"THE MANNER OF CONFERRING AND TREATING WITH THEM": THE BOARD OF TRADE, THE 1730 ANGLO-CHEROKEE TREATY, AND THE CONFLUENCE OF GLOBAL BRITISH TREATY PRACTICES

by

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Abstract

In the summer of 1730, the Lords Commissioners of Trade and Plantations (the Board of Trade) determined to make a treaty with seven Cherokee delegates who were then in London, England. Drawing on their experiences and observations of treaty making with European and Native American parties, as well as on expert advice, the Commissioners of Trade concluded a treaty that they believed fulfilled European and Native American expectations of legitimate treaty making and formalized a relationship of layered sovereignty between the Cherokee Nation and the British Crown.

Foregrounding the 1730 Anglo-Cherokee Treaty as its hinge, this project places British treaties with Native Americans within Britain's broader treaty practices. Doing so reveals the expectations and assumptions that underlay British treaty making with First Nations, yet have been overlooked and taken for granted in studies of British treaty making with First Nations in situ on the North American continent. I examine the 1730 Anglo-Cherokee Treaty as one event in the Board of Trade's work relating to treaties, between the years 1717 and 1730. Employing a forensic approach to the Board of Trade Minutes, along with additional correspondence and papers, this project draws out the assumptions about treaties, treaty making and sovereignty that the Commissioners of Trade deployed. This analysis shows that the Commissioners of Trade, representatives of the larger British imperial administration, perceived treaties at one and the same time as a means to affirm and to act coercively on a polity's sovereignty. It shows that the Commissioners pragmatically recognized a variety of parties as sovereign entities capable of making treaties. The Commissioners perceived treaties as common, necessary and desirable tools for establishing and maintaining relationships between sovereign peoples, relationships which could thereby be manipulated for British commercial and territorial advantage. Treaties, in this understanding, could be used to establish situations of "layered sovereignty," in which each party's recognized sovereignty existed concurrently but unequally by expressing itself within different parameters.

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Note on Dates and Spelling

Until 1752, Great Britain used a calendar that was 11 days behind the calendar used in continental Europe (and presently). Additionally, in England, the year was judged to start in March. As is conventional, for clarity I have taken the year to start January 1. For dates within the year, I retain the dates used by the writers; in all cases these are in the Old Style except for certain cited letters which both the writer and I have marked "NS" for New Style.

I have adhered to the historical punctuation and spelling of my sources, except in cases where this has made the meaning of the text especially unclear.

Chapter 1

Introduction

On the morning of September 7, 1730, an honour guard of two sergeants and twelve grenadiers escorted a delegation of seven Cherokee diplomats to the office of the Lords Commissioners of Trade and Plantations in Whitehall. The Cherokees had arrived in England four months earlier, on a visit orchestrated by Sir Alexander Cuming, a Scottish impresario who believed that he had secured the Cherokee nation's submission to the British Crown. The seven delegates had seen the sights, gone to the theatre, and had had four audiences with King George II. Now, they were headed to meet with the Board of Trade to conclude a treaty, a last-minute addition to their schedule.

Less than three weeks earlier, the Commissioners of Trade had written in haste to the Secretary of State, spurred on by the Cherokees' impending departure and the advice of the new governor of South Carolina. The Commissioners had informed the Secretary of State that it would be a mistake to let the Cherokees depart without having made a treaty with them – both a diplomatic faux-pas and a missed opportunity for the commerce of Britain and the safety of the colony of South Carolina.[1]

The Commissioners had requested royal approval to make a treaty, a power they did not normally hold. Not only had the Board been quickly granted this power, the Secretary of State had also instructed them to proceed "in such manner, with the said

[1] The National Archives (TNA) CO 5/4/2, pp 198-199, 20 August 1730, Board of Trade to Newcastle.

Indian Chiefs" as they "shall think for His Majty's Service."[2] In this way, the Secretary of State deferred to the Commissioners as knowledgeable experts of the "manner" of proceeding with Native Americans for British advantage. The Commissioners in turn called on the expertise of the former governor of Pennsylvania, who prepared for them the draft of a "treaty of friendship and commerce," prior to any consultation with the Cherokees themselves.[3]

On September 7, 1730, the Commissioners presented this treaty to the Cherokee delegates who had been led in such fine style to their office. Only three members of the Board of Trade were present, but they were joined by a number of "other Gentlemen" to witness the event.[4]

After a day to consider, the Cherokees gave their reply. It was favourable, and the Commissioners moved swiftly on to other business. They did not record in their minutes the later difficulty they had convincing the Cherokees to sign the "fair copy" of the treaty, although the London newspapers breathlessly reported this.[5] The Commissioners did, however, make a point of alerting the Secretary of State to the treaty's "uncommon Style" when they forwarded it to him at the end of the month, saying, "altho' our

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[2] TNA: CO 5/361, p 164, 31 August 1730, Newcastle to Board of Trade.
[3] TNA: CO 391/39, p 214-215, 20 August 1730, Board of Trade Minutes.
[4] TNA: CO 391/39, p 226, 7 September 1730, Board of Trade Minutes.
[5] *Evening Post* 29 September 1730 #3308; *Daily Journal* 30 September 1730 #3037; *London Evening Post* 29 September 1730 #440.

Proposals and their Answers are in an uncommon Style, it is such as is best understood by them and is the same which is always made use of upon the like Occasion."[6]

As they told the Secretary of State, the Commissioners had produced a treaty that they believed was typical of treaties made with Indigenous peoples in North America. In their estimation, the resulting treaty was "uncommon" in how it differed in style from treaties concluded with European powers. And yet, as their correspondence shows, both the members of the Board of Trade and the Secretary of State recognized the agreements made with peoples in each of these geographic realms as treaties.

The 1730 Anglo-Cherokee Treaty offers a striking example of the ways in which British ideas of treaty making, developed in both the European and North American political realms, came together in British-Native American treaty making. The 1730 treaty conference's location in London, England, and the Commissioners of Trade's participation make the links between these two treaty realms unmistakable. Within the Board of Trade minutes, this treaty was literally embedded in the ongoing diplomatic worlds of Europe and North America. The Commissioners' work with European treaties and their extensive correspondence and advice from Colonial Officials show how these two realms came together. The 1730 Anglo-Cherokee Treaty's unusual features – its speedy creation in London by the Commissioners of Trade – do not detract from the commonalities it shares with other British-First Nations treaties conducted in the same period. Like many such treaties, it emerged during a moment of peace to create or affirm

[6] TNA: CO 5/4/2, pp 209-210, 30 September 1730, Board of Trade to Newcastle.

a renewable relationship. It contained stipulations to regulate familiar issues, including trade and military security, that were concerns for both First Nations and British leaders. Examining the 1730 Anglo-Cherokee Treaty reveals the expectations and assumptions – about sovereignty, legitimacy, and the life of treaties – that underlay, and yet have been overlooked and taken for granted in, British treaty making with First Nations in situ on the North American continent.

It was my interest in how British-Native American treaties worked – at their time of signing and currently in present-day North America – that spurred my focus on this topic. I grappled to find a way to approach the question of just what British participants believed was going on, why they would name documents and agreements "treaties" which now, some argue, bear little resemblance to the many and varied treaties made and still signed between European countries. How could Canadians today, I wondered, differentiate so strongly between two treaties, made at the same time, by the same imperial power, but with different treaty partners – thinking of the Treaty of Utrecht of 1713, by which France ceded its claim to Acadia/Nova Scotia to Great Britain, and the Eastern Treaties of 1725-28, by which the British and Mi'kmaq negotiated terms for their cohabitation in this same territory. Yet every day, the news showed me that they did. One of these treaties was taken for granted, an unspoken, unthought-of foundation of the country's current existence; the other has been contested in court, on fishing boats and by news commentators, and exposed vicious racism and tensions in Canadian society. If the identity of one side of the treaty had led to this perception of First Nations treaties as

somehow less legally binding, more contestable, and less legitimate than European treaties, what could the British side of these treaties tell us about their legitimacy? What did it mean that historical British officials had named agreements with First Nations "treaties" just as their counterparts did in agreements with Europeans? Had the cross-cultural context of treaty making in North America changed the fundamentals of what a treaty was?

These were the questions that led me to this project, which I have attempted to answer and which have always undergirded my study. What I wanted was a way to examine First Nations treaties in the context of concurrent European treaties; to place the history of the colonization of North America within an expansive British world. As a result, this project draws from several scholarly corners. It taps into early colonial North American history, imperial history, British history, Atlantic history and ethnohistory.

The treaties conducted by British representatives in North America in the early eighteenth century – and truly, for the entire history of European colonization and settlement in North America – were not and should not be considered as divorced from the practices of treaty making ongoing for centuries between Great Britain and Europe, nor, for that matter, between colonies we now consider as distant and as separate as Nova Scotia and South Carolina.[7] British and colonial functionaries operated in a world without

[7] The Commissioners of Trade saw the link between these two colonies clearly. They made the comparison explicit in their 1720 instructions to the Governor of South Carolina, "Representation with a Draught of Instructions for a Governor of Carolina appointed by the King and relating to the State of Defence of that Province and Nova Scotia." (TNA: CO 5/400, p 31-32, 30 August 1720).

such clear divisions, and drew on lessons and assumptions cobbled together across a variety of geographic and cultural realms of experience. British treaty making in these various realms operated concurrently, as the Board of Trade's work between 1717 and 1730, examined in this study, illustrates. Looking at these treaty histories together, as if we were in the Board of Trade office with copies of each crossing our desk simultaneously, gives us greater insight into the operation and implications of treaties in North America in the early period of colonization.

To conduct my analysis, I examine the 1730 Anglo-Cherokee Treaty as one event in the Board of Trade's work relating to treaties. I focus in particular on the Board's activities between 1717 and 1730. Of the four members of the Board of Trade who were involved with the Anglo-Cherokee Treaty, three were members of the Board by 1717; the fourth was not appointed to the Board until May of 1730.[8] Their experiences on the Board from 1717 forward to the Anglo-Cherokee Treaty provide the natural periodization of this project. This reconstruction draws out the conceptual space, what Cornelius J. Jaenen calls the "conceptual frameworks, intellectual constructs and cultural cadres"[9] in

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[8] Paul Docminique, appointed to the Board 13 December 1714; Martin Bladen and Thomas Pelham, appointed 13 July 1717; James Brudenell, appointed 14 May 1730.

[9] Cornelius J. Jaenen, "'Les Sauvages Ameriquains': Persistence into the 18th Century of Traditional French Concepts and Constructs for Comprehending Amerindians," *Ethnohistory* 29, no. 1 (Winter, 1982): 44. For more on the mental landscapes of British imperialists, see Robert Travers, *Ideology and Empire in Eighteenth-Century India: The British in Bengal* (Cambridge: Cambridge University Press, 2007); Ronald Robinson and John Gallagher, *Africa and the Victorians: the official mind of imperialism* (London: Macmillan, 1981).

which imperial administrators and officials held and applied assumptions about what treaties did, how they proceeded and their powers.

The question of periodization is integral to any study of British treaty making with First Nations (and of the United States and Canadian governments' subsequent treaty making with Native Americans). The character of intent, outcome and relative power fluctuated significantly over the centuries from the earliest British-Native American diplomatic encounters and to better-known nineteenth and twentieth-century treaties.

On their arrival in North America, Europeans had a significant disadvantage of numbers, knowledge and power relative to the people on whose shores they had weighed anchor. The Indigenous peoples in what is now North America had a long history of diplomatic engagements with each other and culturally-specific diplomatic protocols and processes.[10] Europeans, too, brought culturally-derived knowledge about diplomacy to their encounters with First Nations,[11] but found they needed to adapt to and adopt First

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[10] For inter-Native American diplomacy, see for example Rosalie Marie Francis, "The Mi'kmaq Nation and the Embodiment of Political Ideologies: Ni'kmaq, Protocol and Treaty Negotiations of the Eighteenth Century" (master's thesis, St. Mary's University, 2003); Tom Arne Mitrod, *The Memory of All Ancient Customs: Native American Diplomacy in the Colonial Hudson Valley* (Ithaca: Cornell University Press, 2012); Robert A. Williams, Jr. *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800* (New York: Oxford University Press, 1997).

[11] For inter-European diplomatic culture, see M. S. Anderson, *The Rise of Modern Diplomacy 1450-1919* (London: Longman, 1993); Jeremy Black, *A History of Diplomacy* (London: Reaktion Books, 2010); Hamish Scott, "Diplomatic culture in old regime Europe," in *Cultures of Power in Europe during the Long Eighteenth Century,* ed. Hamish Scott and Brendan Simms (Cambridge: Cambridge University Press, 2007), 58-83.

Nations diplomatic practices. The outcome, as Deborah Doxtator puts it, was that "initially, treaties and diplomacy with Native groups…took Native, not European, forms."[12]

Over time, British numbers in North America increased, as did their confidence, and their priorities for their colonies changed. Native Americans, getting to know the newcomers, also developed changing perspectives on how to manage their relationships. British and First Nations diplomacy reflected individual and group responses and judgments about local circumstances and contingencies. Even so, British treaty making broadly in North America passed through three observable periods.

As articulated by treaty historian J. R. Miller, the earliest period of British-First Nations treaties was a period of "commercial compacts" beginning in the seventeenth century. This was followed by a period of emphasis on "treaties of peace, friendship and alliance" from the late seventeenth through the eighteenth century. In the third period, from the 1760s to the 1920s, British and then Canadian and United States diplomacy was focused on "territorial treaties" aimed at land acquisition.[13] The treaties conducted in the

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[12] Deborah Doxtator, "Inclusive and Exclusive Perceptions of Difference: Native and Euro-Based Concepts of Time, History and Change," in *Decentring the Renaissance: Canada and Europe in Multidisciplinary Perspective, 1500-1700*, ed. Germaine Warkentin and Carolyn Podruchny (Toronto: University of Toronto Press, 2001), 36. See also J. R. Miller, "Compact, Contract, Covenant: The Evolution of Indian Treaty-Making," in *New Histories for Old: Changing Perspectives on Canada's Native Pasts,* ed. Ted Binnema and Susan Neylan (Vancouver: UBC Press, 2007), 66-91.

[13] J. R. Miller, *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada* (Toronto: University of Toronto Press, 2009), 4. Other historians who have tracked changing British treaty orientations in North America include Stuart Banner, *How the Indians Lost their Land: Law and Power on the Frontier* (Cambridge, Mass: Belknap

early eighteenth century, examined in this study, show that for British treaty negotiators, concerns for colonial security and trade markets were more pressing than land acquisition. Establishing formal relationships based on mutual non-aggression and commercial ties was their priority.

There are many modern legal implications of the ways that historic First Nations treaties frame the relative sovereignty of their Indigenous and European participants. Historians and jurists have both turned to the law of nations or *ius gentium* to interpret the creation and meaning of these treaties. In the present project, I take the legal concepts on which treaties were predicated as social constructions, to deepen our understanding of what treaties were and still are.

This study aims to provide a better understanding of the tools of empire. Commercial and alliance treaties were as much part of Britain's imperial activities as their territorial treaties.[14] Theoretically, treaties are agreements between sovereign parties. Using a treaty to transform a sovereign entity into a subject, as many First Nations treaties textually attempted, has been explained particularly as a manipulation of treaties in the service of empire. As Ann Laura Stoler argues, empires depend on different

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Press of Harvard University Press, 2005); Dorothy V. Jones, *License for Empire: Colonialism by Treaty in Early America* (Chicago: The University of Chicago Press, 1982).

[14] For the role of commerce in British imperial expansion and self-image, see David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000); P.J. Cain and A.G. Hopkins, *British Imperialism: Innovation and Expansion, 1688-1914* (London: Longman, 1993); and in the more recent period, Gary B. Magee and Andrew S. Thompson, *Empire and Globalisation: networks of people, goods and capital in the British world, c.1850-1914* (Cambridge: Cambridge University Press, 2010).

degrees of sovereignty.[15] Dorothy V. Jones, author of the sole study to position Native American treaties alongside a European treaty system, argues that "One of the marks of colonialism is that it bends traditional diplomatic structures to exploitative ends."[16] My examination of the 1730 Anglo-Cherokee Treaty in the context of the Board of Trade's global view shows a broader British tradition of using treaties to establish relations of layered, hierarchical or nested sovereignty between polities, suggesting that the colonial uses of treaties were not a "bending" of a previously neutral system.

The idea of "layered" sovereignty comes from Lauren Benton's *A Search for Sovereignty*.[17] Benton deploys this concept primarily to describe the articulations of imperial and colonial sovereignties; like me, Edward Cavanagh has found Benton's concept useful for understanding situations of coexistence of imperial (colonial) and Indigenous sovereignty.[18] This project will show that treaties, as deployed by polities, both affirmed and attempted to act coercively on another polity's sovereignty. The uses to which colonial and imperial governments put treaties in North America, ultimately using them as tools to remove and eliminate populations, is not comparable to their use in Europe. Finding the roots of this colonial usage takes away the "return to innocence" of

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[15] Ann Laura Stoler, "On Degrees of Imperial Sovereignty," *Public Culture* 18, no. 1 (2006): 128. "Imperial formations are not now and rarely have been clearly bordered and bounded polities. We can think of them better as scaled genres of rule that produce and count on different degrees of sovereignty and gradations of rights."
[16] Jones, *License for Empire*, xii.
[17] Lauren Benton, *A Search for Sovereignty: law and geography in European Empires, 1400-1900* (Cambridge: Cambridge University Press, 2010), 31.
[18] Edward Cavanagh, "A Company with Sovereignty and Subjects of Its Own? The Case of the Hudson's Bay Company, 1670–1763," *Canadian Journal of Law and Society* 26, no. 1 (2011): 25-50.

the European realm.[19] We can locate the colonial and imperial[20] uses of this technique in a longer history and broader context of British treaty making; British officials were using old forms to new imperial purposes.

Treaties, conducted between recognized sovereign entities, in the European realm could be made between partners of unequal power and could be used to enforce or manipulate unequally beneficial relations. Europeans, Britons included, had a history of using alliances, formally confirmed by treaties, to condition and control other sovereign entities. These alliances were not equal, and allies were generally involved in more ambiguous and complex maneuvers, as one ally tried to manage the other.[21] According to this understanding of treaties, parties to a treaty were not necessarily meeting from equal positions of power or perceived as equally powerful actors. European sovereign parties

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[19] On the concern of seeing political constructs as ahistorical and therefore neutral, see Ian Hunter, "Global Justice and Regional Metaphysics: On the Critical History of the Law of Nature and Nations," in *Law and Politics in British Colonial Thought: Transpositions of Empire,* ed. Shaunnagh Dorsett and Ian Hunter (New York: Palgrave MacMillan, 2010), 11-29.

[20] I consciously employ both "colonial" and "imperial" because they designate different orientations of European projects in North America and throughout the world. "Colonial," especially in the context of the literature on colonial North America to which this project contributes, refers to projects focused on settlement, with additional efforts at territorial and commercial control. "Imperial," especially in the context of empire studies into which this project also enters, refers to a more worldwide impulse of influence and commercial expansion, with or without settlement aims. See for example David Lambert and Alan Lester, "Imperial Spaces, Imperial Subjects," in *Colonial Lives Across the British Empire: Imperial Careering in the Long Nineteenth Century,* ed. Lambert and Lester (Cambridge: Cambridge University Press, 2006), 1-31; Magee and Thompson, *Empire and Globalisation*; Travers, *Ideology and Empire*; Michael Warner, "What's Colonial about Colonial America," in *Possible Pasts: Becoming Colonial in Early America,* ed. Robert Blair St. George (Ithaca: Cornell University Press, 2000), 49-70.

[21] Marco Cesa, *Allies yet Rivals: international politics in 18th century Europe*, trans. Patrick John Barr (Stanford: Stanford University Press, 2010).

would participate in an agreement but might find their ability to dictate terms or to enforce treaty terms after the fact was circumscribed. Britons proceeded in a similar fashion and embedded similar meanings into their treaties with First Nations.

Sovereignty is not and has not been a "static concept."[22] In the eighteenth century, jurists, statesmen and other interested parties drew on theories of Natural Law to frame their understandings of sovereignty. At issue was not just the question of who was sovereign but how sovereigns could legally interact – especially to claim territory and make "just war." While theorists and commentators offered some similar answers to these questions, there was no consensus.[23] European polities such as Spain and England could wield different interpretations of the fundamental concepts of Natural Law – presumed by each to be universally applicable – to make claims against each other. Central to this posturing were European claims in the Americas. Indeed, Antony Anghie argues that the origins of international law, as expressed by a founding theorist Francisco Vitoria in the sixteenth century, were "created out of…the colonial encounter."[24] As European polities, self-identified and mutually-recognized as sovereign, set out to establish their claims in these new-to-them worlds, they used treaties as one way of

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[22] Alexander B. Murphy, "The Sovereign State System as political-territorial ideal: historical and contemporary considerations," in *State Sovereignty as Social Construct*, ed. Thomas J. Biersteker and Cynthia Weber (Cambridge: Cambridge University Press, 1996), 87.

[23] Andrew Fitzmaurice, *Sovereignty, Property and Empire, 1500-2000* (Cambridge: Cambridge University Press, 2014).

[24] Antony Anghie, "Francisco de Vitoria and the Colonial Origins of International Law," *Social and Legal Studies* 5, no. 3 (1996): 322. Anghie expands on this argument in *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2005).

proceeding within the accepted parameters of Natural Law, in order to "establish claims that would compel international recognition."[25] Their use of treaties in this way at one and the same time recognized Indigenous sovereignty while projecting a European sovereignty over the territory vis-à-vis other Europeans.[26]

To understand this layering of sovereignty and the ways that sovereignty was conceptualized and perceived to function in early eighteenth-century Britain, we can draw on analytic concepts from recent theories of sovereignty. The most helpful of these conceptualizes sovereignty as "an inherently *social* concept."[27] In this model, "sovereignty is negotiated out of interactions with intersubjectively identifiable communities" and relies on states' recognition of each other as sovereign.[28] Treaties were moments which mutually affirmed the other party's sovereignty.

There are different ways that sovereignty can be expressed, including juridical independence, diplomatic representation, effective control within and beyond territorial

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[25] Jeffrey Glover, *Paper Sovereigns: Anglo-Native Treaties and the Law of Nations, 1604-1664* (Philadelphia: University of Pennsylvania Press, 2014), 7.

[26] Treaties were not the only instrument that European powers used to assert their imperial territorial claims against each other and the Indigenous inhabitants. For European uses of ceremony, maps and forts to stake their claims, see Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576-1640* (Cambridge: Cambridge University Press, 2006); Patricia Seed, "Taking Possession and Reading Texts: Establishing the Authority of Overseas Empires," *William and Mary Quarterly* 49, no. 2 (April 1992): 183-209.

[27] Thomas J. Biersteker and Cynthia Weber, "The Social Construction of State Sovereignty," in *State Sovereignty as Social Construct*, ed. Thomas J. Biersteker and Cynthia Weber (Cambridge: Cambridge University Press, 1996), 1, emphasis original.

[28] Biersteker and Weber, "The Social Construction of State Sovereignty," 11; Alexander Wendt and Daniel Friedheim, "Hierarchy under Anarchy: informal empire and the East German State," in *State Sovereignty as Social Construct*, ed. Thomas J. Biersteker and Cynthia Weber (Cambridge: Cambridge University Press, 1996), 240.

boundaries, control over economic interests, and the ability to control the flow of goods, people and ideas in or out of the polity. Because of these different arenas for the expression of sovereignty, which are not mutually dependent, "the absence or loss of one kind of sovereignty does not logically imply an erosion of others, even though they may be empirically associated with each other."[29] Recognizing the different domains in which sovereignty can be expressed has important implications in the context of contemporary Indigenous sovereignty because a unitary conception of sovereignty treats "sovereignty, state, power, legitimacy and supreme authority…as synonyms" thereby denying any possibility of other, especially Indigenous, sovereignties.[30]

The eighteenth century European world was made up of layered, variegated and hierarchical sovereignties.[31] In Britain and Europe during this period, "sovereignty was still the exercise of authority within different domains (seigneurial, ecclesiastical, juridical, etc.). These domains were often not delineated territorially with great precision and, if they were, their limits often did not coincide with one another."[32] Both the English Revolution (1688) and the Union of England and Scotland in 1707 drew to the fore

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[29] Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999), 24.
[30] Kevin Bruyneel, *The Third Space of Sovereignty: The Postcolonial Politics of US-Indigenous Relations* (Minneapolis: University of Minnesota Press, 2007), 23.
[31] Philip J. Stern describes this period as filled with "hyphenated, hybrid, overlapping, and composite forms of sovereignty." Philip J. Stern, *The Company-State: corporate sovereignty and the early modern foundation of the British Empire in India* (New York: Oxford University Press, 2011), 3.
[32] Mark Greengrass, "Introduction: Conquest and Coalescence," in *Conquest and Coalescence: The Shaping of the State in Early Modern Europe*, ed. Mark Greengrass (London: Edward Arnold, 1991), 3.

questions of the location and limits of sovereignty and the possibility of layered or conterminal sovereignty within the British Isles.[33] Across the channel, Europe during the eighteenth century hosted a number of composite monarchies of "indirect rule, consultation and fragmentary sovereignty."[34]

In North America, the legacy of this working concept of treaties lead to coercive, unilateral treaties imposed by settler colonial governments (United States and Canada) on Indigenous populations. Colonial powers notoriously used power inequalities to manipulate and dictate treaty negotiations, as James Daschuk has shown. Daschuk forcefully delineates how in the late nineteenth century especially, the Canadian government manipulated famine relief offered to displaced Indigenous bands to coerce their participation in restrictive and punitive land cessions treaties.[35] Micheal Asch also speaks to the complexities of consent and agency in treaty making in situations of unequal power. Looking specifically at Canada's Treaty 4 (1874) and Treaty 6 (1876), the same period considered by Daschuk, Asch shows how particular government officials could, as individuals, negotiate in good faith but not be supported by the larger

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[33] Stuart Sim and David Walker, *The Discourse of Sovereignty, Hobbes to Fielding: the state of nature and the nature of the state* (Aldershot: Ashgate, 2003); John Robertson, ed. *A Union for Empire: Political Thought and the British Union of 1707* (Cambridge: Cambridge University Press, 1995).

[34] Jack P. Greene, "Transatlantic Colonization and the Redefinition of Empire in the Early Modern Era: The British-American Experience," in *Negotiated Empires: Centers and Peripheries in the Americas, 1500-1820,* ed. Christine Daniels and Michael V. Kennedy (New York: Routledge, 2002), 269.

[35] James Daschuk, *Clearing the Plains: Disease, Politics of Starvation, and the Loss of Aboriginal Life*, especially Chapter 7 "Treaties, Famine, and Epidemic Transition on the Plains, 1877-82" (Regina: University of Regina Press, 2013), 99-126.

government apparatus that would nullify government promises through inaction or obstruction.[36] Speaking of Native American treaty participation with the United States government in this same period, signified by "X-marks" on treaty documents, Scott Richard Lyons reminds us that, "To the extent that little choice isn't quite the same as no choice, it signifies Indian agency."[37]

We must be mindful of this legacy of coercion when studying First Nations treaties, without reading back to the early eighteenth century assumptions based on later developments. One explanatory theme for the nineteenth- and twentieth-century treaties is colonial racism, the belief that Native Americans were an inferior and dying race who therefore needed to give up their land (and lives) for white settlement. These types of understandings of human difference, based on "naturalized taxonomic difference, [which] reified notions of gradation and hierarchy between racial types" emerged in the last decades of the eighteenth century.[38] These views of Indigenous peoples as *racially* inferior – rather than phenotypically different – were not present in the same way in the early eighteenth century, the time period of the Anglo-Cherokee Treaty.[39] Eighteenth-

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[36] Michael Asch, *On Being Here to Stay: Treaties and Aboriginal Rights in Canada*, especially Chapter 5 "Treaty Relations" (Toronto: University of Toronto Press, 2014), 73-99.
[37] Scott Richard Lyons, *X-Marks: Native Signatures of Assent* (Minneapolis: University of Minnesota Press, 2010), 1.
[38] Paul Turnbull, "British Anatomists, Phrenologists, and the Construction of the Aboriginal Race c.1790-1830," *History Compass* 5, no. 1 (January 2007): 27.
[39] See for example Kathleen Brown, "Native Americans and early modern concepts of race," in *Empire and Others: British Encounters with Indigenous Peoples, 1600-1850*, ed. Martin Daunton and Rick Halpern (Philadelphia: University of Pennsylvania Press, 1999), 79-100; Jane T. Merritt, *At the Crossroads: Indians and Empires on a Mid-*

century Britons held their own opinions about the origins and meaning of human biological difference, which carried different prejudices and assumptions with them. British perceptions of difference were formed and expressed according to a variety of ideas that were both changing and unevenly employed.[40] As scholars have carefully shown, some looked to climate[41] and some looked to religion[42] to explain visible differences between human populations.

The 1760s marked a transitional period in British conceptions of human difference and their associated assumptions about peoples. In North America, increased colonial land speculation lead to antagonistic relations with First Nations. Resulting "diplomatic breakdowns" lead colonial and First Nations representatives to speak of race as an "intransigent difference" between them.[43] In Great Britain, press reports of the military tactics of French-allied Native Americans during the Seven Years' War lead the

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Atlantic Frontier, 1700-1763 (Chapel Hill: University of North Carolina Press, 2003); Karen Ordahl Kupperman, *Indians and English: Facing Off in Early America* (Ithaca: Cornell University Press, 2000); Nancy Shoemaker, *A Strange Likeness: Becoming Red and White in Eighteenth-Century North America* (Oxford: Oxford University Press, 2004).

[40] Roxann Wheeler, *The Complexion of Race: Categories of Difference in Eighteenth-Century British Culture* (Philadelphia: University of Pennsylvania Press, 2000), 38-39.

[41] Dror Wahrman, Chapter 3: "Climate, Civilization, and Complexion: Varieties of Race" in *The Making of the Modern Self: Identity and Culture in Eighteenth-century England* (New Haven: Yale University Press, 2004), 83-126; Wheeler, *The Complexion of Race.*

[42] Colin Kidd, *The Forging of Races: Race and Scripture in the Protestant Atlantic World, 1600-2000* (Cambridge: Cambridge University Press, 2006).

[43] Shoemaker, *A Strange Likeness*, 141-142; Jane T. Merritt also identifies the 1760s as a pivotal turning point in colonial perceptions of Native Americans towards colour-based racism. Merritt, *At the Crossroads*.

British public to view Native Americans as warlike and serious enemies.[44] Meanwhile, Scottish and Continental philosophers drew on the increased public awareness of Native American peoples as models for the earliest, "natural" and "uncivilized" human conditions they described in their stadial philosophies of human development.[45]

This project considers the 1730 Anglo-Cherokee Treaty very much from the British perspective, but it does not intend to either celebrate or excoriate the Board of Trade, its members, or any colonial or imperial actors. Rather, I believe that understanding how administrators of empire understood one of their tools of colonization – treaties – gives us better understanding of the history of colonization in North America, and the ongoing legal, social, cultural and political ramifications of colonization. Historians of the British Empire, particularly those working within the 'new imperial history,' have worked to articulate a postcolonial approach to the study of empire, to examine the historical importance of empire without valorizing it or continuing its processes of marginalization.[46] Historians of colonial North America have gone through a similar struggle to position their work, determining that it is important to address colonial expansion, development and procedures as "a problem to be explained, not an inevitable

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[44] Troy O. Bickham, *Savages within the Empire: Representations of American Indians in Eighteenth-Century Britain,* especially Chapter 2, "American Indians in the British Press" (Oxford: Clarendon Press, 2005), 65-109.

[45] Bickham, *Savages within the Empire,* especially Chapter 5, "'Under the Rudest Form in Which We Can Conceive Man to Subsist': The Scottish Enlightenment and the North American Indians," 172-209; Fitzmaurice, *Sovereignty, Property and Empire*, Chapter 5 "Theories of Occupation in the Eighteenth Century," 125-170.

[46] See for example Kathleen Wilson, "Introduction: histories, empires, modernities," in *A New Imperial History: Culture, Identity, and Modernity in Britain and the Empire, 1660-1840,* ed. Kathleen Wilson (Cambridge: Cambridge University Press, 2004), 1-26.

process to be traced."[47] The historiography of European-Native American treaty making has tended to take the British or European starting point, that is their understanding of the form, function and purpose of treaties, for granted.[48] Leaving the European side

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[47] Daniel K. Richter, *Facing East from Indian Country: a Native history of early America* (Cambridge: Harvard University Press, 2001), 8.

[48] This significant and extensive literature on European-Native American treaty making includes: Michael C. Blumm, "Retracing the Discovery Doctrine: Aboriginal Title, Tribal Sovereignty, and their Significance to Treaty-Making and Modern Natural Resources Policy in Indian Country," *Vermont Law Review* 28 (2004): 713-777; John Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government," in *Aboriginal and Treaty Rights in Canada: Essays on Law, Equity, and Respect for Difference*, ed. Michael Asch (Vancouver: UBC Press, 1997), 155-172; Colin G. Calloway, *Pen and Ink Witchcraft: Treaties and Treaty Making in American Indian History* (Oxford: Oxford University Press, 2013); Mary A. Druke, "Iroquois Treaties: Common Forms, Varying Interpretations," in *The History and Culture of Iroquois Diplomacy: An Interdisciplinary Guide to the Treaties of the Six Nations and their League,* ed. Francis Jennings, William N. Fenton, Mary A. Druke and David R. Miller (Syracuse: Syracuse University Press, 1985), 85-98; Gilles Havard, *The Great Peace of Montreal of 1701: French-Native Diplomacy in the Seventeenth Century*, trans. Phyllis Aronoff and Howard Scott (Montreal and Kingston: McGill-Queen's University Press, 2001); J. David Lehman, "The End of the Iroquois Mystique: The Oneida Land Cession Treaties of the 1780s," *William and Mary Quarterly* 47, no. 4 (October 1990): 523-547; Cary Miller, "Gifts as Treaties: The Political Use of Received Gifts in Anishinaabeg Communities, 1820-1832," *American Indian Quarterly* 26, no. 2 (Spring 2002): 221-245; J. R. Miller, "Compact, Contract, Covenant: The Evolution of Indian Treaty-Making"; J. R. Miller, *Compact, Contract, Covenant*; Andrea Bear Nicholas, "Mascarene's Treaty of 1725," *UNB Law Journal* 43 (1994): 3-18; Stephen Patterson, "Eighteenth-Century Treaties: The Mi'kmaq, Maliseet, and Passamaquoddy Experience," *Native Studies Review* 18, no. 1 (2009): 25-52; Stephen Patterson, "Anatomy of a Treaty: Nova Scotia's First Native Treaty in Historical Context," *UNB Law Journal* 48 (1999): 41-64; Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley: University of California Press, 1994); William Wicken, *Mi'kmaq Treaties on Trial: History, Land, and Donald Marshall Junior* (Toronto: University of Toronto Press, 2002); Williams, *Linking Arms Together*.

Some valuable works consider colonial officials' motivations without nevertheless further interrogating their base conceptualization of "treaty." Asch, *On Being Here to Stay*; Peter Marshall, "Sir William Johnson and the Treaty of Fort Stanwix, 1768," *Journal of American Studies* 1, no. 2 (October 1967): 149-179; Timothy J.

unexamined does a disservice to the Indigenous side of the story as well. Treaties by definition have at least two sides, and to truly understand the meaning and importance of a treaty or a history of treaty making neither can be taken as an unquestioned norm.

This project also offers a new look at the Board of Trade. A heavy flow of information from North America and Europe, as well as South Asia and Africa, went through the Board of Trade office; in this respect, it is a far more significant a body than has been recognized. Within the government in London, the Commissioners were at the front line of information and instructions to and from the colonies. While their advice was not always heeded, it was not insignificant.

The Board of Trade has not been a fashionable subject of study for some time, as historians have moved away from institutional histories and from the bureaucracy of empire.[49] Historians, however, have not hesitated to use the Board's rich archive of

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Shannon, *Indians and Colonists at the Crossroads of Empire: The Albany Congress of 1754* (Ithaca: Cornell University Press, 2000); Dorothy V. Jones approaches an analysis of a "European Treaty System" but focuses more on British treaties in North America taking for granted this prior treaty system. Jones, *License for Empire*.

Tcho Mbaimba Caulker's study from the British-African encounter is also instructive. Tcho Mbaimba Caulker, "British-African Treaty Making and the Construction of a British Colonial State in Sierra Leone," in *The African-British Long Eighteenth Century: An Analysis of African-British Treaties, Colonial Economics, and Anthropological Discourse* (Lanham: Lexington Books, 2009), 37-56.

[49] Of the most detailed and important studies of the Board of Trade, the most recent was published in 1968: Ian K. Steele, *Politics of Colonial Policy: the Board of Trade in colonial administration 1696-1720* (Oxford: Clarendon Press, 1968); Sir Hubert Llewellyn Smith, *The Board of Trade* (London: G. P. Putnam's Sons Ltd., 1928); Arthur Herbert Basye, *The Lords Commissioners of Trade and Plantations Commonly Known as the Board of Trade 1748-1782*, (New Haven: Yale University Press, 1925); Mary Patterson Clarke, "The Board of Trade at Work," *The American Historical Review* 17, no. 1 (October 1911): 17-43. Although it does not take the Board of Trade as its sole

minute books, incoming and outgoing correspondence with merchants and colonial officials, and official instructions, especially to tell the history of early colonial America. Without embarking on an institutional history, there is value to bringing a refreshed critical historical eye to these papers and their producers, to better understand the sources on which we draw, to better understand the history of colonial America. As Ann Laura Stoler states, "to understand an archive one needs to understand the institutions that it served."[50] Work such as Lynn Zastoupil's *John Stuart Mill and India* have also shown the value of giving more attention to administrative offices in England, highlighting their active participation in the conceptual framing of empire through their administrative work.[51]

It is important to examine the Board of Trade on its own terms, as more than a simple archival house. The influence it had in shaping the conceptual frameworks of empire – not least the understandings and applications of treaty law – has been underappreciated. There is further value to reading the administrative work of the Board of Trade within the wealth of material that recent decades of scholarship in Indigenous

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focus, Leonard Woods Labaree's *Royal Government in America*: *A Study of the British Colonial System Before 1783* (New Haven: Yale University Press, 1930) can be counted among this number. A more recent study (1980) has gone virtually unnoticed: Alison G. Olson, "The Board of Trade and London-American Interest Groups in the Eighteenth Century," in *The British Atlantic before the American Revolution,* ed. Peter Marshall and Glyn Williams (London: Frank Cass, 1980), 33-50.

[50] Anne Laura Stoler, "Colonial Archives and the Arts of Governance," *Archival Science* 2 (2002): 107.

[51] Lynn Zastoupil, *John Stuart Mill and India* (Stanford: Stanford University Press, 1994).

histories have uncovered. The work of the Board of Trade shows us how the Indigenous inhabitants of North America were part of British ideas of sovereignty and international law.

The Board of Trade was an advisory body of the Privy Council. It reported principally to the Privy Council via one of the Secretaries of State. The Board was composed of seven Members of Parliament and one member of the House of Lords. In practice, the Commissioners' attendance was variable, and all eight were rarely present at once; only four of them, Martin Bladen, Thomas Pelham, James Brudenell and Paul Docminique, were involved with the 1730 Anglo-Cherokee Treaty.

The Board was established in the late seventeenth century with two purposes: to "encourage" British trade and to supervise the British colonies. These aims were frequently intertwined, as the commercial self-interest of the empire abutted new and old producer and consumer markets. While the Board was a gatherer of information, it was not a dispassionate Board; it was looking out for British interests. The Board's two jurisdictions meant that it effectively had a global view; it dealt with issues concerning Europe, North America, Africa, the Leeward Islands, Jamaica, the Bahamas, and other British plantations and trade partners.

The Board of Trade's geographically expansive view is central to my interest in this office and its involvement with British treaties including the 1730 Anglo-Cherokee Treaty. The idea that the eighteenth-century British world should be viewed holistically rather than as geographically isolated territories of activity has been expressed in a

variety of compelling ways, yet has still had only limited purchase among historians of either Native American or British-European treaties in the earlier years of colonization or empire.[52] As Tillman Netchman argues, any distinction between the local (Great Britain, England, London) and the global (America and Asia, and, I would add, continental Europe) is "historically misleading and … undesirable" because they were so "fully fused" in eighteenth century Britain.[53] Assumptions and understandings developed in one locale would influence actions and understandings in another. As Peter J. Marshall notes, "however much they may have tried to adapt to local conditions, those British invested with authority at home or in the colonies inevitably applied some common assumptions and objectives throughout the world."[54] Analyzing the Commissioners of Trade's

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[52] A recent collection radically expands the comparative contexts of European-Indigenous treaty making within this literature but nevertheless does not place these practices alongside concurrent European treaty making within Europe. Saliha Belmessous, ed., *Empire by Treaty: Negotiating European Expansion, 1600-1900* (Oxford: Oxford University Press, 2014). For developments in this direction, see also H. V. Bowen, Elizabeth Mancke, and John G. Reid, eds., *Britain's Oceanic Empire: Atlantic and Indian Ocean Worlds, c. 1550-1850* (Cambridge: Cambridge University Press, 2012).

[53] Tillman W. Nechtman, *Nabobs: empire and identity in eighteenth-century Britain* (Cambridge: Cambridge University Press, 2010), 5.

[54] P. J. Marshall, *The Making and Unmaking of Empires: Britain, India, and America, c.1750-1783* (Oxford: Oxford University Press, 2005), 3. For more on an imperial worldview between Britain and the empire, see Elizabeth Buettner, *Empire Families: Britons and late Imperial India* (Oxford: Oxford University Press, 2004); Richard Drayton, *Nature's Government: Science, Imperial Britain, and the 'Improvement' of the World* (New Haven: Yale University Press, 2000); Catherine Hall and Sonya O. Rose, eds., *At Home with the Empire: Metropolitan Culture and the Imperial World* (Cambridge: Cambridge University Press, 2006); David Lambert and Alan Lester, eds., *Colonial Lives Across the British Empire: Imperial Careering in the Long Nineteenth Century* (Cambridge: Cambridge University Press, 2006); Kathleen Wilson, ed., *A New Imperial History: Culture, Identity and Modernity in Britain and the Empire, 1660-1840* (Cambridge: Cambridge University Press, 2004). For a dissenting take, see Bernard

interactions with treaties without hermetically sectioning their work geographically allows us to calibrate commonalities and differences of approach and assumptions which in turn offer nuanced insights about British perceptions of power, sovereignty and the purposes of treaties.

The Board's broad geographic scope along with careful scholarly consideration has guided my choice to frame this project as a study of "global" British treaty practices. Since Bernard Bailyn's *Atlantic History: Concept and Contours*,[55] the idea of an Atlantic world has dominated studies of the connections, influences, movement of people and colonial and imperial relationships between Britain and North America. However, Paul Cohen questions, "Was there an Amerindian Atlantic?"[56] While Jace Weaver offers an emphatic *yes* to this question, his expansion of the parameters of "Atlantic" to encompass the Pacific in *The Red Atlantic* suggests a different geographic framing device may be in order.[57] The limits of the Atlantic framing are evident in my study's very premise: that

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Porter, *The Absent-Minded Imperialists: Empire, Society and Culture in Britain* (Oxford: Oxford University Press, 2006).

[55] Bernard Bailyn, *Atlantic History: Concept and Contours* (Cambridge: Harvard University Press, 2005). Further discussions of the concept of the Atlantic World include: David Armitage, "Three Concepts of Atlantic History," in *The British Atlantic World, 1500-1800,* ed. David Armitage and Michael J. Braddick (New York: Palgrave Macmillan, 2002), 11-27; Alison Games, "*AHR Forum* Atlantic History: Definitions, Challenges, and Opportunities," *The American Historical Review* 111, no. 3 (June 2006): 741-757.

[56] Paul Cohen, "Was there an Amerindian Atlantic? Reflections on the limits of a historiographical concept," *History of European Ideas* 34, no. 4 (2008): 388-410.

[57] Jace Weaver, *The Red Atlantic: American Indigenes and the Making of the Modern World, 1000-1927* (Chapel Hill: The University of North Carolina Press, 2014). John G. Reid argues that "to understand the Atlantic World with genuine explanatory power, an Aboriginal dimension is just as essential as the imperial and colonial dimensions." John

British diplomacy outside of the Atlantic region (to regions such as Sweden and Russia, for example) was part of the same world and had its influence on British approaches to diplomacy with North American peoples. Certainly, my study, while more expansive than the Atlantic, does not address British interactions with all territories and peoples around the globe. On the other hand, the approaches of global history which seek patterns across broader swathes of peoples, places and nations are instructive for my approach in this project.[58]

Amongst their work, the Commissioners of Trade were frequently called on regarding the commercial stipulations of treaties signed with European powers, and they received reports of treaties conducted in North America from governors and other officials. The Plantations Office acted as a receptacle of knowledge and had an advisory rather than an executive role. Treaties – proposed or enforced – were a frequent cause to draw on the Board's knowledge resources. The result was that the Commissioners were conversant with European treaties and passingly knowledgeable about the forms and functions of Native American treaties. These they saw through the prism of their concerns with British commerce, colonial security, and British territorial and commercial

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G. Reid, "How Wide Is The Atlantic Ocean? Not Wide Enough!" *Acadiensis* 34, no. 2 (Spring 2005): 81-87. A model for this Indigenous-centric Atlantic narrative can be found in James Taylor Carson's *Making an Atlantic World: Circles, Paths, and Stories from the Colonial South* (Knoxville: University of Tennessee Press, 2007).

[58] Felicity A. Nussbaum, "Introduction," in *The Global Eighteenth Century,* ed. Felicity A. Nussbaum (Baltimore: The Johns Hopkins University Press, 2003), 1-18; Philip J. Stern, "British Asia and British Atlantic: Comparisons and Connections," *William and Mary Quarterly* 63, no. 4 (October 2006): 693-712.

advantage over its European rivals. In this way and in its work, the Board of Trade represented a major global power seeking to extend and entrench its domination.

Examining the Commissioners' practical responses to treaties reveals the conceptual and procedural notions they held regarding treaties concluded with European powers. The Commissioners' involvement with treaties built their conceptual ideas of how treaties were conducted, with whom, to what purpose and with what effect. As I will show, within these broad categories, the Commissioners evinced pragmatic fluidity in their identification of treaty partners and their ongoing application of treaties after their signing.

The Board members did not enunciate theoretical thinking on such matters, either individually or in their office records; but in their work they carried on an active response to such questions. My approach here owes much to Philip J. Stern's approach in *The Company-State: corporate sovereignty and the early modern foundation of the British Empire in India*. Stern finds in the British East India Company's practical business the expression of an implied ideological position. I follow the idea that we can find conceptual strains in the day-to-day administrative business of the Board of Trade as much as the East India Company. As Stern argues, we must "tak[e] seriously as political thinkers in their own right those that did the governing and, in turn, regar[d] the act of governing itself as equally productive a site of political thought as the sorts of theoretical work more often studied."[59]

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[59] Stern, *The Company-State*, 14.

Given the rich opportunities for analysis presented by the 1730 Anglo-Cherokee Treaty, it is surprising that it has not yet received focused academic attention. As yet there has not been a study dedicated to it, though it has received cursory attention as part of larger works on Indigenous visitors to England or about the Cherokee nation. Of these, Grace Steele Woodward's outdated *The Cherokees* as well as the more recent *The Savage Visit: New World People and Popular Imperial Culture in Britain, 1710-1795* by Kate Fullagar and Alden T. Vaughan's *Transatlantic Encounters: American Indians in Britain, 1500-1776* are much more interested in the Cherokees' visit to London than the treaty.[60] These three works, each offering one or half a chapter on the 1730 delegation, focus on the Cherokees' experience and reception in London rather than the treaty in which they took part.[61]

Nancy Shoemaker and Robert J. Conley offer analyses of the Cherokees' formal reply to the treaty, reading the Cherokees' spokesman's translated, transcribed speech. They fold their analysis of this portion of the 1730 Anglo-Cherokee Treaty into their broader works "How Indians got to be Red" and *The Cherokee Nation: A History*,

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[60] Grace Steele Woodward, *The Cherokees* (Norman: University of Oklahoma Press, 1963); Kate Fullagar, *The Savage Visit: New World People and Popular Imperial Culture in Britain, 1710-1795* (Berkeley: University of California Press, 2012); Alden T. Vaughan, *Transatlantic Encounters: American Indians in Britain, 1500-1776* (Cambridge: Cambridge University Press, 2006).

[61] Jace Weaver's survey of the *Red Atlantic* offers only two pages to this delegation. Weaver, *The Red Atlantic*, 155-156.

respectively.[62] However, their conclusions about the meaning of this speech are almost directly at odds. Both Shoemaker and Conley consider how this recorded speech accords with Cherokee worldviews – Conley concluding it was completely fabricated by their South Carolinian interpreter or their London audience, Shoemaker using it as evidence of Cherokee ideas of skin colour differentiation.[63] Conley's study brings us closest to an analysis of the treaty as a diplomatic, international agreement with purpose and power rather than as an aside to a different argument. I will discuss his conclusions more fully during my analysis of the treaty text in Chapter Seven.

My analysis of the Anglo-Cherokee Treaty uncovers its place within broader British treaty practices. This thesis is organized accordingly with the intention of laying out for the reader the world, viewpoint and experiences which came to bear on the Anglo-Cherokee Treaty. To this end, the following chapter draws a picture of the eighteenth-century world within which the 1730 Anglo-Cherokee Treaty was carried out. It emphasizes the interconnected nature of this world, one in which the Commissioners stationed in London were tied personally, economically and administratively to people, information and ideas in North America and Europe. It shows how the Cherokees were part of a world of connections centered on the Cherokee towns, and navigated and negotiated their connections with the trade and alliances of the European world.

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[62] Nancy Shoemaker, "How Indians Got to be Red," *The American Historical Review* 102, no. 3 (June 1997): 625-644; Robert J. Conley, *The Cherokee Nation: A History* (Albuquerque: University of New Mexico Press, 2005).
[63] Shoemaker, "How Indians Got to be Red," 640-641; Conley, *The Cherokee Nation*, 34-35.

The next chapter considers the Commissioners' work with treaties conducted with Europeans between 1717 and 1730, closely examining the Board of Trade records to establish the processes, purposes, and powers that were familiar to them. This chapter draws out the ways that Britons and Europeans used treaties to regulate trade and thereby manipulate relations between sovereign polities to British advantage. It shows that the Commissioners saw treaties as a means to manipulate and constrain the sovereign activity of another power, without denying their partner's sovereign identity.

The subsequent chapter examines the Commissioners' work with treaties conducted with Native Americans in the decade and a half before the 1730 Anglo-Cherokee Treaty, bringing a forensic examination to the Board of Trade archives. This analysis shows that the Commissioners perceived treaties as common, necessary and desirable tools for establishing and maintaining relationships with First Nations that were beneficial for British trade and colonial security. The Commissioners were familiar with the procedures of treaty making in the North American intercultural context, and their work shows that they conceptualized Native Americans as sovereign treaty partners.

The final three chapters address the 1730 Anglo-Cherokee Treaty directly. Chapter Four sets the stage, first establishing the context from which the Cherokees' visit was initiated, and secondly following the Cherokee delegates' experiences in England. This chapter shows the Cherokees' longstanding political relationship with British colonists and the ways that their diplomatic authority was acknowledged and undermined in England.

The last two chapters examine in close detail the procedure of the treaty's drafting and signing and the two textual renderings of the 1730 Anglo-Cherokee Treaty. The Commissioners' proposal for making the treaty and the procedure they followed, examined in Chapter Six, show the Commissioners acknowledging the Cherokees' sovereignty while espousing treaties as a means to manipulate relationships between sovereign entities. This manipulation, as expressed by the Commissioners, would establish a situation of layered sovereignty, in which Cherokee and British Crown sovereignty were both in effect.

Chapter Seven examines the two texts of the treaty which the Commissioners of Trade produced, the one in their Minute Book, the other transmitted to the Secretary of State as the official "fair copy." The differences between these texts as well as the diplomatic procedures of gift giving and use of Chain of Friendship and kinship language show the Commissioners attempting to implement a treaty which subordinated Cherokee sovereignty to the British Crown without denying that same Cherokee sovereignty that legitimated their agreement as a treaty.

Finally, this project's concluding chapter offers a brief examination of the ways that Cherokee and colonial spokesmen invoked the 1730 Anglo-Cherokee Treaty during the following decades. It shows how the treaty was used by Cherokees and colonists alike to obligate their partner's behaviour. This analysis opens up to a further discussion of the conclusions about British conceptions of layered sovereignty, flexible recognition of

sovereign entities, the power of treaties to obligate and the contemporary uses of treaties explored in the previous chapters.

In a project such as this, some note must be made about the vocabulary being used, to refer to groups of people and to concepts. The reader will have noticed that I employ the terms "First Nation," "Native American" and "Indigenous" all to refer to the peoples who inhabited North America well before European contact there. I have chosen to employ these multiple terms because their use most effectively conveys meaning in my text and agency to the people to whom they refer. None of these terms is universally preferred today, and their modern meanings are anachronistic to my period of study. Each conveys to the reader important information about the longevity, polity and location of these peoples. When I wish to highlight for the reader that these are people or peoples who are in North America, I use a designation with that terminology, and when I wish to emphasize for the reader the longevity of these peoples on the lands that are now called North America, I use "Indigenous." When I wish to emphasize the political unit, I employ "First Nation." I will speak frequently of specific "Nations" among these peoples, because that is a modern designation which corresponds with how the eighteenth century British also understood Native American peoples in the treaty context. Where able I do my best to use specific group (national, tribal, confederate) names. However, the Board of Trade members were not always aware of such differences, and I have not wanted to anachronistically alter the reader's perception of the Commissioners' understanding of the peoples in North America, since that is such a central concern of my study.

A further note must be made about my use of "Cherokee" as a unitary group. During the eighteenth century, the Cherokee towns were not unified as a "nation" in the modern sense. However, the Commissioners of Trade and Plantations did not perceive this difference. Historically, these peoples called themselves Ani-Yun-wiya and Ani-Tsalagi.[64] During the early eighteenth century, individuals of these communities referred to themselves as "Cherokees," sometimes specifying their town affiliation, when speaking in the English-language documentary record. Today, scholars from the Cherokee Nation self-identify as "Cherokee" or as "Tsalagi (Cherokee)."[65] Scholars of Cherokee history, cited throughout this study, refer to this people collectively as "Cherokees."

When it comes to the non-Indigenous subjects of my study, the members of the Board of Trade, the colonial officials, Secretaries of State, and others, I most frequently employ the term "British." I do my best to account for differences of experience and identification of individuals stationed in the colonies or London, and of individuals coming from different areas of the British Isles or colonies. The period of focus in my study begins only a decade after the Union of England and Scotland in 1707. "British"

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[64] Tyler Boulware, *Deconstructing the Cherokee Nation: Town, Region, and Nation among Eighteenth-Century Cherokees* (Gainesville: University Press of Florida, 2011), 3; Russell Thornton, *The Cherokees: A Population History* (Lincoln: University of Nebraska Press, 1990), 8.

