

## CHAPTER IV: THE METIS ORIGINS AND THEIR DEVELOPMENT AS A SEPARATE PEOPLE

### I. The Metis As A Separate Aboriginal People:

The idea that Metis were a distinct group of aboriginal people separate from the Indians of Canada, first arose formally during the free trade agitation in the Northwest during the period 1846 to 1850. It did not arise at that time as a legal issue but was raised by the Hudson's Bay Company officials in their response to a memorial from the settlers of the Red River regarding the imposition by the Company of their monopoly trade provisions under the Rupertsland Charter.

In 1844, residents of the Red River sent a petition to the British government protesting that the rights of the citizens of the Red River were being trampled. In particular, the petition claimed that "this interference with those of aboriginal descent has been carried to such an extent as to endanger the peace of the settlement".<sup>1</sup>

Since most of the free traders were "Metis" or "half-breeds," it is clear that they considered themselves to possess the same right to conduct their affairs without interference, as did the Indians. As has been pointed out previously, the general legal principle of the Law of Nations, which was followed by the British in their dealings with aboriginal peoples, was that the sovereign had the right to make laws to control relations among colonists or settlers and between them and the Indians. They did not, however, purport to control relations among the Indians in unceded territory.<sup>2</sup>

In its response to the memorial of the petitioners, the Hudson's Bay Company attempted to limit the use of the term "Native" to the "Indians or aboriginals". They further attempted to make a distinction in their reply between persons of mixed-ancestry and Indians. Those of mixed-ancestry, who were descendents of European fathers, they claimed were considered as Europeans, and therefore, subject to the laws and regulations made by the Company under the terms of their Charter.<sup>3</sup> A.K. Isbister, in his reply to the Hudson's Bay Company response to the memorial, dismissed the Hudson's Bay Comp

claim that persons of mixed-ancestry who were not aborigines, as having no basis in the Law of Nations and as repugnant to the circumstances in the Northwest, where the fathers often abandoned their mixed-ancestry progeny to be cared for by the Indians or by other "halfbreeds".<sup>4</sup>

It is in fact clear from the dealings of the British and Canadian governments in other parts of Canada prior to this period and up to Confederation, that those governments, as a matter of law and policy, did not distinguish between pure ancestry and mixed-ancestry aborigines. Nowhere in the literature, or in legislation dealing with Aboriginal issues, was the term "Metis" or "Halfbreed" used. The first Indian Act of 1850 contained the following definition of "Indian":

"First, all persons of Indian blood, reputed to belong to a particular body or tribe of Indians and the descendents of all such persons;

Secondly, all persons intermarried with any such Indians and residing amongst them and the descendents of such persons;

Thirdly, all persons residing among Indians, whose parents on either side were or are Indians of such body or tribe, or entitled to be considered as such,

and

Fourthly all persons adopted in infancy by any such Indians and residing in the village or upon lands of such<sup>5</sup> tribe or body of Indians and their descendents."

This definition was carried forward in subsequent Indian Acts and was incorporated into the 1868 Act, which established the Department of the Secretary of State for the provinces. It was not until 1876 that the federal government changed this definition to exclude "Halfbreeds" covered under the Manitoba Act. Subsequent amendments have further restricted the meaning of the term "Indian" for legislative purposes. It is clear that this legislation cannot change or restrict the meaning of "Indian" in the British North American Act, 1867. The accepted meaning of the term "Indian" at the time must have been what the Fathers of Confederation had in mind when sub-section 91(24) was put into the B.N.A. Act.

The identification of the Metis and Halfbreeds in Rupertsland, as a group separate from the Indians, related to their role in the economic, social and political development of the area and the way in which they viewed themselves in relation to the Indians and the European Trading Companies who were their employers. Therefore, it is important to briefly examine the origins of the Metis.

## II. Metis Origins

To some extent, the origins of the Metis are obscure. In other respects, they are well known. It is generally agreed that the first Metis were the offspring of French fathers -- "Courier de bois" -- and Indian women. These offspring became known as the "Bois Brule" and later were referred to as the Metis (persons of mixed-ancestry). The term "Halfbreed", which was later applied to the descendants of English fathers and Indian mothers was also later applied in legislation to all persons of mixed-ancestry implied that the offspring were of white fathers and Indian mothers. It is, however, likely that many of the workers who accompanied the first French expeditions of exploration and trade were already persons of mixed-ancestry<sup>6</sup>.

In his book, Tremauden traces the origins of the Metis to Jean Nicollet and his family, who penetrated the Northwest as far as the territory of the Cree and the Assiniboine while engaged in trade with the Indians during the period between 1618 and 1656. After this period, a number of expeditions were dispatched to the north and west to explore the country. Tremaudan speculates that some of the men who accompanied these expeditions were so enamored with the lifestyle of the new lands that they took Indian wives and established themselves permanently in the Northwest. There were a series of such expeditions beginning in 1659. The most famous and the ones with the largest entourages were under the direction of Radisson and Grosseillers in 1659 and up to 1670. These early expeditions were followed by others under the direction of La Verendrye in 1727 and 1731. In 1743 he explored the prairie regions. Other expeditions followed under other explorers. As well, the Hudson's Bay Company sent expeditions into the area under Anthony Henry

in 1750 and sent the famous Henry Kelsey into the region as early as 1690. Tremauden believed that, since the records showed that not all the men returned from these expeditions, some stayed and became permanent settlers. They either lived with the Indians and were absorbed into the Indian tribes or they settled apart from the Indians and became independent trappers and traders.<sup>7</sup>

It is this latter group, which he believed formed the nucleus of the "Metis", who became an important labour force for the fur trading companies. This would suggest that the Metis lived in the Northwest before the trading posts penetrated the area. They were already acting as guides, independent traders, and freighters. They facilitated the process by which trading posts became established further inland. They assisted in the selection of sites for trading posts, they worked at the posts, often settled their families there and became an important liaison between the traders and the Indians. The Indians, on the other hand, remained as the gatherers of furs, food and other products which they traded to the companies. Therefore, even at this early period, the Metis began to have a role much different from that of the Indians. It is natural that from this role they would begin to identify themselves as a unique people, although closely allied with the Indians.

In the case of the English "half-breeds", who were the offspring of the traders and employees of the Hudson's Bay Company, they were initially brought up around the few trading posts that the Company established on the shores of the Bay. During the first century of its trade, the Company had a limited number of trading posts on the Bay and a few inland posts in the area north of Lake Winnipeg. It was also the practice of the traders and employers to take Indian mates. Children were raised at the trading posts. When employees finished their tour of duty, some returned to Europe, leaving Indian wives and children behind; others extended their contracts, and still others settled permanently in the new territory. The children and women either returned to live with the Indian tribes or remained around the trading posts. When the men settled, the wives and children settled with them. Although the "Halfbreed" population grew more slowly than the Metis population,

it did grow. By the late 1700's the "Halfbreed" laborers formed the major part of the work force of the Company. This ready-made indigenous work force also played a major role in the Company's move to establish posts further inland and in their move into the prairie area, which the Company had not previously tried to claim as its territory. This indigenous work force was allowed to fill many positions in the company including clerks and traders. However, they were never allowed to hold management positions such as those of factors, chief traders and explorers. As a result, the "Halfbreeds" came to play much the same role in the commercial activities of the Hudson's Bay Company that the Metis played in the Company of New France. Again, this role was different from that of the Indians or the white managers. The use of this indigenous labour force and the fostering of a special role for the Metis was encouraged as part of the official policy of these Companies. This decision was made for several reasons. Firstly, it was less expensive to use an indigenous, rather than an imported, labour force. Secondly, the Metis knew the country well and didn't require guides. Thirdly, the Metis had valuable connections with their Indian relatives; they spoke the language and were able to develop and use these in the fur trade to the Company's advantage.

