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ASSOCIATION OF METIS AND NON-STATUS INDIANS OF SASKATCHEWAN

Aboriginal Rights Research

Research Report

on

"THE NATIONHOOD CLAIM OF THE METIS -
THE HISTORICAL AND EMPIRICAL BASIS OF THE CLAIM IN 1870"

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THE QUESTION OF METIS NATIONHOOD

I Introduction

The question of Canadian Nationhood is one which is very much in the news these days because of the potential threat of Quebec independence. The Quebec independence claim is based on the French Canadian claim to sovereignty and nationhood and the belief that these two objectives cannot be safeguarded within the present Canadian federation.

In I869 when the question of the transfer of Rupertsland to Canada became a distinct possibility, the Metis people of the area also became concerned about their nationhood rights. It is, therefore, well to establish initially what people are speaking of when they see themselves as a nation and claim for themselves nationhood rights. In an earlier paper dated December 7, I978, the Association traced the various ways in which this concept is and has been used both historically and legally.^I A review of Metis history indicates the Metis people used this idea to cover the following attributes of their culture and national identity;²

- a) possession, use and control of their land and resources;
- b) a common language, religion and way of educating their children;
- c) other common institutions such as local or regional governments, their local laws and the laws of the paper, and the system of justice used in connection with the enforcement of these laws;
- d) common customs, values, usages and lifestyles;
- e) commonly recognized and accepted rights, privileges, etc.;

Given this particular frame of reference, it is then important to pose the question as to whether Canada is or was intended to be a nation or whether the intent was to establish a federation of British colonies in North America, each largely an autonomous territory with its own recognized nationhood rights. An examination of the B.N.A. Act and of deliberations leading to confederation would tend to suggest the latter.³ This is supported by a statement by Lord Haldane of the Privy Council in his inquiry into the legal status of the public domain, in Canada.

His findings in part were as follows:

"The scheme of the Act passed in 1867 was thus, not to weld the provinces into one, nor subordinate provincial governments to a central authority, but to establish a central government (in which these provinces should be represented) entrusted with exclusive authority only in affairs in which they had a common interest. Subject to this each province was to retain its independence and autonomy, and to be directly under the Crown as its head. Within these limits . . . its local legislature, so long as the imperial parliament did not repeal its own Act confirming this status, was to be Supreme"⁴. The principle outlined above was a central theme in the events in the Northwest.

The purpose of this paper is to examine whether there was a basis in fact for the Metis claim to nationhood, what legal and/or formal recognition was given to this claim, and the role this question played in the events which took place at the Red River in 1869-70 and in the Northwest in 1885.

II The Origin of the Metis People

Everyone is generally aware that the mixed blood native people had their origins in the relationships between the fur traders and the Indian tribes. However, there is a very limited understanding of how they developed as a group unique and separate from both the Europeans and the Indians, or of the significant role they played in the development of Western Canada in particular.

As far as the Association has been able to determine, the

only in-depth research and documentation ever undertaken by anyone is to be found in a publication, "The History of the Metis Nation in Western Canada". This study was commissioned and conducted by the Metis themselves through the Manitoba Metis Historical Society. The history was compiled and interpreted by Father Auguste-Henri Tremaudan, and was edited by members of the Metis Historical Society. This book examines the questions of origin and nationhood in detail. Much of the subsequent information is taken from this book and wherever possible has been corroborated from other source documentation.

Tremaudan traces the origins of the Metis to the early French explorers who, from the St. Lawrence River settlements, penetrated north to Hudson Bay and west to the Mississippi River in the mid 1600's. He speculates that some of the 30 Frenchmen who were part of an expedition which explored as far west as the Mississippi River in 1659 lured by the native way of life, stayed behind to live with the natives, and were the ancestors of the first Metis. The exploration of the area west of the Lake of the Woods, across the Great Plains to the Rocky Mountains began in 1727 under the direction of La Verendrye. Records show that many of the 50 Frenchmen who set out on a westward expedition in 1731 stayed behind to take Indian wives and to live with the Indians. The first fort at the Red River was established in 1737. This served as a jumping off point for future westward expeditions. As the explorers and fur traders advanced and built new posts inland in the next few years, they continued to take Indian wives and settle in the area. During this period, the new population of Metis was created and gradually began to become a significant factor in the Northwest. Settlements began to grow around the fur trading posts and, as early as 1754, a few agricultural experiments were attempted in the Carrot River Valley.⁵

By 1760 when New France was ceded to Canada, a substantial population of adult mixed blood native people were established in the West. With their knowledge of the country and their close contacts with the Indians, they were intermediaries between the new

English Company and the Indians. They acted as advisors, interpreters, traders, and formed a major work force for the new company. They had firmly established French as the working language of the area and had adopted in common many of the values and attitudes, as well as the lifestyle of their French ancestors.⁶

Although the Hudson Bay Company was granted its trading charter in Rupertsland in 1670, for the first 100 years it did its trading primarily at the mouths of the rivers emptying into Hudson's Bay. The first English explorers to travel as far west as the Saskatchewan set out in 1750 reaching as far west as the Blackfoot country. This expedition under Anthony Henry returned to the area for further exploration in 1754 and 1755. His records showed evidence that he found the French and Metis established at all of the major trading posts in the West. Prior to 1760, there is little evidence of any fraternization between the English explorers and traders and the Indian women. The emergence of the English half-breed population took place following 1760.

III The Development After 1760

After New France surrendered, the Company of New France also surrendered its fur trading activities in the Northwest. They were quickly replaced by an English company which operated out of Montreal known as the Northwest Company. It was, like its rival to be, the Hudson Bay Company, controlled by a group of Scottish adventurers and businessmen. The Northwest Company, however, very quickly recognized that if it was to take over the fur trading empire of the Company of New France, it must align itself with and employ the French and Metis traders and explorers who had worked for the French company. Therefore, the development of the Metis population in the Northwest continued.⁷ According to Tremaudan, it was during the next 100 years, as more traders of both the Northwest Company and the Hudson Bay Company arrived in the West, that the Metis population increased and began to take on a distinctive flavor.⁸

"At first the descendants of these original ancestors (French, Irish, Scots) did not constitute a distinct element in the life of

the young people. But during the following century, from 1760 to 1861, more especially in the fifty years from about 1760 to 1810, when the numerous Northwest traders and members of the Hudson Bay Company arrived, the diverse elements of the Metis nation became crystallized into one distinct unit."⁹

The practice of both fur trading companies was for the top administrators and those in charge of trading posts to generally be Scottish or English. The many employees, however, were usually Metis. The Hudson Bay Company also learned in time that if it was to successfully compete in the Northwest fur trade, it must employ the indigenous Metis in various aspects of its trade. Because of the way in which the Metis nation developed, the French influence became dominant in the activities of both Companies.¹⁰

Again Tremaudan sums this up as follows:

"At the beginning of the nineteenth century, the Metis Nation, then in its first flowering, comprised two distinct groups - the French Metis (Bois Brule) whose paternal language was French, and the English Metis whose paternal language was English. Since the Bois Brule were much more numerous and generally better developed, we must turn to them to discover their ancestral traditions and most outstanding in order to get a picture of their mentality. It is fitting, too, to add that in most cases, the ancestors of the English Metis left the country immediately the period of their service terminated, and abandoned their wives and children. The latter, the French often adopted and 'frenchified' them. This explains why so many French families have Scottish and Irish names."¹¹

In his history, Tremaudan also describes how the distinctive physical features, dress, occupations, and general life style of the Metis developed during this period. In the early period, the Metis shunned sedentary life for adventure and for the hunt. Being nomadic, he kept in contact with his relatives and kinfolk throughout the Northwest. Metis laws began to develop around the hunt, as did the sense of Metis community. Over the period of time, his work and the demands of his responsibilities resulted in his adopting a more sedentary life particularly during the cold winter months. He

began to build log houses where he lived during part of the year, while spending the summer in the more nomadic pursuits of hunting, trading, freighting, etc.. Metis people began to settle in carefully selected communities on lakes or rivers at sites where Edmonton, Batoche, Calgary, Prince Albert, The Pas, etc. are now located. In addition to being on good transportation routes, these sites provided fresh water, fish and access to game on a year-round basis.¹²

With settlements also came the beginnings of agriculture with river lots which grew some vegetables, sometimes a small amount of grain and which provided pasture and hay for a few livestock which were gradually accumulated. The elder members of the family and the children were often left behind to tend these small farms while the parents joined the hunt for their stable supply of meat, tallow, hides, bones, and other animal products. Meat and hides were also in demand and the kill of the hunt which they did not require for their own needs was prepared and used to trade for goods or sold for cash. It was during this period that many of the distinctive cultural characteristics of the Metis developed.¹³

Tremaudan summarizes this cultural development as follows:

"Although they esteemed peace, they cherished justice more highly. The abuse of force troubled them more than insults, ingratitude and offensive treatment. Metis idolized their rights, and ever refused to recognize the famous principle that is engrained in civilized people that 'might is right'. With the impeccable logic of their French and English ancestors, they retained their probity and their respect for the rights of others. Theft they considered a contemptible offence. This is shown in their hunting regulations: 'All men caught in theft will be led to the centre of the camp where everybody will call him "Thief" three times'.

