

An Exploration of the Selkirk Treaty

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Abstract

In 1817, the fifth Earl of Selkirk and certain Saulteaux chiefs negotiated the Selkirk Treaty to secure the existence of a fragile Euro-Canadian settlement near the confluence of the Red and Assiniboine Rivers. Selkirk died soon after, and his agents and successors disputed the content of the treaty with the Indigenous negotiating parties. The historiography of the Selkirk Treaty has not reached a consensus on these disputes, in part due to the number of ostensibly contradictory sources it draws upon. This thesis argues that these disputes can be best answered, and these ostensibly contradictory sources best reconciled, by situating them and the Selkirk Treaty within the context of the Indigenous and Imperial land frameworks that operated in Red River in 1817.

This thesis first identifies unresolved questions in the historiography of the Selkirk Treaty. Using primary sources cited in the historiography, it then outlines the ideas acting within the Indigenous and Imperial land frameworks operative over Red River. It argues these ideas and frameworks remained intact during the negotiation of the Selkirk Treaty. On the basis of these frameworks, this thesis further argues that neither Lord Selkirk nor the Saulteaux negotiators intended the Selkirk Treaty to consist of a permanent alienation of Indigenous land. However, after Selkirk's death, his agents and successors came to trust the Indenture of the Selkirk Treaty, a written and signed record of the treaty, as the only trustworthy record of the agreement. Selkirk's agents and successors then read the Indenture as a permanent alienation of land, but this thesis argues that, on the basis of the borders specified in the Indenture, that document alone is inadequate to interpret the Selkirk Treaty.

The primary purpose of this thesis is to provide a point of departure for future research into the Selkirk Treaty. At the same time, it is intended as a corrective against assuming the ideas of either Indigenous or Euro-Canadian actors about land rights in colonization zones. It is also meant to act as a caution against relying any more heavily on the Indenture of the Selkirk Treaty than scholars do on the written records of other treaties. It is further hoped that this thesis contributes to a better understanding of Red River's Métis population in these early years by situating them within the framework of the broader Iron Alliance.

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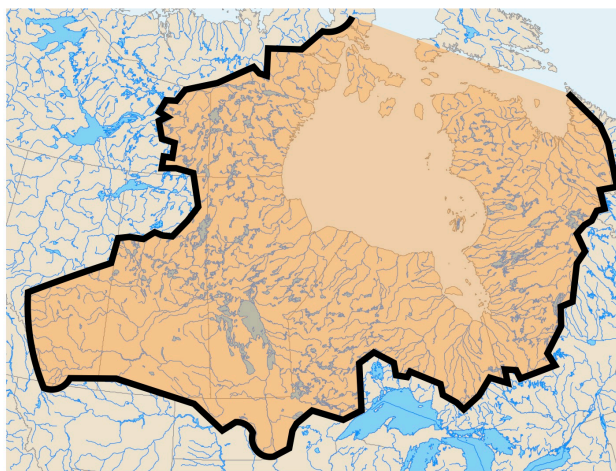
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Introduction

In 1670, the fur-trading Hudson's Bay Company (HBC) received a Royal Charter granting it a trading monopoly, jurisdictional authority, and fee simple property ownership over Rupert's Land. Rupert's Land was defined, with some caveats, as all the lands along the waterways "that lye within the entrance of the Streights commonly called Hudsons Streights." By the early nineteenth century, the HBC controversially interpreted this to mean the entire Hudson's Bay drainage basin [Figure 1], conveniently rendering illegal the long-standing activities of its fur trade rivals based out of Canada, in particular the North-West Company (NWC).¹ Thomas Douglas, the Fifth Earl of Selkirk and a keen proponent of North American

Figure 1: Rupert's Land

Rough approximation of Rupert's Land. Traced upon detail of "North American Environmental Atlas—Lakes and Rivers, 2009." Commission for Environmental Cooperation. 2009. Accessed March 31st, 2019. <http://www.cec.org/tools-and-resources/map-files/lakes-and-rivers-2009.Cooperation>.



colonization, agreed. He began buying stock in the HBC in 1809, and soon after spearheaded a project to found an agricultural colony along the Red River. The HBC had only recently begun extending its commercial presence into the area, but such a colony would directly affirm the HBC's proprietary pretensions. It would also disrupt the NWC's supply chain and export route to Montreal and the St. Lawrence.²

¹ "Charter of the Hudson's Bay Company, 1670," in *Charters, Statutes, Orders in Council, Relation to the Hudson's Bay Company* (London: Hudson's Bay Company, 1960), 3-4. For a defence of the HBC position on the extent of Rupert's Land, see Samuel Gale, *Notices on the Claims of the Hudson's Bay Company: to Which is Added, a Copy of Their Royal Charter* (London, John Murray, 1819); compare with Kent McNeil, *Native Rights and the Boundaries of Rupert's Land and the North-Western Territory* (Saskatoon: University of Saskatchewan Native Law Centre, 1982).

² J. M. Bumsted, *Lord Selkirk: A Life* (Winnipeg: University of Manitoba Press, 2008), 187, 192-193 (compare with John Perry Pritchett, *The Red River Valley, 1811-1849: A Regional Study* (New Haven: Yale University Press, 1942), 35-36); W. L. Morton, *Manitoba: A History* (Toronto: University of Toronto Press, 1967), 44-46.

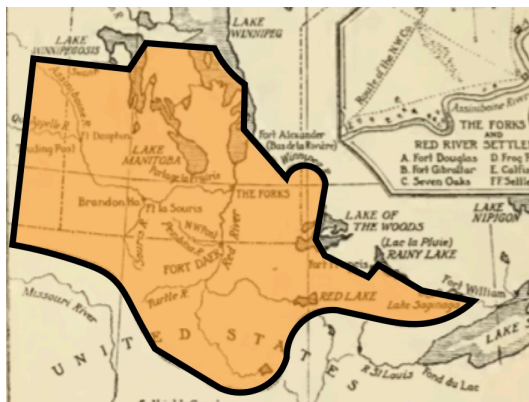


Figure 2: Assiniboia or the Selkirk Grant
Modified detail of “Map of Assiniboia and the Red River Settlement,” Chester Martin, *Lord Selkirk’s Work in Canada* (Toronto: Oxford University Press, 1916), 227.

For this purpose, in 1811 the HBC formally granted Lord Selkirk around 120,000 square miles of property in the Lake Winnipeg basin. The expanse became known as Assiniboia or the Selkirk Grant [Figure 2]. The entails in Selkirk’s deed of conveyance meant that he had not been granted fee simple property ownership.³ This then was the framework for the first attempt by the HBC to realize

a proprietary colony under its charter authority. Selkirk and the HBC soon appointed Miles Macdonell, a retired soldier from the Canadas, as the Governor of Assiniboia. Macdonell proceeded to Red River, with instructions to disguise from the Indigenous population the fact that he was founding a permanent settlement. However, when the first settlers reached the Red River in 1812, the Saukteaux bands they met were favourable to the plan. Both they and the Métis in the area provided critical aid to these settlers through the harsh early winters.⁴

Then in January 1814, Macdonell, citing charter authority and settlers’ food security, issued the Pemmican Proclamation, banning the export of provisions from Assiniboia. In July,

³ “Grant of the District of Assiniboia by the Hudson’s Bay Company to Lord Selkirk,” in E. H. Oliver, *The Canadian North-West, Its Early Development and Legislative Records: Minutes of the Councils of the Red River Colony and the Northern Department of Rupert’s Land*, vol. 1, (Publications of the Canadian Archives No. 9 (Ottawa: Government Printing Bureau, 1914), 154-168.

⁴ Instructions from Lord Selkirk to Miles McDonnell, 1811, SP 177; September 19th, 1812, in Miles McDonnell No 2—Journal from 7th July 1812 to 22nd April 1813, SP 16754; the NWC also helped the first settlers get through the winter (Donald Gunn and Charles Tuttle. *History of Manitoba from the Earliest Settlement to 1835* (Ottawa: Maclean, Roger & Co, 1880, 76-78). A note on terminology: ‘Saukteaux’ is the name the French gave to the Anishnaabe or Ojibwa people they had encountered living near Sault Ste. Marie. I have chosen to use the term because its variants appear the most often in my sources, and because it conveys their relatively recent migration to the Red River area, which proved vital to all discussions of the Selkirk Treaty. For other options and their explanations, see John Shaw’s lengthy note in his dissertation on the Turtle Mountain band (John Morrison Shaw, ““In order that justice may be done”: The Legal Struggle of the Turtle Mountain Chippewa, 1795-1905,” (PhD Dissertation, University of Arizona, 2004), 89-93, note 12). I also use the term ‘Métis’ exclusively.

he further forbade hunting bison on horseback. These proclamations angered the Métis, who depended on the bison hunt for their livelihood. Macdonell also served NWC posts with eviction notices.⁵ He thus provoked the so-called Pemmican Wars, in which a number of Métis sided with the NWC against the Colony and HBC. Though the latter were able to call on some Saulteaux allies, the NWC and Métis captured Macdonell in 1815 and dispersed the nascent colony. Settlers returned in 1816, but after the Métis killed a number of them at the Battle of Seven Oaks, the settlers evacuated once more. The next year, a recently disbanded regiment hired by Selkirk as a private army arrived in Red River. His own subsequent arrival coincided with the news of a proclamation from the Prince Regent ordering both NWC and HBC to stand down and return stolen property. Commissioner W. B. Coltman arrived soon afterwards with a mandate from the governor of British North America to settle and report on the conflict.

During his months in Red River, Coltman assisted Selkirk in convincing the local Indigenous population to negotiate an agreement guaranteeing the security of the twice-dispersed colony. This agreement became known as the Selkirk Treaty. On July 18th, 1817, the totems and names of one Cree and four Saulteaux chiefs were affixed to a written document, along with Selkirk's name and those of certain witnesses from Selkirk's party. The substantive elements of the document, hereafter referred to as the Indenture, are as follows:

1. The document refers to itself as an indenture, not a record of a treaty.
2. The agreement was between Lord Selkirk on the one hand and the "Chiefs and Warriors" of the Saulteaux and Cree on the other.
3. The land specified in it was given to King George III for the use of Selkirk and his heirs or agents, who would in turn allow it to be used by settlers.

⁵ "Proclamation Issued by Miles Macdonell. Jan. 8th, 1814," in Oliver, *Canadian North-West*, vol. 1, 184-185; Miles M^cDonell to Lord Selkirk, Red River Settlement, July 25th, 1814, SP 1184-1185; October 21st, 1814, Miles M^cDonell No 3, SP 16932.

4. The specified land consisted of two miles on each bank of the Red River from Lake Winnipeg to Grand Forks, and again up the Assiniboine to the Champignon or Muskrat River, with circles of a six-mile radius around Grand Forks, Fort Daer, and Fort Douglas.
5. The above terms were conditional upon “the annual Present or Quit Rent” of 100 pounds of tobacco to be given to Saulteaux chiefs and warriors at the Forks, and another 100 pounds given to Cree chiefs and warriors at Portage la Prairie.
6. The above terms were subject to the further condition that the traders already established on the included land “not be molested in the Possession of the Lands which they have already cultivated and improved” pending a royal decision regarding them.
7. The signatory parties were Lord Selkirk, Peguis, The Premier, The Black Robe, The Black Man, and Le Sonnant. Selkirk also had a number of his employees sign the Indenture as witnesses to the transaction.⁶

Though the Indenture spells out the above terms plainly, the content of the Selkirk Treaty would fiercely be disputed between the Indigenous signatories, the settlers, and the HBC.

Rupert's Land and the Selkirk Grant had covered vast spaces, but ignored Indigenous populations; they were set up entirely within the largely fantastic British Imperial legal framework extended over Red River. The Selkirk Treaty, by contrast, was confined to land along the lower Red and lower Assiniboine Rivers, and it drew its legitimacy from influential figures in Indigenous bands occupying the area. That is, it was elaborated within the Indigenous legal framework over Red River. The Selkirk Treaty was a meeting of both these frameworks, Indigenous and Imperial. This thesis argues that the key to a proper understanding of the Selkirk Treaty lies in a thorough consideration of the overlapping matrices of land claims over Red River. The Indenture alone does not encompass these frameworks, but describes a single land

⁶ There are a number of roughly contemporary copies of the text of the Indenture, but the substance remains the same in all of them (“Selkirk Treaty, Western Treaty No.1-IT 257,” July 18th, 1817, LAC MIKAN 3972577; HBCA/AM E. 8/1 fo. 9d, in “Spotlight: HBCA in words and images: The Selkirk Treaty and Map,” Archives of Manitoba, accessed November 6th, 2018, https://www.gov.mb.ca/chc/archives/hbca/spotlight/selkirk_treaty.html; July 18th, 1817, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20; Lord Selkirk to W. B. Coltman, July 19th, 1817, SP, 3824-2825; 8. and 9., Register Book A, 1811-1823, Selkirk Papers, Reel C-20, 189; unsourced facsimile on the inside covers of John Gray, *Lord Selkirk of Red River*. East Lansing: Michigan State University Press, 1964). Andrew McDermot claimed that “Mr. Spencer” and “Mr. J. McBeath” were also witnesses (“Peguis Refuted,” Nor'-Wester, February 28th, 1860, page 3), but neither signed the Indenture or appears to have written about it.

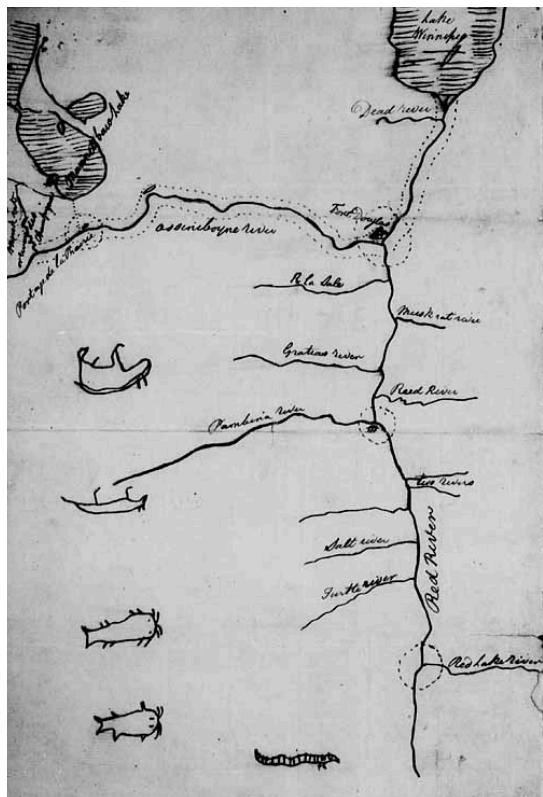


Figure 3: “Selkirk Treaty—Indian Chart of Red River—IT 258”

Earliest cartographic depiction of Selkirk Treaty, perhaps drawn by Peter Fidler, or on the basis of Fidler’s description of the Selkirk Treaty in the Brandon House Post Journal. LAC MIKAN 3972592.

arrangement between the collective chiefs and Selkirk. We thus have to look to later statements by Peguis, one of the chiefs, for more specific details.⁷

In 1817, Peguis, an eloquent Saulteaux chief, had a grudge against the NWC. He was one of the HBC’s and Colony’s earliest and firmest allies, and the lynchpin in the negotiation of the Selkirk Treaty. Shortly before his death, he recalled that he had the authority to sign for the lowest stretch of the Red, from the Forks where the

Assiniboine joins the Red, to Lake Winnipeg

[Figure 3]. This included both the site of Fort

Douglas, the Colony’s administrative centre, and the

first settlers’ surveyed lots; unsurprisingly, he would

become known as the Colony Chief.⁸ Peguis also said that the land up the Red from the Forks as

far as the mouth of the Pembina River, where the Colony had constructed Fort Daer, had been

under the authority of The Premier. Macdonell referred to The Premier as the foremost

hereditary chief among the Saulteaux. He maintained strong ties to the NWC, though he had

⁷ William King, “Important Statement of Pegowis, The Indian Chief,” *Nor’-Wester*, October 14th, 1863, page 3.

⁸ The best biography of Peguis is Donna Sutherland’s *Chief Peguis: A Noble Friend* (Winnipeg: Chief Peguis Heritage Park, 2003); however, due to Sutherland’s concentration on primary sources at the expense of familiarity with secondary literature, it should not be consulted without reference to Edward Jerome and Ruth Swan, “Review: Donna G. Sutherland, *Peguis: A Noble Friend*,” *Manitoba History* 50 (2005): 43-46.



Figure 4: Musk Rat Creek
North is to the right. Detail from map in Peter Fidler, "General Report of Red River District by Peter Fidler 1819 May," HBCA B.22/e/1.

placed himself in the Colony camp shortly before the arrival of Lord Selkirk.⁹ South again from Fort Daer, the land indicated in the Indenture stretches to the confluence of the mouth of the Red Lake River, or the Grand Forks.

Peguis explained that this had been signed for under the authority of The Black Man, a third Saulteaux chief. The Black Man had a close relationship with Macdonell, and swore vengeance on the NWC when the Colony was

dispersed in 1815. In contrast to the other signatory chiefs, The Black Man was consistently prepared to shed blood on behalf of his Colony allies.¹⁰ The last stretch of land covered by the Indenture ran along the Assiniboine, from the Forks up to the Musk Rat River, just east of Portage la Prairie [Figure 4]. Peguis said this had been signed for under the authority of the Saulteaux chief The Black Robe. Though an ally of the Colony, surviving records indicate The Black Robe was little involved with it from 1812-1817. He appears to have been the least influential of the signatory chiefs.¹¹ The final Indigenous name and totem on the Indenture belong to the Cree Chief Le Sonnant. Though he had a number of friendly interactions with the

⁹ Miles McDonell to Lord Selkirk, the Forks, July 17th, 1813, SP 790. For more on The Premier, his family and role as hereditary chief, see Leo Waisberg and Tim Holzkamm, "We have one mind and one mouth. It is the decision of all of Us": Traditional Anishinaabe Governance of Treaty #3, Draft Confidential Working Paper, October 2001, accessed through Christian Aboriginal Infrastructure website on November 6th, 2018, <http://caid.ca/TradGov010408.pdf>, pages 6-8; Sara J. Mainville, "Treaty Councils and Mutual Reconciliation Under Section 35," *Indigenous Law Journal* 6:1 (Fall 2007): 147-148; and Theodore Catton, *Rainy Lake House: Twilight of Empire on the Northern Frontier* (Baltimore: John Hopkins University Press, 2017), 264-266, 271.

¹⁰ June 15th, 1814, McDonell No 3, SP 16908; February 9th, 1815, Miles McDonell No 3, SP 16957; July 16th, 1815, Journal at Red River Settlement ... 1815, SP 18512; June 20th, 1817, Miles McDonell Journal from April 5th..., SP 17291. He was also known as coming from Turtle River, which flows into the Red north of Grand Forks.

¹¹ Longtime HBC employee Peter Fidler noted in 1820 that Blue Coat, another name for The Black Robe, had "little authority among his countrymen." Cited in Jennifer Brown, "Central Manitoba Saulteaux in the 19th Century," in William Cowan, editor, *Papers of the Sixteenth Algonquian Conference* (Ottawa: Carleton University, 1985), 2.

Colony, he was a solid ally to the NWC.¹² According to Peguis, Le Sonnant did not speak for a particular stretch of land during negotiations with Selkirk. Instead, Le Sonnant welcomed the presence of Euro-Canadian traders, but not Euro-Canadian agricultural settlers. Significantly, Peguis described Le Sonnant vocally opposing the deal with Selkirk.¹³

Both Cree and Saulteaux were thus represented among the signatures on the Indenture, which mandates payments to both Cree and Saulteaux. However, the Indenture does not specify to which group each signatory belonged. The distinction between Cree and Saulteaux is not simple.¹⁴ In the documents consulted for this thesis, for example, Le Sonnant was usually referred to as Cree, but occasionally also as Saulteaux. He definitely shared kinship ties with the Saulteaux, and like them appears to have originated between the Great Lakes and Lake of the Woods.¹⁵ However, Peguis set Le Sonnant apart as “the Cree chief” in his recalling of Selkirk Treaty negotiations. Le Sonant’s background may have actually been Monsoni, but that would

¹² Peter Fidler, “General District of Red River District,” HBCA B.22/e/1.

¹³ William King (Peguis), “Important Statement of Pegowis, The Indian Chief,” Nor'-Wester, October 14th, 1863, page 3. I chose the term Euro-Canadian to refer to settlers and traders as they derived from the Canadas and Britain.

¹⁴ Anthropologist Robert Dunning quoted in Michael Peter Czuboka, “St Peter’s: A Historical Study with Anthropological Observations on the Christian Aborigines of Red River (1811-1876),” (MA thesis, University of Manitoba, 1960), 37. Donald Gunn described three separate groups of bands represented at the Selkirk Treaty negotiations, pure Saulteaux who lived freely in woodlands and on plains, pure Cree, and descendants of Swampy Cree and Saulteaux who had “left the forests on the east side of Lake Winnipeg to hunt the buffalo on the plains of Red River” (Gunn, *History of Manitoba*, 202). Gunn only attributed a higher land claim to the pure Cree. For further complications in discussions of Saulteaux and Cree identity, see Neal McLeod, “Plains Cree Identity: Borderlands, Ambiguous Genealogies and Narrative Irony,” *The Canadian Journal of Native Studies* 20:2 (2000): 437-454 and Nicole St-Onge, “Uncertain Margins: Métis and Saulteaux Identities in St-Paul des Saulteaux, Red River 1821-1870,” *Manitoba History* 53 (October 2006): 2-10.

¹⁵ March 27th, 1815, Miles McDonell No 3, SP 16976; December 13th, 1817, January 9th, 1818, and January 24th, 1818, Fort Pelly Post Journal, 1817-1818, HBCA B.159/a/6. Le Sonnant was a cousin to the great Saulteaux chief Little Shell, who was killed a few years before the Indenture was signed (Nicholas Vrooman, “*The Whole Country was... ‘One Robe’*”: *The Little Shell Tribe’s America* (Helena, Montana: Little Shell Tribe of Chippewa Indians of Montana and Drumlummon Institute, 2012), 115).

not have affected his ability to rise to an influential position among the Cree.¹⁶ Though Le Sonnant's band retained more ties to woodlands and the fur trade than fellow Plains Cree bands, in 1817, Selkirk himself and the HBC trader Peter Fidler believed that Le Sonnant represented Plains Cree to the west rather than the Sauteaux.¹⁷ This is important, because regardless of blurred identities, ethnicities, or kinship ties, in 1817 the Sauteaux and Cree observed a distinction between the nature of their land rights over Red River. The Sauteaux also distinguished between the land rights of the Cree represented by Le Sonnant, and those Swampy Cree who in later years migrated in large numbers to the St. Peter's settlement on the Red. These Swampy Cree originated nearer York Factory and James Bay, and the St. Peter's Sauteaux never recognized in them land rights of the same standing they had recognized in Le Sonnant's Cree.¹⁸

Three days after the signing of the Indenture, the settlers returned to Red River. The Selkirk Treaty thereafter retained a low profile. Though it could have served as proof of Indigenous support for the settlement, Selkirk did not mention it in an 1818 memorial published in refutation of a number of NWC allegations. Commissioner Coltman similarly did not describe the treaty either in his official report, completed in 1818, nor in related correspondence published

¹⁶ William King, "Important Statement of Pegowis, The Indian Chief," Nor'-Wester, October 14th, 1863, page 3; Adolph Greenberg and James Morrison, "Group Identities in the Boreal Forest: The Origin of the Northern Ojibwa," *Ethnohistory* 29:2 (Spring 1982): 96 note 15; Coues, *The Manuscript Journals of Alexander Henry* ..., vol. 1, 46-47, 165-166, 204, 429; see also Theodore Binnema, *Common and Contested Ground: A Human and Environmental History of the Northwestern Plains* (Toronto: University of Toronto Press, 2004), 14 and Robert Alexander Innes, "Multicultural Bands on the Northern Plains and the Notion of 'Tribal' Histories," in Robin Jarvis Brownlie and Valerie J. Korinek, editors, *Finding a Way to the Heart: Feminist Writings on Aboriginal and Women's History in Canada* (Winnipeg: University of Manitoba Press, 2012), 131, 133.

¹⁷ Sarah A. Carter, "KĀ-KĪWISTĀHĀW," in *Dictionary of Canadian Biography*, vol. 13, University of Toronto/ Université Laval, 2003–, accessed November 6th, 2018, http://www.biographi.ca/en/bio/ka_kiwistahaw_13E.html; Lord Selkirk to Alexander McDonnell, Pembina, September 14th, 1817, SP 4053; Peter Fidler, "General District of Red River District," HBCA B.22/e/1.

¹⁸ Jean Friesen, "Grant Me Wherewith to Make My Living" (Winnipeg: T.A.R.R. Centre, 1985), 58-60; see also Cockran to Woodrooffe + Coates, Grand Rapid, c. autumn 1832, CMSA, Section V, Part 2, Reel 35, and Rarihokwats Rarihokwats, Manitoba Treaty History, Volume I: To 1849, A Documentary Historical Background to a Claim Against Her Majesty the Queen by "The Children Who Were Born Afterwards" to the First Nation of which Nahwahchewaykahpow Was Chief, Working Draft, accessed through academia.eu on November 7th, 2018, https://www.academia.edu/24990517/Manitoba_Treaty_History_-_vol_1_to_1849, 85, note 23.



Figure 5: The Selkirk Treaty and Map (Modified extract)

St. Peter's (c. 1832) and Portage la Prairie (settlement c.1850) are both inside the bounds indicated in the Indenture. These are in light blue, and were likely based on the map featured in Figure 2. The red line approximates the boundary, 50 miles from the Forks, of the District of Assiniboia. HBCA/AM E.8/1 fo. 11.

in 1819.¹⁹ Selkirk died in 1820, and the Indenture remains almost the sole record of what was agreed in the Selkirk Treaty. In the early 1820s, Colony officials began citing the Indenture as proof that the Selkirk Treaty had provided for the permanent alienation of the land it described. However, in the early 1830s, Peguis founded an Indigenous agricultural village and parish on some of this supposedly alienated land. Anglican

missionary William Cockran had persuaded him to do so against the wishes of Colony and HBC officials, and the parish of St. Peter's was born [Figure 5].

Shortly afterwards, Selkirk's son sold all his interests in Assiniboia to the HBC. This Reconveyance was kept hidden from the general population of Red River for some time; nevertheless, the HBC assumed all the Colony's rights and responsibilities, including those specified in the Indenture.²⁰ Indigenous parties to the Selkirk Treaty do not appear to have been

¹⁹ Lord Selkirk, "The Memorial of Thomas Earl of Selkirk..." in Bumsted, ed. *The Collected Writings of Lord Selkirk, 1810-1820* (Winnipeg: Manitoba Record Society, 1987), 111-203; Coltman, A General Statement and Report relative to the Disturbances in the Indian Territories of British North America, Quebec, June 30th, 1818, LAC MIKAN 114974, 33; *Papers Relating to the Red River Settlement: VIZ: RETURN to an Address from the Honourable House of Commons ... dated 24th June 1819...* (London: House of Commons, 1819).

²⁰ Ross, *Red River Settlement: Its Rise, Progress, and Present State. With Some Account of the Native Races and Its General History, to the Present Day* (London: Smith, Elder and Co., 1856), 173-174; Kenneth Narvey, "The Royal Proclamation of 7 October 1763. The Common Law, and Natives Rights to Land with the Territory Granted to the Hudson's Bay Company," *Saskatchewan Law Review* 38 (1974): 206-207.

consulted, in spite of the ongoing nature of the treaty. For all intents and purposes, the Reconveyance was treated by the HBC as a simple transfer of property.

The HBC reorganized the Selkirk Colony's governing institutions into the Municipal District of Assiniboia. In 1841, the HBC specified its borders as a circle with a diameter of one hundred miles centred upon the Forks; however, its regulations were only to apply to land within two miles of either side of the Red and Assiniboine. This simultaneously acknowledged the Selkirk Treaty while making no mention of the six-mile radii included in the Indenture. It also excluded the westernmost reach of the land indicated in the Indenture [Figure 5].²¹ Later that decade the inhabitants of Red River, unclear about the precise rights claimed by the HBC and whence it had derived them, began to demand answers from the Company. The arrival of an Imperial garrison in September of 1846 helped ensure these questions remained within a formal sphere, and the next February, the case of *McDermot vs. Fanyant* came up before the General Quarterly Court of Assiniboia. A group of Métis had decided to test their rights as an Indigenous people over a lot registered by the HBC to Andrew McDermot, a councillor of the Municipal District. The Court admitted the Indenture as evidence that Lord Selkirk had permanently extinguished Indigenous land rights within its boundaries, and the case was decided for McDermot.²² The Métis nevertheless continued to agitate against the rights the HBC claimed

²¹ Adam Thom, *A Charge delivered to the Grand Jury of Assiniboia, 20th February, 1845* (London: E. Couchman, 1848), 13-14; Oliver, *Canadian North-West*, vol. 1, 372; the 1851 regulations repeated this (ibid, 372-373).

²² J. A. Jaffary, editor, William Pearce manuscript, 1925, Open Collections, BC Historical Books, accessed November 6th, 2018, <https://open.library.ubc.ca/collections/bcbooks/items/1.0348609>, 13; the thirteenth of fourteen questions directed towards Governor of Assiniboia Alexander Christie by a group of Métis in 1845 asked about the respective statuses of municipal regulations, the Selkirk Grant, and the Selkirk Treaty. Christie sidestepped it (cited in James Edward Fitzgerald, *An Examination of the Charter and Proceeding of the Hudson's Bay Company, with Reference to the Grant of Vancouver's Island* (London: Trelawney Saunders, 1849), 206-210); Andrew McDermott vs. Bapt. Fanyant, Pierre Poitras, Louison Morin & Pascal Berland, in Dale Gibson, *Law, Life, and Government at Red River, Volume 2: General Quarterly Court of Assiniboia, Annotated Records, 1844-1872* (Montreal & Kingston: McGill-Queen's University Press, 2015), 52-54. For the role of the garrison, see Rodger Guinn, *The Red-Assiniboine Junction: A Land Use and Structural History, 1770-1980* (Ottawa: Ottawa: Parks Canada, 1980), 76-77.

over the Northwest. The garrison was replaced by ineffectual pensioners, and in the famous Sayer Trial of 1849, the Métis turned a second verdict against them into a local but resounding *de facto* defeat for HBC charter pretensions.

The Cree and Saulteaux around the settlement also rejected the court's interpretation of the Selkirk Treaty. In 1850, The Black Robe's band, represented by his son and successor Pequakekan, negotiated an entirely new treaty with William Cockran and a group of incoming settlers at Portage la Prairie. The land in question fell within the bounds already specified in the Indenture [Figure 5], and the HBC unsuccessfully opposed the new arrangement. In the ensuing years, Red River's Indigenous population found increasing opportunities for their opinions of the Selkirk Treaty to reach Imperial circles. The Aborigines' Protection Society and its mouthpiece *The Colonial Intelligencer* was particularly helpful to them in the early- to mid-1850s.²³ The return of an Imperial garrison from 1857 to 1861 dissuaded any escalation to violence, but the 1859 founding of the *Nor'-Wester* provided a new outlet for debate. The next year, its pages featured arguments from Peguis, Métis representatives, Andrew McDermot, and the settler Donald Gunn about the nature of Indigenous land title and the Selkirk Treaty.²⁴ However, debates over whether the treaty constituted a permanent alienation of land never definitively resolved these concerns. A decade later, Canada bought out all HBC claims in the Northwest, established

²³ A. K. Isbister, who had grown up in Red River but pursued a career in educational circles in England, had helped bring the Red River Settlement to the APS's attention. Indigenous statements were published in the *Intelligencer*, and the APS succeeded in getting a statement from Peguis printed as an appendix to the report of the 1857 committee investigating the HBC's administration of the Northwest ("LETTER from Peguis, Chief of the Saulteaux Tribe at the Red River Settlement, to the Aborigines Protection Society, London," in F. W. Chesson to H. Labouchere, London, June 7th, 1857, Appendix No. 16, in *Report from the Select Committee ...* (London: House of Commons, 1857), 445-446; *Twenty-First Annual Report of the Aborigines' Protection Society*, May 1858).

²⁴ J. M. Bumsted, *Trials & Tribulations: The Red River Settlement and the Emergence of Manitoba 1811-1870* (Winnipeg: Great Plains Publications, 2003), 102-103; for an account of the various pretexts used to get the troops to Red River, see Charles N. Bell, "Some Red River Settlement History," *Manitoba Historical Society Transactions*, series 1, no. 29 (April 1887): 1-9. The 1860 interchange in the *Nor'-Wester* reached Canadian ears: Henry Youle Hind, *Narrative of the Canadian Red River Exploring Expedition of 1857 and of the Assiniboine and Saskatchewan Exploring Expedition of 1858*, vol. 2 (London: Longman, Green, Longman, and Roberts, 1860), 167-177).

Manitoba as a province, and sought to extinguish Indigenous land rights through land grants to the Métis and treaties with other Indigenous peoples. Canadian officials investigated the Selkirk Treaty controversy, but decided not to press any claims they may have acquired from the HBC. Instead, they proceeded to negotiate Treaty 1 as if the Selkirk Treaty did not exist. This largely eclipsed the legal question of whether or not Selkirk had extinguished Indigenous land rights.²⁵

Canada had found it inexpedient to judge whether or not the Selkirk Treaty had extinguished title, but later scholars have taken up the debate. Some have argued that the Selkirk Treaty had permanently extinguished Indigenous land title in the Colony. Other have argued the opposite: that the Selkirk Treaty went so far as to confirm ongoing Indigenous title over the settlement. Though there are a limited amount of sources available, scholars have tended not to use them all as they outwardly seem to contradict each other. This thesis was written instead from the assumption that the available sources can be reconciled into a homogenous whole. It seeks to contribute to the historiography of the evolution of the practice of Indian Title within the Canadian Northwest through a study of Selkirk and the rights he assumed under the HBC's charter, and also to explore some of the ways that overlapping or joint land rights could work within the framework of broader Indigenous alliances: specifically, this thesis argues that the irregularities within the historiography of the Selkirk Treaty can be resolved by a more thorough consideration of the overlapping matrices of land claims over Red River.

²⁵ David Laird, "Our Indian Treaties," *Transactions of the The Historical and Scientific Society of Manitoba*, No. 67, February 23rd, 1905. Though the negotiation of Treaty 1 largely mooted the Selkirk Treaty controversy, some legal ramifications remained due to the clause of the *Manitoba Act* guaranteeing existing land tenures following Canadian annexation; the HBC's reticence to hand over details of its administration and the fact that it never had complete control over locally recognized land tenures in the Colony bred a number of legal troubles. See Andrew Martin, *Hudson's Bay Company's Land Tenures and the Occupation of Assiniboia by Lord Selkirk's Settlers with a List of Grantees under the Earl and the Company* (London: William Clowes and Sons, 1898), and James Taylor and Veterans of the Fur Trade Association, *Pamphlet ordered to be printed by the Veterans of the Fur Trade Association showing their ownership of 7,455,552 acres of land, being one-tenth of Lord Selkirk's estate, in the country formerly known as the District of Assiniboia* (Prince Albert: Advocate Office, 1906).

My methodological approach has thus consisted of identifying areas of dispute within the historiography of the Selkirk Treaty, and then of following the footnotes of different scholars and attempting to reconcile them with each other. Through this process, I have drawn on the archival record available in the form of relevant HBC post journals, selected records of the Church Missionary Society, various Blue Books published by the British and Canadian Parliaments, the *Nor'-Wester*, the *Colonial Intelligencer*, and published witness statements about the Selkirk Treaty.²⁶ I also used finding aids to consult extensively the Selkirk Papers, transcriptions from original documents that perished in 1940 when a fire burned down the Selkirk ancestral home in Scotland. As the Selkirk Papers are incomplete, I have tried to weigh the opinions of scholars who had access to the originals, such as George Bryce and John Perry Pritchett, accordingly.²⁷ Copies of other Selkirk correspondence transcribed separately from the Selkirk Papers also made it into Library and Archives Canada, and I consulted this by following footnotes as well. An obvious limitation to my approach is that it limited my source base to the written documents cited or produced by other scholars. This has resulted in relatively little consultation of French-language primary sources. Further comparisons with oral histories will also no doubt add richness to my analysis, but are beyond the scope of this project.

Chapter One provides an overview of the historiography of the Selkirk Treaty, organized according to the main disputed or unresolved questions about the treaty: did Selkirk have the authority to negotiate for Indigenous land, and what did he believe was legally required of him given the charter pretensions of the HBC? Within the complex of Indigenous land claims existing in Red River in 1817, did the Saulteaux, Cree, Assiniboine, and Métis have the right to

²⁶ See Appendix Two for a list of these statements.

²⁷ Bumsted, *Lord Selkirk*, xii.

negotiate; did they respectively do so; and what were their roles more generally in the Selkirk Treaty? Was the Selkirk Treaty intended to consist of a permanent alienation of land? To what extent does the the Indenture actually reflect the Selkirk Treaty? The subsequent chapters attempt to answer these questions by privileging an analysis of Euro-Canadian and Indigenous beliefs about who had a right to land in Red River.

Chapter Two sets out sets out the ideas about land tenure in Red River that existed among the negotiating parties of the Selkirk Treaty. It argues that Selkirk contended that the HBC charter had such rights vested in it under the Imperial legal framework that negotiating for the extinguishment of Indigenous title would make no difference to his land rights over the settlement. Not feeling bound by Imperial law, Selkirk would only make arrangements with the Indigenous populations for practical reasons. Such practicalities did, however, lead him to attempt to find a place for the Colony within an Indigenous land framework over Red River. The operative framework he encountered was that of the Iron Alliance, which linked many Saukteaux, Cree, Assiniboine and Métis against Sioux enemies further south. Within this framework, the Cree, Assiniboine, and Métis were deemed to share a higher right to land than the Saukteaux, but the Cree were understood to have the greatest claim to the immediate territory of the settlement. The Saukteaux acknowledged the inferiority of their own right.

Chapter Three then describes the events leading from the arrival of the settlers in 1812 to the negotiation of the Selkirk Treaty in 1817. It argues that despite the stress placed on Iron Alliance relationships in this period by the conflict of the HBC and Colony with the NWC, the land rights framework of the Iron Alliance remained intact at the negotiation of the Selkirk Treaty. Chapter Four then discusses the negotiation of the Selkirk Treaty. It argues that Selkirk

had no authority beyond the charter to negotiate for Indigenous land, and that Commissioner Coltman had misgivings about the rights Selkirk assumed under the charter. Nevertheless, for the sake of immediate peace and longer geopolitical advantage, Coltman unofficially helped Selkirk secure a place for the settlement within the Indigenous land matrix through the Selkirk Treaty. This chapter further argues that the Assiniboine, the Métis, and the Cree were all involved in the elaboration of the terms under which the Saulteaux would be permitted to treat away land to Selkirk for the purposes of settlement. These terms confirmed the higher Cree right to the settlement's land, and the subsequent Selkirk Treaty confirmed the ongoing rights of both Cree and Saulteaux over it.

Chapter Five then presents an argument that the Selkirk Treaty had not been intended to be an alienation of land by either Selkirk or the Indigenous population. Colony officials nevertheless began declaring this to have been the case. The only reliable statements about the result of the Selkirk Treaty from self-declared informed witnesses denied this. However, Selkirk's precipitate death and insufficient instructions, compounded by the loss of institutional memory among Colony officials in the early 1820s, led Colony officials to rely on the Indenture as the sole record of the Selkirk Treaty. This was despite the fact that Selkirk Treaty annuities did not correspond to the Indenture, and that Colony officials did not treat the annuities it did specify as essential requirements for the settlement's tenure. Selkirk did not believe that he had secured sufficient Cree consent to the Selkirk Treaty, and instructed his agents to secure greater Cree consent. They failed, but once Colony officials had turned the Indenture into the sole measure of the Selkirk Treaty, they assumed that the Cree had already endorsed its contents. Nevertheless, both Saulteaux and Cree signatories continued to accept the annuities paid to them

under the Selkirk Treaty as a tangible sign of their ongoing land rights over the Red River settlement's land. Furthermore, the Saulteaux, Cree, and Métis all appear appear to have continued to uphold the negotiated framework of 1817 in the face of Colony assertions about the Indenture. To demonstrate the misplaced value Colony officials placed in the Indenture, Chapter Six then argues specifically that the provisions of the Indenture do not accurately reflect what was negotiated in 1817. It does so through a case study of the land borders specified in the Indenture.

Chapter 1: Identifying Areas of Dispute

This chapter provides an overview of the historiography of the Selkirk Treaty, identifying the primary areas of dispute in the historiography. These can be divided into roughly three categories. The first concerns the set of ideas and rights Selkirk had within the framework of the British Empire. It asks whether Selkirk had the authority to negotiate for Indigenous land, and what he considered, in light of the HBC's charter, to be the nature of the right in Indigenous land he might thereby acquire. The second category revolves instead around the Indigenous set of ideas and rights that served as a framework in Red River. It asks questions about the rights and roles of the Saulteaux, Cree, Assiniboine, and Métis vis-à-vis the Selkirk Treaty. The third category of historiographical disputes then attempts to bring together the first two categories. It asks, given the different frameworks under which Selkirk and the Indigenous population of Red River were operating, whether the Selkirk Treaty was intended to permanently alienate Indigenous land. This chapter also identifies a lapse in the historiography, namely a discussion of the extent to which the Indenture of the Selkirk Treaty actually follows the Selkirk Treaty.

The first question that emerges from the historiography is whether or not Selkirk had the right, under the Imperial framework to which he adhered, to purchase Indigenous land. When the Red River settlement was founded, Indigenous land frameworks were far more dominant in Red River; nevertheless, the answer to this question factors directly into what Selkirk was attempting to gain from the Selkirk Treaty. The significance of the question was recognized early on by Alexander Ross, the first published historian of the Red River Settlement. His 1856 *The Red River Settlement* begins with a legal argument claiming that the HBC's charter precluded any legal requirement to purchase land from Indigenous peoples. Ross concluded that

the Selkirk Treaty was only reached for the practical purpose of pacifying the Indigenous population.¹ Other early commentators, Andrew McDermot and Joseph Hargrave, believed that Selkirk needed the explicit sanction of the Crown to purchase Indigenous land. They also believed that he had it, but their contemporary Donald Gunn doubted this because Selkirk “stood too much on the power of the charter to appeal to any other power.”² Arthur Ray, Jim Miller, and Frank Tough’s 2002 chapter on the Selkirk Treaty also addressed the question of whether the HBC and Selkirk had the authority to negotiate for the purchase of Indigenous title. They quoted correspondence between Coltman and Selkirk in the Selkirk Papers to argue that the Earl himself believed his authority to make a land purchase derived from the HBC charter.³ However, they did not otherwise connect the question to the content of the Selkirk Treaty, and the historiography has generally neglected it.

A handful of scholars have attempted to define the precise legal right Selkirk would have been purchasing from the Indigenous population in light of the HBC’s charter claims. Some have leaned towards a sort of fee simple ownership.⁴ Others believed Selkirk was simply paying compensation for losses accrued by no longer being able to hunt on the land in question.⁵

However, relatively few scholars have approached this question, and the concept of Indian Title

¹ Ross, *Red River Settlement*, 2-13. Compare with his earlier account both hailing the Selkirk Treaty as “the first groundwork of civilisation in this part of British North America” and misdating it to 1811, presumably confusing its date with that of the Selkirk Grant (Alexander Ross, *The Fur Hunters of the Far West; A Narrative of Adventures in the Oregon and Rocky Mountains*, vol. 2 (London: Smith, Elder and Co, 1855), 261).

² Andrew McDermot, “Peguis Refuted,” *Nor'-Wester*, February 28th, 1860, page 3; Joseph Hargrave, *Red River* (Montreal: John Lovell, 1871), 76-78; Donald Gunn, “Peguis Vindicated,” *Nor'-Wester*, April 28th, 1860, page 4.

³ Arthur Ray, Jim Miller, and Frank Tough, *Bounty and Benevolence: A History of Saskatchewan Treaties* (Montreal: McGill-Queen’s University Press, 2002), 24.

⁴ George Bryce, *Manitoba: Its Infancy, Growth, and Present Condition* (London: Sampson Low, Marston, Searle, & Rivington, 1882), 258; Robert Hill, *Manitoba: History of Its Early Settlement, Development and Resources* (Toronto: William Briggs, 1890), 76.

⁵ Hargrave, *Red River*, 76-78 and Charles Bell, *The Selkirk Settlement and the Settlers. A Concise History of the Red River Colony from Its Discovery, Including Information Extracted from Original Documents Lately Discovered and Notes obtained from Selkirk Settlement Colonists* (Winnipeg: Printed at the Office of “The Commercial”, 1887), 26. Kenneth Narvey argued that Selkirk wavered between these two poles (Narvey, “Royal Proclamation,” 188-200).

remained in flux long after 1817. As the lawyer Archer Martin explained in an 1898 study, colonizers often considered the extinguishment of Indigenous title as a moral rather than a legal obligation. In 1888, the highest British court was given the opportunity to define Indian Title, but explicitly declined to do so.⁶ The questions of whether Selkirk had authority under the British legal framework to make a purchase of Indigenous land, and the nature of the right he would have purchased, are explored in Chapter 1.

A second unresolved historiographical question of the Selkirk Treaty pertains to the role of the Saulteaux signatories. Within the matrix of Indigenous land claims in Red River in 1817, did they have the right to permanently alienate land? Apart from outliers due to misquotation⁷ or disinterest,⁸ the historiography has provided four principle answers to this question:

1. No, they did not have the right.
2. While their own right to the land was insufficient to negotiate, they received permission to negotiate from those who did have the right.
3. Yes, they did have the right.

⁶ A. Martin, *HBC Land Tenures*, 12-14, 94-99.

⁷ Laura Peers's landmark work *The Ojibwa of Western Canada: 1780 to 1870* (Winnipeg: University of Manitoba Press, 1994), for example, cites a nearly comprehensive array of sources, but errs in its account of whether the Saulteaux had the right to negotiate: it cites Ross to explain that there was tension between the Cree and Saulteaux over the right to negotiate, and then cites Fidler's journal and Coltman's correspondence with Selkirk to conclude that negotiations between the Cree and Saulteaux resolved the tension (93). However, Ross actually referred to tension that arose only after the signing of the Indenture, and that tension could not therefore have been solved by the negotiations that had occurred before its signing. Burrows followed Peers into this error, though he also used a quote about Cree permission to the Saulteaux from Coltman's correspondence with Selkirk that he derived through Ray, Miller, and Tough to largely dismiss the question of tension between Cree and Saulteaux (P. Paul Burrows, "'As She Shall Deem Just.'" Treaty 1 and the Ethnic Cleansing of the St. Peter's Reserve, 1871-1934" (MA thesis, University of Manitoba, 2009), 53-54); another scholar in error through source confusion is Donna Sutherland, whose discussion of the Selkirk Treaty relied on a copy of the Indenture, Coltman's correspondence with Selkirk, and the 1860 *Nor'-Wester* debate. She did not realize that the Le Sonnant mentioned on the Indenture was the same Cree chief discussed under the name Senna in the 1860 debate. Not finding the name Senna on the Indenture, she concluded that Le Sonnant was a Saulteaux chief like the other signatories (*Chief Peguis*, 138-144).

⁸ A disinterest in defining who had the right to sell has been typical. For example, Howard Baker II noted on the basis of Coltman's report on the disturbances in the Northwest that the proprietary claims of the Cree, Assiniboine, and Métis seemed "the most plausible," but like Coltman left it there (Howard Baker II, "Law Transplanted, Justice Invented: Sources of Law for the Hudson's Bay Company in Rupert's Land, 1670-1870" (MA Thesis, University of Manitoba, 1996), 79). Interestingly, Nelly Laudicina's similar but more recent study of the development of legal structures in the Red River Settlement skirted around the Selkirk Treaty until discussing the 1860 debate in the *Nor'-Wester* (Nelly Laudicina, *Droit et métissages, Evolution et usages de la loi à la colonie de la Rivière Rouge, 1811-1869* (PhD thesis, University of Ottawa and Université Paris IV-Sorbonne, 2013), 57-58, 288-290).

4. The Saulteaux were trying to take advantage of the treaty to elevate their own land claims above other Indigenous claims.

The first three of these positions were respectively championed by Alexander Ross, Andrew McDermot, and Donald Gunn. Significantly, they were the sheriff, plaintiff and foreman of the jury in *McDermot vs. Fanyant*, the first formal test of the Selkirk Treaty.⁹ Alexander Ross answered no: the Saulteaux migrated to the Red River area within living memory, and as such had no right to negotiate for land in 1817. Instead, “the rightful owners or inhabitants of this part of the country” were the Cree and Assiniboine.¹⁰ Andrew McDermot echoed Ross’s position that the Saulteaux had no right to sell. However, he added that other chiefs who did have that right, most notably the Cree chief Le Sonnant, had been persuaded to allow the Saulteaux to sell.¹¹ Finally, Donald Gunn claimed that the Saulteaux had equal land rights to those of the Cree and Assiniboine. He based this opinion on an account, derived from Peguis, of the Saulteaux’s arrival in the area: the Cree and Assiniboine had been devastated by smallpox, and gratefully welcomed the Saulteaux as an ally against their common Sioux enemy. To Gunn, this had elevated the Saulteaux’s land rights in Red River to those of the Cree and Assiniboine. He thus described inter-Indigenous negotiations preceding the Selkirk Treaty as a fair rhetorical battle between Peguis and other Saulteaux chiefs against Le Sonnant. Each had equal rights, but the Saulteaux had come away the victors.¹²

⁹ *Andrew McDermott vs. Bapt. Fanyant, Pierre Poitras, Louison Morin & Pascal Berland*, in Gibson, *Law, Life, and Government*, vol. 2, 52-54.

¹⁰ Ross, *Red River Settlement*, 10. Ross echoed his entire critique of Saulteaux involvement in the Selkirk Treaty in his discussion of an unratified 1851 treaty in Minnesota, noting there that the Assiniboine and Cree had better title than the Saulteaux and that only the less representative Saulteaux chiefs helped conclude it (ibid, 412).

¹¹ Andrew McDermot, “Peguis Refuted,” *Nor'-Wester*, February 28th, 1860, page 3; Andrew McDermot, “The Peguis Land Controversy,” *Nor'-Wester*, May 14th, 1860, page 1; Molyneux St. John to Adams Archibald, Winnipeg, January 17th, 1871, No. 176, AM P7920/2. McDermot first wrote that Peguis was the persuader, later that the persuader was Selkirk.

¹² Donald Gunn, “Peguis Vindicated,” *Nor'-Wester*, April 28th, 1860, page 4; Gunn, *History of Manitoba*, 87, 202-204. In his posthumous history, Gunn indicated that the invitation to the Saulteaux came from only the Assiniboine rather than both Cree and Assiniboine.

