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A 'Real' or an 'Imagined' Community? Métis as an Aboriginal People in Canada

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The Métis are a people who claim identity as an aboriginal community or nation, within Canada. Their claims are based on ancestry (mixed Native/European), historical continuity of community (their identity as a distinct people extends back at least the late 18th century), and continuity of traditions and ways of life. More recently they have been fighting to have their identity as an aboriginal people legally recognised within the Canadian Constitution, and this is central to their claim that they are entitled to aboriginal rights. However their claims to being a 'real' aboriginal community have been disputed based on these same factors of mixed ancestry, historical continuity, continuity of traditions, and legal status.

Métis History

The Métis are a people whose identity as a community is based on their descent from both Aboriginal nations and Europeans, as a result of intermarriage, the fur trade and settler-colonialism. The ancestors of the Métis included (on the male, European side) primarily French fur traders (voyageurs), but also early Scottish, Irish and English traders and explorers who had settled in the Canadian interior from the 17th centuries onwards. On the female, Aboriginal side, their ancestors came from the Aboriginal nations, including the Cree, Ojibwa and Sioux nations. At first, many of the mixed-race children of this early contact would have lived with the mother's community,

but gradually over several generations, especially in the more isolated interior, these mixed-race people began to form their own communities and live separately from their European and Cree or Ojibwa ancestors (Weinstein 2007, p.2). This process of Métis ethnogenesis occurred mainly in the prairies of west-central Canada from the mid-18th century onwards. This new self-conscious and self-defining community, blending a new identity from Aboriginal and European elements, was centred on the Red River region, where the southern province of Manitoba is today. In the mid 19th century, Red River was outside the Canadian colonies: it was a part of Rupert's Land which was ostensibly (but loosely) under the control of the fur-trader Hudson's Bay Company (Asch 1993, p.5).

By 1867, Red River was one of the largest settlements in the North American interior, with a population of about 10,000 (there were also several hundred European traders and other Aboriginal peoples in the region). The Métis community of Red River were seen as a people in themselves, who possessed 'a history, culture, imagined territorial boundaries, national anthem and, perhaps most importantly, a sense of self-consciousness as Métis' (Andersen 2008, p.350). However, Métis rebellions against the Canadian expansion into Red River and further west in 1869 and 1885 led to the defeat, and subsequent diaspora of Métis across central and western Canada. The ensuing break-up of Métis communities and further marginalisation of Métis identity as subversive had a long and damaging result; for nearly 100 years, they were a marginal and forgotten community.

The Canadian state's attitude towards Métis identity and their aboriginality has changed over the past 200 years, depending on the political circumstances of the time, and the legislation created concerning Métis has reflected this. Immediately after the Métis

Rebellion in 1869, as the creation of the province of Manitoba was being negotiated, Métis were recognised as having some right to their land, and part of the Manitoba Act (1871) reflected this, allowing for land grants to Métis. However after the second Rebellion in 1885 and subsequent marginalisation, there was no longer any need for the political accommodation of Métis (Weinstein 2007, p.16). They were explicitly excluded from the Indian Act, barring them from claiming any status as an aboriginal people until the 1960s, when the state became more open to ideas of aboriginality in a context of civil and indigenous rights and decolonisation across the world. Lawrence explains that this was:

> colonial legislation governing Indianness…as a discourse, as a way of seeing life that is produced and reproduced by various rules, systems and procedures, creating an entire conceptual territory on which knowledge is formed and produced (2004, p.25)

Thereafter, this was the social and political context that influenced the legal system and its categorisation of Métis.

The 1982 Constitution and Métis Aboriginality

By the 1970s, Métis identity was undergoing a revival, and political claims to aboriginal status were being made. The Canadian state was involved in the process of creating a new Constitution, and through a long series of lobbying, protests and political organisation, Métis were included in the new Constitution in 1982 as an Aboriginal people. In addition, it was recognised that Métis may be entitled to claim aboriginal rights, alongside Inuit and First Nations. The wording of the Constitution reads:

> 35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed. (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit, and Métis peoples of Canada (from Weinstein 2007 p.236).

