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**Indian Act Colonialism:
A Century Of Dishonour, 1869-1969**

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Introduction: Colonialism - Canada's National Duty.

In 1867, with the passage of the British North America Act, Canadians began the process of nation building. Over the next few years, new provinces emerged – Manitoba, British Columbia, Prince Edward Island – and Canada became, by 1873, a nation from sea to sea. At the same time, by way of three legal instruments, the federal government was equipped to function as an imperial power. Section 91:24 of the B.N.A Act assigned to it the responsibility for all “Indians and lands reserved for Indians” – a responsibility that had been carried by the Imperial government for the previous century. The Rupert’s Land Order in Council transferred the vast Hudson’s Bay territories to Canada’s exclusive jurisdiction. And finally, in the Indian Act of 1869, the government set out its own vision of future Canada-First Nations relations: an aggressive colonizing project of assimilation not only of First Nations in those territories but of all First Nations throughout the nation. Successive federal governments, Liberal and Conservative, over the next century, in amendments to the 1869 Act and in new Acts, spelled out, in increasing detail, a colonial structure that passed control of First Nations people and communities into the hands of the Indian Affairs Department. That structure survived without effective opposition or change until 1969.

Canada’s colonization of First Nations was not a wholly new initiative in 1869; it rested, in part, on an Imperial policy heritage. Thus while the first Indian Act departed significantly from some elements of past British policy, it maintained others. The foundation of British policy was the historic Proclamation of 1763. The principles it laid down with respect to land and its inherent respect for the “national” character of First Nations formed the core of British-Indian relations and re-emerged in the late 1970s as the baseline of Canadian-First Nations relations. Certainly, the fundamental characteristics of the contemporary relationship emanate from it: the recognition of Aboriginal rights, the Canadian treaty system and, of course, the persistent court cases geared to clarifying the nature of the “existing rights” embedded in the repatriated Constitution of 1982 - a constitution which specifically recognizes the continuing existence and significance of the Proclamation and its principles.¹

However, the centrality given to the Proclamation in the 1982 Constitution, and its respect for Aboriginal rights, is only a relatively recent feature of Canada's history. For most of that history, from 1869 forward, the Proclamation's principles were alternately ignored, violated or, more often than not, applied with an eye to serving first national and only incidentally Aboriginal best interests. In the Proclamation's place, the relationship between Canada and First Nations was shaped by other influences, more by "cultural" forces rather than legal principles. Those forceful determinants were private property ownership and the rhetoric of Empire - the "whiteman's burden." Together, they were the primary markers of 18th and 19th century British civilization; and in Canada, they were the formative elements of federal Indian policy - a policy with a fixed, unwavering goal, a Canadian version of the "burden." As Canada's first Prime Minister, J.A. Macdonald, informed Parliament, it was the nation's duty to "do away with the tribal system and assimilate the Indian peoples in all respects to the inhabitants of the Dominion."ⁱⁱ1

Assimilation became the enduring justification for federal colonialism. To that end, Macdonald's, and governments that followed, marginalized much of the Proclamation. Most critically, Indians who had been allies, or, in the words of the Proclamation, "Nations or Tribes of Indians with whom We are connected,"ⁱⁱⁱ were, by the Indian Acts, extensively colonized and made the objects of penetrating federal control; First Nation's self-government was ended. Not until the failure of the Trudeau/Chrétien White Paper proposal in the early 1970s was the determination to "assimilate the Indian peoples"^{iv} abandoned and a search begun in constitutional conferences and court rooms to a find a place in Confederation for First Nations that would fully respect their "existing rights."

Laying the Foundations of Canadian Colonialism: The Proclamation of 1763

At Canada's birth, the federal government inherited the Proclamation's basic principles. Adopted in 1763, the Proclamation had set out a three-corned system of governance for British North America, combining the Imperial Crown, its colonies and those "Nations or Tribes of Indians." This system, with only slight amendments, became Canada's constitutional structure in 1867. The Imperial Crown gave way to the Federal, the colonies became provinces and the self-governing First Nations remained, for a brief period, a third order of government.

The cornerstone of that order was the recognition of Indian land tenure within an over-arching Crown sovereignty; the recognition, in fact, of an Aboriginal right to land, that would be, thereafter, alienable only to the Crown by purchase. This facet of the Proclamation, the Canadian government maintained. After Confederation, negotiated purchases, treaties based on Proclamation procedures, prefaced the creation of provinces in the prairies and national expansion into the north. Only in the case of British Columbia's entrance into the federation in 1871 was this "Canada system" abandoned in the face of the argument by the province that treaties were not necessary for the pacification of First Nations.^v

Standing back from treaty history at that point and scanning the next one hundred years of treaty-making reveals some underlying nationwide commonalities. A pattern was set; national tribal homelands, reserves, were recognized and their boundaries marked out. For these, the Crown had the duty to provide, in the words of the Proclamation, "Protection" so that tribal nations "should not be molested or disturbed"^{vi} in their enjoyment and use of their land. This created a Crown-First Nations relationship, a fiduciary relationship, that would remain a basic element of Canadian policy.

