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THE ADMINISTRATION OF JUSTICE
IN CANADA'S NORTHWEST TERRITORIES, 1870-1990:
A CASE STUDY IN COLONIALISM AND SOCIAL CHANGE.

by

Allan Lloyd Patenaude

B.A. (Hons.), Simon Fraser University, 1989

THESIS SUBMITTED IN PARTIAL FULFILMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF ARTS (CRIMINOLOGY)
in the School
of
Criminology

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The Administration of Justice in Canada's Northwest

Territories, 1970-1990: A Case Study of Colonialism and

Social Change

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ABSTRACT

In 1870, the Dominion of Canada formally acquired Rupert's Land and the North-Western Territories from Great Britain. Ten years later, the islands of the Arctic Archipelago were also secured. Although various authors have commented on the rationale and events surrounding these acquisitions (cf. Bovey, 1967; Brown, 1907; Clancy, 1985; Jenness, 1964, 1968; Johnston, 1933; Morrison, 1967, 1973, 1985; Zaslow, 1971, 1981, 1985), few researchers have discussed them as part of a process undertaken by the Canadian state to maintain stability and to impose its notions of cultural hegemony on these areas. Two assertions will be examined in this thesis: (1) that perceived threats to the stability of the fledgling Canadian state hastened the eventual acquisition of those vast expanses of territory; and, (2) that the imposition of the Anglo-Canadian system of criminal justice was carried out to legitimize those actions to promote the cultural hegemony of the dominant society from Southern Canada amongst the aboriginal inhabitants of the region.

Through the use of primary and secondary sources the author examines the administration of justice, notably the actions of the police and courts and, to a lesser degree, corrections in the Northwest Territories since 1870. The historical approach adopted throughout this thesis offers an example of the role which the criminal justice system has played in promoting the cultural hegemony desired by the Dominion government, especially through periods of government financial neglect. This approach, and the results which it yields, will offer Northerners and their governments, at both the federal and territorial levels, an opportunity to understand the potential of the criminal justice system to act as an agent for social change.

This study illustrates the need for legal scholars, notably those claiming Marxist roots, to pay heed to the political and

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cultural as well as economic aspects of criminal justice in Canada. Among the conclusions reached in this thesis is the notion that the interests of the central government, rather than the needs and aspirations of Northerners, were served by the creation, amendment, and application of criminal justice legislation in the North.

RESUME

Le Dominion du Canada acquit formellement de la Grande-Bretagne la terre de Rupert et les Territoires du Nord-Ouest en 1870 et, dix ans plus tard, les îles de l'Archipel Arctique. L'acquisition de ces terres a donné lieu à des commentaires de la part de plusieurs chercheurs concernant la raison pour laquelle elle se fit et les événements qui l'ont entourée (cf. Bovey, 1967; Brown, 1907; Clancy, 1985; Jenness, 1964, 1968; Johnston, 1933; Morrison, 1967, 1973, 1985; Zaslow, 1971, 1981, 1985). Néanmoins, peu d'entre eux ont examiné un certain point, à savoir que cette acquisition fait partie d'un procédé qui aide à maintenir la stabilité de l'état canadien tout en imposant sa notion d'hégémonie culturelle. La thèse suivante soutient deux points: (1) à savoir que le nouvel état canadien acquit ces vastes territoires dans l'espoir d'établir une stabilité soit disant menacée; et (2) à savoir que l'imposition d'un système de justice criminelle anglo-canadien fut implantée dans le but de promouvoir l'hégémonie culturelle de la société dominante du sud canadien parmi la population native de la région.

L'auteur examine le système de justice criminelle à l'aide des sources primaires et secondaires et joint à ses recherches son expérience considérable comme un travailleur dans le système de la justice criminelle du Nord. Il explore l'administration de la justice, à savoir notamment les actions de la police et des cours criminelles, et mentionne également le système correctionnel dans les Territoires du Nord-Ouest depuis 1870. L'approche historique adoptée dans cette thèse offre un exemple du rôle joué par le

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A.L. Patenaude
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CHAPTER I

CANADA'S NORTHERN JUSTICE ISSUES: AN OVERVIEW.

Introduction

During the last twenty years the Dominion government has shifted the focus of its attention from the events of the global village towards the problems faced by those citizens living throughout the various regions of Canada (Berger, 1977; Penner, 1983). Issues such as the economic recession, the Canada-U.S.A. Free Trade Agreement, the environment and the debate over the provisions of the recently-defeated *Meech Lake Constitutional Accord* have become topics of discussion among many Canadians. This shift in focus has brought into view not only the multicultural heritage of this nation, but the fact that the history of Canada is a history of the growth and development of the various regions of Canada, such as the North, rather than a single national history. Indeed, this thesis is a descriptive analysis of the evolution of one such region, the Northwest Territories, since its "acquisition" by the Dominion of Canada in 1870.

Prior to the Second World War, the Canadian government and academics evidenced very little interest in the development of those lands which are, currently, the Northwest Territories (Coates, 1985; Coates and Powell, 1989; McMahon, 1988; Page, 1986). Since the end of the war in 1945 and the beginning of the Cold War between the two major political alliances (the North Atlantic Treaty Organization [NATO] and the Warsaw Pact) in the 1950s a renewed interest has been demonstrated by governments. While much of the academic interest in the North has been focused through the physical sciences very little attention has been paid to the social sciences such as anthropology, education, health care, psychology and sociology. Far less attention has been paid to those changes which were brought about by the imposition of and development

within the legal and political spheres of Northern life, especially in relation to the administration of justice (cf. Adamyk, 1987; Ashlee, 1984; Bovey, 1967; Braden, 1976; Carlson, 1986; Chartrand, 1986; Clancy, 1985; Dickson-Gilmore, 1987; Feeney, 1977; Foraie, 1976; Hardie, 1976; Jensen, 1974; Morrison, 1973; Piddocke, 1985; Potts, 1977; Rea, 1968).

This thesis will focus on one aspect of the evolution, since 1870, of the contemporary Northwest Territories of Canada. Within those spatial and temporal boundaries, this thesis will examine the roles played by the three major components of the criminal justice system, namely the police, courts and corrections, in constructing the current social dynamics of Northern life. This examination requires exploring both the political and legal development of the N.W.T. and the impact of that development upon the evolution and administration of criminal justice throughout the region. It will examine the Euro-Canadian imposition of systems of law and politics, the indigenous peoples' resistance to this and, finally, the directions which that resistance has led the indigenous peoples of Canada's Northwest Territories.

The common thread woven throughout the following chapters and which binds together this thesis is the primary research question:

Were the imposition and evolution of the Euro-Canadian legal and political systems in the N.W.T. influenced more by perceived threats to stability of the Canadian state and its dominant ethnic hegemony rather than the legal developments occurring in Southern Canada?

Each of the following chapters will seek to answer that question by responding to three subsidiary questions, first posed by Motyl (1987) in his examination of the Soviet Union, each of which are as topical to the debate over the Meech Lake Constitutional Accord during 1990 as they were to Canada's "acquisition" of the Rupert's Land and the North-Western Territories in 1870, namely:

1. How does the state deal with its opponents?
2. How does it interact with ethnicity?
3. How does it reconcile the imperatives of survival, or self-maintenance, with those of autonomy?

Organization of the Thesis

In order to accomplish the goal of answering the major and subsidiary research questions, this thesis has been organized along temporal lines. This will enable the major economic, legal and political events of the study period to be presented and examined as part of a process of social change in the North.¹ The remainder of this chapter, Chapter I, will present the general organization and content of the subsequent chapters and indicate how each is essential to an understanding of the current system of politics and criminal justice within the N.W.T.

Chapter II introduces the land and the peoples of the N.W.T. Within this chapter, the Northern physical and human environments are discussed in general terms. Essential to these discussions is the presentation of the terminology commonly used when examining the aboriginal and non-aboriginal peoples who make the Canadian North their home, namely: Dene, Metis, Inuit, and the Europeans/Euro-Canadians ("Others" in the current terminology used by the Government of the Northwest Territories).

¹ Throughout this thesis, the terms "North," "Northern," "Northerner," will be used to describe the areas of the residual or contemporary Northwest Territories and its residents regardless of ethnic origin. Similarly, the term "North Western Territories," "North-West Territories," "Northwest Territories," and "N.W.T." will be used interchangeably, as appropriate to the temporal period, to describe the jurisdiction being reviewed. Those areas and residents of Canada south of the 60th degree of latitude will be described as "South," "Southern Canada," and as "Southerners."

Chapter III offers an examination of the various theories and models which have been applied in the past to analyze the relationships between the Canadian state and the Northwest Territories. These models have traditionally included the notions of colonialism and its variants - dependency, development and underdevelopment - and the various theories of the State. There is a brief discussion of their strengths and weaknesses when applied to a study of the North and its peoples as well as their general tendency towards economic reductionism while ignoring the inherent political aspects and nature of the processes of change within the N.W.T. Finally, this chapter offers the reader, who may not be familiar with the works of Alexander Motyl, an opportunity to become acquainted with his 1987 discussion on state stability and ethnic hegemony within the Soviet Union. Following the presentation of Motyl's (1987) concepts, their applicability to an understanding of Canada's Fourth World will be assessed.

Chapter IV begins with the assumption that the history of the North is one of massive social change which has been unparalleled elsewhere in Canada. Indeed, it will be argued that this change has been a long-term, rational process of change on the part of the larger Euro-Canadian society. This chapter examines the traditional approaches which social scientists have utilized to understand the aboriginal peoples of the North, their rich social and cultural heritage, their current problems, and prospects for the future. As the processes of change are long-term in nature either an ethnohistorical or historical approach appears to offer the most appropriate method for this thesis; This thesis will utilize a historical approach as financial and other constraints have prevented the use of the former method.

Chapter V employs a historical analysis to identify those processes of change which had been present prior to Confederation in 1867 and during the following years. Motyl's notions of stability and ethnic hegemony will be discussed in order to

illustrate their appropriateness in Northern social research. The contemporary views towards aboriginal peoples and Rupert's Land and the North-Western Territories will be presented. Similarly, the results of the transformation of Anglo-Canadian values into the Dominion governments public policy as applied to the North and aboriginal peoples will be analyzed using Motyl's concepts. Finally, this chapter presents the 1835 murder case involving three Metis trappers, Baptise Cadien, Creole La Graisse, and Baptise Jourdain, as an example of the attitudes of the dominant society of that time towards the "savages and half-savages" as they labelled the aboriginal peoples.

Chapter VI discusses many of the notable events which occurred between 1870 and 1930, such as the "acquisition" of the region, the creation of the Yukon Territory and the provinces of Alberta, Saskatchewan and Manitoba, and the evolution of the Northwest Territories Council. Finally, the role of the police in attaining Sir John A. Macdonald's "National Policy" and the peaceful assimilation of the west (including the North), the establishment of a *de facto* police administration supported by the Stipendiary Magistrate's Courts will be discussed (Jenness, 1964, 1968; Morrison, 1973). Their respective roles in upholding (enforcing?) the generalized, Anglo-Canadian law will be examined.

Chapter VII examines the political activity which occurred within the truncated Northwest Territories during the 1925-1945 period (Chartrand, 1986; Jenness, 1964, 1968). In this chapter, it is argued that the government priorities of sovereignty and political stability had been established during the previous study period resulting in over two decades of neglect by the central government. This neglect did not halt the establishment of additional police detachments, the use of Southern-based "circuit" courts to bring justice into the North nor the retention of centralized political control in Ottawa.

Chapter VIII examines the period, 1945-1975, when the colonization of the Northwest Territories began in earnest, resulting in the rapid expansion of government activity throughout the region, and ending with the increasing awareness of the rights of Northerners, both aboriginal and non-aboriginal alike. It was during this period, for example, that the R.C.M.P. began to adapt the roles played by aboriginal Northerners in their ranks from guides and dog-handlers towards the performance of regular police duties. Similarly, the establishment of the Territorial and Supreme Courts in the Northwest Territories was the first major step towards aboriginal legal acculturation as the courts brought "justice to every man's door" in the Northwest Territories. Unique to the correctional systems in Canada, this period would bear silent witness to the establishment of the N.W.T. Corrections Service which had the cosmetic appearances of blending aboriginal and non-aboriginal values and belief systems. However, the effects of a Northern correctional system would be to reinforce middle-class, non-aboriginal Canada.

Chapter IX, considers the imposition of the Euro-Canadian systems of politics and criminal justice, the desire of Northerners to preserve many aspects of Northern living. This chapter will present the efforts of the Northerners since 1975 to resist past and present colonial actions of the central government, maintain their ethnic identity and seek ethnic survival through the establishment of autonomous legal and political structures. Just as the decisions and structure of the courts will serve as indicators of how these two opposing have continued to clash, the recent Agreements-in-Principle concerning land claims and self-government will illustrate the renewal of Northern aspirations and the beginning of a spirit of compromise.

In Chapter X, the major arguments set forth in the previous seven chapters are summarized and conclusions about the future of criminal justice in the Northwest Territories are offered. It

focuses on the efforts of the central government, notably within the areas of politics and criminal justice, to maintain its own versions of stability and ethnic hegemony and the counter-balancing efforts of Northerners to become self-determinant in those same areas. In conclusion, this thesis will offer researchers directions for future socio-legal research in the Northwest Territories.

CHAPTER II

THE LAND AND THE PEOPLE

One of the major aims of this thesis is to provide scholars with an opportunity to understand the potential of the criminal justice system to act as an agent for social change. Nowhere does this become more apparent than when studying the rapid social, political, and economic changes which have occurred in the NWT since Canada acquired this area from Great Britain. This chapter will present a brief description of the physical geography of the area presently defined as Canada's Northwest Territories and the peoples, both aboriginal and non-aboriginal, who make it their home.

Northern Canada's Environment

The scope of this thesis is quite broad in terms of its spatial and temporal focus. This thesis examines, from a spatial perspective, the vast land mass and archipelago ceded by Great Britain to the Dominion of Canada in 1870 and 1880, respectively. Fortunately, however, the territorial development of Canada, since 1870, has truncated geographic size of the Northwest Territories from nearly ninety percent of British North America to less than two-thirds of the current Dominion of Canada. This section will present a brief description of the physical geography of Canada's Northwest Territories.

The question "What are the boundaries of Canada's North?" has been asked by researchers seeking a geographical, political, or social definition. Canadian geographer Louis-Edmond Hamelin, considered the doyen of those seeking to delineate Northern Canada from its southern neighbours, utilizes "nordicity" as a method of delineating these two regions from each other. Based on a ten-part index which measures relative northern location, degree of northern

geographic or physical environment, and the type of human activity, Hamelin (1978) argues that Canada's North has decreased in mass by 20% since the 1880s, primarily, as the result of improvements in transportation technology and its resultant northern expansion of the Canadian population and economy (Hamelin, 1978:15-46).

From a political perspective, it is possible to delineate the territorial North as the land mass and archipelago north of the sixtieth parallel (excluding Nouveau-Quebec and Labrador). It is that arbitrary line on a map which sets the colonial tone of the relations between the federal government in Ottawa and the peoples of the North. Indeed, it illustrates that both the Yukon Territory and the Northwest Territories are, currently, colonial extensions of the Canadian state, dependent upon the latter's largesse for their continued existence.

Although the Canadian Shield covers large portions of both "Southern" Canada and the Northwest Territories, it is possible to delineate these regions in terms of their respective physical environments. The peaks and watersheds of the Mackenzie Mountains provide the western boundary of the Northwest Territories, Canada's largest, single jurisdiction. Expanding eastward and northward from that mountain range one finds two distinct geographies: the subarctic taiga and the arctic tundra which is found above the treeline. Stretching across the subarctic areas of the Northwest Territories is found the Canadian Shield and the taiga and tundra which cover it.

The taiga region is best described in physical terms as a series of rivers and lakes, rolling hills, and boreal forests comprised of black spruce, birch, fir, poplar, tamarack, and willow (Coates, 1985:16-18). The Liard, Mackenzie, Nahanni, and Slave River systems along with the two largest lakes, Great Slave Lake and Great Bear Lake, form the major waterways of the region. The Mackenzie River, for example, drains over 1600 km. from the western

arm of Great Slave Lake in the south to its northern terminus in the Beaufort Sea. The short, summer season has not reduced the amount of wildlife abundant throughout the region. The abundance of fur-bearing mammals (beaver, fox, mink, muskrat, otter), game animals (brown/black bear, silver-tipped grizzly bear, bison, woodlands caribou, moose) and fish (arctic grayling, pickerel, pike, sturgeon, trout, whitefish) have been the staples of the aboriginal economy. During the last fifty years the non-renewable resources (gold, lead-zinc, uranium, petroleum, natural gas) of the region have become apparent and attracted attention from resource corporations and the federal government in the South.

The treeless, *tundra* region is typified by the exposed rock which predominates the landscape. The rock forms are not, however, typical and range from rolling hills to spectacular mountains such as Mount Thor in Auyuittuq National Park on Baffin Island. Vegetation throughout the region is a mixture of mosses, lichens, scrub grass and miniature pine and willow. This limited vegetation base supports, however, an extensive population of mammals (barrenland caribou, fox, arctic hare, and muskox) and hundreds of migratory and non-migratory birds. Similarly the inshore waters are rich with fish (arctic char, cod, herring and shrimp) and sea mammals (polar bear, beluga whale, killer whale, narwhal, various seals, and walrus). These natural resources have traditionally supported, albeit in cycles of feast and famine, a limited human population. In terms of non-renewable resources, there are two producing lead-zinc mines within the Arctic Archipelago and extensive reserves of oil and natural gas in the High Arctic.

The Northwest Territories stretches across three time zones, and covers nearly 3 million kms. and yet has a total population of only 53,000 residents, of whom Dene comprise 22%, Metis account for 18%, Inuit are 35%, and the remainder non-Native. Thus, it becomes mandatory to distinguish between these groups of Northerners.

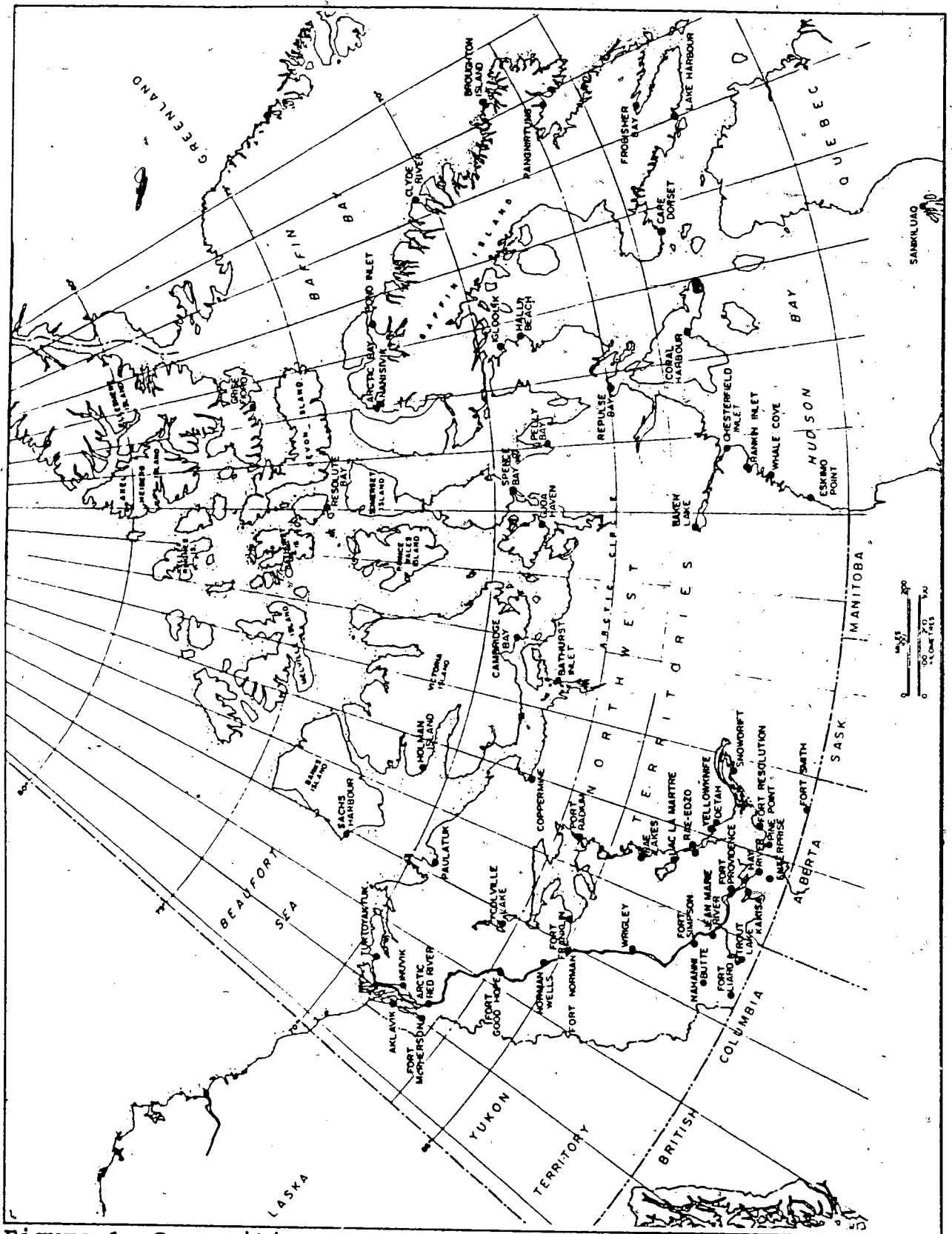


Figure 1 Communities of the Northwest Territories.

Addressing the Semantic Concerns: "Native" vs. "native"

After conversations during which the concepts of "culture", "natives" or "Indians" were discussed, this anthropologist-turned-criminologist has been observed walking away while muttering comments about his "heathen criminological brethren". How does the criminologist steeped in the traditions of either psychology or sociology, for example, operationalize these concepts? Indeed, anthropologists who employ these terms as their stock-in-trade routinely disagree with others within their own discipline on the definition and use of them! Therefore, prior to addressing the history of indigenous-incursive relations in Canada's Northwest Territories it is necessary to delineate the concepts and definitions used throughout this discussion. These concepts include: culture, native/Native, and Indian.

(i) **Culture:** Culture is regarded by many as the most central concept of anthropology and ethnographic inquiry. Unfortunately as such a central tenet of the discipline it is also the most hotly debated one. Cashmore's Dictionary of Race and Ethnic Relations (Second Edition) (1988) illustrates this lack of consensus, for example, by noting that:

Defined by Sir Edward Tyler in 1871, as when 'taken in its wide ethnographical sense' being 'that complex whole which includes knowledge, belief, art, morals, law, custom and any other capabilities and habits acquired by man as a member of society'. Since then, definitions have proliferated with little if any increase in precision. Sir Raymond Firth has written that 'If society is taken to be an aggregate of social relations, then culture is the content of those relations.' Society emphasizes the human component, the aggregate of people and the relations between them. Culture emphasizes the component of accumulated resources; immaterial as well as material (Cashmore, 1988:68),

Similarly, Kottak's Anthropology: The Exploration of Human Diversity (Second Edition) (1978) presents the consensual,

mainstream definition of culture as:

That which is transmitted through learning, behaviour patterns, and modes of thought acquired by humans as members of society. Technology, language, patterns of group organization, and ideology are aspects of culture (1978:536).

For the purposes of this thesis, a hybrid definition of culture will be employed. Based upon the works of Kottak (1978) and Cashmore (1988) culture will be accepted as:

That which is transmitted through learning, behaviour patterns, and modes of thought acquired by humans as members of society. Cultures are dynamic as individuals come to terms with changing circumstances (such as new technology) they change their ways and shared meanings change with them.

(ii) **Native/native:** It is recognized that the terms "aboriginal", "Amerindian", "Indian", "indigenous", "Inuit", and "Metis" have been used interchangeably and incorrectly with the all-inclusive term "native". The use of the terms "Native" and/or "native" is a case-in-point. The classification provided by Peterson and Brown (1985) will be adapted herein and employed throughout this discussion to include:

Native, when written with a small 'n', is the racial term for those persons possessing any degree of Amerindian ancestry in Canada. Written with a capital 'N', Native is a socio-cultural or political term for the original and subsequent Amerindian peoples who have evolved into distinct but related cultural groups (Peterson and Brown, 1985:6).

(iii) **Indian:** Perhaps no other definition associated with the native peoples of Canada is misunderstood and subsequently misused to the same degree as the single term "Indian". Originating with Columbus' discovery of the Caribs at Hispaniola in 1492, the term "Indian" has evolved into a legal definition within the federal

Indian Act (1985).² Indeed, within the interpretive sections of the *Indian Act (1985)* have come into force the following legal definition:

§2(1) "Indian" means any person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian;

This definition provides only a limited understanding of who actually is an "Indian" other than in law. The inherent inadequacy of the definitions within the *Indian Act (1985)* is its lack of precision and incompleteness. Nicholls (1966:1) argues, for example, that the *Indian Act (1952)* merely created a dichotomy between "Indian" and all other Canadians who are "Non-Indians" without distinguishing between cultural or legal characteristics. Similarly, Weafer (1986) notes that controlled registration as an "Indian" is the delineating characteristic under the federal *Indian Act (1985)*:

It is also important to indicate that the legal definition of the term "Indian" may tend to exclude a large number of native people. It is the Indian Act of Canada that defines an "Indian" as an individual who is registered as an Indian. It is obvious that this would exclude those natives not registered, as well as Inuit and Metis. Thus, one must use caution when utilizing the term "Indian" and the literature which may only focus on registered Indians (Weafer, 1986:21).

For the purposes of this thesis, Weafer's caveat will be heeded and the terms "native" and/or "Native" will be used in the contexts discussed herein, however, the term "aboriginal" is preferred. Indeed, wherever possible the terminology used by Northern peoples to describe themselves, namely "Dene", "Metis" and "Inuit", will be applied. It is interesting to note that these terms are often

² An Act to Amend the *Indian Act*, 1985 (Can.), c.27, hereafter the *Indian Act (1985)*.

discarded in the political arena in favour of the collective term "aboriginal peoples".

Northerners. All: Dene, Metis, Inuit and Others³

(i) **Dene:** -During 1976, average Canadians were first exposed to the term "Dene" (pronounced "Dennay") on a national basis with the publication of the *Dene Declaration*. That declaration was an articulation of both the sense of frustration felt by many Dene and their quest for self-determination. This may be seen in section 4 of the *Declaration* which states "The definition of the Dene is the right of the Dene. The Dene know who they are" (in Watkins, 1977:186). For Euro-Canadians living and/or working in the northern areas of Alberta and Saskatchewan as well as the Mackenzie Valley-Great Slave Lake areas of the Northwest Territories, that term was much more familiar. Dene leader George Erasmus (1977) presents how this term and its usage has evolved:

We have always called ourselves 'Dene.' Simply translated, we defined ourselves as 'people,' as different from the animals. With the coming of the Europeans, we developed the term 'Dene' to mean not only ourselves as a people separate from the animals, but ourselves as separate from the Europeans (in Watkins, 1977:178).

The post-contact Dene lifestyle has been described as a migratory, subsistence mode of living which is gradually giving way to a modernized, sedentary lifestyle (cf. Coates, 1985; Coates and

³ For the purposes of brevity, this chapter, it is seen prudent to present only brief discussions of the social, political and cultural attributes of Dene, Metis, Inuit, and non-Native society in the North. For a fuller understanding of these peoples, the reader is directed to: David Damas (ed.) Handbook of North American Indians, Volume 5: Arctic (1984) and June Helm (ed.) Handbook of North American Indians, Volume 6: Subarctic (1981); and Kenneth Coates and Judith Powell The Modern North: People, Politics and the Rejection of Colonialism (1989).

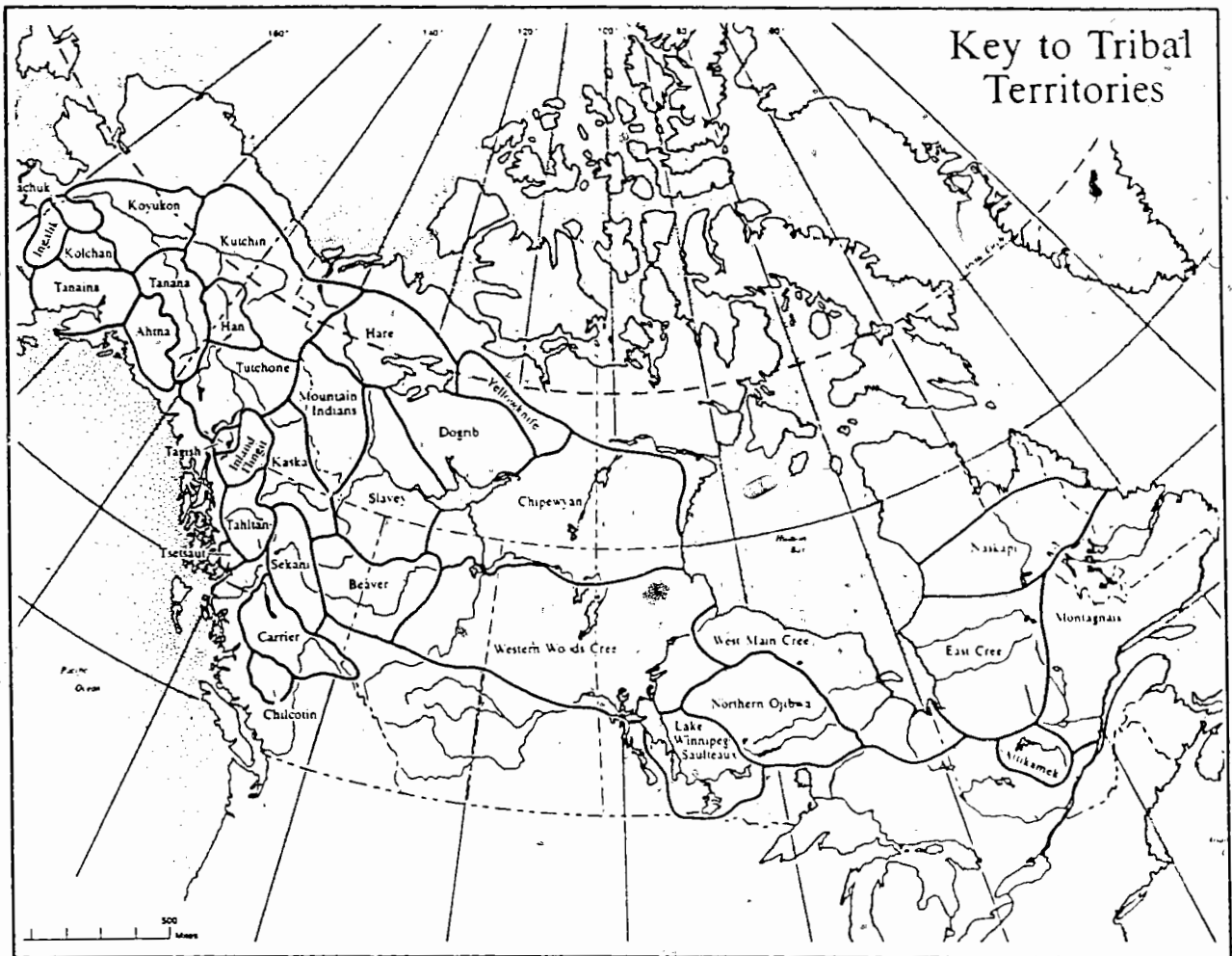


Figure 2 Subarctic Tribal Territories in Canada.

Source: June Helm (ed.) Handbook of North American Indians, Vol. 5: Subarctic, (1981).

Powell, 1989; Crowe, 1974; Dacks, 1981; Damas, 1969; Helm, 1981; Jenness, 1968). In general terms, much of the traditional, consensual-style of leadership and the primacy of the extended-family remains intact in the small, Dene communities in the treeline areas of the Northwest Territories. Indeed, most Dene communities range in size from 50 to 750 persons although there exist the larger, regional communities of Rae-Edzo, Hay River, Fort Smith, Fort Simpson and Yellowknife (GNWT Bureau of Statistics, 1989b). While the arrival of the Euro-Canadians has had a dramatic impact upon the traditional lifestyle of most Dene, their

"traditional" lifestyle is currently romanticized by many, both Dene and Euro-Canadians, and practised by fewer Dene as a subsistence hunting/trapping existence with surplus fur yields sold for the necessities of life. Recently urbanization, individual and collective trauma (Shkilnyk, 1984), and the decline of the fur industry in Canada have had debilitating results upon the cultural resilience of many Dene, who are in turn, are succumbing to pressures from the South to assimilate. This may be seen in the decline in the relative importance of the extended family, elders, and traditional methods of conflict resolution and social control.

Generally speaking and for the purposes of this thesis, the term "Dene" has referred to the Athapaskan-speaking, native peoples of the Mackenzie Valley-Great Slave Lake areas of the Northwest Territories. This definition includes those persons of Chipewyan, Dogrib, Hare, Kutchin, Loucheux, Nahanni, Sahtu Dene, Slave and Yellowknife ancestry, who identify themselves as "Dene" regardless of their legal status under the *Indian Act* (1985).

(ii) **Metis:** The Metis peoples have laboured under the yoke imposed by government definitional imprecision far more than any other Native group in Canada. In Home and Native Land: Aboriginal Rights and the Canadian Constitution (1984), Asch notes that the definition of "Indian" has taken on new polemic distinctions, namely "status Indians" and "non-status Indians" as:

status Indians" refers to those persons who are registered under the Act; and "non-status Indians" are those who have lost, or as the government phrases it, "have not maintained their rights as status Indians" (Statistics Canada n.d.:7). Government, although using a separate verbal designation for non-status Indians, has tended to place this group, administratively, into the same category as "Metis" - a category that, at least until the Constitution Act of 1982, did not have "special" rights as aboriginal people (Asch, 1984:25).

The question of Metis group membership remains somewhat

unclear at this time, a fact which may hinder individual inclusion as an aboriginal person within the meaning of §35(2) of the Constitution Act (1982).⁴ While *metisage*, the process of intermarriage between individual natives and non-natives, has been occurring since the early post-contact period in Canada *metisation* or the creation of a Metis identity is still occurring (Peterson and Brown, 1985:4-5; Feeney, 1977:11). Peterson and Brown (1985) offer the definition of "Metis" which shares the belief of many Euro-Canadians that Metis were:

Persons of mixed Indian and European ancestry who, for whatever reasons, are not regarded as either Indian or white are referred to, often pejoratively, as "halfbreeds," "breeds," "mixed-bloods," "metis," "michif" or "non-status Indian." Collectively, they are characterized by an almost universal landlessness and an oppressive poverty, conditions which historically have inhibited political combination or action (1985:4).

While this definition may have characterised many Metis during the 1885-1945 period it is taken as a political statement of ethnogenesis by the Metis National Council. As a Council, they hold that:

the "Metis" people form "a distinct indigenous nation with a history, culture and homeland in western Canada, "consisting specifically of the descendants of those who were dispossessed by Canadian government actions from 1870 on (Peterson and Brown, 1985:6),

which is a position that is strongly contested by the Native Council of Canada. The latter body believes that Metis are those people "who base their claim on national rights rather than aboriginal rights" (Peterson and Brown, 1985:6). It is fortunate

⁴ Constitution Act (1982). Enacted by the Canada Act (1982), (U.K.), c.11; Amended by the Constitution Amendment Proclamation, 1983, in force June 21, 1984, hereafter the Constitution Act (1982).

that this division has been temporarily put aside in favour of a joint Dene-Metis Agreement-in-Principle regarding the settlement of land claims with the federal government.

Thus, as a people, Metis have internalized the positive aspects of an externally imposed ethnic boundary and, in turn, regard themselves as *michif* or in the middle of two ethnic groups and endowed with the strengths of both cultures. For the purposes of this thesis, the definition of Metis offered by Feeney as:

persons of mixed White and Dene parentage and who consider themselves to be distinct and separate from both Dene and Whites (some persons of mixed White and Dene parentage consider themselves to be Dene) (Feeney, 1977:11);

coalesces the Metis identity in the Northwest Territories and will be utilized to discuss this dynamic group who share the land with the Dene and non-Native peoples of the Western Arctic.

(iii) Inuit: Until the end of the Second World War two factors limited the understanding of Canada's most-northerly residents, Inuit, by the dominant Euro-Canadian society: 1) the remoteness and extremes of the Arctic and, 2) the lack of the necessary transportation and other technology to sustain contact with the region and its peoples. These factors contributed to incorrect views and a general 'myth-understanding'[sic] of Inuit.

"Inuit" is the current term of general application used to describe the aboriginal residents of the Circumpolar Arctic from Siberia eastward to Greenland, whose ancestors traditionally occupied territories along the Arctic Coasts and above the tree line. Although Inuit share a common genetic origin they are not a homogeneous population. There are regional differences in language, material culture and cultural persistence despite the efforts of the dominant society in their respective nation. An

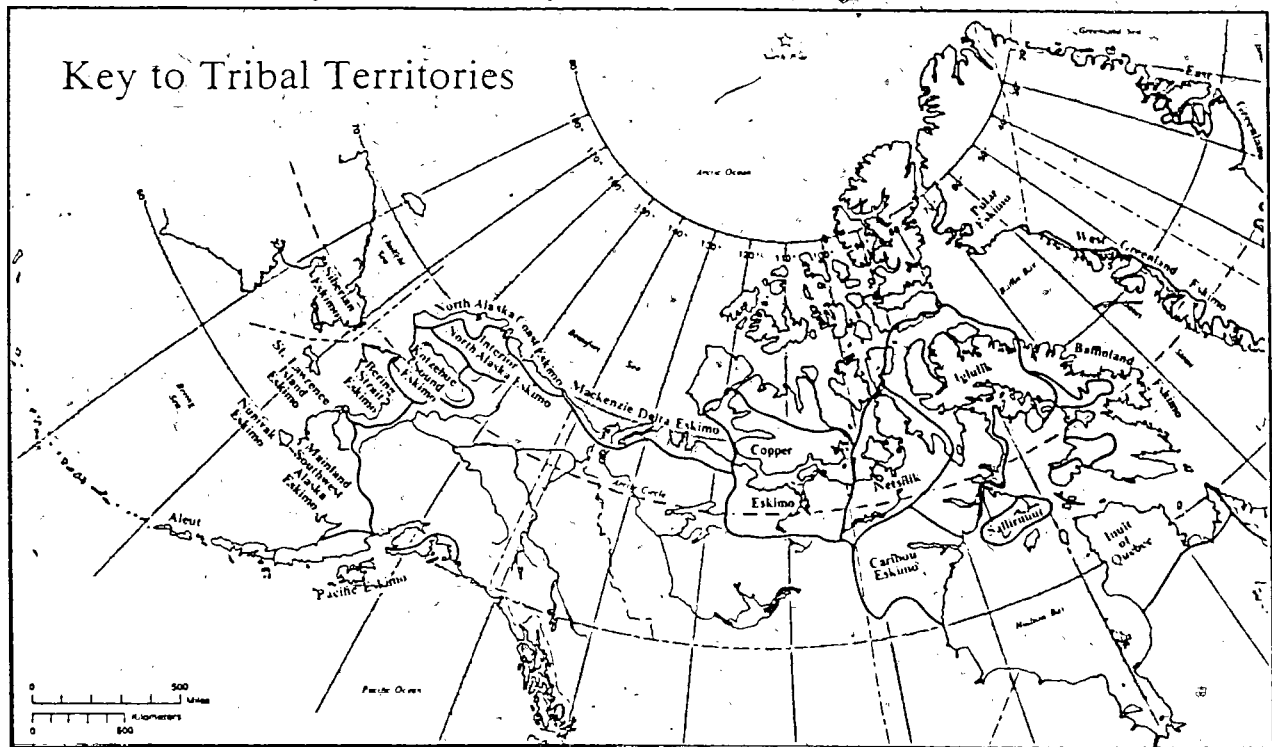


Figure 3 Arctic (Inuit) Tribal Territories.

Source: David Damas (ed.), Handbook of North American Indians, Volume 6: Arctic, (1984),

example of this diversity may be seen in the terminology Inuit use to describe themselves: *Yupik* (Siberia), *Inupiat* (Alaska), *Eskimo* (Alaska, Central Canadian Arctic), *Inuvialuit* (Mackenzie Delta/Beaufort Sea areas and Western Canadian Arctic), and *Inuit/Innu*it (Eastern Canadian Arctic, Nouveau-Quebec, Labrador, Greenland).

Traditional Inuit society was constrained by the available resources and technology in the region. The seasonal rhythms, based on the summer and winter environments, were aimed at harvesting the seal and caribou resources essential for survival. Group survival mechanisms and activities were enculturated and maintained by the three primary influences within the culture: the *-miut* group (extended-family), the *inumariit* (elders), and the *angakkoq* (shaman). These factors influenced the organization and

the social regulation/social control mechanisms which it employed. As with Dene in the Western Arctic, Inuit have been subject to recent influences from Southern Canada and not only exhibit many signs of individual and collective trauma, but have assimilated much of the Euro-Canadian values and beliefs.

