

Treaty Responsibilities Between Settler and Indigenous Nations in the Western Lake Erie-Detroit River Ecosystem

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Background

The ecosystem that includes the Detroit River and Western Lake Erie is Indigenous land. These lands and waters are both the historical and current home of the Three Fires Confederacy (the Odawa, Ojibwe, and Potawatomi Nations) and the Wyandot. Additionally, the health of this ecosystem has profound impacts on nearby Indigenous nations (i.e. the Aamjiwnaang First Nation) who are impacted by the water and air which flows through this ecosystem.

As today's residents are living and working on Indigenous land, any legitimacy for their presence, and the presence of the states of Canada and the United States of America, must be rooted in the treaties executed between Indigenous nations, to whom the land belongs, and European settler colonial states. It is thus essential that work done in relation to the land and waters by settlers be conducted in accordance with not only the laws of the settler states and the state's obligations under treaties, but also the laws of the Indigenous nations to whom the land belongs.

History and Status

The Foundational Treaties

In 1613 as Dutch settlers moved up the Hudson River and into Mohawk territory, the Haudenosaunee met with the settlers and presented them with a treaty in the form of a Wampum Belt (Figure 1). In Canada's Indigenous Constitution John Borrows describes this Wampum Belt as such:

The belt consists of two rows of purple wampum beads on a white background. Three rows of white beads symbolizing peace, friendship, and respect separate the two purple rows. The two purple rows symbolize two paths or two vessels travelling down the same river. One row symbolizes the Haudenosaunee people with their law and customs, while the other row symbolizes European laws and customs. As nations move together side-by-side on the River of Life, they are to avoid overlapping or interfering with one another (Borrows, 2010).

The Wampum Belt, commonly referred to as the Two Row Wampum Belt today, formed the basis of all future treaties between the Haudenosaunee and European settlers as it was extended to the relationship with each of the British, French, and American governments (Borrows, 2010).

The Haudenosaunee intended for the principles in the treaty to last "as long as the grass is green, as long as the water flows downhill, and as long as the sun rises in the east and sets in the west" (Keefer 2014).



Figure 1. Two Row Wampum Belt (Source: <https://www.onondaganation.org/culture/wampum/two-row-wampum-belt-guswenta/>).

As the treaty formed the basis of all future treaties between the Haudenosaunee and European settlers, it is the foundation of the modern day Canadian and American law. In the Canadian context this foundational nature was reaffirmed in the Treaty of Niagara, 1764, between the British Crown and two thousand chiefs from over twenty-four Indigenous nations (Borrows, 1997). The Treaty of Niagara included the British Crown presenting the Royal Proclamation, 1763, to the Indigenous nations, who in turn presented the Crown with the Two Row Wampum Belt to demonstrate each party's understanding of the treaty and the Royal Proclamation (Borrows, 1997). As a result, the Royal Proclamation, which in the Canadian state's law is the legal basis for all future treaties, must be read in accordance with the obligations of the Treaty of Niagara and the Two Row Wampum Belt (Borrows, 1997). According to John Borrows this means that:

The contents of each treaty signed after the Royal Proclamation/Treaty of Niagara have more to them than appears on their face. The parties negotiated subsequent treaties against a background of Canadian Proclamation/Niagara usage (extending from the Maritimes to the foothills of the Rocky Mountains), the implications of which both parties can be tacitly assumed to accept. The implied conditions each party would assume in subsequent treaties would be the promises spelled out in 1764, or those similar to them renewed at later meetings. As will be recalled, these were promises of a preservation of sovereignty, alliance, trade, consent to land surrender, and affirmations of peace, friendship, and respect (Borrows, 1997).

Treaties in the Detroit River/Western Lake Erie Region

The land surrounding western Lake Erie and the Detroit River was the specific subject of treaties over a century after the Two Row Wampum treaty was formed, and a decade after the Royal Proclamation and Treaty of Niagara came into effect. In 1790 the British government entered a treaty (called Treaty 2 by the Canadian government) with representatives of the Odawa, Ojibwe, Potawatomi, and Wyandot nations for the purchase of a tract of land spanning from the Detroit River, along Lake Erie, to just south of modern day London, Ontario (Figure 2). In this treaty the Wyandot retained a tract of land along the Detroit River which encompasses modern day Amherstburg. This land was later the subject of “Treaty 35” in 1833 between the British government and the Wyandot alone (Figure 2). Treaty 2 also did not include Walpole Island, located at the North of Lake St. Claire, which remains unceded land.

