

BEAD BY BEAD

Constitutional Rights and Métis Community

Edited by Yvonne Boyer and Larry Chartrand



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Foreword

TONY BELCOURT

This book by knowledgeable and respected academics and lawyers is a must read for anyone with an interest in Aboriginal peoples and our rights. It provides a critical examination of the questions of Métis identity and Métis rights in a comprehensive and thorough way. Finally, we have a source that in a single place provides material and commentary that will support informed debate and help to come to grips with the questions of Métis identity, community, and constitutional rights.

I've had to combat these issues all of my adult working life – from the late 1960s, when I was involved in Métis politics in Alberta, to when I came to Ottawa as president of the newly formed Native Council of Canada (now called Congress of Aboriginal Peoples) in the early seventies through to the nineties and the early twenty-first century as president of the Métis Nation of Ontario (MNO), and even to today, twelve years after my retirement from active politics in 2008.

When I was growing up in the Métis community of Lac Ste. Anne, Alberta, I don't recall that we ever talked about who we were. In fact, I don't recall that we ever used the term "Métis." We simply knew who we were. We called and understood ourselves to be Nehiyow (the people) or Apeetogosan (half-relative in Cree). The Cree called us Otipemisiwak (the people over there – live on their own). In some communities, people preferred to call themselves Half-breeds, although we didn't appreciate that term in Lac Ste. Anne because it was usually prefaced with "dirty."

Today, we know and understand that we are “a people,” one of the Aboriginal peoples of Canada whose existing treaty and Aboriginal rights are recognized in the constitution. We are a people who have a history, values, traditions, culture, kinship ties, and territory.

But although we know that, and more and more First Nations and others are coming to know that, we nevertheless to this day have to deal with confusion about who we are and the nature and extent of our nation and of our rights. For example, very recently I met a man in his fifties who told me proudly that he had just got his “Indian status.” He then proceeded to ask that since he comes from a French-speaking community on the Ontario-Quebec border and is of mixed ancestry, “Doesn’t that make me Métis instead of Indian?”

It’s astonishing that the very word “Métis” has led to so much confusion. But then again, perhaps we shouldn’t be surprised. We barely register in school curricula, and the little that is in print is primarily about Riel and the Riel Rebellions, repeating the decades-long false premise, promoted by the federal Department of Indian Affairs, that the only “Aboriginals” in southern Canada are the “Indians.”

Throughout my life as an elected leader and advocate for the recognition of the Métis and our rights, it has been a constant frustration to confront the ignorance about us among elected and appointed officials, corporate and business leaders, the media, and even some Métis leaders and our relations in First Nations communities. Section 35 of the *Constitution Act, 1982*, specifically identifies us as one of the Aboriginal peoples of Canada, along with the Indians and the Inuit, but the redundant phrase “Aboriginal *and* Métis” is still commonly used. It’s as though the people who use that phrase see the First Nations and the Inuit as “Aboriginal” but not the Métis.

Some believe that the use of the word “Métis” makes it obvious that we are “mixed” individuals – thought of mostly as part Indian and part French. I relate to and always like to tell people about the way my friend, the Honourable Yvon Dumont, former president of the Métis National Council and former lieutenant governor of Manitoba, put it. He said, “I’m not part anything, I’m 100 percent Métis!”

I’m pleased to see how this book accurately addresses this aspect of who we are: as a people with common values, traditions, culture, way of life, family ties, history, communities, and shared territory. Though I honour all of my ancestors, including those Iroquois and French voyageurs and fur traders who first arrived in my area during the 1780s, I am extremely proud to know that from the early 1800s to today all of them, with the exception of one, were Métis.

I welcome the discussion in this book that though the Métis communities of western Canada are relatively well understood and acknowledged, there is debate about whether Métis exist in Eastern Canada. I don't have first-hand knowledge about those claiming to be Métis or Métis communities in eastern Quebec and the Maritimes, but I do know about the Métis of Ontario.

My experience as president of the MNO gave me a glimpse into the probable cause for their low profile. After we formed the organization in 1993, we quickly learned about the deep-seated systemic discrimination against the Métis in the province. It has its roots in the 1870 shooting of Thomas Scott by the provisional government at Red River, led by Louis Riel. Scott was a member of the Orange Order, a secret society formed in the north of Ireland in 1795, having as its object the maintenance and political ascendancy of Protestantism. Many residents of southern Ontario, known as Upper Canada at the time, were Orangemen. They saw the Métis as too French, too Indian, and too Catholic. They hated Louis Riel and passed a bounty in the Ontario legislature of \$5,000 for his capture (the equivalent of approximately \$600,000 in 1997). One of their own, Prime Minister John A. Macdonald, ensured that Riel was charged under an archaic British law, tried by a magistrate without a jury of twelve of his peers, and convicted and hanged for high treason. To Ontario, that was the end not only of Riel, but of the Métis. The Orange Order remained influential in the province until well into the twentieth century.