Ross's work has been especially influential. However, many scholars who based their opinions on his work have not echoed his condemnation of Saulteaux land rights. Instead, they have cited Ross simply to indicate that there was a controversy, without taking a side in it. These include Archer Martin in his 1898 study of land tenures, Alexander Begg in his 1904 *History of the North-West*, F. H. Schofield's in his 1913 *The Story of Manitoba*, W. L. Morton in his 1957 *Manitoba: A History*, and recently J. M. Bumsted in his 2003 *Trials & Tribulations*. Bumsted in particular explained that Selkirk had dealt with those he found in possession and not necessarily the true owners. He then declined to engage further as it was the sort of question that could only be definitely answered by an "*ex cathedra* court decision."¹³

McDermot's argument that the Saulteaux had no right to land in Red River, but that the Cree had allowed them to sell it anyway, was picked up in 1861 by James Hunter, who pointed insistently at Le Sonnant's signature on the Indenture to indicate Cree consent.¹⁴ Arthur Morton revived the argument in his 1939 *A History of the Canadian West* by citing comments by Commissioner Coltman. John Perry Pritchett reached the same conclusion in his treatise on the Red River valley by combining Ross and Gunn's accounts. Pritchett himself was then cited, along with Archer Martin, Begg, and a newly uncovered statement by Andrew McDermot, by Michael Czuboka in his MA thesis on the St. Peter's reserve. Both Pritchett and Czuboka

¹³ A. Martin further pointed to Treaty 1 and the *Manitoba Act's* Métis land grant (A. Martin, *HBC Land Tenures*, 13-14); Alexander Begg, *History of the North-West*, Volume 1 (Toronto: Hunter, Rose & Co, 1894), 190-192; F. H. Schofield, *The Story of Manitoba*, vol. 1 (Winnipeg: S. J. Clarke Publishing, 1913), 144-145, 187-188; Morton interestingly noted that four chiefs, not five, were parties to the Selkirk Treaty, and given his knowledge of the 1860 *Nor'-Wester* debate and the controversy over whether Le Sonnant signed the Indenture, it seems he believed it was only negotiated with the Saulteaux (*Manitoba*, 55, 105, 154); Bumsted, *Trials & Tribulations*, 34, 139-142.

¹⁴ "History of the Red River Settlement, First Paper," *Nor'-Wester*, February 1st, 1861, page 2; "History of the Red River Settlement, Eighth paper," *Nor'-Wester*, June 1st, 1861, page 3.

credited Peguis's influence as pivotal.¹⁵ Kenneth Narvey cited Coltman in a 1974 study of the Royal Proclamation to argue that Selkirk had secured a permanent land purchase by dealing with "the relative rights of the Cree and Saulteaux." Ray, Miller, and Tough similarly cited a comment from Coltman that said the Cree had allowed the Saulteaux to negotiate. However, they then quoted Coltman counselling the Saulteaux not to anger the Cree as they negotiated, without linking the two comments.¹⁶ Nevertheless, Coltman's testimony has proven vital to this argument. One isolated reading of Coltman's comments even interpreted them to mean that the Cree had ceded land to the Saulteaux, who were then free to negotiate as they willed.¹⁷ However, Theresa Schenck's 1998 article on the Indigenous role in the founding of the Selkirk settlement concluded the more standard argument that the Cree had allowed the Saulteaux to participate in negotiations, and she did so without citing Commissioner Coltman. Instead, she looked to journals of Miles Macdonell in the Selkirk Papers, and also to commentary by Peter Fidler in the Brandon House Post Journal.¹⁸

Against the arguments of Alexander Ross and Andrew McDermot, Donald Gunn argued that the Saulteaux had equal land rights to the Cree in 1817. Gunn's argument was echoed by

¹⁵ A. Morton cited Coltman from correspondence with Selkirk in the Selkirk Papers and the 1819 printed documents. Morton's understanding of Cree permission to the Saulteaux also informed his take on the 1860 *Nor'-Wester* debate (Arthur S. Morton, *A History of the Canadian West to 1870-1871 Being a History of Rupert's Land (The Hudson's Bay Company's Territory) and of the North-West Territory (Including the Pacific Slope)*, 2nd edition, ed. Lewis G. Thomas (Toronto and Buffalo: University of Saskatchewan and University of Toronto Press, 1973), 591-592, 856-857); while Pritchett's book claims to have based its discussion on Ross and original documents from St. Mary's Isle, the text cited included a quotation clearly derived instead from Gunn's posthumous history (*Red River Valley*, 197-199). Czuboka contributed the novel but negligible argument that negotiations were legitimate but not the treaty, as it was unethical ("St Peter's," 16-18). This has not been repeated in later studies of St. Peter's, such as Angela Jeske's thesis, which treated the Selkirk Treaty peripherally (Angela Jeske, "St. Peter's Indian Settlement: A House Indian Community at Red River, 1833-1856," (MA thesis, University of Alberta, 1990), 36 note 17).

¹⁶ Narvey, "Royal Proclamation," 196; Ray et al, *Bounty and Benevolence*, 21-31. The latter also believed the Cree were more opposed to the HBC's interpretation of the Selkirk Treaty than the Saulteaux, but their cited evidence, a speech from Henry Prince during Treaty 1 negotiations, does not support that conclusion.

¹⁷ James Daschuk, *Clearing the Plains: Disease, Politics of Starvation, and the Loss of Aboriginal Life* (Regina: University of Regina Press, 2013), 47.

¹⁸ Theresa Schenck, "Against All Odds... and with the Help of Our Friends: The Native Role in Establishing the Red River Colony, 1812-1817," *North Dakota Quarterly* (1998): 49-50.

James Hargrave in 1871, George Bryce in 1882, and in 1887 by Charles Bell who specifically cited the Saulteaux's "right of conquest and occupation" to that effect.¹⁹ Later scholars have been more hesitant to make this argument. In 1923, A. C. Garrioch argued that Saulteaux and Cree had had equal land rights in *First Furrows*; however, his 1933 revision pointed out how significant it was that Selkirk had convinced the Saulteaux to accept a quitrent as well as the Cree, because the Saulteaux had not been the true owners of the land.²⁰ The assumption that Cree and Saulteaux had equal land rights can be somewhat inferred from Jim Gallo's 1978 study of the Yellow Quill band. Gallo cited Peter Fidler's Brandon House commentary and 1819 Brandon House district report to say that the Saulteaux had been the sole signatories, but he also wrote that they had rented out, not sold, the land.²¹ Paul Burrows's 2013 MA thesis assumed that Cree and Saulteaux land rights had been similar when pointing out that the Saulteaux had exercised significant land rights in a wider area than that indicated by the Indenture.²² The most significant recent scholar to assume Gunn's argument is the Métis political scientist Adam Gaudry. Gaudry did not address the question of inferior Saulteaux rights, writing only that the Selkirk Treaty had confirmed the tenure of both Saulteaux and Cree over the settlement. More important to him was that the treaty did not exclude other Indigenous claims.²³

¹⁹ Hargrave, *Red River*, 76-77; Bryce, *Manitoba*, 258-259; Bell, *Selkirk Settlement*, 26.

²⁰ Garrioch, *First Furrows: A History of the Early Settlement of the Red River Country, including that of Portage la Prairie* (Winnipeg: Stovel Company, 1923), 45-47; Garrioch, *The Correction Line* (Winnipeg: Stovel Company, 1933), 47-48, 109-110.

²¹ Jim Gallo, *The Yellow Quill Band and the Land Question: the 1906 Expropriation and the 1908 Land Surrender of Part of Swan Lake Reserve I.R. No. 7. T.A.R.R.*, May 1977, revised March 1978, 103-104 note 14.

²² Burrows, "As She Shall," 53-56. He did mention that the Saulteaux had needed Cree permission, but muddled it by following an error by Laura Peers, and did not delineate Cree and Saulteaux rights.

²³ Gaudry's confidence that potential conflicts arising from overlapping Indigenous land claims can be solved collaboratively through inter-Indigenous negotiations allowed him to sidestep the question of inferior Saulteaux rights (Adam Gaudry, "Fantasies of Sovereignty: Deconstructing British and Canadian Claims to Ownership of the Historic North-West." *Journal of the Native American and Indigenous Studies Association* 3:1 (2016): 55, 71 note 47; see also his discussion of joint title in Karen Drake and Adam Gaudry, "'The lands...belonged to them, once by the Indian title, twice for having defended them...and thrice for having built and lived on them': The Law and Politics of Métis Title," *Osgoode Hall Law Journal* 54 (2016): 38-39).

Ross, McDermot, and Gunn thus each modelled a historiographical answer to the question of Saulteaux rights in the Selkirk Treaty. However, their writings also provided material for a fourth answer to the question, namely that the Saulteaux used the Selkirk Treaty to usurp the established land rights of the Cree. Ross wrote that Peguis was a recent migrant without any influence even among his own people. McDermot described the Saulteaux selling land to Selkirk even though they admitted it belonged to the Cree; apparently they had believed Selkirk when he responded that they did have a right to sell the land, and had further been tempted by his offers of chieftainships.²⁴ James Hunter picked up this theme in 1860, as has more recently Gerhard Ens; both leave the reader to infer that the Saulteaux were usurping Cree rights.²⁵ In 1975, D. Bruce Sealey, a scholar of the Métis, expressed the idea directly. Sealey argued that Peguis supported the settlers in Red River in order to get an ally against the Cree and Assiniboine, who had never accepted “his invasion of the valley.”²⁶ A 1985 report by Jean Friesen similarly claimed that Peguis allied with the Colony in order to become independent from the Cree and Assiniboine. In support of the claim, Friesen described Peguis’s band as outsiders from the bulk of the Saulteaux.²⁷ Brian Gallagher did the same in his 1986 thesis, depicting Peguis as a shrewd opportunist using Selkirk to augment his own authority and the

²⁴ Ross, *Red River Settlement*, 10; Andrew McDermot, “Peguis Refuted,” *Nor'-Wester*, February 28th, 1860, page 3.

²⁵ “History of the Red River Settlement, First Paper,” *Nor'-Wester*, February 1st, 1861, page 2. The author is anonymous, but Lyle Dick identified him as James Hunter, crediting Bumsted and Coutts (“Red River’s Vernacular Historians,” *Manitoba History* 71 (Winter 2013): 9); Gerhard Ens, *Homeland to Hinterland: The Changing Worlds of the Red River Métis in the Nineteenth Century* (Toronto: University of Toronto Press, 1996), 30-31.

²⁶ D. Bruce Sealey, *Statutory Land Rights of the Manitoba Metis* (Winnipeg: Manitoba Metis Federation Press, 1975), 31-32.

²⁷ J. Friesen, buoyed by a claim by Isaac Cowie in a historical scrapbook in the Manitoba Legislative Library that Peguis had come to Red River as a “‘refugee’ from his own band,” distinguished Peguis’s “Saulteaux,” a band brought in by the NWC as trappers, from the “Red Lake Chippewa” who had received the invitation described by Gunn (Friesen, “*Grant Me Wherewith*,” 40-41. The copy I consulted of this report has “[Not for duplication or citation]” handwritten upon it. I’m not quite sure what to make of that. Laura Peers did cite the report, though I am not aware that another scholar has directly done so. Friesen adapted much of the report into a book chapter by the same name in *Aboriginal Resource Use in Canada: Historical and Legal Aspects*, edited by Kerry Abel and Jean Friesen (Winnipeg: University of Manitoba Press, 1991): 141-155, but this did not include much of the useful information she uncovered concerning land management in St. Peter’s prior to 1870.

standing of Saulteaux land claims. Gallagher believed that the Cree were hostile to Saulteaux land claims, and in support of his arguments cited the 1860 *Nor'-Wester* debate and a biography of Peguis by Albert Thompson.

Clearly then, the role of the Saulteaux in the Selkirk Treaty cannot be separated from the role of the Cree. Cree involvement is thus the subject of the third set of historiographical questions about the Selkirk Treaty. Did the Cree agree to the treaty? If not immediately, did they consent to it later? What was the nature of their involvement; were they direct parties to the treaty, or did they only allow the Saulteaux to negotiate? Were the Cree angry at the Saulteaux over the result of the Selkirk Treaty? Because the questions regarding Saulteaux and Cree rights are so intertwined, the question of whether or not the Cree gave the Saulteaux permission to negotiate has already been discussed. Two important historiographical elements remain outstanding, however: the question of whether the Cree retroactively endorsed the Selkirk Treaty after it had already been negotiated; and the question of tension between the Cree and Saulteaux over the Selkirk Treaty.

In the 1860 *Nor'-Wester* debate, Donald Gunn cited a personal conversation with Peguis to argue that Le Sonnant had “refused point blank to sell land to the Earl of Selkirk.” Around the same time, a Métis public meeting passed a resolution stating that Le Sonnant had not agreed to dispose of land in the Selkirk Treaty. This served as the foundation of the meeting’s formal position on Red River land tenure.²⁸ In response to these claims, Andrew McDermot backed away from his assertion that Peguis had persuaded Le Sonnant to agree to sell land in the Selkirk Treaty. He then claimed to have witnessed Le Sonnant retroactively consent to the Selkirk

²⁸ “The Land Question,” *Nor'-Wester*, March 14th, 1860, 2; Donald Gunn, “Peguis Vindicated,” *Nor'-Wester*, April 28th, 1860, page 4”; Donald Gunn, “The Land Controversy,” *Nor'-Wester*, June 28th, 1860, page 4.

Treaty after the HBC had bought out the Selkirk Colony. According to McDermot, Le Sonnant had been curious that Peguis was using his own authority to formally regulate land occupancy at St. Peter's. Le Sonnant thus asked Colony authorities about their land arrangement with Peguis, and McDermot and a few others explained their understanding of the Selkirk Treaty to him. They showed him the Indenture, and Le Sonnant consented to the Selkirk Treaty as it had been explained to him. Donald Gunn responded to McDermot again, but sought to refute McDermot's general position rather than the details of this particular account. McDermot's account of retroactive Cree consent thus remains outstanding; however, no scholars have picked up on it. McDermot himself did not appear confident in the account, as he did not repeat it to Canadian officials investigating the Selkirk Treaty in 1871.²⁹

McDermot had implied a lack of communication between Peguis and Le Sonnant, but did not imply that there was any tension between the two of them. McDermot also claimed that many chiefs were disappointed with Peguis, but did not imply tension between the Cree and Saulteaux more broadly. However, a number of scholars came to assume that the Cree were angry at the Saulteaux for the Selkirk Treaty. This assumption originated with Alexander Ross. In the *Red River Settlement*, Ross wrote that the Cree took umbrage at the Saulteaux's participation in the treaty. Apparently the Cree had threatened to drive the Saulteaux back to the east, and to reclaim the settlement's land unless the Saulteaux names were struck from the Indenture. Ross later clarified that the Saulteaux had received an interest in the treaty in 1817, even though they recognized that they did not have a right to the land. Ross explained that the

²⁹ Andrew McDermot, "Peguis Refuted," *Nor'-Wester*, February 28th, 1860, page 3; Donald Gunn, "Peguis Vindicated," *Nor'-Wester*, April 28th, 1860, page 4; Andrew McDermot, "The Peguis Land Controversy," *Nor'-Wester*, May 14th, 1860, page 1; Molyneux St. John to Adams Archibald, Winnipeg, January 17th, 1871, No. 176, AM P7920/2; Molyneux St. John to Adams Archibald, January 3rd, 1871, No. 164A, AM P/7920/1, page 3.

Cree were actually angry because, having been admitted, “the Saulteaux claim a sort of prescriptive right, rendered as valid, by mere lapse of time, as that of the Cree themselves.”³⁰ Ross thus believed that the Cree were angry that settlers had privileged Saulteaux land claims, and that the Saulteaux had since begun making a higher land claim than they had in 1817.

A number of scholars have followed, and tried to corroborate, Ross’s account of Cree-Saulteaux tension over the Selkirk Treaty. In 1894, Alexander Begg repeated Ross’s account exactly, updating it only to say that the Cree never ended up following through on their threats to either Saulteaux or Colony.³¹ Garrioch speculated why this might be in his 1933 *The Correction Line*: the Cree’s “apparent acquiescence” to the Saulteaux presence in Red River, and to their participation in the Selkirk Treaty, was because they could serve as a buffer against the Sioux to the south. When the Colony reached a position of strength, the Cree regretted allowing the Saulteaux a share in Selkirk Treaty payments. Nevertheless, as the Cree and Saulteaux never actually fought over the treaty, Garrioch surmised that linguistic similarities and the ongoing Sioux threat were enough to maintain cordial ties between the two.³² Brian Gallagher and Jean Friesen tried to corroborate Ross’s account of Cree-Saulteaux tension in order to support their claim that the Saulteaux were seeking to usurp Cree land rights. However, Gallagher was able to find only that the Cree referred to the Saulteaux with a term “highly reminiscent of the Greek term barbaros.” Friesen, for her part, looked to the power dynamic that would emerge on the St. Peter’s reserve, and the tension between Saulteaux and Swampy Cree there. Laura Peers did the

³⁰ Ross, *Red River Settlement*, 13, 158-159. For Ross’s reliability on Indigenous matters, see Dick, “Red River’s Vernacular Historians,” 8.

³¹ Begg, *History of the North-West*, vol. 1, 190-192.

³² Garrioch, *The Correction Line*, 109-110.

same, but the argument falls flat as these Swampy Cree never shared the land claims represented by Le Sonnant.³³

Scholars studying the Selkirk Treaty have not looked for any similar tension between the Assiniboine and the Saulteaux. The only suggestion that the Assiniboine were displeased about the Selkirk Treaty comes from Andrew McDermot's report to Canadian officials investigating the Selkirk Treaty in 1871. Apparently, the "Assiniboines, Mandans, and other Indian tribes" had contested the right of the Saulteaux to transfer land to Selkirk in 1817. However, McDermot had not brought this up during the more public 1860 *Nor'-Wester* debate, and no scholars have followed his claim.³⁴ Indeed, though scholars of the Selkirk Treaty have often spoken of Assiniboine land rights in the same breath as those of the Cree, they have seldom explored the Assiniboine role in the Selkirk Treaty. Alexander Ross is a prime example; in the *Red River Settlement*, he listed the Cree and Assiniboine as the best claimants to the land covered by the Selkirk Treaty, but then later wrote that only the Cree had "always claimed Red River as their land."³⁵ More recently, Ray, Miller, and Tough, did not mention the Assiniboine a single time in their chapter discussing the Selkirk Treaty, illustrating the lack of scholarly interest in Assiniboine participation.³⁶

³³ Gallagher, "Whig Interpretation," 26, underlining in original; J. Friesen, "Grant Me Wherewith...", 58-59; Peers, in *The Ojibwa*, noted that she was not sure of the origin of the Cree who began competing with Peguis's band in Red River in the 1820s. They were either Swampy Cree "from the Hudson Bay Lowlands, or they may have been members of the northernmost bands of Ojibwa from the region northeast of Lake Winnipeg," but either seems to exclude Le Sonnant's Cree (66). Later tension within Peguis's band she distinctly cast in terms of Swampy Cree (134). Religious differences would only later develop between Peguis and Le Sonnant, as Peguis moved towards Christian conversion while Le Sonnant was apparently a celebrated conjuror (October 16-20, 1833, *People of the First Man: Life Among the Plains Indians in Their Final Days of Glory: The Firsthand Account of Prince Maximilian's Expedition up the Missouri River, 1833-34*, watercolors by Karl Bodmer, edited and designed by Davis Thomas and Karin Ronnefeldt (E.P. Dutton & Co: New York, 1976), 158).

³⁴ Molyneux St. John to Adams Archibald, January 3rd, 1871, No. 164A, AM P/7920/1, page 3.

³⁵ Ross, *Red River Settlement*, 12, 158-159.

³⁶ Ray et al, *Bounty and Benevolence*, 21-31.

The handful of scholars that has expressed interest in the Assiniboine role in the Selkirk Treaty has tended to argue that the Assiniboine were direct parties to the treaty. Its evidence is slight, however. For example, in his 1882 history of Manitoba, George Bryce assumed that the Indenture included an Assiniboine signature, and inferred that The Black Man was “a chief of the Assiniboines.” However, when reworking the material into a later book, he wrote that it was Le Sonnant who was “seemingly” an Assiniboine Chief. He then named The Premier, The Black Man, and The Black Robe as Cree chiefs, leaving Peguis alone as Saulteaux. Later in the work, he reverted to labelling The Black Man as an Assiniboine chief. Clearly then, Bryce was only guessing at the ethnicities of the signatories.³⁷ Even so, Gerhard Ens recently and uncritically followed Bryce’s assumption that The Black Man was an Assiniboine chief.³⁸ Other scholars have claimed that the Assiniboine were consulted and sold land interests in the Selkirk Treaty by citing primary documentation that did not mention the Assiniboine at all. These include Selkirk biographer John Morgan Gray, who cited a letter from Lord to Lady Selkirk, and Laura Peers, who cited Peter Fidler’s commentary on the treaty in the Brandon House Post Journal.³⁹ Gerald Friesen did not point to a specific source when he claimed the signatories represented the Assiniboine.⁴⁰ More helpful is Theresa Schenck’s article on the Indigenous role in the founding of the Red River settlement. Citing Macdonell’s journals in the Selkirk Papers, Schenck inferred

³⁷ Bryce, *Manitoba*, 260; George Bryce, *The Romantic Settlement of Lord Selkirk’s Colonists [The Pioneers of Manitoba]* (Toronto: Musson Book Company, 1909), 22, 147.

³⁸ Ens wrongly cites the Indenture to say that The Black Man was an Assiniboine chief. Given his reliance on Bryce for the content of his argument, it is quite clear he derived this from Bryce instead (Gerhard Ens, “The Battle of Seven Oaks and the Articulation of a Metis National Tradition, 1811-1849,” in Nicole St-Onge, Carolyn Podruchny, Brenda Macdougall, editors, *Contours of a People: Metis Family, Mobility, and History* (Norman: University of Oklahoma Press, 2012), 106; Gerhard Ens and Joe Sawchuk, *From New Peoples to New Nations: Aspects of Metis History and Identity from the Eighteenth to Twenty-first Centuries* (Toronto: University of Toronto Press, 2016), 85).

³⁹ Gray, *Lord Selkirk of Red River*, 234, 360; Lord to Lady Selkirk, Red River, July 21st, 1817, LAC MIKAN 114526, Reel A27, 521-523; Peers, *The Ojibwa*, 92; July 18th, 1817, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20.

⁴⁰ Gerald Friesen, *The Canadian Prairies: A History* (University of Toronto Press, 1987), 2004 reprinting, 80.

from an Assiniboine chief's presence at a preliminary negotiating session in June that he had been one of the chiefs to request the attendance of representatives of the Colony and fur traders. Schenck even quoted part of the chief's speech at the session, but unhappily not the part of it that explicitly referred to land ownership.⁴¹ Schenck thus did not greatly alleviate the scholarly neglect of the Assiniboine role in the Selkirk Treaty.

A similar but more surprising neglect in the historiography of the Selkirk Treaty is any discussion of the Métis, despite their leading role in events leading up to it. For example, Ray, Tough, and Miller did not try to explain how the Métis fit into the negotiation of the Selkirk Treaty, even though they quoted Commissioner Coltman saying that he had counselled the Saulteaux to avoid "driving the Metis to despair" as they negotiated.⁴² Especially significant, however, is that scholars of the Métis have not engaged the question. This appears to be because the Métis themselves identify the primary moment of the period as the Battle of Seven Oaks, which Pierre Falcon famously recorded it in song. Scholars have explained how Falcon's lyrics referenced defending territory against interlopers, but by and large they have not then applied this Métis concern for land rights to discussions of Selkirk Treaty negotiations.⁴³ L.-A. Prud'homme's study of Seven Oaks thus did claim that Selkirk regularized his land title through a treaty with the Cree and Saulteaux, but he did not address how the Métis fit into it. August-Henri de Trémaudan's only reference to the Selkirk Treaty in his 1935 *Histoire de la nation*

⁴¹ Schenck, "Against All Odds," 49-50; June 29th, 1817, Miles McDonnell Journal from April 5th..., SP 17301.

⁴² Ray et al, *Bounty and Benevolence*, 25.

⁴³ Margaret Arnett MacLeod, editor, *Songs of Old Manitoba: With Airs, French and English Words, and Introductions* (Toronto: Ryerson Press, 1959), 1-30; Katherine Durnin, "Mixed Messages: The Métis in Canadian Literature, 1816-2007," (PhD dissertation, University of Alberta, 2008), 62-63. For Falcon's reliability, see Lyle Dick, "The Seven Oaks Incident and the Construction of a Historical Tradition, 1816 to 1970," *Journal of the Canadian Historical Association* 2:1 (1991): 97-98.

métisse was similar, but he did not even bother delineating between Cree and Saulteaux.⁴⁴

Marcel Giraud more helpfully situated the Selkirk Treaty within the context of a larger thesis that Métis national claims had temporarily collapsed, and that they had “forgotten their claims to sovereignty.” He then cited only Fidler’s commentary in the Brandon House Post Journal to claim that the Selkirk Treaty consisted of a formal land purchase.⁴⁵ The bulk of major works dealing with the Métis have since eschewed any serious discussion of the Métis role.⁴⁶

Those scholarly arguments that have been made about the Métis role in the Selkirk Treaty concentrate on whether or not the Métis had any land rights in 1817. Gerhard Ens stands out in particular for defending the idea that in 1817, within Red River’s Indigenous framework, the Métis did not have any land rights. In a 2012 chapter about competing narratives concerning the Battle of Seven Oaks, Ens made the case that the NWC tried to make a scapegoat of the Métis by inventing the claim that they were a full-fledged Indigenous people. He looked to the negotiation of the Selkirk Treaty for proof. Citing the Indenture, Macdonell’s journals in the Selkirk Papers, and George Bryce, Ens concluded that “no one—not Coltman, not Selkirk, not the Metis interpreters—believed it necessary to consult the Metis.” He particularly pointed to extracts of a speech that Bryce had derived from the Selkirk estate, which recorded Peguis saying he did not recognize the Métis as an “independent tribe.” To Ens, Peguis’s individual opinion

⁴⁴ L.-A. Prud’homme, “L’engagement des Sept Chênes,” *Mémoires de la Société Royale du Canada* Section 1, Série III, 12 (décembre 1918 et mars 1919): 176; August-Henri de Trémaudan, *Histoire de la nation métisse dans l’ouest canadien* (Montreal: Éditions Albert Lévesque, 1935), 99.

⁴⁵ Marcel Giraud, *The Métis in the Canadian West*, vol. 1, trans. George Woodcock (Edmonton: University of Alberta Press, 1986), 466-473.

⁴⁶ With the exception of Sealey, those arguing in the 1980s that the Métis had been unjustly dispossessed/dispersed following the entry of Manitoba into Confederation did not consider the Selkirk Treaty or Métis role in it relevant, nor did Margaret Arnett MacLeod and W. L. Morton’s *Cuthbert Grant of Grantown: Warden of the Plains of Red River* (Toronto: McLelland and Stewart Limited, 1974); Frits Pannekoek’s *Little Flock: The Social Origins of the Riel Resistance 1869-70* (Winnipeg: Watson & Dwyer, 1991); Ruth Swan, “The Crucible: Pembina and the Origins of the Red River Valley Metis” (PhD Thesis, University of Manitoba, 2003), 41; Michel Hogue, *Metis and the Medicine Line: Creating a Border and Dividing a People* (Chapel Hill: University of North Carolina Press, 2015).

meant that no other Indigenous actors believed the Métis to be an independent group, including the Métis themselves. The Métis lack of independence also separated them from an Indigenous land right.⁴⁷ Ens is alone in this argument, however.

Other scholars to have engaged the question of the Métis role in the Selkirk Treaty have instead taken the view that the Métis did have land rights in 1817. James Jackson assumed that the Métis had a legitimate if not preeminent land right when he explained that the Selkirk Treaty preempted further Métis claims over the settlement's land.⁴⁸ D. Bruce Sealey was more direct in his 1975 *Statutory Land Rights of the Manitoba Métis*. Sealey agreed that Bryce's report of Peguis's speech indicated that the Saulteaux chief did not believe the Métis had a right to land. However, Sealey added to this account a report, presumably gathered from his work collecting oral histories among the Métis, that the Métis leader Bostonais Pangman had responded to Peguis by threatening to kill all of the Saulteaux: "Apparently it settled the argument ... Whatever the foe, the Metis insisted upon recognition of their land claims."⁴⁹ In 1996, Howard Baker II cited Commissioner Coltman to conclude that the proprietary claims of the Cree, Assiniboine, and Métis seemed "the most plausible" over Red River. Baker interpreted this to mean three equal prescriptive claims, but did not apply the idea to the Selkirk Treaty.⁵⁰ More recently, Adam Gaudry assumed that the Métis had joint and equal land rights, as he had

⁴⁷ Ens, "The Battle of Seven Oaks," 105-106.

⁴⁸ Jackson, *Centennial History*, 53.

⁴⁹ Sealey, *Statutory Land Rights*, 31. I was unable to find this account elsewhere, but it may have come from his research that went into preparing *Stories of the Métis*, published under his editorship two years earlier and recently described by one reader as "a collection of oral testimonies from Elders in the community," and part of "a move to record and transmit the history of the Métis in their own words" (Krystl Dawn Raven, "Beyond the Battlefield: Gabriel Dumont and Métis Leadership (1837-1885)," (MA thesis, University of Saskatchewan, 2017), 4; Bruce Sealey, ed., *Stories of the Métis* (Winnipeg: Manitoba Metis Federation, 1973). With reservations, some scholars have picked up the account as helpful (Chantal Fiola, *Rekindling the Sacred Fire: Métis Ancestry and Anishnaabe Spirituality* (Winnipeg: University of Manitoba Press, 2015), 220, note 7).

⁵⁰ Baker II, "Law Transplanted, Justice Invented," 79.

assumed of the Cree and Saulteaux. He downplayed any hierarchy among them. Without citing anything specific, Gaudry noted in footnotes that the Selkirk Treaty left Métis rights outstanding, and speculated that the reason they had been excluded from the Selkirk Treaty was because Selkirk denied their Indigeneity.⁵¹ This thesis attempts to provide a more satisfying explanation for why the Métis did not feature on the Indenture of the Selkirk Treaty.

The above discussions of the historiographical positions relative to respective roles in the Selkirk Treaty, and to rights within Imperial and Indigenous legal frameworks, culminate in the primary question of the Selkirk Treaty historiography. Given the rights and roles of Lord Selkirk, the Saulteaux, the Cree, the Assiniboine, and the Métis, did the Selkirk Treaty consist of a permanent alienation of land? The historiography has presented three answers to this question: yes, it was; an unwillingness to draw a conclusion, sometimes disguised as an argument that the question is insoluble due to cultural misunderstandings between negotiators; and no, it was not.

The majority of scholars who have argued that the Selkirk Treaty consisted of a permanent alienation of land were convinced by a formal reading of the Indenture of the Selkirk Treaty. These include *Nor'-Wester* historian John Hunter; Lieutenant-Governor Alexander Morris; early Manitoba historians George Bryce, Charles Bell, Robert Hill, W. H. Healey, and A. C. Garrioch; John Perry Pritchett in his study of the Red River Valley; Saulteaux scholar Harold Hickerson; and political scientist Thomas Flanagan. J. M. Bumsted also relied on the Indenture, particularly the clause indicating that the land conveyed was “to have and to hold forever,”

⁵¹ Gaudry, “Fantasies,” 55; 71, notes 35 and 47.

though he further supported his argument with a misreading of the 1860 *Nor'-Wester* debate.⁵² Gerhard Ens was convinced that the Selkirk Treaty consisted of a permanent alienation by McDermot's contributions to that debate. Marcel Giraud was convinced of the same by Peter Fidler's commentary in the Brandon House Post Journal. Laura Peers looked to both Fidler's commentary and the 1860 *Nor'-Wester* debate, but also a third-hand account in the Selkirk Papers that The Premier's son said the Saulteaux had "sold the lands" along the Red. John Gray looked instead to a letter from Lord Selkirk to his wife, wherein he described the treaty as a "cession."⁵³

Other scholars described the Selkirk Treaty as a permanent land arrangement by situating their argument within larger interpretive rationales. Arthur Morton argued that the Saulteaux had not protested about the interpretation that the treaty was a permanent alienation for decades after the Indenture was signed. Morton thus concluded the interpretation must have been correct, and credited Peguis's direct challenge to the Colony's claims in 1822 to nothing more than a delay in his annual payment. Kenneth Narvey cited a number of sources to argue that the Selkirk Treaty

⁵² "History of the Red River Settlement, First Paper," *Nor'-Wester*, February 1st, 1861, page 2; "History of the Red River Settlement, Eighth paper," *Nor'-Wester*, June 1st, 1861, page 3; Alexander Morris was aware of Indigenous complaints about the HBC's interpretation of the Selkirk Treaty, but did not bring them to bear in his discussion of the Selkirk Treaty (Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories Including the Negotiations on Which They Are Based, and Other Information Relating Thereto* (Toronto: Willing & Williamson, 1890), 14-15, 298-300); Bryce, *Manitoba*, 169, 258; Bell, *The Selkirk Settlement*, 26; Hill, *Manitoba*, 76; W. H. Healey, ed., *Women of Red River: Being a Book Written from the Recollections of Women Surviving from the Red River Era, A Tribute to the Women of An Earlier Day by the Women's Canadian Club* (Russell, Land & Co. Ltd., Winnipeg, 1923), inside covers; Garrioch; *The Correction Line*, 47-49, 182, 193; Pritchett, *Red River Valley*, 198-199; Harold Hickerson, "The Genesis of a Trading Post Band: The Pembina Chippewa," *Ethnohistory* 3:4 (1956): 326-327. Thomas Flanagan acknowledged the debate over the Selkirk Treaty without pronouncing either way on it, but later assumed he could refute a statement from l'Abbé Richot that Indian Title remained unextinguished near Portage la Prairie around the time of the Riel Resistance on the basis of the Indenture (*Métis Lands in Manitoba* (Calgary: University of Calgary Press, 1991), 13-15, 44 note 68). Bumsted erroneously wrote that Peguis had claimed that land had only been conveyed for twenty years, and further mistook the intervention of Paketay-Hoond for one of Peguis's (Bumsted, *Trials and Tribulations*, 34, 139-142).

⁵³ Ens, *Homeland to Hinterland*, 30-31; Giraud, *The Métis*, vol. 1, 482; Peers, *The Ojibwa*, 92-94. Peers has since speculated that Peguis's complaints that "the Selkirk Treaty had been intended as a preliminary move prior to formal sale of the land" were inspired by the negative impacts of an unratified treaty south of the border in 1851 (Laura Peers and Anne Lindsay, "Governor William B. Caldwell's Souvenir: Exoticism and a Gentleman's Reputation," *Manitoba History* 73 (Fall 2013): 6); Gray, *Lord Selkirk of Red River*, 234, 360.

was a land purchase, but his sources were incidental to his larger argument that the provisions regarding Indigenous land rights in the Royal Proclamation of 1763 applied to Rupert's Land.⁵⁴

Many scholars, faced with contradictory testimony about whether the Selkirk Treaty consisted of a permanent alienation of land, have opted to suspend judgement or declare the question insoluble. Alexander Begg in his 1871 *Creation of Manitoba*, Andrew Martin, and recently Dale Gibson all made sure to note both sides of the controversy, but let it stand unresolved.⁵⁵ Selkirk biographer Chester Martin discussed the Selkirk-Coltman correspondence in the Selkirk Papers but asserted only that "treaties were made with the Indians." William Morton noted that later Indigenous complaints indicated a lack of clarity concerning the content of the Selkirk Treaty. Kenneth Tyler more recently discussed the controversy by drawing on relevant sources connected to Treaty 1 negotiations, but his ambition was only to demonstrate that the Indigenous negotiators of the Numbered Treaties cared about resource rights.⁵⁶ Scholars who preferred to declare the controversy insoluble after describing the two opposing sides include Theresa Schenck, who cited Fidler's commentary and Macdonell's journals in the Selkirk Papers. Ray, Miller, and Tough did the same; after citing correspondence in the Selkirk Papers, Coltman's transcribed and printed reports, and McDermot's statement to Treaty 1 officials, they concluded that the Saulteaux and Selkirk saw the treaty payments differently. The Saulteaux considered these an "annual payment," where Selkirk saw it as a "quit rent." Ray, Miller, and

⁵⁴ A. Morton, *History of the Canadian West*, 591-592, 652-653, 856-857; Narvey, "Royal Proclamation," 187-211. Narvey cited the Indenture, McDermot's statement to Molyneux St. John, correspondence of Selkirk and Coltman in the Selkirk Papers, and District of Assiniboia court decisions.

⁵⁵ A. Martin, *HBC Land Tenures*, 12-14, 65-66, 94-99; Dale Gibson, *Law, Life, and Government at Red River*, vol. 1, 7, 19 note 2, 158, 189, 390 note 12; Gibson, *Law, Life and Government*, vol. 2, 19, 158, 163; Alexander Begg, *The Creation of Manitoba; or, a History of the Red River Troubles* (Toronto: Hunter, Rose & Company, 1871), 87-88.

⁵⁶ Chester Martin, *Lord Selkirk's Work in Canada* (Toronto: Oxford University Press, 1916), 133, 135; W. L. Morton, *Manitoba*, 105, 154; Kenneth Tyler, "Will Delgamuukw Eclipse the Prairie Sun? Implications for the Prairie Treaties," in *Beyond the Nass Valley: National Implications of the Supreme Court's Delgamuukw Decision*, edited by Owen Lippert (Vancouver: Fraser Institute, 2000), 208-212.

Tough neither attempted to define these terms nor explain their implications. Donna Sutherland's biography of Peguis quoted the Selkirk-Coltman correspondence, statements by Peguis and McDermot, and extracts from the CMS archives, but held them up as if for comparison rather than engaging the contradictory opinions they expressed. John Shaw's dissertation on the Turtle Mountain band also held the two contradictory positions sides against each other as proof of a cultural misunderstanding.⁵⁷

Other scholars have been more comfortable concluding that the Selkirk Treaty was not a permanent alienation of land. For them, the most important sources have been the opinions of Peguis, either published or mediated through others such as Donald Gunn. These convinced Peguis's descendant Albert Thompson, as well as treaty researchers Jim Gallo, Aimé Craft, and Adam Gaudry. Craft and Gaudry further look to a particularly quotation from the Selkirk-Coltman correspondence, wherein Selkirk wrote that "I would propose to them not a sale but a gift."⁵⁸ Recently, scholars making this argument have also begun pointing to the text of the Indenture itself. In 2011, Sheldon Krasowski claimed its lack of a specific surrender clause precluded a sale of land. Since then, Paul Burrows and Adam Gaudry have concentrated instead

⁵⁷ Schenck, "Against All Odds," 49-50; Ray et al, *Bounty and Benevolence*, 21-31; Sutherland, *Chief Peguis*, 60-68, 98-99, 107-115, 138; John Shaw, "In order," 73.

⁵⁸ Donald Gunn, "Peguis Vindicated," *Nor'-Wester*, April 28th, 1860, page 4; Donald Gunn, "The Land Controversy," *Nor'-Wester*, June 28th, 1860, page 4; "The Land Question," *Nor'-Wester*, June 14th, 1860, page 3; Thompson, *Chief Peguis*; Gallo, *The Yellow Quill Band*, 11, 103-104 note 14; Aimée Craft, *Breathing Life into the Stone Fort Treaty: An Anishinabe Understanding of Treaty One* (Saskatoon: Purich Publishing, 2013), 37-38; Gaudry, "Fantasies," 54-55. A century earlier, E. H. Oliver, editor of a collection of documents concerning the Red River Settlement, contextualized the Indenture with the Selkirk quote, but did not explicitly pass judgement on the dominant interpretation of the treaty (E. H. Oliver, *The Canadian North-West, Its Early Development and Legislative Records: Minutes of the Councils of the Red River Colony and the Northern Department of Rupert's Land*, vol. 2, (Publications of the Canadian Archives No. 9. Ottawa: Government Printing Bureau, 1915), 1288-1289).

on the contemporary meaning of the term “quit rent” to argue that the Indenture indicated a confirmation rather than an extinguishment of Indigenous title.⁵⁹

Some have preferred to argue that the Selkirk Treaty did not consist of a permanent alienation of land on the basis of broader rationales rather than upon documentary sources. Alexander Ross argued the treaty could not have alienated land because the Hudson’s Bay Company charter precluded prior Indigenous ownership. The Métis in the 1860 *Nor’-Wester* debate argued that a lack of Cree consent meant the treaty could not have alienated land. Historian George Stanley retroactively concluded the same, but only because Treaty 1 was negotiated without taking the Selkirk Treaty into account. Michael Czuboka weakly argued that the treaty could not have consisted of an alienation of land because the low purchase price made it unethical. More recently, Sarah Carter pointed to Peguis’s land regime at St. Peter’s to prove that the Selkirk Treaty had reinforced rather than alienated Indigenous title.⁶⁰

Scholars have thus rallied both documentary sources and broader historical arguments to support mutually exclusive arguments about whether or not the Selkirk Treaty consisted of a permanent alienation of land. One source in particular stands out: both sides have confidently cited the Indenture of the Selkirk Treaty in support of their positions. Neither side has thus particularly questioned the authority of the Indenture, even though the accuracy of written

⁵⁹ Sheldon Krasowski, “Mediating the Numbered Treaties: Eyewitness Accounts of Treaties Between the Crown and Indigenous Peoples, 1871-1876” (PhD Thesis, University of Regina, 2011), 83; Burrows, “As She Shall,” 55-56; Adam Gaudry, “Kaa-tipeyimishoyaahk — ‘We are those who own ourselves’: A Political History of Métis Self-Determination in the North-West, 1830-1870.” (PhD dissertation, University of Victoria, 2014), 44-49; Gaudry, “Fantasies,” 54. Nicholas Vrooman read the Indenture the same way in 2012 (“*The Whole Country*,” 115).

⁶⁰ Ross, *Red River Settlement*, 2-13; see Pritchett, *Red River Valley*, 230-231 to see that Ross was amusingly citing the legal arguments of Selkirk lawyers themselves citing previous Selkirk lawyers; “The Land Question,” *Nor’-Wester*, June 14th, 1860, page 3; George Stanley, *The Birth of Western Canada: A History of the Riel Rebellions*, 2nd edition (Toronto: University of Toronto Press, 1966), 207-208. Stanley noted the importance of ongoing provisions in the treaty, but did not wrestle with their implications at the Reconveyance, which he treated as a property sale; Czuboka, “St. Peter’s,” 17-18; Sarah Carter, “‘They Would Not Give Up One Inch of It’: The Rise and Demise of St Peter’s Reserve, Manitoba” in Zoë Laidlaw and Alan Lester, eds., *Indigenous Communities and Settler Colonialism: Land Holding, Loss and Survival in an Interconnected World* (Hampshire: Palgrave Macmillan, 2015), 175-176.

records of treaty negotiations has been closely scrutinized elsewhere.⁶¹ The last question this thesis will thus explore is to what extent the Indenture actually reflects the Selkirk Treaty. The two are conceptually distinct: the Indenture is a written document ostensibly reflecting the Selkirk Treaty, but the Selkirk Treaty itself was a negotiated agreement and may include post-signing adjustments not recorded in the Indenture. Conflation of the Indenture and the Selkirk Treaty nevertheless began in its first published appearance in Ross's *Red River Settlement*. Though the Indenture refers to itself as an Indenture, with mere property connotations, Ross referred to it as a "treaty," connoting nationhood and sovereignty.⁶² However, in 1998, Geoffrey Lester demonstrated the importance of distinguishing between the Indenture and Selkirk Treaty. A then-recent court ruling had permitted ancient documents to skip the "hearsay rule," and Lester used the Indenture to explain that the authenticity of an ancient document did not necessarily entail that its testimonial evidence was credible.⁶³ Even the authenticity of the Indenture has been questioned because the copy in the Selkirk Papers does not include the words "to have and to hold forever." This exclusion was due to a negligible transcriptionist's error.⁶⁴ Nevertheless,

⁶¹ See for example the controversies attendant upon outside promises to Treaties 1 and 2 (Krasowski, "Mediating the Numbered Treaties," 89-97).

⁶² Ross, *Red River Settlement*, 10.

⁶³ Geoffrey Lester, "The Problem of Ancient Documents: Part II," *Advocates' Quarterly* 20:2 (1998): 138-140.

⁶⁴ Works pointing out or even relying on the missing clause in the Selkirk Papers include Jean Friesen, "*Grant Me Wherewith*," 45, note 26; Ray et al, *Bounty and Benevolence*, 257, note 18; and Burrows, "As She Shall," 55. However, through on my work with the Selkirk Papers, I have noticed that they include a number of transcription errors (see also Grace Lee Nute, "Introduction," in *Documents Relating to Northwest Missions 1815-1827*, edited by Grace Lee Nute (Saint Paul: Clarence Walworth Alvord Memorial Commission, 1942), xviii). The clause is not missing from other early recensions: Selkirk Treaty, "Western Treaty No.1-IT 257," July 18th, 1817, LAC, MIKAN 3972577; HBCA/AM E. 8/1 fo. 9d; July 18th, 1817, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20; unsourced facsimile inside covers of Gray, *Lord Selkirk of Red River*; 8. "Treaty made by Lord Selkirk . . . July 18th, 1817," Register Book A, 1811-1823, Selkirk Papers, Reel C-20. Compare with Selkirk to Coltman, July 17th 1817, LAC, B46-Commission of inquiry into the Red River Disturbances, Lower Canada, MIKAN 126128, 1192-1195, which is labelled "Purchase of land from the Indians" in a finding aid. Unhappily, I did not consult it. When archivist Bérénice Giasson brought this document to my attention in January of 2019, it was being digitized, and temporarily unavailable. My correspondence with her was in the context of a prolonged, unsuccessful, and abandoned attempt to establish which document is the original signed Indenture. Any inquiry in this direction could consider comparing the spellings of the signature of Miles Macdonell on the versions held in the LAC and HBCA, and also consider Alexander McDonnell to Lord Selkirk, Fort Douglas, September 13th, 1818, SP 5385.

establishing the extent to which the Indenture and Selkirk Treaty reflected each other will be a preoccupation of later portions of this thesis.

In conclusion, the historiography of the Selkirk Treaty has not provided clarity on a number of key questions that are bound up in it. A discussion of Selkirk's thoughts about the purchases of Indigenous title in particular seems lacking, but so too are convincing discussions of the rights or roles of the Métis or Assiniboine in the Selkirk Treaty. The land rights of the Cree and Saulteaux have been explored to a greater extent, but they remain controverted. The chief question of the Selkirk Treaty is whether or not it included a permanent alienation of land, but it is equally controversial because of the dearth of research into the above questions. The question of whether or not the Indenture, the accepted written record of the Selkirk Treaty, actually reflected the Selkirk Treaty has also not been explored in any detail. The subsequent chapters of this thesis seek to bring together the many relevant sources cited in the above chapter in order to provide more homogenous answers to these historiographical questions.

Chapter 2: Land Frameworks over Red River

The Selkirk Treaty historiographical questions identified in the introduction fall within the categories of Selkirk's ideational framework, the Indigenous ideational framework in Red River, and then how those two frameworks meshed in the Selkirk Treaty. This chapter begins by discussing an abstract framework of land claims that can be used to analyze and compare the two competing views. It then discusses Selkirk's ideas about his right to negotiate and what he might be negotiating for. It then looks to Indigenous ideas and the matrix of land claims in Red River that already existed before the arrival of Selkirk's settlers. This will go a long way to establishing answers to the historiographical questions about the rights of Selkirk, the Saulteaux, Cree, Assiniboine and Métis within their respective frameworks.

One of the difficulties in analyzing any early treaty between North American Indigenous peoples and Euro-Canadians is that the two sides had different systems of land tenure. These were not necessarily mutually intelligible, but representatives of either system could come to understand the other, and translate their systems into terms intelligible to the other. Multiple scholars have noted that Indigenous peoples have successfully translated their spatial practices into the alien terms of colonizers while maintaining the integrity of their own ideas.¹ Other approaches are available to scholars. Stuart Banner, in his landmark study of Indigenous dispossession in the United States, provides a useful pathway for proceeding in a study of different property systems. This is to abstract a common denominator from both systems:

¹ Susan Hill, *The Clay We Are Made Of: Haudenosaunee Land Tenure on the Grand River* (Winnipeg: University of Manitoba Press, 2017), 114; Yale Belanger, "'The region teemed with abundance': Interlake Saulteaux Concepts of Territory and Sovereignty," in John Nichols, editor, *Papers of the Thirty-Second Conference* (Winnipeg: University of Manitoba, 2001), 17; Allan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern America* (Cambridge: Cambridge University Press, 2018), 53; 309; Krasowski, "Mediating the Numbered Treaties."

I use the word property in its most culturally neutral sense, to mean only the intellectual apparatus by which a group of people organizes who will get to use which resources located on which land.²

This abstracted approach serves the purposes of this thesis. However, in addition to the intellectual apparatus allowing for resource allocation within a given area, this thesis is also concerned with the mechanism by which such an administration addresses competing administrative claims: force. It will thus refer to two abstract categories of possession, a higher or sovereignty possession, and a lower or occupancy possession.

As abstracted categories, neither sovereignty nor occupancy conform to a system of law. My definition of sovereignty is crass: the ability to regulate the administration of natural resource exploitation in a given area, an ability based on military or diplomatic supremacy. It can be exercised collectively, as by Indigenous bands joining forces to drive away rival coalitions. It can also be exercised by an individual, as when land in England was concentrated in the Crown following the Norman Conquest. It can even be exercised on behalf of another, as when the British Crown farmed out its sovereign claims over Rupert's Land to the HBC. My definition of occupancy is similarly simple: a sub-sovereign right to land and the resources on it. Occupancy rights can be layered — as in Euro-Canadian contexts where fee simple property owners can lease out land without impinging on their own title — but the enjoyment of all such layered occupancy rights requires the abiding consent of an entity enforcing a sovereign claim. To overturn an occupancy right guaranteed by the sovereign, one seeks to persuade the occupant or sovereign to relinquish or adjust the right by mutual consent, or one seeks to replace the sovereign by exercising sovereign force. A sovereign power can remove occupants at will,

² Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge: Massachusetts: Harvard University Press, 2005), 9.

though it can be constrained by the rules it sets out for itself to regulate occupancy rights.

However, sovereignty is ultimately based on a recognition of force over a territory, not law. Thus one can also make a false sovereign claim over land without having the power to actualize it, as, for example, the British Crown's claim over Rupert's Land. This analytical framework of sovereign-occupant rights guides the following discussion of the two separate systems of tenure.

The crux of Selkirk's ideas about land tenure in Red River hinged on the HBC's charter claims to jurisdiction, monopoly, and fee simple property in Rupert's Land. Selkirk and the HBC's legal consultations in the planning stages of the Red River Colony encouraged them in these claims, particularly that of fee simple tenure.³ However, this approach to colonial administration had fallen out of favour with the Imperial Government, and there was a real possibility, further encouraged by NWC agitation, that Westminster would rescind the charter. Selkirk defended its ongoing value in *A Sketch of the British Fur Trade* in 1815, arguing that fee simple proprietors had a higher vested interest in orderly government and general prosperity.⁴ However, his NWC opponents rejected the charter and its proprietary provisions, and argued that British subjects could only claim land in Rupert's Land through prescription, that is uncontested possession for a number of years.⁵ Selkirk disliked arguments based on tradition, but providing

³ Selkirk to Miles MacDonell, June 13th, 1813, in Oliver, *Canadian North-West*, vol. 1, 182.

