CANADA OBTAINS AN EMPIRE

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Canadian historian William Lewis Morton once observed that the Canadian acquisition of Rupert's Land in 1869-70 was "One of the greatest transfers of territory and sovereignty in history…" He completed his thought by noting that the whole matter "was conducted as a mere transaction in real estate."[1] This has always struck a note with me, replete with images of bewhiskered HBC Directors, dignified British Government officials and dandified Canadian representatives sitting around a succession of board room tables in London over the course of six months, negotiating the exact terms of the "deal."

It is no understatement to say that this "deal" transformed Canada: it not only brought a huge swath of North America under Canadian control, but also made possible the realization of the real prize – getting the Crown Colony of British Columbia to join Confederation only one year later, making Canada, barely more than a colony itself, a trans-

1 W.L. Morton, *Manitoba: A History*. (Toronto: University of Toronto Press, 1967 ed), 117.

◂ Henry Youle Hind, *Geological Map of a Portion of Rupert's Land*, 1859. Image Courtesy of University of Manitoba Archives & Special Collections.

continental nation within four years of its founding. This was nation building on a grand scale, and at a price tag of only £300,000 for one twentieth of the arable land in the fertile belt (plus land around existing posts and a few other lesser concessions) it humbled both Jefferson's Louisiana Purchase and William Seward's more recent Alaska purchase.[2] Even better, it kept both the HBC territories and British Columbia out of the hands of the always avaricious Americans, preserving these lands and other natural resources for the use of the (white) peoples of Canada and the larger British Empire. What had been a sparsely populated fur trading and Indigenous "frontier" would now be open for settlement and development on an almost unimaginable scale. In effect, the pathway to the Canada of today had been set.

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I have always thought of these negotiations as being akin to a high-stakes poker game. The shareholders of the HBC, most of them relatively new investors who had taken control of the company in 1863, wanted an immediate return on their investment.[3] The British Imperial Government desperately wanted to keep the HBC territories and British Columbia as part of the British Empire, but didn't want the expense or bother of maintaining a Crown Colony, or heaven forbid, dealing with another New Zealand (which was occupying the energies of up to 18,000 British troops in the 1860s). The newly founded nation of Canada had already promised its inhabitants – right in the British North America Act of 1867 – that it would take control of this territory and make it part of Canada. The stakes were high – some said Canada's future hung in the balance, for without Rupert's Land Canada would never be able to link up with British Columbia, and never be able to become a transcontinental nation capable of withstanding the ongoing pressure of American *manifest destiny* to control the continent. And, in this poker game – where the Canadians were playing with money borrowed from the British – the Canadians clearly walked away from the table as the big winners.

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This slightly re-imagined triumphalist narrative

2 Jefferson's administration paid $15,000,000 in 1803 for the Louisiana Purchase and the Andrew Johnson administration paid $7,200,000 for Alaska in 1867. The £300,000 was equal to $1,500,000.

3 In 1863 the HBC had been bought out by a group of railway and financial interests headed by Edward Watkin – the International Financial Society. See "E.A. Mitchell, "Edward Watkin and the Buying-Out of the Hudson's Bay Company, *Canadian Historical Review* (September 1953): 219-244.

was what generations of Canadian school children were offered regarding the "transfer" of 1869-70. But when I consider the deal that was struck in London, and more particularly how it was done and its long-term impact, I feel profoundly non-triumphal. To be blunt, the poker game was played for stakes that didn't really belong to any of the three players. More to the point, the deal was done with absolutely no regard for the views, desires and rights of the Métis and First Nations Peoples who lived in this vast territory – those who had real skin in the game. To these peoples, what the HBC called Rupert's Land and the Canadians called the North-west, was their homeland. Or more accurately, their homelands – plural – as the drainage basin of Hudson's Bay consisted of many overlapping ecological and environmental zones – ecoregions, ecotones (the transitional boundaries between larger ecoregions) and specific habitats; zones that were filled with cultural, spiritual and material significance for the diverse peoples who inhabited them.

