



HIS 262S: #8 Understanding Canada's Constitution and Constitutional Changes:



The Long Journey to Independence, 1867-1982

Professor Heidi Bohaker

Definitions

▶ Sovereignty – Peace of Westphalia, 1648 and international law

▶ Constitution

▶ Principles or rules for governance,
 ▶ Idea of rights

▶ Can be written or unwritten

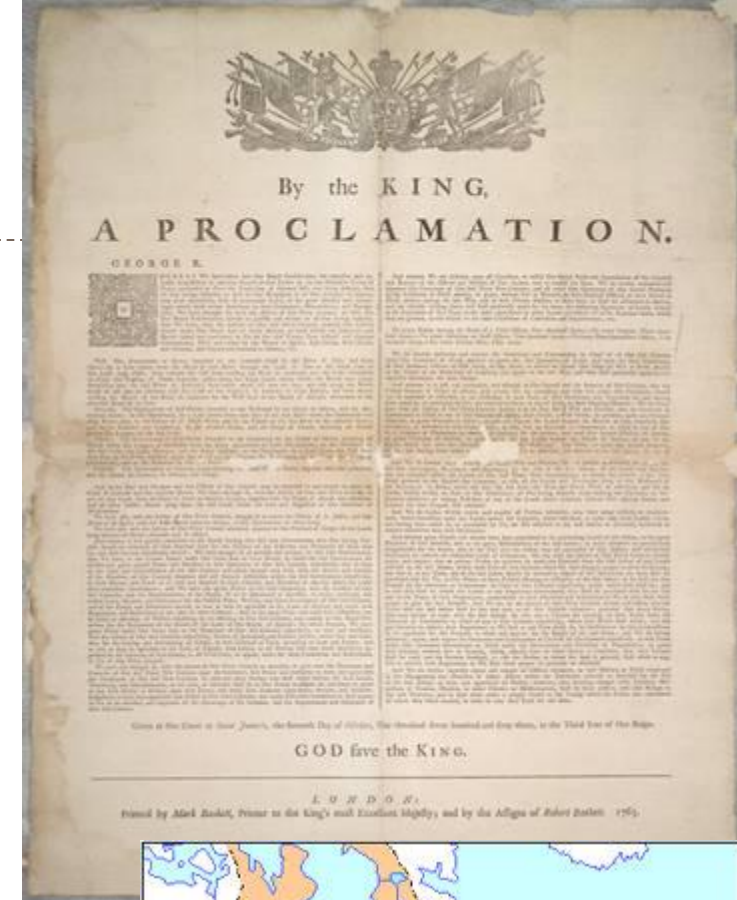
Examples

- ▶ United Kingdom (unwritten)
- ▶ United States (written)
- ▶ Canada (written, with unwritten principles)
- ▶ Haudeonsaunee (Six Nations): The Great Peace (unwritten, oral)



Early Canadian Constitutions

- ▶ 1763: Royal Proclamation (King George III)
- ▶ 1774 Quebec Act (Act of British Parliament)
- ▶ 1791 Constitutional Act (Act of British Parliament)
- ▶ 1840, Union of the Canadas Act (Act of British Parliament)



The British North America Act, 1867

The goals for the federal system.

- ▶ “We desire local self-government in order that the separate nationalities of which the population is composed may not quarrel. We desire at the same time a strong central authority. Is there anything incompatible in these two things? Cannot we have both? What is the difficulty?”
- ▶ *Globe*, 17 September 1864

Interpreting Confederation

“As a distinct and separate nationality,
we form a state within a state. We enjoy the full
exercise of our rights and the formal recognition of
our national independence.”

