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SUBMISSIONS

The Corvette publishes the work of current and recently-graduated University of Victoria History Undergraduate students. *The Corvette* endeavours to publish articles that represent the best scholarship produced by UVic students concerning the past. We are interested in all methods and fields of inquiry.

PUBLISHING

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COVER IMAGE

The cover of this issue of *The Corvette* features a detail from a double-hemispherical map of the world printed in Amsterdam in the eighteenth-century for inclusion in a bible. Each corner of the map features allegorical figures intended to symbolize four continents; seen in detail here is Europe (top-left), with the other corners featuring Asia (top-right), North and South America (bottom-right), and Africa (bottom-left). The map and the allegorical representations derive from a seventeenth-century Dutch bible map produced by Nicolaas J. Visscher (1618-1679) in Amsterdam in 1663.¹ Notably there are several regions that are incomplete (including North America, Australia, and New Zealand) reflecting seventeenth-century geographical knowledge.

The signature of Jan Van Jagen (c. 1710-1796), a Dutch engraver, and son of the engraver Cornelius Van Jagen (fl. 1706-1744), can be found at the bottom-centre.² The map was printed in black and white and hand painted with watercolour. For this reason the copy held in Special Collections is unique when compared to other known copies of the map, such as a copy held at the National Library of Australia, which has significantly different watercolour work.³ The verso of the map contains the following chapter, titled in Dutch: “Short description of the landscapes of the world, how it has been divided by the flood and inhabited by the offspring of Noah; serving further explanation for the tenth Cap. of Genesis.”⁴ Bruce and Dorothy Brown donated the map to Special Collections in 1993.

¹ Rodney W. Shirley, “431 Nicolaas J. Visscher,” *The Mapping of the World: Early Printed World Maps, 1472-1700*. (Riverside, Conn.: Early World Press, 2001) 451.

² R. V. Tooley, *A Dictionary of Mapmakers*. Map Collectors’ Series. Volume 8, No. 78 (London: Map Collectors’ Circle, 1971) 270.

³ Van Jagen, Jan, [World] (s.n, [Amsterdam], 1710), National Library of Australia (Call Number: 399638; MAP RM 2815), <http://trove.nla.gov.au/version/7169798>.

⁴ My thanks to Dr. Kirsten Sadeghi-Yekta, Assistant Professor, Applied Theatre, University of Victoria, for her translation from Dutch into English.

Special Collections and University Archives serve as a research and teaching resource for students, faculty, and the community at large. Its mandate is to collect, preserve, and make accessible rare books, manuscripts, maps, architectural plans, photographs, and oral history interviews, among many other documents.

Heather Dean
Associate Director
University of Victoria Special Collections

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Dean's Message

As Dean of the Faculty of Humanities, I am honoured to be able to introduce this volume of *The Corvette*. The students and production team are to be congratulated on assembling yet another fine collection. The publishing world is littered with stellar launches with no staying power. Like its small warship namesake, *The Corvette*, however, has stamina.

This issue once again shows the diversity of subject material available for historical mining. North American issues such as the role of 'honourable violence' and American identity in the 19th century Wild West, and the technology of rivalry seen in the Cold -War space race between the Americans and the Soviets, are historical strands easily found in today's news. International themes of tensions and resolutions in the Middle East in the 60s and 70s, and the causes and results of Ukrainian emigration to Canada in the early 20th century, are clearly also helpful in interpreting stories on the front pages (home pages?) of today's newspapers. The interaction of legal and political history is also well-represented in the papers on same sex marriage in Canada, and Aboriginal land title in BC.

Time and time again, I hear that what makes for a memorable undergraduate student experience, is the opportunity to make research a part of university classes. Indeed, more learning takes place outside the classroom compared to inside it. What all of these papers show, and what the editors and production team have demonstrated is that undergraduates here

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in Humanities at UVic are not merely *consumers* of knowledge; they are becoming *producers* of knowledge.

Thank you for sharing the fruits of your academic labours with a broad audience. You are fine ambassadors showcasing your knowledge and skill as you ply your historian's craft.

Sincerely,

Dr. John Archibald
Dean of Humanities and Professor of Linguistics

Chair's Message

It is my great pleasure to offer these introductory remarks for this issue of *The Corvette*.

This journal—student run and student produced—is a source of great pride to the History Department. To be sure, it reveals the range and depth of subjects taught by the faculty. More important, however, it highlights the vibrant and dynamic intellectual life of our undergraduate students. It may sound simple, even trite, but the truth is that the History faculty love teaching history here because our students love history. The undergraduate students in this department believe passionately in history's relevance, and they embrace opportunities to gain hands-on experience in the practice of history—including the publication of this journal.

This year, *The Corvette* received some fifty-five submissions. To evaluate them, it enlisted the help of nineteen peer reviewers, both undergraduate and graduate students. The six articles that made the final cut range in subject from indigenous rights, to same-sex marriage, to the Cold War Space Race, to conflict in the Middle East. Diverse they may be, but they all exhibit the careful research, clear analysis, and lucid writing that distinguishes the best undergraduate work in the History Department.

Ultimately, however, the ongoing success of the journal is the result of the work of its editors-in-chief: Stephen Frampton, Deborah Deacon, and Diana Dale. In consultation with the

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journal's faculty advisors—Dr. Peter Cook and Dr. Mitchell Lewis Hammond—they shepherded the creation of this issue from beginning to end. Editing can be a stressful and challenging task, but must also be rewarding when it producing a final product of this quality. On behalf of the History Department, I congratulate the editors, contributors, reviewers, and advisors for another exemplary issue of *The Corvette*.

Sincerely,

Dr. Jason M. Colby
Chair, Department of History

Editor's Introduction

We are pleased to present our third volume of *The Corvette*, a peer-reviewed history undergraduate journal at the University of Victoria. *The Corvette* has provided history students at UVic the opportunity to take part in the publication of a research journal and has encouraged academic excellence among students. Each year we publish the best history papers that we receive from undergraduate students on a variety of topics.

This past year, we received fifty-five submissions, six of which have made it to these pages. While each submission has contributed to the spirit of academic excellence that this journal seeks, these six authors need to be commended for the quality of the papers written. The subjects span three continents and 165 years, with topics ranging from the American Wild West, Ukrainian settlement in Canada, the space race in the Cold War era, the Nisga'a's fight for sovereignty, the Israeli-Egyptian political relationship and the journey towards same-sex marriage in Canada. These papers are thought-provoking, well-researched, and we are pleased to present them to you.

The Corvette could never have come to fruition without the help and support of so many people. Nineteen students acted as peer reviewers for this publication. Timely, eager, and thorough, our peer reviewers outdid themselves this year.

We are also grateful for two exceptional women who were prominent in the passage of *The Corvette* from pages to publication. Heather Dean, Associate Director of Special

Collections provided the editorial team with remarkable knowledge of the University of Victoria's vast array of primary documents. The eye-catching cover image is the result of her expertise. Secondly, no UVic journal would be possible without the generous guidance of Inba Kehoe, Scholarly Communication Librarian at the University of Victoria. Multiple meetings and email exchanges were required to get this publication to press. Inba and Heather have been integral to *The Corvette's* journey.

Our two faculty advisors, Dr. Mitchell Lewis Hammond and Dr. Peter Cook, have also been key in the publication of this year's *Corvette*. Their knowledge, expertise, and previous experience with *The Corvette* have been indispensable in this process. We have been lucky to once again have the support of the History Department and the University of Victoria. Dr. Jason Colby, Chair of the History Department, and Dr. John Archibald, Dean of the Faculty of Humanities, have both aided in the final publication of *The Corvette*. We would also like to acknowledge the contributions of The History Undergraduate Society and the University of Victoria Students' Society whose generous support and funding have made this publication of *The Corvette* possible. We hope next year's editorial team will be as fortunate to receive the help and enthusiasm that we did this year.

Sincerely,

Diana Dale
Editor-in-Chief

Deborah Deacon
Editor-in-Chief

Stephen Frampton
Editor-in-Chief

The Other Wild West

MICHAEL CRONK

In The Other Wild West, the author discusses the revisionist arguments on American Old West violence as put forward by leading historians including Robert Dykstra and Lynn Perrigo, systematically debunking former work by Roger McGrath and Ray Billington on cow-town violence. Drawing on Richard Brown's argument that Old West violence was a part of the same conflict as the Indian Wars, the author demonstrates how violence in this era was neither reduced to individual vigilantism nor white-on-white aggression. The author concludes that although conflicts were more collective, systematic and transnational than conventional understandings suggest, the myth of personal violence persists. The author discusses the value that this myth has played in forming national consciousness and bolstering political rhetoric and how this has tangled the historical credence of pop-culture with documented reality. The author holds that such confusion dispossesses non-white participants from the historical purview; those who not only played formative roles but were themselves also victims of the most violence. Because of the disinheritance intrinsic to the old west myth of personal violence, the author forwards a continual re-visitation of de-facto history.

In a 1910 address to the American Historical Association Frederick Jackson Turner said “each age studies its history anew and with interests determined by the spirit of the time.”¹ In his time Turner interpreted the frontier as a concept that had been integral to American identity and considered its loss a moment of great adjustment. Historians have not failed to continue reading meaning into the frontier age and the “Wild West,” often milking it of nationalist, social or political interpretations. One of the most contested motifs of the late 19th century West is violence and homicide. Here, myths and truths abound, and traditionalists

¹ Fredrick Jackson Turner, quoted in, Gerald Nash, *Creating the West: Historical Interpretations 1890-1990*, (Albuquerque: University of New Mexico Press, 1991), 7.

and revisionists have found ample ground for dispute. By looking at the discussion as it has evolved over the past fifty years, it becomes evident that the myth of individual “honourable” violence must be, at least mostly, replaced by the reality of collective violence and that those minority groups who were subjected to the most violence should be brought into the greater purview of the Old West.

In his 1968 book *The Cattle Towns*, Robert Dykstra argued against historians such as Ray Billington, Vernon L. Parrington and Harvey Wish who had written that rampant cattle town violence was fact. Dykstra countered their created histories by pointing out that it was in a cattle town’s interest to keep violence at bay, and that this was achieved through an emphasis on police and on gun control laws.² Dykstra admitted that there was occasionally corruption through hiring ex-criminals into law enforcement but that, on the whole, the system worked.³ Even famed outlaws such as Clay Allison, Doc Holliday and Ben Thompson were never recorded as having killed anyone in a cattle town. The highest rate of homicide in any one cattle town was five in a single cattle season.⁴ Dykstra concluded that “[I]egend does the cattle town people a double injustice- falsely magnifying the periodic failures of their effort while altogether refusing to take account of its internal complexities.”⁵ Roger McGrath, in his 1984 book on frontier violence wrote about mining towns, agreeing that they, like cow-towns were well policed, but answered Dykstra with an alternate perspective on violence.

² Robert Dykstra, *The Cattle Towns*, (New York: Alfred A. Knopf Inc, 1968), 116-117, 21.

³ Dykstra, *The Cattle Towns*, 132.

⁴ Dykstra, *The Cattle Towns*, 142, 145.

⁵ Dykstra, *The Cattle Towns*, 148.

In McGrath's case, the towns of Aurora and Bodie, he contended that there were continual fistfights and gunfights among the men: "[m]any of them belonged to that class of western frontiersmen known as badmen: proud, confident, and recklessly brave individuals who were always ready to do battle and to do battle in earnest."⁶ McGrath recorded homicide rates by the FBI's rating system which utilized a 100,000 population denominator, and thereby concluded that Bodie and Aurora had murder rates some five and ten times higher than the American average in 1980.⁷ Richard White in his 1991 work on the American west, as well as Robert Hine and John Faragher in their 2000 text, reproduced McGrath's shocking-by-contrast statistics.⁸ Dykstra, however, countered McGrath in 1996, arguing that using small population towns for this kind of measurement was statistically misleading. For instance, comparing Bodie to Miami was to compare Bodie's 29 homicides "over several years" to Miami's 515.21 in 1980 alone. It was hardly a fair rubric.⁹

In fact, Dykstra argued that "when one looks closely at the western experience beyond the cattle towns, it is odd that actual body counts all over the place are not especially high."¹⁰ Dykstra pointed out Boorstin's report of Billy the Kid killing more than sixty men in the Lincoln County War was about triple of the actual count. The notorious Wild Bill Hickok accounted only

⁶ Roger McGrath, *Gunfighters Highwaymen and Vigilantes: Violence on the Frontier* (Berkeley: University of California Press, 1984), 253.

⁷ McGrath, *Gunfighters Highwaymen and Vigilantes*, 254.

⁸ Richard White, "It's Your Misfortune and None of My Own": A New History of the American West (Norman: University of Oklahoma Press, 1991), 331-32; Robert Hine and John Faragher, *The American West* (New Haven: Yale University Press, 2000), 308.

⁹ Robert Dykstra, "Overdosing on Dodge City," *The Western Historical Quarterly* 27, no. 4 (1996): 509.

¹⁰ Dykstra, "Overdosing on Dodge City," 512.

seven or eight kills in his life, and the Jesse James gang took, on average, just about one life a year.¹¹ Dykstra held that “it was clearly a safer-and one heck of a lot saner-West than ever dreamt of in our national imagination.”¹² Dykstra built on the pioneering 1941 revisionist work of Lynn Perrigo who said that “the Wild West as related to the communities strung along these Colorado gulches can be tamed down considerably” but that “more sweeping conclusions await similar detailed investigations of law and order in many other widely separated mining communities.”¹³ Indeed, Richard White wrote that if the violent West with its men “devoted to the cult of personal violence” was *anywhere*, it was in the cattle and mining towns.¹⁴ In 1993 Richard Brown argued that the violent West was a reality, but that it should be seen from the context of a Western Civil War of Incorporation, not self-serving gunslingers.¹⁵

“From 1850 to 1920,” argued Brown, “the conservative, consolidating authority of modern capitalistic forces infused the dynamics of the Western Civil War of Incorporation.”¹⁶ This is the conflict that saw the use of gunfighters, albeit, not as the lone riders that myth has made of them.¹⁷ Gunfighters were hired by capitalists such as rail barons Collis Potter Huntington, Leland Stanford and Charles Crocker who rallied against farmers in the Mussel Slough district, prompting a bloody shootout.¹⁸ Or millionaire William A. Clark who utilized vigilantism to break up

¹¹ Dykstra, “Overdosing on Dodge City,” 512.

¹² Dykstra, “Overdosing on Dodge City,” 509.

¹³ Robert Dykstra, “Quantifying the Wild West: The Problematic Statistics of Frontier Violence,” *The Western Historical Quarterly* 40, no. 3 (2009): 329.

¹⁴ White, “*It’s Your Misfortune and None of My Own*,” 329.

¹⁵ Richard Brown, “Western Violence: Structure, Values, Myth,” *The Western Historical Quarterly* 24, no. 1 (1993): 6, 8.

¹⁶ Brown, “Western Violence,” 6.

¹⁷ Brown, “Western Violence,” 7-8.

¹⁸ Brown, “Western Violence,” 9.

the violent Tonto Basin War— a feud precipitated by incorporation politics— so that trains could run without dissidents robbing them.¹⁹ The War of Incorporation, Brown found, bred two kinds of gunslingers. There were those who fought for incorporation on a payroll, such as Wild Bill Hickok and Wyatt Earp, but there were also the anti-incorporation rebels such as Billy the Kid, Jesse James and Gregorio Cortez.²⁰ There were, in short, enough characters to give both sides of the political fence, their heroes.

Hine and Faragher wrote on how Buffalo Bill's Wild West shows depicted real life characters to audiences in the East simultaneous to those characters living their actual exploits in the West, and thus "western history was converted into living melodrama."²¹ The way these characters were depicted was a matter of show business. Paula Marks wrote that the "abundance of distorted narratives stems in part from our love affair with the mythical American West... The distorted narratives and caricatures stem from the fact that nobody at the time of the confusing fight could agree on who the good guys and bad guys were."²² "Generally," wrote Brown, "the socially conservative myth of the western hero dominates (but not by much) in our culture- probably because it confronts and engages our fear of anarchy."²³ Richard White suggested, rather, that "Western myth, in effect, validat[ed] the larger belief in a society of social peace. Violence existed, the myth said, but the violence was personal, and it largely vanished as society imposed law and order."²⁴

¹⁹ Brown, "Western Violence," 9-11.

²⁰ Brown, "Western Violence," 20.

²¹ Robert Hine and John Faragher, *The American West* (New Haven: Yale University Press, 2000), 501-502.

²² Paula Marks, *And Die in the West: The Story of the O.K. Corral Gunfight* (New York: William Morrow and Company, Inc, 1989), 7.

²³ Brown, *Western Violence*, 20.

²⁴ White, "It's Your Misfortune and None of My Own," 328.

