

CHAPTER 13 THE METIS AND “INDIAN” QUESTION

That the Dominion Parliament ... proceeded to organize a government for our country, giving to the Governor who was to administer the same, unlimited power ... assisted by a council to be chosen by himself, consisting of Hudson's Bay Company officers and Canadians; and thus your memorialists (the people) found their ancient surveys, land marks, boundaries and monuments of title, set at naught and disregarded, and a Government established over their heads, in the selection of the rulers and administration of which, they had no voice; and by this process they found that their homes, their country and their liberties, were held at the mercy of a foreign power and subject to a foreign jurisdiction. —“Memorial of the people of Rupert's Land and North-West” to President Ulysses S. Grant, Red River, October 3, 1870.

The strong desire of speculators and settlers in Canada, especially Canada West, to develop Rupert's Land and the lands beyond it—the area that comprised the Hudson's Bay Company's Northern and Southern departments and where it had suzerain rights— was one of the driving forces behind Confederation. They saw the region as a source of raw materials and a market for eastern goods. Most Canadian annexationists wanted to simply brush aside Native people and the HBC and take control of the region. The Métis refused to let them. Taking up arms in 1869 and 1870, they forced the new Canadian government to address their aspirations and some of their most pressing concerns in the Manitoba Act. The government moved more slowly to establish the legal and administrative frameworks that it believed it needed to deal with other Native people. It took a major step in that direction in 1876 when Parliament passed the Indian Act. This crucial piece of legislation consolidated earlier colonial acts dealing with the First Nations. The primary goal of the act was to encourage assimilation. It was also supposed to protect the interests of Native people, most of whom resided west of Ontario.

THE CANADIAN INVASION

Having already gained title to all the Aboriginal lands of Canada West that were suitable for agriculture, developers cast their eyes northwestward to Rupert's Land for a new area to colonize. Canadian annexationists did not want to recognize the validity of Aboriginal or HBC titles to the area they coveted. They lobbied the British Parliament to review the company's licence and colonizing activities, and they drummed up excitement about the development potential of the prairie West. Their lobbying led the Canada West and British governments to back separate well-publicized scientific expeditions to the region in the late 1850s. The Canadian excursion, led by Henry Youle Hind, and the British-sponsored party, commanded by Capt. John Palliser, provided solid information about the Plains people and those of the Rocky Mountains north of the 49th parallel, made detailed descriptions of the agricultural potential of the prairies, gave accounts of coal and other mineral deposits, and discussed possible transcontinental transportation routes.

Politicians and would-be developers and speculators paid little attention to Hind's and Palliser's ethnographic work, but they were thrilled by their discussion of the economic potential of the sprawling region. The information circulated widely and had an impact well beyond Canada. It led the International Financial Society, a syndicate of English and French bankers and stock promoters, to buy control of the HBC in 1863. The society recapitalized the company and made a highly successful public offering of its shares by promoting the development possibilities of the chartered territory. Subscribers hoped to make a windfall profit from the sale of Rupert's Land to

the British or Canadian government; however, the British government had no intention of buying the territory, and the Canadian government could not afford the high price the company's directors led the shareholders to anticipate.

After protracted negotiations, Canada agreed to buy Rupert's Land for a mere £300,000 on March 8, 1869. The HBC kept one-twentieth of the lands of the "fertile belt," which Palliser had defined as the tall-grass prairies and parklands, and it retained the developed lands around its numerous trading posts (approximately fifty thousand acres). These land grants were compensation for the disappointingly small cash payment the company received. The agreement confirmed all the titles the HBC had issued to settlers (mostly in the Red River colony) before March 8. The failure of HBC directors to secure a large cash settlement left a majority of the shareholders very angry; they had expected a settlement of as much as £5 million. The reaction of the shareholders was mild compared with that of the Aboriginal residents of the northwest, who were outraged. The company and the two governments had treated the entire affair as if it were a straightforward real estate deal involving vacant territory, although the company had sought and obtained legal protection from land claims through the Rupert's Land Act of 1868. This act was passed by the British Parliament to facilitate the transfer of the HBC's title to Canada. It provided that the company would not be liable for "any claims of Indians to compensation for lands required for purposes of settlement." According to the deed of surrender, the Canadian government accepted this responsibility. What deeply offended Native people was that no one consulted them about their land during the prolonged negotiations.

