treaty were read to the Mi'kmaq chiefs, "who expressed their satisfaction therewith, and declar'd that all the Tribe of the Mickmacks would

40 Council Minutes, 14 and 16 Feb 1760, RG 1, vol. 188, 128–32, NSARM.
41 St. John's and Passamaquoddy Treaty, 23 Feb 1760, C.O. 217/18, 3–31.
42 Council Minutes, 9 Jan 1760, RG 1, vol. 188, 114–17, NSARM.

be glad to make peace upon the same Conditions."[43] Recognizing the difficulty of getting all the Mi'kmaq together to make a single treaty, the governor and council settled on a policy of signing a separate treaty with each individual band as its chief made himself available. In part, the approach reflected the logistical obstacles involved, but more fundamental was the British recognition that the Mi'kmaq were a highly decentralized people, made up of autonomous local communities, each of which had its own sakamow or chief. None identified a central authority that could act for all. The several treaty instruments thus accurately mirrored the particularistic structure of the Mi'kmaq people.

On 10 March, the governor and council formalized treaties with Michel (or Michael) Augustine of the Richibucto, Paul Laurent of the La Have, and Claude René, who was sakamow of the Shubenacadie-Musquodoboit. These were the first of the several treaties made with the Mi'kmaq in Halifax. The treaty made by Claud René on behalf of the Shubenacadie-Musquodoboit Mi'kmaq is of particular interest because what we know of it is essentially derived from extrinsic evidence or historical context; no one has so far found a copy of the original. We may assume that it was like the other Halifax treaties of this series, at least in its written form, because all of those extant are similar, differing only in the location of truckhouses assigned for Mi'kmaq use. We know that Michael Augustine and Paul Laurent had already agreed to conditions like those in the Maliseet-Passamaquoddy treaty and had indicated that all Mi'kmaq would similarly agree. Two copies of their treaties, made at the same time as Claud René's treaty, exist. We also have Governor Lawrence's letter to Britain written the next day, in which he said that the Maliseet and Mi'kmaq were offered "the same terms."[44] In other words, the extrinsic evidence suggests that Claud René was treated like the others.

There is additional evidence, moreover, that places these first Halifax treaties in the larger context of peacemaking, which includes military submissions and oaths of allegiance. All three Mi'kmaq chiefs had made prior submissions. Augustine and Laurent submitted at Fort Cumberland and swore oaths of allegiance to the British crown. René, who perhaps lived closest to Halifax of all the Mi'kmaq, sent an emissary directly into the city in January and then appeared himself in February before the Maliseet-Passamaquoddy treaty had been concluded. He received a pass allowing him to come and go. Governor Lawrence described his

43 Council Minutes, 29 Feb 1760, RG 1, vol. 210, 115–16, NSARM.

44 Gov. Lawrence to Board of Trade, 11 March 1760, C.O. 217/17, 58–63.

treaty-making with Natives in a letter written to General Amherst only two days after concluding the first three Mi'kmaq treaties: "I am now upon a general Treaty of Peace with the Tribes of the St. Johns and Micmack Indians, who have many of them already taken the Oaths of Allegiance to His Majesty."[45] The two stages—oaths of allegiance and then formal terms and conditions—that Governor Lawrence described are how we should understand the treaty process of 1759 to 1761.

The Halifax series of Mi'kmaq treaties drew on the content of the Maliseet-Passamaquoddy Treaty, but they looked quite different in form. Unlike the Maliseet-Passamaquoddy instrument, they did not renew earlier treaties. Rather, they began *de novo*, as if this were the first treaty the Mi'kmaq had ever made. There was compelling logic to this—many Mi'kmaq communities had not subscribed to earlier Nova Scotia treaties, so there was thus nothing to renew. As written, the several Mi'kmaq treaties were nearly identical in substance. Most variations in wording were slight, with the exception of the trade clause, which confined future trade to one of five different truckhouse locations, each chosen for its proximity to the Native community named in the treaty. The latter feature, it should be noted, emphasized the essentially local character of each treaty. The treaties have also been accurately described as "separate but similar." In content, all began with a submission to the British Crown in which the Mi'kmaq sakamow and his community acknowledged the jurisdiction and dominion of King George over the territories of Nova Scotia. The Natives promised not to molest the king's subjects in settlements already made or that may hereafter be made or in carrying on their commerce "or in any thing whatever within this the Province of His said Majesty or elsewhere." They promised to make restitution for robbery or violence and not to entice soldiers to desert. They further agreed to resolve misunderstandings between themselves and English settlers by relying on the king's laws. They promised to free English prisoners, to have nothing further to do with the French, and to report any of their ill designs against the British. Lastly, they agreed to confine their trade to government truckhouses, where they would leave some of their number as hostages to guarantee their good behaviour.