It is no wonder to me that Métis people and their communities in Ontario remained "invisible" until the 1970s. In a 2003 Supreme Court of Canada trial, *R v Powley*, a Métis community at Sault Ste. Marie was found to have existed at the time of the Robinson-Huron Treaty of 1850, that it exercised rights, and that its rights were never extinguished because the Métis were never allowed to participate in the treaty. Research since then has proven similar results in communities as far east as the Ottawa River. As a result of *Powley*, the MNO and Ontario entered into an agreement in 2004 to recognize the Métis right to hunt and fish for food in the territory of these historic Métis communities.

The fact that the Métis are an Aboriginal people who have constitutional rights is not only mostly unknown, it has been ignored or even refuted. At trial in 1995 and at various courts in appeal, not only did the Government of Ontario deny that our rights existed, it denied the very existence of our communities. I never realized the extent to which Canadian governments denied the existence of our rights until we went to the Supreme Court

of Canada in *Powley*. It was disheartening to say the least to see that the Government of Canada and of every province and territory stood beside Ontario to argue that Métis rights either never existed or if they did, they were extinguished.

When I first came to Ottawa in 1971, it was to create awareness about the Métis and non-status Indians, to lobby for access to federal programs and services, and to advocate for recognition of our rights. Our overarching long-term goal could be summed up in the urging of my father, who said to me, “Get our land back son, get our land back.” That was a tall order, for to all intents and purposes, we were a “forgotten people.” At that time, there was no *Constitution Act, 1982*, to recognize and affirm the Aboriginal and treaty rights of the Aboriginal peoples of Canada, and there were no legal precedents of Métis rights. But that has all changed because of the cases of *Powley*, *Daniels*, and *Manitoba Metis Federation*. In addition, other Supreme Court decisions now come to bear in considering the rights of our people and our communities. Governments are now obliged to deal with us and indeed have begun the process of entering into framework agreements to do so.

When I refer to “us,” I mean those Métis communities within the Métis Nation as represented by the Métis National Council (MNC). Recent court decisions, and in particular *Daniels*, determine how governments may deal with individuals who are outside the scope of the MNC but who identify as Métis and who claim Métis rights. The chapters pertaining to them in this volume will be useful to the debate.

Bead by Bead: Constitutional Rights and Métis Community is a timely book. With the advent of framework agreements and other initiatives to work toward reconciliation with the Métis, everyone involved can make use of the valuable information in these pages. Governments and Métis people and their representatives are contemplating new arrangements between Canada and the Métis, including those related to rights, lands, and self-government. I commend the editors, Yvonne Boyer and Larry Chartrand, for taking the initiative to produce this important work. The content is authoritative and at times provocative. There is no question of its value, the knowledge we gain from it, and how it will augment everyone’s perspective of the issues of Métis identity, communities, and constitutional rights.

Introduction

YVONNE BOYER, LARRY CHARTRAND,
AND WANDA MCCASLIN

Especially since the Battle of Batoche in 1885, the Métis peoples have experienced discrimination, dispossession, and marginalization by Canadians and subsequent governments. The Métis have been pushed aside and forgotten. However, this is no longer the case, thanks in part to the dedication and constant struggle by our leadership to advance our inherent rights and to the ongoing perseverance of our families over many, many years. There is renewed hope for the Métis people, as this volume sets out to explain. Yet, as revealed by the legal experts who wrote its chapters, not all is clear skies in Métis country. Troubling issues of Métis identity politics, imposed colonial policies, and racist legal doctrine continue to plague our aspirations for a just future. Although many of these issues are similar to those experienced by First Nations and Inuit in Canada,¹ several are unique to the Métis and require distinct legal responses. Of course, the best-known is the chronic denial from both provincial and federal governments of any jurisdictional responsibility for the Métis, which contributed to serious violations of social, political, and legal rights until the *Daniels* case of 2016 finally resolved the jurisdictional “football” game.² The *Daniels* decision confirmed that Métis are “Indians” for the purposes of determining which government (federal or provincial) has legislative responsibility over them. Thus, the federal government can no longer deny its obligations.