With the fall of New France in 1760 and the collapse of the Company of New France, which had established an extensive network of trading posts and travel routes right to the Red River, the Hudson's Bay Company began to consider moving south to establish its claim to all of Rupertsland as described in its Charter. However, before it could do so, a new company of Scottish adventurers and capitalists took over the trading empire of the Company of New France. This company, known as the Northwest Company, operated out of Montreal as a Canadian company and in direct competition with the Hudson's Bay Company. To establish their presence in the hinterlands of the northwest, they were, to a large extent, dependent upon the Metis. Although the Company did not entrust senior management positions to the Metis, it did give them positions of

importance as traders, and as managers in the fur posts, and depended upon them to enforce the Northwest Company presence and their trade regulations in the area they claimed.

The company quickly expanded its trading posts inland so that by the late 1700s it had posts as far west as the Rocky Mountains and as far north as the Athabasca. It also attempted to gain a foothold in the interior of what is now British Columbia and in the Oregon territory. In all of these areas it was in direct competition with the Hudson's Bay Company. During this period the Metis in the areas controlled by the Norwesters began to take on the characteristics of a separate cultural group. They also began to see themselves as having a right to the soil along with their Indian relatives. This idea was deliberately fostered by the Northwest Company and further re-enforced the idea of a Metis people or Metis nation.<sup>8</sup> The Metis, therefore, came to have a vested interest in trying to keep the Hudson's Bay Company and settlers out of the area.

As the Hudson's Bay Company began to move west and south, there was also increased contact between the Metis and the "half-breeds." In time, through marriage, these two groups began to have more in common and began to identify with each other as a new nation of people. Nevertheless, they were caught up in the fierce rivalries that developed between the two Companies. These included the frequent raids on each other's trading posts, open hostilities, and a variety of more subtle means of undercutting each other's trade. Since the Northwest Company employed many English managers who also began to produce offspring, by the early 1800s the Metis of the southern areas included a mixture of persons of French /English and Indian ancestry plus the products of liasons between these two groups of indigenous persons. This further served to integrate and consolidate the Metis population of the Northwest. The process was further fostered by Metis leaders such as Cuthbert Grant.<sup>9</sup>

III. The Collison of the Two Companies and the Results:

By the early 1800s both the Northwest Company and the Hudson's Bay Company had trading establishments in the Red River. The Hudson's Bay Company, however, was to have limited success in establishing a foothold in the fur trade in the south and to the west. The Northwest Company had a better network of posts and its relations with the Metis to support it. The Company was also stronger commercially so that the Hudson's Bay Company could not effectively compete price wise with the Norwesters. Although there were a number of skirmishes in the Red River and on the Saskatchewan, the Northwest Company made no concerted effort to prevent the Hudson's Bay Company from operating in the Red River, nor did it attempt to oust the Company.<sup>10</sup>

When Lord Selkirk, in 1808, bought what became known as the Province of Assiniboia from the Hudson's Bay Company, with the intention of establishing a significant settlement of Scottish settlers, this move presented a serious threat to the Northwest Company trade and a challenge to its control over the Territory. The headquarters of the Northwest Company were in the area. As well, all of the trade in furs and goods by the Company passed through the area. If the settlement became a reality, and substantial numbers of settlers established in the area, it would assist the Hudson's Bay Company in gaining control over the area and over the trade routes. The result would be the strangulation of the Northwest Company's trade and its quick demise.

This move by the Hudson's Bay Company also presented a serious threat to the Metis, for their livelihood depended on the activities and prosperity of the Northwest Company. Bringing settlers into the area could also have serious repercussions for their claim to the land and the resources of the area and it could, as well, affect their lifestyle.<sup>11</sup> Therefore,

the Metis leaders and their followers and the management of the Northwest Company were quick to join forces to attempt to keep out the settlers. When the settlers nevertheless arrived, the Company and its Metis allies resorted to a variety of means to get the settlers to leave, including legal suits in Canadian courts and various forms of harrassment.<sup>12</sup> This eventually led to the Seven Oaks incident and the attempt at the expulsion of the new settlers.

This development further served to consolidate the Metis and "half-breed" people into a more cohesive group. When the two Companies amalgamated in 1821 under the name of the Hudson's Bay Company and when the Selkirk settlement became an established fact, a series of events followed which would further serve to strengthen the idea and feeling of a Metis community.

The amalgamation of the two Companies threw large numbers of employees of both Companies out of work. They were encouraged to settle primarily in the Red River. An agricultural settlement in that area held out the best hope of success and would interfere the least with the fur trade. In addition, some of the Metis settled in various areas where trading posts existed, but the majority of the unemployed began to migrate to the Red River and take up residence on river lots. A number of communities were established and eventually took on the form of parishes. These included communities such as Grantown, which was established by Cuthbert Grant. By the mid-1840s over 4,000 Metis were resident in the Red River area. This figure had reached almost 12,000 by 1869. At the time it was the largest settlement west of the Mississippi and north of the Missouri in the plains of North America.



The majority of the Metis only farmed part-time. They also worked as boatmen, overland freighters, and hunted the Buffalo. The Metis labourers, hunters and traders soon came into conflict with the Hudson's Bay Company. Developments included worker strikes and the emergence of the free trade movement led by Jean Louis Riel and Metis leaders such as Sinclair, McDermott and Sayer. These developments and the successful challenge in 1850 of the trade monopoly of the Hudson's Bay Company further served to draw the Metis together as one people. It also further developed their ideas of rights, justice and the new Metis nation.

#### IV. The Metis Role in the Economy and in Politics and Social Development:

As has been pointed out earlier in this presentation, the way in which the colonial powers dealt with indigenous peoples and the laws they made or recognized concerning them were to a large degree shaped by the political goals of each of the colonial powers. It is clear from a study of early Canadian history that both France and Britain were primarily concerned with the development of the commercial possibilities in the northern part of the continent. This required the economy to be built around the fur trade and the country to be maintained in a state which was most conducive to the profitability of that trade. This meant not disturbing the natural state of the country while introducing enough new technology to increase the fur harvest.<sup>13</sup> This also meant introducing a credit system which would keep the Indians entirely dependent on the fur trading Companies. Initially, the Company of New France depended upon the French voyageurs from Quebec and the Hudson's Bay Company on the Scottish workers, from Britain, for their labor forces. It also had to form alliances of peace and friendship with different Indian tribes to facilitate trade in their areas and passage through their territories if the trade was to penetrate further inland.

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There were problems with the immigrant labour force. Firstly, the expenses of transportation, housing and food were high. Secondly, the immigrant labour force did not know the country and had no relationship with the Indians nor did they speak the language. Thirdly, this meant that the traders were entirely dependent upon the Indian tribes to act as guides and to provide extra labour while on inland trading expeditions. The Indians' main loyalties were to their tribe. In addition, the Indians were not accustomed to the backbreaking labour required to move big boats and large quantities of supplies long distances overland.

It soon became obvious to the Company that an indigenous labour force, with close relations with the traders on the one hand, and with the Indians on the other, would have definite advantages. Also, the indigenous labour force did not have to be housed and fed to the same extent, since they were more independent than the European labourers. As well, long-term employment contracts with the Metis were not necessary. This helped to keep down labour costs. It was also to the advantage of the Companies to encourage the Metis labour force to be independent of the Indian tribes in lifestyle and residence. This ensured that they would and could move easily over large territories. This also ensured that they would be readily available to work for the Companies when needed.