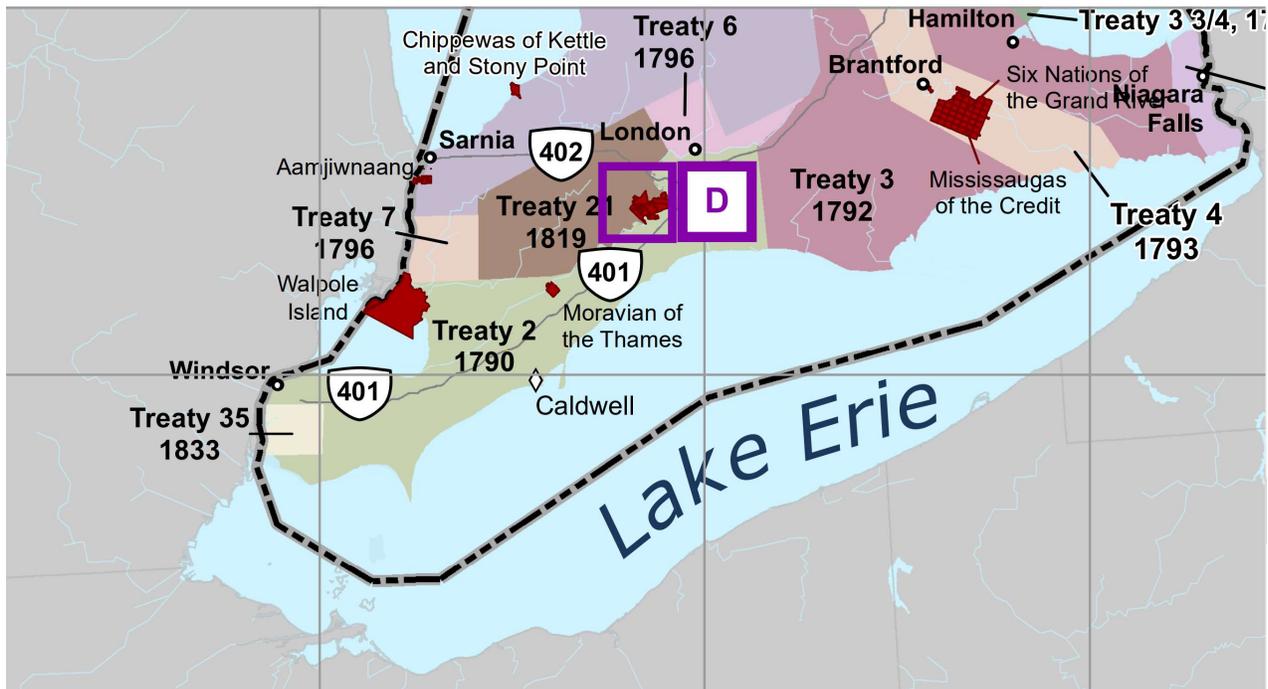


Figure 2. Map of Southwestern Ontario Treaties (Adapted from: https://files.ontario.ca/treaties_map_english.pdf).

The American government executed a similar treaty with the Odawa, Ojibwe, Potawatomi, and Wyandot nations in 1807, called the Treaty of Detroit, which included much of southeast Michigan as well as northwest Ohio including the Maumee River (Figure 3).

