

# Living as Treaty People Lessons from Mi'kma'ki and Beyond

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Volume 43, Number 1, Winter/Spring 2014

URI: [https://id.erudit.org/iderudit/acad43\\_1re01](https://id.erudit.org/iderudit/acad43_1re01)

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Publisher(s)

The Department of History at the University of New Brunswick

ISSN

0044-5851 (print)

1712-7432 (digital)

[Explore this journal](#)

Cite this note

Kelm, M.-E. (2014). Living as Treaty People: Lessons from Mi'kma'ki and Beyond. *Acadiensis*, 43(1), 185–194.

Living as Treaty People:  
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IDLE NO MORE CALLED UPON NON-FIRST NATIONS CANADIANS to see themselves as also treaty people, bound to our Indigenous neighbours through historic, sacred, living agreements. Most Canadians, no doubt, found this demand baffling and for this they may be forgiven since Canada's treaty relations with First Nations have received scant official attention of late. The Government of Canada's "Canadian History" webpage does not include a link to the treaties, and the Canada History Fund (announced in June 2013) is silent on support for research into the relevance of the treaties. And yet the treaties and their interpretation continue to affect the lives of Indigenous people in specific and profound ways, bringing them to the courts to defend fishing and hunting rights they thought were guaranteed by treaty. Canadian scholars in the academy and the judiciary struggle to interpret the treaties from within their own disciplinary perspectives: what documents adequately reflect the on-the-ground negotiations and how to place such documents in relation to First Nations oral traditions? What is needed, however, is an altered historical consciousness – for all Canadians – that understands the treaties as relational – as intellectual meeting points between two (or more) ontologies. This requires imagination and empathy, and the six books under review here offer much of both: Trudy Sable and Bernie Francis, *The Language of this Land, Mi'kma'ki* (Sydney: CBU Press, 2012); William Wicken, *The Colonization of Mi'kmaw Memory and History, 1794-1928: The King vs. Gabriel Sylliboy* (Toronto: University of Toronto Press, 2012); Arthur Ray, *Telling it to the Judge: Taking Narrative History to Court* (Montreal and Kingston: McGill-Queen's University Press, 2011); Bruce Miller, *Oral History on Trial: Recognizing Aboriginal Narratives in the Courts* (Vancouver: UBC Press, 2011); Paula Madden, *African Nova Scotian-Mi'kmaw Relations* (Fernwood: Winnipeg and Black Point, NS, 2009); and Martha Walls, *No Need of a Chief for this Band: The Maritime Mi'kmaq and the Federal Electoral Legislation, 1899-1951* (Vancouver: UBC Press, 2010). Exploring questions of language, identity, and leadership, in addition to studying interpretations of treaties in communities and the courts, these books offer new ways to imagine what it might mean for all Canadians to know themselves as treaty people and indicate the limits colonial thought, policy, and practice place on that imagining.

History plays a key role in this process, and these authors argue, in a variety of ways, that expanded historical consciousness is needed for all Canadians to live the promise of being treaty people. A critical intervention in this regard is Sable and Francis's *The Language of this Land, Mi'kma'ki*, for it demonstrates the ever-present, ever-changing embeddedness of history, knowledge, and language in the landscape of Mi'kma'ki. William Wicken traces the formation of historical consciousness around treaties over the course of the 19th and early 20th centuries in the Maritimes, and his is a nuanced and thought-provoking book. Bruce Miller,

Arthur Ray, and Paula Madden tell cautionary tales demonstrating how the courts and human rights tribunals solidify oppositional epistemologies, rehearsing, as Madden describes, spectacles of racial reification (81). We could, as Madden seems to do, dismiss these institutions of state power as contradictory yet effective tools of colonization. Yet Martha Walls makes clear how within these contradictions there are spaces wherein Indigenous leaders can and have advanced the interests of their people. Moreover, as Ray reminds us, it is judges, as arbiters of state power, who “write the ethnographies that matter most to Aboriginal people” (158), and so it behooves us, as Canadians, to engage with governmental authority. But how best can we do that? Miller and Ray suggest potential advances involving the court system. Walls’s scholarship is precisely the kind — critical, challenging, surprising — that Ray has worked to introduce to the judiciary but, as both he and Miller contend, a real shift in historical consciousness at the level of the courts has yet to be achieved. It is tempting to conclude, as some scholars have done, that the ontological differences between settlers and Indigenous people are simply too great to traverse. But the authors here all argue, to some extent or another, against incommensurability. As they do, they offer modest blueprints for living up to the extravagant promises of the treaties — to share land and resources, to live peacefully, to recognize multiple sovereignties — all necessary, and possible, if we are determined to live as treaty people.

