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## **Negotiating an Identity: Metis Political Organizations, the Canadian Government, and Competing Concepts of Aboriginality**

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### **Article**

Negotiating an Identity: Métis Political Organizations, the Canadian Government, and Competing Concepts of Aboriginality

This essay describes how the contemporary Métis of Canada have attempted to have their collective identities recognized by the Canadian government and its legal system, and the way the Canadian government has both resisted and accommodated this claim. Struggles for self-definition by aboriginal minorities against an encompassing nation-state are fraught with irony. The very process of declaring oneself to be "Métis" (or "Indian" or "Inuit") means taking on aspects of identity and otherness that have been defined by the dominant society. Such irony has been exacerbated by academics, who have labeled many of the struggles by contemporary aboriginal peoples to reformulate national cultures and communities as "invention." This postcolonial argument suggests that nations, ethnicities, and aboriginal identities are "imagined"; that cultural identities are myths; and that attempts to isolate cultures are illusory (Dirlik 2). What is disturbing about this trend is the apparent equation of invention with a lack of authenticity -- the suggestion that these processes of self-identification are somehow bogus simply because an inconsistency between past practices and present interpretations of the past can be demonstrated. Much of this kind of analysis ignores the more interesting question of why or "against what" these definitions develop (Thomas 216).

Furthermore, not all expressions of ethnicity are self-defined. In its relationships with Native peoples, the nation-state often creates or defines aboriginal identities for its own use. These necessarily distort, and may have little to do with peoples' understanding or perceptions of themselves. An example is Section 35(2) of Canada's Constitution Act of 1982, which states: "In this Act, 'Aboriginal peoples of Canada' includes the Indian, Inuit, and Métis peoples of Canada." Here the construct "Indian" is an obvious fabrication, conflating many disparate cultures and political and linguistic groups into one overall entity. Yet, Native people in Canada have to some extent taken on this identity for themselves, although the recent trend of referring to Canada's Indian population as "First Nations" (which at least suggests the plurality of identities), shows that even the Canadian government realizes the absurdity of amalgamating so many groups into one. The Métis organizations, after intensive lobbying to have the category of "Métis" recognized in the constitution, now find themselves in the same position as that of Indians. That is, they now must live with the consequences of an overarching classification, one that is no more appropriate for them than it is for "Indians." The Métis have many local, regional, and cultural variations which militate against their being considered a unified whole. To date there has been little government recognition of this disparity.

As of 1991 the segment of the population who self-identified as Métis was estimated at 139,000 (RCAP: 19). Regionally, most Métis are concentrated in the prairie provinces, with an estimated population of 101,000. About 24,000 live in Ontario, Quebec, and the Maritime Provinces, and 14,000 in British Columbia, the Northwest Territories, and the Yukon. The majority live in urban areas (65 percent) while the remainder live in rural areas (32 percent) and on reserves (approximately 3 percent). But these figures, particularly those

identifying urban dwellers, are problematic, since they do not distinguish between the "Métis Nation" and groups in other parts of Canada that have recently adopted the name "Métis." The traditional origins of the Métis have usually been characterized by Canadian historians as centering around the Red River colony during the seventeenth and eighteenth centuries -- that is, separate groups of French, Scottish, and English mixed-blood populations that evolved from marriages between European fur traders and aboriginal women, and the Red River basin of southern Manitoba (Stanley; Giraud; and Morton). Much of this familiar analysis concerns the Riel resistance movements of 1869-70 and 1885. But many other Métis groups -- with distinct characteristics and separate local histories -- have existed, such as the one found in the Grande Cache area of Northern Alberta (Nicks and Morgan), in areas south of the Great Lakes (Peterson), and in northern Ontario (Ray). Until the Canadian government began to undertake land cession treaties and scrip programs, there was little need for most mixed-blood populations to distinguish themselves from Indian populations.(1) Treaties were intended for Indians and scrip for Métis, but even after these programs were inaugurated the status of Métis and Indian was often interchangeable. Métis were given the opportunity to choose between signing treaty or taking scrip, and provisions were made for people to switch from one to the other (P. Sawchuk 58-64). Contemporary characterization of the Métis tends to amalgamate these separate histories and separate populations of English, French, and Scottish "half-breed" into a single entity known as "Métis," although, as shall be seen, that characterization is currently being challenged by Métis from different backgrounds.

Perhaps in keeping with postcolonial analyses that suggest much of tradition is invented or at least recreated in light of present needs or circumstances, the historical roots leading to the reified identities of Métis today have been manipulated and distorted to reflect one group -- the Red River Métis -- above others. Many groups of "Métis" -- or mixed-bloods -- existed. Not all of them acted as distinct political units, however, nor were they necessarily seen as separate from the Indian populations that surrounded them. But this complex history does not alter the fact that today the Métis are recognized by the Canadian constitution as a single, holistic aboriginal group.

