

Their Rights by Law, Our Rights by Weji-sqalia'tiek:  
An Exploration of the Resistance to Systemic Erasure of  
Mi'kmaw Land Rights within Kjipuktuk

By

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## **Abstract**

Their Rights by Law, Our Rights by Weji-sqalia'tiek: An Exploration of the Resistance to Systemic Erasure of Mi'kmaw Land Rights within Kjipuktuk

By

Salina Marie Kemp

This thesis seeks to bring consideration to the history of Kjipuktuk and the continued occupation of unceded Mi'kmaw territory by sharing my personal story of sprouting from the land and how history has influenced my existence. I begin by exploring the worldviews and concepts which have shaped the topics discussed in this thesis. Next it will be necessary to acknowledge some of the most impactful events that shaped the founding of Halifax and my ancestors' connection to Kjipuktuk. Many people can recognize the existence of historical policies and legislation that directly attacked Mi'kmaw treaty rights; however, many people continue to be unaware of the ways that treaty rights have been eroded through the subsections of policies and legislation. It is through my own story of sprouting from this land that I challenge the policies and legislation to make space to celebrate a Mi'kmaw culture that has survived for so long.

October 7<sup>th</sup>, 2019

## Acknowledgments

Wela'lin, thank you, to the person reading this thesis; Your judgement of my story has both terrified me and driven me to write so that you may know even one of the many stories about the realities that exist for Mi'kmaq living on unceded lands which are claimed by another nation.

Wela'lin, thank you, to my close friends and family; Your love and support, even when I was angry or crying over the atrocities I was required to read through in order to create this thesis, is the only reason that I continued my work. Without your love and support I would not have had the mental wellbeing to continue to read the written accounts of the attempted genocide of the Mi'kmaw.

Wela'lin, thank you, to those who have challenged me, whether it was the supportive questioning by my supervisors and colleagues, or the malicious questioning of those who were themselves bigoted as well as those who believed that I had become bigoted towards those of colonial descent; Your questions have helped me to shape this thesis in a way that is respectful of all those who sprout from here while also demanding space on unceded land.

Wela'lin, thank you, to the many Elders and community members who have shared their knowledge and their stories; Your love and support has encouraged me throughout my entire life. Your stories that have been shared, either with me directly or through public sharing, have been a constant reminder that I am not alone, and the knowledge you have shared has reminded me to be true to my own story.

Wela'lin, thank you, to the many people who are a part of the Mi'kmaw Native Friendship Centre; You supported me when I was a teen mom looking for employable experience, you supported me when I decided to continue my education, and you have supported many of my attempts to build relationships to support future students.

Wela'lin, thank you, to the many students, faculty, and staff at Saint Mary's University who I have had the pleasure of working with; You know who you are. You have not only supported Indigenous students on campus, but you have also taken the time to hear what we need and fight for real systemic change; but you really do have to work on those "baby steps".

Wela'lin, thank you, to those ancestors who sprouted here before me and those who will continue to sprout from here in the future generations; To all those who are reclaiming our land, our language, and our culture...

*Kesaluloq aq Wela'lioq*

## **Preamble**

*Gwe, nín teluisi Salina Kemp aq tlewayi Kjipuktuk*, my connection to the Mi'kmaw language is limited, but my connection to the landscape of Kjipuktuk is not. I grew up in Kjipuktuk and am what many people call an Urban Indigenous person. I am called “Urban Indigenous” instead of just “Indigenous” or “Mi'kmaw” because I live off reserve. I have lived here, fished here, gathered, and trapped here; I come from multiple generations who lived here and have a strong connection with my urban community. Growing up within the City of Halifax as a Mi'kmaw woman, it was exceedingly difficult to be ignorant of the competing landscape that exists within this shared space that is also known as Kjipuktuk. All around the city there are reminders of the past, and yet that past is very selective.

It is no secret that the attempted erosion of Mi'kmaw connection to Kjipuktuk is reflected in access to food and medicines, loss of language and traditional knowledge, internalized and lateral discrimination relating to geographical location, and access to traditional ceremonies. But I want to share what these things mean on the individual level; I am a living example of the lasting impacts of the legislation within Kjipuktuk and through an auto-ethnographic approach I show how these facts have shaped who I am and how I can interact with my landscape. But this is not the usual story of victimhood because I am also a product of my family's refusal to give up the treaty right to sprout from this land as we always have. Kjipuktuk is filled with strong Mi'kmaw people who have continued to not only sprout from this land but also keep their culture and traditional knowledges.

Although I will draw on academic methods and sources, this thesis has been developed through discussions with community and family members and the stories they have shared. It is also important to note the many conversations with community elders that have helped to shape this thesis as well as the ceremony conducted in the search for how to present the teachings and the history in a way that is respectful for the wide variety of experiences and connection to place. I have made every attempt to ensure that academic language is used only when necessary while also giving reference to where the academic views are available. All references are within the footnotes to make the general flow of the reading feel less like an academic paper and more like the story of my connection.

## **Introduction**

Many Canadians go through their lives without considering the ways that seemingly endless laws, policies, and legislation govern our lives. They dictate where we live, how we interact with our environment and each other, as well as who has what rights and powers. They are social constructions which exist in a constant cycle of shaping society through regulation, and in turn being shaped by the society that they are created to regulate<sup>1</sup>. This constant shifting and evolving of socially constructed regulations can be seen to be based on the existing ideologies of the society; at times it is the unwritten convention of the application of legislation that changes, while at other times it is the actual policy or legislation itself that changes. It was due to a shift in ideology that the policies and legislation regarding Indigenous people, which were explicitly racist and genocidal, began to be challenged. These shifting ideologies can be seen in the fact that the term "person" within the Indian Act no longer means an individual other than an "Indian"; or the fact that women no longer gain or lose their "Indian" status based on whom they marry<sup>2</sup>. Unfortunately, even with these shifting ideologies there is still truly little attention paid to the seemingly endless subsections and addendums that have both directly and indirectly encroached on the historic Mi'kmaw connection to the land and water of Kjiptuk (Great Harbour now known as Halifax, Bedford, and Dartmouth). There is even less attention paid to the ways in which historical connections to the landscape now known as Halifax have been created or forgotten with the help of policies and legislation.

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<sup>1</sup> Frederick Schauer; The Social Construction of the Concept of Law: A Reply to Julie Dickson, Oxford Journal of Legal Studies, Volume 25, Issue 3, 1 October 2005, Pages 493–501.

<sup>2</sup> The definition of person was never actually changed in the Indian Act, but it was removed from the Indian Act of 1951. Women stopped gaining or losing their status based on the men they married thanks to Bill C-31 in 1985.

At a time when so much effort is being put into the resurgence of the Mi'kmaw language and culture it is becoming necessary to also reclaim the space to be able to teach those in the traditional way, on the lands that we sprouted from. In the Introduction of "*The language of this land, Mi'kma'ki*", Trudy Sable and Bernie Francis introduce the concept of 'Weji-sqalia'tiek' which is translated to mean "we arose from here". The concept of 'Weji-sqalia'tiek' is said to be deeply ingrained within the Mi'kmaw language, a language that grew from within the ancient landscape of Mi'kma'ki<sup>3</sup>. According to Sable and Francis "Weji-sqalia'timk expresses the Mi'kmaw understanding of the origin of its people as rooted in the landscape of Eastern North America...The Mi'kmaq sprouted or emerged from this landscape and nowhere else; their cultural memory resides here"<sup>4</sup>. It is through this concept of emerging from a particular place and nowhere else that the United Nations recognize that "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired"<sup>5</sup>. My examination of the lack of space within Kijipuktuk to celebrate Mi'kmaw history, culture, and connection is based on these concepts of inalienable rights to exist and practice our culture on the land we sprouted from.

Recently, based on the Calls to Action of the Truth and Reconciliation Commission (TRC), institutions, such as governmental departments and universities, have begun to recognize their place within unceded Mi'kmaw territory<sup>6</sup>. While I respect the steps being taken by those

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<sup>3</sup> Sable, Trudy, Francis, Bernard, Lewis, Roger J., and Jones, William P. *The Language of This Land, Mi'kma'ki*. Sydney, NS: Cape Breton University Press, 2012.

<sup>4</sup> For further information regarding the difference between the term "Weji-sqalia'tiek" and "Weji-sqalia'timk" please refer to Sable, Trudy, Francis, Bernard, Lewis, Roger J., and Jones, William P. *The Language of This Land, Mi'kma'ki*. Sydney, NS: Cape Breton University Press, 2012. The language of this land will only be referenced as a way to understand the connection to the land, any understanding of the etymology will be best conveyed through the original authors words.

<sup>5</sup> Article 26.1 of the United Nations Declaration on the Rights of Indigenous Peoples

<sup>6</sup> Truth and Reconciliation Commission of Canada: Calls to Action  
[http://nctr.ca/assets/reports/Calls\\_to\\_Action\\_English2.pdf](http://nctr.ca/assets/reports/Calls_to_Action_English2.pdf)

institutions to recognize their place within unceded Mi'kmaw territory and create space for Indigenous students and knowledges, I also believe that it is quite ironic that the institution I attend is acknowledging that it is on land that was never ceded. The irony lies in this institution owning the lands that it is saying are unceded. It creates a mind game to think through how someone else can own something that was never relinquished by the original 'owner'. It is this very irony that has led me to question just how it could be that private lands exist on unceded traditional territory of the Mi'kmaq. To truly reconcile Canada's past, we need to do more than just acknowledge our place on unceded Mi'kmaw territory; we also need to examine how it has come to be that private property can exist in a place that it recognized as being unceded, and just what this means for those who would call that territory home. I begin with the concepts that shape our thinking, and then explore those ways of thinking further through the many policies and legislation that have affected the lands of Kjiptuk before exploring my own story of connecting to the land and possible ways to move forward.

In Chapter 1: The Importance of Space, I begin with an examination of the theories that shaped the ideologies of the time in order to better understand the colonial world views which shaped the policies and legislation. The difference in beliefs between the Mi'kmaq and the colonists about connection to the land and water led to many conflicts throughout history. Unfortunately, the availability of sources relating to Mi'kmaw connection to the landscape are limited; however, there are numerous philosophical and scholarly arguments relating to the connection between place and identity. The colonial concept of legal and exclusive ownership stemming from the alteration of the land must have been incomprehensible to people who believed that while it was possible to control access to a territory, it was not possible to 'own' the land and that there was

instead a responsibility to protect the environment for future generations<sup>7</sup>. To support an analysis of the importance of connection to land and the influence of the built heritage, I draw on theories of relationships to place and the role of built heritage in fostering a connection. Furthermore, I believe that it is possible to identify ways in which colonial policies and legislation have been used as a tool to influence identity and connection to landscapes to perpetuate the Mi'kmaq disconnection from the landscape while also facilitating a colonial connection. This belief is supported by Harold M. Proshansky, Abbe K. Fabian, and Robert Kaminoff who theorize about the importance of connection to place and the role that connection to place has in shaping our identity<sup>8</sup>. Their theories help us to understand not only the impacts of the systemic erosion of treaty rights but also the reason why some Canadians may feel defensive when speaking of connection to place<sup>9</sup>.

In Chapter 2: A History Shaped by Wars, Treaties, and 'Development', this awareness of the differing worldviews will then be used to support an examination of the development and many revisions of the treaties and the conflicts which occurred due to the continued colonial encroachment on Mi'kmaw lands. From there I will look to show how the early colonies created governing policies and legislation which conflicted with treaty rights. It is during this early legislative period that the Mi'kmaw people went from being recognized as a nation and military ally to somehow being wards of the state in need of protection; their lands held in trust by the crown for the benefit of the Mi'kmaw. There is still very little recognized historical documentation of just how these lands came to be held in trust or just what that was supposed to

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<sup>7</sup> Locke, John. *The Second Treatise of Government*.

<sup>8</sup> Proshansky, Harold M., Abbe K. Fabian, and Robert Kaminoff. "Place-identity: Physical world socialization of the self".

<sup>9</sup> These theories can also help to argue for the need to have a more inclusive representation in the landscape and space for connection.

mean, and yet this information is necessary for examining the concept of ‘unceded’ territory. As legislated power strengthened there was a shift in the power relations. This becomes clear with the shift from licences of occupation to the reserve systems within Nova Scotia, the many attempted policies of assimilation, and the intentional forgetting of Mi’kmaw communities close to the valuable port harbour. It is not possible to examine the complete history of Kjiptuk within this thesis, but it is necessary to acknowledge key historical events that shaped the founding and development of Halifax within Kjiptuk. That history has been shaped by wars and treaties that are still referenced today, but it has also been shaped by small and often forgotten pieces of legislation. I believe that a close examination of the history of the policies and legislation governing Kjiptuk will show subtle attempts to disconnect the Mi’kmaw people from the landscape of Kjiptuk, and their treaty rights.

In Chapter 3: Historical Legislation, I will show how the more drastic policies of enfranchisement and residential schools have caused many to overlook the subtler attempts to disconnect the Mi’kmaw people from the historical landscape of Halifax, and their treaty rights. Through this chapter I will draw on policies and legislation that both directly and indirectly relate to Indigenous connection to land. Although I begin with the more commonly known legislation which was created for the purpose of influencing land use and ownership, I also feel it is important to focus on the indirect influences on connection to land. Much of this evidence can be found in the subsections and addenda of policies that otherwise have no relation to the Mi’kmaw people. Other evidence exists within the journals and reports of those ‘Indian Agents’ tasked with the legal control and supposed responsibility for the management of the Mi’kmaw people and their lands. Their reports show not only the attitude towards rightful ownership of lands but also their belief in cultural superiority, and Canada’s history of lack of ‘consultation’

about lands and rights. During this time ‘Indian Agents’ tasked with protecting the lands from settler encroachment were instead writing deeds of occupation for those who were encroaching; squatters’ rights were legislated into existence, while laws were also developed to make it illegal for the Mi’kmaq to take the crown to court over lands. Through an examination of the evolution of these pieces of legislation that affected Mi’kmaq connection to the landscape I will show the ways in which Halifax's racist conventions have been challenged throughout history.

The more recent and systemic claims to our unceded territory are examined in Chapter 4: Hidden in Plain Sight, which focuses on some of the ways that the difference in beliefs about ownership and treatment of the land and water led to conflicts throughout our more recent history. Colonial history shows how the growth of the colony’s population and sense of entitlement gave a perceived right for the formation of governing policies and legislation which conflicted with treaty agreements<sup>10</sup>. Yet even when legislation was created, the Mi’kmaq would use that new legislation as a tool to fight for their land<sup>11</sup>. Although power relations had shifted drastically by the end of the 19<sup>th</sup> century that did not stop the Mi’kmaq from continuing to resist colonial claims to ownership over their lands. Although the reserve system had been created, many continued to occupy sites considered to be private property around Kjiptuk. Jerry Lonecloud, on behalf of those occupants, had even put forward applications for recognition as the Halifax County Band with lands that included, but were not limited to, Tufts Cove along the Dartmouth shore<sup>12</sup>. Following the Halifax explosion of 1917, the visible, and undeniable, occupation of a part of the harbour ended and with it the recognized visibility of the Mi’kmaq

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<sup>10</sup> A Short History of British Colonial Policies contains a good piece about the colonists’ attitudes towards land and the creation of certain policies from a British colonial view instead of a Canadian colonial view.

<sup>11</sup> One example of this is through the petition for licenses of occupation in the Harry Piers Ethnology Papers, Vol. 1, 2, and 3, Museum of Natural History, Ruth Holmes Whitehead

<sup>12</sup> Harry Piers Ethnology Papers, Vol. 2, Museum of Natural History, Ruth Holmes Whitehead

people within Kijipuktuk. In their place the now iconic smokestacks of the power station have taken over that landscape<sup>13</sup>. The Halifax explosion was a major turning point in Mi'kmaw history and to this day the communities where their descendants moved to continue to fight for the land that was wrongfully taken from them. But that is not my story to tell; my story looks for the reality of my connection as a Mi'kmaw woman who sprouted from Kijipuktuk. It is in fact the history of Kijipuktuk after that event that is of the most interest, not only because it is the least recognized but also because of the lasting impacts of some of those events. This absence of Mi'kmaq visibility within Kijipuktuk facilitated the formation of an exclusive historical narrative that influenced education, commemoration, and land use; making Mi'kmaq occupation seem like a long-ago tale rather than recent history and a fight that has never stopped<sup>14</sup>. My family is not the only family to have continued to occupy the lands around Kijipuktuk and while this is not their story, their story has influenced my connection through the knowledge that I am not alone.

The historical narrative created by colonists can be seen to further perpetuate and compound the Mi'kmaw disconnection from the landscape and the colonists' sense of belonging during the nation-building activities that followed confederation. The colonial records which often speak of unidentified 'Indians' with so little regard also serve as proof of continued occupation and traditional land use within the context of this thesis. Ironically, it is because of the long history of systemic injustice and Mi'kmaw representation in the legal records that it is possible to see any written records of Mi'kmaw people occupying lands within Kijipuktuk and

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<sup>13</sup> While the power station may not be in the exact location it is within such small proximity to account for the same landscape, before you even contest my claim, and you know who you are R1.

<sup>14</sup> This can be seen in the records of petitions for land or the recognition of possession of land between 1906 and 1913 as well as in the letter from Jerry Lonecloud asking for help to rebuild following the Halifax Explosion. Harry Piers Ethnology Papers, Vol. 2, 2003, Museum of Natural History, Ruth Holmes Whitehead

continuing to exercise autonomy and their treaty rights<sup>15</sup>. With the creation of the reservation system the colonists seem to have believed that because the Mi'kmaq would not assimilate, they would be willing to move away from colonial development and be happy to live in the woods. What the colonists failed to consider was that they were creating their settlements in locations that were traditional family sites that had been selected and maintained based on the resources available at those sites. As colonial cities began to develop the Mi'kmaq simply adapted to the new resources available and took advantage of the growing market to trade within thus creating what became known in the 1900's as the 'urban Indian problem'. It would appear as though the colonial government have experienced some delays but are still working on that "Indian problem".

Although Canada denies continued attempts to deal with the "Indian Problem", Chapter 5: Policies and Legislation that Continue to Deny Connection, will explore the continued systemic erasure of rights through legislation. This chapter examines the belief that the Mi'kmaq have the legal burden of proof to show uninterrupted ownership and traditional use. Next, the chapter will examine the lasting impacts of policies and legislation even after they have been changed, and the development of policies that force communities to trade land for already existing rights. Each of these have had a direct impact on my story, through the lasting implications of the historic refusal to acknowledge the Halifax County Band or their lands, the ways that the Mi'kmaq were pushed from their settlements around Kjiptuk, and the impacts of selective representation in the historical landscape of Halifax. Following the Halifax explosion, the concepts of centralized reservations and assimilation were thought to be the solution to the

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<sup>15</sup> Gabriel Sylliboy and William Labrador were charged with not following the legislation relating to hunting and fishing.

'Indian' problem; however, contrary to the exclusive narrative of Halifax, Kjiptuk is still used and occupied by Mi'kmaw people over 100 years later. It is my goal to challenge the narratives of disconnection by demonstrating that not only is Kjiptuk unceded territory, but it has also been continuously inhabited by, and used by the Mi'kmaq of the area. Finally, I will examine the selective representation of Mi'kmaw place and resistance to land claims to demonstrate the ongoing opposition to Mi'kmaw belonging. By doing this I believe it will be possible to show the ways in which Halifax is resistant to the reclaiming of unceded lands once belonging to the unrecognized Halifax County Band. It is my hope that through the documentation of these stories of maintaining a connection I will not only provide evidence for my theory but also a sense of belonging for those who call Kjiptuk their home and unceded territory.

Chapter 6: My Story of Sprouting from Kjiptuk, addresses my lived experiences as a part of the urban Indigenous community. It is no secret that the attempted erosion of Mi'kmaw connection to Kjiptuk is reflected in access to food and medicines, loss of language and traditional knowledge, internalized and lateral discrimination relating to geographical location, and access to traditional ceremonies. But I want to share what these things mean on the individual level; I am a living example of the lasting impacts of the legislation within Kjiptuk and through an auto-ethnographic approach I show how these facts have shaped who I am and how I can interact with my landscape. But this is not the usual story of victimhood because I am also a product of my family's refusal to give up the treaty right to sprout from this land as we always have. Kjiptuk is filled with strong Mi'kmaw people who have continued to not only sprout from this land but also keep their culture and traditional knowledges. However, any analysis of the impacts on connection to the landscape have been done through self reflection because I do not feel comfortable examining community members or analyzing the extent of

their connection to landscape. I share my own story of connection as a way to tell just one story of how Mi'kmaw connection has been influenced. The historical stories shared within this thesis are intended only to demonstrate continued, yet evolving, land use and to support inflections while recognizing the differences in experiences and to show resilience in the face of a changing landscape.

Chapter 7: Reclaiming Land (in Theory), will explore the importance of land-based learning for the continuation of culture and language, and explore the realities of making space in a landscape filled with so many other cultural spaces. In this chapter I question the continued denial of space to practice culture in a city that celebrates its multi-culturalism and just what it means to prove that the lands were never legally ceded. The thesis will finish by seeking to find space for reconciliation by exploring the possibilities for making space for Mi'kmaw culture and spirituality as well as the alteration of constructed heritage to reflect the two different landscapes that exist within this place known both as K'jipuktuk and Halifax.

## Chapter 1: The Importance of Space

To develop an understanding about why certain things in history have happened the way they have it is necessary to look at the concepts which shaped the beliefs at that time. It is for this reason that the first chapter of this thesis examines the colonial theories and concepts that existed relating to human interaction with the environment around them and the place they occupy. We are first introduced to our culture's belief of connection to the earth through our creation stories and it is because our different stories of creation tell so much about their society, that is where I begin to look at differences with connection to the land. The Mi'kmaw creation story portrays a people who have sprouted from the land and learned many lessons from the land<sup>16</sup>; while the colonial creation story found within their bibles portrays a people who have been created in their gods image, with the earth created for their benefit, and they were cast out of nature for their sins<sup>17</sup>. This difference in coming from the land or being created independent of the land shows a very deep-rooted difference in worldviews about connection to the land. Theorists such as Hegel believed that people became alienated from nature as they developed consciousness; much like in the colonial creation story<sup>18</sup>. Unlike Hegel, the Mi'kmaw understanding of the connection to nature may be found in the concept of Msit No'kmaw which is often loosely translated to "all my relations" but also holds the deep-seated concept that all things (human and nature) are interconnected.

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<sup>16</sup> See video from Elder Jane Meader <https://www.youtube.com/watch?v=oCVIUYID3qs>, or Gerald Gloade <http://www.mikmaweydebert.ca/home/ancestors-live-here/blomidon/the-creation-of-kluskap-and-the-mikmaq/>

<sup>17</sup> There are many versions of their bibles and creation story and so I will not reference any one particular story, only the many concept of human relation to the environment that they come from.

<sup>18</sup> Gavin Rae (2012) Hegel, Alienation, and the Phenomenological Development of Consciousness, *International Journal of Philosophical Studies*, 20:1, 23-42.

Although it is possible to see a drastic difference in the concepts of connection to our environment there were still many colonial theorists who believed that people could never be truly alienated from the environment. For theorist Karl Marx the theory of alienation from nature only refers to the socially constructed environment because our place in the natural world makes everything that we create a part of nature<sup>19</sup>. In this way our cities are not separate from nature but are the human form of alteration of nature the same as a bird building a nest or a beaver creating a dam. The concept of alienation from nature that Marx talks about goes deeper than the idea of coming from nature or being created independently of nature; it explores the ability to recognize our role in the creation and maintenance of social constructions. Marx's theory of alienation from nature focuses on the failure to recognize our societies as a product of our constructs as much as we are a product of our environment. Marx's theory of alienation is said to reveal the human activity that creates and maintains the seemingly impersonal forces that govern our societies<sup>20</sup>. Marx believed that we should understand our place in the production and maintenance of social constructions such as legal systems, social power structures, and history. In this way Marx would say that a person who is unable to recognize their role in the production and maintenance of social constructs is alienated from nature<sup>21</sup>. However, Marx's theory of alienation from nature stems from the development of capitalism and the loss of control over labour. For Marx the creation of a capitalist society was dependant on the brutal enclosure of common land, meaning that for the first time in history the majority in society were denied direct access to the means of production and subsistence, thus creating a class of landless labourers

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<sup>19</sup> Marx, Karl. 1894. "The Process of Capitalist Production as a Whole." *Capital: A Critique of Political Economy*. Vol. 3. Edited by Friedrich Engels. New York.

<sup>20</sup> Cox, Judy. "An introduction to Marx's theory of alienation."

<sup>21</sup> Vogel, Steven. "Marx and Alienation from Nature."

who had to submit to exploitation in order to survive<sup>22</sup>. In this way Marx's alienation from nature may instead be seen as an alienation from the means of production. Fortunately, theorists like Ernst Fisher believe that the first recognition of the fact that "the world can be changed by conscious activity" holds all future, as yet unknown, but inevitable change<sup>23</sup>. This is important to consider when writing a thesis that asks for the socially constructed landscape to make space so that the original people of this land not be alienated from the means of production which are protected through treaties. That is to say that the original and continued intent of the treaties by the Mi'kmaq who signed was to protect the Mi'kmaq right to Netukulimk<sup>24</sup>.

Another social construction that is of importance to the understanding of the history of Kijipuktuk is the concept of land ownership. This concept is one that was not shared by the Mi'kmaq people at the time of the treaties as they believed instead that the land belongs to those generations who will come after us and that we had a responsibility to ensure that the resources and the relationship with the land/water be respected so that it may support future generations as it has the past generations. To contrast this belief, I look to John Locke's theory of ownership to show the social construction of land ownership being tied to the labour that one has put into the land as well as the social construction of 'improving' the land<sup>25</sup>. According to Locke's theory of ownership, labour is what gives value to the land and rights of ownership stem from that value that has been added to the land by using a person's labour to make 'improvements' to the land. This concept of ownership does not on its own justify the theft of lands occupied by others and although many have drawn on John Locke's concept of ownership to develop the concept of

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<sup>22</sup> Cox, Judy. "An introduction to Marx's theory of alienation."

<sup>23</sup> Cox, Judy. "An introduction to Marx's theory of alienation." *International Socialism* (1998): 41-62.

<sup>24</sup> To sprout from and to depend upon and protect the natural resources of the environment. Find further definition within sources such as the book *Netukulimk* or websites such as this one <http://www.uinr.ca/programs/netukulimk/>

<sup>25</sup> Locke, John. "Second Treatise of Government."

Terra Nullius, this concept developed after the colonization of the America's began. In fact, it was the concept of who was to be defined as a 'person' by the pope which would be the justification for the theft of the lands by the colonists. Due to the papal bull "Inter Caetera" issued by Pope Alexander VI on May 4, 1493 the colonists were given the blessing of the church to conquer any lands not occupied by Christians<sup>26</sup>. This belief that the colonists were people while non-Christians were not, is also supported by the existence of slavery. It is with these concepts of ownership and personhood that colonists were able to justify the appropriation of Mi'kmaw lands based on the amount of labour that they put into changing the lands. The acceptance of this concept as a legal construction can be seen in the belief that any land without physical changes from labour was not truly owned. This belief that labour which changes the land creates rights for ownership can be seen in the development of what is known to many as squatter's rights, now legally referred to as adverse possession<sup>27</sup>. However, our relationships to place consists of more than just ownership and so I will also explore the diverse ways that Mi'kmaw and colonists have relationships with the place known as Kjiptuk.

Social psychologist Irwin Altman and anthropologist Setha Low's concept of 'place attachment' defines the ways in which people connect to various places, and the effects that those connections have on identity development, place-making, perception, and practice<sup>28</sup>. Due to this concept of 'place attachment' it is possible to identify five different ways that people have relationships to place; a Biographical connection comes from being born to a place, a spiritual or

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<sup>26</sup> Scott, William Henry. "Demythologizing the Papal Bull "Inter Caetera"." *Philippine Studies* 35, no. 3 (1987): 348-56.

<sup>27</sup> Highlander Law Group, *Squatters Rights and Adverse Possession in Nova Scotia*, 2018, <https://www.highlanderlaw.ca/halifax-lawyer-blog/squatters-rights-adverse-possession>

<sup>28</sup> Low, Setha M., and Irwin Altman. "Place attachment." In *Place attachment*, pp. 1-12. Springer, Boston, MA, 1992.

emotional connection comes from feelings of joy or connection with a place, an ideological connection comes from the feelings of a moral or ethical responsibility towards a place, a narrative connection comes from stories that connect a person to a place, and a commodified connection comes from the choice to make a connection based on the desirability of that place<sup>29</sup>. It is important to note that a person may have any combination of these relationships to specific places based on their experience with that place. Our first relationship to place being the biographical relationship to the place where we are born. This often develops into an emotional relationship of feeling connected to the place where we grew up and even an ideological relationship of protecting the place that we are connected to. These relationships are reinforced by the narrative relationship that we develop with a land as we share memories and stories that relate to that place. While these first four relationships to land seem to be remarkably similar among all people regardless of culture there is often a significant difference between Indigenous peoples and colonists in the development of commodified relationships. All people have a commodified relationship with place in that if the place could no longer support their survival, they would move on to another place regardless of the other four connections with that place. However, with the development of capitalism there has been a change in the way colonists conceptualize what it means to have a commodified relationship with a place to be closer to the concept of exploitation.

If we use these concepts of connection to place to look at the development of the colony of Canada it is possible to see that the earliest relationships that they formed with this place were commodified as they were interested only in temporary fishing and trapping settlements. The commodified relationship grew with the interest in the spread of empires and resource extraction.