With their inclusion in the Constitution, 'Métis' was now also a legal category alongside 'Indian' and 'Inuit' in Canadian legal discourse: their identity is now a matter of government edict as well as self-identification (Hedican 2008, p.190). This means that the legal meaning of the word 'Métis' (or aboriginal, or Indian) is now at least partly controlled by what the state believes the boundaries of this category should be. Garroutte (2003) describes state definitions of ethnic identity as falling into four forms of criteria, especially in the case of aboriginal peoples. There are biology (ancestry, or blood quantum); culture (language, lifestyle, religion and so on); self-identification (but alongside community acceptance); and legal (you are aboriginal if the state says you are, otherwise you are not). An important point here is that if it is the state controlling who is legally aboriginal, the government then has the capacity to limit who and how many people are considered aboriginal. This also means that the state can control who is able to claim aboriginal rights, and as these are mentioned but not explained in the Constitution, what is implied by these rights is also ambiguous.

As well as the legal category of Métis, there is also the issue of how the Métis themselves talk about who is and who is not Métis. This has become more of a problem since the inclusion of the Métis in the Constitution as an aboriginal people entitled to aboriginal rights, but without a definition of who is Métis. In 2002 the Métis National Council, which represents Métis at the national level, defined who is Métis in a very strict way, accepting only individuals

with demonstrable links to the Métis Nation of the 19th century prairies around Red River:

> Métis means a person who self-identifies as Métis, is of historic Métis Nation Ancestry, is distinct from other Aboriginal Peoples and is accepted by the Métis Nation (Métis National Council, 2012).

On the other hand, the Congress of Aboriginal Peoples (CAP, formerly the Native Council of Canada) is much more inclusive, describing a Métis as someone with aboriginal and non-aboriginal ancestry who identifies with and is accepted by the Métis community as being Métis, regardless of any demonstrable connection to Red River. Whichever of these definitions, the stricter historic-Métis or broader, more inclusive CAP approach becomes widely accepted, the category of Métis is still being contested, and, as Sawchuk argues, 'it is certainly not easy to predict what the boundaries of the Métis will look like' in the future (2001, p.82).

Self-identification is an important element in both of these definitions. Although it is not a legally-binding definition of Métis, the Canadian census asks participants to self-identify as Métis. This presents an interesting framework for discussion of the changing legislative definition of Métis in recent years. In the latest censuses (1996, 2001 and 2006) the question that refers to Métis has been: 'is this person an Aboriginal person, that is, a North American Indian, Métis or Inuit?' and if the respondent answers yes, there was a subsequent space for the participant to fill in which of these they identify as (Andersen 2008, p.358). 'Métis', then, is now a category that can be ticked, but nowhere on the census form or in any census-related literature is it defined what is meant by this word. For the purposes of the Canadian census, you are Métis if you tick the

'Métis' box. And since 1996, there has been a dramatic increase in the numbers of people doing this. In the census of 1996, a total of 204,000 people ticked the Métis box. By 2006, it was 390,000 – a 91% increase that cannot be explained by demographic growth (Gionet 2009, p.20). This means that out of a current Canadian aboriginal population of 1,173,000 people, a third now call themselves Métis. Of these people now identifying as Métis, many of them had previously identified themselves in the census as French-Canadian or non-status Indian, and this movement towards identification as Métis is a phenomenon that has been described as 'ethnic mobility' (Andersen 2008, p.347).

So while the Métis have now been accepted in principle as an aboriginal people who may be entitled to claim aboriginal rights, because of the uncertainties over who can claim to be Métis, and how the Constitution should be applied to Métis, as well as what 'aboriginal rights' would mean for them, by the 1990s and 2000s not much had changed in practice for them. Métis political organisations have begun to try to have this situation clarified, and one way of doing this, alongside negotiation with the government, has been to use the courts to push through test cases for Métis aboriginal rights.

Claiming Aboriginality

I will take a step back here and discuss more generally the issue of aboriginal status and aboriginal rights, and what is entailed for a group to be legally recognised (or not) as aboriginal. Claims by a group to status as an aboriginal people tend to concentrate on the construction of an indigenous identity as something connected clearly to a pre-colonial past. In Australia, the belief was that the removal of church and state colonial oppression would lead to `the restoration of pre-contact social and cultural formations but; why did

the "future" for indigenous peoples have to be a return to the "past"?' (Motha 2007, p.81). The idea was that if the outside forces on an indigenous people were lifted, they would revert to their pre-colonial ways of life. This view is very limiting for indigenous peoples, as it denies them any agency in managing their own futures. Zenker argues that in light of the limitations this imposes on indigenous peoples:

> continuity with "primitive society" should be abandoned as a condition sine qua non for "indigeneity" [i.e. aboriginality]… then such people stand a fair chance of benefitting from their acknowledged "indigeneity"' (2011, p.76).

