Canada: ‘If they treat the Indians humanely, all will be well’

In 1840 the Aborigines’ Protection Society (APS) produced an advice manual for the Colonial Office, a set of model laws for the governance of the ‘Native’ peoples of the Empire. Published by John Murray of London under the title *Outline of a System of Legislation for Securing Protection of all Countries Colonized by Great Britain; Extending to Them Political and Social Rights, Ameliorating Their Conditions, and Promoting Their Civilization*, the model laws laid down general principles of legislation based on ‘the indefeasible rights of every people . . . the natural rights of man . . .’, which entailed a people’s rights as an independent nation the sovereignty of which could be justly obtained only by fair treaty and consent, and of which every individual had a ‘right to personal liberty, and protection of property and life’. On rights of property, the model laws decreed that the land must be obtained by treaties, which would be unacceptable unless there were adequate reserves for Aborigines. Indigenes should possess all the privileges of British subjects, and be taxed and treated by law as such. In systems of justice, everything should be done in negotiation with and by the consent of Aborigines who, where settled in large numbers, should adjudicate minor offences committed among themselves. All Aborigines living under the sovereignty of Great Britain should have the right of inheriting and holding real and personal property, and of disposing of it by will or transfer. In civil and criminal cases, the evidence of Aborigines should be admitted in British courts of justice and not invalidated because their customs prevented them from taking an oath.

The model laws had a particular relevance in British North America where Governor-General Lord Sydenham was being asked to advise on future relations between settlers and Indigenous people. He had few precedents to follow in undertaking this difficult task. To Indigenous peoples, governors represented the great Father/
Mother over the seas who had guaranteed their protection. Sydenham, however, was also charged with responsibility for negotiating settler demands for increased autonomy and access to lands. In moderating these demands the governor knew that he could expect little support from a Colonial Office anxious to rid the British taxpayer of the cost of the annual distribution of gifts, as required under the treaties, while avoiding criticism from humanitarians and evangelicals, ashamed that the progress of civilisation seemed always to be accompanied by Indigenous decline. While Colonial Secretary Lord John Russell had forwarded the APS’s advice he assured Sydenham that it was far from binding, commenting: ‘How far any of the suggestions in this Pamphlet may be worthy of adoption in Canada is a question which you have better means of determining than I possess.

By 1840 there were four colonies in mainland British North America, clustered in the south-eastern corner of the vast Canadian land mass, the rest of which remained under the administration of the Hudson’s Bay Company. Representative government had been introduced during the last quarter of the eighteenth century, beginning with the maritime colonies of Nova Scotia (1758), Prince Edward Island (1773) and New Brunswick (1785), and extending to Upper and Lower Canada, the constituent parts of the new province of Canada, in 1791 (see Map 2.1). Property qualifications varied according to local circumstances, but were sufficiently liberal to render agitation for extension of the franchise non-existent. In both Upper and Lower Canada a small number of Indigenous men of mixed descent, living a settled life, had been able to qualify, and Mohawk Chief John Brant had, in 1832, been briefly elected to the Legislative Council as member for Haldimand. Most Indigenous peoples, however, were little concerned with settler political institutions, continuing to regard themselves as allies rather than subjects of the Crown.

Although the Colonial Office had direct oversight only of relationships with the Indigenous peoples in the colonies of Upper and Lower Canada, practices developed in these colonies were influential in both the maritimes and, later, in the new west-coast colonies of Vancouver Island (1849) and British Columbia (1856). These practices were encoded in legislation passed by the Assembly of the Province of Canada after it had assumed responsibility for Indigenous peoples in response to the announced intention of the British Government to cease its maintenance of the Indian Office in 1860. When the colonies entered into confederation in 1867, it was these policies that determined the status offered to Indigenous peoples in the new nation.
Competing understandings

Discussions of the status of Indigenous peoples in the British North American colonies reflect competing and at times conflicting understandings among the four major stakeholders – the Colonial Office, with its locally based governors and Indian agents; the missionaries; the settlers; and the Indigenous peoples themselves. The Colonial Office response in the past had been one of avoidance, decreasing the opportunities for demands to be made. Lieutenant-Colonel James’s recommendation that ‘Indian Councils should not be Assembled at every pretext; it is a most mistaken notion that an Indian must have all his requests complied with’ was enthusiastically endorsed when his dispatch arrived. But with proximity between the two communities increasing by the 1830s, clearer policies for mutual responsibilities had to be devised.

Never questioning the inevitability of White settlement, governors increasingly classified Indigenous people, alongside women and children, as minors deserving of protection: ‘the Crown their
Guardian . . . [they] can do no legal act of their own’.9 As the wealth, power and potential threat of Indigenous peoples declined, protection slipped into coercion, compelling the decimated and increasingly isolated bands to trade land for the promise of security, and to move towards European models of civilisation and self-sufficiency. Addressing a delegation of the Iroquois who had come to England in January 1830, Secretary of State for the Colonies Sir George Murray warned that

the White population, by the habits of cultivation, were spreading everywhere over the Country like a flood of Water; & . . . unless the Indians would conform themselves to those habits of life, & would bring up their children to occupy Farms & cultivate the Ground in the same manner with the White people . . . they would be gradually swept away by this Flood, & would be altogether lost, but by accepting Grants of Land & cultivating Farms, they would gradually increase their numbers & their wealth, & retain their Station in a Country in which they were so well entitled to have a share, & in which he [Murray] had a very sincere wish to see them prosperous & happy.10