Treaties are more than written documents, and may include verbal promises not committed to writing, so it is important to ask whether there

45 The Richibucto treaty of 10 March 1760 is found in C.O. 217/145. A copy of the La Have treaty of the same date is found in the Andrew Brown Collection, NSARM. See note 54 for evidence related to the Shubenacadie-Musquodoboit Treaty. See also Council Minutes, 9 Jan, 16 and 21 Feb 1760, RG 1, vol. 188; the Claud René pass, RG 1, vol. 165, PANS; and Governor Lawrence to General Amherst, 12 March 1760, W.O. 34/12, 24–30.

is any evidence of such promises in any of the discussions held between British officials in Halifax and the Mi'kmaq chiefs who treated. There is nothing in the records to suggest that any of the first three made demands or received promises that distinguished one from another. Further, there is no mention of trade, no request for privileges relating to land or resources, and nothing to suggest that the Mi'kmaq chiefs sought to bargain. In all three cases, there is evidence that the Natives sought to make peace unconditionally. We might assume that Laurent and Augustine were happy with the truckhouse trading arrangement offered to the Maliseet, but it should be noted that they did not demand anything of the sort, and neither they nor any of the Mi'kmaq chiefs who followed bothered to raise the issue. My opinion, based on the historical evidence, is that the truckhouse clause was a British idea, not a British response to a Native demand. The evidence of widespread Native willingness to submit, swear allegiance to Britain, and sign treaties in Halifax reflected their realistic appraisal of the collapse of French power and their own vulnerability, especially given their long-standing dependence on the French for powder and shot (essential for hunting at this point in Native cultural adaptation) and other basic foodstuffs. The evidence suggests to me that Natives set no conditions because they lacked bargaining power and had become economically dependent on European goods that they could not produce themselves. The remaining Mi'kmaq treaties, however, must not be prejudged. The process of treating with each group separately allowed each chief the opportunity of raising issues of concern to his band. The process itself opened the possibility for later agreements—especially if unwritten—to vary in detail. Each of the several Mi'kmaq treaties must therefore be read in context, and extrinsic evidence must be examined to determine the meaning of each. For some at least, there are minutes of what was said, permitting a reconstruction of events and analysis of what was agreed to.

The most complete description of a treaty ceremony is that of 25 June 1761, when headmen of the Cape Breton, Shediac, Miramichi, and Pokemouche bands made their treaty with Jonathan Belcher, acting lieutenant governor. Particularly striking were the words of the Cape Breton chief who, speaking for all the others, said, "Our intentions were to yield ourselves up to you without requiring any terms on our part." While they made no demands and set no conditions, the Mi'kmaq requested that they be allowed to continue to worship according to their Catholic faith, and that the British would help them do so by encouraging Catholic priests

to live amongst them. When Jonathan Belcher replied for the Crown, he acknowledged the request respecting religion and agreed to it, something later governors viewed as an obligation despite its not having been written into the treaty instrument. Beyond this, Belcher's chief concern was to explain to the Mi'kmaq the particular meaning that he attached to their subscribing to the treaty. It meant that from thenceforth British and Nova Scotia law would apply to them. "The Laws will be like a great Hedge about your Rights and properties," implying that the Mi'kmaq would be treated like all other subjects of the British Crown. Aboriginals would enjoy the freedoms that all British subjects enjoy, and the laws would, in turn, protect them. Importantly, Belcher put the essential point into clear language. He referred to the British in Nova Scotia as "your fellow subjects." In the future, he said, Natives and non-Natives would fight on the same side, as brethren, "that your cause of war and peace may be the same as ours under one mighty Chief and King, under the Same Laws and for the same Rights and Liberties." On this point, both Belcher and the Cape Breton chief seemed to have a clear meeting of minds. The latter concluded thus: "As long as the Sun and Moon shall endure … so long will I be your friend and ally, submitting myself to the Laws of your Government, faithful and obedient to the Crown."[46] Such evidence is impossible to ignore for anyone interpreting the treaties as historical archives. In their own language in their own time, both a British officer and a Mi'kmaq chief agreed that by treaty the Mi'kmaq were now British subjects to be governed by the same laws as other British subjects.