#### GOVERNMENT DEFINITIONS OF MÉTIS

Canada may have recognized three categories of Native peoples, but it has stopped short of defining any of these in a meaningful way. There is a supposed definition of "Indian" -- the Indian Act defines "Indian" as someone who, pursuant to the Indian Act, is registered as an Indian or is entitled to be registered as an Indian -- but the very fact that there is a registry means that some people of Indian ancestry are on the list and some are left off. Hence, a large number of non-Registered" or "non-Status" Indians (i.e., people of Indian ancestry not registered under the Indian Act) reside in Canada. There is no corresponding registry or definition for either the Métis or the Inuit, although the Métis National Council is proposing a centralized registry of Métis citizens. A government definition that almost became official, taken from the wording of the Métis Nation Accord, was accepted by federal, provincial, and aboriginal leaders in 1992 as part of the Charlottetown Accord. However, the Charlottetown Accord was rejected in a national referendum, and is not legally binding.(2)

It is surprising that no governmental definition of Métis exists, considering the long history of federal government legislation specifically recognizing the Métis as an aboriginal people separate and distinct from Indians. This legislation includes the Manitoba Act of 1870, which recognized the "Indian title" of certain "half-breeds"; the Dominion Lands Act of 1879, which also dealt with the extinguishment of the "Indian" title for mixed-blood residents in the Northwest Territories outside the limits of Manitoba; the adherence to Treaty 3 of the mixed-bloods of Rainy River (whereby they "surrendered all claim, right, title, or interest which they, by virtue of their Indian blood, have or possess"); and Section 35(2) of the 1982 Constitution Act, which states that "aboriginal peoples of Canada" includes the Indian, Inuit, and Métis peoples of Canada.(3)

Despite all of this legislation, one example has arisen during which the government actually attempted to define Métis. Perhaps significantly, it was a provincial government, not the federal government, that made the attempt. In 1938 the province of Alberta passed the Métis Population Betterment Act, which established several Métis "colonies" or settlements and contained a definition of Métis. To date Alberta is the only province that has such a definition. Originally the definition stated that "a Métis means a person of mixed white and Indian blood but does not include either an Indian or a non-treaty Indian as defined in The Indian Act." A later version of the act that appeared in 1940 defined a Métis as a person with "a minimum of one

quarter Indian blood" (Bell 6). This was an unusual case for Canada: unlike the United States, blood quantum has not often been used to determine aboriginality there. This definition was only used for administrative purposes, to determine if an individual was eligible to live on one of the provincial Métis settlements. It was of no practical use in identifying whether a person was Métis or not, since most Métis did not regard the definition as a legitimate criteria of identification. The idea of blood quantum was eventually dropped, due in no small part to the objections of the Métis themselves. The most recent version of the act, the Métis Settlements Act (1990) defines Métis as "a person of aboriginal ancestry who identifies with Métis history and culture." The current definition, which depends primarily on the basis of self-identification and acceptance from the Métis population, is more in keeping with the way political organizations defined Métis in recent years.

#### ABORIGINAL ORGANIZATIONS AND THE DEFINITION OF MÉTIS

Government-Native relations in Canada cannot be understood without a consideration of the many provincially and federally based Native pressure organizations that are a permanent part of the political scene in Canada. The four most important national organizations are the Assembly of First Nations (AFN) representing Status Indians; the Inuit Tapirisat; the Métis National Council (MNC) representing Métis (mostly from the western provinces); and the Congress of Aboriginal Peoples (CAP, formerly the Native Council of Canada), representing a variety of Métis, non-Status, and other aboriginal groups. Funded for the most part by government grants, these lobbying organizations, particularly the three major federal associations, define the relationship between Canada and its aboriginal populations. These national organizations are augmented by many powerful associations organized on the provincial and sometimes regional level. Many other countries boast such organizations, particularly Australia and Norway, but Canada is unique in the breadth and depth of the operation of these organizations, and the amount of public funding that supports them.

The role these organizations, particularly the Métis organizations, have played in negotiating an aboriginal identity is considerable. The most obvious example is the recognition of the Métis as one of Canada's aboriginal peoples under section 35(2) of the Constitution Act of 1982, which came about as a direct result of lobbying by Métis and non-Status Indian groups (particularly the Native Council of Canada), and some of the more active provincial organizations (such as the Association of Métis and non-Status Indians of Saskatchewan). However, the inclusion has set the stage for several conflicts between different groups of Métis. Two significant conflicts were the splitting up of a long-standing political union between Métis and non-Status Indians, and the growing separation between the western or "historic" Métis (the descendants of the Métis population having origins in the Red River basin area of southwestern Manitoba) and several other Métis populations in Ontario, Labrador, and elsewhere.

#### THE WESTERN MÉTIS, OR "THE HISTORIC MÉTIS NATION"

In the 1960s and 1970s, the early days of Native political organizations in Canada, a political union existed between Métis and non-Status Indians, and the definition of who was allowed to join a Métis organization was broadly based. Most Métis organizations defined a Métis as someone of mixed white and Indian ancestry (or of mixed non-Indian and Indian ancestry); non-Status Indians were welcomed to join. No distinction was made between Métis with roots in Red River and those Métis whose ancestry was founded in other parts of Canada. For example, Section V(1) of the Constitution of the Métis Association of Alberta dated 13 August 1977 simply defined the Métis as "Any person of mixed Indian and Non-Indian blood." Membership was also open to "any non-Status Indian, or their [sic] spouse, as the case may be, sixteen years of age or older." However, in 1984 the same organization changed the definition to

A Métis is an Aboriginal person who declares himself/herself to be a Métis person, and can produce satisfactory historical or acceptable legal proof that he/she is a Métis, or has traditionally held himself/herself to be a Métis, and is accepted by the Métis people as a Métis. (AMMSA)

All mention of the non-Status Indian was dropped, as well as references to mixed ancestry. The term "Métis" was also expanded to include those who trace their descent from English and Scottish mixed-blood populations of the Red River area of the nineteenth century, as well as of the French.