While a similar protective policy was also applied to the first Black immigrants to the maritime provinces – refugees from slavery in the United States – for Indigenous people the tutelage became permanent.11 In order ‘to promote the disposition amongst the Indians, to assume the habits of Civilization’, plans were drawn up to individuate reserve lands, and to provide the heads of families with the ‘location tickets’ which were later to prove central to the claim for enfranchisement.12 The refusal of Indigenous peoples to accept such provisions, and their insistence on holding land in common, were read as evidence of ‘wildness’ or ‘savagery’, reinforcing the need for continued ‘protection’. As Britain sought to free itself of ongoing obligations to its former allies, governors were instructed to persuade settler legislatures to take responsibility for the peoples whom they had dispossessed.13 Although the instructions issued to new governors continued to require them to protect Indigenous peoples while promoting religion and education among them, they were increasingly deprived of the resources that would have enabled them to implement such policies without settler support.14

The only other substantial group with an interest in safeguarding the rights of Indigenous peoples was the missionaries, all of whom, despite their theological and denominational differences, advocated a process of gradual civilisation. Settlement, evident in the cessation of ‘wandering’, was central to their understanding of this process, its side benefit – freeing the land for sale – was promoted as the means of financing the transition to an agricultural lifestyle. ‘It would be very advantageous’,
wrote the Roman Catholic lord bishop of Quebec in 1828, ‘could they be induced to solicit the application of these funds to building houses in their villages and a good school house, which might serve as a place of worship till a Church could be built’. Thirteen years later the Protestant missionary to the Mi’kmaq assured the Nova Scotia legislature that local bands ‘appeared’ willing to hand over most of their land in exchange for assistance in farming the remainder for their own support. ‘It seems neither wise nor just’, he concluded, ‘to allow in our midst, another race to remain permanently inferior, a burden and misery to themselves, and a barrier to the general progress of the whole community.’

Until the process of civilising was complete missionaries were keen to present themselves as protectors of Indigenous peoples whose safety and well being were being threatened by rapacious settlers. Often working in isolation, beyond the limits of White settlement, Roman Catholic and Wesleyan missionaries reporting to home societies in France and the United States had the capacity to highlight Britain’s failure to protect its Indigenous subjects. Such reports would later be seized on by the APS, anxious to add ‘waning loyalty’ to its list of evils consequent upon the failure of the Colonial Office to act in defence of Indigenous peoples across the Empire.

To the settlers, the missionaries’ campaign for continuing protection of Indigenous peoples was evidence of the failure of the civilising mission. Positioning themselves as pioneers, their claim to the land based on their willingness to labour, the settlers reacted angrily to any suggestion that their taxes should be used to support Indigenous landholders, whose attachment to land was standing in the way of further expansion. In their version of settlement history, the ‘humane’ course of action was to induce ‘the Indians by offers of compensation, to remove quietly to more distant hunting grounds, or to confine themselves within more limited reserves, instead of leaving them and the white settlers exposed to the horrors of a protracted struggle for ownership’. Canada’s ‘peaceable settlement’, they argued, had left ‘the Indians . . . in possession of advantages which far exceed those of the surrounding white populations, and which afford them the means under a proper system of mental improvement, of obtaining independence and even opulence’.

Anxious to gain access to more land, settlers decried such ‘special treatment’, arguing that Indigenous peoples should be compelled rather than merely encouraged to become self-sufficient. Claiming a knowledge born of familiarity, they argued that ‘the longer the Indian is kept in a comparatively helpless condition, and treated as a child, the less inclined he will be to assume the responsibility of providing for or
taking care of himself’, insisting instead that, ‘like his white neighbour’, he should be forced to rely entirely on his own exertions.20

‘If, on the one hand’, Sir George Murray observed, ‘there existed a disposition with the aboriginal Inhabitants to cling to their original habits \& mode of life, there was a proneness also in the new occupants of America to regard the Natives as an irreclaimable race \& as inconvenient neighbours, whom it was desirable ultimately wholly to remove’.21 Although members of local legislatures liked to boast of the superiority of Canadian Indian policy as compared to that of the United States, even they were prepared to admit that if full responsibility was vested in settler governments ‘it would lead to dissatisfaction and difficulty’.22

The Indigenes’ understanding of this changing situation was more evident in action than in word, yet there is no sense in which they were silent victims. Band councils continued to function, retaining considerable autonomy within the reserves and serving as the first point of contact for government and colonial officials. The Council of the Six Nations, the largest Indigenous group in the province of Canada, consistently argued that its people remained allies not subjects of Britain, living under the uneasy supervision of the Indian Department. Other bands, however, were prepared to explore the possibilities which ‘subject’ status offered. In their exchanges with representatives of the Colonial Office individual chiefs expressed their wish to embrace some of the benefits of civilisation. Addressing a gathering at Drummond Island in 1827, Potagunnser Band member Ashagashe had declared:

