

## DONALD MARSHALL JUNIOR AND THE MODERN-DAY MANIFESTATION OF TREATY BENEFITS

Patrick Augustine

### Abstract

This paper is a critical examination of the communal socioeconomic impacts of the Supreme Court of Canada's *Marshall* rulings. It begins by providing some historical context of the Peace and Friendship Treaties signed by the chiefs in Sikniktuk. A critique seen through a counter-Enlightenment lens is then provided. The paper concludes by outlining some perceived disparities of economic benefit in Elsipogtog First Nation after entering into federal fishery agreements.

### Résumé

Cet article est un examen critique des impacts socio-économiques communautaires des décisions *Marshall* de la CSC. Il commence par fournir un contexte historique des Traités de paix et d'amitié signés par les chefs de Sikniktuk. Une critique vue à travers le prisme de la contre-lumière est ensuite proposée. Le document conclut en décrivant certaines disparités perçues en matière d'avantages économiques dans la Première Nation d'Elsipogtog après la conclusion d'accords de pêche fédéraux.

### Introduction

This paper is a critical examination of the communal economic impacts of the Supreme Court of Canada (SCC) *Marshall* decisions which affirmed First Nations' treaty right to fish, hunt, and gather in pursuit of a moderate livelihood in Canada subject to federal management for conservation purposes.<sup>1</sup>

Shortly after *Marshall 1*, I was invited to Esgenoopetitj (formerly known as Burnt Church) First Nation to discuss peace and friendship treaties by the community. I had family members supporting the community fishery during their conflict with DFO enforcement of their commercial regulations. I also co-presented with Chief Francis Jadis of Scotchfort Reserve of the Abegweit First Nation to the Standing Committee on Fisheries and Oceans at the Stanley Bridge Country Resort in Kensington, PEI. I also assisted him during their negotiations with the federal negotiator, Jim Mackenzie, in Charlottetown. Initially, Chief Robert Levy of Big Cove was adamant about signing an agreement, and most Maritime chiefs eventually did. The accommodation into the commercial lobster fishery involved agreeing to regulations in exchange for numerous boats and gear. Many fishers were grandfathered in who previously fished for food and ceremonial purposes and owned their own boats and some traps, while many have speculated that beneficiaries were either politically influenced or called it nepotism. Some members received what many called armchair allocations, as they did not possess either boat and

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<sup>1</sup> *R v Marshall*, [1999] 3 S.C.R. 456 (*Marshall 1*) and *R v Marshall*, [1999] 3 S.C.R. 533 (*Marshall 2*); see also L. Jane McMillan, *Truth and Conviction: Donald Marshall Jr. and the Mi'kmaw Quest for Justice* (Vancouver: UBC Press, 2018).

gear to fish but rather contracted with other fishers and received portions of revenue and employment insurance benefits.

In any event, with the influx of employment, there was also an increase in material wealth. There were many new vehicles seen in the community, including large pickups to haul traps, as well as vehicles such as ATVs/UTVs, snowmobiles, pontoon boats, campers, fifth wheels, and various RVs.<sup>2</sup> This also created a multi-class society, those employed and the unemployed, or the minority on social assistance. The disparities in material wealth coincided with other social issues, which may be coincidental and have no correlation. The band allowed the establishment of gaming rooms and provided liquor licences as well as receiving tobacco allocations. Shortly after the legalization of marijuana in Canada by the federal government, numerous dispensaries were also established after the band became a co-owner with an individual. Alcohol and drug use were normalized with delivery services being provided without any type of regulations. Existing drug issues worsened with methadone users abusing sedatives, along with crystal methamphetamine usage increasing.<sup>3</sup> ATV/UTV operation on public roads was also unregulated as the RCMP were told not to pursue enforcement given broader justice issues for which enforcement mechanisms other than laying charges was preferred. The RCMP stated the band required bylaw enforcement officers to free police time from attending court proceedings, a suggestion that was ignored. The Health and Wellness Court began taking on legal cases that were not deferred to Moncton after the Richibucto Courthouse closure.

While I was undertaking my doctoral studies in Ottawa, I encountered information of the province granting exploratory licences to the fracking industry situated within my community's traditional territory. Upon moving back to Elsipogtog to complete my dissertation, I began to observe and document through photographs any activity connected to the exploration along with community protests/meetings. I would later suggest pursuing an Aboriginal title claim after hearing a presentation by lawyer Dr. Bruce MacIvor that he gave on the subject at the bingo complex at Saint Mary's First Nation. Yet any title claim needs to be based on a thorough understanding of the Peace and Friendship Treaties signed by the chiefs in Sikniktuk, the focus of the first part of this article.

The paper concludes by outlining some perceived disparities of economic benefit in Elsipogtog First Nation after entering into federal fishery agreements. They had a negative impact on Elsipogtog that had ongoing social issues that were never really addressed since the suicide crisis. This impacted members' health and well-being, despite the influx of government funding since the 1990s. Other additional funds were disbursed for Indian Residential/Day Schools compensation as well as federal Covid-19 relief funds from both the Canadian and American governments as members have dual citizenship. Perhaps the response to the *Marshall* decisions is just another failed response to a multitude of issues of treaties being ignored.

## The Peace and Friendship Treaties

The Richibucto Treaty, which Marshall relied upon for his defence, was one of many in a series signed between the Mi'kmaq and the English; some refer to it as the Covenant Chain. It is also a treaty signed by my ancestor Chief Michael Augustine for the Richibucto Indians in 1760. These treaties

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<sup>2</sup> ATV = All-terrain vehicles; UTV = Utility task vehicles; RV = Recreational vehicle.

<sup>3</sup> See, for example, Tori Weldon, "Elsipogtog Roadblocks Planned to Keep Drugs out of Community," *CBC News*, April 28, 2016, <https://www.cbc.ca/news/canada/new-brunswick/levi-mi-kmaq-drugs-elsipogtog-1.3555515>.

resulted from the conflict and animosity from land acquisitions from Boston, Massachusetts Colony, up along the eastern seaboard involving the Wabanaki tribes in the District of Maine and the Maritime provinces. The Colony of Massachusetts began settling in southwestern Maine, as Maine was then a part of Massachusetts.

## The 1725 Treaty

The 1725 Treaty, the first in the series, was signed in Boston by British Major Paul Mascarene and the chiefs of the Penobscot, Norridgewak, Wulastuk, and Mi'kmaq tribes. Treaties were entered into in the region ostensibly to establish conditions of peaceful co-existence between the Indigenous peoples and settlers. The 1725 Treaty was mainly about peace and friendship, with clauses that ensured the liberty of properties not formerly acquired by the British, and safeguarded trade, justice, and peace with Massachusetts, New Hampshire, and Nova Scotia. The treaty reads, in part:

Whereas His Majesties King George by Concession of the Most Christian King made at the Treaty of Utrecht is become the Rightfull Possessor of the Province of Nova Scotia or Acadie according to its antient Boundaries We the said Indians Sanguaarum alias Loron Arexus Francois Xavier and Meganumbe Delegates from the said Tribes Penobscott Naudgewaek St. Johns Cape Sables and other tribes Inhabiting His Majesties and territories in Nova Scotia or Acadie and New England in the name and behalf of the said Tribes We Represent Acknowledge His Said Majesty King George's Jurisdiction and Dominion over the said Territories of Nova Scotia or Acadie and make our Submission to his said Majesty in as ample a Manner as We have formerly done to his most Christian Kings.<sup>4</sup>

I believe that this acknowledgment of the English Crown was recognized by the Penobscot, Abenaki, Wulastook, and Mi'kmaq Nations of the Wabanaki Confederacy. The treaty clauses were reaffirmed by the Sikniktuk chiefs by similar treaties which followed. Following the Treaty of 1725, similar treaties were signed in Nova Scotia; one of the clauses in the 1726 ratification of the 1725 Peace and Friendship Treaty stipulated that delegates agreed to “acknowledge His Said Majesty King George's Jurisdiction and Dominion over the said Territories of Nova Scotia or Acadia and make our Submission to his said Majesty in as ample a Manner as We have formerly done to his most Christian King.”<sup>5</sup>

The 1725 Treaty and its ratification a year later were signed by several chiefs and men of Sikniktuk and adjacent areas, including “Piere X Martine, Chief of Refhiboucto [now Richibucto]; Jiom X Attanas, Chief of Gidiark [Shediac]; Joseph Martine X, Chief Piere X Armquarett, Chief of Minis [Minas], Philip X Eargomot [Alguimou], Chickanicto [Siknituk, Chignecto] and Michel Eargamet [Alguimou], son of Philip.”<sup>6</sup> During this period, as the British continued to expand their geographical reach, the governor of

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<sup>4</sup> Nova Scotia Archives, “Treaty of 1725 for Ratification at Annapolis Royal,” Mi'kmaq Holdings Resource Guide, Peace and Friendship Treaties, <https://archives.novascotia.ca/mikmaq/archives/?ID=615&Transcript=1>.

