

THE MI'KMAQ AND WUASTUKWIUK TREATIES

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Between 1722 and 1786, Native people of the Atlantic region signed a series of treaties with the British Crown. In recent years, the Mi'kmaq and Wuastukwiuk¹ have argued that the treaties supersede provincial statutes governing their hunting, fishing and trading rights. The resulting litigation has focused on two principal questions. Firstly, who signed the treaties, and therefore, who can claim their protection, and secondly, how are the treaties to be interpreted?

The courts are seeking answers to historical questions for which conclusive proof is lacking, but do not have the time and materials required to properly evaluate historical documents and testimony. The difficulties which this poses are suggested by errors in historical interpretation made in recent judgments in the Atlantic region. In *R. v. McCoy*,² Justice Turnbull of New Brunswick stated that a treaty had been signed "with the Indians ... at Annapolis Royal in 1750."³ While treaties were signed in 1749 and 1752, both at Chebouctou (Halifax), none was concluded in 1750 at Annapolis Royal. Moreover, Justice Turnbull based his decision on a number of questionable historical interpretations, arguing, for example, that there "was never any fighting between the Indians and the French in either New Brunswick or Nova Scotia" and that "mutual respect commenced with Champlain and the Order of Good Cheer."⁴ As evidence shows, there are a number of recorded incidents of hostility between the Mi'kmaq and French during the early 17th century.⁵ Moreover, friction continued to characterize relations between the two people until the Acadian expulsion of 1755.⁶

While a court may not have time to grapple with the sometimes tortuous historical debates surrounding 18th century European-Indian relations, it does need to evaluate the historical documentation which is purported by both the

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¹More commonly referred to as "Maliseet", a Mi'kmaq word meaning "speaks badly." The name that these people give to themselves is "'Wu-as-tuk-wi-uk" or "People of the Wulstukw [Saint John] River."

²(1993), 1 C.N.L.R. 135.

³*Ibid.* at 137.

⁴*Ibid.* at 139.

⁵H.P. Biggar, ed., *The Works of Samuel de Champlain*, vol. 5 (Toronto: The Champlain Society, 1922-26) at 101-102. France, Archives départementale, Archives de la Charenté Maritime (La Rochelle), Serie B, Cours et juridictions, B-5654, Deposition de Nicolas Le Creux, 31 juil. 1635, Ottawa, National Archives of Canada, (NAC), MG 6, transcripts at 14-15.

⁶W.C. Wicken, *Encounters with Tall Sails and Tall Tales: Mi'kmaq Society, 1500-1760* (Ph.D. Dissertation, McGill University, 1994) at c. 4.

treaty claimants and the Crown to validate their particular claims. This article outlines available 18th century documentation and points out some of the difficulties in using these materials to interpret the treaties.

Only by understanding the context in which documents are created is it possible to evaluate opposing interpretations critically. This requires knowing why the document was created, the context in which it was written and the identity of the author. From this it is possible to make some general comments regarding a document's biases, and therefore to evaluate the reliability of the information which it purports to describe. This assists historians in attempting to overcome their greatest difficulty: reconstructing an historical event using documents written by Europeans who are now dead and whose descendants have no memories of these events. What dialogue occurs must be created artificially by constantly questioning one's own assumptions. In doing so, historians must be sensitive to the particular historical context in which they live and question how this influences their perception of the past.⁷

The Sources

Historians and anthropologists have long recognized the difficulties of reconstructing the histories of Native societies.⁸ As Native people did not generally produce written records or, in cases where they did, records have not survived, researchers rely almost exclusively on archaeological data to understand North American people prior to European contact, and on European produced documentation after this contact.

In the Atlantic region there are few archaeological sites which provide a detailed view of either Mi'kmaq or Wuastukwiuk society in the pre-European period.⁹ This is so for several reasons. First, the Mi'kmaq were principally a maritime people who lived much of the year along the shore. With the constant

⁷This discussion of sources is in part based on R. Sweeny, *Internal Dynamics and the International Cycle: Questions of the Transition in Montréal, 1821-1828* (Ph.D. Dissertation, McGill University, 1986) at 1-35.