For the purposes of this thesis, the term "Inuit" will be utilized in deference to the aboriginal preference. The past terms "Eskimo" and "Esquimaux", both adaptations of a Chipewyan word meaning "Eaters of raw meat", are not used throughout this text, although they will be retained within quoted extracts for the purposes of historical accuracy. Indeed, Lange (1972:v) notes that these latter terms are disliked by many Inuit, notably those residing in the Eastern Canadian Arctic, and seen as a pejorative term and remnant of colonialism.

(iv) **Others (Whites/Euro-Canadians):** This category, like the previous one describing Indians, is fraught with imprecision. "Euro-Canadians" includes, as Kravitz (1974:7) noted, "all non-indigenous residents, i.e. English, Canadian, Japanese, Jewish, East Indian, West Indian, etc." of the Northwest Territories. The use of this term has generally been used to refer to "the White population found in the Canadian Arctic, for Canadians and Europeans form its largest part" (Lange (1972:v). Feeny (1977:11), for example, offers the explanation that Euro-Canadian refers "primarily to Caucasian Anglophone Canadians, although many of the characteristics extend more generally to North Americans of European descent who are part of the industrial, capitalist economy."

In general terms, it is often the socio-economic status and/or transient nature of this group which separates it from the aboriginal peoples of the North. While the number of Euro-Canadians living in the North is less than the aboriginal population, its 88% participation rate in the Northern economy is

dramatically higher than the 56% aboriginal participation rate. Concomitant to these figures are the higher rates of personal income and improved housing standards among Euro-Canadians, often provided by their employers (GNWT Bureau of Statistics, 1989a).

One problem which has been endemic in the Northwest Territories is the transient nature of many Euro-Canadians employed there. Although the number of long-term Northerners is increasing, one analyst noted that:

"About eighty percent of non-transient non-natives are prepared for no more than a few years stay in the Arctic. Some leave after building up a nest egg of cash; others, especially government employees, are transferred or promoted out of communities." Workers in the Beaufort Sea and at the Nanisivik and Polaris mines represent northern mobility at its most extreme. From the beginning of these projects, the people have been flown in and out on rotation, spending from three to six weeks in the North, usually within the confines of a company camp, and then given a furlough of equal length in the South. While technically they are northern workers, these highly paid individuals have had only a marginal impact on northern society and have returned very little to the region (Coates and Powell, 1989:17).

Prior to the 1970s most earlier writers employed the term "White" to describe the incursive population, or European/Euro-Canadians, in the North. During the 1970s the Government of the Northwest Territories began to categorize the populations of the North through the use of ethnic or pseudo-ethnic labels: "Dene" for status Indians, "Metis" for non-status Indians, "Inuit" for persons of Eskimoan heritage, and "Others" for persons not included within the previous labels including Europeans/Euro-Canadians, Asians, and Africans. This term has been used in general application by the governments in the North as the label for Euro-Canadians, however, due to their numbers. In deference to these practices in the Northwest Territories, the term "Euro-Canadians" will be given general application throughout this thesis. However, those terms

employed in quoted excerpts will remain. In the case of the Inuktitut (the language of Inuit), this has included the following dialect variations: *kabloonaq*, *krablunak*, *kadlunak*, *kallunak*, *qalunak*, *qadlunak*, and *qallunaaq*.

CHAPTER III

THE STATE, COLONIALISM, AND PLANNED SOCIAL CHANGE.

Concepts of the State

Numerous philosophers, political scientists and sociologists have written about the concept of the state and its role in regulating human activities at both the individual and aggregate levels. From the liberal thinkers of the sixteenth and seventeenth centuries through to the sociological, albeit functionalist, writings of the eighteenth and nineteenth centuries and, finally, to Marxist works written in the nineteenth and twentieth centuries, much ink has been spilled in mankind's efforts to find an all-encompassing understanding of the state. This chapter will spill yet more ink as it examines the various perspectives of state theory as well as the notions of colonialism, development/underdevelopment, stability, and ethnic hegemony as they relate to discussions of the relations between the Canadian state and the Northwest Territories.

For the purposes of this discussion, several authors were surveyed in order to acquire a rudimentary understanding of what constitutes the state and its role in those societies practising a capitalist mode of production (cf. Brym, 1985; Held, 1983; Knuttila, 1987; Motyl, 1987). Although a secondary source and, thereby, an interpretation of original authors, Murray Knuttila's State Theories: From Liberalism to the Challenges of Feminism (1987) provided a broad-based perspective and summary of the major schools of thought concerning the state to which the author is indebted. State theorists, according to Knuttila (1987), may be classified initially by their perspectives on the question of what constitutes human nature:

Some theorists might argue that there is in fact a fixed

and static human nature, that human beings are, by nature, self-centred, egotistical, aggressive, and possessive individuals. Others argue that there is no such thing as a fixed "human nature" and maintain that human beings are largely the products of the social environment into which they have been born and in which they develop. The conceptions held about the fundamental character of the species obviously have significant implications for any larger view of society and ultimately for a view of the state (Knuttila, 1987:10).

The classical liberal theorists, such as Hobbes and Locke, would be representative of those who subscribe to the former beliefs. Indeed, they would be most likely to regard basic human nature as *a priori* and the creation of a social contract as the competitive expression of that human nature. Political scientist Roger Scruton (1983) notes that, while it is almost impossible to reduce liberalism to a single theoretical position, liberalism:

expresses the political theory of limited government, and conveys the political sentiments of the modern man, who sees himself as detached from tradition, custom, religion and prejudice, and deposited in the world with no guidance beyond that which his own reason can provide. Hence, if there is a reasoned account to be offered of fundamental human liberties and rights, the individual can judge the legitimacy of political institutions by the extent of their respect for them, and extend his allegiance accordingly (Scruton, 1983:269).

Within a Hobbesian framework, for example, the creation of a social contract would emerge from the conditions of continual and perpetual war (at the individual rather than collective level) and mankind's search for solutions to improve their everyday living conditions (Held, 1983:6).

The state would be created as the individual, being a member of a collective, willingly or unwillingly, relinquishes certain rights of self-action or self-government in return for assurances from the group that the common or public good would be maintained by that collective. Within these liberal belief statements are

found the roles of the state, namely: to maintain order, ensure individual safety from the self-centred actions of others, and to encourage a stable growth of the larger society (Held, 1983:8-12). These functions would remain essentially the same regardless of the form of government or the mode of production practised by the society under review. Knuttila (1987), for example, offers a succinct explanation of the locus and role of the state, claiming that:

For the classical liberal, the state stands outside and even above civil society, serving the role of an umpire in the contests and conflicts that permeate market society. The state's role is not to eliminate conflict, but rather to provide for a minimal basis of order and to adjudicate conflicts as they arise (Knuttila, 1987:49).

Rejecting notions of the state operating outside civil society, acting as the arbiter between disputes, and seeking the public good, elite theorists such as Bottomore (1964) and Porter (1965), perceive the state as stratified and operated for the benefit of the powerful elites within that society. Elites, they claim, are a natural evolution within any group or society as individuals seek to attain status, power, and domination over others. Acknowledging the plurality of elites in many stratified societies, Bottomore (1964) comments on those conditions which may lead to development of elites:

If, however, we were to find, in a particular type of society, that the movement of individuals and families between the different social levels was so continuous and so extensive that no group of families was able to maintain itself for any length of time in a situation of economic and political pre-eminence, then we should have to say that in such a society there was no ruling class (Bottomore, 1964:43).

Indeed, he notes that such preconditions contribute to our understanding of the roles which elites play in such societies. For example, Bottomore (1964) offers the view that:

With their help we can attempt to distinguish between societies in which there is a ruling class, and at the same time elites which represent particular aspects of its interests; societies in which there is no ruling class, but a political elite which founds its power upon the control of the administration, or upon military force, rather than upon property ownership and inheritance; and societies in which there exists a multiplicity of elites among which no cohesive and enduring group of powerful individuals or families seems to be discernable at all (Bottomore, 1964:44).

This statement is in direct conflict with the views of the classical liberal theorists who hold human nature as predetermined and immutable. Found within the economic, labour, political, bureaucratic, and ideological arenas of society, elites are created through the interplay between individual effort and the existing social organization (Knuttila, 1987:61). Beginning with those concepts of mobility and multiplicity of elites offered by Bottomore (1964) and concluding with Porter's (1965:26-27) commentary on the hierarchical nature of social institutions, the notion of elites evolving and emerging from the mass of society has been a central tenet of elite theory. Indeed, elite theorists have tended to ignore the role of the state, claiming it has no autonomy or freedom of action, while favouring the study of how individuals gain power and, then, exercise it to attain dominance over others (Knuttila, 1987:50-63).

The value of elite theory for students of the state and, in particular, the relationships between the Canadian state and the North may be found in: (1) understanding the interplay and competition between bureaucratic elites and their respective agencies, and (2) understanding the manner by which economic elites, such as the Hudson's Bay Company and various renewable resource corporations in Canada, have influenced government policy in the North through their manipulation of the staple sectors of the Canadian and Northern economies.

That corpus of literature which claims a Marxian heritage may be representative of the view that human nature and, by extension, human beings are social products. Regardless of their theoretical denomination of Marxist thought, theorists such as Miliband (1973), Milovanovic (1988), Panitch (1977), Poulantzas (1972), and others differ from the elite theorists through their emphasis on class and class-interests rather than the latter's notion of individual efforts.

The state is perceived somewhat differently by those Marxist theorists who profess either a structural, instrumental, class-conflict (Gramscian), or a capital-logic approach towards understanding the state and its roles. Of these four approaches structural Marxism and instrumental Marxism have received the largest amount of attention within the literature concerning the state. Within the instrumental perspective, for example, the state is perceived as lacking sufficient autonomy from the economic processes within the society and merely serves the interests of the dominant, ruling class. Structural Marxists, on the other hand, argue that the state is autonomous from the economic institutions and serves as an arena or domain for class-struggle while promoting the long-term reproduction of capital. Human agency or that capacity for autonomous human activity, favoured by elite theorists, is relegated by both approaches to secondary importance behind the issues of class and class-struggle (Knuttila, 1987; MacLean, 1986; Motyl, 1987; Ratner, McMullan and Burtch, 1987).

The value of a Marxist/neo-Marxist perspective for this discussion may be found within its use as a tool in understanding the economic base of the North, legal and political arrangements between the North and the central government, and the metropolis-hinterland relationship that exists between the Northern resource-base and capital located in Southern Canada (Harris, 1968; Jorgenson, 1971; Elias, 1975).

What these discussions highlight is the lack of consensus which exists within the broad, theoretical range of state theory. Based within the theoretical perspectives discussed in the previous paragraphs, this author offers a hybrid definition of the state and its roles, namely:

The state is the institution within society which organizes the collective will of the people, defines and regulates the actions of the populace, and promotes the general well-being of its citizenry. Its actions are influenced, directly and indirectly, by the interests and actions of the elite members and dominant classes within the society.

While this type of hybrid definition is vulnerable to attacks by the supporters of those theories which it attempts to consolidate, it may be strong enough, nevertheless, to stand on its own merit to withstand all attacks save the argument that it fails to address the issue of human nature, which is implicitly held to be a product of social interactions within a group.

Concepts of Ethnicity

Just as with the previous section dealing with notions of the state and its role in our understanding of society, the concept of ethnicity, as distinct from notions of culture, must also be discussed and an operational definition formulated.⁵ The actual term "ethnicity" has its origins within the Greek noun *ethnos*, meaning tribe or people, and its adjective *ethnikos*. Cashmore

⁵ - Intra-disciplinary debates within anthropology concerning the definition and use of the concept of ethnicity continue to the present day. Rather than wading through a large number of examples, the reader is directed to Pierre van den Berghe's The Ethnic Phenomenon (1987), Martin Marger's Race and Ethnic Relations: American and Global Perspectives (1985), and Alan Anderson and James Fridere's Ethnicity in Canada: Theoretical Perspectives (1981) for a fuller understanding of ethnicity and its contemporary use.

(1988) summarizes the mainstream view within anthropology, namely:

- (1) ethnicity is the term used to encapsulate the various types of responses of different groups;
- (2) the ethnic group is based on a commonness of subjective apprehensions, whether about origins, interests or future (or a combination of these);
- (3) material deprivation is the most fertile condition for the growth of ethnicity;
- (4) the ethnic group does not have to be a 'race' in the sense that it is seen by others as somehow inferior, though there is a very strong overlap and many groups that organize themselves ethnically are often regarded by others as a 'race';
- (5) ethnicity may be used for any number of purposes, sometimes as an overt political instrument, at other times as a simple defensive strategy in the face of adversity;
- (6) ethnicity may become an increasingly important line of cleavage in society, though it is never entirely unconnected with class factors (Cashmore, 1988:102).

This definition, notably its latter two aspects, offers an insight into the Dominion government's official use of ethnicity. Anderson and Frideres (1981) present such use to be based on four criteria:

- (1) *ethnic origin*, largely determined - according to Canadian census specification - by the mother tongue spoken by an individual or his patrilinear predecessor upon immigration to North America; or referring to patrilinear descent from a forefather claiming membership in a certain ethnic group in a region from which he emigrated (not necessarily in the mother country), with this descent represented in a family name typical of the group (unless changed, e.g., Anglicized);

- (2) *mother tongue*, i.e., a language traditionally spoken by members of a particular ethnic group;
- (3) *ethnic-oriented religion*, i.e., participation or membership in a religious affiliation recognized as the traditional religion of a particular ethnic group;
- (4) *folkways*, i.e., the practice of certain customs unique to the group (Anderson and Frideres, 1981:37).

While these definitions illustrate the components of ethnicity they both fail to present the temporal nature of that concept. Indeed, Cashmore (1988) notes that the salient feature of ethnicity is the consciousness it creates among its members during the present and over time. He states:

Once the consciousness of being part of an ethnic group is created, it takes on a self-perpetuating quality and is passed from one generation to the next. Distinct languages, religious beliefs, political institutions become part of the ethnic baggage and children are reared to accept these (Cashmore, 1988:98-99).

For the purposes of this discussion and the thesis as a whole, the author presents ethnicity as:

a sense of belonging to a group brought about by shared experiences and/or origins such as commonalities of language, kinship, religious beliefs, and political oppression. Often ethnicity may be developed across generations and may be used to provide for, not only, the growth and revitalization of the group, but for its cleavage from the resources of the larger society.

Concepts of Stability

In discussions concerning the concept of the state, the notion of stability often emerges. In the political context, stability is presented by Motyl (1987), who maintains that:

As long as the state maintains all of its patterns of authority it maintains itself as the state it is and therefore is stable to a greater or lesser degree. If any pattern of authority is, for whatever reason, replaced by another, then the original state has in fact ceased to exist. (Mere changes in state personnel - such as changes in or of government - are unrelated to stability) (Motyl, 1987:14).

Indeed, Scruton (1983) elaborates on this perception of political stability, defining it as:

The securing of a regime from the threat of internal overthrow by revolution or rebellion....However, political stability does not depend only upon money and arms, but also (so it seems) upon ideology and felt social unity, both of which may be provided by religion (Scruton, 1983:445).

Threats to State Stability

In the operational definition presented in the previous section, the notion of the state promoting the general well-being of the nation's citizenry was introduced. This notion has within it the implicit idea of the state's role to ensure not only the economic or class forces in society to the role which ethnic groups play in the activities of the state and the relationship between its institutions.

Alexander Motyl's Will the Non-Russians Rebel? Ethnicity and Stability in the USSR (1987) provides the theoretical basis for an alternative approach, based on the notions of ethnicity and state stability, to understanding the dominant Euro-Canadian society's use of the criminal justice system in the Northwest Territories since 1870. This text is an examination of the politics within the Soviet Union and its component republics since the Revolution in 1917. Motyl illustrates the actions of the Soviet state in dealing with the "regional hegemonies" of the non-Russian republics as they confront each other. These actions include the actions/reactions

of both groups as the latter confronts the state with its "Russian pattern of authority [which] is generated both by the autonomously acting state and the societally hegemonic ethnic power of the Great Russians" (Motyl, 1987:xi). This has included historical examples and discussions of those methods employed by the Soviet state to prevent undesirable attitudes, i.e. rejection of Russian control in favour of autonomy and/or independence, through the ideological domination and coercive measures.

Fundamental to Motyl's text is his construction of a state-ethnicity-stability triad and his subsequent examination of the relations between those elements and the populace. Accepting the broad concept of the state as the organizer of the collective will of the people, Motyl (1987:9-12) focuses on the relations of control and domination as both essential to and, ultimately, the goals of the state. This is illustrated by his comment:

Implicitly if not explicitly, the key idea in all these definitions is control - just what we would expect from a wilful human community, a policy-making and policy-implementing organization with a logic, structure, and interests of its own. The state embodies two different kinds of control, however. Externally, the state aspires to control the individuals, classes, and ethnic groups that comprise the society inhabiting the territory under its jurisdiction. Internally, the state represents a set of institutions organized along hierarchical lines. One or more institutions lead the state as a whole; in turn, the leading institution or institutions are guided by a strategic elite. Although these entities set the tone for the state, neither the leading institution(s) nor the elite of the apex is omnipotent, so that political jockeying for power and a constant tug-and-pull among state agencies are always the order of the day (Motyl, 1987:10).

In its efforts to control or dominate the various segments of society, the leading institution of the state acquires and wields societally-generated authority patterns which, in turn, legitimate its position. These authority patterns may be either class-or

ethnicity-based and may eventually become inscribed, according to Motyl (1987:13-14), in the state's political patterns of authority. Indeed, the outcome of these efforts may be either ethnic domination, if the ethnic patterns of a segment of society become inscribed in the state's authority patterns among and across its social institutions, or ethnic terrains of struggle both within and between the state's institutions as they are directly involved:

in authority relations with other institutions in general and with the leading institutions in particular: if the state is an ethnic terrain of struggle, state submits will be engaged in a kind of ethnic free-for-all; if it is marked by an ethnic pattern of domination, certain units will tend to be more or less permanently subordinate to others...If the state is marked by a pattern of ethnic domination, however, its relationship with societal ethnic subordinates will differ markedly from that with societal ethnic dominants. The former will be involved in a relationship that is inherently conflictual on both the political and ethnic levels; the latter will experience the state only as a source of political authority, whose weight may be mitigated by its ethnic propinquity (Motyl, 1987:15).

The conflict inherent within such a struggle for dominance may be found within any authority relations; Primary examples may be found in colonialism (ethnic domination) and those actions in opposition to the state's political or ethnic patterns of authority such as rebellion or nationalistic politics (collective antistate activities).

Having established the state and its effective pursuit of survival in terms of political, class and ethnic authority patterns, Motyl (1987:13-18) presents stability as the inevitable tug-of-war between the state, attempting to maintain its existing authority patterns, and those political, class, and ethnic forces in society which seeks to achieve their own goals and, thus, undermine the stability of the state.

Indeed, while the concept of stability requires further elaboration and less dichotic definitions, we are fortunate that Motyl (1987) offers a much more elaborate discussion of the conditions necessary to produce collective antistate activities when he states:

First, antistate activity presupposes at least some willingness to engage in it: the requisite attitudes must exist....Second, people must be able to communicate their opposition before they can actually oppose the state indeed. Antistate attitudes *per se*, therefore, are only the starting point, since it is the public airing or *deprivatization* of such attitudes that really counts....Third, there must be a *collectivity*, a group of some kind sharing deprivatized antistate collectivity can arise only if there is sufficient space for it in that conceptually distinct sphere of like within which collective undertakings occur....Finally, *leaders* are necessary. A variety of scholars have correctly emphasized that collective activity without leadership is either infeasible or, at most, ineffective (Motyl, 1987:15-17).

This discussion may appear, at first glance, to be describing many of the characteristics of an ethnic group in the process of mobilization rather than those conditions necessary for antistate collective activity.

The final component of the state-ethnicity-stability triad to be discussed here is the notion of ethnicity and how it is involved in and affects the relationships among and between the state's institutions. Motyl (1987) begins his discussion of ethnicity in much the same manner as many contemporary writers on race, ethnic relations and the state (*cf.* Anderson and Frideres, 1981; Bolaria and Li, 1985; Cashmore, 1988; Marger, 1985; Nevitte and Kornberg, 1985; van den Berghe, 1981). It is Motyl's (1987:21-33) choice of ethnic rather than class differences as a focal point in discussions of the notion of the state which sets him apart. Agreeing with Rothchild's (1981:33) comment that "ethnicity is not simply primordial and that ethnic groups and ethnic conflict are

not mere masks for socioeconomic classes and class conflict", Motyl offers the alternate view, to those of many state theorists, that:

To insist, instead, that class alone really matters and that ethnic interests are ultimately reducible to class interests is, first to engage in semantic games (after all, when exactly does the "last analysis" occur?); second, to be guilty of monocausality and reductionism; third, to flirt with the genetic fallacy by "arguing that the origin of something [ethnicity] is identical with that from which it originates [class]"; and fourth, to ignore the available empirical evidence to the contrary (Motyl, 1987:21).

Indeed, the value of this approach is illustrated in Motyl's (1987:26-33) discussions of ethnic power (the use of resources for the creation and movement within ethnic hierarchies) and ethnic domination (the control of state institutions along ethnic lines). Examining ethnic groups along the urban-biased, power dimensions of:

1. **Demographic size** (the number and distribution of ethnic groups within the area);
2. **Economic modernization** (measured by the size of an ethnic group's working class);
3. **Social development** (measured by the number of urban dwellers);
4. **Cultural vitality** (measured by the size of the ethnic *intelligentsia*);
5. **Communications capacity** (measured by the number of books and/or newspapers published); and,
6. **Organizational capacity** (measured by the number of ethnic sociopolitical organizations and/or activists),

Motyl (1987:29) notes that ethnic groups may become integrated within and gain control of the various state institutions in society. He presents the notion that:

an ethnic group that is dominant in five or six categories may be termed hegemonic; one that dominates in three or four is dominant; where no one ethnic group is hegemonic or dominant, ethnic balance may be said to exist (Motyl, 1987:29).

The hegemonic ethnic group, or hegemon, is often in a unique position in terms of access and resources. Such hegemons may have extensive, preferential access to the state's resources, according to Motyl (1987:31), based upon the large numbers of its members among the state's personnel and, often, play a leadership role within those institutions. There is, perhaps, no better example of ethnic hegemony, or the operation of ethnic patterns of authority and domination, than that exercised by the incursive ethnic group once a colonial situation has been established. Indeed, the colonial regimes of Great Britain and France, and the internal colonialism of the Dominion government provide excellent examples of the ethnic domination of the state's institutions within Canada.

Colonizing or Colonializing?

The interrelated processes of colonialism and its variants dependency, development/underdevelopment, and modernization are particularly relevant to any discussion of the imposition of the Anglo-Canadian political and legal systems in the North. While these theoretical models provide valuable insights into the development of Canada and her two territories, they each have their limitations. One major limitation which they appear to have in common, however, is a tendency to emphasize the economic relations while ignoring the cultural, social, political and other relations which may be occurring simultaneously. For the sake of brevity, however, it is decided that only the primary process of colonialism and its variants will be discussed here.

Defining colonialism as a set of processes which have at their core "the revolutionary transformation of a society through

invasion by agents of another society" (Brookfield, 1972:18), it is possible to view an ethnic hegemon coming into existence. This hegemon comes into existence as its agents attempt to create new political, class and ethnic authority patterns in which they are hegemonic. Beginning with penetrations into the existing societal institutions of the indigenous residentiary complex, the agents of colonialism would eventually create these new authority patterns and linkages with their former homeland (Brookfield, 1972; Motyl, 1987). This, it becomes possible to regard colonialism as:

a process of constant interaction. The colonial system is a projection of external forces, and all kinds of controlling, transforming and restricting forces of external provenance are part of the total colonial impact. They are influenced and modified both by the nature of the interaction and by changes in their remote areas of origin. The colonized residentiary system does not merely receive innovations, adopting, adapting, resisting or rejecting inputs of external nature. Its members seek constantly to comprehend and manage a changing total system which includes both their own complex and the impinging or invasive forces. The will to sustain self-determination is always present even though the power may be lacking, and action at any stage follows from comprehension attained of opportunities and constraints within the changing system as a whole. This simple opposition of forces is complicated by the creation of neo-residentiary complexes which operate in alliance with both basic forces and which themselves seek to command events (Brookfield, 1972:205).

This process has often been described as a satellite-metropolis relationship (Jorgenson, 1971; Elias, 1975) whereby the resources and destiny of a satellite region are controlled by an imperial, metropolitan region and makes it possible to view colonialism as processual and including the variants of neo-colonialism and internal colonialism. Cashmore (1988) notes that the effects of colonialism upon the indigenous populations were not entirely positive:

Colonialism worked to the severe cost of the populations colonized. For all the benefits they might have received in terms of new crops, technologies, medicine, commerce and education, they inevitably suffered: human loss in the process of conquest was inestimable; self-sufficient economies were obliterated and new relationships of dependence were introduced; ancient traditions, customs, political systems and religions were destroyed (Cashmore, 1988:59).

Neo-colonialism is defined here as an outcome of colonial and/or multinational-corporate domination "whereby economic control is retained even though political independence has been granted" and is characterized by "unequal exchange between the exploitative neo-colonial nations and their exploited" (Lee and Newby, 1985:147). This notion of continued dependence upon and subordination to a metropolis is still quite evident within the context of the relationship between Southern capital and the Northern resource base. This stage in development is often superseded by the processes of internal colonialism (cf. Blauner, 1969; Hechter, 1975; Kellough, 1980; Keesing, 1981; Ponting, 1986; Swiderski, 1989; Van den Berghe, 1981).

Keesing (1981:513) presents the process of internal colonialism, for example, as occurring "within an ethnically diverse nation-state cultural domination, and economic and political domination and exploitation of minorities." Another model of internal colonialism is presented by Hechter (1975), which focuses on:

the role of cultural and economic institutions in determining social-structure and processes of change...[and] the differential allocation of power throughout the social-structure in capitalist social systems (Chartrand, 1986:9-10).

Hechter (1975) departs from "traditional Marxists" and their perspectives on class conflict. Rather than equate ethnicity with social class, Hechter notes that assimilation is not required for

class conflict to exist, as most Marxists would argue, but that political and cultural integration would create the inequities necessary for a cultural division of labour (Hechter, 1975:19-40). Applied to the Canadian context, this includes the actions of a "government within a government", namely the Department of Indian Affairs and Northern Development, which has socio-fiscal control over the daily lives of the aboriginal peoples (Kellough, 1980; Ponting, 1986; van den Berghe, 1981). Van den Berghe (1981:175) describes this situation and the segment of the population as one in which they have become "...conquered micronations, engulfed in a huge neo-European representative government that treats them as a microcolonial empire."

The question posed by the title of this section "Colonizing or Colonializing?" appears to be an appropriate finale to this discussion. As the arguments progressed, variations on the theme of colonialism were introduced. Whereas the origins of colonialism may be found within the notions of imperialism, colonialization is distinct from both concepts. Imperialism is regarded as the control of the exploited region from a distant imperial metropolis, or centre, without settlement by the imperial power. Colonialism and the processes of colonization, we have noted, grows out of that initial exploitation but extensive settlement and the imposition of a foreign system of governance is instituted by the imperial power. Colonialization is distinct, from both imperialism and colonialism/colonization, in that it involves exploitation and limited settlement by the imperial power, however, the indigenous government and bureaucracy is left intact and co-opted to carry out the tasks assigned by the imperial authorities. From this perspective, it is possible to understand the British occupation of parts of North America, Australia, and various Caribbean islands as colonizing efforts, whereas their endeavours in India and Egypt were colonialization (Frank, 1979).

CHAPTER IV

Methodological Choices and Rationales

Maintaining the Disciplinary Boundaries?

The post-contact era has been witness to massive erosion of self-determinism, inherent with a decline in social, economic and political direction on the part of the aboriginal peoples. The events of the last one hundred and twenty years have been complex in terms of socio-political directions on the part of many Northerners, especially the Dene, Metis and Inuit. Documenting and analyzing these events requires a methodology which addresses the long-term nature of the processes which have affected all aspects of Northern development.

There are many approaches available to social scientists in their quest to understand the values and belief systems in a given culture. These approaches may include traditional ethnographic research, museum research, life histories, ethnohistorical research and traditional historical research, all of which have received extensive scholarly attention over the years. The approach chosen by the researcher may be influenced and adapted by the physical environment, the needs and aspirations of the study group, the requirements of the researcher's parent organization or funding agency and, finally by the researchers own personal agenda (Carmack, 1971; Carr, 1964; Fenton, 1966; Lucey, 1964; Mandelbaum, 1973; Sturtevant, 1966; Trigger, 1982).

Traditional ethnographic research seeks to determine cultural diffusion between geographically adjacent cultures and reconstructing the temporal sequences of cultural change (Carmack, 1971:127) through first-hand contact with the culture-bearers. Museum studies are presented by Fenton (1966:74-75) as permitting the study of vanishing technologies in societies where field study

is still possible in order to provide an understanding of the material culture and a base for the testing of new ideas in the field. Life histories are the collected accounts of the life of an individual, completed or ongoing, which emphasize their coping with society rather than the societal perspective (Mandelbaum, 1973:177-180). Ethnohistorical research is subject to broader interpretations due to the dual nature of its field of inquiry: the intersection of anthropology and history. Trigger (1982:2) presents the view that:

there merely seems to be a tacit agreement that ethnohistory uses documentary evidence and oral traditions to study changes in non-literate societies from about the time of the earliest European contact,

whereas the aim and methodological concerns of ethnohistory are, according to Sturtevant (1966) to produce:

a description paralleling as closely as possible what would be possible in field ethnography, even though the evidence is not what the anthropologist has himself observed, overheard, and been told, rather what others, non-anthropologists, have learned and written down (Sturtevant, 1966:7).

Traditional historical research has often limited itself to the study of the past as reflected in written records, with pre-literate cultures lacking their own written history are held as lacking any history (Sturtevant, 1966:1-2). Indeed, Sturtevant argues that the nature of the written evidence has often restricted traditional historical research to the political, dynastic and military history of a society rather than the areas of interest to anthropologists and ethnohistorians, namely the cultural and political spheres of social life (Sturtevant, 1966:10).

Yet, history must be much more than the recording of great events in literate societies and the ritualistic consultation of

vast libraries by successive generations of students. For the purposes of this discussion, the author is indebted to the works of three eminent historians: Marc Bloch, for his The Historian's Craft (1953; original 1941), Edward H. Carr, for his What is History? (1964), and Fr. William L. Lucey, S.J., for his History: Methods and Interpretation (1958).

Each writer offers the view that history is much more than the definition offered by Sturtevant (1966), as it (history) seeks to help man to understand the 'truth' of his past and present situations in terms of socially significant activities occurring in a changing world, or as Carr (1964) simply put it "an unending dialogue between the present and the past." According to Lucey (1958:93-94), for example, such historical 'truth' is to be found within the "permanent, basic factors and forces (causes and conditions) behind historical continuity and change in human history", namely: man, the physical world, man's cultural milieu and the supernatural.

History, according to Carr (1964), is a study in the duality of history. This duality is found, first, within the term itself which he holds to mean "both the inquiry conducted by the historian and the facts of the past into which he inquires" (1964:55) and, secondly, within the dual functions, namely "to enable man to understand the society of the past, and to increase his mastery of the present" (1964:55) of the discipline.

The study of the methods of history, historiography; offers a possible insight into how Carr would have man accomplish these dual functions of history. One definition of Historiography is offered by Henige (1982) who believes it may be seen as:

a straightforward term meaning the study of (literally 'the writing about') the past....historiography as an activity incorporates any form of historical enquiry, including that based on oral sources, from the conception

of a problem through to its solution or abandonment (Henige, 1982:1-2).

Such a definition as this permits the historian to pursue a subjective form of social science, a form of science which many social scientists, indeed, have denigrated as an area within the humanities. Bloch (1953:20-23) prefers that as historians:

we shall preserve the broadest interpretation of the word "history." The word places no a priori prohibitions in the path of inquiry, which may turn at will toward either the individual or the social, toward momentary convulsions or the most lasting developments. It comprises in itself no credo; it commits us, according to its original meaning, to nothing other than "inquiry" ...At the start, while focusing our attention upon the real problems of investigation, it would be pointless to draw up a tedious and inflexible definition. What serious workman has ever burdened himself with such articles of faith?...The worst danger of such careful articles is that they only bring further limitations (1953:20-21)

It is no less true, faced with the vast chaos of reality, the historian is necessarily led to carve out that particular area to which his tools apply; hence, to make a selection - and, obviously, not the same as that of the biologist, for example, but that which is the proper selection of the historian. Here we have an authentic problem of action (Bloch, 1953:22).

Carr (1964:12-13) and Lucey (1958:46-88) discuss the use of this selectivity in, both, the determination of sources and interpretations of those sources. Carr (1964) discusses this same selectivity when he notes that:

History therefore is a process of selection in terms of historical significance. To borrow Talcott Parson's phrase one more, history is 'a selective system' not only of cognitive, but causal, orientations to reality. Just as from the infinite ocean of facts the historian selects those which are significant for his purpose, so from the multiplicity of sequences of cause and effect he extracts those, and only those, which are historically significant; and the standard of historical significance

is his ability to fit them into his pattern of rational explanation and interpretation (Carr, 1964:105).

Bloch (1953) supports this notion of selectivity discussed by Carr (1964) due, in part, to what he terms the ordinary and restricted sense of history, stating:

We are told that the historian is, by definition, absolutely incapable of observing the facts which he examines. No Egyptologist has ever seen Ramsés. No expert on the Napoleonic Wars has ever heard the sound of cannon at Austerlitz (Bloch, 1953:48)

Indeed, Bloch (1953:138) argues that such selectivity and the restrictions placed on historical data creates a dilemma for the historian, namely: "that of historical impartiality, and that of history as an attempt at reproduction or as an attempt at analysis." In terms of impartiality Bloch (1954) presents the historian as performing the dual roles of the scholar and that of the judge. For Bloch (1953):

They have a common root in their honest submission to the truth. The scholar records - better still, he invites - the experience which may, perhaps, upset his most cherished theories. The good judge, whatever his secret heart's desire, questions witnesses with no other concern than to know the facts, whatever they may be. For both this is an obligation of conscience which is never questioned.

However, there comes a moment when their paths divide. When the scholar has observed and explained, his task is finished. It yet remains for the judge to pass sentence. If, imposing silence on his personal inclination, he pronounces it according to the law, he will be deemed impartial (Bloch, 1953:138-139).

Yet, it may be the historian's own belief in what constitutes selectivity and historical significance which may result in the rewriting and reinterpretation of history and historical causality. Lucey (1958) discusses the rewriting of history:

The most apparent reason for rewriting history is the discovery of new material which has substantially increased our knowledge of the past and requires a new construction on the basis of the new material....Again, the history of a period may be rewritten although no substantial amount of new material has been discovered. The old material is interpreted with more regard for the significance of certain factors or forces....And much history is rewritten because it was, in the first place, poor history (Lucey, 1958: 89-90).

While these notions of history, historical fact, and the methods utilized to determine historical fact are excellent measures of traditional history, i.e., accounts of economic, military or political events which occurred in literate societies, they fail to adequately address the history of non-literate, aboriginal societies throughout the world, but notably among the Amerindian populations of North America. The task of redressing this inadequacy has been taken up by the ethnohistorian, including such notable authors as Fenton (1966), Helm (1978), Hickerson (1966), Sturtevant (1966), and Trigger (1982, 1986). Yet ethnohistorical research should not be regarded as a panacea in this regard. Indeed, that current state of affairs has progressed little since Harold Hickerson's (1966) comment, that:

In general, historians whose work involves Indian-European relations have been as ignorant about culture as anthropologists have been as naive about history.... A quick look through the ethnohistorical journals will disclose that there is little culture in them (in Fenton, 1966:72).

The historical accounts of aboriginal peoples throughout North America have been found mainly among the records of fur-traders, missionaries and government agents, who expressed their own biases and hidden agendas through their accounts. This is commented upon by ethnohistorian Bruce Trigger (1986) who states:

Recent studies have made it abundantly clear that from the beginning contact between Europeans and native

Americans was coloured by preconceptions on both sides. European explorers approached the first native peoples they encountered with expectations derived from classical traditions and medieval superstitions concerning what sorts of peoples lived in remote corners of the world: monsters, savages, cannibals, or the remnants of a Golden Age (Dickason, 1984). While physical monstrosities proved to be short supply, the other preconceptions continued to shape interpretations of native peoples. Inevitable, however, self-interest influenced how Europeans construed native peoples far more powerfully than did preconceptions. Depending on circumstances, favourable as well as unfavourable traits were emphasized. Advocates of colonization often described peoples as skilful, intelligent, hardworking, and tractable (Vaughn, 1982:927-29). To win financial support for their missions, the Jesuits stressed the rationality and generosity of groups they hoped to convert. Yet they added that these same natives languished in profound religious ignorance and even described them as the abject slaves of the devil (Trigger, 1976:467-70). Even in the most nuanced European accounts, the depiction of native peoples was distorted by preconceptions and self-interest.

As a consequence of even more ambitious European projects to seize possession of American lands, native people were represented increasingly as savages, irredeemably bellicose, and the inveterate enemies of civilization. The Spanish conquests of Mexico and Peru were portrayed in contemporary accounts as crusades to rescue native people from ignorance and sin; the conquerors argued that servitude in this world was a reasonable price for the natives to pay for the salvation of their souls. Puritan clergymen proclaimed that God had cursed the Indians of New England and thus it was fitting for his elect to enslave or destroy them (Trigger, 1986:254-255).

This approach towards understanding the aboriginal history of North America continues to the present day. Even those authors who claim to present the aboriginal perspective of the relations between aboriginal peoples and the Euro-Canadians fall prey to their own professional biases and the corresponding lack of written aboriginal accounts of events. Historian Cornelius Jaenen, for example, attempts to present the aboriginal perspective in his "Amerindian Views of French Culture in the Seventeenth Century"

(1988), yet presents only five directly quoted passages by aboriginal speakers within an article which contains a total of twenty-six quotations by contemporary speakers!

One may only speculate, however, how different would be our understanding of aboriginal/Euro-Canadian relations if there were contemporary, written accounts by aboriginal peoples one. Recent aboriginal interpretations of historical events, such as Howard Adams' Prison of Grass: Canada From a Native Point of View (1989) which details the aboriginal perspective concerning the Second Riel Rebellion of 1885, offer one possible alternative. Indeed, as Trigger (1982:15) points out:

The price of ignoring native history has been not simply a one-sided understanding of relations between native people and Europeans. In some cases it has resulted in serious misunderstandings of the internal dynamics of European colonization (Trigger, 1982:15).

Rather than attempting to rewrite the history of the Canadian Arctic, this thesis seeks to offers a selective survey of those events, issues, and personalities which, during a broad time frame, illustrate the significance of political rather than economic forces, the nature of aboriginal/Euro-Canadian relations, and the evolution of a system for the administration of justice in Canada's Arctic. While critics may note the occurrence of other significant events during the period in question, the events, issues, and personalities presented herein were selected to present a viable examination of the legal and social change which occurred throughout the Canadian Arctic. It is illustrative of the Motyl's (1987) approach and is, merely, one perspective available to researchers wishing to examine the wide range of topics concerned with relations between the central government in Ottawa and its Northern territories: the Yukon Territory and the Northwest Territories.

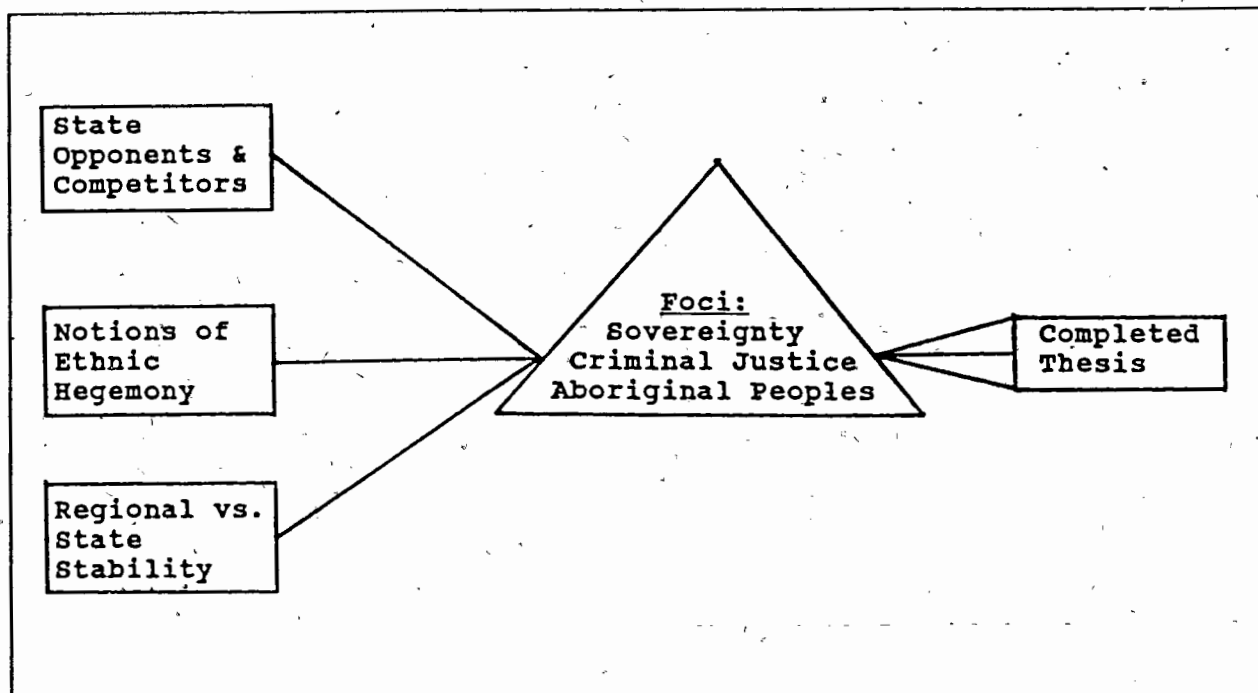


Figure 4 Methodology.