Indeed, the last thirty years have seen a remarkable explosion of litigation in Métis rights in Canada, including unprecedented attention given to

Métis peoples in the public sector.³ This focus is largely the result of three prominent and “successful” Supreme Court of Canada cases – *Powley*, *Manitoba Metis Federation*, and *Daniels* – which some leading Métis rights scholars and lawyers refer to as the “trifecta.”⁴ The three decisions resulted in increased attention by government, especially the federal government, regarding Métis issues, also furthered by other developments, including the release of the Truth and Reconciliation Commission Report (TRC Report), the adoption of the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*, and an important report commissioned by Canada concerning the advancement of reconciliation in regards to the Métis.⁵

The 2015 TRC Report received strong support from both the public and private sectors.⁶ Of significance is its Call to Action, which promotes the adoption of *UNDRIP* as the framework for future relations with Indigenous peoples, including the Métis.⁷ At the forefront of this framework is the recognition that treaties and agreements are the preferred tools in achieving reconciliation.⁸ Released one year later, the report of the special representative on reconciliation (Thomas Isaac) focused exclusively on issues concerning Métis and stressed the need for reconciliation between the governments and Métis peoples in order to “re-calibrate their relationships with Métis rights and culture within the context of Canada’s larger history, and resolve outstanding Métis claims.”⁹ Following closely in April 2017, the Canada–Métis Nation Accord was signed by representatives of the Métis National Council and the Government of Canada during the first Métis Nation–Crown Summit in Ottawa.¹⁰ The accord encourages engaged relationships with the Crown and promises meaningful consultation on federal policies that affect Métis communities. Together, these developments are seen as a strong beginning for renewed relationships. They opened the door with the federal government in particular and prompted the creation of “Reconciliation” memorandums of understanding (MOUs) with the Métis National Council and affiliated political organizations such as the Métis Nation of Alberta, the Manitoba Metis Federation, and the Métis Nation of Ontario.¹¹ Most recently, the MOUs have led to the creation of self-government agreements. These agreements are not considered a final resolution of the jurisdiction and authority of the Métis governments to which they apply. Nor do they state that they are treaties within the meaning of section 35 of the *Constitution Act, 1982* (though, interestingly, they don’t say that they’re not treaties). They are intended to set out an ongoing process of self-government negotiations rather than to provide a final statement on jurisdiction.¹² Iterative in nature, they contemplate the acquisition of additional jurisdictions

beyond the initial recognition of the authority by the Métis government over its own internal affairs.¹³ They expressly allow for and anticipate additional jurisdiction implementation agreements.¹⁴

The trifecta also contributed to increased litigation by individuals and communities, arguing for recognition of their Métis identity and Aboriginal rights.¹⁵ This has produced strong controversy over who can claim Métis identity and the associated Métis Aboriginal rights.¹⁶ In the Prairie West, Métis who have asserted rights claims on the heels of *Powley* have achieved mixed results in the lower courts, which, as shown in several chapters of this volume, have imposed onerous and problematic legal tests relating to rights recognition, particularly in defining the appropriate rights holder.¹⁷ East of Sault St. Marie, Métis claims have achieved little to no success in the lower courts. In [Chapter 1](#), Professor Sébastien Grammond (recently appointed a judge with the Federal Court of Canada) offers some insightful conclusions on why cases like *Vautour* in New Brunswick and *Corneau* in Quebec have not met with much success.¹⁸ In British Columbia, the failure to recognize Métis communities has been exacerbated by provincial policies of denial and by judicial narrow-sightedness regarding the legal test to determine the appropriate rights-bearing community and the evidence needed for establishing it. In [Chapter 3](#) of this volume, Christopher Gall and Brodie Douglas focus on this challenging situation in British Columbia.

Other concerns mirror the issues that plague the field of Aboriginal rights policy and jurisprudence in Canada. We know that the field of Aboriginal rights doctrine, on which the Métis must currently rely in Aboriginal rights claims, is fraught with serious problems of logic stemming from its racist foundations. These are carried through to the present day in the case law and the established Aboriginal law precedents.¹⁹

In this era of reconciliation, we agree that judicial principles of interpretation and differing Métis lived realities are critical in engaging deep understandings and developing opportunities for considerations of Métisness in all negotiations with Canada. These issues have significant implications not only for Métis peoples but also for government debates and the development of renewed and emerging relationships. For the latter to be effective, conceptions of Métisness must be refined so that the Métis, as a collective, aren't defined as rights-based peoples who are less than or less worthy than First Nations or Inuit. The vision for their identity and constitutional rights requires acknowledgment of missed opportunities for deeper understanding and of the disconnectedness between legal doctrines and the realities of Métis peoples.

