CHAPTER I

THE THEORY, LAW AND PRACTICE OF ABORIGINAL RIGHTS AND HOW THEY WERE APPLIED TO THE METIS

I. INTRODUCTION:

In 1976 the Association began a process of research on the Aboriginal rights of the Metis people in the Canadian Northwest. The purpose of this research was as follows: a) to determine how the Aboriginal rights of the Metis were recognized; b) to examine how Metis rights were dealt with in law and practice; c) to determine how the Metis peoples' present position of poverty, powerlessness and dependence came about; d) to determine if the basis for a legal "aboriginal land claim" by the Metis might still exist; and e) to prepare a report on the findings including conclusions and recommendations as to possible action to be taken to restore Metis rights.

II. ABORIGINAL TITLE:

a) Its Origin

The term "aboriginal" has never been used in legislation by any nation as far as researchers could determine. It certainly has never been used in legislation in North America. In Canada the term "Indian title" was used in the Manitoba Act of 1870, in the Dominion Lands Acts of 1879 and 1883[1] and in numberous Orders-in-Council.[2] Even the term "Indian title" is not used in treaties, the Indian Acts or other legislation or regulations regarding Indians. Nor was the term used in the B.N.A. Act 1867. Modern writers have used the term synonymously with the term "Indian title", the assumption being the term Indian in 91-24 of the B.N.A. Act covers all aboriginal people.

The concept of "Indian title" was first referred to in Case Law in Canada in the St. Catherines Milling Case in 1888.[3] The term "aboriginal title" was first use in Case Law in 1969 in the Calder Case.[4] It was also used by Judge Morrow in the case of an application by Chief Francois Paulette for a caveat against Northwest Territories lands.[5]

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It has been used in many other legal cases since that time. One must assume that the learned judges used the terminology, "aboriginal title", and dealt with it in their decisions because the term was used by the counsel who presented arguments in these cases.

The term appears to have first been used in published material by Dr. Archer Martin in 1898 in his book The Hudson's Bay Company's Land Tenures.[6] It was also used by Noonan and Hodges in their research report of 1944 for the Saskatchewan Metis Society.[7] The next instance of its use seems to have been by Douglas Sanders in a research report prepared for the Indian and Eskimo Association of Canada in 1970. This report was published as a book in 1972 under the editorship of Peter A. Cummings and Neil H. Mickenberg.[8] If one who is uninformed about the history of Aboriginal rights, reads this book, he/she may be left with the distinct impression that the concept of "aboriginal title" was developed by Francisco de Vitoria and that it was first defined in North American Case Law by Judge Marshall in the case of Johnson vs. McIntosh.[9]

Neil H. Mickenberg, in an article published in 1971, used the terms "aboriginal rights" and "Indian title" which he equates with "aboriginal title".[10] The term "aboriginal title" would therefore appear to have been coined by relatively modern legal and academic writers and has been embedded in Case Law by judges, along with the active help of legal counsel. The term "Indian" in 91-24 of the B.N.A. Act was interpreted by the Supreme Court of Canada as encompassing Eskimos in Canada in 1939 in the case of Re: Eskimos.[11] Since Eskimos (Inuit) are one distinct group of Aboriginal peoples in Canada not generally referred to as Indians, the use of the term "Aboriginal title" may have appeared to have a broader application and to be less confusing that the use of the term "Indian title".

Most Inuit and Indian groups and organizations have eagerly grasped the terms and argued that it included a broad range of Aboriginal rights, ranging from national sovereignty to fee simple title vested in individual aborigines.

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MacLeod, in The American Indian Frontier, clearly outlines how the practice of recognizing Indian tribes and federations as sovereign nations developed, and how this became an established policy. The concept of sovereignty included all the rights that a sovereign was recognized as having in International Law at the time, including ownership and use of the land.[14] He further traces why the British took over the management of Indian Affairs. He also examines their confirmation of the practices of the colonies, in the form of Constitutional Law, in the Royal Proclamation of 1763. After the War of Independence in 1776, the Americans adopted this policy and incorporated it into their own laws.

The title of the Indians, therefore, included sovereign ownership of all National lands and the right of the Indian nations to decide on the use and management of their lands and resources as among themselves, to the exclusion of all other nations or sovereign powers.

