

**Cultural Negotiations and Colonial Treaty-Making in Upper Canada and British West
Africa 1840-1900**

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Introduction

In 1921 the Judicial Committee of the Privy Council, the final court of appeal for all legal disputes within the British Empire, passed judgement in a landmark case that was to reverberate across the empire. The appeal was brought by an African chief, Amoudu Tijani,¹ against the colonial government in Nigeria demanding compensation for the expropriation of his land. At the heart of the matter was the Treaty of Cession signed between Britain and one of Tijani's forebears, King Docemo of Lagos in 1861. The colonial government claimed that under the terms of that treaty, the British crown acquired ownership of all lands in the colony of Lagos including that claimed by Amodu Tijani. Indeed, Article 1 of the treaty stated:

I, Docemo, do with the consent and advise of my Council, give, transfer, and by these presents grant and confirm unto the Queen of Great Britain, her heirs and successors for ever, the Port and Island of Lagos, with all the rights, profits, territories and appurtenances whatsoever thereunto belonging...freely, fully, entirely and absolutely....²

However, although the wording of the treaty unambiguously attests to the transfer of "legal rights" over Lagos lands from King Docemo to the British Crown, the interpretation of this treaty provision was problematic from the beginning. The British officer negotiating the treaty faced a revolt by other chiefs who argued that King Docemo did not have absolute customary or legal authority over "all the lands in Lagos" that he had supposedly ceded to the Queen.³ Even in his capacity as King of Lagos, Docemo had neither feudal authority nor seigniorial rights over his chiefs, nor absolute rights over the land held in trust by them. Thus, in spite of treaty provisions, Tijani's case hinged on the position that King Docemo really had "nothing to transfer."⁴ In the end, the Privy Council ruled that Tijani would have to be compensated as a "trustee" of the lands of his native community. Whatever concessions King

Docemo may have made to the British crown concerning sovereignty was “made on the footing that the rights of property of the inhabitants were to be fully respected.”⁵

This judgement had significant ramifications for imperial jurisprudence, setting a legal precedent that extended well beyond the African continent. It was held as authoritative on two particular issues in British colonial administration: the effect of treaties ceding overseas territories to the British Crown, and the nature of customary land tenures in Africa.⁶ In Canada, both federal and provincial governments became increasingly concerned about the prospects of Indians pressing land claims before the Privy Council and made attempts to prevent this.⁷ One contemporary Canadian historian captures this concern:

In 1921 there occurred in London an event having critical relevance to aboriginal title throughout the British Empire, but especially in places like British Columbia, where land title had not been explicitly extinguished. In a case arising from Southern Nigeria, Viscount Haldane affirmed on behalf of the Judicial Committee of the Privy Council that aboriginal title was a pre-existing right that must be presumed to have continued unless the contrary is established by the context of the circumstance. Should the British Columbia land claim get to the Judicial Committee there was a substantial possibility that the committee would rule that Indian title had not been extinguished.⁸

The case of *Amodu Tijani*⁹ was subsequently cited as applicable judicial precedent in several cases involving aboriginal land claims in Canada and throughout the British empire-commonwealth.¹⁰ One of such cases was *Calder v. Attorney-General of British Columbia* which is credited with having provided the impetus for overhauling aboriginal land claims in Canada.¹¹ Like *Amodu Tijani*, Frank Calder, a hereditary chief of the Nisga’a Indian nation challenged the validity of provincial land legislation that ignored Nisga’a land claims. As in *Tijani* case, the central issue in this case were colonial treaties or their lack thereof. The Nisga’a argued that they had never signed a treaty nor had their sovereignty over their tribal land ever been legally extinguished. As such, the government of Canada had no sovereign or proprietary rights over their lands. These cases, arising from the legacies of colonial treaty making in two ends of the British Empire, speak to the underlying historical connections between the experiences of indigenous people in Canada and Africa.

This paper aims at both interpretative and comparative theme. However, I am keenly aware of the pitfalls of comparative history, one of which is the preliminary issue of comparability of cases. Another is the question of the depth offered in the cases studies presented. As others have noted, the comparativist is always open to the charge of superficiality particularly in treating cases outside his/her own speciality. Yet, the in-depth understanding of a single culture in its historical breadth can be a life's work, and inherently limiting. There is no way to avoiding this if one wants to search for meaningful causal irregularities or interpretative patters.¹²

Admittedly, the political situations in Canada and British West Africa in the nineteenth century were vastly different. Canada was a colonial settler society, where European pioneers sought permanent settlements while colonialism in West Africa colonial was more fleeting. Besides, unlike Canada where the aboriginal population became a tiny minority with the deluge of European migrations, the population in both settler and non-settler colonial Africa remained predominantly African. These are important distinctions that any comparative study must consider. However, underlying these seemingly disparate historical contexts are important parallels that lend cogency to this study. First, in administering their tropical colonies in Africa, British imperial institutions from colonial officials to the Privy Council drew extensively on experiences from the Dominion of Canada which was seen as a model for colonial administration.¹³

Secondly, the process of post-confederation treaty making in Canada coincided with the European "scramble for Africa" which was characterized both by coercion and more conciliatory processes of treaty making. Thirdly, certain commonalties continue to underlie debates over the legacies of colonial treaty making and the rights of indigenous people in both societies.¹⁴ Exploring these similarities and connections can illuminate our understanding of the colonial encounter in both historical contexts.¹⁵ Focussing on colonial treaties with the Yoruba of West Africa (Nigeria, Bénin) and aboriginal communities in Upper Canada, this paper investigates some of the conditions and contingencies that shaped the role of indigenous people in the treaty making process.¹⁶ It examines these historical conditions within the context of the on-going debates about indigenous agency in colonial treaty making.

Treaties and Imperial Agendas

The idea of negotiating with aboriginal people for trade, alliances and land through legal treaties was accepted policy in both the first and second British Empires. Apart from spelling out the terms of British engagement with indigenous people, treaties were the instruments with which the government consolidated administrative control and cleared lands of aboriginal title to facilitate settlement and resource development. They were also an important means with which indigenous people *negotiated* their place within changing societies. In this sense, treaties constituted the foundations of the colonial political and legal systems. In Canada, these treaties have been described as “the fundamental component of the Crown’s relationship with indigenous people.”¹⁷ In the case of the Yoruba people of West Africa, they have been similarly described as “the cornerstone of their engagement with the British.”¹⁸

Colonial treaty agreements came with the accepted definition of nation-to-nation treaties and were taken seriously by the Colonial Office. Between 1820 and 1924, Sir Edward Hertslet, the Librarian and Keeper of the Archives of the Foreign Office in London compiled and published a series of thirty volumes of signed treaties, many of which were made with indigenous people throughout the British Empire.¹⁹ Because the circumstances under which these treaties were made varied widely, their terms and implications for British influence over native peoples were also wide-ranging. While some treaties gave Britain extensive political and economic influence over indigenous people and their territories others were diplomatic accords, limited to bilateral agreement of “peace and friendship.”

From the perspective of most indigenous people, colonial treaties held out the hope that they could maintain some form of autonomy and initiative in their encounters with Europeans and the government. Yet, there were real limits to their negotiating power. In both African and North American colonial contexts, indigenous people were often subordinate participants in colonial treaty making. There were two main insurmountable limitations on the negotiating power of indigenous people -- the lingering threats of military coercion and their unfamiliarity with European political institutions and diplomatic practices. European military advantage also meant that aboriginal people had limited political and legal recourse when treaty terms were unilaterally abrogated by British authorities.