The Metis chose to settle at key trading posts, river crossings, or meeting places. They settled on the land and built their log cabins, which they usually occupied for at least part of the year. Nobody challenged their right to do this or to live off the resources of the land, namely, the game, the fish, and the wild plants. In time, the Metis and the half-breeds came to be essential to the economy. During the period 1820 to 1850, they almost entirely controlled the following:

- the boat brigades which provided the main transportation for freight and people travelling into and out of the Northwest;
- the development of overland freighting;
- workers and clerks in the trading posts;
- guides, hunters and traders;
- the gathering of food from the famous buffalo hunt;
- the development of river lot agriculture.

In addition, they functioned as:

- traders in furs and in goods from Europe and other areas;
- tradesmen (carpenters, millers, boat-builders);
- teachers and clergy.

They, in effect, were the mainstay of the economy, which exchanged raw furs for manufactured goods. They also began to develop a new dimension to the economy by expanding commercial trade activities and developing both markets and product sources in the United States.

In the area of politics they played a key role in providing the manpower for para-military forces under such leaders as Cuthbert Grant. He patrolled the plains and maintained some semblance of law and order. They also successfully pushed

for improvements in labour practices, broke the free trade monopoly, and became influential in the Council of Assiniboia and its political institutions.

In the area of social activities they developed a distinctive lifestyle built around the parish church and around activities such as the buffalo hunt and the freighting activities. As part of this development came well-established and accepted civil laws and codes referred to as usages. They also developed educational institutions, the arts, and the social-recreational activities and the style of dress which came to be associated with the Metis.

In summary they dominated the economy and the social life of the Northwest and they played a key role in politics, education and religion.

The developments during the period 1820 to 1869 further served to bring the Metis and the "half-breeds" together as one distinctive community, strengthening the feeling of Metis nationalism and the concept of Metis nationhood.

V. Rights Claimed by the Metis by 1870/

Prior to 1869-70, there was no comprehensive formal claim of rights made by the Metis people. However, certain rights were exercised and others were claimed in formal petitions in 1846-47. Other rights were simply taken for granted. It must be noted that the Metis themselves did not speak in terms of having something called aboriginal rights. It is likely that few of them were aware of the legal concepts regarding the rights of aboriginal people. However, they had a strong sense

of freedom and justice which showed itself in their actions and in their lifestyle. Rights that were taken for granted included:

- the right to travel wherever they pleased;
- the right to establish a residence where they chose, as long as no one else claimed the plot of land;
- the right to hunt, fish and trap and, in other ways, live off the land;
- the right to their own customs and usages;
- the right to practice the languages of their parents;
- the right to worship freely as they chose.

Other rights that had been claimed in more formal ways included the right to claim a plot of land and settle and cultivate that land. Usually the people conformed to the land regulations of the Hudson's Bay Company, particularly in the Red River, but many also claimed plots by squatter's rights. The right to a specific plot of land and to free access to the common land were claimed and even recognized in the laws of the Council of Assiniboia. The right to free trade was also claimed formally during the 1840s and 50s and this right was in fact widely exercised. When the Metis list of rights was drawn up in 1869-70, a number of other rights were claimed. These included:

- the right to local self-government;
- control over the public domain;

- language rights in education, courts and legislatures;
- the right to vote;
- the right not to be taxed without representation.

From this review, it can be seen that the Metis concept of their rights extended far beyond any limited concept of aboriginal title to the land. The Metis indeed claimed rights on two bases: the first was as descendents of the aboriginal peoples; the second was as the first settlers in the Northwest.

#### VI. The Rupertsland Transfer

The Hudson's Bay Company had recognized as early as 1848 that the fur trade would not remain profitable on a long-term basis.<sup>14</sup> When Sir Edmund Head became Governor of the Hudson's Bay Company, he saw his task as one of making the trade profitable in the short-term, while seeking out a means as to how the Company could turn the terms of its Charter into long-term and profitable development based on other resources. The Company had not attempted to claim a legal title to the land but claimed trading rights and the right to develop resources. Negotiations began in the early 1860s over the eventual transfer of the territory to Canada. The process involved the Hudson's Bay Company giving up its Charter and its Charter rights then reverted to the British Crown. The British Crown then transferred its claim to the territory on request of the newly created Dominion of Canada

The Hudson's Bay Company believed it could obtain profitable short-term compensation as well as long-term access to resources such as land, minerals and timber, which it could

develop profitably. It, as well, aimed to retain its rights to trade in the Northwest. The Hudson's Bay Company did not consult either the Indians, the Metis, or its employees about this plan. The Company clearly recognized the title of the Indians but took the position that they had never interfered with or extinguished this title; therefore, the British and Canadian governments must deal with this claim. In the case of the Metis, it is not clear whether the Company identified them as Indians or as whites with no Indian rights. However, it is clear that at least the British and Canadian governments at the time viewed the Metis as part of the population of "uncivilized savages" of the area. The fact that employees were not consulted probably reflected the prevailing ideas of that time—that employees should have no say in the financial and policy decisions of the Company.<sup>15</sup>

It is unclear how much the Metis knew about the developments that were taking place regarding Rupertsland. However, there is no evidence that serious concerns were voiced prior to 1869. Negotiations for the Rupertsland Transfer had broken off in 1866. In part, this resulted from an inability to get an agreement among the three parties and, in part, it resulted from the fact that British and Canadian politicians became absorbed with the larger question of forming a new self-governing Dominion of Canada. They did not have time to deal with this issue. However, provisions were made in the B.N.A. Act 1867 for the joining of Rupertsland and the Northwest Territories to Canada. Serious negotiations on this matter began again in 1868, and by the summer of 1869 the transfer agreement had been finalized. This agreement spelled out the rights of Canada in the area. It did not have much to say about the rights of the Indians or Metis. The transfer agreement and an address from the Canadian Parliament, which formed part of Order

in Council Number 9 of the British Parliament, became incorporated into Section 146 of the B.N.A. Act 1867. These documents had two stipulations dealing with Indians: firstly, Canada would be responsible to deal with any claims of the Indians; secondly, Canada undertook to obtain from the Indians any lands required for settlement according to the fair and equitable principles which governed the British Crown in its dealings with the Aborigines. Given the nature of the Indian Act at the time, and the use of the term "Indian" in the B.N.A. Act 1867, it is clear that at least the British Crown saw the term as being all inclusive; that is, applying to all aboriginal peoples.

These documents, however, only dealt with the narrow question of land rights. They did not deal with other rights, which, as has been pointed out above, were rights claimed by the Metis. It is also clear that the Indians enjoyed and claimed certain other rights, some of which (education and local self-government) were provided for in the Treaties. It would appear that the British and Canadian governments took the position that Canada could not deal with the claims of the Aborigines until it had acquired the territory.<sup>16</sup>

Obviously the situation of the Metis was different than that of most of their "Indian brothers". They had claimed permanent plots of land which they cultivated, they had permanent homes; they also had their own churches, their own courts, their own local legislatures, plus other institutions such as schools. In addition, they enjoyed certain trading and entrepreneurial rights - or at least exercised them. The evidence suggests that Sir John A. Macdonald did not want to recognize any of these rights. In negotiations with the delegates of the Red River in 1870, he suggests that the Metis



as civilized men who had achieved a degree of self-government (provisional government) and who wanted full citizenship rights as Canadians, could not also have claims as aborigines. These suggestions were rejected by Ritchot and the other delegates, and the issue was not an important factor in the negotiations leading to the Manitoba Act. <sup>17</sup> However, when introducing the land provisions of the Manitoba Act in Parliament, Macdonald found it convenient to argue these provisions on the basis of the "Indian title of the Metis". <sup>18</sup> This, however, did not stop Macdonald from later claiming in Parliament that the Metis outside Manitoba had no claims as aborigines unless they wanted to join an Indian band. <sup>19</sup>

The Rupertsland transfer brought the issue of the Metis and their rights to a head for the first time. It also highlighted the fact that, whatever those Metis rights were, the Metis did not want to be dealt with in the same manner in which Britain and Canada had dealt with the Indians. They clearly considered themselves civilized men with full citizenship rights - not individual members of Indian tribes or "savages" as government officials were fond of calling the Indians. The Metis were demanding to have their rights fully recognized and dealt with as would be the claims of other British subjects. It was also clear that they did not see these rights limited to some narrow concept of Indian title; that is, use but not ownership of the land.