> Our great Father at York has given our Brethren the means to cut up the ground [plough] and has taught them to cultivate the land, how they are favoured; we wish he would favour us in the same way . . . we have arms as well as the whites but we don’t know how to use them – Our hearts are dark we want them made white [become Christians] how we should laugh to see our Daughters milking Cows and washing dresses for us, and to see the Young men beating Iron and making shoes for each other.23

Behind the elaborate language lay a clear intent to define an Indigenous subject status, different from but not inferior to that enjoyed by settlers. Through their band councils Indigenous peoples in Lower Canada resisted attempts to have revenues derived from their land diverted to fund educational facilities that in settler communities would have been provided out of government revenues.24 All Indigenous communities argued for the right to retain their remaining land on their own terms, and, as contact with settler communities increased, Indigenous leaders were quick to protest the inconsistencies they saw in the new status to which they were being assigned.25 Petitioning the Crown in 1854, the Mi’kmaq people declared:
We have no power to maintain our rights against the encroachments of the whites. They are more numerous and powerful than we, and have more knowledge . . . everywhere and by all classes the poor Indian is despised. Because of our poverty we are despised. But who, we could ask, has made us poor? Who has taken our property from us? Because of our ignorance we are despised, and alas! we are despised and degraded because we are Indians. But in the light of that great bright sun which shines upon us all alike; and in the presence of that Great Creator who made us all, we would ask whose fault is it that we are Indians? And who gave the white man a right to deceive and despise and oppress us simply on the ground that the color of our skin is somewhat different from his own?26

The move to responsible government

By 1840, however, the British Government was far more preoccupied with settler interests. The responsible government recommended by Lord Durham had been little theorised, leaving colonial governors to negotiate its implementation with local legislatures. Beginning with Nova Scotia in 1847, responsible government spread to the province of Canada and New Brunswick in 1848 and Prince Edward Island in 1851. Settler politicians were quick to seize the advantage, demanding control of patronage, and positioning the governor essentially as their servant. Governor-General Sir Charles Metcalfe, in a private despatch to Secretary of State for the Colonies Lord Stanley, observed:

The Governor is now I conceive in a false position, his responsibility to the Home Government and to the People of the Colony being alike impaired, and his own power of usefulness, if he possesses any, frustrated by the scarcely avoidable necessity of lending his weight to a party, instead of acting with exclusive attention to the Public Good.27

The distinction between ‘party’ and ‘public good’ reflected the governor-general’s awareness that, although there had been no agitation for extension of the franchise in any of the colonies, not all of those for whom he was charged to care were effectively represented under the prevailing arrangements. Reporting on the political rights of Indigenous peoples to Governor Sir George Arthur in 1839, Mr Justice Macauley had written: ‘if possessed of sufficient property to qualify them, then competency to vote at elections or fill municipal offices if duly appointed thereto, could not be denied’.28 Given that their land continued to be held in common it was unlikely that Indigenous people would be able to qualify, but even that slight possibility was negated by the passage of the Crown Lands Protection Act later in the same year, designating all Indian land as being vested in the Crown.29
The rare voices in local legislatures urging the removal of barriers to Indigenous participation, were usually arguing for the removal of all elements of their ‘special status’. Speaking in the Legislative Assembly of the United Canadas in 1843 Colonel Prince argued that the exclusion of ‘[the r]ed man . . . while the coloured man was indiscriminately allowed the privilege . . . was both unjust and illiberal’. Ten years later he was agitating ‘to put the Indians on the same footing as the white . . . [taking] some of the privileges which they had superior to those of the white men, such as the privilege of hunting at unseasonable times . . . [and] the privilege under some circumstances of not paying their debts’.

The knowledge that Indigenous people had the right to become full citizens was not widespread. Officials of the increasingly locally controlled Indian Department, justifying their continued employment by reconstructing themselves as ‘protectors’ of Indigenous peoples, had long argued that political participation was the privilege of the civilised subject. Indigenous people, they had consistently claimed, could not be ‘admitted individually, to the rights His Majesty’s other subjects enjoy’ until ‘further improvement be made in their moral condition by the Instruction and Education of their Youth, leading gradually to the attainment of sufficient knowledge to enable them to manage their own affairs, to cultivate with advantage their own lands’. However when the issue was canvassed by the Commission of Inquiry into Indian Affairs in 1844, Chief Superintendent Jarvis set out to demonstrate that the situation envisaged by the Macauley judgment was far from being attained. Although ‘the natural abilities of the Indians . . . if cultivated would render them as fit for the enjoyment of all the civil and political rights as nine tenths of the lower classes’, they were disqualified from exercising such privileges by their lack of education.

The missionaries who responded to the same questionnaire were unaware of the Macauley judgment. Dr Adamson, Wesleyan missionary to the Mississauga of the River Credit, cited lands held in common and exemption from property taxes as the reasons why Indigenous people were not allowed to vote. However, he did not consider their disqualification justified, arguing that although they were not ‘actual British subjects . . . many of the Indians have now sufficient knowledge and ability to exercise all the political and civil rights of the whites and that all would have so if properly educated’. There was no sense in the missionaries’ responses that they saw enfranchisement as an immediate goal. Indeed, the Reverend R. Flood, missionary to the Munsees and Chippewas of the River Thames, deplored any such possibility, arguing that bringing Indigenous peoples into the political process ‘would have the tendency to bring them into contact with the demoralized portion
of the white population at political meetings when they might easily become the prey of the wicked and designing'.