– *La Minerve*, 1 July 1867



British North America Act, 1867

<u>Federal (Section 91)</u>	<u>Provincial (Section 92)</u>
defense	public lands
trade and commerce (including customs)	municipal institutions
direct and indirect taxation	direct taxation
currency	tavern and other licenses
navigation and shipping	local public works
“Indian” Affairs	solemnization of marriage
bankruptcy	property and civil rights
make laws for “peace order and good government”	“Generally all matters of a merely local or private Nature in the province”



THE BNA Act – Allowed for Bringing New Provinces Into Confederation


- ▶ 1870 Manitoba Act
- ▶ 1871 British Columbia
- ▶ 1873 Prince Edward Island
- ▶ 1905: Alberta/Saskatchewan
- ▶ 1949: Newfoundland

And changing/extending Provincial
Boundaries/Redefining Territories

1912-1913: Quebec, Ontario, Manitoba

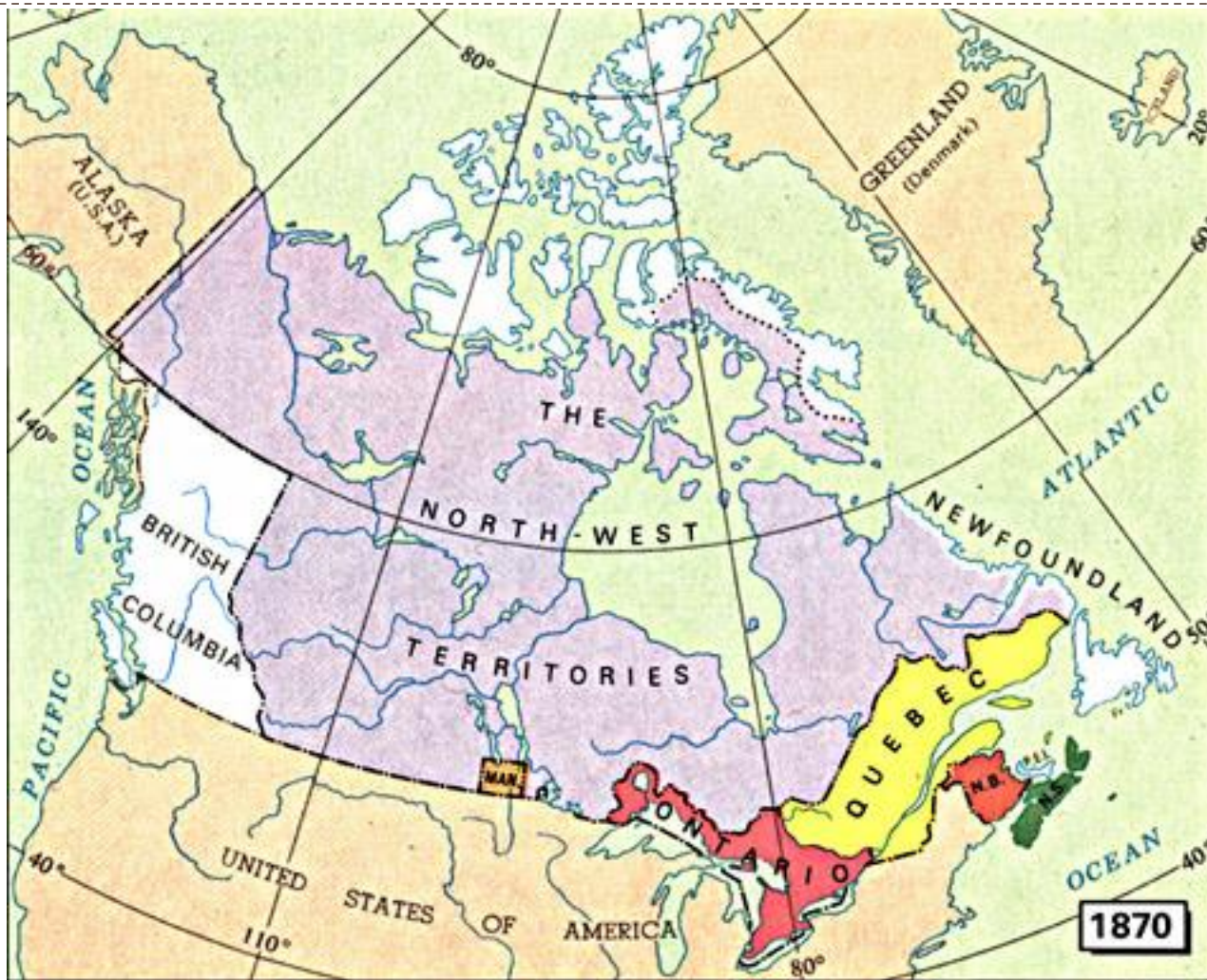
1999 Nunavut





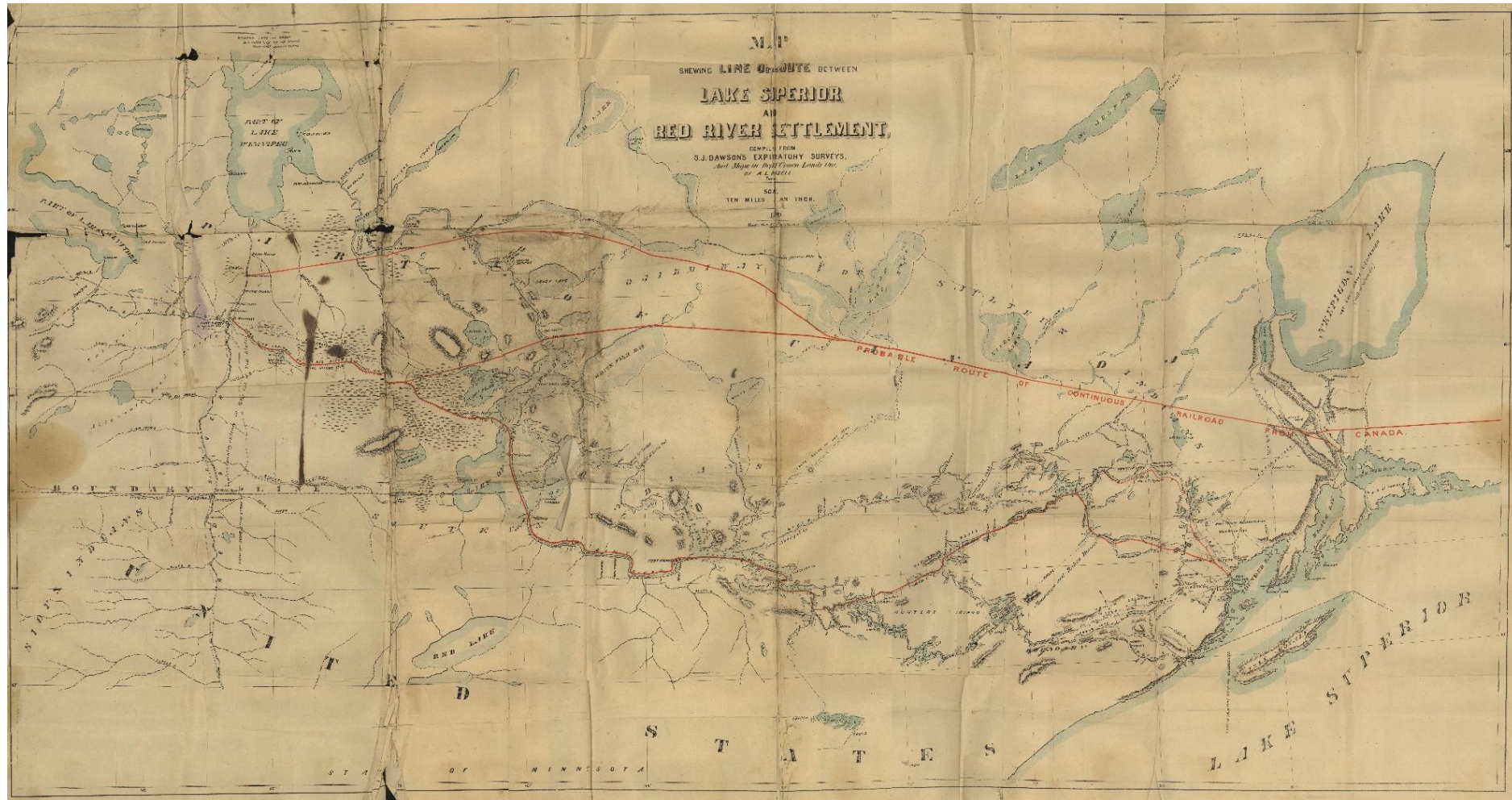
Expanding Canada From Colony to Colonizer

“Sale” of Rupert’s Land to Canada



The North-West Territories (Rupert's Land and the North-Western Territory) are acquired by Canada from the Hudson's Bay Company. From part of them Manitoba is created as the fifth province.