The governor and council in Halifax continued to entertain Native chiefs and sign treaties into the fall of 1761. Then, in a speech to the legislative assembly in March 1762, Lieutenant-Governor Belcher (newly appointed as such) reported "that Treaties of Peace have been concluded between this His Majesty's Government and every District of the Tribes of Indians amongst us."[47] The historical record supports this view, but only if we consider that the treaties included both military submissions, or oaths of allegiance, and the treaties made in Halifax. The record contains ten extant treaties or clear official references indicating that treaties like those extant were signed in Halifax, but there is nothing for several Mi'kmaq groups, including the Cape Sable or Annapolis Mi'kmaq (who were probably a single community by this point), or those at Minas, Antigonish, Restigouche, or Isle St. John. On the other hand, we know from

46 Ceremonials at Concluding a Peace, C.O. 217/18, 276–84.

47 *Journals of the House of Assembly* (1761–64), II: 53–4.

the military records that all these Mi'kmaq groups formally submitted to British military officers or indicated a wish to make peace, and we have varying degrees of detail respecting their actual submission. Taking both kinds of treaty into consideration, one would have to conclude that Belcher was correct in his assertion that treaties had been made with all bands or districts in the region.

The treaties of 1760–1761 represented a new departure in treaty-making. They not only established the relationship of Mi'kmaq, Maliseet, and Passamaquoddy with the British Crown, without reference to the past, but, unlike previous experience, they seemed to work. Subsequent history shows that both Natives and non-Natives viewed 1760–1761 as the cornerstone of their relationship. At least before Confederation in 1867, Aboriginal communities did not claim rights stemming from treaties signed earlier. While treaty rights claims have been made in the twentieth century based on the treaties of 1725–26 and the Treaty of 1752, the recent trend has been to rely on the Halifax Treaties of 1760–61, giving them, at long last, the recognition they deserve.[48]

Post-Treaty Evidence

One of the ways of judging the extent to which Aboriginal people understood and accepted the treaties they signed with the British is to examine their behaviour afterwards. Of the treaties signed before 1760, none established a general and lasting peace, and the treaties signed in 1760 and 1761 provide clear evidence of this. The Maliseet (referring to treaties of 1725 and 1749) explicitly acknowledged that:

> the said Articles of Submission and Agreement, so made and concluded, renewed, confirmed, and ratified have notwithstanding, been since violated contrary to the good Faith therein engaged for the constant and strict observation and performance thereof and to the Allegiance due from the said Tribes to His Majesty Our Sovereign Lord King George.[49]

While there is no comparable clause in the Mi'kmaq treaties from this period, the treaty ceremonies refer to former hostilities, burying the

48 Handwritten notes of the Sylliboy trial are in the Public Archives of Nova Scotia [NSARM], and a published version appears in Ruth Holmes Whitehead, ed., *The Old Man Told Us* (Halifax, 1991), 327–30. Thomas B. Akins published a copy of the Treaty of 1752 in *Selections from the Public Documents of the Province of Nova Scotia* (Halifax, 1869), 683–84.

49 Maliseet and Passamoquoddy Treaty, 23 Feb 1760, C.O. 217/18.

hatchet, and Native requests for forgiveness. When the chief of the Cape Breton Mi'kmaq addressed Jonathan Belcher, the acting governor, he hoped "that no mention will ever be made of any Hostilities that have been committed by us against you and Yours." And when he buried the symbolic hatchet, he said that it would be "impossible for me to make use hereafter of this Instrument of my Hostilities against you."[50] There is no evidence of general hostilities between the Mi'kmaq and the British thereafter.

The subsequent behaviour of both parties helps explain their common intent.[51] The treaties contained a number of clauses that required a full understanding on both sides if they were to be effective. The Mi'kmaq were to accept British sovereignty, resolve misunderstanding "according to the Laws established in his said Majesty's Dominions," and confine their trade to designated truckhouses. All these things, as the British understood them, required a Native acceptance of the prevailing laws of the province. Any number of examples might be adduced to demonstrate the general acceptance by the Mi'kmaq of their new relationship with the British and adjustment to British law and practice. Mi'kmaq traders made use of truckhouses established for a brief time in the early 1760s under the terms of their treaties and given the force of law by acts of

50 "Ceremonials at Concluding a Peace with the several Districts of the general Mickmack Nation of Indians …," C.O. 217/18, 277–83.