[65] As examples, Robert J. Conley and Thomas King employ "Cherokee" (Conley, *The Cherokee Nation*; Thomas King, *The Inconvenient Indian: a curious account of Native People in North America* (Toronto: Doubleday Canada, 2012)) while Jeff Corntassel uses "Tsalagi (Cherokee)" (Jeff Corntassel et al., "Unsettling settler colonialism: The discourse and politics of settlers, and solidarity with Indigenous nations," *Decolonization: Indigeneity, Education & Society* 3, no. 2 (2014), 3).

was a newly emerging identity.[66] When it comes to the four Commissioners who enacted the 1730 Anglo-Cherokee Treaty, these men held an official role in the colonial administration which tied them directly to the king of Great Britain and the British colonial project. Collectively, the "British" individuals, where their lives intersect with my study, were actors within the administration, governance and commerce of the British empire; "Britishness" was their "public identity."[67] Therefore where specific differentiation only obscures the matter, I will refer to them as "British." This also ties into my argument that from these diverse individual perspectives we can draw out an imperial point of view, which can be called "British," while recognizing that it was anything but monolithic and undifferentiated.

The treaty that is at the centre of my study has not been accorded a recognizable title in its day or by later historians. Therefore, I have elected to refer to it as the "1730 Anglo-Cherokee Treaty" to recognizably designate it according to participants and year

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[66] Strong arguments for a collective British identity are presented in Linda Colley's *Britons: Forging the Nation 1707-1837* (New Haven: Yale Nota Bene Press, 1992) and Kathleen Wilson's *The Island Race: Englishness, Empire and Gender in the Eighteenth Century* (London: Routledge, 2003). A complicating view is presented by Colin Kidd in "Ethnicity in the British Atlantic World, 1688-1830," in *A New Imperial History: Culture, Identity and Modernity in Britain and the Empire 1660-1830,* ed. Kathleen Wilson (Cambridge: Cambridge University Press, 2004), 260-277.

[67] The phrasing is Mori's, from her description of the dualized identities of "British" diplomats in the long eighteenth century. Jennifer Mori, *The Culture of Diplomacy: Britain in Europe, c. 1750-1830* (Manchester: Manchester University Press, 2010), 4.

and to differentiate it from other treaties conducted either with First Nations, in London or in 1730.[68]

[68] This choice is in contrast to David H. Corkran, who refers to the treaty interchangeably as the Treaty of London or the Treaty of 1730. An earlier treaty between England and Spain in 1604 also bears the name Treaty of London. Tyler Boulware who also employs Treaty of 1730. Because Corkran and Boulware's studies are closely focused on Cherokee-colonial relations, they do not need a more precise name for the 1730 Anglo-Cherokee Treaty. Boulware, *Deconstructing the Cherokee Nation*; David H. Corkran, *The Cherokee Frontier: Conflict and Survival, 1740-62* (Norman: University of Oklahoma Press, 1962).

Chapter 2

Stepping into the World of the 1730 Anglo-Cherokee Treaty

Step into the office of the Board of Trade.

The Council Chamber is spacious; it can comfortably hold all eight Commissioners of Trade and Plantations, their Secretary, and the several men they have called to advise them on the matters of the day. The Council Chamber is part of a suite of rooms that make up the Plantations Office. The Office is in the palace of Whitehall, London, the centre of parliamentary government in Great Britain: the centre of empire. The Council Chamber is conveniently flanked by the Secretary's office on the one side and a waiting room for petitioners, advisors and other visitors on the other. The clerks' office with the Board's library of papers is stashed in a fourth associated room; for years, they are housed in the attic space above the Council Chamber.[1]

Three or four times a week, if they were diligent, the Lords Commissioners of Trade and Plantations would leave behind the hustle and bustle of early eighteenth-century London to enter the business-like sanctum of the Plantations Office. Scrapping the mud off their shoes, the Commissioners did not shake off the manifold ties and

[1] Mary Patterson Clarke, "The Board of Trade at Work," *The American Historical Review* 17, no. 1 (October 1911): 19.

influences that bound London to broader British, European, colonial, Atlantic, Pacific and global networks.[2]

This was a world of connections, a world that reached from far Russian forests to distant New England woods, coveted by Britons in London for timber, timber used as masts for the ships which carried the goods, people and news of the empire. This world stretched from the cod fisheries of Newfoundland to the Hamburg Herring trade, where money was made, food was caught and British sailors earned their sea legs. This world encompassed agreements, disagreements and compromises between Great Britain and a myriad of sovereign peoples across the globe relating to trade, territory and security. The men who sat in the Plantations Office were apt to see the jumbled interconnectedness of this world, thanks to their personal financial interests and family ties, in addition to the demands of their role as Commissioners of Trade and Plantations.

Until they met in the Plantations Office in 1730, the Commissioners of Trade knew of the Cherokee people only through second-hand colonial reports. The Cherokees, for their part, were intimately familiar with the global thrust of the world that European imperialism and colonialism had built around them. From their towns in the Appalachian Mountains and valleys, Cherokee chiefs travelled to the colonial governments, stepping into council halls to negotiate the terms of their inclusion and participation in this expanding world. The chiefs protested the colonists' capture and sale of Cherokees to

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[2] On the idea of networks in the British world, see especially Gary B. Magee and Andrew S. Thompson, *Empire and Globalisation: Networks of People, Goods and Capital in the British World, c. 1850-1914* (Cambridge: Cambridge University Press, 2010).

slavery in the West Indies. They lodged complaints when English traders stationed in their towns were unruly or cheating. And they negotiated the parameters of the markets for Cherokee and British goods.

The colonial governors of South Carolina dutifully reported these negotiations with the Cherokees in their correspondence with the Board of Trade. The governors, sojourners in the colony, trod carefully between local contingencies and desire for British commercial and settlement expansion. They dealt with complaints from colonists, traders, Cherokees, proprietors and royal ministers; sometimes they were deposed for their troubles.

This world may not have been the world of all residents of England, the South Carolina colony or the Cherokee towns, but it was the world inhabited by those who participated in the 1730 Anglo-Cherokee Treaty. These men, whether Cherokee or British, were fully enmeshed in the webs of transatlantic mobility, commerce, colonial settlement, negotiation of imperial jurisdiction and cross-cultural trade and diplomacy. The 1730 Anglo-Cherokee Treaty was a product, as well as an example, of this world.

From its inception, the Board of Trade's mandate required a capacious view of the world. The Board of Trade and Plantations had its origins in the seventeenth century, from the need for a body that would oversee the government of the colonies and improve British trade – in short, to have "oversight of all material resources of the empire."[3]

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[3] Arthur Herbert Basye, *The Lords Commissioners of Trade and Plantations Commonly Known as the Board of Trade 1748-1782* (New Haven: Yale University Press, 1925), 1. For more on the early precursors to the Board of Trade, see Charles M. Andrews, *British*

During the last decades of the seventeenth century, Parliament and the King and Privy Council were jockeying for power. To satisfy both sides, the Board was established as an office that would collect and store information, which it would evaluate and assimilate in order to provide "intelligent advice and opinion" for both Parliament and the Privy Council.[4] In this way, both Parliament and the King and Privy Council would benefit from the Board's mandate and neither would fear that the Board's power would encroach on their own.

As a storehouse of curated information and a source of considered opinion, the Board influenced trade and colonial policy. In this role, the Board became an integral cog in the machinery of government; every department drew on its information resources.[5] The Board's reports on commercial and colonial concerns had traction in the Privy Council and Parliament; "its policies were often adopted by the crown and its advice accepted by both the home and colonial officials."[6]

The Board's influence was enacted through reports and written advice. In the Privy Council, the Board was represented by the two Secretaries of State rather than reporting in person.[7] The Board reported to Parliament only at Parliament's request.

Committees, Commissioners, and Councils of Trade and Plantations, 1622-1675 (Baltimore: Johns Hopkins Press, 1908).

[4] Ian K. Steele, *Politics of Colonial Policy: the Board of Trade in colonial administration 1696-1720* (Oxford: Clarendon Press, 1968), 7.

[5] Basye, *The Lords Commissioners of Trade and Plantations*, 4-5.

[6] Basye, *The Lords Commissioners of Trade and Plantations*, 5.

[7] Paul Langford, *A Polite and Commercial People: England 1727-1783* The New Oxford History of England (Oxford: Clarendon Press, 1989), 171; Sir Hubert Llewellyn Smith, *The Board of Trade* (London: G. P. Putnam's Sons Ltd., 1928), 16; Ian K. Steele, "The

However, the Board's ongoing records and especially its conduct of the 1730 Anglo-Cherokee Treaty indicate that this office was active.

The Board of Trade's role as a source of informed opinion was part of a growing emphasis and "enthusiasm" in government during this period for "informed policy" – that is, "policy based on expert advice, including mapping and census."[8] This was a period when professionalization of knowledge was increasingly valued by the British government. Detail, volume and precision of information were key. As John Brewer explains, "to be more effective, government required greater knowledge; skilled government needed more detailed and precise information."[9] From 1714 the Board of Trade participated in this movement by making "an effort to improve its sources of information" especially "to gather and use more statistical material."[10] Amongst its many information-gathering efforts, the Board of Trade purchased maps of North and South America, Scotland and the English counties, though the office was stymied in its attempts to purchase an accurate map of each of the British colonies.[11] On the numerical front, the Commissioners of Trade requested "specialized charts of commodity imports and

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Anointed, the Appointed, and the Elected: Governance of the British Empire, 1689-1784," in *The Oxford History of the British Empire: Volume II: The Eighteenth Century,* ed. P. J. Marshall (Oxford: Oxford University Press, 1998), 107.

[8] Richard Drayton, "Knowledge and Empire," in *The Oxford History of the British Empire: Volume II: The Eighteenth Century,* ed. P. J. Marshall (Oxford: Oxford University Press, 1998), 246.

[9] John Brewer, *The Sinews of Power: war, money and the English state, 1688-1783* (London: Unwin Hyman, 1989), 221.

[10] Steele, *Politics of Colonial Policy*, 153.

[11] Steele, *Politics of Colonial Policy*, 154.

exports" from the Inspector-General of Customs.[12] These documents were incorporated into the Board's institutional holdings, constituting the physical memory of the office. Records such as these were filed away, to be retrieved and dusted off when the Commissioners needed their contents. In this way, the physical materials of the Board, the texts and images that the office solicited and categorized, built an archival institutional memory.

The Commissioners who participated in the 1730 Anglo-Cherokee Treaty were men fully integrated into the interconnected world, each with their own experiences of treaty making and their own interests regarding trade and the colonies. Of the Board's eight members, four participated in the conception, preparation and confirmation of the treaty: Martin Bladen, Thomas Pelham, Paul Docminique and James Brudenell.

Martin Bladen[13] was the Board of Trade's most diligent and influential[14] member from his appointment in 1717 to his death in 1746. He had received a legal education, an asset in the Board of Trade office. Prior to his political career he had been a colonel in the army, serving in Flanders and Spain. First elected as a Member of Parliament in 1715, he sat for over 30 years. He is of further special interest in this study because he acted as commissary to France in 1719 to settle certain articles of the Treaty of Utrecht of 1713,

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[12] Steele, *Politics of Colonial Policy*, 153.
[13] Martin Bladen, c.1680-1746. Educated at Westminster School 1695-97 and the Inner Temple; Member of Parliament for Stockbridge 1715-1734, Maldon 1734-1741, Portsmouth 1741-1746; Commissioner of the Board of Trade 1717-1746; Comptroller of the Mint 1714-1728; Secretary to the Lords Justices of Ireland 1715-1717.
[14] Philip Haffenden, "Colonial Appointments and Patronage under the Duke of Newcastle, 1724-1739," *The English Historical Review* 78, no. 308 (July 1963): 419-421.

gaining first-hand experience of treaty negotiation. Bladen's military service, family connections and commercial interests as well as his diplomatic service embedded him in the global currents of the period.[15]

Bladen's interests in British commerce reflected more than his role on the Board of Trade, as his focus in his parliamentary speeches suggests. In Parliament, he was "a frequent government speaker, usually on trade matters."[16] Bladen was a director of the Royal African Company from 1717, a post that was "so desirable to the powerful" that several prominent and titled political men could not find positions there.[17] As a director, Bladen would have conversed with men such as a prominent merchant trading to Turkey and the Chancellor of the Exchequer's "financial go-between."[18] However, in 1725 Bladen "was among the African Company directors who divested themselves of their stock to avoid appearing as 'interested persons for speaking with a design to promote their own fortunes' in matters relating to the company."[19] His second wife, who he married in 1728, was the daughter of an East India merchant, and later inherited a sugar

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[15] Rory T. Cornish, "Bladen, Martin (1680–1746)," in *Oxford Dictionary of National Biography* online edition, January 2008 (Oxford University Press, 2004), accessed June 11, 2014. doi:10.1093/ref:odnb/2551
Eveline Cruickshanks, "BLADEN, Martin (?1680-1746), of Aldborough Hatch, Essex," *The History of Parliament: the House of Commons 1715-1754*, ed. R. Sedgwick (New York: Oxford University Press, 1970), accessed October 3, 2013. http://www.historyofparliamentonline.org/volume/1715-1754/member/bladen-martin-1680-1746

[16] Cruickshanks, "BLADEN, Martin."

[17] William A. Pettigrew, *Freedom's Debt: The Royal African Company and the Politics of the Atlantic Slave Trade, 1672-1752* (Chapel Hill: University of North Carolina Press, 2013), 168.

[18] Pettigrew, *Freedom's Debt*, 168.

[19] Cruickshanks, "BLADEN, Martin."

plantation on the island of Nevis in the West Indies.[20] As a result of this union, Bladen became "one of the leaders of the West Indians in Parliament."[21] Bladen's contributions to Britain's parliamentary democracy were influenced by his global commercial and familial interests.

Like all members of the Board of Trade, Bladen was a beneficiary of political patronage. Seven of the eight seats on the Board of Trade were filled by appointment of sitting members of parliament.[22] The men on the Board reflected the currents of governments and party politics in parliament. Britain's political landscape exhibited stability in the decade before the signing of the Anglo-Cherokee Treaty. When King George II succeeded George I in 1727, the political situation calmly transitioned; the old ministry continued "virtually unchanged."[23] For the Board of Trade, men who relied on political favour, political stability was a boon.

The Commissioners frequently held additional patronage appointments during their tenure. Bladen, for example, was appointed to the positions of Comptroller of the Mint and Secretary to the Lords Justices of Ireland. Further, his third parliamentary seat, representing Portsmouth, was considered a safe admiralty seat and a reward for his services from the Duke of Newcastle and Sir Robert Walpole.[24]

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[20] Cruickshanks, "BLADEN, Martin." This was Francis Foche of Aldoborough Hatch Essex.
[21] Cruickshanks, "BLADEN, Martin."
[22] Steele, "The Anointed, the Appointed, and the Elected," 107.
[23] Langford, *A Polite and Commercial People*, 14.
[24] Cruickshanks, "BLADEN, Martin."

Another beneficiary of Newcastle's political influence was Thomas Pelham,[25] his kinsman,[26] who came to the Board alongside Bladen in 1717. Pelham was not himself a charming man; he nearly lost his seat in the general election of 1734 because of his personal unpopularity.[27] At the Board of Trade, he was an "occasional rather than constant attender;"[28] nevertheless, he was present at very nearly all of the meetings regarding the 1730 Anglo-Cherokee Treaty.

Greeting Bladen and Pelham in the Board office was Paul Docminique,[29] who had been appointed three years earlier, in 1714 at the age of 71. He served until his death in 1735. Highlighting the Commissioners' place in a globally-connected world, Docminique was the son of an eminent merchant of Huguenot origin from Lille, France, and had been naturalized in 1662.[30]

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[25] Thomas Pelham, c.1678-1760. Educated at St. Edmund Hall, Oxford; Member of Parliament for Lewes 1705-1741; Commissioner of the Board of Trade 1717-1741; Secretary of Embassy at Paris, 1733.

[26] Thomas Pelham has been overshadowed by, but should not be confused with, his brother-in-law Thomas Pelham-Holles, Duke of Newcastle.

[27] Romney R. Sedgwick, "PELHAM, Thomas (?1678-c.1760), of Lewes, Suss.," *The History of Parliament: the House of Commons 1715-1754*, ed. R. Sedgwick (New York: Oxford University Press, 1970), accessed October 3, 2013. http://www.historyofparliamentonline.org/volume/1715-1754/member/pelham-thomas-1678-1760

[28] Sedgwick, "PELHAM, Thomas."

[29] Paul Docminique, 1643-1735. Member of Parliament for Gatton 1705-1735. Commissioner of the Board of Trade 1714-1735.

[30] Romney R. Sedgwick, "DOCMINIQUE, Paul (1643-1735), of Spitalfields, London, and Chipstead, Surr.," *The History of Parliament: the House of Commons 1715-1754*, ed. R. Sedgwick (New York: Oxford University Press, 1970), accessed October 3, 2013. http://www.historyofparliamentonline.org/volume/1715-1754/member/docminique-paul-1643-1735

Although he was one of the Board's most diligent of attenders, perhaps because of his advanced age Docminique was only involved in the 1730 Anglo-Cherokee Treaty at the final meeting, when the Cherokees presented their response to the Board. Therefore he was less directly involved in the conception and preparation of the treaty than his fellow Commissioners. Nonetheless, his long and diligent service would have had its influence on his fellows and the actions they took, especially over the course of twelve years of service alongside him.

An idea of the perspective that Docminique brought to the Board can be found in a look at his parliamentary and commercial activities. In parliament, he voted with the administration in all recorded divisions.[31] However, he was also a member of the "October Club" of 1711-1712. This club, or "Tory backbench rebellion," was composed of over 100 "Parliament men of the country." They were determined to call the previous Whig administration to account for its perceived financial abuses and opposed the policy of moderation espoused by the then First Lord of the Treasury.[32] They acquired the name "October Club" thanks to the October beer that they drank at their weekly meetings.[33]

The October Club also had opinions about treaties. In 1711, the Club was "instrumental in defeating proposed Commons amendment 'No Peace with out Spain'" and in 1712 they voted the Barrier Treaty, by which Great Britain would assist Dutch defences during the War of Spanish Succession, as "destructive to the trade and interest

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[31] Sedgwick, "DOCMINIQUE, Paul."
[32] H. T. Dickinson, "The October Club," *Huntington Library Quarterly* 33, no. 2 (February 1970): 158.
[33] Dickinson, "The October Club," 156.

of Britain."[34] In 1713, defectors from the Club opposed the commercial treaty with France that would ultimately become the Treaty of Utrecht (1713) but there is no indication that Docminique was among these defectors.[35]

It was therefore as an MP as well as a member of the Board of Trade that Docminique viewed the significance of treaties with European powers. Involved in a party which took a stand on treaty issues, he would have been aware of the importance and significance of such agreements. Presumably, he could extrapolate this importance to the North American realm; the Board of Trade's work with Native American diplomacy, to be considered in Chapter Four, would have underlined this point.

Docminique also had strong interests in British colonial expansion overseas. He was the London Correspondent and chair of the West New Jersey Society, and was succeeded there by his son in 1720.[36] The West New Jersey Society was a corporation that in 1698 had "purchased the territory and government of West New Jersey from its main proprietor."[37] The Society divided and subdivided West New Jersey into shares, which were seen in London as profitable and quick investments.[38] The West New Jersey Society also set up the New Mediterranean and New Pennsylvania Companies.[39]

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[34] Dickinson, "The October Club,"165, 166.
[35] Dickinson, "The October Club," 169.
[36] Beverly Mc Anear, "Notes and Documents: An American in London, 1735-1736," *The Pennsylvania Magazine of History and Biography* 64, no. 3 (July 1940): 359.
[37] Mary K. Geiter, "Notes and Documents: London Merchants and the Launching of Pennsylvania," *The Pennsylvania Magazine of History and Biography* 121, no. 1-2 (January-April 1997): 104.
[38] Geiter, "Notes and Documents," 104.
[39] Geiter, "Notes and Documents," 104.

Docminique had other commercial and territorial interests and was connected with William Penn, the Proprietor of Pennsylvania, to the degree that in 1720 he provided bond for one of Penn's deputy-governors of Pennsylvania.[40]

The final of our quartet of Board of Trade members who were involved in the 1730 Anglo-Cherokee Treaty is James Brudenell.[41] Brudenell was appointed to the Board in May 1730, not long before the Anglo-Cherokee Treaty was signed. He would become one of the Board's more feckless members; Brudenell's *History of Parliament* biography notes that he "seldom attended" the Board of Trade after his appointment there.[42] Nevertheless, in 1730 he was present at every meeting that concerned the Anglo-Cherokee Treaty – perhaps because this was only months into his tenure on the Board.

Brudenell was born in 1687, the second son of the Lord Francis Brudenell. His life underscores the connections of the eighteenth century world. During the seventeenth century, the Brudenells were Roman Catholics and royalists under Queen Anne. James Brudenell was raised Catholic, but later converted to the Church of England along with his older brother the Third Earl of Cardigan, possibly through the influence of his cousin

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[40] Steele, *Politics of Colonial Policy*, 151-152.

[41] James Brudenell, c. 1687-1746. Member of Parliament for Chichester 1713-1715, Andover 1715-1734, Chichester 1734-1746; Commissioner of the Board of Trade 1730-1746; Master of the Jewel Office 1716-1730; Groom of the Bedchamber to George II 1733-1746; Gentleman of the Horse to George II 1737- 1746; Recorder, Chichester 1730-1746.

[42] R. S. Lea, "BRUDENELL, Hon. James (c.1687-1746)," *The History of Parliament: the House of Commons 1715-1754*, ed. R. Sedgwick (New York: Oxford University Press, 1970), accessed October 3, 2013. http://www.historyofparliamentonline.org/volume/1715-1754/member/brudenell-hon-james-1687-1746

and mentor the Duke of Shrewsbury.[43] Both brothers were sent to Italy to complete their educations, spending the years 1703 to 1706 in Rome and Venice with Shrewsbury and their tutor.[44] During Brudenell's adolescence, "on account of the War of the Spanish Succession, Rome had taken the place of Paris as a 'finishing' centre of culture and good society for the gilded youth of England."[45] An international component to their education was still expected, only moved in response to the international climate. While Shrewsbury did his best to be a steadying influence on his younger cousin, James Brudenell was "unmanageable;" he neglected his studies in favour of sightseeing, dinner parties and other entertainments.[46]

Despite his wild ways, Brudenell benefitted from a number of political appointments, including Master of the Jewel Office and Groom of the Bedchamber to George II. Appointments were no mean affair; by 1734, Brudenell brought in £2000 per annum from his and his wife's official emoluments.[47] He allegedly increased his income by less-than-honest means as well; "[a]fter he left the jewel office it was discovered that a quantity of royal plate that he had taken home had been seized by his creditors and was

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[43] Lea, "BRUDENELL, Hon. James"; Joan Wake, *The Brudenells of Deene* (London: Cassell, 1953), 195.
[44] Wake, *The Brudenells of Deene*, 191-197.
[45] Wake, *The Brudenells of Deene*, 190.
[46] Wake, *The Brudenells of Deene*, 192-193.
[47] Lea, "BRUDENELL, Hon. James."

being offered for sale."[48] On the other hand, he invested in the opera, acting as the director of the Royal Academy of Music from 1726 to 1728.[49]

Brudenell's interest in opera was not merely about personal musical enjoyment. The Royal Academy of Music commissioned operas from George Fredric Handel and other composers that were disproportionately set in the Orient. Ellen T. Harris argues that this reflects the commercial interests of the Academy's directors and financiers; they had a vested interest in the East Indian Trade and "presenting such operas publicly kept the image of the East before those in the audience who were responsible for voting the appropriations necessary to defend British trade and dominion."[50] Brudenell's involvement with the Royal Academy of Music illustrates how international trade and domestic political concerns influenced even the cultural productions in London. The threads of connection were everywhere.

These four members of the Board of Trade were professed Christians, although their confessional beliefs were not uniform. Brudenell was a converted Catholic and Docminique came from a family of Hugenots. There is no doubt that personal faith and Christianity shaped how they saw the world in which they lived.[51] However, there is no

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[48] Lea, "BRUDENELL, Hon. James"; Ellen T. Harris also references this incident. Ellen T. Harris, "With Eyes on the East and Ears in the West: Handel's Orientalist Operas," *The Journal of Interdisciplinary History* 36, no. 3, Opera and Society: Part I (Winter 2006): 423.
[49] Harris, "With Eyes on the East and Ears in the West," 423.
[50] Harris, "With Eyes on the East and Ears in the West," 436.
[51] For studies of the religious impulses of colonial and imperial expansion in the eighteenth century, see David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000); Colin Kidd, *The Forging of Races:*

evidence that either their personal faith or an overarching Christian mission formed any part of their deliberations on the Board regarding the 1730 Anglo-Cherokee Treaty. Overt Christian rhetoric and gestures are not apparent in the 1730 Cherokee visit to England. In contrast to previous and later Native American diplomatic visits to England, the Cherokee delegates did not receive Bibles or promises of Christian religious education, nor did they ask for these.[52] Therefore, although Christian religious practice and proselytization played an important role in British life, in British relations with Native Americans and British colonization efforts, it does not appear prominently in this study.

During the years 1717-1730 considered in this study, 14 other men also sat for various periods as members of the Board of Trade.[53] Because none of these men were

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Race and Scripture in the Protestant Atlantic World, 1600-2000 (Cambridge: Cambridge University Press, 2006); Carla Gardina Pestana, *Protestant Empire: Religion and the Making of the British Atlantic World* (Philadelphia: University of Pennsylvania Press, 2009); Andrew Porter, *Religion versus Empire? British Protestant Missionaries and Overseas Expansion, 1700-1914* (Manchester: Manchester University Press, 2004). For the role of religion in eighteenth-century British culture broadly, see Stefan Collini, Richard Whatmore and Brian Young, eds. *History, Religion, and Culture: British Intellectual History 1750-1950* (New York: Cambridge University Press, 2000); David Hempton, *Religion and Political Culture in Britain and Ireland: from the Glorious Revolution to the decline of empire* (Cambridge: Cambridge University Press, 1996); Richard H. Popkin and Mark Goldie, "Scepticism, priestcraft, and toleration," in *The Cambridge History of Eighteenth Century Political Thought*, ed. Mark Goldie and Robert Wokler (Cambridge: Cambridge University Press, 2006), 79-109.

[52] The Mohawk and Mahican delegates who visited England in 1710 were "courted" by Church of England officials. At least three of the delegates were Christian, and sought further Christian education or baptism. A young member of the later 1734 Creek delegation received lessons in the Lord's Prayer and other church instruction. (Alden T. Vaughan, *Transatlantic Encounters: American Indians in Britain, 1500-1776* (Cambridge: Cambridge University Press, 2006), 127, 159).

[53] Ashe, Edward (24 June 1720-20 Nov 1746); Bridgeman, Sir Orlando 2nd Baronet (8 Aug 1727-27 June 1737); Carey, Walter (8 Aug 1727-14 May 1730); Chetwynd, John

present for any of the meetings concerning the 1730 Anglo-Cherokee Treaty, they are taken in this study as part of the institutional background of the Board of Trade rather than treated individually.

The Board of Trade's day-to-day institutional operation was assured by its Secretary and clerks. These men, especially the Secretary, also strongly influenced and orchestrated the Board's work and institutional memory. The Secretary and clerks were appointed to their position. Members of the Board would nominate clerical candidates, and these men would be promoted according to seniority as older clerks retired.[54] Once in office, the clerks remained; they were far less vulnerable to political upheavals than were the Board of Trade Commissioners. If they wished, they could retain their clerkship at the Board for life, as Samuel Gellibrand did, serving for 50 years.[55] Other clerks served for more than 25 years.[56]

The Board of Trade Secretary's longevity was enhanced in the early eighteenth century by the treatment of the post as a family legacy. During the period considered in this study, 1717-1730, two men served as Secretary: William Popple and his son Alured

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(13 Dec 1714-1 June 1728); Cooke, Charles (13 Dec 1714-2 Jan 1721); Croft, Sir Archer 2nd Baronet (14 May 1730-5 May 1741); Frankland, Sir Thomas 3rd Baronet (1 June 1728-14 May 1730); Hobard, Sir John 5th Baronet (14 Oct 1721-8 Aug 1727); Holdernesse, Robert (Darcy) 3rd Earl of (31 Jan 1718-11 May 1719); Molesworth, John (5 Jan 1716-26 June 1720); Plumer, Richard (4 Sept 1721-8 Aug 1727); Pulteney, Daniel (13 July 1717-14 Oct 1721); Suffolk, Henry (Howard) 6th Earl of (12 May 1715-31 Jan 1718); Westmorland, Thomas (Fane) 6th Earl (11 May 1719-22 May 1735). (J. C. Sainty, *Office Holders in Modern Britain III Officials of the Board of Trade, 1600-1870* (London: The Athlone Press, 1974)).

[54] Basye, *The Lords Commissioners of Trade and Plantations*, 18-19.

[55] Clarke, "The Board of Trade at Work," 27.

[56] Clarke, "The Board of Trade at Work," 27.

Popple. They had been preceded in the role by the older William Popple, father of William and grandfather of Alured, who had been the first Secretary to the Board in 1696. In total, the Popple family held the post for 41 years.[57]

Thanks to their longevity in the Board office, the clerks and the Secretary came to know and enforce the "traditions of the office," following a "rigid and formal routine" in their work. [58] The clerks' duties were "to copy, to digest, and to collate all the information that came from the colonies, to draft replies to letters, to prepare reports to the secretaries of state and representations to the Privy Council."[59] While the Commissioners would be involved in initiating, editing or approving the reports, representations and letters that were sent from the Board of Trade office, the clerks' role in drafting these materials gave them considerable influence over their form and content. For his part, the Secretary was "entrusted with the opening and arranging of letters, he supervised the drafting of letters, reports and representations, he carried on routine correspondence with other departments and with the colonies over his own signature, he presented the heads of business at the meetings of the board."[60]

In these duties, the clerks and Secretary curated the information and matters that proceeded in front of the Board. They, along with the Board's solicitor, read and

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[57] Clarke, "The Board of Trade at Work," 26.
[58] Basye, *The Lords Commissioners of Trade and Plantations*, 14.
[59] Basye, *The Lords Commissioners of Trade and Plantations*, 14.
[60] Basye, *The Lords Commissioners of Trade and Plantations*, 14.

evaluated laws and petitions sent from the colonies,[61] paring the information and materials down to a manageable volume possible to be processed by the Commissioners and subsequently the Privy Councilors.[62] It was up to the Secretary and clerks' judgment, therefore, what materials were laid before the Commissioners and the manner in which they were represented.

In cases where there is ambiguity in the Board's records as to which papers were read with attention by different Commissioners, the work done by the clerks and Secretary means that these papers were nevertheless known to the Board institutionally if not to the Board members individually. The work of the clerks and Secretary assured that the Board office was a source of considered and synthesized information, not just a storehouse of papers.

The Commissioners' work and the papers they amassed to assist them in their duties illustrate the ways that empire and commerce, and the knowledge that these impulses produced, were intricately entwined. Officially, there was no hierarchy in the Board's mandate between the concerns of trade and concerns of the colonies. In effect, the time the Commissioners would spend on each of these areas would vary according to circumstance. Their work illustrates what P. J. Cain and A. G. Hopkins describe as "the

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[61] Michael G. Kammen, *A Rope of Sand: The Colonial Agents, British Politics, and the American Revolution* (Ithaca: Cornell University Press, 1968), 63.
[62] Kammen, *A Rope of Sand*, 63.

existence of a close relationship between the development of the home economy and imperialist forms of expansion."[63]

Commerce was a defining feature of the interconnected eighteenth century world, and was integral to the way that the participants of the 1730 Anglo-Cherokee Treaty, both British and Cherokee, saw the world, each other, and the agreement they were making. From the British perspective, most eighteenth-century commentators "agreed that they lived in a commercial age, an era in which the processes of production and exchange had dramatically increased the wealth, improved the living standards, and transformed the mores of western societies."[64] In this world, trade and international relations were frequently one and the same thing. The same was true among Native Americans. As Neal Salisbury states, amongst First Nations peoples, "for both individuals and communities, exchanges sealed social and political relationships."[65] In Cherokee society, each town's "Red Chief" was "charged with matters involving outsiders," including both trade and alliances.[66]

In the North American Southeast, South Carolinian and Cherokee individuals had come to know each other through trade. The Cherokee towns had longstanding trade networks and preferences prior to European incursion. In the late seventeenth century,

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[63] P. J. Cain and A. G. Hopkins, *British Imperialism: Innovation and Expansion 1688-1914* (London: Longman, 1993), 6.
[64] Langford, *A Polite and Commercial People*, 2.
[65] Neal Salisbury, "The Indians' Old World: Native Americans and the Coming of Europeans," *William and Mary Quarterly* 53, no. 3 (July 1996): 437.
[66] Robert J. Conley, *The Cherokee Nation: A History* (Albuquerque: University of New Mexico Press, 2005), 6.

Carolinian traders travelled into the Cherokee towns, prior to any official meeting between colonial and Cherokee delegates.[67] From the 1690s, the Cherokees had contact with South Carolina traders who ventured into the Appalachian Mountains to enslave them.[68] The colonial traffic in Cherokee slaves nearly stopped after a delegation of Cherokees complained to the South Carolina officials in Charles Town.[69] This practice "of European purchases of Indian slaves" marked Cherokee perception of the British colonists and "helped to cement some of the alliances and foster some of the animosities that dominated southern affairs for the next half century."[70]

By the early 1700s, the South Carolinian government perceived "inseparable connections between economic and diplomatic exchange" in the southeast.[71] Francis Nicholson, the colony's first royal governor, believed that "the deerskin trade was of little use to the well-being of South Carolina and the British empire unless it helped strengthen South Carolina's political hold on the Indians."[72] For a few brief years, the government asserted a monopoly on the trade. Factors stationed in particular Cherokee towns greatly increased South Carolinian understanding of the extent of the Cherokee towns and their

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[67] Steven J. Oatis, *A Colonial Complex: South Carolina's Frontiers in the Era of the Yamasee War, 1680-1730* (Lincoln: University of Nebraska Press, 2004), 9.
[68] John Phillip Reid, *A Better Kind of Hatchet: Law, Trade, and Diplomacy in the Cherokee Nation during the Early Years of European Contact* (University Park: The Pennsylvania State University Press, 1976), 23-25. For more on Native American slavery, see Joyce E. Chaplin, "Enslavement of Indians in Early America: Captivity without the Narrative," in *The Creation of the British Atlantic World,* ed. Elizabeth Mancke and Carole Shammas (Baltimore: Johns Hopkins University Press, 2005), 45-70.
[69] Oatis, *A Colonial Complex*, 35; Reid, *A Better Kind of Hatchet*, 27.
[70] Reid, *A Better Kind of Hatchet*, 27.
[71] Oatis, *A Colonial Complex*, 150.
[72] Oatis, *A Colonial Complex*, 232.

political structure, although this knowledge still remained misleadingly imperfect – not least because none of the South Carolina factors could speak any of the Cherokee dialects.[73] The public monopoly was short lived and succumbed in 1718 to resistance from Cherokees, merchants, planters and frontiersmen.[74]

The Cherokees for their part were not without options; traders from Virginia could undercut the prices of those from South Carolina and offered an appealing alternative.[75] South Carolina's regulation of the "Indian Trade" in the 1720s was an effort to ensure favourable and friendly relations with the Cherokees by controlling the behaviour of the traders who visited their towns, the South Carolinians with whom the Cherokees were most frequently in contact.[76]

It was not only in this "intercultural" North American realm that trade and diplomacy were so intertwined. For England in relation to Europe, "[d]iplomacy and commerce were inextricably mingled [particularly] for the Ambassadors and Secretaries of State who had constantly to weigh dynastic and strategic interests in a balance which responded to commercial considerations."[77] Furthermore, "every war during this period was in essence a commercial war, and to a marked extent a colonial war" and every period of peace, such as mid-1730, represented "the continuation of war by economic

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[73] Oatis, *A Colonial Complex*, 55; Reid, *A Better Kind of Hatchet*, 93.
[74] Oatis, *A Colonial Complex*, 154.
[75] Oatis, *A Colonial Complex*, 134.
[76] Oatis, *A Colonial Complex*, 231; Edson L. Whitney offers a concise summary of the different regulations and changes made to the Indian Trade during the 1720s in *Government of the Colony of South Carolina* (1895; repr. Baltimore: Haskell House Publisher Ltd., 1970), 105.
[77] Langford, *A Polite and Commercial People*, 176.

means."[78] Peacetime treaties of alliance were therefore important not just in view of anticipated conflict, but for present concerns of trade.

Imperial expansion in the Americas – both commercial and territorial – further emphasized the simmering tensions between European nations, not least because territorial expansion represented the acquisition of new resources, production and goods as well as new markets. Colonial settlement was a key factor for British territorial claims and for resource extraction and markets.[79] This was a period of increased British settlement in North America. For the mobile British population, the North American colonies offered an opportunity for "a better life for themselves and their families…or a last gamble to escape financial ruin."[80] Hence, settlement was bound up in the economic concerns of the empire. Immigration to North America also led to migration within and between the colonies.[81] In the Board of Trade's longer title, the colonies were figured as "Plantations." In seventeenth-century English usage, "'plantation' was equivalent to 'colony,' metaphorically emphasizing that people and perhaps societies could be

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[78] Langford, *A Polite and Commercial People*, 3.
[79] Elizabeth Mancke, "Negotiating an Empire: Britain and its Overseas Peripheries, c. 1550-1780," in *Negotiated Empires: centers and peripheries in the Americas, 1500-1820*, ed. Christine Daniels and Michael V. Kennedy (New York: Routledge, 2002), 236; Nancy Shoemaker, *A Strange Likeness: Becoming Red and White in Eighteenth-Century North America* (Oxford: Oxford University Press, 2004), 10.
[80] James Horn, "British Diaspora: Emigration from Britain, 1680-1815," in *The Oxford History of the British Empire, Volume II: The Eighteenth Century*, ed. P. J. Marshall (Oxford: Oxford University Press, 1998), 49.
[81] Horn, "British Diaspora," 29.

transplanted."[82] Plantations were conceptualized as subordinate to the home government in England.

The land on which British immigrants settled, on which colonial boundaries were drawn, was not an empty land. The increase of European incomers and their desire for property in land provoked conflict with the Indigenous peoples. However, the role of land in European-Indigenous conflict fluctuated over the years of English colonial encroachment. During the early decades of the eighteenth century, especially when it came to South Carolinian-Cherokee relations, struggles over land were marginal compared to trade issues. Certainly, in other locations in North America and in other decades, "land became central to the power dynamics between Indian and white communities."[83] Disputes over land would become a principal cause of the adoption of beliefs of irreconcilable racial difference by both Native Americans and British colonists in the 1760s.[84] However, in this earlier period, disputes that arose between colonists and Native Americans revolved around trade as much as land. And the disputes about land were disputes about the ways that incomers were treating the original inhabitants rather than the disputes about land as property that would arise. For example, some Cherokees sent diplomatic complaints to the South Carolina government (1693) while others

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[82] Peter E. Pope, *Fish into Wine: the Newfoundland plantation in the seventeenth century* (Chapel Hill: University of North Carolina Press, 2004), 1.
[83] Jane T. Merritt, *At the Crossroads: Indians and Empires on a Mid-Atlantic Frontier, 1700-1763* (Chapel Hill: University of North Carolina Press, 2003), 21.
[84] Shoemaker, *A Strange Likeness*, 141.

attacked South Carolinian colonists (1715) because of the abusive treatment they were receiving from traders and the continuation of colonial traffic in enslaved Cherokees.[85]

European nations jostled with each other to assert their claims for ownership and legitimate settlement in North America. One tool in this maneuver was treaties, both those conducted with other Europeans and those conducted with First Nations. The result was that while diplomatic and non-diplomatic encounters between British and Indigenous individuals responded to immediate lived concerns, the arena of European claims and politics was a background hum in the minds of British actors. The formal diplomacy that these officials pursued with Native Americans, especially framing devices in the agreements they made, were intimately entwined with European politics.

The world in which the 1730 Anglo-Cherokee Treaty was carried out was, from the British perspective, a world of men. The Board of Trade was composed of Members of Parliament and one member from the House of Lords; the first female MP would not be admitted until 1919, and women were excluded from the House of Lords until 1958. Within British society, the role of politics, diplomacy and treaty making were played by men. Only one woman had a role in the Plantations Office in these years: the "necessary woman." This was a woman employed by the Board as a general housekeeper for the offices. Although they marked her fee of 15 shillings in their regular accounts, the Board's Secretary or clerks did not name her in these records.[86] She remains for us as a

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[85] Reid, *A Better Kind of Hatchet*, 27.
[86] See for example TNA: CO 388/29 fol. 25, "Petty Expenses in the Service of the Lords Commissioners for Trade and Plantations, from Lady Day to Midsummer 1728":

shadowy figure, barely remarked by the men who wrote and archived the Board of Trade's records. She was a figure familiar with the dust that accumulated on the Board's least-referenced papers and the level of oil in the lamps and the mud on the floor tracked in from London's streets.

Things were different in Cherokee society where "women's councils…wield[ed] a significant amount of political power."[87] Yet no women were part of the delegation that travelled to London in the summer of 1730. This may be a reflection of British inability to see the role that women played – even when South Carolinians mounted diplomatic ventures into the Cherokee towns in 1725, they remained oblivious to the role of women. As John Phillip Reid notes in his study of early Cherokee-colonial trade diplomacy, "it would be several more years before Charles Town learned that women had an equal voice at Cherokee councils, a rather disturbing discovery that the British found convenient to ignore."[88] It may also have been that Cherokee women played their political role within the community and not with outsiders.[89] This "hidden" role of women may have occurred prior to the Cherokee delegates' embarkation for London, in councils with the departing male delegates, but it was not evident to the British.

"Necessary Woman's Bill --- 0-15-0"; TNA: CO 388/29 fol. 67, "Petty Expenses in the Service of the Board of Trade, from Mids˜: 1730 To Mic'mas following": "Necessary Woman --- 0-15-0".

[87] Conley, *The Cherokee Nation*, 6. See also Tom Hatley, *The Dividing Paths: Cherokees and South Carolinians Through the Era of Revolution* Chapter 5 "We Should be Well Set to Work to Take Notice of Women's Actions" (Oxford: Oxford University Press, 1993), 52-63.

[88] Reid, *A Better Kind of Hatchet*, 167.

[89] Theda Perdue, *Cherokee Women: Gender and Cultural Change, 1700-1835* (Lincoln: University of Nebraska Press, 1998), 91.

The Anglo-Cherokee Treaty occurred during a brief moment of peace in 1730, in Europe as in North America. This was a relative peace, because while all-out war was not underway, the tensions and fears of barely-ended conflicts remained. The 1730 Parliamentary session began on the 13th of January "with a royal speech setting out the benefits of the Treaty of Seville,"[90] the treaty which had drawn a tentative end to the conflict of the 1720s between the alliances of Hanover (Great Britain and France) and of Vienna (Austria and Spain). But despite this peace with Spain, Great Britain was not able to conclude a general settlement with Spain's ally Austria until 1731. While all-out war had abated, the situation remained uneasy.[91]

Not so distant memory also called up the War of Spanish Succession, which had spilled over to French and British conflict in North America. This war of dynastic succession, which became an excuse for imperial posturing in North America, was brought to a resolution with the Treaty of Utrecht in 1713. This treaty (actually a series of bilateral treaties between the several belligerents) radically altered relations between European countries on the North American continent and in Europe, as forts and territories changed European hands. Amongst other changes, Great Britain acquired France's claims over Hudson's Bay, Nova Scotia, Newfoundland and St. Kitts.[92] The connections between European diplomacy and colonial fates were intricately linked.

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[90] Jeremy Black, *Parliament and Foreign Policy in the Eighteenth Century* (Cambridge: Cambridge University Press, 2004), 56.
[91] Langford, *A Polite and Commercial People*, 18-19.
[92] Julian Hoppit, *A Land of Liberty? England 1689-1727*, The New Oxford History of England, (Oxford: Clarendon Press, 2000), 122.

In colonial North America, an atmosphere of tense, unstable peace pervaded during the early decades of the eighteenth century. The British colonies, notably South Carolina, remained wary of the Spanish, French and Indigenous peoples in their vicinities.[93] British colonists especially feared that French and Spanish colonial officials and missionaries would "influence" First Nations peoples to enact hostilities against the British settlers, as a way of continuing European squabbles on a new field and augmenting their own colonial claims.

Leading up to the 1730 Anglo-Cherokee Treaty, South Carolinian settlers and government officials were uneasy. Although they were officially at peace, their allies the Creeks and the Cherokees were at war with each other.[94] As the map in Figure 1 shows, the Carolinian settlements were located within or very near to Cherokee, Creek and Catawba territory. The Yamasee War, a concerted attack against the South Carolinian colonial settlements, was also too recent for South Carolinians and the colonial administration to ignore. Waged by Yamassee people and their allies between 1715 and 1717 against South Carolina traders and settlers, the war's effects lingered into the 1720s. The war devastated South Carolina's economy and infrastructure and strained relations with neighbouring British colonies which had been loath to assist the South Carolinians, mindful of their own security. [95]

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[93] Oatis, *A Colonial Complex*, 42-43.
[94] Oatis, *A Colonial Complex*, 245-248.
[95] Leonard J. Sadosky, *Revolutionary Negotiations: Indians, Empires, and Diplomats in the founding of America* (Charlottesville: University of Virginia Press, 2009), 16.

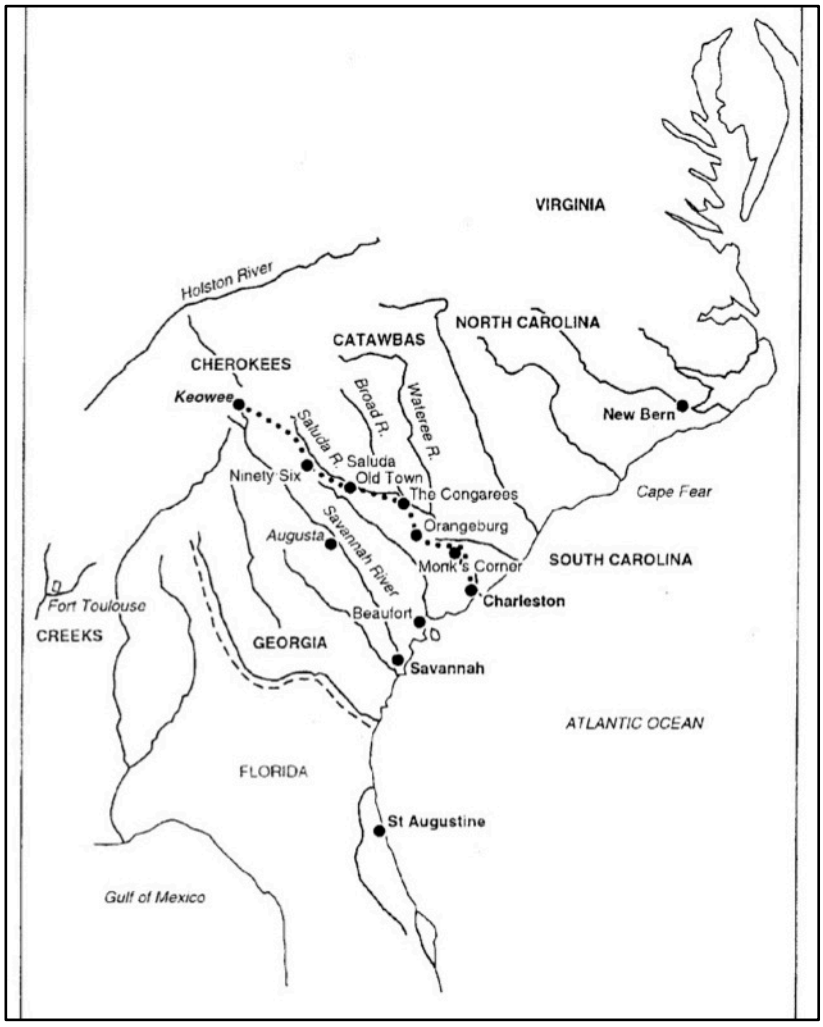

Figure 1: The Carolinas and Georgia
Source: John Oliphant, *Peace and war on the Anglo-Cherokee frontier, 1756-63* (Baton Rouge: Louisiana State University Press, 2001)

The steps that South Carolina had made to protect itself and reduce the conflict had reconfigured the colony's relationship with the Cherokees, Creeks, Yamasees and other Indigenous nations. In an effort to protect themselves against the Yamasees and their allies, the South Carolinians had courted and affirmed an alliance with the

Cherokees of the Lower, Middle, and Overhill towns in 1716.[96] However, not all of the Cherokee towns supported alliance with the South Carolinians; some of the Lower Cherokee towns supported the Yamasees by making their own attacks on South Carolinian traders.[97]

The conditions in the North American southeast during the period around the Yamasee War also promoted changing outlooks amongst the Cherokees, Yamasees, Catawbas and Creeks. These changing outlooks "altered the shapes of their own societies but also helped redraw the parameters of the region's ongoing imperial struggles."[98] Immediate, on-the-ground experiences of conflict or alliance, even individual face-to-face meetings, influenced individuals and groups to ally with one another for or against European incomers. These alliance set colonial fears alight – or allayed them – with the thought of Indigenous "fighting men" defending or attacking British, French or Spanish settlements, the imperial outposts in North America.

The Yamasee War also altered South Carolina's relationship with the British Crown. Settlers, fearing for their lives and the prosperity of their colony, had first looked to the colonial proprietors for help. But when it was not forthcoming, they turned to the British monarch. They believed that their compatriots in Great Britain had a duty of care

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[96] Oatis, *A Colonial Complex*, 112; Sadosky, *Revolutionary Negotiations*, 16.
[97] Oatis, *A Colonial Complex*, 136.
[98] Oatis, *A Colonial Complex*, 177. For a seminal study of the ways that Indigenous societies reacted to the changes provoked by European encroachment in the North American Southeast, including the Yamasee War, in the specific case of the Catawba, see James H. Merrell, *The Indians' New World: Catawbas and Their Neighbors from European Contact through the Era of Removal* (Chapel Hill: University of North Carolina Press, 1989).

towards them, and the colonial administrators in London were compelled to respond. The intercontinental links of security and governance were strong.

Carolina had been established as a proprietary colony by royal charter in 1663.[99] By 1730, South Carolina was a crown colony, but only recently so. In fact, the Board of Trade was still negotiating the acquisition of the final eighth portion of the colony from the one hold-out proprietor while the Cherokee delegates were in London. In 1720, still reeling from the Yamasee War, the colonial inhabitants of the southern district of Carolina, particularly those involved with its governance in the Commons Assembly, had rebelled against the proprietary government because they felt they were not being sufficiently protected from attacks.[100] They deposed the proprietary governor, and pleaded to be put under royal protection because they viewed royal protection "as a long-term solution for the province's security."[101] They believed that royal protection would ensure that they would receive the funds, armory and troops necessary to properly protect the South Carolinian settlers from attack, and in a timely manner. The Commons Assembly's repeated memorials on the subject were received by the Secretary of State and considered by the Board of Trade, who also met with a colonial agent on the subject.[102] In response to the colony's pleas, a royal governor was appointed.[103]

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[99] Oatis, *A Colonial Complex*, 12.
[100] Reid, *A Better Kind of Hatchet*, 126; Whitney, *Government of the Colony of South Carolina*, 38.
[101] Oatis, *A Colonial Complex*, 163.
[102] TNA: CO 5/387, p 35, 1719, "address of the representatives of the inhabitants of South Carolina to His Majesty to be under Royal Protection because of Indian hostilities and laxity of Proprietors"; TNA: CO 5/358/1, p 4, 11 August 1720, "Petition of the

In an era now of instantaneous electronic communication, we may wonder at the effectiveness of sending a shipboard letter to call on a king across an ocean for protection from immediate, local attacks, but evidently the South Carolinians saw the move as worthwhile. Indeed, in his study of seventeenth and eighteenth century transatlantic communication, Ian Steele argues that while we may now view eighteenth-century communications as ineffectively slow, this was not the perception of those who relied on it because "time perception is a learned social value derived from observable motion."[104] The Commissioners repeatedly instructed colonial governors to furnish them with reports in a regular and timely manner, and colonial governments were required to await royal assent of the acts they had passed.[105] If either complained about delays, it was not the ocean passage that they identified as the problem, but the governor's inattention to the task or British administrative neglect. Correspondents became familiar with the "rhythms of particular routes," including the seasonality of transatlantic passage.[106] Steele judges that for these correspondents, monthly correspondence was "perceived as adequate."[107] Often, governors and the Board of Trade would send multiple copies of the same letter by different vessels to ensure that messages would be received in the event of a wreck or delay to one of the ships.

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inhabitants of Carolina to be put under protection of Crown not authority of Lords Proprietors."

[103] Oatis, *A Colonial Complex*, 163, 165.

[104] Ian K. Steele, *The English Atlantic, 1675-1740: an exploration of communication and community* (New York: Oxford University Press, 1986), viii.

[105] Steele, "The Anointed, the Appointed, and the Elected," 107.

[106] Steele, *The English Atlantic*, 9-10.

[107] Steele, *The English Atlantic*, 10.

The expanse of the Atlantic Ocean, then, was no more a barrier to political relations and administrative oversight than the channel that separated England from Europe. Indeed, British diplomats on the continent frequently bemoaned the tardiness of instructions and correspondence – perhaps more so than officials in North America.[108] In the mid-eighteenth century, "[c]ommunication routes to London, not to mention other parts of Europe, were slow and unpredictable, which meant that diplomats could be left without orders for months at a time."[109] British envoys and diplomats were stationed at courts and commercial centres across Europe. They sent back information in letters and reports. This information was used by Parliament and the Privy Council to determine policy and effective action. Despite the distance created by the ocean, the relative predictability of transatlantic delivery speeds may have made this correspondence seem more efficient and effective in comparison.

When it came to knowledge about the Indigenous inhabitants of their colonially-claimed territories, Britons in the imperial centre, such as the Commissioners of Trade, relied on the movement of people for the diffusion of information. Alongside governors and diplomats were British merchants, missionaries, settlers and agents who became familiar with local situations and cultures and transmitted this information back to England either textually, through material objects or in person. The information they gathered was given validity because of their first-hand and professional knowledge.

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[108] Jennifer Mori, *The Culture of Diplomacy: Britain in Europe, c. 1750-1830* (Manchester: Manchester University Press, 2010), 27.
[109] Mori, *The Culture of Diplomacy*, 26.

British opinions about Native Americans differed according to the author's first-hand experience and access to information. In her study of British renderings of Native America, Karen Ordahl Kupperman has shown that contemporary writers "at home" in Britain "could be much more definite in their judgments than the confused and self-contradictory writings of those who struggled to make sense of their manifold observations and experiences."[110] First-hand experience forced Britons to look beyond the stereotypes and preconceptions that persisted amongst writers who had not travelled to North America. In this way, the people who moved between the regions of empire "remade both metropolitan and colonial spaces in the act of connecting them."[111]

For the Commissioners in an office such as the Board of Trade, the "manifold observations and experiences" of colonists and merchants were their principal sources of knowledge about Native Americans and the state of the British colonies, as will be explored in the following chapters. But the Commissioners, like other Londoners, would also have encountered representations of Native Americans in newspaper reports, fiction, sermons or displays of Native American material culture produced for London audiences.[112]

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[110] Karen Ordahl Kupperman, *Indians and English: facing off in early America* (Ithaca: Cornell University Press, 2000), x.
[111] David Lambert and Alan Lester, "Introduction," *Colonial Lives across the British Empire: imperial careering in the long nineteenth century*, ed. David Lambert and Alan Lester (Cambridge: Cambridge University Press, 2006), 8.
[112] Troy O. Bickham, *Savages within the Empire: Representations of American Indians in Eighteenth-Century Britain* (Oxford: Clarendon Press, 2005).