The Dawson Road: NW Angle to Fort Garry, 1869



The Métis



Paul Kane," "Half-Breeds Running Buffalo," 1846 Royal Ontario Museum.

A. Red river carts in encampment; Métis traders, circa 1872

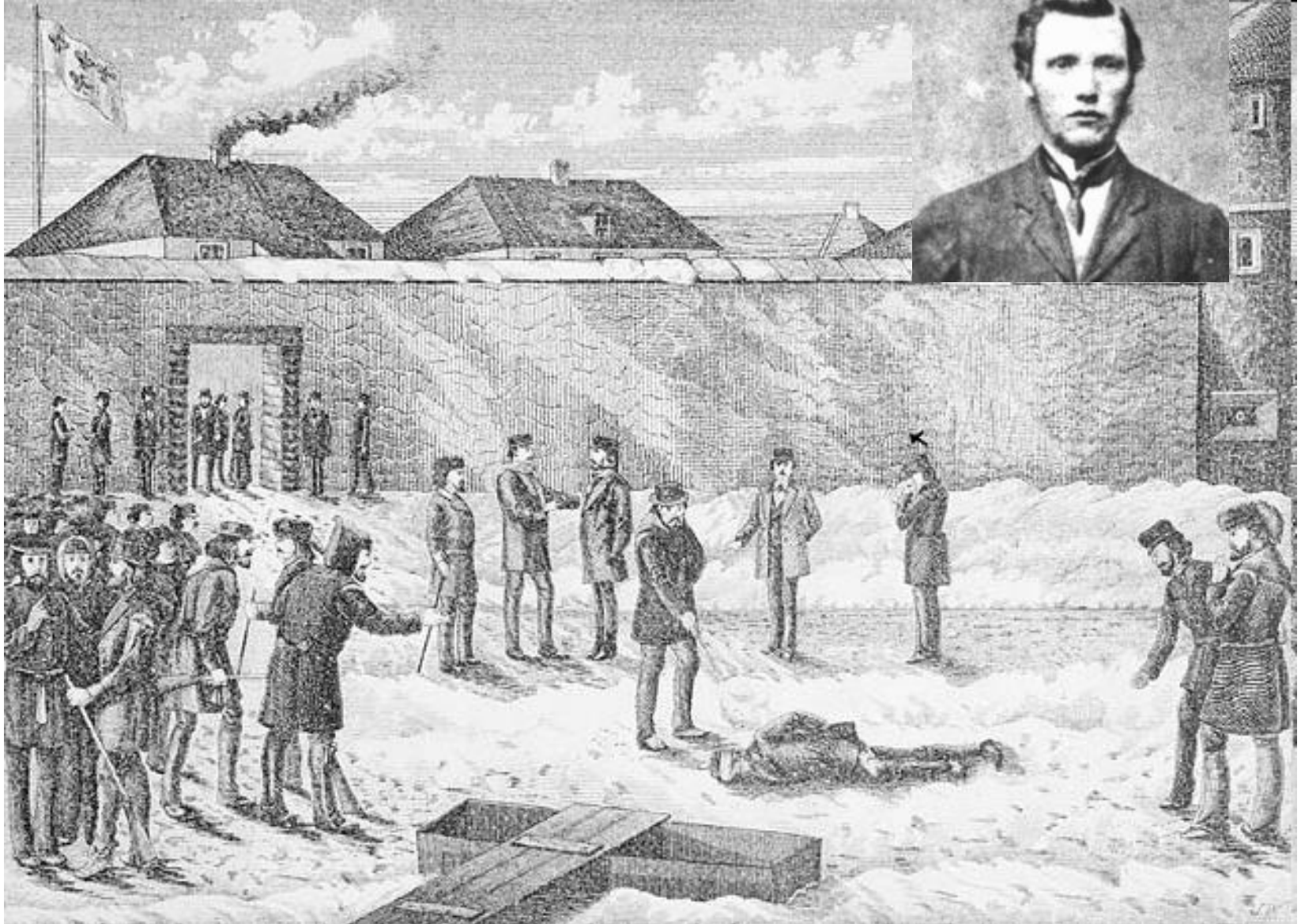
Source: [Archives of Manitoba](#), Boundary Commission (1872-74) 165, N11932.