This veneration for their personal rights, their disdain of theft, coupled with their missionaries training, explains their stubborn resistance to the Canadian authorities who seized their

land. Since they had logic and right on their side, nothing could make them surrender what was theirs. Just as the Frenchman, his paternal ancestor ..., and the Indian, ... his maternal ancestor, ... could reply regarding anything he might fear, 'I only fear one thing - that the sky might fall on my head.'

Old time Metis were fond of fun and merriment. Gay reunions, balls, feasts and weddings were fashionable. Strangers and voyageurs were always invited to the table at dances. During these evenings story tellers, musicians and singers told their wonderful tales or struck up French and Scottish refrains on their violins."¹⁴

IV The Hudson Bay Company - Northwest Rivalry and Merger - Its Impact on the Metis

During the period up to 1774, the Hudson Bay Company tended to direct its attention towards the north and to the northwest passage. In that year, it turned its attention to the south and in 1776 built forts at the Red River, Portage la Prairie and Brandon. Open rivalry now developed between the two companies in trade and exploration. This rivalry on many occasions developed into open conflict and, on occasion, wars.¹⁵

The Metis who found themselves in the employ of both companies tried to remain aloof from this conflict. However, although often related by ancestry and with strong bonds of kinship, they would find themselves on opposing sides of the conflict and drawn into hostile events. There was a tendency for the English half-breeds to be employed by the Hudson Bay Company and the Metis by the Northwest Company. However, this division of the Metis into two separate communities was far from complete, with famous Metis such as Cuthbert Grant leading the resistance against the Hudson Bay Company, while French Metis such as Boucher, Mandeville, St. Germain and Desjarlais found themselves in the employ of and on the side of the Hudson Bay Company.¹⁶

This open rivalry lead to murder, theft and the general debauchery of the Indians and of other settlers in the Northwest.

It also proved financially disastrous for both companies. The attempts by Lord Selkirk to establish white settlements in the Red River area between 1812 and 1816 lead to further conflict between the two companies and between the companies and the settlers who were seen as a threat to the fur trade. The Metis tended to take sides with the companies against the settlers. This was a period of conflict, confusion and legal battles affecting the Northwest territories. Lord Selkirk abandoned his efforts to settle the territory of Assiniboia in 1818.¹⁷

During this period, there also occurred the famous Seven Oaks Massacre in which the Metis under Cuthbert Grant participated. Tremaudan's history shows that the events at Seven Oaks happened more by accident and were not a brutally planned and premeditated event as historians would have us believe. One result of this event was the establishment by the British of a commission to look into the tragedy. One of the commissioners, W.B. Coltman, visited the area and recommended: one, that the British assume governing authority over the colony; and second, that the two companies be merged into one. This second recommendation took four years to accomplish but the merger did take place in 1821.¹⁸

Although the merger was good for the companies fur trade from a profit point of view, it was bad for the Indians and the Metis for several reasons. One, it eliminated competition in the trade and left the Indians and the Metis traders at the mercy of the Hudson Bay Company. In the case of the Metis, it posed the first threat of large scale unemployment for a great many. During the period of rivalry, the two companies generally built rival posts at key trading centres. Such rival posts existed at the Red River, at the Qu'Appelle lakes, in the Touchwood Hills, on the South Saskatchewan, at Edmonton and at numerous other points throughout the Northwest. With the merger almost half of the trading posts were closed and nearly half of the employment opportunities likewise disappeared.¹⁹

With many left unemployed and to their own devices to survive, an alternate economic base had to be found. The Hudson Bay Company

and the missionaries increasingly encouraged the surplus labour supply to take up farming particularly in the Red River. This accelerated the trend towards a more sedentary and settled life for many Metis. In the next forty years, they were to establish their river lots along the Red River from St. Boniface to Pembina and on the Assiniboia as far west as where Carberry, Manitoba is presently located. They also settled along other tributaries such as the Rat River and the Seine.²⁰

Smaller settlements were also established on the north and south Saskatchewan in the Prince Albert-St. Laurent area, at Edmonton, St. Albert and in the Qu'Appelle Valley. The major economic changes brought about by the merger of the two fur trading companies, although it at first brought wide scale distress, eventually lead to a consolidation of the predominant position of the Metis in the West. It also brought about a unification of the Metis community, and of its common institutional and cultural position.²¹

V The Period from 1821 to 1869

With the increasing number of Metis settling in the Red River area after the merger of the two companies, the church and its educational institutions played an increasingly more influential role in helping to shape many of the social and cultural characteristics of Metis life and on the form of government and social organization in the new settlements. The settlements developed on a parish basis around the churches and agriculture began to be taken as a more serious way of life. In 1823, the first livestock were brought in from the U.S.A. Some settlers began to devote full time to farming but the majority still depended on the hunt and on fishing. The farm produce provided a back up supply of food. Many Metis were also still involved in trapping fur-bearing animals on a part time basis.²²

With the increasing population in the Northwest outside the Red River and the establishment of a number of permanent settlements, there was a demand for imported goods of various kinds, and a need for greater outlets for products from the interior. These develop-

ments called for increased transportation facilities. In earlier times when residents in the area were almost entirely self-sufficient the means of transportation was up and down the water ways. The furs were brought out in this way and the few provisions required were moved inland in this way. With more goods going into the area for support of and trade with the population and to transport the bulkier buffalo hides, pemmican and other goods needed at the Red River, a new mode of transportation was required.²³

In response to this need, the Metis developed the Red River cart and a system of overland routes along which the freight was moved and over which trade took place. As a result, hundreds of Metis from the Red River area became involved in the freighting business. They moved goods from St. Boniface over trails to Fort MacLeod, the Qu'Appelle lakes, Prince Albert, North Battleford, Edmonton, St. Albert and many other points in the interior. This development also provided the communications system between Metis institutions in the Red River and the people in the interior. People also moved back and forth along these life lines between the Red River and the outlying settlements for purposes such as education, etc.. This development further strengthened the ties and bonds of culture and lifestyle between all of the Metis people in the territory which contributed significantly to the feeling of and the fact of Metis nationhood.²⁴

In the Red River, the Hudson Bay Company and the governor of Assiniboia controlled trade and to some extent civil government in the area. Outside the Red River area, the Hudson Bay Company was the supreme power in regulating trade. The Company also held courts to deal with civil and criminal matters arising out of relationships between the native (Metis and Indians) and the white traders and settlers. In other areas such as local government and relationships between people in the parishes, the people were left to their own devices. With the help of the church, they developed both formal and informal institutions and rules to govern their conduct. The laws of

the Buffalo Hunt or Laws of The Prairie and the laws of St. Laurent and St. Albert are examples of the extent to which many values, roles and relationships eventually became institutionalized. In the Red River the Council of Assiniboia, with some local representation, played a more significant role in all aspects of the life of the area.²⁵

Although the period was one of progress and prosperity on one hand, on the other it was a period of increasing economic control and domination on the part of the Hudson Bay Company. The merger of 1821 had given the Hudson Bay Company a monopoly over all trade in the area. The prices for furs, hides and pemmican were very low and the price for goods coming into the area were very high. This led the Metis to try to bypass the Hudson Bay Company and trade directly with American companies operating out of St. Paul in the U.S.A. The Company responded to these attempts by arresting anyone caught so trading, confiscating their furs, convicting them in court and sending them to jail.²⁶

The Metis chafed under these restrictions and eventually with the help of a famous Metis lawyer, Alexander Isbister Kennedy, were able to place a petition before the British colonial office bringing various charges and complaints against the Company. The result was that in 1846 a special committee was set up by the British colonial office to investigate the dealings of the Company in the Northwestern colonies. After lengthy hearings in London and a partial on-the-spot investigation by several commissioners who were sent to the Northwest to gather information and observe what was happening first hand, the Company was exonerated of any wrong-doings.²⁷ However, several significant changes took place as a result of these hearings. First, the Hudson's Bay Company was no longer able to enforce the terms of its trading charter which granted it a monopoly. This introduced competition into the trade in furs and goods. Although some of this trade was carried on with the Canadian colonies of the East, most of the competition was from the U.S.A.²⁸