In spite of these common trends however, native peoples experienced colonial treaty making quite differently. For example, it has been suggested that indigenous people of South Africa involved in treaty negotiations with European colonists “fared even worse than the first peoples of North America.”²⁰ One explanation for this is that unlike Africans in South Africa whose experiences with Afrikaner and British settlers made them deeply sceptical of colonial treaties, aboriginal North Americans regarded these formal ceremonial agreements as essential part of their dealings with Europeans and later, the government of Canada. Thomas Anderson and Alexander Vidal, two government officials who travelled extensively across Upper Canada consulting with Indian bands in preparation for treaty negotiations reported that Indians of the region were “friendly towards the idea of a treaty.”²¹ The ceremonial smoking of the “pipe of peace” associated with colonial treaty making in North America held a certain political and spiritual meaning for Indian leaders that was absent among African chiefs. Indian treaty making occurred within a framework of spiritual practices as evident in Iroquoian oral traditions.

When the Haudenosaunee first came in contact with the European nations, treaties of peace and friendship were made. Each was symbolized by the Gus-Wen-The or Two Row Wampum. There is a bed of white wampum which symbolized purity of agreement. There are two rows of purple, and those rows have the spirit of the ancestors. There are three beads of wampum separating the two rows and they symbolize peace, friendship and respect.... The principles of the Two Row Wampum became the basis for all treaties and agreements made with the Europeans.²²

Beyond the ceremonial significance of treaty making, however, the issues at stake in the settler colonies in Canada and South Africa were quite different from those at stake in non settler West Africa. For one, questions about the control of land or the creation of land reserves for indigenous people never dominated colonial treaty making in the same way that they did in Canada or South Africa. Unlike the great land rush of the seventeenth and eighteenth century North America and the Pacific Islands, a combination of geographical, climatic and strategic considerations made West Africa less desirable as settlement colony for Europeans. This influenced how colonists dealt with land issues. For example, during the nineteenth century scramble for Africa, “terra nullius” became a reference not to whether territory was occupied by non-Europeans but instead whether they were occupied by other Europeans. Unlike in North America where the

concept was used by settlers as justification for the appropriation of Indian lands,²³ in Africa “terra nullius” served the role of international law in prescribing ways to avoid conflict between rival European powers.²⁴

Rather than land, treaty negotiations in West Africa focused more on questions over the extent of native political and economic autonomy amidst growing British influence. Central to the issue of native economic autonomy were British efforts to promote “legitimate” trade through treaty obligations on Africans chiefs following the abolition of the slave trade.²⁵ Until the 1880s most of these treaties focused on “peace and friendship” with Britain, freedom of trade and freedom to propagate Christianity. By the 1880s, the scramble among European powers for African territories had reached a fever pitch and treaties began to enjoin local rulers not to enter any treaty relations with any other nation “except with the knowledge and sanction” of the British Government. After 1880, treaties focussed on British demands for exclusive rights to economic resources and full jurisdiction over British subjects and “protected persons.”²⁶ Careful consideration of these varied imperial agendas in settler colonies and tropical dependencies is essential to understanding the different trajectories of colonial treaty making on both colonial contexts.

Smoking the Pipe of Peace: Treaty making in Upper Canada

The process of dealing with aboriginal people through formal agreement began shortly after contact was established between Europeans and aboriginal peoples in North America. From 1725 to 1923, British colonial authorities and later, the Government of Canada, made several treaties with Indian bands in Canada. Many of these were treaties of “peace and friendship” signed between aboriginal chiefs and European consuls and agents. Earlier treaties dealt mainly with securing military alliances or trading partners and seldom involved the acquisition of native lands.²⁷ They also regulated diplomatic relations between the British and indigenous peoples. Concluded during a period of rivalry and warfare between England and France, they were primarily intended to secure the neutrality or assistance of the aboriginal nations in exchange for a commitment not to impede them in their traditional pursuits. Later “treaties of concession” involved commerce and the transfer of land. These treaties became the instruments used by the Crown to clear lands of aboriginal title to facilitate settlement or resource development.²⁸

In the period of Anglo-French rivalry and conflicts, Indian nations made military alliances with European powers mainly on the understanding that Europeans would have use (not ownership) of the land in return for “presents” and other conditions. For much of this period,

indigenous people were able to protect their political and economic interests through a series of military alliances and agreements. It has been suggested that early treaty negotiations such as those culminating in the 1701 treaty with the Iroquois in Montreal marked a “triumph of Iroquois diplomacy.” These negotiations were shaped largely by the initiatives and objectives of Iroquois political policy toward New France and her native allies. Beyond concessions gained in the fur trade, the treaties enabled the Iroquois to achieve their broader and far more important goal of securing their hunting territories and neutralizing the belligerency of New France and her native allies.²⁹ However, the capitulation of the French to British forces in New France in 1760 brought about a shift in the relationship between aboriginal people and European settlers. Although the Peace of Paris and the Royal Proclamation after the war restricted European expropriation of Indian lands, the negotiating leverage aboriginal people had gained through trade and military alliances declined dramatically. In many cases, British authorities withdrew “presents” promised under treaty agreements which they no longer saw as necessary. But even with the French out of the way, Britain could not afford to completely disregard Indian sensibilities particularly over issues of land. In a bid to secure the strategically important region of what is now south western Ontario as a buffer against possible American encroachment, British authorities began to negotiate for the purchase of Indian land and actively encourage the settlement of British immigrants. Over the next few decades, Indians communities including the Ojibwa and Odawa nations relinquished large tracts of land between Lake Erie and the Thames River in Upper Canada for European settlement. Much of this was done through treaty agreements such as the Upper Canada Treaty 5 for the purchase of lands in the Penetanguishene area signed in 1798.³⁰

By 1830s, treaties had come to assume great importance in Anglo-Indian relations. There were several reasons for this. One reason was because British colonialism came under the critical scrutiny of British liberals and reformers. The British humanitarian movement, which had just won a significant victory over slavery, now saw ominous parallels between the large-scale dispossession of indigenous people and the reviled institution of slavery.³¹ The secretary of the Aborigines Protection Society, H.R. Fox Bourne, argued publicly that subject to certain limitations, native races within the British Empire had an “incontrovertible right” to their own soil, that their territory should never be acquired by force or fraud, and that their right to personal liberty should be protected.³² The Humanitarian League proclaimed that it was the duty of civilized nations and individuals in their dealings with “inferior races” to recognize the native’s

right to the use of land and its produce.³³ Under such growing pressure from the Aborigines Protection Society, the British government set up a commission of inquiry: the Select Committee on Aborigines (British Settlements), which published its report in several volumes between 1836 and 1838. The Committee urged the protection of “inferior races” in the British colonies against unrestrained colonial aggression. It urged local authorities in the colonies to make efforts to fairly negotiate treaties with the indigenous inhabitants for the alienation on their land and to set aside “reserved lands” for their sole use and benefit. Like humanitarians, Jesuit missionaries working among Indians sought to protect Indians from unfavourable dealings with the government. This led one official to complain in 1849 about Jesuit “interference” and their attempts to “influence the government into what [they] consider a good bargain for the natives.”³⁴ As we shall see later, missionaries also played important roles in British treaty making in West Africa.