The Gradual Civilisation Act

Settler governments were determined to exclude Indigenous peoples – increasingly condemned as a barrier to settlement, retarding improvement – from any widened franchise. Nova Scotia, introducing manhood suffrage in 1854, excluded ‘Indians’ alongside paupers, arguing that those in receipt of government assistance were unable freely to exercise a vote, repealing this clause when property qualifications were reintroduced nine years later. Legislators in the province of Canada, under increasing pressure from the Colonial Office to assume responsibility for the Indigenous peoples in their midst, developed policies grounded in the 1844 Commission of Enquiry understanding that, whatever their rights at law, such people needed to be educated or civilised before they could exercise the franchise. The province of Canada legislated, in language which blended notions of protection and liberation, to establish both a distinct legal status for Indigenous peoples as wards of the government, located outside the privileges of full citizenship and the means by which they could be enfranchised.

Introduced in two pieces of legislation passed in the province of Canada in 1850 – An Act for the Better Protection of the Lands and Property of the Indians in Lower Canada and An Act for the Protection of Indians in Upper Canada from Imposition, and the Property Occupied or Enjoyed by Them from Trespass and Injury, and elaborated more fully seven years later in what became known as the Gradual Civilisation Act – the concept was disarmingly simple. While Indigenous people remained in their ‘uncivilized state’ they could continue to enjoy the special status which treaties had guaranteed. However, to qualify for Canadian citizenship, a process described as ‘enfranchisement’, they had not only to demonstrate that they had become educated/civilised, but were compelled to renounce their rights to share in communal payments, to individuate their land and to disassociate themselves from their communities. This solution, developed in the province of Canada, was, after confederation, applied nation-wide by the Indian Act 1876.

Skilfully blending the controlled benevolence of the missionaries with the simmering resentments of the settlers, the representation of enfranchisement was that it offered a positive way forward, but even those Indigenous people who had been willing to engage with the notion of ‘civilisation’ rejected the terms on which it was being offered.
As early as 1838, Wesleyan convert the Reverend Peter Jones (Kahkewaquonaby) had written to the APS arguing for access to the franchise as part of a process of ‘coming together’ that he saw as inevitable. ‘Scattered & surrounded by the White people as the Indians are’, he argued, ‘it would be in vain for them to attempt to keep up a separate form of Government from their neighbours, who form the largest population.’ Unlike the Six Nations, Reverend Jones’s people, the Mississauga of the Credit, had fully embraced the civilising package of conversion, education and settlement. However, they had embraced civilisation without abandoning their Indigenous identity, requesting recognition of their status of landowners-in-common and the right to control their own affairs, without the necessity of individuation and assimilation. Despite being eligible for enfranchisement under the new legislation, both Jones and his son refused to apply because they did not want to sever their connection with the rest of the band. Responding to a later revision of the legislation, in 1869, Jones’s son Oronhyatekha explained:

I hardly conceive it to be possible to frame an Act which would remove or more effectually bar any Indian from seeking enfranchisement than it does. It is simply an ingenious provision by which an Indian has the liberty accorded to him of surrendering all his rights and privileges and the rights and privileges of his wife and children, for the inestimable boon of paying taxes and being sued for debt.

Despite the benevolence of its language, the Gradual Civilisation Act functioned to disenfranchise individuals, whose eligibility to vote, where they were suitably qualified, had not been questioned in the past. During the parliamentary debate, W. B. Robinson, who had negotiated the treaties that had opened to settlement lands around Lakes Huron and Superior, warned that the Bill would be ‘very distasteful’ to chiefs who did not understand themselves as being disenfranchised. ‘At their Council meetings the Indians chiefs deliberated quite as sensibly as hon. members did in this House . . . They knew very well how to manage their own affairs’ and understood that if they had land they would be eligible to vote.

Robinson’s fears were realised ten years later when representative institutions were introduced in the Algoma region to the north of Lake Superior. Although candidates had been actively canvassing the Indigenous vote, the local returning officer made it clear that he would accept only the votes of those who had gone through the process of enfranchisement. A local resident, writing under the name ‘One Who Knows’, pointed out the inconsistency of this ruling. Indigenous people, he argued, did not need to be ‘enfranchised’ because they were
never slaves, and to demand that they be able to ‘read and write fluently . . . [their] own and another language, either English or French’, in order to register to vote was to set the bar too high. ‘How many of our own people would forfeit a right we have always held most sacred, were this condition compelled at our elections? We all know not one-tenth of the population could vote.’

Despite having six legal opinions which argued that suitably qualified British subjects, ‘irrespective of race or colour’, were entitled to vote, the returning officer chose to act on the one recommending that Indigenous people seeking to vote swear an oath that they were not ‘Indian’ in the terms of the Act. Believing their party to have been disadvantaged by this decision, Reform Party advocates argued:

We saw white men of the most degraded moral character, the very lowest degree of stupidity and ignorance, and without a dollar worth of tangible property to their names, sworn in as ‘householders,’ and voting. We saw the negroes, born nobody knows where . . . and without a semblance of property, house or anything else, sworn in as voters. And, we saw at the same polling place a fine, manly looking Indian chief, the owner of a good house, with cultivated lands, boats, nets and other valuable property . . . subjected to a process of badgering and insult by a pack of pert pettifoggers, and driven off from the polls, because he was an Indian

Such protests notwithstanding, practices introduced at Algoma became standard at elections as political parties increasingly identified with the settler population in their opposition to Indigenous ‘privilege’. The possibility of Indigenous people having any political rights became increasingly contentious as settlers moved from an understanding of the franchise based on property to one based on individual (male) rights. In revising provincial franchises after confederation, both Ontario and the new province of Manitoba identified as ineligible to vote specifically those ‘Indians’ in receipt of annuities. In Ontario this disqualification was extended in 1876 to include all Indigenous people living on reserves and, eight years later, anyone living off the reserve but still in receipt of annuities.