The MAA is now known as the Métis Nation of Alberta (MNA). Its current constitution requires that a

prospective member produce an ancestor who received scrip during the late 1800s under either the Manitoba Act or the Dominion Lands Act, or an ancestor from up to five generations back who was recorded as a Métis by the government or a church. It will also accept a statutory declaration from another Métis. As in the previous definition, the member must "hold himself/herself to be a Métis, and be accepted by the Métis people as a Métis" (Fuller 16). A new feature of the organization is an appointed fourteen-member Métis senate, which has, among other duties, the ability to decide on a person's eligibility to claim Métis status and join the organization.

Both the inclusion of the term "aboriginal" and the dropping of the term "non-Status" are undoubtedly references to section 35(2) of the Constitution Act of 1982. Since the constitution does not recognize non-Status Indians but does recognize Métis, the political status of the two groups drastically changed after 1982 (see J. Sawchuk 71-72). All of the prairie organizations subsequently changed their definitions to either eliminate or at least no longer specifically recognize non-Status Indians as potential members. This back and forth process is neatly encapsulated by the name changes passed through by the Saskatchewan organization: it started out as the Métis Society of Saskatchewan (MSS) in 1964, changed to the Association of Métis and Non-Status Indians of Saskatchewan (AMNSIS) in 1972, and then changed back to the Mss in 1987.

The definition of Métis in Manitoba has also gone through some significant changes. According to the 1992 Constitution of the Manitoba Métis Federation, "Métis" means an Aboriginal person who self-identifies as Métis, who is distinct from Indian and Inuit and (a) is a descendant of those Métis who received or were entitled to receive land grants or scrip under the provision of the Manitoba Act of 1870, or the Dominion Lands Act, as enacted from time to time; or (b) is a person of Aboriginal descent who is accepted by the Métis Nation." The term has become more legalistic; with some special legal concerns of its own constituency. The reference to the Manitoba Act and the Dominion Lands Act are undoubtedly included because the MMF is currently pursuing a land claims case through the courts. This legalistic and complex definition is quite a change from the beginnings of the MMF, when membership was open to "any unregistered person of Indian descent, or any non-Indian who is married to a person of Indian descent" (J. Sawchuk 48). There were several non-Native members of the MMF in the 1960s and 1970s, usually spouses of Métis or Indians. Many of them were active in leadership roles in various locals.

By the 1990s the idea of a separate, historically definable group of Métis, one that was limited to people descended from Red River Métis (that is, distinct from other mixed-blood populations in Canada), and the only one entitled to use the name "Métis," was beginning to take hold. This sentiment led to the formation of the Métis National Council, which had its early definition of Métis as: (a) an aboriginal people distinct from Indian and Inuit; (b) descendants of the historic Métis who evolved in what is now western Canada as a people with a common political will; and (c) descendants of those aboriginals who have been absorbed by the historic Métis. The Métis community comprises members of the above who share a common cultural identity and political will (Bell 378). The key phrase for the MNC is "historic Métis," whose place of origin is western Canada. This regional and historical particularity is how the MNC distinguishes itself from other Métis organizations.

This ever-narrowing of the definition of Métis, which eliminates non-Status individuals and limits membership to people in western Canada only, shows no sign of letting up and is now threatening to thin the ranks of the Métis National Council itself. Despite its name, the Métis National Council is not a national organization in the strict sense of the word, nor does it pretend to represent all Métis across Canada. It is the umbrella organization for Métis organizations from Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia. Its current members are provisionally defined in a draft document on the definition of Métis as the "Historic Métis Nation," by which it means the descendants of the aboriginal people known as the Métis or "half-breeds" who resided in the historic Métis Nation Homeland (the area of land in west central North America used and occupied as the traditional territory of the Métis) on or before 8 December 1869, the date of the proclamation of the Provisional Government of the Métis in the Northwest Territories (Teillet). An alternate date of origin of the Métis Nation also being proposed in the document is at the Battle of Seven Oaks in 1816. The MNC is quite forthright about why a specific date is important:

Specifying a date can be useful for several reasons. One reason is that by reiterating our historic moments in our formative documents (we hope that eventually this national definition will be included in our Métis Nation

Constitution) we reinforce our own history and our own important Métis historical moments. It is helpful to emphasize when the Métis Nation came into being and by stating this date, the Métis are saying we are not just descendants of Indians, we are descendants of a pre-existing Métis Nation which was self-proclaiming and self-determining. This date is recognizable by Métis people and by the Canadian state. Further the inclusion of a date is the practice used in modern land claim and self-government agreements. (Teillet)