⁸J. Merrell, *The Indians' New World: Catawbas and Their Neighbours from European Contact through the Era of Removal* (Chapel Hill: University of North Carolina Press, 1989) at ix; B. Trigger, *Children of Aataentsic: A History of the Huron People to 1660* (Montréal: McGill-Queen's Univ. Press, 1976) at 5-26; and *Natives and Newcomers: Canada's 'Heroic Age' Reconsidered* (Kingston: McGill-Queen's Univ. Press, 1985) at 164-172.

⁹For overviews of archaeology in the Atlantic region, see D. Sanger, "An Introduction to the Prehistory of the Passamaquoddy Bay Region" (1986) 16 *American Review of Canadian Studies* at 139-159; and "Maritime Adaptations in the Gulf of Maine" (1988) 16 *Archaeology of Eastern North America* at 81-99; J. Tuck, *Maritime Provinces Pre-history* (Ottawa: National Museums of Canada, 1984).

erosion of the coastline, most of their former villages have been submerged by water.¹⁰ Second, inland sites are not only difficult to find, but also tend to yield little information as residual materials are often destroyed by the highly acidic character of the soil. As a result, archaeologists have not discovered the large settlements that are characteristic of Huron and Houdenasaunee (Iroquois) societies.

Studies of the pre-1760 period, therefore, have relied almost exclusively on European produced records to understand the character of Mi'kmaq and Wuastukwiuk societies both before and after contact. This documentation tends to be sporadic, however. For example, even though Europeans were fishing in the northeast Atlantic and drying their fish along the shoreline from at least the early 16th century, there are, with minor exceptions, no descriptions of either the country or the people encountered.¹¹ In large part, this is because the majority of fishermen were illiterate, and thus they could not record their experiences or impressions. With the beginning of European attempts to establish permanent settlements in the northeast in the early 17th century, this situation changed as the venturers often included an individual who recorded their observations. Such was the case, for instance, with the first French attempts to settle Mi'kma'ki¹² between 1604 and 1607, when both Samuel de Champlain and Marc Lescarbot wrote of their experiences, and again between 1611 and 1613, when the Jesuit father, Pierre Biard, provided extensive descriptions of the French settlement at Port Royal.¹³ From 1613 until the early 1690s, there are few records regarding this region, and those which exist focus on the European traders and farmers and not on the Mi'kmaq or Wuastukwiuk populations.

There are two principal exceptions; Nicolas Denys' lengthy treatise on Acadia, published in 1671, and the Récollet priest Chrestien LeClercq's account of his life

¹⁰See D.R. Grant, "Recent Coastal Submergence of the Maritime Provinces"(1975) 27 Proceedings of the Nova Scotian Institute of Science at 83-102.

¹¹Two of the exceptions are D.B. Quinn, "The Voyage of Etienne Bellenger to the Maritimes in 1583: A New Document" (1962) 63 Canadian Historical Review at 328-343; "The voyage of M. Charles Leigh, and divers others to Cape Briton and the Isle of Ramea" in E. Goldsmid, ed., *The Voyages of the English Nation Before the Year 1600 from Hakluyt's Collection of Voyages, 1598-1600*, vol. 1 (Edinburgh: E & G Goldsmid, 1889) at 62-74.

¹²Mi'kma'ki is the name which the Mi'kmaq people use to describe their territory. This includes what is now southern Newfoundland, Cape Breton Island and mainland Nova Scotia, the Magdalene Islands, the eastern coast of New Brunswick and the Gaspé peninsula.

¹³*Works*, vol. 1, *supra*, note 5; Pierre Biard's relations regarding Mi'kma'ki are contained within the first three volumes of *The Jesuit Relations and Allied Documents*, ed. by R. Thwaites (Cleveland: Burrows Brothers, 1896) [hereinafter JR]; M. Lescarbot, *The History of New France*, trans. W.L. Grant (Toronto: The Champlain Society, 1907-1914).

among the Restigouche Mi'kmaq between 1675 and 1686.¹⁴ Thus, for almost two hundred years of known contact between European and Mi'kmaq people, researchers are almost totally dependent on accounts left by five authors, of whom only Biard and LeClercq wrote extensively of the Mi'kmaq people they encountered.