British Columbia’s introduction of a racial bar

In the colonies on the west coast, where Indigenous peoples greatly outnumbered settlers, the practice of excluding the majority population from citizen status was apparent in the earliest years of colonisation. In contrast to their European predecessors, Hudson’s Bay Company employees who had intermarried with local people, Vancouver Island settlers defined themselves in opposition to the ‘savages’, increasingly depicted as external enemies who threatened the security of the colony,
and pressured the local authorities to have Indigenous peoples removed from the settled districts. ‘Shall we allow a few vagrants to prevent forever industrious settlers from settling on unoccupied lands?’ asked influential local newspaper editor Amor de Cosmos in 1861. ‘Not at all . . . Locate reservations for them on which to earn their own living, and if they trespass on white settlers punish them severely.’

Although the colony’s first effective governor, Sir James Douglas, had negotiated some land purchases with Indigenous people, the manner of land acquisition equated more to the practice in New Zealand than that of the rest of Canada where the amount of land left as reserves related directly to the number of families to be accommodated. Douglas used no set formula; but, importantly, he recognised ‘native title’ to such lands and did not vest them in the Crown. Later dispossession occurred without even such minimal formalities. Although the practice of reserving small areas of land remained, neither the British nor the local legislature was prepared to bear the expense of treaty purchase, so the situation was left unresolved. As in the older colonies of the east, successive governors, as representatives of the Colonial Office, expressed increasing agreement with the missionaries that the solution to the ‘Indian problem’ lay in their ‘settling’ on their remaining lands, although with no guarantee that even there they would be free from further intrusion.

In 1866 the Colonial Office created the new colony of British Columbia, bringing the gold miners of the mainland and the more established settlers on Vancouver Island under a single administration which it hoped would move rapidly towards self-government. The incoming governor advocated the introduction of a selective franchise which, he argued, was ‘absolutely requisite for the successful dealing with the large Indian population which becomes a greater source of anxiety and a more difficult problem daily’. Local politicians, however, wanted manhood suffrage, with a libertarian minority willing to countenance a race-blind franchise if that would allow for the dismantling of what they saw as the unjustified system of Indian protection:

We are not among those who wish to see the Indian swept from the face of the earth; he was placed here for some wise purpose, owns the land we vauntingly call ours, and is entitled to a full measure of liberty and protection. To say that a man, because he has a red skin is not to be allowed the same rights that are accorded the man who wears a white skin is absurd. It is setting aside a recognized principle that an Indian is a responsible being and reducing him in the scale of humanity.

Opponents warned, however, that British Columbia would become the laughing stock of the Empire were it to adopt such a scheme. ‘Some
ten thousand whites would have to contend at the polls with fifty thousand painted, whiskey-drinking “red-skin” voters . . . peradventure to sit in a Legislature in which the savage element largely pre-dominated’.58

While the Island retained a franchise restricting voting to landholding British subjects resident in the area for a minimum of three months, on the mainland near-manhood suffrage prevailed, except in the more closely settled district of New Westminster from which ‘Indians’ were overtly excluded. In 1870, however, the Colonial Office intervened, insisting that British Columbian voters had to be able to read and write English, a requirement that functioned to exclude Indigenous people – and the many non-European immigrants – without needing to make explicit mention of race.59

Parliamentarians in British Columbia, who in 1870 had argued eloquently for their responsibility to represent, in Ottawa, the majority Indigenous population – ‘who . . . contribute as much to the revenue as a Canadian . . . [and] are entitled to be represented as well as white men’ – offered no resistance to the move.60 Indeed, when granted responsible government on entering the Confederation in 1871 the same parliamentarians proceeded to revise their Local Franchise Act to exclude all ‘Indians’ (and Chinese) across the province, irrespective of their economic or citizen status. When the final property qualifications were removed, in 1875, the racial disqualification clauses were omitted for fear that the Bill would be disallowed by the governor.61 However, once this fear was set aside they were quickly reinstated.62 Hence it was the province of British Columbia, where the 10,000 settlers were clearly outnumbered by an estimated 40,000 Indigenous people, that marked the site in which racial exclusion was most central to the transition towards White democracy.63

