Indigenous Self-Government in Canada: Where Are We and the Métis Landscape

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Acknowledging the Biases and Fictions in Some ‘Nation Building’ Narratives

Telling Truths About Canada’s History
The Pre-Existence of Indigenous Land, Laws and Language is Often Ignored or Framed as ‘History’
The Pre-Existence of the Metis is Often Missing Entirely

At the time of European contact, diverse groups of Aboriginal peoples lived in all regions of the northern half of the continent.
Colonization’s Toolkit: Dispossession, Denial and Erasure from the ‘Map’
The history of the interface of Europeans and the common law with aboriginal peoples is a long one. As might be expected of such a long history, the principles by which the interface has been governed have not always been consistently applied. Yet running through this history, from its earliest beginnings to the present time is a golden thread – the recognition by the common law of the ancestral laws and customs the aboriginal peoples who occupied the land prior to European settlement.
Canada’s Underlying Constitutional Legitimacy and Future is Anchored on Treaties (Historic & Modern), Fulfilling Solemn Promises and Constitutional Commitments as well as Reaching Other Constructive Arrangements with Indigenous Peoples.

[3] The government policy regarding the First Nations was to enter into treaties with the various bands, whereby they agreed to settlement of their lands in exchange for reservations of land and other promises.

[4] The government policy with respect to the Métis ... was less clear.
Treaty 3
Halfbreed Adhesion (1875)

Halfbreed Exclusion from Treaty-Making (1850)
Powley (2003)
“... towards the extinguishment of the Indian Title to the lands in the Province, to appropriate a portion of such ungranted lands, to the extent of one million four hundred thousand acres thereof, for the benefit of the families of the half-breed residents … ” – Manitoba Act, 1870, s. 31
The Métis Perspective

“When the Government of Canada presented itself at our doors it found us at peace. It found that the Metis people of the North-West could not only live well without it ... but that it had a government of its own, free, peaceful, well-functioning, contributing to the work of civilization in a way that the Company from England could never have done without thousands of soldiers. It was a government with an organized constitution whose junction was more legitimate and worthy or respect, because it was exercised over a country that belonged to it.”

- Louis Riel, 1885
The Prime Minister of the Day’s Perspective

“... it will require a considerable management to keep those wild people quiet. In another year the present residents will be altogether swamped by the influx of strangers who will go in with the idea of becoming industrious and peaceable settlers.”

– Prime Minister Sir John A. MacDonald, 1869
Métis Rights: A “Legal Lacuna” in Canadian Law

“Although widely recognized as a culturally distinct Aboriginal people living in culturally distinct communities, the law remained blind to the unique history of the Métis and their unique needs. ... Governments slowly awoke to this legal lacuna. ... The constitutional amendments of 1982 ... signal that the time has finally come for recognition of the Métis as a unique and distinct people.

Outstanding Métis Claims \textit{(MMF, 2013)}

- Métis Section 35 Rights \textit{(Powley, 2003)}
- Jursidiction for the Métis \textit{(Daniels, 2016)}

Reconciliation with Métis through "just and lasting settlements"
Addressing the “Legal Lacuna”: Métis Self-Government Agreements

• In June 2019, Canada signed Métis Government Recognition and Self-Government Agreements with the Métis Nation of Alberta (“MNA”), the Métis Nation-Saskatchewan (“MN-S”) and the Métis Nation of Ontario (“MNO”) that provide immediate federal recognition of the Métis right to self-government of these collectives as well as sets out a process for Federal Recognition Legislation and full recognition of Métis jurisdictions in core areas.

• In July 2021, Canada signed a Manitoba Métis Self-Government Recognition and Implementation Agreement with the Manitoba Métis Federation (“MMF”) that provides immediate federal recognition with respect to MMF’s representativeness and existing self-government as well as contemplates a future self-government treaty, along with Federal Implementation Legislation.
Pre-Existing Métis Rights and Outstanding Métis Claims
The Way Ahead?

• The limitations of a “right” by “right” approach to interpreting and implementing Section 35 has shown its frailties and limits.

• The honour of the Crown is increasingly relied upon to balance the inherent tension between pre-existing title, laws, interests and “assumed Crown sovereignty.

• The reconciliation of Indigenous laws, jurisdictions and legal orders with Canadian law through negotiations and/or judicial recognition of Canada’s multi-juridical origins provides a better way forward. This approach is consistent with the United Nations Declaration on the Rights Indigenous Peoples as well as the ultimate purpose of Section 35.