Comments made by both of these writers, however, should be treated with care.¹⁵ Biard, for instance, did not speak Micmac and ventured beyond the walls of the French settlement at Port Royal only occasionally. Thus most of his comments regarding the Mi'kmaq are likely the result of conversations with French traders and fishermen and not from first-hand experience.¹⁶ Conversely, LeClercq not only spoke the language, but also lived among the Mi'kmaq. Though he occasionally visited villages as far south as the Richibouctou River, his mission was located at Restigouche, and therefore comments regarding seasonal economic cycles cannot be applied directly to those living further southward. Moreover, both missionaries were conversant principally with Mi'kmaq society and knew little about the Wuastukwiuk. While both Lescarbot and Champlain visited a Wuastukwiuk village at the mouth of the Saint John River, neither wrote lengthy descriptions of it nor visited villages further upstream.

Researchers have used comments made by these five writers to suggest that significant alterations occurred in Mi'kmaq society as a result of contact with Europeans. However, the limited character of their interactions with Mi'kmaq communities would suggest these changes cannot be applied automatically to every community.

Beginning in the 1690s, the volume of extant records increases as both the French and New England governments exhibit more interest in the region. In contrast to the earlier period, records from the post-1690 years are composed principally of correspondence between various colonial officials in Acadia, New England, Nova Scotia and Ile Royale¹⁷ and their European superiors whose interest in both the Mi'kmaq and Wuastukwiuk was perfunctory. Unlike Biard and LeClercq, officials were less interested in the souls of Native inhabitants than in their strategic value to imperial and colonial interests. Thus, the lengthy

¹⁴N. Denys, *The Description and Natural History of the Coasts of North America*, ed. by W.F. Ganong (Toronto: The Champlain Society, 1908); C. LeClercq, *New Relations of Gaspesia With the Customs and Religion of the Gaspeian Indians*, ed. by W.F. Ganong (Toronto: The Champlain Society, 1910).

¹⁵For another critical overview of early 17th century documentation see, F. Stewart, "Seasonal Movements of Indians in Acadia as Evidenced by Historical Documents and Vertebrate Faunal Remains from Archaeological Sites" (1989) 38 *Man in the Northeast* at 55-77.

¹⁶The Jesuit priest who accompanied Biard, Enemond Massé, spent one winter among the Mi'kmaq. Thus it is likely that most of Biard's information is based on that provided by Massé.

¹⁷This is the French name given to Cape Breton Island.

descriptions of Mi'kmaq society which had characterized the writings of both Biard and LeClercq are lacking in the correspondence of the post-1690 period and do not re-appear in the records until abbé Gaulin's arrival in Mi'kma'ki in 1704, and the establishment of abbé Maillard's mission of 1735 to 1762.¹⁸

One of the principal inferences which may be drawn from 18th century government correspondence is that officials were exposed to Mi'kmaq or Wuastukwiuk society only rarely. This was particularly true of English officials ensconced at Annapolis Royal after the conquest of 1710, and at Chebouctou after its establishment in 1749.¹⁹ Unlike the French regime in Mi'kma'ki, the English government had not developed economic and social relationships with either the Mi'kmaq or Wuastukwiuk people. Thus, English soldiers and settlers did not move freely through Mi'kmaq territories but generally remained within the immediate environs of their settlements. Because of this, officials were often ill-informed about the people who surrounded them and the events that transpired within their communities, a situation illustrated by the dearth of information regarding the Mi'kmaq and Wuastukwiuk in correspondence between officials first at Annapolis Royal, and later Chebouctou, and the Board of Trade, the ministerial body responsible for English colonies. Even after 1760 and the expansion of English settlement in the region, this situation did not change appreciably.

In contrast are French government and missionary records between 1700 and 1760, which contain the most valuable information regarding the Mi'kmaq and Wuastukwiuk before 1760.²⁰ Though there are multiple series within the French colonial records, the most substantive information is in the Archives des colonies, which contains the principal correspondence of the Ministry of the Marine, the governmental body responsible for overseeing France's colonial empire.²¹ French

¹⁸Both Gaulin and Maillard were French Catholic missionaries who established missions among the Mi'kmaq. For an extensive description of their mission activities and the influence of Catholicism on Mi'kmaq society, see Wicken, *supra*, note 6 at c. 6.

¹⁹The principal colonial correspondence is contained in Colonial Office Series [CO] 217 and 218. These files were reorganized by the Public Record Office in England during the early part of this century. Prior to this, Nova Scotia's archivist, Thomas Akins, had completed an extensive transcription of all records regarding Kmitkinag. These are contained in the RG 1 series, held by the Public Archives of Nova Scotia [PANS]. Thus, the two series are not identical. Other useful documents are contained in War Office 34 and Admiralty 1 and 51.

