Fantasies of Sovereignty: Deconstructing British and Canadian Claims to Ownership of the Historic North-West

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Source: *Native American and Indigenous Studies*, Vol. 3, No. 1 (2016), pp. 46-74

Published by: University of Minnesota Press

Stable URL: https://www.jstor.org/stable/10.5749/natiindistudj.3.1.0046

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IN THE SETTLER-COLONIAL CONSCIOUSNESS of the nineteenth century, the origin of Canadian sovereignty in the historic North-West[1] is the Hudson's Bay Company's transfer agreement with the Dominion of Canada in 1870. This transfer agreement was a vital step in Canada's self-understanding as a nation *a mari usque ad mare,* from sea to sea. Negotiated in London under British law, the transfer paved the way for Canada to populate the region with its settlers and to act as the territory's primary political authority. In exchange for transferring these rights, the Company was paid £300,000 and received a one-twentieth of the land of the "fertile belt" in this newly Canadian territory. All of this occurred without the involvement or consent of the Indigenous peoples who were still the numerical majority in the region. The transfer agreement presumed that British sovereignty could be asserted successfully through an act of imperial legislation half a world away, even if it conflicted with local proprietary claims. This claim reaffirmed the imperial logic of the day that Indigenous assertions of territoriality were secondary to European claims of sovereignty. Such a position has been roundly criticized,[2] but has never been fully deconstructed in its connection to claims of Canadian sovereignty in the historic North-West. The purpose of this article is to unpack this basic claim—that the Hudson's Bay Company (HBC) possessed legitimate ownership of the North-West and could sell it to Canada in 1870 without the involvement of Indigenous peoples who lived there.

Contrary to the claims of European empires, Indigenous peoples in the North-West exercised more or less unconstrained political authority over most of their lands both before and after 1870. However, throughout the seventeenth, eighteenth, and nineteenth centuries, British and Canadian institutions mobilized a complex array of legal arguments to claim possession of huge expanses of territory they "discovered" but did not control. For the most part, Canadian political institutions have traced their ownership of the North-West to the Hudson's Bay Company transfer in 1870, which is rooted in the problematic logic of the Doctrine of Discovery. Therefore, this

article shows that at the heart of Canadian claims to ownership of Indigenous lands in the North-West lies an impractical mythology that, in the words of John Borrows, allowed the Crown to secure legal control of Indigenous lands through "raw assertion."[3] In demonstrating this point, I critically analyze five major public political events that position the Hudson's Bay Company transfer agreement as the foundation of Canada's 1870 assertion of sovereignty over the North-West. These events include: (1) the British Crown's initial discovery claim at Hudson Bay; (2) the Hudson's Bay Company Charter of 1670; (3) the Selkirk Grant of 1811 and Treaty of 1817; (4) Canada's North-West discovery via New France; and (5) the HBC transfer agreement in 1869. This article demonstrates that Canada's political claims to ownership over the North-West lay in problematic claims of sovereignty made by British and Canadian explorers, politicians, and businessmen, using language of discovery and sovereignty to obscure Indigenous governance already in practice. These claims are further complicated as they are more assertively invoked at the moment of a settler-colonial transition in the North-West, and are bound up in the changing status of an Indigenous-centered fur trade economy with a new settler project that sought to displace Indigenous peoples from the land both conceptually and physically.

In analyzing the theoretical underpinnings of these political articulations, I am less concerned with Indigenous responses to British and Canadian claims making (although there were many), or the historiography of interpreting such events, than I am in showing that Canada's political claim to the North-West ultimately rests on what James Tully refers to as a *hinge proposition*. A hinge proposition is a foundational assumption that is "relatively immune to direct criticism" because it is part of the "background norms" used by political actors to understand their political community, and thus rarely subjected to critical analysis.[4] The idea that Canada exercises exclusive jurisdiction over the "Canadian West" is premised largely on a fantasy that Europeans found a continent full of primitive peoples who receded from the advance of a politically sophisticated civilization, rather than complex Indigenous polities with intricate political institutions capable of controlling political events in their territories. The hinge in this proposition is that if we recognize that Indigenous peoples are *not* inherently inferior to Europeans, as a growing number of scholars contend,[5] then Indigenous political formations ought to be considered political powers in their own right. If we accept such a logic, we must then call into question how Indigenous peoples ceased to govern themselves and control their territories and how Canadian sovereignty became ascendant.[6] Thus, for Canada to be able to sweep aside preexisting Indigenous political authority, it must rely on a fantasy of sovereignty, predicated on an inherent inferiority of Indigenous political formations that could

easily be unhinged from their territories and replaced by foreign systems of power. Yet, long after the arrival of French and British empires to the continent, Indigenous peoples retained control of the region. Hudson's Bay Company entities, like Red River's Council of Assiniboia, saw frequent Indigenous disruptions and challenges to their authority.[7] In more remote areas, when fur traders ventured beyond the walls of fur company forts even into the late nineteenth century, they did so by integrating themselves into Indigenous social and political formations rather than presiding over them.[8] Whatever the on-the-ground reality of life in the historic North-West, British political institutions relied on a foundational moment of discovery to justify their claims to territorial ownership and political authority.

The Doctrine of Discovery and Underlying Crown Title

The area historically referred to as the North-West is home to Assiniboine, Blackfoot, Cree, Dakota, Dene, Lakota, Métis, Saulteaux, and other peoples, who long marked the social and political landscape with shifting governance patterns and diplomatic relationships. Into the mid-nineteenth century these peoples thrived in an efficient and well-stocked buffalo economy, provisioning the fur trade with meat and skins. Over time, buffalo numbers declined and settler populations increased, leading to treaties—and conflicts—with the settlers, which defined the contours of Canadian Confederation and the increasingly marginal place of Indigenous peoples "within" Canada.

Despite this long history of Indigenous presence in the North-West, the fantasy of British (and later Canadian) possession of the North-West is rooted in the "discovery" of Indigenous lands by foreign "explorers." While the Doctrine of Discovery is a well-known legal precept, it is necessary to provide a brief description here. Discovery is a European legal convention that allowed European empires to imagine possession of "new" territories already inhabited by other people, establishing property and sovereignty over lands previously unknown to European empires.[9] Even though most European explorers were aware that the lands they discovered were long inhabited, discovery was premised on the myth that Indigenous peoples possessed an inferior relationship to their territory and had a weaker form of political authority that could be overridden by the presence of European political power. Their land was considered *terra nullius,* "legally 'vacant' and 'unused,' and open to appropriation by Europeans."[10] As a result, European empires claimed superior political authority over Indigenous territories by their simple discovery of those lands. Such a rationale allowed Europeans to simultaneously understand the "New World" as a fully peopled landscape full of preexisting political units and at the same time construct a legal logic that made these political

entities legally inferior to the political powers of European empires. Discovery is premised on a number of settler-colonial assumptions about what Patrick Wolfe calls "dominion without conquest." For Wolfe, the "conceit of discovery, when pompous navigators proclaimed dominion over whole continents to trees or deserted beaches," long predated the practical ability to realize "the final securing of European settlement."[11] Lorenzo Veracini also suggests that settler sovereignty is "typically imagined *before* it is practiced,"[12] which means that discovery claims were made credible only after they could be actualized by settlers on the ground, at which point these claims could then be retroactively projected onto the past. Therefore, in times of settler-colonial ascendency, like today, formerly improbable claims to territorial ownership, like those in the nineteenth-century North-West, can be reconceptualized as a long-standing sovereignty over an untamed wilderness.