The long-term nature of the social and legal changes in both Canada's Arctic and, indeed, throughout the entire Circumpolar North, requires a methodological approach which is either historical or ethnohistorical in nature. As may be gleaned from the previous paragraphs, this thesis employs a historical, rather than ethnohistorical, approach towards understanding those changes. Within that framework, the main methodological emphasis is concerned with examining the notion of "historical causality and change" (Vansina, 1985:130) as it relates to the interrelationships which existed between political events in 'Southern' Canada, the long-term efforts of the dominant society to impose its own cultural hegemony upon aboriginal peoples of the Northwest Territories and the resistance efforts of the latter societies. Both this approach and its emphasis were primarily chosen due to economic and other constraints.

Theses and dissertations, written between 1930 and the present, and other archival materials were the primary resources

utilized in the completion of this thesis. While theses and dissertations are, more often than not, classified as secondary data sources they are not without value. Indeed, while economic and other constraints precluded the extensive use of archival resources, the number of theses and dissertations written as the result of first-hand contact with the peoples living within the Northwest Territories is increasing. While the methodologies employed by these researchers were beyond the control of this writer, the selection and interpretation of their results were wholly within his control. Thus, in turn, these resources were tempered with the writer's own experiences in the Canadian Arctic between 1981 and 1987 inclusive.

CHAPTER V.

CORPORATE AND STATE EXPANSIONISM, 1670-1930.

One of the more intriguing aspects of life in Canada's Arctic is that of ownership or sovereignty. Who, indeed, does hold title and exercise exclusive competence over the vast tracts of land and the islands of the Arctic Archipelago which comprises the current Northwest Territories? This question has been surfacing and resurfacing in halls of government in Denmark, Great Britain, Norway, and the United States as well as those in Ottawa since before the transfer of Rupert's Land and the North-Western Territories in 1870 and the islands of the Arctic Archipelago in 1880 were effected.

This section is written not with the intent of determining in law the question of sovereignty, rather it intends to briefly illustrate the events and concerns which have surrounded Canada's acquisition of that vast land mass and inshore areas.⁶ Creating the backdrop for such a discussion requires an introduction to the manners by which the Imperial government and the Hudson's Bay Company exercised exclusive competence over those areas prior to their union with the Dominion of Canada. The enactment of civil

⁶ For an in-depth, legal analysis of Canadian sovereignty claims and the territorial rights of both the Crown and Northern aboriginal peoples, the reader is guided to Geoffrey S. Lester's The Territorial Rights of Inuit of the Northwest Territories: A Legal Argument (1981), William McConnell's Canadian Sovereignty Over the Arctic Archipelago (1970), Brian Slattery's The Land Rights of Indigenous Canadian Peoples, as Affected by the Crown's Acquisition of Their Territories (1979), and Gordon W. Smith's three excellent works on Canadian sovereignty: The Historical and Legal Background of Canada's Arctic Claims (1952), "The Transfer of Arctic Territories From Great Britain to Canada in 1880, and Some Related Matters, as Seen in Official Correspondence." (1961), and Territorial Sovereignty in the Canadian North: A Historical Outline of the Problem (1963).

and criminal legislation, the administration of justice, and appropriate criminal cases of the period will be examined in order to establish that competence of jurisdiction.

A Charter for Corporate Sovereignty⁷

Prior to the passing of various acts and orders-in-council by both the Imperial and Dominion governments, most of the land mass which lay to both the north and west of the provinces of Canada were part of the proprietary holdings of the Governor and Company of Adventurers of England Trading into Hudson's Bay (hereafter "Hudson's Bay Company", "HBC", or "the Company" will be used interchangeably with the earlier title) by virtue of the Royal Charter of May 2nd, 1670 issued to them by Charles II of England. The Charter granted:

the sole Trade and Commerce of all those Seas, Streights, Bayes, Rivers, Lakes, Creekes and Sounds in whatsoever Latitude they shall bee, that lie within the entrance of the Streights, commonly called Hudsons Streights together with all the Landes and Territoryes upon the Countryes, Coastes and Confynes of the Seas, Bayes, Lakes, Creekes and Sounds aforesaid that are not already actually possessed by the Subjectes of any other Christian Prince or State (in Stanley, 1961:3).

More importantly for the purposes of this discussion, the Royal Charter constituted them as "the true and absolute Lordes and Proprietors of the same Territory, lymittes and places" (Stanley, 1961:3)

⁷ While the intent of this thesis is to examine the legal, political and social legislation which was enacted during the time period 1870-1990, the rapid cultural change among Canada's aboriginal peoples during the two hundred years immediately preceding that period must be introduced. Indeed, that change provided the impetus for a brief discussion of the period 1670-1870 which is presented in this chapter.

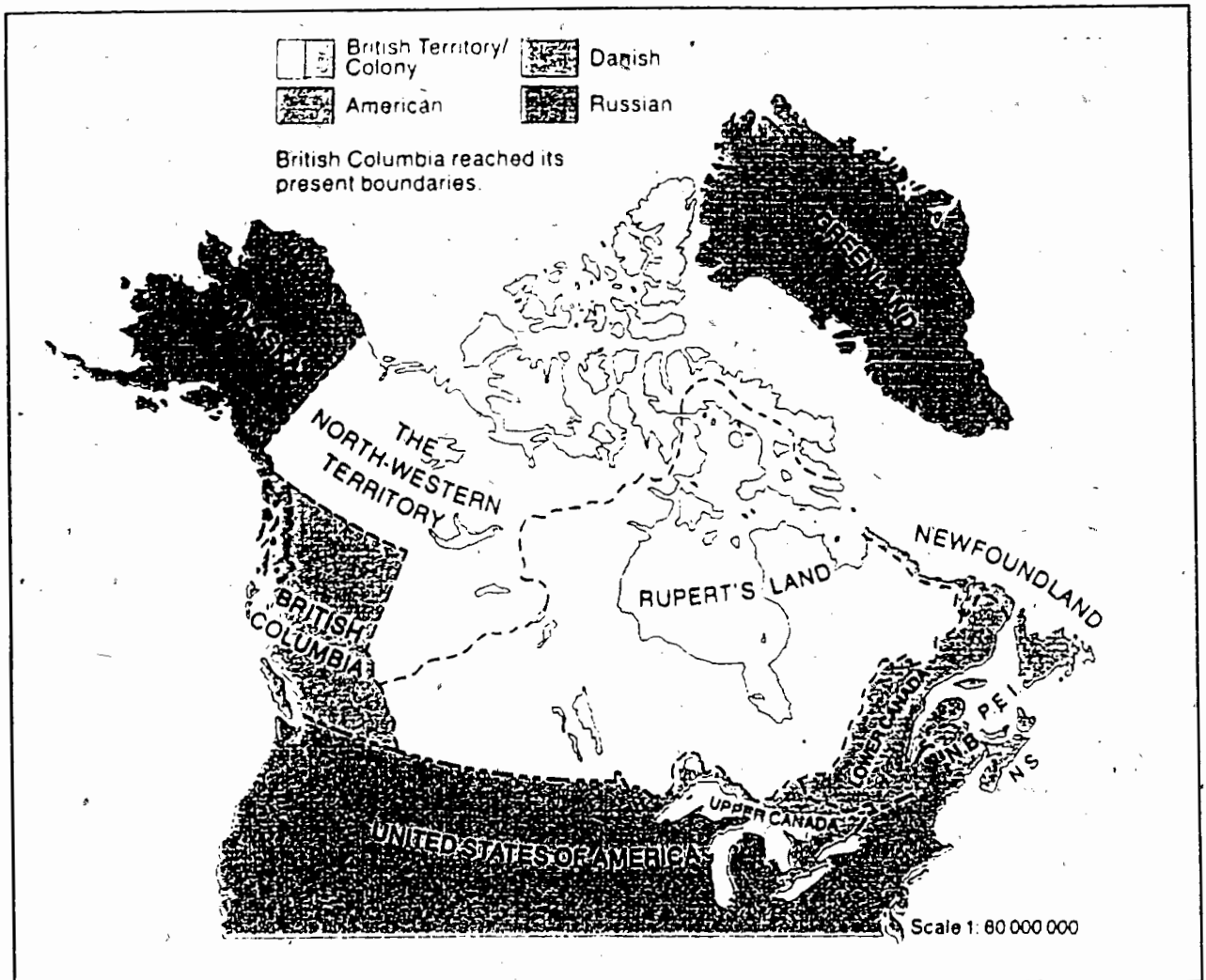


Figure 5 British North America and Rupert's Land, 1866

Source: D.G. Kerr (ed.), A Historical Atlas of Canada (1966).

The agents, traders, and officers of the Hudson's Bay Company were often the first Europeans/Euro-Canadians with whom the aboriginal peoples of the western prairies and subarctic came into contact. In many ways, their arrival and activities served as the imitators of change for both the incursive and indigenous societies. The processes of socio-cultural change among the Athapaskan-speaking peoples of the region, the actions of the Company's employees, and the traditional social organization of the aboriginal peoples have been well-documented by batteries of anthropologists, ethnohistorians, and historians (cf. Bishop, 1974;

Bishop and Ray, 1976; Carmack, 1972; Hickerson, 1970; Ray, 1974; Yerbury, 1986). Through the use of primary and original documents such as the Jesuit Relations (the published correspondence between the missionaries and Society of Jesus in France) and the archival records of the Hudson's Bay Company, coupled with the reconstruction of Athapaskan kinship terminology and social structures, these researchers have provided the current generations of scholars of indigenous-incursive relations in Canada with a window, of sorts, on the operation and results of the intercultural processes of the period.

What emerges from these studies is an image of Athapaskan life during the period of 1670-1870 which has been divided into three periods: prehistoric, protohistoric and historic, each containing distinct patterns of aboriginal/Euro-Canadian relations. During the prehistoric period which ended in 1680 or so, for example, the Company ventured into lands traditionally occupied by the Athapaskans⁸ and trade between the indigenous and incursive populations ensued. Bishop and Ray (1976) argue that the arrival of the Company traders and the bartering exchanges which they initially ended the prehistoric period of subsistence hunting and trapping.

The second or protohistoric period lasted from approximately 1680 to 1769 and was marked by increased contact and trade between the two societies *vis-a-vis* the traders and individual hunters and trappers. As the contact increased and the demands of the traders exceeded the ability of local bands to meet those needs, a middleman economy emerged. Within local bands, enterprising individuals ranged afar to distant bands to engage in the types of

⁸ These areas occupied by the present-day Ojibwa, Salteaux, Western Woods Cree, Beaver, Slavey, Mountain, Dogrib, and Chipewyan located in both Figure 2 and the corresponding areas of Rupert's Land and the North-Western Territory in Figure 5.

trade preferred by the Company's traders. These same independent individuals provided a valuable conduit and acted as a safety valve between the two cultures. Indeed, as they became more involved in the middleman economy those individuals engaged less and less in subsistence-oriented activities. The protohistoric period was marked by increased exchange of goods and the beginning of aboriginal dependency upon those same goods and services.

The third and final period in this schema, the historic period of 1769 to 1870, was marked by increased contact between the indigenous and incursive populations and may, itself, be divided further into three sub-periods: early fur trade, competitive fur trade, and the trading post-dependency periods. Yerbury (1986:10-16) discusses the problems of delineating between the three major periods (prehistoric, protohistoric, historic) as well the components within each period, as one of overlapping characteristics. During the early fur trade period, for example, there appear to be few differences between the middleman era of the protohistoric period and the early fur trade era of the historic period other than the intensity of the trade and contact. The competitive fur trade era was marked by the establishment of numerous trading posts/centres within areas previously occupied by Athapaskans and increases in both the number of participants and the amount of the fur harvest. This era was marked by the slaughter of game, notably the beaver and buffalo, by both aboriginal and Euro-Canadians. Such excesses would lead to the eventual extinction of the buffalo and more frequent cycles of famine for the Athapaskans.

Indeed, as Yerbury (1986:12) notes this period should not be interpreted as the time during which the significant socio-cultural change took place as the previous one hundred years had created the conditions for such change, and begun the integration of Athapaskan middlemen and others into the Euro-Canadian market economy.

The excessive and wholesale slaughter of game and fur-bearing animals by both aboriginal and non-aboriginal hunters during the competitive trade era would serve to sew the seeds for those conditions necessary for the emergence of the trading post dependency era. The competition between the newly-formed XY Company (amalgamated with the NorthWest Company in 1804), the larger NorthWest Company (amalgamated with the Hudson's Bay Company), and the well-established Hudson's Bay Company promoted the slaughter of game over a larger spatial zone. This disrupted the carrying capacity of the region resulting in cycles of famine during which the trading posts continued to dispense the trade goods on a credit basis. This system of credit created both a dependency on the new trade goods and a sense of debt from which the Athapaskans could not expiate themselves. The carrying capacity of the region was further threatened by the need to harvest even more game and fur-bearing animals to trade for basic subsistence goods. This period would come to a close as government agents, missionaries and settlers moved into the region and the modern period of aid, dependency and reserves began.⁹

The Hudson's Bay Company, to use its current title, exercised most of the functions of an independent state including the minting of coinage, issuance of trade rights, and the legislative power to enact laws and impose sanctions in its role as "absolute Lordes and Proprietors". In addition to these legislative powers the Hudson's Bay Company also exercised quasi-judicial and judicial functions. Their Charter authorized the Governor and Committee of the Company to designate its officers as Justices empowered "to judge Company employees or resident of its territories in both civil and criminal cases, with mentioned exceptions where the accused were to be sent

⁹ This discussion has purposively not included the history of contact between Inuit and Europeans/Euro-Canadians in the Arctic regions. This course of action was followed as the period of sustained contact and dependency would not occur until the late 1800s and early 1900s.

to England for trial" (McConnell, 1970:6). These exceptions included civil cases exceeding £200 and criminal cases where the accused could, upon conviction, be executed or transported to a penal colony (Foster, 1989:24,64).

As the Red River Settlement grew, for example, the Company continued to hear civil and criminal cases, designated judicial districts (using the existing Company districts), and established a *de facto* superior court system in the operation of its General Quarterly Court of Assiniboia as the Governor's court was to become known (Ward, 1966:6). This arrangement would continue in operation until shortly after Manitoba became a province.

The exclusive competence which the Hudson's Bay Company enjoyed in civil and criminal matters was to continue unabated until 1803 when the passing of the *Canada Jurisdiction Act (1803)*¹⁰ permitted the Governor of Lower Canada to appoint territorial judges and grant them trial jurisdiction, but required that all criminal trials be heard in Lower Canada (Quebec) or, in exceptional cases, in Upper Canada (Ontario). It is interesting to note, as did Stanley (1961:17), that while this act assumed that "crimes committed in the Indian territories were not cognizable by any jurisdiction" it did nothing to correct that oversight.

During 1821 the Hudson's Bay Company and the acts of its agents again came under Imperial scrutiny and was subjected to changes in legislation. It was to the Company's advantage, however,

¹⁰ An Act for extending the Jurisdiction of Courts of Justice in the Provinces of Lower and Upper Canada, to the Trial and Punishment of Crimes, and Offenses within certain parts of North America adjoining to the said Provinces, 43 Geo. III, c. 138, 1803 (Gt.B.), hereafter the *Canada Jurisdiction Act (1803)*.

that the *Fur Trade Act (1821)*¹¹ was enacted as it extended the Company's jurisdiction into what was previously known as "Indian Territory". This effectively gave the Hudson's Bay Company control over those lands which currently comprise the most of the provinces of Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia as well as the Yukon Territory and the Northwest Territories (less the islands of the Arctic Archipelago). Similarly it established, in law, the jurisdiction of Canadian courts over "Indian territory" in practice, however, the Act did nothing which "could be construed to affect the rights, privileges, authority, or jurisdiction" of the Hudson's Bay Company (Stanley, 1961:17).

The overall effect of these two pieces of legislation was minimal. While the latter *Fur Trade Act (1821)* reduced the competition between the Hudson's Bay Company and the Northwest Company and established the former's trade monopoly, Officers of the Hudson's Bay Company continued to deal with all civil and criminal matters which came to its attention as "a matter of internal corporate discipline" pursuant to its 1670 Charter rather than these two Acts (Foster, 1989:26). An example of this practice is provided by Foster (1989:24) in the 1842 murder of the clerk in charge of Fort Stikine where the Company declined to prosecute due, primarily, to the expense involved in transferring the accused to Canada. Indeed, during the 1803-1857 period the Company did not attempt to adhere, according to Foster, to the principles of English common law of the period.

What mattered was whether you were Indian or White, company employee or stranger; not whether English law, in some abstract and lawyerly sense, governed the Indian Territories (Foster, 1989:27).

¹¹ *An Act for Regulating the Fur Trade, and establishing a Criminal and Civil Jurisdiction within certain parts of North America (1 & 2 Geo. IV, c.66, 1821, (Gt.B.), hereafter the Fur Trade Act (1821).*

Expanding the Criminal Jurisdiction: A Test Case

The most noticeable exception to this pattern was the murder case involving three Metis, Baptise Cadien, Creole La Graise, and Baptise Jourdain, from Fort Norman near Great Slave Lake. During Autumn, 1837, these three Company employees departed Fort Norman for a nearby fishing camp in order to bolster the dwindling food stocks of the fort. This was a response to the cycle of famine which was gripping the area since 1833 and would continue until 1842 (Foster, 1989:28-33). Although, the contemporary accounts of the events differ in many details Foster (1989:27-62) presents a consensual account of the events, and the subsequent trials, which is presented here.

During December, 1835, the three came upon a Hare encampment wherein they competed with the men for the possession and sexual favours of the Hare women. As the direct and not unforeseeable result of this competition, jealousy and bad feelings were harboured by both parties. Despite these emotions the two parties remained in camp together for four days and the fish which the accused caught was cached for future transportation to Fort Norman. During the early morning hours of the fifth day, the three accused massacred eleven Hare, including women and children, of which one of the women was pregnant. The apparent motives surrounded Cadien's desire for one of the women with whom he had sexual relations with in the past. Cadien apparently convinced his companions to kill the Hare on the strength of the argument that they (the Hare) were plotting to kill them.

Baptise Cadien, Creole La Graise, and Baptise Jourdain confessed to their parts in the affair and were subsequently charged with the murders by Fort Norman Chief Trader Donald Ross. Choosing not to deal with the affair he sent them to Norway House for his superior, Sir George Simpson, to deal with. Simpson, for his part, sought the advice of his Company superiors in England and

from Lower Canada's Attorney-General. The result were the rather unusual trials of Cadien, La Graise, and Jourdain in Trois-Rivieres during 1838.

It was interesting to note that while La Graise was taken to England for trial in 1837 and returned to Lower Canada in 1838 where the charges were subsequently dropped, the charges against his co-accused remained in force. One major point continued to be argued, in support of Cadien and Jourdain, by Trois-Rivieres lawyers Edouard Barnard and Henry Judah, namely:

that the court was without jurisdiction to try the case on the grounds that neither Cadien nor the Hare Indians were British subjects, and that Lake Puant, which is how the lake where they had been killed is described in the Canadian sources, was not within British territory (1989:46).

This motion was denied by the senior trial judge, Chief Justice James Reid, and witnesses would later state that only British subjects traded at Fort Norman (1989:46) in support of that view. The trials eventually ended with the acquittals of La Graise and Jourdain and the conviction of Cadien in 1838. The last accounts concerning these three pawns of Empire revealed that Jourdain was rehired by the Hudson's Bay Company, La Graise returned to the Athabasca region where he died in 1879, and Cadien, whose death sentence was commuted to transportation to Van Dieman's Land (Australia), perished en route to that colony (Foster, 1989:55).

It could be advanced that these trials were, in effect, the first recorded uses of the criminal justice system to promote imperialist hegemony in Canada. Foster (1989:45-46) notes the unfortunate timing of these trials and the personal/political beliefs of the trial judges influenced their judgements. The senior trial judge, Chief Justice James Reid differed from his colleagues Justice Elzear Bedard and Judge Vallieres de St. Real

who were both critical of the government's approach to the 1838 Rebellion in Lower Canada. Chief Justice Reid was not only a staunch supporter of the government of the day, but "a man who believed the French majority "represented a menace" that "should be anglicized as quickly as possible" (1989:45). Indeed, not only had Reid passed sentence against a Hudson's Bay Company employee for the murder of a North-West Company employee in Rupert's Land in 1809, but he was also married to the sister of a prominent Nor'Wester. Although it may be inferred from this description that the court's decision had been influenced by political and personal concerns, it could be employed by both Imperial and Dominion politicians as justification for expansionist actions in the North and the West. It is only fitting to close this part of the discussion with Foster's final statement that:

As it is, the *Case of Baptise Cadien*, the only offense ever tried by a Canadian court during the HBC's licensed monopoly over the Indian Territories, stands as a little-known example of how imperial law was enforced in the fur trade. It is one of the reasons that the long distance justice of the *Canada Jurisdiction Act* was never resorted to again (1989:63).

State Expansionism, 1857-1870

(i) The Early Years, 1857-1867

During the same time as the Cadien trial was occurring, agitation by the recently established Red River Settlement, near present-day Winnipeg, and the colony of British Columbia attracted the attention of the Imperial government in London as did the handling of its Indian "wards". Applying for a renewal of the exclusive trade license, required since its merger with the North-West Company, the Company was the recipient of an amended license in 1837 which contained the clause that:

such conditions as may enable Her Majesty to grant, for the purpose of settlement or colonization, any of the

lands comprised in it, and with that view...a power should be reserved even of establishing new colonies or provinces within the limits comprised in the Charter (Stanley, 1961:21).

This section of the license was not acted upon until 1857 when the Crown appointed a "Select Committee to consider the State of those British Possessions in North America which are under the Administration of the Hudson's Bay Company, or over which they possess a License to Trade". The Select Committee charged and acquitted the Company with "exercising an obnoxious monopoly in a tyrannical manner and with placing every obstacle in the way of colonization and settlement" (Stanley, 1961:21). In addition to those charges and ever mindful of the waning British interest in colonization, the Select Committee recommended that the Red River and Saskatchewan settlements should be ceded to the provinces of Canada, those colonies which were only just beginning to industrialize and flex their untested, nationalistic muscles (Stanley, 1961:22-25).

Indeed, the Province of Upper Canada sought to have the Hudson's Bay Company Charter declared null and void during its protestations to the Colonial Office during 1857 and to the Judicial Committee of the Privy Council during 1858. It advanced the argument, through the efforts of Chief Justice Draper and the Honourable Joseph Cauchon, Commissioner for Crown Lands, that the Charter's qualification of lands "that are not already actually possessed by the Subjects of any other Christian Prince or State" was the key to its efforts to have the sovereignty claims of both the Hudson's Bay Company and the British Crown negated. The Province claimed that French subjects in New France possessed the lands, granted by Charles II to the Company, by right of prior discovery and occupation (Stanley, 1961:28). These claims were, in turn, countered by the Hudson's Bay Company who claimed their rights were ensured by over two hundred years of privilege.

The Crown, for its part, adopted a wait-and-see attitude while it entertained legal opinions on the validity of both arguments. During 1860, however, this attitude changed and negotiations began in earnest with the Crown acting as a mediator between Canada and the Company. Concurrently, the Crown began to enact the *British North America Act (1867)*¹², hereafter the *Constitution Act (1867)*, which would permit not only the political development of the Dominion of Canada but the acquisition of the Company's land and the Indian Territory. This latter notion is explicit within §146 of the *Constitution Act (1867)* which reads:

It shall be lawful for the Queen by and with the advice of Her Majesty's Most Honourable Privy Council...and on address from the Houses of the Parliament of Canada, and from the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces or any of them, into the Union, and on Address from the Houses of Parliament of Canada to admit Rupert's Land and the North-western Territory, or either of them, into the Union, and on such Terms and Conditions in each case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the provisions of this Act; and the Provisions of any Order-in-Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of great Britain and Ireland.

The Company eventually offered "to surrender their territorial claims for equitable compensation" (Stanley, 1961:29-34), but their agreement on what exactly constitutes equity would delay that surrender to the Crown until March 9th, 1869. It was shortly thereafter that the Parliament in Westminster enacted the *Rupert's Land Act (1868)*¹³ which would serve as the enabling legislation

¹² An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith, 30 Victoria, c.3, 1867 (Gt. B.), hereafter the *Constitution Act (1867)*.

¹³ *Rupert's Land Act*, 31-32 Victoria, c.105, 1868 (Gt. B.) hereafter the *Rupert's Land Act (1868)*.

for the British Crown to accept the Hudson's Bay Company surrender of its lands and privileges and their subsequent transfer to the Dominion of Canada.

The Dominion acted quickly to ensure that the transfer of the former Company lands would not be delayed in any fashion. The fledgling Dominion government in Ottawa enacted its own enabling legislation, the *Temporary Government Act* (1869)¹⁴ which complemented §146 of the earlier *Constitution Act* (1867).

Reviewing those events which were occurring simultaneous to the negotiations provides for an understanding of the sense of urgency and pressure to affect the surrender that was felt by all parties. Continuing throughout the term of the negotiations were the American efforts, grounded within their belief in a "Manifest Destiny", to exploit and control the resources of the region. Beginning with cross-border incursions by frontiersmen, whisky-traders, and gun-runners, the American efforts culminated with their House of Representatives passing a Bill in 1866 that provided for "the admission of the States of Nova Scotia, New Brunswick, Canada East and Canada West, and for the organization of the territories of Selkirk, Saskatchewan and Columbia", and included the revealing clause:

Article XI. The United States will pay ten millions of dollars to the Hudson's Bay Company in full discharge of all claims to territory or jurisdiction in North America, whether founded on the charter of the Company, or any treaty, law or usage (Stanley, 1961:35-37).

Indeed, the American purchase of Alaska from Imperial Russia

¹⁴ *An Act for the Temporary Government of Rupert's Land and the North-Western Territory when United with Canada*, Statutes of Canada, 32 & 33 Victoria, c.3, 1869, hereafter the *Temporary Government Act* (1869).

illustrates their willingness to negotiate the purchase of North America. Canada, in turn, responded by increasing its negotiating pressure in hopes of securing the transfer of Rupert's Land and the North-West Territories to Great Britain, while the latter followed its established routine of dispatching a battalion of heavy infantry from the Royal Canadian Regiment, to create an Imperial presence at Fort Garry.

(ii) The Final Years, 1867-70

From these discussions, it may be possible to infer that Confederation was heralded with a sigh of relief by the Imperial government and one of exasperation and confusion by the Dominion government in regards to the administration of justice and the management of Indian affairs. §91(24) of the *Constitution Act (1867)* granted exclusive jurisdiction over Indians and lands reserved for Indians and the enactment of criminal legislation to the federal government while the provinces would be responsible for the administration of justice (such as police, courts, and some correctional services) within their jurisdictions.

While the *Constitution Act (1867)* unified the Provinces of Upper and Lower Canada, Nova Scotia and New Brunswick and thereby created the Dominion of Canada, it contained only a single reference to the new nation's expansion to the north and west. Within the meaning and intent of §146 of that Act the future growth and development of Canada was assured. This latter notion is explicit within §146 of the *Constitution Act (1867)* which reads:

It shall be lawful for the Queen by and with the advice of Her Majesty's Most Honourable Privy Council...and on address from the Houses of the Parliament of Canada, and from the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces or any of them, into the Union, and on Address from the Houses of Parliament of Canada to admit Rupert's Land and

the North-western Territory, or either of them, into the Union, and on such Terms and Conditions in each case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the provisions of this Act; and the Provisions of any Order-in-Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

The Dominion acted swiftly and unilaterally to ensure their entry into the Union through the passage of the *Temporary Government Act (1869)*. As shown here, this Act was wholly inadequate for governance but, having provided for the appointment of a Lieutenant-Governor, the North-West Council, and the administration of justice, its rhetoric was adequate for political purposes in Canada. The Prime Minister of the day, Sir John A. Macdonald, recognized this fact, stating:

It was passed simply for the purposes of having something like an organization ready, something like the rudiments of a Government, from the time the Territory was admitted into the Dominion, it being understood that the Act should continue in force only until the end of the present session of Parliament.... The government felt they were not in a position from acquaintance with the circumstances of the country and wants of its people, to settle anything like a fixed constitution upon the Territory (in Bovey, 1967:21).

Unfortunately for Macdonald, as Bovey (1967) and Stanley (1961) point out, the Government of Canada was soon forced to make a rapid "acquaintance with the circumstances of the country and wants of its people" as this Act may have contributed to the emotions which, in turn, surfaced in the first Riel Rebellion.¹⁵

¹⁵ Having a rebellion thrust upon them, Canadian politicians soon began to understand some of the issues throughout the region, notably those in the Red River Settlement, and eventually passed the *Manitoba Act*, 34 Victoria, c.16, (1870).

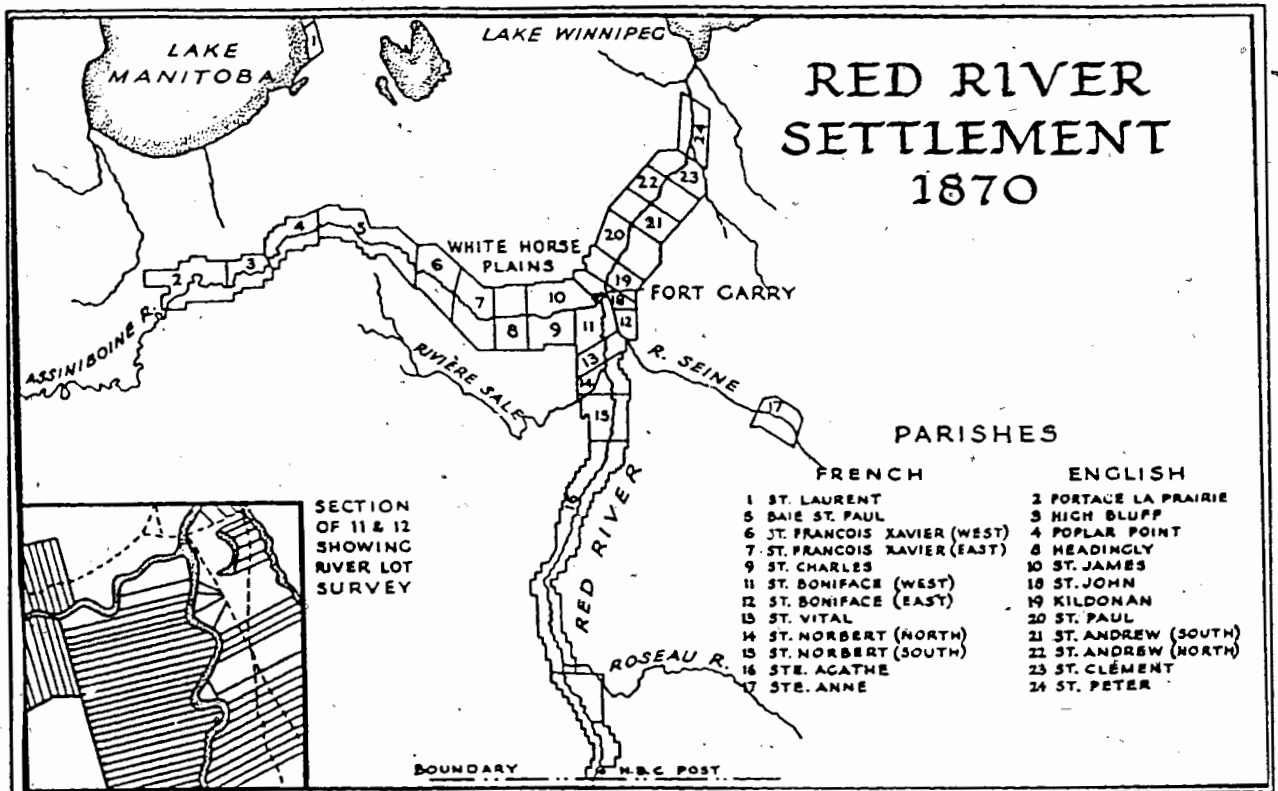


Figure 6 Red River Settlement, 1870.

Source: George F.G. Stanley, The Birth of Western Canada: A History of the Riel Rebellions (1961).

While the *Temporary Government Act* (1869) contained the necessary provisions for the administration of justice within §2 of that Act, which reads in part:

It shall be lawful for the Governor... to authorize and empower such Officer as he may from time to time appoint as Lieutenant-Governor of the North-West Territories, to make provision for the administration of justice therein, and generally to make, ordain and establish all such Laws, Institutions and Ordinances as may be necessary for the Peace, Order and good Government of Her Majesty's subjects and others therein (in Ward, 1966:12),

the Canadian government of the day failed to take the immediate steps to effect that administration. Even though two Orders-in-Council (August 10, 1870, 1871, no.20, p. 25; and September 13,

1870, 1871 no. 20. p. 26) were issued which authorized the appointment of justices of the peace the senior government bureaucrat, Lieutenant-Governor Adam G. Archibald, did very little to:

exercise these powers but appoint Johnson [as Recorder] and name six justices. It would be useless to do more until a territorial police force was established to enforce the rule of law (Ward, 1966:14-15).

The customary practice, in regards to the rule of law, was to defer to existing Hudson's Bay Company judicial arrangements. Although several inspectors and a commission of inquiry would recommend changes in the administration of justice, such as the appointment of additional magistrates and the establishment of a military detachment of up to 500 mounted rifles to keep the peace and preserve British/Canadian sovereignty (Ward, 1966:15-19), no serious changes would occur in the administration of justice until 1873.

These rather Machiavellian actions would culminate with the transfer of the region to Canada through *Her Majesty's Order-in-Council Admitting Rupert's Land and the North-West Territory into the Union*, (July 23, 1870). Canadian acceptance of these lands would occur with the passage of the *Northwest Territories Act (1870)*¹⁶ and the *Manitoba Act (1870)*.¹⁷ While both Acts fortified the Canadian title to the region for external purposes, they had the internal effect of merely forestalling the ethnic confrontation between the Canadian state and the emerging Metis nation under Louis David Riel and others until 1885.

¹⁶ *North-West Territories Act*, Statutes of Canada, 32-33 Victoria, c.3, 1870, hereafter the *North-West Territories Act (1870)* and/or *NWT Act (1870)*.

¹⁷ *Manitoba Act*, Statutes of Canada, 34 Victoria, c.16, 1870, hereafter the *Manitoba Act (1870)*.

Indians and Eskimos, 1670-1870

Since their respective arrivals in North America, the various European nations have pursued approaches towards the aboriginal peoples they encountered which, although differing in technique, were based within the philosophies of conquest and colonization (cf. Asch, 1984; Boldt and Long, 1985; Cox, 1988; Fisher and Coates, 1988; Frideres, 1988; Getty and Lussier, 1983; Hawkes, 1989; Little Bear, Boldt and Long, 1984; Moore, 1978; Morse, 1989; Ponting, 1986; Watkins, 1977). These approaches have ranged from the earlier voyages of exploration, wherein the "savages" encountered were often kidnapped and brought back to Europe, to the use of controlling legislation, albeit without the knowledge or informed consent of the aboriginal peoples.

This history of contact has been marked by attempts to establish not only a European cultural presence but a cultural superiority over the aboriginal peoples they encountered. Beginning with the various explorers, traders, missionaries and governments this myth has been inculcated among both native and non-native population (Marule, 1984; Ryser, 1984; Tobias, 1983; Upton, 1973). Sturtevant (1980:47-49), for example, presents a typical, early account of European/Aboriginal contact, in this case Labrador Inuit, of North America. Although lengthy, it is presented here in its entirety as it illustrates a European/Euro-Canadian perspective which would survive into the late 1920s:

In this year 1566 there arrived at Antwerp, by ship from Zealand, a savage woman (a small person) together with her little daughter, and she is shaped and clothed as this picture shows, and was found in Nova Terra which is a new district first discovered by the French and Portuguese a few years ago, and this woman with her husband and little child were met by the French (who had voyaged to this district and came ashore and sought wonderful things), and the husband was shot through his body with an arrow. However he would not surrender but took his stand bravely to defend himself; and in this

skirmish he was severely wounded in the side by another Frenchman with a broadsword, then he took his blood from his side in his hand and licked it out of his hand, and took his stand to defend himself still more fiercely than before. Finally he was struck and wounded in his throat so severely that he fell to the ground and died from this wound. This man was 12 feet tall and had in twelve days killed eleven [12] people with his own hand, Frenchmen and Portuguese, in order to eat them, because they like to eat no flesh better than human flesh. And as they seized the woman she took her stand as if she were completely raving and mad because of her child whom she would have to leave behind when the sailors took her away to the ship, as though she would rather lose her life than leave her child behind. Because she was so mad, they let her alone a bit; she went to the spot where she had concealed her child, then she was calmer than before, then they took the woman with her away; and none of the frenchmen could understand a single word of hers or speak with her at all. But she was taught enough in 8 months that it was known that she had eaten many men. Her clothing is made of seal skins in the manner shown by this picture. the paint marks she has on her face are entirely blue, like sky blue, and these the husband makes on his wife [when he takes her for his wife] so that he can recognize her [his wife] by them, for otherwise they run among one another like beasts, and the marks cannot be taken off again with any substance. these marks are made with the juice of a plant which grows in the country. Her body is yellow-brown like the half Moors. The woman was twenty years old when she was captured in the year 66 in August, the child 7 years. Let us thank God the Almighty for His blessings that He has enlightened us with His word so that we are not such savage people and man-eaters as are in this district, that this woman was captured and brought out of there since she knows nothing of the true God but lives almost more wickedly than the beasts. God grant that she be converted to acknowledge Him. Amen (Sturtevant, 1980:48-49).

More "enlightened" approaches to dealing with the aboriginal peoples may be found in the "legislative approach" of the nineteenth and twentieth centuries. Yet, the extent and effectiveness of that myth of European/Euro-Canadian superiority or "great lie" (Little Bear, Boldt and Long, 1984:25) has been enormous, indeed it has been internalized by many individuals and groups among the Native population.

Current Canadian policy towards aboriginal peoples and their lands may have their origins in the colonial efforts of the *ancien regime* of New France and the Imperial governing of British North America. French colonists in Canada, according to Moore (1978), initially sought:

• mutual peace and prosperity through the cultivation of military and commercial alliances with the natives. The French then wanted to "civilize" the Indians by introducing them to Christianity and the material goods of European society (1978:6).

The objects of their policies were two-part: (1) to protect the aboriginal peoples from the avariciousness of the fur traders, and (2) to assimilate them (the aboriginal peoples) into the mainstream of the colonies activities. Just as their policies had two goals there were two polemic approaches to their realization: the Jesuit Order of the Roman Catholic church sought to isolate the aboriginal peoples on "reserves" wherein they could become civilized while the opposite viewpoint, such as expressed by officials of the Colony, was based upon immediate integration and assimilation.¹⁸ One major point of contention between the European and aboriginal

¹⁸ The Jesuits owned and operated an early "reserve" on their *seigneurie* at Sillery, near present-day Quebec City, which was the forerunner of the modern Canadian Reserve. Within the confines of the *seigneurie* the aboriginal peoples were able to exercise fishing, hunting and trapping rights unmolested but were unable to convey the land in any fashion to others without Jesuit permission. The Jesuits would attempt to educate and convert to Catholicism the population of the *seigneurie* (Stanley, 1950; Moore, 1978).

On the other hand, the Colonial officials were preoccupied with the fur trade, regulating the effects of the liquor and firearms trade between the colonists and the aboriginal peoples, and acquiring title to the vast lands of the region. Other efforts of the Colonial government were aimed at securing the military-political alliances necessary to reduce British influences and to "francise" the aboriginal population.

leadership was the title to the land and its conveyance. French officials steadfastly refused to recognize aboriginal title and transferred title to the British through the *Articles of Capitulation* (1759) and the *Treaty of Paris* (1763).

Although the colonial government of Imperial Britain shared the goals of the defeated *ancien regime*, namely to "protect the rights of the natives, then to bring them into "white" society as "civilized Christians" (Moore, 1978:10), it recognized that the key to maintaining its new colony was to be found in good relations with the aboriginal populations. The major aboriginal resentment, of the period, appeared to be the transfer or conveyance of their lands by the French without their participation or knowledge, which may have contributed to the enactment of the *Royal Proclamation of October 7, 1763*.

Through this instrument the British Crown intended to prove, to all concerned, that it was both the legitimate and most benevolent authority in the region. Indeed, the *Royal Proclamation* was explicit in its wording concerning "Indian Lands" when it stated:

And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds....And We do further declare it to be Our Royal Will and Pleasure, for the present aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our said Three new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also the Lands and Territories lying to the Westward of the Sources of the Rivers and North West as aforesaid (in Getty and Lussier, 1983:33-34).