⁴ Selkirk also defended the HBC charter from allegations that led to a 1749 inquiry into its charter, and from the fact that it was ignored when the *Canada Jurisdiction Act* was passed in 1803 (Lord Selkirk, *A Sketch of the British Fur Trade in North America; with Observations relative to the North-West Company of Montreal*, 2nd ed. (London: James Ridgway, 1816), in Bumsted, *The Collected Writings*, 82-97). One argument Selkirk did not himself engage here was that the charter had been due for parliamentary ratification seven years after it was passed, and this did not occur (see Desmond Clarke, *Arthur Dobbs Esquire, 1689-1765* (London, 1958); E. E. Rich, *The History of the Hudson's Bay Company, 1670-1870*, vol. I (London, 1958), 558-586; Baker, "Law Transplanted, Justice Invented," 38-42; Joseph Robson, *An Account of Six Years Residence in Hudson's—Bay, From 1793 to 1736, and 1744 to 1747* (London: J. Payne and J. Bouquet, 1752), 81; A. K. Isbister, *A Few Words on the Hudson's Bay Company; with a Statement of the Grievances of the Native and Half-Caste Indians, Addressed to the British Government through their Delegates now in London* (London: C. Gilpin, c.1847), 21-24; and A. Piggott, R. Spankie, and H. Brougham, London, January 1816, in *Hudson's Bay Company (Red River Settlement.): RETURN to an Address of the Honourable the House of Commons, dated 9 February 1849 ...* (London: House of Commons, 1849), 18-20.

⁵ Jn. McTavish, Fraser & Co; Inglis, Ellice + Co. to H. Goulburn, London, March 18th, 1815, in *Papers*, 41.

the enclosure of the land in question, he grudgingly accepted that prescriptive rights had a backing in Imperial law.⁶ In 1813, he had thus instructed Miles Macdonell to issue eviction notices to NWC forts nearing twenty years of existence, because “Twenty years uninterrupted possession though it does not give an absolute right, yet creates a title which cannot be overturned except by a process of peculiar solemnity.”⁷ In other words, he believed the charter granted the HBC rights, but that it he might lose them within certain areas if the claims the NWC was establishing by prescription went uncontested. Selkirk’s emphasis when it came to land tenure was thus on the ways he and his rivals might secure exclusive possession to land.

Selkirk’s preoccupation with exclusive possession in the Northwest played into his view of the nature of Indian Title, especially in light of the HBC’s charter claims and the Royal Proclamation of 1763. The HBC and other private entities in the British North American colonies had long secured rights of access from Indigenous populations, including by acquiring sites for trading posts.⁸ However, the Royal Proclamation reserved to the Crown the right to purchase Indigenous land. The Proclamation excluded Rupert’s Land, but it established a legacy of governmental monopolies on Indigenous land purchases that affected public opinion beyond the Proclamation’s own immediate purview. The American government adopted the precedent, for example, so that Stuart Banner was able to trace a shift in American public opinion based on the Royal Proclamation: in the 1790s, Indigenous land that had not been purchased was thought to be owned by the Indigenous, but by the early 1820s, such land was thought to be owned by

⁶ Bumsted, *Lord Selkirk*, 262; for his lack of sympathy for prescriptive rights, see Lord Selkirk to Robert Semple, April 26th, 1816, LAC MIKAN 114526, Reel A27, 290, and his agent’s summary of Selkirk’s position in Samuel Gale to W. B. Coltman, Red River, August 23rd, 1817, SP 3965.

⁷ Lord Selkirk to Miles MacDonnell, June 13th, 1813, in Oliver, *Canadian North-West*, vol. 1, 182.

⁸ Ray et al., *Bounty and Benevolence*, 46.

state and federal governments.⁹ A similar shift took place more slowly in what remained of British North America after the American Revolution. When the governor of British North America reported on the situation at Red River in late 1816, he referred to the “Indians” as “lords of the soil.”¹⁰ In the legal parlance of the time, it is quite clear that a lord of the soil indicated a fee simple property owner, with specifically the same sort of proprietary claim the HBC made over Rupert’s Land.¹¹ However, by the 1840s, the long-serving Secretary of State for War and the Colonies, Lord Grey, whose opinions would become particularly influential in Red River, was quite clear that he disagreed with the idea “that the aboriginal inhabitants of any country are proprietors of every part of its soil of which they have been accustomed to assert any title.”¹² Finally, in 1888 the Judicial Committee of the Privy Council ruled that property rights had ultimately been vested in the Crown rather than Indigenous occupants. The judgement assumed

⁹ “The Royal Proclamation,” October 7th, 1763, accessed November 7th, 2018, http://www.solon.org/Constitutions/Canada/English/PreConfederation/rp_1763.html. Kenneth Narvey in “Royal Proclamation” argued that Rupert’s Land was included within the rights guaranteed by the Royal Proclamation (183-184), though the simplest reading of the proclamation excludes it (Darren O’Toole, “The Red River Resistance of 1869-1870: The Machiavellian Moment of the Métis of Manitoba” (PhD thesis, University of Ottawa, 2010), 95 footnote 59); Banner, *How the Indians Lost Their Land*, 150. The shift was sealed in 1823 by *Johnson vs. McIntosh*.

¹⁰ Sherbrooke to Bathurst, Quebec, November 11th, 1816, in *Papers*, 63. NWC apologists also explained that their Métis allies “consider themselves the possessors of the country and lords of the soil” (W. M. McGillivray’s “STATEMENT Relative to the Settlers from the Red River,” Kingston, August 15th, 1815, in *ibid*, 24). In contrast, Canadian governors were routinely advised to assert Crown title by virtue of the Conquest, ignoring that the French neither conquered the Indigenous nor extinguished their title (Greer, *Property and Dispossession*, 404).

¹¹ See the 1821 case of *Arnold vs. Mundy*, in William Halsted, *Supreme Court of Judicature of the State of New Jersey*, Volume 1, 3rd edition (Jersey City: Frederick D. Linn & Co., 1886), 29; Zephaniah Swift, *A Digest of the Laws of the State of Connecticut, In Two Volumes*, vol. 1 (New Haven: S. Converse, 1822), 18; *Rickards against Bennett and Another*, in Richard Vaughan Barnewall and Cresswell Cresswell, *Reports of Cases Argued and Determined in The Court of King’s Bench, With Tables of the Names of the Cases and the Principal Matters, Volume 1: Containing the Cases of Michaelmas, Hilary, and Easter Terms, in the 3rd and 4th Years of Geo. IV. 1822, 1823* (London: J. Buttersworth and Son, and J. Cooke, 1823), 229; and *United States of America v. Fernando M. Arredondo and Others*, in *Record in the Case of the USA v. Fernando M. Arredondo and Others, Supreme Court of the United States, January Term, 1831* (Washington: Duff Green, 1831), 264-265.

¹² *The Times*, December 29th, 1846, cited Amicus, “Correspondence relating to Earl Grey’s Letters of Instructions,” *The Colonial Intelligencer; or Aborigines’ Friend* 3 (1847): 37-43. Ross cited Grey’s opinions authoritatively (*Red River*, 2-3) and, as Secretary of State for War and the Colonies from 1846 to 1852, Grey was responsible for receiving petitions from Red River regarding the HBC and its claims; analyses of his role appear in John Perry Pritchett, “Some Red River Fur-Trade Activities,” *Minnesota History Bulletin* 5:6 (1924): 419-422; J. M. Bumsted, “The Colonial Office, Aboriginal Policy, and Red River 1847-1849,” in *Thomas Scott’s Body and Other Essays on Early Manitoba History* (Winnipeg: University of Manitoba Press, 2000): 91-114; and Barry Cooper, *Alexander Kennedy Isbister: A Respectable Critic of the Honourable Company* (Ottawa: Carleton University Press, 1988).

the Royal Proclamation had defined Indian tenure as only “a personal and usufructuary right, dependent upon the good will of the sovereign,” but declined to define “the precise quality of the Indian right.”¹³

Selkirk was well aware of the ever-uncertain and evolving nature of the idea of Indian Title. In 1803 and 1804, he had visited Prince Edward Island, Nova Scotia, both Canadas and New England, and took copious notes about the different ways Indigenous tenure was treated. He interacted with squatters and noted Indigenous dispossessions, confirmations of Indigenous title, and extinguishments of Indigenous title. He also spoke with the Haudenosaunee leaders Joseph Brant and John Norton, from whom he learned of Indigenous expectations of reciprocity in land arrangements.¹⁴ His diary mostly offers facts rather than opinions, though his attitude can be glimpsed from an objection to a substantial reserve granted to a dozen Mississauga families, parcels of which they were selling: it was “surely paying them too great a compliment to allow them to dictate in such a manner + keep the Colony disjointed.”¹⁵ A few years later, Selkirk’s Upper Canadian agent purchased him land from another Euro-Canadian at Grand River. Here, the Haudenosaunee had forced the Canadian government to allow them to exercise their sovereignty by disposing of land within the Canadian system of legal tenure. Officially, their tenure stemmed from a Crown grant, and they used legal forms in keeping with that. In practice, the Haudenosaunee retained a special authority over supposedly alienated land: in Selkirk’s

¹³ *St. Catherines Milling and Lumber Company v The Queen (Ontario)*, [1888] UKPC 70, 14 App Cas 46, (1889) LR 14 App Cas 46, The Judicial Committee of the Privy Council Decisions, accessed November 6th, 2018, http://www.bailii.org/uk/cases/UKPC/1888/1888_70.htm. It closed a provincial-federal jurisdictional dispute that hinged on whether property title passed to the Crown on the assertion of sovereignty, or on the extinction of Indian Title.

¹⁴ Patrick White, ed, *Lord Selkirk’s Diary, 1803-1804: A Journal of His Travels in British North America and the Northeastern United States* (Toronto: The Champlain Society, 1958), 115; 121-122; 196; 245; 257; 304; 307.

¹⁵ Selkirk himself could not imagine that the land had been reserved to the Mississauga for their own benefit, but assumed that speculating officials planned to discretely appropriate it later (White, *Lord Selkirk’s Diary*, 161-162). Settlers similarly thought little of those Indigenous persons who could speak English, and who understood and tried to commercialize the value settlers placed on land (ibid, 115-116).

Grand River purchase, the previous owner's deed returned to the Crown, but was then only deeded to Selkirk with explicit Haudenosaunee approval.¹⁶ Thus, by the founding of the Red River Settlement, Selkirk was well aware of wide variances in the treatment of Indigenous title. Rupert's Land was a jurisdiction as yet untouched by discussions of Indigenous title, giving him a certain freedom in deciding how he would approach it.

It was thus easy enough for Selkirk to treat Indigenous land claims as irrelevant in light of the HBC's proprietary claims. In 1811, he instructed Governor Miles Macdonell to offer to purchase the Colony's land from the Indigenous population, but only if the settlement provoked Indigenous anger. Even then, Macdonell was to negotiate land payments as annuities rather than lump sums so they could be broken off at a moment's notice — Selkirk apparently did not believe that rescinding those annuities would rescind the Colony's land rights. In 1813, Macdonell reported that the Saulteaux claimed not to own the land along the Red and so were unable to sell it. Selkirk's response in his 1814 instructions was that no "formal purchase" was necessary, as "I was indeed mistaken in supposing that a purchase from the Indians would strengthen our rights either of property or of jurisdiction." Instead, he counselled that an annual present be given to the Saulteaux in exchange for peace and for not hunting around the settlement.¹⁷ There is no indication that Selkirk's belief, that his rights within the Imperial framework were unaffected by Indigenous land rights, had changed prior to the negotiation of the

¹⁶ White, *Lord Selkirk's Diary*, 148; the Selkirk Papers include record of a land conveyance from the Haudenosaunee to one of his neighbours, directly grounding their title in the Haldimand Grant, though the plan to purchase failed ("Copy of a Surrender made by the Mohawk, or Six Nation Indians in favor of William Dickson Esquire," March 13th, 1809, SP 20024-20026; Charles Johnston, "Introduction," in Johnston, *Valley of the Six Nations*, lxiii-lxv); Claus's Speech at Six Nations Council at Fort George, May 29th, 1807, in Johnston, *Valley of the Six Nations*, 138-139; A Speech by the Six Nations in Council, May 29th, 1807, in *ibid*, 168; Alexander McDonell to Lord Selkirk, York, November 28th, 1808, in *ibid*, 173-174.

¹⁷ Lord Selkirk to Miles McDonnell, 1811, SP 177; Miles McDonnell to Lord Selkirk, the Forks, July 17th, 1813, SP 790; Selkirk to Miles Macdonell, April 12th, 1814, SP 1013.

Selkirk Treaty. Had Selkirk begun admitting the necessity of securing Indigenous title, it would have delegitimized the settlement's occupancy from 1812 to 1817. Selkirk had no desire to provide such fodder for NWC apologists.¹⁸ Providing on-the-ground circumstances permitted it, he was hoping to avoid treating for Indigenous land rights.¹⁹

Selkirk also denied that Indigenous populations had any sense of higher or sovereign land ownership, but assumed they thought of their own rights as merely those of occupants. When predicting Indigenous opposition to the settlement, he wrote that only those Saulteaux in the "immediate vicinity" of the Colony could have a plausible objection to it.²⁰ His interest in Indigenous conventions of land ownership was minimal. To him, the Indigenous population was made up of occupants who could be displaced by the HBC's similar but higher occupancy right as a fee simple property owner. This provided a way to fold Indigenous occupancy rights into

¹⁸ Kenneth Narvey interpreted later comments to say that Selkirk "returned to the concept of a formal purchase" before the Selkirk Treaty was signed, but the evidence he cited in favour did not speak to what Selkirk believed was required of him under Imperial law (Narvey, "Royal Proclamation," 188-190). Furthermore, a pamphlet by Selkirk's employee Samuel Gale and cited in an early printing by the approving Earl, made it clear that the two of them believed that the terms of the Conquest, at least, reserved under the Crown "for the benefit of the Indian natives, all the lands and territories not included ... within the limits of the Hudson's Bay Company," implying both the newer understanding of Indigenous title and the opinion that Indigenous title to land in Rupert's land within the Imperial framework had never existed (Samuel Gale, *Notices on the Claims of the Hudson's Bay Company: to Which is Added, a Copy of Their Royal Charter* (London, John Murray, 1819), 39; Lord Selkirk to John Greig, December 2nd, 1818, SP 5562-5563). Bumsted similarly believed that the rationale provided in the Pemmican Proclamation indicated that Selkirk had come to doubt the charter's authority (Bumsted, *Lord Selkirk*, 251, 262), but that conflicts with the later Selkirk to Miles Macdonell, April 12th, 1814, SP 1013.

¹⁹ In this capacity, see also Edward Ellice's testimony to the 1857 Select Inquiry on the HBC. Ellice had been a leading figure of the NWC and, after its coalescence with the HBC, an important director of the new company. He was familiar with all arguments made about the charter, having at different times defended each opposing side. When asked about the idea of Indian Title, he noted that it was "very difficult altogether" because of inconsistent handling in North America; then, when asked whether Selkirk had compensated the Indigenous population for land, he responded that "I never heard that he made any, and I am inclined to think he would have made none, except that he wanted at that time to keep the Indians at peace" (Edward Ellice, June 23rd, 1857 in "Minutes of Evidence," in *Report*, 327-328, 347). Keeping peace rather than purchasing land was indeed the crux of Selkirk's position.

²⁰ Instructions from Lord Selkirk to Miles McDonnell, 1811, SP 177-178; Selkirk to the Governor, Deputy Governor, and Committee of the Hudson's Bay Company, Penge Place, February 14th, 1815, in *Papers*, 3; Lord Selkirk to Miles McDonnell, London, March 23rd, 1815, SP 20041. Despite this claim, in 1815 Selkirk assumed that the greatest Indigenous claims to Colony land would come from the Assiniboine, likely due to the NWC's Sir Alexander Mackenzie (Lord Selkirk to Miles McDonnell, London, March 23rd, 1815, SP 20041; True copy of minute by Miles McDonnell, signed in Golden-Square, May 24th, 1811, in *Papers*, 17), and a further letter from an agent saying the Saulteaux only pretended to claim that land and their pretensions could be bought out and the Saulteaux attached by gifts to the Colony (Colin Robertson to Lord Selkirk, Terrebonne, February 22nd, 1815, SP 20134).

the Imperial framework: in *A Sketch of the British Fur Trade*, he wrote of “the Indians who are the occupiers, and the Company who are the proprietors, of the land.” Under that HBC proprietorship, Selkirk planned to establish a system giving the Indigenous “permanent tenure of their hunting grounds, as nearly as practicable on the footing of private property” — but even then, it would only near the footing of private property.²¹ In 1816, he instructed his agents to lay the groundwork for that plan, apparently thinking that a higher fur trade price and guarantee to help drive anyone they liked from their assigned districts would persuade the Indigenous “feudatories” to drive off the NWC and adhere to his scheme.²² Because the HBC represented the sovereign authority, it could organize occupancy rights as it willed, and could organize Indigenous rights to fall beneath its own fee simple rights.

However, the Indigenous inhabitants of Red River may have thought that Selkirk respected their land claims. For one thing, the Royal Proclamation created the expectation, even in territories explicitly excluded by its text, that the Imperial framework dictated sovereign-to-sovereign negotiations for land purchases. This implied respect for Indigenous land rights and sovereignty.²³ Furthermore, though Selkirk did not respect Indigenous sovereignty in Red River, his earlier involvement in Grand River may have created a false reputation for him. He had respected the Haudenosaunee’s authority at Grand River under British legal forms. He may also have seemed an ally in their fight to receive the last third of a land grant promised to their authority: Selkirk’s agent hoped to buy that last third from them, and in 1808 wrote to Selkirk

²¹ He first fleshed out these ideas in Lord Selkirk, *Observations on a Proposal for forming a Society for the Civilization and Improvement of the North American Indians within the British Boundary* (London, 1807); Lord Selkirk, *A Sketch*, 98-100. Bumsted assumed that the end of the *Sketch* was rushed, and that Selkirk did a poor job of outlining an alternative solution for solving the conflict over the fur trade in the Northwest, but the ending takes on a different light were Selkirk defending the charter by dismissing Indigenous claims (Bumsted, *Lord Selkirk*, 273).

²² Lord Selkirk to Colin Robertson, April 25th, 1816, LAC MIKAN 114526, Reel A27, 292-293.

²³ Greer, *Property and Dispossession*, 404.

that he agreed with the Haudenosaunee's claim that it had been promised to them.²⁴ Many Haudenosaunee served as fur trappers in the Northwest and sometimes got involved in resource disputes there, and the Red River Sauteaux had relatives among the Haudenosaunee's Mississauga neighbours. There is thus a good chance that Selkirk's reputation, derived from his agent's dealing in Grand River, would have factored into Indigenous attitudes towards the Red River settlement and later Selkirk Treaty negotiations.²⁵

Indigenous circumstances and ideas would have been more influential, however. The Indigenous inhabitants of Red River in 1812 broadly consisted not only of bands of Sauteaux, but also of many Cree, Assiniboine, and Métis bound together in the Iron Alliance. The core of this alliance was the Cree and Assiniboine, who since the mid-1700s had shared the Red River valley and defended it against a Sioux coalition to the south. Cree and Assiniboine then began to shift towards a "horse-and-bison economy" on the western plains, and increasingly lost interest in fur-bearing animals and woodland game. Some Sauteaux began venturing to Red River from villages around lakes to the east, whence they would annually return with furs for Canadian traders. Some ceased commuting back and joined the Iron Alliance against the Sioux. By the 1790s, an examination of fur traders' journals makes it seem that the Sauteaux had become the

²⁴ Quoted in Hill, *The Clay We Are Made Of*, 152-153.

²⁵ John Tanner, *A Narrative of the Captivity and Adventures of John Tanner; (U.S. Interpreter at the Saut de Ste. Marie.) during Thirty Years Residence among the Indians in the Interior of North America*, ed. Edwin James (London: Baldwin & Cradock, 1830), 90-91; many Haudenosaunee employees originated near Montreal (Nicole St-Onge, "'He was neither a soldier nor a slave: he was under the control of no man': Kahnawake Mohawks in the Northwest Fur Trade, 1790-1850," *Canadian Journal of History* 51:1 (2016): 1-32), but their ties with Grand River remained. In 1804, Selkirk recorded that Brant spoke to him of an obligation to avenge the deaths of Kahnawake relatives, who had been killed far in the Northwest by the Gros Ventres (White, *Lord Selkirk's Diary*, 304). Selkirk's Grand River agent, Alexander Collachie McDonell, is not to be confused with Alexander MacDonell, whom Selkirk recruited in 1814 and who held a variety of leadership positions at the Colony (J. M. Bumsted, "McDONELL (Collachie), ALEXANDER," in *Dictionary of Canadian Biography*, vol. 7, University of Toronto/Université Laval, 2003–, accessed November 6th, 2018, http://www.biographi.ca/en/bio/mcdonnell_alexander_7E.html; Edith Burley, "MACDONELL, ALEXANDER," in *Dictionary of Canadian Biography*, vol. 6, University of Toronto/Université Laval, 2003–, accessed November 6th, 2018, http://www.biographi.ca/en/bio/macdonell_alexander_6E.html).

principal Indigenous people in the area.²⁶ However, the warring coalitions made the Red River valley unsafe. Both Sioux and Iron Alliance considered the valley a war road. The Saulteaux hesitated to replicate villages there, as Sioux war parties visited the Forks as recently as 1811.²⁷ The sovereign claim of the Iron Alliance and the sovereign claim of the Sioux competed against each other, each trying to enforce its regime of resource exploitation on the area. At the arrival of the settlers, the Red River valley was a disputed and dangerous no man's land, open for occupation to anyone who could hold it.

Indigenous ideas about land tenure cannot be teased out as individually as Selkirk's, but despite the diversity of the Indigenous Selkirk Treaty negotiators, they held the same fundamental ideas concerning political authority and land tenure. By 1810, the Red River cart and increased numbers of horses led most of the Iron Alliance, including many but not all of its Saulteaux members, to adopt a plains economy and abandon direct participation in the fur trade.²⁸ However, both those bands aligned more with woodland economies and those aligned more with plains economies followed the same basic political structure. Bands tended to be small, and their structures and membership were neither rigid nor imposed. Bands were not strictly ethnically homogenous, but formed organically through kinship, friendship, and immediate shared interests. Indigenous authority was based on a person's ability to exercise an ongoing influence over those who might follow him. A chief's power was thus inherently

²⁶ Vrooman, *The Whole Country*, 6-7, 16-17, 20-21; Robert Alexander Innes, *Elder Brother and The Law of The People: Contemporary Kinship and Cowessess First Nation* (Winnipeg, University of Manitoba Press, 2013), 43-63; Peers, *The Ojibwa*, 18, 45; Mary Jane Schneider, "First Settlements in the Red River Valley," *North Dakota Quarterly* 65:4 (1998): 18-20. Schneider noted that the Monsoni were also inhabitants of the Red River Valley with the Cree, Assiniboine, and Saulteaux. The Saulteaux were not immediately accepted by Cree and Assiniboine, but apparently they reconciled by 1802 and soon lived together (Coues, *The Manuscript Journals*, vol. 1, 165, 203, 429).

²⁷ Hickerson, "The Genesis," 293-294, 305; Schneider, "First Settlements," 19-22; John Tanner seems to place a Sioux raid the year prior to the settlers' arrival (Tanner, *A Narrative*, 186-188).

²⁸ Vrooman, *The Whole Country*, 21; Shaw, "In Order," 80.

unstable, as one observer noted of a contemporary Iron Alliance war party of plains and woodland bands where

not one ... would acknowledge any authority superior to his own will. It is true, that ordinarily they yield a great deference, and a degree of obedience to the chief each may have undertaken to follow; but this obedience, in most instances, continues no longer than the will of the chief corresponds entirely with the inclination of those he leads.²⁹

Bands were political units, but their membership fluctuated with disagreements among members. Chiefs could have enough authority to represent their bands to outsiders, and even to allocate unoccupied resources to outsiders, but bands did not require a chief to regulate their occupancy customs. The ultimately authority of a chief was advisory, and this was as much a fixture among the plains bands as it was the woodland bands of the Iron Alliance.³⁰ The Indigenous signatories of the Selkirk Treaty all shared this fundamental paradigm of authority.

Whether the Indigenous signatories shared ideas about land tenure is another question. Historical geographer Cole Harris believed that moving away from woodland, fur-trapping economies had an effect on ideas about land tenure. He explained that force dictated territorial rights on the plains, and yet bands moved far beyond the large areas they claimed as home territories. He contrasted this with woodland bands' respect for hunting grounds, cultivated plots, and sugar groves, which entailed stronger territorial claims. Though outdated, this is a significant hypothesis in the context of the Selkirk Treaty.³¹ The Indigenous negotiators varied

²⁹ Tanner, *A Narrative*, 204-207.

³⁰ Tanner, *A Narrative*, 91-92, 213-214; Binnema, *Common and Contested Ground*, 11-12; Innes, *Elder Brother*, 59; Innes, "Multicultural Bands," 139; "Reports on the Eastern Coast of Lake Winnipeg, 1815," HBCA B.16/e/1, 7; John McDonald, "Reports of Upper Red River District for the Year 1822/23," HBCA B.22/e/2, 5-7.

³¹ Cole Harris and John Warkentin, *Canada Before Confederation: A Study in Historical Geography* (Ottawa: Carleton University Press, 1991), 241-242. Harris cited Peter Fidler's "General Report on the Manetobah District for 1820 by Peter Fidler" in the HBCA here. It should be noted that when Harris replaced his volume with *The Reluctant Land: Society, Space, and Environment in Canada before Confederation* (Vancouver: UBC Press, 2008), he did not attempt to delineate Indigenous conceptions of tenure to the same degree (see chapters 1, 4, and 10).

along the woodlands-plains spectrum and could presumably differ even among themselves about the fundamentals of land tenure.³² On closer examination, however, it appears that both ends of the spectrum simply emphasized different aspects of the same system of thought.

The Plains Cree are a case in point. According to John Milloy, the Plains Cree had proprietary ideas about individual guns, horses, and tents, but these ideas did not extend to land. Because their economy revolved around a collective endeavour, the bison hunt, they did not divide up their territory into individual or band hunting grounds.³³ Edwin Denig, a fur trader writing in the 1850s about Plains nations including the Cree and Assiniboine, was more specific: Plains nations thought that the land had been created by a divine being who gave it to them for subsistence purposes. They did not carve land out for themselves “but the means of subsistence, which every Indian deems himself entitled to, even should he be compelled to destroy his enemies or risk his own life to obtain it.” In times of peace, all could roam as they pleased. Territorial divisions were the product only of the immediate circumstance that nations happened to be at war. Independent, cooperating bands formed rough, temporary borders by joint exercises of sovereignty, warding off other coalitions of bands. If its own subsistence were threatened by scarce game, a coalition challenged the sovereign rights carved out by rival coalitions in other

³² J. P. Pruden, “A Short Account of the Carlton District 1815,” May 29th, 1815, HBCA B.27/e/1, 2-3; J. P. Pruden to William Williams, “Report of Carlton District from the 27th of May 1818 to May 1819,” May 28th, 1819, HBCA B. 27/e/2, 2-3; Peter Fidler, “General District of Red River District,” HBCA B.22/e/1, 20-21.

³³ John Milloy, *The Plains Cree: Trade, Diplomacy and War, 1790 to 1870* (Winnipeg: University of Manitoba Press, 1988), 78.

territories.³⁴ These coalitions and the sovereign boundaries they enforced often followed ethnic lines, but they were defined primarily by a sense of shared political interest.³⁵

Denig also noted that a sense of exclusive land use was a part of the way the Plains Cree and Assiniboine governed sub-sovereign occupancy. Though neither cultivated plots themselves, they respected the small, individual fenced claims of others. This respect would last only as long as crops were actually in the ground: “It is in fact merely loaned from the general district for the purpose of him who wishes to cultivate.” The moment an individual ceased working the land, the claim would evaporate. Because land was a space for necessary communal resources, it could be temporarily, but not permanently alienated. When the land taken up in individual plots did not threaten collective subsistence, the individual plots were respected.³⁶ Bands within a plains economy thus recognized both sovereign rights and exclusive rights of occupancy, but each was only useful insofar as it helped manage the primary purpose of their land system: subsistence.

Those Saukteaux further towards the woodland pole of the woodland-plains spectrum had a greater interest in agriculture. While the Sioux threat made the Saukteaux wary of recreating their long-lasting settlements, they maintained an important village at the relatively defensible

³⁴ Edwin Thompson Denig, “Indian Tribes of the Upper Missouri, Edited with Notes and Biographical Sketch by J.N.B. Hewitt,” *Forty-sixth Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution, 1928-1929* (Washington: Government Printing Office, 1930), 378-379, 476-478. The manuscript they reproduced was dated to roughly 1854. Denig was specifically looking at those within the bounds of American sovereign claims, but did note that the Cree and Saukteaux within the bounds of British sovereign claims “are a great deal farther advanced in knowledge of every kind than those of whom we write” (476).

³⁵ Such coinciding political interests could help bring about ethnic mergers, however, as had begun to happen to the Cree and Assiniboine in Red River at this period, even as they maintained their own political interests (Binnema, *Common and Contested Ground*, 4-15; Patricia Albers, “Changing Patterns of Ethnicity in the Northeastern Plains, 1780-1870,” in Jonathan D. Hill, ed., *History, Power, and Identity: Ethnogenesis in the Americas, 1492-1992* (Iowa City: University of Iowa Press, 1996), 91, 99).

³⁶ Denig, “Indian Tribes,” 476-477. Denig noted that the Mandan, Gros Ventres, and Arikara tilled small patches, and that the Plains Cree cultivated little until the 1850s and decline of the bison herds (Milloy, *Plains Indians*, 109).

Netley Creek, a northerly tributary to the Red.³⁷ Within living memory, its inhabitants had begun cultivating a considerable amount of corn, but more significant to their ideas of land tenure was the community's relationship to sugar production. Saulteaux families had recognized rights to specific groves of sugar-producing trees, and newcomers would either have to ask permission to use them, or find an unoccupied grove. Laura Peers even speculated that claims to such groves were some of the first permanent Saulteaux ties to the region.³⁸ The trader Peter Grant, writing in 1804, reported a similar proprietary convention in Saulteaux families' exclusive winter hunting grounds. However, "[i]n case of famine ... any one may abandon his district and seek a better hunt on his neighbour's land without incurring the least ill will or reproach" — the right was exclusive only insofar as it provided for orderly subsistence under normal conditions.³⁹

When it came to the orderly exploitation of natural resources, both the conventions of plains and woodlands bands thus emphasized the idea of subsistence. Their practices were tailored to their specific economies, but fundamentally they thought the same way about land. Plains bands living together hunted bison together, and were able to trade bison products for any other needs they had. Woodland bands instead tended to find that the least fractious way of exploiting the natural resources within their territory was to partition exclusive rights among themselves. Red River's Indigenous inhabitants appreciated both plains and woodland

³⁷ Vrooman, "*The Whole Country*," 19; formerly the site of a Cree village wiped out by an epidemic in the 1780s that had also likely suffered devastating Sioux attacks, this was the most established Saulteaux village in the Red River area by 1810 (Peers, *The Ojibwa*, 19-20, 237, note 122; William Warren, *History of the Ojibway People*, second edition, ed. Theresa Schenck (St. Paul: Minnesota Historical Society Press, 2009), 184, 184 notes 8 and 9). As far from the Sioux as possible while still near the Red River, its swampy location made it more defensible than southern alternatives (April 18th, 1832, William Cockran, "Journal, 1831-1832," CMSA, Section V, Part 2, Reel 36).

³⁸ Peers, *The Ojibwa*, 54; Tanner, *A Narrative*, 86, 180; Instructions from Lord Selkirk to Miles McDonnell, 1811, SP 176-177.

³⁹ Peter Grant, "The Sautaux Indians," c. 1804, in L. R. Masson, ed., *Les Bourgeois de la Compagnie du Nord-Ouest: Récits de voyages, lettres et rapports inédits relatifs au Nord-Ouest canadien, deuxième série* (Quebec: A. Côté and Co., 1890), 326.

economies. Some Plains Cree continued producing sugar and hunting furs, just as bands like the Saulteaux-Métis at Turtle Mountain continued to allocate areas of exclusive resource extraction among kinship groups as they transitioned into a plains existence.⁴⁰ Regardless of where the Indigenous signatories and participants in the Selkirk Treaty stood on the woodland-plains spectrum, they did not think about land differently. Their concern with subsistence would be irrevocably bound up in any land deal they negotiated; the Saulteaux, for example, would later prove perfectly willing to refuse ongoing annuities when concerned that past land agreements would not provide for their subsistence.⁴¹

By the arrival of the settlers in 1812, the Cree, Assiniboine, Métis, and Saulteaux in the Iron Alliance had also reached a consensus about their relative land rights in Red River. Though the rival Sioux and the Saulteaux appeared to have become predominant in the wider Red River area by the 1790s, the Plains Cree and Assiniboine further west continued to frequent and attach importance to the Red River and Lower Assiniboine. Partly rooted by ancestral burial grounds, they continued to join their Saulteaux allies on expeditions against the Sioux to expand the Iron Alliance's territory. They never relinquished their claims, and, as late as 1860, Plains Cree who had long abandoned any familiarity with their woodland roots continued to visit the Forks.⁴²

Their plains economy allowed them to minimize the time they spent in the Red River valley, but

⁴⁰ Shaw, "In Order," 43; April 4th, 1816, Brandon House Post Journal, 1815-1816, HBCA B.22/a/19.

⁴¹ Peguis changed policy on the sale of Sugar Point in the 1830s (July 4th, 1833, William Cockran, "Extracts of a Journal kept at R. R. S. 32/33," CMSA, Section V, Part 2, Reel 36). Similarly, in 1873 when the Saulteaux thought their Treaty 1 promises had not been kept, they refused their annuities (Carter, "They Would Not Give Up," 179).

⁴² Schneider, "First Settlements," 18-20; Albers, "Changing Patterns," 100 (contrast with the census at the end of Peter Fidler's Journal at Red River Settlement ... 1815, SP 18513). Peers, *The Ojibwa*, 19-20; Andrew McDermot, "Peguis Refuted," *Nor'-Wester*, February 28th, 1860, page 3; Donald Gunn, "Peguis Vindicated," *Nor'-Wester*, April 28th, 1860, page 4. For the importance of burial grounds, see John Shaw's dissertation, which cites William Warren in support of the idea that graves of ancestors helped connect the Plains Indians of the Turtle Mountain band to their territory ("In order," 43); a few Plains Cree were also still trading at Red River (J. P. Pruden, "A Short Account of the Carlton District 1815," May 29th, 1815, HBCA B.27/e/1, 2-3); Tanner, *A Narrative*, 202-207; John Schultz, "The Old Crow Wing Trail," *MHS Transactions* Series 1, No. 45 (April 5th, 1894), 12.

the Iron Alliance recognized their ongoing right. As Miles Macdonell told Lord Selkirk in 1813, the Saulteaux he found occupying the Red River area told him the land they were on belonged to the Cree. In 1817, they reiterated to Commissioner Coltman that their occupancy was “only by sufferance” of the Cree.⁴³ The Cree and Assiniboine were moreover known for both insisting on their sovereign claim and tolerating intruding occupants.⁴⁴ Two sets of Indigenous rights can thus here be delineated, the lower claim of the Saulteaux and the higher claim they recognized in the Cree. Within the matrix of the Iron Alliance, the Cree had sovereign rights and the Saulteaux had occupancy rights over the land occupied by the Red River settlement.

A difference of opinion would later develop between the Cree and Saulteaux about their relative land rights due to a particular emphasis the latter placed on the length of one’s presence when discussing land rights. This is demonstrated in the Ottawa warrior John Tanner’s *Narrative*, wherein he recounts personal disputes with individual Saulteaux over land rights on three occasions. Concerning a first opponent, Tanner wrote that “I had an equal right with him, and was strong to maintain that right,” but an important Saulteaux chief friendly to Tanner pacified the situation. The second time, an old unsuccessful Saulteaux hunter told Tanner he had no right to hunt bison nearby, and Tanner simply ignored him. The third time, Tanner was unwilling to invite revenge by killing his challenger, and left a band over it. In all three cases, the ostensible grievance was Tanner’s resource exploitation, recent arrival, and status as a stranger.⁴⁵ The importance of this Saulteaux sense of longevity was also noted by Alexander

⁴³ Miles McDonnell to Lord Selkirk, July 1813, quoted in Lord Selkirk to Governor, Deputy Governor, and Committee of the HBC, in *Papers*, 2; Coltman to Sherbrooke, Quebec, May 26th, 1818, in *Papers*, 145.

⁴⁴ On Cree and Assiniboine tolerance of occupants while maintaining their sovereign right, see G. A. Belcourt, “Department of Hudson’s Bay,” *Collections of the Minnesota Historical Society, Volume 1. Being a Republication of the Original Parts Issued in 1850-51-52-53-56* (St. Paul: Ramaley, Chaney & Co., 1872), 237; Peter Fidler, “General District of Red River District,” HBCA B.22/e/1, 20-21.

⁴⁵ Tanner, *A Narrative*, 168, 177, 231-235. Tanner had a similar run-in with a Haudenosaunee trapper (91-92). Tanner was an excellent hunter (February 6th, 1814, Miles McDonell No 3, SP 16880).

Ross in the 1850s, when he noted that the Saulteaux had begun claiming a “sort of prescriptive right” equal to that of the Cree.⁴⁶ However, from 1812 to 1817, the Saulteaux had no desire to challenge the higher Cree claim to land. To do so would destroy a cherished relationship, as well as put them in a poor strategic geopolitical position between the rival Cree and Sioux sovereign claims. The Saulteaux came to change the nature of the right they claimed, but in 1817, an emphasis on longevity only reinforced the Cree claim.

The Cree may have had the most immediate right to the settlement’s land, but the Assiniboine and Métis also had their own recognized places within the Iron Alliance’s land matrix. Both shared the same higher rights the Saulteaux were not claiming. Selkirk was unaware of the Métis existence, and when he became so, he insisted on labelling them British subjects. This was an attempt to bind them to the HBC charter and remove any share they had in Indigenous rights under the Imperial legal framework. However, an NWC apologist could claim that already in 1784 a Métis chief near the Forks had demanded over 400£ in goods from fur traders for permission to trade, a clear exercise of sovereign land rights.⁴⁷ The Métis shared the same system of thought informing the plains and woodland economies of Cree, Assiniboine, and Saulteaux. While they only began gathering numbers in the Red River area after early nineteenth-century layoffs caused by fur company reorganizations, like the Saulteaux they would

⁴⁶ Ross, *Red River Settlement*, 159; see also the comments of French Catholic missionary and linguist George Belcourt at Pembina in 1849 about the nature of Saulteaux claims there (G. A. Belcourt to Major Wood, Pembina, Territory of Minnesota, August 20th, 1849, in *Pembina Settlement. Letter from the Secretary of War, transmitting report of Major Wood, relative to his expedition to Pembina settlement, and the condition of affairs on the north-western frontier of the Territory of Minnesota. March 19, 1850. Referred to the Committee on Military Affairs, and ordered to be printed*, 31st Congr., 1st sess., Serial Set Vol. No. 577 Session Vol. No. 8, H.Exec.Doc.51, 36-37).

⁴⁷ *A Narrative of Occurrences in the Indian Countries of North America, since the Connexion of the Right Hon. the Earl of Selkirk with the Hudson’s Bay Company, and His Attempt to Establish a Colony on the Red River; With a Detailed Account of His Lordship’s Military Expedition to, and Subsequent Proceedings at Fort William, in Upper Canada* (London: B. McMillan, 1817), 150-151, note; when discussing how long the Métis had been present along the Red River, Ruth Swan cited a man who claimed to have been at the Forks since 1787, though her other evidence pointed to the beginning of the first decade of the 1800s (Swan, “The Crucible,” 250-251).

have established a more permanent presence were it not for the Sioux threat.⁴⁸ In 1818 Commissioner Coltman, who had gathered much of his information from the Saulteaux, was quite clear in his official correspondence “that the half-breeds, with the Crees and Assiniboins, were always considered the proprietors of the country.” The Métis, and their forefathers, had firmly retained their land rights, and the Métis often complained at the settlers’ occupancy.⁴⁹ The Assiniboine and Métis shared in the Cree’s sovereign claim in the Iron Alliance.

Red River’s Indigenous land matrix thus clearly included a hierarchy of tenures. Selkirk, however, held that the British Crown through the HBC held the only real higher right to land, and consequently flattened out this Indigenous hierarchy into a horizontal plane of equal rights of occupancy. His 1814 instructions to Macdonell instructed him to forgo purchasing land and instead to give presents to the Indigenous population. These were to be calibrated according to the usual proximity and number of the recipients, that is the extent to which they threatened the settlement.⁵⁰ The Saulteaux were usually the most immediately present, so Selkirk preferred to give them more presents than the Cree; though the Cree had the higher right, they spent less time in the immediate area. A spiritual successor to Selkirk emerged half a century later, when the chief Canadian negotiator of Treaty 1 confidently told his Indigenous counterparts that he would

⁴⁸ The Métis cultivated land, attached proprietary conventions to sugar production, and collectively hunted bison on horseback (MacLeod, *Cuthbert Grant*, 106-107; 164 note 45); Miles McDonell to Lord Selkirk, the Forks, July 17th, 1813, SP 793; April 12th, 1814, Miles McDonell No 3, Journal April 22nd, 1813 to April 7th, 1815, SP 16892; November 17th, 1813, Miles McDonell No 3, SP 16865; for terminology see Vrooman, “*The Whole Country*,” 41.

⁴⁹ W. B. Coltman “A general Statement and Report relative to the Disturbances in the Indian Territories of British North America,” June 30th, 1818, in *Papers*, 167; W. B. Coltman to Sir J. C. Sherbrooke, Quebec, May 14th, 1818, enclosed in Sir John C. Sherbrooke to the Earl of Bathurst, Quebec, May 16th, 1818, in *Papers*, 124. Jennifer Hayter wrote that Coltman believed that “the Métis were misguided . . . in their belief that they had a right to land” (Jennifer Hayter, “Racially “Indian”, Legally “White”: The Canadian State’s Struggles to Categorize the Métis, 1850-1900,” PhD thesis, University of Toronto, 2017), 46-47), but misinterpreted Coltman’s comment that they had “acted in the first instance under a mistaken sense of right” to mean that Coltman thought their land right was mistaken, rather than their right to attack the settlers; in keeping with that misinterpretation, she quoted around Coltman’s parenthetical comment concerning “their claim to the soil jointly with the Indians (in favour of which the evidence before me shows that plausible grounds might be assigned).”

⁵⁰ Selkirk to Miles Macdonell, April 12th, 1814, SP 1013.

be negotiating for their occupancy rights alone. The lingering claims of the Plains Cree to Treaty 1 territory would be discussed, but dismissed.⁵¹

In conclusion, Selkirk's emphasized rights of exclusive possession when it came to land tenure. Selkirk's confidence in the charter led him to believe that purchasing land from the Indigenous population would enhance neither his legal rights of jurisdiction nor his rights of property. As the Indigenous occupants of the HBC's property had no recourse to British legal rights of prescription, he did not believe he had a legal necessity to make land arrangements with them, only a practical one. He was aware of the disparity in the treatment of Indigenous land rights in northeastern North America, and, given his dismissal of Indigenous land rights, appears to have banked on it. These ideas heavily inform the argumentation of this thesis.

This chapter has also begun providing answers to the questions left by the historiography of the Selkirk Treaty concerning the land rights of the Saulteaux, Cree, Assiniboine, and Métis in Red River. They all shared the same understanding of political leadership, which in practice was advisory. Their ideas about land tenure also all emphasized subsistence. They were bound together within the framework of the Iron Alliance against their mutual Sioux enemies to the south. The Sioux were the sovereign competitors to the Iron Alliance. There was also a hierarchy of tenures within the Iron Alliance: the Cree, Assiniboine, and Métis shared in a higher sovereign right to land in Red River, though the Cree had the most immediate right to the settlement's land. The Saulteaux's emphasis on longevity meant they believed themselves too

⁵¹ Archibald's reply to Crees concerning a treaty, January 4th, 1871, No. 166, AM P7920/1; see also comments on the claims of Le Sonnant's son Makasis in "The Treaty. Chippewas and Saulteaux in Council. Commission Simpson and the Lieutenant-Governor Meet the Indians," Lower Fort Garry, July 26th, 1871, in *The Manitoban and Northwest Herald*, July 29th, 1871, page 2.

recently arrived to claim more than a lower right, or a right of occupancy, over the area. They would adjust their own claim, but only decades after the Indenture was signed.

Chapter 3: Preserving a Land Framework, 1812-1817

The previous chapter described the matrix of land claims within the Iron Alliance that confronted Selkirk's settlers on their arrival in Red River in 1812. The events of the next five years strained the relationships with the Iron Alliance, however, particularly as the HBC and NWC each attempted to leverage its constituent parts against the other. Both fur trading companies had relationships throughout the Iron Alliance, but the NWC formed a more targeted alliance with many but not all the Métis, and the HBC with many but not all the Saulteaux. Arguments about land rights had a role in the formation of these targeted alliances, as did, in the spirit of the Royal Proclamation, arguments over whether the NWC or the HBC and Colony represented the authority of the Crown. This chapter argues that the inter-Indigenous relationships within the Iron Alliance succeeded in weathering the many tense moments during the tumultuous years between the first arrival of the settlers and the negotiation of the Selkirk Treaty.¹ The opposed members within the Alliance ultimately preserved their own relationships rather than sacrifice them over the question of the Colony's existence. The Métis exercised a sovereign claim that seemed to contradict the Saulteaux's occupancy claim, but the two avoided directly clashing over it. Thus, though the political tensions among the Iron Alliance were directly attached to questions of land rights, the land framework laid out in the previous chapter remained intact at the negotiation of the Selkirk Treaty. This chapter also reveals some important background information relating to the ways in which the Cree, Assiniboine, Saulteaux, and Métis approached Selkirk Treaty negotiations; most noteworthy is the Cree declaration to Macdonell that they did not intend to sell the Colony any land.

¹ This was hardly the first time strained relationships within the Iron Alliance were successfully maintained (See Gaudry, "Kaa-tipeyimishoyaahk," 128)

Relationships within the Iron Alliance were already under a lot of strain when settlers began arriving in Red River in late 1812. Recent consolidations among fur trading companies had lowered fur prices. While many Métis trappers were able to negotiate higher prices on account of their personal contacts among fur traders, this incurred the jealousy of Saulteaux trappers forced to accept standard rates. The numbers of game and fur-bearing animals were also dwindling, causing tension between the newcomer Saulteaux and the Cree and Assiniboine. Saulteaux beaver-trapping parties had to roam further and further south, where they met and were usually defeated by their more extensively horsed Sioux enemies. Horses were more common among the Saulteaux's Cree and Assiniboine allies, who procured them from villages of the Mandan and Hidatsa to the southwest. The Assiniboine, in the face of a steadily declining market for their bison-derived products, then began stealing rather than buying Mandan-Hidatsa horses. The Cree objected to this measure, destabilizing the longstanding Cree-Assiniboine relationship by 1817. While the Cree and Assiniboine soon mended fences, the breach with the Mandan-Hidatsa would be more permanent. This was a problem for horse procurement, but the Mandan-Hidatsa villages had also been a major source of agricultural produce for the Cree and Assiniboine. One alternative was the Red River area, but the constant threat of Sioux attacks prevented their Saulteaux allies from cultivating the fertile valley. The Iron Alliance forged connections with British and Canadian fur traders, but rather than ward off the Sioux such traders thereby became Sioux targets. HBC traders sometimes feared to leave their forts. In 1810, the NWC abandoned its Pembina post as too near the Sioux, and recentered its trade on the Forks.²

² Hickerson, "The Genesis," 309-310, 325-326; Peers, *The Ojibwa*, 48-49, 63-66; February 13th, 1832, William Cockran, "Journal, 1832-1832," CMSA, Section V, Part 2, Reel 36; Milloy, *Plains Cree*, 43-50, 55-64; Swan, "The Crucible," 248-249; Miles Macdonell to Agents NWCo, Fort Daer, March 8th, 1814, SP 969.

A more reliable ally for the Iron Alliance appeared at Pembina when settlers arrived in 1812 and began building Fort Daer. The first Colony fort, it would serve as a base for provisioning the planned settlement near the Forks. Fort Daer also served as a buffer for the settlement; Colony governor Miles Macdonell was a retired soldier, and well aware of Pembina's military significance relative to the hostile Sioux. Its location was a message to the Saulteaux that the Colony could be a useful ally, prepared for a pitched fight against the Sioux instead of a general retreat. Macdonell only joined the settlers in late 1812, but even on the coast of Hudson's Bay he had heard enough to write confidently to Selkirk that the Saulteaux anxiously awaited the Colony for the help it could provide against the Sioux.³ The Premier, the foremost Saulteaux chief in the area, was pleased that Macdonell was more powerful than the traders, and the next year responded positively to Macdonell's request that the Saulteaux set up villages near the Forks. The Saulteaux would have done so earlier had it not been for the Sioux. That summer, Macdonell equipped The Premier and other chiefs for an Iron Alliance expedition against the Sioux.⁴

Most of Red River's Saulteaux had much stronger relationships with the NWC than with the recently arrived HBC. They were nevertheless friendly with the Colony, despite its close association with the HBC. Even more so were the few Saulteaux with stronger ties to the HBC, such as the little-known chief Peguis. Peguis and his small following of fur trappers had become

³ September 14th, 1812, Miles McDonnell No 2, SP 16752-16753; Herbert J. Mays, "MACDONELL, MILES," on *Dictionary of Canadian Biography*, vol. 6, University of Toronto/Université Laval, 2003–, accessed November 6th, 2018, http://www.biographi.ca/en/bio/macdonell_miles_6E.html; September 19th, 1812, in Miles McDonnell No 2, SP 16754; Milloy, *Plains Cree*, 74; February 1st, 1818, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20; Miles Macdonell to Lord Selkirk, York Factory, July 8th, 1812, SP 441. Fort Daer was military in nature; though it had better agricultural prospects, the Sioux threat meant the settlement would be placed further north (Barry Kaye, "The Red River Settlement: Lord Selkirk's Isolated Colony in the Wilderness," *Prairie Forum* 11:1 (1986): 15-17).