The Métis strongly feared that the sale of Rupert's Land would hurt their economic and political interests. They distrusted Canadians, and with good reason. Following the Sayer trial, the HBC had made a greater effort to accommodate Métis interests. The Red River colony remained reasonably tranquil until Upper Canadians began to settle there and elsewhere in the northwest. These newcomers championed annexation to Canada, disdained the HBC, looked down on the hunting and trapping lifestyles of the prairie nations and Métis, and gave little credence to the company's, or the Native people's, claims to land. Dr John Christian Schultz, leader of the small but vociferous Canadian Party, was their main spokesman. From 1865 to 1868 he published the *Nor' Wester* newspaper, which championed the annexationists' cause. The immigrants from Canada West also encouraged divisions within the colony between the mixed-bloods and Métis. By the summer of 1869, the Métis of Red River had decided to block the unconditional transfer of Rupert's Land to Canada, a decision that marked a major turning point for Native people in the West. They sprang into action when a Canadian land-survey crew arrived in August. Led by the twenty-five-year-old Louis Riel, whose father had been among the armed group of Métis at the Sayer trial, they stopped the government surveyors, informing them that Canada had no authority in the territory. In keeping with their tradition of organizing themselves with suitable leadership—the buffalo hunt provides an example of this—the Métis selected a National Committee and chose Louis Riel as its secretary.

They made a wise choice. Riel was one of the best-educated young Métis living in the settlement. As a young boy he had attended school at St Boniface in Red River. The Catholic bishop, Monseigneur Alexandre Taché, and his teachers were greatly impressed with Riel's ability and piety. In 1858, with Riel's parents' blessing, the bishop sent the fourteen-year-old Riel

off to study for the priesthood at the Collège de Montréal. He proved to be a good scholar, but after seven years of intense study, Riel decided against a life of serving the Church and left the college. He found employment in the firm of a leading Montreal lawyer, where he remained for a little more than a year before returning home in 1868 on the eve of the Red River uprising. In October 1869, the Métis prevented William McDougall, lieutenantgovernor-designate for Rupert's Land and the North-West Territory, from entering Red River, and shortly thereafter they seized the HBC's Fort Garry. After forming a provisional government, the Métis set about trying to pull the colony together to present a united front for negotiating terms of union with Canada. The story of what happened next is well known. Sir John A. Macdonald and his government wanted to avoid further conflict, so they invited the people of Red River to draw up a list of demands and send a delegation to Ottawa to discuss them. At a large public meeting held in the courtyard of Fort Garry on January 19, 1870, Riel proposed that the English-speaking and French-speaking communities each elect twenty representatives to a committee that would determine how best to reply. The assembly accepted his suggestion and the Convention of Forty had their first meeting a week later. After lengthy deliberations, they drew up a List of Rights to present to Ottawa. At Riel's insistence, members of the convention also created a provisional government before they finished their work. The new government was proclaimed on February 10, 1870, with Riel as president.

In this capacity, the Métis leader dispatched three envoys to Ottawa to submit a revised list of terms. His government demanded that the new province (Manitoba) be admitted to Confederation on equal terms with the other governments; all the properties, rights, and privileges that the inhabitants of the territory enjoyed at the time of union be continued; the legislature of the province have full control over all public lands; and everyone involved in the uprising be granted amnesty. The provisional government also wanted the new province to include all of what was now, for the first time, called the North-West Territories—formerly the HBC's Rupert's Land and the North-West Territory. (Out of this was carved the province of Manitoba, and in 1905 Alberta and Saskatchewan.) Privately, Riel instructed one of the negotiators, Abbé N. J. Richot, to “[d]emand that the country be divided into two so that the customs of two populations [French Catholic and English Protestant] living separately may be maintained for the protection of our most endangered rights.” In other words, Riel and his followers sought a way to join Confederation under terms that would allow these two cultures to flourish in the newly emerging country. Métis leaders knew that this would not be possible without a substantial land base.

