

**ASSIMILATION THROUGH INCARCERATION:
THE GEOGRAPHIC IMPOSITION OF CANADIAN LAW OVER
INDIGENOUS PEOPLES**

by

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Abstract

The disproportionate incarceration of indigenous peoples in Canada is far more than a socio-economic legacy of colonialism. The Department of Indian Affairs (DIA) espoused incarceration as a strategic instrument of assimilation. Colonial consciousness could not reconcile evolving indigenous identities with projects of state formation founded on the epistemological invention of populating idle land with productive European settlements. The 1876 *Indian Act* instilled a stubborn, albeit false, categorization deep within the structures of the Canadian state: “Indian,” ward of the state. From “Indian” classification conferred at birth, the legal guardianship of the state was so far-reaching as to make it akin to the control of incarcerated inmates. As early iterations of the DIA sought to enforce the legal dominion of the state, “Indians” were quarantined on reserves until they could be purged of indigenous identities that challenged colonial hegemony. Reserve churches, council houses, and schools were symbolic markers as well as practical conveyors of state programs. Advocates of Christianity professed salvation and taught a particular idealized morality as prerequisites to acceptable membership in Canadian society. Agricultural instructors promoted farming as a transformative act in the individual ownership of land. Alongside racializing religious edicts and principles of stewardship, submission to state law was a critical precondition of enfranchisement into the adult milieu. When indigenous identities persisted, children were removed from their families and placed in residential schools for intensive assimilation. Adults and children deemed noncompliant to state laws were coerced through incarceration. Jails were powerful symbols of the punitive authority of the Dominion of Canada. Today, while the overrepresentation of Aboriginal persons in prisons is a matter of national concern, and critiques of systematic racism dismantle ideologies of impartial justice, the precise origins of indigenous imprisonment have not been identified. The DIA was so intimately invested in assimilation through incarceration that lock-ups were erected with band funds on “Indian lands” across Canada. Archival documents and the landscape of Manitoulin Island make this legal historical geographical analysis of assimilation through incarceration possible.

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Chapter 1

Introduction: Assimilation Through Incarceration

In Kingston, Ontario, the Correctional Service of Canada posts a warning outside Kingston Penitentiary, the first such facility in Upper Canada. The sign cautions all who may enter that Kingston Penitentiary and its grounds are a federal reserve. In the Canadian vernacular, a “reserve” is a federally-sanctioned place for First Nations peoples. “Indian Reserves” are legal creations that certainly do not reflect the full extent of traditional indigenous territories and may not even be located on traditional lands. Rather, they are geographies of legal exception within a state that struggles to come to terms with the indigenous peoples who inhabit them and, reluctantly, with those who maintain social and legal ties to reserves even when they choose to reside elsewhere. As this dissertation will demonstrate, the notification that Kingston Penitentiary falls into the legal-geographical category of a government “reserve” is especially salient because of the disproportionately high numbers of Aboriginal persons incarcerated in federal and provincial prisons.

Indigenous communities and individuals are major subjects of Canada’s current legal and justice systems. Geographical connection, personal identity, family membership, social association, racialized phenotypical traits, and legal status under the *Indian Act* are all ways in which individuals are identified as “Indians” by the people who translate the structures of the criminal justice system into practice. A literature review reveals that scholarly, political, and indigenous efforts to lift the mantle of institutionalized racism recognize that the crux of Aboriginal overrepresentation in prison lies in Canada’s colonialist socio-legal structures. In parallel to research proceeding on the sociological parameters of contemporary imprisonment, academics in many disciplines are illuminating the ways in which reserves and residential schools operated as part of the Department of Indian Affairs’ program of “civilization.” Epistemologies of racism, abuse, violence, and poverty form important bridges in contemporary scholarship yet there is sparse literature to indicate the role that the Department of Indian Affairs played in incarceration.

Clearly, the colonial antecedents of overrepresentation fly in the face of Western aspirations to “blind justice” symbolized by Lady Justice holding aloft the scales of her vocation. It is less evident in the literature precisely how, where, and why colonial injustice has led to

contemporary imprisonment through any other means than historic trauma. Imprecision can lead to the disconcerting racialized deduction that the seeds of criminality have been embodied within indigenous peoples themselves: that indigenous persons are damaged at their very core and require drastic remedial intervention in order to circumvent criminal activity.

Imprisonment is more than a by-product of socio-economic inequality stemming from colonialism. Justice may take many forms. However, state justice is fundamentally embedded in the politics of territorial control. The very existence of indigenous peoples unsettled colonial ideological claims to the lands that became Canada. Colonial governments devised programs of geographic segregation in order to assimilate indigenous peoples into state visions. Assimilation through incarceration is rooted in the early days of colonial settlement when the inaccuracy of early predictions that “Indians” could be segregated on temporary reserves where they would either die out or assimilate to persuasive models of agrarian Christian life became apparent. Invasive measures of geographic control were applied in order to contain perceived threats and hasten the resolution of “the Indian problem.” The vestiges of many of the laws, policies, and procedures first instituted during European settlement can still be found in Canadian societal conventions, legal structures, and government legislation. Accurately situating assimilation through incarceration requires careful legal historical-geographical scholarship and a scrupulous balance between the centralized bureaucracies of colonizing government, particular legal geographical contexts, and multivariate indigenous negotiations of totalizing state claims.

The specific origins of indigenous imprisonment in Canada are difficult to discern; however, Manitoulin Island, a landscape of separation on many scales, indicates how these legal inequalities were instituted. Incarceration was intentionally propagated by the Department of Indian Affairs as a tool of assimilation. Far from current ideals of justice, incarceration was entirely in keeping with the coercively paternalistic spirit of Indian Affairs as the colonialist state imposed British forms of law over indigenous lands and peoples. Interactions between the Department of Indian Affairs and the indigenous peoples of Manitoulin Island are especially helpful in establishing key modalities of Aboriginal imprisonment because of the island’s particular physical and human geographies. As Canada’s largest freshwater island, Manitoulin Island enjoys exceptional grandeur in the national imagination.

Manitoulin Island is a particularly opulent palimpsest of colonialist segregation because of its bounded nature and intriguing incidents including the razing of the Island by the Haudenosaunee in the mid-seventeenth century, the “return” of the Odawa, Ojibwa, and

Pottawatomi following the War of 1812, and the failed 1836 attempt of Sir Francis Bond Head to use the island as a hospice for the entire “race” of “Indians.”



Figure 1: Legal Landscapes of Great Manitoulin Island¹

Burden’s 1860 map of Manitoulin Island illustrates the position of many of the places discussed in this dissertation. Take note of the north shore of Lake Huron across from Little Current and Sucker Creek, Gore Bay to their west, Georgian Bay and Lonely Island to the east, the proximity of Manitowaning and Wikwemikong in parallel yet contrasting legal geographies, and the southward position of Providence Bay.

For the highly-centralized Department of Indian Affairs, Manitoulin Island held a crucial position within the national program of assimilation as a place of socio-spatial segregation where assimilative programs could be tested on First Nations peoples. Nevertheless, neither treaty-making, surveying, nor settlement unfolded as planned by the colonizing bureaucracy. Fishing disputes off the shores of Wikwemikong Unceded Territory demonstrated the determination of indigenous peoples to protect resources and maintain order in correspondence with their own ontologies. While revelations of organized indigenous strength threatened the colonial state, legal instruments such as the *Indian Act* served to criminalize the “Indian” by the very legal-geographic terms of that designation. Provisions of the 1876 *Indian Act* apportioned disproportionate

¹ Adapted from Harold Nelson Burden, *Manitoulin, or, Five years of church work among Ojibway Indians and lumbermen, resident upon that island or in its vicinity*, (London: Simpkin, Marshall, Hamilton, Kent, 1895).

penalties to people who appeared to bear the phenotypical or social traits of “Indians” whether or not they had “status.” Alongside this legislation, the Department of Indian Affairs undertook the construction of lock-ups on Manitoulin Island, and across Canada, in order to enforce laws in ways that advanced their assimilative aims. Although this dissertation ultimately reveals Indian Affairs’ distancing from localized and legislative incarceration, it closes by establishing incredible continuities of assimilation through incarceration within the broader welfare state.

The Second World War brought about a recalibration of government policies and a repositioning of “Indians” within the general social welfare programs of the state. The movement of Indian Affairs away from judicial functions and localized jails has served to obscure their participation in incarceration. Nonetheless, as this dissertation unearths through reading both material and documentary sources as geographical palimpsests, practical structural adjustments were partial, governmental functions were intermingled, and entrenched prejudices were difficult to dislodge. When the standing of enfranchised Canadians as subjects of the British Crown was translated into citizenship with the 1947 *Citizenship Act*, “Indians” did not gain equivalent rights as citizens even though they had also been subjects with, ostensibly, the same legal protections.² The 1951 *Indian Act* allowed greater “Indian” control of band governance, gave women the right to vote in band councils, and marked a move towards integrating children into regular school systems.³ Indian Affairs began to publically acknowledge the possibility that First Nations identity and citizenship in Canada could coincide.⁴ Although some attempts were made to improve nation-wide curriculae on Aboriginal culture, educational reforms did little to “facilitate the movement of Aboriginal people as Aboriginal people from wardship to citizenship” in the Canadian state.⁵

Citizenship has been made the “ideological rival” of indigenous persons’ *sui generis* and treaty rights.⁶ In 1960, “Indians” received the federal franchise without losing “status” under the *Indian Act*. Nevertheless, by the end of the decade, Minister of Indian Affairs Jean Chretien outlined the Trudeau Government’s intent to fully assimilate status Indians. The 1969 *White Paper* proposed to dissolve the unique legal relationships between First Nations and the Federal

² James (Sákéj) Youngblood Henderson, “*Sui Generis* and Treaty Citizenship,” *Citizenship Studies*, 6(4), (2002):415-440.

³ John S Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879-1986*, Manitoba Studies in Aboriginal History XI, (Winnipeg, Manitoba: The University of Manitoba Press, 1999):189, 197, 211, 212, 220.

⁴ *Ibid*:198.

⁵ *Ibid*:198.

⁶ Henderson, 2002, *Op. Cit.*:418.

Government by completing the integration of “Indians” into provincial service systems, repealing the *Indian Act*, and bringing an end to treaties. The *White Paper* was rejected by the majority of First Nations because, despite the inequalities in legislation governing the relationships between “Indians” and the federal government, it would also eliminate significant distinctions and duties caught up in the *Indian Act*. The legal geographies used to restrict indigenous persons for the purposes of assimilation can also be used as positions of entrenchment from which to insist on the state’s legal obligations to First Nations.

Today, with its M’Chigeeng, Sheguiandah, Sheshegwaning, Aundeck Omni Kaning, Wikwemikong, and Zhiibaahaasing reserves, Manitoulin Island remains an extraordinary place. Beautiful vistas, waterways, tourist destinations, farmlands, businesses, and industries are found in both settler and First Nations communities. For a historical geographer, the presence of lock-up buildings in the landscape of Manitoulin Island is an intellectual enigma that must be decoded.

Archival research is an authoritative scholarly tool for addressing pertinent research questions:

- 1) How did incarceration develop historically and geographically as a peculiarly prominent element of “Indian” interactions with the Canadian state?
 - a) What were the particular legal and geographic characteristics of “Indian” incarceration and how did they vary over time?
 - b) What mechanisms and treatment distinguished “Indian” interactions with law enforcement, court, and correctional systems?
 - c) What “place” did incarceration have on reserves?
- 2) How was state law applied on Manitoulin Island in the early days of European settlement?
 - a) How was “crime” understood and criminal law enforced?
 - b) How did the growth of European settlements and deepening of Canadian state functions influence the use of incarceration on Manitoulin Island?
 - c) Why, and how, did the Department of Indian Affairs build lock-ups on Manitoulin Island? How did these facilities operate?
- 3) What were the impacts of changing social concerns on criminalization and the use of incarceration?
 - a) How did post-Second World War societal priorities and the 1951 *Indian Act* influence carceral and assimilative processes?
 - b) Has racism resulted in the elision of traits associated with indigenous ancestry with unlawfulness?

Keys to understanding this captivating landscape are found in the examination of scholarly literature and archival approaches in Chapter Two. Building on the principles of historical-geographical scholarship and legal geography, Chapter Three begins to lay a foundation

for assimilation through incarceration by interpreting early assertions of the colonial state through the legal instruments of mapping, surveying, and treaty-making. Manitoulin Island has long been a place of international summit for indigenous and colonizing nations. As an island, Manitoulin presented segregative opportunities to indigenous peoples resisting the incursions of settlers as well as to colonizing governments asserting state power over indigenous peoples through geographical containment. Through the establishment of legally reserved spaces for indigenous peoples, colonizing governments attempted to dispatch Aboriginal title in order to legitimate state claims on the frontier lands that seemed most promising for settlement and economic enterprise. As settler populations grew and spread north-west around the Great Lakes, demand increased for lands and resources that once seemed remote and undesirable.

By reconsidering the murder of a colonial official amidst the fog of legal rights to Manitoulin fisheries, Chapter Four demonstrates the tendency to validate state power through criminal law enforcement when the considered legal approaches of indigenous peoples clashed with the legal understandings of frontier businessmen and inflamed the insecurities of settlers within the colonizing state. As indigenous communities assessed advancing settlement, they strategically negotiated their relationships to colonial legal structures. However, these legal structures continually evolved according to colonial expediency. The state refined and justified its practices through legislation. Chapter Five critically assesses the entrenchment of assimilative and segregative approaches to indigenous peoples in early renderings of the *Indian Act*. Once confederated, Canada paid little attention to its reliance on indigenous allies to secure territorial advantage in European contests on the North American continent. Canada was left with what was perceived as the unfinished business of extinguishing problematic indigenous existence and power. Nevertheless, as they positioned themselves in the shifting legislative landscapes of Canada, indigenous communities maintained their own legal ontologies and continued to pay heed to the responsibilities of their own lifeways.

Attestations to indigenous strength challenged the ultimate authority of Canada. Chapter Six delves into unrests and inconsistencies of colonial Canadian frontiers as it explores assimilative criminalization on the “frontiers” of a developing Canadian state. The persistent enactment of indigenous legal principles and calls to honour agreements made with First Nations threatened state aspirations. Therefore, the legal prerogatives of indigenous peoples were paternalistically undermined and criminalized. Within its assimilative trajectory, the *Indian Act* is conceptualized as a piece of criminal legislation for the classification, control, and eventual elimination of “Indian” as a legal category. The criminalizing provisions of the *Indian Act*

defined specific “Indian” crimes and laid out procedures for the investigation, prosecution, conviction, and punishment of “Indians.” Carceral terms are delineated in the *Indian Act*. Criminal codes, law enforcement, and regulatory systems drew on the *Indian Act* as the primary legislative arbiter of “Indian” relationship to the Canadian state. When “Indians” turned to colonial legal systems, the assimilative ideals of Indian Affairs could outweigh the securing of justice.

Abstinence from the consumption of intoxicating liquors was a central assimilative ideal of Indian Affairs. The difficulty of enforcing complete temperance when the very settler society that “Indians” were intended to emulate did not abstain is borne out in Chapter Seven. A legally-informed deconstruction of the “Drunken Indian” stereotype demonstrates that, while this pernicious racialization predated Confederation, it was reinforced by the assimilative criminalization of state policies. Sentences for criminal offenses involving the possession, consumption, and trade of intoxicants were legislated into the *Indian Act*. Indian Affairs’ abstemious mandate was applied through their own invasive surveillant, judicial, and carceral powers over “Indians.” While complete control of human agency could never be effected, assimilative coercion was written into the legal geographies of state structures and societal prejudices.

The construction of lock-ups for the imprisonment of “Indians” is a previously undiscovered and unmapped phenomenon. Chapter Eight embarks on tracing this punitive geographical restriction. In Chapter Nine, the precepts of historical-geography and legal geography are used to document and convey the multifarious connections between Manitoulin Island lock-ups and the assimilative jurisdictions of Indian Affairs. “Indian” imprisonment appeared to move geographically, legislatively, and administratively from the bureaucratic domain of Indian Affairs into the correctional systems of the welfare state following the Second World War. Chapter Ten traces the material legal geographies of three relocations exemplified by the concession of the Gore Bay Gaol’s District Gaol status in favour of imprisonment in Sudbury, the enrollment of children in a residential school which had its own system of teaching the administration of justice, and the assimilative purposes and products of labour undertaken in prisons. Assimilation and incarceration have remained astonishingly close. Historical and legal geographical analysis illuminates critical state structures that remain in place today.

Relevant primary sources were found in the National Archives of Canada and the Archives of Ontario. While many of these files are available to any researcher, several voluminous files of highly sensitive documents from the Department of Indian Affairs and the

Department of Justice were obtained from the National Archives through a successful Access to Information application and researcher agreement. Newspapers and other historical publications were used as windows on popular interests, influential representations of events, and changing legal environments. Legislation was evaluated as an arbiter of legal geographic rights and restrictions. Parliamentarians' work includes improving the legislation that enshrines what is, and is not, lawful behaviour. Therefore, as well as contributing to the creation of particular legal geographies, legislative evolutions are reflections of the problems and priorities of real legal contexts. Legal disputes and decisions were used to illustrate and illuminate the differing historical-geographic circumstances in which the law is enacted.

Findings generated from the marriage of historical and legal geographies serve to support the paramount contribution of this dissertation: deliberate scrutiny of colonial legal abstraction is grounded in the form of small jails built for "Indian" inmates. The Department of Indian Affairs was thoroughly immersed in the construction and utilization of lock-ups for the incarceration of "Indians." Incarceration has a profound place in the program of assimilation through geographic segregation. The material connections between Indian Affairs and imprisonment were perpetuated even when services for "Indians" became more closely integrated with general social welfare systems following the Second World War. The current overrepresentation of Aboriginal persons in Canadian provincial and federal carceral facilities is thus much more direct than socio-economic indices resulting from historic trauma and discrimination. This dissertation demonstrates that incarceration has always been inequitably applied to "Indians."

Chapter 2

Literature Review: Theoretical and Methodological Contexts

The blossoming of academic scholarship in legal geography provides a theoretical context for this dissertation. Discourses of legal geography are practical responses to the complexity of relationships between theories of identity, such as gender, class, and racialization, with “on the ground” realities embedded in human agency, physical geography, materiality, and the semiotics of landscape. Legal and surveillant practices are critical to understanding how these realms operate and cooperate. Chris Butler locates legal geography in the theories of Henri Lefebvre’s *Dialectical Materialism*, *The Right to the City*, *The Urban Revolution*, and *The Production of Space*.¹ Within the latter treatise, Lefebvre’s delineation of spatial practices, representations of space, and representational spaces, in other words, “the physical, the mental and the lived,” Butler finds a theoretical grounding for legal geography.²

Recent legal geographical work has been done in the areas of economic globalization, the politics of water, housing, terrorism, “race,” political asylum, gated communities, satellites, surveillance, urban policing, spatio-therapeutics, and Canadian federalism.³ There are many more

¹ Chris Butler, “Critical Legal Studies and the Politics of Space,” *Social & Legal Studies*, 18(3, September), (2009):313-332.

² Ibid:320.

³ Joshua Barkan, “Law and the geographic analysis of economic globalization,” *Progress in Human Geography*, 35(5, October), (2011): 589-607; Wendy Jepson, “Claiming Space, Claiming Water: Contested Legal Geographies of Water in South Texas,” *Annals of the Association of American Geographers*, 102(3), (2012):614-631; K Maria and D Lane, “Water, Technology, and the Courtroom: Negotiating Reclamation Policy in Territorial New Mexico,” *Journal of Historical Geography*, 37(3, July), (2011):300-311; Patrick Forest, “The Legal Geography of Water Exports: A Case Study of the Transboundary Municipal Water Supplies Between Stanstead (Québec) and Derby Line (Vermont),” *Québec Studies*, 42(Fall/Winter), (2002): 91-109; Peter J Atkins, M Manzurul Hassan, and Christine E Dunn, “Toxic Torts: Arsenic Poisoning in Bangladesh and the Legal Geographies of Responsibility,” *Transactions of the Institute of British Geographers*, 31(3, September), (2006): 272-285; Deborah G Martin, Alexander W Scherr, and Christopher City, “Making Law, Making Place: Lawyers and the Production of Space,” *Progress in Human Geography*, 34(2), (2010):175-192; Nick J Scullo, “On the Language of (Counter)Terrorism and the Legal Geography of Terror,” *Willamette Law Review*, 48(3, Spring), (2012):317-341; Benjamin Forest, “The Legal (De)construction of Geography: Race and Political Community in Supreme Court Redistricting Decisions,” *Social & Cultural Geography*, 5(1, March), (2004):55-73; A White, “Geographies of Asylum, Legal Knowledge and Legal Practices,” *Political Geography*, 21, (2002):1055-1073; Ron Levi, “Gated Communities in Law’s Gaze: Material Forms and the Production of a Social Body in Legal Adjudication,” *Law & Social Inquiry*, 34(3, Summer), (2009): 635-669; Christy Collis, “The geostationary orbit: a critical legal geography of space’s most valuable real estate,” *Sociological Review*, 57(May), (2009):47-65; Micheal Vonn, “CCTV and the 2010 Vancouver Games: Spatial Tactics and Political Strategies,” *Case*

subjects that appear to have obvious relevance to this perspective yet have not been addressed. As Joshua Barkan comments in his analysis of economic globalization, while geographers have made significant contributions, there has been a “curious absence of law” in examinations of state restructuring.⁴

Perhaps this absence is in some way connected to Nicholas Blomley’s observation that geographers have been “generally reluctant” to contemplate the violence of state law despite the “discipline’s violent entanglements” and the “intrinsic and consequential geography to law’s violence” found in the establishing of property through legal conceptions such as the frontier and legal instruments such as surveys.⁵ As Blomley, the foremost legal geographer, holds this lens to the idea of property, useful insights are achieved into the interpretations and outcomes of property systems with British colonial origins.⁶ Blomley’s work thus provides a backdrop for the rough interactions between indigenous and colonial law and, critically, a balancing between the coercive potential of colonial ideologies and the porosity of real places and boundaries. Synthesizing insights and approaches from a variety of disciplines has always been a forte of geographic scholarship.

Although written as a legal academic exposition, geographic considerations have clearly been brought to bear on Douglas Harris’ reconstruction of the “legal spaces” of indigenous fisheries in *Fish, Law, and Colonialism: the Legal Capture of Salmon in British Columbia*.⁷ Harris’ contextual archival research uses the term “law” as a descriptor of the situated networks of indigenous and state regulation.⁸ In British Columbia, colonial authorities justified the imposition of state law by failing to recognize the existence of indigenous law.⁹ Despite brief reference to instances where conflicts between indigenous and colonial applications of law led to

Western Reserve Journal of International Law, 42(3), (2010):595-605; Bernd Belina, “From Disciplining to Dislocation: Area Bans in Recent Urban Policing in Germany,” *European Urban and Regional Studies*, 14(4), (2007):321-336; Dawn Moore, Lisa Freeman, and Marian Krawczyk, “Spatio-Therapeutics: Drug Treatment Courts and Urban Space,” *Social & Legal Studies*, 20(2), (2011):157-172; Robert Stack, “The Legal Geography of Expansion: Continental Space, Public Spheres, and Federalism in Australia and Canada,” *Alberta Law Review*, 39(2), (2001):488-510.

⁴ Barkan, Op. Cit.:591.

⁵ Nicholas Blomley, “Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid,” *Annals of the Association of American Geographers*, 93(1), (2003):121-141.

⁶ Nicholas Blomley, “Simplification is Complicated: Property, Nature, and the Rivers of Law,” *Environment and Planning A*, 40, (2008): 1825-1842; Nicholas Blomley, “Making Private Property: Enclosure, Common Right and Work Hedges,” *Rural History*, 18(1), (2007):1-21; Nicholas Blomley, *Rights of Passage: Sidewalks and the Regulation of Public Flow*, (New York: Routledge, 2011).

⁷ Douglas C Harris, *Fish, Law, and Colonialism: The Legal Capture of Salmon in British Columbia*, (Toronto: University of Toronto Press, 2001).

⁸ Ibid:5-7.

⁹ Ibid:4.

imprisonment, Harris primarily concentrates on British Columbia fisheries and does not make detailed connections between incarceration and assimilation on a broader scale.¹⁰ It may be more difficult to discover the nature of these relationships within research on the somewhat removed colonial administrative contexts of British Columbia. Nevertheless, as this dissertation makes evident, these linkages exist. Even as state power operated in varying colonial contexts through particular individuals, central ideologies and policies were transmitted from colonial seats of power to the whole. It is for these reasons that assimilation through incarceration must be critically assessed on several scales.

While most geographers are by no means lawyers, law is unmistakably influential in geography. The importance of the law goes beyond legal texts to legal practice. As Deborah Martin, Alexander Scherr, and Christopher City underscore, lawyers “interpret and enact the law in socio-spatial contexts that can reinforce or alter spatial norms.”¹¹ Reginald Oh dissects the implication of the 1989 United States Supreme Court contention in *Richmond v. Croson* that “African Americans were now politically powerful because of and not in spite of having historically suffered from invidious racial discrimination.”¹² Oh uses this “profoundly inaccurate” assumption to argue for the “importance of examining space and geography in critiquing and constructing legal doctrine.”¹³ Bernd Belina maintains a critical perspective in an analysis of the relationships between geographic imagination and *Aufenthaltsverbote*, a German method of policing through “area bans.”¹⁴ When “spatializations of crime,” perceptions of criminal danger associated with place, are made into law, their “structuring impact on police work and the urban fabric are intensified.”¹⁵ The central role of law in geographic ontologies animates the systematic analytical approach of legal geographic scholarship.

2.1 Incarceration: Surveillance, Segregation, and Racism

Weighty scholarship on segregation, racism, and incarceration has been pursued in both the USA and Canada; however, much of this work is either in the contemporary vein, does not consider indigenous peoples, or makes theoretical rather than empirical allusions to historical-

¹⁰ Douglas Harris, 2001, Op. Cit.:51-54, 111-113, 197.

¹¹ Martin et. al., 2010, Op. Cit.:175.

¹² Reginald Oh, “Re-mapping Equal Protection Jurisprudence: A Legal Geography of Race and Affirmative Action,” *American University Law Review*, 53(6, August), (2004):1307.

¹³ Ibid:1308.

¹⁴ Belina, 2007, Op. Cit.:321.

¹⁵ Ibid:322.

geographical contexts. Polemic works can be too hazy about the specific, geographically-grounded, application of the law to support confident connections between the present and the past. Constance Backhouse, Ann Curthoys, Ian Duncanson, and Ann Parsonson champion the perspective that

[h]istorical societies were not monolithic in respect of the attitude to race; they were not unrelievedly smothered by ideas of racial hierarchy... We know too little yet about the historical record of race to make sweeping generalizations about what was known or understood, and what could have been known or understood, about the evils of white supremacy. So why the hesitation to use words such as 'racist' or 'anti-racist' in recounting historical times? There somehow seems to be less resistance to using the label 'sexist' to describe historical actors, even though this is also a modern addition to our vocabulary.¹⁶

Diana Paton does not hesitate to use these terms as she situates the particularities of Jamaican penal approaches within the colonial drive to incarcerate.¹⁷

In Canada, historical mentions of imprisonment and indigenous peoples tend to be incidental to narratives of important historical figures or events such as Louis Riel and the conflicts on western colonial frontiers. Andrew Graybill's *Policing the Great Plains: Rangers, Mounties, and the North American Frontier* is an example of a frontier history of law enforcement of indigenous peoples and borders.¹⁸ Graybill contrasts the "exterminating or expelling" tactics of Texas Rangers with those of the North-West Mounted Police (NWMP) who "sought to subdue" indigenous peoples through "implementing Ottawa's policy of coerced assimilation."¹⁹ The NWMP were "well positioned" for the task at hand because "Ottawa had invested the constabulary with the power to arrest, prosecute, judge, and sentence offenders."²⁰ Amanda Nettelbeck and Russell Smandych make similar claims as they turn to comparative study to evaluate the effectiveness of colonial law in legally protecting indigenous peoples as subjects of the British crown.²¹ Mounted police were deployed on both the Canadian and Australian

¹⁶ Constance Backhouse, Ann Curthoys, Ian Duncanson, and Ann Parsonson, "'Race', Gender and Nation in History and Law," *Law, History, Colonialism: The Reach of Empire*, Eds. Diane Kirkby and Catherine Coleborne, (Vancouver: University of British Columbia Press, 2001):280.

¹⁷ Diana Paton, *No Bond But the Law: Punishment, Race, and Gender in Jamaican State Formation, 1780-1870*, (Durham: Duke University Press, 2004).

¹⁸ Andrew R Graybill, *Policing the Great Plains: Rangers, Mounties, and the North American Frontier*, (Lincoln: University of Nebraska Press, 2007).

¹⁹ *Ibid*:51.

²⁰ *Ibid*.

²¹ Amanda Nettelbeck and Russell Smandych, "Policing Indigenous Peoples on Two Colonial Frontiers: Australia's Mounted Police and Canada's North-West Mounted Police," *Australian & New Zealand Journal of Criminology*, 43(2, August), (2010):356-375.

frontiers to “facilitate Indigenous people’s subjugation to colonial law.”²² Colonialist ideals of legal protection emanating from the centre of the British Empire were “compromised” by directives to “ensure the negation of Indigenous sovereignty, and to implement effective policies of containment and surveillance.”²³ With these powers, the NWMP has been likened to its own government.²⁴ Such analogies may serve to negate the historical delegation of these powers by the assimilating government. In chronicling the way in which Indian Agents administered a pass system to restrict indigenous persons to reserves and instructed that the vagrancy provisions of the *Criminal Code* be used to remove indigenous persons from towns, even though police were “steadily more uncomfortable with the task of restricting Amerindian movements,” Olive Patricia Dickason adeptly places the origins of these assimilative responsibilities within the truly wide-reaching governance of Indian Affairs.²⁵

A theoretical strand of “carceral geography” lies in what Chris Philo terms “geographical security studies.”²⁶ Critical geographical theorist Derek Gregory identifies a “global war prison” with fast-moving borders.²⁷ Philo describes these carceral geographies as “alighting on the spaces set aside for ‘securing’ – detaining, locking up/away – problematic populations of one kind or another.”²⁸ Only a small portion of these carceral geographic studies are concerned with prisons in the conventional institutional sense. From the theoretical antecedent of Foucault, Philo and other geographers cast more widely to carceral geographies of the asylum.²⁹ If, as Philo contends, geographies of “‘unreasonable’ denizens” functioned to keep inmates in rather than to keep the rest out, they are rather different from legal historical geographies of “Indians” within colonial Canada where the ideological standards of “civilization” were so fastidious that most settlers did not qualify and were thus viewed askance by Indian Affairs whenever they ventured too close to segregated indigenous populations.³⁰ While transfiguring “Indians” into “white” settler society was the professed goal of Indian Affairs, the realities of frontier settlement in colonial Canada

²² Nettelbeck and Smandych, 2010, Op. Cit.:357.

²³ Ibid:357.

²⁴ Ibid:360.

²⁵ Olive Patricia Dickason, *Canada’s First Nations – a History of Founding Peoples From Earliest Times*, 3rd ed., (Don Mills: Oxford University Press, 2002):293.

²⁶ Chris Philo, “Boundary Crossings: Security of Geography/Geography of Security,” *Transactions of the Institute of British Geographers*, 37(1), (2012):1-7.

²⁷ Derek Gregory, “The Everywhere War,” *The Geographical Journal*, 177(3, September), (2011):238-250;

Derek Gregory, “War and Peace,” *Transactions of the Institute of British Geographers*, 35(2, April), (2010):154-186.

²⁸ Chris Philo, 2012, Op. Cit.:4.

²⁹ Ibid.

³⁰ Ibid.

were less than satisfactory. For the paternalistic Department of Indian Affairs, an “actual” settler might be likened to an over-familiar older suitor who could lead an impressionable youngster, quite literally, astray.

David Sibley and Bettina van Hoven observe that the “limited engagement of geographers with prison spaces only reflects a broader problem” of privileging Foucauldian theories over empirical research.³¹ The dearth of empirical research is due in part to the difficulty of gaining productive ethical access to prison spaces as researchers.³² The implementation of Julie Abril’s research program in the Ohio Reformatory for Women in Marysville offers a glimpse of the problematic potential of research involving imprisoned persons. In response to a Native American Identity Questionnaire, in excess of forty percent of respondents identified themselves as at least partially of Native American origins.³³ Despite the prison’s estimation that there were only two Native American prisoners, from the over one-third of total prison population sample, 255 women reported Native American heritage.³⁴ In the Ohio prison study, the warden publicized and requested prisoner participation in the study.³⁵ The prison staff distributed the questionnaire, helped inmates fill it out, collected completed questionnaires, and took responsibility for referring inmates to counseling if it was needed as a result of the study.³⁶ Research conducted in the style of this questionnaire could easily become skewed, harmful, or exploitative. Moreover, although it could produce data on current overrepresentation in circumstances where institutional numbers are dubious, it would not assist in tracing the much deeper historical-geographical roots of assimilation through incarceration.

Sibley and van Hoven employ surveys and in-depth interviews in the interests of exploring spatialities and interactions amongst inmates in a New Mexico prison, rather than any absolute authoritative power of the prison structure.³⁷ Although one set of relations cannot be completely disentangled from the other, they take this approach in order to demonstrate that “there are other things going on” in the production of carceral spaces.³⁸ For Sibley and van Hoven, flaws lie in Foucauldian ideas of the internalization of disciplining surveillant power

³¹ David Sibley and Bettina van Hoven, “The Contamination of Personal Space: Boundary Construction in a Prison Environment,” *Area*, 41(2), (2009):198.

³² *Ibid*:198-199.

³³ Julie C Abril, “Native American Identities Among Women Prisoners,” *The Prison Journal*, 83(1, March), (2003):38.

³⁴ *Ibid*:43-44.

³⁵ *Ibid*:41-42.

³⁶ *Ibid*:41.

³⁷ Sibley and van Hoven, 2009, *Op. Cit.*:198-206.

³⁸ *Ibid*:199.

because “space within the prison is both transparent and opaque” and the degree to which Bentham’s panoptic self-discipline is effected is shaped by factors including personality, length of sentence, and social networks outside of the prison.³⁹ Furthermore, there is a considerable difference between the outward appearance of conformity to power and the persevering internal power of human agency.⁴⁰ Imprisoned persons are not just under surveillance: they also surveil each other as exemplified by Sibley and van Hoven’s story of a “Native American prisoner, who...said that he spent much of his day” watching “others as a means of deciding who to avoid.”⁴¹ Like Sibley and van Hoven’s efforts to articulate what is going on in carceral spaces, this dissertation’s engagement with archival, government, and legislative sources is a determined effort to conduct empirical geographic research on the grounded operations of carceral power.

Jared Sexton and Elizabeth Lee find two conceptual “failures” in the concentration of scholarly attention on imprisonment within the politicized discourses surrounding warfare and Abu Ghraib.⁴² When academic interest becomes preoccupied with torture, it generates a “reification of the prison that both relies upon and displaces its racialization as an institution of black spatial containment and social control.”⁴³ Sexton and Lee offer a critical reminder that, in addition to what occurs once persons are in prisons, the processes and structures that allow imprisonment must be examined. Despite its immediate relevance, African-American overrepresentation in prisons is not a new phenomenon. Sexton and Lee assert that the “profound continuity of black captivity across the entire history of the United States indicates... its status as what we might call pre-political, a condition of gratuitous (and not only instrumental) violence that founds the very order of the political.”⁴⁴ Since carceral control is interwoven in the foundations of the state, attempts at redress might be viewed as striking at the very heart of state power. Although its origins have heretofore been absent from the academic literature, this dissertation makes evident that another profound continuity is found in the imprisonment of indigenous persons in Canada.

Politically, scholarly analysis of racialization and imprisonment in the USA have conveniently overshadowed Canada’s own carceral historical geographies. Literature on racialization and overrepresentation in prisons in the USA is not an adequate substitute for

³⁹ Sibley and van Hoven, 2009, Op. Cit.:199.

⁴⁰ Ibid:200.

⁴¹ Ibid:202.

⁴² Jared Sexton and Elizabeth Lee, “Figuring the Prison: Prerequisites of Torture at Abu Ghraib,” *Antipode*, 38(5, November), (2006):1005-1022.

⁴³ Ibid:1006.

⁴⁴ Ibid:1013.

scholarship on Canada.⁴⁵ A certain moral superiority is oft lent Canada in actions such as the 1890s barring of the importation of Alabama and Tennessee pig iron by Canada Customs because some of it was produced by prison labour.⁴⁶ Similarly, Marie Gottschalk's discussion of the death penalty demonstrates little awareness of racialization in Canada. Indeed, there is little historical scholarship on the issue to inform this literature that it is inaccurate to presume that Canada was "more at liberty to focus single-mindedly on the deterrence issues and make that a central feature of the national debate because they did not have to contend with claims about how the death penalty was imposed in a racially discriminatory manner."⁴⁷ Gottschalk contends that the death penalty was abolished by Canada's political elites in 1967 "despite strong public support for it."⁴⁸ Part of the answer for why Canadian political figures abolished the death penalty may be found in the systematic generalization of the state's social welfare focus following the Second World War. As this dissertation demonstrates, ideologies of paternalistic guardianship and incarceration are bedfellows of Canadian historical-geography.

2.2 The Overrepresentation of Aboriginal Persons in Prisons

Chris Andersen asserts that the criminal justice system is where the Federal Government's "failure" of Aboriginal persons is most apparent.⁴⁹ According to 2006 Census and 2007/2008 Integrated Correctional Services Survey data, relative to the general population, Aboriginal persons are overrepresented in correctional facilities in every Canadian province and territory.⁵⁰ In 2006, 3.1% of adults in Canada self-identified as Aboriginal. According to 2007/2008 Correctional Service data, self-identified Aboriginal adults comprised 17% of admissions to remand, 18% of admissions to provincial and territorial custody, 16% of

⁴⁵ See Appendix A.

⁴⁶ Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South*, (New York: Verso, 1996):94.

⁴⁷ Marie Gottschalk, *The Prison and the Gallows: the Politics of Mass Incarceration in America*, (New York: Cambridge University Press, 2006):229.

⁴⁸ *Ibid*:227-229, 301.

⁴⁹ Chris Andersen, "Governing Aboriginal Justice in Canada: Constructing Responsible Individuals and Communities through 'Tradition,'" *Crime, Law & Social Change*, 31, (1999):303-326; Chris Andersen, "Aboriginal Gangs as a Distinctive Form of Urban Indigeneity," Paper presented at the Annual Meeting of the Association of Canadian Geographers, 76th Congress of the Humanities and Social Sciences, Saskatoon, Saskatchewan, 30 May 2007.

⁵⁰ The subsequent statistical sketch is based on the following two sources: Samuel Perrault, "The Incarceration of Aboriginal People in Adult Correctional Services," *Juristat*, Statistics Canada, 85-002-X, 29(3, July), (2009); Office of the Correctional Investigator, "Background: Aboriginal Inmates," 2 February 2010, << <http://www.oci-bec.gc.ca/rpt/annrpt/annrpt20052006info-eng.aspx> >>

admissions to probation, and 19% of admissions to conditional sentences. The Census respondents self-identify with at least one Aboriginal group based on a definition of “Aboriginal” as North American Indian, Métis, or Inuit. The Correctional Service follows a classificatory system where every inmate may be categorized as Non-Status Indian, North American Indian, Métis, Inuit, Non-Aboriginal, or Aboriginal-Status Unknown. Of the Aboriginal persons incarcerated at the time of the 2006 Census, approximately 68% were identified as First Nations, 28% as Métis, and 4% as Inuit.

Although overall admissions to sentenced custody have declined for both Aboriginal and non-Aboriginal adults, decreases have been proportionately less for Aboriginal persons. Therefore, as a proportion of the whole, the overrepresentation of Aboriginal persons in prisons is increasing. Female inmates make up a relatively small proportion of the correctional system; however, Aboriginal females comprise a larger segment of the female correctional population than Aboriginal males do within the male correctional population. While Aboriginal persons are overrepresented in corrections in all provinces, there is a distinctive geographical distribution to this inequality.

Province or Territory	Remand	Provincial or Territorial Sentenced Custody ¹	Probation	Conditional Sentence	Adult General Population ²
Newfoundland and Labrador	23%	21%		23%	4%
Prince Edward Island	6%	1%			1%
Nova Scotia	9%	7%	5%	7%	2%
New Brunswick	9%	8%	8%	11%	2%
Québec	4%	2%	6%	5%	1%
Ontario	9%	9%	9%	12%	2%
Manitoba	66%	69%	56%	45%	12%
Saskatchewan	80%	81%	70%	75%	11%
Alberta	36%	35%	24%	16%	5%
British Columbia	20%	21%	19%	17%	4%
Yukon	78%	76%	66%	62%	22%
Northwest Territories	85%	86%			45%
Nunavut			97%	97%	78%

Figure 2: Percentage of Total Aboriginal Correctional Admissions Per Category⁵¹

The percentages of self-identified Aboriginal admissions to the correctional system is high in all provinces and territories; however, when organized according to jurisdiction and offence, it becomes apparent that, even within shared inequality, there are distinct geographical variations.

⁵¹ Table adapted from Perrault, 2009, Op. Cit.. 1: Includes intermittent sentences. 2: Proportion is based on data from the 2006 Census. Original Source: Statistics Canada, Canadian Centre for Justice Statistics, Adult Correctional Services Survey, Integrated Correctional Services Survey, and 2006 Census of Population.

Scholars continue to inquire into the characteristics of, and possible solutions for, the staggeringly imbalanced incarceration of Aboriginal peoples. Patricia Monture and Carol LaPrairie make great strides in examining the contemporary overrepresentation of Aboriginal persons in Canadian prisons.⁵² LaPrairie estimates that high rates of Aboriginal imprisonment have raised public awareness of the sheer preponderance of prison sentences given by the Canadian Criminal Justice System.⁵³ The brevity of most sentences does not alleviate Canada's "high dependence on prison-based sentences."⁵⁴ Monture makes a meaningful argument that

prison does impact on Aboriginal peoples generally in a much more profound way than principles such as deterrence take account...how important it is to account for the colonial impact and the way historical events reproduce present day devastations on Aboriginal peoples. Colonialism has created the climate of distrust where Aboriginal people see this is not a system of justice, which equally represents them.⁵⁵

Monture and LaPrairie's thoughtful scholarship forms an estimable foundation upon which much more work might be done.

2.3 Restoring Justice: History, Geography, and Canada's Indigenous Legal Futures

While many indigenous peoples maintain that an inherent right to the self-determination of justice systems is "not dependent upon, granted, or given by any external source," many lines of resistance look to the rights found in current Canadian and international laws or charters.⁵⁶ Part of the intransigence of the Canadian legal system is that, even when recognizing indigenous principles, it "treats them as discoverable facts that are, moreover, frozen in time, rather than as... evolutive systems of law produced by legal orders dating from pre-colonial times but still in force."⁵⁷ It can appear that, from the state's perspective, there is little "proof" either that these are indeed evolutive systems of law or that historical state approaches to indigenous peoples pre-date Confederation and are still effectual today.

⁵² Patricia Monture-Angus, "Confronting Power: Aboriginal Women and Justice Reform," *Canada Woman Studies*, 25(3,4), (2006):25-33.

⁵³ Carol LaPrairie, "Aboriginal Peoples and the Canadian Criminal Justice System," *Hidden in Plain Sight: Contributions of Aboriginal Peoples to Canadian Identity and Culture*, Eds. David R Newhouse, Cora J Voyageur, and Dan Beavon, (Toronto: University of Toronto Press, 2005):239.

⁵⁴ *Ibid*:239.

⁵⁵ Patricia Monture-Angus, "The Lived Experience of Discrimination: Aboriginal Women Who Are Federally Sentenced," The Elizabeth Fry Society, 2002.

⁵⁶ Ted Palys and Wenona Victor, "'Getting to a Better Place': Qwi:qwelstóm, the Stó:lō, and Self-Determination," *Indigenous Legal Traditions*, Ed. The Law Commission of Canada, (Vancouver: University of British Columbia Press, 2007):12-39.

⁵⁷ Andrée Lajoie, "Introduction: Which Way Out of Colonialism?" *Indigenous Legal Traditions*, (Vancouver: University of British Columbia Press, 2007):5.

Mark Walters' detailed legal histories give credence to the argument that contemporary "legal constructions of the initial contact between the common law and Aboriginal customary law must incorporate native and non-native legal and historical methodologies, a reconciliation that courts are only just beginning to attempt" through cases such as the Supreme Court's controversial 1997 *Delgamuukw v. British Columbia* decision.⁵⁸ Walters attests to the ability of common law to communicate with indigenous legal epistemologies on the basis of a shared "system of normative reasoning" regarding history: Western historical scholarship has

tended to assume that relatively objective and linear historical realities can be identified through interpretations of written records in which the historian attempts to keep his or her own cultural and historical perspective at a distance and to produce interpretations of history relevant to that particular cultural and historical position. In contrast, Aboriginal conceptions of history are informed by oral traditions that are generally non-linear, and the goal is not to seek an objective truth detached from the present but to tell a story of the past in which the assumptions and aspirations of the teller and the listeners are more of an integral part. At least in relation to legal history, common-law reasoning tends to resemble the native rather than the non-native conception of history.⁵⁹

Judges' interpretations of common law mine historical legal narratives for "rules and principles that have moral resonance and therefore normative force" for the particular individuals and communities involved in each case.⁶⁰

Despite their disparities, ontological resonances exist between settler and indigenous legal understandings. Sympathetic historical accounts have tended to list between the dichotomous shores of two unintelligible spheres of law and ignore similarities between systems of order, situations that would have been unjust or illegal even from a solely settler framework, and the rapid study that indigenous peoples made of settler legal systems as they fought to survive within the unequal application of state law. It is important to recognize that the individuals who applied settler laws on indigenous lands and peoples were also attempting to keep themselves afloat on the torrential rivers of colonial state formation. Although their privileged aggregations of state powers made them formidable gatekeepers of state law, frontier businessmen lacked deeper indigenous understandings of place. Frontier officials faced the true peril of their exalted positions when they made the grave error of dismissing the power and knowledge of indigenous persons. Although there are compelling reasons to build a new framework for indigenous legal

⁵⁸ Mark D Walters, "Towards a 'Taxonomy' for the Common Law: Legal History and the Recognition of Aboriginal Customary Law," *Law, History, Colonialism: The Reach of Empire*, Eds. Diane Kirkby and Catherine Coleborne, (Vancouver: University of British Columbia Press, 2001):125; *Delgamuukw v. British Columbia*, (1997), 3 SCR 1010; Kirsten Manley-Casimir, "Creating Space for Indigenous Storytelling in Courts," *Canadian Journal of Law and Society*, 27(2), (2012):231-247.

⁵⁹ Walters, 2001, Op. Cit.:125.

⁶⁰ *Ibid*:126.

relationships with the Canadian state, there are also valid reasons that indigenous peoples should have the empirical evidence to “demonstrate that even in terms of ‘settler’ law, as it ought to have been applied, their ancestors had certain legal rights and that the historical denial of these rights by officials was unlawful.”⁶¹ Scholars of indigenous legal histories who do not profess indigenous identities nevertheless have a great deal to contribute in redressing false assumptions about Canada’s legal past.⁶² The object of this dissertation is to empirically excavate heretofore submerged aspects of state legal relationships with indigenous peoples.

Contemporary programs aimed at understanding and reducing the overrepresentation of Aboriginal persons in Canadian penal systems have a particular provenance. Carol LaPrairie’s seminal research on indigenous persons and the Criminal Justice System follows the development of Aboriginal justice initiatives into more formal Aboriginal organizations.⁶³ While Australia and New Zealand have undertaken similar reforms, Canada is distinct in this area because Aboriginal communities, organizations, and agencies are driving this change from outside the system.⁶⁴ The American Indian Movement was born in 1968 as activists laboured to secure indigenous religious ceremonies for Aboriginal persons within prisons.⁶⁵ The Correctional Service of Canada incorporates, and evaluates, Aboriginal justice initiatives within their system and are striving to integrate those aspects that appear most successful into the goals of their “Strategic Plan for Aboriginal Corrections.”⁶⁶ Indigenous relationships with the penal system are represented in the hybrid model of the “Corrections Continuum of Care.”

⁶¹ Walters, 2001, Op. Cit.:138.

⁶² Ibid:138.

⁶³ Carol LaPrairie, “Aboriginal over-Representation in the Criminal Justice System: A Tale of Nine Cities,” *Canadian Journal of Criminology*, (2002):181-208; LaPrairie, 2005, Op. Cit.:236-45; Carol LaPrairie, “Community Justice or Just Communities? Aboriginal Communities in Search of Justice,” *Canadian Journal of Criminology*, 37(October), (1995):521-545; Carol LaPrairie, “The Impact of Aboriginal Justice Research on Policy: A Marginal Past and an Even More Uncertain Future,” *Canadian Journal of Criminology* (1999):249-60; Carol LaPrairie, “Native Women and Crime: A Theoretical Model.” *The Canadian Journal of Native Studies*, VII(1), (1987):121-37; Carol LaPrairie and Eddie Diamond, “Who Owns the Problem? Crime and Disorder in James Bay Cree Communities,” *Canadian Journal of Criminology*, (1992):417-34; James Bonta, Carol LaPrairie, and Suzanne Wallace-Capretta, “Risk Prediction and Re-Offending: Aboriginal and Non-Aboriginal Offenders,” *Canadian Journal of Criminology*, 39(2), (1997):127-44.

⁶⁴ LaPrairie, 2005, Op. Cit.:236.

⁶⁵ Dickason, 2002, Op. Cit.:377.

⁶⁶ Correctional Service Canada Aboriginal Initiatives Directorate, “Strategic Plan for Aboriginal Corrections: Innovation, Learning & Adjustment 2006-07 to 2010-11,” Government of Canada, (2006-2011):1-22.

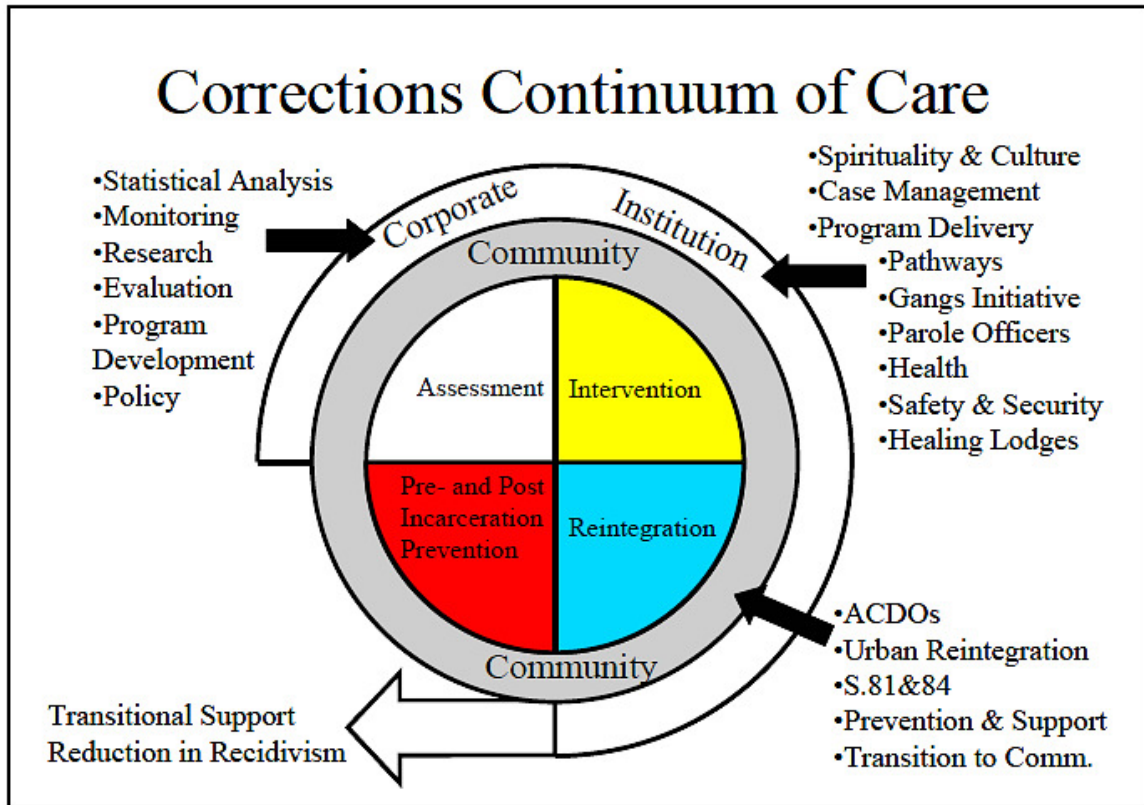


Figure 3: Correctional Service Canada’s Incorporation of Indigenous Ontologies⁶⁷
 The Correctional Service’s programs attempts to reconcile indigenous ontologies with institutional prerogatives.

Cultural approaches to prison reform predominate because one of the more immediate explanations for overrepresentation has been that discrimination experienced in the contemporary criminal justice system was instigated by conflicting cultures and one of the earliest principles of Aboriginal correctional programs was that rehabilitation is more likely to be successful if indigenous inmates receive culturally-appropriate programming.⁶⁸ Cultural explanations can devolve into an “underlying assumption that the problem lies with the limitations of Aboriginal culture to adapt to non-Aboriginal legal culture – an assumption of inferiority.”⁶⁹ Sociological and criminological approaches to this issue struggle with the question of whether it is essential

⁶⁷ Sections 81 and 84 of the 1992 *Corrections and Conditional Release Act* (CCRA) enable the Correctional Service to formulate agreements for the incorporation of convicted individuals into First Nations communities. Aboriginal Community Development Officers (ACDOs) collaborate with communities to create plans for reintegration. Adapted from Correctional Service Canada Aboriginal Initiatives Directorate, 2006-2011, Op. Cit.:9.

⁶⁸ Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada*, (Ottawa: Minister of Supply and Services Canada, 1996):40; LaPrairie, 2005, Op. Cit.:238-239.

⁶⁹ *Bridging the Cultural Divide*, 1996, Op. Cit.:41.

that Aboriginal persons receive entirely different forms of justice or “whether local justice can support the development of democratic institutions and an active citizenry, and not become a meaningless symbol of local control or, worse still, a coercive tool of repression for the powerful.”⁷⁰ Insidious prejudices that substitute “culture” for the less palatable term “race” are never far from this debate.

The most widely-known early organized Aboriginal justice initiative, the national Native Courtworkers Program established in the mid-nineteen seventies, was inspired by the belief that indigenous peoples are subjected to many disadvantaging dynamics within the Criminal Justice System.⁷¹ A decade later, while attention was brought to Aboriginal constitutional issues and customary law, efforts to bring Aboriginal perspectives to criminal justice concentrated on “Indigenizing” structures through actions such as attaching an Aboriginal arm to the Royal Canadian Mounted Police.⁷² More recent initiatives, influenced by larger philosophies of self-determination, propose to take indigenous justice outside of state institutions.

For Ken Coates and William Morrison, the existence of special programs for arrested or convicted Aboriginal persons, despite their awkward relationships with legal and correctional systems, is evidence that the problem is so extreme that even the most conservative members of these systems are looking for a solution.⁷³ Numerous additions have been made to Canadian justice systems in attempts to ameliorate evident imbalances involving indigenous peoples. The Department of Justice’s Aboriginal Justice Initiative began in parallel to the Royal Commission on Aboriginal Peoples (RCAP) in 1991 and was formalized into the Aboriginal Justice Strategy in 1996 as the findings of the Royal Commission were released.⁷⁴ RCAP engaged more inquiries, reports, and conferences on Aboriginal peoples and the justice system than any other arena in their purview; however, these tended to concentrate on “current realities” rather than specific historical foundations of injustice.⁷⁵ *Aboriginal Peoples and the Justice System* is an important

⁷⁰ LaPrairie, 2005, Op. Cit.:244.

⁷¹ Ibid:237.

⁷² Ibid:238.

⁷³ KS Coates and WR Morrison, “A Drunken Impulse: Aboriginal Justice Confronts Canadian Law,” *The Western Historical Quarterly*, 27(4, Winter), (1996):452; CBC Radio, “Ontario Today – Native Matrimonial Rights,” Host Rita Celli, Aired Friday 29 September 2006; Melissa S Williams, “Criminal Justice, Democratic Fairness, and Cultural Pluralism: The Case of Aboriginal Peoples in Canada,” *Buffalo Criminal Law Review*, 5(45), (2002):465; LaPrairie, 2005, Op. Cit.:237-238.

⁷⁴ Department of Justice, “The Aboriginal Justice Strategy,” 8 August 2012,

<<<http://www.justice.gc.ca/eng/pi/ajs-sja/index.html> >>

⁷⁵ *Bridging the Cultural Divide*, 1996, Op. Cit.:26.

compendium of indigenous initiatives in light of these realities.⁷⁶ The Royal Commission's 1996 publication of a volume entitled *Bridging the Cultural Divide: A Report on Aboriginal Peoples and Criminal Justice in Canada* was a significant step in identifying inequalities and establishing the principle of community justice programs for Aboriginal peoples.⁷⁷ A major conclusion of the Royal Commission was that the justice system had failed, and continued to fail, Aboriginal peoples despite all of the Commission's efforts.⁷⁸ RCAP also championed "the rule of law...as a fundamental guiding principle" of indigenous societies.⁷⁹

Indigenous law is not, however, given to the secular abstraction of codified texts.⁸⁰ In many indigenous societies, law is "grounded in instructions from the Creator or, alternatively, a body of basic principles embedded in the natural order."⁸¹ Law is a guiding tool of responsibilities to each other and to the earth to which indigenous peoples belong. RCAP repudiates over-confidence in colonial systems of written law to the denigration of laws transmitted through oral tradition and practice. The Royal Commission makes the point that "even in mainstream society, few individuals are familiar with more than a small portion of written law; in practice, ordinary people conduct their lives in accordance to what amounts to a living customary system."⁸² The Haudenosaunee explain that the indigenous form of law that is best recognized for its written form, the *Kaianerekowa*, or Great Law of Peace, is nevertheless "essentially a law based on the mind and can be discerned only through oral teachings."⁸³ Like any body of law, indigenous laws are steadfast in tradition even as they grown and evolve in changing contexts.

Taiaiake Alfred explains injustice as "dysfunction" and indigenous justice as a holistic "perpetual process of maintaining that crucial balance and demonstrating true respect for the power and dignity of each part of the circle of interdependency."⁸⁴ Indigenous conceptions of law differ from Western law in that they are not primarily fixed on ideals of equity of treatment or

⁷⁶ Royal Commission on Aboriginal Peoples, *Aboriginal Peoples and the Justice System*, (Ottawa: Minister of Supply and Services Canada, 1993).

⁷⁷ *Bridging the Cultural Divide*, 1996, Op. Cit.

⁷⁸ Ibid:26-27.

⁷⁹ Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples. Volume II: Restructuring the Relationship, Part I*, (Ottawa: Minister of Supply Band Services Canada, 1996):119.

⁸⁰ Ibid:119-120.

⁸¹ Ibid:120.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto*, (Toronto: Oxford University Press, 1999):42.

distribution, there is no universalizing principle of practice to limit freedoms, and both human and non-human frameworks are used to determine the appropriate use of power.⁸⁵ Jo-ann Archibald describes these principles in action through the First Nations Advisory Committee of the Law Courts Education Society of British Columbia's collaboration with indigenous storytellers to establish the First Nations Journeys of Justice provincial elementary school curriculum on indigenous principles of justice.⁸⁶ A major challenge of the First Nations Journeys of Justice curriculum was to articulate common bridging principles between internal indigenous holistic ontologies and the Canadian legal system.⁸⁷

Sentencing circles, recommended in *R. v. Moses* in 1992, are one of the restorative justice models in operation across Canada.⁸⁸ Nonetheless, caustic skepticism is a feature of many media commentaries on restorative justice. Jonathan Kay's *National Post* opinion piece disparages the "lethal folly of a government mindset focused more on preserving aboriginal cultures than saving aboriginal lives."⁸⁹ At issue are the horrific deaths of a one-year-old and a three-year-old. The small children passed away after their father took them outside, and then blacked out, on the Yellow Quill, Saskatchewan, Reserve that Kay describes as a "geographically remote, economically destitute, politically dysfunctional, booze-addled 120-family hamlet...an archetypal den of government-bankrolled Indian misery; the sort of place that would mercifully fold up shop within a matter of days if its residents were white."⁹⁰ Kay locates the origins of the sentencing circle in the 1990s when governments and academics "began blaming high rates of native criminality on a 'white' criminal justice system that alienates natives with its focus on Western abstractions such as 'justice,' 'guilt' and 'punishment.'"⁹¹ There is scant literature to demonstrate the deep material legal historical-geographies of current disjunctures between indigenous communities and the criminal justice system to persons who will not accept indigenous sources. The autonomous wealth and resilience of indigenous principles of law must also be recognized;

⁸⁵ Alfred, 1999, Op. Cit.:42.

⁸⁶ Jo-ann Archibald, *Indigenous Storywork: Educating the Heart, Mind, Body, and Spirit*, (Toronto: University of British Columbia Press, 2008):101-127.

⁸⁷ *Ibid*:105-107.

⁸⁸ *R. v. Moses* (1992), 71 CCC (3rd) 347 at 356 (Yukon Territorial Court); Barbara Tomporowski, Manon Buck, Catherine Bargaen, and Valarie Binder, "Reflections on the Past, Present, and Future of Restorative Justice in Canada," *Alberta Law Review*, 48(4, May), (2011):814-819; Emma Cunliffe and Angela Cameron, "Writing the Circle: Judicially Convened Sentencing Circles and the Textual Organization of Criminal Justice," *Canadian Journal of Women & the Law*, 19(1), (2007):17.

⁸⁹ Jonathan Kay, "The Folly of Native Sentencing Circles," *National Post*, 29 January 2009; Kevin Libin, "Sentencing Circles For Aboriginals: Good Justice?" *National Post*, 27 February 2009.

⁹⁰ Kay, 2009, Op. Cit.

⁹¹ *Ibid*.

however, the legal geographical examination of this dissertation supports the assertion of indigenous legal knowledge and provides detailed evidence of the origins and intentional development of imprisonment as a tool of assimilation.

Bill C-41, the 1996 *Sentencing Reform Act*, added Section 718.2(e) to the *Criminal Code* and directed that all alternative sanctions to imprisonment should be considered when sentencing Aboriginal offenders.⁹² In *R. v. Gladue*, a landmark interpretation of Section 718.2(e), the Supreme Court explained that the section is a purposeful response to the overrepresentation of Aboriginal persons in prisons: the provision

is not simply a codification of existing jurisprudence. It is remedial in nature and is designed to ameliorate the serious problem of overrepresentation of aboriginal people in prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing. There is a judicial duty to give the provision's remedial purpose real force.⁹³

The original decision held that a suspended or conditional sentence of imprisonment was not appropriate in this case where a teenager pled guilty to stabbing her common-law husband. The judge "noted that there were no special circumstances arising from the aboriginal status of the accused and the victim" because they were "living in an urban area off-reserve" and, therefore, in his opinion were not "'within the aboriginal community as such.'"⁹⁴ The Supreme Court's decision on *Gladue* instructed judges to give due weight to the distinctive "systemic or background factors which may have played a part in bringing the particular aboriginal offender before the courts" and the "types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular aboriginal heritage or connection."⁹⁵ The burden of gleaning knowledge of the specific circumstances of each accused offender is borne by the presiding judge.⁹⁶

From the critical perspective of Renée Pelletier, the *Gladue* decision's nuanced handling of diverse indigenous cultures, fragmented colonial experiences, and structural inequalities is somewhat blunted by the apparent setting aside of unspecified "serious" offences from this reform and reticence in explaining what the mitigating factors might be.⁹⁷ However, the decision does not explicitly exempt serious offences. On the contrary, the Court's recognition that it is "unreasonable to assume that aboriginal peoples do not believe in the importance of traditional

⁹² Renée Pelletier, "The Nullification of Section 718.2(e): Aggravating Aboriginal Over-Representation in Canadian Prisons," *Osgoode Hall Law Journal*, (2,3), (2001):470, 473-474.

⁹³ *R. v. Gladue*, 1999, 1 SCR 688

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*; Pelletier, 2001, *Op. Cit.*:473-4, 479-81.

sentencing goals such as deterrence, denunciation, and separation, where warranted” and that it is within this “context, generally” that the “more serious and violent the crime, the more likely it will be as a practical matter that the terms of imprisonment will be the same for similar offences and offenders” could be seen as a respectful approach to strong principles of indigenous law.⁹⁸

Pelletier’s concern that the Court focused on each offender’s “connection to the community and culture” and did not consider the Aboriginal offender who has “been unable to participate in his or her culture” is validated by studies of rehabilitative programming.⁹⁹ The realities of colonialist alienation from indigenous identities do not fit comfortably with this aspect of the *Gladue* decision. For example, during the implementation of the first family violence program instituted for indigenous men in North America at the Ma Mawi Wi Chi Itata Centre in the Stony Mountain Institution of Manitoba, numerous “offenders” disclosed that they were afforded their “first opportunity in their lives to explore and understand their aboriginal heritage” through the prison program.¹⁰⁰

The Supreme Court’s decision may be in danger of perpetuating restrictive notions of the evolving and diverse spectrum of indigenous identities. *Gladue* may be accused of ignoring bizarrely-classified “non-traditional” concerns that affect the evolving lives of indigenous women such as domestic violence and the unequal application of matrimonial division of property on reserves.¹⁰¹ Faizal Mirza warns of a further hazard that mandatory sentencing increases the “gatekeeping” role of police and could cause harm because of the “prevalence of racist policing and improper use of prosecutorial discretion.”¹⁰² Neither specificity nor judicial leeway have a comfortable place in a system that at its best strains to avoid the perpetuation of historical injustices that are built into its very bones.

Although Canadian Courts and Correctional Service Canada have instituted changes aimed at ameliorating the sentencing of Aboriginal persons to imprisonment and making rehabilitation programs more relevant, the overrepresentation of Aboriginal persons in carceral institutions continues. Societal and systematic prejudices are extremely deep. Anke Allspach contends that contemporary social “problems” within Aboriginal communities “cannot be seen as individualistic or culturally specific, but are gendered consequences of colonialism and embedded

⁹⁸ *R. v. Gladue*, 1999, Op. Cit.

⁹⁹ Pelletier, 2001, Op. Cit.:470, 477.

¹⁰⁰ Evelyn Zellerer, “Culturally Competent Programs: The First Family Violence Program For Aboriginal Men In Prison,” *The Prison Journal*, 83(2, June), (2003):183.

¹⁰¹ Pelletier, 2001, Op. Cit.:470, 478.

¹⁰² Faizal Mirza, “Mandatory Minimum Prison Sentencing and Systematic Racism,” *Osgoode Hall Law Journal*, 39(2 and 3), (2001):492.

racialized state doctrines and henceforth are also the responsibility of the Canadian nation state.”¹⁰³ For Allspach, inexorable colonial violence within Canadian criminal justice systems works on “active inactivity” in denying adequate legal support to indigenous women.¹⁰⁴ Several of Allspach’s research participants divulged that they had not been provided proper legal counsel in the criminal justice system.¹⁰⁵

Surprisingly, vestiges of the Justice of the Peace provisions of the *Indian Act* that this dissertation will show were historically used to imprison “Indians” are now re-purposed as a method of limited reform. The *Indian Act* allows the appointment of Justices of the Peace for by-law and minor *Criminal Code* infractions and, although the Federal Government no longer pursues this route, some provinces have dedicated Justices specifically to Aboriginal issues or have instituted programs dedicated to recruiting and training of indigenous Justices.¹⁰⁶ In northern communities, the high costs of circuit courts and disagreements about the nature of offences, who is affected, and what the consequences may be, have encouraged the recruitment of indigenous Justices of the Peace.¹⁰⁷ A major motivating factor in employing Indigenous Justices is to ensure that offenders are evaluated by persons who are familiar with their circumstances and how their alleged offences impact their communities; however, experience has proven it difficult to find volunteers willing to become Justices in their own communities.¹⁰⁸ Contrary to concepts of legal neutrality, these Justices are meant to purposefully use their personal knowledge.¹⁰⁹

In contrast to the convening of sentencing circles in response to specific offences, community justice committees present ongoing opportunities to draw on the guidance of the community.¹¹⁰ One form of justice committee, the elder panel, brings culturally-specific local knowledge to sentencing. Elders or community leaders act in an advisory capacity to ensure that judges are informed of local norms and circumstances that have a bearing on the case.¹¹¹ Justice committees were first used in the remote north where communities had to decide how to deal with

¹⁰³ Anke Allspach, “Landscapes of (Neo-)Liberal Control: The Transcarceral Spaces Federally Sentenced Women In Canada,” *Gender, Place and Culture*, 17(6, December), (2010):711.

¹⁰⁴ Ibid:712.

¹⁰⁵ Ibid.

¹⁰⁶ Katherine Beaty Chiste, “Getting Tough on Crime the Aboriginal Way: Alternative Justice Initiatives in Canada,” *Hidden in Plain Sight: Contributions of Aboriginal Peoples to Canadian Identity and Culture*, Eds. David R Newhouse, Cora J Voyageur, and Dan Beavon, (Toronto: University of Toronto Press, 2005):219.

¹⁰⁷ Ibid:219.

¹⁰⁸ Ibid:220.

¹⁰⁹ Ibid:221.

¹¹⁰ Ibid:222.

¹¹¹ Williams, 2002, Op. Cit.:473.

offences in the potentially long period before the conventional justice system could intervene.¹¹² Consequently, many northern communities see them as a “return to traditional ways, when an entire community and its respected leaders were collectively responsible for restoring harmony after a harm had been committed.”¹¹³ The greater acceptance of indigenous justice practices in places socio-legally understood as “Indian” is apparent in that, when justice committees have also been attempted in southern and urban communities, “closer contact with the legal profession throws up roadblocks to the process” in raising issues such as that of liability insurance.¹¹⁴ Manitoba and Alberta lead in using these committees and Québec is relatively accepting of their common goals of rehabilitation and prevention.¹¹⁵ The justice committee has been used most widely with young offenders in the twelve- to seventeen-year-old age range because the 1984 *Young Offenders Act* allows for alternative forms of justice.¹¹⁶ Some committees are entirely indigenous while others are made of persons of various identities because the spirit of the committees is to glean information from all of those who are connected with the offender and the crime regardless of their ethnicity.¹¹⁷

The use of a committee changes the physical and psychological place of a courtroom. Instead of the conventional staging of a judge sitting, “on high,” with lawyers making submissions as learned proxies, committees generally sit around a table and include the community in the discussion rather than countenancing them as spectators.¹¹⁸ An offender is thus conceptualized as part of a network that is operating dysfunctionally rather than an isolated aberrant individual.¹¹⁹ The perspective gained from placing offenders in this context is a major contribution of Aboriginal peoples to the Criminal Justice System.¹²⁰

In spite of detractors, Katherine Chiste maintains that indigenous justice actually requires those involved to “get tougher on crime, but in a different way: not by isolating offenders from their crime and its consequences, but by *connecting* them to the victims and community their criminal act has disturbed.”¹²¹ While the Community Holistic Circle Healing program in Hollow Water, Manitoba, does tend to dispense shorter sentences, five years of supervision by program

¹¹² Chiste, 2005, Op. Cit.:222.

¹¹³ Ibid.

¹¹⁴ Ibid:223.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid:224.

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Ibid:218-219, 255.

teams is required before offenders are fully reintegrated into the community whereas the maximum probation period in the conventional justice system is three years.¹²² The Toronto Aboriginal Legal Services Community Council offers a diversion program that admits offenders who admit their guilt to a “community sentence” based on counseling, treatment, and restitution.¹²³ The purpose of this approach is to “return criminal justice responsibility to the Aboriginal community, to reduce recidivism, and to make offenders more accountable” in the places where they live.¹²⁴

A major criticism of justice committees was raised by indigenous women during the proceedings of the Royal Commission on Aboriginal Peoples: inappropriate choices may be made in the selection of the committee or powerful families could dominate proceedings.¹²⁵ As restorative justice increases in breadth into many different types of crime, as well as beyond indigenous communities, the appropriateness of restorative justice models for certain types of crime is actively debated. In cases involving sexual assault or domestic violence, serious issues of risk assessment, safety, and the needs of victims must be addressed.¹²⁶ Emma Cunliffe and Angela Cameron refute the discourse-limiting negation of texts as important influences when setting the institutional priorities of “alternative” justice initiatives.¹²⁷ Cunliffe and Cameron find that restorative justice is not achieved when “patterns of violence against Aboriginal women are absent from the texts of judicially convened sentencing circle decisions in favour of an institutional focus on the possibility of ameliorating the rate of incarceration of Aboriginal men.”¹²⁸ Joanne Belknap and Courtney McDonald use interviews with Judges to raise questions about, and call for more research into, the complex intersections of racialization, gender, law, and colonialism.¹²⁹ Both methodological treatments of this issue point to the repercussions of colonialism yet neither have the basis provided in this dissertation to identify imprisonment as a colonial tool of assimilation rather than its socio-economic or systematic legacy.

The New Zealand system performs according to an interesting model of indigenous restorative justice. Youth Committees of the Family Group Conference, structured on Maori ideas

¹²² Williams, 2002, Op. Cit.:480.

¹²³ LaPrairie, 2005, Op. Cit.:242.

¹²⁴ Ibid:242.

¹²⁵ Ibid:224.

¹²⁶ Tomporowski, et. al., 2011, Op. Cit.:826.

¹²⁷ Cunliffe and Cameron, 2007, Op. Cit.:1-35.

¹²⁸ Ibid:35.

¹²⁹ Joanne Belknap and Courtney McDonald, “Judges’ Attitudes About and Experiences With Sentencing Circles in Intimate-Partner Abuse Cases,” *Canadian Journal of Criminology and Criminal Justice*, 52(4,July), (2012):369-395.

of restorative justice, have been used since the 1989 *Children, Young Persons and Their Families Act* legislated their use for all children in the fourteen- to sixteen-year-old age group, regardless of cultural origin.¹³⁰ The New Zealand Family Group Conference brings together a committee of the offender, the victim, their families, and their supporters. As a whole, the group creates a “disposition” to deal with the offence in a way that will lessen the chances of future criminal acts by the offender and move towards resolution for the victim.¹³¹ Its intention is to promote healing rather than punishment. In addition to the commendable confluence of indigenous and state structures to promote justice in a culturally competent and equitable manner, Family Group Conferences are seen as efficacious measures and have received positive responses from New Zealand police forces.¹³²

2.4 Literature for an Emergent Criminalization: “Aboriginal Gangs”

Aboriginal gangs are a growing predicament for law enforcement, criminal courts, and correctional institutions. There is a great deal to learn about contemporary manifestations of Aboriginal gangs and just as there is so little scholarship on the specific historical-geographies of indigenous criminalization. Jana Grekul and Patti LaBoucane-Benson enter the fray wielding sociological tools that identify the “street gang” characteristics of Aboriginal gangs.¹³³ For Grekul and LaBoucane-Benson, the overrepresentation of Aboriginal persons in prisons “compounds the situation, making gang affiliation an almost expected outcome for increasing numbers of Aboriginals, particularly since the street gang-prison gang connection is pronounced for this population.”¹³⁴ Whereas they acknowledge that “[c]ultural conflict, poverty, lack of opportunity, and lack of power contribute to a cycle of behaviours that may be the outcome, in part, of structural inequality,” this dissertation submits that imprisonment is far more than a factor that “perpetuates the problems” as inmates are released into circumstances of structural inequality.¹³⁵

Instead, criminalization, geographic restriction, and imprisonment itself are major pillars in the structure of indigenous relationships with the state. It is through these structural inequalities that poverty, conflict, and lack of opportunity have been perpetuated. In other words,

¹³⁰ Chiste, 2005, Op. Cit.:223.

¹³¹ Ibid.

¹³² Ibid.

¹³³ Jana Grekul and Patti LaBoucane-Benson, “Aboriginal Gangs and Their (Dis)placement: Contextualizing Recruitment, Membership, and Status,” *Canadian Journal of Criminology and Criminal Justice*, 50(1, January), (2008):59-82.

¹³⁴ Ibid:63.

¹³⁵ Ibid:71.

contemporary assessments that the “interaction of.... indicators of structural inequality with each other, with community and cultural breakdown as a result of historic, economic, and political processes, and with systemic discrimination results in Aboriginal over-representation in prisons” have got it backwards.¹³⁶ There is little to inform this literature that indigenous communities were purposefully subjected to imprisonment, not because they were socially and culturally bereft and disordered, because they were lively and powerful in their indigeneity: this dissertation will establish that imprisonment was used to assert the primacy of state law over existent indigenous law.

The very title of Jana Grekul and Kim Sanderson’s “‘I thought people would be mean and shout.’ Introducing the Hobbema Community Cadet Corps: a response to youth gang involvement?” reveals their disquiet with this program.¹³⁷ The Hobbema Community Cadet Corps (HCCC) is a “military-style program run by two Caucasian” Royal Canadian Mounted Police officers for approximately one thousand children between the ages of six and eighteen in a community populated by four First Nations.¹³⁸ The Hobbema area has “attained the reputation of being a hotbed of crime and disorder.”¹³⁹ The objective of the HCCC is to divert young people from gangs and criminal activity.¹⁴⁰ Structural inequalities and socio-economic marginalization give Hobbema the sociological indicators of risk for both criminal victimization and criminal offence.¹⁴¹ The operation of six street gangs in Hobbema is of “paramount concern” in circumstances where, whatever the pitfalls of stereotyping, “the fact is that people are dying as a result of gang-related ‘warfare’.”¹⁴² Grekul and Sanderson look for practical paths of improvement. Nonetheless, their examination of diversion programs through structured sociological indices misses deeper connections to the criminalization of indigenous persons when they point to “all that the legacy of colonization and residential schools entails” and skip forward to possible programmatic solutions.¹⁴³ While communities develop powerful indigenous strategies for healing and scholars engage in imperative “something must be done in the meantime” work in

¹³⁶ Grekul and LaBoucane-Benson, 2008, Op. Cit.:77.

¹³⁷ Jana Grekul and Kim Sanderson, “‘I thought people would be mean and shout.’ Introducing the Hobbema Community Cadet Corps: a response to youth gang involvement?” *Journal of Youth Studies*, 14(1, February), (2011):41-57.

¹³⁸ Ibid:42.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid:44, 51.

¹⁴³ Ibid.:48.

crisis conditions, this dissertation will uncover the precise legal historical-geographical foundations of untenable structural disparities.¹⁴⁴

Rick Ruddell and Shannon Gottschall's investigation of prison gangs finds that individuals associated with "Aboriginal," "Asian," and "street" gangs have different correctional profiles than "Outlaw Motorcycle" and "Traditional Organized Crime" gangs.¹⁴⁵ While Aboriginal gang membership was primarily drawn "from their ethnic group," the majority of "Asian" gang members did not self-identify as "Asian."¹⁴⁶ The great majority of Motorcycle and Traditional Organized Crime gang members were "White."¹⁴⁷ Between 1 January 2006 and 31 August 2009, 9.5% of individuals admitted on new sentences to federal penitentiaries in Canada were identified by an Institutional Parole Officer as belonging to a gang.¹⁴⁸ Once individuals are designated, Security Intelligence Officers investigate their gang involvement and classify them according to type of gang.¹⁴⁹ Identified gang members in prisons are statistically more likely to be younger, male, and "Aboriginal," "Asian," or "Black."¹⁵⁰ Members of these gangs are assessed as being at increased risk, having greater need of rehabilitation, and possessing lower potential for reintegration.¹⁵¹ Gang members have higher rates of property and drug offences, are more likely to have previously been incarcerated, and are more frequently placed in prisons with higher levels of security even though a larger proportion of non-gang inmates are serving sentences for violent offences.¹⁵² "Aboriginal" and "Street" gang members are least likely to be placed in minimum security facilities.¹⁵³ "Aboriginal" gang members have the highest rates of previous convictions, the lowest aggregate sentences, and the highest rates of violence while under sentence.¹⁵⁴

Springing from a "long history of trust," Lawrence Deane, Denis Bracken, and Larry Morrisette conducted a remarkably innovative and collaborative study of "Aboriginal street gang" members in Winnipeg, Manitoba.¹⁵⁵ The Ojijiita Pimatiswin Kinamatwin Program began when two "original leaders of one of the city's most noted Aboriginal gangs" approached Deane,

¹⁴⁴ Grekul and Sanderson, 2011, Op. Cit.:52.

¹⁴⁵ Rick Ruddell and Shannon Gottschall, "Are All Gangs Equal Security Risks? An Investigation of Gang Types and Prison Misconduct," *American Journal of Criminal Justice*, 36, (2011):265-279.

¹⁴⁶ Ibid:273.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid:268-269.

¹⁴⁹ Ibid:269.

¹⁵⁰ Ibid:271-272.

¹⁵¹ Ibid.

¹⁵² Ibid:273.

¹⁵³ Ibid:274.

¹⁵⁴ Ibid.

¹⁵⁵ Lawrence Deane, Denis Bracken, and Larry Morrisette, "Desistance Within An Urban Aboriginal Gang," *Journal of Community and Criminal Justice*, 54(2), (2007):125-141.

Bracken, and Morrissette and requested “help for gang members who were coming out” of a nearby federal penitentiary.¹⁵⁶ One of the three authors self-identifies as “Aboriginal,” has both family and social ties to the gang members, grew up in the same neighbourhood, previously ran a program in the area based on traditional teachings for youth, and had provided support for Aboriginal persons in prison.¹⁵⁷ Another of the authors was involved in an inner city housing renewal project that could potentially provide employment to those who chose to take the program.¹⁵⁸

The young male members of this “urban Aboriginal gang, made decisions to desist from crime and participate in a program which supported these decisions” while retaining social ties to a “street gang” defined as having a “criminal orientation, geographic terrain, self recognition in terms of colours, tattoos and insignia, and an organizational structure.”¹⁵⁹ Despite predominantly violent media portrayals of gang life, those who chose to refrain from the gang’s criminal activities were, for the most part, respected and supported by the gang as they pursued a program of acquiring carpentry skills, engaging in counselling, connecting to educational opportunities, and learning traditional indigenous “pro-social values” through “cultural teachings.”¹⁶⁰ Gang members in the program were under surveillance since they were “working quite visibly in the neighbourhood and were questioned regularly by police about knowledge they may have had of offences committed by others.”¹⁶¹ They were not entirely free of domestic disputes, breach of parole, and “spontaneous incidents” such as fights; however, it was evident that the program was successful when none of the active participants between 2001 and 2006 were arrested for organized gang-related activities even though all had long histories of frequent incarceration.¹⁶² Deane, Bracken, and Morrissette’s claims that it is an “unrealistic expectation to ask gang members who were socially isolated from mainstream society, to sever social affiliations with lifelong friends” and that “desistance from crime” can be a more successful goal than achieving the dismantling of gang social networks is proven through practice.¹⁶³

¹⁵⁶ Deane, et. al., 2007, Op. Cit.:127.

¹⁵⁷ Ibid:128.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid:126.

¹⁶⁰ Ibid.

¹⁶¹ Ibid:128.

¹⁶² Ibid.

¹⁶³ Ibid.

In the Ogijiita program, providing stable employment was consistent with one of the “primary functions of gangs... to provide economic survival opportunities for members.”¹⁶⁴ Gang members felt strongly affiliated to the program and took the Ogijiita name as part of their identity “given to them in a ceremony by their elder, and reflecting their new identity as a work crew or as a group of former offenders.”¹⁶⁵ Most of the Ogijiita participants “said that they first encountered their traditions through cultural programs provided in prison.”¹⁶⁶ For marginalized indigenous peoples, becoming situated in positive indigenous identities is a critical aspect of restorative justice. However, Deane, Bracken, and Morrisette offer the indispensable clarification that these teachings are weightier than positive self-esteem. Sacred indigenous cultural and spiritual traditions “experientially present the thought forms and values that have aided Aboriginal people in survival for many millennia.”¹⁶⁷ Indigenous teachings and principles of order are substantive and practical.