If we are to live as treaty people, then we must understand the complexities of Indigenous ontologies. Sable and Francis offer us glimpses into Mi’kmaw worlds where knowledge, morality, identity, and history are literally carved into the landscape, heard in song, and embodied through dance. Reminiscent of Keith Basso’s *Wisdom Sits in Places: Landscape and Language among the Western Apache*,<sup>1</sup> Sable and Francis help their readers understand how “what we perceive as a literal landscape becomes a mirror of Mi’kmaw psyche, embedded in their culture and inseparable from their being” (25). Mi’kmaw language articulates deeper understandings of relationality across time, between people, between animate and inanimate objects, between all these and a sentient landscape. Mi’kmaw language captures the fluidity, the processual qualities of life in Mi’kma’ki. Though the language itself is under threat, Sable and Francis demonstrate amply that it is an adaptive mechanism by which introduced, non-Indigenous goods, people, and concepts may be drawn into Mi’kmaw ontologies within particular communities in surprising and variable ways; the word for “town bus,” for instance, is animate in one community and inanimate in another. Through the language, the landscape conveys meaning — mythic and moral — and stories, songs, and dances articulate historic, geographic, and environmental truths. Richly illustrated with maps and photographs, *The Language of this Land, Mi’kma’ki* demonstrates the multisensorial qualities and impressive richness of Mi’kmaw ontologies. With its simultaneous engagement with deep historic and contemporary time, Sable and Francis’s book provides the bedrock upon which readers can build new interpretations of the past that include rather than elide Indigenous knowledge systems.

1 See Keith Basso, *Wisdom Sits in Places: Landscape and Language among the Western Apache* (Albuquerque, NM: University of New Mexico Press, 1996).

William Wicken's award-winning *The Colonization of Mi'kmaw Memory and History, 1794-1928* extends the quest for an expanded historical consciousness.<sup>2</sup> For Wicken, who focuses his discussion on the case of *The King v. Gabriel Sylliboy* (the grand chief of the Mi'kmaq), the goal is to understand how Mi'kmaw ideas about the contemporary role of treaties changed over time and why. The Sylliboy case, like many others, was brought to establish the limits of non-Indigenous governance over Mi'kmaw rights and, in this particular case, over the right to hunt out off-season and off-reserve. The guiding question of the case was what rights did the 18th century treaties with Britain give the Mi'kmaq? But this was not always the question that Mi'kmaq asked of the treaties. Through meticulous archival and documentary research, Wicken reconstructs the contexts in which Mi'kmaw people came to know and apply the 18th century treaties made with the British Crown. Where once Mi'kmaw people reminded Britain of these treaties in order to protest incursions upon Mi'kmaw sovereignty, a sovereignty guaranteed when the Mi'kmaq agreed to deal peacefully with the British in 1752, by the later 19th century Mi'kmaw treaty discourses shifted towards rights-based interpretations. Mi'kmaw beliefs about the treaties were not static but contextual, shaped by contemporary relations of advancing segmentation between Mi'kmaw people and local settlers. Consulting an array of imperfect sources – for example, court testimony, census, and schooling records – and interpreting them cautiously but creatively, Wicken argues that Mi'kmaw people were increasingly isolated in a modernizing Nova Scotia. Their precarious hold on economic viability gradually slipped away in the face of settler overhunting and forestry practices that damaged or reduced Mi'kmaw access to the fishery and also as factories displaced small-scale Mi'kmaw craft production. The Mi'kmaq did not enjoy the health and educational benefits of modernization; indeed, they were repeatedly excluded from the hallmarks of modernity such as wage labour, proximity to cities, schooling, and health care. A “moditional economy” (to use John Lutz's phrase) that required geographic mobility to access an array of seasonal resources or labour opportunities was gradually closed off to them.<sup>3</sup> Confined to reserve lands, Mi'kmaw political consciousness as Indigenous people grew and the Grand Council of the Mi'kmaq became a formidable political entity. In the process, as the treaty spoke to contemporary circumstances for Mi'kmaw people, their focus shifted from sovereignty to rights. Whereas previous generations had identified the 18th century treaties as a source of title to the land that was violated when Mi'kmaq were forced to live on reserves, Sylliboy's generation viewed the treaty as a source of rights to natural resources (fish, furs, game) located off-reserve. Hence the forces of modern colonization in Nova Scotia emphasized racial difference, constructed, and constrained Mi'kmaw articulation with the larger Nova Scotian society, and shaped Mi'kmaw historical consciousness of the 18th century treaties.