In spite of pressures from humanitarians and missionaries, British officials on the ground often had neither the incentive nor the will to radically change their approach to treaty making with aboriginal groups mainly because there was no coherent official policy on treaty making. Most of the crucial decisions about treaty terms were taken not based on any overarching policy guidelines from Whitehall or the government in Ottawa but at the discretion of local officials. In 1850, William Benjamin Robinson, a former fur trader, entered into the first of a series of so-called numbered treaties on behalf of Canada. After confederation, Treaties One and Two, which encompassed vast areas of the north shores of Lake Huron and Lake Superior, set the pattern for future treaties by including hunting and fishing rights as part of the compensation package.³⁵ Although most of the Robinson treaties were nominally founded on the notion of aboriginal rights and sovereignty, others were premised on the notion of *terra nullius* – the assumption that aboriginal land was in effect no man’s land and that by conquest and “improvement,” European settlers could make legitimate claims to them.³⁶ In many parts of British North America land treaties were further complicated by the fact that unlike much of New France, colonized territories were occupied by aboriginal farmers, who were less likely to allow even usufructuary rights to the Europeans without adequate compensation. Indians were also concerned about preserving their traditional lifestyles by maintaining their fishing and hunting rights. In the case of the Robinson treaties, for example, Indian leaders insisted that specific portions of the surrendered tracts of land, selected by Indian Chiefs, be reserved exclusively for Indian use.

These were usually longstanding village locations or traditional hunting and fishing sites that Indians did not want to relinquish under treaty terms.³⁷

As treaties became more common features of Anglo-Indian relations, the negotiating power of aboriginal people in the treaty making process declined considerably. Some scholars have suggested that the approach of the British authorities to treaty making with aboriginal people shifted from the notion of equality to the “rights of discovery.” With declining aboriginal population resulting from disease and war, and the mass displacement from their ancestral lands, treaties of peace and friendship were no longer considered essential to the safety of colonists. The objective of negotiating treaty agreements with Indian nations was now to clear the path for European settlements. During the period of colonial expansion just prior to and following confederation in 1867, treaties provided a veneer of legitimacy to the wholesale alienation of Indian lands for Euro-Canadian settlements.³⁸ Between Treaty Eight in 1899 and Treaty Eleven in 1921 native title had been extinguished in much of Ontario and the Prairie provinces in a process that accorded aboriginal people limited options in treaty negotiations. However, prevalent suggestions about aboriginal passivity and marginalization in colonial treaty making have been increasingly challenged.

The Debate over Indigenous Agency

Until relatively recently, the dominant paradigm for explaining the skewed terms of most colonial treaties was deemed simple and self evident: In both settler and tropical colonies, European agents and governments through a deliberate and well thought out process exploited their military and economic power to wring unfavourable treaty terms from natives whose understanding of the treaty making process was quite different from those of European colonists. Colonial commissioners often saw treaties in one way and the Indians in quite another.³⁹ Another long standing supposition is that indigenous people were at best subordinate participants in the treaty making process and at worst passive observers in processes that furthered Euro-Canadian privileges more than they did indigenous rights.⁴⁰

These assumptions are evident in two of the most authoritative accounts of post confederation treaty making in Canada: Alexander Morris’ collation and summary of the various negotiations published in 1880 and G.F.G. Stanley’s *Birth of Western Canada* published in 1936.⁴¹ Both accounts present treaty making as a well thought-out process initiated and facilitated by the government in which indigenous people played relatively insignificant roles.

Morris who, as commissioner for Indian Affairs, led several treaty negotiations on behalf of the government remarks that Indians were “tractable, docile and ready to learn.”⁴² Similarly, Brown and Maguire state with reference to the Ontario treaties that “in no instance was a treaty instigated by an Indian group and in very few cases did they influence the terms to any great extent.”⁴³ Related to this is the universal assumption that Indian leaders had a fundamental misunderstanding of the processes and outcomes of treaty negotiations. Indians thought they had concluded treaties of friendship and mutual assistance, while agreeing to Euro-Canadian agricultural settlements. Euro-Canadian negotiators believed that treaties secured Indian surrender of whatever claims they had to the vast lands of Upper and Western Canada.⁴⁴

However, in the past few decades this paradigm for understanding colonial treaty making in Canada has come under critical scrutiny. There appears to have been a shift from, or at least a complication of, notions of Indian passivity and subordination. There is renewed emphasis on the initiatives of aboriginal people in treaty making processes and reassessments of the influence of the government in treaty making.⁴⁵ Some scholars now dispute the assumption that the role of the government in treaty making was planned or deliberate. John Tobias argues that in the 1871 treaty negotiations, the government of Canada had no plans on how to deal with the Indians. There was no clear Indian policy beyond expediency and the desire to avoid costly conflict. Treaties were essentially a means of *negotiating resistance*. He goes even further to argue that the negotiation of the treaties was not at the initiative of the Canadian government but at the instance of the Ojibwa Indians and the Salteaux.⁴⁶ What appeared to be a careful and deliberate scheme of dealing with native peoples had, in fact, been given very little thought by the government.

Other studies similarly suggest that Indians played much larger roles in treaty making than previously recognized. D. J. Hall argues that in the negotiation of Treaty One for instance, Indians not only forced major changes in the government’s plan, but also raised most of the issues that appeared in subsequent treaties.⁴⁷ In the 1874 agreements between Commissioner Morris and the chiefs of Qu’Appelle, Saskatchewan Indian chiefs were able to negotiate both reserves and the right to hunt and fish on land that had not yet been settled.⁴⁸ Because Indians saw treaties as establishing a relationship that would guarantee them assistance in adjusting to the new order, it was they who were mainly responsible for the inclusion of many of the terms that promised continuing assistance. During Treaty Four talks in 1874, it was Indian negotiators

who suggested the treaty obligations to supply farm stock, implements and supplies. It was the Indian's perception of their needs and their determination to secure as much as possible that lengthened the negotiations leading the government Commissioner to complain of Indian "stubbornness" and "outrageous demands."⁴⁹ The government simply could not disregard Indian conceptions of justice and Indians were to some extent able to negotiate treaties as a way of ensuring their autonomy and economic security in the face of a very uncertain future.⁵⁰

Rhonda Telford has revealed how the Anishinabe, for instance, resisted government and capitalist pressures to dispossess their mines and minerals in the mid-nineteenth century, precipitating the Robinson Treaties and forcing mining companies to abandon their operations.⁵¹ From the aboriginal perspective, the Robinson treaties recognized and respected their sub-surface land rights but irregular colonial action soon caused Anishinabe anger to rise to the level it reached in 1854 when they closed the mines on Michipicoten Island.⁵² Similar concern over mineral rights was the subject of several petitions written by Indian leaders to the central government. One of the most well known of these was the a petition sent by Chief Shinguacouse of River Garden to the Governor General in 1846, in which he demanded for his people "a share of what (was) found on (his) land." Indians also wanted a royalty of some kind for the minerals extracted from their lands.⁵³

In making the arguments for Indian agency in colonial treaty making, some studies have gone beyond official government documents to give more attention to Indian oral traditions and the recollections of Indian chiefs and elders.⁵⁴ Although historians remain uncertain about how to interpret or weigh these oral traditions as historical sources, there is an emerging consensus that rather than being passive participants, Indians played important roles in the treaty making process. As one scholar puts it, the pendulum of historical interpretation seems to have swung from one extreme to another.⁵⁵ The pendulum has swung from old assumptions about Indian passivity and limited negotiating power to new interpretations of colonial treaty making in which Indians are seen as "aggressive negotiators," who could initiate treaty negotiations and influence their outcomes.⁵⁶

Given these more recent interpretations of Indian agency in the colonial treaty making, it is tempting to conclude, as some have, that aboriginal people in North America fared much better than indigenous people in Africa in treaty negotiations with European colonists.⁵⁷ However, such conclusions cannot be justifiably made without examining the complex historical

contexts of treaty making in Africa and how they may have mirrored or differed from developments in North America. Understanding British colonial treaty making with indigenous people dictates such comparative approaches if the peculiarities of one colonial situation are not to distort the overall impression.