What the myth does not address is Dykstra's continued argument that "the western experience was part and parcel of a larger American strain of violence" pointing out, by the way, that the Cincinnati homicide rate in 1883 was twice that of San Francisco in 1860.²⁵ Perhaps the Old West was not so different from the East.

Michael Bellesiles took up Dykstra's argument, claiming that "[v]iolence in the West has tended to be collective, as was true elsewhere in the nation prior to the twentieth century.... Nonetheless, writers search for the distinctiveness of the West."²⁶ Bellesiles divided the kind of violence in the West into three categories: "state-sanctioned, personal, and impersonal (or structural)." He gave personal violence the benefit of notoriety, state-sanctioned as most significant in conquering the West, and impersonal, "resulting from unregulated industrialization," as actually claiming the most lives: "In each category" Bellesiles notes, "little difference can be found between the nature of violence in the West and in the rest of the country."²⁷ Significantly, however, the second of Bellesiles' categories has prevailed in popular history of novels and films. Tellingly, this lesser category of personal violence is the one that least indicts a greater population and therefore skirts the problematic politics of collective class conflict or, more so, blatant racism. Michael Pfeifer argued, in his 2004 work on lynch culture, that lynching was a "harsh, rapid, and communal punishment" in the 1850s and 1860s, which was revived nearing the end of the century as a means of resisting the new (Eastern

²⁵ Dykstra, "Quantifying the Wild West: The Problematic Statistics of Frontier Violence," 344.

²⁶ Michael Bellesiles, "Western Violence," *A New Significance: Re-envisioning the History of the American West*, ed. Clyde A. Milner II (New York: Oxford University Press, 1996), 167.

²⁷ Bellesiles, "Western Violence," 162.

model) imposition of law.²⁸ Dykstra, however, pointed out that though lynching was more common in the West than in the East, it was more common still in the South, and generally in the states with more racial diversity.²⁹

Here Dykstra has put a finger on the much larger venue of violence which many authors skirt when discussing the creation or deconstruction of a violent West myth. Even Brown made reference to Cormac McCarthy's (1985) *Blood Meridian* without mention of the fact that most of the violence in the novel, based on the exploits of the real Glanton gang, was towards Indians and Mexicans.³⁰ Richard White recorded that whites "killed an estimated 4,500 Indians in California between 1848 and 1880... Most of those killed died at the hands of civilians, not soldiers."³¹ Bellesiles noted that in 1860 Californian ranchers "killed an estimated 185 peaceful Wiyots in response to some cattle thefts by a different Indian tribe."³² Any suggestion that these are part of a separate conflict from the late 18th century Wild West (a suggestion that some authors make) are silenced by Brown's explanation that the white conflicts were simply borne of incorporation conflict in the first— the same conflict, concerning land and resources, as was at the core of Indian Wars. "The so-called 'Indian Wars' of the West might better be labeled 'Wars of Incorporation'" wrote Brown; "I say this because the Native American struggle did not simply collapse and end on some

²⁸ Michael Pfeifer, *Rough Justice: Lynching and American Society 1874-1947* (Urbana: University of Illinois Press, 2004), 94-95.

²⁹ Pfeifer, *Rough Justice*, 289.

³⁰ Richard Brown, "Western Violence," 9-10. The designation "Indian" rather than "indigenous," "Native American" or other allocation is used in this paper for its generally accepted present and historical American usage.

³¹ White, "*It's Your Misfortune and None of My Own*," 338.

³² Bellesiles, "Western Violence," 166.

bloody battlefield.”³³ As such, this broadly spanning conflict caught other non-white parties, such as Chinese workers, and Mexican ranchers, in the crosshairs of incorporation too. Tragically they often became targets of violence in a time of crisis. “[W]estern lynch mobs rarely earn the condemnation directed at southern mobs,” contended Bellesiles, “[m]any scholars of the West identify ‘belief systems’ to explain western violence, yet rarely mention racism, which was probably the single most prominent cause of violence in the West.”³⁴ The discussion of the Old West myth of violence has dealt primarily with white conflict, possibly because so much of the popular entertainment which created the Western myth was by, for, and about whites. David Gutierrez wrote that “Mexican Americans have long been aware of the ways such myths have helped to obscure, and thus to diminish, the actual historical producers of the culture that Anglos ostensibly celebrated.”³⁵ Patricia Limerick saw politics at play in this: “[i]t is the topic of power that knocks the pins out from under any effort to portray region as a unifying factor transcending ethnicity, gender, and class.”³⁶

In 1930, Edward Douglas Branch’s book, *Westward: The Romance of the American Frontier*, had the following words to say about the 19th century conflicts in the West: “[t]here was opposition indeed—Indians, Frenchmen, and Spaniards, but each of these barriers was bowled over so inevitably and so

³³ Richard Brown, “Western Violence: Structure, Values, Myth,” *The Western Historical Quarterly* 24, no. 1 (1993): 6.

³⁴ Bellesiles, “Western Violence,” 168.

³⁵ David Gutierrez, “Significant to whom?: Mexican Americans and the History of the American West,” *A New Significance: Re-Envisioning the History of the American West*, ed. Clyde A. Milner II (New York: Oxford University Press, 1996), 71.

³⁶ Patricia Limerick, “The New Significance of the American West,” *A New Significance: Re-Envisioning the History of the American West*, ed. Clyde A. Milner II (New York: Oxford University Press, 1996), 71.

completely that... the Indians and the conflicts with New France and New Spain dwindle in importance...the taming of the land—that is the essential conflict.”³⁷ The polemic of entwined myth and reality demonstrated in Branch’s “history” downplays historical players for want of a tidy American narrative. David Hamilton Murdoch rightly noted that myths “show how things should be by claiming to show how they once were.”³⁸ For this purpose, the myth must be consciously authoritative and morally unquestionable. Murdoch wrote that “Americans could not decide (and still have not decided) how to reconcile their demands for government help and their resentment of government interference. Each time this dilemma has arisen, the Western myth has been trotted out.”³⁹ In this eristic, the didactic of myth, however flawed, is a powerful one, and one where the reality of collective violence against racial minorities must be revised or omitted. David Weber, a historian whose work focuses on Mexican Hispanic transition into the American Union, admitted that as recently as the 1980s “the Spanish borderlands had fallen from fashion in university history departments and had failed to win the attention of writers of American history textbooks. United States historians saw the field as part of Latin American history and ignored it.”⁴⁰ Indian history, meanwhile, has been pushed into a “savage war” myth over the past century, where the uncivilized Indian iconizes the enemy of American ideals.⁴¹ Even African American cowboys, who comprised some

³⁷ Edward Douglas Branch, *Westward; the Romance of the American Frontier* (New York: Cooper Square Publishers, 1969), v-vi.

³⁸ David Hamilton Murdoch, *The American West: The Invention of a Myth* (Cardiff: Welsh Academic Press, 2001), 100.

³⁹ Murdoch, *The American West*, 101-102.

⁴⁰ David J. Weber, “The Spanish Borderlands, Historiography Redux” *The History Teacher* 39, No. 1 (November 2005), 44.

⁴¹ Richard Slotkin, “Dreams and Genocide: The American Myth of Regeneration Through Violence,” *The Journal of Popular Culture* 5,

9,000 during the “golden” 1880s have been all but omitted from pop-culture, or in the case of Nat Love (Deadwood Dick) and others, re-cast as white heroes.⁴² Generally speaking, any other non-white Americans were tidily categorized as side-kicks or villains in Hollywood and dime novels where the self-serving white gunslinger was king. Richard Slotkin wrote that Theodore Roosevelt identified heavily with the myth of the white, individualist “hunter-hero” who forwarded civil progression by killing Indians.⁴³ Far from correcting popular culture, meanwhile, Dwight D. Eisenhower once told his listeners they ought to “read [their] westerns more,” and Ronald Reagan was so endeared to the myth Hollywood perpetuated that he was known to get film scripts and historical reality confused.⁴⁴ Although Cowboy Historian Richard Slatta suggests that Americans should simply “enjoy the cultural richness and creativity inherent in the myths while also identifying myths as such,” this becomes problematic when it is considered that these myths build a national consciousness in which huge sections of American culture are left out or misrepresented.⁴⁵ Yale Frontier Historian John Mack Faragher rightly asserted that “current historical research of diverse, multifaceted frontiers is instructive,” but also “intimidating, for it requires that historians now imagine a new

no. 1 (2004): 49; Richard Slotkin “Our Myths of Choice,” *The Chronicle of Higher Education*.

⁴² “Deadwood Dick and the Black Cowboys,” *The Journal of Blacks in Higher Education*, no. 22, 30-31.

⁴³ Richard Slotkin, “Nostalgia and Progress: Theodore Roosevelt’s Myth of the Frontier,” *American Quarterly* 33, no. 5 (1981): 612-614.

⁴⁴ Dwight D. Eisenhower, Remarks Upon Receiving America’s Democratic Legacy Award, Nov 23, 1953, quoted in David Hamilton Murdoch, *The American West: The Invention of a Myth* (Cardiff: Welsh Academic Press, 2001), 106; Murdoch, *The American West*, 115.

⁴⁵ R. W. Slatta, “Making and Unmaking Myths of the American Frontier,” *European Journal of American Culture* 29, no. 2 (2010): 89.

narrative.”⁴⁶ To look at a more nuanced Frontier History, Faragher admits, will require in-depth comparative analysis, but comes with the benefit of understanding “the remarkable complexity and diversity of North American history.”⁴⁷

What seems certain is that we need a broader understanding of violence in the West and of the players it affected most. Far dismissed should be notions of high noon draws and honourable vigilantism. What gun slinging did transpire was mostly due to a broader trans-national story of incorporation through capitalist and federal control of the West. This conflict extended to Indians, Mexicans, African Americans, Chinese and other minority groups as social changes wrought economic, cultural and racial strains. The largest loss of life was among Indian communities, so when the western myth serves an Anglicized West-East historical narrative, and disinherits and misrepresents Indians and other minorities in it, it adds insult to injury. Limerick and Slotkin may well be right that a politics of power is at work in the myth of Western violence. Not only does it downplay national culpability by reducing anarchic acts to ruthless individualism but it sidesteps a national agenda to incorporate and “civilize” what remained of the frontier, regardless of what that juggernaut dispossessed, fist cuffed, or lynched. Those looking for the heroics of Hollywood westerns may be disappointed with recent revision, but in all likelihood need not be concerned. If the Old West was collective, the new western myth-makers are not. The historian, after all, can expose and rebuff a myth without, as yet, expelling it.

⁴⁶ John Mack Faragher, “Americans, Mexicans, Metis: A Community Approach to the Comparative Study of North American Frontiers,” In *Under an Open Sky: Rethinking America's Western Past*, (New York: W.W. Norton and Company, 1992), 91.

⁴⁷ Faragher, “Americans, Mexicans, Metis,” 92.

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By Force or By Choice: Ukrainian Settlement Patterns on the Canadian Prairies

MEAGAN HUFNAGEL

Between 1891 and 1914, 250,000 Ukrainian immigrants arrived on the Canadian prairies. They left difficult conditions in their homelands to chase the promises of Clifford Sifton, Minister of Interior in the government of Sir Wilfred Laurier, offering cheap land and excellent growing conditions. Immigration officials have been accused of pressuring or forcing Ukrainians to settle in particular areas with little regard for their opinions. While officials used many methods to encourage Ukrainians to assimilate, hoping to prevent the creation of ethnic enclaves, the newcomers attempted to recreate their old settlement patterns through kinship ties and chain migration. This paper demonstrates that immigration officials used varying degrees of force only in unusual situations and examines how and why, for all the pressure they may have been under from immigration officers, the Ukrainians pushed back in order to settle where they wanted to rather than where they were told to.

The first Ukrainian immigrants arrived in Canada in 1891, and by 1914, approximately 250,000 Ukrainians had made their homes there. Like so many other immigrant groups, they were drawn by the lure of large tracts of land and the promise of excellent growing conditions. For many, it was also an opportunity to escape from difficult conditions in Europe. The Canadian government in partnership with the Canadian Pacific Railway (CPR) recruited many newcomers from Europe and America to populate the prairies and create a grain-growing region that would supply the rest of the country. Some historians have argued that the government dictated where these newcomers could settle, attempting to contain less desirable ethnic groups in bloc settlements on marginal lands while allowing immigrants of more acceptable ethnicities to select their

own homesteads. But while the Canadian government did attempt to place the newcomers in certain areas, the Ukrainian immigrants had a voice in the issue. In fact, they had a good deal of control in where they settled.

Most of the Ukrainian immigrants came to Canada from Galicia and Bukovyna, where peasants struggled to support themselves. Many were deeply in debt from trying to pay the taxes which funded a program that freed them from the control of the landlords. Prior to this, many peasants lived in conditions that were reminiscent of feudal times; landlords controlled where people lived and worked, who they married, and required payment of *panshchyna*, three to six days of labour or monetary payments in lieu of work. This left many peasants with little time to tend their own crops or feed their families. The government program that eliminated this system imposed very high fees on the peasants in order to reimburse the landlords for the loss of labour. Many peasants were deep in debt and being charged 52% -104% in interest in order to pay these government fees. In addition, land holdings in Galicia were getting smaller. From 1859 to 1900 the average farm fell from twelve acres to six acres, greatly impacting how much a peasant could produce.¹ This left peasants looking for other ways to support their families. When the news began to spread that there was excellent agricultural land to be had in Canada many Ukrainians made the decision to move. Some, mainly single men, were only moving west temporarily in order to earn money that would help support family remaining behind in Europe, but many more were families making a permanent move to Canada.

¹ Vic Satzewich, *The Ukrainian Diaspora* (London: Taylor and Francis Group, 2002), 28-29. All of the information about *panshchyna* and the landlord-peasant relationship in this paragraph came from this source.

The news of promising farmlands in Canada was first relayed by Wasyl Eleniak and Ivan Pylypiw, the first documented Ukrainian immigrants to settle on the Prairies. The two men left Nebyliv in Galicia and homesteaded near Edmonton.² They sent word back to friends and family about the great potential of the Canadian West for newcomers willing to work. Given how challenging farming had become in Galicia, this news proved to be a very powerful motivator. Another immigrant was an agriculture professor from Lviv, Dr. Oleskiw. During this time, many Ukrainians were leaving the country in search of a better life; some remained in Europe, some went to Hawaii, and others made their way to Brazil.³ Oleskiw believed that there were better locations for Ukrainian peasants and decided the ideal place was on the Canadian prairies. He authored a pamphlet which was widely distributed among Ukrainians in Galicia, stirring up interest in the young country across the ocean. Vic Satzewich quotes a government official who explained that, “the bulk of Galicians came out. . . as a result of Olsekiw’s work.”⁴

Oleskiw recommended that those with “adequate means and temperament” would do well on the prairies and that a bloc settlement pattern would be best as it would provide the newcomers with practical as well as emotional support as they built their new homes.⁵ He selected areas at Stuartburn and

² Frances Swyripa, “Ancestors, the Land, and Ethno-religious Identity on the Canadian Prairies: Comparing the Mennonite and Ukrainian Legacies,” *Journal of Mennonite Studies* 21 (2003): 54-55. A bit of information about Eleniak and Pylypiw can also be found in the booklet *Ukrainians in Canada* published by the Canadian Historical Association.

³ Oleh W. Gerus and J.E. Rea, *Ukrainians in Canada* (Ottawa: Canadian Historical Association, 1985), 5.

⁴ Satzewich, *Ukrainian Diaspora*, 36.

⁵ Gerus and Rea, *Ukrainians in Canada*, 5.

Dauphin in Manitoba and organized groups of immigrants, the first of whom arrived in Québec in May of 1896.⁶ It is interesting to note that while these two areas were so highly praised by Oleskiw prior to settlement, they proved to be impractical for farming beyond the initial few homesteads. This was especially true at Stuartburn, where those who arrived later in the development of the settlement found that the lands to the west of the Ukrainians were already occupied and the agricultural potential of the land decreased as they moved further east, as it became boggy and more heavily treed.⁷

Of course, it was not only Ukrainians who were attempting to lure others to join them in Canada; both the Canadian government and the Canadian Pacific Railway expended considerable effort to attract newcomers who would make use of the new rail lines and populate the prairies. The CPR and the government worked together to spread an advertising campaign throughout Europe to attract agricultural settlers to the West. This included posters and brochures similar to the ones that caught Oleskiw's eye and had him singing the praises of the prairies to Ukrainian peasants. There were also agreements in place between the CPR and steamship companies in other countries whereby the steamship companies would be paid bonuses from the CPR for carrying agricultural immigrants to Canada. The purpose of this was to circumvent European governments who were opposed to the loss of what were perceived as the "anchors of social stability" leaving for Canada.⁸

⁶ Valerie Knowles, *Strangers at Our Gates: Canadian Immigration and Immigration Policy, 1540 – 2006*, rev. ed. (Toronto: Dundurn Press, 2007), 102.