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<sup>29</sup> Low, Setha M. "Towards an Anthropological Theory of Space and Place"

Those colonists who were alienated from the means of production in the place where they had a biographical relationship were tempted to the new colony with promise of land and control over the means of production on their own land. With the development of the colonies there also began to be a development of a narrative relationship with the land as maps, stories, and songs were created about their new connection to place. With permanent settlement also came the first colonists to have a biographical connection to place. As the colony developed into a state there were policies created to encourage the further development of a narrative connection through literature, art, and education. This narrative connection was used to inspire a spiritual and emotional connection to the state and create a national identity. Examples of this can be seen in the development of national holidays such as Canada Day, literature such as Anne of Green Gables, and tourism sites such as Signal Hill<sup>30</sup>. As the emotional relationship to place became stronger there was a development of an ideological relationship to place as can be seen in the shift in focus from exploitation of resources to the protection of resources. The development of parks and conservation areas as well as monuments to history not only show the ideological relationship that is developing but also the ways that they reinforce the emotional, spiritual, and narrative relationship that colonists have to place.

Although many Canadians today have a biographical relationship to Kjiipuktuk because they have been born here, they can trace their family back to the time when they came here. The Mi'kmaw people are able to trace their family back to the creation story yet there has been no significant attention paid to the many relationships that the Mi'kmaw people have continued to have with Kjiipuktuk after colonization. Perhaps this is because it was not possible for the

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<sup>30</sup> None of these examples come from the history of Kjiipuktuk however the prevalence of those examples within the national narrative show the impact that they have had on the colonial narrative of connection to place.

colonists to form a connection to land that already had stories of connection that belonged to the Mi'kmaq people. Although there was no significant colonial focus on Mi'kmaq stories of connection they do still exist in the stories of the origin of the hockey stick, the existence of the Tufts Cove settlement, and images of Mi'kmaq selling goods at the Halifax market.

It is with these theories of connection to place that I will explore the evolution of connection around Kjiptuk to show the ways that the colonists created their own connection through policies and legislation that also worked to erode Mi'kmaq connection. For many who continue to fight for their treaty rights their ideological connection to place means that protection of the place is more important than the commodification of the place. Places have value not for the ways that they may be exploited but for the ways that they support our spiritual and emotional well-being, the continuation of the Mi'kmaq culture, and our future generations. The difference in world views relating to land ownership and the commodified relationship that we have with the land is what has led to decades of misunderstandings and misinterpretations between the Mi'kmaq nation and the settler nations.

Land is more than just the place where we live or work, it shapes us much the same way that we shape it. The earth is where our people and languages sprouted from and it is through our languages and environment that our cultures are developed and supported<sup>31</sup>. Thomas Andrews, who is noted for research into the significance of place-names in the Dene culture, believes that place-names are mnemonic devices, giving a mental framework in which to remember relevant aspects of cultural knowledge and that landscape may be viewed as a collection of symbols which record local knowledge and meaning. Furthermore, Andrews believed that where place

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<sup>31</sup> Sable, Trudy, Francis, Bernard, Lewis, Roger J., and Jones, William P. *The Language of This Land, Mi'kma'ki*. Sydney, NS: Cape Breton University Press, 2012.

names become memory aids for recalling the relevance of a message encoded in associated narratives, physical geography is transformed into ‘social geography’ where culture and landscape are fused into a semiotic whole<sup>32</sup>.

The belief that place helps to shape our identity is further defined within the field of environmental psychology as the concept of ‘place identity’<sup>33</sup>. The term ‘place identity’ was introduced by environmental and social psychologists Harold M. Proshansky, Abbe K. Fabian, and Robert Kaminoff, who argue that place identity is a sub-structure of a person’s self-identity and consists of knowledge and feelings developed through everyday experiences of physical spaces<sup>34</sup>. They believe that place identity comes from the many ways in which places provide us with a sense of belonging, construct meaning, foster attachments, and mediate change. The ‘place identity’ of a person is also thought to inform their experiences, behaviors, and attitudes about other places. These concepts will be used throughout this thesis to help us understand the change in who felt at home, as well as why displacement from the places we have a relationship with can be so traumatic for individuals and groups.

When considering theories of ‘place attachment’ or ‘place identity’ it becomes possible for me to draw on individual experiences of connections that I have formed with places as well as the ways that those places have helped to shape my identity. The memories that I formed throughout my childhood are attached to specific places and act to normalize certain behaviours in certain settings, my place within the world, and also connect me with others who have shared

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<sup>32</sup> Andrews, T. D. (1990). Yamoria’s arrows: stories, place-names and the land in Dene oral tradition. Canadian Parks Service, National Historic Parks and Sites, Northern Initiatives.

<sup>33</sup> Giesecking, Jen Jack, William Mangold, Cindi Katz, Setha Low, and Susan Saegert, eds. *The people, place, and space reader*. Routledge, 2014.

<sup>34</sup> Giesecking, Jen Jack, William Mangold, Cindi Katz, Setha Low, and Susan Saegert, eds. *The people, place, and space reader*. Routledge, 2014.

similar memories. One such memory which is attached to place is the memory of blueberry picking with my family, this place was the setting for many lessons about life and our interconnection with our environment. However, when I returned there to share the narrative and lived connection with my own son the place that once provided my family with blueberries had been replaced with a walking path and parking lot. This destruction of the place where my family had gathered berries and shared stories disrupted the connection to place that was created through generations of traditional land use and stories. By destroying my connection to place this ‘park’ was transformed into a landscape to be marketed as a perk to living in the nearby condos. By constructing a narrative of a beautiful park for outdoor leisure activities they have constructed a new meaning for the place and fostered a colonial attachment. This experience is not unique to me as many others experienced this feeling as their places of connection were transformed into ‘landscapes’. The concept of a ‘landscape’ is something that is unique to colonists and reflects the continued belief in separation from nature. The Oxford Dictionary defines ‘landscape’ as all the visible features of an area of land, often considered in terms of their aesthetic appeal<sup>35</sup>. Used as a verb it is defined as the action of making a space more visually attractive by altering the existing design and adding ornamental features. This action of altering place to make it more appealing to colonists has been happening around Kijipuktuk since the earliest colonial inhabitation. The colonists looked to alter the land to reflect the ‘landscape’ that they were more familiar with in order to create a sense of belonging. This alteration of the landscape to create a sense of belonging was not only physical alterations of the land but also the development of a literary landscape.

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<sup>35</sup> <https://en.oxforddictionaries.com/definition/landscape>

Through the use of maps and stories the colonists created an imagined landscape that they had a connection to. Sarah Wylie Krotz examines the role of literature and maps in creating that landscape in the article *Place and Memory: Rethinking the Literary Map of Canada*. Krotz examines the use of maps within literature and how the “writing itself becomes a form of cartography when the landscapes and special experiences that writers describe engender mental or cognitive maps in the reader”<sup>36</sup>. In this way Canadian writers have worked to negotiate the shared and contested spaces of the map, the identities and geographical spaces and places, by endowing space with imaginative and mnemonic value<sup>37</sup>. By giving a narrative to the spaces the literature is rooting the culture in the physical world, “underscoring that what is at stake is a sense of place as well as an understanding of culture”<sup>38</sup>. Krotz examines *A Literary Map of Canada* by William Arthur Deacon and states that “while it depicts a recognizable geography, outlining the contours of the country and many of its major lakes and rivers, Deacon’s literary map—like all literary maps—points to a doubly-imagined place: it represents a Canada written into being in long poems and tall tales and distilled in the imagination of a reader cultivated in the colonized cultural centres of English and French Canada”. In fact, “the blank spaces and silences of maps remind us that cartography is not a mirror of the world so much as a representation of a way of seeing it”. The articles that Krotz draws on explore the idea of writers as nation builders, and as participants of “the Lockean process of perceptual annexation through literary labour”. This is because the images and maps provided within literature create images that the reader incorporates into their own mental maps which help them to perceive and

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<sup>36</sup> Krotz, Sarah Wylie. "Place and Memory: Rethinking the Literary Map of Canada." *ESC: English Studies in Canada* 40, no. 2 (2014): 133-154.

<sup>37</sup> Mnemonic is defined as something that helps with remembering.

<sup>38</sup> Krotz, Sarah Wylie. "Place and Memory: Rethinking the Literary Map of Canada." *ESC: English Studies in Canada* 40, no. 2 (2014): 133-154.

understand the world around them. In addition to giving meaning to spaces, literature creates an imaginative dwelling that deepens our experience of the space as a place<sup>39</sup>. By giving names from the places that colonists came from they “inscribe the so called “New World” with the memory of the “old””. Krotz notes that the memories of places are physical and that our vision of the world is filtered through these memories of places; this is the reason why early literature shows a “profound homesickness”. Krotz shows how the experience with the landscape was shaped by an intense longing for the home they would never return to, and the ways that literature produced from this perception has further influenced the readers perception of the landscape and ownership.

Throughout this thesis I will draw on theories of ownership and belonging to understand the development of policies focused on nation building and the many changes following confederation. However, it is also necessary to examine the political aspects of landscape creation as a tool for the construction of ‘history’. Lachlan B. Barber investigates the production and maintenance of the heritage landscape in downtown Halifax to show the unequal power relations that produced and were inscribed in the landscape as well as the ways that those power relations continue to work in the present<sup>40</sup>. Barber argues that collective memory is not necessarily authentic, but rather useful; by selectively manipulating certain bits of the national past, while suppressing others, is a primary instrument in the creation and nurturing of a national identity<sup>41</sup>. Thus, certain forms of heritage are celebrated and made visible while others may be marginalized and left invisible. Barber examines the mythology of the founding of Halifax which

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<sup>39</sup> For Krotz ‘space’ can be seen as something we move through without connection while ‘place’ is where we form connection and give meaning.

<sup>40</sup> Barber, Lachlan B. "Making meaning of heritage landscapes: The politics of redevelopment in Halifax, Nova Scotia." *The Canadian Geographer/Le Géographe canadien* 57, no. 1 (2013): 90-112.

<sup>41</sup> Barber, Lachlan B. "Making meaning of heritage landscapes: The politics of redevelopment in Halifax, Nova Scotia." *The Canadian Geographer/Le Géographe canadien* 57, no. 1 (2013): 90-112.

makes it appear as if the land was unoccupied, ‘terra nullius’, and was designed to give the residence a feeling of pride and belonging. Not only does this selective narrative privilege the colonists but it also acts to erase the Mi’kmaq from history and diminishes their relationship to land and place.

Robert Summerby-Murray’s article “Interpreting deindustrialised landscapes of Atlantic Canada: Memory and industrial heritage in Sackville, New Brunswick” draws on the argument of Doreen Massey who argues that heritage reflects a sanitised recovering of the past<sup>42</sup> while also acknowledging theorists such as Knox<sup>43</sup>, Boyer<sup>44</sup>, Roberts and Schein<sup>45</sup>, who comment on the ways in which this sanitised image that Massey describes is commodified for public consumption<sup>46</sup>. This sanitised recovering of the past can be seen in National Historic sites such as Citadel Hill where the ‘history’ of the site is commodified for public consumption offering tourists a glimpse of the past. None of the ‘history’ provided speak of the many years of war with the Mi’kmaq Nation or the realities of how or why the site was built. The heritage presented glorifies the early colonists and the war between colonial nations on Mi’kmaq land. However, Nuala C. Johnson challenges the argument that the heritage industry merely presents a sanitized or bogus version of the past through the examination of an instance in which an historical icon is presented to a popular audience in a provocative and nuanced rendering of the past<sup>47</sup>. Johnson

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<sup>42</sup> Massey, Doreen. 1991. “A Global Sense of Place” *Marxism Today*, 24-29, reprinted in *Reading Human Geography: The Poetics and Politics of Inquiry 1997* edited by T. Barnes and D. Gregory (London: Arnold), 315-323

<sup>43</sup> Knox, P. 1991 “The Restless Urban Landscape: Economic and Sociocultural Change and the Transformation of Metropolitan Washington, DC” *Association of American Photographers*, Vol. 81, 181-209

<sup>44</sup> Boyer, M. C. 1992 “Cities for Sale: Merchandising History at South Street Seaport” *Variations of a Theme Park* Edited by M. Sorkin 181-204

<sup>45</sup> Roberts, S. and Schein, R. 1993. “The Entrepreneurial City: Fabricating Urban Development in Syracuse, New York” *Professional Geographer* Vol. 45, 21-33

<sup>46</sup> Summerby-Murray, R. (2002). Interpreting deindustrialised landscapes of Atlantic Canada: Memory and Industrial Heritage in Sackville, New Brunswick. *Canadian Geographer*, 46(1), 48-62.

<sup>47</sup> Johnson, Nuala C. "Where Geography and History Meet: Heritage Tourism and the Big House in Ireland." *Annals of the Association of American Geographers* 86, no. 3 (1996): 551-66.

examines heritage tourism, its framing of history, and its relationship with narratives of national identity in the article “Where Geography and History Meet: Heritage Tourism and the Big House in Ireland”. Johnson effectively shows the role the literature has on the developing of a collective historical imagination attached to places. This is supported by the influence that the literature of Ann of Green Gables has had on the historical imagination of Prince Edward Island’s heritage development. Hauna McCabe’s article *Contesting Home: Tourism, Memory, and Identity in Sackville, New Brunswick* looks at the expression of place and cultural identity through tourism practices. McCabe argues that the expression of place and cultural identity are in no way simple, uncontested constructions of identity and culture. Rather, cultural and heritage tourism practices may be sites where a fundamental symbolic struggle is waged over that identity and culture: over the meaning and representation of place and of ‘home’<sup>48</sup>. Robert Summerby-Murray points out that the “harnessing of collective memory to select those aspects of past processes and environments that are sufficiently valued to be projected into the future as heritage (Barthel 1996; Trapeznik and McLean 2000) is an inherently political process, muddied by "constructs of the imagination" that make metaphors for the past "more real than their referents" (Schama 1995, 61) and by the commodification of past places and processes for economic advantage (Francaviglia 2000)”.<sup>49</sup> It is through this thesis that I will seek to challenge the collective memory and constructions of the imagination that has formed around Kijipuktuk to make space for the recognition of Mi’kmaw connection to place.

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<sup>48</sup> McCabe, Hauna. "Contesting Home: Tourism, Memory, and Identity in Sackville, New Brunswick." *Canadian Geographer / Le Géographe Canadien* 42, no. 3 (1998): 231-45.

<sup>49</sup> Summerby-Murray, R. (2002). Interpreting deindustrialised landscapes of Atlantic Canada: Memory and industrial heritage in Sackville, New Brunswick. *Canadian Geographer*, 46(1), 48-62.

Frits Pannekoek's article *Who Matters? Public History and the Invention of the Canadian Past* claims that history has been used to reinforce the values of Euro-Canadian culture, which has always seized the threads of its "usable" past to justify a culture of progress which masks their capitalist and imperialist system of inequality<sup>50</sup>. Pannekoek goes on to state that "minimally, the marginalized have won specialty volumes or footnotes in the dominant narrative, but in only very rare instances have the basic chronology or milestone events...changed". Pannekoek is not shy in stating that "academic" or "university appointed" historians have to accept a preponderance of guilt for the state of "public history" because they have constructed, or at least, reinforced the underpinnings of all public commemoration. In an examination of Parks Canada's National Historic Sites, Pannekoek notes that "the historian's job is inevitably to defend previous selections, especially those involving large dollars, and to guard the agency's authority". In fact, Pannekoek also says that what others may see as giving voice to the marginalized is viewed by the Director General of the National Historic Sites as "substituting one version of history for another" while the Metis referenced view the presence of their story at a National Historic Site as confirming their heritage. This belief that marginalized voices are trying to substitute one version of history for another ignore the possibility that space may be made without silencing others. In order to challenge this belief that recognition of Mi'kmaw history on the land would replace colonist history I will examine how the history of these cultures have been intertwined since the time of contact.

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<sup>50</sup> Pannekoek, Frits. "Who matters? Public history and the invention of the Canadian past." (2000): 205-217.

## Chapter 2: A History Shaped by Wars, Treaties, and ‘Development’

Canada’s perceived ‘history’ has been carefully constructed in such a way as to try to create a sense of nationality, delivered in deliberately selected “Heritage Moments”<sup>51</sup>. By carefully selecting the moments in ‘history’ to turn into Canadian ‘heritage’ the colonists were able to create a sense of nationality<sup>52</sup>. Historic locations which have preserved their original features from the early colonial days, or are linked to grand stories, have been developed to allow the visitors to feel as though they are experiencing life when the colonies were conquering and warring. Unfortunately, this accumulation of past events that are represented as ‘history’ have left very little room for understanding the history of the Indigenous peoples of the land now called Canada. In this chapter I seek to show the colonial ‘history’ that is often ignored, that is their interactions with the Mi’kmaw people throughout history as it relates to land sovereignty. According to Jeffers Lennox, “to talk about Acadia or Nova Scotia in the eighteenth century is to engage in an act of imagination. Empires were geographic fictions...”<sup>53</sup>. Lennox believes that this is because early settlement in Mi’kma’ki was focused on fish and trade, with weak forts scattered through a land still controlled by the Mi’kmaw Nation in partnership with the Wabanaki Confederacy.

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<sup>51</sup> I always thought that the heritage moment for Ka-na-ta was funny because it demonstrates the ego of the colonist ‘explorers’ and because it was one of the few that showed some form of history of Indigenous people and the reliance that the colonist had on the Indigenous nations in the beginning. The official description is “Lost in translation? The explorer’s first meeting with Iroquoian peoples provides one story of how Canada got its name (1534).” Film clip can be found at: <https://www.historicacanada.ca/content/heritage-minutes/jacques-cartier>

<sup>52</sup> Heritage can be understood as the valuing of objects and places as representative of a group or nation’s exclusive historical story, those objects and places are used to generate a sensory experience with the past but with a focus on the preservation and ownership by the colonists. This developed sense of heritage, which is inherited and passed on to future generations through heritage activities such as museums and historic sites, is what creates a sense of nationality for those who identify within the constructed story of the colonial past.

<sup>53</sup> Lennox, Jeffers. *Homelands and Empires: Indigenous Spaces, Imperial Fictions, and Competition for Territory in Northeastern North America, 1690-1763*. Toronto: University of Toronto Press, 2017.

It is no great secret that historians once gave very little consideration to the Indigenous Nations, often only acknowledged as existing before the formation of Canada. This selective representation acts to give people the belief that our culture and our history are a thing of the distant, pre-contact, past. Photographers were more concerned with the use of props than they were with capturing the authentic life of the Indigenous people<sup>54</sup>, surveyors deemed any land not “improved” to be unoccupied and mentions in archival materials often exclude names in exchange for “Indian”. The few mentions of Mi’kmaw people are often limited to legislation and passing remarks by surveyors and businessmen. With the help of this selective representation, the landscape that is now known as Halifax has been constructed in such a way that celebrates certain histories of the land while ignoring others. It has been my personal experience that while people know about the role of Edward Cornwallis in the establishment of Halifax, few know about his hatred for anyone of a different race or religion, his hatred was not reserved solely for the Mi’kmaq, and left many of the settlers who crossed over to establish the new colony with him to find their own way outside of the colony of Halifax<sup>55</sup>.

The exclusionary practices of creating a landscape may be seen not only through these selective reminders of history, but also through the existence of whole communities. There is no denial of the fact that certain racialized groups within Halifax have experienced racism and marginalization. Consequently, the historic communities of Africville, a community of Black

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<sup>54</sup> Many photographers have been known for using props across Canada and throughout history; although they claimed to have the intention of capturing images of the culture before it disappeared, the interpretation of what were considered to be significant heritage items through a colonial lens resulted in the need to provide props in order to fit within the expectation. Examples include J.S. Rogers, W. D. O’Donnell, and Ralph Harris.

<sup>55</sup> Reid, John. "The Three Lives of Edward Cornwallis." *Journal of the Royal Nova Scotia Historical Society*.

Loyalists<sup>56</sup>, Tufts Cove, a Mi'kmaw community<sup>57</sup>, and many other ethnic communities were excluded from the 'Canadian' narrative. At the time of nation building, which is when Canada was trying to create a unified national identity, the colonists marginalized narratives that did not fit within the 'Canadian' narrative of a peaceful and homogenous nation. Much like the historic communities of Tufts Cove and Africville were at odds with the constructed 'Canadian' narrative, the continued recognition of Mi'kmaw occupation and use of lands was also a threat to that narrative. It was difficult for the Canadian nation to build a national identity and to create a sense of belonging when there was a clear representation of the true 'ownership' of lands that were never ceded by the Mi'kmaw Nation. In this chapter I look to explore just a small part of the history that shaped not only the signing of the Treaties but also the formation of the colonial nation. This chapter will focus on those events which have had the greatest impact on land and water access from the time of contact. Even with such a narrow historical focus on events that shaped connection to land it will still be necessary to examine events outside of Mi'kma'ki that had effects on current day connection.

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<sup>56</sup> Africville, was established in 1836 yet they were exploited, marginalized, denied services, and exposed to toxins before they were pushed out for industrial development in the 1960's. A more detailed history of Africville and the context of black refugees is detailed in "Shaping a Community: Black Refugees in Nova Scotia" by Lindsay Van Dyk and "The Story" on the website for the Africville Museum website.

<sup>57</sup> Tufts Cove was destroyed in the Halifax Explosion and the survivors were denied help to rebuild, instead they were moved to nearby reservations with family. Harry Piers Ethnology Papers, Vol. 2, Museum of Natural History

## *The Impact of Wars*

Prior to 1525 the seven Mi'kmaw Districts flourished with their own language, economy, and government; it is only after 1610 when Chief Membertou and 140 Mi'kmaq are baptized that the way of life in Mi'kma'ki begins to change in any drastic way. With the introduction of these colonists came illnesses which the Mi'kmaw people's immune systems were not prepared for and many Mi'kmaw historians refer to the spread of a plague like sickness among the Mi'kmaw people; although few can agree on what that illness was or when it occurred, they each agree to the devastating loss of life that resulted<sup>58</sup>. During this time another illness ravaged the land, greed; wars were waged between the colonial nations who attempted to claim land on Mi'kmaw territory changing the name from Mi'kma'ki to Acadia, to New Scotland, and finally to Nova Scotia. One war that shaped where we are today is the war that was waged from 1722 till 1725 between the Mi'kmaw and the colonists. This war ended with the creation of what would be the first of the Treaties of Peace and Friendship, also known as Dummer's treaty<sup>59</sup>. The war was mainly sparked by Mi'kmaq, Maliseet and Abenaki concerns regarding the colonists' increasing expansion. The colonists were beginning to push more aggressively into Nova Scotia's coastal

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<sup>58</sup> While it is likely that there was widespread death and illness from interactions with the colonists there is nothing more than speculations and postulations based on limited sources regarding actual populations and the impacts of colonial diseases. "Indeed, contact is thought to have wrought profound alterations in all aspects of Mi'kmaq society, including massive depopulation" William C. Wicken, *Encounters with tall sails and tall tales: Mi'kmaq society, 1500-1760*; "Anthropologists who have studied the Micmac Indians of the Maritime Provinces of Eastern Canada in the twentieth century have almost uniformly estimated the Micmacs' aboriginal population at a maximum of 3,500...the source of these estimates is most likely...the Jesuit priest Pierre Biard's figure set down in 1616." Virginia P. Miller, *Aboriginal Micmac Population: A Review of the Evidence*;

<sup>59</sup> "In December 1725, Governor William Dummer of Massachusetts initiated the first of a number of treaties of peace and friendship between the Crown and several First Nations. This process led to a further treaty between the Mi'kmaq Nation leaders and the Nova Scotia colonial authorities, which was signed in 1726" Nova Scotia Archives Mi'kmaq Holding Resource Guide

waters than had been true before 1713, creating concerns about possible interference in the fishery<sup>60</sup>.

The 1725 treaty and later treaties are said to be unique not only for what they do say but also for what they do not say. The most important of the 1725 treaty's provisions dealt with land, more specifically the recognition of Mi'kmaw rights to all lands not already occupied<sup>61</sup>. In return, the Mi'kmaq and other members of the Wabanaki Confederacy agreed not to attack the colonists' settlements that had already been made or were lawfully to be made. With this, the Nations involved formally accepted the legality of each other's existing settlements. They also agreed that the colonists might establish future settlements, though such settlements could only be made 'lawfully'. The treaty, however, did not define what would be considered as 'lawful' settlement. This issue may have been addressed in the negotiations, but any record of these discussions has been lost. On the other hand, it is reasonable to assume that they reached the agreement that future settlement would be the subject of future negotiations. In return, the colonists agreed not to interfere with the Indigenous Nations existing lands or their fishing, hunting, planting and other 'lawful' activities. While the treaty did not define what they considered to be the location or size of such lands, we would assume that it would include all lands outside the 'existing settlements'. We would also assume that these lands were ones that were used by the Mi'kmaq and other Indigenous Nations at the time the treaty was signed at 1726. However, it is not clear whether all those lands outside the 'existing settlements' would be

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<sup>60</sup> “Fact sheet on Peace and Friendship Treaties in the Maritimes and Gaspé” Prepared by William Wicken  
[https://www.rcaanc-cirnac.gc.ca/eng/1100100028599/1539609517566?fbclid=IwAR366c5gbuw7qTsFVmbUCKrfTYvwCBkkB\\_xaCOWFik80rq\\_7P0pjXQKUd2s](https://www.rcaanc-cirnac.gc.ca/eng/1100100028599/1539609517566?fbclid=IwAR366c5gbuw7qTsFVmbUCKrfTYvwCBkkB_xaCOWFik80rq_7P0pjXQKUd2s)

<sup>61</sup> Although the 1725 treaty dealt with land, the 1726 ratification was much less clear about the intentions regarding the land. In fact, it may be claimed that because the 1726 and subsequent treaties did *not* deal with land, they left Mi'kmaw ownership unaffected according to both Mi'kmaw and colonial conceptions of legality.

considered as part of the 'fishing, hunting, and planting grounds'<sup>62</sup>. Interestingly, this treaty was also the first agreement that any disagreement between the Indigenous Nations and the colonists would be addressed by the colonial government instead of privately, thus accepting responsibility for ensuring that colonists adhered to the terms of the treaties<sup>63</sup>.

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<sup>62</sup> <http://www.aadnc-aandc.gc.ca/eng/1100100028599/1100100028600>

<sup>63</sup> <https://www.cbu.ca/indigenous-affairs/unamaki-college/mikmaq-resource-centre/treaties/treaty-of-1725/>

## *The Era of Treaties and How Kjipuktuk Became Halifax*

When Cornwallis and some two thousand colonists arrived on the shores of Kjipuktuk under imperial instruction to begin the construction of settlements and a military base, it was considered an act of war. The Mi'kmaw believed that the lands could only be ceded by them and that this had been recognized by the treaties that were signed in 1725. The colonists seemed to believe that the crown had the power to determine what was legal occupation. The chiefs continued to state their position that the land did not belong to the colonists and that the Mi'kmaq Nation would not abandon their lands and waters without a fight. Letters were written to the crown informing them that the colonists were taking lands that they had been told that they could not have or without negotiation at all<sup>64</sup>. The difference in definition of the 'lawful' settlement of lands led to war yet again following the settlement of Halifax<sup>65</sup>. Although some have made the claim that the Mi'kmaw had declared war on the colonists, Cornwallis is noted as saying that he refused to declare war on the Mi'kmaw because to do so "would be a manner to own them a free and Independent people", instead the governor and council issued a proclamation ordering colonists to "annoy, destroy, take or destroy the savage commonly called Micmacks wherever they are found" and offering a reward for every Mi'kmaq that was taken alive or killed "to be paid upon producing such savage taken or his scalp (as is the custom of America)"<sup>66</sup>. The records or examinations of this period in history which currently exist do not

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<sup>64</sup> While it was beyond the scope of this thesis to find the original letters written throughout the history of the colonization of Mi'kma'ki there is the frequently referenced letter from the Mi'kmaq of Cape Breton and Antigonish to Cornwallis, 23 September 1749, United Kingdom National Archives, CO217/9, f. 116

<sup>65</sup> "Sure enough, the Mi'kmaq soon made their continued presence felt – striking, in fact, at the very machinery of city-making. On September 30th, they descended upon Major Jarmon's sawmill on the Halifax harbour and killed four workmen as they prepared planks for the building of Halifax homes". *"We are damaged": planning and biopower in Halifax, Nova Scotia, 1880-2010*, Ted William Rutland, 2012, The University of British Columbia

<sup>66</sup> Patterson, Stephen E. "Indian-White Relations in Nova Scotia, 1749-61: A Study in Political Interaction." *Acadiensis* 23, no. 1 (1993): 23-59.

provide details of a conflict which would justify a scalping proclamation and even less from a Mi'kmaw perspective. The Nova Scotia Archives notes that shortly after the establishment of a British military presence at Kjiptuk (Halifax) a renewal and affirmation of the 1725 treaty was entered by the Mi'kmaq Nation and the newly established government at Kjiptuk<sup>67</sup>. However, as pointed out by Ted Rutland, while the Mi'kmaq would accept coexistence with the British, would neither submit to colonial rule nor forfeit their traditional claims to territory<sup>68</sup>.