While the treaties set out the geographic boundaries separating colony from First Nation, the second significant principle of the Proclamation dealt with constitutional relations amongst the three elements of the Proclamation's governance system. Again the issue of land was the starting point. Colonies were forbidden from purchasing Indian land^{vii} and were not permitted any "legislative interference"^{viii} in Indian affairs. For its part, the Imperial government undertook to deal with the tribes as if they were indisputably independent political entities, nations with "Possessions, Rights and Privileges to be respected"^{ix} including recognition of the ancient "Rules and Constitutions by which they are governed."^x Years later, in 1836, the Upper Canadian Attorney General, R. Jamieson, gave evidence of the continuation of that constitutional norm. First Nations, he wrote "have within their own communities governed themselves by their own laws and customs."^{xi} In short, First Nations were self-governing within their recognized jurisdictions including all internal affairs. They remained so until the Indian Act of 1869.

After Confederation, only some of these constitutional forms were maintained. The responsibility for conducting relations with First Nations was shifted from the Imperial to the Federal government; the Imperial Indian

Department became the Canadian Indian Department. And as had been the case with colonial governments, their Canadian provincial successors were given neither authority over, nor any responsibility to, Indian peoples, communities or land. First Nations were an exclusive Federal responsibility – or so it was assumed generally until the issue was complicated in the late 1940s by Canadian citizenship legislation, Indian urbanization and amendments to the Indian Act in 1951.

Not every important element of the Proclamation's governance system was carried forward, however, into the post-Confederation period. Most notably, First Nations' self-government, was sacrificed to Macdonald's proclaimed assimilative duty. This radical colonizing gesture was not in any way a legal or constitutional requirement of the transfer of the responsibility for Indian Affairs from the Imperial to the Federal government. Rather the root cause of that dramatic shift lay in the consequences of an Imperial social policy for First Nations that had been developed in the final three decades before Confederation - a policy of civilization

The Move from Civilization to Assimilation

In 1830, the Colonial Office in London adopted “the settled purpose of gradually reclaiming them [the tribes] from a state of barbarism and of introducing amongst them the industrious and peaceful habits of life.”^{xii} Thereafter, the Indian Department, missionaries and self-governing First Nations cooperated in a broad community development program creating, in the southern section of the United Canadas, a number of settlement sites, the infrastructure of “civilization” – villages with day schools, churches, European houses and ploughed fields. For a period, at least, permanent self-governing, self-sufficient communities on the basis of agriculture and European education were the common goal.

The history of this policy of civilization, the shape it was given in the three decades after 1830 by local civilizers, missionaries and Indian agents, and their critique of its progress, had a fundamental impact on the content and structure of future Canadian policy. Two critical issues emerged. Civilizers, on the basis of policy reviews in the early 1840s and the mid-1850s, found that settled communities were still in “half-civilized” state - their complete transformation “yet a glimmering and distant spark.”^{xiii} They became convinced that further development would be realized only by the education

of children and their subsequent enfranchisement into colonial society. The Province of the United Canadas obligingly opened the gate to colonial “citizenship” by the Act to Encourage the Gradual Civilization of the Indian Tribes in the Province, 1857.^{xiv} The Act provided that any Indian judged to be educated, free from debt and of good moral character could apply to receive land within the colony and “the rights accompanying it.”^{xv} With those provisions, the goal of community civilization was replaced by assimilation, by community dismemberment – enfranchised individual by enfranchised individual. This would become the core feature of Canada’s approach to its First Nation responsibility.

With the shift of the policy’s emphasis away from community development to preparing individuals for enfranchisement, communities, especially in the post-Confederation period, would be left to find their own way forward with little federal assistance. For almost all communities this became an increasingly insurmountable challenge, particularly in the first half of the 20th century as the nation modernized, becoming industrialized in urban and in rural areas, as well. Not until the 1980s was there any “concerted attempts to inject life into the reserve economy.”^{xvi} Instead, attention and finances were devoted to assimilation - to producing individuals who would be “desirous ... of sharing the privileges and responsibilities which would attend their incorporation with the great mass of the community.”^{xvii} And to that end would abandon, voluntarily, their First Nation’s membership. It was assumed that such a transition would be achieved most effectively by residential schools – another Imperial initiative inherited and built upon by the federal government. The first two were opened, in the late 1840s, in Upper Canada and then a system, national in scope, was adopted, in 1879, by Macdonald’s cabinet. This connection between schools and citizenship, and thus between education for First Nations cultural extinction, remained a particularly regrettable aspect of Federal policy. Each successive Indian Act in the period under review, carried enfranchisement provisions. A number of amendments even obviated the need for an individual to volunteer. The 1876 Act, for example, provided that anyone earning a university degree or “admitted ... to practice law,” or “who may enter Holy Orders ... shall ipso facto become and be enfranchised under this Act.”^{xviii} And, of course, the residential schools continued to operate with federal funding until 1986.