The Hudson Bay Company was forced to pay better prices for furs and charge less exorbitant prices for goods, thus improving the

economic position of both the Indians and Metis. In addition, the trade to the South opened up new and now legitimate economic opportunities for some Metis as traders in their own right. It also opened a new overland freighting route from the Red River to St. Paul free of the previous arrest, seizure of goods and general harassment practiced by the Hudson Bay Company.²⁹

The second factor which emerged at the time was the possibility of a merger of Rupertsland with Canada as one of the Canadian colonies. The Hudson Bay Company was, of course, not in favour of such a move, seeing it as a threat leading to eventual settlement and destruction of the fur trade. In response, the Company and the colonial office agreed to give the Metis greater representation in the Council of Assiniboia. It appointed a number of additional key Metis leaders to the Council with the result that they formed a majority of the council members. The Council was allowed to run local and civil matters under the direction of the Governor of Assiniboia without interference from the Hudson Bay Company. As Tremaudan notes,³⁰

"the result achieved by this intervention, motivated by the Metis, was not limited to the degree of emancipation proclaimed in such positive manner. The Metis attitude had also the effect of making the Hudson Bay Company and its supporters in the Council of Assiniboia understand that now they must reckon with the French speaking population of the colony".³¹

Although Metis representatives which were added to the Council in the ensuing years were not elected, the members appointed were highly respected in the Metis community. They had good contacts in the community and espoused and worked for the Metis cause. The Metis were satisfied with this development and when the question of the renewal of the Hudson Bay Company charter for a period of 14 years came up in 1857, the Metis did not protest. They were generally prosperous, satisfied with how the territory was being governed and no longer advocated uniting with the Canadian colonies.³²

In 1858, the Canadian government sent a number of agents into the Rupertsland territory. Some like Dawson and Youle were to explore

the area and report to the Canadian government. Others like Schultz and Mair settled at the Red River and began to attempt to stir up the population of the area against the Hudson Bay Company and the Council of Assiniboia. This was done primarily through the publication of an English language newspaper called the NorWester, of which Dr. Schultz was editor. The new Canadian settlers also began to advocate the union of the area with Canada. They also worked to create dissension between the French and English Metis and the few English settlers in the area.³³

The excesses of these Canadians tended to offend the peace-loving Metis. It strengthened their distrust of the Canadians and did not endear the idea of union with Canada to them. It also made them fear for the protection of their rights and culture. When negotiations began in 1869, between the Hudson Bay Company, Great Britain and Canada for the transfer of the territory to Canada, the stage for conflict and resistance was set.³⁴

VI The Rupertsland Transfer

The Hudson Bay Company, by the mid 1860's, was finding that its fur trading empire in the Northwest was no longer as profitable as it wished. The ending of the trade monopoly had made its impact but, more important, the fur trade was declining. After several centuries of overharvesting, the fur-bearing animals and game were getting scarce in many areas and in some areas had all but disappeared. These two factors along with the growing population and demand for services in the Northwest raised the possibility that administering its far-flung northwestern empire would soon cost more than the expected profit from the fur trade.³⁶

As a result, the Company, with some prompting from the British Colonial office, entered into discussions with the fathers of confederation for the possible transfer of Rupertsland and the Northwest Territories to Canada. When the new Dominion was formed in 1867, an agreement in principle had already been reached with the Company for the eventual transfer to Canada of the area. The agreement involved a payment of 300,000 pounds by Canada, to cover

the legal and other expenses incurred by the Company during the negotiations and transfer process. The Company was also to retain its posts and a parcel of land around each post. In addition, it would be allocated 5 percent of all the land in the fertile belt.³⁷

This was a verbal agreement which required the Company to cede its charter to Great Britain and Great Britain to transfer the territory to Canada. Section I46 of the B.N.A. Act made provision for the area to become part of Canada subject to certain Orders in Council, an address to the Queen by the Canadian parliament requesting the transfer, and the conclusion of the transfer agreement which would become a schedule to the enabling Order in Council. The Orders in Council passed under this section were to have the same effect as if they had been passed by the parliament of Great Britain and Ireland. The actual surrender to Great Britain by the Company was effected by the Rupertsland Act. The transfer to Canada was to be finally effective on July 16, 1870.³⁸

In all of this process, no one ever consulted the Metis people of the territory or, for that matter, anyone in the territory. The Metis were looked on as part of the "uncivilized" Indian population whose rights the British attempted to protect with a clause in the Transfer agreement indicating Canada would become responsible for compensating the Indians for any loss of land.³⁹ Although the Metis had heard of the transfer proposals and were anxious about their rights, they took no immediate action against the transfer. If Canada had been able to wait for the actual transfer arrangements to be completed before it tried to impose its presence on the territory, the outcome may have been much different. However, as early as 1886, McDougall sent Snow to the area to make plans for the building of a road from the lakehead to the Red River.⁴⁰

Canada also in other ways began to exert her authority in the Red River settlement. In the summer of 1869, surveyors, under the direction of Colonel Dennis, were sent to the area to begin surveying the land. When the surveyors began surveying the land of Andre Nault of St. Vital, the Metis decided they were going too far and stopped the survey and forced the surveyors to leave.⁴¹

These activities that were taking place were opposed not only by the Metis but also by the Governor of the Hudson Bay Company. When Governor MacTavish discovered Snow was coming to the area to build the road, he wrote to his supervisors in London and informed them of "these illegal and unusual acts". The Deputy Governor of the Hudson Bay Company passed the protest to the British Colonial office indicating the Company would be prepared to issue a permit to the Canadian government to build a road if they requested such of them.⁴²

This protest and the suggestion was communicated by the British Colonial office to McDougall and Cartier. These two gentlemen replied in detail by letter on January 16, 1869 and concluded their letter with the following paragraph:

"The Government of Canada, therefore does not admit, but, on the contrary, denies and has always denied the pretensions of the Hudson's Bay Company to any right of soil beyond that of squatters, in the territory through which the road complained of is being constructed."⁴³

The Company decided to leave the question of trespass in the hands of the British authorities and MacTavish allowed Snow to proceed with the road. Negotiations for the Transfer proceeded and the actual terms of the Transfer were agreed to by the Hudson Bay Company in April of 1869.

VII The Metis Claim to Nationhood & the Resistance to the Transfer

The Canadians, who rejected the claim of the Hudson Bay Company to the Northwest and Rupertsland gave no indication that they even recognized there were any inhabitants in the Northwest other than the Indians. It is quite clear that the provision regarding Indian rights was insisted on by the British as part of its long established policy of dealing with the Indians and at the insistence of the Hudson Bay Company to ensure it would not be burdened with settling future Indian claims.⁴⁴

The Metis made their first protest against the action of the

Canadian government in the summer of 1869. Riel spoke with Boulton about the trespassing of his survey crews and explained the potential problems involved. Boulton indicated he had his orders and must follow them. The next confrontation occurred in October, 1869 when Riel and others stopped the surveyors on Nault's land and made them leave. Shortly following this event, the Red River inhabitants heard that Canada had appointed a Governor, the Honourable William McDougall, who was on his way to take over the territory.⁴⁵ The Metis met in assembly as was their custom when decisions must be made. Tremaudan describes these events as follows:

"They met in assembly, discussed all aspects of the situation and organized to oppose forcibly both the invasion of their country and the violation of their sacred rights, since neither the one side nor the other had dreamed of consulting them."

This assembly had practical results. Following their own esteemed traditions, the Metis organized an association and chose leaders. John Bruce, at whose home the meeting took place, was named president, and Louis Riel secretary. On October 21, ten days after the St. Vital incident, the new association which was called "The National Committee of Red River Metis", drafted a notice addressed to Mr. McDougall and worded in terms which revealed its author's feelings. The notice read as follows:

'The National Committee for the Red River Metis gives notice to Mr. McDougall not to enter the Northwest Territories without special permission from this committee. By order of the president, John Bruce and secretary, Louis Riel.

Dated at St. Norbert, Red River
October 21, 1869.'

