Racially "Indian", Legally "White": The Canadian State's Struggles to Categorize the Métis, 1850-1900

by

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A thesis submitted in conformity with the requirements for the degree of Doctor of Philosophy
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2017

Abstract
The Canadian state has constantly been faced with a paradox: differentiated rights and regulations required it to define the boundaries of the invented category "Indian," yet it was never able to do so satisfactorily. The existence of mixed-ancestry and Métis people disrupted its seemingly clear categories of "Indian" and "White." This thesis asks three central research questions: how did the Canadian state understand the category they called "half breeds;" what cultural and intellectual ideas informed these notions; and what was their impact? There was no single meaning or understanding of the term "Half Breed," but it was in fact characterized by inconsistency, ambiguity, contradiction, and confusion. There were two significant opposing forces at play: 1) the need to consolidate the power of the emerging state, which usually meant grouping the Métis and people of mixed ancestry in with “Indians” in order to better control them, and 2) the desire to save money, which usually meant separating out “half breeds” as a way of reducing the number of status Indians (to minimize the scope of the state’s fiscal responsibilities). The Métis presented themselves as a free “civilized” Indigenous People, but for the government, the term "half breed" was most useful as a floating signifier, with no stable
meaning. In an era of increasing state rationalization, the sliding signifier allowed for flexibility in otherwise rigid laws and policy, aiding the state in navigating between its often-conflicting goals. Only in a few instances did the state recognize the Métis as a distinct People. Because of discrimination and the lack of official recognition, many Métis people were dispossessed and hid their heritage. On the other hand, this very ambiguity could provide a degree of freedom, and Métis today are working to define themselves as a distinct people and to fight for their inherent Indigenous rights.
Acknowledgments

I would like to express my gratitude to all the people who helped make this thesis a reality. I am so privileged to have benefited from the assistance of so many amazing people. First on the list is my supervisor, Dr. Heidi Bohaker. Her expertise, advice, patience, and encouragement have been invaluable. To my supervisory committee members, Dr. Cecilia Morgan and Dr. Melanie Newton, thank you so much for your feedback and suggestions.

This research would not have been possible without the financial assistance of the SSHRC, Ontario Graduate Scholarship, University of Toronto Fellowship, Margaret McCullough Scholarship, Craig Brown fellowship, and Jeanne Armour Scholarship. Thank you also to the Department of History at the University of Toronto.

Thank you to Justice Charles Vaillancourt, and members of the Sault Ste. Marie Métis community for generously sharing their time and knowledge (and delicious moose curry).

Sincere thanks to my proofreaders, Patty, Penny, Sandi, and Sparkle.

I am grateful to Bernard Leroux for being so generous with introductions into the Ontario Métis community and for all of our inspiring conversations, and to Johanne St. Louis, and my other dear friends, for putting up with my long absences during busy periods.

My deepest gratitude goes to my family. Without you all none of this would be possible. I specially acknowledge the strong women in my family—my mom, grandma, aunt, and great aunts—who raised me with a love of learning, and encouraged me always to think and question. And to my grandfather, who valued education above all else, and began saving for my university education when I was a child. As a child I politely thanked you for my yearly Christmas-time Canada savings bond, but as an adult I truly appreciate the opportunity it provided me.

For my daughter, who was born part way through this process, you have enriched my life immeasurably, forcing me to grow as a person to try to live up to the kind of example I want to provide. And most of all for David, for your unfailing support, both emotional and material. You are my rock and I love you.

I acknowledge the Anishinaabeg Peoples upon whose land I live and write.  
Marsee. Thank you.
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Introduction

"I am a Metis native of Manitoba born at Lac Qu Appelle January 3rd 1866. Father name Baptiste Roche Brim & mother name Julia La Mere." - Isabell Roche Brim to Department of Interior, April 4, 1890

In an 1890 letter to the Minister of Canada’s Department of the Interior, Isabell Roche Brim explained that her family had signed "a treaty" in 1873 and had received only two annuity payments, but she had not received the scrip to which she was entitled.¹ From 1870 to 1930, the federal government of Canada distributed scrip certificates, redeemable for homestead lands of 160 to 240 acres on the prairies, to Métis and people of mixed European-Indigenous ancestry. Receiving scrip officially identified a person as a "half breed," while taking treaty classified a person as "Indian"--the government would not permit a person to inhabit both categories. Isabell clearly self-identified as Métis. Indian Department officials in the Ministry of the Interior were less certain. In a lengthy series of correspondence about her case, officials from the Department of Interior and Department of Indian Affairs variously labelled her either "Indian" or "half-breed." None of the officials used Isabell's chosen self-identifier, Metis.

The state-given identifiers of “Indian” and “half-breed” were intended to make diverse Indigenous Peoples legible and controllable by the federal government. Which term was applied to an Indigenous person defined which laws of Canada applied to them: if “Indian,” the Indian Act applied. If “half-breed,” the person may be treated racially as Indian, but was legally considered white. These state-created labels had and continue to have, enormous implications for the persons on the receiving end of each designation. The term Status Indian in Canada, with all that it implies, is a construct of nineteenth-century legislation. Defining people by statute in this

¹ Isabell Roche Brim to Department of Interior, April 4, 1890, LAC RG10 Vol 3836 File 67528
way took away from Indigenous polities the right to decide their own members and to exercise control over their own lands and lives. The complex origins of these terms, their use in law, their impact on people, and their long term implications are the subject of this study.

In Isabell’s case, some officials identified Isabell as an "Indian" because her parents had taken treaty and therefore they and their descendants had been officially "Treaty Indians." According to the Indian Act this designation entitled them to certain rights, depending on the specific treaty terms negotiated. For example, they might receive yearly payments (annuities), farming implements, and access to limited reserve land. These rights, however, came with many legal debilities: they would have been prohibited from voting, owning land, and drinking alcohol. Their movements could be restricted and many daily activities were often highly regulated.

Others identified Isabell as a "half breed." This is because her parents and their eight living children had received "discharges" from Treaty on the 25th of June, 1886. After a discharge, a family and their descendants were no longer considered to be signatories to the treaty. At that time, the federal government permitted some "half breeds" to take this action, effectively transforming them from Indian to white in the eyes of the law (though not in the eyes of most white settlers who often continued to treat them with racism and discrimination). Baptiste and Julia subsequently applied for scrip "before the Half-breed Commission at Qu'Appelle, on the 28th October, 1886."\(^2\) The evidence they submitted in their affidavits satisfied the commissioners that they were eligible for scrip. Receiving scrip changed their official categorization from "Indian" to "Half Breed." In the eyes of the state it also

\(^2\) For Baptiste's affidavit see LAC RG15 Vol 1329 (Larocque, Jean Baptiste). For Julia's see LAC RG15 Vol 1355 Lemire, Julie. Lynwood Pereira, Assistant Secretary, Dep of interior to L. Vankoughnet, 19th July 1890, LAC RG10 Vol 3836 File 67528
"extinguished" their "partial Indian title" to their land, and rendered them legally identical to white.

Not only is the self-identification of Isabell completely ignored by all the officials, they commented that she did not even know her own name, nor her father’s. The assistant Indian Commissioner wrote to the head of the Department of Indian Affairs that although "she states that her mother's name was Julia La Mere, and her father's Baptiste Roche Brim, this latter is evidently an error, as her father's name, as given to a sworn statement, now in this office, is Baptiste Laroque." The state officials clearly privileged their own naming practices and written documentation. They did not even consider the possibility that the scrip commissioners in 1886 may have misheard, misunderstood, or misspelled the names. They were either unaware or dismissive of variable spellings or of French and Métis practices of "dit names," in which families adopted alternate surnames, often to distinguish them from unrelated families with the same surname. In the genealogy of Isabell's family, various documents recorded the following family surnames: Larocque, Laroche, Rocbrune dit LaRocque, Rockbrune, Rockburne, La Roque, Rochbrune, Laroquebrune, and Laroquebrunne. Though they appear to be different, they are all the same family. Indian Commissioner Hayter Reed wrote that he doubted her own name:

This woman's name (Mrs. Isabella Roche Brim) does not appear in any list of records in the Department... this I quite understand as Roche Brim is not her name. I would suggest that enquiry be made for the name of Julie Lamere, wife of Baptiste Larocque, alias Roche blane, Rouchblain, and

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3 H. Paget[?], Assistant Indian Commissioner to Deputy SGIA, 19 May 1890, LAC RG10 Vol 3836 File 67528
laterly Roche Brine, and I feel confident that Isabella will be found mentioned in her application papers."^6

Hayter Reed was clearly aware that variations in spelling were common, and he believed Isabella was using this to cheat the state. He thought she must already have received scrip under a different name. This is an example of the distrust many Métis people faced, not only for straddling official lines of identification, but also because of their history of defiant political independence that, in 1870 and 1885, had directly challenged the Canadian state.

It is also notable that Isabella was born at Qu'Appelle, located in what is now the Province of Saskatchewan, but she identified as a native of Manitoba. Her parents were both born at St. Francois Xavier (also known as White Horse Plain and Grantown), a French Catholic parish west of Fort Garry/Winnipeg on the Assiniboine River. They also married here. Scrip affidavits reveal that, of their eight living children, the three oldest children were born in St. Boniface (a nearby French Métis parish at Fort Garry) in 1858, and at St. Francois Xavier in 1860 and 1862. Four of the younger children were born in the Northwest Territories—Qu'Appelle (1866), Cypress Hills (July 1876), Dirt Hills (winter 1878), and at an unspecified location "in the North West" (26 August 1883). In 1886 the family lived in Montana. ^7 These details indicate the Larocque/Lemire family was, like so many Métis, highly mobile. That all of the younger children were born outside of Manitoba indicates their parents probably did not return to live in St. Francois Xavier, but remained year-round on the plains after the 1860s. Despite this, Isabella identifies as a native of Manitoba. She may never have even visited Manitoba but saw it as her homeland, the place to which her people were Indigenous. She mentions no First Nations relations, and none of her grandparents were of First Nations ancestry—three were Métis and one was French. Despite this,

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^6 Hayter Reed, Indian Commissioner to DSGIA June 17, 1890, LAC RG10 Vol 3836 File 67528

^7 These details were compiled primarily from the files in LAC RG15 Volumes 1325, 1329, 1354, 1355. I was unable to find details about Elzear, presumably born sometime between 1867 and 1875 (possibly 1873).
the government insisted on naming her "Indian" or "half breed" (in this latter case by implication the child of one Indigenous and one white parent).

The confusion and uncertainty in these officials' letters is unsurprising. Indeed, it exemplifies the condition of many policymakers and civil servants throughout the nineteenth century. Even as the state grew more bureaucratic and organized, and statutes created legal definitions of "Indian," the government struggled with how to classify the Métis. But one thing is certain: they were unwilling to recognize the Métis in law as a distinct people or nationality. As nineteenth-century Canadian lawmakers shaped policy towards Indigenous peoples, they wanted only two possibilities: one could either be legally Indian, or legally white. The term “half-breed” was a makeshift measure to identify those Indigenous peoples eligible to receive scrip as a one-time recognition that transferred them forever after into the “legally white” category. The idea of a Métis nation within Canada was not part of the government’s vision.

Who are the Métis?

Although the Métis were legally identified in the 1982 Canadian Constitution as rights-bearing Aboriginal people (along with "Indians" and Inuit), there is no single agreed-upon definition of Métis. The largest and best recognized Métis organization, the Métis Nation of Canada, currently uses this working definition of a Métis person: "Métis means a person who self-identifies as Métis, is of historic Métis Nation Ancestry, is distinct from other Aboriginal Peoples and is accepted by the Métis Nation." On their website, the brief outline of the origins of the Métis is as follows:

The advent of the fur trade in west central North America during the 18th century was accompanied by a growing number of mixed offspring of Indian women and European fur traders. As this population established

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distinct communities separate from those of Indians and Europeans and married among themselves, a new Aboriginal people emerged – the Métis people – with their own unique culture, traditions, language (Michif), and way of life, collective consciousness and nationhood.\footnote{9} Geographically, they describe the Métis Nation homeland to include "the three Prairie Provinces (Manitoba, Saskatchewan, Alberta), as well as, parts of Ontario, British Columbia, the Northwest Territories and the Northern United States."\footnote{10} Not everyone agrees on these details, however.

*Métis* is a French word that originally meant mixed, like the Spanish word *Mestizo*. Mixing, or *métissage*, of European and Indigenous populations happened all over colonial North America.\footnote{11} However at some point some of these racially mixed and culturally hybrid communities produced a new people--the Métis. There is considerable debate about exactly where, when, and how this happened. Though no consensus has been reached, most historians currently believe Métis ethnogenesis occurred sometime in the eighteenth century. Most children of mixed parentage assimilated into the societies of their Cree, Anishinaabe, Saulteaux, or Chipewyan mothers, or sometimes into those of their French, Scottish, or English fathers. However, the particular social, economic and cultural conditions of the fur trade in central North America encouraged the formation of independent communities that were intimately acquainted with the fur trade or the bison hunt and united by strong kinship connections and cultural traditions. Many were born, married, resided, and died in and around the Red River area in the

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\footnote{10} “FAQ | Métis National Council.”
nineteenth century. The evidence for group consciousness was strongest here and on the Northern Plains.\(^\text{12}\)

Many historians credit the battle at Seven Oaks in 1816 as a key event that transformed these proto-Métis into a nation. Seven Oaks was the culmination of violent clashes between rival fur trading companies the North West Company (NWC) and the Hudson's Bay Company (HBC) in 1812-1821. At the battle of Seven Oaks, as well as the 1840s struggle for free trade and the Sayer Trial of 1849, the 1869-1870 Red River uprising, and the 1885 Northwest "Rebellion," the Métis began to consciously articulate their peoplehood as they fought to protect their political rights. It is generally accepted that through these conflicts they developed a collective sense of self and political unity. But it is also clear that these transformative experiences rested on a deep-rooted pre-existing foundation, built from strong community and kinship bonds, a sense of political independence, and the experience of self-governance.

The earliest histories of the Métis typically focused on Red River and Louis Riel. These histories were all written by non-Métis historians. Though not Métis himself, Auguste-Henri de Trémaudan was commissioned by the National Métis Union to write from a Catholic and Métis nationalist perspective.\(^\text{13}\) In his 1935 book *Histoire de la nation métisse dans l'Ouest canadien*, Riel appears as a visionary and martyr, and the Métis are filled with national pride.\(^\text{14}\) Other French Canadian histories depicted the Métis as heroic but tragic defenders of the French

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\(^\text{13}\) For a detailed discussion of the relationship between L’Union and Trémaudan, see Gerhard Ens and Joe Sawchuk, *From New Peoples to New Nations: Aspects of Métis History and Identity from the Eighteenth to the Twenty-First Centuries* (Toronto: University of Toronto Press, 2016), 114–28.

language and Catholicism.\textsuperscript{15} English language histories (such as those written by Harold Innis, George Stanley, W.L. Morton, and E.E. Rich) and the detailed ethnography of Marcel Giraud generally portrayed the Métis as a primitive throwback on the frontier, doomed to die out when confronted with the inevitable progressive march of civilization.\textsuperscript{16} Many of these stereotyped ideas originated in the period of this study (1850-1900); the historians of the early twentieth century had a similar mindset as government officials and lawmakers had in the nineteenth. Stereotypes can be remarkably enduring.

The 1960s Red Power movement, Indigenous pride movements of the 1970s, and the inclusion of the Métis in the Constitution in 1982 sparked new interest in the Métis. By the 1980s, Métis history as a field was growing significantly. As the Métis were beginning to demand their rights, for example by launching the Manitoba Métis Federation (MMF) vs Manitoba Case in 1981, historians increasingly began to write about the Métis as an Aboriginal rights-bearing community.\textsuperscript{17} In the MMF case, The Manitoba Metis Federation charged the Crown with failing to fulfil the promises of the 1870 Manitoba Act. MMF-retained historian D.N. Sprague began to research the Manitoba Act, in which land was promised to the Manitoba Métis. He argued that scrip certificates, the means used to fulfil this promise, only led to the

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dispossession of the Métis as speculators quickly grabbed the land. At this time Tom Flanagan (retained by the Crown) began writing controversial histories that disputed the Aboriginal rights of the Métis. Though the MMF case concluded in 2013 (the Supreme Court of Canada concluded the Crown failed to implement the Manitoba Act in accordance with the honour of the Crown), the ongoing and highly politicized historical debate continues to this day.

In the 1980s and 1990s social historians began to look beyond the "Riel Rebellions," examining social and cultural history, history from below, women's history, and the history of Métis populations other than those of Red River, including local histories of the Métis and people of mixed ancestry in the Maritimes, St. Lawrence, Great Lakes, western Canada, and the United States. Historians such as John Foster, Jennifer H.S. Brown, Sylvia Van Kirk, Olive

Dickason, and Gerhardt Ens recognized that the Métis were something more than just biracial offspring.²²

The landmark case *R v Powley* initiated in 1993 was the first to recognize the legal existence of a rights-bearing Métis community not derived from Red River, affirming the Sault Ste Marie Métis existed and had hunting rights. This coincided with scholarship that was interested in exploring the diversity of experience of Métis history, arguing that gradual and decentralized origins, historical diversity, and openness characterize the Métis, and are not deficiencies.²³ In the twenty-first century, family, community, and collaborative histories are now exploring topics that are of more relevance to the Métis people themselves, who (like all peoples) continue to reformulate, transform and develop themselves.

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The Métis and the Canadian State

It is clear, then, that the field of Métis history has been expanding steadily over the last few decades, and there is now a well-developed body of secondary literature. To date, however, historians have given little attention to the ways in which the Canadian state conceptualized the Métis. Indeed, other than histories of the two Métis-led uprisings, relatively little research has been published about the relationship of the Métis to the Canadian state. The most complete body of work in this field explores the complex history of the Manitoba Act and federal scrip policy. Because scholars researching in this area were largely driven by the MMF case initiated in 1981, much of this research has been concerned with judging the federal and provincial government's actions in Manitoba and the North West. Some researchers have also begun to study government policy more broadly, finding that Métis families and communities were maintained, destroyed, or sometimes created in response to interactions with the government. Sometimes Métis people were able to use the categories available to them in order to negotiate the lives they wished to lead. My thesis extends this body of research by exploring how the

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Manitoba Act, the Indian Act, Indigenous policy, and scrip policy affected and were affected by the beliefs and assumptions of lawmakers and state officials.

More recently, there has been some fascinating work regarding the Canada-US border and the effects of different state policies on the formation, fragmentation, and persistence of Métis communities. The entire Great Lakes region on both sides of the border was filled with multicultural French-Indigenous trading towns and villages from the seventeenth century, and North Dakota and Montana are as central to the historic prairie Métis homeland as Manitoba and Saskatchewan. These historians found the border exerted significant impact on Métis people. Métis individuals and families crossed it at will, particularly before the 1870s when it was rarely enforced, and used the different jurisdictions to their own benefit, whether their livelihood consisted of hunting, carting, trading, or smuggling. However, due to the different legislative regimes, members of the same family could belong to different official categories, depending where they lived. For instance, unlike in Canada where Isabell was officially a "half breed," American census documents variously label her as "Indian," "Chippewa," or "white" under "color or race." Métis was not an option in the United States either. In Canada the Manitoba Act and scrip policy created an official category "half breed," while in the United States this was


27 She was also listed as "1/2 white" in some cases. Ancestry.com. Original data from United States of America, Bureau of the Census. Census of the United States, 1900, 1910, 1920, 1930, National Archives and Records Administration.
an unofficial category. The history of Canadian and American Métis people has been intertwined and yet divergent.

Probably the best exploration of the Métis and their historical relationship to the Crown and Canadian state is Gerhard Ens and Joe Sawchuk's recent work *From New Peoples to New Nations*. They use a social constructionist and instrumentalist approach to Métis ethnicity, arguing that it has been constructed and reconstructed over time, through an ongoing dialogic process of self- and other-ascription.\(^28\) Government views and state categories thus had a substantial influence on Métis group consciousness, most significantly by creating an official category through scrip. Scrip created absolute boundaries, as individuals needed to swear in an affidavit that they were "half breeds" and formally disclaim Indian status in order to obtain their scrip.\(^29\) Ens and Sawchuk’s work reveals the extent to which these questions are of contemporary significance. My thesis builds on this work by adding a detailed analysis of the identity clauses of the Indian Act and Indian Affairs policy, including in Ontario and British Columbia. Such analysis helps us understand how the existence of mixed and Métis people affected the creation of "Indian" identification laws, primarily by forcing the state to articulate the underlying conceptions of Indianness that were at the core of the legislation and policy. In articulating what it thought defined an "Indian," the state was, at the same time, constructing whiteness as its opposite.

This thesis also draws on the well-developed literature that exists on colonial and Canadian Indigenous policy in the nineteenth century, building on the research of John Leslie, John Milloy, Laurie Barron, Sidney Harring, and extends it by looking at Indigenous policy


\(^{29}\) Ens and Sawchuk, *From New Peoples to New Nations*, 145.
My research explores the ways in which understandings of Métis and people of mixed ancestry informed Canadian Indigenous legislation and policies, as well as how these laws and policies affected Métis and people of mixed ancestry. The Indian Act created two divergent Indigenous categories, "Indian" and "Half breed," with different rights attached to each identification. Some Métis and people of mixed ancestry were accounted as "Indians" and therefore were "handled" by the Department of Indian Affairs, while others were not.

**Does Métis = Mixed?**

This thesis necessarily studies both Métis and people of mixed Indigenous-European ancestry, because the government often grouped them together in the same category as "half breed." The two, of course, are not the same thing. The idea of purity of race or culture is a fantasy; all people--Indigenous or otherwise--are genetically and culturally "mixed"; there is no such thing as mixed race, though of course the concept does have a social meaning. Sociologist Chris Andersen argues that retaining this concept of hybridity in descriptions of the Métis only perpetuates racial colonial constructs, and prevents the Métis from being viewed as a whole Indigenous People. In Canada, however, there is a long history of confusing these issues that

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32 Chris Andersen, “Métis”: Race, Recognition, and the Struggle for Indigenous Peoplehood (Vancouver: UBC Press, 2014), 36. See also Chris Andersen, “From Nation to Population: The Racialisation of ‘Métis’ in the Canadian Census,” *Nations and Nationalism* 14, no. 2 (April 1, 2008): 347–68; Chris Andersen,
has led to the situation where for many the popular definition of Métis is mixed. Historians have perpetuated this fallacy, perhaps out of a desire to be inclusive; a general interest in the concept of hybridity, or as the result of their own racist thinking. Though most recognize the Métis are more than simply a collection of interracial people, many still take "mixedness" as foundational to their peoplehood. In the last decade there has been a reversal of this trend towards more inclusive approaches.

Jacqueline Peterson exemplifies this significant reversal. In the 1980s she studied métissage in the Great Lakes fur trade between 1700 and 1815. At the time she characterized the mixed population in the area as (small-m) métis in order to differentiate them from the Métis Nation of Red River, for whom they were a "prelude." These Great Lakes métis migrated west after 1815 where they and other mixed communities in the Red River area developed a sense of nationalism. In 2012 she publically declared she had been wrong to call the mixed population in the Great Lakes métis. Though she believes it is impossible to discern how this population saw themselves (largely due to a lack of documents authored by them), she argues most likely they did not have ethnic self-consciousness, call themselves Métis, or desire political autonomy. She now believes Métis ethnogenesis failed to occur in this region.


This is highly contentious, however. Historians of the Ontario Métis disagree, and the more than 18,000 Ontario Métis take offense. Karl S. Hele for example, argued that the term Métis is being monopolized for the "political priorities of one group" which "is itself a form of internal colonialism." A survey of Ontario Aboriginal people analyzed in the 1991 publication *Ontario Metis: Characteristics and Identity* argued that despite the fact that traditional definitions may not apply to them, Ontario Métis saw themselves specifically as Métis. Unlike "non-status Indians" interviewed, most Ontario Métis declared they would prefer to have legal status as Métis rather than be reinstated into the band of their ancestry.

As early as 1983 Thomas Flanagan recognized the problem of focusing on Métis mixedness, though his argument gained little traction at the time. He argued that basing Métis rights on their Aboriginal ancestry reifies racial inheritance. His argument was highly problematic because he substituted a different sort of purity narrative, arguing Aboriginal rights should be based on way of life, specifically the nomadic "uncivilized" lifestyle that was overcome by agrarian and industrial economies. Since the Métis were and are not nomadic, he argued, they should not have Aboriginal rights. What he did not recognize is that it is possible for Métis to have Indigenous rights without relying on racial constructs of mixedness. This tension between a more open and inclusive definition of Métis and a more restrictive one persists to this day, and is perhaps even more meaningful as there are now some material benefits associated with government recognition of the Métis both as an Aboriginal People and as an

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36 The numbers are actually much higher, but the Métis Nation of Ontario has an "objectively verifiable, centralized registry of over 18,000 Métis citizens." See “Métis Nation of Ontario | About the Métis of Ontario,” 2017, http://www.metisnation.org/about-the-mno/the-m%e3%a9tis-nation-of-ontario/.
interest group. These benefits are, to date, relatively meagre. Some limited harvesting rights have been won in court, and Métis organizations across the country have been working on agreements with various jurisdictions. They also provide some services and benefits (such as scholarships) to their members. As yet there is no federally recognized right to land, self-governance, or compensation.

**Terminology**

The Métis have used and been called many names over the centuries: Métifs/Michifs, Bois-brûlés/brûlés, Chicots, Country-born, Gens libres/Freemen/Otipemisiwak, Mixed-bloods, Breeds, and Halfbreeds, and sometimes Natives, Canadiens, Countrymen, or Creoles. Some of these were self-referential, while others were given by outsiders. Some referred specifically to the Métis as a people, some to all people of mixed ancestry, some to all natives of Rupert's Land, and some to a certain occupational or social class within the fur trade. Additionally meanings of words change over time and in different contexts. Therefore, it is not always clear in archival documents exactly who the terms are referencing, though this can sometimes be deduced based on contextual clues.

The term *Bois Brûlés* was commonly used, particularly by the French and the North West Company, from the eighteenth century until the early nineteenth century. This was a French term literally translated as “burnt wood,” and is usually assumed to refer to dark skin colour, but

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42 For example see the letters in Grace Lee Nute, *Documents Relating to Northwest Missions, 1815-1827* (Saint Paul, Pub. for the Clarence Walworth Alvord memorial commission by the Minnesota historical society, 1942), http://archive.org/details/documentsrelatin00nute.
nobody really knows the origin of the term. According to an 1819 printed glossary, it was “said to be derived from the sallow complexion of the half-breeds being compared to the appearance of a forest of fir-trees that had been burnt, an occurrence frequent in those parts, and which assumes a universal brown and dingy colour.” Linguist Peter Bakker offers another interpretation: it may have been borrowed from the Ojibwe word for "half burnt wood," meaning black on one end and white on the other, indicating someone of mixed culture and origins. It is even possible that it was a modifier of "coureurs de bois," indicating either something like nativized free traders, or even (as Norma Hall speculates) followers of Étienne Brûlé, the original coureur de bois, famous for his independent adventurous spirit while living and trading among Indigenous North Americans.

Métis originated as a French colonial term originally designating interracial people in the colonies--in the Americas, Indochina, and West Africa. In North America Métis (and related alternatives Métifs and Michifs) began to be used to refer to a distinct collectivity probably around the mid-18th century. When written Métifs, the 'fs' may be interpreted as a long -s- (as in Mississippi) indicating it would have been pronounced "Métiss." Bois Brûlé was still more common at the time, but the two words were used interchangeably in most documents. Métis became the most common French term by the late nineteenth century. Today, Métis is the most

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44 Peter Bakker, A Language of Our Own (New York: Oxford UP, 1997), 64.
47 Farrell Racette, “Sewing Ourselves Together,” 26; Bakker, A Language of Our Own, 64.
common and politically acceptable term used by both English and French speakers, though as discussed above it is not always clear to whom the word refers.

Terms such as *Gens libres*, Freemen, or *Otipemisiwak* (also written *kaa-tipeyimishoyaahk*), a Cree-Michif term meaning the people who own themselves, and other similar variations demonstrate the centrality of freedom and liberty to Métis self-understanding. These terms originally referred to being independent both from the fur trading companies and from First Nations governance, with an entrepreneurial spirit as buffalo hunters, traders, pemmican suppliers, freighters, or diplomats. Terms such as *Gens libres* did not always, in the historical record, refer exclusively to the Métis, and as with terms such as *canadien* could also include French Canadians who viewed themselves as independent of fur company authority. This is an excellent reminder of the contextuality of language; it was also customary to speak of NWC employees and Canadian fur traders as French, and HBC servants as English, no matter their ethnicity or language.

Native or native-born was a name the Métis used for themselves in the nineteenth century, particularly during the free trade struggle of the 1840s and the Red River uprising of 1869-70. Though it literally meant someone native to or born in an area, it fairly unambiguously referred to the Métis. Sometimes it also included First Nations but it rarely included whites at least until the 1830s-1840s when the first whites born in Red River began to reach adulthood.


In Chapter 4, I argue the Métis employed this powerful term deliberately to assert their rights as Indigenous to the area.

The term this dissertation focuses most on is "half breed." It is a term with a complicated history. In her research Jennifer Brown found that, as far as she could tell, the first time it was used to refer to mixed Indigenous/European was in 1775 when the Oxford English Dictionary used it in reference to Florida. The NWC and then the HBC borrowed it for use in Rupert's Land at the beginning of the nineteenth century. Métis occasionally used it to refer to themselves (for example there are letters signed in 1810 by "the chiefs of the halfbreeds").\textsuperscript{51} By the mid-1820s it had become the most common English term for the Métis, largely entrenched by HBC governor Simpson, who also began to use it with negative connotations.\textsuperscript{52} In general, however, it remained a relatively neutral signifier at this time--though the racial implications are impossible to elude. "Half breed" became the preferred term used by English speaking government officials by the mid-nineteenth century, but the term was employed with little consistency.

In the period of this study, 1816-1900, "Half Breed" was often simply the English translation of "Métis." It also referred to a subset of Métis: the English-speaking Protestant Métis at Red River, who used the term self-referentially with pride.\textsuperscript{53} However, Canadian officials and lawmakers just as often used the term to signify a broader category of people that also included interracial and intercultural people. The term was often used as a synonym for "mixed blood" (i.e. of both Indigenous and non-Indigenous ancestry), or to mean something like "part Indian," or "semi civilized Indian"—which could mean acculturated, settled and Christianized, or impure

\textsuperscript{51} Quoted in Bakker, \textit{A Language of Our Own}, 64.
and inauthentic. Other terms referencing this idea of "mixing" included "half caste" and "country-born," both borrowed from British imperial India, though neither was used extensively.\(^{54}\)

In the 1870s "half breed" also became an official category, differentiated in the 1876 Indian Act from "Indians," eventually becoming equated with a person who had received Half Breed Scrip. However, conceptions of Métis and mixed race people remained so unclear in part because the concept of "Indianness" was equally imprecise. Although "Indian" became a legal identity in the nineteenth century, it remained ambiguous. The existence of people categorized as "half breeds" repeatedly forced the state to examine its delusion that "Indian" was a simple and common sense category. This thesis teases apart these various signifiers and their significations, exploring in particular the emergence and evolution of the category "half breed."

Most people today deem the term "Half breed" and related terms such as "mixed blood" to be unacceptable for their racist and derogatory connotations, and simple inaccuracy—as Jacqueline Peterson writes, "blood does not mix, and surely not in equal proportions."\(^{55}\) It brings to the modern mind distasteful images of eugenics and animal breeding. The solution has often become simply to substitute "Métis" for the term 'Half breed' in order to avoid being offensive, but this is historically inaccurate and anachronistic as the terms were not necessarily synonymous. This is the historian's dilemma. Any historian of the Métis will constantly come across references to “half breeds” in the archives, and there is a risk of failing to distinguish who exactly was being referred to. Contested terms such as this can neither be rejected as meaningless

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colonial categories, nor simply taken at face value.\textsuperscript{56} In order to use the archives effectively, historians must, in the words of Bernard Cohn, pay attention to “the shadings of language and the structure of the text, and through the development of sensitivity to changes in form through time.”\textsuperscript{57} By treating archival documents as a discourse requiring exegetical reading, I uncover some of the underlying ideas that informed legislation and policy related to the Métis, such as the regulatory regimes of Indigenous identity (including the Indian Act), as well as the practices of the Department of Indian Affairs and other state bodies.

The social category “Indian” had been invented by Europeans, and formalized in the nineteenth century as a legal administrative category in Canada.\textsuperscript{58} I use the term “Indian” when I am referring to this legal fiction or invented category of people. I use the term “First Nations” when referring to the actual people who lived in North America prior to European contact. On the other hand “Indigenous” or “Aboriginal” refers more broadly to all the people who originated in the Americas, including all First Nations and Métis.

Arguments

In British North America and Canada there was never a single meaning or understanding of the category "Half Breed." It was characterized by inconsistency, ambiguity, contradiction, and confusion. Continually redefined and contested over time, the term was so ambiguous that there was no certainty that two people even understood the same thing when they used it. This caused no end of confusion in government circles (and makes working with archival documents especially challenging). The state and its agents exhibited a perpetual lack of consensus

regarding their slippery categories of “half-breed,” and “Indian”. However, events would regularly require some means of identifying Métis and people of mixed ancestry. Government officials and lawmakers generally avoided formulating a conclusive definition, postponing or avoiding the responsibility whenever possible. Instead, ad hoc working definitions were more common. State agents and departments contradicted themselves and each other, and the rules were constantly being broken and rewritten at various levels of government. In reality, they used the category "half breed" as what Stuart Hall calls a sliding or floating signifier, with no stable meaning. This is precisely what made it a useful term of governmentality. In an era of increasing state rationalization, the sliding signifier allowed for flexibility in otherwise rigid laws and policy, aiding the state in navigating between its often-conflicting goals.

At times the state did unofficially recognize a distinct people, those now known as the Métis. At others, a racial notion of Métis and people of mixed-ancestry dominated, defined by their proportion of “Indian blood.” In still other cases, “half breeds” were seen as a kind of “semi-civilized Indians”—people who combined cultural traits of Indigenous and European cultures. For example, in the last two years of the North West Half Breed Commission (which sat from 1885-1887), only people who were deemed capable of being economically self-sufficient were allowed to leave treaty and obtain scrip (thus becoming legally white). Lifestyle, language, individual ownership of livestock, means of subsistence, and type of residence were as important as ancestry.

That the state’s conceptions of Métis and mixed race people were so completely ambiguous (to the point that at times state agents simply threw up their hands and refused to attempt a true definition) also highlights the government’s inability to come to terms with what

an “Indian” was. Europeans had imagined the category “Indian,” but did not always agree on what exactly it meant and who fit that classification. In Canada, although "Indian" became a legal identification beginning in 1850, it remained ambiguous. The category “Indian” could be understood to include “half breeds,” but in the Indian Act of 1876 and in scrip policy from 1870 to the 1920s they were mutually exclusive categories. A person could not legally be both. Government writings, policies, and laws variously characterized the category of “Indian” as a way of life, a race, or a sort of people or nation. To be Indian meant to be *sauvage*/*wild* (but able to be civilized), or it meant to be permanently marked by one’s ancestry or “blood,” or it was some sort of ill-understood membership in a group (for example "reputed to belong to" a “tribe,” “band,” or “nation”). By the late nineteenth century, an "Indian" had a treaty relationship with the Crown, but then again, there was the exception of the "non-treaty Indian." Often the best the state could do was a sort of circular logic; one is Indian if the Indian Act says so. But even still there was an extra-legal concept of “nonstatus Indian,” someone racialized as “Indian” but legally identical to white.

Because, in Canada, specific rights, regulations and material consequences follow from the legal identity "Indian“, the government needed to decisively and permanently fix Indigenous categories. However, the state was always faced with the existence of "half breeds"—mixed-ancestry and Métis people who disrupted the categories of "Indian" and "White." The state was constantly faced with a paradox: its own policies and practices required it to define the boundaries of "Indian", "half-breed", and white, yet it was unable to do so. This is largely because there were two significant opposing forces at play: 1) the need to consolidate the power

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60 For example, Chancellor Boyd, one of the arbitrators in the dispute between The Dominion of Canada and the Province of Ontario over Robinson Treaty annuities, stated "It is not desirable to define with minuteness who are Indians entitled to share, in advance of any particular case which arises for decision." The Province of Ontario v. The Dominion of Canada and The Province of Quebec; In Re Indian Claims, No. 25 S.C.R. 434 (Supreme Court of Canada 1895).
of the emerging state, which usually meant grouping the Métis and people of mixed ancestry in with “Indians” in order to better control them, and 2) the desire to save money, which usually meant separating the Métis and mixed race people from status Indians so as to reduce the number of status Indians (in order to minimize the scope of the state’s fiscal responsibilities). Despite the law’s supposed clarity, these categories remained ambiguous and confusing, continuing as Renisa Mawani noted, "to exasperate Indian Agents, missionaries and local law enforcement authorities well into the twentieth century."\(^6^1\)

On the one hand the ambiguity and confusion may have been difficult for Métis and people of mixed ancestry, who were often categorized by the state in ways they would not have preferred. Some were legally forbidden from living on the reserves on which they had grown up, and often they were treated with racism and discrimination despite their legal status as non-Indian. With no land security, economically marginalized and pushed out of their homeland by incoming white settlers, many landless Métis became "road allowance people." A road allowance is Crown land that has been surveyed and set aside for a future roadway. Many Métis ended up settling (officially, “squatting,” since the state did not recognize their land rights) in makeshift communities on such road allowances and other empty Crown land. There were hundreds of these informal settlements in Alberta, Saskatchewan and British Columbia. This was a precarious existence because the government could build on this land at any time. With little security, forgotten by the state but ever resourceful, they survived however they could.\(^6^2\) Because of

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discrimination and government policies, many Métis people lost or hid their heritage—today, even when they work to rediscover it, some find it difficult to be accepted by their community.63

On the other hand, this very ambiguity could provide a degree of freedom. Since 1870 many Métis became adept at working with Canada’s definitions and identifications, sometimes joining treaty when they needed the security of land and regular annuities or when they were closely connected to the First Nation, or taking scrip when they preferred the independence of a non-Indian identification. In this way, Métis could sometimes escape the state’s most intense assimilation efforts. Lily McAuley’s address at the sixth North American Fur Trade conference in 1991 offered a personal perspective on these advantages. She argued “because we were half-breed, we were fortunate in that we did not have to be herded onto reservations when the treaties were signed. Because we were not part of the treaties, we continued to live more like the Indians than the Indians did.”64

Though inconsistent and ambiguous, the definitions of and beliefs about the Métis were not random. In the archival government documents on which this thesis is largely based, certain patterns and themes are evident. These themes include ideas about race, breeding and "blood"; the heterogeneous nature of the state and its often-conflicting motivations; notions about what it means to be "civilized;" ideas about paternity, lineage and gender; the drive of the developing state to both knowledge and power; social Darwinism, science and eugenics; and enlightenment ideas about liberal universalism. Canada was embedded in an imperial and global milieu; though locally translated, most of the ideas Canadians had about the Métis and people of mixed ancestry

were not invented in Canada, but were adopted and adapted from an international and imperial context. Other imperial and colonial situations also displayed concern over categorizing Indigenous populations, questions about people of mixed race, and whether they contributed to uplift or degeneration. Difficult-to-categorize people like the Métis--by their very existence and, sometimes, by overt resistance--had the power to disrupt colonial hierarchies.

Scope

This thesis is not geographically limited to the Prairies, which had the largest and most recognizable population of Métis, but also includes Ontario and British Columbia. In the pre-Confederation period, I focus on Upper Canada, because its policy became the precedent for post-Confederation Indigenous policy, and many of the Upper Canadian officials brought their ideas about race mixing and "Indianness" to the federal Indian Department where they worked after Confederation. I also look at Rupert's Land from 1816 to 1870 because, although it was not a Crown colony controlled by the Colonial Office (where policy was typically generated), it had the largest population of Métis during this time. The attitudes of HBC officials directly influenced the British, who had little other source of information about Rupert's Land. The HBC preferred to give the impression of lawless, and potentially anarchic, plains societies and land that was unsuitable for settlement because they knew the British did not want the cost of administering such a situation. And, prior to the 1857 when the Colonial office sent a Select Parliamentary Committee to investigate the HBC monopoly, the British had no impartial informants and no way of verifying the claims of the HBC.65 As George Simpson was Governor

of the HBC from 1820-1860, nearly the whole of its monopoly, his views were particularly influential.

In studying the state, I include the judiciary, lawmakers, agents of, and officials employed by the government, and state agencies that have exerted authority over people living in the areas now known as Canada. The focus of my research is the nineteenth century, particularly the 1870s-1890s. This was a period of gradual state formation and consolidation in Canada, when many of the relevant policies, procedures and legislation were first instituted. The population grew from approximately 3,689,000 in 1871 to 5,371,000 in 1901, and Canadian territory grew from 377,045 square miles in 1867 to 3,329,146 square miles in 1892. Improved communication and transportation networks using steamships, the telegraph, and railways, enabled the government to more effectively administer the vast territory. At the beginning of this period, the British North American colonies had only limited self-rule. Britain still held responsibility for Indian Affairs. From 1848-1855, the colonies achieved responsible government and effective self-rule. By 1899, a confederated Canadian state was virtually independent (in terms of domestic policy) and was increasingly present in the everyday lives of its citizens and subjects.

Significance

Despite its growing power, knowledge, and reach, the colonial and then Canadian state post-1867 was anything but omnipotent and omniscient. Examining its ambiguous and

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contradictory policies and ideas respecting the Métis and mixed race population makes it clear that the state’s grasp on knowledge and power was actually relatively tenuous. Regardless of this, the state's definitions had power and far reaching effects. They affected the everyday lives of individuals who lived with the official categories that determined the nature of their relationship to the Crown, the specific rights they could claim, and the restrictions under which they lived. Of course, one of the most important long-term effects of creating differentiated Indigenous categories (such as status/nonstatus and Indian/Métis) was the removal of many Indigenous people from their land. Indeed, Bonita Lawrence estimates that by 1985, "legislation ensconced in the Indian Act had rendered two-thirds of all Native people in Canada landless."  

These categories also affected Métis people's self-perceptions and self-identification to some degree. Labels to some extent constitute meaning and shape the people they are meant to describe. There is a reciprocal relationship between state discourse and lived reality. As Bruce Curtis puts it: “political administration is incessantly transformative of the things it seeks to administer.” State activities such as laws, policies, ordinances and censuses both reflect and produce social reality. In using the law to create a category of “Indians” who were wards of the state, people became Indians and lived with the implications of adult wardship. When ethnic categories are produced as technologies of governance, people often have to formally identify in these ways because they become necessary in order to interface with the state. This is evident in court cases, from Laprise [1977] to Blais [2003] and Powley [2003], which often relied on

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72 Andersen, “From Nation to Population,” 355.
authenticity discourses in which Métis were judged on whether they were "Indian enough." These identifications can even produce new internal hierarchies and oppressions (for example, “pure blooded” and mixed). Certainly, "Métis social cohesion must struggle against the power of definition,” which the state took for its own right.

This study is primarily about the federal government of Canada and its history of racial thinking and practice – nevertheless, it does have implications for how scholars might understand the history and current reality of the Métis as a people. Ideas have power, but their effects are not always clear or straightforward, and many ideas coexist in a society at the same time. Approaching these state categories and their related legislation as a discourse, in the Foucauldian sense, can help to break down the naturalized, invisible conceptual frameworks that help structure thinking. Historicizing such categories of thought thus helps not only to understand them, it also helps to destabilize and de-naturalize them. The Métis existed on the edge of categories, like a fault line, close analysis of which can help deconstruct the colonial "order of things" in Canada, particularly in terms of human classification systems that became naturalized and entrenched in law. And of course, racialized social identities created during the crucial

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78 This term is borrowed from Ann Laura Stoler, Race and the Education of Desire: Foucault’s History of Sexuality and the Colonial Order of Things (Durham: Duke University Press, 1995).
period of state formation in the nineteenth century are still with us today. That these issues are of contemporary significance is evident from the 2013 release of the Supreme Court's decision in the *Daniels v. Canada* case, which stated that Métis people are in fact "Indians" under s.91(24) of the 1867 constitution. Métis people are still living with the implications of categories created in 19th century law.

**Chapter Summaries**

Before 1800, the Imperial government in Britain was largely unaware of the existence of the Métis. The first time the Métis came to their attention was during the trade wars between the rival fur trading companies, the Hudson's Bay Company and the North West Company, culminating in the battle at Seven Oaks in 1816, and the subsequent trials. However, the British were not all that interested in identifying or defining Métis people. For that matter they were not interested in defining "Indians" either, most likely because their primary concern was military alliance with First Nations rather than trying to govern them as individuals. In 1830, once peace on the continent seemed secure (after the War of 1812), the Indian Department passed to civilian control and its main preoccupation was how to reduce costs and ensure the availability of land for agricultural settlement. The "Civilizing Programme" as set out in 1828 and its humanitarian influences promoted a policy of assimilation, to turn First Nations into self-supporting individualist farmers. This was intended to reduce departmental costs while it freed up land for settlement, and remained the basis for Indigenous policy throughout most of the nineteenth and twentieth centuries. Chapter one explores the underlying ideas that informed this policy, and its effects on Métis and people of mixed race. Of particular significance for how the Métis came to be included in the “not-Indian” category is the negotiation of the Robinson Treaties of 1850, as it provided the model for future treaty making. Robinson refused to negotiate with the "half
breeds" as a group, viewing them as something other than "Indian." In later treaties, the Crown would only negotiate with those it identified as "Indians," differentiating them through treaty from those it labelled "half breeds."

Chapter two provides an intellectual genealogy of the official definition "Indian" as written in the Indian Act of 1876 and its precursor legislation. This was not just an exercise in semantics. The state made these definitions in order to exert power over people by removing their rights to self-identify, and to determine their rights and restrictions. Analyzing the statutes reveals that the legislation was informed by co-mingled old and new ideas about race, gender, nationality, property, inheritance, and legitimacy. "Indian" was a category fabricated by Europeans, but it came to have material implications, and the government tried repeatedly to legislate a more precise definition of the term. The category of "Indian" also became increasingly restrictive from 1850-1876, as the categories of "not-Indians" grew to include: whites, people of colour, enfranchised Indians, women marrying anyone without Indian status, the children of fathers without Indian status, and some Métis ("half breeds" who had obtained Manitoba scrip). The various iterations of these definitions from 1850-1876 did not make the category "Indian" much less ambiguous. Officials and agents still struggled with it long after 1876.

Indian Department officials continued to wrestle with what to do with the category of people they called "half breeds," who were only officially defined in Manitoba. In Ontario and British Columbia, there was no one policy for dealing with Métis and people of mixed ancestry. Through the nineteenth century, the Department, like many arms of the state, was working towards increasingly rationalized, efficient, and bureaucratic organization. Chapter 3 demonstrates that when they were deciding how to categorize the Métis, officials tried to weigh and balance the sometimes-competing goals of economy and control. Because the state had financial treaty obligations to "Indians," categorizing them as Indians cost the state more money,
but it also gave the government more control over them because the regulations in the Indian Act would apply. In all of these cases, Canada awarded itself the ability to define, identify and categorize people and attempted to overwrite First Peoples' own self-identifications.

In Manitoba and the North West Territories, things were somewhat different; there was an official, but term-limited, category of "half breed" which was mutually exclusive from the official category "Indian." This came about because of the Manitoba Act, the subject of Chapter 4, which promised grants of land to the children of the Manitoba Métis. The Manitoba Act was the result of the Red River uprising of 1869-70 when the Métis forced Canada to negotiate their entry into Confederation. Though on the Prairies the Métis viewed themselves as Indigenous (but not "Indian"), the Manitoba Act justified the grants of land by referring to Métis' so-called partial Indian title. Though this racial conception of the Métis followed them for a century or more, and is still part of current jurisprudence, it did not erase the Métis' peoplehood nor their inherent Indigenous rights.

Chapter five looks at one outcome of the Manitoba Act, the practice of distributing scrip to the Métis. After 1870, Canada regretted its promises of land grants to the Métis, worrying that these grants would keep land out of the hands of white agricultural settlers. Nor did it want to create a Métis stronghold. Using scrip individualized the grant and broke up Métis townships, and scrip could be sold more easily than a block of entailed land; scrip was intended to transform Métis into agriculturalists or put their land in the hands of white settlers. The large archive created by The Manitoba Scrip Commission of 1876 and the Northwest Scrip Commission of 1885-1887 reveals a great deal about Métis lives in this period, and about how the government was viewing them. By exploring Métis who took treaty (thus officially becoming Indian) or left treaty to take scrip (and become 'half breed'--legally identical to white), we can focus on the official perceived boundary between Indian and Half breed. This is revealing of how the
government understood those it labelled Indians as well as how it determined who was white. To cross the boundary required not only specific ancestry, but also (at times) certain qualities, foremost of which was self-sufficiency. Many whites were not self-sufficient, yet self-sufficiency was deemed the quality that separated "Indians" from white. This racist notion of Indian dependency persists to this day. I conclude by giving an overview of some of the implications of these divisive state-created Indigenous identifications for present-day Métis people, historians, and policy makers.
Chapter 1: Imperial Thinking in the Canadas and Rupert's Land, 1816-1860

An old joke says the first Métis was born nine months after the French first landed in Canada. Certainly, colonial contact and the close relationships of the fur trade rapidly led to children of mixed Indigenous and non-Indigenous ancestry, some of whom became Métis. By mid-eighteenth century Hudson's Bay Company officials in Rupert's Land were beginning to recognize a distinct population, known as "bois-brulés," "Métifs," and "Half Breeds." But overall in British North America at this time there was little official interest in the Métis or people of mixed ancestry. In general, the British and colonial Canadians had an impoverished understanding of Indigenous peoples and their social classifications, and were relatively unconcerned with such things. This is partly because this period was characterized by conflict, alliances, trade, and kinship relations among multiple parties: Haudenosaunee, Anishinaabeg, Cree, French, British, and Americans, among others.¹ The British Empire characterized First Nations as "quasi-autonomous units" that were largely separate and sovereign (because they could make alliances and they had their own laws and territories) but under Royal protection.² Because they dealt with Indigenous people largely as groups, the imperial and colonial governments were indifferent to the status of individuals; it simply was not relevant. Formally this remained the case until the responsibility for "Indian Affairs" officially passed to Canada in 1860, though the relationship was already beginning to change by the 1830s when the management of Indian Affairs was transferred from military to civil control. The Colonial Office

then introduced the "Civilizing Policy," which was the attempt to remake communities by remaking individuals. This shift signified the government’s growing preoccupation with the status of individual Aboriginal people.

The state was barely aware of the Métis until the Red River uprising of 1869-70, though the Seven Oaks incident of 1816 made the British more conscious of the Métis, and foreshadowed the later uprising in many ways. For example, the Métis were increasingly viewed (first by the British and later by the Canadians) as potential troublemakers with disproportionate power and influence. Though the documents of the time show there was little consistency in descriptions of the Métis, there was also little concern with getting the definition exactly right; the Métis in this case only needed to be identified because they were allied with the Hudson's Bay Company's enemy, the North West Company. Other than Seven Oaks, there was little official interest in the Métis for the next few decades, but there was some interest in other Indigenous people of mixed ancestry (also referred to as "half breeds").