⁷ John C. Lehr, "Governmental Coercion in the Settlement of Ukrainian Immigrants in Western Canada" in *Immigration and Settlement, 1970 – 1939*, ed. Gregory P. Marchildon (Regina: CPRC Press, 2009), 273.

⁸ Reg Witaker, *Canadian Immigration Policy Since Confederation* (Ottawa: Canadian Historical Association, 1971), 7.

Clifford Sifton, Minister of the Interior in Wilfred Laurier's cabinet, was determined to bring in farmers as he viewed them as the only desirable immigrants.⁹ When the advertising failed to attract enough attention from Western Europeans and Americans, they shifted their focus to Ukrainians and others from Eastern Europe. Sifton was inclined toward the "peasants in sheepskins" who he felt had the work ethic to be successful in farming on the prairies. He summed up his preference for Ukrainian agriculturalists with a statement in a Macleans article in 1922, explaining that, "[t]hese men are workers. They have been bred for generations to work from daylight to dark. They have never done anything else and never expect to do anything else."¹⁰ He was emphasizing hard working agricultural immigrants, believing that Canada needed a population of experienced farmers on the prairies.

However, these hard-working peasants arriving on the prairies needed to be controlled. While they had the work ethic that was so desirable, they were still seen as inferior to the preferred immigrants from America, Britain, and Germany and as such had to be carefully contained. It was a fine balancing act; immigration officials attempted to keep the newcomers in close proximity so they could support each other yet dispersed enough to assimilate into the acceptable British-influenced Canadian culture. According to John Lehr, large bloc settlements were undesirable to the government because they were "politically dangerous to Anglo-Saxon elites."¹¹ Officials needed to control how large the communities were becoming, given the influx of so many Ukrainians arriving on the prairies in such a short period

⁹ Gerus and Rea, *Ukrainians in Canada*, 7.

¹⁰ David Hall, "Clifford Sifton's Vision of the Prairie West," in *The Prairie West as Promised Land*, ed. Douglas Francis and Chris Kitzan (Calgary: University of Calgary Press, 2007), 90.

¹¹ Lehr, *Governmental Coercion*, 281.

of time. Officials attempted to create new colonies by dissuading immigrants from selecting lands near already well-populated areas such as Stuartburn, Yorkton, or Star. Immigration Commissioner William McCreary and his staff, including Kyrilo Genik, one of the first of the Oleskiw settlers, attempted to convince settlers to take up homesteads and start new communities in different areas.¹² They were successful in establishing several communities, such as Fish Creek and Pleasant Home in Saskatchewan. This prevented the existing settlements from becoming a threat to the Anglophone residents nearby, but it was rarely an easy task.

Government policies which encouraged the practice of kin-based chain migration and the inclination to cling to the familiar meant that Ukrainian newcomers were reluctant to settle in areas where family and friends were not already present.¹³ Immigration officials used various methods and varying degrees of force to coax settlers into new communities. Reports at the time claimed that agents were forcing immigrants off of trains at random locations, a charge denied by the government and likely a baseless rumour. The *Winnipeg Telegram* wrote that the Ukrainians were being forced onto marginal lands with no concern for their welfare or chances for success.¹⁴

Lehr claims that many immigration agents were interested in seeing the homesteaders do well on their new farms and that coercion was used in the best interest of the settlers but it was the exception to the rule. On one occasion, immigration officials ordered that the windows and doors of a train be locked and it be

¹² Lehr, *Governmental Coercion*, 271.

¹³ Royden Loewen, *Ethnic Farm Culture in Western Canada* (Ottawa: Canadian Historical Association, 2002), 17.

¹⁴ Lehr, *Governmental Coercion*, 272-275.

run through Winnipeg without stopping in order to prevent immigrants from falling prey to land speculators.¹⁵

There were other instances of McCreary ordering that trainloads of Ukrainian settlers be taken to sites which had been selected by the government, using either deception or force. In April of 1898 a group hoping to settle in Edmonton were unable to go farther than Saskatchewan when the CPR failed to have an engine on the north bank of the Saskatchewan River. Offers were made to place them at the new settlement at Pleasant Home, Manitoba and they were threatened with ejection from the immigration hall when they refused. Ottawa ordered McCreary to place them on the south bank of the Saskatchewan River, near water, by the unsettled Fish Creek area.¹⁶

While officials felt the need to take what Lehr calls “firm and arbitrary action,” they appear to have only done so at times when large numbers of Ukrainians were arriving in an area and the immigration halls were already full. He also stresses that while immigration officials may have abandoned with indifference those homesteaders who insisted upon marginal plots, they seldom used violence. Local officials were responsible for most cases of violence against incoming settlers and any immigration agent who did so was removed from their role.¹⁷

This is not to say that the Ukrainian immigrants had no voice in where they settled. They were not merely led along by government and immigration officials who placed them in areas which were politically and socially safe. The offer of 160 acres of land for a ten dollar fee was enticing to peasants eking out an existence on plots one-tenth of that size. They tended to identify

¹⁵ Lehr, *Governmental Coercion*, 272.

¹⁶ Lehr, *Governmental Coercion*, 276.

¹⁷ Lehr, *Governmental Coercion*, 275.

by village or region while they were living in Europe and attempted to maintain those connections when they arrived in Canada. Newcomers wanted to remain in close proximity to those they knew for support and assistance as they built their new homes in a place that was very different and at times very hostile to them. As Oleh Gerus wrote, Ukrainian immigrants created bloc settlements to recreate the close-knit communities of Galicia and Bukovyna.¹⁸ They were also willing to adapt their plans in order to maintain these relationships. When later settlers were not able to obtain good agricultural plots of land to the west of the Ukrainian group already at Stuartburn, they took marginal, heavily treed lands to the east and became farm labourers and sold cordwood. Ukrainian newcomers would also resist pressure to settle in areas where kin and community were not already present. When one group of immigrants arrived in Canada they were assigned by officials to the Fish Creek settlement but none of them remained there, choosing instead to move on to Edmonton, Dauphin, Yorkton, Pleasant Home, or Stuartburn where they had pre-existing connections. When another group arrived in Winnipeg, immigration agents were ordered to take them to the Fish Creek site; the Ukrainians had been led to believe they were bound for Edmonton or Dauphin. Upon arrival at Fish Creek they openly rebelled, demanding to be taken to their chosen destinations. Officials attempted to call in the Northwest Mounted Police (NWMP) who refused to become involved in the situation. Seventy-five of the settlers began to walk to Regina, complaining that there were no other Ukrainians in the area.¹⁹ While a dozen families opted to stay at the new site, the immigrants' defiance demonstrates that officials did not

¹⁸ Gerus and Rea, *Ukrainians in Canada*, 7.

¹⁹ Lehr, *Governmental Coercion*, 277-278.

exercise complete domination over submissive newcomers. The settlers knew what they wanted and were willing to push for it.

Beyond knowing who they wanted to settle near, the Ukrainians knew what types of land they wanted. While some wanted lands that would work for raising livestock, others preferred the wooded parklands of the upper prairies. The treed lands were familiar to some of the newcomers, but for settlers from other regions the trees were a welcome new resource that meant readily available building materials and firewood.²⁰ While some homesteaders were coaxed onto timbered lands that were not of their choosing, many welcomed the parkland as familiar, useful, and preferred.

There were many different parties involved in the Ukrainian immigration wave of the late 19th and early 20th centuries and all had their own motivations and agendas. It can be seen that the CPR and the government both attempted to control where the newcomers settled. The government certainly had an interest in keeping both the size and composition of the new communities acceptable to the predominantly English-speaking settlers who were also taking up homesteads on the prairies, knowing that their electoral success was at stake. But the Ukrainians were not always easily manipulated; they would take action if they felt pressured in order to retain familiar community networks from their old villages. They would also accept lands that were deemed marginal and find new ways to support themselves in order to maintain their relationships and they saw benefits to lands that others viewed as unacceptable.

²⁰ Loewen, *Ethnic Farm Culture*, 9. John Lehr also writes of the immigrants' appreciation for treed parkland because of the lack of timber on the Galician steppes from which they came.

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Lunar Colonies and Nuking the Moon: Motivational Factors behind the American Conquest of the Moon

STEPHEN GRUNDMANIS

In the 1950s and 1960s, the United States and the Soviet Union embarked on the greatest technological race the world has ever seen. Sparked by the advent of nuclear weapons, the Space Race pitted American and Soviet scientists against each other in a struggle to achieve superiority in outer space. However, when the Soviets expanded their lead with the launch of several lunar probes, American officials feared their counterparts were planning a militarization of the moon. As this was considered, officials began to believe that the nation which controlled the moon would have an invaluable advantage in the Cold War. In light of this, this essay first analyzes newspaper responses to early satellite launches to demonstrate how the Soviet lead in space technology fostered serious security concerns in the United States. It then investigates declassified official documents to show how U.S. officials perceived the moon as a Cold War arena in which they could prove their nation's technological and military superiority. Even though the moon bases and lunar nuclear detonations as suggested by these documents never occurred, the perception of the moon as the ultimate proving grounds for U.S. technological and military superiority remained, which continually fuelled support for the Apollo program.

On the morning of 5 October 1957, the American public awoke to shocking newspaper headlines announcing “Reds Fire ‘Moon’ into Sky!”¹ The day before, the Soviet Union had successfully launched the first artificial satellite into space, using the newly developed R-7 booster rocket. Officially named Sputnik I by the Soviets, the satellite was little more than a metal sphere that emitted a radio signal which could be listened to by

¹ “Reds Fire ‘Moon’ into Sky!” *Chicago Tribune*, 5 October 1957, 1.

anyone with a radio when it flew overhead. While this “red moon” posed no direct military threat, Americans who had their radios tuned to Sputnik I’s frequency could be reminded every ninety-six minutes that the Russians were, indeed, ahead of the United States in ballistic missile technology. What ensued would become known as the Space Race, an international competition in which the United States and the Soviet Union would constantly try to outperform each other through spatial endeavours. For most Americans, the Space Race created an era of ambition, particularly after President John F. Kennedy’s challenge to place a man on the moon before the end of the 1960s. Some U.S. military officials, however, took this ambition farther than most citizens could have imagined. To them, manned lunar colonies and nuclear detonations on the moon were entirely feasible operations by which the U.S. could win the Space Race, and ultimately the Cold War.

Shortly after Kennedy’s challenge to place a man on the moon, Cold War tensions came to a peak during the Cuban Missile Crisis. To the relief of countless American and Soviet citizens, the period following the Cuban Missile Crisis (1962-1979) became an era of relative peace and stability between the United States and the Soviet Union. This can be demonstrated by the establishment of direct communication between the United States and Soviet leaders, and the signing of the Limited Test Ban Treaty in 1963. Although direct confrontation decreased and nuclear tensions eased, the Space Race continued unabated. The Soviet Union achieved several new space exploration milestones during this time period, including the first multi man space mission and the first extra vehicular space-walk. The United States was also able to achieve several notable accomplishments, by setting several space flight duration records. Although these achievements were significant for their time, the Space Race would not end in Earth’s orbit. To both the Americans and the

Soviets, technological superiority could only be proven by placing a man on the moon. For the Americans, this led to the creation of the National Aeronautics and Space Administration's (NASA) Apollo program which sent nine manned missions to the moon; six of which would land on the surface.

Most of the Apollo program's development took place during the period of low Cold War tensions following the Cuban Missile Crisis. Furthermore, by the end of the Apollo program, the entire project had cost the United States well over the twenty billion dollars that NASA had predicted.² Since the American government continued to fund the Apollo program even after it went over its estimated budget, it is clear that there were several key motivating factors that continued to drive the missions to the moon. In light of the contradictory decision to send men to the moon during a Cold War lull, this essay will examine the factors that led the United States to pursue a conquest of the moon no matter what the cost.

Historian Roger Launius outlines several of the current theories that seek to explain the American moon program. According to Launius, many have interpreted Kennedy's decision to pursue the moon landings as a rational choice that reflected a need to raise "international prestige in the height of the Cold War."³ Launius also offers that the moon landings could have been a result of Kennedy's competitive and aggressive personality, and that Kennedy's insistence on the moon landings could have been a reflection of his desire to further human space exploration. Finally, Launius concludes that the potential propaganda value of an American moon landing was the ultimate motivating factor behind Kennedy's support for the Apollo

² Andreas Reichstein, "Space-The Last Cold War Frontier?" *Amerikastudien / American Studies* 44, no. 1 (2012): 123.

³ Robert D. Launius, "Kennedy's Space Policy Reconsidered: A Post-Cold War Perspective," *Air Power History* 50, no. 4 (Winter 2003): 18.

missions.⁴ While the propaganda value of American moon landings cannot be disregarded, this essay will demonstrate that there were several other key factors that propelled American astronauts to the moon.

Other historians attribute the moon landings to different key factors of the 1950s and 1960s. In Andrew Reichstein's article "Space-The Last Cold War Frontier?" the reader is provided with an outline of Lyndon B. Johnson's contributions to the Apollo program. Reichstein claims that Johnson supported the moon landings primarily because he saw an opportunity to make space exploration a Democratic Party issue and ultimately strengthen his career as a politician. Reichstein's article then demonstrates how Johnson continually put pressure on NASA administrator James Webb and President Kennedy to pursue moon landings all for the purpose of gaining support from American voters.⁵ Although Reichstein provides several convincing examples of Johnson's influence in the Apollo program, it is difficult to attribute such a massive program to one individual alone.

While some historians observe the role of key political figures in the development of the Apollo program, others focus on other circumstances that drove the moon missions. David Bruggeman completely denounces the role played by politicians, and states that individuals such as President Kennedy only "influenced the nature of the mission."⁶ Instead, Bruggeman suggests that the Apollo missions reflected a need for both political victories and American heroes, who would be a "powerful symbol of American strength" in the atmosphere of

⁴ Launius, "Kennedy's Space Policy Reconsidered: A Post-Cold War Perspective," 20, 22.

⁵ Reichstein, "Space-The Last Cold War Frontier?" 115, 121, 122.

⁶ David Bruggeman, "NASA: A Path Dependent Organization," *Technology in Society* 24, no. 4 (Fall 2002): 420.

the Cold War.⁷ However, while the moon landings did create inspiring American heroes, it is doubtful that the United States would have spent over twenty billion dollars for the sole purpose of winning a political victory and creating a handful of idolized astronauts.

While the question of motivation behind the American moon landings has been given a substantial amount of attention by historians, recently declassified U.S. government documents have provided new perspectives on American interest in the moon. It is now evident that there were legitimate security concerns caused by the initial Soviet lead in the Space Race. This can be demonstrated by American newspapers that reacted fearfully to early Soviet space achievements, and by declassified United States government documents that address the issue of potential Soviet moon landings. Furthermore, as demonstrated by declassified official U.S. proposals and study reports, there were numerous military objectives that continued to fuel American interest in lunar missions. In light of these revelations, this essay will argue that the United States' continued support for the Apollo missions was a result of security concerns surrounding the American space technology deficit, and the perception of the moon as the ultimate proving ground for American military superiority.

The Space Race was not the first technological race between the United States and the Soviet Union. As the Cold War began to unfold in the late 1940s and early 1950s, both the Americans and the Soviets began to place increasing importance on the quantity and capability of their nuclear weapons. While the nuclear arms race continued throughout the 1950s and 1960s, the Space Race developed shortly after as the United States and the Soviet Union began to develop booster rockets for delivering

⁷ Bruggeman, "NASA: A Path Dependent Organization," 422.

nuclear weapons and ultimately carrying payloads into space. Discourse on space operations had already begun by the early 1950s, when the United States began seeking reliable ways to spy on the Soviet Union. However, the development of rockets capable of carrying payloads into space did not begin until the International Geophysical Year (IGY) challenged the Americans and Soviets to place an artificial satellite into low-earth orbit. At the time, there were two rockets in the early stages of development that were capable of putting a satellite into space. These included the Naval Research Laboratory's Vanguard rocket, and Wernher Von Braun and the Army's Jupiter missile. According to Walter McDougal, Eisenhower's decision to consign the satellite project to the Navy significantly hindered the United States' first successful satellite launch, as the Vanguard program was underfunded and the rocket had to be made from scratch.⁸ Consequently, it was the Soviets who won the first leg of the Space Race with the successful launch Sputnik I on 4 October 1957. To the Eisenhower Administration, the widespread shock and panic caused by Sputnik I meant that the United States had to seriously re-evaluate its space program.

Unfortunately for Americans, the string of Soviet space accomplishments continued. Only one month after the launch of Sputnik I, the Soviets triumphed yet again over the successful launch of Laika the dog, the first live animal in space. American confidence then took another blow with the catastrophic failure of several Vanguard rockets, which were supposed to deliver the first U.S. satellite into space.⁹ In light of the highly publicized Vanguard failures and increasing rivalry between the Navy and Army over control of the space program, Eisenhower began

⁸ Walter A. McDougal, "Sputnik, the Space Race, and the Cold War," *Atomic Scientists, Bulletin* 41, no. 5 (Spring 1985): 20-22.