Seen by many people, aboriginal and non-aboriginal alike, as the "Indian Charter of Rights", the *Royal Proclamation* set the tone for relations between the colonies and its aboriginal neighbours which would continue until 1867 and Confederation. However, goodwill expressed by the *Royal Proclamation* was countered by the creation of Indian Department, the forerunner of the Department of Indian Affairs and Northern Development, and the beliefs of its bureaucratic and political masters, such as those expressed by Chief Superintendent Darling in 1828 and the Lieutenant-Governor of Upper Canada, Sir James Kempt in 1829. Moore (1978) presents the former's beliefs, for example, stating that:

the Indians deserved the protection of the Crown as "part-citizens" not merely allies or wards. The administration, therefore looked upon the natives, at this time, as people who were unable to assume the rights and obligations of "full citizens", but who, once "civilized", could adopt such status. Department officials saw Christianity, literacy, farming or industrial labour, patriotism and civic responsibility, as the components of civilization that the Indians had to learn before attaining "true citizenship" (Moore, 1978:24).

The latter, Sir James Kempt, possessed both the belief and the ability to transform those beliefs into action. He recommended:

- (1) To collect the Indians in considerable numbers, and to settle them in villages, with a due portion of land for their cultivation and support.
- (2) To make such provision for their religious improvement, education and instruction in husbandry as circumstances may from time to time require.
- (3) To afford them, such assistance in building their houses, rations, and in procuring such seed and agricultural implements as may be necessary, commuting, when practicable, a portion of their presents for the latter (in Moore, 1978:25),

which were to come to fruition as the Manitoulin Island Experiment of 1836. This experiment was the first attempt at isolating the aboriginal peoples in order to protect them from and assimilate them into the Canadian society of the period. The fact that the Ojibwa who were resettled on Manitoulin Island had neither the desire to nor a tradition of agriculture was, somehow, overlooked by the well-meaning officials in Upper Canada and may be seen as a reason for the failure of this experiment in, what some have termed, "early apartheid" (Moore, 1978:1,24-28).

During the decade of the 1850s, the legislatures of both Upper and Lower Canada passed separate Acts to "protect" the aboriginal peoples within their respective jurisdictions. In Lower Canada, the legislature passed two Acts, the first, the *Indian Land Protection Act (1850)*,¹⁹ may have contributed to the discriminatory practices inherent in recent and current versions of the *Indian Act* as it defined Indian status along race, gender and marital lines.

The second Act, the *Gradual Civilization Act (1857)*,²⁰ was without question, the strongest pre-Confederation attempt at the "legislative integration" to emerge from either Lower or Upper Canada. It re-defined Indian status to include the new definition of a "franchised Indian" as someone whom a Commissioner for Indian Affairs has examined and found to be:

any such Indian of the male sex, and not under twenty-one years of age, is able to speak, read and write either

¹⁹ An Act for the Better Protection of the Lands and Property of Indians in Lower Canada, Statutes of the Province of Canada, 13-14 Victoria, c.42, 1850, hereafter the *Indian Lands Protection Act (1850)*.

²⁰ An Act for the gradual Civilization of the Indian tribes in the Canadas, Statutes of the Province of Canada, 20 Victoria, c.26, 1857, hereafter the *Gradual Civilization Act (1857)*.

english or french language readily and well, and is sufficiently advanced in the elementary branches of education and is of good moral character and free from debt (*Gradual Civilization Act (1857)*, §2(3)).

In addition to these qualifications, franchised Indians were offered financial inducements and land to franchised Indians.

The legislature in Upper Canada, on the other hand, passed *Indian Protection Act (1850)*²¹ only two months after its counterpart in Lower Canada. This Act contained specific provisions, however, to protect the lands of those aboriginal and non-aboriginal persons who have inter-married.

During the decade of the 1860s, the legislation concerning Indians and their lands within the two Provinces was consolidated and followed by legislation which were in force within both jurisdictions. The Imperial statute *Indian Lands Act (1860)*²² served as the progenitor of the modern system of Indian reserves in Canada. While this Act detailed the necessary pre-conditions for the sale or together conveyance of Indian lands, it was enacted not only with the purpose of protecting the aboriginal peoples of Canada, but fully cognizant of the ever-changing geo-political conditions of the period sought to secure:

the north-western territory against the threat of American expansion by solidifying the Indian's allegiance to the British Monarch....[However] Indian Affairs administrators from 1861 through 1864 strove to consolidate their authority over the lands and resources

²¹ *An Act for the Protection of the Indians in Upper Canada from Imposition, and the Property Occupied or Enjoyed by them from Trespass and Injury, Statutes of the Province of Canada, 13-14 Victoria, c.74, 1850, hereafter the Indian Protection Act (1850).*

²² *An Act respecting the Management of Indian Lands and Property, 23 Victoria, c.151, 1860 (Gt.B.), hereafter the Indian Lands Act (1860).*

of the Indian's reserves and to protect the North-West against invasion by the powerful Union troops of the United States (Moore, 1978:57-58).

This introduction to the early statutes affecting not only Indians and their lands but the entire Northwest Territories has accomplished more than a mere appraisal of the legislation, indeed, it has provided an insight into the ways in which ethnicity, specifically Indians as an ethnic group, have been perceived by European/Euro-Canadian society. Similarly, this discussion has provided an introduction into the historical use of unilateral legislation to deal with perceived threats to the expansion of Canada from, both, within the nation (Indians and lands reserved for Indians) and from those external forces (commercially and militarily) within the United States.

Unfortunately for the Dominion government and the aboriginal peoples, two points have yet to be resolved, namely: the resolution of land claims, and the role of aboriginal law and legal beliefs within the broader Canadian scope.

Indeed, if one were to examine these events in light of Motyl's (1987) three research foci, it would be possible to interpret, as did historian Stanley (1961), that increases in the frequency and intensity of the American interventions throughout the region provided the impetus for the Dominion government's sudden action in the prairies and subarctic. Although, previously there were whisky-traders and wolf-trappers in the area, once their influence was coupled with that of increasingly large numbers of settlers and men-under-arms on the American prairies and the recent purchase of Alaska from Imperial Russia, these events could have served as a direct threat to the sovereignty of the Dominion. The Canadian state, in the form of the Dominion government, reacted to the increasing numbers of aboriginal peoples of whom it had become aware through the enactment of legislation which was based solely

along ethnic lines and sought to "protect, civilize, and assimilate" those aboriginal peoples thought to be more responsible.

The enacted legislation clearly illustrated the Dominion government's desire to deal arbitrarily and unilaterally on the issues of Indian ethnicity and the notion of sovereignty for westerners. The continuous rounds of negotiations between the Imperial government, the Dominion government, and the Hudson's Bay Company similarly illustrated the Dominion government's desire to ensure it possessed the vast prairies and Northern taiga.

CHAPTER VI

CANADA ACQUIRES ITS COLONIES, 1870-1930

The history of Euro-Canadian/aboriginal relations since the first and second Riel Rebellions in 1869-70 and 1885 to the present are believed to have been influenced by "the great lie" of European/Euro-Canadian cultural and racial superiority over native peoples (introduced in Chapter V). The policies of the Bureau of Indian Affairs, with its subsequent organizational titles and additions, for example, have been predicated on earlier Province of Lower Canada goals which held that:

Protection, civilization, and assimilation have always been the goals of Canada's Indian Policy. These goals were established by governments which believed that Indians were incapable of dealing with persons of European ancestry without being exploited. Therefore, the government of Canada had to protect the person and property of the Indian from exploitation by the European, which meant that the Indian was to have a special status in the political and social structure of Canada (Tobias, 1983:39)

These policy goals were supported by the exclusive power of the Dominion government to enact and amend legislation affecting the aboriginal peoples of Canada, mobilize and deploy troops or police to deal with recalcitrant Native groups, and the actions of its Indian Agents in every aspect of the cultural, economic, political and social spheres of aboriginal life. Within the former area, legislative control, the power of the Dominion government is best illustrated by the six major revisions to the *Indian Act*²³ between 1876 and the outbreak of the Second World War. These revisions, for example, included the definitions and eligibility

²³ Although An Act to Amend the Indian Act, 1985 (Can.), c.27 has since been enacted, the *Indian Act, R.S.C. 1970, c. I-6*, hereafter the *Indian Act (1970)*, remains the most commonly referred Act.

for Indian status, the loss of such status by aboriginal women who, until recent years, married Euro-Canadian men, and the re-definition of Inuit as Indians!

This chapter will bring forth those processes of change which had been initiated during the 1870-1930 period and their effects on regional stability and ethnic hegemony. Paramount to this discussion is an examination not only of the role of federal legislation, but the roles of the police and the courts in attaining the Dominion government's national policies, including the peaceful assimilation of the Northwest Territories into the Canadian polity (Jenness, 1964, 1968; Morrison, 1973).

(i) The Rebellions and the Intervening Years, 1870-1885

The period of 1870-1885 may be seen as the 'gestation' period of the newly-conceived Northwest Territories. The vast tracts of land known as Rupert's Land and the North-West Territories were conveyed to Canada by an Imperial Order-in-Council in 1870 and the fledgling Dominion enacted legislation to solidify its grasp upon those new lands. Although titular control exercised by the appointed Northwest Council, the new lands would be administered through N.W.T. Branch of the federal Department of the Interior and, in the case of the aboriginal peoples, the agents and officers of the Bureau of Indian Affairs. Yet, two related events occurring at the two respective ends of this period would continue to influence the shape of aboriginal-government relations to the present day.

The two Riel Rebellions of 1869-1870 and 1885 (although the latter is officially known as the North-West Rebellion of 1885) may be interpreted as expressions of the ethnogenesis, or *metissage* of both the Metis and the Metis Nation in Canada. Indeed, the origins of Canada's modern Indian policy may be traced back to the latter instance of aboriginal resistance to the Canadian state (Allen, 1983; Driben, 1986; Frideres, 1988; Peterson and Brown, 1985;

Ponting, 1986; Tobias, 1983, 1988).

The aboriginal perspective, rather than the Euro-Canadian view, of both these two events and the developmental state of aboriginal society at the time may be explained using any three related approaches: Herbert Blumer's (1969) concept of social movement, Mary Helms' (1969) notion of a purchase society, Anthony F.C. Wallace's definition of a revitalization movement. Blumer (1969), for example, notes that social movements may be viewed as:

collective enterprises to establish a new order of life. They have their inception in a condition of unrest, and derive their motive power on one hand from dissatisfaction with the current form of life, and on the other hand, from wishes and hopes for a new scheme or system of living. The career of a social movement depicts the emergence of a new order of life. In its beginning, a social movement is amorphous, poorly organized, and without form; the collective behaviour is on the primitive level that we have already discussed, and the mechanisms of interaction are the elementary, spontaneous mechanisms of which we have spoken. As a social movement develops, it takes on the character of a society. It acquires organization and form, a body of customs and traditions, established leadership, an enduring division of labour, social rules and social values - in short, a culture, a social organization, and a new scheme of life (1969:8).

Anthropologist Helms (1969), on the other hand, presents the notion of a "purchase society" which she argues may be used as a framework within which to "analyze simple societies living on the economic frontiers of both agrarian and industrializing states" (Helms, 1969:325). Such a society is similar to a peasant society, according to Helms (1969:325), as both societies operate outside the economic controls of their neighbouring agrarian and industrial states. She notes, in general terms, that purchase societies differ from the latter category as they owe no formal political allegiance to the neighbouring states but are involved in informal trading arrangements with either their agrarian or industrial

neighbours. Yet, for a purchase society to continue it required stability within three areas: the political leadership and its relative autonomy, the volume of surplus goods for trade, and the trading value of those same surplus goods.

In his 1986 essay concerning Louis Riel and the Metis Nation, Paul Driben takes an ethnohistorical approach to understanding the social disorganization and cultural stress which Western aboriginal peoples (Indian and Metis alike) were undergoing as the result of Euro-Canadian expansionism. Driben felt that Metis society prior to the first Riel Rebellion, 1869-1870, was aptly described by Helms' notion of a purchase society, but that their society was undergoing a period of revitalization which erupted in violence during both this and the second Riel Rebellion in 1885.

Wallace, an eminent anthropologist concerned with how aboriginal societies adapt themselves during periods of intense cultural disorganization and individual stress, presents the concept of a "revitalization movement" as the mechanism for that rebuilding. A revitalization movement, according to Wallace (1956), is a recurrent phenomena which seeks to reconstruct the society through a return to earlier values and beliefs (cf. Adas, 1979; Jorgenson, 1971; Mooney, 1965; Worsley, 1968). Indeed, this phenomena is one of five overlapping stages in a process of change. These include:

(1) The Steady State: Social and cultural forces exist in a dynamic equilibrium. Cultural change takes place in a slow and orderly fashion, maintaining the integrity of the society and keeping personal levels of stress within tolerable levels.

(2) The Period of Increased Individual Stress: Occurs when the cultural system can no longer satisfy the needs of its members. This happens when the system is pushed out of equilibrium because of an epidemic, invasion, or some other disruptive force.

(3) **The Period of Cultural Distortion:** Marked by ineffective and piecemeal attempts to reduce stress and restore equilibrium to the system. Special interest groups may try to set the system aright, but efforts usually lead to more disorganization and stress.

(4) **The Period of Revitalization:** Takes place once people realize their culture is maladaptive. But success is not always guaranteed; instead, it depends on the completion of a number of tasks. First, a code must be formulated that proposes a blueprint for a better society. Second, the code must be communicated to win converts. Third, the converts must be organized into disciples and followers. Fourth, the movement must be defended by modifying the code or, if necessary, by force. Fifth, a cultural transformation must take place so that the "new" blueprint culture replaces the "old" maladaptive one. Finally, the movement must be routinized so that the new culture establishes its own methods for handling change.

(5) **The New Steady State:** This occurs when social disorganization and personal stress return to tolerable levels, and a new dynamic equilibrium is restored (Driben, 1986:69).

Revitalization movements may be found, for example, within the Ghost Dance phenomena among the Seneca (Wallace, 1972) and Sioux (Mooney, 1965) in North America as well as the five South Pacific rebellions reported by Adas (1979).

During the period shortly before and between the two Riel Rebellions was a period of intense social change for the aboriginal societies throughout the Plains and the aboriginal societies were being transformed from purchase societies into dependent societies. Many scholars have noted that the old order, deduced to be a steady state to use Wallace's terms, was being threatened by the agrarian expansion into the West (Driben, 1986; Dyck, 1970, 1986; Gibbons and Ponting, 1986). The Hudson's Bay Company stranglehold upon the trade between the two societies was loosening as the Canadian nation and settlers began to move westward.

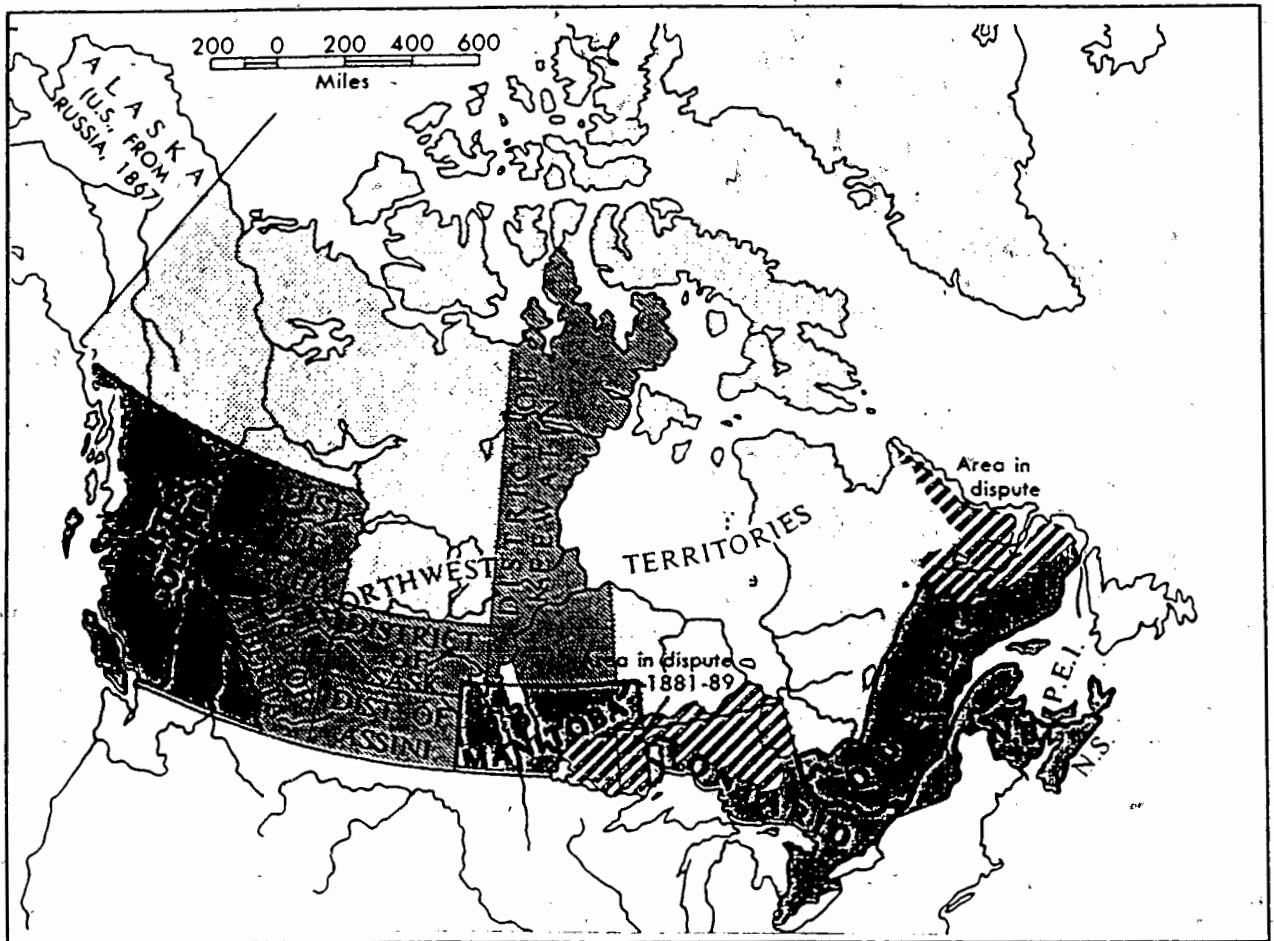


Figure 7 Canada and its Territories, 1882.

Source: Geoffrey Matthews and Robert Morrow Jr., Canada and the World: An Atlas Resource, (1985).

The Dominion government was successful in its efforts to avoid, or at least forestall, the problems encountered by the Americans in contacts with the aboriginal peoples living in their western territories. The Crown set itself, above both the Company and the existing aboriginal leadership, as the new political order in the region. Pursuing the policy goals of protection, civilization, and assimilation for its Indian wards, the Crown was able to forestall events, such as those in Montana during 1865 where a series of reciprocal murders took place, which:

hardened the white population of that territory, indeed, conditioned and encouraged them to kill Indians in the interest of future white "peace, prosperity and progress." Often the killers were hailed as heroes, contributing to a stable society and helping to protect innocent and defenceless white women and children (Allen, 1983:229).

This change in political structure and authority patterns was followed by the decreasing value of aboriginal trade goods, such as buffalo meat and fur, as the agricultural base of the Red River Colony was barely sufficient to meet the demands of most of its inhabitants, let alone to permit trade. Thus, not only was the volume of trade reduced but the value of that trade began to decrease.



Figure 8 The Canadian West, 1870-1894.

Source: George Stanley, The Birth of Western Canada: A History of the Riel Rebellions (1961).

While the Indian transition from a purchase society was more gradual than that of the Metis, it may be deduced from this discussion that they, too, were undergoing a period of individual stress and cultural distortion. The new settlers from Canada brought with them another threat to the established Metis order: the Anglo-Canadian system of land tenure and measurement. This change in land allocation and registration conflicted sharply with the established *seigneurie*-based system of land use practised by the Metis. These changes, when coupled with the failures of both the crops of the new colony and the Metis buffalo hunts during the period of 1868-1872, contributed to feelings of increased individual stress and cultural distortion (Wallace, 1972), and the creation of the social movement which exploded as the Metis resisted the Canadian state.

In partial response to the armed resistance towards these changes by the Red River Metis, the Dominion government enacted the *Manitoba Act (1870)*.²⁴ An exercise in expediency, the *Manitoba Act (1870)* created the "postage stamp" sized province of Manitoba, calmed the Metis leadership, and:

returned the greater part of the Northwest Territories to the form of government that Ottawa first intended for the whole [territories]; it enabled Canada to take over all the interior of British North America with relative ease although with more trouble and expense than first anticipated....It created a legal entity with the name of the North West Territories. But beyond the boundaries of the province of Manitoba effective government remained almost completely unknown (Bovey, 1967:26-27).

By means of this statute the Dominion government created a new jurisdictional term, a "territory", for both Canada and Great Britain. Sir John A. Macdonald managed to both diffuse the Metis concerns through the enactment of this Act and sow the seeds of

²⁴ *Manitoba Act*, (Statutes of Canada, 34 Victoria, c.16, 1870, hereafter the *Manitoba Act (1870)*).

aggravation and frustration for future generations of territorial politicians. Noting that Macdonald may have regarded the provincial/territorial differences as merely semantic rather than constitutional, Bovey (1967) correctly identified the ongoing Dominion of Canada position on the issue when he stated:

The overwhelming bulk of Rupert's Land and the Licensed Territory still was called the "North-West Territories", but perhaps Sir John considered that a geographic description, not a constitutional status. Certainly one might conclude from his subsequent conduct that he regarded "territories" as the Canadian equivalent of crown colonies, to be ruled directly from Ottawa (Bovey, 1967:24).

The Macdonald administration managed to effect the transfer of Rupert's Land and the North-West Territories to Canada, create a political structure for the government of those lands, and diffuse the Metis resistance movement of 1869-1870 during it's first years in office. However, it's accomplishments in the administration of justice were abysmal and, aside from the appointment of a few Justices-of-the-Peace, seemed to merely perpetuate the ineffectual criminal justice administration of the Hudson's Bay Company (Ward, 1966:19-20).

To employ an analogy to the earlier Guy Fawkes incident in Great Britain, the spark which ignited the judicial and political powder kegs under Macdonald's administration was not the unrest among the Red River Metis, but the murder of over thirty²⁵ Indians at what would become known as the Cypress Hills Massacre in 1873. Its origins may be found within the exchanges of atrocities between Euro-American wolf-hunters and whisky-traders and members of the

²⁵ Testimony brought out during the subsequent extradition and massacre trials have disputed this figure. The number of Assiniboine murdered at Cypress Hills, according to witnesses, ranged from eleven individuals to the ambiguous "forty lodges".

Blackfoot Confederacy in the Montana Territory during the 1860s and early 1870s.

Having a peaceful settlement and strict controls forced upon them, the wolf-hunters and whisky-traders saw:

an unhindered and easy profit for their whisky trade in the "British Possessions." By the early 1870's the Americans had established a number of "whisky forts" north of the border, such as those along the Belly River with such colourful names as Slide-out, Standoff, Whisky Gap, and Robber's Roost. The centre of this trading traffic was Fort Whoop-Up (near present-day Lethbridge, Alberta), and the entire area became known as Whoop-Up country (Allen, 1983:231).

and was soon in a state of lawlessness as the wolf-hunters and whisky-traders operated, according to contemporary accounts, "without law, order, or security for life or property...robbery and murder...have gone unpunished...and all civil and legal institutions are entirely unknown" (Allen, 1983:232).

These abuses of Canadian sovereignty and the slipping into anarchy of the lands claimed by the Dominion would lead to that government enacting the *NWMP Act*, (1873).²⁶ This Act created not only the North-West Mounted Police (hereafter "NWMP"), but established the territorial judiciary by authorizing the position of Stipendiary Magistrate.

Stipendiary Magistrates could ~~commit to trial~~ those persons accused of petty larceny and assault and, upon conviction, could impose a sentence of either a fine or a maximum of two years imprisonment. The *NWMP Act* (1873) also appointed the Commissioner

²⁶ *An Act respecting the Administration of Justice, and the Establishment of a Police Force in the North West Territories*, 36 Victoria, c.35, 1873, hereafter the *NWMP Act* (1873).

and Superintendents of the NWMP as Justices-of-the-Peace, a situation which a revised NWMP Act (1874) would exacerbate by appointing them as Stipendiary Magistrates and other members as Justices-of-the-Peace. This created the situation where members of the police were authorized to:

perform the duties of the justices of the peace. Because of it, the police could arrest an offender, act as his prosecutor, sit in judgement on him, and then become his jailer, thus performing all the functions of a judicial system (Ward, 1966:26).

In response to these affronts to the British tradition of an independent judiciary, the Dominion government enacted the *North-West Territories Judicature Act (1873)*,²⁷ which authorized the appointments of justices-of-the-peace and coroners throughout the region. Once again, political considerations would influence the placing of names on the judicial appointments list to ensure that adequate numbers of the French-speaking population were included.

Interestingly enough, this legislation would come into force only a month prior to the massacre of a number of Assiniboine camped in the Battle Creek Valley in the Cypress Hills area of southern Saskatchewan, but was politically motivated rather than a direct response to those events. During the debate on the *Manitoba Act (1870)* Macdonald announced that:

a body of mounted rifles was presently being recruited for service in the Northwest Territories. It was intended to protect people "from the chance of Indian war", and was planned to be a bi-lingual force, raised in Upper and Lower Canada, and in the territories themselves (Bovey, 1867:159).

27. *An Act to Amend and Consolidate the Laws respecting the North-West Territories, Statutes of Canada, 36 Victoria, c.34, 1873, hereafter North-West Territories Judicature Act (1873).*

As Bovey (1967:159) was to comment, however, these admirable plans were not to come into fruition nor was the NWMP raised until 1873.

Having established a judicial system for the North-West, the Dominion government was caught in a trap of its own design, namely being forced to spend funds on the administration of that system and places for the detention and imprisonment of convicted felons. While it continued many of the justice-related practices of the Hudson's Bay Company, that government managed not to inherit the Company's gaol system.²⁸

Whereas §91 of the *Constitution Act (1867)* stipulated that the Dominion government held exclusive jurisdiction over the operation of penitentiaries, §92 gave exclusive jurisdiction to the various Provinces in the operation of "Public and Reformatory Prisons". Rather than establishing a penitentiary in the North-West Territories, the Dominion government chose the less-expensive solution of transferring prisoners, after 1885, to either Ontario or the newly-constructed Manitoba Penitentiary (soon renamed Stony Mountain Penitentiary) near Winnipeg. What was to emerge from the distinctiveness of the territorial jurisdiction was also a unique approach to imprisonment as:

conditions in the North-West Territories did not seem to warrant construction of a prison and penitentiary there. What eventually resulted in the North-West Territories was a complex system embracing three main elements. These were: North-West Mounted Police guardhouses built and maintained at the various outposts in the

²⁸ The Hudson's Bay Company did not hold the establishment of a system of gaols to be cost effective prior to 1835. Instead, guardhouses were improvised on an *ad hoc* basis in most of the Company's trading forts. With the expansion of the Red River Colony, the Company established a court house and gaol at the forks of the Red and Assiniboine River during 1835 and built a new gaol "positioned where Fort Garry's guns could fire on it" (Leyton-Brown, 1988:146).

territories, jails located in two of the cities of the Territories, and a penitentiary which served the Territories but was, in fact, located in the province of Manitoba (Leyton-Brown, 1988:151).

This system was to prove inadequate and ineffectual not only the next fifteen years, but throughout the entire territorial period. Indeed, its inadequacies would come into public question shortly after the second Riel Rebellion and, again, at the close of the nineteenth century.²⁹

The Cypress Hills Massacre, as it would soon be known, occurred during the afternoon of June 1st, 1873, when a small mixed-force of American wolf-hunters and whisky-traders came upon an encampment of Assiniboine, whom they believed had stolen horses and taken shots at the trading forts. During the course of events which followed, the Americans proceeded to massacre not less than eleven Assiniboine, destroy the encampment, and rape some of the women.

One of the first actions of the newly-created North-West Mounted Police (the term "Mounted Rifles" being too provocative) was to investigate those murders and attempt to bring to trial seven of the participants in the massacre. During an extradition trial in Montana, the accused were released due to inconclusive evidence. The NWMP continued to investigate the massacre and were, eventually, in 1876, able to arrest Philander Vogel, James Hughes and George M. Bell, who were sent to Manitoba to be tried by a judge of the recently constituted Court of Queen's Bench of Manitoba. Although the accused were acquitted of the massacre,

29

The North-West Mounted Police reacted to an explosion in the inmate population, caused by the convictions of the Metis and Indian leadership of the Second Riel Rebellion, by building a gaol in Regina during 1885. The gaols in Regina and Prince Albert would be delayed until 1890 and 1898, respectively (Leyton-Brown, 1988:165).

arraigned on a single murder charge and released on their own recognizance, they would subsequently flee from the province and disappear from public notice. Once again, the motivation behind the trial was political as it was a successful attempt to impress to all concerned, but most notably upon the minds of the aboriginal peoples, that "a genuine attempt was being made by the Queen's government in Ottawa to establish a just and racially equitable system of law, order, and authority" (Allen, 1983:243).

While the events surrounding this trial inspired confidence in the minds of many aboriginal peoples in the prairies of the North-West Territories it would be offset by the enactment and provisions of the first *Indian Act* (1876)³⁰. Canada's national perceptions of Indians were influenced by those encountered in Ontario, Quebec, and the Maritimes as well as "the Indian" as portrayed in the American print media. As such, Canada enacted legislation to "protect, civilize, and assimilate" only those Indians rather than western aboriginal peoples who were not considered "advanced enough in civilization to take advantage of the act" (Tobias, 1983:45).

In order to "protect" western aboriginal peoples from Euro-Canadian exploitation, the "reserve system" was established. Unfortunately, the Act legislatively exploited the aboriginal peoples by isolating them on "lands reserved for Indian" which were, generally, unworkable for either agriculture, hunting, or trapping activities. The Act's "civilizing" aspects, albeit civilization in a Christian-European context, attacked numerous traditional aboriginal practices as well as contacts with members of the incursive society, such as: marriage, divorce, adoption, public alcohol consumption, elections, and the surrender of Indian lands. It was envisioned that aboriginal compliance with the

³⁰ *An Act to amend and consolidate the laws respecting Indians, Statutes of Canada, 39 Victoria, c.18, 1876, hereafter the Indian Act (1876).*

provisions of this Act, notably remaining on reserves and engaging in agriculture under Euro-Canadian tutelage, would result in their "assimilation" into the larger Canadian society (Tobias, 1983:45).

The government of the day realized correctly that, in order to be effective, the *Indian Act (1876)* required a mechanism for its enforcement. Unfortunately, an effective mechanism was not included in this Act and would remain absent until 1881 when it would be amended to include §107 which provided for the appointment of local Indian Agents as justices-of-the-peace.

The *Indian Act (1876)* was enacted during the same period of the signing of *Treaty Six (1876)* and *Treaty Seven (1877)* with the Plains Cree and the Blackfoot Confederacy, respectively. The treaties contained numerous provisions whereby the aboriginal leadership expressed definite ideas on what they should receive in exchange for their loyalty and renouncing of land claims. The inclusion in *Treaty Six (1876)*, for example, of the undertaking:

That in the event of hereafter of the Indians comprised within this treaty being overtaken by any pestilence, or by a general famine, the Queen...will grant to the Indians assistance of such character and to such an extent as her Chief Superintendent of Indian Affairs shall deem necessary and sufficient to relieve the Indians from the calamity that shall have befallen them (in Dyck, 1986:123-124),

was prophetic as not only had the buffalo hunt failed (and would continue to fail), but the Sioux sought refuge in Canada during 1876 and put further strains on the region's carrying capacity.

Relief was issued, albeit insufficiently, in accordance with the provisions of the treaties and the *Indian Act (1876)* to those in dire need. By 1880, the Dominion government had instituted the Reserve Agricultural Programme as an interim measure which would help the Indians to provide for themselves and to increase the rate

of assimilation into Canadian society. This programme failed to accomplish its goals and, indeed by 1885, had the opposite effect by transforming Indian society from independence into dependence (cf. Dyck, 1970, 1986).

Also proclaimed during that year were the *Keewatin Act (1876)*³¹ and the *North-West Territories Act (1875)*³² which established the form which the territorial governments in the North would follow to the present day. Originating out of the suggestions made by the, then, Lieutenant-Governor of Manitoba, Alexander Morris, to establish "a council of three appointed members, who would have their seat of government in Winnipeg" (Bovey, 1967:36) to aid him in governing the areas of Lake Winnipeg and those disputed by the governments of Manitoba and Ontario. Accepted by Ottawa as a practical method of administering those vast areas and allaying the political aspirations of Manitobans, the *Keewatin Act (1876)* temporarily established an appointed council of not less than five nor more than ten members under the *ex officio* leadership of the Lieutenant-Governor of Manitoba.

The latter Act, the *North-West Territories Act (1875)*, merely reaffirmed Ottawa's control over those regions between Ontario and the Crown Colony of British Columbia. It continued the governance of the territories from Ottawa, albeit through a titular Lieutenant-Governor and North-West Council, while ignoring the distinctiveness of the regions which comprised them, eg. prairies, mountains, boreal forests, and tundra. An example of the relative

³¹ An Act respecting the North-West Territories and to create a separate Territory out of part thereof, Statutes of Canada, 39 Victoria, c.21, 1876, hereafter the *Keewatin Act (1876)*.

³² An Act to amend and consolidate the Laws respecting the North-West Territories, Statutes of Canada, 38 Victoria, c.49, 1875, hereafter the *North-West Territories Act (1875)* was proclaimed during 1876, although officially recorded as enacted during 1875.

powerlessness of the Keewatin and North-West Councils is provided by Bovey's (1967) comment that:

Shortly after the Keewatin District was proclaimed on October 7th, 1876, a smallpox epidemic broke out among the Icelanders and Indians of the Lake Winnipeg area, and the Mackenzie government was promptly spurred into appointing a council of six members to deal with the emergency. But once the epidemic had been successfully controlled, the Keewatin Council was promptly dismissed. It had offended a primary rule of territorial government in Canada by spending money, extravagantly in the estimate of Ottawa, to eradicate the disease that had been the reason for its appointment. No members of the Keewatin Council were ever again appointed. It continued to exist on paper, and the Lieutenant-Governor of Manitoba continued to be the Lieutenant-Governor of the District of Keewatin in fact, until the Keewatin was re-incorporated into the Northwest Territories in 1905 (Bovey, 1967:39).

Indeed, this powerlessness in relation to the Dominion government continues to this day for both the governments of the Yukon and Northwest Territories.

Through these and similar actions the Dominion government had illustrated both its desire and inability to effectively govern its north-western acquisitions. It had acquired not only that vast land mass from Great Britain, but British anxieties over American expansionism throughout the hemisphere which were promptly added to those of its own in that regard.

Yet, having acquired Rupert's Land and the North-West Territories from Great Britain, the Dominion of Canada endeavoured to acquire an even larger area: the islands of the Arctic Archipelago. Canada would have its efforts rewarded on 31 July, 1880, when an Imperial Order-in-Council, rather than an Act of Parliament, granted it:

all the territory in the northern waters of the continent of America and Arctic Ocean, from 60 degrees west longitude to 141 degrees west longitude and as far north as 90 degrees, that is to say, the North Pole (Maxim, 1976:18).

Canada based its claims to the Archipelago on earlier British claims which had their strength in the principle of prior discovery and possession as well as an 1825 Imperial treaty with the Russian Crown. The former principles were never "prior to the transfer to Canada, ratified by state authority, or confirmed by the exercise of jurisdiction & c." according to the, then, Chief Astronomer of Canada, Dr. W.F. King (McConnell, 1970:3-4). The latter argument, an 1825 treaty with Imperial Russia, firmly established the 141st degree of west longitude as the boundary between Russia's American colony in Alaska and that of British North America. However, the Dominion government had been shocked by the Alaska Panhandle Dispute into the realization that:

legal arguments and historical claims to land are not enough and effective occupation is required. Effective occupation such as settlements and communities with true governmental representation in the area was the only answer (Maxim, 1976:20).

In order to create the semblance of sovereignty, the Dominion government continued to practice a form of "symbolic sovereignty." Morrison (1986:246-247) presents this method of sovereignty as "actions taken to fulfil the formal requirements of sovereignty under international law...aimed at the citizens of other countries" (1986:246). The consolidation of that sovereignty when "the government formulates a policy for the development of territory under its control is presented as "developmental sovereignty" by Morrison. This kind of sovereignty ranges far beyond symbols, and thus has a tremendous impact on native peoples" (1986:247). Indeed, it continued to enact and amend legislation such as the *Northwest Territories Amendment Act (1888, 1891, 1905)*, and the

issue Orders-in-Council, such as the 1895 and 1897 orders creating the Yukon Territory and detailing Canada's jurisdiction in the North respectively, aimed at both external and internal threats to Canada's sovereignty claims.

The most notable pieces of legislation enacted during this period were, in fact, amendments to the *Indian Act (1876)* during 1884 and 1886 and the enactment of the *Indian Advancement Act (1884)*³³ which was aimed at continuing Canada's developmental sovereignty and countering real and perceived ethnic threats to the stability of the contemporary North-West Territories and its governance.

While the *Indian Act (1880)*³⁴ merely continued the policies and practices of the earlier Act, it had two major effects of creating the Independent Department of Indian Affairs, albeit continuing under the existing organizational umbrella of the Minister of the Interior and appointing all Indian Agents as Justices-of-the-Peace for the purposes of the *Indian Act (1880)* (Akman, 1985; Youngman, 1978). This amendment would create the legislative basis for a federal department which, in time, would insert itself into nearly every aspect of aboriginal life in Canada. Similarly, those powers of a Justice-of-the-Peace enabled the Agent to exercise administrative and judicial power over the lives of aboriginal peoples.

The subsequent *Indian Advancement Act (1884)* was a model piece

³³ An Act for conferring certain privileges on the more advanced bands of Indians of Canada with the view of training them for exercise of Municipal Affairs, Statutes of Canada, 47 Victoria, c.27, 1884, hereafter the *Indian Advancement Act (1884)*.

³⁴ An Act to amend and consolidate the Laws respecting Indians, Statutes of Canada, 43 Victoria, c.28, 1880, hereafter the *Indian Act (1880)*.

of legislation by contemporary standards which continued to promote the ambitious goals of the protection, civilization and assimilation of Canada's aboriginal peoples of the earlier Act. Having witnessed the aboriginal resistance to the election of band councils and having decried it as evidence of their "uncivilized" state and need for "more direction and guidance" (Tobias, 1983:45) the Dominion government attempted, once again, to destroy the traditional tribal authority structure. To carry out this feat required the granting, on paper, of a wide range of political powers to the elected council which, although capable of being vetoed by the local Indian Agent, were far greater than the traditional chiefs. Unfortunately for the government, most tribes merely elected their existing, traditionally-endorsed, chiefs as chiefs and band councillors under the Act (Tobias, 1983:45-47). As noted by Tobias (1983:46), the Indian Agents followed an unwritten policy of declaring the elections to be void and administering the bands themselves.

During 1884, the Dominion government amended the *Indian Act* once again. This amendment was clearly influenced by the unrest among the aboriginal peoples of the prairies and prohibited the sale of fixed or ball ammunition to them, banned several forms of ceremonial activity such as the potlatch and Sun-dance, and introduced a "leave-ticket", a form of "internal passport", which was required by aboriginal peoples wishing to travel off their reserves (Frideres, 1988:29). This amendment to the *Indian Act* (1880) would also dramatically expand the powers of the Indian Agent. As Akman (1985) noted, the scope of these powers would be expanded, first in 1882 by giving:

every Indian Agent the same powers as a stipendiary or police magistrate. In 1884, the jurisdiction of the Indian Agent was further expanded by giving him authority to hold trials wherever "it is considered by him most conducive to the ends of justice" to conduct the trial. The agent also was allocated jurisdiction over any breaches of the Act regardless of where they occurred.

The apparent intent behind these changes was to empower Indian Agents to hold trials off-reserve if they so chose and to have authority over offenses under the Act that were committed off the reserve.

The agent's jurisdiction also expressly included authority over "any other matter affecting Indians (Akman, 1985:3).

As previously discussed, this period could be described as the gestation period of Canada's policies concerning aboriginal periods. Beginning with attitudes and legislation which merely continued the relationships which the Dominion had established with the aboriginal nations of Central and Eastern Canada, these policies would prove ineffective when dealing with the, hunter-gather lifestyles of the aboriginal peoples of the North-West. The government's policies of protection, civilization and assimilation were not cancelled, according to Guimond (1956), but merely scaled downwards:

With regard to the civilization of the Indian, a change in outlook on the part of officials was perceptible by 1876. The optimistic attitude of the late 1870's, which had envisaged the achievement of assimilation in the not too distant future, had yielded to one of awareness that the civilization of the savage would be a slow gradual process. The earlier attitude had been based on experiences with more civilized tribes, and was not unrealistic until the admission of the Nova Scotia, New Brunswick and especially the North-West Territories and British Columbia had forced the Department to lower its sights. Nonetheless, as evident from the 1876 act, the government did not change its ultimate objective of making the Indians self-supporting members of the community in time (Guimond, 1956:75-76).