Among some imperialists there was a small hope, at the time of the Civilizing Policy of the 1830s, that mixed race individuals could have a "civilizing" (Europeanizing) effect on their "pure Indian" relatives. In the early to mid-nineteenth century there were many competing notions about human nature and difference. Ideas about inherited characteristics — rank, lineage and blood—coexisted with Enlightenment universalism and Evangelical notions that character was formed through industry, education, and the possibility of progress. Though Euro-Canadians defined “half breeds” at least partly by their mixed ancestry, most viewed their cultural practices, influenced by both European and First Nations practices, as more revealing of character and identity. In this conception, Métis and people of mixed ancestry were often depicted as "semi-civilized."
Though in the early nineteenth century, there was virtually no concern with distinguishing between "Indians" and "Half breeds," by mid-century the Crown wished to reduce its financial responsibility towards Indigenous people—who were no longer needed as military allies. The thinking was that fewer "Indians" would need less land, claim fewer presents, and cost less money. These kinds of concerns figured in the Bagot Commission of 1842-1844, which was the first time the state attempted to enumerate "half breeds" and which for financial reasons recommended excluding them from the lists of those eligible to receive presents.3 Similarly, land pressure in the Province of Canada encouraged a more limited definition of "Indian," which could make more “surplus” land available for settlement by productive, presumably white, agriculturalists. The first legislation defining and identifying "Indians" appeared in 1850, for the purpose of identifying who could live on Indian lands.4

At the same time, in the Robinson Treaty negotiations of 1850, the Crown made a distinction between "Indians" and "Half Breeds" for the purpose of excluding the latter from treaty negotiation. Many of the so-called Indians with whom Robinson negotiated were actually self-identified Half breeds, but he expended little energy trying to differentiate them. The desire to distinguish "Half Breeds" from "Indians" was more evident in the Pennefather Commission Report of 1858. The civilizing programme was proving to be more expensive and less successful than originally expected, and officials, missionaries, and Indian agents were looking for an explanation, asking questions such as what effect race mixing had on people’s character and whether the reason for the failures of Indigenous assimilation could be attributed to an


4 See Chapter 2 for a detailed interpretation of Canada's identity legislation and its relationship with the Métis and people of mixed ancestry.
unchangeable biology or simply stubbornly held customs.\(^5\) From 1816 to 1858, in multiple British North American colonies, there was a nascent awareness of the Métis and interest in classifying people of mixed ancestry. But as the drive to define, identify, and characterize these "Half Breeds" grew, so did uncertainty, ambiguity, and confusion.

**Seven Oaks Incident 1816 & Selkirk Trials**

One of the first events that sparked British-Canadian awareness of the Métis in Rupert’s Land was the Seven Oaks Incident of 1816. Seven Oaks was a violent clash in the fur trade wars between fur trading rivals the Hudson’s Bay Company (HBC) and the North West Company (NWC). Many historians and Métis see it as pivotal because it crystallized the growing sense of political nationhood among the Métis.\(^6\) In brief, Thomas Douglas, the fifth Earl of Selkirk, established a colony at Red River in 1812, which the NWC saw as a threat to their trade. The Métis in the area generally sided with the NWC because of their close relations\(^7\) and because they believed the Selkirk settlement threatened their hunting and trade routes. In 1814, the first Governor of the settlement, Miles Macdonell, concerned that settlers were unable to feed themselves, issued the "Pemmican Proclamation," prohibiting the export of provisions and limiting buffalo hunting near the settlement.\(^8\) This angered the Métis, who saw it as an assault on

\(^5\) Richard T Pennefather, Thomas Worthington, and Froome Talfourd, “Report of the Special Commissioners Appointed on the 8th of September, 1856 to Investigate Indian Affairs in Canada,” Appendix to the Sixteenth Volume of the Journals of the Legislative Assembly of the Province of Canada, 1858.


their independent way of life. They did not recognize any HBC authority over them. The NWC began harassing settlers, and in 1815 attacked the colony and captured (or arrested, according to the NWC) MacDonell. Retaliations and skirmishes followed, culminating in the June 19, 1816 Battle of Seven Oaks between a group of settlers led by Robert Semple (the new governor) and the Métis led by Cuthbert Grant. The clash killed Semple and most of his men, and only one Métis, reinforcing their reputation as fierce fighters. Selkirk retaliated by raiding Fort William (the primary base for the Métis and where they were holding prisoners) and capturing several NWC partners for treason and conspiracy. Selkirk was charged for this and went on trial. He lost and had to pay a fine. Paul Brown and Francois Firmin Boucher were also arrested and tried for Semple’s murder. Lawsuits and countersuits followed until Selkirk’s death in 1820, which opened the door for union between the two companies and peace on the prairies. The 1821 merger put approximately 1000 employees, many of them of mixed ancestry, out of work, contributing to the growing ethnic and political consciousness amongst the Métis.

These various trials and investigations from 1817-1819 used testimonies and letters as evidence, which are useful historical sources, providing an intriguing picture of the kind of ideas the British and Euro-Canadians held regarding the Métis and people of mixed ancestry. Also informative is The Coltman Report, the work of a British-appointed commission of inquiry. Though the settlers thought the Report was biased towards the NWC, Royal Commissioner W.B. Coltman had a reputation as fair-minded and conciliatory, and he aimed for an impartial,

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11 There were approximately 30 witnesses examined in Report of the Proceedings. 41 pieces of official communication, including Coltman’s report, are to be found in Great Britain Colonial Office, Papers Relating to the Red River Settlement (London, 1819).
accurate, and thorough account.\textsuperscript{12} He interrogated under oath numerous witnesses from all parties (approximately half were HBC employees or settlers and half were Métis or NWC). Examining these documents reveals many themes, such as the challenges of understanding the Métis within European notions of race and social belonging, and the characterization of the Métis as illegitimates and as powerful troublemakers—all ideas that continued to be significant throughout the nineteenth century.

There appears to have been little concern for precise identification or that the Métis might be mislabelled. They were explicitly identified as "mixed blood" and somehow distinct, but other than this there was little consistency in their depictions; commentators did not agree on their temperament, character or qualities. Of course, people who were sympathetic to the NWC viewed the Métis in a more positive light than those who were sympathetic to the HBC. The North West Company tended to portray the Métis as a distinct "tribe" who acted on their own, while the HBC described them as mere instruments of the NWC rather than as a People as such.\textsuperscript{13} Also, there was some disagreement over whether the Métis were basically like Europeans, basically like First Nations, or something else altogether. Most identified them by their way of life (their livelihood, customs, clothing) and very few solely by their ancestry, race, or visible appearance. Though the British generally did not perceive the Métis as an independent nation with rights to the land, they did recognize that the Métis claimed these rights. As Adam Gaudry explains, the Métis were establishing themselves as (in Michif) \textit{kaa-tipeyimishoyaahk}, an

\textsuperscript{13} Ens and Sawchuk, \textit{From New Peoples to New Nations}, 15–16.
independent self-determining Indigenous people, but this was a difficult concept for the British who believed the HBC charter established their authority over all of Rupert's Land.¹⁴

Nearly all of the contemporary commentators on Seven Oaks agreed that the origin of the Métis was the "mixing" of European fur traders and Indigenous women.¹⁵ The glossary printed with the Semple murder trial defines "Half-breeds, Métifs, Bois-brulés" as “the names given to the mixed population which exists in the North-West arising from the connection of Europeans or Canadians with the Indian women.”¹⁶ Elsewhere in the documents they were described as a "mixed population sprung from the intercourse of the Traders with the Indian women"¹⁷ and “offspring of white men by Indian women”¹⁸ and “a daring and now a numerous race, sprung from the intercourse of the Canadian Voyagers with the Indian women” and “persons descended from Indian women by white men.”¹⁹ Other than this widely agreed-upon fact, commentators concurred on little else. This ideas of "mixedness" and many of the other diverse characterizations also continued to follow the Métis as stereotypes well into the twentieth century.²⁰

Many British fur traders and officials saw the Métis as more or less the same as those they categorized as Indians. During the Semple murder trial one of the witnesses, John McDonell, brother of Miles, described himself as being “well acquainted with the manners and

¹⁵ There were indeed few European women in Rupert’s Land at the time, but the commentators did not seem to even consider the possibility of unions between white women and Indigenous men.
¹⁷ A Narrative of Occurrences in the Indian Countries of North America, since the Connexion of the Right Hon. the Earl of Selkirk with the Hudson’s Bay Company, and His Attempt to Establish a Colony on the Red River (London: B. McMillan, 1817), 9.
²⁰ See Andersen, Métis.
customs of the Half-breeds;” he was formerly of the NWC, and had a Métis wife and children.\footnote{Herbert J. Mays, “McDonell, John (Le Prêtre),” \textit{Dictionary of Canadian Biography Online} (University of Toronto/Université Laval, 1988). For an unclear reason, their surnames are spelled differently.}

He explained: “their habits are very like those of the Indians. They mingle constantly with the Savages, and hunt and fish like them.” When the Chief Justice asked “are these Half-breeds like Indians in their manners and customs?” McDonell replied, “the major part are like Indians,” and he further emphasized: “a great many live as the Savages do.” In an effort to clarify what made them so similar, McDonell explained that they “hunt and fish like them; they are not accustomed to cultivate the ground, but live generally by the chase.”\footnote{Report of the Proceedings, 207–10.}

McDonell was expressing a common idea that the use a people made of their land directly related to their status as civilized or not. This was an ancient idea, adopted by Scottish Enlightenment thinkers such as David Hume, Adam Smith, and Adam Ferguson, who believed humankind went through progressive stages of development based on their increasing domination of the natural world (i.e. becoming less at its mercy). The details varied among thinkers but in general were based on a people’s means of subsistence, for example hunting, pastoralism, agriculture, or commerce. Europe, in this ethnocentric perspective, was the pinnacle of civilization. By the early nineteenth century, this model of unilinear cultural evolution influenced the thinking of the general educated population, particularly those who had attended Scottish universities, as so many of Canada’s elites had.\footnote{Marshall and Williams, \textit{The Great Map of Mankind}, 213–14; Elizabeth Vibert, \textit{Traders’ Tales: Narratives of Cultural Encounter in the Columbian Plateau} (Norman: University of Oklahoma Press, 1997), 21–22.} This stagist view remained relevant through the entire century; it was not uncommon for late nineteenth century officials to base a hierarchy of Métis (usually from most "wild" to most "civilized") on their means of subsistence. Métis would, in this view, be considered the same as "Indians" if they lived by hunting. On the
other hand, many Métis lived by commerce and indeed some commentators saw them as basically indistinguishable from European fur traders.

The NWC portrayed the Métis as a distinct type or "tribe" of Indian. For example, one of the depositions in a report on the Selkirk colony described "a number of Indians (called half-breeds) and other Indians,” suggesting the two Lieutenants saw them as a subset of Indians.24 In a letter to the commissioner, William McGillivray (head of the North West Company) stated: “the half-breeds under the denominations of bois brulés and metifs have formed a separate and distinct tribe of Indians.”25 Tribe is an old concept imperialists had borrowed from the ancient Romans. For them, a tribe was a number of politically integrated bands (small kin-based groups), sharing a language and culture. “Tribe” was used to describe the political organization of peoples thought to be in a lower position in the evolutionary hierarchy.26 In a sense McGillivray recognized their political distinctness or peoplehood, while categorizing them culturally as Indians.

McGillivray also argued they should be considered Indians because they were illegitimate, and therefore could not take the identity of their European fathers: “It is absurd to consider them legally in any other light than as Indians; the British law admits of no filiation of illegitimate children but that of the mother.”27 This idea of illegitimacy was a thread picked up by several commentators. John Pritchard, a former NWC fur trader who had recently settled at

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27 William McGillivray to W.B. Coltman, 14 March, 1818, printed in Great Britain Colonial Office, Papers Relating to the Red River Settlement, 140. McGillivray’s wife was Cree; it would be interesting to research how he viewed their children, since they clearly were not illegitimate but were of mixed parentage.
Red River,28 described “the persons designated by the appellations of bois-brulés, métifs, or half-breeds” as “illegitimate children of the partners and servants of the North-West company.”29 One of Semple’s employees stated, “the Bois-brulés are the bastard children, either of French or English fathers, by Indian Women.”30 Similarly, the Chief Justice in the Semple murder trial described them as “the bastards of white men, their mothers being Indians, and they the illegitimate offspring of French and English traders.”31

Illegitimacy had been connected with interracial procreation in the European mind for several centuries. For example, in the Spanish colonies from the sixteenth century illegitimacy was clearly associated with race mixing.32 Castas, people of mixed race, and particularly Mestizos, of mixed Spanish-Indigenous ancestry, were generally assumed to be illegitimate. Along with illegitimacy, qualities such as impure blood, poverty, and low status were associated with castas, while legitimacy, purity of blood, honour, wealth, and nobility were seen as virtues of the Spanish elite. In the 1789 Slave Code the status of the mother dictated that of children, so regardless of their father’s status the child of a slave mother was a slave. These children would have nearly always been illegitimate.33 In America, too, slaves and interracial people were often presumed to be illegitimate by definition.34 Though children born out of wedlock was quite

28 Carol M. Judd, “Pritchard, John,” Dictionary of Canadian Biography Online (University of Toronto/Université Laval, 1985).
32 María Elena. Martínez, Genealogical Fictions : Limpieza de Sangre, Religion, and Gender in Colonial Mexico (Stanford, Calif.: Stanford University Press, 2008), 164.
34 Robert V. Wells, “Illegitimacy and Bridal Pregnancy in Colonial America,” in Bastardy and Its Comparative History : Studies in the History of Illegitimacy and Marital Nonconformism in Britain, France, Germany, Sweden, North America, Jamaica, and Japan, ed. Peter Laslett, Karla Oosterveen, and Richard Michael Smith (Cambridge,
common in the eighteenth century, particularly among the lower classes, in British property law and society, illegitimates were unable to inherit, had few rights, and were considered shameful.\(^{35}\) This is a theme that returns throughout the century and is significant as it contributed to the dispossession of the Métis.\(^{36}\)

Another common view was that the Métis were neither truly white nor truly "Indian," though they were recognized as similar to both. One of the witnesses in the trial explained: “I do not think they consider themselves as white men, or that they are so considered by white men, nor do they consider themselves as only on a footing with the Indians.”\(^{37}\) Another stated: “they are accustomed to dress like Canadians… they imitate the white people, and dress like them at all times, except when engaged in sporting as Indians.”\(^{38}\) In other words they could masquerade as Indians or as white people, but were not actually either. Another described "a scene of rejoicing the same evening at the fort, the half-breeds being painted and dancing naked, in the manner of savages, to the great amusement of their masters."\(^{39}\) Their employers were amused because these non-Indians were play-acting like Indians.

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\(^{35}\) See in particular, chapters 2 and 5 of this thesis.

\(^{36}\) F.D. Heurter, *Narratives of John Pritchard, Pierre Chrysologue Pambrun, and Frederick Damien Heurter, Respecting the Aggressions of the North-West Company, against the Earl of Selkirk’s Settlement upon Red River* (London: John Murray, 1819), 68–69, emphasis mine.
Identifying the Métis as illegitimate and not-Indian made it easier to dismiss their claims to land. The British and Canadians did recognize that the Métis asserted land rights, but they gave the claims "little credence. The Narrative of Occurrences in the Indian Countries of North America, a pro-NWC publication on the Selkirk trials, referred to "the right, now claimed by the Half-Breeds, to the possession of the Country." William McGillivray explained that the Métis "consider themselves the possessors of the country and lords of the soil," and that "they one and all look upon themselves as members of an independent tribe of natives, entitled to a property in the soil, to a flag of their own, and to protection from the British Government." Special Commissioner Coltman understood this, reporting that, "the half-breeds, with the Crees and Assiniboins, were always considered the proprietors of the country." Of course Coltman, like a good imperialist, thought that the Métis were misguided (and in fact intentionally misled by the NWC) in their belief that they had a right to land. He argued they had "a mistaken sense of right, and an impression that the settlers were invaders of the natural rights of themselves and the North-West company; their claim to the soil, jointly with the Indians… was evidently strongly impressed on them by the partners of the North West company, to whose opinions they naturally looked up." This idea remained significant through the nineteenth and most of the twentieth century; while British and Canadian officials widely believed "Indians" had at least a

40 A Narrative of Occurrences, 149–50.
43 W.B. Coltman, "A general statement and Report relative to the disturbances in the Indian Territories of British North America, by the undersigned Special Commissioner for inquiring into the offences committed in said Indian Territories, and the Circumstances attending the same," printed in Great Britain Colonial Office, Papers Relating to the Red River Settlement, 124.
“plausible claim” to land, they virtually always refused to make treaty with the Métis. The Métis, on the other hand, repeatedly asserted their rights as Indigenous "natives" of the country.

Although not predominant, there were some references to race, skin colour, and physical features in these documents following the Seven Oaks incident. Though this may not be its actual derivation, the glossary in the Semple murder trial report explains, “the term Bois-Brulé is said to be derived from the sallow complexion of the half-breeds being compared to the appearance of a forest of fir-trees that had been burnt, an occurrence frequent in those parts, and which assumes an universal brown and dingy colour.” Additionally, there is an intriguing case in which Robert Semple wrote a letter taunting the NWC by referring to the Métis as their “Black-breed allies.” This letter was used as evidence in the trial for Semple’s murder. John Pritchard noted that, “it had been said they (the half-breeds) were blacks, and we should see that they would not belie their colour.” In other words, character follows appearance. This idea is a marker of racialized thinking, a kind of essentialism that posits a natural connection between how people look and their internal nature. It had a long history: eighteenth century belief in physiognomy helped set the stage for nineteenth century scientific racism. Stuart Hall argues it is a way of reading bodies as texts, with visible characteristics as the signifiers for things like innate intelligence, morality, and other character traits. With Romanticism, which was growing in popularity after 1800, there was also the emerging idea of national character as well as notions

46 Report of the Proceedings, 90.
49 Hall, Race: The Floating Signifier.
of personal quality, character, or "genius" which resided in the blood. All of this contributed to the biologization of race, the increasing connection of cultural traits with physical ones.

This idea—that appearance and character, outside and inside, are connected—has some similarities with animal breeding. Historically in British stock breeding, external appearance (beauty and conformation) was an important factor in selecting for productivity, because it was easier to assess appearance than productivity and the latter was seen to follow from the former. People drew on the same repertoire of ideas to help explain both human and animal reproduction. Stock breeding certainly informed how people thought about things like descent, personality, heredity, and cross-breeding, and influenced the idea that certain traits were heritable. Ideas about human pedigree were often connected with that of horses. For horses detailed parentage was kept for several generations in order to be aware of whether ancestry included a notable animal. Many breeders drew attention to the similarity with aristocratic pedigree—it was considered common knowledge that superiority and nobility were passed down from a historical figure in a person’s ancestry—and did actually use it to explain horse pedigree.

With the rise of bourgeois genteel culture in the late eighteenth century, “good breeding” in humans was no longer only the product of birth or descent but also of upbringing and adherence to specific behavioural standards. Similarly, at the time of the Seven Oaks incident most portrayals of the Métis and mixed-ancestry people described their identity and character as

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50 Hannaford, Race, 189–90.
52 Martínez, Genealogical Fictions, 28.
54 This is one reason for the popularity of etiquette manuals in the nineteenth century. L. Young, Middle Class Culture in the Nineteenth Century: America, Australia and Britain (Springer, 2002), 124–26.
determined primarily by their way of life, rather than by ancestry, skin colour or “blood.” Many witnesses in the Selkirk trials believed that “half breeds” could, if properly raised and educated, be as “civilized” as any European, but otherwise would be as “savage” or “wild” as Indians. For instance, one witness in the trials is asked whether, when employed as “servants and canoe-men,” the Métis “paint and preserve the habits of Indians.” He responded: “No, not when they are so employed,” demonstrating that he recognized that they could easily follow either Indigenous or European customs when the situation called for it.\(^{55}\) Special Commissioner Coltman similarly described “the less savage force of half-breeds” in a letter: “some few who have received their education in Canada, and are employed by the North-West company as clerks, are nearly as much civilized as the traders themselves, a few others on the contrary, are scarcely removed from the savage state, and the greater bulk fill the various gradations between these two...”\(^{56}\) Again, this time acting as a witness in the murder trial, Coltman argued:

> The Half-breeds are of various kinds... varying in character, information, and manners, according to the peculiar circumstances in which they may have been placed with reference to education and numerous particulars. Some have been sent to Montreal for education, and some even to England. I believe these are not very far removed from white men, but the advantages they have enjoyed are so various that they may be considered as filling every link from the character of pure Indians to that of cultivated men.\(^{57}\)

In his report for the Colonial Office, he reiterated that some Métis “have received an ordinary school education,” while others “are notoriously without any education... being little removed from the savage state.”\(^{58}\)


\(^{56}\) Coltman to Sherbrooke, 14 May, 1818 in Great Britain Colonial Office, Papers Relating to the Red River Settlement, 122.


Coltman found this distinction so important that he argued the extent of an individual's culpability in the Seven Oaks affair should be in proportion to that person's level of Europeanization, so those who should be punished would be those who "had the advantage of a civilized education and religious instructions," while in the case of the others "a further palliation of their crime is to be found in their half savage state."  

Civilizing Policy of the 1830s

The idea that education and cultivation had such a significant influence that it could actually change a person's ethnicity was at the foundation of the Civilizing Policy of the 1830s, the forerunner of the assimilationist policies of the nineteenth and twentieth centuries such as enfranchisement and residential schools. Environmental or cultural explanations for human difference remained popular in the early nineteenth century. During the Enlightenment, many thinkers held that to be human was to have the potential of differentiating oneself from nature and that becoming civilized meant leaving the state of nature. By the end of the eighteenth century the rise of liberalism and the middle class were replacing older notions of social rank, pre-ordained by birth, with a new admiration for the self-made man. In this view, "savagery" was not inherent in a person's blood or biology, but was rather a radically simple innocence, a stage to be overcome. This "Enlightenment faith in human perfectibility" meant, theoretically, that all people could be "improved." John Locke, for instance, viewed Indigenous people as children but thought that with education they could have land, property, government, and surplus

wealth. In other words, whether “Half Breed” or “Indian” (a distinction which mattered little), they could be removed from the state of nature.

These sorts of ideas prevailed among the British humanitarians who were so influential in Parliament and the Colonial Office in the early nineteenth century, and were manifested in the Civilizing Programme, the assimilationist policy directed at the Indigenous population in the Canadas beginning in the 1830s. Humanitarianism dominated the discourse in both evangelical missions and secular reform movements at the time. Espousing the idea that people could be "improved" or "civilized," humanitarianism relied on the somewhat contradictory ideas of human equality and British superiority, especially upper and middle class superiority. Abolitionists, reformers, and evangelicals constituted themselves in opposition to other colonial actors. They saw themselves as the liberators of the enslaved, and saw slaves, Indigenous people, and the poor as victims who required others to act and speak on their behalf. Humanitarians certainly affected government policy, as is evidenced by their success in achieving abolition, and reforms to other institutions such as prisons, factories, and workhouses. Many influential officials, civil servants, and MPs were humanitarians. They had significant influence on the overall direction of British colonial policy. Indeed for nearly two decades humanitarians dominated the Colonial Office. For example, Lord Glenelg was Colonial Secretary 1835 to 1839, James Stephen was Permanent

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Undersecretary from 1836 until 1848 (when Herman Merivale succeeded him), and the third Earl Grey was Colonial Secretary from 1846-52.\textsuperscript{65}

In the first half of the nineteenth century the general direction of policy towards Aboriginal people in British North America was created in Britain, though the transfer of authority to Canada had begun even before the formal transfer in 1860. By 1830, Upper and Lower Canada each had its own Indian Department.\textsuperscript{66} The Colonial Office and Governors set policy in all the British North American colonies but it was executed largely by Canadians, who often had different motivations than the British. Although humanitarianism may have been influential at the elite level of the British government, on the ground there was often a different, and more pragmatic philosophy, as well as a different set of goals.\textsuperscript{67} Official policy decisions were somewhat limited in their effects, as they were reinterpreted (or occasionally disobeyed) in the colonies. Still, British North America was not excluded from the kinds of ideas sweeping the British Empire and the Atlantic world. Certainly, the circulation of officials in colonial administration influenced policymaking in Canada. For instance, George Arthur, beginning his career in Honduras (1814), had various colonial appointments until he became Lieutenant-Governor of Van Diemens Land (1823-36), Lieutenant-Governor of Upper Canada (1838-41), and Governor of Bombay (1842-6).\textsuperscript{68} Charles Metcalfe, from a prominent East India Company


family, was appointed Governor of Jamaica (1839-1842) and of Canada (1843-5). Similarly, Lord Elgin was Governor of Jamaica (1842-6), Governor of Canada (1847-54), and Viceroy and Governor General of India (1861-2). Within these imperial networks were many other humanitarians and reformers.

The peak of humanitarianism, social reform, evangelicalism and political radicalism in Britain was approximately 1780-1850. Movements for the abolition of slavery, universal male suffrage, land reform, and republicanism were moving around Britain, France, and America, as well as the colonies. Notable reforms in Britain that occurred at the same time as the Civilizing Policy include the 1832 Reform Act for universal male suffrage and the Emancipation Act of 1833, which formally abolished slavery in the British Caribbean, the Cape Colony and Mauritius. In Canada, there was a flowering of political radicalism culminating in the rebellions of 1837 in Upper and Lower Canada, which as historian Allan Greer argues, are best understood in this transnational context. As in the rest of the Empire, humanitarian and missionary activity was also on the upswing in British North America. In 1839, the HBC reversed its old policy of anti-evangelization and began to work with missionaries.

Reformers, evangelicals, and humanitarians believed it was a British duty to help raise and improve people in society; together they collaborated on many projects. Though each started from different premises, evangelicals and secular humanists shared many broad ideas about human nature and had similar goals, including the abolition of slavery. Many abolitionists

70 W. L. Morton, “Bruce, James, 8th Earl of Elgin and 12th Earl of Kincardine,” Dictionary of Canadian Biography Online (University of Toronto/Université Laval, 1976).
71 Lester and Dussart, Colonization and the Origins of Humanitarian Governance, 2.
73 Allan Greer, The Patriots and the People: The Rebellion of 1837 in Rural Lower Canada (Toronto: University of Toronto Press, 1993).
74 Carol Devens, Countering Colonization (Berkeley: University of California Press, 1992), 54.
believed only the institution of slavery was holding slaves back from living respectable lives, and emancipation would automatically result in virtue. Once liberated, men (as the heads of upright Christian families modelled on the British middle class) could become independent moral actors.\textsuperscript{75} There was little understanding of or respect for Indigenous African, African-American or Caribbean customs or family forms. This demonstrates a degree of ambivalence; though abolitionists viewed slaves as potential equals, they also strongly believed in white superiority.\textsuperscript{76} Indeed the “failure” of their vision for former slave societies—former slaves had their own vision of freedom and refused to follow the scripts of the British middle class—contributed to the upswing of racism in the later nineteenth century.\textsuperscript{77} Similarly, the humanitarians professed little admiration or respect for most Indigenous cultural practices, despite their belief in a universal human nature. They believed strongly in British superiority and their duty to "improve" people when possible.\textsuperscript{78} They thought imperialism could thus be a force for good, provided some of its excesses were moderated. To this end various humanitarians, including former abolitionists such as Thomas Fowell Buxton, formed the Aborigines Protection Society in 1837, which organized for racial integration and the end of race-based legislation in the colonies.


\textsuperscript{77} Holt, \textit{The Problem of Freedom}, xxiii–xxiv.

This humanitarian spirit was also directly responsible for The Select Committee on Aborigines for the British Settlements, which was formed (with Buxton as President) to look at "what measures ought to be adopted with regard to the Native Inhabitants" of settler colonies, in order to civilize, convert, and protect them.\textsuperscript{79} The Committee’s 1837 report created the "defining narrative" for humanitarian colonization.\textsuperscript{80} It argued that colonialism was corrupting the easily influenced colonized people, and bemoaned "the desolating effects of the association of unprincipled Europeans with nations in a ruder state." Had the colonizers worked harder to convert and civilize, "those nations which have been exposed to our contamination might, during the same period, have been led forward to religion and civilization."\textsuperscript{81} The committee members, believing themselves to be more virtuous than "unprincipled" lower class settlers, argued that there were only two options for settlements: 1) constant military action to preserve their security, or 2) "a line of temperate conduct and of justice towards our neighbours." They recommended the latter, meaning no violence or oppression of natives, but instead the morally, economically, and technologically superior should take care of those weaker than themselves.\textsuperscript{82} This illustrates the tension between the universalist ideals of the humanitarians and their imperialist arrogance. They were at once benevolent and authoritarian, and utterly convinced of their superiority, both vis a vis the natives and other colonial actors.

This report, and the APS more generally, were influential among lawmakers and officials in Britain and in Canada.\textsuperscript{83} For instance, Herman Merivale, permanent undersecretary of the

\textsuperscript{79} Sir Thomas Fowell Buxton, “Report from the Select Committee on Aborigines (British Settlements); with the Minutes of Evidence, Appendix and Index” (Great Britain: Parliament. House of Commons, 1837), 2.


\textsuperscript{81} Buxton, "Report from the Select Committee on Aborigines," 44–45.

\textsuperscript{82} Buxton, “Report from the Select Committee on Aborigines,” 75–76.

Colonial Office (1848 to 1860), thought the APS was fanatical but agreed that aborigines needed protection from low rank greedy settlers.\(^8^4\) The idea that the Crown must protect Indigenous Canadians from the "whims of the local legislatures" was embodied in the federal jurisdiction over "Indians and lands reserved for the Indians" in the British North America Act of 1867.\(^8^5\) Though humanitarians and missionaries were also imperialists, their relationship with the state was not always simple and direct. Among the British elite, even in Parliament and the Colonial Office, there was a general state of ignorance about their colonies (which numbered over 200).\(^8^6\)

That did not stop them from having opinions, however. Though they never completely opposed imperial rule, they variously strengthened, clashed with, and reshaped imperial activities; humanitarianism was both an enabler and a limit on colonialism.\(^8^7\) This is also clear in the Canadian context, when missionaries variously conformed to, ignored, or tried to modify state policy towards Aboriginal people.\(^8^8\) For instance, Mississauga Methodists Peter Jones

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\(^8^8\) There are many examples, including: T.G. Anderson to B., 23rd June 1835, Toronto Reference Library, Anderson Papers, S29, Folder D; Many of the letters in LAC RG10 Vol 6031 File 150-9; LAC RG10 Vol 2654 File 132413; LAC RG10 Vol 6031 File 150-9 part 1.
(Kakhewāquonāby) and George Copway tried to prevent the worst excesses of colonialism, but also worked to Christianize and acculturate their people.89

These humanitarian ideas affected state strategies regarding Aboriginal people in Canada as well, most obviously with the Civilizing Policy. By the 1820s the British felt secure that the peace on the continent was a lasting one, and military alliance with First Nations was no longer a priority. The fur trade was moving steadily west, removing the livelihood of many Indigenous communities in the Canadas, and settlers were swiftly grabbing land. In 1830 Sir George Murray, the Colonial Secretary, transferred the Indian Department to civil from military control, and soon there followed budget cuts and even calls for the Department to be abolished.90 All of this significantly changed the relationship between the British and First Nations. To the British, two options seemed possible: removal or assimilation.91 Governor Bond Head, who had worked in Argentina and travelled extensively in Upper Canada, believed Indigenous extinction was inevitable and therefore wanted to remove entire communities to Manitoulin Island to live out what he thought were their last days.92 First Nations, missionaries, and humanitarians protested this controversial plan. Indigenous leaders articulated that their people were fully capable of equality. Exactly how they envisioned it varied. Some (such as Peter Jones) argued they could become acculturated and, like all citizens, participate in the civic affairs of Upper Canada. Others

92 Great Britain Colonial Office, Aboriginal Tribes (North America, New South Wales, Van Diemen’s Land and British Guiana): Return to Several Addresses to His Majesty (London: HMSO, 1834), 57–58.
(such as Shingwaukonse) preferred to focus on self-rule and a reciprocal relationship with the Crown. All Indigenous leaders recognized the need for security of land.\footnote{Smith, \textit{Sacred Feathers}, 164; Janet Elizabeth Chute, \textit{The Legacy of Shingwaukonse: A Century of Native Leadership} (Toronto: University of Toronto Press, 1998), 74–75.}

The Colonial Office abandoned Bond Head's plan and instead decided to focus on an active programme of civilization comprised of both protection and assimilation. They would temporarily isolate Indigenous people on land protected from purchasers and creditors, and work towards assimilating them, which in their view meant sedentarization, Christianization, and agricultural education.\footnote{Upton, “The Origins of Canadian Indian Policy,” 58–59; Great Britain Colonial Office, \textit{Aboriginal Tribes}; John Milloy, “The Early Indian Acts: Developmental Strategy and Constitutional Change,” in \textit{As Long as the Sun Shines and Water Flows: A Reader in Canadian Native Studies}, ed. Ian L. Getty and A. S Lussier (Vancouver: UBC Press, 1983), 59.} Of course, the civilizing programme was highly pragmatic—it was a convenient way to save money, as self-sufficient farmers would cost less than military supplies and diplomatic presents—but it was justified using humanitarian ideals. Many British and Canadians, who liked to think of themselves as more enlightened, benevolent, and liberal than the Americans, in relation to their treatment of their Aboriginal population, endorsed it.\footnote{For example see Binnema and Hutchings, “The Emigrant and the Noble Savage,” 118.}

The founding document of the civilizing programme, Major General H.C. Darling’s report of 24 July 1828, described the initial goals and methods for the assimilationist policy. Darling, after touring Upper and Lower Canada, believed the Indian Department was still necessary to prevent First Nations from starving. Darling blamed the bad influence of Europeans for what he viewed as Indian degeneracy, calling for "active interposition of the Government… on behalf of these helpless individuals, whose landed possessions (where they have any assigned to them,) are daily plundered by their designing and more enlightened white brethren."\footnote{H.C. Darling, Report, 24 July, 1828 in Great Britain Colonial Office, \textit{Aboriginal Tribes}, 22.} This is the same thinking as the 1837 \textit{Report from the Select Committee on Aborigines}, which described
the degradation of previously "noble Indians" as a result of living among disreputable white settlers.\textsuperscript{97} One of the key beliefs of humanitarianism, however, was the possibility of human progress. Certainly Darling seemed hopeful that, although "an Indian is little better than a child,"\textsuperscript{98} with the proper instruction this would not be a permanent condition. In other words, he thought Aboriginal characteristics were due to their way of life, culture, education, and upbringing rather than birth, ancestry, or race. Darling's report planted the seeds for and reflects the same philosophical underpinning as nineteenth and twentieth century assimilative policies such as enfranchisement, prairie farm policy, and residential schools.

Although humanitarians wrote virtually nothing about the Métis, the 1837 \textit{Report from the Select Committee on Aborigines} gives a sense of humanitarians' views on race mixing in other contexts. For instance, the report mentioned that the Griquas, who originated in the intermarriage of Khoikhoi and Dutch colonists in South Africa, " retains no trace of civilization from their European parentage," which the Committee blamed largely on a lack of Christian education.\textsuperscript{99} However some Griquas, "are rather to be considered as Whites with a tinge of Hottentot blood, than as Hottentots with a tinge of white blood."\textsuperscript{100} The Report described race not as a fixed set of categories, but a sort of racial gradation. The authors of the Report clearly expected some characteristics to be passed through ancestry, but upbringing or education could prevail over blood. This general view about miscegenation, the inheritance of character, and the power of socialization dominated views about Indigenous North Americans as well.

In opposition were those who believed miscegenation contributed to degeneration. Bond Head, for instance, had complained that civilization had "blanched their [Indigenous women's]
babies' faces,” arguing that European influence fouled what he saw as the unspoiled nature of the primitive, causing adultery, loose morals, and the mixing of races. A Romantic who strongly believed the "Noble Savage" must be protected, he associated race mixing with impurity, immoralities, and illegitimacy. The humanitarians of the APS defended the chastity and character of the Christian Indian females" by arguing their babies were always pale, "even where the character is above suspicion and the blood pure." They too, in this instance, appeared to connect racial with sexual purity, but did not see paleness as a sign of racial and sexual degeneracy.

Most humanitarians viewed the Métis and mixed Indigenous people as similar to "Indians," and therefore like minors or dependents, but improvable. For instance, however powerful he might be within his own community, to the British, a Métis man was still a child. One letter to the Colonial Office stated, “Nesanquetainrivene (a bois brulé), lately from the red river… is one of our faithful subjects…and has ever acted as an obedient and good child;…the Bois brulés have placed him at their head as their chief, and that he has great influence over them." However, at the time of the Civilizing Policy most officials remained optimistic that the Métis could become "civilized" and very close to, if not identical to, whites. Indeed Samuel Jarvis, Chief Superintendent of Indian Affairs for Upper Canada from 1837 to 1845, thought intermarriage itself could be a civilizing force among the Indigenous population. Merivale,

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101 Binnema and Hutchings, “The Emigrant and the Noble Savage,” 120.
104 McNab, “Herman Merivale and Colonial Office Indian Policy in the Mid-Nineteenth Century,” 60–61; Ted Binnema, New Histories for Old: Changing Perspectives on Canada’s Native Pasts (Vancouver: UBC Press, 2007), 52. This was also a time when plant hybridization was beginning to lose its image of wickedness, and as gentlemen amateur botanists were producing hybrid crops and flowers, this negative image was slowly being replaced with the notion of improving God's creation (such as with the creation of the sugar beet in early nineteenth century). Noël.
having no firsthand knowledge of Canada or Rupert's Land, theoretically agreed in his early

*Lectures* but later began to view the Métis similarly to most English Canadian officials as (in the

words of historian J.M. Bumsted) a "separate and troublesome group halfway between savagery

and civilization."\(^{105}\) They had the power to disrupt the imperialists' self-serving construction of

Indigenous people as "improvable" children; many Métis had characteristics the British

conceived of as "civilized" (for example, they were Christian and spoke English or French), but

their loyalties were questionable: the Métis tended to be steadfastly independent and dedicated to

their own people.

**Bagot Commission 1842-1844**

The goals of the Civilizing Programme remained authoritative until the twentieth century,

but were never achieved to the satisfaction of the authorities, leading to periodic reviews. One

early reassessment came in 1842 when Governor Bagot appointed a commission that was to

examine the operation of the Indian Department and the conditions of the Aboriginal people of

the Province of Canada with the stated purpose of improving their standard of living while

reducing colonial expenses, particularly since Britain wanted (as advised in Lord Durham's

report) increased autonomy for the colonies.\(^{106}\) Among the commissioners Bagot appointed

Rawson William Rawson, an avid statistician and colonial official. Bagot and Rawson were both

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\(^{106}\) For more on the context of the Bagot Commission see Leslie, “The Bagot Commission.”
proponents of responsible government for white settlers.\textsuperscript{107} The report was lengthy, thorough, and influential. It set out an overarching philosophy to guide policy makers as well as specific policies and established the administrative bureaucracy of the Department of Indian Affairs. Despite the significant shifts in the structure and politics of Canada (such as responsible government in 1848, Confederation in 1867, and the westward expansion of the 1870s), the administrative system established by the Bagot Commission was very resistant to change and remained in place for many decades.\textsuperscript{108} The Indian Act and important subsequent government practices, such as residential schools and the promotion of agriculture, grew out of the programme outlined in the Bagot Commission report. Although not its primary focus, the Commission appears to be the first time that state officials made it a point to distinguish between “Half breeds” and “Indians.”

Bagot reaffirmed the Darling Report's civilizing programme. The Commission concluded that the goal of the Indian Department should be to create self-reliant Christian farmers who would eventually be able to be full citizens. At this point, "the Indians now settled in the Province should be expected to fall into the ranks of the other subjects of her Majesty."\textsuperscript{109} They would be fully assimilated, no longer Indians, and would no longer need the Indian Department. In their Manichean world view, "civilization" was the opposite of Indianness; the Commission could not conceive of people who retained their Indigeneity but were formally educated and integrated into civil society. Though it is questionable whether the commissioners thought


Aboriginal people could ever become the equals of Europeans in all respects, they did not seem to see any particular racial barriers to such “improvement.” What would success look like, in their view? The report explains that civilized people "are more regular in their habits; dress more like white people, wash their hands and faces daily... attend public worship regularly... their moral habits are materially improved." They are also Christian, settled farmers, economically self sufficient, and good liberal subjects.\textsuperscript{110}

However, for the Bagot Commission, civilization was not altogether positive. Just like the APS, the commissioners thought the influence of Europeans could sometimes be harmful, causing the “Indian” to become “indolent to excess, intemperate, suspicious, cunning, covetous, and addicted to lying and fraud.” There were echoes of the noble savage trope in their admiration of “the physical formation of the red man in his native state" which consisted of "height, beauty of proportions, nobility of carriage, activity, strength and suppleness." They thought these fine characteristics "all decreased with civilisation and the progress of settlement,” which caused physical and moral decay, due to liquor and starvation (caused by the reduction in game) laying "the seeds of disease and degeneration.”\textsuperscript{111} The idea that Indigenous people were perfect physical specimens prior to European influence also hints at the theme of purity, something particularly relevant to ideas about race mixing. Becoming more like Europeans, whether biologically through race mixing or culturally by becoming “half civilised,” was not necessarily positive in their view; the commissioners thought it was important to protect Aboriginal people from settler influence, focusing on “moral and religious improvement” instead.

In addition to moral and religious change, the commissioners believed a change in the form of land ownership was necessary in order to fully assimilate the Indigenous population.

\textsuperscript{110} Bagot, “Report on the Affairs of the Indians, Parts 1&2.”
\textsuperscript{111} Bagot, “Report on the Affairs of the Indians, Parts 1&2.”
They explained that the problem was that "Indian Lands were held in common and the title to them was vested in the Crown, as their Guardian." Because these lands were held in common rather than by individual freehold tenure, Indians had only limited rights (right of occupancy and compensation for surrender) to those lands, which prevented them from being full citizens with civil rights such as voting and taxation, according to the commission. This was a period of changing concepts of land, but political independence was still deeply associated with property ownership—the Reform Act of 1832 had broadened but did not remove property requirements. The commissioners argued it was a mistake to think "Indians" did not have these rights; they could have the same rights as whites providing they attained the same qualifications, which required, most importantly, individual land ownership. Indigenous leaders also believed that security of Indigenous lands was the foundation to their autonomy and political rights, but they did not necessarily believe the precise method of tenure was important. An Indigenous-controlled territory was what mattered.

The Bagot Commission recommended eliminating the “peculiar” Indian title and replacing it with individual land ownership, with title deeds of 100 acres going to each Indian family. There are echoes here of British humanitarianism; some abolitionists for instance believed in free villages for Jamaican ex-slaves in order to produce that independence that they

113 For example, see Sara L. Maurer, The Dispossessed State: Narratives of Ownership in Nineteenth-Century Britain and Ireland (Baltimore: JHU Press, 2012).
114 Smith, Sacred Feathers, 238.
believed only came from individual property ownership. The Bagot Commission recommended Indigenous people were to become farmers on their individually owned land, becoming economically self-sufficient and enabling the government to reduce and then end the system of presents. Of course, this also would have been a convenient way to gain more land for settlers, since fewer acres were required to support a family through farming than hunting. The First Nations strongly opposed and resisted this change in land tenure, preventing it from being put into action, but the idea never really lost its appeal for the state. In the late nineteenth century the same ideas provided the moral underpinnings of scrip policy on the Prairies. The Canadian government preferred to satisfy its responsibility towards the Métis, who were viewed as more self-sufficient than the Indians, through individual grants of land instead of protecting collective land through treaty. In many ways, this notion of individual land ownership as the solution to the "Indian problem" never disappeared. It was behind the White Paper of 1969, introduced by Prime Minister Pierre Trudeau and Minister of Indian Affairs Jean Chrétien, which proposed to abolish Indian Status altogether and convert reserve lands to private property. It was also behind the First Nations Property Act, proposed in 2011 by Prime Minister Stephen Harper's government, and continues to be espoused by some policy advisors.

The Bagot Report’s discussion of land sheds light on the British understanding of Indigenous land rights and why the British did not in this period view the Métis as having those

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116 Hall, *Civilising Subjects*, 132–39. On the other hand, some officials (such as Lord Glenelg) felt land should be kept out of the hands of the ex-slaves because it might diminish the labour supply. Holt, *The Problem of Freedom*, 73–75.


rights. To explain how the Crown originally gained ownership of Indian lands, the report cited the eighteenth century political philosopher Emer de Vattel, whose *Law of Nations* was commonly cited to justify colonization.\(^{119}\) Vattel argued that a people could not justly claim more land than they were cultivating.\(^{120}\) Because the commissioners believed Aboriginal people did not farm, they thought their land was never fully utilized and they did not lawfully possess it.\(^{121}\) Therefore the commissioners claimed the British "were lawfully entitled to take possession of it and to settle it." Besides, they argued, settlers would have encroached anyway due to "the natural laws of society."\(^{122}\) So according to the commissioners, Indigenous peoples had no *natural* rights to the land; it was the Royal Proclamation that had *created* their land rights. Today most scholars argue Indigenous rights are natural or inherent, and the Royal Proclamation of 1763 simply codified and confirmed these pre-existing rights.\(^{123}\) However, the dominant view in the mid-nineteenth century, as expressed in the Bagot Commission, was quite different. In an

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\(^{121}\) The foundations for this were in sixteenth and seventeenth century international law, colonial policy and American case law (since prior to *St Catherines Milling* in 1888 there was no Canadian case law but, being from the same legal tradition, Canada has often used American case law). In 1722 the British Privy Council affirmed the generally respected law of nations, declaring there were two ways of establishing British sovereignty. If the land was *terra nullius* (empty), the discoverer could claim sovereignty; if already occupied a nation could only claim sovereignty by conquest or treaty. In practice, *terra nullius* was often used as justification if the land was inhabited by people perceived as significantly different or inferior, with the argument that they did not properly use and occupy the land. Dara Culhane, *The Pleasure of the Crown: Anthropology, Law, and First Nations* (Burnaby, B.C.: Talonbooks, 1998), 47–48. However, in North America, the various colonial powers (Dutch, Swedes, British, America) generally recognized Indigenous land rights and favoured cession rather than conquest. Neil H. Mickenberg and Peter A. Cumming, eds., *Native Rights in Canada*, Second (Toronto: Indian-Eskimo Association of Canada, 1972), 15–16. The 1722 memorandum was more about how to establish sovereignty that other colonial powers would respect rather than establishing sovereignty over natives.

\(^{122}\) Bagot, “Report on the Affairs of the Indians, Parts 1&2.”

ethnocentric interpretation of international law, “wandering Indians” (as the commissioners described them) did not fully use their land and therefore did not lawfully possess it. What limited rights they did have had been granted by what was imagined as the enlightened and generous British spirit. Because Métis were not included in the Royal Proclamation, the Bagot Commission would not have viewed them as having any land rights. And indeed, other than being forced by the Red River uprising of 1869-70 to negotiate the Manitoba Act, the government generally refused to negotiate with the Métis as a group.

The separate classification of "Indians" and "half breeds" began as a way of reducing costs and furthering the goal of ending what was viewed as government generosity. The commissioners stated, "the bounty of the Crown in its present shape should cease." By the mid-nineteenth century the British were attempting to find an alternative to the system of presents distribution, which had long been used to cement their alliances with First Nations. For example, in 1850, Lord Grey wrote to Lord Elgin, "I am sorry to hear of agitation among the Indians but it is clear that the H. of Commons will not go on voting the presents so we must make the best of it." The customary gift giving was a longstanding Indigenous diplomatic custom predating the British. Presents had been customarily distributed to acknowledge the loyalty of valuable allies, but it was becoming costly and Canadians were increasingly viewing Indigenous peoples through the lens of dependency rather than alliance.

127 Witgen, An Infinity of Nations. Some Métis had been receiving presents, but there was some disagreement over whether this was appropriate. T.G. Anderson to S.P. Jarvis, 23 May 1840, LAC RG10 Vol 124, pp. 69712-69713; Alexander Vidal and T.G. Anderson, "Report of Commissioners A Vidal and TG Anderson on visit to Indians of
The Bagot Commission's plan to phase out presents included a recommendation to stop giving them to people they perceived as “civilized.” In this category they included the Métis and many people of mixed ancestry. Indeed the category of "Half Breed" could even be put to work shrinking Indian numbers. Among their recommendations was one of the firsts attempts by the state to identify individuals as either Indians or Half Breeds; they asked Indian agents to describe and enumerate people of mixed ancestry in each community. In Lower Canada, in particular, there was a long history of intermarriage and adoption. The commissioners described how “in some settlements there is scarcely a single pure-blooded Indian” while in other settlements there were “others of still more impure Indian blood.” Occasionally there were even attempts to precisely quantify a person's "Indianness", using terms such as “quarter breed” in an effort to be more specific.

The report set out a gradual program that started with creating exclusive band lists; only those on the lists would receive “annual bounty.” Nobody else was to be added, and children educated in residential schools would be removed. This would limit the size of the list, along with government financial responsibility, and eventually even those remaining would "have acquired the knowledge and habits necessary" through the civilizing project to dispense with the list altogether. Although they did not state it, the implication was that the land would at this point revert to the Crown. The commissioners were careful to note that the lists must exclude “half

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breeds, or descendants of half breeds, where the difference is clearly marked,” unless they were “adopted by the Tribe with which they are connected, and live, as Indians among them.”

Thus it was both mixed ancestry and lifestyle that defined a "Half breed." This was perhaps the first time the government was interested in separating those it called "Indians" from those it called "half breeds" for the purpose of saving money and acquiring land, but it was certainly not the last.

Robinson Treaties 1850

Many of the ideas found in the Bagot Commission began to have concrete effects during the Robinson Treaty negotiations of 1850 between the British Crown and the Anishinaabeg of the Upper Great Lakes. The Robinson-Huron and Robinson-Superior Treaties of 1850 covered a huge tract of land north of Lakes Huron and Superior. In the 1840s the industrial demand for minerals created new interest in mining, and the government sent surveyors and began selling land to mining interests. This violated the Royal Proclamation of 1763 and alarmed local Anishinaabeg, who had petitioned the government repeatedly over the years, asking them to negotiate a Treaty. Other than commissioning reports, the government took no action until after the embarrassing incident at Mica Bay in 1849, in which a group of Anishinaabeg and

131 Dianne Newell, Technology on the Frontier: Mining in Old Ontario (UBC Press, 2011), 63. The first mining regulations were established by Order in Council for Upper Canada in 1845. The first statute was The Gold Mining Act of 1864. Legislative Assembly Province of Ontario, Sessional Papers, 1893, 221–23. In the Upper Great Lakes region, there is evidence of Indigenous mining and trade, particularly of copper, from as early as 3000 BCE. Edmund Jefferson Danziger, Great Lakes Indian Accommodation and Resistance During the Early Reservation Years, 1850-1900 (Ann Arbor: University of Michigan Press, 2009), 82–83; Charles E. Cleland, Rites of Conquest: The History and Culture of Michigan’s Native Americans (Ann Arbor, MI: University of Michigan Press, 1992), 18–19.
Métis attacked and occupied one of the mining establishments that was trespassing on their land. Shortly thereafter the Crown appointed William B. Robinson as its representative and sent him to negotiate the treaties.