At its core, then, discovery claimed to disrupt Indigenous ownership, allowing the discovering empire to envision itself, in an obvious legal fiction, as the original occupant of Indigenous lands, and thus in possession of a superior and underlying title.[13] From the moment of discovery, Indigenous landholding was said to diminish full Indigenous control of the landscape to something less than private property ownership.[14] Indigenous peoples were said to have retained their right to "use the land and hold it against third parties, but their interest [was] subordinate to the Crown's underlying title."[15] Discovery, however, never claimed to invest total control of Indigenous peoples in the Crown; it also had important legal limitations that placed limits on the discoverer's political power. British law, for instance, did not allow its institutions to unilaterally impose government on Indigenous peoples. British colonial governments were empowered only to govern interactions between British subjects; it did not extend over relationships *between* Indigenous peoples, at least until they signed an extinguishment treaty or otherwise consented to be protected by the Crown.[16] Underlying title also did not eliminate Indigenous use rights to discovered territories, but reimagined those use rights as existing at the pleasure of the Crown.[17]

In terms of the discovery of the North-West, it was first claimed by the British upon the formal discovery of the shores of Hudson Bay in 1668 by two French explorers, men commissioned by the English king to sail into the Bay and map the surrounding lands and river mouths. Medard des Groseilliers and Pierre-Esprit Radisson's act of mapping these shores and waterways constituted the ceremonial act of discovery and claimed underlying Crown title to the lands they contained. Although this initial mapping "yielded no understanding of the interior or of the Native peoples who lived there," the act of rendering unknown lands cognizant to European empires and renaming the landscape after British people and places provided the basis for claims of

underlying title to the drainage under English law.[18] As it was practiced in the seventeenth and eighteenth centuries, the discovery of the mouth of a river was equated with the discovery of all of the river's tributaries and the lands that drained into them.[19] This ceremony of discovery, then, also resulted in a discovery claim to all lands that drained into these rivers, including those far away in the interior, most specifically, the North-West.

The Charter of the Hudson's Bay Company

The discovery of Western Canada, then, originates in the Hudson Bay where, after the mapping of the mouths of "new" rivers in 1668, King Charles II granted to his cousin Prince Rupert and some other aristocrats large tracts of land in the Bay's drainage in 1670, through "The Royal Charter of the Company of Adventurers Trading into Hudson's Bay," more commonly known as the Hudson's Bay Company Charter. Although at the time of discovery little was known about the extent of this region, the Charter granted the Company exclusive right to trade in furs on "all the Lands, Countries and Territories, upon the Coasts and Confines of the Seas, Streights, Bays Lakes, Rivers, Creeks and Sounds" that empty into the Hudson Bay, "which are not now actually possessed by any of our [British] Subjects or the Subjects of any other Christian Prince or State."[20] Most important for our purposes, the Charter also provided the Company with the political authority to govern these lands and the British subjects inhabiting them, granting the Company the power "to make, ordain, or establish, any such Laws, Constitutions, Orders, and Ordinances, in such Form as aforesaid, shall and may lawfully impose . . . such Pains, Penalties and Punishments upon all Offenders, contrary to such Laws, Constitutions, Orders and Ordinances . . . for the better Advancement and Continuance of the said Trade."[21] The Charter, according to Darren O'Toole, theoretically invested "legislative, executive and judiciary powers" in the Company, generating the first European government in the drainage,[22] and theoretically establishing underlying Crown title to Indigenous lands, protecting the region from the claims of other European empires.[23] Despite the confidence with which the Charter was written, the truth was that in 1670 no Englishman had seen most of the lands claimed by the document.[24] Its power and legal force originated in Europe, and flowed from the king's sovereign will, claiming to establish these adventurers as "the true and absolute Lords and Proprietors, of the . . . Territory,"[25] to be the bulwark of British imperialism over these vast, legally vacant lands. While British knowledge of the lands of the Hudson Bay drainage would grow over time, an increase in knowledge of the area did little to embed European control, as ownership and control were not premised on knowledge, but rather on the practical ability

to govern and a prior occupation of the territory. In fact, as the knowledge of the Hudson's Bay Company increased, so too did its knowledge of the political power of Indigenous peoples populating the region.

In these early days, the Hudson's Bay Company's claim to the drainage was contested primarily by the French Crown, which had established a physical presence in the seventeenth century through a small trade network that rivaled the English presence, even though both remained insignificant compared to the extensive Indigenous population in the region. As time went on, European knowledge of the interior of the drainage grew considerably, although as Michael Witgen notes, "The empires of Europe could, at times, influence the peoples and events in the interior, but most of the continent lay beyond their control."[26] While the French maintained for much of the eighteenth century a distinct claim to have discovered the region, the French colonial apparatus was eventually turned over to the British in 1763, putting to rest any non-British competition to discovery of the drainage.

Because of its abstract nature, the discovery claim of the Bay had little impact on the lives of those peoples already living in the drainage in 1670, or for a great many years after that. It was also never accepted, as we will see, by the French Crown, or Canadian rivals in the fur trade like the North West Company.[27] The immense influence of the Charter, however, did not reside in its ability to assert itself on top of Indigenous polities or against imperial rivals, but in its ability to motivate and justify the colonial ambitions of British traders, and later the Company's settlers. In the Charter, Company men found the confidence to act on the sovereignty of their king in lands far away from their own, over which they could initially claim little control.

Despite its grandiose claims, the Charter was a document that motivated British traders more than it affected Indigenous peoples on the ground. The Charter was the basis for English law and British governance in the North-West and was identified as such in the Company's legal codes. It defined the basis for, and extent of, Company governance, as well as asserting the right of British underlying title through discovery. However, throughout the seventeenth and eighteenth century the Charter served more to motivate Europeans to trade on Indigenous lands, not settle them, and trade occurred largely on Indigenous terms. Despite the lofty claims of the Charter, the British in the drainage were more than willing to live by Indigenous protocols, practice Indigenous kinship obligations, and participate in Indigenous diplomacy, as was often necessary to engage in the fur trade.[28] Because of these on-the-ground relationships, the Charter alone proved insufficient for justifying British presence in the region, and Indigenous peoples sought specifically defined relationships with the fur traders and settlers in their midst.

"By Annual Present of Quitrent": The Selkirk Grant of 1811 and the Selkirk Treaty of 1817

In the early nineteenth century, the first permanent community of settlers in the North-West was established at Red River, and constituted a first attempt at settler-colonial ascendency in the North-West.[29] For the first sixty years of its life, the Red River Settlement was also the lone community of the North-West with significant European settlement, so it is not surprising that attempts to assert British governance were most pronounced there. Settler claims to sovereignty in the Red River valley can be traced to 1811, when the Company granted a large portion of the North-West to the Scottish Earl of Selkirk from its own Charter grant. Selkirk, a major investor in the HBC, had bought enough shares to generate a Company-backed yet Selkirk-governed speculation scheme, envisioning the settlement of Scottish farmers in the Red River valley to provision fur traders with grain from the North-West rather than the British Isles. This 1811 grant to Selkirk was premised on the Company's claim that it was in "good right, full power and lawful and absolute authority . . . to convey and assure the land, hereditaments and premises," as "absolute Lords and Proprietors of all the Lands and Territories" that drained into Hudson Bay, as conveyed by the Charter.[30] Thus empowered by their Charter, the Company transferred 116,000 square miles of what was then called Assiniboia, along with the authority to govern it, to Selkirk. Selkirk received this grant for the paltry sum of "ten shillings of lawful money of Great Britain," providing only that Selkirk make progress in settling the region after ten years and did not interfere with the Company's fur trading activities.[31]

Despite the grant's claim to own and govern the landscape, it did little to establish actual British sovereignty in the region. Even with the reiteration of the Company's absolute proprietorship over the land in his grant, the Company and Selkirk's relatively weak political standing in the region left these settlers at the mercy of Indigenous peoples already there. Despite Selkirk's confidence in the grant from the Company, he was also keenly aware of how vulnerable his settlement actually was. In 1811 Selkirk sent instructions to Miles Macdonell, the first governor of the Red River colony, requesting that the first party of settlers disguise themselves as the staff of a new trading post to hide the permanency of the settlement, and that they hire a well-known trader to help maintain the illusion.[32] Knowing ultimately that the settlement could not exist without Indigenous consent, Selkirk later wrote Macdonell advising that "when it can no longer be concealed that the establishment is to be permanent, if the jealousy of the Indians appears to be roused, the proposal of purchasing the land must be brought forward."[33] Selkirk's fears were realized in the summer of 1816, when Métis soldiers, upset

about the infringement on their hunting economy by the colonists, began dispersing Selkirk's settlers and reasserting themselves as the descendants of the original inhabitants. When Selkirk's representative Robert Semple confronted a party of Métis, a skirmish broke out resulting in the death of Semple and twenty other colonists. While colonial officials in England may have viewed the deaths of the settlers at the hands of the Métis as an affront to British control over the region,[34] Selkirk ultimately found it impossible to hold any of the Métis party responsible under British law. Despite Selkirk's claims to govern the Red River valley, he was ultimately forced to seek the consent of local Indigenous peoples to protect his colony, as the authority of Selkirk's Grant had little bearing on events on the ground.[35]