⁹ Reichstein, "Space-The Last Cold War Frontier?," 116.

searching outside the military for a new organization to lead the American space effort. The group he selected was the National Advisory Committee for Aeronautics (NACA), which was little more than "an obscure group of part-time scientific consultants" at the time.¹⁰ Nevertheless, on 29 July 1958, Eisenhower signed the National Aeronautics and Space Act, which transformed NACA into a space exploration oriented organization called the National Aeronautics and Space Administration (NASA). Although its first mission, Project Mercury, was to place humans into earth orbit by the early 1960s, by 1959 NASA's Research Steering Committee on Manned Space Flight had already decided that NASA's next mission should be a manned lunar landing. A meeting on 9 July 1960, officially named the project Apollo, and the new mission began to take shape directly after.¹¹

The American space program spent its first years playing catch up with the Soviet Union. The initial Soviet lead in the Space Race can be attributed to its capture of German V-2 rocket development and testing centres in the late stages of World War II, along with several key German rocket scientists.¹² At the end of World War II, the United States was in possession of a large bomber fleet and several overseas military bases that were in striking distance from the Soviet Union. As a result of this disadvantage, the Soviet Union began using their captured V-2 information and German rocket scientists to develop intercontinental ballistic missiles (ICBMs).¹³ The first ICBM developed by the Soviet Union was the R-7 rocket, which was intended to deliver the newly created hydrogen bomb. When the

¹⁰ Joan Johnson-Freese and Roger Handberg, "Realigning NASA's Destiny," *Technology in Society* 13, no. 4 (1991): 435.

¹¹ Reichstein, "Space-The Last Cold War Frontier?" 117.

¹² Roadl Sagdeev, "Sputnik and the Soviets," *Science* 318, no. 5847 (Fall 2007): 51.

¹³ Trevor Brown, "The American and Soviet Cold War Space Programs," *Comparative Strategy* 30, no. 2 (Summer 2011): 177.

IGY challenged the United States and the Soviet Union to launch an artificial satellite into space, the R-7 was already in development and easily modified into a satellite booster.¹⁴ While the United States held clear air superiority over the Soviets, the Soviet Union's rocket technology was far superior at the outset of the Space Race.

The Apollo program was, in large part, a reaction to the American space technology deficit that became apparent in the late 1950s. Security concerns surrounding the lag in space technology can be demonstrated by American newspapers that were published directly after major Soviet and American space achievements. On 5 October 1957, the day after the launch of Sputnik I, the *Chicago Daily Tribune* began reporting on the Soviet's ground breaking accomplishment. Interestingly, most of the articles in this volume dedicated to the launch of Sputnik I appear to be unconcerned with the new potential security threat. Instead, the articles focused on American scientists who extended their congratulations to Russian scientists. Dr. Joseph Kaplan, chairman of the United States National Committee for the IGY, was reported to have said the Soviet launch was a "remarkable achievement on their part," while chairman of the Technical Panel on United States Satellites, Dr. Richard Porter claimed the launch was a "magnificent step forward in science."¹⁵ It is important to note the entire newspaper contained solely U.S. scientist responses. This is most likely because U.S. officials had not prepared an adequate response to Sputnik I at this time, thus explaining the lack of negative responses.

Although the *Chicago Daily Tribune* newspaper published on 5 October 1957, did not portray any security threats, this

¹⁴ Sagdeev, "Sputnik and the Soviets," 51.

¹⁵ "Russians Congratulated by American Scientists," *Chicago Tribune*, 5 October 1957, 6.

began to change in the editions published in the days that followed. On 6 October 1957, the *Chicago Daily Tribune* reported that the White House had deemed the launch of Sputnik I “a great propaganda victory” for the Russians.¹⁶ It also appears U.S. officials wanted to downplay the panic caused by Sputnik I, demonstrated by their statement that the Russian accomplishment would have no effect on the planned launch of the American’s first satellite, which was to take place in the spring of 1958. Later in the article, Sputnik I was directly linked with Soviet ICBMs when U.S. Satellite Chief John Hagen claimed the launch of Sputnik I had represented a victory in “the race for the ultimate weapon—the ICBM.”¹⁷ Now that there had been time for U.S. officials to respond, newfound security concerns began to surface.

By the next day’s edition, the *Chicago Daily Tribune* had completely stopped reporting on the scientific achievements of Sputnik I, and focused solely on security concerns as highlighted by U.S. military officials. According to Major General John Homer, the same rocket used to propel Sputnik I into space “could be used to hurl deadly transoceanic missiles.”¹⁸ In addition to new long range strike capabilities, Homer warned that the Soviet Union could use their satellite technology to spy on the entire world and locate western defence systems and nuclear stockpiles. In his conclusion, Homer warned that the Soviet accomplishment had revealed “new dangers and the accompanying need for heightened vigilance on the home front.”¹⁹ Foy Kohler and Dodd Harvey have accurately

¹⁶ “Won’t Rush ‘Moon’ Plans- White house,” *Chicago Tribune*, 6 October 1957, 3.

¹⁷ “Won’t Rush ‘Moon’ Plans- White house,” 6.

¹⁸ “Sees Red Moon Baring West’s Arms Secrets,” *Chicago Tribune*, 7 October 1957, 2.

¹⁹ “Sees Red Moon Baring West’s Arms Secrets,” 2.

characterized American reactions to Sputnik I, which they refer to as “an orgy of self-denigration.”²⁰ While the White House had tried to depict itself as unfazed by Sputnik I, it is clear that the Soviet lead in space technology had thrown the United States into a state of panic.

When the United States launched its first satellite, Explorer I, on 1 February 1958, it became very clear that it was a direct response to concerns surrounding the Soviet Union’s lead in space technology. Although the White House had declared that the United States’ first satellite launch would take place in spring 1958, the launch of Explorer I actually took place in the middle of winter. This early launch shows that the Explorer I program was rushed after the success of Sputnik I, most likely to close the gap between U.S. and Soviet space technology. To add to this competitiveness, a substantial amount of effort was also put in to promoting the superiority of Explorer I over Sputnik I. The *Chicago Daily Tribune*’s newspaper published on 1 February 1958, reported that Explorer I “should prove much more valuable than the Russian Sputniks.”²¹ In the following day’s edition, an entire full page column was dedicated to reporting praise received from around the world. Italy’s foreign affairs office was reported to have said the United States “held supremacy in the scientific race with the Soviet Union,” while the president of the German Rocket Society claimed the American satellite was “fabulous- far better than the Russian Sputniks.”²² Evidently, as a result of the launch of Sputnik I and other early Soviet space

²⁰ Foy D. Kohler and Dodd L. Harvey, “Administering and Managing the U.S. and Soviet Space Programs,” *Science* 169, no. 3950 (Summer 1970): 1051.

²¹ “U.S. Satellite Termed Vital Aid to Science,” *Chicago Tribune*, 1 February 1958, 3.

²² “Western Europe Happy over U.S. Satellite,” *Chicago Tribune*, 2 February 1958, 3.

accomplishments, the United States made superiority over the Soviet space program an issue of national priority.

On 12 April 1961, the Soviet Union proved their space technology superiority yet again with the launch of Yuri Gagarin, the first man in space. However, perhaps even more concerning to U.S. officials was the successful launch of the Soviet moon probes Lunik I, II and III in the late 1950s. Between January and October of 1959, the Lunik probes sent back valuable lunar information, the most notable being T.V. pictures of the previously unseen far side of the moon.²³ While these probes obviously posed no direct threats to U.S. national security, an examination of recently a declassified U.S. official report will show that Soviet lunar probes were taken extremely seriously.

U.S. official concerns about the Lunik probes can be observed in Sydney Finer's report on a CIA covert operation that hijacked a Lunik probe from a touring Soviet exhibition. According to Finer, U.S. analysts had reason to believe the touring probe was not a mock up, which resulted in an operation to extract vital information on Lunik's design and configuration. When Lunik was carried away in a truck at the end of its most recent exhibit, the truck was stopped and the driver escorted to a hotel room. Meanwhile, the truck was driven to a rented out salvage yard, where the probe was unpacked and examined by CIA agents. After Lunik had been disassembled and extensively photographed, it was quickly put back together and sealed in its original container. The original truck driver then took the probe to its original destination, and the Soviets never discovered that their probe had been "borrowed for a night."²⁴ Given the risk involved with such a difficult operation, it is clear U.S. officials

²³ Gerard P. Kuiper, "The Apollo Program and Lunar Science," *Atomic Scientists, Bulletin* 29, no. 10 (Winter 1973): 20.

²⁴ Sydney Wesley Finer, "The Kidnaping of the Lunik," *Studies in Intelligence* 11, no. 3 (Winter 1967): 33-39.

considered matching and surpassing Soviet lunar capabilities essential to future American space endeavours.

Shortly after the launch of Lunik I, the U.S. Army and Air Force began drawing up their own plans for the moon. While many Americans followed the adventures of Buck Rogers and fantasized about moon colonies and other extraordinary space endeavours, recently declassified U.S. Army and Air Force studies and proposals show that extraordinary U.S. lunar goals were not exclusive to the world of science fiction. In line with classic early Cold War optimism and boundless confidence in technology, evidence will show that U.S. officials and scientists believed that manned lunar military outposts and lunar nuclear tests were very real possibilities that could be achieved well before the 1970s. To them, a militarization of the moon would be the ultimate display of both U.S. military and technological strength and superiority.

On 20 March 1959, the United States Army submitted a two part study titled Project Horizon. The goal of the study was to examine the feasibility of a manned military lunar outpost, including the procedures required to achieve the objective of a lunar outpost and the purposes to which such a project would serve.²⁵ From the outset, one of the primary motivating factors for Project Horizon was a militarization of the moon. In its list of military objectives for the lunar outpost, the study acknowledged that the ability to observe both earth and space vehicle movement from the moon would be “highly advantageous.”²⁶ In addition to surveillance, the study also asserted that moon based weapons systems for use against both earth and space targets could be extremely effective. Aside from individual military objectives,

²⁵ United States Army, *Project Horizon, Volume I: Summary and Supporting Considerations*, 20 March 1959, 14.

²⁶ United States Army, *Project Horizon, Volume I: Summary and Supporting Considerations*, 4.

Project Horizon argued that a militarization of the moon would be a key asset in deterring nuclear war because of the “extreme difficulty, from the enemy point of view, of eliminating our ability to retaliate.”²⁷ These claims show that many U.S. officials considered military control of the moon the key to Cold War victory, and the decisive factor in the case of all out nuclear war.

Project Horizon also voiced concern about Soviet military activity on the moon. After listing the security benefits of an American military lunar outpost, the study recognized that these advantages could be reversed if a hostile country was to establish their own lunar base before the United States. In light of this, the study recommended that the establishment of a lunar outpost be given “priority similar to the Manhattan Project in World War II.”²⁸ In addition to using the moon as a weapon against the United States, Project Horizon claimed that a Soviet lunar outpost could completely prohibit the United States from landing on the moon as it could be considered an act of hostility. As a result of these fears, the study proposed a strict timeline that would end with the completion of the manned lunar outpost. The initial cargo launches were to begin in January 1965, using the newly developed Saturn I and II booster rockets. In April 1965, the first two astronauts were supposed to arrive on the moon, and begin construction of the outpost using cargo that had already flown in prior to their arrival. By November 1966, the outpost was to be completely operational and able to sustain twelve astronauts at a time. In total, Project Horizon estimated it would need sixty-one Saturn I rockets and eighty-eight Saturn II rockets carrying 490,000 pounds of cargo for the build-up phase, and an additional sixty-four launchings carrying 266,000 pounds of

²⁷ United States Army, *Project Horizon, Volume I: Summary and Supporting Considerations*, 4.

²⁸ United States Army, *Project Horizon, Volume I: Summary and Supporting Considerations*, 4.

cargo between 1966 and 1967. The total cost of the project was estimated at six billion dollars, or roughly seven hundred million dollars per year.²⁹ Given the extensive detail and planning put into the Project Horizon study, along with its insistence on urgency, we can assume the project's developers were told the establishment of a lunar outpost was a matter of utmost priority.

The U.S. Army's Project Horizon was not the only study to explore the possibility of manned lunar outposts. On 20 April 1960, the U.S. Air Force also submitted a proposal for a U.S. lunar base, which took a different approach than Project Horizon. Like the Army study, the Air Force report acknowledged that military deterrent forces could be stationed on the moon. In particular, it asserted that a "lunar based bombardment system" could be developed, with an accuracy range of two to five nautical miles.³⁰ However, unlike Project Horizon, the Air Force study did not consider any of the available American booster rockets capable of bringing the required supplies to the moon. Instead, it suggested the development of a new five stage rocket that was capable of six million pounds of thrust in the first stage. The study also called for a later completion of the lunar base, with the first manned landing taking place in June 1967 and operational requirements of the base being completed in June 1969. Furthermore, the Air Force envisioned the establishment of a lunar base would require one million pounds of cargo and cost a total of 7.7 billion dollars.³¹ Lunar base studies such as Project Horizon and the U.S. Air Force study show that lunar bases were

²⁹ United States Army, *Project Horizon, Volume I: Summary and Supporting Considerations*, 20-22.

³⁰ Air Force Ballistic Missile Division, *Military Lunar Base Program or S.R. 183 Lunar Observatory Study Volume I: Study Summary and Program Plan*, 20 April 1960, 12.

³¹ Air Force Ballistic Missile Division, *Military Lunar Base Program or S.R. 183 Lunar Observatory Study Volume I: Study Summary and Program Plan*, 8-13.

considered a viable way to gain an upper hand in the Space Race and ultimately the Cold War.

U.S. military goals for the moon did not end with the establishment of a manned lunar outpost. Completed on 19 June 1959, L. Reiffel's study for the Air Force Special Weapons Centre examined the possibility of detonating nuclear weapons on and within the vicinity of the moon. To Reiffel, the explosion of a nuclear bomb on the moon would provide the United States with valuable military information. In particular, Reiffel believed the United States would learn to detect nuclear space tests performed by other countries, and gain a better understanding about the "capability of nuclear weapons for space warfare."³² Reiffel's study also asserted that a nation stood a lot to gain if they were the first to perform a nuclear detonation on the moon as "a demonstration of advanced technological capability."³³ Interestingly, the report gave no thought to the potential environmental disturbances that could result from detonating nuclear devices on the moon.³⁴ Reiffel's study provides another example of how the moon had been transformed into a Cold War arena for proving technological and military superiority.

The lunar base and nuclear detonation studies all strongly emphasise that the United States should be the first nation to complete their proposed projects. This is likely because there were significant concerns that the Soviet Union would attempt their own manned lunar landing and possibly a lunar militarization. Although this was suggested by Project Horizon, these concerns were more fully addressed by later CIA and NSA reports. A 1963 CIA report titled "Soviet Intentions Concerning

³² L. Reiffel, Armour Research Foundation, Illinois Institute of Technology, *A Study of Lunar Research Flights, Volume I*, 19 June 1959, 10.

³³ Reiffel, *A Study of Lunar Research Flights, Volume I*, 10.

³⁴ Reiffel, *A Study of Lunar Research Flights, Volume I*, 7.

a Manned Lunar Landing” asserted that the most recent Soviet lunar probes represented significant technological progress, and that the role of the probes may have been to gather information on the lunar surface to prepare for a manned landing. The report also stated that the Soviets were in possession of a launching pad large enough to support moon capable boosters, and concluded that Soviet moon landings could potentially take place between 1967 and 1969.³⁵ While this report only considered the possibility of lunar module landings, others reports demonstrate there was a fear that the Soviets had more militaristic goals for the moon. According to John O’Hara’s NSA report, many scientists thought that the Soviet Union’s lunar probes were precursors to a Russian moon colonization attempt. O’Hara also claimed there was a legitimate concern that the Soviet Union would “place nuclear weapons on the moon and use it as a launching site.”³⁶ While Soviet ICBMs were the initial security concern caused by Russian space supremacy, the continued American lag in space technology fostered a fear that the Soviets could use the moon as an instrument of war.

Despite fears of a Soviet militarization of the moon and the tremendous amount of effort and research put into reports such as Project Horizon and Rieffel’s study, no U.S. lunar bases were ever developed and no nuclear weapons were exploded on the moon. This was most likely due to the immense costs involved in completing such projects, and because it soon became apparent that the Soviet Union was not capable of manned lunar expeditions. The estimated costs for Project Horizon and the U.S. Air Force project were six billion dollars and 7.7 billion dollars respectively. By the time the Apollo missions were completed, it

³⁵ Office of National Estimates, Central Intelligence Agency, *Soviet Intentions Concerning a Manned Lunar Landing*, 25 April 1963.