During the negotiations, Shingwaukonse and the other First Nations representatives requested that the Métis be included in the treaty, but Robinson unequivocally refused. It was not a foregone conclusion that they would be excluded. They had been recognized in several government reports, though there was no consensus on the extent of their rights. Some individual Métis were involved in the negotiations and became beneficiaries as members of bands such as Garden River. Some had already joined the bands in anticipation of treaty negotiations, some joined later, and some preferred to remain independent. Joshua Biron, a Métis who had joined Garden River prior to the Robinson Treaty negotiations, when interviewed in 1893 stated, these "other Half-breeds said they were already Indians enough without binding

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134 Robinson came from a prominent Upper Canadian loyalist family. He had been a manager at Bruce Mines, so he was somewhat familiar with the area and presumably sympathetic to mining interests, though he had a reputation for fairness. He also had some experience with treaty negotiations, having negotiated in 1843 a treaty with the Ramas of Lake Simcoe. Chute, The Legacy of Shingwaukonse, 140; Anne Marie Bridget O’Connell, “Poverty and Race: Colonial Governmentality and the Circuits of Empire” (Ph.D. Thesis, University of Toronto (Canada), 2005), 1; Julia Jarvis, “Robinson, William Benjamin,” Dictionary of Canadian Biography Online (University of Toronto/Université Laval, 1972).

135 Report of Mr. W.B. Robinson to the Honbl Colonel Bruce, Superintendent General of Indian Affairs, on transmitting the "Robinson Treaty", 24th September 1850, LAC, RG10, vol 191: 111,693-111,708; Morris, Treaties of Canada, 16.

136 For example: "It is understood that there is near the Sault St Mary, a small settlement composed chiefly of persons of mixed extraction, but it is not known to this Department to which Tribe or Tribes they consider themselves as belonging.” D. B. Papineau, "Report of the Hon. Commissioner of Crown Lands relative to the claims of certain Indians to Territory on the Shores of Lakes Huron & Superior", 4 Nov 1847, LAC RG10 Vol 163, 94981-6. See also "Report of commissioners A Vidal and TG Anderson on visit to Indians of North Shores lakes Huron and Superior for purpose of investigating their claims to territory bordering on those lakes," 1849, AO Reel MS1779.

137 For example the list of recipients included Métis families such as the Bells, Cadottes, and Birons. "Voucher no. 2: For Shinguacouse's Band and Self," Sep11, 1850, AO Reel MS1779 31-1.
themselves to be under an Indian Chief.” Nevertheless, they were not, as a separate interest group, included in the treaty. There were no Métis reserves, or land grants, or compensation given to the Métis as a group. Robinson’s reasons for denying Métis claims were vague. In his report, he wrote that although the chiefs insisted he provide 100 acres to each of 60 Métis individuals, he told them he “had no power to give them free grants of land.” He did recognize that they might “seek to be recognized by the Government in future payments,” but dismissed this concern for another day. Nowhere did he explain why he saw them as not entitled to compensation for the land they used and occupied, or what differentiated them from those he did view as entitled.

In trying to understand why the Crown felt no obligation towards the Métis, it is useful to examine why it felt an obligation towards the people it classified as Indians. In fact, the Province of Canada’s commitment to all First Peoples was relatively weak at this time. Canadians were mostly unaware that they were surveying and mining on other people’s lands—they considered it their land already. The Legislative Assembly in 1846, for example, approved mining locations with no consideration of the people who already lived there. This is quite revealing of mid-nineteenth century Euro-Canadian views of Aboriginal land rights—as relatively unimportant but basically impediments to progress. The Bagot Commission illustrated the dominant view in the mid-nineteenth century that the Royal Proclamation was the sole source of Indigenous rights, which were therefore subject to the "royal will and pleasure" of the Crown. Most government

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138 “Robinson Treaty Statement of Joshua Biron of Sault St Marie a Halfbreed Included in or at all events paid with the Garden River Band of Indians from the year 1850 to the present time 1893. Made to John Driver and sworn to by him,” AO Reel MS1780.


140 Province of Canada. Legislative Assembly, Journals (Montreal: R. Campbell, 1846), 169–70.

141 This theory of rights was made official in the St. Catherine's Milling case of 1888, but it had already been articulated in the Bagot Commission report of 1845, and was also implicit in the policies and procedures of the
officials assumed all land already belonged to the Crown, and Indian treaties were a mere formality. If anything the Crown, post 1812, was trying to get out of its obligations to First Nations. This helps explain the reluctance to negotiate the Robinson Treaties.

The Indigenous requests to negotiate were initially denied, and Canada continued to drag its heels in the late 1840s. The Canadians commissioned several reports to look into the strength of the Indigenous claim to land north of the Upper Great Lakes, in an attempt to determine whether they had a duty to negotiate. The reports contained mixed recommendations—some argued the forefathers of the current residents had hunted from time immemorial on these lands and they therefore had a relatively strong claim. But most seemed to think the Anishinaabeg were merely immigrants without any title to surrender. For example Denis-Benjamin Papineau, the Commissioner of Crown Lands, believed they had migrated from much further south on the Mississippi, while the original inhabitants had been wiped out by warfare and smallpox. He also argued the local communities were scattered and not an organized nation, "and therefore cannot claim the territory."
Although these reports may have disagreed about the historical facts, they implicitly agreed that Aboriginal entitlement only applied to direct descendants of original inhabitants and not to more recent immigrants. They used language such as “forefathers”, “old Stock”, and “original tribes”. This terminology reveals how the Canadians were viewing land ownership through the lens of their own very British ideas about nationality and territory, kinship and descent, property and inheritance, and offers a clue as to one reason for the exclusion of the Métis. Because the Métis were a comparatively new people, with their origins in living memory, they would not have been considered "old stock" or original possessors of the land, neither were they viewed as a nation.

Papineau reported there was "a small settlement composed chiefly of persons of mixed extraction, but it is not known to this Department to which Tribe or Tribes they consider themselves as belonging." Though they formed a cohesive and distinct community, the local Métis do not appear to have been organized into a large defined polity (nation), nor to have one person the Canadian government could identify as their leader. Euro-Canadians were comfortable thinking in terms of tribes and chiefs, but the Métis had neither. The Métis were, of course, politically active and striving to retain their land. There is evidence that they were among the economically and politically prominent families in the area. They were acknowledged as distinct but had strong relations with their extended kin among the Anishinaabeg, and an established alliance with Shingwaukonse since 1837.

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146 Knight and Chute, “In the Shadow of the Thumping Drum,” 95–100; Peterson, “Red River Redux: Métis Ethnogenesis and the Great Lakes Region.”
147 For example see the many petitions listed in Knight and Chute, “In the Shadow of the Thumping Drum,” 281, note 162.
148 Chute, The Legacy of Shingwaukonse, 72–73.
The Métis practiced a unique mixed seasonal economy. Their style of land holding was also distinct, consisting of fenced land with a preference for French Canadian-style strip lots along the water, which is why they requested individual parcels rather than reserves or other communal land holdings. Indeed, their particular land use patterns may have worked to their detriment. Viewed as "squatters," their ancestral ties to the land generally went unrecognized.

Robinson did advise the government to consider land grants for the Métis:

The Canadians resident on the lands just surrendered at Sault Ste. Marie are very anxious to obtain title to the land on which they have long resided and made improvements… I think the survey of the tract should be made so as to interfere as little as possible with their respective clearings and that those who can show a fair claim to the favorable consideration of the government should be liberally dealt with.

However, he essentially saw them as as relying on the grace of the Crown, having no rights as a people. Then again, the government did not necessarily want to acknowledge other Indigenous rights either.

Ultimately the Robinson Treaties came about for pragmatic reasons. The Province of Canada was feeling increasing pressure from many directions. Mining interests wanted unobstructed rights to explore and develop minerals. Settlers wanted clear title to the land they

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149 John Driver to E.B. Borron, June 5, 1893, AO reel MS1890.
150 For instance, T.G. Anderson’s report of 1845 stated: “The poor Canadian and half breed settlers… may be termed squatters.” He identified them as such because they used the land “without other authority than a permission from the natives who, notwithstanding the territory is said to be theirs cannot sell or give a title to any but the British Government.” TG Anderson "Statement in reference to a report from lieut. Harper," 1 September, 1845, LAC RG10 Vol 151, 87755-58. See also Report of TG Anderson to Captain G Philpotts, 18 July, 1835 AO reel MS35-3; "The Indian Emeute," Globe, Jan 5, 1850. Also see John C. Weaver, The Great Land Rush and the Making of the Modern World, 1650-1900 (Montreal & Kingston: McGill-Queen’s Press, 2003).
151 “Report of Mr. W.B. Robinson to the Honbl Colonel Bruce, Superintendent General of Indian Affairs, on transmitting the ‘Robinson Treaty,’” 24 September, 1850, LAC RG10 vol 191, 111,693-708. According to MacDonell, a representative of the indigenous interests, Robinson told him “there was an act which prohibited the Government making free grants of Land and to enable the Government to fulfil such agreement a special act of parliament would be required.” Robinson “suggested that these people and also the Indian Chiefs should petition the Government upon the subject, and promised to urge upon the Government the fulfillment these their wishes.” Allan MacDonell to Cameron, April 9, 1852, LAC RG 10 Vol 266.
152 George Desbarats to Indian Affairs, May 10, 1847, LAC RG10 Vol 163, 94986-8; Newell, Technology on the Frontier, 64.
occupied. The local chiefs were politically savvy and well aware that British policy had always been to negotiate treaties; in 1848 Shingwaukonse organized a delegation to Governor General Lord Elgin. In addition, they had sent numerous petitions, and staged some well-publicized opposition, culminating in the Mica Bay incident in late 1849. Elgin said he was "very much annoyed" and accused the Canadians of mishandling the situation and expected them to rectify it. The semi-independent Province of Canada was brand-new, and while the imperial-colonial relationship had shifted some, Canada could not go against British law and custom. It became apparent that a treaty was needed to satisfy everyone. Once Canada finally acquiesced, their main goal was to minimize their obligations while achieving the cession of the largest tract of land possible.

Robinson may not have been targeting the Métis per se but, like the Bagot Commission, was trying to economize by excluding them. At this time, the Province of Canada was short of funds, and Britain was no longer willing to finance the acquisition of land. Canada wanted to secure its financial interests by developing the resources in the colony, and mining had some potential for revenue generation. However, mining in the area was unproven and the government was reluctant to invest much in the industry. Robinson did say that he had no objection if the chiefs shared some of their money with their Métis friends or relatives, but he would not allocate

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156 Historian Arthur Ray argues with this new form of annuities the government "turned to the Native people for credit": the plan was that the colonial government would resell the land on credit, using settlers' interest payments to pay annuities. Ray, An Illustrated History of Canada’s Native People, 152–53.
additional funds specifically for them. However, saving money cannot have been his only motivation. At the end of the negotiations Robinson actually had 1000 pounds left in his budget so he could have allocated some of this to the Métis had he been willing.

Robinson may also have wanted to exclude the Métis because he feared they would drive a harder bargain. Métis commonly acted as cultural brokers in treaty negotiations; because of their extensive diplomatic and linguistic skills and kin connections, all sides respected them. The Métis were socially and politically powerful, and had been instrumental in the recent Michigan treaties (1820, 1836). The government had warned Robinson to prevent “the Indians against listening to the counsels of anyone who may advise them to resort to criminal proceedings…” The main focus of such warnings was Allan MacDonell, a white Catholic lawyer who was viewed as the ringleader of the recent disturbances including Mica Bay. He was denounced repeatedly as interfering, self-interested, and overly influential. Métis were also sometimes mentioned as being among the agitators. The idea that the “noble savage” could be led towards trouble by "scheming whites" was not new (nor was it isolated to Canada), and traders and "squatters" in the area, sometimes identified as Métis, were often characterized as

158 Not only because they preferred not to spend the money but because of the prevailing idea that Indigenous peoples could not manage money: “any sum paid in cash which ought not to exceed £5000, and which the Committee of Council, in view of the interests of the Indians think should be as small as possible.” Order in Council, 16 April, 1850, LAC RG10 vol266, 163164-66.
159 He only spent £4000 out of the £5000. Chute, The Legacy of Shingwaukonse, 141; Miller, Compact, Contract, Covenant, 116.
162 R. Bruce to W. Robinson, 11 January, 1850, LAC RG10 Vol266, 163160-61. Vidal and Anderson state that because the Métis are “generally better informed [they] exercise such an influence over” the Indians. "Report of commissioners A Vidal and TG Anderson on visit to Indians of North Shores Lakes Huron and Superior for purpose of investigating their claims to territory bordering on those lakes,” 1849, AO Reel MS1779, 31-4.
troublemakers and villains—selling liquor and encouraging vice. The image of the Métis as potential instigators (particularly during treaty negotiations) was one that persisted through the remainder of the nineteenth century.

Regardless of his motivations, Robinson made a clear distinction between "half breed" and "Indian." Though he refused to negotiate with the Métis as a group, many individual Métis participated in the negotiations, and received annuities for years to come. Robinson even included them in his “very correct census.” Although the evidence shows the Métis saw themselves as distinct, many families officially "became" Indian because they had no other way of protecting their interests in the land—again foreshadowing what occurred in the North-West after 1870. Their First Nations kin helped by pressuring the government to place their names on the paylist. The State had drawn a line between those they called Indian and those they called Half Breed, but as usual it was a messy line. In 1850 Robinson was not yet concerned with identifying individual Métis. However, the new practice of paying individual annuities (begun in 1855) eventually led to the Indian Department desiring control over band membership, and

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163 Lord Elgin complained, "indeed the whole Indian question is a most perplexing one for they are such a miserable set and are so surrounded by villains that in dealing with them one is always getting from one difficulty into another," Elgin to Grey, October 11, 1850 Doughty, The Elgin-Grey Papers, 1846-1852, 1937, 2:724–25. An editorial in the Globe newspaper blamed the "half-bred brethren" of Chiefs Shinguakous and Nebinagochim [sic] for inciting resistance to Robinson. Globe, October 12, 1850. For more on this perception of squatters see TG Anderson to James Fraser February 2, 1842, LAC RG10 vol 124, 69765-67. The Bagot Commission also described squatters whose "illegal possession was accompanied by circumstances of a still more objectionable nature, such as cutting the timber, selling liquors, and plundering, and encouraging vice among the Indians. Bagot, “Report on the Affairs of the Indians, Part 3.”

164 For more examples of the perception of Métis-troublemakers see chapters 4 and 5.


periodically attempting to exclude Métis and people of mixed ancestry in order to control costs. For example, in the 1890s, the Province of Ontario and the Dominion of Canada were in arbitration over the payment of Robinson Treaty monies. At issue was the number of people on the paylists, many of whom were descendants of the original Métis who had joined the bands around the time of the Robinson Treaties. These kinds of attempts to "tidy up" the paylists happened every decade or so. The Indian status of these Métis was constantly threatened, even after they had been members of the bands for generations.

Those Métis who did not join a band were considered legally white, and officially indistinguishable from other British subjects. Many of these Métis were forced to practice their traditions in private while publically assimilating into white Canadian society with varying degrees of success. However, growing prejudice from incoming settlers made that a challenging route as well. With increased immigration to Canada, reserves became in many cases the only safe enclaves for Indigenous peoples to practice their traditions and way of life. This is one reason most Canadians today are unaware that there are Métis in the Great Lakes region. Despite all of this, the Métis survived and small but growing communities still thrive in the Great Lakes. The landmark R v. Powley case of 2003 brought this situation to national attention when the judge ruled that the Métis community had become “invisible” but was not destroyed. Though there have been challenges from those who argue the mixed population of the Great Lakes are

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168 The Province argued that the Métis were a separate and distinct group and were not entitled to annuities.
169 For several examples see Chapter 3. This was happening at least up until the 1930s. For example see LAC finding aid 10-19, which lists enfranchisements for the Sault Ste Marie agency. The overwhelming majority are Métis names. Robin Brownlie argues many who chose to enfranchise themselves had already been removed from the band list. Robin Jarvis Brownlie, “‘A Better Citizen than Lots of White Men’: First Nations Enfranchisement - an Ontario Case Study, 1918-1940,” The Canadian Historical Review 87, no. 1 (2006): 41–42.
170 Anonymous, Personal Communication, August 26, 2012; Richardson, Belonging Métis; Knight and Chute, “In the Shadow of the Thumping Drum.”
not Métis, many people have been rediscovering pride in their heritage.\textsuperscript{171} The exclusion of the Métis was not necessarily a premeditated strategy, but it is clear that the government did not consider the Métis as the original possessors of the land, or as a nation worthy of negotiation.\textsuperscript{172}

**Pennefather Commission 1858**

In the decade after the Robinson Treaties the state again made distinctions between "Indians" and "Half Breeds," and tried to define, identify and enumerate the latter. In 1856, a new commission was appointed under Richard Pennefather to investigate Indian Affairs (the report come out in 1858). In order to assess the progress of the civilizing mission, they asked agents and missionaries questions similar to those of the Bagot Commission, but added some new questions, including some that pertained to the Métis and people of mixed race. Consequently, fairly large portions of the reports are taken up with enumerating and describing people of mixed ancestry.\textsuperscript{173}

The questions the superintendents were to answer included:

\begin{itemize}
  \item 41. Among the Indians under your superintendence what is the proportion of half breeds?
  \item 42. Is there any marked difference in the habits and general conduct of the half breeds and the native Indians if so, state it.
  \item 43. In cases where intermarriage with the Whites have taken place do you find the condition of the Indian improved?\textsuperscript{174}
\end{itemize}

Taken together, these questions show the government’s interest in seeing how the "mixing of races," both socially and biologically, might affect the civilizing programme—they wondered, could it be a positive force? They wanted to determine (Q43) whether a close and intimate

\textsuperscript{171} For example, Peterson, “Red River Redux: Métis Ethnogenesis and the Great Lakes Region.” There is still much work to be done to fully understand the strategies used to resist the forces of the state and settler society.

\textsuperscript{172} The Robinson Treaties are also significant because of their consequences for the future of treaty making in Canada. They became a template for subsequent treaties, including the numbered treaties in the West, from which the Métis as a group were again excluded (but many were included as individuals by identifying as Indians).

\textsuperscript{173} The report uses the terms \textit{mixed blood}, \textit{half breed}, \textit{half blood}, and \textit{mixed descent} interchangeably.

\textsuperscript{174} Pennefather to Captain Ironside, 19 Jan, 1857, LAC RG10 Vol 614.
relationship with whites, through intermarriage for instance, was enough to “civilize” Aboriginal individuals and communities. The commissioners were attempting to understand the connection between race and character, but had not actually made up their mind about how to characterize the Métis and people of mixed ancestry.

Certainly not everyone thought in racial terms at this time. Some of the correspondents did not see "Indians" as a separate race. For instance the Reverend J. Marault, Missionary to the Abenakis Tribe at St. Francis, stated that Indians acted and looked the same as whites once they were settled long enough and it was only from spending so much time exposed to the sun that the Indians appeared any different from Whites: "I have heard visitors express their astonishment, saying that they expected to see Indians where to their great surprise they found white men."¹⁷⁵

Most of the missionaries, agents and superintendents believed Indigenous people were not so different from Europeans that they could not be assimilated. The report argued: “there is no inherent defect in the organization of the Indians, which disqualifies them from being reclaimed from their savage state.”¹⁷⁶ They generally held similar ideas about the civilized/savage distinction as did those in previous decades. According to the commission, becoming more "civilized" meant being Christian, sedentary and settled in permanent houses, subsisting through agriculture, and occupying individually apportioned land rather than shared land.¹⁷⁷

In the 1830s the "civilizing" goal had seemed within reach, but by the second half of the nineteenth century missionaries and Indian agents were beginning to realize how difficult it was to completely assimilate entire peoples who did not want to be assimilated. Although the commissioners remained hopeful, they now lamented that “any hope of raising the Indians as a

¹⁷⁷ There is also a connotation of being subdued. They did not want to pay for special status but did not necessarily intend for Indigenous peoples to be completely integrated with whites.
body to the social or political level of their white neighbours, is yet but a glimmering and distant spark.” Perhaps it is unsurprising that missionaries and government agents wished to demonstrate their successes by relating examples of gradual improvement as well as to make excuses for their failures, but it is also true that internationally humanitarianism was on the wane. Elsewhere in the Empire, disappointment with the results of the civilizing mission was hardening racial prejudice. During the period 1830-1860 missionaries seeking funds and colonial officials justifying their jobs exaggerated and publicized “barbarous” practices throughout the British Empire—for example, Chinese foot binding, widow-burning and infanticide in India, cannibalism and tattooing in the pacific, polygamy and “deviant” sexuality among Africans and Native Americans. Their shocking stories had a strong impact at home. People with radically different social practices such as Indigenous Australians remained little understood, and proved puzzling since they resisted becoming Europeanized despite continued contact. In India, the 1857 Rebellion horrified the British and resulted in increased racial intolerance. The Morant Bay Riot in Jamaica 1865 led to a debate about the potential for equality of former slaves and people of colour more generally. This, combined with the rise of racial science and anthropology, led to the increasing suspicion that perhaps these colonized peoples were "unimprovable." Though many still believed in unilineal cultural evolution, that Indigenous or “primitive” peoples were

like the English past, there was increasing doubt as to whether they could ever "progress" to the same stage as the English.\textsuperscript{182}

Similarly, in the Pennefather Commission, the Canadians were considering the possibility that Indianness might be a permanent disability, one that could lead only to extinction. For instance Mr. Huilburt, the head of the Alderville Institution, an industrial school, stated, "the Indians of North America have not an equal capacity for self government, with the Saxon race, perhaps never will possess the same capacity."\textsuperscript{183} MPP of Chicoutimi David E. Price had similar ideas, arguing Indigenous people, prevented by the "purity of native blood and savage indolence of the desert, will never till the soil, and will gradually become extinct" because of either epidemics or starvation due to loss of hunting ground.\textsuperscript{184} Most still believed this inferiority was not permanent and that Indigenous people could be "improved" at least to some degree, and so the assimilative policy continued to dominate. Still, there was increasing doubt about its effectiveness.

The Pennefather Commission displayed intensified racialization, compared with the 1840s. The greater part of the correspondents did make note of some kind of qualitative biological difference between "Indians" and whites, but were generally undecided as to its implications. Natural history was a fashionable amateur activity in Victorian Canada, and Canadian naturalists were part of the international scientific community.\textsuperscript{185} There was great interest in miscegenation, hybridity, and breeding, which also resulted in curiosity about the

\textsuperscript{182} Anderson, Race and the Crisis of Humanism, 29.
\textsuperscript{183} Pennefather, Worthington, and Talfourd, “Report of the Special Commissioners,” 163.
characteristics of “half breeds” and whether or not they were more assimilable. There were a variety of opinions among the superintendents and missionaries who submitted reports. The Commission itself seemed to be undecided on this front, at times seeing intermarriage as a force for civilization, while at other times doubting whether it provided any advantage. The Commission was influential in both general philosophy and specific policy adopted by the Department of Indian Affairs (now controlled by the Province of Canada after 1860), and there were significant consequences of the report for Métis communities throughout Canada. For instance, Pennefather’s definition of “Indian” ended up as the basis for the exclusionary and patrilineal definition in the Indian Act in 1876.

Conclusion

In the pre-Confederation period, Britain and the colonies that would become Canada had little interest in the Métis (as evidenced by the Selkirk trials), but this started to change after mid-century. There were several reasons for this change. The Colonial Office’s civilizing policy of the 1830s led to the state becoming interested in assimilating individuals, meaning they were interested in the identification and character of these individuals. Additionally, the Colonial Office and the Canadas were becoming more concerned with saving money now that the military no longer bore the expense of presents after 1830. The Bagot Commission of 1842 proposed that reducing Indian numbers, partially by excluding people of mixed ancestry, would save money.

186 The notion of interspecies sex as a perversion (and the idea that the Bible was anti-mule) was being replaced with the possibility that hybrid plants and animals could be better than their parents. Kingsbury, *Hybrid*, 78–93. For instance ethnographer Daniel Wilson, fascinated with the hybridity that permeated human history, wrote that North Americans of mixed ancestry were an improvement over Indigenous People (and Europeans in many cases), and they were contributing to their inevitable extinction through "absorption." Daniel Wilson, “Hybridity and Absorption in Relation to the Red Indian Race,” *Canadian Journal of Science, Literature and History* 14 (1875): 444–51.

There was also the growing belief that the Métis did not share in Aboriginal land rights, whether viewed as natural or granted by the Royal Proclamation. In the Robinson Treaty negotiations, the Métis, depicted as squatters rather than as possessors of the land from time immemorial, were formally excluded as a group. However, many Métis individuals were still included and received treaty annuities if they joined local bands, which demonstrates that the state was not able to precisely identify and enforce these classifications. In the Pennefather Commission of 1858 there was a growing concern with who and what "Half breeds" were, and how they affected the civilizing programme, which had not been as successful as hoped. New racial science was beginning to have an impact. People began to question the results of intermarriage and interracial procreation. They wondered (in their highly ethnocentric language): could the white blood in half breeds be a civilizing force, or were they little improved over pure Indians? In some ways, uncertainty as to whether Indianness was a race or a cultural stage led to similar results; if culture is perceived as insurmountable, it is possible to have, in the words of Balibar and Wallerstein, "racism without races."188

The British and Canadians had little understanding of Indigenous peoples and their social and political organization, and their understanding of the Métis was ambiguous at best. The desire to identify and characterize the Métis and people of mixed ancestry became more urgent in the late nineteenth century as the Métis inserted themselves politically into the colonial landscape, and as specific rights became attached to official identities, but it originated in the mid nineteenth century. As it grew towards independence, the emergent Canadian state inherited not only administrative structures but also a whole complex of ideas from the British who had governed before them. As the British were stepping aside, the influence of the humanitarians

waned.\textsuperscript{189} New ideas, as well as the older ideas they were gradually replacing, became woven into the structure and policy of the new government as well as identity laws, the subject of the next chapter. Though officials worked harder to define and categorize the Métis and people of mixed ancestry, they remained unable to find a suitable and consistent definition or method of identification. Though this uncertainty could have opened up the possibility of the independent and politically astute Métis defining themselves on the national stage, the increased racialization and desire for colonial dominance in the West foreclosed this possibility.

\textsuperscript{189} Julie Evans et al., \textit{Equal Subjects, Unequal Rights: Indigenous Peoples in British Settler Colonies, 1830-1910} (New York: Distributed exclusively in the USA by Palgrave, 2003), 113.
Chapter 2: The Indian Acts, Legal Classifications, and the Métis

In the second half of the nineteenth century the invented category "Indian" became a legal identity that was intended to replace many diverse Indigenous self-understandings with one administrative category. Though there was great diversity in worldview amongst the many First Peoples in the territory that became Canada, there are some commonalities, such as the categorization of people into enemies and relatives. In many Indigenous societies, strangers were potential enemies unless they were made into kin--in a broad sense, beyond immediate blood relatives. There were many ways to make someone kin, such as membership in the same clan or nation, marriages between any family members, and naturalization by adoption. Because relatives do not harm each other, to be human was about creating and maintaining relatives, about being deeply connected, and being a good relative--and not just with human relations, but also with the land and the sacred. This notion of family or connection is expressed by terms such as tiyospaye in Sioux, nkonegaana in Anishinaabe, etoline in Dene, wahkootowin/wahkohtowin in Cree and Michif. These were the kinds of social categories and relationships that mattered to many of the people the federal government named "Indians" and those it named "half breeds."¹

Until 1850 legislation respecting First Nations (primarily intended to “protect” them from liquor and trespassing) contained no definition of Indian. In 1850 the colonial state first gave itself the power to demarcate the category, for the purpose of defining not-Indian as the category of people forbidden from residing on Indian lands. From 1850-1876 the legal definition of Indian became ever more restrictive, expanding the category not-Indian by excluding people such as many (though not all) Métis and people of mixed ancestry. By 1876 the purpose of the identity

¹ Macdougall, One of the Family; 8–10; Gaudry, “Kaa-Tipeyimishoyaahk - ‘We Are Those Who Own Ourselves,’” 87–89; Witgen, An Infinity of Nations, 377.
clauses was no longer simply to determine who had the right to Indian lands. Now a specific set of rights and restrictions (and federal jurisdiction) issued from this identification. Legally defining and classifying "Indians" was therefore a vital step in consolidating the early Canadian state and extending its power to the new territories it was colonizing in the North West. By defining Indians, the Acts also defined another category of people: not-Indians, and their enfranchisement clauses delineated how a person could pass from the former into the latter category. The Indian Acts were one of many genocidal measures; they legislated Indians both into and out of existence.

This chapter explores the underlying Euro-Canadian worldview that informed these statutes. Looking at the categories of people that traversed the line from "Indian" to "Not-Indian"--such as enfranchised Indians and women marrying non-Indians--reveals a great deal about lawmakers' conceptions of another major category of Indigenous not-Indians: the "Half-Breed" (including Métis from Manitoba and people of mixed ancestry with nonstatus fathers). It also sheds light on whiteness and how it was understood in Confederation-era Canada. The Enfranchisement clauses of the Indian Acts demonstrate that Indianness was not entirely viewed as a racial category or permanent condition but was seen as a "primitive" stage of development that could be overcome. Classical liberal ideas about land ownership and personhood identified the Métis, at least sometimes, as persons capable of owning land in fee simple while considering "Indians" as minors who required protection and tutelage before they could progress to this stage. The paternity clauses in which Indianness became a status passed down by the father reveal how legislators also drew on common law traditions of inheritance of real property and status, nationality and allegiance, and illegitimacy. Many such analogies were used in the impossible quest to narrow complex and diverse Indigenous national and social groupings into convenient legal categories. However, the Métis and people of mixed ancestry confounded the
category Indian, despite the repeated attempts at clarification from 1850-1876. The Indian Act was built on fragmented, heterogeneous, often conflicting layers consisting of previous legislation, common law traditions, and popular imagery of Indigenous peoples. Individual lawmakers attempted to harmonize these fragments, and made decisions using the repertoire of ideas available to them, often borrowing from other histories of imperial conquest, including elsewhere in the Americas and British Empire.

Though the pre-1876 legislation was relatively limited in its effects and was only in force for a brief period (1850-1876), it is important to study it. On the whole Indian legislation proved relatively resistant to change, so the early legislation set a strong precedent for later statutes. Many clauses were borrowed nearly verbatim from earlier legislation, demonstrating the persistence of its underlying ideology. A genealogy of the identity clauses in Indian legislation offers "an account of the origin and historical development" of their revisions, corrections and amendments, but does not view them as a consistent progression. Genealogy deconstructs historically what was later assumed to be given or natural. Foucault adapted this methodology from Nietzsche, studying the errors, accidents of history, and details that resulted in something later accepted as truth or fact. The critical sociology of law cautions against the belief that the language of legislation describes an existing fact or real state of affairs. Rather it often makes them. Bourdieu, for instance examined the "'special linguistic and social power of the law 'to do things with words,'" to make things true just by the power of legal language. The formalization and codification of beliefs, opinions, and sentiments in legal language in turn sanctifies and

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perpetuates these beliefs. In Canada, the law and other tools of the state were used to create racial distinctions such as "Indian" which came to be seen as natural. Policies relating to official Indigenous categories came to order, to some degree, ways of thinking for Indigenous and non-Indigenous people alike. In addition, because of the rights regime related to the category "Indian," there are significant material consequences to such legal identifications. Therefore, as historian Jocelyn Thorpe writes, there is a particularly "direct relationship between legal discourse and material reality" in Canada. Without deconstructing their history, these definitions may appear to have their origin in reality instead of merely in colonial imaginings.

Indian Acts - Chronology of Statutes 1850-1885

Prior to 1850 there was little in the way of legislation respecting Indigenous peoples in British North America. What did exist were primarily laws preventing the sale of liquor to "Indians" (beginning as early as 1663 in New France), or protecting Indigenous lands from encroachment, or in some cases regulating slavery. The most significant was the Royal Proclamation 1763, which forbade private sales of unceded Indian lands; all agreements, land sales or land cessions were to be conducted only with the Crown. Local colonial laws such as in Quebec in 1777, and in Upper Canada 1839 prevented liquor sales to Indians and prohibited

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5 Constance Backhouse, Colour-Coded: A Legal History of Racism in Canada, 1900-1950 (Toronto: University of Toronto Press, 1999), 27; Lawrence, “Gender, Race, and the Regulation of Native Identity.”
7 "Decree of the Superior Council of Quebec Forbidding all Persons to Trade or Give Intoxicating Liquors to Indians," Sep 28, 1663 in Smith, Canadian Indians and the Law, 26–27.
8 For example, Raudot, "Ordinance on the Subject of Negroes and the Indians Called Panis," April 13, 1709, in Smith, Canadian Indians and the Law, 30.
10 An Ordinance to Prevent the Selling of Strong Liquors to the Indians in the Province of Quebec, 17 George III (1777), Cap. 7 (Province of Canada), in Smith, Canadian Indians and the Law, 31–32.
"Persons" (presumably non-Indians, though the term was not defined) from buying or settling on Indian lands. They did not overtly attempt to define or identify Indians.

**Table 1 - Select List of Legislation**

<table>
<thead>
<tr>
<th>Year</th>
<th>Name</th>
<th>Jurisdiction</th>
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<tbody>
<tr>
<td>1850</td>
<td>Better Protection Act</td>
<td>Lower Canada</td>
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<tr>
<td>1851</td>
<td>Amendment to &quot;Better Protection Act&quot;</td>
<td>Lower Canada</td>
</tr>
<tr>
<td>1857</td>
<td>Gradual Civilization Act</td>
<td>Province of Canada</td>
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<tr>
<td>1860</td>
<td>Management of Indian Lands and Property Act</td>
<td>Province of Canada</td>
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<tr>
<td>1867</td>
<td>BNA Act/Constitution</td>
<td>Dominion of Canada</td>
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<tr>
<td>1876</td>
<td>Indian Act</td>
<td>Dominion of Canada</td>
</tr>
<tr>
<td>1884</td>
<td>Indian Advancement Act</td>
<td>Dominion of Canada</td>
</tr>
</tbody>
</table>

The first legislation that attempted to define Indians was intended to protect Indigenous lands from unauthorized encroachment. This was the 1850 Act for the Better Protection of the Lands and Property of Indians in Lower Canada, commonly known as the Better Protection Act.\(^\text{12}\) The Province of Canada passed a similar Act for Upper Canada in the same year but it did not contain such a definition. It was unnecessary, unlike in Lower Canada where there were white outsiders actually claiming to be Indians in order to access reserve land.\(^\text{13}\) The Lower___

\(^\text{11}\) Crown Lands Protection Act, 2 Victoria (1839), Cap. 15 (Upper Canada), in Smith, Canadian Indians and the Law, 35–38.
\(^\text{12}\) "An Act for the Better Protection of the Lands and Property of the Indians in Lower Canada," 13 & 14 Vic, Cap. 42 (Province of Canada) § (1850). A similar Act for Upper Canada was enacted in the same year but did not contain such a definition.
\(^\text{13}\) Ted Binnema, “Protecting Indian Lands by Defining Indian: 1850–76,” Journal of Canadian Studies 48, no. 2 (Spring 2014): 9–10; Daniel Rueck, “Commons, Enclosure, and Resistance in Kahnawá:Ke Mohawk Territory,
Canada Better Protection Act defined Indian for the first time, for the purpose of determining who could live on Indian lands. It was, therefore, only concerned with identifying "Indians" in order to determine who was not an Indian and therefore who could be arrested for "trespassing" on Indian lands; the law targeted settlers, not Indigenous People. The legal identity Indian was initially created as a by-product of the creation of another identity (not-Indian) legally disallowed from using and living on Indian Lands. However, the 1850 Act’s definition of Indian is highly significant because it provided the precedent for later legislation. It stated:

And for the purpose of determining any right of property, possession or occupation in or to any lands belonging or appropriated to any Tribe or Body of Indians in Lower Canada, Be it declared and enacted: That the following classes of persons are and shall be considered as Indians belonging to the Tribe or Body of Indians interested in such lands:

1. All persons of Indian blood, reputed to belong to the particular Tribe or Body of Indians interested in such lands or immovable property, and their descendants.
2. All persons intermarried with any such Indians and residing amongst them, and the descendants of all such persons.
3. All persons residing among such Indians, whose parents on either side were or are Indians of such Body or Tribe, or entitled to be considered as such.
4. All persons adopted in infancy by any such Indians and residing in the Village or upon the lands of such Tribe or Body of Indians and their descendants.

With this Act, Lower Canada Indigenous nations retained considerable power to control their own membership, something which was eroded over time. It was followed up quickly by an

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14 This was probably to prevent what had been happening in other British settler colonies: landhunters, speculators and squatters had been settling on lands in advance of the legal mechanisms for allocating land, creating many administrative challenges. In Canada, the state was relatively successful at holding settlers off until it was able to properly survey and officially sell or grant the land to settlers. Weaver, *The Great Land Rush*. Protecting Indigenous lands for Indigenous use may have been part of the motivation, but it was also about postponing their transfer to white hands until the Crown could properly control it.

15 Province of Canada, An Act for the better protection of the Lands and Property of the Indians in Lower Canada.
amendment in 1851 in order to "designate more accurately the persons" who could lawfully live on Indian Land. Unlike in 1850, when men and women could both attain Indian status by marrying an Indian, the amendment specified that only women could marry into the definition. Non-Indigenous men marrying Indian women would no longer become Indians. This will be explained in detail below.

The 1857 Act to Encourage the Gradual Civilization of Indian Tribes (known as the Gradual Civilization Act) first introduced the concept of enfranchisement, the means by which an Indian could cease to be an Indian, thereby gaining the rights and liberties of any other (white) British subject. Although it had relatively little direct impact at the time, it is significant because it was with this law that "Indianness" became a legal disability. Its purpose was "to encourage the progress of Civilization among the Indian Tribes" and "the gradual removal of all legal distinctions between them and Her Majesty's other Canadian Subjects." In other words, its ultimate goal was to make itself unnecessary. In order to clarify to whom this Act applied, it included a definition of "Indian" that was basically the same as the 1850 Lower Canada Protection Act. However, the consequences of this legal identity had now changed. No longer simply a category of people permitted to live on Indigenous lands, now "Indian" was defined as a non-citizen.

Next followed some relatively inconsequential legislation. In 1859, the Civilization and Enfranchisement Act (with a minor amendment in 1860) consolidated previous legislation and used the same definition of Indian as the 1857 Gradual Civilization Act, which was in turn drawn

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17 Enfranchisement was highly unpopular—between 1859 and 1876 only one person was enfranchised. Canada. Royal Commission on Aboriginal Peoples, “Looking Forward, Looking Back” (Ottawa, 1996), 138. In addition, Binnema argues it had little impact because the Department continued to operate as if there were no legal definition of Indian. Binnema, “Protecting Indian Lands by Defining Indian,” 21.
from the 1850 Lower Canada Act. It reaffirmed the assimilation policy and legislated many of the suggestions in the Pennefather Commission report in hopes that "civilization" and enfranchisement would accelerate. The 1860 Management of Indian Lands and Property Act gave power over "Indians" to the Province of Canada's Indian Department. It used the same definition as the 1851 amendment to the Lower Canada Act.

The next important piece of legislation was the British North America Act, or Constitution Act, of 1867, which joined three British colonies--the Provinces of Canada, Nova Scotia, New Brunswick--to create the new Dominion of Canada. In its distribution of powers, s.91(24) indicated that "Indians, and Lands reserved for the Indians" would be under federal jurisdiction rather than provincial. It did not, however, define "Indians." Although there is little direct evidence as to why s91 placed Indians under federal jurisdiction, it may be because of the Imperial belief that the Crown had to protect Indigenous peoples from settlers and the "whims of the local legislatures." It had significant consequences for all Indigenous people--not only for First Nations but also Métis. This constitutional separation of powers has become one of the defining features of the state's relationship with the Métis. When the Métis were officially defined as being something other than "Indians," as they most commonly were, they were under the jurisdiction of the provinces, but when defined as "Indians" they were under the jurisdiction of the Dominion. This resulted in some notable cases over the years where the provinces and the Dominion bickered over who had responsibility for the Métis.

21 British North America Act, 1867.
23 In most cases the provinces desired to define "half breeds" as "Indians" so that they would not be responsible for their health, education and welfare, while the federal government preferred to define them as legally white so as to
After Confederation, the new Dominion needed to consolidate and extend previous
Indian legislation, as each province had different laws and policy left over from the colonial
period. But there was little originality from either Macdonald's Conservatives (1867–1873) or
Mackenzie's Liberals (1873–1878).\textsuperscript{24} The first piece of legislation was the 1868 "Act for
Organization of the Department of Secretary of State of Canada and for the Management of
Indian and Ordnance Lands," which set out the procedures for the protection and management of
Indians and their lands. Its definition of Indian (clause 15) was the same as 1851 Lower Canada
Act.\textsuperscript{25} The 1869 Gradual Enfranchisement Act extended the Gradual Civilization Act throughout
the Dominion. It was intended to improve the rate of enfranchisement (which to that point had
been nil).\textsuperscript{26} For example, as a step towards individual land ownership, it created location tickets
for Indigenous individuals upon reserve land. This Act is notable because it was the first
departure from those 1850 and 1851 definitions. It tightened the definition of Indian, using blood
quantum for the first time.

In the division among the members of any tribe, band, or body of Indians,
of any annuity money, interest money or rents, no person of less than one
fourth Indian blood, born after the passing of this Act, shall be deemed
entitled to share in any annuity, interest or rents.

\textsuperscript{25} Canada, “An Act Providing for the Organisation of the Department of the Secretary of State of Canada, and for
the Management of Indian and Ordnance Lands, 1868,” 31 Victoria Chapter 42 § (1868).
Additionally, women marrying non-Indian men, and the children of such unions, were no longer to be accounted Indians, setting the precedent for the 1876 Indian Act's gender based identity clauses.

Provided always that any Indian woman marrying any other than an Indian, shall cease to be an Indian within the meaning of this Act, nor shall the children issue of such marriage be considered as Indians within the meaning of this Act; Provided also, that any Indian woman marrying an Indian of any other tribe, band or body shall cease to be a member of the tribe, band or body to which she formerly belonged, and become a member of the tribe, band or body of which her husband is a member, and the children, issue of this marriage, shall belong to their father's tribe only.27

This gendered rule remained the case until the 1985 amendment (commonly known as Bill C-31).

The Dominion expanded to include Manitoba (1870), the North West Territories (1870) and British Columbia (1871), and the signing of the numbered treaties began in the same decade. During this period, the Indigenous population within its borders quadrupled within three years. There were approximately 25,000 Indigenous individuals in 1868 among the four provinces in Canada, and by 1871 there were over 100,000 among the six provinces and the North West Territories.28 The numbered treaties added an enormous new population to the federal government’s responsibilities under the British North America Act. The Indian Department found the existing legislation to be inadequate: it was too piecemeal and vague.29 The Indian Act of 1876 was the result, consolidating all previous legislation, extending it throughout all Provinces and the Territories, and making some minor modifications. Although it was enacted

under a new Liberal government that had criticized Conservative Indian Policy, it followed the same pattern as previous legislation and again created few innovations. It simplified and further restricted the definition of "Indian," explicitly excluding Métis who had received Half Breed Scrip (individual land grants to Métis on the Prairies beginning in the 1870s). It broadened the powers of the Indian Department, defined the powers of chiefs and band councils, protected Indigenous Lands against encroachment, regulated the sale and use of these lands and resources, prohibited liquor (now also punishing "Indians" as well as those who sold them the liquor), and encouraged enfranchisement.  

The Indian Act had almost yearly amendments from then forward, but its basic framework remained stable until 1951. In the 1880s many of the amendments demonstrated the Department's desire for increasing control over Indigenous people in the North West. For instance, in 1881, Indian Agents were given the power to enforce regulations and to act as Justices of the Peace. In 1882, this power was increased further, and Agents could also act as magistrates. "Indians" also needed a permit to sell agricultural produce. The 1884 amendment made it illegal to incite "Indians or Half-breeds" to riotous demands or to cause a breach of the peace. This legislation increased control over Indigenous "morality," with tightening of powers and restrictions, demonstrating the government's push for greater control and assimilation of Indigenous peoples.
restrictions on liquor and sexuality, including clauses intended to stop prostitution and extramarital reproduction. In 1884, religious ceremonies and dances (such as the potlatch) were also prohibited.

The attempts towards assimilation did not abate. Policies such as education, including compulsory attendance at schools (1884), and the promotion of agriculture were intended to force rapid acculturation. Similarly, in the 1879 amendment, 1880 Indian Act, and 1884 amendment there was a provision to allow Métis and people of mixed ancestry who had Indian status to withdraw from treaty and obtain scrip. This resulted in hundreds choosing to withdraw from treaty, giving up their Indian status to become official "half breeds" (legally identical to white), particularly after the 1884 amendment declared they no longer had to repay previously received annuities. Despite all the government attempts since the 1857 Gradual Civilization Act, enfranchisement had remained decidedly unpopular. The largest number ever of Indigenous individuals voluntarily choosing to renounce their Indian status was this post-1884 rush of withdrawing Métis. Along with women who involuntarily lost their Indian status for marrying non-Indians, it was therefore the most prolific "enfranchisement" the Department had seen.

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34 Canada, “An Act to Amend ‘The Indian Act, 1876’ (1879),” S.C. 42 Vic, Cap. 34 § (1879), secs. 7&8; Canada, “The Indian Act, 1880,” S.C. 43 Vic Cap. 28 § (1880), secs. 95&96; Smith, Canadian Indians and the Law, xxiii–xxv.
35 Canada, An Act further to Amend “The Indian Act, 1880” (1884), sec. 3.
36 Leslie, Maguire, and Moore, The Historical Development of the Indian Act, 78–79.
37 Canada, An Act to amend “The Indian Act, 1876” (1879), sec. 1; Canada, The Indian Act, 1880, sec. 14; Canada, An Act further to Amend “The Indian Act, 1880” (1884), sec. 4.
38 Between 1885 and 1887 alone, more than 1292 individuals who had successfully applied for scrip had withdrawn from treaty. This number does not include those with withdrew but who were not successful in their scrip application. There were 17,839 registered Indians in that area in 1885, meaning at least 6% withdrew in those three years. Ens and Sawchuk, From New Peoples to New Nations, 164. In some cases (such as the Papaschase band) nearly the entire band withdrew. See Chapter 5 for more details.
In order to further promote acculturation and (it hoped) lead to greater enfranchisement, Parliament also enacted the Indian Advancement Act in 1884. This built on the clauses in the 1876 Indian Act by which the government gave itself control over the political organization of diverse Indigenous societies, replacing their own Indigenous forms of governance with, for example, standardized rules for the election of band councils.³⁹ The 1884 Indian Advancement Bill was intended to provide limited self-government for some bands (particularly those of Eastern Canada whom legislators viewed as more "civilized" than the prairie nations) as a step towards enfranchisement. The long title of the Act clearly expresses this goal: "An Act for conferring certain privileges on the more advanced Bands of the Indians of Canada, with the view of training them for the exercise of municipal powers."⁴⁰ Similarly the 1885 Electoral Franchise Bill was to give some Eastern Indigenous men the ability to vote in federal elections. It passed despite significant opposition (opposed largely because of the North West Rebellion), but had little effect and was repealed in 1898.⁴¹

**Increasingly restrictive definitions**

One of the most important trends that became apparent through all of this legislation from 1850 to the end of the nineteenth century was the increasingly specific and restrictive definition of "Indian." This was to have significant effects on Métis and people of mixed ancestry, most of whom had not been specifically excluded from the early legal definitions of Indian. The 1850 Lower Canada statute, the first and most inclusive definition, provided First Nations with the

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most control over their own membership, stipulating that a person who lived "among such Indians" and who had an Indian parent or spouse would be accounted an Indian. It even acknowledged adopted members (who did not need to have any ancestors in the band).

According to this definition many Métis and people of mixed ancestry would be able to have Indian rights depending on which community they belonged to. The process of restricting the category began in 1851 when the definition was amended to exclude non-Indian men married to Indian women; a man could no longer become an Indian though marriage, though a woman still could. The 1857-1868 Acts remained basically the same as the 1851 Act, simply extending the definition through Upper Canada, and then through the rest of Canada in 1868.  

After Confederation, the definition of Indian tightened again. The first significant change came with the 1869 law, which added blood quantum to the definition (so eliminating adopted persons, as well as some interracial individuals). Lawmakers worried that there could be people who had the status of Indians but might not racially be Indians. Deputy Superintendent General of Indian Affairs, William Spragge wanted to "define the point beyond which persons of mixed Indian and White blood should cease to be recognized as Indians." Indian status now required a person to have one fourth "Indian blood." Additionally, women marrying non-Indian men lost status, and so did their children; legally, by this act of marriage, they would "cease to be an Indian within the meaning of this Act." This was intended to prevent outsiders from receiving a share of the band's funds, but also ended up excluding many women, and their children who

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42 Province of Canada, The Gradual Civilization Act, 1857; Province of Canada, An Act respecting Civilization and Enfranchisement of Certain Indians, 1859; Canada, An Act providing for the organisation of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands, 1868.
44 Canada, Gradual Enfranchisement Act, 1869, sec. 4.
45 Canada, Gradual Enfranchisement Act, 1869, sec. 6. More on the implications of these highly gendered clauses below.
were band members. There is evidence of some resistance among Indigenous bands who wanted to retain control over how they distributed their revenue and over their own band membership.\textsuperscript{46} The Indian Department was also not satisfied with the 1869 law as it only excluded those mixed children born after 1869.\textsuperscript{47}

One of the intentions of the Indian Act 1876 was to remedy this situation. It was meant to strengthen and clarify the identity legislation. The Indian Act of 1876 included a streamlined and succinct definition of Indian:

"The term 'Indian' means--
First. Any male person of Indian blood reputed to belong to a particular band;
Secondly. Any child of such person;
Thirdly. Any woman who is or was lawfully married to such person."\textsuperscript{48}

Though eliminating explicit reference to blood quantum, the Indian Act of 1876 expanded the category of non-Indians. The list of non-Indians now included illegitimate children, those who had lived outside of Canada for five years, and "half-breeds." The Indian Act created the legal category of "half-breed" under the classification non-Indian: "no half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian."\textsuperscript{49} For the first time "Indian" and "Half Breed" were defined as two separate and exclusive legal categories.

However, not all Métis and people of mixed ancestry were excluded by the 1876 Act. Only Manitoba Métis who had accepted scrip and children with non-Indian fathers were officially excluded. Métis who belonged to a band of treaty Indians--this was actually fairly common in the 1870s and 1880s--were considered Indians, regardless of their fathers’ status.

\textsuperscript{46} For example see "Minutes of Joint Council of Chiefs Augustin and Nubeneugooching," August 5, 1875, LAC RG10 Vol 1967 File 5184; \textit{The General Council of the Six Nations and Delegates from Different Bands in Western and Eastern Canada} (Hamilton: The Spectator, 1870), 25.

\textsuperscript{47} For example see W.R. Bartlett to L. Vankoughnet, June 26, 1877, LAC RG10 Vol 1992 File 6808.

\textsuperscript{48} Canada, The Indian Act, 1876, sec. 3.

\textsuperscript{49} Canada, The Indian Act, 1876, sec. 3e.
Mixed-ancestry men were not necessarily excluded providing their fathers had Indian status, and mixed-ancestry women were included if their fathers or husbands had status. The Act did, however, continue to exclude women who married non-Indians (and their children), using nearly the exact same wording as in 1869. Despite all the Indian Act amendments (almost yearly), there were no significant changes to the legal definition of Indian until 1985.