²⁰Between 1690 and 1700, the centre of French government in this region was Nashwaak, a Wuastukwiuk village located above the present day site of Fredericton on the Saint John River. The principal government correspondence from this period is available in translation in J.C. Webster, ed., *Acadia at the End of the 17th Century* (Saint John: New Brunswick Museum, 1934).

²¹The principal series which contain information regarding the Mi'kmaq and Wuastukwiuk is in: Paris, Archives nationales (AN), Archives des Colonies (AC), Correspondence Générale, Acadie (C11D), Canada (C11A) and Ile Royale (C11B). The Minister's letters to officials in New France are in AC *Lettres envoyées* (B). These records are on deposit at the National Archives of Canada (NAC).

nationals had preceded their English-speaking counterparts in trading with the Mi'kmaq and Wuastukwiuk and in settling Mi'kma'ki. As a result, they were able to develop social and economic linkages with individual families which in turn facilitated the establishment of a political alliance with the French Crown in the post-1690 period.

After the settlement of Louisbourg by a French garrison in 1714,²² this alliance became formalized in an annual meeting between sakamows and elders and French colonial officials, with the Mi'kmaq meeting with the Governor of Ile Royale at Port Toulouse and Ile Saint-Jean, and Wuastukwiuk leaders travelling to Québec to meet with the Governor of New France.²³ It was at these annual conferences that French officials learned first-hand of events transpiring in Mi'kmaq and Wuastukwiuk communities and listened to the opinions and complaints of sakamows and elders.

For the remainder of the year, French officials were almost totally dependent for news of their allies on Roman Catholic missionaries who lived and travelled throughout Mi'kma'ki and the Wulstukw Valley and on Mi'kmaq travellers or Acadian merchants who occasionally brought information to Louisbourg.²⁴ Of these three sources, the most regular and dependable information was conveyed by missionaries through either written correspondence or face to face conversation. The missionaries were a vital part of France's alliance with the Mi'kmaq and Wuastukwiuk, and their letters and reports are scattered throughout the colonial records. This correspondence begins in the late 17th century, when missionaries were once again assigned to live and work in the region, after a hiatus of more than thirty years.²⁵ Jesuit missionaries established a mission at the French fort

²²With the signing of the Treaty of Utrecht between the English and French Crowns in 1713, France ceded its right to Acadia but retained "sovereignty" over Ile Royale. As a result, the garrison which had been stationed at Port-Royal until its conquest by a New England force in 1710 was re-stationed at Louisbourg.

²³Records of these meetings are more substantive for the 1720s than for other years. See for example, AC C11B 5:20-20v, Saint-Ovide au ministre, 24 nov. 1719; AC C11B 5:125-132v, Saint-Ovide au ministre, 5 sept. 1720; AC C11B 5:340-340v, Conseil de la marine, nov. 1721.

²⁴On missionaries, see AC C11B 7:192v, Saint-Ovide au ministre, 10 déc. 1725. This can also be gleaned from the frequent sojourns of the missionaries at Louisbourg during the 1730s and 1740s. See Table 6.5 "Monies Spent on Missionaries Lodgings in Louisbourg" in Wicken, *supra*, note 6, c. 6. That the Governor obtained news regarding events on the mainland from Mi'kmaq visitors to Louisbourg can be gleaned from AC C11B 8:47, Saint-Ovide au ministre, 18 nov. 1726. A fuller discussion of this is in W.C. Wicken, "August 26 1726: A Case Study in Mi'kmaq-New England Relations in the Early 18th Century" (Autumn 1993) XXIII *Acadiensis* at 5-22.

²⁵These missions in Kmitkinag are discussed in Wicken, *supra*, note 6 at c. 6. On what is now New Brunswick, see E. Godin, "Établissement de l'Église catholique au Nouveau-Brunswick" (1981) 48 *Sessions d'études* at 37-56 and generally on Acadia, C. de Nantes, *Pages glorieuses de l'épopée Canadienne: Une mission Capuçine en Acadie*, Montréal, Le Devoir, 1927.