³⁶ John O’Hara, “Luna 9, the First Soft Landing on the Moon,” *Cryptologic Almanac* (March 2003): 1.

had cost somewhere between 21.8 and twenty-five billion dollars.³⁷ Given there were only nine Apollo missions that spent very limited time on the moon, it is evident that lunar outposts which required dozens of launches and a million pounds of cargo to sustain astronauts for months at a time were soon calculated to be far too expensive. In addition to the massive underestimation of lunar outpost costs, it was also realized that the Soviet space program was not capable of placing men on the moon in the foreseeable future. This was due to the Soviet's inability to develop a heavy lift booster equivalent to the Apollo program's Saturn V. While the Soviet heavy booster attempts were overwhelmed by technical difficulties, demonstrated by one prototype that blew up on the launch pad, the ultimate reason the Soviets did not develop a heavy booster was their lack of private aerospace companies that could produce boosters relatively cheaply.³⁸ As threats of a Soviet militarization of the moon decreased, it is likely nuclear detonations on the moon and other experiments in space warfare were seen as unnecessary. As a result of overwhelming costs and decreasing Soviet space threats, the Apollo landings between 1968 and 1972 were but a shadow of initial American plans for the moon.

Although the period between 1962 and 1979 is often considered a low point in the Cold War, it witnessed perhaps the greatest technological race the world has ever seen. For the United States, the Space Race culminated in the massively expensive Apollo program, which landed twelve Americans on the moon. Until recently, historians who have examined motivating factors behind the United States' decision to pursue

³⁷ Monika Gisler and Didier Sornette, "Exuberant Innovations: The Apollo Program," *Society* 46, no. 1 (Winter 2009): 58.

³⁸ John B. West, "Historical Aspects of the Early Soviet/Russian Manned Space Program," *Journal of Applied Physiology* 91, no. 4 (Fall 2001): 1511.

manned lunar missions have offered two explanations for this commitment. Some argue that the Apollo programs were the result of one key political figure's influence, such as Lyndon B. Johnson or John F. Kennedy. Others argue that the Apollo programs were supported because of their propaganda value and to create American Cold War heroes. While these factors cannot be overlooked, they do not fully explain the United States' commitment to such an expensive and technologically demanding project.

Recently declassified U.S. government documents have generated a new, more convincing explanation for the United States' commitment to the moon. This explanation begins with the large-scale insecurity caused by the initial Soviet lead in the Space Race. As demonstrated by American newspapers published directly after major Soviet space achievements, there was immense fear that the Soviets could use their new space technology to spy on western allies from the vantage point of space. There were also significant concerns that the rockets being used to place satellites in space could also be used to deliver nuclear warheads across the ocean. However, as the Soviets took the next step in the Space Race with the successful launch of several lunar probes, U.S. officials became wary of a new, far more frightening Soviet threat. Many believed that the Soviet lunar probes were a precursor to Soviet moon colonies, from which they could launch earth bound nuclear weapons. Fears surrounding the Soviet lunar probes are evident in Sydney Finer's account of the CIA kidnapping of a Lunik probe, and by CIA and NSA reports that claim Soviet moon landings and lunar militarization attempts were very real possibilities.

In light of these new Soviet threats, U.S. officials came up with many extravagant plans for the moon. Both the U.S. Army's Project Horizon and the U.S. Air Force report stressed an urgent need for the construction of manned lunar outposts, and L.

Rieffel's study for the Air Force Special Weapons Centre shows that the United States seriously considered detonating nuclear devices on the moon. All three studies highlighted specific military goals that could be accomplished on the moon. Project Horizon noted that lunar outposts could be used for Earth surveillance, and both lunar base proposals acknowledged that the moon could be used as a launching pad for new U.S. weapons. In addition, Rieffel's study claimed that nuclear tests were an ideal way to test nuclear weapons for space warfare. As demonstrated by these reports, the moon was clearly perceived by many U.S. officials as the ideal area to prove their military and technological strength and superiority.

Ultimately, while the Apollo missions did not set up lunar outposts or detonate nuclear weapons, their motivation was grounded in security concerns caused by the American space technology deficit. As the Soviet lead in the Space Race grew, fears surrounding a Soviet militarization of the moon prompted U.S. officials to develop their own ambitious plans for the moon. Although these plans never progressed past the proposal stage, the perception of the moon as the ultimate proving ground for American capability remained. By sending men to the moon, the United States demonstrated that the years of fear caused by the Soviet lead in ICBM and space technology were over.

Forty years after the last Apollo mission landed on the moon, on 25 January 2012, Republican presidential candidate Newt Gingrich addressed a crowd of seven hundred people. In his speech, Gingrich announced that if he was elected, he would establish a moon colony by 2020. When criticized as being grandiose, Gingrich retorted that the people of America were naturally grandiose, as demonstrated by the Wright Brothers and John F. Kennedy. Gingrich then promised that his election would be "the second great launch of the adventure John F. Kennedy

started.”³⁹ Although his campaign went poorly, Gingrich’s platform and substantial amount of supporters shows that the era of Buck Rogers and belief in perpetual technological advancement still lives on in the hearts and minds of those who grew up during the Space Race.

³⁹ “Gingrich Promises US Moon Colony by 2020,” *NBC News*, 25 January 2012.

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Aboriginal Land Title: The Nisga'a's Fight for Sovereignty

BARRIE NICHOLLS

As Canada continues to progress into the twenty-first century, arguably the biggest issue facing the future of the country is its relationship with aboriginal peoples. While aboriginal rights is one of the oldest issues of human rights in the country, it has only been in the last few decades that it has entered the consciousness of the courts and legislatures. To illustrate this point, the Nisga'a's battle for sovereignty dates back over a century. This includes attempts for government consultation, royal visits to London, damaging legal restrictions imposed by the infamous Indian Act and lastly, a Supreme Court decision. The Nisga'a's fight for sovereignty is best characterized by their perseverance, strength and unrelenting fight for justice. This paper will show how the historical affairs between the courts and the Aboriginal peoples of British Columbia, specifically the Nisga'a, can serve as a case study to highlight the greater issues of Canadian Government-Aboriginal relations.

The issue of aboriginal rights is one of the oldest questions of human rights in Canada. At the same time, however, it is also very recent; for only in the last few decades has the idea of Aboriginal land title entered the consciousness of the courts and legislature.¹ The subject of Aboriginal rights begins with the colonial occupation of a continent already inhabited by other peoples with their own cultures, languages, institutions and ways of life.² Today, Aboriginal peoples are advancing their claims for lands they once occupied, while also calling for self-determination and self-government. In the 1970s, the emergence of an influential Aboriginal political force caused the Canadian

¹ Irwin Clarke, "The Nisga'a Indians and Aboriginal Rights," *Fragile Freedoms* (1981): 219.

² Clarke, "The Nisga'a Indians and Aboriginal Rights," 219.

courts and legislatures to address Aboriginal sovereignty.³ In British Columbia, Aboriginal protest regarding land title has been challenged. Specifically, one British Columbian nation has been at the forefront of this controversy: the Nisga'a. The Nisga'a's battle dates back to the colonization of North America, and goes forward to the legal disputes of the Canadian Courts and legislatures. This paper will show how the historical affairs between the courts and the Aboriginal peoples of British Columbia, specifically the Nisga'a, can serve as a case study to highlight the greater issues of Canadian Government-Aboriginal relations.⁴

When Europeans arrived in North America, they began to colonize it. They primarily asserted their sovereignty over the First Nations and the New World by virtue of the principle of discovery. Europeans justified the dispossession of Aboriginal peoples with arguments of moral superiority and religion.⁵ Furthermore, the idea of civilizing the 'savages' and making the land productive became the rationale for expanding colonial power.⁶ However, many Europeans recognized that Aboriginal peoples were the land's original occupants, and retained a legal interest in it. For instance, early expansion into Canada marked few agreements between colonizers and Aboriginals, however, the Royal Proclamation of 1763 became the British Crown's first legal recognition of Aboriginal rights. It established the important precedent that Aboriginal peoples had certain rights to their lands and reserved these rights until they were purchased or ceded from them. Moreover, the Royal Proclamation of 1763's inclusion under S. 25 (a) of the Canadian Charter of Rights and

³ Clarke, "The Nisga'a Indians and Aboriginal Rights," 219.

⁴ Clarke, "The Nisga'a Indians and Aboriginal Rights," 220.

⁵ Clarke, "The Nisga'a Indians and Aboriginal Rights," 220.

⁶ Cole Harris, "The Native Land Policies of Governor James Douglas," *BC Studies* (2012): 2.

Freedoms entrenched its legitimacy within the Canadian legal system.⁷

In British Columbia, like other colonies, it was in the best interest of settlers to develop the land.⁸ Thus, in 1849, Vancouver Island was established as a Crown colony, and James Douglas was named its first governor. Douglas was a strong advocate for the development of the British colonial enterprise. However, Douglas believed that Aboriginal peoples were just as competent as any other, and that their assimilation into British society was also possible.⁹ Douglas had a great deal of experiences with Aboriginal affairs, had been a fur trader and was even married to a *Métis* woman. Douglas' policy regarding Aboriginal land was that only after Aboriginal title had been extinguished by a treaty could colonial settlement proceed. For example, on Vancouver Island, Douglas entered into fourteen treaties which called for the cession of Aboriginal land and provision of reserves. Within these treaties, Aboriginals were able to retain the right to hunt and fish over the land until it was taken up for settlement.¹⁰

In 1867, the unification of Vancouver Island and British Columbia marked the beginning of settlers ignoring their responsibility to negotiate with Aboriginals. The newly unified British Columbia began to deny Aboriginal title when the legislature realized that the funds to finance Aboriginal claims would have to be provided locally.¹¹ Joseph Trutch, Chief Commissioner of lands and works of the newly united colony of British Columbia, claimed:

⁷ Anthony J. Hall, "The Royal Proclamation of 1763," *Canadian Encyclopedia*, February 7, 2006.

⁸ Harris, "The Native Land Policies of Governor James Douglas," 2.

⁹ Harris, "The Native Land Policies of Governor James Douglas," 3.

¹⁰ Clarke, "The Nisga'a Indians and Aboriginal Rights," 222.

¹¹ Clarke, "The Nisga'a Indians and Aboriginal Rights," 223.

The Indians have really no right to the lands they claim, nor are they of any actual value or utility to them; and I cannot see why they should ... retain these lands...for the general interests of the colony.¹²

While British Columbia and Trutch no longer recognized Aboriginal title, the authorities agreed that Aboriginals deserved enough land to be sufficient for the probable requirements of cultivation. British Columbia soon adopted a reserve system.¹³

In 1871, British Columbia entered Canadian Confederation over the promise of a Pacific railway. However, delays with implementing the infrastructure created an acrimonious relationship between British Columbia and Ottawa. Moreover, new disputes over Aboriginal title and reserves added to the tension. Under the British North America Act, “Indians and Lands Reserved for the Indians” came under federal jurisdiction.¹⁴ However, under s. 92 (13) of the BNA Act, property and civil rights fell within the jurisdiction of the provincial governments—creating a constitutional dilemma over division of powers.¹⁵

While the BNA Act’s list of enumerations was left to be interpreted by the courts, there was no element of the Constitution that was more threatening to provincial autonomy than the federal powers of reservation and disallowance. Under disallowance, the Federal Government could render null and void any provincial law a year within its passage.¹⁶ Consequently, British Columbia acted promptly through the adoption of the

¹² Harris, “The Native Land Policies of Governor James Douglas,” 11.

¹³ Harris, “The Native Land Policies of Governor James Douglas,” 11.

¹⁴ “The British North America Act,” *Solon*.

¹⁵ “The British North America Act,” *Solon*.

¹⁶ Peter H. Russell, “Constitutional Odyssey: Can Canadians Become a Sovereign People?” (Toronto: University of Toronto Press, 2004), 38.

1874 Land Act. The act was meant to address the disposition of Crown lands. However, it made no provision for supplying Aboriginal reserves. Through the use of the Federal powers of reservation and disallowance, the 1874 Land Act was disallowed. This was followed by a letter written from Prime Minister Alexander Mackenzie's Minister of Justice, Telesphore Fournier, stating: "There is not a shadow of doubt, that from the [Royal Proclamation of 1763], England [and its dominions] have always felt it imperative to meet the Indians in council."¹⁷

Under Prime Minister Alexander Mackenzie, the Federal Government had attempted to obtain a settlement of its claims for the Aboriginals of British Columbia, but failed because there was no constitutional obligation requiring the province to make such a deal. Nevertheless, Aboriginal peoples across British Columbia continued to fight the ethnocentric policies of the British Columbia Legislature. In 1887, the Provincial Government appointed a Royal Commission to "[e]nquire into the Conditions of the Indians of the Northwest Coast."¹⁸ It was during the commission's arrival in the Nass Valley when it first interacted with one of Canada's most resilient Aboriginal groups: the Nisga'a. Addressing the commission, Nisga'a Chief David Mackay summed up the Aboriginal perspective perfectly: "The Government is saying it will give you this much land, [yet] how can they give us land when it is our own? We cannot understand it."¹⁹

The turn of the century marked new opportunities for Aboriginal peoples and their quest for sovereignty. However, it began with more disappointment. In 1906 and in 1909, delegations of Aboriginal Chiefs from British Columbia went to

¹⁷ Clarke, "The Nisga'a Indians and Aboriginal Rights," 226.

¹⁸ Clarke, "The Nisga'a Indians and Aboriginal Rights," 230.

¹⁹ Clarke, "The Nisga'a Indians and Aboriginal Rights," 230.

London to present their demands to the King himself.²⁰ However, even the Imperial government was powerless to change the mind of the provincial government in British Columbia. In 1909, the Premier of British Columbia, Richard McBride, stated, “Of course it would be madness to think of conceding to the Indians’ demands. It is too late to discuss the equity of dispossessing the Red man [*sic*] in America.”²¹ In 1913, the Nisga’a formed the Nisga’a Land Committee. They soon formed a coalition of tribes called the Allied Tribes of British Columbia.²² However, the Federal Government was determined to end the question of Aboriginal sovereignty, and in 1927, they created an amendment to the infamous 1876 Indian Act prohibiting the raising of funds to pursue land claims without leave from the Department of Indian Affairs.²³ In the second quarter of the twentieth century, claims to Aboriginal treaty rights all but disappeared from Canadian Courts. Aboriginal claims became largely unknown to the judiciary. In 1951, the amendment was repealed, and Aboriginal peoples were able to reassert themselves into the courtroom.²⁴

Prior to 1951, no cases arose concerning Aboriginal title in British Columbia or other non-treaty areas in Canada. However, outside of Canada, cases involving Aboriginal title in a number of African colonies arose. Early Judicial Committee of the Privy Council (JCPC) decisions stated that Aboriginal tribes were too primitive to have their title continue under the British regime. However, in a monumental case from Nigeria, the JCPC rejected these requirements of individual ownership and indicated that

²⁰ Clarke, “The Nisga’a Indians and Aboriginal Rights,” 229.

²¹ Clarke, “The Nisga’a Indians and Aboriginal Rights,” 231.

²² “Nisga’a Land Committee,” *Nisga’a Lisims Government*.

²³ Douglas C. Harris, “A Court Between: Aboriginal and Treaty Rights in the BC Court of Appeal,” *Pacific Affairs* (2009): 2.

²⁴ Harris, “A Court Between,” 2.

pre-existing communal or tribal title should be presumed to continue under the British. This ruling was made by Viscount Haldane.²⁵ Haldane's ruling came at a time when the land claims efforts of the Allied Tribes of BC were most intense. Haldane's ruling likely influenced the Canadian Parliament's decision to outlaw claims-related activity, making it legally impossible for Aboriginals in British Columbia to take the necessary steps to get their claims to the JCPC.²⁶

Upon signing the Declaration of Human Rights in 1948, Canada was forced to re-examine its treatment of minority groups and expand their civil liberties. In 1960, under Prime Minister John Diefenbaker, the Federal Government gave non-enfranchised Aboriginals the right to vote in federal elections.²⁷ Moreover, in 1967, the growing civil rights movement created the opportunity for the Nisga'a to bring a suit before the Supreme Court of British Columbia. Their claim was a simple one: Aboriginal title had never been extinguished in British Columbia.²⁸ In April of 1969, President of the Nisga'a Tribal Council, Frank Calder, had his claim opened in the Supreme Court of British Columbia before Mr. Justice J.G. Gould, in what legal historians have called the "Calder Case."²⁹

Counsel for the province of British Columbia argued that Aboriginal title was a concept unknown to the law and that, even if such title had existed, it had been extinguished by the old colony of British Columbia. Justice Gould agreed that sovereignty over British Columbia flowed from the Imperial Crown of England, and if the Nisga'a had ever possessed a right

²⁵ Paul Tennant, "Aboriginal Title in the Courts," *Aboriginal Peoples and Politics* (1990): 214.