As well as this, such a return would be generally impossible anyway because of the changes that have come with colonialism, such as urbanisation, education, or the loss of the skills needed to live on the land as formerly. A second problem with this view is that it implies (or demands) some demonstrable continuity with the pre-colonial past for a group to be accepted as indigenous or aboriginal (Eriksen 2002, p.71).

The process of gaining acceptance as an aboriginal people with aboriginal rights frequently hinges on perceptions of authenticity and tradition. This view of what it means to be aboriginal often means that aboriginal peoples have to:

> perform authenticity in order to make gains in postcolonial, multicultural settler societies… [especially involving]… the presumption of, and in some cases the insistence on, direct continuity between the pre- and post-colonial (Hamilton 2009, p.33).

This need to demonstrate the colonial imagination of what aboriginal authenticity should be usually involves demonstrating cultural

stability and continuity of lifestyle, language, practices, and so on, or can even be based on `looking Indian' (Clifford 1988, p.284). It has only been by representing themselves as traditional and closely connected to the pre-colonial past that some aboriginal groups have been able to establish legitimacy in the eyes of the state and general society. Where aboriginal people have not been seen to conform to the dominant society's ideas of aboriginality, their authenticity has been contested or denied (Lawrence 2004, p.5; Korsmo 1999, p.119). As Bordewich describes in the case of the Lumbee of North Carolina (quoted in French 2009, p.117), `seeing no feathers or beads, the white authorities saw no Indians at all'.

The recognition of particular groups as aboriginal is still under the control of the ex-colonial powers and general Euro-American society, as it is only with their recognition that a claim to aboriginality is meaningful politically; `it is that society that defines indigenousness and controls decision-making' (Kuper 2003, p.396). Recognition of a group as aboriginal still `depends on the natives being sufficiently native' in the eyes of the international community (Motha 2007, p.75). In discussing the construction of identity, Tania Li concludes that:

> a group's self-identification as tribal or indigenous is not natural or inevitable, but neither is it simply invented, adopted or imposed. It is, rather, a positioning that draws upon historically sedimented practices, landscapes, and repertoires of meaning, and emerges through particular patterns of engagement and struggle (2000, p.151).

As legal identity becomes the basis for aboriginal identity claims, aboriginal peoples have to situate themselves within the dominant discourse to make their claims heard, and to resist the legislation controlling their identities (Lawrence 2004, p.42). The legal

identities of aboriginal people are often based on what the courts and the dominant society believe aboriginality should look like. In the nineteenth century, when the Gradual Civilisation Act in Canada was passed (1857), aboriginality was something that could be lost if an individual became educated or learnt English, or was in paid employment and debt-free. As Vermette argues (2008, p.223), `it is strange to think that an Aboriginal person could cease to exist as Aboriginal if they embodied enough superficial characteristics of non-Aboriginal people'. This emphasis on aboriginality and aboriginal people as defined by colonial expectations of aboriginality is an important point in the context of courts making judgements about aboriginal rights on the basis of perceived authenticity and tradition of aboriginal peoples.

The insistence on the link between authentic aboriginality and historical continuity sets aboriginal people up in a dichotomy between tradition and modernity (Clifford 1988, p.152), and means that to convince states and courts of their aboriginality, groups have to represent themselves in a way that necessarily emphasises their continuity of tradition (Bhandar 2007, p.101). This need to conceal `modernity' is the result of the use of the concept of culture as a static entity in settler society, ignoring the `complex cultural lives of contemporary indigenous peoples' (Hamilton 2009, p.32, also Culhane 1998, p.70). Weiner describes how the courts emphasise tradition and authenticity, and while this might benefit some groups who are subsequently legitimised as aboriginal, it leaves many, especially settled or urban groups, outside the legal category of aboriginal (1999, p.193). Through this process, aboriginal people, along with sympathetic lawyers and supporters, have to represent themselves in a way that the courts recognise as aboriginal and this means that, `what in fact is tested judicially is not strictly speaking

"Aboriginal culture" but some relational product of indigenous Aboriginal exegesis and Western notions of tradition' (Weiner 1999, p.195).