A study of the Indian Acts and of the government dealings with aborigines over a period of years shows a clear intent to limit aboriginal rights as much as possible. The goal was to eliminate any special status through policies which were designed to eventually assimilate the Indian people into the general population.

VII/. The Metis Resistance:

The Metis people had limited knowledge of what provisions, if any, were being made in the transfer agreement, to protect their rights. The Catholic Church and clergy were equally concerned. In many respects the interests of the Church and the French Metis were one and the same—the Metis almost all being devout Catholics. An alliance quickly developed between the clergy and the Metis. It is not clear how early this concern first developed among the Metis. However, records show that Metis of the Parish of St. Norbert, just north of Pembina, were already meeting in early 1869 and planning actions to protect their land rights. This movement was led by Father Ritchot and Maxime Lepine. A committee for the defense of Metis rights had been formed before the Canadian surveyors under Colonel Boulton had begun their survey in the Spring of 1869. The group protested to Boulton but he paid little attention to them. The action of the surveyors who were running survey lines, based on the Torrens land tenure system, was of great concern to the existing inhabitants. The surveyors were running survey lines across their properties with no attention paid to existing surveys or boundaries between properties. This was seen as a definite threat to the river lot holdings of the people.

It was decided to enlist the help of Louis Riel—recently returned to the settlement from Montreal—who was educated, had some legal knowledge and, it was believed, could readily explain the Metis position to Boulton. Riel did speak to Boulton about the surveys in the early summer of 1869 and explained the concerns of the people of the Parish. Boulton expressed his sympathies but protested that he was only carrying out his orders. After consulting with his superiors he did suspend the survey for the summer.

Meanwhile, the Dawson Road from Thunder Bay was being pushed toward the settlement and the government was preparing to send McDougall west to install himself as the Lieutenant-Governor of the area. When this news was followed by the resumption of the survey in the early Fall of 1869, in the Parish of St. Vital, the Metis, under the leadership of Riel, decided to take action. Firstly, they stopped the surveys and drove off the surveyors. Secondly, they took steps to form the National Committee of the Metis. Its goal was to take steps to protect the rights of the local inhabitants.

The Committee resolved not to allow McDougall to enter the Red River or to allow Canada to establish its claim to the territory until the rights of the Metis and other inhabitants were formally recognized and guaranteed by the government or by some person having a full commission to act and make commitments on the government's behalf. To this end, the Metis began to draft a Bill of Rights. Attempts by the Council of Assiniboia to dissuade the Metis from this action failed. The Metis then called a conference of delegates from the English and French parishes. The English met with the Metis the second day after boycotting the meeting the first day. They showed little enthusiasm for the Metis actions, since they saw them as acts of hostility against the British Crown to which the half-breeds felt a great deal of loyalty.

The Metis immediately took action to put the territory under their control. Fort Garry was occupied and arms and stores were requisitioned. The Hudson's Bay Company was pressured into advancing a cash loan for the Metis army and Riel's men took control of the roads into and out of the settlement, including the road to the entry point into the Red River country north of Pembina on the Canada-U.S. Border.

More work was done on the Bill of Rights and a second convention of delegates was called in early December of 1869. This convention, however, did not succeed in setting up a provisional government or in agreeing on the details of the Bill of Rights. It did, however, agree on plans to call a third convention in January, 1870, and to have each parish elect their representative to this convention.

At the January convention it became clear that the English "half-breeds" and other settlers in the area were also concerned about their rights and landholdings. However, they felt that they would be committing acts of treason if they set up a provisional government. When the ailing Governor McTavish informed them that he no longer had authority in the area, and urged them to set up their own government, the objections disappeared and the delegates took steps to formally establish a provisional government. As well, an executive was elected by the delegates, with Riel as President. The Bill of Rights was also debated and a revised form was approved, with some of the original clauses dropped and others added. One of the contentious issues was whether the area should join Canada as a territory or as a self-governing province.<sup>20</sup> It is claimed by some that the final Bill of Rights was not the same as the one approved by the convention. Indeed, some changes were made by the executive council, who had been authorized to do more work on the Bill. The two main changes were the insertion of a clause to provide for provincial status and the insertion of a clause to guarantee language and religious rights in the educational system. The delegates to the convention also chose their representatives to present the Bill of Rights to the Canadian government in Ottawa.

#### VIII. The Bill of Rights!

In the final draft of the Bill of Rights presented by the

Manitoba delegates, the question of the "Indian Title" of the Metis people did not arise. This issue was, however, raised in the first draft of the Bill of Rights, a copy of which was sent to Macdonald on November 18, 1869, by John Young. The second clause of this draft asked for a certain portion of the money paid for the Indian title to be paid to the "half-breeds" because of their relationship with the Indians. In the final Bill, the Metis seem not to be claiming separate land rights from those of the other inhabitants of the Red River. The Bill, however, did request that the government deal with the Indians through the signing of Treaties. This clause acknowledged two facts: Firstly, the Indians had rights as autonomous nations; secondly, the responsibility for dealing with Indians rested with the federal government. The federal government was requested to sign Treaties with the Indians to satisfy their rights.<sup>21</sup>

The records of the deliberations of the Provisional Government on the Bill of Rights do not indicate any discussion of the concept that Metis people may have had a special claim to "Indian Title". However, it is clear from the discussions between Macdonald and the Red River delegates that the possibility of the Metis possessing Indian title was not ruled out, but was seen as something over and above other aboriginal rights claimed in the Bill of Rights. National rights were being claimed for all of the residents of the Red River except the Indians.<sup>22</sup> Ritchot's position was that the question of the Metis having Indian title must be considered as a personal right possessed by virtue of their ancestry. This right could not be affected by the recognition of the national rights of the people of the Red River, which they claimed by virtue of having first settled and developed the area.<sup>23</sup>

It would, in fact, appear that the Metis, in requesting control over the public domain and sovereign rights as a province, may have believed that this would give them the authority to

protect any rights they personally possessed as descendents of the Indians, or any national aboriginal rights that they claimed as new nation. On the other hand, they also clearly recognized the responsibility of the federal government to deal with the Indians.

Since this question of Indian title is an important issue, it is worth quoting Ritchot's interpretation of the conversation with Macdonald and Cartier on these points—as recorded in his diary:

"After the exposition of these conditions that we accept, a long debate arose on the rights of the Metis.

The Ministers made the observation that the settlers of the Northwest, claiming and having obtained a form of government fitting for civilized men, ought not to claim also the privileges granted to Indians. They do not claim them, they wish to be treated like the settlers of other provinces...but there are some expenditures to be made for the Indian title to be bought out... .