The rough wooden defensive walls that surrounded the first settlers of Halifax soon gave way to stone houses and military structures. During this time the Mi'kmaw continued to occupy the lands around Kjiptuk, defending their lands from further encroachment. Historical records make note of attacks on settlers attempting to occupy lands that the Mi'kmaq had not approved<sup>69</sup>. However, they do not write from the perspective of a person who was defending their home from invasion but rather from the perspective of a person who believes that they have a right to the land. The Nova Scotia Archives online Mi'kmaq Holdings Resource Guide states that despite the reaffirmation of the treaty, hostilities between colonists and the Mi'kmaq Nation still occurred, as the young colony continued to move forward and press for additional land<sup>70</sup>. This indicates a perceived right of colonists to appropriate lands and ignores the fact that the protection of lands was the Mi'kmaw chiefs' reason for signing the treaties. The Nova Scotia Archives notes that an additional treaty of peace was signed in November 1752 to end hostilities and reaffirm earlier

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<sup>67</sup> Nova Scotia Archives, Mi'kmaq Holdings Resource Guide, Peace and Friendship Treaties at the Nova Scotia Archives <https://novascotia.ca/archives/mikmaq/results.asp?Search=AR5&SearchList1=all&TABLE2=on>

<sup>68</sup> *"We are damaged": planning and biopower in Halifax, Nova Scotia, 1880-2010*, Ted William Rutland, 2012, The University of British Columbia

<sup>69</sup> Examples can be found in the Nova Scotia Archives Colonial Office Papers Part 1; C.O. 218, Vol. 1, June 18 Annapolis Royal, A.&W. 1. Vol. 58, no. 146; C.O. 218, Vol. 2, June 6 Whitehall, 1722, B.T.N.S. vol. 33 p. 14; C.O. 217, vol.4, September 19 Canso, 1722, C. 77, B.T.N.S. vol. 4; C.O. 217, vol. 40, July 23 Chebucto, 1749, A.&W.I. vol. 31, p. 61; C.O. 217 vol.9, September 11 Chebucto, 1749, F. 89, B.T.N.S. vol. 9; C.O. 217 vol.9, September 11 Chebucto, 1749, A.&W.I. vol. 31, p. 109; C.O. 217, vol. 9, March 19 Halifax, 1750, F. 127, B.T.N.S. vol. 9

<sup>70</sup> Nova Scotia Archives, Mi'kmaq Holdings Resource Guide, Peace and Friendship Treaties at the Nova Scotia Archives <https://novascotia.ca/archives/mikmaq/results.asp?Search=AR5&SearchList1=all&TABLE2=on>

treaties. However, they do not mention the letters written by the Mi'kmaw complaining to the colonial crown about illegal settlement on Mi'kmaq lands.

If one is to consider the history of conflict resulting from the continued expansion of Halifax through appropriation even after the signing of treaties, then it becomes clear that the Mi'kmaw never agreed to anything other than to allow a small settlement to continue to exist within Kjiptuk. It comes as no surprise that as the colonists continued to appropriate lands, peace did not prevail. The Mi'kmaw regularly raided settlements that were expanding outside of what was protected by treaty and the colonists established raiding parties of their own to attack Mi'kmaw settlements. The Seven Years' War between the French and British colonists, beginning in Mi'kma'ki 1755, led the British colonists to again seek to end hostilities with the Mi'kmaq<sup>71</sup>. This led to the signing of several similar but separate treaties between the British colonists and the Mi'kmaq Nation starting in February 1760 and extending into 1761<sup>72</sup>. The signing of those Articles of Peace and Friendship concluded on June 25, 1761, with a "Burying of the Hatchet Ceremony" that was held at the Governor's farm in Halifax<sup>73</sup>. During the ceremony, treaties of peace and friendship were signed between Governor Jonathan Belcher on behalf of the colonist, and several the Chiefs from the Mi'kmaq Nation. Agreements that were reached in these treaties relating to land can be seen to have been reinforced by the 1763 Royal Proclamation which set guidelines for colonial settlement across North America, while limiting

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<sup>71</sup> Many historians, including Mi'kmaw historian Daniel Paul note that the treaties are a result of the Mi'kmaw accepting defeat after witnessing the defeat of the French colonists and while I accept that that may be the reason behind the Mi'kmaw agreement to sign I do believe that it was the British colonists who initiated the negotiations of peace in order to ensure Mi'kmaw alliance at a time of war to prevent fighting on two fronts.

<sup>72</sup> These treaties were originally intended to be consolidated into one treaty

<sup>73</sup> Insert original documentation of this event

the power of the colonies to encroach upon First Nations' land. The document was published in Halifax in January 1764 and distributed to all the North American colonies<sup>74</sup>.

The versions of history which have been taught in schools or shown through the development of heritage have all ignored the autonomy exercised not only as a Mi'kmaw Nation but also as individual Mi'kmaq people. Stephen E. Patterson's article "Indian-White Relations in Nova Scotia, 1749-61: A Study in Political Interaction" provides a different perspective, claiming that there is a popular view today that Indigenous people were simply the victims of history, implying that they passively fell before a huge, powerful, and overwhelming force or institution. Patterson argues that this viewpoint not only distorts history but also inadvertently devalues the historic role of Indigenous people themselves. In fact, Patterson argues that the Mi'kmaq in Nova Scotia behaved as autonomous peoples throughout the contact period, exercising choices which represented their best efforts to accommodate the European intruders and adjust to the challenges and opportunities they posed<sup>75</sup>.

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<sup>74</sup> Nova Scotia Archives, Mi'kmaq Holdings Resource Guide, Peace and Friendship Treaties at the Nova Scotia Archives <https://novascotia.ca/archives/mikmaq/results.asp?Search=AR5&SearchList1=all&TABLE2=on>

<sup>75</sup> Patterson, Stephen E. "Indian-White Relations in Nova Scotia, 1749-61: A Study in Political Interaction."

## *The Development from Mi'kma'ki to Nova Scotia*

The Mi'kmaw people who occupied Kijipuktuk were a part of the Sipekne'katik district of Mi'kma'ki. It is important to acknowledge this because the original districts of Mi'kma'ki were ignored in the establishment of colonial communities, provinces, and nations borders. The Mi'kmaw signed the treaties with the belief that those treaties would mean an end to colonial encroachment, a belief supported by the Royal Proclamation of 1763, claiming to protect Mi'kmaw lands. Yet even those actions which claimed to end colonial encroachment on unceded Mi'kmaw lands acted to appropriate lands. The Royal Proclamation of 1763 did four things that are of interest. First, it sought to define the lands recognized as "Indian Territories", where First Nations people "should not be molested or disturbed" by settlers. Second, it sought to prevent any future abuse of First Nations and their lands by prohibiting colonial governors from making any grants or taking any land from First Nations people and established a set of protocols and procedures for the purchasing of First Nations land. Third, the protocols and procedures it established led to the establishment of the Indian Department which would be the primary liaison between the Crown and First Nations people. Fourth, while the intent was to slow the uncontrolled western expansion of the colonies and regulate the relationship between First Nations people and colonists, the Royal Proclamation also became the first public recognition directly from the colonial crown of First Nations rights to lands and title.

Although the intentions of the Royal Proclamation appear to be the protection of unceded lands and the establishment of protocol for engaging with the Mi'kmaw, the reality was drastically different. Jennifer Reid's book "Myth, Symbol, and Colonial Encounter" argues that while the Proclamation and the Treaty both promised "favour, friendship, and protection" the

reality of the colonization process was that “no dictate could have been so meaningless”<sup>76</sup>. One settler is even quoted as saying that “our soldiers take great pains to drive the [Indigenous people] away and clear the country of them”. These attempts to “clear the country” of Mi’kmaq are said to have been varied but continued well into the 1850’s with colonial administrations employing companies of Boston Rangers to hunt the Mi’kmaq<sup>77</sup>.

According to historian John Reid, the reality of the application of the requirements regarding Indigenous land transfer was neither logical, nor legal, but was instead determined largely by the colonial encroachments brought about by increasing colonial settlement, especially during and following the Loyalist migration of the early 1780s. Reid argues that “settler encroachments not only caused profound environmental and economic harm to Indigenous communities, notably through agriculture and the disruption of transportation routes. It also led to the granting of land to colonists on an unprecedented scale”<sup>78</sup>. Martha Walls supports this with the claim that “the influx of thirty-five thousand Loyalists into Nova Scotia following the American Revolution changed Mi’kmaq-British relations and eroded Mi’kmaq political autonomy. Well-armed and ready for land, the Loyalists, unlike previous settler populations, outnumbered the Mi’kmaq. Endorsed by Britain as settlers to the colony, the Loyalists challenged Mi’kmaq control of Mi’kma’ki”<sup>79</sup>. Walls argues that “following the Loyalist arrival, Britain compelled the Mi’kmaq to join the newcomers in petitioning for land, and as early as December 1783, the Nova Scotia government had designated specific tracts for their use. Unlike

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<sup>76</sup> Reid, Jennifer. *Myth, Symbol, and Colonial Encounter*. University of Ottawa Press, 1995.

<sup>77</sup> This may later provide a much needed perspective of the damage caused by the current need to prove uninterrupted occupation of land for land claims when the Mi’kmaq were quite literally *hunted* by colonists.

<sup>78</sup> Reid John. "The Significance of the Royal Proclamation of 1763 for Atlantic Canada"

<sup>79</sup> Walls, Martha. *No Need of a Chief for This Band: The Maritime Mi’kmaq and Federal Electoral Legislation, 1899-1951*.

the Loyalists, who were granted deeds, the Mi'kmaq were issued licenses of occupation; in 1783, Mi'kmaw chiefs in what is now Nova Scotia were assigned licenses of occupation for ten locations containing a total of 18,105 acres”<sup>80</sup>. Walls observes that although this was allegedly intended to safeguard Mi'kmaw land, these “reserves” also acted as a way to free up land for Loyalist settlement. L. F. S. Upton’s article, “Indian Policy in Colonial Nova Scotia 1783 - 1871,” points out that “[Colonists] quickly disrupted [the Mi'kmaw] pattern of life since they preferred to settle the easily accessible places first: the coast for the fisheries, and the river valleys, not only for the best soil and fisheries, but also for the potential of water powered saw mills. The indented coastline and numerous rivers of the province ensured that this [colonial] settlement intruded almost simultaneously into every part of the land, and meant that the [Mi'kmaw], in moving from forest to river to coast, inevitably encountered the newcomers. Since Nova Scotia was small, there was nowhere the [Mi'kmaw] could maintain even a semblance of the old life (as in Canada or New Brunswick) in ignorance of the [colonists]. These changes had become apparent to all by 1783”<sup>81</sup>.

Even though the lands recognized as Mi'kmaw lands in Nova Scotia remained at approximately twenty thousand acres, on paper at least; Walls points out that “what this figure does not show is that much of the acreage was unlawfully occupied by squatters”<sup>82</sup>. In the years from 1783 to 1815 there continued to be applications by the Mi'kmaw to be granted licenses of

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<sup>80</sup> Although Wall’s calls the land that the Mi'kmaw were given “reserves” they did not actually become known as reservations until 1819. Walls, Martha. *No Need of a Chief for This Band: The Maritime Mi'kmaq and Federal Electoral Legislation, 1899-1951*.

<sup>81</sup> This quotation has been re-worded to replace the words “Indians” with “Mi'kmaw” and “whites” with “colonists”; this is done to provide a bit more clarity as the Loyalist settlers were not all white colonists but they did help in the colonization of the land that Upton writes about, and I just really do not like the ambiguity of the term “Indian” L. F. S. Upton’s article “Indian Policy in Colonial Nova Scotia 1783 – 1871”.

<sup>82</sup> Walls, Martha. *No Need of a Chief for This Band: The Maritime Mi'kmaq and Federal Electoral Legislation, 1899-1951*. Vancouver: UBC Press, 2010.

occupation, to the extent that Surveyor General Morris reported on the whole situation in 1815. According to Upton, Surveyor General Morris “urged against making grants to individual Indians, for too many sold their holdings for cash or liquor; the only acceptable procedure was to reserve lands for their use in “such situations as they have been in the habit of frequenting.” There were lands reserved for them in numerous localities, but none had been surveyed”. Upton notes that the formation of the North American Indian Institution in Halifax in 1814 was the first token of a new type of concern for the welfare of the Mi’kmaw<sup>83</sup>. The resolutions that they passed formed a broad, but entirely predictable, plan for betterment of the Mi’kmaw based on the colonial virtues of farming and hard work. The Institution's secretary, Walter Bromley, was unrelenting in a personal campaign to “settle the Indians”, seeking financial aid from the missionary New England Company in London and receiving the moral support of Lieutenant Governor Lord Dalhousie.

Upton notes that by early 1817 Bromley had “collected” twenty-four Mi’kmaw families and was settling them on lands at Shubenacadie. Lord Dalhousie lent it his indirect support by a special message to the legislature concerning the “most wretched and deplorable” state of the Mi’kmaw and urging the encouragement of those who were willing to farm. By August 1818 the Shubenacadie settlement was off to a “satisfactory” start with twenty-two families settled there and a little over 51 acres cleared for further development. It was in the context of these improvement efforts that Lord Dalhousie made the first full scale attempt to face the government's responsibilities to the native peoples by proposing the establishment of a reserve in each county, not to exceed 1,000 acres, to be held in trust for those “Indians” who were disposed to settle. On May 8, 1820, the Surveyor General reported to Council with descriptions of reserves

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<sup>83</sup> Upton, L. F. S. "Indian Policy in Colonial Nova Scotia 1783 - 1871." *Acadiensis* 5, no. 1 (1975): 3-31.

in each county. The lands were a mixture of old and new allocations, and no money was provided for the costs of a proper survey. The descriptions were of little value either as a legal defence against encroachment or as a guide to what was in fact set aside for the Mi'kmaw, many of whom continued to use the lands outside of the colonial designated reserves<sup>84</sup>.

The colonial failure was not limited to the proper descriptions of what was considered reserve land, or the protection of those lands, but also in the attempts to encourage Mi'kmaw settlement on those lands. Upton points out that "it had been apparent for some time that the reserves everywhere existed in name only, and the policy of settling "Indians" had collapsed". This failure is pointed out again by Upton who writes that in 1829 the Lieutenant Governor tried without success to have the Council devise "some means to protect from encroachment and trespass the various tracts of land reserved for the Indians"<sup>85</sup>. Interestingly, Upton also notes that when the British parliament enquired into the condition of the "aborigines of the empire" there was no information provided from Nova Scotia. Yet the colonial indifference was finally interrupted by a petition from Chief Paussamigh Pemmeenawweet directly to Queen Victoria. The petition was received at the Colonial Office on January 25, 1841 and just five days later a despatch was sent to Nova Scotia's new Lieutenant Governor stating that "Her Majesty was deeply interested in the appeal but the Colonial Secretary did not have the necessary information to advise her on the subject. Resume the enquiries immediately"<sup>86</sup>. By January 1842, Nova Scotia's colonial government had prepared a bill, based on recommendations from the subsequent inquiries, which was passed as law in March. The law provided for the appointment

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<sup>84</sup> Upton, L. F. S. "Indian Policy in Colonial Nova Scotia 1783 - 1871." *Acadiensis* 5, no. 1 (1975): 3-31.

<sup>85</sup> Upton, L. F. S. "Indian Policy in Colonial Nova Scotia 1783 - 1871." *Acadiensis* 5, no. 1 (1975): 3-31.

<sup>86</sup> Upton, L. F. S. "Indian Policy in Colonial Nova Scotia 1783 - 1871." *Acadiensis* 5, no. 1 (1975): 3-31.

of an “Indian Commissioner” to supervise the reserves, act against squatters, consult with the Chiefs to encourage settlement, and arrange for the admission of “Indians” to local schools<sup>87</sup>.

In 1853 the acting “Indian Commissioner” reported that the Mi’kmaq would always be unwilling to work and settle, the lands reserved for the Mi’kmaq were mostly unfit for farming, and those parts that were not unfit had already been taken by colonists<sup>88</sup>. It was then proposed that since the Mi’kmaq were “fast passing away”, the government should “ease their last days by supplying them with blankets and greatcoats and, if any money was left over from the annual grant, a few seed potatoes”<sup>89</sup>. However, it was proposed that these funds should come from the sale of any lands that squatters possessed.

The eventual result was "An Act concerning Indian Reserves" passed March 30, 1859, that allowed squatters to buy the land. Upton points out that there had initially been a clause to permit the sale of unoccupied reserve land in the original draft of the bill, so the idea of a general dismemberment of the reserves had been considered. The money raised from the sale of the lands were to be paid into an “Indian Fund” with an interest of 6%, to be applied to relief as a first charge and then to the promotion of settlement. In the future, intruders were to be liable to summary ejection and a new position, “Commissioner of Indian Reserves”, was created to supervise these proceedings. Upton provides a bit of humour by stating “Thus, if law alone could do it, the problem was solved. Squatters would become legal freeholders, no further Indian land would be lost, and a fund would build up to the point where the Assembly no longer had to subsidise the Indians out of the general revenues”. This of course was not the case as Upton later

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<sup>87</sup> Upton, L. F. S. "Indian Policy in Colonial Nova Scotia 1783 - 1871." *Acadiensis* 5, no. 1 (1975): 3-31.

<sup>88</sup> This topic may be explored further through (Parnaby, Andrew. "The Cultural Economy of Survival: The Mi'kmaq of Cape Breton in the Mid-19th Century." *Labour / Le Travail* 61 (2008): 69-98.) or through (Landry, Mark William, and Saint Mary's University. Dept. of History. *Pokemouche Mi'kmaq and the Colonial Regimes*, 2010).

<sup>89</sup> Upton, L. F. S. "Indian Policy in Colonial Nova Scotia 1783 - 1871." *Acadiensis* 5, no. 1 (1975): 3-31.

points out the “new wave of optimism” was reliant on the compliance of the Mi’kmaw being “settled” and the squatters now expected to pay for the land. It is hard not to laugh at Upton’s bluntness in stating that “Neither group played their role as desired”. Upton points out that the colonists believed that the Mi’kmaw made "many unreasonable objections" to having their reserves subdivided, wishing rather "to have everything in common, even their wigwams — they wish to be as children of the same family." This reluctance to simply accept what the colonists declared is made evident in the petition in 1860 by Francis Tomma, Head Chief of the Mi’kmaq, Louis Adelaide, Clement Bernard, Michael Christmas, and other Mi’kmaq Chiefs, regarding intrusions on their lands by white men and illegal land deals. This source also includes a letter by S. Fairbanks to those illegally occupying Mi’kmaq land.<sup>90</sup> Yet even though the Mi’kmaq continued to fight to maintain traditional connections to the land, according to Upton, by the end of 1866 only ten Mi’kmaw families had agreed to settle and the squatters were no more cooperative with disputes over the price they should pay with very few of the squatters actually paying anything and none who had paid in full. Again, Upton bluntly points out that “the squatters preferred to stay put until this latest enthusiasm of the government had run its course”.

In 1867 the British North America Act joined Nova Scotia with other provinces to form Canada, giving the dominion parliamentary power to create “Laws for the Peace, Order, and good Government of Canada”, in relation to “Indians, and Lands reserved for the Indians”<sup>91</sup>. With the passing of the British North America Act there becomes a legal recognition of responsibility that the federal government has for maintaining the treaties and protecting the land from further encroachment. However, the British North America Act also legally claimed any

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<sup>90</sup> Nova Scotia Archives, 1860, Lieutenant Governor of Nova Scotia — Petitions series Nova Scotia Archives RG 5 Series GP, Vol. 3, No. 162, Microfilm 9683

<sup>91</sup> <http://www.justice.gc.ca/eng/rp-pr/csj-sjc/constitution/lawreg-loireg/p1t13.html>

lands not designated as reserved for “Indians” as belonging to the provincial colonies. This one piece of legislation acted to legalize the theft of Mi’kmaw lands between the last ratification of the Peace and Friendship Treaty in 1761 and the signing of the Act in 1867. The new and centralized responsibility for the Indigenous Nations throughout Canada led to the development of the first “Indian Act” in 1876 to replace the many pieces of legislation existing in the individual provinces and to organize “Indian Agents”.

Again, the implied intentions and the reality were drastically different and the “Indian Agents” tasked with the protection of the lands instead gave justification for giving title to the thieves<sup>92</sup>. A report by Samuel P. Fairbanks, who was both the commissioner of Crown Lands and the commissioner of Indian Affairs, found in the Appendix of the Journals of Assembly Nova Scotia 1867, makes a good example of the role of the convention of the application of the legislation and proclamations. Fairbanks’ report states that “I find in the earlier records of the Crown Land Department, that various tracts of land, primarily in those parts of the province where the [Mi’kmaq] chiefly resorted, were set apart for their benefit. These lands, with few exceptions, were found at a very late period unoccupied and unimproved by the [Mi’kmaq]; a small portion of them however, were settled upon by some of the white inhabitants, ignorant of the reservation, who had made them of value by their labor, and occupied them as a home. Many instances of similar intrusion and settlement upon the Crown Lands were also found to exist; and after grave consideration [of] the legislature resolved not to disturb these settlers, but to give them a title to what they possessed, upon payment of a fair valuation of the land in its natural state; the proceeds of the [Mi’kmaw] lands to be invested at interest for their benefit, to provide stock and agricultural implements whenever any family should resolve to abandon the roving

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<sup>92</sup> Appendix 6 of the Journals of Assembly Nova Scotia 1867, Nova Scotia Archives

habits, and devote themselves to the cultivation of the soil. This law has been acted upon; the lots occupied were sold at fair valuation, and the proceeds are at the credit of the [Mi'kmaq] for the above purpose; being one branch of the Provincial liabilities. As regards to the remainder of the lands, the title is by law vested in the commissioner of Crown Lands, in trust for the [Mi'kmaq]. . . With these remarks respecting their lands, and the care taken to protect as well as encourage the improvement of them, it is scarcely necessary that I should dwell upon a communication not long since made to the colonial office by a person in the island, alleging grievous wrongs inflicted upon the [Mi'kmaq] in reference to their lands, including a Burial Ground, which they are accustomed to regard with sacred reverence, and which should be preserved from intrusion. Such complaints, if they had any foundation, would have met with prompt redress from myself as commissioner, or the Government in case of my neglect. My inquiries lead me to believe that whatever wrongs may have occurred in years long past, the legislation which has taken place, the annual supervision of the legislative committees, and the vigilant oversight exercised as I have before stated, forbid that such should occur in the present day.”<sup>93</sup>. It is of little surprise that colonists would choose to act in the best interest of other colonists instead of the Mi'kmaw.

Throughout history we see continued examples of how the convention of applying the law has differentiated from the written legislation but with the push to colonize that followed the British North America Act that legislation began to more accurately represent the intentions of the colonists. The first example of this can be seen in the development of the centralization policy. Lisa Lynne Patterson's thesis “Indian Affairs and the Nova Scotia Centralization Policy” provides insight into the development and implementation of the attempted centralization of

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<sup>93</sup> Appendix 6 of the Journals of Assembly Nova Scotia 1867, Nova Scotia Archives

Mi'kmaw people. Patterson begins with the 1896 elections of Sir Wilfrid Laurier as Prime Minister and George H. Murray as Premier, claiming that this began "a lengthy period of Liberal control in federal and Nova Scotia politics during which it was easy for the federal government to dismiss complaints in the House of Commons about the state of Indian affairs in Nova Scotia"<sup>94</sup>. Patterson provides insight into the continued willful ignoring by the colonial government of encroachments on Mi'kmaw lands. This is demonstrated in the example of colonial lumbering operations being accused of destroying reserve lands while the Minister was claiming that there was "practically no trespass on Indian lands". Although there is a willful ignorance of the theft and destruction of reserve lands, Patterson points out that it was not considered possible to give away title to Mi'kmaw lands. In fact, when the Halifax M.P., Robert Borden, urged the government to "exchange, sell or dispose of Indian lands rather than let them be ruined, the Prime Minister explained that, because the [Mi'kmaq] were scattered all over the province, it was virtually impossible to discuss the surrender of their lands with them"<sup>95</sup>. It is of little surprise that the government's role was further criticized a few years later with the statement that "the object of our Indian Department seems to be to increase the number of officials and to squander the money of the Indians and give them as little enlightenment as possible"<sup>96</sup>.

Although the colonial government did not attempt to ask the Mi'kmaw to surrender their lands, they were reluctant to acknowledge Mi'kmaw occupation of those lands. With the development of the First World War and the resulting strain on colonial moneys there continued to be criticism of the number of people employed by the "Indian Department". However, the

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<sup>94</sup> Patterson, Lisa Lynne. *Indian Affairs and the Nova Scotia Centralization Policy*, 1986.

<sup>95</sup> Patterson, Lisa Lynne. *Indian Affairs and the Nova Scotia Centralization Policy*, 1986.

<sup>96</sup> Patterson, Lisa Lynne. *Indian Affairs and the Nova Scotia Centralization Policy*, 1986.

distance and number of Mi'kmaw settlements in Nova Scotia made it difficult to reduce the number of "Indian Agents".

Anita Maria Tobin's thesis, "The Effect of Centralization on the Social and Political Systems of the Mainland Nova Scotia Mi'kmaq," shows the resilience of the Mi'kmaw occupation in opposition to continued attempts of removal<sup>97</sup>. According to Tobin, "the initial spark of centralization to Millbrook was ignited in 1916, prior to the Halifax explosion, as squatters belonging to the Halifax County Band of Mi'kmaq residing in Tufts Cove and Elmsdale were being pressured to vacate that which had been deemed private property"<sup>98</sup>. Tobin points out that "the fate of these communities were under discussion as early as 1911 when Indian Superintendent A. J. Boyd wrote the Department of Indian Affairs stating that those people living at Elmsdale had "stood the test of being a permanent camping ground". He recommended that the property be officially named the "Elmsdale Indian Reservation". However, that never came to be. The attempts to have the Halifax County Band recognized also never came to be<sup>99</sup>. Tobin points out that by the spring of 1918, the colonists were pressuring politicians in Ottawa to find a place for the Mi'kmaq who were 'squatting' on the property near Grand Lake and allegedly owned by a colonist known as C. Musgrave. In response to this, J. D. McLean, the Deputy and Secretary of the Department of Indian Affairs, ordered Boyd to do a survey of the numbers of people living there, and to determine the extent of their stay, what timber had been cut, any improvements they had made, and what compensation, if any, these

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<sup>97</sup> Tobin, Anita Maria, and Saint Mary's University. Atlantic Canada Studies Program. The Effect of Centralization on the Social and Political Systems of the Mainland Nova Scotia Mi'kmaq: (Case Studies: Millbrook-1916 & Indian Brook-1941), 1999.

<sup>98</sup> Tobin, Anita Maria, and Saint Mary's University. Atlantic Canada Studies Program. The Effect of Centralization on the Social and Political Systems of the Mainland Nova Scotia Mi'kmaq: (Case Studies: Millbrook-1916 & Indian Brook-1941), 1999.

<sup>99</sup> Harry Piers Ethnology Papers, Vol. 2, Museum of Natural History

Mi'kmaq should have to pay to Musgrave. A memorandum supplying information about the Halifax County Band was included in that file. It stated that there were 235 Mi'kmaq in Halifax County at that time. It further reported that 86 Mi'kmaq were not living on either of the 7 reserves in Halifax County. Instead, they had set up residence at Bedford, Dartmouth, Windsor Junction, Enfield, King's Siding, Elmsdale and Wellington, some of which was private property"<sup>100</sup>. Although it is mentioned that an additional 18 Mi'kmaq people, originally from Tuft's Cove, had moved to a "tenement house," built by the Department after the Halifax explosion there is no reference to any who may have chosen to stay<sup>101</sup>.

The continued attempt to cut costs and the destruction of Tufts Cove prompted a campaign to force all the Mi'kmaw in Nova Scotia onto two reservations, thus allowing the colonial government to reduce the number of "Indian Agents" and free up lands for settlement. In many ways the Halifax Explosion in 1917 marked the beginning of what would become known as the centralization policy. When the Mi'kmaw community of Tufts Cove was destroyed in that explosion there was very little interest in helping the survivors to rebuild<sup>102</sup>. The Millbrook First Nation website provides a Mi'kmaw perspective stating that "after the Halifax Explosion, the Halifax County Mi'kmaq were told they could move to the Millbrook Reserve. However, the Halifax County Mi'kmaq refused to settle in Millbrook. In 1918, the Creelman property was purchased for the Halifax County Mi'kmaq who wished to amalgamate with the

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<sup>100</sup> Tobin, Anita Maria, and Saint Mary's University. Atlantic Canada Studies Program. The Effect of Centralization on the Social and Political Systems of the Mainland Nova Scotia Mi'kmaq: (Case Studies: Millbrook-1916 & Indian Brook-1941), 1999.

<sup>101</sup> Tobin, Anita Maria, and Saint Mary's University. Atlantic Canada Studies Program. The Effect of Centralization on the Social and Political Systems of the Mainland Nova Scotia Mi'kmaq: (Case Studies: Millbrook-1916 & Indian Brook-1941), 1999.

<sup>102</sup> Harry Piers Ethnology Papers, Vol. 2, Museum of Natural History

Truro Mi'kmaq<sup>103</sup>. The Truro reserve was the first experiment on the part of the Department of Indian Affairs to centralize Mi'kmaq to reserves”<sup>104</sup>. This short history shows how the Halifax Explosion marks the beginning of the long history of colonial attempts to implement centralization spanning more than two decades until its acceptance in 1942. Patterson claims that “the general principle of collecting Indians in a limited number of locations for the convenience of the government and, paradoxically, to further Indian assimilation had been established at least a century earlier. Indeed, the 1942 centralization scheme may be seen as part of a continuum that consisted of a growing population of settlers sweeping North America's indigenous peoples into a diminishing number of piles”<sup>105</sup>.

This shift from the perception that the Mi'kmaw would die off to the perception that the Mi'kmaw would surrender land rights in order to assimilate into the dominant society shows that colonial perceptions had not changed all that drastically over 400 years.

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<sup>103</sup> The Creelman Property was located near the already existing Truro Indian Reserves 27A, 27B and 27C.

<sup>104</sup> <http://www.millbrookfirstnation.net/about-us/culture-history>

<sup>105</sup> Patterson, Lisa Lynne. *Indian Affairs and the Nova Scotia Centralization Policy*, 1986.

## *Colonial Perception of the Mi'kmaw Throughout History*

As we look through the history of Kjiipuktuk and the legislation relating to the Mi'kmaw it is possible to see changes in the colonial perception of the Mi'kmaw throughout history. J. Sharon Ingalls provides insight into these changes in colonial perception with a thesis entitled "Distorted Images: Attitudes towards Micmac in Nova Scotia, 1788-1900"<sup>106</sup>. Ingalls examines Nova Scotia literature to show the roots of stereotypes held by colonists as well as the influence that those stereotypes have on the interaction between the two groups and on public policy. There are four distinct stereotypes discussed within the thesis: the 'Noble Savage' which was romanticized, the 'Demonic Savage' which was vilified, the 'Degraded Savage' which was pitied, and the 'Vanishing Indian'. Although the 'Noble Savage' and the 'Demonic Savage' originated from some of the earliest literature, and the stereotypes continue in many ways, the development of social sciences provided new justification for discrimination. The rapid social and political change that occurred from 1851 to 1900 left Nova Scotians feeling uncertain about their place in the world and the new belief that the 'Indians' would soon disappear acted to strengthen assimilative efforts. Colonists are shown to have seen themselves as the beneficiaries of a lengthy historical process which had produced a superior, vital, and energetic civilization<sup>107</sup>.