Adherence to Treaties

Unfortunately, both the Canadian and American governments have not upheld the relationship of peace, friendship, respect, and non-interference to which they are bound by the Two Row Wampum treaty. There are numerous examples of why this is the case. A prominent and explicit example from the Canadian side is the residential school system. Recently the

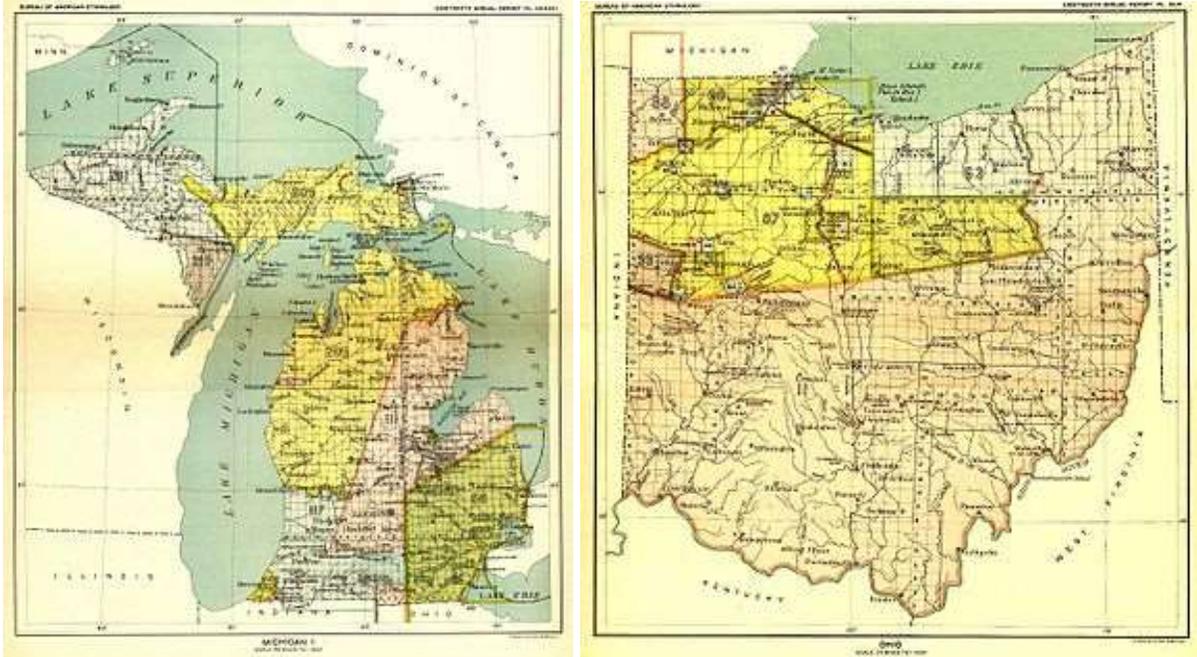


Figure 3. Treaty of Detroit, highlighted in olive on the map of Michigan and bright yellow on the map of Ohio (Source: <https://blogs.lib.msu.edu/red-tape/2017/nov/november-17-1807-treaty-detroit-signed/>).

Canadian government formed the Truth and Reconciliation Commission (TRC) to investigate the depth of the harm caused by the residential school system, its ongoing legacy, and what needs to be done to reconcile these past harms. The TRC’s final report unequivocally identified the residential school system as an act of cultural genocide perpetrated against the Indigenous peoples of Canada by the Canadian Government (TRC, 2015). This is not merely a historical issue, as there is currently a crisis in Canada with a vastly disproportionate number of Indigenous children being taken away from their families and placed into foster care compared to the rest of Canadian society (Figure 4). Additionally, this is not a uniquely Canadian issue as there was a long history of equivalent programs in the United States (Adams, 1995).



Figure 4. Indigenous children in foster care in Canada (Source: <https://www.sac-isc.gc.ca/eng/1541187352297/1541187392851>).

The lack of adherence to the Two Row Wampum relationship also often manifests in the form of environmental harm. Prominent examples of this include pipeline projects which are planned to move through Indigenous land without consent or proper consultation. The projects constitute a clear breach of the doctrine of non-interference from the Two Row Wampum treaty. Multiple projects have led Indigenous peoples to protect their lands in recent years including at Standing Rock in 2016, and in Wet’suwet’en territory from 2019 to the present day. Another common form of environmental harm is the development of highly polluting industry around Indigenous reserves. This type of development results in negative health income for those living on reserve. This has been found amongst residents of the Aamjiwnaang First Nation Reserve in Sarnia, Ontario, who are surrounded by Sarnia’s “Chemical Valley” (Figure 5; Basu and Cyderman, 2013). Similar results have been found amongst the population of Awkesasne First Nation on the Saint Lawrence River who are similarly surrounded by industrial facilities (Jacobs, 2018). Environmental impacts do not only relate to land use, but also to clean drinking water for many Indigenous nations in Canada. Insufficient progress is being made to remedy this reality (David Suzuki Foundation, 2018).