After this conflict with the Métis, Selkirk and his agents met with five chiefs representing the local Saulteaux and Cree bands in order to settle diplomatically any misapprehension about the future of the Red River Settlement, and the subsequent negotiations led to Selkirk's Treaty in 1817.[36] The surviving written document notes that five signatory chiefs from Cree and Saulteaux bands agreed with Selkirk "to *give, grant and confirm* unto our Sovereign Lord the King, all that Tract of Land adjacent to Red River and Assiniboyne River, beginning at the mouth of the Red River and extending along the same as far as Great Forks," for "the use of the said Earl of Selkirk, and of the Settlers being established there."[37] In exchange, Selkirk would "annually pay to the Chiefs and Warriors" a "Present or Quitrent" of "one hundred pounds of good and merchantable Tobacco" from Selkirk, his heirs, and successors.[38] In Selkirk's' mind this document, coupled with the 1811 grant, established him as the lone political authority in Red River valley—or at least two miles on either side of the Red and Assiniboine rivers. The Selkirk Treaty, in this view, legitimated British governance in the new Red River Settlement and forever established sovereignty over Indian lands there. Under British common law, because Indigenous peoples were said to continue to possess certain residual use and occupancy rights on their territories after discovery, agents of the Crown were still required to negotiate for the extinguishment of all "residual" Indian title to newly discovered lands in order to establish full and uncontested sovereignty.[39] This rationale, of extinguishing inferior title as a burden on the Crown's superior title, was how Selkirk envisioned treaty making.

But Indigenous peoples, unwilling to accept that Britain could claim ownership over their lands, thought of treaty making in a much different way. For the Saulteaux, Selkirk's Treaty did not clearly establish British claims to the lands[40] and it did not extinguish their title to the land.[41] Selkirk's view of the treaty was bitterly contested by Saulteaux leaders for years afterward, who argued that the treaty was actually a rental agreement, not a land cession.

Examining the treaty's somewhat ambiguous language, the Saulteaux rental-arrangement interpretation seems to be in keeping with much of the written agreement. Regardless of Selkirk's interpretation, the treaty did not clearly result in extinguishment of Indian title to the region. What is particularly telling in this regard is the language describing this exchange as a "quitrent" relationship. Quitrent relationships, a common custom in Selkirk's day, were a feudal practice in which a tenant farmer paid "an annual fixed and heritable charge upon the land."[42] Older feudal conventions required peasants to contribute labor toward public works and military duties defined by their lord, but by the nineteenth-century, in order to maximize their profitability, many estates consolidated all these various feudal duties into fixed quitrents, or regular payments that replaced all other obligations.[43] As a feudal institution, quitrent explicitly recognized the ownership of the land by the feudal lord as well as institutionalizing a specific relationship between lord and tenant. It was generally understood in the nineteenth century that quitrent did not transfer the land title to the tenant and the land remained the property of the feudal lord.[44] For Selkirk, himself a land-owning nobleman in Scotland, would have understood intuitively the language of quitrent. Selkirk preferred the language of "quitrent," noting in his journal that "a large quantity of goods . . . offered for the purchase it might be said that the temptation of immediate advantage had induced them to sacrifice their permanent interests. [He] would therefore propose to them merely a small annual present in the nature of a quit rent or acknowledgement of their right."[45] He likewise considered annual presents as a way of ensuring an ongoing relationship defined in a treaty. Selkirk wrote in 1811, "An annuity to be annually distributed among the tribes and families who have a claim to the lands, will form a permanent hold over their peaceable behaviour, as they must be made to understand that if any individual of the tribe violates the treaty, the payment will be withheld."[46] As Selkirk was concerned about the sustainability and ongoing nature of the agreement, annuities would ensure its long-term viability and provide an incentive for his treaty partners to uphold the agreement. This second concern also demonstrates the weakness of the infant colony's ability to assert itself, and that presents and annuities were more effective in protecting British interests on the ground than were the claims of Selkirk's Grant.

The local Cree and Saulteaux chiefs, who saw a small annual present as an acknowledgment of their ownership, justifiably understood the treaty as a kind of rental agreement. Selkirk, as the party paying this annual "gift" to the five chiefs to use the land, seems to accept the role of the tenant responsible for paying the quitrent to the landlord in exchange for use rights. The Selkirk Treaty, then, rather than ceding Indigenous lands to the Crown, or

perpetuating a fantasy of underlying title, may have succeeded more in reinforcing the position of the Cree and Saulteaux signatories as the landlords of the Red River region, recognizing their prior possession of the North-West.[47] The treaty's emphasis on quitrent also undermines Selkirk's claim to have purchased the territory outright, as any future claim to British ownership of the Red River valley is in clear conflict with a quitrent relationship.

This interpretation is also consistent with how Saulteaux chiefs understood the treaty. Chief Peguis, one of the treaty's signatories, was adamant that the treaty outlined an annual rental agreement for this tract of land. In 1859 Peguis gave a formal statement, recounting that "no final bargain was made; but that it was simply a loan . . . I say positively *the lands were never sold*."[48] Peguis's son, Henry Prince, likewise told a Métis assembly in 1869 that "the land had only been leased and the annual gratuity now paid . . . by the HBC was part of the rental."[49] From the perspective of Peguis and his son, the treaty did nothing to change the ownership of the land in the Red River valley, which continued to rest with the Indigenous peoples rather than with Selkirk, the Company, or the Crown.

The fact that Selkirk even negotiated for land that the Company already claimed ownership of through British discovery also tells us much about the lack of authority of the Charter and Selkirk's Grant. Mere assertion of the possession of land by Selkirk and the Company did not convince the local Indigenous peoples of the Company's right to possess and occupy the land. The existence of this treaty actually testifies to the Crown and Company's weak political authority. Donald Gunn, the Red River settler and prominent Company critic, made this very argument in *The Nor'-Wester* in June 1860. Gunn argued that the weakness of the Charter's claims meant that the HBC was required to gain Indian consent through treaty making. If the Company felt differently, Gunn asked, why the farce of buying the land with the Selkirk Treaty? The Company knew full well that "the Indians have a prior and superior claim to any which the Company can set up."[50] Though perhaps the most telling commentary on the Selkirk Treaty's validity comes from the Canadian government. In 1871, while negotiating Treaty 1—on the same lands that Selkirk's Treaty were supposed to have ceded to the Crown—Canada chose to ignore Selkirk's Treaty and negotiate as if there was no prior treaty relationship, an act unnecessary if the Canadians considered Selkirk's Treaty to have extinguished Indian title and asserted Crown sovereignty in the Red River valley.[51]

Regardless of what Selkirk believed, for the Indigenous peoples of the North-West the status of the Selkirk Treaty was that of a long-term rental agreement resulting in colonist use rights, not sovereignty. Rather than solidifying the presence of the Company's authority, the Selkirk Treaty was

a document that could not live up to its claims. What the Selkirk Treaty did establish, even if it was only on a quitrent basis, was the legitimacy for a sedentary European agricultural settlement, which could assume reasonably safe tenure of the land they were farming. Tellingly, Selkirk's settlement was made possible by a treaty, which sought consent of the local Indigenous peoples, rather than a document that claimed ownership through discovery. From the perspective of most Indigenous people in the region, Selkirk's Treaty left their relationship to the North-West almost entirely unchanged. Whatever its status, after Selkirk's death and a failure to turn a profit on this settlement scheme, the grant was sold back to the Company in 1835, and the Company continued to pay the quitrent to the Cree and Saulteaux chiefs until the transfer in 1870.[52] But ownership insecurities of the North-West persisted as different colonial bodies attempted to claim grant as its own. These debates bubbled to the surface in 1857 as the British Crown sought to deal with the contest over the Company's ownership of the North-West among its own subjects.

Canadian Claims of Discovery at the 1857 Select Committee on the Hudson's Bay Company

By the mid-nineteenth century the social dynamics that made the Company the vanguard of British colonialism in the North-West were shifting, and new imperatives of empire-building were emerging. These new social influences were conspiring to replace the governing colonial joint-stock companies—like the Hudson's Bay Company—with settler-colonies directly tied to the Crown. In the Victorian era, notions of agrarian progress more than ever drove the British desire "to tame the world's remaining wilderness regions and manage them for the desires of humanity."[53] The prevailing discourse on civilization, and its equation with settlement, expansion, and market-oriented agriculture, was changing social discourses in Canada and Britain, and this very distant ideological led to an intimate challenge of Indigenous governance in the North-West. This era also saw a sustained challenge to the existing fantasy of British sovereignty—pitting two British colonial governments with profoundly different colonial orientations against one another, and resulting in new claims by the Colony of Canada to ownership over the North-West.