2.5 Carceral and Legal Historical Geographies in Canada: The “Indian”

Legal geography is a growing field that challenges the concept of “blind justice” operating in undifferentiated “space” with social and political realities.¹⁶⁸ Evelyn Peters and Bettina Koschade’s work on indigenous jurisdiction and the Ardoch, Ontario, Algonquin First Nation is evidence of one of the many opportunities for innovative research in this arena of scholarship.¹⁶⁹ From her valuable research in First Nations geography and policy, Peters has steadily built an evidence-based rationale and framework for legal geography.¹⁷⁰

Renisa Mawani’s analysis of the development of the concept of the “half-breed” is theoretically complementary to Peter’s legal geography. Under the *Indian Act*, a “half-breed” was “a legal subject” yet the authors and implementers of that legislation “never fully articulated the racial-legal parameters” of this form of evolving indigeneity and “never explicitly defined... its

¹⁶⁴ Deane, et. al., 2007, Op. Cit.:130.

¹⁶⁵ Ibid:134.

¹⁶⁶ Ibid:137.

¹⁶⁷ Ibid.

¹⁶⁸ Bettina Koschade and Evelyn Peters, “Algonquin Notions of Jurisdiction: Inserting Indigenous Voices into Legal Spaces,” *Geogr. Ann.*, 88(3), (2006):299.

¹⁶⁹ Ibid.

¹⁷⁰ Evelyn J Peters, “Métis Populations in Canada: Some Implications of Settlement Patterns and Characteristics,” *Native Studies Review*, 17(2), (2008):19-44; Evelyn J Peters and Vince Robillard, “‘Everything You Want is There’: the Place of the Reserve in First Nations’ Homeless Mobility,” *Urban Geography*, 30(6), (2009):652-680; Evelyn J Peters, “[W]e Do Not Lose our Treaty Rights Outside the... Reserve’: Challenging the Scales of Social Service Provision for First Nations Women in Canadian Cities,” *GeoJournal*, 65, (2006):315-327.

territorial implications.”¹⁷¹ Mawani’s observation that the “half-breed was marked by a dexterity and pliability that made racial determinations slippery, unintelligible, and geographically unenforceable” is further articulated in this dissertation by mutually valid evidence that the very ambiguity of colonial ideas of the “half-breed” were used to enact legal restrictions based on perceived racial association.¹⁷² As Mawani explains, in addition to phenotyping, “efforts to distinguish half-breeds and Indians were also asserted through the nonvisual, unseen, and hidden markers of race, including (im)moral qualities and criminal impulses.”¹⁷³ As this dissertation makes evident, despite political and scholarly attempts to establish clear distinctions between “status Indians” and the broader group of self-identified indigenous peoples, the legal category of “Indian” has never been as discrete as discussions of status appear to imply.

Robin Jarvis Brownlie illustrates that, according to the ideology of the Department of Indian Affairs’ “civilization” program, “First Nations people were in essence ‘going white,’ being legally transformed from Indians into whites” and they “had to have become ‘white’ first, or at least ‘non-Indian’” in order to be enfranchised.¹⁷⁴ Mary Ellen Kelm ascertains that well into the twentieth century, medical scholarship “added medicalized and pathologized dimensions” to racializations of indigenous peoples.¹⁷⁵ These “scientific” prejudices “emerged as much from what nonnatives feared most within their own societies as it did from what they observed on the reserves they studied.”¹⁷⁶ While changes to language may occur over time, underlying racializations are slower to change.

On Canada’s West Coast, discussions of criminality in indigenous communities were “fused together with prevailing assumptions regarding their fragile sensibilities, their need for colonial tutelage, and to justify their segregation on reserves.”¹⁷⁷ In particular, through criminalizing and imposing territorial restrictions on the trade and consumption of alcoholic intoxicants, the “Dominion government rendered Indians to have tastes, desires, and impulses that were already potentially criminogenic.”¹⁷⁸ Although charges resulting from the criminalization of

¹⁷¹ Renisa Mawani, “‘Half-Breeds,’ Racial Opacity, and Geographies of Crime: Law’s Search for The ‘Original’ Indian,” *Cultural Geographies*, 17(4), (2010):491,496.

¹⁷² Ibid:496

¹⁷³ Ibid:489.

¹⁷⁴ Robin Jarvis Brownlie, “‘A Better Citizen Than Lots of White Men’: First Nations Enfranchisement – an Ontario Case Study, 1918-1940,” *The Canadian Historical Review*, 87(1), (2006):30.

¹⁷⁵ Mary Ellen Kelm, “Diagnosing the Discursive Indian: Medicine, Gender, and The ‘Dying Race,’” *Ethnohistory*, 52(2), (2005):371-406.

¹⁷⁶ Ibid:397.

¹⁷⁷ Mawani, 2010, Op. Cit.:497.

¹⁷⁸ Ibid:497.

the “Indian” liquor trade may have been used on the West Coast to remove “mixed-race peoples” from reserves, the mechanism of applying the criminalizations of the *Indian Act* appears to have operated differently than it did in many of the legal geographies of this dissertation.¹⁷⁹ Mawani tells a story of four “half-breeds” on a British Columbia reserve whom the Indian Agent believed were legally allowed to purchase whisky.¹⁸⁰ Persons with close or visible ties to indigenous communities were not legally permitted to purchase whisky in other Canadian jurisdictions. Moreover, although Wikwemikong, like the majority of British Columbia, was unceded and Indian Agents were never able to completely govern its disputed borders, prohibitions against the liquor trade were considered legally valid according to the measures of the *Indian Act* regarding intoxicants on reserves and the possession, manufacture, or consumption of intoxicants by any person considered an “Indian,” “non-Treaty Indian,” or to whom the phrase “Indian mode of life” could be applied.¹⁸¹

Although it does not trace the origins of “Indian” imprisonment, in subject matter, Joan Sangster’s “‘She Is Hostile to Our Ways’: First Nations Girls Sentenced to the Ontario Training School for Girls, 1933–1960” is closest to this dissertation. Sangster’s differentiation of the social reforming of the marginalized “working-class” and “Indians” is helpful. While both, in a sense, were assimilative “nation-building projects,” Sangster makes the critical argument that the “dispossession of Native peoples from their lands, their resulting social dislocation, and the political control expended by the federal Indian Act, as well as the denigrations of racism, also set the colonial project of assimilation apart.”¹⁸² Although relatively few “Indian” or Métis girls were admitted to the Ontario Training School for Girls reformatory, the numbers of committals increased in the late 1940s “mirroring the growing over-incarceration of Native peoples in post-

¹⁷⁹ Mawani, 2010, Op. Cit.:497.

¹⁸⁰ Ibid:493, 498.

¹⁸¹ The misattribution of the phrase “mode of life” is discussed in Chapter Seven.

¹⁸² Sangster also provides historically-grounded feminist critiques in other related areas. Joan Sangster, “‘She Is Hostile to Our Ways’: First Nations Girls Sentenced to the Ontario Training School for Girls, 1933–1960,” 2002, *Law and History Review*, 20(1, Spring), (2002):60; Joan Sangster, “Girls in Conflict with the Law: Exploring the Construction of Female Delinquency in Ontario, 1940-1960,” *Canadian Journal of Women & Law*, 12(1), (2000):1-31; Joan Sangster, “Criminalizing the Colonized: Ontario Native Women Confront the Criminal Justice System, 1920-60,” *The Canadian Historical Review*, 80(1, March), (1999):32-60; Joan Sangster, “Archiving Feminist Histories: Women, the ‘Nation’ and Metanarratives in Canadian Historical Writing,” *Women’s Studies International Forum*, 29, (2006) 255-264; Joan Sangster, “‘Pardon Tales’ from Magistrate’s Court: Women, Crime, and the Court in Peterborough County 1920-50,” *Canadian Historical Review*, LXXXIV(2), (1993):161-197; Tamara Myers and Joan Sangster, “Retorts, Runaways and Riots: Patterns of Resistance in Canadian Reform Schools for Girls, 1930-1960,” *Journal of Social History*, 34(3, Spring), (2001):669-697.

World War II Canada, a trend that escalated even further in subsequent decades.”¹⁸³ Importantly, as occurred with DIA carceral facilities, the post-war increase in indigenous girls in reformatory schools outside of the classical purview of the Department of Indian Affairs “reflected governments’ new interest in integrating Native peoples into the heart of the welfare state.”¹⁸⁴ Despite this attempt at change, racialized ideologies of an “unreachable Native cultural persona” nevertheless “remain embedded” in Canada’s criminal justice systems.¹⁸⁵ Sangster critiques the ways in which ideologies of cultural impoverishment pour out seemingly sympathetic tales of “unsalvageable victims” and, in so doing, avoid action on deeper issues of power relations such as the inequalities wrought by colonialism.¹⁸⁶

Sangster acknowledges that archival files, government records, and socio-medical documents are a “precarious way of understanding Native girls in conflict with the law” since they are “highly mediated” by authority figures.¹⁸⁷ Deena Rymhs agrees that the “mechanisms of discipline Foucault describes – observation, collation of records, institutional control,” are more intense for certain racialized groups.¹⁸⁸ It is vital to listen for stories in archival research materials and remember that all stories are situated and partial.¹⁸⁹ Hermeneutics provides the archival researcher with helpful principles for interpreting archival data. Considering each document’s authorship, intended and unintended purposes, intertextual connections, and possible audiences, brings focus to archival research and builds a deeper awareness of wide potential within the limits of archival data.¹⁹⁰ The hermeneutic contexts of such sources remain highly pertinent when the words they contain are attributed to Aboriginal persons engaged with these powerful systems.¹⁹¹ Sangster believes that these sources can be fruitfully, and critically, read. Sangster agrees with “historians who support the endeavor of at least attempting to write across the boundaries of our

¹⁸³ Sangster, 2002, Op. Cit.:60.

¹⁸⁴ Ibid:67

¹⁸⁵ Ibid:60, 69.

¹⁸⁶ Ibid:61.

¹⁸⁷ Ibid:63.

¹⁸⁸ Deena Rymhs, *From the Iron House: Imprisonment in First Nations Writing*, (Waterloo: Wilfred Laurier Press, 2008):12.

¹⁸⁹ Julie Cruikshank compares the methodological issues in following stories through oral and written sources. Julie Cruikshank, *Do Glaciers Listen? Local Knowledge, Colonial Encounters, and Social Imagination*, (Toronto: University of British Columbia Press, 2005); Julie Cruikshank, “Oral Traditions and Written Accounts: An Incident from the Klondike Goldrush,” *Culture*, IX(2), (1989); Julie Cruikshank, *The Social Lives of Stories: Narrative and Knowledge in the Yukon Territory*, (Lincoln: University of Nebraska Press, 1998); Julie Cruikshank et al., *Life Lived Like a Story: Life Stories of Three Yukon Native Elders*, (Lincoln: University of Nebraska Press, 1990).

¹⁹⁰ James Duncan and David Ley, “Introduction: Representing the Place of Culture,” *Place/Culture/Representation*, Eds. James Duncan and David Ley, (New York: Routledge, 1997):8-10.

¹⁹¹ Sangster, 2002, Op. Cit.:63.

own identity and experience.”¹⁹² Reading in this way entails “searching the documentary record for micro-events, those that seem to have no purchase in the manufacture of dominant history” in order to “prod the gaps left by mainstream histories.”¹⁹³ While no scholarly methodology confers omniscience, profound aspects of carceral resistance can be uncovered using archival sources.

Sangster’s work does not use the term “legal geography”; however, it does make evident that archival sources and historical documents can bring to light legal-geographic changes and continuities. The endurance of social concerns can be seen in archival documents when terms used to denote socially constructed concepts such as “race” are simply retitled “nationality.”¹⁹⁴

While she does not link it to assimilative “mode of life” legislation, Sangster relates that

a status Indian girl admitted to OTSG from a large city, whose family was solidly blue collar, was described in her file with little reference to her Native heritage. Yet girls from reserves, whether Metis or status Indians, were more likely to be analyzed in terms of their Native background, as the reserve (and particularly hunting and trapping subsistence) was equated with a racialized culture of backwardness.¹⁹⁵

Another aspect of “justice by geography” is revealed in the limited alternatives to incarceration faced by “reserve girls” when they were brought before rural or small-city courts.¹⁹⁶

While making greater use of a different government system, the Department of Indian Affairs continued to influence carceral legal geographies. Family information such as arrests for the consumption of liquor, other criminal records, “illegitimacy,” and sexual “immorality” all served to justify incarceration and the “suspicions of those like Indian agents intent on regulating reserve morality were enough evidence for a magistrate or judge to proscribe training school.”¹⁹⁷ Indigenous girls were under disproportionate surveillance.¹⁹⁸ Amazingly, once policy changes made admitting “Indian” girls into reformatories easier, some residential schools claimed that “residential schools were never meant to be correctional institutions” and attempted to redirect girls with “discipline problems” to reformatories.¹⁹⁹

A parallel hermeneutic approach to indigenous incarceration can be found in Deena Rymhs’ *From the Iron House: Imprisonment in First Nations Writing*. Rymhs places residential

¹⁹² Sangster, 2002, Op. Cit.:64

¹⁹³ Michael Ripmeester, “Intentional Resistance of Just ‘Bad Behaviour’: Reading for Everyday Resistance at the Alderville First Nation, 1837-76,” *Blockades and Resistance: Studies in Actions of Peace and the Temagami Blockades of 1988-89*, Eds. Bruce W Hodgins, Ute Lischke, and David T McNab, (Waterloo: Wilfred Laurier University Press, 2003):107.

¹⁹⁴ Sangster, 2002, Op. Cit.:66.

¹⁹⁵ Ibid:66.

¹⁹⁶ Ibid:79.

¹⁹⁷ Ibid:73.

¹⁹⁸ Ibid:74.

¹⁹⁹ Ibid:78.

schools and prisons on the same “carceral continuum.”²⁰⁰ As Rymhs observes, for indigenous peoples, “even home, the reserve, in its physical segregation, curtailing of indigenous territory, and concentration of economic poverty, has been compared to a prison.”²⁰¹ Rymhs illustrates the material contexts in which indigenous persons may sit in cells surrounded by inscribed “markings” that “rise out from their illicit spaces and begin to speak a history... a record, a proxy history of intersecting lives and lost kinships.”²⁰² Rymhs’ literary flair is communicated through vibrant description of prison walls that have been transformed into

a medium for this history, a narrative that emerges from the undersides of bunks. The markings signify a counter-discourse, a quiet and intractable conversation carried out among this structure’s occupants... the prison is not just an apparatus of detention and punishment, but a structure signifying the colonization, criminalization, and suppression of a people... With its parallel, insidious presence in the recent histories of Aboriginal people, the residential school has also been likened to a prison. These institutions played a regulatory and punitive function that instilled a similar sense of cultural guilt... Both the residential school and the prison used surveillance as a means of control.²⁰³

To Rymhs, these inscriptions are documents that demonstrate the “prevalent role that penal and regulatory institutions have played in the recent histories of Aboriginal people.”²⁰⁴ The ways in which penal and regulatory institutions were inequitably deployed, far earlier than can be attributed to “recent” history, are uncovered in this dissertation.

2.6 Peroratio: Methodological Paradox

A danger of research on sensitive topics is that it can be exploitative, paternalistic, or outright harmful. Gilian Balfour counsels that indigenous communities may not have the “resources or trust to participate in research collaborations to document colonial traumas that have undermined family and community life, such as parenting, substance abuse and family violence.”²⁰⁵ If indigenous communities do choose to pursue sensitive topics, the momentum for both research and publication must come from the community rather than from any outside government body or academic institution. *Restoring the Balance: First Nations Women, Community, and Culture* is an example of the sound scholarship and leadership of indigenous

²⁰⁰ Rymhs, 2008, Op. Cit.:5.

²⁰¹ Ibid:5.

²⁰² Ibid:1.

²⁰³ Ibid:2.

²⁰⁴ Ibid:1.

²⁰⁵ Gilian Balfour, “Do Law Reforms Matter? Exploring the Victimization – Criminalization Continuum in the Sentencing of Aboriginal Women in Canada,” *International Review of Victimology*, Published Online Prior to Print, 29 May 2012:15.

women.²⁰⁶ Centuries of “scientific” study of indigenous peoples has made it necessary to state that indigenous communities can bring much more valid knowledge to their existence than any “outside” research project can. Despite common histories of false socio-legal and geographic aggregation, individual and community experiences vary. Just as the colonial intention of assimilating indigenous persons did not result in their mimetic transformation into members of the dominant cultures, the written words of government officials do not represent the totality of indigenous experiences, knowledge, or human agency.²⁰⁷

Paradoxically, the inaccurate homogenization of the many diverse groups of indigenous peoples in Canada as “Indians” or “Aboriginal,” “half-breeds” or “Métis,” and “Eskimo” or “Inuit,” combined with paternalistic governmental collection of information on the peoples thus categorized, makes this research possible. Moreover, the embedding of this false classification and the discrimination it entailed into Canadian legal systems, social prejudices, and geographies makes it all the more important to pursue this line of inquiry. Although it is indigenous peoples who have been the colonial subject, the ideology that objectified them demands attention. Canadians still operate within the systems that create, and perpetuate, this inequality yet privacy restrictions and ethics guidelines place appropriate limitations on investigations into this highly sensitive arena. Although the only true understandings of the effects on indigenous peoples must come from within, too little is known about how colonial mentalities practiced this legal geography.

As Wendy Jepson affirms in her legal geography of water in south Texas, “attention to documents... reveals how the legal process unfolds, cuts off political avenues, writes new narratives, and ultimately creates new geographies.”²⁰⁸ Restricted and open archival files containing the internal correspondence, policy-making, policy articulation, proceedings, and considerably ecumenical information-gathering of Indian Affairs, Department of Justice, and law enforcement officers facilitate the uncovering of significant modalities of the legal relationships between indigenous peoples and colonizing governments. Historical newspapers, circulars, and newsletters offer informative glimpses into popular interests in, and representations of, local and national legal geographies of indigenous peoples. Manitoulin Island newspapers also acted as disseminators of significant civic information such as court calendars and details of local convictions. The published sessional papers of federal and provincial governments often provide

²⁰⁶ Gail Guthrie Valaskakis, Madeleine Dion Stout, and Eric Guimond, Eds., *Restoring the Balance: First Nations Women, Community, and Culture*, (Winnipeg, Manitoba: University of Manitoba Press, 2009).

²⁰⁷ Homi K Bhabha, *The Location of Culture*, (New York: Routledge, 2002):112.

²⁰⁸ Jepson, 2012, Op. Cit.:628.

a great deal of qualitative and quantitative information as well as a fascinating contrast between the public rhetoric and private concerns of government departments. Historical legal handbooks, legislation, and judicial decisions reveal the evolution of the law as everyday life and legal practice interplay with legal codification and political priorities. In a scholarly context in which the historical-geographies of assimilation through incarceration have not been explored, archival methodologies are persuasive tools of investitive research. The relationships between the practice of colonizing legal ideology and geography are the focus of this dissertation.

Chapter 3

Historical Geographies of Legal Dissonance: Assimilative State Law

The “place” of First Nations peoples in Canadian society is a controversy propelled in no small measure by disputes over who has the right to engage in the debate. Do proponents of inclusivity recognize that the indigenous peoples whose territories precede the Canadian state have a right to self-government? Does inclusivity mean that diverse groups, including the clumsy category of non-Aboriginals, have an equal voice despite historical atrocities and unequal access to platforms of public communication? Is this a public debate or a private matter in which the state refrains from interference within the homes of a singularly multicultural Canada? Is the sovereign self-determination of individual First Nations, rather than self-government within the Canadian state, the appropriate scale for this discussion?

Wherever political viewpoints are moored in the difficult balance between First Nations diversity and the constitutive prerogative of the Canadian state, powerful centralized programs predicated on governmental unity of purpose create a measure of common experience. First Nations peoples and non-Aboriginal Canadians, whether subscribers to those labels or not, share in the historical geographies of colonizing indigenous peoples: all take part in the ways in which colonial pasts are remembered and each influences how colonial repressions continue to be performed. Every person inhabiting the lands that lie within Canadian borders has a responsibility to critically contemplate colonialism. Within a spectrum of individual and community responses, centralized systems of official state interactions with persons recognized as “Indians” have resulted in marked empathic experience. A crucial element of this shared experience is the segregation of “Indians” from adult membership in the Canadian state.

3.1 The Function of Colonialism: Geographic Imposition of State Law and the Separation of “Indians” from Canadian Society

A function of colonialism was to extend European systems of law over indigenous lands, persons, and ways of life. Geography was vital to the growth and maintenance of empires governed from afar in European capitals and imposed by envoys in the “New World” according to pseudo-Christian philosophies of divine imperial right. As Cole Harris illustrates through British Columbia, the colonial instrument of mapping was used to translate the “unfamiliar space” of indigenous territories into “Eurocentric terms, situating it within a culture of vision,

measurement, and management.”¹ Harris argues that deeper understandings of the workings of colonialism lie in recognizing its “basic geographical dispossessions of the colonized” morally legitimized through a “cultural discourse that located civilization and savagery and identified the land uses associated with each.”² Imperial subjugation was achieved through the manipulation of geographical knowledge.

Early “Indian” policy was established through the bureaucratic realms that converged in the Colonial Office in London, England. Brian Titley’s insightful work on the structure and ethos of the DIA clearly situates the formation of Indian Affairs within a prerogative to enforce the law. The seed of what became Canada’s Department of Indian Affairs was sown in the late seventeenth century when Indian Commissioners in Britain’s Thirteen Colonies were given the mandate to govern the fur trade and curb the illegal trade in alcoholic beverages.³ Administering legal restrictions against liquor traffic with “Indians” would be an enduring preoccupation of the DIA and of law enforcement involving indigenous peoples.

Manitoulin Island, and all of the Great Lakes, were once part of New France. John Borrows reflects on the confluence of histories and concludes that association with fur trade interests in New France was what led the Huron, Odawa, and Ojibwa to go to war against the Haudenosaunee as they struggled to control trade in the Upper Great Lakes.⁴ A “disruption of occupancy of Manitoulin Island” occurred in 1652 while the Haudenosaunee were prevailing in this conflict.⁵ Although many Ojibwa and Odawa individuals “permanently fled west after their defeat” at the hands of the Haudenosaunee, others quickly returned to Manitoulin and, together, the Odawa, Ojibwa, and Potawatomi “eventually” reclaimed the island.⁶

¹ Cole Harris, “How Did Colonialism Dispossess? Comments from an Edge of Empire,” *Annals of the Association of American Geographers*, 94(1), (2004):165-182.; Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia*, (Vancouver: University of British Columbia Press, 2002):175; Cole Harris, *The Resettlement of British Columbia: Essays on Colonialism and Geographical Change*, (Vancouver: University of British Columbia Press, 1997).

² Cole Harris, 2004, Op. Cit.:165.

³ E Brian Titley, *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada*, (Vancouver: University of British Columbia Press, 2005), 1.

⁴ John Borrows, “Negotiating Treaties and Land Claims: The Impact of Diversity Within First Nations Property Interests,” *Windsor Yearbook of Access to Justice*, 12, (1992):187.

⁵ Ibid:187.

⁶ According to Borrows, land use on Manitoulin was less intensive than it had been prior to the wars. Ibid:187.



Figure 4: The Great Lake Waters Within New France, 1688⁷

Within this map, Lake Huron, and all it contains, are depicted as part of the legal realm of New France. Manitoulin Island, and its indigenous inhabitants, were involved in abstracted colonial struggles to claim land as well as “on the ground” military clashes as colonial legal topographies evolved.

Initially, First Nations were sought as allies when European powers fought for dominance in the “New World.”⁸ The British classified the Odawa, Ojibwa, Huron, and Potawatomi amongst the “Western Indians.”⁹ At the outbreak of the British-French Seven Years’ War, it was necessary that these colonizers create and maintain alliances with local military powers. First Nations possessed both the military might and geographical knowledge to be invaluable allies.¹⁰

⁷ Adapted from “Partie occidentale du Canada ou de la Nouvelle France [document cartographique] ou les nations des Illinois, de Tracy, les Iroquois, et plusieurs autres peuples; avec la Louisiane nouvellement decouverte etc. dressée sur les memoires les plus nouveaux par le P. Coronelli, cosmographe de la serme. repub. de Venise ; corrigée et augmentée par le Sr. Tillemont ; et dediée a Monsieur L’abbé Baudrand,” National Archives of Canada, R3908-2-4-F, Volume: 1.

⁸ Cole Harris, 2004, Op. Cit.:175; Cole Harris, 1997, Op. Cit.

⁹ Mark D Walters, “The Extension of Colonial Criminal Jurisdiction Over the Aboriginal Peoples of Upper Canada: Reconsidering the *Shawanakiske* Case (1822-26),” *University of Toronto Law Journal*, 46, (1996):278, 279.

¹⁰ Brian S Osborne and Michael Ripmeester, “Kingston, Bedford, Grape Island, Alnwick: The Odyssey of the Kingston Mississauga,” *Historic Kingston*, 43(January), (1995):92; Osborne and Ripmeester, “The

The Western Indians, along with the majority of Algonquian peoples, allied with France against Britain in the 1756-1763 Seven Years' War.¹¹ After the defeat of the French at the Plains of Abraham and the 1763 *Treaty of Paris*, Britain's indigenous allies retained their importance as military confederates while dissent fomented in the Thirteen Colonies.



Figure 5: 1763 *Treaty of Paris* Superimposed on the Indigenous Peoples of the Great Lakes¹²
 Indigenous peoples are charted, yet coloured over with the colonial divisions of the *Treaty of Paris*, in this excerpt from a 1768 map.

In terminology that has since been the subject of great debate as First Nations advocate for their rights to land and self-governance, the *Proclamation of 1763* granted rights to land and self-determination based on mutual benefit. King George III commanded,

Mississaugas between Two Worlds: Strategic Adjustments to Changing Landscapes of Power,” *Canadian Journal of Native Studies*, XVII(2), (1997):259-292.

¹¹ Walters, 1996, Op. Cit.: 278, 279; Borrows, Op. Cit.:187.

¹² Adapted from “An Accurate Map of North America. Describing and distinguishing the British, Spanish and French Dominions on this great Continent; According to the Definitive Treaty – Concluded at Paris 10th Feby 1763 – Also all the West India Islands Belonging to, and possessed by the Several European Princes and States. The whole laid down according to the latest and most authentick Improvements, By Eman Bowen Geogr. to His Majesty and John Gibson Engraver. [cartographic material],” London: Printed for Robt. Sayer opposite Fetter Lane, Fleet Street, 1768, National Archives of Canada, Box 2000230116, Box 2000230119, Box 2000230120, Box 2000230121, Microfiche NMC11694, Microfiche NMC24630, Microfiche NMC44362, Microfiche NMC48906, Local Class No. H2/1000/[1763] (4 sections), Access Code: 90, Copyright: Expired.

whereas it is just and reasonable, and essential to our interest, and the security of our Colonies, that the several Nations or Tribes of Indians with whom we are connected, or who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories as not having been ceded to, or purchased by us, are reserved to them, or any of them, as their hunting grounds.¹³

The *Proclamation of 1763* recognized Aboriginal title to land, created a boundary between eastern colonial settlements and “Indian lands,” and decreed that this reserved land could be ceded only to the Crown.¹⁴ Rhetorically composed as a protection for Indians in unceded territories upon whom “great frauds and abuses” had been perpetuated, the *Proclamation* instilled the idea that indigenous and settler communities should be kept apart and, when exchanges occurred without the supervision and consent of the Crown, they were criminal.¹⁵ A basic function of colonial officials was to enforce criminal law. The *Proclamation*

expressly enjoin[ed] and require[d] all officers whatever, as well military as those employed in the management and direction of Indian Affairs... to seize and apprehend all persons whatever, who, standing charged with treasons, misprisons of treason, murders, and other felonies or misdemeanors, shall fly from justice, and take refuge in said territory, and to send them under proper guard, to the colony where the crime was committed, of which they stand accused, in order to take their trial.¹⁶

When instances of settler offences against indigenous persons occurred, colonial authorities “respected native customary law either by allowing native nations to retaliate or by adhering to the native ‘ceremonies of condolence’ at which satisfaction was paid.”¹⁷ If criminal allegations were made against “Indians,” and early attempts to have the accused surrendered for trial failed, “officials were instructed by the commander-in-chief of British forces to seek satisfaction from the nations to which the accused natives belonged according to ‘their own Customs and Ceremonies.’”¹⁸ The remarkable distinction between the *Proclamation of 1763* and later colonial policies is that the onus of geographical segregation, and criminalization for transgressions, rested on colonizers rather than on indigenous peoples.

With the 1774 *Quebec Act*, a great span of *Proclamation* “Indian lands” became part of the Province of Québec.¹⁹ Following the 1775-1783 American Revolution, partially incited by

¹³ “Headquarters – Canada – A History of the Indian Department in Canada and the Imperial Government Compiled by S. Stewart, Comprised of Reports, Memoranda and Correspondence (Plan of Georgian Bay Area,” 1713-1907, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 3016, File: 218,410, Part 1, Access Code: 90.

¹⁴ Titley, 2005, Op. Cit.:2.

¹⁵ “Headquarters – Canada – A History of the Indian Department,” Op. Cit.

¹⁶ Ibid.

¹⁷ Walters, 1996, Op. Cit.:281.

¹⁸ Ibid:281.

¹⁹ Ibid:282.

British limitation of settler lands in the *Proclamation of 1763*, Indian Affairs was moved northward to Canada.²⁰ Therefore, a significant feature of the historical-geography of Upper Canada is that most of the province had once been set aside as “Indian territory” under the *Proclamation of 1763*.

The 1791 *Constitution Act* divided Québec into Upper and Lower Canada.

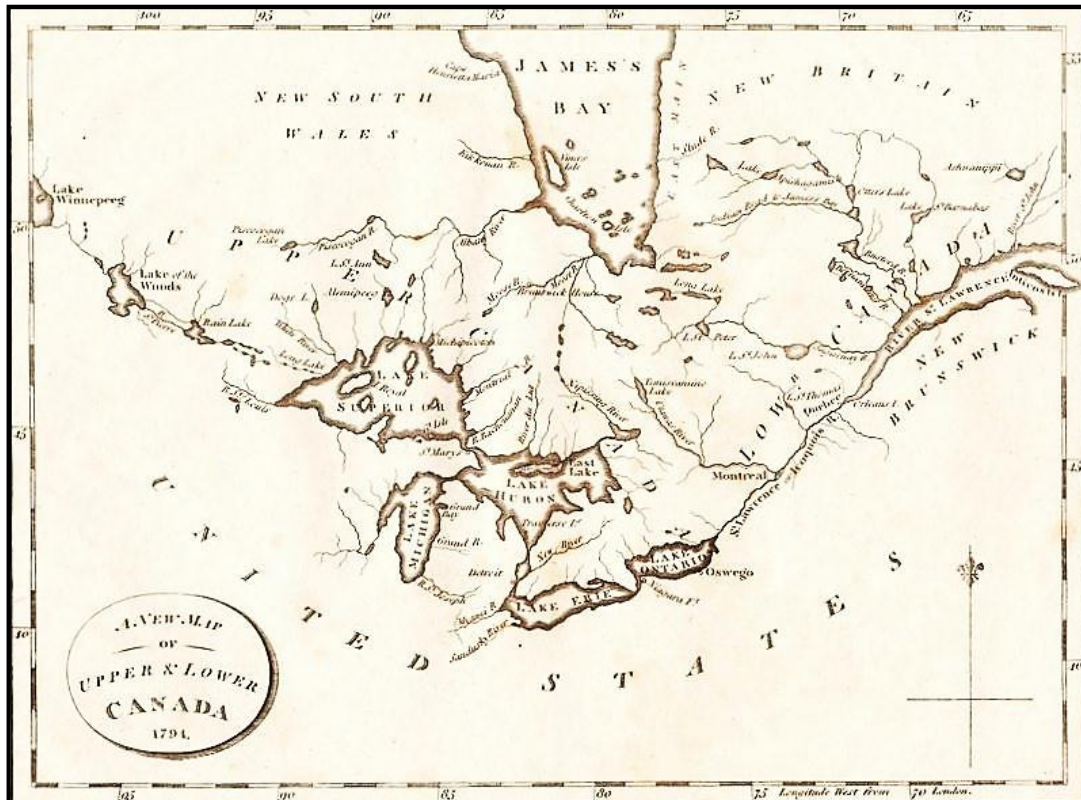


Figure 6: A New Map of Upper and Lower Canada, 1794²¹

Following American Independence, a colonial mapping took place in which Upper and Lower Canada were formed: the legal places where important “Indian policy” was created.

While localized governance often took precedence in the Maritimes and British Columbia, in Upper and Lower Canada, the imperial administration took on a close supervisory role until Indian Affairs was passed into colonial control and “only reluctantly accepted by the Canadian authorities” in 1860.²² Titley notes that the Canadas were the place where the “greatest body of

²⁰ Titley, 2005, Op. Cit.:2.

²¹ Adapted from “A new map of Upper & Lower Canada, 1794 [cartographic material],” Piccadilly, England: Publisher J Stockdale, 10 October 1794, National Archives of Canada, Alexander E MacDonald Canadiana Collection #512, Accession No. 80101/245 CA, Local Class No. 11001794 H3, R11981-185-0-E, Microfiche NMC93316, Access Code: 90, Copyright: Expired.

²² Titley, 2005, Op. Cit.:1-4.

legislation affecting Indians was developed – legislation that was borrowed heavily by the new Dominion government” when it turned to formulating its own “Indian” policies.²³

Despite earlier ties to France, many indigenous peoples of the Great Lakes allied with Britain against the United States during the War of 1812.²⁴ When the War of 1812 was quelled by British and indigenous forces, the utility of First Nations as military allies of the British dwindled.²⁵ Through the example of the Mississaugas’ relocations in the region of Lake Ontario, Brian Osborne and Michael Ripmeester shed light on how European colonizers assigned a higher value on the skills, knowledge, military resources, and existing political order of North America’s indigenous inhabitants when it was to the advantage of colonial powers: typically in areas of lesser European settlement and greater trade.²⁶ Consequently, it seemed less necessary for officials of the Indian Department to protect indigenous lands after the War of 1812.²⁷ Britain redirected its conquering gaze towards the remaining impediment to its colonial hegemony in North America: the very indigenous nationhood that once made military alliances so crucial to British victory.

As First Nations endured and continued to advance their claims even though they had ceased to be of immediate use as allies in war, the legitimacy of the colonizing settler state was threatened. The British colonial government engaged in dubious negotiations that justified sweeping appropriations of land and ended an irregular series of treaties across Canada. For indigenous peoples, the land that had been their home since “time immemorial” was now “defined by bundles of rights and values that were foreign to their ways and were defended by the courts.”²⁸ Although abstract European conceptions of land ownership and legally-defined enfranchisement in the state had very real effects, they could not obliterate indigenous identities that are, by definition, woven of, and through, the land itself.

Paternalistic colonial Britain portrayed “Indians” as relics of a single savage culture that was dying away in the face of superior civilization. Whether characterized in colonizing minds as naive “noble savages” or violently heathen savages, reductive reasoning assumed that indigenous

²³ Titley, 2005, Op. Cit.:1.

²⁴ Borrows, 1992, Op. Cit.:187.

²⁵ Titley, 2005, Op. Cit.:2.

²⁶ For an informative explanation of these shifting landscapes of power, through the example of the Mississaugas, see Osborne and Ripmeester. During the eighteenth century conflicts between France and Britain for control of North America, the “most powerful nation controlling the east end of Lake Ontario was not Britain or France, but the Mississaugas.” Osborne and Ripmeester, 1995, Op. Cit.: 92; Osborne and Ripmeester, 1997, Op. Cit.:259-292.

²⁷ Titley, 2005, Op. Cit.:2.

²⁸ Cole Harris, 2004, Op. Cit.:177.

persons were incapable of governing their own affairs and that overtly indigenous political organization was a threat to order and good government. The struggles of indigenous communities as they grappled with disease, European settlement, and changes to long-standing cultural mores underpinned the belief that they were a disappearing “race” and those who remained should be isolated from the rest of Canadian society.²⁹ The colonial “solution” was geographical segregation: indigenous peoples should be quarantined until they either died out or were assimilated to British colonial culture by means of “the Bible and the plow.”

Canada is not known for its revolutionary origins or for its frontier conquest of indigenous peoples. Within Canada, Brenna Bhandar finds that the negation of the “violence of colonial settlement and a refusal to call into question the legitimacy of the assertion of Crown sovereignty facilitate an understanding of Canada as a liberal-democratic advanced capitalist state, with its state-of-the-art Constitution and dominant ethos of pluralism and multiculturalism” and this “image of Canada masks systematic forms of discrimination and exclusionary practices and policies.”³⁰ Nevertheless, as Hon. Aurélien Gill expressed to his parliamentary colleagues,

You know as well as I do how the Americans dealt with Indians between 1830 and 1890 — with brutality, meanness and without respect. Canada was definitely less brutal, but were the results any different? Indian lands disappeared, natural resources were put under government trusteeship, reserves were established, treaties were not respected, the administration was unfair and fraudulent, powers were abused and our most fundamental rights were violated.³¹

²⁹ The perception of indigenous persons as a dying “race” stemmed from the earliest days of contact with Europeans. Indigenous populations were devastated by European-borne diseases for which they had no biological resistance or immunity. Establishing any precise figure is problematic. Ubelaker provides a range of 1 213 475 to 2 638 900 for the indigenous population of North America in, or around, the year 1500. Aside from other factors that may cause inaccuracy, Olive Patricia Dickason observes that networks of interactions between First Nations enabled diseases to spread inland from the eastern shores of North America “far ahead of the actual presence of Europeans, decimating up to 93 per cent of Native populations.” While the very first accounts of contact at the eastern seaboard describe healthy populations, later accounts from the period of inland movement during colonization describe seemingly empty lands. According to Dickason, archaeological evidence now makes it possible to contend “with growing conviction, if not absolute proof, that the pre-Columbian Americas were inhabited in large part to the carrying capacities of the land for the ways of life that were being followed.” Douglas H Ubelaker, “Historical Perspectives on Estimation of the American Indian Population Size,” *Variability and Evolution*, 2(3), (1993):85-92; Olive Patricia Dickason, *Canada’s First Nations – a History of Founding Peoples From Earliest Times*, 3rd ed., (Don Mills: Oxford University Press, 2002):3, 9, 203.

³⁰ Russel Lawrence Barsh also offers a useful critique. Russel Lawrence Barsh, “Aboriginal Peoples and Canada’s Conscience,” *Hidden in Plain Sight: Contributions of Aboriginal Peoples to Canadian Identity and Culture*, Eds. David R Newhouse, Cora J Voyageur, and Dan Beavon, (Toronto: University of Toronto Press, 2005): 272; Brenna Bhandar, “Anxious Reconciliation(s): Unsettling Foundations and Spatializing History,” *Environment and Planning D: Society and Space*, 22, (2004):831.

³¹ Hon. Aurélien Gill, “An Assembly for Aboriginal Peoples,” *Canadian Parliamentary Review*, 31(3, Autumn), (2008):12.

The violation of fundamental rights was supported by the dichotomy constructed by colonial and Canadian governments between indigenous identities and adult participation in weaving the political fabric of the state.

Harris' observation that the division between British Columbia's reserves and the rest of the province became the principal line on its map offers insight into the relationships between societal rifts and historical geography.³² Put forward by Sir George Murray, Britain's Secretary of State for War and the Colonies, the formal adoption of a British colonial civilization policy in 1830 for the "gradual civilization and christianization of the Indians of Upper Canada" rested on principles of "Indian protection, based on the Royal Proclamation; improvement of Indian living conditions; and Indian assimilation into the dominant society."³³ The policy involved three systemic pillars: ceding land through treaties, Indian reserves governed by Indian Agents, and "Indian" schools.³⁴ Since confinement on reserves was vital to the 1830 civilization project, treaties had to be made in areas such as Manitoulin Island where indigenous settlements lay outside of previously treated territories.³⁵ For the legislators that created them, reserves were impermanent sites where the policy of assimilation would be implemented. Indian Agents and missionaries supervised the settlement of indigenous communities into villages where "Indians" were subjected to instruction designed to instill in them the idealized characteristics associated with British settlers: self-sufficiency, Christianity, loyalty to the Government, individual property ownership, and the agrarian economy.³⁶ Throughout Canada, reserves were places of exception as their borders hemmed in indigenous peoples who, although claimed as subjects by the British Crown, were not considered fit to be at large in lawful society.

³² Cole Harris, 2004, Op. Cit.

³³ John Leslie, "Indian Act: An Historical Perspective," *Canadian Parliamentary Review*, 25 (2, Summer 2002):24; John S Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879-1986*, Manitoba Studies in Aboriginal History XI, (Winnipeg, Manitoba: The University of Manitoba Press, 1999):11; Robert J Surtees, "Treaty Research Report: Manitoulin Island Treaties," Treaties and Historical Research Centre, Indian and Northern Affairs Canada, 1986.

³⁴ Leslie, 2002, Op. Cit.:24; Milloy, 1999, Op. Cit.:16-17.

³⁵ Robert J Surtees, "Treaty Research Report: The Robinson Treaties (1850)," Treaties and Historical Research Centre, Indian and Northern Affairs Canada, 1986.

³⁶ John Richards, "Reserves Are Only Good for Some People," *Journal of Canadian Studies*, 35(1), (2000):190-202; Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*. Volume: II: Restructuring the Relationship, Part I, (Ottawa: Minister of Supply Band Services Canada, 1996).

3.2 Manitoulin: Place of International Summit

Manitoulin Island has long been a place of international interaction. The Great Manitoulin chain forms a “bridge of sorts” between the Bruce Peninsula and the head of Lake Huron.³⁷



Figure 7: Manitoulin as a Frontier Between Developing States, 1842³⁸

Manitoulin is illustrated in this 1842 map within the regional context of the international border. Upper Canadian settlement is expanding into the frontier of Indian Lands.

Overlapping nationalisms have conferred a legacy of controversy on the historical-geography of Manitoulin Island. Manitoulin is part of the large indigenous territory of the Three Fires Confederacy: an Algonquian alliance of the Odawa, Ojibwa, and Potawatomi that supersedes

³⁷ Surtees, “Manitoulin Island Treaties,” 1986, Op. Cit.

³⁸ Cropped and enlarged to show detail, adapted from “A map of the province of Upper Canada...with the counties adjacent from Quebec to Lake Huron...London. Published by Jos. Wyld...1842. [cartographic material],” National Archives of Canada, R12567-123-1-E, Box 2000215522, Accession No. 76701/383, Local Class No. H2/400/1842 (Copy 1), Access Code: 90, Copyright: Expired.

provincial, state, and national borders. The Manitoulin Island chain occupies an important place in the colonial expansion of Canada and the development of Indian policy.

3.2.1 Sir Francis Bond Head's Indian Hospice?

Manitoulin Island was an early site of assimilationist experimentation. When Murray's 1830 plan of "gradual civilization and christianization" was first put forward, certain bands were chosen for a "pilot project of this new policy."³⁹ After colonial officials gauged "progress" in an initial five-year project with five hundred Chippewas in the Lake Simcoe area, a new project site was to be opened on Manitoulin Island.⁴⁰

Although Canadian history attributes the idea of Indian removal to Manitoulin to Sir Francis Bond Head, in his own telling, there appears already to have been advanced discussion of setting Manitoulin aside for indigenous persons. When Head was obligated to journey to Manitoulin early in his governorship, he lacked sufficient time to make new plans despite having being instructed to formulate new arrangements.⁴¹ Head was dismayed to find that his predecessor had "with a view to civilize and Christianize the Indians who inhabit the country north of Lake Huron" already arranged for "erecting certain buildings on the great Manitoulin" and presaged the distribution of presents from the island.⁴² Borrows asserts that the regular colonial-First Nations "distribution of presents" was relocated to Manitoulin Island in 1836 in order to promote Indian settlement there.⁴³ Head maintained,

I did not approve of the responsibility, as well as the expense of attracting, as had been proposed, the wild Indians from the country north of Lake Huron to Manitoulin, yet it was evident to me that we should reap a very great benefit if we could persuade these Indians, who are now impeding the progress of civilization in U. Canada, to resort to a place possessing the double advantage of being admirably adapted to *them*, (inasmuch as it affords fishing, hunting, bird-shooting and fruit,) and yet in no way adapted to the

³⁹ Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.

⁴⁰ Ibid.:2, Quoted from British Parliamentary Papers, Vol. 12. Correspondence and other Papers relating to Canada and to the Indian Problem Therein, 1839; "Communications and Despatches Relating to Recent Negotiations with the Indians and Arrangements for the Future Settlement of the Tribes in this Province," (Toronto: Printed by order of the House of Assembly at the Office of the British Colonist, 1838); Bond Head to Glenelg, 20 November 1836, "Communication and Despatches," Op. Cit.

⁴¹ Head to Glenelg, 20 August 1836, "Communication and Despatches," Op. Cit.

⁴² Ibid.; Despatch of Sir FB Head to Lord Glenelg enclosing the foregoing treaties, 20 August 1836, (Toronto), "Ontario – Copy of 'Sir Francis Bond Head's Treaty' Signed at Manitowaning in 1836 in the Matter of the Islands on the North and East Shores of Lake Huron. Copies of Robinson Superior, Robinson Huron and Lake Simcoe [sic] Treaties and Correspondence, Reports, Memoranda and Claims Relating to These Treaties," 1896-1897, National Archives of Canada, RG10: Department of Indian Affairs, Volume 2848, File: 175,258, Access Code: 90.

⁴³ Borrows, 1992, Op. Cit.:188

white population... I felt convinced that a vast benefit would be conferred both upon the Indians and the Province by prevailing upon them to migrate to this place.⁴⁴

Perhaps the mineral wealth of the north shores of Lake Huron and Lake Superior had already been discovered when the first proposal of drawing First Nations from the north, instead of Head's proposed south-eastern catchment, was made.

While on Manitoulin Island, Head, determining that it "belong[ed] (under the crown) to the Chippewa and Ottawa Indians, and that it would, therefore, be necessary to obtain their permission before we could avail ourselves of them for the benefit of other tribes," set out a proposal in front of the group of fifteen hundred First Nations persons assembled for presents.⁴⁵ Head conducted "private interviews" with the Chiefs and scheduled a Grand Council at Manitowaning on 9 August 1836 to discuss his particular plan for the island.⁴⁶ In keeping with international norms involving negotiations between representatives of high stature, on the day of the Grand Council, the indigenous peoples had already met to establish their position and appoint "one of their greatest orators," Sigonah, to speak with Head.⁴⁷ Head proposed that indigenous lands be ceded to the Crown in exchange for the dedication of the Manitoulin chain for the "Indians" of Upper Canada.⁴⁸ Head professed satisfaction in the "calm deliberate manner in which the Chief gave, in the name of the great Ottawa tribe, his entire approval."⁴⁹ Head was prepared with a memorandum, not a formal land cession document, to be signed by the Chiefs; however, when he forwarded his document to Lord Glenelg, Britain's Secretary of State for War and the Colonies, he made it clear that wampum had been given along with the agreement and that, in addition to government officials, Church of England, Catholic, and Methodist clergy witnessed the accord.⁵⁰ Head underscored the wampum belt because he realized its importance in First Nations negotiations as a formal pledge "handed down from father to son, with an accuracy and retention of meaning which is quite extraordinary."⁵¹ In terms of British colonial policy, Head conceded that the document was "not in legal form; but, dealings with the Indians have been only in equity, and... was therefore anxious to shew that the transaction had been equitably

⁴⁴ Head to Glenelg, 20 August 1836, "Communication and Despatches," Op. Cit.

⁴⁵ Ibid.; Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.

⁴⁶ Head to Glenelg, 20 August 1836, "Communication and Despatches," Op. Cit.

⁴⁷ Ibid.

⁴⁸ Surtees also explains that a second group, the Ojibwa of the Bruce Peninsula, would move north of the Saugeen River. Surtees, "Manitoulin Island Treaties," 1986; Head to Glenelg, 20 August 1836, "Communication and Despatches," Op. Cit.

⁴⁹ Ibid.

⁵⁰ See Appendix B for the Manitoulin Document. Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.

⁵¹ Head to Glenelg, 20 November 1836, "Communication and Despatches," Op. Cit.

explained to them.”⁵² Although they did not necessarily meet the highest British legal standards, Surtees argues that Head “wished to have the two memoranda considered as legal land surrenders... these two speeches have taken on the status of actual treaties” as the *Manitoulin Island Treaty* of 1836.⁵³

Head’s motive was to procure land for the colonial government.⁵⁴ By his own admission, Head’s document was meant to have two outcomes: segregated “Indian” settlements and the “acquisition of their vast and fertile territory... hailed with joy by the whole Province.”⁵⁵ If all indigenous lands were reduced to the confines of Manitoulin Island, massive surrenders would make a great deal of land available as settlement advanced westward.⁵⁶ While Head boasted to his superior that the signing of the Manitoulin Document at a “General Council held expressly for the purpose, made over to me 23,000 Islands” and that the “Saugeen Indians also voluntarily surrendered to me a million and a half acres of the very richest land in Upper Canada,” he did not put the document in quite the same light to the First Nations.⁵⁷ He sheepishly half-confessed, “it may appear that the arrangement was not advantageous to the Indians, because it was of such benefit to us” and failed to realize the deep meaning of indigeneity when he pontificated, “but it must always be kept in mind that however useful rich land may be to *us*, yet its only value to an Indian consists in the game it contains.”⁵⁸ Thus, Head rationalized that First Nations had weak claims to land where settlement had diminished stocks of game.

In his Manitoulin Document, calling the First Nations who negotiated so eloquently “red children” of the “great Father,” the British monarch, Head paternalistically framed the *Proclamation of 1763* as an outdated artifact of beneficent protection of First Nations that could not be sustained in the face of the “unavoidable increase of white population, as well as the progress of civilization.”⁵⁹ By 1836, it had “become necessary that new arrangements should be

⁵² Head to Glenelg, 20 November 1836, “Communication and Despatches,” Op. Cit.

⁵³ Surtees, “Manitoulin Island Treaties,” 1986, Op. Cit.

⁵⁴ Ibid.

⁵⁵ Head to Glenelg, 20 November 1836, “Communication and Despatches,” Op. Cit.

⁵⁶ Titley, 2005, Op. Cit.:3.

⁵⁷ Head to Glenelg, 20 November 1836, “Communication and Despatches,” Op. Cit.

⁵⁸ Ibid.

⁵⁹ “The Chippewa, Ottawa and Suaking Indians – Provisional Agreement for the Surrender of the Manitoulin Islands and the Islands on the North shore of Lake Huron and also of the Sauking Territory – IT 120 1836/08/09,” 1836, National Archives of Canada, RG10: Department of Indian Affairs, R216-79-6-E: Treaties and Surrenders, Volume: 1844/IT120, Access Code: 90; Head to Glenelg, 20 November 1836, “Communication and Despatches,” Op. Cit.

entered into for the purpose of protecting... from the encroachment of whites.”⁶⁰ Head illustrated the problem:

In all parts of the world, farmers seek for uncultivated land as eagerly as you, my red children, hunt your great forests for game. If you would cultivate your land, it would then be considered your own property; in the same way as your dogs are considered among yourselves to belong to those who have reared them; but uncultivated land is like wild animals.⁶¹

Although Head tacitly acknowledged Aboriginal title to Manitoulin by confirming the need for cession to Lord Glenelg, in his document to the First Nations, Head put their legal claim to territory on a less firm footing. Head portrayed the legal geography of both Manitoulin and the north shore of Lake Huron as “alike claimed by the English, the Ottawas and the Chippewas.”⁶² Since the Manitoulin chain “might be made a most desirable place of residence for many Indians who wish to be civilized as well as to be totally separated from the Whites,” Head offered, “your Great Father will withdraw his claim to these Islands, and allow them to be applied for that purpose.”⁶³ Moreover, the question at the end of Head’s document was not put as a clear cession to the Crown under the *Proclamation of 1763*. Rather, Head asked, “Are you, therefore... willing to relinquish your respective claims to these Islands, and make them the property (under your Great Father’s control) of all Indians whom he shall allow to reside on them?” and requested that First Nations put their marks to the document.⁶⁴ Especially with British control hidden behind parentheses, Head’s proposal might easily have been construed as British cession to pan-Aboriginal title. From what was represented to them as an uncertain future, at the very least, the First Nations would have an additional documented right to the land.⁶⁵

3.2.2 Diplomacy and Despair

Although Lord Glenelg informed Head that King William IV approved his plans for Manitoulin Island and wished its indigenous inhabitants to be under his care, the King directed Glenelg to “signify his express injunction that no measure should be contemplated which may afford a reasonable prospect of rescuing this remnant of the aboriginal race, from the calamitous

⁶⁰ Head to Glenelg, 20 November 1836, “Communication and Despatches,” Op. Cit.

⁶¹ “The Chippewa, Ottawa and Suaking Indians,” 1836, Op. Cit.; Head to Glenelg, 20 November 1836, “Communication and Despatches,” Op. Cit.; “Ontario – Copy of ‘Sir Francis Bond Head's Treaty’,” Op. Cit.

⁶² Head to Glenelg, 20 November 1836, “Communication and Despatches,” Op. Cit.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Surtees, “Manitoulin Island Treaties,” 1986, Op. Cit.

fate which has so often befallen uncivilized man, when brought into immediate contact with the natives of Europe.”⁶⁶ William IV would “with highest interest” receive Head’s suggestions regarding the “prospect of their being reclaimed from the habits of savage life, and being enabled to share in the blessings of Christian knowledge and social improvement.”⁶⁷ The King thought it advisable that indigenous persons be geographically restrained to the limits of Manitoulin Island; however, he did not predict their survival. The tenor of Head’s correspondence soon darkened.

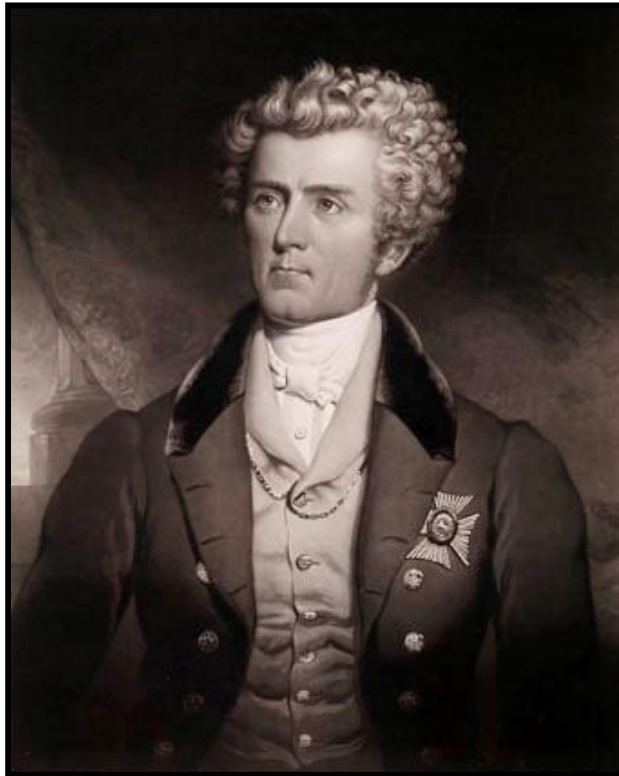


Figure 8: His Excellency Sir Francis Bond Head, 1837⁶⁸

When Sir Francis Bond Head corresponded with the Colonial Secretary in November 1836, he did so in a tone of despair, writing that the fate of the indigenous peoples of “America, the real proprietors of its soil, is, without any exception, the most sinful story recorded in the history of the human race.”⁶⁹ Head had completed a tour of inspection in which he purported to have visited every Indian settlement in Upper Canada “with one or two trifling exceptions”

⁶⁶ Glenelg to Head, 5 October 1836, “Communication and Despatches,” Op. Cit.

⁶⁷ Ibid.

⁶⁸ “His Excellency Sir Francis Bond Head,” 1837, National Archives of Canada, Peter Winkworth Collection of Canadiana, R9266-5-0-E, Item No. 3154, Access Code: 90, Copyright: Expired.

⁶⁹ Head to Glenelg, 20 November 1836, “Communication and Despatches,” Op. Cit.; Surtees, “Manitoulin Island Treaties,” 1986, Op. Cit.

making it his “duty to enter every shanty or cottage, being desirous to judge, with [his] own eyes, of the actual situation of that portion of the Indian population which is undergoing the operation of being civilized.”⁷⁰ Although Head used movingly romantic language, he did not shy away from the reality that imperial powers “were obtaining possession of their country by open violence, the fatal result of unequal contest was but too easily understood.”⁷¹ For Head, a sense of poignancy was derived from the futility that, “now that we have succeeded in exterminating their Race from vast regions of land,” assimilative projects, and any contact, seemed

sure to prove fatal to the Red Man... if we attempt to christianize the Indians, and for that sacred Object congregate them in villages of substantial log houses, lovely and beautiful as such a theory appears, it is an undeniable fact, to which unhesitatingly I add my humble testimony, that as soon as the hunting season commences, the men (from warm clothes and warm housing have lost their hardihood) perish, or rather rot, in numbers, by consumption; while as regards their women, it is impossible for any accurate observer to refrain from remarking, that civilization, in spite of the pure, honest, and unremitting zeal of our missionaries, by some accursed process has blanched their babies faces. In short, our philanthropy, like our friendship, has failed in its profession; producing deaths by consumption, it has more than decimated its followers; and under the pretense of eradicating from the female heart the errors of a pagan’s creed it has implanted in their stead the germs of Christian guilt.⁷²

Head avowedly denied reports that civilization was successful and concluded that

every person of sound mind in this country who is disinterested in their conversion, and who is acquainted with the Indian character, will agree,-

1. That an attempt to make farmers of the Red Men has been, generally speaking, a complete failure.
2. That congregating them for the purpose of civilization has implanted many more vices than it has eradicated; and, consequently,
3. That the greatest kindness we can perform towards these intelligent, simple-minded people, is to remove and fortify them as much as possible from all communication with the Whites.⁷³

Despite the more buoyant rhetoric of his Manitoulin Document, for Head, the estimated 6507 indigenous inhabitants of Upper Canada should be funneled northwest where the natural limits of Manitoulin Island would demarcate something of an Indian hospice for the single “race” that he believed was dying out.⁷⁴

⁷⁰ Head to Glenelg, 20 November 1836, “Communication and Despatches,” Op. Cit.

⁷¹ For an examination of Head as a Romantic primitivist, see Theodore Binnema and Kevin Hutchings, “The Emigrant and the Noble Savage: Sir Francis Bond Head’s Romantic Approach to Aboriginal Policy in Upper Canada,” 1836-1838, *Journal of Canadian Studies*, 39(1, Winter), (2005):115-138; Head to Glenelg, 20 November 1836, “Communication and Despatches,” Op. Cit.

⁷² Head to Glenelg, 20 November 1836, “Communication and Despatches,” Op. Cit.

⁷³ Ibid.

⁷⁴ Titley, 2005, Op. Cit.:3.; Head to Glenelg, 20 November 1836, “Communication and Despatches,” Op. Cit.

The “Committee of the Executive Council of Lower Canada respecting the Indian Department” rejected Head’s critique of the civilization project because they saw no inherent characteristic “to unfit” an indigenous person from “rising to a level with his brethren of the European race.”⁷⁵ They attributed the negative conditions observed by Head to either neglect on the part of paternalistic assimilators who “should have watched over his improvement” or a “vicious system positively calculated to depress and degrade him.”⁷⁶ Despite casting indigenous persons as victims, the Committee also noted that “[v]ices attributed to the Indians as the Result of attempts to civilize them have been none other than have ever been found even in the most savage and uncultivated forms of life.”⁷⁷ The Committee maintained that First Nations, given the “opportunity” of civilization, exhibited a “capacity for the ordinary pursuits and arts of life.”⁷⁸ Lord Glenelg concurred that segregation would enable “Indians” to move towards assimilation without the detrimental effects of neighbouring frontier settler communities.⁷⁹ Lord Glenelg and the British Treasury approved Head’s land proposal.⁸⁰ As massive land surrenders were secured for “Indian lands” outside of Manitoulin Island in preparation for the removal, the vociferous protests of First Nations peoples and missionaries caused the Colonial Office to withdraw the Manitoulin Island strategy and resume a policy of gradual assimilation by 1838.⁸¹

Agents of the colonial government proceeded with a different version of the Manitoulin project. A fledgling government settlement was established on Indian lands at Manitowaning in 1838.⁸² From 1839 to 1844, the Government spent “upwards of \$30,000” in developing Manitowaning as an administrative centre of Indian Affairs with

some 40 Indian houses, a large frame store, a saw-mill, four large houses for the agent, English clergyman, doctor, and school-master; also a blacksmith’s, carpenter’s, and cooper’s shops; a large English church was also built, under the hope that a large number of Indians could be congregated there, and in some degree civilized and taught industrious pursuits.⁸³

⁷⁵ Surtees, “Manitoulin Island Treaties,” 1986, Op. Cit.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Titley, 2005, Op. Cit.:3

⁸² Surtees, “Manitoulin Island Treaties,” 1986, Op. Cit.

⁸³ CE Anderson, “Report on the Free Port of Sault Ste. Marie,” October 1864, *Reports of the Inspectors of the Free Ports of Gaspé and Sault Ste. Marie, Together with Certain Statistical Tables of Imports*, Sessional Papers of the Province of Canada, (Québec: Hunter, Rose & Co., 1865):39-40.

Nonetheless, as a government presence for the purposes of Indian assimilation, Manitowaning was not impressive.⁸⁴ Government civilizers vied with religious missionaries as the church of state, the Anglican Church, was rivaled by Jesuit missionaries who settled in Wikwemikong village.⁸⁵

3.2.3 The Mica Bay Uprising: Historical-Geographical Contexts of the *Robinson-Huron* and *Robinson-Superior Treaties*

Manitoulin's geographical context influenced international relationships as First Nations and imperial powers fought for survival, territory, and legal rights. The Ojibwa bands beyond Manitoulin used points on the island as short-term camp and meeting places.⁸⁶ On the northern shores of Lake Huron, as Osborne and Ripmeester found in the Mississauga's odyssey in more southerly realms, colonial expediency was the catalyst for the legalized geographical control of indigenous peoples.⁸⁷ Where the fur trade had once been the major commercial indigenous-colonial relationship, mining resources put additional pressure on the issue of Indian land cessions.⁸⁸ In his 1880 historical compilation, Alexander Morris straightforwardly relates the colonial reasoning that, because of the "discovery of minerals, on the shores of Lakes Huron and Superior, the Government... deemed it desirable, to extinguish the Indian title."⁸⁹ Nonetheless, this colonial practicality was less pragmatic when situated within the realities of indigenous peoples.

Robert Surtees suggests that prospecting on the north shore of Lake Huron for mineral resources was "regarded by the Indians as trespassing" and attempts at mineral exploration motivated letters of complaint to the government.⁹⁰ According to Surtees, in 1846, Chief Shinguakouse (Shinguacouse) of the Garden River First Nation threatened a land surveyor.⁹¹ As he petitioned the Governor General in June 1846, sending his missive through the Indian Agent at

⁸⁴ An 1856 Special Commission for the investigation of Indian Affairs found that Indians were not present at church services at Manitowaning and its generally ineffective school was infrequently attended although Rev. Mr. Jacobs had some success in running an evening school. Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.

⁸⁵ Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.

⁸⁶ Ibid.

⁸⁷ Osborne and Ripmeester, 1995, Op. Cit.

⁸⁸ Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.

⁸⁹ Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories, Including the Negotiations on Which They Were Based, and Other Information Related Thereto*, (Toronto: Prospero Books, 2000) Reprinted from 1880 Belfords Clark and Company edition: 16.

⁹⁰ Surtees, "Robinson Treaties," 1986, Op. Cit.

⁹¹ Ibid.

Manitowaning on Manitoulin Island, Shinguakouse cited his military service with the British during the War of 1812 and asserted that he had been promised that he could live on his land without outside incursions.⁹² Although it is not clear whether Shinguakouse possessed a wampum belt or other forms of agreements, in 1836 Sir Francis Bond Head recognized that many wampum belts made by British Generals with First Nations allies during “the American wars,” had been “preserved... entrusted to the keeping of the great orator Sigonah,” with whom Head negotiated on Manitoulin Island in 1836.⁹³ Head recognized that “in every sense these hieroglyphics are moral affidavits” supported by ceremonial present-giving which “corroborates the testimony of the wampums.”⁹⁴ Head’s understanding of the legal weight of wampum belts did not suit later colonial strategies.

In July 1847, the Indian Department made a vain attempt at convincing Shinguakouse to relocate his band from the Garden River village, which had been identified as a potential mineral location, to Manitoulin Island.⁹⁵ Perhaps with the Haudenosaunee period in mind, by November 1847, Commissioner of Crown Lands Denis-Benjamin Papineau denied the legally-established claims of the north shore peoples of Lake Huron and Lake Superior because, in his estimation, they could not be considered original inhabitants since they did not live on the lands until the end of the Seven Years’ War in 1763 and they were too dispersed to be recognized as an organized nation with a right to territory.⁹⁶ In June 1848, having refused to relocate, Shinguakouse formed a deputation to travel to Montreal to request the cessation of mining activities.⁹⁷ Tensions mounted when the deputation returned to find that their Garden River village had been sold as a mining location.⁹⁸ Once again, Shinguakouse journeyed to Montreal in July 1849 and spoke with Lord Elgin.⁹⁹

In September of the following year, Lord Elgin ordered that Alexander Vidal and Thomas Anderson embark on a recognizance mission in preparation for securing indigenous land

⁹² Shinguakouse fought alongside British forces at Detroit, Queenston Heights, and Moraviantown. Surtees, “Robinson Treaties,” 1986, Op. Cit.; Janet E Chute, “Shingwaukouse: A Nineteenth-Century Innovative Ojibwa Leader,” *Ethnohistory*, 45 (1, Winter), (1998):70-71.

⁹³ Head to Glenelg, 20 November 1836, “Communication and Despatches,” Op. Cit.

⁹⁴ Ibid.

⁹⁵ Rhonda Telford, “Aboriginal Resistance in the Mid-Nineteenth Century: The Anishnabe, Their Allies, and the Closing of the Mining Operations at Mica Bay and Michipicoten Island,” *Blockades and Resistance: Studies in Actions of Peace and the Temagami Blockades of 1988-89*, Eds. Bruce W Hodgins, Ute Lischke, and David T McNab, (Waterloo, Ontario: Wilfred Laurier University Press, 2003):73.

⁹⁶ Surtees, “Robinson Treaties,” 1986, Op. Cit.

⁹⁷ Telford, 2003, Op. Cit.:74.

⁹⁸ Ibid:74.

⁹⁹ Ibid:75.

cessions. When the members of this mission arrived in Manitowaning, Manitoulin Island, First Nations were warned to be prepared for an upcoming round of treaty talks.¹⁰⁰ In general, unproductive negotiations “left the Anishinabe on both lakes on bad terms.”¹⁰¹ While the colonial government had yet to receive the *Vidal-Anderson Report*, an uprising occurred.

Stories of this conflict, emanating from broken promises made on Manitoulin Island, differ. According to Surtees, the November 1849 Mica Bay “Indian uprising” took place when a “band of Indians and Metis, led by the white entrepreneur Allan Macdonell” journeyed to Mica Bay from Sault Ste. Marie, “attacked the mining installations of the Quebec Mining Company,” and demanded surrender.¹⁰² Rhonda Telford places the leadership of this resistance with Shinguakouse and Nabenagoching, who led a group to “forcibly shut down the operations” as a “demonstration of Ojibwa ownership of and beneficial interest in the subsurface.”¹⁰³ Indigenous peoples in Ontario have used products of the subsurface of the land, such as copper, for thousands of years.¹⁰⁴ The Crown would not recognize indigenous mining knowledge or rights.¹⁰⁵

After a hundred-rifle force was sent against the uprising and warrants were issued, Shinguakouse, Nabenagoching, and Macdonell were amongst those arrested in December 1849 and sent to Toronto for trial.¹⁰⁶ Macdonell’s charge of “forcible possession” was heard, and rejected, in the home of family friend Chief Justice JB Robinson.¹⁰⁷ While in detention, Shinguakouse and Nabenagoching “demanded compensation” from government mineral revenues.¹⁰⁸ Telford’s assertion that Macdonell’s association with the Robinson family “enabled both him and his Ojibwa friends to avoid lengthy punishment” is supported by the release of the imprisoned indigenous participants and the appointment of William Benjamin Robinson, brother of the Chief Justice, to negotiate treaties on the north shores.¹⁰⁹

The Mica Bay Uprising took place on what was still very much a north-western frontier to the British colonial government. Following the uprising, mining interests warned the government that treaties must be secured quickly in order to prevent a second uprising to the

¹⁰⁰ The comprehensiveness of this mission is questionable because it coincided with an epidemic and was undertaken at an insalubrious time of year. Surtees, “Robinson Treaties,” 1986, Op. Cit.

¹⁰¹ Telford, 2003, Op. Cit.:78.

¹⁰² Surtees, “Robinson Treaties,” 1986, Op. Cit.

¹⁰³ Telford, 2003, Op. Cit.:71, 78.

¹⁰⁴ Ibid:71.

¹⁰⁵ Ibid:79.

¹⁰⁶ Surtees, “Robinson Treaties,” 1986, Op. Cit.; Telford, 2003, Op. Cit.:79.

¹⁰⁷ Telford, 2003, Op. Cit.:79.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

detriment of Bruce Mines.¹¹⁰ The Mica Bay Uprising foreshadowed later First Nations and Métis resistance farther into the Canadian North-West and had a great impact on colonial policy. Surtees reasons that the Governor General “apparently saw a connection” between the uprising and land cession.¹¹¹ With valuable mineral exploration already in progress, and the power of multifaceted indigenous resistance so clearly demonstrated, it was urgent that treaties be established with the indigenous peoples of Lake Huron and Lake Superior. Although Lord Elgin considered the Mica Bay resisters’ claims dubious and judged that they had been led astray into “‘violent courses by the evil counsels of unprincipled white men’,” he regretted that Aboriginal title had not been extinguished before mineral licenses were granted.¹¹²

Despite its untimeliness, the government report that resulted from the Vidal-Anderson preparatory mission achieved recognition of the rights of First Nations in the area north of Lake Huron. It was established that indigenous rights to land were “‘derived from their forefathers, who have from time immemorial hunted upon it’” and that indigenous claims to these desirable territories were “‘unquestionably as good as that of any of the tribes who have received compensation for the cession of their rights in other parts of the Province; and therefore entitle[d] them to similar remuneration.’”¹¹³ Therefore, despite Papineau’s earlier assessment, it was incumbent on the government to negotiate treaties with indigenous peoples holding Aboriginal title.

Special Commissioner William Benjamin Robinson, the first person outside of the Indian Department to be appointed to negotiate a treaty, began the treaty process in 1850.¹¹⁴ Robinson “was expected to save the government from further embarrassment in the northwest” and “buy as much land as possible, but not settle for less than ‘the north shore of Lake Huron and the mining sites along the eastern shore of Lake Superior.’”¹¹⁵ The *Robinson Treaties* were the prototype for all subsequent historical treaties in Canada.¹¹⁶

According to Surtees, Lord Elgin’s promise of an official pardon for Chief Shinguakouse and other Mica Bay uprising participants eased relations prior to negotiations; however, Telford

¹¹⁰ Telford, 2003, Op. Cit.:79.

¹¹¹ Surtees, “Robinson Treaties,” 1986, Op. Cit.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Morris, 2000, Op. Cit.:285.

dates the pardon after the signing of the treaties.¹¹⁷ Independence was also something of an incentive as Robinson emphasized usufructuary rights to hunting and fishing with the argument that the Canadian Shield was not attractive to settlers and, therefore, usufructuary rights would not be impinged upon as they had been by the settlement of eastern Upper Canada.¹¹⁸

Although Robinson's task was to secure cessions on both Lake Huron and Lake Superior, the Lake Superior Bands signed the treaty on 7 September 1850 while Shinguakouse and the Lake Huron Bands wished to continue negotiations.¹¹⁹ Shinguakouse calculated that the treaty annuity payment should be higher than what had been proposed and he also wanted to ensure that a reserve be created "for the half breeds at the rate of 100 acres per head."¹²⁰ Despite refusing because he had been instructed to "treat with Indians, not whites," Robinson posited that the "half breeds... could be given land on the Indian reserves if the band agreed."¹²¹ Shinguakouse and the Lake Huron Chiefs signed the treaty on 9 September 1850 and ceded the

Eastern and Northern Shores of Lake Huron, from Penetanguishine to Sault Ste. Marie, and thence to Batchewanaung Bay, on the Northern Shore of Lake Superior, together with the Islands in the said Lakes opposite to the shores thereof, and inland to the height of the land, which separates the territory covered by the charter of the Honorable Hudson Bay Company from Canada: as well as all unconceded lands within the limits of Canada west to which they have any just claim.¹²²

Land cessions in the *Robinson Treaties* were made "save and except the reservations" outlined in the treaties themselves.¹²³ Reserve lands were held in common for the benefit of the band.¹²⁴

For the most part, the chiefs who signed the 1850 *Robinson Treaties* were "allowed to choose" their own reserves "which were usually locations of longstanding usage such as a

¹¹⁷ Telford records that Shinguakouse was pardoned for his role in the Mica Bay Uprising in May 1851. Surtees, "Robinson Treaties," 1986, Op. Cit.; Telford, 2003, Op. Cit.

¹¹⁸ Surtees, *Robinson Treaties*, 1986, Op. Cit.

¹¹⁹ Ibid

¹²⁰ Ibid.

¹²¹ Despite Robinson's indication, in practice, "Half-breeds" were forced to choose to be identified as either "Indian" or non-Indian. Ibid.

¹²² "In the Matter of the Arbitration Between The Dominion, the Province of Canada, and the Provinces of Ontario and Quebec: Statement of Case of the Dominion on Indian Claims Arising Out of the 'Robinson Treaties'," "Terms of Agreement of the Robinson Huron Treaty Signed on the 9th of September 1850," 1850-1893, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2545, File: 111,834, Access Code: 90.

¹²³ "Robinson Huron Treaty – Surrender by the Ojibewa Indians inhabiting the North Shore of Lake Huron – IT 148," 1850/09/09, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 1844/IT148, Access Code: 90; "Terms of Agreement of the Robinson Huron Treaty," Op. Cit.

¹²⁴ Ibid.

summer encampment where limited agriculture was practiced.”¹²⁵ While agriculture coincided with Indian Affairs’ assimilation plans, active indigenous involvement in mining did not.



Figure 9: Reducing Indian Lands to the Garden River Reserve¹²⁶
 Indigenous lands were reduced to the reserves established through treaty negotiations.

¹²⁵ Surtees, “Robinson Treaties,” 1986, Op. Cit.

¹²⁶ Adapted from “L.H. No.23. Plan of Indian Reserve situate at Garden River, North Shore of Lake Huron. Being No.14 under the Treaty of Septbr. 9th 1850. [with description] signed Jno. Stoughton Dennis: L.S., Weston, 14th May, 1853. [cartographic material],” National Archives of Canada, Copy No.1 from Department of Indian Affairs, Survey Records, No. 420A, Box: 2000222726, Local Class No. H2/440/Garden River (IR)/1853, Access Code: 90, Copyright: Expired.

As they had been from before the conflict exacerbated by mineral exploration began, differing understandings of the land are at the heart of these agreements. The financial and administrative oversight of the Indian Department was enshrined in the *Robinson Treaties*' requirement that any future sales of minerals, "valuable productions," or lands within reserves would take place through Indian Affairs "for their sole benefit, and to the best advantage" yet the treaties also stipulated that this would occur at the "request" of the indigenous parties.¹²⁷ Within reserves, the text of the *Robinson-Huron Treaty* makes Indian Affairs the middlemen rather than the instigators of economic development.

It may appear that Indian Affairs' control of mining extraction outside of reserves was understood when the indigenous signatories agreed that they would not "at any time hinder or prevent persons from exploring or searching for minerals or other valuable productions in any part of the Territory hereby ceded."¹²⁸ Nevertheless, this clause, and the treaty itself, arose from concerns about violence following the recent uprising. Now that the parties had finally engaged in treaty negotiations, pledges of peace were appropriate. Moreover, searching and exploring is not equivalent to extraction. If the procedure for mineral extraction were the same as that applied to the products of the reserve, it would only happen at the instigation of all of the First Nations who shared this territory.

In a sense, in this critical negotiation between differing nations, both sides appeared to be making some concessions. On the part of the Crown, it was acknowledged that indigenous peoples did possess Aboriginal title that must be approached through treaty-making rather than disregarded through unlawful frontier incursions. On the part of indigenous negotiators, it was implicitly acknowledged that the British used the surface boundary delineation of rights to minerals rather than holistic indigenous understandings based on minerals being part of the land itself. While reserve lands would become the sole realm of each band to settle on, products of the lands outside the reserves, such as animals to "hunt over the Territory" and fish swimming beneath the surface of the water, were still their "full and free privilege."¹²⁹ From this perspective,

¹²⁷ "Terms of Agreement of the Robinson Huron Treaty," Op. Cit.; "Copy of the Robinson Treaty Made in the Year 1850 with the Ojibewa Indians of Lake Huron Conveying Certain Lands to the Crown," Reprinted from the edition of 1939 by Roger Duhhamel, Queen's Printer, Ottawa, 1964, Indian and Northern Affairs Canada, Cat. No. Ci 72-1264; Morris, "Appendix: The Robinson Huron Treaty," 2000, Op. Cit.:305-306.

¹²⁸ "Ontario – Copy of 'Sir Francis Bond Head's Treaty'," Op. Cit.

¹²⁹ Telford asserts that the exception to this clause that allowed the provincial government, "from time to time," to sell or lease parts of this larger territory "was not discussed in the negotiations, nor would the Ojibwa have agreed to it. It was added afterwards and should not be a binding part of the treaty." Telford, 2003, Op. Cit.: 82.; "Ontario – Copy of 'Sir Francis Bond Head's Treaty'," Op. Cit.

since “minerals were not expressly surrendered, they did not pass to the Crown.”¹³⁰ Divergent interpretations of the legal status of negotiations, the texts of treaties, and the vertical and horizontal geographical bounds of agreements endured while the Manitoulin Island chain, on the blurry margins of this debate, continued to be used as a place of international summit.¹³¹

3.3 *The Manitoulin Island Treaty: The Settlement of Manitoulin Lands and Waters*

In an August 1861 *Order in Council*, the Commissioner of Crown Lands directed that Manitoulin Island be surveyed and divided into townships in preparation for colonial settlement.¹³² The waters of the Manitoulin Island chain had already been encroached upon by “white fishermen who were actually the first whites to penetrate the Manitoulin frontier” and fishing leases had already been granted.¹³³ As Douglas Harris demonstrates, Canadian colonial authorities “justified imposing state law on the Native fisheries by finding an absence of law.”¹³⁴ The premature leases in Manitoulin waters were “clearly an infringement of Indian rights, and the natives registered their dissatisfaction by harassing those whites who exercised their licenses.”¹³⁵ When the provincial Commissioner of Fisheries, Mr. William Gibbard, advised the village of Wikwemikong in July 1859 that they would have to purchase their own indigenous usufructuary fishing rights by auction, the chiefs protested.¹³⁶

By 1861, the Wikwemikong and West Bay (M’Chigeeng) First Nations had resolved against the colonial settlement of Manitoulin Island.¹³⁷ When commissioners arrived in Manitowaning to negotiate a treaty to cede the land, the indigenous peoples were told that Head’s 1836 agreement was based on an estimate that nine thousand “Indians” would relocate to Manitoulin Island on allotments of twenty-five acres per family.¹³⁸ In 1863, the *Globe* estimated

¹³⁰ Telford, 2003, Op. Cit.:82.

¹³¹ Manitoulin Island was again a meeting place when, as Robinson was returning from this treaty process, on 16 September 1850, Lake Simcoe Chiefs “Yellowhead” and “Snake,” with Beausoliel Island Chief Aisence, were there to meet him and register claims to lands near the Severn River. In registering these claims, the Robinson-Superior tract was put into question and an agreement was not re-established until the *Williams Treaty* of 1923. Telford, 2003, Op. Cit.:82-84; Morris, 2000, Op. Cit.:20; Surtees, “Robinson Treaties,” 1986, Op. Cit.

¹³² Surtees, “Robinson Treaties,” 1986, Op. Cit.

¹³³ *Ibid.*

¹³⁴ Douglas C Harris, *Fish, Law, and Colonialism: The Legal Capture of Salmon in British Columbia*, (Toronto: University of Toronto Press, 2001):4.

¹³⁵ Surtees, “Manitoulin Island Treaties,” 1986, Op. Cit.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

Great Manitoulin's entire "Indian" population at approximately twelve hundred to fourteen hundred persons.¹³⁹ Since relocation had not occurred at the desired scale, the government averred that indigenous peoples had "not fulfilled their part of the contract" and, thus, it was rendered invalid.¹⁴⁰



Figure 10: "Wequemalong, Manitoulin Island, Lake Huron," 1868-1929¹⁴¹

When the First Nations rejected the 1861 cession proposal and did not give permission for a survey of Manitoulin Island, they were told that the survey would be conducted under guard.¹⁴² In November, John Stoughton Dennis executed the survey and, in so doing, informed the government of potential resource development on the Manitoulin Island chain.¹⁴³

An Order in Council gave William McDougall, Superintendent General of Indians Affairs and Chief Commissioner of Crown Lands, the authority to conduct the process that

¹³⁹ "The Manitoulin Islands – Outrages by the Waquimakong Indians – Armed Force Sent to Arrest Father Kohler and Other Ringleaders," *The Daily Globe*, Toronto, Canada West, 27 July 1863, Volume: XX, No. 183:2.

¹⁴⁰ Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.

¹⁴¹ Adapted from "Wequemalong, Manitoulin Island, Lake Huron," 1868-1929, National Archives of Canada, Robert Bell Fonds, R7346-0-4-E, FA-272, Box: 4937, Access Code: 90, Copyright: Expired.

¹⁴² Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.

¹⁴³ Ibid.

resulted in the 1862 *Manitoulin Island Treaty*.¹⁴⁴ When McDougall set forth to secure the treaty, he was already prepared with a treaty text approved by the Executive Council on 12 September 1862.¹⁴⁵ The treaty council was held at Manitowaning in October 1862.¹⁴⁶ Indian Agent Ironside felt that he had garnered the approval of Chief Assiginack “who was considered by the Department to hold considerable influence”; however, resistance from Wikwemikong was soon apparent.¹⁴⁷ The Toronto, Canada West, *Daily Globe* later characterized the geographical division of Manitoulin treaty negotiations as a religious dispute stemming from the differing colonial-Christian missions.¹⁴⁸ McDougall found that there was one part of the island where he

encountered a good deal of opposition. These were the Waquimakong band, Roman Catholic Indians, occupying the peninsula at the Eastern extremity of the Island. The Protestant and Pagan Indians, scattered over the rest of the Island, readily fell in with his proposals, and agreed to accept the reservation of certain specified guarantees of land for each family, in lieu of their right to roam over the whole territory. The Waquimakongs, a large portion of whom are Indians from the United States, influenced, it is said, by their priests, who are foreign Jesuits, conducted themselves in a very violent manner during Mr. McDougall’s visit, and refused.¹⁴⁹

Although McDougall was “somewhat shocked to receive an immediate refusal” at the outset of treaty discussions, he proceeded with the government position and was partially vindicated when the unity of various Manitoulin Island First Nations appeared to split during a break from negotiations.¹⁵⁰ Some of the First Nations appeared to be willing to take part in negotiations even though the “obstinacy came primarily from the Wikwemikong band, which had, of course been generally hostile to government from the earliest days of the Manitoulin Establishment” in Manitowaning.¹⁵¹

McDougall was forced to modify the treaty text because the other Manitoulin chiefs were uneasy about signing a treaty containing terms to which one group would not concede.¹⁵² McDougall’s pre-prepared text had to be revised to “exclude from the proposed arrangement that part of the Island eastwardly of the Manitoulin Gulf & Heywood Sound, – and other terms being

¹⁴⁴ Copy of a Report of a Committee of the Honorable the Executive Council, approved by His Excellency the Governor General on the 14th November 1862,” 1862/11/14, “Order in Council Confirming and approving of Surrender, Manitoulin Island as made – IT 238,” National Archives of Canada, RG10: Department of Indian Affairs, Volume: 1846/IT238, Access Code: 90.