Negotiating Palavers: The West African Context

Treaties had a much briefer history in West African colonies than they did in Canada for obvious reasons, chief of which was the absence of European settlers. Although treaties did not have the same implications for European land acquisitions as they did in Canada, it would be a mistake to assume that they were any less significant to British colonial projects in West Africa. In fact, the second half of the nineteenth century witnessed what has been described as the “treaty making phase” of British-Yoruba relations.⁵⁸

British authorities were inclined to conclude treaties with African chiefs for pragmatic reasons. At the Berlin African Conference of 1884 which effectively divided Africa among contending European powers, treaties were made a condition for staking territorial claims in the continent. The conference sought to regulate the rivalry among European powers by defining “effective occupation” as the criterion for international recognition of territorial claims. This meant that competing European powers could stake their claim to territories in Africa only if they actually possessed them. One way of proving such effective possession was by treaty agreements with local African chiefs. Britain had a decided advantage in this regard. By the 1880s when European powers began their scramble for Africa, Britain had over two centuries of experience in treaty making in North America to draw on.

Even before the period of the scramble, Britain had made significant inroads into West Africa. Many indigenous states and societies in West Africa, including the Yoruba saw their control over both external and internal affairs either lost or severely curtailed by growing European incursion. In one of the earliest of such interventions, British forces occupied the coast of Lagos in 1820. This gave the Britain a major foothold in West Africa from which to pursue her campaign against the overseas slave trade, promote “legitimate” trade in agricultural produce and encourage Christian missionary activities. This began a sequence of events leading up to the Treaty of Cession between the British and King Docemo of Lagos. Although such treaty agreements were central to early encounters between European and Africans, they depended heavily on the way they were interpreted by both parties. As the treaty with King Docemo

shows, European colonists often found it difficult to determine whether the chief who signed a treaty held absolute authority over the territory in question or whether he had the traditional authority to make such concessions. African chiefs on the other hand were sometimes unaware of the full ramifications of such treaties.⁵⁹

Following the resolutions of the Berlin Conference, early British consuls and administrators signed several bilateral treaties of friendship and trade where indigenous people “agreed” to come under British jurisdiction in return for British protection and friendship. For many Yoruba states, this was an expedient decision given the prevailing conditions of civil war insecurity and economic decline.⁶⁰ Treaties were also a means of coming to terms with the reality of British conquest and avoiding the Queen’s “palaver.”⁶¹ The chiefs of the Yoruba community of Kisi for example, hoped that the treaty with Britain would help them preserve a precarious status quo, amidst pressures from Europeans and other African groups.⁶²

The treaties made between Britain and several Yoruba groups between 1852 and 1895 have been the subject of varied historical interpretations. Historians disagree on the significance of these treaties. While J. A. Atanda considers treaties an important part of British-Yoruba relations, O. Adewoye argues that considered against the background of *de facto* British presence in Yorubaland, treaty making appear to be a “superfluous exercise.”⁶³ Other studies have suggested that colonial treaties in Yorubaland are important because they bore the promise of facilitating the early emergence of modern independent states in Africa built on indigenous models and institutions. The fact that this promise was not ultimately realized had more to do with subsequent colonial actions that contravened the spirit and terms of these treaties.⁶⁴

As in Canada, the emphasis in historical studies on treaty making in Yorubaland has been on how British power influenced the processes and outcomes of the agreements. Treaties were essentially a means by which European powers sought to strengthen their spheres of influence and stake territorial claims in their quest for control over the continent. Historians such as C. W. Newbury, Omoniyi Adewoye and J.F Ade Ajayi have mostly presented a picture of British initiatives and African responses in their accounts of treaty making.⁶⁵ Adewoye stresses how “British capacity for treaty making” and “show of force” paved the way for treaty agreements with the Yoruba. He argues that in concluding treaties with the Yoruba, Britain was operating within a tradition of the use of law in the acquisition of territories overseas – a tradition honed in the Americas.⁶⁶ This was a legal tradition that disadvantaged African rulers and subordinated

them in treaty making processes. The role of Africans in the treaty making process is thus, seen primarily in terms of responses to British initiatives.

However, the assumption that treaties were instruments for legitimizing colonial rule, over which African had little or no control, has been challenged. James Crawford argues that these treaties were not “always illusionary or a mere sham.”⁶⁷ Hadley Bull makes the related point that “while it would be wrong to accept the imperialist treaties of the time that African political communities all over the continent voluntarily extinguished themselves, there is also danger in projecting backwards in history, the assumption of the present time, that no political community could knowingly prefer colonial status to independence.”⁶⁸ What Bull and others who make similar arguments often do not adequately clarify however, is the precise meaning of “colonial status.” The dominion status of Canada, Australia and New Zealand was quite different from the colony or protectorate status of most parts of Africa. While the argument can indeed be made that some Africans, particularly the emergent group of mission-educated elites, were sympathetic to British colonial overrule, it is doubtful that the way colonialism unfolded in Africa was anything close to what they desired or anticipated.

A stronger case, I think, can be made specifically for African agency in colonial treaty making. As in Canada, blanket assumptions about the passivity of Africans in the treaty making process tend to obscure cases where Africans wielded significant negotiating power, and were able to influence treaty terms to their advantage. Studies have shown that in some cases, African rulers were able to directly or indirectly influence colonial decisions on the allocation of disputed territories and the delimitation of borders.⁶⁹ It is accurate that a large number of colonial treaties can be considered fraudulent and called into question on legal and moral grounds: the sovereign international status of the signatories can be disputed, the powers of the signatories as we have seen in the case of King Docemo can be questioned, and the territorial limits to which treaties were supposed to apply may be doubtful. However, European disregard for African/aboriginal political circumstance in the treaty making process was not universal. In Africa as in Canada, European powers could not afford to be entirely dismissive of African interests in treaty negotiations and British administrators often struggled to find the right balance between coercion and inducement, between the carrot and the stick, in treaty negotiations.

European administrators often had to resort more to offering carrots than wielding sticks in treaty negotiations. Since one of the objects of treaties was that they could be used in support of territorial claims in negotiations with rival European powers, governments were interested in presenting as convincing an image of the genuineness of their treaties as possible.⁷⁰ Conscientious European treaty makers therefore took precautions in order to ensure that their treaties were indisputable. Such precautions, though not always followed, involved proper translations of treaty terms to African chiefs through interpreters and affirmation by impartial witnesses. Aware that recognition by other colonial powers was an important determinant of the validity of colonial treaties, African chiefs sometimes denounced treaties on the grounds that the terms were misrepresented to them. Cases where Europeans deliberately misrepresented treaty terms to African chiefs are well known.⁷¹ Less known are instances where African chiefs used claims of misrepresentation as pretext to renege on treaty obligations or to renegotiate treaty terms.⁷² As in British North America, African rulers played the political game of trying to preserve much of their independence as possible by playing off European powers against each other. Nowhere was this more evident than in Anglo-Egba relations in the late nineteenth century. Frustrated with British policy in the 1880s, the Yoruba kingdom of Egba pursued alliances with the French as a way of countering British influence and securing more favourable agreements.⁷³ Such political manoeuvring came to characterize treaty making between Britain and the Egba.