The second critical issue concerned self-government. Civilizers identified the independence of tribal government as a serious hindrance to progress being made by individuals along the road to civilization. They gave as

evidence, the opposition of many leaders to the enfranchisement section of the Gradual Civilization Act - it was designed, one leader charged accurately, “to break us to pieces - ”^{xxix} and by the fact that by 1863 not one individual had volunteered for enfranchisement. As well, communities were represented as unwilling to forego what were characterized as regressive traditional customs. The most problematic of these was their insistence on holding land in common. In the opinion of civilizers, the refusal of band councils to authorize individual ownership destroyed, “industriousness,” the basis of all progress. From all of this it was clear to Indian agents and missionaries, alike, that development had stalled and that the key prerequisite for future movement, as the Governor of the United Canadas was told in 1863, was that “Petty Chieftainships,” be swept aside and a “Governor and sufficient number of magistrates and officers” put in their place.^{xx} Self-government had to end.

Indian Act Colonialism – Governance

With the passage of the first Indian Act, in 1869, it was evident that the conclusions and policy recommendations of Indians agents in the early 1860s had been taken to heart. Now for Macdonald’s government the phrase “Nations ... of Indians” was no longer appropriate as, in his estimation, Indians were like children; they were like “persons underage, incapable of the management of their own affairs” and, therefore, the government had to assume the “onerous duty of ... guardianship.”^{xxi} Certainly, the title of the 1869 of Act - an “Act for the Gradual Enfranchisement of Indians, the Better Management of Indian Affairs,”^{xxii} indicated its dedication to assimilation. The details of the Act confirmed that. Its two most important features were enfranchisement and, the key provision, giving communities “the benefits of municipal government.”^{xxiii} This meant that the Act abolished traditional forms of government and replaced them with a male-only elective system largely under the control of the local Indian agent. Thus Chiefs and Councillors were to serve at the pleasure of the Crown. They could be, removed “by the governor for dishonesty, intemperance or immorality.”^{xxiv} Not only would the Indian Department control the institution and personnel of council but the powers of the council to make laws for communities were limited to such a degree that they were no longer in any meaningful way self-governing. The 1869 Act allowed councils to make by-laws for: “the care of public health,” “the observance of order and decorum and public assemblies,” “the repression of intemperance and profligacy,” “the prevention of trespass by cattle,” “the maintenance of roads bridges, ditches

and fences,” “the construction . . . of school houses, council houses and other public buildings” and “the establishment of pounds and the appointment of pound-keepers.”^{xxv} Control of many elements of the reserve – land, resources and finance for example – passed into the hands of the Department.

But the Act went further, for even in these narrow jurisdictions, band council authority was strictly limited. The laws councils framed were “subject to confirmation by the Governor in Council”^{xxvi} – meaning, in practise, that they had to meet the wishes of the local agent. Furthermore, subsequent Indian Act amendments expanded Departmental power in aid of assimilation. Agents, for example, were appointed justices of peace for their jurisdictions. In that role, they were directed to apply the provisions of the “Act Respecting Offences against Public Morals and Public irregularities, offences against Canadian social and sexual norms. The application of those provisions to communities was designed to bring First Nations people within the same moral boundaries as non-Aboriginals. There were also amendments to the Act which made more direct attacks upon objectionable aspects of First Nations cultures - the Sundance and Potlach, for example.^{xxvii}

Clearly, for the sake of the government’s assimilative mission, the independence of community leaders was to be ended. It was to be replaced by over-riding Federal authority in band affairs. In the second Act, the Consolidated Indian Act of 1876^{xxviii}, the constitutional formula of 1869 was repeated and the implication that First Nations would lose control of almost every aspect of their communities was spelled out in detail. The Department was empowered to institute all the systems of development it cherished: individualized land holding, education and resource and financial management.^{xxix} Subsequent Acts, while maintaining the basic structures of the 1869 and 1876 legislation, (municipal government and enfranchisement) blanketed communities with regulations in an attempt to establish Canadian economic and social norms throughout community life.^{xxx}

One Nation Two Paths.

The consequences of early Indian Act legislation were far greater than the details of those laws. The nation assumed a marked characteristic; a fundamental dualism was planted at the core of Canadian federalism. Two paths were laid out and maintained unquestioningly until after the Second World War: one for non-Aboriginal Canadians of full participation in the

affairs of their community, province and nation and one for First Nations people stripped of the power of self-determination, separated from provincial and national life and existing in communities whose colonization was profound and immutable. Politicians and civil servants alike testified to the persistence of the assimilative goal. With the passage of the 1876 Act, the Minister, David Laird, declared that the Department now had the means “to prepare him [the Indian] for a higher level of civilization by encouraging him to assume the privileges and responsibilities of full citizenship.”^{xxxii} On the 50th anniversary of that Act, the Deputy Minister, Duncan Campbell Scott, told a House Committee that it should have no doubts as to the continuing appropriateness of that policy. For his part he had no “intention of changing the well-established policy of dealing with Indians and Indian Affairs in this country.” Indeed, “I want to get rid of the Indian problem,” therefore “our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question and no Indian Department.”^{xxxiii}