¹⁴⁵ “Copy of a Report of a Committee,” Op. Cit.

¹⁴⁶ Surtees, “Manitoulin Island Treaties,” 1986, Op. Cit.; “The Manitoulin Islands”, 1863, Op. Cit.:2.

¹⁴⁷ Ibid.

¹⁴⁸ “The Manitoulin Islands”, 1863, Op. Cit.:2.

¹⁴⁹ Ibid.

¹⁵⁰ Surtees, “Manitoulin Island Treaties,” 1986, Op. Cit.

¹⁵¹ Ibid.

¹⁵² Superintendent of Indian Affairs W McDougall, 3 November 1862, (Manitoulin Island), Morris, 2000, Op. Cit.:22-24.

deemed necessary to prevent future difficulty.”¹⁵³ These “other terms” included the provision that the Wikwemikong chiefs had “expressed their unwillingness to accede...as respects that portion of the Island, but have assented to the same as respects all other portions thereof.”¹⁵⁴ In addition to exempting Wikwemikong unceded territory from surveys and individual ownership of property, the 1862 treaty also specified that “said Indians will remain under the protection of the Government as formerly, and the said easterly part or division of the Island will remain open for the occupation of any Indians entitled to reside upon as formerly, subject, in case of dispute, to the approval of the Government.”¹⁵⁵ The “as formerly” clause is especially meaningful because the 1862 treaty expressly laid out the government position that, although “Indian title to said Island was surrendered to the Crown...by virtue of a treaty” made with Sir Francis Bond Head in 1836, “few Indians from the mainland whom it was intended to transfer to the Island, have ever come to reside thereon.”¹⁵⁶ By 1862, it was “deemed expedient (with a view to the improvement of the condition of the Indians, as well as the settlement and improvement of the country)” to create fixed locations of limited size for “Indians” and open Manitoulin for settlement.¹⁵⁷ Therefore, those who resided in territory not ceded in 1862 still enjoyed the affirmed treaty rights of 1836 with their emphasis on sole use without the incursion of settlers.

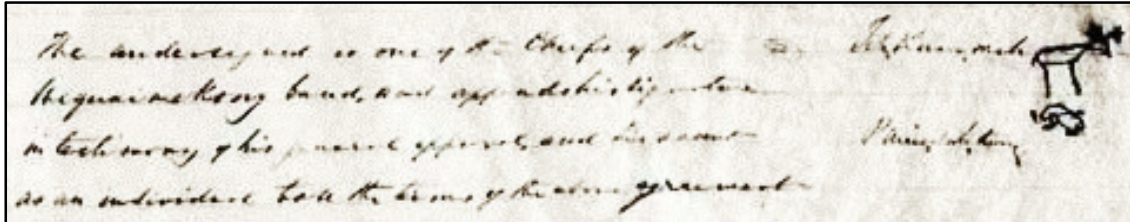


Figure 11: Wikwemikong Chiefs’ Endorsement of the 1862 *Manitoulin Island Treaty*¹⁵⁸
 The Wikwemikong Chiefs’ endorsement is separate from the main signatures of the treaty parties.

Two Wikwemikong Chiefs signed the treaty as an indication of their endorsement.¹⁵⁹ Although the terms of the *Manitoulin Treaty* had already been negotiated, McDougall’s revision “was not to take effect” until approved by the Executive Council afterwards.¹⁶⁰

¹⁵³ “Copy of a Report of a Committee,” Op. Cit.

¹⁵⁴ “The Manitoulin Island Treaty,” Morris, 2000, Op. Cit.:310.

¹⁵⁵ Ibid:311.

¹⁵⁶ Ibid:309-310.

¹⁵⁷ Ibid.

¹⁵⁸ Adapted from “Surrender of land by the Ottawa, Chippewa and other Indians – IT 237,” 1862/10/06, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 1846, Access Code: 90.

¹⁵⁹ Surtees, “Manitoulin Island Treaties,” 1986, Op. Cit.

While the *Manitoulin Treaty* purported to allow those qualified for acreages their “own selection of any land on the Great Manitoulin Island,” further provisions requiring “contiguous or adjacent” lots revealed the government plan to ensure that “Indian settlements on the Island may be as compact as possible.”¹⁶¹ The government could “claim, from any reserve, any sites which might in its opinion, be better used for the public good” provided that a new selection could be made and the inhabitants would be reimbursed for any improvements to the land.¹⁶² Lands that were not reserved, aside from Wikwemikong, were to be sold for settlement and the money was put into a fund from which band members would draw annual interest payments.

Immediately following the treaty, the Wikwemikong band were reportedly “conducting themselves in so violent a manner” that it was not “deemed expedient” to survey Manitoulin townships for settlement.¹⁶³ Fisheries Commissioner William Gibbard, a signatory to the *Manitoulin Treaty* who also took part in the great geographical claiming process of surveying, informed the “Government that, until this lawless spirit is repressed, it would be unsafe for any white man to remain on the Island, the whole of which is still claimed by the Waquimakongs.”¹⁶⁴ In view of McDougall’s relative success in achieving what the government considered surrender, the *Globe* thought it generally understood that it was “exceedingly undesirable that so much valuable territory, of so easy access from the settled parts of Upper Canada, should be left in a state of nature, and its settlement is of the more importance as being an almost necessary preliminary” to settling the north shore.¹⁶⁵ In the end, it was extremely “unsafe” for Gibbard to be on Manitoulin Island.

Many stakes from the survey conducted in the winter of 1863 were destroyed by a large fire that spread across Manitoulin Island.¹⁶⁶ After the fire, Manitowaning was dismal and damaged.¹⁶⁷ Several services usually administered through the village temporarily ceased.¹⁶⁸ Instead of following the Anglican tradition supported by the government village, it was speculated that two-thirds of the indigenous community in the area were professing the Roman

¹⁶⁰ Copy of a Report of a Committee, Op. Cit.; Superintendent of Indian Affairs W McDougall, 3 November 1862, (Manitoulin Island), Morris, 2000, Op. Cit.:22-24.

¹⁶¹ The treaty afforded 100 acres per head of family, 50 acres per single adult, 100 acres per “family of orphan children” and 50 acres to single orphans. “The Manitoulin Island Treaty,” Morris, 2000, Op. Cit.:310-311.

¹⁶² Surtees, “Manitoulin Island Treaties,” 1986, Op. Cit.

¹⁶³ “The Manitoulin Islands”, 1863, Op. Cit.:2.

¹⁶⁴ Ibid:2.

¹⁶⁵ Ibid.

¹⁶⁶ Anderson, 1865, Op. Cit.:39-40.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

Catholic faith.¹⁶⁹ In contrast, in Wikwemikong, the Jesuit Fathers ministered to over six hundred “Indians and half-breeds” in a comparatively clean and orderly village.¹⁷⁰ Wikwemikong had been affected by the fire; however, through a concerted community effort, they were able to prevent the blaze from destroying their entire crops and the presence of “good fishing grounds” further mitigated the effects of the fire.¹⁷¹

3.4 Peroratio: Manitoulin for Sale to “Actual Settlers”

ADVERTISEMENTS.



DEPARTMENT OF INDIAN AFFAIRS

—o:o—

INDIAN LANDS.

—o:o—

Lands in the undermentioned Localities are offered

FOR SALE TO ACTUAL SETTLERS

Through the following Local Indian Agents :

On the Great Manitoulin Island, Lake Huron, Ontario.

Mr. J. C. Phipps, of Manitowaning, is the agent for the sale of lands in following Townships on this Island :—Assignak, Bidwell, Howland, Sheguiandah, Billings, Campbell, Carnarvon, Allan, Tehkumah, and Sandfield ; and in the Townplots of Sheguiandah, Manitowaning and Shaftesbury (commonly called Little Current).

Mr. B. W. Ross, of Cockburn Island, is agent for lands on that Island, as well as or those in the Townships of Robinson, Dawson (on Manitoulin Island), and Townplot of Gore Gay, Townplot of Tolsonville (Cockburn Island), and Gordon, Mills, Burpee (on Barrie Island).

LEADING ROADS have been constructed throughout the Great Manitoulin Island.

ON THE SAUGEEN PENINSULA, ONTARIO.

The lands in the Townships of Amabel, Albemarle, Keppel, Eastnor, Lindsay, and St. Edmunds, as well as in several Townplots in the Peninsula, are offered for sale through Mr. Wm. Simpson, Indian Lands Agent, at Warton, County of Bruce, Ont.

ON THE GARDEN RIVER RESERVE, ONTARIO.

Mr. William Van Abbott, of Sault Ste. Marie, is agent for the sale of lands within this tract, and which are situated in the Townships of Macdonald, Laird and Meredith ; also for lands within the tract commonly known as the Batchewan Bay Indian Reserve, and comprised in the Townships of Aweres, Fenwick, Kars, Pennefather, Dennis, Herrick, Fisher, Tilley, Haviland, Vankoughnet, Tupper and Archibald.

A Leading Road is at present in course of completion through these lands, and will, when completed, afford ready communication with other parts of the country to intending settlers.

THE CONDITIONS OF SALE in respect to the lands within the Townships above described can be ascertained on application to the respective agents.

By order, **L. VANKOUGHNET,**
Deputy Sup.-General of Indian Affairs.

DEPARTMENT OF INDIAN AFFAIRS,
OTTAWA, JUNE, 1884.

Figure 12: Indian Lands for Sale to “Actual Settlers”,¹⁷²

Indian Lands on Manitoulin Island and in adjacent areas were advertised for sale by the Department of Indian Affairs in a legal handbook. As local Indian Agents sold land to settlers, they advanced programs of assimilation and the rule of state law.

¹⁶⁹ Anderson, 1865, Op. Cit.:39-40.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Adapted from *A Legal Hand-Book and Law-List for the Dominion of Canada: A Book of Parliamentary and General Information*, Louis H Tache, (Toronto: Carswell & Co Law Publishers, 1888):482.

Despite the obstacles, surveys of Manitoulin were eventually carried out at an “unusually large” cost to the Government.¹⁷³ Large areas of land made available for settlement were already “occupied by a prosperous and thriving population” by 1880.¹⁷⁴ Visiting Superintendent Phipps, and other officials of the Department of Indian Affairs, actively advertised lands for settlement. Member of Provincial Parliament RA Lyon held forth at a supper on Manitoulin Island in March 1880, informing his electorate that Ontario colonization roads had been of such help in the settlement of Algoma District that the population of Manitowaning had increased from one hundred to almost five hundred people in two years and the population of the entire island increased by approximately one-half in the same period.¹⁷⁵

This chapter has served to sound out the historical-geographical dissonances of the early extension of state law over Indian Lands. Manitoulin Island has always been a notable place of international interaction for indigenous peoples. Sir Francis Bond Head saw the fascinating geographical separation and indigenous connections of Manitoulin when he placed it at the centre of British legal relationships with indigenous peoples as the hospice for all “Indians.” Head’s paternalistic view of indigenous persons conceded the great violence involved in “civilization.” Although Head’s plan was ultimately a failure, in large part due to his ignorance of the size, diversity, and geographical extent of indigenous populations, it did set the stage for the colonization of Manitoulin Island from the government seat in Manitowaning in awkward parallel to unceded Wikwemikong and its Jesuit mission. Furthermore, this chapter exposes the duplicity of British legal agreements with indigenous peoples. Conflicts were more a function of the failure of state forces to uphold legal commitments than they were of indigenous persons’ failure to understand European legal terms. When desirable lands or resources were at stake, state priorities trumped their promises and the power of indigenous peoples was portrayed as lawlessness. Far from being unlawful, in the face of increasing settlement and resource extraction, indigenous peoples continued to negotiate for places where they could legally reside without incursion.

¹⁷³ Province of Canada, *The Indian Affairs, Province of Canada Report for the Half-year Ended 30th June 1864*, (Québec: Hunter, Rose & Co, 1865):4.

¹⁷⁴ Morris, 2000, Op. Cit.:22.

¹⁷⁵ *Manitoulin Expositor*, 10 April 1880, Volume: 1, No. 47, Manitowaning, Ontario.

Chapter 4

Fishing for Rights: Law, Jurisdiction, and Territorial Boundaries

The application of criminal law when mediating issues of indigenous self-determination became front-page news when Fisheries Commissioner William Gibbard was murdered one year after the signing of the 1862 *Manitoulin Island Treaty*.¹ Discussions of Gibbard's death have called it an "alleged murder" or stated that he was "apparently murdered and thrown overboard" from the steamer *Ploughboy*.² Most of the "facts" of the case are in dispute; however, a coroner's jury did make a finding of murder. In reporting the multifaceted circumstances surrounding Gibbard's death, newspaper accounts rendered into the national imagination a binary opposition of state lawfulness against the survival of indigenous identity.

4.1 Clashing Law Enforcement: Lonely Island

The dispute that preceded Gibbard's murder centred on Aboriginal title and assimilative colonization. Manitoulin Island "Indians" asserted their rights to a fishery off Lonely Island on the grounds of its contribution to their subsistence.³ The 1862 *Manitoulin Treaty* stipulated that the "rights and privileges in respect to the taking of fish the lakes, bays, creeks and waters within and adjacent to the said Island, which may be lawfully exercised and enjoyed by the white settlers thereon, may be exercised and enjoyed by the Indians."⁴ Nevertheless, since Lonely Island is adjacent to Wikwemikong unceded territory, the rights of settlers to any fishing activities are particularly contentious.

¹ Robert J Surtees, "Treaty Research Report: Manitoulin Island Treaties," Treaties and Historical Research Centre, Indian and Northern Affairs Canada, 1986.

² Peggy J Blair, "Settling the Fisheries: Pre-Confederation Crown Policy in Upper Canada and the Supreme Court's Decisions in *R. v. Nikal* and *Lewis*," *Revue générale de droit*, 31, (2001):158; Douglas Harris, *Landing Native Fisheries: Indian Reserves and Fishing Rights in British Columbia*, (Vancouver: University of British Columbia Press, 2008):32.

³ Reginald Good, "Admissibility of Testimony From Non-Christian Indians in the Colonial Municipal Courts of Upper Canada/Canada West," *Windsor Yearbook of Access to Justice*, 23, (2005):90-91

⁴ Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories, Including the Negotiations on Which They Were Based, and Other Information Related Thereto*, (Toronto: Prospero Books, 2000) Reprinted from 1880 Belfords Clark and Company edition:311.



Figure 13: Indigenous Fisheries of Wikwemikong, 1876⁵

This sketch map is an example of using geographical legal instruments to negotiate claims to an indigenous fishery. Notice Lonely Island in the lower right corner.

The *Globe* gave a “narrative of the facts” that “induced the Government to have recourse to the very decided measure of sending” a “large armed force, to assert the supremacy of the law.”⁶ The *Globe* situated their readers by first placing the conflict within the historical-geographical context of treaty negotiations with McDougall in which the indigenous peoples “surrendered their claim to its exclusive possession – a claim founded on the alleged gift of the Island to the Indians by the Great Spirit Manitou, and also on the somewhat more tangible title

⁵ Adapted from “[Wikwemikong Reserve no. 26. Plan of part of Manitoulin Island showing areas asked to be reserved for fisheries by the Indians] [cartographic material],” 1876, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 1972, File: 5530, Access Code: 90.

⁶ “The Manitoulin Islands – Outrages by the Waquimakong Indians – Armed Force Sent to Arrest Father Kohler and Other Ringleaders,” *The Daily Globe*, Toronto, Canada West, 27 July 1863, Volume: XX, No. 183:2.

supposed to be derived from an arrangement made in 1836 by Sir Francis Bond Head.”⁷ The 1836 treaty explained that the Manitoulin chain was a “most desirable place of residence” due, in part, to “being surrounded by innumerable fishing islands.”⁸ Mark Walters suggests that if the objective of the 1836 Manitoulin treaty was to “create a reserve in which Indians would fish and hunt free from non-native encroachment, that purpose could not have been accomplished if there existed a right of non-native access” to the indigenous fisheries.⁹

It was relayed to the *Globe*’s readership that two Manitoulin Island chiefs, who were “two of the largest farmers on the Island... having expressed themselves favourably” to the *Manitoulin Island Treaty* of 1862 were “forcibly taken out of their homes,” transported to Manitowaning, the administrative seat of Indian Affairs, and “warned under penalty of death” that they must never return to Manitoulin Island.¹⁰ On 17 December 1862, the families of Charles De La Ronde and Jean Baptiste Proulx were informed by an envoy from the “head chief of Waquimakong” that they must also leave.¹¹ The order was reinforced by the removal of the stove that provided heat to the families.¹²

The families were taken by boat to Wikwemikong, brought before the Council on the following morning, and informed through the Council’s interpreter that they were banished from Manitoulin Island.¹³ De La Ronde’s attempt to find recourse by asking permission to speak with the Government agent at Manitowaning was futile because the Wikwemikong First Nation upheld that they “did not care about the Government agent or the Government either that they had laws of their own, and whoever would not obey those laws must be removed off the Island.”¹⁴ Charles De Lamorandiere wrote a letter to the editor of the *Globe* to put forth his own views in response

⁷ “The Manitoulin Islands,” 1863, Op. Cit.:2.

⁸ Despatch of Sir FB Head to Lord Glenelg enclosing the foregoing treaties, 20 August 1836, (Toronto), “Ontario – Copy of ‘Sir Francis Bond Head’s Treaty’ Signed at Manitowaning in 1836 in the Matter of the Islands on the North and East Shores of Lake Huron. Copies of Robinson Superior, Robinson Huron and Lake Simcoe [sic] Treaties and Correspondence, Reports, Memoranda and Claims Relating to These Treaties,” 1896-1897, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2848, File: 175,258, Access Code: 90.

⁹ Mark D Walters, “Aboriginal Rights, *Magna Carta* and Exclusive Rights to Fisheries in the Waters of Upper Canada,” *Queen’s Law Journal*, 23, (1998):308.

¹⁰ Chiefs “Taikoma and Keechee Baptiste” were reportedly asked to leave. From the similarity in names, despite spelling, it is probable that at least one of these Chiefs was one of the two Wikwemikong signatures of general approval on the 1862 treaty. “The Manitoulin Islands,” 1863, Op. Cit.:2.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

to their “Manitoulin Island Outrage” article.¹⁵ He asked the *Globe* why their story on the banishment of De La Ronde and Proulx did not explain that they were “in the habit of giving spiritous liquor to the Indians, contrary to law?”¹⁶ De Lamorandiere took the view that the word “lawless” might be applied to De La Ronde and Proulx, rather than solely to “Indians,” as well as to “a good many others besides, including some Justices of the Peace of this neighbourhood.”¹⁷ Certainly, indigenous and colonial principles of law and its proper enforcement differed.

Membership in the state was also a feature of the discourse of conflict on Manitoulin Island. To the *Globe*, the most prominent fact was that the “leading spirits in the Waquimakong band, who, if they had their will, would prevent a single man from setting foot on the Great Manitoulin or any of the adjacent Islands, are foreigners.”¹⁸ Charles De La Ronde was “a Canadian by birth” and Jean Baptiste Proulx was the nephew of a priest who served on the Island “before the arrival of the foreign Jesuit priests.”¹⁹ Proulx’s father lived in Wikwemikong.²⁰ On the borderlands of Manitoulin Island, De La Ronde claimed that “those actively engaged in the perpetuation of this outrage upon him were all foreign, that is, American Indians, with two exceptions.”²¹ De Lamorandiere disputed applying the word “foreigners” to persons who “left their all to come and live under the British Government by the invitation of an English Governor, Sir Francis Bond Head.”²² De Lamorandiere insisted that they had allegiance to the British Government “from the first American war, in which their ancestors shed their blood in defending the British flag, and again during the years 1812, ‘13 and ‘14, their fathers fought alongside of the British soldiers, and during the rebellion of 1837.”²³ As the Canadian state was forming, and imperial priorities shifted, insights into indigenous contributions faded.

Since Proulx went to his father’s house in Wikwemikong and refused to leave, a compromise was made that he could move four miles into the bush if he would depart Manitoulin

¹⁵ De Lamorandiere was involved in the *Ploughboy* incident in that he passed a message to lawyer Blain that Gibbard would be in contact about the incident later. Chas De Lamorandiere, Killarney, Lake Huron, 3 August 1863, “The Manitoulin Troubles,” Letter to the Editor, *The Daily Globe*, Toronto, Canada West, 8 August 1863, Volume: XX, No. 194: 2; D Blain, “The Troubles on the Manitoulin,” Letter to the Editor, *The Daily Globe*, Toronto, Canada West, 3 August 1863, Volume: XX, No. 189: 2; “Inquest on the Body of Mr. Gibbard,” 1863, Op. Cit.:Front Page-2.

¹⁶ Ibid:2.

¹⁷ Ibid.

¹⁸ “The Manitoulin Islands,” 1863, Op. Cit.:2.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² De Lamorandiere, 1863, Op. Cit.:2.

²³ Ibid.

Island in the spring.²⁴ Jesuit priests at the mission at Wikwemikong were accused of “exciting the Indians to the perpetuation of outrages” such as this banishment. Proulx’s father, also asked to leave by spring, gave a deposition to colonial authorities that his order of removal was made ““under the dictation of the Jesuit priests of Waquimakong, who openly say they are independent of the Government, and can make their own laws on their own lands’.” The Superior at the Mission, Father Kohler, was especially singled out as having, according to reportage of Gibbard’s deposition,

denounced the Commissioner of Crown Lands, the Indian Agent, and other Government officers, as highway robbers; declared that Russia had never perpetuated a more villainous or infamous cruelty than that committed by the Commissioner of Crown Lands in robbing the Indians of their lands; said that if the Indians had taken his advice, instead of signing the treaty, they would have armed, and called the Sioux Indians to their aid; that he would himself have led them on, to drive every white man off the Indian lands, and made for the British Government a more costly and bloody war than the Indian mutiny, and that as their priest he was ready to arm himself and die for them.

In June, following the banishments, Fisheries Commissioner Gibbard visited the traditional indigenous fishing grounds off Lonely Island. De La Ronde, the Proulx families, a trader from Owen Sound named GL Newcombe, and “Fishing Chief Waseegecsceck, a native of Waquimakong, with his sons” were engaged in the Lonely Island fishery. De La Ronde and Proulx expressed their concern that they would be removed from this island as well and asked for government protection.

The form of state protection that Gibbard gave was a symbolic dismissal of indigenous laws and self-determination. The settler families had been found fishing without the consent of their own government yet with the, at least, partial tolerance of indigenous governments demonstrated by the presence of Waseegecsceck, the Fishing Chief. To these settlers acting outside of the laws of their state, Gibbard granted a seasonal license for the south half of Lonely Island “with the understanding that any peaceable and well disposed Indians who did not interfere... should be allowed to fish.” As the only indigenous persons from Wikwemikong “who really make a business of fishing,” Gibbard also offered Waseegecsceck and his sons a license for the fishing grounds on the north half of Lonely Island. Waseegecsceck “dare not take one, or hold any communication on business matters, with any officer of the Government, such having been strictly forbidden, under the penalty of banishment by the law-makers of Waquimakong.” The law of Wikwemikong was far from immaterial.

²⁴ The discussion on this page is based on the following source: “The Manitoulin Islands,” 1863, Op. Cit.:2.

Gibbard's estimation of Wasegecsceck's fishing practices reveals narrow colonial ontologies of resource extraction in which profitability drives the scale of extraction. While Wasegecsceck and his sons may have had "more nets and fishing rig than all the other Indians put together," this did not preclude the importance of the fishery to the other indigenous fishers who relied on it.²⁵ David Blain, a Toronto lawyer on vacation who would later represent Oswanamkee in Sault Ste. Marie, made reference to "men of respectability who know their circumstances" when asserting that the Wikwemikong band lived for "about five months in the year exclusively on fish" and occasionally had to "resort to the use of slippery elm bark and buds of trees."²⁶ Since its importance lay in its place within indigenous lifeways rather than profits, small-scale use that maintained a healthy fishery was more valuable than large-scale extraction. In this light, the licensing by Gibbard of the fishery to Proulx for "\$4 per annum, (mark the sum)... laid him open to the suspicion that he intended rather to famish the Indians than benefit the Government, se[e]ing that the license was issued for \$4."²⁷ Gibbard's conduct is entirely in keeping with Douglas Harris' finding that by employing "myriad colonial strategies designed to induce fear, foster division, create truths, and assimilate the other, the Canadian state replaced indigenous fisheries law with its own."²⁸ Nonetheless, the *Globe* claimed that, prior to his death, as Gibbard was "making arrangements" for leasing fisheries, he was also reserving areas for Manitoulin Indians.²⁹

On 28 June, Gibbard gave Father Kohler a note "requesting him to explain to the Waquimakong Indians that they must not trespass on De La Ronde's grounds."³⁰ Kohler "called in a number of the Indians" and he and Father Schonte "worked themselves into a great passion" despite Gibbard "having requested them to behave in a manner more becoming."³¹ Kohler is reported to have said that "if he was not a priest, he would have his (Gibbard's) heart's blood," that Gibbard "had no business there with the British flag flying," and that "if the Indians were men, they would arm and follow him, and drive every white man off" of their indigenous territories.³²

²⁵ "The Manitoulin Islands," 1863, Op. Cit.:2.

²⁶ Blain, 1863, Op. Cit.: 2.

²⁷ Ibid:2.

²⁸ Douglas C Harris, *Fish, Law, and Colonialism: The Legal Capture of Salmon in British Columbia* (Toronto: University of Toronto Press, 2001):4.

²⁹ "The Manitoulin Islands," 1863, Op. Cit.:2.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

Upon hearing of plans to evict the new licensees from Lonely Island, Gibbard drafted a notice to the Head Chief warning him of what the government response would be to this eviction.³³ When he discovered that the Chief was absent from home, Gibbard proceeded to Lonely Island. Gibbard was eating dinner in Proulx's house when he "heard drums beating and men shouting" as the eviction party arrived. A "worthy named Lawa-anameekee" read a written statement of eviction. Gibbard, the representative of state law, avowed that this would not occur in his presence and "on the Indians moving forward... called on his men," who were waiting in their boat, to "land and bring their revolvers." The eviction party attempted to prevent the boat from landing; however,

Mr. Gibbard ran forward to the beach, and standing between them and his boat, pulled out a hunting knife and threatened to strike the first Indian who meddled with his men. One of the Indians brought from one of the boats a long knife, with a blade of 18 inches or thereabouts, and came towards Mr. Gibbard, but his men meanwhile were landing, revolvers in their hand, and the Indians did not think it prudent to commence an attack.

During the discussions that followed this stand-off, Gibbard "read the law to the Indians, and assured them that if they took the law into their own hands, and committed outrages" they would be punished. In turn, the eviction party explained that they "had nothing to do with the Government or with the British laws – that they had already removed various parties from the Manitoulin, and, although the Government agents said they would be punished, no punishment had come." The eviction party's response was based on their own legal position that "all the islands in the lake were theirs" and they would not permit any fishing to continue without their consent. Gibbard refuted this argument, proclaiming that "their island was the Queen's, and that they were subject to her laws." The leader of the eviction party refused to take the notice that Gibbard had prepared for the Head Chief.

The language of protection in early indigenous-government negotiations implied that agreements would safeguard their communities from "white" settlers and settlement. Blain also traced the dispute to this point.³⁴ Nonetheless, he presented a different perspective to *Globe* readers than did their columnist. As Blain described it, Gibbard "got into difficulty" and the consequent "breach was widened at every meeting, till finally he threatened to run a line dividing the island, or a part of it, in the face of all opposition, and boldly stated that he would clear the

³³ Unless otherwise indicated, the discussion on this page is based on the following source: "The Manitoulin Islands," 1863, Op. Cit.:2.

³⁴ Blain, 1863, Op. Cit.:2.

way for the compass with his revolver.”³⁵ The Wikwemikong eviction party, believing that Gibbard “acted on his own responsibility without the sanction or approval of the Government, asked to see his instructions before they would submit.” Since Gibbard refused to prove his right, Blain reasoned that it was “not difficult to understand how the Indians would resist” what appeared to be the actions of an unreasonable and unlawful individual.

Blain relayed the Wikwemikong case that the fishery on the south side of Lonely Island “was never ceded nor surrendered by them” in the 1862 *Manitoulin Treaty*. Their rationale had its basis in their own legal principles. First, that the “Indians hold their lands as tenants in common, and it is stated that the signatures of all the parties who are as such interested, were not obtained.” Second, in acknowledgment that the “Chief has authority to negotiate... there are many Chiefs among the Manitoulin Indians, and the signatures of all were not obtained.” Since they did not sign the treaty, they reasoned that the “document itself must testify, that there is not the signature of one single Waquimakong Indian Chief.” Third, those who did sign the treaty were “by the Government Agents unduly and improperly influenced in different ways.” Fourth, that while treaty negotiations were underway, it was not understood by the indigenous persons that Lonely Island, or its fishery, were part of the discussion. Fifth, if it were correct that the island had been ceded, “they understood while the negotiations were going on, that the effect of the cession was not that the whites should drive them off the island, but that the Government should protect them in their possession against intruders.” Blain contended that, if this were true, the Wikwemikong First Nation was “doing nothing illegal in asserting their rights” to the indigenous fishery.

Although, according to Gibbard, after the confrontation, the eviction party departed to Wikwemikong to hold a Council on the matter, as Gibbard was about to leave Lonely Island, half of the party returned.³⁶ It was anticipated that the other half would return later “some 40 or 50 strong, and armed.”³⁷ The *Globe* reported that the eviction party took the position that, “if Mr. Gibbard would stay there another day he would find who had the power.”³⁸ Gibbard replied that he was too busy to stay and promptly left Lonely Island.³⁹

³⁵ Unless otherwise indicated, the discussion on this page is based on the following source: Blain 1863, Op. Cit.:2.

³⁶ “The Manitoulin Islands,” 1863, Op. Cit.:2.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

4.2 Applying and Subverting the Law

In a sworn deposition, De La Ronde and Proulx senior described their forcible eviction from Lonely Island by a large party from Wikwemikong, some of whom allegedly said that they “acted through their priests’ advice, and that some of them came unwillingly, knowing that, if they had refused, they would have been banished.”⁴⁰ Banishment is one form of indigenous law enforcement.

The growing Canadian state had another. It deployed a “strong force to assert the supremacy of the law, and to bring down for trial the chief perpetrators and abettors” in the hopes that “punishment of the ringleaders may have the effect of awing the rest into submission.”⁴¹ Peggy Blair explains that Gibbard responded to the Lonely Island removals by taking a “posse” to Wikwemikong.⁴² Gibbard’s demonstration of law enforcement included two sergeants and six officers from the Toronto Police, the High Constables of Barrie and Collingwood, and fourteen other men.⁴³ As the *Daily Globe* describes, Gibbard intended to arrest the “ring-leaders” including Kohler.⁴⁴ Gibbard disclosed that there were approximately fifteen “refractory Indians to be arrested that could not be controlled, but that the respectable Indians would assist us in securing them.”⁴⁵ Harring underscores the “legal structuring” of the 1863 fishery dispute: the indigenous peoples avowed that they had a sovereign prerogative to the protection of their fishery yet the provincial government deployed a large company of police to arrest “what amounted to an entire band on petty criminal charges.”⁴⁶ Gibbard was overly-confident in the effectiveness of this show of force.

At Wikwemikong, an “armed standoff” ensued with a “large party of Ottawa warriors, some 300 in number.”⁴⁷ After arresting the priest, a melee broke out in which one man was thrown into the water, Gibbard ordered that the priest be released, and Gibbard’s men again retreated.⁴⁸ De Lamorandiere observed that, in the face of Gibbard’s armed force, the “Indians said that they were willing to go down if legally summoned, but would rather die than go

⁴⁰ “The Manitoulin Islands”, 1863, Op. Cit.:2.

⁴¹ Ibid:2.

⁴² Blair, 2001, Op. Cit.:158.

⁴³ “The Manitoulin Islands”, 1863, Op. Cit.:2.

⁴⁴ Ibid:2.

⁴⁵ “City Council – The Case of Sergeant-Major Cummins,” *The Daily Globe*, Toronto, Canada West, 24 November 1863, Volume: XX, No. 286: Front Page.

⁴⁶ Sidney L Harring, *White Man’s Law: Native People in Nineteenth-Century Canadian Jurisprudence*, (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 1998):153.

⁴⁷ “City Council – The Case of Sergeant-Major Cummins,” 1863, Op. Cit.:Front Page; Blair, 2001, Op. Cit.:158.

⁴⁸ Blair, 2001, Op. Cit.:158.

handcuffed like criminals.”⁴⁹ When Gibbard heard this refusal to go in handcuffs, he “promised that he would not take one of them prisoner, if they would appear if summoned.”⁵⁰ Sidney Harring explains the compromise as a matter of disputed legal status and jurisdiction.⁵¹ While the Wikwemikong group “would not appear before any Ontario court, in accord with their position that the province had no jurisdiction over them... they would agree to appear before a government hearing, consistent with their position as ‘allies of her majesty.’”⁵² Gibbard’s subsequent actions do not reflect this agreement.

As the “posse” stopped at Bruce Mines on their way to Sault Ste. Marie, Gibbard spotted a “member of the Wikwemikong Band and arrested him although Oswanamkee had not been involved in the incident” on Manitoulin Island.⁵³ Oswanamkee was handcuffed and taken before the court in Sault Ste. Marie.⁵⁴

Blain, Oswanamkee’s legal representative, describes Gibbard’s testimony that, having requested that the “Indians” assemble to discuss their “rights, a dispute arose, and Mr. Gibbard fearing difficulties, ordered them to disperse, to which they paid no attention,” causing him, quite literally, as a magistrate in the District of Algoma, to read the *Riot Act*.⁵⁵ Blain conveys the preposterous and tragic circumstances that “the whole of the Indians might be tried, and, if convicted, the penalty under the statute would be death” even though few of the Manitoulin “Indians” could “understand the most ordinary discourse in English,” much less the *Riot Act*.⁵⁶

Gibbard’s multiple authorities to act as an agent of the government on the colonial frontier of Canada West left little recourse for the Manitoulin Indians in the courtroom. Gibbard, acting as

magistrate... took the deposition of Mr. Proulx... issued a warrant to the constables, directing them to bring before him... the Indians therein named... then he went as a constable to make the arrest under this warrant. The warrant was issued on an alleged breach of the Fishery Act, but the Act authorized no such proceeding. – He, however, arrested the Indian on it, and carried him to Sault Ste. Marie, where he called together the magistrates of the place and stated the offence to be that contained in the warrant... laid further information, which went to show that the prisoner was guilty of 8 or 4 indictable offences, one being the refusal to disperse after the Riot Act was read.⁵⁷

⁴⁹ De Lamorandiere, 1863, Op. Cit.:2.

⁵⁰ Ibid.

⁵¹ Harring, 1998, Op. Cit.:153.

⁵² Ibid.

⁵³ Blair, 2001, Op. Cit.:158.

⁵⁴ De Lamorandiere, 1863, Op. Cit.:2.

⁵⁵ Blain, 1863, Op. Cit.:2.

⁵⁶ Ibid.

⁵⁷ Ibid.

The magistrates dismissed Blain’s argument for the defense that the “whole question is one of title” with the decision that producing a fishing license was predicated on the presumption that the property belonged to the Crown.⁵⁸ Presiding in Sault Ste. Marie, Territorial Judge of the District of Algoma John Prince found Oswanamkee, “liable to be indicted for riot and forcible entry, on the unrecorded sworn testimony” of Gibbard.⁵⁹ While Oswanamkee awaited trial, Prince allowed bail of one hundred dollars by the accused and sureties of fifty dollars each from two priests.

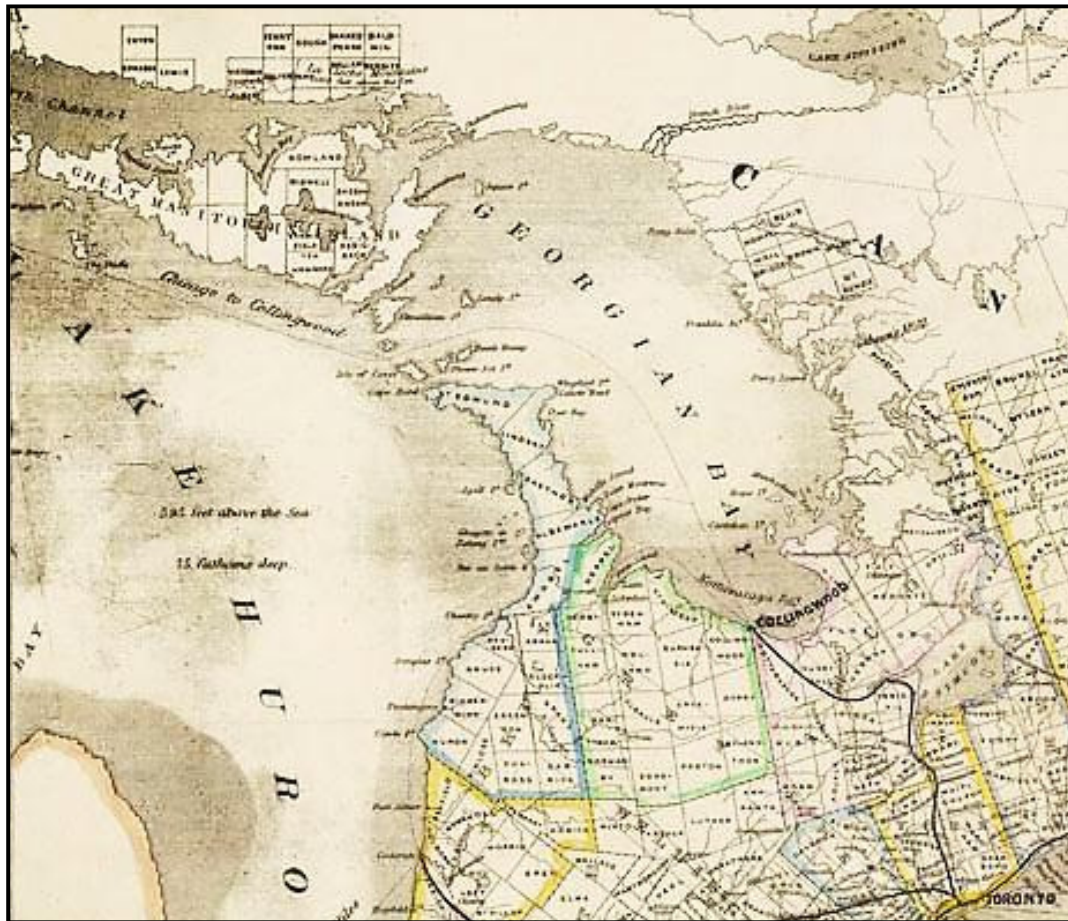


Figure 14: Manitoulin Island Connections Within Canada West, 1865⁶⁰

Manitoulin Island has been mapped into linear state law as Canada West extends into the colonial frontier. The legal and geographical connections between Manitoulin, Collingwood, and Toronto are featured in this chapter.

⁵⁸ Blain, 1863, Op. Cit.:2.

⁵⁹ Good observes that other unsworn testimony was taken but, as it was not considered by the judge as evidence, was presumably from “non-Christian Indians.” Good, 2005, Op. Cit.:90-91.

⁶⁰ Adapted from “Map of Canada West [cartographic material],” National Archives of Canada, Toronto: WC Chewett, 1865, Alexander E MacDonald Canadiana Collection #494, R11981-135-7-E, Microfiche NMC105071, Local Class No. H3/400/1865, Other accession No. 80101/245 CA, Access Code: 90, Copyright: Expired.

4.3 Submerging the Law

The seemingly bizarre situation that the entire group who travelled to Sault Ste. Marie departed the city together on the same sailing of the steamship *Ploughboy* is an uncomfortable reality of the geography of life on Lake Huron at that time. Several days passed between Gibbard's disappearance from the *Ploughboy* and the discovery of his body a mile off of Little Current floating upright, arms extended, head contused, inches below the surface of the water.⁶¹

During that time, Blain assisted Captain Smith in inquiring into Gibbard's disappearance.⁶² Already, Blain felt it necessary to make it known that he was "inclined to think that the Indians did not throw him overboard."⁶³ While Gibbard was still mysteriously missing, the *Newmarket Era* reported that many of the passengers on board the *Ploughboy* "declared that the Indian must have killed him and thrown him overboard."⁶⁴ The *Era* advocated, if Gibbard's "blood... be found in their skirts, they ought to be made to suffer the penalty of their crime, – while the Jesuits should be banished altogether from the Island, and other spiritual guides placed over them having respect for the British law."⁶⁵ The *Ploughboy* transported Gibbard's body back to Collingwood on 5 August 1863.⁶⁶



Figure 15: The *Ploughboy* Resumes Service⁶⁷

⁶¹ At the time, Little Current and Wikwemikong, the latter loosely defined, were sub-ports of Sault Ste. Marie. Until his death the previous month, Manitowaning Indian Superintendent Ironside had acted as the landing waiter and received \$200 for these services. "Inquest on the Body of Mr. Gibbard," 1863, Op. Cit.:Front Page-2; Anderson, 1865, Op. Cit.:28.

⁶² Blain, 1863, Op. Cit.:2.

⁶³ Ibid.

⁶⁴ "Indian Outrages in Canada," *Newmarket Era, and North York General Intelligencer and Advertiser*, Friday 31 July 1863, Volume: XII, No. 25:2.

⁶⁵ Ibid.

⁶⁶ "Death of Mr. Gibbard," *The Daily Globe*, Toronto, Canada West, 5 August 1863, Volume: XX, No. 191: 2.

⁶⁷ Adapted from "The Royal Mail Steamer *Ploughboy*," *The Daily Globe*, Toronto, Canada West, 3 August

Gibbard had not been seen on the *Ploughboy* after the early hours of the morning on 28 July 1863.⁶⁸ As reported following a Coroner's Inquest into his death, the events of that night were extremely contentious and involved issues of "race," class, religion, law, intoxication, and violence.⁶⁹ On 12 September 1863, the Coroner's Jury brought a verdict of willful murder by "person or persons unknown."⁷⁰ The *Globe* recorded, "[u]pon no man had well-defined suspicion fallen, that we are aware of."⁷¹ Despite this conclusion, Good remarks that it was "alleged that Osaw-Ani-Mikee was responsible" even though he was not charged for the murder and his earlier charge was dismissed because of lack of sufficient evidence.⁷² Rumours took hold of this deeply mysterious, and nationally-important, story.

4.3.1 Toronto Recriminations

The case was of such great import that Sergeant-Major Cummins of the Toronto Police Force, one of the large group whom Gibbard led to Manitoulin, was the subject of great scrutiny by the Mayor and City Council for his role in the affair. Toronto Councillor Bennett exclaimed, the "blood of the murdered man, and the tears of the widow and orphans, as also, the voice of the citizens of Toronto cry aloud" for Cummins' dismissal.⁷³ Alderman Metcalf claimed that the Council had a valid interest in the matter as one of their "fellow citizens had been hurled out of existence, and a foul and bloody murder had been committed in [their] midst."⁷⁴ Gibbard was an influential figure in expanding the lawful reaches of Canada West. His death shook the legal foundations of colonial society.

The Mayor read a letter to the councilors from Cummins, dated 23 October 1863, in which Cummins repudiated the "cruel charge by implication of murder fastened" on him.⁷⁵ Cummins was criticized for having found seven Roman Catholic individuals to respond to Gibbard's request for men when the situation involved the arrest of a Roman Catholic Priest.⁷⁶

1863, Volume: XX, No. 189: Front Page.

⁶⁸ "Inquest on the Body of Mr. Gibbard," 1863, Op. Cit.:2.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ "Inquest on the Late Mr. Gibbard," *The Daily Globe*, Toronto, Canada West, 15 September 1863, Volume: XX, No. 226: 2.

⁷² Good, 2005, Op. Cit.:90-91

⁷³ "City Council – Sergeant-Major Cummins," *The Daily Globe*, Toronto, Canada West, 20 October 1863, Volume: XX, No. 256: Front Page.

⁷⁴ Ibid.

⁷⁵ "City Council – The Case of Sergeant-Major Cummins," 1863, Op. Cit.:Front Page.

⁷⁶ Ibid.

Cummins protested that he was “entirely ignorant of the nature of the duty to be performed” when he chose his men.⁷⁷ The Mayor supported Cummins by stating that Gibbard had asked him whether the Commissioners of Police would assign him men to “assist him in executing the commands of the Government... not upon priests, as had been erroneously supposed, but against some refractory Indians” on Manitoulin Island.⁷⁸

4.4 Another Fishery “Outrage”

As settlement continued on Manitoulin Island, the discord between indigenous power and the prerogative of the state to enforce law continued to reverberate. On 28 October 1875, the *Toronto Daily Globe* announced another “Outrage by Manitoulin Island Indians.”⁷⁹ From the pen of the correspondent, this “serious outrage” was “committed by the Indians of Manitoulin Island” when they removed fourteen thousand yards of net and fifty packages of fish from two Collingwood fishers off Squaw Island.⁸⁰ Allegedly, one of the fishers thus “robbed was among the party who some years ago accompanied Mr. Gibbard to investigate a similar outrage on the part of these Indians, and it is thought that had something to do with the present case.”⁸¹ The argument that the individuals from Wikwemikong who applied this enforcement measure were “acting under instructions” of DIA Visiting Superintendent Phipps was dismissed by the newspaper correspondent because the nets were purportedly four miles beyond the land boundary of the reserve.⁸² Such a high level of “indignation was caused among the fishermen by this outrageous act that it was with difficulty they were restrained from going in a body and taking summary vengeance on the Indians.”⁸³ Instead, the fishermen approached the government.

The newspaper columnist darkly communicated the fear that if the government did not “give satisfaction... the consequences may be serious, as the fishermen do not feel disposed to submit quietly to such treatment.”⁸⁴ In reply to an alarmed Indian Branch, Phipps defended, that

⁷⁷ “City Council – The Case of Sergeant-Major Cummins,” 1863, Op. Cit.:Front Page.

⁷⁸ Ibid.

⁷⁹ *The Toronto Daily Globe*, 28 October 1875, “Manitowaning – Correspondence Concerning Seizure of Nets by Manitoulin Island Indians from White People Illegally Fishing,” Clipping, 1875, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 1972, File: 5522, Access Code: 90; “Collingwood – Outrage by Manitoulin Island Indians – Regatta – Bonus to Foundry,” *The Toronto Daily Globe*, 28 October 1875, Volume: XXXII, No. 258:Front Page.

⁸⁰ Ibid:Front Page.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

the “Indians” were only “exercising the power and privileges conferred upon them as Lessees, by the Fisheries Act (sec. 13)” in removing a “considerable number of nets which they state were set in trespass within their fishery, and delivered them to my charge, to be dealt with according to Law.”⁸⁵ Phipps supported them in laying a complaint against the two fishers.⁸⁶ Summons were drafted for the parties involved in the dispute and, as a Magistrate as well as a Visiting Superintendent, Phipps could examine the case.⁸⁷ Since the fishermen did not respond to the summons, only the evidence of the Wikwemikong Indians was heard by Phipps and GB Aubrey, Fisheries Overseer.⁸⁸ Although the case was postponed, Phipps offered the opinion that the Wikwemikong “Indians” seemed to have “acted with great forbearance” and did not appear to have “in any way exceeded the powers the Law confer[ed] upon them for the protection of their Fishery from trespass.”⁸⁹ Phipps and the Aubrey investigated the charges, found the fishermen guilty, and fined them twenty dollars each with costs in addition to the forfeiture of their nets and fish.⁹⁰

Indigenous rights to lands and resources were caught in the middle of clashing legal ontologies and unequal membership in the state. The fishermen appealed to the Department of Marine and Fisheries. The departmental Minister pointed out to Aubrey that Phipps, “under his authority as a Magistrate and lessee of the trust acting in their behalf,” could order that the nets and fish be seized; however, “Indian” wards of the state could not take it upon themselves to apply the law and seize nets and fish under their own lease.⁹¹ Since the Minister of Marine and Fisheries judged that the fishers had not trespassed in waters under lease to the Wikwemikong Reserve, he concluded that the “Indians” could be held responsible for “illegal conduct.”⁹² The Minister of Marine and Fisheries

⁸⁵ Phipps to Minister of the Interior Indian Branch, 8 November 1875, (Manitowaning), “Manitowaning – Correspondence Concerning Seizure of Nets,” Op. Cit.

⁸⁶ Ibid.

⁸⁷ Reginald Good calls Phipps “a magistrate and visiting superintendent” when discussing a case Phipps was involved with in 1874. Good, 2005, Op. Cit.:90; Department of Indian Affairs, *Report of the Deputy Superintendent of Indian Affairs, 1878*, (Ottawa: Maclean, Roger & Co., 1879):123; Phipps to Minister of the Interior Indian Branch, 8 November 1875, (Manitowaning), “Manitowaning – Correspondence Concerning Seizure of Nets,” Op. Cit.

⁸⁸ Phipps to Minister of the Interior Indian Branch, 8 November 1875, (Manitowaning), “Manitowaning – Correspondence Concerning Seizure of Nets,” Op. Cit.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ NF Whitcher, for the Minister of Marine and Fisheries, to Fisheries Overseer GB Aubrey, 28 December 1875, (Ottawa), “Manitowaning – Correspondence Concerning Seizure of Nets,” Op. Cit.

⁹² Ibid.

perceive[d] that throughout these documents fishery stations are mentioned as belonging to the Indians and reserved by them for their exclusive use. It is inferred, therefore, that some strange misconception exists at the bottom of this affair ... Whether it is attributable to ignorance or perversity respecting fishing rights in the neighbourhood of Indian lands, does not yet appear. Probably these Indians believe or are instructed that there exist reservations of Indian fisheries' to which they have exclusive right – irrespective of fishing leases or licenses.⁹³

Aubrey was instructed to “inform the Indians... that no pretensions to exclusive fishing rights will be recognized” in no uncertain terms because “the public” had already “suffered trouble and expense through violent proceedings in the same neighbourhood.”⁹⁴ Assuredly, as wards, Indians were not considered part of this public.

Furthermore, the rights of the convicted fishermen were extended further into indigenous territory because their “just” access to a license was contingent on the Indian Superintendent granting permission to use reserve land for drying the fish.⁹⁵ While Aubrey was ordered to suspend the conviction that was formed jointly with Phipps, the Minister of Marine and Fisheries could not casually overturn Phipps’ judicial authority.⁹⁶ The Minister forewarned Aubrey that the fishers might “protect themselves at law” and seek damages if Phipps pursued the collection of fines.⁹⁷ The Minister of Marine then wrote to Deputy Minister of the Interior Meredith informing him that the *ex parte* decision had been revised through a Member of Parliament.⁹⁸ In this way, the caution was passed on to the Indian Branch without directly challenging their legal position as guardians or their judicial functions.

4.5 Dispensing with Lonely Island

Administrative rights to Lonely Island were claimed by the Department of Indian Affairs until the protracted jurisdictional quarrel involving issues of “title to the Islands in the Great Manitoulin group,” was finally resolved in 1913.⁹⁹ In 1891, Lonely Island was still “claimed by

⁹³ NF Whitcher, for the Minister of Marine and Fisheries to Fisheries Overseer GB Aubrey, 28 December 1875, (Ottawa), “Manitowaning – Correspondence Concerning Seizure of Nets,” Op. Cit.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Aubrey was informed that MP Cook overturned the decision. Ibid.

⁹⁹ “Disposing of light-house site on Lonely Island to the Department of Marine and Fisheries,” Department of Indian Affairs, 22 February 1913, “Manitowaning – Application From the Department of Marine and Fisheries to Purchase for Lighthouse Purposes, 100 Acres of Lonely Island Situated Contiguous to the Great Manitoulin Island in Georgian Bay,” 1891-1913, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2597, File 120, 488, Access Code: 90.

the Ojibways and Ottawas of Manitoulin Island as being one of those set apart by the Treaty made between Sir Francis Bond Head and the Indians, to become the property under the Crown of all Indians who might reside thereon.”¹⁰⁰ Although the island remained a fishing station rather than a place of permanent settlement, Phipps surmised that Lonely Island had been surrendered in the 1862 *Manitoulin Treaty* and was therefore “in the hands of the Department.”¹⁰¹ The Department of Marines and Fisheries had already erected a lighthouse on the island and requested that the entire island be transferred into their control.¹⁰² By 1898, a sawmill was operating on Lonely Island even though it was still officially held by Indian Affairs “on behalf of the Indians.”¹⁰³ To the chagrin of the DIA, the Ontario Commissioner of Crown lands had granted a license for the cutting of timber.¹⁰⁴ The Ontario government continued to press their claims until Assistant Deputy and Secretary of Indian Affairs McLean notified the Ontario Ministry of Marine and Fisheries that Lonely Island would be categorized as a “non-disposition by either Government until the question of title” was determined.¹⁰⁵ When, in 1913, the province wished to officially secure lands for lighthouses, the problem had to be resolved by obtaining the consent of the Administrator of the Government of the Province of Ontario and the Governor in Council because the *Indian Act* required it.¹⁰⁶ One hundred acres were finally set aside for the Lonely Island lighthouse.¹⁰⁷

¹⁰⁰ Jas Phipps to Deputy Superintendent General of the DIA L Vankoughnet, 31 October 1891, (Manitowaning), “Manitowaning – Application From the Department of Marine and Fisheries,” 1891-1913, Op. Cit.

¹⁰¹ Ibid.

¹⁰² Deputy Minister of Marine William Smith to Deputy Superintendent General of DIA Vankoughnet, 30 November 1891, (Ottawa), “Manitowaning – Application From the Department of Marine and Fisheries,” 1891-1913, Op. Cit.

¹⁰³ Secretary of the DIA JD McLean to the Assistant Commissioner of Crown Lands Toronto, 26 November 1898, (Ottawa), “Manitowaning – Application From the Department of Marine and Fisheries,” 1891-1913, Op. Cit.

¹⁰⁴ Assistant Commissioner of Crown Lands White to Secretary of the DIA JD McLean, 30 November 1898, (Toronto), “Manitowaning – Application From the Department of Marine and Fisheries,” 1891-1913, Op. Cit.

¹⁰⁵ Deputy Superintendent General of the DIA Pedley to MP Leighton McCarthy, 8 April 1904, (Ottawa), “Manitowaning – Application From the Department of Marine and Fisheries,” 1891-1913, Op. Cit.; Deputy and Secretary of the DIA JD McLean to Deputy Minister of Marine and Fisheries, 26 December 1912, (Ottawa), “Manitowaning – Application From the Department of Marine and Fisheries,” 1891-1913, Op. Cit.

¹⁰⁶ Section 46 of the *Indian Act*, “as amended by Sec., 1, of Chap., 14, 1-2 Geo., V., provided that no portion of any Indian Reserves shall be taken for the purpose of any public work of work designed for any public utility without the consent of the Governor in Council.” “Disposing of light-house site on Lonely Island to the Department of Marine and Fisheries,” Department of Indian Affairs, 22 February 1913, “Manitowaning – Application From the Department of Marine and Fisheries,” 1891-1913, Op. Cit.; “Certified copy of a Report of the Committee of the Privy Council, approved by His Royal Highness the Governor General on the 27th. February, 1913,” 27 February 1913, “Manitowaning – Application From the

4.6 Peroratio: Unceded Peoples and Places

Sympathetic accounts of the acquisition of territory for Canada are inclined to linger on the exploitively poor translation of European philosophies of land ownership into indigenous terms. The focus of colonizing agents on land as an object for ownership missed the mark for many indigenous peoples who saw themselves as negotiating principles of use and protection on the lands of which they are a part. While critiques based on this ontological incompatibility are informative, they must go further in order to be precise. Although they are part of the same earth systems, Eurocentric ontologies naturalize a distinction between lands and waters. Since holistic indigenous epistemologies do not resonate with this social construction, from indigenous perspectives, the agreements that they negotiated regarding the protection and use of places included lands, waters, and everything that was a part of a place. In this way, the island fisheries of the indigenous peoples of Wikwemikong were part of their unceded territory. The inhabitants of that territory were thus also unceded and, despite pressures, desired to find ways of continuing their own forms of governance.

When, through the 1876 *Indian Act*, a pseudo-municipal electoral system was imposed on the Manitoulin Island Unceded Band, they refused to accept their apportionment from the municipal loan fund.¹⁰⁸ Phipps attributed this strategic decision to the “distrustful nature of the Indian, and a feeling that injustice was done them in taking away their fisheries and renting them to White men, which led them to fear that an attempt was being made to take their land from them.”¹⁰⁹ Although Phipps felt that he had gained some ground in explaining the fund, the Unceded Band had “not yet decided to accept the money” and were “paying considerable attention” to work on the colonizing roads that were cutting through Manitoulin Island.¹¹⁰

As this chapter has shown, the indigenous peoples of Manitoulin Island and the north shore were not mystified, nor were they helpless, in their sense of injustice: they were aware of the legal assertions of the colonizing state and of the promises that had been made to them. The disputes that arose between indigenous peoples and the frontier state over differing ontologies of land and territory were valid disagreements about the legal geography of Manitoulin lands and waters. As indigenous peoples continued to negotiate their legal relationships with the state and

Department of Marine and Fisheries,” 1891-1913, Op. Cit.

¹⁰⁷ Ibid.

¹⁰⁸ Department of Indian Affairs, *Report of the Deputy Superintendent of Indian Affairs, 1877*, (Ottawa: Maclean, Roger & Co., 1878):21-22.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

enforce legal order, their strength was met with hostility. Weakness may have fit with colonialist self-congratulatory munificence; however, organized indigenous strength struck at the heart of colonial legitimacy. If indigenous peoples were functional societies inhabiting the land, then the colonial state had no right to claim it. Therefore, indigenous demonstrations of legal order and power were interpreted as aberrant outbursts of unlawful violence.

Chapter 5

The *Indian Act*: Legislated Segregation

The 1876 *Indian Act* entrenched an erroneous legal category into the developing Canadian state: the singular homogenous “Indian” in need of “civilization.” Colonialist distinctions between “Indian status” and Eurocentric cultural traits associated with citizenship were instilled in policies and legislation preceding Canadian Confederation in 1867, consolidated into the 1876 *Indian Act*, and remain a challenging organizing feature of Canadian society.¹ The *Indian Act*, albeit a revised version, remains in effect today.

In the eyes of colonizing governments, a close watch had to be kept on “Indians” in order to map a route through the precarious terrain of assimilative racial transformation. Matthew Hannah’s historical-geography of the late-nineteenth century imposition of US agency life on the Oglala Lakota (Sioux) of the northern Great Plains describes the way that the Indian Agents of the US government would not allow Aboriginal persons off the reserve until they were considered effectively individualized and immobilized such that the “deterrence of criminal or disorderly behavior ceased to depend on immediate surveillance.”² Corresponding views were held by their Canadian contemporaries. William Duncan of the Metlakahtla Indian Mission of British Columbia, a man who was later lauded in the Canadian Senate as “one of the most successful missionaries in the world,” launched into the subject of surveillance as the “proper starting point for commencing a right policy in Indian affairs; for without Surveillance no satisfactory relationship can ever exist” between “Indians” and the state.³ Prejudicial assumptions that indigenous peoples warrant invasive examination for criminal intent, and are particularly

¹ In 1850, *An Act for the protection of the Indians in Upper Canada from imposition and the property occupied or enjoyed by them from trespass and injury* prohibited the conveyance of Indian land without Crown consent, exempted Indians from taxation, and decreed that Indians were not liable for the payment of certain categories of debts. A similar act in Lower Canada offered the first definition of “Indian”: a person of indigenous “blood” who belonged to a “tribe” and their spouses and children; however, it was amended the following year to exclude non-Indian males married to Indian women. The 1857 *Act for the Gradual Civilization of the Indian Tribes in the Canadas* required that an adult male candidate for enfranchisement meet government standards of good character, lack of debt, and fluency in English or French. The 1857 *Civilization Act* enshrined governmental distinction between indigenous cultural identities, associated with reserve geographies, and success in settler culture off-reserve.

² Matthew G Hannah, “Space and Social Control in the Administration of the Oglala Lakota (“Sioux”), 1871-1879,” *Journal of Historical Geography*, 19(4), (1993):428.

³ Department of the Interior, *Annual Report of the Department of the Interior for the Year ended 30th June, 1875*, Part I, (Ottawa: Maclean, Roger & Co., 1876.):lx; Debates of the Senate of the Dominion of Canada: First Session – Sixth Parliament, (Ottawa: AS Woodburn, 1887):417-419.

dangerous when off-reserve, are deeply ingrained in the euthenic ideal that, rather than becoming full members of Canadian society as indigenous peoples, quarantine in controlled conditions on reserves must enable “Indians” to become “white.”

In the eyes of colonial officials, “Indian” males traversed a racial and geographical boundary as they forfeited legally-recognized Indian status, and the right to reside on a reserve, in favour of receiving enfranchisement along with a share of band lands and funds. By crossing this border, enfranchised Indians became new immigrants to a colonializing country superimposed on their own indigenous territories. In this way, reserves were calculated to function in a manner similar to current Immigration Holding Centres where potentially threatening, legally suspicious, or unqualified individuals are geographically segregated in legal limbo while they are assessed for fitness to join Canadian society. Even before Confederation, Sir Francis Bond Head’s 1836 treaty had been described as a failed “scheme for deporting all the Indians from the mainland to the Manitoulin Island.”⁴ “Indians” were “foreign” to the colonizing state that claimed their territories. “Indians” were expected to assimilate or perish as a result of constitutional incapability for civilized existence. The ultimate goal of this process was to excise officially-recognized indigenous identities from Canada and “return” reserve lands to the colonizing state.

5.1 Negotiating Legal Ontologies: First Nations Principles of Good Order

As Canada struggles to understand the vast overrepresentation of Aboriginal persons in prisons, valuable holistic First Nations principles of restorative justice are considered newly-permissible adjuncts to, rather than catalysts for, change throughout the Canadian criminal justice system. The sense that indigenous principles have only recently been annexed to an entrenched legal system tends to obscure important interactions between indigenous and colonial systems of law. Confederation did not completely negate indigenous legal systems, or First Nations’ efforts to negotiate within the Canadian system.

As PG McHugh explicates, in the face of British colonial law, First Nations asserted their indigenous ontologies of order in a “historical parallelism that runs from colonial foundation through to the end of the twentieth century and into the present.”⁵ The English constitutional

⁴ “The Manitoulin Islands – Outrages by the Waquimakong Indians – Armed Force Sent to Arrest Father Kohler and Other Ringleaders,” *The Daily Globe*, Toronto, Canada West, 27 July 1863, Volume: XX, No. 183:2.

⁵ PG McHugh, *Aboriginal Societies and the Common Law: A History of Sovereignty, Status, and Self-Determination*, (Toronto: Oxford University Press, 2004):vi.

system and common law were transplanted onto territories so that First Nations “engulfed by this system and once marginalized, perforce had to resort to it in order to validate their claims and eke as much as they could from their condition as colonized people.”⁶ For First Nations, negotiating the legal ontologies of the colonizing state was a strategy of survival.

Moreover, Mark Walters points out that, regardless of “all the perceived faults of British colonialism, in British colonial law legal systems never simply disappeared; the indigenous *lex loci* either continued at common law, subject to imperial legislation or Crown prerogative, or was held not to have existed in the first place.”⁷ For example, in the *Delgamuukw* case, Walters pinpoints Chief Justice McEachern’s “unjustifiably narrow” misconception of aboriginal rights whereby “instead of defining aboriginal rights by looking to the continuity of (at least part of) aboriginal law, and thus the rights which aboriginal peoples recognize among themselves, aboriginal rights are said to derive from use and occupation of lands.”⁸ The common law doctrine of Aboriginal rights leads judges to consider the

continuity of Aboriginal ‘identities’. These identities (national, cultural, political, and/or legal), and their concomitant territorial foundations (the lands and resources upon which they were based) pre-dated colonialism, survived (*de facto* at least) colonialism and, it is argued, ought to be recognized and protected today. Second, judges seek to achieve a sense of continuity of ‘legal rules and principles’: true to the common law tradition, they prefer to locate the legal genesis of today’s Aboriginal rights in old judicial precedent. Third, the law of Aboriginal right is concerned in some way with ‘inter-systemic’ continuity: common law Aboriginal rights derive, in part, from the continuity of Aboriginal customary legal systems, or at least elements of them, within non-Aboriginal legal systems.⁹

Walters defines the “principle of continuity” that supports common law conceptions of indigenous rights.¹⁰ Imperial common law established that

(i) in uninhabited territories acquired by discovery and occupation or settlement, settlers were presumed to be governed by English municipal law as their ‘birthright’, as adjusted to local conditions; and (ii) in inhabited territories acquired by conquest or cession, Parliament or the Crown could abrogate or alter local law, but until this power was exercised, local laws, institutions, customs, rights, and possessions remained in force.¹¹

For example, in 1803, a Cree “marriage custom was applied not as foreign law but as part of the law of the British empire – there had been *inclusive* continuity of Aboriginal custom *within*

⁶ McHugh, 2004, Op. Cit.:vi.

⁷ Mark D Walters, “British Imperial Constitutional Law and Aboriginal Rights: A Commentary on *Delgamuukw v. British Columbia*,” *Queen’s Law Journal*, (1992):351.

⁸ *Ibid*:352.

⁹ Mark D Walters, “The ‘Golden Thread’ of Continuity: Aboriginal Customs at Common Law and Under the *Constitution Act*, 1982,” *McGill Law Journal*, 44, (1999):714.

¹⁰ *Ibid*:715.

¹¹ *Ibid*.

British law.”¹² Within this framework, granting Chiefs limited power to legally regulate reserves was both appropriate and practical.

5.1.1 Wikwemikong Unceded Reserve: Regulations for the Maintenance of Good Order

Since formidable state control has never had the omnipotent presence that religious ideologies confer on it, it has not succeeded in entirely dismantling enduring indigenous ways of life. The territories claimed by the Canadian state include many different indigenous languages, nations, and cultures and it is impossible to identify a single shared code of indigenous law. Nevertheless, indigenous communities reinforce strong socio-legal systems that govern life. Indigenous legal traditions, formed on the foundations of kinship and sustainable practices, depend on deliberate communal decision-making and guidance through the wisdom of elders. Henderson explains that, by definition, these *sui generis* rights “do not depend for their existence on consistency with British law.”¹³ Astounding resilience is drawn from indigenous belonging to the land. Nevertheless, the totalizing aims of colonial power significantly destabilized the functional structures of First Nations communities.

As Manitoulin Island opened for settlement, and the government town of Manitowaning grew, the internal order of Wikwemikong was disrupted as colonial assertions of legal power undermined the authority of the Chiefs. In 1874, the Wikwemikong Chiefs attempted to negotiate an agreement to recognize their roles as principals of societal order by outlining common standards and agreeing that the Canadian legal system would be invoked for more intractable cases. In beautifully-scripted indigenous and English language documents, the Chiefs and leaders of the Reserve outlined regulations that were “proper for the maintenance of good order” in their community.¹⁴

¹² The inclusive principle contrasts with the exclusive principle of continuity which, as in the USA, sees local legal systems as foreign. Walters, 1999, Op. Cit.:717.

¹³ James (Sákéj) Youngblood Henderson, “*Sui Generis* and Treaty Citizenship,” *Citizenship Studies*, 6(4), (2002):424.

¹⁴ Visiting Superintendent of Indian Affairs JC Phipps to the Minister of the Interior, Indian Branch. 6 February 1874, (Manitowaning), “Manitowaning – Manitoulin Island Unceded Reserve – J.C. Phipps Transmitting Regulations for the Maintenance of Good Order Established by the Chiefs,” National Archives of Canada, RG10, Department of Indian Affairs, Volume: 1922, File: 2974, Access Code: 90.

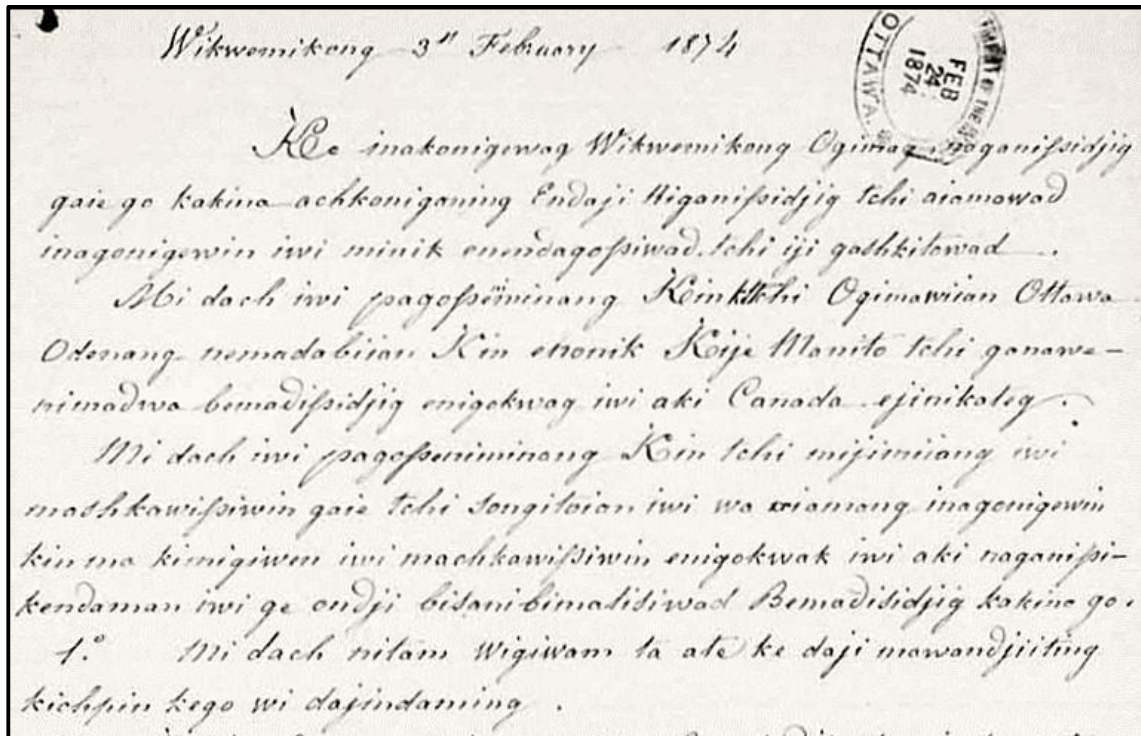


Figure 16: Negotiating Regulations for the Maintenance of Good Order¹⁵

By sending their regulations in both languages, the Chiefs asserted the parallel legal validity of indigenous words.

The Wikwemikong Chiefs' regulations were sent through Visiting Superintendent Phipps to be legally approved by the Governor General in accordance with procedures in the 1869 *Act for the Gradual Enfranchisement of Indians* stating that the

Chief or Chiefs of any Tribe in Council may frame, subject to confirmation by the Governor in Council, rules and regulations for the following subjects, viz:

1. The care of the public health.
2. The observance of order and decorum at assemblies of the people in General Council, or on other occasions.
3. The repression of intemperance and profligacy.
4. The prevention of trespass by cattle.
5. The maintenance of roads, bridges, ditches and fences.
6. The construction of and maintaining in repair of school houses, council houses and other Indian public buildings.
7. The establishment of pounds and the appointment of pound-keepers.¹⁶

¹⁵ Adapted from JC Phipps to the Minister of the Interior, 6 February 1874, (Manitowaning), Regulations Dated 3 February 1874, Signed by Thomas Kinoshameg, Lour Avakegishik, Augustin Kissizabonve, and Levi Ekatinigakweskong, "Transmitting Regulations," Op. Cit.

¹⁶ Phipps to Minister of the Interior, 6 February 1874, "Transmitting Regulations," Op. Cit.; *Act for the Gradual Enfranchisement of Indians, the Better Management of Indian Affairs, and to Extend the Provisions of the Act 31st Victoria, Chapter 42, SC 1869, 32-33, Victoria, c. 6, s. 12.*

The Wikwemikong Chiefs acknowledged the religious dominion of the Canadian state by requesting that the “Highest Chief, residing in the City of Ottawa” who had been “appointed by God, to take care of the people living all over the land called Canada... sanction these regulations” and give them the “necessary power to enforce them all over this land, over which you are the Supreme ruler, for the peace and tranquility” of all inhabitants.¹⁷

In keeping with the needs of the community and the social mores that might be approved of by the assimilative government, the Wikwemikong regulations declared,

1. Let there be a house where we can meet when there is anything to be discussed.
2. Let no one be allowed to insult either the chiefs or those appointed by them, or to revile any aged person.
3. The meeting ought to be respected; no one should be allowed to use any insulting language or joke in the house, and whilst one is speaking.
4. During the night time turbulent young men and all boys should keep quiet in the interior of their houses, and no one should be roding about after the night bell has been rung.
5. Yong girls especially such as are of a light character, ought to keep quiet in the interior of their houses during the night time.
6. No one should bring wiskey into this village.
7. No drunker should rode about, and if any one is seen drunk, he should be taken up immediately and asked who gave him the wiskey, and if he does not make the declaration, he should be fined himself.
8. No one should damage any thing belonging to another, although it may appear old or useless.
9. No one should ill treat any animal so as to kill it, none without any exception, how small so ever it may be.
10. No one should damage fences around fields or gardens or in any other place.
11. When orders are issued to make or repair the roads, every man ought to go to the work, if he is in good health.
12. If any one is engaged to work, he ought to be payed, when he has finished his work.
13. If two persons make an agreement about something, they are bound to stand by it as far as it is just.
14. Let no one be robbed of his property.
15. Let no one take what belongs to another without having previously asked for and obtained permission.
16. Let no one strike his fellow man, although he be in a state of drunkenness.
17. When there are fruit trees planted in a garden or field, let no one steal the fruits there of.
18. Let all the males of animals be altered or cut, except such as are deemed necessary to remain entire.
19. Let no one keep a dog that use to kill or to bite sheep.
20. If any one willfully violates the regulations, here written down, he is to be taken up, brought before the Indian Chiefs in order to be judged by them and he ought to submit to their judgement.
21. But if any one does not submit to this judgement, he is to be given up to the english court.

¹⁷ Phipps to Minister of the Interior, 6 February 1874, “Transmitting Regulations,” Op. Cit.

22. If any one having been summoned to desist from something continues nevertheless thus doing worse, he is to be given over to the English court.¹⁸

At the Wikwemikong Council where he was presented with these regulations, Phipps was asked to impress the “urgent necessity for sound regulations being established by law, for preserving order and regulating the internal affairs” of the reserve, on the government Minister to whom they would be sent.¹⁹ The Wikwemikong Council expressed their desire to curb insobriety, restrain “white arrivals running at large,” and prevent vandalism to fences.²⁰ The Council expected to go beyond taking part in the creation of regulations: they saw the need to exercise “power... to award punishment for infraction of such regulations” by assessing monetary or grain fines as well as public service through labour.²¹ The enforcement power of the Wikwemikong Council would be “subject to appeal” to Canadian authorities through the judicial power of Phipps.²²

Phipps was of the opinion that some form of state-approved local regulations were necessary for the inhabitants of the Unceded Reserve because “respectable and well conducted Indians” were “frequently annoyed” by inebriated and trouble-making individuals who would “refuse to submit to the decisions of their chiefs” because they had “no power to enforce them.”²³ The authority of the Chiefs of Wikwemikong was shaken by a changing socio-legal order where the Canadian state claimed dominance. Ironically, the presence of a local Indian Branch representative was ineffectual in establishing good order among both “Indians” and “whites.” It appears that the hope was that, if colonial power could be employed in support, rather than subjugation, the grounded authority of the Wikwemikong Chiefs and leaders might meet common goals of both societies.

The Indian Branch was not willing for this considered approach to go beyond their confines to the Governor General, as the Chiefs requested. Paradoxically, the very harmony of these regulations was used against the Wikwemikong Chiefs. Vankoughnet, Deputy Superintendent of the Indian Branch, observed that regulations 1, 2, 3, 4, 5, 6, 7, 10, 11, 16, 18, 19, 20, 21, and 22 were in accordance with the *Act* while regulations 8, 9, 12, 13, 14, 15 and 17 were “very elementary natural laws,” which, in the case of regulation 9, would “prevent one from

¹⁸ The original document’s spelling and terminology has been kept intact in this quotation. Phipps to Minister of the Interior. 6 February 1874, “Transmitting Regulations,” Op. Cit.

¹⁹ JC Phipps to the Minister of the Interior Indian Branch, 16 May 1874, (Manitowaning), “Transmitting Regulations,” Op. Cit.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

killing a mosquito.”²⁴ In the end, Phipps was instructed to relay the message that “as they are already in force either as part of the moral law, or by the laws of the land,” it was not necessary to confirm the regulations with the Governor General; however, if they could draft rules that aligned with the *Indian Act* and would “be of practical benefit to their Band,” the Superintendent General might be persuaded to submit them to the Governor General.²⁵ The Indian Branch also determined that the Chiefs’ request for power to enforce the regulations with fines and labour was beyond the power of either the Superintendent General or Governor General of Canada to confer.²⁶ In this way, the Wikwemikong Council’s efforts to use Canadian legislation as a basis for negotiating practical socio-legal solutions to problems caused by the destabilization of indigenous authority on the reserve, erratic regulation of settlement, and ineffective application of state law were dismissed by the Indian Branch.

Meanwhile, by 26 May 1874, not long after the Chiefs drafted their regulations on 3 February 1874, the Canadian Parliament had assented to new Indian legislation. The 1874 *Act to Amend Certain Laws Respecting Indians, and to Extend Certain Laws Relating to Matters Connected with Indians to the Provinces of Manitoba and British Columbia* discarded the provision for indigenous regulations and focused on the legal power of the state to deter liquor traffic with Indians and on reserves, require honest testimony from Indians in criminal cases, and mete out fines and terms of imprisonment. Enfranchisement was a “gradual” process that had to be earned step-by-step and yet was presented as an inevitable goal of “Indians”: a goal that some might be so eager to accomplish that it was necessary to caution that “any Indian falsely representing himself as enfranchised under this Act when he is not so, shall be liable, on conviction before any one Justice of the Peace, to imprisonment” for up to three months.²⁷

5.2 The *Indian Act*: Isolation and Transformation

The 1876 *Indian Act* introduced a chimera in the legal pantheon of the Canadian state: the ghostly figure of a lone “Indian.” The *Indian Act* was a consolidation of previous legislation constructed for the purpose of ending what was thought to be a fundamental dissonance between

²⁴ “Memo By Deputy Superintendent of Indian Affairs L Vankoughnet on Certain Rules and Regulations Submitted by the Indian Chiefs of Wikwemikong, on the Manitoulin Island, for approval by His Excellency the Governor in Council, under the provisions of the Act 32-33 Vic Cap 6 Sec 12,” “Transmitting Regulations,” Op. Cit.

²⁵ to JC Phipps, 8 June 1874, “Transmitting Regulations,” Op. Cit.

²⁶ Ibid.

²⁷ *Act for the Gradual Enfranchisement of Indians*, 1869, Op. Cit.

“Indian” identities and capable membership in the Canadian state. The false division constructed between indigenous identities and lawful existence did more than relegate indigenous persons to places of exception from full membership in the Canadian state: it placed many aspects of their existence outside of the law.

In the *Indian Acts* of 1876, 1880, and the *Indian Advancement Act* of 1884, the Government of Canada claimed the right to direct “unilaterally, every aspect of life on the reserve and to create whatever infrastructure it deemed necessary to achieve the desired end – assimilation through enfranchisement and, as a consequence, the eventual disappearance of First Nations.”²⁸ The 1876 *Indian Act* assumed that Indians must be divested of their indigenous heritage in order to become individualized Canadian citizens or die out as remnants of a single “race” overcome both physically and culturally by greater European civilizations. As guardians of Indian wards, the administrative branch that became the Department of Indian Affairs held such legal assimilative power that indigenous “traditions, ritual life, social and political organization, or economic practices could be proscribed as obstacles to Christianity and civilization or could be declared by Parliament, as in the case of the potlatch and sun dance, criminal behaviour.”²⁹ Evidence of organized indigenous cultures undermined the foundations of a colonizing state which located its legitimacy in the myth of claiming unorganized geographical territory for a European Crown.

Justice Sinclair explicates the ways in which this occurred in the Canadian prairies. Indigenous treaty negotiators were not ignorant of the fact that they were

being asked to surrender their rights to exclusive use of large parcels of land. However, it was also clear that they wanted lands for their exclusive use as tribal homelands – a concept the government understood but that it took advantage of and perverted into a policy to corral and control Indian movement and growth.³⁰

Part of the colonial plan was to prevent indigenous groups from gathering in meaningful ways. In 1884, amendments were made to the *Indian Act* to outlaw indigenous Potlatch and Sundance ceremonies.³¹ The intent of Potlatch and Sundance laws was to “remove tribal traditions from their positions of importance in the lives of Aboriginal people.”³² Prosecutions under these

²⁸ John S Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879-1986*, Manitoba Studies in Aboriginal History XI, (Winnipeg, Manitoba: The University of Manitoba Press, 1999):21.

²⁹ Ibid.

³⁰ Justice C Murray Sinclair, “Suicide in First Nations People,” *Suicide in Canada*, Eds. Antoon A Leenaars et al., (Toronto: University of Toronto Press, 1998):169-170.

³¹ *An Act Further to Amend “The Indian Act, 1880,”* SC 1884, 47 Victoria, c. 27, s. 3.

³² Sinclair, 1998, Op. Cit.:169-170.

provisions of the *Indian Act* were often carried out against traditional indigenous leaders.³³ When convicted, the sentences involved hard labour.³⁴

In turn of the century Manitoba, many of the inmates at the Stony Mountain Penitentiary had been convicted under these xenophobic laws.³⁵ By relocating indigenous leaders to carceral institutions, their ability to provide direct guidance was reduced and the colonizing government effected a strategic demonstration of their hegemonic power over indigenous communities.³⁶ For example, when a man from Kahkewistahaw's Band, Saskatchewan, was jailed for a month in Regina for holding a "give away dance," Indian Agent JP Wright hoped that this "would have its due effect upon the others" in encouraging fear of the law and obedience.³⁷

Sinclair establishes that federal and provincial authorities gave directives to prosecutors, magistrates, and judges "exhorting and, in some cases, demanding that they sentence Indian offenders harshly so as to make it clear to their fellow tribesmen that they must abide by the laws of Canada."³⁸ By quarantining indigenous communities on reserves, removing indigenous cultural influences, and exposing "Indians" to idealized forms of Canadian society, Indian Affairs hoped that they would imbibe "white" culture and be racially transformed. Loss of "Indian status" through enfranchisement was more than an ill-conceived reward for cultural change; rather, Indian Affairs desperately hoped that it would invoke an ethnic metamorphosis from "Indian" to "white."