<sup>5</sup> *Ibid.* According to the Nova Scotia Archives, “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 Indigenous communities. This process led to a further treaty between the Mi'kmaq Nation leaders and the Nova Scotia colonial authorities, which was signed in 1726. Additional treaties or ratifications were signed in 1727 and 1728 to confirm the inclusion of most parties.” See Nova Scotia Archives, “Peace and Friendship Treaties at the Nova Scotia Archives,” Mi'kmaq Holdings Resource Guide, <https://archives.novascotia.ca/mikmaq/results/?Search=AR5&SearchList1=all&TABLE2=on>.

<sup>6</sup> Cape Breton University, “Ratification of 1725 Treaty,” <https://www.cbu.ca/indigenous-affairs/mikmaq-resource-centre/treaties/treaty-of-1725/>.

Nova Scotia promised the Acadians that they would be exempt from bearing arms against the French and the Mi'kmaq. Reid emphasizes how frustrated these efforts were in large measure by Mi'kmaq resistance.<sup>7</sup> Chief Pierre Martine of Richibucto signed the 1726 Treaty, consenting to peace and friendship with the British. Chief Philip Eargamet of Chignecto also signed the 1726 Treaty in Halifax, Nova Scotia, along with his son, Michel.<sup>8</sup> These Mi'kmaq treaties were responses to previous land claims. The Mi'kmaq believed they had entered into a similar relationship with the British to the one they had with the French, that is, one of “favour, protection, and friendship,” rather than one of submission.<sup>9</sup>

The English philosopher John Locke influenced the British view of Aboriginal title. They believed that Aboriginal title was restricted to lands Aboriginal people cultivated but not lands used for “hunting, fowling and fishing.”<sup>10</sup> Aboriginal status was consequently misunderstood in a Lockean-defined relationship to land. Locke influenced liberal ideals highlighted during the Enlightenment, which were also incorporated by the English colonists in North America, through the United Empire Loyalists.

## The 1749 and 1760–61 Treaties

The Acadians ultimately swore an oath of allegiance to the British in 1749, but they would not bear arms against the French or Mi'kmaq.<sup>11</sup> Chief Pedousaghtigh of Chignecto signed the Treaty of Halifax (1749); however, other chiefs refused to sign, in part because of the British presence in Chebucto (later known as Halifax).<sup>12</sup> The oath read,

I Joannes Pedousaghtigh Chief of the Tribe of Chigenecto Indians for my self and in behalf of my tribe my Heirs and their Heirs for ever and we Francois Arodowish, Simon Sacrawino and Jean Battiste Maddouanhook—Deputies from the Chiefs of the St. Johns Indians and Invested by them with full powers for that purpose do in the most Solemn Manner—renew the above Articles of Agreement and Submission and every Article Thereof with his Excellency Edward Cornwallis Esqr. Captn. Generl and Governor in Chief in and over his majesties Province of Nova Scotia or Accadie Vice Admiral of the same Colonel in his Majesties Service and one of his bed Chamber. In Witness whereof the said Joannes Pedousaghtigh have subscribed this Treaty and affixed my Seal and we the said Francois Arodowish, Simon Sacrawino, and Jean Battiste Maddouanhook —In behalf of

<sup>7</sup> John G. Reid, *Essays on Northeastern North America, 17th and 18th Centuries* (Toronto: University of Toronto Press, 2016), 168.

<sup>8</sup> Atlantic Policy Congress of First Nations Chiefs, Ratification of 1725 Treaty, <https://www.apcfn.ca/storage/2020/06/1726.pdf>; William C. Wicken, *Mi'kmaq Treaties on Trial: History, Land, and Donald Marshall Junior* (Toronto: University of Toronto Press, 2002).

<sup>9</sup> *Ibid.*, 127.

<sup>10</sup> *Ibid.*

<sup>11</sup> James Laxer, *The Acadians: In Search of a Homeland* (Toronto: Anchor Canada, 2006), 53.

<sup>12</sup> Treaties were signed with the British in 1749, 1752, and 1760–61. These later treaties were believed to be necessary by the British because, “up until the late 1750s, the Mi'kmaq remained allied with France and during periods of British-French conflict, many communities chose to side with the French against the British. To a large degree, this decision was dictated by geography. For instance, up until 1758, France retained de jure (legal) control over Ile Royale, and Ile St. Jean, as well as de facto (actual) control over much of what is now the province of New Brunswick. Not surprisingly, Mi'kmaq and/or Maliseet communities living in these areas tended to side with France, a position that had as much to do with practicalities as with their political or cultural affinities with French officialdom.” See Government of Canada, “Fact Sheet on Peace and Friendship Treaties in the Maritimes and Gaspé,” last modified September 15, 2010.

the Chiefs of the Indian Tribes we represent have subscribed and affixed our seals to the same and engage that the said Chief shall ratifie this Treaty at St. Johns. Done in Chibucto Harbour the fifteenth of August one Thousand Seven Hundred and Fortynine.<sup>13</sup>

Governor Lawrence proclaimed in 1759 that vacated lands were open for settlement, and later stated the settlers would be protected by the military and offered them religious freedom, with the exception of Catholics.<sup>14</sup> The Acadians of Petitcodiac and Memramcook surrendered to Colonel Frye at Fort Cumberland (formerly Ft. Beauséjour) in 1759, followed later by the surrender of the Mi'kmaq.<sup>15</sup> The Chief of Richibucto, Michael Augustine, signed a Peace and Friendship Treaty in 1760, and the Chiefs of Shediac and Chignecto, as well as other regional Mi'kmaq chiefs, signed the treaty by 1761. This occurred at the tail end of the so-called French-Indian War (also known as the Seven Years' War).

In his analysis of *R v Marshall*, Justice Ian Binnie indicated that the case analysis was complicated as the treaties were a series of agreements signed between the British and individual Mi'kmaq communities in 1760 and 1761 with the British intending them to be consolidated into a comprehensive treaty.<sup>16</sup> Colonel Joseph Frye, in a letter to Gov. Charles Lawrence, indicated that the French priest Fr. Manack brought in the chiefs representing Miramichi, Richibucto, and Bouctouche and that they agreed to the articles of submission in January, 1760. Frye told Fr. Manack that he hoped to have more chiefs make submissions, however, the priest said that would have to be after the spring hunt. In total, there were fourteen other chiefs, all of the Mi'kmaq nation, and Fr. Manack provided him a list of the following locations: Tobogomkik, Pokemoosh, Gediak, La Have, Chignecto, Pictou, St. John's, Nalkitgoniash, Keshpuqowitk, Minas, and Richibucto.<sup>17</sup>

## Belcher Proclamation

In 1762, Nova Scotia Governor Jonathan Belcher issued a proclamation reserving the right to protect Indian lands and to ensure that the treaties were not violated, and to remove squatters from those lands.<sup>18</sup> This proclamation reserved Mi'kmaq lands along the coast of Nova Scotia to Cape Tormentine, New Brunswick, up to the Miramichi and the Bay of Chaleur in Quebec. These royal instructions resulted from treaty breaches, as the Proclamation states,

THAT the Indians have made, and still do continue to make great Complaints, that Settlements have been made, and possessions taken, of Lands, the Property of which they have by Treaties reserved to themselves, by Persons claiming the said Lands under

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<sup>13</sup> Nova Scotia Archives, "1749 Renewal at Chebucto of the Treaty of 1725," Mi'kmaq Holdings Resource Guide, last modified June 2023, <https://archives.novascotia.ca/Mikmaq/archives/?ID=619&Page=201605004&Transcript=1>.