51 John G. Reid takes a quite different view of the Halifax treaties and the post-treaty evidence in "*Pax Britannica* or *Pax Indigena?* Planter Nova Scotia (1760–1782) and Competing Strategies of Pacification," *Canadian Historical Review* 85, no. 4 (December 2004): 669–92. He argues that, until the arrival of the Loyalists, Aboriginal groups held a balance of power against British authority and New England Planter settlements, forcing respect for an Aboriginal understanding of the treaties, presumably different from the British view, although largely undefined. Reid carefully acknowledges contradictory evidence—some colonial officials saw a continuing Native threat where others saw none—while favouring the former view (which supports his thesis). Inadvertently, the argument questions Native sincerity—they eschewed war in the treaties. More to the point, an argument linking Planter wariness with Mi'kmaq insistence on treaty rights faces three large hurdles. First, the Planters settled principally in the Annapolis Valley, the southern side of Minas Basin, and the south shore from Chester to Yarmouth, numbering several thousand by 1766. At most, two hundred Mi'kmaq inhabited this southwestern part of the peninsula, their numbers greatly depleted by the disruptions of the Seven Years' War. The demographic imbalance is thus much greater than Reid suggests. Second, only one of the four Mi'kmaq communities in the region made a treaty in the Halifax series, at least on the extant evidence, leaving us to ask what treaty rights the others claimed. If the trading right was central, how do we explain the government's closing, within months of their opening, the three truckhouses in the region, claiming lack of business? Third, while it is true that the colony's mostly civilian governors sounded occasional alarms during the 1760s about the dangers posed by "savages," do these not need to be weighed against the colony's desperate financial situation and dependence on infusions of imperial capital? Perceived threats of enemies without or within served pleas for both continuing financial aid and military presence.

the Nova Scotia legislature.[52] When the Crown vetoed the truckhouse arrangement, the Mi'kmaq accepted the system of licensed traders that followed. Government, for its part, left the Mi'kmaq alone to manage their internal affairs, recognizing that chiefs served a valuable purpose in maintaining order among their people. Gradually, government took steps to integrate Native structures into British law and practice, creating the impression that the chiefs' authority was derived from the British. In 1771, Lieutenant-Governor William Campbell issued a commission to Francis Alexis, chief of the Cape Sable Mi'kmaq, that allowed him to "wear the glorious colours of our Gracious Sovereign King George the Third" (perhaps a military-style red coat) and required him "to behave as a good faithful Overseer over the families of Indians of Cape Sable."[53] The commission suggested a political integration of the Mi'kmaq people into the prevailing British structure of government, or at the least a reconciliation of those practices with British law. By 1781, the lieutenant-governor had a standard form for commissioning Mi'kmaq chiefs throughout the province.[54] After New Brunswick was formed in 1784, a similar practice was followed there. By this time, also, both Mi'kmaq and Maliseet were asking that certain lands be reserved and protected to them by licenses of occupation, similar to those being issued to new settlers. Both Nova Scotia and New Brunswick governments responded by issuing such licenses and other forms of land grants in trust. In a word, the treaty partners worked at making their agreements effective.[55]

There was, on the other hand, one serious challenge to treaties of 1760–1761. During the American War of Independence, American agents from Maine attempted to win support from both the Mi'kmaq and Maliseet, and for a short time attracted the interest of a few. The Maliseet split over the issue, with one group signing a treaty with the Americans at Watertown, Massachusetts in 1776. Loyal Maliseet, however, eventually

52 *Act … to prevent private trade with Indians*, N.S. Assembly Minutes, 23 Sept 1760; *Abstract of supplies to truckhouses*, Nov 1760, C.O. 217/18; Legislation regulating the Indian trade, *The Statutes at Large of Nova Scotia* (Halifax, 1805), I: 53, 62, 78; *An Act for the Regulation of the Indian Trade*, 2 July 1762, C.O. 217/19; *Remarks on the Indian Commerce, 1760–62, with accounts*, 5 April 1763, C.O. 217/20.

53 RG 1, vol. 168, 155, NSARM.

54 RG 1, vol. 169, 5–6, NSARM.

55 Licences of occupation to Lemable Janat, chief of Cape Breton, and others, 18 Dec 1783, RG 1, vol. 430, no. 23 1/2, NSARM; petition re St. Margaret's Bay Indians for 500 acres of land, 28 Feb 1786, RG 1, vol. 430, 26 1/2; Grant and licence to Charles Alexis and Cape Sable Indians, 22 June 1786, RG 20A, reel 256, NSARM. See also the several petitions and land grants to Indians in New Brunswick in RS 108, Public Archives of New Brunswick.

prevailed.[56] In 1778, Michael Francklin, then superintendent of Indian affairs in Nova Scotia, went to the mouth of the St. John River and held a treaty conference with the Maliseet and representative Mi'kmaq headmen. Here, the Natives renewed their oath of allegiance to the British Crown, a written agreement that Francklin called a treaty. They promised to refrain from any direct or indirect involvement in the war between Britain and the American "rebels" and to follow their "hunting and fishing in a peaceable manner."[57]