Information connected the public as well as those with administrative interests. During the eighteenth century, information was diffused into a newly prominent public realm. Newspapers, periodicals, and other printed texts circulated widely and transmitted information broadly. Cabinets of curiosity, exhibits of exotic specimens and the commercial market brought a tangible dimension to individual encounters with the empire and Europe.[113] Coffee houses, with the new forms of association and information distribution that they generated, have become symbols of this new eighteenth-century culture.[114] According to one count, by 1700 there were over two thousand coffee houses in London alone.[115] The coffee houses provided a new public place to discuss, debate and profit from new information. The discussions generated in these venues covered scientific developments, politics and commerce. In these spaces, new "cognitive and cultural norms" about credit, honour and information were generated.[116] In this way, information in the eighteenth century was integrally linked to commerce.

The Commissioners of the Board of Trade were men embedded in the flow of information, goods and money that circulated the British world. The Plantations Office that they steered was an unassuming, integral and integrated part of this world. The

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[113] Kupperman, *Indians and English*, 21.
[114] This symbolic importance of coffee houses in the scholarly literature is indebted to Jurgen Habermas' *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (1989); for more on the role of coffee houses in eighteenth-century British society, see James Livesey, *Civil Society and Empire: Ireland and Scotland in the Eighteenth-Century Atlantic World* (New Haven: Yale University Press, 2009).
[115] Livesey, *Civil Society and Empire*, 326.
[116] Livesey, *Civil Society and Empire*, 34; 29-30.

Cherokee delegates who came to the Board office in 1730 saw from the vantage point of the Cherokee towns the strands of trade, colonial settlement and imperial rivalry that now tied them to this expansive world. Colonial governors, settlers, traders and other mobile Europeans, returned information to the imperial centres while testing the extent of metropolitan control. As the Commissioners set to develop a treaty with the Cherokees in 1730, these many realities guided and complicated their work. The ideas of sovereignty, international obligations, and sources of informed advice developed during their years on the Board since 1717 all weighed on their actions and approach in 1730.

Chapter 3

Experience and Expectation: The Board of Trade's Work with European Treaties, 1717-1730

In this chapter, I will examine the Commissioners' ongoing and varied engagement with treaties conducted between Great Britain and European powers pragmatically recognized as sovereign during the years 1717 to 1730. As explained in Chapter One, this periodization best reflects the experiences on the Board of the four men who would initiate and conduct the 1730 Anglo-Cherokee Treaty. Delving into the influences on their conduct of the Anglo-Cherokee Treaty grounds us in the context from which that treaty emerged and illustrates the conceptual links – and distinctions – between British treaty making with European and Native American actors. European and North American treaty concerns crossed the Commissioners' desk virtually simultaneously, but the Commissioners' active role towards these treaties was different in accordance with their mandate. Therefore, I have chosen to address these treaty realms separately in this first stage of my analysis. Both arenas were integrated into the Commissioners' weekly, ongoing work, but required from them different responses.

The Commissioners implicitly enacted their understandings of treaties through their work for the Board of Trade. They did not make formal statements on the topic. Nevertheless, as Philip J. Stern has convincingly argued, the administrative archives of

institutions can reveal their ideological positions.[1] The Commissioners' responses to the various treaty issues that came before them provide indications of their perceptions of sovereignty and sovereign power in the international arena, and the purposes of treaties. My analysis will excavate these underlying and unstated assumptions.

This chapter presents the most prominent cases of the Board's interaction with European treaties during the years 1717-1730. These were moments when the Board members explicitly and often extensively dealt with treaty concerns – considering the trade advantages of proposed treaties, monitoring British and foreign compliance with existing treaties, and writing the instructions for treaty negotiators. To modern eyes, the cases under consideration in this chapter may seem like a jumbled assortment of minimally consequential treaties. But they were not so at the time. For the Commissioners of Trade, these were the moments when they gave more than a passing glace at treaties; this is not a selection of their work concerning treaties but the totality. The Commissioners devoted the time that they did to these treaties precisely because they were consequential: British trade markets, profits and resources all hung in the balance. I have chosen not to extend the temporal parameters of my study in order to address European treaties whose names have remained more prominent, because I am focused on creating a sense of the personal knowledge of the Commissioners who were involved in the 1730 Anglo-Cherokee Treaty. While institutional knowledge was certainly a strength of the Board of Trade, with its dense documentary holdings and secretarial staff's

[1] Philip J. Stern, *The Company-State: corporate sovereignty and the early modern foundation of the British Empire in India* (New York: Oxford University Press, 2011).

continuity, nevertheless, there is no guarantee that what appear to be important moments, from a present perspective, were as prominent in their time to the Commissioners' understandings of treaties and treaty making.

The cases examined in this chapter reveal important components of the Commissioners' working conceptions of treaties. Firstly, they demonstrate that the Commissioners pragmatically identified valid and necessary treaty partners, in whom they recognized sufficient sovereign power for treaty making. Such sovereign entities included cities and kings with whom Great Britain needed agreements to govern international trade. The Commissioners' work in these cases shows their use of treaties as means to manipulate and constrain the sovereign activity of another polity and thereby create – as an advantageous side effect – hierarchical relations between recognized sovereigns, without denying entirely the other's identity as a sovereign entity. This power jockeying would draw on treaties years or more after their signing. The power to enforce or disregard treaty stipulations was a further expression of sovereignty. The Board's work shows that while treaties were deployed as stable documents in some disputes, in others, pragmatic recognition of contingency and changing circumstances was written into the treaty or evident in its later interpretation and enforcement. Treaties in effect acted as living documents, amenable to changing circumstance. Finally, the Board's work with treaties shows very practical procedural processes by which sovereignty was recognized and the power to negotiate treaties was accorded, enacting assumptions about authority and legitimacy. These are questions that have been raised in the arena of British treaties

with Native Americans – to show how treaties were understood in the European realm offers a much more grounded understanding of British ideas of sovereignty.

The Commissioners' engagement with European treaties stemmed primarily from the Board of Trade's mandate to "encourage" British trade. Accordingly, as a Board they had a tightly focused view of European treaties and Britain's international relations; the Commissioners were only concerned with those articles or provisions of treaties which related to trade or colonial territorial boundaries. They ignored for example any articles that addressed dynastic and hereditary concerns, unless they touched directly on commerce or trade.

Underlying the Commissioners' work with treaties was an effort to use treaties to ensure British commercial advantages by limiting the actions or powers of their sovereign treaty partners – inasmuch as they could do so while their treaty partner similarly attempted to prioritize its own ambitions and larger balance of power considerations. In their seminal study of the explanatory impulses of empire, P. J. Cain and A. G. Hopkins defined imperialism by the "distinguishing feature" that "it involves an incursion, or an attempted incursion, into the sovereignty of another state."[2] What this chapter shows is that the "encouragement" of British trade, from the standpoint of the Board of Trade, was similarly tied to attempted incursions on the sovereignty of other states, and in turn to stave off those states' incursions on British sovereignty. The commercial and colonial

[2] P. J. Cain and A. G. Hopkins, *British Imperialism: Innovation and Expansion 1688-1914* (London: Longman, 1993), 43.

work of the Commissioners of Trade shows how they conceptualized sovereignty pragmatically and flexibly for the purposes of their office.

The term "treaty" could evoke multiple meanings in the Commissioners' work, which reflected the word's use in broader eighteenth-century British and European society. This is not a marginal point. The fluidity of understanding of "treaty" in the thought processes of those conducting and consulting treaties provides important insight. As Francis Paul Prucha argues, contemporary confusion about First Nations treaties "arises from reading back into the past our modern understandings of the word *treaty*."[3] Prucha highlights that

> in the colonial and early national periods of the United States history the term also had an alternative meaning … that was widely used; 'treaty' in that sense was the 'act of negotiating,' the discussion aimed at adjustment of difference or the reaching of an agreement, and by extension the meeting itself at which such negotiations took place.[4]

The Commissioners of Trade employed this meaning of treaty as action, as I will show.

Observations of the fluidity of the concept of "treaty" are important because they allow us to better understand what was going on in both North America and in Europe, and the conceptual framework of treaty making that was shared between these realms. Otherwise adroit scholars have perpetuated a contrary narrative. In particular, Patricia Seed emphasizes an early English definition of treaty as "writing" without accounting for the effect of English participation in the broader European realm on English

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[3] Francis Paul Prucha, *American Indian Treaties: the history of a political anomaly* (Berkeley: University of California Press, 1994), 24-25, emphasis original.
[4] Prucha, *American Indian Treaties*, 24-25.

understandings of "treaty." Other European languages derived "treaty" from face to face interaction. In inter-European relations, the English would have had to respond to the fluidity that accrued to the term and concept of "treaty" during the seventeenth and eighteenth centuries.[5] The danger is for scholars to perpetuate an over-emphasis on "treaty" as a written, textual document, rather than as an orally-conducted negotiation and meeting. Certainly Native Americans' oral understandings of treaties have come to prominence;[6] Europeans' own participation in oral cultural understandings must also be understood.

Most commonly in the Board's minutes and papers, themselves textual documents, references to "treaty" denote a textual document composed and signed in the past. This usage arises in cases where the treaty is being consulted or contested as a reference document to set the terms for commercial and territorial relations. "Treaties" in this sense appeared in the domestic as well as the international realm. For example, in the late seventeenth century, arranged marriages among the English elite were "often referred to as making an 'alliance' or 'treaty'."[7]

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[5] Patricia Seed, *American Pentimento: The Invention of Indians and the Pursuit of Riches* (Minneapolis: University of Minnesota Press, 2001), 23-24.
[6] See for example John Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government," in *Aboriginal and Treaty Rights in Canada: Essays on Law, Equity, and Respect for Difference*, ed. Michael Asch (Vancouver: UBC Press, 1997), 155-172; John F. Leslie, "The Importance of Oral and Extrinsic Historical Evidence in Understanding Indian Treaties," *Archivaria* 53 (Spring 2002): 122-129.
[7] Julian Hoppit, *A Land of Liberty? England, 1689-1727* (Oxford: Clarendon Press, 2000), 62.

The word "treaty" also appears in the Board's records to describe an action. For example, in 1719, Board of Trade Commissioner Martin Bladen was instructed "to enter into Treaty"[8] with the French Commissaries with whom he was to settle certain commercial stipulations of the Treaty of Utrecht of 1713. While I will examine Bladen's commissaryship in much more detail below, the meaning of "treaty" in his instructions was as both a confirmed agreement (the Treaty of Utrecht of 1713) and as a process, the "Treaty" he was to enter into with the French commissaries.

Bladen's letters to the Secretary of State, reporting on his progress (or lack thereof) with the French representatives, offer another way of thinking about "treaty" as process. In a report, Bladen informed the Secretary of State that he and the French commissaries had "proceeded to fix the method of treating,"[9] meaning that they had made a mutual decision on how to proceed in their negotiation. As Bladen continued to explain, "It was agreed to take the several matters separately and distinctly in the order the treaty of Utrecht has ranged them"[10] as the "method of treating." In these examples, the idea and term of "treaty" communicated a process, referring to the actions of diplomatic negotiation, rather than either the end result or the initial peace which they were clarifying.[11] This use of "treaty" as an action, not a result, is congruent with usage in North America, where a "treaty" was frequently the entire meeting between colonial

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[8] TNA: SP 78/166, p 8 verso, 1719, "Instructions for Martin Bladen Esqr., appointed His Majesty's Commissary to treat with the Commissary or Commissaries to be appointed by the most Christian King."
[9] TNA: SP 78/166, p 56, 1 November 1719 NS, Martin Bladen to Delafaye.
[10] TNA: SP 78/166, p 56, 1 November 1719 NS, Martin Bladen to Delafaye.
[11] TNA: SP 78/166, p 8-16, 1719, "Instructions for Martin Bladen Esqr…."

officials and First Nations representatives. The Commissioners were aware of this colonial usage, which will be shown in the following chapter. English usage of "treaty" as both an action and a result was linguistically and conceptually concurrent in the Board of Trade office.

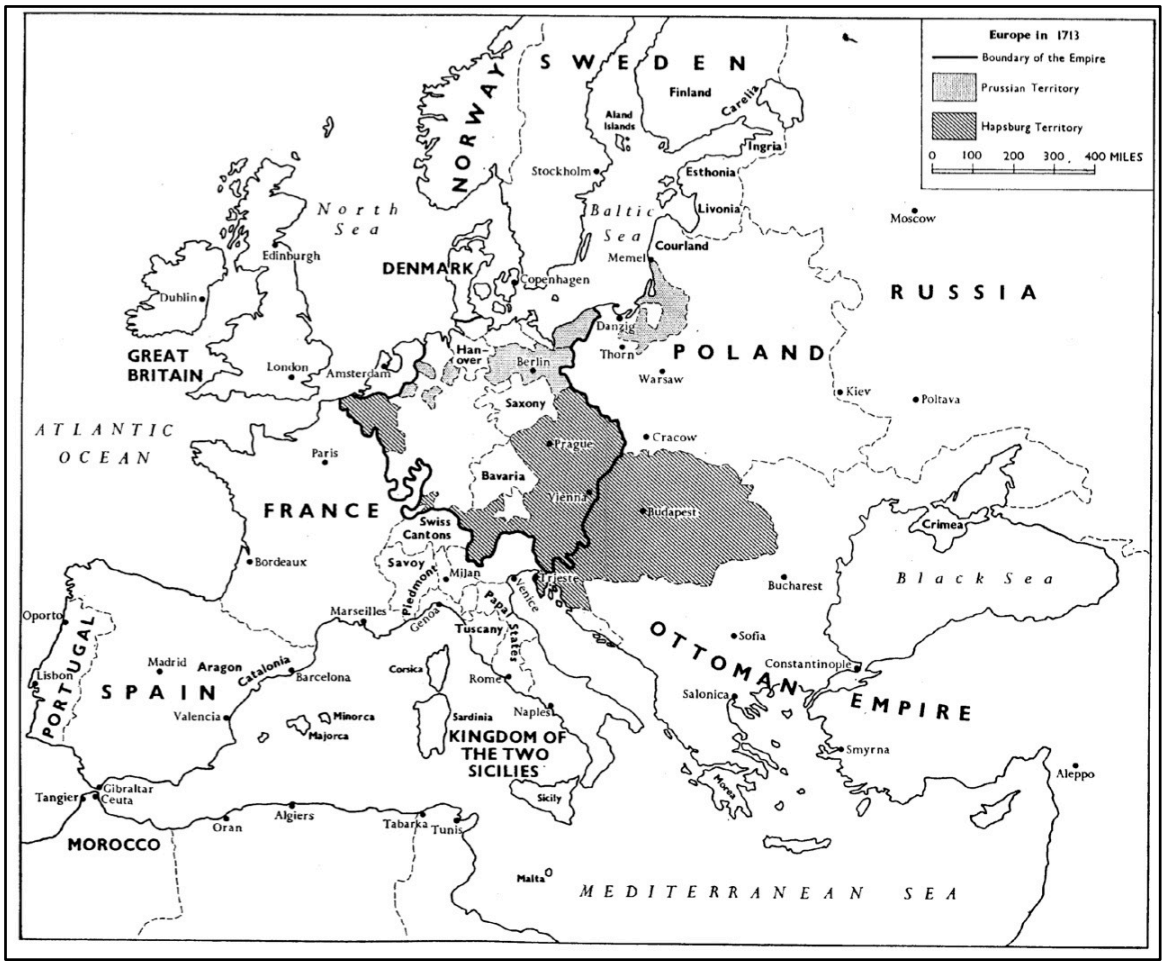

Figure 2: Great Britain and Europe in 1713
Source: David Bayne Horn, *Great Britain and Europe in the eighteenth century* (Oxford, Clarendon Press, 1967)

The Commissioners' principal engagement with European diplomacy circled the question of British trade interests. As the Commissioners sought to ensure British

commercial advantage, they conceptualized treaties as instruments to shape and manipulate relationships with other sovereign powers to Britain's commercial advantage. The European world they were part of is depicted in Figure 2. Despite linguistic, national and cultural differences, treaties between these many European parties were conducted according to the assumption of a shared system of procedure and expectation.

From the end of the seventeenth century, diplomatic behaviour in Europe was increasingly codified. A number of manuals were published instructing diplomats, ambassadors and Foreign Office officials of their functions and the "manner of negotiating."[12] Noted diplomatic historian Ragnhild Hatton "emphasized the importance of such manuals as a guide to the political thinking and practical state craft of the age."[13] Complementing the manuals, collections of treaties began to be published. These collections were intended especially for statesmen, diplomats and other individuals involved in international affairs. The largest of these collections, published in 1726 in Amsterdam, contained in twelve volumes "an assembly of documents drawn from sources all over Europe."[14] These publications were one indication that the Europeans engaged in interstate relations were starting to see treaty making across Europe as a

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[12] Robert Oresko, G. C. Gibbs and H. M. Scott, "Introduction," in *Royal and Republican Sovereignty in Early Modern Europe: Essays in Honour of Ragnhild Hatton,* ed. Robert Oresko, G. C. Gibbs and H. M. Scott (Cambridge: Cambridge University Press, 1997), 25.
[13] Oresko, Gibbs and Scott, "Introduction," 25.
[14] M. S. Anderson, *The Rise of Modern Diplomacy 1450-1919* (London: Longman, 1993), 96.

coherent tradition and system of legal precedent.[15] These developments have lead historians such as Dorothy V. Jones to identify a "European treaty system," labeling this culture and tradition of diplomacy and treaty making.[16] The Commissioners' work with treaties underlines this common treaty culture, as they proceeded according to assumptions about expected procedure and purposes of treaties and treaty making with different recognized sovereign entities.

In the rhythm of the Board of Trade's work, the Commissioners' attention to treaties was unevenly dispersed. Concerns about the French fishing off the coast of Newfoundland and Nova Scotia, contrary to treaties between England and France, arose a few times a year, over a period of several years. Other treaties occupied the Commissioners' time in a more concentrated way, repeated attention dispersed over a matter of weeks or months rather than years. In such cases, the Commissioners' attention to the treaties was much more clumped. Yet I still emphasize that this attention was "dispersed," because by the nature of their mandate, the Board always considered a variety of issues concurrently. In a day's work, the Commissioners might consider material from five or more of Britain's colonial or commercial regions. The Commissioners would focus their attention on one particular issue when they held a hearing, but even when they asked advisors to attend and provide expert advice, the Commissioners would hear their advisors and then move along to other, often completely

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[15] Anderson, *The Rise of Modern Diplomacy*, 96.
[16] Dorothy V. Jones, *License for Empire: Colonialism by Treaty in Early America* (Chicago: University of Chicago Press, 1982), 7.

unrelated, business. When constructing an analysis of the Commissioners' understandings of and interactions with treaties, the moments of their attention are brought together to provide a more linear view of how they perceived certain aspects of a treaty's functions. This creates a sounder way to track patterns and understandings, but should not be misunderstood as an oversimplification of the diversity of the Commissioners' daily, weekly, and yearly work.

The Commissioners' most frequent attention to treaties in the European realm revolved around other nations' perceived contraventions of trade agreements or commercially-important territorial agreements. The Board's attentiveness to trade "varied greatly," responding to the issues that were referred to them.[17] In the case of the French fishery in northeastern North America, these referrals came from the local governors; in the case of trade concerns in European territories, from the Secretaries of State.

The Commissioners' ongoing concern with efforts to get the French to abide by the fishing limits delineated in the Treaty of Neutrality of 1686 and the Treaty of Utrecht of 1713 provides an example of the ways that treaty concerns entered into the rhythms of the Board of Trade's work. Clearly, it was not enough to have made a treaty, but to convince the other party to the agreement to abide by it. It was further not enough to have them agree to abide by it, but to agree what the terms were by which to abide! These examples are instances where active power was necessary to enforce the aspects of

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[17] Arthur Herbert Basye, *The Lords Commissioners of Trade and Plantations Commonly Known as the Board of Trade 1748-1782* (New Haven: Yale University Press, 1925), 20.

treaties which would benefit the signatory – in this case, territorial fishing limits for the benefit of the British fishery and the limitation of the French.

In October of 1724, the Commissioners considered a report of French ships being driven away from a fishing station in Newfoundland according to 13th Article of the Treaty of Utrecht.[18] This followed a pattern of over six years of occasional complaints and reports from Newfoundland and Nova Scotia that the French were fishing in British waters. While these reports are few and dotted the Board's work occasionally, they were nevertheless a recurrent reminder of the power plays that manipulated treatied relationships. The reference to Article 13 in the 1724 complaint indicates the legal framework in which this commercial annoyance was understood, showing that the treaty had an ongoing relevance and expectation of compliance.

In their analysis of the situation, the Commissioners determined that the French fishing vessels' ability to contravene the treatied limits was the result of Britain's insufficient power of enforcement. In 1719, the Board read a copy of the Governor of New England's order to a ship captain "to seize all ships &c fishing contrary to the Treaty of Neutrality made between England & France in 1686."[19] In 1722, the Commissioners emphasized to the Secretary of State "the Necessity there is of building Forts on the Coast of Nova Scotia, particularly at Canço, to secure the Fishery there, from

[18] TNA: CO 391/33, p 266, 21 October 1724, Board of Trade Minutes.
[19] TNA: CO 391/28, p 190, 7 April 1719, Board of Trade Minutes.

the French & Indians."[20] The treaty had effective power, but only with active power behind it. The French could get away with contravening the treaty stipulations because of the distance between the Newfoundland waters and powerful European observers. As this example shows, it was not enough to have made an agreement, but to convince the other party to the agreement to comply with it. For their part, the Commissioners included explicit directions in their instructions to all of the colonial governors that these officials, and the colonies under their command, were to respect the Treaty of Neutrality made in 1686 with the French.[21]

The Commissioners' use and understanding of treaties as reference documents in the scope of their work on the Board of Trade arose several times in the period under study. Examining the Commissioners' investigation into a new Swedish regulation regarding the measurement of ships in 1724 provides a detailed example of their use of

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[20] TNA: CO 391/31, p 107, 23 May 1722, Board of Trade Minutes. British officials and inhabitants believed that the Mik'maq and other Indigenous inhabitants were French allies or under French influence into the 1720s.

[21] See for example TNA: CO 5/400, p 78-79, 30 August 1720, " Instructions for Francis Nicholson, Esq, His Majesty's Capt^{n} General and Commander in Chief in and over His Majesty's Province and Territory of Carolina in America," Article 69; TNA: CO 5/916, p 102-104, 20 March 1728, "Instructions to William Burnet Esqr Our Captain General and Governor in Chief in & over Our Province & Territory of the Massachusets Bay in New England in America," Article 66; TNA: CO 5/996, p 48-50, 31 May 1720, "Instructions for Our Trusty & Welbeloved William Burnet Esqr; Our Captain General & Governor in Chief in and over Our Province of Nova Ceasaria or New Jersey in America," Article 26; TNA: CO 5/996, p 238-240, 28 September 1727, "Instructions for Our Trusty and wellbeloved John Montgomery Esq^{r} Our Cap^{t} General and Gov^{r} in Chief in and over Our Province of Nova Casarea or New Jersey in America," Article 93; TNA: CO 5/1125, p 69-70, 28 September 1727, "Instructions to Our Trusty and Wellbeloved John Montgomery Esq^{r} Our Cap^{t} General and Governor in Chief of Our Province of New York and the Territories depending thereon in America," Article 100.

treaties as guidelines for ongoing commercial relationships, which could be used to arbitrate emerging trade questions.

The question of ships' measures was not a parochial concern: "because of some regional differences in the basic formula, the measured tonnage of any given vessel could vary slightly from port to port."[22] For vessels measured in British and Swedish ports, there was "a Difference of about Half an Inch between an English & Swedish Foot."[23] Such variations could have larger effects on the harbour dues calculated according to tonnage.[24] Penalties would be exacted on vessels that under-reported their tonnage. In 1724, the merchants trading to Sweden explained to the Board of Trade that they "run the Risque of paying a penalty of 50 Dollars for a Difference in their Measurement."[25] British merchants' profits were therefore tied to the question of ships' measures.

The Commissioners frequently called on the expertise and opinions of merchants regarding the trade implications of treaties. In the case of the contested Swedish measures, the Commissioners' first response was to call on several merchants trading to Sweden for their opinions.[26] Merchants, in the eighteenth century, were "wholesale

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[22] John J. McCusker, "The Tonnage of Ships Engaged in British Colonial Trade during the Eighteenth Century," in *Essays in the Economic History of the Atlantic World* (New York: Routledge, 1997), 52.
[23] TNA: CO 391/33, p 133, 15 May 1724, Board of Trade Minutes.
[24] McCusker, "The Tonnage of Ships," 69.
[25] TNA: CO 391/33, p 133, 15 May 1724, Board of Trade Minutes.
[26] TNA: CO 391/33, p 57-58, 10 March 1724, Board of Trade Minutes.

traders who had dealings with foreign countries" not just anyone who traded goods.[27] A definitive characteristic of "Merchants" was their importation and exportation of goods to "remote countries" – territories about which the Commissioners needed first-hand information.[28] Most merchants did not have "strong political convictions;"[29] instead of engaging in partisan politics, they "used politics primarily to safeguard their commercial, social and personal interests."[30] By coming into the Board office or sending memorials, merchants enjoyed one avenue to affecting public policy and the interpretation of international legal frameworks for trade.

Following their first meeting with the merchants trading to Sweden, the Commissioners ordered that the Secretary of State provide them with "Copies of all the Treaties that have been made between this Kingdom & Sweden since 1662."[31] This request indicates that they saw that the solution to their problem – one of international trade relations – lay in the legal diplomatic agreements that had been made between the two countries or at minimum should comply with existing treaties. Together with their merchant informants, the Board members ultimately considered just one article (the 12th article) of a treaty signed between Great Britain and Sweden in 1720, along with the

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[27] David Hancock, *Citizens of the World: London merchants and the integration of the British Atlantic community, 1735-1785* (Cambridge: Cambridge University Press, 1995), 9-10.
[28] Hancock, *Citizens of the World*, 9-10.
[29] Hancock, *Citizens of the World*, 42.
[30] Hancock, *Citizens of the World*, 42.
[31] TNA: CO 391/33, p 64, 13 March 1724, Board of Trade Minutes.

Attorney General's legal report on this article.[32] They had identified the article that regulated the issue in question.

The Commissioners next called on expert advice to determine the implications of the current complaints. When they had addressed a similar question two years earlier, the Commissioners had turned to the Custom office to know what duties on measurements were being imposed on Swedish and other foreign vessels in British ports, as a point of comparison and as to whether they conformed to this 12th article of the 1720 treaty.[33] Now, the Commissioners were able to draw on this information, and take in the merchants' expert advice. The Commissioners concluded their meeting with the merchants by agreeing with the merchants' request that they defer their report until the merchants had received replies from their correspondents in Sweden, which would take up to a month.[34]

This sequence indicates that the Commissioners cross-checked the merchants' advice and observations against the existing treaties. The treaties were not the final word on the matter; they were used as support documents in conjunction with information about the particulars of the current situation. In this case, the 1720 Anglo-Swedish treaty provided the official guidelines for the interactions between Great Britain and Sweden, but the Commissioners relied on the merchants' knowledge of the actual state of affairs to

[32] TNA: CO 391/33, p 72, 20 March 1724, Board of Trade Minutes.
[33] TNA: CO 391/31, p 46, 28 March 1722, Board of Trade Minutes.
[34] TNA: CO 391/33, p 72-73, 20 March 1724, Board of Trade Minutes.

determine their practical response. Thanks to the merchants' advice, the Commissioners judged that it would be preferable for British ships to be measured in Sweden.[35]

The Commissioners again deferred to their merchant advisors' expertise in the case of their investigation into a possible treaty with Hamburg in 1728. When the merchants themselves requested that the Board wait until the merchants had received further information from their correspondents, the Board agreed. In this case, what was at issue were proposed regulations to be made by the King of Denmark regarding wrecks and ships stranded on the Danish Territories in the Elbe.[36] The Commissioners proceeded by calling for "Hamburgh Merchants" (that is, merchants who traded to Hamburg) to attend the Board, and by contacting the governor of the Hamburg Company. They asked the merchants "to consult with what Persons they think proper and let the Board have their Sentiments upon this Subject as soon as possible."[37] Over a month later the merchants attended the Board to present their answer.[38] Subsequently, the Commissioners informed the Secretary of State that they were "desirous of deferring their Representation for some Time, in Expectation of an Answer from some Merchants at Hambrough upon this subject."[39] Once again, the Commissioners validated the knowledge of experts on the ground, familiar with the contingencies of the situation, when it came to the question of how to interpret and enforce treaty stipulations for the benefit of British trade.

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[35] TNA: CO 391/33, p 132-133, 15 May 1724, Board of Trade Minutes.
[36] TNA: CO 391/37, p 53, 27 February 1728, Board of Trade Minutes.
[37] TNA: CO 391/37, p 58, 29 February 1728, Board of Trade Minutes.
[38] TNA: CO 391/37, p 95, 5 April 1728, Board of Trade Minutes.
[39] TNA: CO 391/37, p 96, 5 April 1728, Board of Trade Minutes.

In other cases, new treaties could result from trade grievances that came to the Commissioners' attention. In 1720 and 1721, the Board members spent time considering a proposed treaty of commerce with the city of Danzig (Gdansk, Poland). In the eighteenth century, "Dantzig, though legally subject to the Polish republic and geographically surrounded by Polish territory which served as its economic hinterland, was in practice almost an independent state."[40] Britain's willingness to conduct the sovereign business of treaty making with Danzig shows how this city could be at one and the same time a subject and a sovereign state. In 1720, when the issue arose, the Commissioners and their informants, Sir Randolphe Knipe and other merchants trading to Danzig, turned to a treaty signed with Danzig in 1706 as a model and frame of reference. When the issue returned in 1721, it centered on their evaluation of a new proposed treaty of commerce.

In 1720, the Secretary of State referred the matter to the Board, with an extract from a letter from the British Resident[41] at Danzig, along with a copy of the treaty of commerce between England and Danzig of October 1706.[42] The Commissioners did not take immediate action – indeed, they took no action at all on the matter until they were chided by the Secretary of State, who sent them a letter "desiring Dispatch" for their

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[40] David Bayne Horn, *Great Britain and Europe in the Eighteenth Century* (Oxford: Clarendon Press, 1967), 190.
[41] "Resident" was a diplomatic title that "conferred a higher status than the older term 'agent'" (Anderson, *The Rise of Modern Diplomacy*, 83.)
[42] TNA: CO 391/29, p 77-78, 3 February 1720, Board of Trade Minutes.

opinion on the treaty.[43] Spurred to action, the Commissioners wrote to the Eastland Company, a chartered company trading to Scandinavia and the Baltic, for some of their members to attend the Board.[44] The members of the Eastland Company did not attend,[45] which is a reminder of the limits of the Board's institutional power – they could request, but not compel merchants and others to attend their meetings or provide them with advice and information.

Having been stood up by the Eastland Company – the Board's Secretary recorded that "the Eastland Merchants who were expected not attending" – the Commissioners turned to other informants.[46] The Commissioners had the Secretary write to Sir Randolphe Knipe, "to signify the Board's Desire of speaking with him, at Eleven of the Clock on Tuesday Morning next, and with such other Gentlemen concern'd in the Trade to Dantzwick as he shall think fit in relation to the said Treaty & the Alterations propos'd to be made therein."[47] Knipe and some other unnamed "Gentlemen trading to Dantwick" duly attended as requested.[48] Knipe was a London merchant with "interests in both the

[43] TNA: CO 391/29, p 198, 14 June 1720, Board of Trade Minutes.
[44] TNA: CO 391/29, p 198, 14 June 1720, Board of Trade Minutes.
[45] TNA: CO 391/29, p 205, 16 June 1720, Board of Trade Minutes.
[46] TNA: CO 391/29, p 205, 16 June 1720, Board of Trade Minutes.
[47] TNA: CO 391/29, p 205, 16 June 1720, Board of Trade Minutes.
[48] TNA: CO 391/29, p 208-212, 21 June 1720, Board of Trade Minutes.

Baltic and the Mediterranean."[49] He was involved in the Madagascar slave trade and in this capacity was again an informant to the Board in 1724.[50]

At the meeting, the Commissioners asked the merchants "whether His Majts Subjects residing at Dantzwick enjoy the same privileges as they do at Konningberg, Riga & other places in those parts, & as other Nations enjoy at Dantzwick."[51] The merchants' reply focused in particular on a Duty on Housekeepers (what we would now call house holders or home owners) and on the fact that British merchants did not have the liberty of trading from Danzig up further into Poland, as well as grievances regarding the courts and the lighters at Danzig.[52] These complaints all had to do with the merchants' ability to turn a profit, running the gamut from access to markets to (seemingly) prejudicial taxes suffered by particular merchants. These were the issues that these individual merchants interviewed by the Commissioners felt were most important. The Commissioners' view of the matter was therefore coloured by these men, who had this opportunity to express their individual or self-serving concerns as well as a general opinion of British merchants trading in Danzig. The Eastland Company may have had different grievances (or none at all) but they did not offer their opinion to the Board

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[49] G. D. Ramsay, "The Smugglers' Trade: A Neglected Aspect of English Commercial Development," *Transactions of the Royal Historical Society* Fifth series, 2 (1952): 133-134.
[50] Virginia Bever Platt, "The East India Company and the Madagascar Slave Trade," *William and Mary Quarterly* 26, no. 4 (October 1969): 556; James A. Rawley, "Richard Harris, Slave Trader Spokesman," *Albion: A Quarterly Journal Concerned with British Studies* 23, no. 3 (Autumn 1991): 448-449.
[51] TNA: CO 391/29, p 209, 21 June 1720, Board of Trade Minutes.
[52] TNA: CO 391/29, p 210-211, 21 June 1720, Board of Trade Minutes.

members. The influence of these few merchants on British trade policy, in a Board looking to expand British trade, illustrates the relationship of "economic activity and political authority" signaled by Cain and Hopkins in their seminal account of the economic "gentlemanly capitalist" drives of empire.[53] The Commissioners of Trade depended on these merchants for information, but the merchants in turn benefitted from this access to influence policy.

The Board had further business regarding Danzig the following year, business which adds nuance to our view of how the Commissioners relied on treaties in the context of European trade disputes. In October 1721, the Commissioners received a letter, forwarded to them by the Secretary of State, relating to a treaty of commerce with Danzig, along with papers from the Resident at Danzig and the Envoy from Poland.[54] At the meeting where they looked at these papers, the Commissioners also finally read a letter from the Secretary of State from months earlier which transmitted the draft of a treaty for their opinion.[55] In the days that followed, the Commissioners considered the letters and papers and "made a progress." They also called on the Attorney General and Knipe, once again.[56] When Knipe, accompanied by another merchant, attended the Board, the discussion revolved around the two issues which had been raised as principal concerns the previous year: "vizt The allowing to the British Merchants the Liberty of

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[53] Cain and Hopkins, *British Imperialism.*
[54] TNA: CO 391/30, p 326, 25 October 1721, Board of Trade Minutes.
[55] TNA: CO 391/30, p 326-327, 25 October 1721, Board of Trade Minutes.
[56] TNA: CO 391/30, p328-329, 26 October 1721, Board of Trade Minutes; TNA: CO 391/30, p 331, 1 November 1721, Board of Trade Minutes.

carrying Goods from Dantzigg into other Countries…and the exempting British Inhabitants House Keepers at Dantzigg from certain Taxes or Impositions laid upon Burghers & other House keepers there."[57] Based on the verbal and later written answers from the two merchants to these questions, as well as a considered look at the articles of the treaty itself, the Board completed its representation on the subject.[58]

The Commissioners' responses to the question of trade regulations and treaty making with Danzig illustrate the typical patterns of the Commissioners' engagement and response to treaties: the matter being referred to their office, their consultation with legal authorities and with merchants more familiar with the particular circumstances, the delays and the ultimate creation of a report. The Commissioners had an institutionalized way of proceeding – and the 1730 Anglo-Cherokee Treaty would follow this pattern of procedure.

The Commissioners adhered to this pattern when they evaluated the "project" of a treaty of commerce with Venice in the spring of 1718. The Board's minutes of their consideration of this projected treaty are perfunctory, yet they demonstrate the common procedures enacted by the Commissioners in this type of situation. The Commissioners called on and consulted with different experts on the matter. In this case, they consulted with the former British Resident at Venice. The Commissioners also referred one article of the proposed treaty to His Majesty's Advocate General for his expert legal opinion.[59]

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[57] TNA: CO 391/30, p 333-334, 3 November 1721, Board of Trade Minutes.
[58] TNA: CO 391/30, p 350, 24 November 1721, Board of Trade Minutes.
[59] TNA: CO 391/27, p 209, 24 April 1718, Board of Trade Minutes.

The Secretary of State later hastened the Board when he informed them on May 6, 1718, that the King wished to see the project and the Board's observations on it.[60]

These case studies show the diversity of entities whose sovereignty the Commissioners recognized and who they considered to be legitimate (and desirable) treaty partners. In their day-to-day work, the Commissioners exhibited conceptual and practical fluidity in their manner regarding treaties. Their application of the fundamental assumptions guiding treaty making were flexible: they acknowledged cities, countries, kings and other polities as suitable treaty partners; they recognized a variety of individuals as empowered to conduct treaties; and the very process of negotiation and ceremony varied according to circumstances. Danzig and Hamburg were cities, yet recognized as appropriate treaty partners. In addition, in the Board's minutes concerning the proposed treaty with Danzig, the Secretary recorded the treaty to be with the *City* of Danzig, rather than with a political leader or figurehead. Looking ahead to the North American context, it is worthwhile underlining the flexibility in the category of who was an appropriate and legitimate treaty partner. This fluidity is evident in the treaties with Europeans and with Native Americans that the Commissioners examined.

This evident flexibility of the category of appropriate (sovereign) treaty partners aligns with contemporary sovereignty theorists' assertions that sovereignty is a social construct. As Thomas J. Biersteker and Cynthia Weber argue, "states' claims to sovereignty construct a social environment in which they can interact as an international

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[60] TNA: CO 391/27, p 226, 6 May 1718, Board of Trade Minutes.

society of states, while at the same time the mutual recognition of claims of sovereignty is an important element in the construction of states themselves."[61] As Daniel Strang argues, in this framework "Sovereignty is viewed… as a social status that enables states as participants within a community of mutual recognition. From this perspective, a focus on the state misleads when it treats political actors as natural or exogenous, while directing attention away from the larger community and culture that constructs states with specific capacities and warrants."[62] Treaties are an important avenue by which this socially constructed sovereignty is recognized, because the very process requires two (or more) parties to mutually validate the agreement and each other's participation in it.

Each of the incidents discussed above took up the Commissioners' attention and time, and offer small windows into the workings of European treaties in the Commissioners' minds. One incident provides a much larger window: Martin Bladen's commissaryship to France in 1719 to settle certain commercial and territorial articles of the Treaty of Utrecht of 1713. The Treaty of Utrecht, actually a series of treaties between the different belligerents, had drawn to an end the War of Spanish Succession (1701-1714). These agreements had reshaped the European and North American territorial maps and guaranteed certain lines of succession in the royal families of Europe.[63] The

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[61] Thomas J. Biersteker and Cynthia Weber, "The Social Construction of State Sovereignty," in *State Sovereignty as Social Construct*, ed. Thomas J. Biersteker and Cynthia Weber (Cambridge: Cambridge University Press, 1996), 1-2.
[62] Daniel Strang, "Contested Sovereignty: the Social Construction of Colonial Imperialism," in *State Sovereignty as Social Construct,* ed. Thomas J. Biersteker and Cynthia Weber (Cambridge: Cambridge University Press, 1996), 22.
[63] Hoppit, *A Land of Liberty?*, 122.

agreement between Great Britain and France contained 30 articles with stipulations such as the transfer of French-claimed territories to Great Britain, including Hudson Bay, Nova Scotia, Newfoundland and St Kitts, and French support for the Hanoverian succession in Great Britain.[64] This treaty was supposed to be the arbiter of French and British colonial limits in North America, but as we have seen, the British were perturbed by French encroachments on the fishing on the coast of Nova Scotia and Newfoundland, which cut into British fishing and commerce.[65]

In 1719, Martin Bladen, then a member of the Board of Trade for two years, was appointed commissary for treating with France "relating to the respective Limits of the Plantations of the Two Crowns in America."[66] To carry out this role, Bladen received detailed instructions and royal powers. He then travelled to Paris to meet with his French counterparts. The process by which he was accredited and instructed for these negotiations, and his diplomatically frustrating experiences in France, show the European treaty system in action.

The Commissioners learned on July 21, 1719 that the Lords Justices had appointed Bladen to "go to the Court of France, to settle such matters relating to the

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[64] Hoppit, *A Land of Liberty?*, 122.
[65] For discussions of how the British and French negotiation of the relevant articles of the Treaty of Utrecht did not preclude future disputes, see J. K. Hiller, "Utrecht Revisited: The Origins of French Fishing Rights in Newfoundland Waters," *Newfoundland Studies* 7, no. 1 (1991): 23-39 and John G. Reid, "Imperialism, Diplomacies, and the Conquest of Acadia," in *The Conquest of Acadia, 1710: Imperial, Colonial, and Aboriginal Constructions,* ed. John G. Reid et al. (Toronto: University of Toronto Press, 2004), 101-123.
[66] TNA: CO 391/28, p 305, 21 July 1719, Board of Trade Minutes.

respective Limits of the Plantations of the Two Crowns in America."[67] The Commissioners were thereby charged with preparing Bladen's powers and instructions. Accordingly, the Commissioners focused on collecting information about the colonial boundaries ("limits"). They called on colonial agents and merchants, and looked at the colonies' charters and patents that they had in their records.[68] After many meetings and repeated considerations, the Commissioners finalized their draft of Bladen's commission and instructions on August 26, 1719.[69] While for the most part I have emphasized that the Commissioners' engagement with European treaties took time, in this case this seems to be a speedy turn-around after a month of concerted effort. Indeed, it was so speedy that although the Commissioners prepared a circular letter to the governors of the plantations in North America, asking them about the territorial boundaries and to provide maps, the Commissioners had completed Bladen's instructions before the colonial officials could have received their letters, let alone had time for their replies to reach England.[70] Presumably, the Commissioners judged that the information provided by the colonial agents already in London and by the documents in Board of Trade's archives was sufficient to make the British case in Paris.

Four Commissioners signed the Board of Trade's representation relating to Bladen's powers and instructions, including Bladen himself. Amongst these signatories, Bladen was the most active Board member. He was the most involved of the

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[67] TNA: CO 391/28, p 305, 21 July 1719, Board of Trade Minutes.
[68] TNA: CO 391/28, p 326-327, 6 August 1719, Board of Trade Minutes.
[69] TNA: CO 391/28, p 367, 26 August 1719, Board of Trade Minutes.
[70] TNA: CO 391/28, p 328, 7 August 1719, Board of Trade Minutes.

Commissioners who carried out the information gathering and evaluation process necessary to prepare his instructions. As Ian Steele notes, Bladen essentially prepared his own instructions.[71] In his letter acknowledging his appointment, Bladen showed initiative in having consulted the treaty and determined both where further negotiation would be required, and where further information would also be necessary.[72] Bladen knew that some of this information was among the papers held in the Board of Trade offices and suggested an official request be made for the Board of Trade's assistance.[73] Therefore, not only did Bladen receive the information outlined in his instructions, he was also familiar with all of the information that had been drawn on to prepare the instructions, as well as the decision-making and prioritization processes that had led to his instructions as they were written.

The Commissioners reported to the Lords Justices that they had conducted a thorough fact finding for these instructions. The Commissioners apologized for not having prepared the instructions more quickly, "by reason of the Multiplicity of Books & Papers which were necessary to be read & well consider'd upon this Subject; besides, that We were oblig'd to consult with several Persons" and to wait for information from the Hudson's Bay Company, the African Company, and others. They also "perus'd & consider'd the several Charters granted" to the British colonies in North America. As a result of their thorough search for information, the Commissioners realized that their

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[71] Ian K. Steele, *Politics of Colonial Policy: the Board of Trade in colonial administration 1696-1720* (Oxford: Clarendon Press, 1968), 165.
[72] TNA: SP 78/166, p 2-3, 3 July 1719, Martin Bladen to [Delafaye].
[73] TNA: SP 78/166, p 3, 3 July 1719, Martin Bladen to [Delafaye].

office did not as yet have sufficient maps or other proofs to stake British claims in a boundary negotiation with France for the plantations other than Hudson's Bay and Nova Scotia. Because they lacked this precise geographic information, they did not accord Bladen power to negotiate these other boundaries.[74]

Bladen received incredibly detailed instructions for his work in Paris. For each article that would be under negotiation, he was given specific instructions and expectations of what was to be determined in the agreement. For example, his instructions outlined carefully the boundaries he was to negotiate in Hudson's Bay and Nova Scotia, and cautioned him to make sure that the agreement he made did not inadvertently preclude future boundary negotiation on the part of Britain in other territories covered by the Utrecht treaty.

While in Paris, Bladen was to be in communication with the Secretaries of State, and was not to deviate from his instructions without consulting them, although this direction contained the understanding that not all eventualities could be anticipated in his instructions.[75] The role of the Board of Trade was also remarked, as Bladen was to give a

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[74] TNA: SP 78/166, p 21-23, 26 August 1719, "Representation of the C. of Trade relating to Mr. Bladen's Powers & Instructions." On the importance of geographic, and especially cartographic information for British and French negotiators of the Nova Scotia/Acadia boundaries, albeit at a later conference, see Jeffers Lennox, "Nova Scotia Lost and Found: The Acadian Boundary Negotiation and Imperial Envisioning, 1750-1755," *Acadiensis* 40, no. 2 (Summer/Autumn 2011): 3-31.

[75] TNA: SP 78/166, p 15 verso, 1719, "Instructions for Martin Bladen Esqr., appointed His Majesty's Commissary to treat with the Commissary or Commissaries to be appointed by the most Christian King."

full report to the King upon his return, and transmit a copy to the Board of Trade for their records.[76]

Along with his instructions, Bladen received a commission for his task from King George "under the Great Seal of Great Britain."[77] After an appropriate preamble situating the treaty of peace concluded at Utrecht, this commission specified that the commissaries for France and Great Britain were to "meet to consider of & to settle, certain Matters specify'd in the 10th 11th 12th 13th 14th & 15th Articles of the said Treaty" particularly relating to the territory and boundaries of the Hudson's Bay Company, damages for ships taken during peace time, the surrender and boundaries of Nova Scotia and the regulation of its fishery.[78] The commission granted Bladen "sufficient authority" to both meet and negotiate on these issues, and to sign in the King's name "any Instruments necessary to accomplish the Matters abovemention'd" which the King would then view as binding him.[79]

The preamble to Bladen's instructions indicates that between two European powers, negotiations were to be conducted between individuals with equivalent powers and authority (not between a king and an ambassador, for example). The commissary

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[76] TNA: SP 78/166, p 8-16, 1719, "Instructions for Martin Bladen Esqr…"
[77] TNA: SP 78/166, p 8, 1719, "Instructions for Martin Bladen Esqr…"
[78] TNA: SP 78/166, p 8, 1719, "Instructions for Martin Bladen Esqr…"; TNA: CO 5/4/1, p 42 [?1715], "Draft of full powers for Colonel Bladen appointed Deputy and Commissary for the execution of the Commercial part of the Treaty of Utrecht." The docket on this document dates it to 1715, but its placement in the bundle and its contents suggest a later date of composition, in 1719.
[79] TNA: CO 5/4/1, p 42-44 [?1715], "Draft of full powers for Colonel Bladen appointed Deputy and Commissary for the execution of the Commercial part of the Treaty of Utrecht."

Bladen, appointed by King George I, was to meet with his counterpart(s), the commissary or commissaries appointed by the French king, and they were each to check the other's credentials ("powers") before proceeding. Mutual recognition of their representative sovereign entity was therefore crucial to this diplomatic treaty procedure. These instructions illustrate how the sovereign entity's authority could be readily and explicitly deputed for the practical purposes and conduct of treaty making.

In terms of international relations, Bladen's commissaryship raises further points. Bladen enclosed for the Secretary of State's information the powers provided by Queen Anne to her commissaries in 1713, and the full powers given by the king of France to his own deputies at the earlier Utrecht negotiations.[80] His inclusion of these examples, especially the French one, suggests the British diplomatic administration's recognition that both nations were operating within one system and with shared formulas and expectations regarding deputed authority and how it was accorded.

Just as Bladen received written authorization of his powers to treat with the commissaries appointed by France, so too he received a copy of the powers given by the French king to his commissaries. Bladen's instructions directed him to check the French commissaries' powers to make sure that they were sufficient for the business at hand. The thrust of the French commission was much the same as Bladen's. The French Commissaries' purpose relating to the articles of the treaty of Utrecht was outlined; they were similarly deputed and empowered to pledge the King to any articles and

[80] TNA: SP 78/166, p 4-5, 1714, "Copy of the full powers from the French king to his Commissaries," in Bladen 3 July 1719.

conventions that they would advise him.[81] The similarity of form and function of the French and British commissions indicates the system in which they mutually operated.

Bladen's instructions indicate explicitly a point made earlier regarding the Commissioners' dealings in commercial disputes: treaties were perceived as having effective force. Bladen's instructions told him "you are to insist that the French are oblig'd by the Treaty of Utrecht to deliver up all the Lands & Settlements."[82] Treaties, as the instructions made clear, created obligations. Assuring that nations lived up to the agreements they had signed was another matter – otherwise Bladen would not have been required to insist on it. As evident from the case of illicit French fishing in the Nova Scotia and Newfoundland waters, ensuring "the due execution of articles" and "compliance" were ongoing issues following an agreed treaty.[83]

The documents surrounding Bladen's commissaryship indicate the simultaneously binding and contingent nature of European treaties. Bladen's letter acknowledging his appointment as commissary indicates the articles' more uncertain state. He writes that he will "treat" "concerning the several Matters left undecided by the late Treaty of Peace."[84] This remark suggests that in European treaty making, certain goals – such as peace during wartime – were prioritized over other niceties of international interaction – such as trade. It seems it was better to have the two nations at peace, than to wait for them to

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[81] TNA: SP 78/166, p 4-5, 3 July 1719 "Copy of the full powers from the French King to his Commissaries in Bladen"; TNA: SP 78/166 p 46-47, 21 October/1 November 1719 Martin Bladen to Delafaye.
[82] TNA: SP 78/166, p 8-16, 1719, "Instructions for Martin Bladen Esqr…"
[83] TNA: SP 78/166, p 8-16, 1719, "Instructions for Martin Bladen Esqr…"
[84] TNA: SP 78/166, p 2, 3 July 1719, Martin Bladen to [Delafaye].

hammer out the commercial stipulations while the war waged on. Contingencies were therefore built into the treaty – it was understood that these specified articles were not definitive, but contingent on further, future, negotiation.

Bladen's commissaryship to France illustrates how a concluded treaty was not in effect a stable document – its provisions were binding and decisive but open to future finessing of their practical application and settlement. This contingency embedded in treaties did not preclude their usefulness as reference documents. As seen in the case of the Swedish measures, emerging trade issues would be determined through reference to the treaty and practical responses from concerned parties. The parameters of the treaty would be adhered to, but how that adherence would be carried out – for example, in what ports would the ships be measured – could respond to emerging necessity. Similarly, the North American colonial governors were instructed that the Treaty of Neutrality of 1686 with France precluded British-French trade in territories that were "possessed or *which shall be possessed*" by one or the other.[85] These instructions asked the governors to

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[85] TNA: CO 5/400, p 78-79, 30 August 1720, " Instructions for Francis Nicholson, Esq, His Majesty's Capt^{n} General and Commander in Chief in and over His Majesty's Province and Territory of Carolina in America," Article 69; TNA: CO 5/916, p 102-104, 20 March 1728, "Instructions to William Burnet Esqr Our Captain General and Governor in Chief in & over Our Province & Territory of the Massachusets Bay in New England in America," Article 66; TNA: CO 5/996, p 48-50, 31 May 1720, "Instructions for Our Trusty & Welbeloved William Burnet Esqr; Our Captain General & Governor in Chief in and over Our Province of Nova Ceasaria or New Jersey in America," Article 26; TNA: CO 5/996, p 238-240, 28 September 1727, "Instructions for Our Trusty and wellbeloved John Montgomery Esq^{r} Our Cap^{t} General and Gov^{r} in Chief in and over Our Province of Nova Casarea or New Jersey in America," Article 93; TNA: CO 5/1125, p 69-70, 28 September 1727, "Instructions to Our Trusty and Wellbeloved John Montgomery Esq^{r}

adhere to the dictates of the treaty while working within the fluidity and contingencies of international territorial claims.

Bladen's instructions remind us that that within Europe, treaties were international and therefore inter-linguistic processes. The French translation of the Treaty of Utrecht differed from the Latin copy on which the British relied, especially in Article 13's definition of the boundaries of Nova Scotia. The Commissioners explained to the Secretary of State that in their work preparing Bladen's instructions, "it will certainly be necessary that the true Sence and meaning of the Treaty of Utrecht upon this Subject should be so fully Explained, that the said Commissarys may have a certain Rule to Walk by."[86] The British preferred the Latin version of the treaty, because of the territorial advantage that this rendering of the Nova Scotia boundaries conveyed to them. One of Bladen's tasks would therefore be to convince the French commissaries to view the Latin version of the treaty as the definitive version as well. He was told that, "if the French commissary or commissaries shou'd pretend to ground a more extensive claim upon the French Treaty than dos appertain to them by the Latin one, You are to insist upon it, that the Latin Treaty is to be your Guide in all cases."[87]

Both French and Latin were recognized diplomatic languages at the time of the Treaty of Utrecht's signing. French was increasingly the diplomatic language in the eighteenth century; from the mid-seventeenth century, international negotiations were

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Our Cap[t] General and Governor in Chief of Our Province of New York and the Territories depending thereon in America," Article 100. Emphasis added.
[86] TNA: SP 78/166, p 2-3, 3 July 1719, Martin Bladen to [Delafaye].
[87] TNA: SP 78/166, p 8-16, 1719, "Instructions for Martin Bladen Esqr…"

conducted in French instead of Latin, and the textual recording of the agreements slowly followed. As M. S. Anderson has traced, "from the Aix-la-Chapelle peace of 1748 onwards, every major international agreement involving the states of western and central Europe was in French" rather than in Latin.[88] The transition period during which Latin was overtaken by French as the common European diplomatic language was not a smooth one, as this concern in Bladen's instructions shows. Crossing between the two languages, as well as further translating the Utrecht treaty into English for common British reference, left plenty of occasion for mistranslation, alteration of meaning or loss of nuance. We think about treaty-making in North America as being conducted across a linguistic and cultural gulf, but clearly in Europe, within a longstanding diplomatic system between peoples familiar with each other and the languages and cultures at play, the matter of communication and translation of meaning was likewise an issue.

Martin Bladen's experience in Paris, as expressed in his regular letters to the Secretary of State (or his secretary) was a frustrating one. He arrived in Paris in the middle of September 1719, and remained until the end of November, leaving at the last possible moment to not miss the opening of the Parliamentary session in London.[89] As he wrote in his final letter from Paris, during these two and a half months, he "met with abundance of civility, but very small disposition to enter into any measures for doing us

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[88] Anderson, *The Rise of Modern Diplomacy*, 101. Hamish Scott pins this transition from Latin to French to the years between 1726 and 1780. Hamish Scott, "Diplomatic culture in old regime Europe," in *Cultures of Power in Europe during the Long Eighteenth Century,* ed. Hamish Scott and Brendan Simms (Cambridge: Cambridge University Press, 2007), 66.