In the new nation, First Nations existed in a wholly new context with the immigrant state. The partnership of cultures, which had marked the fur trade and the period of British Indian relations after 1763, ceased. In the 1860s, tribal nations, unlike Quebec and the Maritimes, were not necessary for Confederation, and thus in the new national scheme they were given no room to create revitalized cultures in a modern context though the dominion provincial structure of Confederation gave cultural guarantees to others. The new nation’s ethics of cooperative federalism and cultural tolerance ignored them. In essence, First nations were left out of Confederation, even though their reserves and unceded homelands became part of the national estate. The Indian Acts of the pre-Second World War period allowed that First Nations people could join the national community only as enfranchised, assimilated individuals. In a sense they were meant to be immigrants in their own land moving not across an ocean but across constitutional jurisdictions from a federally controlled reserve to a province. Indeed, that was just how the federal government came to see the process. In 1949, when Indian Affairs became a part of the newly created Department of Immigration and Citizenship, the Minister, Jack Pickersgill, described the Department’s task in words echoing Laird and Scott. “The function of the new department was to help the increasing number of immigrants become Canadian citizens and to help the growing Indian population assume the full responsibilities and privileges of citizenship.”^{xxxiii}

But who is an Indian? : Creating the Colonized Indian

Colonialism was not limited to issues of governance. The institution of parliamentary authority over First Nations and the concentration of the government's power in the hands of the Indian Affairs Department, was the platform for an even more profound intervention - the denial of self-determination through the Act's construction of an officially sanctioned "status Indian."

In its early Indian Act legislation, Parliament defined the concept "Indian." In part, this was no more than a practical matter. Just who fell under section 91(24) of the British North America Act, just who had, in the words of the Indian Act, the "legal rights, privileges, disabilities and liabilities of Indians,"^{xxxiv} to whom did the federal government owe a duty of protection and who exactly did it intend to raise to "a higher civilization?"^{xxxv} The answer was an administrative tool but it was also much more than that. With the creation of a certifiable Indian status, Parliament took another giant colonizing step forward, denying First Nations' people the power to determine, for themselves, who belonged to their communities. Again Indians were placed on a separate path. Alone amongst all other residents and future immigrants to Canada, "Indians" were a legal construct imposed by Ottawa, with almost no reference to Indian custom and experience or the ways in which First Nations people might want to arrange their relations with the "mixed-bloods" and other ethnic peoples who would enter their lives, families and communities.

The "Indian status" created in the Indian Act grew out of Victorian cultural assumptions: that property ownership was the foundation of civilized society and that both ownership and decent of property were attached, primarily, to males. In line with these beliefs, the initial Acts defined "Indian" in relation to property. Thus "For the purpose of determining what persons are entitled to hold, use or enjoy the lands and other immoveable property belonging to or appropriated to the use of the various tribes bands or bodies of Indians"^{xxxvi} that

The term "Indian" means: First. Any male person of Indian blood reputed to belong to a particular band. Secondly. Any child of such person. Thirdly. Any woman who is or was married to such person.^{xxxvii}

Any reserve resident not fitting that description would not have “status,” would be declared a trespasser and Departmental agents would be directed “to remove from the said land ... every such person.”^{xxxviii} “Status” was not necessarily permanent; it could be lost or even given up. Any woman “marrying any other than an Indian shall cease to be an Indian within the meaning of this act”^{xxxix} and “any illegitimate child may ... be excluded from ... membership”^{xl} And individuals who volunteered and qualified for enfranchisement exchanged their status and that of their wife and children for membership in non-Aboriginal society.

This legal formulation of the “Indian,” rooted in the patriarchal nature of property ownership, went a step further. It dismantled tribal nations by segregating their bands into separate property-bound entities and units of municipal administration. Thereafter, the individual’s status was tied to the band on its reserve rather than to traditional, tribal collectives. Thus if an Indian woman married an Indian of another band, she “shall cease to be a member of the band to which she formerly belonged, and become a member of the band ... of which her husband is a member.”^{xli} And men’s property rights and privileges were restricted to their own reserve. Indians attempting to live on a reserve to which they were not attached by their status were, like white trespassers, subject to removal.^{xlii}

The privileging of males which underlay the status definition, a definition which in turn set out the boundaries of the government’s responsibility under section 91(24), had a further and quite surprising consequence. Some Indians were pushed outside those boundaries and some non-Aboriginal people were brought in. This occurred because according to the norms of Victorian Canadian society, children and women, in parentage and marriage, took the identity of the dominant, determining male. And thus, while a line of male blood, red and white, was meant to divide the Aboriginal from the non-Aboriginal population, the fact that women’s and children’s status was determined by male affinity meant that Indian women “marrying-out” lost their status taking on that of their white husband. But it meant, too, that non-Aboriginal women who married an Indian man gained status with reserve residence and rights and so too did their mixed-blood children. This would make a bewilderingly difficult situation for all, First Nations people, of course, but also for officials charged with policing reserve populations and administering federally funded programs directed to status Indians only. By the operation of status rules, “biological” Indians with and without status

and “biological” non-Indians with Indian status (in the main women and their children), would be located on both sides of a reserve boundary.