The notice was entrusted to a Metis delegation led by J.B. Ritchot, who were to place it in Mr. McDougall's hands.⁴⁶

When the Council of Assiniboia heard of the Metis action, they asked for an explanation and tried to persuade them to give up their contemplated action. However, the Metis were firmer than ever in their resolve to stop McDougall when they heard that he was bringing

arms for the partisan Canadians already at the Red River. On October 30, the order was delivered into his hand. After several attempts to enter the country and proclaim his authority, McDougall retreated to the American side of the line where he was to remain encamped for the next several months.⁴⁷

The next step taken by the Metis was on November 2, 1870 when they decided it was time to take control of Fort Garry. This feat was accomplished without any hostilities and Riel and his army of Metis were now in control of the settlement. There are several authenticated statements to indicate that Governor McTavish encouraged and supported Riel's action. However, at the same time, he was protecting his own position by writing to McDougall welcoming him and disavowing any knowledge of Riel's intentions.⁴⁸

The NorWester, the propaganda instrument of the Canadians, continued to attempt to stir up the local populace but Riel, concerned about the possibility that they would succeed in stirring up the English speaking population, also moved to take over control of the newspaper. Riel also called together a delegation of 24 representatives at the court house on November 16, 1869 to discuss the actions taken and to plan for the future. The delegates met again on November 17 and 22 but no substantial agreement on what joint action should be taken came out of these meetings. McTavish had issued a proclamation on behalf of the Hudson Bay Company and the Council of Assiniboia exhorting everyone to return home and let events take their course. The English delegates in particular, still loyal to the existing government in the territory, refused to join the Metis in any actions. The delegates arranged to meet again on December 1. Still no agreements were reached.⁴⁹

During the course of these events, Dr. Schultz and his Canadians continued to attempt to influence the passions of the English against Riel. They were also in constant contact with McDougall, planning and scheming how they could exert their authority over the settlement. When all attempts, including an offer by McDougall to discuss the claims of the Metis with Riel at Pembina, failed, McDougall resigned his commission and left for Canada on December 18. Schultz

and many of his followers, who all this time had been fomenting trouble, were in the jail at the Fort and Colonel Dennis had fled back to Canada.⁵⁰

One of the important questions discussed during the meeting of the English and French Metis was the establishment of a provisional government. However, Riel decided not to push this project but to support McTavish and his Council for the time being. Macdonald responded to the problems by sending Donald Smith, a former Hudson Bay Company employee, as a commissioner to investigate what was happening in the territory. Riel called an assembly at Fort Garry on January 19, 1870, at which approximately 1,000 delegates showed up. Dissatisfied with what Smith had to say, the assembly did agree to select 40 delegates (half English, half French) to meet to work out an agreement on a common course of action for dealing with the Canadian government.⁵¹

Riel again raised the possibility of establishing a provisional government which had first been raised at meetings in November. The English delegates, however, hesitated wanting first to determine that they were not usurping McTavish's authority. A delegation was sent to meet with McTavish to determine whether he was still governor and whether he would continue to be. The Hudson Bay Company had relinquished their charter to the British crown on November 19, 1869 and therefore had no more claim to legal jurisdiction in the territory. McTavish responded to their questions as follows:

"For the love of God, form a government. I no longer have either power or authority."⁵²

This statement removed the last barrier to agreement on a joint course of action by both the English and French Metis.

VIII The Provisional Government

The provisional government of Rupertsland was formed on January 25 and an executive was elected. The executive consisted of president - Louis Riel, secretary - Thomas Bunn, treasurer - W. Donaghue, Chief Justice - James Ross, Postmaster - A.C.B. Banatyne, Adjutant general - Ambroise-Dydime Lepine, secretary -

Louis Schmidt. Tremaudan comments on this event as follows:

"It was clear that no government existed in the Red River colony other than the provisional government of which Riel had been instigator. He was now its leader by the nearly unanimous vote of a regularly constituted convention, one conforming to the clearly expressed wishes of Ottawa's special envoy, Donald A. Smith, in response to a formal invitation from the "Governor" of the country."⁵³

The provisional government began its work on February 9, 1870. Many matters ranging from the list of rights and how should Rupertsland enter into confederation to the question of what to do with the prisoners, had to be taken up. Smith met with the assembly and reviewed their list of rights with them, leaving them with the impression that the Canadian government would be pleased to ratify the requested rights.⁵⁴

Meanwhile, Dr. Schultz and his cronies who had escaped from Fort Garry at Christmas were busy raising an army of English settlers and sympathizers at Portage la Prairie with plans to lead an attack on Fort Garry. There is evidence that they received active support from Donald Smith, who on April 12, 1870, sent the following dispatch to Ottawa:

"If these men (the rebels), well armed and organized had been ready to support the well disposed French group (Pierre Leveille, Charles Nolin, etc.) when they acted in the middle of January or the beginning of February, order would have been established, and the transfer to Canada achieved without the necessity of exchanging shots. In the actual conditions, the rising was not only thoughtless - but useless - for, without its intervention, the prisoners would certainly have been released ... up to a point, my sympathies were on the side of the rebels, the portage men whom I believe to have been inspired by the best of motives."⁵⁵

The English speaking supporters marched on Fort Garry to release prisoners being held there. On the way to Fort Garry a retarded Metis, Norbert Parisien, became frightened and attempted to escape his hiding place. In the confusion he shot John Sutherland

and he in turn was beaten to death by Sutherland's compatriots. The united support for the provisional government, for a time, began to disintegrate with the English party refusing to recognize the provisional government. After several exchanges of letters between Riel and the English party, the latter decided not to press the hostilities further and sent their men home. Riel, not knowing about this, proceeded with a military court where Major Boulton and three of his lieutenants were tried, convicted and condemned to death. The three lieutenants were pardoned and Boulton's life was also spared when he agreed to take an oath saying he would never again take up arms against the provisional government. The troublemaker, Schultz, meanwhile had fled the territory and returned to Ontario.⁵⁶

Peace was now restored and the English parishes selected delegates to send to a new convention. The other event which helped convince the populace of the area that Riel was in control and should be supported was the execution of one Thomas Scott. Scott had been one of Schultz's supporters and was a fanatical Canadian and orangeman. He refused to leave the territory, even when Riel offered to release him. Riel finally decided he had no choice but to allow the execution to proceed. This event, although it strengthened Riel's hand at the Red River, was to be the cause of great political problems in Canada for Macdonald and a motive for revenge leading to Riel's eventual execution in 1885.⁵⁷

Did the Canadian government acknowledge the legality of the provisional government as the representatives of a self-governing colony and deal with Riel and his supporters on this basis? This is a key question in determining whether Rupertsland, under the Metis, entered confederation as a nation or was simply acquired as Crown property by transfer from the Crown. Donald Smith, although he dealt with the provisionals, worked with them on their bill of rights, etc., was later to deny that he recognized the legality of the government and even recommended a strong military force be sent to the area to protect the country, even though there was no evidence that it needed protecting.⁵⁸

Macdonald and the Canadian government were equally ambivalent and contradictory in their dealings with the provisional government. In debates in the House of Commons in April, 1870, Mr. Dickey, a member of the opposition, read into the record a statement by Bishop Tache exhorting both the English and the French to abide by the laws of the established government in the Red River. Bishop Tache was acting as an official envoy at the request of the Canadian government. Therefore, the question was raised as to whether this was an indication that Macdonald recognized the legality of the provisional government. A minister, Mr. Campbell, denied first that Bishop Tache was an envoy and second that the Canadian government recognized the authority of the provisional government.⁵⁹

Campbell, in the same debate, however, acknowledged that Scott's execution had taken place in a foreign country and the Canadian government had no jurisdiction. However, in earlier debates on Scott's execution in March, Macdonald himself repeatedly referred to the authorities at the Red River as the provisional government. Macdonald also agreed that the provisional government should choose delegates to come to Ottawa to negotiate the terms on which Rupertsland would enter Canada. He guaranteed the safety of these delegates and by entering into negotiations with them in fact recognized them as the official representatives of the territory with the authority to speak on behalf of the people of the area.⁶⁰

IX The List of Rights

The Canadian government, as well as willing historians, have been content over the years to convey the mistaken notion that the provisions for land allocations in the Manitoba Act and later in the Dominion Land Act were to deal with the question of the Indian title of the Metis. Indeed this terminology appears in both Acts, leading to the claim of the Canadian government that the aboriginal rights of the Metis have been extinguished. An examination of the facts, however, indicate that the question of Indian title for the Metis was never raised by them although their list of rights did provide for treaties to be entered into with the Indians as a

condition of the territory entering confederation.⁶¹

The Metis began working on their list of rights in late 1869, and the list underwent a number of revisions before it was adopted by the provisional government as the basis for negotiations with Ottawa. There seem to have been a number of lists of rights in circulation. One list was appended to Donald Smith's Report to Josephe Howe and is included in the Sessional Papers. Tremaudan, in his book, includes yet a different list which he claims to be the official list given to the delegates and which formed the basis of the official negotiations with Ottawa.⁶³

Chester Martin in his study of the natural resources question in 1920 claims that there was another list of rights, a second one, drawn up by Bishop Tache and the clergy which he claims formed the basis of Richot's negotiations in Ottawa. This list was apparently published in the Free Press December 27, 1889.⁶⁴ In comparing it to the above list, we find the two are the same. The list which Martin claims the delegates took to Ottawa with them is either an earlier list or a different translation. In all, it is said that the list went through nine revisions before the list used by the delegates was approved.