2 Wicken's book received the 2012 Canadian Historical Association Clio Prize (Atlantic Region) and the Sir John A. Macdonald Prize, the latter of which is “awarded to the non-fiction work of Canadian history judged to have made the most significant contribution to an understanding of the Canadian past.”

3 John Lutz, *Makuk: A New History of Aboriginal-White Relations* (Vancouver: UBC Press, 2008), 23-4.

Wicken goes to great lengths to try to understand the motivations of the principals of the case: Sylliboy, who provoked it; Alex Gillis, the farmer who made the initial complaint; Otto Schierbeck, Nova Scotia's chief forester who laid the charge; and the bureaucrats at the Department of Indian Affairs, who allowed the appeal of the lower court conviction. Wicken does so with only scant documentation of how these individuals explained their own actions to themselves or others. That he can build a convincing interpretation is a testament to his prodigious skills as a researcher, and his detailed discussion of sources and methods also makes this text a useful teaching tool. *The Colonization of Mi'kmaw Memory and History* is about the production of historical consciousness in a time of contracting opportunities and expanding political awareness. While set at the turn of the last century, this book resonates with the on-going struggle for treaty rights in Canada today.

Arthur Ray's *Telling it to the Judge: Taking Narrative History to Court* discusses his attempts to shift the historical consciousness of the judiciary by introducing it to archival research and sophisticated interpretation. Working over the past 30 years as a historical geographer, Ray has been involved in some of the most significant court cases involving Indigenous rights and title including *Delgamuukw* (1997), the monumental land claims case involving the Gitksan and Wet'suet'en that resulted in the determination that Indigenous oral narratives should be considered by the courts; *Samson* (2005), which demanded an interpretation of the meaning and intent of Treaty 6; and *Powley* (2003), which defined the Métis as a people and as a community and set out their particular communal rights. In *Telling it to the Judge*, Ray recounts his work as an expert witness in these and other cases. He describes this work as a kind of teaching, where the courtroom is a classroom and the judge its only student. Ray even goes so far as to prepare (and share) power point presentations used to illustrate his "lectures."

Repeatedly Ray demonstrates the utility of finely grained historical research to shed light on early historical leadership, Indigenous expectations of treaties, the role of various natural resources in Indigenous economies historically, and the definitions of kinship and community that constitute being Métis. During *Delgamuukw*, for instance, Ray used an early fur trader's journal/ethnography to demonstrate the clear delineation and consistency of clan leadership and the role that these leaders played in resource management and stewardship. Some of this journal is reprinted in *Telling it to the Judge*, another helpful pedagogical intervention. During *Samson*, Ray argued that the Cree's long-standing relationship with the Hudson's Bay Company gave them the impression that the Crown wanted to share resources and was not, therefore, demanding the absolute surrender of their land and resources. And in *Horseman* (1990) and *Wassaykessic* (1992), he uncovered the place of big game hunting and fishing in Indigenous economies and how commodity trading folded seamlessly into subsistence; in so doing, he challenged the power of federal and provincial fishing and game laws over Indigenous hunting and fishing. In *Powley*, he used fur-trading post journals to demonstrate the existence of a distinct Métis community before the British established sovereignty over the Upper Great Lakes. Through all of this Ray became a seasoned expert witness, learning how to buy time for thought during rigorous cross-examination, how to push judges' amateur interest in history towards more sophisticated interpretations, and how to overcome the odd spatial dynamics of a courtroom wherein expert witnesses have trouble physically facing the judge. In

this book Ray also explains how the production of evidence shapes historical consciousness. Since the Crown tends to rely on established historical interpretations, Indigenous people must find evidence to counter these claims – often through producing oral narratives or through commissioning new archival research. Despite the Supreme Court’s determination in *Delgamuukw*, Ray shows that subsequent judicial decisions continue to call into question the veracity and admissibility of oral narratives. Meanwhile the armies of Crown and Indigenous litigants’ historical researchers produce volumes upon volumes of documents, often segmented from their archival contexts and thereby “sandbagging” legal teams and judges. In Ray’s experience, Crown lawyers often dismiss the archival research commissioned by Indigenous litigants as tendentious. While historians embrace, as Wicken has done, the notion that present concerns shape how we understand the past, judicial historical consciousness seeks out “facts” that are decontextualized without changing over time. And while academic historians resist closure, judges pursue it. Or, as Ray writes: “[Academic] scholarship has helped to keep the Aboriginal past alive . . . and connected to its present interests . . . Courts, on the other hand, use history to bury the past rather than to continually revisit it” (152). Judicial historical consciousness remains resistive to academic history but, as Ray’s career demonstrates, the success of *Powley* and *Delgamuukw* indicates change, albeit at a glacial pace.