It was in this shifting ideological context that British Parliament formed the Select Committee on the Hudson's Bay Company in 1857. Its mandate was to review the activities of the Hudson's Bay Company and assess the Company's ability to spread British civilization by fostering agricultural settlement and Christian missionization of its territories.[54] Another obvious goal of the Select Committee was to determine the North-West's suitability for

permanent colonial settlement and to assess the fitness of the Company's governance to accomplish this end.[55] The Select Committee created a political space for the North-West, or at least its "fertile belt," to be imagined as a settler-colonial space, much as Selkirk had attempted to do in Red River. During its hearings, the Committee received testimony from a diverse group of witnesses, including those who had a direct interest in the outcome of the Select Committee's report. Thus Company men claimed the territory's frozen landscape was unsuitable for agricultural settlement and that it was best that it remained a fur-harvesting region with an Indigenous majority under ostensible control of the Company. They were challenged by pro-settlement witnesses who argued that the Company's failure to treat the North-West's Indigenous peoples fairly had demonstrated that the Company was a poor moral force to encourage Indigenous peoples to become civilized Christian agriculturalists.[56]

One outcome of the Select Committee's hearings was the establishment of a narrative of Canadian settler sovereignty over the North-West, in defiance of both Indigenous people and the Charter, developed by Canada's representative, William Henry Draper. In his testimony submitted on behalf of the Colony of Canada, Draper argued that the Company's discovery claim to the North-West "was no more than a claim" and was superseded by Canada's rightful possession of the region.[57] Draper's arguments were intended as the basis for a legal challenge to the Company's possession of the North-West, a plan that Canada later abandoned. Nonetheless, Draper's evidence provides valuable insight into how Canadians viewed their relationship to the then-distant North-West, and how they would lay claim to it in the future.

Draper's main argument was that the Colony of Canada, through the Doctrine of Discovery, rightfully possessed the fertile belt of the North-West, a vast territory bounded "on the south by the United States' boundary; on the west by the Rocky Mountains; on the north by northern branch of the Saskatchewan; on the east lake by Lake Winnipeg, the Lake of the Woods, and the waters connecting them."[58] To make such claims, of course, Draper rejected the Company's claim of discovery to all lands draining into Hudson Bay. Through Draper's testimony and submissions to the Select Committee, the Canadian colonial legislature expressed its own fantasy of possession, adopting "a very strong opinion that a considerable portion of the territory occupied or claimed by the Hudson's Bay Company will be found to lie within the proper limit of that Province [of Canada]."[59] Draper's claim shows the degree to which the Canadian colonial leadership had, as early as 1857 if not before, imagined a legal right to settle the fertile belt of the North-West as its own territory despite no meaningful presence there. In challenging the Company's claim to the North-West, then, Draper did not problematize the

legitimacy of the Doctrine of Discovery as a way of dismissing the Company's claims; rather, he relied heavily on the doctrine to produce a second, supposedly superior discovery claim to the North-West. What Draper aspired to do was assert this alternative claim of discovery to allow Canada to assume possession of the region and to repopulate it with Canadians. Consistent with past discovery practices, Draper's imaginings never directly addressed the preexisting Indigenous authority in the North-West. Rather, Draper's documents appear to be primarily concerned with disputing the claims of the Company, which he probably considered as the lone European entity in the region to be the only political authority that mattered.

Draper's argument rests on the assumption that during the seventeenth and eighteenth centuries the Company's claim to the North-West was preempted by competing French claims that predate actual British occupation. Just like Charles II, the French Crown claimed the Hudson Bay drainage by right of discovery.[60] While the Company claimed through discovery the entire Hudson Bay drainage by the act of mapping the Bay's shores in 1668, New France claimed it by extension of the territories originally settled on the St. Lawrence beginning in 1627. New France, Draper claimed, had always stretched to the "Northern Sea," what the English called Hudson Bay. Draper's written submission recounts how, as a result of these contradictory claims of discovery by English and French agents, there was regular conflict during their first two hundred years at the Bay. During this period, there was a series of skirmishes in the Hudson Bay straits, where fur trade forts changed hands, or were sacked and burned; as the two empires fought over access to the lucrative fur trade there, trade was interrupted to the benefit of neither party.[61]

The French and English companies sought a nonmilitary solution to end this rivalry. Most important for Draper, during the eighteenth century the Company announced its willingness to negotiate a clear boundary between the two competing claims—a diplomatic stance that the Company denied in the nineteenth century.[62] Draper claimed that prior to New France's absorption into the British empire in 1763, the conflicting claims of the two Crowns led to several attempts by French and British interests to establish a clear north—south boundary line that would separate the more northerly Hudson's Bay Company Territory from the French territory of Canada in the south. In one instance, Draper showed that the Company suggested a demarcation line between Forts York and Albany, which was near the 53rd degree of latitude.[63] The Company explicitly stated that this proposed compromise should not be seen as limiting its larger claim to the entire drainage unless the French agreed to accept the proposed border, yet Draper interpreted the Company's offer to compromise as an acceptance that its claim to the

southern parts of the drainage was weaker than that of New France. Draper argued that because the Company was willing to compromise on its territorial claim with French Canada and effectively alienate the southern parts of the Hudson's Bay Territory in the eighteenth century, this contradicted the Company's nineteenth-century claims to the entirety of the North-West.[64] Draper specifically challenged the Company's claim that it possessed, by right of discovery, the fertile belt because the French had maintained a presence in these regions long before. He therefore claimed that French Canada had an eighteenth-century presence in the fertile belt of the North-West, with forts at "Lake St. Anne, called by older geographers Alenimipgou; at Lake of the Woods; Lake Winnipeg, and two, it is believed, on the Saskatchewan."[65] Using this knowledge, Draper constructed an alternative narrative of discovery for the southern regions of the North-West that made Canada the inheritor of New France's superior claim to discovery of the North-West.

In 1627, Draper argued, well before the HBC Charter of 1670, King Louis XIII of France chartered a company to settle, govern, and trade in Canada. In 1663 this company surrendered its charter to King Louis XIV, and Canada became a Crown colony of France. In 1671 this colony sent out men to explore lands to the north and the west, where the "Sieur de Lusson returned after having advanced as far as 500 leagues [1,500 miles] from here, and planted a cross, and set up the kings arms, in presence of 17 Indian nations assembled on the occasion from all parts, all of whom voluntarily submitted themselves to the dominion of his Majesty, who alone they regard as their sovereign protector."[66] While this expedition's success was almost certainly exaggerated on all counts,[67] Draper argued that its presence, as well as the establishment of early fur trade posts, allowed the French to realize their discovery claim to the southern reaches of the Hudson Bay drainage, which the Company "had not penetrated when Canada was ceded to Great Britain in 1763, nor for many years afterwards."[68] This claim of French occupancy allowed Draper to argue that the North-West was discovered and possessed by France prior to the cession of the French colony of Canada to Britain in the 1763 Treaty of Paris.