As the reports of the Canadian negotiators[4] and the close analysis of those negotiations by historian R.S. Longley make clear,[5] the men involved exhibited not one iota of concern for the Indigenous peoples of the territories in question. Famously, none of the inhabitants of the territories were consulted in any way, shape, or form as the fate of their homeland was being determined. In fact, one struggles to find any mention of Indigenous rights or concerns in any of the correspondence or other documents surrounding these negotiations. The sole exception to this is contained in a letter from Lord Granville (the Colonial Secretary) to Governor Northcote of the HBC, pushing him to accept what would become the final monetary and land compensation package as quickly as possible – on the grounds that the current "state of affairs was unfair to the inhabitants of the West, and there was a grave danger that settlers might flock into the country before it had a stable government."[6] Of course, given the vagueness of his statement, Granville might well have been referring to the small body of Canadian settlers who had already moved out to the Red River colony – so even this comment may not have been about First Nations or Métis peoples.

It would also appear that both the HBC and British Imperial representatives accepted the legal fiction that, prior to the issuance of the HBC charter in 1670, the interior of North America was *Terra Nullius* (the Canadian delegates disputed the validity of the charter, but on different grounds). As a consequence, when that charter – which had made the HBC the "true and absolute Lords and Proprietors" of the entire drainage basin of Hudson's Bay – was being surrendered, all that was required was working out a compensation package acceptable to the HBC's shareholders. Indeed, it is notable that Indigenous peoples are mentioned only once in the Imperial Order-in Council which formally passed Rupert's Land to Canadian control in 1870, and this was a seemingly pro-forma statement which came

4 Canada, *Report of the Delegates Appointed to Negotiate for the Acquisition of Rupert's Land and the North-West Territory* (Ottawa: King's Printer, 1869).

5 R.S. Longley, "Cartier and McDougall, Canadian Emissaries to London, 1868-69." *The Canadian Historical Review*, Volume 26, Number 1, March 1945, pp. 25-41.

6 Cited in *Ibid*., 39.

directly from the Company's Deed of Surrender, exempting the HBC from any responsibility for any land claims that might be made by the Indigenous peoples of the region.[7]

> **"As we commemorate Manitoba's 150th anniversary as part of Canada, I do think that we should be troubled by the way this "transaction" was carried out."**

At one level, one would have to be quite naïve to be surprised by this lack of concern for, or consultation with, Indigenous peoples. Afterall, the annals of British Imperial history are rife with such examples. And yet, as we commemorate Manitoba's 150th anniversary as part of Canada, I do think that we should be troubled by the way this "transaction" was carried out. Why? Well, it needs to be born in mind that the negotiations referred to above took place not in the early modern era when the conception of *Terra Nullius* was largely uncontested among Europeans and when virtually nothing was known of the land or its inhabitants. By the second half of the 19th century neither of these was the case.

Not to put too fine a point upon it, but by the late 1860s there was a roughly two-hundred-year record of interactions with many of the peoples of "Rupert's Land." So, this was most emphatically not *Terra Nullius* – and all three parties to the negotiations knew it only too well.

Since the 17th century the British Imperial Government had allied itself to various First Nations groups, signed treaties and, perhaps most importantly, had issued the Proclamation of 1763 – the bedrock upon which subsequent Crown-Indigenous relations would be based (although at the time the HBC territories were purposely excluded from the terms of the Proclamation). It had also involved itself in the affairs of the western interior on several occasions. These would include the 1749 "Dobbs" Inquiry into the affairs and conduct of the HBC; the 1803 extension of the jurisdiction of Canadian courts into parts of "Rupert's Land"; the actions of 1821 which effectively forced the amalgamation of the HBC and the rival North West Company and granted a new, exclusive license to trade (plus a grant of extraordinary powers extending all the way through to the Pacific Slope); the stationing of British Imperial troops at Red River in 1846; and, perhaps most famously, 1857's Select Committee of Inquiry, which would lay the ground work for the Canadian takeover of HBC territories in the not too distant future.