It is of interest to note that in none of the lists of rights did the Metis raise the question of aboriginal claims for themselves. The major points in the final lists can be summarized as follows:

- a) provincial status;
- b) representatives in the House and Senate;
- c) guarantee of all rights, property, privileges, customs, usages, etc.;
- d) a number of references to the tax system and the public debt;
- e) separate schools for the two religious denominations;
- f) the vote for all men, except the Indians;
- g) control by local legislature over N.W.T.;
- h) treaty with the Indians;
- i) rail communication;
- j) use of French and English in legislature, courts, and all publications of governments;
- k) bilingual judges and lieutenant-governors.

Many of the clauses deal with the question of nationhood rights. One of the key provisions which would provide the basis for meaningful self-government for the new province was clause II, claiming full control over the territory (land and resources).

Each delegate left for Ottawa armed with a list of rights plus a letter of instructions from Thomas Bunn, the Secretary of State of the provisional government which stated as follows:

"Dear Sir:

With this letter you receive your commission as well as a copy of the conditions and terms necessary for the people of this country to consent to enter Canadian confederation. You will proceed to Ottawa, Canada, as quickly as possible and, on your arrival, with the other delegates, you will get in touch immediately with the Dominion Government on the subject of your commission.

Regarding articles I, 2, 3, 4, 15, 17, 19 and 20, take cognizance of the fact that you will be at liberty - in concert with your co-commissioners - to exercise discretion, but remember that since the entire confidence of these people is placed in you, in the exercise of this discretion, you must do everything possible to obtain for them their rights and privileges which, until now, have been refused. Insofar as the other articles are concerned, they are obligatory.

Further, I must remind you that you have no power authorizing you to conclude definite arrangements with the Canadian government; that all negotiations between you and that government must first receive approval of the provisional government and be ratified by it before Assiniboia becomes a province of Confederation.

I have the honor to be, Sir

Thomas Bunn" 65

Donald Smith had responded positively to most of the points in the list of rights, on the question of control over public lands he said justice would be done. Having now committed their conditions to paper, selected their delegates and sent them off to Ottawa with instructions which were to form the basis of their negotiations, the

people of the Red River anxiously awaited the results.

X The Negotiations at Ottawa

The record of Ottawa's negotiations with the people of the Red River, is a story of expediency, deceit and downright treachery by the government. The record is quite clear that the Canadian government believed that it had a sort of prior claim to the British territories in the Northwest. For example, Joseph Cauchon, Commissioner of Crown Lands, speaking for the Canadian government on the renewal of the charter of the Hudson Bay Company in 1857 clearly set out Canada's case against recognizing Hudson Bay Company jurisdiction in the Northwest. He carefully develops the case to show that the territory, all the way to the Pacific Ocean, was part of New France. Therefore, as part of the 1760 cession of New France to Britain, he claims the territory became part of Canada. Although that argument was not accepted by the colonial office, it is clear that the Canadian government only negotiated with Great Britain and the Hudson Bay Company for the territory in 1868 out of loyalty to the British crown and as a matter of expediency. It was less expensive for Canada to negotiate than to try to exert her claim by force.⁶⁶

Macdonald, however, was a very clever fellow and maintained the myth that his government viewed the Northwest as foreign territory. He could trot out this argument whenever the opposition criticized the government for taking no action to protect Canadians and Canadian interests in the area.⁶⁷

Ottawa's first negotiations with the people of the Red River were through Bishop Tache. He was on his way to a Vatican Conference in Rome at the time. On receiving an urgent request while in Paris from the Canadian government to return, he did so. Cartier and Macdonald asked him to intercede with the people of the Red River to try to bring about a peaceful solution to the troubles at the Red River. In return for Tache's promise of help, Macdonald and Cartier made numerous promises. These included a complete armistice, amnesty for everyone participating in the "so called" uprising,

a promise to respect the wishes of the Metis as made known through their delegates (the list of rights), a promise that the Canadian government would cover the expenses of the delegates and ensure their safe journey, etc. Tache, however, neglected to get anything in writing from the Canadian government. Macdonald later quite conveniently forgot some of his promises or manipulated events so that the blame for violations shifted to others.⁶⁸

With the Bishop's return to the Red River, the delegates were chosen. Judge Black, representing the white settlers, Alfred Scott representing the English halfbreeds, and Father Ritchot representing the Metis. The latter became the main spokesman and negotiator for the people of the Red River, as Judge Black (who never returned to the Red River) and Scott, were only too eager to accept terms proposed by Canada for the entry of the territory into confederation. With the list of rights adopted by the people of the Red River, the delegates were chosen and they left for Ottawa; Scott and Ritchot on March 23 and Judge Black the following day.⁶⁹

Although safe passage had been guaranteed, the opposition were concerned for the safety of the delegates. Mair and Schultz, who had both returned to Ontario, were busy going around among their orange compatriots stirring up the wrath of the orangemen against the Metis. The orangemen were a powerful political force in Canada, one which Macdonald could not ignore and one which he found it necessary to break solemn promises to appease. Campbell, on April 8, 1870, ensured the members in the House that he believed the delegates would reach Ottawa without being molested.⁷⁰

On April 11, 1870, shortly after crossing the border to Ontario, they were arrested on a warrant issued by Thomas Scott's brother and taken to jail in Toronto. Their release on bail was obtained shortly and then they travelled on to Ottawa. Arriving here they were again arrested and held in jail for seven days. Charges were brought against them and heard in court April 22, when the judge dismissed these charges.⁷¹ Although now free to negotiate, it is clear that Macdonald could have provided an escort

and prevented these events. However, the arrests undoubtedly intimidated the delegates and contributed to Macdonald's scheme to negotiate from a position of strength.

On the day of their release, the delegates first met with Cartier. The following day, they met with Cartier and Macdonald and on April 25 they met with these gentlemen again. Although having previously promised to deal with the delegates, Macdonald was now careful not to legally recognize them. He didn't want to acknowledge the legitimacy of the provisional government and therefore appear to recognize the legality of Scott's execution, for fear of further inciting the orangemen. Ritchot, who smelled a rat, asked for official recognition of the delegation by the government but was ignored. Ritchot refused to negotiate and on April 26, Macdonald finally gave the order to recognize the delegates officially and summonsed the delegates to a conference with himself and Cartier.⁷²

Ritchot's diary indicates that on most questions, the negotiators were either able to agree or to reach a compromise with some minor rewording of the rights. The negotiations went on until May when a final agreement was finally reached. On May 3, the Governor-General telegraphed Lord Granville that the negotiations were completed. The Canadian government, however, had not sanctioned the list of rights. There was never a formal or official agreement signed. Also, the Provisional Government had added a provision to the list of rights which they relayed by telegram. It was that Rupertsland should enter into the Dominion as the province of Manitoba.⁷³

In the negotiations, problems developed around a number of points. Article one called for all of the Northwest to enter Canada as one province. Cartier and Macdonald, although not objecting to the idea of provincial status, felt that the area at a minimum would have to be divided into several provinces. In an early draft there had been a proposal that just the district of Assiniboia be the new province, with the rest of the area to be under the control and governed by the legislature of the new province. This, too, was

unacceptable to Cartier and Macdonald and the compromise finally reached was that the Lieutenant-Governor of Manitoba would also be Lieutenant-Governor of the Northwest Territories, and via this arrangement the new province could have some limited influence on the rest of the Northwest Territories. (This was one of the articles on which the delegates were authorized to negotiate).⁷⁴

In connection with article five, Macdonald raised the question of the Indian title of the Metis. Interestingly the charter of rights made no direct reference to this matter nor had it at any time been raised by the delegates. It must be assumed that the Metis people assumed that if article five and eleven were accepted they would have the control necessary, so that their own local legislature could deal with and provide such rights. (Articles 5 and 11 were not to be subject to negotiations) According to Ritchot's diary, Macdonald raised the issue by suggesting that since the Metis had and would have, under the proposed charter, full citizenship rights, the right to vote, etc., they surely could not also claim Indian title.⁷⁵

Ritchot seems to have reacted with some surprise to this suggestion. His response, however, indicates that he and the Metis operated on a basic principle, i.e. citizenship rights and Indian title are two different things, the one does not affect the other. He also distinguished the question of Indian title from the question of nationhood right to control land and resources. It was the latter that the Metis lay claim to. They were, however, only asking for those rights and privileges afforded the other provinces of confederation and not any special privileges for themselves.⁷⁶

Macdonald dropped the issue and it was never raised again during the negotiations by any of the delegates based on Ritchot's account. Therefore, the embodiment of this concept in the Manitoba Act is a puzzle to historians since it did not relate to the bill of rights. Nor is it clear how it got linked to the 1.4 million acre land reserve set aside for the Metis people. It would appear to have been included as a matter of expediency by the Canadian

government and there is no evidence that the delegates at Ottawa or the Metis understood the full implications of this clause. This is another example of government treachery practised on a trusting populace.