²⁶ Tennant, "Aboriginal Title in the Courts," 215.

²⁷ "1951-1981: Aboriginal Rights Movement," *Canada in the Making*.

²⁸ Neyooxet Greymorning, "Calder V. Attorney General of BC," *The Canadian Journal of Native Studies* (2006): 5.

²⁹ Greymorning, "Calder Case," 5.

to the land, it was extinguished by the Imperial government.³⁰ The judges dismissed the protection under the Royal Proclamation of 1763 stating that the land was “*terra incognita*” and not recognized under British law. Nevertheless, the Nisga’a did not give up. In November of 1971, they brought their case before the British Columbia Court of Appeal. While the Court of Appeal also dismissed the case on the account that the Nisga’a people were not officially recognized by the Crown, the Nisga’a continued to press the issue until it was brought before the Supreme Court of Canada in January of 1973.³¹

Strategically, the Nisga’a limited their claim to Aboriginal title, avoiding the contentious issue of “self-government.” Seven judges sat, marking the first significant case on Aboriginal land title and its use.³² The Supreme Court judges organized the question of Aboriginal title into three issues: (1) whether Aboriginal title existed in the first place; (2) whether, in the case of the Nisga’a, the title had been lawfully extinguished; (3) a procedural issue as to whether or not the Court had jurisdiction to grant such a declaration despite the fact that the Nisga’a had not secured permission to sue the Crown.³³ Six of the seven judges affirmed that Aboriginal title exists as a right within the common law, regardless of government recognition or acknowledgment by a treaty. However, three of those justices found that Aboriginal title had existed, but was extinguished. On the other hand, the other three justices found that there was no proof of extinguishment. On this calculation, the court was tied. Mr. Justice Louis-Philippe Pigeon, the seventh judge, expressed no

³⁰ Clarke, “The Nisga’a Indians and Aboriginal Rights,” 237.

³¹ Greymorning, “Calder Case,” 6.

³² Lorraine Weir, “Time Immemorial and Indigenous Rights: A Genealogy and Three Case Studies from BC,” *Journal of Historical Sociology* (2013): 389.

³³ Weir, “Three Case Studies from BC,” 389.

opinion on the main issue. Pigeon declined to believe that the Nisga'a peoples had their own ideas of land ownership and Chief Justice Davey summed up Pigeon's opinion on the matter: "They were undoubtedly at the time of settlement a very primitive people with few of the of the institutions of civilized society, and none at all of our notions of private property."³⁴

While the Nisga'a lost their battle in the Supreme Court by a count of 4-3, their battle brought the notion of Aboriginal title into the mainstream of Canadian Politics. On 8 August 1973, Jean Chretien announced that the Federal Government intended to settle Native land claims in parts of Canada where no treaties had yet been made.³⁵ It was fitting that under the Trudeau government in 1982, Jean Chretien, now Minister of Justice, was an integral drafter of S. 35(1), and the inclusion of the Royal Proclamation of 1763 in S. 25 (a) of the Canadian Charter of Rights and Freedoms. Section 35 (1) states that "existing aboriginal and treaty rights... are hereby recognized and affirmed," and section 35 (2) defines Aboriginal peoples of Canada as including Indians, Inuits and Métis."³⁶ However, there still remains considerable ambiguity within the Charter, because it does not spell out what these "existing rights" actually are: in the absence of agreements and treaties that would answer this, it has been left to the courts to decide."³⁷

Even after the adoption of the Charter, British Columbia's opinion on Aboriginal rights remained unchanged. In 1991, Mike Harcourt's NDP government was elected and agreed to open negotiations with the Nisga'a people and other First Nations

³⁴ Clarke, "The Nisga'a Indians and Aboriginal Rights," 242.

³⁵ Clarke, "The Nisga'a Indians and Aboriginal Rights," 248.

³⁶ Claude Denis, "The Nisga'a Treaty: What Future for the Inherent Right to Aboriginal Self-Government?" *Review of Constitutional Studies* (2002): 41.

³⁷ Denis, "The Nisga'a Treaty," 42.

groups throughout the province.³⁸ In the fall of 1995, the federal and BC governments finally proposed a settlement to the Nisga'a people. After a few years of negotiating and fine-tuning the proposal, a final agreement was signed on 4 August 1998. The Nisga'a settlement provided two thousand square kilometers of land, and self-governing institutions. Importantly, it capped more than a century of struggle for justice, and a new era of tolerance and respect for Canadians.³⁹ It was summed up perfectly on 2 December 1998 in the BC Legislature when Chief Joseph Gosnell declared " [t]oday marks a turning point in the history of British Columbia. Today, Aboriginal and non-Aboriginal people are coming together to decide the future of this province."⁴⁰

While the Nisga'a agreement was more than a century in the making, it was not without its critics. Many argued that the Federal Government was pursuing its own agenda of containing the scope of indigenous demands. The Nisga'a were only able to obtain a very small part of the land they had claimed, amounting to roughly 8 percent. Moreover, the Nisga'a were forced to make large concessions to the Provincial Government, including the amount of land obtained and limits to logging and fishing rights.⁴¹ On some issues, the Federal Government stepped in to compensate the Nisga'a. However, the Federal Government's fiduciary responsibility to compensate First Nations could be considered minimal at best. Lastly, the Nisga'a's agreement was met with great hostility from the opposition party: the BC Liberals.

While the Nisga'a agreement was not perfect, it did change the attitude of the Provincial Government regarding Aboriginal

³⁸ Denis, "The Nisga'a Treaty," 51.

³⁹ Joseph Gosnell, "Nisga'a Treaty is a Triumph for all Canadians," *Canadian Speeches* (1999): 2.

⁴⁰ Gosnell, "Nisga'a Treaty is a Triumph for all Canadians," 2.

⁴¹ Denis, "The Nisga'a Treaty," 10.

peoples. Interestingly, former BC Liberal Premier, Gordon Campbell, an active opponent of the Nisga'a agreement, suddenly changed his mind. In 2006, he stated to the Federal Government that:

Canada's first nations, Metis and Inuit people should not be further marginalized by dint of this effort to unite Canada, which leaves them noticeably out of the picture. It is high time we formally acknowledge Canada's third solitude -- the aboriginal peoples of Canada.⁴²

Moreover, on 26 June 2014, the Supreme Court of Canada made a landmark ruling in what legal observers are calling the most important Supreme Court ruling on Aboriginal rights in Canadian history.⁴³ For the first time, the Court recognized the existence of Aboriginal title on a particular site in British Columbia's interior. The courts determined that Aboriginal peoples still own their ancestral land, unless it was signed away in a treaty with the government.⁴⁴

There are nearly fifty million Native people in North and South America and almost everywhere they are dispossessed, poor and powerless. They have never given up, and they have continuously refused to be assimilated. Canada, and specifically British Columbia, has been given the opportunity to address these problems by providing a fair settlement of Native claims and creating a strong partnership moving forward. In conclusion, while the Nisga'a agreement was over a century in the making,

⁴² "Recognize Aboriginals as Nation in Canada, Campbell Says," *Vancouver Sun*, 27 November 2006.

⁴³ Sean Fine, "Supreme Court Expands Land-title Rights in Unanimous Ruling," *Globe and Mail*, 26 June 2014.

⁴⁴ "Supreme Court Expands Land-title Rights in Unanimous Ruling," *Globe and Mail*.

its conclusion marked a positive turning point for the future of Aboriginal and non-Aboriginal relations in Canada.

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The Visit: How Sadat's Visit to Jerusalem Changed the Israeli-Egyptian Conflict and the Course of History in the Middle East

MARIANA GALLEGOS DUPUIS

After three decades of war since the establishment of the state of Israel, Prime Minister Begin received Egyptian President, Sadat, in Jerusalem for what unfolded to be a historic visit. Through a review of the relevant preceding history, a description of the central individuals, the itinerary, and the momentous consequences of the visit, this paper categorizes this historic encounter of leaders of estranged nations and cultures as a standard of hope for peace in the Middle East.

Rarely do peace initiatives amount to the significance of Egyptian President Muhammad Anwar El Sadat's visit to Jerusalem on 19-21 November 1977, at the invitation of the Israeli Prime Minister Menachem Begin. Indeed, these two nations had been at war for three decades. Yet, Sadat's willingness to visit Jerusalem, and Israel's hospitality shook the status quo of the Middle East and cracked the impasse in peace negotiation. Most importantly, they created the platform for lasting peace between two enemies by deconstructing the illusions of each other. Also, the context of history preceding the visit illustrates, through contrast, how revolutionary the visit was: the Khartoum Conference after the 1967 War, Resolution 242, Sadat's expulsion of Soviet advisers from Egypt in 1972, and the Yom Kippur War in 1973. A background of both of these leaders also illustrates why the world was in utter disbelief at the emergence of this new hope for peace. Furthermore, a close analysis of how the visit unfolded, the invitations, the itinerary, the reaction of the public in both these countries and around the world, and Sadat's speech in the Knesset, the Israeli parliament,

demonstrates its significance. Lastly, an examination of its legacy establishes the visit as a vital step towards the Camp David Accords, and a beacon of hope for peace in the Middle East, despite provoking retaliation from the Palestinian Liberation Organization (PLO) and unease from the Arab world.

A brief historical overview of the years preceding the 1977 visit, signifies its coming as an important change in the status quo of the Middle East. For instance, at the Khartoum Conference in late August of 1967, most heads of Arab states united to gain collective leverage against Israel in peace negotiations (Syria boycotted the conference as it preferred direct military action). The conference concluded that, by uniting, they sought to “ensure the withdrawal...from Arab lands” occupied in the Six Day War.¹ This political effort would be done “within the framework of the main principles by which the Arab states abide, namely, no peace with Israel, no recognition of Israel, no negotiations with it, and insistence on the rights of Palestinian people in their own country.”² Sadat threatened to violate all of the “three no’s” by visiting Jerusalem and seeking peace. The Khartoum Conference’s declaration appeared to allow for participation in third party negotiations, namely with the United Nations, but avoided any specific concession, such as peace agreements with Israel and disallowing any unilateral Arab move towards partial peace with Israel for the return of one country’s land. In contrast, “Israel refused intermediaries, fearing outside attempts to compromise their position,” making it more beneficial for Israel to negotiate directly with individual Arab states.³ Furthermore, Israel was in a position of power after the Six-Day War and was in no rush to return land without secure

¹ Charles D. Smith, *Palestine and the Arab-Israeli Conflict* (Boston, MA: Bedford/St. Martins, 2013), 304.

² Smith, *Palestine and the Arab-Israeli Conflict*, 304.

³ Smith, *Palestine and the Arab-Israeli Conflict*, 305.

assurance that the exchange of land for peace would provide more than the return of Israel's status to pre-June of 1967. Therefore, the main reason for the impasse in peace negotiations was that the Arab states "stressed Israel's withdrawal from the territories as a precondition for the tacit recognition of Israel's right to exist, whereas Israel demanded explicit recognition in return for partial withdrawal from the lands they had acquired;" The United Nations argued that the priorities of both these groups need not be in conflict with each other.⁴

In order to make that argument, the United Nations put forward its own attempt to resolve Israeli occupation of Arab lands which came in the form of Resolution 242, passed by the Security Council on 22 November 1967. In summary, it emphasized the "inadmissibility of the acquisition of territory by war" and therefore required the "withdrawal of Israel from territories occupied in the recent conflict' and for 'termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity, and political independence of every state in the area...'"⁵ Inconsistencies between interpretations arose from the phrase "withdrawal of Israel from territories occupied" because the Soviet—American negotiated draft phrased the clause "from the territories," indicating all the territories acquired by war but the "the" was strategically excluded from the final clause because "Israel refused to agree to withdraw from all the territories it had taken."⁶ The Israeli Government viewed the resolution with open interpretation of which territories were to be returned while the Arab countries were assured by the Security Council that any border change from the map before the 1967 War would be

⁴ Smith, *Palestine and the Arab-Israeli Conflict*, 305.

⁵ Smith, *Palestine and the Arab-Israeli Conflict*, 306.

⁶ Smith, *Palestine and the Arab-Israeli Conflict*, 306.

minor. For instance, Jordan signed the resolution because of American assurance that the U.S. would endeavour to return the West Bank to Jordan.⁷ Discrepancies in translation led to different understandings of responsibilities. It is strange how the omission of the word “the” gambled the fate of all Palestinians in the West Bank and Gaza. Though a U.N. negotiator was appointed, the talks fell through over the next few years because of American contested interests due to their involvement in the Vietnam War and opposition from Syria and the PLO.

However, in Egypt, there was a crucial change in regimes after Gamal Abdel Nasser died of a heart attack in 1970. In his book *Thirteen Days in September: Carter, Begin and Sadat at Camp David*, Lawrence Wright argues that Sadat took the presidency as a mere placeholder, but proved himself to be “a master of the unexpected.”⁸ For instance, in 1972 “he expelled fifteen thousand Soviet troops and military advisers from Egypt” compromising the Soviet “foothold in the Middle East.”⁹ Israel did not consider Egypt a threat without Soviet support; however, in early October of the next year, the Egyptian army managed to cross the Suez Canal. Sadat’s objective in this maneuver was not to attempt to win a war “which he knew to be unrealistic”; rather, he sought to “erase the Egyptian (the Arab) inferiority complex vis-à-vis Israel,” in order to set a new “psychological balance” for the coming negotiations.¹⁰ Despite not having Soviet support, the Egyptian army still shattered the notion of Israeli military superiority. The Yom Kippur War was, ironically, another of Sadat’s deliberate steps towards peace between these two

⁷ Smith, *Palestine and the Arab-Israeli Conflict*, 306.

⁸ Lawrence Wright, *Thirteen Days in September: Carter, Begin, and Sadat at Camp David* (New York: Alfred A. Knopf, 2014), 20.

⁹ Wright, *Thirteen Days in September*, 20-21.

¹⁰ Ennio Di Nolfo, “The Cold War and the Transformation of the Mediterranean, 1960-1975” *The Cambridge History of the Cold War*. Vol. II (Cambridge: Cambridge University Press, 2010), 251.

nations. However, to the eyes of an onlooker, without the benefit of knowing the future, this would not seem to be a step towards peace, but rather another act of violence between two enemies.

Also, the personal backgrounds of President Sadat and Prime Minister Begin seem *prima-facie* like the least likely leaders of Egypt and Israel to forge a peace treaty. For instance, twenty years after the end of the Second World War, a Cairo magazine asked prominent Egyptians to write a letter to Hitler, published in 1953. Some of Sadat's letter follows below:

My Dear Hitler,

I admire you from the bottom of my heart. Even if you appear to have been defeated, in reality you are a victor. You have succeeded in creating dissensions between the old man Churchill and his allies, the sons of Satan...Germany will be reborn in spite of Western and Eastern powers...You did some mistakes...but our faith in your nation has more than compensated for them. You must be proud that you have become an immortal leader of Germany.¹¹

This letter highlights some of what Sadat saw as valuable in a leader of a nation: sovereignty and independence from "Western and Eastern powers," and an indelible legacy. These priorities are evident in his rule. How ironic it is that the author of this letter would later tour the Holocaust Memorial along side with Begin, who had lost his parents and his older brother in the Holocaust.¹² It is also essential to note that the main political platform of Begin's carrier was "to expand Israel's borders" for national security, which contrasts greatly with his final decision (with the

¹¹ Wright, *Thirteen Days in September*, 13 (cited in *Man of Defiance*, Israeli, 19).

¹² Lawrence Wright, *Thirteen Days in September*, 26.

support of the Knesset) to return the Sinai Peninsula to Egypt in the Camp David Accords.¹³ It is in this context of history then, that the world was so surprised at Sadat's announcement that he was ready to "travel to the ends of the earth if this will in any way protect an Egyptian boy, soldier, or officer from being killed or wounded...Israel will be surprised to hear me say that I am willing to go to...the Knesset...and debate with them."¹⁴ Even his audience, Egyptian parliamentarians and Yasser Arafat (present as a guest) regarded the statement as an empty gesture.¹⁵ Less than two weeks later, Sadat "held the world spellbound" when he arrived at Ben Gurion Airport.¹⁶

There are discrepancies in historical accounts on what the American reaction was to Sadat taking this initiative. For instance, in his book *Diplomacy of Surprise: Hitler, Nixon, Sadat*, Michael Handel states that Washington was displeased because direct contact between Israel and Egypt "endangered American leverage in the Middle East and wreck[ed] the American plan to prepare for the comprehensive approach at Geneva," but there was also worry of security: both for Sadat's life and for the danger of a coup d'état in Egypt.¹⁷ Similarly, in *Power and Leadership in International Bargaining*, Shibley Telhami accounts that Sadat's surprise "had stolen political initiative in a manner that could have undermined American strategy for a comprehensive settlement."¹⁸ However, in *Peace*

¹³ Wright, *Thirteen Days in September*, 31.