The chapters in this book chart the legal jurisprudence trajectory and shaping of Métis identity. More significantly, they undertake a critical analysis of the parameters that current Indigenous legal doctrines place on Métis rights discourse in law. They also advance the importance of self-determination and the lived connections of Métis realities as individuals and as collectives (communities, regions, nations). And their references to reconciliation and the honour of the Crown are offered, not as a complete review, but in hopes of encouraging vigorous and much needed investigations of the jurisprudence and the realities – including colonization, self-determination, kinship, land roles, and more – of Aboriginal peoples and of Métis peoples in particular.

This book aims to correct the dearth of legal scholarly material by Métis scholars on the considerable concerns relating to Métis identity and constitutional rights jurisprudence doctrines in an era of reconciliation.²⁰ In explaining what is needed and examining the misinterpretations and missed opportunities of the courts, its chapters challenge current Aboriginal rights doctrines. As such, they expand the focus from a singular Aboriginal rights approach to the deeper issues of self-determination, colonization, kinship, land roles, and other critical aspects of Métis realities.

To be clear, this exploratory book does not claim to be the definitive text on who the Métis are, either as individuals or as a collective. Certainly, the jurisprudence employs the word “Métis” in referring to distinct Aboriginal peoples. In this, it is consistent with Métis Nation identification as the homeland nation with its roots in the Prairies. Yet, the use of “peoples” in the constitution infers autonomy of self-determination to assert cultural distinctness and sovereignty. Like Sébastien Grammond in [Chapter 1](#), we do “not attempt the impossible task of coining a single and absolute definition of Métis identity” (page 16). Nor does this book seek to be the final thesis on the structures of Métis community and constitutional rights or on their relations to culture, tradition, and legal system(s). It does not provide a final resolution of tensions and conflicts in theoretical and legal approaches regarding who we are. Yet, as these chapters highlight, there are connections, divergences, and significant missed analytical opportunities in jurisprudence canvassing the identity and rights of Métis peoples.

Chapter Summaries

In [Chapter 1](#), Sébastien Grammond explores inequalities and tensions arising from definitions of Métis identity, especially in situations where the state has the power to impose its own categorizations. When identity is seen as

grounded in objective criteria, definitions can be blurred, depending on power, perspectives, evolution, and shifting contexts. As a distinct ethnic identity, the Métis Nation is treated as such under section 35 of the *Constitution Act, 1982*. Its ethnogenesis arose from collective historical experiences, and it sets itself apart from other groups claiming Métisness. It has been suggested that removing historical experiences would result in racial mixedness criteria, thereby undermining the authenticity and worthiness of Métis peoples of the Prairies. Grammond discusses court-imposed tests that categorize identity and suggests that they are potentially incompatible with the fluidity of identity itself. As he explains, “There comes a point where these categories lose their capacity to identify the members of a political community or the group of persons who have been victims of injustice and deserve compensation ... [and who] could even be open to manipulation by persons or groups” (pages 26–27). To illustrate, Grammond examines *Daniels* and *Powley*, two Supreme Court of Canada cases that took radically different approaches to Métis identity. *Daniels* held that Métis were Indians for the purposes of determining policy responsibility as between federal and provincial governments. Thus, the federal government has responsibility under the Constitution. But, in deciding this issue, the court held that an individual “Métis” person need not belong to a Métis-specific community to be recognized as Métis under federal government responsibility given the broad scope of the term “Indian” given to section 91(24) by the court.²¹ By contrast, *Powley* saw membership in a community as a necessary element of Métis identity.²² State recognition and membership in historically connected Métis communities are a requirement for rights recognition, which makes it unclear what rights, if any, will be provided non-community affiliated Métis individuals under the legal definition of *Daniels*.