⁴ March 12th, 1813, Miles McDonnell No 2, SP 16803-16804; Miles McDonnell to Lord Selkirk, the Forks, July 17th, 1813, SP 790. On The Premier's desire to farm, see October 31st, 1813, Miles McDonnell No 3, SP 16862; and May 29th, 1816, Brandon House Post Journal, 1815-1816, HBCA B.22/a/19.

some of the HBC's best suppliers after a dispute with an NWC trader. In search of allies against the NWC, Macdonell saw and capitalized on Peguis's antagonism towards the company. He hired Peguis to provision the fledging settlement near the Forks, persuaded him to remain nearby, and began referring to him as the "Chief of the Forks." Peguis was a persuasive orator, and his relationship with the Colony helped raised his profile to that of an influential chief. The Saulteaux were, moreover, looking towards fresh voices of influence following the death of Little Shell, the most famous of Red River's Saulteaux chiefs, at the hands of the Sioux in early 1813. Macdonell took advantage of this by bestowing chiefly gifts upon a number of Saulteaux chiefs.⁵ This helped the chiefs raise their own profiles while strengthening their Colony ties.

The primary cement in the relationships Macdonell was building between the Colony and the Saulteaux was shared material interests. Macdonell infuriated the Métis when he announced in January and July of 1814 that he forbade the export of foodstuffs from Assiniboia and then the hunting of bison on horseback. In contrast, the announcements pleased the Saulteaux as well as the settlers. Both hunted bison on foot, which was greatly complicated by hunters on horseback driving off and exciting the herds. Winter usually slowed hunting on horseback, but a meagre snowfall made the winter of 1813-1814 an exception.⁶ Accordingly, the settlers and Saulteaux

⁵ Peers, *The Ojibwa*, 34, 41, 75-75; October 14th, 1812, Hugh Heney, Pembina Post Journal 1812-1813, HBCA B.160/a/3; September 5th, 1812, Miles McDonell No 2, SP 16745; September 9th, 1812, *ibid*, SP 16749; September 30th, 1813, Miles McDonell No 3, SP 16759; May 20th, 1813, *ibid*, SP 16831; Tanner, *A Narrative*, 161, 179-180; Peter Fidler, "General Report of Red River District by Peter Fidler 1819 May," HBCA B.22/e/1; Vrooman, "*The Whole Country*", 202; May 27th, 1814, Miles McDonell No 3, SP 16907; June 16th, 1814, Miles McDonell No 3, SP 16908; February 5th, Miles McDonell No 3, SP 16955. Peguis's grudge was with the NWC's Wills, who died a few years later (January 6th, 1815, Archibald McDonald, Journal at R.R.S. II, January 1st to June 28th, 1815, SP 18244).
⁶ "Proclamation Issued by Miles Macdonell. Jan. 8th, 1814," in Oliver, *Canadian North-West*, vol. 1, 184-185; Peers, *The Ojibwa*, 44, 48; Miles McDonell to Lord Selkirk, the Forks, July 17th, 1813, SP 769; Coltman, A General Statement, LAC MIKAN 114974; Miles McDonell to Lord Selkirk, Red River Settlement, July 25th, 1814, SP 1184-1185. The problems of horsed bison hunters to those on foot were described by Gunn in "History of the Red River Settlement," *Nor'-Wester*, August 17th, 1869, page 1. The issue continued to cause grief for some years (George Simpson to Andrew Colville, York Factory, September 5th, 1822, SP 7767; October 28th, 1831, William Cockran, "Journal 1831-1832," CMSA, Section V, Part 2, Reel 48).

had struggled to feed themselves, and understandably joined forces to enforce Macdonell's proclamations. The NWC compounded their misery by hiring men to keep bison away from the settlement. The shared suffering of settlers and Saulteaux at the hands of the NWC brought them closer together, and in February of 1815, Macdonell successfully evoked it in a speech to a Saulteaux band from Red Lake.⁷

Shared interests were one thing, but the Saulteaux were also convinced that Macdonell, unlike the NWC, was a true representative of their ally King George III. Red River's Indigenous inhabitants understood the reified hierarchies of the British and the ultimate accountability of all Euro-Canadian actors to the Crown. They thus took the question of representativity very seriously in weighing whether to intervene in the ongoing HBC/Colony-NWC struggle. Ottawa John Tanner, a Saulteaux ally, recounted that it took days of convincing before he accepted that of the two the HBC "had the right on its side, or rather, was that which was acting with the sanction of the British government."⁸ The Métis remained skeptical. Macdonell's proclamations had been out of character with Crown actors' past actions, but the Métis were not completely convinced by the NWC either. One of their first actions after dispersing the settlement in 1815 was to write to the Governor of British North America to ask whether Macdonell was supposed to have any authority over them. If that were the case, they wrote, they planned to withdraw to the bounds of American sovereign claims. They received no response.⁹ For his part, Peguis was

⁷ January 11th, 1815, Miles M^cDonell No 3, SP 16946; Schenck, "Against All Odds," 42-43; Deposition de Charles Beautineau, Red River, July 7th, 1817, SP 15849; February 1st, 1815, Miles M^cDonell No 3, SP 16953. The Red Lake Saulteaux agreed with Macdonell's speech, though were more immediately concerned with the Sioux threat.

⁸ September 1st, 1814, Journal at Red River Settlement ... by Peter Fidler, SP 18439; Laudicina, "Droits et metissages," 61-62; September 17th, 1816, Diary August 14th, 1816 to January 23rd, 1817, SP 18632; Tanner, *A Narrative*, 219.

⁹ Deposition of Cuthbert Grant, cited in Coltman, "A general Statement...", in *Papers*, 172, 201; John Pritchard, sworn before John Fletcher, Montreal, February 18th, 1817, enclosed in Sir. J.C. Sherbrooke to Earl Bathurst, Quebec, April 8th, 1817, *Papers*, 90.

confident that the Crown supported the HBC and Colony. Four days after Macdonell announced the restrictions to bison hunting, Peguis accompanied the governor on his annual trip to the HBC's North American headquarters at York Factory. There he slept on board the H.M.S. *Rosamond*, which was guarding Hudson's Bay during the Napoleonic Wars. The ship not only impressed the Crown's power on Peguis, but seemed a clear sign that the Crown supported the HBC and Colony.¹⁰

Macdonell had a second reason to persuade Peguis that the Crown supported the Colony. Peguis would have been familiar with the Royal Proclamation's reservation of Indigenous land purchases to the Crown and, as Lieutenant Edward Chappell of the *Rosamond* wrote,

It seems that [Peguis] had some claims to the territory on which Lord Selkirk's colony now stands; but he had sold his birth-right "for a mess of pottage." Therefore, to keep him in good humour with the infant establishment, he had been brought down on a visit to *York Factory*, where it was intended that he should receive an accumulation of honours.

Significantly, this was three years prior to the Selkirk Treaty. Fortunately, Peguis himself later recalled this early land arrangement in a published statement: after settlers had taken possession of land in Red River without permission, "For the sake of peace, I, as the representative of my tribe, allowed them to remain on our lands, on their promising that we should be well paid for them by a great Chief who was to follow them."¹¹ This promise was probably made in May,

¹⁰ Miles McDonell to Lord Selkirk, York Factory, September 8th, 1814, SP 1225; Edward Chappell, *Narrative of a Voyage to Hudson's Bay in His Majesty's Ship Rosamond Containing Some Account of the North-Eastern Coast of America and of the Tribes Inhabiting That Remote Region* (London: J. Mawman, 1817), 201-202; Donald Gunn, "History of the Red River, Or Selkirk Settlement," *Nor'-Wester*, May 22nd, 1869, page 1.

¹¹ Chappell, *Narrative of a Voyage*, 200 (italics in original); "LETTER from Peguis, Chief of the Saulteaux Tribe at the Red River Settlement, to the Aborigines Protection Society, London," in "Red River Indians," *Colonial Intelligencer* 6 (April to June, 1857): 224-226. Allowing land to the Colony may also have been a source of prestige for Peguis; John Tanner noted the shame involved in being given a gift of a beaver skin from a lesser hunter, and a sort of inverse principle could apply here to land (Tanner, *A Narrative*, 86).

1813.¹² Indeed, on Macdonell's return to Red River, he freely acknowledged that the gifts he was making the Saulteaux were not for lands, and that he expected only "good will and friendship" in return for them. Chappell had thus misunderstood the nature of the land arrangement; it was apparently easy for a Euro-Canadian observer to confuse a provisional land arrangement with a sale of land.¹³ This arrangement would serve as a model for Saulteaux expectations and interpretations of the Selkirk Treaty.

The Saulteaux acted as if this provisional arrangement gave the Colony a legitimate if temporary land tenure. Though they had told Macdonell they could not sell him land because it belonged to the Cree, by July of 1813 they were referring to him as "Master of the soil."¹⁴ The next year, Selkirk instructed Macdonell to back away from a formal purchase of land from the Saulteaux. Macdonell did, and had no Indigenous land concerns to report that year; instead, he comfortably wrote to Selkirk about land surveying and allocating land grants to retired Canadian traders.¹⁵ The settlement had thus clearly achieved a legitimacy within the Iron Alliance's land matrix over Red River. The Saulteaux had temporarily relinquished their occupancy rights over the settlement for the material benefits it could bring them. They were confident in their land rights. The Pemmican Proclamation of January 1814 went well beyond the rights they had

¹² The Premier thought the settlement would be at Pembina, where the settlers had wintered (March 13th, 1813, M^cDonell No 2, 16803-16804; June 19th, 1813, the Forks, Miles M^cDonell No 3, SP 16873). Macdonell's promise to Peguis likely occurred when he stopped at the Forks on his annual journey to York Factory. From May 20th-24th, 1813, he first identified Peguis as "Chief of the Forks" and had dealings with his band (ibid, SP 16831-16833).

¹³ Anon. (possibly Peter Fidler) to Anon., Red River Settlement, October 23rd, 1814, SP 13421; Chappell's extensive dealings with Hudson's Bay's Indigenous inhabitants also resulted in superficial observations (William H. Whiteley, "CHAPPELL, EDWARD," in *Dictionary of Canadian Biography*, vol. 9, University of Toronto/Université Laval, 2003–, accessed November 6th, 2018, http://www.biographi.ca/en/bio/chappell_edward_9E.html).

¹⁴ Miles M^cDonell to Lord Selkirk, the Forks, July 17th, 1813, SP 790-791. Some have not interpreted the 'Master of the Soil' statement to indicate a legitimate land arrangement (Schofield, *The Story*, 144; Laudicina, "Droit et metissages," 57-58), but John Perry Pritchett did, and believed these early arrangements involved more than courtesy or different conceptions of tenure (Pritchett, *Red River Valley*, 112).

¹⁵ Selkirk to Miles Macdonell, April 12th, 1814, SP 1013; Miles M^cDonell to Lord Selkirk, Red River Settlement, July 25th, 1814, SP 1200-1203.

allowed the Colony, but caused only minor disquiet among them. In June, about a month before Peguis and Macdonell left for York Factory, The Premier asked in an oft-cited speech at the NWC's Fort Gibraltar at the Forks,

Who are they—these land workers? what brought them here? who gave them our lands? and how dare they to prevent our traders from purchasing whatever we have to give them upon our own lands? But it would appear that these strangers, these makers of gardens, look upon themselves as the real possessors of these lands...

He went on to explain that if violence broke out, he would side with the NWC.¹⁶ This appears to be the only reported occasion between 1812 and 1817 that any Saulteaux reacted to the NWC's claim that the Colony had stolen their lands. Nevertheless, scholars have consistently used this speech to demonstrate general Indigenous dislike for the settlement, though a few have also believed it to be an NWC fabrication.¹⁷ Neither claim seems accurate; The Premier was simply playing both sides. The bulk of the speech emphasizes his desire for peace, and he made a similar speech of attachment to Macdonell shortly afterwards. Though displeased that the settlement was built north of the Forks rather than at Pembina, and unhappy at the Pemmican Proclamation's high-handed assertion of land rights, he likely appreciated the bison hunting restrictions announced a month later.¹⁸ In general, the allegation that the Colony was stealing Saulteaux land did not much trouble The Premier. By 1816, the NWC ceased trying to leverage

¹⁶ "Speech of the grandes Oreilles," inclosed in Wm. McGillivray to Lieut. Col. Harvey, Quebec, July 6th, 1815, in Sir Gordon Drummond to Earl Bathurst, Quebec, August 16th, 1815, in *Papers*, 14. Compare with "Speech of the Grandes Oreilles," Appendix XIII in *A Narrative of Occurrences in the Indian Countries of North America*, 35-36.

¹⁷ A recent example of the standard use of the speech is Jim Miller, *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada* (Toronto: University of Toronto Press, 2009), 131. Selkirk's brother-in-law doubted the authenticity of the speech (John Halkett, *Statement Respecting The Earl of Selkirk's Settlement Upon the Red River in North America; Its Destruction in 1815 and 1816; and the Massacre of Governor Semple and His Party. With Observations Upon a Recent Publication, Entitled "A Narrative of Occurrences in the Indian Countries," &c* (London, Albermarle Street, 1817), 130-133), and George Bryce, in a claim recently picked up by a couple of scholars, wrote that an NWC trader confessed to having made it up (Bryce, *Manitoba*, 259; Krasowski, "Mediating the Numbered Treaties," 4-5; Ens and Sawchuk, *From New Peoples*, 77 and 540, notes 21-22).

¹⁸ March 12, 1813, M^cDonell No 2, 16803-16804; June 19th, 1813, the Forks, Miles M^cDonell No 3, SP 16873; June 18th, 1814, Miles M^cDonell No 3, SP 16910.

it in their appeals to him.¹⁹ The rest of the Saulteaux likewise appeared confident in their land rights vis-à-vis those of the Colony.

Neither the Assiniboine nor the Cree were particularly concerned about the Colony as a threat to their land rights either. Ongoing Mandan reprisals for Assiniboine horse raids throughout this period preoccupied the Assiniboine in any event, though the NWC did anger them by trading with the Mandan, helping the Métis raid the HBC's Brandon House, and renegeing on a promise of liquor. However, the Cree did not have to fear Mandan attacks, and the Colony initially perceived them as a real threat.²⁰ The NWC circulated rumours that the Cree would disperse the settlement if they were not paid for their lands, but few actually took umbrage at the Colony. The most influential of these was Le Sonnant, a chief among the most easterly Plains Cree who planned to bring forty warriors against the Colony in 1815. However, that May he did not accompany the dozen Cree who did arrive at the Forks but merely drank the plenteous alcohol offered to them at the NWC's Fort Gibraltar. To the NWC's displeasure, they then met with Macdonell, "spoke very sensible," assured him that they both owned and had no intention of selling the land occupied by the settlement, and left.²¹ This quiet confidence in their land rights left the majority of the Cree with no reason to pick a side. They had good relationships with both the HBC and NWC, and considered the Colony a useful ally and source of agricultural

¹⁹ Deposition of Frederic Huertur cited in Coltman, "A general Statement...", in *Papers*, 235. Saulteaux refusals to be provoked by allegations that land was being stolen from them are more frequent, such as *Trial of John Siveright, Alexander Mackenzie, Hugh McGillis, John McDonald, John McLaughlin, and Simon Fraser, as Accessories to the Murder of Robert Semple, Esq.* in A. Amos, *Report of the Trials in the Courts of Canada, relative to the Destruction of The Earl of Selkirk's Settlement on the Red River with Observations* (London: John Murray, 1820), 252-253.

²⁰ October 9th, 1814, *ibid*, SP 18454; Peter Fidler to Robert Semple, Brandon House, April 7th, 1816, SP 2173; May 16th, 1815, Miles McDonald No 4, SP 17708; May 28th and June 1st, 1816, Brandon House Post Journal, 1815-1816, HBCA B.22/a/19; April 11th, 1817, Miles McDonald Journal from April 5th, 1817 to August 30th, 1817, SP 17241.

²¹ Carter, "KĀ-KĪWISTĀHĀW"; intercepted letter from Seraphin Lamar to John Cameron, Fort Qu'Appelle, March 8th, 1815, quoted in W. B. Coltman, A General Statement, 50, LAC MIKAN 114974; Miles McDonald, "A Sketch of the Conduct of the North West Company towards Red River Settlement from Sept 1814 to June 1815 inclusive," SP 1777-1778; May 18th, 1815, *ibid*, SP 17010; the Cree's original land was around Lake Winnipeg and Lake of the Woods (John McDonald, "Reports of Upper Red River District for the Year 1822/23," HBCA B.22/e/2).

produce. Thus, when the Métis turned against the Colony and HBC in 1815, Cree warriors actually garrisoned the HBC's Fort Qu'Appelle against a group of Métis preparing to attack it. The Cree presence meant that such an attack would shatter relationships and incur revenge cycles; the Métis stood down, and their relationship with the Cree within the Iron Alliance remained intact.²²

Despite such Cree attitudes, the Métis did perceive the Colony's land claims as a threat. Initially, many Métis had welcomed the Colony as a source of employment and an ally against the Sioux. The arrival of the settlers had set the influential Métis Cuthbert Grant on edge, however. He asked how Macdonell wanted the Métis to conduct themselves, and after expressing the hope that the governor "would not take all the soil from them," requested land for "him & his people." Macdonell confirmed that the Colony would allot them land. However, Macdonell also specified that he represented "the proprietor of the soil," a basic confirmation of Grant's fear.²³ Thus, though the Métis generally respected the provisional arrangement reached between Peguis and the Colony in 1813, Grant continued to worry that the Colony would steal land. Furthermore, Macdonell, Peter Fidler, and other leading Colony figures regularly offended and insulted the Métis. Encouraged by the NWC's denial of Macdonell's authority, many Métis reached a breaking point at Macdonell's July 1814 restriction on bison hunting. This was a

²² Peter Fidler, "General Report of Red River District by Peter Fidler 1819 May," 22-23, HBCA B.22/e/1. See Marcel Giraud's comments on revenge dynamics concerning Seven Oaks (*The Métis*, vol. 1, 462 and 464).

²³ September 29th, 1812, Miles McDonell No 2, SP 16757-16758. Ruth Swan attributed these comments to Black Duck, a Saulteaux warrior for whom she assumed Grant was acting as a translator. However, Macdonell introduced Grant first, and while his response spoke of "Indians" generally, he was including Grant among them. As late as June of 1814, Macdonell considered Grant a "good quiet Indian" (Swan, "The Crucible," 274-276; June 20th, 1814, Miles McDonell No 3, SP 16910). Grant had only recently returned to the Northwest from Lower Canada and his influence would peak after distinguishing himself during the upcoming Métis mobilization and conflict (December 24th, 1810, William Yorston's Red River Journal, 1810-1811, SP 16520; George Woodcock, "GRANT, CUTHBERT (d. 1854)," in *Dictionary of Canadian Biography*, vol. 8, University of Toronto/Université Laval, 2003-, accessed November 6th, 2018, http://www.biographi.ca/en/bio/grant_cuthbert_1854_8E.html; Tanner, *A Narrative*, 216).

direct assault to the land rights claimed by the Métis. They defied the restrictions the following winter, and Macdonell arrested the influential Bostonais Pangman at Fort Daer in March 1815. Assembled Iron Alliance chiefs swiftly intervened, but it was not until Cuthbert Grant offered himself for Pangman's bail that Macdonell released him. Colony officials apparently thought this settled the Métis threat, and began focussing instead on rumours of Cree displeasure at the settlement. In May, Peter Fidler even asked Cuthbert Grant to go to the Forks to prevent any Cree attack; however, the Métis had begun to speak of their right to compensation for the settlement's land.²⁴

The Cree did have the highest claim to the settlement within the Iron Alliance's land framework over Red River, but they were unwilling to enforce it against the Colony. The Cree visit to the Colony in May showed that they did not take the Colony's threat to Indigenous land rights seriously. Only after that visit did a group of Métis including Cuthbert Grant and Bostonais Pangman attack the settlement. Unsupported by much of their own community but greatly encouraged by the NWC, they captured Macdonell, who was carried off by NWC agents to stand trial in Montreal. The settlers, under Peter Fidler's leadership, then proposed terms to their Métis antagonists which clearly acknowledged Métis sovereignty. One proposal, an offer "to confine themselves to three small points of land, until some arrangement could take place between the Earl of Selkirk and the half-breeds," echoed Peguis's arrangement with Macdonell. The Métis refused and insisted the settlers evacuate, save one whom Grant allowed to remain and

²⁴ Swan, "The Crucible," 279-280; June 20th, 1814, Miles McDonell No 3, SP 16910; October 18th, 1814, Journal at Red River Settlement ... by Peter Fidler, SP 18456; Anon. (Peter Fidler?) to Anon., Red River Settlement, October 23rd, 1814, SP 13421; January 15th, 1815, Miles McDonell No 3, SP 16947; The Premier, Le Sonnant, the Sauteaux Machicabou, the Cree Chief Tobacco, and Cuthbert Grant were all at Pembina in March. A council delegated The Premier to request Pangman's freedom, but it was Grant who secured it (March 9th-March 31st, 1815, Miles McDonell No 3, 16968-16976); May 16th, 1815, Miles McDonell No 4 — Journal from 7 April 1815 to 17 June 1815, SP 17708; Deposition of Desmanais, cited in Coltman, "A general Statement...", in *Papers*, 172.

gather his crop “in the name of the half-breeds.”²⁵ The Métis thus removed the Colony threat. Moreover, they had forced the acknowledgement of their own sovereign right to the settlement’s land without either challenging or displacing the higher Cree right to it.

Significantly, the Métis did not directly challenge the Saulteaux either, despite the alliance Macdonell had cemented with Peguis during their trip to York Factory. Only after their return did Macdonell feel comfortable to invite the retribution of NWC agents by sending eviction notices to their forts. However, Peguis’s band dispersed to its winter hunting grounds. Peguis only returned at the end of May, 1815, and he and the other chiefs favourable to the Colony did not have the time to assemble enough manpower to deter the oncoming Métis attack. Peguis did attempt to appease the Métis, and when they captured Macdonell he rushed to the settler’s defence at Fort Douglas with the few warriors at his disposal. The settlers tried unsuccessfully to negotiate with the Métis for occupancy rights. Peguis then escorted the settlers away, bidding them return swiftly.²⁶

In a conversation recorded by Peter Fidler shortly before the settlers’ departure, Peguis revealed his frustration with the way that the rival fur trading companies and Colony officials had been speaking about land rights in Red River. Fidler told Peguis that the Métis had ordered the settlers to leave,

but we could not leave these Lands without sending for you, in order that you might tell us to leave them, because we consider those who are now driving us

²⁵ Journal at Red River Settlement ... by Peter Fidler, SP 18514-18516; Journal of Peter Fidler and Deposition of Desmanais, cited in Coltman, “A general Statement...”, in *Papers*, 172; September 1st, 1814, Journal at Red River Settlement ... by Peter Fidler, SP 18439; Deposition of Desmanais, cited in Coltman, “A general Statement...”, in *Papers*, 172. For Métis unsupportive of the party overtly exerting Métis land rights, see Coltman, “A general Statement...”, in *Papers*, 81, 194, 235.

²⁶ October 21st, 1814, Miles McDonell No 3, SP 16932; October 23rd, 1814, *ibid*, SP 16933; May 27th, 1815, Journal at Red River Settlement ... by Peter Fidler, SP 18466; June 7th and June 10th, 1815, *ibid*, SP 18473-18474; June 24th, 1815, *ibid*, SP 18947. Events unfolded too quickly for the Saulteaux. The Black Man, for example, arrived too late to help (June 28th, 1815, *ibid*, SP 18508-18509).

from your lands as having no right to do so half of them was not born upon these Lands ... we know these Lands are yours, if you tell us to leave them we are ready to do so, but if you tell us to remain here we will not leave these lands.

Fidler thus pitted his understanding of the land claims of the Saulteaux against those of the Métis, apparently unaware that Peguis had not been born on those lands either. Peguis differed greatly from these Métis in his feelings towards the Colony, but nevertheless responded by refuting Fidler's premises: "The people of the other house [NWC] are always breaking my ears and telling stories about my Lands, but these are not my Lands, they belong to our Great Father, for it is he only who gives us the means of existence." After so attributing the land to the divine creator, Peguis spoke of his desire for peace, "but if my Lands must be reddened with your blood, my blood and that of my children shall mix with yours and like a stone we shall sink together."²⁷ Clearly, there was no English vocabulary available for Fidler to translate Indigenous conceptions of tenure. Peguis was referring to separate concepts with the two uses of "my Lands," an inalienable divine tenure and the tenure claimed by the Saulteaux.²⁸ Significantly, rather than asserting that the latter tenure was superior to that of the Métis, Peguis offered to die alongside the settlers. This was more likely to dissuade the Métis than a land claim; killing Peguis would unleash revenge cycles and tear apart the Iron Alliance. The Métis did not want that, and allowed the settlers to peacefully evacuate.

²⁷ June 24th, 1815, Journal at Red River Settlement ... by Peter Fidler, SP 18497-18502; June 24th, 1815, Winnipeg Post Journal, 1814-1815, HBCA B.235/a/3.

²⁸ A similar problem in translation is the term Great Father. In the speech Fidler had made preceding Peguis, he had referenced a 'Great Father' who was clearly meant to refer to the British King, yet in the above response "our great Father" seems fairly clearly to refer to a creator deity, as per Denig's discussion of Plains Indians, that "all the Prairie or territory in the West (known to them) and now occupied by all the Indians was created by Wakoñda for their sole use and habitation," all of which was "intended by Wakoñda for their support" (Denig, *Indian Tribes*, 477-478). Peguis was using the term rhetorically, shifting it to speak of the creator deity rather than the King. Sarah Carter came to the same conclusion (Sarah Carter, "'Your Great Mother Across the Salt Sea': Prairie First Nations, the British Monarchy and the Vice Regal Connection to 1900," *Manitoba History* 48 (2004): 37).

The Métis avoided a confrontation with Peguis's Saulteaux again in 1816 after the settlers returned to Red River in a deliberate rejection of Métis authority. Colony officials also seized Fort Gibraltar, angering the bulk of the Indigenous population which desired peace.²⁹ The Métis then dispersed the settlement a second time, but only after the Battle of Seven Oaks broke their largely bloodless streak. The battle had been an accident, and both the NWC and Métis strove to disassociate themselves from it. The NWC blamed the Métis, saying they were a nation unto themselves; for his part, Cuthbert Grant made the case that the Métis had only fought the battle on behalf of their NWC allies. The Métis nevertheless continued to enact a sovereign land claim in 1816, and again without enacting it against the Saulteaux.³⁰ Though Peguis could not muster the manpower to deter a Métis attack, he and a dozen warriors nevertheless offered their services to the Colony shortly before the Battle of Seven Oaks. Robert Semple, the new governor, turned them away. Semple hoped to avoid turning the HBC-NWC conflict into an inter-Indigenous war, and did not recognize that even a few determined Saulteaux warriors would force the Métis to make the difficult choice of whether or not to sacrifice a large number of their Saulteaux relationships. Semple thus simplified the Métis decision to attack, and they again successfully challenged the settlers without challenging the Saulteaux.³¹ The Métis continued to think

²⁹ John Sutherland to Peter Fidler, Qu'Appelle, April 2nd, 1816, LAC MIKAN 114526, Reel A27, 286-287.

³⁰ Gerhard Ens recently defended the idea that the Métis were only NWC dupes in "The Battle of Seven Oaks," 102-103. However, when he argued that the battle was caused by an NWC strategy to control the Athabasca fur trade, he downplayed the effects on the Métis of Macdonell's restrictions on bison hunting (101); ignores that a group of Métis at Pembina under Bostonais Pangman made peace with the Colony in late 1815, only to have Bostonais arrested (his second arrest at Pembina) by Selkirk's Alexander McDonnell that spring; and ignores Grant's displeasure at the return of the settlers in 1816 (Pritchard, sworn before John Fletcher, Montreal, February 18th, 1817, enclosed in Sir. J.C. Sherbrooke to Earl Bathurst, Quebec, April 8th, 1817, *Papers*, 84-85; Friesen, *Canadian Prairies*, 77). Métis national claims were on display at Brandon House in 1816, and again when captured settlers provoked Grant into letting them depart against NWC policy by casting the Métis as NWC underlings (Peter Fidler to Robert Semple, Brandon House, April 1st, 1816, SP 2147; John Pritchard, sworn before John Fletcher, Montreal, February 18th, 1817, enclosed in Sir. J.C. Sherbrooke to Earl Bathurst, Quebec, April 8th, 1817, *Papers*, 86-89).

³¹ Prud'homme, "L'engagement des Sept Chênes," 186; Coltman, A General Statement, 164-166, LAC MIKAN 114974.

Peguis's Saukteaux a threat, however, and tried to cow them after the 1816 dispersal by camping in force with NWC agents at Netley Creek. However, the outnumbered Saukteaux remained faithful to their allies. After the Métis and NWC departed, Peguis determinedly promised the HBC trader John Stitt his protection if Stitt wintered at Netley Creek. In early 1817, Peguis helped Selkirk's agent recapture Fort Douglas. By March, he had gathered eighty warriors, and was soon joined by other Saukteaux chiefs. Peguis intended to confront the Métis, and finally had effective numbers to do so.³²

Peguis did not rely on the Saukteaux alone, and tried to engineer a broad coalition in support of the Colony. Macdonell had returned to the settlement, but could not furnish Peguis with the tobacco required for any diplomatic encounter in the Northwest; nevertheless, Peguis successfully reached out to Cree and Assiniboine on the Colony's behalf. Peguis even persuaded Le Sonnant to visit Fort Douglas for the first time. Macdonell seized the opportunity to present the Cree chief with chiefly gifts while pleading the Colony's case to him.³³ Peguis also reached out to the Sioux in keeping with Selkirk's plan to bring peace to the Red River area. Selkirk hoped the Sioux would prove a valuable strategic and commercial partner, and in late April, his agents helped to broker a truce between Sioux and Saukteaux bands further south. Sioux bands

³² John P. Bourke, in *Trial of John Siveright, Alexander Mackenzie, Hugh McGillis, John McDonald, John McLaughlin, and Simon Fraser, as Accessories to the Murder of Robert Semple*, in Amos, *Report of the Trials*, 213; May 29th, 1816, Brandon House Post Journal, 1815-1816, HBCA B.22/a/19; John Pritchard, sworn before John Fletcher, Montreal, February 18th, 1817, enclosed in Sir. J.C. Sherbrooke to Earl Bathurst, Quebec, April 8th, 1817, *Papers*, 89-90; "M.S. By Lord Selkirk Relating to Red River," SP 12783; March 10th, 1817, Alexander McDonell's Journal from May 8th, 1815 to August 17th, 1817, SP 18141; March 10th, 14th, 15th, and 16th, 1817, Alexander McDonell's Journal, SP 18141-18142.

³³ April 11th-14th and May 9th, 1817, Miles McDonell Journal from April 5th..., SP 17242-17246, 17260. Colony officials had experienced particular difficulty reaching out to the Assiniboine without Peguis, due to chronic problems finding interpreters (September 1st, 1814, Journal at Red River Settlement ... by Peter Fidler, SP 18439; Tanner, *A Narrative*, 224). The Cree and Assiniboine also seldom frequented the Colony; Peguis's task was easier because a number of them were camped at Portage la Prairie in early 1817 in order to distance themselves from the Mandan. For Macdonell's tobacco shortage, see April 21st, April 24th, April 25th, May 14th, May 17th, June 11th, and June 13th, 1817 (Miles McDonell Journal from April 5th..., SP 17249-17251, 17264-17265, 17284-17285), and Lord Selkirk to Lady Selkirk, Red River, July 7th, 1817, LAC MIKAN 114526, Reel A27, 503.

proceeded north, hoping to negotiate further truces. Peguis met them at Fort Douglas, and made clear that peace would require the adhesion of the Assiniboine. In late May, negotiations between Sioux and Iron Alliance negotiators were hosted at Fort Douglas, though the Sioux representatives had not been authorized to treat with the Assiniboine. On their departure, they made plans to return in July with such authority. A tenuous and ill-fated peace had begun.³⁴

By June of 1817, the only active conflict remaining in Red River was thus the one over the Colony. It was primed for escalation. Sioux attacks were no longer imminent, and both sides were converging on the settlement. Selkirk and a party of men were travelling west from Lake Superior and up the Red at the same time that the NWC's annual canoe brigade was heading east towards Montreal with the year's furs.³⁵ The NWC party's route would take them under the shadow of Fort Douglas, but the party did not get so far. It reached the Forks before Selkirk, but was confronted by Macdonell and the warriors gathered by Peguis. The NWC party was significantly outnumbered.³⁶ Opposing armed groups camped in force near each other, tangible representations of entrenched political opinions. Le Sonnant's and The Premier's ongoing attempts to preserve relationships with both sides had become temporarily untenable. The Premier announced a switch in loyalty away from the NWC in the wake of councils among a number of Assiniboine camped nearby. He then joined Peguis and fellow Saulteaux chief The Black Man in asking Macdonell to prevent the canoe brigade from passing Fort Douglas, lest it

³⁴ May 29th-June 2nd, 1817, Miles McDonell Journal from April 5th..., SP 17271-17276. Peace with the Sioux would not last, and plains rivalries and past grievances eventually overcame the temporary hope of some Saulteaux chiefs for peace (Tanner, *A Narrative*, 225-226; Alex. McDonell to Lord Selkirk, Fort Douglas, January 24th, 1818, SP 4282). Peguis seems to have tried to sustain efforts to keep peace the longest, but by 1823 he too had given up despite his famously "pacific disposition" (Peguis to Colville, Red River, June 12th, 1821, SP 7309-7310; Dickson to Pritchard, Hayfield, August 30th, 1821, SP 7354-7357; May 13th and 25th, 1823, Winnipeg Post Journal, 1822-1823, HBCA B.235/a/5; Affidavit of Michael McDonell, Montreal, SP 15979; Henry Prince jr., cited in "Province United to Honor Chief Peguis' Memory," *The Winnipeg Evening Tribune*, May 26th, 1924, page 2).

³⁵ Alternately, they were planning to recapture Fort William (Bumsted, *Lord Selkirk*, 341).

³⁶ Lord Selkirk to Andrew Colville, Red River, August 7th, 1817, LAC MIKAN 114526, Reel A27, 539.

intercept the still-travelling Selkirk. Le Sonnant attempted at least an appearance of neutrality, but Macdonell insisted he pick a side after the Cree chief smuggled a Métis spy into Fort Douglas. If only for the moment, two clear sides had crystallized, and all knew the stakes: the Métis were informed that if the canoe brigade proceeded, Macdonell would fire Fort Douglas's cannon upon it.³⁷

Subsequent events reveal once again the interesting dynamic among these Iron Alliance allies who were ultimately reluctant to fight each other. Outnumbered, Le Sonnant, Cuthbert Grant, and the NWC-friendly Saulteaux chief Machicabaou announced they would be in the leading canoe as it passed Fort Douglas.³⁸ To the mind of Macdonell, bombarding that canoe remained an obvious choice; however, it presented a dilemma to his Indigenous allies. Firing on that canoe now meant tearing apart the Iron Alliance and setting off the revenge cycles they had so far managed to avoid. When the chiefs allied to the Colony heard the brigade planned to force the issue on June 19th, they went to speak at length to the chiefs allied to the NWC. The brigade did not proceed the next day, so this apparently met with some success. However, The Premier reported to Macdonell that he was now in favour of stopping the brigade, because the chiefs allied with the NWC had laughed at his efforts to persuade them to talk things over with Macdonell. The Black Man, who had vowed vengeance when the Colony was dispersed in 1815, was similarly inclined, even though it meant firing on his nephew Machicabaou. Of the chiefs allied with the Colony, Macdonell reported on June 20th that only Peguis still “urged the

³⁷ June 3rd, June 10-11th, 1817, Miles McDonell Journal from April 5th..., SP 17283-17284; June 15th, June 17th-19th, 1817, Miles McDonell Journal from April 5th..., SP 17286-17289. For The Premier's loyalty, see also the speech attributed to him during Selkirk Treaty negotiations by Bryce (Bryce, *Manitoba*, 26); Deposition of Jacob Witschy, cited in Coltman, “A general Statement...”, in *Papers*, 234.

³⁸ June 18th, 1817, Miles McDonell Journal from April 5th..., SP 17288; Machicabaou had been with the Métis party at Seven Oaks, though had hidden rather than fought (Coltman, “A general Statement,” in *Papers*, 186, 188; Coltman, *A General Statement*, 439, LAC MIKAN 114974).

propriety & necessity of letting the N.W. pass with their provisions &c.”³⁹ This likely meant the arrest or even killing of Lord Selkirk, and Peguis’s intentions were not clear. He may have been buying time for Selkirk’s imminent arrival. He may also, in the face of his allies’ desire for vengeance, have concluded that sacrificing Selkirk was a better outcome than the damage entailed by an attack on Le Sonnant and Cuthbert Grant. Either way, it is clear that Peguis did not treat his ties to the latter lightly, and he refused to apologize when Macdonell censured him for his pacifist stance.⁴⁰ Selkirk’s arrival on June 21st then defused the tension attached to this question. Once again, the relationships making up the Iron Alliance did not crack under the considerable strain the struggle over the Colony placed upon them.

In conclusion, despite considerable strain, relationships within the Iron Alliance emerged unbroken from the turbulent years stretching from the arrival of the settlers to the arrival of Selkirk. The matrix of land claims over Red River bound up in these relationships, and outlined in the previous chapter, thus did not undergo any fundamental changes. The Saulteaux did not suddenly begin to claim a new, higher right to land, but tried to discourage the Métis from displacing their Colony ally. When the Colony directly challenged the rights of the Métis to hunt bison on horseback, it usurped the limited position that Peguis had allowed the settlers within Red River’s land matrix. The Cree had the highest right to the settlement’s land, but had not been troubled by the prohibition on horsed bison hunting. They declined to reprimand the Colony. A group of Métis then enforced their own sovereign rights against the Colony, but managed to avoid a direct challenge to the Saulteaux even while dispersing the settlement on two

³⁹ June 19th-20th, 1817, Miles M^cDonell Journal from April 5th..., SP 17289-17291. Le Sonnant also arrived at Fort Douglas while Macdonell met with the Saulteaux chiefs, but Macdonell denounced him and turned him out.

⁴⁰ June 21st, 1817, Miles M^cDonell Journal from April 5th..., SP 17292-17293.

separate occasions. The second occasion, however, was despite an effort by Peguis and his vastly outnumbered Saulteaux allies of the Colony to put themselves at the mercy of their opponents. Peguis was instead in a position of power at the standoff near the Forks in June of 1817. His outnumbered opponents Cuthbert Grant and Le Sonnant then used the same tactic, threatening to put the other side into the position where it would have to make a choice whether or not to kill them. The threat of breaking up relationships within the Iron Alliance was very real, and one its constituent members sought to leverage in pursuit of diverging political goals.

Other elements brought out by this chapter include that both Peguis's Saulteaux and the Métis with Cuthbert Grant were encouraged in their respective stands by the belief that their own Euro-Canadian ally was the true representative of King George III, an ultimately mutual ally to both of them. It similarly establishes that a reader should exercise caution when considering the vocabulary choices used by Euro-Canadian observers when referring to Indigenous land claims. Lieutenant Chappell of the Royal Navy misunderstood a provisional arrangement as a land sale, and even Peter Fidler, who had served in the Northwest for decades, was refuted by Peguis when he tried to characterize the land rights of the Saulteaux. This chapter also brings out a final important point: while most Cree did not inherently oppose the Colony or view it as a threat to their land rights, they also expressed that they had no desire of selling their rights to the settlement's land. The implications of this will be explored more in the next chapter, a study of the actual negotiation of the Selkirk Treaty.

Chapter 4: Negotiating the Selkirk Treaty

The second chapter of this thesis laid out the intersecting Imperial and Indigenous matrices of land claims over Red River, and the third chapter argued that despite considerable tension in the lead-up to the negotiation of the Selkirk Treaty, the Indigenous land framework had remained stable. This chapter discusses the negotiation of the Selkirk Treaty, and argues that the Indigenous land matrix continued to remain stable, even as it accommodated some of the Colony's ambitions in the Selkirk Treaty. It argues that the Cree maintained their land claims over Red River, but allowed the Saulteaux to negotiate away what can be understood as occupancy rights over certain lands. The Cree and Saulteaux reached this agreement after a broad consultation among the Iron Alliance's members, including the Assiniboine and even the Métis who had dispersed the Colony. The Saulteaux then gave up these rights to Selkirk on specific and limited terms. The Cree did not endorse the resulting treaty.

This chapter will also take into account the Imperial framework under which Lord Selkirk sought a treaty, and argues that Lord Selkirk did not intend the treaty to change anything within this framework. Instead, this chapter argues that Selkirk and other Euro-Canadian negotiators were not attempting to negotiate a deal permanently extinguishing Indigenous land rights. To strengthen this argument, this chapter draws solely on contemporary Euro-Canadian records, and no retrospective Indigenous witness statements. From this source base, it is clear that Selkirk was not interested in a formal land purchase so much as he was an ad hoc deal that would cement the Colony's relationships with Red River's Indigenous population, and ward off future attacks. Commissioner Coltman similarly refused to commit himself officially to the forthcoming treaty, while doing his utmost to convince the Indigenous negotiators that Selkirk

had Imperial authority to treat with them for land. Coltman could not know whether this were true, but the Indigenous inhabitants understood the Imperial land framework enough to insist that Coltman establish for them whether or not Selkirk had the authority to treat with them.

Many scholars examining Selkirk Treaty negotiations have looked only to the days immediately prior to the signing of the Indenture.¹ However, Selkirk Treaty negotiations included at least four sessions over the better part of a month. This chapter proceeds by discussing these sessions respectively: a first session was at a public conference at Fort Douglas on June 22nd, the day after Selkirk's arrival. A second was a representative council of all interested parties, including the Métis opposed to the Colony, at the Saulteaux chief The Premier's lodge on June 29th. A third took place as part of a conference that Commissioner Coltman, an envoy of the Governor of British North America, held to gather evidence for his inquiry into the troubles in the Northwest; this took place at the Forks from July 16th to the morning of July 18th. A fourth negotiating session consisted of a conference at Fort Douglas later on the 18th; the Saulteaux from Coltman's conference were in attendance, as was the Earl of Selkirk, and when it was completed they all signed the Indenture of the Selkirk Treaty.

Negotiations began shortly after Lord Selkirk's arrival at Fort Douglas on June 21st. His agents had previously failed to enact his schemes to secure the Colony from Indigenous antagonism, but Selkirk spoke with greater authority than they. He also had an unprecedented opportunity to address the vast number of Red River's Indigenous inhabitants gathered together.² Selkirk was quick to take advantage, and the next day held a public conference where he exchanged speeches with Peguis, The Premier, and an Assiniboine chief. Selkirk read out the

¹ A recent example is Ens, *From New Peoples*, 84-85.

² June 21st, 1817, Miles McDonell Journal from April 5th..., SP 17294.

recently arrived Proclamation from the Prince Regent that ordered the NWC and HBC to cease hostilities. He also commented that under the Proclamation, neither company had the right to bar the passage of the other: the NWC canoe brigade could thus proceed past Fort Douglas, ending the standoff that had so nearly degenerated into violence. Selkirk also took advantage of the opportunity to publicly float the idea of a quit rent to his interlocutors, as he told Commissioner Coltman a few weeks later.³ The Saulteaux were generally favourable to an annual present in exchange for the presence of the Colony. However, they did not believe that they alone had the authority to conclude such an arrangement. The Saulteaux would only begin negotiating with Selkirk after having secured the consent of their Iron Alliance allies. Thus when sixteen more lodges of Assiniboine and Cree arrived hoping to sell plains products six days later, Peguis and The Premier took the opportunity to assemble a representative council to discuss the NWC-HBC impasse and Selkirk's land proposal.⁴

This council, the second Selkirk Treaty negotiating session, took place at The Premier's lodge on June 29th. All interested parties were represented. The NWC had its agent Angus Shaw. The HBC was represented by its trusted trader John Stitt. Miles Macdonell stood in for Lord Selkirk, and recorded a partial account of the meeting, noting that "All the Chiefs & men of most influence & solidity were assembled, Sauteaux, Crees & Ossiniboins." By name, Macdonell mentioned Peguis, The Premier, and The Frêne, a chief of the "Cree & Assiniboine." He also noted Bostonais Pangman, the influential Métis leader, sitting "among the Indians." Neither Macdonell nor the few scholars to have discussed this council made much of Pangman's

³ June 22nd, 1817, Miles McDonell Journal from April 5th..., SP 17295.

⁴ June 28th, 1817, Miles McDonell Journal from April 5th..., SP 17300.

presence.⁵ Macdonell at least had a vested interest in publicly maintaining the claim that the Métis were British subjects through their European ancestry, and consequently bound by the HBC charter and excluded from any Indigenous land rights. Writing as Macdonell did would help mitigate damage to Selkirk's legal cause should the NWC intercept Macdonell's journal. This was a very real possibility, as Macdonell was planning on leaving shortly for Montreal to testify in ongoing HBC-NWC court battles.⁶ Though Macdonell's wording dismisses Pangman, The Premier, as host of the meeting, would have invited Pangman as a representative of the Métis hostile to the Colony. Pangman had assumed the leadership of that group after Cuthbert Grant went into hiding to avoid an arrest warrant. Pangman's own credentials were clear: he had co-led the Métis during the dispersal of the Colony in 1815, the 1816 attack on Brandon house, and the Battle of Seven Oaks. Pangman was also an NWC employee, but were he representing or acting as an interpreter for his employer, he would have been sitting with Shaw rather than "among the Indians." Like Grant, Pangman balanced his functions as an NWC employee with his

⁵ June 29th, 1817, Miles McDonell Journal from April 5th..., SP 17301-17302; John Stitt was high in the trust of both the HBC and Peguis (Swan, "The Crucible," 248-249; April 26th and 27th, 1811, William Yorston's Red River Journal, 1810-1811, SP 16538; "Grant of the District of Assiniboia by the Hudson's Bay Company to Lord Selkirk," in Oliver, *Canadian North-west*, vol. 1, 158; SP 16538; "M.S. By Lord Selkirk Relating to Red River," SP 12783); Shaw was a former NWC partner continuing to receive dividends and should not be confused with his Métis son of the same name who helped disband the Colony in 1815 (Allaire Gratien, "SHAW, ANGUS," in *Dictionary of Canadian Biography*, vol. 6, University of Toronto/Université Laval, 2003-, accessed November 7th, 2018, http://www.biographi.ca/en/bio/shaw_angus_6E.html; Journal at Red River Settlement ... by Peter Fidler, SP 18515; Lord Selkirk, "The Memorial of Thomas Earl of Selkirk to His Grace Charles Duke of Richmond..." in Bumsted, ed. *The Collected Writings*, 155-156; Coltman, "A general Statement...", in *Papers*, 248-249). As for scholars who discussed Pangman's presence at the council, Theresa Schenck dismissively wrote that "Only two Métis were mentioned as present" and that probably included mistaking Angus Shaw for his son ("Against All Odds..." 49), and Marcel Giraud separately identified Bostonais as Métis and Shaw as a partner of the NWC, but inferred nothing from it as it would contradict his thesis that Métis national claims had already fallen apart (*The Métis*, vol. 1, 473).

⁶ In private, Macdonell and his peers often referred to Grant as an "Indian" (September 29th, 1812, Miles McDonell No 2, SP 16757-16758; October 12th and 18th, 1814, Journal at Red River Settlement ... by Peter Fidler, SP 18455-18456; May 25th, 1815, Miles McDonell No 4, SP 17015; Alexander McDonell to Lord Selkirk, Fort Douglas, November 10th, 1817, SP 4197), but under public cross-examination in Montreal in May 1818, Macdonell said the measure prohibiting horsed bison hunting that provoked the Métis was to "except Indians" (*Trial of Colin Robertson...* in Amos, *Report of the Trials*, 15). Selkirk held the same position (Gaudry, "Fantasies," 71, note 35).

functions as an independent ally of the NWC in his capacity as a Métis leader.⁷ Unfortunately, Macdonell's account of the council is incomplete as he left well before its conclusion. It is thus unclear whether Pangman was given the chance to speak. Nevertheless, his presence indicates that the Saulteaux were eager to bring their erstwhile Métis antagonists into these discussions.

As the host, The Premier gave the first speech. Now that the pressure of a an immediate conflict was alleviated, he tried to reclaim his good relationship with the NWC, complimenting the company and welcoming all traders to the area. Peguis then spoke, expressing his hope that free and peaceful movement would continue. Peguis then revealed a specific agenda: he introduced the land question, affirming "that the country belonged to different nations in alliance with the Sauteaux." The Frêne, an important chief among a mixed plains band of Cree and Assiniboine, represented two of these nations. He spoke next, and alluded to the material benefits that could be derived from the settlers. However, The Frêne continued, the immediate area "belonged to the Crees."⁸ Macdonell was then invited to speak, and began to describe the beneficial nature of the Colony to Red River's Indigenous inhabitants. Appealing to the close connection the Indigenous placed on subsistence and land tenure, Macdonell specifically pointed out how it could serve to model land cultivation in an increasingly fur-starved country. To that

⁷ June 21st, 1817, Miles McDonell Journal from April 5th..., SP 17294; July 14th, 1817, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20; Journal at Red River Settlement ... by Peter Fidler, SP 18515; Augustin Cadotte, in *Trial of Colin Robertson, Michael Heden, John Bourke, Louis Nolin, and Martin Jordan, for a Riot*, in Amos, *Report of the Trials*, 25; March 26th and June 1st, 1816, Brandon House Post Journal, 1815-1816, HBCA B.22/a/19; June 29th, 1816, Journal June 16th, 1816 to July 18th, 1816, SP 18670; Coltman, A General Statement, 115-116, LAC MIKAN 114974); Affidavit of Michael McDonell, Montreal, SP 15979; *Trial of John Siveright...* in Amos, *Report of the Trials*, 252-253; John Pritchard, sworn before John Fletcher, Montreal, February 18th, 1817, enclosed in Sir. J.C. Sherbrooke to Earl Bathurst, Quebec, April 8th, 1817, *Papers*, 84; March 26th, 1816, Brandon House Post Journal, 1815-1816, HBCA B.22/a/19.

⁸ Macdonell had recorded The Frêne's name when he sent Assiniboine envoys to the Colony for powder and tobacco (November 1st, 1813, Miles McDonell No 3, SP 16862; January 28th, 1814, *ibid*, SP 16878). He identified him as "The Cree Chief called Lefresne" on March 6th and March 9th, 1814 (*ibid*, SP 16884, 16886), but on June 3rd, 1817, he told Macdonell that an NWC agent had been "urging him & all the Ossiniboins, & Crees during the winter" to attack the Colony (June 2nd and 3rd, 1817, Miles McDonell Journal from April 5th..., SP 17277-17279). Peter Fidler also noted him in the company of some Assiniboine (November 8th, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20). On interethnic plains chieftains, see Binnema, *Common and Contested Ground*, 14.

end, Macdonell expected that Peguis “would cede a grant of land which would belong to us” — a phrase clearly struggling to convey the thought of an exclusive right to a defined tract.

Macdonell did not reference the possibility of payment for that tract, but he did threaten the relocation of the Colony. Angus Shaw spoke next, and evoked the threat of withdrawing the NWC’s patronage from the Cree and Assiniboine plains bands. Shaw did not worry Macdonell, who withdrew as the former spoke.⁹ The meeting had not yet heard from all represented parties, but Macdonell had achieved his goal of explaining what the Colony wanted in terms of land. Though Macdonell’s account of the meeting is truncated, it demonstrates that all interested parties within the Iron Alliance, including the Assiniboine and the Métis, had a seat at the table when discussing the future of the settlement and the land arrangements that would involve.