The Colonial Office response

The Colonial Office, which in 1837 had been adamant that it was not in the interests of Indigenous peoples to be entrusted to the care of local legislatures, was silent over, if not complicit in, their subsequent disenfranchisement. For the colonial authorities the appeal of the civilisation-assimilation solution was that, successfully applied, it would eliminate both Indigenous peoples’ claims to special status and the costs incurred in protecting the rights associated with that status. Outlining, in 1841, a policy that was also embraced by the lieutenant-governors in the Atlantic provinces, Lord Sydenham had foreshadowed this solution. While the British government had a responsibility to intervene on behalf of those ‘Indians who can still follow their
accustomed pursuits . . . if they become settlers they should be com-
pelled to fall into the ranks of the rest of Her Majesty’s subjects, exer-
cising the same independent control over their own property and their
own actions, and subject to the same general Laws as other Citizens’.
To attempt to maintain ‘a system of pupillage’ in the ‘civilized parts of
the Country’ would lead to ‘embarrassment to the Government,
expense to the Crown, a waste of the resources of the Province and
injury to the Indians themselves’.64

Any doubts expressed about the impact of such a policy on the impe-
rial responsibility to protect Indigenous peoples were dismissed as
impractical. ‘Any attempt to regulate the internal economy of Public
Affairs in Canada, by directions from this Country, is daily becoming
more and more hopeless’, a Colonial Office official noted, ‘as it respects
the Indians this difficulty could probably prove insuperable. Practically
& in truth every thing must be left to the local Authorities.’65 Given
that the local settlers had achieved control of their own affairs, they
should assume the financial responsibilities as well.66 Arguments that
such a move would disadvantage Indigenous peoples were swiftly dis-
missed by Earl Grey, the secretary of state for the colonies:

The continuance of the existing system of presents is not really favour-
able to the civilization of the Indians, and I have merely to add the expres-
sion of my confidence that, in so far as any assistance is either due to
them as compensation for lands, or demanded by a humane interest in
their improvement, the Provincial Parliament will never be insensible to
the claims which the former occupants of the Canadian territory have
upon the consideration of the great and flourishing European community
by which it is now inhabited.67

His advisers, both at home and abroad, did not share his confidence.
‘The Canadian Lre’, noted Colonial Office clerk Blackwood, have
‘never taken any steps themselves to improve the condition of the
Indians’.68 New Brunswick Governor Sir Edward Head agreed:

The covetous desire for land – the fearless energy which makes a man face
the wilderness – the half sullen isolation in which he resolves to fence in,
and maintain the bit of ground on which he has ‘squatted’ as a home for
himself and his family – all these make an English settler unlikely nicely
to weigh the claims, or conciliate the good will, of the native population
– He establishes himself by repelling the aborigines, not by mixing with
them, and when he has a vote it is easy to see which way his sympathies
will direct its exercise.69

This was advice which the secretary of state for the colonies, faced with
the responsibility of justifying the continuing cost to the British tax-
payer of supporting Indigenous people in colonies aggressively assert-
ing their independence, did not want to hear. Doubts about the willingness of settlers to assume this responsibility were transformed, over time, into anger directed towards the ‘remnants of a dwindling race’, who retained large landholdings which they were unwilling to capitalise. ‘Why’, asked Colonial Under-Secretary Elliot,

should this vast property be for ever left apart for the few Inhabitants of one or two villages, or perhaps eventually for the last red man of the Province? The legitimate use of the property is to supply training, education and indispensable subsistence and guardianship for these people until they can provide for themselves.70

By transforming Canadian Indigenous peoples from perpetual children to proprietors of substantial estates, Elliot was denying their need for continuing protection, situating them instead alongside the politicians in control of the local legislatures as people unwilling to assume responsibility for their own support. While Elliot’s superior, Permanent Under-Secretary Herman Merivale, did not substantially disagree with this analysis, he did attempt to moderate the message, advising colonial governors that the Colonial Office would ‘be satisfied with any disposition arrangement which meets your approval, & at the same time is consistent with the full preservation of the faith of the Imperial Government so far as it may, be pledged to the nation’.71

The Colonial Office then proceeded to minimise the extent of that pledge. Appeals from governors, faced with accusations from Indigenous peoples that the imperial government was reneging on treaty responsibilities yet forced to plead with settler assemblies for any provision in response, were repeatedly rejected.72 It would be both impracticable and irresponsible, Lord Stanley argued, for the Colonial Office to attempt to intervene. ‘The Canadians have become a nation, and upon them must depend the good management of everything within their Territory. If they treat the Indians humanely, all will be well; if not, the defect is not to be supplied by pitching an Annual sum of money across the Atlantic.’ It was also, he noted, a matter of justice. ‘Whilst the European Inhabitants of Canada are the only persons who have the power, it seems just that they should also bear the burthen of protecting the original possessors of the soil, for it is they who enjoy the profit.’73

By 1860, Elliot was able to report: ‘we at last have a formal acquiescence of the Canadian Government in the transfer from England to the Province of the expenses of the Indian Department. As they are to pay, it is quite fair that they also should manage.’74 With responsibility for the Indian Department vested in the commissioner for crown lands it was clear that Indigenous peoples would in future pay for their own
support, a decision in line with the policy Elliot had been pursuing, designed to mollify the resentments of tax-payers both at home and abroad yet fully in accord with the programme of civilisation advocated by both the missionaries and the APS.