¹⁴ Wright, *Thirteen Days in September*, 31.

¹⁵ Wright, *Thirteen Days in September*, 20-21.

¹⁶ Wright, *Thirteen Days in September*, 21.

¹⁷ Michael I. Handel, *The Diplomacy of Surprise, Hitler, Nixon, Sadat* (Cambridge: Center for International Affairs, Harvard University, 1981), 331.

¹⁸ Shibley Telhami, *Power and Leadership in International Bargaining: the Path to the Camp David Accords* (New York: Columbia University Press, 1990), 137.

Process: American Diplomacy and the Arab-Israeli Conflict Since 1967, William B. Quandt contends that with progress in resolving the impasse moving at glacial speed, President Carter sent a handwritten note to Sadat in late October appealing to the mutual promise, made earlier in the year, “to do all they could for peace. Carter came across as saying that he has little more to offer and that the time had come for a bold move by Sadat. No specifics were mentioned, but the point was clear: if further progress was to be made, Sadat would have to take the initiative.”¹⁹ Quandt also notes that when Sadat did announce his willingness to go to Jerusalem, Washington was caught by surprise and was forced to “adjust its strategy because events in the Middle East that had proved to be beyond its control.”²⁰ Furthermore, after Begin extended a formal invitation to Sadat to come and debate in the Knesset on 12 November, The New York Times reported that when President Carter was “asked if he were pleased by Israel’s invitation, Mr. Carter replied ‘Yes.’ He said Israel had not consulted the United States on the matter.”²¹ Therefore, it may be safely concluded that although the White House might have been taken by surprise by the expressed willingness to visit Jerusalem and the extended invitation, this new development was nonetheless an important measure en route to amity.

The details of the visit beg for analysis because the manner in which it unfolded shows how unexpected this dauntless journey was. For instance, there were sharpshooters “stationed on the rooftops...in case terrorists suddenly emerged from the

¹⁹ William B. Quandt, *Peace Process: American Diplomacy and the Arab-Israeli since 1967* (Washington D.C.: The Bookings Institution, 2005), 191.

²⁰ Quandt, *Peace Process*, 191.

²¹ Anonymous, “Begin Invites Sadat to Visit Jerusalem for Talks on Peace.” *New York Times*: 1977.

presidential plane rather than Sadat himself,” emphasizing the level of distrust that the Israelis held in the hope for peace.²² It is important to realize how revolutionary this visit truly was. Wright claims that by “presenting himself to Israel, Sadat was introducing two cultures that were almost completely unknown to one another,” and changing the course of history.²³ For the Egyptians at home watching on television sets, seeing Sadat “staring into the faces of the enemy—until now figures of legend—suddenly and unsettlingly humanized the Israelis in the Egyptian mind,” prompting the nature of the conflict to undergo a metamorphosis. The word “humanized” is vital in understanding the impact of the visit; it changed the public’s understanding of who the enemy was on both sides of the Egyptian-Israeli border from an abstract notion of an impersonal threatening force to human beings with lively interests. Handel notes that “Sadat’s peace initiative was intended to bring immediate and concrete results...[the visit] was of intrinsic value, calculated to shock and prod others into action,” showing Sadat’s extraordinary flair for foresight.²⁴ In addition, Telhami claims that when “Sadat finally visited Jerusalem, Israelis danced in the streets in near euphoria, shockwaves rattled the Arab world, and the international community watched in disbelief.”²⁵ Telhami also emphasizes how, since the official beginning of the state of Israel, Egypt had “been its most avowed regional enemy, and major wars has been fought between the two nations in 1948, 1956, 1967 and 1973. A generation of Egyptians had grown up

²² Also, since the Israeli military orchestra did not have the sheet music for the Egyptian national anthem they had to learn to play it by listening to Cairo radio. Lawrence Wright, *Thirteen Days in September: Carter, Begin, and Sadat at Camp David*, 21.

²³ Wright, *Thirteen Days in September*, 22.

²⁴ Handel, *The Diplomacy of Surprise*, 332.

²⁵ Handel, *The Diplomacy of Surprise*, 332.

knowing Israel as an ‘illegitimate, temporary, Zionist entity.’”²⁶ This notion of betrayal of Arab unity through the violation of the “three no’s” of the Khartoum Conference is in distinct contrast with the joyous celebration which took place in Israel.

There are also a few more details of the visit that exhibit its significance; for instance, as Sadat made his way towards Jerusalem, crowds along the highway sang and openly wept. And when Sadat arrived at the historic King David Hotel, which Begin had participated in bombing years before, a carillon at the YMCA played “Getting to Know You.” One of Sadat’s bodyguards died of a heart attack at the hotel and his “corpse was smuggled into a cargo plane to keep rumours of assassination from taking root,” knowing that death could be so easily misinterpreted with the whole world watching.²⁷ These circumstances show an awareness of the importance of the history unfolding in Jerusalem. Sadat, as has already been mentioned, was a master of flabbergasting moves strategically planned for impact. It is no coincidence therefore, that the visit took place during one of the holiest days in Islam: “Eid al-Adha.” This feature further compounded the insult for the Arab world.²⁸ Not only was Sadat’s visit threatening to violate all of the “three no’s” of the Khartoum Conference, but he was doing so on a Muslim holiday.

Furthermore, the itinerary for the visit is also of enormous symbolic value. Sadat started the day with dawn prayers at the Al-Aqsa Mosque, and his “presence in this sacred space sent electrifying currents throughout the Muslim world, alternately of hope and betrayal.”²⁹ It was that same mosque in which a Palestinian tailor killed King Abdullah I of Jordan in 1951

²⁶ Telhami, *Power and Leadership in International Bargaining*, 6-7.

²⁷ Wright, *Thirteen Days in September*, 22.

²⁸ Wright, *Thirteen Days in September*, 21.

²⁹ Wright, *Thirteen Days in September*, 25.

because “he dared to negotiate with the Israelis. The bullet holes were still visible.”³⁰ He went on to the Dome of the Rock, and then went on to the Church of the Holy Sepulchre where Palestinians began to break through security ranks and called out saying “Sadat, what do you want from us.... We are against you. We don’t want you here.” Indeed, there was controversy over whether Sadat had intentionally forsaken the Palestinians in order to gain the peace Egypt desperately needed to fix its economy. However, in the Camp David Accords, President Carter and Sadat made constant efforts to include Palestinian rights as part of the peace treaty between Egypt and Israel, against Begin’s legendary negotiation tactics. Sadat then laid a wreath at the memorial for Israeli soldiers who had died since Israel had become a state. Afterwards, alongside Prime Minister Begin, Sadat toured the Holocaust Memorial and wrote down the following note in the guest book: “May God guide our steps towards peace. Let us put an end to the suffering of mankind.”³¹ In the article “Sadat Street,” a journalist for the Jerusalem Report, who previously was the director of Government Press Office and part of the team of Israeli officials in charge of the arrangements for the visit, wrote about how the itinerary developed:

“Let’s take him to Yad Vashem,” someone suggested, and we all laughed. The idea of an Arab leader, especially one who had supported Germany during World War II, touring the Holocaust memorial seemed absurd. Still, we didn't know what else to propose and so...we conveyed the invitation. Within a short time the answer arrived: President Sadat would be honored to visit Yad

³⁰ Wright, *Thirteen Days in September*, 25.

³¹ Wright, *Thirteen Days in September*, 26.

Vashem. We were amazed and delighted. “Maybe we should ask him if he wants to lay a wreath on the Tomb of the Unknown Soldier,” someone said, and once again we all laughed. Sadat was the enemy; many of the unknown soldiers commemorated died fighting on the Egyptian front. In a spirit of curiosity we forwarded the suggestion...President Sadat would be gratified by the chance to lay a wreath on the memorial.³²

The invitation to these two symbolic sites of Israeli history and the leader of the “enemy” supererogatorily honouring them are fascinating examples of the revolutionary nature of the visit.

Yet, the most important element of the visit was Sadat’s speech at the Knesset. He began with a statement that can almost be read as a proclamation of his intention of the visit: “Ladies and gentlemen, there are moments in the life of nations and peoples when it is incumbent on those known for their wisdom and clarity of vision to overlook the past, with complexities and weighing memories, in a bold dive towards new horizons.”³³ He used circumspect diplomatic language speaking to the leaders of Israel, aware that he was actually speaking to the rest of the world, especially the Arab world. For instance, the differentiation between the “life of a nations” and “life of...a peoples” reflects the second “no” of the Khartoum Conference, “no recognition of Israel” and casts vigilant ambiguity of the legitimacy of the state of Israel.³⁴ Furthermore, as Thomas L. Friedman later noted in his article “the Sadat Standard” for the Foreign Affairs section of the New York Times, Sadat firstly assured the Israelis of what was most important to them by saying that in “all sincerity, I tell you, we welcome you among us, with full security and safety,”

³² Ze’ev Chafets, “Sadat Street,” *The Jerusalem Report* Oct. 1991: 22.

³³ Wright, *Thirteen Days in September*, 28.

³⁴ Smith, *Palestine and the Arab-Israeli Conflict*, 304.

before continuing with his demand.³⁵ Then he added “I have not come here for a separate agreement between Israel and Egypt,”³⁶ encompassing the Palestinian rights with his demands. As for return of territory, Sadat argued:

Peace cannot be worth its name unless it is based on justice, and not on the occupation of the land of others. It would not be appropriate for you to demand for yourselves what you deny others.... You have to give up, once and for all, the dreams of conquest, and give up the belief that force is the best method for dealing with the Arabs.³⁷

Wright notes that it is bizarre for the (four-time) defeated party to come to the parliament of the victors and lay down the terms for peace. When Sadat finished his speech, Begin did not applaud. The debate on peace terms did not take place and instead, he insisted on Israel’s right to exist by saying “No sir, we took no foreign land... We have returned to our homeland,” and referencing how the generation of survivors of the Holocaust “swore an oath of allegiance: never again shall we endanger our people.”³⁸ Begin perhaps felt the responsibility for that promise more than anyone else in the world at that time as the leader of the Jewish Homeland and himself a Holocaust survivor. With these deep discrepancies in foundation of the leaders’ respective national identity, official peace between Israel and Egypt was still many months away.

The consequences of the visit included acts of terrorism, the Camp David Accords, and the murder of Sadat, who paid for peace with his life and the hatred of much of the Arab world. The

³⁵ Thomas L. Friedman, “The Sadat Standard.” *New York Times*: 1998.

³⁶ Friedman, “The Sadat Standard.”

³⁷ Wright, *Thirteen Days in September*, 28-29.

³⁸ Wright, *Thirteen Days in September*, 29-30.

PLO perpetrated two infamous terrorist attacks in retaliation to Sadat's visit and what it symbolized. The first started when on 18 February 1978, two Palestinian terrorists murdered Youssef el-Sebai, a newspaper editor and a good friend of Sadat who had accompanied him to Jerusalem. The terrorists declared that everyone "who went to Israel will die...including Sadat."³⁹ The second attack became the worst terrorist attack in Israeli history: eleven Palestinian militants landed their boat 40 miles of their intended destination, Tel Aviv. After killing an American photographer they encountered, they made their way onto the highway and attacked cars with their rifles and grenades. They then hijacked a taxi and two buses, killing most of those on board. Thirty-eight Israelis, including thirteen children were killed, and many more wounded.⁴⁰ These attacks were meant to enflame Begin into zealous vengeance, and therefore, beckon the Arab world to retaliate. Three days after the coastal highway attack, the Israeli army marched into southern Lebanon "with the declared mission of punishing Palestinian forces there, but in the process kill[ed] more than a thousand civilians, leaving hundreds homeless, and escalat[ing] Arab fears the Israel would annex the southern part of the country."⁴¹ Peace was still far away. However it did come: the Camp David Accords did establish a lasting peace between the two nations. Furthermore, in the document's preamble, the third listed guide for peace in the Middle East references Sadat's visit to Jerusalem and Begin's later visit to Ismailia as having "created an unprecedented opportunity for peace which must not be lost if this generation and future generations are to be spared the tragedies of war."⁴² This assured the significance of the visit in the process for peace

³⁹ Wright, *Thirteen Days in September*, 40.

⁴⁰ Wright, *Thirteen Days in September*, 40-41.

⁴¹ Wright, *Thirteen Days in September*, 41.

⁴² Telhami, *Power and Leadership in International Bargaining*, 225.

between Egypt and Israel.⁴³ Arab leaders did rally in Tripoli, on 1 December 1977, to attempt to prevent Sadat from “making a feared separate peace with Israel,” a Washington Post reporter testified. He also noted the pressure on the Syrian President Hafez Assad to at once coerce Sadat, while prudently avoiding “a complete break with Egypt, the Arab heartland,” but the Arab League headquarters were moved from Cairo.⁴⁴ When the headquarters were eventually reinstated in Cairo (as Sadat had predicted), they were not far from the Israeli embassy, which was established by the Camp David Accords.⁴⁵ After Sadat’s murder, President Hosni Mubarak eagerly worked to repair relations with the Arab world that Sadat severed in the Egyptian-Israeli peace process because Egypt received the Sinai Peninsula gradually. This was due to the joint efforts of President Carter, Prime Minister Begin, and President Sadat and their respective administrations.⁴⁶

Sadat’s visit to Jerusalem and Begin’s hospitality are exceptional models of effort between strangers and previous enemies to put their lives, careers, and military supremacy at risk in order to guide their nations to peace in a region of the world that has often seen the turmoil of war. The visit defied the context of history and inspired the leaders of nations to work diligently to bring about tangible peace. Although it met vigorous opposition and it was not a perfect peace, as it neglected to achieve the prescribed rights of the Palestinians, the visit transformed what ignorance had labeled a blood feud into diplomatic negotiations with a future.

⁴³ Telhami, *Power and Leadership in International Bargaining*, 225.

⁴⁴ Jonathan C Randal, “Anti-Sadat Arabs Meet in Tripoli.” *The Washington Post*: 1977.

⁴⁵ Chafets, “Sadat Street.”

⁴⁶ William E. Farrell, “Sinai After April 25; News Analysis.” *The New York Times*: 1982.

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Canada's Court-Led Journey to Same-Sex Marriage

SARAH MATHESON

During the thirty years from Canada's first legal case against the definition of marriage to that definition's amendment in 2005, the Provincial and Supreme Courts have been at the forefront of making same-sex marriage a legal reality. This essay chronicles the numerous legal battles Canadians have undergone in pursuit of marriage equality, and submits that those court cases were the driving force behind changing government policy; in every province as well as at the federal level, amendments to marriage acts were made in response to court decisions rather than by proactive government action. While this can be attributed to the different nature of judicial and legislative bodies, the latter having to answer to a large portion of voters opposing same-sex marriage, in several instances, government action actually slowed changes advocated by the courts. Canada's ability to claim being the fourth country in the world to legalize same-sex marriage is thus owed to the many Canadians who took their grievances to court and the many more who supported them, rather than the governments that accepted those court decisions after the fact.

Canada's legal definition of marriage met its first official challenge in 1974 when Chris Vogel and Richard North applied for a marriage license.¹ Their attempt marked the beginning of thirty years of growth in legal equality and protection from discrimination for same-sex couples. The bulk of that development took place in the 1990s with a number of landmark cases that saw "sexual orientation" placed on equal ground with the other descriptors of section 15(1) of the *Charter of Rights and Freedoms*, and numerous amendments to existing

¹ Pamela Dickey Young, *Religion, Sex, and Politics: Christian Churches and Same-Sex Marriage in Canada* (Winnipeg: Hignell, 2012), 10.

discriminatory laws. By 2002, the right of same-sex couples to marry was being debated at both the provincial and federal levels of government. Finally in 2003 the first definite breakthroughs were made in a series of Provincial Court of Appeal cases: the *Marriage Act*'s definition of marriage was found to violate rights protected under section 15(1) of the *Charter of Rights and Freedoms* and would therefore be revised. In the next two years nearly every province corrected their act's definition, and on 19 July 2005, same-sex civil marriage was legalized by Canadian Parliament. This essay tracks the numerous cases that led to the 2005 legislation and Canadians' reactions to the marriage debate to illustrate that, in this instance, the higher courts were the true advocates for equality while elected governments typically slowed its progress.

Before the legalization of same-sex marriage could be discussed in court, the discrimination of Canadians based on sexual orientation had to be legally eliminated. The first steps toward this came in December of 1967, with Prime Minister Pierre Trudeau's Omnibus Bill, and December of 1977, with Quebec's inclusion of sexual orientation "as a prohibited ground of discrimination in the Quebec Human Rights Code."² Fifteen years later, the 1992 Ontario Court of Appeal case *Haig v. Canada* ruled, "that the absence of sexual orientation from the list of proscribed grounds of discrimination in s. 3 of the Canadian Human Rights Act was unconstitutional and in violation" of section 15(1) of the *Charter*.³ Though sexual orientation was not explicitly listed under s. 15, it was found to be an "analogous ground for discrimination."⁴ Three years later,

² Jane Adolphe, "The Case Against Same-Sex Marriage in Canada: Law and Policy Considerations," *BYU Journal of Public Law* 18, no.10 (2004): 488.