The introduction of the North-West Mounted Police into the region would be an exception, however, as they would be viewed as first as protectors and later as agents of the Euro-Canadian state by the aboriginal peoples.

However, events of the period would overtake the Dominion's

"peaceful" attempts to protect, civilize, and assimilate its aboriginal wards into the mainstream of Canadian life. The peaceful resistance to impose political and socio-legal control by the Euro-Canadians erupted in the second Riel Rebellion of 1885. This armed resistance, while based upon the smouldering embers of resentment remaining from the first rebellion of 1869-1870, was an attempt by the aboriginal peoples of the North-West to redress the pitiful conditions on Indian reserves and Metis colonies as well as to recapture their traditional political and authority structures. Unfortunately, it was also the first opportunity for the fledgling Dominion to flex its political and military muscles in support of its sovereignty claims.

The results of the second Riel Rebellion would soon manifest themselves in nearly every aspect of aboriginal life from that point onwards in time. The Dominion would regard every attempt by the aboriginal peoples to maintain a distinct ethnic identity as a direct threat to the stability of the state. Subsequently, it would exercise its exclusive jurisdiction to marginalize the aboriginal peoples of the North-west Territories and, indeed, Canada.

(ii) Changes in Territorial Jurisdiction, 1885-1905

The 1885 Northwest Rebellion saw Canada's use of troops and police to suppress the Indians and Metis groups throughout the Northwest Territories. This direct exercise of power on the part of the Dominion government was carried out merely for reasons of imperialist hegemony and resulted in the imposition of new structures upon the Indian and Metis populations. The short-term results of that event included the incarceration and execution of many of the Metis leadership, the restriction on movements among the Indian and Metis population of Canada, and the *metisisation* or coalescing of a Metis identity.

During the years preceding the Rebellion, the Dominion government's Department of Indian Affairs with its supporting legislative base became instruments of government control. Shortly after the second Riel Rebellion, that control would become nearly complete and the ethnocide of Canada's aboriginal peoples would begin in earnest. Subsequent federal legislation would create for aboriginal peoples restrictions on agriculture, settlement and education which would, then, be enforced by local Department of Indian Affairs agents (Frideres, 1983:25).

The birth of Canada's contemporary policy towards aboriginal people may, thus, be traced to the provisions of the *Indian Act (1886)*³⁵ and the *Indian Act (1887)*.³⁶ These Acts sought to continue the policy goals of the earlier Acts through a variety of measures, including:

a general reduction of food, an extension of the Act's enfranchisement provisions, and compulsory school attendance for Native children...Increasingly, areas such as education, morality, local government, and land resources fell under government regulation. Significantly, the 1886-1887 amendments also attempt to "protect" Native concerns; they prescribe penalties for liquor abuse and prostitution, offer protection of lands from expropriation, and limit the exploitation of land for timber, mineral, and coal (Frideres, 1988:30).

More significantly, as noted by Akman (1985:2), §107 of the *Indian Act (1886)* provides the mechanism by which the Dominion government and, by extension, the Euro-Canadian society may enforce compliance with those policy statements and goals:

³⁵ An Act to amend and consolidate the laws respecting Indians, Revised Statutes of Canada, 50 Victoria, c.43, 1886, hereafter the *Indian Act (1886)*.

³⁶ An Act to amend and consolidate the laws respecting Indians, Revised Statutes of Canada, 50-51 Victoria, c.33, 1887, hereafter the *Indian Act (1887)*.

§107. The Governor-in-Council may appoint persons to be, for the purposes of this Act, justices of the peace and those persons have and may exercise the powers and authority of two justices of the peace with regard to:

- (a) offenses under this Act, and
- (b) any offence against the provisions of the *Criminal Code* relating to cruelty to animals, common assault, breaking and entering and vagrancy, where the offence is committed by an Indian or relates to the person or property of an Indian.

Justices-of-the-Peace, including Indian Agents so appointed, held jurisdiction over numerous areas affecting Indians, including:

- §23 Removal and punishment of persons returning to use or settle upon reserve lands after having been removed.
- §26(1) Trespass.
- §26(2) Removal of timber, hay, minerals, etc. from the reserve.
- §27 Trespass by Indians.
- §30 Sale or purchase of produce from reserve without consent.
- §32 Logging on reserve without consent.
- §48 Enforcement proceedings for non-payment of rent.
- §67 Seizure of goods taken from reserve without consent.
- §76 Enforcement of rules and regulations passed by a band council.
- §79 Actions in debt, tort or contract.
- §81 Purchase of presents given to Indians by the Crown.
- §83 Notarizing certificates of eligibility for enfranchisement.
- §94 Furnishing intoxicants to Indians.
- §95 Commanding a vessel used in the supply of intoxicants to Indians.
- §96 Indians making or furnishing intoxicants to other Indians.
- §99 Being found intoxicated or gambling in an Indian home.
- §100 Issuing warrants to search for and seize intoxicants.
- §101 Authorizing the seizure of vessels used in the delivery of intoxicants to Indians and its forfeiture to the Crown.

- \$104 Intoxication of Indians.
- \$105 Refusal by Indians to state the source of intoxicants in his possession.
- \$106 Keeper of a common bawdy house involving Indian women.
- \$106(2) Indians frequenting a common bawdy house.
- \$109 Agents knowingly giving false information as to lands.
- \$110 Agents obtaining an interest in Indian lands.
- \$111(a) Inciting Indians to riot.
- \$111(b) Inciting Indians to breach the peace.
- \$113 Sale of Ammunition to Indians if prohibited by the Superintendent General.
- \$114 Celebrating a Potlatch or Tamanawas.
- \$126 Indians obtaining homesteads in Manitoba, the North-West Territories or the District of Keewatin.
- \$129 Notarizing of affidavits required by the Act (Akman, 1985:10-11).

This amendment to the *Indian Act* was the most comprehensive, legislative intrusion by the Dominion government into aboriginal life to occur during the period. It enabled the agents of the state, in this case the Indian Agents and the criminal justice system, to enforce the government's assimilationist policies on its "Indian wards".

While the Dominion government's attention was being drawn increasingly to a series of constitutional and patronage crises, it continued to deal with the problems of state stability *vis-a-vis* the growing disaffection of its growing settler population and "Indian wards" in the Northwest, and encroachments by American frontiersmen on the prairies and the Alaskan border, numerous territorial politicians were attempting to have that level of government legitimized. Their efforts would be rewarded in the amendments (1888, 1891, 1905) of the *North-West Territories Act*.

Prior to the second Riel Rebellion, the North-West Council served only an advisory role having, as in the case of the earlier Keewatin Council, its mandate and ability to either raise or spend funds for the territories were severely curtailed by both

legislation and Orders-in-Council (Carlson, 1986; Leyton-Brown, 1988). Whereas the *North-West Territories Act (1888)*³⁷ confirmed most of the earlier Orders-in-Council, it also provided for the appointment of the Legislative Assembly of the North-West Territories to replace the earlier, also appointed, North-West Council. The subsequent *North-West Territories Act (1891)*³⁸, on the other hand, was a radical departure from past practices affecting the North. Although it began with a restatement of the laws and ordinances affecting the North-West Territories, the Act provided:

an important new area of legislative competence for the Assembly, which decreased further the dissimilarities between powers of the Assembly and those of the provincial governments...

These were significant powers, and having them based on explicit legislation rather than on Orders in Council suggests an increased stature for the Assembly. But Parliament preserved its over-riding power in all areas, and nothing comparable to the Province's section 93 powers with respect to education was introduced. And perhaps most significant of all, the territorial government was not given control over Public Lands (Leyton-Brown, 1988:66).

While this amended Act may be heralded as the beginning of responsible government for and by Northerners, two major restrictions found in the previous *North-West Territories Act* remained in force:

³⁷ An Act to amend the Revised Statutes of Canada, chapter fifty, respecting the North-West Territories, 1888, Revised Statutes of Canada, 51 Victoria, c.19, 1888, hereafter the *North-West Territories Act (1888)*.

³⁸ An Act to amend the Acts respecting the North-West Territories, 1891, Statutes of Canada, 54-55 Victoria, c.22, 1888, hereafter the *North-West Territories Act (1891)*.

1. The North-West Territories could not raise funds by borrowing on the public credit or by issuing bonds. The Legislative Assembly could, however, determine how Territorial funds could be spent.
2. The North-West Territories retained no jurisdiction nor administrative power over the natural resources within its boundaries (Patenaude, 1987:95).

This notion of Dominion control over the natural resources of the North-West would be reinforced further by the discovery of gold in Yukon and the subsequent Klondike Gold Rush. Those events would produce crises over sovereignty and the administration of justice, notably in the areas of policing and the judiciary, in the North or, more precisely, the lands north of the 60th degree of latitude.

The North-West Mounted Police³⁹ during the early years of this period continued to pursue a realistic approach towards law enforcement and its dealings with the aboriginal peoples of the region. In general terms, the NWMP could be seen in several lights. First, as the Force built roads and established lines of postal and telegraph communications with the expanding Dominion it

³⁹ Numerous texts, including many first-hand accounts, have been written on Canada's "settlement" of the North-West, however, for a fuller understanding of the Force's role during this period the reader is directed towards several texts which stand well above the rest. These include: Kenneth B. Leyton-Brown's The Origin and Evolution of a System for the Administration of Justice in the North-West Territories: 1870-1905 (1988), R.C. MacLeod's The North-West Mounted Police and Law Enforcement, 1873-1905 (1976), The North-West Mounted Police, 1873-1905: Law Enforcement and the Social Order in the Canadian North-West (1972), and The North-West Mounted Police, 1873-1919 (1978), William Morrison's two works The Mounted Police on Canada's Northern Frontier, 1895-1940 (1973) and Showing the Flag: The Mounted Police and Canadian Sovereignty in the North, 1894-1925 (1985), and, finally, John Jennings' article "The North-West Mounted Police and Indian Policy After the 1885 Rebellion" (1986).

could be seen as the builders of empire, in much the same manner as the French Foreign Legion built that nation's colony in North Africa. Second, the North-west Mounted Police was a mediator and found that conflict resolution and the restoration of peace was far more desirable than applying the full force of the law and legal institutions to a situation. Third, although the NWMP approached the aboriginal peoples with respect and fairness, they were agents of government policy, albeit far more reasonable in their approach than the Indian Agents of the period.

As agents of the government the police sought to persuade the aboriginal peoples to sign treaties and thereby cede their land in favour of "lands reserved for Indians" and to integrate them into the incursive society through their compliance with the Queen's Law. The Queen's Law, however, was applied more on a situational basis rather than through the letter of the law with unenforceable laws often ignored in favour of common-sense (MacLeod, 1976:141-163; Leyton-Brown, 1988:225-234). The rather lengthy list of offenses within the provisions of the *Indian Act (1886)* may have been subjected to this common-sense approach by the police to law enforcement resulting in the respect which the North-West Mounted Police enjoyed during this period.

The popular respect for the police in their general enforcement duties was not to extend, however, to their acting in a judicial capacity as provided in the *North-West Territories Act (1875)* and the *North-West Mounted Police Acts (1873, 1874)*. As previously discussed there was a rising wave of discontent concerning this practice and calls for a territorial bar continued unabated until 1886 with the establishment of the Supreme Court of the North-West Territories.

The history of the judicial administration of the North-West Territories not only during the early years but throughout the entire 1885-1905 period is marked by a lack of primary source

materials.⁴⁰ This is not surprising, according to Leyton-Brown (1988:96-97), as no new courts were established after the creation of the Supreme Court of the North-West Territories during 1886. Indeed, the provisions for the appointment of Justices-of-the-Peace and Stipendiary Magistrates remained in force as did the general lack of administrative support to the Courts and their general inadequacy. Leyton-Brown notes, for example, that:

While the Stipendiary Magistrate was clearly intended to be dominant judicial officer in the North-West Territories it is equally clear that he would not stand alone. Justices of the Peace, though clearly of inferior rank, continued to exist, and, somewhat more surprisingly, the Judges of the Court of Queen's Bench in Manitoba had an original jurisdiction in the North-West Territories (Leyton-Brown, 1988:104-105).

The judicial hierarchy in the North-West Territories continued to be unique in regards to the remaining Courts operated throughout the Dominion. Having evolved from the two-tiered court system of the Hudson's Bay Company, through the system of Territorial Justices-of-the-Peace supported by Manitoba Courts of Queen's Bench, to a three-tiered Territorial court system, it is not entirely surprising that the latter court system would have its appeal court sitting extra-territorially. The new levels of court would ascend from the courts of the Justice-of-the-Peace Court to the Stipendiary Magistrate's Court to the Supreme Court of the North-West Territories. This hierarchy would culminate with the latter Court sitting *in banco* as a Court of Appeal (although the case could be appealed to Westminster).

⁴⁰ Three notable exceptions to this general lack of materials are: Sandra Bingaman's The Northwest Rebellion Trials of 1885 (1971), T.M. Reynolds' Justices of the Peace in the North-West Territories, 1870-1905, and William P. Ward's The Administration of Justice in the North-West Territories, 1870-1967 (1966).

During 1886, the *North-West Territories Act (1886)*⁴¹ was amended to authorize the establishment of the Supreme Court of the North-West Territories. In many respects, it merely legitimized many of the practices of the earlier Courts, however, it brought those practices more into line with their counterparts in the Dominion. Consisting of five *puisne* judges, who held tenure similar to Superior Court judges elsewhere, the Supreme Court held original jurisdiction in all civil and criminal matters as well as the ability to sit *in banco* to hear appeals. Individually, each judge held the powers of both a Stipendiary Magistrate and a Superior Court Judge. Similar to the earlier statute which established Stipendiary Magistrates, this Act laid down the basic qualifications for the position, namely:

§6. Any person may be appointed a judge of the court who is or has been a judge of a superior court of any Province of Canada, a Stipendiary Magistrate of the Territories or a barrister or advocate of at least ten years' standing at the bar of any such Province, or of the Territories.

The authority of the judges of the Supreme Court of the North-West Territories was such that they could hear, on either original indictment or on appeal, civil cases involving the potential of "substantial judgments" or criminal cases where either the sentence involved a term of more than two years in a penitentiary or the charge was a capital offence. While the police were effective in bringing cases forward to the courts who, in turn, were less than effective in their handling of those same cases. The underlying reasons behind their ineffectual treatment of offenders were

⁴¹ *An act further to amend the law respecting the North-West Territories, 1886, Statutes of Canada, 49 Victoria, c.25, 1886, hereafter the North-West Territories Act (1886). However, as noted by Leyton-Brown (1988:130), this Act was repealed almost immediately and replaced by An Act respecting the North-West Territories, 1886, RSC, 49 Victoria, c.50, 1886.*

structural in nature. The grafting of Anglo-Canadian judicial institutions onto the Governor's Courts of the Hudson's Bay Company and their gradual evolution through to the decades following the second Riel Rebellion were only part of the neglect of the Territories by the Dominion government. Only the establishment of a prison system for the North-West Territories, however, was required to complete the necessary structures for the administration of justice in the region.

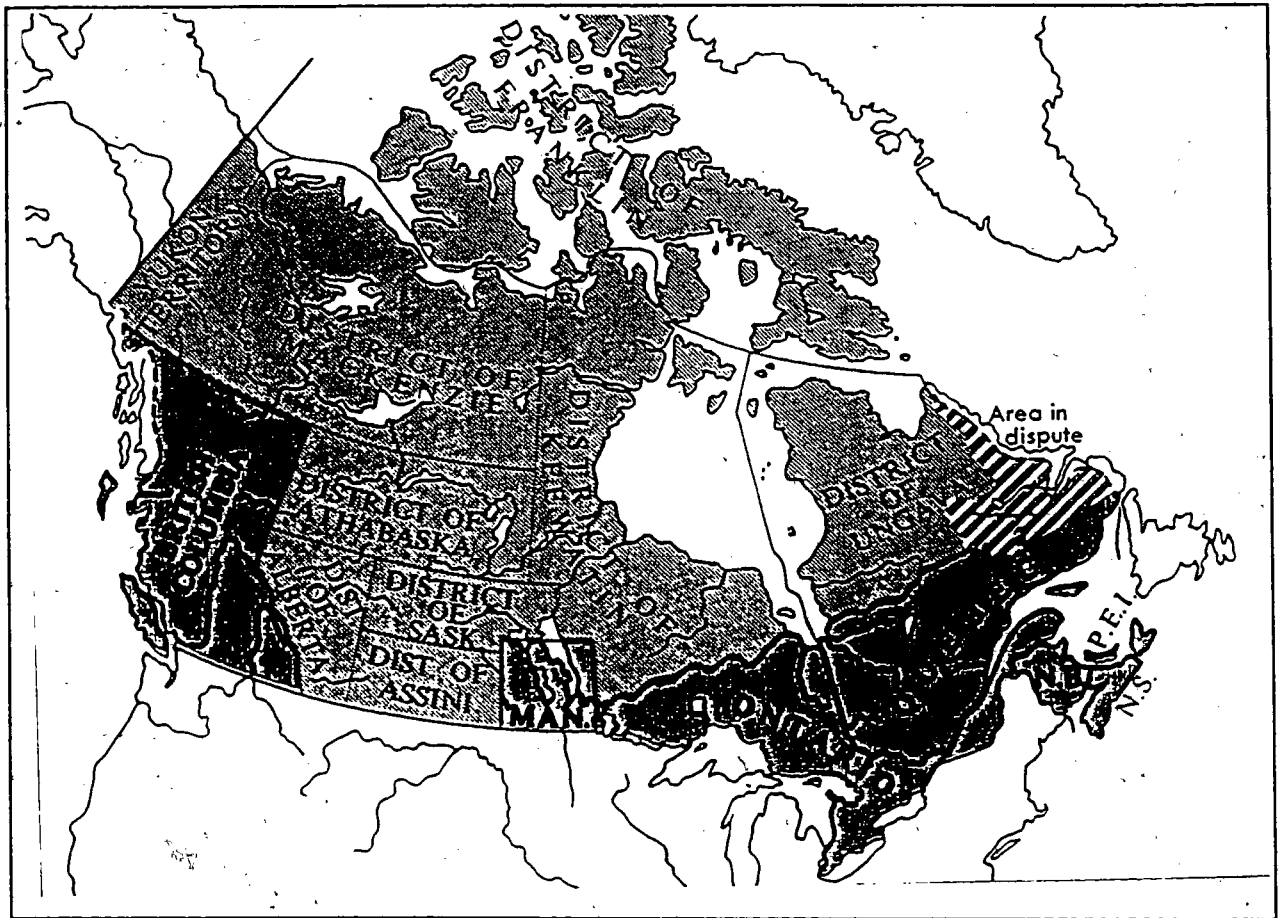


Figure 9 Canada and its Territories, 1898.

Source: Geoffrey Matthews and Robert Morrow Jr., Canada and the World: An Atlas Resource, (1985).

As previously discussed, the territorial correctional system was a unique mixture of federal and provincial services to serve

the vast distances of the North-West Territories. Unlike the provinces at that time, the North-West Territories did not have to comply with the "two year rule", whereby convicted felons serving more than two years imprisonment would be transferred to a federal penitentiary. Therefore, it was not uncommon to have either long-term inmates serving time in the Regina or Prince Albert gaols or inmates serving two years in the over-crowded North-West Mounted Police guardrooms (Leyton-Brown, 1988:170-172). The police did, however, take the novel approach of building "a guardroom at Depot Division in Regina, where a large building which could later be converted into a barracks was raised and divided into eighteen, three-man cells" (Leyton-Brown, 1988:190) and began to transfer inmates to that facility from all over the North-West Territories.⁴² The Territorial prison systems were, like the

⁴² One interesting practice, albeit both extraordinary and representative of the racist views of the day, was the release of terminally-ill inmates to die with their families. Leyton-Brown (1988) notes:

This was a fairly unusual occurrence as far as the White population was concerned, but it became quite common with the Indians. And over the years, large numbers of Indians were released from prison on compassionate grounds. Individuals were often released and sometimes groups. The return from Stony Mountain for 1884, for example, contains a reference to fifteen Indians who had been let out early. G. Cloutier, the Roman Catholic Chaplain, credited this to their good behaviour and observed that their release would show the White man's justice and mercy. The prison doctor, however, said that the main reason for their release was their excessive and incurable sickness. The release of Poundmaker after serving six months of a three year sentence for his involvement in the North-West Rebellion seems to have been another example. Poundmaker's release would have been a wise move politically even had he not been deathly ill. But under the circumstance, any other course would have been foolhardy. Had he died in prison considerable ill feeling would certainly have resulted among the Indian population (Leyton-Brown, 1988:196).

larger Dominion system, not without their problems or difficulties. During the later years of this period, for example, charges of impropriety would result in independent investigations and dismissals of many of the senior members among the staffs of Stony Mountain Penitentiary and the Regina Gaol.

The closing of the nineteenth- and the dawning of the twentieth-century saw a significant reduction of the Territorial land mass due to the creation of the Provinces of Alberta and Saskatchewan. As would occur in the far North, Canada acted with "national rather than local interests" in mind (Zaslow, 1971:281) and virtually ignored the needs and aspirations of the region's indigenous populations. With the exceptions of amendments to the *North-West Territories Act* and the *Indian Act*, and the Klondike Gold Rush, the last decade of the period, 1895-1905 was marked by attempts to ensure Canadian sovereignty and to maintain the *status quo* throughout the North-West Territories, including the administration of justice.

During the 1895-1905 decade, the Dominion government was forced to take notice of many subjects which it had hoped would lapse into obscurity: the aboriginal peoples of the North-West Territories, the issue of sovereignty over that vast region, and the North-West Mounted Police and the expenses associated with their operation.

The immense degree of interference in and control of the daily lives of the aboriginal peoples, which was authorized by the *Indian Act* (1887), would be expanded during the decade of the 1890s with a further four amendments to that Act. These amendments would include:

- 1890 - The sale of produce and livestock from reserves to non-aboriginal people prohibited.

- 1890 - Game laws of Manitoba and the North-West Territories made applicable to aboriginal peoples.
- Superintendent of Indian Affairs given power to pay up to 50 percent of the value of reserve lands as inducement for aboriginal peoples to surrender the land in question.
- 1894 - Superintendent General of Indian Affairs empowered to lease reserve lands without its surrender by the band.
- 1894 - Superintendent General of Indian Affairs empowered to lease the lands of aboriginal orphans and the elderly without their permission.
- Financial aid to bands using the location ticket of land allocation reduced.
- Governor-in-Council empowered to make whatever regulations necessary to ensure that aboriginal children attend government-funded boarding and/or industrial schools.
- 1896 - Aboriginal peoples have the franchise to vote in Dominion elections legislatively revoked.
- 1898 - Superintendent General of Indian Affairs empowered to enact regulations concerning police and public health services and to unilaterally expend band funds for that purpose (Tobias, 1983:45-49).

As can be deduced from these amendments to the *Indian Act*, the Dominion governments policies continued to be aimed towards the gradual advancement, albeit in the Euro-Canadian model, of the aboriginal peoples and the surrender of "lands reserved for Indians".

The North-West Mounted Police was, in the minds of the Treasury Board and many Parliamentarians from Ontario and Quebec, an unnecessary and increasing drain upon the Dominion's coffers. Indeed, although the police force was not constituted nor trained to perform military functions, their performance during the second Riel Rebellion (1885) was less than memorable (Bovey, 1967;

Morrison, 1973; Ward, 1966; Zaslow, 1971). This lack of distinction and parliamentary support caused many in Ottawa to campaign for the dissolution of the NWMP in favour of locally-raised, municipal police forces.

Fortunately for the police, they were slowly gaining a solid reputation for law enforcement and dispute resolution among the inhabitants of the prairie regions of the North-West Territories. Even more fortunate for the police was the discovery of gold in the Yukon during the early years of the 1890s and the subsequent Klondike Gold Rush in 1897 which were perceived as direct threats to the Dominion government's ability to exercise sovereignty, notably in the area of taxation, in the region. Indeed, they were the only federal agency which was organized and capable of moving northwards on short notice. The minimal expense to the Dominion government may have also contributed to the police being dispatched northwards.

Only six years earlier, for example, William Ogilvy of the federal Department of the Interior offered the cavalier opinion that:

The Yukon should remain an unorganized region of the North-West Territories, a wilderness in which anarchy, at least in respect to government control and administration, would receive a sort of negative sanction from the federal capital for the meanwhile. Not even a policeman would be posted there to symbolize Canadian sovereignty (in Bovey, 1967:79).

The Dominion government responded to these threats to its sovereignty merely by issuing an Order-in-Council⁴³ establishing the District's boundaries and creating the Yukon Provisional District of the North-West Territories and dispatching Inspector

⁴³ Order-in-Council no. 2640, 2nd October 1895, *Canada Gazette*, Vol. XXIX, No. 16, 19 Oct, 1895, pp. 283-285.

Charles Constantine and Staff-Sergeant Charles Brown of the North-West Mounted Police to the Yukon to investigate the situation. The report of their "sovereignty patrol", according to Zaslow (1971), illustrated Constantine's belief:

that although the whites and the Indians were peaceable and co-operative, the area was a sort of "no-man's land" and required forty-five to fifty police to control the several hundred miners. He singled out as necessitating police action the need to control liquor consumption and gambling, collect customs' duties, enforce Canadian laws, and discourage the miner's committees arrogating to themselves powers of enforcing law and order (Zaslow, 1971:99).

In addition to his report, Constantine collected \$3,248 in customs' duties and \$485 for the Department of the Interior and returned to Ottawa after having detailed Brown to "show the flag."

The Dominion government was shocked out of its complacency and was forced to re-evaluate its position on the North during 1895. The American control of the seaport entry points to the gold fields, influx of treasure seekers, which also included a high percentage of Americans, and the actions of the Territorial Assembly each contributed to the Dominion's change in attitude (Zaslow, 1971:105-110).

During 1897, the Dominion government appointed Major J.N. Walsh, late of the North-West Mounted Police, as Commissioner and Chief Executive Officer for Yukon and T.B. MacGuire as justice of the Yukon Provisional District Court. Interestingly enough, the government and Legislative Assembly of the North-West Territories held the opinion that the Yukon Provisional District was, as the Dominion Order-in-Council stipulated, within its jurisdiction and the Territorial Lieutenant-Governor subsequently dispatched an officer to collect fees and taxes in the gold fields. This officer, a member of the Territorial Executive Council, proceeded

to Dawson Creek whereby he:

set up a local three-man board of commissioners and collected \$2,000 in fees from sixteen saloons and hotels. The permits he issued for importing 61,000 gallons of liquor at a tax of \$2 per gallon yielded the Regina government an unexpected \$122,000 windfall (Zaslow, 1971:109),

before the Dominion government took legislative action. The parliament reacted by passing the *Yukon Territory Act (1898)*⁴⁴ which established distinct political, administrative and judicial institutions for new Territory.

By the time the Klondike Gold Rush was perceived as an order-maintenance crisis, the Dominion government responded with the establishment of the Yukon Field Force consisting of 288 officers and men of the North-West Mounted Police supplemented by a 203 man detachment from the Royal Canadian Regiment. The mandate of the Yukon Field Force was, according to Zaslow (1971:109), to "hold Yukon against subversion from within or attack from without."

The police were organized into two Divisions located at the largest population centres with detachments established at the various entry points into the Territory. These detachments served the functions of a civil service at great savings to the Dominion treasury and, thus, created a *de facto* police state for the Territory (Morrison, 1973:98-117). These "civilian" duties were not entirely appreciated by the police who:

performed their diverse tasks with varying degrees of enthusiasm. The force had a strongly defined conception of its proper role; it was to catch criminals and to

⁴⁴ *An Act further to amend the Acts respecting the North-West Territories and create a separate Territory out of part thereof, 1898, R.S.C., 61 Victoria, c.6, 1898, hereafter the Yukon Territory Act (1898).*

maintain the law. The police therefore sometimes chafed when they found themselves cast in the role of minor civil servants. Yet despite some occasional failures and derelictions of duty, the jobs which the police disliked were done well, while those they found to their taste could have been done no better (Morrison, 1973:iii-iv).

Indeed, the police ensured that the miners were adequately equipped and paid the appropriate duties and fees.⁴⁵ These actions, when coupled with their general enforcement duties, had the effect of negating any serious concerns of the American government concerning the safety of its expatriate citizens.

The other elements of the criminal system throughout the Yukon Territory, however, did not expand their numbers as population increased. Justice T.B. MacGuire of the Yukon Territorial Court was, in turn, supported by officers of the North-West Mounted Police serving as justices-of-the-peace.⁴⁶ Unfortunately Territorial judicial and correctional services during the same period have not any significant scholarly attention. Indeed, they were in greater need of material and personnel than those in the truncated North-West Territories. The practice of convicted felons serving their sentences in NWMP guardrooms and, in the case of lengthy sentences, were transferred to the North-West Territories apparently continued. These and other criminal justice practices would continue until well into the twentieth century.

⁴⁵ Inspector Sam Steele, North-West Mounted Police, reported that "they had checked over 30,000,000 pounds of solid food, "sufficient to feed an army corps for a year," had passed more than 30,000 persons, and collected over \$150,000 in duties and fees" (in Zaslow, 1971:110).

⁴⁶ This situation was to change with the enactment of the *Yukon Territory Amendment Act (1901)*, R.S.C. 1901, c.41, §1 authorizing the Governor-in-Council to appoint Police Magistrates and the *Yukon Territory Amendment Act (1902)*, R.S.C. 1902, c.35, §1 which created and assigned criminal jurisdiction to Judges of the Yukon Territorial Court.

Meanwhile, the Dominion government would be awakened into action by events on the international, rather than national, scene. The boundary between Alaska and the Dominion was fuse which eventually led to an explosion of federal activity in the far North at the end of this study period (Bovey, 1967; Johnston, 1933; Leyton-Brown, 1988; Maxim, 1976; McConnell, 1970; Morrison, 1973; Zaslow, 1984).

The Alaska Panhandle Dispute, as it would later be called, was concerned with delineating the precise boundary of between the Dominion and the United States. The both parties sought to control the headwaters of the inlets of the region as whoever controlled those areas also controlled the seaward access to and from the gold fields of the Klondike. The establishment of an impartial boundary tribunal was regarded as an amicable settlement process.⁴⁷ The decision, entirely in agreement with the United States position, demarcated the panhandle boundary as:

a line approximately thirty miles inland from the serpentine coast, not a line approximating the coast's general trend. Canada would have no outlet to the tidewater north of the mouth of the Nass River (Bovey, 1967:117).

Responding to this direct threat to its sovereignty, the Dominion government realized, as Maxim (1976:20) commented, that "Effective occupation such as settlements and communities with true

⁴⁷ This notion of impartiality occurred in name only as United States President Theodore Roosevelt appointed commissioners who, in actuality, argued the position of their government. Their vigour in this regard and the Imperial government's colonial policies swayed Lord Alverstone, the British president of the tribunal, to vote for the majority American position. These events contributed to the two Canadian commissioners declaring the tribunal "nothing less than a grotesque travesty of justice" and "totally unsupported either by argument or authority, and it was, moreover, illogical" (Bovey, 1967:117-118).

governmental representation in the area was the only answer." With this notion in mind, the Dominion government dispatched maritime sovereignty patrols into the Arctic Archipelago and authorized the establishment of North-West Mounted Police detachments in the areas where the whalers of numerous nations would enter the archipelago. These police detachments, according to the NWMP Commissioner of the day, would:

stand for law and good order, and show that no matter what the cost, nor how remote the region, the laws of Canada will be enforced, and the native population protected (Bovey, 1967:119).

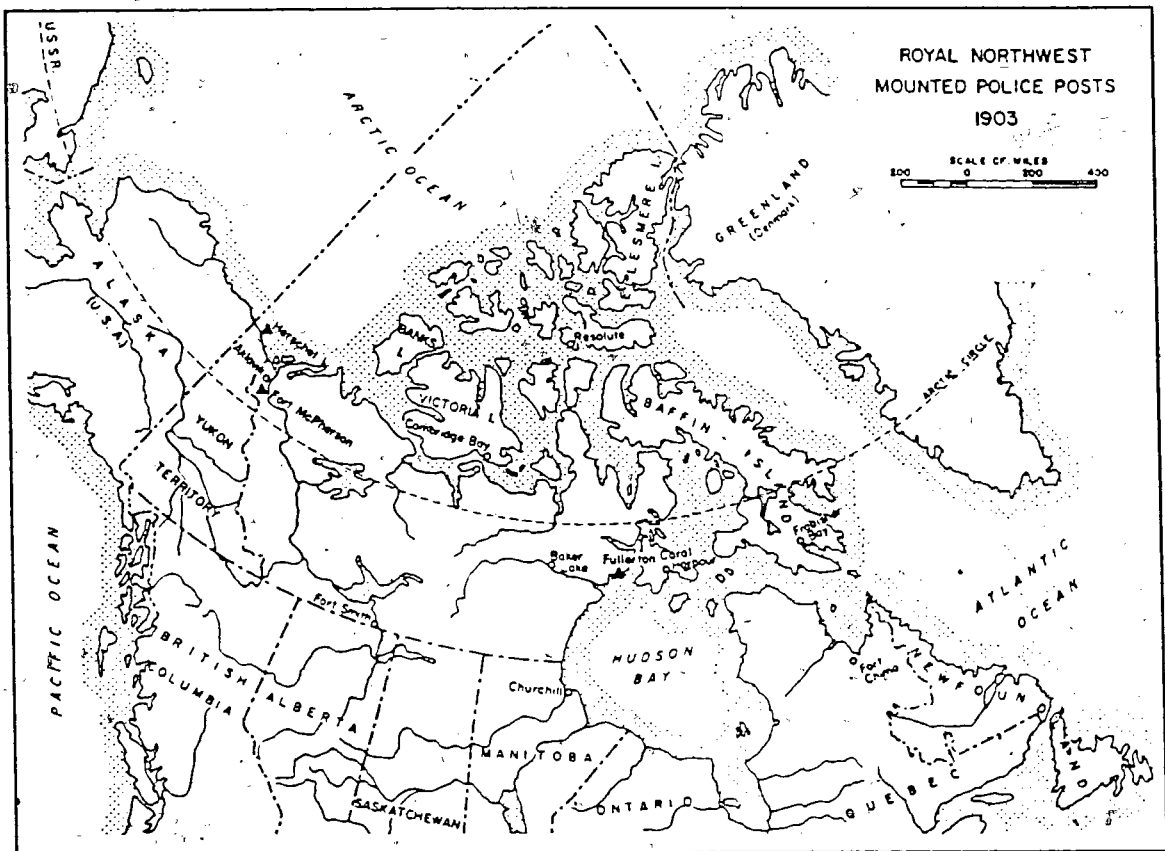


Figure 10. Royal Northwest Mounted Police Posts, 1903.

Source: Diamond Jenness, Eskimo Administration: II. Canada (1964).

These actions marked a complete change from the previous government aloofness described by Arctic ethnographer Diamond Jenness:

From time to time faint rumours concerning the activities of the whalers filtered through to Ottawa, but the authorities disregarded them because they were carrying more important burdens than the remote and useless Arctic. As long as no other country attempted to gain a foothold in that region they were content to forget it and push on with the development of the southern provinces of the Dominion (Jenness, 1964:16).

In conjunction with these actions, the Dominion government enacted a series of Acts and amendments to existing Acts with the ultimate goals of developing the West and North-West as well as asserting Canadian sovereignty in the region. The most notable of these acts were the *Northwest Territories Amendment Act (1905)*,⁴⁸ the *Alberta Act (1905)*,⁴⁹ and the *Saskatchewan Act (1905)*,⁵⁰ which created internal boundaries of those jurisdictions.

The *Northwest Territories Amendment Act (1905)* established the new territorial boundaries which would claim not only the entire Arctic Archipelago and mainland areas as well. The new Northwest Territories would officially include the existing District of Keewatin and created the Provisional Districts of Ungava, Mackenzie, and Franklin. From a legislative and judicial perspective, the Territories would be:

⁴⁸ An Act to further amend the North-West Territories (1905), R.S.C., 4-5 Edward VII, c.27, 1905, hereafter the *Northwest Territories Amendment Act (1905)*. This was the first official use of the term "Northwest" rather than "North-West" in the territorial title.

⁴⁹ *Alberta Act (1905)*, R.S.C., 4-5 Edward VII, c.3, 1905.

⁵⁰ *Saskatchewan Act, 1905*, R.S.C., 4-5 Edward VII, c.42, 1905.

administered by an appointed commissioner, assisted by an appointed four-member council, with the same powers of promulgating ordinances as those possessed by the former lieutenant-governor and legislative assembly of the pre-1905 North-West Territories....[and] the seat of government remained in Ottawa (Zaslow, 1971:209-210).

Indeed, the new Northwest Territories Council was as hamstrung by Dominion legislation as were its predecessors. It could neither raise nor expend funds within the region, nor could it control the natural resources found therein.

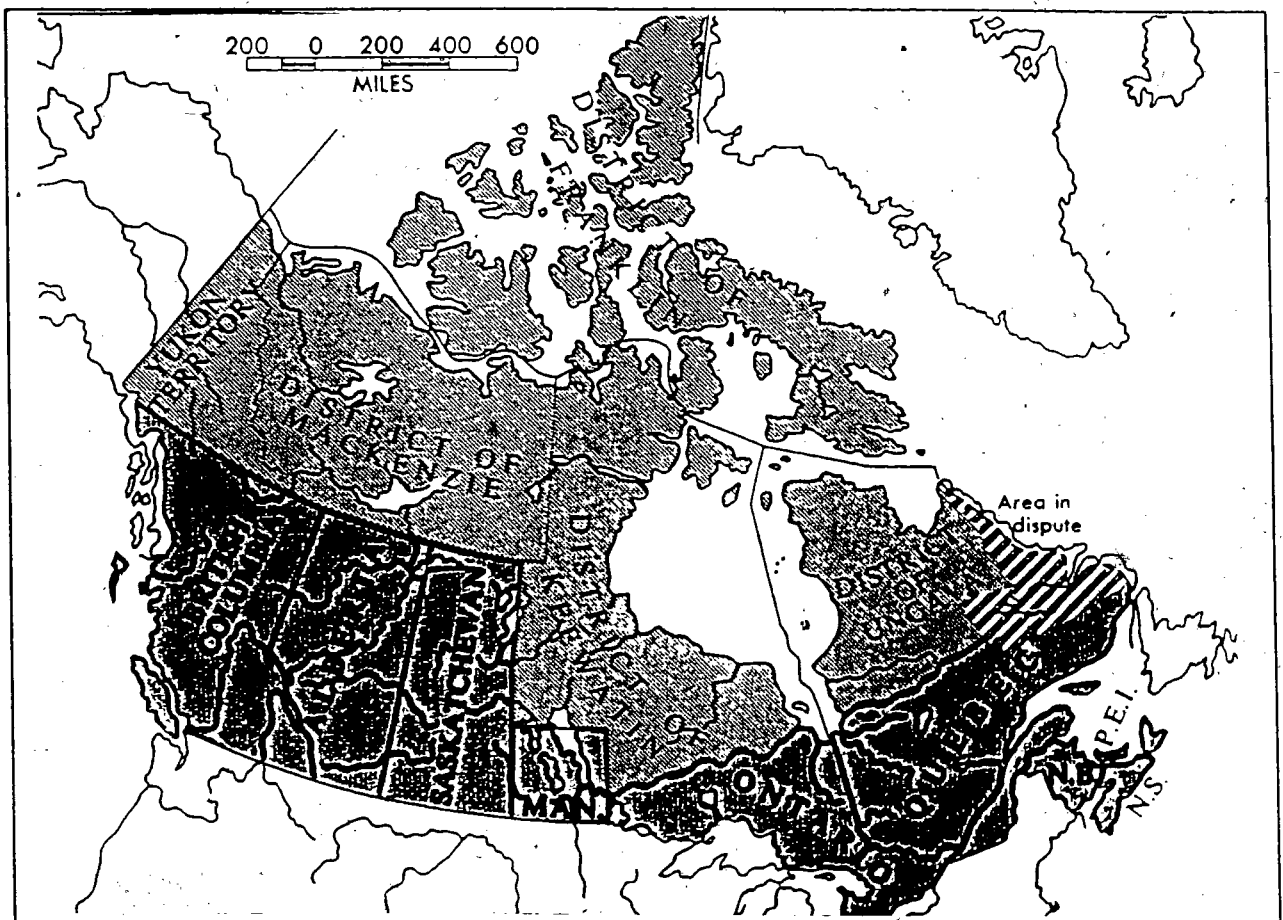


Figure 11 Canada and its Territories, 1905.

Source: Geoffrey Matthews and Robert Morrow Jr., Canada and the World: An Atlas Resource, (1985).