The Anglo-Egba Treaty

For Africans as with Indians, treaties were a means by which they sought to negotiate their place within radically changing societies. African kings and chiefs insisted that British authorities recognized their sovereignty and accorded them some level of local political and economic autonomy. One of such agreements was the “treaty of friendship and commerce” between Britain and the Egba in 1893 which fully recognized Egba independence.⁷⁴ This treaty is significant because it belies the assumption that Africans were passive participants in colonial treaty making. It also compels us to reconsider the conclusion that Africans fared significantly worse than indigenous people in North America in the treaty making process.

Under the terms of Anglo-Egba agreements, Britain not only recognized the autonomy and independence of Egbaland, but also promised that no aggressive action would be taken against any part of the country.⁷⁵ By this arrangement, a wholly African government -- the Egba

United Board of Managements and later, the Egba United Government (EUG) -- administered Egbaland largely independently of the British government even when the rest of West Africa fell under colonial rule.⁷⁶ The Egba government instituted its own state institutions including an autonomous revenue system based on custom duties imposed on produce export and tolls on trade routes.⁷⁷ It has been suggested that Egba autonomy during this early period of European incursion provided a unique opportunity for the modernization and economic development of indigenous African states, which was frustrated rather than accelerated by European conquest.⁷⁸

How could the Egba have negotiated with Britain to preserve their autonomy and sovereignty in an era of intense European competition for control of African territories? The answer lies partly in the role of Egba leaders, notably the *Saros*, in the Anglo-Egba relations. The *Saros* were Egba liberated slaves who had emigrated from Sierra Leone back to their Yoruba homeland after the abolition of the slave trade. They were Western educated Christians, teachers, traders and skilled artisans many of whom served as missionaries in both the Anglican Church Missionary Society, and the Methodist missions scattered throughout West Africa. One British missionary referred to them as “the better class of Africans... who had attained correct notions of right and wrong.”⁷⁹ When they first settled in the Egba town of Abeokuta in the 1840s, the *Saros* were well received by the traditional Egba chiefs mainly because they were viewed as potential assistants in trade and diplomatic relations with Europeans. The *Saros* became very influential in Egba society and held positions such as those by traditional chiefs and lineage heads. They operated as the bridge between African and European society, desirous of close diplomatic relations with Britain but also fiercely protective of Egba autonomy. They constituted a new Westernized and cosmopolitan African elite class that gained a reputation within colonial officialdom for their sophistication and shrewd negotiations.⁸⁰

The *Saros* were particularly influential in negotiating Anglo-Egba agreements and became the main agents of nineteenth century Egba diplomacy. Using their missionary influence, they pushed the colonial government and the British Home Office to pursue an “Abeokutan policy” in which the city and Egbaland generally would be made an example of “native advancements.”⁸¹ This development placed the Egba in good stead during the scramble and colonial conquest. The Egba were spared British military attacks and maintained their independence until 1914. One of the most influential *Saro* of this period was George William Johnson whose main goal was to create a “Christian and civilized Egba state” independent of

foreign leadership. In his position as Director and Secretary of the Egba Board of Management, Johnson was involved in negotiating several treaty agreements with British authorities.⁸² He opposed the system where British officials made agreements with individual African Chiefs and insisted that the Board represent the Egba people in all “external relations” with Britain.⁸³ In 1866, he successfully negotiated an agreement with the British administrator to abolish trade taxes and reopen trade routes closed by Britain. In these negotiations, the Egba leadership sometimes used strong armed tactics against the British such as they did in 1867 when they expelled all European missionaries and ordered the closure of all churches as a way of forcing the British authorities to accede to their demands. Britain on her part, tended to be more cautious in its dealing with this group of vocal and “more civilized” Africans.

Ultimately, Egba independence did not last very long. With the consolidation of colonial rule in West Africa, British officials became increasingly dissatisfied with an awkward political arrangement that allowed for a wholly independent African state within a British Colony. There was also concern about the role of the Saros who the Colonial Office accused of “aggravating the problems of British foreign policy.”⁸⁴ In 1914, the British authorities used the opportunity of internal strife within the Egba Government to terminate Egba independence in explicit contravention of the terms of the 1893 treaty and earlier agreements.

With European rivalry for African territories subsiding at the dawn the twentieth century, British officials were less concerned about appeasing African rulers than they were during the scramble. Like the Indians of Canada at the end of the Anglo-French conflict, the Egba no longer had the same negotiating power they once had in the period of European competition. British response to Egba protests against the contravention of treaty terms tended to be dismissive. Governor William Macgregor of the Lagos colony insisted that Egba was never intended under the terms of the treaty to be an independent state but merely a “responsible authority.” Another official later stated that the term “independent” used in the Egba treaty had been “a mere phrase.”⁸⁵ Such flagrant abandonment of treaty obligations for outright military conquest and annexation was common throughout Africa.

Although the scope of Egba autonomy was exceptional for the period, the ability of African communities to negotiate some level of autonomy with British authorities was not uncommon. In 1888, the Yoruba kingdoms of Ife and Otta were recognized as “perfectly independent,” paying tribute “to no other power.”⁸⁶ One leading scholar of Yoruba history has

concluded that “by and large, treaties of the nineteenth century in Yorubaland gave the British no jurisdiction in the country.”⁸⁷ This fact was widely acknowledged by British officials including the Governor William McGregor himself who complained in 1903 that in the administration of Yorubaland, British hands were tied by a “network of treaties” with indigenous rulers.⁸⁸

What is evident from this is that Africans were sometimes actively engaged in colonial treaty making and were able to significantly influence the terms of these treaties. The fact that Britain ultimately abandoned such treaties in preference for outright military conquest and annexation tends to obscure the important concessions that Africans were initially able to negotiate under these treaties. When we focus on the processes of treaty making and the spirit of treaty terms rather than on their subverted outcomes, it becomes apparent that far from being passive parties, Africans like Amerindians, at times had the capacity and opportunity to shape colonial treaty making.

Conclusion

Broad conclusions that indigenous people in one colonial situation fared better or worse in colonial treaty making than those in another, can be problematic if they do not adequately consider how specific historical conditions affected the trajectories of colonialism in each society. Comparisons without consideration of what I call the “historical specifics” would be akin to comparing apples and oranges. Fruitful comparisons must attend carefully to specifics.