³ Adolphe, "The Case Against Same-Sex Marriage in Canada," 488.

⁴ *Haig v. Canada*, [1992] C.H.R.R.D., 226.

in the 1995 Supreme Court Case *Egan v. Canada*, that decision was upheld.⁵ In the *Egan* case, a homosexual couple in their sixties fought the limitations the term “spouse” imposed upon their ability to collect benefits under the *Old Age Security Act*. While the Court agreed that sexual orientation was protected under s. 15(1) they divided over the issue of whether the term “spouse” was discriminatory as it stood. Justice L’Heureux-Dubé offered up a definition of discrimination in her dissenting opinion, stating:

“when members of that group have been made to feel, by virtue of the impugned legislative distinction, that they are less capable, or less worthy of recognition or value as human beings or as members of Canadian society, equally deserving of concern, respect, and consideration.”⁶

Her definition, now well accepted, advocated a fairly broad understanding of discrimination and demonstrated many Canadians’ growing acceptance of each other regardless of difference. In 1996 with the passing of Bill C-33, “discrimination was prohibited on the ground of ‘sexual orientation’ under the federal Human Rights Act.”⁷ Acceptance of same-sex partnerships had grown to the point where they were being legally protected. Equality for such couples was still a long way off however, and it would take several court battles in the first years of the next century to secure them the legal ability to marry.

The year 2003 was one of definite progress in the legal realm for same-sex marriage. On 1 May, the British Columbia Court of Appeal released the verdict on *EGALE Canada Inc. v.*

⁵ Young, *Religion, Sex, and Politics*, 11.

⁶ *Egan v. Canada*, [1995] 2 S.C.R. 513: 545.

⁷ Young, *Religion, Sex, and Politics*, 11.

Canada. This recognized barriers to same-sex marriage in both the province's definition of marriage, the "voluntary union for life of one man and one woman," and the accepted "legal definition of marriage under section 91(26) of the *Constitution Act, 1867*."⁸ It concluded that "the common law definition of marriage violated the right to equality under section 15" of the *Charter of Rights and Freedoms* and should therefore be amended.⁹ The case arose when seven couples were denied marriage licenses by British Columbia's Director of Vital Statistics and consequently petitioned the court with support from Equality for Gays and Lesbians Everywhere Canada (EGALE).¹⁰ The first verdict delivered, by BC's lower court, deemed the definition of marriage inalterable because it survived in the Canadian constitution through an 1866 case from the House of Lords: *Hyde v. Hyde and Woodmansee*.¹¹ In that case, marriage was declared to "be defined as the voluntary union for life of one man and one woman, to the exclusion of all others." This definition was offered in reaction to a case regarding polygamy and divorce, however, and precluded by the Justice's own limitation on marriage: "as understood in Christendom."¹² Though the circumstances surrounding the formulation of the definition were not directly addressed in the *EGALE* case, it is interesting to note that the 2003 definition of marriage was based on a one hundred-forty year old statement made in response to a very specific issue. The lower court argued that changing the *Hyde* definition (it being the legal definition at the creation of the *Constitution Act, 1867*) would entail the same process as making

⁸ Connie L. Mah, "The History of Marriage," *Law Now* 29, no.6 (June/July 2005).

⁹ Mah, "The History of Marriage."

¹⁰ Julie C. Lloyd, "Defining Marriage, Step One: EGALE v. Canada," *Alberta Law Review* 39, no.4 (April 2002): 963.

¹¹ Lloyd, "Defining Marriage, Step One," 963.

¹² Lloyd, "Defining Marriage, Step One," 967.

a constitutional amendment. Consent from multiple provinces and Parliament would be necessary, and therefore the ability to change the definition of marriage was *ultra vires* BC provincial government.¹³ When *EGALE* reached the Court of Appeal however, it was subjected to a *Charter of Rights and Freedoms* analysis, and, upon finding that the standing definition of marriage violated s. 15(1), the question of its constitutional sanctity became irrelevant. The definition of marriage would be corrected to read “the lawful union of two persons to the exclusion of all others.”¹⁴ That modification was to be suspended to allow Parliament time to comment: an action that angered all those who had so nearly won the ability to marry.

One month later, on 10 June 2003, the Ontario Court of Appeal passed judgement on *Halpern et al. v. Canada*, agreeing that the current common law definition of marriage wrongly interfered with s. 15(1) and did “not constitute a reasonable limit ... as contemplated by s. 1” of the *Charter*.¹⁵ The Court declined suspending the modification to Ontario’s *Marriage Act*, against the advice of the Attorney General, because suspension “would perpetuate the charter violation.”¹⁶ Upon the announcement of the *Halpern* decision and redefinition, British Columbia lifted its suspension as well.

By the end of 2004, four provinces and one territory had followed suit: Quebec in *Catholic Civil Rights League v. Hendricks*, the Yukon in *Dunbar v. Yukon*, Manitoba in *Vogel v. Canada*, Nova Scotia in *Boutilier v. Nova Scotia*, and Saskatchewan in *N.W. v. Canada*. In *Dunbar*, the judgement in

¹³ Lloyd, “Defining Marriage, Step One,” 964.

¹⁴ Adolphe, “The Case Against Same-Sex Marriage in Canada,” 482.

¹⁵ Sharon Roberts and Tim Outerbridge, “Same-Sex Unions and the Law: An Introduction,” *Alberta Law Review* 41, no.2 (September 2003): 569.

¹⁶ Graham Gee and Gregoire Webber, “Same-Sex Marriage in Canada: Contributions from the Courts, the Executive and Parliament,” *The King’s College Law Journal* 16, no.1 (Winter 2005): 135.

favour of a new definition was accompanied by costs ordered against the Province for not “noting the matter should not have gone ahead given the decisions on point in other jurisdictions.”¹⁷ Evidently, some felt the question of same-sex marriage legality had already been answered, but governments were not accepting the change freely. Every amendment of a provincial marriage act before July 2005 was the result of a court case rather than proactive government intervention. In the marriage issue, the judicial system was essential for correcting the inequality: something that would be true at the federal level as well.

Parliament had first officially addressed same-sex marriage in 2002 through the Standing Committee on Justice and Human Rights.¹⁸ While the Committee opened up a discourse on the subject, it did not actively push for any changes. Critics argued that the Committee’s wide scope of issues to address ensured the marriage debate was lost amongst broader discussions.¹⁹ Notable government action on the issue did not occur until 2003, when Minister of Justice Martin Cauchon pushed for the redefinition of marriage after the *Halpern* decision’s release.²⁰ The judgment and Cauchon’s support were major issues of debate at a Liberal cabinet meeting held on 17 June 2003, at which it was decided that the government would not be appealing the redefinition decisions of the provinces.²¹ After that point, Prime Minister Jean Chrétien gave assent for granting government approval for same-sex marriage (what would eventually be Bill C-38), though his party was divided over when and how they should attempt to pass the motion. With the planned party takeover by Paul Martin

¹⁷ Mah, “The History of Marriage.”

¹⁸ Sylvain Larocque, *Gay Marriage: The Story of a Canadian Social Revolution*, trans. Robert Chodos, Louisa Blair, and Benjamin Waterhouse (Toronto: James Lorimer & Company, 2006), 91.

¹⁹ Larocque, *Gay Marriage*, 91.

²⁰ Larocque, *Gay Marriage*, 141.

²¹ Larocque, *Gay Marriage*, 145.

imminent they felt there would not be enough time to pass a bill before the change.²² Further, waiting and submitting the issue to the Supreme Court would subdue some of the protest the party was sure to face; if the court ruled in favour of same-sex marriage, the Liberals would be seen as following suit rather than as the driving force behind the idea. While this may have been a wise political move for the party, it was decided on behalf of party interests rather than those of the Canadians waiting for marriage equality.

Parliament referred the task of redefining marriage to the Supreme Court by submitting three questions: “Does Parliament have the exclusive legal authority to define marriage? Is the proposed act compatible with the Charter of Rights and Freedoms? Does the Constitution protect religious leaders who refuse to sanctify same-sex marriage?”²³ Paul Martin, after replacing Chrétien as Prime Minister on 12 December 2003, submitted a fourth question to the Supreme Court: “Is the opposite-sex requirement in the common law definition of civil marriage consistent with the *Charter*?”²⁴ The Court denied an answer to that question, however, on the principle that “it was unclear what ‘hypothetical benefit Parliament might derive from an answer.’”²⁵ It was effectively covered by the previous questions and any decision specifically regarding the issue would not have affected the overall answer or the way the charter’s notwithstanding clause might be used in the future. Here, government action was simply a hindrance.

On 9 December 2004 the Supreme Court released its *Reference re Same-Sex Marriage*, affirming that the *Charter of Rights and Freedoms* qualified all previous court decisions that

²² Larocque, *Gay Marriage*, 146.

²³ Adolphe, “The Case Against Same-Sex Marriage in Canada,” 480.

²⁴ Gee and Webber, “Same-Sex Marriage in Canada,” 136.

²⁵ Gee and Webber, “Same-Sex Marriage in Canada,” 140.

found the definition of marriage violated s. 15(1). The Court also agreed that the definition as per the *Hyde* ruling was not inalterable; it invoked the “living tree” interpretation of the constitution, which highlighted its ability to adapt to the changing needs of Canadian government and society.²⁶ In the reference, the Court emphasized the distinction between marriage and civil unions, ensuring that their specific support of same-sex marriage as well as civil unions was clearly stated.²⁷ They made it well known that, “if ‘civil unions are a relationship short of marriage,’ they are unequal to marriage,” thereby eliminating any opportunity to deny same-sex couples the full ability to marry.²⁸ Importantly, the Court also stated that religious officials opposed to marrying same-sex couples should not be punished for denying service to such couples, as they are exercising their right to religious freedom as protected under s. 2(a) of the *Charter of Rights and Freedoms*.²⁹

The reference decision was appreciated by many Canadians, but there were also those who felt apprehensive about the new idea of marriage. By June 2005, New Brunswick and Newfoundland had joined the pro-same-sex marriage provinces, leaving only Prince Edward Island, Alberta, and the two remaining territories behind.³⁰ Of those, Alberta’s aversion to redefining marriage was the most publicized. A large concern of those opposed to redefinition was that “couples who were denied marriages might launch civil and human rights proceedings against such churches” and religious institutions that denied

²⁶ Gee and Webber, “Same-Sex Marriage in Canada,” 137.

²⁷ Gee and Webber, “Same-Sex Marriage in Canada,” 138.

²⁸ Gee and Webber, “Same-Sex Marriage in Canada,” 138.

²⁹ Gee and Webber, “Same-Sex Marriage in Canada,” 138.

³⁰ “A Primer on Bill C-38: the Path to a Same-sex Marriage Law in Canada,” *Canadian Press NewsWire* (28 June 2005).

them.³¹ Alberta has a strong Christian community that had been tied to politics during the long domination of the Social Credit Party.³² As such, the choice to support or oppose redefinition was a formidable obstacle for the Premier; either decision would anger a sizable portion of the population. This did not seem to concern Conservative Premier Ralph Klein, however, as his stance was clear. Klein announced his dissatisfaction with the *Halpern* ruling, stating, “not to say we won’t do our part to protect gay rights. But marriage is where we draw the line.”³³ The issue of same-sex marriage had actually been suspended in 2000 when the provincial government invoked the notwithstanding clause of s. 33(1) of the *Charter of Rights and Freedoms*. This meant the government could refrain from making any decisions regarding redefinition until 2005 at the earliest, and even then the amendment of the *Alberta Marriage Act* was somehow overlooked. Only in 2014 did Alberta announce it would make the change to its Act.³⁴

The Alberta government’s actions illustrate that redefining marriage was not forced upon the provinces by an external power. The Supreme Court reference did not bind any government to accepting its decision, parliament included. Further, “nothing precludes any Canadian or provincial government from invoking the notwithstanding clause of section 33 of the *Charter of Rights and Freedoms* to prohibit same-sex marriages,” as was the case in Alberta and could still occur today. The court decisions within the provinces did force the amendments of provincial marriage acts, but appeals were put

³¹ Young, *Religion, Sex and Politics*, 66.

³² Gloria Filax, “Producing Homophobia in Alberta, Canada in the 1990s,” *Journal of Historical Sociology* 17, no.1 (March 2004): 88.

³³ Larocque, *Gay Marriage*, 77.

³⁴ “Alberta to Recognize Validity of Same-Sex Marriages,” *CBC News*, 17 April 2014.

forth by groups suffering discrimination, not by government parties advocating equality. Likewise at the federal level, although the Supreme Court did not force parliament to amend marriage's definition, change was not set in motion until the provinces' widely publicized cases and Supreme Court reference had been released. Without the wave of changes enacted by courts across the country, the federal cabinet would assuredly not have proposed Bill C-38.

Also known as the *Civil Marriage Act*, Bill C-38 redefined civil marriage as "the lawful union of two persons to the exclusion of all others."³⁵ The act itself consisted of a considerable preamble, which many felt was necessary for "establishing a context and rationale for legislation," and fifteen clauses.³⁶ It amended eight existing federal acts "including the *Canada Business Corporations Act*, the *Divorce Act*, and the *Income Tax Act*."³⁷ The bill was met with fierce opposition by many in Parliament, most significantly by the Conservatives, who passed a motion to stop it before its Second Reading, though that was not successful.³⁸ As stated previously, a major concern for many was that legislating same-sex marriage would lead to the discrimination of opposing religious groups. On this point however, the Supreme Court had made it clear in their reference that "the mere recognition of the equality rights of one group cannot, in itself, constitute a violation of the rights of another."³⁹ Bill C-38 itself clearly promised that religious institutions could deny marriage services to same-sex couples without fear of legal

³⁵ Mary C. Hurley, "Bill C-38: The Civil Marriage Act," Parliament of Canada: Law and Government Division.

³⁶ Hurley, "Bill C-38: The Civil Marriage Act."

³⁷ Peter Bowal and Carlee Campbell, "The Legalization of Same Sex Marriage in Canada," *American Journal of Family Law* 21, no.2 (Summer 2007): 37.

³⁸ Gee and Webber, "Same-Sex Marriage in Canada," 142.

³⁹ Hurley, "Bill C-38: The Civil Marriage Act."

action, as s. 2(a) of the *Charter of Rights and Freedoms* was just as relevant and protective as s. 15(1). The bill was debated over a period of several months, during which representatives from religious and advocacy communities, as well as academics and legal advisors, delivered testimony on the issue. It survived all three readings with only one amendment from the original report, and officially passed the House of Commons on 28 June 2005 in a vote of 158 to 133.⁴⁰ On 19 July it passed the Senate and received Royal Assent the next day, making Canada the fourth country to legalize same sex-marriage.⁴¹

Parliament's legal authorization of same-sex civil marriage was a major step towards making Canada a more inclusive and indiscriminatory country because it set the standard for civil marriage legislation. Of course, most provinces had already converted to the new definition, and the ones left behind could not be forced by parliament to amend their marriage acts—solemnization of marriage falls under provincial jurisdiction in s.92 (12) of the constitution.⁴² While Bill C-38 was a major step for same-sex couples, it did not put an end to the marriage debate. Many Canadians and political parties continued to oppose the redefinition: although same-sex marriage was legally permitted in Prince Edward Island and Alberta after 2005, PEI did not amend its *Marriage Act* vocabulary until 2009, and Alberta only announced its intention to do so in April 2014.⁴³

Looking at these two provinces and the numerous court battles it took to change legislation in the rest of Canada, it is easy to condemn elected governments for so reluctantly amending marriage laws. A decade passed between the Ontario

⁴⁰ Hurley, "Bill C-38: The Civil Marriage Act."

⁴¹ Hurley, "Bill C-38: The Civil Marriage Act."

⁴² Can Const. of 1867, art. 92, s. 12.

⁴³ "P.E.I. Proclaims Same-Sex Marriage Amendments," *CBC News*, 21 December 2009.

Court's ruling in *Haig* that "sexual orientation" is analogous to the terms specified in s. 15(1) of the *Charter of Rights and Freedoms* and the first provincial Court of Appeal case won for same-sex couples, and both those gains for equality were forced upon government by the courts. It cannot be forgotten however that elected parties and judicial bodies have different roles—governments, in theory, must answer to their voters, and there were as many voices opposed to redefining marriage as voices in support of it. Only an impartial legal body, largely free from the consequences of voter opinion, had the authority and ability to assess the *Charter of Rights and Freedoms*' application to marriage law and encourage redefinition.

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