From another side, the settlers of the Northwest, in asking a form of government similar to those of the provinces of other subjects of Her Majesty, do not propose by that to deprive anyone among them who possesses rights either personal or national, and because these settlers wish to be treated like other subjects of Her Majesty, does it follow that those among them who have a right as descendents of Indians should be obliged to lose these rights. I don't believe it, thus in asking control of the lands of the province, they have no intention of causing the loss of the rights that the Metis of the Northwest have as descendents of the Indians. They wish only the rights common to the other provinces of Confederation... ."24

It is clear from the above that the delegates had not come to Ottawa to deal with the separate aboriginal rights of the Metis but were claiming national rights for all Red River settlers. It is also clear that they believed that the Metis had special rights and that they did not see these rights as being in any way affected by the actions they were taking.

What were the rights that the residents of the Red River were demanding? The Bill of Rights passed through eight versions before the final draft was approved, which draft was sent to Ottawa with the delegates. It is contained in its entirety in Tremauden's History of the Metis.<sup>25</sup> It consisted of 19 clauses. The rights being requested can be summarized as follows:

- a) the Northwest Territory to join Canada as a province with all the rights and privileges of other provinces;
- b) all property, rights, privileges and usages recognized at the time be respected;
- c) separate schools run by the different religious groups;
- d) voting privileges for all males 21 and over;
- e) the local legislature of the new province would have control over all the territories (control of the public domain);
- f) Canada to conclude treaties with the Indians;

- g) legislatures and courts to be conducted in both French and English and public documents to be published in both languages;
- h) that Canada assume certain debts, costs of certain public works, and agree to provide transportation and communications links;
- i) the new province not to have any responsibility for the existing public debt of Canada;
- j) certain political arrangements (i.e.- form of local legislature, representation in Parliament, etc.).

An examination of the Bill of Rights further clarifies that the rights were not just Metis rights but rights for all. It is also clear that the requests were consistent with the provisions made for other provinces in the B.N.A. Act 1867.

In the negotiations, Macdonald and Cartier agreed to most of the requests. Where there were differences, these were resolved through negotiation. For example, the government did not agree to the idea that the whole Northwest would be one province or that the new province would have control over the Northwest Territories outside its boundaries. However, one Lieutenant-Governor would be responsible for both the Territories and the new province. The key area on which an agreement could not be reached and around which a stalemate developed was the issue of control of the public domain. Again we quote from Ritchot's diary:

"Then the Ministers asked us about what we wished to do in the matter of lands. Reply: the control of those lands as requested in our instructions. Impossible, said the Minister. We could by no means let go control of



the lands at least unless we had compensation on conditions which, for the population, actually would be the equivalent of control of their province."<sup>26</sup>

Macdonald and Cartier respond to this position by offering the following:

Free possession of all lands or establishments on lands of the Hudson's Bay Company (on which Indian title is extinguished). This was the two-mile strip along the rivers which had been purchased under the terms of the Selkirk Treaty. Possession was recognized for persons who:

1. had a contract or connection with the Company.
2. had a contract or connection but had not paid for the land.
3. possessed land but had no contract or connection with the Company.
4. were settlers living on lands not Company lands.
5. had a right to common lands.

After the discussion on Metis land rights quoted above, the following was agreed upon:

1. All male and female Metis settlers were entitled to a parcel of land(settlers grant).
2. All children born or to be born prior to some fixed date were entitled to a land grant(Indian title grant).

The amount of land mentioned was 200 acres but this was not a firm figure. A Metis reserve of 150,000 acres to heads of families and 300,000 acres for children was offered by Macdonald. Ritchot asked for 3 million acres for the children. After extensive negotiations a figure of 1.4 million acres was finally settled on as the size of the Metis reserve for the children of the "half-breed" heads of families. This was interpreted as the off-spring of a white father and an Indian mother. Therefore, some government officials and politicians believed that the 1.4 million acres was to be divided between all persons of mixed-ancestry in the area. In addition, there was agreement that the local legislature would be responsible to select and distribute this land.<sup>27</sup>

With agreement on all questions now settled, the government proceeded to draft the Bill. The one outstanding issues was the question of a grant of amnesty for all persons involved in the Red River Resistance, but this was a separate issue from rights and was pursued outside of the discussions of legislative action.

#### IX. Aboriginal Rights in the Manitoba Act

In discussions regarding lands to be set aside for the Metis, it is clear that the delegates understood the land grants to be compensation for giving up control of lands and resources in the new province. This is confirmed by Wickes-Taylor, an American representative of the U.S. Secretary of State. He was a close personal friend of The Honorable Joseph Howe, the Secretary of State for the provinces. Through Howe, he kept informed of developments in the negotiations and he reported to the U.S. Secretary of State, Hamilton Fish, on a regular basis. In a memorandum

to Hamilton Fish, dated May 24, 1870, he stated as follows:

"I proceed to an analysis of the Manitoba Act in connection with a proposition, a bill of rights, of the Fort Garry convention...these provisions were accepted by the Red River delegates as an advance on the demands made by the Fort Garry convention. The grant of 1,400,000 acres to the children of the half-breed residents was regarded as an equivalent for the "control by the local legislature of the public lands" within a circumference of Fort Garry, of which the distance to the American line formed the radius".(Underlined for emphasis).28

When the delegates were presented with a draft of the Manitoba Act, Ritchot expressed his displeasure with some of its terms. On May 5, 1870, Ritchot wrote in his diary:

"The Bill appeared very much modified. Several clauses displeased me fundamentally. I saw our colleagues and some friends. We saw Sir George and Sir John, we complained to them. They declared that in practice it amounted to the same thing. For us, they promised that they would give us, by Order in Council, before our departure, assurance of the carrying out of verbal understandings, but that for the present it would be impossible to get the bill passed if one changed its form... . The two Ministers, seeing that we were strongly opposed, promised us, among other things, to authorize by Order in Council, the persons we choose to name ourselves, as soon as might be after the Bill should be passed, to form a committee charged with choosing and dividing, as may seem good to them, the 1,400,000 acres of land promised."29

Ritchot, in his diary expressed concern both about the land grants to children and to the heads of families. The debate centered around the fact that the government believed it could not dispose of promised land in "Indian territory" until the Indian title had been extinguished. It is not clear from the diary whether the objections were to the 1.4 million acres being designated as an extinguishment of Indian title or on some other basis. However, with the promise that the new Manitoba government could name the persons to select and allocate the lands, the delegates reluctantly accepted the Bill. The clause in the Bill dealing with the land reserve was Section 31 and read as follows:

"And whereas it is expedient towards the extinguishment of the Indian title to the lands in the province to appropriate a portion of such ungranted lands in the province, to the extent of one million four hundred thousand acres thereof, for the benefit of the families of the half-breed residents, it is hereby enacted that under regulations to be from time to time made by the Governor in Council, the Lieutenant-Governor in Council shall select such lots or tracts in such parts of the province as he may deem expedient, to the extent aforesaid, and divide the same among the children of the half-breed heads of families residing in the province at the time of the said transfer, and the same shall be granted to the said children respectively in such mode and on such conditions as to settlement and otherwise as the Governor General in Council may from time to time determine."30

Clearly the delegates were unhappy with the mode of selection and distribution provided for above. It also seems likely that they had not understood that the land grants were to extinguish the Indian title and that they did not want this reference in the clause. This is supported by Wickes-Taylor's memo to Hamilton Fish, and also by the following excerpt from

the Northcotte diary:

"This mode of introducing the vexed question of lands reserved for the half-breeds was ingenious. He, Macdonald, treated the land (1,400,000 acres) as being reserved simply for the purpose of extinguishing Indian title and he threw in the suggestion that grants to the people who might be entitled to them were to be made much in the same way as the grants to the U.E. Loyalists (United Empire Loyalists of the United States), a reference very acceptable to the Ontario men."