Furthermore, because the Crowns of Britain and France maintained these separate claims to the same territory over a hundred-year period, Draper argued that the Colony of Canada ultimately inherited these claims from New France. As a result of the Seven Years' War and France's 1763 cession of Canada to the British, France's claim was supposedly transferred to British Canada with the Treaty of Paris.[69] Draper thus concluded that the Colony of Canada inherited France's title to the southern regions of the North-West, including Red River, which was discovered and occupied by "Canadians" (even if they were in reality French *Canadiens*) before the Hudson's Bay Company could establish an effective presence there. This meant that, at least in the

mind of Draper and his Canadian colleagues, the lands claimed by the Company in the fertile belt of the North-West actually belonged to Canada by right of discovery and occupation. This French discovery therefore entitled Canada to repopulate the North-West with Canadian settlers, without regard for the Company's claims under its Charter.[70]

Supposedly supporting Draper's arguments are two statutes—the Canada Jurisdiction Act, 1803, and the Regulation of the Fur Trade Act, 1821—which established that capital crimes committed in "Indian territory" and the North-West were to be tried in Lower Canada and Upper Canada, respectively.[71] Such statutes would imply that legal jurisdiction over the North-West was already established by Canada in a country it claimed as its own. However, in response to this threat, the Company repeatedly refused to send its servants east to face trial, and asserted its own legal capacities in its place.[72] Only one individual accused of a capital crime in the North-West was sent to the Canadas under either statute, and, as Hamar Foster argues, the Company preferred to overlook violent offences rather than acknowledge that Rupert's Land fell under Canadian legal jurisdiction.[73]

From an Indigenous standpoint, however, Canada's claim was just as fantastical as the Company's, since it was entirely divorced from the reality of Indigenous political authority as it existed in the North-West. A few fur trade posts, regardless of who operated them, could not create a broad claim to the territory superior to those who lived there—or more important the right to repopulate it with settlers. Nor could these claims compete with Indigenous political independence, which had very different standards of territorial legitimacy. In his "Last Memoir," Louis Riel identified land ownership as part of an intergenerational Indigenous inheritance as a kind of precondition for the legitimate possession of territory: "One's native land is the most important of all things on earth. Above all it is made holy through the ancestors who pass it on. To take it away from the people it gave birth to is as abominable as to tear a mother from her little children at the time they need her most."[74] Riel also rejected other claims to territory that lack this intergenerational attachment to land, which he saw as the primary means through which legitimate possession of land is expressed. Abstract claims like discovery were not valid sources of territorial legitimacy. Riel notes that justice, at least from a Métis perspective, does not allow "a stronger people to snatch away the homeland of a weaker people"; human conscience condemns such acts as "criminal and its grievous consequences are many and difficult to measure."[75] For Riel, the theft of someone else's territory is "the greatest sacrilege," leading to further evil acts and great suffering.[76] Thus ownership of land fell to those who inherited it by birth—Indigenous peoples of the North-West—rather than those who claimed it through more abstract means.

While Draper's discovery narrative of Canada's right to the North-West was flimsy, even by the standards of British law, its explanatory power resonated elsewhere. Draper succeeded in crafting a powerful fantasy that justified unrestricted Canadian settler-colonial expansion. Much like the Company's claim empowered Company servants to colonize their supposed possessions in the drainage, Canada's narrative legitimated the expansionist drive of Ontario, generating a sense of entitlement to settle the southern regions of the North-West.[77] When Ontarians moved there, they began to express these settler-colonial sentiments in the bluntest of ways. Red River's paper, *The Nor'-Wester,* was pro-annexationist and Canadian-owned, and it readily seized on Draper's fantasy of Canadian discovery as the basis for large-scale Canadian settlement in the area. In a July 1867 issue celebrating Canadian Confederation, *The Nor'-Wester* reprinted a letter from the Duke of Buckingham, which more or less restated Draper's 1857 argument:

> When the Charter of the Hudson's Bay Company was granted by Charles the Second in 1670, the Valleys of the Assiniboine, Saskatchewan, and Red River, formed a part of *La Nouvelle France,* and were in the possession of subjects of the French King, by virtue of Charter granted by Louis the Thirteenth, [in] 1626. They had erected forts and established hunting stations in many parts of the territory. By the conquest of Canada this territory came into possession of the British Crown and shortly afterwards British subjects resident in Canada engaged in the fur trade, and carried out their enterprise through the North West Territory to the shores of the Pacific.[78]

This rationale also allowed the paper to editorialize on the eve of Canada's attempted 1869 purchase of the North-West: "We believe this territory belongs to Canada, it is her just right, and that she is best adapted to advance the interests of this people and to carry us onward in a career of prosperity under civil liberty in its truest sense; and we don't beat around the bush saying so."[79] Regardless of the accuracy of Draper's argument, with its underlying assumption that Indigenous political authority did not matter, Canada's fantastical claim to the North-West was adopted as the creed of settler-colonial expansion and the fantasy was disseminated through the expansionist press to the general public back in Canada.

Despite its future influence, Draper's argument proved unconvincing in London. The memorandum Draper submitted to the Select Committee was never referred to the Judicial Committee of the Privy Council, as he claimed it would be, and the argument was later abandoned by Canada in its attempt to secure the North-West under British law.[80] The Select Committee also seemed unconvinced by Draper's claims, and in what was perhaps a nod to the Company's authority, suggested that this dispute should be resolved at a future time.[81] Despite its shortcomings, the Canadian fantasy of discovery

in the North-West remained a powerful narrative for Canada's increasing settler-colonial drive. It allowed all manner of rationalization for annexation, and even provided rationale for the belief that the territory was already part of Canada and thus under the scope of Canadian government.[82] This understanding is perhaps the greatest source of the troubles with the Métis at Red River in 1869–70. It certainly provoked the Métis, who were bombarded with stories about unfettered Canadian settlement in their homeland in the lead-up to the Red River Resistance. Canada's claim to discovery of the North-West, inherited through New France, thus served the same legitimizing and motivating purpose for Canadian annexationists that the Charter did for Company men. Without being able to account for actual political authority established and expressed on the ground, Canadian insistence on the recognition of French discovery and their inheritance of New France's territorial claims was the fantastic legitimizing logic of the Canadian North-West settlement drive.

"Taken from under Their Feet": The Legislative Appropriation of the North-West in the 1860s

With the failure of Draper's reasoning to convince imperial politicians of Canada's underlying ownership of the North-West, the colony switched tactics by the late 1860s, and attempted to secure the Company's claim to the region through British constitutional channels.[83] In 1865 delegates from the Canadian colonies, including John A. Macdonald and George Etienne Cartier, were visiting London to discuss the possibility of a colonial union in British North America and opening up the North-West to Canadian immigration.[84] The Canadian delegates expressed a desire to the British government to purchase the Company's claim to the North-West in the quickest possible manner to prevent American annexation and, unlike in 1857, were now willing to compensate the Company for whatever Charter rights may exist in the North-West.[85] As a result of these meetings, in December 1867 the new Canadian Parliament was able to petition the Crown to fulfill settler colonial desires to extend Canada "westward to the shores of the pacific ocean" into the "unorganized territories" of the North-West, because "the colonization of the fertile lands of the Saskatchewan, the Assiniboine, and the Red River districts . . . are alike dependent upon the establishment of a stable Government for the maintenance of law and order in the North-Western Territories."[86] In response to this request, the British and Canadian parliaments passed a package of legislation allowing the lands to be unilaterally "transferred" between British entities to allow for settlement, all without involvement of the Indigenous peoples. The transfer of the Hudson's Bay Company's claim

to the North-West to the Dominion of Canada in 1869 was justified by three pieces of legislation: two imperial statutes, the Rupert's Land Act (1868) and the British North America Act (1867); and one Canadian bill, the Act for the Temporary Government of Rupert's Land (1869). Under British law, this legislation was said to be sufficient to unilaterally transfer the possession of a vast peopled landscape from one authority of empire, the Hudson's Bay Company, to another—Canada.

In July 1868 British Parliament initiated what it believed would to be a simple transfer of territory with Rupert's Land Act, which cleared the way under British law for the admission of Rupert's Land as a new territory in the Dominion of Canada. The Act rested on the pleasure of the Crown to transfer the right to land and governance "upon such Terms as Her Majesty thinks fit to approve," while also formalizing the surrender to the Crown all the Company's "Lands, Rights, Privileges, Liberties, Franchises, Powers, and Authorities" to be later transferred to Canada.[87] Such a legislative move, like the Charter before it, relied on the investiture of underlying title to Indigenous lands in the Crown. Since it has already been established that this was based on a questionable claim of discovery in 1668, it is difficult to imagine that the Crown could claim ownership of the North-West from the Company whose own control to the territory proved so tenuous. None of these entities (as the Red River Resistance in 1869–70 soon demonstrated) could actualize its governance or ownership of the land if Indigenous peoples rejected it. Like most preceding legal understandings, the Rupert's Land Act presumed the Crown could initiate the transfer through unilateral legislation "upon such Terms and Conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company."[88] The substantive details of the agreement for the transfer came after a series of private London meetings in late 1868 between representatives of Canada and the Hudson's Bay Company, and mediated by the imperial government. Both parties ultimately agreed to a surrender of the Company's claims in the region in exchange for a one-time payment of £300,000 from Canada, as well as a land grant to the Company of one-twentieth of all land within the fertile belt near the Red River Settlement, including the land around the Company's current fur trade posts. The Company would be left with land in fee simple that totaled about fifty thousand acres. It also received guarantees from Canada that it would not experience unnecessary limitations on its economic activities in the North-West.[89] It should be noted that Canada had not entirely given up its claim to the fertile belt through French discovery outlined in 1857, and, as Kent McNeil notes, this deal only extinguished the Company's "possible claims," because even at this stage "Canada did not admit the validity of the Company's claims by agreeing to this settlement."[90] Like the drafting of the

Rupert's Land Act, these meetings were devoid of any actual involvement of people on the ground; underlying Crown title through discovery presumably rendered their participation unnecessary.[91] What was agreed on, however, was that Canada inherited the responsibility "to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the transfer," which it would do through initial treaty making followed by extensive and violent settler-colonial policies.[92] This meant that Canada would be left to deal with whatever residual title was still possessed by Indigenous peoples living in this now-Canadian territory. This responsibility, however, did not necessitate Indigenous input in the larger question of the transfer agreement.

