

**L. Jane McMillan, *Truth and Conviction: Donald Marshall Jr. and the Mi'kmaw Quest for Justice* (Vancouver: UBC Press, 2018). 220 pp. Hardcover \$34.95.**

The name Donald Marshall Jr. is synonymous with two things: wrongful conviction and fishing rights. This book by Jane McMillan, a legal anthropologist who was in a relationship with Marshall for 13 years, travels this well trodden ground, but takes it much further. McMillan, former Canada Research Chair for Indigenous Peoples and Sustainable Communities and chair of the Department of Anthropology at St. Francis Xavier University, offers personal insights gleaned from her intimate relationship with Marshall, as well as her unique perspective arising from her participation in the case that would become *R v Marshall*, her years of research into the Mi'kmaw justice system and Mi'kmaw fishing rights, and her involvement in and knowledge of the Mi'kmaw community.

While not a biography, *Truth and Conviction* (the word “truth” is written in oversize letters on the cover) does cover biographical ground. We learn of the impact of Marshall's time behind bars, for example, from letters in which he writes of homesickness and loneliness (23). McMillan also chronicles Marshall's despair, once exonerated, at being blamed for his wrongful conviction and receiving inadequate compensation of which half went to legal fees; his work with youth; and his participation in the justice initiatives stemming from the inquiry into his case. Ironically for a man at the centre of so much history, Marshall preferred nothing more than to be at his home in Membertou, Cape Breton, fishing (110).

McMillan's main focus, however, is the effect of both Marshall's wrongful imprisonment and the Supreme Court fishing rights case *R v Marshall* on Mi'kmaw efforts to establish their own justice system. She provides an extensive background to Mi'kmaw legal tradition, one that was superseded by the imposition of British common law with colonization and the passing of the Indian Act in 1876, the peace and friendship treaties entered into with the British notwithstanding. Based on such principles as mutual forgiveness and creating harmony, Mi'kmaw law could not be separated from the Mi'kmaw worldview that centered around sacred balance with the earth, *netukulimk*. As McMillan makes clear, such concepts were at odds with the adversarial nature of Canadian law with its concepts of guilt, punishment, and incarceration, concepts which in practice reinforced the racist bias of the state.

The underlying thesis of McMillan's book is that the inquiry into Marshall's wrongful conviction and its recommendations became a catalyst for a return to Mi'kmaw forms of justice. The inquiry resulted in a number of initiatives including pilot projects on Indigenous policing and restorative justice, a Tripartite forum in

1991, the exploration of a Mi'kmaw regional police force, and the Mi'kmaq Justice Institute. The forum, however, showed "little evidence of good will from the provincial or federal governments to guarantee its success" (97), while many of the other initiatives foundered owing to lack of core funding, cost off-loading, bureaucratic red tape, cost-cutting, and federal-provincial jurisdictional wrangling (105).

Regarding *R v Marshall*, the 1999 Supreme Court of Canada decision that found in favour of the Mi'kmaw treaty right to fish commercially, McMillan is able to offer a unique perspective, having been in the boat with Marshall when he was charged with illegal fishing, and initially a co-defendant in the case. She describes fishing for eels as "hard and dirty work" but as something that "reinvigorated and helped reintegrate Donald" after his incarceration (111). When they went fishing on "that fateful day in August 1993," she writes, "it never crossed our minds that harvesting and selling the innocuous eel would lead to the transformative Supreme Court of Canada decision *R v Marshall*" (127). McMillan discusses both the substance of the decision and its aftermath, when, despite the recognition of Mi'kmaw rights, "the plethora of policies, rules, and regulations imposed on Indigenous fishers in order to 'include' them in the commercial fishery effectively marginalized them" (121). Marshall, frustrated by the negative reactions of the public and the non-Indigenous lobster fishers towards Mi'kmaw commercial fishing rights, eschewed lobster for the rest of his life (123).

The trial also took a toll on Marshall's already fragile respiratory system. In 2003, having suffered respiratory failure the year before, he underwent a double lung transplant. The following year he and McMillan split up, but remained friends; McMillan became "very concerned" for Marshall's well-being (141). In 2006 Marshall was charged with uttering death threats towards a fellow Membertou resident and with dangerous driving; McMillan believes that the immuno-suppressant drug regime Marshall was following to prevent his body rejecting his transplanted lungs, combined with PTSD resulting from his eleven years in prison, were at the root of his psychotic behaviour. The Sydney court agreed to the charges being dealt with by the Mi'kmaw Legal Support Network, a legacy of the earlier inquiry. Through a healing circle the conflict between the two men was resolved and harmony, the goal of Mi'kmaw law, was restored; McMillan's depiction of the process, the antithesis to the normative Canadian legal system, shows Mi'kmaw restorative justice traditions in action (the Crown charges were withdrawn).

In 2008 McMillan was appointed special investigator in a review of the Marshall Inquiry recommendations, which found that many Mi'kmaq felt they had been mistreated and misunderstood by police, lawyers, and justice system service providers (155). The Marshall Inquiry recommendations were seen as fundamental to establishing a Mi'kmaw justice system, but many felt that a profound lack of knowledge of and respect for Indigenous rights and legal principles among non-Indigenous Canadians impeded its implementation. In 2009 Marshall, at the age of 55, died from complications from the lung transplant; in a damning detail McMillan

notes that retired Sydney Police Chief John MacIntyre, whose racism-fueled tunnel vision had largely figured in Marshall's wrongful conviction, died two months later, age 90 (147).

Overall, McMillan's book attributes a central role to Marshall in promoting justice for his people. Her book is an excellent resource on Mi'kmaw justice, documenting in detail the many changes that have led to an increasing role for Mi'kmaw law in Mi'kmaw communities, culminating in the opening of a "Gladue" court to support the cultural needs of Indigenous peoples in conflict with the law in 2018 in Cape Breton (173). Of particular note is her annotated list of resources, a must-read for anyone studying Mi'kmaw law. Inevitably the book focuses on the Mi'kmaq of Nova Scotia, particularly Cape Breton, where Marshall lived and fished, leaving out Mi'kmaw communities in New Brunswick, Prince Edward Island, and Newfoundland; McMillan's list of Mi'kmaw petitions to Crown officials in England protesting the impoverished condition in which the Mi'kmaq lived during the early to mid-nineteenth century, for example, leaves out Chief Oliver LeBone's 1838 petition from the Mi'kmaq of Prince Edward Island.

For obvious reasons, in a book focusing on Mi'kmaw law, McMillan includes only a bare minimum of details about her life with Marshall. While we are given insight into Marshall's beliefs and motivation, we are left wondering about aspects of her own experience, for example what it meant to be a non-Indigenous Canadian navigating the at times violent reaction of the local non-Indigenous fishers towards the Mi'kmaq. Her deep concern for Marshall is evident, but this book is not the place for a major delving into the complex and at times contradictory psyche of a man who faced overwhelming odds and suffered a great deal while leaving a lasting legacy for his people but who in the end faced psychological breakdown. Overall, the book is a hybrid written from a privileged position, a wealth of information combined with a heartfelt commitment to the furtherance of Mi'kmaw law, and a tribute to the legacy of Donald Marshall Jr.

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