[89] TNA: SP 78/166, p 72, 15 November 1719 NS, Martin Bladen to Cragg.

Justice."[90] Indeed, on his arrival, not only were his French counterparts, the Maréchal D'Estrées and the Abbé Dubois, not in Paris, they had not yet received their powers as commissaries. By the time Bladen needed to leave Paris for the opening of Parliament, he had only managed to meet with the French commissaries a handful of times to pursue negotiations.

It was not until a month after his arrival in Paris that Bladen was able to report that "a commission being now ready to pass the seales here appointing the Marechal D'Etrees and the Abbé Dubois to be commissarys on the part of france."[91] Hopefully, and, as it turned out, rather too optimistically, he continued, saying "we shall meet for the first time within two or three days."[92] In the event, it was not until October 31st, nearly two weeks later, that the much anticipated and much delayed first meeting took place. At this meeting, each opened the other's commission and "judg[ed] their powers to be sufficient" before proceeding, as had been stipulated in their instructions.[93]

To be fair, not all of the French delays were intentional manipulations. The Abbé Dubois was at one point "confined…to his bed by a retention of urine."[94] Nevertheless, other than presenting the British demands to the Hudson's Bay boundaries, to which Bladen never received an answer, the effect was to stymie negotiations and British gains. Bladen reacted with frustration. He wrote that, "By the delay this court has hitherto made

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[90] TNA: SP 78/166, p 82, 30 November 1719 NS, Martin Bladen to Delafaye.
[91] TNA: SP 78/166, p 42, 20 October 1719 NS, Martin Bladen to Delafaye.
[92] TNA: SP 78/166, p 42, 20 October 1719 NS, Martin Bladen to Delafaye.
[93] TNA: SP 78/166, p 56, 1 November 1719 NS, Martin Bladen to Stanhope.
[94] TNA: SP 78/166, p 63, 7 November 1719 NS, Martin Bladen to Delafaye.

in entering into the subject matter of my Commission one would imagine that either they were not in earnest when they desired commissarys to be appointed for this purpose, or that they have repented their intention since that time."[95] If the French would not negotiate in good faith, the British could not in fact force them to do so within the bounds of diplomacy.

When Bladen reported his second meeting with the French commissaries to the Secretary of State, he expressed frustration at yet another unanticipated snag. The French, outside of the negotiation process, were laying claim to the island of Santa Lucia. Consulting with the Maréchal D'Estrées on the matter, Bladen learned that the French were claiming the island according to an unnamed treaty, and by right of French settlement there. Bladen was particularly frustrated because the Maréchal was unable to produce a copy of the supposed treaty. "I confess," Bladen told the Secretary of State, "I cannot help thinking it will be to very little purpose to puzzel ourselves about settling Boundaries by treaty in the North of America, if the French have so concise a way of fixing their's in the South, without asking our Concurrence."[96]

Present in Bladen's experiences in treaty negotiation in Paris is a distinction between formal and informal communication to the same individuals on adjacent matters. Having received from the Secretary of State information of French pretensions to Santa Lucia, Bladen consulted with Lord Stair, the British ambassador in Paris, "who was of opinion with [Bladen] that it would be very proper to lay hold of the first occasion in

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[95] TNA: SP 78/166, p 42, 20 October 1719 NS, Martin Bladen to Delafaye.
[96] TNA: SP 78/166, p 63, 7 November 1719 NS, Martin Bladen to Delafaye.

discourse to mention this matter to the Abbé Dubois, not as a formal complaint, but as a report to which we could not possibly give any credit."[97] Diplomacy and treaty making were part of the larger information gathering efforts of empire; Bladen's instructions informed him that "You are hereby directed during the time of Your Residence in France, to get the best Information you can, concerning the situation, Trade, Strength, Laws & Government of the French Colonies in America."[98]

Throughout his time in Paris, Bladen relied on Lord Stair. In Bladen's correspondence, it is clear that Lord Stair assisted him with introductions, connections, information and not least, moral support. Lord Stair also hosted at least one planned meeting between Bladen and the French commissaries.[99] Stair has been contrasted with other, "playboy" ambassadors to France with his diligence in the task.[100] David Bayne Horn relates that "though accused of rashness and ostentation, he proved a worthy representative of his master [the King], whose dignity and interests he secured at the expense of some personal unpopularity at the French court."[101] Stair and his successors "specialized in organizing an efficient intelligence service for the embassy."[102] It is worth noting that despite Stair's integral role in getting the negotiations off the ground in 1719 and his presence with Bladen at the meetings, he was not the one with the commission; it was commissaries not ambassadors who were treating together. Bladen requested that

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[97] TNA: SP 78/166, p 50, 28 October 1719 NS, Martin Bladen to Delafaye.
[98] TNA: SP 78/166, p 8-16, 1719, "Instructions for Martin Bladen Esqr…"
[99] TNA: SP 78/166, p 63, 7 November 1719 NS, Martin Bladen to Delafaye.
[100] Horn, *Great Britain and Europe*, 40.
[101] Horn, *Great Britain and Europe*, 40.
[102] Horn, *Great Britain and Europe*, 40

Stair be empowered to treat, reflecting the Board of Trade's tendency to turn to local expert advice. It also shows that ambassadors and commissaries were not equivalent in terms of their negotiating and power to bind the monarch to the agreements they made.

When Bladen left Paris, it was with explicit permission from the Lords Justices who had sent him. He left for his successor in the post, Daniel Pulteney,[103] his "commission and instructions together with several other books & papers wch I brought hither."[104] He was confident that Pulteney would have no difficulty stepping into the negotiations, thanks to ambassador Stair's guidance as much as to the meager progress that Bladen himself had made.

Stair's involvement helped ease the transition between British commissioners; Pulteney's role as member of the Board of Trade also helped. Like Bladen, he had participated in the Board of Trade meetings that deliberated and produced the instructions for the commissaries to treat with those of France. Acknowledging that two members of a committee, even if present at the same meetings (which Pulteney was not, not having attended as many as Bladen on this topic), may come away with different knowledge and opinions, nevertheless, Pulteney was not coming in entirely "cold" to Bladen's position.

Bladen's tasks during his commissaryship show that some articles of concluded treaties could be provisional, to be refined at a later date. It shows that within the European community's behaviour of diplomacy and treaty making, only individuals with

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[103] Daniel Pulteney, c.1674-1731. Member of Parliament for Tregony 1721, Hedon 1721-1722, Preston 1722-1731; Commissioner of the Board of Trade 1717-1721; Envoy extraordinary to Denmark 1706-1715; Lord of the Admiralty 1721-1725.
[104] TNA: SP 78/166, p 76, 25 November 1719 NS, Martin Bladen to Secretary Cragg.

parallel deputed authority were to make these negotiations, and that subsequently the sovereign entities would be bound by the agreements made by their deputed representatives. It shows that British commissaries were to follow their instructions to the letter, and maintain frequent and reliable communication with the office of the Secretary of State. Bladen and the Board members knew that those instructions were the product of intensive information-gathering from documentary material (charters and letters) and first-hand information from merchant companies and colonial agents. Bladen found that stated intentions and good will might not match action, as the French assured him of their cooperative intentions but delayed the negotiations.

Bladen's experience as a commissary in France is also particularly relevant because in 1730, mere months before the Commissioners conceived the Anglo-Cherokee Treaty, the Secretary of State instructed the Board of Trade to evaluate the instructions prepared for the commissaries appointed to settle the Treaty of Seville of 1729. The four men who would be involved in the 1730 Anglo-Cherokee Treaty, Thomas Pelham, Martin Bladen, James Brudenell and Paul Docminique, were all actively involved in this task. The Treaty of Seville of 1729 had restored peace with Spain after an "an undeclared but costly war" from 1727 to 1729.[105] By order of the King, the Secretary of State directed the Board to consider the "Draught of Instructions for the Commissaries" appointed to treat with those of Spain regarding the previous year's treaty. He provided the Commissioners with a draft of the instructions and directed them "to offer such

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[105] Paul Langford, *A Polite and Commercial People: England 1727-1783* (Oxford: Clarendon Press, 1989), 19; Horn, *Great Britain and Europe*, 290.

Additions or Alterations as this Board may have to propose to the said Draught and also such further Informations as may be necessary to be given by their Lordsps to the said Commissaries."[106] A month later, the Board's Secretary recorded in the minutes that the Commissioners had finished their consideration of and observations on the draft instructions and composed their report. Pelham, Bladen, Brudenell, Docminique and their fellow Board members consulted several of the papers held in their office, called on the expertise of the secretary to the commissaries in Spain and of the Consul at Bilbao, and received memorials from interested merchants.

The Commissioners' procedure in this way reflected their approach when composing Martin Bladen's instructions in 1719, and when evaluating the various treaty issues that crossed their desk in the period of 1717 to 1730. The Commissioners consulted treaties as reference documents, as well as other papers held in their office, they called on merchants as experts in touch with the commercial realities and specifics of the situation, and also consulted officials such as Residents, Envoys, and the Attorney General. Altogether, throughout these years the Board members had an uneven but ongoing interaction with European treaties and their responses demonstrate their belief that treaties had the power to oblige certain behaviours from sovereign parties, had the power to limit sovereign parties' territorial bounds and movements, and yet were also in need of physical enforcement and could be incomplete, with articles left to be negotiated at a later date after the main treaty was concluded. When it came to sovereign treaty

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[106] TNA: CO 391/39, p 167, 30 June 1730, Board of Trade Minutes.

partners, they recognized a variety of parties as legitimate treaty partners but aimed treaties at circumscribing the expression of that same sovereign power. These characteristics of treaties formed their understanding which would come to play when they decided to make a treaty with the Cherokee delegates in 1730.

Chapter 4

Procedure and Purpose: The Board of Trade's View of Treaties with Native Americans, 1717-1730

"It would…be for your Majesty's service," the Commissioner of Trade and Plantations informed the King and Privy Council in 1721, "that the several Governors of your Majesty's plantations should endeavour to make treaties & alliances of friendship with as many Indian Nations as they can."[1]

Articulated in their 1721 *Report on the State of the Colonies in North America*, the Commissioners thereby explicitly advocated for treaties as the manner for developing and securing relationships of "good understanding" with the Native American peoples in proximity to the British North American colonies. The recommendation followed pages of frank discussion about the colonies' trade and security, and suggestions for how each could be strengthened for British benefit. The Commissioners had developed an understanding of the importance of British-Indigenous treaties for the British situation in North America through their observation of reported treaties and their attention to colonial matters in general. They articulated this understanding clearly and polemically in their 1721 *Report*.

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[1] Lords Commissioners for Trade and Plantations, "State of the British Plantations in America, in 1721," in *Documents Relative to the Colonial History of the State of New York, Volume 5,* ed. J. R. Brodhead and E. B. O'Callaghan (Albany: Weed, Parsons and Company, 1855), 627.

This chapter draws out the Commissioners' knowledge and understandings of treaties with First Nations through a fine-grained analysis of their work with treaties conducted with Native Americans between 1717 and 1730. This approach offers a second point of entry into the Commissioners' assumptions and expectations that they brought to their engagement with the visiting Cherokee representatives in 1730. I take a forensic approach to the Board's minutes to draw out from their recorded interactions with treaties the underlying understandings and assumptions that guided the Commissioners' thinking and actions. I consider both the broad view of the rhythms of the Board of Trade's work, and particular case studies of instances when the Board members, advised by visiting colonial governors or colonial agents, delved into the specifics of particular treaties conducted with different First Nations. Through these interactions with the Native American treaty realm, the Commissioners, guided by the colonial officials who supplied them with facts and opinions, came to see treaties as the surest way of establishing and maintaining relations with First Nations. This belief took for granted First Nations' identity as sovereign actors capable of entering into treaties whose legitimacy would be recognized by other European powers. In this chapter I also consider the Board's response to the transfer – by "treaty" – of South Carolina from Proprietary to Crown control. This episode nuances the Commissioners' understandings of sovereignty in North America.

My analysis shows that the Commissioners perceived treaties as common, necessary and desirable tools for establishing and maintaining relationships with First

Nations peoples and for furthering British commercial advances and territorial security in North America which depended on these good relations. It shows that the Commissioners were familiar with the rhythms and procedures of treaty making with First Nations, which they then attempted to apply in their 1730 council with the Cherokee delegation. Despite British claims of dominion or sovereignty over Indigenous peoples and territories, the procedures that colonial officials followed – their diplomacy and treaty making – demonstrated to the Commissioners their practical recognition of Indigenous sovereignty.

This chapter carefully displays the sources of information and processes of information management in the Board of Trade office because, as Jens Bartelson argues, "sovereignty and knowledge implicate each other logically and produce each other historically."[2] What the Commissioners knew – or thought they knew – about First Nations treaty making was the grounds for their knowledge about First Nations' sovereignty and the relationship between British sovereignty and First Nations' sovereignty in North America. Without denying First Nations sovereignty, the Commissioners posited, in tandem with their informants, a situation of layered sovereignty in which British sovereignty, including territorial claims and jurisdictional extent, overlay First Nations' independent sovereign existence.

In this analysis, I adhere to the time frame outlined previously, because examining the Commissioners' work between 1717 and 1730 most closely reflects the experiences on the Board of those men who would conduct the Anglo-Cherokee Treaty in 1730. This

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[2] Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995), 5.

will provide a view of how the Commissioners' understanding and assumptions were developed leading up to the treaty. Examining this period closely also adds to the literature on British-Native American treaty making. As discussed in Chapter One, it is necessary to emphasize the particularity of time period for understanding British-Native American treaty making. European-Indigenous treaty making underwent several transitions from early contact into the present. In the current literature on First Nations treaty making, the treaties conducted in the first few decades of the eighteenth century, with the exception of the Eastern Treaties of the 1720s, have received less attention than earlier and later treaties. A closer look at the treaties conducted in the early eighteenth century shows how trade and alliance treaties figured a relationship between sovereigns that proposed layered, shared sovereignty on the continent.

The Commissioners of Trade and Plantations were stationed in London, and none of the four Commissioners who produced the 1730 Anglo-Cherokee Treaty had been to North America. Unlike in the European realm, the members of the Board of Trade did not have direct involvement with the treaties conducted in North America, either as commissaries or advisors on proposed articles. The Board members were therefore dependent on the information that their correspondents and informants provided. Their informants might write generally. Or, they might speak specifically of the nations and representatives with whom they negotiated, as did the Governor of South Carolina who named not just the nations with whom he was having conferences, the Cherokees and the

Creeks, but also their diplomatic representatives Outassatah and Oulatta.[3] The Commissioners' reliance on the expert advice of colonial governors and others who had gained their knowledge and experience of First Nations in the colonies meant that the Commissioners' viewpoint more closely mirrored that of their colonial informants: taking seriously the sovereign, diplomatic roles of Native American peoples.

The governors and other correspondents mediated information for the Board members, giving them context and order. The language that these individuals used in the papers they transmitted to the Board shaped the Commissioners' understandings of their content. For example, in September 1722, the Commissioners of Trade and Plantations learned that the Governor of Massachusetts Bay had issued a "Declaration of War" against the "Eastern Indians."[4] Fed up with what he called the "Insults committed" by the Eastern Indians,[5] including seizing and plundering ships, the Governor had resorted to a formal declaration of war.[6] He retained hope of a peaceful, diplomatic resolution to the conflict, however, and sent to the Commissioners a "Copy of what" one of his

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[3] TNA: CO 391/33, p 277, 29 October 1724, Board of Trade Minutes.
[4] TNA: CO 391/31, p 183, 12 September 1722, Board of Trade Minutes.
[5] New England colonists used the name "Eastern Indians" to refer to the "chain of villages stretching from present-day New Brunswick through northern Maine, New Hampshire and Vermont, composed of family bands of Penobscots and Kennebecs who spoke the Algonquian Eastern Abenaki language, and Pigwackets, Pennacooks, Cowassucks, Missiquois, Sokokis, and other local groups who spoke Western Abenaki." (Daniel K. Richter, "Native Peoples of North America and the Eighteenth-Century British Empire," in *Oxford History of the British Empire Volume Two: The Eighteenth Century,* ed. P. J. Marshall, Alaine Low, and William Roger Louis (Oxford: Oxford University Press, 1998), 375).
[6] TNA: CO 391/31, p 183, 12 September 1722, Board of Trade Minutes; TNA: CO 391/31, p 198, 25 September 1722, Board of Trade Minutes.

commanding officers "designs to represent to the Indians in the Case they send an Embassy."[7] From the papers that the Massachusetts Governor transmitted to the Board, the Commissioners learned that the Eastern Indians were a polity against which it was appropriate to declare war, and which could be expected to have embassies – whether or not they chose to send those to the British Colonial government. For the Governor, pretending otherwise, against lived experience and longstanding colonial practice, was nonsense.[8] These were characteristics of autonomous, sovereign polities, as with whom one made treaties.

The Board's reception of treaties from North America was shaped by the rhythms of correspondence and transatlantic ship movements, by the backlog of papers in their office, and by the governors' management of information, as well as by the Board's Secretary. The Board received its information regarding the colonies – and the treaties conducted there – from governors' reports and correspondence and from in-person meetings with former governors, colonial agents and merchants trading to the colonies. In the years 1702-1711, a monthly packet-boat service ran, making a circuit of Barbados, Antigua, Montserrat, Nevis, St. Kitts and Jamaica, encouraging frequent correspondence from governors, although the North American colonies may not have benefited from this

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[7] TNA: CO 391/31, p 198, 25 September 1722, Board of Trade Minutes.
[8] For more on British colonial diplomatic history with the Eastern Indians going back to the later 1600s, see John G. Reid, "The Sakamow's Discourtesy and the Governor's Anger: Negotiated Imperialism and the Arrowsic Conference, 1717," in *Essays on Northeastern North America, Seventeenth and Eighteenth Centuries* (Toronto: University of Toronto Press, 2008), 153-170.

service.[9] When this unprofitable service stopped, the governors became more remiss in their correspondence.[10] As individuals with lives outside of the Board of Trade office, the Commissioners also had access to various writings and representations of the colonies available in newspapers, books and the arts.[11] These realms of knowledge outside of the Board of Trade office will be considered more in the following chapter.

Having received the correspondence from the colonies, the Secretary mediated when these papers would be laid before the Board. In the rhythms of the Board of Trade's work, the Commissioners' notation of treaties from North America was frequently enfolded by other concerns: colonial trade, colonial boundaries, or as just one incident reported in the numerous papers delivered by a colonial governor to the Board and considered en masse. The Board's preference for organizing its meetings according to geographic subsections clearly enfolded treaties as integral to colonial concerns. Its archival practice of bundling papers according to the same geographic demarcations reinforced this ordering principle.

The Board's sandwiching of treaties between other colonial matters was both a result of the Commissioners' dependence on colonial correspondence and an artifact of

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[9] James Hamilton St. John, "Edmund Dummer and His West India Packets," *Studies in British History* 11, no. 2 (January 1941): 131, 137.
[10] Ian K. Steele, *Politics of Colonial Policy: the Board of Trade in colonial administration 1696-1720* (Oxford: Clarendon Press, 1968), 143.
[11] Troy O. Bickham, *Savages within the Empire: Representations of American Indians in Eighteenth-Century Britain* (Oxford: Clarendon Press, 2005); Troy O. Bickham, "A Conviction of the Reality of things: Material Culture, North American Indians and Empire in Eighteenth-Century Britain," *Eighteenth-Century Studies* 39, no. 1 (2005): 29-47.

how the Board conducted its business. Although I have drawn out the Commissioners' interactions with treaties from the totality of the Board's work, at a typical meeting the Board members would consider issues concerning several different trade territories and colonial regions. Within the colonial affairs, treaties were just one of a multitude of business items.

For example, in June 1727, after having read "some reasons and proposals for settling Nova Scotia," the Commissioners considered numerous papers received from the Lieutenant Governor of Nova Scotia. Among these were "Articles of Peace &c sign'd by Majr Mascarene and the Indian Delegates at Boston the 15th Dec 1725" and "Articles of Agreement between Mr Doucet and the Indians Made at Annapolis the 4th of June 1726."[12] On a busy day a year earlier, in June of 1726, the Board had before it three letters from the Lieutenant Governor of New Hampshire. These letters included the Minutes of Council of New Hampshire, an account of powder and stores, three acts passed, a list of ships entered and cleared from the harbour, the draft of the southern boundary of New Hampshire and (last but not least), "Articles of Peace concluded with the Eastern Indians."[13] Likewise, when the Board read the Governor of South Carolina's report of his "Proceedings" with Chickasaw, Creek and Cherokee headmen in 1724, these papers were enfolded with many others from the Governor on a diversity of topics.[14]

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[12] TNA: CO 391/36, p 133, 1 June 1727, Board of Trade Minutes.
[13] TNA: CO 391/35, p 272-273, 30 June 1726, Board of Trade Minutes.
[14] TNA: CO 391/33, p 277, 29 October 1724, Board of Trade Minutes.

The Commissioners could derive meaning from the seemingly haphazard organization of the information in front of them. Late in April 1726, following many lengthy meetings concerned with the African trade, the Board's Secretary noted that the Commissioners had read two letters from the Lieutenant Governor of Massachusetts Bay. The first of these, the Secretary recorded, enclosed "a Treaty with the Eastern Indians" of December 1725, while the second transmitted "the Vote of the General Assembly of the Massachusetts Bay for accepting the King's Explanatory Charter."[15] At this meeting, these two letters were grouped for the Board by the Secretary, perhaps in order to catch up on business that had been laid aside while the African trade was under review. But positioning the content of these two letters together revealed a certain logic. The King's charter and the treaty were both tools or documents of sovereignty. Linked in this way in the minutes – intentionally or simply as the result of pragmatic time concerns – they came together within the conceptual space in which the Commissioners understood treaties.

It was not only the Secretary who amalgamated potentially disparate concerns for the Board's perusal; the colonial governors did so too. In October of 1723, the Commissioners read "A Letter from Mr Burnet Governor of New York, to the Board, about a Treaty with the Indians, & recommending the passing the 2PCent Act" from May

[15] TNA: CO 391/35, p 136-137, 26 April 1726, Board of Trade Minutes.

of that year.[16] In this case, it was the Governor who had placed the treaty and the taxation act together in the same frame.

Governors also transmitted information about treaties to the Commissioners in person, offering more detailed information in a more immediate delivery. In these meetings, the Board members had the opportunity for more layered and dimensional learning about North American treaties than when they simply read treaties or reports of treaties enclosed among other papers from the colonies.

The Commissioners' close communication with the governors, by letters or in person, is significant for understanding the Commissioners' perspective on Native Americans. The governors were men who had spent significant time in North America. They had had first-hand interactions with First Nations, and had discharged the responsibility of navigating their colony's security through the choppy waters of regional alliances and animosities. As a result, their perceptions of Native Americans, which they would transmit to the Board, were more nuanced than those of men who did not have these experiences.

Karen Ordahl Kupperman emphasizes this influence of experience. Her close reading of sixteenth-century colonial texts reveals clear evidence of colonists recognizing the sovereign status of Native American individuals and groups, to the chagrin of observers in England. Kupperman argues that commentators in England were able to distance themselves from the realities of the local situation, and therefore draw a line

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[16] TNA: CO 391/32, p 197, 23 October 1723, Board of Trade Minutes.

between Europeans and "uncivilized" Native Americans. In contrast, colonists on the ground acknowledged Indigenous political sovereignty because Indigenous actors carried the markings of European sovereignty. For example, in the seventeenth century,

> The Virginia Company strongly objected to colonists' calling Powhatan a King, saying that Virginians could recognize no king but King James, and investors chided the colonists for seeming to recognize the sovereignty of Opechancanough, Powhatan's successor. But the colonists could not afford to indulge such fantasies. Indians functioned as kings in their eyes, and they used the word accordingly.[17]

Sovereign political identity was tied to function in Europe, and so it was in North America as well.

It should be noted that Native American representatives did not have the opportunity to speak to the Board. Their voices were occasionally rendered in the governors' correspondence, particularly in treaty transcripts, which were nevertheless translated and transcribed renditions of oral communications. The few Native American diplomatic visitors who came to England prior to the 1730 Cherokee visit, the Powhatan delegation led by Pocahontas in 1616 and the Mohawk and Mahican representatives in 1710, do not appear to have discussed the finer points of treaty making or Indigenous-colonial relations with the Board or its predecessors. The Commissioners' knowledge of

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[17] Karen Ordahl Kupperman, *Indians and English: facing off in early America* (Ithaca: Cornell University Press, 2000), 92.

British-Indigenous treaty making was therefore firmly embedded in the flow of colonial knowledge that prioritized the utility of information for British imperial benefit.[18]

First Nations' autonomy in the diplomatic sphere nevertheless shines through in the record, especially their ability to initiate but also abandon diplomatic negotiations. This sovereign autonomy was something that the Commissioners had also observed in the European realm. The previous chapter showed that in European diplomacy, treaty making was not always a smooth process and did not always go as planned. In the minutes of June 19, 1717, is an example of unsuccessful treaty making in Carolina. At this time, the Agent for the Province of South Carolina attended the Board, regarding the state of Carolina, particularly "with regard to the Indian War."[19] He told the Board that the most recent letters he had received from Carolina, "take Notice of some Indians coming to make Peace with that Government, who sent a Person to treat with them, but that the Indian Messengers left the said Person in the Woods, from whence it is suppos'd the

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[18] For more about the self-interested British collection of colonial knowledge, see C. A. Bayly, *Empire and Information: intelligence gathering and social communication in India, 1780-1870* (Cambridge: Cambridge University Press, 1997); Bernard S. Cohn, *Colonialism and Its forms of Knowledge: the British in India* (Princeton: Princeton University Press, 1996); Matthew H. Edney, *Mapping an Empire: the geographical construction of British India, 1765-1843* (Chicago: University of Chicago Press, 1997); David Lambert and Alan Lester, "Introduction: Imperial Spaces, Imperial Subjects," in *Colonial Lives Across the British Empire: imperial careering in the long nineteenth century,* ed. David Lambert and Alan Lester (Cambridge: Cambridge University Press, 2006), 1-31; D. A. Washbrook, "Orients and Occidents: Colonial Discourse Theory and the Historiography of the British Empire," in *Oxford History of the British Empire Volume 5: Historiography,* ed. Robin Winks and William Roger Louis (Oxford: Oxford University Press, 1999), 596-611.

[19] TNA: CO 391/26, p 282, 19 June 1717, Board of Trade Minutes.

Negotiation broke off."[20] The First Nations' seeming willingness to treat and then abandon the South Carolinian messenger foreshadows the French treatment of Bladen in 1719, giving him the run around while seemingly amenable to negotiation. This incident from Carolina illustrates the agency of the First Nations, their power to both initiate and abandon treaty making, to change their minds, and to compel the British colonial representatives to travel, as the Carolinian messenger did, into the woods to treat with them on their home turf.

Interpreters were also integral actors in the British-Native American diplomatic encounter who were almost entirely invisible to the Commissioners of Trade.[21] These men (and occasional women)[22] were rarely if ever mentioned in the materials sent to the Board of Trade regarding treaties with Native Americans. Yet these mediating individuals played an important and influential role in European-Indigenous diplomacy in North America.[23] The Board of Trade's neglect of the translators in British-Indigenous

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[20] TNA: CO 391/26, p 282, 19 June 1717, Board of Trade Minutes.

[21] For a detailed and cogent examination of the impact that translators and scribes had on recorded Native American treaty speeches, see James H. Merrell, "'I desire All that I have Said…May be Taken down Aright': Revisiting Teedyuskung's 1756 Treaty Council Speeches," *William and Mary Quarterly* 63, no. 4 (October 2006): 777-826.

[22] For example, Mary Musgrove, a Creek woman, was an integral mediator in the Creek-Georgia relationship (Claire Schuette Levenson, *Gifts, Trade and Diplomacy: the Creek Indians and the Georgia Colonists in the American Southeast, 1733-1763* (PhD diss., Cambridge, 2008) 69-70).

[23] See for example James H. Merrell, *Into the American Woods: negotiators on the Pennsylvania frontier* (New York: Norton, 1999). For more on interpreters, middlemen and intercultural go-betweens, see James H. Merrell, "'The Cast of His Countenance': Reading Andrew Montour," in *Through a Glass Darkly: Reflections on Personal Identity in Early America*, ed. Ronald Hoffman, Mechal Sobel and Fredrika J. Teute (Chapel Hill: University of North Carolina Press, 1997), 13-39; Simon Schaffer, Lissa Roberts, Kapil

diplomacy in their records matches their records' silence on translators in the European diplomatic realm. As shown in the previous chapter, the issue of translation differences was not absent in the European realm; however, little if any recognition was given to the individuals who enacted the translation. Although British officials could be considered to be acting across a wider linguistic gulf in North America, it is consistent that this issue would not occupy the attention of the Board members, within their conceptual framework. It is more curious that the colonial governors who relied on the interpreters did not bring them to the Commissioners' attention.

In July of 1720, perhaps as part of their fact-finding for their upcoming *Report*, the Board was attended by several colonial governors and former governors to advise them about the state of these colonies. During this process, the Board members received an explicit lesson regarding First Nations treaties signed in New York. The Commissioners first read a letter and papers from the Lieutenant Governor of Virginia which included the copy of a letter "relating to the settling a Peace with the 5 Nations of Indians &ca."[24] The next day, the Board was attended by both the former Governor and current Governor of New York and New Jersey (these colonies being represented together by one governor). Regarding the matter, the former Governor told the Board that when the former Governor of Virginia "was with him at New York, he had represented to [the then Governor of Virginia] the Inconvenience of insisting on punctilios with those

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Raj and James Delbourgo, eds., *The Brokered World: Go-Betweens and Global Intelligence, 1770-1820* (Sagamore Beach, Mass.: Science History Publications, 2009).
[24] TNA: CO 391/29, p 233, 6 July 1720, Board of Trade Minutes.

Indians;" – that is, on "a minute detail of conduct in a ceremony"[25] such as the location for negotiation preferred by the Governor – "And he now further inform'd their Lordsps, that Albany was the Place where the said Indians us'd to meet, and treat with the English, and that when he had Occasion to settle any thing with them, […the colonial officials] were oblig'd to meet them at Albany."[26] This information from the former Governor indicated to the Board an ongoing history of treaty making with prescribed and expected behaviour, and the power of the Five Nations to dictate the procedure, to "oblige" the colonial officials to follow their expectations, in terms of where the treaty would be held.

The former Governor then went on to tell the Board that the Five Nations were very "Warlike," and that their "Warlike Disposition" should be directed against other Native Americans, otherwise it would be directed against British settlers. Nevertheless, he reported that the "5 Nations promised him not to molest any Indians who are tributary to His Majesty in any of His Governments."[27] However, the Five Nations did not do so unconditionally and again dictated terms in the relationship: "they expected a Declaration what Indians were tributary or protected by the British Governments."[28]

Continuing on with an implicit acceptance of the Five Nations' demand, the former Governor argued that it was the colony of Virginia that should bear the cost to "send Deputies & some of each Nation of their Indians with a Belt of Wampum, to

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[25] "Punctilio," *Merriam-Webster Dictionary* online edition, accessed April 10, 2015. http://www.merriam-webster.com/dictionary/punctilio
[26] TNA: CO 391/29, p 239-240, 7 July 1720, Board of Trade Minutes.
[27] TNA: CO 391/29, p 240, 7 July 1720, Board of Trade Minutes.
[28] TNA: CO 391/29, p 240, 7 July 1720, Board of Trade Minutes.

establish & confirm a Friendship between them and the 5 Nations."[29] According to this treatied agreement, not only would the colonies accede to the Five Nations' demands, they should follow Five Nations protocol – carrying a wampum belt – when doing so. Furthermore, his report assumed that his readers – Londoners – knew what a wampum belt was and its importance.[30] As recorded in the minutes, the former Governor did not explain these things to the Commissioners. Instead, he assumed that wampum was part of their common knowledge.

A central concern in the literature on Native American-British treaty making has been the question of how much the forms of the treaties conducted between Indigenous and British representatives reflected their respective treaty traditions. Historians such as Colin Calloway have rightly pointed out the numerous ways that European forms of treaty making were adapted and altered in response to Native American diplomatic procedures and expectations.[31] Europeans in North America interacted with peoples and nations who had longstanding diplomatic traditions which included "common protocols and rituals…among widely divergent tribes."[32] Colonial officials transmitted treaties to the Board of Trade that displayed ceremony and language that combined both Native American and European protocols.

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[29] TNA: CO 391/29, p 240-241, 7 July 1720, Board of Trade Minutes.
[30] Wampum in this context refers to belts or strings of shell beads used as diplomatic guarantees and communication devices. I will be discussing wampum in detail in Chapter Seven.
[31] Colin G. Calloway, *Pen and Ink Witchcraft: Treaties and Treaty Making in American Indian History* (Oxford: Oxford University Press, 2013).
[32] Robert A. Williams, Jr., *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800* (New York: Oxford University Press, 1997), 33-34.

However, there is a tension between the narrative of Europeans' adaptation to working within existing Native American diplomatic protocols, and Europeans' retention of their conceptual frameworks about what constituted a treaty and how it could be used. British officials retained this conceptual framework even as they adapted to Indigenous diplomatic expectations and adopted Indigenous diplomatic forms and protocols.[33]

The prevalence of a common conceptual framework amongst colonial and metropolitan British officials is assumed but not explicated by historians researching later British-Native American treaties. For example, Timothy Shannon argues that "The Albany congress [in 1754] marked *a passage from* a pattern of imperial and intercultural relations that was predominantly autonomous and commercial in nature."[34] Therefore, during this time period, a common but not formally expressed conceptual framework guided British aims and behaviours in First Nations treaty making in contrast to later periods when official imperial policy would guide treaty making.[35] When British officials used Indigenous ceremonies and metaphors, British officials *also* kept their old, European-based ideas – ideas about how international relations were conducted, and who

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[33] This tendency was not limited to British officials in North America. Describing British imperial officials in India, P. J. Marshall states, "However much they may have tried to adapt to local conditions, those British invested with authority at home or in the colonies inevitably applied some common assumptions and objectives throughout the world." (P. J. Marshall, *The Making and Unmaking of Empires: Britain, India, and America, c.1750-1783* (Oxford: Oxford University Press, 2005).

[34] Timothy J. Shannon, *Indians and Colonists at the Crossroads of Empire: the Albany Congress of 1754* (Ithaca: Cornell University Press, 2000), 13, emphasis added.

[35] Shannon, *Indians and Colonists at the Crossroads of Empire*, 13.

had the authority, that is the sovereign power, to make treaties. This is how it made sense to them.

To return to the former Governor of New York and New Jersey's dialogue with the Board members in 1720, he proceeded to show how the British position in North America was dependent on Indigenous political relations and especially the Five Nations. The Board members might have drawn comparison to the ways that Britain's position in Europe was shaped by the calculation of balance of power diplomacy, as shown in the previous chapter. The former Governor told the Board that a source of "differences" between the Indigenous nations was the fur trade carried on by Carolina, Virginia, New York and "other of His Majesty's Plantations."[36] The Governor's observation of this source of conflict is a possible origin of the Commissioners' insistence on a colonial united front in their *Report* of the following year.

July of 1720 also saw the Commissioners learning about Indigenous-colonial diplomacy from the former Governor of Maryland, whose information emphasized commonality of treaty making forms between Indigenous nations. The Commissioners had asked the former Governor of Maryland to attend the Board to give them current information about the state of the colony. While he was no longer the Governor, the Commissioners expected that he retained an informational link to the colony, while helpfully being located in London and therefore able to attend their office. "In relation to the Indians," the former Governor told the Commissioners, "some of the Tuscaruros

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[36] TNA: CO 391/29, p 241, 7 July 1720, Board of Trade Minutes.

under the Protection of the 5 Nations, had come and settled in that Province; But that he had made a peace with them."[37] He followed on to say that "the 5 Nations esteem'd those Indians as their Children & promis'd to answer for their Behaviour."[38] Here the power of the Five Nations was again deferred to, even as the colony conducted diplomatic relations with the Tuscarora themselves. The Commissioners' informant interpolated the peace that the former Governor had made with the Tuscarora with commentary based on his experience with the Five Nations.[39] Furthermore, the similarity of this reported diplomatic interaction with that reported to the Commissioners by the former Governor of New York and New Jersey gave the Commissioners the impression that while the Indigenous nations differed, treaty making and diplomacy with them would be similar across regions.

The power relations between Native American and British treaty makers were not necessarily equal, and the agreements that came out of treaty negotiations were not necessarily equally beneficial either.[40] The Commissioners' examinations of the treaties produced in North America offered them further insights into the ways that power struggles could be expressed in treaties and how unequal negotiations could produce

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[37] TNA: CO 391/29, p 262, 20 July 1720, Board of Trade Minutes.
[38] TNA: CO 391/29, p 262, 20 July 1720, Board of Trade Minutes.
[39] Although the Tuscarora would later join the Five Nations confederacy, making it the Six Nations, they were not at this time part of the confederacy.
[40] Colin Calloway offers a discussion of the persistence of Indigenous military power into the 1790s in *The Victory with No Name: The Native American Defeat of the First American Army* (Oxford: Oxford University Press, 2015).

mutually binding but not necessarily mutually beneficial treaties – similar to how treaties were used in European diplomacy and commercial relations.

Considerations of agency and power in treaty making are important because the Commissioners of Trade were not uninterested observers of colonial treaty making. They were gatekeepers for the imperial government's assistance for upholding the promises made by colonial officials. They also observed how Native American participation and agency was expressed in the treaty process, which informed the Commissioners' approach to the 1730 Anglo-Cherokee Treaty. While the liberty to treat and parity between treaty partners was less uneven in the earlier eighteenth century than in the nineteenth, discussed in Chapter One, it is an important reminder of the trajectory that British-Indigenous treaty making took in the following century.

In their 1721 *Report,* the Commissioners took the opportunity to express their opinions on the importance of treaties with First Nations, influenced by their meetings with the governors. The Secretary of State had ordered them to prepare this report. In practice, Martin Bladen was the principal author of the *Report*, while the data in the report was compiled by the Board's Secretary.[41] Bladen had an enduring interest in the colonies which surpassed the requirements of the Board. Jack P. Greene argues that Bladen "was probably better informed on colonial affairs than any other British official" between 1710 and 1748.[42] The *Report* provided summaries of the location, governance

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[41] Steele, *Politics of Colonial Policy*, 167.
[42] Jack P. Greene, "Martin Bladen's Blueprint for a Colonial Union," *The William and Mary Quarterly* 17, no. 4 (October 1960): 517.

structure, population demographics, natural resources and trade potential of each of the British colonies in North America, details which determined, in the Commissioners' estimation, the colonies' prosperity, stability and benefits to Britain. The Commissioners further offered to the King, via the Secretary of State, "such methods as have occurred to us, for securing, improving and enlarging so valuable a possession as that of your Majestys dominions in America."[43] The Commissioners identified three main areas to effect this: precautions to prevent French encroachments; "cultivating a good understanding with the native Indians;" and "putting the Government of the plantations upon a better foot."[44] These three areas for improvement overlapped and would work together to improve the security, profitability, and territorial claims of the British colonies in North America.

To ensure a good understanding with the Native Americans, the Commissioners focused especially on trade relations. They argued that good prices and good behaviour from the traders would lead Native Americans to look favourably on the British, compared to the French and Spanish. This favourable feeling, they argued, should then be formalized by treaty between the colonial governments (on behalf of the crown) and the First Nations.[45]

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[43] Lords Commissioners for Trade and Plantations, "State of the British Plantations in America," 623.
[44] Lords Commissioners for Trade and Plantations, "State of the British Plantations in America," 623.
[45] Lords Commissioners for Trade and Plantations, "State of the British Plantations in America," 625-627.

The Commissioners believed that the colonies would need to present a unified front for the treaties to be most effective. They argued that "every governor upon his making a treaty with any Indian nation, should immediately communicate the same to all other your Majesty's Governors upon the Continent"[46] so that one colony would not inadvertently (or intentionally) attack or alienate a nation otherwise allied to a (and thereby all the) British colonies. The Commissioners would not have had to emphasize this if the various colonies were not in the habit of undermining each other's trade and alliance relationships with Native Americans and thereby, they believed, weakening colonial security and prosperity.

The Commissioners also maintained that "all your Majesty's subjects should be expressly included" in these treaties, "& all traders should be instructed to use their endeavours to convince the said Indians, that the English have but one King, & one interest."[47] The traders were the primary point of contact between the First Nations and the colonies; the Commissioners saw that it was integral that these men inform the First Nations about a political order in the British colonies that would most strengthen the British imperial position. Framed in terms of inter-European diplomacy, the traders were to act as ambassadors, collecting and distributing information and promoting the good relationship between their sovereign and the polity in which they were stationed. They were not, however, imagined as commissaries; the Board of Trade's *Report* did not

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[46] Lords Commissioners for Trade and Plantations, "State of the British Plantations in America," 627.
[47] Lords Commissioners for Trade and Plantations, "State of the British Plantations in America," 627.

suggest that the traders be accorded the power to make treaties with the Indigenous peoples with whom they interacted. Treaty making was to be done by the Crown's representatives, who were the colonial governors.

The Commissioners preferred as little variation in the governance of North America as possible, from colonists as much as from Indigenous nations. If colonial governments were sometimes confused about who held diplomatic power in Indigenous nations, or how political power was distributed, the Commissioners did not want the Indigenous nations to be similarly confused about the power structure organizing the British colonies. The Commissioners believed that it should be clear that the colonial governments were subject to the British Crown, and act accordingly in ways to mutually reinforce common British security and trade in North America, rather than according to separate colonial interests. This was an early expression of the belief, from the imperial view, of the importance of an organized and unitary colonial policy, which would slowly and unevenly be put in place in the following decades.[48] As well as arguing here as elsewhere in the *Report* that the colonies needed to act as a unified entity, the Commissioners desired the governors to reconcile all Indigenous nations "in amity" with British subjects to each other.[49]

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[48] In 1739, Martin Bladen would make a proposal, independent of the Board, for a plan for organizing the colonies under a central, bicameral government. (Green, "Martin Bladen's Blueprint.")

[49] Lords Commissioners for Trade and Plantations, "State of the British Plantations in America," 627.

A few years later, the series of treaties signed and ratified with the Indigenous nations on North America's northeastern coast offered the Commissioners another, and more detailed opportunity to delve into the case of treaties with Native Americans. Of the treaties that the Commissioners received and considered, these "Eastern Treaties" offered a clear view into the way that issues of sovereignty were articulated throughout the treaty process and treaty articles. This case study also clearly shows how European treaties and North American treaties were related and interdependent. In this case, the Treaty of Utrecht and the Eastern Treaties of 1725-28 relied on each other. British diplomacy in the Eastern colonial territories in these years was a result of the Treaty of Utrecht as well as local concerns, and the British reinforced the terms of the Treaty of Utrecht by means of their treaties with the Mi'kmaq and Maliseet (Wulstukwiuk) peoples.

This was also the Commissioners' most detailed engagement with Native American treaties in closest proximity to the 1730 Anglo-Cherokee Treaty. Based on attendance records at these meetings, reports of the Eastern Treaties formed part of the Board's collective institutional view of how Native American treaties worked rather than the particular view of individual Commissioners involved in the 1730 treaty, whose attendance was spotty. But the institutional role of the Secretary also ensured that this was part of the Board's "living memory" when they came to respond to the 1730 Cherokee diplomatic visit.

From 1726 to 1728, the Commissioners received numerous letters, reports and the texts of treaties conducted and ratified with the "Eastern Indians" in proximity to the

colonies of Massachusetts Bay and Nova Scotia. These treaties drew to a close the war that the colonists called "Dummer's War" after the then governor of Massachusetts Bay.[50] Between 1722 and 1725, an alliance of First Nations in northeastern North America had carried on hostilities against colonial settlements in New England and fishing stations in Nova Scotia – British settlements they perceived as colonial aggressions.[51] An initial peace was concluded by Penobscot representatives in Boston in 1725 which was then ratified by other nations.[52]

The Board members' interaction with the Eastern Treaties began in November of 1726 when they read a letter from Colonel Doucet, the Commanding Officer at Annapolis Royal in Nova Scotia, along with three papers: the "Copy of the Articles of Peace agreed by Col. Doucet with (and sign'd by) the Indians," the "Copy of an Instrument sign'd by Col. Doucet on an Agreement of Peace with the Indians," and the "Certificate of Col. Doucet's being an honest & a Loyal Man."[53] The Commissioners' recorded response to these papers was quite mundane: they simply ordered their Secretary to write to acknowledge the receipt of the letters and papers.[54]

Even if they did nothing more than engage with the titles of the papers, the Board members took in important information about the treaty making that had taken place. First, the parenthetical remark that the Indigenous parties had signed the articles of peace,

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[50] Stephen E. Patterson, "Indian-White Relations in Nova Scotia, 1749-61: A Study in Political Interaction," *Acadiensis* 23, no. 1 (October 1993): 26.
[51] Patterson, "Indian-White Relations in Nova Scotia," 26.
[52] Patterson, "Indian-White Relations in Nova Scotia," 26.
[53] TNA: CO 391/35, p 334-335, 10 November 1726, Board of Trade Minutes.
[54] TNA: CO 391/35, p 335, 10 November 1726, Board of Trade Minutes.

not just agreed to them, suggested the multi-step process of treaty making and the manner by which they became binding in the British mind. The Instrument signed by the Commanding Officer suggested the two-sided nature of the treaty process, indicating that each side made an agreement or promise, which each signed to confirm. Finally, the certificate of Doucet's being an "honest and loyal man" was a character reference which informed the Commissioners that Doucet was well-suited to have made this treaty and to have acted on behalf of the King, that he had acted in the Crown's best interest and duly and truthfully reported what had occurred.

The next year, the Board received further articles of peace concluded in the northeastern British colonies, embedded among colonial papers on a variety of other concerns. For example, in June 1727, the Board received letters and papers from the Lieutenant Governor of Nova Scotia. These included "Articles of Peace &c sign'd by Majr Mascarene and the Indian Delegates at Boston the 15th Dec 1725" and "Articles of Agreement between Mr Doucet and the Indians Made at Annapolis the 4th of June 1726" as well as remarks on the defence of the colony in terms of the state of the Garrison at Annapolis Royal, and surveys of provisions.[55] In September of that year, the Commissioners read another letter from the Lieutenant Governor, which included the "Ratification of the Peace with the Indians Dated the 4th of June 1726."[56] It was considered alongside a "List of the Fishery of Canco for the Year 1726," the State of the

[55] TNA: CO 391/36, p 134-135, 1 June 1727, Board of Trade Minutes.
[56] TNA: CO 391/36, p 215, 28 September 1727, Board of Trade Minutes.

Fortifications at Annapolis Royal, the Minutes of Council, and an "Oath Administered to the French Inhabitants of Nova Scotia in 1726."[57]

These papers ran the gamut of the Board's concerns with the North American colonies: trade (fishing), international boundaries (fishery), colonial defence (against the French and other Europeans), and relations with the First Nations in a formal perspective. In May 1728, the Board made note of four letters sent by the Governor of New England, and the papers referred to were laid before the Board. These included a "Printed Copy of the Conference with the Eastern Indians, at the Ratification of the Peace at Falmouth in Casco Bay in July & August 1726, and in July 1727."[58] Other matters contained in the papers related to an Act for raising a public levy, a bill for fortifications, and the Journal of the House of Representatives. The treaty was just one item amongst this business, and did not receive particular note in the minutes. The details the Commissioners received about the Eastern Treaties, especially with the receipt of a printed treaty text, was therefore understood within this frame.

As the Governor of New England's papers informed the Commissioners, the Eastern Indians had ratified the 1725 peace.[59] In Europe, ratification legitimized international agreements that had been negotiated by properly empowered diplomats and bound the sovereign entity to them. In Great Britain, treaties had to be "ratified by the

[57] TNA: CO 391/36, p 215, 28 September 1727, Board of Trade Minutes.
[58] TNA: CO 391/37, p 153, 24 May 1728, Board of Trade Minutes.
[59] TNA: CO 391/37, p 153, 24 May 1728, Board of Trade Minutes.

monarch and laid before parliament for approval."[60] This was more or less a rubber-stamp process, but an important one; treaties had to be ratified before they would come into effect. Without ratification, the agreement did not become legally binding on the sovereign that signed but did not ratify it. British officials in North America recognized that First Nations had to ratify the treaties they made, just as Britain's European treaty partners did. This is another example of how European-based ideas of international diplomacy found life in North America. The notation of the Eastern Indians' ratification of the treaty can therefore be interpreted both as the following of known procedure of how treaties worked (on the part of British colonial officials who sought the ratification) and also the political organization of the Eastern Indians themselves. The colonial government of Nova Scotia also ratified the treaty on June 4, 1726, thereby holding itself and the British Crown accountable to the treaty's articles.[61]

The eighteenth century Eastern Treaties have received more scholarly attention that other contemporaneous treaties in part because of their ongoing legal relevance in the Canadian Maritime provinces.[62] These historical treatments offer only brief analysis as to

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[60] Peter Jupp, *The Governing of Britain 1688-1848: The Executive, Parliament and the People* (London: Routledge, 2006), 35.
[61] Andrea Bear Nicholas, "Mascarene's Treaty of 1725," *UNB Law Journal* 43 (1994): 10.
[62] Nicholas, "Mascarene's Treaty of 1725"; Stephen Patterson, "Eighteenth-Century Treaties: The Mi'kmaq, Maliseet, and Passamaquoddy Experience," *Native Studies Review* 18, no. 1 (2009): 25-52; Stephen E. Patterson, "Anatomy of a Treaty: Nova Scotia's First Native Treaty in Historical Context," *UNB Law Journal* 48 (1999): 41-64; Patterson, "Indian-White Relations in Nova Scotia"; John G. Reid, "Pax Britannica or Pax Indigena? Planter Nova Scotia (1760-1782) and Competing Strategies of Pacification," *The Canadian Historical Review* 85, no. 4 (December 2004): 669-692;

the relationship between the treaties conducted in North America and British oversight from England. William Wicken characterizes the Board of Trade and Secretary of State as "nonchalant" towards these treaties because they did not provide the colonial officials in Nova Scotia with "official direction" but yet viewed the treaties and ratifications favourably.[63] Furthermore, he argues that the Board of Trade hindered colonial efforts by not developing clear policy and not speedily providing presents, necessary diplomatic accoutrements for First Nations treaty making.[64] Of course, as discussed previously, the Board of Trade was not conceived as a policy-making body, and while the Commissioners did influence policy through their informed reports and advice, they cannot hold sole blame for the lack of a coherent or singular colonial policy. Similarly, while the Board would oversee colonial finances, including expenses for the purchase and distribution of presents, this was as much the responsibility of the colonial governors and Secretary of State.

Conversely, Wicken also argues that, "As products of a large imperial bureaucracy, the treaties were drafted in a manner consistent with British colonial policies."[65] This seemingly contradicts his previous analysis, but the logic works if we consider colonial officials "at home" and "abroad" to have been working within common

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William C. Wicken, *The Colonization of Mi'kmaw Memory and History, 1794-1928: The King v. Gabriel Sylliboy* (Toronto: University of Toronto Press, 2012); William C. Wicken, *Mi'kmaq Treaties on Trial: History, Land, and Donald Marshall Junior* (Toronto: University of Toronto Press, 2004); William C. Wicken, "The Mi'kmaq and the Wuastukwiuk Treaties," *UNB Law Journal* 43 (1994): 241-254.

[63] Wicken, *Mi'kmaq Treaties on Trial*, 142.

[64] Wicken, *Mi'kmaq Treaties on Trial*, 108.

[65] Wicken, *Mi'kmaq Treaties on Trial*, 12.

conceptual frameworks about what a treaty was and the aims of treaty making – a point that this chapter's analysis shows. This assumption would likewise reconcile Wicken with his interpretive adversary Stephen Patterson, who has argued that "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,"[66] because, even without an imperial policy, similar conceptual frameworks entered into action.

Wicken argues that for the British, the 1726 treaty acknowledged that British dominion in Nova Scotia depended on negotiation with Native inhabitants and that British dominion had not been unilaterally accorded based on the Treaty of Utrecht.[67] British dominion would only be effective if British officials could convince the local nations of their dominion. However, as Wicken emphasizes, "even though the language of the treaty implied Mi'kmaq submission to King George, the simple fact that a treaty was being negotiated indicated that the British did not intend to impose their will on their new allies."[68]

Colonial officials also emphasized the discrepancy between words of dominion aimed at convincing Europeans and what was understood by the First Nations themselves about their relationship with the British. In the 1760s, William Johnson, Superintendent of Indian Affairs for the Northern Department, wrote to the imperial administrators to

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[66] Patterson, "Eighteenth-Century Treaties," 32.
[67] Wicken, *Mi'kmaq Treaties on Trial*, 73.
[68] Wicken, *Mi'kmaq Treaties on Trial*, 113.

clarify this point; he "conceded that it was common for people to describe Indians as subjects of the Crown, but, he insisted, the Indians themselves would never have consented to that status."[69] There is no reason to believe that Indigenous peoples felt otherwise only a few decades earlier.

The Commissioners' engagement with questions of the extent of British dominion in North America reveal their understanding of the potential for sovereignty over a territory to be layered, held concurrently by different sovereign people. For example, on August 6th, 1719, "Their Lordships…read a Deduction of His Majesty's Title to Nova Scotia & Hudson's Bay, as also His Majty's Right of Sovereignty over the 5 Nations of Indians at New York… and agreed upon the whole, That the French have no pretence to claim any Interest in or Dominion over the said 5 Nations of Indians."[70] This note illustrates the Commissioners' practical employment of a double-vision or layering of sovereignty. The autonomous power of the Five Nations was not mentioned, but because they had been and continued to be treaty partners with the British colonies, the Five Nations' sovereignty was implied. However, vis-à-vis the French, the British claimed sovereignty over the Five Nations. Something different was therefore operating on the European-European level than on the European-First Nations level.

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[69] Mark Walters, "'Your Sovereign and Our father': The Imperial Crown and the idea of Legal-Ethnohistory," in *Law and Politics in British Colonial Thought: Transpositions of Empire,* ed. Shaunnagh Dorsett and Ian Hunter (Houndmills: Palgrave Macmillan, 2010), 96. The letter in question is William Johnson to Thomas Gage, 31 October 1764, in *The Papers of Sir William Johnson, Vol. 11*, ed. Milton W. Hamilton (Albany: The University of the State of New York), 394-395.

[70] TNA: CO 391/28, p 327, 6 August 1719, Board of Trade Minutes.