at Nashwaak on the Wulstukw River. Beginning in 1704, abbé Gaulin was assigned to the Mi'kmaq mission in Kmitkinag (mainland Nova Scotia), a position he maintained until 1732, while a Récollet priest lived among the Mi'kmaq inhabiting the eastern coast of New Brunswick.²⁶ In 1735, abbé Maillard began working among the Mi'kmaq and was followed three years later by abbé Le Loutre. Both Maillard and Le Loutre spent much of the next 25 years in Mi'kma'ki. Collectively, their correspondence and writings constitute a unique insight into Mi'kmaq society during the 1740s and 1750s.²⁷

Some of the most important records made by missionaries were the periodic censuses they compiled of Mi'kmaq and Wuastukwiuk villages. These censuses provide valuable information regarding population, family size and composition as well as territorial occupation. The earliest census was completed in 1687-88 by the French official, M. de Gargas, but only included Mi'kmaq people living adjacent to Acadian or métis communities.²⁸ A more complete census was done between 1706 and 1708 by abbé Gaulin and encompassed Unimaki²⁹, Kmitkinag as well the Wuastukwiuk village Aukpaque, situated on the Wulstukw above present-day Fredericton.³⁰ This is the only comprehensive nominal census of either population until that done by the Federal government in 1871.³¹ Gaulin

²⁶Virtually none of the Jesuit correspondence regarding their mission on the Wulstukw appears to have survived. Some mention of the Wuastukwiuk is contained in "Memorial of Father Loyard: Upon the present condition of the Abnaquis" in *JR, supra*, note 13 at 121-125. Correspondence of abbé Thury is in: Québec, Archives de l'archidiocèse de Québec, Serie 312 CN, Nouvelle Ecosse 1, [1698]; and the principal memorial by abbé Gaulin is in Archives nationales (Paris), Monuments historiques, carton 1232, pièce 4, Gaulin à d'Aguesseau, [1720], NAC MG 3, Series K. Other correspondence by Gaulin can be found in AC C11B 4:131-137, Gaulin au ministre, 17 nov. 1719; and AC C11B 3:56-59v, Conseil de la marine, 3 mai 1718. The Récollet priests figure in the correspondence of the governor of Ile Royale, but no letters from him have been found.

²⁷Maillard's principal writings have been published as A.S. Maillard, *An Account of the Customs and Manners of the Micmaks and Maricheets: Savage nations now dependant on the government of Cape Breton* (London: S. Hooper and A. Morley, 1758); "Lettre du M. l'abbé Maillard" ed. by H. Casgrain in *Les Soirées Canadiennes*, (1863) at 291-426; "Une autobiographie de l'abbé Le Loutre (1709-1772)" ed. by A. David in (1931) 6 *Nova Francia* at 1-34; and "Lettres de M. L'abbé le Loutre" *Documents Inédits du Canada-Français*, 1 (Québec: 1888), 19-39.

²⁸M. de Gargas, "General Census of the Country of Acadie, 1687-88" in W.B. Morse, ed., *Acadiensia Nova*, vol. 1 (London: B. Quaritch Ltd., 1935) at 144-155.

²⁹This is the Micmac name for the territory which encompasses Cape Breton, the Magdalene Islands and southern Newfoundland. The census appears to have only included Mi'kmaq living on Cape Breton.

³⁰"Recensement general fait au mois de Novembre mille Sept cent huit ...", Chicago, Newberry Library, Ayers Collection, [hereinafter 1708 census].

³¹Material from this census is discussed in W.C. Wicken and J.G. Reid, "An Overview of the Eighteenth Century Treaties Signed between the Mi'kmaq and Wuastukwiuk Peoples and the English Crown, 1725-1928" report submitted to the Royal Commission on Aboriginal Peoples, October 1993 at 169-176.

undertook another census of Unimaki and Kmitkinag in 1721 in which he gave a rough estimate of each village, dividing the population according to sex and age and listing the number of household heads and widows.³² Another census, made in 1735, included all Mi'kmaq villages except those located in southern Ktaqamkuk, but in this case only the number of fighting men was given.³³ Missionaries also kept registers regarding births, marriages and deaths within the Mi'kmaq and Wuastukwiuk communities. Copies of the registers have not survived. A small number of individuals do appear, however, in registers kept by priests assigned to the Acadian parishes.³⁴

The third major group of documents regarding the Mi'kmaq and Wuastukwiuk is contained in the records of Massachusetts.³⁵ From at least the early 1670s, New England fishermen had been frequenting fishing banks to the east of Kmitkinag.³⁶ This, coupled with the strategic importance of Mi'kma'ki to Massachusetts' security, enhanced that colony's economic and political interest in the region. Most of the extant records focus on the period between 1690 and 1726 and are concerned principally with altercations between fishermen and the Mi'kmaq or with the government's attempts to protect the colony's fishing fleet. As in the case of both English and French records, Massachusetts records are primarily focused on the Mi'kmaq and deal only peripherally with Wuastukwiuk people. Valuable information can also be found in the various newspapers published in Boston beginning in 1704. This information comes principally in the form of private letters written by English military officers stationed at Annapolis Royal and Canceau (Canso) and fishing merchants.³⁷

³²AC C11B 6:77.