In a series of landmark cases, from 1823 to 1831, Chief Justice Marshall of the U.S. Supreme court ruled in such a way as to seriously restrict the meaning of the now familiar "title of Indians" or what he referred to as "Indian title". In Johnson vs. McIntosh[15] Marshall ruled that the Indian nations did not possess full title to their lands but that they possessed only a right of occupancy. The court claimed their title had been reduced from full sovereignty because of discovery and occupancy. In Cherokee vs. Georgia,[16] the court ruled that the Cherokees were not a sovereign but a domestic nation, further justifying the decision that the Indian title was limited to use and occupancy. In 1831 Marshall softened his position somewhat but still ruled that Indian nations did not possess a full title to their lands. Interestingly, the American Government ignored these rulings and continued to treat the Indian nations as sovereign nations.[17]

In Canada the Indians in the Maritime colonies and Upper and Lower Canada were at an early date dealt with in a manner similar to Indians in areas where American colonies had been established. The Royal Proclamation of 1763 was applied to the Indian nations

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in these colonies. When Upper Canada wanted Indian lands on Manitoulin Island and in the area north of Lake Huron, it negotiated the Robinson Treaties in 1853 and 1854. These Treaties did not follow the practice of outright payment for Indian lands, which was the earlier policy. The Treaties instead introduced the practice of land cessions and a system of paying annual annuities and providing other compensation in goods and services in exchange for lands. Also, specific land areas were set aside for the Indians' use but these were not considered reserves.[19]

When the new Confederation of Canada began Treaty-signing in the Northwest in 1873, it continued the pattern of cessions established in the earlier Treaties, along with ongoing payments in money, goods and services. The Treaties now also established the reserve system.[20] The issue of "Indian title" is not dealt with in the Treaties. The Treaties followed those processes for land succession outlined in the Royal Proclamation of 1763 and the commitments made by Canada in Schedules to Order-in-Council No. 9 Section 146, incorporated into the B.N.A. Act, 1867. The Treaties suggest the recognition of the sovereignty of Indian nations. These nations ceeded, not sold, their land to the Crown and retained traditional hunting, fishing and trappings rights on these lands under certain conditions. These included their agreement to become British subjects, to swear allegiance to the Queen and to be subject to Canadian laws.[21] The reserves which were set aside for the Indians were Crown lands reserved for Indians, and not sovereign lands. In Canada, therefore, the Indians lost their land and sovereignty through a land cession. In theory, this was done through choice; therefore, it is clear that if the Indians owned the land before the Treaties were signed they may have given up that ownership as well as their sovereignty through Treaty agreements.

The first occasion on which the question of the title of Indians was considered legally in Canada was in the St. Catherines Milling Case. This occurred in the old section of Ontario known as Upper Canada. In this case the Federal Government argued that Indians had a full proprietary interest in the land, which had been purchased for them by the Federal Government.[22] This argument was

based on traditional British policy and practice in regard to the recognition of Indian ownership of their lands. Chancellor Boyd, in a decision later only partly upheld by the Privy Council, however, argued that American cases were more applicable, and adopted the view of Marshall that the Crown already had a proprietary interest in the land and that the title of the Indians was a personal right of use of land dependent on the good will of the sovereign.[23]

The net effect of the St. Catherines Milling Case was to deny that Indian nations existed either as sovereign Indian nations or as domestic nations. This was even more limiting than the Marshall ruling.

The result of the St. Catherines Milling Case can be summarized as follows:

1) It became accepted policy and law that Indians did not have a proprietary interest in lands they occupied.

2) It also became policy and law that the Aboriginal peoples did not possess a full proprietary interest or absolute title to lands they occupied before the Europeans arrived and before any Treaties were signed.

3) Until the late 1960s and 1970s, the Royal Proclamation of 1763 remained relatively unimportant as a source of rights for the Aboriginal peoples, with the exception of certain cases relating to hunting and fishing rights in areas falling within the geographical limits of the Proclamation.[24]

4) The "personal rights" of the Aboriginal peoples to their lands was limited to use and occupation "dependent upon the good will of the Sovereign".[25]

5) Indians subsequently looked to the Treaties or legislation as opposed to the Royal Proclamation for recognition of their rights.