Once these terms were agreed on, the Rupert's Land Act allowed the Dominion of Canada to annex the North-West through a preexisting clause in the British North America Act, Canada's constitution at the time.[93] Section 146 of the BNA Act permitted the transfer of any British North American colonies and territories to the Dominion of Canada, including the Hudson's Bay Company's territories.[94] Darren O'Toole argues, however, that section 146 did not treat all colonies in the same way, but rather envisioned two categories of colonies that would be added to Confederation, using different processes. The incorporation of what amounted to settler-colonies like Prince Edward Island, Newfoundland, and British Columbia required Canada first to obtain "the acceptance of their respective Legislatures before the Imperial Crown could admit them as members of the Canadian federation."[95] But neither the Rupert's Land Act nor the BNA Act required "a legal obligation to consult . . . the inhabitants of the territories"; in fact, "the only legal mechanism that was available to the inhabitants was that of petitioning the Crown, but this did not in any way limit the Crown's prerogative."[96] This meant that according to British law, in order for Canada to annex the West and govern it as a settler-colony of its own, it did not need the consent of the Indigenous peoples of the North-West who had never surrendered their governing authority to Crown or Company. Under the colonial pretensions of British law, the only legal requirement for Canada was the passage of legislation in its own parliament that incorporated this new territory and its peoples into Canadian jurisdiction unilaterally.

In addition to these two British statutes, a third piece of legislation authorized Canada to take possession of the North-West. Unlike the previous two, this third Act was a piece of Canadian legislation, signed into law in June 1869. Known as the Act for the Temporary Government of Rupert's Land, this statute bridged the Rupert's Land Act and section 146 of the BNA Act, legalizing, on behalf of the queen, the admittance of "Rupert's Land and the North-Western Territory into the Union or Dominion of Canada."[97] The Act

also provided for the appointment of a lieutenant—governor of the territory, the Conservative politician William McDougall, "to make provision for the administration of justice therein, and generally make, ordain, and establish all such Laws, Institutions and Ordinances as may be Necessary for the Peace, Order and good Government of Her Majesty's subjects and others herein."[98] In addition to an appointed head of government, the Act also provided for "a Council, not [to] exceeded fifteen nor less than seven persons," to aid in the administration of the territory.[99] Since the Act stated that the Council was to be appointed by the lieutenant—governor rather than being elected by the local citizenry, it combined both elective and governing functions of the territory in a single person.[100] It was, as Red River trader Alexander Begg described it, "a fine Family Compact idea," akin to the oligarchical system of colonial government that Ontarians themselves had thrown off in 1837—38.[101] Despite this contradiction, and lacking any involvement of the people who were actually in control of the vast North-West, these legislative processes seemingly satisfied the Dominion of Canada of its legitimate possession of the North-West. In short order it appointed William McDougall in September 1869 to the post of lieutenant—governor, who expected only "an imperial entrance into the settlement and an unpacking of his extensive luggage at the large house rented for him."[102] It was likely a big surprise to a number of Canadian and British politicians when he was met at the border, as the representative of the new Canadian authority in the North-West, by a party of armed Métis with a message from their leadership that he was forbidden from entering the country until they, "the government" of the country, deemed it appropriate.[103]

While Canada and Britain may have been mostly willing to ignore Métis political existence in Red River, its early attempts to put the transfer's legislation into practice proved impossible since it did not have the political or military capacity to displace or absorb Indigenous polities. The Métis-formed Provisional Government at Red River condemned both the Company and the transfer agreement in 1869, with a public repudiation of the validity of the transfer in the *Declaration of the People of Rupert's Land and the North-West,* stating that it was impossible for the Company to sell "all the rights which it had *pretended* to have in this territory" in a transaction "which the people were considered unworthy to be acquainted."[104] Since this Company's transfer was not legitimate in the eyes of the Métis-run Provisional Government, the Métis were then "free and exempt from all allegiance to that government"; at the same time they "refuse[d] to recognize the authority of Canada, which pretends to have a right to govern and impose on us a despotic form of government still more contrary to our right and interests as British subjects, than was that government to which we had subjected ourselves through necessity up to a recent date."[105] This sentiment was not merely confined to the

Métis political elite. During the 1869–70 Resistance, a reporter from *The Globe* interviewed Métis guards at Fort Garry, who questioned how the Company gained the power to buy and sell Indigenous land: "Your Canada Government offered to pay £300,000 to the Hudson['s] Bay Company for the Rivière Rouge Territory. Now what we want to know, and we will not lay down our arms till we know what they meant to buy. Was it the land? If so, who gave the Hudson's Bay Company the right to sell the land? When did the Canada Government bought the land did they buy what was on it? Did they buy us? Are we the slaves of the Hudson['s] Bay Company?"[106] Simply put, the transfer did not impart the legitimacy of Canadian government among the Métis, nor alter their allegiance to traditional authority structure, nor even deter Métis soldiers from forcing Canadian government officials out of the country. Whatever the justificatory narratives used in the Imperial Rupert's Land Act and BNA Act, as well as Canada's Act for the temporary government of Rupert's Land, Canada very quickly found out what the Company had known for decades, that it could not do much in the North-West without the blessing of Indigenous peoples.

The Métis were not the only Indigenous nation to express doubts about the validity of the transfer, in fact, criticism of the transfer resurfaced repeatedly in treaty negotiations throughout the 1870s. During Treaty 4 negotiations, for instance, the Gambler, a Saulteaux spokesperson, protested to the Crown's Treaty Commissioner, Alexander Morris that "the Company have stolen our land."[107] Another headman later demanded that his people be paid the £300,000 Canada paid to the Company for what was, in effect, the land of his people.[108] During initial Treaty 4 negotiations, "unhappiness over the Rupert's Land transfer" caused the First Nations leadership to refuse a pipe ceremony with the Crown's negotiators—the precursor to proper treaty making on the prairies—then declined to negotiate with the Crown for five days.[109] Even though the transfer agreement satisfied British and Canadian legal necessities, the transfer's legislative package did little to transform actual political authority in the lands it claimed to annex, or the opinions of the people who lived there. They were, in reality, unilateral acts by a foreign power, which at the time had little substantive effect on still-independent Indigenous peoples.

In general, Indigenous people did not recognize the legitimacy of the Charter, the transfer agreement, or other unilateral pronouncements of governance by outsiders. They looked instead to their negotiated agreements—the treaties and the Manitoba agreement between the Provisional Government and Ottawa—that established a Canadian presence in the region. Canada's claim to have purchased the North-West can only be treated as legitimate if it involved the transfer of legitimately controlled territory, a

situation that was not realizable on the ground. At the heart of this proposed territorial transfer was the Company's discovery claim, meaning that Canada's claim to ownership, sovereignty, and settler-colonial imperative in the region is also initially premised on the same problematic justifications as the Company's. Canada's purchase from the Company, which relies on the assumption of legitimate Company ownership in 1869, suffers from a serious problem of credibility. This means that Canada's claim to have purchased the North-West—over half of Canada's current land mass—is premised on a legal fiction. Since the Company's claim was itself founded on the fantasy of discovery, Canada was in effect purchasing a fantastical claim to this already-peopled territory.