Although there are important parallels in the discussions about indigenous agency in colonial treaty making in Canada and West Africa, there were fundamentally different reasons for making treaties in each colonial situation. Some of this had to do with differing imperial agendas – one was a settler colony with a large population of peoples of European descent while the other was a tropical dependency that was never intended to be settled by Europeans. The result is that issues of access to and control of land featured more prominently in colonial treaties in Canada than they did in West Africa. However, land and the settler factor alone do not fully explain the different courses and outcomes of British treaty making in Africa and Canada. Even in South Africa where the history of European settlement migrations and struggles over land generally mirrored developments in Canada, colonial treaty making took very different forms than they did in Canada.⁸⁹

The answer to explaining the difference in the methods and outcome of colonial treaty making in Canada and West Africa must be sought not in the generalities but in specifics – in the unique elements of each society that influenced the nature of British encounters with indigenous

people. In Canada, such historical specifics include Anglo-French conflicts and the political opportunities which they offered to Indians, Britain's bid to secure a buffer against American encroachment and the critical role of British libertarians and humanitarians in pressuring the government to deal fairly with natives. These conditions influenced the Indian initiatives and opportunities in treaty negotiations. In West Africa, the historical specifics were different but just as decisive -- the European scramble for Africa which made treaties as important for Europeans powers as they were for African rulers seeking alliances, Britain's push to replace the slave trade with legitimate trade and the important role of African leaders such as the Saros of Egbaland. In spite of these historical specifics however, it is safe to say that both West African chiefs and Indian leaders in Canada saw British intervention as threats to their autonomy and saw treaties as a way of *negotiating domination* and protecting their political and economic prerogatives. Although Indigenous peoples were not always successful at this, the relevance of colonial treaties would endure well beyond the colonial era.⁹⁰ Their real power lay in the future, when indigenous people could invoke and reinterpret them in political and economic claims against the state.

Notes

¹ Amodu Tijani was also known as Chief Oluwa.

² "Treaty of Cession between the British Government and King Docemo in 1861," cited in *Nigerian Law Report*, 2, 8-9.

³ M.P Cowen and R.W. Shenton, "British Neo-Hegelian Idealism and Official Colonial Practice in Africa: the Oluwa Land Case of 1921," *Journal of Imperial and Commonwealth History*, 22 (1994), 234.

⁴ Even within the context of the English common law system, this treaty could be challenged on the basis of a well established legal rule: *Nemo dat quod non habet* (no one can give what they don't have). See Olawale Elias, *The Nigerian Legal System* (London: Routledge & Kegan Paul, 1963), 324.

⁵ *Amodu Tijani v. Secretary of Southern Nigeria, Appeal Cases (AC)*, 399 (1921), 404.

⁶ O. Adewoye, "The Tijani Land Case (1915-1921): A Study in British Colonial Justice," *Odu*, 13, (1976), 24.

⁷ For example, it has been suggested that the passage of the Indian Act by the Canadian Parliament in 1927 which made it a criminal offence to solicit funds without permission for the purposes of prosecuting Indian land claims was partly intended to discourage Indian land claims before the Privy Council following the Tijani verdict. See Paul Tennant, *Aboriginal People and Politics* (Vancouver: University of British Columbia Press, 1990), 111-2.

⁸ Tennant, *Aboriginal People and Politics*, 101.

⁹ For a detailed study of the ideological positions that shaped the Amodu Tijani case see Cowen and Shenton, "British Neo-Hegelian Idealism and Official Colonial Practice in Africa," 217-50.

¹⁰ Under the doctrine of *stare decisis* in English common law, a lower court must have regard to mandatory precedent when deciding a case. Such mandatory precedent created by a higher court and is binding on lower courts. This became the grounds for applying the principle in the Tijani verdict to several aboriginal land cases in Canada and Australia. See Michael Asch, *Aboriginal and Treaty Rights in Canada: Essays on Law, Equity, and Respect for Difference* (Vancouver: University of British Columbia Press, 1997) 136 and Marcia Langton, *Honour among Nations?: Treaties and Agreements with Indigenous People* (Melbourne: Melbourne University Publishing, 2004) 18.

¹¹ See *Calder v. Attorney-General of British Columbia* (1973), 34 D.L.R. (3d) 145 (also reported: [1973] S.C.R. 313, [1973] 4 W.W.R. 1). The decision in *Calder v. Attorney-General of British Columbia* is often credited with having provided the impetus for overhauling aboriginal land claims negotiation process in Canada. For the first time in Canadian history, the notion of aboriginal land rights was recognized in a court of law.

¹² John Foran, *Taking Power: On the Origins of Third World Revolutions*, (Cambridge University Press, 2005, 27).

¹³ For example, the British Colonial Secretary, Oliver Lyttleton rejected a proposal by Nigerian politicians that to include a declaration of human rights in the constitution partly on the grounds that the Dominion of Canada which had no such constitutional provisions for fundamental rights, had a much better record of protecting human rights. Nigerian National Archives, Ibadan (hereinafter, NNAI) B10, "Record of Proceedings of the Nigerian Constitutional Conference held in London in July and August 1953."

¹⁴ I recognize that the terms "indigenous" and "aboriginal," particularly as used in a comparative historical study like this can be problematic. A simple characterization of indigenous people as "original occupants of the land" does not suffice because indigenous societies on both sides of the Atlantic have been inhabited by successive waves of migrant settlers arising from wars and displacements of one group of people by another before European arrival and even in course of European incursion.

¹⁵ Available comparative studies of colonial Canada and Africa tend to be limited to settler colonialism in South Africa. See for example, Joan G. Fairweather, *A Common Hunger: Land Rights in Canada and South Africa* (Calgary: University of Calgary Press, 2006); Annie E Coombes, *Rethinking Settler Colonialism: History and Memory in Australia, Canada, Australia, New Zealand and South Africa* (Manchester: Manchester University Press, 2006); John Eddy, *The Rise of colonial Nationalism: Australia, New Zealand, Canada, and South Africa First assert their Nationalities, 1880-1914* (Boston: Allen & Unwin, 1988); John C. Weaver, *The Great Land Rush and the Making of the Modern World, 1650-1900* (Montreal: McGill-Queen's University Press, 2003).

¹⁶ The Upper Canada treaties include the Robinson-Superior and Robinson-Huron treaties of 1850; pre confederation treaties No. 75 of 1854 and 1857 respectively; post-confederation treaty No. 3 of 1873, and other treaties concluded between the government of Canada and "Indian bands" (mainly of the Iroquois and Algonquin nations) in present day Ontario between 1840 and 1900. The selection of these treaties is guided by the need to examine treaties that are contemporaneous with the colonial treaty making in Yorubaland which began in the 1850s. These treaties include British treaties with the Yoruba people of Lagos, Egba, Addo, Ijebu, Idenre and Ijesha among others.