The other clauses in the Manitoba Act granted the language rights, education rights and other rights set out in the Bill of Rights to the satisfaction of the delegates. For the most part, these other provisions created minimal problems in Parliament. Since it was generally agreed that the Manitoba Act was unconstitutional the Canadian Parliament asked the British Parliament to pass a special Act of the British Parliament making the Manitoba Act a constitutional Act. This was done in 1871.<sup>32</sup>

The Manitoba Act appeared to have dealt with both the national aboriginal rights of the Metis of Manitoba as well as their Indian title or land rights. In June of 1870, after the return of Ritchot to the Red River, Riel called the delegates of the provisional government into special session to review the agreement as contained in the Manitoba Act. Riel, Ritchot and Tache spoke in favour of approval of the provisions of the Act. The assembly formally and unanimously approved the agreement.

Today the Metis of Manitoba see it as a bad agreement but nevertheless accept it as an agreement. Their challenge

of the government claim to having extinguished the Metis "Indian title" or their other aboriginal rights is on the basis of the implementation of the Act. Since the implementation of this agreement currently affects many Metis living in Saskatchewan, we examine the process of implementation under the Manitoba Act in the next Chapter. A more detailed challenge of the implementation of the land provisions is to be found in the final research report of the Manitoba Metis Federation of 1979-80.<sup>34</sup>

As indicated above, the Manitoba Act affirmed other rights besides the "Indian title" of the Manitoba Metis. These rights were granted regardless of whether the residents were of French or English extraction. Earlier in this submission the nature and content of aboriginal rights was explored in some detail. The legal practice of the British had been to recognize the "Indian title" of the aboriginal people. This provided a convenient mechanism for the extinguishment of their land rights. Once this had been done, the policies developed were assimilation policies such as those found in the Indian Acts. However, the policies in this regard were, at best, inconsistent. For example, in the Royal Proclamation of 1763, the reference is to "tribes or nations" of Indians. Nations, under the Law of Nations, are recognized as having full authority to make laws regulating a whole series of matters including language, education, criminal and civil law, police and the courts, economic development, religious practices, etc. The Law of Nations further accepted that a change of sovereign did not change these rights unless the new sovereign took specific action to limit, restrict or modify some or all of these rights.

In the signing of the Treaties the governments of Britain and Canada chose to recognize some of these rights in Treaties and later in the Indian Acts. These included the right to local

self-government and the right to make their own local laws. Other rights included hunting and fishing rights. Also, the right to education and health services was recognized in some of the Treaties. The Treaty provisions were silent on questions such as language, religion and other cultural issues. No laws were ever passed dealing with their rights except for administrative regulations which attempted to restrict the use of aboriginal languages or prevent aborigines from following some of their own religious practices. Attempts to implement rules which were made by the Department of Indian Affairs have been discontinued and are generally acknowledged as having been unfair and unjust. A strong argument could be made that many of the other rights of the aboriginal peoples still exist, even though they haven't been allowed to practice these rights.

In the case of the Metis people, the basic question revolves around whether there was a Metis nation. If we use the term in the sense of a nation state, then, except possibly for a brief period during January to July, 1870, there was no Metis nation state. However, if we accept the more common definition of nationhood as a community of people with a common language, purpose, customs, traditions, and with common institutions, then there clearly was a Metis nation.<sup>35</sup> This nationalism and the desire of the people of the Red River to ensure that the national characteristics of the people were maintained was reflected in the Bill of Rights. The clauses of the Bill have been examined earlier. They recognized the difference between the English-and-French-speaking population and they sought to have these privileges preserved in legislation. As indicated previously, this legislation became a Constitutional Act.

What rights did the Manitoba Act recognize besides land rights? An examination of the Act indicates that the following additional rights of the people were recognized:

- a) the right to local government and control over local affairs;
- b) rights and privileges with respect to denominational schools. These included the language of instruction, (English was the language of instruction in Anglican and Presbyterian schools and French was the language of instruction in the Roman Catholic schools;
- c) the use of both French and English language in the Legislature, in records of the Legislature and Acts of the Legislature, and in court proceedings and legal and court documents;
- d) local laws, customs and usages are guaranteed as coming under the provincial legislature in the B.N.A. Act of 1867, and these provisions of that Act were to be applied. This would include provincial rights in the area of intra-provincial trade, certain aspects of economic development, and of social development. Since the natural resources were retained by Ottawa, the development of these resources such as timber, hunting and fishing, were subject to federal regulations. No special guarantees were granted in the Manitoba Act regarding natural resources.

The Manitoba Act, therefore, recognized a wide range of national rights of Manitobians and its minority groups. The question of how these rights were implemented will be dealt with in the next Chapter of this Submission.



X. Aboriginal Rights Outside Manitoba:

The Manitoba Act made no provisions for the territory outside the original boundaries of Manitoba. This immense tract of land, which was all to become known as the Northwest Territories, joined Confederation pursuant to the provisions of Section 146 of the B.N.A. Act. The Manitoba Act had two references to the governing of the Northwest Territories. The first provided for the Lieutenant-Governor of Manitoba to be appointed Lieutenant-Governor of the Northwest Territories. The second indicated that the Northwest Territories should be governed under the provisions of an Act entitled "An Act for the temporary government of Rupertsland and the Northwest Territories". None of these provisions made any reference to the aboriginal people in the territory. Therefore, the only provisions for aboriginal people in the Northwest Territories were those contained in the Rupertsland transfer agreement and the address from the Canadian Parliament to the British Parliament requesting the transfer to Canada of the Territories in question.

The transfer agreement made the Canadian government responsible for dealing with the Indians for their land.<sup>36</sup> The Address from Parliament indicated that Canada would deal with the Indians in accordance with the equitable principles which governed the British Crown.<sup>37</sup> It must be assumed that those principles were the ones set out in the Royal Proclamation of 1763, since those were the principles which the British Crown had followed in its dealings with the Indians. It is also clear that the term "Indian" as used in the transfer agreement and under Sub-section 91(24) and Section 146, O.C. 9, was all inclusive as defined in the Act which created the Department of the Secretary of State, 1868.<sup>38</sup> This Act wasn't

amended until 1876 to explicitly exclude the Metis of Manitoba. By implication, it did not exclude other Metis in the Northwest Territories. This is supported by Macdonald's argument in Parliament as late as 1884 that if the Metis wished to have their land rights recognized they could do so by joining an Indian band or going into Treaty.<sup>39</sup> It is also significant that in an 1860 Act to manage Indian lands the government built in the process for obtaining surrenders from the Indians which closely followed the process for negotiating land surrenders established by the Royal Proclamation.<sup>40</sup> Archibald recognized as early as 1870 that the government must take immediate action to sign Treaties with the Indians in Manitoba to obtain their lands before it could actually begin to allocate land and grant title to land for settlement purposes. The only land area not in dispute was the 2-mile strip along the rivers, which had been obtained under the provisions of the Selkirk Treaty. The first two of the numbered Treaties were concluded in 1871 and covered primarily the territories within the Manitoba boundaries of 1870.<sup>41</sup>

Although reference is made to Metis having been present at the first meeting of the Commissioner and the Indians, there is no mention of Metis rights having been raised at this meeting. It can be assumed that this was because these rights had been dealt with under the provisions of the Manitoba Act. In a memo to the Secretary of State, dated November 3, 1871, Archibald mentioned that when some bands were paid annuity money, Metis among them were told they could claim land under the Manitoba Act. However, only a few took advantage of this opportunity at the time. The rest joined Treaty.<sup>42</sup>