During this period, it was a common belief that these superior traits could be imparted to lesser people, thereby elevating them close to colonial standards. Inevitably, ethnocentrically defined natural law, based on the values and beliefs colonial capitalist societies, when applied to non-colonial societies led to misunderstanding. It is already understood that the newcomers felt

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<sup>106</sup> Ingalls, J. Sharon, and Saint Mary's University. Atlantic Canada Studies Program. *Distorted Images: Attitudes towards the Micmac in Nova Scotia, 1788-1900*, 1992.

<sup>107</sup> Ingalls, J. Sharon, and Saint Mary's University. Atlantic Canada Studies Program. *Distorted Images: Attitudes towards the Micmac in Nova Scotia, 1788-1900*, 1992.

compelled to impose order on the treacherous forests and on the people and animals who inhabited them. The colonists demonstrated a belief that the wilderness had to be subdued and the Indigenous people of the land had to be eliminated or civilized. Throughout history many colonists built their opinions of the Mi'kmaw people from literature, or more recently social media; as Ingalls points out, this is unfortunate when we consider that "the reality of [Mi'kmaw] life was discounted in favour of literary convention". Ingalls notes that literary convention determined how the Mi'kmaw were depicted in "refined" literature". Ingalls argues that colonial literature created the stereotyped Noble and Demonic Savages, often ignoring "contemporary Indians" as not being worthy and instead represented as the "contemporary degraded Indian". Because works of the imagination are confined by literary stereotypes, they only hint at colonial attitudes and do not fully tell us how these attitudes may have influenced behaviour. It may be possible to get beyond stereotypes if works other than those that reflect the literary imagination are examined. Documents such as historical accounts, newspapers, periodicals, promotional pamphlets, and legislative records contain reference to the Mi'kmaw which reveal how Nova Scotians regard the native people. Along with this material, Ingalls included two poems by resident writers for illustrative purposes. Ingalls quotes a poem from a Halifax play in 1803 which speaks of the "metamorphosis" of the province from a place of "savages" to a place of elegance and culture. The Mi'kmaw are referred to as "completely subjugated" and "blood stained sachems [who] bury the hatchet which they fear to use"<sup>108</sup>. Throughout the poem the contempt that the colonists felt for the Mi'kmaw as well as the belief that the Mi'kmaw had been conquered becomes clear.

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<sup>108</sup> Ingalls, J. Sharon, and Saint Mary's University. Atlantic Canada Studies Program. *Distorted Images: Attitudes towards the Micmac in Nova Scotia, 1788-1900*, 1992.

At this time, the Mi'kmaw were faced with continually dwindling resources, rampant disease, and harassment from colonists. With no alternatives available, they had become increasingly dependent on the provisions provided by the colonial government. From enemies to be feared, the Mi'kmaw were transformed into objects of pity. As objects of pity, the image of the Mi'kmaw changed. Gradually concepts of the Noble and Demonic Savage merged into a commonly held perception of the Mi'kmaw as a degraded people. Ingalls argues that this is because it was generally agreed that hunters and gatherers did have some simple virtues, but if they became contaminated, their purity was lost, and they sank even lower on the developmental scale. Evidence of this perception of the Mi'kmaw is found within a provincial government committee report on the condition of the "Indians" where the cause of this degeneration was assumed to be a result of the contaminating Influence of the lowest elements of colonial society. However, the colonists would take no blame for the assumed native vice of vagrancy. They failed to perceive that colonial population pressures were responsible for the Mi'kmaw peoples increasingly nomadic lifestyle. The concept that the Mi'kmaw might, in the present or in the past, reside in anything other than temporary camps did not fit with their ideas of the reckless life led by wandering "savages". According to colonial interpretations of hunting and gathering societies, members of such groups wandered from place to place desperately searching for sustenance. The only difference, Nova Scotians believed, was that now the Mi'kmaw "wander from place to place, and door to door, seeking alms"<sup>109</sup>.

This belief in the Mi'kmaw dependence contributed to the distorted image of a degraded, or child-like, people who were thought to need guidance from a more mature and refined race.

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<sup>109</sup> Ingalls, J. Sharon, and Saint Mary's University. Atlantic Canada Studies Program. *Distorted Images: Attitudes towards the Micmac in Nova Scotia, 1788-1900*, 1992.

Ingalls notes that it was suggested that "They should at all times to treated as wards of the Sovereign who possess property - as orphans who have peculiar claims upon the instant care and attention of the Government"<sup>110</sup>. The colonists assumed that the native people would eventually become extinct; therefore, there was no need to be concerned about them, exempt for the occasional charitable handout to ease their present misery. Until that fateful day of extinction, the Mi'kmaw were to be allowed to carry on their traditional lifestyle, as well as they were able, but only if they did not interfere with the activities of the colonists. While Bromley had introduced humanitarianism to a largely indifferent colonial society in the 1810's it was not until the late 1820's that colonists began to take up similar causes. The optimistic attitudes of the humanitarians were constantly opposed to the indifference of most of the colonial population. Full of hope, they believed that it was possible to change both the character of the Mi'kmaw and their way of life. Ingalls points out that although neither religion, history, nor science endorsed the concept of natural inferiority, yet it seems to have been a commonly held perception. Instead, this perception of superiority was supported by the influential writer, Lord Kames, who claimed that there were different races and that some races were superior to others. Additionally, Kames stated that there was no hope for a degenerate nation but to let the natives die out, and to repopulate the country with "better men". Many Nova Scotians seem to have identified the Mi'kmaw as one of Kames' degraded, inferior races who should be allowed to become extinct. However, many colonists still felt the need to help those they saw as inferior to improve their life and become more like the colonists.

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<sup>110</sup> Ingalls, J. Sharon, and Saint Mary's University. Atlantic Canada Studies Program. *Distorted Images: Attitudes towards the Micmac in Nova Scotia, 1788-1900*, 1992.

The colonial belief in the uplifting effects of a settled agricultural life was so entrenched that Bromley's philanthropic society refused to give supplies to those who would not settle. Ingalls uses the example of a gun that was refused because it would not contribute to the civilizing process but would only allow them to pursue their "wild habits." For Bromley, no compromise was possible, although other supporters of the Mi'kmaw, such as Moses Perley, Indian Commissioner of Saint John, and Abraham Gesner, Assistant Commissioner of Indian Affairs, advised that the Mi'kmaw be gradually weaned from their "savage" life. They would allow some fishing and hunting until an agricultural way of life was established. Although philanthropists argued for isolation with the welfare of the Mi'kmaw people in mind, for many settlers, isolated reserves simply served to place the Mi'kmaw out of sight and out of mind.

It is also important to consider how beliefs and perceptions regarding the Mi'kmaw changed following the arrival of the Loyalist settlers. From the arrival of the Loyalists in 1783 until the late 1820s the documents reveal a shift in attitudes from scornful disregard to, at least for a minority, to concern augmented by guilt. The flood of refugees quickly assumed possession of Mi'kmaw village sites which were located on desirable land at river mouths and harbours along the coast<sup>111</sup>. The overwhelming numbers of new arrivals combined with the loss of coastal food gathering sites forced many of the Mi'kmaw to the interior where resources were limited. Isolated in the interior wilderness, they were less visible, thereby making it easier for the settlers to ignore them<sup>112</sup>. Ingalls brings consideration to the attempts at assimilating the Mi'kmaw

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<sup>111</sup> Ingalls quotes: Harold F. McGee, "The Micmac Indians: The Earliest Migrants" in Banked Fires: The Ethnics of Nova Scotia, ed. Douglas F. Campbell, (Port Credit, Ont.: Scribblers' Press), p. 27 and Leslie F.S. Upton, Micmacs and Colonists: Indian-White Relations in the Maritimes, 1713-1867, (Vancouver: University of British Columbia Press, 1979), p. 82.

<sup>112</sup> Ingalls quotes: Upton provides an earlier manifestation of this policy of driving the Micmac into the interior. In 1762 after an Indian scare in Lunenburg, the local assembly's London agent stated that "the proper place for the savages was the interior, where they could hunt for skins, which was their lazy occupation"; they should be allowed to come to the coast only if they did not disturb the white settlers and fishermen. Upton, p. 62.

people, through the establishment of education for the children and the ‘rights’ to land ownership and voting for adults. Ingalls points out that “after reserves were settled on the Micmac, it had to be conceded that they were property owners, even if the land was held in trust. Thomas Crawley, Indian Commissioner of Cape Breton, believed that the Mi’kmaw, as owners of land, should have the right to vote”. Interestingly, Joseph Howe, the first to be appointed Indian Commissioner for Indian Affairs under the Indian Act, is quoted as saying that “when I meet an Indian on the passage to the other world, I do not want him to tax me with not only having robbed him of his broad lands, but also having wrested from him the privilege of voting”<sup>113</sup>. However, Ingalls notes the Mi’kmaw reluctance to change their way of life and demonstrates the ignorance of the colonists who thought the right to vote made up for the theft of lands.

Ingalls observes that while it is difficult to determine popular attitudes, as they were rarely expressed in print, there is enough evidence to illustrate that attitudes ranged the full gamut from contempt to admiration to pity<sup>114</sup>. Antipathy towards the Mi’kmaw is shown to be evident in a settler’s complaint that he and his neighbours did “not mean to have an Indian Town at [their] elbow”<sup>115</sup>. Other settlers encroached on land granted to Indians knowing that there was little chance that officials would evict them<sup>116</sup>. Although Ingalls provides the warning that Bromley’s stories are based on hearsay and are possibly exaggerated it is noted that such scenes may have taken place. In one quote it is noted that the “Indians at Chedebucto Bay” were “expelled in the most brutal manner...by the white people”<sup>117</sup>, while in another quote it is noted

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<sup>113</sup> Ingalls quotes: Cited in J. Murray Beck, *Joseph Howe, Vol. II*, (Kingston, Ont.: McGill-Queen’s Press), ftnt. 77, p. 299.

<sup>114</sup> Ingalls, J. Sharon, and Saint Mary's University. Atlantic Canada Studies Program. *Distorted Images: Attitudes towards the Micmac in Nova Scotia, 1788-1900*, 1992.

<sup>115</sup> Ingalls quotes: Cited in Upton, p. 82.

<sup>116</sup> Ingalls quotes: *Ibid.*, pp. 87-88.

<sup>117</sup> Ingalls Quotes: Bromley, 1820, p. 24.

that “the peasantry of this country declare in the most undistinguished manner, that they thought it no greater a sin to shoot an Indian than a bear or a cariboo”<sup>118</sup>. These examples show us the attitudes that shaped the policies and legislation were more often than not antipathic towards the Mi’kmaw people’s inherent rights.

While many would say that these attitudes are a part of the past, I believe that these attitudes have continued. They have continued from the time of the original Peace and Friendship Treaties because the settlers have continued to interpret their meaning differently than the Mi’kmaw. One example of how the difference of interpretation of the Peace and Friendship treaties continues to be visible may be found within the Nova Scotia Archives website for the Nova Scotia Land Papers 1765-1800. There it states that “from the earliest days of Nova Scotia as a British colony, virtually everything was Crown Land, held in reserve by government for settlement and development purposes. The availability of individual grants from within these reserves was promoted as a way to attract settlers. The land came at no cost, except for minimal administrative fees charged during the grant process. The only requirement imposed on the recipient was to settle and develop the acreage within a specified reasonable length of time”<sup>119</sup>. This statement goes against everything that the Mi’kmaw fought for and erases the reason for the ratification of the treaties.

These attitudes show why the colonists believed they had a right to determine new laws of the land according to their settler society with no regard for their impact on Mi’kmaw society and inherent rights; or in some cases in direct opposition to Mi’kmaw inherent rights. With all this evidence it becomes possible to determine the role that historical attitudes played in the

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<sup>118</sup> Ingalls quotes: Bromley, 1815, p. 6.

<sup>119</sup> Nova Scotia Archives Land Papers 1765-1800 <https://novascotia.ca/archives/landpapers/grants.asp>

development of government policy, the programs of philanthropists, and the relationship between settlers and the people they had displaced.

## **Chapter 3: How Historical Legislation Influenced Traditional Land Based Practices**

It is unfortunate that most of the history taught about the Mi'kmaw ends at the time when the many colonial outposts were beginning to work together as provinces, as upper and lower Canada, and then as the Canadian Nation. It is during this nation building period that the colony began giving itself legal power over lands that had never been ceded. While many students are taught how the colony of Canada developed, there is very little acknowledgement that these colonial governments granted themselves power over the lands and lives of the Indigenous nations. It is through this chapter that I will question how a developing nation granted itself power through legislation. It is through legislation that the colonial government gave itself power to define who would be considered to be Indigenous or a colonist, power to determine lands belonging to Indigenous nations, as well as the power to protect or to claim those lands. Before confederation the legislation relating to Indigenous nations was different in each separate colony, or province but their intention of claiming the land was much the same.

Colonial intention to settle the lands and assimilate or subjugate the Indigenous Nations becomes the most visible in the legislation that was created in the years leading up to and following confederation in 1867. Some of this legislation, such as the Indian Act, continues to be in effect but has changed over time to reflect colonial attitudes towards the Indigenous people of Turtle Island. Other legislation, such as those relating to resources and conservation, may not be written with the intent of regulating the Indigenous peoples within the colonial nation-state but have been applied in such a way as to indirectly impact their way of life.

## *Legislation Directly Affecting Traditional Land Based Practices*

Often when we think about Canadian legislation that directly affects the traditional practices of the Mi'kmaw, our first thought is of the Indian Act. However, there were numerous acts and policies created following confederation which were aimed directly at the Indigenous nations' connection to land and exercise of sovereignty, both provincially and federally. These pieces of legislation span almost 200 years and have been changed over the years by revisions or orders in council and so it is not possible to provide a conclusive list. It is instead my intention to show the impact of some of these changes on Mi'kmaq lives.

### Legislation Leading up to the Indian Act

During the time of confederation, the colonial provinces each had separate legislation that the colonial nation was attempting to represent within a centralized piece of legislation relating to the many Indigenous nations within the colony. During this time Mi'kmaq and Indigenous lives became regulated by various kinds of legislation, not all of which were primarily focused on Indigenous communities or people. However, even though many of those pieces of legislation were not directed at the Mi'kmaq people they provide an indication of the attitudes that shaped later legislation. Leading up to confederation there was a focus on the “Civilization and Enfranchisement of certain Indians”<sup>120</sup>, the “sale and management of the Public Lands”<sup>121</sup>, and

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<sup>120</sup> An Act respecting Civilization and Enfranchisement of certain Indians. C.S.C. 1859, c. 9 directly states the intention of the piece of legislation by beginning with “in order to encourage the progress of civilization among the Indian Tribes in this Province, and the gradual removal of all legal distinctions between them and Her Majesty’s other Canadian Subjects, and to facilitate the acquisition of property and of the rights accompanying it, by such Individual Members of the said Tribes as are found to desire such encouragement and to have deserved it : Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:”

<sup>121</sup> An Act respecting the sale and management of the Public Lands. S.C. 1859, c. 22 seems to be out of place as it appears to relate to the legislated authorization to sell land, that is until the section stating that “The Governor in Council may from time to time declare the provisions of this Act or any of them to apply to the Indian lands under the management of the Chief Superintendent of Indian affairs, and the said Chief Superintendent shall, in respect to

“the making and maintenance of Roads through Indian Reserves in Lower Canada”<sup>122</sup>.

Interestingly there is a great deal of conflicting interests present within the legislation that gives both the responsibility to protect and the legal right to take Indigenous lands. One such example of this is found in “An Act respecting Indians and Indian Lands”<sup>123</sup>. Within this piece of legislation, the colonial government grants itself power to write licences for settlers to occupy Indigenous lands, through lease or ownership. It also granted power to determine who was Indigenous and what lands would be recognized as ‘reserve land’. In 1868 the “Act providing for the organisation of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands” states that the “Secretary of State shall be the Superintendent General of Indian affairs and shall as such have the control and management of the lands and property of the Indians in Canada”<sup>124</sup>. This Act also detailed the only ways that lands may be surrendered as well as penalties for those who would use alcohol as a method for gaining agreement to the surrender of lands. In addition to the early focus of legislation on authority over land there was also restrictions put on the ability to move through the land, practice traditional ways, and recognition of identity or personhood. It is these early pieces of legislation as well as

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the lands so declared to be subject to this Act, have the same powers as the Commissioner of Crown Lands has in respect to Crown Lands. 16 V. c. 159, s. 15.”

<sup>122</sup> An Act to authorize the making and maintenance of Roads through Indian Reserves in Lower Canada S.C. 1859, c. 60 also directly states that the whole reason the piece of legislation is being created is because a “great inconvenience has been suffered from the want of authority to the Municipalities of Lower Canada to make and cause to be maintained public roads in the Indian Reserves of Lower Canada” therefore the piece of legislation defines when the theft of land would be considered ‘legal’ with the statement “—and whenever it shall be declared by a Resolution of any such [municipal] Council, that it is expedient to take any part of an Indian Reserve for the purpose of opening a new road, it shall be lawful for such Council, after consent obtained from the Superintendent General of Indian Affairs”.

<sup>123</sup> An Act respecting Indians and Indian Lands. C.S.L.C. 1860; c. 14 has within it a section detailing the protection of lands but is then followed by the granting of permission to rent or sell those lands which are held in trust.

<sup>124</sup> An Act providing for the organisation of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands, S.C. 1868, c. 42 shows a transition from previous legislation which directly stated the intent to take lands where possible to the more passive and indirect wording of today's legislation.

provincial pressures which shaped the development of the Indian Act and ignored the individual agreements of the treaties signed with sovereign nations.

### The Many Revisions of the Indian Act

The original Indian Act of Canada was enacted on April 12<sup>th</sup>, 1876 as an Act to amend and consolidate the laws respecting Indians<sup>125</sup> as an attempt to create a unified piece of legislation for the newly unified colonial nation. It is through this act that the term ‘Indian’ was defined and great detail was given to the many ways that Indigenous peoples would or would not be considered ‘Indians’, through treaty, marriage, birth, or choice<sup>126</sup>. It is also through this Act that a ‘person’ was defined as an individual other than an ‘Indian’, unless the context clearly requires another construction<sup>127</sup>. The term "reserve" was defined as “any tract or tracts of land set apart by treaty or otherwise for the use or benefit of or granted to a particular band of Indians, of which the legal title is in the Crown, but which is unsurrendered, and includes all the trees, wood, timber, soil, stone, minerals, metals, or other valuables thereon or therein”<sup>128</sup>. By this definition the federal government gave itself legal title to lands that they acknowledged, in writing, to have never been surrendered. It is unlikely that many, if any, within the Mi’kmaw nation knew that the colonial government had granted itself legal title of their lands. This is very different from the Peace and Friendship Treaties that had been agreed to by the Mi’kmaw nation.

It is with these definitions of these terms that the colonial government again granted itself the power of authority over the many nations who had signed treaties, as well as their lands.

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<sup>125</sup> An Act to amend and consolidate the laws respecting Indians, S.C. 1876, c. 18

<sup>126</sup> Identity

<sup>127</sup> Personhood

<sup>128</sup> Land

Authority was assigned to the Superintendent-General to oversee the provisions of the Indian Act; this included the protection of reserve lands as well as the many ways that land may be “surrendered”<sup>129</sup>. Even though the Indian Act details the many ways that land may be surrendered to the Crown it does make the important acknowledgement that it does not confirm any invalid surrenders that existed before its creation<sup>130</sup>. In fact, the Indian Act gives thorough detail of the responsibility of the Superintendent-General to protect ‘reserve lands’ from wrongful occupation; even if it does also state the many ways that the Superintendent-General has the authority to also lease those lands for resource extraction<sup>131</sup>. This contradictory legislation has undergone many changes over the years, the first change coming only 3 years after it was enacted and the most recent amendment happening in 2017. It is important to note the presumed authority over not only what lands belonged to who but also the identity of those who were recognized to have the right to occupy the lands based on their gender and racial purity.

The first of many changes to the Indian Act happened in 1879 with changes to the wording within the Act<sup>132</sup>. One section of the Act which was changed was section 16 in order to provide more detail relating to the punishment of “any person or Indian, other than an Indian of the band to which the reserve belongs” who is trespassing on reserve lands without written permission by the Superintendent-General<sup>133</sup>. This wording made it illegal for the Mi’kmaw and other Indigenous people to occupy lands not recognized as belonging to the community that they were registered through without the permission of the Superintendent-General. By making it illegal for the Mi’kmaw and other Indigenous nations to move freely within and outside of their

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<sup>129</sup> Surrender through Law

<sup>130</sup> Only legal Surrender is recognized by the Act, regardless of how much time has passed.

<sup>131</sup> Contradictions of the powers and responsibilities of the Superintendent-General

<sup>132</sup> An Act to amend "The Indian Act, 1876". S.C. 1879, c. 34.

<sup>133</sup> New section 16 – permission to trespass is required on our own lands limited mobility between communities and began to create division.

own territory the colonial nation attempted to not only limit their sovereignty but also their national solidarity. The Mi'kmaw already had political systems and recognized districts and boarders and methods to attaining permission to move between those districts and although the colonial government attempted to regulate their movement there is evidence throughout history that these restrictions were largely ignored. Another interesting change was the addition of regulatory power given to the Chiefs and Councils which it would seem was simply a way to pass on responsibility while also limiting power<sup>134</sup>. In addition, changes were made to section 69 relating to presents or property belonging to Indigenous people. These changes to the Indian Act weakened the protection of Indigenous lands and properties, making it possible for Indian Agents acting under the Superintendent-General to seize lands or personal property.

Beginning with “The Indian Act, 1880”, the 1880’s was a decade marked by almost yearly Indian Act revisions with seven that I have found, though not all directly relate to land. The Indian Act of 1880 was a complete revision of the Indian Act of 1876 and amendments of 1879<sup>135</sup>. While much of the definitions remain the same, the Act of 1880 created the Department of Indian Affairs<sup>136</sup> and adds extensive detail relating to the sale, lease, or surrender, of lands. Sections 15 to 20 set out what lands will be covered by the Indian Act, how they will be subdivided, the granting of location tickets, and who will be deemed legal possessors of land in reserves. Although section 21 does not directly relate to the Mi'kmaw it is interesting to note the continued belief that the ‘improvement’ of lands gave rights to the land even when they have no legal rights. With section 22 the Indian Act made it illegal for the Mi'kmaw to move between communities or to hunt outside of their own recognized lands, voiding all leases, contracts, and

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<sup>134</sup> Chief and council

<sup>135</sup> An Act to amend and consolidate the laws respecting Indians, S.C. 1880, c. 28

<sup>136</sup> Department of Indian Affairs was created with S.C. 1880, c. 28, s. 4 and its scope of work was defined with S.C. 1880, c. 28, s. 7

agreements with non-community members. Although some would argue that this was intended to prevent the appropriation of lands, I would argue that this became a method of dividing the Mi'kmaw nation into individual bands without a centralized voice or legal ability to move freely through their own nation or even district. This was enforced by section 23 which granted power to remove people from the lands and sections 24 to 28 which detail what punishments offenders will face while section 30 details the duty of law enforcement to carry out the directions of the Superintendent-General.

In Section 36 of the 1880 version of the Indian Act it is stated that “No reserve or portion of a reserve shall be sold, alienated or leased until it has been released or surrendered to the Crown”; Unless of course that land belonged to anyone who was ‘aged’, sick, a woman, or a child without a guardian. The conditions for a valid release or surrender of reserve land require the acceptance of the majority of male members of the community over the age of 21. Section 38 however raises a number of questions as to what may have caused the federal government to feel the need to include in the legislation that it was in fact not legal to get people drunk in order to convince them to consent to things, and it is troubling that this was such a problem as to have not only a substantial fine but also a substantial reward for the informer. Any such actions to impair someone’s judgement in order to take advantage of them would have made the land surrenders illegal, even by the ethical standards of the time. Section 39 confirms that nothing within the Indian Act confirms the release or surrender of any lands to any party other than the crown and section 41 makes it illegal for any Indian Agent selling ‘Indian’ lands to purchase or profit from those lands but section 55 makes it punishable to prevent the sale of ‘Indian’ lands. It is not only the sections relating to the sale of lands which are troubling but also the ability to grant licences for resource extraction. Section 56 granted the Superintendent-General, or any officer or agent

authorized by him to grant licenses to cut trees, with regulations and restrictions to be based on the location of the licence. Sections 56 to 68 give extensive detail on licences for logging on reserve lands and the punishments for logging without a licence. While section 69 states that the profits from such sales or licenses as well as all other money applicable to the support or benefit of the ‘Indians’ would be dealt with as they had before, section 70 gives the governor in council power to determine how those funds will be managed. Interestingly, after many sections of the Act detailing the many ways that lands may be appropriated or exploited there is a section recognizing the rights of Indigenous people to seek legal action. Section 78 clearly states that ‘Indians’ and ‘non-treaty Indians’ shall have the right to sue for debts due to them or in respect of any tort or wrong inflicted upon them, or to compel the performance of obligations contracted with them. This ‘legal’ right seems to have had little benefit, troubled by a different concept of ‘justice’, and ‘ownership’, and ‘evidence’, the Mi’kmaw continue to fight within a colonial legal system to prove colonial guilt for the theft of lands.

The first change to this ‘new’ Indian Act came in 1881 with changes to the power to remove people from reserve lands as well as who may be enlisted to enforce the proclamations made by the Superintendent-General<sup>137</sup>. In 1882 there were changes yet again which included striking out the words “but which is unsundered” in the sixth subsection of section 2 of the Indian Act of 1880 and replacing them with the words “and which remains a portion of the said reserves”<sup>138</sup>. This changed the wording of the Indian Act of 1880 so that the term “reserve” went from being defined as:

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<sup>137</sup> An Act to amend "The Indian Act, 1880," S.C. 1881, c. 17, s. 8 and s. 9

<sup>138</sup> An Act to further amend "The Indian Act, 1880," S.C. 1882, c. 30, s. 1

The term "reserve" means any tract or tracts of land set apart by treaty or otherwise for the use or benefit of or granted to a particular band of Indians, of which the legal title is in the Crown, but which is unsurrendered, and includes all the trees, wood, timber, soil, stone, minerals, metals and other valuables thereon or therein.

to being defined as:

The term "reserve" means any tract or tracts of land set apart by treaty or otherwise for the use or benefit of or granted to a particular band of Indians, of which the legal title is in the Crown, and which remains a portion of the said reserves, and includes all the trees, wood, timber, soil, stone, minerals, metals and other valuables thereon or therein.

This very small change in wording removed the acknowledgement that the lands have never been surrendered and added the 'legal title' of the crown. By doing so the colonial government was able to claim to have legal title to all lands including those lands they recognized as reserve land without the actual surrender of lands.

Changes to the Indian Act continued with what was called "The Indian Advancement Act, 1884"<sup>139</sup>. John F. Leslie's article "The Indian Act: An Historical Perspective" explains the title best with the statement "In 1884, An Act for conferring certain privileges on the more advanced Bands of the Indians of Canada, with the view of training them for the exercise of municipal powers – that is the actual title of it – was passed by Parliament. This legislation

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<sup>139</sup> "The Indian Advancement Act, 1884", S.C. 1884, c.28

became known as the Indian Advancement Act, and its focus was mainly on the bands of eastern Canada”<sup>140</sup>. Leslie also points out that although the major provisions of the Indian Act of 1880 remained in place until 1927 there were approximately thirty amendments when it was finally revised. Some of those amendments included a ban on dances and traditional ceremonies in 1884, and the power to direct industrial or residential schools, making school attendance enforced with strict truancy penalties in 1894.

John Giokas’ article explains that the 1906 consolidation of the Indian Act<sup>141</sup> was extremely long and detailed with 195 sections - nearly twice as many as the original Act of 1876. The additional provisions reflected the emphasis on civilization and enfranchisement that had overtaken policymaking over the years. Giokas notes that the Indian Advancement Act was incorporated almost unchanged as Part II of the Indian Act (where it would remain unchanged until repealed in 1951)<sup>142</sup>. However, even with these extensive changes and additions, the Indian Act was revised again in 1911 making it legal to expropriate lands deemed necessary for public services such as roads, railroads, and utilities<sup>143</sup>. The ability to take land without previously required consent was justified by the belief that money raised through the sale of lands would benefit those of the community more than the undeveloped land would. In addition to this new ability to sell land without consent for public services there was also a new ability to remove any reserve considered to be too close to a town.

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<sup>140</sup> Leslie, John F. "Indian Act: an historical perspective." Canadian parliamentary review 25, no. 2 (2002): 23-27.

<sup>141</sup> Indian Act. R.S.C. 1906, c. 81.

<sup>142</sup> Giokas, John “The Indian Act: Evolution, Overview and Options for Amendment and Transition”  
[http://publications.gc.ca/collections/collection\\_2016/bcp-pco/Z1-1991-1-41-130-eng.pdf](http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1991-1-41-130-eng.pdf)

<sup>143</sup> An Act to Amend the Indian Act S.C. 1911, c. 14, s. 1

Further amendments in 1918 made it possible for Indians living off-reserve to enfranchise<sup>144</sup> with the most drastic change occurring in 1920, when the Act was amended to once again allow the compulsory enfranchisement of Indians<sup>145</sup>. This provision was repealed two years later<sup>146</sup> but the lasting impacts of policies and legislation such as these can be seen in the continued lateral violence and discrimination towards those who chose to live off reserve.