Parallel priorities from the outset underpinned Indigenous policy in the new colonies in the west. Although incoming governors were still instructed to protect the interests of Indigenous people they were also informed that responsible government was a right to be extended to settlers in new colonies as swiftly as was practicable.\textsuperscript{75} Their doubts about the scarcity of settlers ‘attached to the British throne and constitution, and capable of appreciating the civil and religious liberty derived from that constitution’, went largely unheard in a Colonial Office committed to reducing the costs of colonisation.\textsuperscript{76} Once these colonial legislatures were empowered to design their own franchise they did so on the assumption that only settlers of Anglo-Saxon descent were equipped to exercise the political rights of the British subject. Although when the racially restrictive franchise provisions proposed for British Columbia came to the Colonial Office for approval, Blackwood, the clerk with responsibility for the North American colonies, cautiously suggested that these might be difficult to ‘reconcile . . . with the Royal Instructions to Gov. Seymour’, his superiors chose to ignore his concern; indeed the Colonial Office suggested means by which the desired result could be achieved.\textsuperscript{77} While governors and governors-general continued to express their special concern for Indigenous peoples, because they were not represented in parliament, they were left with nothing but persuasive power to alter the Indigenes’ conditions.\textsuperscript{78}

\textit{From colony to nation}

Each of the Canadian colonies that entered into the Confederation (Ontario, Quebec, New Brunswick and Nova Scotia in 1867; British Columbia in 1871; and Prince Edward Island in 1873) retained its distinctive franchise, crafted in order to safeguard settler hegemony in their particular historical circumstances. Although each of these franchises effectively excluded Indigenous people, only in British Columbia was this exclusion overtly racial in its definition. In the older colonies in the east, where settlers were in the majority, legislation positioned Indigenous people, alongside other men in receipt of government assistance, as insufficiently free to exercise the franchise, ignoring the argument that Indigenous payments were dividends on lands surrendered or held in trust rather than charity extended to the indigent. Even if substantial numbers of Indigenes had surrendered such payments and
individuated their land in order to be enfranchised, the retention of property qualifications ensured that the few who might have qualified would have shared both the status and ideologies of their fellow-voters and hence would not threaten the prevailing polity. The refusal of even the best qualified to seek enfranchisement allowed settler politicians not only to absolve themselves from accusations of discrimination, but, in fact, to blame Indigenous people for their own exclusion. By insisting on holding property in common, argued Nova Scotian David Mills, a Liberal member of the Canadian House of Commons, Indigenes were solely to blame for their diminished state.

They have all sunk, and necessarily so, to the level of the most indolent; and I fancy that, if the white population of any district were dealt with in the same way, if the consciousness of separate and independent property holdings was taken away, you would, in great measure, reduce them to the same barbarous condition in which the Indians are found at this moment.79

Despite being vested with responsibility for Indigenous peoples the national government did nothing to contest such attitudes. Administering its new responsibilities through an expanded Indian Department, the government continued the policy of protection–coercion, negotiating treaties across the former Hudson’s Bay Company territories in order to free land for White settlement. While these new settlers had easy access to Canadian citizenship, the displaced Indigenous peoples, confined on reserves, were compelled to embrace civilisation before they could enjoy the same privilege.

Notes
3 Colonial Office to Lord Sydenham, 18 May 1841; CO 42/478 Correspondence: Canadas 1841, vol 2: March–April.
8 PRO, CO 42/170 Lower Canada 1816, Correspondence, vol. 5: miscellaneous,
undated: Memorandums and Remarks on the Indian Department, Upper Canada 1814, 1815 and 1816, by Lieutenant-Colonel James, 37th Regiment, p. 303.


12 PRO, CO 42/229 Lower Canada 1830, Correspondence, vol. 2: April–June, Kempt to Murray, 20 May 1830, p. 305.


15 PRO, CO 42/223 Lower Canada 1828, Correspondence, vol. 2: April–May 1828, Lord Bishop of Quebec to Kempt, 23 April 1829, enclosed in Kempt to Murray, 16 May 1829, p. 319.

16 PRO, CO 188/77 New Brunswick 1842, Correspondence, vol. 2: April–May, Reports on Indian Settlements, &c. Published by command, 11 December 1841, pp. 115–16.

17 Colonial Intelligencer; or Aborigines' Friend, April (1850), p. 406.


19 See for example the memorial of residents in relation to the Wyandotte Reserve, National Archives of Canada (hereafter NAC), RG 10, vol. 232, part 1: Civil Secretary's Office Correspondence, File 9947, Memorial from the Municipal Council of the township of Amsterdam to Sir Edward Walker Head, Governor-General, 17 February 1857.

20 Indian Department (Canada), Return to an address of the House of Commons dated 28 April 1856 for ‘copies or extracts of recent correspondence respecting alterations in the organization of the Indian Department in Canada’, 1856, William McMurray, Rector of Ancaster and Dundas to Viscount Bury, Superintendent-General of Indian Affairs, 22 August 1855, pp. 35–6.


23 PRO, CO 42/212 Lower Canada 1827, Correspondence, January–December, Minutes of a speech made by the Potagunser Indian Ashaghashe, Drummond Island, 19 July 1827, enclosed in Dalhousie to Right Honourable William Huskisson, 22 November 1827, p. 396.

24 PRO, CO 42/264 Lower Canada 1836, Correspondence, vol. 4: October–December, Gosford to Glenelg, 18 November 1836, p. 265.