The Act gave to the Department the authority to attribute or deny status to individuals and this led to the development of a powerful colonizing device – a status tracking system composed of band and treaty numbers for individuals, a national registrar and registry to make and register status determinations and eventually status cards. These made the status population legible to the Department, marked it genealogically. That legibility facilitated heightened levels of Departmental surveillance and intervention in communities and in the lives of individuals. By registering births and determining the paternity of each child, band lists could be established and policed and a separation maintained between status and non-status Indians and non-Aboriginals. Such surveillance and regulation became increasingly important in the 1950s and thereafter as the Indian population increased and thus Federal expenditures in treaty payments and welfare state benefits and services escalated accordingly. In defence of the legal status “purity” of band populations, and of the Indian Department’s budget too perhaps, thousands of Indian women and children, culturally but not considered legally “Indian,” would be exiled from their communities. Cut-off from family and community support, and, often lacking education and job skills, these women often became, in the post-war period, the objects of off-reserve provincial social service organizations. The most tragic consequence of this exile and surveillance was that many of their children would be “apprehended” by child welfare officials and would be lost to culture and community in the labyrinth of the fostering and adoption system.

Integration: Dominion/Provincial Shared Responsibility

The immediate post-World War II period brought a significant change to Federal/First Nations relations. But it was not change for the better. Rather communities became the objects of even more complex colonial structures as provincial legislation came to the heart of Indian Affairs with a consequent diminishment of federal responsibility. Again, as in the Confederation era, the cause lay not in law but in a new policy – integration – a Department of Indian Affairs strategy designed to respond to what would be the major characteristic of western democracies through to the 1980s - the welfare state – governments’ creation of a superstructure of benefits, pensions, disability allowances and general provisions for social, economic

and health security for all Canadians.

National plans to achieve such conditions brought Indian children, their families, and communities under the new welfare umbrella. First Nations, families, therefore, were automatically eligible for benefits under what was one of the first programs – the federal Family Allowance in 1945. And, in 1947, with the passage of the Citizenship Act, Indians, along with all others born in Canada, became Canadians. The Department felt immediately the weight of the state's increasing social responsibilities and faced expectations of benefits and service delivery to First Nations on par with those for non-Aboriginal people. This was a considerable challenge for the separate path First Nations had been put on had brought them to a sorrowful destination. The Minister, E. Fairclough, herself, admitted "It must be remembered ... this Department faced a very grave problem which threatened the survival of the Indians. At that time health, education, housing and community standards were so far below minimum standards that a major program of assistance was essential before there could be any hope of Indians competing on an equal basis in our society."^{xliii}

Unfortunately, subsequent Departmental reports charted the heritage of colonialism, of federal control and neglect of community development - the continuing deterioration of the social and economic conditions of First Nation, the failure of successive governments to alleviate those conditions and thus the hollowness of First Nations' Canadian citizenship. The substructure of the crisis was a phenomenal increase in population. From 1941 to 1981 it grew by 205% compared to a 109% national rate.^{xliv} National economic restructuring brought rising unemployment for those workers with little education, marketable skills or capital and thus levels of dependency for Indians, most of whom fit those descriptions, escalated far outpacing national norms. In 1964, 36% were receiving social assistance, (compared to 4% of the non-Aboriginal population) growing at the end of the 1970s to 70%. Housing conditions and health conditions, often inter-related, were equally deplorable. In 1980, less than 50 percent of Indian houses were properly serviced compared to a national level of 90 per cent. The impact on child health was tragic with infant deaths, again higher than national levels, attributed, by the Department "to respiratory ailments and infectious or parasitic diseases, reflecting poor housing, lack of sewage disposal and potable water, as well as poorer access to medical facilities." Community and family health showed the strain. "The strength and stability of family units" the Department noted, "appears to be eroding, as evidenced by

increasing divorce rates, births outside marriage, children in care, adoptions of Indian children by non-Indians and juvenile delinquency.^{xliv}

There were many reasons for the near total collapse in First Nations' communities, but two, both prime traits of federal colonialism, stand out: a persistent lack of funding in every sector and the residential schools and their impact on individuals and families. In terms of funding allocations, the Department admitted that there was yet another disparity with non-Aboriginal Canadians. Despite Fairclough's call for one, no "major program of assistance" had been launched and thus Aboriginal funding was a fraction of what was needed. In the most critical decade, for example, the 1970s, funding for First Nations increased 14% per capita compared to a 128% per capita growth in other federal social programs; and only 10% of overall First Nations funding was assigned to development.^{xlvi}

Through the 1960s, and 1970s, the evidence of the destructive impact of the schools, of their institutional parenting of children, and their trans-generational effects accumulated in Departmental files. In the 1980s, this evidence became part of a growing public record through student memoirs, academic commentary and court rooms. The schools were factories of disability and deviance more than they were halls of learning. The Aboriginal Rights Coalition listed the consequences of a century of removing children from parents and culture: "the loss of language ... the loss of traditional ways of being on the land, the loss of parenting skills through the absence of four or five generations of children from Native communities, and the learned behaviour of despising Native identity." These factors produced further sorrowful results so evident in the 1980s - the large and growing number of children in care, the fact that 50-60% of illness and deaths of First Nations individuals were related to alcohol and the over-representation in prisons "by more than 3 times their proportion of the population."^{xlvii}