(iii) Colonization Begins With a Survey, 1905-1930

The next period of interest, 1905-1930, was marked by the Dominion government's enactment of legislation concerned with, both, exploration and research in the North-West Territories and the Dominion control over the lives of Canada's aboriginal peoples. Both Canada and Denmark, for example, sent expeditions northwards for purposes which may best be described as a form of 'imperialist hegemony'. The actions of the Dominion government were foremost symbolic in nature and were carried out to enforce Canada's claims to Arctic sovereignty and forestall rival claims to the region (Lester, 1982; Morrison, 1986; Smith, 1963, Zaslow, 1971). Indeed, as Diamond Jenness was to state during the 1960s:

Colonization schemes commonly begin with a survey. A party goes out to explore the region, to examine its climate, its soil, its vegetation, its water supply, and other features; and only after it has completed this examination and selected the most favourable spot do the colonists move in with their families. Should they choose a coastal location a sheltered harbour will be vital, and a safe and easy approach to it from the open sea. The navigability of the open sea itself is never questioned; every colony planted on a coastline takes it for granted that sea-going vessels will keep it in contact with the outside world (Jenness, 1964:59).

Immediately prior to and concomitant to the first half of this period, the Dominion government sought to assert Canadian sovereignty in the region. Gordon Smith (1963) notes that small-scale expeditions were:

dispatched to patrol the waters of Hudson Bay and the eastern arctic islands and assert Canadian sovereignty there. Under government instructions they took note of all activities at the places they visited, imposed licenses upon Scottish and American whalers, collected customs duties upon goods brought into the region, and generally impressed upon both Eskimos and whites that henceforth they would be expected to obey the laws of Canada. Scientists of various kinds were regularly

included to attempt to bring back more knowledge of the region (Smith, 1963:8).

Smith (1963) elaborates on these activities in the North by pointing out that these "research" expeditions and sovereignty patrols had the mandate to claim for Canada any new territory which they discovered. Examples of this mandate may be seen in Bernier's (1909) claim to the entire Arctic Archipelago and Stefansson's (1919) claim to the Wrangell Island. The best known of the Dominion government's efforts was the Canadian Arctic Expedition, 1913-18, which conducted salvage anthropology of Inuit from the Mackenzie River delta to the eastern shores of Baffin Island.

The Canadian Arctic Expedition was comprised of two distinct groups: the Northern Party (Beaufort Sea and Arctic Archipelago) under Stefansson and the Southern Party (Canadian mainland and adjacent islands) under Anderson. Commissioned jointly by the Dominion government's Department of Naval Service and Department of Mines, the Expedition remained in the field from 1913 until 1918 (although the Southern Party returned in 1916 as originally planned). The Canadian Arctic Expedition gathered a wide range of data concerning the anthropological, botanical, geological, geographical, marine biological/hydrographical, and topographical conditions present in the Canadian Arctic.

Combining both natural and social science methodologies the Expedition's members approached their respective tasks with concern for the impact of their research activities upon those groups of Inuit whom they studied. The reports of Stefansson and Jenness, for example, reflect not only that concern but an urgency to record the traditional culture and lifestyle at a time when both Europeans and Euro-Americans and their technologies were becoming a presence in the region. The Canadian Arctic Expedition was not without its prestige nor its tragedy: the members of the Northern Party included noted anthropologists Henri Beauchat and Edward Sapir

although the former perished, along with numerous others, when the M.V. *Karluk* was crushed in the ice near Wrangell Island. Fortunately for the Expedition Jenness assumed Beauchat's duties (recording the language, manners, customs and religious beliefs of Inuit) as well as his own responsibilities of recording Inuit physical anthropology/archaeology and technology.

Denmark, on the other hand, had established its legal claims to Greenland in the previous century and sought to both survey its possession and expand its territory into the disputed Arctic Archipelago. This resulted in the explorations of the Fifth Thule Expedition (1921-24) by Rasmussen, Matthiassen, Birket-Smith and others. The wide-ranging investigations of that expedition, which were conducted during the heights of the fur-trading period in the Northwest Territories and thus was witness to rapid social and economic change among the Inuit population, included reports on: archaeology, physical anthropology, physiography, geology, botany and zoology as well as detailed ethnographic accounts of the Caribou, Netsilik, Igloodik and Copper Inuit (Collins, 1984:11-12). Similar to the Canadian Arctic Expedition, it's members were trained social and physical scientists whose methodological choices also illustrated a desire to not unduly influence or disrupt the cultural activities of the peoples they studied.

The results of the expeditions of both nations included increases in the knowledge concerning Inuit cultural, physical and social anthropology as well as the beginning of the Canadian colonization of the Arctic Archipelago. Unfortunately for legal scholars, neither of the expeditions were overly concerned with aboriginal concepts of law and social control. These symbolic measures culminated in the establishment of Royal North-West Mounted Police, and its successor the Royal Canadian Mounted Police, posts throughout the North to enforce the Queen's law (and later the King's law), collect customs tariffs and establish a Canadian, albeit Dominion-oriented, presence.

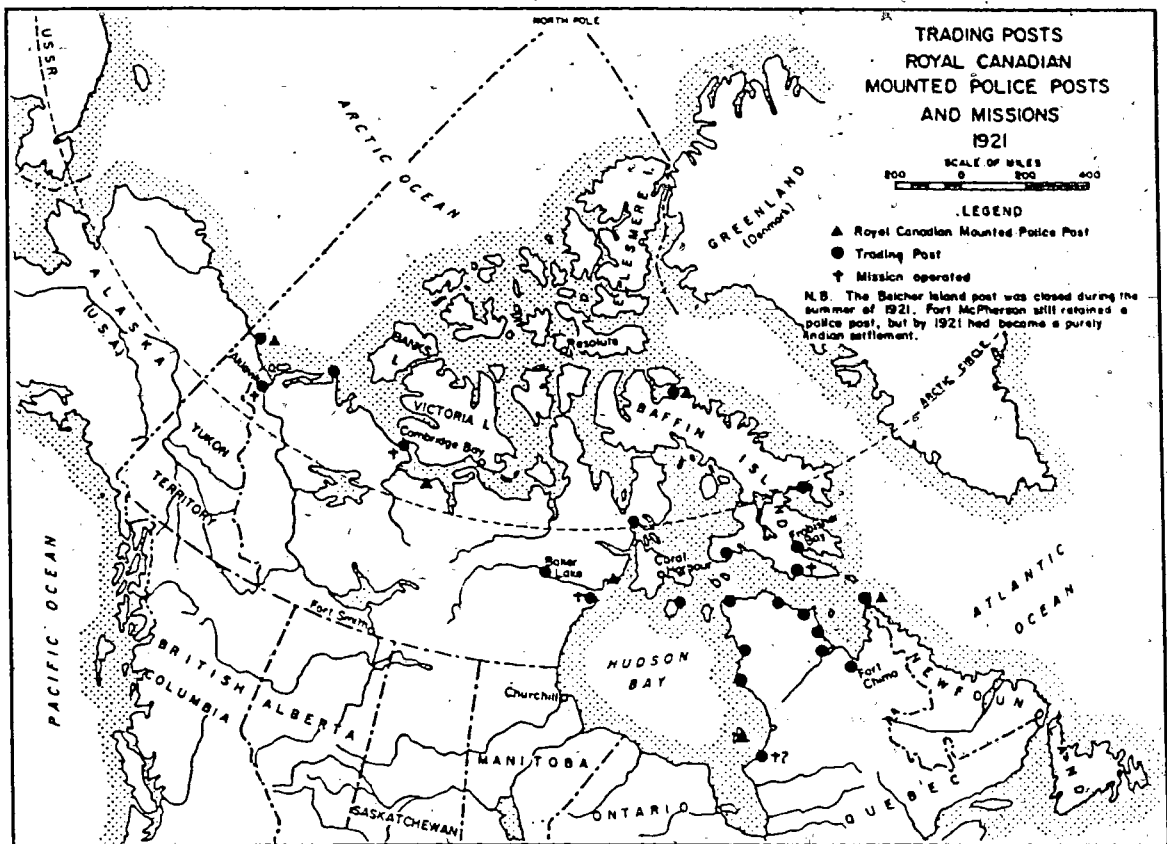


Figure 12 Royal North West Mounted Police Posts, 1921.

Source: Diamond Jenness, Eskimo Administration: II. Canada (1964).

Whereas the Dominion government began to emphasize the value of its "northern attic," it remained as tight-fisted with public funds as during the earlier periods discussed previously. Indeed, as Bovey (1967) commented:

Canada was content to permit the residual Northwest Territories to remain a deserted and forgotten national attic. The government might be striving to extend that attic to the North pole, but it had no intention of furnishing it with meaningful government if the expense could be avoided (Bovey, 1967:iv).

The Dominion government's fiscal policies often forced the police to approach either the Hudson's Bay Company traders or the local

missionary and beg for transportation or other aid with which to carry out their duties (Jenness, 1964).

It was also during this period that many "first contacts" occurred between the Euro-Canadian and aboriginal societies in those areas of the Northwest Territories found north of the 60th degree of latitude. There are numerous accounts of the reactions of many Mounted Policemen to the conditions and habits of the Dene and Inuit whom they encountered.

According to Morrison (1973) the North-West Mounted Police brought with them their own standards of "Indianness" or what constituted a good Indian which they, then, applied to the aboriginal peoples of the Yukon and Northwest Territories. This standard was based, unfortunately, upon the concept of the "noble savage...proud, energetic men worthy of some respect" (Morrison, 1973:115-116). Indeed, the aboriginal peoples of the Mackenzie River system were pacified and, in some cases, debilitated by extensive contact with the alcohol, disease, and morality of the miners, whalers, and other Euro-Americans. In the Yukon, for example, one constant complaint of the period was the unending appeals for food by the aboriginal people. Commenting on the differences between *Dene* and *Inuit* of the Mackenzie Delta, NWMP Inspector A.M. Jarvis summed up the attitude of many members of the Force:

The Indians here, they are too lazy to hunt or trap and live all the year on fish...any money or debt they can procure goes on their backs, and then their stomach is thought of. Different with the *Esguimaux*; one need only go 100 miles down the Mackenzie River, and he will find the men either out trapping, or fishing through the ice. The women are either making skin boots or clothing, or smoking cigarets [sic] and laughing... They are not improvident like the Indians. They very seldom take debt, [but if they do]...the first thing they do is to come in with the furs to pay what they owe...(Morrison, 1973:307).

From these statements, it may be possible to infer that differential enforcement based upon ethnicity may have occurred in the Northwest Territories.

Throughout their encounters with the aboriginal peoples of the Northwest Territories, the police sought to continue the common-sense approach to law enforcement. This often resulted in the King's law being ignored for a peaceful solution which may have had its base in *lex loci*⁵¹. Police-aboriginal conflict resolution may be seen in the following, although lengthy, passage:

In the summer of 1916, a family of Eskimos stole a case of pemmican from the Canadian Arctic Expedition at Bernard Harbour, and headed east. A police corporal, who was staying with the expedition at the time, set out in pursuit, and soon caught up with the thieves. Rather than arrest the Eskimo for theft, which would have involved endless bother, the corporal invoked the *lex talonis*, and demanded that the thief make restitution for the stolen pemmican. The Eskimo offered a seal put in payment, but the corporal refused it, and took instead two boxes of cartridges. These were the Eskimo's most valuable possessions, and he protested, but to no avail. As the corporal later reported, "Something had to be done, however, to show these people that they could not steal with impunity." This was an irregular method of enforcing the law, but it was justice that an Eskimo could readily understand, once he had accepted the white man's concept of private property (Morrison, 1973:314-315).

While the police took exceptional steps to resolve conflict and enforce the law, the judiciary attempted to carry out its mandate in the same manner as it would in Toronto, Winnipeg, Calgary or Edmonton but without the same organizational structure.

⁵¹ *Lex loci*, a Latin phrase meaning, literally, "the law of the place." This term is often used interchangeably with another Latin phrase *lex loci actus* which means "the law of the place of the act," although the phrase *lex situs* or "the law of the land" may be more accurate.

The enactment of the *Northwest Territories Amendment Act (1905)*⁵² contained major changes for the administration of justice throughout the region. Within §8 of the former Act, Stipendiary Magistrates were reintroduced with expanded powers:

§8 The Supreme Court of the North West Territories is hereby disestablished in the territories, but the Governor-in-Council may appoint such number of persons as Stipendiary Magistrates, from time to time, as may be deemed expedient, who shall have and exercise the powers, authorities and functions by the said Act vested in a Judge of the said Supreme Court of the North West Territories.

These changes by Ottawa were not responses to the growth of the Territories and its judicial administration, but were based in wholly within the Dominion government's policy of governing by neglect, or extending the national attic while avoiding the expenses of governing it. Yet, these changes, as sweeping as they were, failed to stop the general practice of transferring serious and capital cases to either Edmonton or Calgary as was the case in the 1917 trial and re-trial of *Inuuk*, *Sinnisiak* and *Uluksuk*, for the murders of two Oblate missionaries.⁵³

During the next twenty-five years the Commissioners of the Northwest Territories would revert to its practices of old and

52 The provisions of this Act were confirmed nearly word for word during the following year when Parliament enacted *An Act respecting the laws of the Northwest Territories (1906)*, R.S.C., 1906, c.62, hereafter the *Northwest Territories Act (1906)*.

53 For a fuller understanding of the deaths of Frs. Jean-Baptiste Rouviere, O.M.I. and Guillaume Le Roux, O.M.I. in 1913, and the subsequent murder trials of *Sinnisiak* and *Uluksuk* in 1917, the reader is directed to Robert G. Moyles *British Law and Arctic Men: The Celebrated 1917 Murder Trials of Sinnisiak and Uluksuk, First Inuit Tried Under White Man's Law* (1979).

appoint only four new Stipendiary Magistrates. As in the past, there would be no Chief Justice of the Stipendiary Magistrates Court as all appointments would be as a *puisque* Stipendiary Magistrate. These appointments would include:

1. Magistrate A. Bowan Perry (1907-1920)
2. Magistrate E.C. Senkler (1910-1912)
3. Magistrate Lucien Dubuc (1921-31)
4. Magistrate Louis A. Rivet (1923-1928) (Price, 1986:49-81).

These Stipendiary Magistrates would travel to the Royal North-West Mounted Police/Royal Canadian Mounted Police detachment nearest the place of the offence to hear the case. In this manner, Magistrate Dubuc "went north in 1923 to deal with several trials at Herschel Island, and thereafter to go north on criminal circuit in the summers of 1924, 1926, 1929 and 1931" (Price, 1986:72).

In 1923, Magistrate Rivet journeyed to the police detachment as Pond Inlet, on the northern tip of Baffin Island to hold the Janes murder trial. This case involved the shooting death of a Newfoundland trader, Robert Janes, near Eclipse Sound in the Pond Inlet area. Having grown despondent and morose due to his failure to establish a successful trading post, he attempted to journey out of the area. During that ordeal, he encountered a group of Inuit whom he frightened enough for them to fear for their group survival and execute him. The events became public knowledge and the police sought out and arrested three Inuit. Several months later, Stipendiary Magistrate Rivet arrived in Pond Inlet and held a trial which lasted four days. The trial results:

- a first conviction for manslaughter and a sentence of ten years imprisonment to be served at Stony Mountain Penitentiary.

- a second conviction for manslaughter and a sentence of two years imprisonment to be served at the police guardroom in Pond Inlet.

- an acquittal and release of the accused (Morrison, 1973:337-338; Price, 1986:378).

Both trials also illustrated the nature of corrections in the Northwest Territories during this period. As in the earlier pre-provincial period, convicted felons would either serve their short-term sentences in either the local police guardroom or a territorial gaol or, in the case of long-term sentences be transferred to Canada and one of the Dominion's penitentiaries. The execution of sentence for those sentenced to death usually occurred in one of the larger territorial centres as close as possible to where the offence occurred.

While the Dominion government was pinching its pennies in the administration of justice in the Northwest Territories, it was also seeking ways to reduce its expenditures in the management of Indian affairs. Having assessed its policies of protection, civilization, and assimilation of the aboriginal peoples into the Euro-Canadian social structure as far from successful, the Dominion government amended the *Indian Act (1898)*. The *Indian Act (1906)*⁵⁴ was the Dominion government's response to criticism that the reserve system was, in fact, retarding the assimilation of the aboriginal peoples and the economic development of the areas where reserves were situated (Getty and Lussier, 1983). Indeed, the peaceful assimilation of Canada's aboriginal peoples was discarded as a policy goal and the reduction and eventual disposition of "lands reserved for Indians" was promoted by the Department of Indian Affairs (Getty and Lussier, 1983:48-49).

⁵⁴ An Act to consolidate the laws regarding Indians (1906) R.S.C., 6 Edward VII, c.81, 1906, hereafter the *Indian Act (1906)*.

This situation would continue until 1920 as the various amendments to the *Indian Act* (1876) occurring in 1886, 1887, and 1906 dealt only with Indian self-sufficiency in similar areas, but would have a major impact upon the lease or sale of reserve lands and the fitness for enfranchisement of Indians. The latter was not to occur until 1960 on the federal scene when aboriginal people received the right to vote in Dominion elections. The major orientation of both these legislation and policies was to assimilate Indians and Metis into the mainstream of Canadian society, albeit in a gradual manner.

The powerlessness of the disenfranchised aboriginal population was seen as a factor in their lack of action as aboriginal people could not directly affect the election of Dominion politicians. Such socio-structural deprivation may be seen merely as an exercise of power by the dominant Euro-Canadian society and the lack of action on the part of the aboriginal peoples as a lack of understanding of their ability as agents in a power relationship. This lack of knowledge and understanding by Aboriginal peoples may be illustrated by those amendments to the *Indian Act* which included (1924) and then excluded (1938) Inuit under the responsibility of



Figure 13 Royal Canadian Mounted Police Posts Guarding the Entrances to Hudson Bay and the Arctic Archipelago, 1927.

Source: Diamond Jenness, Eskimo Administration: II. Canada (1964).

the Superintendent-General of Indian Affairs without their representation or consultations. Yes, Inuit were Indians in the eyes of the Department of Indian Affairs, a view which was later supported by the Supreme Court of Canada.

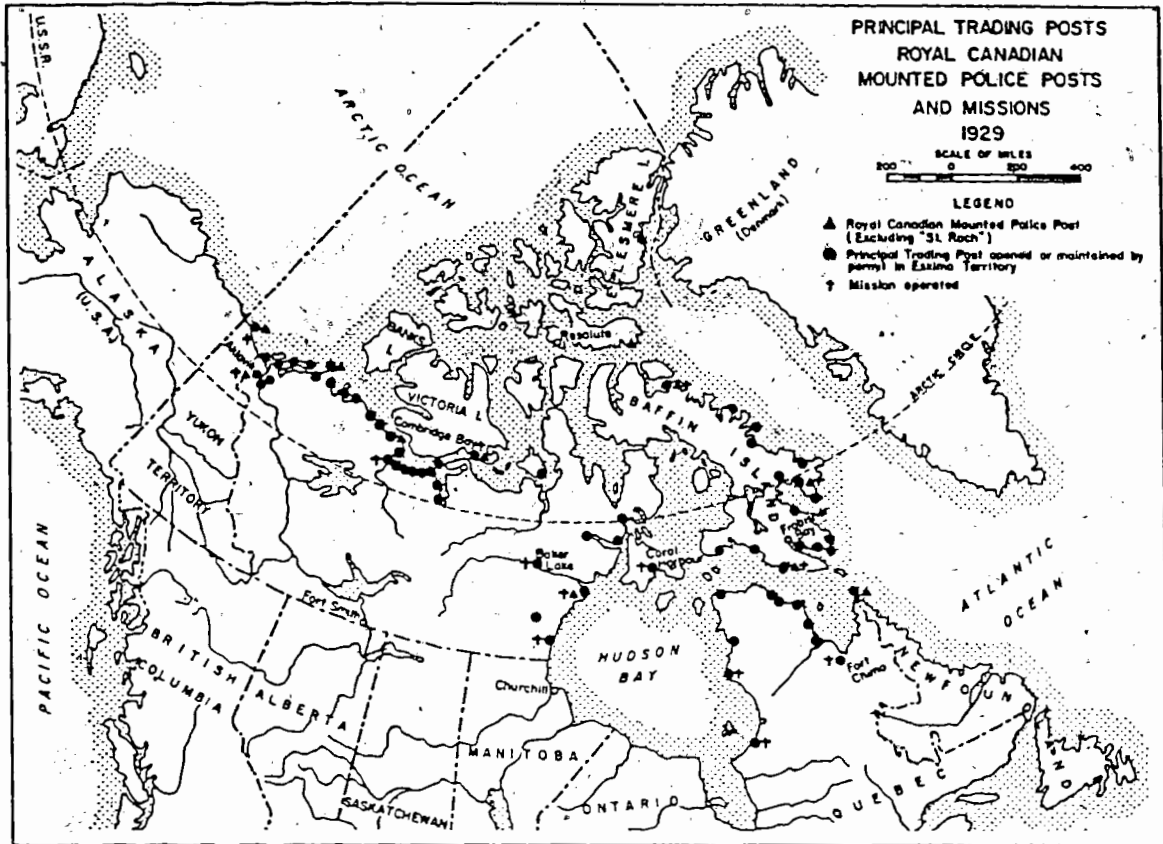


Figure 14 Principal Trading Posts, Royal Canadian Mounted Police Posts and Missions, 1929.

Source: D. Jenness, Eskimo Administration: II. Canada (1964).

To conclude this section without having taken notice of those international events which helped to shape Canada's arctic claims and subsequent policies would be amiss. During 1919, the Dominion government protested to its Danish counterpart that Greenlanders were entering Canadian territory and killing muskoxen, contrary to Canadian game laws, on Ellesmere Island. While this extremely

large island fell within Canada's northern claim due to an application of the "sector principle," the Dominion had very few resources with which to assert her sovereignty of the island. Anxiety and paranoia concerning a possible Danish colonization scheme in the region was manifested by the Dominion government authorizing police detachments on Ellesmere Island and at the entrance points to the Arctic Archipelago and Hudson's Bay (Maxim, 1976:26; McConnell, 1970:14-17).

The Dominion government's anxieties were fueled by the actions of Danish explorer Knud Rasmussen who not only challenged the applicability of Canadian game laws in the area, but promoted the view that "as every one knows the land of the polar Eskimo falls under what is called "no-man's-land" and there is therefore no authority in this country except that which I myself am able to exert..." (McConnell, 1970:56-57). Those symbolic sovereignty measures which began with the establishment of police posts in the area reached their highest point, in the opinion of Dominion government, with the creation of the Arctic Islands Game Reserve and the Northern Advisory Board in 1926. It was the hope of that government that such measures would bring an end to Danish actions in the area (Maxim, 1976:23).

The decades between the turn of the century and the outbreak of World War II were of little consequence for the peoples and government of the Northwest Territories as it appeared that the nation's "northern attic" was 'forgotten' by the central government in Ottawa, except as a source of revenue and support of sovereignty claims (Braden, 1976; Chartrand, 1986; Clancy, 1985; Zaslow, 1971). Economic considerations brought about by the discovery of gold and oil in the Mackenzie District during the early 1920s resulted in a change in administration as the Department of Mines and Resources accepted responsibility for the Northwest Territories. National rather than local interests, once again, would predominate during the fifteen years preceding the end of the Second World War.

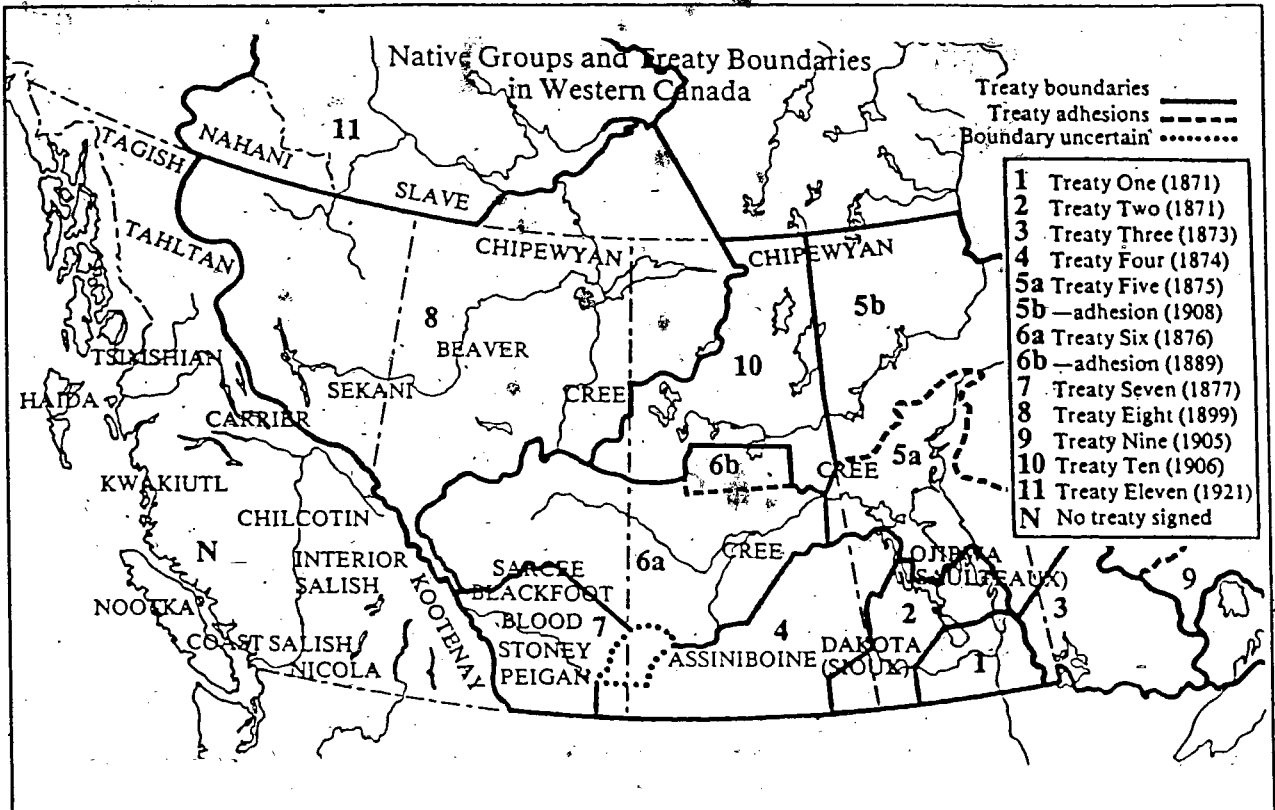


Figure 15 Native Groups and Treaty Boundaries in Western Canada, 1871-1921.

Source: Ian Getty and Antoine Lussier, As Long as the Sun Shines and Water Flows (1983).

Indeed, it was these national interests which provide the attraction for those researchers who utilize the same approach to understanding the state, ethnicity and stability as Motyl (1987). During the first half of the period in quest, 1870-1900, the Dominion faced a crisis which was concerned with order-maintenance as much as it was based in land acquisition and sovereignty over it. Faced with increasing numbers of Americans operating trading centres such as Fort Whoop-Up, where alcohol flowed generously and lawlessness reigned, the Dominion government established the judicial institutions of the Stipendiary Magistrate and the North-West Mounted Police and enacted legislation to support their actions, albeit legislation which was inadequate to meet the needs of a growing settler population (Stanley, 1961; Tobias, 1983).

While these two institutions were instrumental in "showing the flag," so to speak, to other circumpolar nations, they were not capable of laying serious claim to the region.

The Dominion government, during this era, continued to demonstrate a preference towards dealing with its opponents through negotiations and the establishment of judicial institutions (symbolic sovereignty) and through force of arms and domestic legislation (developmental sovereignty). The deployment of the Yukon Field Force (police and troops), for example, was carried out to maintain Dominion control over the lands and its mineral resources. Indeed, the use of force and unequal treaty negotiations were to become a hallmark of government-aboriginal dealings during the period.

Throughout the era of 1870-1900, ethnicity was regarded by the Dominion government in much the same way as the Imperial government had interacted with the aboriginal populations, namely as a matter of military, political, and economic expediency. As the relative importance of the aboriginal populations decreased *vis-a-vis* the Dominion and regional economy and fears remaining from the previous Riel Rebellions failed to dissipate, the government instituted a policy of economic dependency and marginal land reserves.

While the Dominion government continued many of the policies established during the previous thirty years, the 1900-1930 era was marked by increased efforts to deal with its opponents through the least intrusive and least expensive manner available to it. The use of force was discontinued in favour of cash settlements and the establishment of police posts to establish Canadian sovereignty in the international arena. Within the context of ethnicity, the Dominion government continued to amend the *Indian Act*, conclude treaties which saw the ceding of reserve/treaty lands, and to deal with aboriginal peoples from a position of, both, material and psychological superiority. The notions of autonomy and self-

government for aboriginal people, apparently foreign to the minds of Dominion bureaucrats, had become intertwined with the signing of treaties which, in turn, were contracts for aboriginal dependency.

CHAPTER VII

CANADA NEGLECTS ITS NORTH, 1930-1945

The Dominion government entered the decade which preceded the start of the Second World War by witnessing the demise of two challenges to its Arctic sovereignty. The first challenge, involved the Dominion government recognizing the exploration and mapping efforts of Norwegian Otto Sverdrup. Sverdrup had, during the course of his journeys in the High Arctic, claimed the many islands for Norway although that nation had not exercised those rights. In recognition of the expenses which he had incurred as well as a method of acquiring Norway's recognition of Canada's claim, the Dominion government made an *ex gratia* payment of \$67,000 to Sverdrup in 1930 (Zaslow, 1984:5).

The second challenge was met vicariously by the Dominion government through a dispute, during 1933, over the ownership of East Greenland between Norway and Denmark in the Permanent Court of International Justice. The Court established that while sovereignty required effective occupation that such occupation required "a reasonable amount of occupation" for sovereignty purposes (Maxim, 1976:24).

While the Dominion government was apparently content to exercise only symbolic measures of sovereignty, it was also willing to ignore the needs of the residents of the region if the expenses could be avoided. The administration of the Northwest Territories remained in the hands of "the usual triumvirate - the state as represented by the RCMP, the church, to tend the souls of the savages, and the commercial power of the Hudson's Bay Company" (Braden, 1976:27-28). The Dominion government required, according to Braden (1976), either a threat to its sovereignty or the promise of economic benefits, rather than the desires of its residents, before it would take action:

The discovery of gold in 1930 near what is now Yellowknife, followed quickly by related mineral developments in the Great Slave and Great Bear Lake areas, increased the level of economic activity in the Mackenzie District. The Northwest Territories Council began to exercise more of its powers during the period 1930 to 1940 in response to pressures from white southern migrants who populated new mining communities such as Yellowknife. The newcomers felt they were entitled to facilities and amenities similar to those found south of the 60th parallel. However, despite these new economic developments and a more active Council and federal government, provision of services continually lagged behind the demands which were being made for them (Braden, 1976:29).

The notions of the production of and dependence upon staples in Canada, and by extension in the Northwest Territories, have been commented on by numerous economic historians (cf. Aitken, 1959; Easterbrook and Aitken, 1965; Easterbrook and Watkins, 1967; Fowke, 1952; H.A. Innis, 1950, 1951, 1956, 1962; M.Q. Innis, 1943; Mackintosh, 1923). The role which Canada's production of staples (fish, fur, timber, grain, and minerals) for European and American markets has contributed to the colonial development of the state within and the nation of Canada. In this regard, the primary importance of the two staples, fur and non-renewable resources, which made up the Territorial economy during the 1930s cannot be understated. While the importance of these staples to the northern economy remained constant, their marketability, especially the white fox market, declined dramatically during the same period.

Following Mackintosh's (1923) initiatives, H.A. Innis (1950, 1951, 1956, 1962, 1967) regarded the notion of staple production as the central theme in the history of Canada's economic, political, and social growth. It was Innis' belief that the European desire for both raw materials and luxuries from Canada and the latter's dependence upon European finished goods were the motivation behind the exploitation of the new lands. Indeed, Innis (1967:16-27) consistently puts forth three themes:

(1) Canada's economic development, notably in the areas of industrial development, was retarded by its reliance upon a staple economy,

(2) that both the Imperial (British) and Dominion governments enacted social and economic legislation, such as the *Constitution Act (1791)* and the *Jay Treaty (1794)*, to ensure the orderly reproduction of staples and,

(3) the aboriginal peoples of Canada provided not only a labour pool but the material culture necessary to exploit the staples of fish and fur.

As the European demand for staples increased and the Euro-Canadian methods of obtaining them improved, Innis (1967:24-25) argued, the participation rate and relative importance of the aboriginal people to the economy decreased. Fortunately, the aboriginal peoples of the Northwest Territories possessed both the knowledge base and requisite skills to corner the market. On the other hand, it was doubly tragic that many aboriginal people had become dependent on Euro-Canadian goods and practices, at a time when the value of their fur harvests had reached their lowest point.

With the absence of threats to Canadian sovereignty and the decrease in the potential mineral resources, the Dominion government remained idle as far as legislation in the Northwest Territories were concerned. Indeed, as Braden (1976) notes:

No attempt was made during this period to establish local government institutions in the north, or permit some level of northern representation on the Northwest Territories Council, which continued to be dominated by federally appointed civil servants (Braden, 1976:30).

The Dominion government continued to undertake symbolic measures to ensure its sovereignty in the Northwest Territories. Whereas it extended the internal boundaries of the provinces of Manitoba, Ontario and Quebec northward and, by extension, changed the boundaries of the residual Northwest Territories through the



Figure 16 Canada and its Territories, 1932.

Source: Geoffrey Matthews and Robert Morrow Jr., Canada and the World: An Atlas Resource, (1985).

provisions of the *Northwest Territories Act (1912)*, amendments to that Act in 1930 created the current geo-political jurisdiction known as the Northwest Territories.

On the other hand, the Dominion government did not remain idle, but the administration of the criminal justice stagnated. In spite of the Depression and Second World War, it appointed nine Stipendiary Magistrates to assist the two existing Magistrates, one of whom resided in Yellowknife, in the judicial administration of the Northwest Territories after 1933. Prior to that time, the

judicial administration was handled by the existing Stipendiary Magistrates supported by "Police Inspectors, Indian Agents and a few Medical Officers who all held appointments as Justices of the Peace with the powers of two [justices]" (Price, 1986:95). By 1939, there were a total of five Stipendiary Magistrates for the Northwest Territories, of whom only two were resident within the Territories. This number was to expand to eleven by the end of the Second World War although the number of Stipendiary Magistrates resident with the Northwest Territories was reduced to one.

While the judicial administration resources were slightly expanded, the budget for the police activities and patrols was reduced significantly. The annual Eastern Arctic Patrol was reduced, for example, to "routine operation of supplying and relieving the medical officer at Pangnirtung and the posts of the police" (Price, 1986:87). As was the case with the delivery of correctional services during the earlier study period, the detention and imprisonment of convicted felons continued to occur at the Royal Canadian Mounted Police guardrooms and the federal Stony Mountain Penitentiary in Manitoba.

Dominion legislation alone could not accomplish its goals of protecting, civilizing, and assimilating Canada's aboriginal populations without active support of the Superintendent-General of Indian Affairs and his officers. This support was not, however, to be forthcoming as that department not only exercised the degree of autonomy available to it within the overall structures imposed by the government, but was disbanded and existed in *stasis* until it was resurrected in 1933.

During that year, several major legislative events took place which affected the lives of Canada's aboriginal peoples. The

Indian Act (1933)⁵⁵ not only resurrected the Department of Indian Affairs, but placed major restrictions on the enfranchisement of aboriginal peoples, the sale of reserve lands, the wearing of ceremonial garb, and compulsory school attendance for aboriginal children. The Department of Indian Affairs was also able to block any appeal of the actions of local Indian agents (Euro-Canadian officers of the Department) with which the band or tribe was unhappy. This was accomplished by way of an internal directive which all aboriginal complaints and inquiries would be dealt with at the local rather than Headquarters level (Hawthorne, 1966:169).

The generalized effects of these changes were that the aboriginal peoples in Canada could only hope for benevolence on the part of both the Department and its agents and that they felt little belonging in the Canadian policy and nation. The Treasury Board and its parliamentary watchdogs would ensure that such benevolence would not occur with Dominion funds, as they would deny Indian Affairs both the funding and personnel by which effective programs could be implemented (Hawthorne, 1966:172).

In closing, this chapter has presented a very limited view of those events which occurred during the period, 1930-1945.⁵⁶ Unfortunately for legal scholars, the Depression and Second World War captured the Dominion government's interest and, as a result, very little archival materials exist or, if they do, describe this period adequately.

⁵⁵ An Act to amend the laws respecting Indians (1933), R.S.C., 23-24 George V, c.42, 1933, hereafter the Indian Act (1933).

⁵⁶ For a fuller understanding of the events of this period and their impact on the peoples and government of the Northwest Territories, the reader is directed to Diamond Jenness' Eskimo Administration, Volume II, : Canada (1964) and Ken Coates and Judith Powell's The Modern North: People, Politics and the Rejection of Colonialism (1989).

The inattention of the Dominion government was to change almost overnight with the opening of hostilities and Canada's declaration of War in 1939. The events of the Second World War resulted in the United States government requesting permission to build the Alaska Highway across northwestern Canada. The building of the Canol Pipeline project from the oil fields near Norman Wells, in the western Arctic, to Whitehorse was one part of a strategic shift of wartime priorities for the Dominion government. During the same period, the construction of a staging and re-fuelling airfield at Frobisher Bay in the eastern Arctic, as part of the Crimson Air Staging Route to Europe, was a similar reshifting of Dominion priorities. This shift in priorities resulted in a rude awakening for that level of government as it was shocked into spending large amounts of funds on the Northwest Territories for the first time in the Dominion's history (Carlson, 1986; Chartrand, 1986; Clancy, 1985; Jenness, 1964, 1968; Mayes, 1978; Robertson, 1985; Zaslow, 1984).

Once again, if one were to examine these events in light of Motyl's (1987) three research foci, it would be possible to interpret, as did political historian Braden (1976), that the Dominion government realized that settlement and the delivery of public services, albeit sparse and less than the national standard, was required to establish its claim in international law. While the frequency and intensity of foreign incursions into and claims to the region had decreased dramatically, the Dominion government moved quietly to increase its sovereignty in the, now truncated, Northwest Territories through symbolic rather than developmental measures. Increases in transportation technology and the demands of the Second World War, however, served as, both, a surrogate threat to Dominion stability and the mechanism by which that government's sovereignty in the region could be established

The Canadian state, in the form of the Dominion government as the political authority of Northwest Territories Council was merely

titular, reacted to the notion of ethnicity through the enactment of legislation which continued the previous policies aimed at the "protection, civilization, and assimilation" of the aboriginal peoples of the region. Contemporary legislation exhibited the Dominion government's lack of concern for aboriginal autonomy as it arbitrarily and unilaterally legislated the legal status of Inuit as Indians! Once again, the issues of self-maintenance and autonomy for Northerners remained foreign to the minds of Dominion bureaucrats as the Indian Affairs Branch continued to act as "a government within a government" (van den Berghe, 1981) throughout the Northwest Territories.

CHAPTER VIII

CANADA'S COLONIAL EXPERIMENTS, 1945-1975

The Dominion Government Imposes Its Will

The frustrations of Canada's aboriginal peoples and the residents of the Northwest Territories, which were described in Chapter VII, would continue throughout the war years and into the early years of the 1950s. At that time, the Dominion government, fresh from wars with oppressive regimes, would begin to look in earnest at the problems faced by its own aboriginal peoples as well as those of northern development. Although she was commenting on the Dominion government's multiculturalism policy in 1981, Kogila Moodley could easily have been describing the previous sixty years of reticence in aboriginal administration in Canada:

Perhaps the most typical form of Canadian bigotry consists of an ostrich-like denial that a significant problem of racial hostility exists at all...Native Indians and Inuit, the relics of conquest, constitute caste-like minorities in Canadian society. They are largely excluded from competition and are subject to condescending and paternalistic treatment by the charter groups. How complete and successful the conquest and colonization of this group has been evident in their internalization and exhibition of many of the features of interiorized peoples elsewhere (Moodley, 1981:15-16).

The colonialization of both Canada's hinterland and its aboriginal peoples was nearly complete by the outbreak of war in 1939 and recognized both in fact during 1946 and by legislation during 1951 with the amendments to the *Indian Act*. The Dominion government soon found that this repressive legislation, which it had only just recently enacted during 1933, was too bitter a pill to swallow as they had just fought a war which ended many colonial and exploitative regimes among its former allies and enemies alike. The awareness of this growing public problem by members of

Parliament led to the creation of a *Joint Committee of the Senate and House of Commons (1946-1948)* which received input from not only aboriginal and non-aboriginal members of the public, but also from many academics and public servants involved in the delivery of services to aboriginal clients.

The Joint Committee distilled the representations of the various groups and recommended limited actions to be undertaken. The major points included recognition of:

1. failure of the government policy of assimilation,
2. low levels of educational and vocational training among aboriginal people,
3. low levels of regional/national level organizational development exacerbated by the low education illiteracy and political alienation among the aboriginal leadership,
4. lack of regional/national aboriginal identities with a high affiliation at the tribal/band level (Hamilton, 1966:167-170).