<sup>14</sup> C.A. Pincombe and E.W. Larracey, *Resurgo: The History of Moncton*, vol. 1 (Moncton, NB: City of Moncton, 1990); and W.D. Hamilton, "Indian Lands in New Brunswick: The Case of the Little South West Reserve," *Acadiensis* 13, no. 2 (1984): 3–28.

<sup>15</sup> Pincombe and Larracey, *Resurgo: The History of Moncton*.

<sup>16</sup> *R v Marshall* [1999] 3 S.C.R., 467.

<sup>17</sup> Peter Fisher, *History of New Brunswick* (1825; repr., Saint John: Government of New Brunswick & William S. Fisher; New Brunswick Historical Society, 1921), 114.

<sup>18</sup> W.D. Hamilton and W.A. Spray, eds., *Source Materials Relating to the New Brunswick Indian* (Fredericton: Centennial Print & Litho, 1977).

Pretence of Deeds of Sale & Conveyance, illegally, Fraudulently, and surreptitiously obtained of said Indians.<sup>19</sup>

The Lords of Trade in England were dissatisfied with Belcher and replaced him the following year with Gov. Montagu Wilmot; although Belcher's proclamation was never officially recognized or rescinded, it would later be superseded by the Royal Proclamation (1763).

France surrendered all its North American possessions to Britain through the Treaty of Paris in 1763.<sup>20</sup> The focus of Mi'kmaq socioeconomic activities linked to geography shifted from French to British influence. At that time, there were about two thousand Mi'kmaq in the Bay Verte region, one thousand Wulastuk, and no more than a hundred Passamaquoddy (including a number of Huron), which was an alarming number to the English. A letter from Colonel Frye to Governor Wilmot indicated the size of the Mi'kmaq population: "They were very numerous, amounting to near three thousand souls."<sup>21</sup> According to the historian Reid, it was the fear of the Indigenous peoples that kept the settlers out of Nova Scotia.<sup>22</sup>

## American Revolution/Independence

Although the Acadians suffered economically from the ongoing conflicts between the French and the British, they maintained their social identity by trying to remain neutral. With the American Revolution/War of Independence in 1776, a contingent of Mi'kmaq and Wulastukiyik travelled to Watertown, Massachusetts, and expressed their dissatisfaction with the British. According to the Department of Indian and Northern Development, "During the American Revolutionary War, the position of the Indians was less certain, and attempts were made by the American insurgents under Colonel John Allan to gain support from the Micmacs and Malecites."<sup>23</sup>

The Mi'kmaq and Wulastuk perhaps felt a strain on their treaty relationship as a result of the American Revolution; Hay notes that "during the Revolutionary war, attempts were made to rouse the Indians to take the part of the revolted colonists, but without effect."<sup>24</sup> Colonel John Allan, Superintendent of Eastern Indian Department, sent a contingent of canoes to the Miramichi with wampum to entice the Mi'kmaq to the American cause.<sup>25</sup> American author Frederic Kidder (1867) reported that the Mi'kmaq expected compensation for going to war, or at least provisions, as was the French custom. The Mi'kmaq claimed that they were promised hard money and other things. Despite his lack of money and provisions including corn and cloth, Allan continued in his efforts to persuade the Mi'kmaq to support the British cause.<sup>26</sup> Some warriors offered their services in war as a source of

<sup>19</sup> Peter Cumming and Neil Mickenberg, *Native Rights in Canada* (Toronto: Indian-Eskimo Association of Canada in association with General Pub. Co., 1972), 285.

<sup>20</sup> Stephen Patterson, "1744–1763: Colonial Wars and Aboriginal Peoples," in *The Atlantic Region to Confederation: A History*, eds. Phillip Buckner and John Reid (Toronto: University of Toronto Press, 2005), 143.

<sup>21</sup> Fisher, *History of New Brunswick*, 114.

<sup>22</sup> John Reid, *Essays on Northeastern North America, 17th and 18th Centuries* (Toronto: University of Toronto Press, 2016).

<sup>23</sup> Canada, Annual Report of the Department of Indian Affairs, (Ottawa: Department of Indian Affairs, 1869).

<sup>24</sup> George U. Hay, *A History of New Brunswick: For Use in Public Schools* (Toronto: W. J. Gage & Co. Ltd., 1903), 109.

<sup>25</sup> *Ibid.*, 110.

<sup>26</sup> Frederic Kidder, *Military Operations in Eastern Maine and Nova Scotia* (Albany, NY: Joel Munsell, 1867).



income, perhaps, due to their economic situation at the time. Allan observed of the Mi'kmaq that "their Behaviour is so Changeable, and when any thing is on the Carpet on Either Side they appear so assiduous & Sanguine that I am often led to suppose they are come to final determination, which brings on an unsteadiness in my own conduct with them."<sup>27</sup> A canoe returned from the Miramichi Mi'kmaq with wampum and an indication of their support.<sup>28</sup>

## The Watertown Treaty

During their visit to Watertown in 1776, the Indians requested a French priest, presented a British sword and pistol, and sought peace, friendship, and trade.<sup>29</sup> The warriors reciprocated the cultural protocols involved in maintaining family and kin relationships with the Americans by rejecting the British gifts of weaponry. They informed the Americans they had "60 men at Winsor, 80 at Meremichi and Rechibucto, 40 at Beauséjour/Cumberland, 50 at Le Have, and 50 at the Gaspee."<sup>30</sup>

The Americans requested six hundred men to fight the British and asked that they use their influence to encourage the Passamaquoddy and other tribes to join them. Joseph Denaquara of Windsor, Sebbattis Netobcobwit of Gaspé, and Peter Andre of Le Have enlisted immediately. They were to be paid forty shillings per month and would be provided with a rifle shirt, blanket, shoes and buckles and were asked to bring their own guns. The Americans relied on Mi'kmaq relationships with other tribes in order to entice additional warriors to their cause. The Americans also promised a truckhouse at Machias and a priest, although not French. Indigenous peoples requested "strouds" and blankets, powder and shot, flints, knives and combs, hatchets, small axes of different sizes, paint, beaver traps, and guns for hunting.<sup>31</sup> This increased need for goods was an indication of the economic gap in Nova Scotia since trade was lost with the French as a result of the war.

The Treaty of Friendship and Alliance (Watertown Treaty) was signed on July 17, 1776.<sup>32</sup> Indigenous peoples attending the treaty conference, Joseph Denaquara of Windsor, Sebbattis Netobcobwit of Gaspé, and Peter Andre of Le Have, also agreed to void previous agreements as it stipulated that "Delegates do hereby annul and make void all former Treaties by them or by others in behalf of their respective Tribes made with any other power, State of person so far forth as the same shall be repugnant to any of the Articles contained in this Treaty."<sup>33</sup>

In late 1776, the Eddy Rebellion, whereby Massachusetts-born Jonathan Eddy, who resided in Cumberland County, Nova Scotia, formed a militia and led an attack on Fort Cumberland in a bid to extend the American Revolution to the colony, failed, lacking the support of the Wolastaqiyik.<sup>34</sup> Milner

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<sup>27</sup> *Ibid.*, 193.

<sup>28</sup> Kidder, *Military Operations*.

<sup>29</sup> James P. Baxter, *Documentary History of the State of Maine, Containing the Baxter Manuscripts. Vol. XXIII.* (Portland, Maine: Main Historical Society, 1916).

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> Treaty of Watertown, Cape Breton University, Mi'kmaq Resource Centre, n.d., <https://www.cbu.ca/indigenous-affairs/mikmaq-resource-centre/treaties/treaty-of-watertown/>.