Integration, which meant opening up to First Nations people the social and health services, which under the British North America Act were within provincial jurisdictions, was the Federal government's response to "the very grave problem"^{xlviii} of First Nations conditions. While it would mean adding new colonial practises, it did not disturb existing ones. In particular, federal control of First Nations governance remained unchanged. There were, however, surface changes tied to the remarkable contribution of First Nations communities and individuals to the war effort, to a new tolerance

stemming from the defeat of fascist racism and to post-war immigration from non-traditional areas, southern Europe principally. In the shadow of those elements, traditional official attitudes to Indian culture softened on paper, at least. Parliament, for example, dropped Indian Act sanctions against the sun dance and potlatch. And work was begun by the Branch on what in the 1970s would become known as culturally appropriate curriculum for use in residential schools.^{xlix} These new policy initiatives would, the Department asserted in words that appeared an attempt to cut ties with its own racist past, enable the “Indian ... to take his place as an Indian with other citizens of the country.”¹

The integration policy was more than a strategy to deal with poverty; it brought a surprising change in the structure of colonialism involving Dominion/Provincial/First Nation relations. This was heralded by a considerable revision in the Federal government’s understanding of Section 91(24). From a belief in its exclusive, over-riding authority, the federal government moved to one of a shared federal/provincial responsibility for “Indians,” though not for “land reserved for Indians.” The Department’s assimilative mandate remained the same - “to assist Indians to take their places in the main stream of Canadian life as fully participating members of society”^{li} but now, as rates of urbanization climbed, it was argued that this must be a co-operative venture with the provinces. And that to that end, “one of the essentials, if this objective is to be achieved, is that the Indians should be accepted on an equal footing with other citizens as they move from their own communities into non-Indian towns and cities throughout Canada.”^{lii} In part this was an issue of efficient service delivery as provinces controlled the main social institutions but it was also, according to federal officials, a legal requirement stemming from provincial constitutional obligations to the status Indian. Thus, the Department insisted in a submission to cabinet, that Indians were “their [the provinces’] citizens” having the same rights and responsibilities and “eligible for the same ... services as other Canadians.”^{liii} The Minister, J. Pickersgill, put it in constitutional terms “... my interpretation of section 91, Item 24 of the British North America Act is that the jurisdiction over Indians which was given to the Parliament of Canada refers to Indians domiciled on reserves.”^{liv}

Pickersgill went on to set out the policy implications of such a position. These were linked directly to the Department’s on-reserve social welfare responsibilities. “This interpretation is the basis for the total welfare programme of Indian Affairs Branch which is designed specifically for

reserve type of living."^{lv} This was not a wholly new position. In 1920, A.S. Williams, the Department's legal officer commenting on the eligibility of Indian widows for benefits under Ontario's Mothers' Allowance Act planted the seeds for the Minister's assertion of Indian provincial rights and the province's obligation to them. "Indians residing outside of a reserve would, I feel sure come within its [the Act's] provisions because they are then in the same position as any other resident of the province ..."^{lvi} By being "in the same position" Williams meant that they had established an off-reserve residence and were as such "subject to municipal taxation."^{lvii} This line of logic was taken up by the Department in the post-war era as its justification for abandoning off-reserve status Indians to the care of provincial authorities. As a Departmental statement on welfare concluded "... the provinces must be prepared to recognize a responsibility for their citizens and the fact that Indians of course contribute, as do other provincial residents, to provincial revenues."^{lviii}

Any provincial constitutional obligation to First Nations people was to end at the reserve boundary but provincial involvement would not. On-reserve Indians remained clearly an exclusive Federal responsibility. But in line with its integration strategy, that did not mean that the federal government intended on dealing with reserve conditions by itself. It was not prepared financially to provide the necessary health, welfare and educational infrastructure and staff when those institutions and their trained professionals existed in the provinces. Rather it intended to purchase such services from the provinces. The Indian Act of 1951 readied communities for such service agreements by providing an on-reserve legislative context for them. Section 87 of the Act established that "... all laws of general application in force in any province are applicable to and in respect of Indians except where such laws are inconsistent or duplicate provisions in the Indian Act or other federal legislation."^{lix} Provincial authority and a vast burden of provincial legislation and regulation, from traffic to child care, tacked on to the Indian Act moved across reserve boundaries, without the agreement of the community.^{lx} Shared responsibility meant shared colonialism, province by province.

Section 87 brought more than just an increase in intervention in the lives of First Nation people and communities; it brought conflict and vastly different services province by province. The Department was, of course, fully aware of the fact that the government's re-definition of Section 91(24) carried the possibility of "constitutional conflict"^{lxi} and, moreover, there was no

guarantee that cooperation would be forthcoming for on-reserve work. There was some success at the outset in the field of education where local school boards, facing rising costs to accommodate baby boom children, welcomed the capital cost contribution the federal government was willing to make in exchange for places for First Nations pupils. Ontario was outstanding in its willingness to provide services on and off-reserve in many sectors. And in the Maritimes, too, federal cost sharing of provincial responsibilities made some space for cooperation with Indian Affairs. In other jurisdictions, however, Alberta and Saskatchewan most notably, there was almost no cooperation. The idea of a shared obligation as set out by the federal government was rejected. Moreover, the failure of federal and provincial leaders to fashion a single national accord covering First Nations (as leaders did in areas such as health and unemployment), differing levels of provincial welfare funding capacities and continuing federal under-funding meant, province by province, different and unequal treatment for First Nations and in some places no services at all. As with the earlier civilizing technology, residential schools, integration was a net contributor to worsening First Nations conditions rather than alleviating in any substantial fashion the deplorable conditions Departmental reports bluntly outlined.