The recommendations of the Joint Committee (1946-1948), on the other hand, sought numerous changes in the relationships between the Dominion government and aboriginal peoples. These changes may be seen in the following Joint Committee recommendations:

1. The complete revision of every section of the Indian Act and the repeal of those sections which were outdated.
2. That the new Indian Act be designed to facilitate the gradual transition of the Indian from a position of wards up to full citizenship. Therefore the Act should provide:
 - A. A political voice for Indian women in band affairs.

- B. Bands with more self-government and financial assistance.
 - C. Equal treatment of Indians and non-Indians in the matter of intoxicants.
 - D. That a band might incorporate as a municipality.
 - E. That Indian Affairs officials were to have their duties and responsibilities designed to assist the Indian in the responsibilities of self-government and attain the rights of full citizenship.
3. Guidelines for future Indian policy were to be:
- A. Easing of enfranchisement.
 - B. Extension of the franchise to the Indian.
 - C. Co-operation with the provinces in extending service to the Indian.
 - D. Education of Indian children with non-Indians in order to prepare Indian children for assimilation (Tobias, 1983:52-52).

In essence the Joint Committee was reaffirming the previous assimilation policy of the Department of Indian Affairs but not their methods of attaining that goal. These methods were predestined to be ineffective as any policy goal which sought to help Indians retain and develop their native characteristics while simultaneously assuming the degree of Anglo-conformity necessary for taking on the full rights and responsibilities of Canadian citizens was inherently unobtainable.

The results and recommendations of the Special Committee were unfortunately written in much the same form as the 1946 policy but recommended the radical approach of repealing and almost totally amending the *Indian Act* (1933). The labours of the Special Committee would come into fruition and would become apparent in the

transfer of the Indian Affairs Branch to the Department of Citizenship and Immigration in 1949 and major amendments to the *Indian Act* two years later during 1951.

The revised *Indian Act* (1951) was, however, a return to the oppressive, post-Riel Rebellion *Indian Act* (1888), albeit with the following major innovations:

1. Increased provincial legal authority on reserves;
2. Decreases in federal control of reserve life;
3. Indian status defined more precisely;
4. Enabling legislation for franchisement; and,
5. Devolution of responsibility of local bands (Frideres, 1988:35).

These innovations were met with both support and opposition by the Parliamentarians and aboriginal peoples alike. This lack of consensus would contribute to the creation of a second Joint Committee a decade later. This second inquiry conducted during 1965-1966 by eminent University of British Columbia scholar of aboriginal peoples and issues, Harry B. Hawthorne, would comment again on the confusion and lack of information among the aboriginal peoples concerning their political rights, the wide philosophical gulf between Indian Affairs and the local bands, the appearance of Indian Affairs as a miniature colonial government, and the confusing competition between Dominion and provincial governments for specific and limited control over aboriginal lands and lifestyles (Hawthorne, 1966:170-174). By identifying such lack of common purpose among the aboriginal peoples, Canadian politicians were judging aboriginal peoples by their own rather than native cultural and social values. This, too, is an example of the unequal power relationship which existed during that period and which continues to this day.

While the Dominion government gave little more than cosmetic attention to the plight of its aboriginal citizens at the beginning of the 1960s decade they modified their beliefs concerning their assimilation into the mainstream of Canadian society during 1969. The Dominion government recognized the development of local, regional and national interest groups by aboriginal peoples could facilitate the upcoming multiculturalism policy and the development of a structure which would permit decolonization to occur.

The Statement of the Government of Canada on Indian Policy (1969) was "...to provide Indians with the right to full and equal participation in the cultural, social, economic and political life of Canada" (Asch, 1984:8; Marule, 1978:104). This new direction would, if accomplished, see the termination of the reserve system and the special status granted by the original *Indian Act (1876)* as they would become fully integrated into Canadian society. This would have had the effect of engendering cultural genocide had it not been for widespread condemnation of the policy by aboriginal people and the effective use of the media by aboriginal political action groups. The national outcry which ensued forced the Dominion government to announce its new policy of multiculturalism. The multiculturalism policy sought to recognize cultural pluralism in Canada and the differential integration of ethnic and racial groups into Canadian society. In reality, this new policy was a method of reducing the influence of both aboriginal and francophone political action groups as well as discouraging potential allies from among other ethnic or cultural groups throughout the country. Indeed, as Tobias (1983) commented:

this withdrawal does not mean that the goal has been repudiated; at least there is no indication of such renunciation to date. It is simply that alternative means to achieve it are being considered. At the moment Canada's Indian policy is in a state of flux, but unlike any earlier period, a more honest effort is being made to involve the Indian and Indian views in the determination of a new Indian policy (Tobias, 1983:53).

Although the inequities of both the *Indian Act* (1951) and the practices of the Department of Indian Affairs and Northern Development continued into the 1960s, changes did occur in Ottawa's management of its aboriginal wards. The first change was an amendment to the *Canada Elections Act* (1960) which, then, resulted in the granting of the franchise for aboriginal peoples to vote in Dominion and, by extension, Territorial elections. The second change was the result of a restructuring of the departments and agencies of the Dominion government. While the Indian Affairs Branch continued to administer and manage programs for the aboriginal peoples, it found itself becoming a section of Northern Affairs and National Resources during 1964 (Frideres, 1988:34).

While the Dominion government was wrestling to come to terms with the question of ethnicity it was also facing challenges to its exclusive control of the Northwest Territories. The populations of the Yukon Territory and the Mackenzie District of the Northwest Territories were becoming increasingly vocal on their need for both services from and representation at the Dominion level.

In 1947 some effort was undertaken to placate Northerners, both aboriginal and non-aboriginal alike, by appointing northern residents to the Northwest Territories Council, although none of whom were Inuit or from the Eastern Arctic (Carlson; 1986; Braden 1976). During the same year, the Dominion government incorporated the Yukon Territory and the Mackenzie District as a single electoral district. These changes would not diffuse the resentment of decades of being controlled from Ottawa and northern residents would clamour for more elected representation at both the territorial and federal levels. Changes would occur during 1951, as the three additional elected members took their places on the Northwest Territories Council and, again, in 1952 as both the Yukon and Mackenzie became their own electoral districts. Thus began the journey of the Northwest Territories towards responsible government.

During 1947, the Northwest Territories Council commissioned former fur trader James Cantley to investigate the state of the territorial economy. His report when released during the following year noted that dependence upon the production of two staples, furs and minerals, had left the aboriginal peoples in a hazardous position vis-a-vis the declining fur industry and the booming mining and petroleum industries for which they lacked the necessary skills. While the Cantley Report offered no concrete direction on how to improve the economic situation, it recommended that local or regional councils be established to advise the Northwest Territories Council on matters affecting those areas.

One of the results of the Cantley Report (1948) was the decision by the Dominion government to reduce its northern bureaucracy rather than expand services to the Northwest Territories. This resulted in a small change in the political will which saw an increase in the powers of the office of the Commissioner of the Northwest Territories. The major political change of the 1950s was an amendment to the *Northwest Territories Amendment Act (1905)* which resulted in the enactment of the *Northwest Territories Act (1951)*.⁵⁷ That Act was incorporated to facilitate:

1. The Commissioner to borrow money for territorial, municipal, or local purposes;
2. The Commissioner to lend money to municipalities and school districts within the Territories; and
3. The establishment of a formalized fiscal arrangement between the Northwest Territories Council and the federal government.

⁵⁷ An Act to Amend the Northwest Territories Act (1951), R.S.C., 15 George VI, 1951, N-1, hereafter the *Northwest Territories Act (1951)*.

The development of representative and responsible government within the Northwest Territories would continue to be hindered, unfortunately, by the exclusive control of both finances and natural resources by the Dominion government and the marginal political status of Canada's aboriginal peoples (Braden, 1976; Carlson, 1986; Swiderski, 1985; Zaslow, 1984).

The decades of the 1950s saw the establishment of artificial settlements throughout the Northwest Territories, mainly in the Eastern and High Arctic. In response to the pressures of the Cold War and potential threats to Canadian sovereignty from its circumpolar neighbours, the Dominion government responded by creating the artificial settlements of Resolute Bay and Grise Fiord in the High Arctic. In the case of the latter settlement, Grise Fiord, 17 Inuit families were uprooted from Northern Quebec and transported to the unfamiliar hardships of Ellesmere Island during 1953 and 1955, to participate in a two-year experiment, or so they were informed. While some of those families, and others brought there from the Baffin Island settlement of Pond Inlet, have returned to their original homes, many families still remain in Grise Fiord. Recent claims for compensation and repatriation, such as that by John Amagoalik, have asserted that there was:

evidence of slave labour. My father and other relatives spent months at a time taking government surveyors around the High Arctic and they were never paid for it. There has been evidence of sexual favours. While the men were out hunting, days at a time, the women and children were left and they were hungry. Certain people in authority told women, "If you want food for your children, you are going to have to do certain favours." (Nunatsiaq News, July 27, 1990:1-2).

Three major political events marked the 1960s in the Northwest Territories: decentralization of federal government services, the enactment of anti-pollution legislation, and the creation of a new level of government, namely the Government of the Northwest

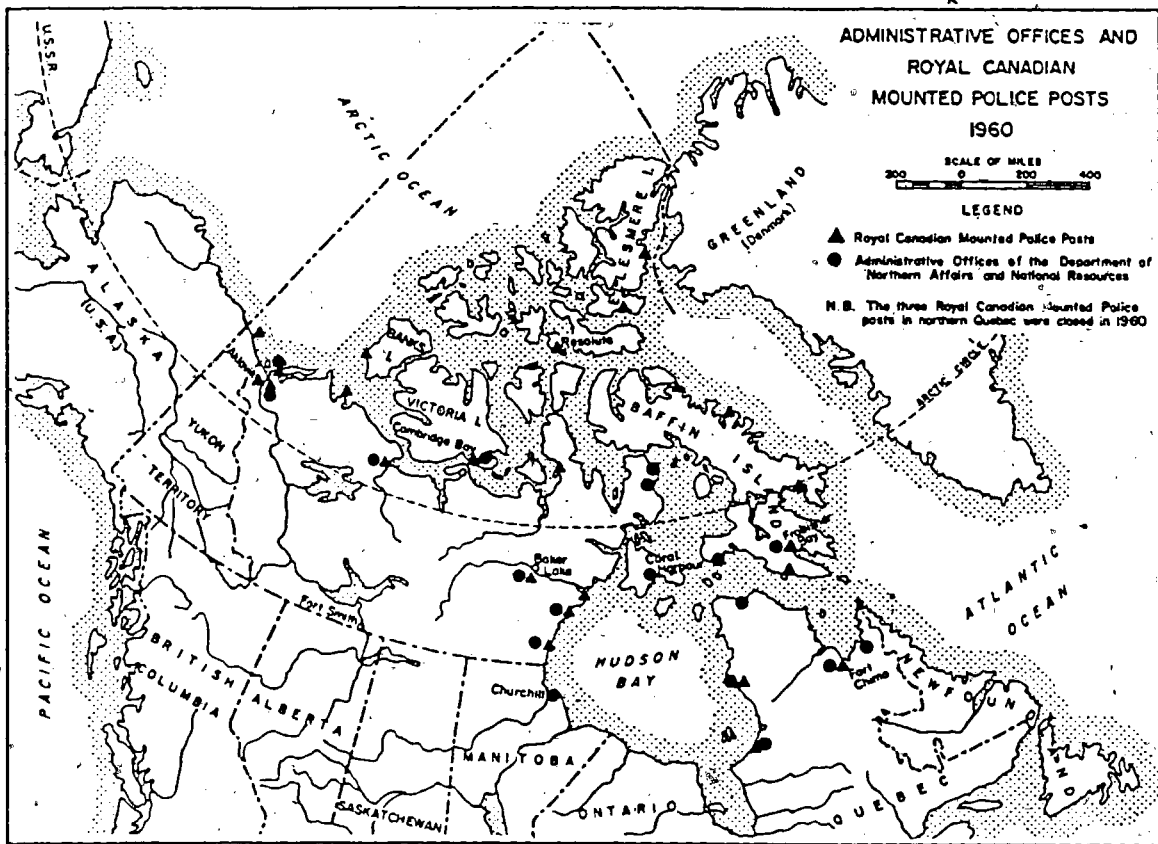


Figure 17 Administrative Offices and Royal Canadian Police Posts, 1960.

Source: Diamond Jenness, Eskimo Administration: II. Canada (1964).

Territories. The former was accomplished through a gradual shift by the new federal Department of Northern Affairs and National Resources from a highly centralized format to a regional administrative format. The anti-pollution legislation of the period followed the trans-Arctic cruise of the supertanker U.S.S. Manhattan and was enacted more for symbolic sovereignty reasons than for pollution control. Two acts, *Arctic Waters Pollution Prevention Act (1970)*⁵⁸ and the *Territorial Seas and Fishing Zones*

⁵⁸ An Act to prevent pollution of areas of the arctic waters adjacent to the mainland and islands of the Canadian arctic (1970), R.S.C. 1970, 18-19 Elizabeth II, c.47,

Act (1970)⁵⁹ would declare Canada's sovereignty in the Arctic Archipelago and its control over adjoining offshore areas of up to 100 miles for the prevention of pollution. The origins of the latter, however, may be traced back to former University of Western Ontario Dean A.W.R. Carrothers' efforts to answer the question of self-government for the Northwest Territories distinct and separate from the Department of Northern Affairs and National Resources (Dacks, 1981:92). His report, entitled the Carrothers' Commission on the Development of Government in the Northwest Territories (1966), recommended the creation of community-based government in the North among other changes.

While the creation of the Government of the Northwest Territories, a quasi-provincial level of government, may have placated many residents of the North, it did nothing to reduce the control exercised by the Dominion government over natural resources and resource development. Within the newly-created territorial government, moved during 1967 to Yellowknife, a separate Department of Local Government (since renamed Department of Municipal and Community Affairs) was established "to develop politically-workable and administratively self-sufficient communities within the N.W.T." (Swiderski, 1985:6-7). Despite their efforts, however, they were constrained by a lack of financial resources and control by the communities that would leave their Hamlet and Band Councils powerless to change the situation (Braden, 1976; Carlson, 1986; Rea, 1968; Zaslow, 1984).

The early 1970s saw a shift in government policy from, both, centralization to de-centralization from Ottawa and the

hereafter the *Arctic Waters Pollution Prevention Act* (1970).

⁵⁹ An Act to Amend the *Territorial Sea and Fishing Zones Act* (1970), R.S.C. 1970, 18-19 Elizabeth II, c.68, hereafter the *Territorial Seas and Fishing Zones Act* (1970).

exploration/exploitation of non-renewable resources to the provision of basic human services to the people of the North. This change in priorities and policy resulted in the delivery of increased housing, social, educational and health services at the community level. Many aboriginal political leaders, however, felt that these developments were neither fast enough, far reaching enough, nor did they address their special needs and aspirations for the future.

The last major political developments of the period under review were the limited recognition of the cultural and legal rights of aboriginal peoples and the transfer of the Indian Affairs Branch to the Department of Northern Affairs and National Resources. Two reports, Mr. Justice Thomas Berger's The Report of the Mackenzie Valley Pipeline Inquiry (1977), which was also known as the Berger Report, and Milton M.R. Freeman's Inuit Land Use and Occupancy Project, emerged during the 1970s and sought to address the emerging concerns of aboriginal title and the development by the aboriginal peoples of the Northwest Territories. The general issue in question, was land and its control based upon the conflicting beliefs that aboriginal title had never been extinguished and that the Dominion government had the unilateral right to define and modify aboriginal rights and title. The effective use of the mass media to promote aboriginal issues had been pioneered by the Berger Inquiry and aboriginal peoples were beginning to understand not only its value, but that which the Anglo-Canadian Courts held for the acquisition of the lands which they claimed.⁶⁰

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The first major case involved the Nishga claim that they had possessed a reconcilable system of land use and tenure to that in Canadian law which had not been ceded by treaty. This case, *Calder v. the Attorney-General of British Columbia* [1970], 74 W.W.R., 481, (B.C.Ct.A.), was a landmark decision wherein it was recognized that the provincial government retained the land pursuant to colonial legislation by which it had unilaterally

The Legal Order: Something Old, Something New

While the Dominion was enacting legislation and regulations for the symbolic and developmental sovereignty of the Northwest Territories and its residents, the criminal justice system in the Territories was evolving to meet their needs as well as those of the Dominion government. The Royal Canadian Mounted Police, for example, had continued to establish detachments throughout the Northwest Territories during the 1945-1975 period. Whereas they had established detachments in most Dene communities, the police had not yet established themselves in most Inuit settlements. Indeed, the number of detachments in the latter settlements buoyed from a low of 7 at the outbreak of the Second World War, to 19 detachments in 1950, and 24 in 1960 (Jenness, 1964:91). Today, there exist only a few settlements without a resident RCMP detachment and are served, as a result, by regular police patrols from a nearby settlement.

The police would continue, as before, to collect taxes and customs duties from whalers, hunters and traders, collect census data, confiscate liquor, issue relief to aboriginal persons in need, render first-aid and inoculate dogs, as well as their duties to administer the law and ensure justice was done! In addition to these duties, members of the RCMP appointed either as Police

extinguished all Indian titles to land within the colony of British Columbia. Subsequent appeals to the British Columbia Court of Appeal and Supreme Court of Canada revealed the inherent ethnocentrism in Canadian law and legal practice in general and specifically this case. The major points of law in *Calder* (1970) centred on the determination of whether or not Nishga law was congruent with the existing Canadian law and whether prior colonial law was intended as general or specific legislation to extinguish Indian title. By choosing the former view and its use of an *obiter dictum*, or judicial comment, the courts set the tone of relations between the Dominion government and the aboriginal peoples for the next decade.

Magistrates or Stipendiary Magistrates continued to carry out those functions until 1955. The last police officer appointed as Stipendiary Magistrate in the Northwest Territories was Magistrate Douglas James Martin. Receiving a temporary appointment in 1948 Martin would continue in that role until 1951. During the period in question, those roles would not change.

Indeed, the court and their circuits within the Northwest Territories would continue to owe much of their existence to the efforts of the RCMP. Court circuits followed the patrol routes of the police and drew upon the police for much of their pomp and ceremony. Price (1986) comments on the interrelationships between the police and the courts during the early part of this period, stating:

In the Northwest Territories, the RCMP provided a "touch of ceremony" for the court party. This could be a mere presence in ceremonial uniform at the trial, as still continues in criminal Superior Court trials in Canada in the 1980's; or a travelling escort....The police though, provided more than pageantry. Acting as reporter, Constable Richard Wild accompanied Dubuc north to Fort Providence in 1921 and Herschel Island in 1923. At various times, RCMP officers acted as clerks and reporters. Additionally, the police occasionally made transportation arrangements for the judicial party, and often arrangements for the trial itself. Under police auspices, trials were held at police detachments at Herschel Island and Pond Inlet in 1923; the tiny living room of the police detachment at Pangnirtung in 1939; and the police barracks at Coppermine in 1946.

On circuit the ceremony and formal trappings of a Supreme Court in trial in "civilization" were preserved. Counsel and the Stipendiary Magistrate, gowned, observed the essentials of court procedure. McKeand specifically alluded to the importance of preserving the dignity of the administration of justice on the Eastern Arctic circuit believing "that the impression on the native mind would have a lasting effect (Price, 1986:229-230).

The assistance of the local police officer was essential as the court party which travelled "with all its impedimenta" lacked the

knowledge of the local facilities and personalities.

During 1955, the era of the Police/Stipendiary Magistrate came to an end as the first Justice of the Territorial Court of the Northwest Territories was appointed. In accordance with the provisions of the Northwest Territories Act (1952)⁶¹ the office of Stipendiary Magistrate was repealed and replaced by the interim office of Police Magistrate. The Territorial Court of the Northwest Territories and the Judge of the Territorial Court were proclaimed during 1955 and the first Judge of the Territorial Court, Justice Jack Sissons, was appointed shortly thereafter. This change in jurisdiction would have an immense impact on the administration of justice in the Northwest Territories. The impact would include:

1. the demise of the Police/Stipendiary Magistrate would ensure that all jurists, less justices-of-the-peace, would be juridically trained.
2. the coincidental jurisdiction of judges in other provinces and territories, notably Alberta and Yukon, would be removed.
3. a reduction in the length of remand orders due to a resident judge.
4. the introduction of culturally-relevant sentences.

The Territorial Court was, at this moment in time, a Superior Court in much the same manner as the earlier Magistrates Court. In this regard it held the same jurisdiction of as a Supreme Court in one of the provinces until the early 1970s when a distinct Supreme Court of the Northwest Territories was created. Mr. Justice Sissons set the tone for judicial operations which continues to this day in the Northwest Territories. This tone, reminiscent of the intent of

⁶¹ An Act to amend the Northwest Territories Act (1952), R.S.C. 1952, 16 George VI, c.331, hereafter the Northwest Territories Act (1952).

the *Magna Carta*, included:

1. Justice shall be taken to every man's door;
2. This court shall go on circuit to every part of its realm at least once or twice a year;
3. The proper place for a trial is the place where the offense was committed or the cause of action arose;
4. Every person accused of a serious offense is entitled to be tried by a jury drawn from the area in which the offense was committed;
5. No man shall be condemned except by the judgement of his peers and the law of the land (Sissons, 1968:76).

Returning once again to the principles of the *Magna Carta*, that an accused should receive "speedy, impartial and uniform justice from a jury of their peers", the new court was a vast improvement in the reduction of the time between the moment a charge was laid and the time adjudication and/or sentencing had been completed. Price (1986) argues that this was, indeed, the case:

it was not unusual for a delay of one year between the Preliminary Inquiry and the trial. This delay was lauded by some: "all cases were held over until the opening of water navigation without any way defeating the administration of justice"; and criticized by others: the accused could be evacuated at the first opportunity instead of being "held over nine, ten, eleven months pending the arrival of the judicial party (Price, 1986:243).

The transfer of the Territorial government to Yellowknife during 1967 also occurred as the Northwest Territories Correctional Service (or more accurately, the Corrections Division of the Department of Social Services) of the Government of the Northwest Territories was authorized. Prior to that date short-term sentences of incarceration were served in the local R.C.M. Police guardrooms in Fort Smith, Iqaluit (formerly Frobisher Bay), Inuvik,

and Yellowknife, whereas since the close of the Second World War sentences in excess of ninety days were served in provincial and federal institutions.

Shortly after the opening of the Yellowknife Correctional Institute (as it was then named) and its satellite camp at the Yellowknife River the fledgling Corrections Division sought to evaluate its programs and their effectiveness. This decision would be operationalized as a systematic review carried out during the closing months of 1970, which identified the need for more community programs and expansion of the physical plant of the Yellowknife Correctional Institute. The delivery of correctional services were not unique to the Northwest Territories nor its aboriginal peoples. Indeed, Wilkins (1972) pointed out that:

in the absence of proven methods it was expedient to employ southern techniques, adjusting them to native needs, with the goal of developing the best possible correctional programs for Northerners (Wilkins, 1972:4).

During 1973, the Government of the Northwest Territories enacted the *Corrections Ordinance, R.O.N.W.T. (1973)* and acted upon previous studies which recommended increased institutional bedspace and opened the South MacKenzie Correctional Centre in Hay River and the Baffin Correctional Centre in Iqaluit, both during 1973. The *Corrections Ordinance (1973)*, in conjunction with the appropriate Dominion legislation, provided a structural and legal mandate for the system to operate. This creation of small, correctional institutions in the regions has contributed to a reduction in the cultural dislocation experienced by many Inuit and Dene offenders who served their sentences in Yellowknife.

In addition to the relative proximity of these regional centres to the offender's home community they (the centres) attempted to provide culturally relevant programs to their inmate populations. While exchange agreements exist between the

Territorial government and the federal and the provincial governments to provide prisoner exchanges occur to meet the needs of individual inmates, it has been the policy of the N.W.T. Corrections Service to retain Northern offenders within the Northwest Territories whenever and wherever possible.

Table 1.
Hierarchy of Courts
in the Northwest Territories

Jurisdiction (Descending)	Composition	Sitting At
N.W.T. Court of Appeal	3 Judges from the Supreme Courts of Alberta, N.W.T. and/or Yukon	Calgary or Edmonton, Alberta (semi-annually)
Supreme Court of the Northwest Territories	Chief Justice Mark DeWeerd Justice Ted Richard (N.W.T. Resident Justices)	Yellowknife and other settlements as required
Territorial Court of the Northwest Territories	Chief Judge Robert W. Halifax D/Chief Judge R. Michel Bourassa Judge B.A. Browne Judge B.A. Bruser Judge T.B. Davis (N.W.T. Resident Judges)	Yellowknife and other settlements as required (at least monthly)
Justice of the Peace Court in the N.W.T	One or more Justices from the local area	Weekly or as required

Notes: 1. Territorial and Supreme Courts only are Youth Courts.
2. Territorial and Supreme Courts are unified courts (criminal, civil, family, youth) by the nature of the circuit court system of service delivery.

Source: Griffiths, C.T. and A.L. Patenaude, "Application of the Criminal Law to Native Indians and Inuit in the Northwest Territories, Canada." (1988).

Within the Department of Social Services, the Director of Corrections is responsible for all adult and juvenile correctional facilities and programs whereas the Co-ordinator of Community Corrections is responsible for community-based correctional programs including probation. The various Regional Superintendents, of which there are five, are responsible for supervising the social workers in their respective regions. Departmental social workers provide probation, parole and after-care services.

The Yellowknife Correctional Centre, opened in 1967 with a rated capacity of 72 inmates and remodelled during 1988-1989, serves the N.W.T. as the secure facility of the correctional system. It currently houses in excess of 125 inmates. This general security or multi-level institution holds minimum, medium and maximum security sentenced inmates as well as maximum security persons remanded into custody awaiting trial.

The majority of correctional programs and services operated by Yellowknife Correctional Centre are institutionally rather than individually oriented. The centre has within the last five years removed its protective custody program and integrated that class of offender into the general population. It offers a wide range of educational, vocational, recreational and light medical services to those persons incarcerated there.

The South MacKenzie Correctional Centre is a minimum-security institution for thirty-five male and female inmates. With the exception of institutional maintenance programs, all of the centres programs are community-oriented. To strike a balance between the concepts of resocialization and self-sufficiency South MacKenzie Correctional Centre operates two major projects: A land program and a commercial fishing venture. These programs are self-sufficient with any surplus funds placed into the inmate trust fund and welfare accounts.

The Baffin Correctional Centre, whose Inuktitut name *Ikajuraturvik* means 'a place to get help', was opened in 1974 to serve the needs of Inuit male inmates from the Eastern and High Arctic settlements. Prior to that date, offenders from those settlements were transferred to either the RCMP guardroom in Iqaluit, Yellowknife Correctional Centre in Yellowknife, or South to serve their sentences in provincial and federal institutions. The major programs reflected these physical restrictions and were centred around the traditional hunting and fishing lifestyle of Inuit in the Region.

The Baffin Correctional Centre moved into a new facility during 1986 which resulted in a change of attitudes and orientation by all concerned. The Centre is a uniquely organized and operated correctional facility in terms, of both, the North and its peoples as well as the profession of corrections as a whole. It is a general purpose or multi-level facility in terms of security and program levels. In terms of staffing and program orientation the Centre is a truly cross-cultural facility.

This Centre is the only correctional facility in the world where the inmates may regularly handle firearms. The safety record of the Land Program in this regard is seen as positive by the public. Most concerns are overshadowed by the positive community service projects carried out by the inmate population such as: Spring clean-up, the digging of graves, construction of coffins and helping non-pilot organizations.

The Northwest Territories Correctional Centre for Women, originally opened in 1977, closed during 1986, will reopen during 1990-1991. Since the closure of N.W.T. Correctional Centre for Women in Fort Smith female inmates have been transferred to the remaining correctional institutions which were converted to co-correctional status. As the result of numerous complaints and at least two internal inquiries, the Minister responsible for

correctional services announced that reopening of this centre in its original community. This centre has operated, in the past, educational and vocational programs which included life skills, basic home-making skills, hygiene, and substance abuse programs.

Traditionally, in correctional terms, there have been four alternatives to incarceration in the North: **fine options, community services, restitution and community residential centres.** The implementation and effectiveness of community-based alternatives have been influenced by the attitudes of the public as a whole, the policies and decisions by the police and the courts, and by the effectiveness of traditional probation/parole operations. The major constraints facing community corrections practitioners in the Northwest Territories have been a lack of resources with which to operate meaningful community-based programs and a lack of community support for those same programs (fieldnotes, 1983-1987).

The years within the 1945-1975 period comprised a period of rapid social change for most of Canada. While the Dominion government sought to ignore to the problems faced by the nation's aboriginal population *vis-a-vis* their marginalized position in society, events during the latter part of this period would overtake them. The Dominion government reacted to perceived threats to its sovereignty claims in the Arctic by entering into a massive program of resettlement which contained implicit, rather than explicit, gestures of ownership. Rapid political and social changes were similarly taking place in the Northwest Territories as the Government of the Northwest Territories was created and began the journey towards representative and responsible government. As an act of legitimation, the criminal justice system in the Northwest Territories initially employed southern, non-aboriginal programs, adjusting them to local conditions.

Finally, the thirty years which immediately followed the close of the Second World War, 1945-1975, provide an opportunity to

examine the actions of the Dominion government through the use of Motyl's (1987) three research foci. Numerous social scientists have examined the results that the establishment of artificial settlements throughout the Northwest Territories had for the aboriginal peoples of the North (Balikci, 1970; Briggs, 1970; Damas, 1969, 1972; Honigmann and Honigmann, 1965, 1970; Matthiasson, 1975; Mayes, 1978, 1982; Paine, 1971, 1977; Vallee, 1967; Zaslow, 1971), including the fact that the settlement policy was instituted solely for reasons of sovereignty and to assuage the fears generated by the Cold War.

The notions of ethnicity and autonomy were given lip-service during the period, yet little else was effected. While the social institutions throughout the Arctic were expanded and aboriginal people were recruited into them, they continued firmly as hegemonic agents for aboriginal dependency and the maintenance of the *status quo*. Aboriginal northerners watched their desires for autonomy rise and fall during the 1945-1975 period with the conclusion of the *Calder (1970)* case, wherein they were instructed that they would have to adopt the new Euro-Canadian ways in order to claim their past!

CHAPTER IX

THE LAST FIFTEEN YEARS, 1975-1990

The old proverb which begins with the phrase "let sleeping dogs lie" could perhaps have been describing the approach which the Dominion government in Ottawa preferred to follow when dealing with the interrelated issues of aboriginal rights, northern development, and sovereignty. The problem which Ottawa was discover was that these sleeping dogs awoke hungry for their share of the national resources which had been served elsewhere in the nation.

As responses to real and perceived deprivations under an internal colonial regime a number of political action groups were created by aboriginal peoples throughout Canada (Anderson and Frideres, 1981). Notable examples of these political action groups (PAG's) included the Protective Association for Indians and Federation of Saskatchewan Indians, the Indian Association of Alberta, the Assembly of First Nations, and the National Indian Brotherhood. Indeed, Frideres (1988) provides a summary of the aboriginal PAG's (national/radical/local/multi-ethnic) which have emerged to meet the needs of Canada's aboriginal peoples:

All these organizations have become important vehicles for meeting the needs of Native peoples. They have all provided forums for the understanding and discussion of Native issues. Each of these organizations has also had to adapt its structure and objectives to existing conditions or face quickly losing its membership.

Clearly, the use of formal organizations among Natives is likely to increase. They have discovered that formal organizations carry a sense of legitimacy that can be very effective in persuading governments to act in Native interests. These organizations have also begun to produce improvements in Native conditions. Organizations continue to provide opportunities to develop leadership techniques and other political skills for those who choose to move Native issues into the political arena (Frideres, 1988:276)

While both these organizations and the aboriginal peoples they serve differ greatly so, too, do their methods. Beginning with the peaceful negotiations among the Sechelt and culminating with the recent, armed confrontations among the Mohawk Nation at the St. Regis-Akwesasne, Kanawake and Kanesatake reserves in Quebec, the differences in approach range from peaceful negotiation, public awareness campaigns involving the media and courts, to armed confrontation at blockades to nation park entrances or reserve lands. Regardless of their choice of methods all aboriginal political organizations in Canada hold the belief that aboriginal peoples are entitled to special status based on their aboriginal status and the history of aboriginal-government relations. In addition to special, aboriginal status these political action groups seek the same cultural, economic, political and social rights for their members as those already available to non-aboriginal Canadians.

According to Asch (1984) special status for aboriginal people requires a self-determinant land base from which to participate in the broader Canadian society. Indeed, Asch summarizes the aboriginal view that:

These rights flow, first of all, from the fact that the aboriginal peoples were in sovereign occupation of Canada at the time of contact, and secondly from the assertion that their legitimacy and continued existence has not been extinguished by the subsequent occupation of Canada by immigrants (1984:30).

During the one and one-half decades of the period 1970-1985, the Dominion government managed to deal not with the causes of the growing discontent and increasing politicization among Canada's aboriginal population, but to address the symptoms as they became apparent, or took on the role of, what Gusfield (1981:1-23) described as, a public problem. Indeed, much of the government's ability to avoid problems during this period was due to their

apparent commitment to the settlement of land claims. Throughout those years, the Dominion government managed to delay the settlement of land claims and resolution of the issues surrounding them by employing a two-part process: first, through lengthy discussions to set an agenda for change and, second, through the establishment of a comprehensive land claims policy and process (Frideres, 1988:127-130).

The first major case involved the Nisga'a of northeastern British Columbia. It was their protestation that they possessed a reconcilable system of land use and tenure to that in Canadian law. Furthermore, they argued that their traditional lands had not been ceded by treaty. This case, *Calder (1970)*,⁶² contained a landmark decision whereby it was recognized that the provincial government retained the land pursuant to colonial legislation which had unilaterally extinguished all Indian titles to land within the colony of British Columbia. Subsequent appeals to the British Columbia Court of Appeal and Supreme Court of Canada revealed the inherent ethnocentrism in Canadian law and legal practice in general and specifically this case.

The major points in law centred on the determination of whether, or not, Nisga'a law was congruent with the existing Canadian law and whether prior colonial law was intended as general or specific legislation to extinguish aboriginal title. By choosing the former view the courts set the tone of government-aboriginal relations and claims negotiations for the next decade. This landmark legal case would impose new structure upon those aboriginal groups seeking legal redress to various socio-structural deprivations.

⁶² *Calder v. Attorney-General of British Columbia [1970]*, 74 W.W.R. 481 (B.C.C.A.), hereafter *Calder (1970)*.

The *Calder (1970)* decision and the *obiter dictum* it contained served to set that agenda. Indeed, *Calder (1970)* would have a lasting effect on all aboriginal claims including those by Dene, Metis, and Inuit throughout the Northwest Territories. Inuit had their day in court, for example, when the people of the Hamlet of Baker Lake, N.W.T. sought legal recognition of their sovereign rights. That case, *Baker Lake et al (1980)*,⁶³ asked Inuit to provide legal proof of their title to the land by way of either occupation or title. The standard of proof was not by way of oral tradition and traditional land use, but they would be entitled to that land of which they could prove long-term use or occupation in terms of the British common law and the Canadian interpretations of it. Mr. Justice Mahoney, the trial judge, ruled that this was not proved by Inuit nor could legal title be found to the land other than the *Royal Proclamation of 1670* which extinguished aboriginal title by granting the Hudson's Bay Company ownership of Rupert's Land, which included the Baker Lake area (Asch, 1984:52).

The decisions of these two cases would give credibility to the policies and programs of the Department of Indian Affairs and Northern Development as that agency endeavoured to continue their colonial-style administration of Canada's aboriginal peoples. Recognizing the increasing public interest in aboriginal affairs and conscious of the need to improve its corporate image, Indian Affairs would begin that process of improvement by:

- a) Encouraging the orderly economic and political development of the Yukon and Northwest Territories, and
- b) Settling claims related to traditional Native use and occupancy of lands in those areas of Canada where this traditional right has not been extinguished by treaty or superseded by law (Frideres, 1983:209).

⁶³ *Hamlet of Baker Lake et al v. Minister of Indian Affairs and Northern Development et al [1980]*, 5 NWR 193, 50 CCC (2d) 377, (Fed. Ct.TD.)

The establishment of a comprehensive claims policy in 1985 reversed the Dominion government's earlier policy whereby they sought extinguishment of all land claims for all time, especially those recognized by the courts. During 1988, Frideres noted that as a result of these policy goals "negotiations had stalled and settlements of various Native claims had been few. The task force recommended that a blanket extinguishment of all aboriginal no longer be an objective" (Frideres, 1988:127).⁶⁴ The Dominion governments' comprehensive claims policy has established a lengthy process, approximately three years per claim, for the settlement of land claims.

The legal rights of the aboriginal peoples in Canada were formally recognized in the drafting of *The Canadian Charter of Rights and Freedoms (1982)*. The specific inclusion of §35 of the Charter dealing with aboriginal rights and freedoms was a major leap towards the full recognition of Canada's aboriginal peoples, their culture and heritage, and the contributions which they have and are capable of making to the development of the nation as a whole. Yet, although recognition within §35 of the *Constitution Act (1982)* is great symbolic leap, it has merely had the effect of supporting the "extinguished by treaty or superseded by law" component of the Department of Indian Affairs' mandate and, as a result, are forcing aboriginal peoples and their claims into the Anglo-Canadian legal arena, once again, for the acquisition and

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The task force's list of fifteen recommendations will not be discussed at this point. However, these recommendations are contained in Appendix III. For a fuller understanding of the issues and processes involved in the settlement of aboriginal land claims, the reader is directed to James S. Frideres' *Native Peoples in Canada: Contemporary Conflicts* (3rd Edition) (1988), David C. Hawkes' (ed.) *Aboriginal Peoples and Government Responsibility: Exploring Federal and Provincial Roles* (1989), and Bradford W. Morse's *Aboriginal Peoples and the Law: Indian, Metis and Inuit Rights in Canada* (Revised Edition) (1989).

definition of their rights. The intent of §35 of the Charter was reinforced by §16 of the defeated Meech Lake Constitutional Accord.

The second major innovation also occurred during 1985 and involved the amendments to the *Indian Act (1951)*. Indeed, this Act contained the only substantive changes to the *Indian Act* since 1951! Enacted in the face of strong opposition from many aboriginal peoples, notably among the status Indian leadership, this amendment to the *Indian Act* redressed the loss of Indian status by many aboriginal women and their children. Under the provisions of previous *Indian Acts* those aboriginal women who married non-aboriginal men or those aboriginal men who had taken the franchise, lost their Indian status under the *Indian Act*.⁶⁵ Their names would be struck from either the Band List or Indian Register. While this amendment allowed the Bands to control membership and influence the behaviour of their members, the Dominion government was able to reduce payments to the Band and its members due to reserve out-migration. Band leaders and councils regarded this as an assault on their authority and an effort to further reduce consensus among aboriginal groups (Gibbins and Ponting, 1986:38).

During the following year, the *Sechelt Indian Band Self-Government Act (1985)*⁶⁶ was enacted to provide not self-government by an autonomous aboriginal nation, but self-administration of 33 reserves by a dependent aboriginal band. Under the *Sechelt Act (1986)*, the Sechelt Band continues to be governed by its Band

⁶⁵ For a fuller understanding of the gender discrimination inherent within the *Indian Act*, the reader is directed to Kathleen Jamieson's "Sex Discrimination and the Indian Act" in J. Rick Ponting (ed.), Arduous Journey: Canadian Indians and Decolonization, Toronto, Ontario: McClelland and Stewart. 1986. pp. 112-136).

⁶⁶ The *Sechelt Indian Band Self-Government Act (1986)*, R.S.C. 1986, hereafter the *Sechelt Act (1985)*.

Council as constituted under the *Indian Act*. However, in addition to a three major changes have occurred:

1. Those federal and provincial laws of general application not inconsistent with the *Indian Act* are in force regarding the Band and its members.
2. The Band acquires the power to levy taxes on residences and businesses for local improvements.
3. The Band is permitted to borrow funds from external sources to finance band projects (Frideres, 1988:361).

One may infer, from these events, that the Dominion government is continuing to follow the practices and processes of developmental sovereignty initiated by their predecessors in 1886-1887. These efforts have given aboriginal peoples a spark of hope that they will be recognized as full members of the Canadian confederation, on one hand, while dictating that such membership, if it is granted, will be defined and controlled by the dominant society. Indeed, the example provided by the *Sechelt Act (1986)* illustrates the Dominion government intention to "provide one solution to the issue of self-government" (Frideres, 1988:362) and that solution will, most likely, be the municipal or regional example.

While diffusing aboriginal threats to its exclusive jurisdiction over their corporate lives, the Dominion government continued to negotiate constitutional development and responsible government for aboriginal and non-aboriginal populations of the Northwest Territories. First recommended by the Carrothers Report (1966) and preferring to follow the path of consultation during 1977, the Dominion government appointed the Hon. C.M. Drury to seek the consensus view of both aboriginal and non-aboriginal Northerners and make necessary recommendations to:

- Modify and improve the existing structures, institutions and systems of government;
- Extend representative, responsive and responsible government;
- Transfer or delegate federal responsibilities and programs to the government of the NWT;
- Promote native participation in government at all levels;
- Devolve powers and responsibilities to the local level;
- Protect native cultural interests (Drury, 1980:1)

Indeed, the Drury Report (1980) deserves both praise and criticism. In a positive sense, it illustrated the resentment of aboriginal and non-aboriginal Northerners on their inability to control their own destinies while burdened under Ottawa's economic and political yokes, and clearly identified the interrelations between cultural preservation, economic independence, land claims and political development in the Northwest Territories (Dickerson, 1982:457-564). Unfortunately for persons residing in the Northwest Territories, the Drury Report recommended the development of regional councils and the eventual devolution of power to the Legislative Assembly of the Northwest Territories. Indeed, both of these recommendations have occurred *de facto* rather than in law. Rather than presenting a critical analysis of the state of territorial political development, the Drury Report (1980) appeared to be "an excellent survey of problems of political development in the north" (Dickerson, 1982:457).