<sup>34</sup> Pincombe and Larracey, *Resurgo: The History of Moncton*.

notes that “[Michael Francklin] had been a prisoner with Indians as a youth and understood their language and their ways. His personal influence was such that he was able to enrol a corps of volunteer militia in the Minas township 450 strong.”<sup>35</sup> Michael Francklin became lieutenant governor of Nova Scotia in 1767; he held that position for ten years, and later became the superintendent of Indian Affairs.<sup>36</sup> The American invaders, Eddy and his company, attacked Francklin and other settlers: “On 28<sup>th</sup>, Batt made a sortie dispersing Eddy’s force and killing two Indians and one white man. Eddy and his compatriots fled through the woods back to the St. John River.”<sup>37</sup> The settlers along the Bay of Fundy were subjected to (New England) ship raids.<sup>38</sup> Francklin was appointed superintendent of Indian Affairs early in 1777, to prevent the Indians from helping the Americans.<sup>39</sup> Extracts of a letter from Michael Francklin to Lord George Germaine (Colonel Secretary), June 6, 1778 read as follows:

I have every reason to believe, from undoubted authority, that at least 200 canoes of Mickmacs are now actually assembled at Miramichi, in the gulf of St. Lawrence, and others are daily passing to join them. I am therefore under very great apprehension the result of their meetings will be to break with us, and should that be the case, small as the numbers of the savages shall appear to be, compared to the king’s troops that may be stationed in the colony, they will be capable of ruining the interior settlements of the country.<sup>40</sup>

We learn from Hamilton that in 1778, “about six hundred Indians assembled at the mouth of the Jemseg for the purpose of destroying the settlement of Maugerville, but the people escaped across the river to Oromocto, where a fort had been erected.”<sup>41</sup> A similar situation occurred in the Miramichi. Francklin, along with his deputy, James White, and the French missionary, Father Bourg, held a large gathering and provided the Mi’kmaq and Maliseet with many presents and entertainment before signing a treaty with them on September 24, 1778.<sup>42</sup> The British followed an ancient protocol of maintaining relationships and providing gifts, which was, at that time, an economic necessity. The date differs in Hamilton’s account, which states that, “in the following year, 1780, numbers of Indian assembled at Fort Howe, at St. John, and swore allegiance to King George.”<sup>43</sup> The Indians again promised not to help the Americans—their oath read, in part, “I do promise that I will not take part directly or indirectly against the King in the troubles now subsisting between Great Britain and His Majesty’s Rebellions Subjects of America, but that I will follow my hunting and Fishing in a peaceable and quiet manner.”<sup>44</sup> Several Siksiktuk Mi’kmaq signed the treaty as well: Jean Baptiste Arimph, second chief; Louis Augustin, captain; Antoiness, deacon; Francis Joseph Arimph, captain (all from Richibucto); Antoine Arnau, captain; Jean Baptiste Heart, principal

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<sup>35</sup> W.C. Milner, *Records of Chignecto*. Collections of the Nova Scotia Historical Society, Volume XV (Halifax, NS: William McNab and Son, 1911), 47.

<sup>36</sup> L.R. Fischer, “FRANCKLIN (Franklin), MICHAEL.” *Dictionary of Canadian Biography/Dictionnaire biographique du Canada*, 1979, [http://www.biographi.ca/en/bio/francklin\\_michael\\_4E.html](http://www.biographi.ca/en/bio/francklin_michael_4E.html).

<sup>37</sup> Milner, *Records of Chignecto*, 48.

<sup>38</sup> Milner, *Records of Chignecto*, 85.

<sup>39</sup> Fischer, “FRANCKLIN (Franklin), MICHAEL.” *Dictionary of Canadian Biography*.

<sup>40</sup> Hamilton and Spray, *Source Materials Relating to the New Brunswick Indian*, 50.

<sup>41</sup> J.R. Hamilton, *New Brunswick and Its Scenery: A Tourists’ and Anglers’ Guide to the Province of New Brunswick* (Saint John: J. & A. McMillan, 1874), 43.

<sup>42</sup> Adam Shortt and Arthur G. Doughty, *Canada and Its Provinces: A History of the Canadian People and Their Institutions*, vol. 11 (Edinburgh: Edinburgh University Press, 1914).

<sup>43</sup> Hamilton, *New Brunswick and Its Scenery*, 32.

<sup>44</sup> Collections of the New Brunswick Historical Society, vol. 1, 1894, <https://archive.org/details/collectionsofnew1t6newb>.



Indian, from Miramichi; Michael Argimau, chief; Pierre Bernard Cataup, captain; Joseph Portis, captain, from Chignecto; Francis Joseph Istashe, captain, from Pokemouche; and Michael Sagaket and Charles Nocout, Principal Indians from Minas.<sup>45</sup>

## The 1779 Miramichi Treaty

The 1779 Miramichi Treaty was a peace and friendship treaty wherein the Mí'kmaq agreed to protect traders, undertake no correspondence with the Americans, and to ratify all former treaties, in return for promises to remain free and unmolested in their hunting and fishing. Chiefs Julien (Miramichi) and Augustine (Richibucto) signed this treaty, along with several other regional chiefs. The conditions were negotiated aboard a British ship, *The Viper*, which had been sent up the Miramichi River to protect British traders from the Mí'kmaq, and later affirmed in Nova Scotia:

AND, we do also by these presents for ourselves, and in behalf of our several Constituents hereby Review, Ratify and Confirm all former Treaties entered into by us, or any of us, or these heretofore with the late Governor Lawrence, and other of His Majesty King George's Governors who have succeeded him in the Command of this Province.

In consideration of the true performance of the foregoing Articles, on the part of the Indians Affairs doth hereby promise in behalf of Government,

THAT, the said Indians and their Constituents, shall remain in the Districts before mentioned, quiet and free from any molestation of any of His Majesty's Troops, or other his good Subjects in their hunting and fishing.<sup>46</sup>

During the 1780s and for decades after, the British failed to honour the treaties to protect Mí'kmaq hunting, fishing, and planting grounds. This was likely due to the perception that the Mí'kmaq did not own the land: "Between 1782 and 1784, the Nova Scotia government responded to the Mí'kmaq petitions by granting them ten 'licences of occupation' but these were almost useless because the areas awarded were never surveyed and could be claimed by newcomers with ease."<sup>47</sup> Although there were other chiefs who signed the Miramichi Treaty in 1779, Chief Julien was the only one who received a land grant from the colonial government of Nova Scotia: "On 30 Aug. 1783, Governor John Parr of Nova Scotia gave John Julien and his tribe a license to occupy, during pleasure, 20,000 acres along the shores of the Northwest Miramichi River."<sup>48</sup> It was the Loyalist immigrants who forced the Passamaquoddy from the colony altogether. At that time, there was no expectation that principles of fairness would be applied if the Governor chose to end that licence to occupy the land. Nova Scotia was partitioned, and New Brunswick became a new province in 1784.<sup>49</sup>

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<sup>45</sup> *Ibid.*

<sup>46</sup> Atlantic Policy Congress of First Nations Chiefs Inc., Mikmaq and Maliseet Treaty Forum; *The Past, Present and Future*, (Truro, NS: Eastern Woodland Publishing, 1997), 33.

<sup>47</sup> Arthur J. Ray, *Illustrated History of Canada's Native People: I Have Lived Here Since the World Began* (Montreal: McGill-Queen's University Press, 2016), 146.

<sup>48</sup> L.F.S. Upton, "JULIEN, JOHN," in *Dictionary of Canadian Biography*, vol. 5, University of Toronto/Université Laval, 2003–, accessed June 20, 2023, [http://www.biographi.ca/en/bio/julien\\_john\\_5E.html](http://www.biographi.ca/en/bio/julien_john_5E.html).

<sup>49</sup> Pincombe and Larracey, Resurgo: *The History of Moncton*.

In June 1841, Moses Perley was tasked by the provincial government of New Brunswick to conduct a survey of the Wulastuk and Micmac communities of New Brunswick, as well as to ascertain how the province should deal with land reserves set aside for the Indigenous peoples in the region and whether the province ought to build schools for those communities. In the course of completing his report on the Wulastuk (previously called Maliseet Peoples), he visited settlements near Fredericton, at Meductic Point, at Tobique, and at Madawaska. He recorded approximately 440 members of the Wulustukieq Nation in these areas along the St. John River.<sup>50</sup>

Promises of schools and medical attention failed to materialize, and conditions for the Indigenous peoples did not improve. More European settlement occurred, and hunting grounds were lost.<sup>51</sup> Perley's work, entitled "The Indians of New Brunswick," served as the basis for the *New Brunswick Indian Act*<sup>52</sup> of 1844, yet it did not prevent encroachment on Indian lands; Soucoup notes that "Substantial Aboriginal land sales did occur with little benefit to the Natives."<sup>53</sup> Perley, who was made an honorary chief in 1842—close to a kin relationship—by the Mi'kmaq and Wulastuk in appreciation of his work on their behalf, ultimately failed to protect Indigenous interests. Acheson notes that "By 1846, Perley realized that squatters were not being ejected and that the auction sales of lands not needed for Native agriculture were raising little money, but his demands that the policy stop were rejected by the Executive Council [of the colonial government] and resulted in dismissal."<sup>54</sup> Perley was fired during a time of economic change when free trade adversely affected the timber market as well as the monopoly on flour and grain. Careless notes that "The dependent British American colonies found themselves flung suddenly out of the world trade, where they were ill-equipped to compete."<sup>55</sup>

## Trade and the Reciprocity Treaty

The lumber trade<sup>56</sup> in New Brunswick suffered and consequently the colony suffered, particularly the Mi'kmaq, who had never benefitted economically from the timber and shipbuilding industries. In 1847, Abraham Gesner, a geologist, referring to Nova Scotia, wrote:

Almost the whole Micmac population are now vagrants who wander from place to place and door to door seeking alms....They are clad in filthy rags. Necessity often compels them to consume putrid and unwholesome food....The sufferings of the sick and infirm surpass description, and from lack of humble degree of accommodation almost every case of disease proves fatal.<sup>57</sup>

<sup>50</sup> See Moses H. Perley, "The Indians of New Brunswick," Colonial Office Series 188/106, pp. 206–22, Public Record Office [PRO], London, 1848. The Wabanaki Nations were also supported by a group of Huron.