For First Nations people in their communities there was in all of this no real progress. The Acts before and after the war maintained the dominance of federal authority and, after 1951, sanctioned “legislative interference” by provinces many of which felt they had no constitutional obligations to First Nation Canadians, had little time or concern for them and fewer funds. With the coming of provincial legislation, band council governments were even less able to set standards and determine norms in their communities consistent with their cultural values. The welfare state’s vaunted equality of treatment in the end only strengthened the colonial grip on communities instituted through the Indian Acts.

There was one further post-war federal initiative designed to achieve the government’s assimilative purpose. Ironically, it called for the end of federal authority and the Indian Act. The Trudeau/Chretien White Paper proposed total and immediate integration; federal authority, the treaties and the Indian Act were to be rolled up and First Nations communities and individuals would be passed into the care of the provinces. Thereafter, there would be no Federal/First Nation connection, no Aboriginal rights and no new federal Indian legislation.

In a way that Trudeau never expected, the White Paper proved to be the end of Indian Act colonialism. It was rejected not only by First Nations' leaders across the country, but by non-Aboriginal Canadians who had historically supported federal assimilative policy for First Nations. The government was forced to retreat from it. That retreat brought, however, no new blueprint for the future of First Nations Canadian relations and certainly there has been no unanimity amongst non-Aboriginal leaders as to the form that that future should assume. But the defeat was a significant indication of the vibrancy of the First Nations decolonizing movement. It was also that movement's first major victory. The second one saw the recognition of the continuing existence and relevance of the principles of the Proclamation of 1763 and the "existing rights" enshrined in the Canada Act, 1982. At the very least, though there is still a fair distance to travel, a watershed has been crossed.

ⁱ Constitution Act, 1982, See Part II s. 35. (1) referencing the "existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed." And Part I, s. 25. (a) "any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763.

ⁱⁱ As quoted in M. Montgomery, "The Six Nations and the Macdonald Franchise," *Ontario History* 57, 13 1965.

ⁱⁱⁱ "The Royal Proclamation, October 7, 1763" I. Getty and A. Lussier (eds.), *As Long as the Sun Shines and the Water Flows*, (Vancouver: U.B.C. Press 1983), 29-37.

^{iv} Montgomery, "The Six Nations and the Macdonald Franchise."

^v For a discussion of the union negotiations and the rejection of the Canada see: R. Fisher, "Joseph Trutch and Indian Land Policy," *B.C. Studies* 1970-71.

^{vi} The Royal Proclamation.

^{vii} The Royal Proclamation.

^{viii} National Archives of Canada, [NAC] *Journal of the House of Assembly of Lower Canada from the 12th Jnay to the 24th April 1819*, (Quebec, n.d.), p.41.

^{ix} Public Records Office (London) "Lord Egremont to Lords of Trade, May 5, 1763" quoted in R.A. Humphreys, "Lord Shelburne and British Colonial Policy, 1766-68" *English Historical Review*, No. CXCVIII (1935), p128.

^x "Instructions to Governor Murray, Dec. 14, 1763" *Documents Relating to the Constitutional History of Canada 1759-1791*, Part I, p.199.

^{xi} NAC, RG10 Vol. 60, pp. 60737-38, To John Joseph Esquire, Secretary to His Excellency the Lieutenant Governor from R. Jamieson. Att. Gen. Upper Canada, 18 February, 1836.

^{xii} NAC, C.O. 42/27, G Murray to J. Kempt (No. 95), 25 January, 1830.

^{xiii} For a full discussion of these reviews and the remodeling of the policy see: J.S. Milloy, *The Era of Civilization – British Policy for the Indians of Canada, 1830-1860*, Chapters IV and V unpublished DPhil thesis, University of Oxford, 1978, 165-283.

^{xiv} Statutes of Canada, 20 Vict., 26, 10 June 1857.

^{xv} Statutes of Canada, 20 Vict., 26, 10 June 1857.

^{xvi} H. Buckley, *From Wooden Ploughs to Welfare, Why Indian Policy Failed in the Prairie Provinces*. (Montreal-Kingston: McGill-Queens University Press 1992), 25.

^{xvii} NAC, RG 10, Vol. 287, J. Gilkison to the Chief Superintendent of Indian Affairs, 4 March, 1863.

^{xviii} Statutes of Canada 39, Vict. 1876, An Act to amend and consolidate the laws respecting Indians, s.86 (1).

^{xix} NAC, RG 10 Vol.245 part 1, D. Thorburn to R. Pennefather, 13 October 1858.

^{xx} NAC, RG 10 Vol. 239, Part 1 Rev. T. Hurlburt t R. J. Pennefather, 22 December, 1857.

^{xxi} House of Commons Debates from Sixth Day of November, 1867, to the Twenty-Second Day of May, 1868, p.200.

^{xxii} Statutes of Canada, 32-33 Vic., c.6, 22 June 1869.