³³1735: AC G1 466, doc. 71. There is also an undated census of the Mi'kmaq of Ile Royale and Antigoniche which likely dates from the 1730s or 1740s. There is a nominal list of the male family heads and the number of men, women and children in each family. See AC G1 466 doc. 72.

³⁴Archêveché de Québec, Copie des Registres de l'État Civil de different endroits de l'Acadie ... 1680 à 1757, NAC MG 9: B8, vol. 1; PANS, RG 1: 26, Register of Baptisms, Marriages and Burials at Annapolis Royal, 1702-1728 and 1722-1755; AC G1, 411, Registres, Ile Saint-Jean; AD, l'ille-et-Vilaine (Rennes), Registres de baptêmes, mariage et sépultres de Saint-Pierre-du-Nord, 1725-1758, NAC MG 6:A4.

³⁵These records are housed in the Boston, Massachusetts State Archives and are contained in volumes 1 to 126. Valuable information is also buried in the Suffolk County Court Records.

³⁶D. Vickers, *Maritime Labour in Colonial Massachusetts: A Case Study of the Essex Cod Fishery and the Whaling Industry of Nantucket, 1630-1775* (Ph.D. Dissertation) at 195-196.

³⁷*Boston Gazette*, 1719-1776; *Boston Newsletter*, 1704-1776; *New England Courant*, 1721-1726; *New England Weekly Journal*, 1727-1732. On the Boston newspapers, see also I.K. Steele, *The English Atlantic 1675-1740: An Exploration of Communication and Community* (New York: Oxford University Press, 1986) at 132-167.

The Treaties

Collectively, these records provide the basis for our understanding of Mi'kmaq and Wuastukwiuk society during the treaty-making period. As is evident, the records are fragmentary, with long silences between mentions of either people. Consequently, it is difficult to reconstruct the precise contours of either society during the 17th and 18th centuries. We do not know, for instance, such basic information as population sizes before and after contact.³⁸ Indeed, one of the most important aspects of the records is that they show many, if not all, Mi'kmaq and Wuastukwiuk people lived far removed from the sight and the pen of European officials. Because of the fragmentary character of this material, it is necessary to consult records produced after 1760. These sources, principally contained in British and Nova Scotian archival series, provide valuable insights into traditional fishing and hunting sites which, in some cases, had been abandoned temporarily in consequence of an expanding imperial rivalry between England and France in the Atlantic region between 1744 and 1760.

Interpretation is complicated further by the fact that the documentary evidence is not readily available. Because of the particular historical circumstances in which Mi'kmaq and Wuastukwiuk lands were invaded by European people, source materials tend to be scattered in archival series housed in Canada, England, France, Massachusetts, New Brunswick, Nova Scotia and Québec. Piecing together this information is a painstaking and time consuming process. Because of the vast quantity of historical documentation that must be read and analyzed, there may be a tendency, particularly in courtroom situations, to make general conclusions without first sifting through the available evidence. In the Atlantic region this point is particularly important since little new research on the Mi'kmaq and Wuastukwiuk has been published since the late 1970s, forcing an undue reliance on older academic interpretations.

The treaties signed between the British Crown and Mi'kmaq and Wuastukwiuk people illustrate these interpretative difficulties. There are, with one exception, no records of treaty negotiations. Generally, Europeans were not privy to discussions among sakamows and elders, and thus would not have known of community debates which preceded and followed a treaty signing. For example, the Governor of Ile Royale, Saint-Ovide, wrote in November 1728 that during the previous year the Mi'kmaq had held great meetings at Antigoniche, but he had