Although the revisions in the first twenty years of the 1900's caused drastic changes, what is of greater interest is the extensive changes made to the Indian Act in 1927 relating to the legality of their connection to the place. Those changes that are of interest include sections 35<sup>147</sup>, 39<sup>148</sup>, 48<sup>149</sup>, 49<sup>150</sup>, 53<sup>151</sup>, 55<sup>152</sup>, 71<sup>153</sup>, and 141<sup>154</sup> of the Indian Act of 1927. Section 39 gives jurisdiction over the possession of lands and their recovery with the statement that "If the possession of any lands reserved or claimed to be reserved for the Indians, or of any lands of which the Indians or any Indian or any band or tribe of Indians claim the possession or any right of possession, is withheld, or if any such lands are adversely occupied or claimed by any person, or if any trespass is committed thereon, the possession may be recovered for the Indians or Indian or band or tribe of Indians, or the conflicting claims may be adjudged and determined or damages may be recovered in an action at the suit of His Majesty on behalf of the Indians or Indian or of the band or tribe of Indians entitled to or claiming the possession or right of possession or entitled to or claiming the declaration, relief or damages". This section is worded

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<sup>144</sup> Indian Act. S.C. 1918, c. 18, s. 6.

<sup>145</sup> Indian Act. S.C. 1919-1920, c. 50, s. 3

<sup>146</sup> Indian Act. S.C. 1922, c. 26, s. 1.

<sup>147</sup> Indian Act. R.S., c. 81, s.34 Illegal possession of reserve land

<sup>148</sup> Indian Act. R.S., c. 81, s. 39 Recovery of possession of Reserves

<sup>149</sup> Indian Act. R.S., c. 81, s. 48 Lands taken for Public Purposes

<sup>150</sup> Indian Act. R.S., c. 81, s. 49 Surrender and Forfeiture of Lands in Reserve

<sup>151</sup> Indian Act. R.S., c. 81, s. 53 Does not make illegal surrenders valid

<sup>152</sup> Indian Act. R.S., c. 81, s. 55 Sale and Transfer of Indian Lands

<sup>153</sup> Indian Act. R.S., c. 81, s. 71 Patents

<sup>154</sup> Indian Act. R.S., c. 81, s. 141 Illegal to solicit funds without government consent

in such as a way as to appear to give the government responsibility for recovering the possession of lands recognized as reserve land yet has the reality of acting to take control of the fight for lands. However, section 48 details how lands may be taken for “public purposes” and the further surrender and forfeiture of lands in reserve are detailed in sections 49 to 54. Of particular interest is the new section 52 which states that “In the case of an Indian reserve which adjoins or is situated wholly or partly within an incorporated town or city having a population of not less than eight thousand, and which reserve has not been released or surrendered by the Indians, the Governor in Council may, upon the recommendation of the Superintendent General, refer to the judge of the Exchequer Court of Canada for inquiry and report the question as to whether it is expedient, having regard to the interest of the public and of the Indians of the band for whose use the reserve is held, that the Indians should be removed from the reserve or any part of it”<sup>155</sup>. Most notably, section 141 prohibited anyone, First Nation, or non-First Nation, from soliciting funds for First Nation legal claims without special license from the Superintendent General; this amendment granted the government control over the ability of First Nations to pursue land claims. This remained in effect until it was revised again in 1951.

#### Legislation Enacted Separate from the Indian Act

With so much focus on the Indian Act it is possible to forget that the provinces were creating legislation which both directly and indirectly influenced the Mi'kmaw both before and after the creation of the Indian Act. The most notable piece of legislation before the Indian Act being “An Act to Prevent Nuisances by Hedges, Weirs, and other incumbrances, obstructing the

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<sup>155</sup> Indian Act. R.S., c. 81, s. 52

passage of fish in the rivers in this province”<sup>156</sup>. Enacted in 1763, this piece of legislation is not expressly in relation to the Mi’kmaw, yet it has had lasting impacts on the ability to create fishing weirs and pass on traditional fishing practices. While there have been many pieces of legislation created throughout history which have had an indirect impact on Mi’kmaq lives those impacts have been considered by many to be unintentional because the Mi’kmaq were never even considered during the writing of the legislation; for the purpose of this thesis they have been excluded. Following Confederation, the legislative focus on Indigenous people shifted from the provinces to federal control through the Indian Act. However, the provinces continued to have questions surrounding the ownership of unceded lands, requiring further legislative definition.

The Indian Reserves of Nova Scotia Act, also called “An Act to confirm an agreement between the government of Canada and the government of the province of Nova Scotia respecting Indian Reserves” was written and ratified in 1959 with the express purpose of enabling the Canadian Government to deal effectively with reserve lands<sup>157</sup>. This act was written as a memorandum of understanding between the province of Nova Scotia and the Federal Government of Canada to transfer the control of reserve lands and lands said to have been surrendered by the Mi’kmaw. Although it is claimed that the lands have been surrendered there is no documentation of said land surrenders and Indian Reserve lands are given the vaguest of descriptions within the appendix. The stated intent of the memorandum of understanding was to settle the outstanding issues regarding letters of patent under the great seal of Canada purporting

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<sup>156</sup> “An Act to Prevent Nuisances by Hedges, Weirs, and other incumbrances, obstructing the passage of fish in the rivers in this province”, NS Legislature, Volume 1, 1763, [https://nslegislature.ca/sites/default/files/legc/scanned/at\\_large/volume1/1763.pdf](https://nslegislature.ca/sites/default/files/legc/scanned/at_large/volume1/1763.pdf)

<sup>157</sup> Indian Reserves of Nova Scotia Act, S.C. 1959, c.50, s. 1

to convey said land to various persons. Without proof that the lands have in fact been surrendered it would not be possible to hold free and clear title to the lands, even with a letter of patent Canada must prove authority to grant the lands. The reason given for the defective title comes not from the lack of proof that the lands had been surrendered but instead is alleged to be a result of the fact that the colony of Nova Scotia had never granted the reserve lands to the federal government of Canada. To settle this the memorandum of understanding was set out to transfer all rights from the Province of Nova Scotia to the Federal Government of Canada, apart from minerals and transport which remain to be claimed by the Province. Yet even as the MOU claims the surrender of Mi'kmaw lands it includes the defining terms that surrender "does not include a surrender of rights and interests in reserve lands for purposes other than sale". This is ironic when the next section claims to confirm all existing grants of patented lands<sup>158</sup> and the following section after that claims to transfer all rights and interests in reserve lands from the Province of Nova Scotia to the federal government of Canada. Also included was the statement that if a 'band' becomes extinct all lands held for that band would be returned to the province. Here it is possible to see the belief that the colony controlled the land and bands were individual instead of part of a sovereign nation. The ownership of lands in the event that a community be considered extinct does not seem to encourage the interest in the survival of that community.

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<sup>158</sup> Indian Reserves of Nova Scotia Act, S.C. 1959, c.50, s. 2

## *Legislation Indirectly Affecting Traditional Land Based Practices*

All legislation relating to the use of land can be seen to have an indirect impact on traditional land-based practices, and not all legislation has a negative impact. Due to the divisive mentality of the colonists, the territory of the Mi'kmaw known as Mi'kma'ki is divided across the Canadian provinces of Nova Scotia, New Brunswick, Prince Edward Island, Quebec, and Newfoundland, as well as the state of Maine in and the United States of America. It is due to the Jay Treaty of 1794 that the Mi'kmaw continue to have the legislated right to move freely across those national colonial borders. However, having communities spread across so many borders has meant that there are decentralized governing bodies each creating their own unique circumstances based on the legislation of the colonial nation, and province or state, that they are within. This caused the Mi'kmaw nation to become decentralized as communities began to work together based on colonial borders instead of the traditional districts because of their shared circumstances<sup>159</sup>.

### The Creation of National and Provincial Borders

The fact that Mi'kma'ki has been divided by two nations and five provinces has led to not only pressures to pick sides during conflict but has also led to a decentralized theft of land that went unchecked by the crown authorities who argued over whose responsibility it was. Being divided over multiple provinces and nations has meant a wide range of different laws and governments attempting to act upon the different communities, after working within different jurisdictions for so long the Mi'kmaw nation has decentralized, no longer divided by traditional districts the communities have more recently begun to identify with the colonial jurisdictions

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<sup>159</sup> These circumstances included health and social services, treaty rights and negotiations, financial support, etc.

encouraging many to begin to try to strengthen traditional alliances. Even though historical colonial conflicts put many pressures on the Mi'kmaq to pick sides they continued to remain neutral, yet the steady pressure of different policies has created divisions no war ever could. The Jay Treaty of 1794 acted as recognition that the Mi'kmaw, and other Indigenous nations, were separate from the two nations claiming to exist on Mi'kma'ki and allowed movement across the national boarder, with proper identification. There are many ways which the creation of national and provincial boarders has influenced traditional land use, but the Jay treaty actually acted to maintain the traditional migration through the districts even if the nations and provinces each contained divisive policies.

#### The Indirect Impact of Nation Building Policies

“Nation-building” refers to the process of constructing or structuring a national identity using the power of the state. This process aims at the unification of the people within the state so that it remains politically stable and viable in the long run. Nation-building can involve the use of propaganda or major infrastructure development to foster social harmony and economic growth. Definition: The development of behaviors, values, language, institutions, and physical structures that elucidate history and culture, concretize, and protect the present, and insure the future identity and independence of a nation. One example of Nation building policies which have negatively impacted the Mi'kmaw nation and the environment that we are connected to is explored by Courtney Mrazek's thesis, “The Mi'kmaq and British Agricultural Policies in Colonial Nova Scotia: Theoretical Underpinnings and Motivations”<sup>160</sup>. Although it is not mentioned in the thesis, there has been recent evidence that pesticides and fertilizers from

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<sup>160</sup> Mrazek, Courtney, and Saint Mary's University. Dept. of History. *Our Nation Is like a Withering Leaf on a Summer's Day': The Mi'kmaq and British Agricultural Policies in Colonial Nova Scotia*, 2016.

farming are leaking into the rivers and streams and chemicals such as Round-Up are being found in our food, demonstrating the realities of the harmful effects of farming legislation which ignore the environment in favor of development<sup>161</sup>. Other ways that nation building policies have indirectly impacted the Mi'kmaq and their environment include the development of highways that blocked the migratory routes of moose and caribou cutting off a food source for many and endangering their continued existence<sup>162</sup>.

### Indirect Impacts of Logging and Nature Conservation

The destruction of paths and historic route markers, habitat, wildlife, and plants may not have occurred for any reason other than profit, but it still occurred, and it still impacted many Mi'kmaq and colonists alike. Clearcutting of large tracts of land has not only endangered many species of plants and animals it has also led to flooding as the waters are no longer retained by the tree roots. Fishing regulations intended to protect the fish are not reflective of actual fish stock or breeding habits. Crown lands are being designated as parks making them inaccessible to land claims and making it illegal to exercise treaty rights. It may be argued that environmental preservation is a constitutionalized right implicit in the negotiation of treaty rights to hunt, and fish. That when these rights were negotiated, they were also negotiating for the continued existence of their traditional substance activities which could not exist without the preservation

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<sup>161</sup> For information relating to the regulations relating to farming and the drainage of chemical by-products into the environment see "A Guide to Agricultural Best Management Practices within Municipal Drinking Water Supply Areas in Nova Scotia" [http://www.nsfa-fane.ca/efp/wp-content/uploads/2017/04/Watershed\\_WEB\\_Final\\_2017.pdf](http://www.nsfa-fane.ca/efp/wp-content/uploads/2017/04/Watershed_WEB_Final_2017.pdf) or for examples of chemicals in our food there are news articles by CTV "Weed-killing chemical found in pasta, cereal and cookies sold in Canada: study" <https://www.ctvnews.ca/health/weed-killing-chemical-found-in-pasta-cereal-and-cookies-sold-in-canada-study-1.4086615>

<sup>162</sup> For more information see The Moose Sex Project by the Nature Conservancy of Canada at <http://www.natureconservancy.ca/en/where-we-work/new-brunswick/featured-projects/other-projects/help-moose-cross-the-chignecto.html>

of the ecosystems that they are dependant on<sup>163</sup>. However, conservation has been argued as the reason for restricting treaty rights while allowing commercial exploitation. The treaty right to harvest on the lands is one which continues to be contested, as evident in the most recent case of a Wolastoqew (Maliseet) logger, who says that an investigation by conservation officers who claim that he was harvesting lumber from Crown land outside of provincial regulations is a violation of his treaty right to earn a moderate livelihood<sup>164</sup>.

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<sup>163</sup> Collins, Lynda M., and Meghan Murtha. "Indigenous Environmental Rights in Canada: The Right to Conservation Implicit in Treaty and Aboriginal Rights to Hunt, Fish and Trap." *Alta. L. Rev.* 47 (2009): 959.

<sup>164</sup> "First Nations logger says conservation officers are eliminating his market instead of laying charges" Nic Meloney, CBC News, May 24, 2019 <https://www.cbc.ca/news/indigenous/nb-firewood-harvesters-moderate-livelihood-1.5139994>

## Chapter 4: Hidden in Plain Sight: The Continued Occupation of Kjipuktuk

This chapter will explore some of the ways that the difference in beliefs about ownership and treatment of the land and water led to conflicts throughout our more recent history. By looking at letters to the crown by, or on behalf of the Mi'kmaq people, it is possible to see the concept of unceded territory made it difficult to understand the idea of a colonist being granted legal and exclusive ownership to traditional family lands. Colonial history shows how the growth of the colony's population and sense of entitlement gave a perceived right for the formation of governing policies and legislation which conflicted with treaty agreements<sup>165</sup>. Even when faced with a growing colonial population the Mi'kmaq continued to fight for their lands using the colonial law to support their claims through petitions, licenses of occupations, and the provincial and federal courts. Although power relations had shifted drastically by the end of the 19<sup>th</sup> century that did not stop the Mi'kmaq people from resisting the claims to ownership over their lands. Although the reserve system had been created, many continued to occupy Kjipuktuk, and some of those occupants even put forward applications for recognition as the Halifax County Band with lands that included Tufts Cove along the Dartmouth shore. Following the Halifax explosion of 1917, the visible, and undeniable, occupation of a part of the harbour ended and with it the recognized visibility of the Mi'kmaq people within Kjipuktuk. In their place the now iconic smokestacks of the power station have taken over that landscape<sup>166</sup>.

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<sup>165</sup> A Brief History of British Colonial Policies has a good piece about the colonist's attitudes towards land and the creation of certain policies from a British colonial view instead of a Canadian colonial view.

<sup>166</sup> While the power station may not be in the exact location it is within such small proximity to account for the same landscape, before you even contest my claim, and you know who you are R1.

This absence of Mi'kmaq visibility within Kijipuktuk facilitated the formation of an exclusive historical narrative that influenced education, commemoration, and land use; making Mi'kmaq occupation seem like a long-ago tale rather than recent history and a fight that has not stopped. This type of created narrative can be seen to further perpetuate and compound the Mi'kmaw disconnection from the landscape and the colonists' sense of belonging during the nation-building activities that followed confederation. Ironically, it is because of the long history of systemic injustice and Mi'kmaw representation in the legal system that it is possible to show records of Mi'kmaw people occupying lands within Kijipuktuk. The colonial records which often speak of unidentified 'Indians' with so little regard also serve as proof of continued occupation and traditional land use within the context of this thesis.

The history of Kijipuktuk has been, until recently, told by colonists as a reflection of how they viewed the past. The history expressed within this thesis so far has, in many ways, followed the colonial format for understanding history; with the reliance on dates, names, and supporting documents which have been produced by colonists who wrote about their experiences years after they happened or are biased to show self importance. But this chapter will involve a different perspective on the events of the past. It is the bias of racism which has helped to shape the colonial interpretation of 'history' and ironically, I am forced to turn to those very same images and archival information which have been used to demonstrate the loss of land in order to also demonstrate the seldom acknowledged 'history' of Mi'kmaw occupation and ongoing fight for land. This acknowledgement of colonial bias towards the Mi'kmaq can be found in the thesis, *Distorted Images: Attitudes Towards the Micmac in Nova Scotia, 1788-1900*, where J. Sharon

Ingalls writes about how distorted images of the Mi'kmaw people in colonial literature have influenced beliefs as well as legislation in Nova Scotia<sup>167</sup>.

Similarly, Upton writes that the Mi'kmaq were "Disparaged on one side, patronized on the other, the Indians themselves were developing a leadership that could learn the new ways and bring its own influence to bear on the government. The first example of this trend was the appearance before the bar of the Assembly of Andrew Meuse, who successfully opposed a bill that would have ended the porpoise hunt in the Gut of Annapolis. J. B. Uniacke witnessed the scene as a boy, and years later recalled the deep impression it had made on him. Meuse spoke of the legislators: "I see among them but one face that I know, and that man is trying to take away from the Indian the source of his livelihood."<sup>168</sup> Meuse later became the Chief of the Bear River settlement, from which position he is said to have lobbied both the colonial government and London philanthropists for support. According to Upton, Meuse and his brother James organised a petition that Chief Charles Glower presented to the Assembly on the very basic issue of liquor, calling for the prohibition of its sale to Indians. The Chief was heard with great respect as he explained that "himself and friends were led to trouble the House from having daily witnessed the disgrace and misery which spirituous liquors spread among the Indians". The result of his appeal was the passage of a law — the first one, despite common belief to the contrary — to "prevent" the sale of alcohol to Indians. It was far short of what Glower had wanted, for all it did was authorise the magistrates to make regulations in their own districts. If there were no regulations then presumably sales would continue, as they in fact did. While they were dealing with Indian matters, the Council took the opportunity of tacking on a clause providing for the

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<sup>167</sup> Ingalls, J. Sharon, and Saint Mary's University. Atlantic Canada Studies Program. *Distorted Images: Attitudes towards the Micmac in Nova Scotia, 1788-1900*, 1992.

<sup>168</sup> Upton, L. F. S. "Indian Policy in Colonial Nova Scotia 1783 - 1871." *Acadiensis* 5, no. 1 (1975): 3-31.

instruction of Indians free of charge at any publicly supported school. This may be one of the few acknowledgements of the convention which developed of simply “tacking on” an additional clause to legislation relating to the Indigenous nations without consideration, and the perversion of original intent through incomplete action.

Historically represented as pawns of the French and Acadians within a colonial story it can be difficult to consider Mi’kmaq as a strong willed people with a strong sense of autonomy but when we acknowledge historical events such as addressing the House of Commons to contest a Bill that would endanger his livelihood and rights we begin to see that strong sense of will and autonomy. These images within our minds eye are created from our world views and the information that is available to us. When we are given new information the image within our minds eye changes and although it will always be seen through the lens of our worldview, we can at the least see a more complete detail of the image. In previous chapters I have attempted to contest the image of terra nullius by making information that was previously ignored available, in this chapter I will focus on the image of the ‘defeated Indian’ that seems to be shared by far too many<sup>169</sup>. In many instances the stories that are told do not intentionally erase the Mi’kmaq place in Kijipuktuk, it simply is a case of amplifying some information while excluding or forgetting other parts of the story. For example, it is acknowledged that Joseph Howe’s first report as Commissioner struck a sombre note stating that “There had been 1,425 Micmacs in the province in 1838, but their numbers had declined so rapidly in the previous four years that they would disappear completely within forty”<sup>170</sup>. But the image that he portrayed was amplified by his comments of nostalgia stating that "Our grandchildren... would find it as difficult to imagine

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<sup>169</sup> Though it should be noted that this is vigorously contested by several OWG’s (Old White Guys)

<sup>170</sup> Upton, L. F. S. "Indian Policy in Colonial Nova Scotia 1783 - 1871." *Acadiensis* 5, no. 1 (1975): 3-31.

the features or dwelling of a Micmac, as we do to realize those of an ancient Briton." Howe is also quoted as pointing out that "There were 22,050 acres of Indian reserves, but the lands and sites were generally poor. Five counties had no reserves at all, and there were none near Halifax, although the capital attracted Indians from all over the province who were "consequently compelled to build their camps on private property, and are tempted to destroy the wood, and commit [vexatious] depredations." <sup>171</sup>

The imagined image of the Mi'kmaq seems to have ignored those who pointed out the Mi'kmaq habit of ignoring claims of private lands as well as their continued connection to Kjiptuk. While history has focused on the records which speak of the failures of the Indian Act in its primary objectives of settlement, education, and agriculture there has become an image of the Mi'kmaq as "the dispossessed Indians" who are "broken in spirit". Yet even as Indian Commissioner, Abraham Gesner spoke of the distorted image that many had it was still acknowledged that the Mi'kmaq had "a real but almost unknown existence within the colony." <sup>172</sup>

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<sup>171</sup> Upton, L. F. S. "Indian Policy in Colonial Nova Scotia 1783 - 1871." *Acadiensis* 5, no. 1 (1975): 3-31. 0

<sup>172</sup> Upton, L. F. S. "Indian Policy in Colonial Nova Scotia 1783 - 1871." *Acadiensis* 5, no. 1 (1975): 3-31. 2

## *Squatters on Their Own Land*

The 20<sup>th</sup> century was a time of rapid change within Mi'kma'ki, and the landscape of Kijipuktuk. Colonization was quite literally gaining ground as settlers were being granted plots of land that had never been ceded, either through incentives to settle, sale, or through simple possession. With the development of squatters rights the colonists were able to claim land for themselves simply by occupying and altering the land. These squatters' rights developed from the colonial ideology of putting labour into land and was strengthened by the convention of the Indian Agents signing over ownership of land to any who sought to 'improve' the land. Although the actions of the Indian Agents are beyond the scope of this thesis it is still important to acknowledge their role in facilitating the theft of Mi'kmaw lands while simultaneously being responsible for ensuring that those lands, and the honour of the crown, are protected. Although the colonists were able to apply for the ownership of land under squatters' rights the same was not the case for the Mi'kmaq. It is because of the long history of representation in the legal system that it is possible to show records of Mi'kmaw people occupying lands within Kijipuktuk. However, while I acknowledge them it is not my place to share their individual stories if they are not already publicly known.

As deeds were handed out to the colonists, they were soon faced with the reality that the Mi'kmaq had never ceded their lands or the resources, in fact they continued to occupy and harvest on their traditional lands. Many colonists complained and sought to have the Mi'kmaq charged with trespassing, destruction or theft of property such as lumber, and illegal hunting or fishing<sup>173</sup>. Squatters on their own land, differences in culture and philosophy regarding the value

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<sup>173</sup> Donald Marshall Jr. was not the only Mi'kmaw to be charged with not following the provincial legislation because they had a treaty right and exercised their continued autonomy, Gabriel Sylliboy and William Labrador are two others who faced charges.

and claim to land being connected to the alteration of that land meant that many claims to rightful and continued possession were ignored. Upton points out that “One major obstacle to any attempt at settlement was the fact that whites never allowed an Indian land claim to stand in their way”<sup>174</sup>. According to Upton the colonists were accustomed to squatting where they pleased on Crown Lands and making their peace with the authorities if the need arose and actually saw no reason to treat “Indian lands” any differently and assumed the government would take an equally indulgent view of their presence on them. Unfortunately, in most cases, the colonists were right: “it was very easy for a white official to see the virtuous hard work of a squatter with a large family to support, less easy to remember that those who had been dispossessed had some claims on colonial justice”<sup>175</sup>. As noted by Upton the Mi’kmaw had always participated in what the colonists would recognize as “farming”, but their farms were seasonal clearings with no one in year-round occupation<sup>176</sup>. Although the colonists put great emphasis on the alteration of the land being the determining factor for ownership it is acknowledged by Upton and others that land that had been cleared was “most attractive to whites who moved in while the band was out hunting”<sup>177</sup>. Upton writes about one Chief who told a humanitarian named Walter Bromley<sup>178</sup> that his father had cleared two hundred acres in various parts of the province as the whites discovered his clearings one by one. Apparently, it was common for Mi’kmaq who farmed in

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<sup>174</sup> Upton, L. F. S. "Indian Policy in Colonial Nova Scotia 1783 - 1871." *Acadiensis* 5, no. 1 (1975): 3-31.

<sup>175</sup> Upton, L. F. S. "Indian Policy in Colonial Nova Scotia 1783 - 1871." *Acadiensis* 5, no. 1 (1975): 3-31.

<sup>176</sup> This would be because ‘farming’ would be done in such a way as to encourage a greater bounty of something already in existence within a particular habitat and families would move to set locations based on the seasonal availability of the resources at each of their ‘farm locations’, however the idea of Mi’kmaw nurturing the land to increase the production of resources to trade with other districts and nations in a complex social, political, and economic system is often ignored in favor of the idea of the colonists saving the poor Mi’kmaq people by teaching them to ‘farm’.

<sup>177</sup> This sounds a lot like theft but for some reason this terminology is avoided in favour of the idea of the colonists just peacefully moving in without a fight.

<sup>178</sup> A “humanitarian” who believed himself to be working for the betterment of the poor, the “Indians” and the “Blacks” in Halifax; Also believed in keeping the “Indians away from the evil influences of urban life” Judith Fingard, “Bromley, Walter,” in *Dictionary of Canadian Biography*, vol. 7, University of Toronto/Université Laval, 2003, [http://www.biographi.ca/en/bio/bromley\\_walter\\_7E.html](http://www.biographi.ca/en/bio/bromley_walter_7E.html)

their customary locations outside of colonial designated reserves to discover that there was no obstacle to the colonists gaining legal title and forcing them to move on. It is possible to see why those who faced no hope of resisting the “acquisitive whites” agreed to sell the lands they occupied for whatever they could get. Upton demonstrates how if simple possession or purchase failed, there were other ways of expelling “unwanted Indians”. One example of this is in a contest over river frontage where a “basic white” colonial tactic was to net all the fish at the mouth of the river so that the fishermen upstream got none. The Indian response to these harassments was, according to Upton, almost inevitably to move to a less desirable location, without offering any resistance beyond a petition to the government drawn by a local sympathiser. When the colonial government did try to evict squatters, it found that it could only complain, for it had neither the money for the necessary court actions nor the force to remove undesirables<sup>179</sup>.

In contrast to these stories of theft that seem to portray a picture of victimhood, there are the personal oral histories of autonomy. The following two oral histories have been made public as a part of the Cape Breton University Unama’ki College’s Mi’kmaq Resource Centre. The oral history of William G. Paul and Cecile Marr demonstrate a resiliency and continued connection to the land despite the many colonial attempts to take the land and destroy the connection to that land.

#### Oral History of William G. Paul – Indian Brook First Nation, Nova Scotia

“I was born August 4, 1896, at Sheet Harbour, Nova Scotia. My father was John Edward Paul and my mother was Rhonda Hubley. I was born on my parents’ farm, not on the Indian squatting grounds. At that time my parents did not live on Indian land.... My father was Micmac Indian, and he was born on

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<sup>179</sup> Upton, L. F. S. "Indian Policy in Colonial Nova Scotia 1783 - 1871." *Acadiensis* 5, no. 1 (1975): 3-31.

Joe Paul's grant in Sheet Harbour. Joe Paul's grant belonged to my grandfather, Joe Paul. The land was later taken by the government.... I remember that we lived in a house made of rough lumber. A lot of people in those days lived in birch bark wigwams. We lived on caribou and moose meat. I remember my father killing a moose one hundred feet away from our house. You could never do that today. I think that the animals moved deeper into the woods because they will not stay if there are a lot of people. I remember, too, that the Indians all lived near the water. They lived on the fish they caught, for if they had not, they would have starved. They also lived on lands that were known as squatting grounds. They lived near Sober Island, Mushaboom, and all down the eastern shores of Nova Scotia.... I remember the Halifax Explosion. I was working in Halifax at the time. I was working in a big glass building, about one hundred feet long. Potatoes and vegetables were planted and grown in this building. The only way that I can describe the noise that I heard that day was that it was as if a bomb went off, it was so loud. It was an awful time. People's heads were cut off. Some people had sticks through their faces. The only thing that saved me was that I jumped under a table when I saw all the glass come shattering down where I was.... The Depression days were hard days for everybody, but I can't say that they affected my family more than anyone else. We had fourteen children, and I had to work hard to feed them. I had a steady job all the time, but during those days I also worked for myself. During the evenings and weekends, I made furniture. I made chairs, and one time I sold two hundred chairs in one day! A lady who owned a hotel bought them from me. I can make anything from wood. I also made canvas canoes – never birch bark canoes. You could never stand up and go sword fishing in the canoes they make today. You would fall over and drown. The old Indians made really good canoes. I remember once when my mother was sick. I cooked for her and a nurse would come in once a day and clean her up. When my parents died, they had beautiful coffins. They were not like the ones you see today. The coffins in those days were made of birch bark.... I remember that the first bridge between Halifax and Dartmouth was made of wood. I can't say that I recall anyone putting a curse on the bridge. I know that the bridge fell twice. I hear that an Indian put a curse on the bridge.... The government started giving handouts to the Indians about twenty years ago. At that time, it wasn't even money, just a piece of paper. I don't recall too much about it. I never collected a ration in my life. I always worked for my money. The government used to give barrels of flour to the reserves, so the Indian people could make their own bread. It's hard to say how the Indians would be today, if the white man had not come. I know Indians fished and hunted for their food. They did not have many of the modern things, but they did not have diseases. I guess they helped each other. The Indians helped the white man by curing

many of their diseases. I think the government should be good to the Indian people for if it were not for the Indians, the white man would not be here<sup>180</sup>.