An Indigenous consensus on the question of Colony land, with a framework for upcoming negotiations, was established either at the end of this meeting or in the next few days. On June 30th, Shaw failed once more in an attempt to turn the collected Saulteaux, Cree, and Assiniboine against the Colony. Two days later the bulk of the Cree and Assiniboine departed; they had completed their part in the land question, they had begun running low on provisions, and they had helped preserve the Iron Alliance. Commissioner Coltman arrived at Fort Douglas on July 5th to pursue his investigation into the conflicts in the Northwest, and soon learned of the negotiating framework that had been established among the Iron Alliance.¹⁰ He would describe this the next year in a letter to the Governor of British North America:

the Saulteaux who inhabit the country immediately adjoining the Red River proper, the lands whereof are understood to be fittest for an agricultural settlement, appear decidedly favourable, both from interest and inclination, to

⁹ June 29th, 1817, Miles M^cDonell Journal from April 5th..., SP 17301-17302.

¹⁰ June 30th, July 3rd, July 11th, 1817, Miles M^cDonell Journal from April 5th..., SP 17303, 17305, 17313.

such an establishment, whilst ... the Cree Indians, who inhabit the Assiniboine branch of the river, although rather jealous of the settlement, and universally acknowledged to be the original proprietors of the lands which the Saulteaux inhabit only by sufferance, have, apparently from consideration of these latter, virtually said they would confine themselves to the country above the River des Champignons, a stream which falls into the Assiniboine, and not interfere with any arrangements which the Saulteaux might make below that point.¹¹

The Cree were unwilling to dispose of their land, as noted in the last chapter, but out of charity to the Saulteaux, allowed them to make a land arrangement with the Colony. The Cree gave no indication they were abandoning their claim over Red River, nor did they promise to endorse whatever arrangement would be reached between Colony and Saulteaux. This agreement can be helpfully construed in terms of ongoing Cree sovereign claims and Saulteaux occupancy claims. The Saulteaux could not give up sovereign rights to the settlement, as these belonged to the Cree. The Cree declined to assert their unchallenged sovereign rights against the Saulteaux when the latter treated away some of their own occupancy rights. The Assiniboine, for their part, had deferred to the Cree, and it would appear that the Métis did as well.¹²

Before negotiating any agreement with the Colony, however, the Saulteaux insisted on establishing Selkirk's authority to negotiate with them. They had an understanding of the Royal Proclamation of 1763, but for five years had been sifting through contradictory stories about whether the NWC or HBC and Colony had royal backing. Commissioner Coltman was crucial

¹¹ Coltman never visited the Rivière aux Champignons (also named Musk Rat Creek) just west of Portage la Prairie, and did not realize that it flowed north into Lake Manitoba, not south into the Assiniboine. W. B. Coltman to Sir J. C. Sherbrooke, Quebec, May 26th, 1818, inclosed in Sir J. C. Sherbrooke to Earl Bathurst, Quebec, July 1st, 1818, in *Papers*, 144-145. See also July 18th, 1817, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20. Given ongoing Cree claims over the settlement's land, it would appear that James Daschuk was mistaken to read these words to mean that the Cree had given up their claim in favour of the Saulteaux (Daschuk, *Clearing the Plains*, 47).

¹² Deposition of Louis Nolin, cited in Coltman, "A general Statement...", in *Papers*, 204. To briefly break with the source-base outlined for this chapter, compare the previous quote with Peguis's later account of Le Sonnant's negotiating position vis-à-vis the Selkirk Treaty. The two mirror each other; the Métis position was amply represented by Le Sonnant (William King (Peguis), "Important Statement of Pegowis, The Indian Chief," *Nor'-Wester*, October 14th, 1863, page 3).

here. He had the clearest and most direct mandate from the Crown through the Governor of British North America, and the Saulteaux saw that both NWC partners and Selkirk deferred to him. Indeed, where the Saulteaux would remember Selkirk as “the Silver Chief,” they referred to Coltman as “the Gold Governor as being superior to every thing.”¹³ If anyone could clarify the authoritative status of the opposed parties, it was Coltman. On July 12th, two Cree and five or six Saulteaux chiefs representing bands of the lower Assiniboine and Red River sent a request for a private meeting with the Commissioner via Selkirk.¹⁴ They were the bands authorized to negotiate with the Colony under the Indigenous diplomatic framework. The Métis led by Pangman departed shortly after the invitation was tendered. Like the departed Cree and Assiniboine, the Métis had completed their role in the land arrangement, and the Saulteaux and remaining Cree would respect the diplomatic framework under which they had been authorized to negotiate. For the Saulteaux to unilaterally overturn it now would have been to betray entirely the character of their relationships with their Iron Alliance allies to date.¹⁵

Moreover, Selkirk did not want the Saulteaux to upset the consensus that allowed them to negotiate with him. He insisted on an open negotiation process, as he wanted all Indigenous parties to understand the terms of any deal, and not just their chiefs. Years earlier in Grand

¹³ July 12th, 1817, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20. Underlining in original. Peguis noted Selkirk’s title in his letter in “Red River Indians,” *Colonial Intelligencer* 6 (April to June, 1857): 224-226.

¹⁴ Lord Selkirk to W. B. Coltman, July 12th, 1817, SP 3738.

¹⁵ Lord Selkirk to W. B. Coltman, Fort Douglas, July 13th, 1817, SP 3750-3752. Selkirk and Coltman spoke on the morning of the 13th, but had many pressing matters to discuss and probably did not get to the land question until the 14th. There is no written record of Coltman’s response to Selkirk’s letter, as Selkirk’s physician John Allan verbally relayed it (Lord Selkirk to W. B. Coltman, July 14th, 1817, SP 3777). As for the Métis departure, they may not have gone far (Bryce, *Manitoba*, 259), and claimed to have left only because of a lack of provisions. Thus they knew they would not be participating in the upcoming negotiations with Selkirk, as the Earl would be obligated to provide food for the assembled Indigenous population (Gunn, *History of Manitoba*, 203). Peter Fidler’s tone suggested the Métis left for reasons other than food; Fidler had arrived the day before, prepared to give evidence against Pangman for the attack on Brandon House (July 13th and 14th, 1817, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20). For his part, Selkirk thought the Métis departure was connected to a period Coltman had announced he would use to hear voluntary witness statements about Seven Oaks, and that they feared arrest after it closed on the 16th (Lord Selkirk to the Duke of Richmond, Governor of Lower Canada, “The Memorial of Thomas Earl of Selkirk” (Montreal: Nahum Mower, 1819), in Bumsted, *The Collected Writings*, 155-156).

River, one of Selkirk's agents had privately finalized a land purchase with Joseph Brant, a chief whom the Haudenosaunee had authorized to act as their land agent. However, Brant died shortly afterwards, and influential Haudenosaunee subsequently challenged the entire arrangement.¹⁶

Selkirk hoped to avoid a similar occurrence in Red River, particularly as the NWC was waiting in the wings, ready to turn any Indigenous uncertainty about the coming arrangement against the Colony. Selkirk thus made arrangements with Coltman to ensure trusted, accurate, and cross-checked translations during the Commissioner's upcoming meetings. However, when it came to the Imperial framework, Selkirk shied away from any accountability for his choice of negotiating parties. He put the onus on Coltman to establish, to the Commissioner's own satisfaction, the extent to which the chiefs who had requested a meeting were able to speak for their peoples. However, Coltman was busy with his inquiry, and does not appear to have privately met with these chiefs prior to his subsequent public conference at the Forks.¹⁷

The primary goal of this conference was for Coltman to gather Indigenous testimony for the purposes of his inquiry. It was attended by both allies and antagonists of the Colony, including Le Sonnant and Machicabaou, and ran from July 16th to the morning of the 18th. The inquiry carried the agenda through the 16th and much of the 17th, and Coltman appears to have been oblivious to fact that a general expectation of forthcoming land negotiations also existed.

¹⁶ Alexander McDonell to Lord Selkirk, York, March 18th, 1808, in Johnston, *Valley of the Six Nations*, 170-171; concerning Selkirk's insistence on transparency and the usurpation, see his 1815 comments that the Assiniboine, whom he still considered the primary obstacle to any land arrangement, if calling for payment, would first have to prove that the land did not belong to anyone else first (Lord Selkirk to Miles McDonell, London, March 23rd, 1815, SP 20041). He wanted the Indigenous population to think the arrangement above board even if he otherwise dismissed their conventions of tenure.

¹⁷ Selkirk to Coltman, July 14th, 1817, SP 3777. Both Ross and Hargrave had opinions about the Selkirk Treaty chiefs' authority, but tended to circumvent the perpetual flux inherent in Indigenous power dynamics (Ross, *Fur Hunter*, 10; Hargrave, *Red River*, 76-78). The request for the private meeting did not reference the land question as such, but the bands represented land mirroring the land described in the Indenture and Coltman's account of the Cree-Saulteaux agreement. However, had the meeting taken place, Coltman would have known more about the land question than he displayed when it came up on July 17th.

The outcome was not certain; Selkirk recalled that the conference began shortly after most NWC agents in the area left the area, confident “that the Indians would never agree to a sale of their lands.”¹⁸ Nevertheless, Selkirk did not attend to plead his own case, and his agents Miles Macdonell and Peter Fidler only attended on the morning of the 18th. All three left documentary records of the conference, but the bulk of their information thus derived from Coltman. The correspondence between Selkirk and Coltman throughout the conference is riddled with examples of miscommunication, unsurprising as the two had not discussed Selkirk’s intentions beforehand.¹⁹

Coltman thus only brought up the land question at the conference after Selkirk sent him an oft-cited letter on July 17th, in mid-session. Selkirk would not explain to Coltman that he had already suggested a quit rent to the Indigenous population until the next day. In this letter, Selkirk instead asked him to put a question to the Indigenous attendees: whether they would consent to cede a defined portion of their lands to Selkirk for “the exclusive use of the settlers.” Lest Selkirk invite accusations of tempting the Indigenous population to sacrifice long-term

¹⁸ Lord Selkirk to Andrew Colville, Red River, August 7th, 1817, LAC MIKAN 114526, Reel A27, 541; Coltman, “A general Statement...,” in *Papers*, 188, 191, 236 (‘Paper No. 409’ appears to have held the notes taken by Coltman during the conference); Coltman, A General Statement..., 181-182, 193, 198, 207, 210, 222, 444, LAC MIKAN 114974; July 17th, 1817, Miles McDonell Journal from April 5th..., SP 17316.

¹⁹ Selkirk had tried to talk to Coltman on the 16th but the length of the council derailed Coltman’s schedule, as per a note to Selkirk saying he would not get away in time to meet (W. B. Coltman to Lord Selkirk, July 16th, 1817, SP 3803); Macdonell’s information from the 16th and 17th came through Coltman (July 16th-17th, 1817, Miles McDonell Journal from April 5th..., SP 17315-17316; W. B. Coltman to Lord Selkirk, July 17th, 1817, SP 3813; Lord Selkirk to W. B. Coltman, July 17th, 1817, SP 3812) and even on the 18th, Macdonell spent time running back and forth to Selkirk and missing proceedings (Lord Selkirk to W. B. Coltman, July 17th, 1817, SP 3812; Lord Selkirk to W. B. Coltman, July 16th or 17th (actually 18th), SP 3807; Selkirk referred to a “Captain M”, who should not be confused with Captain Matthey who similarly signed the Indenture as a witness); Peter Fidler only arrived on the morning of the 18th (Lord Selkirk to W. B. Coltman, July 17th, 1817, SP 3812). Further confusion in the Selkirk-Coltman correspondence has derived from a dating error in the chronology of their communications in the Selkirk Papers: the proper order is Selkirk to Coltman, July 17th, SP 3809-3811; Coltman to Selkirk, July 17th, SP 3813; Coltman to Selkirk, July 17th, SP 3814; Selkirk to Coltman, July 17th, SP 3812; a verbal communication from Coltman to Lord Selkirk via Miles Macdonell on the morning of July 18th; later that morning, another verbal communication from Coltman to Selkirk via the interpreter Bruce; Selkirk to Coltman, July 16th or 17th (actually 18th), SP 3807-3808; and finally Coltman to Selkirk, July 18th, SP 3818-3819. The error occurred because the letter dated “July 16th or 17th” to fit in with the other letters was actually written on July 18th.

interests for short-term gain, the Earl explained that he would “propose to them not a sale but a gift.” In exchange for this gift of land, Selkirk would offer “a small annual present, in the nature of a quit rent, or acknowledgement of their right.” Characterizing his proposal as an annual gift exchange, an arrangement for ongoing and mutual subsistence purposes, allowed Selkirk to satisfy the requirements of the Indigenous land framework. Within the Imperial land framework, however, Selkirk’s high opinion of the HBC charter led him to envision his proposal as an ad hoc practicality, not a formalized land arrangement. Indeed, should a higher authority ever establish that the boundaries of Rupert’s Land exclude Red River, Selkirk wrote, “such a cession” would mean nothing. Because Coltman did not share Selkirk’s confidence in the charter, the Earl proposed to draw up a “Deed” using forms lining up with the Royal Proclamation. This was to ensure Coltman that, even if Selkirk were ultimately proven wrong about the HBC charter, grants from an authorized representative of the Crown, based on the deed, would nevertheless allow the later settlement of the area. Selkirk also emphasized that the deed would allow the Indigenous population to corroborate the agreement later, in front of a Crown-appointed interpreter.²⁰

Coltman broached the land question at the conference after receiving Selkirk’s letter. Mid-session, he wrote back to the Earl that those gathered desired the settlement for their material advantage. Coltman reported that they would thus require little in exchange for settlers’ exclusive land possession, though an annual present would help secure Indigenous friendship into the future. However, he was not comfortable taking part “in any deed of sale.” Coltman was using the term ‘sale’ loosely, as he wrote Selkirk a second letter a little later, saying he would

²⁰ W. B. Coltman to Lord Selkirk, July 18th, 1817, SP 3818; Lord Selkirk to W. B. Coltman, July 17th, 1817, SP 3809-3810. The Indenture appears to be the only reference to the formality of selling the land to the Crown for the use of Selkirk, in keeping with the Royal Proclamation. An official receipt for Treaty annuities prepared in 1823, for example, references a grant made directly to Selkirk, not the King (“Copy of the Receipts of the presents delivered to the Indians. 9th October. 1823,” SP 8065).

convey Selkirk's wish to treat for annual presents to compensate for any losses incurred by the settlers' occupation. In this letter Coltman also imparted details he had just learned of the Indigenous negotiating framework, and asked the Earl to send over agents to propose terms.²¹ The conference ended before they arrived, but Selkirk wrote back, indicating his pleasure that even NWC allies were prepared "to make the proposed cession of land for a direct & nominal consideration of trifling value."²² However, Selkirk's abiding desire to "obviate representation" continued to influence Miles Macdonell. In his journal that evening, Macdonell described both the Cree and Saulteaux making an offer of "a gratuitous grant of Land of a considerable extent," thus again excluding any talk of compensation, payment, or gifts in return.²³

Coltman's Indigenous audience, unlike Coltman himself, was already aware of Selkirk's proposal. What those gathered actually wanted the Commissioner to establish was whether Selkirk had the authority to negotiate a land arrangement with them. This question hinged entirely on the HBC charter. Coltman could not truthfully answer one way or the other until the charter underwent a legal test in a court competent to judge it. Coltman thus refused to compromise his mandate by committing himself on the jurisdictional question, especially not by signing a deed as Selkirk had requested. However, Coltman recognized the practical advantages the arrangement could have. He made this point in a letter to the Governor of British North America the next year, citing the settlers' welfare, continued British control of the area's fur trade, and the geopolitical value of Selkirk's plan to link the Sioux to the Colony.²⁴ Coltman thus

²¹ W. B. Coltman to Lord Selkirk, July 17th, 1817, SP 3813; Coltman to Selkirk, July 17th, 1817, SP 3814.

²² Lord Selkirk to W. B. Coltman, July 17th, 1817, SP 3812.

²³ Lord Selkirk to W. B. Coltman, July 17th, 1817, SP 3809; July 17th, 1817, Miles McDonell Journal from April 5th..., SP 17316; Mary Black-Rogers, "Varieties of "Starving": Semantics and Survival in the Subarctic Fur Trade, 1750-1850," *Ethnohistory*, 33:4 (1986), 374.

²⁴ Amos, *Report of the Trials*, 96, 143-144; Lord to Lady Selkirk, Red River, July 21st, 1817, LAC MIKAN 114526, Reel A27, 521-523; Coltman to Sherbrooke, Quebec, May 26th, 1818, in *Papers*, 144-145.

disingenuously tried to convince his Indigenous audience of the Crown's support for Selkirk. When pressed for proof, Coltman pointed to Colony artillery furnished to Selkirk by the Imperial Government. However, Selkirk had personally purchased all but one of the guns, and the sole exception had probably been destined for the protection of York Factory. It hardly indicated a ringing Imperial endorsement of the extension of HBC charter pretensions over Red River.²⁵ Indeed, Coltman himself would refuse to be present at the signing of the Indenture, even after insisting that Selkirk include a clause referencing the constitutional uncertainty: the tenure of the NWC's existing forts within the bounds specified in the Indenture was to be respected "till His Majesty's pleasure shall be known." Nevertheless, Coltman continued to help create a false impression that Selkirk had special Crown authority.²⁶

Coltman's effective role in the Selkirk Treaty was thus to clear the way for negotiations with Selkirk personally. On the morning of July 18th, Selkirk wrote a letter to Coltman clarifying that he had already proposed a specific quit rent to the Indigenous population. Coltman responded that in regard to payments, he had confirmed to his audience only that Selkirk wanted land for settlers and was prepared to make an annual payment for it. The Commissioner's preliminary role was completed. However, before the Indigenous negotiators moved from the Forks down to Fort Douglas, Coltman offered them some final advice. He counselled the Saulteaux to be reasonable in their "demands," and to "avoid offending or cause

²⁵ As per a verbal message from Coltman to Selkirk on the morning of the 18th, it seems that on the 17th Coltman had been pressed about whether the King approved of any land arrangement between the Indigenous inhabitants of Red River and Selkirk (W. B. Coltman to Lord Selkirk, July 18th, 1817, SP 3818; Lord Selkirk to W. B. Coltman, July 16th or 17th (actually 18th), SP 3807-3808); Amos, *Report of the Trials*, 360; Selkirk knew well that in 1812, the year the settlers arrived, he did not have the support of the Imperial government (Bumsted, *Lord Selkirk*, 214). Nevertheless, it would appear that Peter Fidler and the NWC thought there was a real possibility that the Selkirk Grant, at least, would be upheld (December 1st, 1817, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20).

²⁶ Lord Selkirk to W. B. Coltman, July 16th or 17th (actually 18th), SP 3807-3808; W. B. Coltman to Lord Selkirk, July 18th, 1817, SP 3818. This false impression divided the Red River settlement for years to come (McDermot, "Peguis Refuted"; Hargrave, *Red River*, 77; Gunn, "Peguis Vindicated").

trouble with the Crees or driving the Metif to despair.” These parting comments suggest both the limited authority the Cree had granted to the Saulteaux, and also that neither Métis nor Cree representatives would be attending the council with Selkirk.²⁷

The fourth and final stage in Selkirk Treaty negotiations took place at Fort Douglas later on July 18th. Surviving contemporary Euro-Canadian sources dealing with the proceedings of this session are limited. Selkirk took notes that were destroyed by fire in the 1940s, but his paraphrases of certain Saulteaux speeches were preserved in quotation by the historian George Bryce. According to these paraphrases, Peguis tried to explain to Selkirk that NWC lies were to blame for the antagonism of the Métis aligned with Bostonais Pangman and Cuthbert Grant. Peguis did not acknowledge these disaffected Métis “as an independent tribe,” but apparently did not quite know what to make of this particular group’s recent but Indigenous origin: “They have sprung up here and there like mushrooms, and we know them not.” Significantly, however,

²⁷ Lord Selkirk to W. B. Coltman, July 16th or 17th (actually 18th), SP 3807-3808; W. B. Coltman to Lord Selkirk, July 18th, 1817, SP 3818.

Peguis was not referring to the Métis as a whole, only those warriors with Pangman.²⁸ Many Métis did not support Pangman and Cuthbert Grant's political goals, yet political scientist Kelly Saunders is comfortable asserting that the Cree at this time already referred to the Métis as "the people who own themselves."²⁹ It was only this one group that troubled Peguis, who moreover does not appear to have revisited this particular contention. To step briefly outside the source base outlined for this chapter, D. Bruce Sealey encountered a report, likely a Métis oral tradition, that Pangman had confronted Peguis after the council and settled the Saulteaux's chief's uncertainty with a threat of sovereign force.³⁰ The only other contemporary Euro-Canadian records concerning the proceedings of the council were the journals of Miles Macdonell and Peter Fidler. Their brief accounts did not record any speeches, but describe the boundaries that were established to the land reserved to settlers. They also note that the best efforts of the NWC

²⁸ Bryce, *Manitoba*, 259. Bryce's extracts smack of authenticity. Selkirk often took detailed notes during conversations — it was said he had the unusual custom of discretely taking down shorthand notes of conversations on his fingernails, which were apparently "very large" (Francis Garry, editor, "Diary of Nicholas Garry, Deputy-Governor of the Hudson's Bay Company from 1822-1835. A detailed narrative of his travels in the Northwest Territories of British North America in 1821," *Royal Society of Canada Transactions*, 2nd series, number 6 (1900), 136). Furthermore, internal details of these excerpts seem to bear out surrounding events: Le Sonnant was not mentioned but stayed largely silent, the Premier's speech indicates that he was still playing both sides, and the speech of The Black Robe, by far the least influential of the signatory chiefs, was not deemed worth repeating (Peter Fidler, "General District of Red River District," HBCA B.22/e/1; in a later work, Bryce quoted The Black Robe as saying "We have reason to be happy to-day," which presumably has the same standing as the other extracts: George Bryce, *The Makers of Canada: Mackenzie, Selkirk, Simpson* (Toronto: Morang & Co, 1910), 192). External details also support the extracts' authenticity. Bryce described a notebook filled with details of Selkirk's trip from the Colony to Upper Canada (Bryce, *Manitoba*, 261-262); though only Selkirk's diary of 1803-1804 was preserved through the Selkirk Papers, Jack Bumsted noted that more were written (Bumsted, *Lord Selkirk*, xii). There are many reasons to pause at both Bryce's historiographical motives and methodology, but he was an eager researcher who tended to include very long quotations from primary sources. His biographer Catherine Macdonald explained that much of his background information on Manitoba derived from conversations with Andrew McDermot and other old settlers, but that he also had access to transcriptions of documents from the Selkirk ancestral home on St. Mary's Isle in Scotland. These transcriptions were selected separately and a couple decades earlier than what the team of Scottish transcribers copied out to become the Selkirk Papers (Catherine Logan Macdonald, "George Bryce, Manitoba Scientist, Churchman and Historian, 1844-1931" (MA thesis, University of Manitoba, 1983), 10-11, 121-130; Deirdre Simmons, *Keepers of the Record: The History of the Hudson's Bay Company Archives* (Montreal & Kingston: McGill-Queen's University Press, 2007), 102). Compare with Pritchett, *Red River Valley*, 26 note 15.

²⁹ Kelly Saunders, "No Other Weapon: Métis Political Organization and Governance in Canada," in *Métis in Canada: History, Identity, Law & Politics*, ed. Christopher Adams, Gregg Dahl and Ian Peach (Edmonton: University of Alberta Press, 2013), 343.

³⁰ Sealey, *Statutory Land Rights*, 31.

failed, and that the five Indigenous signatories drew their bands' totems on the Indenture in the mess room of Fort Douglas in the presence of forty or fifty *Saulteaux*. According to Peter Fidler, Le *Sonnant*, the only Cree he mentioned, held out for some time but eventually signed as well.³¹

Selkirk, Macdonell, and Fidler all differed somewhat in the vocabulary they used to discuss the concluded arrangement. Macdonell wrote yet again of a grant of land without mentioning any gifts or payments in return. He was likely concerned that the NWC would intercept his journal on his upcoming journey to Montreal, and use it to argue that Selkirk had tempted the Indigenous population to sacrifice its longterm interests for short-term gains. Peter Fidler's journals had already been plundered by the NWC for rhetorical ammunition, but he was not making the same dangerous trip and felt freer mentioning payments.³² Fidler copied out the Indenture and commented that the *Saulteaux* had "sold the Land to Lord Selkirk" in exchange for annual tobacco. Fidler further noted that the Cree would perpetually receive annual tobacco for "having given liberty to the *Saulteaux* to grant the Land."³³ However, as demonstrated in the last chapter, Euro-Canadian observers' vocabulary choices can be misleading.³⁴ Selkirk very carefully, for example, did not speak of a sale, but consistently referred to a cession and a quit rent when describing the arrangement. Coltman similarly used the term quit rent, as did the

³¹ July 18th, Miles McDonell Journal from April 5th, 1817, SP 17317; July 18th, 1817, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20. See also August 8th, 1817, *ibid*.

³² July 18th, Miles McDonell Journal from April 5th, 1817, SP 17317; Lord Selkirk to W. B. Coltman, July 17th, 1817, SP 3809-3810; W. B. Coltman to Sir J. C. Sherbrooke, Quebec, May 14th, 1818, enclosed in Sir J. C. Sherbrooke to Earl Bathurst, Quebec, May 16th, 1818, *Papers*, 122, 128-129; W. B. Coltman, "A general Statement," *ibid*, 164, 169-170, 180.

³³ July 18th, 1817, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20. Despite this liberty, it is clear that the arrangement with Selkirk was only with the *Saulteaux* (July 29th and August 8th, 1817, *ibid*).

³⁴ This applies specifically to the word "sold" by which the words of The Premier's son filtered to Selkirk's agent later that year; it was third-hand information that had probably travelled through three different languages before it was written down (Alex McDonell to Lord Selkirk, Fort Douglas, December 27th, 1817, SP 4274).

Indenture.³⁵ The Indenture clearly demonstrates what Selkirk meant by the term in its use of quit rent and “present” as synonyms. Selkirk used the latter term to acknowledge to the Indigenous population that the regular present specified was bound up in the context of reciprocal gift exchange.³⁶ In other words, he believed the Saulteaux were annually ceding land for a nominal compensation to indicate their ongoing, if temporarily alienated, rights over it. The term quit rent meant to explain the same idea to Selkirk’s Euro-Canadian correspondents. Selkirk had concluded an unusual arrangement; in Upper Canada lump sum payments were the norm for purchases of Indigenous lands until the 1820s.³⁷ The annuities of the Selkirk Treaty thus pointed to something different, something less than a formal land purchase.

Selkirk’s unusual position is best understood in light of his contention that a purchase of Indigenous land rights could not improve the quality of the land rights he derived through the HBC’s charter. Indeed, if Selkirk concluded a formal purchase of Indigenous title in 1817, he would have been acknowledging that the settlement’s on-and-off occupation up to that point had been illegitimate. He consequently did not mention the Selkirk Treaty in an otherwise exhaustive memorial published the next year, even though it would have served to contradict the NWC’s widely circulated claims of Indigenous hostility towards the Colony. Nevertheless, Selkirk secured proof of an agreement with the Indigenous population by signing the Indenture, a document that appeared to conform to the Royal Proclamation. As Selkirk had indicated to

³⁵ Lord to Lady Selkirk, Red River, July 21st, 1817, LAC MIKAN 114526, Reel A27, 521-523; Lord Selkirk to Andrew Colville, Red River, August 7th, 1817, LAC MIKAN 114526, Reel A27, 541; Coltman to Sherbrooke, Quebec, May 26th, 1818, in *Papers*, 144. In 1818, Selkirk also noted “the tract which the Sauter Indians have agreed to give up for the use of the settlement” (Lord Selkirk to F. Matthey, Montreal, June 17th, 1818, SP 5044).

³⁶ See the difference in nuance between a present and a gratuity, a word favoured by Macdonell, in the glossary of fur trade vocabulary worked out by the linguist Mary Black-Rogers (Black-Rogers, “Varieties of Starving,” 374).

³⁷ Ray et al., *Bounty and Benevolence*, 34. For the contemporary meaning of a quit rent, see Burrows, “As She Shall,” 55-56; Gaudry, “Kaa-tipeyimishoyaahk,” 44-49; Gaudry, “Fantasies,” 54; and James Whishaw, *A New Law Dictionary; containing a Concise Exposition of the Mere Terms of Art, and such Obsolete Words as Occur in Old Legal, Historical, and Antiquarian Writers* (London: J. & W. T. Clarke, 1829), 258.

Coltman, should his title be “found defective” and the charter cease to apply — and thus the Royal Proclamation begin to apply — the Indenture would allow the settlement of the country anyway.³⁸

As it happened, it did not take long for some of the land indicated in the Indenture to be cut out of Rupert’s Land. In 1818, Selkirk learned of an upcoming agreement between the British Empire and the United States of America to set a mutual boundary to their sovereign claims in the Red River valley at the 49th parallel. This removed a large swath of the Selkirk Grant from the bounds of British sovereign claims. Selkirk hoped that precedents made for Crown grants following the American Revolution would secure his continued property ownership south of the border. However, practices concerning Indigenous title were more confirmed in the United States than in Rupert’s Land, as Selkirk learned when seeking a partnership to settle the land there with John Greig, a fellow Scot and American congressman. Greig explained to the Earl that even if the American government recognized the HBC’s title, an Indigenous “interfering claim” would remain. Selkirk showed the Indenture to Greig, and further correspondence between the two indicated that Selkirk argued “that the Indian Title” had already been extinguished within its bounds. Nothing came of their prospective partnership. However, in Selkirk’s failing months, even as his memory misled him as to extent of land specified in the Indenture, he again wrote a letter indicating that the Indenture proved an extinguishment of title south of the American boundary.³⁹ Selkirk recognized that his unusual

³⁸ Lord Selkirk, “The Memorial of Thomas Earl of Selkirk...” in Bumsted, ed. *The Collected Writings*, 111-203; Lord Selkirk to W. B. Coltman, July 17th, 1817, SP 3809-3810.

³⁹ John Greig to Lord Selkirk, Canadanaigua Ontario County, New York, November 24th, 1818, SP 5543; Lord Selkirk to John Greig, December 2nd, 1818, SP 5563-5564; Lord Selkirk to Samuel Gale, Pau, January 24th, 1820, SP 6659-6665. For the argument on how the HBC’s charter and entailed rights applied in the United States, see Gale, *Notices on the Claims*, 17-25, to which Selkirk approvingly referred Greig in their correspondence.

legal position on the HBC charter vis-à-vis Indigenous title would not be respected by the United States. However, he had also understood that the form of the Indenture would allow him to assert something that, according to his understanding of the HBC charter, he had not actually concluded under the Imperial framework.

Selkirk believed that he could easily so transpose his interpretation of the Selkirk Treaty because he believed that he had secured the Colony a legitimate place within the Iron Alliance's land framework. The Indigenous negotiators believed the same, and thus did not suspect that Selkirk and Colony officials did not, and would not, predicate tenure in the settlement on ongoing Indigenous consent. However, Selkirk also misunderstood somewhat the attitudes and framework under which the Indigenous negotiators had signed the Indenture. The Earl reported to his brother-in-law that Coltman had been satisfied that the treaty had been a "unanimous and deliberate act," but in that letter he referenced only the Saulteaux.⁴⁰ Le Sonnant's name appears on the Indenture, but Selkirk overestimated the willingness of the Cree to be direct participants to the treaty. Peter Fidler described Le Sonnant's great reluctance to sign the Indenture, hardly the act of a chief delegated by other Cree to endorse the treaty on their behalf.⁴¹ The nature of Indigenous political authority, as described in Chapter Two, was such that Le Sonnant's signature in the presence of no other Cree did not speak to any broader Cree consent. Selkirk emphasized the importance of ensuring that his arrangements with Indigenous chiefs were known to the rest of the Indigenous population; in keeping with that, he did not believe that Le Sonnant's signature alone could complete the deal. He was, however, mistakenly confident that other Cree were ready to endorse the treaty. Two months after the signing of the Indenture, Selkirk made

⁴⁰ Lord Selkirk to Andrew Colville, Red River, August 7th, 1817, LAC MIKAN 114526, Reel A27, 541.

⁴¹ July 18th, 1817, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20.

provisions to have the treaty “completed on the part of the Crees” by tasking his agent Alexander McDonnell to secure more Cree signatures on the Indenture. Selkirk furthermore suggested that McDonnell reserve the quit rent for the Cree “till a greater % of nation have ratified the bargain.”⁴² It was probably in view of getting these signatures that Peter Fidler had written out an exact copy of the Indenture, but neither he nor McDonnell were ever able to obtain the signatures.⁴³ The ongoing Cree right to land was taken into account by the Saulteaux in the Selkirk Treaty with the provision of the tobacco payments. The Cree, however, refused to specifically and officially endorse the arrangement, even if, in the heat of the moment, Le Sonnant had been persuaded to sign the Indenture. Particularly significant to this thesis’s attempts to correct certain ill-founded historiographical tendencies is that Lord Selkirk himself recognized that, on his departure from Red River in 1817, the Selkirk Treaty was not a “completed” arrangement.

In conclusion, even sources deriving solely from Euro-Canadian observers and participants in the negotiation of the Selkirk Treaty provide helpful correctives to some of the

⁴² Lord Selkirk to Alexander McDonnell, Pembina, September 14th, 1817, SP 4054-4055. For the number of signatures on comparative regional treaties, see the Prairie du Chien treaty negotiated on an American initiative in 1825 (Edward Neil, “History of the Ojibways, and Their Connection with Fur Traders, Based upon Official and Other Records,” 395-510, in *Minnesota Historical Society. Volume 5. History of the Ojibway Nation* (Saint Paul: Minnesota Historical Society, 1885. Reprint 1897), 468, note 1).

⁴³ Peter Fidler appears to have been the one charged with obtaining the signatures. Initially, Alexander MacDonell was supposed to have been the “Master at Riviere Qu’Appelle” himself (October 6th, 1817, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20), but he ended up staying in the Colony instead. In November, he wrote to Selkirk saying that he had written to Fidler “respecting the Cree Indians according to your Lordships orders and he was to attend to it, in October they were not at home, they were out on a war party against the Mandans, nor have I heard what Mr. Fidler has done with them, but I am very glad they did not come here, as I had no Tobacco” (Alexander McDonnell to Lord Selkirk, Fort Douglas, November 10th, 1817, SP 4197). The next autumn, MacDonell indicated that in response to a letter from Selkirk dated July 20th, he had sent him “the Indians Deed” (Alexander McDonnell to Lord Selkirk, Fort Douglas, September 13th, 1818, SP 5385). I did not locate a copy of the letter from Selkirk. However, the instructions MacDonell claimed to have written to Fidler are not mentioned in Fidler’s Brandon House Post Journal. Instead, in 1819 Fidler reported that the Cree still had not received any payment, “No proper officer having been sent out to meet them at the Portage De Prairies belonging to the Colony but next October it is fully intended that the Crees shall have the stipulated quantity distributed amongst them the 2 or 3 principal men of that Tribe” (Peter Fidler, “General Report of Red River District,” HBCA B.22/e/1). Fidler took ill and died shortly thereafter, and there is no evidence that other Cree chiefs ever signed the Indenture.

historiographical questions identified in the first chapter of this thesis. Selkirk did not believe that negotiating for land could improve his position in Red River under the Imperial legal framework. Nevertheless, Commissioner Coltman helped him convince the Indigenous population that Selkirk had the authority to negotiate for land with it. Coltman was not himself convinced of the rights Selkirk asserted under the HBC charter, but valued the practical advantages that a land arrangement would have for the settlers and for the British Empire. Selkirk and Coltman further benefitted from the willing participation of the Saulteaux. A quit rent, explained to the Indigenous population as an ongoing gift exchange, thus secured the Colony's place within the Iron Alliance's land matrix over Red River. Selkirk also secured a written record of an agreement that would stand up to scrutiny under the Royal Proclamation of 1763, and would serve him if the rights he asserted under the Imperial framework were overturned.

The Cree, Saulteaux, Assiniboine, and Métis all had a role in allowing the Colony into Red River's Indigenous land matrix through the Selkirk Treaty. The Assiniboine deferred to the higher right of the Cree, and the Métis, in light of their weak military position during negotiations, appear to have done the same. The Cree themselves had mixed feelings, but allowed the Saulteaux to go ahead with their land arrangement in order to preserve the Iron Alliance. This can be construed as a Cree sovereign claim permitting a Saulteaux occupancy claim to move forward. The Saulteaux, preoccupied with the advantages the Colony entailed for their subsistence, then concluded the Selkirk Treaty with Lord Selkirk. The Selkirk Treaty alienated neither the rights claimed by the Cree nor those claimed by the Saulteaux. While it provided exclusive occupancy rights for the settlers, these rights were only temporary, for the

treaty also confirmed the ongoing land rights of both Cree and the Saulteaux through an annual quit rent. However, providing their land rights remained acknowledged, the Cree had no wish to be direct participants in the Selkirk Treaty alongside the Saulteaux. Apart from the reluctant and unrepresentative signature of Le Sonnant, which Selkirk himself did not believe represented binding Cree consent, there is no indication that the Cree specifically endorsed the Selkirk Treaty in 1817. The next chapter of this thesis will draw on a larger base of sources to explore how the Selkirk Treaty became interpreted as a permanent land arrangement, though neither Selkirk nor the Indigenous population treated it as such in 1817.

Chapter 5: Towards a Permanent Alienation of Land and Reliance on the Indenture

The last chapter argued that the Selkirk Treaty appears to have consisted only of a lease under the Indigenous land framework, and that Selkirk only intended it to have any standing under the Imperial land framework if his understanding of the HBC charter were first overturned. Recent scholars have similarly concluded that the Indenture, the signed written record of the Selkirk Treaty, indicates a sort of rental agreement on the part of the Indigenous population. However, the longer-standing historiographical tradition has read the Indenture as proof that the Selkirk Treaty permanently sold or extinguished Indigenous title.¹ The Hudson's Bay Company shared the latter position after 1836, when it bought from Selkirk's son whatever rights to which the Indenture entitled him. In 1847, the legal system set up by the HBC specifically admitted the Indenture as evidence that Indigenous land rights had been extinguished within the borders it described. The HBC would continue asserting this until all its claims in the Northwest were purchased by the Dominion of Canada in the late 1860s.²

However, the Indigenous population never conceded that Selkirk had bought their land or extinguished their title, nor that the Indenture was a fundamental record of the Selkirk Treaty. According to arguments laid out by political scientist Heidi Stark, the Saulteaux negotiators would have conceptualized the treaty as the sum of council proceedings and events surrounding and subsequent to negotiations. In 1869, one Saulteaux witness to the Selkirk Treaty negotiations declared that he had never even heard of the Indenture.³ Indigenous objections to

¹ For example, see Gaudry, "Kaa-tipeyimishoyaahk," 44-49, and Bumsted, *Trials & Tribulations*, 139-142.

² Narvey, "Royal Proclamation," 207; *Andrew McDermott vs. Bapt. Fanyant, Pierre Poitras, Louison Morin & Pascal Berland*, in Gibson, *Law, Life, and Government*, Vol. 2, 52-54; Begg, *The Creation of Manitoba*, 88.

³ Heidi Kiiwetinepinesiik Stark, "Respect, Responsibility, and Renewal: The Foundations of Anishinaabe Treaty Making with the United State and Canada," *American Indian Culture and Research Journal* 34:2 (2010): 148; McDougall to Howe, Pembina, Dacotah Territory, November 5th, 1869, in *Correspondence and Papers Connected with Recent Occurrences in the North-West Territories* (Ottawa: I. B. Taylor, 1870), 17-18.

the HBC's interpretation soon confronted Canadian officials preparing to negotiate Treaty 1.

Adams Archibald, with Indenture in hand, reported back to Ottawa in 1870

I do not now enter into the question of the genuineness or validity of this Deed. The Indians dispute both. They say at one time, that the Chiefs never executed such a Deed. They say at another time that if the Chiefs did sign a Deed they did not intend to sign one to this effect. That they never sold their rights but merely lent the land for a season, and even then, did not lend according to the boundaries set forth in the Deed.

At another time they say that the Chiefs who pretended to sell, had no right, as they were not Chiefs of the tribes in actual occupation.

Archibald admitted that "the Indians were not ingenuously dealt with." Though Archibald also noted that that Indigenous title over the settlement "has here always been assumed to be extinguished," Canada preferred uncontested tenure.⁴ The Dominion would not seek to exercise any rights by unilateral transfer through the Indenture, as the HBC had done when taking over from Selkirk's son.

This chapter continues the argument that the Selkirk Treaty did not consist of a permanent alienation of land. It begins by demonstrating that the aggregated witness statements concerning Selkirk Treaty negotiations, or at least those cited in the historiography, agree with this argument. The chapter then attempts to trace the shift in which the Selkirk Treaty came to be viewed as a formal extinguishment of Indian Title in the eyes of Colony officials, the HBC, and the settlers. It argues that Selkirk's precipitate death, along with dissension and high turnover among Colony officials in the early 1820s, led succeeding Colony officials to rely on the Indenture as the sole source of authority relating to the content of the Selkirk Treaty. On the basis of the Indenture, officials concluded that the land it indicated had been permanently sold,

⁴ Adams G. Archibald to Secretary of State for the Provinces Joseph Howe, Fort Garry, December 20th, 1870, No. 155, AM P7920/1, pages 1-3.

and they discounted Indigenous accounts of negotiations as opportunistic and self-serving. The Colony's policy on the Selkirk Treaty thus visibly changed in the years immediately following the signing of the Indenture, particularly in its treatment of the kind and amount of presents supposed to be attached to the Selkirk Treaty; at the same time, officials never acted as if withholding payments would impact the settlement's tenure. The reliance on the Indenture by officials also led them to admit the Cree into Selkirk Treaty quit rents, even though Selkirk had deliberately excluded them until the securing of further Cree signatures on the Indenture. Despite the Colony's variability, the Cree, Sauleaux, and even Métis continued to uphold their diplomatic framework of 1817, the paramount item of which was that none of them had permanently rid themselves of any land rights.

The bulk of surviving retrospective statements about Selkirk Treaty negotiations derive from Indigenous witnesses, and all of them are reliable. Of the Indigenous signatories to the Indenture, only Peguis lived long enough to participate actively in subsequent published debates about the Selkirk Treaty. However, relatives and successors of the Indigenous signatories also left witness statements. These included Peguis's son Eske-Pake-Koose, Le Sonnant's son and successor Makasis, and The Black Robe's son's brother-in-law Paketay-Hoond. The Cree chief Wawaskasis and the Sauleaux chief Kes-Kis-si-ma-kun also made authoritative statements.⁵ All

⁵ Statement of Eske-Pake-Koose, Red River Settlement, April 5th, 1849, in *The Red River*, "The Colonial Intelligencer" 23 (March, 1850): 391-393; "Statement of Makasis, the Cree Chief of the Assiniboine country, made in the presence of the undersigned witnesses, at a meeting, or council, held on the Assiniboine river 21st May 1858," printed in "The Red River Indians," *The Colonial Intelligencer* (January to June, 1859): 6-7; Keeskisimakun, Wawaskasis and Makasis to Secretary of State for the Colonies, c. May 1858, in "The Hudson's Bay Territory," *The Colonial Intelligencer*, (July to December 1859): 90-91; Sarah Carter identified Makasis as Le Sonnant's son and "a renowned hunter, peacemaker, and linguist who was head chief of the eastern Cree by mid century" (Carter, "KĀ-KĪWISTĀHĀW"); Paketay-Hoond, "Paketay-Hoond on the Land Question," June 15th, 1860, in *Nor'-Wester*, June 28th, 1860, page 4; Kees-ke-si-ma-kun and Makasis, Fox to House of Commons, Red River Settlement, September 1860, appendix 3 to APS memorial to Duke of Newcastle, *Colonial Intelligencer* (January to December, 1861): 227-228; "Indian Councils," *Nor'-Wester*, September 10th, 1863, page 2. See also Begg, *Creation of Manitoba*, 88.

these could corroborate their accounts with the testimony of the four dozen Saulteaux that Peter Fidler had described attending Selkirk Treaty negotiations. Some of these, such as Peguis's brother Red Deer, were able to relate what they had observed as late as the negotiation of Treaty 1.⁶ The Métis André Trottier also witnessed Selkirk Treaty negotiations, and two of his published statements survive. While Trottier had fought alongside Cuthbert Grant and Bostonnais Pangman at the Battle of Seven Oaks, he was apparently even-handed enough that Selkirk and the NWC separately called him as a witness in front of Commissioner Coltman.⁷ In one form or another, all these witnesses denied that Selkirk had permanently bought land.

The most important and detailed witness statements concerning the Selkirk Treaty derive from Peguis. They have been preserved in an appendix to the 1857 report of the Select Committee of the Hudson's Bay Company, in a statement sent to the Imperial Parliament through the Aborigines' Protection Society in 1859, and in an account in the *Nor'-Wester* newspaper in

⁶ July 18th, 1817, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20; "The Chippewa Treaty. Second Day's Proceedings," Lower Fort Garry, July 27th, 1871, in *The Manitoban & Northwest Herald*, August 5th, page 2. Peguis and Red Deer were of a long-lived family (see also January 21st, 1814, Miles McDonell No 3, SP 16875, though in this case the "cut nose chief" in question may refer to another chief than Peguis, whom Macdonell tended to refer to as Peguis, on February 6th, SP 18880 for example; see also "Reports on the Eastern Coast of Lake Winnipeg, 1815, HBCA B.16/e/1, 8).

⁷ Andre Trukè's Statement," May 26th, 1858, in "The Red River Indians," *The Colonial Intelligencer* (January to June, 1859): 7; "The Land Question," *Nor'-Wester*, June 14th, 1860, page 3. See the appendices for spellings of his name; I have opted to use Trottier, as per Brenda Macdougall and Nicole St-Onge, "Rooted in Mobility: Metis Buffalo-Hunting Brigades," *Manitoba History* 71 (Winter 2013): 29; "TROTIER, André Jr," Hudson's Bay Company Archives—Biographical Sheets, accessed November 7th, 2018, https://www.gov.mb.ca/chc/archives/hbca/biographical/t/trottier_andre-jr.pdf; Coltman, "A general Statement..." in *Papers*, 195-196; at Seven Oaks his brother Joseph was disabled, which the NWC compensated by helping support the family; Ross, *Red River Settlement*, 38; December 20th, 1817, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20. See also Depositions no. 225 and 226, cited in W. B. Coltman, "A general Statement..." in *Papers*, 195-196.

1863, the year before Peguis's death.⁸ Some settlers in Red River also were familiar with Peguis's account; in 1860, Donald Gunn reported that Peguis had "always asserted, that the arrangement about the land was only preliminary to a final bargain, giving as a reason that His Lordship was pressed for time." Peguis believed that Selkirk planned to return in 1818 to properly conclude the treaty.⁹ According to Peguis, after coming to terms over boundaries Selkirk had told the Indigenous negotiators

At present we cannot conclude the arrangement, for I have nothing to pay you with. Let us leave the matter as it stands. I will come back, and then we will close the negotiations. I am in a hurry, and cannot remain longer, but I will be sure to return.

Selkirk then offered presents of gunpowder, tobacco, and rum "in consideration of the arrangement which is to be made when I come back." The Earl then pressed two reasons on the chiefs for signing the Indenture: it would allow him to explain the proposal to others in England, and also would make it easier to conclude the treaty on his return to Red River in the event of the death of one of the negotiating chiefs. Peguis said the signatories signed only after Selkirk had thus assured them the Indenture was little more than a letter of intent. Selkirk did not return, and the tobacco, ammunition, and rum became annual gifts. The Saulteaux had to work out what the

⁸ The 1857 and 1859 letters were published through the Aborigines' Protection Society, which had become a link between Red River and England ("The Red-River Indians," *The Colonial Intelligencer* 21 (January 1850): 324-326). The 1857 letter appears as "LETTER from Peguis, Chief of the Saulteaux Tribe at the Red River Settlement, to the Aborigines Protection Society, London," in F. W. Chesson to H. Labouchere, London, June 7th, 1857, Appendix No. 16, in *Report from the Select Committee ...* (London: House of Commons, 1857), 445-446. The APS also published a version in the *Colonial Intelligencer* that has fewer typos. References to the letter in this thesis have thus been taken from the *Intelligencer* (in "Red River Indians," *Colonial Intelligencer* 6 (April to June, 1857): 224-226). Chesson wrote that the original was in the handwriting of Peguis's son, which he may have concluded by comparing it with an appeal Eske-pake-koose had sent the APS in 1849. It was not easy to secure the place of Peguis's statement in the Select Committee's report (*Twenty-First Annual Report of the Aborigines' Protection Society*, May 1858; Peguis to the Great House across the great waters, March 21st, 1859, enclosed in John Taylor to F. W. Chesson, Red River Settlement, April 25th, 1859, *Colonial Intelligencer* (January-June, 1859): 9); William King (Peguis), "Important Statement of Pegowis, The Indian Chief," *Nor'-Wester*, October 14th, 1863, page 3.

⁹ Donald Gunn, "Peguis Vindicated," *Nor'-Wester*, April 28th, 1860, page 4; Peguis, "Red River Indians," *Colonial Intelligencer* 6 (April to June, 1857): 224.

Selkirk Treaty, as a provisional arrangement stretching longer than anticipated, meant, and Peguis explained that they interpreted the annual presents as confirmation of their ongoing right. Until a permanent land treaty were concluded, the Saulteaux thus treated the Selkirk Treaty as a rental agreement, where they were compensated with gifts every October for allowing their settler allies to occupy land provisionally within the two-mile limit. Until his death, Peguis remained adamant that these presents “were not in payment for our lands. We never sold them. We only proposed to do so; but the proposal was never carried out, as Lord Selkirk never came back.”¹⁰

The details of Peguis’s account of negotiations with Selkirk stand up to scrutiny. Selkirk thought the charter precluded any need to have a permanent land deal with the Indigenous population recognized under the Imperial framework; however, Selkirk’s reference to getting approval in England would have helped to assuage any lingering doubts the Saulteaux had about his authority to treat with them. It is also true that the Earl had nothing beyond pemmican to pay the Saulteaux or Cree anyway. His finances were fragile, he had paid an enormous amount to Coltman in bail, and even the tobacco promised under the Indenture would only be available in December.¹¹ Furthermore, Selkirk’s reported concern about the potential death of chiefs echoed the effect chief Joseph Brant’s death had on Selkirk’s attempted land purchase nine years earlier in Grant River.¹² Selkirk had also been in a hurry to conclude his affairs in Red River and depart

¹⁰ William King (Peguis), “Important Statement of Pegowis, The Indian Chief,” *Nor'-Wester*, October 14th, 1863, page 3.

¹¹ Alex McDonell to Lord Selkirk, Fort Douglas, December 27th, 1817, SP 4274; Bumsted, *Lord Selkirk*, 299, 337; Chester Martin, *Lord Selkirk's Work*, 133 footnote 2; Lord Selkirk to Lady Selkirk, Red River, July 7th, 1817, LAC MIKAN 114526, Reel A27, 503; December 1st, 1817, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20.