The geographic region in Canada includes the Red River Settlement (in Manitoba), Saskatchewan, and Alberta, and in Montana and North Dakota in the United States. Some members of the Métis National Council believe this regional definition is already too narrow, particularly members from Ontario and British Columbia; the definition itself probably precludes the potential inclusion of members from the Northwest Territories as well. Currently the MNC's draft definition is as follows:

"Métis" means a person who self-identifies as Métis, is accepted by the Métis Nation through the Acceptance Process and:

(a) is a descendant of a Métis person who resided in or used and occupied the Historic Métis Nation Homeland on or before 8 December 1869; or

(b) is of Canadian aboriginal ancestry, can demonstrate sufficient connection to the Métis Nation, and is resident in the Métis Nation Homeland at the date of enrollment; or

(c) was adopted as a child, under the laws of any jurisdiction or under any Métis custom, by a Métis within the meaning of (a) or (b) or a descendant of any such adoptee.(4)

There is a further potential limitation to membership. The Métis National Council is proposing the establishment of a national Métis registry, to be used to identify those eligible to participate in the electoral process governing Métis political institutions and to receive benefit from the programs and services delivered by Métis organizations. The registrar would have the legal responsibility to add or delete individuals from the registry ("Métis Nation" 6-7). The MNC feels that:

There (is) strong support...for a centralized registry of Métis citizens, not just an enumeration. An enumeration only provides for a one-time count of Métis people, whereas a national registry will allow for the Métis Nation to maintain control of its citizenship, as well as provide credibility and consistency for the Métis definition adopted by the MNC and its governing member organizations.(5)

This invites parallels to the federal government's registry system for Status Indians, and could lead to a new category in Canada: "Registered Métis" and (inevitably) "non-Registered Métis."(6) This is just one of the many indications that the definition of Métis is becoming narrower and narrower. There is danger that the organizations are creating a new set of disaffected Métis who, for one reason or another, are not seen as bona fide members of the Métis Nation.

The "Other Métis"

In fact, there is already good evidence that such a disaffected Métis population exists. Not all aboriginal pressure groups have rejected the notion prevalent in the 1970s that anyone with mixed aboriginal and non-aboriginal blood could be perceived as Métis. The Congress of Aboriginal Peoples (CAP), formerly the Native Council of Canada (NCC), casts a much wider net. The Congress, in fact, attempts to represent all aboriginal peoples who are "excluded" using various definitions -- from the government's definitions found in the Indian Act to organizations' definitions such as that of the MNC. The CAP claims it is the national representative of over eight hundred thousand off-reserve Indian, Inuit, and Métis, all non-Status Indians, and those who have regained status under Bill C-31.(7) What the CAP'S constituents have in common is that, despite their aboriginal background, they are excluded from government policies and programs for aboriginal peoples. Among the groups the CAP claims to represent are:

Métis people (who) are located in all of the provinces and territories of Canada. These persons, who may or may not be entitled to status under the Indian Act, are Métis culturally, historically, and for purposes of

constitutional recognition. Some of this group are a distinctive mixed blood population, others are closely identified with the history and culture of the French/Cree Métis in southern Manitoba and central Saskatchewan in the 1860S. (Others include)...Bush Cree-Métis; "Bay-Métis" in Northern Ontario; and Gwitchin Métis in the northern McKenzie.(8)

The attitude of those who are excluded from the "Métis Nation" of the prairies can be seen in "The Other Métis," a website dedicated to "Providing Information on Métis Peoples Everywhere in North America."(9) This site is the creation of Martin Dunn, a former researcher for the Native Council of Canada, the Ontario Métis and Non-Status Indian Association, and the Royal Commission on Aboriginal Peoples. Although Dunn is himself a descendant of Red River Métis, he disagrees with the exclusionary definition developed by the MNC. He feels that the Acadians were the first Métis, and likes to point out that mixed-bloods existed long before the Red River group was founded. He estimates that at least 17 percent of Canadians qualify as Métis under the old Native Council of Canada guidelines (Fuller 16). On the first page of the website the name "The Other Métis" is explained:

There are virtually millions of people of mixed Aboriginal and non-Aboriginal ancestry in Canada and the United States. Some of these people identify themselves as Métis and some do not. This site is dedicated to those individuals, communities, and Nations who want to assert their Métis identity and heritage as a living and valuable contribution to modern life. As the title of this site implies, the emphasis of the information presented here will be related to those Métis who are not represented by the better-known Canadian prairie Métis organizations and their national organization, the Métis National Council. It is these "other" Métis who most need the opportunity to present their case.

This split between the "Métis Nation" from the prairie provinces and other groups claiming a Métis identity in the rest of Canada has also been addressed by the Report of the Royal Commission on Aboriginal Peoples (RCAP).(10) The RCAP acknowledges that the appropriateness of applying the term Métis to everyone is problematic, and that many members of the Métis Historic Nation believe that, because the term has been associated most often with them and their ancestors, they have a right to its exclusive use. These Métis believe that other Canadians of mixed aboriginal -- non-aboriginal ancestry and culture should be described in some other way. But other mixed-blood populations in Canada point out that that in terms of a dictionary definition, "Métis" simply means "mixed." They contend that when the term was inserted in the constitution in 1982, it was intended to apply to all Métis people. The RCAP definition of Métis attempts to accommodate both groups by recommending that every person who a) identifies himself or herself as Métis, and b) is accepted as such by the nation of Métis people with which that person wishes to be associated, on the basis of criteria and procedures determined by that nation, be recognized as a member of that nation for purposes of nation-to-nation negotiations and as Métis for that purpose (RCAP 4.5:2).