<sup>51</sup> Hamilton and Spray, *Source Materials Relating to the New Brunswick Indian*.

<sup>52</sup> It was officially called *An Act to Regulate the Management and Disposal of the Indian Reserves in This Province*. See British North American Legislative Database, 1758–1867. <https://bnald.lib.unb.ca/legislation/act-regulate-management-and-disposal-indian-reserves-province-passed-14th-april-1844>.

<sup>53</sup> Dan Soucoup, *Know New Brunswick: The Essential History* (Dartmouth: Maritime Lines, 2009), 97.

<sup>54</sup> T.W. Acheson, "The 1840s: Decade of Tribulation," in *The Atlantic Region to Confederation: A History*, ed. Phillip A. Buckner and John G. Reid (Toronto: University of Toronto Press, 1994), 307–32.

<sup>55</sup> J.M.S. Careless, *Canada: A Story of Challenge* (Cambridge: Cambridge University Press, 1970), 208.

<sup>56</sup> Harvested from Indian lands in many cases.

<sup>57</sup> Daniel N. Paul, "The Hidden History of the Americas: The Destruction and Depopulation of the Indigenous Civilisations of the Americas by European Invaders," *Settler Colonial Studies* 1, no. 2 (2011): 178.

Economic changes enveloping the colony were further influenced by the construction of the Intercolonial Railway which began in 1848.<sup>58</sup> By 1853, a railway ran from Saint John to Shediac; a railway line was built to Moncton in 1857 and to Bouctouche in 1883.<sup>59</sup> Construction on the European and North American Railway began in 1854 on a line from Saint John to the Northumberland Strait.<sup>60</sup> Rail generally served as an economic benefit for the province and it served well the shift in economic orientation away from an international trade market based on shipping to a continental one premised on rail. The Reciprocity Treaty, a free trade agreement with the U.S. from 1854 to 1866, provided the free exchange of natural products between Canada and the United States. It also allowed for “free access to each other’s fisheries” and, “for European fishers in the Maritimes, resulted in trade of the region’s fish and timber.”<sup>61</sup> It is worth noting that while the wider economy of New Brunswick was becoming increasingly continental, Indigenous economic activities in New Brunswick found some traction in global markets. For example, Mi’kmaq women, by the 1850s, found an international market for their distinct craft of porcupine quillwork on birchbark.<sup>62</sup>

Despite such innovations, however, Mi’kmaq suffered economically in the emerging new economic order. In nearby Nova Scotia, Indian Commissioner William Chearnley convinced the colonial governing assembly that the Mi’kmaq were doomed, and argued that “the government should give the unfortunate Mi’kmaq a few blankets and greatcoats to help them in their final days.”<sup>63</sup> This policy of relief would not be in place until years later, in 1862. The Mi’kmaq in Nova Scotia were believed to be a dying race—a concept fuelled by notions of racial superiority in popular literature, which encouraged their marginalization.<sup>64</sup> These ideas were held in New Brunswick as well.<sup>65</sup>

## New Brunswick Indian Reserves Created

Although the mid-nineteenth century was an era of economic hardship for the Mi’kmaq, rail also became important to them as they relied heavily on this transportation and often relocated to live in close proximity to the rail tracks that offered ready access to markets. Mi’kmaq men and women adapted their economic activities and their family/kin groups accordingly and on gender lines and sought employment and income that utilized rail transportation. This resulted in cultural and socioeconomic adaptation. The men sought wage labour and women started door-to-door selling of baskets. In an attempt to reclaim some of their traditional economic practices while adapting to settler expectations, Indian men worked as hunting guides to hunters brought to the province by rail, and the women, using

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<sup>58</sup> Hamilton, “New Brunswick and Its Scenery.”

<sup>59</sup> Pincombe and Larracey, *Resurgo: The History of Moncton*.

<sup>60</sup> Ian Ross Robertson, “The 1850s: Maturity and Reform,” in *The Atlantic Region to Confederation: A History*, eds. Phillip Buckner and John G. Reid (Toronto: University of Toronto Press, 1994), 333–59.

<sup>61</sup> Careless, *Canada: A Story of Challenge*, 210–211. It was also a scheme for smaller colonial governments like PEI to access American capital to build colonial infrastructure (commercial fisheries) at the expense of Peace and Friendship Treaty rights.

<sup>62</sup> Robertson, “The 1850s: Maturity and Reform,” 347.

<sup>63</sup> Ray, *Illustrated History of Canada's Native People*, 149.

<sup>64</sup> And by the perceived Beothuk example in Newfoundland.

<sup>65</sup> See, for example, Rachel Bryant, “The Last of the Wabanakis: Absolution Writing in Atlantic Canada,” *Settler Colonial Studies* 10, no. 1 (2020): 1–14.

rail lines as nexus of transport and source of markets, continued to sell handcrafts of baskets and moccasins, often door-to-door.<sup>66</sup> The division of labour was along gender lines.

By the 1860s, squatters persisted on reserve land, many of whom bought land but failed to continue paying for it, while still others neglected or refused to pay at all. These squatters felled timber on Indian lands without censure from the government.<sup>67</sup> Unfettered squatting on Mi'kmaq land and theft of Mi'kmaq resources characterized the Indian land situation in New Brunswick leading up to the time of Confederation in 1867.

## On the Path to Confederation

In 1866, the much-revered free trade agreement between the United States and British North America lapsed. This economic reality prompted talk of a wider British North American union and the creation of an economy that was centred east-west instead of north-south.<sup>68</sup> Part of the issue was the fact that the British North American colonies needed to expand their credit as they were heavily indebted, so they merged to extend credit. In essence, each colonial government had a choice to seek credit from Britain or join Confederation. Such a union of the colonies was also viewed as a way of mitigating against American expansionism and a threat of annexation.<sup>69</sup>

An initial conversation around union of the Maritime colonies led, in 1864, to talks about a wider political union that included Canada East and Canada West, in a conference held at Quebec. Britain, anxious to rid itself of dependent colonies, supported the prospect. As New Brunswick negotiated its joining of Confederation, no Indigenous peoples were consulted. While some Indigenous people may have hoped that Confederation would lead to greater respect for their land rights,<sup>70</sup> Mi'kmaq interests were not served by Confederation. By the time Confederation was enacted in 1867, the province had already sold thousands of acres of Indigenous land over the previous twenty years yet had generated insufficient revenue to provide assistance to Indigenous peoples. By 1867, as historian Phil Buckner writes, “only £2,853.10.0 was generated for the Indian fund, never enough to meet even the immediate needs of the Natives for relief, let alone provide them with schools or other forms of assistance.”<sup>71</sup>

The *British North America Act* that created a confederated Canada assigned control of “Indians and lands reserved for the Indians” to the new federal government. A new federal department, the Department of Indian Affairs (DIA), was created in 1880 to oversee federal Indigenous policy. One of the immediate consequences of Confederation for New Brunswick Indigenous peoples was the creation of a federal system of day schools; many of them had been previously attending common schools in the

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<sup>66</sup> Phillip Buckner, “The 1860s: An End and A Beginning,” in *The Atlantic Region to Confederation: A History*, eds. Phillip Buckner and John G. Reid (Toronto: University of Toronto Press, 1994), 360–86.