¹² Alexander McDonell to Lord Selkirk, York, March 18th, 1808, in Johnston, *Valley of the Six Nations*, 170-171.

as soon as possible, as were Coltman and Macdonell.¹³ Moreover, as demonstrated last chapter, Selkirk did not believe the Selkirk Treaty had been settled with the Cree at the time of his departure. The Saulteaux moreover had a good precedent leading them to trust that Selkirk would return. As demonstrated in Chapter Three, Miles Macdonell had reached a similar, if less detailed, provisional arrangement with Peguis in 1813. Despite being forcefully removed in 1815, Macdonell had returned to the settlement. Selkirk, as promised, then arrived in Macdonell's wake to negotiate more permanently for the settlement's land. A final significant point is that, as Peguis claimed, Selkirk intended to return to Red River as soon as possible. The Earl was prevented from returning in 1818 by court battles in the Canadas, and by his return trip to Britain that winter; nevertheless, he sought to arrange a passport through the United States in order to visit the settlement during the spring of 1819. This was ultimately prevented by ill health. By the end of May, his biographer Jack Bumsted noted that Selkirk had ceased to be "a player in his life, but merely a passing victim."¹⁴ Selkirk would not return before dying in April 1820, but he had intended to do so.

There were far fewer Euro-Canadians present during the negotiation of the Selkirk Treaty, and those who did sign the Indenture as witnesses did not participate in the later debate. Neither did the settlers, who arrived back in the settlement only shortly after the Indenture was

¹³ Macdonell in particular was to leave within days (Lord Selkirk to Lady Selkirk, Red River, July 7th, 1817, LAC MIKAN 114526, Reel A27, 504; July 22nd, 1817, Miles McDonell Journal from April 5th, 1817..., SP 17318; July 22nd, 1817, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20).

¹⁴ Bumsted, *Lord Selkirk*, 414-415; Peguis, "Red River Indians," *Colonial Intelligencer* 6 (April to June, 1857): 224. In late 1818-early 1819, Selkirk asked a prospective business partner to arrange for the passport, but overestimated the latter's willingness to go into business and by February 25th the Earl had ceased writing of his imminent arrival (Lord Selkirk to John Greig, December 28th, 1818, SP 5599; Lord Selkirk to John Greig, January 30th, 1818, SP 5764; Lord Selkirk to John Greig, February 25th, 1819, SP 5949). In Lord Selkirk to Robert Dickson, London, May 21st, 1819, SP 6208, Selkirk suggested that if the Sioux gave up their land rights south of the American boundary, it might matter less that he return in person, indicating that his presence was necessary for a similar existing plan, namely the Selkirk Treaty. This was all despite the fact that a return to North America would have harmed his chances of remaining in the House of Lords (Selkirk to Lord Hopetown, February 2nd, 1819, SP 5861).

signed. Early historian Donald Gunn was convinced that details of the Selkirk Treaty were not shared with the settlers, but were learned “only by hearsay.” A friend to Peguis and a reliable historical investigator, Gunn thus took to the pages of the *Nor'-Wester* to refute Andrew McDermot, the only Euro-Canadian in the later debate who claimed to offer authoritative personal testimony about the Selkirk Treaty. McDermot was the sole witness to argue publicly that Selkirk had intended, and succeeded, in permanently alienating land during the Selkirk Treaty. He offered as proof the fact that he lived in the settlement in 1817 and had been acquainted with many of the signatories. However McDermot’s account is riddled with inconsistencies. When Gunn demonstrated as much, McDermot backed away from his claims to rest his broader position on the authority of the HBC charter and the innate inferiority of Indigenous testimony to his own.¹⁵ The unreliability of McDermot’s account stands in a marked contrast to Peguis’s. This is especially telling because McDermot had just as much of a vested interest as Peguis in the outcome of the Selkirk Treaty. In 1817 McDermot had been a fur trader earning a reputation among the Indigenous population for duplicity, but by the time he was participating in the debates about the Selkirk Treaty, he was an intimate member of Red River’s HBC elite and one of the Colony’s biggest landowners. He had proved his direct interest in preserving the Indenture as a permanent root of tenure in the settlement by serving as the plaintiff in the test of case of *McDermot v. Fanyant* in 1847, the case that saw the Indenture

¹⁵ On the 18th, settlers were still travelling from Netley Creek to the Image Plain (July 18th, 1817, Alexander McDonnell’s Journal, SP 18172-18173); Andrew McDermot, “Peguis Refuted,” *Nor'-Wester*, February 28th, 1860, page 3; Donald Gunn, “Peguis Vindicated,” *Nor'-Wester*, April 28th, 1860, page 4; Andrew McDermot, “The Peguis Land Controversy,” *Nor'-Wester*, May 14th, 1860, page 1; Donald Gunn, “The Land Controversy,” *Nor'-Wester*, June 28th, 1860, page 4. Gunn discussed the Selkirk Treaty in his posthumously published history (Gunn, *History of Manitoba*, 202-204). On Gunn as historian, see Editor’s preface to Donald Gunn, “The History of the Red River or Selkirk Settlement,” *Nor'-Wester*, February 12th, 1869; and Lyle Dick, “Red River’s Vernacular Historians,” 11.

admitted as evidence that Indigenous title had been extinguished.¹⁶ McDermot is an outlying and unreliable witness, but through his letters to the *Nor'-Wester* in 1860, and personal conversations with Treaty 1 officials, his testimony has disproportionately influenced the historiography of the Selkirk Treaty.¹⁷

The preponderance of later witness statements thus claimed that the Selkirk Treaty was not a permanent arrangement. However, as early as 1823 an American visitor to the settlement wrote that Selkirk had “extinguished the Indian title” by paying a set sum and an annuity.¹⁸ It would appear then that by the early 1820s, Colony officials were telling visitors that Indigenous title to land within the settlement had been permanently extinguished. The shift in understanding

¹⁶ While McDermot’s superior reported him as an “Honest” employee in 1815 (Reports on the Eastern Coast of Lake Winnipeg, 1815, HBCA B.16/e/1, 6), this soon changed (“Report of the Manitoba District by William Brown for 1818-19,” 7, HBCA B.122/e/1). On McDermot’s HBC career, see “MCDERMOT, Andrew,” Hudson’s Bay Company Archives—Biographical Sheets, accessed November 7th, 2018, http://www.gov.mb.ca/chc/archives/hbca/biographical/mc/mcdermot_andrew.pdf. In his limited defence, McDermot did trade with The Black Man, and likely Peguis (September 1st, 1822 and June 6th, 1823, Winnipeg Post Journal, 1822-1823, HBCA B.235/a/5). Nevertheless, he had more lots registered to him in the settlement than any other individual (“List of Grantees of Lands in Assiniboia under the Earl of Selkirk and the Hudson’s Bay Company, from 1812 to July 15, 1870,” in A. Martin, *HBC Land Tenures*, 152). McDermot’s role in the 1847 trial was moreover part of his ongoing effort to repair his relationship to the HBC, having only just been reinstated to the Council of Assiniboia after spearheading agitation over a trade question (*Andrew McDermott vs. Bap. Fanyant, Pierre Poitras, Louison Morin & Pascal Berland*, in Gibson, *Law, Life, and Government*, vol. 2, 52-54; Barry E. Hyman, “MCDERMOT, ANDREW,” in *Dictionary of Canadian Biography*, vol. 11, University of Toronto/Université Laval, 2003–, accessed November 7th, 2018, http://www.biographi.ca/en/bio/mcdermot_andrew_11E.html). By the time McDermot spoke to Treaty 1 negotiators, he had long since been solidly linked with the HBC again (Gallagher, “Whig History,” 31-32; 89-90).

¹⁷ Andrew McDermot, “Peguis Refuted,” *Nor'-Wester*, February 28th, 1860, page 3; Andrew McDermot, “The Peguis Land Controversy,” *Nor'-Wester*, May 14th, 1860; Molyneux St. John to Adams Archibald, Winnipeg, January 17th, 1871, No. 176, AM P7920/2. McDermot signed St. John’s report. Historians who have relied uncritically on McDermot include Czuboka, “St Peter’s,” 36; Peers, *The Ojibwa*, 93; Gerhard Ens, *Homeland to Hinterland*, 30-31; Ray et al., *Bounty and Benevolence*, 29-31; and Bumsted, *Trials*, 139-142. Recent opponents of the McDermot’s interpretations, such as Adam Gaudry, have not engaged with McDermot’s assertions.

¹⁸ William Keating, ed, *Narrative of An Expedition to the Source of St. Peter’s River, Lake Winnepeek, Lake of the Woods, &c. &c. Performed in the Year 1823, by order of thee Hon. J. C. Calhoun, Secretary of War, Under the Command of Stephen H. Long, Major U. S. T. E., compiled from the notes of Major Long, Messrs. Say, Keating, and Colhoun, in two volumes*, volume 2 (Philadelphia: H. C. Carey I. Lea, 1824), 42. Interestingly, a contemporaneous Italian visitor who never went further north than Pembina did not discuss the treaty at all, but made both his and the Pembina Métis’s contempt for the charter very clear (Letter XVIII, Selkirk Colony, Bloody River, August 10th, 1823, in J. C. Beltrami, *Pilgrimage in America: Leading to the Discovery of the Sources of the Mississippi and Bloody River; with a Description of the Whole Course of the Former, and of the Ohio* (Chicago: Americana Classics, Quadrangle Books, 1962), 334, 345-349, 356.

the Selkirk Treaty from a temporary arrangement to a permanent land alienation can presumably then be traced to the years immediately following the signing of the Indenture.

An important characteristic of the Colony's government during this period was an unsettled and changing leadership.¹⁹ Lord Selkirk's choice of governor of Assiniboia after the signing of the Indenture was Alexander MacDonell, but the Earl also appointed other officials with unclear mandates in relation to MacDonell's. Infighting ensued. The HBC then appointed George Simpson to head its North American operations. He arrived on the continent in 1820. The next year, the HBC and NWC agreed to coalesce their operations to create a more harmonious and profitable fur trade, and Simpson concluded that MacDonell was mismanaging the Colony. Simpson arranged MacDonell's removal from office in March 1822. Andrew Bulger, a retired soldier who had served alongside relatives of Red River's Indigenous population during the War of 1812, succeeded MacDonell and arrived in the settlement in June. The demoted MacDonell decided to stay in the settlement, and took on a few lesser official functions. However, the former governor tended to challenge rather than cooperate with other officials, and was particularly effective on account of official papers he had refused to hand over to Bulger. Unsurprisingly, Bulger did not enjoy his new position and almost immediately gave a year's notice of his resignation. His replacement, the young Robert Parker Pelly, lasted from 1823 until 1825 but looked to Simpson for all of his instructions. Of these three three governors, only Alexander MacDonell had spent any length of time in the Red River area under Selkirk; Bulger, Pelly, and even Simpson ventured into the Red River area only after their appointments.

¹⁹ Compare with Red River's Indigenous political leadership, the primary chiefs of which remained largely the same throughout this period, though The Premier's influence waned and Peguis's rose after 1817 (Peter Fidler, "General Report of Red River District by Peter Fidler 1819 May," HBCA B.22/e/1).

By 1824 MacDonell had fallen so far from grace among other officials that they would have looked skeptically on any institutional knowledge he may have felt inclined to impart.²⁰ Between such a high turnover and MacDonell's hoarding of official documents, interpretive vacuums began to emerge on certain issues. The Selkirk Treaty was one of these, and the Indenture was increasingly seen as the only trusted authority about it available to Colony officials.

This was despite the fact that the practices surrounding Selkirk Treaty payments strayed considerably from the text of the Indenture in these early years. The Saulteaux signatories evidently understood that the Selkirk Treaty gave the Colony a temporary ownership of lands along the Red and Assiniboine in exchange for a quit rent or gifts acknowledging their ongoing land rights every October. However, their gifts went beyond the tobacco specified in the Indenture. As noted earlier, Peguis recalled receiving ammunition, tobacco, and rum "which we took as preliminary to a final bargain for our lands." Peguis explained that these became annual gifts, gradually diminishing in quantity.²¹ Even George Simpson, who insisted in 1857 that Selkirk had regularly purchased the settlement's land, acknowledged that the price included not only tobacco but also ammunition and other articles.²² Andrew McDermot recognized the significance of the variance of actual payments from the terms of the Indenture, and in 1860 provided an explanation: a few days after signing the Indenture, the Indigenous signatories

²⁰ An example of an official with an unclear mandate challenged by Alexander McDonnell is William Laidlaw, whom Selkirk charged with the Colony's first experimental farm without giving him written documentation to prove his authority (William Laidlaw to Lord Selkirk, Mayfield, July 22nd, 1818, SP 5214-5215); Burley, "MACDONELL"; Robert S. Allen and Carol M. Judd, "BULGER, ANDREW H," in *Dictionary of Canadian Biography*, vol. 8, University of Toronto/Université Laval, 2003–, accessed November 7th, 2018, http://www.biographi.ca/en/bio/bulger_andrew_h_8E.html; John S. Galbraith, "SIMPSON, Sir GEORGE," in *Dictionary of Canadian Biography*, vol. 8, University of Toronto/Université Laval, 2003–, accessed November 7th, 2018, http://www.biographi.ca/en/bio/simpson_george_8E.html; Simpson to Colville, Fort Garry, May 31st, 1824, SP 8225.

²¹ Peguis, "Red River Indians," *Colonial Intelligencer* 6 (April to June, 1857): 224. Trotter similarly mentioned "three little kegs of rum, and three little parcels of goods" which Selkirk had presented "as a sort of recompense for the loan of your lands" in the future (Andre Trukè's Statement, May 26th, 1858, in "The Red River Indians," *The Colonial Intelligencer* (January to June, 1859): 7); Peguis, "Important statement."

²² Sir George Simpson, February 26th, 1857, in "Minutes of Evidence," in *Report from the Select Committee*, 63.

decided that the specified tobacco was “too much” and asked that some of their quit rent be paid in goods of an equivalent value.²³ This was not the case; the Colony had a shortage of tobacco in 1817, including when the Saulteaux signatories tried to collect their first quit rent in October. Alexander MacDonell reported that he had conciliated them each with a medal and a keg of mixed rum, and that enough tobacco only arrived in the Colony for them in December.²⁴ The Colony thus did not always find itself able to fulfill the terms of the Indenture.

Moreover, in the eyes of the Saulteaux, any variations in their payments factored into their agreement with Selkirk. So too did items spoken of during negotiations with Selkirk.²⁵ Gifts of alcohol were a case in point. In 1817, Selkirk instructed Alexander MacDonell to accompany the quit rent with liquor. The next year Captain F. Matthey, appointed Superintendent at Red River to manage the settlement in cooperation with MacDonell and who himself had signed the Indenture as a witness, wrote that the Indigenous signatories were claiming tobacco, but also rum and trade goods “which I remember was just mentioned but nothing stipulated.” Matthey then validated Indigenous expectations by providing both. Peter Fidler described the 1818 payment made by Matthey, and specifically contrasted the quit rent described in the Indenture with the actual “annual present,” which consisted of tobacco, rum, ammunition, and clothing.²⁶ Payments beyond the tobacco quit rent quickly became identified

²³ McDermot also wrote of pounds sterling given annually to the signatories, and that each signatory chief was to receive a keg of rum once all required signatures were secured (Andrew McDermot, “Peguis Refuted,” *Nor'-Wester*, February 28th, 1860, page 3).

²⁴ Colony officials had enough tobacco on hand to pay The Premier and The Black Man, and persuaded Peguis and The Black Robe to hold off until they could be paid (Alexander MacDonell to Lord Selkirk, Fort Douglas, November 10th, 1817, SP 4197; Alex MacDonell to Lord Selkirk, Fort Douglas, December 27th, 1817, SP 4274). MacDonell had been “hardly put to for the Tobacco” (Alexander MacDonell to Selkirk, Fort Douglas, July 20th, 1818, SP 5193).

²⁵ Stark, “Respect, Responsibility, and Renewal,” 148.

²⁶ Lord Selkirk to Alexander MacDonell, Pembina, September 14th, 1817, SP 4053-4054; Lord Selkirk to F. Matthey, Montreal, June 17th, 1818, SP 5044; Capt. F. Matthey to Lord Selkirk, Fort Douglas, September 12th, 1818, SP 5371; Peter Fidler, “General Report of Red River District by Peter Fidler 1819 May,” HBCA B.22/e/1.

with the Selkirk Treaty; in early 1819, a newly-arrived missionary wrote to his bishop that a principal clause of the land agreement was an annuity in rum to certain chiefs. Similarly, André Trottier recalled that “the chiefs of the Assiniboine river” were disappointed in 1819 to be denied the trade goods they understood to be a part of the treaty — but Trottier nevertheless noted that they were still given rum in addition to the tobacco quit rent.²⁷ Colony officials exhibited discomfort in moving beyond the text of the Indenture in the early years of the settlement. They did so anyway, indicating a lack of confidence in what Selkirk had agreed, and a lack of clarity regarding the nature of Selkirk Treaty payments.

This confusion was only compounded by the fact that Selkirk Treaty payments were all indistinguishable from gifts that were standards in the fur trade and prairie diplomacy. That the quit rent was to be paid in the autumn was unexceptional, and neither alcohol, ammunition, tobacco, or even medals marked out signatory chiefs from other influential chiefs. A good illustration of this occurred in 1817, a few days after Alexander MacDonell had given the Saulteaux signatories each a medal and a keg of mixed rum, but not all their quit rent tobacco. Two dozen men arrived at the settlement under the “Indian Chief” Cuthbert Grant. MacDonell gave Grant a mixed keg of rum, and wrote that he would have given Grant a medal except that he

²⁷ Sév. Dumoulin to Monseigneur J.O. Plessis, January 5th, 1819, Pembina, in Nute, *Documents Relating to Northwest Mission*, 172, 172 note 85; Nive Voisine, “DUMOULIN, SÉVÈRE (1793-1853),” in *Dictionary of Canadian Biography*, vol. 8, University of Toronto/Université Laval, 2003–, accessed November 7th, 2018, http://www.biographi.ca/en/bio/dumoulin_severe_1793_1853_8E.html; Andre Trukè’s Statement,” May 26th, 1858, in “The Red River Indians,” *The Colonial Intelligencer* (January to June, 1859): 7; “The Land Question,” *Nor'-Wester*, June 14th, 1860, page 3. Apparently the chiefs mentioned by Trottier sought payment at Fort Souris, that is Brandon House, rather than either location specified in the Indenture. They may then have been connected to Fidler’s task of trying to get more Cree signatures on the Indenture.

had run out.²⁸ However, not only were Selkirk Treaty payments nondescript, they were also made for land that was never occupied under the authority of the Indenture. The disassociation of Selkirk Treaty payments from land was especially acute in payments made to The Black Man even though the land he had signed away soon fell under American sovereign claims.²⁹ Unsurprisingly, a Métis public meeting in 1860 resolved that payments received by signatory chiefs after the signing of the Indenture did not indicate that land had been sold in the Selkirk Treaty. Informed by decades of the HBC's incoherent treatment of Métis land title in the St. François-Xavier parish on the Assiniboine River, the meeting claimed instead that payments had

²⁸ Alexander McDonell to Lord Selkirk, Fort Douglas, November 10th, 1817, SP 4197. Grant may have expected such treatment again, as a Grant turned up at the Forks the next year just as the signatories began gathering and discussing the coming quit rent payment. Captain Matthay suspected that Grant was there to strengthen ties with the NWC-friendly Pillager band and influence others "towards war and mischief" (Capt. F. Matthay to Lord Selkirk, Fort Douglas, September 12th, 1818, SP 5371), though it is possible that this was not Cuthbert but a James Grant instead (Alexander McDonell to Lord Selkirk, Fort Douglas, July 20th, 1818, SP 5190). For the non-descriptiveness of payments, see Report of the Manitoba District by William Brown for 1818-19, HBCA B.122/e/1, page 8; Lord Selkirk to Alexander McDonell, Pembina, September 14th, 1817, SP 4053; Duncan Graham to Lord Selkirk, Fort Douglas, September 13th, 1818, SP 5381. For standard autumnal presents, see September 16th, 1802, Coues, *The Manuscript Journals*, vol. 1, 204.

²⁹ The Black Man signed the 1823 receipt ("Copy of the Receipts of the presents delivered to the Indians. 9th October. 1823," SP 8065). George Bryce and Charles Bell noted this receipt and another from 1831 in "Original Letters and other Documents relating to the Selkirk Settlement," *Transactions of the Manitoba Historical Society*, Series 1, No. 33, Read January 17th, 1889, last revised January 13th, 2013, accessed November 7th, 2018, <http://www.mhs.mb.ca/docs/transactions/1/selkirkletters.shtml>. I did not locate the 1831 receipt, though McDermot claimed that The Black Man's heirs received payment too ("Peguis Refuted," *Nor'-Wester*, February 28th, 1860, page 3), and Pritchett noted that Selkirk's heirs continued the annuities until 1836 in the hope that the American government would eventually recognize their claims south of Pembina (Pritchett, *Red River Valley*, 230-231).

been made “to every influential Indian throughout the country” as a general practice.³⁰ Even Peguis believed he would have been entitled to such gifts “irrespective of the land,” though he also directly tied the payments he received from Colony officials to the Colony’s land use.³¹

The Saulteaux signatories and Colony officials thus both seemed to be feeling their way around uncertain expectations in regard to the Selkirk Treaty. Peguis was initially content to await Selkirk’s return to solidify their agreement; as the linguist Mary Black-Roger noted, the Saulteaux did not usually think about time limits in regards to the repayment of reciprocal debts, and Peguis was further bolstered by a handsome recommendation Selkirk had written for him in

³⁰ “The Land Question,” *Nor'-Wester*, June 14th, 1860, page 3. Compare with the earlier Métis strategy of claiming that it was against British policy to receive payments for Indigenous land that had not yet been sold (John Taylor to F. W. Chesson, Red River Settlement, April 25th, 1859, in “The Red River Indians,” *The Colonial Intelligencer* (January to June, 1859): 8-9). Taylor was a member of the ad hoc “Assiniboine Committee” along with Pascal Breland (*ibid.*, 7). St. François-Xavier is on the Assiniboine, and appears to have been similar to Grand River and St. Peter’s, insofar as Métis land administration there was exercised in ways intelligible to Euro-Canadian systems. From at least 1827 onwards, the mixed-blooded population on the Red River toed a similar line in two systems, asserting sovereign rights yet more or less respecting the District of Assiniboia’s land regulations (Giraud, *The Métis*, vol. 2, 222; Guinn, *The Red-Assiniboine Junction*, 70; Ens, “The Battle of Seven Oaks,” 110). The Métis had not ceded their territorial claims when in 1824 Simpson gave Cuthbert Grant land at White Horse Plain (George Simpson to Andrew Colville, May 27th, 1824, in MacLeod, *Cuthbert Grant*, 86). While Simpson ignored the Selkirk Treaty by granting a depth of 6 miles on the north side of the Assiniboine, Grant was content to interpret his territorial rights within conventions of Euro-Canadian property, confining the lots he granted to a Selkirk-Treaty depth of two miles, and explaining the way he thereafter allotted lots about him in terms of the Lower Canadian seigneurial system (MacLeod, *Cuthbert Grant*, 92-93). Colony agents had long before denied the Roman Catholic bishop the right to institute such a system, however, and after Grant failed to reign in the Métis during the Sayer Trial, Chief Factor Ballenden cracked down on his claims in this regard (Bulger to Provencher, Fort Douglas, September 10th, 1822, in A. Martin, *HBC Land Tenures*, 201; MacLeod, *Cuthbert Grant*, 137; and John Ballenden to Sir George Simpson, Fort Garry, February 13th, 1850 in *ibid.*, 137-138). Still, many settlers there continued to think they held their titles through Grant rather than the HBC (J. Clouston to William Lane, October 9th, 1855, cited in Ens, *Homeland to Hinterland*, 33). The HBC, as the Selkirk Estate before it, officially denied settlers real proprietary rights such as the ability to set the terms upon which they could lease out their land without harming the integrity of their title; no wonder then that the Métis, whose Indigenous territorial rights and Euro-Canadian property rights were both denied by the HBC, should seek to deny in turn the pretensions of the HBC. The chair of the public meeting was Pascal Breland, Grant’s high-profile son-in-law and *de facto* successor, and a defendant in *McDermot vs. Fanyant* (Ens, *Homeland to Hinterland*, 86-87; Gibson, *Law, Life, and Government*, vol. 2, 52).

³¹ William King (Peguis), “Important Statement of Pegowis, The Indian Chief,” *Nor'-Wester*, October 14th, 1863, page 3.

1817.³² Selkirk's death changed matters. Peguis learned of it in October of 1820, and thereafter wrote multiple letters to Selkirk's family asking that Alexander MacDonell be replaced. Peguis was convinced MacDonell was cheating and deceiving him, and he did not trust the governor to deliver all of the presents from Selkirk's family.³³ MacDonell had not cultivated a good relationship with the Saulteaux, particularly while their nascent truce with the Sioux foundered — when a Sioux delegation arrived at Fort Douglas in May of 1821, a pitched battle with Red River's Saulteaux was only avoided after MacDonell threatened to fire on the Saulteaux with the fort's artillery. That autumn, MacDonell himself reported that the Saulteaux had been provoked, not by him but by NWC stories that the Colony was selling land for more than what it had paid for it. He also claimed to have mollified the Saulteaux with presents and an explanation of the NWC's motives. The 1821 presents to Peguis did go well beyond the tobacco specified in the Indenture.³⁴ Even so, the Saulteaux had initially welcomed the Colony as an ally and bulwark

³² Black-Rogers, "Varieties of Starving," 367. See also Bruce White's commentary on Mary Whelan's study of the Sioux in the fur trade, where he speculated that the Saulteaux may have considered a quick repayment unfriendly as it ended the reciprocal relationship (Bruce White, "A Skilled Game of Exchange: Ojibway Fur Trade Protocol," *Minnesota History* (Summer 1987): 240). See also Bruce White, "'Give Us a Little Milk': The Social and Cultural Meaning of Gift Giving in the Lake Superior Fur Trade," *Minnesota History* 48:2 (Summer 1982): 60-71 and Laura Peers, "Rich Man, Poor Man, Beggarman, Chief: Saulteaux in the Red River Settlement," in William Cowan, editor, *Papers of the Eighteenth Algonquian Conference* (Ottawa: Algonquian Conference, 1987), 261-270 for Saulteaux expectations of gift-giving and reciprocal relationships. The text of Peguis's recommendation from Selkirk was attached to his statement attached to the Select Committee Report "Appendix 16, *Report from the Select Committee*, 446; see also Garry, "Diary of Nicholas Garry," 143.

³³ Peguis to Andrew Colville, Red River, June 12th, 1821, SP 7309-7310. Peguis learned of Selkirk's death from John West on October 13th, 1820 (John West, *The Substance of a Journal during a Residence at the Red River Colony, British North America; and Frequent Excursions among the North-West American Indians, in the years 1820, 1821, 1822, 1823* (L.B. Selley and Son: London, 1824), 20-21). For comparison, Simpson heard of it in August but, thinking it an NWC conspiracy, only believed when letters from England came on February 4th, 1821 (E. E. Rich, ed. *Journal of Occurrences in the Athabasca Department by George Simpson, 1820 and 1821, Report* (London: The Hudson's Bay Record Society, 1938), 18, 42, 44, 257, 259). For the value Peguis placed on continuity among Colony officials, see Capt. F. Matthey to Lord Selkirk, Fort Douglas, September 12th, 1818, SP 5368.

³⁴ Alexander McDonell to Colville, York Factory, September 13th, 1821, SP 7417. Interestingly, the Colony's chief agent dealing with the Sioux believed this incident was "a violation of our territory," but his account indicates that the Sioux recognized the land to belong to the Saulteaux (Robert Dickson to John Pritchard, Hayfield, August 30th, 1821, SP 7349-7358). In the spring of 1821, the Colony supplied the Saulteaux with grain to sow and forty hoes for Peguis (Alexander McDonell to Colville, York Factory, September 13th, 1821, SP 7417-7418), and Peguis's annual gift that autumn "consisted of 14 lbs gunpowder, 14 lbs ball and shot, ½ dozen firesteels, ⅓ doz. scalping knives, ¼ lb. vermilion, 10 lbs. tobacco, ¼ dozen large horn combs, 3 gallons spirits, 28 lbs flour, 106 lbs pemmican" (Friesen, "Grant Me Wherewith," 46, citing Legislative Library of Manitoba, Historical Scrapbooks, M5, 88).

against the Sioux. The Selkirk Treaty had moreover slotted the settlement into the Iron Alliance's land framework over Red River, from which the Alliance had been excluding the Sioux through prolonged warfare. Between the Sioux and Peguis's complaints about MacDonell, the Colony was clearly disappointing the Saulteaux in their expectations of the Selkirk Treaty.

Peguis accepted the presents offered him in 1821, but was disappointed in his response from Selkirk's estate. John Halkett, a relative by marriage and close partner to Selkirk in his Northwestern endeavours, did arrive at the Colony in June of 1822 in the company of the newly-appointed governor Andrew Bulger. Halkett remained in Red River for seven weeks. He appreciated the help Peguis had given the settlers, but any interview with Peguis at this time did not assuage the Saulteaux. A response to Peguis's latest letter was separately en route from England, but it only arrived month after his band had already lost patience with the Colony.³⁵ Bulger described this in letters to Selkirk's brother-in-law: on September 8th, the Saulteaux were complaining that they had not received enough for "the land purchased from them." Bulger continued, writing that on September 14th, Peguis and The Black Robe met at Fort Douglas, and that on the 15th, Peguis requested a council with Bulger where he pled the Saulteaux case. He spoke of what Selkirk had promised, and "complained that we had got their land too cheap, and that we even diminished their presents every year." Significantly, Bulger then searched the Colony's papers for instructions "by which to regulate my transactions with these Indians," but was only able to find the Indenture. Bereft of clarifying instructions, Bulger would have had to rely exclusively on the Indenture but for Alexander MacDonell. The former governor assured

³⁵ Shirlee Anne Smith, "HALKETT, JOHN," in *Dictionary of Canadian Biography*, vol. 8, University of Toronto/ Université Laval, 2003–, accessed November 7th, 2018, http://www.biographi.ca/en/bio/halkett_john_8E.html; Robert Coutts, *The Forks of the Red and Assiniboine: A Thematic History, 1734-1850* (Ottawa: Environment Canada, Parks Service, 1988), 113; Bulger to Colville, Fort Douglas, December 7th, 1822, in *Papers Referring*, 13.

Bulger that Selkirk had instructed that a present be given along with the tobacco quit rent.

Bulger promptly delivered both to Peguis.³⁶

Bulger was not finished and confronted Peguis with the Indenture. Bulger asked if Peguis had signed it. Peguis first denied it, then admitted as much after Bulger threatened to produce witnesses to the contrary. However, Peguis explained that he had signed “without consulting his chiefs and young men, who were always reproaching him with what he had done.” Bulger’s past military experience had exposed him to Indigenous power dynamics, and he would have understood that Peguis’s signature meant little without the ongoing consent of his band. He thus rushed to give Peguis an ultimatum: white men considered a signed bargain sacred, and Bulger could write to Selkirk’s family to withdraw the settlers entirely. Peguis was “staggered” by this response, but ended the meeting with a request that Bulger relay his case to Selkirk’s family anyway. Peguis’s band was less trusting, and two days later attempted and failed to cow Bulger through an uncoordinated show of force.³⁷ However, Peguis had not given up on Selkirk’s family; he had been personally assured by Selkirk that the Indenture signified something quite different than what Bulger assumed it did, and still hoped for redress. Certainly, Bulger had misunderstood the Saukteaux complaint, believing that the Saukteaux regretted having misvalued the land they had sold in a closed transaction. Instead, Peguis was complaining that the transaction had never been closed: the Saukteaux had not alienated their lands, and indeed had not been paid enough to have alienated their lands.

³⁶ Bulger’s task was made more difficult by Selkirk’s reticence to share his ultimate thoughts and plans, at least in the surviving written documentation (Bumsted, *Lord Selkirk*, xiii). Andrew Bulger to Andrew Colville, Fort Douglas, September 8th, 1822, SP 7750-7751; Bulger to Colville, Fort Douglas, December 7th, 1822, in *Papers Referring*, 4-5. Bulger indicated he thought the meeting of Peguis and The Black Robe was portentous, but HBC observers at Upper Fort Garry, which Peguis visited first, though displeased at the later visit, thought little of it (September 15th, 1822, Winnipeg Post Journal, 1822-1823, HBCA B.235/a/5).

³⁷ Bulger to Colville, Fort Douglas, December 7th, 1822, in *Papers Referring*, 5-8.

Andrew Bulger had thus deliberately challenged Peguis's understanding of the Selkirk Treaty on the basis of the Indenture alone. Bulger's successor Robert Pelly was even more reliant on the Indenture because of the Colony's failing institutional memory: Peter Fidler died in December of 1822, and while Alexander MacDonell had advised Bulger in September, the former governor's progressive fall from grace proportionally reduced the knowledge he provided.³⁸ Significantly, not only local officials relied on the Indenture. Bulger, as requested, had conveyed Peguis's complaints back to England. Andrew Colville, Selkirk's brother-in-law and leading executor, tried to address them. Unfortunately, his knowledge of the Selkirk Treaty appears to have been largely limited to the Indenture, and he assumed that the Saukteaux complaint was that they were being short-changed on the quit rent specified in the document. To remedy Peguis's complaints, Colville thus pointed Pelly towards the Indenture, and instructed him to "be particularly attentive" to its terms.³⁹ Pelly made sure of this, and had Peguis, The Black Man, and The Black Robe sign a receipt for their 1823 quit rent. However, Pelly also found the Indenture insufficient: the receipt noted an extra gift of liquor, gunpowder, and ammunition, though these were only to be continued at the pleasure of the agents of Selkirk's successors.⁴⁰ Significantly, Pelly thus incorporated officially, but in such a way as to be entirely voluntary, those extra-Indenture payments that the Saukteaux had legitimately come to expect

³⁸ Prior to the 1822 conference with Bulger, McDonell had given written information to Peter Fidler about how to proceed with the Selkirk Treaty, but Fidler was ill and far away in Fort Dauphin at the time (Alexander McDonell to Lord Selkirk, Fort Douglas, November 10th, 1817, SP 4197; Robert S. Allen, "FIDLER, PETER," in *Dictionary of Canadian Biography*, vol. 6, University of Toronto/Université Laval, 2003–, accessed November 7, 2018, http://www.biographi.ca/en/bio/fidler_peter_6E.html).

³⁹ Memorandum for Captain R. Pelly respecting Lord Selkirk's Settlement upon the Red River, January 1823, SP 7791. Getting a better sense of Colville's understanding of Indian Title would be useful to a discussion of changing attitudes towards the Selkirk Treaty, but time and space prohibited exploring it further in this thesis. For Colville's understanding of the Selkirk Treaty, see also Lord Selkirk to Andrew Colville, Red River, August 7th, 1817, LAC MIKAN 114526, Reel A27, 541.

⁴⁰ "Copy of the Receipts of the presents delivered to the Indians. 9th October. 1823," SP 8065.

from the Selkirk Treaty. Colony officials could now comfortably assert the Indenture as the sole standard by which to judge the treaty. Unsurprisingly, despite Pelly's honest reputation, he too found himself accused of withholding presents from the Sauteaux by the beginning of 1825.⁴¹

Theoretically, the distinction drawn in Pelly's receipt between the quit rent tobacco and the extra presents indicated that Colony officials could arbitrarily withdraw only the extra presents. In practice, they treated the quit rent tobacco as a serious but equally optional responsibility. Selkirk provided the guiding philosophy. In 1811, he instructed Miles Macdonell to secure land in exchange for an annuity in order that Macdonell could exercise leverage by withholding the annuity.⁴² Similarly, displeased at The Premier's efforts to maintain a relationship with the NWC, after the signing of the Indenture Selkirk wrote to Alexander MacDonell about the possibility of withholding The Premier's share of the quit rent.⁴³ In neither case did the Earl believe the Colony's tenure was at risk. Colony officials' treatment of The Premier echoed Selkirk's. The Premier seems to have either stopped accepting or been refused payments. He did not sign the 1823 receipt, and though he visited the settlement in the summer of 1824, he did not return that autumn for his quit rent. By 1825, though still influential, The Premier could no longer obtain credit from the HBC.⁴⁴ In April he visited the settlement, telling the missionary David Jones that his band was having difficulty sustaining itself. He noted that the settlers were living well "on our lands," and asked for "leave to settle here with his band."

Even though Jones had given Peguis seed-grain only the previous day, he recorded that The

⁴¹ John Henderson to Captain Bulger, January 20th, 1825, cited in Oliver, *North-west*, vol. 1, 46; Simpson to Colville, Fort Garry, May 31st, 1824, SP 8256.

⁴² Instructions from Lord Selkirk to Miles McDonnell, 1811, SP 177.

⁴³ Lord Selkirk to Alexander McDonell, Pembina, September 14th, 1817, SP 4054.

⁴⁴ "Copy of the Receipts of the presents delivered to the Indians. 9th October. 1823," SP 8065; The Black Robe visited with him that summer, but returned without him in the autumn: June 15th-16th and October 9th, 1824, Fort Garry Journal 1824/25, HBCA B.235/a/6; John Cameron, May 25th, 1825, "Rainy Lake report," HBCA, B.105/e/6, cited in White, "A Skilled Game of Exchange," 236.

Premier's plan "was not encouraged." The Premier clearly maintained an ongoing claim over the settlement's land, if not the immediate power or desire to break his relationship with the Colony by settling there without Colony consent. He and his family starved to death the next winter.⁴⁵ The Colony, however, showed no indication that its refusal or inability to pay The Premier a quit rent in 1823, for example, impacted the settlement's tenure.

Like The Premier, Le Sonnant did not sign Pelly's receipt in 1823.⁴⁶ However, where The Premier's involvement with the Selkirk Treaty appeared to decrease in the early 1820s, Le Sonnant's increased. As discussed in Chapter Four, Selkirk had recommended to Alexander MacDonell to reserve the quit rent to which the Indenture entitled the Cree until more of them signed the Indenture. They never would. Indeed, when Le Sonnant arrived at the settlement in late 1822, perhaps in an effort to smooth over ties with the newly-coalesced HBC and NWC, he was refused admittance at Fort Douglas. The plain text of the Indenture indicated that the Cree were owed quit rent, but Bulger was still accepting MacDonell's counsel, as he had done in his recent confrontation with Peguis. The death of Peter Fidler that December appears to have

⁴⁵ April 28th and 29th, 1825, David Jones, "Journal continued from June 1824 to June 1825," CMSA, Section V, Part 2, Reel 48; Catton, *Rainy Lake House*, 271. The winter of 1825-1826 was particularly harsh. Enough snow fell that the spring floods saw water destined for the Missouri flow instead into Lake Winnipeg (May 17th, 1826, David Jones, "Extracts from a Journal kept at Red River Colony during the years 1825 + 1826," CMSA, Section V, Part 2, Reel 48). For The Premier's longstanding interest in pursuing agriculture in the Red River valley, see October 31st, 1813, Miles M^cDonell No 3, SP 16862; May 29th, 1816, Brandon House Post Journal, 1815-1816, HBCA B.22/a/19.

⁴⁶ "Copy of the Receipts of the presents delivered to the Indians. 9th October. 1823," SP 8065.

spelled the end of any attempt to secure further Cree signatures.⁴⁷ MacDonell's counsel was increasingly disregarded by other officials, and though Le Sonnant's name does not appear on Pelly's receipt in 1823, the Cree chief received a favourable reception at Fort Douglas in the summer of 1824. That autumn, an observer at Upper Fort Garry noted Le Sonnant receiving his "usual present" in tobacco, ammunition, liquor, and other goods. The timing and the fact that Peguis and The Black Robe were shortly afterwards observed each receiving their "annual present," suggest these were attached to the Indenture.⁴⁸ No more Cree chiefs signed the Indenture, and a controversy later developed over whether even Le Sonnant's signature was genuine.⁴⁹ However, Colony officials' reliance on the Indenture left them no room to doubt Le Sonnant's signature, and they began to admit him to Indenture quit rents. Le Sonnant may have had no greater desire to endorse the Selkirk Treaty than he had in 1817, but presumably, like Peguis, he began demanding the quit rent as a tangible sign of his ongoing rights to the settlement's land. The second chapter of this thesis noted that Plains Cree respected individual plots providing their collective subsistence was not threatened. Colony officials had begun asserting that their settlers' plots were secured by more than a temporary loan from collective Indigenous resources, and Le Sonnant thus complained about their interpretation of the Selkirk

⁴⁷ October 4th-6th, 1822, Winnipeg Post Journal, HBCA B.235/a/5; Governor Bulger to Andrew Colville, Fort Douglas, December 7th, 1822, in *Papers Referring*, 12-13. Le Sonnant's arrival followed Bulger and Peguis's confrontation so closely that Bulger was still afraid Peguis would blockade the lower Red River; his fears may have been ill-founded, as missionary John West met Peguis at this time at Netley Creek and conversed pleasantly (West, *Substance of a Journal*, 20). In 1822, Le Sonnant's refusal at the Fort may have been connected to his band's hope to trade with the settlers against the wishes of the HBC; however, the poor relationship between Bulger and the HBC may not lend itself to that explanation. Bulger would not have been affected by the Indenture's requirement that the Cree pick up their quit rent at Portage la Prairie, as the Saulteaux signatories usually picked up theirs from Fort Douglas rather than the Forks. For efforts to secure more Cree signatures, see Lord Selkirk to Alexander McDonell, Pembina, September 14th, 1817, SP 4054; Alexander McDonell to Lord Selkirk, Fort Douglas, November 10th, 1817, SP 4197 (this letter shows that apart from Peguis only "three other chiefs" were expected, underlining in original); Peter Fidler, "General Report of Red River District by Peter Fidler 1819 May," HBCA B.22/e/1.

⁴⁸ July 26th-27th, September 4th-6th, September 18th, and October 9th, 1824, Fort Garry Journal 1824/25, HBCA B.235/a/6. Le Sonnant had first been refused entry again in September, but only because it was Sunday (September 6th, 1824, David Jones, "Journal continued from June 1824 to June 1825," CMSA, Section V, Part 2, Reel 48).

⁴⁹ For a discussion of the debate over Le Sonnant's signature on the Indenture, see Appendix 3.

Treaty. Like Peguis, he maintained until his death that the Selkirk Treaty was not a permanent sale of land to the Colony.⁵⁰

Nevertheless, the Colony did more to help than hinder the subsistence of both Le Sonnant and the Saulteaux, and both settled into maintaining their ongoing land claims without attempting to exert them by force. The Métis too appear to have been content with the product of the diplomatic framework they had helped establish in 1817, but as with Miles MacDonell's prohibition on running the bison in 1814, the Colony's pretensions to land rights affected them more than the Cree and Saulteaux. The Colony began to assert that the Selkirk Treaty involved a permanent alienation of land, and acted on this in the 1830s by unilaterally revamping the settlement's land regulations. Many Métis had located within the settlement and were directly affected, and many young Métis responded vocally that land was being robbed from them.⁵¹ In 1847, a group of Métis further tested their position within the District of Assiniboia's legal framework by trespassing on one of Councillor Andrew McDermot's lots and triggering the case of *McDermot vs. Fanyant*.⁵² These formative years for the Métis saw them demand land rights of their own. Even so, when they argued in the 1850s that the Selkirk Treaty had not permanently alienated Indigenous land, they chose to do so by taking up Le Sonnant's claim that he had never sold land to Selkirk. In so doing, they upheld the diplomatic framework of 1817 and the harmonious land claims they then held with their Iron Alliance allies.⁵³

⁵⁰ Andre Trukè's Statement," May 26th, 1858, in "The Red River Indians," *The Colonial Intelligencer* (January to June, 1859): 7. Moreover, Cree and Saulteaux would coordinate their continued land claims ("WHO OWNS THE SETTLEMENT?," *Nor'-Wester*, May 14th, 1860, page 2).

⁵¹ Gunn, *Manitoba*, 283.

⁵² See also Métis efforts in *Hudson's Bay Company (Red River Settlement.): RETURN to an Address of the Honourable the House of Commons, dated 9 February 1849 ...* (London: House of Commons, 1849).

⁵³ Moreover, just as Le Sonnant had represented their opinions in 1817, they cast themselves as Cree representatives in 1860 ("The Land Question," *Nor'-Wester*, March 14th, 1860, 2). See footnote 12 on page 86 of this thesis. See also Darren O'Toole, "Métis Claims to "Indian" Title in Manitoba, 1860-1870," *The Canadian Journal of Native Studies* 28:2 (2008): 249-250, for a discussion of Métis as representatives.

In conclusion, the Selkirk Treaty as negotiated in 1817 had been intended by neither Selkirk nor the Indigenous signatories as a permanent alienation of Indigenous land. This was certainly the consensus of Red River's Indigenous population, as evidenced by the many Indigenous witness statements published in later debates about the Selkirk Treaty. Especially significant is Peguis's detailed and reliable account that the only thing concluded with Selkirk was the groundwork for a land arrangement to be completed on Selkirk's return. This was true even if the Saulteaux came to accept quit rent payments as a token of their ongoing land rights over the settlement. In opposition to these united voices stood only Andrew McDermot, who argued that the Selkirk Treaty had consisted of a permanent alienation of land. McDermot presented himself as an authoritative voice on the Selkirk Treaty, but he is an unreliable witness. He had considerable vested interests in the outcome of the Selkirk Treaty, and his contemporary Donald Gunn easily demonstrated the internal inconsistency of McDermot's accounts.

Even so, by the early 1820s, Colony officials argued that the Selkirk Treaty was a completed bargain, and had permanently alienated Indigenous land rights. This chapter has argued that high turnover and internal dissension among Colony officials led to a loss of institutional memory, leaving the Indenture as the only record of the Selkirk Treaty they felt they could trust. They then interpreted the Indenture to indicate a permanent alienation of land, despite the fact that payments made under the Selkirk Treaty did not adhere to the Indenture. Colony officials validated Saulteaux expectations that gifts extraneous to the Indenture were a part of a larger treaty complex, even if non-signatories could not distinguish either these or the quit rent specified in the Indenture from gifts they themselves might receive as standard diplomatic gifts. However, even as Colony officials formally separated the Indenture's quit rent

from the extraneous gifts as indicated in Robert Pelly's 1823 receipt, they hypocritically did not act as if paying the quit rent was a necessary condition of the settlement's land tenure. Indeed, Selkirk had left instructions on his departure from Red River in 1817 that the Selkirk Treaty still had to be completed by the Cree by securing more signatures on the Indenture. Selkirk's agents failed to procure the signatures, but Colony officials' reading of the Indenture led them to assume the Cree were already full parties to the treaty even though the document bore a single Cree signature only. Le Sonnant thereafter collected quit rent payments as well as the Saulteaux, but like them probably as a token of ongoing, non-alienated Indigenous rights over the settlement's land. Le Sonnant and the Saulteaux thus continued to uphold the diplomatic framework the Iron Alliance had reached in 1817. So too did the Métis, even as they themselves were the most affected by the Colony's pretensions under the Indenture.

This chapter has contributed to answering the historiographical questions outlined in the first chapter of this thesis by arguing that the Cree, Saulteaux, and Métis all continued to uphold their diplomatic framework of 1817, even as the Colony began to assert rights it had not been allowed under the framework. This chapter has also continued the argument that the Selkirk Treaty was not to have consisted of a permanent alienation of land. The Indigenous population did not believe it had permanently alienated land, and its accounts hold up to scrutiny better than its opponents' do. Selkirk's death and insufficient instructions left both Indigenous and Euro-Canadian officials struggling to interpret the Selkirk Treaty; the loss of institutional memory among Colony officials led them to insist upon an erroneous reading of the Indenture as the sole authoritative interpretation of the Selkirk Treaty. The Indigenous population, failing to convince officials otherwise, opted to continue receiving the payments the Colony offered them under the

Indenture as an implicit recognition of their continued land rights. However, the terms specified in the Indenture differed from what Selkirk and the Indigenous signatories had actually negotiated in 1817. The next chapter of this thesis furthers this argument through a case study of the borders outlined in the Indenture.

Chapter 6: The Boundaries of the Selkirk Treaty and Inadequacy of the Indenture

Though the Indigenous population disputed that the Indenture was an accurate reflection of the Selkirk Treaty, from 1817 onwards it respected the boundaries actually negotiated with Lord Selkirk.¹ This chapter tests the land provisions outlined in the Indenture against the cited historical record and witness statements, and argues on the basis of these land provisions that the Indenture did not accurately reflect the terms of the Selkirk Treaty. This chapter begins by discussing the two sets of boundaries specified in the Indenture: the first consists of a two-mile extent on either side of the Red and Assiniboine, and the second of six-mile radii around Fort Douglas, Fort Daer, and Grand Forks. Neither the two-mile limit nor six-mile radii were particularly controversial, but this chapter argues that the Indigenous population only ever appears to have agreed to the two-mile limit. The three six-mile radii were referenced only by people who relied on the Indenture for their knowledge of the Selkirk Treaty.

Disputes concerning the boundaries of the Selkirk Treaty revolved instead around the Forks, St. Peter's, and Portage la Prairie, all overt pockets of Indigenous possession within the two-mile limit that belied the Indenture. Recognizing the danger to the HBC's interpretation of the Selkirk Treaty, Andrew McDermot provided an explanation in the pages of the *Nor-Wester* that reconciled all three pockets to the Indenture. According to McDermot, shortly after the Indigenous signatories alienated land along the Red and Assiniboine to Selkirk, the Earl agreed to grant these three pockets to them. McDermot further claimed that the pockets at Portage and the Forks had since come into the possession of the HBC. However, his narrative cannot be

¹ Some of the disputes about the Indenture are murky, such as when it came to the question of the nature of payments as discussed in the previous chapter, and some can only be discussed speculatively, such as whether a specific time limit were part of the arrangement negotiated with Selkirk (see Appendix 4); for early respect of the negotiated boundaries, see Alex McDonell to Lord Selkirk, Fort Douglas, December 27th, 1817, SP 4274.

corroborated from the cited historical record, and in some places is contradicted by Peguis. This chapter argues that neither the pocket at St. Peter's nor the pocket at the Forks had been included in the land which the Indigenous signatories allowed Selkirk for the use of the settlers. It points to the significance of the site of Fort Gibraltar in connection with the pocket at the Forks. In connection with the pocket at Portage la Prairie, this chapter argues that The Black Robe's band let the Selkirk Treaty lapse in the 1840s, and that the pocket had actually been reserved in the early 1850s in an entirely new treaty made with incoming settlers. This chapter demonstrates that while McDermot's accounts of the pockets at the Forks, St. Peter's, and Portage are unreliable, they allowed him to act out the dispossession of the Indigenous population on reserves it had retained, while simultaneously providing a theoretical framework to secure the settlers' title in the face of looming regime change. The chapter concludes that between the two-mile limit, the six-mile radii, and the three reserves, the Indenture reflects only some of the boundaries that the Indigenous signatories preliminarily negotiated with Lord Selkirk in the summer of 1817.