^{xxiii} House of Commons Debates, 2d Session 1st Parl. , 32-33 Vic., vol.2, p.83.

^{xxiv} Statutes of Canada, 32-33 Vict., , c.6, 22 June 1869. s.10.

^{xxv} Statutes of Canada, 32-33 Vict., c.6, 22 June 1869. s. 12.

^{xxvi} Statutes of Canada, , 32-33 Vict., c.6, 22 June 1869. s.12.

^{xxvii} Statutes of Canada, 47 Vict. c.27. 1884. s3.

^{xxviii} Statutes of Canada, 39 Vict. c.18, 1876.

^{xxix} Statutes of Canada, 39 Vict. c.18, 1876. See, for example, s. 69-74, 75-76, and 96.

^{xxx} Statutes of Canada, 43Vict. c 28, 1880. See, for example, s. 43-48.

^{xxxi} Annual Report, Department of Indian Affairs, 1876.

^{xxxii} E.B. Titley, *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada*, (Vancouver, UBC Press (Vancouver) 1986). 50.

^{xxxiii} missing

^{xxxiv} Statutes of Canada, 43 Vict., c.28, 1880.

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- xxxv Annual Report, Department of Indian Affairs, 1876.
- xxxvi Statutes of Canada, 31 Vict., c.42, 1868.
- xxxvii Statutes of Canada, 39 Vict. c.18, 1876, s. 3 (3).
- xxxviii Statutes of Canada, 39 Vict. c.18, 1876, s. 12.
- xxxix Statutes of Canada, 39 Vict. c.18, 1876, s. 3.3, (c).
- xl Statutes of Canada, 39 Vict. c.18, 1876. s.3.3, (a).
- xli Statutes of Canada, 39 Vict. c.18, 1876. s. 3.3, (d).
- xlii Statutes of Canada, 39 Vict. c.18, 1876, s11-12.
- xliii NAC, RG 10 C10985, Vol.6932, File 501/29-1, pt 4. E. Fairclough to Dr. G. Johnson, 13 October 1959
- xliv For an excellent discussion of First Nations' population dynamics in this period see: M.J. Norris, "Contemporary Demography and Aboriginal Peoples in Canada," D.A Long and O.P. Dickason (eds) *Visions of the Heart, Canadian Aboriginal Issues*. (Toronto: Harcourt Brace 2000).
- xlv All of this material was published in *Indian Conditions: A Survey*, Department of Indian and Northern Development, 1980.
- xlvi *Indian Conditions: A Survey*.
- xlvii Indian and Northern Affairs Canada [INAC] File E6575-18-2 Vol.4 ... [name omitted] ..et al., *Aboriginal Rights Coalition to the Honourable Tom Siddon*, August 1992. This file is part of the closed INAC collection and thus its reference is here amended to conform to Privacy Act restrictions under which it was obtained.
- xlviii NAC, RG 10 C10985, Vol.6932, File 501/29-1, pt 4. E. Fairclough to Dr. G. Johnson, 13 October 1959
- xlix For information on curriculum see: INAC, L. Fortier, Memorandum 26 January, 1951 File 6-21-1, Vol.1
- ¹ NAC, RG 10, Vol. 8576, File 1/1-2-2-21, Regional School Inspectors Conference, 21-23 November, 1956. See remarks by Col. H. Jones.
- ^{li} NAC C10983, Vol. 6924, File 1/29-1 pt7. Col. H. Jones to Mrs H.A Tanton, President Salmagundi Club Toronto 5 April 1962
- ^{lii} NAC, C10983, Vol. 6924, File 1/29-1 pt7. Col. H. Jones to Mrs H.A Tanton, President Salmagundi Club Toronto 5 April 1962
- ^{liii} NAC, RG 10 C10982, Vol. 6923 File 1/29-1 pt.4. Draft submission to cabinet and agreement with provinces titled "Application and Extension of Welfare Services to Indians " May 1959.
- ^{liv} NAC, RG 10, C13809, Vol. 8463, File 1/23-21, pt1 J. Pickersgill to the Hon. F.C. Ball, 28 April, 1955.
- ^{lv} NAC, RG 10, C13809, Vol. 8463, File 1/23-21, pt1 J. Pickersgill to the Hon. F.C. Ball, 28 April, 1955.

^{lvi} NAC, RG 10, C11342, Vol. 3224, File 549,421-1 A.S. Williams to D.C. Scott.

^{lvii} NAC, RG 10, C11342, Vol. 3224, File 549,421-1 A.S. Williams to D.C. Scott.

^{lviii} NAC, RG 10, C 10983, Vol. 6924, File 1/29-1 pt7 See: memo to file "Welfare."

^{lix} Statutes of Canada, 15 George VI, c.29, 1951, s. 87.

^{lx} NAC, RG 10, C10992, Vol. 8387, File 901/29-4, pt 1. To Regional Administrators from Mary K. King Deputy Superintendent of Child Welfare, B.C. 31 May 1960.

^{lxi} NAC, RG 10 C10982, Vol. 6923 File 1/29-1 pt.4. Draft submission to cabinet and agreement with provinces titled "Application and Extension of Welfare Services to Indians " May 1959.