Grammond’s chapter dovetails with [Chapter 2](#), Thomas Isaac’s examination of three significant Supreme Court of Canada cases – *Powley*, *Manitoba Metis Federation*, and *Daniels*. Isaac takes the customary approach of focusing on the case law, though, of course, he does not present it as the final definitive statement on Métisness. Rather, his analysis of historical developments and their relationship to legal reasoning in Métis jurisprudence captures the current colonial legal landscape that has shaped the emerging reconciliation process between the Métis and the federal Crown. He offers an overview of Métis rights law before the passage of section 35 and the *Powley* decision, both of which fundamentally changed Crown-Métis relationships. He then discusses *Manitoba Metis Federation*,²³ which set a precedent not only in addressing Ottawa’s long-standing failure to implement a land grant

promise in the *Manitoba Act, 1870*, but also as a leading case on the honour of the Crown. Turning to *Daniels*, Isaac argues that it determined which level of government has the power to legislate in relation to the Métis. He concludes by suggesting that reconciliation may expand beyond groups that hold section 35 rights to encompass individuals who may not, an eventuality that opens up much uncertainty as to the extent and scope of the Crown's obligations.

In [Chapter 3](#), Christopher Gall and Brodie Douglas offer a more skeptical perspective on the practical implementation of reconciliation, as it relates to the Métis of the Athabasca region in British Columbia. Focusing on the duty to consult Aboriginal communities and the honour of the Crown, they argue that the duty, as established in *Haida*, applies to them.²⁴ Specifically, they cite *Haida* to show that the Métis of the Athabasca region are owed a duty to consult, especially in circumstances relating to natural resources. The failure to recognize the Métis is particularly acute in British Columbia, where the provincial government flatly denies that Métis rights-bearing communities exist in the province. Gall and Douglas employ historical records to show that this is not accurate and that a Métis community has existed in the Athabasca region since the nineteenth century. Although they acknowledge that this claim has yet to be tested in court, they argue that it is the very reason why the duty to consult was established and that it meets the triggering threshold. The authors provide a necessary addition to the literature on the duty to consult with Métis specifically and illustrate the negative consequences of Canadian jurisprudence on the recognition of Métis rights.

In [Chapter 4](#), Karen Drake and Adam Gaudry provide a similar but specialized analysis of Métis title in their discussion of the collectiveness of Métis land rights in the Prairies. They present an extensive treatment of Métis land rights case law, buttressed with historical and modern Métis relationship frameworks, to offer a persuasive analysis that Métis land rights have not been extinguished. Though appreciating that, at first blush, legislation may appear to support extinguishment positions, they argue that Métis land must be tested against the prescribed forms under surrender, legislation passed before April 1982, or by constitutional amendment doctrine. In doing so, they provide a powerful and compelling account regarding the issue of Métis title and whether the *Manitoba Act, 1870*, or the relevant Dominion Lands Acts, whose intent was to extinguish the "Indian title" of the Métis, actually achieved such purpose in law.²⁵ For instance, they pose the question that if Aboriginal title is collective in nature, how could the issuance of "scrip coupons" on an individual basis extinguish the collective

Aboriginal title of the Métis in Manitoba or elsewhere in the northwest? These historical facts, combined with the Crown's failure to adequately discharge its duties in setting aside the promised lands or the issuance of scrip, lead to the obvious conclusion that Métis title was not extinguished. This chapter complements Gall and Douglas's contention that Métis land rights still exist in British Columbia and is in line with Grammond's chapter on the collective and unextinguished title under the *Manitoba Act, 1870*, and the Dominion Lands Acts. These acts, case law, and modern government actions all signal an intention, not to wholly extinguish Métis title in one single moment, but rather to extinguish Métis title piecemeal, over time, as each individual Métis beneficiary chooses the "scrip" option. Gaudry and Drake conclude that the surrendering of Indigenous rights can't be effective on an individual scrip extinguishment basis, but must be achieved through a negotiated process with the appropriate Métis collective as case law has affirmed that section 35 constitutional rights can only be possessed by Indigenous collectives and not individuals.

In [Chapter 5](#), Brenda Gunn examines Aboriginal rights in *Powley*, *Manitoba Metis Federation*, and *Daniels*, applying a gender analysis to the roles of Indigenous women. She reminds us that we must not forget the gendered nature of the status quo approach when we analyze rights claims. Concentrating on male-dominated perspectives not only erases Métis women in legal analysis but also undermines their inclusion in reconciliation processes. Omitting gender analysis maintains power relations in law that privilege males, with the result that Métis women will either remain frozen in time or will remain invisible in the rights and conceptions of what it is to be Métis. Gunn notes that they are invisible in Supreme Court of Canada decisions, despite their key role in the evolution of Métis societies. She argues, for example, that had their perspective been included in the legal analysis in *Powley*, the kinship quality of Métis communities and governance would have been accorded more attention and weight. In her view, so-called gender-neutral approaches in law actually privilege male perspectives and experiences in a way that is acceptable to colonial world views. She points out that in light of the *Manitoba Metis Federation* and *Daniels* decisions, combined with commitments to engage with Métis political bodies to resolve outstanding claims, it is especially important to take a proactive and culturally relevant gendered approach. According to the World Health Organization, "sex" refers to the biological and physiological characteristics that define men and women," whereas "gender" refers to the socially constructed

roles, behaviours, activities, and attributes that a given society considers appropriate for men and women.”²⁶