#### Oral History of Cecile Marr, Indian Brook First Nation, Nova Scotia

“Cecile Marr was born in 1916 into a family of twenty-two children, in the province of Quebec.... When Cecile first arrived in Indian Brook, there was only one path which lead out of the community. This path was known as “Indian Road”. There was no name for Indian Brook at the time, and the community itself consisted of only three houses. When people walked from Indian Road into town on a rainy day, they were forced to walk in mud up to their ankles. All of the houses looked like barns, and had no foundations.... Cecile and John derived their only income from basket making. They made both baskets and basket cradles, which sold for fifty dollars. They obtained their wood for basket making from Nine Mile River and Renew (Grand Lake). They commonly used ash for their baskets, and for implements such as axe, pick, hammer, and hoe handles. To do this, they used a tool called a draw knife. It had two handles at each end of a straight blade. A saw horse was used to hold the wood in place for carving. There was a large marketplace located in Halifax where produce and meats were sold, generally displayed on tables. It was only open on Fridays and Saturdays from eight in the morning until twelve noon. Cecile also made and sold Christmas wreaths. Along with John and a friend, they also cut pulpwood which they sold by the cord. Logs were hauled with a horse and sled. A white man would come to purchase the pulpwood from them.... The road to Halifax was very narrow, and therefore most people travelling to Halifax had to go by train. This was how she and her husband travelled to Halifax to sell their baskets. There weren’t many cars around in those days, though Cecile’s husband owned an old car which Cecile referred to as a “tin can”. It only cost one dollar and fifty cents for gas to go from Indian Brook to Halifax.... John Marr was chief of Indian Brook back in 1942. There was a federal law banning alcohol in Mi’kmaw communities, however, and John was deposed from office by the Council on June 13, 1944. He had been caught in possession of alcohol. Cecile Marr was four feet three inches tall and

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<sup>180</sup> These stories are part of the oral history collected by Darin J. Googoo and Leslie Googoo which has been made public by the Unama’ki college’s Mi’kmaq Resource Center. Referenced as “Oral History Two with William G. Paul”, the website resource notes that “This oral history was researched and prepared by Violet Paul in the early 1990’s while she was in a student employment program. According to the website Violet chose to write the history of her grandfather, William G. Paul, to show that Mi’kmaw elders have a history that is evocative and alive. William Paul passed away in 1993, but we remember him in his stories”. <https://www.cbu.ca/indigenous-affairs/unamaki-college/mikmaq-resource-centre/essays/oral-histories/>

had blue eyes. Though a non-native, she resided in Indian Brook until the end of her life, and was also buried there in 1992. At the time of the interview two of her grandchildren were living with her. Cecile would become happy when anyone took the time to speak with her about the old days, and was always very pleasant and full of good humour. She is sadly missed.”<sup>181</sup>

These oral histories show that while the colonists have developed a mental image of the Mi’kmaq as a conquered people, the Mi’kmaq have continued to view themselves as separate and autonomous from colonial society. That is to say that you can tell a tree that it has been colonized but that will not stop it from continuing to sprout from the land the same as the trees before it, and the trees that come after it will not be any less trees. The same goes for the Mi’kmaq who come from the very same land as those trees and continue to sprout from that very same land as those trees; The social construction of colonialism may have altered the trees and the Mi’kmaq but they continue to be uniquely their own. To continue attempting to colonize the land that they sprout from would be an act of genocide<sup>182</sup>.

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<sup>181</sup> These stories are part of the oral history collected by Darin J. Googoo and Leslie Googoo which has been made public by the Unama’ki college’s Mi’kmaq Resource Center. The website resource notes that this story is from an interview conducted by Leslie Googoo in 1988 and is referenced as “Oral History Three with Cecile Marr”. This oral history is based on an interview with Cecile Marr, an elder of Indian Brook, Nova Scotia. This research was originally part of an assignment completed by Leslie Googoo for the Transitional Year Program at Dalhousie University; the interview was conducted in December 1988. Cecile Marr was born March 11, 1916 and died February 19, 1992.

<sup>182</sup> A Legal Analysis of Genocide: Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls [https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report\\_Genocide.pdf](https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf)

### *The Urban Indian Problem*

With the creation of the reservation system the colonists seem to have believed that because the Mi'kmaq would not assimilate, they would be willing to move away from colonial development and be happy to live in the woods. What the colonists failed to consider was that the colonists were creating their settlements in locations that were traditional family sites that had been selected and maintained based on the resources available at those sites. As colonial cities began to develop the Mi'kmaq simply adapted to the new resources available and took advantage of the growing market to trade within. While most of these sites were not recognized as reservations, they all faced discrimination by colonists who did not want Mi'kmaq living near them. This attitude was not a new development and throughout the years many colonists have expressed their fear and anger over the Mi'kmaq refusal to stop using the land as if it was still their own. As lands in Mi'kma'ki were being granted to colonists they began to complain about the refusal to move family encampments and the continued resource extraction by the Mi'kmaq<sup>183</sup>. It is with this refusal to surrender their autonomy and sovereignty over their territory that the Mi'kmaq began to be viewed as an urban Indian problem.

The colonial perception of the 'urban Indian problem' and the steps that were taken to address the problem have been explored within Martha Walls' article "The Dispossession of the Ladies: Mi'kmaw Women and the Removal of the King's Road Reserve, Sydney, Nova Scotia". The events which Walls writes about were made possible by the 1911 amendment of the Indian Act which added section 49A, allowing the Department of Indian Affairs to appoint a federal Court Exchequer to assess whether relocation of an urban reserve was in the best interest of both

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<sup>183</sup> Harry Piers Ethnology Papers, Vol. 2, Museum of Natural History, Ruth Holmes Whitehead

the First Nations inhabitants and the wider city<sup>184</sup>. The creation of section 49A marks the first time in Canadian Law that the relocation of an urban reserve was possible even when the majority of band members were opposed to the surrender. The first Exchequer Court hearing was held in Sydney, Nova Scotia, in 1915, to decide the fate of the King's Road Reserve and led to a ruling which called for the relocation of the community. Walls uses the testimony from the court hearing to explore and understand the wider colonial process that accompanied the removal of First Nations people from urban settings. Walls also draws on the argument by Louise Johnson that the displacement of urban reserves, like older processes of colonization, was accomplished largely by bureaucratic means. This argument is supported by the fact that the King's Road Reserve removal was accomplished by legal and judicial mechanisms; namely the creation of section 49A of the Indian Act and the execution and result of the Exchequer Court hearing which mandated the relocation. This particular bureaucratic process marked a watershed moment in "Canadian Indian Policy"<sup>185</sup>. The same colonial sense of moral superiority which led to the legislated support of the Exchequer Court hearing also led to the exclusion of Mi'kmaq witnesses, and particularly Mi'kmaq women. Such a clear imbalance of witnesses shows a history of epistemic injustice within the Courts in which the imbalance of testimony is used to ensure that Mi'kmaq voices are underrepresented and that testimony was selected to endorse the sale of lands and relocation of the Mi'kmaq who live on those lands<sup>186</sup>. Although Mi'kmaq women were not silent in political matters, often writing about their concerns to state officials<sup>187</sup>

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<sup>184</sup> The Dispossession of the Ladies: Mi'kmaq Women and the Removal of the King's Road Reserve, Sydney, Nova Scotia. By Martha Walls

<sup>185</sup> A watershed moment is the exact moment that changes the direction of an activity or situation; a dividing point, from which things will never be the same.

<sup>186</sup> Epistemic injustice an injustice which related to the communication or understanding of knowledge, such as the purposeful exclusion of Mi'kmaq women's testimony providing knowledge of the people and place in question.

<sup>187</sup> This was found in a footnote from Walls, Martha. 2010. No Need of a Chief for This Band: The Maritime Mi'kmaq and Federal Electoral Legislation, 1899-1951.

or engaging in “political acts of refutation”<sup>188</sup>, they were, in 1915, excluded from the male dominated world of politics<sup>189</sup>. This comes at no surprise during a time when the colonists were fixated on erasing Indigenous women’s autonomy and subordinating their sexuality as well as their economic, social, and political roles to men<sup>190</sup>.

Duncan Campbell Scott, the Deputy Superintendent General of the Department of Indian Affairs and considered to be the “principle architect” of Indian policy from 1913 to 1932, was particularly dedicated to reducing the number of Nova Scotia reserves through sale and to relocate the Mi’kmaq as sales occurred<sup>191</sup>. In 1918 Scott clarified that he would consider selling not only uninhabited reserves but also “reserves on which Indians reside, but of which they are not making sufficient use”<sup>192</sup>. Despite this colonial intention to disposes the Mi’kmaq of their unceded lands using the colonial legal system, the Mi’kmaq continued to resist. This is noticeable in the fact that the Mi’kmaq petitioned for and against sites being considered for a post relocation reserve. This was a level of engagement which frustrated the Department of Indian Affairs and prompted at least one official to complain that “the indians...are still as unreasonable as they have ever been in the past, in this connection”<sup>193</sup>.

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<sup>188</sup> This was found in a footnote from Walls, Martha. 2010. No Need of a Chief for This Band: The Maritime Mi’kmaq and Federal Electoral Legislation, 1899-1951.

<sup>189</sup> This was found in a footnote from Walls, Martha. 2010. No Need of a Chief for This Band: The Maritime Mi’kmaq and Federal Electoral Legislation, 1899-1951.

<sup>190</sup> Personally, I believe that (some) colonial men are still acting in a way to attempt to subordinate Mi’kmaq women’s autonomy by telling them that it is vulgar to say the word “fuck” or to express our anger over the genocidal atrocities which have been and continue to be endured.

<sup>191</sup> This was found in a footnote from Walls, Martha. 2010. No Need of a Chief for This Band: The Maritime Mi’kmaq and Federal Electoral Legislation, 1899-1951.

<sup>192</sup> This was found in a footnote from Walls, Martha. 2010. No Need of a Chief for This Band: The Maritime Mi’kmaq and Federal Electoral Legislation, 1899-1951.

<sup>193</sup> This was found in a footnote from Walls, Martha. 2010. No Need of a Chief for This Band: The Maritime Mi’kmaq and Federal Electoral Legislation, 1899-1951.

This refusal to surrender lands or autonomy can be seen to have persisted throughout the 1900's leading to the development of the concepts of the 'Indian problem' and the 'urban Indian problem' and legislation meant to deal with those 'problems'. The colonial perception of the 'Indian problem', the First Nations' unreasonableness in expectations, and the role of the Indian agents in the 'advancement' of the 'Indians' is one which has been shared by many colonists; if only those "poor savages" would learn to accept the loss of their lands and assimilate into colonial culture and religion and be saved<sup>194</sup>. Academics such as Victor Satzewich demonstrate that even those who are tempted to cry out that "not all" colonists were inherently racists, they just worked within a racist system of oppression, must admit that the system and the majority of those who operated within that system were actually inherently racist. Surprisingly, Satzewich is one of the few academics to directly acknowledge that a large part of the perceived 'Indian problem' was a result of historical grievances stemming from contested treaty interpretations and land claims disputes<sup>195</sup>. Even within an article which was intended to argue that not all Indian agents were racist on a personal level it is clear that the perception held by the Indian agents of the 'Indian problem' developed from the First Nations refusal to surrender their land and accept the domination of the colonists.

The earliest decades of the 1900's focused on the settlement of First Nations on reservations and the movement of those recognized reserve lands away from urban centres in order to encourage further colonial settlement. However, regardless of how many policies the colonial government produced they were not successful in moving all the Mi'kmaq, or other

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<sup>194</sup> This statement is based on my own sarcastic interpretation and generalization of colonial documents which have been endured for the sake of this thesis with a contempt which should not be mistaken as bigotry as I already know...NOT ALL colonist believe this, just an overwhelming number.

<sup>195</sup> This was found in Walls, Martha. 2010. No Need of a Chief for This Band: The Maritime Mi'kmaq and Federal Electoral Legislation, 1899-1951.

First Nations, onto the reservations. Not only did the Mi'kmaq continue to trade in the 'urban' areas but some continued to live within the cities, or most often along the outskirts of the city<sup>196</sup>. Images of Mi'kmaq families selling baskets in the Halifax market and stories about Mi'kmaq crafted hockey sticks show that the Mi'kmaq never stopped being a part of Kjiptuk. However, the destruction or forceful relocation of Mi'kmaq communities away from urban centres caused them to be easily removed from the public interest. Following the contributions made by the First Nations during the World Wars, as well as the nature of the crimes confronted during the wars, there was a growing public interest in First Nations civil and human rights<sup>197</sup>.

Evelyn J. Peters offers a systemic examination of the development of federal government policy for "urban Indians" between 1945 and 1975<sup>198</sup>. Peters begins with an overview of the move towards urban centres, beginning in the 1940's, and the public responses to the changing settlement patterns. While studies all indicated that Indigenous migration to urban centres was not only beneficial but also inevitable, public opinion still viewed the presence of Indigenous people in urban centres as "extremely problematic". Peters draws on many articles which demonstrate the racism and discrimination that was faced by urban residing Indigenous people. Peters also identifies several theories which attempt to explain the cause of the "urban Indian problem". However, Peters argues that out of the many theories to exist the belief that urbanization equated an accepted cultural change was the main belief of the time. The implications of such a belief included the idea that reservations were islands of traditional culture within a modernizing society, this led to the idea that reserves and urban life were in opposition

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<sup>196</sup> Records of Mi'kmaq living in or near Halifax and Dartmouth can be found in the Nova Scotia Archives, but they are not my story to share at this time.

<sup>197</sup> It becomes harder to commit blatant acts of genocide after claiming to liberate others from the crime of genocide.

<sup>198</sup> Peters, Evelyn J. 2001. "Developing Federal Policy for First Nations People in Urban Areas." *The Canadian Journal of Native Studies* 21 (1): 57-96.

and that changing location represented a changing identity. This belief created a new population category, one which required separate policy and program initiatives. This belief has been contested by First Nations representatives who have tried to make it clear that Indigenous people living in urban centres are not “urban natives”, they are “band members living off reserve”<sup>199</sup>. Reports by Indigenous people show that difficulty adapting to city life is influenced by economic factors instead of cultural ones and argue for greater control by First Nations of First Nations policy and decision making in program design.

The push for the control of access to programs led to the development of the Friendship Centre Movement which connected Indigenous people with already existing provincial and municipal programming. The colonial intent was to provide “culture as therapy” which would give the Indigenous people access to their culture until they completed the process of assimilation into Canadian society. Contact with Indigenous culture was in this way viewed as providing a sense of identity, a temporary reprieve from mainstream society, and a source of pride and self-esteem. At the same time, the parameters of these cultural roles were severely restricted. Indigenous culture continued to be viewed as antithetical to urban ways of life and colonists continued to believe that expressions of that culture through special celebrations and contact with other Indigenous people should be contained within the walls of the Friendship Centres. Understandably, Indigenous representatives rejected the narrow scope and place for Indigenous cultures in the city and put forward an alternative perspective through a redefinition of the role of the Friendship Centres. Peters uses the example of the attempted Calgary Urban Treaty Indian Alliance of 1972 to demonstrate the roles available to ‘urban Indians’ as a result of

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<sup>199</sup> Peters, Evelyn J. 2001. "Developing Federal Policy for First Nations People in Urban Areas." *The Canadian Journal of Native Studies* 21 (1): 57-96.

the definition of their situation by government bureaucracies. Those roles were confined to “wards of the state” with access to federal supports, an “ethnic group” involved in narrowly defined cultural programming in a Friendship Centre, or they could act as “citizens of the province” and be perceived to have lost their cultural distinctiveness and recognition of the treaty and Indigenous rights<sup>200</sup>. What was noted to be lacking from these roles during this period in history were “projects, supported by Indian Affairs, which gave First Nations people substantial autonomy and control in program design and management”<sup>201</sup>.

Again, the colonists failed to listen to the recommendations of the Indigenous representatives, or to recognize their own flaws, they were instead obsessed with the forced assimilation of Indigenous people and the clear definition of financial responsibility. The complete incompetence of the colonial officials of this era of policy development relating to Indigenous people is most clearly visible in the proposed ‘White Paper’. What is not readily visible is the way that although the ‘White Paper’ was rejected and did not have an immediate effect on policies, over time the policy makers began to use the distinction between urban and reserve residence as a way of limiting responsibilities of Indian Affairs. In this way Indigenous people on reserves were defined in terms of traditional culture and a legal status of wardship under the responsibility of Indian Affairs. In the city, Indigenous people were viewed as integrating into modern society, becoming citizens like other urban residence, under the responsibility of municipal or provincial governments or federal departments other than Indian Affairs. What these definitions have failed to take into account was the mobility of Indigenous people to move on and off of reservations based on their personal or family needs as well as the

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<sup>200</sup> Peters, Evelyn J. 2001. "Developing Federal Policy for First Nations People in Urban Areas." *The Canadian Journal of Native Studies* 21 (1): 57-96.

<sup>201</sup> Peters, Evelyn J. 2001. "Developing Federal Policy for First Nations People in Urban Areas." *The Canadian Journal of Native Studies* 21 (1): 57-96.

ability of those Indigenous people to maintain familial connection and retain their cultural distinctiveness off reserve. My grandfather taught me to take pride in refusing to live where the government wanted us to, and to know that I am who I am no matter where I live and that nobody can take that from me. I come from a long line of ancestors who fought for their rights to sprout from this land and be a part of this land on their own terms.

Peters demonstrates their concern with the seeming acceptance of the obviousness of an urban/Reserve split in such materials by quoting Patricia Monture Okanee who wrote:

*This "I'm on reserve, you're off reserve" is a split in our communities that troubles me greatly. It is directly, if only partially, responsible for our youth feeling lost, caught in the middle. It is a variation on the divide and conquer game that has been used by the settler populations to oppress our people. And it is time we stopped being so compliant with the rules to somebody else's game. The Indian Act is not ours. It is not a reflection of how we are a nation, or how we govern ourselves. Reserves are not our creation, so the distinction between being raised "on or off" is one that should not be central in how we think about ourselves. It is a false distinction. It is a distinction that oppresses us. I am Mohawk and my people have a territory. It spans the borders of New York State, Ontario and Quebec. It is that territory I come from and not the so-called province of Ontario. This oppressive thinking, which so many of my people have picked up, predisposes us to leading of a life of oppression<sup>202</sup>.*

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<sup>202</sup> Monture Okanee, Patricia. 1992. The Roles and Responsibilities of Aboriginal Women: Reclaiming Justice. Saskatchewan Law Review 56(2):237-266.

## *A History of Fighting for Rights*

Land use within Mi'kma'ki has evolved in many ways due to both internal and external influences as well as the Mi'kmaw and colonist response to those changes. Although much of the focus thus far has been on the colonial force of legislated restrictions it is also important to understand the Mi'kmaq responses to these restrictions. The Mi'kmaw fight for treaty rights is not a new one and can be dated back to the signing of the first treaty and the subsequent conflicts that arose when the treaties were not being followed. The colonial attempt to block the Mi'kmaq in their fight for rights is not new either. It has been acknowledged that the Indian Act made it illegal to solicit funds to take the federal government to court for land rights without the approval of the federal government, yet it has not been acknowledged that those restrictions did not stop the Mi'kmaw nation from continuing to fight for their lands<sup>203</sup>. With the signing of the peace treaty there was an end to the wars but there was not a surrender of land; This is evident in the continued occupation of the land surrounding the colony of Halifax<sup>204</sup>. The Mi'kmaq continued to write petitions to the crown and occupy their lands even after colonists waived their pieces of paper around claiming to have private ownership of the land, many were even arrested for refusing to leave their land or to stop taking resources from unceded lands<sup>205</sup>. Even as lands were being signed away by colonists against the will of the Mi'kmaw Nation and the Colonial Crown, the Mi'kmaq continued to be connected to the place now known as Halifax<sup>206</sup>.

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<sup>203</sup> Interestingly the same year that the Indian Act was changed to prevent land claims, 1927, there were also names and dates carved into a stone in Bedford on what is now private property.

<sup>204</sup> The Nova Scotia Archives Mi'kmaq Resource Holdings and the Cape Breton University Mi'kmaq Resource Centre provides countless archival documents to show the continued occupation of Kijipuktuk by Mi'kmaw people, using maps, photos, written personal accounts, and formal documents.

<sup>205</sup> Harry Piers Ethnology Papers, vol. 2

<sup>206</sup> There is very little written about Halifax's overlooked history of creating a tradition of going to the city for business.

The Mi'kmaw are not the only Indigenous Nation to have continued to fight within and against the colonial system for the right to remain connected to the land that they sprouted from and their settlement of disputes within the colonial legal system has also influenced Mi'kmaw land disputes. Although it is beyond the scope of this thesis to explore the implications of the land disputes for future cases it is necessary to acknowledge the existence of some of the most influential litigation. The first case, known as *Calder v. British Columbia* in 1973 was the very first legal acknowledgement that title to land existed prior to colonization, effectively shutting down the idea of *terra nullius*<sup>207</sup>. The case known as *R. v. Sparrow* in 1990<sup>208</sup> is what created the first criteria for determining existing rights and the case known as *Delgamuukw v. British Columbia* in 1997<sup>209</sup> established the recognition of the duty to consult. Through these cases we can see the ways in which the colonial legal system, which historically acted to strip the Mi'kmaq of their land rights, has now also become the system which forces the federal government to respect the legal implication of the treaties and the rights of the Mi'kmaw nation. This became the most evident in the *R. v. Marshall* case in 1999<sup>210</sup> which affirmed not only the right to fish for survival and a small livelihood but also recognized that "Aboriginal rights cannot be extinguished by regulation; Aboriginal rights to hunt, fish, trap and gather, take precedence over other uses; and the Crown has a fiduciary obligation to protect Aboriginal interests."<sup>211</sup> The *Haida Nation v. British Columbia (Minister of Forests)* case in 2004 further solidified the duty to

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<sup>207</sup> *Calder v. British Columbia (A.G.)*, [1973] S.C.R. 313, [1973] 4 W.W.R. 1.34 D.L.R. (3d) 145, affirming 73 W.W.R. 481, 13 D.L.R. (3d) 64 (B.C.)

<sup>208</sup> *R. v. Sparrow*, [1990] 3 C.N.L.R., [1990] 1 S.C.R. 1075, 56 C.C.C. (3d) 263, 46 B.C.L.R. (2d) 1, [1990] 4 W.W.R. 4 10, 70 D.L.R. (4<sup>th</sup>) 385, 11 N.R. 241, cited to C.N.L.R.

<sup>209</sup> *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 10 10, cited in SCR.

<sup>210</sup> *R. v. Marshall*, [1999] 3 S.C.R. 456

<sup>211</sup> MacDonald, Lindiwe "The Process of Mi'kmaq Community-Based Development: A Case Study of the Bear River Mi'kmaq Npisunewawti'j (Medicine Trail) Project"

[https://www.collectionscanada.gc.ca/obj/s4/f2/dsk1/tape2/PQDD\\_0018/MQ57305.pdf](https://www.collectionscanada.gc.ca/obj/s4/f2/dsk1/tape2/PQDD_0018/MQ57305.pdf)

consult and also set forth the definition of the honour of the crown in dealing with Indigenous nations<sup>212</sup>. Most recently the Tsilhqot'in Aboriginal Title Case (also known as the William Case) Decision in 2014 was the colonial court system has declared the existence of Indigenous title outside of a reservation<sup>213</sup>.

Although each of these court decisions have been instrumental in fighting for my individual ability to connect and engage with the land I sprout from, it is the R. v. Marshall decision which has had the most direct and profound impact on my connection. It is the R. v. Marshall case which made me realize how much control the colonial government believes itself to have over my existence and the risk that my family had taken in exercising our treaty rights. It was also this court case which sparked a renewed strength in the Mi'kmaq fight for rights at the individual level and brought awareness at the public level. This belief is supported by Gavin Smith who is noted as claiming that the productivity of culture increases as historical moments of heightened resistance and rebellion increase; this is because valued components of the culture are challenged, or even threatened by external forces, and as such there is a perceived need to articulate them more strongly within<sup>214</sup>. Jane L. McMillan writes about the R. v. Marshall court case which ended up becoming the focus of a treaty test case<sup>215</sup>. McMillan's telling of the story of Donald Marshall Jr. provides context in the fight for rights and compares the reality of Mi'kmaq fishing to the history deemed to be legitimate by colonists and the Nova Scotia judicial system. McMillan seeks to demonstrate the interweaving of domination and legitimation of

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<sup>212</sup> Haida Nation v. British Columbia (Minister of Forests), [2004] 3 S.C.R. 511, 2004 SCC

<sup>213</sup> Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, [2014] 2 S.C.R. 256, also detailed by the Indigenous Nation which won the case at [http://www.tsilhqotin.ca/Portals/0/PDFs/2014\\_07\\_03\\_Summary\\_SCC\\_Decision.pdf](http://www.tsilhqotin.ca/Portals/0/PDFs/2014_07_03_Summary_SCC_Decision.pdf)

<sup>214</sup> Smith, Gavin A. *Confronting the Present: Towards a Politically Engaged Anthropology*. Global Issues. Oxford; New York: Berg, 1999.

<sup>215</sup> McMillan, L.J. "'MU KISI MAQUMAWKIK PASIK KATAQ - WE CAN'T ONLY EAT EELS:' MI'KMAQ CONTESTED HISTORIES AND UNCONTESTED SILENCES." *The Canadian Journal of Native Studies* 32, no. 1 (2012): 119-42.

colonial society over the Mi'kmaw society in terms of the attempted regulation and restriction of Mi'kmaq access to traditional Mi'kmaw resources, while also illustrating how the Mi'kmaq are recasting their identity as rightful players in the Atlantic commercial fisheries. The outcome of the case has reverberated across the country inspiring Indigenous communities to unite in protests and divide in conflict over negotiations imposed by the Canadian government regarding how, when, and where the Indigenous commercial fishing rights recognized in the Marshall decision were to be articulated. Donald Marshall Jr. was an eel fisher, but the supreme court of Canada decision was interpreted as affording Mi'kmaq access to all ocean resources. Colonial fears that the Mi'kmaw Nation would take to the waters and harvest everything as soon as they had access were compounded by the governmental department of fisheries' excessive militancy used in restricting Mi'kmaq access to the waters, confiscating fishing gear, and interpreting the Supreme Court Decision according to their own volition. In response to the growing conflicts there was an influx of Indigenous people from across North America who were sought to protect their historic and treaty rights; boundaries were marked by roadblocks and warrior flags and were seen by the colonists as symbols of Mi'kmaq militancy. Conflicts escalated and with that sacred sites, people, and property were injured in the confrontations. When charges against the colonists involved in the conflicts were dropped, this confirmed the perception of a historical judicial bias in which the courts tend to favour colonists and punish Indigenous people, or anyone considered to be 'other'. This perception of judicial bias is also evident in the fact that the "Supreme Court of Canada, in an extraordinarily rare action, submitted to public and political

pressure and wrote a motion decision narrowing the limitations set out in the first decision and thus “Marshall 2” was put forward much to the outrage of supporters of Mi’kmaq interests”<sup>216</sup>.

The federal policies which have emerged from the Marshall decision have both created and perpetuated inequalities relating to Mi’kmaq access to traditional Mi’kmaq resources. McMillan argues that “the ruling should position the Mi’kmaq and other Indigenous Nations to assume a leadership role in reshaping natural resource management policies and priorities”. This leadership role is believed to be connected to the fundamental relationship the Mi’kmaq have with the sea which their cultural identity has emerged socially, economically, and politically. Unfortunately, the only available method of fighting for Indigenous rights and freedoms is through the colonial legal system which inherently puts Indigenous people at a disadvantage due to its ethnocentric, confrontational structure as well as its tremendous financial and emotional costs. This case demonstrated that both provincially and federally there was an unwillingness to pursue land claims or treaty rights settlements through negotiations with Indigenous Nations or a recognition of their sovereignty, instead the colonial judicial system focused on arguments over their own colonial documents. The Mi’kmaq, however, continue to try to express the concept of Netukulimk as one which defines Mi’kmaq connection to and responsibility for the natural resources of the place they sprout from.

It is the connection to the place we sprout from which connects us to community, culture, and mental health, and it was that connection which Donald Marshall Jr. was seeking after being

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<sup>216</sup> McMillan, L. "“MU KISI MAQUMAWKIK PASIK KATAQ - WE CAN'T ONLY EAT EELS:" MI'KMAQ CONTESTED HISTORIES AND UNCONTESTED SILENCES." *The Canadian Journal of Native Studies* 32, no. 1 (2012): 119-42.

freed from his wrongful conviction for a murder he never committed<sup>217</sup>. Marshall was able to re-establish a sense of connection through the communal activity of eel fishing and the ethic of sharing and while the Mi'kmaq that Marshall fished with would talk about how malicious actions were representative of an l'nu "turning white" there were no talks about fishing licences<sup>218</sup>. Fisheries officers were viewed as a slight nuisance because they were nosy but were not generally confrontational. Marshall was known for sharing his catch with elders and even colonists who came to his home to buy them. Although the colonists were more than happy to buy the eels their general beliefs at the time were that the "Indians" should stay on their reserves. However, the Mi'kmaq harvesters continued to frequent places known to be old Mi'kmaq settlements regardless of colonial attitudes because they shared a sense that they had a right to harvest the natural resources of those locations. On the day that Marshall was confronted by Fisheries Officers and asked to present a fishing licence he responded by saying that he was a Mi'kmaq and did not need a license to fish. When the officer tried to tell him that everyone needs a licence to fish Marshall again replied that he did not need a license because he has a treaty. Unfortunately for Marshall federal and provincial education surrounding the existence of the treaties had been lacking in the last few decades and some of his fishing gear was confiscated.

This was not Marshall's first encounter with the colonial legal system, and he was confident that he was protected under the 1752 Treaty, and so he sought permission from the Paqtnkek Chief to fish in the area. Then Marshall and the Chief of Paqtnkek informed the local

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<sup>217</sup> Donald Marshall Jr. was already such a well-known name because of his proven wrongful conviction for murder charges and the systemic racism that was made visible to the public during his trial and eventual victory with the Supreme Court of Appeals.

<sup>218</sup> The term "l'nu" is a Mi'kmaq word that is directly translated to mean person but has developed the meaning of person of Mi'kmaw or Indigenous decent and culture; doing unnecessary harm to others would be cause to be excluded and seen as evidence that a person was colonized and no longer followed traditional cultural ways.