This definition obviously takes much of its inspiration from earlier organizational definitions, particularly in terms of self-identity and acceptance from the community. However, it ignores the issues of scrip or the tracing of ancestry back to the Red River population. Where it breaks new ground is in its inference that there may be more than one Métis community, as indicated by the phrase "by the nation of Métis people with which that person wishes to be associated." The RCAP report explicitly acknowledges that there are many distinctive Métis communities across Canada, with more than one culture.

[I]n deference to the legitimate concerns of Métis Nation members who trace their roots to the western fur trade, we have tried to differentiate these two Métis worlds as much as possible by referring to one as the Métis Nation and to the other by terms such as other Métis, Labrador Métis, and so on.... There are many distinctive Métis communities across Canada, and more than one Métis culture as well. Geographically, the homeland of the Métis Nation embraces the three prairie provinces as well as parts of Ontario, the Northwest Territories, British Columbia, and the north central United States. Another Métis people, at least as old as the Métis Nation, is located in Labrador and has maritime traditions. Although the origins of that population are venerable, the application of the term Métis to it is relatively recent. Other Métis communities are found in Quebec, Ontario, Nova Scotia, New Brunswick, British Columbia, and the North. Some have significant links to the western Métis Nation while others do not. (RCAP 4-5: 1.3)

The Labrador Métis are an interesting example. The RCAP report accepts the idea that the Métis people of

Labrador are probably in a position to exercise the rights and powers of nationhood. It claims that the Labrador Métis community exhibits the "historical rootedness, social cohesiveness and cultural self-consciousness that are essential to nationhood, and they are developing a political organization that will allow them to engage in effective nation-to-nation negotiation and to exercise self-government" (RCAP 4.5:1.3) The RCAP admits that the way of life of the Labrador Métis is very similar to that of the Labrador Inuit and Innu, but feels that the Métis culture is sufficiently distinct to mark them as a unique people. They are likely to be eligible for nation status under the recognition policy proposed by the RCAP.

The situation of the Labrador Métis also affords an excellent example of how organizations and pressure groups can affect, or even manufacture, identity change. The population of mixed-bloods in Labrador might be an old one, but the application of the name Métis is recent, and in part can be directly attributed to the activities of the Native Council of Canada. Yvonne Dumont, formerly the lieutenant governor of Manitoba and one-time president of both the Manitoba Métis Federation and the Métis National Council, was probably the first to apply the term "Métis" to this group. It happened when he was a young fieldworker for the Native Council of Canada, sent to assist in setting up the organizational structure of the Labrador non-Status Indian organization. As a fieldworker he was responsible for helping with their organization, assisting them in becoming incorporated, suggesting structures for the board of directors, and suggesting a format for their constitution. As Dumont recounts the story today, when the question came up of what to call the new association, it was at his suggestion that the name the Labrador Métis Association was chosen. This probably was the first time that the leaders of that aboriginal community referred to themselves as Métis. Dumont feels he made a mistake, and says he would do things differently today; he now feels that only those people comprising the Métis Nation are entitled to use the term Métis (taped interview, September 1995).

#### PROVINCIAL COURTS AND THE DEFINITION OF Métis

In recent years there have been several court cases involving either the use of the aboriginal title or the aboriginal rights of the Métis, both of which have the potential of affecting the issue of Métis identity. In discussing these cases it should be pointed out that I am making no attempt at analyzing their legal merits. I am only concerned with the way the courts have dealt with the issue of "when" or "who" is a Métis. Nor am I am concerned with how these cases have defined Métis aboriginal rights. I simply wish to explore how the courts have defined Métis. Generally it would appear that the courts have usually accepted self-definition as sufficient proof. In *Manitoba Métis Federation v. Attorney General of Canada* (2 C.N.L.R. 19 [S.C.C., 1990]), a case concerning the land rights of the Métis under the Manitoba Act of 1870, the court stated:

[L]et me make it clear that, for the purpose of this appeal, I assume the truth of all allegations of fact contained in the statement of claim. Those allegations include the allegation that all half-breeds of 1870 were "Métis"; that the Métis of 1870 were a distinct people; and that all their descendants are included within the undefined group of persons constitutionally recognized today as "the Métis people."

This judge also felt that the Métis organizations were in a good position to represent the interests of the Métis:

[I]t is impossible in our jurisprudence to have rights without a remedy and the rights of the Métis people must be capable of being asserted by somebody. If not by the present plaintiff [Manitoba Métis Federation], then by whom?

