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Editor's Introduction
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Editor's Introduction

Dr. Chris Andersen

Welcome to issue 6.2, a special issue dedicated to discussion on and about the issue of Metis reconciliation. The contents of this issue are based on the work of scholars who attended the Conference on Reconciliation and the Metis in Canada, held at the University of Ottawa in the late fall of 2015. This conference, organized by Professor Larry Chartrand (then in the Faculty of Law at the University of Ottawa, now at the Native Law Centre at the University of Saskatchewan), was part of a large Social Sciences and Humanities Research Council Project awarded to Professor Chartrand and his team on the issue of Métis treaties and Métis-Crown relationships more broadly. In the team's description of the project, "[s]tandard historical accounts of indigenous settler relations in Canada do not refer to treaties involving the Métis. The basic aim of this project is to challenge this common understanding and to show that Métis-settler relations in Canada, from the 19th century to the current times, have been marked by the conclusion of treaties."[1]

The submissions of the scholars participating in this journal issue reflect this underlying animus between settlers and Metis, but, in a disciplinarily diverse and intellectually robust fashion, expand upon and productively complicate what we normally take for granted in discussion on treaties, Métis rights, and their relationship to those of First Nations. This issue has brought together a series of jurisprudential scholars as well as those well-versed in historical legal issues to explore the problematic of Métis treaties and Métis-Crown relations in further detail.

Toward this end, and keying off the momentous 2016 Supreme Court of Canada decision *R. v. Daniels*, noted constitutional lawyer and professor Joseph Magnet explores some of the complex legal and social issues around which the case evolved. The plaintiffs sought a number of declarations surrounding the jurisdictional place of Metis and Non-Status Indians in Canada's federal constitution, and following from this, sought new and more just fiduciary and consultative relationships with the federal government. Through his direct involvement at all levels of the case, Magnet details the fascinating tug of war between Canada's lawyers and those of the plaintiffs as the case wound its way through the courts. *R. v. Daniels* has potentially set in motion powerful currents vis-à-vis the relationships between Metis and the federal government of Canada, though Magnet is less optimistic about the court decision's ability to produce concrete changes in the short term.

Following Magnet's discussion, Dr. D'Arcy Vermette engages in a close reading of the 2013 Supreme Court of Canada *Manitoba Metis Federation Inc. v. Canada* court decision. He lays out what he terms the standard discourse about historical Métis rights in Manitoba (apparent in the work of, for example, Thomas Flanagan), which lacks much of the social context necessary to interpret historical social relations correctly. Vermette argues that tendencies toward acontextuality, like those apparent in Flanagan's work, tend to obscure the

1 "Métis Treaties Research Project," accessed August 5, 2017, http://www.metistreatiesproject.ca/.

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Aboriginality of historical Métis communities, their relationships to lands and territories, and, ultimately the rights that arise from those relationships. Vermette calls for a move away from engaging with such arguments, toward a more autochthonous intellectual space through which Métis produce our own histories of this era and area.

If Vermette focuses on what many scholars would regard as "ground zero" of historical Métis nationhood, Dr. Kerry Sloan instead explores the issue of Métis rights at what Evans and Barman have described as the "sociological edge" of Métis nationhood, in British Columbia. Keying off the common trope of Métis as a "forgotten people" (coined by the late Métis leader Harry Daniels), Sloan examines the extent to which Canadian jurisprudence on Métis rights—she focuses in particular on the 2003 *Powley* decision—has benefitted those communities self-identifying as Métis in British Columbia. Drawing on extensive interviews with twenty-three research informants, she sophisticatedly challenges the extent to which *Powley*'s logic can make sense of, let alone protect, the collective character of these communities.

Finally, Professor Brenda Gunn begins with a discussion of how the notion of a Métis treaty fits with international law on Indigenous treaties in general. More specifically, Gunn argues not only that Métis treaties should be understood as international legal agreements, but that doing so is crucial to reinvigorating the nation-to-nation ethos through which Indigenous peoples negotiated treaties until the nineteenth century. Using the 2013 SCC *Manitoba Metis Federation Inc. v. Canada* as her foil, Gunn lays out the case for understanding as a treaty in themselves the social relations that eventually led to the *Manitoba Act of 1870* (though importantly, she does not suggest that the Act itself should be considered a treaty), and offers a lucid explanation for why the failure to understand it as such has no logical basis in law.

As with every issue, this issue also contains a number of commentaries that speak to issues related to Métis rights and Métis-Crown relations more structurally. The first commentary in this section is by noted Métis legal scholar Professor Paul Chartrand, who keynoted the Métis reconciliation conference from which these submissions are drawn. In his keynote, Professor Chartrand makes the case that the constitutional status of Métis people should be limited to those who are part of what he terms "Riel's people" (the historic Métis nation then centred in Red River), who were the only "Métis collective" to assert the legal and political rights that demonstrate recognizable self-determination.

Following Professor Chartrand, Dr. Signa Daum-Shanks provides a concrete discussion of the kinds of historiographical tools we need to add to our conceptual (and methodological) toolbox to study and analyze Métis legal issues properly. After laying out a number of useful strategies, Daum-Shanks concludes by asking us to think about the historical role of Métis trade as a constitutional prerogative—not only because it constitutes a central pursuit of historical communities, but also because it offers a conceptual touchstone for thinking about issues around conservation and sustainability of central interest to communities today.

Finally, the third commentary includes an article previously published by Natacha Gagné, Claudie Larcher, and Sébastien Grammond in *Anthropologie et Sociétés*. Following their generous offer to translate their article into English, we are able to offer it to an

anglophone audience in this issue as well. Their original article explores the issue of how Canadian courts grapple with the notion of "community" in cases pertaining to Aboriginal rights. Using the 2010 Hirsekorn case (on Métis hunting rights in southern Alberta), the authors carefully trace the various Crown uses of the term in the case and compare them with the anthropological literature on community. They conclude with a sobering discussion of how juridical conceptions of community unnecessarily (and artificially) narrow more robust notions of community, and the impact that this could have on future juridical claims. Following the articles and commentary, this journal issue also includes Dr. Robert Hancock's review of Gerhard Ens and Joe Sawchuk's recent book *From New Peoples to New Nations: Aspects of Métis History and Identity from the Eighteenth to Twenty-First Centuries* (University of Toronto Press). Finally, our foundational document for this issue is the Supreme Court of Canada's *Daniels v. the Queen*.