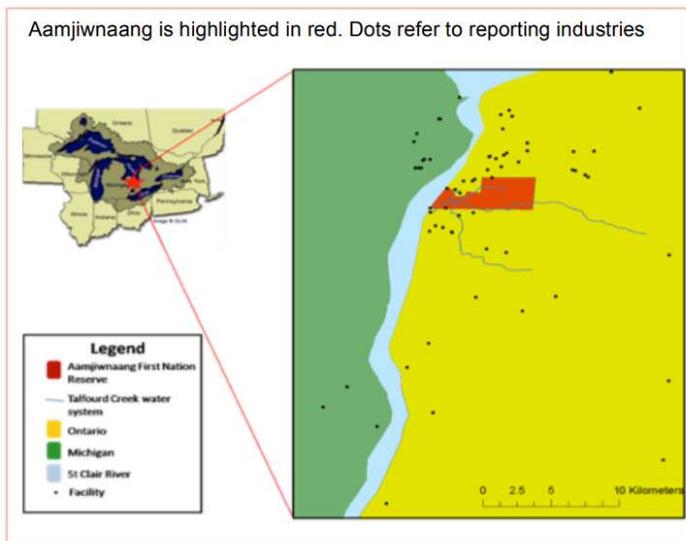


Figure 5. Aamjiwnaang First Nation in relation to industry (Source: Basu and Cyderman, 2013).

These environmental issues are of particular importance due to the centrality of the lands and waters to Indigenous life, culture, and laws. For example, the Akwesasronon judge the health of the people in a wholistic interconnected manner with the health of the Earth Mother, waters, fish life, food plants, animals, and trees (Jacobs, 2018). Thus, harm done to the environment by the Canadian state greatly impacts the meaning of the health for the Akwesasne people. A further example is how the laws of the Anishinaabe (which includes the Three Fires Confederacy of the Odawa, Ojibwe, and Potawatomi nations) are in part derived from nature. This means that Anishinaabe rely on observing and learning from the natural order of the world around them to seek guidance and inspiration for their laws (Borrows, 2010). Thus, harm done to the environment, be it from climate change, invasive species, pollution, or land use, interferes with the law that Anishinaabe nations are built upon. This interference with the health and the laws of Indigenous peoples is once again a clear example of contravention of the Two Row Wampum treaty.

In summary, the treaties which form the basis of the settler states' existence and legitimacy for occupying the land, are not being followed. This is clear in the amount of interference by the settler states in the lives of Indigenous peoples. This then becomes further relevant at the local level with regard to the treaties conveying land, such as the treaties in the Western Lake Erie-Detroit River Basin which were outlined earlier. As described above, the Two Row Wampum belt is the foundation of all future treaties between the Settlers and Indigenous peoples (Borrows, 2010). Furthermore, Canadian treaties, such as the ones signed in the Essex region, are enabled by the Royal Proclamation and the Treaty of Niagara. As the relationships and promises that are identified in the Two Row Wampum Belt and the Treaty of Niagara are not being followed, the legitimacy of the treaties, which enable settlers to occupy the lands which are the subject of the treaties (including the entirety of the Western Lake Erie-Detroit River Basin), is questionable.

Management Next Steps

The treaties between settler states and Indigenous peoples, including the relationship of the Two Row Wampum Belt, must be followed. Work being done on the health of ecosystems in Canada and the USA can be a catalyst for this action. As degraded ecosystem health is in effect interference in the lives and laws of Indigenous peoples, greater collaborative efforts are warranted to eliminate this interference. It is important to note that this work on restoring ecosystem health must not be oriented solely to the standard of the settler states, but also conducted in a spirit of partnership in accordance with the standards of the laws and customs of the Indigenous peoples whose lands they occupy. In "Earth-Bound: Indigenous Resurgence and Environmental Reconciliation" John Borrows argues that:

Reconciliation between Indigenous peoples and the [Canadian] Crown requires our collective reconciliation with the earth. Practices and partnerships of resurgence and reconciliation must sustain the living earth and our more-than-human relatives for future generations. This will not occur without the simultaneous resurgence of Indigenous laws, governments, economies, education, relations to the living earth, ways of knowing and being, and treaty relationships (Borrows, 2018).