At times, doubts arose within the DIA that this policy "formulated for the purpose of taking hold of Indians in their untutored state and gradually educating them to fitness for the status of full citizenship" would work because they observed that "any halt in the earlier stages of progression is the immediate precursor of retrogression, and it may probably be asserted, that in the more advanced stages of the march, the failure to go on, is in some degree, fraught with kindred danger."³⁹ The danger in the later steps of the march was that bands would turn their knowledge of the colonizing state to the purposes of securing indigenous self-governance rather

³³ Sinclair, 1998, Op. Cit.:169-170.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1898*, (Ottawa: SE Dawson, 1899):136.

³⁸ Sinclair explains that these directives were particularly influential because "magistrates did not enjoy any type of judicial independence, holding office 'at pleasure' of the government" and "most of the magistrates in the Northwest Territories (before the western provinces were created) were employees of the federal government, foremost among them being Indian agents and RCMP (NWMP) officers." Sinclair, 1998, Op. Cit.:169-170.

³⁹ *Annual Report of the Department of Indian Affairs*, 1898, Op. Cit.:xxvi.

than assimilative enfranchisement. Reserves, then, were more than places of paternalistic protection for the enculturation for Indians: they were seen as places on which to confine “Indians” for the protection of Canadians.

Legal “Indian status” and segregated lands were so intensely linked in the geographical imagination of colonizing minds that, as Robin Jarvis Brownlie elucidates, whether they had formally engaged the enfranchisement process or not, “Indian agents who made the decisions about status and benefits tended to view long-term off-reserve residents as non-Indian.”⁴⁰

Geographic proximity encouraged the converse as well:

Some individuals were referred to as ‘halfbreeds’ or ‘non-treaty Indians’ but given relief and other assistance by the agents. On the other hand, since non-treaty Indians and those belonging to a different band had no legal right to reside on a reserve, they could be summarily expelled by the agent. DIA officials thus functioned as gatekeepers to Indian status.⁴¹

Department of Indian Affairs officials kept a wary watch on persons who did not have Indian status yet maintained social and familial ties to reserve communities.

Although enfranchisement could occur without an individual’s consent, the requirements for enfranchisement could also be used as a guide for how not to qualify by those who would not officially discard their indigenous identities in favour of voting in a social system that rejected them. Indigenous identities persisted and reserves, meant to be temporary sites that would later become available for other government uses, remained spaces of exception from adult membership in the Canadian state. In this way, “status Indians” were socially, legally, and geographically segregated from public life. Moreover, a racialization of diverse indigenous peoples stereotyped certain phenotypical and cultural traits as “uncivilized” and perilously out of place beyond reserve boundaries.

5.3 Peroratio: Indigenous Interactions

Although “Indians” have been heavily laden by the state’s assimilative functions, as state power operated within the varied circumstances of individuals’ and communities’ lives, First Nations peoples altered its outcome to something very different from assimilation: the concurrence of indigenous identities with active engagement in the Canadian state. Olive Patricia Dickason has been criticized for her argument that First Nations are amongst Canada’s “founding

⁴⁰ Robin Jarvis Brownlie, “‘A Better Citizen Than Lots of White Men’: First Nations Enfranchisement – an Ontario Case Study, 1918-1940,” *The Canadian Historical Review*, 87(1), (2006):29-52.

⁴¹ *Ibid*:36.

peoples.”⁴² The main counter-point is that Dickason elides action and intention. While it is arguable that the actions of all people living on territories later confederated as Canada somehow influenced what it became, the word “founding” connotes strong intentionality. A balanced approach recognizes the complexities of diverse indigenous interactions with colonizing forces as they negotiated everyday survival and their own visions of homeland. Only hubris could allow founders to believe that they could truly predict the full scope of outcomes related to their actions. Dickason succeeds in demonstrating that First Nations people played larger and more divergent roles in the making of Canada than romantic tales of the important, yet gritty, economies of fur-trading imply. Although some First Nations peoples may have intended to support colonial powers in some ways, it is more precise to say that there were a range of responses to the colonial project as indigenous persons shouldered the burden of previously unknown diseases and negotiated their positions in an unpredictable global empire.

From a British perspective, colonizing powers may have proved their prowess through engulfing the lands and peoples eventually organized under the name “Canada” as they painted maps pink with Empire. However, the international imperial victory sought abroad did not quell the countless international responses by First Nations within Canada. Notwithstanding the greedy appetites of colonialism, this chapter makes evident that indigenous communities had their own laws, their own systems of regulating community life, and their own approaches to international relations with the British Empire. Colonial policies and legislation such as the *Indian Act*, based on assumptions of the inevitable assimilation or death of indigenous peoples, were unsettled by the persistence of First Nations as rational cultural communities within expanding colonial territories. Colonial officials’ segregative geographical tactics in response to this threat to their legitimacy flowed from settler governments’ rapacious requirements for land.

⁴² Olive Patricia Dickason, *Canada’s First Nations – a History of Founding Peoples From Earliest Times*, 3rd ed., (Don Mills: Oxford University Press, 2002):xi.

Chapter 6

Criminalizing the “Indian”: Unrest and Assimilation

Assimilation is not what it once was. Contemporary use of the term “assimilation” to describe government approaches to First Nations people tends to imply cultural assimilation. While this aspect of assimilation is very meaningful, it tends to obfuscate the driving force behind the creation of the assimilation program: a nascent Canadian state struggling to bring together a vast geography under the principles of order and good government. Whatever politics direct the means of achieving it, a government, particularly in its formative stages, has no legitimacy unless it can offer societal order. The cruel and unethical aspects of cultural assimilation recognized today were not the full extent of historical understandings of the term. Paradoxically, in the colonial rhetoric, deriving cultural assimilation from the larger momentum of nation-building was almost a humanitarian effort on the part of a paternalistic government.

The hard line of what colonial and Canadian governments saw as necessary to bring order to “the Indian problem”, however, meant that all Canadian citizens would be “white men.”¹ The racialized aspect of assimilation added an acutely physically invasive component to the psychological torture of cultural assimilation. In colonial aspirations, “Indians” were to cease to exist whether this result came from extinction or reproducing with “white” partners until all visible, as well as cultural, traces disappeared. As John Milloy saliently observes, although colonial and Canadian legislation purported to “solely” concern persons with “Indian” status, the “assumption behind them was the same for all Aboriginal people”: whether “Indian,” Métis, “non-status Indian,” or Inuit, “each in their own time and place, as their homeland was encompassed by the expanding Canadian nation, would be expected to abandon their cherished life ways.”² Moreover, governmental “distinctions between authentic and inauthentic natives came to serve a number of ends associated with the management of indigenous peoples and the

¹ Women’s official identities in the colonial system were determined patrilineally even though this did not accord with the more balanced and matrilineal social organization of many First Nations. For a deeper view of the realities of women’s experiences, self-perceptions, and differing geographical understandings of what colonizers considered “The West,” see Sarah Carter, Lesley Erickson, Patricia Roome and Char Smith, eds., *Unsettled Pasts: Reconceiving the West through Women’s History*, (Calgary: University of Calgary Press, 2005).

² John S Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879-1986*, Manitoba Studies in Aboriginal History XI, (Winnipeg, Manitoba: The University of Manitoba Press, 1999):21.

measurement of their disappearance.”³ In effect, legal “Indian status” was somewhat malleable in the paternalistic hands of the DIA and could be used to either claim or deny responsibility. First Nations peoples who did not have legal status were nevertheless racialized as “Indians” and were of some interest to the DIA and law enforcement as such. Since racialized physical and cultural characteristics of First Nations people were not part of colonizers’ imagined geography of Canada, any perpetuation of indigenous peoples on state territory was a threat to good order and legitimacy.

Although paternalism was the tenor of departmental rhetoric, in the late nineteenth century, the deceptively munificent face of the DIA came under criticism from Canadian settlers. Conflicts between Aboriginal and colonial powers on the frontier of the Canadian North-West were frequently addressed through policing. The north-westward movement of the Canadian frontier is itself a colonial construct that relies on a geographical imagination that privileges Euro-Canadian “progress” advancing from a state centralized in a “civilized” east. For First Nations living in the lands where they were created and had inhabited since “time immemorial,” the very idea of a frontier was irrelevant until they clashed with the colonial powers that gave those words significance. In as much as they were considered unincorporated into the future of a legal Canadian state, and yet subject to the law, indigenous persons interacted with Canadian law enforcement in divergent ways that illustrate the mutual foreignness of differing legal and geographical ontologies.

6.1 Conflicts: Canada’s North-West Frontier in the National Imagination

As the map of Canada changed strikingly in the late nineteenth century, an international struggle for power between Canada, the USA, and First Nations groups took place. Dickason aligns the first “Métis resistance” with the transfer of Hudson’s Bay Company (HBC) lands to Canada in 1870.⁴ Conflicts between indigenous peoples, Métis, and colonial powers on both sides of the Canadian-US border led to the 1873 Cypress Hill Massacre. By the following year, the Indian Affairs Branch formally recommended the “appointment of a few sub-agents and some

³ Jeffrey Sissons, *First Peoples: Indigenous Cultures and Their Futures*, (London: Reaktion Books, 2005):28.

⁴ Dickason notes that this transfer “increased Amerindian militancy” and led to a range of disputes on the parts of indigenous leaders who disputed the right, and ability, of land to be sold. Olive Patricia Dickason, *Canada’s First Nations – a History of Founding Peoples From Earliest Times*, 3rd ed., (Don Mills: Oxford University Press, 2002):276-277, 285.

simple system of Indian Police, which will bring distant Tribes more within the reach and better control of the Government.”⁵

The second resistance, involving Métis, First Nations, US, and Canadian actors, occurred as the buffalo, a vital part of indigenous subsistence economies, declined and the Canadian Pacific Railway (CPR) was being built to add another unifying line to the map of Canada and encourage western settlement.⁶

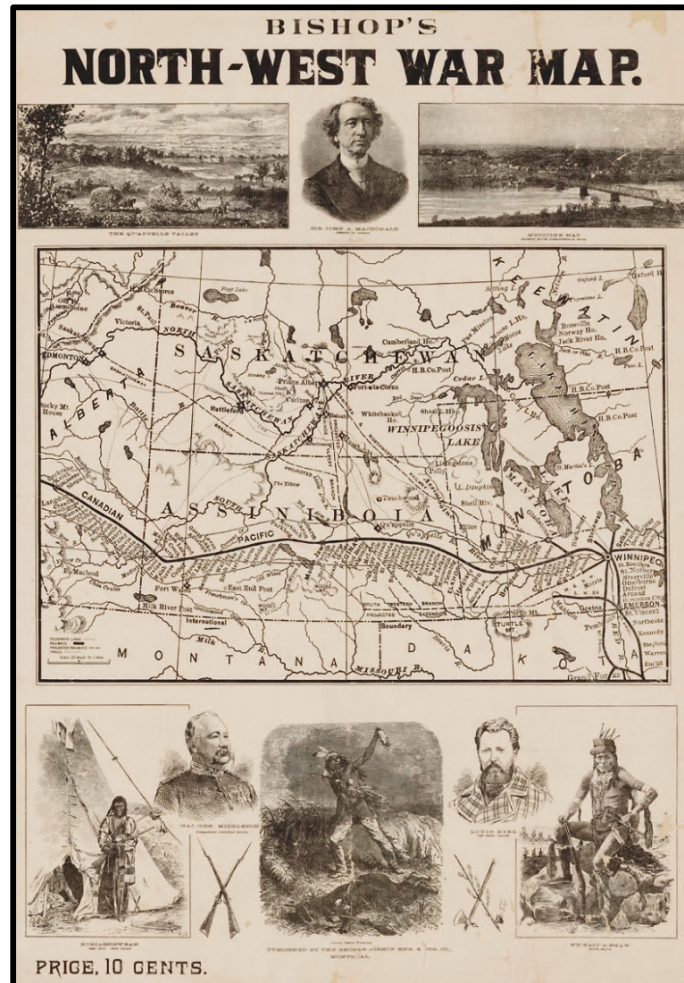


Figure 17: War in the North-West, 1885⁷

Conflicts on Canada's North-West frontier as state law was asserted over indigenous territories and peoples were prominent in the national imagination.

⁵ Department of the Interior, *Annual Report of the Department of the Interior for the Year ended 30th June, 1874*, Part 2, (Ottawa: Maclean, Roger & Co.):68.

⁶ Dickason, 2002, Op. Cit.:285.

⁷ Adapted from "Bishop's North-West War Map [cartographic material]," Montreal: George Bishop Eng. & Ptg. Co., 1885, National Archives of Canada, Microfiche NMC 15955, Library of Congress class No. G3471.S57 1885 .G4 H2, Access Code: 90, Copyright: Expired.

Entwined as civilizing arms of the state, AG Irvine, Commissioner of the North-West Mounted Police, recounted in the 1880 *Annual Report of the Department of Indian Affairs*,

[s]ince the disappearance of buffalo the Indian situation has assumed quite a different aspect. As long as the buffalo lasted the Indian was independent and self supporting, independent and contented. Now, however, he is in a very different position, his only means of support is virtually gone, and he has to depend on the Government for assistance, being forced, in so doing, to remain about the Police Posts, Indian Agencies or other settlements.⁸

The southward movement of dwindling buffalo herds had been something of a reprieve for policing since it kept the “most miserable existence” of remaining hunters beyond the International Boundary Line in the United States of America. Commissioner Irvine predicted the increase of the Indian population that would occur once the buffalo were gone and the hunting population returned. Irvine warned that this “population, too, will, irrespective of the aid received from Government, be a starving one, a dangerous class requiring power, as well as care, in handling.”⁹ Insightfully, Irvine saw the “advancement of civilization” as one of the reasons that the NWMP must be increased. Irvine reasoned that the US “military had no trouble with the Indians until settlers appeared on the scene.”¹⁰ Whereas the HBC had little policing power, by the beginning of the second resistance in 1885, the Northwest Mounted Police was an authoritative force on the Canadian Plains.¹¹

6.1.1 Competing for Survival, Competing for National Territory: Mistahimaskwa’s (Big Bear’s) Response to Changing Landscapes

Big Bear, one of the most well-known chiefs on the Plains, sought unity amongst indigenous peoples as an essential strategy to resist western settlement and, in so doing, “seriously alarmed Ottawa.”¹² Big Bear refused to receive gifts before the negotiation of *Treaty Six* because he did not want to be compelled to concede to the Canadian government.¹³ Dickason explains that Big Bear was especially opposed to the treaty provision that “Canadian law would become the law of the land; as he perceived it, the treaty would forfeit his people’s autonomy.”¹⁴

⁸ North-West Mounted Police Force Commissioner AG Irvine, “Part II North-West Mounted Police Force Commissioner’s Report,” *Annual Report of the Department of Indian Affairs for the Year Ended 31 December 1880*, (Ottawa: Maclean, Roger & Co., 1881):6.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Dickason, 2002, Op. Cit.:285.

¹² Ibid:277.

¹³ Ibid.

¹⁴ Ibid.

He did not put his signature on the treaty in 1876; however, in 1882, as settlement progressed, diseases weakened indigenous populations, and the resources of First Nations were increasingly strained, Big Bear was compelled to sign the treaty in exchange for rations for his band.¹⁵

Nevertheless, Big Bear did not abandon his desire to maintain self-determination.

In a time of great deprivation, withholding rations was Indian Affairs' "principal weapon for bringing people into line."¹⁶ Dr. Kittson of the NWMP made an empirical analysis of the rationing situation and warned his superiors of the potential consequences of widespread hunger.¹⁷ Kittson wished to "disabuse the authorities at Ottawa of an erroneous idea generally prevailing" that there was enough small game in the northern Plains.¹⁸ He estimated that there was not enough game in one hundred square miles to feed a small family for a year.¹⁹ Hunting could not be a substitute for rations "if the Indians are to be kept on their Reservations."²⁰ Arguing that they "must assume that an Indian adult required as much food as a white man," Kittson used information gathered from asylums, prisons, and infirmaries in differing locations to demonstrate that the rations were indeed falling short.²¹ Kittson movingly described gaunt First Nations people begging for food and hoped, "When I tell you that the mortality exceeds the birth rate it may help you to realize the amount of suffering and privation existing among them."²² Appealing to the government's need to maintain order, Kittson expressed surprise that the starving indigenous population had been "so patient and well disposed" and warned that this might be "'the calm before the storm', but human suffering must have its limit."²³ Even though Kittson's determined message was circulated within Indian Affairs and there were gestures of mercy, assimilative priorities prevailed. The DIA disapproved of an incident during this period in which the NWMP decided to feed seven thousand people from police rations.²⁴ Indian Affairs thought that this action impeded compliance.²⁵

¹⁵ Dickason, 2002, Op. Cit.:277.

¹⁶ Ibid:278-279.

¹⁷ Kittson's correspondence is found in "Report from D. Kittson of the Northwest Mounted Police Stationed at Fort MacLeod, Concerning the Insufficiency of the Rations Issued to the Indians in the Northwest Territories," 1880-1915, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 3726, File: 24811, Access Code: 90.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Dickason, 2002, Op. Cit.:278-279.

²⁵ Ibid.

Big Bear grappled with colonial systems of government and ontologies of ownership in order to negotiate indigenous autonomy. Big Bear desired to create a contiguous indigenous territory by juxtaposing the reserves of several Plains Cree chiefs; however, the DIA discovered this pattern and chose to ignore treaty provisions that allowed chiefs some choice in their allocations.²⁶ In 1884, Big Bear instigated a Thirst Dance on Poundmaker's reserve in order to establish a First Nations representative who would serve a four-year term.²⁷ Dickason writes that North-West Lieutenant-Governor Edgar Dewdney combatted this plan through strategic control of rations as well as an amendment to the *Indian Act* that allowed any Indian on another reserve without DIA approval to be arrested.²⁸ Dewdney's geographical control was later tightened into the "Pass System" used to restrict any unsanctioned off-reserve movement.

Meanwhile, the Métis were also experiencing lean times as they advocated for rights to self-determination as a unique people group born of European and First Nations ancestry. The still very controversial Métis leader Louis Riel was calling for rights as British subjects when he set up a provisional government in March 1885.²⁹ First Nations and Métis systems of order were struggling with the unsettling influence of hunger resulting from the misuse of lands and resources during the onslaught of settlement. Big Bear intervened to stop his discontented war chiefs when they plundered Frog Lake HBC stores; however, the women and children that he saved, along with the HBC representative, did not discount that nine people had already been killed.³⁰ At first, terrified settlers barricaded themselves in Fort Pitt, the NWMP garrison.³¹ After conferring with each other, the settlers decided to surrender to Big Bear and he allowed members of the garrison to depart before taking over Fort Pitt on 15 April.³²

Although the CPR was still in a rather disjointed phase, the Federal Government's ability to raise forces against the uprising was much greater than it would have been a short time earlier. After fighting the Battle of Batoche against the overpowering Canadian militia, Riel surrendered

²⁶ Dickason, 2002, Op. Cit.:280.

²⁷ Ibid:282.

²⁸ Ibid.

²⁹ Kevin Bruyneel argues that Louis Riel "was and remains a necessary invention for the production of Canadian political identity and sovereignty, including the colonial and racial legacies intertwined in this production." Brian Osborne considers the numerous shifting interpretations of Louis Riel: public discourses and the disjuncture between memory represented in physical monuments and changing perspectives. Kevin Bruyneel, "Exiled, Executed, Exalted: Louis Riel, *Homo Sacer* and the Production of Canadian Sovereignty," *Canadian Journal of Political Science*, 43(3, September), (2010):712; Brian S Osborne, "Corporeal Politics and the Body Politic: The Re-Presentation of Louis Riel in Canadian Identity," *International Journal of Heritage Studies*, 8(4), 2002: 303-322; Dickason, 2002, Op. Cit.: 287-288.

³⁰ Dickason, 2002, Op. Cit.:288.

³¹ Ibid.

³² Ibid.

on 15 May 1885, Poundmaker on 26 May 1885, and, on 2 July 1885, Big Bear voluntarily “walked into Fort Carlton to surrender to a startled sentry.”³³

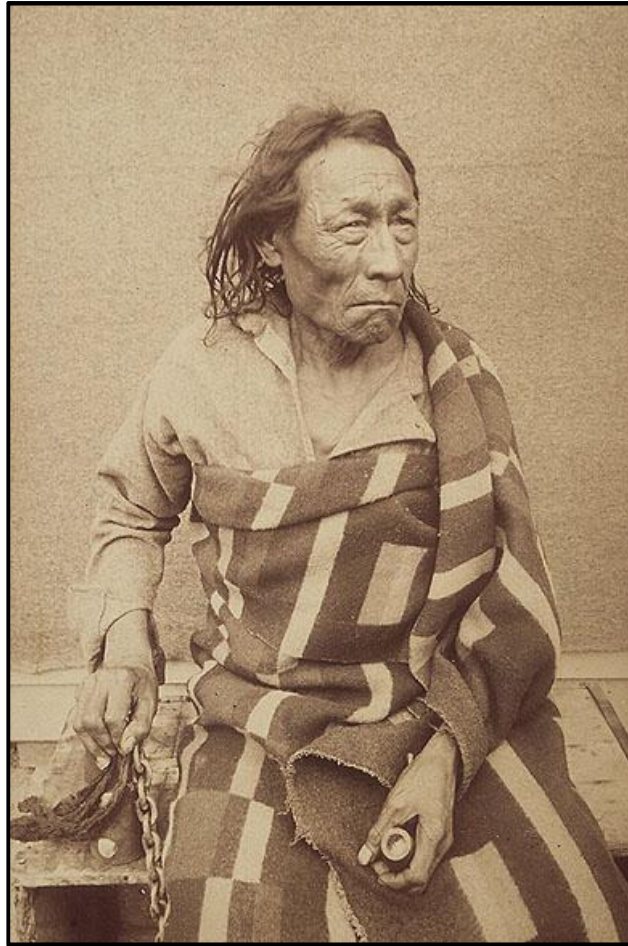


Figure 18: Big Bear in Leg Irons, NWMP Regina Barracks, 1885³⁴

The government and judiciary were presented with the task of prosecuting a large number of people who fit into three distinct governmental categories of membership in Canada. In total, there were eighty-four trials and one hundred twenty-nine people were imprisoned.³⁵ The eight

³³ Dickason, 2002, Op. Cit.:289.

³⁴ The National Archives’ description of this photograph explains, “Cree chiefs who were involved in North West Rebellion of 1885, in leg irons, photographed outside the North-West Mounted Police barracks, Regina, Sask., 1885.” Adapted from OB Buell, National Archives of Canada, C-001873, “Mistahi maskwa (Big Bear ca. 1825-1888), a Plains Cree chief,” Item No. RO1L18, Box 02690, Other Accession No. 1966-094 NPC, Copyright: Expired.

³⁵ Seventy-one trials were held for treason-felony, twelve for murder, and Riel was tried for high treason. Of the forty-six Métis persons imprisoned, nineteen were convicted, one was hanged, and seven were conditionally discharged or not brought to trial. Of the eighty-one “Indians” imprisoned, forty-four were

First Nations individuals who were hanged together at Battleford on 17 November of the same year were meted out a severe penalty. Nonetheless, those in prison fared extremely poorly. Prison terms were “virtual death sentences” for the indigenous people convicted for their involvement in the uprising.³⁶ Three chiefs sentenced to three years’ imprisonment suffered so acutely that they had to be released before serving their full terms and they died within a year.³⁷ In the end, all of the First Nations people convicted of felony treason were pardoned before they served the complete terms of their sentences; however, Big Bear was the last prominent prisoner of the North-West Rebellion.³⁸

As an imprisoned “Indian,” Big Bear was a major political symbol of colonizing state power. His hair was shorn and he was clothed in colonial garb.³⁹ It is evident that police regulators understood the demeaning power of forcibly cutting indigenous persons’ hair. They later stipulated that, although every other “convicted prisoner” in the Regina Guard Room where Big Bear had been kept should “have their hair cut short” on admission, no “Indian Prisoner’s hair is to be cut without the express order of the Commanding Officer.”⁴⁰ Several years had passed when an Indian Agent from Gleichen, Alberta, wrote to the Secretary of the DIA concerning the NWMP lockup where “many Indians are sent... for various offences, i.e., more than we would like.”⁴¹ The keeper of the NWMP lock-up had informed the Indian Agent that he was “not authorized” to cut the hair of imprisoned “Indians.”⁴² The Indian Agent regretted this lack of authority because if the keeper “carried it out, it would tend [to] lessen the number of Indian offences.”⁴³ The Indian Agent rationalized that the “Indians do not think that it is much punishment to be committed to the place referred to, the cutting of their hair would strike them

convicted, eleven sentenced to hang, and three of the hanging sentences were commuted to life in prison. Two Canadian citizens of European ancestry were imprisoned and both were acquitted of treason-felony. Dickason, 2002, Op. Cit.:290.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid:290-291.

³⁹ Ibid:291.

⁴⁰ “North West Mounted Police Rules for the Guidance of Prisoners in the N.W.M.P. Guard Room Regina,” “Regulations for Prisoners Confined in Police Guardrooms,” 1893, National Archives of Canada, RG18: Royal Canadian Mounted Police, Volume: 79, File: 253-93, Access Code: 90.

⁴¹ Indian Agent to the Secretary of the DIA, 14 May 1903, (Gleichen, Alberta), “Correspondence Regarding the Sale of Intoxicants to the Indians in Manitoba and the Northwest Territories,” National Archives of Canada, RG10: Department of Indian Affairs, Volume: 3981, File: 158693, Access Code: 90.

⁴² Ibid.

⁴³ Ibid.

much harder.”⁴⁴ DIA Law Clerk Reginald Rimmer wrote a response to this Agent which the centralized Indian Affairs adopted in their formal reply.⁴⁵

If the Regulations of any carceral institutions did not “require that the prisoners shall submit to the cutting of their hair,” Indian Affairs saw “no reason for suggesting any discrimination against an Indian.”⁴⁶ It was “understood” that the “Blackfeet almost universally allow their hair to grow long and would regard any interference with it as the greatest indignity; and it would be very similar to the branding of a white man.”⁴⁷ Although their understanding of the dehumanizing humiliation that this practice could cause was not in conflict with that of the Indian Agent, in this case, a different conclusion was reached. The Department decided that cutting hair is “a punishment not to be inflicted except where white men are liable to the same treatment.”⁴⁸ Perhaps what happened to Big Bear influenced their determination in this course of action.

While Big Bear remained in prison, a petition from Cree Chiefs emphasized their loyalty to the Queen and maintained that by “punishing those concerned in the uprising, with various terms of imprisonment, the law was righteously enforced, and that the infliction of these penalties will have the happy effect of deterring other evil disposed persons from attempting to disturb the peace of the Country in future.”⁴⁹ However, the petition also included a statement of admiration for the mercy accorded to prisoners released after a short period as well as an expression that the Cree Nation would appreciate the release and pardon of the last prisoner, Big Bear.⁵⁰ DIA Assistant Commissioner Hayter Reed made the case that, if Big Bear were released, it should be made to appear to be a result of the loyal Chiefs’ petition, so that they might have more influence over him.⁵¹

⁴⁴ Indian Agent to Secretary of the DIA, 14 May 1903, “Correspondence Regarding the Sale of Intoxicants,” Op. Cit.

⁴⁵ Law Clerk Reginald Rimmer to the Deputy Superintendent General, 1903 (Ottawa), “Correspondence Regarding the Sale of Intoxicants,” Op. Cit.; Secretary of the DIA JD McLean to Indian Agent Markle, 26 May 1903 (Ottawa), “Correspondence Regarding the Sale of Intoxicants,” Op. Cit.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Petition from Chief Mistawasis, Chief Attakakoop, Chief Twatt, and Chief John Smith to His Honor the Indian Commissioner Regina. 15 January 1887. Witnessed by Owen Hughes MNWC, L Clark HBC, and Thos McKay, (Prince Albert, NWT), 1887, “Prince Albert – Petition from Cree Chiefs requesting the release of ‘Big Bear’ from prison,” National Archives of Canada, RG10: Department of Indian Affairs, Volume: 3774, File 36846, Access Code: 90.

⁵⁰ Ibid.

⁵¹ Assistant Commissioner Hayter Reed to the Superintendent General of Indian Affairs, 29 January 1887, (NWT), “Prince Albert – Petition from Cree Chiefs,” Op. Cit.

Big Bear was retained when the others were not partly because his absence encouraged his band to split up and settle with other bands.⁵² For the DIA, this newly-freed land brought them one step closer to the completion of their assimilation program. It was feared that these dispersed individuals would regroup with Big Bear upon his return.⁵³ Deputy Superintendent General Vankoughnet advanced the idea to John A Macdonald that Big Bear should be held until the group of over five hundred fully dispersed.⁵⁴ Big Bear petitioned the government to give his band clemency because he believed that they would die if they did not receive assistance before the winter.⁵⁵ For the time being, Big Bear would remain in the Stony Mountain Penitentiary in Manitoba.⁵⁶ Although not asked to report on the health of Big Bear, the Surgeon General of the Manitoba Penitentiary advocated for the release of his patient whose health was so acutely aggravated by imprisonment that it could lead to death from confinement.⁵⁷ On 4 February 1887, Big Bear was released on the order of the Governor General.⁵⁸ Shortly after his release, Big Bear died.⁵⁹

As a result of the North-West Rebellion, the federal government's assimilation program was strengthened by new devices in the national imagination: the victory of the Canadian state over rebels in battle, a prominent large-scale demonstration of the state's legal system, and the menacing deterrents of the imprisonment or hanging of First Nations peoples. Despite this gory nationalistic narrative, some of the DIA officials and First Nations leaders who actually experienced or witnessed the suffering on the Plains first-hand appeared to move closer to concession, if not compromise, after the Rebellion. Nonetheless, Indian Affairs was even more vigilant in confining First Nations peoples to reserves and they enlisted the police in their efforts. More Indian Agents were sent to the North-West, the NWMP grew, and pseudo-legal measures such as the Pass System criminalized Indian identity outside of reserve borders.⁶⁰

⁵² Assistant Commissioner Hayter Reed to the Superintendent General of Indian Affairs, 29 January 1887, (NWT), "Prince Albert – Petition from Cree Chiefs," Op. Cit.

⁵³ Reed to Superintendent General of Indian Affairs, 29 January 1887, "Prince Albert – Petition from Cree Chiefs," Op. Cit.

⁵⁴ Vankoughnet to Sir John Macdonald Superintendent General of Indian Affairs, 5 February 1887, (Ottawa), "Prince Albert – Petition from Cree Chiefs," Op. Cit.

⁵⁵ Dickason, 2002, Op. Cit.:290.

⁵⁶ To Deputy Minister of Justice GW Burbridge, 11 February 1887, (Ottawa), "Prince Albert – Petition from Cree Chiefs requesting the release of 'Big Bear' from prison," National Archives of Canada, RG10: Department of Indian Affairs, Volume: 3774, File: 36846, Access Code: 90.

⁵⁷ Department of Justice to Deputy Superintendent General of Indian Affairs Vankoughnet, 21 February 1887, (Ottawa), "Prince Albert – Petition from Cree Chiefs," Op. Cit.

⁵⁸ Ibid.

⁵⁹ Dickason, 2002, Op. Cit.:290-291.

⁶⁰ Ibid:293.

6.1.2 North-West Borders

Depicting “Indians” as “uncivilized” threats to the settlement of the lawful Canadian dominion, 1887 newspapers reports continued to warn of aggression in the west. Calling for government vigilance, the *Medicine Hat Times* decried the “tricks” of the “Untutored Wards of the Nation.”⁶¹ The fount of this distress was horse theft and frightening incidents such as that experienced by the son of Mr. Gobbett who was allegedly shot at when “Indians called for” his father’s horses and were disappointed to find that they were not in the stable.⁶² The “people in Medicine Hat,” presumably settlers, were angry about the “depredations committed” by the government’s “pet children.”⁶³ *The Times* predicted that the citizens of the western territories would have to guard themselves against “lawless redskins” by the pedantically civilized method of forming a law and order committee.⁶⁴ Terse newspaper reports were the public expression of more detailed collaboration between the DIA and police to advance assimilative law and order in Canada.

The DIA kept track of such reports, investigated incidents, and directed the policing of their wards. In April 1887, the *Winnipeg Evening Journal* reported that the Blood Indians had killed cattle, stolen horses, and fired upon a detachment of police.⁶⁵ Staff Sergeant Spicer’s police report, a copy of which was forwarded to the DIA, confirmed that the NWMP were fired upon by what was described as a “large party of Indians” believed to be Bloods.⁶⁶ The NWMP notified Indian Agents and set out with a plan to arrest any Blood Indians found making their way to the

⁶¹ Clipping from *The Medicine Hat Times* to Indian Commissioner E Dewdney, 2 May 1887, (Regina), “Northwest Territories – Unrest Resulting in Depredations Among the Blood, Assiniboine and Gros-Ventres Indians,” 1887, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 3778, File: 39063, Access Code: 90.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ To Indian Commissioner E Dewdney, 5 May 1887, (Regina), “Northwest Territories – Unrest Resulting in Depredations,” *Op. Cit.*; “The Bloods Grow Bold. They Fire on a Detachment of Mounted Police – A Party Pursuing Them. [Special to the Journal.] *Winnipeg*, April 28,” “Northwest Territories – Unrest Resulting in Depredations,” *Op. Cit.*

⁶⁶ PR Neale to the Commander NWMPolice Regina, 1 May 1887, (Macleod, Alberta), “Northwest Territories – Unrest Resulting in Depredations,” *Op. Cit.*; Staff Sergeant Spicer to the Officer Commanding NWMPolice Maple Creek, 30 April 1887, (Medicine Hat), “Northwest Territories – Unrest Resulting in Depredations,” *Op. Cit.*

reserve from the east.⁶⁷ It is likely that Superintendent Neale of the Macleod Division used DIA information to infer that the offending parties had come from, and returned to, the USA. The Bloods transcended the border and only twelve persons were known to have been absent from the Canadian reserve that week.⁶⁸

Importantly for the public image and purpose of the DIA, when the Lieutenant Governor visited the Blood and Piegan Reserves, “Chiefs of both bands stated that it was their most earnest wish that their tribes should continue the friendly relations now existing between them and the whites.”⁶⁹ The efforts of Chiefs to lead their people and negotiate circumstances of economic marginalization were lost in Reed’s ascription to the tunnel vision of assimilation. Reed explained to the Superintendent of Indian Affairs that the Chiefs “had no complaints to make on either Reserve save the old one of a scarcity of rations; and the Agents on both Reserves state that there is more farming going on this year, than ever before.”⁷⁰ Reed’s celebration of the agricultural arm of Indian Affairs’ assimilative program was no match for assimilation’s larger purposes when the new nation’s borders were disrespected in favor of much older indigenous territories and even used for what Canadian authorities saw as illegal gain.

In early May 1887, The Dog and Big Rib rode into the Blood camp singing a war song and driving horses that were identified as being stolen from Medicine Hat.⁷¹ Superintendent Neale sent Inspector Saunders to arrest these men because he had also heard that they were responsible for firing on Sergeant Spicer and his party.⁷² Nonetheless, the police captured only one horse from Medicine Hat when, on the afternoon of the arrest, One Spot returned the stolen

⁶⁷ PR Neale to the Commander NWMPolice Regina, 1 May 1887, (Macleod, Alberta), “Northwest Territories – Unrest Resulting in Depredations,” Op. Cit.; Staff Sergeant Spicer to the Officer Commanding NWMPolice Maple Creek, 30 April 1887, (Medicine Hat), “Northwest Territories – Unrest Resulting in Depredations,” Op. Cit.

⁶⁸ Ibid.

⁶⁹ Assistant Commissioner Hayter Reed to the Superintendent of Indian Affairs, 13 May 1887, (Regina, NWT), “Northwest Territories – Unrest Resulting in Depredations,” Op. Cit.

⁷⁰ Ibid; PR Neale to the Commander NWMPolice Regina, 1 May 1887, “Northwest Territories – Unrest Resulting in Depredations,” Op. Cit.

⁷¹ Inconsistencies in the exact dates in May 1887 may be due to delays in sending correspondence through the postal and bureaucratic systems. In his June record of the event, Reed stated that The Dog and Big Rib rode into the Blood Camp on 2 May 1887, were arrested on 13 May, and were sentenced on 17 May. On 18 May 1887, Deputy Superintendent General Vankoughnet reported to Sir John A MacDonalld that alleged ringleaders “The Dog” and “Big Rib” were arrested and taken to MacLeod on the charge. Assistant Commissioner Hayter Reed to The Superintendent General of Indian Affairs, 2 June 1887, (Regina, NWT), “Northwest Territories – Unrest Resulting in Depredations,” Op. Cit.; Deputy Superintendent General of Indian Affairs L Vankoughnet to Sir John Macdonald, 18 May 1887, (Ottawa); R Neale to F White, 18 May 1887, (Macleod, NWT), “Northwest Territories – Unrest Resulting in Depredations,” Op. Cit.

⁷² Reed to Superintendent General of Indian Affairs, 2 June 1887, “Northwest Territories – Unrest Resulting in Depredations,” Op. Cit.

mare that one of the men had ridden into the camp.⁷³ The Dog and Big Rib were sentenced by Justice McLeod to five years' imprisonment in the penitentiary.

On an eventful day, 20 May 1887, while The Dog and Big Rib were being conveyed to prison, Assistant Commissioner Reed advocated for the moral state of the accused by arguing that the alleged shooting could not have been intended to cause "real harm, but was another instance of what has not infrequently occurred before, viz, Indians firing over, or in the direction of the Police, with a view to keeping them at a sufficient distance; to prevent their discovering something which our Indians desired to conceal." Reed thought it implausible that a party of twenty Aboriginal men firing on mounted police from the range of thirty to forty yards would not hit a man or a horse, if that had been their intention. Putting aside such discrepancies in the police reports, Reed asserted that the incident was actually an indication that nothing of an "alarming nature" was occurring "as regards the feelings of the Indians, and in fact, it may be fairly inferred that, were they meditating any evil designs, they would carefully abstain from thus giving cause for suspicion, before their plans were ripe." Reed put the alleged actions into a wider context within the Canadian west where, that a degree of "lawlessness may be attributed to the Bloods and other Indians, is unquestionable, but when their numbers are considered – to say nothing of their nature – it is thought that in this respect, their conduct compares very favorably with that of white men." While being transported to prison on 20 May, the men escaped from custody at Dunmore and were thought to be heading for the South Piegans in the USA. The Agent there was alerted and promised to endeavor to return them to the Canada-US border. The policing of cross-border horse theft would continue with little rest because it was so thoroughly intertwined with greater issues of nationhood and territory.

6.1.3 Diplomacy in the Canadian North-West

When it was advantageous to do so, the DIA attempted to intercept and direct police actions. Sometimes, negotiation was the most efficacious method of achieving justice and, contrary to political portrayals of cossetted wards, powerful First Nations in the Canadian North-West were not averse to respectful diplomacy. Not long after The Dog and Big Rib's flight across the Canadian border, DIA Commissioner Dewdney met with the Commissioner of Police

⁷³ The discussion on this page is based on the following source: Reed to Superintendent General of Indian Affairs, 2 June 1887, "Northwest Territories – Unrest Resulting in Depredations," Op. Cit.

regarding the alleged theft of forty-five Montana horses by the Bloods.⁷⁴ When Dewdney learned the police were planning to retrieve the horses, he made haste to the reserve.

Dewdney was concerned that police action could inflame a larger conflict in which one hundred horses were stolen from Red Crow on the Blood Reserve by members of the Gros Ventre and Crow nations traversing the US border. Police intervention to return the Montana horses could be seen as impeding attempts to ameliorate the proportionately greater loss incurred by the Bloods. Red Crow and one hundred fifty Blood Reserve inhabitants approached Dewdney to discuss the issue. They explained that they had delayed their plans to make a retaliatory journey south to explain to Dewdney that the account of horse theft in Montana was incorrect. Red Crow clarified that they pursued horses that were first stolen from him and had been able to reduce the initial loss to thirty-one horses and various colts; however, when Red Crow called at a police outpost on his return path, they assumed that Red Crow was travelling with horses that he had stolen from Montana.

In view of the circumstance that three horses had also been stolen from the NWMP and taken to the USA, Dewdney suggested that Red Crow accompany NWMP Inspector Saunders in a recovery trip to the Gros Ventres. The Bloods promised that they would stop cross-border horse procurement if the police helped Red Crow. The Bloods contended that their experience was that the police made them release the horses that they stole yet neglected to help the Bloods recover horses that were stolen from them. Red Crow proposed that he attempt a Peace Treaty with the Gros Ventres and committed that, if the Bloods' horses had been taken to the distant reservation of the Crows instead of the Gros Ventres, he would not travel to the Crow reservation. Red Crow and the Gros Ventres agreed upon peace.⁷⁵

It is a mark of the DIA's power that Dewdney was informed of impending police action in what would otherwise be a criminal matter beyond the realm of most government departments. In the interests of preventing immediate conflict and establishing better long-term relations between the Bloods and representatives of Canadian law and order, Dewdney was in a position to accept the self-determining power of Red Crow. In turn, Red Crow found a solution that went far

⁷⁴ Unless otherwise indicated, the discussion on this page is based on the following source: Commissioner Dewdney to the Superintendent General of Indian Affairs, 3 June 1887, (Regina), "Northwest Territories – Unrest Resulting in Depredations," Op. Cit.

⁷⁵ To Comptroller of the NWMPolice White, 16 June 1887, (Ottawa), "Northwest Territories – Unrest Resulting in Depredations," Op. Cit.; Pocklington to the Indian Commissioner, 13 June 1887, (Fort Assiniboine), "Northwest Territories – Unrest Resulting in Depredations," Op. Cit.

beyond the restoration of horses to peace between indigenous nations and, if not peace, a moment of détente between First Nations and the aspiring Canadian state.

6.2 Criminal and Moral Codes: A Geography of “Indian” Criminality

“Indian” criminality is an entirely colonial construct based on limited understandings of the diversity of indigenous identities and legal epistemologies. Mark Walters distinguishes between two meanings of “Aboriginal Law”: laws made about Aboriginal peoples by the state and laws made by Aboriginal peoples for themselves.⁷⁶ If law depends on a “narrative to which its subjects cannot relate, one that refuses to respect their common humanity, then it is not ‘law’ in any meaningful sense; subjugated peoples cannot participate in or identify with the national moral narrative that founds legal meaning.”⁷⁷ Correspondingly, as Martin Luther King Junior sat in a Birmingham jail cell, he responded to criticism of his willingness to break certain laws during his non-violent campaign, writing,

A law is unjust, for example, if the majority group compels a minority group to obey the statute but does not make it binding on itself. By the same token, a law in all probability is unjust if it is inflicted on a minority that, as a result of being denied the right to vote, had no part in enacting or devising the law... Sometimes a law is just on its face and unjust in its application.⁷⁸

Indigenous persons experienced the structures and application of colonial and Canadian law in particular ways.

6.2.1 Geographies of “Civilizing” Power in the Canadian West

Underscoring that land is “at the bottom of all the troubles with the Indians,” Senator Macdonald sketched a geography of state law enforcement over indigenous peoples west of Ontario.⁷⁹ In the North-West, the Dominion Government believed that they had the “lands under their own control, and the police regulations as well” and could therefore “settle disputes more easily than... in other parts of the country.”⁸⁰ Indigenous title to land had been recognized and the

⁷⁶ Mark D Walters, “The Morality of Aboriginal Law,” *Queen’s Law Journal*, 31, (2006):470-520.

⁷⁷ *Ibid*:478.

⁷⁸ Martin Luther King Jr., “Letter from Birmingham Jail,” *Why We Can’t Wait*, Ed. Martin Luther King Jr., (New York: Harper & Row, 1963).

⁷⁹ *Debates of the Senate of the Dominion of Canada: First Session – Sixth Parliament*, (Ottawa: AS Woodburn, 1887):417-419.

⁸⁰ *Ibid*.

Dominion Government saw “the necessity” to extinguish it through treaty.⁸¹ In contrast, in British Columbia, the provincial government did not recognize indigenous title “at all, not even the title of possession.”⁸² Within the British Columbian context, Macdonald felt that Indian Affairs was “hampered” by a duality of authority whereby the province controlled land and police regulations yet, through the *Indian Act*, the Dominion government oversaw Indian Affairs at the federal scale.⁸³

Before British Columbia even became a province of Canada, William Duncan held the power of a Civil Magistrate under British colonial law, as well as the powers of an “Indian agent, teacher, missionary, trader, and justice of the peace” in Metlakahtla.⁸⁴ Duncan organized a “well disciplined and effective” police force of indigenous persons.⁸⁵ The police force worked in concert with the Metlakahtla mission lock-up.⁸⁶ By 1886, Metlakahtla, British Columbia, had become a tax-paying “civilized Indian village” of approximately one thousand inhabitants with an estimated export value of between forty and sixty thousand dollars of salmon.⁸⁷

While the “Indians had grievances respecting their land and reserves” they afforded correct depositions to the appropriate authorities.⁸⁸ Metlakahtla refused to allow a survey before they received a response regarding their petitions.⁸⁹ Commissioner Powell depicted a dire situation in which the Metlakahtla Council had seized the church and school house, removed the store to a different location, “taken possession of the gaol or provincial lock-up – holding the keys” and was not hesitating to impose fines and imprisonment on those who did not agree with their plan to boycott state legal and economic systems.⁹⁰

Senator Macdonald, however, later defended Duncan by clarifying that the store already belonged to the “Indians” and they had always had keys to the lock-up since Duncan’s force of

⁸¹ *Debates of the Senate*, 1887, Op. Cit.:417-419.

⁸² In 1969, Frank Calder, president of the Nisga’a Tribal Council, rejected a British Columbia ruling that Nisga’a title to unceded land had been extinguished simply by the enactment of British colonial law. The Calder Case resulted in the landmark 1973 Supreme Court of Canada ruling affirming Aboriginal title under the *Proclamation of 1763*. Dickason, 2002, Op. Cit.:332; *Debates of the Senate*, 1887, Op. Cit.:417-419.

⁸³ *Debates of the Senate*, 1887, Op. Cit.:417-419.

⁸⁴ “Mr Duncan’s Mission at Metlacatlah,” *Annual Report of the Commissioner of Indian Affairs*, United States Office of Indian Affairs, (Washington: Government Printing Office, 1870):558-559.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Debates of the Senate*, 1887, Op. Cit.:417-419.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1886*, (Ottawa: Maclean, Roger & Co., 1887):98.

fifty Indian Constables had “maintained law and order in that northern country for twenty-five years.”⁹¹ Importantly, imprisonments had not taken place “under Indian rules by the Indians.”⁹² To Indian Commissioner Powell, it seemed that Duncan, once respected, had now changed and was misleading the village of Metlakahtla to believe that they were acting according to a direct legal relationship with the British Crown.⁹³ Powell believed that they would not acknowledge Canadian law or Canadian officials.⁹⁴

A gunship was ordered to address the situation.⁹⁵ Duncan attempted to intervene with the provincial Premier before the vessel departed by assuring him that, if the Indian Commissioner would join him in speaking with the village, the situation could be quietly resolved and a warship would not be required; however, the Premier ordered that it proceed.⁹⁶ In consequence, the *HMS Cormorant* journeyed up the coast with a stipendiary magistrate, the Victoria Chief of Police, and a “posse of constables.”⁹⁷ Of the eight “ringleaders” who were arrested without resistance, some were tried, convicted, and sentenced to imprisonment while others were committed for trial in a higher court.⁹⁸ The survey was completed before the *Cormorant* left Metlakahtla.⁹⁹

6.3 Legal Structures in Upper Canada

As colonial expansion placed indigenous geographies in Eurocentric maps, it claimed that the people and places within were brought into the legal realm of the empire. Nonetheless, as it was applied in the Canadian colonies, British common law was tailored to suit settler interests and it is “simply unreasonable to assume that the common law rules could be blindly extended and applied to the determination of the territorial rights of indigenous nations without any regard for the obvious differences” between indigenous and settler experiences.¹⁰⁰

⁹¹ *Debates of the Senate*, 1887, Op. Cit.:423.

⁹² *Ibid.*

⁹³ *Annual Report of DIA*, 1886, Op. Cit.:98; *Debates of the Senate*, 1887, Op. Cit.:420-422.

⁹⁴ *Debates of the Senate*, 1887, Op. Cit.:420-422.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ *Annual Report of DIA*, 1886, Op. Cit.:xi.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ Mark D Walters, “Aboriginal Rights, *Magna Carta* and Exclusive Rights to Fisheries in the Waters of Upper Canada,” *Queen’s Law Journal*, 23, (1998):330.

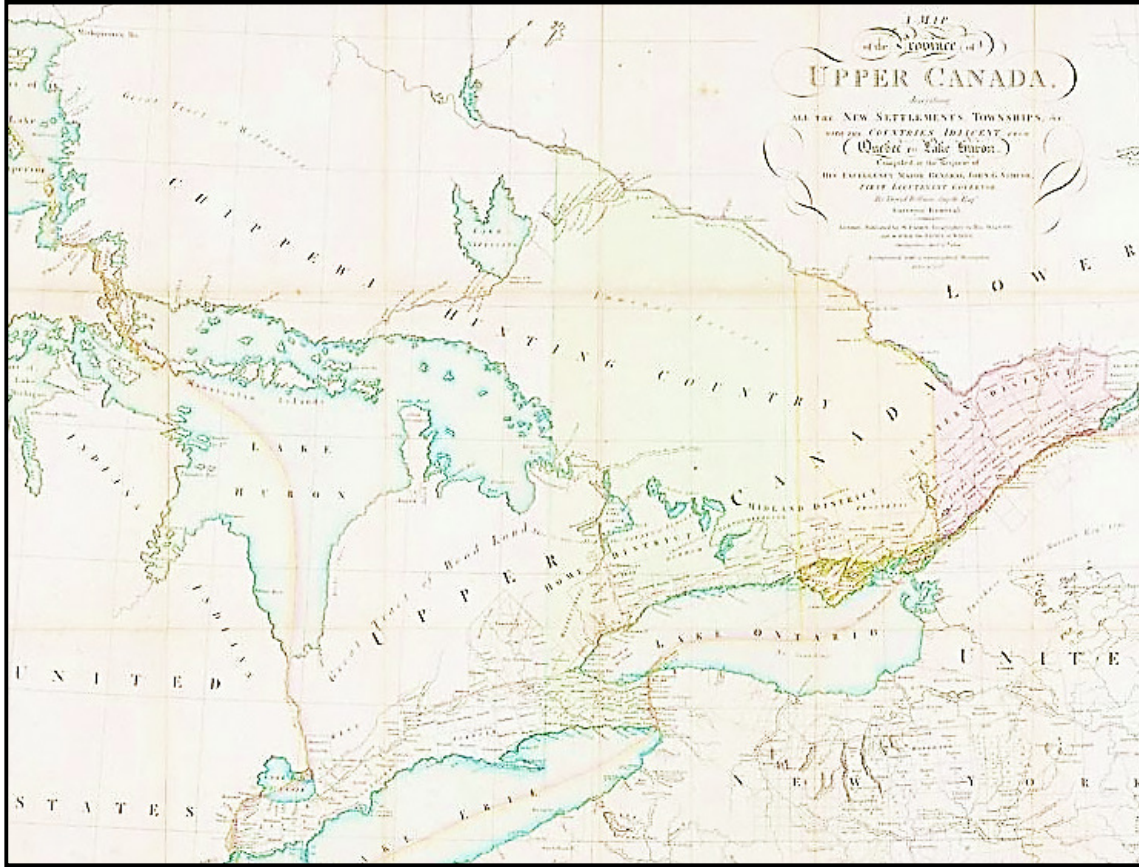


Figure 19: Indian Country Overlaid By Upper Canada, 1800¹⁰¹

In Upper Canada, Courts of Quarter Sessions were apportioned into four main districts, Eastern, Midland, Home, and Western, which remained functional divisions until the 1830s and 1840s.¹⁰² In the application of justice, accommodations had to be made because much of Upper Canada was still a western frontier.¹⁰³ In locations where lands had not been ceded, “manifestations of British authority were minimal.”¹⁰⁴ Furthermore, Walters makes the important point that Upper Canada did not create a statute “expressly to include reserves” in colonial court systems.¹⁰⁵

¹⁰¹ Adapted from “A Map of the Province of Upper Canada describing all the new settlements, townships, &c with the countries adjacent from Quebec to Lake Huron [cartographic material],” 12 April 1800, National Archives of Canada, Alexander E MacDonal Canadiana Collection #444, Microfiche NMC98186, R11981-104-7-E, Box 2000931253 Item no. assigned by LAC 444, Other accession no. 80101/245 CA, Local Class No. H2/400/1800 (copy1), Access Code: 90, Copyright: Expired.

¹⁰² Walters, 1998, Op. Cit.:284-285.

¹⁰³ Ibid:285.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid:288.

Since criminal codes are a measure of what societies consider unacceptable, crime and immorality are closely associated. As legal guardians, the Department of Indian Affairs deployed forces of law to enforce assimilationist values. Indian Agents were empowered as Justices of the Peace and given the task of governing the “behaviour of their Aboriginal wards” using Title IV, “Offences Against Religion, Morals and Public Convenience” of the 1892 *Criminal Code of Canada*.¹⁰⁶ Although the 1876 *Indian Act* inserted “Indians” into an apparently discrete category of wardship, when crime, punishment, and assimilative goals were under consideration, a wider view was taken. Elements of many government and ecclesiastical laws could be called upon to achieve state goals. Under the heading “Inciting Indians to Riotous Acts,” chapter 43, section 111, of the 1892 *Criminal Code of Canada* reached beyond strict definitions of status outlined in the *Indian Act*. Instead, this section of the *Criminal Code* appears to consider the unrest in the north-western Great Lakes frontier as it set into law that

Every one is guilty of an indictable offence and liable to two years’ imprisonment who induces, incites or stirs up any three or more Indians, non- treaty Indians, or half-breeds, apparently acting in concert-

(a) To make any request or demand of any agent or servant of the Government in a riotous, routous, disorderly or threatening manner, or in a manner calculated to cause a breach of the peace; or

(b) To do any act calculated to cause a breach of the peace.¹⁰⁷

Whether enfranchised or not, individuals of indigenous and Métis ancestry were legally distinguished as being at proportionately greater risk of “being led astray” and disturbing the good order of Canada.

The 1892 *Criminal Code* reveals a great preoccupation with the potential criminal morality of “Indian” women. Convictions for offences considered as the “Prostitution of Indian Women” could result in fines between ten and one hundred dollars or six months’ imprisonment.¹⁰⁸ In this case, “Unenfranchised Indian” women are specified. The “keeper of any house, tent or wigwam,” as well as any person who “appears, acts or behaves as master or mistress, or as the person who has the care or management” who allows an “unenfranchised Indian woman to be or remain in such house, tent or wig-wam, knowing or having probable cause for believing that such Indian woman is in or remains in such house, tent or wigwam with the intention of prostituting herself therein” is criminalized alongside the woman.¹⁰⁹ The language of

¹⁰⁶ *Criminal Code of Canada*, Title IV, “Offences Against Religion, Morals and Public Convenience,” 1892, Amended 1893.

¹⁰⁷ *Ibid*:c. 43, s. 111.

¹⁰⁸ *Ibid*.

¹⁰⁹ *Ibid*:c. 43, ss. 106 and 107, c. 33, s. 11.

this part of the *Criminal Code* echoes the *Indian Act* and inculcates a geography of criminality both on and off reserves. Despite their status as legal minors, “Indian” women could be convicted, and sentenced, for being “found in” a place associated with criminal immorality.

6.3.1 Assimilation, Law, and Moral Convenience

Canadian governments could not publically countenance self-determined indigenous legal systems because First Nations systems of order undermined state justifications of rational control applied over wild Canadian landscapes and “Indians.” While displaying a degree of unease, the Department of Indian Affairs occasionally demonstrated a partial recognition of First Nations laws and customs. Not to belie larger societal beliefs about lawless “Indians,” this was often an acquiescence of convenience related to only those elements of indigenous laws that appeared to coincide with idealized membership in the Canadian Dominion. Nevertheless, these bureaucratic inconsistencies tangled the colonial system employed to encourage the supposedly inevitable march to assimilation because they tacitly acknowledged indigenous customary laws.

Superintendent General of Indian Affairs Clifford Sifton acknowledged this difficulty in his department’s 1904 *Annual Report*. In order to promote the marital ideal, marriages made according to “tribal customs” were recognized by Dominion law, nevertheless, the dissolution of marriage by indigenous custom was prohibited even though divorce was a legal recourse for marriages made under Canadian law.¹¹⁰ While reflecting his department’s preoccupation with morality, Sifton nonetheless recognized the double-standard that cohabiting men and women previously married to other persons should be “condemned as illegal and immoral” when their communities saw the unions as the “quite correct” outcome of divorce and remarriage.¹¹¹ Although Sifton observed a “considerable looseness exists in the relations between the sexes,” he argued that “on the whole the morality of the Indians, up to their light, is as good as that of their

¹¹⁰ In response to a question regarding the validity of a second “Indian marriage” after a previous Indian marriage was dissolved according to indigenous practice, it was also the Department of Justice’s opinion that “marriages if valid cannot be dissolved according to the Indian customs, but only in such manner as may other valid marriages.” Therefore, in such cases, a subsequent marriage would not be recognized by the Government and the indigenous wards of the state would be considered to be engaged in immoral relationships. Indian “custom” could be transformed into Canadian legality; however, once legally sanctioned by the state, indigenous persons would not be permitted to maintain, or return to, indigenous legal practices. Deputy Minister of Justice EL Newcombe to the Deputy Superintendent General of Indian Affairs, 7 November 1904, (Ottawa), “Dept. of Justice Opinions – Vol. 3,” 1900-1910, RG10: Department of Indian Affairs, Series B-8, Volume: 11195, File: 1, Access Code: 32; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1904*, (Ottawa: SE Dawson, 1905):xxix.

¹¹¹ *Ibid*:xxix.

neighbours.”¹¹² Sifton believed that the lack of adherence to systems of Canadian legal marriage in preference for indigenous systems occurred because indigenous peoples could not “appreciate such distinctions.”¹¹³ Rational preference for enduring indigenous ways of life was unthinkable to Sifton.

Although it was thought that there was “even among the most advanced a regrettable amount of laxity” in “tribal” marriage customs, Deputy Superintendent General Frank Pedley assessed that, by 1910, Indian Affairs had succeeded in making “overt acts of conjugal infidelity,” once accepted without criticism, the subject of negative peer attention.¹¹⁴ Responding to news reports that “Indian” girls were being sold into slavery, Pedley identified these “sales” as part of an indigenous marriage process, remarked that such transactions were uncommon, and insisted that the “principle of the financial aspect does not seem to widely differ from that which not uncommonly governs the arrangement of marriages in advanced civilization, and the Indian girls apparently acquiesce as cheerfully as do their white sisters under analogous circumstances.”¹¹⁵ The main public objection dwelt upon the potential that they could, as contractual obligations, be terminated upon fulfillment or mutual consent, so that, in terms of Canadian law, subsequent contracts might mean that the crime of bigamy had been committed.¹¹⁶ Pedley thought that enacting a law against these contracts could make matters worse by alienating many women who considered themselves wives, categorizing children as illegitimate, and complicating property descent.¹¹⁷

As Reverend John Semmens of Lake of the Woods witnessed in 1915, it was “pretty generally supposed that the Indian is not richly gifted with the grace of moral purity”; however, “admitting that some reason may be found for this conclusion... imagination has helped to make matters worse in report than they are in fact.”¹¹⁸ Rather than indulging in a “general condemnation of native frailty” Semmens desired that it be recognized that he found “hundreds of them who lead clean lives, keep their marriage vows in all good conscience, and conduct

¹¹² *Annual Report of the DIA*, 1904, Op. Cit.:xxix.

¹¹³ *Ibid*:xxix.

¹¹⁴ Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for Department of Indian Affairs for the Year Ended March 31, 1910*, (Ottawa: CH Parmelee, 1911):xxix.

¹¹⁵ *Ibid*:xxix-xxx.

¹¹⁶ *Ibid*:xxx.

¹¹⁷ *Ibid*.

¹¹⁸ Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1915*, Part II, (Ottawa: J de L Taché, 1916):19-20.

themselves commendably.”¹¹⁹ Obliquely acknowledging Aboriginal systems of law and resistance to imposing Canadian law, Pedley acknowledged

the fact that as a rule these Indians among whom tribal marriage customs prevail attach much greater sanctity to them than to any other religious or civil ceremony which might be imposed upon them, and any attempt to exert force in this direction might readily result in introducing the practice of cohabitation without any pretense at contract or ceremony at all.¹²⁰

In any case, reasoned Pedley, the inevitable spread of settlement would make the entire issue irrelevant.¹²¹

6.3.2 Morality and Legal Rights: An Appeal from Sucker Creek, Manitoulin Island

In 1896, a young woman from Manitoulin Island’s Sucker Creek band, now known as Aundeck Omni Kaning, sent a written plea to the Department of Indian Affairs asking for the annulment of her marriage to a man from the Sheguiandah reserve.¹²² Nine years previously, as an orphan of only thirteen years-old, the young woman was compelled by her sister to marry the man. The young woman “never loved him” and her groom had not even asked her to be his wife. In her own words, the young woman

Never had a desire to be married at that time. Though the Clergyman who performed the ceremony plainly saw that I was averse to be married. When I was told to step forward in the Church I never made a motion. But by both the Pastor & Relatives I was persuaded to go up to the front of the Church & the knot was “tied.”

The young woman was aware of the legal requirements of Christian marriage and declared, “I am not afraid to take an oath that my marriage never went any further than that... there was never a proper relation (or connection) took place between the man & myself.” Despite advice, and thinking “the matter over many a time,” she found it “impossible” to even attempt to live with her husband.

The Department of Indian Affairs forwarded the issue to the Deputy Minister of Justice for an opinion. It was determined that the High Court of Justice had jurisdiction over the matter and that, in a case such as this, the marriage could be declared “null and void” according to legislation or by a private act of Parliament.

¹¹⁹ *Annual Report of the DIA*, 1915, Op. Cit.:19-20.

¹²⁰ *Annual Report of the DIA*, 1910, Op. Cit.:xxx.

¹²¹ *Ibid.*

¹²² In this section, names have been withheld and partial reference information is given. “Manitowaning Agency – Request of...of the Sucker Creek Band to Have Her Marriage to... of Sheguianda Annulled.” 1896-1897, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2848, File: 175,262, Access Code: 90.

The DIA requested statements from the clergyman and from other persons who might support the claims of the young woman's letter. A statement from a Chief explained that the woman now lived with another man and had a child with him. A woman from the band supported the request for annulment. She was a witness to the marriage ceremony in which the "young Bride sat on the farthest back seat & when told to go up to the front would not obey, but her sister persuaded her at last to go up." Although it had been planned that the newlywed couple would begin their life together in this woman's home, fear led the bride to share sleeping quarters with the woman's daughter and to play with her during the day. The two girls were approximately the same age. The daughter confirmed that these were the sleeping arrangements. Another band member stated that the bride "told my wife that she never had closer relations with her husband than the form of marriage ceremony" and that the groom told the same story. Moreover, the groom was willing to have the marriage annulled. Several Sucker Creek band members confirmed that the woman did not live with her husband, nor was she financially supported by him.

The clergyman who conducted the marriage ceremony professed it "contrary to the canons" of the Church of England to "countenance divorce under any circumstances." In fact, canon law supports adultery as a validation for divorce. The clergyman maintained that the girl was actually sixteen when she was married and that it was "untrue to say that she was coerced or that she did not understand the nature of the obligation because [he] took the trouble to explain it to her at the time of her marriage." The minister implied that the girl's reason for not living with her husband, that she did not like him, was not sufficient and had no bearing on her claim that she did not wish to be married to him. He also noted her relationship and child with another man and portrayed the annulment as a scheme to "hide" adultery. The clergyman's only sympathy was for the husband who was "hampered with such a slut" yet the husband was also deemed beyond help from church-sanctioned divorce because he was also living with another person.

Aside from the abundance of evidence, in both Canadian and canonical law, to support annulment or divorce, in the end, it was the assimilationist values of the Indian Department that drove their decision on the matter. The Deputy Superintendent General of Indian Affairs cited the woman's "improper life" as the reason that the request for a divorce or annulment would not be supported. For those classed as "Indians," law enforcement could be more a matter of assimilationist departmental morality than legal right.

6.4 Peroratio: Criminal Assimilation

As an aggregated and unenfranchised class within the machinery of the colonizing state, all “Indians” could be unduly subjected to the manipulations of both legislative and criminal law. Within the social, legal, and geographical frameworks of the colonizing state, the only way that indigenous peoples could enter into a full condition of lawful adult existence was by divesting themselves of their identities. As this chapter has shown through a legal historical geographical retelling of nationalistic tales on Canada’s North-West frontier, since indigenous principles of law were devalued and criminalized, peoples who maintained their indigenous identities within territories claimed by the colonizing state were considered inherently less than lawful. Similar to prisoners, state legislative and criminal law required that indigenous identities be “reformed” or, rather, discarded in order that they be assimilated into the state. Canada’s North-West frontier has loomed longer in the national imagination than more recent celebratory reclamations of its history. For colonial officials with an eye to asserting state law over “Indian” peoples moving over vast swaths of land that Canada desired to have for its own purposes, the North-West was indeed a wild frontier that had to be policed and conquered. From the centralized administration of colonial governance, the criminalization of indigenous peoples in the North-West influenced “Indian” policy and legislation across Canada.

Chapter 7

Intoxicating Geographies: Liquor, Identity, and Place

The association between indigenous persons and alcohol abuse is a persistent negative stereotype and an enduring governmental preoccupation. While the precise boundaries of this prejudice are controversial, it is evident that it emerged from colonial ideals and expediencies. The stereotype of the “Drunken Indian” is more often seen as a problem to be addressed rather than an idea to be critically assessed. In this chapter, the “Drunken Indian” will be reconsidered.

7.1 Stereotypes of the “Drunken Indian”

Attempts to bring about equality for Aboriginal peoples within the Canadian state do not escape the mire of external and internal racialization. While cultural and racial stereotypes can be dissected as social constructions, they sharply affect the everyday lives of those who capitalize on privilege as well as those who bear phenotypical witness to systematized prejudice. Alcoholism is seen as a legacy of despair visited upon Aboriginal persons by horrific colonial pasts and seemingly impenetrable futures on economically-depressed reserves or in the supposedly confounding urban environments of Canada where individuals are cast as out-of-place and under-qualified by virtue of select visible indicators of indigenous ancestry.¹

Even as the National Aboriginal Health Organization was given a shut-down date of 30 June 2012, Canadian news media pronounced, the “abysmal health of native people is Canada’s greatest shame.”² Warnings that alcohol and substance abuse “are rampant” share column space with the information that approximately “17,000 aboriginals are currently behind bars, making up 20 per cent of this country’s prison population” yet media sources claim that, to Canadians, “[n]one of this is news.”³ While the population count “skyrockets,” reputable accounts are buttressed by government statistics as they grieve a range of inequities from the “Third World conditions on some reserves to the plights of many urban aboriginals,” who now comprise the

¹ Bill Johnston, “First Nation Youth,” *The Globe and Mail*, Toronto, (16 March 2012):A14.

² André Picard, “Tories ‘want out of the aboriginal business,’” *The Globe and Mail*, Toronto, (10 April 2012):L5.

³ “The Aboriginal Stats,” *The Globe and Mail*, Toronto, (16 January 2008):A18.

majority of self-identified Aboriginal persons.⁴ It is this particular population geography that inspires a sense of urgency and unsettles complacent perpetrators of the colonial myth that all Aboriginal peoples in Canada are confined to remote reserves.⁵ Paternalistic mourning over purportedly atavistic indigenous peoples is lent new credence by inequalities observed through geographic proximity. Uncomfortable relationships between Aboriginal peoples and the Canadian state are thus made relevant to those whose main concern is that the threat of the “uncivilized” is reaching their conventional doorsteps.

From a Western medical perspective, even though, compared to the general population, a “small percentage of Indigenous people in Canada consume alcohol, the rate of disordered drinking is substantially higher” amongst indigenous persons.⁶ Nevertheless, examining the 2001 Aboriginal Peoples Survey and the 2000-2001 Canadian Community Health Survey Cycle 1.1, Kathi Wilson and Nicolette Cardwell find similar rates of regular alcohol consumption amongst Aboriginal and non-Aboriginal persons in urban settings.⁷ Indigenous persons in North America are characterized as having a low-frequency/high-quantity “typical drinking style”: although indigenous persons are less likely to consume alcohol, when alcohol is consumed, it is in relatively higher amounts with resultant accidents, violence, morbidity, and mortality.⁸

Alcohol use and alcohol abuse are conflated and racially attributed to persons of indigenous ancestry and identity. Annette Browne explains that when

health-care providers have frequent contact with patients who embody social problems (e.g., alcoholic patients), and when these patients are associated with a particular ethnocultural group, it can be challenging not to assume that social problems are culturally based. Because of the relatively narrow conceptualization of culture, the tendency in culturalist discourse is to overlook the broader structural, economic, and historical contexts that shape social and health problems.⁹

For indigenous peoples, the very ideas of “social,” “health,” or “problem” may be conceived quite differently than the norms accepted by Canadian, provincial, or territorial healthcare providers. From this ontological difference, philosophies of how to approach alcohol-related

⁴ “The Aboriginal Stats,” 2008, Op. Cit.:A18.

⁵ Ibid.

⁶ Malcolm King, Alexandra Smith, and Michael Gracey, “Indigenous Health Part 2: The Underlying Causes of the Health Gap,” *The Lancet*, 374(July), (2009):78; Robert S Young and Jennie R Joe, “Some Thoughts About the Epidemiology of Alcohol and Drug Use Among American Indian/Alaska Native Populations,” *Journal of Ethnicity in Substance Abuse*, 8, (2009):223-241.

⁷ Kathi Wilson and Nicolette Cardwell, “Urban Aboriginal Health: Examining Inequalities between Aboriginal and Non-Aboriginal Populations in Canada,” *The Canadian Geographer*, 1, (2012):105.

⁸ Darryl S Wood, “Alcohol Controls and Violence in Nunavut: A Comparison of Wet and Dry Communities,” *International Journal of Circumpolar Health*, 70(1), (2011):20.

⁹ Annette J Browne, “Discourses Influencing Nurses’ Perceptions of First Nations Patients,” *CJNR*, 41(1), (2009):179.

phenomena may become even more divergent from standardized healthcare protocols and vary between diverse indigenous peoples within Canada.¹⁰

Nonetheless, in a study designed to explore Aboriginal experiences of public health research in Garden River, Little Current, M'Chigeeng, Wikwemikong, and London, Ontario, Maar et. al. assess that while Western scientific paradigms are “criticized for their embodiment of colonial power imbalances, public health research remains critically relevant due to the significant health disparities experienced by Aboriginal people.”¹¹ “Non-communicable” diseases and injuries such as alcohol and substance abuse, cancer, cardiovascular disease, diabetes, family violence, fire injuries, motor vehicle accidents, death by suicide, and death by accidental drowning have eclipsed infectious diseases as the predominant causes of morbidity and mortality of Aboriginal persons.¹²

Amy Salmon found that, as of 2011, there was “no population-level data available showing the extent to which Aboriginal women in Canada drink during pregnancy, or exhibit patterns of alcohol use that are (or are not) distinct from those of other Canadian women.”¹³ Colonial legacies have been compounded by “ethnocentric and patriarchal constructs which position Aboriginal mothers as abusive, neglectful and otherwise dangerous to their children.”¹⁴ Since colonialism is implicated in both alcohol abuse and stereotypes of indigenous peoples, campaigns against Fetal Alcohol Spectrum Disorder (FASD) are tailored to Aboriginal contexts.¹⁵ Linking anti-FASD campaigns to decolonization is a “strategy for accessing much needed state resources,” however,

hegemonic understandings of what causes FASD and why it needs to be prevented remain intact: the targets for FASD prevention messages are pregnant women who drink (not the State policies that perpetuate colonial conditions and health disparities), and ‘FASD births’ (i.e. Aboriginal children whose mothers drank during their gestation) need to be prevented because they represent extraordinary costs to communities and State institutions.¹⁶

¹⁰ Christine Smillie-Adjarkwa, “Aboriginal Alcohol Addiction in Ontario Canada: A Look at the History and Current Healing Methods That Are Working in Breaking the Cycle of Abuse,” *Indigenous Policy Journal*, XX(3, Fall), (2009):1-9.

¹¹ MA Maar et. al., “Thinking Outside the Box: Aboriginal People’s Suggestions for Conducting Health Studies with Aboriginal Communities,” *Public Health*, 125, (2011):748.

¹² *Ibid*:747-53.

¹³ Amy Salmon, “Aboriginal mothering, FASD Prevention and the Contestations of Neoliberal Citizenship,” *Critical Public Health*, 21(2, June), (2011):166.

¹⁴ *Ibid*:169.

¹⁵ *Ibid*:171.

¹⁶ *Ibid*.

In consequence, indigenous women are seen to fail “tests of citizenship” by bearing children who are devalued as “‘burdens’ and ‘drains’” on social welfare systems.¹⁷ FASD is also associated with costs to the state in enforcing criminal law.¹⁸

Aboriginal communities in Canada have developed local approaches to intoxicants. The Wikwemikong Unceded Reserve adopted an Alcohol Management Policy in 1993.¹⁹ Self-determination of alcohol is a factor in the decolonization efforts of many Aboriginal communities who assert that alcohol use did not take place in First Nations, Métis, or Inuit “societies prior to European contact, and that the introduction of alcohol was intimately tied to conditions of colonisation.”²⁰ Some communities choose to become “dry” while others draft, institute, and enforce alcohol control policies that regulate commercial sales of alcohol as well as document and restrict individuals with histories of alcohol abuse.²¹

Colleen Davison, Catherine Ford, Paul Peters, and Penelope Hawe conducted the first large-scale compilation and examination of alcohol control policies in the Canadian north.²² Their study of seventy-eight communities in the NWT, Yukon, and Nunavut between 1970 and 2008 traced the movement toward local governance from the first provisions in provincial and territorial *Liquor Control Acts* to allow the adoption of local control of liquor through plebiscite.²³ While the first community restriction did not occur in the Yukon until 1991 and most communities continue to remain open in both the Yukon and the NWT, by 2006, only four communities in Nunavut did not have special restrictions on the importation of alcoholic beverages.²⁴ Locally-regulated communities tend to be more geographically isolated, smaller, and younger and have significantly higher populations of persons who self-identify First Nations, Métis, or Inuit origins.²⁵ Almost all communities with total prohibition do not have permanent road access.²⁶ Darryl Wood notes that “dry” communities in Nunavut record less violent crime than communities with alcohol importation; however, dry communities remain “relatively violent places” where the crimes of simple, serious, and sexual assault occur at more than double the

¹⁷ Salmon, 2011, Op. Cit.:173.

¹⁸ Ibid.

¹⁹ Louis Gliksman et. al., “Aboriginal Community Alcohol Harm Reduction Policy (ACAHRP) Project: A Vision for the Future,” *Substance Use & Misuse*, 42, (2007):1851-1866.

²⁰ Salmon, 2011, Op. Cit.:170.

²¹ Ibid: 170.

²² Colleen Davison, et. al., “Community-driven Alcohol Policy in Canada’s Northern Territories 1970-2008,” *Health Policy*, 102, (2011):34-40.

²³ Ibid:35.

²⁴ Ibid:36.

²⁵ Ibid:36, 38; Salmon, 2011, Op. Cit.:170.

²⁶ Davison, 2011, Op. Cit.:38.

national rate.²⁷ Despite the benefits of alcohol restriction and self-governance, simplistic nationalistic visions of harmonious life in the remote dry communities of the Canadian north are illusory.

7.2 Intoxicants in the *Indian Act* and the Historical “Drunken Indian”

In addition to Canadian prejudices, stereotypes of the “Drunken Indian” are prevalent in other countries founded from European colonial and missionary origins.²⁸ While most research on alcohol and indigenous persons in Canada is undertaken in a contemporary medical vein, this literature puts forward the argument that the history of alcohol abuse in the “north, and among indigenous peoples in general, is inextricably linked to colonialism, historic injustices and the paternalistic relationships that have been in place between the state and indigenous groups.”²⁹ There is a great deal more to learn about both contemporary and historical associations between alcohol, colonialism, and indigenous persons in Canada.

Stipendiary Magistrate Francis O’Brien of Chicoutimi reified the idea of the “Drunken Indian” as he traced the origins of the “most potent cause of demoralization and... of extinction of the divers Indian races on this part of the North American Continent” to the “cursed traffic in rum... encouraged by the French authorities.”³⁰ Monseigneur Laval “displayed the greatest energy possible against the poison-sellers” and made a successful journey to France in 1678 with

²⁷ Wood, 2011, Op. Cit.:25-26.

²⁸ In their examination of potential juror bias towards Native American defendants, Struckman-Johnson et. Al. found “suggestive evidence for a stereotypical drunken-Indian bias in mock juror judgments.” Cindy Struckman-Johnson, Michael G Miller, and David Struckman-Johnson, “Effects of Native American Race, Intoxication, and Crime Severity on Judgments of Guilt,” *Journal of Applied Social Psychology*, 38(8), (2008):1990; Marilyn Brown, “Aina Under the Influence: The Criminalization of Alcohol in 19th-Century Hawai’i,” *Hūlili: Multidisciplinary Research on Hawaiian Well-Being*, 7, (2011):311-339; Mandy Wilson, et. al., “The harmful use of alcohol amongst Indigenous Australians,” *Australian Indigenous HealthInfoNet*, 4(May), (2010):1-20; Chris Cunneen, “Indigenous Incarceration: The Violence of Colonial Law and Justice,” *The Violence of Incarceration*, Eds P Scraton, and J McCulloch, (London: Routledge Taylor and Francis Group, 2009): 209-224; Erin Ebbett and Dave Clarke, “Maori Identification, Alcohol Behaviour and Mental Health: A Review,” *International Journal of Mental Health and Addiction*, 8(2, April), (2010):214-231; Christine Hamelin, et. al., “Childhood sexual abuse and adult binge drinking among Kanak women in New Caledonia,” *Social Science & Medicine*, 68, (2009):1247-1253; Peter Mancall, Paul Robertson, and Terry Huriwai, “Maori and alcohol: a reconsidered history,” *Australian and New Zealand Journal of Psychiatry*, 34(1, February), (2000):129-134; Nicole Yuan, et. al., “Alcohol is Something That Been With Us Like a Common Cold’: Community Perceptions of American Indian Drinking,” *Substance Use & Misuse*, 45(12), (2010):1909-1929.; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1915*, Part II, (Ottawa: J de L Taché, 1916):11.

²⁹ Davison, 2011, Op. Cit.:39.

³⁰ Department of Indian Affairs, *Report of the Deputy Superintendent of Indian Affairs, 1879*, (Ottawa: Maclean, Roger & Co., 1880):39-40.

a view to obtaining a royal decree “interdicting the sale of intoxicating liquors by the French to the Indians” from Louis XIV so that Governor Frontenac would be forced to halt the liquor trade.³¹

Robert Campbell finds that “European stereotypes about Native drinking revealed European concerns about excessive drinking in general and the place of Aboriginal peoples in society in particular.”³² Although the “widespread problem of alcohol abuse” impinged on “settlers and Aboriginal peoples alike,” the sale of liquor to “Indians” was made illegal as part of the assimilation program.³³ For the paternalistic Department of Indian Affairs, intoxicants represented the antithesis of all that they were attempting to accomplish amongst their “Indian” wards.

For many, heightened perceptions of the dangers of alcohol consumption by “Indians” stemmed from beliefs in their constitutional weakness as well as the danger that “savage” tendencies might be loosed from the constraints of “civilization” by disinhibiting liquor. In 1881, Drapeau, Priest and Indian Agent of Restigouche, demonstrated the physical, religious, cultural, and legal confluence involved in this racialization of “Indian” wards. Drapeau believed that the “most prevalent disease” on the reserve, tuberculosis, “no doubt, originates from the abuse of alcoholic liquors, and this use increases the disease more and more.”³⁴ The belief that Indians were both vulnerable and dangerous was more than a societal prejudice. Wardship and prohibition from liquor were the Canadian state’s official policy legislated in the *Indian Act*.

The DIA hoped that an anti-tuberculosis pilot project launched in Ontario could be used to secure a larger parliamentary appropriation to expand the program across Canada.³⁵ The two-pronged pilot project centred on a medical survey to identify “incipient cases” to be confined to sanatoria and an effort to “introduce more sanitary conditions in the dwellings of the Indians.”³⁶ The DIA authorized that a circular, “designed to easily arouse the attention of the more primitive type of Indian mind,” in both English and Cree syllabics, be posted in prominent places on reserves. Although titled “Instructions Which if Followed Will Prevent Indians Contracting

³¹ *Annual Report of the DIA*, 1879, Op. Cit.:39-40.

³² Robert A Campbell, “Making Sober Citizens: The Legacy of Indigenous Alcohol Regulations in Canada, 1777-1985,” *Journal of Canadian Studies*, 42(1, Winter), (2008):106; Mariana Valverde, “A Postcolonial Women’s Law? Domestic Violence and the Ontario Liquor Board’s ‘Indian List,’ 1950-1990,” *Feminist Studies*, 30(3, Fall), (2004):569.

³³ Campbell, 2008, Op. Cit.:107.

³⁴ Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 31 December 1881*, (Ottawa: Maclean, Roger & Co., 1882):16-17.

³⁵ *Annual Report of the DIA*, 1915, Op. Cit.:xxiii-xxiv.

³⁶ *Ibid.*

Tuberculosis,” this pamphlet clearly indicated other DIA “health” messages such as an admonition to refrain from drinking whisky because “[w]hisky and allied drinks are the world’s national curse.”³⁷



Figure 20: “Drunken Indians Among the Stumps of London,” Canada West, 1843³⁸

From early admonitory legislation, Upper Canada passed a permanent ban on liquor sales to “Indians” in 1840.³⁹ Enduring colonial concerns that liquor would have intense and dangerous effects on “Indians” were legislated into the first consolidated *Indian Act* in 1876.⁴⁰ The legal geography of the 1876 *Indian Act* targeted the contaminating influences of liquor in sites of assimilative quarantine. After an initial definition principally referring to alcoholic beverages, the first occurrence of “intoxicants” in the 1876 *Indian Act* is in reference to the governance of land surrender and resource extraction. Section 27 made it illegal to “introduce at any council or meeting of Indians held for the purpose of discussing or of assenting to a release of surrender of a reserve or portion thereof, or of assenting to the issuing of a timber or other license, any

³⁷ *Annual Report of the DIA*, 1915, Op. Cit.:xxiii-xxiv.

³⁸ Adapted from “Drunken Indians among the stumps of London, C.W.,” Sir James Edward Alexander Sketchbook, 1843, National Archives of Canada, Acc. No. 1977-22-78, Copyright: Expired.

³⁹ Campbell, 2008, Op. Cit.:108; *An Act to Amend and Make Permanent an Act Passed in the Fifth Year of His Late Majesty’s Reign, entitled, “An Act to prevent the Sale of Spirituous Liquors to Indians,”* 1840, 3 Victoria, c. 8, s. 1.

