

1875: Métis Government and Métis Law

Vocabulary

enfranchised *appointee* *sphere* *ideologies* *spectre*
litigation *interim* *usurp* *preamble*
tyrannical *mediating* *stipulated* *magistrate*
belligerent *superseded* *provocateur* *insurrection*

The system of government used by England and many of its colonies, including Canada, was thought to be the most progressive in the world throughout the 19th century. But the British system of government was not truly democratic. For example, in Canada many people were not yet enfranchised. Women could not vote. Indians could not vote. Working people and poor people could not vote unless they owned property. Substantial wealth was required of potential appointees to the Senate in Canada. Appointees had to be British subjects aged 30 or over, who owned real property valued at \$4000 and clear of debt.

The Métis system of government, on the other hand, was described by historians as uncivilized, yet it was in many ways a model democracy. All positions of social importance, save that of the priests, were filled by elected members. This was true not only in the political positions, such as council members, but also in the economic sphere of activity. Men who had proven themselves good hunters, or men of wisdom or compassion, were elected to the Métis council.

At St. Laurent, the Métis council became a permanent facet of village life. This was simply a natural progression from the hunting councils of earlier times, which were elected only for the duration of the buffalo hunt. Traditionally, captains and leaders were elected to office on the eve of a hunt, and served only until the hunt ended.

The laws that were developed through this practice, known as the laws of the prairie, served only to regulate the hunt, and did not attempt to regulate civil or criminal matters on a permanent basis.

Then, in 1873, the Métis of St. Laurent updated and formalized the laws of the prairie into a written document, known as the *Laws of St. Laurent*. These laws covered all aspects of Métis life in the district, not just the conduct of people engaged in the hunt. The traditional principles remained unchanged, however. All laws were made by elected representatives of the people. Hunters were governed by hunters. Community members were governed by members of the community who had no special status apart from their proven record of ability and generosity. The only exception to this was the priests who, as part of the Catholic Church, represented forces and ideologies that did not develop and emerge directly from within the Métis community.

The representatives of the Church, particularly Fathers André and Moulin, played a prominent part in the creation of the *Laws of St. Laurent*. As a result, a stern religious morality was built into these laws. The *Laws of St. Laurent* went far beyond the creation of a moral civil code of conduct, however, They set up a written system of enforceable guidelines for both the hunting and the preservation of the remaining buffalo herds.

By 1873 the scarcity of buffalo was becoming critical, and the spectre of starvation hovered over the people of the North West.

In September 1874, the federal government received a petition from the Métis of Fort Qu'Appelle, asking that steps be taken immediately to preserve the remaining buffalo as a food

supply for the Natives. The government in Ottawa, however, exhibited little concern for such matters, and no action was taken on this request.

This government inaction tended to justify the steps taken by the Métis of St. Laurent in creating their own laws for the protection of the buffalo. There were three groups of people on the prairies whose very existence depended upon the buffalo. There were the Indians who had not settled on reserves, such as the numerous Cree bands under the leadership of Chief Big Bear. There were the Métis hunters under the direction of Gabriel Dumont, and there were the Hudson's Bay Company's northerly posts such as Fort Edmonton and Fort Carlton. The Company simply could not carry out its winter operations without pemmican, the vital food staple made from smoked buffalo meat. As competition for the scarce buffalo herds increased, these three groups came into open conflict with each other.

While the *Laws of St. Laurent* served to ensure an equitable share of the dwindling herds for the Métis families involved, the laws came into conflict with the needs of the Hudson's Bay Company. Lawrence Clarke, the Company factor at Fort Carlton, was also the legal representative of the federal government as a magistrate. In this role, he sat in judgment when people entered into civil or criminal litigation. The *Laws of St. Laurent* conflicted with Lawrence Clarke's interests in both his positions: As Hudson's Bay Company factor, and as magistrate of the federal government.