<sup>67</sup> Hamilton and Spray, *Source Materials Relating to the New Brunswick Indian*, 129.

<sup>68</sup> Careless, *Canada: A Story of Challenge*, 212.

<sup>69</sup> *Ibid.*, 238.

<sup>70</sup> M. Walls, “Mi'kmaw Politicism and the Origins of the Micmac Community Development Program, 1900–1957,” *Journal of the Royal Nova Scotia Historical Society* 20 (2017): 1–17.

<sup>71</sup> Buckner, “The 1860s: An End and a Beginning,” 367.

Maritimes. In 1868, there were increasing numbers of grants requested by Indigenous communities for establishing and maintaining Indian schools.<sup>72</sup>

Confederation did little to alter the lifeways of Indigenous peoples in New Brunswick. As before Confederation, many of them engaged in migrant employment in New Brunswick and Nova Scotia, selling their baskets or performing odd jobs for local residents. Indigenous peoples were also camped near towns or summer resorts to sell baskets or woodwork, while looking for employment.<sup>73</sup> This constant mobility made it difficult for Mi'kmaq children to attend school regularly. Indigenous peoples in the province were differentiated by federal officials according to their cultural and economic differences. Hamilton, a tourist guidebook author in New Brunswick, for example, defined the Mi'kmaq as "possessing both moral and physical superiority over the others...a tall and powerful race of men....The other and less numerous and inferior body are the Milicetes."<sup>74</sup> He indicated that the Mi'kmaq were located on the coast and that the Wulastuk lived on the lakes and streams of the interior. The Indigenous population in New Brunswick fluctuated between 1841 and 1871, going from 1,377 in 1841 to 1,116 in 1851, and then increasing to 1,403 in 1871.<sup>75</sup>

## Post-Confederation Developments

While the region as a whole suffered economically after Confederation, Indigenous peoples were further marginalized and dispossessed of their lands.<sup>76</sup> The new federal government, like their colonial predecessors, tried to persuade the small migratory bands of Mi'kmaq to settle in permanent locations.<sup>77</sup> Fishing became the main industry along the coast. Most men living on reserves continued to hunt, trap, fish, and farm, while others worked in lumbering, sawmills, and river-drives. There were no substantial support services geared toward Indigenous peoples. Those who adapted to the forest industry were quickly impacted by its changes: "With hydro dams across many of New Brunswick's major rivers, log drives were no longer practical, and with new portable sawmills and powerful log trucks, sawing logs close to logging sites became popular."<sup>78</sup> Mi'kmaq men were employed as labourers during the log drives and trail blazes (cutting trails) and provided manual labour at the mill site; trucking eliminated many of these labour jobs through mechanization. Trucking also eliminated the need for logging camps.

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<sup>72</sup> J. Fingard, "The Anglican Design in Loyalist Nova Scotia: 1783–1816," Church Historical Society Series, 1972. According to Walls, "Day schools operated in the Maritimes as early as the 1780s, when the London-based New England Company set about "civilizing" the Mi'kmaq and Wulastuk (Maliseet) of New Brunswick using English-language day schooling, apprenticeship-based vocational training, and conversion to Protestantism." See M. Walls, "[T]he Teacher That Cannot Understand Their Language Should Not Be Allowed": Colonialism, Resistance, and Female Mi'kmaq Teachers in New Brunswick Day Schools, 1900–1923," *Journal of the Canadian Historical Association/Revue de la Société historique du Canada* 22, no. 1 (2011): 61.

<sup>73</sup> Webster, 1928.

<sup>74</sup> Hamilton, *New Brunswick and Its Scenery*, 72.

<sup>75</sup> Hamilton, *New Brunswick and Its Scenery*, 74.

<sup>76</sup> Suffering was mixed. For example, those who were able to get monopolies and Crown land made a lot of money in relation to timber, fish, and coal extraction. One wonders the extent to which the capture of Indigenous territories as "Crown lands" played into intense resource extraction, the subsequent concentration of wealth into the hands of a few, and theft of Wabanaki territory.

<sup>77</sup> John G. Reid, *Nova Scotia: A Pocket History* (Halifax: Fernwood Publishing, 2009), 26.

<sup>78</sup> Soucoup, *Know New Brunswick*, 39.

After World War I, staples were traded with the United States such as wheat, minerals, and wood pulp. Careless observes that “Large pulp mills sprang up in the north, driven by the plentiful water-power of these hilly regions. Whole new towns appeared among the rocks and birches of northern New Brunswick or northern Ontario and Quebec.”<sup>79</sup> There were few resources left, and “the Atlantic provinces still relied heavily on the fisheries, but since the war fish prices had been low.”<sup>80</sup>

By the 1930s, a recession gripped the nation, and it was an economic downturn that began a full decade earlier in the Maritimes.<sup>81</sup> The Great Depression was hard on the Mi’kmaq. In a bid to cut costs, the DIA cut relief roles.<sup>82</sup> During the 1930s, hunting and trapping declined due to the scarcity of fur-bearing animals, an environmental factor further affecting the Indigenous relationship to land. Many Indigenous men had enlisted during World War I and returned home to veterans’ benefits. Lackenbauer et al. note that

Veterans’ benefits and support from the Canadian government were put in place but the implementation of the programs on reserves was vastly different than elsewhere in Canada. The *Soldier Settlement Acts* of 1917 and 1919 were key government initiatives that attempted to look after veterans by providing them access to land and low interest rate loans for farming implements/improvements.<sup>83</sup>

In response to the decline of more traditional economic activities, other sources of employment were sought. Indians were employed in wage labour economy and selling of their crafts.<sup>84</sup> World War II created significant development in Canadian industry and finance; “Shipbuilding and war traffic brought prosperity to the Maritimes and British Columbian ports.”<sup>85</sup> In the late 1950s, most of the Indians of New Brunswick were engaged in seasonal employment. In the spring, they cut and planted potatoes in Maine, and later picked berries, peas, and beans. In the fall, potato picking occupied many of them who then returned to their reserves to work in lumbering operations throughout the winter. During the fishing season, they caught lobster, smelt and gaspereau.

## Bureau of Indian Affairs Reliance on Social Science

Big Cove (known as Elsipogtog First Nation since 2003) began economic development within the framework of existing jurisdictions in Canada, federal Indian Affairs, and the provincial economy. Historically, there were 1,800 Mi’kmaq in New Brunswick, as reported by Indian Affairs in 1961. The economic situation in the province was similar to that of previous years; the department observes that

<sup>79</sup> Careless, *Canada: A Story of Challenge*, 353.

<sup>80</sup> *Ibid.*, 354. In essence, we were seeing the birth of the New Brunswick pulp and paper industry. See Bill Parenteau, “The Woods Transformed: The Emergence of the Pulp and Paper Industry in New Brunswick, 1918–1931,” *Acadiensis* 22, no. 1 (1992): 5–43.

<sup>81</sup> Acheson, “The 1840s: Decade of Tribulation.”

<sup>82</sup> Lisa Patterson, *Centralization in Nova Scotia: An Adventure in Canadian Indian Policy*. Canadian Historical Association, Ottawa, 1986.

<sup>83</sup> P.W. Lackenbauer, J. Moses, R.S. Sheffield, and M. Gohier, “A Commemorative History of Aboriginal People in the Canadian Military,” National Defence, 2010, 134.

<sup>84</sup> B.G. McNutt, “Oppression in the Shadows: the Mi’kmaq of Nova Scotia and the Development of Indian Affairs, 1760–1950” (MA thesis, Saint Mary’s University, 2020).

<sup>85</sup> Careless, *Canada: A Story of Challenge*, 353.