The development of Regional Councils throughout the N.W.T. has continued since the release of the Drury Report (1980). These quasi-legal councils are comprised of representatives from each of the elected Hamlet/Town Councils within the appropriate geographic region. The political groundwork of the previous five years produced the formation, in 1983, of the Baffin Regional Council (B.R.C.) which was composed of the mayors of each Baffin region

community. The exceptions being those unincorporated communities and those which remain as such. This latter council appears as the logical extension of the political wills of the people and their elected representatives. The influence of the Nunavut discussion and working papers and the movement of the region towards those conditions necessary for its creation are appearing.

The regional councils provide forums for each region to discuss issues of common concern, seek solutions to problems, and to lobby (through collective action) for needed improvements and the resources to become self-determinant.⁶⁷ The agenda and timetable for political evolution of the Northwest Territories continues to be controlled by external rather than internal forces. The Territorial government continues to enact legislation, such as the *Municipalities Ordinance (1974)*,⁶⁸ the *Regional and Tribal Councils Ordinance (1983)*,⁶⁹ which contribute to the development of the territorial infrastructure, while the Dominion government retains the power to determine when, and if, the notion of provincial status will be brought before the full partners of confederation. It is unfortunate, indeed, that the constitutional negotiations which culminated with the 1987 tabling of the Meech Lake Constitutional Accord did not include active participants from the governments of the Yukon or Northwest Territories. These developments have angered both aboriginal and non-aboriginal Northerners as they now perceive that their hopes for self-determinism and provincial status will receive only 'lip service'

⁶⁷ For a fuller understanding of the role of regional and tribal councils within the Northwest territories, the reader is directed to James C.D. Carlson's Regional Councils in the NWT (1986).

⁶⁸ *An Ordinance respecting Municipalities*, RONWT, 1974, c. M-5, hereafter the *Municipalities Ordinance (1974)*.

⁶⁹ *An Ordinance respecting Regional and Tribal Councils*, RONWT, 1983, c.7, hereafter the *Regional and Tribal Councils Ordinance (1983)*.

from Ottawa. The lack of Dominion government action, in this regard, since the release of the Drury Report (1980) clearly illustrates that Ottawa's - colonial attitudes regarding the Northwest Territories will continue into the future.

The political awareness of aboriginal Northerners was felt most-assuredly within the Legislative Assembly in Yellowknife by 1982 with the creation of the N.W.T. Constitutional Alliance, composed of the Members of the Legislative Assembly who chose to be members of either the Western Constitutional Forum or Nunavut Constitutional Forum. Division was legitimized in 1982 by the Referendum on Division of the N.W.T. which showed overwhelming eastern support but mixed western support for division. The Dominion government tactfully agreed to the concept but under strict conditions which included an undisputed settlement of boundaries. Yet the major efforts of the Inuit Tapirisat of Canada and other Northern native political interest groups have directed towards the settlement of land claims and the development of a political infrastructure operated by native people.

Since 1976 there have been land claims presented by Dene, Metis, and Inuit of the Northwest Territories. The Nunavut Constitutional Forum published an information booklet in 1983, titled simply Nunavut, which reiterated Inuit desires for an "ethnically-based jurisdiction" within the current constitutional parameters of the Canadian federal state (N.C.F., 1983:55). This was followed in 1983 by several NCF documents: Building Nunavut, which consolidated both earlier claims and those for the development of a Western Arctic Regional Municipality (WARM) as proposed for Inuvialuit by COPE, and three working papers Nunavut: The Division of Power, Nunavut: Financial Perspectives and Nunavut: Options for Public Lands Regime. The most interesting aspect of these latter documents was the ethnically-based infrastructure which included taxation and the administration of justice, a curious mixture of modern and traditional ways.

The joint Dene-Metis publication Public Government for the People of the North proposed division of the territories along similar lines to those of the Nunavut proposal the emphasis would be upon the entrenchment of Dene and Metis cultural and political desires. The new territory would also be called "Our Land" or *Denedeh* in the language of the Dene. As with the Nunavut proposal, *Denedeh* would seek the preservation of the culture, values and aboriginal rights of both status and non-status Indians and the Metis of the N.W.T. by the acquisition of provincial status. Interestingly, neither Dene nor Metis would comprise the majority, merely one-third of the population, in the new jurisdiction although they sought political control of it (Robertson, 1985:15).

The most dramatic developments since 1985 have been the Inuvialuit and Nunavut land claim settlements. The recently rejected Dene-Metis Agreement-in-Principle would have completed the extinguishment of aboriginal title in the Northwest Territories. Thus, the Dominion government would have gained legal control over the entire Northwest Territories and removed potential, internal threats to its claims of Arctic sovereignty.

The administration of justice in the Northwest Territories continues to search for its own identity from among the competing goals of the dominant Euro-Canadian legal system and often ignored aboriginal community standards. Often researchers who conduct fieldwork among the aboriginal peoples of the Northwest Territories are confronted with the notions of imposed versus indigenous legal systems and the notion of control from outside the community. While these issues are usually brought forth by the community members who have been acculturated in the ways of the dominant society, community elders and the established leadership speak more often of the efficacy of these two systems rather than their origins in either the incursive or indigenous society.

Provincial Court Judge James Igloliorte, of Goose Bay Labrador

and himself an Inuk, notes that neither system is entirely pleased nor entirely appropriate for the administration of justice in aboriginal communities. Responding, in part, to the question "How can we reconcile the whole business of the Canadian justice system brought into the communities with the need for Native people to address their problems and to have a system that is useful for them?" While at a recent aboriginal justice conference at Thompson, Manitoba, Judge Igloliorte commented:

There is no pleasure in a system in which people in small communities who are of native ancestry are subjected to an imposed system. The only time we are going to have a proper justice system for northerners and for Inuit people, and for Indian people, is when the community itself is allowed, either through self-government or some form other means, to show that they had a system of social control which worked and that could be used for developing alternatives to the existing system. It can be a system that is part of the community and which is part of social control, but doesn't have all of the legal formalities which are so difficult and so foreign for the people to accept. As a judge and as an Inuit person who is required to impose the legal system I try to lessen the impact of the system on the people. The way to do that is to make sure that everyone knows that they can talk to a lawyer, they can talk to the lawyer with an interpreter when they come to court, and that everything will be interpreted.

...But the short answer to your question is really, from my opinion, that it should be replaced from something that comes out of the community that's valid to the people who are there. The only thing that is going to help us, is time and conferences of this nature where a different viewpoint is put forward, and finally reaches the people who make laws. Because, I suspect, that in one form or another, either from the community or from the government, the primary issue will be changing the laws so that they reflect what the people want (Northern Justice Society, 1990:6-7).

Mr. Eddie Gardner, himself an aboriginal person and currently Chief of Native Programs for the federal Department of Justice, noted that these complex problems are really:

a matter of trying to resuscitate the community and get the people more involved. It doesn't necessarily mean an influx of experts, but rather something that the communities themselves can utilize and can take more control over what needs to be done to improve life in the community (Northern Justice Society, 1990:18).

Policing services throughout the Northwest Territories continues to be delivered by the Royal Canadian Mounted Police through a contractual agreement between the Government of the Northwest Territories and the federal Department of the Solicitor General. At the current time, not every community in the Northwest Territories has a resident RCMP detachment and are subsequently served on a regular and an "as required" basis by patrols from a neighbouring detachment. While nearly every settlement within the Northwest Territories express the desire to have an RCMP detachment established within their corporate limits, they have diverse ideas concerning the type of police services they receive from that same detachment.

Two competing models of policing, the 'community specialist' and the 'enforcement specialist,' often emerge during discussions with community members and criminal justice practitioners on the subject of policing in the North. The 'community specialist' officer becomes part of the community in which they serve and attempt to facilitate the growth of the community whereas the 'enforcement officer,' on the other hand, tends to become alienated from the community through an emphasis on a 'by the book' approach to policing. These two categories are not necessarily irreconcilable and may, in actuality, form the ends of a continuum along which the police officer may move to meet the shifting needs of the community. One unidentified speaker, at a recent aboriginal justice conference, commented on the roles of the police and the community:

The police and the Special Constables are a major part of the criminal justice system. And the police have

a great deal of discretionary power, particularly in relation to the *Young Offenders Act* and diversion. You need community Elders to be involved in those types of issues so that you don't have to go to the justice system. The Elders can be a valuable resource in the community. I think that the whole role of policing in the communities is changing to more of a social function, rather than being an enforcer. The police have to change our attitudes. Police officers have to change their attitudes and the governments have to change their attitudes of what our role is (Northern Justice Society, 1990:9).

At the same conference, RCMP Sergeant Brian Lynch agreed with the need to shift to a community-based model of policing aboriginal communities. According to Lynch:

Every Native community, every northern community, has its own identity and its own characteristics. As tax payers, I am a tax payer as well as all of you, but we don't have the dollars to increase the amount of police officers. That's where you've got to put more responsibility back on the community (Northern Justice Society, 1990:35).

One approach used to put the community back into policing has been the RCMP Indian Special Constable Program or 3B Option for policing aboriginal communities. Since their arrival in the residual Northwest Territories, the Mounted Police have utilized aboriginal persons as Special Constables to perform a variety of tasks which have included the handling of dog-teams, guiding, and interpretive duties. Since the late 1970s these duties have been expanded to include nearly every aspect of general police duties in their settlements and the Indian Special Constable Program has been formally instituted. Griffiths and Patenaude (1988) commented that this "indigenization" of the R.C.M.P. is helping to bridge the cultural gaps between the mainly Euro-Canadian officers and the communities which they serve" (1988:22).

As beneficial to both the criminal justice system and the

community as the Special Constable Program⁷⁰ as this program has been, numerous concerns have emerged from the two partners, the police and the communities they serve, concerning the Special Constable Program. One concern which emerges from the police perspective, according to Lynch, is stress:

Up until a few years ago, we had some difficulty keeping all of the positions filled. Policing is a stressful job. From a Native perspective, a Native person working as a special constable, it is much more difficult. They are dealing not only with the stresses of policing but they are dealing with the stresses of being a Native and being policemen. This often results in problems. Native people cannot see the criminal justice system or the policing system as relevant to them. Native people seem to think that the Native person who is an Indian Special Constable is crossing the line. They often think that, "Rather than being one of us, he became one of the police or part of the justice system, part of the legal system (Northern Justice Society, 1990:36).

Similar concerns have also been identified by aboriginal peoples as noted by one unidentified aboriginal speaker:

But there are even problems with the Indian Special Constables. I know one in particular who has been working for several years and who has had good training and who is really good at his job, but he is working with almost all of his own relatives. And he has had a lot of difficulties with that. On one occasion, he attempted suicide because it affected him so greatly (Northern Justice Society, 1990:10).

Recently, the RCMP have taken measures to address the problems encountered by Special Constables by conducting conferences for members of "G" Division in the Northwest Territories. These conferences permitted the sharing of common problems encountered

⁷⁰ For the purposes of this discussion, the author has dropped the term "Indian" from the title of this program. This has been carried out as Dene, Metis, and Inuit have been recruited into the program.

and individual means of coping with those same problems. On a more global basis, RCMP Commissioner Inkster recently announced the cancellation of the Indian Special Constable Program as one method of improving the, often negative, image of aboriginal police officers and the quality of services. For those Special Constables already in the Force, they will be given the opportunity to upgrade their academic and professional qualifications.

Judicial administration has also been adapting during the last fifteen years. This state of transition was best summarized by Chief Justice Laycraft of the NWT Court of Appeal in *R. v. J.N.* (1986)⁷¹ when he commented:

For the last quarter century, much of northern Canada, particularly in its more remote regions, has been a land in crisis. The traditional institutions and the old cultures of its people are being replaced or modified, in collision with influences from the South (*R. v. J.N.* [1986], 1986:131).

During 1988, the Report of Justices of the Peace and Coroners was released by the Government of the Northwest Territories. The Report contained numerous recommendations aimed at improving both the delivery of services and the image of the courts, as well as qualifications and training of Justices-of-the-Peace. As the Justices-of-the-Peace face the same criticisms as the Special Constables in the Northwest Territories, they fought to remain effective jurists and members of the community in which they live. This has had the favourable result of having two Justices, one aboriginal and one non-aboriginal, sitting together to hear cases (Patenaude, 1987).

The juridically-trained courts (Territorial and Supreme Courts), have also struggled with competing notions of Canadian

⁷¹ *R. v. J.N.* [1986], 1986 N.W.T.R. 128, at p.131, (N.W.T. Ct.A.).

jurisprudence and culturally-relevant, community-based sanctions. Commenting on the operation of the circuit courts in both Greenland and Canada, Chief Judge Hans Christian Raffnsoe of the High Court of Greenland, noted that:

It would seem to me that a major problem with the circuit court is that, as a judge, you are flying in and making decisions about people and you do not belong to that society. It's difficult for any person, including a judge, who is from a different community to go into another community and be aware and identify problems and concerns of that community (Northern Justice Society, 1990:3-4).

The flexibility and cultural awareness which Justice Sissons attempted to introduce into the jurisprudence of the Northwest Territories has not always been utilized and, when applied, have often been overturned by the NWT Court of Appeal.

The decisions of Chief Justice Harvey of the Alberta Court of Queen's Bench and Mr. Justice Marshall of the N.W.T. Supreme Court illustrate. Indeed, the former jurist stated that:

they have a right to have their case considered fairly, and fully and honestly; but on the other hand they owe a corresponding duty...the laws are the same for all; they are all equal before our laws, and what would be an offence for one would be an offence for all (in Moyles, 1979:79-80)

whereas the latter justice echoed those thoughts by stating:

No matter how these matters are seen in a particular community, there is only one criminal law for all Canada and for all Canadians...This is where there is a conflict between their Native custom and valid criminal law. Canadian criminal law applies to all Canadians. This, of course, does not mean that Native traditions and customs will not be honoured; they will. But where they conflict with the criminal law of Canada, the criminal law must be followed (in R. v. J.S.B. [1984])⁷²

⁷² R. v. J.S.R. [1984], N.W.T.R. 210 (N.W.T.S.C.).

Yet, these two decisions have not discounted the inclusion of custom and customary law into the criminal law and courts of Canada, but have presented the circumstances by which they may be included. The inclusion of customary law into that arena must, again, be carried out in a manner which complies with those juridical prerequisites mentioned by Yabsley (1984). One example of the outcome of introducing customary law into the courts of the Northwest Territories is found in Justice Marshall's earlier comments in *R. v. J.S.B. [1984]* concerning the applicability of custom in the Canadian courts. This notion is supported by a second case, *R. v. Baillargeon [1986]*⁷³ which resulted in a similar outcome for the accused who had inflicted grievous bodily harm on his wife over a lengthy period of time. There Justice Marshall stated:

Spousal assault is no less serious because it occurs in a Dene village rather than a depressed or even affluent section of Toronto or Halifax...In my view, to take account of culture, isolation and other attitudes which are not in accord with clear Canadian law is just to delay the day of atonement. It only puts off the inevitable (in *R. v. Baillargeon [1986]*, 1986:126).

The aboriginal communities in the North have realized the value in the non-aboriginal system of justice in dealing with problems or offenders that are too sensitive or disruptive to be handled by traditional or community-based methods. One again, an anonymous aboriginal speaker is quoted as saying that:

The basis of law and order is to provide some sort of social order and to preserve it. And all that law and order was meant for was to help people to effectively deal with certain problems....From the Native perspective and in Native culture, many things are civil rather than criminal matters. And there is a peacemaking system for resolving disputes. One party suffered and another party didn't necessarily win, but both parties understood that

⁷³ *R. v. Baillargeon* [1986] N.W.T.R. 121 (N.W.T.S.C.)

there had to be some sort of common ground (Northern Justice Society, 1990:95).

One area of common ground which has not been attained, yet, is within the area of correctional services for offenders. It has been accepted by researchers that aboriginal peoples did not practice any form of incarceration, however, their sanctions have been far more drastic in cases where the survival of the group was concerned, e.g. sanctioned executions and banishment. The expansion of correctional services into the communities has resulted in a reintegration of traditional values and beliefs into corrections, notably within the delivery of probation and parole services. The sanctions of mediation and restitution have their counterparts within both aboriginal and non-aboriginal society which judges and justices have focused on. Speaking on the operation of a youth justice committee in Hay River, NWT, Angela Lantz illustrated the value of mediation:

After everyone has been contacted, a meeting is then set with all of the parties involved: the youth, the victim, and the parents. Mediation sessions are held. The guidelines for the mediation sessions are that there will be no interruptions, people can raise their voice, but only in a measured way. During the mediation sessions, there is an opportunity for the youth to confront the victim and to apologize. That is one of the hardest things for youths to do. If the youth had gone into court and plead guilty, the youth never sees the effect of his or her crime on the victim or the victim's family (Northern Justice Society, 1990:82).

These paragraphs have focused attention on the actions of the Euro-Canadian government to deal with what it has perceived as "the Indian problem," "the problem of northern autonomy," and the "problems of sovereignty." Unfortunately, there have been very few published materials, however, on the similar perceptions of and efforts by the aboriginal peoples of Canada to deal with their own public problem, namely "the White problem" for Indians, Inuit, and

Metis in Canada.⁷⁴ This lack of dialogue between holders of these two points of view is an area which needs to be addressed by scholars of the relationships between the Canadian state and its aboriginal citizens.

⁷⁴ Two notable exceptions are the Northern Justice Society's Preventing and Responding to Northern Crime (1990) and Howard Adams' Prison of Grass: Canada From a Native Point of View (1989).

CHAPTER X

SUMMARY AND CONCLUSIONS

This thesis has focused on the efforts of the Dominion, and later Territorial, governments since 1870 to the present. Indeed, it has been argued that those efforts were processual in nature and held as their ultimate goal the building of a nation: Canada. While there are many threads which create the common bond which holds the nation together, this thesis will examine only three such threads: Canadian sovereignty, aboriginal administration, and the administration of justice, as each pertains to the Northwest Territories.

Employing a theoretical perspective which is based on Motyl's (1987) state-ethnicity-stability triad and supported, in turn, by the judicious use of primary and secondary sources, this thesis illustrates the disparities which exist and are maintained by the ethnic patterns of authority in Canada. The state as an ethnic terrain of struggle (Motyl, 1987) sought to maintain its dominance over those lands it recently acquired. The institutions of the state, notably the police and the courts, were comprised of individuals of Euro-Canadian ancestry who inscribed their own cultural beliefs on the institutions they served. The result was that the Anglo-Canadian justice system was transformed into a set of institutions dominated by a single ethnic authority pattern. These institutions soon developed ethnic patterns of domination.

Having acquired the vast areas known as Rupert's Land and the North-West Territories from Great Britain in 1870, the Dominion government initiated a series of actions which were illustrative of its desire to maintain and extend the patterns of authority it currently practised in the provinces of Canada. Once these patterns were maintained, Motyl (1987:14) asserted, the state maintained itself. The North-West Mounted Police and the

Stipendiary Magistrates managed to continue those authority patterns of the Anglo-Canadian state which the Hudson's Bay Company had initiated decades earlier.

Aside from these the notions of developmental sovereignty (Morrison, 1973:246-247), the Dominion government enacted several pieces of legislation to present an illusion of Dominion government control to the outside world at a time when the region was sparsely inhabited. The Dominion government approached the notions of ethnicity and/or race in much the same manner as its Imperial predecessor. Indeed, if the peoples encountered during the search for empire were less civilized as Europeans of the day, they were "savages" and could be treated as such. During the late pre-Confederation/early post-Confederation years, the Provincial and Dominion governments enacted a series of Acts, such as the *Gradual Civilization Act (1857)* which were concerned with the enhancement of the aboriginal peoples of the nation, albeit with the already acculturated MicMac, Huron, and Mohawk. The beliefs of many contemporaries were such that those aboriginal peoples residing in the eastern areas of the nation were more civilized than their western relations. From a purely economic perspective, as the European demand for staples increased and the Euro-Canadian methods of obtaining them improved, Innis (1967:24-25) argued, that the participation rate and relative importance of the aboriginal people to the economy decreased.

The "manifest destiny" actions of the Americans and their government were interpreted as threats to the fragile Canadian state during the first thirty years after Confederation. The former's expansion into the western plains, the acquisition of Alaska from Imperial Russia, and requests for mining rights in southern Baffin Island, were interpreted in Ottawa as a clear signal that the United States wished to occupy or purchase all of North America. The trans-border activities of wolf-hunters and whisky-traders based out of Montana contributed to the general

lawlessness of the early Northwest Territories, culminating in the Cypress Hills Massacre in 1873. The Dominion government responded to these incidents with the creation of a force of "500 mounted rifles" who would march west and eventually become the world-renown Royal Canadian Mounted Police. Thus, any cross-border trade would soon be regulated by the Police.

The notion of the state-ethnicity-stability triad becomes clear when the interrelations between the aboriginal peoples and the agents of the Canadian state are discussed. Beginning with the *Indian Act (1876)*, Dominion legislation and practices have had elements of each aspect of the Motyl's triad. The goals of the *Indian Act (1876)* were the "protection, civilization, and assimilation" of Canada's aboriginal population. When Canadian settlers began to arrive in the Red River Colony, competition between the mainly Anglo-Canadian farmers and the aboriginal peoples was inevitable. The *seigneurie*-style land tenure practised by the Metis conflicted sharply with the systems of allocation and measurement of Ontario. Indeed, the style of river-bed fans, as the strips of Metis land resembled, restricted access to the rivers while the sectional-style of Anglo-Canadian land use restricted access to the decreasing buffalo hunts for the aboriginal peoples. Similarly, the Indians of the prairies were undergoing a period of culture stress and transition from a hunting mode of production to a more sedentary lifestyle due to a recent famine cycle and failures in the buffalo hunts. In many ways, they could be described as a purchase society (Helms, 1969) which was entering one or more of the stages which characterize a revitalization movement (Wallace, 1972).

When the tensions erupted into conflict during 1869-1870 and, again, in 1885 the Canadian state took action within the provisions of the *Constitution Act (1867)* and deployed troops and police to deal with the "rebellions." Both rebellions failed as a result of internal dissention among the rebels/patriots and, in the second

instance, armed opposition by resolute opponents. Resolving this order-maintenance crisis by force, the Dominion government then tried and sentenced the aboriginal leadership for sedition and treason. Following the trials, any possible aboriginal resistance was minimized. The results of those trials included:

1. Aboriginal leaders executed:	09
2. Indians imprisoned:	23
3. Metis imprisoned:	21
4. Indian/Metis killed in action:	<u>49</u>
	102

The state managed to ensure its continued growth and expansion into the prairies of the, then, North-West Territories. The Dominion government retaliated against the aboriginal populations as a whole, by enacting repressive legislation which had as their stated goals: protection, civilization, and assimilation. The final component of the state-ethnicity-stability triad presented by Motyl (1987) was formed by the NWMP remaining on the prairies, keeping the peace and supporting the local Justices-of-the-Peace, and the few Stipendiary/Police Magistrates, thus ensuring that justice was seen to be done, at least on paper.

Between the second Riel Rebellion and the discovery of gold in what was to become the Yukon Territory, the Dominion government carried out symbolic and developmental activities aimed at securing Canada's frail claims to the western prairies and the unforetold wealth of her "Arctic Attic." With the advent of the Klondike Gold Rush, the Dominion government enacted additional legislation to give the pretence of Canadian sovereignty. However, when the mainly American miners began to operate informal "miner's councils" to administer justice in the gold fields and the Dominion government realized that this was, like the gold fields themselves, an untapped bonanza of customs duties and tax revenues. Subsequently, the Dominion government dispatched a reinforced

company of heavy infantry from the Royal Canadian Regiment, a detachment of Horse Artillery with packable cannon, and over two hundred mounted policemen! The Canadian Red ensign and/or Imperial Union Jack flew over the Yukon declaring Canadian sovereignty.

The Yukon was declared a Provisional District within the North-West Territories and the appropriate civil servants were appointed. A judicial system was also introduced into the District and although the "system" convicted and sentenced offenders to lengthy terms of incarceration, they were served, for the most part, in local NWMP guardrooms. Once again, the Canadian state ensured its growth and expansion in terms of geographic and institutional expansion. Interesting comments have emerged from this period of time which illustrated that the government, through its agents, were not well disposed towards the aboriginal peoples of the area having found them less industrious and self-sufficient than their counterparts on the prairies.

During the next thirty years, approximately 1905-1930, the Dominion government answered challenges to its arctic sovereignty from its circumpolar rivals, i.e. Denmark, Norway, and the United States, through the courts, and lump sum payments, and a sovereignty patrol, the Canadian Arctic Expedition (1913-1918), under the guise of a survey of the lands and their peoples. During the same period, the Dominion government consolidated its legislative and developmental sovereignty over the aboriginal peoples of Canada. Amendments to the *Indian Act* restricted the practice of aboriginal customs, relegated status Indians to a strange, agricultural lifestyle on the worst possible land for those purposes, enculturated aboriginal children in the new ways through compulsory school attendance, and most damaging of all, authorized Indian Agents to inculcate a sense of despair, through a system of tutelage and patronization.

As these events were occurring, the peoples of the Northwest

Territories were clamouring for more autonomy and representative government. Changes to the *Northwest Territories Act (1875)* resulted in the shrinking of the Territorial land mass as the provinces of Alberta and Saskatchewan were created while the provinces of Manitoba, Ontario, and Quebec had their respective boundaries extended northwards. At this time, the colonial nature of government in the North became more apparent as the Northwest Territorial Council remained a collection of federally appointed civil servants residing in Ottawa.

During the next one and one-half decades, the Dominion government remained silent on aboriginal and northern issues, preferring, it seemed, to ignore these marginalized populations when ever possible.

With the advent of the Second World War, attention was paid to the Northwest Territories but not to the aboriginal peoples of Canada. The strategic location and resources of the North were exploited and, thus, began a new era in Federal-Territorial relations. This inattention towards the aboriginal peoples of Canada was also changing as the Dominion government had a difficult time accepting its own treatment of its citizens while condemning other nations. Indeed, the aboriginal peoples of Canada did not yet have the right to vote in federal elections!

Since the end of the war, the Dominion government entered a new phase in its relations with the marginalized peoples of the North and the, even less advantaged, aboriginal peoples of Canada. This phase could best be described as the corporate phase, wherein, the Dominion government attempted and, in many ways, succeeded in governing from a distance: responsibility and control without accountability! By granting limited autonomy, but retaining fiscal control, to a newly-created Government of the Northwest Territories it could assert sovereignty in the Arctic. Through similar measures, it was able to devolve much of its mandated

responsibilities to a band, the Sechelt Band, while retaining a large degree of fiscal control. An implicit warning from the Dominion government is apparent to both the territorial government and the aboriginal peoples: If you can't handle this little authority, which we doubt, you'll never be granted it again!

The current directions in aboriginal affairs and northern development which the Dominion government appears to be heading still conforms to the state-ethnicity-stability relationships expressed by Motyl (1987). Again, the senior level of government is attempting to extinguish land claims and, wherever possible, existing treaties. The municipal/regional and land claims models appear to be working and afford a mechanism by which the Dominion government could negotiate its constitutional responsibilities away

Since the signing of the *James Bay Agreement* (1976)⁷⁵ the status of reserve lands and aboriginal culture have been in question and will continue to be contentious if the various governments of the day are capable of unilateral or unequal bilateral changes to the title of aboriginal lands. The current jargon includes the term "land claims" as a central part of the aboriginal or "Indian" question in Canada. At this point, it seems extremely appropriate to note that:

as most people who are involved in this field are aware that the term Land Claims is too narrow to cover the political, economic, cultural and administrative issues involved. Even "Native Claims" seems to confer a suppliant status on the native people, and begs the moral and legal questions. A new relationship between native people and major Canadian institutions is being worked out (Crowe, 1979:31).

The history of aboriginal/government relations in Canada has

⁷⁵ *The James Bay and Northern Quebec Native Claims Settlement Act* (1976, RSC 1976-77, 25-26 Elizabeth II, c.32, hereafter the *James Bay Agreement* (1976)).

been assimilationist from the onset of the last one hundred and twenty years. The ethnocentric and racist practices of successive governments have done little else than to create a cycle of dependency among Canada's aboriginal peoples where once self-determinism and pride existed (Mayes, 1978). There has been little real change in this situation over the last century. This inaction on the part of the Dominion government and Canada's aboriginal peoples have been a denial of the past by the former and an enshrining of the past by many of the latter.

The current policies and practices of the various levels of Dominion government have been motivated by a sincere desire to "solve the Indian question" since 1945, albeit from a position of power and advantage. Unfortunately, there is no political method available to them which would not be seen as racist or cultural genocide by either the Canadian electorate or the world-at-large.

It only remains to be seen how long the patience of the aboriginal peoples will continue to withstand the policies and practices of the Dominion government, their loss of status as a charter member of the Canadian polity, and what actions will be undertaken at that time. Comments by, then, Minister of Indian and Northern Affairs, Hon. Bill McKnight, to the effect that northern aboriginal peoples, as far as land claims are concerned, should "take the money and the land or nothing" is indicative of both the power and the growing impatience of that level of government. Dominion government practices have not only marginalized Canada's aboriginal peoples but, now have a new weapon in the decolonization process. Indeed, the power of the government in this type of power/agency relationship will be illustrated to the remainder of the country along with the internalization of dependency and inferiority by many aboriginal peoples, if the programs set up to replace dependency under a colonial-style administration fail.

Throughout this thesis, the writer has been selective in his

choice of which events, issues, and personalities to present to the reader. This is not intended to imply that those topics not included were, in any way, unworthy of note. On the contrary, they are significant, but the choice of events and interpretations was carried out in order to present a viable examination of the legal and social change which have occurred in the Northwest Territories since 1870. Indeed, this thesis is indicative of the approach presented by Alexander Motyl in his Will the Non-Russians Rebel?(1987) and offers one, of the many, perspectives available to scholars examining the relations between the Canadian state, its subordinant Northwest Territories, and the aboriginal peoples of the North and the nation as a whole. While the "problems" which have been discussed throughout these chapters were interpreted through actions of the hegemonic institutions of the Dominion government, they have fail to account, as Motyl (1987) noted in the Soviet experience, for the constraints which a state's patterns authority place upon it. These patterns:

both delimit the possible range of a state's policies and demand the implementation of certain of these policies. In this case, the state itself is its own primary confining condition. Paradoxically, the logic of survival may, under certain circumstances, fatally circumscribe state autonomy and thus prove to be the major obstacle to self-maintenance. Unable to prevent or contain those forms of collective activity that are both supportive of or detrimental to them, unable to act autonomously, states may freeze, ineffectively pursue survival, and perhaps cease to exist. Quite simply, they will have lost the tug-of-war (Motyl, 1987:19).

In closing, one is left with three questions which beg answers:

1. Will the Dominion government continue to deny the existence of aboriginal title, requiring the aboriginal peoples to accept Kanesatake-style negotiations?
(state reaction)

2. Will the socio-structural deprivation experienced by Canada's aboriginal peoples be redressed or continue?
(reaction to ethnicity)
3. Will the current trend towards civil disobedience and/or armed confrontation continue to be hallmarks of the government-aboriginal relations in Canada?
(threats to stability)

Failure to answer these questions may result in the Canadian state losing the stability tug-of-war conceived by Motyl (1987).

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APPENDICES

APPENDIX I

The Royal Proclamation of 1763

(Reprinted in RSC 1970, Appendices, pp.125)

(Reprinted in Aboriginal Peoples and the Law, 1989. pp.52-54)

And, whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds - We do therefore, with the Advice of our Privy Council, declare it to be Our Royal Will and Pleasure, that no Governor or Commander in Chief in any of our Colonies of Quebec, East Florida, or West Florida, do presume, upon my Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments, as described in their Commissions; as also that no Governor or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, and until our further Pleasure be Known, to grant Warrants of Survey, or pass any Patents for Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.

And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our said new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid:

And We do hereby Strictly forbid, on Pain of Our Displeasure, all our loving subjects from making any Purchase or Settlements whatever, or taking Possession of any Lands above reserve, without our special leave and License for the Purpose first obtained.

And, We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or

purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.

And Whereas Great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the Great Prejudice of our Interests, and to the Great Dissatisfaction of the said Indians; In Order, therefore, to prevent such Irregularities for the future, and to the End that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council, strictly rejoin and require, that no private Person do presume to make any Purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where, We have thought proper to allow Settlement; but that, if at any Time any of the said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for the Purpose of the Governor or Commander in Chief of our Colony respectively within which they shall lie; and in case they shall lie within the limits of any Proprietary Government, they shall be purchased only for the Use and in the name of such Proprietaries, comfortable to such Directions and Instructions as We or they shall think proper to give for the Purpose; And We do, by the Advice of our Privy Council, declare and enjoin, that the Trade with the said Indians shall be free and open to all our Subjects whatever, provided that every Person who may incline to trade with said Indians do take out a License for carrying on such Trade from the Governor or Commander in Chief of any of our Colonies respectively where such Person shall reside, and also give Security to observe such Regulations as We shall at any Time think fit, by ourselves or by our Commissaries to be appointed for this Purpose, to direct and appoint for the Benefit of the said Trade;

And We do hereby authorize, enjoin, and require the Governors and Commanders in Chief of all our Colonies respectively, as well those under Our immediate Government as those under the Government and Direction of Proprietaries, to grant such Licenses without Fee or Regard, taking especial care to insert therein a Condition, that such License shall be void, and the Security forfeited in the case that Person to whom the same is granted shall refuse or neglect to observe such Regulations as We shall think proper to prescribe as aforesaid.

And We do further expressly enjoin and require all Officers whatever, as well as Military and those Employed in the Management and Direction of Indian Affairs, within the Territories reserved as aforesaid for the Use of said Indians, to seize and apprehend all Persons whatever, who standing charged with Treason, Misprisons of Treason, Murders, or other Felonies or Misdemeanors, shall fly from Justice and take Refuge in the said Territory, and to send them under a proper Guard to

the Colony where the Crime was committed of which they stand accused, in order to take their Trial for the same.

Given at our Court at
St. James' the 7th Day
of October 1763, in the
Third Year of our Reign.

GOD SAVE THE KING

APPENDIX II

STATUTES CONCERNING NORTHERN CANADA

Imperial Statutes

An Act of Settlement, 1701, 12-13 William III, c.2, 1701

Articles of Capitulation (1759).

The Treaty of Paris (1763).

Royal Proclamation (1763)

An Act for the Further Introduction of English Criminal Law into Upper Canada, 1800, 40 George III, c.1, 1800.

An Act for extending the Jurisdiction of Courts of Justice in the Provinces of Lower and Upper Canada, to the Trial and Punishment of Crimes, and Offenses within certain parts of North America adjoining to the said Provinces, 43 George III, c. 138, 1803.

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An Act to make further provision for the government of the North West Territories, 1871, Statutes of Canada, 34 Victoria, c.16, 1871.

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An Act respecting the Administration of Justice, and for the Establishment of a Police Force in the North West Territories, 1873, Statutes of Canada, 36 Victoria, c.35, 1873.

An Act to amend "An Act to make further provision as to Duties of Customs in Manitoba and the North West Territories," and further to restrain the importation or manufacturer of Intoxicating Liquors into or in the North West Territories, 1874, Statutes of Canada, 37 Victoria, c.7, 1874.

An Act to amend "An Act respecting the administration of Justice for the establishment of a Police Force in the North-West Territories," 1874, Statutes of Canada, 37 Victoria, c.22, 1874.

An Act to establish a Supreme Court, and a Court of Exchequer, for the Dominion of Canada, 1875, Statutes of Canada, 38 Victoria, c.11, 1875.

An Act to amend and consolidate the Laws respecting the North-West Territories, 1875, Statutes of Canada, 38 Victoria, c.49, 1875.

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An Act respecting the North-West Territories, and to create a separate Territory out of part thereof, 1876, Statutes of Canada, 39 Victoria, c.21, 1876.

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An Act to amend and consolidate as amended the several enactments respecting the North-West Mounted Police Force, 1879, Statutes of Canada, 42 Victoria, c.36, 1879.

An Act respecting the safe keeping of dangerous Lunatics in the North-West Territories, 1879, Statutes of Canada, 42 Victoria, c.38, 1879.

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An Act to remove doubts as to the effect of "The North-West Territories, Act, 1880," and to amend the same 1882, Statutes of Canada, 45 Victoria, c.28, 1880.

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An Act respecting the administration of justice, and other matters, in the North-West Territories, 1885, Statutes of Canada, 48-49 Victoria, c.51, 1885.

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An Act respecting the North-West Mounted Police Force, 1885, Statutes of Canada, 48-49 Victoria, c.54, 1885.

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An Act respecting the North-West Territories, 1886, Revised Statutes of Canada, 49 Victoria, c.50, 1886.

An Act respecting Real Property in the Territories, 1886, Revised Statutes of Canada, 49 Victoria, c.51, 1886.

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An Act respecting the application of certain laws therein mentioned to the Province of Manitoba, 1888, Revised Statutes of Canada, 51 Victoria, c.33, 1888.

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An Act to authorize the granting of Pensions to members of the North-West Mounted Police Force, 1889, Revised Statutes of Canada, 52 Victoria, c.26, 1889.

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An Act to consolidate and amend the Acts respecting Land in the Territories, 1894, Revised Statutes of Canada, 57-58 Victoria, c.28, 1894.

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An Act respecting Trials by Jury in certain cases in the North-West Territories, 1897, Revised Statutes of Canada, 60-61 Victoria, c.32, 1897.

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An Act to amend the Mounted Police Pension Act, 1889, 1898, Revised Statutes of Canada, 61 Victoria, c.33, 1898.

An Act respecting the Supreme Court of the North-West Territories, 1900, Revised Statutes of Canada, 63-64 Victoria, c.44, 1900.

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An Act for the Protection of the Indians in Upper Canada from Imposition, and the Property Occupied or Enjoyed by them from Trespass and Injury. Statutes of Province of Canada, 13-14 Victoria, c.74, 1850.

An Act for the gradual Civilization of the Indian tribes in the Canadas. Statutes of Province of Canada, 20 Victoria, c.26, 1857.

An Act for the Temporary Government of Rupert's Land and the North-Western Territory when United with Canada. Statutes of Province of Canada, 32 & 33 Victoria, c.3, 1869.

Province of Alberta

An Act respecting the Supreme Court, 1907, 7 Edward VII, c.3, 1907.

An Act respecting the District Courts, 1907, 7 Edward VII, c.4, 1907.

Province of Manitoba

An Act to establish a Supreme Court in the Province of Manitoba, and for other purposes, 1871, 34 Victoria, c.2, 1871.

An Act to amend an Act to establish a Supreme Court in the Province of Manitoba, 1872, 35 Victoria, c.3, 1872.

Province of Saskatchewan

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An Act respecting the Establishment of a District Court and for the practice and procedure therein, 1907, 7 Edward VII, c.9, 1907.

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An Ordinance respecting Regional and Tribal Councils, RONWT, 1983, c.7.

APPENDIX III

COMPREHENSIVE CLAIMS TASK FORCE RECOMMENDATIONS (1985)

1. Agreements should recognize and affirm aboriginal rights.
2. The policy should allow for the negotiation of aboriginal self-government.
3. Agreements should be flexible enough to ensure that their objectives are being achieved. They should provide sufficient certainty to protect the rights of all parties in relation to land and resources, and to facilitate investment and development.
4. The process should be open to all aboriginal peoples who continue to use and to occupy traditional lands and whose aboriginal title to such lands has not been dealt with either by a land-cession treaty or by explicit legislation.
5. The policy should allow for variations between and within regions based on historical, political, economic, and cultural differences.
6. Parity among agreements should not necessarily mean that their contents are identical.
7. Given the comprehensive nature of agreements and the division of powers between governments under the Canadian Constitution, the provincial and territorial governments should be encouraged to participate in the negotiations. The participation of the provinces will be necessary in the negotiation of matters directly affecting the exercise of their jurisdiction.
8. The scope of negotiations should include all issues that will facilitate the achievement of the objectives of the claims policy.
9. Agreements should enable aboriginal peoples and the Government to share both the responsibility for the management of land and resources and the benefits from their use.
10. Existing third-party interests should be dealt with equitably.
11. Settlements should be reached through negotiated agreements.
12. The claims process should be fair and expeditious.
13. An authority independent of the negotiating parties should be established to monitor the process for fairness and progress, and to ensure its accountability to the public.
14. The process should be supported by government structures that separate the functions of facilitating the process and negotiating the terms of agreement.
15. The policy should provide for effective implementation of agreements. (DIAND, 1985:31-32).