Fisheries office that Marshall did indeed have permission to harvest there. Marshall also informed the Chief of Membertou, where he was a band member, of the encounter and the confiscation of gear. The Membertou Chief instructed Marshall to keep fishing. Although Marshall was able to catch and sell one batch of eels undisturbed by the fisheries officers it was later learned that they were “hiding in the bushes while taking photographs of the day's fishing activities and eel sales”<sup>219</sup>. When Marshall returned three days later to check his nets he found that they had been confiscated by DFO. Three months after that, two fisheries officers arrived at Marshall's Waycobah home in Cape Breton and formally charged him and his partner with three offenses under the Maritime Provinces Fishery Regulations and Fishery General Regulations. The resulting court case was very public, expensive, and lengthy, mostly because it was set out as a test case for Mi'kmaq treaty rights. The charges against Marshall's partner were dropped, largely because she is not an Indigenous person and the judge understood this as an Indigenous treaty rights test case. The charges against Marshall were vigorously pursued by the Crown and the trial lasted more than forty days over an eighteen-month period. Volumes of documents were presented and interpreted by anthropological and historical experts on both sides. Not once was Marshall's voice heard in the court process except to acknowledge his presence in the room. The provincial court had the role of delegitimizing Mi'kmaq histories, this was assisted by a legal process which clearly authorized a colonial version of history and interpreted Mi'kmaq histories as singular, static, inoperative, and invalid. McMillan points out that “Donald Marshall Jr., for the second time in his life, faced the Supreme Court of Canada and for the second time won. Marshall argued that the treaties signed between the Mi'kmaq and the Crown in the 1760s gave

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<sup>219</sup> McMillan, L. J. "'MU KISI MAQUMAWKIK PASIK KATAQ - WE CAN'T ONLY EAT EELS:' MI'KMAQ CONTESTED HISTORIES AND UNCONTESTED SILENCES." *The Canadian Journal of Native Studies* 32, no. 1 (2012): 119-42.

him the right to catch fish for sale and excuse him from the current fisheries regulations”<sup>220</sup>. The Supreme Court of Canada agreed, stating that... where a treaty was concluded orally and afterwards written up by representatives of the Crown, it would be unconscionable for the Crown to ignore the oral terms while relying on the written ones<sup>221</sup>. It was further acknowledged that the courts have the role of legitimizing or delegitimizing history through the inequality resulting from the power of the colonial society to select documents from a largely singular history without consideration of the voice of others. Despite the decision of the Supreme Court of Canada, Mi’kmaq claims to territories, resource management, and equitable access to resources continued to be denied.

This fight for the protection of and access to the natural bounty of the place we sprouted from has continued throughout history in a fight that is perceived by the Supreme Court of Canada as having “no beginning or end”. The story of Donald Marshall Jr. is just one story in a historical struggle against the silencing of Mi’kmaq histories. This story continues today in the fight by the Mi’kmaq to maintain the health of the water and lands along the Shubie River and connected waterways.

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<sup>220</sup> McMillan, L. J. "MU KISI MAQUMAWKIK PASIK KATAQ - WE CAN'T ONLY EAT EELS:" MI'KMAQ CONTESTED HISTORIES AND UNCONTESTED SILENCES." *The Canadian Journal of Native Studies* 32, no. 1 (2012): 119-42.

<sup>221</sup> *R. v. Marshall* [1999] S.C.R 26014

## **Chapter 5: Policies and Legislation That Continue to Threaten Connection in Kjipuktuk**

For many Canadians there is a misconception that all of the bad things which happened to Indigenous people are in the distant past, that there is no longer any theft of lands or restrictions on rights. There is a misconception that all that remains are rights and privileges. After some of the directly genocidal actions of centralization, residential schools, and eugenics, it can be difficult to see the ways that a single point in an otherwise innocuous piece of legislation could possibly be a threat to Mi'kmaw connection to place. However, it is those seemingly innocent pieces of legislation which have had the most lasting impact. In fact, some of the most damaging legislation was created under the guise of being for the benefit of the Indigenous people of Canada. For example, the land claims legislation which forces Mi'kmaq to fight for lands that they never legally ceded in long and expensive court battles. Another example of legislation which claims to be for the benefit of all people of Canada, is that relating to parks and conservation, which actually act to restrict Indigenous and treaty rights to access traditional foods and medicines. Although the most directly and undeniably genocidal actions of the Canadian Nation may have stopped but nothing has been done to attempt to help repair the damage that has been done. It may not be illegal to practice our own spirituality anymore but there is also no space available to practice that spirituality and policies continue to prevent it where space is available, and there is little to no support to enable the sharing of traditional knowledge. While the legislation in Halifax was not directed at the practice of Mi'kmaw spirituality and culture there are many policies and pieces of legislation which have indirectly limited the ability to practice our spirituality within the city. Policies that prohibit smoking in buildings and on sidewalks also has an impact on my ability to smudge because it is viewed by

many as a type of smoke. Policies that determine where a fire is permitted within Halifax also determine our ability to have a sacred fire or sweat lodge within city limits. It was not enough to make Indigenous ceremonies no longer illegal, systemic change is necessary to make them not just legal but also legally possible. Without questioning the policies and legislation which are continuing to threaten our connection to place it will not be possible to heal from the past injustices because they are continued in a different form.

We are allowing injustices to continue happening by not questioning the convention of how policies and legislation are followed; injustices such as consultation which does not allow for non-consent to protect our environment from pollution or the loss of land because the community could not afford the legal fees to fight for it within the colonial legal system or due to a lack of colonial records to confirm claims of ownership.

## *The Continued Threat of the Indian Act*

It comes as no great surprise that legislation such as the Indian Act, which was explicitly designed to break-down socio-political relations and forcibly absorb individual nation members within the broader Canadian society. According to the policy paper “Implementing Indigenous Self-Determination Through Legislation in Canada” by John Borrows, section 88 of the Indian Act usurps Indigenous nations authority by subjecting them to provincial legislation and regulation without their consent<sup>222</sup>. Borrows also identifies issues with clarity for defining responsibilities, establishing governmental accountability, and service delivery funding. The issue that Borrows identifies relating to provincial regulation is that “When governments act through policy as opposed to legislation, they retain greater discretion in carrying out their plans. This allows governments to exercise broader control over Indians. There are generally no legal consequences when a government acts contrary to its policies. The federal government has not cultivated its own accountability and transparency in relation to First Nations service delivery. This is ironic given the decade-long federal fetish focusing on First Nations accountability”. Although much of my existence is regulated by the Indian Act it still contains no protection of culture or communities. This is made worse by what Borrows calls a “significantly deficient” provincial legislation regarding the recognition and affirmation of Indigenous culture and heritage. Borrows claims that the federal government has not yet passed any laws which would prevent corporations, farmers, developers, provinces, and municipalities from undermining Indigenous religious freedoms, and more particularly undermining those freedoms in relation to land and resources.

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<sup>222</sup> “Implementing Indigenous Self-Determination Through Legislation in Canada” by John Borrows

## *Proving Ownership: Longstanding Occupation Vs. Proof of Theft*

Although the courts have affirmed the treaty rights and existing title of the Mi'kmaq as well as the fiduciary obligation of the Canadian nation there continues to be disagreement about the implementation of those court decisions. This is one of the reasons why institutions are beginning to acknowledge that we are on unceded Mi'kmaw land but don't *actually* do anything to give it back. Even when conclusive proof exists demonstrating the occupation and use of land even after attempted theft as well as attempts to fight the theft in court, there is still difficulty having stolen land returned. Even when royal declarations and laws preventing the theft of lands exist, and there is written evidence stating that the land was not obtained lawfully but instead granted by the Indian Agent contrary to those declarations and laws, and even when those lands are not privately owned, there is *still* a great deal of difficulty in having those lands returned. Even when lands are intended to be returned by private owners to the nation, they were stolen from there is *still* a great deal of difficulty in having those lands returned.

Land claims legislation expect the Mi'kmaw to have successfully defended their *sole occupation* of the land uninterrupted for the last 400 years in order to approach the very same colonial government who stole the title to the lands for recognition of continued Mi'kmaw ownership. Unfortunately, even when ownership has been proven within these strict regulations the colonial government does very little to address the designation of those lands as reserve lands, instead demanding that the rights of the colonists be considered. An even greater barrier to land has been that even when a community can afford to take on the necessary research to satisfy the burden of proof, they must continue to pay lawyers in a decades long court battle to fight for lands that research has already proven to be theirs. Failure to pay to fight in court will close the case and the land will be considered to be proven to belong to the colonists.

These fights for land within Mi'kma'ki have been shaped by interjurisdictional injustice as the colonial governments fight over who has jurisdiction over what, whether the lands are provincial or federal or privately owned, and who is responsible for negotiations. For many Indigenous people there is the question of when the land stopped being held in trust because we were considered by the colonists to be wards of the state, and the even greater question of who authorized it without informed consent and where the records are to 'prove' it.

### The Land Claims Process

A big part of proving ownership is learning how to approach the government for permission to have your case against them heard. Land claims are divided into three types, Specific, Comprehensive, and Other. While self-governance is not part of the proof of ownership of land, it is important to note that self-governance negotiations are categorized under comprehensive land claims even though they function differently than the comprehensive land claims in that not all negotiations deal with lands or title but also deal with negotiating the exercise of rights. It is a bit ironic that the Mi'kmaw nation is forced to petition the nation that stole their land to try to have the land that was never ceded returned to them and even more ironic that the Mi'kmaw nation is the one that has been given the burden of proof as if the land was not *all* ours before colonization and as if their own Indian Act did not state that stolen land was not legal. It is no secret that the primary objective of the specific claims policy is to discharge the lawful obligation that Canada has to the Indigenous nations who signed treaties<sup>223</sup>. Specific claims are processed based on one of four scenarios as set out in the 2008 Specific

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<sup>223</sup> The Specific Claims Policy and Process Guide, Crown-Indigenous Relations and Northern Affairs Canada, <https://www.aadnc-aandc.gc.ca/eng/1100100030501/1100100030506>; "Outstanding Business - A Native Claims Policy" was released on May 13, 1982 by the Honourable John Munro, Minister of Indian and Northern Affairs

Claims Tribunal Act<sup>224</sup>. The qualification of a claim is based on six possible grounds for a claim<sup>225</sup>. The comprehensive land claims are based on the concept of continuing Indigenous rights and title which have not already been addressed by treaty or other legal means.

Comprehensive land claims are negotiated through a six-step process with thirteen different possible issues negotiated within<sup>226</sup>. The ‘other’ land claims are those which do not fit within the Specific and Comprehensive claims processes. One example of a possible land claim through the designation of ‘other’ would be requesting space to practice Mi’kmaw culture and spirituality within the city of Halifax.

The 1981 publication by the department of Indian Affairs and Northern Development titled “In All Fairness: A Native Claims Policy: Comprehensive Claims” provides a thirty-page analysis of the development and application of the comprehensive claims policy. “The policy statement in 1973 covered two areas of contention. The first was concerned with the government’s lawful obligations to [Indigenous] people. By this was meant the questions arising

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<sup>224</sup> Subject to the conditions set out in the Specific Claims Tribunal Act, there are four scenarios in which a First Nation may opt to file a claim with the Tribunal: the first being if a claim has not been accepted for negotiation by Canada; the second is if Canada fails to advise the First Nation within three years of its claim having been filed with the Minister whether the claim will be accepted for negotiation; the third being at any stage in the negotiation process if all parties agree; or the fourth being if three years of negotiations do not result in a final settlement. “Fact Sheet - At a Glance: The Specific Claims Tribunal Act”, Crown-Indigenous Relations and Northern Affairs Canada, <https://www.aadnc-aandc.gc.ca/eng/1100100030306/1100100030307>

<sup>225</sup> According to section 14 (1), Subject to sections 15 and 16, a First Nation may file with the Tribunal a claim based on any of the following grounds, for compensation for its losses arising from those grounds: (a) a failure to fulfil a legal obligation of the Crown to provide lands or other assets under a treaty or another agreement between the First Nation and the Crown; (b) a breach of a legal obligation of the Crown under the Indian Act or any other legislation — pertaining to Indians or lands reserved for Indians — of Canada or of a colony of Great Britain of which at least some portion now forms part of Canada; (c) a breach of a legal obligation arising from the Crown’s provision or non-provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation at law, or its administration of reserve lands, Indian moneys or other assets of the First Nation; (d) an illegal lease or disposition by the Crown of reserve lands; (e) a failure to provide adequate compensation for reserve lands taken or damaged by the Crown or any of its agencies under legal authority; or (f) fraud by employees or agents of the Crown in connection with the acquisition, leasing or disposition of reserve lands. Specific Claims Tribunal Act, S.C. 2008, c. 22. <https://laws-lois.justice.gc.ca/eng/acts/S-15.36/FullText.html>

<sup>226</sup> “Resolving Aboriginal Claims - A Practical Guide to Canadian Experiences”

from the grievances that [Indigenous] people might have about fulfillment of existing treaties or the actual administration of lands and other assets under the various Indian Acts. The policy statement acknowledged another factor that needed to be dealt with. Because of historical reasons – continued use and occupancy of traditional lands – there were areas in which [Indigenous] people clearly still had [Indigenous] interests<sup>227</sup>. To deal with the unsettling uncertainty of ownership, when a land claim is accepted for negotiation, the government requires that the negotiation process and settlement formula be so thorough so that the claim cannot arise again in the future. In other words, any land claims settlement will be final<sup>228</sup>. This ceding of all other claims in exchange for the settlement of a small portion of traditional territories is enfranchisement with a different name. The policy also claimed that lands selected by Natives for their continuing use should be traditional land that they currently use and occupy; but persons of non-Native origin who have acquired for various purposes, rights in the land they claimed, are equally deserving of consideration. Their rights must be dealt with equitably. This is perhaps the only place within the legal system where the rights of the thief are believed to be equally deserving of consideration to the rights of the victim of the theft.

The document goes on to state that “Other basic access rights must be taken into consideration: rights of access such as transportation routes within and through settlement area; rights of way for necessary government purposes; rights of access to holders of subsurface rights for exploration, development and production of resources, subject to fair compensation as

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<sup>227</sup> Canada. Dept. of Indian Affairs Northern Development. In *All Fairness: A Native Claims Policy: Comprehensive Claims*, Edited by Patricia Sawchuk. The terminology within this quote was changed from “Indian”, “Native”, and “Aboriginal” to be “Indigenous” as a way of showing that there is no need to adopt many colonial words to explain a group of people who sprouted from this place when there is already a word for a species which sprouts from a particular place and that is “Indigenous”.

<sup>228</sup> Canada. Dept. of Indian Affairs Northern Development. In *All Fairness: A Native Claims Policy: Comprehensive Claims*, Edited by Patricia Sawchuk.

mutually agreed either through negotiation or arbitration”<sup>229</sup>. The perceived right of access shows a delusional sense of entitlement that is somehow greater than the rights of those who sprouted from this land. In cases where land covers more than one jurisdiction or is used by more than one group no land is granted unless an “appropriate and timely means” is found to resolve the complications. “Again, the motive for approaching land selection in this way is to protect the rights of Canadians, Native and non-Native alike, who might be affected by settlement. Furthermore, it is designed to encourage Native people to participate in the fair and equitable negotiations that surround these decisions”<sup>230</sup>. I am unable to comprehend how this dictation of ownership of lands that were never surrendered or the hierarchy of rights to the land could possibly be perceived as “fair and equitable negotiations”.

The injustice of forcing Indigenous nations to prove that their land is in fact their own while also fighting against the perceived rights of thieves is compounded by the systemic process of the negotiations. Those potential claimant groups requiring assistance in the preparation of a claim will be given straightforward indications of the many aspects of settlement that may need to be considered and upon which the government is prepared to proceed. Negotiations with a group will occur only if and when their claim has been accepted. Negotiations will then take place only with those persons who have been duly mandated to represent the claimant groups. In addition, claimant groups should have enough money to develop and negotiate their claims, however, the spending restraints of government and their limits will be kept in mind”<sup>231</sup>.

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<sup>229</sup> Canada. Dept. of Indian Affairs Northern Development. In *All Fairness: A Native Claims Policy: Comprehensive Claims*, Edited by Patricia Sawchuk.

<sup>230</sup> Canada. Dept. of Indian Affairs Northern Development. In *All Fairness: A Native Claims Policy: Comprehensive Claims*, Edited by Patricia Sawchuk.

<sup>231</sup> Canada. Dept. of Indian Affairs Northern Development. In *All Fairness: A Native Claims Policy: Comprehensive Claims*, Edited by Patricia Sawchuk.

Imagine the anger and the insult that you would feel returning from vacationing in your summer home to learn that the government had appropriated the land where you have your home in the winter. Now imagine learning that you had no other legal option to get that land back but to go to the very same colonial government which appropriated your land, but then to add insult to injury the very mechanism in place to try to seek justice produces documents stating that the colonial governments budgeted ability to fight your claims will be taken into account when deciding whether or not to accept your claim of theft. Any claims must be submitted following strict guidelines and failure to file your claim appropriately could result in their refusal to hear your claim. If your claim is accepted then you must conduct research to provide as much supporting evidence as possible to prove that you have been the only person to occupy this land and that the land has never been occupied by anyone else, including those who appropriated it while you were away. Negotiations will take years and anyone who attempts to block development on this land will be arrested, even if your sole occupation of the land is a necessary criterion for proving legal rights of ownership. If the land is developed in a way that is seen to be for the greater good of the population then it will no longer legally be yours, but you may be entitled to a small compensation for your contribution to societies advancement but you will have to fight for that too. After a few decades of fighting for your land back people will begin to question why you can't just let it go and get over it, and if you cannot afford to continue paying a lawyer at any time during your case it will be dismissed and your inability to continue fighting them will be considered to be acceptance. But don't get angry about it, they will not deal with anyone who is irrationally emotional.

## *Conservation and Rights Acknowledgments as Further Theft of Title and Rights*

Much like the land claims process was created with the proclaimed intention of helping to settle past injustices and assist the Indigenous people in their fight for title and rights, conservation legislation has been portrayed as being for the benefit of everyone. Unfortunately, in Atlantic Canada the colonial inability to protect a valued resource was made clear by the collapse of the cod fishery<sup>232</sup>. Yet I am claiming that colonial perceptions of conservation are not only incapable of protecting species and ecosystems but also that those colonial perceptions of conservation are actively destroying the ecosystem and restricting Mi'kmaq access to their lands and resources. Although they focus on conservation of individual species, they do not focus on the conservation of the health of ecosystem that the species exists within. The legal inability to harvest a plant or fish species does not ensure its survival when its ecosystem is being destroyed, instead it prevents the use and sharing of traditional knowledge which included protecting the entire ecosystem. It is in this way which legislation meant to afford additional rights can in fact be detrimental due to its individualistic approach to understanding the world. Similarly, the self-governance and other rights-based negotiations exist under the categorization of comprehensive land claims due to their dual focus of defining rights and title. This categorization understandably leads many Mi'kmaq to believe that these negotiations are attempting to remove Indigenous title to lands that are unceded.

### Land Rights in Exchange for Governance Rights

Although the Supreme Court of Canada recognized the existence and validity of Indigenous and Treaty rights it has only partially defined the nature and scope of those rights due

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<sup>232</sup> CBC Archives has a collection of news articles compiled which relate to the fall of the Cod fisheries <https://www.cbc.ca/archives/topic/fished-out-the-rise-and-fall-of-the-cod-fishery>

to the belief that such definitions should be established through negotiations instead of litigation. By not clearly defining the rights which the Supreme Court was recognizing the Canadian government was forced to enter negotiations with those nations whose rights they sought to define. Negotiations concerning the exercise of rights is ongoing between the Mi'kmaq communities and political organizations, the federal government, and the individual provinces that those communities are in. The Mi'kmaq communities within the provincial borders of Nova Scotia entered negotiations with the federal government and the Nova Scotia provincial government<sup>233</sup>. The negotiations first produced an Umbrella Agreement on June 7<sup>th</sup>, 2002 which was created to state that “there are outstanding issues among the Parties including the inherent right to self-government, [Indigenous] rights, including assertions of title, and treaty issues” and that the “Parties” believed it to be “desirable to jointly discuss, investigate and negotiate measures that will assist in the resolution of issues of mutual concern between the Mi'kmaq of Nova Scotia, Nova Scotia and Canada”<sup>234</sup>. This willingness to negotiate was clarified by the interpretations which stated that “the Parties agree that this Umbrella Agreement is not legally binding and is intended as an expression of goodwill and as a political commitment to enter into discussions. It is not intended to either create, define or affect legal rights or to be construed as an interpretive aid in the determination of any legal right”<sup>235</sup>.

This Umbrella Agreement was soon followed by a Framework Agreement on February 23<sup>rd</sup>, 2007 which re-affirmed the statements of the Umbrella Agreement but with the added focus

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<sup>233</sup> Government of Canada. 2019. "Progress report on Aboriginal and Treaty Rights negotiations in the Maritimes and the Gaspésie." *Crown-Indigenous Relations and Northern Affairs Canada*. February 01. <https://www.rcaanc-cirnac.gc.ca/eng/1100100028583/1529409875394>.

<sup>234</sup> Mi'kmaq - Nova Scotia – Canada Umbrella Agreement, 2002, <https://www.rcaanc-cirnac.gc.ca/eng/1100100028635/1539610878232>

<sup>235</sup> Mi'kmaq - Nova Scotia – Canada Umbrella Agreement, 2002, <https://www.rcaanc-cirnac.gc.ca/eng/1100100028635/1539610878232>

of giving priority to negotiating interim, or incremental, measures or agreements with respect to “Mi’kmaq access to and management responsibilities regarding land and natural resources; Crown land alienation and natural resource development; and Identification and protection of Mi’kmaq sacred and archaeological sites”<sup>236</sup>. On August 31<sup>st</sup>, 2010 the Terms of Reference for the Mi’kmaq-Nova Scotia-Canada Consultation Process were signed and helped in the creation of the Government of Nova Scotia’s policy and guidelines for consultation with the Mi’kmaq of Nova Scotia which was published in April of 2015<sup>237</sup>.

It is also important to note that these negotiations were categorized within the comprehensive land claim negotiations because of their dual focus on rights and title to the land. For the purpose of negotiations with the federal and provincial governments, the Mi’kmaq have developed the Tripartite Forum as well as Kwilmu’kw Maw-klusuaqn also known as Mi’kmaq Rights Initiative or KMK<sup>238</sup>. Although neither of these organizations have the authority to enter into agreements on behalf of the Mi’kmaq Kwilmu’kw Maw-klusuaqn means ‘we are seeking consensus’ and that is exactly what they were intended to do; they negotiate with the provincial and federal governments and then seek consensus from the Mi’kmaq population that they seek to represent. In this way the Mi’kmaq are forced to be politically engaged and ever vigilant of community engagements and voting in which their silence often is construed as acceptance.

On May 9<sup>th</sup>, 2012 a National Parks Interim Arrangement was signed as a show of goodwill in working together. Issues currently being negotiated include those related to wildlife, land, and governance<sup>239</sup>.

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<sup>236</sup> Mi’kmaq - Nova Scotia - Canada Framework Agreement, 2007

<sup>237</sup> Government of Nova Scotia, “Policy and Guidelines: Consultation with the Mi’kmaq of Nova Scotia”, 2015

<sup>238</sup> Information regarding these organizations can be found at <https://tripartiteforum.com/> and <https://mikmaqrighis.com/>.

<sup>239</sup> National Parks Interim Arrangement, 2012

## The Loss of Rights Through Park Creation

Due to increased legislation relating to the conservation of land, water, plants, animals, and fish there is also an increase in the restrictions on Treaty and Indigenous rights. Treaty and Indigenous rights to harvest within Mi'kma'ki are only considered to be legally applicable on public lands which are not considered to be provincial or national parks, the species being harvested are not considered to be a species-at-risk, the lands where harvesting are happening can be proven to be traditional territory for such harvesting, and the person harvesting must not have any intention of profiting from the harvest. But if you can find land that is not privately owned or designated as park lands, the species is not overly depleted or valuable to colonists, and you intend to harvest in a way that is deemed acceptable to the colonists, you might just be able to legally exercise your treaty and Indigenous right to harvest; but there is still a chance that you may face further restrictions. It is unfortunate that the federal and provincial governments have created these vast tracts of land that are legally inaccessible to those seeking to exercise their treaty and Indigenous rights by designating them as parks. In this way the colonial government has effectively curtailed harvesting rights in the name of conservation. This has created the invisible regulation of where we can harvest, what we can harvest, and even what can be done with the harvest. Although *R. v. Marshall* was instrumental in asserting the rights to harvest traditional resources, the designation of park lands has still managed to create a barrier that limits the free exercise of treaty and Indigenous rights. Ironically, the provincial and federal governments have failed to articulate this to those who are still harvesting the resources available to them like a sovereign people would be expected to on their own unceded territory.

According to an organization called Indigenous Corporate Training Incorporated “The concept of a “nation’s park” that would provide protection for the wild animals of the American

plains was first put forth in 1832. Four decades later, in 1872, Yellowstone National Park, the first national park in North America was created. A few short years after that, in 1885, Banff National Park (original name was Rocky Mountains Park) was established as Canada's first national park. These national parks were established as protected areas of pristine, natural beauty and diversity that would generate great national pride and be preserved for future generations. What was not taken into consideration, or if it was it was ignored, was the fact that for thousands of years [Indigenous] Peoples had lived, traversed and harvested these same vast tracts of land. By the early 20th century seven national parks had been created in southern Canada and not one was developed with consideration for First Nations' historic use and occupation of the land. They all prohibited traditional hunting and gathering activities, and in the case of Banff, the Stoney Nakoda, who had traveled and hunted in the area for centuries, were also prohibited... The establishment of the Wood Buffalo National Park in northern Canada in 1922 (expanded in 1924 to the south) was the first national park to allow traditional activities to continue, albeit with a permitting system that set annual limits. This was the first time what is now Parks Canada (founded in 1911) included consideration of [Indigenous] Peoples in the management of a park. Apart from this exception, harvesting of any manner was generally prohibited as it was considered the polar opposite of the preservation mandate of national parks... The passing of the Constitution Act, 1982, through Section 35, formally entrenched [Indigenous] and treaty rights in the supreme law of Canada. It has, however, created some loopholes in the ability of [Indigenous] people to exercise their rights within national parks. Parks Canada has taken the position that "legislation used to establish national parks prior to 1982 extinguishes any [Indigenous] or treaty rights with regards to those parks. Consequently, of the forty national parks and park reserves in Canada, harvesting as an [Indigenous] or treaty right takes place in

twenty of them — primarily in parks and park reserves established after 1982 or those established in northern Canada under comprehensive land claims”<sup>240</sup>.

While there is absolutely no mention of Indigenous rights within the Provincial Parks Act, Section 5 of the Act defines park zoning and sub section 4 states that “(a) A resource conservation zone includes an area of a park that contains significant natural, cultural and recreational features and landscapes that require a high standard of conservation. [and] (b) An area zoned as a resource conservation zone permits activities which do not conflict with the inherent natural character and aesthetic qualities of the park resource base”<sup>241</sup>. Unfortunately, Eurocentric views of significant cultural features and landscape has excluded much of the Mi’kmaq culture from the parks narrative. According to section 25, subject to the Forests Act and regulations, “no person shall have a fire in a park other than in a fireplace or grill provided for that purpose or in an area designated by a park attendant”. According to section 26 community events are only permitted “to take place within designated areas of the park at such times as the park attendant may prescribe”. This makes it illegal to host communal gatherings within a park without first getting the permission of the provincial government minister. In addition, section 27 makes it illegal to “hunt, trap, take, destroy or snare wildlife or attempt to hunt, trap, take, destroy or snare wildlife” or to even possess a gun or a bow on park lands.

Unlike the provincial legislation, the federal legislation makes many direct mentions of Indigenous rights. Indigenous rights are expressly stated under the Canada National Parks Act in section 2 subsection 2, “Aboriginal Rights”, with the statement that “For greater certainty,

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<sup>240</sup> Indigenous Corporate Training Inc., “Can First Nations Hunt in National Parks”, 2015

<sup>241</sup> Provincial Parks Regulations made under Section 37 of the Provincial Parks Act R.S.N.S. 1989, c. 367 O.I.C 89-579 <https://novascotia.ca/just/regulations/regs/ppregs.htm>

nothing in this Act shall be construed so as to abrogate or derogate<sup>242</sup> from the protection provided for existing Indigenous or treaty rights of the Indigenous peoples of Canada by the recognition and affirmation of those rights in section 35 of the Constitution Act, 1982<sup>243</sup>. Section 4 (1) states that the national parks of Canada are hereby dedicated to the people of Canada for their benefit, education and enjoyment, subject to this Act and the regulations, and the parks shall be maintained and made use of so as to leave them unimpaired for the enjoyment of future generations. Section 17 (2) states that where an agreement for the settlement of an Indigenous land claim that is given effect by an Act of Parliament makes provision for traditional renewable resource harvesting activities or stone removal activities for carving purposes within any area of a park, or where Indigenous people have existing Indigenous or treaty rights to traditional renewable resource harvesting activities within any area of a park, the Governor in Council may make regulations respecting the carrying on of those activities in that area. Section 40 deals directly with Indigenous resource harvesting by stating that the application of this Act to a park reserve is subject to the carrying on of traditional renewable resource harvesting activities by Indigenous persons.

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<sup>242</sup> Abrogate means to abolish a law through an explicit repeal; Derogate means to partially suppress a law.

<sup>243</sup> Canada National Parks Act, S.C. 2000, c. 32. <https://laws-lois.justice.gc.ca/PDF/N-14.01.pdf>

### *Systemic Perpetuation of Dead Legislation*

As has been demonstrated in the indirect influence of the “White paper”, even those pieces of legislation which are rejected or no longer enacted can have lasting impact on the colonial perception and as such any future legislation that they may produce<sup>244</sup>. Although there is no longer legislated enfranchisement, my location within an urban setting, off reserve lands, has limited the support that I can received from my community. It is this classification as an urban Indigenous person which designates my welfare as the responsibility of the province and municipality that I live in instead of the federal government.