Conclusion: Beyond Discovery and Assertions of Sovereignty

It was only after a large-scale Canadian settler-colonial presence in the North-West that these claims made sense. And it was not sound legal logic that turned fantasy into common sense, but rather a large number of settlers that believed in it. With this new Canadian ascendency, the fantasy could be projected backward to found legitimate Canadian governance of the North-West in the seventeenth-century fur trade forts of French traders.[110] This settler-colonial retrenchment of the fantasy of sovereignty began in earnest in 1870, after the Métis Provisional Government's rejection of Canadian authority in 1869–70 resulted in the dispatch of a large military force of British regulars and Canadian militia to Red River, effectively ending Métis political independence there. While Indigenous communities remained in control of their own lives for many years after, Indigenous governance over their territories was progressively restricted by the Canadian military and police units that remained in the North-West after 1870. It was only with this significant military presence that a British entity could finally actualize the political supremacy in the region originally imagined by Selkirk and Charles II. This settler-colonial transition allowed what was once only a fantasy to be put into practice.[111] With widespread Canadian settlement—and the creation of a permanent armed force in the North-West Mounted Police—settlers could establish British and Canadian authority on a firm footing, and it was this presence that made these old claims practicable.[112]

Thus, after 1870, Canada had the on-the-ground power necessary to then trace its territorial ownership to 1868, to either the Charter or French discovery, and situate its sovereignty in the transfer agreement in 1869–70. Only after 1870 did these British claims make sense, because Canada was capable of enforcing the transfer agreement and its myriad claims of discovery against the will of Indigenous peoples who rejected them.

However, from a perspective based on justice, settler and military control of a region does little to establish the legitimacy of a government. It is in this sense that the series of events described above does not adequately explain how Britain, the Company, or Canada gained possession and political control over the North-West. Presuming that discovery underwrote British sovereignty and land title, the Crown and Canada consistently acted as if they were already the sole lords and proprietors of a region controlled by Indigenous polities, and indeed this mentality was what justified Canadian settlement and even military occupation on Indigenous lands. As this article has shown, the origin of British and Canadian claims to ownership of the North-West is premised on a fantasy of sovereignty developed through a narrative that erases Indigenous political authority in theory without accounting for its presence in fact. At no point before 1870 had Britain or Canada gained the consent of Indigenous peoples to govern the territory, and the presence of settlers and fur traders had been possible due to local agreements like the Selkirk Treaty (and the numbered treaties after 1870) rather than by abstract claims of European ownership.

Even though Canada is now capable of governing these territories, this does not mean it began doing so in 1668. Nor does it validate the transfer as the origin of Western Canada's place in Confederation. We must not confuse the contemporary assertions of sovereignty arising from the fantasy of territorial purchase from the HBC as the basis for Canadian sovereignty today. Instead, we must more carefully examine the on-the-ground relationships that define British—Indigenous relations before 1870, which differed radically from these high-level discourses on discovery and sovereignty that were impracticable and irrelevant to those living in the North-West. So, too, must we revive international agreements, such as the Selkirk Treaty and the numbered treaties after it, which outline the specific ways Indigenous peoples envisioned European presence on our lands. By doing so, we can move beyond the fantastic claims of practically powerless interlopers who manufactured a mythological authority that later was used to justify settler-colonial possession of territory that ignored the existence of Indigenous political authority throughout the North-West.

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Notes

I would thank the Yale Group for the Study of Native America, who read and provided valuable feedback on an early version of this article. This original version of this article was written with the generous support of the Henry Roe Cloud Dissertation Writing Fellowship at Yale University and a Joseph-Armand Bombardier Canada Graduate Fellowship from the Social Sciences and Humanities Research Council.

1. An expansive but vaguely defined region in the interior of North America, containing most of the lands west of the Great Lakes and east of the Rockies, north of the 49th parallel.

2. See Howard Adams, *Prison of Grass: Canada from a Native Point of View,* rev. ed. (Saskatoon: Fifth House Publishers, 1989), 23; Michael J. Witgen, *An Infinity of Nations: How the Native New World Shaped Early North America* (Philadelphia: University of Pennsylvania Press, 2012). Rex Weyler notes in *Blood of the Land* (Philadelphia: New Society Publishers, 1992) that "Rupert was given, 'at the stroke of Charles' quill, sole possession of a land mass larger than all of Europe" (262).

3. John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002), 95–96.

4. James Tully, "The Struggles of Indigenous Peoples for and of Freedom," in *Public Philosophy in a New Key, Volume I: Democracy and Civic Freedom* (Cambridge, U.K.: Cambridge University Press, 2008), 287.

5. See Michael Asch, *On Being Here to Stay: Treaties and Aboriginal Rights in Canada* (Toronto: University of Toronto Press, 2014); James Tully, "The Negotiation of Reconciliation," in *Public Philosophy in a New Key, Volume I: Democracy and Civic Freedom* (Cambridge, U.K.: Cambridge University Press, 2008), 223–56; Kiera L. Ladner, "Treaty Federalism: An Indigenous Vision of Canadian Federalisms," in *New Trends in Canadian Federalism,* ed. Francois Rocher and Miriam Smith (Peterborough, Ont.: Broadview Press, 2003), 167–94; J. R. Miller, *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada* (Toronto: University of Toronto Press, 2009).

6. Witgen, *Infinity of Nations,* 215–16.

7. See, for example, J. M. Bumsted, *Trials and Tribulations: The Red River Settlement and the Emergence of Manitoba, 1811–1870* (Winnipeg: Great Plains Publications, 2003), 108–10.

8. Witgen, *Infinity of Nations,* 28.

9. Robert J. Miller, *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies* (Oxford, U.K.: Oxford University Press, 2010), 6.

10. Robert J. Miller, "The Doctrine of Discovery in American Indian Law," *Idaho Law Review* 42 (2005): 15–16.

11. Patrick Wolfe, "Structure and Event: Settler Colonialism, Time, and the Question of Genocide," in *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History,* ed. A. Dirk Moses (New York: Berghahn Books, 2008), 108.

12. Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (New York: Palgrave Macmillan, 2010), 76.

13. Patrick Macklem, "What's Law Got to Do with It? The Protection of Aboriginal Title in Canada," *Osgoode Hall Law Journal* 35, no. 1 (1997): 133.

14. Kent McNeil, "The Meaning of Aboriginal Title," in *Aboriginal and Treaty Rights in Canada,* ed. Michael Asch (Vancouver: UBC Press, 1997), 142.

15. Ibid.

16. It should also be noted that these legal limitations on Indigenous use rights were not considered applicable to Métis, as British institutions claimed that the Métis were British subjects that existed under the purview of the Crown.

17. Macklem, "What's Law Got to Do with It?," 133.

18. Witgen, *Infinity of Nations,* 72.

19. By mapping the rivers emptying into the bay in 1771 and 1772, the Company also claimed to have discovered the Mackenzie River and Great Slave Lake. According to the HBC recorder Adam Thom, in 1848, the Company gained "the private and absolute grant [that] extend[ed] from the shores of the sea to the height of the land both Peace River and McKenzie River as appendages of Great Slave Lake" as a result of reaching the river mouths, even though much of the region remained unseen by Company servants. Quarterly Court of Assiniboia, James Calder Decision, August 17, 1848, Hudson's Bay Company Archives, MG 2 B4-1.

20. *The Royal Charter for Incorporating the Hudson's Bay Company, A.D. 1670* (England, 1670).

21. Ibid.

22. Darren O'Toole, "The Red River Resistance of 1869—1870: The Machiavellian Moment of the Metis in Manitoba" (PhD diss., University of Ottawa, 2010), 93.

23. Borrows, *Recovering Canada,* 95—96.

24. Kent McNeil, *Native Rights and the Boundaries of Rupert's Land and the North-Western Territory,* Studies in Aboriginal Rights 4 (Saskatoon: University of Saskatchewan Native Law Centre, 1982), 6.

25. *Royal Charter for Incorporating the Hudson's Bay Company*.

26. Witgen, *Infinity of Nations,* 26.

27. Kent McNeil, *Native Claims in Rupert's Land and the North-West Territory: Canada's Constitutional Obligations,* Studies in Aboriginal Rights 5 (Saskatoon: University of Saskatchewan Native Law Centre, 1982), 2.

28. See Borrows, *Recovering Canada*; Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650—1815* (New York: Cambridge University Press, 1991); Witgen, *Infinity of Nations*.