Métis Claims to Aboriginal Status and Rights

One way in which the courts decide on aboriginality and whether a particular group is entitled to aboriginal rights is through the use of what are known in Canada as `distinctive culture tests' (DCT). For the Métis, the DCT had to be adapted to take into account their particular history (for example could not base a claim to aboriginal rights on pre-contact communities since, by definition, the Métis did not exist pre-contact). This new, Métis-specific test was developed during the 1990s as part of a Métis aboriginal rights claim that was working its way through the courts. This case, R. v Powley (2003), is a clear demonstration of how Métis have had to construct particular arguments and represent their community in a particular way through history in order to satisfy the court's view of what an aboriginal community should be.

The Powley court case concerns two Métis hunters, Steve and Roddy Powley, who shot a moose in Northern Ontario in 1993 and were charged with hunting without the proper licences. This case was a deliberate act by the Powleys to get arrested and to push a test case of Métis constitutional aboriginal rights through the courts. The case went to trial in 1998 and they pleaded not guilty on the basis that as Métis, they had an aboriginal right under the Constitution to hunt for food (as do status Indians in Ontario). The case concentrated on how the Constitution should be applied to the Métis, and who should be considered Métis for the purposes of the Constitution. The judges decided that the intention behind including

Métis in the Constitution was to recognise and protect Métis identity and culture, and that a part of this was hunting for food. So the Powleys would have to prove that they belonged to an identifiable Métis community with a sufficient degree of stability and continuity over time to demonstrate they had aboriginal rights. There was no clear way to do this, so during the course of the trial and subsequent appeals from 1998 to 2003, the judges developed a method specifically for testing Métis aboriginal rights claims, based on the DCT – the Powley test.

This legal test involved proving several different conditions to demonstrate that a community was 'aboriginal enough' to qualify for constitutional aboriginal rights. As the DCT test had been developed for Indian rather than Métis communities, it had to be slightly adapted to take into account the particular history of the Métis. Where the DCT test demanded continuity of the contemporary community claiming rights from a pre-European *contact* historic community, this was modified in the case of Métis to continuity with a community that had existed before European *control.* The timeframe of European control would be decided depending on the location of the claim - so earlier in Eastern Canada, late 19th century in the west and the prairies.

To fulfill what would now be called the `Powley test', the judges had to decide whether the Métis community of Northern Ontario could prove a series of conditions. Firstly what exactly was being claimed had to be made clear - here it was the right of Métis to hunt for food in Northern Ontario. They then had to prove there was a Métis community in northern Ontario in the timeframe defined as pre-European control, and that the contemporary community was a continuation of this. For Ontario, the beginning of European control was found to be the 1850s, and there was clear

evidence of a Métis community long before this time. It also had to be proven that the individuals (here the Powleys) were members of this community (this was not disputed). Next they had to prove that hunting for food was integral to the historic community and that this practice had been continued up to the present day. Lastly it had to be demonstrated that this right had not been extinguished by any earlier legislation (it hadn't), and that it was now being infringed. This was clear from the fact that they had been arrested for hunting.

At trial, the court found in favour of the Powleys, as well as in the two appeals that followed. The final appeal, to the Supreme Court of Canada in 2003, also found the Powleys not guilty and that they had an aboriginal right to hunt as Métis. The decision of the Supreme Court was a huge success for the Métis. It opened up a potential avenue for them to have their constitutional aboriginal rights recognised in a more concrete way, through proving that the criteria of the adapted DCT test could be applied to each Métis community. But even with this victory, the Powley judgement left many issues unanswered and raised some new problems: including the question of developing a way of deciding and defining who is Métis for the purposes of Powley, several limitations associated with the Powley test (particularly the insistence on historical and geographical continuity), and the difficulties and inconsistencies of implementing Powley in other parts of Canada.

Conclusion

The Powley test was developed to test the aboriginality of Métis communities, and how authentic their claim to aboriginal rights is judged to be. The test, and society in general, demands a demonstration of historical and geographical continuity, and continuity of traditions and practices. There is also a biological

element to claims to aboriginality. In the case of the Métis, who claim an identity that is both mixed and aboriginal, this raises the question of 'what happens to indigeneity [aboriginality] in the face of mixed-bloodedness? Does it cease to exist of does it merely change?' (Lawrence 2004:81). How much can a community absorb outsiders, lose or adapt its traditions and practices, move from its homeland, and break with historical continuity and still claim to be aboriginal? And can this community be seen as 'real' or 'imagined'?

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