Bruce Miller, in *Oral History on Trial: Recognizing Aboriginal Narratives in the Courts*, wants to move the judiciary towards understanding Indigenous historical consciousness as it considers oral narratives. Minimally, Miller hopes to broaden the argument about the inclusion of oral narratives from narrow evidentiary questions. Researchers and communities have increasingly turned to oral histories to provide new information and perspectives not obtainable from the documentary record. Massive quantities of oral narratives are being produced and reviewed, skeletonized into snippets of evidence that fit the judicial criteria for admission. But Indigenous processes of producing and understanding oral narratives are grounded in distinct modes of historical (and legal) consciousness. For oral historians – defined by Miller exclusively as Indigenous people trained in oral narrative – the process of learning Indigenous histories may take years and their interpretation is always subject to revision. Elders test their expertise in the feast hall. Miller argues that the very way that oral histories are processed by the legal system violates the relationships in which they are produced and obfuscates and distorts their meaning. Miller argues that oral narratives must be understood in context, as systems of knowledge that cannot be reduced to enduring and unchanging “facts.” Moreover, the Crown’s contention that oral historians are tainted by their engagement with anthropological work, as well as previously published ethnographies and histories, misunderstands the role of the oral historian in knowledge translation (68-72). As Sto:lo oral historian Sonny McHalsie maintains, when he reads ethnographers like Wilson Duff or Charles Hill-Tout he is actually listening for the voices of his ancestors by doing what academic historians might call “reading against the grain” – reading for embedded Indigenous epistemologies through anthropological filters. Documents and recordings, hence, are animated, revealing knowledge in collaboration with readers and listeners (94-101).

Miller aspires to see oral narratives treated sensitively and taken seriously as knowledge that should help Indigenous people support their claims to rights and title



to land and resources. But the Crown resists and, in *Samson*, it rejected interpretations based on oral narratives entirely. Miller inserts himself in the debate by systematically demolishing the work of Crown expert Alexander von Gernet, questioning his training and critiquing his every argument. He similarly contests the ways in which Andrew Wiget and his Zuni collaborators theorized history and used oral narratives in *Zuni Tribe of New Mexico v. the United States* (2008), particularly Wiget's conclusion that, as Miller puts it, "the Zuni . . . cannot be trusted to produce sophisticated, multi-causal explanations because . . . they interpret events from their own vantage point."<sup>4</sup> And a significant portion of one chapter is devoted to a sustained argument against Ronald Mason's view that Indigenous oral histories cannot inform archaeological interpretations because the two methodologies are grounded in incompatible and incommensurate historical ontologies. In particular, Miller contends that Indigenous oral historians are trained and tested rigorously within their communities and that their testimonies, though complex, are worth the effort required of a legal system (or academically trained archaeologists and historians) to understand them fully.<sup>5</sup>

Miller is much gentler when he argues against those Indigenous scholars who contend that Indigenous historical epistemologies are incommensurate to Western academic knowledge systems. Among them, anthropologist Val Napoleon maintains that oral narratives are themselves a system of law and hence cannot be judged by another, foreign legal system as MacEachern did of the *adaawk* of the Gitksan and Wet'suet'en in the *Delgamuukw* case.<sup>6</sup> Miller draws on Cynthia Callison and John Borrows to give voice to concerns about the violence done by the Canadian legal system to Indigenous narratives through appropriation and to elders and oral historians through aggressive cross-examination.<sup>7</sup> But Miller counters that the problem is not that Indigenous oral histories and the judiciary are mismatched as partners in knowledge production but rather that Indigenous oral historians, grounded in their own historical consciousness, have not been recognized as experts in and of themselves. Once they are accorded the status of expert witnesses, the courts will be bringing Indigenous and settler historical epistemologies into conversation with one another.

Yet the flaws of the system infiltrate Miller's book. It is argumentative, even adversarial. Its anthropological perspective seems to have cast severe limits on the literature that Miller used to ground his discussion. Nowhere represented is the sophisticated analysis of oral history that has emerged in the last two decades from within the discipline of history. Here, too, Miller might have found some common

4 Miller, 65 citing Andrew Wiget, "Recovering the Remembered Past: Folklore and Oral History in the Zuni Trust Lands Damages Case," in *Zuni and the Courts: A Struggle for Sovereign Land Rights*, ed. E. Richard Hart (Lawrence, KS: University Press of Kansas, 1995), 184.