The increasingly restrictive definitions over the years reduced the size of the category Indian while increasing the size of the category not-Indian. Reducing the number of Indians meant that less land was necessary for their maintenance. Surplus land could then become available for settlement by non-Aboriginals. Additionally, a reduced number of Indians would save the federal government money in terms of annuities, assistance, and other benefits. Although other reasons were often cited, it is clear that saving money was a major motivator of the ever more restrictive definition. Since at least the 1830s, Indian policy in Canada had been deemed too expensive, and various means used to economize, including reducing the number of Indians to whom benefits or annuities were owed. After the 1870s when Canada colonized the North West and signed the first seven numbered treaties, the cost of the Indian Department skyrocketed because of the sheer number of Indigenous people under its jurisdiction and vastly increased amount of territory now covered. Shortly before the 1874 Indian Act extended the existing legislation to the West, Indian Commissioner J.A.N. Provencher worried that "many half-breeds will be now on the pay-lists." To keep costs down he suggested, as W.J. Robinson had in 1850, paying bands a total sum instead of per capita annuities, then "if the Chiefs desire to

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50 It is difficult to arrive at accurate numbers, but certainly more than half of all Indigenous people do not have status. In 2011 the census reported 1,400,685 people identified as Aboriginal. Of those, 45.5% (637,660) were registered status Indians. Statistics Canada, “Aboriginal Peoples in Canada: First Nations People, Métis and Inuit, National Household Survey Year 2011,” 2013, 4. This includes the 120,000 individuals who regained their Indian Status after Bill c-31 was passed in 1985. Jim West, “Aboriginal Women at the Crossroads,” First Nations Drum, September 9, 2002, http://www.firstnationsdrum.com/2002/09/aboriginal-women-at-the-crossroads/.
introduce new families into their Bands they have perfect liberty to do so, but at the same time
they must understand that the amount payable to each person will be diminished in proportion to
these additions.\textsuperscript{51} If this suggestion had been followed, the federal government may not have
been as concerned about controlling Indian status, and may have permitted First Nations to retain
discretionary power over their own membership. In spite of Provencher's recommendation,
annuities were primarily paid out individually, and therefore the Indian Department did claim
control over paylists, which then became synonymous with official band membership and with
Indian status. It is unsurprising that the Department preferred a narrow definition of Indian so as
to be responsible for the smallest number of people possible.

One of the motivators for the Indian Act was the concern that there might be people who
collected treaty annuities and received scrip. Provencher expressed this concern as well:

At first sight it appears singular that persons who represent themselves as
Indians and who participate in the advantages accorded to that condition,
should afterwards claim from their origin as half-breeds, and again reap
advantages conferred on this class. This double participation in the land
and in public grants can only be an abuse of the law; but I doubt if under
present legislation it can be prevented.\textsuperscript{52}

The same argument was used before the House of Commons during the debates on the Indian
Act:

"Hon. Mr. Laird explained... that the reason for introducing this provision
[the exclusion of Manitoba Half Breeds from Indian Status] was this:
Persons of mixed blood had desired to join in the benefits of treaties made,
and had attained their object, receiving their annuities annually. Lands had
been given to the half-breeds in order to extinguish their titles."\textsuperscript{53}

The 1876 Indian Act now provided the power to exclude those Métis from Indian status, annuity
paylists, and reserve land.

\textsuperscript{52} J.A.N.Provencher, Report, 31 Dec, 1873 in Canada. Department of the Interior, \textit{Annual Report 1874}.
Defining Indian: Why was it the state's concern?

Aside from saving money by regulating access to annuity payments, state power was an important motivator for these identity laws. Canada in the nineteenth century was in a period of state formation and consolidation. The state was becoming (in the words of Allan Greer and Ian Radforth) "progressively pervasive and efficacious in society."\(^{54}\) As Canada expanded and achieved self-government in more and more areas (for example Responsible Government in 1848, the transfer of Indian Affairs from Britain in 1860, the transfer of the Northwest Territories from the HBC in 1870), it was in the process of transforming from a colony towards an increasingly independent state, and was becoming a colonizing power in its own right (in the North West). With increasingly democratic governance, white settlers felt a need to secure and institutionalize their political power. One way was through containing and eliminating Indigenous rights.\(^{55}\) Many of the clauses in the 1876 Indian Act were directly colonial in nature and were meant to facilitate this extension of political power and governance, particularly in the West.\(^{56}\)

As part of its drive to consolidate its power, Canada--especially as a precarious, newly confederated country after 1867--also wanted to eliminate competing sovereignties. John A Macdonald, in particular, saw politically independent Indigenous nations as a barrier to this goal.\(^{57}\) One result was the efforts to remake and control Indigenous self-governance. For example, the 1869 Act transformed Indigenous self-government into a form of municipal government with very limited powers, subject to significant departmental oversight. The 1876

\(^{54}\) Greer and Radforth, “Introduction,” 10.
\(^{55}\) Evans et al., *Equal Subjects, Unequal Rights*, 113.
Indian Act and 1884 Indian Advancement Act significantly increased federal control over local band governance. These statutes progressively regulated, standardized and limited Indigenous societies' power of self-governance, while giving the appearance of granting some political independence.58

As the government began to modernize, there were also changes in knowledge production. The model of distant oversight from the metropole was being replaced by an increasingly centralized and more intensive administration beginning in the mid-nineteenth century. This increasingly rationalized government relied on more detailed and systematic knowledge, particularly quantitative information, which required standardized categories. One of the ways the modern state legitimizes itself is through the collection and management of official knowledge.59 James C. Scott explains that as a state begins to modernize, it must work to make its domain, including its population, legible. In order to do this, it must reduce diverse and complex reality to simplified, abstracted, schematic categories.60

In Canada, this was also about imperial power; complex (to outsiders) Indigenous forms of social organization needed to be reduced to simplified, homogenized categories that could more easily be administered by outsiders. As Bruce Curtis argues, "ruling became inseparable from practices for naming."61 Many scholars have recognized the reciprocal relationship between knowledge and power. For the modern colonial state, knowledge production about its subject population was not only a technology or tool for governing, but also a palpable manifestation of

its power. The attempt to define, fix, and enumerate identities was an indispensable tool of colonial regimes everywhere in their efforts to assert sovereignty over previously independent peoples. Similarly, the emerging Canadian state sought to classify and enumerate the Indigenous population in order to assert sovereignty over it, manage it, and consolidate power.

Control was thus at least one important motivator of the official act of naming, of creating differentiated identities, of producing the legal category "Indian" and then deciding who would be included and who would be excluded. Some scholars also argue that control of racial definitions was important to Canada, as in other settler societies, in order to maintain white supremacy and purity. Based on how eager the state was to move people into the category of not-Indians through enfranchisement, purity may not have been a primary motivator in this instance, but whiteness was clearly privileged because these laws were intended to produce more

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“white” people with the stroke of a pen. Like other amalgamationist projects, the goal was to make rights-bearing Indigenous peoples disappear through absorption.66

In addition, the state gave itself the right to reduce countless Indigenous affinities to one official designation, "Indian." The British and then Canadian governments reserved for themselves the complete discretion to define Indigenous people. This was one more colonial act as the state appropriated from them the right to define themselves. Naming or defining is an act of power, and it assumes a position of superiority over the object or party being defined.67 Also with the power to "invent" a definition comes the power to eliminate it, which was the goal of the enfranchisement clauses. This did not go unopposed, of course. There were significant acts of protest, including local organized forms of opposition, "everyday forms of resistance" (in the words of James C. Scott), and major newsworthy confrontations.68 The Métis resisted during the Red River uprising of 1869-1870 by asserting their own vision of their identity as both "civilized" and Indigenous. Unlike the Dominion, they did not view these characteristics as a contradiction.

Definitions mattered because significant material consequences, such as money and land, were attached to specific official identities. Although in 1850 the stated purpose of the legal category "Indian" was to protect Indigenous lands, it legitimated the dispossession of thousands of Indigenous people over the years. Métis, people of mixed ancestry, and women were lawfully

expelled from their land using the Indian Acts as justification. Treaties enabled the creation of reserves, freeing up the rest of the land for non-Indigenous uses such as railways, settlement, and resource extraction. In the eyes of state officials, reserves required control of membership in order to determine exactly who would have access to these protected lands, and, perhaps most importantly, who had a right to cede title to that land. Similarly, the payment of treaty moneys also required some sort of membership control, particularly for those treaties that included provisions for yearly annuity and interest payments to individuals. Identifying who was an Indian was about determining who had a right to Indian lands and annuity money, and who did not. And of course, Canada had ample motivation to encourage a restrictive definition over the period 1850-1876, excluding many Métis, mixed-race and other boundary-crossing individuals. Narrowing the definition decreased the number of individuals whose Aboriginal land rights the Crown had to acknowledge and limited the government's fiscal duty.

**Enfranchisement and the Métis**

In the 1876 Indian Act the Métis were placed in the same category as other "non-Indian" people--whites, blacks, immigrants from Asia, people with non-Indian fathers, women marrying non-Indians, and enfranchised Indians (someone who was no longer legally an Indian). In comparing the categories of people excluded from the definition of Indian, interesting commonalities emerge. Though lawmakers rarely explained how they understood or perceived Métis and mixed race people, their underlying beliefs were embedded in the laws, particularly in enfranchisement clauses. Enfranchisement's goal was assimilation. The preamble to the 1857 Gradual Civilization Act made this clear:

> Whereas it is desirable to encourage the progress of Civilization among the Indian Tribes in this Province, and the gradual removal of all legal distinctions between them and Her Majesty's other Canadian Subjects, and to facilitate the acquisition of property and of the rights accompanying it,
by such Individual Members of the said Tribes as shall be found to desire such encouragement and to have deserved it.  

Exishing the criteria for enfranchisement thus helps to delineate the perceived dividing line between Indian and everyone else. In other words what would a person have to do in order to cease to be an Indian? These clauses offer clues as to where Métis and people of mixed ancestry were placed in this conceptual classification system.

In a sense the Indian Acts legislated Indians both into and out of existence, by creating the means by which Indians could become not-Indians. As William Spragge, who ran Indian Affairs from 1862 to 1874, explained, the legislation was "designed to lead the Indian people by degrees to mingle with the white race in the ordinary avocations of life." Combined with the "civilizing" policy as set out in the Bagot Commission of 1845, it was designed gradually to eliminate Indian as a legal category, which would eventually remove all moneys owed and break up reserve land. The fact that these laws were intended to have an assimilative function demonstrates that on the whole lawmakers believed that "Indian" was only secondarily a race, and was primarily a social identity defined by culture, means of survival and way of life—all criteria that were not necessarily permanent but could change. They believed, as the humanitarians had, that assimilation was possible, at least to some degree. The enfranchisement policies that arose in the second half of the nineteenth century, then, are evidence of the predominant belief at the federal level that Indianness was not a permanent condition, but was a lifestyle that in theory could be left behind. The government’s ambivalence towards non-Indian Indigenous people, such as the Métis, however, also demonstrates a racialized undercurrent.

71 See chapter 1 for more on the Bagot Commission and early nineteenth century British humanitarianism.
Many government officials thought Indigenous people were intelligent and full of potential but like children, uneducated, morally deficient, and in need of "bringing up." The early laws provide evidence of this belief. Prior to the punitive Indian Act amendments of the late nineteenth century, Indian legislation was primarily intended to be protective legislation. These laws are evidence of the monarchical Tory tradition and diplomacy that positioned the British as a father. They had a paternalistic tone, addressed Indigenous people as children, and seemed filled with the spirit of British humanitarianism—including its benevolent intentions, faith in progress and complete belief in British superiority. For instance, MP Hector Langevin (today widely considered the father of residential schools) expressed this view when he told Parliament, "it must be considered that Indians were not in the same position as white men. As a rule they had no education and they were like children to a very great extent. They, therefore, required a great deal more protection that [sic] white men."

The notion of protection drew on accepted tradition for guardians to manage the wealth of their wards. Though Cherokee Nation v. Georgia [1831] ruled that the Cherokees were a dependant nation under the guardianship of the United States, the idea was strongly resisted, for example by the Grand River Six Nations who maintained they were allies and not subjects. In the mid-nineteenth century lawmakers intended to protect Indian lands almost as an incubation space; "Indians" were to enter a state of tutelage and gradually achieve assimilation (as a long-

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range goal) in a controlled manner. Their legal differentiation was intended to be a temporary situation; it was seen as the inevitable progress of civilization. This did not mean lawmakers saw Indigenous people as potential equals; the goal was assimilation into the lower rungs of society where they could be easily ruled.

Enfranchisement drew on Enlightenment theories that placed "Indianness" in a binary position opposed to "civilization." Aboriginal people, in this schema, were "sauvage"/wild, childlike, wandering, and living by the fruits of the earth instead of by industry, while Europeans were modern, innovative, independent, entrepreneurial, moral, and hardworking. According to historian Kay Anderson, the root of these ideas was the longstanding European notion that to be human meant to fulfill one's potential of mastering and cultivating both inner and outer nature. By this way of thinking, "savagery" was a stage to overcome, and while Aboriginal people had the potential to do so, they temporarily needed protection and assistance from more “advanced” Europeans.

Canada's Indian legislation listed specific achievements that would entitle a person to enfranchisement. In other words, what qualities and achievements would remove a man's Indianness whereby he would become a white British subject, with the ability to vote, drink liquor, pay taxes, and own property—rights and duties not applicable to those categorized as Indians. Upon enfranchisement they would "cease in every respect to be Indians," or as the Indian Act stated, they would "no longer be deemed Indians within the meaning of the laws

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80 This applied only to men until 1876 when unmarried women were also permitted to become enfranchised on their own merit.
relating to Indians. Among the qualities required in order to be considered "civilized" were education and literacy, fluency in English or French, moral character, sobriety, and debt-free status. This reveals not only how lawmakers understood what it meant to be "civilized," but also that they saw no possibility of Indigenous people adapting to the industrial capitalist world while retaining their Indigeneity.

Indigenous leaders had no trouble with the concept; indeed many, such as Shingwaukonse, were very interested in learning the kinds of skills that would allow them to thrive in the new social and economic situation, without losing their Indigeneity. Several leaders from John Norton to Peter Jones promoted Christianization, agricultural settlement, and acculturation at the same time that they fought for autonomy and political independence. Shingwaukonse's vision was of a pan-Indigenous nation with a sophisticated reciprocal relationship with Britain; Indigenous peoples would learn the new skills needed in the new economy but without becoming assimilated to the dominant society. These proposals were unpopular with Britain as they all presented competing sovereignties. Additionally, in Euro-Canadian minds, a "civilized Indian" was a contradiction in terms. This was made clear during the House of Commons debates of Thursday March 30, 1876 when David Laird, Minister of the Interior, said "the Indians must either be treated as minors or as white men. If they should be found intelligent enough to exercise the rights of white men they could become enfranchised."

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81 Canada. Parliament. House of Commons, Debates 1876, 342; Canada, The Indian Act, 1876.
82 Province of Canada, The Gradual Civilization Act, 1857; Province of Canada, An Act respecting Civilization and Enfranchisement of Certain Indians, 1859; Canada, Gradual Enfranchisement Act, 1869; Canada, The Indian Act, 1876.
83 Chute, The Legacy of Shingwaukonse.
84 Willig, Restoring the Chain of Friendship, 251.
85 Chute, The Legacy of Shingwaukonse.
As many historians have demonstrated, this sort of authenticity discourse was certainly not isolated to Parliament, or even to Canada.  

Looking at the specific qualities listed in the enfranchisement legislation can help uncover why in the nineteenth century Métis and people of mixed ancestry were often categorized based on their specific way of life. Euro-Canadians viewed them as either Indian or white depending on things like whether they farmed or lived by the hunt, and whether they lived in a communal or "tribal" organization or whether they preferred an individualist and independent family life. Since in this schema Métis could be difficult to categorize based on lifestyle (for example, many farmed individual plots in the summer, but also participated in the annual bison hunt) they were often imagined as "semi-civilized Indians": in the Canadians' cultural evolutionist notion of progress they were progressing beyond "Indians" but were perhaps not yet quite as advanced as Europeans.

The Métis themselves disrupted this authenticity discourse more than once when they claimed rights as natives of the country, as descendants of Indians, and as civilized men, but the Canadians did not accept it. John A. MacDonald, for instance, told Parliament in 1885: "the half-breeds did not allow themselves to be Indians. If they are Indians, they go with the tribe; if they are half-breeds they are whites." Many Métis were perceived as too educated and too "civilized" to be counted as Indians, though officials and lawmakers often had trouble considering them entirely the same as Whites; race in the last instance still had a hold on their thinking. Because their economic, cultural, and social lives were distinct from both the


traditional Indian way of life and the dominant Euro-Canadian way of life (though they obviously shared some traits with both), Canadians struggled to place them in this binary classification scheme.

The standards to which Indigenous people were held in order to become full citizens were much higher than those white people had to fulfil in order to claim the same rights—a fact some politicians recognized. For example, while debating the Indian Bill in 1876 Langevin stated, "there were many white men who were not fit for enfranchisement, yet they enjoyed all the rights of freemen." The government thought perhaps it was these restrictive standards that led to what they saw as the perpetual failure of the enfranchisement policy. Between 1857 and 1869 various interested parties, including agents of "civilization" such as Indian agents, missionaries, and the government, were dissatisfied with the dismal results of their plans, but could not agree on the cause. Reports such as the Pennefather Report of 1858 were commissioned to help determine the cause of this failure. In fact, one of the main reasons legislators rewrote the enfranchisement provisions in Indian legislation was to make it easier to obtain enfranchisement. They hoped this would encourage more people to become enfranchised.

The focus on individual land ownership increased in the later enfranchisement acts. In 1857 an enfranchised person had to be "able to speak readily either the English or the French language, [have] sober and industrious habits, free from debt and sufficiently intelligent to be capable of managing his own affairs." But in the 1869 Act a person needed "to be a safe and suitable person for becoming a proprietor of land." This required "education, good conduct, and

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93 Canada, Gradual Enfranchisement Act, 1869.
intelligence" and would result in receiving "letters patent for a lot of land in the Indian reserve." The 1876 Indian Act modelled its Enfranchisement clauses on 1869, specifying that enfranchisement was possible for "an Indian who, from the degree of civilization to which he or she has attained, and the character for integrity, morality and sobriety which he or she bears, appears to be qualified to become a proprietor of land in fee simple." In many ways, the Enfranchisement laws were defining "Indians" as people with a specific relationship to land, which is why changing that relationship to land would literally change their legal identity. In 1850 one could be an Indian by birth ("blood"), marriage, or even adoption, providing one resided with the "tribe" on its tribal lands. In the 1857 Gradual Civilization Act, the definition of Indian required a person to be "residing upon lands which have never been surrendered to the Crown (or which having been so surrendered have been set apart or shall then be reserved for the use of any Tribe or Band of Indians in common" and if enfranchised, the person instead was to obtain personal property of 50 acres (taken from reserve lands). Indian lands were for Indians; you knew someone was Indian because they resided on Indian lands. By contrast, according to the enfranchisement acts, owning property in fee simple corresponded to whiteness (at least legally). These ideas also informed scrip policy on the prairies in the 1870s and 1880s. Ottawa preferred the Métis to receive individual parcels or scrip redeemable for land rather than join treaty. In general the Métis also preferred some sort of private property, often holding individual lots, so the Canadians usually preferred to categorize them as a subset of white rather than a subset of Indian. Settlers and missionaries, however, often

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94 Note that this land was removed from the reserve, so each enfranchisee would contribute to breaking up reserve land. Canada. Parliament. House of Commons, Debates 1869, 83. This changed in later legislation so that an enfranchisee was to be given land that was not reserve land.

95 Canada, The Indian Act, 1876.

preferred to identify people based on race and some combination of appearance, mannerisms, lifestyle, religion, reputation, and kin. The franchise debates of 1885 demonstrate that property did not sufficiently make a citizen; while Macdonald argued that the Eastern First Nations, such as the Six Nations, deserved the franchise as propertied British subjects, opponents focused on Indians' minor status. The opposition did not deny their property ownership (which was held in common, in trust by the Crown), but believed they were unable to exercise the responsibilities that went with property.\(^97\) The Liberals, like others in Imperial contexts, used the metaphor of childhood to reconcile human difference with supposedly-universal liberalism.\(^98\)

Ian MacKay argues Canada in the nineteenth century can best be understood as a project of liberal rule. By this he means a particular form of liberalism, often characterized as possessive individualism, in which property was first among liberal values and personal liberty was characterized as self-ownership. For this reason, Indigenous peoples were excluded from the supposedly universal category of liberal individual because their communal land ownership was imagined as backwards tribalism that stood in the way of development.\(^99\) But this was generally not viewed as a permanent or racial quality; to the Canadians, Aboriginal people had potential subjecthood, since they could be enfranchised. A better description of the ideal liberal subject could not be found than in the enfranchisement acts. Enfranchisement had material goals and was certainly intended to undermine collective landholding by encouraging individual land ownership. However, Adele Perry argues that these ideas were no mere by-products of

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\(^{97}\) Evans et al., *Equal Subjects, Unequal Rights*, 119.


liberalism. The creation of liberalism's "others" was integral to defining and consolidating the liberal subject and institutionalizing white political power.100

In a sense, it was unsurprising that enfranchisement was so spectacular a failure. To the Euro-Canadian government, with its strong belief in progress and British superiority, enfranchisement had many things to commend it. The ownership of land was highly coveted in Europe where real property was scarcer, and concentrated in large estates in the hands of the upper classes. It was viewed as a reward and an honour. Government officials could scarcely believe enfranchisement was so unpopular, that it did not have the same meaning to people with totally different values and for whom being enfranchised meant losing their familial and cultural ties, their homes, and any recognition of their Indigeneity. Some abstract notion of liberal subjecthood and property ownership—what Habermas calls system-driven values—were not incentive enough for Indigenous people to give up their very lifeworlds.101 Enfranchisement policy was only ended in 1985. Though very few people voluntarily enfranchised in the nineteenth century, the enfranchisement clauses offer valuable insight into the thinking of the men who drafted the laws that had such a deep impact on Indigenous peoples, including the Métis and people of mixed ancestry.

Gender, Inheritance and Identity

The largest category of Indigenous individuals who became "not Indians" were women who married non-Indians and their children. Patrilineal descent rules were officially introduced in the 1869 Gradual Enfranchisement Act, so that only the wives or descendants of male Indians

could be considered Indians. Having a father or husband who was not Indian automatically made a person identical to a nonindigenous white British subject, at least in the eyes of the law. Similarly, if a woman married someone from another band, she lost membership in her own band, and was transferred to his. The Indian Act of 1876 adhered to this definition. Indianness thus legally passed along the male line, which reveals that Indianness was understood to be similar to nationality. This was significant as women essentially no longer had any status of their own but were Indian (or not) as a function of their relationship to a man; either their fathers or their husbands defined them. It was highly significant for Métis and people of mixed ancestry as well and caused many to lose or gain Indian status, with all of its associated benefits and restrictions.

The gender clauses were at least partially motivated by the desire to save money—for the bands or for the Department of Indian Affairs. In 1869 Langevin defended the gender clause of the Act, because it would save the bands money (at this time many bands received a lump sum instead of per capita annuities). He argued that "in many tribes there was a want of proper discrimination between those who belonged to the tribe and those who came on the reserve from some other quarter. Many came in on the plea of being Indians," and,

divided the revenues of the tribe, which, of course, impoverished them, and deprived them of the means of maintaining their families. This Bill provided that, when an Indian woman married a white man, as regarded her rights to the reserve, her children would not be considered Indians, but would assume the position of the father. After the numbered treaties in the North West, the federal government was paying individual annuities, so reducing the number of children who drew annuities would save them money
(women, though they lost their Indian status if they married a not-Indian, were permitted to keep their annuities).

Based on dominant norms, lawmakers doubtless believed that individual men--at least if they were white--should have the responsibility for their wives and children, rather than the government. The common law and social tradition both dictated that men, rather than the state, should care for their wives and children.\(^{104}\) There is a long history of this. For example, the old Poor Law in England (prior to 1834) aimed to get men to support their illegitimate children. When this was unsuccessful, as it often was, the parish did provide some support. The 1834 Poor Law reforms took the financial responsibility off the parish completely (largely by putting it on individual mothers).\(^{105}\) Similarly, the purpose of dower laws was to prevent widows and children from becoming a public liability.\(^{106}\)

Though the Poor Law was not in force in Canada, the same ideas thrived, and there was no official federal or provincial public relief policy at the time of Confederation--the church or municipalities were primarily responsible.\(^{107}\) The government avoided providing individual assistance whenever possible so as not to interfere in the "natural laws" of economics or encourage dependence. This was most clear in cases of people who were supposed to be self-sufficient, particularly whites (and Métis). That there was a connection between economic self-


sufficiency and non-Indian status was made particularly clear during the 1886-1887 North West Scrip Commission when Métis and people of mixed ancestry were permitted to withdraw from treaty (losing their Indian status and becoming legally white) provided they were able to prove they were economically competent and self-sufficient. Due to treaty promises Canada was obliged to render financial assistance to treaty Indians, and at times they did provide aid to non-treaty Indigenous people such as the Métis. This was because of residual paternalism, or charitable, humanitarian concerns as well as pragmatism--to ensure loyalty and peace.\footnote{Hugh Shewell, "Enough to Keep Them Alive": Indian Welfare in Canada, 1873-1965 (Toronto: University of Toronto Press, 2004), 41.} But the overall desire was not to support people who were supposed to be able to look after themselves, and not to support their children. At times the North West Mounted Police provided some aid to "destitute Halfbreeds" but were repeatedly ordered not to.\footnote{For example see Fred White, Comptroller NWMP to Commissioner, 8 October 1889, RG18 Vol 39 File 143-90; Fred White to the NWMP Commissioner, 12 Dec, 1891, LAC RG18 Vol 57 File 794-91.} And of course, no department or jurisdiction wanted the added expense, so they often tried to pass on the cost of such relief.\footnote{For example, see Hayter Reed to Supt General of Indian Affairs, 24 April, 1889, LAC RG10 Vol 3817 File 57336; Fred White to J.R.C. Honeyman, 9 May, 1906, LAC RG18 Vol 1579 File 127-14, and the reply in the same file.} By transforming many Indigenous people into non-Indians, the federal government was divesting itself of the responsibility for their social and economic welfare and officially placing it on individual men.

Lawmakers also undoubtedly saw the gender clauses as an extension of English common law doctrines on inheritance and property. There was a strong allegiance to British justice and a general belief among English Canadians--especially Tories--that British common law was the most rational, just, and objective.\footnote{Carl Berger, The Sense of Power: Studies in the Ideas of Canadian Imperialism, 1867-1914 (Toronto: University of Toronto Press, 1970); Harring, White Man’s Law; R. C. B. Risk, A History of Canadian Legal Thought: Collected
positivism and formalism, in which politics and intentions were not supposed to be taken into
account in the interpretation of the law, and the common law was viewed as objective and
apolitical, internally consistent and coherent, and essentially moral and just.\textsuperscript{112} Statutes existed,
according to some, only to clarify existing common law doctrines, usually when those doctrines
were insufficient for the issues at hand.

There was little in the way of jurisprudence or precedent related to this question, but there
was a degree of local custom that could provide a foundation. Prior to its being legislated the
patrilineal definition was already in common usage at least in some circles. The 1858
Pennefather Commission reported:

\begin{quote}
The word 'Indian' in Western Canada [Canada West/Upper Canada], is
held, more perhaps from usage than from any legal authority, to comprise
not only all persons of pure Indian blood, but also those of mixed race,
who are recognized members of any tribe or band resident in Canada, and
who claim Indian descent on the father's side. An Indian woman marrying
a white loses her rights as a member of the tribe, and her children have no
claim on the lands or moneys belonging to their mother's nation.\textsuperscript{113}
\end{quote}

In 1877 W.R. Bartlett (a retired officer of the department) wrote that this was indeed the custom
in 1858 when he entered the service.\textsuperscript{114} Similarly in 1899, Inspector J.A. Macrae, "discovered"
that the Indian Department had been using a similar rule for some time:

\begin{quote}
"The chief principle which determined the line of descent of right to the
annuity was obviously contained in one or other of the two maxims Partus
sequiter patrem and Partus sequiter ventrem.[sic] Both could hardly be
\end{quote}
It is quite clear that with a very important exception the first of the two maxims governed, and right descended in the male line.\textsuperscript{115} 

Macrae believed the "Indian maxim" was \textit{partus sequitur ventrem}. In other words he believed Indigenous societies were matrilineal, so for them the status of the child followed that of the mother. In British common law the opposite held true, so that, for centuries, the status of the father determined the status of the child. According to Sir William Blackstone's highly influential 1766 \textit{Commentaries on the Law of England}, under the principle of marital unity, marriage merged the status and identity of the wife with her husband, and the father's status dictated that of the family. Historically, the child of a slave mother could be ruled free (such as in the 1655 case of Elizabeth Kay) if the father was free, based on common law principles around villeinage (serfdom), the closest thing to slavery in the common law.\textsuperscript{116} Even if illegitimate, the child did not take the status of the mother because the child was technically \textit{nullius filius}, of no status at all.\textsuperscript{117}

This began to change in the seventeenth century, however. In 1662 a Virginia Statute ruled that the child of a slave mother was born a slave. This statute and similar subsequent legislation and jurisprudence in other American colonies (often based on slaveowners' self-serving interpretation of Roman civil law) meant that the status of the mother determined the

\textsuperscript{115} The exception was that children of a non-treaty father "as a matter of indulgence" were permitted to keep their status for one generation, but not to pass it on to their children. J. A. Macrae, "Robinson Treaty annuity in Manitowaning Superintendency," 30 January 1899, 3-4, LAC, RG10, Vol. 2832, file 170073-2.


child's status.\textsuperscript{118} There was definitely precedent for either form of descent in the common law tradition, but whereas in Virginia the rule allowed the labour force to be reproduced (through black women's bodies), there was little incentive for the state to reproduce "Indians" in Canada. Additionally, since the British associated \textit{partus sequitor ventrem} with animal husbandry, property loss, Judaism, and other colonial peoples, they looked down upon maternal inheritance patterns.

Ted Binnema argues the gender clauses are an example of the Indian Department’s unsuccessful attempts to follow Indigenous wishes. He found evidence of officials attempting to incorporate Indigenous traditions into these statutes, and it is true that most Indigenous nations wanted the ability to exclude outsiders when necessary. Some communities, including the Abenaki and some factions at Kahnawake, had protested the 1850 Lower Canada law because they were experiencing a real problem of encroachment, and did not want to be forced to admit outsider men to their bands.\textsuperscript{119} Regardless of their efforts to make these clauses consistent with what they thought were Indigenous customs, the reality is that the government favoured a rigid, unambiguous law, which overrode bands' ability to control their own membership. The Six Nations consistently rejected the federal law after 1869, which is unsurprising since it conflicted with their matrilineal and matrilocal social organization.\textsuperscript{120}

The Anishinaabeg of the Grand General Indian Council of Ontario were divided. They discussed the matter repeatedly between 1870 and 1917. Many opposed the Indian Act because they did not like their women being removed, sometimes because of marrying non-treaty Indians such as Potawatomis who had recently immigrated from the United States but who had no treaty

\textsuperscript{119} Binnema, “Protecting Indian Lands by Defining Indian,” 11–14.
\textsuperscript{120} Barbara Alice Mann, \textit{Iroquoian Women: The Gantowisas} (New York: Peter Lang, 2000).
with the Canadian government. On the other hand, they generally opposed their women marrying white men and did not want to admit the men to their bands (in a few exceptions they formally adopted men who they did want to join their bands). They worried about outsiders having a claim to their already limited resources. Unfortunately historians have little access to women’s perspectives on this issue, as women's voices were not recorded in the minutes of the Council. Though women attended the meetings as observers and were clearly interested in the discussion, it is impossible to say how much political influence women held, and what their perspectives were, though it is difficult to imagine they would have supported the gender clauses. In any case, the custom formalized in legislation was not Indigenous custom, but rather that of the Indian Department.

Another relevant doctrine that may have informed the gender clause was coverture, in which a wife's legal existence—including property—became subsumed under her husband's upon marriage. Sir William Blackstone explained: "By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage." All of her property whether inherited or earned before or during the marriage was under his complete control. That lawmakers were aware of this connection is clear when Langevin in 1869 successfully dismissed any concern by reminding Parliament that the removal of Indian rights from a woman who married a white man was nothing unusual, because all women lost

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their land when they married.\textsuperscript{124} It was also the rule in other colonial situations where judges had to rule when parties in the same family had different legal status.\textsuperscript{125}

Indian Status and property rights were similarly intertwined and defined each other. Having an "interest" in Indian land defined an Indian in the pre-1876 laws. Indian status in turn resulted in a hereditary right to Indian lands. Status and real or personal property (reserve land and annuities) could clearly be inherited; both the Crown and First Nations recognized that the descendants of the signatories would also be bound by treaty. Protected Indian lands were a special kind of land comparable to entailed land as they could not be sold. In Britain, entailed land and hereditary titles passed down in similar fashion, to the eldest male heir under primogeniture rules. The analogy is certainly not perfect, but Canadian lawmakers were accustomed to thinking in these terms; primogeniture remained the rule in the case of intestacy in Upper Canada until 1852.\textsuperscript{126}

The early modern notion of heredity involved the transmission of both property and social identity (which defined and legitimated each other) across generations. Sara Eigen Figal argues that indeed the whole structure of European society was built on property and paternal inheritance laws so that "the position of an individual within a genealogical line mapped that person's regulative identity," that is, who they were and what they could do.\textsuperscript{127} Heredity and the desire for secure property and inheritance rights were so important that it is unsurprising that Canadian lawmakers wanted to legislate clarity and consistency into Indigenous practices that varied and were often impenetrable to them. Though legal pluralism had been the rule in the

\footnotesize{
\textsuperscript{124} Canada. Parliament. House of Commons, *Debates 1869*, 85. Note also that Blackstone says a dowager loses her status in the peerage if she marries a commoner.
\textsuperscript{125} For instance see Ghosh, *Sex and the Family in Colonial India*, 171.
}
early modern era, the nineteenth century saw states and empires working to claim legal
hegemony, at least to some degree. It is clear that this was a colonial act of power, but at the
time it was also viewed as extending the privilege of British justice to Indigenous peoples whose
societies were seen as not completely lawless but "primitive" in terms of law and property
ownership. Systems of inheritance could also be a rival form of social order that needed to be
controlled.

The inheritance of nationality was in the process of undergoing significant changes in the
nineteenth century, subordinating wives' separate allegiance to the nationality of husbands.
Traditionally Roman Law used the doctrine of *jus sanguine*, in which nationality was inherited
by blood. In other words, a person belonged to a family, clan, people, or nation, not to a territory.
Early modern England, however used *jus soli*, the right of nationality if born on a nation's soil--
like with Indian lands, nationality and land were connected. Until the 1844 Aliens Act, women
had their own nationality or allegiance to the sovereign (an exception to coverture), which they
did not lose when they married. The 1844 Act declared "any woman married... to a natural-born
Subject or Person naturalized" was herself naturalized--became English. The Naturalization
Act of 1870 completed the process. Wives now automatically took their husbands' citizenship
upon marriage, and children took their fathers'. Women could gain or lose English nationality by
marriage. This is exactly how the Indian Act's gender clauses worked. It is surely not
coincidental that the Naturalization Act was contemporaneous with the introduction of the
gender clauses in 1869, and their entrenchment in 1876.

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131 Todd, “Written in Her Heart: Married Women’s Separate Allegiance in English Law,” 164–65.
Though nationality by the mid-nineteenth century was passed through the father's line, by contrast slave status, and race, did not. Though by the nineteenth century a person could change nationality, one could never "lose" one's race; a black woman marrying a white man did not become white. This shows Indian status was viewed more as a nationality than as a race. The understanding of Indianness as an allegiance or nationality also helps clarify why Canadians were unable to view the Métis as having two identities—being both Indian and White. In the mid-nineteenth century, the doctrine of perpetual allegiance to a sovereign was just beginning to change. Questions of allegiance and nationality were being debated. In Upper Canada in the 1820s, for instance, the question of the allegiance of late Loyalists hung on the question: had British subjects lost their British allegiance and become American when the Treaty of Paris 1783 created an independent America? The Bancroft treaties, which the USA signed with 34 countries between 1868 and 1937, including the UK in 1870, meant naturalization was now considered an act that severed all prior citizenship; a person could only hold one citizenship, for fear of national friction. It was not until the mid-twentieth century that dual nationality gradually became accepted.

The desire to clarify the rules of inheritance of property and Indian status is also clear with the inclusion of illegitimate children in the potential "not-Indian" category in 1876: "any illegitimate child... may, at any time, be excluded from the membership thereof by the band." The illegitimacy clause was intended to clarify rules of inheritance and to enforce Euro-Canadian norms of morality and behaviour. Sarah Carter argues it was part of an effort on the part of the

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132 Todd, “Written in Her Heart: Married Women’s Separate Allegiance in English Law,” 179.
135 Canada, The Indian Act, 1876.
government to make hegemonic the Victorian model of monogamous marriage. This model, in her view, was part of the national agenda, which sought to assimilate those who had different marriage customs. Enforcing this form of marriage was about both morality and the consolidation of state power. Remaking diverse Aboriginal marriage traditions into a single lifetime monogamous relationship was one arm of the "civilizing" agenda. Indigenous societies previously had no concept of illegitimacy, but the DIA was particularly invasive on these issues, "saving" Aboriginal women, labelling "illegitimate" children, and transforming inheritance rules.136 They were supported in this by the 1876 Indian Act, which allowed the Department to stop paying annuities to convicted criminals, family deserters, and any woman living "immorally with another man."137 The Indian Act even permitted (but did not require) the exclusion of illegitimate children from Indian status in order to protect moral virtue on the reserve, and was sometimes used for this purpose.138

"Illegitimate" is a complex term. It legally denoted a fillius nullius (nobody's child). An illegitimate was a child without legal identity due to having unmarried parents. It also held wider connotations of moral illegitimacy, to be an imposter or fraud.139 Additionally, there is a long history of connecting mixed race peoples with illegitimacy, including in Canada. It is possible legislators categorized the Métis and people of mixed ancestry as illegitimate, and therefore not deserving to inherit Indian status, rights, land and annuities. This also might have added to the perception that they were somehow cheating the government, for example, by masquerading as Indians in order to claim annuities, or even worse receiving both scrip and treaty benefits. For

136 Sarah Carter, The Importance of Being Monogamous: Marriage and Nation Building in Western Canada to 1915 (Edmonton: University of Alberta Press, 2008), 6–10. See also LAC RG13 Vol 74 File 1889-792; Mr. Mackay, Berens River Indian Agent, to E. McCall, Inspector of Indian Agencies, Winnipeg, 8 Oct, 1880, LAC RG10 Vol 3847 File 74174.
137 Canada, The Indian Act, 1876.
138 For example see LAC RG18 Vol 2159 File 17.
example, during the negotiations of the numbered treaties Alexander Morris repeatedly admonished, "they cannot take with both hands."\textsuperscript{140}

To the British attempting to deal in binaries, in absolutes, the difficulty of categorizing the Métis sometimes made them seem slippery, suspicious. For one thing, it was never completely clear whether Métis was an identification based on descent or lifestyle. Inspector of Indian Agencies J.P. Wadsworth complained that "an alleged halfbreed who cannot tell the English or French name of his Father, who has been living on a Reserve receiving regular rations, is no fit subject to be turned loose to care for himself and family;" if living like an Indian, Wadsworth felt he should be treated as an Indian.\textsuperscript{141} Even if they could "prove they are half-breeds," Commissioner Dewdney was not certain they should be allowed to legally become half-breeds if they "lead the same life as Indian." This was because descent was an unreliable identifier. He advised, "white blood, however, is comingled to such an extent with the native, particularly in the Saskatchewan country;" that few Indians have difficulty in showing that they are possessed of a strain, which when they so desire, enables them to term themselves halfbreeds.\textsuperscript{142} Métis and mixed race people disrupted the federal government's authoritarian classification system.

Conclusion

Despite all the attempts at clarifying categories, identity legislation failed to make clear, unambiguous and permanent categories. The statutes did little to reduce ambiguities in practice. Countless agents and officials questioned and complained about the confusion and uncertainty.

\textsuperscript{140} Alexander Morris, Despatch, Dec 4, 1876 in Morris, \textit{Treaties of Canada}, 186–87. See also Goulet to Burgess, 4 Aug. 1886, LAC RG15 Vol 501 File 140862; E. Newcombe, Deputy Minister of Justice, to Dept of Indian Affairs, 24 June, 1889, LAC RG13 Vol 2295 File 1899-106.
\textsuperscript{141} J.P. Wadsworth to Dewdney, 27 July, 1886, LAC RG10 Vol 3724 File 24303-2A.
\textsuperscript{142} Indian Commissioner E. Dewdney to Superintendent General of Indian Affairs, July 7, 1886, LAC RG10 Vol 3724 File 24303-2A.
The official paying Treaty 4 monies in 1876 questioned, "where shall the line be drawn to decide who is or who is not an Indian? The Indian Act of last session... does not cover the ground, for under the strict interpretation on the law, as I understand it, many who are of pure Indian blood would be excluded as they have never belonged to 'any particular Band,' and a few of these have followed to a considerable extent the customs of the Whites."¹⁴³ This was an ongoing problem, despite the tinkering with the definition of Indian. From the 1850 Lower Canada Better Protection Act, the first statute creating the legal category of "Indian," to the Indian Act of 1876, which determined that "half breeds" and "Indian" were mutually exclusive categories, lawmakers at first thought they were discovering with ever finer detail existing, natural and objective categories. Before long they realized that legal status would not perfectly correspond with social categories on the ground, but would become a complicated mix of race, culture, and heritable status.

The Indian Act definition could not possibly contain the complexities of reality. It failed to create a coherent, definitive, and unambiguous definition of "half breed" (or for that matter of "Indian"). In 1902 John Bilton, claiming to be a halfbreed, questioned why he did not receive his scrip.¹⁴⁴ The agent persisted in calling him an Indian, for "it is hard for me or anyone else to tell whether he has a few drops of white blood in him or not. If appearance goes for anything he is less a Halfbreed than his brother," who was in treaty and a status Indian.¹⁴⁵ Decades later, in 1936, there were complaints that "a great many of them [Métis or people of mixed ancestry] are no different in appearance from the Indians, the White blood being practically obscured."¹⁴⁶

¹⁴³ Special Appendix C "Report from Mr. M. G. Dickieson to the Honorable the Minister of the Interior", 7 October, 1876, in Canada. Department of the Interior, Annual Report, 1876.
¹⁴⁴ John Bilton to David Laird (Indian Commissioner), Dec 1902, LAC RG10 Vol 3572 File Part G File 132.
¹⁴⁵ John Semmens to David Laird, Jan 15, 1903, LAC RG10 Vol 3572 File Part G File 132.
There are countless other examples of the Métis and people of mixed ancestry confounding the
government, who did not know how to categorize them, what rights they had, what specific
regulations they were subject to, and which department and jurisdiction were responsible for
them. But this ambiguity had its advantages as well. In a time of increasing state rationalization,
the usefulness of "Indian" as a sliding signifier could allow for a degree of departmental
flexibility in otherwise rigid policy.
"Documents, long entombed in official archives and recently released upon our request, come to us and we read, wonder at the words, words which speak of things taken away, given up, non-transmissible. We have them now and work through their convolutions... Aggressively the clerks and administrators were bent upon application of the prefix of negation, and the pages sing darkly with the words disenfranchise and nontransmissible."¹

In late nineteenth century Canada, the Department of Indian Affairs' decisions were motivated largely by two conflicting goals: the desire for economy and the desire for control of racialized people. The Métis and people of mixed ancestry were often caught in the tension between these two goals. It was expensive to include them in the official category "Indian," because it increased the number of people for whom the Indian Department was responsible. But inclusion could provide additional means of control; if they were legally Indians, the Métis and people of mixed ancestry would be subject to the laws and regulatory powers of the Indian Act. Excluding them from Indian status, however, meant they could be removed from the reserve, which gave Indian agents a tool to help control some of those they identified as troublemakers. Sometimes the Department's goals came into conflict, as policies that enabled more control usually cost more money. This is one reason governmental policy towards the Métis and people of mixed ancestry was so inconsistent; it depended upon which goal was foremost at a particular time.

It also varied geographically. After Confederation, the federal Indian Department adopted and adapted Upper Canadian departmental organization and practices.² The Indian Act 1876

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² See Canada. Secretary of State for the Provinces. Indian Branch, Annual Report, 1871. It is likely this is because Lower Canada had long relied on the Catholic Church, whereas Upper Canada had to develop a more thorough formal colonial Indigenous policy. Tobias, “Protection, Civilization, Assimilation: An Outline History of Canada’s
consolidated and extended Upper Canadian legislation throughout the Dominion. However, this
did not lead to a consistent policy across all provinces and territories. Though in charge of Indian
Affairs for the whole country, the Department by the late nineteenth century focused most of its
effort on the prairies, as this was where the most pressing treaty obligations were, and where it
saw the most urgent problems.\(^3\) Officials popularly believed there was a difference in the levels
of "civilization and advancement" between eastern and western Indigenous peoples.
Consequently, different policies were required to manage them. For example, Joseph Howe (at
that time Secretary of State for the Provinces and Superintendent General of Indian Affairs)
reported in 1872 that in Ontario and Quebec, "the work of the Indian Department is easily
managed," partly because of the smaller geographical area but also because of the level of
"civilisation." He wrote, "in the Canadas it is not a rare thing to meet Indian gentlemen as well
educated, as well dressed, as careful in their habits, and as courteous in their manners as are the
higher class of white men to be found in our rural districts, or even in our cities." In contrast, the
"wild tribes" in the West, he thought, required more intensive governmental management.\(^4\)

This geographic divergence also affected the Department's policy towards the Métis. In
Ontario and British Columbia, for example, "Half Breeds" (Métis and people of mixed ancestry)
were handled very differently from how they were handled on the prairies. The evidence
suggests that in Ontario the popular view of eastern Indigenous peoples as more "advanced" led
to a primary focus on economy, on saving money through efficient organization and eventually a

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\(^3\) David Hall, "Clifford Sifton and Canadian Indian Administration, 1896-1905," *Prairie Forum* 2 (1972): 128; E.
Brian Titley, *The Indian Commissioners: Agents of the State and Indian Policy in Canada's Prairie West, 1873-

reduction in the numbers of “Indians” through enfranchisement. This policy goal encouraged an exclusive interpretation of the category Indian, leading to periodic attempts to reduce the "paylists" by removing unentitled families, many of whom were Métis or people of mixed ancestry. The paylist, in determining who received annuity money, became the de facto band membership list (therefore also determining who had Indian Status). The Department often ended up aborting their endeavours to pare down the lists, however, so as not to cause excessive disruption on reserve.

In British Columbia, on the other hand, the federal Indian Department inherited an anomalous (compared with the other British North American colonies) and racially charged colonial system. "Half Breeds" there caused anxieties not seen in the rest of Canada, as they came to symbolize an uncontrollable and immoral force for a province that was determined to become respectable, British, and white. There are repeated letters of concern over Indigenous "concubinage" resulting in mixed race offspring who did not have legal Indian status and therefore were uncontrollable (since the regulations of the Indian Act did not apply to them). They could buy liquor lawfully, for instance, which was the source of many complaints. The province and local agents in BC preferred a more inclusive definition of Indian that would provide regulatory mechanisms to help control interracial people, but tight-fisted Ottawa did not necessarily grant their requests. In Ontario and British Columbia, Métis and people of mixed ancestry navigated the complex boundaries between Indian and White, between the Indian Department and other government departments, and between federal and provincial jurisdiction, attempting to find ways to live meaningful, connected lives amidst the increasing state bureaucracy.

5 J. A. Macrae to Secretary, Department of Indian Affairs, 30 January 1899, LAC, RG10, Vol. 2832, file 170073-2.
Indian Affairs - Modernity, Efficiency & Rationalization

Immediately after Confederation, the Indian Department chose to continue the pattern previously established with the old colonial administration of Indian affairs in Upper Canada. This was largely because the new Department consisted mostly of Upper Canadian officials who had been part of the old Indian Department under the British. They adhered to what they knew and so the basic model and philosophy remained unchallenged. Though it did gradually change over time as it responded to new challenges, the roots of the Department's policy and organization were firmly British. The sense of enlightened British humanitarianism and focus on assimilation remained deeply entrenched, as did some of its organizational quirks. The British Indian Department had never been known for its orderliness or efficiency, and policy and practices had varied geographically among the colonies. Indeed, under the British Colonial Office in the early nineteenth century, Indian Affairs had been operated in a relatively haphazard and unsystematic fashion. Policy tended towards ad hoc reactions to particular challenges in various parts of the colonies. Even after it came under Canadian control in 1860 the Department remained notoriously disorganized. In the short span of a few decades it was moved from the Crown Lands Department (1860-1867) to the Department of Secretary of State for the Provinces (1867-1873) to the Department of the Interior (1873-1880) to a stand-alone Department of Indian Affairs, all the while continuing the British pattern of what David McNab calls "perpetual compromises between principle and immediate exigency."

Though the Superintendent General, after 1873, was technically the head of the Department, he was also the Minister of the Interior, and thus had many other important issues to

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7 McNab, “Herman Merivale and Colonial Office Indian Policy in the Mid-Nineteenth Century,” 297.
attend to, so the Deputy Superintendent General was the primary decision maker for Indian Affairs. The first Deputy Superintendent was William Spragge (1862-1874) who had started in this position in the former Indian Department. Spragge, despite his desire to create a model bureaucracy, operated the Department with very few changes at first, but he and subsequent administrators began gradually pursuing increasingly rationalized operations and a more logical structure. After Confederation, the Department found it needed some consistency among the previously separate jurisdictions, which was in part what prompted the 1876 Indian Act. Indeed from 1867 to 1900, there were ongoing attempts to create a more orderly, rational and systematic administration. This is at least partially because, as Leighton describes, the Victorian men who ran and staffed the Department viewed order, manners, and industry as virtues. Each found fault with his predecessor's methods and set about improving things. Shortly after Confederation Spragge already recognized the need for more organized, efficient and rational governance. In his sporadic efforts towards this goal, he attempted to systematize the collection of data and statistics in order to help inform rational decisions. For example, he reported in 1869, "the population return which will be found appended to this report will shew the number of Indians in each of those Provinces and afford data to compute the amount required to assist them in any effectual degree."

David Laird, Minister of Interior and Superintendent-General of Indian Affairs from 1873-76, also tried to create a more orderly Department in order to address the lack of

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8 Shewell, Enough to Keep Them Alive, 39.
10 Leighton, “A Victorian Civil Servant at Work,” 105; A similar process was occurring in other departments too. See Bruce Curtis, “Class Culture and Administration: Educational Inspection in Canada West,” in Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada, ed. Allan Greer and Ian Radforth (Toronto: University of Toronto Press, 1992), 118.
productivity that he blamed on disorganization and inadequate information management. He described the extent of the problem in his annual report of 1874: "In the Indian Branch ... the method of conducting the business in that branch was somewhat obsolete, the papers and records were in a state of confusion (the older ones being quite inaccessible when required), and, as a natural consequence, there was a heavy accumulation of arrears of work." He attempted to rectify the situation: "Prompt measures were, however, taken to classify and arrange the papers and records said to introduce a simple and more efficient system of registering and filing papers, and of transacting business generally. The arrears of work in the branch were also taken in hand as rapidly as the current business would allow." He seemed reasonably pleased with his success, as he reported the following year that "every effort has been made to systematize and simplify the mode of conducting the business of the Department." For instance, in that year (1875) Laird reorganized the severely understaffed (merely two employees in BC, four in Manitoba and none in the North West Territories) and dysfunctional Indian administration in the West. The West would be organized similarly to Ontario, with a system of superintendents and agents.