A second episode in the same period was confined to a small group of "rebel" Mi'kmaq on the Miramichi. In the summer of 1779, they attacked some local British settlers, ran up the French flag, and asserted their support for the Americans and their French allies. The uprising was quickly subdued by the crew of a British naval vessel who responded to a plea for help from settlers, captured and arrested the rebels, and, with the approval of loyal Mi'kmaq who lived nearby, removed the rebel chief and appointed a new one. Michael Augustine of the Richibuctou Mi'kmaq provided a copy of his 1760 treaty to serve as a model for a temporary treaty signed by the new chief. Two months later, Michael Francklin entertained several chiefs from the area at his home in Windsor, where they signed the Treaty of 1779. It named only the Mi'kmaq groups from Cape Tormentine northward to Baie des Chaleurs, all of whom renewed treaties made since the time of Governor Lawrence and promised to maintain the peace.[58]

The Maliseet flirtation with American rebels and the uprising of Miramichi Mi'kmaqs show that treaties were not perfectly effective in holding the allegiance of all Natives in the region. Yet the fact that the vast majority of Natives did not join in these challenges to British authority—to the contrary, they took steps to aid military and civilian officials in suppressing the disorders and restoring peace—is a significant indication of the Native commitment to the treaties and of their full understanding of what they meant. The events of the American Revolution demonstrate both that the treaties of 1759–1761 were tested, and that they survived the test. Moreover, the British removal of a chief and his replacement by another, both with the approval of local chiefs, shows that they were will-

56 The best account is found in biographical sketches of the Maliseet chiefs, Ambroise Saint-Aubin and Pierre Tomah, by Richard I. Hunt, *Dictionary of Canadian Biography* (Toronto, 1979), IV: 693, 735–36.

57 Manawagonish Conference and Oath of Allegiance, 24 Sept 1778, "Selections from the Papers and Correspondence of James White," *New Brunswick Historical Society Collections* (Saint John, 1893), I: 316–17.

58 Haldimand Papers, B119, BM21, 779: 36–42, 46–49; C.O. 217/54, 221–23.

ing to accept an integration of their traditional forms of self-government with the forms and constraints of British and Nova Scotia law. Sixty-five years later, a Mi'kmaq chief named Adelah or Andrew Muis petitioned the Crown about the sad state of his people in Nova Scotia. He appended a copy of one of the 1760 treaties and stated that, despite their problems over the years, he and his fellow Mi'kmaqs had been "unwilling to contend against the Laws which he had pledged himself by Treaty to obey."[59]

The treaties made in the period 1759–1760 thus represent the principal instruments whereby the Aboriginal peoples of Atlantic Canada established a lasting relationship with the British Crown. They not only set in place an agreement that both sides attempted to honour thereafter, they also marked an important plateau in the education of each about the other. Aboriginal peoples began their accommodation with British law, as they had promised. The British, for their part, accepted a continuing role for existing Aboriginal polities within the limits of British sovereignty. While Aboriginal government was largely local and decentralized, perhaps simple by European standards, it remained perfectly sufficient to the needs of the Mi'kmaq, Maliseet, and Passamaquoddy peoples. The colonial government continued to deal with each local community, just as it had in making the treaties. The truckhouse system, overly ambitious and costly in execution, did not last long, but Aboriginal people were thereafter encouraged to trade with private traders who, at least for a time, were regulated to ensure fair dealing. Before the end of the century, some Native men were moving into the mainstream workforce as lumbermen, log runners, ship hands, and agricultural workers.

The treaties of the 1759–1761 period embraced principles that had been developed reciprocally between Native people and Europeans for over 250 years. The Aboriginal people were not the same as those who first met Europeans along the shore around 1500. They now hunted using European firearms, and relied on trade and, more recently, alliance in order to acquire European goods. The British, for their part, were prepared to experiment with trade to build their own relationship through treaties. The treaties of 1759–1761 acknowledged the Mi'kmaq, Passamaquoddy, and Maliseet as the people they had become. Neither side sought to turn back the clock to 1500. Native people did not ask to be left alone or to define their relationship with the British in terms of two solitudes. To the contrary, they embraced the contact experience and the changes in their lives that it had brought. This is what they brought to the negotiation

59 Petition to Lord Bathurst, 10 Feb 1825, C.O. 217/145, 143-44v.

table—a wish for accommodation that would permit the now-familiar interaction. How well the British understood that they were perceived as the New French is another matter—and a story for another day.

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