“in the eastern part of the province, fishing and lumbering are the principal sources of employment although seasonal employment in Maine continues to make a sizable contribution to their livelihood....The increasing mechanization of the Maine potato industry, [however], had more serious effects on the Indian people.”<sup>86</sup> Big Cove responded with its own economic initiatives, where the chief and council led a movement to increase income from fishing, lumbering and handicrafts. The Bureau of Indian Affairs (BIA) Annual Report for 1962 notes that

Smelt fishing restrictions along the river fronting this reserve have been lifted. Indians have organized a co-operative to fish gaspereaux, and a loan to provide nets was granted by the Branch to 15 fishermen. Timber is non-existent on Big Cove Reserve but a small contract for cutting on leased Crown land, employing 24 Indians for a short period, was arranged by the chief. Production of handicrafts has increased, and one Indian employed seven men during the winter making baskets and lobster trap hoops. A market for 250,000 hoops was available for them.<sup>87</sup>

The department reported on the development of the craft industry in 1962, stating that a “project, involving Indians of the Big Cove Reserve, New Brunswick, is under negotiation with the provincial Department of Industry and Development. These programs are expected to serve as guides in developing handicraft projects elsewhere.”<sup>88</sup> In 1963, Indian Affairs reported crafts training provided by the province, noting that “under a grant loan from the Branch, the New Brunswick Department of Industry and Development has given instruction and supervision in weaving, textile printing, jewelry making and wood turning at the Big Cove Reserve. Designs used are mainly of Indian origin.”<sup>89</sup> Ironically, the government felt it appropriate to provide training to the Mi’kmaq in their own traditional activities. Later accounts indicate that the government enjoyed some economic benefit from the craftsmanship of the Indigenous Peoples, not only in New Brunswick, but across Canada. The 1965 BIA Annual Report provides an update on the development of craft production and the increase in autonomy among craft workers, observing that “The people of the eastern woodlands are naming and getting their prices for porcupine quill, ash and sweetgrass baskets, birchbark miniatures, pottery and weaving....The Micmacs of Big Cove, in New Brunswick, through their Indian artist-designers, are now well-known to national buyers of silk-screened products.”<sup>90</sup> The craft project in Big Cove received federal funding in 1967, as noted in the report: “Craft Industries: During the year, the Indian Affairs Branch assisted with...marketing and promotion programs at Big Cove.”<sup>91</sup>

Various sources of income were identified by a visiting anthropologist, Mohamed Guessous, who reported that Jacob Augustine Sr. stated that his father, Noel Tom Augustine, “lived by trapping,

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<sup>86</sup> Canada, Department of Indian Affairs, Annual Report of the Department of Indian Affairs (Ottawa: The Department of Citizenship and Immigration, 1962).

<sup>87</sup> *Ibid.*, 94.

<sup>88</sup> Canada, Department of Indian Affairs, Annual Report of the Department of Indian Affairs (Ottawa: Department of Citizenship and Immigration, 1963), 39.

<sup>89</sup> Canada, Department of Indian Affairs, Annual Report of the Department of Indian Affairs (Ottawa: Department of Citizenship and Immigration, 1964), 30.

<sup>90</sup> Canada, Department of Indian Affairs, Annual Report of the Department of Indian Affairs (Ottawa: Department of Citizenship and Immigration, 1966), 31.

<sup>91</sup> Canada, Department of Indian Affairs, Annual Report of the Department of Indian Affairs (Ottawa: Department of Northern Affairs and National Resources, 1968), 56.

hunting, cutting wood, farming and cattle-raising.”<sup>92</sup> Hubert Levy was trained as a cabinet-maker and worked briefly in his profession. He earned his living by “cutting pulp-wood, picking potatoes, construction, etc.”<sup>93</sup> Mí’kmaq workers were treated better in the United States, he said; “Here, the white men do not want to give us a job, or they let you wait during many weeks before they tell you a definite yes or no.”<sup>94</sup> Hubert Levy described his desire to travel in pursuit of other work, saying, “Then, I feel some kind of fever, and I know that I’ve got to move to another place and have some good time.”<sup>95</sup> John Augustine, Jacob’s son, was formerly in the military and served briefly as chief. His main source of revenue was from relief and “his main occupation all year around is pulp-wood; he works in a piece of wood which is 12 miles away from the reserve.”<sup>96</sup> Wilfred Simon worked mainly with cutting wood and fishing, “[and] he will work on road construction in the reserve.”<sup>97</sup> His other income included relief and family allowance, and he later worked in Maine. He commented that since people received relief cheques rather than rations, the prices in the Big Cove stores dropped. Willie (William) John Simon indicated that the “Indian constable, and Martin Francis, school janitor, are the only men who have a steady job in Big Cove.”<sup>98</sup> He also worked as a carpenter on the reserve. Willie John said other men did not work on their own homes as “they would not get paid for this [construction] work; they would only have their rations increased.”<sup>99</sup> Their focus of discussion was income. These men had a combined revenue from labour and welfare and suggested that welfare was a very important source of income.

Indigenous hunting and fishing rights continued to be under attack in the decade after the Second World War.<sup>100</sup> William John Simon, my maternal uncle and a special Indian constable with the BIA, had his nets seized in 1951. He argued that he had a treaty right to fish, but Mr. B. Barnes, the district protection officer in the Department of Fisheries and Oceans, wrote that

the matter of fishing rights of Indians has been taken up with our Headquarters and I am advised under date of 28<sup>th</sup> that their rights are the same as those given the white population. Therefore, as regards the Indians on the Reserve, they will have to govern themselves by our Act and Regulations, and any nets found being used illegally by them will be seized by our officers.”<sup>101</sup>

The Indian Affairs Branch indicated to DFO that Simon was fishing for his own personal use; however, Blakey also stated that while “Mr. Simon maintains that Indians are not subject to game laws while on the Reserve...para 2 of Section 70, page 24 of the Indian Agent’s References and Regulations

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<sup>92</sup> Mohamed Guessous, *Field Notes on Big Cove* (Ottawa: Canadian Museum of Civilization, Ethnology Archives, 1960), 23.

<sup>93</sup> *Ibid.*, 24.

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*, 25.

<sup>96</sup> *Ibid.*, 30.

<sup>97</sup> *Ibid.*, 31.

<sup>98</sup> *Ibid.*, 44.

<sup>99</sup> *Ibid.*, 45.

<sup>100</sup> Otherwise, there had been a few Indian rights protests before and during World War II. Jules Sioui, Andy Paull, and others had organized the Committee for the Protection of Indian Rights during the war. After World War I, there had been a significant pan-Canadian Indian rights movement which Duncan Campbell Scott sought to discredit and shut down.

<sup>101</sup> Public Archives Canada, Department of Indian Affairs: RG10, Volume number: 8376, Microfilm reel number: C-15195, File number: 55/3-5-2, File part: 1, 1951.

indicate that Mr. Simon's views are not correct."<sup>102</sup> The branch also encountered issues of Indian hunting rights for the Red Bank Reserve the following year, and the problem of whites trespassing for their hunting and fishing on the Red Bank and Eel Ground Reserves in 1954. The Mí'kmaq assertion of treaty rights was an act of self-determination; however, the federal government rejected these notions through the Departments of Indian Affairs and Fisheries and Oceans.

Simon was again charged in 1957, and when he had his nets seized, he requested that the Indian Affairs Branch assist in an appeal. The court documents outlined his defence, "the sole ground of appeal being that he, as a Micmac Indian, is exempted by virtue of treaty rights from that provision of the Fisheries Act."<sup>103</sup> The judgment, though, stated that Simon could not prove to be an heir to the 1752 Treaty signed by Cope and alleged that "it necessarily follows from the terms of the treaty itself that if any benefits were to accrue, they would accrue only to the heirs or descendants of that band Indians which Cope represented."<sup>104</sup> The judge determined there was no existing legislation in Canada to provide relief through the treaties and dismissed the case.

Big Cove, however, argued against this ruling and the Band Council asserted that it "would like to take the case of Mr. William John Simon, who lost his appeal from conviction under the *Fisheries Act*, to a higher court. In this conviction, they have asked if the Branch would consider bearing the cost of having Mr. Andy Paull brought to handle the case."<sup>105</sup> The Indian Affairs Branch refused to help but wished him luck. The branch would cover costs of a defence for an Indian who committed murder, and in some exceptional cases, cover those for constitutional issues, but in this case, Jones noted "it is not felt that the circumstances are such that the department should assume any of the costs or administrative responsibility of taking the case to a higher court."<sup>106</sup> The court maintained again that there was no ancestor to connect Simon to the treaties and stated that "the appellant made no effort to establish any connection, by descent or otherwise, with the original group of Indians with whom the 1752 treaty was made."<sup>107</sup> The judge determined that Simon could not prove he was descended from a signatory of the 1725 Treaty and dismissed the appeal. The Indian Affairs Branch advised its staff to familiarize itself with the court case and the contents of the treaty used in the argument, saying that "while the value of the treaty is a matter for the court to decide, it is felt that all field officials be familiar with its content."<sup>108</sup>

Income derived from the socioeconomic efforts of the Mí'kmaq were denied due to the inability to provide knowledge of family and kin groups who were descended from treaty signatories. William John Simon is my maternal uncle, and his father Big Johnny Simon, were both harassed in their fishing activities by fisheries wardens and recorded in the Canadian Museum of History by various anthropologists or ethnologists. Through my doctoral research on familial genealogical history, I have learned that it is possible that John Simon's ancestors (Pauls) had migrated from the Cobequid and Shubenacadie areas to Beaumont/Dorchester Reserve in Westmorland County.