XI The Major Barrier in Negotiations -
Control of Land and Reserves

Clause II of the Bill of Rights proved to be the major stumbling block in negotiations between Ottawa and the Red River delegates. Cartier first led the delegates to believe that the new province would have the same rights in this regard as the other provinces. However, when Macdonald got involved in the negotiations, he refused to make any concessions on this matter. The Canadian government had determined in advance that it wanted full control over all land and resources in the Northwest and would administer them for the beneficial interest of Canada. Macdonald basically cited three reasons for his position. First, Canada must have control of the land so it could ensure the building of the railroad to the Pacific.⁷⁷ (The government, in fact, already had devised a scheme that all railroads in the Northwest were to be built from the proceeds of land sales and it eventually allocated to the railways 100 million acres of land for this purpose). It is of interest here to note that British Columbia, which came into confederation in 1873, retained control of its own land and resources and ceded to the Canadian government lands on each side of the railway right of way for the purposes of building the railroad. Not only did the question of B.C. giving up such control not come up in the negotiations, the province in fact received an annual cash subsidy in return for setting this land aside for the railways.

The second reason given by Macdonald was that the government had to retain control of the land so it could extinguish the Indian interest in the land and provide the necessary compensation. Here it must be noted that the government transferred large areas to Ontario and Quebec, the last such transfer taking place in 1912.

The transfer acts provided that the provinces would be responsible to conclude treaties with the Indians in the areas concerned. The control of land and resources was turned over to the provinces immediately. In the case of Quebec, the settlement with the Indians was not to take place until the 1970's.⁷⁸

Finally Macdonald argued that the land could not be turned over because the government wanted to institute a free homestead policy. It was always possible that the province would place controls on land which would restrict the flow of immigration and therefore interfere with Canada's grand design for filling up the western provinces and converting them to agriculture.⁷⁹

Ritchot at first was firm on this question since it was seen by the residents of the Red River as putting the new province on a similar footing with the other provinces. In addition, Ritchot had no authority to negotiate on this particular clause in the charter of rights. However, when Macdonald was adamant in his position and it seemed negotiations might break down, Ritchot began to reconsider the position of control over land and resources. According to his diary accounts, he indicated to Macdonald and Cartier that the residents might be prepared to give up their claim to provincial control over land and resources if there was adequate compensation. After some discussion, it was agreed that the compensation should be in the form of land which could be allocated to the children of the Metis. It had already been agreed earlier that those Metis who already had land would have their titles to the land confirmed.⁸⁰

Macdonald first offered 200,000 acres. Ritchot found this as being completely inadequate and offered to settle for 3 million acres. Negotiations broke off for three days and when they resumed negotiations the amount of 1.4 million acres was agreed to be set aside as compensation for agreeing to give up control over land and resources. The records are not clear on how that amount of land was settled on. Neither is it clear how Ritchot saw this allocation as compensation for the loss of control over lands, since there was no provision for any cash compensation to the new province to carry out its government and public works responsibilities.

Since the allocations to individuals were to be free, the province would receive no compensation from that source. It is, however, clear from Ritchot's diary that he understood the land reserves to be compensation for giving up provincial claim to the land.⁸¹

Chester Martin in 1920, in preparing Manitoba's case for the claim to her natural resources, makes the following points:

- a) the constitutional principles underlying this claim are much older than the Dominion of Canada. They formed part of British Colonial practice which encouraged self-government by her colonies and which recognized that in order for self-government to be meaningful, the self-governing colony must have financial resources. The main sources of such revenue for colonies in Canada was the land and resources;
- b) an exception to the basic principles set out in Section 109 of the B.N.A. Act was only made in the case of Manitoba (and later Saskatchewan and Alberta);
- c) the denial was so exceptional as to be an anachronism even in 1870.⁸²

Did Ritchot understand the implications of what he was doing? Did the residents of the Red River consent to this important omission from the Manitoba Act? On the first question it would appear he was not familiar with constitutional principles and didn't appreciate the tremendous importance of his concession. However, from his own diary there can be no doubt that he did not confuse the concession or the land grant with the question of aboriginal rights if indeed he was even familiar with that concept.⁸³ On the second question, there is no evidence that he consulted with anyone other than his two colleagues. These two delegates left no records of the negotiations and therefore, it is not clear what they understood. However, when Ritchot reported to the provisional government of June 4, 1870 he did touch on and explain the concept of Indian Title and the land entitlement of the Metis. The delegates approved the Manitoba Act but there is no evidence that they understood what giving up control of the land would mean to the future of their province.⁸⁴

Ritchot stayed in Ottawa until the Manitoba Act was passed and then he returned to the Red River. He reported on June 4, 1870 to an assembly of the provisional government. He interpreted what had taken place and the contents of the Act. In particular, he promoted the acceptance of the 1.4 million acre reserve. It is not known whether any of the delegates had access to or studied copies of the Manitoba Act prior to the assembly. Satisfied with Ritchot's explanation and anxious for a return to more normal conditions, the assembly approved Ritchot's report. It disbanded the provisional government as a special assembly by granting Riel the right to govern and to maintain law and order in the area until the Lieutenant-Governor Archibald arrived on the scene.⁸⁵

XII The Manitoba Act

As indicated, the Canadian government did not formally approve the list of rights nor was there any agreement signed by the negotiators for Canada and those for the Red River. Macdonald chose to deal with the entry of Manitoba into confederation by way of a special act of parliament which became known as the Manitoba Act. There seems to have been no particular merit for having selected this method of union with Manitoba, since Section 146 of the B.N.A. Act already provided for Rupertsland, the Northwest Territories, and other colonies such as British Columbia and Newfoundland to enter confederation. This could be done by an address from the Canadian government to the Queen and subject to any orders in Council passed by the Canadian cabinet. On the approval of these terms for admission by the British parliament, they would have the same effect as if they had been enacted by the British parliament.⁸⁶

There was one interesting provision governing the Queen's approval of the conditions, that was that they be "subject to the provisions of this Act" (B.N.A. Act). This seems to suggest that the other provisions of the Act such as Section 109 (control of land and resources) and other provisions which applied to all provinces must also apply to Manitoba. However, the way Section 146 is drafted, special conditions or terms for matters not covered by

the B.N.A. Act could be set for any new province or territory subject of course to the approval of the founding provinces and the British parliament. The Red River residents were asking for some special conditions, some of which applied to Quebec but not to the other provinces. Some such as those regarding the question of Manitoba representation in the Senate and House of Commons, responsibility for the public debt, etc. were of course unique to the new province.⁸⁷

The Manitoba Act enabled the Canadian government to solve the problem it was having with the residents of the Red River under the pretense of granting provincial status and of recognizing nationhood rights. In fact, Manitoba was more of a colony than a province, being denied certain essential rights and privileges which all other provinces had been granted. The most important of these was the beneficial control of the land and the resources. Without the Manitoba Act, it seems safe to assume that this right would have been necessary to make Manitoba's entry legal under the constitution.⁸⁸ At it was, the Manitoba Act after its passage was quickly recognized as being ultra vires of the B.N.A. Act. Therefore, the Canadian government moved quickly to rectify this glaring problem by pressuring the British parliament to pass the Constitutional Act of 1871, which specifically provided for Manitoba's entry into confederation and legalized the exceptional conditions contained in the Act.⁸⁹

The Constitutional Act was later used as the vehicle for creating two new provinces in the Northwest, Saskatchewan and Alberta, which provinces were similarly denied the beneficial control of the public domain. When the land and resources question was carried to the supreme court in 1930 by Saskatchewan, the Court ruled in Canada's favor on the grounds that the Act of 1871 made these special arrangements for the prairie provinces legal and constitutional.⁹⁰

Possibly the most far reaching effect of having given up control of the land and resources was on the other nationhood rights of the Metis. This included special provisions regarding

language, religion, justice, civil law, education, etc.. Although most of these were incorporated into the Manitoba Act, without control over the flow of immigration and over commercial developments, these rights were to be largely eroded by the early 1900's. In some cases, such as the Manitoba School Act, the legislature simply passed legislation which contravened the Manitoba Act. These actions were never challenged by the French speaking population because they were outnumbered and intimidated. In other cases, requirements such as court proceedings in both languages, etc., practices were simply discontinued. Only today are some of these actions being challenged as illegal by the French speaking population.