Although the ban on traditional Indigenous spirituality and ceremonies has ended, it has still had lasting impacts on the future ability to practice those ceremonies, including but not limited to the loss of sacred sites, the loss of traditional objects or knowledge, and seemingly unrelated policies and legislation. Although those bans were not directed at the Mi’kmaq, they were still enforced by Indian Agents in Mi’kma’ki. Some of the ways that ceremony continue to be restricted within the city limits are through the lack of public lands not designated as park lands, the prohibition of fires on any lands that are designated to be park lands, and the strict regulation of the ability to have a fire even on privately owned lands within the city. The city of Halifax has no lands left which are considered to be public lands which are not also designated as park lands, and even if a ceremony was hosted on private property the regulations around fire would still make it illegal unless it fit within the colonial regulations. This has made it so that those who live within the city of Halifax who wish to partake in ceremonies which require the presence of a sacred fire must either go onto reserve or to the only off reserve site available

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<sup>244</sup> Peters, Evelyn J. 2001. "Developing Federal Policy for First Nations People in Urban Areas." *The Canadian Journal of Native Studies* 21 (1): 57-96. [http://www3.brandonu.ca/cjns/21.1/cjnsv21no1\\_pg57-96.pdf](http://www3.brandonu.ca/cjns/21.1/cjnsv21no1_pg57-96.pdf).

which is located at McDonald Beach which is a part of the military base of Shearwater. This means that the only forms of religion or spirituality that is *not* able to be practiced freely within Kijipuktuk are ironically the ones which sprouted from this very place, the place of the great fire<sup>245</sup>. It can be argued that this is but one example that while the “White paper” was rejected and countered by the “Red paper” it simply taught the colonists that the answer is not to address the “Indian problem” directly or to refuse to acknowledge rights, but to systematically erode the ability to exercise those rights.

This erosion of the relatively weak environmental and resource protections which once existed relative to Indigenous lands can be seen in the passing of Omnibus Bills such as Bill C-45 which drastically impacts First Nations rights through the proposed changes to the Indian Act, Fisheries Act, Canadian Environmental Protection Act, and the Navigable Water Protection Act<sup>246</sup>, Bill C-69 which enacted the Impact Assessment Act and the Canadian Energy Regulator Act, and made amendments to the Navigation Protection Act and other Acts<sup>247</sup>, and Bill C-97 which not only enacts the Department of Crown-Indigenous Relations and Northern Affairs Act, but also makes amendments to the First Nations Land Management Act, the First Nations Oil and Gas and Money Management Act, and the Addition of Lands to Reserves and Reserve Creation Act<sup>248</sup>. In 2012 the Canadian government passed two omnibus legislative initiatives that made it easier to develop lands over which Indigenous peoples may have Indigenous title, rights,

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<sup>245</sup> According to the Halifax Regional Municipality By-Law Number O-109 Respecting Open Air Burning section 4 “Fires for religious or ceremonial purposes are allowed in the Permit Required Zone, between March 15th and October 15th and shall require a burning permit, subject to any terms and conditions imposed by the Fire Chief” but even when it was possible to apply for a permit that permit was subject to the restrictions of section 6.

<sup>246</sup> Jobs and Growth Act, 2012. S.C., c.31, December 14<sup>th</sup> (BILL C-45)

<sup>247</sup> David Laidlaw “Bill C-69, the Impact Assessment Act, and Indigenous Process Considerations” (15 March 2018), online: ABlawg, [http://ablawg.ca/wp-content/uploads/2018/03/Blawg\\_DL\\_BillC69.pdf](http://ablawg.ca/wp-content/uploads/2018/03/Blawg_DL_BillC69.pdf)

<sup>248</sup> <https://manitobachiefs.com/wp-content/uploads/04-25-19-Ltr-to-SORegan-and-CBennett-re-Bill-C-97-and-Lack-of-Consultation.pdf>

or treaty protections<sup>249</sup>. John Borrows argues that “In this case, in passing permissive omnibus legislation, Parliament removed specific protections in the Navigable Waters Protection Act which previously triggered federal environmental assessments and Crown duties to consult and accommodate Indigenous Peoples. Pipelines were also specifically exempted from review under the omnibus bills (although the National Energy Board must still consider navigations issues through its approval process). Furthermore, the Canadian Environmental Assessment Act (CEAA) was replaced with changes which completely eliminate environmental assessments for so-called minor projects. Additionally, the Fisheries Act was modified to more directly protect fish, but not fish habitat, and a definition of [Indigenous] Fisheries was imposed which requires “serious harm” to stop development’s harmful to such fisheries. Changes which will have negative effects on Indigenous environments and resources were also made to the following Acts: Hazardous Materials Information Review Act, Canada Oil and Gas Operations Act, National Energy Board Act, Species at Risk Act, First Nations Fiscal and Statistical Management Act, Indian Act”<sup>250</sup>.

These systemic threats to my connection to the land are not the distant past but are instead the realities of the place that I have sprouted from and these systemic threats have shaped my connection to the land even as I have resisted their influence. It is these systemic threats which triggered the “Idol-No-More” movement nationally and internationally and reminded many that we can no longer be silently resilient.

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<sup>249</sup> Jobs, Growth and Long-term Prosperity Act, S.C., c.19, 29th June 2012 (BILL C-38) and Jobs and Growth Act, 2012. S.C., c.31, 14th December 2012, (BILL C-45)

<sup>250</sup> “Implementing Indigenous Self-Determination Through Legislation in Canada” by John Borrows

## **Chapter 6: My Story of Sprouting from Kjipuktuk**

When considering the facts and important dates in history it is possible to forget that these facts influence real lives today. In this chapter I will bring the story back to myself, to explain to you, the reader, just how I have been impacted by these historical facts.

I was born in a Halifax hospital in 1986 to a teenaged single mother who lived with her grandmother in the North End of Halifax. I have spent my entire life being told that the odds are stacked against me, yet here I am writing a master's thesis for settlers to cite. Soon after I was born my mother and I moved to Spryfield to be closer to the support of my mother's family and my aunts and uncles. My grandfather and his brothers helped me to question the world around me, gave me a strong sense of self, and knowledge of my rights as a person and as a Mi'kmaw; all while battling their personal demons with unhealthy coping mechanisms. My mother sought to do the best she could with the little that we had and turned to elders and community organizations for support. We explored the area and learned the resources that were available to us.

When I was a young child I learned to fish, to pick and preserve berries, to set rabbit snares and scare partridges out of the bush, and to know what tree leaks sap that will prevent starvation if you ever get lost. In the early spring we would bike to York Redoubt before the sunrise and the rising tide to catch the first run of mackerel before they made it to the Halifax Harbour; fish caught after they had been in the harbour for more than a few days were said to be full of pollution and not healthy so only new runs of fish were sought. I hated mackerel and so I would sell my portion to my friend's mother and use the money to pay for groceries at the grocery store. With the beginning of the mayfly came the first run of the trout, which were always my favorite. The rivers and dams would overflow with the spring melt allowing the

trout to follow waterways from the ocean to their spawning grounds in the shallows of the lakes. During this migration of the trout along the Macintosh Runs from the Northwest arm and into Long Lake to their spawning grounds it was possible to catch the trout with a net as they attempted to get up over the damn. Careful attention was paid to ensuring that the large “breeder” fish were released as well as any females that were carrying roe. As the weather became warmer and the fish moved to the cooler waters in the middle of the lake our family would shift our attention to picking and preserving strawberries, cherries, and blueberries. As the weather cooled back off and the corn became available in the grocery stores, we would again fish for trout to save for the winter and end the warm season with a feast of fresh potatoes, corn-on-the-cob, pan-fried trout, and blueberries. Fall was always busy with the creation of different crafts that would be sold at community markets or to neighbours and the profits helped pay for school fees, Christmas presents, and canned food to help us get through the winter. During the late fall and early winter, we would set snares for rabbits and hunt partridge with a slingshot because hunting with a gun so close to the city would have brought a lot of unwanted attention.

## *Stories of lived connection with the landscape*

While we did not have a lot in life, we had what we needed to survive, we didn't have the strongest connection to our whole community or even our whole family, but we had a close connection to the place that supported our survival. As our family grew with the birth of my brother and sister so too did our specific connection to the land surrounding Long Lake. Instead of traveling towards where family lived in Timberlea in the summer to camp and fish we established a permanent camp site at Long Lake. While there was no permanent structure built that would draw attention, we did clear the space of plants and small trees to build a stone fire pit and cleared a space to set up tents. However, the camp site is far enough back from the water and the existing human paths that it has gone largely unnoticed for over 25 years. The only evidence that we have existed there for so long is the stone fire pit and the family initials carved into a tree at the entrance to the site. As I got older and development expanded into the area and we began to see changes to the place that sustained us. Overfishing led to the need to stock the lake with trout, they were easily identified for the first year by the colour of their lower fins and the meat of the fish. People complained about the deer near the roads and so the apple trees that grew next to the lake were cut down, the deer stopped using their paths to access the apples. Those trails that the deer created to get to the apples were the trails that we used to get through the brush to the blueberry patches, without the deer maintaining those trails access to the blueberry patches became much more difficult due to overgrowth. Soon after the decision was made to permanently open the damn and the water levels fell to the point that the spring melt was no longer strong enough to allow the trout to access their spawning grounds. A space where community members had spent decades clearing large rocks to create a beach for the small kids to play in shallow water was undone as the water receded.

A Sports fishing competition introduced bass to a lake where they had previously never existed where they not only competed with the fully-grown trout for food but also ate the trout spawn. The sports fishermen were not interested in eating the fish and so their only interest was in how easy they are to catch and how much of a fight they produced when caught. But the fishermen did not keep the fish, instead they released them back into the lake, later releasing them into other lakes damaging the delicately balanced ecosystems of the waterways. Disconnected from the ocean and spawning fish, facing overfishing due to accessibility, the trout population of Long Lake has dwindled. This story of access to food resources is not restricted to the trout; development of vast farmlands and highways that divide the province and continue to encroach on breeding grounds has blocked migration routes for large mammals such as the moose. Even the designation of land as a Provincial Park has not prevented the destruction of habitats and wetlands and restricting access to traditional foods in the name of development. This is made evident by the destruction of a parcel of land at Long Lake Provincial Park, conveniently across from a new development, but instead of there being real consequences for the destruction of the habitat the land was destroyed further. Paths were bulldozed through what had been the blueberry patches and gravel walking trails were added to the new parking lot conveniently located across the road from the development in a space that had been “mistakenly” destroyed<sup>251</sup>.

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<sup>251</sup>CBC News, 2015, “Long Lake Provincial Park clearcutting being investigated”; Woodbury, Richard. 2016 Resourcetec Inc. pleads guilty to clear cutting at Long Lake Provincial Park; Wi’kupaltimk (Feast of Forgiveness)

*My experience with the politics of where we live and how we use the land*

When I was young, I thought that it was natural that people went out to get food from their environment and that they trade surplus resources to get wheat they could not get from their own environment or skills set. As I got older, I learned that this was a treaty right passed down through the generations and not shared by the colonists. But that belief in my treaty right was challenged by the trial of Donald Marshall Jr., if he could be charged for catching fish/eel for his community members than so could my family. Suddenly, I went from seeing myself as an l'nu feeding their family in the traditional ways to hearing stories that we were those responsible for the failing fisheries. It was scary to learn that at any time my family could have been charged or imprisoned for exercising our treaty rights, if so, my siblings and myself would have been taken away to foster care, yet our options had been to make use of our resources or starve. As I became older and began speaking to those who grew up on reservations, I learned that many l'nu believe themselves to be more purely l'nu because they had grown up on reserve, this divisionist attitude is a result of enfranchisement and distracts from the question of access and changes in the land. Almost every l'nu on or off reserve knows a story about avoiding the fish and game wardens or about how development and pollution have changed those resources in their lifetime. Thanks to decades of divisionist policies those who live off reserve were, and still are, treated as less l'nu and their stories about connection to the land have been ignored. However, we have reached a point where over half of our population lives off reserve and they are beginning to realize that they themselves did not become any less Mi'kmaw based on where they live, that it is instead connected to how they live. Perhaps some day they will remember that we sprouted from *all* of Mi'kma'ki, particularly the river heads, and one day we will look back at the short time where the colonists attempted to contain us to reservations.

My grandfather used to tell me to never forget that I am Mi'kmaw and that nobody can take that from me and that my identity as a Mi'kmaw woman will never be any more or less depending on where I live or who I marry. As a child I did not understand the depth of what he was telling me but as an adult I want to hug the man for ensuring that I felt secure in my knowledge of who I am and that nobody could take that away from me because it is passed on by our ancestors, family, and community. It is because of him that I grew up having pride in my family's exercise of their right to live anywhere within our territory instead of shame for not living on a reservation. It was his gift of confidence that allows me to take pride in the fact that I am the fourth generation of my family to live where they pleased within our district, that includes those who chose of their own accord to move on reserve. My family spent very little time living on a reservation, with only a few generations sprouting from the designated land, resilient and skilled they survived the theft of lands around them, they survived the designation of reserve lands as an attempt to contain them, they survived the attempted theft of those reserve lands, my family even survived the murder of my Great Grand-Father along the railroad tracks in Halifax.

I grew up hearing stories about how unsafe this city is and how the police were the ones who beat my great grandfather and left him to die on the railroad tracks, he was beaten so brutally that he was identified only by his well known tattoo on his arm with a spelling of Mi'kmaw that would be wrong any way you tried to spell it. I grew up hearing about the family house that had to always have someone in it, or the Indian Agent would come and change the locks and take possession of it, this was during the theft of land and homes in Cole Harbour. I am proud of my family's exercise of autonomy by choosing where they would live and how they would access the resources available to them to support their survival and connection to the land.

## *My Personal Experience with Colonialism and Neo-Colonialism*

When we use terms such as colonialism or neo-colonialism there seems to be an idea that these are ideologies of the past, in fact many close friends have been offended by my use of the term ‘colonist’ as opposed to ‘Canadian’ or ‘settler’. To avoid confusion and offence it is necessary to state that all Canadians are either settlers who have moved here in their own lifetime and are settling into the colony or are of colonial decent. The term colonist is not applied exclusively to “white” people, it is instead representative of a person’s position and participation within the power structures of the colony. That is to say that the Loyalist who built Citadel Hill in Halifax helped to colonize Kjiptuk as much as the colonial lords and politicians who were writing the new legislation. Although they did not hold the same power within that colonial power structure, they undeniably both benefited from the existence of that power structure on unceded Mi’kmaw lands. Canada continues to be a colonial nation on unceded Indigenous lands and as such the inhabitants of that nation participate in the colonial power structure as colonists. The simple definition of a colonist is a settler in or inhabitant of a colony; For this thesis though I do differentiate between those who are multi-generational colonial decent and those who are first generation settlers, but there is no ‘colour’ divide. There can be no reconciliation without truth and that is the biggest truth to face ‘Canadians’, you are colonists and your nation has been committing genocide against mine. The term neo-colonist is one that I have avoided simply because it does not apply in a place that is still fighting for independence from the colonists, and then I moved into a house and life gave me examples.

It was with great excitement that my partner and I bought a house on a lake that was also within an area of the Sipekne’katik district that I was familiar with and grew up visiting. On June 21<sup>st</sup> we took possession of the property, eager to make the space our own we began to measure

gardens and plot how to replace them with food. With neighbours on both sides but no fence or clear division of land it raised the question of who owned what. On one side the neighbour had built retaining walls making it easy to identify, and to visualize the line from their house, along the retaining walls, and to the lake. On the other side the line was much less clearly defined, when looking at the land survey it showed the line existing about three feet from where the neighbour was claiming. The neighbour proceeded to go to the spot by the lake where he claimed a survey spike existed and pulled the spike out of the ground to show me, and attempted to put it in visibly further over than it had been; when he was unsuccessful he simply took it with him saying that I had clearly seen where it was before he took it out. However, based on the legal measurements of the land survey there was a garden plot which straddled the property line with one foot of it on their property and three feet on our property. When asked about the garden plot the neighbour claimed that the measurements of the property lines must be wrong because it was their land and had been used as such since they purchased the house when it was first built. They truly believed that because they had built on the land and used it as their own for so long that they actually had a real claim to the land. Seeking to avoid conflict over such a small piece of land we offered to help with maintenance of the garden since it was becoming overgrown. When the neighbour declined but instead decided to sell their house and move back to Britain a year later, we saw the opportunity to try to reclaim the piece of property that had been appropriated.

The new neighbours were the stereotypical young Canadians, he asked her to marry him their first night in the house, she said yes, soon after they got a dog and seemed intent on fitting every stereotype. Intent on their own idealized dream of life on the lake they set to changing their backyard to suit their lifestyle, which included cutting down trees for a view of the lake and removing flower beds to create access to a dock. There were more than happy when I agreed to

let them rip out the garden that straddled our property line and put in grass. Yet even as they were acting as though they were respecting the property lines and correcting an injustice, they simply acted as though there were no property lines. What began as an attempt to reclaim three feet of property became a perceived right to use my entire back yard for their dog to run or to clear bushes and trees growing on my land.

In this way I began to understand the difference between the more direct colonial efforts which boldly claimed ownership of land that was clearly not their own, and the much less direct methods of neo-colonialism which acts to appear to be working towards the benefit of all involved while actually causing as much, or more, damage than the original form of colonialism. It was this type of real-life experience which is also reflective of why so many L'nu are so weary of any legislation claiming to be in their benefit. By gaining my land and allowing there to be no clear definition of land the neighbours have developed a perception that they have a right to use all of the land.

## **Chapter 7: Reclaiming Land (in theory)**

There can be no reconciliation without truth, and the truth is that Canada broke its own laws with the theft of lands within Mi'kma'ki. The truth is that Canada committed acts of genocide both directly and indirectly through written legislation. The truth is that even dead policies have a continued influence on Mi'kmaq lives, such as the continued restrictions on ceremony and treatment of urban Indigenous people which requires counteractive legislation. The truth is that Canada's genocide has become so systemic that most of its citizens are blissfully unaware. The truth is that no other acknowledged religious or spiritual group faces such systemic restriction on their ability to practice their beliefs within city limits. And most importantly, the truth is that the Mi'kmaq people never ceded the land and never stopped sprouting from this land and it is time for Canada to reconcile with that fact.

Although the Indian Act no longer contains restrictions on spiritual and cultural practices of Indigenous peoples, the spaces that were sacred have become occupied or conservation policies have regulated the use of the space. It is time that Canada reconciles with the fact that the Mi'kmaw will never assimilate and will continue to fight for the right to practice their own culture and spirituality on their own land. This includes making space for sacred fires within city limits, making space to teach the traditional knowledge in the Mi'kmaw language through Mi'kmaw methodologies which include experiential learning on the land. This also includes access to land and the preservation of entire ecosystems containing traditional foods and medicines, including those which have been poisoned by pollution or encroached upon by development. But mostly, the reclamation of land is the ideological knowledge that this is unceded Mi'kmaw territory and the inalienable connection between the people, and the land that

they have sprouted from, which has survived hundreds of years of colonization, and thousands of years before that.

### *Finding Space for Reconciliation*

Reconciliation as defined by the Oxford Dictionary<sup>252</sup>:

1. *The restoration of friendly relations.*
2. *The action of making one view or belief compatible with another.*
3. *The action of making financial accounts consistent; harmonization.*

It is not the Mi'kmaw who need to reconcile, it is not even our concept to define. It was not the Mi'kmaw who stole lands, children, and culture. The Mi'kmaw have been forced to learn colonial beliefs in colonial institutions and this cannot become another attempt to encourage assimilation. It is not the Mi'kmaw profiting from the lands that were claimed to be held in trust for their benefit. Based on the history explored through this thesis, and the definition of reconciliation, it is clear to see that this movement towards reconciliation needs to be the work of the colonists and settlers<sup>253</sup>. In order to have justice, we must understand what caused the injustices and what impact they have had, this is the work of colonists who do not know the history of their nation that they love so much. In order to restore a friendly relation, it is also necessary to understand each others' views and beliefs. In order to make the Mi'kmaw and colonial views and beliefs compatible with each other the colonists must take the time to learn

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<sup>252</sup> Also see <http://www.trc.ca/reconciliation.html> and <https://vimeo.com/25389165> for definitions of reconciliation.

<sup>253</sup> For the purpose of this thesis a colonist is defined as any person who is descendant of either a colonist or a settler while a settler is defined as any person who has immigrated to Canada. This distinction makes room for the many ethnicities and cultures which colonized this land as well as their role in the formation of the colonial nation state. Any citizen of a place is therefore understood to either be Indigenous to the place, a settler who has move to the place or a colonist who has sprouted from a land that they are not indigenous to. Any citizen of a nation which commits atrocities against the Indigenous people must reconcile with the truth of their complacency in the perpetuation of historic and ongoing injustices.

what our views and beliefs are. Although it would be nice to see colonists make financial accounts consistent with historical records of accounts containing the profits from lands sold, there is no space within this thesis to do this topic any justice and so I encourage future students to pursue it further. Indigenous land rights are going to be central to future relations between Indigenous and colonial and settler peoples. Mainstream conceptions of reconciliation demonstrate a belief that reconciliation will provide closure for past injustices, and in so doing provide an end to non-Indigenous guilt and responsibility<sup>254</sup>.

In my search for similar experiences I have turned to the perspectives provided within post-apartheid South Africa because of their similarities of experiences with loss of land due to colonization and the engagement in the Truth and Reconciliation Commission. Although the similarities appear to end there post-apartheid South Africa does provide the ability to examine the realities of Land Claims, and because there have been no large studies on the realities of Land Claims within Canada (perhaps because of the record of taking quite literally 100 years to settle claims in this district) it is the only example of an Indigenous nation reclaiming their land post-colonization. Ruth Hall claims that land restitution is intended to right the wrongs of the past: to redress unjust dispossession and to heal. Within this statement is the belief that restitution will help to reverse racially skewed patterns of land ownership, dismantle racialized privilege in property rights<sup>255</sup> Unfortunately, Mi'kma'ki is still occupied by the colonists and are quite secure in the validation of their ownership of unceded lands.

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<sup>254</sup> McCall, Sophie, and Hill, Gabrielle. *The Land We Are: Artists & Writers Unsettle the Politics of Reconciliation*. Winnipeg: ARP Books, 2015.

<sup>255</sup> Walker, Cheryl. *Land, Memory, Reconstruction, and Justice Perspectives on Land Claims in South Africa*. Athens, Ohio: Ohio University Press, 2010.

“The Royal Proclamation of 1763 had historical implications with which both Indigenous and non-Indigenous inhabitants of present-day Atlantic Canada continue to live. Through enhanced historical understandings of its provisions that attempted to regulate Indigenous land alienation, and their subversion by colonial authorities, it may well prove also to be a fertile source of legal activity reaching into the future.”<sup>256</sup>

### *The Importance of Land Based Learning*

Despite centuries of attempted erosion of connection between the Mi'kmaw people and their environment there remains a tenacity that refuses to let go of our connection and right to cultural space. The impacts of attempted erosion of connection is not only through the very direct actions of the Residential Schools or the rates of children taken from families for adoption, it also exists in the erosion of the health of the environment. This attempted erosion of connection can also be seen reflected in access to food and medicines, loss of language as well as ability to pass on traditional knowledge, internalized and lateral discrimination relating to geographical location, last and most importantly is access to traditional knowledge of the sacredness of everything. Anishinaabe writer and activist Leanne Simpson acknowledges the importance of practicing traditional knowledges like medicine gathering and ceremony on the land as crucial to asserting Indigenous rights and sovereignty<sup>257</sup>. Simpson identifies the impossible predicament faced by Indigenous Nations when asked to simultaneously embrace reconciliation and relinquish their land. By continuing to engage with our environment and teaching our children to know and protect the place that we sprout from the Mi'kmaq continue to refuse to cede their territory. It is very important that we don't allow policies and legislative restrictions to prevent us

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<sup>256</sup> The Significance of the Royal Proclamation of 1763 in Atlantic Canada, John Reid

<sup>257</sup> McCall, Sophie, and Hill, Gabrielle. *The Land We Are: Artists & Writers Unsettle the Politics of Reconciliation*. Winnipeg: ARP Books, 2015.

from teaching on the land, to engage in the entire process of harvesting and preparing materials, to follow traditional ways of teaching even when they do not fit with the schedule of the funder. We cannot claim to pass on knowledge about making baskets if the ‘students’ never learn the wood to harvest, when and where and how to harvest, when and how to prepare the materials needed, or the many other teachings that would be connected to those activities when they learn how to weave the baskets. It is important to teach our youth to not only hunt but to also honour the life of the plants or animals being harvested, the importance of sharing with elders and community, as well as how to preserve the food. It is through these activities and interaction with the land that we sprouted from that we will be successful in the reclamation of the Mi’kmaq language and the development of fluent speakers.

It is not only the Mi’kmaq who could benefit from the development of land for the purpose of land based traditional knowledge sharing. Both provincial and federal conservation policies and legislations could be strengthened by incorporating traditional knowledge and through possibilities for partnership between the Mi’kmaq with parks and institutions to cultivate the land in the traditional way to support the growth and harvest of traditional foods and medicines through experiential learning on the land with elders.

## *Removing History or Dismantling Celebrations of Colonialism*

Recent events, such as the removal of the Edward Cornwallis statue, has led some colonists to claim that doing so was removing history, while many Mi'kmaq continue to work to dismantle the many ways that colonialism and genocide are celebrated through memorialization. Dylan Robinson and Keren Zaiontz's "Public Art in Vancouver and the Civic Infrastructure of Redress", demonstrates the role of the memorialization of history in the forgetting of the violence done to the land and the people. This memorialized history draws contemporary settlers to identify with the particular people or moments in history by obscuring the violence done<sup>258</sup>. The theft of lands that have never been ceded and continue to be occupied is not a warm and comforting type of history that instills a sense of pride for settlers. It is likely even less comforting to know that land unsettling (also known as theft) is not something that ever ended, it continues in the form of environmental damage, right of way for infrastructure, and inner-city gentrification<sup>259</sup>. While the citizens of Halifax have become much more aware of the city's history after the removal of the statue of Edward Cornwallis, its removal has also raised the question of whether the city was dismantling a celebration of colonialism or removing history. It is ironic that this figure that so many now identified as the sole reason that Halifax was founded was barely even known about before discussions of the statue's removal. Yet none of those who are so enraged by the supposed erasure of that small part of history have stopped to consider the lack of representation for the Mi'kmaw history on this land, a history spanning over thirteen thousand years. Perhaps instead of focusing on the existence of one statue of a person who showed such a flagrant disregard for Mi'kmaw lives we should begin to ask why there is

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<sup>258</sup> McCall, Sophie, and Hill, Gabrielle. *The Land We Are: Artists & Writers Unsettle the Politics of Reconciliation*. Winnipeg: ARP Books, 2015.

<sup>259</sup> McCall, Sophie, and Hill, Gabrielle. *The Land We Are: Artists & Writers Unsettle the Politics of Reconciliation*. Winnipeg: ARP Books, 2015.

such a limited visual representation of the Mi'kmaq who have, and still do, occupy this place. Perhaps people should become equally enraged at the spiritual oppression of the original people of this land.

Robinson and Zaiontz suggest that public art is an important form of recuperating sovereign visual knowledge through the act of sight as a way of asserting sovereignty. The chapter, unreconciling public art, by The New BC Indian Art and Welfare Society Collective explores the ways that “Indigenous public art can claim the city as a space where Indigenous bodies belong”<sup>260</sup>. They point out that even when we are on our own territory, Indigenous people are portrayed as “out of place” within the cities and that at its most basic level these depictions are a continuation of the myth of the “vanishing Indian”, an Indigenous person who has been defeated by colonialism and the temptations of the “white world”. It is for this reason that they draw on the argument by Sherene Razak that while “[Indigenous] bodies haunt settlers, a too present reminder that the land is indeed stolen, they must also serve to remind them of their own modernity and entitlement to the land”<sup>261</sup>. Perhaps instead of memorializing a single person, regardless of their atrocities, the city of Halifax could focus on the location of the buried hatchet and the Peace Treaty which allowed for the continued settlement of Halifax.

*“There are no crying Indians here for you, no screaming children, no horror to consume. All of that exists, but [this thesis is] about freedom”<sup>262</sup>*

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<sup>260</sup> McCall, Sophie, and Hill, Gabrielle. *The Land We Are: Artists & Writers Unsettle the Politics of Reconciliation*. Winnipeg: ARP Books, 2015.

<sup>261</sup> McCall, Sophie, and Hill, Gabrielle. *The Land We Are: Artists & Writers Unsettle the Politics of Reconciliation*. Winnipeg: ARP Books, 2015. (“Memorializing” 910)

<sup>262</sup> Original quote “There are no crying Indians here for you, no screaming children, no horror to consume. All of that exists, but these drawings were about freedom” from McCall, Sophie, and Hill, Gabrielle. *The Land We Are: Artists & Writers Unsettle the Politics of Reconciliation*. Winnipeg: ARP Books, 2015.

It is not enough to dismantle the physical memorialization's of colonization; we must also question how the ideologies which allowed for their creation have been continued and how we can use the recognition of heritage and connection to place as a form of reconciliation. This is a process which will have no one right answer but may be begun in the questioning of what is recognized, where is it recognized, and how is it recognized. To question legislation which states that all artifacts found, regardless of which nation they come from, belong to the colonial nation. It is important to question why the Bedford petroglyph is unknown to many and not promoted in any way, yet the Kejimikujik petroglyphs are known globally and are not only promoted but have staff dedicated to acting as guides and educators. It is also important to acknowledge that the Shubenacadie river was already considered too polluted to be recognized as an ecological site but the Mi'kmaq have not stopped trying to protect their historically and culturally important site and so they have applied for recognition as a heritage river. These attempts to have the river recognized come in response to development along the river which would cause potential harm to the environment and the food sources and was rejected through consultation with the Mi'kmaq. There is no point in which the Mi'kmaq will stop fighting, not for the 'land' but for the ecosystems that we have sprouted from. The acts of genocide have failed, we are not going extinct and you cannot contain where we sprout from. I implore you to make space that I may enjoy the same spiritual freedom as the others who now sprout from our unceded lands.

*"Cite Me Settler"*<sup>263</sup>

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<sup>263</sup> References include jewelry designed by the artist known as Inuk Barbie and Past Dalhousie University Student Union president Masuma Khan who are both fucking amazing warrior women.

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Appendix A – Memorandum of Understanding with Community