Macdonald and his close advisers rejected the idea of handing over control of land and natural resources to the new provincial government and opposed creating large reserves for the Métis or any other group. After all, the financially strapped Canadian government had just paid the HBC £300,000 (\$1,500,000) for its stake in the territory, and it had still to buy Aboriginal title. In addition, the new province the Métis wanted to create would be in a strong position to impede, perhaps even block, Ottawa's nation-building schemes, and the establishment of large areas of reserve land would likely deflect settlers southward into the United States. Nevertheless, concessions were made for pragmatic reasons.

The Manitoba Act was pushed through Parliament in 1870, allowing for the entry of the province into Confederation as a nearly equal member. Ottawa retained control of public lands and natural resources, as it would when Alberta and Saskatchewan became provinces thirty-five

years later. As a further limitation on its economic and political power in the northwest, Ottawa insisted that Manitoba be of “postage stamp-size.” Nevertheless, the Manitoba Act did provide the official bilingualism the Métis wanted and the educational rights the various denominations exercised “by law or practice at the union.” During the negotiations leading up to the act, one of the most perplexing issues was the Métis’ concern about the land rights of those families who held HBC titles in the colony, or who squatted elsewhere on Aboriginal land, and the future rights of their descendants. The Canadian government found itself in an awkward position. An Ottawa politician expressed it tersely: “The Government had to do two things, either they had to send an army to conquer those people and force them to submit, or to consider their claims as put forward by their delegates.... [I]t would be folly to refuse such a small concession when compared with the amount of land which the Hudson’s Bay Company had been allowed to retain.” Faced with this reality, Parliament agreed that “half-breeds” had a valid claim because of their part-Aboriginal ancestry. It gave its approval to the section of the Manitoba Act that stipulated: “It is expedient, towards the extinguishment of the Aboriginal Title to the lands in the Province, to appropriate ... one million four hundred thousand acres thereof, for the benefit of the families of the half-breed residents....” The governor general and lieutenant-governor were given the responsibility for selecting the lots and distributing them to the children of the “half-breed heads of families” living in the province in 1870. The statute also recognized the right of “half-breeds” to occupy the long-lot farms they had already developed along the Red River. Finally, it gave pre-emption rights to settlers located “in those parts of the Province in which Indian Title has not been extinguished.” The purpose of this provision was to allay the concerns of the Métis, mixed-bloods, and others who had settled beyond the boundaries of the HBC grants included within the Peguis Treaty area.

The Manitoba Act represented a major victory for the Métis, with a crucial exception—the act did not specify how the 1.4 million acres should be allocated to them. Problems arose immediately. One of the most troublesome difficulties was that officials had no idea how many inhabitants of mixed ancestry would be eligible for the grants. The government conducted two censuses (in 1870 and 1875), but they were both undercounts because many families were away hunting or engaged in other activities when the enumerators arrived. Making matters worse, the first lieutenant-governor, Adam Archibald, arbitrarily decided to include family heads in the count, even though this was in clear violation of the act. The Métis strongly objected to his unilateral action. Previously they had tried, but failed, to obtain government support for the idea of blocking sales of any allocated lands for at least a generation. Archibald flatly rejected this notion because he thought it ran counter to the trend of bringing “Real Estate more and more to the condition of personal property and abolishing restraints and impediments on its free use and transmission.” Having failed to gain this concession, influential Métis did not want heads of families included among those who were entitled to receive land because these adults, most of whom were illiterate, had the right to sell their holdings immediately. Minors, on the other hand, presumably could not do so until they reached the age of majority. By making sure that only the children received warrants for parcels of land, Métis leaders thought that the land base their people had obtained would be safe during this crucial transitional period. In the end they had their way, and family heads were stricken from the list of those eligible for land grants. Métis leaders also pressed to have the land distributed in contiguous blocks so that their people could

control sizable territories collectively. Initially the government resisted this request, but in 1872 it yielded.