However, there is some indication that a more systematic method of determining who is or is not a Métis would be welcomed. In *R. v. McPherson* (2 C.N.L.R. 137 [Man. Q.B., 1992]), a case involving the hunting rights of two Métis charged with violating the Wildlife Act near Wanless, Manitoba, the provincial court judge stated that the two defendants ("acknowledged Métis") had unextinguished hunting rights and directed the Crown to enact new legislation "which would provide for the registration of those Métis who rely on subsistence hunting as a way of life." This might make life easier for those charged with upholding game laws, but the Manitoba Court of Queens Bench found that the directive to create a registry for Métis persons under the Wildlife Act was unconstitutional in light of the provisions of s. 91(24) of the Constitution Act of 1867, which assigns exclusive legislative authority to the federal Parliament over "Indians and Lands reserved for the Indians." That brings to bear the issue of whether or not Métis should be considered "Indians" under s. 91(24)

of the Constitution Act of 1867, an issue not yet decided.

A more recent case is *R. v. Blais* (3 C.N.L.R. 109 [Man Prov. Ct., 1997]). The accused Métis was convicted of hunting in southern Manitoba, in violation of the provincial Wildlife Act. The principle in the case is Ernie Blais, former president of the Manitoba Métis Federation and currently leader of the breakaway organization, the Métis Nation of Manitoba. Mr. Blais deliberately precipitated this case, informing wildlife officials and the media ahead of time that he intended to violate the act, and giving specific information about where and when he was going to do it. Mr. Blais was attempting to get the courts to widen the geographic area covered in the finding of *R. v. McPherson* (that is, that the Métis had a common right to hunt out of season) to include southern Manitoba.

Once again the claim to being Métis by the individuals in question was accepted by the court at face value. However, the judge commented that an appropriate definition of Métis might be taken from the wording of the Métis Nation Accord, which was accepted by federal, provincial, and aboriginal leaders in 1992 as part of the Charlottetown Accord. The Charlottetown Accord was rejected in the national referendum, and of course is not legally binding. But the judge felt that the definition contained in the Métis Nation Accord was a useful political answer to a political question (Imai). The definition is as follows: "Métis" means an aboriginal person who self-identifies as Métis, who is distinct from Indian and Inuit, and who is a descendant of those Métis who received or were entitled to receive land grants and scrip under the provisions of the Manitoba Act of 1870 or the Dominion Lands Act as enacted from time to time [para. 26]. Note that this definition is very similar to that of the Manitoba Métis Federation and the Métis National Council. In other words, it is very much a definition of the "Historic Métis Nation" and it excludes the Labrador Métis and the "other" Métis.

*R. v. Powley* (O. J. No. 5310 [Ont. Prov. Ct., 1998]) concerned the case of two men who shot a bull moose north of Sault Ste. Marie, Ontario. One of the men was in possession of an Ontario Métis and Aboriginal Association (OMAA) card. This card indicated that he claimed aboriginal rights to hunt under the Robinson-Huron Treaty, as well as "the right to harvest natural resources that my family has done since time immemorial." One of the questions the court had to decide was, Are the Powley family Métis for the purposes of s. 35(2) of the Constitution Act of 1982? In order to determine this the judge reviewed earlier cases, particularly *R. v. Blais*. After reviewing this material the court decided its own definition of Métis:

Without a universally accepted definition of Métis to be found, I shall attempt to distil a basic, workable definition of who is a Métis. Accordingly, I find that a Métis is a person of aboriginal ancestry; who self-identifies as a Métis; and who is accepted by the Métis community as a Métis. [para. 47]

The Métis Accord definition was considered by the court, but the section limiting Métis to those who had or were eligible to receive scrip was dropped. Had that criterion not been dropped, the definition would automatically have eliminated Mr. Powley and all other Métis from northern Ontario. The court found in favour of the Métis. The Crown appealed the case to the Ontario Superior Court of Justice, which also found in favor of the Métis. The case has gone before the Court of Appeal for Ontario where the Métis won again, and is likely to be eventually heard in the Supreme Court of Canada.

It is possible, if the case is heard in the Supreme Court, that the definition cobbled together by a lower court (the Ontario Court of Justice) may someday become the basis of a recognized and court-sanctioned definition of Métis. It is unlikely that the Métis National Council would be happy with such a general definition, although other groups might be. It is to prevent such a definition from becoming accepted that the MNC has pledged to bring forth a recognized national definition:

The immediacy of the task of defining "Métis" for the purposes of citizenship is increasing as courts are being asked to adopt a definition in Métis litigation. There is a growing concern that, unless the Métis exercise our right to determine our citizenship, the courts will be obligated to impose such definitions. The establishment of a national definition of the "Métis" by the MNC and its governing member organizations enhances the chance that the courts will in time adopt the rational definition proposed by the Métis Nation.(11)

There are two competing trends in terms of Métis identity today. One is the trend toward a more exclusive and narrowly defined concept of "Métisness," as evinced by the Métis National Council's and the prairie provincial

organizations' definitions. This definition relies heavily on "acceptance from the Métis community" as well as on direct ancestry to historical populations or proof that ancestors were entitled to land under the Manitoba Act or took scrip under the Dominion Lands Act. These definitions seem to have relatively little cultural content, except for the vague requirement that the person in question must be able to demonstrate "acceptance from the Métis community," although the MNC is developing some new culturally relevant criteria that specifically mark the beginning of the Métis Nation.