Even more significant efforts came from Lawrence Vankoughnet who succeeded Spragge in 1874 as Deputy Superintendent General of Indian Affairs (1874-93). Vankoughnet, a bureaucratic penny-pincher, was also interested in efficiency. In 1877, he implemented the more rigorous accounting that Spragge had previously called for and began to follow more clearly

14 "Indian affairs in British Columbia, Manitoba and the Northwest Territories," PC 1875-1052, 7 December, 1875; Titley, The Indian Commissioners, 44–45.
defined policy and consistent practices.\textsuperscript{15} Overall, his tenure marked the beginning of a pattern of increasingly rigid and centralized control of Indian Affairs that continued to the turn of the century under the harsh and prejudiced Hayter Reed, who was promoted from Commissioner to Deputy Superintendent General in 1893, replacing Spragge. He held the position only until 1897.\textsuperscript{16} Similarly Clifford Sifton, Laurier's Minister of the Interior (and Superintendent General of Indian Affairs) from 1896-1905, overhauled the Department yet again, in order to centralize, reduce costs, and improve efficiency.\textsuperscript{17} There were even occasional cases in which improperly kept records led to a very real loss of money, such as the case of individuals drawing double annuities from both the Manitoulin and Robinson Treaties.\textsuperscript{18} The Department was under constant pressure to reduce expenditures, and departmental expenses such as agents' salaries were regularly questioned. The extensive surveillance and control that became so characteristic of late nineteenth century Indian affairs was expensive, and agents were required to write incredibly detailed and time consuming reports.\textsuperscript{19}

Each man's administration had a unique character, but all were interested in efficiency and rationalization in their attempts at increasing control over the Indians while saving the Department money. Weber sees this pattern as a natural outcome of the bureaucratic state, which is itself a response to the growth in complexity of modern society. As opposed to traditional or charismatic power, in bureaucratic states power is held by big bureaucracies and at the root of this power is specialized knowledge; how things work is not apparent to those outside the

\textsuperscript{15} Shewell, \textit{Enough to Keep Them Alive}, 46; Leighton, “A Victorian Civil Servant at Work.”
\textsuperscript{19} Smith, \textit{Liberalism, Surveillance, and Resistance}, 103.
organization. According to Weber, for a bureaucracy to function it needs objective, calculable rules with little regard for individual persons, sentiment or irrationality. Compared with older societies that were ruled by lords who could be moved by personal sentiments, the bureaucratic state is staffed by experts who follow standard procedures.\(^\text{20}\) The Department was attempting to produce this kind of modern bureaucracy out of an antiquated colonial remnant. This was evident in the lower levels of the Indian Department as well. In 1883 Superintendent William Plummer did an inspection tour of various Ontario agencies, scrutinizing and reporting on their record keeping and filing methods (or lack thereof), offering criticisms and suggestions for improvement.\(^\text{21}\)

Of course, the goal of bureaucratic rationalization was not exclusive to the Canadian Indian Department. In fact, Canada inherited it from Britain, which in 1830-1870 saw a significant change in the scope and nature of the state, with increasing centralization, bureaucratization, standardization, and the rise in importance of middle class civil servants.\(^\text{22}\) James C. Scott views this process—particularly as it relates to the management of information—as crucial to the emergence of the modern state. Without standardized and “rational” knowledge systems in place, the modern state would be unable to govern effectively. There is simply too much data in its infinitely complex reality.\(^\text{23}\) The Canadian Indian Department was working to overhaul and streamline its communication, papers, data, and storage of information. In the archives, historians benefit from this increasing rationalization. Because the Department began to


\(^{21}\) His reports on the various agents can be found in LAC RG10 Vol 2234 File 45474.

\(^{22}\) Curtis, “Class Culture and Administration,” 104–5.

\(^{23}\) Scott, *Seeing like a State*, 77.
use standard record-keeping procedures and forms, Indian Affairs archival documents of the late nineteenth century are much easier to research compared with those from the earlier period. At the same time, the Department was attempting to clarify the boundaries of who exactly fell into its jurisdiction. Scott argues that to make its domain and population legible and governable, the state necessarily must classify people into manageable categories. This was the case in Indian Affairs in the mid to late nineteenth century with the ongoing and increasing desire to define, identify, legislate, and enumerate those designated as "Indians" and "Half-Breeds." In 1883, Superintendent Plummer, for example, advised the Department to aim for consistency in its policy of identification. The Cape Croker council had recently passed resolutions to grant two "French half breed" families some land on reserve but Plummer recommended disallowing this, warning the Department against deviating from its own rules. The Department took his advice, stating it "distinctly refuses to assent to any such proposal" using the 1880 Indian Act identity laws to justify it. Following the rules was more important to them than any Indigenous rights of self-determination.

It is important, however, not to overemphasize the increasing orderliness of the Department, as it was a slow and piecemeal process with each director inevitably finding the administration of the previous one to be inefficient and unsystematic. Through the end of the nineteenth century, the Indian Department remained somewhat isolated and idiosyncratic, with a

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25 Wm. Bull to Superintendent General of Indian Affairs, February 20th, 1883; Plummer, "Memorandum," Feb 23, 1883, both in LAC RG10 Vol 2207 File 41653. To demonstrate the potential consequences of straying from the law, he referenced a situation in Caughnawaga in which violence broke out between "Indians" and "Half Breeds."
26 Indian Department to Wm Bull, March 5, 1883, LAC RG10 Vol 2207 File 41653.
relatively low status, and did not usually attract top tier civil servants. It was a popular source of patronage and sinecures for loyal party members, a system established first under Macdonald's Conservatives, but continued by Laurier. Even by the turn of the century the Department was still fairly ineffective and lax in many ways. At times the Métis and people of mixed ancestry were able to use the ambiguity of the Indian Act and the disorder of the Department to their advantage, while at other times it frustrated their goals.

The DIA in Ontario: Ambiguity and Uncertainty

A primary job of the Indian agents was to ensure the Indian Act was adhered to, but this was not always possible. One significant problem was the inadequacy of the Indian Act for identifying which Indigenous people were under the Act’s jurisdiction and which ones were not. Despite all of the refinements in identity legislation beginning in 1850 and culminating in the 1876 Indian Act, the difficulty of categorizing some Indigenous individuals persisted. One of the largest categories of "problematic" people was the "half breed"—a category that could encompass both the Métis and people of mixed ancestry. Agents and officials often had no idea what to do with people who did not easily inhabit the state-created legal category "Indian" but did not always seem to fit the category "white" either, whether because of their appearance, lifestyle, or culture. Even after the Indian Act supposedly clarified definitions, the ambiguity remained.

Though they knew the law, Indian agents wrote frequent letters to the Department asking for clarification for specific cases, either because they were unable to sort out the complexities of

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28 Hall, “Clifford Sifton and Canadian Indian Administration,” 129–32.
the legislation when applied to real situations, or because they disagreed with the sometimes absurd and unenforceable rules. The federal archives contain numerous examples of communications between Indian agents and the central administration regarding who exactly belonged on the reserve or the paylist.29 They found the Indian Act particularly unhelpful when the application of its rules would create a significant change in band membership. As Inspector J.A. Macrae wrote, if the identity rules were "applied to test rights which antedate them it is found at once that many persons are upon the pay lists who have no right to be, that many are not on who should be, and that it is difficult to understand the lists at all."30 He felt the law, if implemented faithfully, would be highly disruptive to communities on reserves.

In 1875 William Van Abbot, Agent at Sault ste Marie, informed the Department that there were several women who had married "other than Indians," and based on the 1869 law should not be accounted Indians, though "under former superintendents they (but not the husbands) have always received pay. Most of them have been members of the bands before the treaty, and I think it would be very hard now to have their names struck out off the pay list."31 The Department said it would take this under consideration, but by the following year Van Abbott had yet to receive a response, even after the new Indian Act was passed, preserving women's annuity payments (though continuing to remove their Indian status) if they "married out."32 Frustrated with the lack of a resolution and the continuing ambiguity of the law, he wrote

29 For some interesting examples not discussed in this chapter see the files in LAC RG10 VOL 1879 File 1015; LAC RG10 Vol 2877 File 177181; LAC RG10 Vol 2629 File 127,711; LAC RG10 Vol 2769 File 154,660; LAC RG10 Vol 2348 File 69838; LAC RG10 Vol 6031 File 150-9 part 1
30 J. A. Macrae to Department of Indian Affairs, 30 January 1899, LAC, RG10, Vol. 2832, file 170073-2.
31 Van Abbott to the Minister of the Interior, August 7th, 1875, LAC RG10 Vol 1967 File 5184; Canada, Gradual Enfranchisement Act, 1869.
32 "Provided that any Indian woman marrying any other than an Indian or a non-treaty Indian shall cease to be an Indian in any respect within the meaning of this Act, except that she shall be entitled to share equally with the members of the band to which she formerly belonged, in the annual or semi-annual distribution of their annuities,
to the Department again: "with regard to women of the Band marrying outside the Band, the law says they are entitled to receive pay but does not say if their children are also entitled to the same. The Pay Lists as handed to me on my first assuming the duties of Paymaster to the Indians of this Superintendency, contained many such children, who have up to the present received pay; to take these children off the Pay list would seem a great injustice and I am sure such step would likely lead to much discontent."  

The Department responded that whatever law was in force at the time of the marriage should apply, but Van Abbott argued this would mean suddenly withdrawing many children from the paylist, which "would prove very unsatisfactory, and I have no doubts cause trouble."  

This was a difficult situation. The basic philosophy of the Department was that First Nations should be maintained cheaply on reserves in order to prevent disturbances or political problems. The Department did not want trouble, but neither did they want to spend any more money than was necessary.

Deputy Superintendent of Indian Affairs Vankoughnet requested advice from W.R. Bartlett, a retired Indian Affairs officer who, from time to time, advised him on various matters. Bartlett wrote back that there was no law in effect prior to the 1869 Gradual Enfranchisement Act but that it had been customary "when an Indian Woman married a White interest moneys and rents; but this income may be commuted to her at any time at ten years' purchase with the consent of the band." Canada, The Indian Act, 1876, sec. 3c.

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33 Van Abbott to Minister of Interior, July 25, 1876, LAC RG10 Vol 1992 File 6808.
34 Indian Department to William Van Abbott, Sep 19, 1876; Van Abbott to Minister of Interior, May 22, 1877, both in LAC RG10 Vol 1992 File 6808.
35 Hall, “Clifford Sifton and Canadian Indian Administration,” 129.
man, to strike her name from the Census and pay list." Bartlett seemed to think this custom was intended as a deterrent, as "these marriages were often with the lowest and most dissolute class of white men and were objected to by the Indians generally, who asked my interference, but I could only interfere by warning the woman of the consequences that would follow the marriages..." He also referred to the Pennefather Commission, which reported in 1858 that "an Indian woman marrying a white loses her rights as a Member of the Tribe & her children have no claim on the land or moneys belonging to their father's nation." Bartlett's belief that only the "lowest class" of white men would marry Indigenous women demonstrates the prejudice that informed his response. Bartlett saw the custom as a tool for preventing what he viewed as immoral— interracial marriage. But despite this advice and although the law in this case seemed quite clear, Vankoughnet agreed with Van Abbott that it would not "be well" to remove children from the list if they were already collecting money. He did caution Van Abbott to be careful to prevent this from happening in the future. Keeping the peace was in this case more important than saving money.

Similarly, in a case from 1889, Indian Agent J.P. Donnelly requested the Department send an inspector to determine what to do about a large number of children of mixed parentage in the Fort William Band ("thirty seven children of white men, married to Indian women"). Although he knew that by law they "are not entitled to annuity money under the Robinson Treaty," they disputed this rule, claiming "their right, by having been placed in the Band by their Chief." The Indian Department had taken for themselves the power to determine band

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37 As discussed in the previous chapter, this was the customary practice in the Department, but rarely of Indigenous nations.
40 J.P Donnelly to Superintendent General of Indian Affairs, 28th May 1889, LAC RG10 Vol 2465 File 96244.
membership based on Indian Act rules, which had little legitimacy for the real people it affected, and the agents had to deal with the consequences whether or not they agreed with the rules. Donnelly also wrote a private message to Vankoughnet further explaining that his purge of the lists (he had removed 25 people in the last 3 years alone) had created dissatisfaction in the community, and caused him to question his actions: "their claims may be right and if so will be established by looking into the matter by your Inspector, this will also make me feel easy on the matter and then know that I am paying out money to those only having a right." He wanted a third party to do the inspection, presumably because he was unable or unwilling to navigate the ambiguity and did not want to risk the bad feeling that would inevitably arise in the community.\(^{41}\) The Department was clearly unsympathetic. Instead of sending an inspector, they asked him to produce a more detailed report: "you should send full particulars after careful enquiry respecting each doubtful case and the Dept will then decide whether the party concerned is entitled to share in the annuity or not."\(^{42}\)

This case also demonstrates that the Indian Act identity laws were often unpopular and even a little incomprehensible to many of the Indigenous people who were subject to them. It seemed to them absurd that some of their relatives were permitted to live on reserve and receive annuities, while others were not. In general, they wished to have greater control over their own band membership, rather than being subject to abstract, arbitrary laws, which often held little meaning for them. There are several cases where people directly protested against these laws. For example, the Garden River council passed a resolution in 1875 to ensure women who had married "others than Indians" (and their children) would remain in the band and continue to receive their payments. They demanded "the amendment to the fifteenth section of the thirty first

\(^{41}\) J.P. Donnelly to L. Vankoughnet, 28 May, 1889, LAC RG10 Vol 2465 File 96244.  
\(^{42}\) Indian Affairs to J.P. Donnelly, June 7, 1889, LAC RG10 Vol 2465 File 96244.
Victoria cap 42 be repealed.” This was the section of the 1869 Act which stated: "any Indian woman marrying any other than an Indian, shall cease to be an Indian within the meaning of this Act, nor shall the children issue of such marriage be considered as Indians within the meaning of this Act.” In this instance, in Garden River, many of the women and their children were permitted to stay, but the government was clear that this was a matter of grace, meaning they could be removed at any time. The band was unsuccessful at getting the law repealed, though a year later the 1876 Indian Act did permit women who married out (but not their children) to keep their annuities (but not their Indian status or other related rights).

The archives reveal other cases of Indigenous disagreement with identity laws, and surely there are many more that were never documented. In 1885, the council of Henvey Inlet sent a petition, which laid out how the band wanted to allocate annuities and interest money to "Half breeds" and "non-residents." The Superintendent who forwarded this petition to the Department complained that "a very considerable portion of the Henvey Inlet Band are Half-breeds who have not apparently the slightest interest in the Band or Reserve and who are rarely if ever present even on pay-day." He objected not to the ancestry of these annuitants but to their absence from the reserve: "the terms 'Half-breeds' and 'non-resident' are used as if they were synonymous which of course they are not." The Department disagreed with the Superintendent and denied the petition on different grounds; the "half breeds" would not be permitted annuities because in the Indian Act ancestry mattered more than residency—it did not matter where a person resided.

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43 Minutes of Joint Council of Chiefs Augustin and Nubeneugooching, August 5 1875, LAC RG10 Vol 1967 File 5184.
44 Canada, Gradual Enfranchisement Act, 1869.
45 Petition, September 9, 1885 LAC RG10 Vol 2308 File 61,003.
46 Thomas Walton, Superintendent at Parry Sound to Superintendent General of Indian Affairs, 25 September 1885, LAC RG10 Vol 2308 File 61,003.
(providing it was in Canada). To the band members, as evidenced in their petition, a person—regardless of ancestry—who lived with them for twenty years, was more a part of the band than those who might be status Indians but were never on reserve, but the Indian Act rules prevailed.

In a slightly different situation, John Nahwegahbow, Chief of Birch Island, petitioned the Governor General in 1881 to have his daughter returned to the paylist. His daughter Eliza had been removed from her band because she had married a member of a different band and so had been placed on that band's paylist, and was therefore still accounted a status Indian. However, Nahwegahbow was unaware of this, and believed she had been removed because she married a non-status "half breed." Stressing the importance of ancestry, he wrote, "I hope you give the money to all the half breeds as long as they have the Indian blood in them." While the petition from Henvey Inlet demonstrates the council felt residency was more important than ancestry, the Nahwegahbow letter demonstrates the opposite. Both clearly show the sense of frustration that official identification was determined by abstract legislation, rather than by Indigenous Peoples’ intimate understanding of their own communities.

Similarly, in 1889 Abraham King of Thessalon wrote to John A. MacDonald complaining that all but one of his children were not on the paylist: "I don't see why I don't have right to draw for them all. I don't see why they could not treat me so well as the Tebo family... we have the same amount of Indian blood." The Department denied King's request. Because "the Thebo's are descended from an Indian... on the Father's side, while Abraham King is of Indian descent on the mother's side," and therefore not entitled under the Indian Act. King saw the paternal

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47 Indian Department to Thomas Walton, Sept 6, 1885, LAC RG10 Vol 2308 File 61,003.
48 J.C. Phipps to Superintendent General of Indian Affairs, 23 Aug 1881, LAC RG10 Vol 2155 File 31536.
49 Chief John Nowwegahbow to the Governor General, July 4th 1881, LAC RG10 Vol 2155 File 31536.
50 Abraham King to Sir John A Macdonald, Jan 11, 1889, LAC RG10 Vol 2442 File 92,546.
51 Phipps to Superintendent General Indian Affairs, Jan 20, 1889, LAC RG10 Vol 2442 File 92,546.
descent rule as irrational since there was the same amount of "Indian blood" whether the Indian parent was the mother or father. In all of these cases, the Department replied that the band had no power to determine its own members and the Department’s imposed patriarchal rules applied.

Although the children of non-status fathers, whether white, Métis, mixed, or non-treaty Indians, (as well as illegitimate children in many cases) were not legally entitled to receive annuities or live on reserve, agents or departmental officials did not always remove them. However, the bands themselves had virtually no control over this. The government reserved for itself the right and ability to exercise discretion and grace in admitting people into treaty and onto the reserve who would not otherwise legally belong.52 As seen above, this could be for pragmatic reasons — to keep the peace, out of inertia, or a lack of will to disrupt reserve life — but the Department also continued to exercise a certain old fashioned grace or charity towards those it considered morally deserving. If they were young children or very old, or particularly impoverished, the Department sometimes permitted “non-Indian” Indigenous individuals to remain in the band though they were not legally eligible under the Indian Act.

For instance, in 1879 the Indian Agent at Prince Arthur's Landing sent a letter to the Department asking what he was to do about "halfbreeds" who claimed to be included in the Robinson Treaty. These were not necessarily Métis but more likely people of mixed ancestry, with white or mixed fathers, who, according to the agent, "consider themselves Indians, and live and associate with them." Under the Indian Act, they were not entitled to the status "Indian" or to payments under the Robinson Treaties. The agent made a point to write, "they are generally poor, and, in some instances, are Widows with their Children." Vankoughnet advised that although legally they were not entitled to be paid, they would not be removed from the list: "The

52 This was also noted in Gwyneth Jones, “Expert Report for Daniels V. Canada,” June 2011, 13.
53 Amos Wright to J.S. Dennis 16 July 1879, LAC RG10 Vol 2090 File 14,455.
Dept. does not intend however to interfere with the persons of that class above referred to by you who have heretofore been participating in the Robinson Treaty moneys and whose names are now on the Pay List. But no new names of persons who are not Indian within the meaning of the Act must be added to the Pay Lists.\textsuperscript{54} This is consistent with the practice on the prairies in the 1880s and 1890s in which some Métis who had previously been accounted "treaty Indians" were allowed to rejoin their bands if they were infirm, sick or destitute.\textsuperscript{55}

This occasional bending of the rules was not without its conditions. The Department could and did use its power to bestow or withhold Indian status from Métis and people of mixed-ancestry in order to reward or punish certain kinds of behaviour. In other words, the paylist could be a tool for moral, economic and political control. Though remaking the moral life of Indigenous peoples had long been a goal of the Indian Department, it became more central to late nineteenth century policy. The Department directed that their "local superintendents and agents should carefully observe the movements of those under their supervision, and report every sign of material, mental and moral improvement or retrogression."\textsuperscript{56} In their yearly reports, agents dutifully commented on the "improvement" (or lack thereof) of the Indians in their agency. Sexuality, particularly of women, was a particular target, and economic and political activities were policed as well, in order to create peaceable, governable subjects. With the paylist and Indian Status the Department had a powerful tool at its disposal. In keeping for itself the power to decide someone's legal identification, the Department could lawfully evict someone from their

\textsuperscript{54} L. Vankoughnet to A. Wright, 1 August 1879 LAC RG10 Vol 2090 File 14,455.
\textsuperscript{55} For example see Deputy Minister of Justice to L. Vankoughnet, 3 July, 1890, LAC RG13 Vol 78 File 1890-787; Dept of Indian Affairs to Burgess, April 16, 1891, LAC RG10 Vol 3852 File 76777. See Chapter 5 for more examples.
\textsuperscript{56} Canada. Department of the Interior, \textit{Annual Report 1874}. 
home, charge them with trespassing, separate them from their family, and remove what might be their only source of economic support.

Even before Confederation, it was not completely unknown for people to be removed from their band as a form of punishment. For example, in 1862 several members of the Wikwemikong band were removed from the paylist in 1862 as a consequence of opposing the McDougall treaty ceding part of Manitoulin Island: "the Indians well understood that they were dropped from the Pay list for their opposition to the surrender of the Island."\(^{57}\) Annuities could be refused for other offences, such as liquor trafficking in an 1866 case, in which "twenty-two members of the Solomon or Peshikenoe family received annuity, and in that year it was refused to one member, William, and his family of five persons for giving liquor to Indians &c."\(^{58}\) Similarly, one Odjik Louis reported "that he and his family drew Robinson Treaty money from 1850 to 1862, when they were removed for illegal acts &tc."\(^{59}\)

These are examples of what sociologist Jeffrey Monaghan describes as the practice of liberal frontier governmentality, where "bad Indians" were set up as the opposite of "good Indians." For instance, after 1885 Canada used the threat of "bad Indians" to legitimize repressive measures such as the pass laws in the North West.\(^{60}\) "Good Indians" would be rewarded while "bad Indians" would be penalized in order to encourage desired behaviour, for example by withholding rations.\(^{61}\) Then-assistant Commissioner Hayter Reed even recommended treaty money should not be paid to bands or individuals involved in the North

\(^{60}\) Jeffrey Monaghan, “Surveillance and Settler Colonialism” (Canadian Historical Assocation, Waterloo, Ont., 2012).
\(^{61}\) Smith, Liberalism, Surveillance, and Resistance, 73.
West Rebellion, and the most “disloyal” bands should be broken up, while "all Indians who have not during the late troubles been disloyal or troublesome should be treated as heretofore."\(^6^2\)

Being able to bestow or remove Indian status further enforced government sovereignty, and offered a clear display of power because the state had awarded itself the ability to decide an individual's official identification based on how well he or she submitted to being governed.

Despite all of its power, the government was limited in its ability to enforce morality, and people resisted this kind of domination.\(^6^3\) Though the Indian Act and related regulations gave agents considerable power, one thing they could not legally do was force people off the reserve or paylist if they were treaty or status Indians. But Métis and people of mixed ancestry, who might only be in the band by the "grace" of the government, were especially vulnerable to this form of punishment. The Department often made moral judgments when deciding whether or not to overlook a person's mixed parentage. An impoverished and chaste widow or hard working farmer, for instance, was more likely to be allowed to remain than someone viewed as licentious or a drinker.

In 1875 the band at Goulais Bay petitioned the government to have Etienne Kanosh (also known as Jollineau) and his family re-join their band.\(^6^4\) Kanosh had been a member of the band at the time of the Robinson Treaties of 1850, although he was not an Indian under the 1869 Act, because "his father was a Canadian who married to a half Breed [sic] residing on the American side."\(^6^5\) George Ironside (the Northern Superintendent at Manitouaning) had removed him from the band sometime between 1859-1863. Ironside, himself of mixed ancestry, had added many

\(^6^2\) Hayter Reed, "Memorandum for the Honorable the Indian Commissioners relative to the future management of Indians," July 13, 1885, LAC RG10 Vol 3584 File 1130.


\(^6^5\) Van Abbott to Minister of the Interior, October 8, 1875, LAC RG10 Vol1962 File 498.
Métis and people of mixed ancestry to the paylist upon the urging of the chiefs. In this case, though, Ironside had removed Kanosh for moral reasons, specifically for "keeping a hotel and selling spirits." Kanosh's parentage is what made it legal, however, and the federal government in 1875 decided to adhere to the letter of the law, refusing to reinstate him to the band for the official reason that his "father was a whiteman and his mother an American halfbreed Indian woman."

Children could also be removed due to the perceived "immoral" character or activities of their parents. The Indian Act specified that "any illegitimate child... may, at any time, be excluded from the membership thereof by the band." This was particularly likely to happen to children of mixed ancestry. For example, in 1890 a child from Berens River, the son of unmarried parents (treaty Indian father and non-treaty Métis mother), was refused annuity. Among the reasons the agent gave were that the mother "is said to be as corrupt in her morals as vice can make her," and because the agent feared, "nontreaty women were being encouraged to, and receiving a premium for, bastardy with treaty Indians." Though the child had the consent of the band, he was refused annuities.

Similarly, in 1894, an unnamed "French half breed" was expelled from Saugeen largely on moral grounds. After leaving his "industrious clever" Indian wife and children, he reportedly "took up with another woman." They had five children and, according to the agent, "he then left number two and took up with" a third woman. In this case, the council requested to have him

66 Douglas Leighton, “Ironside, George (d. 1863),” Dictionary of Canadian Biography Online (University of Toronto/Université Laval, 1976); Knight and Chute, “In the Shadow of the Thumping Drum,” 108.
67 Minister of Interior to Van Abbott, October 19th 1875, LAC RG10 Vol1962 File 4980. Many Indigenous people lived their lives on both sides of the border, but if away from Canada for 5 years they could be removed from their bands.
68 Canada, The Indian Act, 1876.
69 Mr. Mackay, Berens River Indian Agent, to E. McCall, Inspector of Indian Agencies, Winnipeg, 8 Oct, 1890, LAC RG10 Vol 3847 File 74174.
The Department agreed to remove him, citing section 22 of the Indian Act, which forbade any "person, or Indian other than an Indian of the band" from living on or using reserve land. Like Kanosh, his non-Indian status is what legally justified his expulsion, but his actions (viewed as immoral) were what prompted it.

On the other hand, an individual viewed as respectable and beneficial could be permitted to stay on reserve. Francois Xavier Dagle (also known as Frank Daigle), a French man, was permitted to live on St. Mary's Island because he was married to a band member and was characterized as a good, upright citizen, who in the 25 years he had been living there, "had made valuable improvements to the Island, he being also reported as a steady Industrious man and in no way objectionable to the Indians." The Department allowed him a 5-year permit, "subject to cancellation at the pleasure of the Department." This was an advantageous solution for the Department, as it cost them nothing (Dagle was not paid annuities) but encouraged what they viewed as a good influence. In some circumstances, they were comfortable overlooking the Indian Act provisions against trespassers on reserves.

During the periodic attempts to "clean up" the paylists, the assessed moral character of individuals often influenced whether they were permitted to stay. A list of "trespassers" (non-members of the band, many of whom were mixed or Métis, who were residing on reserve) on the Chippewas of the Thames' reserve from 1909 included details about the reputation of each and whether removal from the band was advised. For instance, on the agent's list, some of the explanations included, "has a bad character, would recommend that he be removed"; "If a charge

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70 J. Allen, Indian Agent Chippewa Hill to Hayter Reed, June 19th, 1894, LAC RG10 Vol 2759 File 150,506.
71 Acting Deputy Superintendent General of Indian Affairs to J. Allen, June 23, 1894, LAC RG10 Vol 2759 File 150,506; Canada, The Indian Act, 1880, sec. 22.
72 Acting Secretary of Indian Affairs to Peter Goyiosh, 31st May 1897, AO Reel 2607, AE William Fonds, F4337-10-0-25; "Memorandum", 19th February 1897, LAC RG10 Vol 2896 File 182,184.
of taking liquor on the Reserve or of bad conduct in some other way be proven against him I
would recommend that he be not allowed to return to the Reserve," and "reputed as not of good
character. Would recommend his removal."\(^73\)

Whether a person was permitted to remain on reserve or on the paylist was decided in a
complex matrix of the law, pragmatism, and moral desires. The decision was based on a person's
ancestry, degree of embeddedness in the band, and reputation. The financial implications were
also considered. Indeed, the goal of increased efficiency and economy could over-ride the
determination to encourage certain forms of behaviour; sometimes even upright, “respectable”
Métis could be refused in the name of economy, orderliness and conformity with the law. In
1889, the agent for the Couchiching band requested that a Métis man named Pat Cyr be allowed
some land on the reserve. The man was a "halfbreed" married to a band member, and therefore
not an Indian himself though he was related to members of the community. The agent described
how "the Band are anxious to have him move onto the Reserve, as he is related to the
Halfbreeds, who are largely in the majority." The agent also believed this man would be a
positive influence, and would farm the land, helping "to raise the Band from its present unthrifty
condition, and that it would strongly tend to inspire a more hopeful, enterprising, and cooperative
spirit amongst them."\(^74\) Despite all of these desirable traits, and even though they had done so in
the past, the Department refused to bend the law in this case, stating that "much confusion
inevitably" would result if they let him live on reserve.\(^75\)

Similarly, a few years later a local missionary, Reverend Nédéles, appealed to the
Department to permit "half-breeds" to cultivate and settle on the Temiscamingue reserve. His

\(^73\) S. Sutherland to Dept. Indian Affairs, 9 February 1909, LAC RG10 Vol 2897 File 183,056.
\(^74\) McCracken to E. McCall, February 22, 1889, LAC RG10 Vol 3812 File 55910.
\(^75\) Supt. of Indian Affairs to E. McCall, March 14, 1889, LAC RG10 Vol 3812 File 55910.
reasoning used a combination of pragmatism and the notion of uplift: "The Indians would not
cultivate on the one hand, on the other they hinder the half breeds to settle and cultivate, without
reasons. All the half breeds connected with this tribe either by blood or language have, in my
humble opinion, the right to settle on the reserves... Now again if you put the half breeds out of
the settlement, who will remain? The rabbits?" 76 In this case the Department neither agreed nor
disagreed with the Reverend, simply reminding him of the law, stating that "the right of each
Halfbreed family has to be considered on its own merits," in particular "from which side his
Indian blood is derived; that is, whether from the father's or the mothers side" and whether he
was legitimate, "that is to say whether the parents were legally married." 77 A subsequent letter
from the missionary accused the agent of abuse of power, because he allowed some "half-breeds"
to live on reserve "by favors or connection with the agent." 78 The Department, attempting to
dismiss Nédéles as a misguided "enthusiast," 79 asked him to submit any such cases to the Agent
for review, but otherwise declined to follow up his accusations. 80 Department officials were
primarily concerned with ensuring the Indian Act was followed, but were not that interested in
the particulars of the case.

The relationship of money and Indian status became a significant issue with the
arbitration, and then Supreme Court case of 1895, between the Province of Ontario and the
Dominion of Canada over the payment of the Robinson Annuity money. 81 Canada claimed that
Ontario was to reimburse Canada for these payments since it had benefited from the lands

76 Rev Father Nédéles to the Superintendent of Indian Affairs, 4 November 1892, LAC RG10 Vol 2654 File 132413.
77 Indian Department to Rev Father Nédéles, Nov 26, 1892, LAC RG10 Vol 2654 File 132413.
78 Rev Father Nédéles to Superintendent of Indian Affairs, 28 December 1892, LAC RG10 Vol 2654 File 132413.
80 Deputy Superintendent General of Indian Affairs to Rev J.M. Nedeles, January 29, 1896, LAC RG10 Vol 2654
File 132413.
81 The arbitrators decided in favour of Canada, but the Supreme Court overturned their decision—Canada ended up
being responsible for the annuities. The Province of Ontario v. The Dominion of Canada and The Province of
Quebec; In Re Indian Claims, 25 S.C.R. 434.
obtained by the Treaty. One of the Province's counter-arguments was that the population of treaty Indians was overestimated, and that Canada "made payments to persons and classes of persons not entitled to share in the annuities," including "Half-breeds, and other persons of mixed blood." If Canada chose to pay them, Ontario should not be responsible.82

E.B. Borron, retained by the Government of Ontario's legal counsel, produced an investigative report that exposed the fact that there were many people on the paylists who had questionable rights, under the terms of the Indian Act, to receive annuities. Many were descendants of the original Métis who had joined Great Lakes bands around the time of the Robinson Treaties, and some were mixed ancestry children with non-status fathers. He argued their unlawful inclusion on the paylist had led to years of overpayment: "It is the wholesale adoption of Half Breeds, and of Indians other than those justly entitled, into the bands... that has really occasioned the enormous increase in the number of Annuitants, now entered on the Pay lists of the Indian Agents." The Indian Act was supposed to ensure the long-term disappearance of the Indian, and "between those Indians who would (so as to speak) die out and those that would become absorbed in the dominant race by marriage, there was certainly no probability of any increase in the number of the bona fide Indians."83 Anything other than a decrease, he thought, was both impossible and expensive. The federal government had been essentially disobeying its own law, paying hundreds of people it was not legally obliged to. This was obviously a problem for a Department constantly fixated on the need to save money. Additionally, it would have “serious and widespread effects as a paradoxical position would be created and persons would become Indian annuitants who were not Indians at all in the eye of

82 "Answer of the Province of Ontario to the case of the Dominion relating to the claims for increases and arrears of annuities under the Huron-Superior treaties of 1850", 1894, AO Irving Fonds, Reel MS6493.
83 Borron to Irving, May 17, 1895, AO Irving Fonds, Reel MS1780.
the law... whitemen and half-breeds married to Indian women and who are not legally Indians would become annuitants.”

On the other hand, the Department feared what would happen to the social order on the reserves if a sizeable number of residents were suddenly removed.

J.A. Macrae, Inspector of Indian Agencies and Reserves, who in 1899 was sent to investigate Métis and mixed-blood annuity recipients in Ontario, produced a solution of sorts. He proposed something called "non-transmissible" title or status. Essentially this meant that many of the unentitled annuitants would be able to continue living on reserve and receiving annuities for the rest of their lives, but their children would not. The Department adopted a version of his plan, choosing "not to interfere with payments to persons paid prior to 1895 (unless on other grounds than that they have no title), but that all such persons should be paid for life only, and that no others should acquire title through them. That is to say title to the annuity is to be granted them, but a non-transmissible title." Those entitled included: "those who intermarried" and their "lawful descendants," those who "by the enactment of 1859 became Indians" (and their lawful descendants as well), and those who were on the paylists in 1895 ("even if they have no inherent title").

The Department announced that this was a matter of grace and human kindness, because those with "nontransmissible status" had no actual right to their status. It was clearly an attempt to strike a balance between cost savings and pragmatics. On the one hand the Department did not want to disrupt reserve life, and they knew that removing community members from the reserve...

84 J. A. Macrae to Secretary of Indian Affairs, 30 January 1899, LAC, RG10, Vol. 2832, file 170073-2.
85 To clarify, he defines: "The term 'half-breed' in all these reports, unless the text indicates otherwise, is used in its colloquial sense, to describe persons of some degree of Indian blood. It is not, therefore, to be reasoned that 'half-breeds' are exactly half Indian." Macrae, "Report of Inspector of Indian Agencies & Reserves," 18th February 1899, Ottawa, LAC RG10 Vol 2831 File 170073-1.
86 Scott and McKenna, "Memorandum," 1 June 1899, LAC RG10 Vol 2831 File 170073-1.
or paylist would cause considerable "turmoil and trouble." But they knew in the long run there would be significant cost savings as people gradually fell off the list as they passed away: "the payment to Indians and other persons who have no inherited title ceases by the lapse of time, and the saving... gradually increases." Continuing to connect morality with the "privilege" of Indian Status, illegitimates were to be excluded even from non-transmissible status.

The subsequent reports are fascinating, with current and historical information (often quite detailed) about each family being considered. Ancestry, connection with the band, and lifestyle were the main concerns. For instance, Macrae described the Desjardins family of Thessalon, who were "said to have undoubtedly possessed some degree of Indian blood" but they should be struck off the paylist as "the mode of life of the family is as entirely un-Indian." For the Dumas family, on the other hand, he recommended non-transmissible title, due to "the mode of life of these people being that of the Indians and there having been actual association and residence with the Thessalon Band..." The yearly paylists had "title nontransmissible" stamped beside the names of those families deemed to be not fully entitled to status. Over the years, as those with non-transmissible status had children, the number of people on reserve who did not receive annuities grew. Though they were not assigned housing or land, they were rarely evicted and usually lived with family members.

This system was followed from 1899 to 1917 when it was abandoned largely due to complaints by both affected Indigenous communities and agents who did not like the confusion it...
caused.\textsuperscript{93} Children born after 1895 who did not have their parents' status passed on to them but who grew up on the reserve and socialized within their communities, were not receiving annuities. This meant members of the same family could be treated differently. Officials complained, "besides causing general discontent among the Indians, the non-payment of these children is causing confusion in connection with the pay-lists at the present time... it is most desirable that this vexed question be disposed of for all time.... if contentment among the Indians is to reign."\textsuperscript{94} Duncan Scott, the Deputy Superintendent General of Indian Affairs, agreed the non-transmissible list should be discontinued and all children would be paid the treaty moneys. He discussed it with the Minister, who, though "anxious about the expenditure," approved the new policy.\textsuperscript{95} Scott instructed that the agents should tell the annuitants "that this is a matter of grace and no claims for arrears can be based on the favourable action of the Department."\textsuperscript{96}

Though in general Indian Department officials tried to abide by the law, at times they bent or broke the rules due to pragmatism, inertia, corruption, or grace. In Ontario, the general desire to save money was paramount, but at times it could conflict with other policy goals, such as encouraging assimilation and maintaining the peace. When these other goals were prioritized instead it led to somewhat inconsistent practices, such as permitting Métis or people of mixed ancestry to stay on reserve or receive annuities even if it was in contravention of the Indian Act.

There was a variety of responses to these policies among the Métis in Ontario. Some wanted their own reserves and to be recognized as Métis. For example, the Métis in the Fort Frances area signed an adhesion to Treaty Three in 1875, known as the “Half-Breed Adhesion to

\textsuperscript{93} J.D. MacLean, circular, 6 August, 1908, LAC RG10 Vol 2831 File 170073-1.
\textsuperscript{94} Paget to Scott, August 29 1916, LAC RG10 Vol 2831 File 170073-1.
\textsuperscript{95} Duncan Scott to Mr. Paget, September 27, 1916, LAC RG10 Vol 2831 File 170073-1.
\textsuperscript{96} Duncan Scott to Mr. Paget, March 17, 1917. The agents were given these instructions in the circular from J.D. Maclean, March 19,1917, LAC RG10 Vol 2832 File 170073-1a.
Treaty No. 3,” providing for reserves, annuities, schools, hunting rights, cattle farming tools and all the other promises of Treaty 3. The Métis would have their own officially recognized band and chief. This agreement was never ratified by Canada and the promises went unfulfilled. As Canada explained, "the Dept cannot recognize separate Halfbreed Bands." The Fort Frances Métis continued to petition the government, which did not want the additional expense; the government worried about "the possible ruinous expenditure that might ultimately be imposed upon it by the natural increase in the number of Annuitants of Indian blood—a danger vastly increased, if not considered absolutely certain, if Half Breeds are to be recognized as Indians." David McNab argues the Métis participation in Treaty 3 negotiations was not an isolated incident, but was one example of the longstanding involvement of the Métis in diplomacy. It is true that this was one of the special niches the Métis cultivated, in which they were able to maximize the utility of what was viewed as their in-betweeness. Their ability to relate to both Euro-Canadians and other Indigenous peoples was one of their great strengths.

Still others preferred to press for Indian status for themselves and their families. For instance John S. Long has noted that, after being denied the "script" they requested, some people of mixed ancestry (locally termed "native") in the Treaty 9 area petitioned the government, some successfully, to allow them to join local First Nations such as Taykwa Tagamou Nation in 1905-6. One motivation was financial, since the fur trade was on the wane in the region. Others preferred to avoid the stigma and restriction of Indian Status, asking the government for other

98 Department of Indian Affairs to J.A.N. Provencher, Aug 30, 1876, LAC RG10 Vol 3637 File 6918
forms of assistance. Many remained in the James Bay region, while others "scattered across the country."\(^{102}\)

Similarly, in the Robinson Treaties area, some Métis families joined bands, while others did not. Among the Métis of Sault ste Marie, many joined the Garden River and Batchewana bands in 1859.\(^{103}\) Thus they became officially accounted as "Indians," though not all acculturated fully into the bands. Many retained their sense of distinctness, living off reserve or living in a specific part of the reserve and practicing endogamy.\(^{104}\) Inspector J.A. Macrae neatly summarized their dilemma. On the one hand, he wrote, "I believe it was pride not to be considered Indian," particularly with all of the oppressive limitations and regulations. But on the other, the few material benefits from Treaty or Indian status could be the difference between starvation and survival. For example, "the captain of a steam tug," he explained, "is a half-breed, lives and works as a white man and is, I believe, too proud to trouble himself much about his rights as an Indian except, as in this case, it pays very well."\(^{105}\) There are many examples of Métis and people of mixed ancestry "passing" or publicly integrating into the dominant white society, which is what contributed to the Métis becoming, in many cases, what the judge in the \textit{Powley} case called an "invisible entity."\(^{106}\)

\(^{102}\) Long, “Treaty No. 9,” 151–53. See also Gwen Reimer and Jean-Philippe Chartrand, “A Historical Profile of the James Bay Area’s Mixed European-Indian or Mixed European-Inuit Community” (Department of Justice Canada, 2005).

\(^{103}\) Evidence for this can be found in various places. The paylists show many Métis surnames such as Biron, Boissenault, Sayer, Riel, Lesage, Cadotte, etc. For example, see LAC RG10 Vol 2026 File 8715 and LAC RG10 Vol 2045 File 9127.


British Columbia

In British Columbia, a very different situation faced the federal Indian Department. For one thing BC was constantly impeding federal Indian administration. The province did not want to make any concessions or change its settlement-oriented policies. BC had not really wanted to join Confederation in the first place. In the era of Responsible Government, colonial British Columbia (united with Vancouver Island in 1866) had experienced autocratic governance and had little in the way of democratic institutions. Although most of the settler population wanted either to remain a British colony or to join the United States, Britain no longer wanted the expense of the colony, and strongly supported BC joining Canada. BC did enter Confederation in 1871 after negotiating excellent terms for itself: Canada was to assume its debt (which was significant due to expensive infrastructure projects, such as the gold rush roads), provide large per Capita grants, and build a transcontinental railway. Additionally, in article 13 of the terms of union, Canada promised to continue with "a policy as liberal as that hitherto pursued by the British Columbia Government" with respect to the First Nations. This became problematic, as BC’s policy had been anything but liberal.

Indeed, there was not much policy at all. Unlike in Upper Canada, there had been no significant treaty process in BC. James Douglas, as governor from 1850-64 had managed to negotiate 14 treaties on Vancouver Island, but most of his policy was abandoned after he retired. The few reserves that remained were tiny and scattered. The Dominion wanted to use the same system it had used first in Upper Canada, then in the North West—signing treaties before

110 Harris, *Making Native Space*, 18–45.
permitting settlement—because they viewed it as legal, controllable, and just. BC, on the other hand, wanted no reserves, or a bare minimum of land set aside for reserves (one proposal suggested a maximum of 20 acres per Aboriginal family). Though “Indians, and Lands reserved for the Indians” were supposed to be federal responsibility, Crown lands were under provincial jurisdiction, which left Canada little choice—they could not reserve land they did not have access to. In 1875 a joint commission was appointed to deal with the issue of reserves. It was unpopular with the British Columbian settler public as it was viewed as overly liberal towards the Indigenous population. The province refused to approve any new reserves. The issue was never resolved to the satisfaction of all parties, though treaty negotiations are presently in progress.

There were other peculiarities in BC at the time of Confederation. For one thing, unlike in the other provinces the Indigenous population was much larger than the settler population (it was only around the turn of the century that Indigenous and non-Indigenous numbers equalized), and the settler population was quite diverse, including large numbers of African Americans, Chinese, and Hawaiians. Additionally, there was a strong gender imbalance among settlers, particularly outside of the colonial enclaves of Victoria and New Westminster. This contributed to a vibrant multiracial backwoods culture, considered by middle class settlers as

111 Harris, Making Native Space, 91.
112 Harris, Making Native Space, 91.
114 Notable attempts over the years to deal with the issue include the 1912 McBride-McKenna Commission which rearranged reserves to provide more (but less valuable) land to First Nations; Calder [1973], Sparrow [1990], and Delgamuukw [1997] affirmed the historical and current existence of Aboriginal title; and more recently the British Columbia Treaty Commission is in the process of negotiating modern treaties. See Culhane, The Pleasure of the Crown; Patricia E. Roy, “McBride of McKenna-McBride: Premier Richard McBride and the Indian Question in British Columbia,” BC Studies, no. 172 (December 22, 2011): 35–35; Paul Tennant, Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989 (Vancouver: UBC Press, 2011).
rugged and unrefined, with frequent interracial relationships, both short and long term, and therefore many interracial children as well. In 1881 and 1891 there were more than 1500 mixed race households (of various kinds) in the province, totalling more than 6000 individuals. Other than some small Métis enclaves near trading posts, most of these people were non-Métis of mixed ancestry, most often with Indigenous mothers and white fathers.

The BC Métis and people of mixed race occupied a liminal space. They were not legally constituted as Métis because they lived east of the Rockies, but neither were they included in the federal legal definition of Indian nor were they accepted by white society. In the second half of the nineteenth century, incoming missionaries and white settlers brought their British and American beliefs about race, gender, and sexuality, in which whiteness was an asset dependent on exclusivity and firm boundaries to preserve its purity. Middle class settler society was on a mission to reform BC society and purify (and whiten) its image, in particular through encouraging the immigration of white women, who they viewed as the key to "civilizing" white men. They depicted "country wives" as concubines and prostitutes partly to deny the existence


117 Outside of towns and cities, there were 8000 non-Indigenous adult men in 1881. Jean Barman estimates that at least one in ten non-Indigenous men lived with an Aboriginal woman, and even more lived with a woman of mixed race. Barman, “Invisible Women,” 160.


121 Perry, *On the Edge of Empire*, 139.
of these relationships. However, the existence of mixed race children was indelible evidence of these relationships. Due to the perception of such interracial relationships as immoral, and because they subverted "respectable" social and sexual principles, the term "half breed" became derogatory in BC in a way that it wasn't in the rest of the country.

Interracial marriage and mixed children distressed British Columbian provincial authorities. To them, these children were symbols of illegitimacy, extreme immorality, and potential danger. In 1873 Alexander G. Anderson (a concerned "private individual") wrote a letter alerting the Province to the "serious question of the intercourse subsisting between certain of the settlers in the Province and the native women." He explained that "a system of concubinage is openly carried on, unrestrained by any law. Hence a class of half-breed children is rapidly increasing in numbers, who, under the hand of illegitimacy, and deprived of all incentives to self respect, will in course of time become dangerous members of the community." He called on the Province to regulate these unions in some way, on the grounds "both of morality and public expediency."

Because "the power of legislating on the subject is exclusively confined to the Dominion Government," the province passed it along to Vancouver MP Sir Francis Hincks, who more or less dismissed it, saying there was little that could be done. To Anderson he wrote: "even you, while pointing out an admitted evil, do not suggest any mode of solving it." Anderson was not pleased that the Dominion had not done anything about this "gross national stigma."
Indian Agents in BC made similar complaints. William Laing Meason, the agent at Williams Lake, wrote to Superintendent Powell in 1884 of the ongoing prevalence of "the practice of White men taking Indian Women to live with them as temporary wives." Powell followed up with Ottawa, adding: "Invariably, the children of such parentage grow up to be the most disreputable characters." Another agent wrote Powell about the problem, using similar language: "I would say that some kind of legislation would seem necessary to prevent the increase of illegitimate halfbreed children, some of whom are found in every village and who will always be a source of greater trouble to the government than the pure Indian." These agents positioned the interracial child as a visible evidence of what they saw as a shameful act.

As we saw in other chapters, the Métis and people of mixed ancestry were frequently connected, in official discourse, to illegitimacy, danger, and trouble. Perhaps it was because the state found them so difficult to categorize. Classification is a way of maintaining order, to (in the words of Mary Douglas) "impose system on an inherently untidy experience," and violations can be highly disturbing. It is difficult to make generalizations, since race manifests so differently in different places and times. However in many situations, interracial people, often useful at the beginning of Empire, could become a source of anxiety for whites, particularly where they were

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128 In 1872 the federal government appointed a single Superintendent of Indian Affairs for BC (I.W. Powell). In 1875 this expanded to two (Victoria Superindendency under Powell, and Fraser under James Lenihan). In 1880 the federal government introduced a system similar to that of Ontario, with six agencies, all under Powell. For details see James Douglas Leighton, “The Development of Federal Indian Policy in Canada, 1840-1890” (Ph.D., The University of Western Ontario (Canada), 1975), 404–504.
129 Wm Laing Meason to Col. I.W.Powell, March 15, 1884, LAC RG10 Vol 3658 File 9404.
130 I.W. Powell to S-G of Indian Affairs, 28 March, 1884, LAC RG10 Vol 3658 File 9404.
133 Ifekwunigwe, “Introduction,” 5.
the numerical minority as in nineteenth century British Columbia.\textsuperscript{134} Ann Stoler describes a similar situation in Dutch Indonesia, with the \textit{indos}, an ambiguous category that could include mixed bloods, poor whites, and Indies-born Dutch. The Dutch feared both their impoverishment (since the \textit{Indos} were their children) and their advancement, and in particular their resentment and potential subversion of the imperial order.\textsuperscript{135}

In addition to being positioned as illegitimate and immoral, people of mixed ancestry in BC, like the \textit{Indos}, were commonly viewed as a major source of social trouble. One of the most conspicuous reasons was that, being legally non-Indians they were therefore able to access liquor, which they could then distribute among “Indians,” who were prohibited from obtaining it through legal means. This concern was repeated in nearly every annual report, with comments such as, "the facility with which they can obtain liquors and sell or distribute the same among Indians is much to be deplored, they do a large amount of mischief."\textsuperscript{136} They were frequently blamed for drunkenness in Indigenous communities: "The Indian liquor traffic is quite difficult to suppress... and it will continue to be so long as halfbreeds can lawfully enter saloons, buy and carry away any quantity of liquor. They are the daily associates of the Indians, and in many cases their near relatives. The Indians seldom arrest or inform against them."\textsuperscript{137} Another example stated, "they have been born and brought up among the Indians, and are virtually such; but, on account of their half white blood they are allowed by law to purchase intoxicants as if they were white men. Of every bottle which they procure a portion goes to some Indian companion, and the


\textsuperscript{135} Stoler, \textit{Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense}.


taste for liquor is thus acquired by the Indians."\textsuperscript{138} Yet another example stated, "in almost every village on the coast there are some halfbreeds deserted by their fathers, and the law allows these to take what liquor they wish. The result is of course that they are made a kind of middlemen to procure liquor."\textsuperscript{139}

Most agents wanted the same laws that applied to "Indians" to apply to those who were known as Half Breeds, whom they viewed as essentially the same. For example, Meason wrote,

There are many half and quarter breeds in the various reserves in my agency, who have been born & brought up as Indians & are rated as Indians of the band... I beg to represent the urgent necessity of a law against their being supplied with intoxicating liquor. Being partly of white blood, the law in British Columbia does not recognize them as Indians: and the Whisky seller is allowed to sell Intoxicants to them openly, although it is well known that every bottle thus sold is destined for some Indian on the Reserve.