⁴⁰ *An Act to Amend and Consolidate the Laws Respecting Indians*, SC 1876, c. 18.

intoxicant.”⁴¹ Of particular interest in developing legal procedures to legitimize the procurement of Indian lands, Section 27 punished any person who introduced intoxicants at these meetings, as well as any “agent or officer” of the Superintendent-General or Governor in Council “introducing, allowing or countenancing by his presence the use of such intoxicant among such Indians a week before, at, or a week after, any such council or meeting.”⁴² Superior courts were instructed to impose a fine of two hundred dollars and pay half of that fine to the informer involved in bringing the charge.⁴³

Discussions of the importance of Indian “status” tend to overlook the broader assimilative scope of Canadian Indian legislation and disregard the degree to which Indian Affairs felt entitled to conduct surveillance. The 1876 *Indian Act* also dealt with the “non-Treaty Indian.” Section 4 defined the “non-Treaty Indian” as “any person of Indian blood who is reputed to belong to an irregular band or who follows the Indian mode of life, even though such person be only a temporary resident in Canada.”⁴⁴ As such, persons subjectively thought to bear the phenotypical and cultural markers of “Indian” identity were subject to the extensive regulation of the state. Moreover, the Canada-USA border was degraded by the stereotypical application of intensive regulation by the Canadian state, despite status, citizenship, or home. Despite its racialized discrimination, in some ways, Section 4 conceded the existence of indigenous persons who did not live according to European epistemological norms and boundaries.

The supply or sale of intoxicants to “any Indian, or non-treaty Indian in Canada” the use of any building on a reserve to supply intoxicants, and the possession of “any intoxicant in the house, tent, wigwam or place of abode” was barred by Section 79 of the *Indian Act* with instructions that convictions

before any judge, stipendiary magistrate or two justices of the peace, upon the evidence of one credible witness other than the informer or prosecutor, be liable to imprisonment for a period not less than one month nor exceeding six months, with or without hard labor, and be fined not less than fifty nor more than three hundred dollars, with costs of prosecution, – one moiety of the fine to go to the informer or prosecutor, and the other moiety to Her Majesty, to form part of the fund for the benefit of that body of Indian or non-treaty Indians, with respect to one or more members of which the offence was committed.⁴⁵

⁴¹ *Indian Act*, 1876, Op. Cit. c. 18, s. 27

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*, s. 4.

⁴⁵ *Ibid.*, s. 79.

Any person in charge of a water vessel involved in the intoxicant trade to “Indians” could be convicted in the same way, given the same fine, and be liable for the same term of incarceration in a “common gaol, house of correction, lock-up, or other place of confinement” if they defaulted on that fine.⁴⁶

MANITOULIN ISLAND.						
Drunk	Nov. 27, 1882	J. C. Phipps	\$10 or 15 days	Forthwith	Not paid	Committed
do	Dec. 18	do	5 9 "	"	do	do
Selling Liquor to Indians	Jan. 9, 1883	do	50	"	† Dept. Ind. Affrs. † Informer	
do	"	do	50	"	do	
do	"	do	50	"	do	
do	Jan. 12	do	50 or one month	"	Not paid	Committed
do	"	do	25 "	"	do	do
Drunk	Feb. 5	do	15	"	Department Indian Affairs	
do	"	do	\$ 5 00	"	do	
do	Mar. 28	H. S. Sims, Thos. Slack	10 days	"		Committed
Assault	April 7	M. Irving, R. English	18 00	"		
do	May 10	C. B. Savage, R. Thorburn	5 00	"		
Selling liquor to Indians	May 18	J. C. Phipps	50 00	June 17	Municipality of Assiginack	
do	June 4	do	50 00	Forthwith	Municipality of Gordon	
Assault	June 20	John Robinson	2 00	June 30	Department Indian Affairs	
Breach of By-law	July 11	C. B. Savage	1 00	Forthwith	do	
Assault	July 19	John Robinson	1 00	Aug. 20	Municipality of Tehkummah	
Drunk	Aug. 4	J. C. Phipps	\$5 or 1 week	"	Municipality of Gordon	
do	"	do	5 00	Forthwith	Municipality Tehkummah	
do	Aug. 6	do	5 00	"		Committed
do	" 18	do	\$10 or 21 days	"		Paid 22d Sept. '88
do	" 20	do	5 00	"		Committed
Breach of Indian Act	" 30	do	25 00	"		do
Assault	" 21	do	1 00	"		do
do	" 21	do	4 00	"		do
Drunk	" 25	do	\$5 or one month	"	Indian Department	
do	Sept. 6	H. S. Sims	1 00	Ten days	do	
Abusive language	"	do	1 00	"	do	

Figure 21: The Disposition of Fines⁴⁷
 Tables of Convictions were published in Manitoulin Island newspapers. The above clipping includes columns for the offence, the date of conviction, the convicting justice, the sentence, when fines were paid, to whom they were paid, and committals. Names of prosecutors and defendants, although published, are not shown.

Unless used for illness under the direction of a “medical man” or minister of religion, “any Indian or non-treaty Indian” who manufactured, possessed, concealed, sold, exchanged, bartered, supplied, or gave any other Indian an intoxicant could be convicted before a judge, stipendiary magistrate, or two justices of the peace, on the evidence of one witness, in addition to the informer or prosecutor, and sentenced to one to six months’ imprisonment with or without hard labour.⁴⁸

In all cases within Section 79, Indians were considered “competent witnesses.”⁴⁹ Prior to the passing of the 1874 *An Act to amend certain Laws respecting Indians, and to extend certain Laws relating to matters connected with Indians to the Provinces of Manitoba and British Columbia*, in which, amidst provisions against liquor, Indians were declared competent witnesses,

⁴⁶ *Indian Act*, 1876, Op. Cit. c. 18, s. 79.

⁴⁷ Adapted from “Return of Convictions by Her Majesty’s Justices of the Peace Within the District of Algoma From 31 March 1883 to 30 September 1883,” *Manitoulin Expositor*, 24 November 1883, Manitowaning, Volume: V, No. 24.

⁴⁸ *Indian Act*, 1876, Op. Cit. c. 18, s. 79.

⁴⁹ *Ibid.*

colonial authorities encountered obstacles in prosecuting cases against liquor traders because of the uncertain validity of sworn legal oaths according to Christian customs by indigenous persons who were not thought to be Christians.⁵⁰ Reginald Good gives the remarkable example of William Gibbard, Fisheries Commissioner and Magistrate of the District of Algoma, deciding in 1863 that as “‘a general all prevailing rule it may be clearly stated that no liquor seller, can be convicted by the evidence of an [non-Christian] Indian or a halfbreed’ because their unsworn testimony was inadmissible.”⁵¹ Phipps concurred that “‘it is impossible to carry out the existing Laws against the sale of Liquor to Indians’ because in most instances of alleged infraction Indian witnesses could not be found who were deemed competent to ‘lay an information upon oath.’”⁵² Paradoxically, in their attempts to stop the liquor trade to “Indians,” the “most sustained lobby for legislation to be passed admitting testimony from non-Christian Indians in colonial municipal courts in Canada West came from Christian missionaries and Christian missionary organizations.”⁵³ The 1874 amendment made it “lawful” for evidence to be received from

any Indian or aboriginal native or native of mixed blood, who is destitute of the knowledge of God, and of any fixed and clear belief in religion or in a future state of rewards and punishments, without administering the usual form of oath to any such Indian, aboriginal native or native of mixed blood as aforesaid, upon his solemn affirmation or declaration to tell the truth, the whole truth and nothing but the truth, or in such form as may be approved by such Court, Judge, Stipendiary Magistrate, Coroner or Justice of the Peace, as most binding in his conscience.⁵⁴

These procedures were folded into the 1876 *Indian Act*.⁵⁵ In addition, the Department of Justice insisted that “Indian witnesses” and “white men” share equal ground in their entitlement to witness fees.⁵⁶

Various Sections of the 1876 *Indian Act* involved the physical components of the intoxicant trade.⁵⁷ The materials of the intoxicant trade gave more autonomy to individual Indian

⁵⁰ 1874 *An Act to amend certain Laws respecting Indians, and to extend certain Laws relating to matters connected with Indians to the Provinces of Manitoba and British Columbia*, c. 21, s.1; Reginald Good, “Admissibility of Testimony From Non-Christian Indians in the Colonial Municipal Courts of Upper Canada/Canada West,” *Windsor Yearbook of Access to Justice*, 23, (2005):90-91.

⁵¹ Inclusion of [non-Christian] by Good. Ibid:90-91.

⁵² Ibid.

⁵³ Ibid:90.

⁵⁴ *An Act to amend certain Laws respecting Indians*, 1874, Op. Cit., c. 21, s.3.

⁵⁵ *Indian Act*, 1876, Op. Cit., s. 74.

⁵⁶ Deputy Minister of Justice Newcombe to the Deputy Superintendent General of Indian Affairs, 11 January 1910, (Ottawa), “Dept. of Justice Opinions – Vol. 3,” 1900-1910, National Archives of Canada, RG10: Department of Indian Affairs, Series B-8, Volume: 11195, File: 1, Access Code: 32.

⁵⁷ Section 68 instructed that courts could recover any pawn made for intoxicants. Section 81 dealt specifically with the use and forfeiture of water vessels. Utilizing transport technology for such purposes flaunted Indian Affairs’ principle of removing Indians to less-accessible locations where they would be

Agents and exposed the lack of privacy for Indian wards of the state. Section 80 provided that any container or vessel involved in the trade or use of intoxicants, as well as their contents, could be seized by a constable “wheresoever found on such land or in such place” and destroyed.⁵⁸ A formal complaint of the possession of any of these components laid before a judge, stipendiary magistrate, or justice of the peace, with the evidence of “any credible witness,” allowed the judicial power to “condemn the Indian or other person in whose possession they were found” to a penalty of fifty to one hundred dollars to be divided between the prosecutor and the Crown.⁵⁹ Any person who did not produce “immediate payment” of what was then a large sum would be incarcerated for two to six months, unless they could procure funds while incarcerated.⁶⁰ As Justices of the Peace, any Indian Agent could carry out this process.

The 1876 *Indian Act* also legislated direct measures against the state of intoxication. Section 83 made it legal for “any constable, without process of law, to arrest any Indian or non-treaty Indian whom he may find in a state of intoxication, and to convey him to any common gaol, house of correction lock-up or other place of confinement, there to be kept until he shall have become sober” and could be brought before a judge, magistrate, or justice.⁶¹ If, at that point, the individual was convicted of having been intoxicated, they were imprisoned for a maximum of one month.⁶² However, a significant factor intervened between conviction and sentencing. Although already convicted, this briefer carceral term depended on the individual informing on others.⁶³ Facing sentencing, the convicted individual who refused to “give information of the person, place and time from whom, where and when, he procured such intoxicant, and if from any other than Indian or non-treaty Indian, then, if within his knowledge, from whom, where and when such intoxicant was originally procured or received” could find that their sentence was extended by up to fourteen days.⁶⁴

Although not required for Canadian adults as a whole, and certainly not a prevailing characteristic of settler society, the 1876 *Indian Act* also required sobriety as a precursor to the

“protected” during enculturation. Section 82 involved the forfeiture of every other “article, chattel, commodity or thing.” *Indian Act*, 1876, Op. Cit., c. 18.

⁵⁸ *Indian Act*, 1876, Op. Cit., 18, s. 80.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, c. 18, s. 83.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

enfranchisement process.⁶⁵ Therefore, as Campbell demonstrates, liquor restrictions “helped to define who was an Indian and who was not” for the Federal Government.⁶⁶ Nonetheless, the liquor provisions of the *Indian Act* ensured that persons racialized as “Indians” were punished as “Indians” when seen to be demonstrating a racialized proclivity to alcohol whether they had “status” or not.

7.2.1 Judicial Functions of the Department of Indian Affairs

Considerable judicial power was invested in representatives of the Department of Indian Affairs. The 1876 *Indian Act* granted some standing when it directed that legal affidavits could be made before a “judge or clerk of any county or circuit court, or any justice of the peace, or any commissioner for taking affidavits in any of the courts, or the Superintendent-General, or any Indian agent, or any surveyor duly licensed and sworn” and appointed to the task by the Superintendent General.⁶⁷

Under the reign of Queen Victoria, the idea of Justices of the Peace was based on the principle that the monarch was the “principal conservator of the peace within all her dominions; and may give authority to any other to see the peace kept.”⁶⁸ Justices of the Peace were appointed by the Queen’s commission “under the great seal, which appoints them all jointly and separately to keep the peace, and any two or more of them to inquire of and determine felonies and other misdemeanors.”⁶⁹ Although a directly judicial function was not specified for all Indian Agents until the 1881 *Indian Act* legislated that that all Indian Commissioners, Assistant Indian Commissioners, Indian Superintendents, Indian Inspectors and Indian Agents “shall be *ex officio* a Justice of the Peace for the purposes of this Act,” at times, practice preceded legislation in frontier contexts where men who represented the legal power of the government often took on several roles and titles concurrently.⁷⁰

⁶⁵ *Indian Act*, 1876, Op. Cit., c. 18, s. 86 and 93.

⁶⁶ Campbell, 2008, Op. Cit.:109.

⁶⁷ *Indian Act*, 1876, Op. Cit., c. 18, s. 86 and 95; “Headquarters – Ottawa, Ontario – Interpretation of a Section of the Indian Act by the Minister of Justice Confirming that Indian Land Agents May Serve as Justices of the Peace as Those in the Position of Indian Agent,” 1894, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2753, File: 148,479, Access Code: 90.

⁶⁸ William Conway Keele, *The Provincial Justice, or Magistrate’s Manual, Being a Complete Digest of the Criminal Law of Canada, and a Compendious and General View of the Provincial Law of Upper Canada: With Practical Forms, for the Use of the Magistracy*, 3rd edition, (Toronto: H Rowsell, 1851):399.

⁶⁹ *Ibid*:399.

⁷⁰ In 1879, as Indian Superintendent IW Powell reported on his travels throughout coastal British Columbia, he noted, “cases were brought before me which I was compelled to deal with in my capacity as

As evident in his involvement as a Magistrate in the fishery conflict, Visiting Superintendent of Indian Affairs Phipps was one such man. In 1878, Phipps sentenced Thomas O'Hara to three months' imprisonment, in default of a fine, for selling liquor to "Indians;" however, after giving security to appear when required by the court, O'Hara chose instead to leave "for parts unknown, not liking the idea of breaking stone for the Sault Ste Marie roads."⁷¹ Phipps lent his approval to changes in the 1880 *Indian Act* which would "materially aid in putting a stop to illicit drinking" by legalizing searches for liquor on Indian Reserves across Canada.⁷² The 1880 amendments authorized the search for intoxicants, and the receptacles involved in their manufacture or transport, on reserve, on the person of any Indian or non-treaty Indian, and in any Indian or non-treaty Indian dwelling and by any officer of the Indian Department or constable "wheresoever found on such land or in such place or on the person of such Indian or non-treaty Indian: and on complaint before any judge, Stipendiary Magistrate, or Justice of the Peace, he may, on the evidence of any credible witness... condemn the Indian or other person in whose possession they were found."⁷³ In this way, 1880 amendments gave Phipps the ability to search for intoxicants prior to the official laying of a complaint. As an Indian Agent Justice of the Peace, Phipps could then adjudicate resultant complaints and lay sentences under the *Indian Act*.

The power of frontier officials could be so great that it appears that, at times, "Indian" wards may have been punished without proper registering of the convictions. In 1880, the *Manitoulin Expositor* reported that "an Indian" convicted by Superintendent Phipps and R English on a charge of intoxication served one week in jail.⁷⁴ Although he was convicted and imprisoned, the individual's name does not appear on the published list of convictions for the District of Algoma.⁷⁵

Justice of the Peace." In 1880, A Power, writing on behalf of the Solicitor for Indian Affairs gave the opinion that Sec. 20 Cap. 27 of the Revised Statutes of Ontario gave Indian Superintendents the power to act as Justices of the Peace. *An act to amend The Indian Act, 1880*, SC 1881, c. 17; *Report of the Deputy Superintendent General of Indian Affairs, 1879*, Op. Cit.: 123; A Power for Solicitor Indian Affairs, 19 February 1880, (Ottawa), "Moravian Reserve – Agent John Beattie Inquires if he has Power to Act as a Justice of the Peace," 1880, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2102, File: 18,511, Access Code: 90.

⁷¹ *The Manitoulin Enterprise*, 12 April 1878, Gore Bay, Volume: I.

⁷² *Annual Report of the DIA*, 1880, Op. Cit.:20.

⁷³ *An Act to amend and consolidate the laws respecting Indians*, SC 1880, c. 8, s. 8.

⁷⁴ *Manitoulin Expositor*, 28 February 1880, Manitowaning, Volume: I, No. 41.

⁷⁵ "Return of Convictions Made by Her Majesty's Justices of the Peace Within the District of Algoma from the December Sessions, 1879, to September 30th, 1880," *Manitoulin Expositor*, 20 November 1880, Manitowaning, Volume: II, No. 79.

—On Thursday last _____,
 an Indian was brought before J.C.Phipps
 and R. English on a charge of drunken-
 ness and was sentenced to one week in
 gaol. Prisoner stated that he was not
 exactly drunk but the ice was very slip-
 pery.

Figure 22: Not in the Court List?⁷⁶

Despite their keen attention to indigenous persons, assimilation into state law, and criminality in general, the name of the “Indian” convicted by Indian Agent JC Phipps does not appear in the detailed court lists published in Manitoulin newspapers.

In her examination of the tenure of two Indian Agents on Georgian Bay, one of whom was RJ Lewis of Manitowaning, Brownlie recognizes that, perhaps, the “most decisive power assigned to Indian Agents under the Indian Act was their role in dispensing justice” since, with the powers granted to Indian Agents to act as Justices of the Peace in 1881, for “minor offences (most often for alcohol consumption) the agent frequently laid the charges himself, investigated them, examined the evidence, pronounced the verdict, and, if applicable, assigned a penalty.”⁷⁷ However, the following year, these already significant judicial powers were increased. 1882 *Indian Act* amendments gave all Indian Agents the “same power as a Stipendiary Magistrate or a Police Magistrate” to adjudicate infractions under the act and removed the right of convicted persons to appeal any judicial order if the fine involved was less than ten dollars.⁷⁸

Gustavus Hamilton and D. Morrison, 20 00					
J. C. Phipps, Indian agent	(\$5, and \$2 50 costs or 1 week in gaol.	Feb. 16, 1886	Dept. of Indian Affairs.	
J. C. Phipps, Indian agent	(\$5, and \$2 50 costs or 2 weeks in gaol.	Unpaid.		Committed to jail.

Figure 23: Name of Convicting Justice – JC Phipps, Indian Agent⁷⁹

In addition to his powers as an Indian Agent, JC Phipps could act as a lone justice, dispense fines, receive fines, and commit “Indians” to jail.

When the Parliamentary Committee examined the 1887 *Indian Act* Amendment Bill, the Honourable Mr. Power objected to the “very unusual and extensive power” given to DIA agents authorized through the Governor in Council, “by subpoena issued by him, to summon any person

⁷⁶ Adapted from *Manitoulin Expositor*, 28 February 1880, Op. Cit.

⁷⁷ Lewis was the Manitowaning Agency Indian Agent from 1915 until 1939. Robin Jarvis Brownlie, *A Fatherly Eye: Indian Agents, Government Power, and Aboriginal Resistance in Ontario, 1918-1939*, (Don Mills: Oxford University Press, 2003):35-36, 51.

⁷⁸ *An act to further amend The Indian Act, 1880*, SC 1882, c 30, s 3, 4.

⁷⁹ Adapted from *Manitoulin Expositor*, 24 April 1886, Volume: 7, No. 49, Manitowaning.

before him and to examine such person under oath in respect to any matter affecting Indians, and to compel the production of papers and writings before him relating to such matters.”⁸⁰ Any person thus summoned by an agent who did not appear, refused to give evidence, or did not supply requested documents could be imprisoned in the common gaol for a maximum of fourteen days. Power saw this as investing a single individual with the authority of an entire court and did not “think that the officer who is holding the enquiry should be allowed on his own motion to send a man to gaol.” A rather less summary process should be available. The Honourable Mr. Kaulbach agreed that these were “extraordinary powers” yet supposed that the Minister “must have some good reason” for them.

Distance was the reason given for this abrupt summary process because, as the Honourable Mr. Abbott explained, if there were disputes in any concern involving “Indians, somebody must enquire into it.” However, the highest officers of Indian Affairs could not be expected to travel throughout the country “to make such enquiries, and the person who is appointed to make it must have the right to compel witnesses to attend and to obtain papers or anything else necessary to form a decision in the matter.” Abbott saw no reason why such a process should not be approved “in relation to the Indians where the questions to arise would probably not be as important as the questions arising relating to lands.” After jocular conjecture that this could mean that the committee members themselves might be compelled by an “inferior officer” to cooperate with an investigation, the committee agreed to the clause.

Universality of application was particularly important to the Department of Indian Affairs because liquor traffic repression was an “important part of the duties of an Indian Agent” yet, try as they might, the DIA could not completely control the movement of indigenous persons across state boundaries.⁸¹ Indian Affairs was apprehensive about the international border with the United States because, in their estimation, the “laws of the latter country, while prohibiting under heavy penalties the sale or gift of ardent spirits to Indians resident therein, do not apply to Indians of a foreign country.”⁸² The 1895 *Indian Act* gave an Indian Agent the power of two Justices of the Peace

anywhere within the territorial limits of his jurisdiction as a Justice as defined in his appointment... for all the purposes of the Indian Act or of any other Act respecting

⁸⁰ Unless otherwise indicated, the discussion on this page is based on the following source: *Debates of the Senate of the Dominion of Canada: First Session – Sixth Parliament*, (Ottawa: AS Woodburn, 1887):398-400.

⁸¹ Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1889*, (Ottawa: Brown Chamberlin, 1890):xiv.

⁸² *Annual Report of the DIA*, 1889, Op. Cit.:xiv.

Indians, and with respect to any offences against the provisions thereof or against the provisions of section 98 of the Criminal Code (inciting Indians to riotous acts), of part XIII of the Criminal Code; (Offences against morality)... and part XV (Vagrancy).⁸³

The territorial limits applied regardless of whether the “Indian or non-treaty Indian charged with or in any way concerned in or effected by the offence, matter or thing to be tried, investigated or dealt with, is or is not within his ordinary jurisdiction, charge or supervision as an Indian agent.”⁸⁴ As Manitoulin Island is geographically situated as a waypoint between shores, provinces, and countries, its Indian Agents could have a role in the prosecution of numerous offences.

The “*ex officio*” terminology was discontinued in the 1951 *Indian Act* as “Indians” became more closely incorporated into the general state legal and social welfare systems; however, unless their appointment was revoked by the federal Minister, existing “Indian Agents” retained this function.⁸⁵ The Governor in Council could confer the authority of a Justice of the Peace. Those invested with this power would then have the powers of two justices for offences under the *Indian Act*, offences under the *Criminal Code* with respect to riotous acts on reserves, robbing “Indian graves,” cruelty to animals, common assault, breaking and entering, and vagrancy “where the offence is committed by an Indian or relates to the person or property of an Indian.”⁸⁶ A provision granted the Minister the ability to redirect annuity and interest monies to the support of dependents when an “Indian” had been “separated by imprisonment from his wife and family.”⁸⁷ As legislation proceeded following the 1951 *Indian Act*, the section “grandfathering” Indian Agent Justices of the Peace was dropped and a provision affirming the judicial authority of provincial justices was added.⁸⁸ The option of conferring judicial powers through the Governor in Council remained.⁸⁹ Moreover, the Governor in Council could make regulations resulting, on summary conviction, in up to three months imprisonment and fines not exceeding one hundred dollars or both.⁹⁰

⁸³ Deputy Minister of the Department of Justice EL Newcombe to the Secretary of the DIA, 28 November 1905, “Dept. of Justice Opinions – Vol. 3,” Op. Cit.

⁸⁴ *Indian Act Amendment*, SC 1895, 58 and 59 Victoria, c. 35, s. 7.

⁸⁵ *Indian Act*, RS 1951, c. 29, s. 106.

⁸⁶ *Ibid*, c. 29, s.105.

⁸⁷ *Ibid*, c. 29, s.67 (c); *Indian Act*. RSC 1985, c. I-5, s.68(c); *An Act to Amend the Indian Act*, 2000, c. 12, s. 152.

⁸⁸ *Indian Act*, RSC 1985, c. I-5, s. 106; c. I-6, s. 107; RS 1985, c. 27 (1st Supp.), s. 203.

⁸⁹ *Ibid*.

⁹⁰ *Ibid*:c. I-6, s. 57.

7.2.2 Financing the “Drunken Indian” Stereotype: Directing the Disposition of Fines

The administrative structure behind state enforcement of liquor laws required funding. The 1876, 1906, and 1927 *Indian Act* stipulations that the moiety of fines resulting from convictions could be divided between the Crown and the prosecutor or informer could inspire freelance detective work and assist provincial law enforcement; however, this sharing out of fines was not always accomplished.⁹¹ Although the *Indian Act* made liquor traffic with Indians illegal, “as in all temperance legislation” Indian Affairs found it rather “somewhat difficult to find white people” to assist them in procuring convictions.⁹² In 1898, the Assistant Secretary of the DIA equivocated that while Indian Affairs was “most anxious to encourage every effort to suppress the nefarious traffic” in liquor, it did not have sufficient funds to pursue a “general practice” of bestowing rewards on informers if fines could not be collected or prosecutions were unsuccessful.⁹³

Indian Affairs deployed the jurisdictional functions of provincial and territorial governments in order to enforce their assimilative priorities. Nevertheless, they guarded departmental finances and assiduously defended their role as the ultimate state arbiter of all aspects of “Indian” lives. The Deputy Attorney General of the Province of Alberta attempted to secure a moiety of the fines through the office of the Deputy Minister of Justice by arguing that fine collection was “largely made through the efforts of the Police” and part of the cost of the police rested on the newly-founded province.⁹⁴ When Deputy Minister of Justice EL Newcombe consulted Indian Affairs, they explained their position that the *Indian Act* provisions were “not intended to refer to such expense of administering the law, as the bearing by the Province of a portion of the expense of maintaining the police.”⁹⁵ Instead, the DIA had

recently manifested in another connection, its willingness to reimburse the same Province for any special expenditure in connection with the prosecutions of infractions of the provisions of the Act relating to intoxicants, but even in such cases it would consider its

⁹¹ *Indian Act*, 1876, c. 18, s. 79; *Indian Act*, 1906, RS, c. 81, s. 135; *Indian Act*, 1927, c. 98, 2. 126; Chief License Inspector James Penrose to Minister of the Interior Sifton, 22 January 1898, (Winnipeg), “Correspondence Regarding the Sale of Intoxicants to the Indians in Manitoba and the Northwest Territories,” National Archives of Canada, RG10: Department of Indian Affairs, Volume: 3981, File: 158693, Access Code: 90.

⁹² Acting Deputy Superintendent General of DIA JD McLean, Memorandum, Mr. Sifton, 11 December 1903, (Ottawa), “Correspondence Regarding the Sale of Intoxicants,” Op. Cit.

⁹³ Assistant Secretary AN McNeill to Chief License Inspector James Penrose, 25 January 1898, (Ottawa), “Correspondence Regarding the Sale of Intoxicants,” Op. Cit.

⁹⁴ Deputy Attorney General of the Province of Alberta to the Deputy Minister of Justice, 23 July 1906, (Edmonton), “Correspondence Regarding the Sale of Intoxicants,” Op. Cit.

⁹⁵ JD McLean to Deputy Minister of Justice EL Newcombe, 22 August 1906, (Ottawa), “Correspondence Regarding the Sale of Intoxicants,” Op. Cit.

obligation to depend on circumstance, such as its having asked for or authorized the expenditure.⁹⁶

Indian Affairs privileged its own programs and secured an Order in Council that allowed the “whole of the fines” to be “devoted to a special fund for the suppression of the liquor traffic with the Indians.”⁹⁷ The rejoinder to the province was that, although Indian Affairs controlled the expenditure of these fines, they were “already applied to the common purpose of maintaining order and vindicating the law” and that the federal government already contributed enough to the Province of Alberta to entitle it to provincial services.⁹⁸

Ontario experienced a similar conundrum when they attempted to bill the DIA for costs that the province incurred in prosecutions for selling liquor to “Indians.”⁹⁹ The Department of Justice gave the opinion that Indian Affairs was not under any legal obligation to pay because they were not consulted prior to the proceedings of the Ontario License Branch.¹⁰⁰ The need for the DIA to gather information regarding these offences could only be expediently addressed if provincial authorities directed all such cases into Indian Affairs’ own prosecutorial system.¹⁰¹

The practice of DIA control of fines was strengthened by a gap in the legislation. While the 1906 *Indian Act* attached fines to most liquor prosecutions, and provided that the Governor in Council could “from time to time” instruct that fines could be allocated to a “provincial, municipal or local authority which wholly or in part bears the expense of administering the law,” it also made it possible for fines to be “applied in any other manner deemed best adapted to attain the objects of such law.”¹⁰² Section 150 stated,

Every fine, penalty or forfeiture under this Act, except so much thereof as is payable to an informer or person suing therefor, shall belong to His Majesty for the benefit of the band of Indians with respect to which or to one or more members of which the offence was committed, or to which the offender, if an Indian, belongs.¹⁰³

Since some of the sections of the 1906 *Indian Act* did not specifically determine that a moiety was definitely to be paid to an informer or prosecutor, this was taken to mean that the entirety of

⁹⁶ McLean to Newcombe, 22 August 1906, “Correspondence Regarding the Sale of Intoxicants,” Op. Cit.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Deputy Minister of Justice EL Newcombe to the Deputy Superintendent General of the DIA, *The King vs. Boyd & The King vs. Debossage et al.*, 28 May 1907, (Ottawa), RG10: Department of Indian Affairs, “Dept. of Justice Opinions – Vol. 3,” Op. Cit.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² *An Act Respecting Indians*, 1906, c. 81, s. 150.

¹⁰³ Ibid.

these fines defaulted to the Department of Indian Affairs' funds.¹⁰⁴ Indian Affairs received one hundred fifty-five dollars on behalf of the Manitoulin Island Unceded Band for liquor fines in the year preceding 31 March 1920.¹⁰⁵ Despite these regulations, in some locations, it appeared that Indian Agents were retaining monies from the convictions that they secured.¹⁰⁶ Acting Director of Indian Affairs TRL MacInnes issued a "Circular Letter to all Indian Agents" to advise that the Deputy Minister of Justice had given the opinion that any Indian Agent, "as a permanent employee in the public service is debarred by section 22 of the *Civil Service Act* from collecting fees otherwise to be taken under the Code by a J.P., for his magisterial services."¹⁰⁷ Indian Agents could not claim fees for any cases whether heard under the *Indian Act* or the *Criminal Code*.¹⁰⁸ In 1951, the disposition of any *Indian Act* fines outside of the DIA was recalibrated with the retention of the 1906 provision and the deletion of any distribution of the moieties of fines whatsoever.¹⁰⁹

7.3 Liquor: The Common Enemy

The Department of Indian Affairs found common cause with other forces of state law as they worked together to apply liquor laws. Through the 1864 *Dunkin Act* and the 1878 *Canada Temperance Act* "electors" could require that a referendum be held on the question of prohibiting liquor sales within their municipality.¹¹⁰ The *Ontario Temperance Act* instituted provincial

¹⁰⁴ Sections 135, 140, and 143 did specify the disposition of the moieties of fines. Deputy Minister of Justice Newcombe Assistant Secretary to the Deputy Minister of Justice, 28 October 1907, (Ottawa), "Correspondence Regarding the Sale of Intoxicants," Op. Cit.; Deputy Minister of Justice Newcombe to the Secretary of the DIA, 8 November 1907, (Ottawa), "Correspondence Regarding the Sale of Intoxicants," Op. Cit.

¹⁰⁵ Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1920*, Part I, (Ottawa: Thomas Mulvey, 1921):95.

¹⁰⁶ "Circular Letter to all Indian Agents," Acting Director of Indian Affairs TRL MacInnes, 20 August 1938 (Ottawa), "Kwawkewlth Agency – 'J – Judicial' – General correspondence re Indian offences and court cases including crime reports and correspondence with Oakalla Prison Farm, B.C. Provincial Police and RCMP (Shannon file)," National Archives of Canada, RG10: Department of Indian Affairs, Volume: 11149, Series C-V-8, File: 23 and 24, Access Code: 32.

¹⁰⁷ The Deputy Minister of Justice's opinion, first given on 18 November 1926, is quoted in the circular. "Circular Letter to all Indian Agents," Acting Director of Indian Affairs TRL MacInnes, 20 August 1938, (Ottawa), "Kwawkewlth Agency – Oakalla Prison Farm," Op. Cit.

¹⁰⁸ Ibid; "Manitoulin Island Agency – Transfer Ledger 1948 – March 31st, 1951 – 52, part 1953," National Archives of Canada, RG10: Department of Indian Affairs, Volume: 12965, File: Series C-V-26, Access Code: 32.

¹⁰⁹ *Indian Act*, 1951, c. 29, s. 102.

¹¹⁰ Scott Thompson and Gary Genosko, *Punched Drunk: Alcohol, Surveillance, and the LCBO, 1927-1975*, (Halifax: Fernwood Publishing, 2009):25.

prohibition from 1916 to 1927.¹¹¹ Christian Temperance movements extended far beyond the years of prohibition. In times of temperance agitation, churches aligned with the views of the DIA in this matter and, in turn, were asked to help.



Figure 24: Gore Bay Temperance House¹¹²

His Grace the Archbishop of Rupert's Land relayed the distress of the Reverend George Holmes in St. Peter's Mission that a liquor trade was being carried out with the "Half-breeds and Indians" of the Peace River District in 1900.¹¹³ James Smart, Deputy Superintendent General of Indian Affairs and Deputy Minister of the Interior, had difficulty coming to terms with this dismaying information because the *Indian Act* and the *Northwest Territories Act* prohibited the supply of intoxicating liquors to "Indians."¹¹⁴ Smart gauged that "it should be an easy matter" to use that legislation to arrest any persons implicated in the liquor traffic.¹¹⁵ Although it was in "the interest" of the Hudson's Bay Company and "the duty" of the NWMP to enforce the law, the Deputy Minister also considered it the "duty of all other well disposed persons in the district to assist in maintaining the law in this matter."¹¹⁶ Smart assured the Archbishop that he would notify

¹¹¹ Thompson and Genosko, 2009, Op. Cit.:23.

¹¹² The *Manitoulin Reformer* was the "organ of the Liberal party of the Manitoulin District."

Adapted from *Manitoulin Reformer*, 29 October 1903, Gore Bay, Volume: 2, No. 26.

¹¹³ Deputy Minister Jas A Smart to His Grace the Archbishop of Rupert's Land, 25 April 1900, (Ottawa), "Correspondence Regarding the Sale of Intoxicants," Op. Cit.

¹¹⁴ Smart cited the *North West Territories Act* amended by Sections 15 and 16 of Chapter 22 of the *Dominion Statutes* of 1891. Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

the Comptroller of the North West Mounted Police, the Chief Commissioner of the Hudson's Bay Company, and Frederick WG Haultain, Premier and Attorney-General of the North-West Territories, so that territorial and federal authorities could combine their efforts.¹¹⁷ Smart also called on the Archbishop to help, affirming, "much of the work can be done by the priest, the missionary or the clergyman who is living near or amongst these people."¹¹⁸ For their information, and to disseminate knowledge of this quintessential aspect of state relationships with "Indians," Smart proposed a poster campaign.

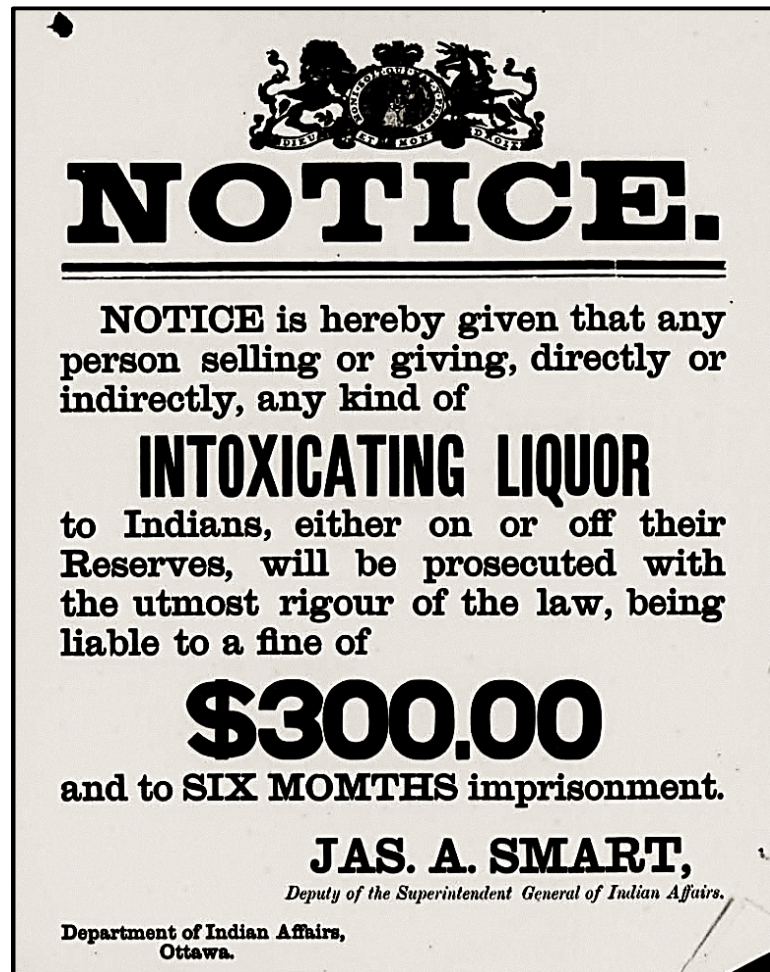


Figure 25: Department of Indian Affairs Notice – Intoxicating Liquor¹¹⁹

¹¹⁷ Deputy Minister Jas A Smart to His Grace the Archbishop of Rupert's Land, 25 April 1900, (Ottawa), "Correspondence Regarding the Sale of Intoxicants," Op. Cit.; Michael Charles Thome, *How the West Was Lost: Frederick Haultain and the Foundation of Saskatchewan*, MA Thesis, Department of History, University of Saskatchewan, 2005:1.

¹¹⁸ Deputy Minister Jas A Smart to His Grace the Archbishop of Rupert's Land, 25 April 1900, Op. Cit.

¹¹⁹ Adapted from Notice, "Correspondence Regarding the Sale of Intoxicants," Op. Cit.

Smart envisioned a “large supply” of posters explaining *Indian Act* and *North West Territories Act* anti-liquor traffic provisions.¹²⁰ A “Warning to the Public Against Supplying Intoxicants to Indians” provided the details of the relevant sections of the *Indian Act*, including stipulations that only applied to “Indians” and “non-Treaty Indians,” with fines and jail terms capitalized and underlined.¹²¹ The authorities responsible for enforcing this law were provided with a primer in pamphlet form.

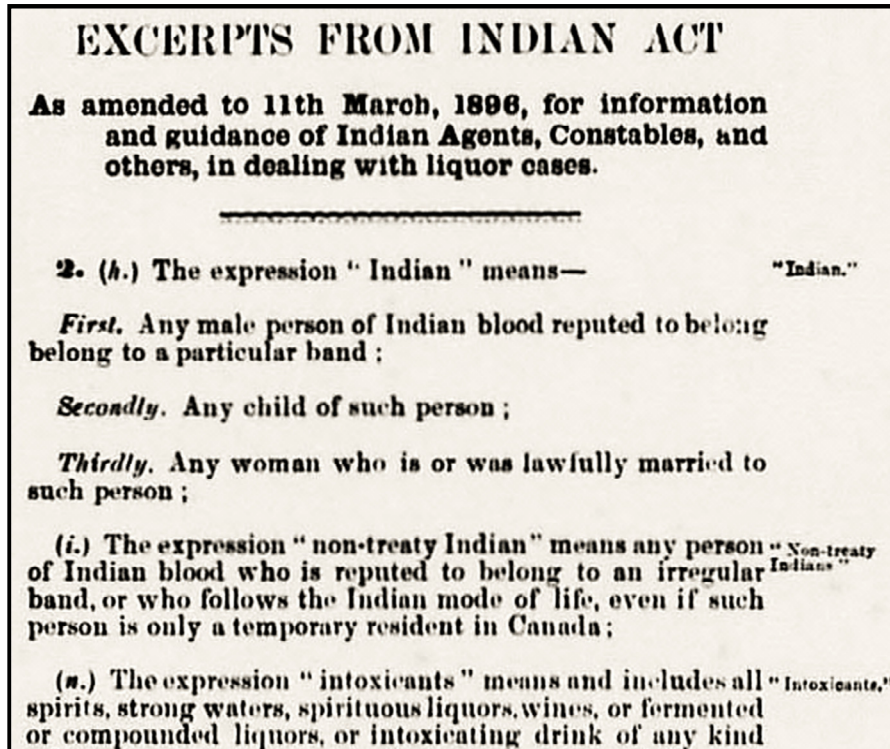


Figure 26: Excerpts From the *Indian Act* for “Dealing with Liquor Cases”¹²²

Frank Pedley, Deputy Superintendent General of Indian Affairs, made noteworthy attempts to recalibrate the fixation of government officials, law enforcement, religious bodies, and Canadian society on preventing Indian wards from consuming liquor. Pedley viewed “protection” on reserves as positive and “very necessary at the earlier stages of contact with a stronger race” yet observed that the reserve boundaries and the “disabilities imposed by class

¹²⁰ Deputy Minister Jas A Smart to His Grace the Archbishop of Rupert’s Land, 25 April 1900, Op. Cit.

¹²¹ Deputy Superintendent General of Indian Affairs, “Warning to the Public against Supplying Intoxicants to Indians,” Approved draft, June 1900, (Ottawa), “Correspondence Regarding the Sale of Intoxicants,” Op. Cit.

¹²² Adapted from “Correspondence Regarding the Sale of Intoxicants,” Op. Cit.

legislation” eventually counteracted full assimilation.¹²³ Since coming into closer contact with “civilization” had “largely corrected the vagueness of the Indians’ information as to their legal rights and the powers of the law” they had “in no small measure become independent of the department’s assistance.” As a result, it was “no longer sufficient to forbid Indians to leave their reserves on objectionable excursions” even though the DIA was “just as vigilant as ever in its use of available means.” The legally-systematized idea that “Indians” should be separated from Canadian citizenry in order to become part of it was ironic and did not allow for intentional self-perpetuation of indigenous cultures.

Pedley insisted that the preeminent “feature of morality is that which concerns the use of intoxicants, not only on account of the immediate results, but because intemperance is the root of so many serious evils.” While Pedley submitted that the law was flouted in some Indian agencies, he also argued that criminal prosecutions for the consumption of liquor would not be given a great deal of attention if legislation did not expressly forbid it. Pedley observed that the majority of “Indians” were unequivocally temperate. Some were geographically “beyond the danger zone” of access to liquor; however, many “Indians” in more accessible regions were purposefully adopting temperance. Although targeted as valuable markets by purveyors of liquor who could enjoy inflated profits by selling otherwise legal goods as Indian contraband, many simply rejected liquor. Pedley found that government surveillance and First Nations annual cycles of geographical mobility were key factors in the illegal liquor trade. For Pedley, the greatest problems occurred with groups of “hunting Indians” who, while living “at a distance from observation and executive machinery for the enforcement of the law, are near water highways which facilitate the carriage of liquor to points convenient for rendezvous when they come in from their hunting fields.” Proximity to the Canada-USA border also provided “ample opportunity for the illicit and nefarious traffic.” The DIA’s efforts were focused on preventing liquor traffic in the “younger provinces” into which settlers were spreading. In the fiscal year prior to the 1908 report, prosecutions in these provinces resulted in thirty-four fines in Manitoba accruing \$1349 and “three sentences of incarceration,” seventy-four fines amounting to a total of \$1919 in Alberta and five carceral sentences, and an income of \$1915 from fifty-eight fines and sixteen imprisonments in Saskatchewan.

¹²³ The discussion on this page is based on the following source: Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1908*, (Ottawa: SE Dawson, 1909):xxxix-xxxii.

By 1910, although the DIA called upon its Indian Agents to formally report on the morality of their charges, Pedley thought it difficult to measure morality aside from records of criminal activity.¹²⁴ Pedley found part of the difficulty in the lack of common standards with which to measure morality when “not a few excellent, if somewhat narrow-minded people” believed that absolute temperance was the “exclusive index to moral or Christian character.”¹²⁵ Significantly, a “vastly larger number” held indigenous persons to this abstemious ideal.¹²⁶ Pedley called criminal measures into question because even “slight consideration” of the situation revealed the “impossibility of compelling abstinence by legal measures among individuals and communities surrounded” by Canadian societies where intoxicants were legally manufactured and traded.¹²⁷ Instead of external application of punishment, sobriety depended on an internal “growth of temperance sentiment alone.”¹²⁸ From Pedley’s perspective, temperance sentiment brought about a “reluctance to treat drinking as a crime among people possessed of a constitutional craving, aggravated by comparative lack of interests and recreations and often by the endurance of hardships, and punishment by fine or incarceration” habitually caused financial strain as the “innocent family” struggled to pay fines and survive without a “provider.”¹²⁹ Even though liquor suppliers were also subject to the law, Pedley cautioned that over-severity might “create sympathy” in the Canadian public.¹³⁰

7.4 The 1951 *Indian Act*

The 1951 *Indian Act* demonstrated some of the social changes that occurred in Canada following the Second World War. For the first time, if consented to by the Lieutenant-Governor of the province, it allowed the sale of intoxicants to “Indians” for consumption in provincially-authorized public places.¹³¹ Otherwise, any person involved in selling, bartering, supplying or giving intoxicants to “any person on a reserve” or any “Indian outside a reserve” could be prosecuted.¹³² The same penalty applied to opening or operating any “place” on a reserve where

¹²⁴ Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for Department of Indian Affairs for the Year Ended March 31, 1910*, (Ottawa: CH Parmelee, 1911):xxviii.

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*:xxix.

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Indian Act*, 1951, c. 29, s. 95.

¹³² Individuals were liable on conviction to a \$50 to \$300 fine, incarceration for one to six months, or both. *Indian Act*, 1951, c. 29, s. 93.

this might occur as well as to the manufacture of intoxicants on a reserve.¹³³ “Indians” themselves were still not permitted to be intoxicated, possess intoxicants, or manufacture intoxicants.¹³⁴ Even if an “Indian” did procure intoxicants in accordance with federal and provincial laws, the pre-emptive judgement possible on unevenly surveilled reserve lands was reinforced by the provision that a “person who is found (a) with intoxicants in his possession, or (b) intoxicated on a reserve, is guilty of an offence.”¹³⁵ Injunctions against intoxicants and intoxication did not apply to “cases of sickness or accident”; however, the “burden of proof” was “upon the accused” to prove that this exemption applied.¹³⁶

The *Indian Act* prohibited intoxication until the 1969 *R. v. Drybones* decision of the Supreme Court of Canada cited an unconstitutional infringement of rights and overturned the section of the *Indian Act* that made intoxication in private places illegal for “Indians” while off reserve.¹³⁷ The Supreme Court ruled that the conviction of Joseph Drybones for “being intoxicated off a reserve” had been appropriately overturned on appeal. The Court held that the relevant provisions of the *Indian Act* were “rendered inoperative” by the 1960 *Canadian Bill of Rights* because they infringed on the right to “equality before the law” in that Drybones was rendered “guilty of a punishable offence by reason of conduct which would not have been punishable if indulged in by any person who was not an Indian.”¹³⁸ However, it was still illegal to be intoxicated on an Indian reserve.¹³⁹

In a sense, *Drybones* provided a measure of equality by detaching liquor provisions from individual “Indian” identity and attaching restrictions to location. While, for the most part, non-Indian citizens of Canada were allowed to be intoxicated in private when Indians were not, all persons in Canada could be intoxicated in private as long as they were not on an Indian Reserve at the time. Furthermore, “Indians” had comparatively greater freedom to maintain status while living and travelling off-reserve yet status was still tied to band membership and recognition of band status was tied to reserve governance and treaty agreements.

According to Gary Genosko and Scott Thompson, provincial and federal legislation produced a legal geography of “Indian” identity and reserve life involving, in the case of Ontario,

¹³³ *Indian Act*, 1951, c. 29, s. 93.

¹³⁴ Convicted person faced fines of \$10 to \$50 dollars, up to three month’s imprisonment, or both. *Indian Act*, 1951, c. 29, s. 94.

¹³⁵ On summary conviction, individuals could face to a fine of \$10 to \$50, imprisonment up to three months, or both. *Indian Act*, 1951, c. 29, s. 96.

¹³⁶ *Indian Act*, 1951, c. 29, s. 98.

¹³⁷ *R. v. Drybones*, 1970, Supreme Court Ruling 282; Valverde, 2004, Op. Cit.:569.

¹³⁸ *R. v. Drybones*, 1970, Op. Cit.

¹³⁹ Valverde, 2004, Op. Cit.:568.

a “specific form of alcohol behaviour” heightened when reserves are proximate to small towns with Liquor Control Board of Ontario (LCBO) stores: “since alcohol had to be consumed on private property, and reserve land was public property, any drinking on the reserve was by definition illegal.”¹⁴⁰ Genosko and Thompson maintain that, in this way, “public drinking became common for First Nations persons.”¹⁴¹ In the context of popular discriminatory stereotypes of indigenous peoples, Genosko and Thompson’s statement is in danger of being misconstrued. Rather, since status “Indians” were legal minors under the guardianship of the Canadian state, any drinking of alcoholic beverages was subject to state correction. Racialized visibilities to Canadian society and law enforcement while off-reserve competed with the inconsistent panoptic visibilities of the reserve. Therefore, any decision made by an “Indian” about where to consume alcoholic beverages might depend on factors such as access to supply, social setting, convenience, cost, and the potential for negative repercussions.

It was not until 1985 that the Manitoba Court of Appeal ruled that “race-specific prohibitions could not be saved by governing through space rather than persons because discrimination is not avoided.”¹⁴² Since the “predominant group on a reserve was Indians, the provision was aimed at them and that consequently,” in the succinct words of Justice Hall, “place becomes race.”¹⁴³ As the legislated place-based racial restriction of “Indian” intoxication disintegrated, the Government of Canada

undertook a major overhaul of the whole Indian Act in which many of the old paternalist techniques of governing aboriginal peoples came to be replaced, in 1985, by a delegated, indirect governance system through which local Indian bands or nations were ‘empowered’ to deal with their own problems, including drinking.¹⁴⁴

Intoxicants were once again important mediums influencing legal relationships between “Indians” and the state. The 1985 *Indian Act* specifies the authority of band councils to call special meetings of band electors to enact by-laws “(a) prohibiting the sale, barter, supply or manufacture of intoxicants on the reserve of the band; (b) prohibiting any person from being intoxicated on the reserve; (c) prohibiting any person from having intoxicants in his possession on the reserve;” and

¹⁴⁰ Gary Genosko and Scott Thompson, “Tense theory: the temporalities of surveillance,” *Theorizing Surveillance: The Panopticon and Beyond*, Ed. David Lyon, (Cuppompton, Devon: Willan Publishing, 2006):126.

¹⁴¹ Genosko and Thompson, 2006, Op. Cit.:126.

¹⁴² *R. v. Campbell*, 1996, Manitoba Court of Appeal, 7298 (MB CA). Refers to *R. v. Hayden* (1983), Manitoba Court of Appeal, 8 CCC (3d) 33 (MB CA); Valverde, 2004, Op. Cit.:571.

¹⁴³ *Ibid.*

¹⁴⁴ Valverde, 2004, Op. Cit.:568-569; Campbell, 2008, Op. Cit.:105-26.

creating exceptions to these prohibitions.¹⁴⁵ The punishments for breaking these band by-laws remained severe. Persons found guilty under summary conviction of breaking by-laws under (a) may be given fines of one thousand dollars or less, imprisoned for six months or less, or both.¹⁴⁶ Convictions for violating by-laws under (b) or (c) may result in fines of a maximum of one hundred dollars, sentences of three months in prison, or both.¹⁴⁷ Despite decided improvements, the *Indian Act* remains a major legislative arbiter of relationships to the Canadian state and reserves continue as geographies of legal exception to conventional citizenship.

By definition, indigenous peoples are of the lands with which they were created, of which whole they are a part, and with which they have lived “since time immemorial.” As European empires sought to control territory in the northern realms of the “New World,” diverse landscapes were tied together by trade, colonization, and railroad politics. Being “of the land” was a threat to colonial entrenchment. In Canada, colonization bastardized the idea of diverse people of the land into racialized “Indians” set apart in places of exception where assimilatory programs attempted to impose a conceptual shift to individual property ownership and standardized extraction from the land. For “Indians,” colonization made place “race.”

7.5 The “Indian List”: Geographies of Identity and Liquor Regulation in Ontario

Official federal jurisdiction over “Indians” did not preclude other forms of government from following their lead through their own means. For the most part, provincial authorities were responsible for administering the sale of alcohol.¹⁴⁸ Scott Thompson and Gary Genosko’s *Punched Drunk: Alcohol, Surveillance, and the LCBO, 1927-1975* and “Tense theory: the temporalities of surveillance” offer groundbreaking sociological insights into the disciplinary gaze of the Liquor Control Board of Ontario from its establishment in 1927.¹⁴⁹ Between 1927 and 1962, eligible adults who wished to exercise their right were required to hold Liquor Permits for the “legal purchase of alcohol in Ontario – licensing the holder to drink in the same way as a driver’s licence” confers driving privileges.¹⁵⁰ Establishments where liquor was sold were also licensed through the LCBO.

¹⁴⁵ *Indian Act*, 1985, c. I-5, s. 85.1 and s. 85.2, c. 32 (1st Supp.), s. 16.

¹⁴⁶ *Indian Act*, 1985, c. I-5, s. 85.4, c. 32 (1st Supp.), s. 16.

¹⁴⁷ *Ibid.*

¹⁴⁸ Campbell, 2008, *Op. Cit.*:109.

¹⁴⁹ Thompson and Genosko, 2009, *Op. Cit.*; Genosko and Thompson, 2006, *Op. Cit.*:123-138.

¹⁵⁰ Thompson and Genosko, 2009, *Op. Cit.*:14.



Figure 27: Liquor Licensing¹⁵¹

When they were advised that an “Indian” from Manitowaning obtained a permit, the Chief Commissioner of the LCBO informed the individual,

you are an Indian, hence the obtaining by you of liquor permit...was irregular...pursuant to... Liquor Control Act, and the provisions of the Indian Act (Dominion), YOU ARE PROHIBITED AS AN INDIAN from holding a liquor permit and from purchasing, having or consuming any intoxicating liquor (including spirits, beer and wine) at all times. Accordingly, you are prohibited from making any purchase of liquor for home consumption and elsewhere, and from visiting hotel beverage rooms.¹⁵²

In addition to the legal banning of “Indians” from licensed premises and liquor stores, provincial Interdiction Lists were used to identify all individuals who were not allowed to purchase alcoholic beverages.¹⁵³ In Ontario, this “Indian List” or “Drunk List” of “chronic and troublesome alcoholics forbidden to buy or possess alcohol,” was kept by the Ontario Liquor Board from the 1930s until 1990.¹⁵⁴ Despite its colloquial name, Mariana Valverde clarifies that the Interdiction

¹⁵¹ Adapted from *The Recorder*, 22 July 1909, Gore Bay.

¹⁵² Liquor Control Board of Ontario Chief Commissioner to [name withheld, Manitowaning], 23 July 1947, (Toronto), “Manitoulin Island District Office – Manitoulin Island Agency – Law Enforcement – Intoxicants,” 1946-1949, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 12686, Series C-V-26, File: [19]/18-6, Part 2, Access Code: 32.

¹⁵³ Campbell, 2008, Op. Cit.:109.

¹⁵⁴ The colloquialism “Indian list” was also used in British Columbia. Barry Mayhew, “Are You on the ‘Indian List’? The Evolution of Liquor Laws in British Columbia,” *British Columbia History*, 41(2), (2008):9-12; Genosko and Thompson, 2006, Op. Cit.:126; Thompson and Genosko, 2009, Op. Cit.:21; Valverde, 2004, Op. Cit.:566-567.

List was principally “used against white Canadians.”¹⁵⁵ The Interdiction List was employed in certain areas of the province: typically in northern Ontario small towns dependent on lumber, mining, and railroad industries where “beer-centred hotels are often the main architectural and social feature.”¹⁵⁶ In their attempts to secure legal and police protection against the alcoholism and violence of their relatives, persons from “largely impoverished and largely rural” families, transformed their family members into “symbolic Indians” by putting them on the “Indian List.”¹⁵⁷

LCBO stores are the provincial liquor regulator’s most familiar manifestation on the landscape. Nevertheless, Genosko and Thompson argue that, from the time of the LCBO’s establishment in 1927, it has been “primarily concerned with the governmental control of liquor” rather than profit.¹⁵⁸ Echoing the larger paternalistic scope of the Department of Indian Affairs, the LCBO employed an extensive bureaucracy. Like the DIA, the LCBO’s Interdiction List files “contained information gathered from multiple institutional sources” such as the Ontario Provincial Police (OPP), municipal governments, and aid organizations.¹⁵⁹ Valverde suggests that it may have been the OPP “responsible for policing the rural areas and those Ontario towns too small to have their own police force—that promoted the use of the list among their ‘clients,’ possibly also generating its popular nickname.”¹⁶⁰ For Valverde, “only the legacy of internal Canadian colonialism can explain the otherwise bizarre practice of dubbing the liquor board’s official list of alcoholics as ‘the Indian list.’”¹⁶¹ The use of the “Drunken Indian” stereotype, and the lack of responsibility that it implied, justified and facilitated modes of surveillance that would not normally apply to adult members of the Canadian state.

The precedent for prohibition against drinking in bars as well as against possessing alcohol within homes, a restriction that Valverde recognizes as a particularly paternalistic constraint, is found in the *Indian Act*.¹⁶² Prior to the use of interdiction lists, “Indians were the only adult inhabitants of Canada” prohibited from alcohol purchase and consumption in public, private, and home places.¹⁶³ Canadian colonialism, demonstrated in “race-specific liquor laws... combined with – and in some ways rooted in – longstanding missionary discourses about

¹⁵⁵ Valverde, 2004, Op. Cit.:567.

¹⁵⁶ Ibid:571.

¹⁵⁷ Ibid:567-568.

¹⁵⁸ Genosko and Thompson, 2006, Op. Cit.:125.

¹⁵⁹ Ibid:126.

¹⁶⁰ Valverde, 2004, Op. Cit.:571.

¹⁶¹ Ibid:567.

¹⁶² Ibid.

¹⁶³ Ibid:570.

'Indians' and their weakness in regard to alcohol, laid the legal as well as the cultural groundwork" for the operation of provincial Interdiction Lists.¹⁶⁴

The "Drunken Indian" was a social category with "dramatic transformative potential" to alter legal-geographical rights because adding the names of "white drinkers" to the Interdiction List "could lead to the conversion of their private abodes to public property for the purposes of criminal investigations under the *Liquor Control Act*, thus 'Indianizing' them by rendering private property into a kind of 'reserve' land" where alcohol was banned and police could enter without search warrants.¹⁶⁵

Genosko and Thompson go further in their description of how liquor was used "to police racial boundaries."¹⁶⁶ They contend that, as the term "Indian List" became part of common parlance during the 1930s, certain "deviant drinking patterns became incorporated into the 'Indian' prototype and a key component of the 'drunken Indian' stereotype; while the strangeness of the convergence of the Indian/Interdicted List caused some whites even to question their own racial purity."¹⁶⁷ While non-Indians could be "Indianized" through the powerful stereotypical association with abuse of liquor, regardless of the assimilative efforts of Indian Affairs, the countervailing route was much more difficult to chart.

Despite explicating key points of the relationship between conception, policy, and practice, Thompson and Genosko's line of reasoning that, by 1876, "First Nations peoples' new classification as Indian/Interdicted had begun to have an impact on their everyday lives as they faced new social situations in which their classification status mediated social action and cultural perceptions" is not historically precise.¹⁶⁸ The 1864 *Dunkin Act* and the 1878 *Canada Temperance Act* provided for local restrictions. Genosko and Thompson state that the Interdiction List did not come into widespread use and everyday parlance until the 1930s.¹⁶⁹ Legal classifications and stereotypes of the "Drunken Indian" preceded, and were well entrenched, before the creation of the 1876 *Indian Act*. Genosko and Thompson make the point that, when provincial liquor boards were established after prohibition, the "convergence of the 'Indian' socio-legal classification reached levels in which systemic classification policy and technology

¹⁶⁴ Valverde, 2004, Op. Cit.:567.

¹⁶⁵ Genosko and Thompson, 2006, Op. Cit.:126, 186.

¹⁶⁶ Thompson and Genosko, 2009, Op. Cit.:21.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid:175.

¹⁶⁹ Ibid:21.

acted to reinforce the reality that it had helped to create in the first place.”¹⁷⁰ Provincial Liquor Board restrictions were important agents of this relationship once they held sway; however, in 1876, the intoxicant-prohibiting federal *Indian Act* itself was the over-arching classification for indigenous peoples.

7.5.1 Intoxicating Indians: Enfranchisement and Racialization

While the LCBO’s Interdiction List may not have been created for the purposes of introducing the legal exclusion of “Indians,” who were already excluded, the deep social resonance of the Drunken Indian stereotype meant that this gaze fixated most often, most publically, and most indelibly on persons visibly identified through racialized markers of indigenous ancestry. In their struggles to find the most appropriate way to enforce legal and social restrictions against “Indian” intoxication, the LCBO found lists impractical. The LCBO produced regular circulars and disseminated explanatory notices of proper procedure regarding “Indians.”¹⁷¹ The LCBO found that following Indian Affairs’ convoluted and incomplete methods of documenting Indian lineage was not practical and instead, vendors “relied upon the ‘Indian’ or ‘Indian mode of life’ prototype as the primary means of classification.”¹⁷² In everyday life, as Genosko and Thompson make evident, the use of this prototype “played an important role in the development of alcohol abuse-related prejudices towards First Nations populations in Ontario.”¹⁷³ Nevertheless, the “mode of life” concept, rooted in Indian Affairs, is a direct quotation from the Section 4 definition of the “non-treaty Indian” instituted in the 1876 *Indian Act*.

When questioned, the Department of Indian Affairs strained to explain to the Department of Justice “whether the expression ‘follow the Indian mode of life’ ha[d] some particular meaning which could be readily identified” and if “a white man [could] come within the meaning of this expression.”¹⁷⁴ Indian Affairs considered that a Department of Justice ruling on the Section 126 intoxication provisions of the 1927 *Indian Act* established their applicability to “half-breeds...

¹⁷⁰ Thompson and Genosko, 2009, Op. Cit.:175.

¹⁷¹ Ibid:179.

¹⁷² Thompson and Genosko illustrate a 1930 case in which a vendor was charged with serving an “Indian.” The ruling held that the person served “was obviously an Indian by appearance” and “no evidence beyond the appearance of the alleged Indian was presented.” Ibid:177-178, 181.

¹⁷³ Brownlie also mistakenly attributes this phrase. Quoting from Backhouse, Brownlie states that the phrase was “lifted straight out” of the 1894 *Howson* Supreme Court decision rather than from the earlier 1876 *Indian Act*. Brownlie, 2007, Op. Cit.:25; Thompson and Genosko, 2009, Op. Cit.:177-178, 181.

¹⁷⁴ PM Anderson for Acting Deputy Minister of Justice to the Director of Indian Affairs, 25 May 1937, (Ottawa), National Archives of Canada, RG10: Department of Indian Affairs, “Dept. of Justice Opinions – Vol. 4,” 1911-1938, Series B-8 , Volume: 11195, File: 3, Access Code: 32.

together with all other persons” considered to conduct themselves according to the “Indian mode of life.”¹⁷⁵ Since this interpretation applied the *Indian Act* intoxication provisions to “whites and others of Indian blood,” its implications were substantial: this piece of preeminent federal legislation had significance to law enforcement in every Canadian province and territory.¹⁷⁶ Despite its importance, the DIA had “no information by which to identify the expression ‘Indian mode of life’” and could not instruct the Department of Justice on whether it could be applied to “a white man.”¹⁷⁷ Acting Deputy Minister of Justice FP Varcoe was

inclined to think that in certain cases it would be possible for the provisions of Paragraph (A) of subsection (1) of section 126 of the Indian Act to apply to white persons as well as to those of Indian blood, but it would not, I think, be satisfactory to endeavor to give any general opinion on this question but rather, if and when, any particular case arises in which there is doubt such case might then be referred to [him] to be dealt with in light of the facts applying thereto...however...the paragraph would apply to white persons only in very exceptional circumstances.¹⁷⁸

While DIA officials could use this ambiguity to advance their intoxication prohibitions wherever it appeared that liquor was impinging on their paternalistic programs, provincial authorities and individual liquor retailers were left with the problem of evaluating potential customers.

When persons who were refused access to liquor through the LCBO based on their “Indianness” persevered in insisting that they were not legal “Indians,” the LCBO required them to present an enfranchisement card.¹⁷⁹ Genosko and Thompson write that the “LCBO’s enfranchisement card was the key technology used as proof of non-inclusion within the Indian category.”¹⁸⁰ Nonetheless, what the LCBO demanded was an official Department of Indian Affairs Enfranchisement Card signed by DIA authorities.

Requests to produce Enfranchisement Cards were highly problematic. Enfranchisement Cards were only held by individuals who had completed the enfranchisement process. Sobriety was a requirement for enfranchisement. Moreover, any wives, children, or descendants of enfranchised individuals who lost, or never received, “Indian status” as a result of the *Indian Act*’s narrow legal delineations based on relationships to adult males, did not carry

¹⁷⁵ Secretary TRL MacInnes to the Deputy Minister of Justice, 21 May 1937, (Ottawa), “Dept. of Justice Opinions – Vol. 3,” Op. Cit.

¹⁷⁶ Ibid.

¹⁷⁷ Acting Director of Indian Affairs to the Secretary of the Deputy Minister of Justice, 27 May 1937, (Ottawa), “Dept. of Justice Opinions – Vol. 4,” Op. Cit.

¹⁷⁸ Acting Deputy Minister of Justice FP Varcoe to the Director of Indian Affairs, 29 May 1937, (Ottawa), “Dept. of Justice Opinions – Vol. 4,” Op. Cit.

¹⁷⁹ Thompson and Genosko, 2009, Op. Cit.:127, 179.

¹⁸⁰ Ibid:179.

Enfranchisement Cards. Nonetheless, they, in addition to other non-status persons, might be racially or socially classed “Indians.”

Persons who possessed Enfranchisement Cards, “even with their evidence of ‘white’ (assimilated) status, were not automatically granted access to liquor” by vendors who had the right to refuse them service.¹⁸¹ The ineffectiveness of the Enfranchisement Card requirement reveals a hypocrisy of doubt about the Federal Government’s assimilative program. Unless a person racialized as an “Indian” was an adult who had personally been vetted by the DIA for enfranchisement and granted an Enfranchisement Card, there was no route to navigate through the administrative protocols of purchasing liquor in Ontario. Those who had been granted passage through their Enfranchisement Card still faced opposition.

If an adult was enfranchised, in order to access liquor rights, they had to disassociate with groups of “Indians” and maintain the public discipline of not exhibiting “Indian” ways of life. Persons of “Indian blood” who were “reputed” to have any association with an “irregular band” or an “Indian mode of life” were not considered fully assimilated even if they lacked, or had never possessed, “Indian status.” Therefore, both an individual who had been enfranchised and held an Enfranchisement Card and a person precluded from Indian status by, for example, the enfranchisement of their grandfather could be assessed by federal authorities, provincial regulators, law enforcement, and the judiciary as if they might have “reverted” to cultural forms that the Department of Indian Affairs avowed would be overcome by a linear progression from “savagery” to “civilization.” The governmental logic of the progressive civilization of “Indian” legal minors towards the adult responsibilities of membership in the state did not hold.

7.5.2 Indicting Ontario Indians: 1951 *Indian Act* Concessions and Interdiction Prosecutions

From 1954, when Ontario took the 1951 *Indian Act* option of allowing liquor consumption in licensed premises, while the right of purchasing liquor in LCBO stores was still withheld, “First Nations peoples were overrepresented on both the Interdicted Lists and in interdiction-related convictions until the list’s demise in the 1990s.”¹⁸² Before this right was legislated, appearance on Interdiction Lists was not necessary for the prosecution of “Indians” who could, in any case, be charged under the *Indian Act*. Prior to 1949, Ontario had not seen any Interdiction List convictions “but they increased substantially to over eight hundred individuals

¹⁸¹ Thompson and Genosko, 2009, Op. Cit.:127, 179.

¹⁸² Ibid:182-183.

by the late 1960s and ‘coincidentally’ appeared alongside the right to purchase alcohol acquired by First Nations.”¹⁸³ Genosko and Thompson’s Indian/Interdiction argument is very compelling in light of these legislative changes. Genosko and Thompson assert that by the “1970s, the integration of Indian/Interdiction into everyday racist common sense was so pervasive that the two were inseparable.”¹⁸⁴ The Drunken Indian stereotype has certainly endured.

Valverde identifies a small number of Indian Reserve inhabitants on the Ontario “Indian List.”¹⁸⁵ Although these individuals were most likely “Indians,” as was reflected by their geographical location, they did not use the Interdiction List’s common name.¹⁸⁶ Rather, they referred to the Interdiction List as “‘the list of those who have problems with alcohol,’” or the “blacklist.”¹⁸⁷ A mother corresponded with the LCBO regarding putting her son on the “blacklist” as did a man who wrote from another reserve to have his own name included on the list.¹⁸⁸ Conceivably, not calling the Interdiction List by its common name was a form of resistance through nomenclature, albeit an act of resistance that trades one tale of discrimination for another.

Voluntary requests for inclusion on the list were automatically adopted without the usual Interdiction List investigations.¹⁸⁹ Letters from individuals living on reserves to the LCBO “show local police – including sometimes aboriginal, reserve-based police – putting pressure on Indians to write ‘voluntarily’ to get themselves put on the list.”¹⁹⁰ Valverde describes “voluntary” requests such as a letter that

would seem heartfelt, except for the fact that the letter is addressed not to the liquor board but to a man that the file later reveals to be an OPP corporal. The male alcoholic, who according to both the reserve (Indian) police and the (white) provincial police, was a danger to his wife and children when he drank.¹⁹¹

Another voluntary interdiction request was written on police stationery and, Valverde believed, appeared to have been dictated by a police officer rather than the subject petitioning to be added to the list.¹⁹²

¹⁸³ Thompson and Genosko, 2009, Op. Cit.:182-183.

¹⁸⁴ Ibid.

¹⁸⁵ While Aboriginal ancestry itself cannot be determined from Ontario interdiction list files, Valverde found that 18 of 154 files in her study referred to individuals living on reserves. Valverde, 2004, Op. Cit.:578.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid:570-571.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid:578.

¹⁹⁰ Ibid.

¹⁹¹ Ibid:578-9.

¹⁹² Ibid.

For the most part, it was unusual for “white police” to ask for formal interdiction orders; however, the interdiction files of some indigenous persons reveal that social workers attempted to invoke the list as a method of applying pressure to allegedly neglectful or abusive parents without officially involving the police.¹⁹³ A Band Council composed a formal resolution to request the addition of three individuals from their First Nation to the Interdiction List.¹⁹⁴ Valverde postulates that bands “simply wanted the interdiction as an additional legal tool to manage the risks of disorder” flowing from colonialism because former methods of maintaining good order, such as the indigenous practice of banishment, were no longer tenable.¹⁹⁵

Systematized racism belied the Department of Indian Affairs’ contention that all “Indians” could be completely assimilated until there was no longer any “Indian problem.” Discriminatory treatment extended to the provinces which inherited portions of these prejudices when their governmental jurisdiction took over parts of the larger system of “Indian” administration. Genosko and Thompson demonstrate that the “disciplinary technology” of the LCBO was “not evenly applied” because, for instance, an “Indian” woman “would have experienced a statistically significant greater likelihood than did her ‘white’ counterpart of receiving severe disciplinary action” from the LCBO.¹⁹⁶ The LCBO built its policies respecting “Indians” on the foundations of the Drunken Indian stereotype.¹⁹⁷ These discriminatory conceptions were woven into federal legislation and provincial law enforcement practices before the LCBO was convened.

While, in approved circumstances, the purchase of alcoholic beverages by “Indians” was legal, public intoxication was criminal and the Drunken Indian stereotype equated one with the other. Since LCBO vendors were obliged to administer alcohol responsibly, even the 1954 granting of the legal right of “Indians” to purchase alcohol did not preclude racialized prohibition because an “‘Indian-looking’ person was considered suspect and thus by dint of classification a potential problem drinker” whether or not they lived on a reserve.¹⁹⁸ Municipalities also defined “Indians” in ways that highlighted their potential for nuisance, violence, and criminality. Valverde’s elucidation of the ways that city governance structures “see” finds “little or no

¹⁹³ The three persons were later charged with breaching the order. Valverde, 2004, Op. Cit.:580.

¹⁹⁴ Ibid:580.

¹⁹⁵ Ibid:578-581.

¹⁹⁶ Thompson and Genosko, 2009, Op. Cit.:20.

¹⁹⁷ Ibid:167.

¹⁹⁸ Ibid:126-127.

distinction between objectionable buildings and objectionable types of people.”¹⁹⁹ As North American municipalities developed, “Indians” were frequently “subject to the same kind of spatially exclusionary rules as dangerous trades, and municipal ordinances often consisted of nothing more than rather random lists of types of people and types of businesses or trades, with little or no categorization.”²⁰⁰ The prejudicial association of indigenous identities with criminal behaviour is endemic to supposedly lawful structures at all levels of state function.

7.6 Peroratio: Intoxicating Incarceration

This chapter demonstrates that the elision of moral ideologies of temperance with stereotypes of indigenous identity was as beguiling for the reforming minds of the Department of Indian Affairs as it was treacherous for indigenous peoples. By smothering “Indians” in the duplicitous identity of moral naivety and moral threat, the Department of Indian Affairs justified, and perpetuated, their own bureaucratic existence. The legislative segregation of the *Indian Act* and the assimilative geographic quarantine of “status Indians” on reserves reinforced this social construction. In addition to their formidable powers of guardianship, Indian Affairs and law enforcement officials knew where to look for, and were given the legal right to look at, an entire class of racialized individuals who were already preconceived as offenders. The insidious aspersion of the “Drunken Indian” enforced reserve boundaries as it made anyone associated with its racialized or behavioural traits out of place in Canadian society and disproportionately accessible to state intervention. The legal geographies of “Indian” identities are criminalizing.

¹⁹⁹ Mariana Valverde, “Seeing Like a City: The Dialectic of Modern and Premodern Ways of Seeing in Urban Governance,” *Law & Society Review*, 45(2), (2011):277-312.

²⁰⁰ *Ibid.*

Chapter 8

Assimilation Through Incarceration: Punitive Restriction

At times, for the paternalistic Department of Indian Affairs, summary convictions resulting in fines and the sharp coercive measure of imprisonment were the humane methods of achieving their assimilationist purposes. If punishment of “uncivilized” behaviour was the goal, a Wikwemikong parish priest greatly preferred that another method be applied to “Indians.” After years of “reflecting with sorrow upon the ineffective way some vices especially lewdness and drunkenness” were punished, the reverend sent suggestions for more effective remedial instruments to Indian Affairs.¹ The priest observed that persons who were “addicted to those disorders” cared “not a straw” if they were assessed fines and, ordinarily, had neither the “means nor will of redeeming themselves from imprisonment.” Regrettably, the payment of fines only caused suffering to their families. From the priest’s perspective, jail was not a legitimate penalty because it allowed idleness and “Indian” prisoners received better fare while incarcerated than they did at home. Moreover, the government bore the expense of feeding prisoners. The Wikwemikong clergyman isolated the problem: by imprisoning “Indians,” the government was making the “mistake” of “dealing with them as with white men” when in many other respects they were “treated as minors.” The priest discerned a pivotal logical flaw of the *Indian Act*.

The Wikwemikong cleric enjoined the Department of Indian Affairs to “let them be punished as minors or wicked boys.” He had been told by a missionary that, in the USA Rocky Mountains, a “delinquent” recidivist was severely flogged in the presence of the entire band and this treatment had a “wonderful effect.” Since the “Indians” of Wikwemikong, “dread public denunciation,” the priest reasoned that this type of “public degradation” would be inexpensive and effective. While the Department of Indian Affairs was cognizant of the challenge of “providing a punishment suitable to the Indian,” drunkenness was “not always as much their fault” as it was caused by “unscrupulous white men” illegally selling liquor for profit.² As they

¹ The discussion on this page is based on the following source: [Name withheld] to Deputy General of Indian Affairs, 9 April 1894, (Wikwemikong), “Manitowaning Agency – Correspondence from the Reverend..., Parish Priest on the Wikwemikong Reserve regarding the conduct of the Indians,” 1894, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2751, File: 148,137, Access Code: 90.

² Department of Indian Affairs to [Name withheld], 12 April 1894, (Ottawa), “Manitowaning Agency – Correspondence from the Reverend..., Parish Priest on the Wikwemikong Reserve regarding the conduct

strove to impose the heaviest punishment on these profiteers, Indian Affairs asked for the assistance of “law abiding citizens” in “bringing offenders to justice” by reporting them to DIA Agents so that they could be prosecuted according to existing laws which were “amply sufficient, whenever... honestly and impartiality administered.”³ Indian Affairs did not believe the priest’s suggestion of the “severe and exceptional measure of corporal punishment” could be supported by public opinion.⁴ Moreover, corporal punishment would cause “Indians” to lose the very self-respect that the DIA, in its conceit, claimed to engender.⁵

The Wikwemikong priest was requested to turn over his information to the Indian Agent.⁶ While Manitoulin Indian Agent AM Ironside was asked to pursue the priest’s complaint, he was encouraged to remember, “it is the white man (who should know better) that the Department wishes to punish rather than the Indian, who were it not for the white man, would probably not have offended; but of course the Indian offenders must also be punished if it be considered necessary to do so to prevent other Indians copying their vicious example.”⁷ To this end, Ironside was asked to warn individuals suspected of wrongdoing that the DIA would “if they continue in their evil courses cause the severest punishment to be visited upon them.”⁸ Despite Indian Affairs’ tone of enlightened superiority, committing “Indian” wards to assimilative incarceration was as severe as it was discriminatory.

For people occupied in indigenous economies of harvesting from the land, jail terms could be especially difficult at certain times of year. An individual who resisted arrest when he was “charged by the Indian constable with being drunk in Manitowaning” was sentenced to a month in jail with hard labour.⁹ The *Manitoulin Expositor* remarked that this sentence would be particularly difficult because it would take place during the annual sugarbush harvest.¹⁰ The convicted man was warned that if he did not disclose where he procured the liquor before his carceral term expired, it would be extended by fourteen days.¹¹ The Department of Indian Affairs

of the Indians,” 1894, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2751, File: 148,137, Access Code: 90.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Deputy General of Indian Affairs to Acting Indian Superintendent AM Ironside, 12 April 1894, (Ottawa), “Manitowaning Agency – Correspondence from the Reverend,” 1894, Op. Cit.

⁸ Ibid.

⁹ *Manitoulin Expositor*, 27 March 1880, Manitowaning, Volume: I, No. 45.

¹⁰ Ibid.

¹¹ Ibid.

jealously guarded the paternalistic authority given them by the Canadian state to radically alter the lives of their charges.

For Deputy Superintendent General James Smart, the *Indian Act* intoxication provisions had assimilative, as well as protective functions. Despite the relative rarity of securing convictions against settlers who supplied “Indians” with intoxicants, Smart contended that the

enactment of special legislation recognizes the fact that the Indians require exceptional protection from their own natural fondness for strong drink, as well as from having temptation put in their way by unscrupulous miscreants whose lust of gain would outweigh every consideration of morality and humanity... While the design of the special legislation referred to contemplates the compulsion of sobriety on the part of individuals who may lack the latent power or desire to abstain, it has a much wider and higher one, viz: to assist in the development of character and power to resist temptation among the people as a whole.¹²

In the *Annual Report of the Department of Indian Affairs*, Smart singled out Manitowaning Indian Superintendent BW Ross’ statement that the West Bay (M’Chigeeng) “Indians” had access to settlers who might supply them with liquor yet had “learned to shield themselves” behind “moral barriers.”¹³ Smart asserted that “Indians are beyond dispute a law respecting people, and when occasionally some serious crime is committed by one of their number, it attracts the more attention from its rarity, and causes alarm if of a character to suggest that racial antagonism may still be slumbering.”¹⁴ The potential for racialized tensions did not dissipate as settlement consumed indigenous territories.

While the legal “place” of “Indians” contracted within ever-shrinking reserves and legislation rejected their ability to address the state as adults, let alone as nations, the inverse was occurring in adjacent towns and villages. The colonizing state drove the geographic expansion of settlements that brought with them markers of legal adult autonomy such as the ability to purchase liquor and to become leaders in political governance at municipal, provincial, and federal scales. As settlement and the administrative apparatus of the state increased in tandem, legal disparities such as the *Indian Act* intoxicant provisions reinforced racializations of “Indians.” In the legal geography of Manitoulin Island, proliferating liquor establishments were moving gateposts of exclusion.

¹² Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1898*, (Ottawa: SE Dawson, 1899):xxv.

¹³ Ibid.

¹⁴ Ibid.


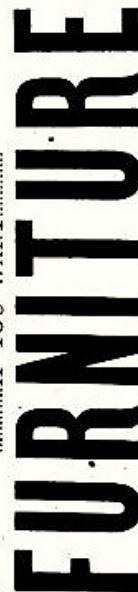
<p>(Three doors south of M. Irving & Co.)</p> <p>SPRING ANNOUNCEMENT !</p> <p>To make room for a number stock of goods I have determined to sell off my entire stock at prices unheard of before. Look at the following prices:—</p> <p>DOUBLE HARNESS from \$26 00 up SINGLE HARNESS " 13 00 up SADDLES, " 5 00 up</p> <p>Wholesale Whips, Saddles, Spurs, Curry-combs, Brushes, Bells, Collars, Bridles, Hames, Sircingles, &c.,</p> <p>AT AND UNDER COST !</p> <p>My increasing trade is sufficient guarantee to the public that I keep no dead stock in my Emporium.</p> <p>W. H. PRICE.</p> <p>ALEX. BRINKMAN - MANAGER.</p> <p>NOTICE—</p> <p>THE LAW BUILDING & MANUFACTURING COMPANY, MEAFORD. BUILDERS AND CONTRACTORS. Manufacturers and dealers in all kinds of building material, sash, doors, blinds, mouldings, &c. Contracts taken for buildings of every description on any part of the Manitoulin Island. Plans and specifications furnished if required. As we employ none but efficient workmen, we can guarantee satisfaction in every case. Orders forwarded to the office at Meaford will receive prompt attention.</p> <p>Nov. 18, 79. JAS. A. ELLIS. 26m8</p>	<p>HOUSE PAINTING AND GRAINING And satisfaction guaranteed.</p> <p>Sign Writing Attended to on Shortest Notice.</p> <p style="text-align: right;">2371</p> <div style="text-align: center;">  </div> <p>W. J. TUCKER, Chemist & Druggist SEEDSMAN & DEALER IN MEDICINAL LIQUORS. Manitowaning Calls attention to his Winter stock of PURE DRUGS ! PATENT MEDICINES ! ! DYE STUFFS ! ! !</p> <p>STATIONERY ! PERFUMERY ! ! TOILET ARTICLES ! ! !</p> <p>TRUSSES—SINGLE AND DOUBLE !</p> <p>Pure and unadulterated Wines and Liquors for medicinal use. Also on hand a large stock of clover and garden seeds. COAL OIL at 80c per gallon; 10c in 5 gallon lots.</p> <p>ORDERS BY MAIL WILL RECEIVE PROMPT ATTENTION.</p>	<p>QUEEN'S HOTEL, MANITOWANING. JOHN COLE PROPRIETOR. Every accommodation for the travelling public. Terms moderate. First-class liquors and cigars. Always on hand. Good hostler. 171</p> <div style="text-align: center;">  </div> <p style="writing-mode: vertical-rl; transform: rotate(180deg);"> IF YOU WANT..... IT WILL PAY YOU TO ATTEND..... BASSINGTHWAIGHTE'S GREAT CLEARING SALE ! DURING MARCH. E. BASSINGTHWAIGHTE. </p> <p>H. LePAN & CO., [Late Wolfe & LePan.] WHOLESALE AND RETAIL DEALERS IN Groceries & Provisions, GLASSWARE, WOODENWARE, WINE AND SPIRIT MERCHANTS OWEN SOUND.</p>
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Figure 28: The Juxtaposition of Law and Liquor¹⁵

The Law Building Company that constructed the provincial Manitoulin lock-ups shares a newspaper page with advertisements for the sale of liquor to settlers. The same liquor would be unlawfully sold, possessed, and consumed if “Indians” were the customers. If found guilty, those involved in the transaction would soon be in contact with the structures provided by the Law Building Company.