5 Miller, 47, citing Ronald J. Mason, "Archaeology and Native North American Oral Traditions," *American Antiquity* 65, no. 2 (2000): 239-60.

6 Miller, 87, citing Val Napoleon, "Delgamuukw: A Legal Straightjacket for Oral Histories?" *Canadian Journal of Law and Society/Revue Canadienne Droit et Société* 20, no. 2 (2005): 123-55.

7 Miller, 88-90, citing John Borrows, "Listening for a Change: The Courts and Oral Tradition," *Osgoode Hall Law Journal/Revue juridique d'Osgoode Hall* 39 (2001): 1-38, and Cynthia Callison, "Appropriation of Aboriginal Oral Traditions," *UBC Law Review* (1995): 165-81.

ground between Indigenous and academic oral historians. Indeed, judges may learn something of the possibilities of oral history from reading this work, as Miller suggests they are already doing from reading Indigenous histories and anthropology. If for Ray the courtroom was a classroom, Miller's *Oral History on Trial* offers the basis of a graduate seminar replete with critical perspectives.

In *African Nova Scotian-Mi'kmaw Relations*, Paula Madden questions the role of the state in offering inclusion to the racialized "other" – both African and Indigenous Nova Scotians. Madden focuses her analyses on human rights legislation, discourse, and programs in Nova Scotia, and concludes that programs designed to address contemporary human rights violations as well as the underrepresentation of Indigenous and African Nova Scotians in educational institutions have failed to meet the needs of the two groups. Looking back over the last two centuries, she uncovers the historical relationships between African American and white Nova Scotians, and their relations with Mi'kmaw people since the late 1700s. While understanding the strategic significance of claims to indigeneity by African American Nova Scotians, she ultimately critiques such ideological work for the way that it has usurped Mi'kmaw rights and identity. She then tries to trace historical relationships between the two groups but, despite certain kinship connections, finds that internalized racism has alienated the communities from each other. Meanwhile, the state's insistence on combining the two groups together for special programming, such as Dalhousie's Transitional Year program, has only served to further racialize both communities and to highlight their exclusion from the dominant culture. Ultimately, Madden argues that grand gestures around human rights struggle do make a meaningful difference so long as the material conditions of life for excluded groups remain challenging and their economic place in the community marginal. Madden's work extends the analyses of Ray and Miller beyond the courtroom. Land claims and treaty cases are about sharing resources, and ultimately call on Canadians to redistribute wealth so that the proceeds of Indigenous lands are shared by Indigenous and settler people. Madden's approach focuses more on the material than the metahistorical, but it makes the point clearly that no move towards reconciliation – towards Indigenous-settler conversation – will be sufficient until it includes financial restitution. Being treaty people means sharing, and in so doing we move toward understanding Indigenous historical consciousness.

Mi'kmaw leaders knew the importance of addressing the material conditions of their people. Martha Walls, in *No Need of a Chief for this Band: The Maritime Mi'kmaq and the Federal Electoral Legislation, 1899-1951*, argues that Mi'kmaw communities did not surrender their control over leadership to the government when they accepted the triennial band election system. Walls's and Wicken's books are complementary as Walls sets out the wider political context for the Sylliboy case, notably Sylliboy's leadership in an era of co-existing traditional and adaptive Mi'kmaw leadership; traditional leaders ran for band election according to the rules of the federal government, but in doing so followed historical protocols and ceremony and thus subverted the assimilative intention of federal initiatives.

Walls's book confirms Ray's point that insightful Indigenous perspectives can be found in the archival record – even one generated by the bureaucratic interventions of the state. The focus on oral narratives can sometimes obscure that Indigenous