Meanwhile, the predecessor to the new Canadian state, the colonial administrations of the Canadas, had participated in the administration of "Indian Affairs" in the pre-Confederation era, and a local official had negotiated the Robinson Treaties, which would set the pattern for the "Numbered Treaties" of

7 Great Britain, *Rupert's Land and North-Western Territory – Enactment No. 3, Order of Her Majesty in Council admitting Rupert's Land and the North-Western Territory into the union, dated the 23rd day of June 1870*. Clause 14 – copied from the HBC's Deed of Surrender – notes, "Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the Company shall be relieved of all responsibility in respect of them."

the post-Confederation era.[8] Beyond this, Canada West was also the home of the Canadian expansionist movement which had been calling for the annexation of the Northwest since 1850; a movement which – among other things – pretended to know all about, and be appalled by, the HBC's lack of concern for the Indigenous peoples in its territories.

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But perhaps most notable of all was that when the new Canadian government commenced negotiating for control over HBC territories one of the two men it sent to London to represent Canada was William McDougall. Not only was he one of the most prominent Canadian expansionists but, while serving as Canada West's Commissioner of Crown Lands, McDougall had personally engineered the repossession of Indigenous reserves on Manitoulin Island – seeing Indigenous land rights as standing in the way of progress![9] So, one could argue that the Canadian state had sent out a representative who was well aware of Indigenous land rights – and saw it as his duty to limit them as far as possible.[10] Finally, we come to the HBC. The latter had a lengthy record of trade, alliance and even inter-marriage with its fur trade partners, and Lord Selkirk had personally participated in the signing of the first western treaty with Chief Peguis in 1817. The Honourable Company's inland officers and servants – if not its new shareholders and Board of Directors[11] – certainly knew that "Rupert's Land" was occupied by diverse and very real human beings who had a profound interest in their homelands – and they knew that these peoples had never conceded sovereignty nor ownership over those lands to any party.

Perhaps most remarkable of all is this: even the residents of the colony at Red River – the beachhead of settler colonialism in the Northwest – were ignored. And this is certainly the oversight which most fascinated Morton when he made his observation about the real estate transaction. Rather kindly, he ascribed no ill intent on the part of the Canadians and largely exonerated the Canadian Government and its representatives from any blame in the matter of not consulting the peoples of the western interior – laying it instead on the

8 Julia Jarvis, "Robinson, William Benjamin," in Dictionary of Canadian Biography, vol. 10, University of Toronto/Université Laval, 2003-, accessed January 1, 2021.

9 Suzanne Zeller, "McDougall, William," in Dictionary of Canadian Biography, vol. 13, University of Toronto/Université Laval, 2003-, accessed December 11, 2020.

10 McDougall would soon be named the first Lieutenant-Governor of the new territory – a position he never took up because of the Red River Resistance.

11 For most members of the International Financial Society who had bought out the HBC in 1863 focus was upon the southern arable portions of Rupert's Land. Their goal had been to see southern Rupert's Land become the home of a transcontinental railway and the scene of large-scale settlement. They had no broad institutional memory of the company's fur trade history.

Imperial government.[12]

Of course, it would be at Red River that the negotiators' failure to consult or consider the views of the inhabitants of Rupert's Land would yield the most immediate of results, the Red River Resistance of 1869-70. Led by Louis Riel, and supported both by the majority of the Métis, many of the English-speaking "country-born" and local representatives of the Catholic Church, this resistance would cause a brief halt in the transfer and would have an interesting constitutional/political result: Instead of the entirety of Rupert's Land and the North West entering Canada simply as a territorial/colonial appendage, the "Postage Stamp" province of Manitoba was created. This province, however, would be unlike any other member of Confederation. Once again, using Morton's words, Manitoba was to be the "Cinderella of Confederation," as the new province would not have control over its public lands or natural resources, the primary source of funding for most provincial governments – a situation that would remain unchanged until 1930.[13]

This exceptional constitutional status – one that would be shared by Saskatchewan and Alberta after they were created in 1905 – in addition to the impact of federal policies related to immigration/settlement, land, railway and taxation which seemed to favour eastern Canada over "the West" – would lead to what scholars later referred to as western alienation, a trope that was used to explain everything from the rise of Riel (not once, but twice) through to the populist, anti-federalist politics of Alberta throughout the 20th century.