The French from whom and against whom the British were laying their claim to the Acadian territory had come to a similar conceptual compromise, one that facilitated both French sovereignty and conceptually allowed the continuation of Indigenous sovereignty in the territory. As Cornelius J. Jaenen argues, the French drew on Jean Bodin's definition of sovereignty which "defined sovereignty as unitary and indivisible" but "made an important distinction between location and exercise of power."[71] By this logic, "France, without renouncing the doctrine that sovereignty was its exclusive possession in the colony, could exercise its power in various ways and could bring it to bear, or not to bear, upon its inhabitants."[72] The sovereign flexibility to not enact its sovereign power in all circumstances allowed France to reconcile its claim of sovereign power with the reality of Native American self-government.[73] Lauren Benton expresses that a conception of sovereignty as flexible and divisible was common to imperial European thinking. The challenges of asserting imperial dominion, she argues, "required imagining sovereignty as a divisible quality whose component parts could be apportioned in various combinations."[74]

British interactions with Native Americans and treaties with them were conducted within a cultural understanding that took into account European purpose and meaning as

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[71] Cornelius J. Jaenen, "French Sovereignty and Native Nationhood during the French Regime," in *Sweet Promises: A Reader in Indian-White Relations in Canada,* ed. J. R. Miller (Toronto: University of Toronto Press, 1991), 23.
[72] Jaenen, "French Sovereignty and Native Nationhood," 23.
[73] Jaenen, "French Sovereignty and Native Nationhood," 21.
[74] Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge: Cambridge University Press, 2010), 5.

well as local circumstances. British treaties with Native Americans were also performative towards Britain and Europe. European interactions with Native Americans were frequently directed towards other Europeans. As Ken MacMillan has argued, "English promoters of New World sovereignty legally justified their activities [against] the rights of native peoples [and against] the competing claims of other Europeans."[75] The Indigenous peoples in North America were "intimately involved in a power struggle that spanned the Atlantic" as colonists and their home governments maneuvered to "preserv[e] their authority" against the other's claim.[76] In this process, colonial and imperial settlers and governments used European legal frameworks to assert one nation's claims against those of other Europeans, frameworks in which the sovereignty of Native Nations was integral to the working of the framework. Because European nations, especially the Spanish, French and English who were at odds in North America in the eighteenth century, did not share a "universal code to regulate territorial acquisition of terra incognita, each colonial power developed its own self-serving code, usually based on its indigenous domestic laws."[77] Although these European nations used different legal qualifications as benchmarks, interactions with Indigenous peoples reliably played a role in Europeans' assertions of their claims.[78]

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[75] Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576-1640* (Cambridge: Cambridge University Press, 2006), 8.
[76] Jenny Hale Pulsipher, *Subjects unto the Same King: Indians, English, and the Contest for Authority in Colonial New England* (Philadelphia: University of Pennsylvania Press, 2005), 6, 5.
[77] MacMillan, *Sovereignty and Possession*, 11.
[78] MacMillan, *Sovereignty and Possession*, 200, 204.

The outward-looking aspect of European treaty making in North America also worked in concert with intra-European treaty making. For example, the 1726 British-Mi'kmaq treaty served the dual purpose of pacifying local conditions and asserting Britain's sovereignty over Nova Scotia, nominally accorded by the Treaty of Utrecht, against French claims.[79] This means that British interactions with Native Americans and treaties with them were conducted within a cultural understanding that took into account European purpose and meaning as well as local circumstances.

The issues of sovereignty, layered or hierarchical sovereignty, and boundaries of dominion also arose in the Board's work within their broader mandate of colonial observation unrelated to relations with Native Americans. The Commissioners were confronted with the complexity of sovereignty and treaty making by the colony of South Carolina's transition from a Proprietary colony to a Crown colony between 1719 and 1729. From 1719, the Proprietors and the crown were in discussion for royal purchase of South Carolina, which proposal they called a treaty. The transaction was finalized in 1729, when "Crown officials succeeded in convincing the Lords Proprietors to sell their land rights, the step that finalized South Carolina's transformation into a Royal Colony."[80] However, only seven of the eight Proprietors agreed to do so. The final eighth

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[79] Wicken, *Mi'kmaq Treaties on Trial*, 73.
[80] Steven J. Oatis, *A Colonial Complex: South Carolina's Frontiers in the Era of the Yamasee War, 1680-1730* (Lincoln: University of Nebraska Press, 2004), 289.

of the colony was retained by Lord Carteret, who refused to concede it until 1743 when he was offered another strip of land, located near the Virginia border, in exchange.[81]

To gain information about this colony, the Commissioners called on two of the Lords Proprietors of Carolina to attend their meeting in July of 1720, to give them a state of that province. The Proprietors explained that their information came from the monthly updates about the condition of Carolina that they received.[82] The bulk of their presentation to the Commissioners concerned the colony's security. First, they spoke of the enslaved black population's recent revolt, emphasizing South Carolina's white population's numerical disadvantage against similar threats. The Proprietors then informed the Board "That as to their Indian Neighbours, they had made a Peace with the Yamasees by the Assistance of their Friends the Cherrikees," another issue of colonial security.[83]

This was an insight into the relationship between the colony and the proximate Indigenous nations: Carolina was in a position where the Cherokees would and could assist them to make peace with the Yamasees. Following as it did on the previous news of insurrection and state of the defences, this was a brief positive note. The Commissioners were at this time well aware of the war that had provoked the Carolina Assembly to ask for Crown Protection; they could therefore understand the value of peace with the Yamasees without further context recorded from the two Proprietors. Of

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[81] Edson L. Whitney, *Government of the Colony of South Carolina* (1895; repr. Baltimore: Haskell House Publisher Ltd., 1970), 31.
[82] TNA: CO 391/29, p 270, 28 July 1720, Board of Trade Minutes.
[83] TNA: CO 391/29, p 272, 28 July 1720, Board of Trade Minutes.

particular note then, I highlight the phrasing, as recorded by the Secretary, which emphasized Peace, Friendship, and the assistance of the Cherokees, who, we are to understand, acted as middlemen between the Yamasees and the English.[84] This is a further iteration of British awareness of Native Americans as distinct nations acting independently of each other, and carrying out balance of power politics themselves.

Following the two Proprietors' oral report, the Commissioners questioned them about "a Report spread Abroad as if the Lords Proprietors of Carolina had dispos'd or were negotiating for the Disposal of their Government & property in Carolina" and advised them "that His Majty might have the Refusal thereof."[85] In reply, the Proprietors "acknowledg'd, that they were in Treaty for disposing of it, and hop'd this Board wou'd be of Opinion, that the Measures they took were most for His Majestys and the Public Service."[86] We should take note of this usage of "treaty." It is an example of "treaty" as process rather than outcome, as seen in the European context in Chapter Three. Indeed, this usage here refers to negotiations between Anglo-Europeans not with First Nations. This is also a reference to "treaty" encompassing proprietary land rights, which is otherwise unusual in the reports of treaties, peaces and conferences pertaining to North America between 1717 and 1730 received by the Board of Trade – except those conducted between Europeans. In this period, according to the materials considered by the Commissioners, territorial property was negotiated between Europeans, while treaties

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[84] TNA: CO 391/29, p 270, 28 July 1720, Board of Trade Minutes.
[85] TNA: CO 391/29, p 273, 28 July 1720, Board of Trade Minutes.
[86] TNA: CO 391/29, p 273-274, 28 July 1720, Board of Trade Minutes.

with First Nations encompassed a different relationship between sovereigns. The Proprietors were in treaty for disposing not just their "property in Carolina" but also their "Government;" this was not only about territorial rights but also about authority for governance in the colony.

The South Carolina Proprietors were treating to dispose of their colony. This transfer would encompass the recognized diplomacy of the Yamasees and the Cherokees. The Proprietors had acknowledged Cherokee and Yamasee diplomatic negotiations with each other and with the British in Carolina. Yet what the Proprietors were promising to transfer by their "Government and Property of Carolina" they conceived as independent of Yamasee and Cherokee sovereignty. They and the Crown conceived the "Government and Property" as a concept over and above the on-the-ground circumstances that were contained in this purview. This double construction of treating clearly indicates the operation of a conceptual hierarchy of diplomacy or political legitimacy. Whether this was a fully formed ideological difference or "simply" engendered by practicalities of the manner in which a proprietary colony would be disposed of which does not take into account local conditions.[87]

The examples examined in this chapter show that the Commissioners and their informants, including colonial officials, saw Indigenous nations as complex and distinct. They drew lessons and parallels from their interactions with one nation to another, while

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[87] For discussions of ideological underpinnings of British imperial expansion, see David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000); Anthony Pagden, *Lords of all the Worlds: ideologies of empire in Spain, Britain and France c.1500-c.1850* (New Haven: Yale University Press, 1995).

keeping in sight the specificity of each nation and the colonial circumstances with them. In this sense, it was not so different from their understanding in the European realm, where they had expectations about diplomacy which spanned the continent, while addressing specific trade or power contexts. They saw treaties as necessary tools for establishing and maintaining amicable relations with Native Americans integral to the success of British trade and colonial security. They also perceived the possibility of treaties to establish hierarchical or layered relations between sovereigns, where British and First Nations' sovereignty existed concurrently by expressing itself in different parameters within the same territorial region. All this was in the Commissioners' minds when they devised to conduct a treaty with the visiting Cherokee delegates in 1730.

Chapter 5

Spaces of Diplomacy: Seven Cherokee Delegates Come to London, 1730

In the spring of 1730, a delegation of seven Cherokees from what is now South Carolina arrived in England. The origins of their visit were dramatic and intentionally diplomatic. Sir Alexander Cuming, a Scotsman recently arrived in the colony of South Carolina, had taken it upon himself to go into the Cherokee towns, distant from the colonial settlements of South Carolina, and meet with the Cherokee headmen there. The Cherokee "nation" at that time was composed of 60 towns divided into three or five regions.[1] They had had an uneven relationship with the colonists of Carolina and Virginia, but had allied with the South Carolinians in 1716 in the fallout of the destructive Yamasee War. In 1730, Cuming believed that he had convinced the Cherokee nation under what he believed was a single centralized government to submit to the British Crown, thereby becoming subjects of the British King. Although it is most likely

[1] Historians have given different counts for the number of Cherokee regions at this time. Conley and Oatis identify 3 regions (Overhills (or Upper Towns), the Middle Towns, and the Lower Towns (or Valley Towns)) while Reid identifies 5 (Lower Towns, the Valley Towns, the Middle Settlements, the Out Towns and the Overhill Towns). See Robert J. Conley, *The Cherokee Nation: A History* (Albuquerque: University of New Mexico Press, 2005), 21, 25; Steven J. Oatis, *A Colonial Complex: South Carolina's Frontiers in the Era of the Yamasee War, 1680-1730* (Lincoln: University of Nebraska Press, 2004), 112; John Phillip Reid, *A Better Kind of Hatchet: law, trade, and diplomacy in the Cherokee nation during the early years of European contact* (University Park: Pennsylvania State University Press, 1976), 2.

that Cuming completely misunderstood the situation, nevertheless, seven Cherokee men agreed to travel with him to England as political representatives.

The seven Cherokee delegates, Oukah-Ulah, Oukanekah,[2] Kettagustah, Tathtiowie, Clogittah, Collanah, and Ounakannowie arrived in England on the 5th of June, 1730.[3] These men had embarked on May 4th, 1730, on the *Fox* man-of-war in Charleston, South Carolina; a month later, they arrived at the port of Dover.[4] In England, they toured the sights of London and had four audiences with King George II. Just before their departure two months later, they were enjoined to make a hasty treaty with the Commissioners of the Board of Trade.

This chapter begins my close examination of the 1730 Anglo-Cherokee Treaty itself by pursuing the assumptions that lead to the Cherokee embassy and the Cherokees' reception and experiences in England. This analysis draws out the specific conditions in which British and Cherokee actors perceived a treaty between the two nations to be desirable in 1730. It shows the ways in which the Cherokee delegates' political identities and sovereign roles were established in their own communities and recognized by British colonists and Londoners. To pursue this analysis, I move from the North American context of Cherokee, South Carolinian and Cherokee-South Carolinian political environments, to the Cherokees' reception in England. For the North American context,

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[2] Oukanekah is better known by the name Attakullakulla (Ada gal'kala), which he bore in his later years as an influential Cherokee leader.
[3] The Cherokee delegates' names have been rendered in different ways both during their visit and by later historians. I have chosen to follow the spelling used by Cherokee historian Robert Conley (Conley, *The Cherokee Nation*, 33).
[4] Conley, *The Cherokee Nation*, 33.

close analysis of George Chicken, South Carolinian Commissioner for Indian Affairs, and Alexander Cuming's accounts of their "missions" to the Cherokees, along with a healthy literature about Cherokee society, are the foundations of my analysis. Examining the Cherokees' arrival and reception in England, the material published by London's popular press commenting on the visit is integral, as is literature on comparative eighteenth-century Indigenous visits to England.

As the brief narrative of the Cherokees' visit which introduced this chapter suggests, the Cherokees' political relationship with Great Britain was formally enacted in two locations: the court of King George II and the office of the Board of Trade. The Cherokees' experiences out and about in London constituted a third arena in which their political identities were both constructed and undermined. The Cherokees' reception in these arenas offer different interpretations of the meanings of their visit and the sovereign relationship they contracted with Great Britain, as understood by the British court, government, and public. How the Cherokee delegates themselves understood their visit and experiences in England is historically obscured. Drawing the picture of the Cherokees' political relationships within their nation and with incoming Europeans brings out some of the stakes for these delegates. A large portion of this chapter is dedicated to this background because it also shows how the relationships were developed in North America and how these ideas of Cherokee, South Carolinian and British sovereignty played out in 1730.

The 1730 Cherokee delegation to England was an explicitly diplomatic engagement, but historians who have studied this visit have underplayed its diplomatic element. Instead, historians such as Carolyn T. Foreman, Kate Fullagar and Alden T. Vaughan have used the 1730 Cherokee visit as one case study among many of Indigenous visitors to England – both voluntary and coerced, with political, religious or entertainment ends.[5] Foreman and Vaughan have emphasized narrative, documenting the comings and goings of Native Americans to England and their activities in England in broad strokes. Themes that emerge from these studies include the role of Indigenous visits in shows of British dominance and relationship-building exercises. Questions of Indigenous agency in initiating, approving and acquiescing to these visits and their activities in England are implied in these narratives rather than addressed outright. The question of coercion is more fully addressed by those studying Inuit and sixteenth-century visitors, captives brought to England by early explorers as proof of discovery or to be trained as interpreters.[6] Fullagar's more recent work examines Native American visits alongside visits from Indigenous Oceanians to explore British concepts of the

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[5] Carolyn T. Foreman, *Indians Abroad 1493-1938*, Chapter 5 "Sir Alexander Cuming" (Norman: University of Oklahoma Press, 1943), 44-55; Kate Fullagar, *The Savage Visit: New World People and Popular Imperial Culture in Britain, 1710-1795*, Chapter 3 "Seven From the Cherokees, Nine From the Creeks" (Berkeley: University of California Press, 2012), 65-87; Alden T. Vaughan, *Transatlatic Encounters: American Indians in Britain, 1500-1776*, Chapter 8 "Delegations from the Lower South" (Cambridge: Cambridge University Press, 2006), 137-164. Notice too how even the chapter titles diminish the identity, purpose and specificity of the Cherokee visit.

[6] For discussions of captive Inuit visitors see especially William C. Sturtevant and David Beers Quinn, "This New Prey: Eskimos in Europe, 1567, 1576 and 1577," in *Indians and Europe: An Interdisciplinary Collection of Essays,* ed. Christian F. Feest (Lincoln: University of Nebraska Press, 1987), 61-140.

savage and exotic. A forthcoming book from Coll Thrush promises to offer an Indigenous perspective on their experiences in England.[7] Even so, these survey studies, covering decades, or even centuries, and dozens of visitors, do not have the opportunity to meaningfully examine the 1730 Cherokee visit.[8]

Robert J. Conley and Grace Steele Woodward have offered an account of the visit as part of a longer history of the Cherokee people.[9] These scholars have focused on the events of the visit as a narrative and on the meaning of the visit as part of a longer historical trend, but have not considered the political meaning of the visit or the assumptions that lead to it, in and of itself. Furthermore, the narrative of the Cherokees' visit, retold by each historian, has superseded an analysis of the treaty that they signed, with the exception of Cherokee historian Robert Conley's denunciation of the Cherokee

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[7] Coll Thrush, *Indigenous London: Native Travellers at the Heart of Empire* (New Haven: Yale University Press, 2016), forthcoming. Thrush's article on "Algonquian London" suggests the direction his interpretation of the 1730 Cherokee visit may take: Coll Thrush, "Meere Strangers: Indigenous and Urban Performances in Algonquian London, 1580-1630," in *Urban Identity and the Atlantic World*, ed. Elizabeth Fay and Leonard von Morze (New York: Palgrave Macmillan, 2013).

[8] Other prominent studies of Native American visitors to England do not include the 1730 Cherokee delegation as a result of their choices of periodization. Their approaches to Native American visits to England have not been significantly different from the rest of the literature. Kate Flint, *The transatlantic Indian, 1776-1930* (Princeton: Princeton University Press, 2009); Harald E.L. Prins, "To the Land of the Mistigoches: American-Indians Traveling to Europe in the Age of Exploration," *American Indian Culture and Research Journal* 17, no. 1 (1993): 175-195; Dagmar Wernitznig, *Europe's Indians, Indians in Europe: European Perceptions and Appropriations of Native American Culture from Pocahontas to the Present* (Lanham: University Press of America, 2007).

[9] Conley, *The Cherokee Nation,* Chapter 4: "Visits Back and Forth," 33-38; Grace Steele Woodward, *The Cherokees* (Norman: University of Oklahoma Press, 1963), 60-67.

delegates' recorded reply to the treaty, which will be discussed in detail in Chapter Seven.

A model for a more in-depth analysis of a single visit of Indigenous diplomats to England is offered by Eric Hinderaker's study of the "Four Indian Kings" who visited in London in 1710. These four men, three Mohawks and one Mahican representative, were brought to London in an effort to sway the Five Nations' military might to ally with Britain for an excursion against Canada (one which eventually did not take place). Examining the popular and political responses to this visit, especially the diplomatic titles attributed to the delegates, Hinderaker places this visit and the visitors' reception into a larger argument about the British public's growing awareness of empire.[10] He argues that this visit was a turning point in the growth of British metropolitan consciousness of empire, a moment when Indigenous peoples were reframed as diplomatic actors in popular consciousness, as evident in their attribution as "kings" and their audience with Queen Anne.[11]

John Oliphant and Timothy J. Shannon's respective studies of the later 1762 voyage of three Cherokees to England also offer models. Both tease out the implications

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[10] Eric Hinderaker, "The 'Four Indian Kings' and the Imaginative Construction of the First British Empire," *William and Mary Quarterly* 53 no. 3, Indians and Others in Early America (July 1996): 488.

[11] Hinderaker, "The 'Four Indian Kings'," 494. Troy O. Bickham contests that Hinderaker locates the emergence of popular British attention to empire too early; he argues instead that the Seven Years' War was the turning point. This difference of interpretation does not undermine either's careful examination of Britons' responses to Native Americans. (Troy O. Bickham, *Savages Within the Empire: Representations of American Indians in Eighteenth-Century Britain* (Oxford: Clarendon Press, 2005), 26).

of Ostenaco (also called Ostenaca) and his companions' dual reception in England; treated as spectacles by the London crowds, they were transacted with diplomatically by the colonial administration.[12] Drawing on greater documentary records than are available for the 1710 or 1730 Native American visits, Oliphant shows the Cherokee leader Ostenaco's diplomatic reasons for requesting the trip. Shannon, in turn, argues that diplomatic intention was not enough; Native American visitors who wanted to be taken as diplomatic actors had to *act* like it. He argues that British officials and the British public developed a "ritualized set of expectations" for the performance of Native American political authority in England – to which they judged that the 1730 Cherokee delegates had conformed.[13]

Such a concentrated and contextualized analysis has not yet been afforded to the 1730 Cherokee delegation. This chapter will recover the 1730 Cherokee visit as a *diplomatic* visit. Examining the Cherokees' arenas of political reception and their own experiences foregrounds the context of the 1730 Anglo-Cherokee Treaty and provides greater insight into the meanings of their visit.

Before they thought of embarking for England, the Cherokee representatives had developed their political roles within their communities. The Cherokee people had

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[12] John Oliphant, "The Cherokee Embassy to London, 1763," *The Journal of Imperial and Commonwealth History* 27, no. l (January 1999): 1-26; Timothy J. Shannon, "'This Wretched Scene of British Curiosity and Savage Debauchery': Performing Indian Kingship in Eighteenth-Century Britain," in *Native Acts: Indian Performance, 1603-1832*, ed. Joshua David Bellin and Laura L. Mielke (Lincoln: University of Nebraska Press, 2011): 221-247.

[13] Shannon, "This Wretched Scene," 223, 235.

likewise developed their political relations with British colonies and colonists over many decades.

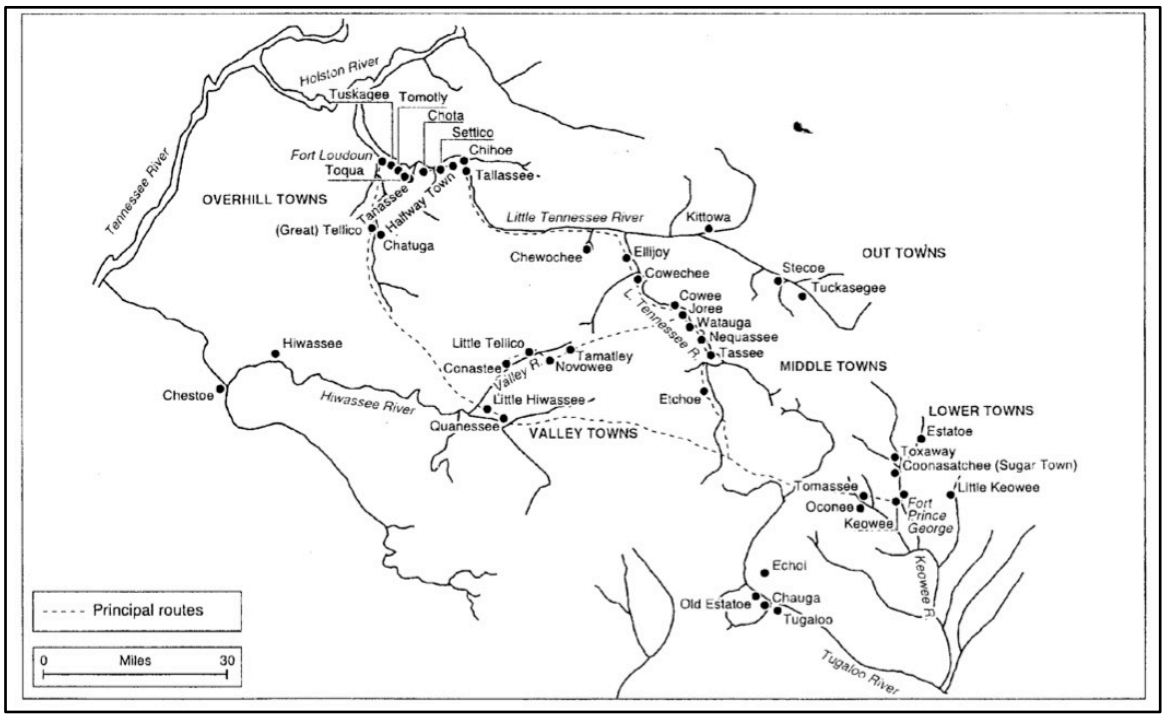

Figure 3: Cherokee Country
Source: John Oliphant, *Peace and war on the Anglo-Cherokee frontier, 1756-63* (Baton Rouge: Louisiana State University Press, 2001)

The Cherokee "nation" in the 1730s was a loosely aligned conglomerate of approximately 60 to 80 towns, each with its own autonomous government.[14] These towns, which are mapped in Figure 3, stretched through territory in what are now the states of North and South Carolina, Kentucky, Virginia, West Virginia, Alabama, Georgia and Tennessee.[15] The towns were assembled into three or five regions:[16] the

[14] Conley, *The Cherokee Nation*, 6, 11; Reid, *A Better Kind of Hatchet*, 4.
[15] Conley, *The Cherokee Nation*, 6.

Lower Towns, the Valley Towns, the Middle Settlements, the Out Towns and the Overhill Towns,[17] and were organized by seven exogamous matrilineal clans. It is this clan structure which allows us to speak of the Towns of the several regions, who spoke different dialects and had different regional alliances and enemies, as a nation.[18] I also employ the term "nation" throughout when referring to the Cherokee people because that is how the Board of Trade members referred to the Cherokees' political organization. As this project seeks to understand what the Commissioners understood themselves to be doing when they made a treaty with the Cherokee visitors in 1730, using the language of "nation" also best leads the reader to understand this position.[19]

Some knowledge of the nuances of the Cherokees' political organization was available to the Commissioners and other Londoners. The Commissioners relied on information from colonial officials. One valuable source of information on Cherokee political society in the early eighteenth century was provided by the South Carolinian trade factors. During South Carolina's brief public monopoly on trade, factors stations in the Cherokee towns had acted as "permanent intelligence agents in the nation. The assistant factors as well as the chief factors were expected to send detailed reports of

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[16] Conley, *The Cherokee Nation*, 21, 25; Oatis *A Colonial Complex*, 112; Reid, *A Better Kind of Hatchet*, 2.
[17] Reid, *A Better Kind of Hatchet*, 2.
[18] Reid, *A Better Kind of Hatchet*, 6.
[19] For a discussion of the problematics of attributing the term "nation" to historic Indigenous groups, see Scott Richard Lyons, *X-Marks: Native Signatures of Assent,* Chapter 3 "Nations and Nationalism since 1492" (Minneapolis: University of Minnesota Press, 2010), 111-164.

Cherokee news to Charles Town, at least once every 2-3 months."[20] From Charles Town, the colony's governor could pass this information along to the Proprietors or Commissioners in England.

This colonial knowledge was also transmitted to the wider London public through newspaper accounts, such as one published in September of 1730, in the last days of the Cherokees' visit. This article informed its London audience that

> The whole Cherrokee Nation is governed by Seven Mother Towns, each of these Towns chuse a King to preside over them and their Dependants; he is elected out of certain Families, and they regard only the Descent by the Mother's Side…Besides these, every Town has a Head Warrior, who is in great Esteem among them, and whose Authority seems to be greater than their King's, because their King is look'd upon as little else than a Civil Magistrate, except it so happens that he is at the same time a Head Warrior.[21]

This description employed Anglicized concepts and terms to depict Cherokee political organization as rather more centralized than it was. Nevertheless, it communicated to its London audience that the nation was composed of several distinct political units (Towns) which each had distinct political authorities; that the position of "king" held a different authority in Cherokee society than in British; and that matrilineal descent was an important factor in Cherokee political organization. In the broadest strokes, the information conveyed the nature of Cherokee political organization. In this description, the power of the political representatives of this polity to treat was taken for granted.

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[20] Reid, *A Better Kind of Hatchet*, 93. These letters are now lost.
[21] *Daily Journal,* 30 September 1730 #3037.

In the early eighteenth century, "fragmentation was the essence of Cherokee government."[22] Each town typically had "a Peace (or White) Chief and a War (or Red) Chief, and each Chief had his councilors, probably one from each of the seven clans. There were probably also women's councils representing the seven clans and wielding a significant amount of political power."[23] In this organization, political authority in the towns came through "personal credit, not government office" and headmen did not have "delegated power or coercive authority."[24]

Geopolitically, in the early eighteenth century the Cherokees had to contend with British encroachments from the colonies of Virginia and South Carolina, French alliances with the Cherokees' traditional enemies the Choctaws and the Creeks, and Spanish machinations from Florida and the southeast.[25] The Cherokees, particularly the Middle and Overhill towns, were also in conflict with "the Catawbas to the east, the Abeikas and the Tallapoosas to the southeast, and Iroquois raiders from the north."[26] In this situation, some Cherokee towns viewed alliance with English colonists as strategically beneficial. On the other hand, when the Cherokees came to peace with the Muskogeans (Creeks) in 1717, they no longer needed as strong a "friendship" with South Carolina.[27]

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[22] Reid, *A Better Kind of Hatchet*, 4.
[23] Conley, *The Cherokee Nation*, 6.
[24] Reid, *A Better Kind of Hatchet*, 5; Theda Perdue, *Cherokee Women: Gender and Cultural Change, 1700-1835* (Lincoln: University of Nebraska Press, 1998), 92.
[25] Conley, *The Cherokee Nation*, 27.
[26] Oatis, *A Colonial Complex*, 185.
[27] Reid, *A Better Kind of Hatchet*, 100.

The Cherokee towns had a history of active diplomatic engagement with the colonial government of South Carolina, spurred initially in reaction to the slave trade. The first Cherokee diplomatic delegation to South Carolina occurred in 1693 when 20 headmen travelled to Charlestown, the provincial capital, to request that the governor put a stop to the traffic in Cherokee slaves.[28]

The character of the relationship between the Cherokees and South Carolinians had developed especially during the decades of 1690 to 1730. Initially, traders were the first South Carolinians with sustained contact with the Cherokee towns. During this period, the South Carolina colonists provided the Cherokees with guns in exchange for military assistance against the Tuscaroras, the Cherokees' traditional enemies.[29] This de facto military and economic alliance gave the Cherokees increased power and influence in the region.[30] However, the Cherokees later learned that South Carolina's colonial policy was to provide guns to the different Indigenous nations and "provok[e] them to make war on each other" in order to receive the resulting war captives who the colonists would sell into slavery in the West Indies.[31] The slave trade of Native American slaves declined in the early eighteenth century.[32] But unsurprisingly, the traders' duplicity and enslavement of Cherokee peoples led some Cherokees to distrust the South Carolinians

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[28] Reid, *A Better Kind of Hatchet*, 25.
[29] Conley, *The Cherokee Nation*, 26.
[30] Oatis, *A Colonial Complex*, 184.
[31] Conley, *The Cherokee Nation*, 26.
[32] Reid, *A Better Kind of Hatchet*, 43.

and ally with the Yamasees and Catawbas against the colonists during the Yamasee War.[33]

Unscrupulous or simply self-interested Carolinian traders and trading practices had led to a tense relationship between the colony and the nations on whose territory they were settling. For South Carolina's governing men, trade was a constant headache. The colonial government perceived the importance of the "Indian Trade" for the security of the colony, but its numerous attempts to regulate this trade to preserve good relations with the Cherokees and other Indigenous trading partners were of middling success, being difficult if not impossible to enforce.[34] From the 1690s, traders circumvented the proprietary monopoly on trade and the governor's order against slave expeditions, and in 1714, "few traders were even bothering to apply for licenses at all."[35] When the colony made an attempt to run the trade by public monopoly, merchants, planters and Indigenous trade partners all resisted.[36] Cherokee leaders were vocal about their dissatisfaction with the trade situation, particularly the traders' "bad behaviour."[37] However, the Cherokees had limited colonial trade options once the Virginia colony withdrew its traders from their territory.[38]

The Yamasee War, from 1715 to 1718, was prosecuted by the Yamasee and their Indigenous allies against the South Carolinians, initially in reaction to unscrupulous

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[33] Conley, *The Cherokee Nation*, 26, 136.
[34] Oatis, *A Colonial Complex*, 190, 231.
[35] Oatis, *A Colonial Complex*, 35; 103.
[36] Oatis, *A Colonial Complex*, 154, 190.
[37] Conley, *The Cherokee Nation*, 28.
[38] Oatis, *A Colonial Complex*, 229.

British trading practices.[39] By the end of hostilities, 400 Carolinian settlers had been killed, and the Yamasee had become Spanish, rather than British, allies.[40] For the South Carolinians and their contacts in Great Britain, this made colonial defence and a stronger alliance with Native Americans even more pressing concerns.

Some Cherokee headmen signed a treaty of alliance with South Carolina in 1716.[41] The South Carolinians trumpeted this as an important military alliance with the entire Cherokee nation, but because of the decentralized character of Cherokee political organization and South Carolinians' previous behaviour towards the Cherokees, "it is likely" that the headmen who made the agreement were "forced to confront a good deal of opposition when they returned to their villages."[42] As a result, the South Carolinians did not receive the extent of military assistance that they had expected from the alliance.

British colonists, interlopers into Cherokee territory, disliked dealing with the Cherokee towns' decentralized and non-coercive political structure for just these reasons.[43] Throughout their dealings with the Cherokee peoples, the colonists sought to identify or create a singular Cherokee representative. Conley argues that the Cherokees understood the colonists' reluctance and confusion in dealing with a decentralized polity and were willing to temporarily adjust to South Carolinian expectations of political representation to simplify trade discussions with the colonists. When they judged it

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[39] Ian K. Steele, *Warpaths: Invasions of North America* (Oxford: Oxford University Press, 1994), 165.
[40] Steele, *Warpaths*, 166.
[41] Oatis, *A Colonial Complex*, 147.
[42] Oatis, *A Colonial Complex*, 186.
[43] Oatis, *A Colonial Complex*, 193.

would be to their benefit, as in the case of trade conferences, the Cherokees satisfied the British colonial desires to deal with a unified people represented by a single, male, military political figurehead. Furthermore, "because military concerns came to dominate relations with Native peoples, colonial officials wanted to negotiate exclusively with warriors."[44] However, the Cherokee towns were only willing to go so far. Because the "practice of sending warriors alone to conduct diplomacy contradicted Cherokee practice," they ignored South Carolina's demands in the 1720s that they do so.[45] For example, in 1729, when the South Carolina Indian Commissioner met with representatives of seven Cherokee towns, "only three towns sent exclusively warriors to represent them, one town sent two warriors and one beloved man[46] (or priest), and three others each sent one warrior and one beloved man."[47]

Superficially adjusting their political representation for interactions with South Carolinians in this way had the consequence of further obscuring from colonial view the role that Cherokee women played in council, where they had an equal voice with men.[48] Nevertheless, Cherokee women's political roles continued to extend beyond internal

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[44] Perdue, *Cherokee Women*, 92.
[45] Perdue, *Cherokee Women*, 92.
[46] "Beloved Man" was the Anglicized rendering of the title of a respected leadership position in Cherokee society. Modern historians interpret this role as "elder" or "councilor." For "elder" see Tom Hatley, *The Dividing Paths: Cherokees and South Carolinians Through the Era of Revolution* (New York: Oxford University Press, 1993), 3; John Oliphant, *Peace and War on the Anglo-Cherokee Frontier 1756-63* (Baton Rouge: Louisiana State University Press, 2001), 5. For "councilor" see Tyler Boulware, *Deconstructing the Cherokee Nation: Town, Region, and Nation among Eighteenth-Century Cherokees* (Gainesville: University Press of Florida, 2011), 11.
[47] Perdue, *Cherokee Women*, 92.
[48] Reid, *A Better Kind of Hatchet*, 167.

Cherokee councils. For example, because women were integral to the kinship networks that governed Cherokee society and the "absence of kinship ties was a distinct liability in Cherokee society….the Cherokees once concluded a peace treaty with the Senecas by Cherokee women choosing Senecas for uncles and brothers. The Cherokees could interact peacefully with their old enemies only if they incorporated the outsiders into their kinship system."[49] British colonial observers, noting the use of familiar metaphors in diplomatic encounters, elided the role of women to govern these relationships. Another example of Cherokee women's presence in the diplomatic process, even in absentia, is an incident from 1768 when "Cherokee warriors negotiating with Iroquoian peoples at Johnson Hall in New York presented a wampum belt…sent by Cherokee women to Iroquois women. Oconostota, a Cherokee war chief who was urging peace, relayed the women's message."[50] The absence of women from the 1730 Cherokee delegation to England was therefore part of this multifaceted construction of Cherokee political authority.

In the decades prior to the 1730 Anglo-Cherokee Treaty, South Carolina faced instability and uncertainty. The Yamasee War had led to the overthrow of the Proprietary government; had changed South Carolina's Indigenous alliances and their trade relations; and had thrown the colony into economic uncertainty.[51]

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[49] Perdue, *Cherokee Women*, 48.
[50] Perdue, *Cherokee Women*, 55.
[51] For more on the transition from proprietary to crown government, as experienced by South Carolinians, see L. H. Roper, *Conceiving Carolina: Proprietors, Planters, and Plots, 1662-1729* (New York: Palgrave Macmillan, 2004).

Into this tumultuous South Carolinian environment came Sir Alexander Cuming in 1729. A larger-than-life character, especially in his own words, spurred on by what he considered to be a prophetic dream,[52] Cuming left his native Scotland for the American colonies. He had, "for the better part of a decade," been pondering and planning schemes for the expansion of the British Empire in North America.[53] His decision to travel to South Carolina is best understood "as the act of a frustrated office-seeker who had long imagined finding wealth in America."[54]

In South Carolina, Cuming quickly established himself as a money-lender in the cash-strapped colonial economy, although his holdings turned out to be nothing more than a front. As his deception was not discovered until after his departure for England with the Cherokee delegation, his role in the colony's economy brought him considerable influence.[55]

From this position of social power, Cuming decided to mount an expedition into the Cherokees' country. He told the South Carolina assembly and traders that his intention in going into the territory was to collect information for the Royal Society, of which he was a member. In his account of his mission, Cuming told how he had marched, fully armed, into a Cherokee meeting and demanded that the headmen there submit to the British Crown. And they did, if his account is to be believed, although both his

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[52] Leonard J. Sadosky, *Revolutionary Negotiations: Indians, Empires, and Diplomats in the founding of America* (Charlottesville: University of Virginia Press, 2009), 13.
[53] Sadosky, *Revolutionary Negotiations*, 13.
[54] Sadosky, *Revolutionary Negotiations*, 15.
[55] Sadosky, *Revolutionary Negotiations*, 13, 18.

contemporaries and later historians have questioned his understanding of the response that the Cherokees gave him and the validity of his self-serving narrative.[56] Cuming also believed that he had presided over and guided the creation and selection of a Cherokee "emperor," though that too is doubtful. More likely, Cherokees such as Moytoy, the newly named emperor, used Cuming's presence and intent to improve their own political position.[57] If all that were not enough, Cuming spoke of his travels in the Cherokee towns as if he was the first person to accomplish a mission such as this. In this case too, he was wrong.

Five years before Cuming set out for the Cherokee towns, Colonel George Chicken had made a very similar mission, one that had been ordered by the colonial governor, unlike Cumming's self-directed tour. Chicken embarked on his mission into the Cherokee towns on the order of the governor Francis Nicholson; a parallel mission was made by a second appointed agent to visit and sway the Creek people.

Nicholson was the colony's first royal governor. He was "a grizzled old soldier" and "professional colonial governor" with over 30 years of experience in colonial administration, in Virginia, Maryland and New York.[58] His qualifications included "a firm loyalty to the Crown and an unwavering confidence in the might of the British

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[56] Conley has gone so far as to say that Cuming's narrative is "totally absurd" (Conley, *The Cherokee Nation*, 29).
[57] Sadosky, *Revolutionary Negotiations*, 22.
[58] Oatis, *A Colonial Complex*, 226. Extensive colonial experience was common amongst gubernatorial appointees (Philip Haffenden, "Colonial Appointments and Patronage under the Duke of Newcastle, 1724-1739," *The English Historical Review* 78, no. 308 (July 1963): 423).

empire."[59] He also had a track record of recognizing the importance of Native American alliance and military support for British colonial security and expansion. Nicholson was the planner behind the Mohawk and Mahican diplomatic visit to England in 1710. Nicholson conceived of this visit as a means of securing the Five Nations' military support for an expedition against New France. While this planned attack ultimately never came to pass, Nicholson's belief was that the Five Nations' representatives would sway their compatriots to support the British in this venture if they saw first-hand the might of Great Britain and its ruler. In this, Nicholson is an example of a colonial administrator, especially an experienced one, seeing and reinforcing the connections between the imperial centre and the colonies.[60]

Nicholson had been sent to South Carolina when it was clear that the colony would no longer accept proprietary governance. He was a "royal executive with the energy, authority and determination to assume the direction of the colony's Indian affairs."[61] Nicholson believed that the trade with the Indigenous nations was "of little or no use to the well-being of South Carolina and the British empire unless it helped strengthen South Carolina's political hold on the Indians."[62] Accordingly, between 1721 and 1725 he brought in five new acts "for the better regulation of the Indian trade" to control traders.[63] He also went on a "campaign to formalize South Carolina's Indian

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[59] Oatis, *A Colonial Complex*, 226.
[60] Bickham, *Savages within the Empire*, 24.
[61] Reid, *A Better Kind of Hatchet*, 127.
[62] Oatis, *A Colonial Complex*, 232.
[63] Oatis, *A Colonial Complex*, 231.

relations by drawing a straighter line between King George and certain Indian leaders" by giving "gifts and commissions to sympathetic headmen of Lower, Middle and Upper Cherokees."[64] It was then, "for the first time since the Yamassee war, the South Carolina government was sending agents to talk with the Indians, not trade with them," agents such as George Chicken.[65]

One of Nicholson's initiatives was the "nationalization"[66] of the Cherokees in an effort to clarify their decentralized governance structures for British colonial simplicity. He and other South Carolina officials, especially the Indian Agent he created, "worked toward the further 'nationalization' of the Cherokees, hoping that the appointment of new Cherokee 'kings' would make the different Cherokee towns and sections into a more manageable and dependable polity."[67] Thus, attempts to centralize Cherokee governance as a means of solidifying the British-Cherokee relationship were not novel to Cuming.

George Chicken was appointed Indian Trade Commissioner after years as a trader with the Indigenous peoples and time as a militia captain.[68] As Indian Trade Commissioner, he had, as Steven J. Oatis explains, "the responsibility of keeping the Cherokees in the South Carolina camp by preventing them from making any separate treaties with the French or the Creeks."[69] Chicken's instructions for his mission recognized the Cherokees' sovereignty even as they required him to do his best to

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[64] Oatis, *A Colonial Complex*, 233.
[65] Oatis, *A Colonial Complex*, 238.
[66] Oatis, *A Colonial Complex*, 242.
[67] Oatis, *A Colonial Complex*, 242.
[68] Oatis, *A Colonial Complex*, 138.
[69] Oatis, *A Colonial Complex*, 238.

circumscribe the Cherokees' diplomatic agency. Chicken was one of three leaders of an expedition of 300 "heavily armed men" sent by the colonial government "into the mountains in an effort to help the Cherokees make up their mind once and for all" whether they would ally themselves with South Carolina.[70] During this mission, Chicken and the other leaders "kept a running correspondence with one another and gradually developed a better picture of the major political camps among the Cherokees."[71] Through their appointment of capable men such as Chicken to the position of Indian agent, the South Carolinian government believed "in their ability to manage their western frontiers through diplomatic channels."[72]

Chicken was the South Carolinian Indian Agent who best carried out Nicholson's initiative. In 1730, Cuming presented what he had done as a novel and important accomplishment. But Cuming's narrative bears a strong resemblance to the journal that Chicken made of his mission five years earlier. Much as Cuming would, Chicken had gone from village to village of the Cherokees, meeting with the headmen. He had also asked them to gather together for a multi-town meeting. He had done his best to direct a process of appointment of a single Cherokee "emperor" to oversee the towns. In 1725, Chicken had appointed a headman who he judged to be "intelligent and sympathetic" (to South Carolinian interests) "named Crow to serve as king of all the Cherokees and

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[70] Oatis, *A Colonial Complex*, 186.
[71] Oatis, *A Colonial Complex*, 186.
[72] Oatis, *A Colonial Complex*, 237.

summon[ed] all the Cherokee leaders to the Middle Cherokee town of Ellijay to take part in the first nationwide Cherokee council on record."[73]

Both Chicken and Cuming used the same turn of phrase to evoke what they believed was Cherokee submission to the British Crown. Chicken had laid the groundwork for Cuming's venture. It is unclear if Cuming was familiar with Chicken's approach, and Chicken had passed away before Cuming arrived in the colony, but their narratives evoke a similarity of intent and action. In his journal of his "Journey to the Cherokees," Chicken recorded that "I also informed them that as Crow was their King and made by them & Approved off by the English, that I Expected they would look upon his as such, otherwise they would *be no people*."[74] For his part, Cuming put this rhetoric into the Cherokee voice, claiming that the Cherokees had made their submission "on their Knees, calling upon every thing that was terrible to them to destroy them, and that they might *become no People*, if they violated their Promise and Obedience."[75] Cuming further described that the Cherokees had promised that "they would obey him [King George] in every thing, and that if they violated this Promise, they would *become no People*."[76] The similarity of this phrasing to Chicken's posturing five years earlier casts doubt on the accuracy of Cuming's reportage. However, as Steven J. Oatis concludes, "While there can be little doubt that some of the Cherokees and Creeks were intimidated

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[73] Oatis, *A Colonial Complex*, 242.
[74] TNA: CO 5/12, p 24, 1725, "Journal of the Commissioners for Indian Affairs on his Journey to the Cherokees," emphasis added.
[75] *Daily Journal* 30 September 1730 #3037, emphasis added.
[76] *Daily Journal* 8 October 1730 #3044, emphasis added.

or shamed by the imperious conduct of Chicken… the Indians' outward compliance did not necessarily indicate their submission before the forces of South Carolina imperialism."[77] A famous letter from William Johnson, Superintendent of Indian Affairs in the 1760s gives insight into what might have been happening. Writing more than 30 years later, Johnson spoke of nuance between the meaning colonists imagined and what Indigenous peoples understood themselves to be doing. Johnson wrote,

> I know it has been very customary for many People to Insinuate that the Indians call themselves Subjects…nor would they approve of it. tis true that when a Nation find themselves pushed…they are apt to say many civil things, and make any Submissions which are not agreeable to their intentions, but are said, merely to please those with whom they transact affairs as they know we cannot enforce the observance of them."[78]

The identification of a single Cherokee spokesman, considered by the British to fulfill a kingly function in the nation, had also already been recorded in a treaty. In 1721, a group of 37 Cherokee headmen travelled to Charlestown to meet with the royal governor of South Carolina. These men were seeking redress for issues including trade concerns and land encroachments. With a treaty, they "attempt[ed] to settle a fixed boundary between the Cherokee country and the colony," and in the process ceded territory to the colony for the first time.[79] At this meeting, the Cherokees also agreed to

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[77] Oatis, *A Colonial Complex*, 240.
[78] William Johnson to Thomas Gage, 31 October 1764, in *The Papers of Sir William Johnson, Vol. 11*, ed. Milton W. Hamilton (Albany: The University of the State of New York), 394-395.
[79] Conley, *The Cherokee Nation*, 27.

select a single man to be the trade representative liaising with the colonial government.[80] In the Cherokees' understanding, this man was only to be a trade representative to facilitate dealing with the colonists, and not otherwise a sole monarch.

The idea of a diplomatic visit to England was also not original to Cuming. Others in South Carolina and other British North American colonies, such as Nicholson, had hoped to bring Native Americans to England to solidify alliances and impress them with England's might. Only one such visit had come to pass before 1730; Cuming's ability to actualize his plan was one of his successes.

The Commissioners of the Board of Trade had also already espoused the idea of Native American delegations to England prior to Cuming's orchestration of the Cherokees' visit. In their 1721 *Report on the State of the Colonies in North America*, the Commissioners had recommended bringing Native American leaders to England to solidify alliances with their nations, stating, "We are likewise of the opinion, that it might be convenient to imitate the French, in sending home some chiefs of the most considerable Clans or nations, to whom they take care to shew the Glory & splendor of the French nation in Europe, that the said Indians may, upon their return, instill the greater respect for them among their countrymen."[81] This would not be the last time that the British looked to France, seemingly successful in their Indigenous diplomacy, for

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[80] Conley, *The Cherokee Nation*, 27.
[81] Lords Commissioners for Trade and Plantations, "State of the British Plantations in America, in 1721," in *Documents Relative to the Colonial History of the State of New York, Volume 5,* ed. J. R. Brodhead and E. B. O'Callaghan (Albany: Weed, Parsons and Company, 1855), 627.

strategic pointers.[82] There was also an element of imperial pride in this proposal, seeing London as the means to awe the First Nations with Britain's might. The South Carolinian government had also identified the potential value of a visit of Cherokees or other Native American representatives to England, but had not been willing to devote the necessary funds for the voyage.[83]

The 1730 Cherokee voyage to England was made possible by Cuming's willingness to initially fund it from his own pocket. However, once arrived in England, Cuming did his best to secure Royal reimbursement for the expenses of this unauthorized visit.[84] He was also frequently absent from the Cherokee delegation as he turned to other schemes. The Crown was hesitant to pay Cuming, since his spending had not been pre-approved by the Crown. The logic of the public purse bearing the cost of an Indigenous diplomatic visit had nevertheless been laid out in the Board of Trade's 1721 *Report*, quoted above. The maintenance of foreign diplomats had been common practice within Europe during the sixteenth century, although the practice had "ebbed away" in the

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[82] For example, following the Seven Years' War, the British officials in the newly-acquired Florida territory explained to the Board that they would have to follow French diplomatic precedents in order to keep the nations there favourably disposed to the new arrivals. (TNA: CO 5/582, f 34, 24 January 1764, "Extract of a letter from Major Farmer dated Mobille 24th January 1764;" TNA: CO 5/574/1, f 75, 29 May 1764, George Johnstone to Board of Trade).
[83] Oatis, *A Colonial Complex*, 261.
[84] TNA: SP 36/19/2, fol. 41, 15 July 1730, Alexander Cuming to Delafaye.

following century. [85] There was European diplomat precedent for the Crown's financial sponsorship of the visit, as well as the precedent of previous Indigenous visits.

When the Cherokee delegation arrived in England, the London newspapers immediately reported on the fact, and characterized the political purpose of the visit and the relationship being forged between the Cherokee nation and Great Britain. The Cherokees' visit and their diplomatic actions looked very different through the eyes of the London press than they did in the minutes taken by the Board of Trade's Secretary. Aiming to attract and entertain readers, the newspapers paid much more attention to the Cherokees' dress and social calendar, and they described in detail the extra-textual events of the diplomatic encounters, especially the treaty, which are absent from the Board of Trade's official record. Furthermore, the newspapers entered into discussions on details that the Board of Trade seemingly took for granted: the Cherokee delegates' exact titles and the identity of their interpreter. Considering how frequently articles relating to the Cherokees were published by multiple newspapers on multiple days, and the discussion culture that surrounded newspapers in this period,[86] we can follow M. S. Anderson's assessment that "the press was the nation's pedagogue"[87] on diplomatic matters applies to the Cherokee visit as well.[88]

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[85] M.S. Anderson, *The Rise of Modern Diplomacy 1450-1919* (London: Longman, 1993), 48.
[86] James Livesey, *Civil Society and Empire: Ireland and Scotland in the Eighteenth-Century Atlantic World* (New Haven: Yale University Press, 2009).
[87] Bickham, *Savages within the Empire*, 67.
[88] Although concerned with a later time period, Jeffrey McNairn's discussion of the role of newspapers to both create and reflect public opinion is instructive. Jeffrey L. McNairn,

During the 1730 Cherokee visit, newspaper articles described the political relationship in two contexts, that of the Cherokees' audiences with the king of Great Britain, and that of their meetings with the Lords Commissioners of Trade and Plantations. The newspapers presented the Cherokees' audiences with King George II as enacting the political relationship between the Crown and Cherokees through symbolic behaviour, while the meeting with the Commissioners resulted in the signing of Articles of Friendship and Commerce. The newspaper reports themselves and the Cherokees' further activities in England constituted a third realm in which the Cherokees' diplomatic identity was enacted.

As soon as they arrived in England, the newspaper press framed the purpose of the Cherokees' visit for curious London readers. The articles that announced the Cherokees' arrival in England described their visit in terms of their diplomatic intentions toward King George II. For example, the *London Evening Post* stated that "Seven Kings or Chiefs of the Chirakee Indians, bordering upon Carolina, are come over in the Fox Man of War, Capt Arnold, in order to pay their Duty to his Majesty, and assure him of their Attachment to his Person and Government, &c."[89] The *Daily Courant* stated that "Several Chiefs of the Indians bordering on South Carolina are come over in the Fox

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The Capacity to Judge: Public Opinion and Deliberative Democracy in Upper Canada, 1791-1854, Chapter Three "'The most powerful engine of the human mind': The Press and Its Readers" (Toronto: University of Toronto Press, 2000), 116-175.

[89] *London Evening Post* 11 June 1730 #391; also printed in the *Daily Journal* 12 June 1730 #2943; *Weekly Journal or British Gazetteer* 13 June 1730 #273; *Universal Spectator and Weekly Journal* 13 June 1730 #88; *London Journal* 13 June 1730 #567.

Man of War to do Homage to his Majesty."[90] Thus, the Cherokees' purpose for traveling to Britain was characterized in the popular press as 'paying duty' or 'homage' to the British king, indicating a relationship of British authority and Indigenous political inferiority. These reports immediately framed the diplomatic, but also subordinate, relationship they expected the Cherokees to confirm.

This impression of the purpose and outcome of the Cherokees' visit was elaborated in the descriptions of their royal audiences, the first formal diplomatic space that the Cherokees entered in England. In total, the Cherokee delegation had four audiences with the British king. At their first royal audience, the Cherokees are reported to have presented King George II with "Belts of Wampum" and to have "kneeled" to him, either on their first introduction or as he passed by them in the procession.[91] As articulated by the *London Evening Post*, the meaning of these gestures was that the Cherokees had "shew'd the highest Marks of reverence and Esteem" to the King.[92] The newspapers reported that the Cherokees too were treated with the respect of visiting dignitaries, being "splendidly entertained at Dinner by his Majesty's Order" and having the honour of being situated "near the King" at that meal.[93]

The clothing that the Cherokees wore for their royal audiences was vividly described for the newspapers' readership. In this period, references to clothing were one of the major ways that Europeans, Britons included, "conveyed differences between

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[90] *Daily Courant,* 12 June 1730 #567; *British Journal,* 13 June 1730 #128.
[91] *London Evening Post* 18 June 1730 #395; *Daily Journal,* 20 June 1730 #2950.
[92] *London Evening Post* 18 June 1730 #395; *Daily Journal,* 20 June 1730 #2950.
[93] *London Evening Post* 18 June 1730 #395.

themselves and others."[94] This was a period prior to stringently racialized categories of difference, and so clothing "played a key role in delineating categories" of rank.[95]

At their first audience with the King, the newspapers reported that the Cherokees wore their "Country habits."[96] A more extensive description was printed in the *London Evening Post* and other papers from June 23rd, which reported that when the delegates

> were introduced to his Majesty at Windsor; the King had a Scarlet Jacket[97] on, but all the Rest were naked,[98] except an Apron about their Middles, and a Horse's Tail hung down behind; their Faces, Shoulders, &c. were painted and spotted with red, blue, and green, &c. they had Bows in their Hands, and Painted Feathers on their Heads.[99]

The newspaper's description singled out Oukah-Ulah's Europeanized dress. This indicated to the British readers that Oukah-Ulah, titled as "King" in the article, held a higher rank than his fellows, corresponding to the distance between King George II and

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[94] Roxann Wheeler, *The Complexion of Race: categories of difference in eighteenth-century British culture* (Philadelphia: University of Pennsylvania Press, 2000), 14.
[95] Karen Ordahl Kupperman, "Presentment of Civility: English Reading of American Self-Presentation in the Early Years of Colonization," *William and Mary Quarterly* 54, no. 1 (January 1997): 199.
[96] *Daily Journal* 20 June 1730 #2950.
[97] At this time, "Scarlet was an extremely expensive kind of fine woolen cloth, which could be of any colour." (Karen Ordahl Kupperman, *Indians and English: Facing Off in Early America* (Ithaca: Cornell University Press, 2000), 71). In 1762, the Cherokee visitors Ostenaco and two companions also wore "scarlet" for their appearance at court. In this case, the garments had been given to them in London, but were supposed to be "in the mode of their own country." (Oliphant, "The Cherokee Embassy to London, 1763," 2).
[98] At this time, "'naked' did not mean completely without clothes, but clothing that was less elaborate than European, lacking layers." (Kupperman, *Indians and English*, 49).
[99] *London Evening Post* 23 June 1730 #397; *Daily Post* 24 June 1730 #3358; *Weekly Journal or British Gazetteer* 27 June 1730 #275; *Universal Spectator and Weekly Journal* 27 June 1730 #90; *Country Journal or the Craftsman* 27 June 1730 #208; *British Journal* 27 June 1730 #130; *Grub Street Journal* 2 July 1730 #26.

his courtiers. Following their first audience, the King provided all seven Cherokees with ornate English outfits;[100] the *Daily Courant* reported that they "took the Air in St. James's Park, habited in rich Garments laced with Gold, presented to them by his Majesty."[101]

Cuming accompanied the Cherokees to their audiences with the King; his presence complicated their diplomatic power. Cuming maintained that he had been empowered by the Cherokee "emperor" Moytoy as the emperor's representative, and that because the Cherokees had, in North America, made their submission to the Crown to him, he was now the conduit for this message. In accordance with this claim or with this empowerment, Cuming laid before King George II the "crown of the Cherokees." This was a headpiece made of possum skin and decorated with feathers and other items. Twenty-five years after the Cherokee visit, Cuming offered an explanation of the crown's symbolism in a letter to and published by the *Public Advertiser*. He wrote,

> The Crown of Tannassee consists of nothing else but of the Tails of the Female O-possum, put together in the Form of a Wig. This Animal has a false Belly, into which she takes up her Young and hides them there when any Danger appears; and this is made use of to express the distinguishing Character which belongs to a Sovereign considered in the Light of a supreme civil Magistrate, whose paternal Affection denominates him both a Father and Mother of his People.[102]

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[100] Woodward, *The Cherokees*, 64-65.
[101] *Daily Courant* 7 August 1730 #8996; *Grub Street Journal* 13 August 1730 #32.
[102] *Public Advertiser,* 18 October 1755 #6554.