While government officials and the Métis wrangled over land-distribution procedures, settlers from Ontario flocked to Manitoba. At first, Ottawa gave the newcomers the right to preempt land ahead of survey crews and before the Métis had selected their reserve plots. This angered the Métis, and the spectre of violence caused the government to rescind the practice in 1871.

Nonetheless, these early preemptions further complicated the land-allocation plan. After several false starts, the government finally distributed the reserved land in 240-acre parcels in the mistaken belief that approximately 5,100 children were eligible to receive grants. In fact, 7,027 bona fide claimants came forward, of whom 6,034 received parcels of land and 993 obtained certificates (scrip) valued at \$240 apiece instead of land. The government arrived at this figure based on the assumption that the land was worth about \$1 an acre on average. Although officials had largely finished making the allotments by 1881, the process dragged on for years. Remarkably, Louis Riel's son received the last grant in 1900; he had been absent from Manitoba in 1875. The government continued to process late scrip applications as late as 1919.

Unfortunately, the Métis leaders' fear that little of the land would remain in the hands of their people for very long proved to be well founded. Speculators did a brisk business in land and scrip. A large number of Métis sold their land, or their claim to it, so that they could move west in pursuit of the retreating buffalo herds or to reestablish themselves well beyond the frontier settlements. Many of them chose the North and South Saskatchewan River valleys, but some settled as far away as the Peace River valley. In the end, the idea of giving the warrants to minors provided almost no protection for the Métis land reserves. A large number of the children conveyed their entitlements through a power of attorney.

The politically contentious issue of pardoning Louis Riel was another acute problem for the Canadian government. During the Red River uprising, a number of Canadian malcontents attempted to overthrow the provisional government and were arrested. Thomas Scott, a violent and boisterous Orangeman from Ulster, was the most obstreperous of them. Riel's government court-martialled and executed him—thereby making its only major political blunder. From that day forward, Riel was a marked man in the eyes of the Red River Canadian annexationists led by Dr Schultz, who held "indignation meetings" in Ontario to inflame public opinion against Riel. A pardon for Riel was out of the question, even though the Canadian government had promised a general amnesty on December 6, 1869, in a pragmatic gesture aimed at persuading the rebels to put down their arms. In February 1872, the Métis leader fled to the United States for safety, helped by a grateful Prime Minister Macdonald, who covered his expenses. Riel was so popular among the Métis, however, that they even elected him to the federal Parliament while he was in exile. In 1875, the House of Commons granted an unconditional amnesty to all who had taken part in the uprising—except for Riel and two others. It gave Riel a conditional absolution; he was banished from Canada for five years. Riel spent nearly all of the next ten years in the United States, where he became a schoolteacher in Montana. Outside Manitoba, the country remained deeply divided about how Riel and the Métis should have been treated. French-Catholic Quebec strongly identified with Riel, the Métis, and their cause. Most people in English Protestant Ontario wanted revenge against the Métis and their leader. They had to wait until 1885.

THE INDIAN ACT

After Confederation, the Canadian government faced the difficult job of developing the legal framework it needed to discharge the responsibility for Aboriginal affairs it had inherited, with reluctance, from the imperial government. It took nine years before Parliament passed the first Indian Act in 1876, which combined all laws affecting Indian people. The consolidated act provided for the uniform treatment of “Indians” everywhere in Canada.

The act defined “Indians” as being men who belonged to a band that held lands or reserves in common, or for whom the federal government held funds in trust. The wives and children of these men also had Indian status. Women who married outside the status-Indian community—and their children born of the marriage—lost their Indian status and all rights associated with status and band membership forever. This provision violated long-standing post-contact marriage practices. Ostensibly, it was intended to protect Indian lands from white opportunists. Indian men were free to choose a non-Indian partner, who then acquired Indian status. According to the act, all “legal” Indians were wards of the federal government and were to be treated as minors without the full privileges of citizenship. (In this and subsequent chapters, the term “Indian” is applied to those who were defined as such under the 1876 act and its various revisions.)