There is no question that Manitoba and its population of immigrants – from Canada, Great Britain, continental Europe, and eventually from many other parts of the world – would be disadvantaged by its status and by some aspects of subsequent federal policy,[14] but this pales in comparison to the disadvantages which confronted the First Nations and Métis peoples of Manitoba and the western interior.

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The Canadian and Imperial governments knew, long before the transfer of 1869-70, that upon taking

12 Morton, *Manitoba*, 117.

13 It is of some note that it was Canada's other representative at the London negotiations of 1868-69, Sir George-Étienne Cartier, who was chiefly responsible for negotiating the peaceful end to the Red River Resistance and creating the new province of Manitoba, with certain guarantees of land rights for the Métis as well as linguistic and religious rights for the French-speaking and Catholic denizens of Manitoba.

14 I have covered this ground fairly extensively in a book-length study on northern development in Manitoba. See Jim Mochoruk, *"Formidable Heritage": Manitoba's Northern Resources and the Cost of Development, 1870-1930.* (Winnipeg: University of Manitoba Press, 2004.), Chapter 4.

"possession" Canada would have to acknowledge Indigenous land rights and negotiate land cession treaties, at least in areas that white settlers and business interests might desire for agricultural, transportation or other economic purposes. Canadian officials also learned – the hard way – that the aboriginal title and land rights of the Métis would have to be acknowledged and treated for, as witnessed by the terms of the Manitoba Act of 1870. Indeed, Canadian officials had begun their post-Confederation quest to acquire Rupert's Land in full knowledge that the transfer would only give the state the preemptive right to obtain Indigenous lands; the concept of aboriginal title was already well established in British common law and, like it or not, the Canadian government would be bound by "the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines."[15] However, by turning this territory over to a Canadian government which had every intention of extinguishing those rights as cheaply and as expeditiously as possible, the transfer of 1869-70 exposed the original inhabitants to levels of abuse and maltreatment that are almost too sad to contemplate. The history of the broken promises of Treaties One and Two, of the hardball negotiations of Lieutenant-Governor Morris in Treaties Three through Six, of the horrific terms of the Indian Act of 1876, and especially of the parsimony, neglect and callousness of the federal administrations of Sir John A. Macdonald as they "cleared the plains" in the 1870s and 1880s is all too well known – as is the subsequent and truly tragic history of Residential Schools and the systemic racism that has plagued Canadian society.[16]

Could things have been different? Perhaps – but not very likely. Morton implied that a more careful, consultative approach might have at least prevented the Red River Resistance. But when one observes the actions and motivations of the Macdonald and Mackenzie administrations of the 1870s and 1880s one cannot help but think that most things would have remained the same. The Canadian and British Imperial desire to have "Rupert's Land" remain part of the British Empire, to keep that territory out of the hands of Americans, and to open up the entire territory to white settlers and developers as quickly as was possible was so deeply entrenched – part of an absolute belief in the propriety of settler colonialism – that it is very hard to imagine another outcome. Indeed, it is even possible that if Canada had not acquired "Rupert's Land" in 1870 the Americans might have annexed it in the succeeding years. And, given the outcomes of American "Indian Policy," this might have had just as bad a result – arguably worse – for Canada's Indigenous peoples.

Playing at what if history is always dangerous – and beyond the scope of this essay. So, at the end of the day, I will conclude simply by noting that when I consider the acquisition and creation of Canada's empire (and my birthplace of Manitoba) I find more occasion for sad reflection than for celebration.

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15 Canada, "Address adopted by the Parliament of Canada, December 16 and 17, 1867" printed in Rupert's Land Order, Schedule A.

16 See for example, James Daschuk, *Clearing the Plains: Disease, Politics of Starvation, and the Loss of Indigenous Life*. (Regina: University of Regina Press, 2014) and John Milloy, *A National Crime: The Canadian Government and the Residential School System 1879-1986*. (University of Manitoba Press, 1999).