I The Riel Rebellion at the Red River Colony

i. Provisional Government



Provisional Government of the Métis Nation
Councillors of the Provisional Government of the Métis Nation, 1870.
Library and Archives Canada, e000009388; PA-012854



ii. The Execution of Thomas Scott. Print, likely 1870. Library and Archives Canada.

Red type: **Dominion of Canada, 1870**

Black type: British Possession or Colony



“From Sea to Sea” – Consolidating Confederation

POST Riel

▶ Macdonald's vision

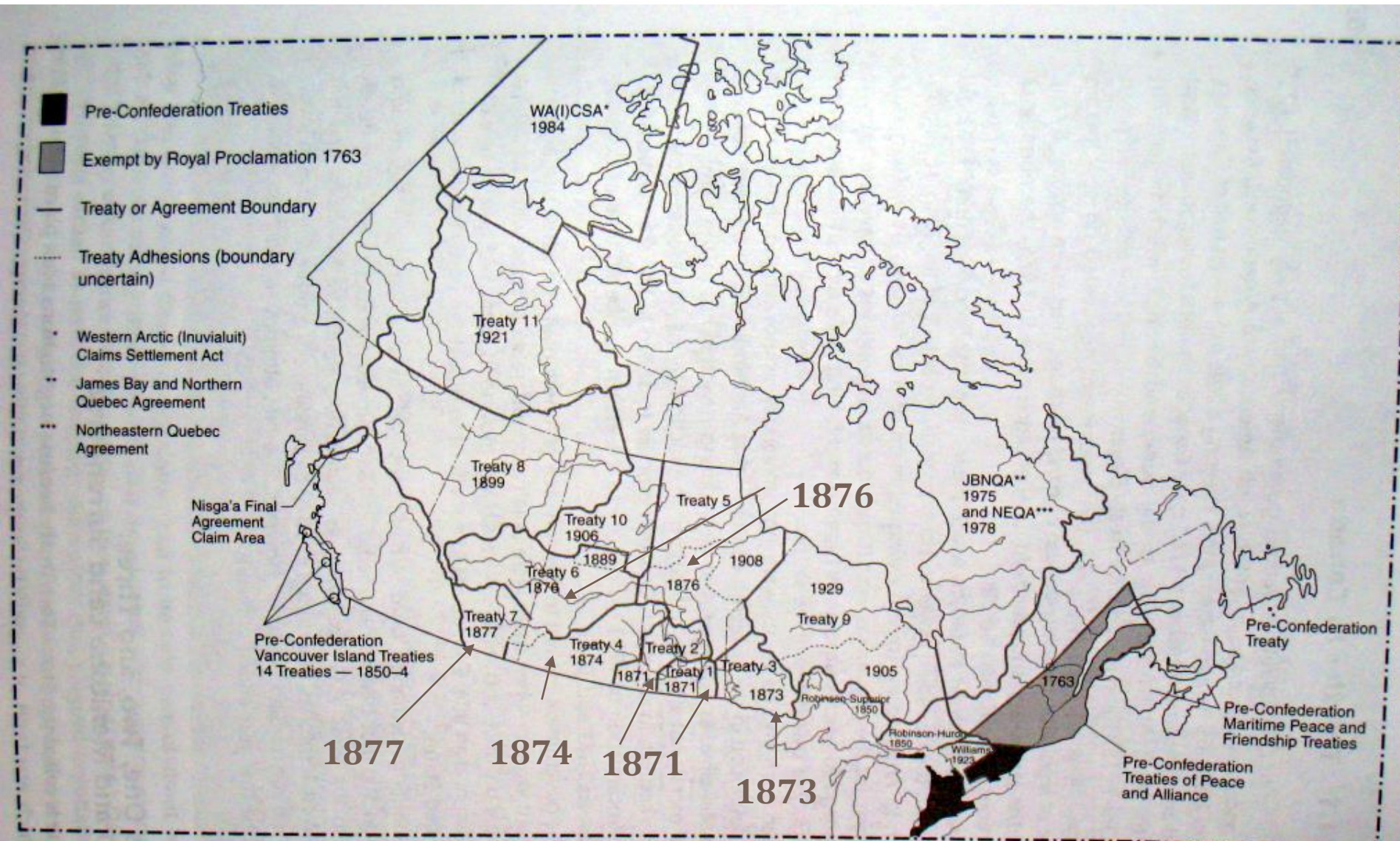
- ▶ BC: 1871
- ▶ PEI: 1873
- ▶ Build Railway – Pacific Scandal