Like Gunn, Jeremy Patzer highlights the challenges of current Métis jurisprudence in achieving justice by interrogating the broader reconciliation relationship. In [Chapter 6](#), he examines Métis legal history from the more general perspective of Aboriginal law doctrine and the placement of the Métis within it. In this perspective, *Powley, Manitoba Metis Federation*, and *Daniels* do not represent a dramatic paradigm shift or a significant victory for Métis justice. Instead, they simply clarify that (in the view of government stakeholders and the courts) the Métis are now ensconced in a limited and post-legal colonial repair process that is defined primarily within “settler colonial rationalities.” Patzer argues that Métis governments, advocates, and citizens must be cognizant of the colonizer settler power dynamics while undertaking what he terms historical repair. In recognizing that the Métis are relative newcomers to this era of “new justice” in Aboriginal-Crown legal relations, Patzer draws attention to the fact that their inclusion may be ambiguous but pushes them to question post-legal rationalities in future claims.

In [Chapter 7](#), D’Arcy Vermette moves the discussion of Métis identity from “mixed” definitions to the larger language of collectives. Like Gunn and Patzer, he suggests that interpretations of who is Métis cannot be disconnected from the lived reality of Métis peoples. Instead, questions must arise regarding the extensive damage caused to them by colonialism and its continuing role in jurisprudence. As a legal identity term that is used too flexibly, “Métis” is removed from the realities of Métis people, the conceptions of rights, and historical and current colonial thinking influencing the law. Vermette argues for a concept of Métis identity in which the Métis are not merely the sum of their ancestral unions or are deconstructed into parts. He further raises the issues of courts attempting to apply one set of Aboriginal rights law that ultimately reduces the reality of Métis peoples. Given that the Métis are now recognized and caught in this colonial enterprise, it is imperative that they assert their independence as peoples by insisting on principles of treaty negotiation that the courts will take seriously and use. Vermette suggests that the courts already have the tools to ensure that treaty negotiations between the Métis and Canada are conducted fairly, and he advocates for their application. He offers the final point that any analysis requires vigorous scrutiny of colonialism in guiding the court’s legal interpretations. His approach moves dogged denials of constitutional rights toward meaningful reconciliation.

From a different vantage point, [Chapter 8](#), by Darren O’Toole, reminds us of the important question of identity by analyzing the categorization of the Métis as “Aboriginal” people. He shows that governments and the courts have relied on certain understandings of the term “Aboriginal” to deny the existence of the Métis as a distinct people and to minimize their rights. In discussing the legal doctrines of the empty box, derivative Indian rights, and distinct Aboriginal people, he demonstrates that all three work against the Métis as a distinct people. He proposes a fourth option – the autochthonous or Indigenous peoples doctrine. His suggestion builds on previous chapter discussions of missed or misinterpreted court analysis of Métis identity and constitutional rights. An advantage of the autochthonous doctrine is that it does not require making questionable legal distinctions between Métis and First Nations peoples. Nor does it impose impossible criteria of indigeneity on peoples who did not exist before contact with Europeans. O’Toole concludes by arguing that the Indigenous rights doctrine (and thus Métis rights) can coherently develop when it moves beyond pre-contact and racial predispositions.

The book concludes with [Chapter 9](#), a thought-provoking discussion by Signa Daum Shanks regarding the potential benefits of seeing Métis-Canadian relations through the lens of “suzerainty.” As she demonstrates, the concepts of suzerainty in Métis realities are recognizable in jurisprudence that can be extended to inspire modern negotiations and reconciliation. She suggests that we abandon our reliance on the concept of “sovereignty” and its relevance to Indigenous issues such as governance and nationalism, choosing instead the principle of suzerainty. The latter is much more flexible and adaptable than the former because it is grounded in the acceptance of others’ governance independence. Relying on historical data, particularly for the northwest of Canada, Daum Shanks shows that Métis communities accepted settler newcomers and allowed them a degree of independence in conducting their own affairs. Such acceptance of was a sign of Métis jurisdictional strength, not an acquiescence to colonial power. Suzerainty in Indigenous language, land use, and laws, with further examples in international and national law, is not a modern trend. Courts rarely acknowledge their suzerainty analysis and shroud it under colonial assumptions of jurisprudence. Recognizing suzerainty provides an interpretative tool that deepens obligations to consult with the Métis. It could flourish in Métis communities, particularly those in the North that govern themselves within municipal political bodies. The author’s arguments allow us to restructure how we think of Canada, not so much as a singular sovereign