The competing trend, that of recognizing all populations of mixed-bloods in Canada as being entitled to the identity of "Métis," comes from organizations and activists who feel they are rejected or not represented by the MNC and its member provincial organizations. These are the "other" Métis. While the Métis Nation can be defined geographically (as can the Labrador Métis, as well as those in Quebec and the Maritimes), the geographical distinction between these groups is not absolute; CAP is making some inroads into the prairies, the heartland of the Métis nation, in an attempt to convince dissident Métis political groups, and perhaps the Alberta Métis Settlements group, to join the "other" Métis.

Thus we see a sort of "accordion" effect in place today -- opposing forces that are simultaneously trying to narrow the definition, as the MNC is trying to do, or widen it, as CAP is trying to do. What is behind this conflict? Theories of ethnicity would tend to define the process in terms of preservation of vested interests, whether they be government largesse (grants to the organizations) or potential land claims settlements. More recent analyses would focus on creating new constructions of tradition, concentrating on the "invention," "reinvention," or "objectification" of culture. Whatever the explanation, this push-pull can have a drastic effect on the viability of a political organization. In the summer of 1987 the provincial Association of Métis and Non-Status Indians of Saskatchewan (AMNSIS) split in two. The Métis took control of the organization, forcing non-Status Indians out. The split was precipitated by many factors, but was at least partially due to the recognition of Métis as aboriginal people by the Canadian constitution, and the concurrent lack of constitutional recognition for non-Status peoples.

A similar tension faces members of the Métis National Council today. For some time the MNC has been promoting a definition of Métis that stresses a historical link to the Red River settlement in Manitoba, and it extended that link even further by suggesting a time of origin for the Métis Nation: either 8 December 1869 (the date of the proclamation of the Provisional Government of the Métis in the Northwest Territories), or 1816 at the Battle of Seven Oaks. The MNC is fully aware that this definition can have dire consequences for some of its member organizations:

This version sets out a strict definition whereby the Métis Nation consists only of descendants of the Historic Métis Nation.... Political consequences of adopting this version are that many of those registered in Ontario and B.C. would be disentitled. MNO [Métis Nation of Ontario] and MPCBC [Métis Provincial Council of British Columbia] may be reduced drastically in numbers with severe financial consequences as they lose needed funding from governments. (Teillet)

There is some indication that the MNC is already finding it difficult to support issues of concern for its Ontario members. An example is its support of Métis hunting rights in *R. v. Powley* (O. J. No. 99 [Ont. Sup. Ct., 2000]). Originally the Powleys were supported by the Ontario Métis and Aboriginal Association (OMAA), a broadly based Ontario Métis association which is affiliated with CAP. The early strategies of the Powleys' fit in with this broad-based support. The defendants pursued several tactics -- both as Indians and as Métis. They claimed both a right through the Robinson-Huron Treaty as well as descent from a historic Métis population. This underlines the fundamental interchangeability of the two statuses in this part of Ontario even today. However, after the court rejected the claim that the Powleys had a treaty right but accepted the fact that the Powleys were Métis and that there was an historic and contemporary Métis community in and around Sault Ste. Marie, support for the Powleys came from another source. The Métis Nation of Ontario, affiliated with the Métis National Council, also became a champion of the Powleys' case. It is an interesting development. The Powleys now base their aboriginal right to hunt on their descent from a historic Métis population located in and around Sault Ste. Marie but one that is separate from that of the prairies, with a different history and set of origins. For the MNC to support this, even secondhand, through the Métis Nation of Ontario, flies in the face of its recent efforts at defining the Métis as exclusively western. The MNC has internalized the two-way pull of contemporary Métis identity politics and has yet to find a way to resolve this.

It is evident that the Métis spend an extraordinary amount of time in creating, discussing, and communicating a distinct Métis reality to each other, to other aboriginal peoples, and to the rest of Canada. But it is not clear to what extent these concerns are heard outside of their own organizations. While the government has responded to the lobbying of the Métis in the past, most notably by including Métis in Section 35(2) of the Constitution Act of 1987, many of the recent concerns the Métis have expressed about regional and cultural variation have not been addressed. The Royal Commission recognized the disparate groups of Métis, but to date very little of the RCAP'S recommendations have influenced government policy. The courts to date have offered two suggestions for defining the Métis, one corresponding to the earlier MNC definition -- self-identity and eligibility for scrip or claims under the Manitoba Act -- and another more general one that ignores any links to the Red River or historic Métis Nation. These definitions have been almost peripheral to the aboriginal rights being decided in the particular cases; to date no court has denied any one self-identifying as Métis the right to be considered as such. But these definitions, which may or may not have the support of the various Métis communities, may become official if no action is taken by government or the organizations themselves.

It is misleading to conclude that because we can see specific attempts at "reinventing" or "objectifying" various traditions, cultures, or communities (such as the selection of one date over another as the "origin" of the historic Métis Nation), that these celebrations are insincere or contrived. The creation of an identity is always self-conscious to some degree, but there is little heuristic value in labeling such events as concoctions. The various "Métis Days" events and other celebrations of Métis ethnicity that are increasingly being held throughout the prairies (usually including Métis dancing, fiddling, contests of strength, races, and the like), "Back to Batoche" Days in Saskatchewan, and other celebrations held in Métis communities across Canada fill an important need, especially for the 65 percent of the Métis population who live in urban areas, cut off from their traditional communities.