In drawing up the *Laws of St. Laurent*, the Métis had been careful to impress upon the federal government that the laws were not designed to usurp Canadian authority in the North West territories. They were intended as an interim measure only. The preamble to the *Laws of St. Laurent* stated:

It is well understood that in making these laws and regulations the inhabitants of St. Laurent in no ways pretend to constitute for themselves an independent state but the actual situation of the country in which they live obliges them to take measures to maintain peace and union amongst them.... But in forming these laws, they acknowledge themselves as loyal and faithful subjects of Canada, and are ready to abandon their own organization and to submit to the laws of the Dominion, as soon as Canada shall have established amongst them regular magistrates with a force sufficient to uphold in the country the authority of the laws.

In 1875, Lawrence Clarke took bold action to regain his power over the Métis hunters whose laws gave them effective control over the buffalo. Clarke, using his position as magistrate, requested that federal troops be brought in to crush what he considered to be a rebellion against the Canadian government. He complained to the Lieutenant Governor that the Métis "have assumed to themselves the right to enact laws, rules and regulations for the Government of the colony and adjoining countries of a most tyrannical nature." Clarke closed his letter by stating:

Unless we have a certain protective force stationed at, or near Carlton, the ensuing winter, I cannot answer for the result. Serious difficulties will assuredly arise and life and property be endangered.... I have thus presumed to address you not as an officer of the HBC but in my magisterial capacity.

Awaiting anxiously for a reply, I have the honor to be sir, your obedient servant, Lawrence Clarke, J.P. for the North West Territories.

The Laws of St. Laurent were placed in jeopardy by the very man who had the most to gain from their destruction. If Lawrence Clarke could establish himself as the man who had the final say over the hunting of buffalo and distribution of the meat, he could ensure that his company would continue to have a good supply of pemmican for its winter operations. This would also be

a means by which Canadian police could enter the area, not as an invading army, but as a force capable of mediating disputes and enforcing Canadian law in the North West.

The 1875 Incident

The *Laws of St. Laurent* functioned to preserve the remaining buffalo and to set up a system of harvesting, rather than plundering, this vital food supply. The laws worked well from their inception in December 1873 until the late spring of 1875, when a group of Indian and Métis hunters broke an all important law. This law stipulated that no one could hunt buffalo until the time decided upon at a general public assembly which was slated for the end of April every year. The article from the *Laws of St. Laurent* stated: "No one, unless authorized by the Council can leave before the time fixed for departure."

These hunters, by starting their hunt prior to the time decided upon for the community hunt, committed an act that could have resulted in tragedy. Had they driven the buffalo out of the region, there could have been severe hardship, and even starvation for some. According to the punishments set out in the *Laws of St. Laurent*, the culprits, if proven guilty, were to be fined heavily.

This small band of renegade hunters, under the direction of Peter Ballendine, a Métis employee of the Hudson's Bay Company, left to hunt for the Company without consulting the Métis council of St. Laurent. The council was informed of their activities, however, and an emergency meeting was called. The council ordered Gabriel Dumont to take a small armed party out on to the prairie and capture Ballendine and his group. Dumont was also instructed to put them on trial.

Dumont quickly located the hunters and arrested them. They were tried and found guilty of leaving for the hunt prior to the time decided upon by council. Ballendine and several of his Indian companions became belligerent. They argued that the Council of St. Laurent had no jurisdiction over them. Dumont ordered that their carts, guns and equipment be seized, and in addition, Ballendine was fined \$25.

Ballendine then returned to Fort Carlton and told the story of his capture and trial to his supervisor, Lawrence Clarke, who was also acting in the capacity of a court magistrate for the federal government. In the meantime, the Métis, under the leadership of Gabriel Dumont, left on the annual spring buffalo hunt. Unknown to them, Lawrence Clarke, in his capacity as magistrate, was using Dumont's arrest of Ballendine as an excuse to abolish the *Laws of St. Laurent*. His plan was to bring in Canadian law, and Canadian police to enforce it.