state, but as a place of multiple suzerain relationships. This evokes an exciting future for Métis claims negotiation and potentially changes the game of Métis constitutional rights in Canada.

A goal of this book is to express diversity in analytical perspectives regarding significant Métis jurisprudence and doctrines of Aboriginal law. Though diverse, the chapters are remarkably coherent in reflecting on and revitalizing conceptualizations of Métis identity and constitutional rights. In short, they help to articulate Métis identity and rights in raising questions that engage future legal theorizing and create pathways to meaningful and inclusive reconciliation.

NOTES

- 1 “First Nations” is used here to refer to non-Metis communities, some of which are defined as Indian bands under the *Indian Act*, RSC 1985, c I-5. Most Inuit live in northern Canadian communities in Nunavut and Nunavik (northern Quebec).
- 2 *Daniels v Canada (Indian Affairs and Northern Development)*, 2016 SCC 12 [*Daniels*].
- 3 In light of this development, Larry Chartrand argues that Métis rights law has become a distinct field of law in Canada. See Larry Chartrand, “Metis Constitutional Law Issues,” in *The Oxford Handbook of the Canadian Constitution*, ed. Peter Oliver, Patrick Macklem, and Nathalie Des Rosiers (Oxford: Oxford University Press, 2017), 367–85.
- 4 The three cases are *R v Powley*, 2003 SCC 43 [*Powley*]; *Manitoba Metis Federation Inc. v Canada (Attorney General)*, 2013 SCC 14 [*Manitoba Metis Federation*]; and *Daniels*, *supra* note 2. In [Chapter 2](#), Thomas Isaac provides an insightful summary and possible future implications of the cases. For the resilience of Métis title, see [Chapter 4](#) in this volume, written by Karen Drake and Adam Gaudry.
- 5 UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: Resolution/Adopted by the General Assembly*, 2 October 2007, A/RES/61/295, <https://www.refworld.org/docid/471355a82.html> [*UNDRIP*]. For the commissioned report, see Thomas Isaac, *A Matter of National and Constitutional Import: Report of the Minister's Special Representative on Reconciliation with Métis: Section 35 Métis Rights and the Manitoba Métis Federation Decision* (Ottawa: Indigenous and Northern Affairs Canada, 2016).
- 6 Truth and Reconciliation Commission of Canada, “Canada’s Residential Schools: Reconciliation,” in *The Final Report of the Truth and Reconciliation Commission of Canada* (Montreal and Kingston: McGill-Queen’s University Press, 2015), 6:3 [TRC Report].
- 7 See, for instance, Call to Action 2, 20, 55i, 58, and 79i, in *ibid*.
- 8 See Call to Action 45 in *ibid* 6:37.
- 9 Isaac, *A Matter of National and Constitutional Import*, 3.
- 10 Canada and Métis National Council, *Canada–Métis Nation Accord*, 13 April 2017, <https://pm.gc.ca/en/canada-metis-nation-accord>.