He suggested an amendment to the Indian Act which would state: "Any half breed, or person of part Indian blood who, with the consent of the Indian Agent or chief of the band, resides upon the Reserve of said band, shall be considered to be an Indian and shall be subject to the provision of the Indian Act the same as if he were an Indian. Any one supplying an Intoxicant to such shall incur the same penalties as if applied to an Indian."\textsuperscript{140} Though it would increase the number of Indians and therefore the cost of managing them, including non-status mixed race people in the category "Indian" would provide additional regulative powers to manage and control them.

On the other hand, some thought the problem might be better solved by completely excluding mixed race people from the reserves. In 1892, the Department requested reports from each BC agent providing information on each "halfbreed" that lived on reserve. The reports were

\textsuperscript{138} W.M. Laing Meason, "Report from Williams Lake Agency," Sep 1, 1890 in Canada. Department of Indian Affairs, Annual Report, 1890.
\textsuperscript{139} W.H. Lomas, Cowichan Agency Report, 5 Sep, 1891, Canada. Department of Indian Affairs, Annual Report, 1891.
\textsuperscript{140} Meason to I.W. Powell, March 25, 1886, LAC RG10 Vol 3842 File 71799.
to include various details such as "his or her general character and reputation for morality" particularly regarding "indulgence in intoxicants or giving the same to Indians" and "why he or she should not be required to remove from the Reserve."\textsuperscript{141} In addition to these facts, many of the agents' reports were careful to note the circumstances of birth (illegitimate or otherwise). The agents' reports included remarks such as: "None of these Halfbreeds have ever been in the habit of supplying liquor to Indians except Alex Meon and he is the only one who should be compelled to leave the Reserve."\textsuperscript{142} This was quite similar to what was happening in Ontario at the same time, using moral assessments as part of the criteria to determine whether the law would be followed strictly, or whether the grace of the government would permit unentitled mixed race people to stay on reserve. The attempts to "clean up" the reserve were not only about ensuring only eligible people ("Indians") were residing there, but also about moral and social control.

Neither of these options appeared to provide a satisfactory solution to what was viewed as the "half breed problem," however. In 1912 the issue remained unresolved, as Indian agents again complained of people of mixed ancestry lawfully accessing liquor. Though the Department recognized that, "the child of an Indian mother by a white man, or by a half-breed not accounted an Indian, has no legal right to membership in the band of the mother," but in practice, "if brought up on the band's reserve since infancy and 'reputed' to belong to the band, and who has shared in the band's privileges and disabilities, may in most cases be accounted an Indian."

Legally in BC this meant many non-status mixed-race Indigenous individuals living on reserve, who were legally

\textsuperscript{141} A.W. Vowell, "Circular 10.B.2.," March 29th 1892, LAC RG10 Vol 3867 File 87125.
on the same footing as those who do not reside upon reserves, and they are allowed to purchase liquor openly as well as the latter. They are also allowed to vote. It seems clear that these half-breeds who claim and exercise these privileges have no just right to be accounted as Indians or to live on an Indian reserve. They cannot share in Indian lands and interest moneys and escape the operation of the sections of the Indian Act in regard to intoxicants.\(^\text{143}\)

The "half breed" in British Columbia was thus doubly associated with illegitimacy—both meanings of the word. Not only did officials associate them with the disgrace of unwed parents, but also suspiciously viewed them as cheats. They alarmed the Department, because their mixed parentage meant they were unclassifiable, with the potential, as sociologist Renisa Mawani explains, for "making fraudulent claims to whiteness and Indianness, or in some cases, to both," whether posing as White and being overly free, unmonitored, perhaps even accessing liquor, or posing as Indian, with the potential for unlawfully receiving access to land, annuities, or other resources.\(^\text{144}\)

It is not difficult to guess what life was like for children stigmatized with labels such as illegitimate, immoral, half breeds. There is some evidence that school was a significant site of discrimination for many interracial children, who—if in public school—received unequal treatment by other children, teachers, and superintendents.\(^\text{145}\) Some missionaries quietly let them into the residential schools (which were supposed to be only for status Indians) but this was not always possible. Mixed sons were doubly marginalized, both from white society and from the reserve. Most eked out a living labouring in the fishing, logging, or ranching industries. It was difficult to survive, which is probably why so many were illicitly selling liquor on reserve. Mixed daughters erased their race as much as possible. Jean Barman suggests that because of the

\(^{143}\) J.D. McLean to W.E. Ditchburn, February 29 1912, LAC RG10 Vol 3867 File 87125.

\(^{144}\) Mawani, Colonial Proximities, 167.

\(^{145}\) "Provincial Schools are averse to taking breed children and you can understand that the families that I instance are far removed from any chance of a Provincial School for some years to come." Agent W.J. McAllen to Secretary DIA, November 17, 1921, LAC RG10 Vol 6031 File 150-9 part 1.
patriarchal society they could, especially if lighter skinned, become subsumed in the identity of their fathers or husbands (who in 1901 were overwhelmingly white). Many hid their ancestry from their children.\footnote{Barman, “Invisible Women,” 171–75.}

On the whole, the experiences of Métis and people of mixed ancestry in British Columbia were largely unrecorded, and this population has been all but ignored in the archives. New research, however, is making good use of oral history. For instance, \textit{What it is to be a Métis: The Stories}, is a book of interviews of Prince George Métis elders.\footnote{Prince George Métis Elders Society, \textit{What It Is to Be a Métis: The Stories and Recollections of the Elders of the Prince George Métis Elders Society} (Prince George: UNBC Press, 1999).} Experiences and memories that otherwise may have been lost were recorded for the use of community members and historians. Similarly, Gabrielle Legault's recent PhD Thesis interviewed 20 Métis in the BC interior to understand how they identify as Métis today.\footnote{Gabrielle Legault, “Stories of Contemporary Métis Identity in British Columbia: ‘Troubling’ Discourses of Race, Culture, and Nationhood” (Ph.D. Thesis, University of British Columbia, 2016).} However, more research needs to be done to uncover the experiences of these women and men in the particular racial landscape of nineteenth century British Columbia.

\section*{Conclusion}

The federal government and Indian Department wanted to save money, while maintaining peace and social control, assimilation, and land for white settlement. However, these policy goals often conflicted with each other, prompting inconsistent responses. For example, the desire to save money and streamline governance encouraged strict adherence to identity laws to reduce annuitants, but the desire for moral and social control sometimes led the government to pay those who technically were not eligible. Métis and people of mixed ancestry, because they did not easily fit the identity legislation, were often caught between these opposing forces. Many Indian
Agents found that the Indian Act did not adequately clarify boundaries, which at times frustrated the goal of modern governance and the legibility of populations on which it depended; how could one govern "Indians" if one could not reliably identify them?

What is clear is that in Ontario and British Columbia, Métis and mixed-race people blurred official boundaries, creating, in the words of Ann Stoler, a sense of "epistemic anxiety" within the state. There was ongoing uncertainty, confusion, disagreement, and protest from Indian Agents, missionaries, and First Nations, as well as from Métis who were often left landless, with their rights unrecognized. The identity clauses of the Indian Act did not solve the problem. In attempting to make clearer definitions, the Indian Department further mired itself in increasingly complex racial ontologies, that were sometimes "non-transmissible." The Department continued to operate on an ad hoc basis to a significant degree. It rarely applied the law in a consistent manner, despite the drive to increasing government rationalization and orderliness.

Even the central authorities in Ottawa occasionally disobeyed their own rules, paying (or refusing to pay) people or allowing them to live on reserve (or removing them) based on factors other than simply their parentage—pauperized widows, pitiable children, chaste women, and upright farmers might be permitted to reside on reserve or receive annuities while any hint of liquor, sex, or political troublemaking encouraged the agents or department to focus more closely on their ancestry. The periodic attempts to "clean up" band memberships often used moral criteria to help them decide who would be subject to the Indian Act and who would be permitted to remain as an act of grace or pragmatism. Additionally, in Ontario and British Columbia, the

149 Stoler, Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense; See also Lawrence, “Gender, Race, and the Regulation of Native Identity.”
inherited structures and ideals of pre-Confederation Indian policy affected the response of the federal government towards the Métis and people of mixed ancestry.

Many fascinating questions remain regarding the responses of Métis and people of mixed ancestry in these two provinces. In general, would they have preferred to obtain Indian status with its material benefits, or did they prefer the relative freedom of not being subject to the Indian Act? To what extent were they able to exploit identity loopholes as a survival mechanism or as a form of protest? Many Métis across the country hid their culture, even at times from their children, in order to survive. In the last few decades, many people have been working hard to rediscover their Métis communities and heritage as a people. Catherine Richardson, professor of social work and Métis community counsellor from British Columbia, describes this as the widespread "experience of becoming a Métis person."150 This has particularly been the case in Ontario and British Columbia where there was no official category for "half breeds" or Métis. The reality was somewhat different in the prairie provinces, where the Métis' political and military strength forced the federal government to deal directly with them in 1870 and in 1885, and to acknowledge (however minimally) their existence.

150 Richardson, Belonging Métis, 45.
Chapter 4: From Indigenous to not-quite-Indian: The Métis and the Manitoba Act

And whereas, it is expedient, towards the extinguishment of the Indian Title to the lands in the Province, to appropriate a portion of such ungranted lands, to the extent of one million four hundred thousand acres thereof, for the benefit of the families of the half-breed residents, it is hereby enacted, that, under regulations to be from time to time made by the Governor General in Council, the Lieutenant-Governor shall select such lots or tracts in such parts of the Province as he may deem expedient, to the extent aforesaid, and divide the same among the children of the half-breed heads of families residing in the Province at the time of the said transfer to Canada, and the same shall be granted to the said children respectively, in such mode and on such conditions as to settlement and otherwise, as the Governor General in Council may from time to time determine. - s.31 Manitoba Act 1870

In 1870, the Manitoba Act did more than create the province of Manitoba. It completely transformed the relationship between the Métis and the Canadian state. The most significant feature of the Act for the Métis was section 31. It promised a special land grant of 1.4 million acres for the purpose of extinguishing the Indian title of the Métis. But until then, the Métis had no recognized Indian title in British law. No colonial government acknowledged Métis Indian rights. Though the Métis identified at once as "civilized" and Indigenous, they were well aware that, to Europeans, being civilized was widely understood as the very opposite of "Indian." During the resistance of 1869-1870 the Métis of Red River formally distanced themselves from their First Nations’ ancestry in order to claim civil and political rights. Although virtually nobody thought the Métis were Indians, the Manitoba Act ended up enshrining (and supposedly "extinguishing") their Indian Rights. The Act’s significance lies in the fact that it created a quasi-

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151 Canada, “Manitoba Act (An Act to Amend and Continue the Act 32 and 33 Victoria Chapter 3; and to Establish and Provide for the Government of the Province of Manitoba),” S.C. 33 Vic. cap.3 § (1870).
legal identity for the Métis that has followed them into the present day—they became viewed as sort of, almost-, not-quite-Indians instead of the distinct People they were and are.

Prior to the Manitoba Act, the Métis were not First Nations or "Indians" by either their own or the Government’s reckoning, but they were and are Indigenous. This is a distinction that has been lacking in most previous discussions of this topic. Newer scholarship is beginning to argue that their inherent rights are not based on having some degree of First Nations ancestry, but primarily on their own right as a distinct Indigenous people.

Some historians argue s31 was simply a matter of political expediency and reveals nothing about the actual rights of the Métis. The Red River uprising put the brand new federal government in Ottawa in a precarious situation, and the government needed to appease the Métis. Prime Minister John A Macdonald and his principal lieutenant, George-Etienne Cartier, saw s31 as the least problematic solution because they did not want the Métis to control the new province's land, nor did they want to create a Métis reserve or potential political stronghold. The political expediency interpretation is not uncontested among historians, politicians, and the courts, and has been significant to the landmark case *Manitoba Métis Federation (MMF) v. Canada*, which was in the courts from 1981-2013. The Manitoba Métis Federation (and their expert witnesses including historians such as D.N. Sprague) argued the federal government did not fulfil the promises of the Manitoba Act, leading to the dispossession of the Métis. Despite s31 and s32 supposedly protecting Métis land, within a few years very few Métis landholders remained, which the MMF contended was largely due to the government's incompetence and

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153 In the MMF case, the Manitoba Court of Appeal concluded the Métis are Aboriginal, though they do not have Indian title. Thomas R. Berger, James Aldridge, and Harley Schachter, “Appellants Factum,” August 2, 2011; O’Toole, “Taking Métis Indigenous Rights Seriously,” 72–73.
malicious injustice. The Province of Manitoba (and their expert witnesses including Thomas Flanagan) used the political expediency argument because it made the Métis right look flimsy. The MMF on the other hand argued that the Métis did have Indian rights derived from their ancestry. It is a fact, after all, that they descended from First Nations, who do have firmly established rights.

One problem with the MMF's "derivative Indian rights" argument is that most sources indicate that in 1870 the Métis of Red River did not view themselves as "Indian." Though they did recognize and honour their First Nations ancestry, they saw themselves as a separate people that was distinct from, and sometimes more educated and developed than, their First Nations kin. They were extremely grounded in—Indigenous to—the community and society that they had created in Red River and on the prairies, which in turn had produced them. But Ottawa, at the time of the uprising, had no category for this—at least not one that was politically acceptable. It was unfathomable, political leaders thought, for such an upstart "rabble" to get in the way of Canada's imperialistic aspirations; the Métis could not be permitted to be an equal self-governing people. They needed to be pacified. Ottawa used the innovative (at the time) concept of partial Indian title in order to justify "giving" land to the Métis. Although the Métis did not necessarily view themselves as Indians, in the end the rights they were able to have entrenched in s31 were these derivative Indian rights, which they agreed to only as a compromise. Rather than calling s31 of the Manitoba Act a matter of political expediency, with all its overtones of unprincipled dealings and insubstantial rights, it can instead be described as a negotiated compromise.

The Manitoba Act was arrived at through debate, negotiation, and significant concessions on both sides. It was indeed a matter of expediency, but this is nothing new in politics. In

creating these new partial Indian rights, it in no way destroyed the Métis' own inherent Indigenous rights. After all, inherent or natural rights are inalienable; they are independent of any laws or action on the part of any government and cannot be destroyed. Recognizing the Métis as Indigenous makes their inherent rights clear, as well as some additional rights that were created by the Manitoba Act—which, despite Ottawa's original motivations, continues to have the force of law.\textsuperscript{155} In other words, viewing the Manitoba Act as a matter of compromise or political expediency need not weaken the current Métis struggle for their own Indigenous rights. The story of the Manitoba Act is a story of creative concessions made by both sides. Instead of achieving the goal of their own province with all the same rights as other provinces, the Métis got a promise of some acres of land as a result of their First Nations ancestry.

In October 1869, after Britain had unilaterally turned Rupert's Land over to Canadian control, the Métis denied a party of Canadian surveyors, led by William McDougall, entry into Red River, thus beginning the Red River uprising. They and their allies promptly established a provisional government, calling it the Legislative Assembly of Assiniboia. Louis Riel was elected President shortly thereafter. In March 1870 they sent a party of three delegates—Judge John Black, Alfred H. Scott, and Father Noel-Joseph Ritchot—to negotiate with Canada. Ritchot was the most significant of the delegates. Being a tough and savvy negotiator he won most of the points, threatening to withdraw from the negotiations if his demands weren't taken seriously.\textsuperscript{156} Representing Canada were Macdonald and Cartier, who was officially Minister of Militia and

\textsuperscript{155} O'Toole, “Taking Métis Indigenous Rights Seriously,” 91.
\textsuperscript{156} Donald Creighton, \textit{John A. Macdonald: The Old Chieftan}, 3rd ed., vol. 2 (Buffalo: University of Toronto Press, 1998), 65. Ritchot also had his own beliefs about the Métis. In general the Catholic Church, desiring a French Catholic prairie society, focused on the French roots of the Métis and downplayed their First Nations roots. Ritchot was among those missionaries who believed non-Europeans were destined to become extinct and saw his work as necessary for Métis survival. This is one reason he fought so hard for a land base and separate schools, to defend against the tide of English Protestants that was to come. Jacinthe Duval, “The Catholic Church and the Formation of Metis Identity,” \textit{Past Imperfect} 9 (2001): 72–76.
Defence but frequently acted as a co-prime minister, particularly during Macdonald’s bouts of ill health.\textsuperscript{157} That they were handling it themselves reveals that they viewed it as a very serious matter indeed. Examining the records of the provisional government and Métis political conventions, newspaper letters and editorials, the writings of Louis Riel and father Ritchot, and the list of rights the negotiators presented to the Canadian government reveals the Métis demands and a great deal about their self-perception. The Canadian perspective can be discerned from letters and parliamentary debates.

**Canadian Government Perspective**

Many historians believe Macdonald was not planning to negotiate in good conscience with the delegates, since he was preparing to send a military expedition to Red River as soon as the ice melted enough to allow passage. Though he would have been happy with a political solution, he hoped to offer some "bland assurances" and charm the delegates without actually ceding anything substantial.\textsuperscript{158} Britain forced his hand, promising the military aid he needed (Canada had no permanent military yet) only if he negotiated, because they did not want to force, or appear to force, anyone to join Canada.\textsuperscript{159} In the meantime Macdonald was trying to manage the pressures of Canadian public opinion and his own party. Though most Canadians had not been very interested in the Red River uprising in 1869, after March of 1870 when the Métis executed the troublemaking Orangeman Thomas Scott, a "passionate controversy" (in Donald Creighton's words) was aroused. English Canadians were demanding that the government refuse to negotiate with "murderers," while the French Canadians demanded a peaceful settlement and

strongly opposed a military expedition.\textsuperscript{160} Canadian expansionists, such as the Canada First Party, agitated for military action against the enemies of the nation and Empire, including within this category what they viewed as treasonous Métis and menacing Americans.\textsuperscript{161} For Macdonald, there were dramatic consequences to any action; he risked breaking up his coalition, which in turn would imperil Confederation itself.\textsuperscript{162} Macdonald had little choice but to negotiate quickly if he wanted to retain power and hold the country together.

But what did Macdonald and the Canadians think about the Métis? Prior to the Red River uprising, Canadians were, on the whole, both unaware and uninterested in the Métis. Then, in 1869 the federal government was suddenly scrambling to figure out who exactly these people were and what they wanted. Even after 1870 lawmakers remained remarkably ignorant about the area and its people.\textsuperscript{163} Few had ever visited Red River. As Joseph Royal, Conservative MP for Provencher, later explained to Parliament: "It was a prevalent idea among us that there were no people in the North-West, except the half-breeds, who were something like the Indians, with no idea of political institutions, no social existence and no prospect in the future—a population, in fact, who could be ignored."\textsuperscript{164} Because of their ignorance, their views about the Métis were primarily informed by stereotype. Whether romantic or disapproving, most shared the opinion that the Métis (particularly French Catholic Métis) were jovial, daring, and hardy, but improvident and primitive. They imagined that as hunters the Métis cherished an independence that bordered on anarchic. But this was not envisaged as a permanent condition. The Canadians, in general, thought that a settled agricultural life would “tame” these characteristics. It was life in

\textsuperscript{160} Creighton, \textit{John A. Macdonald}, 2:60–63.
\textsuperscript{162} Creighton, \textit{John A. Macdonald}, 2:63–64.
\textsuperscript{163} Taylor, “An Historical Introduction to Metis Claims in Canada,” 161.
the distant North-West and the hunt that caused the Métis to become so rugged—it was imagined they had little opportunity for refinement and culture.\textsuperscript{165}

If there was a source that politicians were likely to have read prior to 1869 it was Henry Youle Hind's 1860 report on the North-West. Originally commissioned by the government, he later published the report; it was popular and widely read.\textsuperscript{166} Hind was a journalist, geologist and avid Canadian expansionist.\textsuperscript{167} Like most educated middle class professionals of the mid-nineteenth century, it is evident that Hind held primarily cultural rather than racial beliefs about "Indianness," though cultural and racial notions did tend to shade into one another. He did believe that ancestry or lineage had some effect and certain traits could be passed down "in the blood": "The half-breeds of the north-west are a race endowed with some remarkable qualities, which they derive in great part from their Indian descent, but softened and improved by the admixture of the European element."\textsuperscript{168} However, like most Europeans, Hind seems to have viewed Indianness primarily as a condition, a state of wildness, rather than a race. Civilization was something that had to be learned, but could also be un-learned. It was considered a fact that even whites could "go native" if they spent enough time away from civilization.\textsuperscript{169} Hind described this as "men slowly subjecting themselves to a process of degradation, by which they approach nearer and nearer to Indian habits and character, refusing to adopt or relinquishing the


\textsuperscript{166} Owram, \textit{Promise of Eden}, 85–87.


\textsuperscript{168} Hind, \textit{Narrative of the Canadian Red River Exploring Expedition}, 1860, 1:179.

tame pursuit of agriculture, for the wild excitement and precarious independence of a hunter's life." Despite these stereotyped views, Hind thought such improvidence and primitiveness was caused by "circumstances, far more than disposition." The Métis had never been fully domesticated, and living in the wilds of the North-West was causing them "gradually to lose many of the humanities of civilisation, and approach nearer to the savage wildness of Indian life." So essentially the Métis had the ability either to become settled, agricultural, and "civilized," or to "regress" to the state of nature.

The travel writing genre prior to the 1850s described Rupert's land by convention as untouched wilderness, a dangerous, remote, romantic, frigid, inhospitable frontier, but by the 1850s the possibility of agricultural settlement began to change its image. Among those who wrote about Rupert's Land were other scientists, explorers, and surveyors on official government business (such as Palliser), novelists such as Alexander Begg and R.M. Ballantyne, and other travel writers. Like Hind, they painted the Métis in a romantic light, as daring, hardy, and free but lacking in discipline. They were not Indians, but like the Indians were too wild to be called civilized, but mostly because they lacked the opportunity.

Representations of the Métis shared as much with stereotypes of French Canadians and Catholics as with those of First Nations. Anti-Catholicism was particularly strong in Ontario at this time and the Orange Order was highly influential among the Canada First party that was so instrumental in heightening tensions at Red River. Protestant Canada commonly depicted

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Catholics as idolaters enslaved to the church, stagnant, and impoverished (because their frequent holy days interfered with enterprise). Stereotypes about French Canadians also abounded.

Authors such as eighteenth century botanist Pehr Kalm and nineteenth century historian Frances Parkman represented them as gregarious, courageous, and hardy, but ignorant, improvident, and prone to drunkenness.

Many writers differentiated English or Scottish Métis from French Métis. Palliser, for instance, wrote:

"There is a very remarkable difference between the Scotch half-breed and the Canadian or French half-breed; the former is essentially Scotch, he trades, speculates, works, reads, inquires after and endeavours to obtain the information, and to profit by the advance of civilization in the old country as well as he can. Should his mother or his wife be Indian women, he is kind to them, but they are not his companions. The Canadian or French half-breed, probably on account of an indolent disposition, allied to sociable habits, becomes more and more Indian. If he has energy he is a hunter, and able to beat the Indian in every department of hunting, tracking, running, and shooting. But there his energy ends, his sympathies are all towards his Indian mother, squaw, and especially his (belle mère) mother-in-law."

These stereotypes were remarkably persistent. In 1935 George Stanley described the English-speaking Métis as honest, religious, educated, and loyal, and French speaking Métis as

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improvident, preferring the freedom and excitement of the hunt. Similarly, lawmakers and officials—if they thought about the Métis at all—viewed the Métis not quite as "Indians" but as not entirely "civilized" either. The Métis were viewed somewhat similarly to the category of "enfranchised Indian." They had no special status and thus were legally equivalent to whites, though they were not viewed in an identical manner. Robin Brownlie suggests the status of an enfranchised Indian becomes clearer if whiteness is understood as a status or property rather than as a cultural or biological given. In America, as Cheryl Harris demonstrates, the institution of slavery attempted to transform black people into property; in this schema, whiteness was a privileged status—a protection from becoming property. Native Americans were racialized in a different way; they were not objects of property, but neither were they conceived of as legitimate property holders. Whiteness was what gave a person enforceable property protection. In Canada, to a certain degree, one could similarly “have” whiteness rather than “be white”; enfranchisement conferred legal whiteness (though it did not protect the enfranchisee from racially based discrimination). To become enfranchised, one had to have certain qualities (which therefore reveal the parameters of whiteness). Self discipline, productivity, morality, ambition, sobriety, and education were all seen as white qualities that Indigenous people could, theoretically, achieve. The stereotype of the Métis was generally the opposite; they were imagined as disliking hard work and the settled life, loving fun

179 Brownlie, “‘A Better Citizen than Lots of White Men,’” 46–47.
181 Brownlie, “‘A Better Citizen than Lots of White Men,’” 46–47.
and excitement, and as "quaint and undisciplined." But it was thought that Canadian settlement would eventually assimilate them into the new society, and the uprising was simply the last rebellion against the new modern world. They were seen, at this time, as something like potential whites.

Sir John A. Macdonald, even though he ended up arguing for Méts’ Indian rights in Parliament, did not actually believe the Métis had any Indian rights. Like other lawmakers Macdonald seems to have paid little attention to the Métis prior to 1869, but we can deduce that he too viewed the Métis as closer to white than to "Indian." Macdonald had been a key player in Aboriginal policy, even before Confederation, for example having introduced as Attorney General the 1857 Gradual Civilization Act. When it came to characterizing the Indigenous peoples of the North-West, Macdonald was both confident and ignorant (he had never been west of Southern Ontario prior to 1886). Overall, he shared similar beliefs as most in government at the time. He believed that amalgamation, enfranchisement, and assimilation were beneficial and inevitable due to the innate superiority of British values and institutions. He could not understand why anyone would want any other culture or way of life. Prior to 1869 he probably viewed the Métis similarly to the French or other minority groups: respectable subjects whose differences were irrelevant as long as they were loyal. Post 1869, Macdonald considered the Métis as unruly and anarchic squatters, "wild and semi-barbarous," and unambiguously French (he took little notice of English Métis). Legally they were identical to whites. Since he shared the dominant view of the time that Indianness was in large part a condition that could be left behind (evident in

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182 Owram, Promise of Eden, 85.
184 Smith, “Macdonald’s Relationship with Aboriginal Peoples.”
his strong belief in enfranchisement), it would have been unusual if he had viewed the Métis as Indian since they did not live "tribal" lives, a key defining feature of Indianess in this view. Later (in 1885), he stated this clearly to Parliament: "the half-breeds did not allow themselves to be Indians. If they are Indians, they go with the tribe; if they are half-breeds they are whites, and they stand in exactly the same relation to... Canada as if they were altogether white." And in another 1885 session discussing the franchise, he told Parliament, "an Indian is certainly not a half-breed, and a half-breed is not an Indian." Letters and reports from 1869-70 reveal a similar view amongst other Canadian officials.

**Métis Self-Identification**

Before 1869 Métis or "Half-breed" was a multipolar and lived self-understanding in Red River, not necessarily based on racial ancestry but primarily on social life, connection in community, and kinship. Dipesh Chakrabarty uses the term "fuzzy" community, as it was not based on sharp boundaries; people could identify in multiple and overlapping ways. Being Metis loosely meant having some Cree, Ojibwa, or Saulteaux ancestry, but not self-identifying as "Indian," and some French, Scottish or English ancestry, but not self-identifying as European. In 1849, for instance, Anglican Bishop Mountain defined "Half-breeds [as] a term comprehending every shade of mixed blood among the Natives." Two decades later J.J. Hargrave agreed: "the

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188 For example, see the many examples in Canada, *Sessional Papers*, vol. V, 1870. Also J.Y.Brown to John A. Macdonald, Nov. 26, 1869, LAC MG26-A Vol 102/X1 Page 40837 to 40841.
local custom prevails of speaking of everyone, how remotely soever of Indian descent, as a half-breed.\textsuperscript{191}

Various first-hand accounts clearly depict a distinct M\'etis way of life.\textsuperscript{192} The M\'etis of Red River settled full or part time within or near the community. Though hunting might make up the majority of their livelihood it was often commercially focused rather than primarily subsistence hunting, and was complimented with trading, freighting, small scale agriculture, and other pursuits. They might cultivate a garden or patch of potatoes, but not as a full time or dedicated occupation, and usually did not identify as farmers.\textsuperscript{193} Though the M\'etis might be related to the nearby First Nations, they were not embedded in First Nations' societies, but lived away from them in the Red River area settlements, on a small farm, or in a winter village or encampment on the plains.

The M\'etis did not share one single view of themselves, but there was certainly a sense of distinctiveness, both from First Nations and Europeans. By the 1850s many Red River M\'etis hunting families, joining the plains-centred M\'etis population, had already begun to winter on the plains closer to the buffalo and away from Red River. These \emph{hivernants}, who may have identified more closely with their First Nations kin, had left behind in Red River those M\'etis

\begin{itemize}
\item \textsuperscript{191} J.J. Hargrave, 18 September, 1869, \textit{Montreal Herald and Daily Commercial Gazette}, 11 October 1869, printed in J. M. Bumsted, \textit{Trials & Tribulations : The Red River Settlement and the Emergence of Manitoba, 1811-1870} (Winnipeg: Great Plains Publications, 2003), 33–34.
\item \textsuperscript{193} Though Norma Jean Hall argues farming was well established at Red River, including raising livestock, and it was fairly central to M\'etis women and children in particular, whose farm labour was vitally important. Norma Jean Hall, \textit{Red River Métis Farming, 1810–1870} (Self published, 2015), https://casualtyofcolonialism.wordpress.com.
\end{itemize}
who were somewhat more settled and less reliant on the hunt. In general these Métis of Red River predominantly presented themselves as something other than Indian. Of course, not all Métis throughout the North-West universally believed this, but it was the dominant view in Red River at the time, and thus the view that confronted the Canadians in 1869.

Being Métis also meant being a "native of the country," with a strong sense of political liberty. Adam Gaudry explains that Métis political thought in the nineteenth century relied on two Michif concepts: *kaa-tipeyimishoyaakah* (they own or govern themselves, independence) and *wahkohtowin* (everything is related, connectedness). These concepts together embodied ideas of economic resourcefulness and self-sufficiency (with the extended family rather than the individual as the basic unit of society), collective freedom and strength, cooperation, and decentralized governance. Historians have long recognized that Métis governance grew out of the buffalo hunt, which organized thousands of people of all ages for extended periods of time. These large hunting brigades operated on the principle of consent. Hundreds, even thousands, of self-owning families gathered freely, formed temporary (or provisional) governance structures, and followed laws of the hunt in order to achieve a particular goal. (see Figure 4.2) In this way both cooperation and independence could be respected. The model of the buffalo hunt was

195 For example there was a minority faction which focused on the Aboriginal rights and First Nations ancestry of Métis. See Gerhard Ens, “Prologue to the Red River Resistance: Pre-Liminal Politics and the Triumph of Riel,” *Journal of the Canadian Historical Association* 5, no. 1 (1994): 112.
196 These are also Cree words, *otipemisiwak* or *otimpemisuak* and *wahkohtowin* or *wahkootowin*. The Cree sometimes called the Métis *Otipemisiwak* Devine, *The People Who Own Themselves*, xvii; See also Brenda Macdougall, “Wahkootowin: Family and Cultural Identity in Northwestern Saskatchewan Metis,” *The Canadian Historical Review* 87, no. 3 (2006): 431–62.
197 Gaudry, “Kaa-Tipeyimishoyaakah - 'We Are Those Who Own Ourselves,'” 79–93.
carried over into the settlements. The Métis continued to recognize their political independence and claimed their sovereignty in the North-West as well, such as in an 1873 petition, where they stated: "as there are no laws made as yet for this country, we go on as heretofore. We make a law and that law is strong, as it is supported by the majority." 

All being ready to leave Pembina, the captains and other chief men hold another council, and lay down the rules to be observed during the expedition. Those made on the present occasion were:—

1. No buffalo to be run on the Sabbath-Day.
2. No party to fork off, lag behind, or go before, without permission.
3. No person or party to run buffalo before the general order.
4. Every captain with his men, in turn, to patrol the camp, and keep guard.
5. For the first trespass against these laws, the offender to have his saddle and bridle cut up.
6. For the second offence, the coat to be taken off the offender's back, and be cut up.
7. For the third offence, the offender to be flogged.
8. Any person convicted of theft, even to the value of a sinew, to be brought to the middle of the camp, and the crier to call out his or her name three times, adding the word "Thief", at each time.

Figure 1 - Laws of the hunt as established for the 1840 hunt.

Scholars differ in their opinions of just how divisive religion and language were prior to 1869. Many Métis had a deep connection to French Catholicism but many English Protestant "half breeds" also identified as Métis, particularly as they were excluded from the upper echelons

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of the Company and British Protestant society.\textsuperscript{202} In many cases Anglo and French Métis belonged to the same hunting brigades.\textsuperscript{203} They also worked together politically. For example, Métis with both French and English surnames participated in most of the free trade petitions, Sayer trial, and other political meetings discussed below. Though there were some religious divisions,\textsuperscript{204} Riel's hard work during the 1869-1870 uprising ensured English inclusion. In fact, because he needed their support, Anglo Métis ended up being quite influential in the provisional government.

Within the settlement and its lived social relations, everyone knew who was Métis and what that meant, but to outsiders these may not always have been easily determined demarcations.\textsuperscript{205} However, the uprising forced increased self-reflection, and politicized and solidified Métis self-identification, much as Seven Oaks (1816) and the Sayer Trial (1849) had done many decades earlier. The Sayer Trial of 1849 was a key event that had strengthened Métis political consciousness and organization, and offers insight into Métis self-presentation. After the fur trade wars that culminated in the battle at Seven Oaks in 1816, the NWC and HBC merged in 1821. After the merger, there were fewer employment opportunities, particularly for the Métis, who began agitating for freer trade, including unsuccessfully petitioning Governor Christie in 1845 and Britain in 1846. They argued that as natives of the country they could not be forbidden


\textsuperscript{203} Macdougall and St-Onge, “Rooted in Mobility,” 24–27.

\textsuperscript{204} For an interesting debate in the pages of the Nor'Wester, see H. Cook, “Education in Red River (To the Editors),” Nor'Wester, April 14, 1860; Francois Bruneau, “Education in Red River (To the Editors),” Nor'Wester, April 28, 1860.

\textsuperscript{205} In smaller communities, individual identification is often determined by kin connections—which people you belong to is relatively clear because everyone has always known you. Cheryl Harris writes about her mother being able to "pass" as white but only when she moved away from her community in favour of the anonymity of the city. Harris, “Whiteness as Property,” 1711.
from trading, particularly with each other and with their First Nations relatives. Meanwhile, the Métis' independent commercial successes on the plains were conflicting with the HBC desire to control the fur trade.

The HBC attempted to exercise its royal charter rights to a trade monopoly by seizing Métis furs, and eventually brought charges against four traders, including Guillaume Sayer, in 1849. This trial was highly politicized, and between 200 and 300 well-organized and armed Métis men surrounded the courthouse. Though the jury found Sayer guilty, they recommended mercy because, they argued, Sayer truly believed the Métis could trade freely. Though technically a victory for the HBC, the Company had no way to enforce it, and he was not punished. The Métis outside perceived it as an acquittal, shouting "le commerce est libre!" It was in this struggle over free trade that the Métis first articulated a clear self-description as both "native" and "civilized."

In the period between 1849 and 1869, the Métis continued to work out their political identification and rights as a people. Though they recognized and usually honoured their ancestry, they did not identify themselves racially as either "Indians" or Europeans (though from time to time they could use both of these subjectivities in a fluid manner when the situation warranted), instead using other kinds of defining characteristics. They did refer to themselves as

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"native" and "of aboriginal descent." These terms of self-identification were evident during a series of political meetings held in 1859-1861. In 1860 there was a particularly significant meeting held by Pascal Breland and other Métis (English and French) to discuss their rights. In this meeting they grounded their land rights in three facts, as reported in the *Nor'wester* newspaper, which stated "they are natives; they are present occupants; and they are the representatives of the first owners of the soil," in many ways foreshadowing the discourse of the 1869-79 uprising.

In the twenty first century, there has been a growing international political movement focused on Indigenous issues. Despite the United Nations' 2007 Declaration on the Rights of Indigenous Peoples there is no single definition of Indigeneity or an Indigenous people. This is an active debate, particularly in the field of anthropology. Adam Kuper argues the term ought to be expunged from our vocabulary, as "Indigenous" functions only as a politically correct way of saying "primitive." It is true that the law often relies on authenticity discourses, requiring a performance of historic continuity to recognize Indigeneity, but that does not mean the entire

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209 There were at least four meetings, but perhaps more based on allusions in the newspaper articles: Urbain Delorme, “The Halfbreed Meeting (To the Editors),” *Nor'Wester*, June 14, 1860; “The Land Question,” *Nor’Wester*, March 14, 1860; “Indignation Meetings,” *Nor’Wester*, June 15, 1861.

210 See “The Land Question,” *Nor’Wester*, March 14, 1860, in which the Métis question the validity of the Selkirk treaty, and state they are the descendants of the chiefs (not Peguis) who actually owned the land.


212 Adam Kuper, “The Return of the Native,” *Current Anthropology* 44, no. 3 (2003): 239–90. Though it is true Indigenous is often equated with primitive, he erroneously concludes that the idea that original inhabitants have privileged rights over immigrants is a dangerous slippery slope that leads to extremist right wing nativist politics.
concept must be thrown out. Alan Barnard, borrowing from Sidsel Saugestad, has proposed a useful working definition; they both emphasize that Indigenous is a relational term that only has meaning in relation to the state or other encompassing group. It is a polythetic definition, meaning that these characteristics commonly occur in members of the group or class, but none of them is absolutely essential to membership. The characteristics are: 1) First come (descendance from people who were there before others), 2) non-dominance (under an alien state), 3) cultural difference (particularly in use of resources and territories), and 4) self-ascription. By these characteristics, the Métis are clearly Indigenous as they 1) are descendants of the First Peoples who lived in the North-West, 2) became non-dominant, 3) had their own unique subsistence and land use practices, and 4) self-ascribed as native.

In fact, one of the Métis' most common and significant self-ascriptions both before and during the uprising was as Natives of the country, by which they meant more than just individuals who had been born there. As a people, they were "homegrown," original to, and deeply grounded at Red River, even when physically absent from there as many often were (such as for the seasonal buffalo hunts). As a people their mobility did not interfere with their rootedness; their strong family bonds held them together over the vast territorial spaces they inhabited. They saw themselves as original inhabitants, children of the soil, Indigenous to the area. During the free trade struggle, they sometimes used the term Natives to encompass both

213 Birrell, Indigeneity, 3–16. There are many examples of this in Canada as well as internationally. See Patzer, “Even When We’re Winning, Are We Losing? Metis Rights in Canadian Courts”; Flanagan, “The Case Against Métis Aboriginal Rights.”


Métis and First Nations, but often solely to describe themselves. Hind reported that he had heard the Métis calling themselves natives at political meetings, explaining that "the term 'native'" was used for "distinguishing the half-breeds from the European and Canadian element on the one hand, and the Indian on the other." He said the term "appears to be desired by many of the better class," meaning Native was a self-ascription the Métis wanted and chose for themselves. Prior to 1870 the censuses of Assiniboia included no race question but recorded the origin of the heads of household and as early as 1835 the largest category was "native," the bulk of whom would have been Métis.

During the uprising "native" continued to be an important self-ascription for the Métis. One delegate at the Convention of Forty at Fort Garry in 1870 asked Riel to clarify the definition of "natives of the country" for the purposes of local militia requirements. He wanted to know if this included everyone "born in the country — Indians, half-breeds, and everyone else?" Riel replied, "I am a native of the country and I would say that it means the people now in the country, without any distinction." When asked if this included the Indians, Riel answered, "we do not know that they were born here. (Laughter)"

Louis Riel chose his words carefully, as he had worked so hard to de-ethnicize the uprising, forging an ethnically and linguistically inclusive citizenship (The People of Red River) in order build a broader base of support. He was also addressing the contention that the Métis did not have a right to Red River because their First Nations ancestors were generally from far

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He was saying the First Nations in the area were no more "original" to the area than the Métis were. It was certainly true that the previous century had wrought significant changes for First Nations across the continent; many, including Anishinaabeg, had recently moved to the Prairies at the end of the eighteenth century. Some may have even originated within living memory; ethnogenesis was not a process unique to the Métis. Sidbury and Cañizares-Esguerra list a number of North American "colonial tribes," new peoples that originated in the colonial devastation caused by disease and violence. Similarly, Robert Alexander Innes argues historians have been overly fixated on “tribal” histories, which obscure the multicultural composition of most bands of the northern plains. Whether or not their ancestors were specifically from Red River, the Métis had ancestors from the plains, and had come into being as a people "rooted in mobility." For the Métis, the plains and the Red River settlement were conceptually and affectively knitted together to make a geographically expansive homeland that also contained other distinct peoples. The Métis were at home in the Red River parishes, in a wintering encampment on the plains, or in a mobile buffalo hunting brigade. Riel was disconnecting Indianness from Indigeneity.

Just like at the 1860 meeting, the Métis were grounding their rights in their Indigeneity—in their ancestry, ethnogenesis in the area, and their current land use practices—and they claimed...
political rights directly as a result of it. As reported in the Montreal Herald, they "claimed that as natives of the country they should have been consulted not only as to the transfer of the country, but as to the mode in which it should be governed." Indigeneity may not have been the term they used, but it maps fairly closely to how the Métis presented themselves as Natives of the country.

They viewed themselves as Indigenous but they also consciously presented themselves as modern political citizens and "civilized" British subjects, both before and during the resistance, and unlike the Canadians saw nothing contradictory about these aspects of their character. In the decades before the 1869 uprising, they made frequent demands for increased political representation. They were familiar with the democratic and republican movements happening internationally, including in Canada and the United States. They had long resented the HBC for excluding them from governance. Their 1846 petition to Britain included demands for more democratic governance, and at the 1860 meeting they formally demanded an elected assembly. They sent a large number of petitions and letters to the Council of Assiniboia, and were becoming increasingly politicized after 1849. They were among the Red Riverites who petitioned the government of Lower Canada in 1857 for protection, complaining of having no democratic voice. Despite their campaigning, there were few changes in Red River prior to 1869, other than a slightly more representative Council of Assiniboia, more Métis magistrates,

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and a requirement for a mixed (equal numbers from each language) jury for any trial involving both English and French.²³¹

Red River may have been a distant backwater by the standards of London, or even Montreal (which was itself viewed as unsophisticated and remote by the English), but by 1869 it was becoming increasingly linked with the world economy, particularly the USA. The community had newspapers, various associations, a subscription library, historians, intellectuals and poets. It was fairly safe and orderly, with relatively little crime. Red Riverites—including many Métis families—were worldly, well-read, religious and cultured. The Métis were known for being entrepreneurial, and politically astute.²³²


Figure 2 - Kemp. Winnipeg Looking North from Near Upper Fort Garry 1870
A letter to the editor in 1869 described how the Métis "contrasted their position with that of the pure Indian and appreciated their own high standing in the scale of civilization."

The Métis saw it as their duty, as "civilized" men, to manage, represent and advocate for the First Nations of the prairies. There are countless examples of Métis positioning themselves as intermediaries between governments and First Nations, something they were uniquely suited for based on both their multilingualism and deep understanding of the symbols, rhetoric, and ideologies that are required for successful diplomacy.

At a large meeting in 1860, the Métis declared themselves to be "the immediate representatives of these tribes" and resolved "to use every legitimate means to urge their claims to consideration in any arrangement which the Imperial Government may see fit to make."

Additionally both the Assiniboia Council in the HBC period (1821-1869), which included a few Métis members, and the Provisional Government (1869-70), which included primarily Métis members, aimed to administer, control, and maintain positive relations with First Nations. The Provisional Government even appointed a Commissioner of Indian Affairs. At the Fort Garry convention Feb 1, 1870, George Flett expressed the Métis' political relationship with First Nations: "for my part, I am a half-breed, but far be it for me to press any land claim I

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236 “The Land Question,” Nor’Wester, March 14, 1860
might have as against the poor Indian of the country. (Hear, hear.) We have taken the position, and ask the rights, of civilized men. As to the poor Indian, let him by all means have all he can get. He needs it, and if our assistance will aid him in getting it let us cheerfully give it.

(Cheers.)”

The choice of the term "civilized" during the Rebellion was strategic. Riel frequently commented on the incivility and barbarism of the Canadians. The Metis were relying on the colonial dichotomy of "Civilized" and "Savage," but inverted it to their advantage. Even at a young age Riel had articulated an original vision of civilization and education that in no way contradicted his Indigeneity, arguing that the wisdom of Indigenous cultures could help insure against the vice and immorality of modernity. In Red River being civilized had little to do with ancestry and everything to do with lifestyle, culture, and political belonging (being "citizens"). It was a moral and political state of being. Being civilized meant being orderly, productive, stable, settled, and perhaps most importantly Christian. The ultramontane Catholic notion of la civilisation chrétienne and membership in the church was also key, and Riel viewed the Métis as one piece of the larger French world. Hind wrote that the Métis did not even view the term "half-breed" as appropriate for themselves, "a race of Christian men.” They were not half anything but were a whole Christian, civil people. In the Provisional Government and in the Bill

239 Norma Jean Hall, ed., Reconstituted Debates of the Convention of Forty/La Grande Convention, 1870.
of Rights, all settled Christian men could vote, whether white, Métis or First Nations. Members of First Nations who were not settled in the community were excluded from voting, not because of race but because they belonged to other nations and did not participate in Red River civil society.

In his speeches and writings Riel positioned the Métis as having rights as natives and original owners, but he did not focus on their ancestry. During the Rebellion, he even suggested they might have rights of conquest over the First Nations: "I have heard of half-breeds having maintained a position of superiority and conquest against the incursions of Indians in some parts of the country. If so, this might possibly be considered to establish the rights of the half-breeds as against the Indians." And then later: "The half-breeds have certain rights which they claim by conquest. They are not to be confounded with Indian rights. Great Britain herself holds most of her possessions by rights of conquest." Riel did not think the Métis' strongest claim was to so-called Indian rights. At this time (before the St. Catherine's Milling case in 1888) Aboriginal rights were not widely recognized, viewed more as an encumbrance on the land than any sort of sovereignty or ownership. The British admitted of some limited usufructory rights and the right to treaty when ceding land (but no right to refuse to cede land). Riel did however position the Métis as a nation with the same rights as others under the Law of Nations (droit des gens).

This was certainly not the only perspective among the Métis, but it became the dominant one expressed during 1869–70, and during the uprising they consciously chose to assert their civil rights over their "Indian" rights.

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245 Hall, “A Brief History of the Term ‘Civilized.’”
246 Hall, Reconstituted Debates of the Convention of Forty, 47.
Knowing how the Métis viewed themselves and what they were aiming for, it is unsurprising that among the four versions of The Bill of Rights none mentioned Indian rights or title. The Métis had no wish to be treated like Indians. They did not want to be subject to the paternalism and control of the Canadian government. They were accustomed to running most of their own affairs and they were aware that being identified as Indians could make them wards of the Crown, which was the very opposite of the self government and political rights that they wanted. If identified as Indians, they would be subject to differential laws. For one thing, they would not be able to legally access liquor. The Métis had nothing against prohibition for Indians; indeed the Provisional Government passed its own liquor laws: "If any person supply or sell to any unsettled and uncivilized Indian the means of Intoxication he shall on conviction be fined..." But they certainly did not intend such regulations to be applied to themselves. Additionally, they fully expected to have the vote under eventual Canadian rule.

As politically conscious and free British subjects, the Metis under Riel formally claimed the right to adopt a government in the case of anarchy. In the 1869 Declaration of the People of Rupert's Land and the North-West they stated that when the HBC withdrew they were free of all governmental allegiance: "from the day on which the Government we had always respected abandoned us, by transferring to a strange power the sacred authority confided to it, the people of Rupert's Land and the North-West became free and exempt from all allegiance to the said..."

248 Barkwell, “Métis Lists of Rights.”
252 Hall, Reconstituted Debates of the Legislative Assembly of Assiniboia, 51.
253 Letter to the Montreal Herald, 22 Nov, 1869, in Bumsted, Trials & Tribulations, 37–39; Barkwell, “Métis Lists of Rights.”
Towards the end of the resistance they continued to assert that Canada had "no jurisdiction over this country." Although they refused to recognize the authority of Canada, they continued to view themselves as loyal British subjects. Ritchot even called the Legislative Assembly of Assiniboia the representative of the Crown. They professed a strong belief in British law. And in one debate while some argued their political rights were inherent in all men, others viewed these rights as deriving directly from their British subjecthood. The fact that they continued to recognize the Crown during the resistance demonstrates that although they viewed themselves as a nation, they were not quite declaring themselves sovereign and independent. Rather, they knew they had little hope of resisting Canada in the long run and would have to enter Confederation, but hoped to negotiate better terms of entry and preserve some degree of autonomy and self-determination within it. As Louis Riel put it, "the people of Red River could make their own terms with Canada."

Their vision can also be put in the context of other innovative Indigenous visions for equitable land use and self-governance. Michael Witgen calls this the Native New World—people were working not necessarily to preserve some kind of timeless existence, but to create dynamic and modern Indigenous-centred spaces. Often these were multicultural, "inter-tribal," or pan-Aboriginal movements. For example, Joseph Brant and the Western Confederacy used long-practiced diplomatic customs to create unity in the Pays d'en Haut in the late eighteenth

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254 "Declaration of the People of Rupert’s Land and the North-West," December 8, 1869, Archives of Manitoba, MG3 A1-6, http://www.mhs.mb.ca/docs/pageant/09/rupterslanddeclaration.shtml. Truly they had long been running their own affairs, and the HBC rarely interfered.
255 Hall, Reconstituted Debates of the Legislative Assembly of Assiniboia, 111.
256 Hall, Reconstituted Debates of the Legislative Assembly of Assiniboia, 115.
257 "Declaration of the People of Rupert’s Land and the North-West”; Hall, Reconstituted Debates of the Legislative Assembly of Assiniboia, 10–14.
258 Morton, Manitoba: The Birth of a Province, xii.
260 Witgen, An Infinity of Nations, 361–64.
century, with a number of Iroquoian and Algonquian villages sharing "a dish with one spoon," in order to resist the expansion of the United States. In the 1840s George Copway (Kah-ge-ga-gah-bowh) advocated for a territory that would one day become a state in the American Union. Both Dakota and Anishinabeg would live in Kahgega, which would be run by educated Indigenous leaders, under an Anglo-American governor and a Native American lieutenant governor. In the mid-nineteenth century Shingwaukonse sought to found an inclusive Anishinaabeg (and Métis) homeland characterized by balance and reciprocity; he promoted syncretism in education and spirituality. His goal was the preservation of his people's land base, their economic autonomy and self-determination, with a strong relationship with Canada (including resource sharing). Like these leaders, the Métis and Louis Riel were also re-imagining what it meant to be Indigenous.

In addition to self-determination, the Métis' principal concern was preserving their land and they demanded guaranteed land ownership or control. W.L. Morton sees them as practical and forward-looking, viewing land primarily as a material reality: "The day of the fur trader was ending; that of the land speculator [and agricultural settlement] was dawning." They knew that in the new order, land was going to be the primary source of wealth. Free, clear and secure title to land was imperative. Of course the connection of land and political autonomy was not lost on them. They knew that as freeholders they "would be entitled to a vote under the Canadian franchise."