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- ¹⁷ Robert Mainville, *An Overview of Aboriginal and Treaty Rights and Compensation for their breach* (Saskatoon: Purich Pub., 2001), 34.
- ¹⁸ J.A Atanda, *The New Oyo Empire: Indirect Rule and Change in Western Nigeria 1894-1934* (London: Longman, 1973), 54.
- ¹⁹ *Hertslet's Commercial Treaties*, Vols. 1-31 (London, 1827-1925).
- ²⁰ Fairweather, *A Common Hunger: Land Rights in Canada and South Africa*, 49.
- ²¹ Robert J. Surtees, *Treaty Research Reports: The Robinson Treaties 1850* (Ottawa: Indian Affairs and Northern Development Canada, 1986), 10.
- ²² Grand Chief Michel Mitchell of Akwesane quoted in Dale Antony Turner, *This Is Not a Peace Pipe: Towards a Critical Indigenous Philosophy* (Toronto: University of Toronto Press, 2006), 48.
- ²³ For a commanding study of how the concept of “terra nullius” was deployed in the discourse over control of land in European settler colonies of Canada, Australia, New Zealand and South Africa, see Weaver, *The Great Land Rush*.
- ²⁴ Paul Keal, *European Conquest and the Rights of Indigenous People* (Cambridge: Cambridge University Press, 2003), 52.
- ²⁵ See for example, Anglo-Oyo treaty of 1888 and Anglo-Egba Treaty of 1893 in Samuel Johnson, *The History of the Yorubas: From the Earliest Times to the Beginning of the British Protectorate* (London: Routledge and Kegan Paul, 1969), 652-68.
- ²⁶ Omoniyi Adewoye, *The Judicial System in Southern Nigeria 1854-1954* (London: Longman 1977), 15.
- ²⁷ See Paul Robert Magocsi, *Aboriginal Peoples of Canada: A Short Introduction* (Toronto: University of Toronto Press, 2002), 75 and James Frideres, *Native People in Canada: Contemporary Conflicts* (Scarborough, Ont.: Prentice-Hall Canada, 1983), 51.
- ²⁸ For detailed histories of colonial treaty making in Upper Canada see Robert J. Surtees, *Indian Land Surrenders in Ontario 1763-1867* (Ottawa: Indian Affairs and Northern Development Canada, 1984); James Morrison, *Treaty Research Report: Treaty Nine 1905-06; 1929-30*, (Ottawa: Indian Affairs and Northern Development Canada, 1986) and James Roger Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1989, [1991]).
- ²⁹ J.A. Brandao and William A. Starna, “The Treaties of 1701: A Triumph of Iroquois Diplomacy,” *Ethnohistory*, 43, 2, (1996), 209.
- ³⁰ E. A. Cruikshank, *The correspondence of Lieut. Governor John Graves Simcoe: With allied documents relating to his administration of the government of Upper Canada* (Toronto: Ontario Historical Society, 1931), 75.
- ³¹ Fairweather, *A Common Hunger: Land Rights in Canada and South Africa*, 43.
- ³² *The Manchester Guardian*, 2 February 1898.
- ³³ *The Manchester Guardian*, 2 February 1898.
- ³⁴ Toronto Public Library (T.P.L), Baldwin Room, T.G. Anderson Papers, Box One, “Diary of Thomas Gummorsol Anderson, a Visiting Supt. of Native Affairs at this Time, 1849, at Cobourg,” 2-3.
- ³⁵ Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories* (Toronto: Belfords Clarke & co, 1880), 14-17.

³⁶ The notion of *terra nullius* was more prominent in treaty making elsewhere in the British Empire such as in Australia, New Zealand and South Africa. See treaty of Waitangi between the British and the Maori.

³⁷ Surtees, *Treaty Research Reports: The Robinson Treaties 1850*, 19-20.

³⁸ Fairweather, *A Common Hunger: Land Rights in Canada and South Africa*, 46.

³⁹ George Brown and Ron Maguire, *Indian Treaties in Historical Perspective* (Ottawa: Dept. of Indian and Northern Affairs, 1979), 51.

⁴⁰ Examples of such studies are: Federation of Saskatchewan Indians, *Elders' Interpretation of Treaty 4: A Report on the Treaty Interpretation Project*, (Saskatoon: Federation of Saskatchewan Indians, 1978) and Wendy Moss, *Inuit Perspectives on Treaty Rights and Governance Issues* (Ottawa: Royal Commission on Aboriginal Peoples, 1993).

⁴¹ Morris, *The Treaties of Canada*; G.F.G Stanley, *Birth of Western Canada: A History of the Riel Rebellions* (London: Longmans, 1936). Alexander Morris was the commissioner for Indian Affairs in the 1870s and was an influential figure in treaty negotiations with several Indian bands during the period of this study. His work is based primarily on his personal experiences as commissioner and Lieutenant Governor of Manitoba. Stanley's work incorporates both published materials and primary documents. Both accounts have long been considered careful treatment of the subject.

⁴² Morris, *The Treaties of Canada*, 288.

⁴³ Brown and Maguire, *Indian Treaties in Historical Perspective*, 51.

⁴⁴ Miller, *Skyscrapers hide the Heavens*, 224.

⁴⁵ See for example David T. McNab, "Hearty Cooperation and Efficient Aid: The Métis and Treaty 3." *The Canadian Journal of Native Studies*. 3, 1, (1983); D. J. Hall, "A Serene Atmosphere?" Treaty 1 Revisited," in Samuel W. Corrigan and Joe Sawchuck, *The Recognition of Aboriginal Rights* (Brandon: Bearpaw Pub., 1996); John L. Tobias, "Canada's Subjugation of the Plains Cree 1879-1885." *Canadian Historical Review*, 64 (1983); Jill St. Germain, *Indian Treaty making Policy in the United States and Canada, 1867-1877*, (Lincoln: University of Nebraska Press, 2001); Arthur Ray, *Bounty and benevolence: A History of Saskatchewan Treaties*, (Montreal: McGill-Queen's University Press, 2000).

⁴⁶ John L. Tobias, "Canada's Subjugation of the Plains Cree 1879-1885," *Canadian Historical Review*, 64: 520. For similar arguments for Indian agency see Peter A. Cumming and Neil H. Mickenberg, *Native Rights in Canada* (Toronto: Indian-Eskimo Association of Canada and General Pub. Co., 1972); Melvin M. Crystal, "The Recognition and Affirmation of Treaty and Aboriginal Rights in Canada," in *The Recognition of Aboriginal Rights* eds. Samuel W. Corrigan and Joe Sawchuck (Brandon: Bearpaw Pub., 1996); Sharon Venne, "Understanding Treaty 6: An Indigenous Perspective," in *Aboriginal and Treaty Rights in Canada: Essays on Law, Equity and Respect for Difference*, ed. Michael Asch (Vancouver: UBC Press, 1997).

⁴⁷ Hall, "A Serene Atmosphere?" 10.

⁴⁸ Morris, *Treaties of Canada*, 95.

⁴⁹ Miller, *Skyscrapers hide the Heavens*, 222.

⁵⁰ Sarah Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy* (Montreal and Kinston: McGill-Queens University Press, 1990), 55.

⁵¹ Rhonda Telford, "Aboriginal Resistance in the Mid-Nineteenth Century: The Anishinabe, Their Allies, and the Closing of the Mining Operations at Mica Bay and Michipicoten Island," in

Blockades and resistance: Studies in actions of peace and the Temagami blockades of 1988-89, eds. Bruce W. Hodgins et al (Waterloo, Ont.: Wilfrid Laurier University Press, 2003) 71-84.

⁵² Telford, "Aboriginal Resistance in the Mid-Nineteenth Century," 71.

⁵³ Surtees, *Treaty Research Reports: The Robinson Treaties 1850*, 5.

⁵⁴ See Richard Price ed. *The Spirit of the Alberta Indian Treaties* (Toronto: Butterworth & Co., 1979); John Taylor, "Canada's Northwest Indian Policy in the 1870s: Traditional Premises and Necessary Innovations," in *The Spirit of the Alberta Indian Treaties*, ed. Price; Hugh Dempsey, "One Hundred Years of Treaty Seven," in A. L. Getly and Donald B. Smith (eds.), *One Century Later: Western Canadian Reserve Indians Since Treaty 7* (Vancouver: University of British Columbia Press, 1978); and Chief Jon Snow, *These Mountains are our Sacred Places*, (Toronto: Samuel Stevens, 1977). These writers have gone beyond official colonial narratives to explore Indian perspectives on treaty making through oral accounts and recollections of Indian chiefs and elders.