³⁸Estimates regarding the Mi'kmaq population vary considerably. See V. Miller, "Aboriginal Micmac Population: A Review of the Evidence" (1976) 23 *Ethnohistory* at 117-129; "The Decline of Nova Scotia Micmac Population" (1982) II:3 *Culture* at 107-120 for one viewpoint, and criticism of her work in R. Pastore, "Native History in the Atlantic Region during the Colonial Period" (Autumn 1990) XX *Acadiensis* at 200-213; D.R. Snow, *The Archaeology of New England* (New York: Academic Press, 1980) at 36.

been unable to obtain much information regarding what had been said in council.³⁹ Because of this lack of interaction between the Mi'kmaq and European colonial officials, we do not know what Mi'kmaq and Wuastukwiuk delegates were told by English officials about the treaty. This in turn forces reliance on European documentation and European interpretations to understand the treaty's meaning. Indeed, researchers have tended to accept that the English versions of treaties reflect how the Mi'kmaq and Wuastukwiuk understood them.⁴⁰ As research on late 19th century treaties signed between Western Native people and the Canadian government has shown, however, there could be a significant difference between the written English document and how Native negotiators understood it.⁴¹ The 1725/26, 1749, 1752 and 1760/61 treaties are cases in point.

According to these treaties, the Mi'kmaq and Wuastukwiuk recognized the English Crown's "jurisdiction and Dominion Over the Territories of the said Province of Nova Scotia or Acadia." Subsequent articles implicitly made both people subjects of the English Crown. Given the lack of English military influence throughout the region before the Loyalist immigration of the early 1780s, such recognition appears unlikely. Indeed, from soon after the English conquest of Port-Royal (Annapolis Royal) through to the mid-1750s, a number of sakamows expressed that neither England nor other European powers held claim to Mi'kmaq land.⁴²

How are we to explain this apparent contradiction? One possible explanation is that during the negotiations, the precise content of the treaty was communicated incorrectly to Mi'kmaq and Wuastukwiuk delegates. This is suggested by representations made both by Loron, the speaker for the Penobscot people, and by French speaking delegates who attended the ratification of the 1725 Boston

³⁹AC C11B 10:67-67v, Saint-Ovide au ministre, 3 nov. 1728.

⁴⁰W. Daugherty, *The Maritime Treaties in Historical Perspective* (Ottawa: Department of Indian Affairs, 1983) at 29; O.P. Dickason, "Amerindians between French and English in Nova Scotia, 1713-1763" (1986) 10 *American Indian Culture and Research Journal* at 39-40; O.P. Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times* (Toronto: McLelland & Stewart, 1992); L.F.S. Upton, *Micmacs and Colonists: Indian-White Relations in the Maritimes, 1713-1867* (Vancouver: University of British Columbia Press, 1979) at 44.

⁴¹R. Price, ed., *The Spirit of the Alberta Indian Treaties* (Montréal: Institute for Research on Public Policy, 1979).

⁴²NAC MG 18, F29, "Discours curieux des sauvages du Canada par M. de Saint-Ovide gouverneur d'île royale au sujet des mouvements du gouverneur Anglois de l'Acadie avec les reponses que les sauvages y ont faites" [1720-1722]; A. MacMechan, ed., *Original Minutes of His Majesty's Council at Annapolis Royal, 1720-1739* (Halifax, 1908) at 39.

treaty by Abenaki people at Casco Bay in July 1726.⁴³ In a letter addressed to the Lieutenant-Governor of Massachusetts, Loron stated that

Having hear'd the Acts read which you have given me I have found the Articles entirely differing from what we have said in presence of one another, 'tis therefore to disown them that I write this letter unto you.⁴⁴

Loron took exception to several of the treaty's articles. Though all of his objections were not included in the letter written to Dummer, Loron was particularly upset by those articles which purported that he and his people had acknowledged King George to be their King and had "declar'd themselves subjects to the Crown of England." According to Loron's memory of those negotiations,

when you have ask'd me if I acknowledg'd Him for King I answer'd yes butt att the same time have made you take notice that I did not understand to acknowledge Him for my king butt only that I own'd that He was king his kingdom as the King of France is king in His.⁴⁵

Similarly, French-speakers present at the ratification at Casco Bay wrote that articles read to the Indians of Panaouamské had not included references to the fact that they came to submit themselves to the English King, that they accepted responsibility for beginning hostilities with the English, and that they would agree to live according to English law. Rather, the oral translation of these articles had emphasized that the Panaouamské had "come to salute the English Governor to make peace with him and to renew the ancient friendship which had been between them before."⁴⁶

Mistranslation of treaty articles might have occurred for several reasons. As Algonquian based languages, Micmac and Wuastukwiuk were fundamentally different from both English and French. Consequently, many of the words and ideas contained in the treaties could not be translated easily. In translating the treaties, interpreters, some of whom were likely ill-equipped to deal with the subtle nuances of the language, may have misinterpreted those articles of the 1725 treaty in which the Mi'kmaq and Wuastukwiuk recognized King George as their king and accepted his jurisdiction over their lands.