The Metis did not foresee the consequences of the concessions they had made in Ottawa. The government delegates on the other hand seem to have been fully aware of the future course of events. Indeed there is evidence that the Canadian government planned matters this way. In doing this, they had the willing support and collaboration of the French members of the government. For example, in the 1870 House of Commons debates on the Manitoba Act, Cartier made the following statement in response to a suggestion that the residency requirement for voting in the Manitoba election be only one month rather than the 12 months proposed:

"that was simply universal suffrage, and calculated to drown out the halfbreeds".⁹¹

Although Cartier here seems to be attempting to protect the Metis cause, his statement indicates very clearly that he understood what would happen in the future, given the governments' plans to develop a liberal immigration policy and to encourage mass migration of settlers to the West. We must remember that as early as 1868, the government was already laying the groundwork for this policy by carrying out illegal road construction and surveys in a territory it had not yet acquired. It will be recalled that it was the surveys that brought the resistance at the Red River to a head and resulted in the Metis organizing themselves to protect their rights.

The new province of Manitoba was literally of postage stamp size. It included an area which was smaller than the original area of Assiniboia purchased by Selkirk from the Hudson Bay Company. The area was approximately 100 miles from east to west and 100 miles from south to north or approximately 10,000 square miles. This compares to Manitoba's present size of approximately 300,000 square miles. All the rest of the vast territory known as Rupertsland and the Northwest Territories were joined to the union as colonial territory.

The Act incorporated most of the provisions in the list of rights, with the exceptions already noted and contained the provisions for the land reserve and allocation not included in the list of rights. The question of whether the provisions of Section 31 of the Manitoba Act extinguished any aboriginal claim of the people is being examined by the Manitoba Metis Land Commission. However, it is clear from House of Commons debates that the government recognized that the Metis had a claim on two accounts; one by virtue of their Indian ancestry and second, by virtue of the fact that they were the original settlers (the nationhood claim). Cartier in debate on the Manitoba Act for example refers to this later claim in the following statement:

"The land, except 1.2 million acres, was under the control of the government, and these were held for the purpose of extinguishing the claims of the halfbreeds, which it is desirous not to leave unsettled, as they had been the first settlers, and made the territory."

Macdonald on the other hand in an earlier debate had indicated as follows:

"A certain portion to be set aside to settle the Indian claims and another portion to settle the Indian claims that the halfbreeds have."⁹²

Although Cartier and Macdonald appear to be trying to claim that the land allocation was to settle both claims, later government action would suggest that it was the Nationhood claim that was being dealt with. The government later recognized that the Selkirk settlers

and the old settlers both had rights as original settlers and therefore gave them land grants by way of scrip or title to settled lots, or both, to exactly the same extent that they did to the halfbreeds. In other words, in actual fact the Metis were treated no differently in this regard than the other settlers. All had a right to some form of compensation for giving up their claim to the land and resources, which claim made up a part of the overall claim to nationhood.

XIII Events Following the Entry of Manitoba into Confederation

Although Macdonald had accomplished the objective of uniting Rupertsland and the Northwest Territories with Canada and gaining control over all the land for the beneficial use of Canada, he wasn't satisfied with this goal alone. The Metis had dared to challenge his government, claim nationhood rights and to force the government to negotiate a settlement with them. This was a matter which caused Macdonald a great deal of public embarrassment and much political difficulty with the powerful orange faction in Ontario. In addition, Macdonald had a rather contemptuous attitude toward the native people.⁹³

He negotiated because it was expedient and cheaper than to put down the resistance by force of arms. However, in correspondence to McDougall, although he insisted that attempts must be made to solve the problem by peaceable means if possible, he also indicated that he would be prepared to dipatch an armed force under the command of Wolsely to put down the Metis if necessary and to teach a lesson "to those miserable halfbreeds".⁹⁴

During the course of the negotiations, Ritchot asked for assurance on two matters which were not in the list of rights before he would agree to Ottawa's terms. One was an armistice, i.e. the government would not use the army to deal with Riel and his men. The second was a request for a complete amnesty for everyone who had been involved in the Red River uprising. Macdonald was deceptive and treacherous on both these points. He agreed to an armistice but insisted that a small expeditionary force must be sent to protect

the new province and to ensure that there was no trouble with the Indians. He promised solemnly that there would be no reprisals against any of the Metis who supported Riel. This action would guarantee the security of the new province until the new government could organize itself and take over responsibility for its own policing. On the second question, Macdonald and Cartier said that any amnesty would have to be granted by the Queen since the territory was British territory at the time of the incident. However, if the British government granted the amnesty, the Canadian government would guarantee it.⁹⁵

During the negotiations on this question, the delegates were introduced to Sir Clinton Murdock the British representative by the Governor-General of Canada, Sir Hugh Young. He asked if they were satisfied with their treatment and with the terms that had been agreed on. Ritchot indicated they were but raised the amnesty question. Murdock assured them that amnesty would be granted. Ritchot asked for this guarantee in writing. He was assured by Murdock that this was not necessary as he was authorized to give such assurances. It would take time to get the Queen to proclaim a formal amnesty and this would delay proceedings in Ottawa.⁹⁶ (Macdonald and the British were anxious to have the Manitoba Act passed and proclaimed before parliament rose so that the planned royal order transferring the territory to Canada July 16, 1870 could be concluded; Ritchot unfortunately accepted these verbal assurances.)

Meanwhile, General Wolseley had been commissioned to raise any army of volunteers to go to the Red River. Little did Ritchot suspect that this army would be largely composed of fanatical orangemen whose hate of the Metis and Catholics had been stirred up by Schultz and Mair. Although Macdonald didn't order any reprisals, he was aware of the feelings of the orangemen and he took no action to ensure that a fair, non biased and well disciplined force was selected. Indeed he allowed Wolseley to select whoever volunteered and most were orangemen who did not hide their feelings toward Riel and the Metis. News of their hate and their threat of

revenge preceded them to the Red River. In spite of assurances from Ritchot and Tache, some of the residents were uneasy. Riel himself, who accepted the assurances at first, soon became uneasy. In spite of this, Riel, whose own forces could have easily resisted Wolseley's army, decided on the morning of August 26 to completely evacuate the fort held by his men and disperse his army.⁹⁷

He was warned by one James Stewart to leave to save himself, with Wolseley's army only two miles away. In company of several of his friends, Riel set out for Pembina. Riel stayed for a time with friends in Southern Manitoba. However, when he learned that a warrant had been issued for his arrest and after eluding numerous plots by Wolseley's soldiers to capture and kill him, he left for the U.S.A. and from there went to Quebec.⁹⁸ After being three times elected as a member of parliament in Quebec and each time being prevented from taking his seat in the House, he left permanently for the U.S.A. where he was to settle and eventually take out citizenship.