But what of the ongoing process of inclusion versus exclusion? Will it affect the organizations? Will the accordion continue to be squeezed and stretched? Probably. Competing interests and conflicting histories and traditions will continue to work their influence. The Métis National Council and the prairie organizations will probably continue to pursue their exclusive definitions, while the competing CAP definition may broaden. We may see a growing number of disaffected Métis in the prairie provinces as well as throughout the rest of Canada, and this population might form a new political movement. Whatever the political and economic situation may be, it is certainly not easy to predict what the boundaries of the Métis will look like thirty years from now. It's anybody's guess.

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## NOTES

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(1). Scrip was the method by which the government of Canada attempted to settle Métis land claims in the Northwest Territories. A scrip note recipient could redeem it for a specific amount of dominion lands that were

open for homesteading. The scrip came in one of two forms: land scrip (in 80-, 160-, or 240-acre denominations) or money scrip (for \$80, \$160, or \$240). For a detailed analysis of Métis (mixed-blood) scrip see Sawchuk, Sawchuk, and Ferguson (87-158) or Tough (321-33). The time scrip programs operated from the 1870s to the 1920s, roughly the same period the "numbered" treaties were being negotiated with Indian peoples in the Northwest Territories.

(2). In August of 1992 a federal-provincial agreement, known as the Charlottetown Accord, was finalized. The product of a series of meetings on constitutional reform involving the federal, provincial, and territorial governments as well as representatives of aboriginal peoples, the Accord dealt with many subjects (including the recognition of Quebec as a distinct society) and several issues of concern to aboriginal peoples (such as the constitutional recognition of a right to self-government). A national referendum was held on 26 October 1992; the accord was rejected by 54.8 percent of the voters.

(3). The term "half-breed" requires some comment. Its usage follows that of the Canadian federal government in the latter half of the 1800s and the early part of the 1900s, when the category "half-breed" was established as an all-inclusive term in legislation, government documents, and correspondence. It was not intended as a derogatory term, although in later years it did take on this connotation. It simply separated, for administrative purposes, two populations: Indians who were to be settled on reserves and mixed-bloods who were allowed scrip. I use the term "half-breed" whenever historical documents or usage refers to these persons as such. It is not intended in any derogatory sense. When "mixed-blood" or "Métis" can be substituted without distorting the historical context, I have done so.

(4). Draft definition for discussion, MNC Definition of "Métis" submitted by the Métis Rights Panel, 12 September 1999, Métis National Council.

(5). See Métis National Council Web site at <http://www.metisnation.ca/mna/mnaMETIS.html>.

(6). Many aboriginal groups seem to find the creation of an aboriginal registry an appealing idea. Recently while doing field work in Guam (in 2000) I was informed that the Chamorro were interested in creating a Chamorro registry. When I pointed out the problems such a registry had caused in Canada, with the ever-increasing population of non-Status or non-Registered Indians, I was assured that this could not happen in Guam because the Chamorro would be in charge of the registry, not the government. Presumably this is the argument of the Métis National Council as well, but the potential for creating a non-Registered Métis population still seems very real.

(7). In 1985 Parliament passed Bill C-31, an Act to Amend the Indian Act, in order to bring the Indian Act into accord with the Canadian Charter of Rights and Freedoms. The changes included recognition of the right of aboriginal governments to control their own membership and the abolition of the concept of "enfranchisement" (that is, elimination of Indian status). Bill C-31 also allowed Indian women who lost their Indian status and band membership through marriage under the Indian Act, as well as children of reinstated women, to have their status and band membership restored. The growing group of people who have regained status under this provision is becoming known collectively as "C-31s." There is a certain amount of resentment against these people among Status Indians, and many of the C-31s face problems in claiming band services or band membership. Their special political needs are ostensibly served by the Congress of Aboriginal Peoples, but their needs may best be served by forming their own organization.

(8). See the CAP Web site at [http://www.abo\\_peoples.org/background/constituency.html](http://www.abo_peoples.org/background/constituency.html).

(9). See the Web site for the "Other Métis" at <http://www.cyberus.ca/~mfdunn/metis>.

(10). The RCAP was appointed in August 1991 to help, in the commissions words, "restore justice to the relationship between aboriginal and non-aboriginal people in Canada and to propose practical solutions to stubborn problems." Commonly regarded as one of the most extensive (and expensive) royal commissions in Canada's history, the final report of the RCAP was made public on 21 November 1996, after it was tabled in the House of Commons. It consists of five volumes and includes approximately four thousand pages of text. Previous reports of the Royal Commission dealt with such topics as the administration of justice, the high

arctic relocation, the Crowns fiduciary relationship to aboriginal peoples, and legal and constitutional issues relating to aboriginal self-government. Royal commissions can make recommendations to the government, but they cannot make policy. It is difficult to say at this time what effect, if any, the RCAPS multitudinous reports have had on Canadian policy.

(11). MNC Web site.

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