As a result of this reality, environmental work in this region inexorably engages with Indigenous peoples and the process of reconciliation. It is our responsibility to ensure that our environmental work engages with, and promotes, the process of reconciliation, rather than hindering it.

It is thus recommended that all Canadian-U.S. initiatives to clean up, restore, and sustain the Detroit River and Western Lake Erie, recognize that this ecosystem is comprised of Indigenous lands and waters. As such, environmental initiatives must not be simply binational but rather multinational. Goals for the region must be the result of partnership with Indigenous nations and must be consistent with the laws and customs of the Three Fires Confederacy (the Ojibwe, Odawa, and Potawatomi Nations) and the Wyandot with whom the treaties in this region were signed.

Research/Monitoring Needs

All future assessments of the health of this ecosystem should be done in partnership with Indigenous nations. Considerable monitoring and research data on ecosystem health are available from Indigenous nations. Therefore, greater collaboration is necessary on monitoring, research, and ecosystem health assessments for the corridor.

As noted above, the Akwesasronon judge the health of the people in a wholistic interconnected manner with the health of the Earth Mother, waters, fish life, food plants, animals, and trees (Jacobs, 2018). Through the Great Lakes Water Quality Agreement, the Canadian and U.S. governments have adopted an ecosystem approach to restoring and maintaining the health of the Great Lakes. An ecosystem approach accounts for the interrelationships among, land, air, water, and all living things, including humans. Therefore, all nations view humans as part of nature and ascribe to more comprehensive, ecosystem-based management. It is recommended that a conference or workshop be convened with Indigenous nations to explore the current state of ecosystem-based management and what improvements could be made to achieve common goals.

References

Adams, D.W., 1995. *Education for Extinction: American Indians and the Boarding School Experience, 1875-1926*. University Press of Kansas, Lawrence, Kansas, USA.

Basu, N., Cyderman, D., 2013. *Multiple Chemical Exposure Assessment at Aamjiwnaang*. McGill Environmental Health Sciences Lab Occasional Report 2013-1, Montreal, Quebec, Canada.

Borrows, J., 1997. *Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government*, In: Asch, M., *Aboriginal and Treaty Rights in Canada: Essays on Law, Equity, and Respect for Difference*. UBC Press, Vancouver, BC, Canada.

Borrows, J., 2010. *Canada's Indigenous Constitution*. University of Toronto Press, Toronto, Ontario, Canada.

Borrows, J., 2018. *Earth-Bound: Indigenous Resurgence and Environmental Reconciliation*, In: Asch, M., Borrows, J., Tully, J., (Eds.), *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings*. University of Toronto Press, Scholarly Publishing Division, Toronto, Ontario, Canada.

David Suzuki Foundation, 2018. *Reconciling Promises and Reality: Clean Drinking Water for First Nations*, Vancouver, BC, Canada.

Harrison, J., 2017. *November 17, 1807: Treaty of Detroit Signed*. Michigan State University Libraries, East Lansing, Michigan, USA.

Government of Canada, June 2019. *Reducing the Number of Indigenous Children in Care*. Ottawa, Ontario, Canada.

Government of Ontario, 2017. *First Nations and Treaties*. Ottawa, Ontario, Canada.

Jacobs, B., 2018. Impacts of Industrial and Resource Development on the Wholistic Health of Akwesasronon: A Human Responsibility/Rights Solution. University of Calgary, Calgary, Alberta, Canada.

Keefer, T., March 2014. A Short Introduction to the Two Row Wampum. Briarpatch. Regina, SK, Canada.

Truth and Reconciliation Commission of Canada, 2015. Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada. Ottawa, Ontario, Canada.