people embraced literacy and did not shy away from engaging government on its own terms. Indeed, like many Indigenous peoples, the Mi'kmaq demanded English-language education for their children to prepare them for the changing political and economic early 20th century world in which they lived. By the end of the 19th century, the Mi'kmaq embraced leadership selection procedures and styles that were hybrid – the result of 300 years of interaction with European powers – and used them strategically in conflicts over land and resources. Even after the imposition by the federal government of elected band councils – a move that was explicitly assimilative in intent – Mi'kmaw people barred Indian agents from observing their elections, refused to speak English when discussing elections in front of the Indian agent, chose adjunct leaders in addition to those elected under federal rules, and continued to appoint chiefs who would serve life terms. The Grand Council, an organization whose mandate exceeded band and reserve-level politics, continued despite the mandated elected system and with the knowledge and approval of local officials of the Department of Indian Affairs. Nova Scotia Indian Superintendent A.J. Boyd attended Gabriel Sylliboy's inauguration as the chief of the Grand Council in 1919, and explained to Ottawa the importance of the grand chief's role as a much-needed mediator (103-4). Further, despite Ottawa's tacit disapproval, supra-reserve organizations such as the United General Indian Council of Nova Scotia formed to contest federal policy that sought to centralize the Mi'kmaq onto four reserves (105-8). A combination of the limits of Indian agent authority and the Mi'kmaq's strategic engagement with multiple systems of governance subverted the federal government's assimilative policy and produced, instead, political syncretism.

Walls refutes the case for incommensurability, but it must be recalled that she is writing of a time when the force of state intervention was undercut by limited bureaucracy and the distractions of the Great Depression and two world wars. By 1951 the Mi'kmaq were two generations into the era of failing self-support and yet were not fully economically dependent on the state. When Taiaiake Alfred and others denounce the elected band system of government, they do so within the context of the conditions of dependence wrought first by the power of the interventionist modern state and then by the cynicism and parsimony of neoliberalism.<sup>8</sup> Walls's work may help to soften some of Alfred's criticisms by demonstrating how accepting the electoral system was itself a response to grassroots demands at a time when Mi'kmaw political leadership was strong. Wicken and Walls do important work by historicizing Indigenous political consciousness.

All of these works point to the failure of entrenched positions of incommensurability. Sable and Francis do so by sharing Mi'kmaw historical and geographical consciousness, of a language expressive of and embedded in flexible and reciprocal relationships emergent from a fluid and changing place. Wicken and Walls both demonstrate through meticulous research in the archival record that

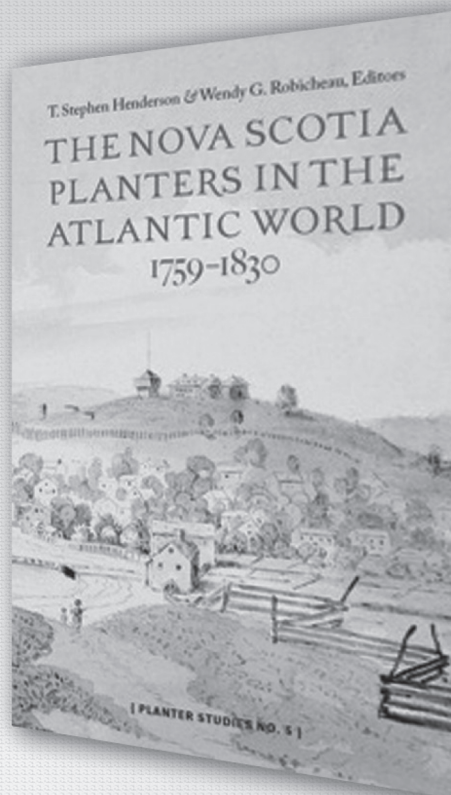
8 See Taiaiake Alfred, *Wasáse: Indigenous Pathways of Action and Freedom* (Peterborough, ON: Broadview Press, 2005). Idle No More protests focused on some Indigenous leadership, particularly Shawn Atleo of the Assembly of First Nations and some band-elected chiefs as well as the federal government in their critique of colonial governance structures that are divorced from grassroots concerns and power.

political consciousness for the Mi'kmaq was syncretic and responsive to changing contexts, always pursuing the best possible outcomes for Mi'kmaq people. Walls, in particular, shows that even the archival record is syncretic, encoding Indigenous interventions alongside government intentions and practice – a point that is clear, as well, in the way that Ray has been able to read documentary records for Indigenous history. These six books all demonstrate that Canada's history is a shared one, subject to constricting opportunities for reciprocal relationships to be sure but one in which Indigenous people have repeatedly sought to maintain themselves and their communities as they also participated in the broader economies, cultures, and politics of Canada. The growing marginalization of Indigenous people has produced incommensurability. Never more crucial than now, as conflicts of lands and resources intensify, these books demonstrate how solid historical research and an attention to multiple ways of understanding and producing history can offer a way beyond the entrenched positions. These books are thus pathways to an expanded Canadian historical consciousness that will be increasingly crucial as First Nations take their rightful place among those who would determine the future of Canada.

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