On Clarke's advice, Lieutenant Governor Alexander Morris directed the North West Mounted Police commander at Swan River, some 430 kilometres east of Fort Carlton, to investigate the matter. A force of 50 police arrived at Fort Carlton on August 5, 1875. Colonel French, the commanding officer of the troop, immediately launched a thorough investigation. In his initial report to Lieutenant Governor Morris, French explained:

As I expected, there is no reason for alarm with reference to the affair of Gabriel Dumont. It is customary for the [Métis] when organizing buffalo hunting parties to place themselves voluntarily under rules and regulations framed by certain officers whom they elect. These regulations usually impose fines for various offences and disobediences of orders, particularly when in the immediate vicinity of, or in chase of the buffalo. In the case reported by Mr. Clarke it appears that Gabriel Dumont as president or captain of a band mostly from St. Laurent undertook to punish and fine certain individuals who did not belong to his camp. Dumont is at present hunting on the plains, and may hereafter be arrested and tried for this offence, and as Mr. Clarke is the only J.P. in this vicinity, I propose leave Inspector Crozier to assist him in his

magisterial capacity, should Dumont be arrested within the next fortnight as is believed to be likely.

After further investigation into the affair Colonel French wrote a final report on the case, implicating both Lawrence Clarke and the HBC's new chief commissioner, Mr. James Graham, as co-conspirators who had set up the whole affair. A Métis informant named Pierre LaValee had discovered how the incident between Dumont and Ballendine had occurred. LaValee reported:

The [Dumont party] caught up to Ballendine, took his carts and fined him twenty-five dollars and sent him back home. He reported to the HBC all kinds of things, thus the excitement. It seems the HBC are the cause of it. They supplied this man with goods and sent him out secretly ahead of the rest.

In his final report, French informed the Lieutenant Governor that both Clarke and Commissioner Graham had indeed been spreading false rumours about a Métis Insurrection. The report concluded:

I cannot myself help thinking that his honor, and I fear the Dominion Government, have been unnecessarily agitated by the alarming reports received... I was informed that four of the persons accompanying Mr. Graham, the Chief Commissioner of the HBC, had stated when passing Fort Pelly that serious disturbances had occurred at Carlton. I however, considered that such could not be the case as Mr. Graham had sent me no previous message on the subject. I sent to the HBC's post at Pelly and inquired from the Officer there if any message or letter had been left for me by Mr. Graham and finding that none such had been left I concluded that the matter a mere canard.

There was, of course, much more to this affair than a 'mere canard' or hoax. This incident, insignificant as it appeared, resulted in the establishment of the NWMP in this northern region. It also resulted in the end of the effective use of Métis law.

French's report was passed on by Lieutenant Governor Morris to the Secretary of State in Ottawa. Although officials there condemned Clarke's actions in the affair, no formal charges were ever brought against him. Instead, Gabriel Dumont and the men under his orders were captured and brought to trial.

They were tried by the very man who, according to police records, who had orchestrated the whole affair-Lawrence Clarke. It was also Lawrence Clarke who, in his capacity as magistrate, levied the fine against Dumont.

Ironically, Clarke's punishment seemed lenient and since the Métis were not aware of his role as the *agent provocateur* who initiated the entire affair, he did not lose stature in the eyes of the Métis. Consequently, he continued to be a political ally of Father André. In fact, since the Métis were not aware that Clarke had conspired to have Dumont arrested for enforcing the *Laws of St. Laurent*, Clarke's leniency served to enhance his image and position in the Métis community.

But the damage had been done. Although Colonel French recognized Clarke's role as *provocateur* in this affair, and also that the Métis were in no way threatening an insurrection, a permanent police force was established at Fort Carlton. The *Laws of St. Laurent* were no longer in effect, having been superseded by Canadian law enforced by Canadian police. With the *Laws of St. Laurent* no longer in effect the buffalo had no formal protection and the slaughter of the remaining buffalo began in earnest.

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