⁴³The Boston treaty of 1725 was negotiated by Penobscot delegates who did so on behalf of other Abenaki people as well as the Wuastukwiuk and Mi'kmaq. The treaty was ratified by Abenaki *sakamows* and elders at Casco Bay in July of 1726 and by Mi'kmaq and Wuastukwiuk leaders at Annapolis Royal in early June 1726.

⁴⁴Letter from Loron Sagourrat to Dummer, (n.d.) in *Documentary History of the State of Maine*, vol. 23 (Portland, 1916) at 208.

⁴⁵*Ibid.* at 209.

⁴⁶"Traité de paix entre les anglois et les abenakis", 1727, dans H.R. Casgrain, éd., *Collection de manuscrits contenant Lettres, Mémoires et autres documents historiques relatifs à la Nouvelle-France, recueillis aux Archives de la Province de Québec ou copiés à l'étranger*, vol. III, Québec, 1884, aux pp. 134-135.

Translation difficulties were exacerbated by a general English distrust of Native people. To English officials, the Mi'kmaq were barbarous and culturally inferior. Native people were, as one New England minister wrote in 1724, a people 'living in a state of Nature' who did not possess the two essential components of every civilized nation, agriculture and a system of government.⁴⁷ They were unpredictable, unreliable, and therefore not to be trusted. Exemplifying this attitude are remarks made in August 1725 by Hibbert Newton, a member of Nova Scotia's Executive Council, and Captain John Bradstreet in conversation with the Governor of Ile Royale, Joseph de Saint-Ovide. In a frank exchange of views, Newton and Bradstreet said,

we valued the Indians so very little and knew how little their word was to be depended on that we took no notice of them, nor never shall, till they come in with a method whereby we may be very well assured by hostages and other good pledges at their good behaviour ...⁴⁸

Similarly, in October 1749, the governor of Nova Scotia, Edward Cornwallis wrote to the Board of Trade that treaties with Indians meant nothing, and nothing "but force will prevail."⁴⁹

To understand the treaties, we must first evaluate the sources available to interpret them. The usefulness of these sources is limited, as the documents were written by Europeans, and their depictions of Mi'kmaq and Wuastukwiuk society were sporadic and sometimes incorrect. This was particularly true of English documentation before 1760. We should be sceptical, for instance, of letters written by English colonial officials which purport to describe events occurring in Mi'kmaq society when little official contact occurred between the two societies. More useful are French records, as there were extensive cultural, social, economic and political interactions between Mi'kmaq and French-speaking communities in the 17th and 18th centuries. Indeed, it appears there were discrepancies between the English copy of a treaty and the oral understanding of Mi'kmaq and Wuastukwiuk negotiators.

This complicates a court's task as it suggests that a literal interpretation of the treaties is not always valid. What we need to do, therefore, is move beyond the treaties' literal meaning and describe the context in which they were signed. In

⁴⁷Rev. J. Bulkley, "An Inquiry into the Right of the Aboriginal Natives to the Lands in America and the Titles Derived from them" in *Collections of the Massachusetts Historical Society for the Year 1795*, First Series, vol. 4 (New York, 1968) at 159-181. Though not written by an English colonial official, the essay nevertheless does suggest the current of thought among the educated classes regarding Native people.

⁴⁸Boston, Massachusetts Historical Society, Gay Papers, F.L. Gay Collection, Nova Scotia Papers, vol. IV, "The proceeding of Hibbert Newton Esq. and Capt. John Bradstreet with Mr. Saint-Ovide" Aug. 1725.

⁴⁹PRO, CO 217 9:110, Cornwallis to Board of Trade, 17 Oct. 1749.

doing so, we may be able to visualize the world not only from the European view point, but also from the perspective of Mi'kmaq and Wuastukwiuk people. This can only be done, however, by first recognizing the limitations of the sources traditionally used to interpret the treaties.