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<sup>102</sup> *Ibid.*

<sup>103</sup> *R v Simon* (1958), 124 C.C.C. 110.

<sup>104</sup> *Ibid.*

<sup>105</sup> Public Archives Canada, Department of Indian Affairs: Miramichi Agency, RG10, volume 8376, File 55/1-2-6, 1958.

<sup>106</sup> *Ibid.*

<sup>107</sup> *R v Simon*.

<sup>108</sup> Public Archives Canada, Department of Indian Affairs: Miramichi Agency, RG10, volume 8376, File 55/1-3, Part 1, 1959.

Nets were again seized from Big Cove fishers in 1958. The Indian Affairs Branch purchased the smelt nets and feared for their loss. Superintendent Blakey noted that “I have advised the Chief Inspector, Mr. A.A. Robichaud, in Moncton, that since these [39] nets were, in most cases, provided at government expense, they are not to be destroyed.”<sup>109</sup> The chief of Big Cove stated he would contest the charges. The DFO returned the seized smelt nets in 1960. A.A. Robichaud, District Protection Officer for the region writes, “I have been advised that the Minister of Fisheries has approved the return of the twenty-four smelt gill-nets confiscated for violation of the Smelt Fishing Regulations, which are now at the Fishery Office at Richibucto.”<sup>110</sup> The purchase of the nets was clearly to generate income and counteract unemployment, which involved socioeconomic factors that were rooted in culture as well as connected to the land.

Both levels of government were uncoordinated in their efforts of assisting the Mi'kmaq in Big Cove's development of their fisheries. A small group of fishermen banded together to form a fishery co-op to assist each other in the fisheries. They obtained economic development funds to purchase nets, which were later seized by fisheries officers in an effort to ensure the Mi'kmaq followed fishery regulations.

## Conclusion

After the *Marshall* decisions, Canada's liberal ideas of pluralism seemed to no longer apply under its multiculturalism policies and to favour the dominant culture. The local public opinion at the risk of sounding illiberal or conservative in nature indicated that a native commercial lobster fishery should be exercised in birchbark canoes to be fair to the Maritime fishing industry. This New England/Loyalist ideology focused primarily on individual freedom and equality for themselves did not apply to others despite Canadians exercising their rights and causing harm to others. These attitudes were possibly transferred to causes such as *Idle No More* and *Black Lives Matter*; Canadian individual liberties saw an unwillingness for them to be applied to BIPOC groups, similar to ultra-right sentiments of the U.S. Individual rights of the political community seem to outweigh the collective rights of a cultural community despite constitutional protections for both. Is this another importation of the dominant Loyalist society, or neo-nationalism? If there were mutual respect within the commercial lobster fishery, would federal regulations be required? Kymlicka indicated that cultural communities are vulnerable to the decisions of the non-aboriginal majority around them.<sup>111</sup>

I have personally witnessed Canadian liberties<sup>112</sup> twisted to access Wabanaki resources without consideration of First Nations' Aboriginal and treaty rights despite constitutional protections. I remember Big Cove members gathering at the small bridge on East Main Street (unnamed at the time). The DFO was attempting enforcement of salmon regulations and our fishers watched from the shore as the local media observed. This solidified community support for their right to harvest salmon for food. Prior to the *Marshall* rulings, I also saw Big Cove members protest their being denied logging access on provincial Crown lands, resulting in blockades of Irving woodlands' contractors in the area of the intersection of Bronson Road and Route 116. There were also Wabanaki Nations protesting in

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<sup>109</sup> Public Archives of Canada, 1958.

<sup>110</sup> Public Archives Canada, Department of Indian Affairs: Miramichi Agency, RG10, volume 8376, File 55/1-3, Part 1, 1960.

<sup>111</sup> Will Kymlicka, *Liberalism, Community and Culture* (New York: Oxford University Press, 1989), 240.

<sup>112</sup> Alternatively, it can be argued that liberalism is “doing its job” of resource exploitation, that is, Canadian liberties are viewed as the right to advance property and capital. In this sense, capitalism, liberties, and settler colonialism go hand in hand. Yet such an interpretation runs counter to liberal ideas of pluralism.

Fredericton, commencing at the provincial legislature and convoying across the river and gathering at Saint Mary's First Nation. After this brief provincial crisis, First Nations were then deliberated in the allocation of the provincial annual allowable cut under the provincial management plan. This accommodation of Wabanaki loggers resulted by entering into forestry agreements allowing Crown land access as well as receiving transfer payments from stumpage revenues.

Looking broadly at the situation, British philosophers such as Locke, Hume, and Adam Smith were motivated by the liberal ideals of owning land in North America derived from the Enlightenment and influenced each other. They asserted that an individual who made improvements to the land could claim ownership, and since Indigenous peoples were hunters/gatherers and they moved about their territories based on cyclical harvest seasons, they were possibly perceived as not making land improvements and therefore were not perceived as laying any legal claim to the land. For settlers, Indigenous peoples could only be integrated into the local economy by way of agriculture. The national narrative is that Canada was built by two founding nations, the English and the French, with very little mention of First Nations. One example is Bannerji, who describes the English and French as "two invading European nations... which might have produced two colonial nation states." She also describes First Nations as "absent signifiers within Canadian national politics."<sup>113</sup> As the bedrock of its national definition project, First Nations remained absent, silenced, excluded, and marginalized. Perhaps, the Loyalists imported liberalism along with their Protestantism (Anglicanism/Episcopalianism), where their sovereignty trumped everything. Sovereignty of the individual took precedence over all else, similar to Locke's concept of state authority over the individual. The United Empire Loyalists also imported their ideas of liberty as outlined by Thomas Paine's *The Rights of Man*. Individual freedoms in the political, economic, cultural and geopolitical spheres of their new colony, New Brunswick, broke away from Nova Scotia. Was this a resemblance of Hume's universal toryism?<sup>114</sup>

Wabanaki tribal cosmology differs from Canadian liberal ideology in that it is aligned with Rousseau's state of nature. There were responsibilities connected with the relationships involved in nature's interconnectivity. The communal nature of Indigenous societies resembled the communitarianism of the counter-Enlightenment. Evil, greed, and selfishness were foreign to the Wabanaki ontologies. Within the Peace and Friendship Treaties, the Wabanaki were willing to share lands and resources in order to coexist. In the wake of the *Marshall* decisions, we are now beginning to see this sharing with respect to the fishery.

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<sup>113</sup> Himani Bannerji, *Dark Side of the Nation* (Toronto: Women's Press, 2000), 91.

<sup>114</sup> On the other hand, an argument can be made that the Loyalists brought with them a conservative, elite land ownership model, where one elite male head of the household had authority over family, servants, and enslaved peoples. In this British land ownership model, the "proper and orderly government" was one centred on landed elites. Liberals challenged this model and stressed private property (and instituted an aggressive appropriation of Indigenous territories in the 1830s onward) and pushed back against Loyalist elites and landed elites resulting in the 1837–38 Rebellions. See, for example, Keith D. Smith, *Liberalism, Surveillance, and Resistance: Indigenous Communities in Western Canada, 1877–1927* (Athabasca: Athabasca University Press, 2009); and, Brenna Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (Durham: Duke University Press, 2018).

**Patrick Augustine** is Mikmaw from Elsipogtog First Nation. His doctoral research was on his First Nation's relationship to their traditional lands as a determinant of health. His maternal ancestry—Simon, Levi and Augustine families—are from the Sikniktuk district in southeastern New Brunswick, and his paternal ancestry—Augustine, Thomas, Bernard, and Paul families—are also from Sikniktuk and Epikwitk aq Piktuk districts of Prince Edward Island and the northern shore of Nova Scotia. Patrick's academic research centres on the supplementary texts to treaty negotiations examining the spirit and intent of the Maritime treaties between the Wabanaki and the British Crown.

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