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261 White, The Middle Ground, 433–43.
262 Donald B. Smith, Mississauga Portraits: Ojibwe Voices from Nineteenth-Century Canada (Toronto: University of Toronto Press, 2013).
263 Chute, The Legacy of Shingwaukonse.
264 Witgen, An Infinity of Nations, 361.
265 Morton, Manitoba: The Birth of a Province, xv.
But the goal, in general, was not just to own individual plots of land. Canadian officials and lawmakers deeply (perhaps wilfully) misunderstood this. As we have seen in other chapters, outsiders often perceived the Metis as squatters, but they certainly did not see themselves that way. They saw themselves as the rightful possessors and authority figures in the country. They weren't interested merely in obtaining secure ownership of the specific plots of land they privately occupied. They wanted their own land base; some sort of territory they could live in and control as a collective entity and where they could exercise themselves politically.\(^{267}\) This is what the Bill of Rights called for, and what Ritchot attempted to obtain in the negotiations with Canada.\(^{268}\) Exactly what this would look like was an object of debate amongst the Métis and the others who participated in the Rebellion.

One vision of this was for the North-West (or some portion of it, such as Assiniboia) to become an equal province within Confederation, with the same standing as the other provinces. According to Morton, this was Riel's main goal and that of many other Métis.\(^{269}\) Confederation meant there was already a structure in place for the preservation of local autonomy, language, and culture within Canada. The main benefit of provincial over territorial status was control of public lands. If the North-West joined the Dominion as a territory with limited delegated powers, its Crown lands would be controlled at the federal level, but if they became a province they could manage their own lands. Riel saw control of these lands as the key to the very survival of the Métis as a people. For one thing, it would provide income for public works and the means for economic development. Additionally, it would give them some power over immigration, which


would in turn help prevent the French Catholics from being quickly swamped by English Protestants. This was a very real fear. For example, Riel argued for more than the proposed one year residency requirement for the franchise, explaining, "we must seek to preserve the existence of our own people. We must not by our own act allow ourselves to be swamped."\(^{270}\) Cartier acknowledged it to Parliament, saying that universal suffrage in Manitoba was "calculated to drown out the half-breeds."\(^{271}\) By control of land and slowing immigration, the Métis might have a chance to retain a strong voice in the legislature, thus ensuring self-government, economic control, and wealth creation.

Aside from having democratic control over Crown lands, the Métis also wanted a secure land base in order to be able to live together. Some wanted a reserve of land or group settlement. One of the members of the provisional government (Mckay), suggested: "I would like to see a reserve set apart for the people of the Assiniboine," perhaps a reserve of land that they could do whatever they wanted with and subdivide however they chose.\(^{272}\) And at the Convention of Forty, Pierre Thibert said the Métis need not be called Indians in order to get a reserve: "The rights put forward by half-breeds need not necessarily be mixed up with those of Indians. It is quite possible that the two classes of rights can be separate and concurrent. My own idea is that reserves of land should be given the half-breeds for their rights."\(^{273}\) Riel, too, wanted a reserve of sorts for the French Métis, a linguistic enclave which would enable the French to maintain their own language and customs.\(^{274}\) Bishop Taché believed this could be the basis for constructing French Catholic communities, though he did not believe the Métis would remain dominant but

\(^{270}\) Hall, Reconstituted Debates of the Convention of Forty, 60.
\(^{272}\) Hall, Reconstituted Debates of the Legislative Assembly of Assiniboia, 67.
\(^{273}\) Hall, Reconstituted Debates of the Convention of Forty, 48.
would assimilate into French Catholic society.\textsuperscript{275} Though not all Métis thought a reserve was the best way to guarantee their survival, most did want the ability to live in a physically close community, to control the lands of the country, and to ensure racial and religious equality.

Ritchot on the other hand envisioned individual land ownership democratically distributed and combined with some sort of entailment so that "all the settlers at present established in the country, men and women, could take where they would in a single parcel or in several each 200 acres of land and have them \textit{gratis}," and "each of their children, born or to be born... will have also the right to have each 200 acres of land, being of the age of sixteen years (with a safeguarding law to keep the land in the family)."\textsuperscript{276} He saw restrictions on selling as fundamental to ensuring the land remained in Métis hands. He also knew the Métis must be in charge of the distribution, so he proposed that it should occur democratically "under the supervision of the above mentioned local legislature which could pass laws to ensure the continuance of these lands in the Métis families."\textsuperscript{277} What all of these proposals had in common was Métis control of Métis lands.

**Negotiating the Manitoba Act**

Although Canada acquiesced to many of the demands in the Bill of Rights, they categorically refused to allow the new province to have control over the land and resources, or the Métis to have a land reserve. Macdonald and Cartier declared it impossible; if they presented the delegates' existing list of rights to Parliament it would be voted down and the government would fall. Macdonald could not conceive of the idea of an equal Métis province. He knew

\textsuperscript{275} Duval, "The Catholic Church and the Formation of Metis Identity," 82.
\textsuperscript{277} Ritchot, "Journal," 143.
English Canadians in particular would have had trouble stomaching what they would have viewed as rewarding the upstarts for rebelling and murdering Thomas Scott. Macdonald found intolerable the idea of providing a land base that could become a Métis stronghold; he would prefer the "troublemakers" were dispersed so they might lose their ability to band together and fight. In addition Canada's own imperialistic aspirations required control over the land and resources and the income from land sales. Their priorities were agricultural settlement and development and they did not want large blocks of land tied up by people they viewed as backwards. For all of these reasons they were absolutely unwilling to give up control over the land.

The Red River delegates demanded control over their lands; the Canadians refused. The negotiations were at an impasse. Ritchot, realizing the Canadians were not going to give in, stated that if the Métis were to give up control over the province's lands, they would require significant compensation. In addition to protecting individual parcels of land already occupied by 3000 Métis (this became s32 of the Manitoba Act), somebody came up with the idea of the Métis perhaps having some kind of Aboriginal land rights due to their First Nations' descent. Historians disagree as to where this idea originated, whether it was Ritchot’s innovation, Macdonald and Cartier’s strategy, or an alternative view amongst one faction of Métis. Gerhard Ens and D.N. Sprague trace the idea to a minority view among the Métis which had been proposed the previous summer by William Dease, a Métis leader and failed opponent of Riel. Darren O'Toole argues that this was a strategic breakthrough on the part of Ritchot but that it did have a basis among the Métis themselves, who he says had on occasion claimed derivative

278 Smith, “Macdonald’s Relationship with Aboriginal Peoples,” 70.
279 Sawchuk, Sawchuk, and Ferguson, Metis Land Rights in Alberta, 110.
280 Ritchot, “Journal,” 140.
281 Sprague, Canada and the Métis, 57–58; Ens, “Prologue to the Red River Resistance,” 112.
Indian title since at least 1816. Additionally, the Métis were well aware of the American treaties that included land or cash for Métis and people of mixed ancestry, based on their partial Indian descent. Flanagan on the other hand claims the idea came from Ritchot himself (he calls it "Ritchot's inheritance theory") and believed it would have had little resonance among the Métis themselves. Ritchot himself seemed to suggest, when presenting it to the provisional government, that it was Cartier and Macdonald's idea. He related that the two men told him that "the only grounds on which the land could be given was for the extinguishment of the Indian title. It was reasonable that in extinguishing the Indian title, such of the children as had Indian blood in their veins should receive grants of land; but that was the only ground on which Ministers could ask Parliament for a reserve." Similarly, when presenting the Manitoba Bill to Parliament, Macdonald, presumably so as to improve his chances of the Bill succeeding, downplayed the influence of the delegates and made it seem as though his government thought up this compromise. Regardless of who originated the idea, it was a compromise Ritchot thought the Métis might be willing to accept. In its original form, it did not significantly challenge the Métis self-image as "civilized" Indigenous people with First Nations' ancestry. Ritchot knew if they weren't going to win the full political rights they fought for, at least they would retain some land rights.

The Canadians had some reservations at first. They did not think the Métis could claim Indian rights while also claiming civil and political rights. Ritchot commented, "the ministers make the observation that the settlers of the North West claiming and having obtained a form of

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282 O'Toole, “Métis Claims to ‘Indian’ Title,” 248.
284 Hall, *Reconstituted Debates of the Legislative Assembly of Assiniboia*, 113.
government fitting for civilized men ought not to claim also the privileges granted to Indians.  

The civilized/savage trope had such enduring power that it was very hard for them to consider anyone labelled "Indians" as also being "civilized"; that is why enfranchised Indians ceased to be Indians in the eyes of the law. Ritchot disagreed. He believed it was possible for the Métis to claim both sets of rights: "because these settlers wish to be treated like other subjects of Her Majesty does it follow that those among them who have a right as descendants of Indians should be obliged to lose their rights? I don't believe it."

Despite their misgivings, however, Macdonald and Cartier agreed to compensate the Métis for their supposed Indian title because it was the only way to break the impasse. The Canadians initially offered 100,000 acres of land for Métis children. Ritchot demanded more acreage—3 million acres—plus he wanted guarantees that land would stay within the family to secure the Metis land base. He demanded the local assembly (which would be largely made of Métis, at least at first) democratically control distribution of these lands to ensure they stayed in Métis hands. He also tried to get a large commons set aside for the people, because large tracts of land for hunting were necessary due to the poor conditions for farming in the area. The Canadians unilaterally changed several details of the agreed-upon settlement at the last minute. Cartier modified the Manitoba Bill before presenting it to Parliament, which he defended saying the bill had no hope otherwise, but he did make private assurances to Ritchot. However, both sides viewed it as a compromise they could live with. The job of each party now was to convince their respective assemblies to ratify their agreement.

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289 Ritchot to Cartier, 18 May, 1870, LAC MG26A Vol 103, 41524-35.
Despite all clues pointing to Macdonald's view of the Métis as not-Indian, May 1870 found him using all of his rhetorical powers to try to convince the House of Commons of the opposite in order to pass the Manitoba Bill. He later admitted this, stating the Manitoba Act was simply a pragmatic solution to a crisis, and he did not believe the Métis actually had Indian rights. "Whether they had any right to those lands or not was not so much the question," he stated, but most importantly he needed to do whatever he could "in order to introduce law and order there, and assert the sovereignty of the Dominion."

To defend his Bill in Parliament, he had to mobilize a racial notion of Indianness, in which descent or "blood" rather than style of life or relationship to the Crown determined identity. Macdonald told Parliament that "if those half-breeds were not pure-blooded Indians, they were their descendants. There were very few full-blooded Indians now remaining, and there would not be any pecuniary difficulty in meeting their claims. Those half-breeds had a strong claim to the lands, in consequence of their extraction, as well as from being settlers."

Cartier, similarly, "contended that any inhabitant of the Red River country having Indian blood in his veins was considered to be an Indian." (This was not legally true in Canada at the time, as the 1869 Act only considered someone an Indian if they had 1/4 "Indian blood" and their father was an Indian.)

Those opposed to the Manitoba Bill generally expressed the same reservations as Macdonald and Cartier had. They opposed any sort of dual status. The opposition also argued the Métis lifestyle precluded them from being Indians. They were independent, intelligent, and settled on farms—how could they also have Indian rights? For example, William McDougall, the appointed Lieutenant Governor of the NWT, whose premature entrance into Red River had

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293 Canada, Gradual Enfranchisement Act, 1869.
triggered the Rebellion (he was thus particularly disgruntled by the whole affair), tried to argue the Métis had "no Indian claim." He insisted: "as soon as the Indian mingles with the white he ceases to be an Indian, and the halfbreeds were just as intelligent and well able to look after their own affairs as any white man." Similarly Alexander Mackenzie stated: "But these half-breeds were either Indians or not, (hear). They were not looked upon as Indians, some had been to Ottawa, and given evidence, and did not consider themselves Indians. They were regularly settled upon farms..." Whether or not these parliamentarians were truly convinced the Métis belonged in the categories white or civilized is debatable, but most were eager to declare the Métis were not Indians because they did not want to give up 1.4 million acres of land. Mackenzie opposed the dual status of the Métis for essentially the same reasons Macdonald and Cartier initially had, doubting that "half-breeds" could be both settlers and Indians. Cartier assured them that the Métis would not be receiving all of the privileges of Indians. He told them the Métis were not getting an Indian reserve, but some plots of land, comparable to that given to loyalists. In the end, Macdonald's rhetoric prevailed, and Parliament passed the Manitoba Act on May 12, 1870.

Unlike the Canadians, most Métis had little trouble seeing themselves as both "civilized" and of First Nations ancestry. Ritchot received cheers from the Provisional Government when he stated: "though the Half-breeds asked to be recognised as civilized people, they had not therefore lost the claims derived from their Indian blood. Those claims are none the less good; because by their energy in hunting and cultivation the Half-breeds have raised themselves to a

higher position than the Indians." However, they knew that to be "Indian" in Canada carried social stigma as well as a legal status as minors with no political rights, and to be so identified went against everything they were fighting for. As James Ross, tormented by personal struggles with his own Aboriginal ancestry, had stated at the Convention earlier in February:

As a half-breed of this country, I am naturally very anxious to get all rights that properly belong to half-breeds. I can easily understand that we can secure a certain kind of right by placing ourselves on the same footing as Indians. But in that case, we must decide on giving up our rights as civilized men. The fact is, we must take one side or the other. We must either be Indians and claim the privileges of Indians—certain reserves of land and annual compensation of blankets, powder and tobacco (laughter)—or else we must take the position of civilized men and claim rights accordingly. We cannot expect to enjoy the rights and privileges of both the Indian and the white man..."

Ritchot assured the delegates that they were not being turned into Indians, saying the land grant from s31 "was to be a reservation for minors, with Indian blood — but not for adults, for the latter are allowed every liberty of self-government and all the rights of white people. They have land already, or, if they have none, it is their own fault. Having then the rights and liberties of white people, adults, even with Indian blood, were allowed no special privileges." An unnamed member asked "whether Half-breeds taking these reserves are to be held as minors, as under the Confederation Act?" Richot replied no. In justifying the compromise that he had to make with the Canadians, he explained: "The Half-breed title, on the score of Indian blood, is not quite certain. But, in order to make a final and satisfactory arrangement, it was deemed best to regard it as certain, and to extinguish the right of the minority as Indians." Though it may not

297 Hall, *Reconstituted Debates of the Legislative Assembly of Assiniboia*, 114.
298 Van Kirk, "‘What If Mama Is an Indian?’"
have been ideal, Riel and the Métis recognized the necessity of this compromise and voted in favour, thus ending the Red River uprising.\textsuperscript{300}

Conclusion

Although it was significantly different from the original demands, the Manitoba Act appeared to provide the Métis with at least some of what they wanted: land and the preservation of their political rights. Nobody could have predicted how the Manitoba Act would forever change their relationship with the Canadian state. Métis rights came to be seen through the lens of partial or derivative Indian rights. Regardless of what Macdonald and Cartier personally thought, it became the official position of the federal state.\textsuperscript{301} Ritchot was correct that the Métis were not exactly being turned into Indians. They did not have a traditional treaty relationship with the Crown, nor did they get Indian status under the Indian Act. Legally they were indistinguishable from White Euro-Canadians. However, in practice this new understanding of them as part-Indians overshadowed their distinct Indigenous peoplehood.\textsuperscript{302} The Manitoba Act ended up creating the precedent for which Métis rights came to be seen through the lens of partial or derivative Indian rights. Regardless of what Macdonald, Cartier, Riel, and Ritchot personally thought, it became the de facto position of the federal state.\textsuperscript{303}

Although the Métis positioned themselves in 1870 as "civilized natives", the Canadians were unwilling to accept a distinct and equal politically active Indigenous people. The Manitoba Act thus ended up transforming the Métis officially into part-Indians. Dipesh Chakrabarty

\textsuperscript{300} Hall, Reconstituted Debates of the Legislative Assembly of Assiniboia, 113–14.

\textsuperscript{301} O’Toole, “Taking Métis Indigenous Rights Seriously,” 54–55.

\textsuperscript{302} Andersen, Métis.

\textsuperscript{303} For example, in the instructions to 1870 census enumerators, "Half-breed" is defined as "any person descended, however remotely, either by father or mother, from any ancestor belonging to any one of the native tribes of Indians, and also descended, however remotely, from an ancestor among the Whites—in other words having in his veins both White and Indian blood.” “Instructions to be observed by the Enumerators appointed by the Lieutenant-Governor, to take the Enumeration of the Province of Manitoba,” 1870, in Canada, Sessional Papers, Volume V, 1871.
borrows Ian Hacking’s concept of dynamic nominalism, demonstrating that when identification categories are produced as technologies of governance, people (to some degree) take on these official identities. Even the Métis themselves had to accept this definition, at least in order to fight for their rights. For instance, until the Powley decision in 2003 the courts were most often concerned with whether Métis could be included in the category Indian: did their ancestors take treaty? Did they live the "Indian mode of life"? Did they have enough "Indian blood"? It is only in the last few decades that the Métis have been able to fight successfully for their rights as a distinct Indigenous people independently of their First Nations ancestry. While the evidence supports historians who argue the Manitoba Act virtually invented Métis Indian rights as a matter of political expediency, it did not invalidate their inherent Indigenous rights—these were just temporarily obscured. The Manitoba Act also had significant material consequences for the Métis. Despite the assurances of Cartier and Ritchot, instead of a secure land base they ended up with individual alienable land grants and money scrip, leading in the end to widespread landlessness, further destroying their political rights.

305 Andersen, Métis, 150.
Chapter 5: How Scrip came to define the Métis in Canada

In 1890, the husband and children of Catherine Parisien, a Métis woman, claimed as her heirs a grant of Half Breed scrip from the federal government of Canada. They based their entitlement on the fact that Catherine was Métis: she was born a "Half Breed," with two Half Breed parents. She and her husband, Joseph Parisien (also Métis), had joined Treaty 1 when it was signed in 1871, officially becoming "Indians." He withdrew from treaty in 1874, officially becoming a "whiteman," but re-entered in 1879 (officially becoming an Indian again) when he realized that upon his previous withdrawal his children had also ceased to be Indians and had been removed from the annuity paylist.¹ Joseph again withdrew from Treaty in 1886 when the scrip commission arrived in his area. Now that he was no longer classed as an Indian he could apply for Half Breed Scrip. Depending on the time and place, an eligible Métis man, woman or child was entitled to a grant of land or scrip, a certificate redeemable for Dominion land. Now an official Half Breed, Joseph was supposedly the legal equivalent of a white Canadian, regardless of his parentage or previous membership in treaty. On the other hand, in 1890 the Indian Department declared Catharine was not entitled to Half Breed Scrip because when she died in 1874 she was "an Indian in the eye of the law," having died shortly before Joseph withdrew from treaty the first time. Though the Department was aware that she was born a Métis and not a "full blooded Indian," they also viewed this as legally meaningless, stating "that fact does not alter the other fact of her legal status being that of an Indian."² Her heirs did not succeed in their claim.

Legally in Canada "Half Breed" is not a racial term. Since 1876 its official meaning was more or less equivalent to "scrip-taker," in the same way that being an "Indian" came to mean

¹ David Young to Joseph Parisien, 24 April 1879, Library and Archives Canada (LAC) RG10 Vol 3770 File 34167.
² L. Vankoughnet to R. Sedgwick, 16 Sep, 1890, LAC RG13 Vol 78 File 1890-945.
having a treaty relationship with the state. This is why the consequences of late nineteenth century scrip policy were so significant, establishing the future legal identity of thousands of individuals, including Joseph and Catharine Parisien, and their descendants, determining the nature of their relationship with the state, and dictating which laws, rights and restrictions applied to them.

Though historians have written about scrip, it is difficult to find an authoritative history of the entire process. Like the above story of the Parisiens, the intricacies and transformations over time of scrip policy can be difficult to follow, sometimes leading to overly simplistic or imprecise assumptions. Scrip policy did not emerge fully formed. It evolved over the late nineteenth century through various ad hoc decisions that served the particular needs of the government at different times. The basic framework of scrip policy was worked out in the 1870s and continued to evolve through the rest of the century.

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5 For instance Indigenous Studies professor Bonita Lawrence writes that during negotiations of the numbered treaties potential "halfbreeds" had to come and given an identity by white officials (generally using cues such as lifestyle, language, residence rather than ancestry). Lawrence, “Gender, Race, and the Regulation of Native Identity,” 10. In fact, scrip was not yet being distributed during the course of the first seven of the numbered treaties, though treaties 8-11 did indeed have a simultaneous scrip commission. Most often, officials allowed people to self-identify, while in other cases they assigned scrip or treaty.
Scrip policy came in three phases (see Table 5.1). The first phase was in Manitoba when scrip was used to fulfil the promises of s31 of the 1870 Manitoba Act. After years of delays, confusion, and false starts, Manitoba scrip was finally distributed in 1876, and again in 1885-1886 with the Manitoba supplementary claims commission, which was intended to distribute scrip to eligible Métis who had missed the first round of distribution. This first phase saw the innovation of scrip as a means to satisfy s.31 and "extinguish" the Aboriginal rights of the Métis without them dominating the province or "tying up" land coveted by white settlers. The 1870s, when this first scrip policy was being worked out, was a busy decade in Indigenous affairs. It was also the period of the numbered treaties when seven treaties were signed in six years (1871-1877), covering millions of acres of prairie land. The Indian Act of 1876 was also enacted in this period. In general, in the 1870s Ottawa was trying to spend as little as possible, minimizing its obligations while trying to appease and manage the Indigenous population, in order to prevent trouble while securing the vast lands of the North West and opening them to white agricultural settlement.6

Table 2 - Select Scrip Commissions

<table>
<thead>
<tr>
<th>Dates</th>
<th>Commission</th>
<th>Description</th>
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<tbody>
<tr>
<td>Phase 1</td>
<td></td>
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<tr>
<td>1875-6</td>
<td>Manitoba Scrip Commission</td>
<td>For claims under s31 of Manitoba Act. Eligibility: &quot;Half Breeds&quot; resident in Manitoba on 15th of July, 1870</td>
</tr>
<tr>
<td>1885-6</td>
<td>Manitoba Supplementary Claims Commission</td>
<td>Outstanding applications from eligible Manitoba &quot;Half breeds&quot;</td>
</tr>
<tr>
<td>Phase 2</td>
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The second phase was the North West Commission, which encompassed three annual Commissions from 1885-1887. At this time, partly as a result of the 1885 uprising, the federal government was becoming more concerned about social control, the management of Indigenous territory and people, and consolidating Canadian sovereignty in the North West. Though always concerned about money, Ottawa was willing to spend a little more at this time to ensure stability, control and order. This is reflected in the increasingly repressive Indian Act amendments as well as scrip policy. In the third phase the government began distributing scrip simultaneously with treaty, beginning with Green Lake (1889) and ending with the Treaty 11 Commission (1921). The government hoped it would prevent some of the problems that had plagued the earlier commissions. It also recognized that Métis goodwill was necessary for an easy treaty negotiation.

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7 A.M. Burgess to L. Vankoughnet, 1 Dec, 1885, LAC RG10 Vol 3726 File 25037.
In order to better serve the needs of the state scrip evolved from the promise of collective land security for the Métis to individual money scrip that was personal rather than real property. Through the three phases of scrip policy the trend was, in general, towards increased abstraction. Critics have argued, in fact, that this abstraction was no accident; it was one of the key developments leading to the widespread dispossession and landlessness of the Métis.9 Section 31 of the Manitoba Act had promised 1.4 million acres of actual and specific land. The bulk of what was distributed was less concrete: land scrip and money scrip. Land scrip was a certificate (as opposed to tangible land) representing the entitlement to a certain number of acres. Land scrip was considered real property and therefore, by English property law, it had certain limitations on its sale, particularly if it belonged to minors. Even more abstract was money scrip, a certificate that entitled the bearer to $160 or $240 worth of land (which the government valued at $1 per acre). Money scrip was considered personal property and therefore easier to dispose of. For instance, there was no name on money scrip; it entitled the bearer, whoever that was, to buy land with it. In order to redeem the scrip, a person (not necessarily the Métis person it belonged to) had to bring it to a Dominion Lands office to exchange it for the appropriate amount of land. There was a large black market for scrip, and most ended up in the hands of speculators. There was also no shortage of fraud. Some people discovered their scrip had already been issued to someone else who had claimed to be his or her agent. Some historians argue the process was

9 For example see Sprague, “The Manitoba Land Question 1870-1882,” 78; Sawchuk, Sawchuk, and Ferguson, Metis Land Rights in Alberta, 103.
deliberately designed this way in order to get the land out of Métis' hands, while others argue government incompetence or bad luck was to blame. While there was no shortage of incompetence, it is also true that Canada wanted Métis land for agricultural settlement. For the federal government then, scrip became the pragmatic solution to the Métis "problem." It was thought that individual land ownership had the potential to transform the Métis into modern agricultural settlers; alternatively, they would sell the land to white settlers. Either way, Canada would achieve its goal.

It is not immediately clear why the late nineteenth century state viewed scrip as appropriate for the people categorized as "Half breeds," while treaty was seen as suitable for the people it categorized as "Indians." The answer may be inferred from the way the government defined and identified eligible scrip-takers. Their category "Half Breed" tended to conflate the Métis with non-Métis people of mixed Indigenous-European ancestry. It was a quasi-racial category that was generally viewed as equivalent to "semi-civilized" and relied on a stagist view of human history. Lawmakers and officials believed such semi-civilized people had the potential to become individual land owners and did not want ongoing responsibility for them. The emphasis placed on race varied, as did the degree to which they permitted Métis to have some choice in their own official identity. This was a brief period of boundary crossing; Métis and people of mixed ancestry could in some cases join treaty to "become Indian" or leave treaty to "become White." In this period (1870-1899) the state used scrip to create a semi-permeable boundary between those they categorized as Indians and those they categorized as Half Breeds in order to assimilate and pacify the Indigenous population of the prairies. This served their often-conflicting drives of saving money, controlling the Indigenous population, and encouraging

10 An excellent overview of the debate, in regards to Manitoba scrip, can be found in Milne, “The Historiography of Métis Land Dispersal.”
white agricultural settlement. This is evident in national archival documents (particularly those of Record Group 15), which contain hundreds of family stories like that of the Parisiens. Some of the files contain only simple facts (See figures 5.1 and 5.2), often just names written in a ledger, while some have rich details or parenthetical notes, demonstrating not only state policy as it emerged, but also the difficult choices Métis women and men had to make in these times, navigating state processes to build their lives in the rapidly changing North West.
Figure 3 - Scrip Affidavit for Lajimodiare, Rosalie, 1875.
Source: LAC RG15 Vol 1322
In 1870 the Dominion government needed to fulfil the promises it had just made in s.31 of the Manitoba Act, which allocated 1.4 million acres to "the children of the half-breed heads of
families" who resided in Manitoba at the time of its transfer to Canada on July 1, 1869. The
government did not know how best to put these promises into practice and it took several years
before a policy was decided upon and enacted. Other than a quickly aborted attempt in 1873,
land was not distributed until 1876—six frustrating years after the Manitoba Act. The delay had
several causes. One problem was that, without an accurate census, it was difficult to determine
the size of the allotments. The total number of acres was to be divided by the number of
eligible individuals in order to determine how many acres would be allotted per person. The
1870 census by Lieutenant Governor Archibald, by which he found approximately 10,000
French and English "Half Breeds", was deemed insufficient. For one thing, it did not
specifically enumerate those eligible for the grants—the children of heads of Métis families.
Macdonald also believed Archibald was too sympathetic to the Métis. In 1872, the Secretary of
State called for a new census. This did not solve the problem. In 1876, the surveyor-general
reported:

The delay has been inevitable, owing to the fact of the number of
claimants, as obtained from the census of Half-breed children taken in the
Province in December, 1870, differing greatly from the number of claims

11 For detailed chronology and analysis of this delay see Kemp, “Land Grants under the Manitoba Act”; Flanagan, Metis Lands in Manitoba.
12 A.G. Archibald to Secretary of State for the Provinces, 27 Dec 1870, LAC RG15 Vol 228 File 796; "Instructions
To be observed by the enumerators appointed by the Lieutenant-Governor, to take the Enumeration of the Province
13 "Lands in Manitoba - Hon. A. Campbell submits revised regulations for dealing with", PC 1871-0874, 25 April
1871. The size of lots under the various censuses, 140 or 190 acres for instance, would have been difficult to
harmonize with the survey size of 160 acres, though not impossible if one did some math. See A.G. Archibald to
Secretary of State for the Provinces, 27 Dec 1870, LAC RG15 Vol 228 File 796.
14 Archibald to the Secretary of State for the Provinces, 26 December, 1870 in Canada, Sessional Papers 1871 Vol
V, 94.
16 P. R. Mailhot and D. N. Sprague, “Persistent Settlers: The Dispersal and Resettlement of the Red River Métis,
17 "Census to be taken of all half breeds in Manitoba entitled to land," PC 1872-0003, January 13, 1872. It is unclear
whether the difference in numbers among the various enumerations was because of different techniques and
questions or because so many Métis had moved out of Manitoba at this time.
reported by the Commissioners, and the data obtained subsequently by the
Dominion Land Agent. According to the results of the census alluded to, it
was estimated that each child would receive 190 acres of land, but upon
recent and more reliable returns it has been found that this is under the
quantity which each child should receive, and, in accordance with your
instructions to that effect, a new and final division of the grant was
submitted, giving to each claimant 240 acres...

Additionally, there were incompatible interpretations of the Manitoba Act. The Métis
wanted large blocks of land, or at least the ability to control the distribution of lots, but the
Dominion was not about to allow that to happen. Cartier had originally (verbally) promised the
Métis that the local legislature would have control over the distribution of the 1.4 million acres.19
Perhaps Cartier truly did intend the Métis to retain control over the process, but in some ways, as
Thomas Flanagan argues, the intentions of the negotiators came to matter less than the content of
the statute, which granted this power to the Lieutenant Governor.20 Cartier continued to assure
the Métis their desires would be taken into account and that there would be an equitable and
efficient division.21 However, despite protests on the part of Manitoba Métis families, the process
was largely unilateral, with little discussion or input from local Métis, and generally ignored
Métis land use patterns. Most policy was passed by orders-in-council.22 The Métis became
increasingly agitated at the delay in distribution of lands, but they had little power at this point,
particularly with their leaders in exile—something clearly recognized by the federal government.\textsuperscript{23}

There were also a number of administrative difficulties. Ottawa really had no idea how it was going to fulfil the terms of the Act—or even who would be receiving the land grant. While s.31 was meant to extinguish the "Indian title" of the M\(\text{\^{e}}\)tis through grants of land to the \textit{children} of M\(\text{\^{e}}\)tis heads of families, s.32 was supposed to guarantee that M\(\text{\^{e}}\)tis (and White) heads of household would obtain title to the land they were already occupying. S.32 had nothing to do with Indian title but was based solely on previous occupation. The Order in Council of 25 April, 1871 confused the two and accidentally stated that \textit{every} half breed resident was eligible for land under s.31.\textsuperscript{24} Two years later, upon realization of this mistake, the previous Order in Council was amended so that once again only the children were eligible for the land grant.\textsuperscript{25} (Macdonald, defending his government, said it had "seemed absurd that the children of half-breeds only should have land the parents none."	extsuperscript{26}) However, then there was no means to "extinguish" the Indian title of the M\(\text{\^{e}}\)tis heads of families, so Parliament passed 37 Victoria Chapter 20 (1874) to provide M\(\text{\^{e}}\)tis heads of household 160 acres or $160 scrip to extinguish their Indian title.\textsuperscript{27} Even still, the Minister of the Interior complained, "the Act was rather indefinite. There were so many

\textsuperscript{23} Private letter, G. McMicken to Sir John A Macdonald, 13 January 1872, LAC MG26-A vol 246 Page 110691 to 110694; Adams Archibald to Secretary of State, July 27, 1872, LAC RG15 Vol 228 File 1091
\textsuperscript{24} "Lands in Manitoba", PC 1871-0874, 25 April 1871.
\textsuperscript{26} Canada. Parliament. House of Commons, \textit{Debates} 1873, 41.
shades of half-breeds that it was difficult to say who were and who were not entitled to a portion of this land.”

In the 1874 Act, heads of families were defined as "half-breed mothers as well as half-breed fathers.” It is particularly notable that Métis women received their own land grants or scrip, in contrast to other forms of property and status. An Indian woman's status was determined by the official identity of her father or husband, and White women had only limited property rights at this time. Additionally, women were generally unable to own homesteads. It is surprising, therefore, that Métis girls and women received scrip in their own names. No explanation for this anomaly was given in the text of the statute, or in either the House of Commons or Senate reconstructed Debates. There was some precedent for this, however. Loyalist grants as well as the Ontario Free Grants and Homestead Act of 1868 had been issued to men, women, and children, presumably with the assumption that the family’s patriarch would manage all the land. Most likely the government did not expect the land or scrip to remain in the hands of the Métis—women or men—so it was not a concern.

Adding to the delay were the different ideas about what the land grant would look like. The French Métis expected, based on their understanding of the Manitoba Act, that they would

29 Canada, An Act respecting the appropriation of certain Dominion Lands in Manitoba, 1874, secs. 1–2.
31 Other than single women between 1872-1876, and some widows in specific circumstances after 1876. Sarah Carter, Imperial Plots: Women, Land, and the Spadework of British Colonialism on the Canadian Prairies (Winnipeg: Univ. of Manitoba Press, 2016), 20.
33 Carter, Imperial Plots, 57–58.
get land together "en bloc."³⁴ By mid-1871 they had claimed several townships and were waiting to have it made official.³⁵ But the English Métis wanted to select individual lands.³⁶ Moreover, by 1871 incoming settlers, the majority of whom were anti-Catholic and anti-French, were applying considerable pressure to prevent large blocks of choice lands being reserved for the Métis—they wanted access for themselves.³⁷ Many new settlers had already claimed land (some of which overlapped with older Métis claims) under the Order in Council of 26 May, 1871, which protected new settler claims until the land was surveyed.³⁸ There was still much uncertainty over how the Métis lands should be surveyed, divided and distributed. Over the next few years government officials such as Archibald, McMicken, and Alexander Morris suggested and debated various plans and schemes—self-selection, random lottery, small blocks, or alternate townships—each with merits and disadvantages.³⁹ Though clearly giving preference to the wishes of the new settlers, the federal government claimed to be trying to avoid conflict ("to do justice to all parties") and essentially postponed the whole thing. David Laird as the new Minister of Interior in 1873 put a stop to the distribution that was just beginning, declaring, "it was found impracticable to proceed with the allotment of the half-breed lands."⁴⁰ It was not until

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³⁵ Flanagan, Metis Lands in Manitoba, 69.  
³⁷ A. Archibald to Secretary of State for the Provinces, June 17, 1871 LAC RG10 vol 3599 file 1532; "Land to Half Breeds in Manitoba - [Secretary of] State - 27 March [recommends] distribution of 1,400,000 acres of land," PC 1872-0297, April 15, 1872.  
³⁸ "Lands in Manitoba - [Secretary of State submits regulations respecting persons who settled on lands before survey, setting forth conditions upon which they may hold the same," PC 1871-1036, May 26, 1871  
³⁹ For a detailed history of this process see chapter 5 of Flanagan, Metis Lands in Manitoba. Also see chapter 20 of Ronaghan, “The Archibald Administration in Manitoba, 1870-1872.”  
⁴⁰ D. Laird (Minister of Interior) to the Governor General, January 20, 1875 in Canada. Department of the Interior, Annual Report 1874.
the idea of scrip was decided upon that the federal government was able to formulate a plan of action.

It is unclear who first suggested the use of scrip, which had previously been used to satisfy land grants for military veterans (such as after the War of 1812). Replacing blocks of tangible land with the abstract form of individual scrip was a process, involving a series of legislative acts and Orders-in-Council. The first step was the April 1871 Order in Council, based on Lieutenant Governor Archibald's advice, which declared that the grants would be individual free title instead of collective blocks of entailed land. In 1873 the Original White Settler Grant was passed, granting land to the Selkirk settlers and their descendants, but the white settlers demanded scrip instead of land, which they got in the 1874 amendment to the Manitoba Act. This may have been the inspiration for doing the same for the Métis heads of households, who were informed that same year that they would be entitled to scrip redeemable for 160 acres or $160. Section 20 of The Dominion Lands Act amendment of the same year declared that scrip redeemable in land could be used to satisfy any claim to grants of land.

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41 "Lands in Manitoba - Hon. A. Campbell submits revised regulations for dealing with", PC 1871-0874, 24 April, 1871. Flanagan views this as a turning point, because the potential for collective settlements was now gone, and all grants—other than the 1875 Rainy River adhesion—were forevermore individual rather than collective. See Flanagan, “History of Metis Aboriginal Rights,” 76.

42 Canada, “An Act to Authorize Free Grants of Land to Certain Original Settlers and Their Descendants, in the Territory Now Forming the Province of Manitoba,” 36 Victoria, Cap. 37 § (1873). This provided grants of 160 acres to descendants of those who had settled in Red River between 1813-1835. The descendants of the Selkirk settlers had been agitating for land grants, and in 1873 an order in council recommended grants of land to settlers "of unmixed blood." “[Lieutenant Governor] Manitoba, address on the subject of the Half Breed Grant and other lands of the Province of Manitoba,” Jan 27, 1873, PC 1873-0788 B. In Parliament later in 1873 Macdonald argued, to choruses of hear hear, that "the children of the original Selkirk settlers in Manitoba, who were as much the pioneers of that country, and had suffered as many hardships, as the half-breeds... It was rather hard that they should not have the same advantages as those of the mixed race." Canada. Parliament. House of Commons, Debates 1873, 555. Later in the North West, a similar provision was passed for white settlers, though a very small number actually claimed it.

43 Canada, An Act respecting the appropriation of certain Dominion Lands in Manitoba, 1874, sec. 4.

44 Sawchuk, Sawchuk, and Ferguson, Metis Land Rights in Alberta, 92.

Council, Métis heads of household were *only* permitted money scrip.\(^{46}\) Although in 1875 the conditions for Métis eligibility had been defined\(^{47}\) and the Commissioners had been appointed to distribute the lands,\(^{48}\) it was only when scrip was decided upon as the means for distribution that the grants promised in 1870 finally began to be distributed in 1876. Only 5088 Métis individuals were found eligible, a number far short of Archibald's original estimate of 10,000. By this time, many French Métis had left Manitoba and did not receive their grant.

**Why Individual Scrip**

While the government was generally satisfied since this resolution, the Métis were not particularly pleased with the previous six years, though they had eventually become resigned to scrip. Ottawa certainly had not wanted the Métis to have a collectively owned territory or reserve, generally for the same reasons the Métis (at least the dominant group among the French Métis) had wanted it: a reserve would allow the Métis to preserve their cultural and linguistic uniqueness, and provide some economic protection.\(^{49}\) The French Métis preferred a collective land base to give themselves time to adapt to the new economy and society before being swamped by incoming English-speaking Protestants. But, using the same assumptions that underlay enfranchisement policy, officials thought that individual land ownership and culturally mixed settlements would better promote assimilation, as they thought individually owned plots of land would promote financial independence, private ownership, and an improving work ethic.

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\(^{46}\) "Manitoba Half Breed Claims - [Minister of Interior], 17 March/76, recommends issue of scrip etc," PC 1876-0238, March 23, 1876.

\(^{47}\) "Manitoba Half Breed, Land Grant of 1400000 acres - [Minister of Interior] 9 April [recommends] approval of a course to be pursued for the distribution of," PC 1875-0406, April 26, 1875.


among the Métis. Macdonald agreed that the Protestant settlers were coming, but thought this was a good thing, stating the "impulsive half breeds... must be kept down by a strong hand until they are swamped by the influx of settlers." He had no tolerance for the notion of Métis self-governance, and would accept no other sovereignties or challenges to Canada's political power. The Métis, particularly after 1870, were often viewed as troublemakers (whether actual or potential), and the federal government had no wish to enhance their collective strength. They feared a reserve might give the Métis a base from which to conduct disturbances and unrest.

Perhaps most importantly, Canada wanted to free up land for settlement (by whites) and agricultural development. Scrip appeared to be the answer, as it allowed for the fulfilment of s.31 of the Manitoba Act without tying up too much land for too long. This is because the laws pertaining to personal property (including money scrip) were very different than those pertaining to real estate. Real estate was difficult to sell, particularly if owned by children. Manitoba’s Lieutenant Governor Archibald recognized this, and in 1870 cautioned that, based on Métis demographics, about half of the land would be in the hands of children who could not sell it until they came of age at 21, and if s.31 was to be satisfied with blocks of entailed land, the 1.4 million acres would be inalienable for up to three generations. As far as he was concerned this would lock up far too much land, keeping it from being developed. A devotee of liberal philosophies of land ownership, he was convinced that modernity was about “bringing Real Estate more and more to the condition of personal property and abolishing restraints and

52 G. McMicken to Sir John A Macdonald, 13 January 1872, LAC MG26-A vol 246 Page 110691 to 110694; Smith, “Macdonald’s Relationship with Aboriginal Peoples,” 70.
53 Sawchuk, Sawchuk, and Ferguson, Metis Land Rights in Alberta, 103.
impediments on its free use and transmission,” and getting rid of entailments instead of creating them. In order to remain “in accord with the habits and thoughts of Modern Life,” he recommended individual free title for the Métis.\textsuperscript{54}

Archibald's feelings were certainly not unique and neither were they just idle musings. They were a key influence on scrip policy. It was because of these concerns—that Métis land would be locked up, "retarding the settlement of the country"—that the 1876 Order in Council declared heads of families could only get money scrip.\textsuperscript{55} Archibald believed the French Métis were not the modern, productive individuals that the Dominion needed to populate the North West. He thought they were too tied to questions of "Race, and Creed and Language," instead of seeing land as exclusively about business. Though he had a degree of respect for them, he saw them as backwards, illiberal and unproductive, and worried they would hold back the progress of the Dominion. Like many English Canadians who held stereotyped views of the Métis, he was convinced they would prefer to continue to hunt instead of farm, and their land would languish. If their land was unentailed, they might sell it, and he felt the land would retain or increase in value if it found its way into the hands of settlers to be cultivated and improved. In this way, he thought, industry and "thrift might come into the place of improvidence," and "the country would be no loser"; instead of stagnating the land would become of use to the Dominion.\textsuperscript{56} For the
Dominion, Scrip was a way to get the land out of the hands of the Métis and into the hands of "improving" settlers.\(^{57}\)

Additionally, the Canadians assumed the Métis would not care which land they occupied. This was because they considered them neither white farmers concerned with land ownership and improvement, nor First Nations with a spiritual connection to their territory. Perhaps they came to this idea from reading writers such as Hind, who wrote: "I was often told that the half-breeds... form but a feeble attachment to a permanent home."\(^{58}\) The concept of the "nomad" was derogatory, assuming mobility was the same as "roaming" or aimlessly "wandering" the land, with no possibility of stability or culture.\(^{59}\) There is also a long history of stereotyping the Métis as squatters, rather than as rightful occupiers or proprietors of land. This idea underlay Alexander Morris' promise to the Métis of Qu'Appelle that the government would "respect the rights of the Half-breeds to the lands which they have cleared and cultivated, because it has always been the custom to regard the rights of actual possessors of lands."\(^{60}\) He was confirming a European notion of land possession that required a specific form of "improvements" and often did not see Métis forms of land use as true possession. Similarly, in dealing with the s32 Manitoba Act claims, the Department of the Interior had consciously used a high threshold for what counted as improvements as evidence of occupation and possession.\(^{61}\)

Despite its basis in such stereotypes, the Métis did in fact accept individual alienable scrip though they were originally dedicated to obtaining blocks of entailed land. Probably the

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\(^{57}\) As Michel Hogue puts it, scrip was part of the process of turning Indigenous land into private property, and then transferring that private property to white settlers. Hogue, *Metis and the Medicine Line*, 188.


\(^{59}\) Macdougall, Podruchny, and St-Onge, “Introduction: Cultural Mobility and the Contours of Difference,” 8.

\(^{60}\) Alexander Morris to Augustin Brabant, Baptiste Davis, and others, Half-breeds, of the Lakes Qu'Appelle and environs, Sep 16, 1874 in Canada. Department of the Interior, *Annual Report 1874*. See also Weaver, *The Great Land Rush*.

\(^{61}\) Mailhot and Sprague, “Persistent Settlers,” 4.
best explanation for their acceptance is that by the time Ottawa was ready to give out the grants, the flood of incoming settlers and the loss of political and economic power meant many Métis were in desperate circumstances.\textsuperscript{62} Though historians differ about what years saw the most migration of the Métis out of Manitoba,\textsuperscript{63} already by the early 1870s the opportunity for preserving their cultural practices and independence through a large block of land had passed. They had little choice but to take whatever the government offered. Once the first attempt at distribution finally began to happen in 1873, it was primarily in specific lots of land, but the recipient often knew nothing about the actual land. There was no information as to whether there was timber or water on the land, or what its value was, and even after the allotments were made there was a long delay before they got possession of the land. In the economic situation of the time they could not, in most cases, wait any longer. They had no capital to develop the land and often did not like the locations given in the random lottery—they were usually far from family and river frontage. It is unsurprising that most of them sold the allotment before they even obtained possession.\textsuperscript{64} The land sold for very little money, as it was risky for buyers who also did not know the land's actual value. Scrip could be more easily sold, and would fetch a higher price as it could be redeemed for any available land.

This helps explain the Métis' eventual preference for scrip instead of tangible land grants. Indeed by 1899 the Métis in the Treaty 8 region (Lesser Slave Lake area) were agitating for money scrip. At this time, many of them already had their own plots of land and what they

\textsuperscript{62} Though Riel and the provisional government governed Manitoba for six weeks, at which time the Red River Expedition arrived and Riel went into exile. Ronaghan, “The Archibald Administration in Manitoba, 1870-1872,” 311. Ronaghan calls this state of affairs a “reign of terror” against the Métis. The Ontario volunteers (many of whom were Orangemen) committed nighttime raids on the settlements and attacks on individuals, including the murder or Elzear Goulet. Ronaghan, “The Archibald Administration in Manitoba, 1870-1872,” 420–21.

\textsuperscript{63} For example see Mailhot and Sprague, “Persistent Settlers”; St-Onge, “The Dissolution of a Metis Community”; Spry, “The Métis and Mixed-Bloods of Rupert’s Land”; Ens, “Dispossession or Adaptation?”

\textsuperscript{64} Flanagan, \textit{Metis Lands in Manitoba}, 90; Mailhot and Sprague, “Persistent Settlers,” 6.
needed most was capital to invest in their farms, so they needed whatever they could sell most easily and for the highest value. In any case, once the potential for a Métis homeland or reserve in Manitoba had passed, money scrip was clearly the most practical there as well. Whether scrip policy was maliciously designed to get the land out of the hands of the Métis as quickly as possible and into the hands of English Protestant farmers, or simply seemed like a miraculous way to transform the inconvenient collective Aboriginal rights of the Métis into alienable fee simple titles, it provided for the possibility of freeing lands up for white settlers. And it did free up land. The story of the speculation in scrip and how nearly all of the scrip and land ended up in the hands of non-Métis has been well researched. Though s31 of the Manitoba Act was meant to preserve their land, scrip policy led to widespread landlessness for the Manitoba Métis, only furthering the stereotype that they were "wandering," unsettled, and "uncivilized."

North West Scrip Commissions & Defining "Half Breeds"

Many of the same issues that had plagued Manitoba came up prior to and during the North West Half-Breed Commissions of 1885-1887, but they were more quickly resolved, because the policy tool of scrip had previously been employed and provided a precedent to follow. In the late 1870s and early 1880s the Métis west of Manitoba were becoming increasingly agitated, sending frequent petitions and letters demanding recognition of their

65 “Minutes of a joint meeting of the Indian Treaty and Half-breed Commissions, held at Lesser Slave Lake, Athabasca District on the 22nd June, 1899,” LAC RG15 Vol 771 File 518158.
67 See Tough and McGregor, “‘The Rights to the Land May Be Transferred’”; Flanagan, Metis Lands in Manitoba; Sprague, Canada and the Métis; Ens, “Dispossession or Adaptation?”; St-Onge, “The Dissolution of a Metis Community.”
68 See LAC RG15 Vol 172 File HB 164 for a circular explaining to Dominion Lands Agents the different kinds of scrip that will be issued, and enclosing sample of each kind.
rights. Ottawa recognized the need to act, but procrastinated. For one thing, the government was uncertain how to proceed. Though the North West Métis were widely (though not universally) viewed as less "civilized" than the Manitoba Métis, few wanted them brought into Treaty. Some sort of individual land ownership was deemed appropriate, perhaps a homestead to encourage farming. Bishop Taché recommended entailed blocks of individually owned land, suggesting it should be unalienable for 3 generations. Because it would make Métis land similar "to real and unalienable estates of noblemen," it would "raise the half-breds to a condition of landlords." Entailed blocks of land was not a popular solution, however. Ottawa preferred "an absolute issue of scrip... to each individual, and then let them take their chances of living or starving in the future." In 1879 the Governor in Council was empowered to deal with North West Métis claims. However, the federal government took no concrete action until 1885 when it had finally decided to deal with the outstanding claims left from the Manitoba Commission (those Métis who had left Manitoba before they could obtain their scrip) as well as begin enumerating the North West Métis. Before the new commission could proceed, the North West Rebellion broke out in March of 1885. This increased the urgency, pushing them to act more quickly.

69 For example, Qu'Appelle Métis to Governor Morris, “Petition,” 11 September, 1874, LAC RG10 Vol 3613 File 4041; North West Council Resolution of 2 Aug 1878, LAC MG26-A Vol 104 Page 42067 to 42071. There are many other examples in the House of Commons debates of 1885 and 1886 as well as in Sessional Papers no 116, 1885 vol13.

70 There are always examples of differing opinions. For example, NWT Magistrate and Councillor Colonel Richardson described Métis expertise in farming as being superior to that of whites. Richardson, Memorandum, 1 Dec, 1879, read in Canada. Parliament. House of Commons, Debates 1885, 1885, 4:3080.

71 Alexander Morris, Despatch, Dec 4, 1876 in Morris, Treaties of Canada, 195.


Because the commissioners were unable to finish in one year, there were three commissions (1885, 1886, and 1887) to enumerate eligible Métis and distribute scrip. The North West Commission proved to be more time consuming not only because of the greater distance the Commissioners had to cover, but also because of the growing complexities of the category "Half Breed"—over the last decade there had been increasing interpenetration of the categories Half Breed and Indian on the prairies, and government officials had to disentangle them in order to determine who was eligible for scrip.

This was not a completely new issue, of course. During the Manitoba scrip commission there had been, overall, very little concern with how to identify or define a "half breed." In general, it was assumed that this was someone of mixed ancestry. The instructions to the enumerators for the 1870 census declared, "a half-breed, for the purpose of this enumeration, is defined to be any person descended, however remotely, either by father or mother, from any ancestor belonging to any one of the native tribes of Indians, and also descended, however remotely, from an ancestor among the Whites—in other words having in his veins both White and Indian blood." Being White, on the other hand, was about purity, "with no admixture of Indian blood." 75 Though in April 1873, as discussed above, only the children of Métis heads of households were declared eligible, in May the legislation clarified that all children of mixed ancestry were eligible, including "all those of mixed blood, partly white and partly Indian and who are not heads of families." 76 In a perfect example of the common slippage between Métis/mixed, a "half breed" was defined not necessarily as the children of Métis but was anyone of mixed ancestry. During the actual Manitoba scrip commission in 1876 there was virtually no

75 "Instructions to be observed by the Enumerators appointed by the Lieutenant-Governor, to take the Enumeration of the Province of Manitoba," 1870 printed in Canada, Sessional Papers 1871 Vol V, Paper no. 46, 76.
76 Canada, “An Act to Remove Doubts as to the Construction of Section 31 of the Act 33 Victoria, Chapter 3, and to Amend Section 108 of the Dominion Lands Act,” S.C. 36 Victoria, Cap. 38 § (1873).
discussion of definitions; a person simply had to self-identify, and have two people to sign affidavits confirming his or her identity. (See figures 5.1 and 5.2)

When the North-West Scrip Commission was inaugurated in 1885 there was again initially little discussion about what constituted a "Half Breed"—aside from some brief confusion over the eligibility of those who were not children of Métis heads of families but of "pure Indian and white parents," which was quickly solved by reaffirming the 1873 Act.77 Similar to the Manitoba Commission, people simply had to declare themselves to be "Half Breeds," state their parentage and have witnesses to vouch for their identity.78 A Half Breed was again defined as anyone of mixed ancestry—Métis or not.79 As in 1876, there was surprisingly little concern in 1885 with the possibility of misrepresentation. Ethnic identification, at this time, was still primarily based on personal knowledge, common sense, and reputation. It is unlikely whites would have let themselves be categorized as "Half breeds," both because in the racially charged post-1885 prairies this category had become stigmatized and socially undesirable, but also because they had their own grants.80 And if an "Indian" took scrip, it would be similar to enfranchisement, which was one of the ultimate goals of the Indian Act.