A settler attempted to bribe an “Indian” with ten dollars to obtain liquor at one of the Manitoulin Island hotels and inform on the proprietor.¹⁶ In describing the attempt, the *Manitoulin Expositor* reported that, in “justice to the Indian... he would take no part in the proceeding whatever which goes to show that even the dark men of the Island are more honorable than some of the white race.”¹⁷ The Wikwemikong priest’s avocation of the efficacy of public shame is an appalling illustration of jarring contradictions in the assimilative plan to fashion “white men” from the cloth of “Indians.” Everyday interactions between the two could result in the disproportionate incarceration of indigenous peoples.

¹⁵ Adapted from *Manitoulin Expositor*, 13 March 1880, Manitowaning, Volume: I, No. 43.

¹⁶ *Manitoulin Expositor*, 20 March 1880, Volume: I, No. 44, Manitowaning.

¹⁷ *Ibid.*

8.1 Policing “Indians” and “Indians” as Police

Discussing amendments to the *Indian Act*, and unsure if he was being fanciful because “Indians are placed possibly in this respect differently from other classes of people,” Visiting Superintendent William Fisher tentatively asked if police forces could be elected or appointed from the ranks of the bands that they would serve.¹⁸ Officers would be required to provide protection and transport persons accused of liquor offences to the nearest lock-up where they would be “dealt with in the ordinary way.”¹⁹ Fisher’s rationale was that he was often unable to procure a policeman when needed. If authority were given to “Indian” police officers, Fisher did not “intend that it should supersede the ordinary force authorized by law” but that the new officers would be “merely an addition” that would lend reserves convenient access to increased security.²⁰

The Department of Indian Affairs anticipated that placing “Indian Constables” on reserves would combat the liquor trade as well as diminish other types of offences on reserves “so situated that they are specially exposed to the aggressions of evil-disposed white men.”²¹ In 1889, “Indians” in the North-West were already “doing good service as scouts attached to the Mounted Police Force.”²² The recruitment of Indian Constables involved soliciting Indian Agents for recommendations of “reliable and intelligent Indians,” applying through Indian Affairs to the Department of Justice for appointments under the *Dominion Police Act*, and distributing approved commissions issued by the Department of Justice.²³ Badges were given to Indian Constables to wear on their arms.²⁴ Superintendent General of Indian Affairs Edgar Dewdney believed that having Indian Constables on reserves would make the “detection of crime... more certain, and proof of guilt... more easily obtained than it could be were a white man to hold the office; besides...by employing Indians as police” the DIA was able to maintain their ever-present insistence on economy.²⁵

The wisdom of taking this course of action on the Restigouche Reserve was questioned. Priest and Indian Agent Drapeau decried the liquor sellers who plied their trade during the

¹⁸ Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 31 December 1880*, (Ottawa: Maclean, Roger & Co., 1881):50.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1889*, (Ottawa: Brown Chamberlin, 1890):xiii-xiv.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

summer months.²⁶ A grant for the establishment of a lock-up at Cross Point had been secured from the Indian Land Management Fund for the township of Mann.²⁷ The Mann lock-up was supposedly “intended for the use of Indians as well as White Men.”²⁸ However, the lock-up was neither convenient to the reserve nor equipped for winter.²⁹ Furthermore, it was asserted, “Indians cannot be kept there with White Men.”³⁰ The suggestion that a lock-up be erected on the Restigouche Reserve was endorsed.³¹ In 1898, the expenses of building a reserve lock-up were applied for and approved.³²

Shortly thereafter, the Secretary Treasurer of the Municipal Council of Mann requested that Indian Affairs relinquish their claim to the Mann Lock-up in order to facilitate the township in making extensive repairs to its larger Courthouse structure.³³ The Mann Lock-up was no longer used because of the new reserve lock-up within a half-mile of the Courthouse in the contiguous township.³⁴ A policing issue complicated the transfer of law enforcement facilities to the Restigouche Reserve. A meeting of the Indian Agent, Chief, and Councillors resolved, an “Indian

²⁶ *Annual Report of the DIA*, 1880, Op. Cit.:32

²⁷ Drapeau to Superintendent of Indian Affairs, 24 August 1880, (Cross Point, Restigouche), “Restigouche Reserve – Construction of a Lock-up and Council Room,” 1880-1900, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2120, File: 22,787, Part 1, Access Code: 90; Extract, 23 October 1880, “Restigouche Reserve,” Op. Cit.; Township of Mann Motion Passed and Certified by Mayor, “Restigouche Reserve,” Op. Cit.; L Vankoughnet to the Accountant, 29 October 1880, “Restigouche Reserve,” Op. Cit.; Department of Indian Affairs Acting Accountant, 27 April 1897, (Ottawa), “Restigouche Reserve,” Op. Cit.; Acting Secretary of the DIA to Indian Agent Dr. Venner, 27 April 1897, (Ottawa), “Restigouche Reserve,” Op. Cit.; *Annual Report of the DIA*, 1880, Op. Cit.: 32; *Annual Report of the DIA*, 1881, Op. Cit.: 87.

²⁸ Extract from letter from Polycarp Martin and Noel Busqua, 12 April 1897, (Restigouche), “Restigouche Reserve,” Op. Cit.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*; Indian Agent Venner, 14 April 1897, (Campbellton, NB), “Restigouche Reserve,” Op. Cit.

³² Superintendent of Indian Affairs to His Excellency the Governor General in Council, 23 March 1898, (Ottawa), “Restigouche Reserve,” Op. Cit.; Assistant Secretary AN McNeill to Acting Indian Agent Jeremie Pitre, 14 April 1898, (Ottawa), “Restigouche Reserve,” Op. Cit.; S Bray to the Secretary of the DIA, 13 April 1898, (Ottawa), “Restigouche Reserve,” Op. Cit.; Secretary of the DIA JD McLean to Acting Indian Agent Jeremie Pitre, 9 April 1898, (Ottawa), “Restigouche Reserve,” Op. Cit.; Clerk of the Privy Council to the Superintendent General of DIA, Extract from a Report of the Committee of the Honourable the Privy Council, approved by His Excellency on the 9 April 1898, “Restigouche Reserve,” Op. Cit.

³³ Secretary Treasurer of the Municipal Council of the Township of Mann to the Superintendent of Indian Affairs, Cross Point, 13 April 1899, (Cross Point), “Restigouche Reserve,” Op. Cit.

³⁴ Assistant Secretary of the DIA to Indian Agent Jeremie Pitre, 17 April 1899, (Ottawa), “Restigouche Reserve,” Op. Cit.; Secretary of the DIA, Memorandum for the Information of the Deputy Minister, 28 April 1899, “Restigouche Reserve,” Op. Cit.

police officer has proven to be a failure.”³⁵ The Department of Indian Affairs was asked to immediately send “a stranger specially a white man for policeman who would not belong to any party and consequently would give justice to every body, and to who every body would obey.”³⁶ Part of the justification for this action was that a “good white policeman” could collect fines to defray his salary while an Indian Policeman could not because of close relationships on reserve.³⁷

8.1.1 Policing Ontario Reserves

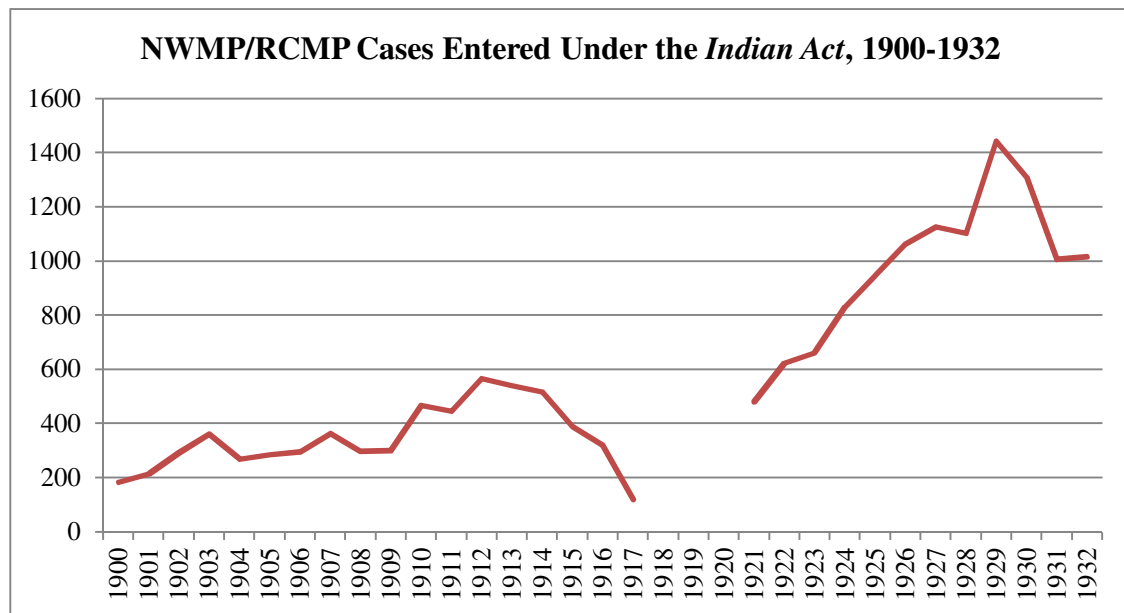


Figure 29: Total Number of NWMP/RCMP Cases Under the *Indian Act*, 1900-1932³⁸

Dominion Constables and the RCMP enforced the *Indian Act* as well as the “ordinary laws of the country” on Indian Reserves and, in their inspections of settler towns in eastern and western Ontario, detected illegal sales of liquor to “Indian” wards of the state.³⁹ The RCMP, formed in 1919 through the merging of the super-provincial NWMP and Dominion Police forces, held the responsibility of enforcing law and order, according to the *Criminal Code*, on Indian

³⁵ Indian Agent Jeremie Pitre, Chief, and Councillors to the Secretary of the DIA, 14 April 1900, (Ste. Anne de Restigouche), “Restigouche Reserve,” Op. Cit.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Reports of the North-West Mounted Police, 1901-1903; Reports of the Royal North-West Mounted Police, 1904-1916, 1918; Reports of the Royal Canadian Mounted Police, 1920-1932.

³⁹ *Report of the Royal Canadian Mounted Police for the Year Ended September 31, 1923*, (Ottawa: FA Acland, Printed by Order of Parliament, 1924):20; *Report of the Royal Canadian Mounted Police for the Year Ended September 30, 1925*, (Ottawa: FA Acland, Printed by Order of Parliament, 1926):36.

Reserves, in National Parks, and throughout the territories.⁴⁰ The RCMP was also responsible for cases involving departments of the Federal Government.⁴¹

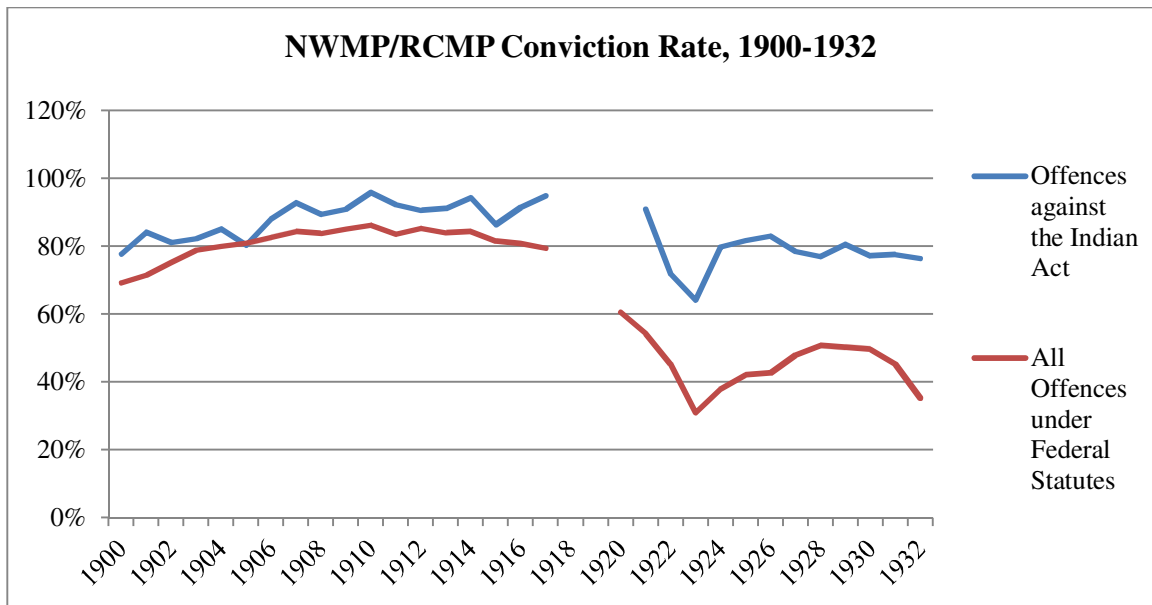


Figure 30: NWMP/RCMP Conviction Rate, 1900-1932⁴²
 Convictions under the *Indian Act* exceeded the average conviction rate for all federal statutes.

Divergences between state law enforcement and members of the Six Nations, a Confederacy that precedes and surpasses provincial and international borders, attract media attention and are often the catalysts for debates about moral right, legal power, and the authority of indigenous self-governance. The RCMP has been called upon to “support the officials of the Department of Indian Affairs” in locations such as the Grand River Indian Reserve where, in 1923, it was “necessary” to place a detachment even though the RCMP deemed it “another example of duties which impose labour without overt results.”⁴³ The RCMP reported that an “element” had taken “a view” that was “incompatible with the administration of the laws of the Dominion.”⁴⁴ The ensuing dispute between this element and the DIA “issued in something very like a general defiance of authority.”⁴⁵ Arrest warrants had not been executed for several years, police officers had been ejected from the reserve, and “no constable had set foot upon it for six

⁴⁰ *Report of the Royal Canadian Mounted Police, 1923*, Op. Cit.:14; The RCMP’s History, 2007-07-09, <<<http://www.rcmp-grc.gc.ca/hist/index-eng.htm>>>

⁴¹ Ibid.

⁴² Ibid.

⁴³ *Report of the Royal Canadian Mounted Police, 1923*, Op. Cit.:14.

⁴⁴ Ibid:20.

⁴⁵ Ibid.

months.”⁴⁶ On 7 December 1922, with Inland Revenue Officers, county constables, and a “sufficient number of police,” Superintendent AW Duffus, Commander of the RCMP in western Ontario, searched approximately nineteen houses on the Grand River Reserve where illicit liquor production was allegedly taking place.⁴⁷ Capitalizing on the momentum of this “assertion of authority” in which arrests and seizures were made, the RCMP established their detachment at the administrative centre of the reserve, Ohsweken.⁴⁸

Contemporaneously, as they imprinted state law enforcement on the reserve through the construction of the RCMP detachment, Indian Affairs sought to impress their vision of state governance structure on the geography of Ohsweken. The Six Nations at Ohsweken had, from “time immemorial,” selected chiefs and councillors using a hereditary system in which women held the voting power.⁴⁹ The Department of Indian Affairs considered this “obsolete... wholly unsuited to modern conditions of life and detrimental to progress and advancement.”⁵⁰ A Royal Commission was appointed to investigate the Six Nations in 1923.⁵¹ On the advice of the Royal Commission, the authority of the *Indian Act*, and with the authorization of a 1924 Order in Council, the DIA concluded that they had effectively dismissed the Six Nations electoral structure.⁵² In its place, Indian Affairs imposed a system under which the Six Nations would “have a measure of local autonomy largely corresponding to that of a rural municipality but subject to the supervision” of the Department of Indian Affairs.⁵³ Despite the efforts of the colonizing state, the Six Nations continue their sophisticated indigenous system of governance. By 1925, the Department of Indian Affairs had also built quarters for the Ohsweken RCMP detachment.⁵⁴

8.1.2 Police and Legal Counsel for Wards of the State

In addition to the discriminatory measures inherent in a legislative framework of wardship that imposed summary conviction for offences involving intoxicants, the Department of Indian Affairs had procedures for how to manage cases that lay beyond the *Indian Act*. Although

⁴⁶ Some of the warrants dated from 1918. *Report of the Royal Canadian Mounted Police*, 1923, Op. Cit.:20.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1924*, (Ottawa: FA Acland, 1925): 11.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ *Report of the Royal Canadian Mounted Police*, 1925, Op. Cit.:33.

Indian Affairs did pursue a policy of hiring of defense counsel for “Indians” accused of the serious crime of murder, conversely, they usually did not hire representation for other offenses even when these offences were far from “minor.” The hiring of defense counsel in murder cases was one device by which colonizing governments were able to claim that “Indians” were not discriminated against in criminal law.

In the differing circumstances of Indian Affairs in British Columbia, where title and cession through treaty were not generally recognized and policies of greater contact between indigenous peoples and settlers were often applied, Lieutenant Governor Joseph Trutch argued that “declared policy has been that the Aborigines should, in all material respects, be on the same footing in the eye of the law as people of European descent.”⁵⁵ When “Indians” were accused of shooting and killing other “Indians” in the vicinity of Victoria, defense council was assigned through the presiding judge, convictions occurred, and sentences of hanging were meted out.⁵⁶ Trutch saw this as fair access to defence counsel since “a poor Indian is no worse off than a poor White man, indeed, he is probably not so friendless, as the judges in this colony have always made it their special care, that Indians on trial should be at least at no disadvantage on account of their being Indians.”⁵⁷ Trutch claimed that Magistrates were the “especially constituted protectors of the Indians against injustice.”⁵⁸ In the 1875 administrative context of British Columbia where Indian Commissioners, not Superintendents and Indian Agents, corresponded with Indian Affairs, Lieutenant Governor Trutch viewed Magistrates as “‘Indian Agents,’ in all but the name” and expressed confidence in this “well-understood branch of their duty, that as full a measure of protection and general advantage has been bestowed on the Indians through their agency” by the government.⁵⁹

Paradoxically, the paternalistic approach of colonizing governments legislated discriminatory standards of lawful behaviour for indigenous persons while leaving them exposed to prosecution within court systems. In 1898 Restigouche, newly-stationed Jeremie Pitre had not yet been appointed to the DIA through an Order in Council and thus was not yet an Indian Agent Justice of the Peace.⁶⁰ He was instructed that, in the meantime, he could lay information based on

⁵⁵ Lieutenant-Governor Joseph Trutch, *Annual Report of the Department of the Interior for the Year Ended 30th June, 1875*, (Ottawa; Maclean, Roger & Co, 1876): lvi.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid:lvi.

⁵⁹ Ibid.

⁶⁰ Secretary of the DIA JD McLean to Acting Indian Agent Jeremie Pitre, 9 April 1898, (Ottawa), “Restigouche Reserve,” Op. Cit.

offences against the *Indian Act* or other statutes; however, if he had been considering the “engaging of counsel – the Department has to point out that this can only be done after having in each case shown it the absolute necessity for professional assistance.”⁶¹ Only the more senior officials at Indian Affairs could properly assess the need and provide the authority to engage defense counsel.⁶²

Lawyers objected to the Department of Indian Affairs’ failure to provide legal defense counsel in serious cases. In 1937, a twenty-year old “Indian boy” from a Saskatchewan reserve was arrested on a charge of “having carnal knowledge” of two underage girls.⁶³ At the Police Station where he was taken upon arrest, the accused lacked legal counsel when he was asked to state if he had “intercourse with these girls... replied that he had, and was told by the interpreter that he had broken the law, and that the Magistrate had sentenced him to three years on each charge, the charges to run concurrently.”⁶⁴ Reserve members requested the assistance of lawyer CS Davis who, in turn, brought a “capable interpreter” when he visited the imprisoned individual in the penitentiary.⁶⁵ Davis learned that the interpreter at the police station spoke a different type of Cree and that the accused individual did not entirely understand him and certainly was unaware of how to defend himself.⁶⁶ Davis was endeavoring to secure a new trial through the Department of Justice and, since the individual in question and his parents did not have the financial means, wondered if the DIA might advance him part of his fees.⁶⁷ Whatever their answer, Davis asserted, an “obvious injury has been done” and he intended to see it “righted,” even if he had to pay for it himself.⁶⁸

Secretary of the DIA TRL MacInnes explained to the Department of Justice that he was “not aware of any statutory authority that would authorize such payment except the general responsibility of the Department for Indian protection and welfare” and Indian Affairs did “not propose to defend in the present case” because it was

not the policy of this Department to defend Indians for any crime lower than murder, although, rarely, exception is made in the case of rape, that being a capital offence, and in certain cases where constitutional issues affecting the jurisdiction and administrative

⁶¹ McLean to Pitre, 9 April 1898, (Ottawa), “Restigouche Reserve,” Op. Cit.

⁶² Ibid.

⁶³ CS Davis of Davis and Davis Barristers, Solicitors, and Notaries to the Department of Indian Affairs, 16 October 1937, (Prince Albert), RG10: Department of Indian Affairs, “Dept. of Justice Opinions – Vol. 4,” 1911-1938, Series B-8, Volume: 11195, File: 3, Access Code: 32.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

authority of the Department entered as where Indian treaties or provisions of the Indian Act are challenged.⁶⁹

The Department of Justice had no objections to the DIA hiring legal counsel in capital cases involving “Indian” defendants “provided the Indian is unable to conduct his own defence” and there was money available.⁷⁰ Ten thousand dollars was allocated to legal fees for the fiscal year 1937-38 in Administrative Allotment Vote 169 and the DIA retained seventy-five hundred dollars on the date of correspondence.⁷¹ The Department of Justice did not see any authority whatsoever that would allow Indian Affairs to provide defense in other criminal or civil cases.⁷²

8.2 British Origins of Town Lock-ups

The principles behind the operation of town or village lock-ups have their basis in British law. The 1847 *Act to establish Lock-up Houses in the unincorporated Towns and Villages of Canada West* preceded Canadian Confederation.⁷³ In order to facilitate the “more effectual punishment of disorderly persons, and other offenders,” complements to District Jails were required.⁷⁴ By grant or purchase, District Councils were given the right to acquire land for the establishment of a lock-up in any unincorporated town or village a minimum of ten miles from the district seat of judicial authority that met the requirement of possessing at least one hundred adult inhabitants.⁷⁵ By petition of two-thirds of the “inhabitant householders” of the town or village, the District Council could authorize a payment of up to £200 for the immediate construction of a lock-up under the direction of two resident, or nearby, Justices of the Peace.⁷⁶ Resident constables, appointed by the District Magistrates in the General Quarter Sessions, acted as jailkeepers.⁷⁷

Any Justice of the Peace who lived close to the lock-up, or closer to the lock-up than to the district town, could make written orders of confinement of any person charged with a criminal

⁶⁹ Secretary TRL MacInnes to Deputy Minister of Justice W Stuart Edwards, 23 November 1937, (Ottawa), “Dept. of Justice Opinions – Vol. 4,” Op. Cit.

⁷⁰ Deputy Minister of Justice W Stuart Edwards to the Secretary of the Indian Affairs Branch, 30 November 1937, (Ottawa), “Dept. of Justice Opinions – Vol. 4,” Op. Cit.

⁷¹ Ibid.

⁷² Deputy Minister of Justice W Stuart Edwards to the Secretary of the Indian Affairs Branch, 8 December 1937, (Ottawa), “Dept. of Justice Opinions – Vol. 4,” Op. Cit.

⁷³ *An Act to establish Lock-up-Houses in the unincorporated Towns and Villages of Canada West*, 1847, 10 and 11 Victoria, c. 41.

⁷⁴ Ibid:c. 41, s. 1.

⁷⁵ Ibid:s. 1, 2, 3.

⁷⁶ The Justices of the Peace were to be within three miles of the town or village. Ibid:s. 2.

⁷⁷ Ibid:s. 3.

offence so that they could be held for up to two days until the case was examined and either dismissed or committed for trial.⁷⁸ Persons committed for trial were to be sent to the common gaol; however, they could be retained in the lock-up prior to transfer.⁷⁹ The resident Justice of the Peace could also apply this power to send “all persons found in the streets or highways in a state of intoxication, or convicted of unlawfully desecrating the Sabbath, and generally all persons convicted, on view of such Justice of the Peace, or on the oath of one or more credible witnesses, of any offence cognizant by law” for up to twenty-four hours.⁸⁰ The expense of establishing the lock-up house could be met through a special assessment yet the costs of maintaining the lock-up, conveying prisoners, and keeping prisoners were to be paid as District costs for the administration of justice as it would be for the common gaol.⁸¹ In keeping with the 1850 *Corporations Amendment Act*, the condition was added that persons summarily convicted by magistrates could be committed to the proximate lock-up instead of to the common gaol.⁸²

The 1867 *British North America Act* placed important areas of law-making under the exclusive jurisdiction of provincial legislatures.⁸³ Although “Indians” themselves were federal wards, critical aspects of their experiences of state law were included in these provincial legislative spheres. Provincial legislatures could create laws regarding the “Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province,” municipal institutions, “Shop, Saloon, Tavern, Auctioneer, and other Licences,” the “Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts,” and the “Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province” related to this section of the act.⁸⁴ While these legislative powers included common gaols and “Generally all Matters of a merely local or private Nature in the Province,” the centralized federal operations of Indian Affairs transversed

⁷⁸ *An Act to establish Lock-up-Houses*, Op. Cit.:c. 41, s. 5.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*:c. 41, s. 4, 6.

⁸² *An Act to provide for the summary punishment of petty trespasses and other offences* was an act of Parliament in Upper Canada in the fourth year of the reign of King Henry the fourth. 1850 *Corporations Amendment Act*, 13 and 14 Victoria, Cap. 64, s. 10. Keele, 1851, Op. Cit.:688; Hugh Scobie, *Scobie's Municipal Manual for Upper Canada*, 2nd edition with supplement, (Toronto: Hugh Scobie, 1851):7-8.

⁸³ *Constitution Act*, 1867, 30 and 31 Victoria, c. 3, s. 92.

⁸⁴ *Ibid.*, s. 92, ss. 6, 8, 9, 14, 15.

the boundaries of Canadian Confederation.⁸⁵ Beyond the exceptional prohibitions of the *Indian Act*, Indian Agents balanced judicial functions that teetered between provincial and federal realms as they enforced Indian Affairs' assimilationist programs and incarcerated "Indians" in lock-ups.

8.3 Lock-ups and the Department of Indian Affairs

Concurrent with solidification of state control in late nineteenth century Canada, Indian Affairs was thoroughly involved in the establishment of small "lock-up" jails for the incarceration of Indian wards of the state. Lock-ups were built on Indian lands and Indian Reserves across Canada. Rather than being a response to any increase in offences of the criminal laws meant to apply indiscriminately to all, the impetus for lock-up construction appears to be linked to assimilative criminalizing restrictions imposed on indigenous peoples. In 1873, Deputy Superintendent General William Spragge described that, aside from areas where indigenous peoples were "exposed to injurious influences, owing to their proximity to towns," and laws against the liquor trade with indigenous persons were not upheld, Indian wards appeared to be increasingly "conscious of their responsibilities as members of society, decidedly orderly in their conduct, more industrious in their habits, and less addicted to crime."⁸⁶ In regard to the "commission of crime," Spragge estimated that there were "probably... fewer instances... than among an equal number of persons who are not of Indian blood."⁸⁷ As part of the assimilative program of geographic restriction, "lock-ups" were established for the purposes of instilling obedience to state power in indigenous peoples.

Lock-ups were "built on a number of Indian Reserves varying a little in size."⁸⁸ As the centralized DIA administered the establishment of these lock-ups, they endeavored to maintain economy and suit the carceral facilities to their assimilationist needs on particular reserves. The lock-up on the Chippewas of Nawash reserve was built by Gilpin and Barker with one hundred sixty dollars from the band's capital fund.⁸⁹ A stone lock-up built by George Baker on the

⁸⁵ *Constitution Act*, 1867, 30 and 31 Victoria, c. 3, s. 92, ss. 16; Province of Ontario, *First Annual Report of the Inspector of Asylums, Prisons, &c., for Ontario, for the Year Ending 30th September, 1868*, (Toronto: Hunter, Rose & Co., 1869):1.

⁸⁶ Department of the Minister of the Interior, *Report of the Indian Branch of the Department of the Minister of the Interior for the Year Ended 30th June 1873*, (Ottawa: IB Taylor, 1874):6.

⁸⁷ *Ibid.*

⁸⁸ Secretary of Indian Affairs to Port Arthur Indian Agent Neil McDougall, 10 May 1907, (Ottawa), "Port Arthur Agency – Jails Within the Agency," 1907-1928, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 8229, File: 492-4-12, Access Code: 90.

⁸⁹ Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 31 December 1884*, Part II, (Ottawa: Maclean, Roger & Co., 1885):17.

Saugeen Reserve cost a great deal more at \$719.07.⁹⁰ The cement lock-up built on the reserve of the Chippewas of Rama was completed for \$994.75.⁹¹ According to Indian Agent Irwin, the “Indians” of Kamloops, BC, constructed a lock-up in their village to be overseen by an “Indian constable.”⁹² Kincolith, the Nass Valley Nisga’a village, also had a lock-up within the Indian village as did the Metlakahtla Indian Mission.⁹³ On the east coast of Canada, the Burnt Church, Eel Ground, and Big Cove Bands, possessed reserve lock-ups.⁹⁴ When the Red Bank, New Brunswick, reserve lock-up was built, Indian Agent Irving pronounced it the “nicest building of this kind in the agency.”⁹⁵ The Department of Indian Affairs gave a contract to Messrs. Constantin and O’Brien to build lockup facilities at Caughnawaga, Québec, with lattice flat steel bar cells.⁹⁶

The members of the Fort William, Ontario, Band Council assembled in March 1907 and approved a motion to request that the DIA withdraw three hundred dollars from their capital account for the purposes of building a cell, or “small room” for use as a lock-up, in both the Mountain and Mission Bay council houses.⁹⁷ Since these lock-ups were “in the nature of permanent improvements,” they could be funded out of the band’s account under Section 90 of the *Indian Act*.⁹⁸ The Grand Trunk Pacific Railway Company had acquired a right of way through the southern part of the reserve, causing the band to split and move to two separate parts of the reserve, and the agency now required two new lock-ups because it was impossible to take

⁹⁰ Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1899*, Part G, (Ottawa: SE Dawson, 1900):76.

⁹¹ Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1915*, Part II, (Ottawa: J de L Taché, 1916): xxvi, 84.

⁹² Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1901*, (Ottawa: SE Dawson, 1902):250.

⁹³ Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1902*, (Ottawa: SE Dawson, 1903):259. Department of Indian Affairs, *Report of the Deputy Superintendent of Indian Affairs, 1879*, (Ottawa: Maclean, Roger & Co., 1880):118.

⁹⁴ *Annual Report of the DIA*, 1902, Op. Cit.:61; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1904*, (Ottawa: SE Dawson, 1905):62.

⁹⁵ *Annual Report of the DIA*, 1911, Op. Cit.:63.

⁹⁶ *Annual Report of the DIA*, 1885, Op. Cit.:69; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1914*, Part H, (Ottawa: J de L Taché, 1915):105; Assistant Deputy and Secretary of Indian Affairs J D McLean to Messrs. Constantin & O’Brien, 15 August 1916, (Ottawa), “Manitoulin Island Agency – Jail Facilities on Manitoulin Island,” 1878-1952, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 8229, File: 481/4-12.

⁹⁷ The Chief Surveyor recommended to the Deputy Minister that a sum \$50 higher be released for the purpose. Indian Agent to Secretary of the Department of Indian Affairs, 29 March 1907, (Port Arthur), “Port Arthur Agency – Jails,” Op. Cit.; Chief Surveyor’s Memorandum for Deputy Minister, 12 April 1907, “Port Arthur Agency – Jails,” Op. Cit.

⁹⁸ Superintendent General of Indian Affairs to His Excellency the Governor General in Council, 15 April 1907, (Ottawa), “Port Arthur Agency – Jails,” Op. Cit.

prisoners to the existing Fort William Lock-up if an arrest was made at night or at another inconvenient time.⁹⁹ The council house lock-ups remained overnight cells secondary to the main Fort William Lock-up.¹⁰⁰ DIA lock-ups were a method of underscoring state presence on reserves: its supposedly temporary geographical outposts of assimilative pre-enfranchisement.

8.3.1 Lock-ups: Resistance and State Presence in Geographical Outposts

The DIA realized, and trumpeted, the deterrent assimilative effects of lock-ups; however, they did not have the effect of eliminating “Indian” identities from Canada. Rather, the lock-ups themselves, as well as the legislative and judicial powers that perpetuated their function, were a beguiling tool that was difficult to dispense with. When the lock-up on the eastern Ojibwas of Lake Superior reserve was first erected, it remained empty because they were “as a rule orderly” and had a “great dislike to the jail.”¹⁰¹ In 1876, Visiting Superintendent William Fisher asserted that, with lock-ups at Little Falls and Tobique, there was “no cause in these places now for the non-imprisonment of those Indians who seem determined, at all hazards, to violate the law” regarding liquor.¹⁰² The Micmac of Maria, Québec, were thought to make material and moral progress during 1884 due to preventative measures to repress the liquor trade “among which may be mentioned the establishment on the reserve of a small lock-up, to confine Indians when intoxicated.”¹⁰³ Twenty years later, J Gagne, Priest and Indian Agent, still found a “powerful hindrance” in the lock-up located in the centre of the reserve.¹⁰⁴

Since most of the DIA lock-ups had to be built cheaply in relatively remote locations, they relied on the use of “Indian labour.” The reliance on future inmates to construct the jails in which they would be held afforded opportunities for resistance. In 1894, the Indian Agent of the Garden River Band on the north shore of Lake Huron complained that the “Indians were to have built a lock-up to put the liquor offender in, but as yet I have not succeeded in getting them to get

⁹⁹ Indian Agent to Secretary of the Department of Indian Affairs, 29 March 1907, (Port Arthur), “Port Arthur Agency – Jails,” Op. Cit.; Superintendent General of Indian Affairs to His Excellency the Governor General in Council, 15 April 1907, (Ottawa), “Port Arthur Agency – Jails,” Op. Cit.

¹⁰⁰ Indian Agent N McDougall to the Secretary of the Department of Indian Affairs, 29 December 1909, (Port Arthur), “Port Arthur Agency – Jails,” Op. Cit.

¹⁰¹ Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1896*, (Ottawa: SE Dawson, 1897):17.

¹⁰² Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1876*, (Ottawa: Maclean, Roger & Co., 1877):31.

¹⁰³ *Annual Report of the DIA*, 1884, Op. Cit.:xxv, 32-33.

¹⁰⁴ *Annual Report of the DIA*, 1904, Op. Cit.:49; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended June 30th 1905*, (Ottawa: SE Dawson, 1906):45.

out the necessary timber for the purpose” even though the “fine looking” new Council Hall had been constructed and was already in use.¹⁰⁵

8.3.2 St. Regis Lock-up

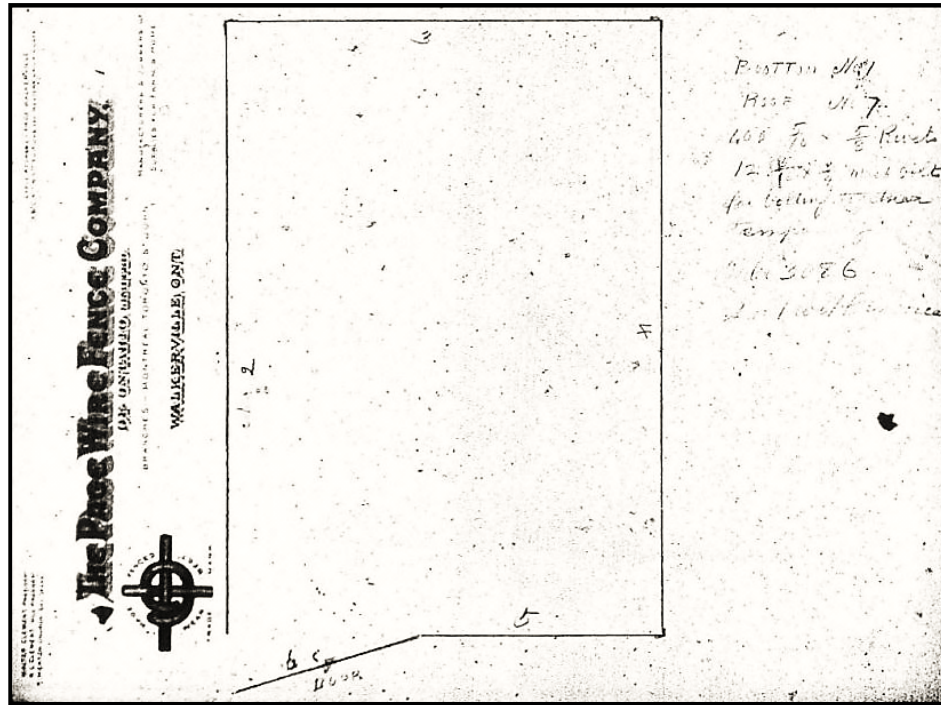


Figure 31: Original Simple Plan of a Steel Cell, St. Regis, 1916¹⁰⁶

The plan drawn up prior to construction was simply a rough sketch of a box with jotted measurements.

The lock-up on the St. Regis Reserve was the site of complex opposition despite predictions that it would “place a certain awe over” reserve inhabitants and “have a peaceable effect upon many.”¹⁰⁷ In 1916, Indian Agent FE Taillon posited the reserve’s isolation and the difficulties of transporting prisoners as reasons to build a jail “or at least a steel cage” in the building where the Band Council met according to *Indian Act* procedures for reserve governance

¹⁰⁵ By 1898, the Garden River lock-up was also in use. *Annual Report of the DIA*, 1898, Op. Cit.:15; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1894*, (Ottawa: SE Dawson, 1895):10.

¹⁰⁶ Adapted from Page Wire Fence Co., Memorandum and Sketch Plan of St. Regis Reserve Lock-up, 3 November 1916, (Walkerville, Ontario), “St. Regis Agency – Agency Buildings – St. Regis Lock-up (Plan),” National Archives of Canada, RG10: Department of Indian Affairs, Volume: 8229, File: 481/4-12, Access Code: 90.

¹⁰⁷ Indian Agent to JD McLean, 10 January 1916, (St. Regis), “St. Regis Lock-up,” Op. Cit.

and St. Regis children attended school.¹⁰⁸ The three manifestations of state law would thus share physical and conceptual space in the assimilative program. Perhaps fittingly, although the issue had not yet been brought before the Band Council, and the legally-required procedural step of securing a resolution had not yet occurred, the DIA was quite willing to allow a steel jail cell to be built using the band's Capital Fund.¹⁰⁹ On 7 August 1916, at a Regular Meeting of the Indian Council, the St. Regis Band approved the funds for a "a steel cage, to be placed in the council house in order that we may have a place to lock up any of our members who may break the laws," by a vote of five in favour and two opposed.¹¹⁰

Despite Taillon's reverie of band leaders' agreement with the law-and-order agenda, certain members of the St. Regis band conveyed their disquiet with the new jail and used it as a rallying point around which to challenge the paternalistic imposition of state law. One St. Regis individual broached a concern for maintaining band rights to reserve lands when he told the Dominion Government,

I want you to pay attention to this Francis Taillon for not doing right by the Indians. He puts a policeman on the Reservation and pays him a salary from the Indian's money. In the fall of 1916 we did not draw any money. A party of six men in St. Regis got the money and bought a cage to shut the Indians up in. Four of the party are full breed French Canadians. One out of the party of Six is buying land here which he has no right to do on the Reservation. His name is not recorded on the Records.¹¹¹

¹⁰⁸ Part of the problem of prisoner transport related to the geography of the Canada-US border. The Indian Agent gave the example that if "a person is arrested either in the Spring or Fall, not having a suitable place here... the route must of necessity be in Canada" through "precarious and at times extremely dangerous" land and water because it was "quite impossible to take the prisoner through the U. S. as he would... be out of our jurisdiction." Ibid; [Name withheld] to Superintendent of Indian Affairs, 15 June 1917, (Iroquois), "St. Regis Lock-up," Op. Cit.

¹⁰⁹ The projected cost of the steel cell was \$225. Assistant Deputy and Secretary of Indian Affairs to Indian Agent FE Taillon, 21 January 1916, (Ottawa), "St. Regis Lock-up," Op. Cit.

¹¹⁰ The quote for a single cell from the Page Wire Fence Company was \$160. The cost was approved according to Section 90 of the 1906 *Indian Act* which preferred consent of expenditures from band funds yet allowed, in the "event of a band refusing to consent to the expenditure of such capital moneys as the Superintendent General may consider advisable... and it appearing to the Superintendent General that such refusal is detrimental to the progress or welfare of the band, the Governor in Council may, without the consent of the band, authorize and direct the expenditure." *An Act Respecting Indians*, Dominion of Canada, 1906, c. 81, s. 90; Superintendent General of Indian Affairs to His Royal Highness the Governor General in Council, 13 September 1916, (Ottawa), "St. Regis Lock-up," Op. Cit.; Page Wire Fence Co., Memorandum and Sketch Plan of St. Regis Reserve Lock-up, 3 November 1916, (Walkerville, Ontario), "St. Regis Lock-up," Op. Cit.; Clerk of the Privy Council to the Superintendent of Indian Affairs, "Certified Copy of a Report of the Committee of the Privy Council approved by His Royal Highness the Governor General on the," Date illegible, (Ottawa), "St. Regis Lock-up," Op. Cit.; Assistant Deputy and Secretary of Indian Affairs JD McLean to the Page Wire Fence Co., 2 October 1916, (Ottawa), "St. Regis Lock-up," Op. Cit.

¹¹¹ [Name withheld] to Dominion Government, 12 June 1919, (St. Regis), "St. Regis Lock-up," Op. Cit.

Another band member protested to the Superintendent of Indian Affairs that Taillon had “established a lock up in the school house” and would “not tell where he got the money to pay for” the steel jail cell.¹¹²

The resistance of St. Regis band members extended to vandalizing the building that housed the lock-up, school, and meetings of the Band Council. After damage to the lock-up windows was repaired and the new window frames were “taken by unknown parties,” Taillon purchased supplies for heavy shutters that could be bolted on the inside.¹¹³

The use of the St. Regis lock-up cage was such that a larger replacement building soon seemed advisable. The pervasive control exercised by Indian Affairs over their wards extended beyond constructing a jail building for use in the application and enforcement of Canadian laws. Criminal law enforcement officers actively worked with the DIA and shared documents and details of cases involving Indians wards. In 1928, at the request of Indian Affairs, the RCMP sent an officer to St. Regis to investigate traffic in intoxicants.¹¹⁴ Detective Constable TS Moore thought it unnecessarily difficult to incarcerate those arrested on the St. Regis reserve. Moore illustrated,

it is necessary for one man to watch the prisoner, as we have no suitable place to lock them up; and the other man then can do very little alone, as while he is searching one place the Indians are free to hide or destroy any liquor which might be concealed in some other part of the premises. There is a good iron cage to lock the prisoners in... The windows of this building are boarded up as the glass has all been broken; and when it rains the roof leaks and we cannot put a prisoner in it. It is also situated too far away from the Indian Agent's office; and when a prisoner is locked up it is necessary for a man to remain and watch the place in case of fire, or to prevent any person from breaking the lock and letting the prisoner free. In cold weather the place is useless, as you cannot put a prisoner in a place where there are no windows... At the present time we have to keep the prisoners in the Indian Agent's office; and if a prisoner is intoxicated to any extent he generally leaves an unpleasant condition behind him, which is not very desirable in a public place.¹¹⁵

¹¹² [Name withheld] to Superintendent of Indian Affairs, 15 June 1917, (Iroquois, Ontario), “St. Regis Lock-up,” Op. Cit.; Assistant Deputy and Secretary of Indian Affairs JD McLean to [Name withheld], 21 June 1917, “St. Regis Lock-up,” Op. Cit.; [Names withheld] to The Dominion Government, 4 November 1919, (St. Regis), “St. Regis Lock-up,” Op. Cit.

¹¹³ Smith Hardware Company Invoice to FE Taillon, 28 June 1922. Indian Trust Fund Voucher to Smith Hardware Company, 20 November 1922, Certified by Agent FE Taillon. FE Taillon to Secretary of Indian Affairs JD McLean, 20 November 1922, (St. Regis), “St. Regis Lock-up,” Op. Cit.; Assistant Deputy and Secretary of Indian Affairs JD McLean to Indian Agent Taillon, 27 November 1922, (Ottawa), “St. Regis Lock-up,” Op. Cit.

¹¹⁴ Commissioner of the Royal Canadian Mounted Police Cortlandt Starnes to the Deputy Superintendent General of Indian Affairs, 6 June 1928, (Ottawa), “St. Regis Lock-up,” Op. Cit.

¹¹⁵ One St. Regis band member was arrested on 15 June at 11:30 pm and was held until 6:00 pm on the following day, when he achieved sobriety and it was deemed possible to release him. Detective Constable TS Moore of the Royal Canadian Mounted Police to the Officer Commanding “A” Division of the RCMP forwarded to the Department of Indian Affairs, 23rd June 1928, (Ottawa), “St. Regis Lock-up,” Op. Cit.

In response to the notification that it was “quite essential” that a more robust lock-up be built at St. Regis, the DIA began a new building process.¹¹⁶ The new lock-up built on the St. Regis Reserve in 1928 was designed by the Department of Indian Affairs’ own architectural and engineering service.

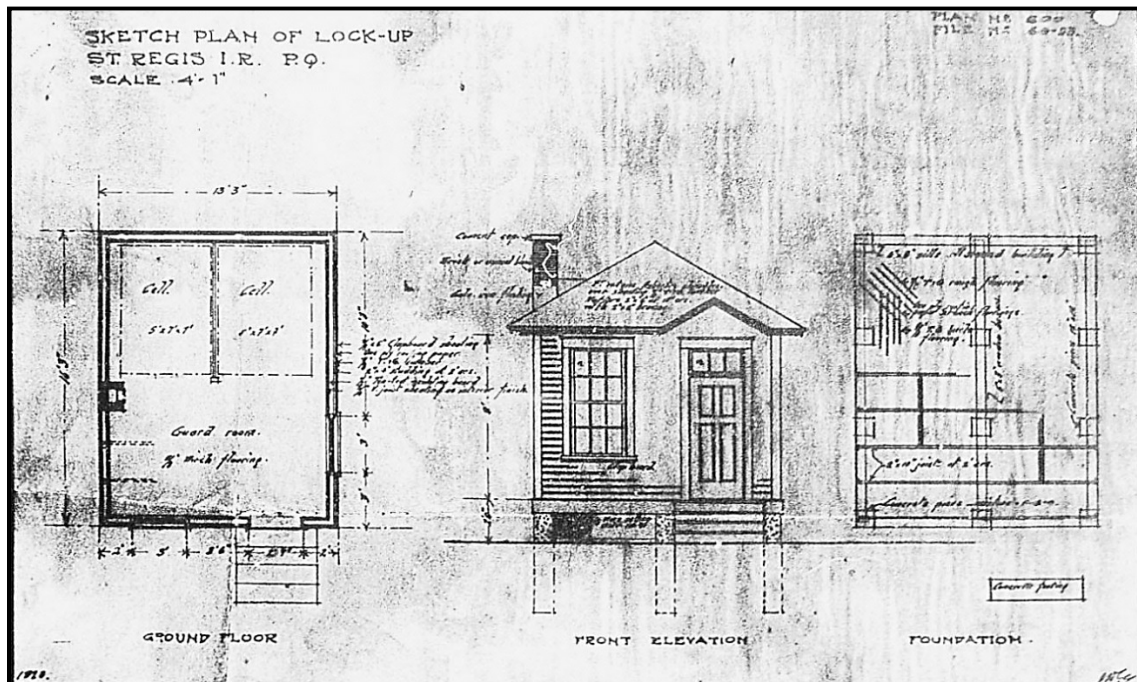


Figure 32: 1928 Plan of St. Regis Lock-up Provided by the Department of Indian Affairs¹¹⁷

¹¹⁶ Initially, St. Regis Indian Agent MacGibbon suggested having the lock-up built on the grounds of the Indian Agent’s house rather than on the existing schoolhouse and lock-up site because he found the distance between the two inconvenient; however, he had second thoughts for “certain reasons” and the decision was made to use the original site. The accountant of the DIA suggested that half of the cost of the jail be charged to the Band’s interest funds and half to a DIA account, since the expenditure was not expected and, thus, not provided for. MacGibbon recommended that the carpentry job of constructing the building should be given to an “Indian carpenter” from St. Regis Village. However, the Acting Deputy Superintendent General of Indian Affairs gave the job to a man in Cornwall named Oliver Hammond. Memorandum of the Accountant of the Department of Indian Affairs Mackenzie and note in response, 3rd July 1928, (Ottawa), “St. Regis Lock-up,” Op. Cit.; St. Regis Indian Agent WA MacGibbon to the Secretary of the Department of Indian Affairs, 17 July 1928, (St. Regis), “St. Regis Lock-up,” Op. Cit.; Acting Deputy Superintendent of Indian Affairs to Mr. Chene, 20 September 1928, (Ottawa), “St. Regis Lock-up,” Op. Cit.; Indian Agent WA MacGibbon to Secretary of Indian Affairs, 22 October 1928, (St. Regis), “St. Regis Lock-up,” Op. Cit.; Indian Agent WA MacGibbon to the Secretary of the Department of Indian Affairs, 14 July 1928, (St. Regis), “St. Regis Lock-up,” Op. Cit.; Indian Agent WA MacGibbon to the Secretary of the Department of Indian Affairs, 19 July 1928, (St. Regis), “St. Regis Lock-up,” Op. Cit.
¹¹⁷ As “sr. asst. eng.,” JD Chene, a permanent employee of the DIA, was requested to provide this plan. Adapted from “Sketch Plan of Lock-up St. Regis I.R. P.Q.,” 1928, (Ottawa), “St. Regis Lock-up,” Op. Cit.; AF MacKenzie to Mr. Chene, Memorandum, 20 July 1928, (Ottawa) “St. Regis Lock-up,” Op. Cit.; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1929*, Part I, (Ottawa: FA Acland, 1930):3.

Despite language differences, three “head men” representing a “considerable minority” on the St. Regis Reserve appreciated the power of a solicitor in the Canadian legal system and brought an interpreter with them when they consulted Cornwall solicitor George A Stiles about the new lock-up in October 1928.¹¹⁸ The men asked Stiles to represent them in their “application for information” to determine why a “Guard House” was being built, who approved its construction, and where the funds to pay for it were coming from.¹¹⁹ Although Stiles did “not sympathise very much with the attitude of some of the members of this Band,” he felt that they had been influenced by agitators from the USA and advised the Department of Indian Affairs that it might generate a better sentiment if it approached the men in a spirit of conciliation.¹²⁰ The DIA informed Stiles that the men were known as part of “an element which is in some degree opposed to constituted authority” and asserted that the establishment of a new lock-up was “in the interests of the maintenance of law and order” on a reserve that lacked a viable place of incarceration for the many arrests that were being made due to cross-border liquor traffic.¹²¹ On his part, Stiles assured Indian Affairs that he maintained communication with the dissenting group and “endeavored from time to time” to assist those who consulted him to “see the matters in a different light.”¹²² Regardless of Stiles’ efforts, opposition to the lock-up on the St. Regis reserve did not dissipate.

Shortly thereafter, the RCMP were also called upon to intervene in the resistance. They earned the gratitude of Deputy Superintendent General Duncan Campbell Scott when they sent officers to address a small faction of band members who were frustrating the progress of the contractors constructing the lock-up.¹²³ Negotiating between the band members and Indian Affairs, the RCMP requested that the building materials in the old schoolhouse be given to any band member who wished to take on the task of demolishing it.¹²⁴ The gesture, which might have

¹¹⁸ Barrister, Solicitor, and Notary George A Stiles to the Superintendent General of Indian Affairs, 6 October 1928, (Cornwall), “St. Regis Lock-up,” Op. Cit.

¹¹⁹ The men planned to return to Stiles’ office with their interpreter on the following week in order to find out what Stiles had learned about the proposed building. Stiles to the Superintendent General of Indian Affairs, 1928, “St. Regis Lock-up,” Op. Cit.

¹²⁰ Ibid.

¹²¹ Department of Indian Affairs to Barrister, Solicitor, and Notary George A Stiles, 8 October 1928, (Ottawa), “St. Regis Lock-up,” Op. Cit.

¹²² Barrister, Solicitor, and Notary George A Stiles to Deputy Superintendent General of Indian Affairs Duncan Campbell Scott, 10 October 1928, (Cornwall), “St. Regis Lock-up,” Op. Cit.

¹²³ Deputy Superintendent General of Indian Affairs Duncan Campbell Scott to Assistant Commissioner of the Royal Canadian Mounted Police Lt.-Col. AW Duffus, 15 October 1928, (Ottawa), “St. Regis Lock-up,” Op. Cit.

¹²⁴ Assistant Superintendent General of Indian Affairs to Indian Agent WA McGibbon, 17 October 1928,

been mutually beneficial, did not put an end to St. Regis resistance to the lock-up and tensions continued to rise. In response to Indian Agent MacGibbon's claim that a group of band members approached the contractor at home and "threatened that if he came over to St. Regis to build the jail they would shoot him," the RCMP formed a guard detail of three uniformed men to protect the lock-up and those constructing it.¹²⁵

From that point, the construction work went on with RCMP supervision.¹²⁶ Several St. Regis workmen were employed on the building site and the construction supplies were transported from Cornwall on a scow owned by a band member.¹²⁷ MacGibbon and the contractor eventually suggested that the three RCMP officers could return to their regular duties.¹²⁸ When, in due course, the bulk of the building was completed, the band members who had been working on the building were laid off even though finishing work remained to be done.¹²⁹ MacGibbon recommended that a St. Regis carpenter be commissioned to build an outhouse approximately forty feet behind the lock-up and suggested that the lock-up be provided with the basic comforts of a small cot, quilts, a small table, and two or three chairs; however, these luxuries were not for the prisoners.¹³⁰ These small comforts were for the benefit of the guards "so when the cell is in use, especially at night time, the officer in charge, would have a place to rest, rather than be obliged to rest on the floor" as the prisoners did.¹³¹

8.4 Peroratio: Assimilation Through Incarceration

Although shallow sketches of the historical relationships between criminal law and indigenous peoples may assume that, as with settlers, laws were enforced through policing, judicial decisions, and correctional measures such as local lock-ups, this chapter reveals that the

(Ottawa), "St. Regis Lock-up," Op. Cit.

¹²⁵ The contractor refused to work on the jail without RCMP protection. Report of RCMP Det. S/Sergt. CA Ramsey of Regt. No. 9055 to the Commanding Officer of the RCMP "A" Division forwarded to Department of Indian Affairs, 23 October 1928, (St. Regis and Ottawa), "St. Regis Lock-up," Op. Cit.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ One band member who had worked for 54 hours that week, was paid \$0.30 an hour for his efforts, despite his agreement, confirmed by the contractor, that he would be paid \$0.50 an hour. Indian Agent WA MacGibbon to Secretary of Indian Affairs, 29 October 1928, (St. Regis), "St. Regis Lock-up," Op. Cit.; Indian Agent WA MacGibbon to Secretary of Indian Affairs, 5 November 1928, (St. Regis), "St. Regis Lock-up," Op. Cit.

¹³⁰ Indian Agent WA MacGibbon to Secretary of Indian Affairs, 27 May 1929, (St. Regis), "St. Regis Lock-up," Op. Cit.

¹³¹ Ibid.

functions of these seemingly equal forces of state law were quite differently applied to indigenous peoples. In large part, the disproportionate application of punitive measures occurred because, for persons and places identified as “Indian,” policing, judicial functions, and correctional facilities were subject to the assimilative control of Indian Affairs. The Department of Indian Affairs spearheaded the establishment of lock-ups throughout the Dominion of Canada using “Indian” lands and band funds. Incarceration was not a measure of restoring errant individuals to the law: it was a method of asserting state law over indigenous legal ontologies. The depth and breadth of Indian Affairs’ use of incarceration as a tool of assimilative social control is exemplified in the geographical particularities of Manitoulin Island.

Chapter 9

Manitoulin Island Lock-ups: Place, Legal Dominion, and Indian Affairs

For those with an interest in historical carceral facilities, as affirmed by Ron Brown's *Behind Bars: Inside Ontario's Heritage Gaols*, if any place could possibly "boast of its preserved lock-ups," Manitoulin Island can.¹ The Gore Bay Museum is indeed noteworthy, the Assiginack Museum Lock-up educational, the defunct Little Current Lock-up promising, and the Providence Bay Lock-up cottage enterprising. At first glance, these small Manitoulin Island jails appear to be interesting examples of the standard utilities of provincial settler communities. Nevertheless, Indian Affairs' contributions to carceral facilities preceded the 1878 construction of the provincial Manitoulin Island lock-ups.

The persistent idea of Manitoulin Island as a place for bringing "Indians" under state law through assimilation originated much earlier in the century. In the year following the death of William Gibbard, Customs Inspector CE Anderson offered a dim view of the "miserable" fire-ravaged settlement of Little Current.² Anderson observed that six or seven years before, Little Current had a Hudson's Bay Company station with a wharf and storehouse.³ HBC employed "Indians and Half-breeds" in cutting cordwood until the company lease ran out on their twenty-year, twenty-acre, station and the DIA "deemed it wise that the Company should leave the Island."⁴ In consequence, the wharf fell into decay and these workers had "fallen back to... fishing and hunting habits."⁵ The schoolmaster complained "very bitterly" of "Indians" receiving liquor from passing trading vessels and steamers.⁶ Anderson recommended Little Current, where excluding the schoolmaster and the storekeeper, the population was "all Indian and Half-breeds," as a good optional location for a lock-up.⁷

Although it is not certain where this temporary lock-up was located, from its administrative centre in Manitowaning, Indian Affairs financially supported the construction of a lock-up before the formal creation of the Manitoulin Island Lock-ups through the Ontario

¹ Ron Brown, *Behind Bars: Inside Ontario's Heritage Gaols*, (Canada: Hignell Book Printing, 2006):90-91

² CE Anderson, "Report on the Free Port of Sault Ste. Marie," October 1864, *Reports of the Inspectors of the Free Ports of Gaspé and Sault Ste. Marie, Together with Certain Statistical Tables of Imports*, Sessional Papers of the Province of Canada, (Québec: Hunter, Rose & Co., 1865):39.

³ Ibid:39-40.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid:39.

⁷ Ibid:39-41.

Department of Public Works.⁸ In 1875, in the 1st Division of the Northern Superintendency served by JC Phipps, eighty dollars was paid by Indian Affairs to the Lockup Superintendent for building repairs or construction.⁹ The closest lock-up recognized in Province of Ontario Sessional Papers at this time was in Parry Sound.¹⁰ However, Parry Sound, the 3rd Division of the Northern Superintendency served by Visiting Superintendent C Skene, although appearing in a lower section on the same accounting spreadsheet, was not the location of this payment.¹¹

Brown attributes the motivation for constructing the Manitowaning Jail to population growth in the town and Manitoulin Island meriting district status.¹² The survey, sale, and settlement of Manitoulin Island was gaining momentum as demand for “excellent” Indian lands had been higher in the year in which the lock-up was built than it had been in any previous year.¹³ Nonetheless, Indian Affairs’ apprehensions regarding liquor and interests in establishing state law were catalysts for establishing jails on Manitoulin Island.

Larger crimes, such as an arson on the Sucker Creek (Aundeck Omni Kaning) Reserve where a “most industrious and deserving Indian family” were made “homeless” as their cattle and property were lost to the fire, invoked a larger penal system and resulted in further geographical abstraction from the everyday life of Manitoulin Island.¹⁴ The person convicted of this crime was sent to the Penitentiary and the homeless family “by the aid of a liberal grant from the Department and some assistance from the white settlers” was “again placed in a condition of comparative comfort.”¹⁵ While this system could still be enacted, locating judicial and carceral services on Manitoulin Island was a matter of convenience as well as a way of infusing the disciplinary arm of the state into the daily lives of settlers as well as “Indians.”

On 31 August 1877, Phipps ascertained that liquor consumption amongst Manitoulin Island Indians had decreased and that “many of the staid and respectable Indians are averse to its

⁸ The construction of a lock-up for the Bersimis Band, Québec, was first financed through the DIA before three-quarters of the costs were refunded by provincial Public Works. Department of Indian Affairs. *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1909*, Part I, (Ottawa: CH Parmelee, 1910):131.

⁹ Department of the Interior, *Annual Report of the Department of the Interior for the Year ended 30th June, 1875*, Part I, (Ottawa: Maclean, Roger & Co., 1876.):63.

¹⁰ Province of Ontario, *Eighth Annual Report of the Inspector of Asylums, Prisons, &c., for Ontario, for the Year Ending 30th September, 1875*, (Toronto, 1876):90.

¹¹ *Annual Report of the Department of the Interior*, 1875, Part I, Op. Cit.:63.

¹² Brown, 2006, Op. Cit.:90-91.

¹³ Department of Indian Affairs, *Report of the Deputy Superintendent of Indian Affairs, 1878*, (Ottawa: Maclean, Roger & Co., 1879):25.

¹⁴ Department of Indian Affairs, *Report of the Deputy Superintendent of Indian Affairs, 1877*, (Ottawa: Maclean, Roger & Co., 1878):21-22.

¹⁵ *Ibid*:21-22.

use, and that public opinion amongst them is undergoing a change on this subject.”¹⁶ Despite this positive report, Phipps thought it “impossible” to “put a stop to its use, notwithstanding the stringency of the laws for the suppression of its use by Indians; by collusion with white men it can generally be obtained.”¹⁷ In the same month of the same year, John Langmuir, Inspector of Asylums, Prisons, and Public Charities for the Province of Ontario, scouted Manitoulin for the “necessity and desirability of erecting Lock-ups in that island, for which the Government had been petitioned.”¹⁸ Langmuir projected that increasing settlement made two lock-ups reasonable and suggested that one be located at Little Current and another at either Manitowaning or Gore Bay.¹⁹ It was determined that, under the auspices of the provincial Department of Public Works, two stone lock-ups designed by provincial architect Kivas Tully would be built at Little Current and Manitowaning.²⁰

In April 1878, on the qualification that they complete construction by October or face twenty dollar per week late penalties, the Law Manufacturing Company of Meaford, Ontario, won the call for tenders to construct the lock-ups with the lowest bid.²¹ By May 1878, the Government of Ontario was working in conjunction with the DIA to select sites on which to locate these provincial “lock-ups” on Indian lands newly prepared for settlement in the towns of Manitowaning and Little Current.²² The Manitowaning townplot already had lands reserved by the DIA for a lock-up and the Government of Ontario duly selected this location.²³

¹⁶ *Report of The Deputy Superintendent General Of Indian Affairs*, 1877, Op. Cit.:21-22.

¹⁷ *Ibid.*

¹⁸ Province of Ontario, *Tenth Annual Report of the Inspector of Asylums, Prisons, and Public Charities for the Province of Ontario, for the Year Ending 30th September, 1877*, (Toronto: Hunter, Rose & Co., 1878):130.

¹⁹ *Ibid.*

²⁰ These lock-ups were similar to lock-ups built shortly before at Bracebridge and Parry Sound. Kivas Tully, “Report of the Architect, etc., Department of Public Works,” *Report of the Commissioner of Public Works, Province of Ontario, For the Year Ending 31 December 1878*, (Toronto: Hunter, Rose & Co., 1879):11; *Tenth Annual Report of the Inspector of Asylums*, 1877, Op. Cit.: 130; Province of Ontario, *Twelfth Annual Report of the Inspector of Asylums, Prisons, and Public Charities for the Province of Ontario, for the Year Ending 30th September, 1879*, (Toronto: C Blackett Robinson, 1880):84; Brown, 2006, Op. Cit.:90-91.

²¹ Mr. Gorley of Manitowaning superintended the construction of both lock-ups as the Clerk of Works. Tully, “Report of the Architect, etc., Department of Public Works,” 1878, Op. Cit.:11; *Tenth Annual Report of the Inspector of Asylums*, 1877, Op. Cit.:130; Brown, 2006, Op. Cit.:90-91.

²² Indian Office Manitowaning to The Honourable Minister of the Interior Indian Branch, 8 May 1878, (Manitowaning), “Manitoulin Island Agency – Jail Facilities on Manitoulin Island,” 1878-1952, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 8229, File: 481/4-12.

²³ *Ibid.*

NOTICE—

THE
LAW BUILDING & MANUFACTURING
COMPANY,
M E A F O R D,
BUILDERS AND CONTRACTORS,
 Manufacturers and dealers in all kinds
 of building material, sash, doors, blinds,
 mouldings, &c. Contracts taken for
 buildings of every description on any
 part of the Manitoulin Island. Plans
 and specifications furnished if required.
 As we employ none but efficient work-
 men, we can guarantee satisfaction in
 every case, Orders forwarded to the
 office at Meaford will receive prompt at-
 tention.

Nov. 13, '79. **JAS. A. ELLIS.**
 26m3

Figure 33: Builders of the Manitoulin Island Lock-ups²⁴

In October 1878, the month of the lock-up contract deadline, Phipps apprised his department that, during the past year, there had been “few cases of transgressing the law... when the large number of Indians in this superintendency is considered”; however, in the previous reporting year, there had been a death due to extreme intoxication near Little Current, two convictions for supplying liquor to Indians, a two month jail term for an Indian convicted of keeping a house for the sale of liquor on an Indian Reserve, and two convictions and three month jail terms for Indians convicted of stealing liquor.²⁵ As Justice of the Peace as well as Indian Agent, Phipps asserted that the “impossibility of getting Indians to testify truthfully in liquor cases” made “it exceedingly difficult to obtain convictions.”²⁶ Moreover, while Phipps had the power to investigate and preside over cases related to the *Indian Act*, cases brought outside of the *Indian Act* against settlers still were heard at the District Criminal Court in Sault Ste. Marie.

²⁴ Adapted from *Manitoulin Expositor*, 27 December 1879, Manitowaning.

²⁵ *Annual Report of the DIA*, 1878, Op. Cit.:25.

²⁶ *Ibid.*

AN INDIAN DRUNK.

On Monday morning last an Indian from White Fish River, was brought before J. C. Phipps, J.P., charged with being in a state of intoxication at the Indian Office, Manitowaning, on Saturday last. He acknowledged the offence and was committed to the lock-up for one week, his fall interest payment to be applied to the payment of his expenses.

CHARGED WITH LARCENY.

Information having been laid before J. C. Phipps, Esq., by Moses Buzwah, an Indian to the effect that three sugar kettles had been stolen from his camp last winter and that he had reason to suspect _____, of Sandfield, of the crime a search warrant was placed in the hands of Constable Bates and the articles were found on the premises of the defendant. A preliminary investigation was held before Messrs. Phipps and Westby, Justices of the Peace, on Wednesday night, and the prisoner was committed for trial. Constable Bates left with him for the Sault per steamer Queen on Thursday.

Figure 34: Paths of Prosecution²⁷

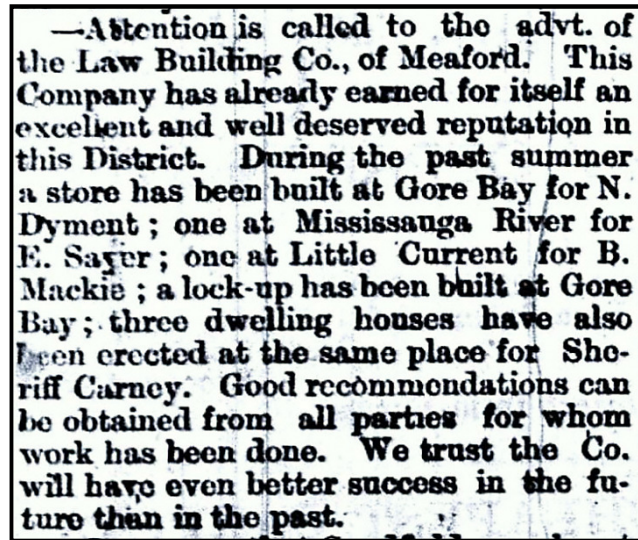
“Indians” might be dealt with by Indian Agents and sent to local lock-ups whereas a more formal investigation, judicial, and carceral process was afforded settlers.

Langmuir’s third choice, Gore Bay, was soon also approved as a site for a lock-up. An appropriation was made to build a stone lock-up in the same dimensions and style as the Manitowaning and Little Current Lock-ups.²⁸ Once again, the Law Building and Manufacturing Company of Meaford won the call for tenders with the lowest bid and the construction occurred

²⁷ Adapted from *The Manitoulin Expositor*, Saturday 13 September 1879, Volume: 1, No. 17.

²⁸ Kivas Tully, “Report of the Architect, etc., Department of Public Works,” *Report of the Commissioner of Public Works for the Province of Ontario for the Year Ending 31st December 1879*, (Toronto: Hunter, Rose & Co., 1880):10; Province of Ontario, *Thirteenth Annual Report of the Inspector of Asylums, Prisons, and Public Charities for the Province of Ontario, for the Year Ending 30th September, 1880*, (Toronto: C Blackett Robinson, 1881):84.

under the supervision of the Clerk of Works.²⁹



—Attention is called to the advt. of the Law Building Co., of Meaford. This Company has already earned for itself an excellent and well deserved reputation in this District. During the past summer a store has been built at Gore Bay for N. Dymont; one at Mississauga River for E. Sayer; one at Little Current for B. Mackie; a lock-up has been built at Gore Bay; three dwelling houses have also been erected at the same place for Sheriff Carney. Good recommendations can be obtained from all parties for whom work has been done. We trust the Co. will have even better success in the future than in the past.

Figure 35: The Law Building Company of Meaford Constructs the Gore Bay Lock-up³⁰

By early October 1879, the Gore Bay lock-up was nearly complete.³¹ The total cost of all three lock-ups to Public Works by December that year was \$6521.79.³²

9.1 Manitowaning Lock-Up

The lock-up site at Manitowaning consisted of the “whole Block” on the west side of Arthur Street between Wellington and Nelson streets.³³ Although Phipps wondered whether they should charge for the disposition of “Indian lands” for the lock-up, the lots selected in Manitowaning were not sold by Indian Affairs to the Province.³⁴ Instead, “no transfer of this site

²⁹ Tully, 1879, Op. Cit.:10.

³⁰ Adapted from *The Manitoulin Expositor*, Saturday 15 November 1879, Volume: 1, No. 26.

³¹ *The Manitoulin Expositor*, Saturday 4 October 1879, Volume: 1, No. 20.

³² “Statements of the Accountant and Law Clerk – Table No. 2 Statement of the Expenditure on Public Works in 1880, and Total Expenditure thereon up to 31st December 1880 – Capital Account,” *Report of the Commissioner of Public Works for the Province of Ontario for the Year Ending 31st December 1880*, (Toronto: C Blackett Robinson, 1881):26.

³³ Indian Office to The Honourable Minister of the Interior Indian Branch, 8 May 1878, (Manitowaning), “Jail Facilities on Manitoulin Island,” Op. Cit.; Deputy Superintendent General of Indian Affairs to Assistant Commissioner of Crown Lands Aubrey White, 7 November 1895, (Ottawa), “Jail Facilities on Manitoulin Island,” Op. Cit.

³⁴ The jail town block consisted of Lots 1 and 2 on the north side of Nelson Street and Lots 1 and 2 on the south side of Wellington Street. Each of the four lots contained 0.20 acres of land. Although in “1878 the Ontario Government selected these lots for jail” construction “[n]o sale was made.” Connor to Dr. Scott, Memorandum Re: Jail Site Manitowaning, 5 September 1928, “Jail Facilities on Manitoulin Island,” Op. Cit.; Indian Office Manitowaning to The Honourable Minister of the Interior Indian Branch, 8 May 1878,

was made, it having been simply reserved for the purpose in question.”³⁵ Despite the Department of Indian Affairs’ disavowal of any responsibility for the upkeep of the lock-up, and their insistence that the “lock-up was built by and is wholly under the control” of the Ontario Government, the circumstance that the “jail in this village” was “built on Departmental Lots” allowed the DIA to retain an official interest its operation.³⁶ The DIA also controlled other important sites such as the wharf.

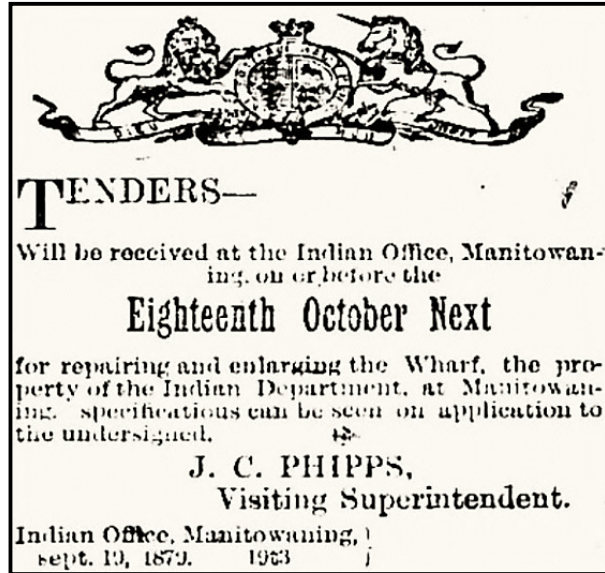


Figure 36: The Wharf was “the Property of the Indian Department”³⁷

The original Manitowaning Lock-up building contained five cells, one of which has been reconstructed in the Assiginack Museum as a display complete with a prisoner’s bedframe.³⁸

(Manitowaning), “Jail Facilities on Manitoulin Island,” Op. Cit.; To Visiting Superintendent of Indian Affairs JC Phipps, 21 May 1878, “Jail Facilities on Manitoulin Island,” Op. Cit.; Visiting Superintendent BW Ross to the Deputy Superintendent General of Indian Affairs, 17 October 1895, (Manitowaning), “Jail Facilities on Manitoulin Island,” Op. Cit.; Deputy Superintendent General of Indian Affairs to Indian Superintendent BW Ross, 23 October 1895, (Ottawa), “Jail Facilities on Manitoulin Island,” Op. Cit.; Deputy Superintendent General of Indian Affairs to Assistant Commissioner of Crown Lands Aubrey White, 7 November 1895, (Ottawa), “Jail Facilities on Manitoulin Island,” Op. Cit.

³⁵ Deputy Superintendent General of Indian Affairs to Inspector of Prisons and Public Charities for Ontario RW Bruce-Smith, 29 September 1905, (Ottawa), “Jail Facilities on Manitoulin Island,” Op. Cit.

³⁶ Frank Pedley to MP AE Dymont, Memorandum, 31 December 1907, (Ottawa), “Jail Facilities on Manitoulin Island,” Op. Cit.; Indian Agent RJ Lewis to the Secretary of the DIA, 7 September 1920, (Manitowaning), “Jail Facilities on Manitoulin Island,” Op. Cit.

³⁷ Adapted from *The Manitoulin Expositor*, Saturday 27 September 1879, Volume: I, No. 19.

³⁸ Brown, 2006, Op. Cit.:90-91.



Figure 37: Reconstructed Cell of the Manitowaning Lock-up

The lock-up was built of stone, with a shingle roof, and a yard delineated by a board fence.³⁹ While the yard of the lock-up structure was fenced, the larger piece of land on which it stood was not, and a fence, well, and pump were recommended in order to allow cultivation.⁴⁰ With appropriate jailkeeping, the site was considered strong, secure, and “large enough for the requirements of the locality, for a long time to come.”⁴¹ The keeper of the Manitowaning Lock-up was granted twenty-five cents per day for the rations of each prisoner.⁴²

In the first year of its operation, Indian Agent Phipps felt that the lock-up had a “wholesome effect, and greatly tended to check the evil” of liquor consumption.⁴³ Nonetheless, as settlement of Manitoulin Island proceeded apace, it prompted the opening of legally permitted

³⁹ *Thirteenth Annual Report of the Inspector of Prisons*, 1880, Op. Cit.:119.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Report of the Deputy Superintendent-General of Indian Affairs*, 1879, Op. Cit.:24.

liquor establishments for settlers. In Phipps' estimation, by 1880, this by-product of settlement "afforded facilities for intoxicants being obtained by Indians; the liquor... usually furnished by some white man who gives it secretly" to Indians despite prohibitions against it.⁴⁴ While twelve Indians had been arrested for intoxication and committed to the Manitowaning Lock-up for terms from five to thirty days, Phipps did not obtain any convictions against liquor suppliers that year.⁴⁵ The following year, Phipps still maintained that liquor suppliers "generally escape punishment, as the Indians almost invariably endeavor to shield them," although fourteen "Indians" had been sentenced to what he considered short terms in the Lock-up.⁴⁶

In contrast to its expansive site, the approximately five by eight metre area of the original lock-up building soon became too constrained.⁴⁷ Even though the lock-up was being used to jail "Indians," by 1880, the jailkeeper's family had commandeered part of the cell area.⁴⁸ In contravention of an officer of the Inspector of Prisons, the jailkeeper did not keep all items from the cell area except for the lock-up furniture.⁴⁹ His family life spilled out of their two rooms into the lock-up when the quarters meant for female prisoners were not occupied.⁵⁰ A two-storey stone jailer's home was added to the front of the structure in 1882.⁵¹

Unfortunately, in 1887, the lock-up was still "too much mixed up with the domestic arrangements of the keeper" and a prisoner escaped, it seemed, because the jailkeeper's wife admitted a visitor to the lock-up in the absence of her husband.⁵² A subsequent examination by an officer of the provincial Inspector of Prisons and Public Charities found that, while the Manitowaning Lock-up did not contain any inmates on that day, it was dirty, overcrowded, and

⁴⁴ *Annual Report of the DIA*, 1880, Op. Cit.:20.

⁴⁵ *Ibid.*

⁴⁶ Department of Indian Affairs. *Annual Report of the Department of Indian Affairs for the year ended 31 December 1881*, (Ottawa: Maclean, Roger & Co, 1882):5.

⁴⁷ Brown, 2006, Op. Cit.:90-91.

⁴⁸ *Thirteenth Annual Report of the Inspector of Prisons*, 1880, Op. Cit.:119.

⁴⁹ *Ibid.*:119, 124.

⁵⁰ *Ibid.*

⁵¹ The estimated cost of this addition was \$300. The tender of FJ Sylvester of Parry Sound was accepted and the construction proceeded under the superintendence of Mr. Gorley, Clerk of Works. Province of Ontario, *Fourteenth Annual Report of the Inspector of Prisons & Public Charities for the Province of Ontario, for the Year Ending 30th September 1881*, (Toronto: C Blackett Robinson, 1882):124; Province of Ontario, *Report of the Commissioner of Public Works for the Province of Ontario, for the Year Ending 31st December, 1882*, (Toronto: C Blackett Robinson, 1883):9; Brown, 2006, Op. Cit.: 90-91.

⁵² The lock-up keeper's wife was reprimanded and admonished to not have anything to do with the custody of male prisoners. Province of Ontario, *Nineteenth Annual Report of the Inspector of Prisons & Public Charities upon the Common Gaols, Prisons and Reformatories for the Province of Ontario for the Year Ending 30th September 1886*, (Toronto: Warwick & Sons, 1887):67.

one room, usually the realm of the jailer, was being used as a makeshift registry office.⁵³ Even with the expansion, the lock-up building was simply too small to accommodate a dwelling house.⁵⁴

Although the land upon which the lock-up was built was larger than that required for the building, even as the settler population of Manitowaning grew, the DIA would not sell the land “at any price” because of its designation for public use as a lock-up.⁵⁵ In 1905, RW Bruce Smith, Inspector of Prisons and Public Charities of Ontario, apprised the DIA that the lock-up certainly did not require the entire portion of land allotted to it and that an adjacent saw-mill owner offered to fence the land occupied by the lock-up in exchange for the unused portion of the block.⁵⁶ The Department of Indian Affairs responded that if the entire area was not required, Smith should provide a plan of the portion that was needed for the lock-up so that the DIA could “make disposition of the remainder of the Lot, for the benefit of the Indians.”⁵⁷ The plan did not proceed and the Manitowaning Lock-up townplot reservation remained “Indian Land” under Indian Affairs’ control.

Instead, Smith proposed that the “vacant and unused” part of the lot that, contrary to DIA ideals, was unfenced and “could not be cultivated,” be made useful through a “lease during pleasure” to a party who agreed to the condition that a high fence completely enclose the entire lock-up property.⁵⁸ Although the Inspector of Prisons claimed a certain right to propose this arrangement, on the basis of the lot having been reserved for the lock-up, it “seemed both right and courteous that the Department of Indian Affairs should be informed of the proposition.”⁵⁹ The DIA’s definitive voice in the matter was evident when Smith asked the Department to “sanction and approve” the proposal that would result in the improvement of the lock-up property.⁶⁰ In this case, the DIA did approve Smith’s plan.⁶¹

⁵³ The Manitowaning Lock-up also lacked a well and fence that had been previously recommended. Province of Ontario, *Twenty-First Annual Report of the Inspector of Prisons & Public Charities upon the Common Gaols, Prisons and Reformatories for the Province of Ontario for the Year Ending 30th September 1888*, (Toronto: Warwick & Sons, 1889):76.

⁵⁴ Ibid.

⁵⁵ The Deputy Superintendent General of Indian Affairs to Indian Superintendent of Manitowaning BW Ross, 23 October 1895, (Ottawa), “Jail Facilities on Manitoulin Island,” Op. Cit.

⁵⁶ Inspector of Prisons and Public Charities for Ontario RW Bruce Smith to Secretary of Indian Affairs JD McLean, 22 September 1905, (Toronto), “Jail Facilities on Manitoulin Island,” Op. Cit.

⁵⁷ The Deputy Superintendent General of Indian Affairs to Inspector of Prisons and Public Charities for Ontario RW Bruce-Smith, 29 September 1905, (Ottawa), “Jail Facilities on Manitoulin Island,” Op. Cit.

⁵⁸ Inspector of Prisons and Public Charities RW Bruce Smith to Deputy Superintendent General of the DIA F Pedley, 8 November 1906, (Ottawa), “Jail Facilities on Manitoulin Island,” Op. Cit.

⁵⁹ Ibid.

⁶⁰ Ibid.