In the year 1873, the Northwest Angle Treaty was negotiated (Treaty 3). It covered the areas east of the Manitoba boundary

to Thunder Bay. When this Treaty was being negotiated, the half-breeds of the area were present and requested that their rights be covered in the Treaty. Alexander Morris, in a letter dated October 4, 1873, indicated the following:

"They said there were some ten to twenty families of half-breeds who were recognized as Indians and lived with them and they wished them included. I said the Treaty was not for whites, but I would recommend that those families should be permitted the option of taking either status as Indians or whites, but that they could not take both."<sup>43</sup>

He makes no further reference to the subject of Metis in this letter. However, in his diary he indicates that one of the chiefs asked for the "half-breeds" to be included in the Treaty. Morris, at this time, responded as follows:

"I am sent to Treat with the Indians. In Red River, where I come from, there is a great body of half-breeds, they must either be white or Indian. If Indians, they get Treaty money. If the half-breeds call themselves whites, they get land."<sup>44</sup>

Morris had introduced the concept that half-breeds were either Indians or whites, that they could not be both. A strange argument indeed, when they were products of both cultures but belonged to neither group. He does, however, suggest that even if they declared themselves white they would be entitled to a land grant. He gave no clue as to how they could avail themselves of these land grants. When the Treaty was signed many of the Metis were excluded. However, the following year, the Commissioners returned to the area and

signed an adhesion to Treaty Number 3, which specifically dealt with the excluded Metis of the area and which brought them into the Treaty as a separate band. We have no indication of the rationale for this action by the government. The same year, 1874, Morris negotiated Treaty Number 4 (The Qu'Appelle Treaty). When Morris arrived at the Qu'Appelle Lakes he was met by a large party of Metis and Indians. The question of Metis rights was again raised by the Indians. Morris simply responded that he did not come to deal with the "half breeds" and concluded by saying:

"You may leave the half-breeds  
in the hands of the Queen, who  
will deal generously and justly  
with them."45

During the course of the negotiations, Morris had a separate meeting with the Metis. He essentially repeated to them what he had told the Indians. The results of this meeting were reported separately to Macdonald. This report is included in Sessional Papers and it gives no indication as to how Morris believed the government would deal with the Metis.

In the negotiations for Treaty Number 5, no mention was made of the Metis. However, when Treaty Number 6 was negotiated, the matter of Metis rights was again raised but Morris gave no indication as to how he responded to the issue. He does, however, in his report of December 4, 1876, have the following comments on the question of the Metis:

"There is another class of population  
in the Northwest, whose position I  
desire to bring to the attention of  
the Privy Council. I refer to the  
wandering half-breeds of the Plains,  
who are chiefly of French descent  
and live the life of the Indians.

There are a few who are identified with the Indians, but there is a large class of Metis who live by the hunt of the buffalo and have no settled homes. I think a census of the numbers of these should be procured, and while I would not be disposed to recommend their being brought under the Treaties, I would suggest that land should be assigned to them...and - if...it should be deemed necessary and expedient, some assistance should be given to enable them to enter upon agricultural operations."<sup>46</sup>

The the signing of Treaty 7 with the Blackfeet, the Indians requested that the Metis be removed from their area. It appears they were looked upon by the Blackfeet as part of the Cree nation, who were their traditional enemies. Morris made no reference to the question of Metis rights being dealt with in his report on these negotiations. Other authorities on the question of the Metis having aboriginal rights also supported the claim much more explicitly. In a book titled Hudson's Bay Company Land Tenures, published in 1898, Archer Martin, a leading authority on early Canadian history, commented on this question as follows:

"One not familiar with the peculiarities of the people known in Manitoba as half-breeds or Metis would naturally ask how the gift to them would extinguish the Indian title, though the name itself would go to show that they had a right in blood to participate to the extent of a moiety."<sup>47</sup>

Others who supported the claim of the Metis included various members of the Northwest Territories Council. These included Thomas McKay, Chairman of the Northwest Territories Council, who set forth the case of the Metis as contained in a resolution of the Council dated October 8, 1881. Others who wrote supporting the resolution included H. MacBeth, Secretary

of the Council, and Lawrence Clarke, a member of the Council. Clarke, for example, states the position as follows:

"The half-breeds have always been recognized as possessing rights in the same soil, subject to which the Dominion accepted the transfer of the Territories..."<sup>48</sup>

Judge Hugh Richardson writing on the subject in 1880 outlining the claim being made by the Metis to title in the soil stated, "that grounds exist for such a contention appears by reference to Statutes of Canada, 1870, Chap. 3, Sec. 31."<sup>49</sup>

Chester Martin, another historian of the early 1900s, in his book on Dominion Lands Policy, acknowledged the Metis claim.<sup>50</sup> Probably one of the most significant admissions of the Metis claim is to be found in a report of the Privy Council dated May 6, 1899, written by John McGee, Clerk of the Privy Council. The report deals specifically with the claim of the Metis that the children born between 1870 and 1885 are entitled to have their claim settled. He stated as follows:

"After careful consideration, the Minister has come to the conclusion that the claim of the half-breeds is well-founded and should be admitted. As already set forth, he is of the opinion that the Indian and half-breed rights are co-existent and should properly be extinguished concurrently."<sup>51</sup>

Although Sir John A. Macdonald steadfastly denied that the Metis had special rights other than as members of the Indian bands, he did campaign in 1878 on a promise to grant the Metis Scrip. To this end he had an amendment passed to the Dominion Lands Act in 1879 providing for a Scrip issue to extinguish

the Indian title of the "half breeds". This section of the Act was again amended in 1883, but the amendment did not change the intention of the Act in regard to Metis rights.<sup>52</sup> It was the 1883 amendment under which the 1885 Order-in-Council was issued.

On March 30, 1885, O.C. 688/1885 was passed which explicitly made provision for the issue of Scrip to satisfy claims existing in connection with the extinguishment of the Indian title preferred by the "half breeds". It is not clear why Macdonald made provision for Metis Scrip in legislation but then insisted as late as 1884 that no special Metis rights existed. Since only those Metis who lived like Indians were allowed to join a band and enter Treaty. Somehow it appears that in his mind aboriginal rights were only possessed by "uncivilized savages" and then only in the form of reserves and Treaty provisions. If one insisted on exercising full citizenship rights, one became white and could not longer claim rights by virtue of Indian ancestry.

The Metis outside Manitoba did not quietly sit back and ignore their own claims after the 1870 provisions made for Manitoba Metis. They were indeed very active in formulating and presenting petitions at Ottawa, to Lieutenant-Governors and to Commissions appointed to negotiate Treaties. The first petition was addressed to Lieutenant-Governor Alexander Morris by the Metis of the Fort Qu'Appelle Lakes on May 3, 1874. From that time until the Metis decided to ask Riel to return to Canada to help them pursue their cause, there were a minimum of 16 petitions forwarded to Ottawa or presented to the Lieutenant-Governors by the Metis of the Northwest themselves. There may have been more petitions but these are the ones that were reproduced for the record in Sessional Papers in 1886. The petitions came from many communities, with the largest group (6)

from the Prince Albert area. In addition, 4 came from the Qu'Appelle Valley area and 3 from what is now Alberta. The remaining petitions came from Battleford, Cypress Hills and Manitoba Village. The first petition included the names of 11 male adults; the Cypress Hills petition included the names of 278 male adults.<sup>53</sup> In addition, there were a minimum of 14 additional petitions or resolutions received from the Catholic clergy and from members of the Northwest Territories Council. The only year between 1873 and 1885 in which the records show no formal petitions was 1879, the year of the amendment to the Dominion Lands Act. The petitions set out rights similar to those requested in the Manitoba Bill of Rights. These included:

- land or Scrip to be exchanged for land;
- the right to establish local government;
- hunting and fishing rights;
- free trade;
- representation on federal and territorial governments;
- language and education rights;
- assistance in setting up their farms; and
- religious rights.