Cuming stated that in 1730, the crown and the Cherokees' other gifts had been "sent to the Tower of London, where undoubtedly they are still preserved."[103] This mattered because Cuming argued that the symbolic act of placing this crown at the feet of King George II signified that the "Cherokee Indians became Subjects to the Crown of Great-Britain."[104] He further described the crown and other Cherokee gifts, "their Eagles Tails, the Scalps of their Indian Enemies" as "Tokens of his Majesty's Sovereignty over all the Territories of the Cherokee Nation."[105] Invoking Cherokee sovereignty was necessary for this rhetorical transfer. If the Cherokees were not sovereign, their presentation of the crown and presents would not signify British acquisition of sovereignty over their territory.

Cuming made his pronouncements on the meaning and significance of the Cherokees' gift items in 1755, during a period when Cherokee action against South Carolinian settlements was feared and only days after a South Carolinian conference with the Cherokees had been reported at length by the same *Public Advertiser*.[106] It is less clear that this significance was expanded on during the Cherokee's 1730 visit. With the benefit of hindsight, the ever-opportunistic Cuming made his contribution to the debate. However, of the crown, Leonard J. Sadosky states, "Certainly, town headmen wore such 'crowns' as markers of their positions of authority, but the notion that a single crown

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[103] *Public Advertiser,* 18 October 1755 #6554.
[104] *Public Advertiser,* 18 October 1755 #6554.
[105] *Public Advertiser,* 18 October 1755 #6554.
[106] *Public Advertiser,* 10 October 1755, also printed in *London Evening Post* 9 October 1755 #4356.

could convey the 'universal Sovereignty' of all of the Cherokee towns was a novel interpretation."[107]

The manner that the *London Evening Post* and other papers reported the Cherokees' departure from Windsor for the sights of London indicates that they (both the writers and the Cherokees) perceived the diplomatic portion of their visit to be concluded, and entertainment beginning. The *London Evening Post* reported that "the 7 Indian Princes took leave of their Majesties, and the rest of the Royal Family at Windsor, and will this day come from thence to town, where we hear they intend to stay for some time, to see all the curiosities here before they return home."[108] During this period of sightseeing in London, the newspapers continued to report on the Cherokees' movements, and the Cherokees' diplomatic identities remained central through discussions such as their proper titles, and accounts of meetings with merchants.

Pinpointing the Cherokees' exact political roles – in European terms – was apparently important to British observers. A lot of significance hangs on the ways in which the popular press identified Indigenous visitors to England. Speaking of the earlier Mohawk and Mahican delegation, which travelled to London in 1710 and was the most obvious precursor to the 1730 Cherokee visit, Hinderaker argues that "they were neither the first Indians to visit the British Isles nor the last, but in cultural impact the episode was unique. In part this was a function of the social and political authority ascribed to the

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[107] Sadosky, *Revolutionary Negotiations*, 23.
[108] *London Evening Post* 30 July 1730 #414; *Daily Journal* 1 August 1730 #2986; *Grub Street Journal* 6 August 1730 #31.

Indians by calling them 'kings'."[109] In the case of the 1710 delegation, all four delegates were accorded the title "king" in London's popular press. During the 1730 Cherokee visit, some of the delegates were portrayed as holding positions of higher authority than others. In both cases, "the idea of Indian kings had radical implications for Britons." As Hinderaker argues, "this new impulse to project political sovereignty onto native leaders was entirely consistent … with the desire to extend English imperial authority in America: it posited the existence of native peoples who were capable of serving as effective allies and agents of the crown in the empire-building process."[110] In the British perspective, the very logic and purpose of the Cherokees, and earlier Mohawk and Mahican visitors' journeys depended on this attributed recognition of their political authority.

The *Grub Street Journal* took its fellows to task for the variable and inaccurate titles they were giving to the visitors.[111] For example, reports described "the Indian King, and the Prince, and five of the chief of his Court;"[112] "the Indian King, Prince, &c;"[113]

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[109] Hinderaker, "The 'Four Indian Kings'," 487.
[110] Hinderaker, "The 'Four Indian Kings'," 488.
[111] *Grub Street Journal,* 10 September 1730 #36.
[112] *London Evening Post,* 23 June 1730 #397; *Daily Post,* 24 June 1730 #3358; *Weekly Journal or British Gazetteer,* 27 June 1730 #275; *Universal Spectator and Weekly Journal,* 27 June 1730 #90; *Country Journal or the Craftsman,* 27 June 1730 #208; *British Journal,* 27 June 1730 #130.
[113] *London Evening Post,* 25 August 1730 #3293; *London Evening Post,* 25 August 1730 #424; *Daily Journal,* 26 August 1730 #3007; *Universal Spectator and Weekly Journal,* 29 August 1730 #99; *Daily Courant,* 26 August 1730 #9012; *Grub Street Journal,* 27 August 1730 #34; *British Journal,* 29 August 1730 #139.

"the 7 Indian Princes"[114] and "the Indian Princes, with a great Retinue."[115] Some of these titles, such as "king" or "prince," accorded supreme political authority to the men thus named. Other titles, such as "warrior," "general" or "captain," placed them on lower rungs of the ladder of political authority. To the extent that these appellations denoted the political structure described by the *Daily Journal* as original to the Cherokee, the terminology used to describe the Cherokee delegates shows evidence of British observers attempting to comprehend Cherokee political organization by means of the language and concepts with which they were already familiar.[116]

However, the extent to which the newspapers' appellations varied suggests a certain amount of uncertainty or instability in the writers' perceptions of the Cherokees' political authority. Indeed, some of the Cherokee "kings" were but "captains." The *Grub Street Journal* emphasized the Cherokees' "correct" titles, indicating that the titles were perceived by eighteenth-century newspaper consumers to define their political roles and authority, so much so that the variety of appellations produced a pernicious effect. In addition, the number of articles with divergent appellation and the variety of titles was

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[114] *Grub Street Journal,* 6 August 1730 #31; *London Evening Post,* 30 July 1730 #414; *Daily Journal,* 1 August 1730 #2986.
[115] *London Evening Post,* 25 August 1730 #3293; *London Evening Post,* 25 August 1730 #424; *Daily Journal,* 26 August 1730 #3007; *Universal Spectator and Weekly Journal,* 29 August 1730 #99; *Daily Courant,* 26 August 1730 #9012; *Grub Street Journal,* 27 August 1730 #34; *British Journal,* 29 August 1730 #139.
[116] For more on European reliance on analogy to comprehend the political structures of non-European peoples, see David Cannadine, *Ornamentalism: how the British saw their empire* (New York: Oxford University Press, 2001); Peter Cook, "Kings, Captains, and Kin: French Views of Native American Political Cultures in the Sixteenth and Early Seventeenth Centuries," in *The Atlantic World and Virginia, 1550-1624*, ed. Peter C. Mancall (Chapel Hill: University of North Carolina Press, 2007), 307-341.

significant. Approximately 80 different articles employed 14 different titles (reflecting a greater gradient of political authority) in 14 different combinations to portray the Cherokees' political roles.[117]

The *Grub Street Journal* raised its concerns in the context of reports of the Cherokee delegation's arrival and entertainment, but the implications for international diplomacy are clear. During August, the London newspapers began to take a more precise view of the Cherokees' "true" titles and roles. This occurred while the Cherokee treaty was in planning but the link was not made explicit in the newspapers. As the *Daily Courant* and others printed, "The Indian chiefs lately brought over from South Carolina are now distinguished by the following Names and Titles, viz. King Ouka, Prince Catorgusta, General Tethtae, General Clogoitta, General Calannah, General Unnowconnowe, Capt. Owcan Nakah."[118] For this writer, it was important that the Cherokee visitors be referred to accurately according to their correct names and titles. The article's implied argument was that for consumers of the London papers, this accuracy was integral to their understanding of the diplomatic processes being reported.

As they moved about in London and saw the sights, the Cherokees travelled with their interpreter, an almost unremarked attendant. Hints of his presence occur occasionally in the newspaper record of the visit. He is there in a description of King

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[117] Georgia Grace Carley, "Reporting Diplomacy: Eighteenth-Century London Newspapers and British Perception of the Indigenous Peoples of North America," (master's thesis, Trent University, 2010), 45.
[118] *Daily Courant* 11 August 1730 #8999; *London Journal* 15 August 1730 #576; *British Journal* 15 August 1730 #137.

George's review of some royal regiments at which "the five Indians were there on foot with their Interpreter."[119] Unlike the Board of Trade Secretary, the newspapers identified this man. They named him as "Mr. Robert Bunning, born at Spalding in Lincolnshire, Interpreter, who hath been fourteen Years in their Country."[120]

Later historians have disagreed about the interpreter's true identity. Some have named the previously mentioned Col. George Chicken as the delegation's attendant;[121] however, Chicken died in South Carolina in 1727, three years before the visit. Even had he survived to this date, his candidacy for interpreter would be extremely unlikely since he himself used the services of an interpreter when he travelled among the Cherokees and "probably knew no more than a few Cherokee phrases."[122] The confusion may stem from a report in the *British Journal* that "Mr. Chicken, an agreeable young Gentle Man of a great Estate, born of English Parents, who came over with em [the Cherokees] from S. Carolina, is next Week to be married to Miss Busch, of Wandsworth."[123] No other report of the Cherokee visit, from 1730 or since, has mentioned this young man or attributed him any importance.

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[119] *London Journal* 27 June 1730 #569.
[120] *Daily Courant* 11 August 1730 #8999; *London Journal* 15 August 1730 #576.
[121] Vaughan has Chicken assisting the delegation (Vaughan, *Transatlatic Encounters*, 137).
[122] Oatis *A Colonial Complex*, 240.
[123] *British Journal* 15 August 1730 #137.

Other historians have named Eleazar Wiggan as the delegation's interpreter. [124] Wiggan is a likely candidate, and Fullagar goes so far as to argue that "Robert Bunning" was in fact simply another name given to Wiggan, although I do not find that as credible. Fullagar argues that both Wiggan and Bunning shared a Cherokee nickname, Cheestoo "the Old Rabbit," and therefore were the same man.[125] For his part, Wiggan would not have been an ideal candidate for interpreter either. Wiggan had been a trader among the Lower Cherokees for roughly two decades at the time of the Cherokee delegation, and had previously acted as a diplomatic envoy to Cherokee leader Ceasar in 1715,[126] both which suggest his linguistic and cultural qualifications for the job. However, he had been "accused of trade abuses and of inciting 'trade-sponsored raids between rival groups of Indians' for Yuchi Slaves 1712,"[127] not necessarily an asset in peace-time diplomatic ventures, or grounds for the Cherokees to accept him as their interpreter.

The confusion over the interpreter's identity also likely stems from the undervalued social position that these individuals frequently held in the colonies. Most colonial interpreters were traders because traders were the colonial individuals who had the most contact with Native Americans and therefore most opportunity and cause to learn their languages. However, frequently "both colonists and Indians were disappointed

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[124] Conley, *The Cherokee Nation*, 33; Woodward, *The Cherokees*, 64; Fullagar, *The Savage Visit*, 69.
[125] Fullagar, *The Savage Visit*, 217 n.23. Fullagar does not list a primary source for this identification.
[126] Reid, *A Better Kind of Hatchet*, 58.
[127] Oatis, *A Colonial Complex*, 100.

by traders as traders and therefore as go-betweens."[128] As James Merrell explains, "a colonial emissary, fluent in foreign words and ways, had a menial job and his own people's contempt."[129] This class element may have contributed to the Secretary's elision of the interpreter's personal identity in the official Board of Trade records.

While their British hosts showed them London in order to impress them, the Cherokees also impressed Londoners, crowds of whom gathered to gawk at them. In London, the lodgings in which they stayed had previously accommodated the 1710 Mohawk-Mahican delegation. The owner was "an undertaker named Arne, who sold tickets to allow curious passersby to peek through the windows to get a look at the unknowing Cherokees."[130] On a reported walk in St. James's Park, "They were accompanied by several Persons of Quality and Distinction, and a numerous Crowd of Spectators."[131] In his analysis of the later 1762 Cherokee visitors to England, John Oliphant argues that the public spectacle of the visit was a separate event to its diplomatic components; the one did not undermine the other. As Oliphant says, "Official London had a different view. These Indians were allies, invaluable to the security and quietness of

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[128] James H. Merrell, *Into the American Woods: negotiators on the Pennsylvania frontier* (New York: Norton, 1999), 80.
[129] Merrell, *Into the American Woods*, 65. For more on interpreters, middlemen and intercultural go-betweens, see James H. Merrell, "'The Cast of His Countenance': Reading Andrew Montour," in *Through a Glass Darkly: Reflections on Personal Identity in Early America*, ed. Ronald Hoffman, Mechal Sobel and Fredrika J. Teute (Chapel Hill: University of North Carolina Press, 1997), 13-39; Simon Schaffer, Lissa Roberts, Kapil Raj and James Delbourgo, eds., *The Brokered World: Go-Betweens and Global Intelligence, 1770-1820* (Sagamore Beach, Mass.: Science History Publications, 2009).
[130] Conley, *The Cherokee Nation*, 33.
[131] *Daily Courant* 7 August 1730 #8996; *Grub Street Journal* 13 August 1730 #32.

the southern frontier."[132] That delegation was received by the King and the Secretary of State as political representatives.

The disjunction between court and public London is a theme that Ann C. Dean draws out in her study of London's eighteenth century newspapers. Her analysis is particularly helpful to read the following sentence of the same newspaper account of the Cherokees' movements. After reporting their walk in St James's, the newspaper informed the reader that "Their Levees are very great every Day, Persons of all Ranks and Distinction being admitted to see them that behave with Decency and good manners."[133] Dean observes that "although London newspapers were available to a socially and geographically wide readership, they frequently reported on levees, balls, and other scenes of aristocratic display"[134] because far from being trivial, these were events where patronage, policy and power were worked out. While general London was not invited, they would feel the resulting changes to economic and military policy. Levees were a sign of power, and those of the most important people were "often thronged."[135] When the newspapers reported that people of rank and distinction were attending the Cherokees' levees, they communicated both that the Cherokees held a place of higher rank and influence and that the Cherokees were the sort of people to hold the events of elite political sociability. The Cherokees' social rounds can be seen, too, within the

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[132] Oliphant, "The Cherokee Embassy to London, 1763," 9.
[133] *Daily Courant* 7 August 1730 #8996; *Grub Street Journal* 13 August 1730 #32.
[134] Ann C. Dean, "Court Culture and Political News in London's Eighteenth-Century Newspapers," *ELH* 73, no. 3 (Fall 2006): 635.
[135] Dean, "Court Culture and Political News," 633.

framework of European diplomatic expectations. As Hamish Scott explains, formal negotiations "always consumed far less time than informal contacts and social gatherings" such as levees.[136]

While in England, the Cherokee delegates also had their portraits painted, another element of the elite sociability of European diplomatic culture. The *London Spectator and Weekly Journal* reported on August 8th that the Cherokees were sitting "to have their Pictures drawn, for his Grace the Duke of Montague" and other newspapers reported their second and third sittings for this purpose.[137]

The Cherokee visit's transatlantic commercial importance was worked out not just by the Board of Trade but also in meetings with merchants. The Cherokee delegates "were nobly entertained" and "regaled" by merchants trading to South Carolina at the Carolina Coffee House and at Pontack's.[138] The relationship of trade to diplomacy in

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[136] Hamish Scott, "Diplomatic culture in old regime Europe," in *Cultures of Power in Europe during the Long Eighteenth Century,* ed. Hamish Scott and Brendan Simms (Cambridge: Cambridge University Press, 2007), 80.

[137] *London Spectator and Weekly Journal* 8 August 1730 #96; *Daily Courant* 11 August 1730 #8999; *London Journal* 15 August 1730 #576; *Read's Weekly Journal or British Gazetteer* 15 August 1730 #282; *Fog's Weekly Journal* 15 August 1730 #99. For more on portraits of Indigenous people in the imperial centre, see Kevin R. Muller, "From Palace to Longhouse: Portraits of the Four Indian Kings in a Transatlantic Context," *American Art* 22, no. 3 (September 1, 2008): 26-49; Stephanie Pratt, "Reynolds' 'King of the Cherokees' and Other Mistaken Identities in the Portraiture of Native American Delegations, 1710-1762," *Oxford Art Journal* 21, no. 2 (January 1, 1998): 135-150; Beth Fowkes Tobin, *Picturing Imperial Power: colonial subjects in eighteenth-century British painting* (Durham: Duke University Press, 1999).

[138] *British Journal* 15 August 1730 #137; *London Journal* 15 August 1730 #576; *Daily Courant* 14 August 1730 #9002; *London Evening Post* 26 September 1730 #439; *Daily Journal* 29 September 1730 #3036; *Universal Spectator and Weekly Journal* 3 October 1730 #104; *London Journal* 3 October 1730 #583.

these meetings was clearly apparent to British observers; the Cherokees reportedly expressed that the treatment they had received in England would make them look preferentially on the British trade. The Cherokees are reported to have responded to the merchants' attentions, as spoken through their translator, with "a Speech to the Gentlemen present, acknowledging the many Favours received since their Arrival in England, and assured them that he should use his utmost Endeavours to preserve Peace and Good Neighbourhood between the Indians and the English."[139] Governor Johnson was present at the Cherokees' reception at Pontack's, suggesting that he may have had a hand in bringing it about. A variety of activities were planned for the Cherokees while they were in England; with Cuming taking a step back after their arrival, it may have fallen to the colonial governor to host the visitors.

Finally, nearly at the end of their visit, the Cherokees' political relationship with Great Britain was formally enacted for a second time, in the office of the Board of Trade. They were escorted on the morning of the treaty with much fanfare and a retinue of sergeants to the Board of Trade office. While at court the initiative of the relationship appeared to flow from the Cherokee camp to the British, at the Board of Trade it was the opposite. On their first meeting, the Board presented the Cherokees with an already-drafted treaty (which will be fully examined in the following chapters), which the

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[139] *London Evening Post* 26 September 1730 #439; *Daily Journal* 29 September 1730 #3036; *Universal Spectator and Weekly Journal* 3 October 1730 #104; *London Journal* 3 October 1730 #583.

Commissioners wished the Cherokees to accept. After some days of deliberation, the Cherokees made their reply and accepted the treaty.

In the Board of Trade's minutes, this concluded the affair, but, as the newspapers reported, it would be several days yet before the Cherokees signed the treaty. This was a result of their distrust of the content of the agreement. Reportedly, they believed that because Alexander Cuming, who they trusted, had not been present, that the articles of the treaty had been misrepresented to them by their interpreter.[140] As the newspapers remarked, "It is observable, that altho' these People are ignorant of our Language, yet they know when they are impos'd on." [141] Eventually, Cuming stepped in and the Cherokees signed the treaty at his lodgings "in Presence of the Governor of Carolina and the Secretary" of the Board of Trade.[142] This would seem to have more to do with personal integrity and trustworthiness than mistranslation, as Cuming had no knowledge of the Cherokee language and depended on an interpreter. Only six of the seven Cherokee delegates signed the treaty, being the six deputed at the "crowning" of the emperor; the seventh man had joined the expedition at a later juncture.

The Board of Trade records are also silent on another aspect of the treaty: the ceremony which accompanied it. For the Board of Trade, textual documents which could

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[140] *Daily Journal* 30 September 1730 #3037; *London Evening Post* 29 September 1730 #440.
[141] *Evening Post* 29 September 1730 #3308; *Daily Journal* 30 September 1730 #3037.
[142] *Evening Post* 29 September 1730 #3308; *London Evening Post* 29 September 1730 #440; *Daily Journal* 1 October 1730 #3038; *London Journal* 3 October 1730 #583; *Reid's Weekly Journal or British Gazetteer* 3 October 1730 #289; *Universal Spectator and Weekly Journal* 3 October 1730 #104.

be filed in their archive of information were paramount. Written words, which could be invoked against the claims of other Europeans, were the most pressing part of the treaty.

The London newspapers offered a much more elaborate view of the proceedings in the Board of Trade office. Where the Board Secretary only recorded formalized dialogue, the newspapers told of action and spectacle. When historians caution our reliance on the textually rendered words of treaties in official records, this is an excellent example.[143] Even so, the newspapers too had their own agendas, both partisan and financial.[144] It is in their descriptions of the treaty – intended for public, non-diplomatic and non-specialist audiences – that further hints at the Cherokee experience are revealed.

While the treaty texts are very matter of fact about the agreement that the Commissioners presented to the Cherokee representatives, the newspapers suggest the

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[143] For works which emphasize this caution, see especially John F. Leslie, "The Importance of Oral and Extrinsic Historical Evidence in Understanding Indian Treaties," *Archivaria* 53 (2002): 122-129; and also Mary A. Druke, "Iroquois Treaties: Common Forms, Varying Interpretations," in *The History and Culture of Iroquois Diplomacy: An Interdisciplinary Guide to the Treaties of the Six Nations and their League,* ed. Francis Jennings, William N. Fenton, Mary A. Druke and David R. Miller (Syracuse: Syracuse University Press, 1985), 85-98; William C. Wicken, *Mi'kmaq Treaties on Trial: History, Land, and Donald Marshall Junior* (Toronto: University of Toronto Press, 2004); and from the Australian historiography, Bain Attwood and Helen Doyle, *Possession: Batman's Treaty and the Matter of History* (Carlton, Vic.: Miegunyah Press, 2009).

[144] For more on the partisan and financial motivations of the British press in the eighteenth century and how they shaped the news, see Hannah Barker and Simon Burrows, eds., *Press, Politics and the Public Sphere in Europe and North America, 1760-1820* (Cambridge: Cambridge University Press, 2002); Troy O. Bickham, *Making Headlines: The American Revolution as Seen Through the British Press* (Dekalb, IL: Northern Illinois University Press, 2009); C. Y. Ferdinand, *Benjamin Collins and the Provincial Newspaper Trade in the Eighteenth Century* (Oxford: Clarendon Press, 1997); Solomon Lutnick, *The American Revolution and the British Press, 1775-1783* (Columbia: University of Missouri Press, 1967).

way that this agreement was framed for the Cherokees. They reported that "the Interpreter was order'd [by the Board] to let them [the Cherokees] know, that they were sent for there to join in Peace with King George and his People; and were desired to say, if they had any thing further to offer relating to the Contract they had before enter'd into."[145] This phrasing helpfully points to the unevenness of the treaty's creation. The Commissioners were asking the Cherokees to enter into an agreement for peace and friendship, which had been pre-prepared rather than negotiated. The Cherokees did express conditions to their assent, but this was not a situation of mutual negotiation. The newspaper accounts framed the treaty as an agreement "drawn up for trading with their Country,"[146] and described that the Cherokees had been "sent for there to join in Peace with King George and his People,"[147] and named the agreement as a "Peace" and a "Contract."[148] This characterization flouted the newspapers' earlier depiction of the visit as intended for Cherokee obeisance to the British king.

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[145] *London Evening Post* 8 September 1730 #431; *Daily Post* 10 September 1730 #3425; *Fog's Weekly Journal* 12 September 1730 #103; *London Journal* 12 September 1730 #580; *Read's Weekly Journal or British Gazetteer* 12 September 1730 #286; *Universal Spectator and Weekly Journal* 12 September 1730 #101.
[146] *London Evening Post* 5 September 1730 #429.
[147] *London Evening Post* 8 September 1730 #431; *Daily Post* 10 September 1730 #3425; *Fog's Weekly Journal* 12 September 1730 #103; *London Journal* 12 September 1730 #580; *Read's Weekly Journal or British Gazetteer* 12 September 1730 #286; *Universal Spectator and Weekly Journal* 12 September 1730 #101.
[148] *London Evening Post* 8 September 1730 #431; *Daily Post* 10 September 1730 #3425; *Fog's Weekly Journal* 12 September 1730 #103; *London Journal* 12 September 1730 #580; *Read's Weekly Journal or British Gazetteer* 12 September 1730 #286; *Universal Spectator and Weekly Journal* 12 September 1730 #101.

The newspapers reported that when the Cherokees began their response to the treaty, they first "sang four or five Songs in their Country Language."[149] They reported that when the Cherokees began their reply, "the [Cherokee] King stood up, and gave a large Feather that he had in his Hand to the Prince, who thereupon spoke to the Lords Commissioners." [150] While neither the newspaper nor the Commissioners remarked on it textually, this interplay suggests the delegation of authority within the Cherokee delegation, and the processes of Cherokee diplomatic oratory. Ouka-Ulah, who the British identified as the delegation's leader (or "king"), had passed the authority to speak to the spokesman Kettagustah through this symbolic gesture.

The Cherokees' reply, as recorded by the newspapers, was much more representative of Cherokee oratory than the speech recorded by the Board of Trade Secretary. According to the newspapers, the Cherokee spokesman said,

> That they were sensible of the Good Usage they receiv'd since they came here, and that they would use our People always well; that they came here like Worms out of the Earth, naked, and that we had put fine Cloaths on their Backs, (pointing to the Cloaths) and that they should never forget such kind Dealings, but should declare the same to their Countrymen"[151]

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[149] *London Evening Post* 8 September 1730 #431; *Daily Post* 10 September 1730 #3425; *Fog's Weekly Journal* 12 September 1730 #103; *London Journal* 12 September 1730 #580; *Read's Weekly Journal or British Gazetteer* 12 September 1730 #286; *Universal Spectator and Weekly Journal* 12 September 1730 #101.
[150] *London Evening Post* 8 September 1730 #431; *Daily Post* 10 September 1730 #3425; *Fog's Weekly Journal* 12 September 1730 #103; *London Journal* 12 September 1730 #580; *Read's Weekly Journal or British Gazetteer* 12 September 1730 #286; *Universal Spectator and Weekly Journal* 12 September 1730 #101.
[151] *London Evening Post* 8 September 1730 #431; *Daily Post* 10 September 1730 #3425; *Fog's Weekly Journal* 12 September 1730 #103; *London Journal* 12 September 1730

As historians have done in other contexts we may question if the British listeners were fully cognizant of the meaning of the metaphorical language that they heard. Tom Hatley observes that in Cherokee men's rhetorical use, a "recurring protest of 'nakedness' often (though far from always) related more to conspicuous consumption among warrior peers than to material impoverishment," meaning that while the Cherokee speakers were not unclothed, they were expressing desire or comparison to another's attire.[152] In 1730, the Cherokee spokesman was representing the Cherokees' relationship to the British through this rhetorical usage.

The newspapers recorded the Cherokees' diplomatic gestures that were part of their reply although the Board's Secretary did not. To punctuate his reply, Kettagustah "laid the Feather with a Bit of Skin upon the Table, saying, it should be as good as the Bible to bind the Contract with King George." [153] Following the formal reply, "the [Cherokee] King got up and kiss'd the Commissioners, as the Prince [Kettagustah] had done before; the other Chiefs also did the same; whereupon they sung some more Songs, and then return'd home, after about two Hours Stay with the Commissioners in making the Contract." [154] When the Cherokees later signed the treaty, the newspapers reported

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#580; *Read's Weekly Journal or British Gazetteer* 12 September 1730 #286; *Universal Spectator and Weekly Journal* 12 September 1730 #101.
[152] Hatley, *The Dividing Paths*, 10.
[153] *London Evening Post* 8 September 1730 #431; *Daily Post* 10 September 1730 #3425; *Fog's Weekly Journal* 12 September 1730 #103; *London Journal* 12 September 1730 #580; *Read's Weekly Journal or British Gazetteer* 12 September 1730 #286; *Universal Spectator and Weekly Journal* 12 September 1730 #101.
[154] *London Evening Post* 8 September 1730 #431; *Daily Post* 10 September 1730 #3425; *Fog's Weekly Journal* 12 September 1730 #103; *London Journal* 12 September 1730

that they were so "pleased" at Cuming's assessment that "he much approved of their Conduct since their Arrival," that "in Token of their Satisfaction, [they] sung and danced after a warlike Manner, in their Way, all the Evening."[155]

When the newspapers concluded their report of the treaty on the 29th of September, they stated that,

> The signing of these Articles, and the due Performance of them, will be attended with great Advantages to the English Nation, as it will strengthen the Hands of his Majesty's Subjects of Carolina, against other Indians supported by any European nation; for these People, as we are inform'd, are so formidable, that they are able to send into the Field many Thousands of Fighting Men.[156]

In this one respect, the newspapers' account of the treaty echoed the Board of Trade's language of security employed in their 1721 *Report*. The newspapers characterized the Cherokees in a role of allies, able to defend the British colonists against un-allied nations. They named the Cherokees' fighting force, the defence of the colony of South Carolina, and the implied danger from other European nations. These were all reasons that the Commissioners had presented to the Secretary of State to argue the importance of making of a treaty with the Cherokees. In the following chapter, I will delve into the Commissioners' rationale in detail.

#580; *Read's Weekly Journal or British Gazetteer* 12 September 1730 #286; *Universal Spectator and Weekly Journal* 12 September 1730 #101.

[155] *Evening Post* 29 September 1730 #3308; *Daily Journal* 1 October 1730 #3038; *London Journal* 3 October 1730 #583; *Universal Spectator and Weekly Journal* 3 October 1730 #54.

[156] *Evening Post* 29 September 1730 #3308; *Daily Journal* 1 October 1730 #3038; *London Journal* 3 October 1730 #583; *Universal Spectator and Weekly Journal* 3 October 1730 #104.

In these ways the diplomatic roles of the Cherokee representatives were carried out in England. How they were framed in the two treaty texts is the subject of the next chapter. Considering how frequently articles relating to the Cherokees were published by multiple newspapers on multiple days, and the discussion culture that surrounded newspapers at this time, it seems reasonable to assume that the Board of Trade members would have been aware of the conversations and reports. What do we make of the fact that this background is textually absent from their records? The Board of Trade's own records tell us much more about their view of diplomacy with the Cherokees.

Chapter 6

Persuasion and Protocol: The Lords Commissioners of Trade and Plantations Propose a Treaty

In the summer of 1730, the Lords Commissioners of Trade and Plantations put their knowledge and experience of treaty making – examined in chapters Three and Four – to use when they conducted a treaty with the Cherokee delegates who were then in London. The Commissioners had not previously been empowered as a Board to conduct a treaty from start to finish, and so they fell back on familiar procedures: they called on expert advice and kept commercial considerations firmly in sight. They also drew on their observations from the North American realm, requesting that their advisor assist them to prepare a treaty in the "Indian stile."[1] Examining how the Commissioners proceeded and their record of the treaty process shows how they legitimized the treaty according to expectations of treaty making derived from the European realm and protocols derived from the North American, and desired the treaty to manipulate a hierarchical relationship between two recognized sovereign entities.

As is evident in the Board of Trade's work over many years, as shown in Chapter Three, British and European conceptions of treaties did not require treaty partners to hold equally powerful positions. The Commissioners understood that treaties could be used as tools to manipulate hierarchical relationships between recognized sovereign entities.

[1] TNA: CO 391/39, p 213, 19 August 1730, Board of Trade Minutes.

They saw no contradiction for treaties to be used to constrain another sovereign's commercial or territorial reach, for example. Conversely, the Commissioners recognized a variety of entities as bearers of sovereignty appropriate for entering into treaty relationships.

The Commissioners of Trade considered a variety of disparate issues over the course of 1730, as they did every year. Their minute book shows them jumping from questions as diverse as making a free port for British traders in Gibraltar, settling protestant settlers (Palatine families) in Nova Scotia, paper currency in the American colonies, the Bermudan whale fishery, and manifold other concerns relating to British commerce and colonial administration.[2] Each topic tumbled after the other in their business, returning day after day as expert advisors attended, framed by new and returning concerns that crested and receded in the office's affairs. Even as the Commissioners conceived of making a treaty with the visiting Cherokees, made their case to the Secretary of State and implemented it, their attention was still diverted to other concerns from other territories at these same meetings. Such was the pattern of work in the Board office.

The topic of South Carolina was already on the Commissioners' minds in early 1730, well before the Cherokee delegates landed in England. The sale of the final eighth of the Proprietary colony had dragged on for years since the majority of South Carolina became a Crown Colony in 1719. The Commissioners spent time examining diverse

[2] TNA: CO 391/39, 1730, Board of Trade Minutes.

elements of South Carolina's governance including the colony's paper money situation, the settlement of "foreign Protestants" there, and instructions for the new governor. These were all issues they viewed as important to the colony's success and for which Crown oversight was required.

On the advice of the Board of Trade, the Crown named Robert Johnson royal governor of South Carolina in late 1729. Johnson had served as proprietary governor from 1717-1719; he had been dismissed from his post by the South Carolinian assembly when they rejected proprietary rule.[3] Subsequently, Johnson had also acted as colonial agent for South Carolina in London. He was therefore both well acquainted with the situation in South Carolina, and familiar to the Commissioners, with whom the colonial agents frequently dealt.[4] The Commissioners obviously did not see his service to the former colonial proprietors as a hindrance to his Crown appointment now that the colony was a royal one.

In August of 1730, Johnson attended the Board of Trade to discuss the Cherokee Nation bordering on the South Carolinian settlements, particularly in relation to the seven Cherokee diplomats who were currently in London. Prompted by Johnson's visit, the Commissioners determined that a treaty should be made with the Cherokee delegates before they returned to North America. They quickly sprang into action.

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[3] Alexander Moore, "Johnson, Robert (1676?–1735)," in *Oxford Dictionary of National Biography* online edition, 2008 (Oxford University Press, 2004), accessed November 26, 2014. doi:10.1093/ref:odnb/68689

[4] For more on the relationship between colonial agents and the Board of Trade, see Michael G. Kammen, *A Rope of Sand: The Colonial Agents, British Politics, and the American Revolution* (Ithaca: Cornell University Press, 1968).

The Board of Trade had never before been empowered to conduct a treaty, but in 1730 the Commissioners wrote to the Secretary of State asking for that power. They outlined a number of reasons for making a treaty with the Cherokees, designed to persuade him. The Commissioners' letter to the Secretary of State remains in the documentary record as an invaluable statement of intent regarding the treaty. This document shows how the Commissioners put into play the two bodies of treaty experience that they had developed, examined in Chapters Three and Four. This was not a smooth melding of practices, but an uneven combination of approaches, especially designed to sway the Secretary of State, and presumably reflecting the thought processes of the Commissioners James Brudenell, Martin Bladen and Thomas Pelham who signed the letter, and their secretary Alured Popple.

The letter began as a reply to one from the Secretary of State. Conveniently, South Carolina was already an expected topic in this correspondence, as the Secretary of State wanted to know about "any Advantages that might accrue to the Publick from Carolina or the Bahama Islands," the two colonies which were at that time making the transition from proprietary to Crown ownership.[5] The Commissioners took the opportunity to alert the Secretary of State of "a particular Incident having fallen their way," one that if "rightly conducted may well contribute to fortify the British Interested in Carolina."[6] "[W]e thought it incumbent upon us," the Board continued, "to acquaint your Grace that we conceive it may be for His Majesty's Service, that some Treaty or

[5] TNA: CO 5/4/2, p 198, 20 August 1730, Board of Trade to Newcastle.
[6] TNA: CO 5/4/2, p 198, 20 August 1730, Board of Trade to Newcastle.

Agreement should be made by His Majesty's Order with the Indian Chiefs of the Cherokee Nations before their departure."[7]

In their letter, the Commissioners put forth a number of reasons why their proposed action, to make a treaty with the visiting Cherokee delegates, would be advantageous to the "British Interest." They first framed their request to make a treaty with the Cherokees with the example of the colony of New York's First Nations diplomacy, especially with the Five Nations. The Commissioners were familiar with New York's situation and diplomacy from correspondence and interviews that had alerted them to treaties made and trade and security benefits, as discussed in Chapter Four. Although the governments of New York and South Carolina, and the Five Nations and the Cherokees were different, the Commissioners found that the comparison across regions provided a compelling model. They reminded the Secretary of State of how important the "good understanding" between the colony of New York and the Five Nations was for the "British Interest," particularly for the safety of that colony. The Five Nations, they argued, could well be called "our Frontier Guards there," defending the "out settlements" and making war on the colony's behalf.[8]

The point was particularly salient to the case of South Carolina, because the Commissioners and their correspondents in South Carolina conceived of South Carolina as a frontier colony in danger from Spanish, French, and Indigenous enemies. The proper defence of the colony had been the principal impetus behind its surrender to the crown 11

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[7] TNA: CO 5/4/2, p 198, 20 August 1730, Board of Trade to Newcastle.
[8] TNA: CO 5/4/2, p 198 verso, 20 August 1730, Board of Trade to Newcastle.

years earlier (as discussed in the previous chapter). The Commissioners and their correspondents perceived the Cherokees to be a "warlike people" who could bring three thousand "fighting men" to the field in defence of the British colony.[9] Although the Commissioners did not spell it out for the Secretary of State, the "good understanding" between the Five Nations and New York was confirmed through regular treaties. When the Commissioners told the Secretary of State that "it is at present in our Power to put the Cherikees upon the same footing" they knew that a treaty was the means of effecting a similar relationship.[10]

The Commissioners next argued that letting the Cherokees return to North America without having made a treaty with them would be interpreted by the Cherokees as a sign of disrespect and would weaken the Cherokees' "friendship" with Great Britain and South Carolina.[11] In eighteenth-century British understanding, "friendship" was a formalized concept. According to the law of nations, "the significance of friendship" in imperial interactions with Indigenous peoples "was twofold," as Alecia Simmonds outlines. Firstly, "in a context of interimperial rivalry" – such as the British were in the American southeast – "friendship" of the Indigenous population "signified consent and good faith in claims of [imperial] possession over land." Secondly, "it promised a system

[9] TNA: CO 5/4/2, pp 198-199, 20 August 1730, Board of Trade to Newcastle.
[10] TNA: CO 5/4/2, p 198 verso, 20 August 1730, Board of Trade to Newcastle.
[11] TNA: CO 5/4/2, p 198 verso, 20 August 1730, Board of Trade to Newcastle.

of order governed by norms of affective restraint."[12] There were laws attributed to friendship, by which a "friend" who did not fulfill the expectations of hospitality broadly defined could legitimately be coerced to do so. And while friendship depended on consent, that consent too could be obtained by coercion. As Simmonds observed in the context of British imperial ventures in Oceania, "Friendship in the face of Native hostility was deemed possible only once the British had displayed and then promised to restrain their use of superior weaponry."[13]

In contrast to this natural law interpretation of friendship, ideas of friendship that owed more to British ideas of patronage and Native American concepts of reciprocity carried obligations of mutuality. Early eighteenth-century colonial and imperial officials deployed "friendship" according to this meaning especially with First Nations in the North American Atlantic and Northeast regions, as John G. Reid has shown. In these contexts, "friendship….implied harmony and mutuality, although as a descriptor it did not necessarily offer a detailed delineation of the dynamics of a given relationship."[14] By either interpretation of "friendship," the Commissioners could expect the Cherokees as "friends" to behave as allies, by maintaining peace with the colonists; acting on their

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[12] Alecia Simmonds, "Friendship, Imperial Violence and the Law of Nations: The Case of Late-Eighteenth Century British Oceania," *The Journal of Imperial and Commonwealth History* 42, no. 4 (2014): 646.
[13] Simmonds, "Friendship, Imperial Violence and the Law of Nations," 655.
[14] John G. Reid, "Imperial-Aboriginal Friendship in Eighteenth-Century Mi'kma'ki/Wulstukwik," in *The Loyal Atlantic: Remaking the British Atlantic in the Revolutionary Era,* ed. Jerry Bannister and Liam Riordan (Toronto: University of Toronto Press, 2012), 79.

behalf against other peoples; and by peacefully upholding British claims to the territory against those of other Europeans.

The Commissioners' assertion that neglecting to make a treaty with the Cherokee delegates would weaken the Cherokees' regard also signaled the Commissioners' awareness of Native Americans' diplomatic agency. The Commissioners had read reports that showed First Nations' power to initiate or abandon treaty making with the British colonies. The Commissioners might have remembered, for example, when the Agent for South Carolina had informed them that the colony's treaty representative had been "left … in the Woods" by the Native American messenger who had sent for him – an incident discussed in Chapter Four.[15] Although it makes up only a brief section of the Commissioners' argument in this letter, this rationale is significant because it positioned the Cherokees as discerning diplomatic actors.

The Commissioners' third argument for making a treaty hits at the crux of the sovereignty question and the relationship between European and Native American treaty realms. While acknowledging the Cherokees' agency and sovereignty, the Commissioners outlined the potential use of the treaty to manipulate the sovereign relationship between the Cherokee nation and Great Britain. They informed the Secretary of State that "in such a Treaty, words may be inserted acknowledging their [the Cherokees'] Dependence upon the Crown of Great Britain, which Agreement remaining

[15] TNA: CO 391/26, p 282, 19 June 1717, Board of Trade Minutes.

upon Record in our Office, would upon future Disputes with any European Nation, greatly strengthen our Title in those parts."[16]

This argument, on the surface, displays a conceptual distance between Native American and European treaties. Certainly, historians who study Native American treaties divorced from European treaties have explained clauses such as this as reflecting British ambivalence towards Native American sovereignty, an ambivalence expressed in efforts to deny Indigenous sovereignty.[17] However, within the European context of treaty making, positions of unequal sovereignty could and were arranged and manipulated by means of treaties, as discussed in Chapter Three. European states used treaties to "render an ally's behaviour predictable, that is, to eliminate the uncertainty resulting from the same ally's freedom of movement."[18] This could mean limiting a polity's right to bring troops into an area, or its right to fish in certain waters, such as the British often tried to do against the French. Any such limitations were limitations on the expression of sovereignty but not on sovereignty itself.

Anticipating their letter to the Secretary of State, the Commissioners had asked William Keith, a former colonial governor, for expert advice on their proposed treaty. The Commissioners told Keith that they wanted a "Form of a Declaration or Agreement

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[16] TNA: CO 5/4/2, p 198 verso, 20 August 1730, Board of Trade to Newcastle.
[17] For the most forthright expression of this view, see Francis Jennings, "Introduction," in *The History and Culture of Iroquois Diplomacy: An Interdisciplinary Guide to the Treaties of the Six Nations and their League*, ed. Francis Jennings, William N. Fenton, Mary A. Druke and David R. Miller (Syracuse: Syracuse University Press, 1985), xiv.
[18] Marco Cesa, *Allies yet Rivals: international politics in 18th century Europe,* trans. Patrick John Barr (Stanford: Stanford University Press, 2010), 37.

proper to be mutually made…upon the said Indians having submitted their Dominion and Territories to His Majesty."[19] The Commissioners articulated a reduction of sovereignty, in this case territorial sovereignty, as a desired outcome of the treaty. Yet the treaty was to be "mutually made." This mutuality was a necessary component of credible international agreements, and would confirm the altered sovereign relationship that the treaty produced. This was possible because the use of a treaty to circumscribe the actions of a treaty partner was a known purpose of European treaties. It was therefore not ambivalence at play in the Commissioners' minds but instead their understanding that a central function of treaties was the creation of hierarchies of sovereignty.

At this point in their letter to the Secretary of State, the Commissioners were arguing that a potential benefit of the proposed Cherokee treaty was aimed towards other European observers and not the Cherokees themselves. The purpose of "words…inserted" in the treaty that affirmed the Cherokees' "dependence"[20] on the British Crown was not oriented towards the British or South Carolinian relationship with the Cherokee people, but rather for Britain's relationships with European nations. The audience of this proposed clause was, according to the Commissioners' stated intentions, other Europeans, either in Europe or in the colonies, not their Native American treaty partners. This would, the Commissioners believed, safeguard the South Carolinian colonial territory against European settler and legal encroachments. Other Europeans, by this logic, would see that the South Carolina territory was claimed by the British, and that

[19] TNA: CO 391/39, pp 213-214, 19 August 1730, Board of Trade Minutes.
[20] TNA: CO 5/4/2, p 198 verso, 20 August 1730, Board of Trade to Newcastle.

the Cherokees were their treatied allies, meaning that other Europeans would not be able to make treaties with them. The treaty, the Commissioners suggested, would be a record to assert British claims against those of other Europeans, no matter the situation on the ground in North America, and not against Cherokee claims.

The Commissioners were well aware of the use of treaties for creating a paper trail to uphold British commercial and territorial claims against those of other Europeans, as their office served as a reference archive of such papers. Furthermore, they were aware of examples of Native American treaties which served the dual purpose of pacifying local conditions and asserting Britain's sovereignty over territories. One example of this use of treaties with Native Americans with which the Commissioners were familiar was the British-Mi'kmaq treaty of 1726, discussed in Chapter Four. This treaty, William Wicken argues, was Britain's most forceful effort, in an otherwise weak showing, to exert control over territory (Acadia/Nova Scotia) which France had transferred to them in the Treaty of Utrecht of 1713. "By the terms of Utrecht," Wicken explains, "Great Britain had occupied 'Acadia with all its ancient boundaries'; the 1726 treaty established the parameters within which that right would be exercised" by creating a framework for territorial boundaries as well as undermining the historical French alliances with Mi'kmaq peoples.[21] The Commissioners proposed that a treaty with the Cherokees would similarly assert British claims by preventing French and Spanish alliance with the Cherokees.

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[21] William C. Wicken, *Mi'kmaq Treaties on Trial: History, Land, and Donald Marshall Junior* (Toronto: University of Toronto Press, 2002), 99-100.

This approach was modeled on France's own tactics of territorial claims in North America. As Brian Slattery argues, in the French model, "the Crown's rights to the soil were to be held, not to the exclusion of the indigenous peoples, but through them."[22] Where once the French had asserted their sovereignty "through native nationhood and self-government" in the European international realm, now the British would adopt this approach.[23] The Commissioners had a history of taking French practices in North America as models for British actions. In their 1721 *Report on the State of the Colonies in North America*, the Commissioners had recommended that the Crown should give "proper encouragement" to those British subjects who "should intermarry with the native Indians," as the French did, as a way of establishing reliably amicable relationships with the First Nations.[24] In 1730, the Commissioners drew on their observations of the French use of treaties to make their argument for conducting a treaty with the visiting Cherokees.

The final two paragraphs of the Commissioners' persuasive letter to the Secretary of State show both the close similarity and radical difference of the treaty they proposed to European treaties in the Commissioners' understanding. To carry out the treaty, the Commissioners sought a procedure that would combine the pragmatism of North

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[22] Brian Slattery, "The Land Rights of Indigenous Canadian Peoples, as Affected by the Crown's Acquisition of Their Territories" (PhD diss., Oxford University, 1979) quoted in Cornelius J. Jaenen, "French Sovereignty and Native Nationhood during the French Regime," in *Sweet Promises: A Reader on Indian-White Relations in Canada,* ed. J. R. Miller (Toronto: University of Toronto Press, 1991), 34.
[23] Jaenen, "French Sovereignty and Native Nationhood," 38.
[24] Lords Commissioners for Trade and Plantations, "State of the British Plantations in America, in 1721," in *Documents Relative to the Colonial History of the State of New York, Volume 5,* ed. J. R. Brodhead and E. B. O'Callaghan (Albany: Weed, Parsons and Company, 1855), 626.

American practices with the systematization of European ones. Combining the expectations of the two treaty realms was not always graceful, but the Commissioners emphasized what they perceived as most important for treaty making. First, they requested the King's "approbation" to treat and "His Majesty's order for that Purpose."[25] This was in keeping with the usual procedure for European treaties in which plenipotentiaries or other representatives were empowered to act on behalf of the King, a process in which the Board of Trade took part, as when they prepared Martin Bladen's instructions to negotiate articles of the Treaty of Utrecht, examined in Chapter Three.

The Commissioners also suggested to the Secretary of State that "As this treaty is to be only with Savages we presume His Majesty's Orders signifyed to us by Your Grace in a Letter, may be sufficient Power for us to act by upon this Occasion."[26] This clause explicitly positioned the proposed treaty process as different from that pursued with European counterparts. The Commissioners justified the difference according to the Cherokees' identity as non-Europeans.

The Commissioners' naming their proposed treaty partners "only savages" is jarring to modern sensibilities. But the Commissioners' identification of their treaty partners as "savages" was not a dismissal. Indeed, if that were so, the Commissioners would not be proposing a treaty at all.[27] The idea of "savage," as applied by Europeans to the peoples they met in the years following 1492, was not a static concept. It could

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[25] TNA: CO 5/4/2, p 199, 20 August 1730, Board of Trade to Newcastle.
[26] TNA: CO 5/4/2, p 199, 20 August 1730, Board of Trade to Newcastle.
[27] Wicken makes this point regarding British-Mi'kmaq treaty making in *Mi'kmaq Treaties on Trial*, 113.

encompass both positive and negative evaluations of the people it was used to describe, and the meanings it invoked changed over time as well as depended on the context in which it was used.[28] Used in this context during this early period of the eighteenth century, the term "savage" was functionally a synonym for the term "Indian." As with the categories of biological difference discussed in Chapter One, the name certainly denoted difference but was not necessarily pejorative, unlike the meanings that had earlier and would later accrue to this term.

Troy O. Bickham has identified the Seven Years' War as the major turning point in British perceptions of Native Americans. He argues that the war-time coverage fostered an image of Native Americans as "warlike," violent and savage. Implied in

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[28] Careful studies of the origins of European identification of the Indigenous peoples of the Americas with "savages" and the ways that this identification changed as Europeans came to know Indigenous peoples and their cultures more closely include: Robert F. Berkhofer, Jr., *The White Man's Indian: Images of the American Indian from Columbus to the Present* (New York: Vintage Books, 1979); Olive Patricia Dickason, *Myth of the Savage and the Beginnings of French Colonialism in the Americas* (Edmonton: University of Alberta Press, 1984); Ter Ellingson, *The Myth of the Noble Savage* (Berkeley: University of California Press, 2001); Christian F. Feest, ed. *Indians and Europe: An Interdisciplinary Collection of Essays*, especially Susi Colin, "The Wild Man and the Indian in Early 16th Century Book Illustrations," (Lincoln: University of Nebraska Press, 1987), 5-36; Cornelius J. Jaenen, "France's America and Amerindians: Image and Reality," *History of European Ideas* 6, no. 4 (1985): 405-420 and "'Les Sauvages Ameriquains': Persistence into the 18th Century of Traditional French Concepts and Constructs for Comprehending Amerindians," *Ethnohistory*, 29, no. 1 (Winter 1982): 43-56; Karen Ordahl Kupperman, "English Perceptions of Treachery, 1583-1640: The Case of the American 'Savages'," *The Historical Journal* 20, no. 2 (June 1977): 263–87; Vanita Seth, *Europe's Indians: Producing Racial Difference, 1500–1900* (Durham: Duke University Press, 2010); Bernard W. Sheehan, *Savagism and Civility: Indians and Englishmen in Colonial Virginia* (Cambridge: Cambridge University Press, 1980); Peter Rhoads Silver, *Our Savage Neighbors: How Indian War Transformed Early America* (New York: W.W. Norton, 2008).

Bickham's focus on the Seven Years' War is that in the earlier eighteenth century, prior to the war, English men and women did not strongly associate these negative characteristics of savagery to Native Americans.[29]

Another well-known image of the "savage" which would incorrectly colour our interpretation of the Commissioners' usage of this term in their letter is the image of the "savage" as primitive early man, the early stage on the ladder of civilization, conceived and popularized by humanist philosophers, such as Rousseau and Locke, and the Scottish Enlightenment philosophers. However, these stadial theories did not come to their full flowering until after 1730.[30]

In her study of Indigenous visitors to England in the eighteenth century, Kate Fullagar contends specifically with the use of the word, and idea, of "savage" in the context of Indigenous visits. In her analysis, "savage" was "a form of exotica" because "savage people from early-modern times were first and foremost different because they lived in places that were not normally or familiarly occupied."[31] Even after two centuries of British settlements in North America, the continent still held far more places that, from British eyes, were not familiarly occupied – such as the Cherokee mountains.

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[29] Troy O. Bickham, *Savages Within the Empire: Representations of American Indians in Eighteenth-Century Britain* (Oxford: Clarendon Press, 2005).
[30] Bickham, *Savages Within the Empire,* especially Chapter 5, "'Under the Rudest Form in Which We Can Conceive Man to Subsist': The Scottish Enlightenment and the North American Indians," 172-209.
[31] Kate Fullagar, *The Savage Visit: New World People and Popular Imperial Culture in Britain, 1710-1795* (Berkeley: University of California Press, 2012), 4-5.

Fullagar argues that "A working definition of early-modern savagery, then, includes first a sense of radical otherness; second, a lack or simplicity of social practices; and third, an ambivalent valuation" either positive or negative.[32] These characteristics are all embedded in the Commissioners' identification of the Cherokees as "savages" in their letter. In the first instance, the Commissioners were asking the Secretary of State to permit them to diverge from the usual parameters of European treaty making. Highlighting the difference of their proposed treaty partners assisted with this task. Secondly, they were asking for a simplified version of the powers that were usually accorded to treaty negotiators. Invoking the supposed "simplicity" of savages would justify this approach. Finally, the ambivalence that Fullagar identifies relates to English valuation of the first two characteristics; as she argues, at this time "dearth or simplicity was not necessarily reviled."[33] Invoking these characteristics was not an out of hand dismissal of the Cherokees.

The Commissioners' reference to "sufficient powers" in this section of their letter is far more instructive of their opinion of the Cherokees' authority and characteristics as treaty partners than their use of the noun descriptor "savages." That negotiators needed to have "sufficient powers" to treat was a key element of European treaty making, as the Commissioners knew well. Treaties could only be negotiated by commissaries or

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[32] Fullagar, *The Savage Visit*, 6. The French term *sauvages* also encompassed this meaning. Jeanen explains that in the eighteenth century French world, "savagery was defined as absence of certain qualities and institutions." (Jaenen, "'Les Sauvages Ameriquains'," 46).
[33] Fullagar, *The Savage Visit*, 6.

plenipotentiaries who had been granted sufficient authority from the King, under his seal. They could also only treat with those who had, in their view, similar authority – European treaty conferences began with a mutual examination of powers, as Bladen carried out during his commissaryship to France, seen in Chapter Three. The Commissioners' request that they be given "sufficient authority" to treat with the Cherokees indicates that the Commissioners were proceeding according to familiar cues from the European realm that legitimized international agreements.