As ownership of the land remained within the Department of Indian Affairs' guardianship, requests for purchase continued. Once again, DIA control was an obstacle when, in 1907, all of the unsold Indian lands on Manitoulin Island were removed from the market for revaluation "in view of the increased value of the lands... in order to obtain the best prices possible in the interests of the Indians."⁶² The DIA had been criticized in Parliament for failing to fulfill their guardianship role by selling land on Manitoulin Island at low prices to "very close friends of the government."⁶³ In 1912, the Indian Agent at Manitowaning was still "not at liberty to sell lots" in the town of Manitowaning.⁶⁴

In this way, as the town of Manitowaning grew and became more associated with emerging settler society than its roots as an administrative town of the Department of Indian Affairs, the origins and purposes of the lock-up were obscured. Manitowaning Indian Agent RJ Lewis was alarmed when he learned that, on 16 August 1920, an "Indian who had been arrested for being intoxicated was taken to Manitowaning" and the "man in charge of the lock-up there refused to incarcerate him, and therefore, he had to be taken back to the reserve."⁶⁵ Lewis himself had been maligned with the accusation, "I refused to act by myself when the information was laid against this Indian, and that owing to the delay, he and several other Indians who were reported to have been intoxicated have left the reserve, and the constable has been therefore unable to serve them with summonses."⁶⁶ Lewis countered with his own report that the individual was arrested at Wikwemikong and, on arrival at the Manitowaning Lock-up, the "keeper refused to incarcerate the prisoner, as he claimed that it is not an Indian jail and that it belongs to the municipality."⁶⁷

⁶¹ Acting Deputy Superintendent General to Inspector of Prisons and Public Charities RW Bruce Smith, 13 November 1906, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.

⁶² The Secretary of the DIA responded to one request with the information that the coveted land could not be sold because "all lands on the Manitoulin Island were some time ago withdrawn from sale" and had "not since been replaced in the market. "Secretary of Indian Affairs to Indian Agent of Manitowaning CLD Sims, 27 August 1908, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1908*, (Ottawa: SE Dawson, 1909):xxxvi.; Secretary JD McLean to Indian Agent Sims, 3 May 1907, (Ottawa), "Manitowaning Agency – Correspondence Reports and Surveys Regarding the Sale of Land on Manitoulin Island (Lists of Unsold Lots By Township, Plans, Notebook of Timber Inspector John Fraser of Gore Bay," 1896-1916, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2885, File: 180,661-1, Access Code: 90.

⁶³ *The Hansard*, 1907: 7747, "Manitowaning Agency – Correspondence Reports and Surveys", Op. Cit.

⁶⁴ Assistant Deputy and Secretary of the DIA to Indian Agent Wm McLeod, 13 August 1912, (Ottawa), "Manitowaning Agency – Correspondence Reports and Surveys", Op. Cit.

⁶⁵ Indian Agent for Manitowaning RJ Lewis to Secretary of Indian Affairs, 7 September 1920, (Manitowaning), "Jail Facilities on Manitoulin Island," Op. Cit.

⁶⁶ Lewis to Secretary of Indian Affairs, 7 September 1920, "Jail Facilities on Manitoulin Island," Op. Cit.

⁶⁷ Ibid.

The management of the larger building had been transferred from the Provincial seat in Toronto to the Municipality of Assiginack.⁶⁸ The lock-up was in “disgraceful condition... filthy dirty and... in use as a store-house” for papers, books, and cement.⁶⁹

The Assiginack Municipal Constable in charge of the lock-up appeared to have a pattern of refusing to “incarcerate Indian prisoners brought by Indian constables.”⁷⁰ Acting Deputy Superintendent General JD McLean brought the problem to the attention of Ontario Attorney General RK Raney.⁷¹ In McLean’s view, it was unreasonable that a prisoner could be refused incarceration in the lock-up “on the mere ground that he is an ‘Indian’ as there is no distinction between an Indian and any other resident of the Province with respect to criminal offences.”⁷² McLean’s assertion appears to be more in line with the administrative expediencies necessary for continued use of the Manitowaning Lock-up to incarcerate “Indians” than any reality of equitable practice.

The highly centralized Department of Indian Affairs had already established their protocol for this type of challenge. In 1907, the Deputy Attorney General of the Province of Manitoba advanced a claim to DIA reimbursement for the maintenance of an “Indian” in the Brandon Gaol because the prisoner had been convicted under the *Indian Act*.⁷³ Deputy Minister of Justice Newcombe explained that there was “no foundation for such a claim” because the

provinces are charged under the constitution with the administration of justice, both civil and criminal, including the establishment, maintenance and management of gaols, and this includes the cost of maintenance of all prisoners lawfully committed to such prisons. The fact that the offence is one under the Indian Act, or that the person convicted is an Indian is immaterial.⁷⁴

In the context of Manitoulin Island, Deputy Attorney General Edward Bayly concurred that all jails in Ontario are “common gaols” and the transfer of the lock-ups to the Municipalities did not alter their use for prisoners remanded or committed to them; however, he understood from the jailkeeper that the

⁶⁸ Lewis to Secretary of Indian Affairs, 7 September 1920, “Jail Facilities on Manitoulin Island,” Op. Cit.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Acting Deputy Superintendent General of Indian Affairs JD McLean to Attorney General the Honourable WK Raney, 11 September 1920, (Ottawa), “Jail Facilities on Manitoulin Island,” Op. Cit.

⁷² Ibid.

⁷³ Deputy Minister of Justice EL Newcombe to the Secretary of the DIA, 19 March 1907, (Ottawa), “Correspondence Regarding the Sale of Intoxicants,” Op. Cit.

⁷⁴ Ibid; Correspondence also appears in: “Dept. of Justice Opinions – Vol. 3,” 1900-1910, National Archives of Canada, RG10: Department of Indian Affairs, Series B-8, Volume: 11195, File: 1, Access Code: 32.

only Indian prisoner who had been refused admittance in the gaol was one who was brought in by an Indian Constable on a charge of being drunk but who the lockup keeper said was sober. The Indian Agent was in the village but the Constable had not taken the prisoner to him. Under the circumstances the lockup keeper at Manitoulin states that he considered he was well within his rights and asking for some authority otherwise as he might have been liable for an action of false imprisonment... the Lockup keeper says that they had quite a few Indian prisoners in the lockup this year and have fed and supplied them with wood but that he has not received payment for any of this.⁷⁵

Even the Attorney General's interest did not resolve the deplorable state of the Manitowaning Lock-up building.

The block was unfenced and desperately in need of improvement when the Municipality requested that the DIA allow them to use it as a site for a war memorial.⁷⁶ The municipal clerk wished MP Beniah Bowman to inquire into having the ownership of the "old jail" lot on the corner of Wellington and Nelson Streets transferred by deed from Indian Affairs to the municipality for a new Town Hall and war memorial.⁷⁷ The Municipality and Memorial Committee intended to grade and enclose the land in order to "convert into an attractive spot what is at present an eyesore" as well as, with the efforts of the Women's Institute, cultivate flowerbeds in the "very stony" grounds that were otherwise unsuitable for cultivation.⁷⁸ The municipality wanted two lots in the reserved block; however, if they were only able to get one lot, they insisted that it be the lot where the lock-up was located since they wanted to erect the War Memorial on amenable elevated ground in front of the building.⁷⁹ The lock-up structure was "falling into decay as no money" had been spent on its maintenance "for many years."⁸⁰ The Municipal Council undertook to revitalize the lock-up as a working jail and maintain it using

⁷⁵ Deputy Attorney General Edward Bayly to Acting Deputy Superintendent General of Indian Affairs JD McLean, 19 October 1920, (Toronto), "Jail Facilities on Manitoulin Island," Op. Cit.

⁷⁶ Department of Indian Affairs Lands and Timber Branch to Dr. Scott, 5 September 1928, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.; DCS to MP Beniah Bowman, 7 September 1928, "Jail Facilities on Manitoulin Island," Op. Cit.

⁷⁷ Bowman informed Deputy Superintendent General of Indian Affairs Duncan Campbell Scott, "they are anxious to secure from your Department" ownership of the lock-up lands. MP Beniah Bowman to Chief Clerk and Secretary of Indian Affairs AF Mackenzie, 4 April 1929, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.; MP Beniah Bowman to Deputy Superintendent General of Indian Affairs Scott, 19 April 1929, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.

⁷⁸ In more recent years, members of the Ontario Horticultural Association have tended the flowerbeds of the Assiginack Museum. Ontario Horticultural Association, "2009 Reports of District Directors," <<http://www.gardenontario.org/docs/200910AnnualReport_Part2of5.pdf>>; Clerk of the Municipality of Assiginack W Beresford Tilston to MP Beniah Bowman, 17 April 1929, (Manitowaning), "Jail Facilities on Manitoulin Island," Op. Cit.

⁷⁹ Tilston to Bowman, 17 April 1929, "Jail Facilities on Manitoulin Island," Op. Cit.

⁸⁰ Ibid.

Council funds.⁸¹ They made an offer for the land yet hoped that the DIA could “see their way to donate the site” as it would be a large expense for a small community.⁸² With the approval of Deputy Superintendent General Duncan Campbell Scott, it was proposed that the entire lock-up block be sold for two hundred twenty dollars, one-tenth cash, and the balance with interest at a rate of six percent.⁸³

Under these circumstances, the Department of Indian Affairs saw no barrier to “our disposing of the property” to the municipality yet was not able to do so by donation “owing to the lots being Indian property and not Dominion Lands.”⁸⁴ Meanwhile, Indian Agent RJ Lewis of Manitowaning differed with the Department’s willingness to sell the lock-up because he was under the impression that it would be entirely converted into a municipal hall.⁸⁵ The concerned Indian Agent took exception to the sale because the Manitowaning Lock-up was the “only jail on the eastern portion of Manitoulin Island” and had continuously, “since erected, been in use in connection with the Indians, of Wikwemikong Reserve.”⁸⁶ If the lock-up were closed, Lewis asserted that it would be “necessary for the Department to erect a new lock-up for the Indians as we will have to have some sort of a jail in the vicinity to Wikwemikong Reserve on account of the District Gaol being seventy five miles from Wikwemikong.”⁸⁷ While Lewis soon learned that the jail would continue to function, he maintained that the Department should confirm this understanding before proceeding with the sale.⁸⁸ Nonetheless, Director of Indian Lands JC Caldwell wrote to the Clerk of the Municipality asking for an assurance that the jail would be retained lest a facility that had “always been used in connection with the incarceration of law breaking Indians” be removed and leave the Wikwemikong Reserve without a neighbouring lock-up.⁸⁹ The Municipality affirmed their promise and, accordingly, settled the bill with the DIA on 19 September 1929.⁹⁰

⁸¹ Tilston to Bowman, 17 April 1929, “Jail Facilities on Manitoulin Island,” Op. Cit.

⁸² Ibid.

⁸³ Director of Indian Lands and Timber to the Deputy Superintendent General, 12 June 1929, (Ottawa), “Jail Facilities on Manitoulin Island,” Op. Cit.

⁸⁴ The DIA offer was based on similar lots south of Nelson Street that sold for \$220.00 “on a one-tenth cash basis with interest at 6%.” Acting Deputy Superintendent General to the Honourable Beniah Bowman, MP, 23 April 1929, (Manitowaning), “Jail Facilities on Manitoulin Island,” Op. Cit.; Director of Indian Lands and Timber to the Deputy Superintendent General, 12 June 1929, (Ottawa), “Jail Facilities on Manitoulin Island,” Op. Cit.

⁸⁵ Indian Agent to the Secretary of Indian Affairs, 15 May 1929, (Manitowaning), “Jail Facilities on Manitoulin Island,” Op. Cit.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Director of Indian Lands and Timber Caldwell to the Clerk of the Municipality of Assiginack J Beresford

It appeared that the overlapping ownership of the Manitowaning Lock-up was finally legally resolved. The jailkeeper's dwelling was indeed converted into a municipal office and library in 1945 and the cells were removed as the jail itself became the Assiginack Museum in 1955.⁹¹ The Assiginack Museum expanded into the dwelling in 1976.⁹² In its current form, the original lock-up exterior is enclosed in additions, yet the walls, one window, the door to the day room, and a fireplace remain.⁹³

9.2 Little Current Lock-up

Set on a lot with an open spaciousness not often seen in Canadian towns, the lock-up stands out, or rather sits back, in Little Current. The Little Current Lock-up was used as a jail from the time of its establishment in 1878 until 1952. From the 1930s until it was officially closed, its carceral functions coexisted with other functions such as an OPP office, a library, and a meeting place for the local council.⁹⁴ Despite long years of disuse, it has survived as the oldest building in Little Current.⁹⁵

The Little Current Lock-up is very similar in construction to the original lock-ups at Manitowaning and Gore Bay; however, it contained only two cells within its six by nine metre structure and the lock-up keeper did not live in the building.⁹⁶ Instead, he lived in a house a mere five yards away and, when prisoners were in the lock-up, was required to keep a constant guard.⁹⁷ Most early reports of the Inspector of Prisons found the Little Current Lock-up clean and orderly.

Tilson, 22 June 1929, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.

⁹⁰ Director of Indian Lands and Timber Caldwell to Indian Agent RJ Lewis, 20 July 1929, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.; Clerk W Beresford Tilston to Director of Indian Lands and Timber JC Caldwell, 19 September 1929, (Manitowaning), "Jail Facilities on Manitoulin Island," Op. Cit.

⁹¹ Brown, 2006, Op. Cit.:90-91.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid:86-87.

⁹⁵ Ibid.

⁹⁶ *Thirteenth Annual Report of the Inspector of Prisons*, 1880, Op. Cit.:120; *Report of the Commissioner of Public Works*, 1880, Op. Cit.:10; Brown, 2006, Op. Cit.:86-87.

⁹⁷ *Thirteenth Annual Report of the Inspector of Prisons*, 1880, Op. Cit.:120.



Figure 38: The Little Current Lock-up

Similar to the Manitowaning Lock-up, jail terms could often be the result of lack of resources. On 29 August 1888, the “clean and satisfactory” Little Current Lock-up held one woman “in custody for want of sureties” that she would keep the peace.”⁹⁸ Matters of law and liquor were closely entwined on Manitoulin Island and were, frequently, the basis on which “Indians” were committed to jail. Phipps reported in 1882 that “cases of intemperance” had been common among the young and nineteen individuals had been jailed for five to twenty days “in nearly all cases being willing to submit to imprisonment rather than divulge the name of the person who furnished the liquor.”⁹⁹ While nineteen people received jail terms, only one fine was levied.¹⁰⁰

⁹⁸ Province of Ontario, *Twenty-first Annual Report of the Inspector of Prisons & Public Charities for the Province of Ontario, for the Year Ending 30th September 1888*, (Toronto: Warwick & Sons, 1889):76.

⁹⁹ Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 31 December, 1882*, Part 1, (Ottawa: Maclean, Roger & Co., 1883):4.

¹⁰⁰ *Ibid.*

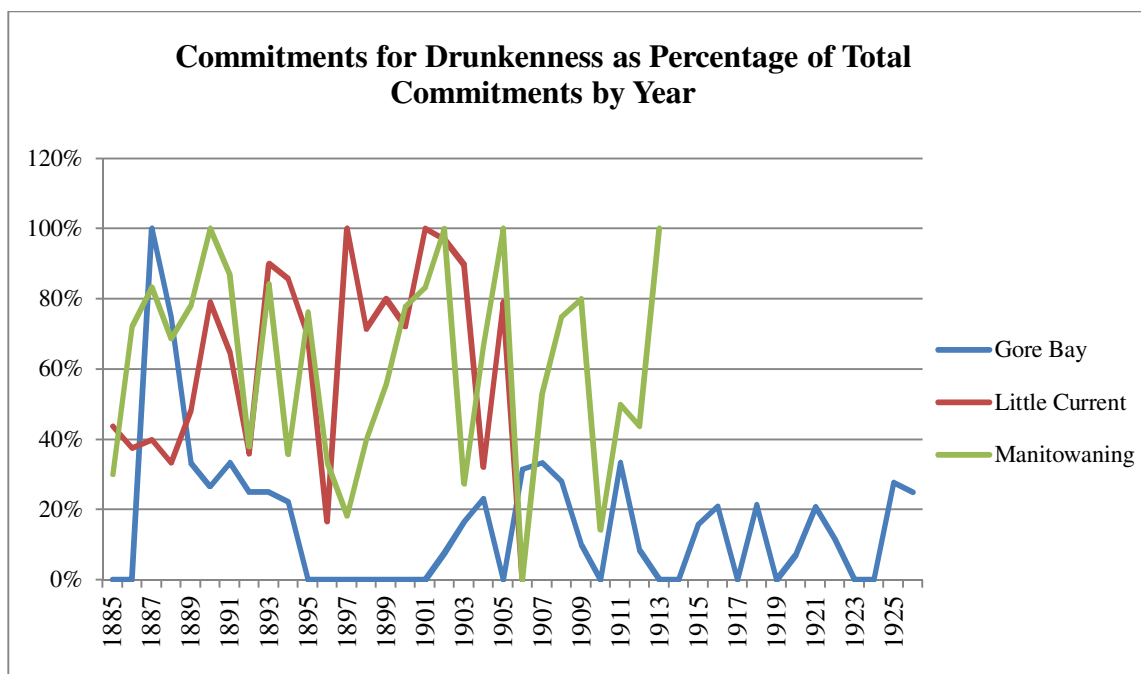


Figure 39: The Offence of Drunkenness as Percentage of Total Commitments to the Provincial Manitoulin Lock-ups¹⁰¹

In 1888, William Gibbon, Reeve of Howland, gave what Indian Affairs considered a “greatly exaggerated” account of a Chief of the Sucker Creek (Aundeck Omni Kaning) Band found “lying on the road drunk and in a frozen condition.”¹⁰² Despite paltry progress in ascertaining who had supplied the liquor, Indian Agent Phipps secured “great promises of amendment” from the injured man.¹⁰³ Although Phipps believed that the man did not refrain from the use of intoxicants, he hesitated in reporting him to the DIA because he had been very helpful in a recent case of serious crime where he “assembled the Band and after a hasty investigation

¹⁰¹ See Appendix C; Annual Reports of the Inspector of Prisons and Public Charities upon the Common Gaols, Prisons and Reformatories of the Province of Ontario, 1885-1888, 1890-1898; Annual Reports of the Inspector of Prisons and Public Charities for the Province of Ontario, 1889; Annual Reports of the Inspector of Prisons and Reformatories of the Province of Ontario, 1899-1905; Annual Reports of the Inspector of Prisons and Public Charities upon the Common Gaols of the Province of Ontario, 1906-1908; Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario, 1909-1923, 1925; Annual Report upon the Prisons and Reformatories the Ontario Board of Parole and the Commissioner of Extra-mural Employment of the Province of Ontario, 1924.

¹⁰² Howland Reeve William Gibbon to JC Phipps, 23 June 1888, (Little Current), “Manitowaning Agency – Correspondence Regarding the Misconduct of Chief [Name Withheld] of the Sucker Creek Band,” 1888-1890, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2427, File: 88,576, Access Code: 90; Indian Office to the Superintendent General of Indian Affairs, 13 February 1888, (Manitowaning), “Correspondence Regarding the Misconduct,” Op. Cit.

¹⁰³ JC Phipps to the Honourable, 26 December 1888, (Manitowaning), “Correspondence Regarding the Misconduct,” Op. Cit.

arrested all those upon whom suspicion seemed to rest and took them to Little Current where they were handed over to the authorities – had he not done this there was nothing to prevent their escape.”¹⁰⁴ Phipps advocated for admonishing the man and cautioning him that future offences would result in the removal of the Department’s recognition of his role as Chief.¹⁰⁵ Unfortunately, the Chief was confined to the Little Current Lock-up when he was found to be intoxicated on Dominion Day 1889.¹⁰⁶ Phipps then recommended that the Chief be removed from his leadership role because his example was “injurious” to “other Indians” and conformity to sobriety did not seem likely.¹⁰⁷ The Department of Indian Affairs approved Phipps’ recommendation.¹⁰⁸ Although the Chief was legitimately elected by his band, the Department of Indian Affairs’ estimation of his positive or negative influence on assimilative criminal law was a pivotal factor in their recognition of his position.

9.3 Providence Bay Lock-up

The Providence Bay Lock-up, a very small building now rented out to tourists, is not one of the major provincial lock-ups. In its phase as one of Sullivan’s Cottages, its two cells have been remodeled into a bedroom.¹⁰⁹ A plaque by the door of the cottage jail states that it was constructed in 1912.¹¹⁰ The Department of Public Works reports that a five hundred dollar grant was made to a Lock-up in Providence Bay between 1867 and 31 October 1911 and no funds were allocated to it in the following year.¹¹¹ The Providence Bay Jail is not included in the statistics of the annual Inspector of Prisons reports on the other three Manitoulin Island lock-ups.¹¹² Nonetheless, a constable was stationed at Providence Bay.¹¹³ The lock-up was likely used as an

¹⁰⁴ JC Phipps to Superintendent of Indian Affairs, 27 March 1889, (Manitowaning), “Correspondence Regarding the Misconduct,” Op. Cit.

¹⁰⁵ Ibid.

¹⁰⁶ JC Phipps to Deputy Superintendent General of Indian Affairs, L Vankoughnet, 10 July 1889, (Manitowaning), “Correspondence Regarding the Misconduct,” Op. Cit.

¹⁰⁷ Ibid.

¹⁰⁸ to Indian Superintendent Phipps, 22 July 1890, “Correspondence Regarding the Misconduct,” Op. Cit.

¹⁰⁹ Brown, 2006, Op. Cit.:96-98.

¹¹⁰ Ibid.

¹¹¹ Province of Ontario, *Report of the Minister of Public Works for the Province of Ontario for the Year Ending 31st October 1912*, Table No. 2, (Toronto: LK Cameron, 1913):124.

¹¹² Province of Ontario, *Forty-Seventh Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario for the Year Ending 31st October 1914*, (Toronto: LK Cameron, 1915):123.

¹¹³ Brown, 2006, Op. Cit.:96-98.

overnight place of confinement. By the late 1930s, it was no longer in use.¹¹⁴

9.4 Gore Bay Lockup, District Jail, and Courthouse

Manitoulin Expositor.
W. L. SMITH Editor.
MANITOWANING, SEPT. 27th. 1879

WANTED—A STIPEEDIARY.
It is with pleasure we notice the support several of our cotems., who are acquainted with the wants of this District, are giving us regarding the appointment of a Stipendiary Magistrate for the Manitoulin. Among these are the *Algoma Pioneer* and the *Collingwood Messenger*, the former of the
cial
ists.

If we are going to have a Stipendiary Magistrate appointed this fall it is time a move was made in the matter. Navigation will soon be closed now and everyone who knows anything about the Island knows the difficulty connected with administering justice here during winter under the present arrangement. Other and less important interests connected with the Island have received prompt attention at the hands of the Ontario

The distance between the Sault and Manitoulin is 200 miles which is traversed in winter with teams over the ice at great cost while it is necessary to cross American territory on the trip; and although lock-ups have been erected on the Island there is no officer empowered to sentence criminals convicted of small offences for longer than twenty days and when committed for trial at the Assizes the prisoners must be taken to the Sault. Again;—

Are we or are we not going to have a Stipendiary Magistrate appointed on this Island before winter? If anything is going to be done in this matter it must be done soon. It is bad enough having to send prisoners to the Sault for trial for every trifling offence during the summer but it is infinitely worse to be put to that trouble during the winter or else keep them in the Lock-up at this place awaiting trial for a month or two, while, if we had a Stipendiary here, they could have summary trial at any time.

Figure 40: Pleas for a Stipendiary Magistrate for Manitoulin Settlers¹¹⁵

In the autumn of 1879, as construction on the Gore Bay Lock-up neared completion, Manitoulin Island was in an awkward judicial phase. Ironically, with growing settlements such as Gore Bay, where seventeen other town buildings were erected in the 1879 construction season,

¹¹⁴ Brown, 2006, Op. Cit.:96-98.

¹¹⁵ Adapted from *The Manitoulin Expositor*, 15 November 1879, Op. Cit.; *The Manitoulin Expositor*, 8 November 1879, Volume: 1, No. 25; *The Manitoulin Expositor*, 27 September 1879, Op. Cit.; *The Manitoulin Expositor*, 13 September 1879, Op. Cit.

the area was under-serviced in the administration of justice.¹¹⁶ While the lock-ups were put to use because most “Indian” infractions could be tried through Indian Affairs, and provincial officials held limited judicial powers, Sault Ste. Marie was still the designated District Gaol to which Manitoulin Island settlers would be sent. Therefore, despite the presence of lock-ups, settler communities advocated for better access to the administration of justice. The *Manitoulin Expositor* and other local papers in the region took up this cause. In addition to the summary convictions that already took place in the Indian Agent’s office, Division Courts were added to the administrative judicial quiver of settlers on Manitoulin Island.

Division Courts.

MANITOULIN ISLAND, 1886.

MANITOWANING—On Monday, 10th May, and Monday, 11th Oct., 9 a.m.

LITTLE CURRENT—On Wednesday, 12th May, and Wednesday, 13th Oct., 9 a.m.

GORE BAY—Saturday, 15th May, and Saturday, 16th Oct., 9 a.m.

Criminal Justice Accounts must be addressed to Sheriff Carney, Sault Ste. Marie, and received by him not later than 1st March, June, September and December for presentation to the Government Board of Audit for the current quarter.

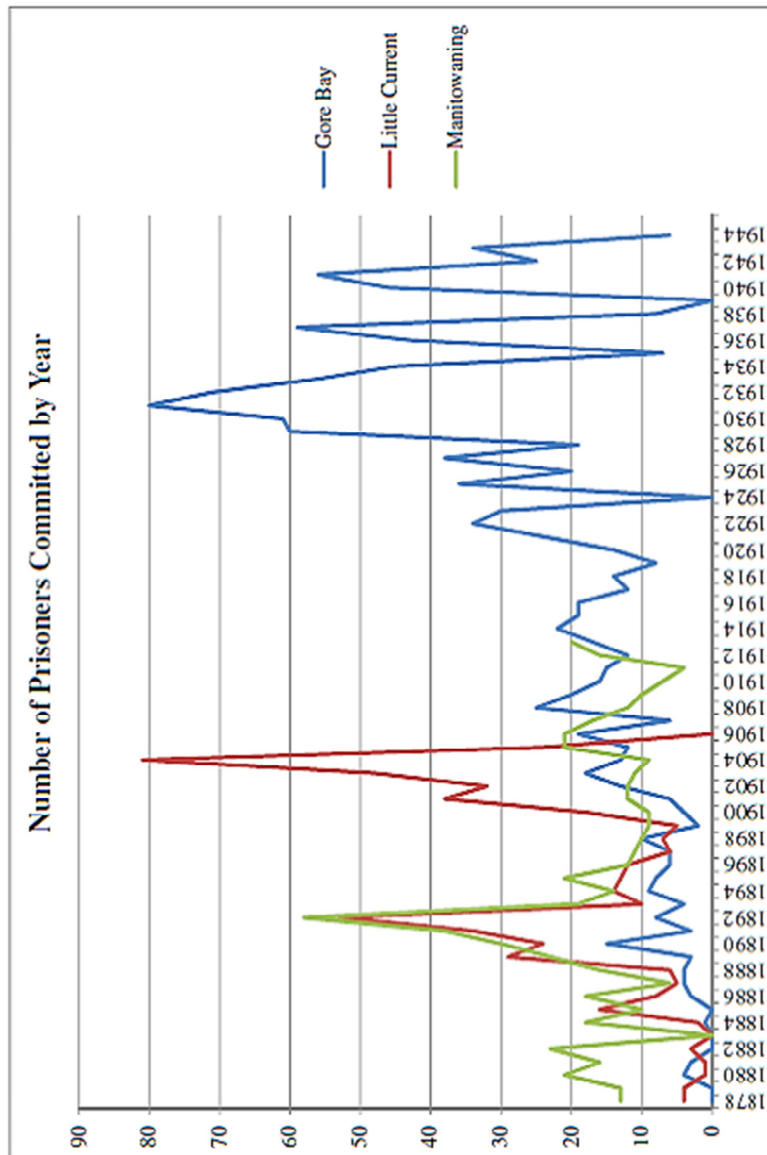
J. JAMES KENOE,
Clerk of the Peace, District of Algoma.
Sault Ste. Marie, Jan. 16, 1886. 37

Figure 41: Division Courts of Manitoulin Island¹¹⁷

¹¹⁶ Shelley J Pearen, *Exploring Manitoulin*, 3rd edition, (Toronto: University of Toronto Press, 2003):91-92.

¹¹⁷ Adapted from “Division Courts,” *Manitoulin Expositor*, 23 October 1886, Manitowaning, Volume: III, No. 3; *Manitoulin Expositor*, 30 January 1886, Manitowaning, Volume: II, No. 37.

Figure 42: Number of Prisoners Committed by Year to Manitoulin Provincial Lock-ups¹¹⁸



¹¹⁸ The Sessional Papers of the Province of Ontario do not consistently report statistics for all of the years in which these jails were in operation. Although government reports can be somewhat variable in what is published year-to-year, part of the reason that the Gore Bay Jail reports continued until its closure, while the lock-ups did not, is that it became a District Gaol while they were turned over to the municipalities. Annual Reports of the Inspector of Asylums, Prisons and Public Charities for the Province of Ontario, 1879-1880; Annual Reports of the Inspector of Prisons and Public Charities upon the Common Gaols, Prisons and Reformatories of the Province of Ontario, 1883-1888, 1890-1898; Annual Reports of the Inspector of Prisons and Public Charities for the Province of Ontario, 1881-1882, 1889; Annual Reports of the Inspector of Prisons and Reformatories of the Province of Ontario, 1899-1905; Annual Reports of the Inspector of Prisons and Public Charities upon the Common Gaols of the Province of Ontario, 1906-1908; Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario, 1909-1923, 1925-1935; Annual Report upon the Prisons and Reformatories the Ontario Board of Parole and the Commissioner of Extra-mural Employment of the Province of Ontario, 1924; Annual Reports upon the Prisons and Reformatories of the Province of Ontario, 1936-1945.

In 1889, a courthouse and registry office were added to the Gore Bay Lock-up and the assemblage was in operation as the judicial administrative seat of the District of Manitoulin.¹¹⁹ The increase in convictions that coincided with these additions required the *Manitoulin Expositor*, now operating in Little Current instead of Manitowaning, to publish a full-page supplement.¹²⁰



Figure 43: The Administration of Justice at the Corner of Dawson and Phipps Streets¹²¹

¹¹⁹ The contract awarded to George Ball of Barrie on 18 June 1889 was valued at \$5680. Province of Ontario, "Statements of the Accountant and Law Clerk," *Report of the Commissioner of Public Works for the Province of Ontario for the Year Ending 31st December 1889*, (Toronto: Warwick & Sons, 1890):10, 42; Inspector of Legal Offices, *Sixth Annual Report of the Inspector of Legal Offices*, (Toronto: Warwick & Sons, 1889):4; Brown, 2006, Op. Cit.:31-33.

¹²⁰ *Supplement to The Manitoulin Expositor*, Saturday 4 January 1890, Little Current.

¹²¹ Adapted from "Manitowaning – Correspondence from JC Phipps Concerning Squatters in Gordon Township and the Survey of the Townplot of Gore Bay," 1875-1876, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 1940, File: 3923, Access Code: 90.

The courthouse was a gabled two-storey stone building.¹²² The Crown Attorney's residence was beside the courthouse.¹²³ The "Canadian plan" Gore Bay Jail comprised a two-storey jailkeeper's house attached to a jail building with ground-floor cells for men and second-floor cells for women.¹²⁴



Figure 44: The Gore Bay Registry Office, Jail, and Courthouse, 1907¹²⁵

Manitoulin settler communities appealed to the federal government to address criminal matters and Manitoulin Island Juries turned their attention to the issue of the intoxicant trade. A 1902 sitting of the Grand Jury congratulated the judge that law and order were "fairly well maintained in the District, considering the great disadvantage under which [they] labor[ed] in the presence of such a large Indian population."¹²⁶ Although the Gore Bay Jail was clean, it was poorly ventilated and equipped.¹²⁷ In their opinion, incarceration in the jail for "any length of time" would cause inconvenience to the jailkeeper and "serious injury" to the health of prisoners.¹²⁸ A new jail and keeper's residence was needed.¹²⁹ The Grand Jury expressed regret that the "selling of liquor is so prevalent between unprincipled white men and Indians" and proposed that the Dominion Government address this problem by partially funding a constable "especially charged with this duty" because if "the Indian is to be saved from the curse of

¹²² Brown, 2006, Op. Cit.:31-33.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Photograph by author of display in Gore Bay Museum.

¹²⁶ "Presentment of Grand Jury – Court of General Sessions, District of Manitoulin," Foreman Robt Thorburn to Judge McCallum, June 1902, Gore Bay, *Manitoulin Reformer*, 6 June 1902.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid.

drunkenness and from utter demoralization, laws should be vigorously enforced.”¹³⁰ The two-storey Gore Bay Jail certainly had larger facilities with which to address the concerns of the Grand Jury than the Manitowaning or Little Current lock-ups.

Despite the outspoken diligence of the Grand Jury, the overall provincially-reported numbers of commitments to the Gore Bay Jail tend to be relatively low until the Manitowaning and Little Current lock-ups begin to deteriorate. Ron Brown found that one hundred ten persons were placed in the Gore Bay cells in 1910.¹³¹ More than ninety of these committals were for “drunk and disorderly.”¹³² Statistics published by the Inspector of Prisons and Reformatories are much lower: in the year ending 30 September 1910, sixteen prisoners, in the year ending 31 October 1911, fifteen prisoners.¹³³ Archival records are apt to be incomplete and government reporting of records can be inconsistent; however, the answer to this particular incongruity may be found in the spatial organization and representations of the Gore Bay Jail itself.

Immediately beyond the ground floor entrance to the jailkeeper’s section of the Gore Bay Jail lies a small intermediate section with two cells. The remaining four cells for male prisoners lie beyond a heavy door. The two cells, physically closer to the settler jailer and his family, may have housed provincially-reported settler prisoners while the set of four cells housed “Indian” inmates. In his first report, the Ontario Inspector of Prisons made a point of instructing county councils that incarceration was an “important branch in the science of government” in which classification was needed and the “indiscriminate mixing” of inmates was an “evil that no civilized community should tolerate.”¹³⁴ While, especially in larger institutions, inmates might be classified according to the type or severity of their offence, in the small gaols of the counties to which the Inspector referred, indigenous and settler populations were the predominant socio-legal categories. The racialized segregation of inmates was given scientific weight through calculation since legislation created additional categories of crime and punishment for “Indians” and “non-treaty Indians.” Despite the prevalence of lock-ups on Manitoulin Island, the scrutinizing eye of the law was preoccupied with this criminalized indigenous class rather than any widespread crime

¹³⁰ “Presentment of Grand Jury,” *Manitoulin Reformer*, 6 June 1902, Op. Cit.

¹³¹ Brown, 2006, Op. Cit.:31-33.

¹³² Ibid.

¹³³ Province of Ontario, *Forty-Second Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario for the Year Ending 30th September 1909*, (Toronto: LK Cameron, 1910); Province of Ontario, *Forty-Third Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario for the Year Ending 30th September 1910*, (Toronto: LK Cameron, 1911).

¹³⁴ Province of Ontario, *First Annual Report of the Inspector of Asylums, Prisons, &c., for Ontario, for the Year Ending 30th September, 1868*, (Toronto: Hunter, Rose & Co., 1869):2.

spree among the settler population.

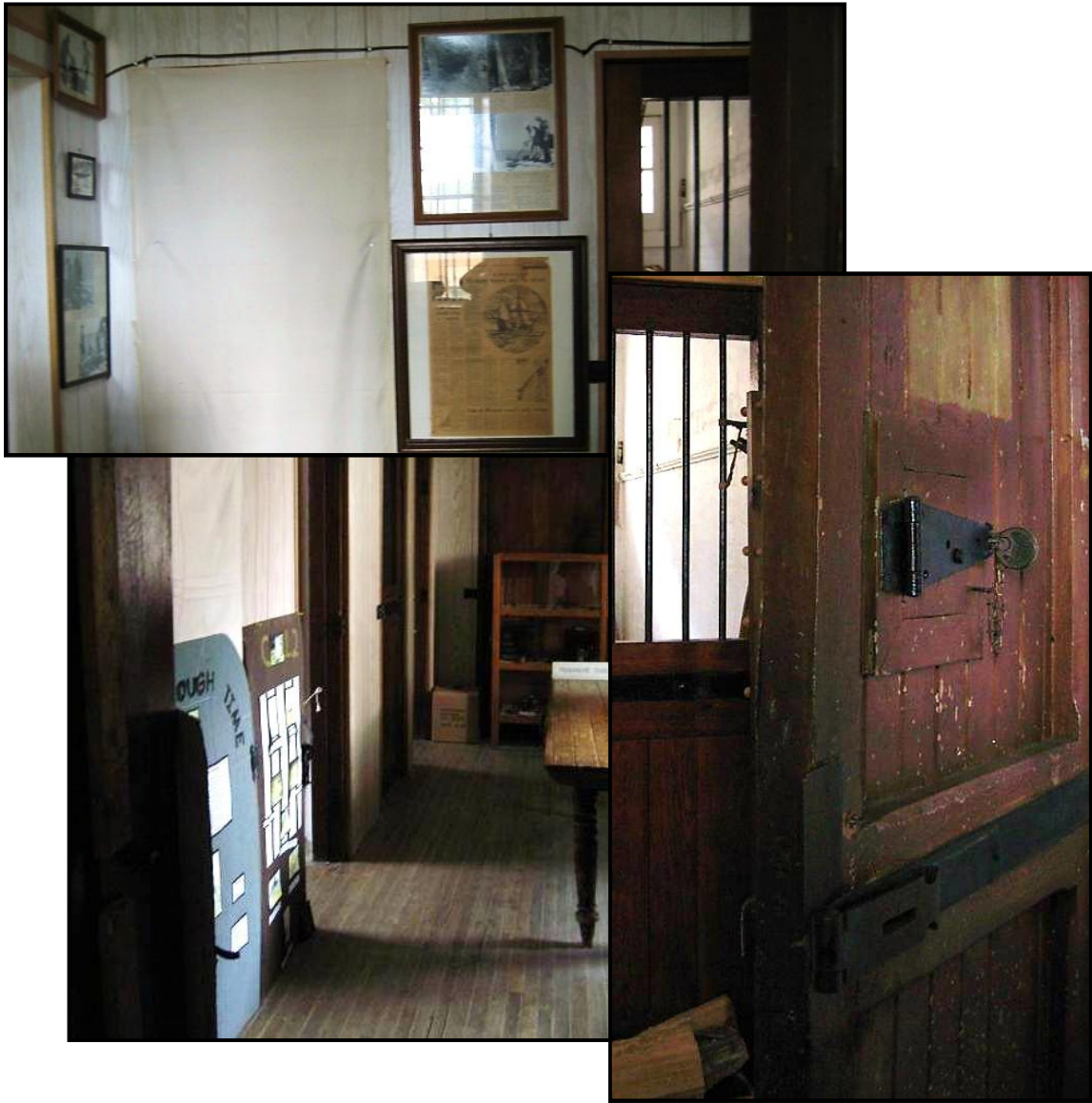


Figure 45: The Spatial Organization of the Gore Bay Gaol

(Top Left) Two cells near the jailkeeper's area, (Right) Heavy door, (Lower Left) Four cell area with prisoners' table

A 1903 sitting of the Court of General Sessions for the Manitoulin District opened with Crown Attorney Murray's congratulations that there were no criminal proceedings to bring before the court.¹³⁵ Despite its gentle workload, the sitting had to take place in order that a Grand Jury be

¹³⁵ The one prosecution that occurred since the last sitting had been dispensed of through the Court of Assizes. "The District Court – No Criminal Cases – The Judge's Address to the Grand Jury," *Manitoulin*

maintained in the District. In his address to the Grand Jury, Judge McCallum observed that Manitoulin was “settled by a respectable class of people.”¹³⁶ McCallum reminded the Grand Jury of their wide investigative powers and invested them with the responsibility of preventing crime.¹³⁷ The 1903 Grand Jury also monitored the Gore Bay District Jail and found the small building clean yet inadequate.¹³⁸ The Grand Jury found it deplorable that there was a “necessity” to imprison “insane persons” in jails, especially when the Gore Bay lock-up presented “close quarters and lack of proper accommodation and opportunities for receiving fresh air and exercise,” conditions that made a “lengthy confinement injurious and oppressive.”¹³⁹ They agreed that a new jail with a jailkeeper’s residence was needed.¹⁴⁰

An individual of the West Bay Band (M’Chigeeng First Nation) was thought to be displaying symptoms of insanity in October 1907.¹⁴¹ He was taken to Gore Bay and “lodged or rather held over” until he could be seen by the Police Magistrate.¹⁴² The individual was released after a “medical man” of Gore Bay examined him and declared that “there was nothing wrong with the Indian.”¹⁴³ During the next week, the individual “cut up and behaved very badly on the reservation.”¹⁴⁴ When he was once again arrested, he was taken to Indian Agent Thorburn at Gore Bay who sentenced him to thirty days in jail and ordered the Indian Constable to transport him to the Manitowaning Lock-up.¹⁴⁵ The West Bay individual had only been in the lock-up for a few days when Jailkeeper Samuel Walker and the Provincial Constable were both required to attend to him.¹⁴⁶ It was Walker who referred the matter to the Crown Attorney at Gore Bay. The Crown Attorney ordered two medical doctors to examine the imprisoned man. The West Bay man was declared insane, taken to Mimico Asylum by the Dominion Constable, and maintained there by the funds of the West Bay Band until his death that Spring.¹⁴⁷ Although Deputy Minister of Justice Newcombe did not hold Indian Affairs “legally responsible” for the West Bay man’s

Reformer, 22 October 1903, Gore Bay, Volume: 2, No. 25.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ “Presentment of Grand Jury,” to Justice McCallum, *Manitoulin Reformer*, 29 October 1903, Gore Bay, Volume: 2, No. 26.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Jailer Samuel Walker to Secretary of the DIA JD McLean, 19 August 1908 (Manitowaning), “Dept. of Justice Opinions – Vol. 3,” 1900-1910, Op. Cit.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

account of \$14.40, for a total of thirty-six days in the Manitowaning Lock-up, he presented the DIA with the choice of assuming this cost in the same way that they had dispensed the cost of the asylum.¹⁴⁸

The Grand Jury occasionally dealt with actual cases involving “Indians” as when the Court of Assizes in Gore Bay returned a “true bill” against a defendant versus “an Indian woman, in which the jury returned a verdict of not guilty.”¹⁴⁹ The Courthouse at Gore Bay is still in operation.

9.5 Peroratio: Jailhouse Palimpsests



Figure 46: Curatorial Clues to the Uses of the Gore Bay Jail

Although the Gore Bay Museum is not presented as a defunct “Indian jail,” material elements of the building give silent testimony to the persons it once contained. Most bluntly, the prisoners’ dining table is inscribed with the messages of those who last sat around it.¹⁵⁰

¹⁴⁸ Walker to McLean, 19 August 1908, “Dept. of Justice Opinions – Vol. 3,” Op. Cit.; Deputy Minister of Justice Newcombe to Secretary of the DIA JD McLean, 22 September 1908, (Ottawa), “Dept. of Justice Opinions – Vol. 3,” 1900-1910, Op. Cit.

¹⁴⁹ *The Recorder*, 22 July 1909, Gore Bay.

¹⁵⁰ Brown, 2006, Op. Cit.:31-33.



Figure 47: Gore Bay Prisoners' Table Palimpsest¹⁵¹

Ultimately, as transportation infrastructure improved and police cells replaced government lock-ups, the Gore Bay Jail was deemed an obsolete and unnecessarily expensive facility.¹⁵² The Gore Bay Jail was closed on 31 December 1944 and Sudbury was formally made the seat of the Gaol for the Provisional District of Manitoulin.¹⁵³ Quarters for the RCMP

¹⁵¹ An image of the prisoners' table also appears in Brown, 2006, Op. Cit.:32.

¹⁵² Deputy Attorney-General CF Magono to Deputy Minister of Citizenship and Immigration Laval Fortier, 11 June 1952, (Toronto), "Jail Facilities on Manitoulin Island," Op. Cit.

¹⁵³ Deputy Attorney-General of Ontario CL Snyder to Indian Agent CR Johnston, 24 November 1944, (Toronto), "Manitoulin Island District Office – Manitoulin Island Agency – Law Enforcement – Intoxicants – Includes general correspondence re justice administration (court costs, returns of convictions, etc.)," National Archives of Canada, RG10: Department of Indian Affairs, Volume: 12686, Series C-V-26, File: [19]/18-6, Part 1, Access Code: 32; Acting Director to Indian Agent CR Johnston, 30 November 1944, (Manitowaning), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.

detachment at Manitowaning were completed in 1949.¹⁵⁴ Regional Supervisor of Indian Agencies F Matters' concerns about the upkeep and geographical distribution of court and jail facilities on Manitoulin Island were passed on to the Deputy Attorney General of Ontario in June 1952.¹⁵⁵ Deputy Attorney General FC Magone replied that he had been prompted to inspect Manitoulin Island in the previous year "after having received numerous reports from the Crown Attorney, Magistrate, Provincial Police and others."¹⁵⁶ Magone had been unsuccessful in his persistent efforts to reinstate three provincial lock-ups at different locations on Manitoulin Island.¹⁵⁷ Therefore, Matters was informed that, for the purposes of Indian Affairs, he was to look to the two cells of the "modern and well equipped" new Gore Bay Municipal Building and anticipate the implementation of a plan to purchase a building for a Provincial Police Station with cells in Little Current.¹⁵⁸

The importance of the provincial Manitoulin Island lock-ups is evident in the landscape; however, as this chapter makes clear, their relationships to indigenous imprisonment have been largely covered by changing governmental and legal jurisdictions. Although surrounded by town buildings, these important nineteenth-century lock-up structures maintain their tenacious presence. Where it is possible to visit these buildings, with the guidance of archival sources situated within the legal historical geographies of Manitoulin Island, assimilation through incarceration can be read through palimpsests of historical use and curatorial representation.

¹⁵⁴ *Annual Report of the DIA*, 1948, Op. Cit.: 223.; *Annual Report of the DIA*, 1949, Op. Cit.: 205.

¹⁵⁵ For Secretary to Regional Supervisor of Indian Agencies F Matters, 18 June 1952, "Jail Facilities on Manitoulin Island," Op. Cit.

¹⁵⁶ Deputy Attorney-General CF Magone to Deputy Minister of Citizenship and Immigration Laval Fortier, 11 June 1952, (Toronto), "Jail Facilities on Manitoulin Island," Op. Cit.

¹⁵⁷ *Ibid.*

¹⁵⁸ For Secretary to Matters, 18 June 1952, "Jail Facilities on Manitoulin Island," Op. Cit.; Magone to Fortier, 11 June 1952, "Jail Facilities on Manitoulin Island," Op. Cit.

Chapter 10

Relocating Incarceration: Material Geographies of Justice

Historical-cultural geographers have long been taught to “read the landscape.”¹ The material elements of landscape are signs of how places have been used; however, as Brian Osborne cautions, “places are constituted by more than materiality.”² Geographic cyphers lead to stories. Through the everyday practices, practicalities, and absurdities of life, abstract space becomes “a social and psychic geography.”³ The glimpse of an institution conjures thoughts of standardization, depersonalization, and legitimization through governmental regulation. Jails and prisons are odd places where legal super-structures collide with overtones of social chaos. It is this uncomfortable confluence that binds carceral and indigenous historical geographies. Indigenous peoples are the First Nations to inhabit territory now claimed by the Canadian state. More profound than the vital importance of precedence is being of the land: created as part of its whole. Indigenous geographies recognize that forcible dislocation from “ethnogeographies... erodes the material and spiritual connectedness of peoples.”⁴ Carceral geographies look to the manipulation of space in order to effect psychological control. What then, does it mean when indigenous peoples are dislocated, and then relocated, from the lands to which they belong? Tracking the material elements of three landscapes of further indigenous relocation uncovers astounding contradictions and connections that indicate how Aboriginal peoples came to be so vastly over-represented in Canada’s prisons.

10.1 Sudbury District Gaol

Although Manitoulin Island ceased to have its own District Gaol by 1945, the administration of justice continued with Indian Agents working in conjunction with Dominion Constables, Provincial Constables, and police magistrates.⁵ Indian Agent CR Johnston and Police

¹ Ed. DW Meinig, *The Interpretation of Ordinary Landscapes: Geographical Essays*, (New York: Oxford University Press, 1979).

² Brian S Osborne, “Landscapes, Memory, Monuments, and Commemoration: Putting Identity in Its Place,” Commissioned by the Department of Canadian Heritage for the Ethnocultural, Racial, Religious, and Linguistic Diversity and Identity Seminar, Halifax, 1-2 November 2001:5.

³ Ibid.

⁴ Ibid:6.

⁵ “Manitoulin Island District Office – Manitoulin Island Agency – Law Enforcement – Intoxicants – Includes general correspondence re justice administration (court costs, returns of convictions, etc.),”

Magistrate WJ Golden were in frequent correspondence.⁶ In some cases, RCMP officer FG Truscott acted as prosecutor in cases before the Indian Agent.⁷ It was, nonetheless, a complication to Indian Affairs that convicted prisoners had to be conveyed by the RCMP to Sudbury District Gaol.⁸

The geographical challenge of removal to the Sudbury Gaol was increased by the reality that many “Indians” sent to the Gaol lacked money. Within the legal structure of the *Indian Act*, which developed alongside Indian lock-ups, had “Indians” possessed more material resources, most would be able to answer their convictions by paying a fine rather than receiving jail time in default. Where lock-ups faded away in favour of short-stay town police cells, Indian Affairs was in a quandary: in their material poverty, the very “Indians” they sent to gaol could become stranded outside of their Indian Agents’ geographical purview. Since the Sudbury District Gaol did not provide transportation home for discharged prisoners, Indian Affairs had to concede that “in cases of dire necessity” they would send a transportation warrant for railway fare to the Sudbury Gaol Governor so that prisoners could be sent on their way to Manitoulin Island.⁹

Paid employment was available off Manitoulin Island and distance from the Indian Agent could be to the advantage of “Indians” who could not afford fines levied against them. When two men from Wikwemikong were convicted under the liquor provisions of the *Indian Act* and sentenced to fines of ten dollars and costs or ten days in jail, they took evasive action.¹⁰ The General Manager of the JJ McFadden Lumber Company wrote to Johnston from Blind River, Ontario, to tell him that the men were working for them as river drivers on the Mississaga River.¹¹ The men had divulged that they might be forced to return to Manitoulin because they were

National Archives of Canada, RG10: Department of Indian Affairs, Volume: 12686, Series C-V-26, File: [19]/18-6, Part 1, Access Code: 32.

⁶ Ibid.

⁷ JA Kinney KC to [name withheld], 14 September 1945, (Gore Bay), “Manitoulin Island District Office – Manitoulin Island Agency – Law Enforcement – Intoxicants,” 1946-1949, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 12686, Series C-V-26, File: [19]/18-6, Part 2, Access Code: 32.

⁸ Indian Agent CR Johnston to the Indian Affairs Branch, 15 March 1947, (Manitowaning), “Manitoulin Island Agency – Includes General Correspondence,” Op. Cit.

⁹ Indian Agent CR Johnston to Sudbury District Jail Governor, 25 March 1947, (Manitowaning), “Manitoulin Island Agency – Law Enforcement,” Op. Cit.; Johnston to the Indian Affairs Branch, 15 March 1947, “Manitoulin Island Agency – Law Enforcement,” Op. Cit.

¹⁰ Indian Agent CR Johnston to Police Magistrate WJ Golden, 23 May 1946, (Manitowaning), “Manitoulin Island Agency – Includes General Correspondence,” Op. Cit.

¹¹ General Manager of the JJ McFadden Lumber Co Limited to Indian Agent CR Johnston, 9 May 1946, (Blind River, Ontario), “Manitoulin Island Agency – Includes General Correspondence,” Op. Cit.

“liable” to the Indian Agent for fines of \$13.00 and \$12.90.¹² The men’s skills were valuable enough to the lumber company to forward a cheque for \$25.90 to the Indian Agent even though they had not yet earned the full amount.¹³

A Manitoulin Island Indian Constable felt that his authority was derided when he attended a wedding dance in 1947.¹⁴ At the dance, the constable was informed that one of the guests had a bottle of liquor in his pocket.¹⁵ The constable informed Indian Agent Johnston,

I at once went to take it away from him. But the bottle was filled with tea, and had purposely prepared the same, for me to take notice of it. And when it was found that was only tea, the laugh was on me by some of the crowd. – I think, Tea is alone enough evidence that he was drunk...no doubt drunk, I could smell him. and this contents of tea might have been mixed with some intoxicants as against *Indian Act* Section 2 subsection ‘f’ And at the same time against Section 106 of the Indian Act. As this was done in contempt with my work.¹⁶

The man with the tea was not the only person whom the Indian Constable thought was drunk. The sister of the groom was “very surprised” when the Indian Constable delivered a summons to her husband.¹⁷ The sister conceded that her husband “was drinking a little bit” and did not “see why he should be taken into custody” as he had not done anything wrong.¹⁸ The woman was extremely worried about the possibility of a jail term because there was a great deal of work to be done in caring for their livestock, she was nearing the end of a pregnancy, they had no money, and their supplies of food and firewood were depleted.¹⁹ Moreover, the woman was already caring for a two-year-old and a three-year old and a “person just can’t let the babies go hungry and cold.”²⁰ The woman pledged that her husband would comply with the summons and attend the Indian Agent’s office the next day and pleaded, “I want to ask you to let him go free.”²¹ Regrettably, when, within the group appearing after the dance, it was the husband’s turn before the Indian Agent, Johnston did not find him credible.²²

¹² General Manager of the JJ McFadden Lumber Co Limited to Indian Agent CR Johnston, 9 May 1946, (Blind River, Ontario), “Manitoulin Island Agency – Law Enforcement,” Op. Cit.

¹³ Ibid.

¹⁴ [Indian Constable] to Indian Agent CR Johnston, 17 January 1947, (Wikwemikong), “Manitoulin Island Agency – Law Enforcement,” Op. Cit.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ to Indian Agent, 17 January 1947, (Wikwemikong), “Manitoulin Island Agency – Law Enforcement,” Op. Cit.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² to Dr, 24 January 1947, (Wikwemikong), “Manitoulin Island Agency – Law Enforcement,” Op. Cit.

Apparently, the couple's pleas of innocence went against the wife's desire to keep the man out of jail because all were fined ten dollars and costs or ten days in gaol; however, he alone was remanded for a week.²³ When she learned of this, the woman travelled through the winter weather to Manitowaning to see the Indian Agent.²⁴ She then became ill and asked the Manitowaning doctor to help her.²⁵ Dr. Simpson intervened and asked that the man be given time to pay the fine.²⁶ Of the nine individuals tried on the same day for infractions against the liquor provisions of the *Indian Act*, only the man with the bottle of tea in his pocket, was not convicted.²⁷ Presumably, he was the one person who could prove that what he was drinking at the wedding dance was not liquor. Cases brought under the *Indian Act* usually resulted in convictions.²⁸

Manitoulin Crown Attorney JA Kinney was not particularly sensitive when he received another woman's letter of complaint while the Provincial Constable was on holiday; however, he discerned that the "proper thing to do" was to lay a charge of assault against the woman's husband.²⁹ Unfortunately, Kinney also wrote to the husband notifying him,

I have a complaint from your wife about you beating her up. The Provincial Police is away at present and I think possibly the matter can stand till the Police returns to make his investigation. However, I desire you to understand that this complaint has been made and if from now on you assault or beat your wife you may get less consideration from the Court when the matter is disposed of. I want you to understand that you must keep your hands off her from now on. If you have any complaints to make, you make them to the Police and not take the law into your own hands.³⁰

Kinney was initially unsure of the woman's status yet he gathered more information and prepared paperwork before he again wrote to the woman with further instructions later that day.³¹ The Police Court was meeting at Manitowaning Orange Hall on 25 September and he had decided to attempt to dispose of the case there.³² The woman was directed to take a document of information

²³ to Dr. 24 January 1947, (Wikwemikong), "Manitoulin Island Agency – Law Enforcement," Op. Cit.; Informations, "Manitoulin Island Agency – Law Enforcement," Op. Cit.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Note on envelope to Dr. Simpson in Manitowaning, "Manitoulin Island Agency – Law Enforcement," Op. Cit.

²⁷ Informations, "Manitoulin Island Agency – Law Enforcement," Op. Cit.

²⁸ See Appendix D.

²⁹ JA Kinney KC to [name withheld], 14 September 1945, (Gore Bay), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

to the Justice of the Peace at Manitowaning so that she could swear to it by oath.³³ If the alleged assault occurred on-reserve, the Indian Agent would ask the Indian Constable to serve summonses; however, if the offence occurred in town, the “Local Constable” would be used.³⁴ The woman was warned that if she was a “treaty Indian” she had “better go and see” the Indian Agent before attempting to contact any other Justice of the Peace.³⁵ Kinney offered his help to the woman in getting any potential witnesses to testify in Court and was willing to offer summonses for their appearance even though his general lack of engagement with “Indian” cases seeps through his tone in telling her

Give me your first name ‘Mary’ or ‘Agnes’ or whatever it is when you write me and tell me the date if there was more than one fight and let me have the full particulars of the trouble but never mind writing me all about your whole life’s troubles. I do not want to hear that. I just want to know what happened when you claim he assaulted and hit you occasioning actual bodily harm.³⁶

Kinney was willing to help, albeit reluctantly, in a case that he clearly would normally perceive as beyond the pale of his practice.

In 1945, a “young man” from Manitoulin Island was accused of murdering his father.³⁷ Indian Agent CR Johnston informed the Indian Affairs Branch that the accused man was a former student of the Residential School in Chapleau, Ontario.³⁸ Indian Agent Johnston only inquired about securing legal counsel for the young man after a preliminary hearing before Magistrate WJ Golden in the Municipal Hall of Sheguiandah resulted in committal for trial in a higher court.³⁹

Although Crown Attorney JA Kinney was an early nomination of Indian Affairs for defense counsel in the young man’s case, Johnston wondered whether Kinney’s prosecutorial position made him ineligible for the job.⁴⁰ Subsequently, Johnston informed Indian Affairs that Kinney agreed that he could not act as lead defense and he would be assisting Sudbury Crown

³³ Kinney to [name withheld], 14 September 1945, “Manitoulin Island Agency – Includes General Correspondence,” Op. Cit.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Indian Agent CR Johnston to Indian Affairs Branch, 30 August 1945, (Manitowaning), “Manitoulin Island Agency – Includes General Correspondence,” Op. Cit.; Indian Agent CR Johnston to Indian Affairs Branch, 2 November 1945, (Manitowaning), “Manitoulin Island Agency – Includes General Correspondence,” Op. Cit.

³⁸ Johnston to Indian Affairs Branch, 2 November 1945, “Manitoulin Island Agency – Includes General Correspondence,” Op. Cit.

³⁹ Johnston to Indian Affairs Branch, 30 August 1945, “Manitoulin Island Agency – Includes General Correspondence,” Op. Cit.

⁴⁰ Indian Agent to JA Kinney KC, 25 September 1945, (Manitowaning), “Manitoulin Island Agency – Includes General Correspondence,” Op. Cit.

Attorney ED Wilkin with his case.⁴¹ Since Kinney and Police Magistrate Golden were the “only qualified men” on the Island, James Cooper of Sudbury was engaged as counsel for the accused young man.⁴² In another case, Indian Affairs declined to provide counsel to a member of the Manitoulin Island Unceded Band even though the Band Council resolved that counsel should be requested and a candidate was already nominated.⁴³ The preliminary charge against that man was murder; however, the charge had been reduced to manslaughter in a Magistrate’s hearing in Wikwemikong.⁴⁴ The Department of Indian Affairs was only obligated to hire counsel in murder cases.

In the murder case, although the Gore Bay Jail had recently closed and the accused young man was being held in the Sudbury District Gaol, the trial itself could still be held at the Gore Bay Courthouse.⁴⁵ Johnston recounted, according to the accused’s own testimony, and that of the

two Indians living with him, he had not slept well for several weeks, and he immediately went home and slept after shooting his father, which in my opinion is not the actions of a person with normal mentality. Mr. J.M. Cooper, I thought, put up a very good defence, and Dr. McLarty, a mental expert from Toronto, pronounced him a mental case, while Dr. Tennant also of Toronto pronounced him not insane, although it appeared to me he admitted that he would consider it a form of insanity had [the accused] been a whiteman.⁴⁶

When the murder trial resulted in a conviction, Indian Agent Johnston furnished Indian Affairs with the thought that they might endeavor to commute the sentence of the convicted man of whom, previous to the trial, he had little knowledge yet now estimated was “about 33 years of age.”⁴⁷ The man had attended residential school in Chapleau for eight years and spoke “fairly good” English.⁴⁸ He was “temperate in habits” and appeared to the Indian Agent to be very

⁴¹ Indian Agent CR Johnston to Indian Affairs Branch, 9 October 1945, (Manitowaning), “Manitoulin Island Agency – Includes General Correspondence,” Op. Cit.

⁴² Ibid; Indian Agent CR Johnston to James Cooper KC, 17 October 1945, (Manitowaning), “Manitoulin Island Agency – Includes General Correspondence,” Op. Cit.

⁴³ to Indian Agent Johnston, Copy of resolution, 11 July 1946, (Wikwemikong), “Manitoulin Island Agency – Includes General Correspondence,” Op. Cit.; Director to Indian Agent CR Johnston, 19 August 1946, (Ottawa), “Manitoulin Island Agency – Includes General Correspondence,” Op. Cit.

⁴⁴ Indian Agent CR Johnston to Indian Affairs Branch, 15 August 1946, (Manitowaning), “Manitoulin Island Agency – Includes General Correspondence,” Op. Cit.; Indian Agent CR Johnston to the Secretary of the Manitoulin Island Unceded Band, 22 August 1946, (Manitowaning), “Manitoulin Island Agency – Includes General Correspondence,” Op. Cit.

⁴⁵ Indian Agent to Kinney, 25 September 1945, Op. Cit.

⁴⁶ Indian Agent CR Johnston to Indian Affairs Branch, 2 November 1945, (Manitowaning), “Manitoulin Island Agency – Includes General Correspondence,” Op. Cit.

⁴⁷ Johnston to Indian Affairs Branch, 2 November 1945, “Manitoulin Island Agency – Includes General Correspondence,” Op. Cit.

⁴⁸ Ibid.

reserved.⁴⁹ Nevertheless, Johnston assessed that the man's "mentality was considerably below normal, that he was suffering from a physical ailment, as well as a delusion that his parents were responsible for his illness, which belief was aggravated by those of his own tribe with whom he associated and sought advice."⁵⁰ From his Sudbury Gaol cell, the man told Johnston that "he could not have lived very long if he did not put a stop to his parents bear walking, a term the Indians use for witchcraft."⁵¹ For the Indian Agent, while murder was certainly not condoned, demonstrations of what appeared to be assimilation to Indian Affairs' ideals sat alongside physical and mental illness as mitigating circumstances.

In addition to relocations to residential schools, children convicted of crimes could be sentenced by the Police Magistrate to the reformatory under the *Training Schools Act*. In the Gore Bay Courthouse, Magistrate Golden convicted three boys from the Manitoulin Island Unceded Reserve, aged ten to twelve years old, of wilful damage and theft.⁵² Golden ordered that the Children's Aid Society take the children to the St. John's Boys' Training School in Toronto where they would "upon admission become a ward of the training school" until they came of age.⁵³

Although, by 1946, the general position of Indian Affairs was that they were not prepared to "assume any costs in connection with a prisoner while he is still in custody on a charge under the Criminal Code, because such costs are recognized as the constitutional responsibility of the province, and any departure from that principle would create a precedent, which would be undesirable," in the case of the Manitoulin Island boys, the municipality deigned to assume the expense of the children's maintenance in conformity to the *Training Schools Act* was the

⁴⁹ Johnston to Indian Affairs Branch, 2 November 1945, "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.

⁵⁰ Ibid.

⁵¹ In 1997, Leon Jacko was acquitted for "clubbing to death another Anishnabe man" named Ron Thompson. Thompson's death was "ruled an act of self-defence motivated by the accused's belief that the victim was a Bearwalker." Deena Rymhs, *From the Iron House: Imprisonment in First Nations Writing*, (Waterloo: Wilfred Laurier Press, 2008):127; Johnston to Indian Affairs Branch, 2 November 1945, "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.

⁵² His Honour Magistrate WJ Golden in Chambers at Gore Bay, Ontario, In the Matter of [name withheld] Training Schools Act, 26 June 1946, (Gore Bay), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.; District Supt WH Hogle to Indian Agent Johnston, 4 July 1946, (Sudbury), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.

⁵³ Magistrate WJ Golden, 26 June 1946, "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.; Excerpts from the *Training Schools Act*, 1939, "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.

Department of Indian Affairs.⁵⁴ Bernard Neary, Superintendent of Welfare and Training, was somewhat baffled by the boys' arrival in Toronto. He asked Indian Agent Johnston, "Were you consulted before the boys were admitted to the Institution?"⁵⁵ Neary did not know the boys' ages and could not determine whether they were "recognized as Indians" by Indian Affairs.⁵⁶

In a different case where housebreaking appeared to have been committed between "Indians," it was not taken as seriously. In response to a complaint, Indian Agent Johnston advised,

this is actually a case for the Provincial Police, but seems a trivial matter to bring the Police from Gore Bay at this time of year. [The Indian Constable] has a commission from the Royal Canadian Mounted police but their work is primarily in connection with intoxicants and are not allowed to handle cases that come under the criminal code. You may report to Mr. Louis Needham, the Provincial Constable at Gore Bay, if you wish, but you should be sure that you can prove your case or you may have costs of the court to pay.⁵⁷

While the three boys were indeed "recognized" by Indian Agent Johnston, they first entered into a realm of law enforcement beyond his sole control when they, allegedly, "broke into a vacant white farm house adjacent to Manitowaning."⁵⁸ When the Provincial Police investigated the housebreaking, the boys were thought to have admitted their guilt.⁵⁹ The children were awaiting trial on this charge when they allegedly broke into a house in Manitowaning.⁶⁰ The boys were tried in the Manitowaning Indian Affairs Office in the presence of Indian Agent Johnston and, since their fathers were away from the reserve and their mothers were unable to make restitution, the boys were tried on the same day in the Gore Bay Courthouse and sentenced to be taken away to the Training School.⁶¹

⁵⁴ Magistrate WJ Golden, 26 June 1946, "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.; Johnston to Indian Affairs Branch, 24 July 1946, Op. Cit.; Director to Indian Agent CR Johnston, 11 June 1946, (Manitowaning), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.

⁵⁵ Superintendent of Welfare and Training Bernard F Neary to Indian Agent CR Johnston, 11 July 1946, (Ottawa), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.

⁵⁶ Ibid.

⁵⁷ Indian Agent CR Johnston to [name withheld], 25 February 1947, (Manitowaning), "Manitoulin Island Agency – Law Enforcement," Op. Cit.; [Name withheld], 15 February 1947, (Wiwemikong), "Manitoulin Island Agency – Law Enforcement," Op. Cit.; [Name withheld], 11 February 1947, (Wiwemikong), "Manitoulin Island Agency – Law Enforcement," Op. Cit.

⁵⁸ Johnston to Indian Affairs Branch, 24 July 1946, "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid; His Honour Magistrate WJ Golden in Chambers at Gore Bay, Ontario, In the Matter of [name withheld] *Training Schools Act*, 26 June 1946, (Gore Bay), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.

10.2 Shingwauk: Incarceration and Assimilation in a Residential School

Residential schools were acute sites of segregation and assimilation where children were sequestered from their parents and, often, subjected to abuse that caused lasting trauma to indigenous persons, families, and communities.⁶² Melissa Williams reflects that, for many, the residential school system is responsible for a “cycle of despair” that originated in childhood abuse and spread under the influence of poor living conditions, substance abuse, and the further perpetuation of violence.⁶³

The North-West conflicts of 1869-70 and 1885 were fodder for those who believed that residential schools could be an expedient method of social control as indigenous children would be, in effect, “hostage” to the state.⁶⁴ John Milloy’s *A National Crime* is highly critical of the poisonous partnerships between government and church denominations that identified children as malleable targets of assimilation.⁶⁵ Although the Catholic, Presbyterian, United, and Anglican Churches ran residential schools, they did so in an uneasy partnership with the Federal Government which, for the most part, provided the majority of funding, set standards of care, acted in a supervisory role, and usurped parental guardianship of “Indian” children through the *Indian Act*.⁶⁶ Despite their educational idioms, residential schools were intended to put indigenous children on a trajectory towards Christianity, agrarian lifestyles, and industry. A great deal of children’s attention was directed towards assimilative work and religious instruction rather than to secular study. The “residential” descriptor of these schools was seen as essential to their success: they ascended over day schools because of the belief that indigenous children had to be separated from their families and communities in order to achieve assimilation. In 1911, the

⁶² Julian Walker, *The Indian Residential Schools Truth and Reconciliation Commission*, 11 February 2009, Library of Canada Legal and Legislative Affairs Division:6; Sylvia S Barton et al., “Heath and Quality of Life of Aboriginal Residential School Survivors, Bella Coola Valley, 2001,” *Social Indicators Research*, 73, (2005):295-312; Noel Dyck, “Tutelage, Resistance and Co-Optation in Canadian Indian Administration,” *Canadian Review of Sociology & Anthropology*, 34(3), (1997):333-48; Fern Elgar, “A Comparative Study of Native Residential Schools and the Residential Schools for the Deaf in Canada” (Carleton University, 1997); Dian Million, “Telling Secrets: Sex, Power and Narratives in Indian Residential School Histories,” *Canadian Women Studies*, 20(2), (2000):92; Derek G Smith, “The ‘Policy of Aggressive Civilization’ And Projects of Governance in Roman Catholic Industrial Schools for Native Peoples in Canada, 1870-95,” *Anthropologica*, 43(2), (2001):253.

⁶³ Melissa S Williams, “Criminal Justice, Democratic Fairness, and Cultural Pluralism: The Case of Aboriginal Peoples in Canada,” *Buffalo Criminal Law Review*, 5(45), (2002):468.

⁶⁴ John S Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879-1986*, Manitoba Studies in Aboriginal History XI, (Winnipeg, Manitoba: The University of Manitoba Press, 1999):32.

⁶⁵ Ibid.

⁶⁶ Ibid:xiii.

Department of Indian Affairs made school attendance for Aboriginal children compulsory, adopted formal contracts with the churches, and formed a policy of favouring residential schools over all other places of education.⁶⁷

Just as cases of perceived or physical violence are pointed to in the contemporary media as justification for the disproportionately high rate of imprisonment among Aboriginal peoples, proponents of the residential school system justified its inception by pointing to what they interpreted as dangerous “criminal” tendencies within indigenous communities such as the unrest in the western territories.⁶⁸ Deplorable conditions meant that some Aboriginal children were plainly suffering to the degree that they “might not live for long, but it seemed that the principal was determined that, with slates and chalk in hand, the children would die on the road to civilization.”⁶⁹ Duncan Campbell Scott, Canadian poet, Deputy Superintendent General of Indian Affairs, and key designer of the residential school system, responded to criticism by admitting that the abusive circumstances experienced by child residential school “inmates” in “the early days” made it “quite within the mark to say that fifty per cent of the children who passed through these schools did not live to benefit from the education which they had received therein.”⁷⁰ Setting aside this horrific statistic, Scott declared that the true danger was that students might degrade to the “level of reserve life” in the instant that they were reunited with their parents.⁷¹ Scott mourned that “relapse” was common and “promising pupils were found to have retrograded and to have become leaders in the pagan life of the reserves, instead of contributing to the improvement” of their bands.⁷²

While Milloy observes that, during the period of “integration for closure” following the Second World War and the 1951 *Indian Act*, “Indian” adults were seen as having parental ability and responsibility, long delays in the process of closing residential schools were due to Indian Affairs’ concern that indigenous persons who had been taken away from their parents and raised in the appalling conditions found in many residential schools would have difficulty in parenting

⁶⁷ Milloy, 1999, Op. Cit.:71.

⁶⁸ The 1857 *Bagot Commission Report* recommended that Aboriginal children be “civilized” by instilling “industry and knowledge” in off-reserve schools where they would be removed from what was seen as the negative influences of their homes and communities. Ibid:13-17, 31-32.

⁶⁹ Duncan Campbell Scott, “Indian Education – The Present Legal Position of the Indians,” *Canada and Its Provinces*, Volume: 7, *Political Evolution II*, Ed. A Shortt, (Toronto: University of Edinburgh Press, 1913):615; Milloy, 1999, Op. Cit.:99.

⁷⁰ Scott, 1913, Op. Cit.:615.

⁷¹ Ibid.

⁷² Ibid.

their own children.⁷³ The last federally-run residential school, the Gordon School in Saskatchewan, closed in 1996.⁷⁴

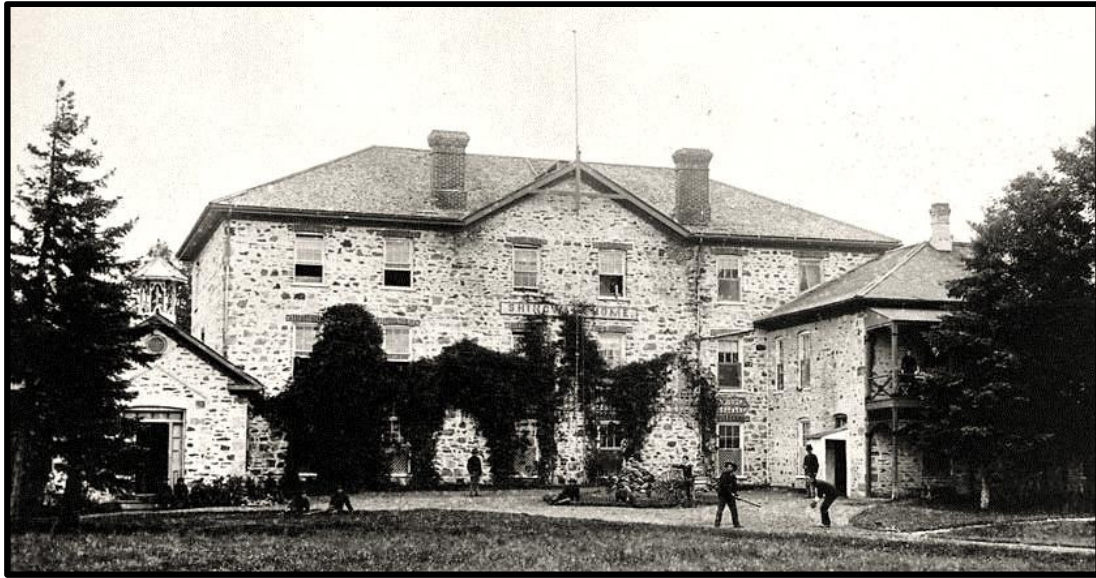


Figure 48: The Shingwauk Home, ca. 1885⁷⁵

The inclusion of lock-ups in residential schools demonstrates the formidable union of incarceration and assimilation. Principal EF Wilson of the Shingwauk Home for Boys and the Wawanosh Home for Girls made a point of removing children because it was seen as the “wisest course, to take Indian children entirely away from home influences for their education.”⁷⁶ The

⁷³ Milloy, 1999, Op. Cit.:189, 197, 211, 212, 220.

⁷⁴ CBC, “A timeline of residential schools, the Truth and Reconciliation Commission,” 16 May 2008, <<<http://www.cbc.ca/news/canada/story/2008/05/16/f-timeline-residential-schools.html>>>

⁷⁵ Adapted from National Archives of Canada, Copy negative PA-182262, Box SC 622, Other accession No. 1991-219, NPC, Indian Industrial Schools Album 2, Copyright: Expired.

⁷⁶ The Aboriginal Healing Foundation states that, from its start in Sarnia in 1877, the Wawanosh Home for Girls was merged with, and brought to the site of, the Shingwauk Home in 1934; however, early documents show that the Wawanosh Home for Girls was operating in Sault Ste. Marie. The combined residential school closed in 1971. “The Wawanosh Home for Indian Girls, Sault Ste. Marie, Ontario,” “Sault Ste. Marie – Reverend EF Wilson of the Shingwauk Home Encloses a Form of Agreement Signed by the Parents of Indian Children for Admission; Also an Extract from the Code of Regulations,” 1877, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2023, File: 8548, Access Code: 90; “Cape Croker Agency – Requisition of William Johnston. A Brother-in-law of the Walker Children Now at the Shingwauk and Wawanosh Homes in Sault Ste. Marie, to Send Some Money Out of Their Annuity to Pay Their Fares Home When the Schools Close for the Summer Holidays,” 1889-1891, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2466, File: 96,536, Access Code: 90; Aboriginal Healing Foundation, *Directory of Residential Schools in Canada*, (Ottawa: Aboriginal Healing Foundation, 2007): 22; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1887*, (Ottawa: Maclean, Roger & Co., 1888):24-28.

original “substantial buildings” of the Shingwauk School complex were erected on the Garden River Reserve on the north shore of Lake Huron.⁷⁷ Six days after the Shingwauk School opened in September 1873, it was completely destroyed by fire.⁷⁸ When the Anglican missionaries resolved to immediately begin again in Sault Ste. Marie, the DIA contributed one thousand dollars to the building and pledged to support a maximum of twenty students at sixty dollars each.⁷⁹

In differing temporal and geographical circumstances, indigenous children from Manitoulin Island attended day schools or the Roman Catholic Wikwemikong Residential School on the island while others were removed to the Roman Catholic Residential School in Spanish, on the north shore of Lake Huron.⁸⁰ Children who attended the various Manitoulin day schools appeared, to the DIA, to be at a disadvantage because their parents would take them out of school in order that they might gain an indigenous education in sugar-making, planting, berry-gathering, and harvesting.⁸¹ In 1877, Phipps found that some of the “Indian teachers” who had been hired to teach in the day schools were teaching “almost exclusively the Indian tongue.”⁸² Phipps was unequivocal in his opinion that “no material advance in the educational status of the children can be expected until intelligent White teachers are employed, and greater prominence is given to the English language in the schools.”⁸³ As Principal Wilson conducted journeys to collect students for the Shingwauk and Wawanosh Homes, he shared Phipps’ lack of appreciation for indigenous

⁷⁷ Department of the Interior, *Annual Report of the Department of the Interior for the Year Ended 30th June, 1874*, Part 2, (Ottawa: Maclean, Roger & Co.):4.

⁷⁸ Aboriginal Healing Foundation, 2007, Op. Cit.: 22; *Annual Report of the Department of the Interior, 1874*, Op. Cit.:4.

⁷⁹ *Annual Report of the Department of the Interior, 1874*, Op. Cit.:4.

⁸⁰ The Roman Catholic Wikwemikong Day School of Manitowaning became a residential school in 1879 and closed in 1963. The Roman Catholic Spanish Residential School opened in 1883 and closed in 1965. Aboriginal Healing Foundation, 2007, Op. Cit.:23; JR Miller, *Shingwauk’s Vision: A History of Native Residential Schools*, (Toronto: University of Toronto Press, 1997):204; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1931*, (Ottawa: FA Acland, 1932):16; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1936*, (Ottawa: JG Patenaude, 1937):19-20; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1914*, Part H, (Ottawa: J de L Taché, 1915):xxii; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1910*, (Ottawa: CH Parmelee, 1911):288. See the Wikwemikong Residential School Album, Algoma University Archives, Residential School Photo Album Series, Shelf location: 2011-19-001, Container No.: 001, <<<http://archives.algomau.ca/drupal6/sites/archives.algomau.ca/files/Wikwemikong.pdf>>>

⁸¹ Department of Indian Affairs, *Report of the Deputy Superintendent of Indian Affairs, 1877*, (Ottawa: Maclean, Roger & Co., 1878):21-22.

⁸² Ibid.

⁸³ Ibid.

educational values.⁸⁴ Some of the students gathered for the schools came from Manitoulin Island.⁸⁵

As Sharon Wall makes evident, elements of the “residential experience were more reminiscent of military or prison life than of domestic tranquillity.”⁸⁶ In Principal Wilson’s view, indigenous children had to be “thoroughly disciplined while young, to be weaned from many filthy habits.”⁸⁷ On its second floor, the Shingwauk residential school contained a 12-foot 3-inch by 8-foot “lock-up” space in which to incarcerate children.⁸⁸ The daily schedule of the school included a time dedicated to the “dispensing of justice” when children were encouraged to confess their “misconduct.”⁸⁹ Children were taught to hold trial processes and act as constables and jailers yet these were not “mock” trials with fanciful punishments.⁹⁰ In the Shingwauk court of trial, three senior boys acted as constables and any boy “suspected” of stealing would be “arrested by a constable armed with a warrant from some member of... staff acting as magistrate, and... placed in the lock-up.”⁹¹ At a “convenient” time for the principal, the accused child would be brought before a jury of six pupils who would give a verdict and recommend a punishment to the presiding principal.⁹² Wall describes one instance where two girls were punished by being locked up, separately, in isolation for days.⁹³ Such treatment “was apparently not an unusual practice.”⁹⁴ A fire that broke out in 1889 was attributed to a boy who had been incarcerated in the school lock-up.⁹⁵

Joseph, a child of Sucker Creek (Aundeck Omni Kaning), arrived at Shingwauk on 18 July 1875.⁹⁶ Although Joseph was not skilled in English when he arrived at Shingwauk, while

⁸⁴ *Algoma Missionary News and Shingwauk Journal*, 1 September 1883, Volume: VI, No. 3:

⁸⁵ *Annual Report of the DIA*, 1877, Op. Cit.:24-28.

⁸⁶ Sharon Wall, “‘To Train a Wild Bird’: EF Wilson, Hegemony, and Native Industrial Education at the Shingwauk and Wawanosh Residential Schools, 1873-1893,” *Left History*, 9(1), (2003):13.

⁸⁷ Edward F Wilson to the Superintendent General of Indian Affairs, 2 August 1877, (Sault Ste. Marie), “Reverend EF Wilson of the Shingwauk Home Encloses a Form,” Op. Cit.

⁸⁸ Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1900*, (Ottawa: SE Dawson, 1901):314.

⁸⁹ Wall, 2003, Op. Cit.: 13.

⁹⁰ Ibid.

⁹¹ Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1888*, (Ottawa: The Queen’s Printer and Controller for Stationery, 1889):22.

⁹² Ibid: 22.

⁹³ Wall, 2003, Op. Cit.:13.

⁹⁴ Ibid.

⁹⁵ Ibid:23.