25 Indian Department (Canada) Return to an address of the House of Commons dated 28 April 1856 for ‘copies or extracts of recent correspondence respecting alterations in the organization of the Indian Department in Canada’, 1856, L.Oliphant, Superintendent-General of Indian Affairs, to Earl of Elgin and Kincardine, Governor General, 3 November 1854, p. 10.

26 PRO, CO 217/213 Nova Scotia 1854, Correspondence, January–October, Petition in both Mi’kmaq and translation enclosed in Sir G. Le Marchant to Newcastle, 4 January 1854, p. 22.
27 PRO, CO 537/142 Supplementary Correspondence, BNA (Canada), 1843–44: Despatches and Private Correspondence (with Memoranda) to and from Sir C. T. Metcalfe (Governor-General), Metcalfe to Lord Stanley, 24 April 1844, p. 13.


34 PRO, CO 42/516, Appendix no. 40, pp. 481–2.

35 PRO, CO 42/516, Appendix no. 30, p. 411.

36 Daily Globe, 16 May 1857.


39 13 and 14 Victoria [1850], Cap. 42 (Province of Canada).

40 13 and 14 Victoria [1850], Cap. 74 (Province of Canada).

41 20 Victoria [1857], Cap. 26 (Province of Canada), An Act to Encourage the Gradual Civilization of the Indian Tribes in this Province, and to Amend the Laws Respecting Indians.


43 NAC, RG 10 vol. 720, p. 7; Smith, *Sacred Feathers*, p. 239.


45 Daily Globe, 16 May 1857.

46 Daily Globe, 24 September 1867.

47 Daily Globe, 6 September, 20 September 1867.


51 An Act to Further Amend the Law respecting Elections of Members of the Legislative Assembly, and respecting the Trial of such Elections, 39 Vic., Cap. 10, 1876.

52 An Act for the Amendment of the Election Law and for the better prevention of Corrupt and Illegal Practices at Elections to the Legislative Assembly, 47 Victoria, Cap. 4, 1884.


56 PRO, CO 305/28 Vancouver Island 1866, Correspondence, vol. 1: January–June, Kennedy to Cardwell, 24 January 1866, p. 73.
57 *Daily Chronicle*, 10 April 1866.
58 *British Columbian*, 14 April 1866.
59 Elections Canada, *A History of the Vote in Canada*, p. 34.
60 *Confederation Debates, British Columbia*, pp. 497, 541.
61 *Daily British Colonist*, 20 April 1875.
62 British Columbia, Qualification and Registration of Voters Act, 38 Victoria, no. 2, 1875.
64 PRO, CO 42/480 Canadas 1841, Correspondence, vol. 4: July–September, Sydenham to Russell, 22 July 1841, pp. 112–13.
66 PRO, CO 42/516 Canada 1844, Earl Grey to Lord Elgin, 15 November 1850, bound before Appendix no 1: Correspondence relative to the Indian Department.
67 PRO, CO 42/516 Canada 1844, Earl Grey to Lord Elgin, 15 March 1851, bound before Appendix no 1: Correspondence relative to the Indian Department, p. 6.
68 PRO, CO 42/532 Canada 1846, Correspondence, vol. 2: May–June, Blackwood to Stephen, 20 June 1846, annotating Earl Cathcart to W. E. Gladstone, 16 May 1846, forwarding address from the Canadian House of Assembly protesting the decision to discontinue gifts to Indians.
69 PRO CO 42/603 Canada 1856, Correspondence, vol. 1: January–April, Head to Henry Labouchere: Private and confidential despatch relating to Blue Book comments on Indian Affairs, 8 February 1856, p. 190.
70 PRO, CO 42/603 Canada 1856, Correspondence, vol. 1: January–April, Memo from Elliott, 5 June 1856, p. 200.
71 PRO, CO 42/603 Canada 1856, Correspondence, vol. 1: January–April, Draft response from Labouchere to Head, 11 July 1856, p. 205.
72 PRO, CO 42/613 Canada 1858, Correspondence, vol. 1: January–May, Head to Lord Stanley forwarding the Report of special commissioner on Indian affairs, 12 May 1858, pp. 476–7.
73 PRO, CO 42/613 Canada 1858, Correspondence, vol. 1: January–May, Annotation on 12 May 1858, Head to Lord Stanley, pp. 477–8.
74 PRO, CO 42/622 Canada 1860, Correspondence, vol. 1: January–April, Annotation by Elliot to Sir F. Rogers, 18 May 1860, on Head to Newcastle forwarding bill re. management of Indian lands, 30 April 1860, p. 279.
75 PRO, CO 410 Vancouver Island Entry Books 1849–64, Labouchere to Douglas, 28 February 1856, p. 44; CO 398/1 British Columbia Entry Books 1858–61, Lytton to Douglas, 31 July 1858, p. 22.
76 PRO, CO 60/11 British Columbia 1861, Correspondence, vol. 2: September–December, Douglas to Newcastle, 8 October 1861, pp. 39–40.
77 PRO, CO 60/27 British Columbia 1867, Correspondence, vol. 1: January–March, Seymour to Carnarvon, 17 January 1867, p. 205.

---

Julie Evans, Patricia Grimshaw, David Philips and Shurlee Swain - 9781526137333
Downloaded from manchesteropenhive.com at 08/03/2019 01:54:11AM via free access