▶ Alexander Mackenzie's Liberal Government: 1873-1878

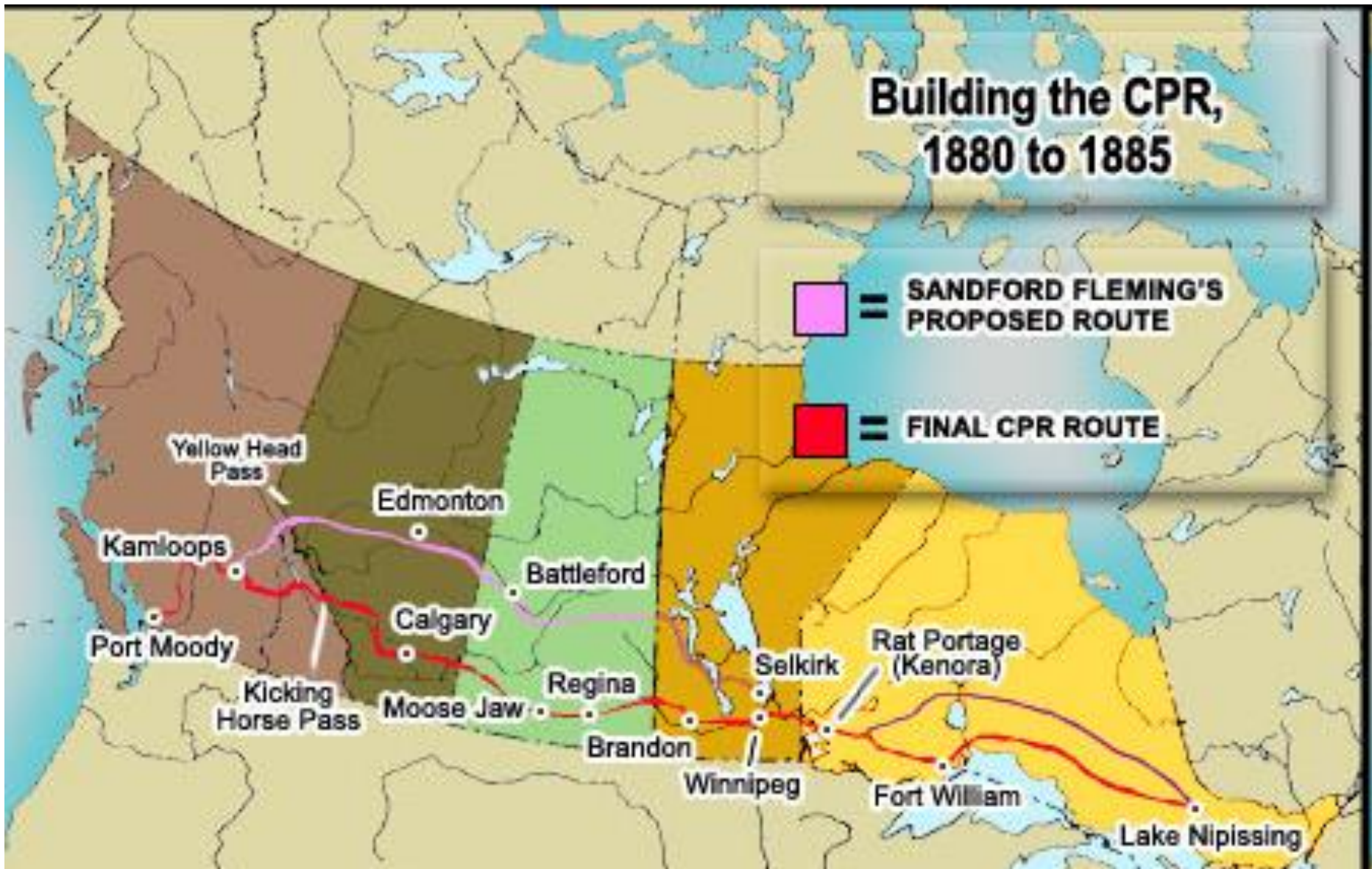
- ▶ Secret Ballot
- ▶ Supreme Court
- ▶ Railway on hold
- ▶ Continue to negotiate treaties with First Nations