⁹⁶ The Shingwauk Residential Schools Centre, Algoma University Archives, Edward F Wilson Fonds, Photograph Album Series, 1870-1893, Shelf location: 2010-048-001, Container No.: 001, <<<http://archives.algomau.ca/drupal6/node/17395>>>

there, he became well-versed in several subjects and trained to be a teacher.⁹⁷ A contemporary of Joseph's, David, first arrived at Shingwauk from his home in Sheguiandah in 1874.⁹⁸ David trained to be a bootmaker; however, in the summer of 1877, "quiet and persevering" David left Shingwauk Residential School and never returned.⁹⁹

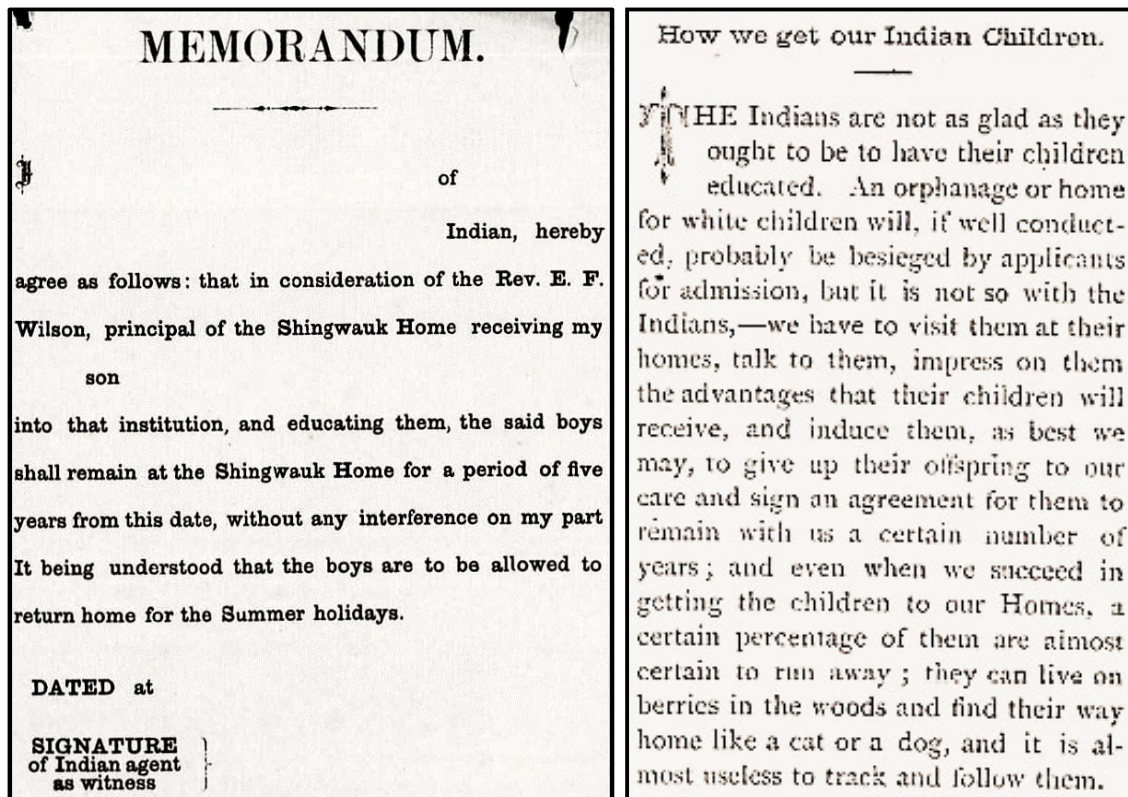


Figure 49: Parental Agreement Form 1877 and How We Get Our Indian Children 1883¹⁰⁰

Principal Wilson explained the means by which he secured pupils in a newsletter for his ecclesiastical district. Copies of parental agreement forms were sent to Phipps and other Indian Agents in order that they might use their "moral influence" to enforce the documents.¹⁰¹ Surely the judicial authority of Indian Agents compounded the threat.¹⁰²

⁹⁷ The Shingwauk Residential Schools Centre, Photograph Album Series, 1870-1893, Op. Cit.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Adapted from 26 October 1877, "Reverend EF Wilson of the Shingwauk Home Encloses a Form," Op. Cit.; *Algoma Missionary News*, 1 September 1883, Op. Cit.

¹⁰¹ McNeill, 26 October 1877, "Reverend EF Wilson of the Shingwauk Home Encloses a Form," Op. Cit.

¹⁰² Ibid.

The material and assimilative philosophical associations between Shingwauk School and incarceration are many. Johnny, another Manitoulin Island student at Shingwauk, wrote of a small group of students' trip to Toronto to see the Semi-Centennial Exhibition.¹⁰³ In addition to the delights of the exhibition, the boys had to represent the school by speaking and singing "Indian hymns" at various events.¹⁰⁴ The Shingwauk boys were also taken to a gaol with four hundred prisoners where they viewed the factories where prisoners manufactured brooms, washboards, and stoves.¹⁰⁵ Principal Wilson was even said to have visited Big Bear in prison and promised a spot in Shingwauk for Big Bear's son.¹⁰⁶

Children were locked in the Shingwauk dormitories at night, lest they escape.¹⁰⁷ Rather than recognizing its faults, Wilson saw escapes from the Shingwauk School as "proof" that indigenous parents must be compelled to relinquish their children at "a proper age" and keep them at the residential school for an approved period.¹⁰⁸ The "proud object" of the Anglican mission's voluntary work was to "raise the Indians from their present low degraded position, & place them on an equal footing with their white neighbours, to make in fact Canadians of them."¹⁰⁹ When students completed Wilson's program of a year-by-year transition from schoolwork to apprenticeship, he believed that they should not return to reserves but take places with "White tradesmen and so gradually do away with the idea of whitemen and Indians being distinct races."¹¹⁰ In this way, the reserve system would pass away.¹¹¹ Wilson was oddly accurate in declaring, "I do not think that any amount of inducement will lead Indian parents to give up their children in a sensible way to be educated" according to his means.¹¹² Wilson's wish would not be granted until the 1919-1920 *Indian Act* was amended to make school attendance compulsory for children between the ages of seven and fifteen and, after three days' notice and a summary conviction, punish any parent, guardian, or adult with which a child resides, with fines of a maximum of two dollars and costs, imprisonment for ten days or less, or both.¹¹³

¹⁰³ *Algoma Missionary News and Shingwauk Journal*, 1 August 1884, Volume: VII, No. 8.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Wall, 2003, Op. Cit.:36.

¹⁰⁷ Ibid:13.

¹⁰⁸ Edward F Wilson to the Superintendent General of Indian Affairs, 2 August 1877, (Sault Ste. Marie), "Reverend EF Wilson of the Shingwauk Home Encloses a Form," Op. Cit.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ *An Act to Amend The Indian Act*, 1880, SC 1920, 10-11 George V, c. 50, s.1.

Shingwauk was not the only residential school to resort to carceral tactics in order to stifle resistance and assert their program of assimilation. In *A National Crime*, his eminent work on residential schools, John Milloy chronicles a school principal's attempt to use an object lesson to demonstrate the reason why so many indigenous people had such a strong aversion to the residential schools. The Reverend Charles Hives, Principal of St. George's School, sent a set of shackles to RA Hoey, Indian Affairs's Superintendent of Welfare and Training.¹¹⁴ A former student of his school told Hives that the shackles had been used to chain runaways to their beds.¹¹⁵ A set of well-used stocks stood in St. George's playground.¹¹⁶

10.3 Prison Labour

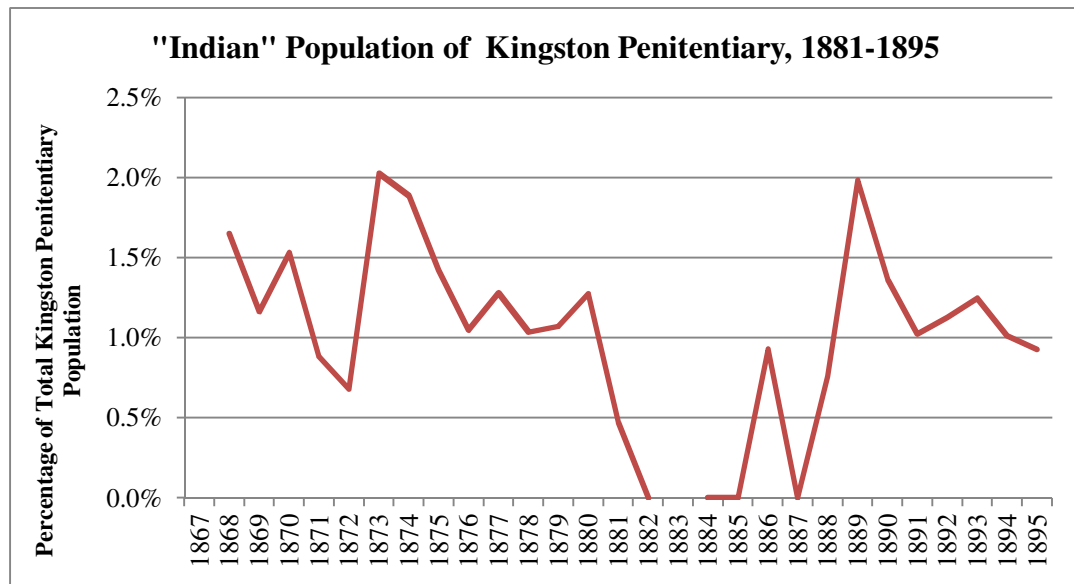


Figure 50: Kingston Penitentiary, Percentage "Indian" Inmates¹¹⁷
 During the period of lock-up establishment, "Indians" were less disproportionately overrepresented in Kingston Penitentiary.

Residential schools have many material connections to carceral institutions. Historical statistics might not appear as startling as contemporary calculations of self-identified Aboriginal persons in federal penitentiaries or stark provincial breakdowns of prison populations. Nonetheless, in spite of Indian Affairs' early preference for local lock-ups, indigenous persons

¹¹⁴ Milloy, 1999, Op. Cit.:110.

¹¹⁵ Ibid.

¹¹⁶ Ibid:110-111.

¹¹⁷ Annual Reports of the Directors of Penitentiaries of the Dominion of Canada, 1867-1874; Reports of the Minister of Justice as to Penitentiaries in Canada, 1875-1895.

have long had a significant presence in Canada's penitentiaries as well as in provincial prisons. Many "Indians" laboured under a double wardship when they became inmates of federal penitentiaries. As the sign outside of Kingston Penitentiary warns, prisons are, after all, government reserves.

Whether sentenced to "hard labour," given skills training, or assigned to rehabilitative programs, inmates in prisons throughout Canada have worked. Ted McCoy argues that, while labour was important to all prisoners, its "colonial overtones" were stronger for indigenous peoples.¹¹⁸ Although prison labour has since been interpreted through philosophies of employable skills and rehabilitation, the first Ontario Inspector of Prisons criticized the municipal authorities who were expected to provide labour projects for inmates yet "looked too much for a means of profitable employment, and failing that, have furnished none at all."¹¹⁹ For the Inspector of Prisons, the main purpose of imprisonment was punishment and deterrence through hard labour.¹²⁰

Nonetheless, in the following decade, while the Department of Indian Affairs was establishing lock-ups across Canada, Manitoba Penitentiary Warden Samuel Bedson espoused the idea that his penitentiary was "an instrument of 'civilization'" and created specially-tailored religious, educational, and labour programs for indigenous inmates.¹²¹ In the penitentiary, Bedson "ensured that they performed labour that would aid them in their new role as agriculturalists."¹²² Bedson's approach was entirely in accord with Indian Affairs' practice of capitalizing on geographic restriction to apply programs of agrarian, Christian, and legal ideologies that it projected would effect the transformation of "Indian" to "white."

The wardens of other prisons, such as the Burwash Industrial Farm in Ontario and the Oakalla Prison in British Columbia also encountered "Indian" inmates as they promoted the rehabilitative effects of agrarian labour. An indigenous Manitoulin Island inmate of the Burwash Industrial Farm was asked to supply the Parole Board with details of how he would be employed before they finalized his release.¹²³ The imprisoned man appealed to the Department of Indian Affairs to tell the Board that he wanted to work his own farm and care for his mother and

¹¹⁸ Ted McCoy, *Hard Time: Reforming the Penitentiary in Nineteenth-Century Canada*, (Edmonton: Athabasca University Press, 2012):129.

¹¹⁹ Province of Ontario, *First Annual Report of the Inspector of Asylums, Prisons, &c., for Ontario, for the Year Ending 30th September, 1868*, (Toronto: Hunter, Rose & Co., 1869):3.

¹²⁰ Ibid.

¹²¹ McCoy, 2012, Op. Cit.:129.

¹²² Ibid.

¹²³ Secretary of the Department of Reform Institutions Board of Parole to [name withheld], 12 June 1947, (Toronto), "Law Enforcement – Intoxicants," Op. Cit.

children.¹²⁴ In British Columbia, Indian Agents could commit convicted offenders directly into the care of the Warden of the Oakalla Prison Farm for infractions under the *Indian Act*.¹²⁵ In one instance, a father and daughter were both serving sentences, one for six months of hard labour and the other for three, for possessing intoxicants.¹²⁶ The Warden corresponded with Indian Agents about whether he held any cash for inmates.¹²⁷ Attempts were made to coordinate plans so that inmates could be met by a Vancouver Indian Agent at the time of discharge and put on boats to their reserves.¹²⁸

The historic Kingston Penitentiary also fostered a prison farm program in which inmates could pursue agrarian skills; however, by the nineteenth century, prison labour was “expected to defray the cost of the institution, if not turn a profit” and industrial skills and processes were promoted.¹²⁹ In the early twentieth-century, a “tremendous change” of values and attitudes “swept over most civilized countries” in regard to prison management.¹³⁰ While the wardens of Dominion Penitentiaries might resort to employing inmates in breaking stone because it was less humane to enforce total idleness, they preferred that other occupations be found.¹³¹ Penitentiaries were “now fast being regarded as industries – factories to manufacture Government material and to remake men” into better citizens.¹³² The reforming spirit of prisons was to take the “depraved, neglected, diseased and crooked material received” and “turn out, as their product, good citizens, reformed and fully qualified to take their places in the world of work.”¹³³ Following the Great War, a twentieth-century drive toward economic growth permeated discussions of prison labor. In the five years preceding the Great War, the average revenue earned through labour in the

¹²⁴ [Name withheld], 22 June 1947, (Burwash Industrial Farm), “Law Enforcement – Intoxicants,” Op. Cit.

¹²⁵ Indian Commissioner for BC WE Ditchburn to Indian Agent WM Halliday, 1 September 1926, (Victoria), “Kwawkewlth Agency – ‘J – Judicial’ – General correspondence re Indian offences and court cases including crime reports and correspondence with Oakalla Prison Farm, B.C. Provincial Police and RCMP (Shannon file),” National Archives of Canada, RG10: Department of Indian Affairs, Volume: 11149, Series C-V-8, File: 23 and 24, Access Code: 32.

¹²⁶ Oakalla Prison Farm Warden to Alert Bay and Vancouver Indian Agents, 28 February 1929, (Burnaby), “Kwawkewlth Correspondence with Oakalla Prison Farm,” Op. Cit.; Oakalla Prison Farm Warden to Alert Bay and Vancouver Indian Agents, 2 March 1929, (Burnaby), “Kwawkewlth Correspondence with Oakalla Prison Farm,” Op. Cit.; Indian Agent WM Halliday to Indian Agent CC Perry, 12 March 1929, (Alert Bay), “Kwawkewlth Correspondence with Oakalla Prison Farm,” Op. Cit.

¹²⁷ “Kwawkewlth Correspondence with Oakalla Prison Farm,” Op. Cit.

¹²⁸ Ibid.

¹²⁹ McCoy, 2012, Op. Cit.:19.

¹³⁰ Department of Justice, *Annual Report of the Superintendent of Penitentiaries for the Fiscal Year Ended March 31, 1926*, (Ottawa: FA Acland, 1927):13.

¹³¹ Ibid:12.

¹³² Ibid:13.

¹³³ Ibid.

penitentiaries was fifty-five thousand dollars.¹³⁴ Following the War, prison labour revenue increased appreciably.

Year	Revenue
1919	\$138,618.04
1920	\$143,333.39
1921	\$162,709.32
1922	\$150,369.12
1923	\$140,153.32
1924	\$151,721.31
1925	\$168,328.91
1926	\$167,920.66

Figure 51: Revenue from Prison Labour¹³⁵

The Department of Indian Affairs took interest when the Committee of the Privy Council approved the Minister of Justice’s initiative that

with a view to the profitable employment for the convicts at the several penitentiaries, and for the purposes of general economy, it is... expedient and advisable that any goods, articles or repairs required for the use of the Government, or of any of the departments or branches thereof, which can conveniently be manufactured, produced or made at the penitentiaries and made available where they are required for the public service should, to the extent of the capacity, be manufactured, produced or made at the penitentiaries so far as this can be done with equal economy... and that the Purchasing Commission and the various departments and branches of... Government be required to give effect to and conform with the intentions herein expressed.¹³⁶

Law-abiding citizens could be relieved of part of their burden of taxation if penitentiaries could be turned from “commercial non-essentials” to desirable business ventures for their governments.¹³⁷ Like “Indians,” penitentiary inmates were “wards of the Dominion Government” living on special governmental reserves and the Superintendent of Penitentiaries saw “no valid reason why goods required for State use, and State use only, should not be made, in so far as possible” within penitentiaries.¹³⁸

¹³⁴ *Annual Report of the Superintendent of Penitentiaries*, 1926, Op. Cit.:12.

¹³⁵ Adapted from *Annual Report of the Superintendent of Penitentiaries*, 1926, Op. Cit.:12.

¹³⁶ Clerk of the Privy Council: C 1760, Certified copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 1st June 1921, “Department of Justice – Utilization of Prison Labour for the Manufacture of Goods Required by the Government,” 1921-1950, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 6824, File: 494-22-1, Access Code: 90.

¹³⁷ *Report of the Superintendent of Penitentiaries*, 1926, Op. Cit.:13.

¹³⁸ *Ibid*:12.

When the Superintendent of Penitentiaries circulated lists of all of the products that they could furnish cheaply from prison labour, the ever-economizing Department of Indian Affairs took notice.¹³⁹ The Department of Justice expressly requested that Superintendent General of Indian Affairs Sir James Lougheed instruct his department to make purchases from the penitentiaries.¹⁴⁰ The penitentiary labour supply could, for example, manufacture desks in their Carpenter Shops, customized uniforms for officers as well as “Indian clothing, in fact any kind of uniform or clothing not requiring too high a class of workmanship,” in their Tailor Shops, ballot boxes and rural post boxes in their Tin Shops, boots for Mounted Police in their Shoe Shops, mail bags in the Mailbag Departments, cell doors and locking bars in their Blacksmith Shops, Corn brooms in their Broom Departments, cut stone from their quarries, and “light tailoring or knitting... by employing the females whom it has been found most difficult to keep suitably employed.”¹⁴¹ Since the penitentiaries did not have sufficient parliamentary appropriation to purchase large quantities of material for large orders, departments wishing to place such orders had to supply the materials.¹⁴² The Minister of Justice commented, “experience has shown that the most satisfactory method to do work for other government departments is to have the other department supply the material and the penitentiary furnish the labour, supervision, etc.” as had “been done for many years with the Indian Department.”¹⁴³ The physical substance of these orders testifies to the close connections between indigenous peoples transported to prisons and indigenous children removed to residential schools.

Kingston Penitentiary manufactured clothing for “Treaty Indians” every year as well as a “considerable quantity of clothing for Indian schools.”¹⁴⁴ “Indian” inmates removed to Kingston Penitentiary could be manufacturing clothing for their own children to wear as they also sat in the assimilative carceral exile of residential schools. Cooperation between the two assimilative branches of government in the “production of supplies for Indians” continued throughout the

¹³⁹ Clerk of the Privy Council: C 1760, Op. Cit.; Extract from a Report of the Superintendent of Penitentiaries, “Utilization of Prison Labour for the Manufacture of Goods,” Op. Cit.

¹⁴⁰ Department of Justice Chas J Doherty to Superintendent General of Indian Affairs Sir James Lougheed, 29 July 1921, (Ottawa), “Utilization of Prison Labour for the Manufacture of Goods,” Op. Cit.

¹⁴¹ Extract from a Report of the Superintendent of Penitentiaries, “Utilization of Prison Labour for the Manufacture of Goods,” Op. Cit.

¹⁴² Ibid.

¹⁴³ Superintendent, Memorandum for the Minister of Justice, 13 May 1922, “Utilization of Prison Labour for the Manufacture of Goods,” Op. Cit.

¹⁴⁴ In 1929, Manitoba Penitentiary, British Columbia Penitentiary, and St. Vincent de Paul were also manufacturing and repairing goods for various government departments. “Re: Goods that can be made in Penitentiaries,” 28 May 1929, “Utilization of Prison Labour for the Manufacture of Goods,” Op. Cit.; Superintendent, Memorandum for the Minister of Justice, 13 May 1922, “Utilization of Prison Labour for the Manufacture of Goods,” Op. Cit.

Second World War.¹⁴⁵ The Acting Superintendent of Penitentiaries assured Indian Affairs' Superintendent of Welfare and Training that they would "always be glad to extend" their "resources to the limit in assisting" in their work.¹⁴⁶

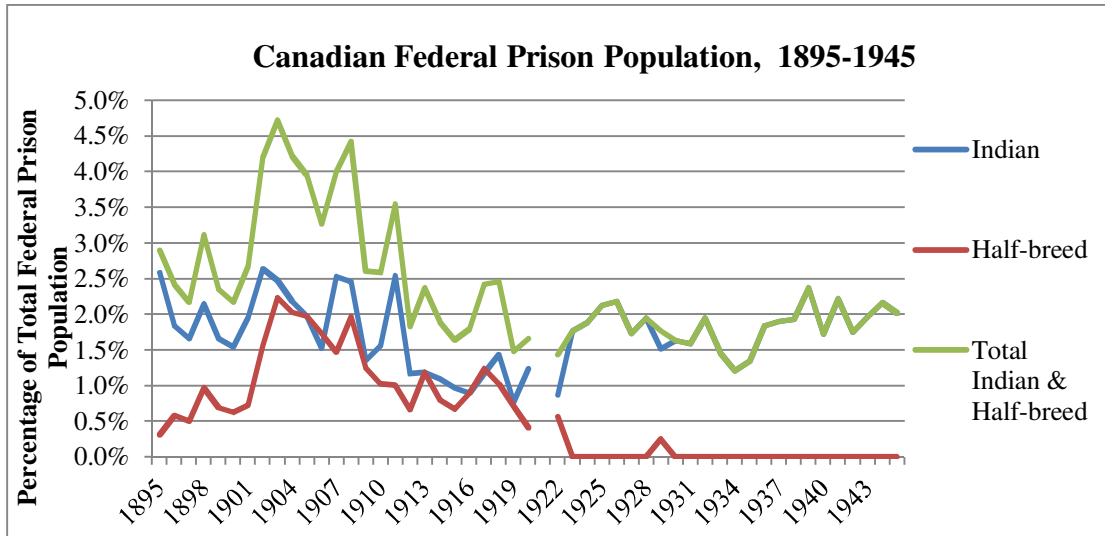


Figure 52: Canadian Federal Prison Population, Percentage "Indian" and "Half-breed"¹⁴⁷

The strange economy of prison labour extended beyond the material that these children sat in to the physical material of what they sat on and laid down upon. When Inspector of Indian Agencies WS Arneil visited Kingston Penitentiary, he and the Warden discussed the manufacture of a school desk.¹⁴⁸ With assurances that it could be made almost entirely of wood if the difficulties of procuring adequate supplies of steel in wartime became too onerous, the Office of the Superintendent of Penitentiaries proposed a pipe-and-wood desk.¹⁴⁹ The Department of

¹⁴⁵ Inspector and Acting Superintendent GL Sauvant to Superintendent of Welfare and Training Indian Affairs Branch Department of Mines and Resources, 6 January 1942, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.; Superintendent of Welfare and Training RA Hoey to Inspector and Acting Superintendent GL Sauvant, 12 January 1942, "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

¹⁴⁶ Inspector and Acting Superintendent GL Sauvant to Superintendent of Welfare and Training RA Hoey, 14 January 1942, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

¹⁴⁷ Reports of the Minister of Justice as to Penitentiaries in Canada, 1895-1913; Reports of the Inspectors of Penitentiaries, 1914-1918; Reports of the Superintendent of Penitentiaries, 1919-1923; Annual Reports of the Superintendent of Penitentiaries, 1924-1945.

¹⁴⁸ Inspector and Acting Superintendent GL Sauvant to Superintendent of Welfare and Training Indian Affairs Branch, 6 February 1942, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

¹⁴⁹ Sauvant to Superintendent Indian Affairs Branch, 6 February 1942, "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

Justice provided a plan to Indian Affairs.¹⁵⁰ The desk could be manufactured for an estimated cost of \$9.50 with a reduction of at least a dollar depending on the quantity of the order.¹⁵¹

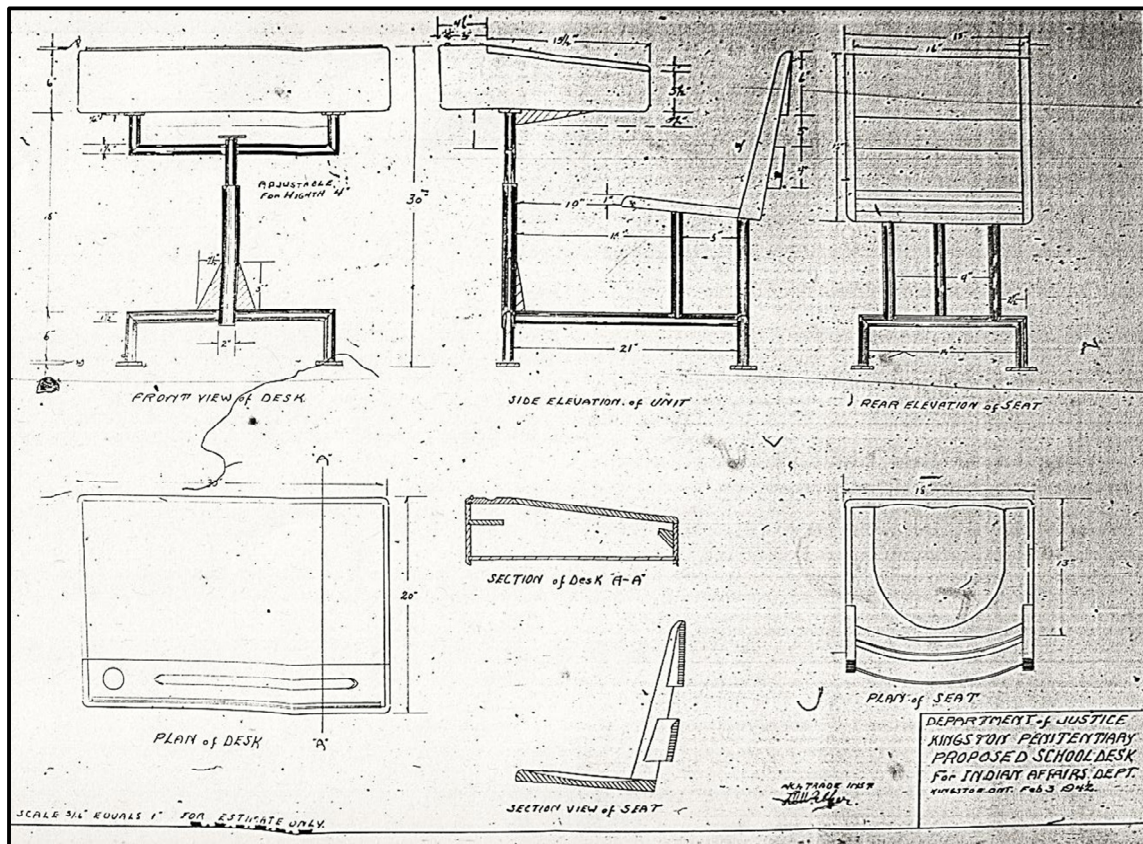


Figure 53: School Desk Manufactured at Kingston Penitentiary for Indian Affairs¹⁵²

Inspector of Indian Agencies WS Arneil and Reverend CA Primeau examined the sagging springs of students' beds in the Spanish, Ontario, Residential School where a number of

¹⁵⁰ "Department of Justice Kingston Penitentiary Proposed Schooldesk for Indian Affairs Dept.," 3 February 1942, (Kingston), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

¹⁵¹ A/Chief Trade Instructor Walker to the Warden of Kingston Penitentiary, 3 February 1942, "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.; Superintendent of Welfare and Training RA Hoey to The Superintendent of Penitentiaries, 17 February 1942, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

¹⁵² "Adapted from Proposed Schooldesk for Indian Affairs Dept.," 3 February 1942, "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

Manitoulin Island children were enrolled.¹⁵³ Arneil proposed that the Penitentiaries Branch could manufacture new springs in order to stave off the replacement of entire beds.¹⁵⁴ Primeau was asked to send along one of the depressed springs so that Kingston Penitentiary's technical advisor could examine it.¹⁵⁵

The manufacture of goods was not entirely uni-directional, especially during a time of war when the value of indigenous skills and materials might be better appreciated. Fredericton Indian Agent EJ Whalen was solicited to have the "Indians" in his agency make forty-eight woven wood splinter baskets for use at the Dorchester Penitentiary, New Brunswick.¹⁵⁶ The half-, three-quarter-, and one-bushel baskets were "required for the gathering of vegetables and roots."¹⁵⁷ If they worked well, more orders might come in to Whalen's Agency.¹⁵⁸

At times, the labour programs of the Penitentiaries could come into competition with those of the Department of Indian Affairs. A "local Indian Agent" was sent by Indian Commissioner for British Columbia DM MacKay to the British Columbia Penitentiary with a request that they undertake to alter a "great number of Army greatcoats" into children's mackinaws.¹⁵⁹ Nevertheless, when Mr. Morris, Superintendent of Welfare and Training, spoke with the Acting Superintendent of Penitentiaries, he stated that the policy was "to have all repairs which can be undertaken by the Indians themselves carried out" without outside assistance.¹⁶⁰ The Superintendent of Penitentiaries had "little doubt" that "considerable quantities of convertible articles" would become available as a result of the troops amassing on the West Coast.¹⁶¹ Incredibly, as with the proportionately high voluntary enlistment of "Indians" in the

¹⁵³ Inspector of Indian Agencies WS Arneil to Principal at Indian Residential School in Spanish Ontario Rev. CA Primeau, 15 August 1944, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid; Inspector EL O'Leary for WS Lawson to Superintendent of Welfare and Training RA Hoey, 9 August 1944, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.; Superintendent of Penitentiaries WS Lawson to Superintendent of Welfare and Training, 10 October 1944, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.; Inspector of Indian Agencies WS Arneil to Principal at Indian Residential School in Spanish Ontario Rev CA Primeau, 12 October 1944, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.; Superintendent of Welfare and Training RA Hoey to Superintendent of Penitentiaries WS Lawson, 12 October 1944, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

¹⁵⁶ Superintendent of Welfare and Training RA Hoey to Indian Agent EJ Whalen, 26 February 1942, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Warden of British Columbia Penitentiary Meighen to The Superintendent of Penitentiaries, 29 April 1942, (New Westminster), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

Great War, many of these Second World War troops were also “Indians.”¹⁶² The Department of Indian Affairs was “insisting upon Indian women altering the surplus Army clothing themselves” for use by indigenous children.¹⁶³

In 1944, the office of the Superintendent of Penitentiaries proposed to expand their cooperative work with the Department of Indian Affairs. In support of the Department of Indian Affairs’ “policy to extend farm cultivation on the various reserves to the greatest possible extent” during the Second World War, Kingston Penitentiary supplied pure-bred Holstein bulls from their dairy herd to Indian Affairs’ training section.¹⁶⁴ Surplus storage vegetables from penitentiaries were also transferred to the Indian Department.¹⁶⁵ The Superintendent of Penitentiaries intended to begin manufacturing farm and garden equipment in one of their western penitentiaries.¹⁶⁶ Plans were drawn up for a “Garden Hand Scuffler” to be built with prison labour in the Manitoba Penitentiary in furtherance of the agrarian efforts of an Indian Residential School. One site of carceral labour was thus used to promote assimilative labour in another site of extreme state control.

¹⁶² In his 1919 appendix to the *Canada in the Great War* series, Duncan Campbell Scott states that approximately 3500, or 35 percent, of eligible males of the then nine provinces of Canada enlisted in the Great War. However, in the 1927 *Annual Report of the Department of Indian Affairs*, Scott wrote that in excess of 4000 Aboriginal men enlisted. RA Hoey, Director of the Indian Affairs Branch, reported that the total Aboriginal enlistment in the Second World War was 3090. Duncan Campbell Scott, “Appendix I: The Canadian Indians and the Great World War,” *Canada in the Great World War*, Volume: III, Guarding the Channel Ports, By Various Authorities, Patricia Edition, (Toronto: United Publishers Ltd., 1919):288; Duncan Campbell Scott, “Annual Report of the Department of Indian Affairs for the Year Ended March 31 1927,” (Ottawa: FA Acland, 1927):9-10; RA Hoey, Director, *Canada Department of Mines and Resources Report of Indian Affairs Branch for the Fiscal Year Ended March 31, 1946*, (Ottawa: Edmond Cloutier, 1947):195; R Scott Sheffield, *The Red Man’s on the Warpath: The Image of the “Indian” and the Second World War*, (Vancouver: University of British Columbia Press, 2004); Madelaine Christine Jacobs, *Committed to Paper: The Great War, the Indian Act, and Hybridity in Alnwick, Ontario*, MA thesis, Queen’s University, 2004.

¹⁶³ Superintendent of Welfare and Training RA Hoey to The Acting Superintendent of Penitentiaries, 5 May 1942, (Ottawa), “Utilization of Prison Labour for the Manufacture of Goods,” Op. Cit.

¹⁶⁴ Inspector for WS Lawson EL O’Leary to the Superintendent of Welfare and Training, 8 July 1944, (Ottawa), “Utilization of Prison Labour for the Manufacture of Goods,” Op. Cit.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

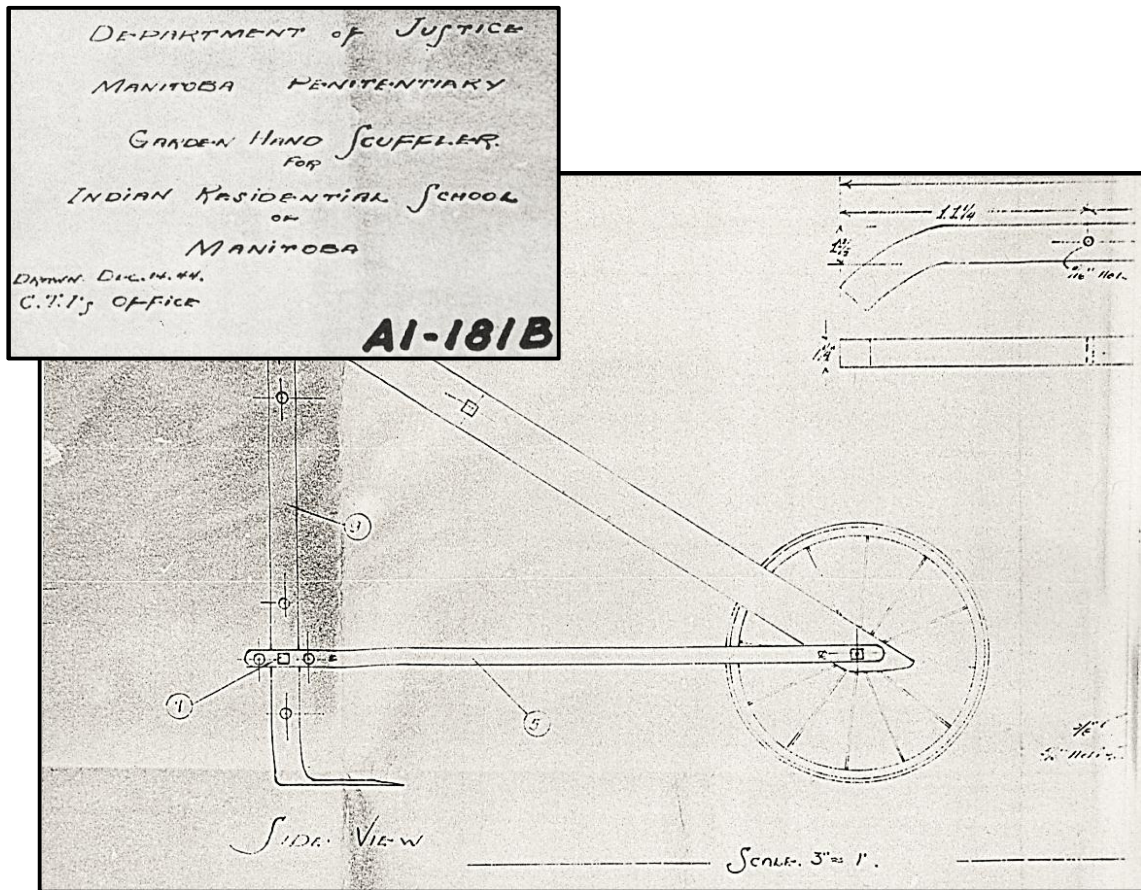


Figure 54: Garden Hand Scuffler for Indian Residential School¹⁶⁷

Indian Affairs' Superintendent of Welfare and Training even invited the Superintendent of Penitentiaries to send someone from his office to visit the larger residential schools to see them in operation.¹⁶⁸ They later went so far as to provide the Superintendent of Penitentiaries with a list of residential schools that were geographically proximate to penitentiaries.¹⁶⁹

¹⁶⁷ Adapted from Department of Justice Manitoba Penitentiary Garden Hand Scuffler for Indian Residential School of Manitoba, "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.; Superintendent of Penitentiaries GL Sauvant to Indian Affairs Branch, 28 March 1945, (Winnipeg), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

¹⁶⁸ Inspector for WS Lawson EL O'Leary to The Superintendent of Welfare and Training, 8 July 1944, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

¹⁶⁹ Chief of Training Division Philip Phelan to The Superintendent of Penitentiaries, 4 May 1945, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.; The Superintendent of Penitentiaries to Chief of Training Division Philip Phelan, 11 May 1945, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

<u>School</u>	<u>Principal</u>	<u>Address</u>
<u>New Westminster Penitentiary</u>		
St. Mary's Mission Kamloops St. George's	Rev. A.H. Fleury Rev. F. O'Grady, O.M.I. Rev. C.F. Hives	Mission City B.C. Kamloops Lytton
<u>Prince Albert Penitentiary:</u>		
St. Alban's Thunderchild Duck Lake Gordon's Qu'Appelle File Hills	Rev. Henry Ellis Rev. JOB. Angin, O.M.I. Rev. G. Latour, O.M.I. Rev. D. L. Dance, Rev. Paul Piche, O.M.I. Mr. L.L. Dobbin	Prince Albert Sask. Delmas Duck Lake Punnichy Lebret Balcarres
<u>Winnipeg Penitentiary</u>		
Brandon Elkhorn Portage la Prairie Birtle	Rev. O.B. Strapp Mr. R. E. Hiltz Rev. A.C. Huston Mr. Roy Webb	Brandon Man. Elkhorn Portage la Prairie Birtle
<u>Kingston Penitentiary</u>		
Spanish Mount Elgin Mohawk	Rev. C.A. Primeau, S.J. Rev. S.H. Soper Rev. H.W. Snell	Spanish, Ont. Muncey Brantford
<u>Dorchester Penitentiary</u>		
Shubenacadie	Rev. J.W. Brown	Shubenacadie, N.S.

Figure 55: Proximity of Residential Schools to Penitentiaries¹⁷⁰

In 2012, having directed the dismantling of its prison farm in 2010, the Government of Canada put Canada's historic Kingston Penitentiary on the pathway to closure in favour of a new era of incarceration.

¹⁷⁰ Adapted from Chief of Training Division Philip Phelan to The Superintendent of Penitentiaries, 4 May 1945, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

10.4 Peroratio: Historically Surreptitious Relationships

It might be historiographically gauche to hold government officials engaged in social reformation in the twentieth-century to contemporary standards; however, this chapter makes plain that, whatever their rationales, the cooperation of administrators, Indian Agents, priests, and judges cultivated social inequalities sown in the colonial origins of the Canadian state. At the time, they may have even been quite proud to be engaged in work that was so important to the shaping of Canadian society. Possibly, there was no need to hide the relationships between the assimilative aims of the Department of Indian Affairs, residential schools, and carceral institutions. Canada has made great strides in admitting the damage caused by the residential school system; however, it is far too easy to make a theoretical leap from abuse, soar through socio-economic inequality and, finally, alight in the staggering numbers of Aboriginal persons in Canadian prisons. Reading the landscape of three dislocations sheds light on the hitherto little known cooperations of reformers whose close relationships have become obscured by changing values and the passage of time.

Chapter 11

Conclusion

The specific historical precedents of current inequalities have heretofore been impossible to identify despite thoughtful attention to the “failure” of Canadian justice to find the causes of, and solutions for, the overrepresentation of Aboriginal persons as offenders in all aspects of state law enforcement, judicial, and correctional systems. The literature review and contextual discussion that launches this dissertation reveals that disproportionate rates of imprisonment are often theorized as the outcome of racism or as symptoms of historic trauma caused by the alienation of culture through assimilative programs of “civilization” and the myriad uncivilized abuses of residential schools. However, most academic investigations rely on sociological and criminological expertise in their efforts to find practical solutions to unconscionable disparities. As they attempt to address present circumstances and emergent challenges such as “Aboriginal gangs,” altogether too few scholarly and community perspectives have dwelt on the complex historical and legal geographies behind alarming statistical data and issues. Nevertheless, in pointing to colonialism, a review of the pertinent literature provides a direction in which to seek better understanding. Perhaps it takes a skeptical eye to hypothesize that the origins of overrepresentation were much more calculated than Eurocentric assimilative systems gone horribly wrong and that indigenous persons may have been intentionally targeted as objects of criminal law throughout Canadian history.

In a political context where acknowledgement of the colonial legacies of residential schools constitutes an achievement, and the sociological indices of criminal victimization and perpetration appear on the surface of many communities, it is audacious to ask the research question, how did incarceration develop historically and geographically as a peculiarly prominent element of “Indian” interactions with the Canadian state? By putting legal geographical practice and historical geographical methods to work, this dissertation has embarked on an uncharted path of inquiry. These methods and their sources have made it possible to discover particular legal and geographic characteristics of “Indian” incarceration and trace many of their temporal vicissitudes. Through the meticulous mapping of legal relationships between indigenous persons and the Canadian state across murky historical-geographical circumstances, this dissertation renders incarceration as a cause of trauma, a tool of assimilation, rather than a more recent effect.

The remarkable landscapes of Manitoulin Island reveal a provocative legal geography of assimilative segregation and incarceration in which to pursue this inquiry. In particular historical-geographical contexts, specific mechanisms distinguished indigenous relationships with state law. Chapter Three critically assesses the use of legal instruments to contain indigenous peoples, extinguish Aboriginal title, and secure new territories for empire. With land, resources, and Eurocentric conceptions of order at stake, indigenous peoples seemed disturbingly anachronistic. The creation of colonial territories under European control was legitimized by postulating that indigenous lands appended by empire were not inhabited by “civilized” peoples with organized social systems and principles of law. Sir Francis Bond Head’s plan to use Manitoulin Island as a hospice for what appeared to British authorities to be a disappearing “race” of indigenous peoples may seem preposterous; however, it was an early example of a flood of restrictive, segregative, and carceral measures. Despite the rhetoric of empire, these measures were not primarily protective of purportedly defenseless primitive cultures. Colonial instruments were manipulated in order to achieve colonial goals.

When the Mica Bay Uprising took place, it was not simply an act of aggression. Rather than thoughtless barbarity, the uprising asserted indigenous rights to resources and demanded recognition of promises made to indigenous allies. Shinguakouse did not instruct his people to vacate the Garden River Village in favour of Manitoulin Island when the colonizing state discerned the mining potential of the north shore of Lake Huron. Early negotiations with the Anishnabe peoples, held on Manitoulin with colonial emissaries, were unsatisfactory. While determined resistance of mineral extraction led to Shinguakouse’s arrest and detention, the economic incentive combined with the threat of indigenous opposition enlivened colonial efforts to extinguish Aboriginal title through treaties.

As with mineral licensing on the north shore, fishing leases were prematurely granted in Manitoulin waters before formal treaties were made. Nonetheless, as with communities on the north shore, the indigenous communities of Manitoulin Island already had dealings with colonial governments. Since the Wikwemikong chiefs did not accept William McDougall’s pre-prepared treaty text, the eastern portion of Manitoulin Island remained unceded territory. Manitoulin’s other indigenous communities were situated on compact reserves. A great deal of the “Indian lands” once set aside by Sir Francis Bond Head could then be proffered by Indian Agents for sale to “actual settlers.” These shrunken segregative geographies were administered through the British colonial government town of Manitowaning that sat in comparative parallel to the Jesuit mission in the village of Wikwemikong.

Geographic restriction was employed to assert state law in circumstances where the persistence of indigenous peoples and the resilience of indigenous laws undermined the legitimacy of state claims to territory. Colonizing governments were driven to support the rhetoric of uncivilized, unregulated, and legally unoccupied lands through which they justified their entitlement to indigenous territories. As the historically scandalous death of Fisheries Commissioner William Gibbard underscores, the capabilities of First Nations seemed most threatening when indigenous communities continued to negotiate their legal rights within colonial systems in times and places where the state had already presumed ascendancy over a valuable frontier. Chapter Four demonstrates that the indigenous peoples of the northern shores and islands of Lake Huron were actively engaged in mediating the incursions of the state and continually pressed their legal rights. While the legal capacities of First Nations struck at the heart of the colonizing state, the embodied agency of indigenous persons struck fear into the hearts of settlers. The expanding structures of Indian Affairs were interested in maintaining state control of indigenous peoples, territories, and the resources therein through geographic containment. Precluding criminality was a central organizing principle of colonial rationalizations.

Chapter Five evaluates the *Indian Act*, the legislation that formalized “Indian” relationships with the Canadian state, as a legal instrument of assimilative segregation. Surveillance and geographic restriction were principal strategies of colonial guardians for whom “Indian” identity was legally antithetical to enfranchisement as adults in the Canadian state. Indian Affairs attempted to stifle ceremonies, meetings, and practices that bolstered cooperation between indigenous peoples. First Nations leaders, such as the Chiefs of Wikwemikong, observed the workings of colonial governance and worked to articulate the position their communities relative to colonial legal systems. As the *Indian Act* was amended and applied in ways that suited colonial convenience, it worked to undermine, although it could not fully negate, indigenous principles of legal order and self-determination.

The *Indian Act* was an evolving legislative tool turned to the purposes of the assimilative state. Although it has more recently been divested of some of its most telling language, this dissertation has made evident that, from the first consolidation of colonial laws into the recalcitrant legislation in 1876, the *Indian Act* has contained criminalizing provisions from which other federal and provincial statutes borrowed. Using the formative example of Canada’s North-West frontier, Chapter Six deepens the analysis of the *Indian Act* as an instrument of criminalization. Specific connections are made between indigenous identities, the legal authority of the Canadian state, and the *Criminal Code*. Indigenous persons were significantly exposed to

criminal investigation, prosecution, and punishment through the *Indian Act*. The Indian Agents who formed the Department of Indian Affairs' Outside Service were tasked with the protection of government wards, yet they were also engaged in land sales and other functions. The obligation of Indian Agents to uphold colonial standards of protective "civilization" were eroded by their powers to single-handedly orchestrate convictions. Despite Indian Affairs' legally-instituted paternalistic guardianship over "Indians," the goal of assimilation was always predominant. The case of a girl married against her will, seemingly eligible for the dissolution of her marriage, yet denied a divorce because she was not thought to meet moral standards, is illustrative of the callousness with which narrow moralistic judgments were privileged above legal principle and protection.

Chapter Seven connects the "Drunken Indian" stereotype, a prejudice that is still closely aligned with the overrepresentation of Aboriginal persons in provincial and federal prisons, with assimilative criminalization. Ironically, although the *Indian Act* is often examined for its delineations of who does, and does not, qualify for "Indian status," in its criminalization of intoxicants, it allowed these distinctions to be circumvented. Applying criminalizing stereotypes to indigenous identities gave Indian Affairs, provincial regulators, and the police the power to assert extreme control over individuals who could be racialized as associated with "Indian" lands, communities, or modes of life. "Indians" did not have the legal access to alcohol afforded the settler communities that they were supposed to become enfranchised into. Reserves were critical legal boundaries of prohibitions of liquor manufacture, possession, trade, and consumption. The surveillant geographies of reserves facilitated intervention in the application of laws that were already inequitable. Indian Agents were given the power to investigate, judge, and incarcerate persons accused of contravening the intoxicant provisions of the *Indian Act*.

In Ontario, the Interdiction List, or the "Indian List," was used by the LCBO to regulate problematic access to liquor. Efforts were made to use this list to bar the sale of liquor to "Indians" and Indian Affairs' enfranchisement cards to facilitate legal access to liquor purchase; however, this chapter finds that phenotypical racializations, racialization through social affiliation, and racialization through connection to reserve geographies defined and criminalized "Drunken Indians." The criminalizing carceral consequences of this racialization shifted beyond the realm of Indian Affairs into that of the LCBO, law enforcement, and prominent legal decisions following the 1951 *Indian Act*. Although "Indian" access to liquor have become less constrained, racialization and place-specific criminalizations of liquor consumption continue.

Following Chapter Seven's examination of one of Indian Affairs' major assimilative ideals, sobriety, and the criminalization of those who appeared to fall short of this criterion for enfranchisement, Chapter Eight turns to the establishment of the carceral tools that Indian Affairs exercised to punish these criminal transgressions. The intentional use of incarceration for assimilative ends is substantiated in Chapter Eight. Local lock-ups were part of traditional British systems of carceral justice; however, Indian Affairs turned them to their own assimilative ends when they directed their construction on "Indian lands," using Indian funds, across Canada. As symbols of state power in geographic outposts, as well as troubling places of punishment, lock-ups prompted activism and resistance in indigenous communities.

In Chapter Nine, archival research and jailhouse palimpsests ground Indian Affairs' use of lock-ups in Manitoulin Island, a flagship geography of indigenous segregation. The establishment of lock-ups in Manitowaning, Little Current, and Gore Bay was an important element of the Department of Indian Affairs' paternalistic program of assimilation for the indigenous peoples of Manitoulin Island. Lock-ups have been reconceived as civic buildings and recast as interesting local museums housed in town jails. Nevertheless, through archival research, reading the landscape, understanding criminalizing legislation, and situating lock-ups within the systems of carceral punishment practiced by Indian Affairs, the deeper layers of these carceral facilities emerge.

For the most part, from the construction of the three provincial Manitoulin Island lock-ups until their retirement as carceral facilities, when local Indian Agents laid charges against "Indians" and adjudicated cases, they kept assimilation through incarceration within their geographical purview. Indian Agents were obligated by *Indian Act* provisions to take on judicial functions and apply carceral terms to "Indian" wards for actions that may not have even been offenses for settlers. Since they could, as wards, be subject to intense surveillance and swift summary conviction through the aggregated powers of the Indian Agent, prior to the Second World War, "Indians" often served sentences in Manitoulin Island lock-ups. In this way, even as they appeared to perform within them, Indian Agents circumvented settler judicial systems that had fewer "minor" offenses to prosecute, more frequently allowed for legal counsel and appeal, and made it more difficult to incarcerate. Settlers, facing with more substantial charges, moved beyond the domain of one local official into larger judicial systems and wider geographies.

From the grounding of assimilation through incarceration in Chapter Nine, Chapter Ten identifies compelling continuities in the carceral assimilation of indigenous peoples despite moves towards integrating "Indians" into the wider social welfare programs of the state during,

and following, the Second World War. In the fullness of time, jail facilities in police stations replaced the original Manitoulin Island lock-ups. As the new year commenced in 1945, the District Gaol at Gore Bay was officially closed and prisoners were to be transported to the Sudbury District Gaol. Indian Agents remained involved in criminal matters; however, their ability to determine cases and retain “Indians” on Manitoulin Island had diminished. When three boys from the Unceded portion of Manitoulin Island appeared to be embarking on a pattern of housebreaking in town, they were sent away to Training School in Toronto. Although not promoted as a punishment, for the children sent from Manitoulin Island to Shingwauk residential school, perceived offenses, mock trials, and the school jail meant that children experienced incarceration. Residential schools also taught assimilative labour. By the Second World War, prisoners sentenced to Canadian penitentiaries were assigned labour in order to instill in them admirable qualities of industry. In a strange economy of prison labour and assimilative cooperation, penitentiary products included the tools with which children might labour in residential schools.

The material geographies of carceral places are evidence of the close ties between incarceration and assimilation despite relocations, diminishing judicial powers, and Indian Affairs’ public face of impartiality. Through a successful Access to Information application and researcher agreement with the National Archives of Canada, these connections are brought to light. The burgeoning proportion of Aboriginal inmates in federal and provincial prisons in the second half of the twentieth century and in recent years is not, in a strict sense, a new phenomenon. The overrepresentation of Aboriginal persons in provincial and federal correctional systems is, to a certain extent, a relocation of incarceration from the purviews of individual Indian Agents into more centralized institutions.

Despite the suffering wrought by colonialism, painful wounds of injustice are certainly not the full story of indigenous peoples in Canada. The often exclusionary Canadian national perspective fails to observe that First Nations communities demonstrate much more than persistence or resilience in response to the colonizing onslaught. In different ways, First Nations demonstrate the innovation, accomplishment, humour, and effective management practices springing from their own diverse indigenous cultures. Notwithstanding the enduring repercussions of grievous colonial legacies, the shifting topographies of First Nations’ interactions with the Canadian state have the potential to evolve from colonialist desire for indigenous land towards a respectful appreciation that has thus far been antithetical to the very structure of the Canadian state.

By drawing on the collective wisdom of the peoples within its state territories, Canada has the capacity to break down historical barriers and simultaneously recognize First Nations' self-determining status alongside full citizenship. For the Canadian state, indigenous identities will always be an integral part of its past, present, and future. A great deal of work has yet to be done to recognize and redress the deep historical-geographical injustices indicated by the continuing overrepresentation of Aboriginal persons in Canadian prisons. Tackling such pernicious questions requires the resourcefulness of scholars of many different disciplines, experiences, and identities. Let us strip the blindfold from Lady Justice and adorn her differently. Allow her to see that constructing a system without insight into the colonial legal geographies of indigenous persons has not brought equality. Although there are different parts to play, the task of unmasking this structural inequality belongs to everyone.

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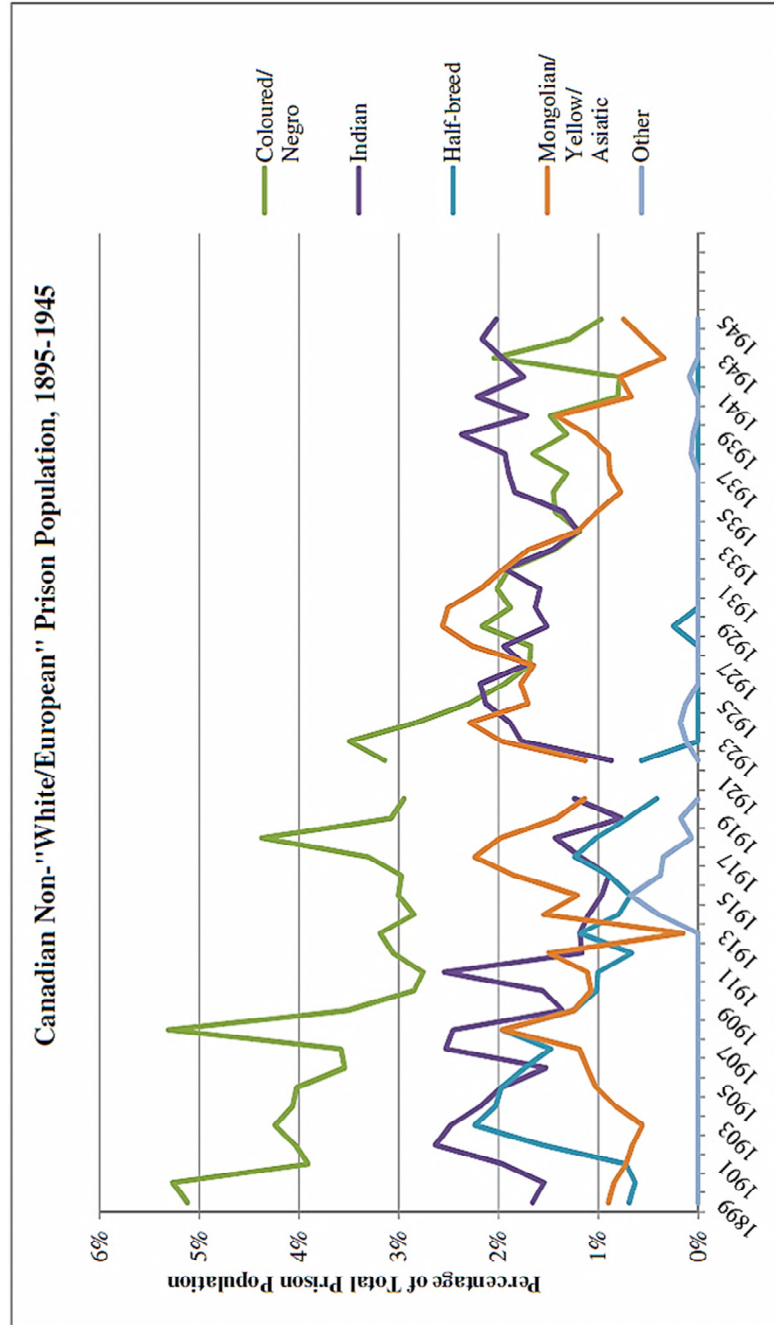
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Appendix A

Canadian Non-“White/European” Federal Prison Population, 1895-1945¹



¹ Reports of the Minister of Justice as to Penitentiaries in Canada, 1895-1913; Reports of the Inspectors of Penitentiaries, 1914-1918; Reports of the Superintendent of Penitentiaries, 1919-1923; Annual Reports of the Superintendent of Penitentiaries, 1924-1945.

Appendix B

Sir Francis Bond Head's Manitoulin Document

My Children

Twenty Snow seasons have now passed away since we met in Council at the wooded place (Niagara) at which time and place your Great Father the King and the Indians of North America tied their hands together by the banner of friendship -

Since that period various circumstances have occurred to separate from your Great Father ^{as are} many of his red children, and unavoidable increase of white population as well as the progress of cultivation have had the natural effect of impoverishing your hunting grounds

it

it has become necessary that new arrangements should be entered into for the purpose of protecting you from the encroachments of the Whites.

In all parts of the world Farmers seek for uncultivated land as eagerly as you, my red Children hunt in your forest for game. - If You would cultivate your land, it would then be considered your own property in the same way as your dogs are considered among yourselves to belong to those who have raised them, but uncultivated land is like wild animals, and your Great Father who has hitherto protected you, has now great difficulty in securing it for you from the Whites, who are hunting to cultivate it. -

Under these circumstances I have been obliged to consider what is best to be done for the red Children of the forest and I now tell you my thoughts -

It appears that these Islands

in

on which we are now assembled in Council, as well as all those on the North Shore of Lake Huron, also claimed by the English, the Ottawas, and the Chippewas.

Consider that from their facilities, and from their being surrounded, by innumerable fishing Islands, they might be made a most desirable place of Residence for many Indians, who wish to be civilized, as well as to be totally separated from the Whites; and I now tell you that your Great Father will withdraw his claims to these Islands, and allow them to be applied for that purpose.

Are you therefore the Ottawas and Chippewas, willing to relinquish your respective Claims to these Islands, and make them the Property of your Great Father, to be distributed to all Indians whom he shall allow to reside on them; if so, affix your marks to this my Proposal

J. P. Wood

Manatawanning
August 9th 1836

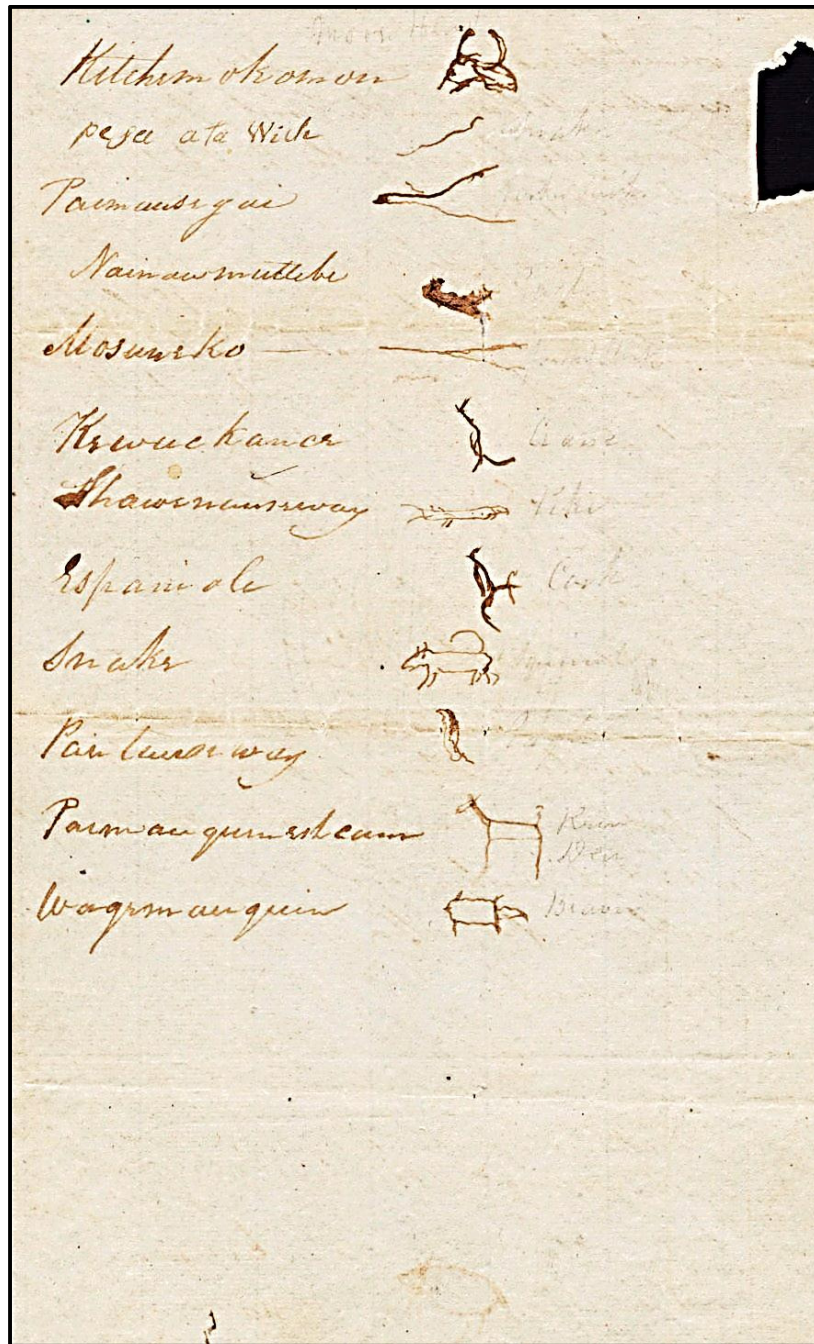
J. B. A. Kewick

W. K. K. K. K.

J. J. K. K. K.

W. K. K. K. K.

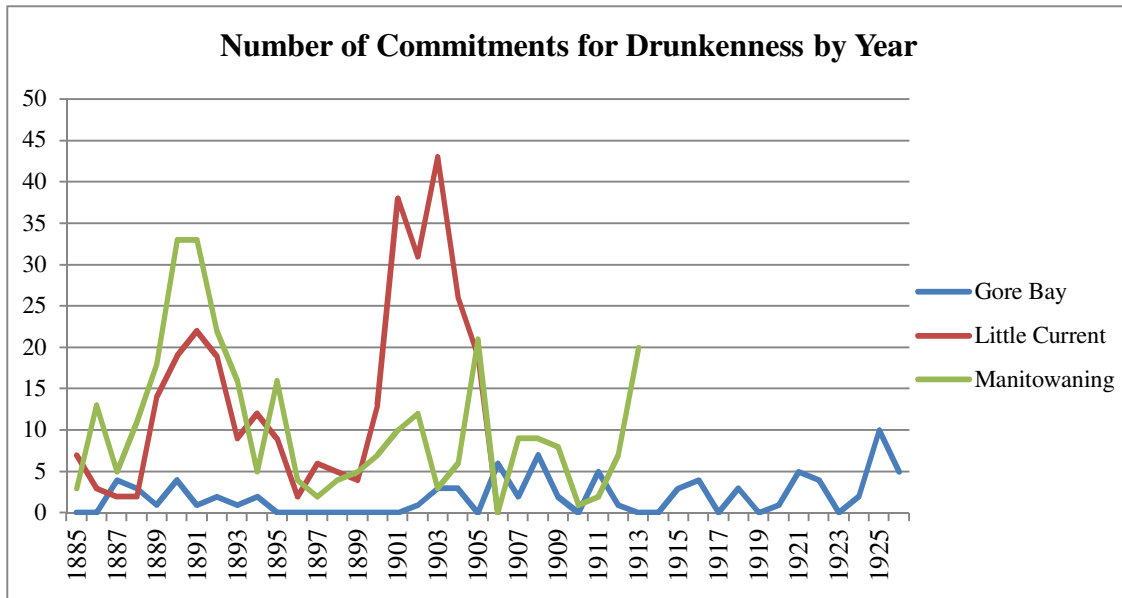




¹ Adapted from "The Chippewa, Ottawa and Sauking Indians – Provisional Agreement for the Surrender of the Manitoulin Islands and the Islands on the North shore of Lake Huron and also of the Sauking Territory – IT 120 1836/08/09," 1836, National Archives of Canada, RG10: Department of Indian Affairs, R216-79-6-E: Treaties and Surrenders, Volume: 1844/IT120, Access Code: 90.

Appendix C

Manitoulin Island Provincial Lock-ups: Drunkenness¹



¹ Annual Reports of the Inspector of Prisons and Public Charities upon the Common Gaols, Prisons and Reformatories of the Province of Ontario, 1885-1888, 1890-1898; Annual Reports of the Inspector of Prisons and Public Charities for the Province of Ontario, 1889; Annual Reports of the Inspector of Prisons and Reformatories of the Province of Ontario, 1899-1905; Annual Reports of the Inspector of Prisons and Public Charities upon the Common Gaols of the Province of Ontario, 1906-1908; Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario, 1909-1923, 1925; Annual Report upon the Prisons and Reformatories the Ontario Board of Parole and the Commissioner of Extra-mural Employment of the Province of Ontario, 1924.

Appendix D

Manitoulin Convictions Under the *Indian Act*

Convictions Under the *Indian Act*, Manitoulin Island, From 10 April 1947 to 25 October 1948¹

Date	Section	Finding	Sentence	Costs	Notes
10-Apr-47	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.65	Witness fee \$1.50
10-Apr-47	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.65	Witness fee \$1.50
10-Apr-47	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$1.00	
10-Apr-47	130(2)	Guilty	\$15 and costs or in default of payment 15 days in jail	\$2.65	Witness fee \$1.50
10-Apr-47	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.15	Witness fee \$1.50
10-Apr-47	130(2)	Guilty	\$15 and costs or in default of payment 15 days in jail	\$2.15	Witness fee \$1.50
10-Apr-47	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.15	Witness fee \$1.50
10-Apr-47	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.15	Witness fee \$1.50
12-Apr-47	135	Guilty	\$5 and costs or in default of payment 10 days in jail	\$1.50	
12-Apr-47	135	Guilty	\$5 and costs or in default of payment 10 days in jail	\$1.50	
2-Jun-47	130(2)	Guilty	One month in District Gaol	\$3.50	Warrant issued, not R.T., [Dated 23 June in Indian Affairs Constable Voucher]
3-Jun-47	135	Guilty	\$5 and costs or in default of payment 10 days in jail	\$3.50	Arrest cost \$1.50
18-Jun-47	130 (1)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.00	

¹ Adapted from “Manitoulin Island District Office – Manitoulin Island Agency – Law Enforcement – Intoxicants,” 1946-1949, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 12686, Series C-V-26, File: [19]/18-6, Part 2, Access Code: 32.

19-Jun-47	126(a)	Guilty	\$50 and costs or in default of payment one month in jail		
19-Jun-47	135	Guilty	\$5 and costs or in default of payment 5 days in jail	\$2.50	Arrest cost \$1.50
19-Jun-47	135	Guilty	\$10 and costs or in default of payment 10 days in jail	\$1.50	Arrest cost \$1.50
19-Jun-47	135	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.50	Arrest cost \$1.50
23-Jun-47	130(1)	Guilty	\$25 and costs or in default of payment 20 days in jail	\$4.60	
23-Jun-47	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.85	Witness fee \$1.50
23-Jun-47	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.85	Witness fee \$1.50
23-Jun-47	130(2)	Guilty	\$15 and costs or in default of payment 15 days in jail	\$2.85	Witness fee \$1.50
? July 1947	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$8.15	2 arrests cost \$3.00, witness fee \$1.50
2-Jul-47	130(2)	Guilty	\$15 and costs or in default of payment 15 days in jail	\$4.50	Witness fee \$1.50
2-Jul-47	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$4.50	Witness fee \$1.50
2-Jul-47	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.50	Witness fee \$1.50
14-Jul-47	130(2)	Guilty	\$15 and costs or in default of payment 15 days in jail	\$9.15	Witness fee \$1.50
14-Jul-47	130(2)	Guilty	One month in Sudbury District Gaol	\$3.15	Warrant issued, witness fee \$1.50, not R.T.
14-Jul-47	130(2)	Guilty	One month in Sudbury District Gaol	\$3.15	Warrant issued, witness fee \$1.50, not R.T.
18-Aug-47	128	Guilty	One month in District Gaol	\$2.55	Warrant issued, witness fee \$1.50, not R.T.
18-Aug-47	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.00	
18-Aug-47	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.55	Witness fee \$1.50, JP \$1.00
18-Aug-47	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.55	Witness fee \$1.50, JP \$1.00

22-Aug-47	130(1)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$4.00	Given until 27 Aug to pay fine, paid to RCMP and remitted by him, witness fee \$1.50
23-Aug-47	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.90	Witness fee \$1.50
23-Aug-47	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.00	Given until 29 Aug to pay fine, paid 1 Sept, witness fee \$1.50
23-Aug-47	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.00	Given until 29 Aug to pay fine, fine not paid, warrant issued, witness fee \$1.50
23-Aug-47	135	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.90	Arrest cost \$1.50
23-Aug-47	130(2)	Guilty	\$15 and costs or in default of payment 15 days in jail	\$2.00	Given until 29 Aug to pay fine, paid 1 Sept, witness fee \$1.50
23-Aug-47	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$0.50	
23-Aug-47	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$5.65	Witness fee \$1.50
22-Aug-47	128		Remanded to 12 Sept., charge withdrawn		
18-Oct-47	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.80	
18-Oct-47	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$4.40	
18-Oct-47	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.90	
1-Nov-47	128	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.50	Arrest cost \$1.50
8-Nov-47	135	Guilty	\$25 and costs or in default of payment one month in jail	\$2.95	
8-Nov-47	130	Guilty	\$5 and costs or in default of payment 10 days in jail	\$2.00	

14-Nov-47	130(2)	Guilty	\$15 and costs or in default of payment 30 days in jail	\$4.60	
22-Nov-47	128	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.65	
24-Nov-47	130	Guilty	\$25 and costs or in default of payment 30 days in jail	\$4.70	Arrest cost \$1.50
1-Dec-47	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.40	
1-Dec-47	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.40	
6-Dec-47	128	Guilty	\$25 and costs or in default of payment 30 days in jail	\$6.50	Arrest cost \$1.50
6-Dec-47	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$6.50	Arrest cost \$1.50
11-Dec-47	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$4.40	
22-Dec-47	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$4.70	
7-Jan-48	130(2)	Guilty	30 days in jail	\$3.70	Warrant issued, witness fee \$1.50
13-Jan-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$4.20	Witness fee \$1.50
13-Jan-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$5.70	
13-Jan-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail		Warrant issued
13-Jan-48	128	Guilty	\$25 and costs or in default of payment 30 days in jail consecutive with former charge	\$4.50	Same individual as above, warrant issued, sentenced to District Gaol
27-Jan-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$4.70	
9-Feb-48	135	Guilty	\$5 and costs or in default of payment 10 days in jail	\$3.50	
9-Feb-48	128	Guilty	\$25 and costs or in default of payment 30 days in jail	\$1.50	Arrest cost \$1.50
14-Feb-48	128	Guilty	\$25 and costs or in default of payment 30 days in jail	\$3.70	
14-Feb-48	135	Guilty	\$5 and costs or in default of payment 10 days in jail	\$1.70	
21-Feb-48	130(2)	Guilty	\$15 and costs or in default of payment 20 days in jail	\$3.50	

21-Feb-48	130(2)	Guilty	\$15 and costs or in default of payment 20 days in jail	\$1.50	
23-Feb-48	128	Guilty	\$25 and costs or in default of payment 30 days in jail	\$3.50	
28-Feb-48	128	Guilty	\$25 and costs or in default of payment 30 days in jail	\$3.70	
16-Mar-48	135	Guilty	\$5 and costs or in default of payment 10 days in jail	\$3.20	
18-Mar-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$1.70	
18-Mar-48	135	Guilty	\$5 and costs or in default of payment 10 days in jail	\$3.50	
25-Mar-48	135	Guilty	\$5 and costs or in default of payment 10 days in jail	\$4.70	
25-Mar-48	135	Guilty	\$5 and costs or in default of payment 10 days in jail	\$5.30	
30-Mar-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$1.70	
30-Mar-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.10	
30-Mar-48	135	Guilty	\$10 and costs or in default of payment 10 days in jail	\$1.70	
30-Mar-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$1.70	
30-Mar-48	130(2)	Not Guilty			Case dismissed
30-Mar-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$1.30	
24-Feb-48	135	Guilty	\$5 and costs or in default of payment 10 days in jail	\$3.50	Arrest cost \$1.50
13-Apr-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.50	
13-Apr-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$0.90	
13-Apr-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.20	
16-Apr-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail		
16-Apr-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.90	Witness fee \$1.50
23-Apr-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.70	
23-Apr-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.50	
23-Apr-48	130(2)	Guilty	\$15 and costs or in default of payment 10 days in jail		

29-Apr-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$4.20	Witness fee \$1.50
29-Apr-48	128	Guilty	\$25 and costs or in default of payment 30 days in jail	\$2.90	
29-Apr-48	135	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.50	
29-Apr-48	135	Guilty	\$5 and costs or in default of payment 10 days in jail	\$2.50	
24-Feb-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$1.20	
30-Apr-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$4.80	Witness fee \$1.50
30-Apr-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$5.40	Witness fee \$1.50
14-Apr-48	130(2)	Guilty	\$10 and costs or in default of payment 15 days in jail	\$9.20	Warrant issued 21 June 1948, 3 witnesses fees \$4.50
7-Jun-48	126a	Guilty	\$50 and costs or in default of payment 30 days in jail	\$5.50	
7-Jun-48	135	Guilty	\$5 and costs or in default of payment 10 days in jail	\$2.50	
7-Jun-48	135	Guilty	\$10 and costs or in default of payment 10 days in jail	\$4.50	
10-Jun-48	128	Guilty	\$25 and costs or in default of payment 30 days in jail	\$5.50	
10-Jun-48	135	Guilty	\$5 and costs or in default of payment 10 days in jail	\$6.50	Witness fee \$3.00
15-Jun-48	135	Guilty	\$5 and costs or in default of payment 10 days in jail	\$3.50	
26-Jun-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$5.00	
26-Jun-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$5.00	
6-Jul-48	135	Guilty	\$5 and costs or in default of payment 10 days in jail	\$2.40	
6-Jul-48	135	Guilty	\$10 and costs or in default of payment 10 days in jail	\$4.70	
8-Jul-48	128	Guilty	\$25 and costs or in default of payment 30 days in jail	\$4.90	
12-Jul-48	128	Guilty	60 days in the District Gaol		Warrant issued
15-Jul-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.70	
16-Jul-48	130	Guilty	\$15 and costs or in default of payment 15 days in jail	\$2.50	

16-Jul-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.70	
23-Jul-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.50	
23-Jul-48	130	Guilty	\$15 and costs or in default of payment 15 days in jail	\$1.30	
23-Jul-48	130	Guilty	\$15 and costs or in default of payment 15 days in jail	\$1.10	
23-Jul-48	130	Guilty	\$15 and costs or in default of payment 15 days in jail	\$1.30	
23-Jul-48	128	Guilty	\$25 and costs or in default of payment 30 days in jail	\$1.70	
23-Jul-48	128	Guilty	\$25 and costs or in default of payment 30 days in jail	\$3.70	
? Aug 1948	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.70	
3-Aug-48	135	Guilty	\$10 and costs or in default of payment 10 days in jail	\$1.00	
9-Aug-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.50	
16-Aug-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.30	
17-Aug-48	128	Guilty	\$25 and costs or in default of payment 30 days in jail	\$4.90	
17-Aug-48	128	Guilty	\$25 and costs or in default of payment 30 days in jail	\$5.20	
17-Aug-48	130(2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.70	
18-Aug-48	130 (2)	Guilty	\$10 and costs or in default of payment 10 days in jail	\$5.70	
19-Aug-48	130	Guilty	\$15 and costs or in default of payment 15 days in jail	\$2.00	
19-Aug-48	130	Guilty	30 days in jail		Warrant issued
19-Aug-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.70	
19-Aug-48	128	Guilty	30 days in jail		Warrant issued
19-Aug-48	130	Guilty	\$25 and costs or in default of payment 30 days in jail	\$4.00	
19-Aug-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$1.00	
19-Aug-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$1.00	
23-Aug-48	130	Guilty	\$25 and costs or in default of payment 30 days in jail	\$2.00	

24-Aug-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$5.50	
26-Aug-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.70	
26-Aug-48	128	Guilty	\$25 and costs or in default of payment 30 days in jail	\$1.70	
28-Aug-48	128	Guilty	\$25 and costs or in default of payment 30 days in jail	\$4.30	
28-Aug-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.20	
28-Aug-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$4.20	
28-Aug-48	130	Guilty	\$15 and costs or in default of payment 15 days in jail	\$2.00	
30-Aug-48	135	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.00	
1-Sep-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.60	
3-Sep-48	130	Guilty	\$15 and costs or in default of payment 15 days in jail	\$2.00	
7-Sep-48	128	Guilty	\$25 and costs or in default of payment 30 days in jail	\$2.90	
7-Sep-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.70	
7-Sep-48	128	Guilty	\$25 and costs or in default of payment 30 days in jail	\$1.90	
7-Sep-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.30	
7-Sep-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.90	
7-Sep-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.10	
7-Sep-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.50	
7-Sep-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.50	
7-Sep-48	128	Guilty	\$25 and costs or in default of payment 30 days in jail	\$1.00	
7-Sep-48	126c	Guilty	\$50 and costs or in default of payment 30 days in jail	\$6.00	
10-Sep-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.10	
10-Sep-48	130	Guilty	\$15 and costs or in default of payment 15 days in jail	\$2.30	

10-Sep-48	128	Guilty	\$25 and costs or in default of payment 30 days in jail	\$3.90	
10-Sep-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.10	
10-Sep-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.50	
16-Sep-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.00	
16-Sep-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.00	
16-Sep-48	128	Guilty	\$25 and costs or in default of payment 30 days in jail	\$4.50	
16-Sep-48	130	Guilty	\$15 and costs or in default of payment 15 days in jail	\$2.00	
16-Sep-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$1.00	
16-Sep-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$1.00	
16-Sep-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$1.00	
16-Sep-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$1.00	
16-Sep-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$1.00	
16-Sep-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$0.00	
20-Sep-48	126a	Guilty	\$50 and costs or in default of payment 30 days in jail	\$2.00	
23-Sep-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$8.50	
23-Sep-48	126c	Guilty	\$50 and costs or in default of payment 30 days in jail	\$12.50	
2-Oct-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.50	
4-Oct-48	135	Guilty	\$10 and costs or in default of payment 10 days in jail	\$3.50	
7-Oct-48	135	Guilty	\$5 and costs or in default of payment 10 days in jail	\$2.00	
9-Oct-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$21.50	
9-Oct-48	130	Guilty	\$10 and costs or in default of payment 15 days in jail	\$23.60	
12-Oct-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.00	

18-Oct-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.50	
25-Oct-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.00	
25-Oct-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$5.20	
25-Oct-48	130	Guilty	\$10 and costs or in default of payment 10 days in jail	\$2.70	

Appendix E

General Research Ethics Board Approval



November 1, 2010

Ms. Madelaine Jacobs
Ph.D. Candidate
Department of Geography
Queen's University

OFFICE OF RESEARCH SERVICES

Fleming Hall/Jemmett Wing, Room 301
Queen's University
Kingston, Ontario, Canada K7L 3N6
Tel 613 533-6081
Fax 613 533-6806
ors@queensu.ca
www.queensu.ca/ors

Dear Ms. Jacobs:

GREB Ref #: GGEO-115-10

Title: "Assimilation Through Incarceration: Legal Historical Geographies of Incarcerating "Indians" on Manitoulin Island 1945-1960s"

The General Research Ethics Board (GREB), by means of a delegated board review, has cleared your proposal entitled "**Assimilation Through Incarceration: Legal Historical Geographies of Incarcerating "Indians" on Manitoulin Island 1945-1960s**" for ethical compliance with the Tri-Council Guidelines (TCPS) and Queen's ethics policies. In accordance with the Tri-Council Guidelines (article D.1.6) and Senate Terms of Reference (article G), your project has been cleared for one year. At the end of each year, the GREB will ask if your project has been completed and if not, what changes have occurred or will occur in the next year.

You are reminded of your obligation to advise the GREB, with a copy to your unit REB, if applicable, of any adverse event(s) that occur during this one year period (details available on webpage <http://www.queensu.ca/ors/researchethics/GeneralREB/forms.html> – Adverse Event Report Form). An adverse event includes, but is not limited to, a complaint, a change or unexpected event that alters the level of risk for the researcher or participants or situation that requires a substantial change in approach to a participant(s). You are also advised that all adverse events must be reported to the GREB within 48 hours.

You are also reminded that all changes that might affect human participants must be cleared by the GREB. For example you must report changes in study procedures or implementations of new aspects into the study procedures on the Ethics Change Form that can be found at <http://www.queensu.ca/ors/researchethics/GeneralREB/forms.html> - Research Ethics Change Form. These changes must be sent to the Ethics Coordinator, Gail Irving, at the Office of Research Services or irvingg@queensu.ca prior to implementation. Mrs. Irving will forward your request for protocol changes to the appropriate GREB reviewers and / or the GREB Chair.

On behalf of the General Research Ethics Board, I wish you continued success in your research.

Yours sincerely,

A handwritten signature in black ink that reads "Joan Stevenson".

Joan Stevenson, PhD
Professor and Chair
General Research Ethics Board

c.c.: Dr. W. George Lovell and Dr. Brian S. Osborne, Faculty Supervisors
Dr. Anne Godlewska / Dr. John Holmes, Co-Chairs, Unit REB
Joan Knox, Dept. Admin.

JS/gi



October 17, 2011

Ms. Madelaine Jacobs
Department of Geography
Queen's University
Kingston, ON K7L 3N6

GREB Romeo #: 6005515

Title: "GGEO-115-10 Assimilation Through Incarceration: Legal Historical Geographies of Incarcerating "Indians" on Manitoulin Island 1945-1960s"

Dear Ms. Jacobs:

The General Research Ethics Board (GREB) has reviewed and approved your request for renewal of ethics clearance for the above-named study. This renewal is valid for one year from November 1, 2011. Prior to the next renewal date you will be sent a reminder memo and the link to ROMEO to renew for another year.

You are reminded of your obligation to advise the GREB of any adverse event(s) that occur during this one year period. An adverse event includes, but is not limited to, a complaint, a change or unexpected event that alters the level of risk for the researcher or participants or situation that requires a substantial change in approach to a participant(s). You are also advised that all adverse events must be reported to the GREB within 48 hours. Report to GREB through either ROMEO Event Report or Adverse Event Report Form at <http://www.queensu.ca/ors/researchethics/GeneralREB/forms.html>.

You are also reminded that all changes that might affect human participants must be cleared by the GREB. For example you must report changes in study procedures or implementations of new aspects into the study procedures. Your request for protocol changes will be forwarded to the appropriate GREB reviewers and/or the GREB Chair. Please report changes to GREB through either ROMEO Event Reports or the Ethics Change Form at <http://www.queensu.ca/ors/researchethics/GeneralREB/forms.html>.

On behalf of the General Research Ethics Board, I wish you continued success in your research.

Yours sincerely,

A handwritten signature in black ink that reads "Joan Stevenson".

Joan Stevenson, Ph.D.
Professor and Chair
General Research Ethics Board

c.c.: Dr. W. George Lovell and Dr. Brian S. Osborne, Faculty Supervisors
Dr. Mark Rosenberg / Dr. John Holmes, Co-Chairs, Unit REB
Joan Knox, Dept. Admin.