**Boundary Crossing (Scrip/Treaty)**

By 1886, however, the scrip commissioners and departmental officials were beginning to question whether it was a good practice to allow people to self-identify. This question arose

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77 "Half Breed claims - Minister of the Interior recommends amending O.C. 1885/01/28, 1885/03/30 and 1885/04/18 by including Children of Half Breeds born before 1870/07/15," PC 1885-1202. Several examples of officials discussing this issue are in LAC RG15 Vol 574 File 175917; RG15 Vol 171 File HB 55; LAC RG15 Vol 501 File 140862.
78 For example, see the files in LAC RG10 Vol 3588 File 1239-201-300 Part D.
79 Indian Commissioner E. Dewdney to Superintendent General of Indian Affairs, July 7, 1886, LAC RG10 Vol 3724 File 24303-2A.
80 “Original white settlers, Northwest Territories - Min. Int. recs extend 37 Vic. Cap. 20 s.4 to the,” P.C. 1886-0658, April 19, 1886.
because of the large number of Métis and mixed individuals who were leaving treaty in order to obtain scrip. Nearly half of the scrip applicants of the North West scrip commissions had been in treaty and were therefore formally Indians. Applying for discharge from treaty meant a change in status from Indian to "Half breed" (or, legally, white). Because there was, for a brief time, some ability for individuals to move between categories, there are an abundance of rich archival sources, as officials debated and discussed policy, methods, and rules for traversing the line between Indian and White through the mechanism of scrip. Though some suggested there should be some sort of blood quantum equation, cultural criteria dominated the discussion and formed the most important criteria. After 1886, a "half breed" qualifying for scrip was someone of mixed parentage who was also self-sufficient, that is, had regular work or farmed, made improvements on the land, and was seen as capable of owning land. Examining why and how this boundary crossing occurred helps reveal how the state conceived of not only the Métis, but also of those it constructed as Indians. Furthermore, like enfranchisement, it reinforced the circular logic in which independence and whiteness affirmed each other.

Many Métis and people of mixed ancestry ended up in Treaty in the 1870s. While the intricacies of Manitoba scrip policy were being worked out, Canada was negotiating the numbered treaties (1871-1877). In most of the numbered treaties, the Indigenous negotiators worked to ensure their mixed ancestry band members and Métis kin would be permitted to join treaty, and generally until 1876 the government allowed such individuals to choose to join treaty and "become Indian," which many did. The commissioners stipulated that a person could not be both Indian and Half Breed, but a "half breed" could have some choice about whether to take treaty and become officially Indian, with all of its "privileges" (such as annuity payments, the security of having a place to live on reserves) and restrictions (such as disenfranchisement, inability to own property, liquor prohibition, and numerous restraints on liberty).
A significant number of Métis and people of mixed ancestry took treaty due to impoverished circumstances. The 1870s was a difficult decade for the Métis. The fur trading economy had completely changed, significantly reducing opportunities for Métis employment. Bison were becoming ever more scarce and had effectively become extinct in the East. The delay in the distribution of s.31 land grants led to land insecurity for the Métis of Red River. After years of assurances that the grants were coming soon, many began to despair whether the government would ever begin distributing the promised 1.4 million acres. This, along with their loss of political power and the extensive English Protestant migration to Manitoba, led to the exodus of a large percentage of the Métis. Even when the scrip commission had finally commenced in 1876, many Métis were unable to attend, and missed out on the distribution. Additionally, the North West Métis who had not resided in the tiny province of Manitoba on July 1, 1870 were considered ineligible for scrip. They had no promise of protection from the new regime. For instance, Baptiste Laclair fell on hard times when his employer (the Church Missionary Society) stopped paying him. He had a wife and 5 children to support. He could not wait for the scrip commission, and lived too far away from Manitoba anyways. By 1873 he was desperate. Though he did not think of himself as an Indian, he stated, "in my last extreme I applied for the treaty." Treaty at least provided some stability and a place to live.

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81 According to Archibald's census the Métis made up approximately 82% of the population of Manitoba in 1870. Canada, Sessional Papers 1871 Vol V, No. 20, 93. By contrast in 1886 Métis made up approximately 8% of the population. Canada. Dept of Agriculture, Census of Manitoba, 1885-6 (Maclean, Roger, 1887). Though St onge says not to overstate Métis withdrawal at this time. The hunting Métis had sold their land earlier than farming Méti, but neither left right away. Both tried to hold onto their land as long as possible.St-onge, “The Dissolution of a Metis Community,” 161. Mailhot and Sprague agree that the Métis were persistent settlers, with a strong connection to land, and they argue only major pressure from the government and incoming settlers eventually drove them off in the late 1870s/early 1880s. Mailhot and Sprague, “Persistent Settlers.”

82 “Half Breed Claims, Manitoba - Min Int, 1885/04/09, recs satisfying to children entitled,” P.C. 1885-0810, April 20, 1885.

The second main reason was that there were many people of mixed Indigenous-European ancestry who were labelled "half breeds" by the federal government, but who did not identify as Métis. They did not see themselves as part of the Métis people, and were outsiders to Métis economic life, traditions, and kin groups. They joined treaty because they were Indigenous band members. They were completely integrated in the often multicultural communities of their Cree, Assiniboine, Saulteaux or Sioux mothers. In other words, they were culturally and socially "Indians," though they had mixed ancestry.

Because English speakers, who dominated the Dominion government, typically used the same term—Half Breed—for Métis and mixed people, it is not always clear to whom they are referring, though contextual clues help clarify it to historians. For instance, Indian Commissioner Wemyss Simpson reported in 1871, "a number of those residing among the Indians, and calling themselves Indians, are in reality half-breeds, and entitled to share in the land grant under the provisions of the Manitoba Act." However, he explained, "a very few only decided upon taking their grants as half-breeds" because "these persons have lived all their lives on the Indian reserves (so called)." It is almost certain that these individuals were mixed ancestry First Nations people and not Métis, because Red River Métis were socially distinct and relatively few lived among these bands at this time. Similarly, when negotiating Treaty 3, the Fort Frances chief asked to include in treaty some Half breeds, specifically "those that have been born of our women of Indian blood. We wish that they should be counted with us... it is the Half-breeds that are actually living amongst us—those that are married to our women." The biological fact of

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84 For a description of these multicultural nations, see Innes, “Multicultural Bands on the Northern Plains and the Notion of ‘Tribal’ Histories”; Gaudry, “Kaa-Tipeyimishoyaahk - ‘We Are Those Who Own Ourselves,’” 76.
85 Wemyss M. Simpson to Secretary of State for the Provinces, Nov 3, 1871, printed in Morris, Treaties of Canada, 41.
86 Morris, Treaties of Canada, 69.
mixed Indigenous-European ancestry was virtually irrelevant to their self-understanding. Treaty would have been an obvious choice for them so they could continue to live with their kin.

These requests were generally granted in the early 1870s when Canada allowed the people it called Half Breeds to make their own choice about whether to take treaty. In Treaty One and Two (1871), Commissioner Simpson explained to any person reputed to be a half breed, that choosing treaty meant becoming Indian and would "forfeit his or her right to another grant as a half-breed," and with that caveat, "the choice [was] given to him to characterize himself."87 In Treaty 3 (1873) this policy was repeated. Alexander Morris reported that such "families should be permitted the option of taking either status as Indians or whites, but that they could not take both,"88 and therefore "if Indians, they get treaty money; if the Half-breeds call themselves white, they get land."89 In Treaty 6 (1876), similarly, some mixed and Métis families were permitted to join treaty.90 It was supposed to be a one-time choice, and a person could not claim two identities, but for a short period of time Canada respected these people's right to choose their own communities of belonging.

After 1876 the Indian Department preferred not to allow Métis in treaty any more, though they did not completely terminate the option until much later.91 The Indian Act of 1876 declared "no half-breed head of a family (except the widow of an Indian, or a half-breed who has already been admitted into a treaty), shall, unless under very special circumstances, to be determined by the Superintendent-General or his agent, be accounted an Indian, or entitled to be admitted into

91 In 1899 it was supposed to have stopped completely. Department of Justice Law Clerk, Memorandum to Department of Indian Affairs, 13 June, 1899, LAC RG13 Vol 2295 File 1899-106.
any Indian treaty.\footnote{Canada, The Indian Act, 1876, sec. 3e. Emphasis mine.} The very special circumstances sometimes included those deemed to be culturally identical to “Indians.” At the Treaty 6 negotiation, Alexander Morris told Chief Mistow-as-is, who wanted to obtain protections for them, that "the Half-breeds of the North-West cannot come into Treaty," but that "the small class of Half-breeds who live as Indians and with the Indians, can be regarded as Indians by the Commissioners, who will judge of each case on its own merits as it comes up."\footnote{A.G. Jackes, "Narrative of the proceedings connected with the effecting of the treaties at Forts Carlton and Pitt, in the year 1876, together with a report of the speeches of the Indians and Commissioners," printed in Morris, \textit{Treaties of Canada}, 222.} The federal government preferred to leave themselves the option of shuffling identities if it served their purposes; they weighed the cost of annuities against the need for pacification.\footnote{Dickieson reported, "I knew it was the desire of the Department that nothing should occur which would tend to disquiet the Indians or weaken their confidence in the Government." M. G. Dickieson to the Minister of the Interior," 7 October, 1876, in Canada. Department of the Interior, Annual Report 1876.}

In practice, the Indian Department and its agents struggled with this. Determining exactly where to draw the line between these two categories continued to confound them. At Qu'Appelle, this issue frustrated M.G. Dickieson, the Commissioner distributing annuities in 1876, when a group of Métis asked to join Treaty 4. He asked them "if they had ever belonged to 'any particular Band,' or had recognized any Indian as their Chief. They replied in the negative, and informed me their desire was to form a Band, distinct from the Indians, and under a Chief of their own." When he explained, citing the Indian Act, that this was impossible, they claimed to be members of the Bands already in treaty. He refused to pay them since they declined to "swear their fathers were or had been Indians." This group appears to have been Métis, not mixed ancestry First Nations since they "have always been accounted Half-breeds, have never adopted the Indian habits or ways of life." In his report, he laid out four categories of "Half Breed", in the form of a sociocultural gradient:
The question as to who is or who is not an Indian is a difficult one to
decide, many whose forefathers were Whites, follow the customs and
habits of the Indians and have always been recognized as such. The
Chiefs, Côte, George Gordon and others, and likewise a large proportion
of their Bands, belong to this class. A second class have little to
distinguish them from the former, but have not altogether followed the
ways of the Indians. A third class again have followed the ways of the
Whites more than those of the Indians, while others have followed the
habits of the Whites and have never been recognized, or accounted
themselves as anything but Half-breeds. The distinction between the first
and fourth of these classes into which I have for convenience divided the
Half-breeds is marked enough, but the difference between the first and
second, the second and third, and third and fourth is very slight, and not
obvious.

This method of categorizing people is what often made it difficult for officials to determine
whether an individual belonged in treaty or not; Métis and other Indigenous peoples often lived
similar lifestyles. Dickieson decided not to admit anyone new to treaty unless they "were
undoubtedly of pure Indian blood," figuring it was better to err on the side of caution, as he
"considered the policy of the Government was to elevate the Indian in the scale of humanity not
to degrade the White to the position of the savage." And treaty would make them minors under
the law.95

He was correct; this was Ottawa's official policy after 1876. The Indian Department
clearly stated that they did not want Métis in treaty and certainly they did not want to pay more
annuities than necessary. Indian Commissioner Hayter Reed did not want to encourage
dependency. He thought if Métis were admitted to treaty they would "not only tend to pauperize
themselves, but encourage others in the idea that they need not exert themselves, but can run to
the Government, for assistance whenever their inertness or improvidence may land them in
difficulties," and it may lead them "back to the condition from which they have emerged."96 It

95 M. G. Dickieson to the Minister of the Interior," 7 October, 1876, in Canada. Department of the Interior, Annual
Report 1876.
96 Hayter Reed to Supt General of Indian Affairs, 24 April, 1889, LAC RG10 Vol 3817 File 57336.
was not just his own idiosyncratic view; the Superintendent General of Indian Affairs replied to
him that the Department "quite concurs in your view on the matter." The official policy was
assimilative; allowing Métis into treaty was viewed as a backwards step for them.

However, this was not the whole story. The government preferred to leave themselves the
option for admitting Metis to treaty in certain circumstances. This was so they could use treaty
and Indian status as a policy tool; they could grant it (or refuse it) in order to achieve other goals.
For example, treaty membership could be used for the purpose of welfare and social control.
There are several examples over the 1880s and 1890s of individual Métis families being brought
into treaty, even some who had obtained scrip and were supposed to be forbidden from doing
so. For example, in 1888, a special request was made to allow William Gladier and Francois
Maison to re-enter treaty because "otherwise they will starve." The two Métis men were made
to sign a statement saying that they found it too difficult to "earn a living among white men," and
that they agreed to forgo their annuities until their scrip was repaid, that they put themselves on
the mercy of the Department and promised to be obedient. The Department wanted to make clear
their minorization if they were to receive any aid. The Bob Tail band, in the Treaty 6 area,
faced a similar situation. Having received discharge and scrip in 1886 most of the band was
taken back into treaty because, according to scrip commissioner Goulet, "they could not provide
for themselves." In 1890 the Department of Justice agreed that Métis who were destitute and
unable to support their families might be permitted to rejoin treaty provided they repaid their

97 Indian Affairs to Hayter Reed, May 8, 1889, LAC RG10 Vol 3817 File 57336.
99 Angus McKay to George Mann, Jan 26, 1888, LAC RG10 Vol 3794 File 46282.
101 R. Goulet to Department of Interior, 28 Jan, 1891, LAC RG10 Vol 3853 File 77138.
scrip (it could be deducted from their annuities),\(^{102}\) and in 1891 the Indian Department informed the Department of the Interior it was only accepting back into treaty those Métis who were infirm, sick or destitute.\(^ {103}\) This was because if in treaty, it was thought they were less likely to become a burden on the local government or commit crimes, and the Indian Act provided additional tools to control their movements. As Inspector of Indian Agencies T.P Wadsworth put it, "within the treaty he can be sent to a reserve, outside he can only be sent to gaol."\(^ {104}\)

On the other hand, the Department always retained for itself the ability to refuse treaty to those Métis and people of mixed ancestry who they felt might make trouble on reserve, as in the 1899 case of a non-treaty Half Breed (probably mixed-race but not Métis) man "Tak Kuoh," who "wanders about with his family hunting." The agent wrote, "I am not anxious that he should join any of the reserves as he has the name of being a leader in Indian dances and we have already quite enough of that element around us."\(^ {105}\) This is similar to what was occurring at the same time in Ontario, where the Department was "cleaning up" paylists by removing mixed ancestry and Métis band members, particularly those they perceived as immoral or troublemakers.\(^ {106}\)

Although there were some provisions for Métis to join treaty in certain circumstances, in general the federal government made it much easier for Métis to leave treaty. This was an evolving practice. Until 1880 there was no clear official policy, rules, or procedures for Métis who wished to leave treaty and obtain scrip. At first anyone who had ever received treaty money

\(^{102}\) Deputy Minister of Justice to L. Vankoughnet, 3 July, 1890, LAC RG13 Vol 78 File 1890-787.

\(^{103}\) Indian Affairs to Burgess, April 16, 1891, LAC RG10 Vol 3852 File 76777.

\(^{104}\) T.P. Wadsworth to Dewdney, 27 July, 1886, LAC RG10 Vol 3724 File 24303-2A. In particular it seems as if the agents on the ground were more concerned with using these categories as a form of control.

\(^{105}\) W. Sibbald to Dept of Indian Affairs, 8 June, 1899, LAC RG10 Vol 3775 File 37267-2. This case is what prompted the Department of Justice to inform the Indian Department that they were no longer to admit half breeds to treaty. Department of Justice Law Clerk, Memorandum to Department of Indian Affairs, 13 June, 1899, LAC RG13 Vol 2295 File 1899-106.

\(^{106}\) For example see the files in LAC RG10 Vol 2833 File 170,073. The use of the paylist and band membership to enforce morality and social control is examined further in Chapter 3.
was forbidden from taking scrip, but in 1874-5, the Department realized some Métis may not have known that taking treaty would prevent them and their children from getting the land grant, so they allowed them in some cases to leave treaty and get scrip.\textsuperscript{107} The 1879 Indian Act amendment formally permitted them to withdraw from Treaty, but only if they repaid their annuities or had it deducted from their scrip payment.\textsuperscript{108}

In 1882, the Indian Department recommended "every facility should be given the Half Breeds in the N.W.T. to withdraw from the Indian Treaties."\textsuperscript{109} In order to facilitate this, the 1884 Indian Act amendment no longer required annuities to be repaid.\textsuperscript{110} The rationale was that "Half-breeds who have been considered members of the Treaty were to all intents and purposes Indians up to the time of their withdrawal, any arrears due them as Indians should be paid them when they withdraw from Treaty in order that they may have no further claim as Indians."\textsuperscript{111} This was clear encouragement to withdraw from treaty, though some confusion remained, particularly in terms of coordination between the two departments (the Indian Department and Department of the Interior).\textsuperscript{112} It was an extremely popular option among Métis in advance of and during the North West Scrip Commission; nearly half of the Métis who applied for scrip in 1885 were or had been in treaty.\textsuperscript{113} These numbers took Ottawa and the scrip commissioners by

\textsuperscript{107} E.A. Meredith to J.A.N. Provencher, 21 April, 1874; Andrew Russell to J.M. Machar, 31 July, 1875, both in LAC RG10 Vol 1922 File 2970.
\textsuperscript{108} Canada, An Act to amend “The Indian Act, 1876” (1879). Also H. Martineau to Jas. F. [?] Graham, April 20, 1882, LAC RG10 Vol 3604 File 2667.
\textsuperscript{109} Vankoughnet to G.W. Burbidge (Deputy Minister of Justice) July 5, 1882, LAC RG13 Vol 53 File 1882-999.
\textsuperscript{110} Leslie, Maguire, and Moore, \textit{The Historical Development of the Indian Act}, 76.
\textsuperscript{111} D.C. Scott, Memorandum, July 9, 1886, LAC RG10 Vol 3754 File 30880.
\textsuperscript{112} Vankoughnet to Burgess, 30 May 1885, LAC RG15 Vol 172 File HB 139.
surprise. They were unprepared for the large number, and it delayed the commission so much that it needed additional years to complete its task.\textsuperscript{114}

\textsuperscript{114}For example see Roger Goulet to A.M. Burgess 4 Aug, 1886; Goulet to Burgess, 5 October, 1886; Goulet to Burgess, Mar 7, 1887; Goulet to Burgess, March 24, 1887; Goulet to John R. Hall, 4 July, 1887, all in LAC RG15 Vol 501 File 140862.
Full answers are required to the following questions by applicants for discharge from Treaty.

Applicant’s Name: Jacob Mowatt

Date and Place of Birth: March 1848 at St. Andrews, Manitoba

Father’s Name: David Mowatt

His Nationality: Half Breed

Mother’s Name: Jane Cameron

Her Nationality: Half Breed

Band to which applicant belongs: St. Peters

Number of Ticket: 218

Years for which applicant has drawn Treaty-money, stating where paid each year: Ever paid Treaty always at St. Peters, S.P. and residence of last year and when I first took Treaty; born near St. Peters 1848.

If Married, to whom and when: Sarah Spence 1866.

Names and date of Birth of all applicant’s living children, if any: William born June 1861, Sarah

Debora born August 1869, Mary June 1871, James, Charles, Elizabeth, Abraham, Edward and

Andrew born June 1872

Names and date of Birth and Death of all applicant’s deceased children, if any: Maria died about 10 months old, died at Beausejour about 3 years ago.

Present place of residence: At Beausejour, Manitoba

Means of Support: Work at farming on a farm, also in the employ of the Hudson’s Bay Company for several years, served for three years at Red River, Alberton and I sold wood on the Reserve at St. Peters.

Figure 5 - Jacob Mowatt, Application for Treaty Discharge, 1893.
Source: LAC RG10 Vol 3902 File 102146.
Why did so many Métis want to leave treaty? There is not a lot of clear evidence, and it is difficult to generalize about family motivations. Though there are thousands of pages of documentation in the archives, most are simple applications or affidavits and have relatively little about the individual circumstances of the applicants, and rarely contain any direct explanations for their desire to leave treaty. (See Figure 5.3) However, some of the documents have marginalia or additional details in accompanying letters, which provide an interesting, if impressionistic, picture of their motivations. There were a variety of reasons depending on familial circumstances. As discussed above, many Métis had only entered treaty because of practical necessity and did not feel like they belonged in the bands. Becoming “Indian” did not make them any less Métis. Many did not live on reserve, only returning each year to collect annuities (and some did not even do continue to do that). These Métis were not necessarily attached to their bands and preferred to live independently, so it was an easy choice to leave treaty. Some were also persuaded by financial reasons. The large amount of land or money scrip that would come all at once, as opposed to a small sum of annuities each year, could be very attractive. On the other hand, a significant number had already begun leaving treaty by 1884, before they had any assurance of receiving any sort of scrip or land grant, so they must have been motivated by more than just money.

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116 Tough, “Neither Fish nor Indians,” 160. These categories were not mutually exclusive.
117 H. Keith to Assistant Indian Commissioner, 10 June 1886, LAC RG10 Vol 3588 File 1239-301-350 part E.
118 A.M. Burgess (deputy minister of Interior) to G.W. Burbudge (Deputy minister of justice), 28 Dec 1885, RG13 Vol 2248 File 1885-98 1885-1265; See also the various letters requesting withdrawals in LAC RG15 Vol 574 File 175917.
Perhaps most importantly, Indian status came with many constraints. There were certainly Métis concerned about not being able to own and sell land and improvements.¹¹⁹ Some understandably preferred to have the full rights of citizens. Thomas Garson explained, "I feel the want of freedom and would wish to enjoy the Franchise of a real subject so that I might have a voice in my country, and be one of many to uphold justice and the general welfare of the peoples." He also did not find reserve land conducive to farming.¹²⁰ Indeed one of the problems plaguing reserves was the shortage of quality arable land. It was often rocky, swampy, and remote from markets.¹²¹ The ability to select land freely would have been another incentive.

Moreover, the Indian Act's amendments and departmental policy were becoming much more repressive, particularly after the 1885 rebellion.¹²² Indian Agents were increasingly empowered to create and enforce oppressive regulations such as the pass system. It was also becoming difficult to access sufficient firearms and ammunition, which made hunting large game difficult.¹²³ It is unsurprising Métis would want to escape the harsh rules, restrictions, and punishments. Some Métis were quite adamant that they wanted nothing to do with being Indian, with that particular relationship with the Crown. At Touchwood Hills in 1886, even after the Agent's repeated attempts to convince them of the supposed advantages of Indian status, nearly

¹²⁰ Thomas Garson to Angus MacKay, 8 Feb 1890, LAC RG10 Vol 3590 File 1239-427-533 Part H.
¹²¹ Carter, Lost Harvests.
¹²³ Devine, The People Who Own Themselves, 175.
all still chose to leave treaty.\textsuperscript{124} One family's application for treaty discharge in 1893 was filled with strong statements, including one from Sarah Houle, who declared herself "living well with my own labor without your treaty which I don't at all want."\textsuperscript{125} Similarly, in 1902, when the Indian agent doubted one John Bilton's Half Breed status, because, "it is hard for me or anyone else to tell whether he has a few drops of white blood in him or not," Bilton writes, "I wish to say that I will not take treaty, and I would like that you would inform the Half-breed Commissioner of my resolve."\textsuperscript{126}

Though there were some restrictions, in general the government made it quite easy for Métis and mixed people to leave treaty in 1884 and 1885. For the Indian Department, it may have been viewed as a way to save money. Though scrip had to be paid as a lump sum, it did not come from the Indian Department budget.\textsuperscript{127} It was also for ideological reasons; lawmakers and officials were opposed to providing for anyone who they thought was capable of being self-supporting. In many cases, they thought the Métis were too self-sufficient to be Indian, Indianness being a condition seen as synonymous with dependency. It is difficult to be certain where this pervasive stereotype originated. Hugh Shewell speculates that it began with the pattern of credit advancement used by the HBC during the fur trade. Despite the actual independence and sovereignty of First Nations and Métis on the prairies until 1870, the HBC's belief in its trading partners' dependence on credit came to influence the federal government.\textsuperscript{128}

Additionally although band funds came from treaty promises and often the band's own monies

\textsuperscript{124} Touchwood Hills Indian Agent H. Keith to Indian Commissioner, 11 May 1886, LAC RG10 Vol 3588 File 1239-301-350 part E.
\textsuperscript{125} "Statement of Sarah Houle," 1893, LAC RG10 Vol 3906 File 105266.
\textsuperscript{126} John Bilton to David Laird, Dec 1902, LAC RG10 Vol 3572 File Part G File 132.
\textsuperscript{127} This was particularly advantageous because scrip was paid not in real cash, but in cash-like certificates to be redeemed for land, and there was a no shortage of land in the North West.
\textsuperscript{128} Shewell, \textit{Enough to Keep Them Alive}, 32.
(held in trust), the stingy and bureaucratic late nineteenth century Departmental operations essentially "transformed all Indians into beggars of their own monies." In general, Canada has preferred to emphasize Indigenous welfare and dependency instead of independence, sovereignty and rights. For the federal government, food and welfare were effective tools for Indigenous subjugation. And as Canada took or destroyed their land, livelihoods, and sovereignty, many communities had little recourse but to depend on the government during difficult times.

Meanwhile, allegorically, Canada was becoming the "maturing colonial son" no longer a colonial dependency. Whiteness, and particularly Britishness, was conflated with the ideal of the independent yeoman or self-sufficient breadwinner.

The Métis, who as scrip-takers were considered "practically whitemen," had the potential to fit this mold. For example, Liberal MP David Mills argued in Parliament in 1879 that the Métis were not entitled to treaty because "some of them were three-fourths white," and "perfectly competent to take care of themselves and their interests." Instead he recommended the government should "induce these people to withdraw from the treaty arrangements" and "receive a certain allotment of lands." And if they were not yet independent and self-supporting, it was thought that disallowing any reliance on the government would encourage it. In 1887, Scrip Commissioner Roger Goulet agreed with this, because with scrip the Métis "are in a better

129 Shewell, *Enough to Keep Them Alive*, 64.
134 Department of Justice, Memorandum to Department of Indian Affairs, 13 June, 1899, LAC RG13 Vol 2295 File 1899-106.
position to improve their condition without the restrictions imposed upon them as treaty Indians." Wilfred Laurier (as Liberal opposition MP in 1886) stated that the Métis were "original possessors of the soil" and "entitled to the same compensation as the Indians," but not in an identical manner, "because of the difference in the state of civilisation of the two races." The Métis were often viewed as in an intermediate position in the scale of civilization, as sort of "half wild" or "semi-civilized," and many, including David Laird, viewed it as an error that Métis had been permitted in treaty in the first place. Scrip policy embodied many of the same notions as Enfranchisement policy, but was far more "successful." Canada had continually been dissatisfied with the failures of enfranchisement (in the 63 years between 1857-1920 approximately 250 people were enfranchised). By comparison, over 1100 Métis and people of mixed ancestry left treaty in just two years, 1886 and 1887.

Despite official encouragement for Métis to leave treaty, in practice ambiguity and uncertainty remained about this process, particularly with regards to those individuals that seemed difficult to categorize. Some agents expressed concern about releasing from treaty those Métis who "are Mixed Bloods of French descent, more Indian than otherwise." Another reported that he tried to discourage a large number of discharges (a significant portion of the band), talking to them for "nearly a whole day on the matter of leaving the Treaty, and told them that it was a very serious step for those to take who had large families to support." Scrip

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136 Goulet to Deputy Minister of Interior, Mar 7, 1887, LAC RG15 Vol 501 File 140862.
137 Goulet to Deputy Minister of Interior, Mar 7, 1887, LAC RG15 Vol 501 File 140862.
141 John McDonald to Dewdney, Aug 6, 1885, LAC RG10 Vol 3588 File 1239-301-350 part E. French Métis continued to experience triple discrimination as French speakers, Catholics, and Indigenous people.
142 Touchwood Hills Indian Agent H. Keith to Indian Commissioner, 11 May 1886, LAC RG10 Vol 3588 File 1239-301-350 part E.
commissioners, Indian agents, and other officials, with their underlying racialized views, worried that the people leaving treaty were no different than Indians and should not be freed from the state of tutelage and dependence.

This concern was brought to the fore during the 1886 North West Half Breed scrip commission when Indian Commissioner Dewdye wrote to Ottawa asking whether "all Indians who represent or can prove they are halfbreeds but lead same life as Indian [were] to be allowed discharge." Dewdney believed they wanted scrip because they lacked forethought and just wanted quick money. He was concerned that they would not be able to support themselves, and predicted most would immediately spend all the scrip money, becoming penniless. They would become a social and moral problem, resorting to crime or living off the bands (who were themselves impoverished), and becoming a bad influence on the Indians.¹⁴³ Scrip Commissioner Goulet concurred: "I have consulted a great many prominent persons of this part of the country relative to this question and they all agree that were these treaty Half Breeds allowed to leave the Reserves on which they are now fed by the Government they would become a burden to the community and would no doubt eventually be a cause of great annoyance to the Government."¹⁴⁴

Through a technicality of ancestry, these people might be imprudently "liberated" from their Indianness (as officials saw it). Wadsworth, the Inspector of Indian Agencies maintained that "an alleged halfbreed who cannot tell the English or French name of his Father"—in other words an Indian masquerading as a half breed—"who has been living on a Reserve receiving regular rations, is no fit subject to be turned loose to care for himself and family."¹⁴⁵ Even Father Lacombe, who frequently advocated on behalf of Indigenous peoples, advised the Department

¹⁴³ Indian Commissioner E. Dewdney to Superintendent General of Indian Affairs, July 7, 1886, LAC RG10 Vol 3724 File 24303-2A.
¹⁴⁴ Goulet to Burgess, 4 Aug, 1886, LAC RG15 Vol 501 File 140862.
¹⁴⁵ J.P. Wadsworth to Dewdney, 27 July, 1886, LAC RG10 Vol 3724 File 24303-2A.
against "the withdrawal of Indians, who pretend to be halfbreeds, from the reserves," which
would only cause "misfortune for these poor creatures." To his paternalistic mind, they could
not make a sensible decision and needed to be protected from themselves. Dewdney agreed that
that their lifestyles made it clear they were not really half breeds (regardless of their mixed
ancestry) so the legislation could not possibly apply to them: "White blood, however, is
comingled to such an extent with the native,- particularly in the Saskatchewan country;- that few
Indians have difficulty in showing that they are possessed of a strain, which when they so desire,
-enables them to term themselves halfbreeds, and is such that are now in considerable numbers
applying for discharge from Treaty." The Indian Department concurred, and cautioned Goulet
that "Half Breeds who had the same mode of life as Indians are not to be granted discharges from
treaty." This policy was not so easy to implement, however. For one thing, it could be difficult to
determine who was a "Half breed" and who was an "Indian." What criteria should be used—birth
or lifestyle? Dewdney, in an interesting blend of biological and cultural racism, thought some
sort of blood quantum equation might work: "perhaps a strict construction of the term 'half-breed'
as distinguished from persons of quarter, or eighth, breed, or blood, might justify in some cases a
refusal to permit withdrawal." Presumably he thought that 50% white blood was the threshold
at which a person became white enough to be liberated from treaty. His suggestion was not
taken, and lifestyle factors were instead used. But even then there were difficulties. It was not
necessarily that clear, for instance, what the "Indian mode of life" was, as (according to inspector

146 A. Lacombe to Vankoughnet, 6 Aug, 1886, LAC RG10 Vol 3724 File 24303-2A.
147 Indian Commissioner E. Dewdney to Superintendent General of Indian Affairs, July 7, 1886, LAC RG10 Vol 3724 File 24303-2A.
149 E. Dewdney to Indian Affairs, July 7, 1886, LAC RG10 Vol 3724 File 24303-2A.
Wadsworth) all Indians were now engaged "more or less" in agriculture. Goulet clarified that he defined "a treaty Half Breed living a life identical with that of the Indians" as one who was "living on the Reserves, receiving rations and treaty payments," while "a treaty Half Breed receiving the Indian annuities," by contrast, provided "for his subsistence by farming, freighting or by hiring out as a labourer, &c." The commissioners ended up using a variety of methods to decide an applicant's identity, consulting with the Indian Agents who knew the person, as well as interviewing applicants to obtain details such as names of father and mother (they were looking for French and English names), whether they drew rations, whether they had stock, what kind of dwellings they lived in, and how they expected to make a living without relying on annual treaty payments. In addition to the specific answers, the commissioners used their own judgement, listening to the way the applicant communicated: "some idea is also gained of the intelligence of the applicant from the manner he replies to the questions." This shows how human characteristics were mapped racially—intelligence, financial competency, and ancestry blurred together in the minds of agents and officials to create a category of people they saw as white enough to be permitted to live independent lives. This is not surprising; it was common for whiteness to be conflated with competency, civility, modernity, and progress.

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150 Hayter Reed to Supt. General of Indian Affairs, July 26, 1886, LAC RG10 Vol 3724 File 24303-2A.
152 Additional research is required to learn more about the specific cases in which Indian agents granted or refused to grant discharges as a reward or punishment.
153 "Questions asked halfbreeds seeking discharge from Treaty", LAC RG10 Vol 3724 File 24303-2A. Note: these were somewhat similar to the criteria for enfranchisement.
154 E. Dewdney to J.P. Wadsworth, Aug 4, 1886, LAC RG10 Vol 3724 File 24303-2A.
Goulet, himself a Métis from Red River, had some misgivings about the policy of refusing discharges to some people based on their lifestyle. But he went along with the majority opinion, and was careful to reassure the authorities in his final report in 1887 that he, Wadsworth, and the Indian Agents had all taken "great precautions" to determine that "the applicant for withdrawal would be capable, in the event of his being allowed to leave the treaty, to support himself and family without the assistance of the government," so that the federal government need not fear "that this class of half-breeds who have severed their connection with the Indian Treaties and have been granted scrip, will have to be taken back on the reserves." This basic policy was also followed in the 1889 Green Lake scrip commission, though Hayter Reed (replacing Dewdney as Indian Commissioner in 1888) was to personally approve all applicants' discharges, for the same reasons as in the previous scrip commission.

Not all Métis chose to obtain scrip and discharge from treaty during this period. Some chose to remain "Indians," even if they did not feel entirely at home with that identity. There is little direct evidence about Métis choosing to remain in Treaty, largely because these Métis were, in the eyes of the state, indistinguishable from other Treaty Indians, but occasionally glimpses of their stories surface. The Department generally assumed they stayed because of financial reasons; there was security in living on reserve with guaranteed annuities to look forward to each

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157 Goulet, “Royal Commission to Inquire into and Report upon the Enumeration of Half-Breeds in the North-West Territories Outside of Manitoba, 1886.”
158 Burgess to Vankoughnet, 12 Dec 1889 and ? to Burgess, Feb 4, 1890, LAC RG10 Vol 3724 File 24303-2A. Hayter Reed wrote, "I have always concluded that if there were a reasonable hope of a treaty Half-breed becoming a self-supporting member of the community, through leaving treaty, he should be encouraged to do so. Where such prospect could not be shown to exist, I have in every possible way endeavoured to hinder the discharge, since it only means a return to perhaps a yet more dependant condition, after a short term of extravagance, during which the proceeds of the scrip hold out." Hayter Reed to E. Dewdney, 7 Aug, 1889, LAC RG15 Vol 488 File 138133.
year. Some must have done so because of family and kin, having established or become part of local families. For instance, William Favel chose to live on reserve because his wife and children took treaty. We know that some had no desire to leave their land, even if they wanted little to do with being categorized as Indian. For example, the Sandy Bay band was nearly entirely made up of Métis and virtually all left treaty and obtained scrip, only to discover they could not use this scrip to buy the land they had been working (because it was reserve land and not for sale). They all requested to return to treaty in order to keep access to their land. Petitions from other places describing similar situations show this was not an entirely isolated incident. Formal education may also have been a motivating factor. The federal government, with some exceptions, generally refused to pay for non-treaty Métis and interracial children to attend federally funded schools, including day, residential and industrial schools. However, these children were sometimes unable to access provincial schools, often due to their distance. This was particularly the case for children who lived on or near the reserve and were too far from nearby towns. One man, Alex Favel, clearly stated that he re-entered treaty for this purpose, “in order that his children might be admitted to the Industrial School.”

159 For example see E. Dewdney, Report from the Office of the Indian Commissioner for Manitoba and the North-West Territories, 23 Dec, 1887, Canada. Department of Indian Affairs, Annual Report, 1887; Goulet, “Royal Commission to Inquire into and Complete the Enumeration of Half-Breeds and Claims of White Settlers in the North-West Territories, 1887.”
160 Pelly Agency Indian Agent to David Laird, 25 June, 1900, LAC RG10 Vol 3572 File 132 part G.
161 LAC RG15 Vol 488 File 138133, LAC RG10 Vol 3828 File 60717. The Sandy Bay story is also well described in Ens and Sawchuk, From New Peoples to New Nations, 205–9.
162 For example, “Petition from Half-Breeds residing on John Smith's reserve, Duck Lake agency, pertaining to their withdrawal from the Treaty and the possibility of retaining the land they occupy,” LAC RG10 Vol 3787 File 42677; “Clandeboye Agency - Petition from certain half-breeds of Fort Alexander asking that if they leave the treaty they may be allowed to retain the home they now occupy on the reserve,” LAC RG10 Vol 3747 File 29701.
163 Hayter Reed to the Bishop of Saskatchewan and Calgary, July 30, 1896 and Clifford Sifton to Mr. Smart, October 13, 1899, both in LAC RG10 Vol 6031 File 150-9 part 1.
165 B.E. Chaffey to D. Laird, July 3, 1900, LAC RG10 Vol 3572 File Part G File 132.
Métis, were otherwise likely to fall into the jurisdicitional gap between federal and provincial responsibilities.

Overall, a wide variety of factors combined to encourage Métis to take or withdraw from treaty. These included both intrinsic and external factors, such as difficult years and the need for cash, the need for security, the desire for freedom from state repression, family and kin connections within or outside of treaty, as well as specific government policies, laws and regulations. It is also important to remember that individuals were only permitted a limited degree of choice, in limited circumstances, and during limited periods of time. In general adult men who could financially support themselves were more likely to be permitted to leave treaty. The few who were permitted to join treaty (other than in the period before the Manitoba Scrip Commission began) were generally considered destitute and a burden to their communities. This is quite revealing of the perception the government had of Métis compared to First Nations. Though the Canadian government attempted to avoid overt biological racial characterization, ideas about descent and the inheritance of personal characteristics always had an impact on the usual cultural views of Indianness. At the same time the need for a flexible boundary between these administrative categories demonstrates the ongoing conflicts inherent in Canada's Aboriginal policy goals. The desire to save money (by reducing the numbers of “Indians” for instance) conflicted with the desire for control over Indigenous people, even if that control came at greater expense. Though they officially had little tolerance for ambiguity and preferred clear binaries, they were not opposed to using treaty and scrip flexibly to further their goals.
If a Métis individual was able to support him or herself\textsuperscript{166} then he or she was viewed as assimilable and encouraged to take scrip (i.e. become white). The hope was that these Métis would assimilate into the dominant Canadian society and become productive farmers or labourers and not bother the state. The opposite held true for those who were of mixed ancestry but who lived the same “mode of life” as the Indians, meaning they were not considered good liberal subjects.\textsuperscript{167} It was deemed that they were better kept on reserve and under the restrictions of the Indian Act. In general, the government made it much easier for Metis and mixed people to withdraw from treaty than it did to enter it, but both could serve their goals of social control and saving money, pacification and assimilation. In allowing the Métis, in specific circumstances, to enter treaty or to obtain scrip by withdrawing from treaty, the government was using the scrip/treaty line as a tool for social control, welfare, and assimilation.

Conclusion

This all helps to clarify why the state created two categories of Indigenous people—Half Breeds and Indians—and dealt with their rights using two separate methods—scrip and treaty. Scrip was the tool preferred for the Métis because of the government's discomfort with the ambiguity inherent in the category half breed. The government preferred to class people as Indian or white and the Métis and people of mixed ancestry clouded that supposedly clear taxonomy; they could never decide where the Métis belonged. This is how it was possible for Macdonald to make the convoluted explanation: "the half-breeds were entitled, just as much as the Indians, to the extinguishment of the Indian title, but, as white men, instead of taking

\textsuperscript{166} As long as she wasn't married to an Indian (in which case she became a legal Indian, without her own identity), a woman was also permitted to leave treaty and take scrip, providing she either could support herself or had family to support her. Generally if a husband left treaty, the wife and children were required to do so as well. See, for example, the files in LAC RG15 Vol 187 File HB 2733 and LAC RG10 Vol 3723 File 24303-2.

compensation for their Indian title collectively they were allowed to take it individually.  
Scrip allowed them to address (or "extinguish") the Aboriginal rights of the Métis without truly acknowledging these rights.

For individual Métis families and people of mixed ancestry, one's official identity was determined by whether one had a treaty relationship with the state or not. There were practical and legal matters attached to official identity. If a person received scrip, he or she was thereafter categorized as "Half Breed," legally identical to a white person, with the ability to own and sell land, to vote and run for public office, to drink liquor lawfully, and with generally increased individual liberty and mobility. Along with this went certain prohibitions. The Métis were forbidden from living on reserve and from hunting and fishing without permits, and their Indigenous rights typically went unrecognized. This is not to say that Métis who were officially Half Breeds, or white in the eyes of the law were necessarily treated the same as white Canadians. A Métis scrip-taker did not necessarily "pass" into whiteness. In the 1901 census under race Métis were still categorized as "R" for "Red."  

They also often faced discrimination in their everyday lives. There are countless unwritten stories—and some written ones—of racist treatment the Métis experienced since the late nineteenth century. Herb Belcourt's family history, for instance, offers examples of discrimination both from the white Canadian public (in this case children) and from representatives of the state (teachers). His oldest sister Georgina remembered discrimination in their rural school in the 1840s: "the teachers were okay, but some of the other kids were beating

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170 Among others, see Maria Campbell, Halfbreed (Toronto: McClelland and Stewart, 1973); Bonita Lawrence, “Real” Indians and Others: Mixed-Blood Urban Native Peoples and Indigenous Nationhood (Lincoln: U of Nebraska Press, 2004), 173–90; St-Onge, Saint-Laurent, Manitoba.
us up... There was a lot of name-calling and bullying."\[^{171}\] His younger sister Virginia Belcourt, reminisced, "Sometimes I remember a teacher would call us 'dirty Indians,' and the kids would want to fight..."\[^{172}\] In urban settings, Metis and other Indigenous people equally shared the experience of discrimination, often in situations whites took for granted, such as renting an apartment; few landlords checked status cards but instead relied on appearance to make their judgements.\[^{173}\]

In the nineteenth century people with a treaty relationship with Canada received Indian status, with all its rights and disadvantages, while those without a treaty relationship ended up with a different set of rights and disadvantages. These two official classes of Indigenous peoples have consequently had very different relationships with the Crown to this day. The 1982 Constitution included the Métis as one of Canada's Aboriginal Peoples, but the long-term consequences of this are still uncertain. What we do know is that, despite the challenges they have faced, the Métis in Canada have resisted erasure and are actively working to flourish and grow.

Conclusion

Despite Canada's less than honourable record, there are some historical moments that can provide a precedent for a more principled future Crown-Métis relationship. For example, McKenna, scrip commissioner in 1899, saw scrip as a territorial right of the Métis, due to their possession of the soil in an "aboriginal way." This was an implicit recognition of the Métis' own Aboriginal rights not derived solely from their First Nations ancestry.¹ This demonstrates that there could have been a space created for the Métis within a more inclusive Indigenous category, which could have allowed for self-determination, land rights, and recognition as a people. Instead, the Métis were characterized most often as mixed, racially and culturally; any recognition of their Indigenous rights was most often perceived as a result of their partial "Indian" ancestry. The government perceived scrip as a way of both recognizing and "extinguishing" their partial Indian rights, and receiving scrip therefore put a person legally into the category "white." At times, "Half Breeds" (a category that included Métis and many non-Métis people of mixed ancestry) were defined as "semi civilized," as a specific kind of cultural synthesis that relied on the colonial civilized/savage dichotomy and unilineal notion of human progression through cultural stages.

This view makes clear one reason the government preferred to categorize the Métis as white, because they thought categorizing them as "Indian" would be moving them backwards or downwards on the evolutionary scale. Classing the Métis as white also served a more practical purpose. It saved money for the federal government, because if they were not classified as “Indians,” the health, welfare, and education of the Métis were the responsibility of the provinces. Additionally, the more “half breeds” that were categorized as white, the fewer

“Indians” the government owed treaty money. This was always a struggle, however, because the
government also had other (often conflicting) goals, particularly control and pacification. At
times, various government departments, jurisdictions, and individuals wished the Métis and
people of mixed ancestry to be categorized as “Indian,” so they could use the regulatory powers
of the Indian act to better control them.

Despite these dominant perceptions of the Métis, there have been, since the beginning of
the period of this study in 1816, moments when the state did recognize the Métis as free,
independent, and Indigenous, though they did not necessarily use this terminology. Some few
lawmakers and officials listened when the Métis presented themselves as an independent "tribe,"
as a free and "civilized" Native people, and as the representatives of the "Indians" to whom they
were related. Today we might use different terms: the Métis were a self-determining nation, a
distinct Indigenous People, and experts in diplomacy and intercultural communications.
Translating these terms into modern day speech may appear be an exercise in anachronistic
thinking, but it is very revealing. Despite the changes over time, and the diversity of perspectives
and identity claims over the centuries, there is a core of something that is remarkably consistent
about Métis self-presentation.

Most officials and policymakers, however, persisted in labelling the Métis using their
own world view rather than recognizing Métis as an Indigenous self-owning people. One reason
for this is simple ignorance. They knew little about the Métis or about the social categories of the
diverse First Nations in North America. They used their own preconceptions, stereotypes, and
the ideas and knowledge that were available to them. Many of these ideas were adopted from
other Imperial and international contexts and adapted to apply to local conditions. Ideas about
race, cultural evolution, and British superiority tended to obscure the Métis' self-presentation.
The government, at times, also perceived the Métis as a significant threat. In hindsight, the Métis resistances from 1816-1885 might appear as tragic and doomed to failure. But at the time, the Métis were strong, politically astute, and fierce— they were truly a force to be reckoned with. At times, they were a real threat to Canada. The Red River uprising of 1869-70 jeopardized the very fragile foundations upon which Canada was built. The government did not want to acknowledge any competing worldviews or power centres as equals. The documents (particularly those from 1869-70) often reveal a sense of mixed animosity and respect on the part of the state. However, the images the government preferred to present after 1885 were less powerful: of neediness, indigence, and racial failure, but with the potential to be assimilated into the white lower social classes. The government hoped everyone would forget about the Métis, and they would disappear, undistinguished and undistinguishable, absorbed by the dominant society. As the public perception of the Métis became further pathologized in the twentieth century, there was increasing tendency to hide their Métis-ness.\(^2\) Despite this, they did not disappear as a people.

Today, by most social metrics the Métis experience similar forms of social and economic discrimination as First Nations and people of color. For instance, they are overrepresented in families with foster children. In 2011, 1.7% of Métis children were in foster care, compared with 0.3% in the non-Aboriginal population.\(^3\) Their rates of post-secondary education (54.8%), are similarly lower than the non-Aboriginal population (64.7%). Their 2010 median after tax income was $24,551, compared with that of non-Aboriginals at $27,622.

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This gives some clues as to the implications of state categorization, in particular how the Métis have had to contend with the legal category "Indian." On the one hand, they lacked the rights associated with that identification, including treaty rights, land, or annuities. Other than the settlements in Alberta established in 1938, they never did achieve their goals of protected self-governing Métis-owned blocks of land. The state did not recognize their rights to harvesting or self-governance. Many, continuing to practice their economic activities, were essentially turned into criminals by the new laws of the land; they survived by inhabiting (illegally “squatting on”) unused Crown land, hunting, fishing, or trapping without a license (“poaching”), and trading (“smuggling”). There was little security in a life like this, and they were often landless and financially impoverished. Despite this, many continued to value their freedom. The collective strength and good humour of so many Métis people helped them cope and survive. In some ways their lack of official categorization provided some benefits compared with Indigenous People categorized as "Indians." Those Métis who did not have Indian status were legally able to own property and vote. Their mobility was less restricted, and fewer oppressive laws and regulations applied to them.

Although people need to work within state categories to some degree, these categories did not necessarily overwrite their own self-understandings. Many Métis quietly practiced their customs and traditions at home, while trying to visibly blend into the dominant society when possible. However, many became so good at it that their children did not even know they were Métis. This was good for survival of the families, but helped to further increase their

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5 For some wonderful examples, see Campbell, Stories of the Road Allowance People.
6 Anonymous, Personal Communication, August 26, 2012
“invisibilization” and marginalization. On the other hand, those Métis that did have Indian status had similar experiences to many First Nations people in the nineteenth and twentieth centuries. But this does not mean they lost their "Métis-ness," even years later, “any more than the state’s legal ‘Indian’ status necessarily wiped out being Cree or Ojibwa;” such categories are not exclusive and people usually have multiple self-understandings.

Figure 6 - Bernard Leroux, Colonial Inversion, 2017. 
Artist Statement: “Colonial Inversion seizes on the term Bois Brule to ‘return the gaze’ as Franz Fanon would have framed it, imagining the transformative process of combustion on Crown symbols as a way for Metis to impose the popular reference upon the Crown.” Photo courtesy of the artist.

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7 Richardson, Belonging Métis.
8 Tough, “Neither Fish nor Indians,” 160.
Ultimately, the lack of an official historical definition also means there is an opening, a space for these discussions, for Métis to define themselves today. Many Métis organizations and individuals are seeking the things that are important to them as a people: land, recognition, self-determination. Figure 6, “Colonial Inversion,” depicts the work of contemporary Métis artist Bernard Leroux. He has taken old colonial-era wooden objects and applied fire, transforming them into bois brûlés, burnt wood. Through art, politics, and stories, Métis today are reimagining a new relationship between themselves and the Crown. There is great diversity among the Métis with a significant range of experience of "being Métis," and they are working in various ways to reformulate their relationship to the Canadian state. The definitions of the state did have a hand in changing and transforming the Métis, but did not destroy them.

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9 For an interesting schema of the varying types of cultural experience (for example, “Raised white with no knowledge of Métis background,” to “Raised Métis in a Métis environment,” to “Raised as a First Nations person in a First Nations environment”) see Richardson, Belonging Métis, 93.
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