The new legislation placed Indian reserve land in the trust of the Crown and stated that this land could not be mortgaged or seized for defaulted debts, nor could it be taxed. In the spirit of the Royal Proclamation of 1763, it specified that reserve lands could be sold only with the approval of a majority of the adult band members and the superintendent-general of Indian Affairs. Furthermore, only the Crown could purchase it. The government was supposed to hold the proceeds from any such sales in trust, although 10 per cent of the revenue could be paid directly to band members. Likewise, timber and mineral resources on reserve land could not be harvested or removed unless the same procedures for obtaining consent had been followed. Parliament made no provision in the act to accommodate the different kinds of Aboriginal governments that existed at the time of Confederation. It simply stated that elected chiefs and councils would govern all bands for three-year terms. Only the adult males could vote. Band councils were given various responsibilities, including overseeing public works and the suppression of “intemperance.” Concerning the latter, the Indian Act outlawed the manufacture, sale, or consumption of liquor on reserves. Because the government aimed to “civilize” all Indians eventually, the original legislation included a provision for enfranchisement. As a first step towards becoming a full-fledged Canadian citizen, an Indian had to prove that he was literate in English or French, of good moral character, and free of debt—terms most Canadians would have found it difficult to meet. Next, the applicant had to obtain an allotment of reserve land and manage it for three years in the same way a non-Indian would. At the end of this probationary term, the superintendent-general of Indian Affairs could make the candidate a full-fledged citizen and give him title to his allotment. Subsequent amendments to the Indian Act made enfranchisement easier in the hope of encouraging assimilation. A 1920 amendment (repealed two years later) and one reintroduced in 1933 gave the superintendent-general the power to enfranchise Native people without their approval. Most resisted because, until 1960, they lost their Indian status when they gained full citizenship rights.

Superficially, the Indian Act of 1876 created a structure that was designed to teach Native people democratic principles, while it protected their interests until they could stand on their own

feet as Canadian citizens. The reality was that the act allowed the federal government to interfere in all aspects of Indians' lives, because Parliament had the right to amend it without first obtaining their permission. The government frequently amended the act over the years to push forward its own agenda for these people. In short, the act created a special class of people designated solely on the basis of their race, and it established a means for governing them autocratically. Because Canada had assumed the responsibility for governing Indians very reluctantly, the government did not give any priority to their needs. In this respect the new country was no different from its colonial predecessors. The Indian Affairs Department began its existence as an unwanted stepchild in the public service. In the 1860s a separate branch had been created within the colony of Canada's Crown Lands Department, and the commissioner of that department also served as chief superintendent of Indian Affairs. For the first eight years after Confederation, the Department of the Secretary of State for the Provinces looked after Indian affairs. In 1873, federal politicians created the Indian Lands Branch, shifting the portfolio to the Department of the Interior, which mainly promoted western development. Simultaneously, a short-lived Board of Commissioners was appointed to administer Indian affairs in Manitoba, British Columbia, and the North-West Territories. Two years later, the board was replaced with a system of superintendents and agents, but a commissioner for the North-West Territories was retained. In 1880 Parliament created a separate Department of Indian Affairs, but its minister also held the portfolio of minister of the Interior.

This constant restructuring shows that politicians believed it was a good idea to tie Indian Affairs to the federal ministry responsible for natural resources and western development. Once established, this tradition remained in place, except for a short period between 1950 and 1966, when Indian Affairs was housed in the Department of Citizenship and Immigration. Linking the department to the ministries responsible for natural resources, immigration, and economic development was a bad arrangement for Native people everywhere in Canada. Conflicts of interest were inevitable, because the minister responsible for reserve lands and aboriginal title in unsundered territories also looked after the acquisition and disposition of public lands. It is hardly surprising, therefore, that the department often did not defend the interests of Native people.