Drafting the instructions and sufficient powers to treat could take considerable time, time which was running out for the Commissioners as the Cherokees' departure neared. For example, when Martin Bladen had acted as commissary to France in 1719 his instructions and powers had taken a full month to prepare. As the Commissioners expected the Cherokee party to depart within the month, speed was essential. Therefore they requested a less formal communication of their powers, simply in a letter from the Secretary of State, and justified this according to the identity of their proposed treaty partners. Their wording, calling the Cherokees "only Savages," communicated that the Cherokees were outside of the European diplomatic system and that the British could therefore proceed in a modified manner – as the Commissioners had observed happening in North America where Indigenous expectations and ceremony, as well as local necessity, could override British formulas or European forms. The ways in which the Commissioners of Trade modified the forms of treaty making – European and Native American – in their 1730 treaty will be examined in the following chapter.

In these ways, throughout their letter to the Secretary of State, the Commissioners framed the idea of a treaty with the Cherokees conducted by them, in London, within the contexts of European and Native American treaties with which they were familiar.

The powers that the Commissioners received from the Secretary of State also reflected this compromise of European and North American forms. The Secretary of State granted the Commissioners permission to make a treaty with the visiting Cherokees nearly two weeks after receiving the Commissioners' request. The Secretary's letter was perfunctory, re-stating the Commissioners' proposal for "the making of some Treaty or Agreement with the Indian Chiefs of the Cherikee Nations, who lately came hither from that Countrey, and are shortly to return home."[34] The Secretary of State addressed the power to treat collectively to the Lords Commissioners of Trade and Plantations and not to individually named members of the Board.[35] Their power to treat was therefore held as a body rather than as individuals. This again was a departure from the individual empowerment of commissaries treating with Europeans, a departure which responded to the Board's institutional identity and knowledge base.

The Secretary of State informed the Commissioners that "His Majty is pleased to approve, and to direct, that you should make such Agreement, and in such manner, with the said Indian Chiefs, as you shall think for his Majty's Service."[36] This was the sum total of the Board's instructions, unlike the copious detailed instructions provided to

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[34] TNA: CO 5/361, p 164, 31 August 1730, Newcastle to Board of Trade.
[35] TNA: CO 5/361, p 164, 31 August 1730, Newcastle to Board of Trade.
[36] TNA: CO 5/361, p 164, 31 August 1730, Newcastle to Board of Trade.

British plenipotentiaries in the European treaty realm, such as those that Bladen had received in 1719, discussed in Chapter Three. The power given to the Commissioners to conduct an Anglo-Cherokee Treaty was incredibly open-ended. It reflects the autonomy with which the British governors to the North American colonies were entrusted when it came to making treaties with First Nations. The pragmatism of leaving the manner of making the agreement to the Commissioners' judgment also recognized that they were the source of knowledge and advice that would have been called on to write those instructions. Indeed, Bladen, as the most diligent Board of Trade member, had virtually written his own instructions by himself in 1719. This runs counter to the usual assessment that this period in Great Britain's governance was a period of "discouragement of administrative initiative by office-holders."[37] Drawing further comparison with the powers that were granted to commissaries in the European realm with which the Commissioners were familiar, the Secretary of State's letter of empowerment did not direct the Board to show its powers to the Cherokees or to check Cherokees' own powers, unlike the mutual examination that British plenipotentiaries were expected to carry out with their European counterparts. Implicitly, the lack of instruction on this front took for granted the Cherokee delegates' power to make a treaty.

As it was, with this power from the Secretary of State, the Commissioners proceeded as they usually did when preparing or assessing treaties: they called on expert

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[37] Ian K. Steele, "The Anointed, the Appointed, and the Elected: Governance of the British Empire, 1689–1784," in *The Oxford History of the British Empire: Volume II: The Eighteenth Century,* ed. P. J. Marshall (Oxford: Oxford University Press, 1998), 115.

advice from men who had direct experience with the people or places in question. In this case, the Commissioners drew on the knowledge and experience of Sir William Keith, former deputy governor of Pennsylvania, and the opinion of Robert Johnson, the recently re-appointed governor of South Carolina. They did not call on Alexander Cuming, the man who had instigated this visit in the first place. Perhaps the Commissioners preferred to work with men with whom they already had a rapport. Keith had assisted them with information for their 1721 *Report on the State of the Colonies in North America*, discussed in Chapter Four, while Johnson had acted as colonial agent between stints as governor.[38] Then again, perhaps Cuming's waywardness played against him; a man of infinite schemes, he was already onto the next gambit once he set foot back in England.[39]

Even before they had written to the Secretary of State for permission, the Lords Commissioners had called on Keith to draft a treaty to present to the visiting Cherokees. The Commissioners had turned to Keith because he had "formerly had Conferences with

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[38] Lords Commissioners for Trade and Plantations, "State of the British Plantations in America, in 1721," in *Documents Relative to the Colonial History of the State of New York*, 620.

[39] The London press reported at the start of August that, "Sir Alexander Cuming, Bart. the Gentleman who brought over the Indian Chiefs from the Cherokee Nation, is now employ'd in drawing up a new Scheme to be laid before Sir Robert Walpole, and the Board of Trade, whereby the Trade, Riches, and Power of the British Nation, and of all of his Majesty's Dominions, may be increased, the Debts of the Nation paid, and an inexhaustible Fund establish'd for Support of the Government, in Case of an unavoidable War; and he proposes to demonstrate the Practicableness of this Method, without having any additional Tax laid on the Subject, or putting the Nation to any Charge, by requiring only proper Powers for establishing a Company of such Persons as will voluntarily make up the Sun of 100,000 l. to be lent out on good Securities throu'out his Majesty's American Plantations, at the Legal Interest of 10 per Cent." (*London Evening Post* 1 August 1730 #415; *Universal Spectator and Weekly Journal* 8 August 1730 #96; *London Journal* 8 August 1730 #575).

the Indians."[40] Together, they discussed the "sevl Nations of Indians bordering upon His Majesty's Plantations on the Continent of America" and as to the "manner of conferring & treating wth them."[41]

Because of the Commissioners' reliance on Keith, British colonial treaty making with the Five Nations provided the model for the form of the 1730 Anglo-Cherokee Treaty, not just a persuasive argument for initiating the treaty. Having at their disposal two men, one experienced with treaty making with Native Americans in Pennsylvania, the other familiar with the Indigenous peoples in the South Carolina environs, the Commissioners leaned most heavily on the former. They asked Keith, not Johnson, to draft the treaty for them. This indicates that the Commissioners valued Keith's experience with intercultural treaty making over Johnson's familiarity with the Cherokee people. This suggests that the Commissioners saw the treaty they would make with the Cherokees as another North American treaty rather than in a frame of the specificity of the Cherokee nation. The Commissioners' reliance on Keith together with their argument in their letter to the Secretary of State that the Cherokees should be placed in a relationship equivalent to that of the Five Nations with Britain demonstrates that the Commissioners drew connections across the geographic and national boundaries in North America. The Commissioners had previously expressed this holistic sense of the North American colonies in their 1721 *Report*. In this *Report*, the Commissioners had advocated a united colonial approach to First Nations diplomacy, knowing that the

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[40] TNA: CO 391/39, p 211, 18 August 1730, Board of Trade Minutes.
[41] TNA: CO 391/39, p 213, 19 August 1730, Board of Trade Minutes.

behaviour of one colony would influence the relationships of the other colonies. Extrapolating from this position, they saw a unified approach in the method and type of relationship to be developed with the many Native American nations.

The minutes of the first meeting that Keith attended on the subject show the Commissioners' generalization of his knowledge of the North American situation. The minutes record that "Their Lord[ships] had some discourse with him concerning the sev[eral] Nations of Indians bordering upon His Majesty's Plantations on the Continent of America."[42] The adjective "several" indicates this was not simply about the Cherokees. Indeed, numerous nations could be described, from the British perspective, in this manner, including the Five Nations and the Mi'kmaq further north. The meeting's minutes exhibit a disregard for national specificity among the First Nations in North America. The minutes state that "Sir William [Keith] was desir'd to let their Lordsps have in Writing, agreeable to the Indian Stile, the Form of a Declaration or Agreement proper to be mutually made by the Chiefs of the Cheroquee Indians."[43] This notation identified an "Indian Style" which the Commissioners considered to be singular and applicable to the Cherokees but not specific to them.

To be fair, had the Commissioners expressed themselves in this way in the European context, they would not have been inaccurate. There, they considered treaties "in the European style" without losing site of the specificity of their treaty partners – French, Swedish, Polish or otherwise. Bringing this realm of experience to bear on the

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[42] TNA: CO 391/39, p 213, 19 August 1730, Board of Trade Minutes.
[43] TNA: CO 391/39, p 213, 19 August 1730, Board of Trade Minutes.

other, the Commissioners might not have considered that diplomatic differences between nations in North America could be greater than between those in Europe. Furthermore, studies of British-Indigenous treaty making, such as those of Dorothy V. Jones and Colin Calloway, are predicated on the development of a British "extended treaty system"[44] by which British officials adapted to Native American practices in a way that was not entirely based on local and specific conventions of their particular treaty partners but rather pulled elements from different experiences on the continent to diplomatic encounters with other unrelated peoples.[45] According to these scholars, the Commissioners' assessment of an "Indian Style" of British-Indigenous treaty making in the early eighteenth century was not so far off. This style was developed by British officials in response to the diplomatic forms of the nations they initially interacted with, especially the Five Nations, and was exported to British interactions with Indigenous peoples in other regions. These historians have seen a pan-American style in the early years of European-Indigenous diplomacy, as particular common elements derived from Indigenous diplomatic forms were adopted by Europeans in their interactions with diverse peoples.

Two days after his first summons, Keith presented "the Form of a Declaration or Agreement proper to be mutually made by the Chiefs of the Cheroquee Indians now here,

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[44] Dorothy V. Jones, *License for Empire: Colonialism by Treaty in Early America* (Chicago: University of Chicago Press, 1982), 9.
[45] Colin G. Calloway, *Pen and Ink Witchcraft: Treaties and Treaty Making in American Indian History* (Oxford: Oxford University Press, 2013).

and by such as His Maj[esty] shall appoint on his part" to the Commissioners.[46] It was only then that the Commissioners wrote to the Secretary of State asking for Royal permission to conduct the treaty. Keith presented his draft of this document to the Board on the 20th of August; on the 25th, the Commissioners took further expert advice. The Board agreed to the "Form of a Treaty with the said Indians" on September 1st and presented it to the Cherokees on the 7th. From the minutes of the Board, this chronology suggests that the "Form of the Treaty" was composed in haste, and primarily by Keith, who was unfamiliar with the Cherokee people despite experience with other Indigenous nations in North America, with consultation from the Cherokees' interpreter and Johnson. Keith later contested the rapidity and ease of the treaty's composition, in a memorial and a petition that found their way to the Prime Minister as Keith searched for a pension.

Later in life, "in the Decline of Life reduced to Indigency and Want,"[47] Keith composed two pleas for a pension, during the early 1740s. These petitions outlined Keith's public services as Customs Master in North America, deputy governor of Pennsylvania, his role in the 1730 Anglo-Cherokee Treaty, and his subsequent inability to secure a public office. Keith featured the 1730 Anglo-Cherokee Treaty prominently among the reasons why he should receive a pension. He weighted it alongside 12 years as deputy governor in Pennsylvania and several months of work in the customs. Though he would have been involved with the 1730 treaty for at most one month (August 18 to

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[46] TNA: CO 391/39, p 214, 20 August 1730, Board of Trade Minutes.
[47] Cholmondeley (Houghton) Papers (CH(h)) 84/45/1, undated, Petition of William Keith to Crown.

September 9, 1730), he judged it to have been important enough to be a sound foundation and example of his public services.

Of the treaty, Keith stated in his Memorial to Robert Walpole, then Prime Minister of Great Britain, "That when the Lords of Trade were by the Kings Command, directed to Treat with the Chiefs of the Cheroquee Carolina Indians, your Memorialist was sent for by that Board, and Assisted them daily for a considerable time together in the Management of That affair, for which he only received Thanks from the Lords Commissrs then present."[48] Keith's depiction of his role and the proceedings does not correspond to the Board's records. It seems obvious that presenting his labour in this affair as extensive would give him a better position in his quest for a pension. While the Board's minutes seem to show the form of the treaty to have been drafted practically overnight,[49] it is plausible also to assume that work continued on the treaty in the intervening days between when Keith was called on and when the treaty was presented to the Cherokees (although the Board's Secretary did not record this work). Assuming that Keith was not inflating his workload, Keith's daily assistance to the Board may have been given to the Secretary rather than to the Commissioners. This is plausible given the Secretary's important role in the Board's work. Then again, this could also simply be an exaggeration in search of a pension.

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[48] CH(h) 84/45/4, undated, Memorial of William Keith to Robert Walpole.
[49] The Board requested that Keith prepare a form of a treaty on August 19th, and he delivered one to them on the 20th, although it was not finalized until September 1st (TNA: CO 391/39, pp 213-218, 19 August to 1 September 1730, Board of Trade Minutes).

Another discrepancy in Keith's account seems more likely to fall under this last explanation. Keith states that the Board received a command from the King, and then summoned him. Yet the initiative for the treaty passed in the other direction. The Board did in fact receive royal approbation to pursue the treaty, so Keith's statement contains the truth, only the sequence of events as he presents them gives greater weight to his own participation than had he been clear that the royal order to make the treaty had arrived on September 1st, well after his own involvement had begun.

Keith's memorial offers a reminder that the Board's minutes do not tell the whole story of the Cherokee visit and treaty. More effort went into the composition of the "form of the treaty" behind the scenes than the Board's Secretary recorded. Even if we remain unsure about the accuracy of Keith's assessment that he worked "daily for a considerable time," to produce the form overnight would itself have been some work.

Not until five days after Keith had first presented a full draft of the "Form of the Agreement" to the Commissioners was the Cherokees' interpreter (but not yet the Cherokees themselves) consulted alongside Keith and Johnson "concerning the manner of treating with the said Chiefs."[50] In North America, interpreters filled a highly important, though not always respected role, and the uncertain identity of the Cherokees' interpreter, discussed in the previous chapter, casts doubt on his expertise. Yet the job of interpreter demanded not only linguistic ability but also familiarity with both British and Indigenous forms of diplomacy and ceremony.

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[50] TNA: CO 391/39, p 215, 25 August 1730, Board of Trade Minutes.

When the Cherokees' interpreter was present to discuss the treaty, the Cherokees themselves were not. This added further distance between Indigenous forms of diplomacy and what was at work in the Board of Trade office. Within Cherokee diplomacy, the "ceremony of the protracted discussion … was integral," more important even than a definitive conclusion to a conference.[51] If Keith was perhaps unfamiliar with this aspect of Cherokee political etiquette, we can hope that the Cherokees' interpreter or Governor Johnson with his previous experience in South Carolina were not. Yet even if Keith was the sole source of information on this front, his experiences treating with the Five Nations should also have guided him to awareness of the appropriateness of extensive discussion prior to a textually rendered treaty. The Five Nations, like the Cherokees, expected "informal" discussions to be an integral part of the treaty process. When they met with colonial governments, the "Treaty conferences consisted of two parallel sets of negotiations. Unofficial private meetings began before the formal opening of a treaty conference, and continued until its conclusion."[52] In Europe too, as the Commissioners knew, making a "treaty" encompassed protracted negotiations. Bladen's commissaryship to France to settle articles of the Treaty of Utrecht had been unsuccessful precisely because the French had avoided the necessary discussions and meetings. There is no

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[51] John Phillip Reid, *A Better Kind of Hatchet: law, trade, and diplomacy in the Cherokee nation during the early years of European contact* (University Park: Pennsylvania State University Press, 1976), 107.
[52] Timothy J. Shannon, *Indians and Colonists at the Crossroads of Empire: the Albany Congress of 1754* (Ithaca: Cornell University Press, 2000), 141.

indication that the Cherokees obtained private meetings or discourse with the British representatives who invited them to treat in 1730.

The Commissioners' proposal and preparation of the 1730 Anglo-Cherokee Treaty examined in this chapter show how the Commissioners, faced with an unusual opportunity, proceeded according to the procedures and expectations that they had developed over their many years of work with Indigenous and European treaties. The Commissioners requested royal approval and royal empowerment to conduct the treaty, following protocol from the European realm. Their adherence to this protocol acknowledged through actions the Cherokees' sovereignty as treaty partners. The Commissioners themselves did not have direct experience with Native American diplomacy, so they called on experts to ensure that the treaty would be done right. The Commissioners did not hesitate to enumerate the ways that the treaty could be used to manipulate the sovereign relationship between the Cherokee and the British for British advantage. The text of the treaty they created carried out this project while continuing to acknowledge Cherokee sovereignty and diplomatic forms. Just as the British did in the European realm, they did with the Cherokees. The stakes, however, would ultimately be higher.

Chapter 7

Common and Uncommon Forms: The 1730 Anglo-Cherokee Treaty

When the Commissioners forwarded the final, signed copy of the treaty they had produced in the summer of 1730 to the Secretary of State, they cautioned him that he might find the treaty to be of "uncommon Style," but assured him that this was "the usual manner of treating with the Indian Nations in America."[1]

The Commissioners' assessment of the 1730 Anglo-Cherokee Treaty that they had made as both usual and *un*usual shows how British treaties with Native Americans and with Europeans conceptually coexisted in the minds of colonial administrators in London during the early eighteenth century. The Commissioners had produced a treaty that they believed was typical of treaties made with Indigenous peoples in North America. Certainly, it differed stylistically from treaties concluded with Europeans, and yet both the Commissioners and the Secretary of State recognized the proceedings as a treaty, one that reflected assumptions about sovereignty that the Commissioners had developed in the realm of European treaties.

The Commissioners presented their drafted treaty to the Cherokee diplomats on the 7th of September. Oukah-Ulah, Oukanekah, Kettagustah, Tathtiowie, Clogittah, Collanah, and Ounakannowie were all present, along with their interpreter; Robert Johnson, Governor of South Carolina; William Keith, their advisor; and "several other"

[1] TNA: CO 5/4/2, pp 209-210, 30 September 1730, Board of Trade to Newcastle.

unidentified "Gentlemen," though not Alexander Cuming.[2] The Board of Trade minutes record that "Their Lordships explain'd to them [the Cherokees] by their interpreter (who was sworn) the Form of a Treaty with them agreed at the last Meeting [of the Board]."[3] Two days later, as requested, the Cherokees gave their "answer to the Propositions made to them in behalf of His Majesty."[4] Kettagustah (recorded in the minutes as Scalilosken Ketagusta) spoke on behalf of the Cherokee delegation. Following his translated and transcribed speech, "their Lordships told them they were well pleas'd wth the consent they had express'd to the Articles propos'd to them in his Majesty's behalf."[5] The Commissioners then turned to other matters. Considering the presence of the two sergeants and twelve grenadiers who had escorted the Cherokees to the Plantations Office that morning, presumably the delegates were dismissed with some formality.[6]

This was the first time that the Board as an office had had an active role in the actual presentation of a treaty, rather than its preparation. If the Commissioners were thrilled or overwhelmed about the authority they had been granted or touched by the ceremony they had been part of, they did not let these emotions creep into their disciplined Minute Book.

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[2] TNA: CO 391/39, p 226, 7 September 1730, Board of Trade Minutes.
[3] TNA: CO 391/39, p 226, 7 September 1730, Board of Trade Minutes.
[4] TNA: CO 391/39, p 237, 7 September 1730, Board of Trade Minutes.
[5] TNA: CO 391/39, p 237, 9 September 1730, Board of Trade Minutes.
[6] The Board paid the Foot Guards for their service. TNA: CO 388/79, fol. 67, Petty Expenses in the Service of the Board of Trade, from Mids~: 1730 To Mic'mas following: "To the Foot Guards attending at the Office, when the Indians came there --- 5"0"0."

The Board of Trade produced two versions of the Anglo-Cherokee Treaty in 1730. The first was the version their Secretary recorded in the Board of Trade minute book (which I will call the Minute Book Version). They produced a second version for the Secretary of State, the Duke of Newcastle, which they sent to him on the 30th of September (which I will call the Newcastle Version). This second version was the "fair copy," the copy which was to be the reference copy in the royal archive.[7] The two recorded versions of the treaty differ in important ways, particularly in phrasing which relates to the autonomy and authority of the Cherokee Nation vis-à-vis Great Britain. There is no explanation given in the Board of Trade minute book or papers as to why or when these changes were made. For the most part, the Newcastle Version alters the prior text of the Minute Book Version in ways that undermine or erase Cherokee sovereignty. It should be emphasized that it was this so-called "fair copy," the Newcastle Version, that would remain on record in London as the formalized parameters of the British-Cherokee relationship. Contemporary newspaper accounts suggest that the Cherokees delayed signing the fair copy of the treaty because Cuming had not been involved in the treaty,

[7] Subsequent records from Virginia indicate that the Cherokees had possession of a copy of the treaty in 1745, suggesting a possible third textual rendition. It appears that this document no longer exists; many of the Cherokees' documentary holdings were transferred to the Library of Congress following capture during the American Revolutionary War, but a 1730 treaty text was not among them. (*Virginia Gazette* 18 May 1745; John Richard Alden, "The Eighteenth Century Cherokee Archives," *The American Archivist* 5, no. 4 (October 1942): 240-244).

and they did not trust their interpreter, as discussed in Chapter Five, but no mention of this is made in the Board's records.[8]

The 1730 Anglo-Cherokee Treaty, like other British-Indigenous treaties, "amounted to a framework for regulating relations between" the Native American nation and the British.[9] The articles covered issues of trade, British settlement, British livestock, military alliance, the retrieval of runaway African slaves and legal jurisdiction in murder cases.

The treaty's opening formula offers a stark comparison of the differences between the two versions of the treaty and how they portrayed Cherokee sovereignty and the relationship between Great Britain and the Cherokee Nation that was being forged. These changes also introduce the major analytic themes that I will be pursuing in my consideration of the treaty texts: the depicted sources of authority, the metaphorical language of kinship and the Chain of Friendship, the characteristics of sovereignty, and gift giving practices.

Both versions of the treaty open with a formula that identifies the Cherokee participants and their purpose at the treaty meeting (please refer to the Appendix for the full texts of both the Minute Book and Newcastle Versions of the treaty). In these opening formulas, the first change is the removal of Ounakannowie from among the named Cherokee participants in the Newcastle Version. Ounakannowie is named in the

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[8] *Evening Post* 29 September 1730 #3308; *Daily Journal* 30 September 1730 #3037; *London Evening Post* 29 September 1730 #440.
[9] William C. Wicken, *Mi'kmaq Treaties on Trial: history, land and Donald Marshall Junior* (Toronto: University of Toronto Press, 2001), 118.

Minute Book Version. The Board of Trade's papers, including a letter the Board received from Cuming, refer to one Cherokee visitor who did not sign the treaty.[10] It may be that between the initial meeting and the production of the "fair copy," the Commissioners or their advisors came to believe that Ounakannowie was not a political signatory of the treaty. Or, he may have had his own reasons for removing his assent at the time of the signing of the "fair copy." But this was only the first of many changes.

More striking are additions in the Newcastle Version which describe the origins of the Cherokees' diplomatic visit. The two formulations serve the same effect of recognizing the deputed authority of the seven (or six) Cherokee men to speak on behalf of the Cherokee nation, but they each give a very different account of the origins of that authority and the political structure of the Cherokee nation. The Minute Book Version states that the delegates "have been deputed by the whole Nation of the Cherokee Indians to come to Great Britain," whereas according to the Newcastle Version, the Cherokee diplomats "have been deputed by Moytoy of Telliko, with the consent and approbation of the whole Nation of the Cherokee Indians." The Minute Book Version's phrasing offers a more accurate representation of Cherokee political organization, hinting at consensus-based decision-making involving the entire nation. Concurrent with the Cherokees' visit, Cuming was promulgating the "fact" that Moytoy of Telliquo had become Emperor of the Cherokees, under Cuming's guidance. While Moytoy's position is not named in the Newcastle Version of the treaty, he is presented in such a way as to be understood as an

[10] TNA: CO 5/361, p 168, 1730, Alexander Cuming to Board of Trade.

authority with the power to appoint delegates and through whom the will of the Cherokee nation is routed. The inclusion of the "consent and approbation" of the Cherokee nation remains in the Newcastle text as a nod to more consensus-based organization; however, this collective consent is presented much more as an act carried out after Moytoy had made his selection rather than the act of selection itself.

This alteration of the origin of the Cherokee visitors' delegated authority from the Minute Book to the Newcastle Version is of a type with the South Carolinian colonists' ongoing desire to identify a single ruler with whom they could transact instead of dealing with the collective and decentralized Cherokee villages, as discussed in Chapter Five. British officials throughout the North American colonies felt the difficulty of dealing with decentralized political organizations in Indigenous societies. The Newcastle Version's identification of the Cherokee delegates' authority as stemming from the "Emperor" also recalls the origins of plenipotentiaries' powers to treat in the European realm. Even in cases where it was the Commissioners of Trade and the Secretary of State writing the instructions and royal orders, they identified the British plenipotentiary's authority as stemming from royal empowerment, as shown in Chapter Three. Whether drawing on South Carolinian or European assumptions about state sovereignty and the proper power of delegated authority – or indeed on both – the change between the Minute Book and Newcastle Versions of the 1730 Anglo-Cherokee Treaty reconfigured the Cherokee people's political organization and the characteristics of how the treaty could be applied, in British understanding.

The "voice" of the treaty's formalized opening offers further indications of the perceived authority of those involved. The opening is in a speaking voice, from the position of the Commissioners of the Board of Trade. This voice named the individual Cherokee participants but grouped the Commissioners as a collective "us." The Commissioners' royal power to treat, expressed in the Secretary of State's letter examined in the previous chapter, had been attributed to them collectively rather than individually, and their speaker's collective "us" reflected that. The treaty's opening then outlines the sources of the participants' delegated authority. I have already discussed how this was done in the two versions for the Cherokees. For the British participants, their recorded speaker stated that "His Majesty has impowered Us to treat with you here" – this framing of "here" attributes a place and time to their empowerment. This was a limited power.

The treaty texts' framing of the participants' authority to treat depicts all of the treaty participants, on both sides, as standing in for someone else. The Board's recorded spokesman says to the visiting diplomats, "We now speak to you as if the whole Nation of the Charrakees, their old Men, young Men, Wives & Children were all present And you are to understand the Words We speak as the Words of the Great King our Master." In this phrasing, the Cherokees there present are characterized as a conduit to the people of their nation, while the Commissioners are the mouthpiece of a singular ruler. The message is that the Commissioners' unified voice originates in a single point (the Crown)

and by its communication to the seven Cherokee delegates it will be diffused to all members of the Cherokee nation.

The Board's spokesman reportedly continued, saying, "And we shall understand the Words which you speak to Us, as the Words of all your People." This phrasing remains unchanged in both versions. Even in the Newcastle Version which emphasizes Moytoy's sovereign individuality, the Cherokees are characterized as funneling a collective voice rather than embodying the will of a single ruler the way the Commissioners are characterized. This may reflect the Commissioners' attempt to speak to a nation with a non-centralized governance structure and to communicate a more accurate characterization of the distribution of political authority in Cherokee society.

As he segued into the body of the treaty, the Board spokesman reiterated the symbolic source of his words, stating, "Hear the Words of the Great King, whom you have seen and who has commanded us to tell You." As I have shown, the King himself did not compose the words. Indeed, I have found no indication that he or the Secretary of State previewed the Board's proposals before they were presented to the Cherokees. Nevertheless, as in Europe where a plenipotentiary's promises bound his sovereign, so the Commissioners had been empowered to speak for the British Crown.

The elements of the 1730 Anglo-Cherokee Treaty which the Commissioners judged "uncommon" to the Secretary of State yet "usual" were those elements that reflected the cross-regional experience of British treaty making with Native Americans. Throughout the treaty that the Commissioners presented to the Cherokees are references

to familial ties and responsibilities, metaphorical allusions to the Chain of Friendship, and repeated gifting from the British to the Cherokees.[11]

In North America generally and Pennsylvania specifically, where Keith had developed his first-hand knowledge of treating with Native Americans, "metaphors were an important part of discourse between Indians and Whites at treaty conferences precisely because they allowed for different meanings within a commonly-used diplomatic language."[12] In the use of kinship terms, Keith's role in the treaty's production must be considered especially vital. Not only did he have first-hand experience of Native American treaty councils from his time as deputy governor of Pennsylvania, but his performance in that role has led historians to judge him more than adept at making use of Native American kinship metaphors for British colonial benefit. For example, James Merrell recounts how Pennsylvanian officials, particularly Keith, "pounced" on an "isolated, uncharacteristic metaphor" spoken by a headman in 1719, who described his people as being "like Children" toward the Pennsylvanians.[13] Keith particularly took up this language to depict the colonial government as a European-style "father" who commanded respect and obedience.[14] Calling his First Nations treaty partners "children,"

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[11] TNA: CO 391/39, pp 226 and following, 7 September 1730, Board of Trade Minutes; TNA: CO 5/4/2, pp 211-216, 30 September 1730, Board of Trade to Newcastle.
[12] Jane T. Merritt, *At the Crossroads: Indians and empires on a mid-Atlantic frontier, 1700-1763* (Chapel Hill: University of North Carolina Press, 2003), 214.
[13] James H. Merrell, *Into the American Woods: negotiators on the Pennsylvania frontier* (New York: Norton, 1999), 124.
[14] Merrell, *Into the American Woods*, 124.

as Keith did in the text of the treaty he prepared for the Board, cast their autonomy as subordinate to a paternal British sovereign.

In contrast to the British, for whom the "king as father" had the "power of discretion," in the Native American view, a father had a "duty of care."[15] Native Americans used kinship terms in councils and treaties to "define the expected forms of behaviour among treaty partners."[16] Kinship titles had "precisely understood meanings,"[17] while "kinship relations" between peoples "were open for interpretation and continually renegotiated and renewed."[18] For example, in Cherokee culture, "an elder brother had the duty of primary protection of his siblings."[19] Therefore, any people named "elder brother" in a treaty were expected to provide protection to those taking on the metaphorical position of "younger brother." Kinship ties were especially important in Cherokee society because they guided behaviour; "people were unsure of how to behave toward someone who had no place in the kinship system."[20] Using kinship metaphors in a diplomatic context embedded corresponding behavioural expectations. Both First Nations and European officials in North America used "names to bind each other in kinship but

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[15] Mark Walters, "'Your Sovereign and Our Father': The Imperial Crown and the Idea of Legal-Ethnohistory," in *Law and Politics in British Colonial Thought: Transpositions of Empire,* ed. Shaunnagh Dorsett and Ian Hunter (Houndmills: Palgrave Macmillan, 2010), 97.
[16] Robert A. Williams, Jr., *Linking Arms Together: American Indian treaty visions of law and peace, 1600-1800* (New York: Oxford University Press, 1997), 71.
[17] Williams, *Linking Arms Together*, 71.
[18] Merritt, *At the Crossroads*, 53.
[19] Williams, *Linking Arms Together*, 72.
[20] Theda Perdue, *Cherokee Women: gender and culture change, 1700-1835* (Lincoln: University of Nebraska Press, 1998), 48.

also to manipulate each other politically."[21] Each was seeking an advantageous relationship.

The kinship metaphors used in the 1730 Anglo-Cherokee Treaty were patterned on Indigenous diplomatic languages with which Keith was familiar, but held a different meaning to British officials who were part of a patriarchal and hierarchical social structure. As Colin Calloway explains, "coming from a patriarchal and patrilineal society, they [Europeans] naturally assumed that the father figure represented authority and wisdom… the term had rather different connotations in matrilineal societies [such as the Cherokee] where the most important adult male in a child's life was the mother's brother, not the biological father."[22] This was not necessarily a stumbling block for intercultural communication.[23] As Cynthia van Zandt suggests, "the fact that each party often meant something different when it used the same metaphor was one reason that kinship was a powerful tool for alliances: Its meaning was flexible."[24] However, this flexibility or ambiguity also meant that to British and European observers, for whom the "fair copy" would remain on file, a particular, patriarchal, interpretation of the relationship formalized between the British and the Cherokees would predominate, especially because the Commissioners and Keith did not consult the Cherokees while they drafted the treaty.

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[21] Merritt, *At the Crossroads*, 59.
[22] Colin G. Calloway, *Pen and Ink Witchcraft: treaties and treaty making in American Indian history* (New York: Oxford University Press, 2013), 24.
[23] Richard White's seminal study showed the generative possibilities of intercultural misunderstandings. Richard White, *The Middle Ground: Indians, empires, and republics in the Great Lakes Region, 1650-1815* (Cambridge: Cambridge University Press, 1991).
[24] Cynthia J. van Zandt, *Brothers among Nations: The Pursuit of Intercultural Alliances in Early America 1580-1660* (Oxford: Oxford University Press, 2008), 70.

In the treaty's opening, the Newcastle Version casts the Cherokee people as "Children and Subjects." They had been "Friends & Allies" in the Minute Book Version; this is a very significant change. Friends and allies are polities of an equivalent if not equal authority; children and subjects are inferior and under the authority of another – the British King, in the Commissioners' thinking. The conclusion of the treaty was altered in the same way. Where the Minute Book Version reads "You are to understand all that We have now said to be the Words of the Great King, whom you have seen, and as a Token that His Heart is open & true to His Children and Friends the Cherokees," in the Newcastle Version, "Subjects" was submitted for "Friends."

From the Commissioners' viewpoint, the relationship flowing from this use of kinship metaphors was being forged according to European ideas of children's responsibilities towards their father. This is evident in one of the treaty's articles, concerning military alliance. This article demanded that the Cherokees "must be always ready at the Governor's Command, to fight against any Nation, whether they be White Men or Indians, who shall dare to molest or hunt the English." This was framed as an imperative following from the fact that "The great Nation of Cherrakees being now the Children of the Great King of Great Britain, and He their Father, The Cherrakees must treat the English as Brethren of the same Family." This article communicated that a change in the relationship was being effected by the treaty, since the Cherokees were "being now" the Children of the King, not as previously. This change to the relationship invoked changing duties between newly recognized kin.

In both versions of the treaty, this article on military assistance characterized both British colonists and Cherokees as "children" of the British king. This section of the treaty also stated that the King encouraged the English colonists to build houses and plant corn "from Charles Town towards the Town of the Cherokees behind the great Mountains, for he desires that the Indians and the English may live together as Children of One Family," and further referred to "His own Children the English." By this phrasing, the Cherokees and the South Carolinian colonists were to be considered on the same footing, both under the paternal largess of the British crown.[25] Grouping the colonists and Cherokees as one "family" rhetorically placed them within this same governmental framework. However, the Crown did not make treaties with its colonial "children." If the British treaty makers rhetorically placed the Cherokees as subjects by using the term "children," their actions of treaty making belied the Cherokees' subjecthood. Lauren Benton's concept of layered sovereignty emerged from her analysis of the tensions between colonial and crown jurisdiction and authority, in which colonial "children" held sovereignty in certain areas, layered hierarchically or parallel with crown sovereignty.[26] In their treaty, the Commissioners were writing a hierarchical relationship between sovereign entities; the Cherokees' sovereignty was textually folded under that of the British Crown, but not eliminated.

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[25] For a discussion of colonial and Native American layered subjecthood under the British Crowns in an earlier period, see Jenny Hale Pulsipher, *Subjects unto the Same King: Indians, English, and the Contest for Authority in Colonial New England* (Philadelphia: University of Pennsylvania Press, 2005).
[26] Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge: Cambridge University Press, 2010).

The language of the Chain of Friendship used in the 1730 Anglo-Cherokee Treaty was another feature that was patterned on Native American diplomatic forms. The Chain of Friendship was a metaphorical language originating in Iroquoian-European diplomacy, used to evoke alliance relationships. In the case of the Anglo-Iroquois Covenant Chain, it referred to a specific covenanted relationship.[27] British colonial officials adopted the Chain of Friendship as the "Indian Style" of treaty making, and used it in diplomatic dealings with non-Iroquoian peoples, such as the Mi'kmaq and Maliseet.[28] As Colin Calloway describes, "Many tribes and confederacies had their own metaphors to describe alliances and relationships, but it was the Iroquois Chain of Friendship or Covenant Chain that became almost the standard term…the Covenant Chain was a multinational alliance in which 'no member gave up its sovereignty' and decisions were made by consultation and treaty."[29] This was the Iroquoian understanding; the Commissioners' usage, like their deployment of kinship terms, suggests they had incorporated this concept into European treaty frameworks and thereby perceived it as another means to manipulate the relationship between sovereigns bound in the treaty.

Keith was familiar with Chain of Friendship diplomacy from his time in Pennsylvania and diplomatic dealings with the Five Nations, Susquehannocks and other Native American peoples. He had listened to Indigenous diplomats speak of ensuring that

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[27] Francis Jennings, *The Ambiguous Iroquois Empire: The Covenant Chain Confederation of Indian Tribes with English Colonies from its beginnings to the Lancaster Treaty of 1744* (New York: W. W. Norton & Company, 1984), xvii.
[28] Stephen Patterson, "Eighteenth-Century Treaties: The Mi'kmaq, Maliseet, and Passamaquoddy Experience," *Native Studies Review* 18, no. 1 (2009): 25-52.
[29] Calloway, *Pen and Ink Witchcraft*, 24.

"the Chain of Friendship between them and us may be so strong as that none of the Links can never be broken"[30] and had himself spoken that "every Link of that Strong Chain between us shall be made as bright & clear as the Sun."[31]

The Chain of Friendship language is especially apparent in the first article of the 1730 Anglo-Cherokee Treaty. This article uses the evocative metaphorical language of the Chain of Friendship to bind the Cherokees and British together. It culminates with the declaration, "And as the Great King [George II] has fastened one End to his own Breast, He desires you will carry the other End of the Chain and fasten it well to the Breast of your Nation ["Moytoy of Telliko" in the Newcastle Version] and to the Breasts of your old Wise Men, your Captains and all your People, never more to be broken or made loose." This phrasing acknowledges the physical location of the King and the treaty occurrence, and the distance from the Cherokees' land and nation. It visualizes the transmission and application of the treaty across the ocean.

This section presents the British King as the ultimate embodiment of the British people and the only person to whom the Chain of Friendship must be fastened. Elsewhere in the treaty, the relationship created by the Chain is described more broadly, as "the Chain of Friendship between him [King George II] and you [Cherokee delegates] and between your people and His People," offering an image of the connection extending to all people of the two nations. This Chain of Friendship is described as "like the Sun,

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[30] "At a Council Held at Conestogoe, July 7, 1721," in *Minutes of the Provincial Council of Pennsylvania, Vol. 3, 1717-1735-6* (Philadelphia: Jo. Severns & Co., 1852), 124.
[31] "At a Council Held in the Court House in Philada., May 11th, 1721," *Minutes of the Provincial Council of Pennsylvania,* 168.

which both shines here & also upon the great Mountains where they [the Cherokees] live, and equally warms the Hearts of the Indians and of the English, That as there are no Spots or Blackness in the Sun, so is there not any Rust or Foulness in this Chain."

This early passage also characterized the Cherokees as having been sent "hither a great way [to England] to brighten the Chain of Friendship," implying through the use of "brighten" that this friendship and the chain that bound it was preexisting to the 1730 voyage to England – as indeed the Cherokee-South Carolinian friendship, albeit tentative at times, was. This reflects South Carolina's ongoing relations with the Cherokees, if not Cuming's self-serving account of his so-called novel achievement. In the history of Cherokee-South Carolinian relations, South Carolinian "diplomatic missions" to the Cherokees would "sometimes merely [be] bringing important information to an Indian nation, at others trying to persuade headmen to hold fast the Chain of Friendship with Carolina."[32]

The language of kinship and of the Chain of Friendship described the character of the relationships, whether of dependence, reliance, or duty of care. These metaphors established the parameters of the relationship between the sovereign parties; other articles in the 1730 Anglo-Cherokee Treaty used more European forms of expression to establish the sovereign relationship between the treating parties. These articles expressed sovereignty in terms of European ideas of territorial sovereignty, juridical sovereignty,

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[32] John Phillip Reid, *A Better Kind of Hatchet: law, trade, and diplomacy in the Cherokee nation during the early years of European contact* (University Park: Pennsylvania State University Press, 1976), 148.

and commercial sovereignty. In these articles, Keith and the Commissioners did their best to position Cherokee sovereignty as responsible to South Carolinian colonial sovereignty. As I argued in my analysis of the Board of Trade's dealings with treaties in the European realm, stipulations such as these did not erase the sovereign position of a contracting party. However, they did manipulate the relationship between the parties in order to curtail that party's expression of sovereignty over particular areas.

One example of the Commissioners' efforts to dictate an unequal relationship between the two sovereign nations within the treaty is an article which states that, "as the King has given his Land on both Sides of the Great Mountains to His own Children the English, so He now gives to the Cherakee Indians the privilege of living where they please." We may consider this to be one of the clauses that the Commissioners suggested to the Secretary of State could be inserted in order to affirm British sovereignty against other European claims. This article asserted British ownership of the land and then gave the Cherokees permission to live where they had previously. This was one way of asserting British territorial ownership over and above Cherokee territorial sovereignty. It was more a question of guaranteeing the rights of freeborn Englishmen than of subjugating the Indigenous population. In the concept of the rights of Englishmen, property in land, individual freedom and sovereignty were linked. However, as Daniel Hulsebosch's study of mid-eighteenth century New York shows, rights of freeborn

Englishmen did not preclude layered sovereignty; they could instead cause the proliferation of overlapping sovereign jurisdictions.[33]

The treaty's British drafters also attempted to limit the Cherokees' decisions in terms of peace and war. In both versions, the treaty reads, "The Nation of Cherrakees shall on their part take Care to keep the trading path Clean, and that there be no Blood in the Path where the English White Men tread, even tho they shou'd be accompany'd by any other people, with whom the Cherakees are at War." This article thereby declared that the Cherokees' own political relations with other nations were to be set aside when they conflicted with British interest, especially of trade. While the "path" was often an integral metaphor in First Nations' treaty talks,[34] in this case the actual movement of people was also at issue. Nevertheless, such constraints on sovereign allies were not out of place in the European treaty realm, where a principal purpose of treaties was defence against un-allied nations.[35]

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[33] Daniel J. Hulsebosch, "Imperia in Imperio: The Multiple Constitutions of Empires in New York, 1750-1777," *Law and History Review* 16, no. 2 (Summer 1998): 344.

[34] For more on the metaphor of the "path" or "road" in First Nations diplomatic language, see William N. Fenton, "Structure, Continuity, and Change in the Process of Iroquois Treaty Making," in *The History and Culture of Iroquois Diplomacy: An Interdisciplinary Guide to the Treaties of the Six Nations and their League,* ed. Francis Jennings, William N. Fenton, Mary A. Druke and David R. Miller (Syracuse: Syracuse University Press, 1985), 3-36; Tom Hatley, *The Dividing Paths: Cherokees and South Carolinians through the Era of Revolution* (Oxford: Oxford University Press, 1995); Merrell, *Into the American Woods*; Merritt, *At the Crossroads*; Timothy J. Shannon, *Indians and Colonists at the Crossroads of Empire: The Albany Congress of 1754* (Ithaca: Cornell University Press, 2000).

[35] For a discussion of this use of treaties in Europe, see especially Marco Cesa, *Allies yet Rivals: international politics in 18th century Europe,* trans. Patrick John Barr (Stanford: Stanford University Press, 2010).

Another category of sovereignty which the Commissioners sought to dictate was juridical. One article, identical in both versions, concerned the jurisdiction of legal justice in the case of an English man killing a Cherokee man, or of a Cherokee man killing an English man. In both cases, the treaty article stipulated that the crime should "be punish'd by the English laws" – the accused Englishman "as if he had killed an English Man," the accused Cherokee "as if he was an English Man." This was another way by which the British asserted power and authority over the Cherokee people, in what was intended to be an ongoing state of affairs.[36]

This division of jurisdiction was very similar to the jurisdictional partitions in the 1725-28 Eastern Treaties, discussed in Chapter Four. As William Wicken states, of the Eastern Treaties, "implicitly, the treaty's signers acknowledged two separate and coexisting political spheres. In the areas inhabited or to be inhabited by His Majesty's subjects, British law was to apply."[37] The jurisdictional division in the 1725-26 Mi'kmaq treaty had a further contradiction: "the king's intent had been to make the Mi'kmaq subjects to his will, yet the treaty was leaving the Mi'kmaq independent of British law. In signing the treaty, the British were tacitly admitting that the Mi'kmaq were not subjects."[38] In contrast, the 1730 Anglo-Cherokee Treaty endeavored to place the Cherokees under British law in the specific cases of inter-cultural murders. This

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[36] For a discussion of the violence of colonial/imperial impositions of English justice, see Elizabeth Kolsky, *Colonial Justice in British India* (Cambridge: Cambridge University Press, 2010).
[37] Wicken, *Mi'kmaq Treaties on Trial*, 131-32.
[38] Wicken, *Mi'kmaq Treaties on Trial*, 138.

manipulation of jurisdictions was a gambit of imperial expansion; as Lauren Benton argues, legal practices were used "to project sovereignty on those spaces."[39]

Restrictions on trade were (and still are) a restriction on commercial sovereignty. This type of constraint on sovereignty was common in eighteenth-century Europe, as evident in the case of British restrictions of French fishing off the coast of Newfoundland according to the terms of the Treaty of Neutrality of 1686. The 1730 treaty prohibited the Cherokees from trading with "the White Men of any other Nation but the English." While this clause would ensure a market for British exports, its significance went deeper. South Carolinian officials perceived trade to be integral to strong and amicable relations with the Cherokees, as shown in Chapter Two. The Board of Trade's 1721 *Report on the State of the Colonies in North America*, examined in Chapter Four, identified trade as Britain's best advantage over the French for Native American relations.

In the same article that addressed trade, the 1730 Anglo-Cherokee Treaty tried to prohibit the Cherokee from letting any non-English Europeans settle "near to any of the Indian Towns, or upon the Lands which belong to the Great King." While this article did its best to preserve English trade monopoly, it also yet again asserted British sovereignty over the territory. The British-authored treaty texts instructed the Cherokees that if any other Europeans did try to settle, "You must acquaint the English Governor therewith and do whatever he directs in order to maintain & defend the Great King's Right to the Country of Carolina." Thus, even with the Cherokee towns separated discursively from

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[39] Benton, *A Search for Sovereignty*, xi.

the "Great King's" land in a preceding line, the King's right was asserted to encompass the whole territory, and the Cherokees to be under the English governor's orders.

A further difference between the two versions of the treaty concerns the textual presence of Cuming, who did not attend the Board of Trade office during the treaty conference, but who had initiated the Cherokee visit. The Newcastle Version of the treaty highlights Cuming's role in the delegation after he was originally absent from the Minute Book Version's rendition of the treaty. This could be a change in response to the Cherokees' discomfort at Cuming's initial exclusion from the treaty process.[40] The Cherokee delegates made reference to Cuming, obliquely rather than by name, in their reply to the treaty. Their reply, it should be noted, was left unchanged between the two recorded versions of the treaty.

The Newcastle Version's references to Cuming reinforce this text's circumscription of Cherokee authority. In the first instance, the Cherokees no longer simply "come to Great Britain," but rather "attend Sir Alexander Cuming, Bart [Baronet] to Great Britain." While this may be a more accurate depiction of how the visit was instigated, as far as the remaining records show, it downplays the Cherokees' agency in this international agreement. Secondly, rather than the Cherokee delegates laying down their symbolic items at the feet of the English King, the Newcastle Version records that Cuming did this on their behalf. Perhaps this was a more accurate narration of the events as they occurred – Cuming certainly claimed that it was he who had placed the "Crown"

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[40] Alden T. Vaughan, *Transatlantic Encounters: American Indians in Britain, 1500-1776* (Cambridge: Cambridge University Press, 2006), 146.

of the Cherokee nation before King George II.[41] Nevertheless, this telling of the events minimized the Cherokees' diplomatic agency and link to the power of these political gestures.

Gift-giving was another element of the Anglo-Cherokee Treaty that drew on both Native American and European diplomatic practices. At their meeting, the Commissioners gave presents to the Cherokee delegates after every article, and presented them with a wampum belt to conclude the treaty. The Cherokees had earlier formally given gifts to King George when they saw him at court; the Commissioners incorporated this prior giving into the text of the treaty. The newspapers reported that the Cherokees presented the Commissioners with symbolic items when they accepted the treaty, but the Board's Secretary did not record this. Both British and Cherokee had traditions of diplomatic gifting, as well as familiarity with the forms of cross-cultural gifting that had developed in European-Native American diplomacy.

Presents were a common element of European diplomacy in the eighteenth century. These were not bribes, although those were also rampant, but rather "customary gifts" which were exchanged on occasions such as "an embassy's commencement or conclusion, or when a treaty was signed."[42] Ambassadors could expect to receive presents from the monarch at whose court they had been stationed, and "diplomats who mediated

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[41] Alexander Cuming, "Autobiographical Notes," British Library, Add. MS 39855, p.27/article 25.

[42] Robert Oresko, G. C. Gibbs and H. M. Scott, "Introduction," in *Royal and Republican Sovereignty in Early Modern Europe: Essays in Honour of Ragnhild Hatton,* ed. Oresko, Gibbs and Scott (Cambridge: Cambridge University Press, 1997), 27.

treaties might get presents from both sides."[43] M. S. Anderson has identified a decline of these practices in the late seventeenth century, as "diplomacy became more of a distinct profession, with standards more clear-cut than in the past, the feeling grew that present-giving should be regulated and kept within reasonable limits."[44] Nevertheless, in 1731, just one year after the Anglo-Cherokee Treaty, these practices were still so rampant that "Lord Palmerston" took "steps to abolish….the customary use of gifts to reward envoys and officials for services rendered in negotiation."[45] Despite Palmerston's attempts, the practice of "the exchange of gifts was a formality throughout Europe observed upon the ratification of treaties" that persisted well into the eighteenth century, so that in 1784 "the newly-created Foreign Office standardized the allowances that envoys and clerks were to receive on this occasion."[46] The gifts given on such occasions in the eighteenth century could include "monetary presents or rewards, snuffboxes and royal portraits set in diamonds"[47] or "plate, gold chains, jewels, luxury goods, ponies, falcons, [and] diamonds."[48] Items of both monetary and symbolic value were therefore appropriate diplomatic presents in the European diplomatic realm.

In Native American diplomacy and "treaty visions of law and peace, reciprocal gift giving established solidarity with others by opening the channels of communication

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[43] M.S. Anderson, *The Rise of Modern Diplomacy 1450-1919* (London: Longman, 1993), 49, 51.
[44] Anderson, *The Rise of Modern Diplomacy*, 51.
[45] Jennifer Mori, *The Culture of Diplomacy: Britain in Europe, c. 1750-1830* (Manchester: Manchester University Press, 2010), 33.
[46] Mori, *The Culture of Diplomacy*, 33.
[47] Mori, *The Culture of Diplomacy*, 33-34.
[48] Anderson, *The Rise of Modern Diplomacy*, 50.

and connection that made relationships strong and reliable."[49] In this diplomatic culture, "failure to either accept or give gifts was regarded as a rejection of the relationship or the propositions made by the other party."[50] These were lessons that colonists and European officials learned in their dealings with Native Americans, and Europeans treating with First Nations adopted the practice. Europeans' treaty behaviour altered pragmatically as they conformed to First Nations' diplomatic expectations.

In 1730, the Commissioners presented the Cherokee delegates with "Four pieces of striped Duffles," "Two Pieces of Blue Cloth," "One Piece of Red Cloth," "Twenty Guns," "Four Hundred Pounds Weight of Gunpowder," "Five Hundred Pounds Weight of Swan Shot, and Five Hundred Pounds Weight of Bullets," "a Box of Vermillion, Ten Thousand Gun Flints, and Six Dozen Hatchets," "Twelve Dozen of Belts," and a gold-fringed wampum belt, one after each article (quoted from the Newcastle Version). Many of these gifts were very practical, of material value, similar to the items that were proper diplomatic gifts in the European realm. The quantities, however, indicate a difference of the recipients of the gifts. In the European realm, presents were given to an individual in recognition of services rendered. In the Native American realm, presents were given to the individual negotiators of the treaty, to be further distributed into the collective community. In the case of the 1730 Anglo-Cherokee Treaty, after the seven delegates had

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[49] Williams, *Linking Arms Together*, 76.
[50] Jenny Hale Pulsipher, "Gaining the Diplomatic Edge: Kinship, Trade, Ritual, and Religion in Amerindian Alliances in North America," in *Empires and Indigenes: Intercultural Alliance, Imperial Expansion, and Warfare in the Early Modern World,* ed. Wayne E. Lee (New York: New York University Press, 2011), 22.

returned home, they "did not keep all the gifts presented them but used their newfound wealth to extend their influence and bind warriors to their leadership."[51]

Also of note is the way that the coloured cloths were characterized between the two versions of the treaty. In the Minute Book Version, the gifted cloth was: "Four pieces of White Cloth to be dyed Blew" and "Two other Pieces of White Cloth to be dyed Red," whereas in the Newcastle Version these gifts are recorded as actual – "Four Pieces of Blue Cloth" and "One Piece of Red Cloth." One suggestion in this difference is the way that presents were used by British officials to manipulate Native American agreement to colonial propositions. There, presents were "often displayed but withheld as an inducement to signing."[52] This is yet another example of the ways that sovereign assent could be manipulated in context of individual participation in treaties. Using such tactics, British officials could position treaty participants as unequal or implicitly coerced them into assenting to an agreement.[53]

At the close of their delivery of the treaty to the Cherokees, the Commissioners presented the Cherokee delegates with a wampum belt. Wampum refers to "tubular

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[51] Perdue, *Cherokee Women*, 102.
[52] Calloway, *Pen and Ink Witchcraft*, 46.
[53] While the gifts given or withheld by the Commissioners of Trade in 1730 were cloth and ammunition for individuals not otherwise lacking, James Daschuk has shown how promised gifts of food and medical provisions were used in the nineteenth century by the Canadian government to coerce ill and starving First Nations peoples' assent to restrictive treaties. James Daschuk, *Clearing the Plains: Disease, Politics of Starvation, and the Loss of Aboriginal Life* especially Chapter 7, "Treaties, Famine, and Epidemic Transition on the Plains, 1877-82" (Regina: University of Regina Press, 2013), 99-126.

bead[s], made from the quahog clam shell"[54] as well as to the belts and strings made with these beads. The beads were both white and purple (called black), based on whether they were made from the centre or the edges of the shell.[55] The beads were made primarily by women, and then used for a number of purposes including as a form of currency, as clothing decoration and as diplomatic tools.[56] By the eighteenth century, in interactions between First Nations and British settlers, the main use of wampum was for diplomacy. For this use, wampum beads were either strung on single strands or woven into belts.