The Commissioners or the Deputy Minister of the Interior would respond politely, indicating that these requests were under consideration by the government. However, the official records show no formal response by the politicians themselves. Furthermore, nothing happened and nothing was done. Occasionally the issue would be discussed in a House of Commons debate. In 1878, a special Commission under Nicholas Flood Davin was established to study the Indian and Metis problem. A comprehensive report was submitted to the government with recommendations.<sup>54</sup> Still nothing happened. The only policy seems to have been the one stated by Macdonald previously that Metis could join Indian bands if they claimed Indian rights. Requests



for special land grants, for seed, animals and implements were all refused. Only when the resistance was already underway did the government act, and then only with a Scrip issue. The other rights requested were either denied or ignored. The 1885 Resistance did, however, firmly establish that the Metis had rights by virtue of their Indian ancestry. Such rights must be dealt with at the same time that Indian Treaties were negotiated. This was the pattern followed commencing with the signing of Treaty Number 8. The Commission would meet with the Indians and the "half breeds" at the same time. The Treaty would first be negotiated and then Scrip was issued. The people themselves were generally allowed to decide if they wanted to choose Scrip or Treaty.

The 1885 O.C. and Scrip issued covered the Metis only in those areas in which Treaties had already been signed. These included areas covered by Treaties 2 and 4 to 7. All half-breeds residing in the area as of July 1, 1870, were entitled to Scrip. In 1899 the government admitted that the application of that policy was wrong. The principle followed with Indians was that their rights were extinguished from the day on which the Treaty with them was signed. It was agreed that if the "half-breed" and Indian rights co-existed, the same principle must be applied to the Metis. Therefore, in 1899, under a new O.C., all Metis in the Territories born prior to July 16, 1885, were to be eligible for a Scrip grant. In spite of the government's attempt to evade its responsibility to the Metis, it is clear that the government acknowledged both in law and practice the validity of the Metis claim.

## FOOTNOTES

- <sup>1</sup>Extracts from Minutes of a Hearing of the Select Committee on the Hudson's Bay Company 1857, p. 438. Public Archives of Canada.
- <sup>2</sup>Ibid. pp. 91 - 92.
- <sup>3</sup>Hudson's Bay Company Response to the Claims of the Petitioners Memorial, 1847, p. 43. Public Archives of Canada, R. G. 7, G 21, Vol. 12, No. 49(1) (a).
- <sup>4</sup>Ibid. p. 58.
- <sup>5</sup>An Act Respecting The Management of Indian Lands, Victorie Regine.
- <sup>6</sup>Auguste Tremauden, *Supra*, pp. 3 - 4.
- <sup>7</sup>Ibid. Chapt. 2.
- <sup>8</sup>George F. Stanley, *Supra*, p. 11.
- <sup>9</sup>Margaret McLeod and W. L. Morton, Cuthbert Grant of Grantown, Warden of the Plains. McLelland and Stewart, 1974.
- <sup>10</sup>See E.E. Rich, The Fur Trade and the Northwest to 1857. McLelland and Stewart, 1967.
- <sup>11</sup>McLeod and Morton, *Supra*.
- <sup>12</sup>George F. Stanley, *Supra*, pp. 1 and 12.
- <sup>13</sup>Summing and Mickenberg, *Supra*, p. 85.
- <sup>14</sup>Letter from George Simpson to Donalf Ross, August 21, 1848, Hudson's Bay Company Papers. Public Archives of Canada, R.G. 7, G 21, Vol. 12, No. 49 (1) (a).
- <sup>15</sup>*Supra*. Appendix A of Select Committee Report on the Hudson's Bay Company.
- <sup>16</sup>Documents related to Rupertsland transfer agreement, found in 1870 Sessional Papers and Statutes of Canada: An Act to Establish the Department of the Secretary of State, 1868, and An Act for the Temporary Government of Rupertsland, 1869.

- 17 Excerpts from Ritchot's Diary. W. L. Morton, Manitoba, The Birth of a Province. Manitoba Record Society Publication, 1967, pp. 141-142.
- 18 Ibid. p. 99, Extract from Northcotte's Diary.
- 19 House of Commons Debate, 1886, p. 834.
- 20 George F. Stanley, Supra, Chapters IV and V.
- 21 The Manitoba Bill of Rights, Auguste Tremauden, Supra, p. 231, 4th French Addition, 1979.
- 22 W. L. Morton, Supra, Ritchot's Diary, pp. 141-142.
- 23 Ibid. p. 141.
- 24 Ibid.
- 25 Auguste Tremauden, Supra, pp 231-233.
- 26 W. L. Morton, Supra, Ritchot's Diary, p. 140.
- 27 Ibid. pp. 143 and 147.
- 28 Wickes-Taylor Papers, Ed. W. D. Smith, Manitoba Record Society, 1968, p. 171.
- 29 W. L. Morton, Supra, Northcotte's Diary, p. 99.
- 30 The Manitoba Act, 1870, Supra.
- 31 W. L. Morton, Supra, Northcotte's Diary, p. 99.
- 32 The B.N.A. Act, 1871, 34 - 38 Victoria, C. 28(U.K.).
- 33 George F. Stanley, Supra, pp. 124 - 125.
- 34 Final Report of the Manitoba Metis Land Commission, 1979-80, D. N. Sprague, University of Manitoba.
- 35 Nation: What Does It Mean and What Are Its Implications (Nation Definition) (International Law), A.M.N.S.I.S., 1978. Prepared by Clem Chartier, L.L.B.

<sup>36</sup>Order of Her Majesty In Council Admitting Rupert's Land And The North-Western Territory Into The Union, June 23, 1870, found at R. S. S. 1965, Vol VI, p. 142: See Section 14; See also Schedule (A) Paragraph 8, and Schedule (C), Section 14.

<sup>37</sup>Ibid.

<sup>38</sup>An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordinance Lands, Statutes of Canada, 1868, Chapter 42.

<sup>39</sup>Supra. House of Commons Debates, 1886, p. 834.

<sup>40</sup>An Act Respecting The Management of Indian Lands, Victorie Regine 23, Chapter 151, 1860.

<sup>41</sup>Alexander Morris, Supra, Chapter IV.

<sup>42</sup>Ibid.

<sup>43</sup>Ibid. . Chapter V, p.

<sup>44</sup>Ibid.

<sup>45</sup>Ibid. Chapter IV, P. 99.

<sup>46</sup>Ibid. p. 195.

<sup>47</sup>Archer Martin, Supra, pp. 99-100.

<sup>48</sup>Sessional Papers 116, 1885, pp. 70 - 80.

<sup>49</sup>Ibid. p. 80.

<sup>50</sup>Chester Martin, Dominion Lands Policy, Found in Vol. 2, Canadian Frontierism Series, p. 357, McMillan, 1938.

<sup>51</sup>Report Of Privy Council, May 6, 1899, P. C. No. 918.

<sup>52</sup>Amendments to the Dominion Lands Act, 1879 and 1883, S. S. of Canada.

53 Sessional Papers, 1886, Paper No. 116.

54 Report on Industrial Schools for Indians and Half-breeds,  
March 14, 1879. Public Archives, Ottawa.

55 Sessional Papers, 1907, Paper No. 27, p. XIII.