Meanwhile back at the Red River Wolseley's men began a reign of terror and revenge. At least six persons who were believed to have been involved in Scott's execution were murdered by being stoned, beaten and axed to death. The Metis families were abused, the women insulted and assaulted and a general reign of lawlessness resulted.⁹⁹ These events were all well documented by the two newspapers which were now operating in the settlement, the NorWester and Les Metis. On at least two occasions the perpetrators of the murders were charged by the local constabulary and brought to trial. Although pronounced guilty and sentenced on the first occasion, no one was prepared to carry out the sentence for fear of reprisals. On the second occasion the judge, finding the murderers guilty, declined to pass sentence being greatly embarrassed by the whole situation but not in a position to do anything about it.¹⁰⁰

In 1873, the volunteers in Wolseley's army were demobilized, it being decided by Ottawa that the need for the army no longer existed. The event, however, took place not in Ontario where they were enlisted but at the Red River. The men were encouraged to

settle in the Red River, being given scrip entitling them to a grant of land in the amount of 240 acres, the same as the allocation received by the children of the Metis and other original settlers.¹⁰¹

The struggle for the recognition of their nationhood by the Metis, although successful in a legal sense, was eventually to be lost in a sea of immigration, exploitation, broken promises and harassment of various forms. Many of the Metis left Manitoba for the Northwest where they continued their traditional way of life and self government in the new and growing communities of St. Laurent, St. Louis, St. Albert, Qu'Appelle lakes, Edmonton, etc.. The respite was brief, however, because with the building of the railroad immigration soon followed them to their new homeland. The rebellion of 1885 was anti-climatic. The government now having legal jurisdiction to the territory was in no mood to negotiate with the Metis for recognition of their rights again. Land rights were to be eventually recognized after the government put down the rebellion by force of arms. With the execution of Riel, the Metis claim to nationhood was crushed and the people completely demoralized.

XIV Footnotes

- I Nation: What Does It Mean and What Are Its Implications - Clem Chartier - Legal Researcher, AMNSIS.
- 2 The History of The Metis - Auguste Tremaudan as translated and abridged by Eugene Thomas.
- 3 Papers on Constitutional Negotiations and The Constitutional Conference in Prince Edward Island 1866. Public Archives of Canada.
The British North American Act of 1867 - An Act of the British Parliament.
- 4 Law Journal Reports, November 1919, page 145.
- 5 Supra - The History of The Metis Nation In Western Canada - Part I - chapters 1-3.
- 6 Ibid.,
- 7 Ibid., part II, chapter I.
- 8 Ibid.
- 9 Ibid., part I, chapter 3.
- I0 Ibid., part II, chapter I.
- II Ibid.
- I2 Ibid., part I, chapter 3.
- I3 Ibid.
- I4 Ibid.
- I5 Old Forts of Manitoba - from Manitoba Archives and H.B.C. Papers - H.B.C. Archives.
- I6 Supra - The History of the Metis Part II, chapter I, and Cuthbert Grant of Gran Town, McLeod and W.L. Morton.

- 17 Hudson's Bay Company Papers - Public Archives of Canada.
- 18 Ibid.
- 19 Supra - The History of The Metis, part II, chapters I & 2.
- 20 Ibid.
- 21 Ibid.
- 22 Ibid.
- 23 Ibid.
- 24 Ibid.
- 25 Supra - Hudson's Bay Company Records and Papers.
- 26 Supra - The History of The Metis - Tremaudan and The Proceedings of A Special Commission to Investigate Metis Allegations against the Hudson's Bay Company - British parliamentary papers - Public Archives of Canada.
- 27 Ibid., H.B.C.
- 28 Supra - The History of The Metis - Tremaudan, part II, chapter 2.
- 29 Ibid., Also W.L. Morton - The Birth of Western Canada.
- 30 British Colonial office papers - Public Archives of Canada and Hudson's Bay Company papers - Hudson's Bay Company Archives.
- 31 Supra - The History of Western Canada - Tremaudan.
- 32 A report of The Select Committee on The Hudson's Bay Company - Hudson's Bay Company Archives.
- 33 Correspondence and reports recorded in The Sessional papers of 1869 & 70, Colonial office correspondence, Tache correspondence, plus other records of the events of The Red River resistance. All sources including W.L. Morton, The Birth of Western Canada, are in general agreement that much of the difficulty was created by certain Canadian fanatics whose goal it was to bring about a union of the Northwest with Canada.

- 34 Ibid.
- 35 Supra - Tremaudan, part II, chapter 2.
- 36 Supra - British Colonial office and Hudson's Bay Company papers.
- 37 Ibid., Also see Rupertsland Transfer Agreement. Sessional papers 1870.
- 38 Ibid., Also see Section 146 B.N.A. Act and O.C. under this section.
- 39 Supra - The Rupertsland Transfer Agreement, The History of The Metis - Tremaudan - The Birth of Western Canada, W.L. Morton.
- 40 Supra - Sessional Papers 1869. Also Colonial office Correspondence and Hudson's Bay Company papers.
- 41 Supra - Tremaudan, part III, chapter I.
- 42 Supra - Sessional Papers 1869.
- 43 Ibid.
- 44 Supra - Colonial Office Papers - Public Archives of Canada.
- 45 Supra - The History of The Metis - Tremaudan; Also see The Birth of Western Canada by W.L. Morton.
- 46 Ibid.
- 47 Ibid., Also See Sessional Papers 1869 and 1870.
- 48 Ibid.
- 49 Ibid., Also See The Birth of Western Canada, W.L. Morton.
- 50 Ibid.
- 51 Ibid.
- 52 Ibid.
- 53 Ibid.

- 54 Ibid., Also see Sessional Papers for Smith's report to Macdonald and Colonial Office Papers for his report to the Hudson's Bay Company Governors.
- 55 Supra - See Sessional Papers 1870.
- 56 Supra - The History of The Metis - Tremaudan.
- 57 Ibid., Also see the Birth of Western Canada by W.L. Morton.
- 58 Manitoba: The Birth of a Province, The Diary of Father Ritchot by W.L. Morton. Also see Donald Smith's report in the 1869 Sessional Papers.
- 59 House of Commons Debates - 1870. Also see The History of The Metis - Tremaudan, and Manitoba: The Birth of a Province - Ritchot's diary - W.L. Morton.
- 60 Supra - House of Commons Debates 1870. Also Sessional Papers 1869 and 1870, and private papers of Macdonald - Volume 48, A.M.N.S.I.S Library.
- 61 Supra - History of The Metis - Tremaudan. See Metis List of Rights, chapter 2.
- 62 Supra - See Sessional Papers 1870.
- 63 Supra - See History of The Metis - Tremaudan.
- 64 The Natural Resources Issue - Chester Martin, volume 47, A.M.N.S.I.S. Library.
- 65 Supra - The History of The Metis - Tremaudan, chapter 2.
- 66 Supra - See Cauchon memo in the reports in the proceedings of of Select Committee on the Hudson's Bay Company. Also see Colonial office papers, and Sessional Papers.
- 67 Supra - See Macdonald in House of Commons debates 1870.
- 68 These events are recorded in sessional papers, Colonial office papers, Tache's papers, in the reports of a special Commission to Inquire into the Amnesty, and as well in most books covering the subject. These include The History of The Metis - Tremaudan, and The Birth of Western Canada, W.L. Morton.

- 69 Supra - The History of The Metis - Tremaudan.
- 70 Supra - House of Commons Debates 1870.
- 71 Supra - The Birth of Western Canada, W.L. Morton, and The History of The Metis - Tremaudan.
- 72 Supra - The Birth of a Province - Ritchot's Diary - W.L. Morton.
- 73 Ibid.
- 74 Ibid.
- 75 Ibid.
- 76 Ibid.
- 77 Ibid.
- 78 Supra - Natural Resources Issue - Archer Martin.
- 79 Supra - The Birth of a Province - W.L. Morton.
- 80 Ibid.
- 81 Ibid.
- 82 Supra - Natural Resources Issue - Chester Martin.
- 83 Supra - The Birth of a Province - W.L. Morton
- 84 Supra - See Minutes of Provisional Government, June 4, 1870 - Colonial office papers.
- 85 Supra - The History of The Metis - Tremaudan.
- 86 Supra - See British North American Act.
- 87 Supra - Manitoba: The Birth of a Province - The Manitoba Act - W.L. Morton.
- 88 Ibid.

- 89 Ibid.
- 90 Supra - See Natural Resources Issue - Chester Martin, volume 47, A.M.N.S.I.S. Library.
- 91 Supra - House of Commons Debates, 1870.
- 92 Supra - House of Commons Debates 1870.
- 93 Supra - Private papers of Sir. John A. Macdonald, volume 48 - A.M.N.S.I.S. Library.
- 94 Ibid.
- 95 Supra - Manitoba: The Birth of a Province, W.L. Morton; Tache papers and British Colonial office papers.
- 96 Ibid.
- 97 Supra - The History of The Metis - Tremaudan.
- 98 Ibid.
- 99 Ibid.
- 100 See selected newspaper clippings, A.M.N.S.I.S. Library.
- 101 Supra - History of The Metis. Also see House of Commons Debates 1873, and files in Department of The Interior - Dominion Lands Branch.