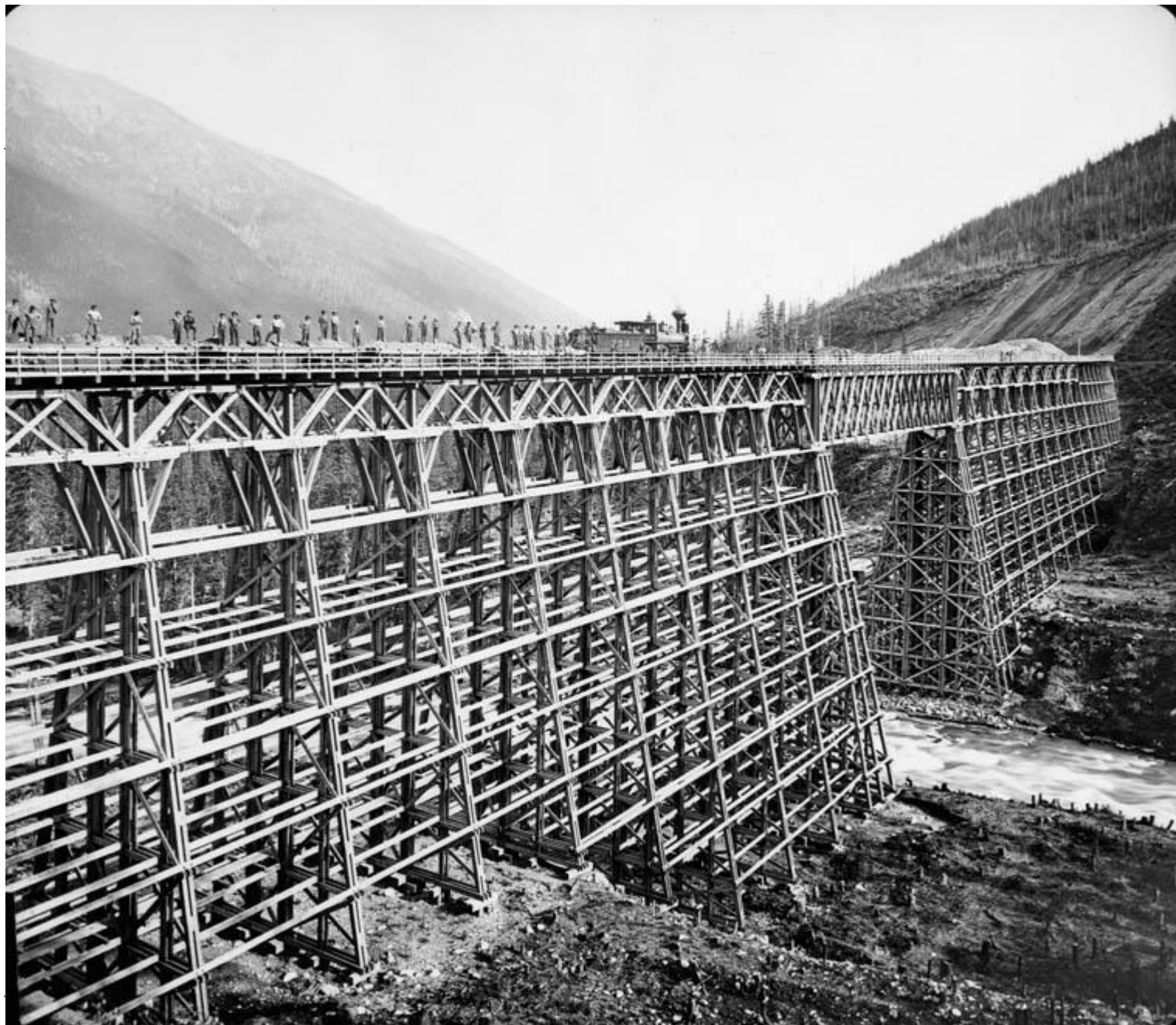


II. Possessions/Dispossessions



3. Building the Railway











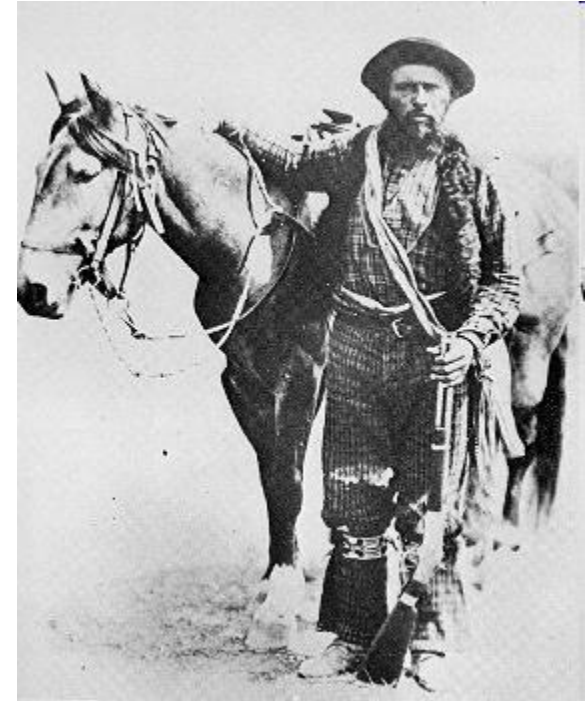


U.S. GEOLOGICAL SURVEY
WHITE MOUNTAIN, ARIZONA

The Return of Louis Riel



- ▶ 1869-70: rebellion
- ▶ Exile -> US citizenship
- ▶ 1884 -> Batoche
- ▶ 1885 -> new provisional government



Riel's trial





J.W. Bengough cartoon, *Grip*, 1885.

SOURCE: National Archives of Canada/C-22249

1880 Arctic Transfer



Source: Historical Atlas of Canada



Moving towards full independence: Control of External Affairs

The Final Step: Being Able to Amend the Constitution
Internally

Statute of Westminster, 1931



CHAPTER 4.

An Act to give effect to certain resolutions passed by Imperial Conferences held in the years 1926 and 1930. A.D. 1931.
[11th December 1931.]

WHEREAS the delegates of His Majesty's Governments in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland, at Imperial Conferences held at Westminster in the years of our Lord nineteen hundred and twenty-six and nineteen hundred and thirty did concur in making the declarations and resolutions set forth in the Reports of the said Conferences:

And whereas it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom:

And whereas it is in accord with the established constitutional position that no law hereafter made by

True foreign policy
independence



1982, Canada Act



- ▶ Canada now able to amend its own constitution without going to Britain's parliament.
- ▶ Change of tradition of Parliamentary Supremacy from the UK
- ▶ Charter of Rights and Freedoms now supreme over Parliament.



THAT'S ALL!



On to Elections...

Professor Heidi Bohaker (heidi.bohaker@utoronto.ca)