Four facts should be kept in mind throughout the following discussion of the Selkirk Treaty's boundaries. First, the final clause of the Indenture required respect for the tenure of traders already established within the bounds it specified. Second, the Imperial government soon handed over the southern portion of the Selkirk Grant, including all the land outlined in the Indenture south of Pembina, to the American government. Third, the Indenture treats the Selkirk Treaty as a single land deal, but the Indigenous signatories did not. The Indigenous diplomatic framework of 1817 had authorized four different chiefs representing four different bands to treat with Selkirk for four different stretches of land, and Peguis's account of negotiations with

Selkirk clearly demonstrates the Saulteaux signatories individually haggling with the Earl over the tracts they would sign over to him.² When Selkirk did not return to conclude the Selkirk Treaty, and the Saulteaux were left to decide what to do with their existing agreement with him, they acted as if it consisted of four separate agreements that could lapse or be upheld without affecting each other. Fourth, Selkirk had finalized the text of the Indenture even before the council at Fort Douglas where this haggling over boundaries took place.³ The Indenture can thus not speak for these final negotiations any more than it can speak for the reserves that McDermot claimed Selkirk had established after it was signed.

The common element to all four of these land agreements was the two-mile limit specified in the Indenture. The Indigenous signatories allowed Selkirk a depth of two miles along the Assiniboine from just west of Portage la Prairie to the Red River, and along the Red from its confluence with the Red Lake River, or Grand Forks, down to its mouth at Lake Winnipeg.⁴ In practice, the two-mile depth was imprecise. Selkirk assumed that a hypothetical straight line through the rivers for surveying purpose would result in something closer to a total of 5 miles of land stretched over both sides of the river. Indigenous accounts concur with the two miles and define it in easily measurable and similarly approximate terms.⁵ All parties

² William King (Peguis), "Important Statement of Pegowis, The Indian Chief," *Nor'-Wester*, October 14th, 1863, page 3.

³ Lord Selkirk to W. B. Coltman, July 16th or 17th (actually 18th), SP 3807-3808. On the morning of the 18th, Selkirk told Coltman that he did not want to alter the draft of the Indenture to include a clause in it securing the NWC's posts within it, as an alteration of the Indenture would apparently have had "a very bad effect" on the Indigenous population. It was tacked on anyway as a final clause, presumably at Coltman's insistence, but this was prior to Selkirk's council later that day. Even so, Selkirk's desire to avoid alterations to the Indenture, in combination with his plan to return the next year to finalize a land agreement, could well have led him to agree to land terms that were not reflected in the Indenture as he considered it only a provisional document.

⁴ The western limit was the Muskrat River/Rivière des Champignons, a rivulet flowing north into Lake Manitoba.

⁵ Lord Selkirk to Samuel Gale, Pau (France), January 24th, 1820, SP 6662. Peguis related to Donald Gunn that the two miles were the distance "as far back from the river bank as a man standing on the bank could see under the belly of a horse out into the plains" (Donald Gunn, "Peguis Vindicated," *Nor'-Wester*, April 28th, 1860, page 4). The Saulteaux sometimes delineated outside boundaries with rivers (Neil, "History of the Ojibways," 467-470), but like the Cree around James Bay likely defined territory by inner landmarks (Greer, *Property and Dispossession*, 54).

acknowledged the core two-mile limit. The Colony confined its surveys to the two miles, and though the HBC instituted another two miles of hay privilege beyond the two-mile limit, it did not presume to grant lots there.⁶ Aided by geographical factors, the two-mile limit was so entrenched that Peguis's band at St. Peter's felt the need to begin enforcing it against encroaching settlers only in the late 1850s.⁷

The one indication in the cited historical record to suggest that the Indenture may not have been accurate in regards to the two-mile limit comes from Andrew McDermot. In 1860, McDermot claimed that The Black Man, worried that settlers would drive away the bison, had offered Selkirk only a single mile on either side of the Red River from Grand Forks to Pembina.⁸

⁶ “3. Memorandum of guidance as Agent for Selkirk's Executors, 1821,” in Oliver, *Canadian North-west*, vol. 1, 216, and A. Bulger to John Clarke, Fort Douglas, April 23rd, 1823, *ibid*, 232. Norma Hall, the most recent scholar to look at the hay privilege, dated its “formal recognition” to 1835, and in support cited a report of a speech by John Schultz in the House of Commons as it appeared in the *Ottawa Times* (Norma Hall, *A Casualty of Colonialism: Red River Métis Farming 1810-1870* (Winnipeg: WordPress, 2015), modified May 7th, 2018. Accessed November 7th, 2018, <https://casualtyofcolonialism.wordpress.com>, “Chapter 4,” footnote 53; “Hay Privilege in Manitoba,” *Ottawa Times*, April 15th, 1873, page 3). However, Schultz's speech, as reported in the historical harsard transcriptions recently compiled by the House of Commons, notes instead that the Hudson Bay Governor in Council instituted the privilege in 1835, which is more than a mere recognition. This version has Schultz citing “the high authority” of Donald Gunn to this effect (John Schultz, April 10th, 1873, *House of Commons Debates: First Session—Second Parliament...* (Ottawa: Library of Parliament, 2013), 253). The codified 1841 municipal regulations governed the hay privilege, and but restrained all regulations to within the two-mile limit (“Minutes of a Council at Fort Garry on the twenty-fifth day of June, one thousand eight hundred and forty one,” in Oliver, *Canadian North-West*, vol. 1, 296-298). The codified 1851 regulations were even clearer, specifically referring to the two-mile limit as “the boundary of the ceded lands” while saying the Council only had the right to regulate the hay privilege of British subjects (“Report of the Law Amendment Committee,” Red River Settlement, May 1851, in *ibid*, 371). On the hay privilege, see also Jean-Norrert Provencher to P.-F. Turgeon, St. Boniface, July 18th, 1848, in *Bulletin de la Société Historique de Saint-Boniface, Volume 3: Lettres de Monseigneur Joseph-Norrert Provencher, Premier Evêque de Saint-Boniface* (Saint Boniface: Imprimerie du “Manitoba,” 1913), 269; “Haymaking and Harvesting,” *Nor'-Wester*, July 28th, 1860, page 3; and R. G. McBeth, *The Selkirk Settlers in Real Life* (Toronto: William Briggs, 1897), 45-47.

⁷ William King (Peguis), “Important Statement of Pegowis, The Indian Chief,” *Nor'-Wester*, October 14th, 1863, page 3. For geographic factors influencing settlement without reference to the Selkirk Treaty, see Barry Kaye, “Some Aspects of the Historical Geography of the Red River Settlement from 1812 to 1870” (MA thesis, University of Manitoba, 1967). The St. Peter's band took efforts to secure the two-mile limit with a manifesto publicized on July 17th, 1858; a few years later it reappeared in the newly-established *Nor'-Wester*. The republication had likely been driven by the foundation of St. Clement's parish on the border of St. Peter's, a manifestation of encroaching settlement (Donald Gunn, “The Land Controversy,” *Nor'-Wester*, June 28th, 1860, page 4; Peguis, Mannamig, Mooscoose, Eskepacoose, Accupas, and Henry Prince, “Indian Manifesto,” *Nor'-Wester*, April 15th, 1861, page 2; Friesen, “Grant Me Wherewith,” 54). The HBC tacitly backed the St. Peter's band's regulation of the two-mile limit (John McDougall, “Voice of the People: An Indian Land Title,” *Winnipeg Tribune*, May 8th, 1909, page 12).

⁸ Andrew McDermot, “Peguis Refuted,” *Nor'-Wester*, February 28th, 1860, page 3. McDermot would have heard this from The Black Man himself (June 6th, 1823, *Winnipeg Post Journal*, 1822-1823, HBCA B.235/a/5), who may have granted land up Red Lake River to Red Lake itself (there is likely a typo in Peguis's 1863 statement, William King (Peguis), “Important Statement of Pegowis, The Indian Chief,” *Nor'-Wester*, October 14th, 1863, page 3).

Selkirk himself in 1820 confidently wrote that the two-mile limit applied there, but the Earl's competency at this point was questionable: he had also written that the Indigenous population had given him a ten-mile radius at Grand Forks, and his brother-in-law Andrew Colville did not trust his judgement — Colville corrected him by citing the six-mile radius specified in the Indenture.⁹ Whether The Black Man had consented to a one- or two-mile width would not be contested, as the American government never recognized the rights Selkirk and his successors claimed south of the 49th parallel. The significance of this point is rather that even Andrew McDermot, who was so insistent that the Selkirk Treaty had alienated Indigenous land rights, acknowledged that the Indenture did not accurately reflect the Selkirk Treaty.

McDermot had nothing to say about the six-mile radii specified in the Indenture, but neither did anyone who did not rely directly upon the Indenture for knowledge of the Selkirk Treaty. As noted above, Selkirk had unreliably referred to a radius at Grand Forks in 1820, but, in the summer of 1817, he had referred only to the two-mile limit when describing the Selkirk Treaty in letters to Colville and Lady Selkirk.¹⁰ Indigenous witness statements refer only to the two-mile limit, and even the District of Assiniboia's municipal regulations came to reference the two-mile limit as "the boundary of the ceded lands" without speaking of the radii at all.¹¹ It appears that only those directly relying on the Indenture for their knowledge of the Selkirk Treaty thought that it included anything beyond the two-mile limit. In 1823, the Colony surveyor William Kempt pointed out that a large lot allowed to the Roman Catholic church slightly exceeded the six-mile radius around Fort Douglas. A few letters back and forth to

⁹ Lord Selkirk to Samuel Gale, Pau, January 24th, 1820, SP 6659-6665.

¹⁰ Lord to Lady Selkirk, Red River, July 21st, 1817, LAC MIKAN 114526, Reel A27, 521-523; Lord Selkirk to Andrew Colville, Red River, August 7th, 1817, LAC MIKAN 114526, Reel A27, 541.

¹¹ "Report of the Law Amendment Committee," Red River Settlement, May 1851, in *ibid*, 371.

England settled the issue quietly.¹² Such concerns were not publicized. Thus, in 1860, the defendant in the case of *Carrière vs. Dagnon* was surprised to learn that land outside the two-mile limit could be legally claimed through the HBC's land register. The judge John Bunn's ruling explained that an exception existed within the six-mile radius of Fort Douglas, which Selkirk had also purchased "on behalf of the Crown." Bunn's understanding of the Indenture, however, had been shaped by *McDermot vs. Fanyant*, over which he had helped preside thirteen years earlier.¹³ It thus appears that the only evidence to support the existence of these three radii points back to the Indenture.¹⁴ Even so, until the relatively quiet *Carrière vs. Dagnon*, it does not appear that either Selkirk or his successors did much to actualize their supposed possession within the radii. The six-mile radii were thus never a point of controversy.

The greater controversy regarding Selkirk Treaty boundaries revolved around the Forks, St. Peter's, and Portage la Prairie. All three sites fell firmly within the two-mile limit specified in the Indenture, but they had manifestly remained in Indigenous possession. On the face of it, these Indigenous pockets or reserves belied the HBC's reading of the Indenture.¹⁵ Andrew McDermot realized this, and argued in the *Nor'-Wester* in 1860, also privately to Canadian officials in 1870, that Lord Selkirk had verbally established the three reserves as Indigenous

¹² Kempt to Andrew Colville, Fort Douglas, August 2nd, 1823, SP 7964. Colville's response was to tell the bishop to make his own arrangements with the Indigenous population for the extra corner (Colville to Kempt, London, March 11th, 1824, SP 8158). The bishop and his successors, concerned about the legality of their tenure, preferred to avoid occupying that part of the lot until Treaty 1 formally extinguished Indian Title there (Joseph-Norbert Provencher to J.O Plessis, Red River, June 13th, 1824, in *Bulletin*, 96; Narvey, "The Royal Proclamation," 201-205).

¹³ *Carrière vs. Dagnon*, "Upper District Local Court," *Nor'-Wester*, August 28th, 1860, page 3; *McDermott vs. Fanyant* in Gibson, *Law, Life, and Government*, vol. 2, 52. To get an idea of Bunn's legal thinking, note that he valued Adam Thom's legal guidance so much that he resigned from the bench in despair at the latter's departure, though he would be persuaded to return (Gibson, *Law, Life, and Government*, vol. 1, 118).

¹⁴ Interestingly, there is some evidence for a radius outside the text of the Indenture. Peter Fidler's paraphrase of the Selkirk Treaty preceding his copy the Indenture referenced a fourth radius at Musk Rat River. One first suspects that he simply misread the Indenture after reading it hurriedly, but all four of the supposed radii appear on the earliest cartographical description of the treaty (July 18th, 1817, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20; "Selkirk Treaty—Indian Chart of Red River—IT 258," LAC MIKAN 3972592. This map is drawn on paper with a watermark of 1813, and appears to have been copied into the map in HBCA/AM E.8/1 fo. 11).

¹⁵ See Adams G. Archibald to Joseph Howe, Fort Garry, December 20th, 1870, No 154, AM P7920/1, page 2.

camping grounds. According to McDermot, the Saulteaux signatories asked for these sites from Selkirk three days after they had permanently alienated their land rights by signing the Indenture. Since then, McDermot continued, both the reserves at the Forks and Portage had come under full HBC ownership.¹⁶ McDermot's explanation has convinced some historians, but they have been unable to corroborate it; moreover, it was refuted by Red River's Indigenous population, which insisted the reserves had never been alienated to Selkirk.¹⁷ The significance of McDermot's account is that it simultaneously allowed the Indenture to stand while grounding the tenure of the reserves in the British Crown through Selkirk. In the rest of this chapter, each reserve is discussed in turn, and it is argued that McDermot did not successfully prove his point, but was acting out a larger nineteenth-century dynamic noted by Alan Greer in a recent study of Indigenous dispossession: settlers came to view land retained by an Indigenous population within a colonization zone as land that had been allocated to the Indigenous population by the settlers' own government.¹⁸

¹⁶ Andrew McDermot, "Peguis Refuted," *Nor'-Wester*, February 28th, 1860, page 3; Andrew McDermot, "The Peguis Land Controversy," *Nor'-Wester*, May 14th, 1860, page 1. Molyneux St. John to Adams Archibald, Winnipeg, January 17th, 1871, No. 176, AM P7920/2.

¹⁷ Andrew McDermot, "Peguis Refuted," *Nor'-Wester*, February 28th, 1860, page 3. Selkirk would have post-signing councils with the Indigenous population before departing Red River (Tanner, *A Narrative*, 225-226), but did not mention establishing these reserves in his descriptions of the treaty in a letter to his wife written the same day as the ostensible council, or in another in August to Colville (Lord to Lady Selkirk, Red River, July 21st, 1817, LAC MIKAN 114526, Reel A27, 521-523; Lord Selkirk to Andrew Colville, Red River, August 7th, 1817, LAC MIKAN 114526, Reel A27, 541). The only mention of any reserve in the contemporary archival record is in Peter Fidler's commentary on the deal, which notes that the Indigenous population, presumably still concerned about potential blockades on their free movement, had reserved the rivers within the land treated for (July 18th, 1817, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20). Even so, multiple historians have picked up McDermot's explanation: Czuboka, "St. Peter's," 16, 18, 36; Narvey, "The Royal Proclamation," 214-216; Ray et al, *Bounty and Benevolence*, 29-31; Burrows, "As She Shall," 56. Laura Peers picked it up as well, but misinterpreted it to mean that the Saulteaux asked for the reserves to get back legal access to the Red River as if coming from the plains, when the reported concern was actually losing access to the banks from the river (Peer, *The Ojibwa*, 94).

¹⁸ Greer, *Property and Dispossession*, 430.

The Forks was a burial site for victims of the smallpox epidemic of 1781 and 1782, and it would remain an important Indigenous gathering point until well after Canadian annexation.¹⁹ According to McDermot, it was turned into a reserve after The Premier requested the site from Lord Selkirk. Donald Gunn responded by asking why, if Selkirk had granted the Forks to the Saulteaux, the HBC had not made arrangements with the Saulteaux in 1836 when it started an experimental farm there. McDermot's answer in the *Nor'-Wester* was simply that the HBC charter precluded any such need; however, in private conversation with Canadian officials ten years later, McDermot instead claimed that the HBC had purchased the site for the farm. According to McDermot, the price included two replacement tracts of land to serve as gathering points, but the Indigenous population found these less convenient and returned to the Forks. McDermot speciously interpreted this as a relinquishment of the two tracts, which the HBC then sold.²⁰ It is not clear if McDermot had actually investigated the matter in the intervening decade.

Peguis insisted instead that the reserve at the Forks had never been included in the boundaries negotiated with Selkirk. The Indigenous diplomatic framework of 1817 had authorized Peguis's band to treat for land between the mouths of the Assiniboine and the Red, and, according to Peguis, his band chose to retain the area between the Assiniboine and Fort

¹⁹ Andrew McDermot, "Peguis Refuted," *Nor'-Wester*, February 28th, 1860, page 3; Coues, *The Manuscript Journals*, vol. 1, 46; Charles Bell, *Henry's journal: Covering adventures and experiences in the fur trade on the Red River, 1799-1801: A paper read before the Society, May 4, 1888* (Winnipeg: Manitoba Free Press Printers, 1888), 4; Charles Bell, *The Old Forts of Winnipeg (1738-1927)* (Winnipeg: Dawson Richardson Publications, 1927), 4; David Burley, "Rooster Town: Winnipeg's Lost Métis Suburb, 1900-1960," *Urban History Review* 42:1 (2013): 10, 22-23 note 55.

²⁰ Donald Gunn, "Peguis Vindicated," *Nor'-Wester*, April 28th, 1860, page 4; Andrew McDermot, "The Peguis Land Controversy," *Nor'-Wester*, May 14th, 1860, page 1; Molyneux St. John to Adams Archibald, Winnipeg, January 17th, 1871, No. 176, AM P7920/2.

Douglas.²¹ Peguis thus objected to McDermot's contention that the reserve had ever belonged to The Premier. It appears that McDermot was simply coming up with plausible explanations based on what he could observe: in 1860, Peguis's band was most closely associated with St. Peter's, and The Premier's son's was the band most associated with the Forks.²² The Premier's son even appeared to have begun claiming the reserve, for Peguis felt the need to assure Donald Gunn that The Premier's son "was not a party to the treaty, but that his father was."²³ To Peguis, a claim from The Premier's son's band to the reserve at the Forks would entirely concede the Indigenous position on the Selkirk Treaty. Such a claim would have to derive either from a gift of the reserve from Selkirk to The Premier, or from a prolonged occupancy that directly worked against Peguis's ongoing efforts to have what had been negotiated in 1817 recognized.

Peguis drew from his own experience to craft his account, while McDermot authoritatively inferred from circumstantial evidence. The cited documentary record from 1817

²¹ Donald Gunn, "Peguis Vindicated," *Nor'-Wester*, April 28th, 1860, page 4; William King (Peguis), "Important Statement of Pegowis, The Indian Chief," *Nor'-Wester*, October 14th, 1863, page 3. Gunn identified the site of Fort Douglas in 1816 as roughly the site of "Mr. Drever's house." For his part, McDermot believed the north boundary of the reserve was specified at a creek, but was not confident about which one it was: "It does not appear to have been ever distinctly known whether the creek in question is that one immediately to the South, or the one immediately to the North of the house now occupied by Mr. McDermot" (Molyneux St. John to Adams Archibald, Winnipeg, January 17th, 1871, No. 176, AM P7920/2). The creek was presumably either Logan's or Brown's (Figure 1, Robert Graham, "The Surface Waters of Winnipeg, Rivers, Streams, Ponds and Wetlands, 1873-1984: The Cyclical History of Urban Land Drainage" (MLA Practicum, University of Manitoba, 1984), 11; and Bell, *The Old Forts*, 24).

²² Though in 1817, a son of The Premier acknowledged that land "in the neighbourhood of Red River" had been included in the treaty, another, or perhaps the same, son of The Premier led a band that frequented the reserve at the Forks enough to be labelled "the Fort Garry Band" (Alex McDonell to Lord Selkirk, Fort Douglas, December 27th, 1817, SP 4275; Burley, "Rooster Town," 10; Krasowski, "Mediating the Numbered Treaties," 70). The band was known for insisting upon its continued land rights. In 1852, for example, the Saulteaux allegedly made land arrangements at Sainte-Anne (Lawrence, Barkwell, *The Metis Homeland: Its Settlements and Communities* (Winnipeg: Louis Riel Institute, 2016), 152), but by 1862 began to harass new colonists, "leur demandant sans cesse et à tout propos une retribution pour les terres qu'ils leur avaient laissé prendre, objectant qu'il étaient eux-mêmes les vrais propriétaires," and threatening to sell their land out from under them to an Anglican clergyman. Their demands were ignored, and the Saulteaux retaliated by setting fire to valuable timber (Charles Marie Mestre to an anonymous friend in France, June 5th, 1863, quoted at length in *Histoire de la paroisse Sainte-Anne des Chênes, 1876-1976* (Ste. Anne: Comité historique du Centenaire, 1976), 2). It may be worth taking this apparent assertion of land rights against even Métis settlers into consideration when discussing their later land sales to Anglo-Canadian surveyors out from under settlers (Testimony of Alexander Taché, April 17th, 1874, in *REPORT of the Select Committee on the Causes and Difficulties in the North-West Territory in 1869-70* (Ottawa: I. B. Taylor, 1874), 8-9).

²³ Donald Gunn, "Peguis Vindicated," *Nor'-Wester*, April 28th, 1860, page 4; compare with April 29th, 1825, David Jones, "Journal continued from June 1824 to June 1825," CMSA, Section V, Part 2, Reel 48.

directly corroborates neither of their accounts, though it does point to another factor that helps make sense of the reserve at the Forks: the NWC's Fort Gibraltar. Selkirk's men had demolished it in 1816, but NWC agents reoccupied the site in 1817 under the Prince Regent's proclamation; the final clause of the Indenture then guaranteed the NWC's possession of the area. Selkirk believed the NWC would be entitled only to the immediate site of the fort. When Commissioner Coltman insisted on a definition of the site broad enough that the Colony lost a field of barley to the NWC, Selkirk petulantly responded that it was only out of his "desire to avoid collision" that

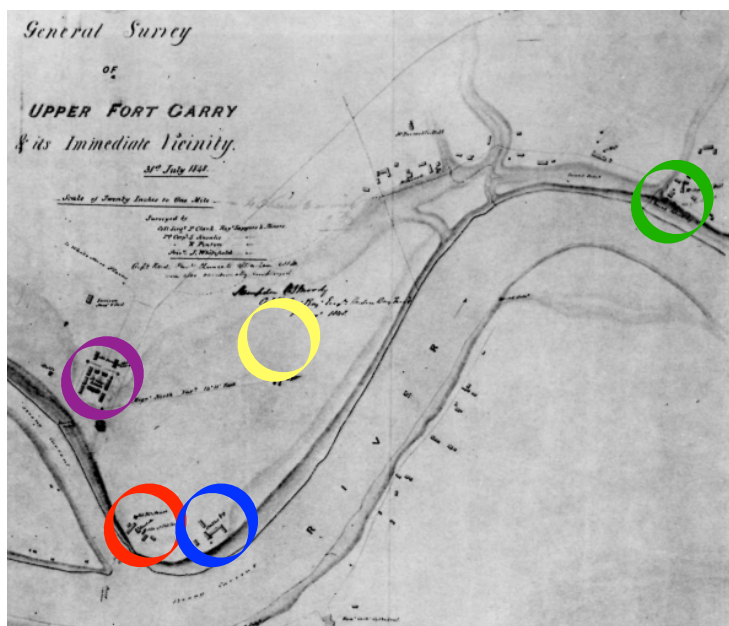


Figure 6: The Forks (July 31st, 1848)

Upper Fort Garry is indicated by a purple circle, the remnants of the buildings from Fort Gibraltar/Old Fort Garry by a red circle, the remnants of the experimental farm buildings by a blue circle, the former location of Fort Douglas by a green circle, and the approximate location of Peter Fidler's short-lived HBC fort by a yellow circle.

Modified detail from "General Survey of Upper Fort Garry & its Immediate Vicinity," Provincial Archives of Manitoba, taken from Figure 19 of Guinn, *The Red-Assiniboine Junction*, 254-255.

he declined to lay out lots between the mouth of the Assiniboine and Fort Douglas. Coltman nevertheless recognized the reserve when he appointed constables over the settlement and defined the southernmost limit of their jurisdiction as the north side of the Indigenous cemetery. Peter Fidler did the same, erecting a short-lived HBC fort just north of it [Figure 6]. Also significant is that Peguis's retelling of negotiations with Selkirk indicated that the Earl had pressed him for

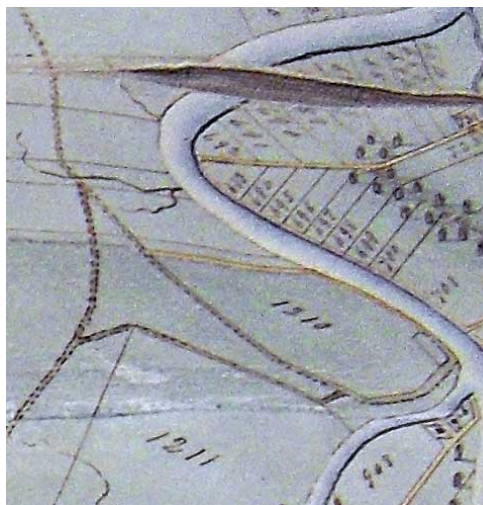


Figure 7: Detail from George Taylor survey map, 1838

The reserve at the Forks is clearly labelled lot 1210, indicating the Hudson's Bay Company considered that the tenure of the reserve fell within the jurisdiction and the purview of its land register.

Detail from Plan of Red River Colony Surveyed in 1836, 7 & 8 by George Taylor, HBCA E.6/14, via Historical Documents, Parish of St. James, accessed November 7th, 2018, http://www.stjamesanglicanchurch.ca/Historical_Documents.html.

more land not at the Forks, but further down the Red.²⁴ NWC possession at the Forks meant Selkirk had little reason to negotiate with the Saulteaux for the spot, and the NWC would hardly have reversed policy to begin asserting higher land rights at the Forks over the Saulteaux and Cree who gathered there.

However, after the NWC and HBC coalesced, the resulting company had no compunction in asserting ownership over the whole reserve despite an ongoing Indigenous presence [Figure 7]. The location for the experimental farm had been selected in England in 1836, where the Indenture had long since become the standard record of the Selkirk Treaty; nevertheless, that summer the missionary David Jones's journal clearly indicates

that the Forks remained an important Indigenous site.²⁵ After the experimental farm was disbanded, the HBC treated the reserve as its own property reserved for Indigenous use. As the HBC did not try to actualize its supposed tenure against the Indigenous population, Indigenous and HBC claims to the reserve easily overlapped. The two sets of claims even cooperated against settler encroachment. In the 1850s, the village of Winnipeg began developing just north

²⁴ Lord Selkirk, "The Memorial," in Bumsted, *The Collected Writings*, 161; Lord Selkirk to W. B. Coltman, August 23rd, 1817, SP 3972-3973; W. B. Coltman, "Appointment of Constables," September 11th, 1817, SP 4120-4121; Bell, *The Old Forts*, 28. Bumsted located the field of barley at the Forks (Bumsted, *Lord Selkirk*, 378); William King (Peguis), "Important Statement of Pegowis, The Indian Chief," *Nor'-Wester*, October 14th, 1863, page 3.

²⁵ For an account of the post-merger development of the Forks by the HBC, see Guinn, *The Red-Assiniboine Junction*, 62-68, 178 note 49; June 14th, 1836, David Jones, "Extracts from a Journal Kept at Red River Settlement during the years 1835 and 1836," CMSA, Section V, Part 2, Reel 48.

of the reserve, upon which the HBC refused to allow settlers to build. Opportunistic settlers eyeing the reserve staked out claims there in 1869, but the Saulteaux and HBC, both claiming rights over the reserve, drove off the would-be squatters.²⁶

The reserves at St. Peter's and Portage la Prairie did not so easily admit simultaneous HBC and Indigenous land claims. St. Peter's was undeniably owned by the Indigenous population living there. Saulteaux and Swampy Cree had peopled it, using a Euro-Canadian model of settlement since the 1830s. Peguis and his son Henry Prince sold lots there, issued title deeds with tacit HBC support, and were universally, if locally, recognized as legitimate sources

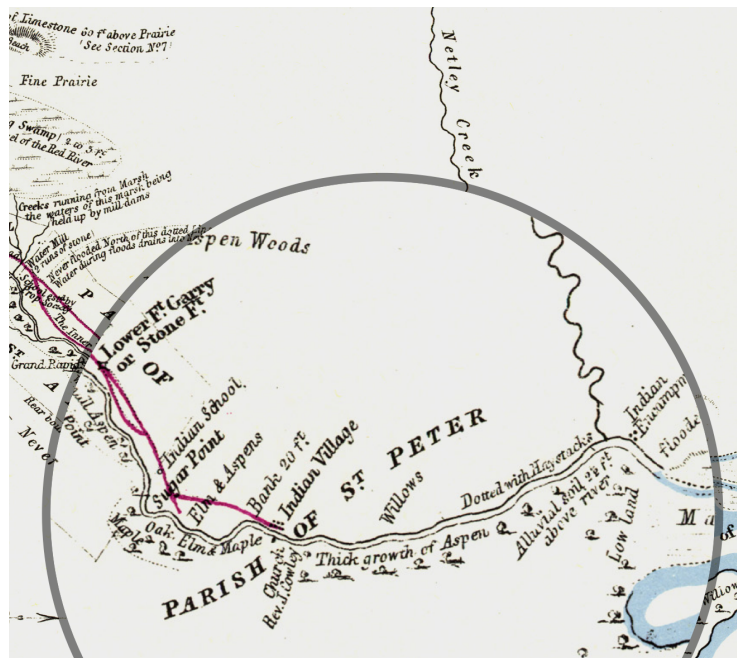


Figure 8: Northern Red River, 1858

Magnified detail indicating the locations of Lower Fort Garry, Sugar Point, the Indian Village or nucleus of the St. Peter's settlement, and Netley Creek, where Peguis and Cockran began an agricultural settlement prior to establishing St. Peter's.

Modified excerpt from John Arrowsmith, Map of part of the Valley of Red River North of the 49th Parallel to accompany a report on the Canadian Red River Exploring Expedition by H.Y. Hind. Wikimedia Commons. Uploaded December 5th, 2007 by Wyman Laliberte, last modified January 22nd, 2018, accessed October 24th, 2018. [https://commons.wikimedia.org/wiki/File:Map_of_Part_of_the_Valley_of_Red_River_North_of_the_49th_Parallel_\(1858\).jpg](https://commons.wikimedia.org/wiki/File:Map_of_Part_of_the_Valley_of_Red_River_North_of_the_49th_Parallel_(1858).jpg)

²⁶ J. J. Hargrave, October 22nd, 1869, reprinted from *Montreal Herald*, November 13th, 1869, in J. M. Bumsted, editor, *Reporting the Resistance: Alexander Begg and Joseph Hargrave on the Red River Resistance* (Winnipeg: University of Manitoba Press, 2003), 64, 68; *Nor'-Wester*, July 24th, 1869, page 2; Hargrave, *Red River*, 191, 197, 307, 310-311, 403. See also Stafford H. Northcote, G. E. Cartier, W. McDougall, Memorandum, March 22nd, 1869, in *Report of Delegates ...* (Ottawa, House of Commons: 1869), 38; and Jaffary, William Pearce manuscript, 6. The settlers had been encouraged by news that the HBC would only receive ten acres at the Forks when it sold its rights to Canada, but the HBC actually ended up securing five hundred. That the reserve was HBC property reserved for Indigenous use appears to have been a standard Winnipeg assumption (Healey, *Women of Red River*, 139). The HBC did sometimes successfully allocate parts of the reserve (Hargrave, October 30th, 1869, reprinted from *Montreal Herald*, November 24th, 1869, in Bumsted, *Reporting the Resistance*, 73). Hargrave's accounts cited here may have been intended to defend HBC title to the reserve (see Dick, "Red River's Vernacular Historians," 9-10).

of property title.²⁷ Andrew McDermot contended that the clear Indigenous title at St. Peter's was rooted in a reserve granted by Selkirk at Peguis's request after the signing of the Indenture. As evidence, McDermot pointed to the early Colony surveys by William Kept, which did not go north of Sugar Point [Figure 8].²⁸ Peguis maintained instead that he had never allowed Selkirk land as far north as Lake Winnipeg, even if the Indenture indicates as much: he argued that after some haggling he and Selkirk had agreed on Sugar Point as the northern limit of the settlement.²⁹ Thus McDermot rooted Peguis's land administration in the British Crown, whereas Peguis rooted it in unextinguished Indigenous land rights.

²⁷ Peguis's overt exercise of land claims in the lower Red following the negotiation of the Selkirk Treaty was clear from at least as early as 1832 (October 15th-16th, 1832, and May 6th, 1833, William Cockran, "Extracts of a Journal kept at R. R. S. 32/33," CMSA, Section V, Part 2, Reel 36), though his authority was hardly absolute (November 26th and 27th, 1835, William Cockran, "Extracts from a Journal kept at the Grand Rapids Red River Settlement in / 35 + /36," CMSA, Section V, Part 2, Reel 36; Carolyn Podruchny, "'I Have Embraced the White Man's Religion': The Relations Between the Peguis Band and the Church Missionary Society, 1820-1838," in D. H. Pentland, editor, *Papers of the 26th Algonquian Conference* (Winnipeg: Algonquin Conference, 1996), 360). As for the HBC's role, St. Peter's resident James Monkman recalled that in 1846 the HBC sent surveyors to St. Peter's to run survey lines delineating the settlement and Peguis's property, authorized Peguis to sell land, and had Thom write him up a model title deed for that purpose (James Monkman to Minister of the Interior, January 8th, 1895, cited in Daniel Bellegarde and P. E. James Prentice, *Peguis First Nation Inquiry Treaty Land Entitlement Claim, in Indian Claims Commission Proceedings: A Publication of the Indian Claims Commission 14 ICCP* (Ottawa: Indian Claims Commission, 2001), 195). In 1860 Gunn noted that the HBC had not contested Peguis's administration (Donald Gunn, "The Land Controversy," *Nor'-Wester*, June 28th, 1860, 4). Some have argued that St. Peter's land was held both in private landholdings and "by the people in common" (Burrows, "As She Shall Deem Just," 59), but Peguis and his son and successor Henry Prince sold almost the entire reserve, using land sales to Swampy Cree to shore up their authority against their fellow Saulteaux (Petition of James Asham, James Johnstone, Henry Cochrane, James Smith, Peter Smith c.1875; Netley Creek Indians to Heads of Western Department, c.1891, cited in Friesen, "Grant Me Wherewith," 58-60). They also sold to Anglo-Métis settlers and even the HBC (Friesen, "Grant Me Wherewith," 6, 55; "Local News," *Nor'-Wester*, February 29th, 1868, page 3; "The Peguis Title" *The Standard*, cited in *Manitoba Free Press*, April 27th, 1878, page 3). See also Clause 32 (4) of the *Manitoba Act* and Chief Justice Howell, quoted by G. H. Bradbury, March 22nd, 1911, *Official Report of the Debates of the House of Commons of the Dominion of Canada, Third Session—Eleventh Parliament, 1-2 George V., 1910-11 Vol. C: Comprising the Period from the Twenty-First Day of February to the Twenty-Second Day of March, Inclusive* (Ottawa: C. H. Parmelee, 1911), 5857-5858. Not all officials would be pleased to recognize Peguis's title deeds, however (Taylor, *Pamphlet*, 22).

²⁸ Andrew McDermot, "Peguis Refuted," *Nor'-Wester*, February 28th, 1860, page 3; Molyneux St. John to Adams Archibald, Winnipeg, January 17th, 1871, No. 176, AM P7920/2. Kempt was to survey occupied lots, but actually began at Image Plain's north end (Colville to Kempt, London, March 11th, 1824, SP 8158). Only a list of Kempt's lots survives (see Richard Ruggles, *A Country So Interesting: The Hudson's Bay Company and Two Centuries of Mapping, 1670-1870* (Montreal: McGill-Queens University Press, 2001), 82); see also Archer Martin, who spoke to witnesses who had consulted the map, and attempted to track it down (A. Martin, *HBC Land Tenures*, 110-116).

²⁹ "Red River Indians," *Colonial Intelligencer* 6 (April to June, 1857): 224-226; Donald Gunn, "Peguis Vindicated," *Nor'-Wester*, April 28th, 1860, page 4; William King (Peguis), "Important Statement of Pegowis, The Indian Chief," *Nor'-Wester*, October 14th, 1863, page 3. Gunn referred to Sugar Point as Maple Point (Hargrave, *Red River*, 193).

McDermot's account is clearly in error: Peguis acted as a fee simple property owner when he allocated lots, and the entails which the HBC had included in the Selkirk Grant meant that Selkirk could never have given fee simple tenure to Peguis.³⁰ Even so, McDermot's account is seemingly corroborated by the missionary William Cockran in the context of encouraging Peguis to found St. Peter's in the early 1830s. Cockran arrived in Red River only in 1825, but in 1831 he comfortably rebutted Peguis's claims about the Selkirk Treaty by saying that it was a closed, "purely mercantile" transaction.³¹ Cockran also acknowledged that an Indigenous reserve existed from Sugar Point northwards. This was common knowledge; anyone cutting timber on the reserve compensated Peguis's band, and settlers even attempted to purchase Sugar Point from Peguis rather than from the Selkirk Estate.³² Supporting McDermot's account, Cockran assured Peguis that Sugar Point, and the rest of the reserve, had been given to Peguis's band to form a settlement. However, a letter to the Church Missionary Society that sponsored him reveals that

³⁰ Peguis never saw himself as a subordinate to the British Crown; at his baptism he adopted the name William King, William a tribute to his friend William Cockran, King an allusion to his authority (Thompson, *Chief Peguis*, 31).

³¹ J. E. Foster, "COCKRAN, WILLIAM," in *Dictionary of Canadian Biography*, vol. 9, University of Toronto/Université Laval, 2003–, accessed November 7th, 2018, http://www.biographi.ca/en/bio/cockran_william_9E.html. Cockran understood Peguis's complaint to be that the increased value of the land for the settlement entitled his band to a greater payment (October 28th, 1831, William Cockran, "Journal, 1831-1832," CMSA, Section V, Part 2, Reel 36). Compare with Alexander McDonnell to Colville, York Factory, September 13th, 1821, SP 7417-7418; February 2nd, 1832, "Journal, 1831-1832," CMSA, Section V, Part 2, Reel 36, and Statement of Eske-Pake-Koose, Red River Settlement, April 5th, 1849, in *The Red River*, "The Colonial Intelligencer" 23 (March, 1850): 391-393.

³² Rev. W. Cockran to Rev. T. Woodrooffe (private), Red River Settlement, August 3rd, 1831, CMSA, Section V, Part 2, Reel 35; Cockran to Woodrooffe + Coates, Grand Rapid, c. autumn 1832, CMSA, Section V, Part 2, Reel 35; July 4th, 1833, William Cockran, "Extracts of a Journal kept at R. R. S. 32/33," CMSA, Section V, Part 2, Reel 36; Andrew McDermot, "The Peguis Land Controversy," *Nor'-Wester*, May 14th, 1860, page 1; Donald Gunn, "The Land Controversy," *Nor'-Wester*, June 28th, 1860, page 4; even George Simpson recognized that a reserve existed that was not factored into the Indenture. Simpson approved of Peguis's agricultural settlement at Netley Creek in 1832, presumably within the bounds specified in the Indenture. He also tried to stop the mission settlement founded further south by citing the HBC's sovereignty and his own authority as an agent of the Selkirk Estate, but refused to put his objections in writing. Despite his displeasure, he could not block it (William Cockran to the Secretaries of the Church Missionary Society, 1834, CMSA, Section V, Part 2, Reel 35; June 12th, 1836, William Cockran, "Extracts from a Journal kept at the Grand Rapids Red River Settlement in /35 + /36," CMSA, Section V, Part 2, Reel 36). A failed attempt to purchase Sugar Point led McDermot to deny that it was a part of the reserve on the lower Red ("The Peguis Land Controversy,"); however, it appears that the HBC quietly bought land from the St. Peter's band south of Sugar Point, with a first attempt in 1853 and a successful one at the founding of St. Clements in 1861 (Memorandum from E. McColl, May 17th, 1878, reporting on statements made by the St. Peter's Band, in Friesen, "Grant Me Wherewith," 56; Donald Gunn, "Peguis Vindicated," *Nor'-Wester*, April 28th, 1860, page 4; Chief Justice Howell, quoted by G. H. Bradbury, March 22nd, 1911, *Official Report of the Debates*, 5857).

Cockran had merely inferred this because the area was “called an Indian reserve,” and because the Saulteaux “were allowed to exact tribute” from those cutting timber on it.³³ In other words, Cockran’s testimony can speak only to the continuous existence of the reserve from 1825 until the founding of St. Peter’s, and not to its origin. Peguis’s account remains the more likely one.

Peguis did not similarly contest McDermot’s assertions about the reserve at Portage la Prairie on the Assiniboine. McDermot’s account here was sparse. In 1860, he insisted only that The Black Robe had sold the land along the Assiniboine to Selkirk and then begged for a reserve at Portage. In 1870, McDermot was mildly more forthcoming to Canadian officials, relating that the HBC had since obtained the reserve while admitting that he did not know how. Peguis would not have been involved in negotiating for any reserve at Portage, and unhappily provided no competing narrative as he had for the Forks or St. Peter’s.³⁴ However, even if The Black Robe had secured a reserve at Portage la Prairie, neither the Selkirk Estate nor the HBC located any settlers near it. Any Indigenous reserve there would have rapidly become meaningless.

The reserve that McDermot identified at Portage was not attached to the Selkirk Treaty, but attached rather to a new treaty under which settlers did move to Portage in the early 1850s. The Black Robe, after failing to impress the Indigenous understanding of the Selkirk Treaty on Colony officials, came to accept Selkirk Treaty payments as a recognition of ongoing land rights. So did his son and successor Pequakekan. However, The Black Robe and Pequakekan were

³³ June 20th, July 4th, 1833, William Cockran, “Extracts of a Journal kept at R. R. S. 32/33,” CMSA, Section V, Part 2, Reel 36; William Cockran to the Secretaries of the Church Missionary Society, 1834, CMSA, Section V, Part 2, Reel 35.

³⁴ Andrew McDermot, “Peguis Refuted,” *Nor'-Wester*, February 28th, 1860, page 3; Molyneux St. John to Adams Archibald, Winnipeg, January 17th, 1871, No. 176, AM P7920/2. Some scholars have built on larger assumptions with McDermot’s unreliable account (Czuboka, “St Peter’s,” 18, 38-38; Narvey, “Royal Proclamation,” 214-216). Peguis had not negotiated a Portage reserve, but Saulteaux bands were closely interrelated. His sons were later involved in Portage land discussions (“Immigration at Portage la Prairie,” *Nor'Wester*, June 19th, 1869, page 2).

connected to the death of a Sioux man at Fort Garry in 1845, leading the HBC to cease payments to Pequaquekan.³⁵ A few years later, Pequaquekan took the initiative to negotiate a new land treaty without any HBC involvement, and indeed against ineffectual opposition from the HBC's George Simpson and Chief Factor John Ballenden, as well as from Adam Thom, the Colony's legal authority.³⁶ Pequaquekan invited William Cockran to begin a mission settlement at Portage on the St. Peter's model. In 1850, Cockran visited the site and committed to providing Pequaquekan a plow, oxen, help building a house, "and annually a Capote for his natural right to the price of the soil on which our mission is to be established. . . . When he has been put in possession of the aforesaid articles of property he is to consider himself paid and is to use his influence to protect us from the assaults of hostile Indians." Cockran then facilitated a broader treaty between the chief and settlers arriving from the St. Andrews parish on the lower Red River.³⁷ This treaty included a reserve of 700 acres for Pequaquekan's band. They planted gardens on it, and resided there for much of the year.³⁸

³⁵ October 9th, 1824, Fort Garry Journal 1824/25, HBCA B.235/a/6; Paketay-Hoond, "Paketay-Hoond on the Land Question," *Nor'-Wester*, June 28th, 1860, page 4; Inhabitants and Indians of Portage La Prairie to Committee of the Church Missionary Society, July 25th, 1853, CMSA, Section V, Part 2, Reel 35. See also the court transcript of and Dale Gibson's commentary concerning *The Public Interest vs. Capenesseweet*, August 4th, 1845, in Gibson, *Law, life, and Government*, vol. 2, 17-27. The Black Robe probably have died in the 1840s; he was an old man, having been in his prime in 1800 (Coues, *The Manuscript Journals*, vol. 1, 54).

³⁶ Cockran to unclear, Indian Settlement, August 4th, 1853, in CMSA, Section V, Part 2, Reel 35, page 7; Garrioch, *The Correction Line*, 181; Kathryn M. Bindon, "THOM, ADAM," in *Dictionary of Canadian Biography*, vol. 11, University of Toronto/Université Laval, 2003–, accessed November 7th, 2018, http://www.biographi.ca/en/bio/thom_adam_11E.html; Clinton O. White, "JOHNSON, Sir FRANCIS GODSCHALL," in *Dictionary of Canadian Biography*, vol. 12, University of Toronto/Université Laval, 2003–, accessed November 7th, 2018, http://www.biographi.ca/en/bio/johnson_francis_godschall_12E.html.

³⁷ William Cockran to David Anderson June 14th, 1851, in CMSA, Section V, Part 2, Reel 35; William Cockran to David Anderson June 21st, 1851, in CMSA, Section V, Part 2, Reel 35. William Cockran to David Anderson, Indian Settlement, December 5th, 1851, CMSA, Section V, Part 2, Reel 35; William Cockran to unclear, Grand Rapids, St. Andrews, January 30th, 1854, CMSA, Section V, Part 2, Reel 35. The initial St. Andrews settlers were soon joined by others after the flooding of 1852 (Kaye, "Some Aspects," 139-140). For the terms of the treaty with the settlers facilitated by Cockran, see Hill, *Manitoba*, 125; Garrioch, *First Furrows*, 92-93; Garrioch, *The Correction Line*, 185, 193; and Malcolm Cummings, cited in Margaret Jane Bell, "Portage la Prairie: From Earliest Times to 1907," (MA thesis, University of Manitoba, 1926), Appendix D, 1.

³⁸ Garrioch, *The Correction Line*, 185 (see also 333-336). This was true for the Saulteaux who both adopted and rejected Cockran's evangelistic program (Hind, *Narrative of the Canadian Red River Expedition*, vol. 1, 281-282).

The Black Robe's band thus acted as if the Selkirk Treaty had lapsed around the Portage area. Records of negotiations over the new treaty do not refer to the Selkirk Treaty. Nor do they reference a pre-existing Indigenous reserve. Cockran had cited the existence of a reserve to legitimize the mission settlement that would become St. Peter's, but he did not do so at Portage. Instead, Cockran claimed simply that his opinions had evolved, and that he no longer believed the HBC's charter authorized the HBC to oppose him and Pequaquekan.³⁹ The Reverend A. C. Garrioch, historian of Portage and member of one of the first St. Andrew's families to move there, later disagreed with Cockran. Due to his origins, Garrioch was one of the few historians to attempt to connect Cockran's treaty with the Selkirk Treaty. However, Garrioch held a high opinion of the HBC, and so reconciled the two treaties by calling Cockran's "informal" and merely a "wise precaution."⁴⁰ Cockran's contemporary records seem to contradict Garrioch. In light of the Portage Saulteaux's well-documented insistence on land rights in the late 1860s and early 1870s, it seems unlikely they would have agreed to yield permanently any land rights when

³⁹ William Cockran to unclear, Indian Settlement, August 4th, 1853, in CMSA, Section V, Part 2, Reel 35, page 7. For his opinion, see also William Cockran to David Anderson June 14th, 1851, in CMSA, Section V, Part 2, Reel 35.

⁴⁰ Garrioch's description of Cockran's treaty ironically echoed Selkirk's feelings towards his own treaty (Garrioch, *First Furrows*, 92-93; Garrioch, *The Correction Line*, 185, 193). Another scholar to have connected Cockran's and Selkirk's treaties is Jim Gallo, who said Cockran's treaty acknowledged the Indigenous land rights that the Selkirk Treaty had never removed (Gallo, *The Yellow Quill Band*, 11). A couple histories of the Long Plains Band have also explored the implications of the Selkirk Treaty on Portage, and the implications of the later treaty on Indian Title there (Norman J. Williamson, "The Portage Band Reserve," Manuscript, (Long Plain Band Office, 1985), accessed November 7th, 2018, http://everlastingexile.weebly.com/uploads/2/5/4/3/2543976/1985_portage_bands_reserve.rtf; and Long Plain First Nation, "Pre History," accessed November 7th, 2018, <https://www.lpband.ca/pre-history/>).

negotiating the treaty with Cockran any more than they had during the negotiation of the Selkirk Treaty.⁴¹ More definite is the unreliability of McDermot's account of the Portage reserve.⁴²

Andrew McDermot's explanations for the origin of the reserves at the Forks, St. Peter's, and Portage are thus all individually deficient, yet a common thread runs through them: they each explained an undeniable pocket of Indigenous possession within the bounds of the Indenture in such a way as to legitimize both the Indenture and these possessions in the eyes of a new government. When McDermot wrote in 1860, it was becoming increasingly clear that the HBC's rights to the Northwest would either be bought or rescinded. The settlements along the Red and Assiniboine would either be annexed by Canada or turned into a separate Crown colony. The new government would try to encourage immigration, and in order to do so, would seek to extinguish Indigenous land title. Those settlers who already resided along the Red and Assiniboine would not have expected the negotiation of land treaties to go smoothly.⁴³ McDermot provided a solution for that. If Lord Selkirk had already extinguished rights to the

⁴¹ *Nor'-Wester*, June 5th, 1869, page 2; "Immigration at Portage La Prairie," *Nor'-Wester*, June 19th, 1869, page 2; "Copy of the Indian Agreement," *Nor'-Wester*, August 17th, 1869, page 2; Chief Moosoes to Adams Archibald, December 17th, 1870, in Friesen, *Grant Me Wherewith*, 22; Krasowski, "Mediating the Numbered Treaties," 64-65. Tom Flanagan is worth noting here, having assumed that the Portage band only asserted rights over land outside the bounds specified in the Indenture. However, arrangements with the Saulteaux and the Portage settlers stretched from the Assiniboine to beyond the two-mile limit, so that Portage had the only back row of lots along the whole of the Red or Assiniboine (Flanagan, *Métis Lands*, 44, note 68; "Local Sketches: Settlements in the West," *Nor'-Wester*, February 9th, 1863; "Information about Land at Red River," *The Globe*, March 20th, 1869, page 3). The arrival of Sioux refugees and Canadian settlers earlier in the 1860s would have encouraged the Saulteaux insistence on land rights as well (see Hill, *Manitoba*, 147-152; Charles Hay and John Garrioch, cited in Margaret Bell, "Portage la Prairie," Appendix D, 4 and 17; "Another Fine Picture of Indian Life," *Nor'-Wester*, May 14th, 1862, page 3).