- 11 See, for example, “Memorandum of Understanding on Advancing Reconciliation,” 3 February 2017, <http://www.metisnation.org/media/653470/mno-canada-mou-on-reconciliation-final-february-3-2017.pdf>. Despite the apparent progress on negotiations, there are concerns that the leadership may be too willing to give more away than it should since it seems to be focused almost exclusively on the inferior legal principles of domestic Canadian Aboriginal law at the expense of insisting on more substantial rights recognized in *UNDRIP*. See Larry Chartrand, “Mapping the Meaning of Reconciliation in Canada: Implications for Métis–Canada Memorandum of Understanding on Reconciliation Negotiation,” in *UNDRIP Implementation: More Reflections on the Braiding of International, Domestic and Indigenous Laws* (Waterloo and Saskatoon: Centre for International Governance Innovation and Wiyasiwewin Mikiwahp Native Law Centre, 2018), 43.
- 12 Yet, some observers would say that the “off limit” jurisdictional governance subject matters imposed by Canada in chapter 17 of the *Métis Government Recognition and Self-Government Agreement between Métis Nation of Alberta and Canada* (27 June 2019) reflect a failure by the Métis leadership to be more assertive of fundamental rights of self-government. Why would we agree that the criminal law is off limits to negotiation when in fact we traditionally managed criminal behaviour as an exercise of our governing authority? See Larry Chartrand, “‘We Rise Again’: Métis Traditional Governance and the Claim to Métis Self-Government,” in *Aboriginal Self-Government in Canada*, 3rd ed., ed. Yale Belanger (Saskatoon: Purich, 2008), 145–57.
- 13 Subject to certain “off limit” subject matters of governance jurisdiction (like criminal law powers) that parallel the same subject matter jurisdictions that have been predetermined as off limits in the federal government’s long-time self-government policy. See Canada, “The Government of Canada’s Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government,” 1995, <https://www.rcaanc-cirnac.gc.ca/eng/1100100031843/1539869205136>.
- 14 See, for example, article 21.01 in the *Métis Government Recognition and Self-Government Agreement between Métis Nation of Alberta and Canada*. The agreements are problematic for a number of reasons, the least of which is the agreement to accept several limitations on self-government authority such that the initial positive statements regarding the recognition of inherent self-government authority are severely diminished by allowing only the creation of a municipal-like government that has no concrete authority and that must comply with federal and provincial laws in any event. Consequently, it is hard to see how the Alberta Métis agreement can be seen as a major advancement for the Métis within that province. Note that other Métis provincial associations have adopted similarly worded agreements. These developments, however, make the critical concerns expressed by the legal experts in this volume all the more urgent and compelling.
- 15 It is difficult to give an exact number of such cases during the last ten years, as some blur the distinctions between non-status claims and Métis claims.
- 16 There is a growing literature and debate on Métis identity, which can involve emotionally charged views. One need only read the online social media commentary between “Western” Métis scholars and “Eastern” Métis scholars to witness how emotionally entrenched these views can become. The debate even had an impact on

the composition of this book, as one legal scholar declined to contribute if the work of another scholar appeared in its pages.

- 17 For a summary of Métis-specific cases, see Jean Teillet, *Metis Law in Canada* (Vancouver: privately printed, 2013). This is a looseleaf resource maintained by one of Canada's leading Métis rights lawyers.
- 18 *R v Vautour*, 2010 NBPC 39, 2015 NBQB 94, 2017 NBCA 21; *Quebec v Corneau*, 2008 QCCS 1536, 2010 QCCS 463, 2015 QCCS 482, 2018 QCCA 1171.
- 19 The scholars who have discussed the underlying racist nature of Canadian Aboriginal rights law are too numerous to list here. For a particularly powerful exposé of Canadian colonial law as it has developed to justify the marginalization and dependency of Indigenous peoples, see Harry Laforme, "Section 25 of the Charter, Section 35 of the Constitution Act, 1982, Aboriginal and Treaty Rights, 30 Years of Recognition and Affirmation," in *Canadian Charter of Rights and Freedoms/Charte canadienne des droits et libertés*, ed. Errol Mendes and Stéphane Beaulac (Toronto: LexisNexis Canada, 2013), 1337–390.
- 20 Métis studies has seen an explosion of anthologies, articulating subjects of Métis culture, history, language, and contemporary issues. This book focuses on critical evaluations of established legal norms in Métis law to give attention to ongoing problematic doctrinal developments and to promote reconciliation of Métis peoples. An excellent resource is the well-documented annotated bibliography by Lawrence Barkwell, Leah Dorion, and Darren Prefontaine, *Metis Legacy* (Winnipeg: Louis Riel Institute, 2000).
- 21 *Daniels*, *supra* note 2.
- 22 *Powley*, *supra* note 4.
- 23 *Manitoba Metis Federation*, *supra* note 4.
- 24 *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73.
- 25 *Manitoba Act, 1870*, 33 Vict, c 3, RSC 1985, App II, No 8, and see for example, *An Act to amend and consolidate several Acts respecting Public Lands of the Dominion*, 42 Vict, c 31, 1879. There are several Acts regarding public lands, which are often collectively referred to as the Dominion Lands Acts.
- 26 World Health Organization, online: <https://www.who.int/westernpacific/health-topics/gender-equity-and-human-rights#:~:text=Gender%20refers%20to%20the%20socially,appropriate%20for%20men%20and%20women>.

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