⁵⁵ Hall, "A Serene Atmosphere?" 8.

⁵⁶ Hall, "A Serene Atmosphere?" 20.

⁵⁷ Fairweather, *A Common Hunger: Land Rights in Canada and South Africa*, 49.

⁵⁸ O. Adewoye, "The Judicial Agreements in Yorubaland 1904-1908," *Journal of African History*, 12, 4, (1971), 608.

⁵⁹ Similar European misunderstanding of the authority of Indian leaders is evident in treaty making in Canada. The government dealt with Indian chiefs and "principal men" who participated in treaty negotiations as if they represented all Indian people living in the treaty areas and had the authority to negotiate on their behalf in much the same way that the government representatives negotiated on behalf of the British crown. This assumption was based on an incomplete understanding of the socio-political organisation of Indian groups. See Lise C. Hansen, "Chiefs and Principal Men: A Question of Leadership in Treaty Negotiations," *Anthropologica*, 29, 1, (1987), 39-60.

⁶⁰ For instance, war exhaustion and the problems of internal security compelled the Egbado to surrender their independence to Britain in the 1880s. Unable to unite for defence against their common neighbouring foes, the Egbado sought and later secured the British protection.

⁶¹ See Kwabena Opare Akurang-Parry, "'Missy Queen in Her Palaver says de Gole Coase Slave Is Free: The British Abolition of Slavery/Pawnship and Colonial Labour Recruitment in the Gold Coast (Southern Ghana), 1874-ca. 1940,'" (Ph.D. diss. York University, Ontario, Canada, 1998).

⁶² Saadia Touval, "Treaties, Borders, and the Partition of Africa," *Journal of African History*, VII, 2 (1966), 285.

⁶³ J. A. Atanda, *The New Oyo Empire: Empire: Indirect Rule and Change in Western Nigeria, 1894-1934*, (London: Longman, 1973), 54; Adewoye, "The Judicial Agreements in Yorubaland," 612.

⁶⁴ See Agneta Pallinder-Law, "Aborted Modernization in West Africa? The Case of Abeokuta," *The Journal of African History*, 15, 1 (1974); Adu Boahen, *African Perspectives on Colonialism*, (Baltimore: Johns Hopkins University Press, 1987).

⁶⁵ See for example, C. W. Newbury, *The Western Slave Coast and its Rulers: European Trade and Administration among the Yoruba and Adja-speaking peoples of South-western Nigeria, Southern Dahomey and Togo* (Oxford: Clarendon Press, 1973); Adewoye, *The Judicial System in Southern Nigeria*; J.A. Atanda, *The New Oyo Empire*; J. F. Ajayi, "Yorubaland in the Nineteenth

Century,” in *Groundwork of Nigerian History*, ed. Obaro Ikime (Ibadan: Heinemann Educational Books, 1980).

⁶⁶ Adewoye, “The Judicial Agreements in Yorubaland,” 609.

⁶⁷ James Crawford, *The Reigns of Peoples*, (Oxford: Clarendon Press, 1988), 179-80.

⁶⁸ Hedley Bull, “European States and African Political Communities” in *The Expansion of International Society: The Consequences for the Law of Nations*, eds. Hedley Bull and Adam Weston (Oxford: Clarendon Press, 1984), 112-113.

⁶⁹ Touval, “Treaties, Boarder, and the Partition of Africa,” 279.

⁷⁰ Touval, “Treaties, Boarder, and the Partition of Africa,” 280

⁷¹ Such as the Treaty of Wuchale between Italy and Menelick, emperor of Ethiopia. For a detailed discussion of these treaties see, Boahen, *African Perspectives on Colonialism*, 28-40

⁷² As was the case in the treaty between Britain and the Matabele ruler, Lobengula. See Touval, “Treaties, Boarder, and the Partition of Africa,” 282.

⁷³ See Johnson, *History of the Yorubas*, 571-576 and Oluwatoyin B. Oduntan, “Iwe Irohin and the Representation of the Universal in Nineteenth-Century Egbaland,” *History in Africa*, 32, (2005), 305.

⁷⁴ NAI, CSO 5/1, XVII. For a commanding study of Egba history in this period see Saburi O. Biobaku, *The Egba and their Neighbours, 1842-1872*, (Oxford: Clarendon Press, 1957).

⁷⁵ “Treaty of Friendship and Commerce made at Abeokuta in the Egba Country on 18th January 1893,” in T. N. Tamuno, *The Evolution of the Nigerian State: The Southern Phase, 1898-1914* (London: Longman, 1972), 353. (hereinafter, “Anglo-Egba Treaty”).

⁷⁶ “Anglo-Egba Treaty.”

⁷⁷ Such was the autonomy Egba rulers enjoyed that they could refuse to have any British officials in the main town of Abeokuta. See Harry Alfred Gailey, *Lugard and the Abeokuta Uprising: The Demise of Egba Independence*, (London: Routledge, 1982), 37.

⁷⁸ Agneta Pallinder-Law, “Aborted Modernization in West Africa? The Case of Abeokuta,” *The Journal of African History*, 15, 1 (1974), 65-67.

⁷⁹ National Archives of the United Kingdom, F.O. 84/976. Campbell to Clarendon, 2 Aug. 1855.

⁸⁰ Agneta Pallinder-Law, “Aborted Modernization in West Africa? The Case of Abeokuta,” *The Journal of African History*, 15, 1 (1974), 69 and J. Herskovits Kopytoff, *Preface to Modern Nigeria: The Sierra Leonians in Yorubaland 1830-1890* (Madison, University of Wisconsin Press, 1965), 220.

⁸¹ Oduntan, “Iwe Irohin and the Representation of the Universal in Nineteenth-Century Egbaland,” 301.

⁸² Pallinder-Law, “Aborted Modernization in West Africa?” 69.

⁸³ Earl Phillips, The Egba at Abeokuta: Acculturation and Political Change, 1830-1870, *The Journal of African History*, 10, 1 (1969), 127.

⁸⁴ Oduntan, “Iwe Irohin and the Representation of the Universal in Nineteenth-Century Egbaland,” 303.

⁸⁵ *West Africa*, 19 July 1902.

⁸⁶ NNAI CSO, 15/1, XV; CSO 5/2 II

⁸⁷ Adewoye, *The Judicial System in Southern Nigeria*, 53.

⁸⁸ Quoted in Adewoye, *The Judicial System in Southern Nigeria*, 53.

⁸⁹ See Fairweather, *A Common Hunger: Land Rights in Canada and South Africa*, 48-51.

⁹⁰ Debates over the First Nations treaty rights continue to dominate political and social discourse in Canada particularly following a violent land dispute between the Mohawk nation and the town of Oka, Quebec in 1990. Similarly, recent demands by ethnic nationalities for resource control based on colonial treaty arrangements have generated renewed interest in colonial treaties in Africa. The Maasai of East Africa have demanded the return of land leased to British settlers under treaty agreements in colonial times. British Broadcasting Corporation News, “Kenya’s Maasai demand Land Back.” <<http://news.bbc.co.uk/1/hi/world/africa/3563718.stm>> (viewed on 18 August 2004).