Europeans very early adopted wampum in diplomacy in North America as an adaptation to First Nations diplomacy, especially in the territory of the Five Nations.[57] By the eighteenth century, every diplomatic meeting between Europeans and Native Americans in Northeastern North America required wampum and could not proceed without it.[58] In a diplomatic meeting, wampum belts were used to confirm the terms of a

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[54] Angela M. Haas, "Wampum as Hypertext: An American Indian Intellectual Tradition of Multimedia Theory and Practice," *Studies in American Indian Literatures* 19, no. 4 (Winter 2007): 78.
[55] Haas, "Wampum as Hypertext," 78.
[56] Nancy Shoemaker, "An Alliance between Men: Gender Metaphors in Eighteenth-Century American Indian Diplomacy East of the Mississippi," *Ethnohistory* 46, no. 2 (Spring, 1999): 239, 246; Kathryn Muller, "Holding Hands With Wampum: Haudenosaunee Council Fires from the Great Law of Peace to Contemporary Relationships with the Canadian State" (PhD diss., Queen's University, 2008), 112; Shannon, *Indians and Colonists*, 129.
[57] Marshall Joseph Becker and Jonathan Lainey, "Wampum Belts with Initials and/or Dates as Design Elements: A Preliminary Review of One Subcategory of Political Belts," *American Indians Culture and Research Journal* 28, no 2 (2004): 25.
[58] Becker and Lainey, "Wampum Belts with Initials and/or Dates," 39; Calloway, *Pen and Ink Witchcraft*, 25.

treaty and as communicative devices that contained the articles of the treaty.[59] They were also "read," when a spokesman voiced the message which accompanied the belt. Giving or accepting a wampum belt signified an act taken on behalf of a larger group. In First Nations diplomacy, after the wampum belt's message had been conveyed, the belt was presented to the negotiators on the other side. If they accepted the belt, the terms of the articles were understood to also have been accepted.[60] Indigenous diplomats did not consider messages credible unless they were accompanied by wampum.[61] British officials in North America quickly learned that they had to conform to these expectations, even if wampum was, on their arrival in North America, something completely new to them.

The presentation of a wampum belt from the Commissioners to the Cherokee delegates indicates only a partial adoption of Indigenous forms of treaty diplomacy. As Colin Calloway argues, "Wampum belts…were essential to diplomacy in Indian country. They turned treaties into sacred commitments."[62] In this function, the wampum as used by the Commissioners suited the purpose. However, Indigenous diplomats also used wampum "as aids to memory and storytelling as well as being ritualized gifts and records, something akin to notes from a speech."[63] This function of wampum was not utilized by the Commissioners, and if the Cherokees used wampum in this way during

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[59] Tom Arne Mitrod, *The Memory of All Ancient Customs: Native American Diplomacy in the Colonial Hudson Valley* (Ithaca: Cornell University Press, 2012), 36.
[60] Calloway, *Pen and Ink Witchcraft*, 31.
[61] Calloway, *Pen and Ink Witchcraft*, 26.
[62] Calloway, *Pen and Ink Witchcraft*, 25.
[63] Calloway, *Pen and Ink Witchcraft*, 27.

their reply in 1730, neither the Board of Trade Secretary nor the London newspapers recorded it.

Keith was familiar with the importance of wampum in treaties with First Nations thanks to his experience treating with Indigenous nations in Pennsylvania.[64] The Cherokees' interpreter also likely played an important role facilitating the inclusion of wampum diplomacy in the 1730 Anglo-Cherokee Treaty. In his study of intercultural negotiators on the Pennsylvania "frontier," James Merrell argues that "so vital was wampum as a medium of communication that no frontier negotiator could hope to succeed unless he knew the language of beads."[65] The role of the "go-between" or interpreter was integral. Merrell observes that "whatever their design and their message, shells were a go-between's stock in trade. He advised wampum makers on the size, color, and patterns of the belts, kept beads on hand just in case, and, before setting out with a message, packed hundreds, even thousands of shells among the 'necessarys…to facilitate the success of his journey'."[66] Merrell's insight into the preparation of wampum suggests that it could have been the Cherokees' South Carolinian interpreter, so silent in the Board of Trade minutes, who had brought the necessary beads to England.

The Petty Expenses of the Board do not clarify the source of the wampum, but they do add another layer to their interpretation. The "Petty Expenses from Midsummer 1730 to Michelmas following" record that a charge of five pounds 10 shillings had been

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[64] See for example "At a Council with the Indians held at Conestogoe, June 15th 1722," *Minutes of the Provincial Council of Pennsylvania,* 181.
[65] Merrell, *Into the American Woods*, 188.
[66] Merrell, *Into the American Woods*, 192.

paid for "Gold Fringe for the Belt of Wampum, for the Indian Chiefs."[67] While the charge for this fringe is recorded, I have not found a record for the expense paid for the wampum belt itself.

The addition of the gold fringe to this wampum belt suggests a merging of European and First Nation physical symbolism. Alteration of a wampum belt to convey different messages was a known medium amongst Native Americans. As Merrell explains, "wampum's value as a communications medium stemmed in part from its versatility;" messages such as war could come "in as scalps tied to a white belt, red paint splashed across it, or a hatchet woven into its face."[68]

A telling example of British manipulation of wampum messages through the addition of European symbols to a belt had come to the Board's attention in 1724. Examining this case briefly shows us the importance of the otherwise negligible record of the gold fringe for the wampum presented to the Cherokees in 1730.

In 1724, the Commissioners received a letter from the Agent of Massachusetts Bay, relaying a colonial power struggle that was expressed through wampum. Earlier that year, the Royal Governor of Massachusetts had accused the colony's House of Representatives of defacing a royal seal that had been attached to a wampum belt in ratification of a treaty made with the Mohawk nation, and, furthermore, with having replaced this symbol of royal authority with the provincial seal. The Governor argued that

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[67] TNA: CO 388/79, item 67, "Petty Expenses in the service of the Board of Trade, from Midsummer 1730 to Michaelmas."
[68] Merrell, *Into the American Woods*, 189.

in doing so, the Representatives had made "an unheard Invasion of his Majesty's undoubted Right of making all Treatys."[69] In defence of their actions, the House of Representatives argued that the royal seal had already been damaged when they had received the wampum belt. They had replaced it with the provincial seal because they believed that as a royal colony they also represented royal authority.

In their letter, the Representatives agreed with the Governor that it was imperative that the correct authority be symbolically attached to the wampum belt. They expressed the fear that if the French saw that the wampum belt did not have the "correct" seal from a European perspective, a seal that represented the British monarch's sovereign ratification of the treaty, that they "would probably Inform these Tribes That yor Majesty's Seal…not being affixed thereto they might be Induced to believe that it was no act of this Government nor ratified by Your Majesty's Seal of this Province."[70] If the Mohawks thought that the Massachusetts colony had not dealt truthfully with them, their longstanding neutral relationship with the British colonies would be compromised. The Massachusetts officials appended their diplomatic symbols to the wampum belt knowing that it would be "read" by both Native American and European parties.

This argument about defaced seals that was relayed to the Board of Trade was a dispute between the Crown (represented by the Governor) and its colony over who held

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[69] TNA: CO 5/752/1, pp 78-79, March 1724, "The Answer of the House of Representatives of Massachusetts….by Elisha Cooke their Agent, to a second memorial of Samuel Shute."
[70] TNA: CO 5/752/1, pp 78-79, March 1724, The Answer of the House of Representatives of Massachusetts…"

the sovereign power to carry out international relations. In this debate, both the colony and the crown's claims depended on the Mohawk nation being sovereign. The question at stake for the Massachusetts Bay Assembly and Governor was which of these bodies could make a treaty with a sovereign entity. To attach their seal was to make this claim. Might the Commissioners have remembered this dispute when they purchased the gold fringe for the wampum belt in 1730?

Historians have not yet examined European diplomatic alterations to wampum belts.[71] The gold fringe purchased in 1730 and the Massachusetts dispute over the seals prove that British officials, like the Native Americans from whom they learned, altered wampum belts to further communicate with their diplomatic partners.

The Commissioners' concluding article to the treaty with which they presented the wampum belt to the Cherokee delegates reiterated many of the emphases in the treaty. The wampum belt, the Secretary recorded, was given

> as a Token that His Heart is open & true to His Children and Friends [Subjects in the Newcastle Version] the Cherakees and to all their People He gives His Hand in this Belt, which He desires may be kept and shewn to all your People and to their Children and Childrens Children, to confirm what is now spoken, and to bind this Treaty [Agreement of Peace and

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[71] The only reference I have found, scholarly or otherwise, to Europeans attaching seals to wampum is the aside in archeologists Marshall Joseph Becker and Jonathan Lainey's article "Wampum Belts with Initials and/or Dates as Design Elements" that "Becker suggests that attachments noted in the documents might be official wax seals of the colony or the governor, or that these objects of leather and beads were meant to resemble the kinds of large wax seals attached to European documents…. other attachments to wampum belts is being pursued in another paper" that has not yet been published. (Becker and Lainey, "Wampum Belts with Initials and/or Dates as Design Elements," 30-31).

> Friendship in the Newcastle Version] betwixt the English and the Cherakees, as long as the Mountains and Rivers shall last or the Sun shine, Whereupon We give this Belt of Wampum.

This closing statement positioned the words of the treaty as coming singly from the British King and being directed at all the members of the Cherokee Nation. It positioned the Cherokees as children, and, in the Newcastle Version, as subjects, reiterating the relationship the British perceived to be forged by the treaty. It also reflected the "Indian Style" and departures from European treaty formulas, in the reference to the longevity of the treaty in terms of the mountains and rivers, and in the presentation of a wampum belt.

Outside of the charge for the gold fringe for the wampum belt, the Board of Trade did not retain the cost of the gifts it presented to the Cherokees in its records of the treaty, nor the overall cost of the visit. A letter from Cuming to the Secretary of State indicates that the royal coffers were opened to pay for the Cherokees' visit and lodgings, but the specifics of the account are lost.[72] It remains unclear who provided, purchased or paid for the presents. Yet these costs would indicate a valuation of the relationship that was being affirmed in this transaction.[73] Triangulating the cost of the visit, particularly who paid for the Cherokees' accommodation, transportation, and presents, indicates where this visit fell in the diplomatic realm in England.

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[72] TNA: SP 36/19/2, p 41, 15 July 1730, Alexander Cuming to Delafaye.
[73] For more on the combination of economic calculations of cost relative to relationships, see Georgia Carley, "Cost, Commodity, Gift: the Board of Trade's conceptualization of British-Native American gift giving during Pontiac's War," *Early American Studies* (Spring 2016), forthcoming.

In the first instance, the treaty being conducted on behalf of the Crown, and South Carolina being a Crown colony, the presents would likely have been paid for by the Crown. Cuming for his part did his utmost to convince the Crown to cover the costs of unforeseen visit.

It is likely, no matter the source of the funds, that Johnson, as governor of South Carolina, was responsible for purchasing the required gifts. In 1734, a comparison was made of "Payment formerly made on Account of Indian Chiefs, with the Cravings on accot of the Indian Chiefs now here" which compared the expenses paid for the visits of the four Iroquoian delegates in 1710 and the seven Cherokee delegates in 1730 with the Creek delegation "now here" in 1734.[74] The account indicated that on September 7, 1730, a total of 700 pounds was allotted

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[74] TNA: T1/274, p 113b-114, 7 September 1734, "Payments formerly made on Account of Indian Chiefs, with the Cravings on Accot of the Indian Chiefs now here." For more on the 1734 Creek delegation's visit in England, see Carolyn T. Foreman, *Indians Abroad, 1493-1938* (Norman: University of Oklahoma Press, 1943), 56-63; Kate Fullagar, *The Savage Visit: New World People and Popular Culture in Britain, 1710-1795* Chapter 3, "Seven from the Cherokees, Nine from the Creeks" (Berkeley: University of California Press, 2012), 65-87; Nancy Shoemaker, *A Strange Likeness: Becoming Red and White in Eighteenth-Century North America* Chapter 2 "Kings" (Oxford: Oxford University Press, 2004), 35-60; Julie Anne Sweet, *Negotiating for Georgia: British-Creek Relations in the Trustee Era, 1733-1752* (Athens, GA: University of Georgia Press, 2005); Julie Anne Sweet, "Bearing Feathers of the Eagle: Tomochichi's Trip to England," *Georgia Historical Quarterly* 86, no. 3 (Fall 2002): 339-371; Vaughan, *Transatlantic Encounters,* Chapter 8 "Delegations from the Lower South," 137-164. Fullagar compares the 1730 Cherokee visit and the 1734 Creek visit but does not differentiate between the fact that the Cherokee delegation met with the Board of Trade, an official body of the British government, while the Creek delegation met with the Georgia colony Trustees (colonial proprietors). What this difference means as far as the working out of jurisdictional sovereignty in North America in the British view would be a fruitful area for future research.

> to Robert Johnson Govr of South Carolina, to defray all Costs, Charges, and Expenses whatsoever which the Seven Cherakee Indians then here or their Attendants have occasioned or may occasion till their Departure hence, and all such further charges as their Voyage back may require for their Passage & Provisions, or for the buying such goods as Govr Johnson should think proper to be presented to Indians Chiefs in friendship with Carolina upon their arrival there.[75]

If Johnson was the one purchasing the gifts, as this account suggests, this gives an interesting relation between the Crown representatives conducting the treaty and this royal delegated official solidifying the treaty, who nevertheless had not been empowered to conduct the treaty himself. Considering the phrasing in this account, that the presents purchased by Johnson were to be given upon his arrival in Carolina to "Chiefs in friendship with Carolina," two options emerge. The first is that these presents were in addition to the presents given during the treaty, and would be given to Cherokee chiefs who had not made the journey to England. The other option is that the presents given during the treaty were placeholders or representative mentions of the presents that would actually be given by Johnson on the delegation's return to South Carolina.

In their letter transmitting the 1730 Anglo-Cherokee Treaty to the Secretary of State, the Commissioners argued for the treaty's cost effectiveness. The Commissioners reassured the Secretary of State that "As the said Indians seem fully satisfied both with their Agreement, and with the Treatment they have met with, since their Arrival in England, we have Reason to hope, the small Expence His Majesty has been at, upon this Occasion, is well laid out, for His Service, and for the Interest of His People in

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[75] TNA: T1/274, p 113b-114, 7 September 1734, "Payments formerly made on Account of Indian Chiefs, with the Cravings on Accot of the Indian Chiefs now here."

Carolina."[76] This is an off note of tentativeness at the close of their letter, reflecting perhaps awareness of the uneven relations between Cherokees and British colonists in South Carolina.

The Cherokee delegation made its reply to the treaty two days after the Board of Trade had presented it to them. Their reply is textually rendered identically in both the Minute Book and Newcastle Versions. The Cherokees delegation's recorded reply touched briefly on the articles that the Commissioners had presented to them. Their recorded speech also referenced Cuming, implying a question of why he was not present. Their answer concluded with their spokesman, Kettagustah, reportedly saying, "We deliver these feathers in confirmation of all we have said, And of Our Agreement to Your Articles." The newspaper reports of the treaty meetings gave a more textured – material – sense of the event, as examined in Chapter Five. But in the office of the Board of Trade, where documentary holdings were privileged, the Secretary made no further note.

The Cherokees had previously presented gifts to King George II at Windsor. There, they had laid before him the "crown" of their nation, along with feathers and scalps. These items were symbolically valuable. In return, the King had presented the visitors with clothing, likewise a symbolic gift. The Cherokee's gift diplomacy focused on their meeting with the King, the sovereign authority, rather than with his ministers, authorized though they might be to make the treaty.

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[76] TNA: CO 5/4/2, pp 209-210, 30 September 1730, Board of Trade to Newcastle.

The two descriptions of the Cherokee delegates' presentation of gifts to King George II in the treaty texts altered the purpose and meaning of their gesture. In the Minute Book Version, the Cherokees simply "laid" their gifts "at His Majesty's Feet." In the Newcastle Version, the phrasing was altered so that the gifts were not only placed "at His Majesty's feet" but done so "in Token of Your [the Cherokees'] Obedience." Between these two versions, the Minute Book's description that the Cherokee's gift included "Feathers of Peace" was transmuted into a gift of "Feathers of Glory" in the Newcastle Version. This change subtly recast the nature of the Cherokee nation, reinforcing the image of them as a "warlike people" that the Commissioners had used to convince the Secretary of State to permit them to make a treaty. There is nothing subtle about the insertion of "Obedience" into the narrative, as the very meaning of the Cherokees' gesture of giving, and the relationship it created, was recast as imbalanced.

To begin to understand the Cherokees' reply to the treaty that the Commissioners' had laid before them, a word of caution is in order. We must remember that what was recorded was mediated both by the Cherokees' interpreter and by the Secretary who transcribed their translated speech. Indeed, Robert J. Conley argues strongly that these words did not originate with a Cherokee individual – that the metaphors employed are nonsensical within a Cherokee worldview. We might consider their recorded reply as a representation of what the British involved expected to hear or found particularly useful to them.

John Philip Reid has argued that "European observers may tell us what was said, but, when they do not understand why it is happening, they tell us less than we want to know. That is why we must read between the lines."[77] As Merrell argues in his study of interpreters and middlemen, "even an interpreter committed to accurate translation had a difficult time getting messages through the cultural and linguistic interference, through the profound difference in agendas and customs."[78] The result of this sort of linguistic and cultural "interference" was that "when translating Cherokee into English," eighteenth-century middlemen "employed words the Cherokee he quotes might not have used, changing a Cherokee meaning into a European misinterpretation."[79] Furthermore, Reid argues that within the Cherokee diplomatic understanding of a peace conference, "the southern Indian was not seeking a treaty or discussing the terms of a concordat. The Cherokee was interested in the atmosphere – in words and thoughts – not proposals."[80] This might explain the Cherokee speech's emphasis on relationship language rather than specific responses to the proposed articles.

Two scholars have offered analysis of the ways that the Cherokees' recorded reply did or did not concur with a Cherokee worldview, and what this means for the Cherokees' participation in the 1730 treaty. Cherokee historian Robert Conley argues that it is "possible, even probably, that the Cherokee sense of what had transpired in England

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[77] Reid, *A Better Kind of Hatchet*, 17.
[78] Merrell, *Into the American Woods*, 210.
[79] Reid, *A Better Kind of Hatchet*, 17.
[80] Reid, *A Better Kind of Hatchet*, 17.

was very different from what the English recorded."[81] He argues that "a close examination of the speech" that Kettagustah is supposed to have delivered to the King "reveals curiosities beyond the question of the speaker's command of the English language." In particular, Conley challenges Kettagustah's recorded statement that "the Cherokees 'look upon the Great King George as the Sun, and our father.'" He argues that "A Cherokee would never have said such a thing without careful British coaching. The English considered the sun, at least metaphorically, as male, and called the King the sun…But to Cherokees the sun was female, and, therefore, no-one's king or father."[82] This allegorical invocation of the relationship being formalized between the two nations was therefore nonsensical in the Cherokee worldview. On this evidence, Conley concludes that "most likely, the speech was delivered in Cherokee and translated…by Wiggan, and 'the Old Rabbit,' probably acting under instructions from Cuming, said these words," not Kettagustah.[83] This conclusion challenges what we can know of the Cherokees' own response to the proposed treaty, as even their recorded words are in doubt. It also returns emphasis on the role of interpreters as middlemen in British-Native American treaty processes. The "Old Rabbit" was familiar not just with the Cherokee language, but especially with what his British audience expected to hear.[84]

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[81] Robert J. Conley, *The Cherokee Nation: A History* (Albuquerque: University of New Mexico Press, 2005), 34.
[82] Conley, *The Cherokee Nation*, 34.
[83] Conley, *The Cherokee Nation*, 35.
[84] In 1762, the Cherokees' translator, named Shorey, had died on the voyage to England. His less fluent replacement claimed that Shorey had made him memorize the Cherokees' speech to the king before Shorey's death. How much of this speech came from the

In contrast, in her analysis of the same speech, Nancy Shoemaker does not question that the imagery in Kettagustah's recorded words originated with the Cherokees. Her analysis centres on the use of colour imagery in the speech, which she argues follows developing conventions in the cultures of Native Americans in southeastern North America, including the Cherokees. Shoemaker interprets Kettagustah's recorded invocation of colour differences between English and Cherokee peoples as its own allegorical definition of the parameters of the relationship being formalized in the treaty. She argues that "the Cherokees adopted colour-based categories as a strategy to inform the English about racial obligations"[85] and therefore that by "asserting a 'red' identity" in his recorded response, Kettagustah "treated 'red' and 'white' as moieties tying the Cherokees and English to an alliance in which each had a distinct, complementary role to play."[86] Shoemaker explains further that,

> If the Cherokees were extending their conception of town politics to explain each other's role in the alliance, the English were metaphorically to assume the role of civil or 'white' chief. A 'white' chief of a Cherokee town did not actually clothe his townspeople, but he did oversee communal resources and was responsible for the welfare of guests and town residents unable to fend for themselves. 'White' chiefs also mediated and advocated peace.[87]

Cherokees and how much from his English "translator" is questionable. (John Oliphant, "The Cherokee Embassy to London, 1763," *The Journal of Imperial and Commonwealth History* 27, no. l (January 1999): 12).

[85] Nancy Shoemaker, "How Indians Got to be Red," *The American Historical Review* 102, no. 3 (June 1997): 638.

[86] Shoemaker, "How Indians Got to be Red," 640.

[87] Shoemaker, "How Indians Got to be Red," 640.

In this way, Shoemaker argues, "in the early eighteenth century, the Cherokees elaborated on their own color symbolism to create a set of categories to stand for their diplomatic relationship with the English."[88] It is therefore conceivable that some of the speech rendered in English represents Kettagustah's understanding and framing of the relationship, but that this was altered or remodeled by the translator or the Board of Trade's Secretary to align with British metaphorical understandings of the sun and their political desires.

Further complicating the picture of the Cherokees' recorded reply is a letter that Cuming sent to the Board of Trade, received on September 13th, in which Cuming argued that he, and not the Cherokees, was the one who had been authorized by Moytoy to speak in reply to certain articles. He wrote,

> It is the Desire of the Chiefs of the Cherokee Nation here present that your Memorialist [Cuming] should Give an Answer to three of the Articles proposed to them by His Majesty which they have purposely Omitted to Speak to, as knowing that their Crown, Eagles Tails and Scalps of their Enemies were intrusted to your Memorialist, and not to them, by their Emperor Moytoy of Telliquo, and that They themselves their other Kings Princes and beloved Men of their Nation Consented to the Same, and that they should obey all your Memorialists' Directions.[89]

The Cherokees' way of confirming the treaty was apparently not enough for the Commissioners. In the Newcastle Version of the treaty, the Commissioners or their Secretary included a Memorandum which stated, "That in further Proof of their Agreement, they [the Cherokees] did afterwards sign the Articles which had been

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[88] Shoemaker, "How Indians Got to be Red," 641.
[89] TNA: CO 5/361, p 166, 1730, Memorial of Sir Alexander Cuming.

proposed to them by the Lords Commissioners for Trade and Plantations."[90] It is unclear in the records which version of the treaty text the Cherokees signed. Deductive reasoning suggests that the Cherokees signed the later, Newcastle version of the treaty rather than the version which was transcribed into the Board Minutes at their initial meeting with the Commissioners. The changes between the treaty versions could have contributed to the Cherokees' fear that the wool was being pulled over their eyes and their hesitancy to sign the document.

On the 30th of September, the Board Members who had been present at the treaty addressed a letter to the Secretary of State, enclosing a copy of the Board's proposals and the Cherokees' answers (the Newcastle Version of the treaty). This letter is the complement to their letter of intent and offers further insight into how these men viewed the treaty in which they had participated. The letter begins by restating the power by which the Board had made the treaty and described that they had proceeded by having "two Meetings with them [the Cherokees] and have made them certain Proposals to which we have received their Answer and full consent."[91] "This being," the letter emphasized, "the usual manner of treating with the Indian Nations in America."[92] Being familiar with the methods and procedures of treaty making in Europe, the Commissioners were aware of how different the 1730 Anglo-Cherokee Treaty would appear to the Secretary of State.

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[90] TNA: CO 5/4, p 216, 30 September 1730, Board of Trade to Newcastle.
[91] TNA: CO 5/4/2, pp 209-210, 30 September 1730, Board of Trade to Newcastle.
[92] TNA: CO 5/4/2, pp 209-210, 30 September 1730, Board of Trade to Newcastle.

It was already irregular that they, as the Board of Trade, had been empowered to conduct the treaty, and so quickly. The legitimacy of the Cherokees' "subjection to His Majesty" in the treaty had to be assured against challenges from other Europeans. Therefore, the Commissioners further explained to the Secretary of State that "although our Proposals and their Answer are in an uncommon style, it is such as is best understood by them and is the same which is always made upon the like Occasion."[93] The modification of British treaty practices towards First Nations' norms was explained in this way as a tool for legitimizing the treaty which the Commissioners argued was therefore well understood by both sides.

In this case, "uncommon" as a descriptor for the treaty only worked accurately from the point of view of Britons in the metropole such as the Secretary of State, or European allies and enemies against whom the British hoped to uphold their claims, and who were embedded in the European treaty forms and traditions. But the treaty's power to establish a relationship of hierarchical sovereignty would not have been so unusual to these observers nor to the Lords Commissioners. Thus it was that the Lords Commissioners drew on their knowledge of treaty practices in both North America and in Europe to initiate and conduct a treaty with the seven visiting Cherokee delegates in 1730. Their assumptions regarding treaties meant that they could devise a treaty which layered Cherokee sovereignty and subjecthood to Great Britain in the same frame.

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[93] TNA: CO 5/4/2, pp 209-210, 30 September 1730, Board of Trade to Newcastle. In a draft of this letter, the Commissioners (or their Secretary) wrote, and then rejected the descriptor "style very singular" to describe the treaty (TNA: CO 5/381/1, p 74, 30 September 1730, Board of Trade to Newcastle).

The style of the 1730 Anglo-Cherokee Treaty exhibited the characteristics that the Commissioners of Trade, guided by Keith, Johnson, the Cherokees' interpreter and their correspondents, believed to be expected, familiar and understandable to the Cherokees. British expectations of purpose and function were embedded in its articles. The treaty's emphasis on trade reflect the Commissioners' perception that trade was integral to peaceful relations with Native Americans. It was also a lesson learned from European commercial treaties which managed disagreements between Britain and other nations. Conversely, in their formal reply, mediated though it was by translation and transcription, the Cherokee delegation made no mention positive or negative of the trade stipulations proposed by the Commissioners. Through metaphors borrowed from Indigenous diplomacy, the Commissioners sought to establish a relationship between two formally sovereign parties that was hierarchical, entailing Cherokee juridical, commercial and territorial subjection to the British Crown.

Chapter 8

Conclusions: Beyond 1730

Late in April, 1745, a Cherokee delegation made its way to Williamsburg, Virginia, to formally reintroduce their nation to the Virginian colonial government and the colony's new Governor. At their meeting, the Cherokee spokesman "laid a Parchment before" the Governor, "entitled, *Articles of Friendship and Commerce proposed by the Lords Commissioners for Trade and Plantations, to the Deputies of the Cherokee Nation in South-Carolina. By His Majesty's Order. On Monday the 7th* Day of September, 1730."[1] He had in his hand a copy of the 1730 Anglo-Cherokee Treaty. As he presented this document to the Governor, the Cherokee spokesman said, "I will remember the Words contain'd in this Paper…I will take Care of this Paper all my Life time, and if I have any Children my Children shall after me."[2]

It had been fifteen years since the seven Cherokee delegates and the Commissioners of Trade and Plantations had concluded their treaty in London, England. Now, in colonial capitals, Cherokee villages and meeting places in between, Cherokee and colonial leaders invoked this document when diplomatically discussing the character of their ongoing relationship.

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[1] *Virginia Gazette,* 18 May 1745, emphasis original.
[2] *Virginia Gazette,* 18 May 1745.

"[A]s long as we keep these Papers," the Cherokee spokesman told the Virginia Governor in 1745, referring to both the treaty and to commissions given to particular Cherokee men, "no Mischief shall happen to the white People."[3] When "mischief" did occur, Cherokee and colonial officials could turn to the 1730 Anglo-Cherokee Treaty to make their response. In 1760, the South Carolinian Governor accused two Cherokee men of murdering three South Carolinian traders. When the Cherokee community refused to bring forward the accused men to be judged according to colonial law, the Governor found in the 1730 Anglo-Cherokee Treaty the terms to make his demands. He forcefully reminded the Cherokees of the 1730 treaty's article regarding jurisdiction in cases of intercultural murders. He told the Cherokee delegation, "By this act [the 1730 Anglo-Cherokee Treaty] it was concluded, that if any *Indian* kills an *Englishman*, the *Indian* who does shall be delivered up to the governor, to be punished as he shall deserve according to our [English] law."[4]

The Cherokee delegation to whom the Governor spoke was led by Attakullakulla, who, by the name Oukanekah, had been a signatory of the 1730 treaty. The Governor made full use of this fact, aiming his remarks at the man, saying, "which condition you Altakulla-Kulla, well remembered; for you was present when the chain was given, it was

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[3] *Virginia Gazette,* 18 May 1745.
[4] *South Carolina Gazette,* 12 January 1760, emphasis original. This is an accurate restatement of the original article, accounting for verb tense changes.

given at Westminster when you was there."[5] In the event, Attakullakulla obfuscated and the Cherokees would continue to obstruct their countrymen's expatriation.

The Cherokees in 1745 spoke of the treaty as a paper document; the South Carolina Governor spoke of it as a metaphorical chain; both invoked it to request, politely or not, that their treaty partners comply with the treaty's directives. This was a living treaty. The particulars of the situation in North America could and did change, but both sides still saw the power and relevance of the 1730 treaty.

Responding to changes in the colonial trade environment, in 1751, a Cherokee delegation travelled to Williamsburg. There, a Cherokee spokesman informed the Virginia Governor that "*Our Emperor sent us here to acquaint the Governor of* Virginia, *that when his Father was in* England, *the King directed and* advised him to apply to the Governor of Virginia or Carolina, *whenever the* Cherokees *were in Want of any Thing.*"[6] He was turning to the Virginians, he continued to explain, because the South Carolina Governor "ha[d] not perform'd" his treatied responsibility of ensuring colonial trade with the Cherokee villages.[7] Quite the opposite – South Carolina had placed an embargo on the Cherokee trade. This was in contravention of the treaty stipulations, which stated "He [King George II] has ordered His People & Children the English in Carolina, to trade

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[5] *South Carolina Gazette,* 12 January 1760.
[6] *Virginia Gazette,* 16 August 1751, emphasis original.
[7] *Virginia Gazette,* 16 August 1751.

with the Indians, and to furnish them with all manner of goods that they want."[8] The Cherokees were therefore turning to the Virginians to uphold the agreement that the colonists' king had made.

These examples vividly show the ongoing relevance that the 1730 Anglo-Cherokee Treaty had in North America. Cherokee and colonial officials alike turned to it to make arguments about the other's responsibilities for trade and personal and territorial security.[9] When they invoked the 1730 Anglo-Cherokee Treaty, Cherokee and British spokesmen articulated their sense of the treaty's meaning and their belief that their treaty partner's behaviour should comply with the treaty as they understood it. They were each, in this way, asserting their power as a sovereign entity to dictate their partner's expression of its own sovereign power.

This was about more than whether or not the Cherokee community would deliver the three suspected murderers to the South Carolinian government or whether Virginia would fulfill the Crown's trade obligations with the Cherokees. It was about the treaty partner agreeing that the terms of the treaty conferred obligations. As James T. Carson

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[8] TNA: CO 391/39, p 226-234, 7 September 1730, Board of Trade Minutes; TNA: CO 5/4/2, p 211-214, 7 September 1730, Board of Trade to Secretary of State the Duke of Newcastle.

[9] Despite limitations of citations, language use and analysis, David H. Corkran is one historian who has traced the recurring role of the 1730 Anglo-Cherokee Treaty in Cherokee relations with South Carolina and Virginia. See David H. Corkran, *The Cherokee Frontier: Conflict and Survival, 1740-62* (Norman: University of Oklahoma Press, 1962).

states, "power marks more than an ability to prevail in a contest; it signifies as well a person's or people's ability to establish and contest meaning."[10]

The power to create meaning out of treaty stipulations has followed different trajectories when it comes to treaties made between Europeans and between European parties and First Nations. Colonial governments have asserted that First Nations treaties made with their imperial forebears are not legally meaningful as living documents, as a tactic to assert power and possession over Indigenous behaviour, land and resources. As Arthur J. Ray argues, colonial governments and legal institutions, from the nineteenth century onwards, strove to define First Nations treaties as static and a-temporal documents which therefore could only retain relevance (*meaning*) if the specific cultural practices and historic conditions within the Fist Nations' community at the time of signing were still visible to the colonial eye. In the Canadian courts, this belief has gained the nickname "the 'frozen rights' or 'pizza Indian' theory of Aboriginal rights," by which the "authentic Indians," the only colonially-recognized parties to the treaty, "do not eat pizza" or display any other participation in modern life styles.[11] This colonial argument relies on "EuroAmericans' denial of Native peoples' existence in time."[12]

As we have seen, the eighteenth-century British imperial and colonial officials who transacted treaties did not proceed – and could not have proceeded – with this

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[10] James Taylor Carson's *Making an Atlantic World: Circles, Paths, and Stories from the Colonial South* (Knoxville: University of Tennessee Press, 2007), xvi.
[11] Arthur J. Ray, "Native History on Trial: Confessions of an Expert Witness," *The Canadian Historical Review* 84, no. 2 (June 2003): 263.
[12] Maureen Konkle, *Writing Indian Nations: Native Intellectuals and the Politics of Historiography, 1827-1863* (Chapel Hill: University of North Carolina Press, 2004), 6.

assumption about the temporal existence of their Native American treaty partners. As shown throughout this project, eighteenth-century British officials saw treaties as living documents. To be a living document meant that the treaty was more than the words on the page – or indeed the words spoken at the council meeting. The treaty as treaty was responsive to changing contingencies and changing interests. British treaty making with Europeans and with Native Americans proceeded within this assumption.

The imperial and colonial officials who transacted the 1730 Anglo-Cherokee Treaty and who invoked it in the following decades perceived it to be a legitimate, living document, functioning in a similar way to treaties conducted with Europeans. Confronted by contingencies and fluid trade circumstances, the Commissioners of Trade drew on treaties with European polities as reference documents that laid out the parameters of the relationship, and used this framework to respond to current interests. The Commissioners could argue that British merchants should have their ships measured in Sweden, working around the ambiguity in the 1721 treaty with Sweden about ships measurements and the possibility of prejudicial port duties. Likewise the Cherokees could turn to Virginia when South Carolina did not uphold its crown's promises. The Board of Trade could caution the French repeatedly against fishing in Newfoundland and Nova Scotia waters, contrary to the Treaty of Neutrality of 1686 and the Treaty of Utrecht of 1713, and the Governor of South Carolina could invoke the 1730 Anglo-Cherokee Treaty to seek the extradition of accused Cherokee murderers. The complainant's power to enforce the terms of the treaty was not effective in either of these latter cases, but this was part of the life of

treaties, not a failure of the treaty itself. Treaties set the parameters, but did not themselves hold coercive power.

This project has used the Board of Trade office as a way to situate treaties made by British and First Nations peoples alongside British treaties conducted with Europeans. The 1730 Anglo-Cherokee Treaty provided the basis for this project because it exhibits familiar elements of British-First Nation intercultural treaty making, including stipulations prioritizing trade and security, while its creation in the Board of Trade office in London highlights the coexistence of European and Native American treaty realms. Re-joining these arenas of treaty relations is one of the major contributions that my project makes. Doing so has shown how British officials conceptualized treaties to at one and the same time affirm their partner's sovereignty and establish the terms by which their sovereignty could be constrained or layered. The processes and protocols of treaty diplomacy and the very creation of a treaty affirmed their partner's sovereignty. British officials understood a pragmatic fluidity to the parties they recognized as sovereign treaty actors, including cities, nations, monarchs and other entities. Limiting sovereign expression in one area would not necessarily limit it in others and did not entail a denial of sovereignty.

The Commissioners of Trade who carried out the 1730 Anglo-Cherokee Treaty, introduced in Chapter Two, enacted these understandings of treaty when they undertook the treaty with the Cherokee delegates. These men brought their personal political and economic interests to their position on the Board of Trade. They acted pragmatically to

address the variety of trade and colonial concerns that crossed their desk. Through their attention to treaties conducted with European and Native American parties, they developed their conceptual framework of how treaties would be carried out and how they would be called on subsequently to regulate the relationship between the contracting parties.

As shown in Chapter Three, within the European treaty realm, the Commissioners deployed treaties as reference documents that could be interpreted according to contingencies. They recognized a variety of entities as sovereign, capable and desirable to make treaties. And they conceived of sovereignty as something that could be contained through treaties agreements – if they had the power to enforce compliance.

Looking to North America, the Commissioners learned that treaties were necessary and desirable means for establishing and maintaining what they regarded as good relations with First Nations. From their colonial informants, they were introduced to Indigenous treaty forms and the diversity of the Native American peoples. They nevertheless saw an "Indian Style" of treaty making. Their colonial informants transmitted to them their recognition of Native Americans as sovereign actors. The Commissioners perceived the ability of treaties to establish situations of layered sovereignty on the continent.

The Commissioners put these knowledges into play when they decided to make a treaty with the visiting Cherokee delegates in 1730. How they proceeded in this task shows the ways that they tried to fulfill both European and Native American treaty forms.

The Commissioners' letter to the Secretary of State, designed to convince him to permit the treaty, employed several different arguments. Invoking the Cherokees' military capacity, the Commissioners suggested that Cherokee warriors could be used as "Frontier Guards" to protect South Carolina against attacks from other Europeans and First Nations.[13] The not so distant Yamasee War (1715-1717) and War of Spanish Succession (1701-1714) had shown how vulnerable the South Carolinian settlements were. The Cherokees' military assistance would greatly improve the colony's security, as the Commissioners argued.

The Commissioners also argued that a treaty with the Cherokees would assert British claims to Cherokee territory against the claims of other Europeans. Nevertheless, the treaty they produced, in its two texts, articulated a situation of layered sovereignty between the Cherokees and the British Crown, where Cherokee sovereignty and British sovereignty would be expressed in different jurisdictions. The Commissioners' very request for royal power to make a treaty indicated their recognition of the Cherokees as representatives of a sovereign polity. The Commissioners used forms and phrases from the European and Native American treaty realms to legitimize the treaty they made. In the decades that followed, the treaty was used by both colonial and Cherokee leaders to make claims on the other.

The balance of power would shift in North America in the ensuing centuries. The colonial aims of empires and settler governments would increasingly target Native

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[13] TNA: CO 5/4/2, p 198 verso, 20 August 1730, Board of Trade to Newcastle.

Americans' lands and territorial resources. First Nations peoples have retained the understanding of treaties as living documents, relevant to present-day concerns despite historical changes. The eighteenth-century British officials who participated in these treaties saw them as living documents too. That's what treaties were – and remain.

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Appendix A

1730 Anglo-Cherokee Treaty: Minute Book Version

TNA: CO 391/39, p 226-234, 7 September 1730, Board of Trade Minutes

Whitehal, Monday Septem^{r} 7th 1730
At a Meeting of His Majesty's Commiss^{rs} for Trade and Plantations
Present
Mr Pelham. Mr Bladen. Mr Brudenell

The Seven Indian Chiefs of the Cherikee Nation attending as they had been desir'd with their Interpreter, Col Johnson Gov^{r} of South Carolina, Sir William Keith and sevl other Gentlemen, Their Lordships explain'd to them by their Interpreter (who was sworn) the Form of a Treaty with them agreed at the last Meeting in the Words following:

"Whereas you Scayagusta Oukah, Chief of the Town of Tassetsa, You Scalilesken Ketagusta, You Tethtowe, You Clogoittah, You Colannah, You Unnaconey, You Oucounacou, have been deputed by the whole Nation of the Cherrakee Indians, to come to Great Britain, where you have seen the Great King George, and in Token of Your Obedience have laid the Crown of Your Nation, with the Scalps of Your Enemies & Feathers of Peace at His Majesty's Feet. Now the King of Great Britain bearing Love in his Heart, to the powerful & Great Nation of the Cherrakee Indians, His good Friends & Allies, His Majesty has impower'd Us to treat with you here, and accordingly We now speak to you as if the whole Nation of the Cherrakees, their old Men, young Men, Wives & Children were all present And you are to understand the Words We speak as the Words of the Great King Our Master, whom you have seen, And We shall understand the Words

which you speak to Us, as the Words of all your People with open & true Hearts to the Great King, And thereupon We give Four pieces of striped Duffles.

Hear then the Words of the Great King, whom you have seen and who has commanded Us to tell You

That the English every where on all Sides of the great Mountains and Lakes are his People & his Children, whom he loves, That their Friends are His Friends, And their Enemies are his Enemies, That he takes it kindly, that the great Nation of Cherrakees have sent you hither a great Way to brighten the Chain of Friendship between him & them, and between your people and His People, That the Chain of Friendship between him & them, and between your people and His People, That the Chain of Friendship between Him & the Cherrakee Indians is like the Sun, which both shines here & also upon the great Mountains where they live, and equally warms the Hearts of the Indians and of the English, That as there are no Spots or Blackness in the Sun, so is there not any Rust or Foulness in this Chain, And as the Great King has fasten'd one End of it to his own Breast, He desires you will carry the other End of the Chain and fasten it well to the Breast of your Nation, and to the Breasts of your old Wise Men, your Captains and all your people, never more to be broken or made loose, And hereupon We give Four Pieces of White Cloth to be dyed Blew.

The Great King and the Cherrakee Indians being thus fasten'd together by the Chain of Friendship, He has order'd His People & Children the English in Carolina to trade with the Indians, and to furnish them with all manner of Goods that they want, and

to make hast[e] to build Houses, and to plant Corn from Charles Town towards the Town of the Cherrakees behind the great Mountains, for he desires that the Indians and the English may live together as the Children of One Family, whereof the Great King is a kind and loving Father, And as the King has given his Land on both Sides of the Great Mountains to His own Children the English, so He now gives to the Cherrakee Indians the Privilege of living where they please, and he has order'd His Governor to forbid the English from building Houses or planting Corn near any Indian Town for fear that your young People shou'd kill the Cattle and young Lambs, and so quarrel with the English and hurt them. And hereupon We give Two other Pieces of White Cloth to be dyed Red.

The great Nation of Cherrakees being now the Children of the Great King of Great Britain, and He their Father, The Cherrakees must treat the English as Brethren of the same Family, and must be always ready at the Governors Command, to fight against any Nation, whether they be White Men or Indians, who shall dare to molest or hurt the English And hereupon We give, Twenty Guns.

The Nation of the Cherrakees shall on their part take Care to keep the trading path Clean, and that there be no Blood in the Path where the English White Men tread, even tho they shou'd be accompany'd by any other people, with whom the Cherrakees are at War. Whereupon We give Four Hundred Pounds Weight of Gunpowder.

That the Cherrakees shall not suffer their people to trade with the White Men of any other Nation but the English, nor permit White Men of any other Nation to build any Forts, Cabins, or plant Corn amongst them or near to any of the Indian Towns, or upon

the Lands which belong to the Great King, and if any such Attempt shall be made, you must acquaint the English Governor therewith and do whatever he directs in order to maintain & defend the Great King's Right to the Country of Carolina, whereupon We give Five Hundred Pounds Weight of Swan Shot, and Five Hundred Pounds Weight of Bullets.

That if any Negro Slave shall run away into the Woods from their English Masters, the Cherrrakee Indians shall endeavour to apprehend them, and either bring them back to the Plantation from whence they run away or to the Governor, and for every Negro so apprehended and brought back, the Indian who brings him shall receive a Gun and a Match Coat, whereupon We give a Box of Vermillion, Ten Thousand Gun Flints, and Six Dozen of Hatchets.

That if by any accidental Misfortune it shou'd happen, that an English Man shou'd kill an Indian, the King or Great Man of the Cherrakees shall first complain to the English Governor, and the Man who did it shall be punish'd by the English Laws, as if he had killed an English Man, And in like manner if an Indian kills an English Man, the Indian who did it shall be deliver'd up to the Governor, and be punish'd by the same English Law as if he was an English Man. Whereupon We give Twelve Dozen of Spring Knives, Four Dozen of Brass Kettles and Ten Dozen of Belts.

You are to understand all that We have now said to be the Words of the Great King, whom you have seen, and as a Token that His Heart is open & true to His Children and Friends the Cherrakees and to all their People He gives His Hand in this Belt, which

He desires may be kept and shewn to all your People, and to their Children and Childrens Children, to confirm what is now spoken, and to bind this Treaty of Peace and Friendship betwixt the English and the Cherrakees, as long as the Mountains and Rivers shall last or the Sun shine, Whereupon We give this Belt of Wampum.

And their Lordships desir'd they wou'd give their Answers thereto on Wednesday Morning next.

Their Lordships then shew'd them the Samples of the abovemen^{d} Presents, and the Chief of the Indians said to the Board by his Interpreter that they were not come hither as Enemies but as Friends. That althô they did not expect to see the King, Yet they had seen Him. And that they wou'd give their Answer to the said Treaty on Wednesday Morning next.

TNA: CO 391/39, p 237-241, 9 September 1730, Board of Trade Minutes

Whitehal, Wednesday, Sept^{r} 9th 1730
At a Meeting of His Majesty's Commiss for Trade & Plantations
Present
Mr Docminique. Mr Bladen. Mr Brudenell

The Seven Indian Chiefs of the Cherikee Nation attending as they had been desir'd, with their Interpreter, as likewise Col Johnson and Sir W^{m} Keith, Their Lordships told them that they were ready to hear what the said Indian Chiefs had to say in answer to the Propositions made to them in behalf of His Majesty on Monday last.

Whereupon Scalilosken Ketagusta being directed by Skyagusta Oukah, and the rest of the said Indians to speak in their behalf, deliver'd himself in the following Terms.

We are come hither from a dark Mountanous Place, where nothing but Darkness is to be found, but are now in a Place where there is Light. There was a person in Our Country with Us, he gave Us a Yellow Token of Warlike Honour, that is left with Moyitohoy of Tellequa, And as Warriors We receiv'd it. He came to Us like a Warriour from you, A Man he was his Talk was upright, and the Token he left preserves his Memory amongst us.

We look upon you, as if the Great King George was present, And We love you as representing the Great King and shall dye in the same Way of Thinking.

The Crown of Our Nation is different from that which the Great King George wears, and from that which We saw in the Tower, But to Us it is all One, and the Chain of Friendship shall be carried to Our People.

We look upon the Great King George as the Sun, and as Our Father, and upon Our Selves as his Children; For thô We are red and you white, Yet Our Hands & Hearts are joyn'd together.

When We shall have acquainted Our People with what We have seen Our Children from Generation to Generation will always remember it.

In War We shall always be as One with you; The Great King George's Enemies shall be Our Enemies, His People and Ours shall be always One and dye together.

We came hither naked & poor as the Worm out of the Earth, but you have every Thing, and We that have nothing must love You and can never break the Chain of Friendship that is between Us.

Here stands the Govr. Of Carolina whom We know. This small Rope which We shew you is all We have to bind Our Slaves with, and may be broken, but you have Iron Chains for Yours However, if We catch your Slaves We shall bind them as well as We can and deliver them to Our Friends again, and have no pay for it.

We have looked round for the person that was in Our Country, he is not here, however We must say, that he talk'd uprightly to Us, And We shall never forget him.

Your White people may very safely build Houses near Us, We shall hurt nothing that belongs to them, for We are the Children of One Father the Great King and shall live and dye together.

Then laying down his Feathers upon the Table, He added, This is Our Way of Talking, which is the same to Us, as Your Letters in the Book are to You. And to you, beloved Men, We deliver these Feathers in Confirmation of all We have said, And of Our Agreement to Your Articles.

After which their Lordships told them they were well pleas'd wth the Consent they had express'd to the Articles propos'd to them in His Majesty's Behalf.

Appendix B

1730 Anglo-Cherokee Treaty: Newcastle Version

TNA: CO 5/4/2, p 211-214, 7 September 1730, Board of Trade to Secretary of State the Duke of Newcastle

> Articles of Friendship & Commerce, proposed by the Lords Commiss^{rs} for Trade and Plantations, to the Deputies of the Cherokee Nation in South Carolina, by His Majesty's Order, On Monday the 7th Day of September 1730

Whereas you Scayagusta Oukah, Chief of the Town of Tassetsa, You Scalilosken Ketagusta, You Tethtowe, You Clogoittah, You Colannah, You Oucounacou, have been deputed by Moytoy of Telliko, with the Consent and Approbation of the whole Nation of the Cherrokee Indians, at a general Meeting at Nikossen the 3^{d} of April 1730, to attend S^{r} Alexander Cuming, Bar^{t} to Great Britain, where you have seen the Great **King George**, at whose Feet the said S^{r} Alexander Cuming, by express Authority for that Purpose from the said Moytoy and the Cherokee People, has laid the Crown of your Nation with the Scalps of your Enemies and Feathers of Glory, at His Majesty's Feet, In Token of your Obedience. **Now** the King of Great Britain, bearing love in His Heart to the powerful and great Nation of the Cherokee Indians, His good Children and Subjects, His Majesty has impowered us to treat with you here, and accordingly we now speak to you as if the whole Nation of the Cherokees, their Old Men, young Men, Wives and Children were all present, And you are to understand the Words we speak as the Words of the Great King

our Master, whom you have seen, And we shall understand the Words which you speak to us, as the Words of all your People with open and true Hearts to the Great King, And thereupon We give Four pieces of striped Duffles.

Hear then the Words of the Great King, whom you have seen and who has commanded us to tell you **That** the English every where on all Sides of the great Mountains and Lakes are His People and His Children, whom He loves, That their Friends are His Friends, and their Enemies are His Enemies; That He takes it kindly, that the great Nation of Cherokees have sent you hither a great way to brighten the Chain of Friendship between Him and them, and between your People and His People; that the Chain of Friendship between Him and the Cherokee Indians, is like the Sun, which both Shines here and also upon the great Mountains where they live, & equally Warms the Hearts of the Indians and of the English; That as there are no Spots or Blackness in the Sun, so is there not any Rust or Foulness in this Chain, And as the Great King has fastened one end of it to His own Breast, He desires you will carry the other end of the Chain, and fasten it well to the Breast of Moytoy of Telliko, and to the Breasts of your old Wise Men, your Capts and all your People, never more to be broken or made loose, And hereupon We give Two Pieces of Blue Cloth.

The Great King and the Cherokee Indians being thus fastened together by the Chain of Friendship, He has ordered His People & Children the English in Carolina, to trade with the Indians, and to furnish them with all manner of Goods that they want, and to make haste to build Houses, and to plant Corn from Charles Town towards the Town

of the Cherokees behind the great Mountains, for He desires that the Indians and the English may live together as the Children of one Family, whereof the Great King is a kind and loving Father, And as the King has given His Land on both Sides of the great Mountains to His own Children the English, so He now gives to the Cherokee Indians the Priviledge of living where they please; And hereupon We give One Piece of Red Cloth.

The great Nation of Cherokees being now the Children of the Great King of Great Britain, and He their Father, the Cherokees must treat the English as Brethren of the same Family, and must be always ready at the Governor's Command, to fight against any Nation, whether they be White Men or Indians, who shall dare to molest or hurt the English; And hereupon we give, Twenty Guns.

The Nation of the Cherokees shall on their Part take Care to keep the trading path clean, and that there be no Blood in the Path where the English White Men tread, even thô they should be accompany'd by any other People, with whom the Cherokees are at War. Whereupon we give Four Hundred Pounds Weight of Gunpowder.

That the Cherokees shall not suffer their People to trade with the White Men of any other Nation but the English, nor permit White Men of any other Nation to build any Forts, Cabins, or plant Corn amongst them or near to any of the Indian Towns, or upon the Lands w^{ch} belong to the Great King; And if any such Attempt shall be made, you must acquaint the English Governor therewith, and do whatever he directs, in order to maintain and defend the Great King's Right to the Country of Carolina; Whereupon we

give Five Hundred Pounds Weight of Swan Shot, and Five Hundred Pounds Weight of Bullets.

That if any Negroe Slave shall run away into the Woods from their English Masters, the Cherokee Indians shall endeavour to apprehend them, and either bring them back to the Plantation from whence they run away, or to the Governor, and for every Negroe so apprehended and brought back, the Indian who brings him shall receive a Gun and a Match Coat; Whereupon we give a Box of Vermillion, Ten Thousand Gun Flints, and Six Dozen of Hatchets.

That if by any accidental Misfortune it should happen, that an English Man should kill an Indian, the King or great Man of the Cherokees shall first complain to the English Governor, and the Man who did it shall be punished by the English Law, as if he had kill'd an English Man, and in like manner if an Indian kills an English Man, the Indian who did it, shall be delivered up to the Governor and be punished by the same English Law, as if he was an English Man. Whereupon we give Twelve Dozen of Spring Knives, Four Dozen of Brass Kettles and Ten Dozen of Belts.

You are to understand all that we have now said, to be the Words of the Great King, whom you have seen, and as a Token that His Heart is open and true to His Children and Subjects the Cherokees and to all their People, He gives His hand in this Belt, which He desires may be kept and shewn to all your People and to their Children, and Childrens Children to confirm what is now spoken, and to bind this Agreement of

Peace of Friendship betwixt the English and the Cherokees, as long as the Mountains and Rivers shall last or the Sun Shine; Whereupon we give This Belt of Wampum.

TNA: CO 5/4/2, p 215-216, 7 September 1730, Board of Trade to Secretary of State the Duke of Newcastle

> **Answer** of the Indian Chiefs of the Cherokee Nation, the 9th day of Septem[r] 1730, to the Propositions made to them – in behalf of His Majesty, by the Board of Trade, on the 7th day of the Same Month

We are come hither from a dark Mountanous Place, where nothing but darkness is to be found; but are now in a place where there is light. There was a person in our Country with Us, he gave Us a Yellow token of Warlike Honour, that is left with Moytoy of Telliko; And as Warriors we received it. He came to Us like a Warriour from you, A Man he was his Talk was upright, and the token he left preserves his Memory amongst us.

We look upon you, as if the Great King George was present; And We love you, as representing the Great King, and shall Dye in the same way of thinking.

The Crown of Our Nation is different from that which the Great King George wears, and from that which We saw in the Tower; But to Us it is all one, and the Chain of Friendship shall be carried to Our People.

We look upon the Great King George as the Sun, and as Our Father, and upon Our Selves as his Children; For tho' We are red, and you white, Yet Our Hands and Hearts are joyn'd together.

When We shall have acquainted Our People with what We have seen, Our Children from Generation to Generation will always remember it.

In War We shall always be as one with you; The Great King George's Enemies shall be Our Enemies; His People and Ours shall be always One and dye together.

We came hither naked and poor as the Worm out of the Earth, but you have everything; and We that have nothing must love you and can never break the Chain of Friendship that is between Us.

Here stands the Governor of Carolina whom We know: This small Rope which We Shew you is all We have to bind our Slaves with, and may be broken; but you have Iron Chains for yours. However, if we catch your Slaves We shall bind them as well as We can, and deliver them to Our Friends again, and have no pay for it.

We have looked round for the Person that was in Our Country, he is not here, however We must Say that he talked uprightly to Us, and We shall never forget him.

Your white People may very safely build Houses near Us, We shall hurt nothing that belongs to them, for We are the Children of one Father the Great King, and shall live and Dye together.

Then laying down his Feathers upon the Table, He added: This is our way of Talking, which is the same to Us, as your letters in the Book, are to You; And to you,

beloved Men, We deliver these Feathers, in confirmation of all We have said, and of Our Agreement to Your Articles.

Memorand[m]: That in further Proof of their Agreement, they did afterwards Sign the Articles which had been proposed to them by the Lords Commissioners for Trade and Plantations