⁴² Though not discussed here, Métis and/or Half-Breed opinions connecting the Selkirk Treaty and the new treaties on the Assiniboine may be worth exploring. They were negotiated shortly after the HBC's post-Sayer Trial crackdown on Cuthbert Grant's land tenure regime at St. François-Xavier (John Ballenden to Sir George Simpson, Fort Garry, February 13th, 1850, in MacLeod, *Cuthbert Grant*, 137-138). The Saulteaux do not appear to have attempted to dislodge those settled along the Assiniboine after the lapse of the agreement between The Black Robe's band and the Colony. The Métis had a generally good relationship with the Saulteaux and Indigenous land rights of their own, and Métis disagreements about HBC land claims were prominent on the Assiniboine, where lay the disputed lot of *McDermot vs. Fanyant* (see also "Indignation Meetings," *Nor'-Wester*, June 15th, 1861, page 2).

⁴³ There was a gulf between Indigenous and Canadian expectations. The Saulteaux, for instance, envisioned retaining the vast majority of their land in any further treaties, not the small reserves Canadian officials had in mind (Adams Archibald to Joseph Howe, Lower Fort Garry, July 29th, 1871, in Morris, *The Treaties*, 33).

existing settlement, as McDermot contended, then settlers could rest secure in their title under any new British regime until any contentious land negotiations were completed. Securing existing title in the settlement was not only in McDermot's interest as a landowner, it was also his duty as a Councillor of the municipal District of Assiniboia. McDermot thus reconciled the HBC interpretation of the Selkirk Treaty to the reserves whose existence seemed to contradict it.

This chapter has presented a case study of the boundaries specified in the Indenture, and concluded that they do not accurately reflect the boundaries negotiated with Lord Selkirk in 1817. McDermot's origin stories for the reserves at the Forks, St. Peter's, and Portage la Prairie do not appear to have been authoritative accounts, primarily because of the discrepancies between the Indenture of the Selkirk Treaty and the boundaries the Indigenous signatories negotiated with Selkirk in 1817. Instead, McDermot likely inferred the boundaries simply on the basis of what he could observe decades later, and he seemingly tailored his accounts with the primary goal of securing the title of settlers. McDermot's account condescendingly assumes that the Saulteaux would have neglected to retain land along the riverbanks when negotiating with Selkirk in the first place. Unrealistically, McDermot also assumes that an undocumented transfer to and from Selkirk would have grounded the existing Indigenous title to these reserves in the Crown. In opposition to McDermot's assumptions, Peguis's account that his band had simply retained reserves the Forks and St. Peter's is both simpler and more convincing. As for the reserve at Portage la Prairie discussed by McDermot, this chapter has argued that it was rooted in a later treaty facilitated by William Cockran rather than in the Selkirk Treaty. By the time Cockran and Pequakekan were negotiating new treaties at Portage, the Saulteaux around Portage had rejected the ongoing validity of the Selkirk Treaty there.

If Peguis was correct, and the boundaries negotiated with Selkirk never included either the Forks or what would become the St. Peter's parish, then the boundaries specified within the Indenture are inaccurate. Moreover, the six-mile radii the Indenture specifies around Fort Douglas, Fort Daer, and Grand Forks are corroborated only by sources that rest on the Indenture for their knowledge of the Selkirk Treaty. These six-mile radii thus do not appear to have been negotiated with Selkirk either. The only consensus that emerged among Indigenous and Euro-Canadian parties concerning the Indenture is that the two-mile limit it specified had been negotiated with Selkirk, yet even this boundary provision was not necessarily reliable, as McDermot himself demonstrated when claiming that The Black Man had only negotiated away one mile on either side of the Red River south of Pembina. The preponderance of evidence thus makes it clear that the boundaries specified in the Indenture do not accurately reflect the boundaries that Peguis, The Premier, The Black Man, and The Black Robe negotiated with Lord Selkirk in 1817. The Indenture should thus not be taken as an accurate reflection of the Selkirk Treaty, but should be contextualized by reliable witnesses such as Peguis.

Conclusion

This thesis has identified a set of unresolved questions in the historiography of the Selkirk Treaty. It has then attempted to come to a better understanding of the Selkirk Treaty by isolating, assessing, and taking into account all the sources used by various scholars to attain contrary positions on these questions. These questions fall into three groupings: the rights of Lord Selkirk within the Imperial legal framework of his day; the rights of the Indigenous population of Red River within the Indigenous framework of land rights over Red River; and finally, whether or not the Selkirk Treaty consisted of a permanent alienation of Indigenous land, and whether or not we can trust the Indenture to be an accurate record of the Selkirk Treaty. This thesis has argued that an analysis of these first two categories can help to come to an understanding of the third. In other words, the overlapping matrices of land claims in Red River need to be thoroughly considered in order to come to a better understanding of the Selkirk Treaty.

The fifth Earl of Selkirk's rights under the Imperial framework in 1817 were basically unknowable, as none of them were ever tested in a court competent to rule on them.¹ Nevertheless, this thesis has argued that after having studied the wide array of treatments of Indigenous land rights in Northeastern North America, Selkirk believed, or at least claimed, that the royal charter granted in 1670 to the Hudson's Bay Company gave it a clear fee simple property right over Rupert's Land. As the only competing land right Selkirk recognized in the Northwest was a right of prescription available only to British subjects, the Earl did not believe that a purchase of Indigenous title could strengthen the land rights he had obtained from the HBC

¹ The related cases of *McDermot vs. Fanyant* and *Carrière vs. Dagnon* were both decided within a court system set up under the HBC's charter. It could hardly be deemed competent to test the HBC's charter rights.

in 1811. Selkirk had no special authority from the Imperial government to negotiate for Indigenous land except insofar as he took it upon himself to represent the HBC.

There were actually two principal competing Indigenous land frameworks over Red River, that of allied Sioux bands, and that of the Iron Alliance made up of a number of allied Saulteaux, Cree, Assiniboine, and Métis. Both frameworks centred on subsistence requirements, rather than the more absolute form of exclusive land tenure permanently guaranteed by the Crown that Selkirk favoured. The Iron Alliance was largely in control of Red River on the arrival of the Selkirk settlers in 1812. However, its hold was being increasingly threatened by the Sioux, whose war parties had been enforcing their own framework further and further north. Nevertheless, as far as the settlers were concerned, the operational land framework remained that of the Iron Alliance, which accorded them a place. Under the Iron Alliance's framework, Cree, Assiniboine, and Métis had a share in a higher right to the land, though the immediate area of the settlement was deemed to belong foremost to the Cree. However, it was bands of Saulteaux acknowledging the higher right of the Cree who were the closest allies to the settlers, and who allowed them a share of their own occupancy right. Governor Miles Macdonell reached an agreement to that effect with the Saulteaux chief Peguis in about 1813.

The Iron Alliance's land framework held throughout the tumultuous years stretching from the settlers' arrival in 1812 to the negotiation of the Selkirk Treaty in 1817. The majority of the Cree quietly assumed their higher land right and did not believe that the settlement threatened it. The Assiniboine likewise had no quarrel with the Colony, though in any event were preoccupied with reprisals for their horse raids on the Mandan. However, the Métis were more affected by the pretensions to land rights of Selkirk's agents. These Colony officials asserted rights against

the Métis that were rooted in the HBC charter, and exceeded the rights allowed them under the Iron Alliance's framework. After the bulk of the Cree declined to intervene, the Métis drove off the settlers. The Saulteaux who had permitted the settlers to occupy land stood by their Colony allies, and a number of them were prepared to challenge directly the Métis's assertion of sovereign rights against the settlers. However, a concatenation of circumstances combined with an unwillingness to break their relationship meant that between 1812 and 1817 the Saulteaux never found themselves in a position where they actualized a threat against the Métis.

Both Saulteaux and Métis had been convinced that they were allied with the correct manifestation of their ultimate ally, the British Crown. However, it was only in 1817 that Commissioner W. B. Coltman, envoy of the Governor of British North America and the best representative of the Crown available, assured them of the Crown's blessing on Selkirk's settlement. Whether this was true was another question. Coltman was uncomfortable with the rights that Selkirk asserted under the HBC charter. At the same time, Coltman saw that Selkirk's settlement would be a commercial and geopolitical asset for the British Empire, and was moreover concerned about the welfare of the settlers. The Commissioner thus helped convince Red River's Indigenous population, already informed by the spirit of the Royal Proclamation, to accord the settlement a more formal place within its own land framework over Red River.

The Saulteaux desired a treaty with the Colony in order to ensure the continued benefit of the settlement, which would act as an ally and bulwark against the Sioux while also helping provide for their future subsistence. They wanted a stronger arrangement than the one they had initially reached with Macdonell, and which the forced dispersal of the settlement had aborted. The Saulteaux chiefs thus consulted with the Cree, Assiniboine, and Métis before seeking to

transfer some of their occupancy rights to Selkirk again. The Assiniboine and Métis deferred to the Cree. The Cree then authorized the Saulteaux to go ahead with an arrangement. The Cree as a whole neither condoned nor endorsed the resulting Selkirk Treaty, but the Saulteaux secured the recognition of the higher Cree land right in the treaty by ensuring that Cree representatives were to be among those to receive annual payments. The Indenture, a written record of the Selkirk Treaty, referred to these payments as presents and quit rents. For his part, Selkirk explained them to the Indigenous negotiators as part of an ongoing gift exchange. This much at least can be established on the basis of the records left behind by Colony and HBC agents, and the Selkirk Treaty thus secured for the Colony a recognized place within the Iron Alliance's land framework over Red River. There is likely more to the story, as the Saulteaux signatory chief Peguis would later argue convincingly that the Selkirk Treaty had been negotiated only as a preliminary measure. The Selkirk Treaty had provided the outline for a more comprehensive treaty with Selkirk, but that treaty was to be concluded at a later date.

Nevertheless, while the former conclusion may not be complete, it is enough to complete the following argument: Selkirk's ideas about land tenure included that he already owned the land in Red River through the Selkirk Grant via the HBC's charter. Selkirk thus did not believe that the Imperial land framework forced him to buy the settlement's land from the Indigenous population. On the other side, through the Selkirk Treaty, the Earl at least temporarily slotted the settlement into the Iron Alliance's land framework. This framework was centred on collective subsistence, and it had no place for a permanent alienation of Indigenous rights in regards to the land occupied by the settlement. Selkirk bought into the Indigenous land framework, and the

Indigenous population did not buy into his; but under either framework the Selkirk Treaty had not consisted of a permanent alienation of land.

It thus could not be the case that the Selkirk Treaty consisted of a permanent alienation of Indigenous land. This also was the conclusion of all Indigenous witnesses to the negotiation of the Selkirk Treaty who later claimed to make authoritative statements about it. In opposition to them, Andrew McDermot claimed authoritatively that the Selkirk Treaty consisted of a permanent sale of land. However, the three preserved McDermot accounts of negotiations are riddled with inconsistencies and with inferences patently based on later circumstances.

Moreover, Selkirk's agents were never able to fulfill his order to secure explicit Cree consent to the Indenture in the form of more signatures, and Selkirk died in 1820. Amid Indigenous objections, insufficient instructions, and high turnover and internal dissension among themselves, Colony officials began to rely on the Indenture as the sole trustworthy record of the Selkirk Treaty. The Indenture could not account for actual practices and expectations surrounding the Selkirk Treaty, and it had only one Cree signature on it. However, because they took the Indenture at face value, Colony officials looked at that signature and assumed a broad Cree consent to the Indenture that had eluded Selkirk. Unsurprisingly, by the early 1820s, Colony officials in Red River had begun reading the Indenture as a permanent alienation of Indigenous land. As the only written document available, the Indenture was also relied upon by Selkirk's heirs and executors in Britain.² The Reconveyance of Selkirk's land grant to the HBC in the mid-1830s cut Selkirk's heirs out of the picture, but in 1847 the legal decision of

² Whether the Selkirk Estate ever read the Indenture as firmly as the Court of Assiniboia did in 1847 is not entirely clear. This may be worth investigating at a later date.

McDermot vs. Fanyant in Red River officially established the Indenture as proof that the Indigenous population had permanently alienated land.

Even beyond the question of Cree consent, the Indenture alone should not be considered a complete and reliable record of the Selkirk Treaty. According to Peguis, Selkirk had assured the signatories that the Indenture only indicated the groundwork for a future treaty. This claim should be taken seriously. The text of the Indenture itself does not discount such a possibility. The Indenture certainly includes a clause saying that the land is “to have and to hold forever,” but two more clauses clarify that the Indenture’s terms are all dependent upon the ongoing payment of a quit rent to the Indigenous signatories. The final clause of the Indenture further suggests the provisional nature of the whole agreement by specifically referencing a future Crown decision. Moreover, the Indenture is the first contemporary record that speaks of an alienation of land to the Crown rather than to Selkirk, suggesting that it was primarily a formality meant to satisfy the spirit of the Royal Proclamation and avoid further NWC accusations.

The boundaries specified in the Indenture suggest that it is not an accurate record of the Selkirk Treaty, and certainly not a final one. The Indenture specifies that six-mile radii were included around the Forks, Fort Daer, and Grand Forks. However, any other references to these in the historiography of the Selkirk Treaty are traceable directly to the Indenture itself, and not to any independent testimony concerning the treaty. By contrast, the two-mile limit specified in the Indenture is widely corroborated by independent testimony.

Within that two-mile limit, however, there were three reserves that the Indenture did not mention, reserves that the Indigenous population clearly retained. Andrew McDermot argued that these were established for the Indigenous population by Selkirk after the Indigenous

population had already permanently alienated its title to them. Peguis explained instead that two of these reserves, one at the Forks and one at St. Peter's, had simply been retained rather than sold and returned within a three-day period. This is a far more convincing explanation. Peguis said nothing of the third reserve identified by McDermot at Portage la Prairie. This thesis has argued, however, that the Portage reserve was rooted in a new treaty negotiated by The Black Robe's band and the missionary William Cockran and incoming settlers. This treaty was concluded after the HBC had ceased paying quit rents to The Black Robe's successor, and it ignored the Colony and HBC entirely. McDermot's account of the three reserves appears to have been informed more by a desire to secure the land tenure of the settlement within the Imperial framework than it was by a search for truth. The latter approach was better represented by his contemporary Donald Gunn, who publicly pointed to a number of the inconsistencies and inaccuracies in McDermot's accounts. The boundaries specified in the Indenture thus cannot be clearly and confidently held up as an accurate reflection of those negotiated in the Selkirk Treaty.

The Indenture cannot account for much that was bound up with the Selkirk Treaty. The question of payments and boundaries aside, the Indenture only implicitly references the Indigenous negotiations that had occurred prior to its signing. It thus does not account for either the Assiniboine or the Métis, nor does it reflect the higher nature of Cree land rights. A plain-text reading of the Indenture moreover assumes a single, binding, Indigenous negotiating block. This mischaracterizes both Indigenous political conventions and the nature of Cree involvement. It also misses the fact that the land boundaries described in the Indenture were negotiated with four separate Saulteaux bands, each authorized with the right to negotiate for a single tract of the whole. A plain reading of the Indenture thus cannot allow for the interpretation that the Selkirk

Treaty consisted of four separate agreements, and that each of these could be upheld independently of each other — or broken, as occurred near the western edge of the settlement.

In conclusion then, this thesis has argued the following answers to the controverted questions it identified over the Selkirk Treaty. First, it is impossible to know if Selkirk had the right to purchase land under the Imperial framework because the HBC charter was never tested by a competent court. However, Selkirk's understanding of Indigenous land rights and the HBC charter gave him the freedom to directly assert charter land rights over Indigenous land rights, so that he did not believe he had to extinguish Indigenous title in land bound by the charter. Assuming that he did not have to extinguish Indigenous title, he was content to achieve the practical necessity of slotting the settlement into the Iron Alliance's land framework over Red River.

Second and third, the Saulteaux did not have the authority of their own to secure the tenure of the Selkirk settlers within the land framework of the Iron Alliance. Instead, they looked to the higher right that they recognized the Cree and others as holding. The Cree can thus be understood as having granted the Saulteaux permission to treat away the Saulteaux's own occupancy rights, without the Cree themselves renouncing their own higher, sovereign right to the settlement. The Saulteaux preferred to retain their ongoing occupancy rights over the settlement as well. Thus in 1817, terms negotiated with Selkirk accommodated the settlement without extinguishing either Cree or Saulteaux land rights over it.

Fourth and fifth, the Saulteaux and Cree deemed the Assiniboine and Métis to have a share in a higher land right. As participants in the Iron Alliance, Saulteaux negotiators consulted both Assiniboine and Métis representatives about the arrangement they wanted to make with the

Colony. They both ultimately deferred to the wisdom and to the right of the Cree. This thesis has particularly sought to speak to the role of the Métis in the Selkirk Treaty, by situating them as a group with integral land rights within the framework of the Iron Alliance. Chapter Four of this thesis has particularly highlighted the significance of the presence of Bostonnais Pangman at a Selkirk Treaty negotiating session, which has been ignored or dismissed by other scholars.

Sixth, under neither Selkirk's conception of his land rights over Red River under the Imperial land framework, nor the Iron Alliance's own land framework, did the Selkirk Treaty constitute a permanent alienation of land from the Indigenous population to Lord Selkirk. Seventh, the Indenture is a problematic document that should not be taken in isolation as if it were an inherently accurate record of the Selkirk Treaty.

The key point in concluding that the Selkirk Treaty was not intended to constitute a permanent alienation of land rests on the idea that the Indigenous population had not allowed for this assumption, and on Selkirk's own belief that under the Imperial framework the charter should have made it impossible, as there was no land right there to alienate. This is not to suggest that Selkirk's stance on the authority of the charter was convincing. Political scientist Adam Gaudry has convincingly demonstrated the fantastical nature of the claims of the British Crown to sovereignty in Rupert's Land.³ Moreover, Parliament had insisted on the ratification of

³ Gaudry, "Fantasies."

the HBC's celebrated charter in 1697, but that had never happened.⁴ Even NWC-turned-HBC director Edward Ellice argued in 1857 that declaring the charter illegal would entitle the HBC to compensation, not because the charter necessarily granted any rights, but because the HBC had claimed and tried to exercise such rights for two centuries. Ellice's emphasis on a prescriptive claim provided an ironic curtain to Lord Selkirk's previous insistence on the positive rights granted to the HBC under its charter.⁵ When the Dominion of Canada bought out the rights "granted or purported to be granted" by the HBC's charter, it dealt a further blow to Selkirk's pretensions by proceeding to extinguish Indigenous land title in Rupert's Land through the Numbered Treaties.⁶ The charter could not have conveyed to Selkirk the rights he argued it did.

This thesis here helps to add a certain nuance and a caution to understandings of the development of Indian Title. In the 1970s, Kenneth Narvey was quite clear in his contention that the HBC's charter, and in turn the Selkirk Grant, were not understood to displace utterly any Indigenous right to the land there, writing that "all concerned" with similar proprietary grants in North America did not consider themselves to have been conveyed a "a clear title, but only the exclusive right to purchase the Indian title." However, Lord Selkirk appears to have been an

⁴ A bill on the HBC was going through the House of Commons in 1697. The House divided into a committee of the whole to discuss it, reported progress and asked leave to sit again, but never did (*Journal of the House of Commons, Volume 12, 1697-1699* (London: His Majesty's Stationery Office, 1803), 263. See also Robson, *An Account*, footnote on pages 80-81. Samuel Gale, charter apologist and Selkirk employee, addressed this by saying that not all the rights in the charter required parliamentary ratification as they remained within the Crown's prerogative, but without explaining which rights fell where (Gale, *Notices on the Claims*, 26-28). The claims of the HBC over Red River were also challenged with the argument that the charter excluded the land owned by the French by right of prior Discovery, and which had passed over to the Canadas rather than the HBC after the Conquest (Joseph Cauchon, "Memorandum," in Appendix B, *Return To an Address of the Honourable Legislative Assembly*, dated 16th March, 1857 ... (Toronto: Crown Land Department, 1857), 7-41). Gale's response to this allegation was more convincing (*Notices on the Claims*, 10-13), particularly given that the French themselves had not always secured the title Imperial officials would sometimes assume via the Conquest (Greer, *Property and Dispossession*, 404).

⁵ Edward Ellice, June 23rd, 1857 in "Minutes of Evidence," in *Report*, 336-337. Selkirk's agent Samuel Gale had even gone so far as to write that "between an individual and a Sovereign, or between an individual and a Colony or Government, a claim founded only on prescription could not exist" (Gale, *Notices on the Claims*, 6).

⁶ "Deed of Surrender of Rupert's Land by the Hudson's Bay Company to the Crown," Appendix Q, A. Martin, *HBC Land Tenures*, 217.

exception to this. Alexander Ross, Red River's first historian, similarly believed the charter precluded Indian Title.⁷ Not a common opinion, it was abandoned by Selkirk's successors and buried in the historiography, clouding later interpretations that placed anachronistic expectations on the Selkirk Treaty.

Selkirk's interpretation of the charter, Colony officials' reading of the Indenture, and McDermot's efforts to turn unextinguished Indigenous land rights into sub-sovereign rights held of the Crown, would be best interpreted as uncoordinated, heuristic successors in a movement by which a localized settler regime sought to secure its land tenure over and against both the surrounding Indigenous populations, and the metropole's expectations of how it ought to treat them. However, Indigenous actors retained the balance of power at Red River throughout this period, and settlers' title would not be secured by such legal fictions. The Indenture was not respected when Canada took over; instead, settlers' title was secured for them by the Red River Métis, who negotiated a framework with Canada which gave these settlers a place. That place smoothly transferred into the framework with which fresh settlers from Ontario rapidly overturned the negotiated one in 1870.⁸

This thesis has also helped contribute to the already considerable literature identifying problems concerning the validity of written records of treaty documents.⁹ While Selkirk did not believe he had to adhere to forms that would satisfy the criteria of the Royal Proclamation, he did use them in the Indenture to satisfy Commissioner Coltman. However, as Peguis recounted, Indigenous signatures were secured on the assurance that the document was only to lay the

⁷ Narvey, "Royal Proclamation," 185; Ross, *Red River Settlement*, 1-13.

⁸ Gaudry, "Kaa-tipeyimishoyaahk," 5, 368-371.

⁹ See for example the outside promises to Treaties 1 and 2 (Krasowski, "Mediating the Numbered Treaties," 89-97).

groundwork for a future deal; because Selkirk never returned to Red River to finalize a deal, the document never ended up representing what Colony officials later concluded it did. As Geoffrey Lester noted, the Indenture may be authentic, but that does not mean that the testimony it bears is necessarily true.¹⁰ Thus Adam Gaudry, the foremost intellectual associated with the Selkirk Treaty, reads the Indenture at face value to conclude that it was essentially an accurate record of the Treaty, simply because Peguis and his son Henry Prince later said they had leased rather than sold land.¹¹ Yet this accounts for only one provision within the Indenture, neglecting other details that can help point to the document's testimonial value. This thesis's discussion of the borders indicated in the Indenture has tried to serve as a reminder that such documentary records need to be examined in their totality to get nearest to the truth of questions related to them.

This thesis has also tried to bring out some of the ways that Indigenous peoples within the same alliance framework interacted with each other, particularly in the face of serious political differences that verged on violence. Scholar Robert Innes has emphasized the extent to which close relationships meant that reported tensions between Cree, Assiniboine, Saulteaux, and Métis never broke out into outright violence. Similarly, Adam Gaudry has taken up the theme to emphasize that kinship relationships among them provided greater opportunities to solve their differences through diplomacy.¹² This thesis has identified one tactic in particular that was used to successfully manage such tension. Chapter Three highlighted the extent to which opposing Métis and Saulteaux engaged in brinkmanship, particularly when one or the other was at a numerical disadvantage. A weaker party always carried the final threat of forcing a battle and of

¹⁰ Lester, "The Problem of Ancient Documents," 138-139.

¹¹ Gaudry, "Fantasies of Sovereignty," 52-56; "Guest Curator: Adam Gaudry," July 20th, 2017, Library and Archives Canada Blog, accessed November 7th, 2018, <https://thediscoverblog.com/tag/treaties/>.

¹² Innes, "Multicultural Bands," 129-130, 132-133; Gaudry, "Kaa-tipeyimishoyaahk," 128.

being killed. This would have meant little against an enemy such as the Sioux, but the Métis and Saulteaux had significant ties with each other. A battle would weaken those ties, which they cherished, and any deaths could inspire a desire for vengeance among various relatives that would entirely tear the ties apart. These very real threats of violence as a tactic within the Iron Alliance may help explain both that the reported tensions among the Saulteaux, Cree, Assiniboine, and Métis have long been taken seriously by some scholars, as indicated by Innes and Gaudry, but also why they did not devolve into warfare.

The methodology for this thesis has had its limitations, leaving open multiple avenues for future research. Following the footnotes of other scholars resulted in considerable consultation of records left by the Anglican Church Missionary Society, but less consultation of records left by Roman Catholic clergy. Any letters between colony surveyors and Bishop Joseph-Norbert Provencher referencing the corner of the Roman Catholic Church's lot that fell outside the six-mile radius specified in the Indenture could be profitable. Consulting oral histories could similarly be useful, particularly in light of D. Bruce Sealey's report that Bostonnais Pangman had contested Peguis's alleged position on Métis land rights. Papers left by scholars who consulted original documents stored at the Selkirk Estate may also be of value; in 1889, George Bryce and Charles Bell, for example, identified receipts for Indenture payments from 1823 and 1831, but I located only a copy of the former.¹³ Other questions worth exploring are the ideas about Indian Title of Andrew Colville, Selkirk's brother-in-law and *de facto* successor in regards to the Red River Settlement, and the reaction of the Métis inhabitants of parishes such as St. François-Xavier to the land treaties attached to the founding of the settlement at Portage la Prairie.

¹³ Bryce, "Original Letters and other Documents relating to the Selkirk Settlement."

Appendices

APPENDIX 1: COMPILATION OF NAMES AND SPELLINGS OF VARIOUS INDIVIDUALS

Compilation of various names and spelling by which people were designated in primary sources, and in various secondary source materials. Not exhaustive.

André Trottier: Métis participant at Seven Oaks who claimed to have witnessed the negotiation of the Selkirk Treaty.

-Alexander Triquet	-André Trottier	-André Truké
-André Traquer	-André Trotter	-André Trulè
-André Trocher	-André Truché	-André Trutier

Eske-Pake-Koose: Saulteaux chief at St. Peter's who participated in agitation for continued land rights under the Selkirk Treaty.

-Eske-Pake-Koose	-Eske-puck-a-koos	-Eskepacakoose
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Kes-kis-si-ma-kun: Saulteaux chief protesting against the HBC's interpretation of the Selkirk Treaty in the 1850s.

-Kees-ke-si-ma-kun	-Keeskisimakun
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Le Sonnant: Cree chief whose signature appears on the Indenture of the Selkirk Treaty.

-Little Rattlesnake	-Petit Sonner	-The Noisy Man
-Le Sonent	-Rattle Snake	-The Sonna
-Little Sonnean	-Senna	-the Sonnant
-Mache Wheskab	-Sinna	-Yorston's Guide
-Mechet oque thou	-Sineu	-Yorstones Guide
-Mechetecoone	-Sonna	-Moche-w-keoach
-Many Eagle Set	-Sonneau	

Machicabaou: Nephew of The Black Man, sided with the NWC over the HBC in 1817.

-Machicobaou	-Magecabaou
-Machincabaou	-Magigawbo

Paketay-Hoond: Saulteaux, brother-in-law of Pequakekan. Claimed that Selkirk Treaty payments had ceased being paid to the Saulteaux at Portage and helped arrange a settlement at Portage la Prairie with William Cockran.

-Pahkitahoond	-Pahketahoone
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Peguis: Saulteaux chief, firm Colony ally, Indenture signatory. Was responsible for land on the Red River from the mouth of the Assiniboine to the mouth of the Red. Note that there was probably another Cut Nose chief still active in the first decade or two of the nineteenth century.

-Be-gwais	-Cut Nose	-Pee-gwa-hais	-Pegowis
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-Peguest	-Pigeois	-Piguis	-Pigwis
-Peguise	-Pigewis	-Piguish	-Pigwys
-Peguiss	-Piguest	-Piguises the	-William King
-Pegwaes	-Pigowis	cut nose chief	
-Pequest	-Pigues	-Pigweis	

Pequakekan: Son of The Black Robe, negotiated treaties in the 1850s with William Cockran and settlers from St. Andrews that provided for the foundation of a settlement at Portage La Prairie.

-Pe-kwah-ki-kun	-Pe-qua-ke-kan	-Pee-quah-kee-quah
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The Black Man: Saulteaux chief and signatory of the Selkirk Treaty, responsible for land in the Indenture from Fort Daer at Pembina to Grand Forks, where the Red Lake River flows into the Red River. Early secondary sources often confuse with The Black Robe.

-Black Man	-Kayajiskebinoa	-Mahkatayihkoonsya
-Hayaguskebinoa	-Le Grand Noir	-The Red Lake Chief
-Homme noir	-L'homme Noir	
-Kayajiekebinoa	-Mahkatayihkoonaya	

The Black Robe: Saulteaux chief and signatory of the Selkirk Treaty, responsible for land in the Indenture along the Assiniboine from its mouth to Musk Rat Creek west of Portage. Early secondary sources often confuse with The Black Man.

-Black Cat	-La robe Noir	-Mechudewikonaie
-Blue Coat	-La Robe Noire	-Mukkadenrkonaie
-Blue coat	-La Robe noire	-Rob Noa
-Blue Robe	-Mechkadewiconais	-Robe noi
-La Robe Noir	-Mechkadewikonaie	-Robe Noire

The Frêne: Chief of a band of Cree and Assiniboine who said that the Cree had the highest right to the Red River area in 1817.

-Fresne	-La Frasne	-Lefresne
-La Frasn	-Le Grand Frêne	

The Premier: High-profile hereditary Saulteaux chief. Signed the Indenture of the Selkirk Treaty, responsible for land conveyed along the Red River between the mouth of the Assiniboine River and Fort Daer at Pembina.

-Kitchi Ottawa	-Grands Oreilles	-Ouckidoat
-Kitchn Ottawa	-Le Premier	-Premier
-Grand Courte-Oreille	-Les Grands Oreilles	-Primier

APPENDIX 2: LIST OF SELKIRK TREATY WITNESS STATEMENTS

List of witness and other statements from later debates, retroactively claiming authoritative knowledge of Selkirk Treaty negotiations and conclusions.

Eske-Pake-Koose, April 1849.

Statement of Eske-Pake-Koose, Red River Settlement, April 5th, 1849. In “The Red River,” *The Colonial Intelligencer* 23 (March, 1850): 391-393.

Peguis, c. 1857.

“LETTER from *Peguis*, Chief of the Saulteaux Tribe at the Red River Settlement, to the Aborigines Protection Society, London.” In F. W. Chesson to H. Labouchere, London, June 7th, 1857, Appendix No. 16, in *Report from the Select Committee on the Hudson’s Bay Company ...* (London: House of Commons, 1857), 445-446.

Also in “Red River Indians,” *Colonial Intelligencer* 6 (April to June, 1857): 224-226.

Makasis, May 1858.

“Statement of Makasis, the Cree Chief of the Assiniboine country, made in the presence of the undersigned witnesses, at a meeting, or council, held on the Assiniboine river 21st May 1858.” In “The Red River Indians,” *The Colonial Intelligencer* (January to June, 1859): 6-7.

André Trottier, May 1858.

Andre Trukè’s Statement,” May 26th, 1858. In “The Red River Indians,” *The Colonial Intelligencer* (January to June, 1859): 7.

Keeskisimakun, Wawaskasis and Makasis, c. May 1858.

Keeskisimakun, Wawaskasis and Makasis to Secretary of State for the Colonies, c. May 1858. In “The Hudson’s Bay Territory,” *The Colonial Intelligencer*, (July to December 1859): 90-91.

Peguis, March 1859.

Peguis to the Great House across the great waters, March 21st, 1859. In John Taylor to F. W. Chesson, Red River Settlement, April 25th, 1859. *Colonial Intelligencer* (January-June 1859): 9.

Also in “Native Title to Indian Lands.” *Nor’-Wester*, February 14th, 1860. Page 3.

Andrew McDermot, February 1860.

Andrew McDermot, “Peguis Refuted,” February 22nd, 1860. *Nor’-Wester*, February 28th, 1860. Page 3.

Métis public meeting chaired by Pascal Breland, March 1860.

“The Land Question: The Council and the Press.” *Nor’-Wester*, March 14th, 1860. Page 2.

Donald Gunn, April 1860.

Donald Gunn, “Peguis Vindicated.” *Nor’-Wester*, April 28th, 1860. Page 4.

Andrew McDermot, May 1860.

Andrew McDermot, "The Peguis Land Controversy," May 1st, 1860. *Nor'-Wester*, May 14th, 1860. Page 1.

André Trottier, June 1860

Possibly Pascal Breland. "The Land Question." *Nor'-Wester*, June 14th, 1860. Page 3.

Paketay-Hoond, June 1860.

Paketay-Hoond, "Paketay-Hoond on the Land Question," June 15th, 1860. *Nor'-Wester*, June 28th, 1860. Page 4.

Donald Gunn, June 1860.

Donald Gunn, "The Land Controversy." *Nor'-Wester*, June 28th, 1860. Page 4.

Kees-ke-si-ma-kun and Makasis, September 1860.

Kees-ke-si-ma-kun and Makasis, Fox to House of Commons, Red River Settlement, September 1860. Appendix 3 to Aborigines' Protection Society memorial to Duke of Newcastle. In *Colonial Intelligencer* (January to December, 1861): 227-228.

"Leading Indians of Beaver Creek, Pembina, Lake of the Woods and this neighbourhood," September 1863.

"Indian Councils." *Nor'-Wester*, September 10th, 1863. Page 2.

Peguis, September 1863.

William King (Peguis). "Important Statement of Pegowis, The Indian Chief." *Nor'-Wester*, October 14th, 1863. Page 3.

Pa-bat-or-kok-or-sis, July 1869.

Cited in Begg, *The Creation of Manitoba*, 88.

Kewetaosh, November 1869.

Cited in McDougall to Howe, Pembina, Dacotah Territory, November 5th, 1869. In *Correspondence and Papers ...*, 17-18.

Andrew McDermot, January 1871.

In Molyneux St. John to Adams Archibald, Winnipeg, January 17th, 1871. No. 176, AM P7920/2, Adams G. Archibald Fonds, Reel 1.

APPENDIX 3: CONCERNING LE SONNANT AND THE INDENTURE OF THE SELKIRK TREATY

Miles Macdonell comments at the signing of the Indenture gave no reason to the reader to think Le Sonnant did not make his own mark on the Indenture, and Peter Fidler went so far as to say that Le Sonnant had been reluctant “but he signed at last.”¹ What it meant precisely to sign the treaty is not clear; Peguis used the passive voice when he later recalled that “Our names and marks were put down.” Macdonell wrote that the chiefs made the “distinction of his tribe” on each, indicating that they only drew the totems on the Indenture.² Lord Selkirk, while making no mention of the Cree in letters to his wife and brother-in-law dated shortly after the Indenture was signed, did believe that Le Sonnant’s signature was legitimate. He also instructed Alexander MacDonell to secure more signatures of Cree chiefs on the Indenture, and suggested Cree quit rents be withheld until then. The death of Peter Fidler, combined with MacDonell’s demotion from governor, appears to have spelled the end of the effort to get more signatures.³

In the late 1850s, it was argued that Le Sonnant had never signed the Indenture. A committee of Métis activists published testimony from Le Sonnant's son Makasis saying that no Cree chief had sold any lands or rights either to Selkirk or the HBC, and from the Métis André Trottier who claimed that Le Sonnant was not present when the Indenture was signed. Trottier then said that because the Saulteaux did not think Le Sonnant would object, “his name was put down.” In 1860, McDermot concurred that Le Sonnant was not at Fort Douglas on July 18th, 1817, but claimed that under pressure from Peguis, Le Sonnant had “told Peguis to sign for him also.” McDermot appears to have been basing himself primarily on Trottier’s account and not on his own information; he claimed that Le Sonnant was at the NWC fort rather than Fort Douglas, but the NWC’s Fort Gibraltar had been demolished in 1816 and not yet rebuilt.⁴ Trottier’s explanation fits better both with the idea that the Cree had given permission to the Saulteaux to make land arrangements without endorsing any arrangements they might make, and the Saulteaux’s belief that they had not concluded a permanent alienation of land.

¹ July 18th, Miles McDonell Journal from April 5th, 1817, SP 17317; July 18th, 1817, Brandon House Post Journal, 1817-1818, HBCA B.22/a/20.

² Peguis, “Important Statement.” Compare Macdonell’s comments with the later Saulteaux practice of touching the pen: Morris, *The Treaties*, 46, 141, 328; Raymond DeMallie, “Touching the Pen: Plains Indian Treaty Councils in Ethnohistorical Perspective,” in Albert Hurtado and Peter Iverson, ed., *Major Problems in American Indian History* (Lexington, M.A.: D. C. Heath and Company, 1994), 345-346.

³ Lord to Lady Selkirk, Red River, July 21st, 1817, LAC MIKAN 114526, Reel A27, 521-523; Lord Selkirk to Andrew Colville, Red River, August 7th, 1817, LAC MIKAN 114526, Reel A27, 541; Lord Selkirk to Alexander McDonell, Pembina, September 14th, 1817, SP 4054; Alexander McDonell to Lord Selkirk, Fort Douglas, November 10th, 1817, SP 4197; Peter Fidler, “General Report of Red River District by Peter Fidler 1819 May,” HBCA B.22/e/1.

⁴ Statement of Makasis and Andre Trukè’s Statement, May 26th, 1858, in “The Red River Indians,” *The Colonial Intelligencer* (January to June, 1859): 6-7; Andrew McDermot, “Peguis Refuted,” *Nor'-Wester*, February 28th, 1860, page 3; Charles Bell, *The Old Forts*, 23.

Moreover McDermot stood alone in the face of overwhelming Indigenous claims to the contrary, and was challenged by Donald Gunn to provide proof for his contention that Le Sonnant had told Peguis to sign for him, thereby indicating a change of mind about participating in the Selkirk Treaty. McDermot then backed away from his contention that Le Sonnant had consented on July 18th, and said that the Cree chief had instead acquiesced to the Selkirk Treaty at a later date. Le Sonnant had apparently known nothing of the treaty until learning that Peguis had begun disposing of land at the north end of the Red River; Peguis apparently then fled from his arrival, and Le Sonnant inquired of the Colony what arrangements had been reached with Peguis. In the presence of McDermot, Alexander Ross, and John Peter Pruden, the Indenture was shown to him; he saw his own signature “marked by Peguis,” and agreed to the deal there. Ross was already dead and could not corroborate this, and McDermot was not confident enough in his argument to bring it up to Molyneux St. John in the context of preparing for Treaty 1. In 1860, however, Donald Gunn, could say nothing of the incident; if true, it had taken place in the 1830s, and Peguis had only informed him about the Selkirk Treaty negotiations with Selkirk in 1817.⁵ Instead, Gunn related what Peguis told him about these negotiations: Le Sonnant had refused to sell land under pressure from Selkirk’s party, hanging “down his head” and remaining “silent and impracticable.”⁶ That does not mean that he remained so for long. Trottier claimed to have witnessed both Peguis and Le Sonnant complain about the land issue to Sir George Simpson.⁷

However, it seems like that Le Sonnant did sign the Indenture. The whole debate probably only came about because defenders of the HBC's interpretation of the Indenture such as Andrew McDermot and James Hunter overplayed the importance of the act of signing the Indenture. The Cree claim to the settlement’s land was known to have been higher than that of the Saulteaux in 1817, and for this reason Le Sonnant’s signature felt essential to Euro-Canadian efforts to prove that the Selkirk Treaty had alienated land. This betrayed a misunderstanding of

⁵ Donald Gunn, “Peguis Vindicated,” *Nor'-Wester*, April 28th, 1860, page 4; Andrew McDermot, “The Peguis Land Controversy,” *Nor'-Wester*, May 14th, 1860, page 1. McDermot’s alleged event would have occurred after Peguis began disposing of land below Sugar Point, which seems to have begun in the early 1830s (October 15th and 16th, 1832, William Cockran, “Extracts of a Journal kept at R. R. S. 32/33,” CMSA, Section V, Part 2, Reel 36; see also Podruchny, “I Have Embraced,” 363); Ross died in 1856 (Frits Pannekoek, “ROSS, ALEXANDER,” in *Dictionary of Canadian Biography*, volume 8, University of Toronto/Université Laval, 2003—, accessed November 7th, 2018, http://www.biographi.ca/en/bio/ross_alexander_8E.html) but he, Pruden, and McDermot had all only been Councillors of Assiniboia with access to the books from 1839 onwards (Oliver, *Canadian North-West*, vol. 1, 61, 62, 65); Molyneux St. John to Adams Archibald, Winnipeg, January 17th, 1871, No. 176, AM P7920/2; Donald Gunn, “The Land Controversy,” *Nor'-Wester*, June 28th, 1860, page 4.

⁶ Donald Gunn, “The Land Controversy,” *Nor'-Wester*, June 28th, 1860, page 4. Peguis’s account would literally place Le Sonnant at Fort Douglas on the 18th, but his natural rhetorical style may have leaned towards conveying substance more than incidental detail — in Peguis’s mind, remaining silent indicated disagreement (see his description of Selkirk’s reaction to The Premier’s initial offer of territory: William King (Peguis), “Important Statement of Pegowis, The Indian Chief,” *Nor'-Wester*, October 14th, 1863, page 3).

⁷ Andre Truké’s Statement,” May 26th, 1858, in “The Red River Indians,” *The Colonial Intelligencer* (January to June, 1859): 7.

Indigenous political authority. The signature of a sole Cree chief, obtained outside of the presence of any other Cree warriors and representing a position they did not hold, could hardly bind the Cree. Moreover, Peguis made it quite clear that Lord Selkirk had told the Indigenous signatories that signing the Indenture would not seal a deal that permanently alienated land.⁸ Le Sonnant's signature did not mean what McDermot and Hunter claimed it did. The Métis and Makasis thus did not argue on the grounds of whether or not Le Sonnant signed the Indenture, but whether or not he had sold the land.⁹ Bulger's efforts with Peguis in 1822 had been more convincing than Hunter's and McDermot's, because they suggest that Bulger, rather than simply assert his own understanding of the importance of a signature, understood that he would have to overcome Indigenous ideas surrounding the importance of a signature: Bulger alleged that a signed document represented a sacred bargain, cutting off Peguis's complaints.¹⁰

The available evidence then suggests that Le Sonnant did indeed sign the Indenture, or at the very least consented to have his name signed upon it. However, the act of signing the Indenture was in no way tantamount to permanently signing away Cree rights to the land occupied by the settlement.

⁸ William King (Peguis), "Important Statement of Pegowis, The Indian Chief," *Nor'-Wester*, October 14th, 1863, page 3.

⁹ A Métis public meeting responding to McDermot's claim that Le Sonnant had consented to his signature simply said Le Sonnant had not ever disposed of the land ("The Land Question: The Council and The Press," *Nor'-Wester*, March 14th, 1860, page 2).

¹⁰ Bulger to Colville, Fort Douglas, December 7th, 1822, in *Papers Referring*, 5.

APPENDIX 4: SPECULATION REGARDING SELKIRK TREATY TIME LIMITS

In light of the Colony's misinterpretation of the Selkirk Treaty, some of the Indigenous inhabitants of Red River legitimized their continued acceptance of Selkirk Treaty annuities by insisting that a time limit had been attached to the land arrangement with Selkirk. André Trottier insisted that Selkirk was only to retain exclusive land use for twenty years, as Selkirk had been afraid "the colony would not succeed." Andrew McDermot claimed that the signatory chiefs apart from Peguis had at first insisted on only a twenty-year lease, but that Peguis had persuaded them to make an immediate sale instead. Donald Gunn responded to McDermot by saying that a "much-esteemed" friend, likely Peguis, had told him that longterm concerns about the Colony's viability had led Selkirk to introduce the idea of the twenty-year period.¹

Though McDermot claimed the idea for a twenty-year lease had originated with the Indigenous population, it makes more sense for Selkirk to have introduced the term. As noted in the second chapter of this thesis, Selkirk believed that twenty years of occupation could produce a prescriptive land claim under Imperial law. The Earl publicly defended the HBC charter against past and current and legal challenges, but he could not ignore the real possibility that even if a competent court found that the charter entailed everything the HBC claimed, Westminster could simply withdraw the charter. Suggesting a twenty year period would have been to hedge his bets when it came to the Colony's tenure; even if the charter were overturned, the Colony and settlers would be able to claim a prescriptive right after remaining there for twenty years. It's worth noting both that Selkirk acknowledged to Coltman that the charter could be overturned, and that Coltman had convinced him to reference that possibility in the Indenture, as seen in clause concerning the NWC traders.²

However, while Peguis apparently endorsed others' statements affirming a twenty-year period, his direct statements never mentioned it. He explained only that the Selkirk Treaty had only been preliminarily negotiated, which implies that any length of time attached to it would have been moot.³ Nevertheless, even if the idea of a twenty-year period were rejected during negotiations, it would have influenced the Saulteaux' understanding of the Selkirk Treaty. This is particularly true given the murk surrounding what had actually been concluded in the Selkirk Treaty and its relationship to the Indenture. A twenty-year annuity in an unratified 1851 treaty negotiated between the Saulteaux south of Pembina and the United States would have only confirmed the impression for the Saulteaux. Regardless, by 1863 the twenty-year period had become part of coordinated Saulteaux messaging; sometimes, this took the form of an insistence

¹ Andre Trukè's Statement," May 26th, 1858, in "The Red River Indians," *The Colonial Intelligencer* (January to June, 1859): 7; "The Land Question," *Nor'-Wester*, June 14th, 1860, page 3; Andrew McDermot, "Peguis Refuted," *Nor'-Wester*, February 28th, 1860, page 3; Donald Gunn, "Peguis Vindicated," *Nor'-Wester*, April 28th, 1860, page 4.

² Lord Selkirk to Miles MacDonnell, June 13th, 1813, in Oliver, *Canadian North-West*, vol. 1, 182; Lord Selkirk to W. B. Coltman, July 17th, 1817, SP 3810; Lord Selkirk to W. B. Coltman, July 16th or 17th (actually 18th), SP 3807-3808; The Selkirk Treaty," in Morris, *The Treaties*, 300.

³ Indian Councils," *Nor'-Wester*, September 16th, 1863, page 2; William King (Peguis), "Important Statement of Pegowis, The Indian Chief," *Nor'-Wester*, October 14th, 1863, page 3.

on compensation for the Colony's occupation since the ostensible expiration of the Selkirk Treaty in 1837.⁴

Some circumstantial evidence surrounding the timing of the Reconveyance may also point to a twenty-year period. In 1834, the Hudson's Bay Company inquired of Selkirk's son whether he would sell back to them the part of the Selkirk Grant of 1811 that remained within the bounds of British sovereign claims. While he responded in the affirmative, payment did not proceed until 1836.⁵ One reason appears to have been that the new Earl of Selkirk wanted to investigate the rights that accrued to him under the Indenture; after apparently confirming in the United States that he would never be able to use it to secure property rights south of the border, in May of 1836 he completed the sale to the HBC of "whatever right title estate or interest I derive or am now entitled to" north of the boundary of British sovereign claims through the Indenture. Significantly, perhaps, a draft of that vague assertion of rights was labelled a memorandum of transfer "of His Lordships Interest in the Lands held of the Chippeway & other Indians."⁶ The term "held of" is directly related to the idea of vassalage, that is an ongoing underlying tenure to one's own land holding.⁷ The Hudson's Bay Company, however, would never admit this. It was also well aware the transaction would go through. The Colony's court system and Council were reorganized in 1835, and Peguis, who only the year before had been defying what George Simpson considered to be rights held by virtue of the Indenture, was apparently once again brought to York Factory, fêted, and granted a 5£ annuity from the HBC.⁸ Nevertheless, the Reconveyance itself was done in secrecy, thus minimizing the HBC's perceived responsibility; it was only a dozen years later that the settlers found out about the transfer.⁹ As proved by *McDermot vs. Fanyant* and many later assertions, the HBC claimed that the Selkirk Treaty had become a permanent alienation, where the Selkirk Estate may have been less sure. A reader prone to conspiracy theories based on circumstantial evidence might say that as the twenty-year agreement expired, the Selkirk Estate got rid of its rights to the HBC, and that the HBC in turn then looked to the Indenture to say there was no specified time limit.

⁴ "Stark, "Respect, Responsibility, and Renewal." 148; McDougall to Howe, Pembina, Dacotah Territory, November 5th, 1869, in *Correspondence and Papers*, 18-19; Begg, *The Creation of Manitoba*, 88; Eden Colville to Archibald Barclay, Lower Fort Garry, September 25th, 1851, in E. E. Rich and A. M. Johnson, editors, *London Correspondence Inward from Eden Colville, 1849-1852* (London: Hudson's Bay Record Society, 1956), 77; *Minnesota Pioneer*, October 30th, 1851, quoted in Ross, *Red River Settlement*, 411; Indian Councils," *Nor'-Wester*, September 16th, 1863, page 2.

⁵ Appendix E, C. Martin, *Lord Selkirk's Work*, 223.

⁶ Pritchett, *Red River Valley*, 230-231; Narvey, "The Royal Proclamation," 205-207.

⁷ See for example the 1801 *Stirlings against Sir John Stirling of Glorat, Baronet*, in William Maxwell Morrison, *The Decisions of the Court of Session, from the Institution until the Separation of the Court Into Two Divisions in the Year 1808 ...* (Edinburgh: Archibald Constable and Co., 1811), 15456; or *An Act to provide for the extinction of feudal and seigniorial rights and burthens on lands held à titre de fief and à titre de cens in the province of Lower Canada : and for the gradual conversion of those tenures into the tenure of free and common soccage, and for other purposes relating to the said province.* (S.L: s.n., 1825), 2.

⁸ Oliver, *Canadian North-West*, vol. 1, 35-36; Gibson, *Law, Life, and Government*, vol. 1, 37-41; William Cockran to the Secretaries of the Church Missionary Society, 1834, CMSA, Section V, Part 2, Reel 35; George Simpson, Fort Garry, January 1st, 1835, in F. W. Chesson to H. Labouchere, London, June 7th, 1857, Appendix No. 16, in *Report*, 446; Friesen, "Grant Me Wherewith," 46.

⁹ Ross, *Red River Settlement*, 170-174; Gunn, *History of Manitoba*, 287.

Bibliography

Notes on sources: the line here dividing primary and secondary sources is arbitrary. I have used some of the older histories, namely those which have been termed vernacular histories, interchangeably as primary and secondary sources depending largely upon the information I derived from them. These have been listed as secondary sources.

Larger works within the archival materials have been highlighted here in order to avoid reprinting their names in full in footnotes. Individual letters and other more isolated documents have not been separately listed.

Primary Sources

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CMSA

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