29. The quotation in this section's subhead comes from the Earl of Selkirk, "Selkirk's Treaty with the 'Chippeway or Sautaux Nations, and of the Cree Nations,'" in *The Canadian North-West: Its Early Development and Legislative Record, Minutes of the Councils of the Red River Colony and the Northern Department of Rupert's Land,* ed. E. H. Oliver (Ottawa: Government Printing Bureau, 1914). The efficacy of early Selkirk-led settlement in the region is debatable. According to Bumsted, while there was a considerable Scottish population in the

region from this point on, but after regular hardship and an inflow of Métis from the surrounding country, by the mid-1820s the settlement was already on its way to becoming a Métis-majority community. See Bumsted, *Trials and Tribulations,* 56–57.

30. Hudson's Bay Company, "Grant of the District of Assiniboia by the Hudson's Bay Company to Lord Selkirk, 1811," in *The Canadian North-West,* ed. Oliver.

31. Ibid.

32. Earl of Selkirk, "Selkirk's Instructions to Miles Macdonnell, 1811," in *The Canadian North-West,* ed. Oliver, 173.

33. Ibid.

34. Gerhard Ens, "The Battle of Seven Oaks and the Articulation of a Metis National Tradition, 1811–1849," in *Contours of a People: Metis Family, Mobility, and History,* ed. Nicole St-Onge, Carolyn Podruchny, and Brenda Macdougall (Norman: University of Oklahoma Press, 2012), 102.

35. Interestingly, the Métis were left out of the treaty process, likely because they were considered by Selkirk to be British subjects, not Indians, and already subject to the Crown's authority.

36. Bumsted, *Trials and Tribulations,* 34.

37. Selkirk, "Selkirk's Treaty with the 'Chippeway or Sautaux Nations, and of the Cree Nations,'" 1288–89.

38. Ibid.

39. James Tully, "The Struggles of Indigenous Peoples for and of Freedom," in *Political Theory and the Rights of Indigenous Peoples,* ed. Duncan Ivison, Paul Patton, and Will Sanders (Cambridge, U.K.: Cambridge University Press, 2000), 50.

40. Bumsted, *Trials and Tribulations,* 141.

41. Gerhard Ens, *Homeland to Hinterland: The Changing Worlds of the Red River Metis in the Nineteenth Century* (Toronto: University of Toronto Press, 1996), 33.

42. Alan D. Watson, "The Quitrent System in Royal South Carolina," *William and Mary Quarterly* 33, no. 2 (1976): 183–211; Beverly W. Bond, "The Quit-Rent System in the American Colonies," *American Historical Review* 17, no. 3 (1912): 496.

43. Bond, "Quit-Rent System in the American Colonies," 496.

44. Watson, "Quitrent System in Royal South Carolina," 184.

45. Selkirk, quoted in Aimée Craft, *Breathing Life into the Stone Fort Treaty: An Anishinabe Understanding of Treaty One* (Saskatoon: Purich, 2013), 37.

46. Selkirk, "Selkirk's Instructions," 173.

47. Although, given that there were also Assiniboine and Métis bands in the area, it would be a mistake to assume that they were the only "landlords" of the Red River valley.

48. Peguis, quoted in Bumsted, *Trials and Tribulations,* 141. Bumsted also notes that many other Métis had knowledge of this same interpretation after it was passed down through their family's oral history.

49. J. M. Bumsted, *The Red River Rebellion* (Winnipeg: Watson and Dwyer, 1996), 47.

50. Donald Gunn, "The Land Controversy," *The Nor'-Wester,* June 28, 1860.

51. Thomas Flanagan, *Metis Lands in Manitoba* (Calgary: University of Calgary Press, 1991), 14–15.

52. Ibid., 15.

53. A. A. Den Otter, "The 1857 Parliamentary Inquiry, the Hudson's Bay Company, and Rupert's Land's Aboriginal People," *Prairie Forum* 24, no. 2 (1999): 144.

54. Ibid., 146.

55. George F. G. Stanley, *The Birth of Western Canada: A History of the Riel Rebellions,* Canadian University Paperbooks (Toronto: University of Toronto Press, 1961), 21.

56. Den Otter, "1857 Parliamentary Inquiry," 146.

57. William Henry Draper's Testimony, Parliamentary Select Committee on the Hudson's Bay Company, *Report from the Select Committee on the Hudson's Bay Company; Together with the Proceedings of the Committee, Minutes of Evidence, Appendix, and Index* (London: House of Commons, 1857), 212; William Henry Draper, "Copy of the Letter Addressed by Mr. Chief Justice Draper to Her Majesty's Secretary of State for the Colonies, Bearing Date 6 May 1857, Together with a Copy of the Memorandum Therein Referred," in ibid., 375.

58. *Imperial Order in Council of the 23rd June, 1870* (Great Britain, 1870).

59. Draper, "Copy of the Letter Addressed by Mr. Chief Justice Draper to Her Majesty's Secretary of State for the Colonies," in *Report from the Select Committee on the Hudson's Bay Company; Together with the Proceedings of the Committee, Minutes of Evidence, Appendix, and Index* (London: House of Commons, 1857), 374.

60. Alexander Begg, *History of the North-West,* vol. 1 (Toronto: Hunter, Rose & Co., 1894), 126.

61. Draper, "Copy of the Letter Addressed by Mr. Chief Justice Draper to Her Majesty's Secretary of State for the Colonies," 376.

62. Ibid.

63. Draper, "Paper Delivered by Mr. Chief Justice Draper, 28 May 1857, Relative to Canadian Boundaries," in *Report from the Select Committee on the Hudson's Bay Company,* 379.

64. Draper, "Copy of the Letter Addressed by Mr. Chief Justice Draper to Her Majesty's Secretary of State for the Colonies," 376.

65. Ibid., 378.

66. Ralon, quoted in ibid., 377.

67. For in-depth analysis of this ceremony of French discovery initiated by St. Lusson on behalf of the king see Witgen, *Infinity of Nations,* 69–71.

68. Draper, "Copy of the Letter Addressed by Mr. Chief Justice Draper to Her Majesty's Secretary of State for the Colonies," 378.

69. Ibid., 375.

70. O'Toole, "Red River Resistance of 1869–1870," 115.

71. Hamar Foster, "Long Distance Justice: The Criminal Jurisdiction of Canadian Courts West of the Canadas, 1763–1859," *American Journal of Legal History* 34, no. 1 (1990): 34.

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73. Foster, "Long Distance Justice," 46.

74. Louis Riel, "Last Memoir," in A.-H. de Trémaudan, *Hold High Your Heads: History of the Métis Nation in Western Canada,* trans. E. Maguet (Winnipeg: Pemmican, 1982), 205.

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76. Ibid.

77. George F. G. Stanley, *Louis Riel* (Toronto,: Ryerson Press, 1963), 44.

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82. Stanley, *Louis Riel,* 44.

83. The quotation in this section's subhead comes from Riel, "Last Memoir," 205.

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85. McNeil, *Native Claims in Rupert's Land and the North-West Territory,* 5.

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90. McNeil, *Native Rights and the Boundaries of Rupert's Land and the North-Western Territory,* 40–41.

91. Stanley, *Birth of Western Canada,* 39.

92. *Imperial Order in Council of the 23rd June, 1870*.

93. Great Britain, "Rupert's Land Act," section 3.

94. O'Toole, "Red River Resistance of 1869–1870," 1.

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97. Canada, "Act for the Temporary Government of Rupert's Land and the North-West Territory When United with Canada," in *32-33 Victoria, c. 3* (1869), preamble.

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101. Alexander Begg, "Letter to *The Globe,* November 10, 1869," in *Reporting the Resistance: Alexander Begg and Joseph Hargrave on the Red River Resistance,*

ed. J. M. Bumsted (Winnipeg: University of Manitoba Press, 2003), 89. See also O'Toole, "Red River Resistance of 1869–1870," 138.

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104. Provisional Government of Assiniboia, *Declaration of the People of Rupert's Land and the North-West,* 1869.

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106. Quoted in O'Toole, "Red River Resistance of 1869–1870," 177–78.

107. Quoted in Miller, *Compact, Contract, Covenant,* 170.

108. Quoted in ibid., 171.

109. Ibid., 170–71.

110. Veracini, *Settler Colonialism,* 5.

111. Wolfe, "Structure and Event," 108.

112. See Veracini, *Settler Colonialism,* 76; Wolfe, "Structure and Event," 108.