As we shall see in the next chapter, the courts have not looked favourably upon the Treaties as a source for recognition of the rights of Indian peoples. The courts have variously interpreted these Treaties as:

a) not being International Treaties embodying agreements between independent nations;[26]

b) contracts or mere promises and agreements;[27]

c) treaties of peace and friendship in certain cases.[28]

It is of interest to point out that only within the last two decades has it been clear that Indians could bring land claims actions into the courts. In 1859 it was held that:

> "The Indians could not have adopted any legal proceedings for dispossessing trespassers either as holding in a corporate capacity or otherwise; it would seem unreasonable on the other hand that time should be considered as running so as to bar the Crown or the Indians...."[29]

In the 1920s the Indian Act was amended, making it illegal to:

a) take a legal court action against the Federal Government over land claims;[30]

b) raise funds for any legal action relating to land claims.[31]

This restriction was not removed from the Indian Act until 1951.

The adoption of this concept in effect legitimized the federal government's practice of extinguishing title through land cessions and through legislative instruments such as the Manitoba Act and the Dominion Lands Act. In the years since 1888, the federal government continued to follow the rule set down in the St. Catherines Milling Case. As well, this precedent has been followed since that time in Case Law, where the question of "Indian title" has been an issue. As previously indicated the term "Indian title" in recent times began to be referred to as "Aboriginal title".

In Native Rights In Canada, Cummings and Mickenberg also use Aboriginal rights (generally accepted as a broad concept encompassing a broad range of rights) interchangeably with "Aboriginal title", which has been used to narrowly define a usufructary title. They define Aboriginal rights as follows:

> "Aboriginal rights are those property rights which inure to Native peoples by virtue of their occupation upon certain lands from time immemorial."[32]

This definition limits Aboriginal rights to property rights deriving from occupancy, namely "Aboriginal title", a usufructuary title. Such a title can only be disposed of to the Crown and can be extinguished by the Crown either by legislation or treaties.

III. THE USE AND CONSEQUENCES OF "ABORIGINAL TITLE":

The legal concept of Aboriginal title has been used in Canada by the government with the approval of the courts, to subjugate the Indians, to deprive them of their sovereignty, to assimilate them,

to dispossess them of their lands, and to leave them poor and dependent. A similar policy was applied to the Metis through the Manitoba Act and the Dominion Lands Act.

As indicated, the St. Catherines Milling Case denied any Indian sovereignty or self-determination except that which was granted at the pleasure of the Crown. The Crown's grand plan, developed as early as the 1850s, was to assimilate the Indians into the Canadian mainstream as a means of solving the Indian problem. Even that limited self-determination granted in local matters in Treaties and Indian Acts was largely denied, until recent times. This was done through a plan to manage the Indians and Metis. It was implemented on reserves through the employment of Indian agents, a pass system and laws controlling the rights of Indians to dispose of their produce or develop their resources on reserve lands. It was implemented through Scrip and Scrip speculation, which deprived most persons of their land entitlement in the case of the Metis. This policy left the Aboriginal people in abject poverty and in the unhealthy dependent state of wards. Its results for them and their culture have been devastating. It has led to large-scale family breakdown, alcoholism, high rates of crime and delinquency, serious health problems, high mortality rates, racism and a host of other social ills.

The Aboriginal peoples have been left powerless, with inferior education and training and lacking many of the social skills required to function as economically independent and socially self-sufficient citizens. They have also been left confused about their identity, guilty about their supposed cultural inferiority, and with a lack of confidence about their ability to care for themselves. Although there has been some improvement in the conditions and circumstances of some Aboriginal peoples in recent years, for the great majority their lives remain rooted in poverty and the social and physical ills which go along with poverty.

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"Aboriginal title" as defined in Law and Practice has produced negative results for the Aboriginal people of Canada. Its use, and the varying definitions given to the term by courts, governments and academics, has only confused the issue of what rights Aboriginal people had. It is not useful to argue about whether the rights of Aboriginal people flow from some legal concept called "Aboriginal title" which did not exist when the first settlers came to North America. These rights in fact flowed from the sovereign ownership, control and administration of their national lands according to laws and practices which they had developed. Their claim to a given geographical area was based on their occupancy and control of their lands. As W. C. Macleod states, "the Indians claimed they owned the land and they did".[32a] What is important to consider is how they lost this land and whether they still retain rights regardless of this loss of land. It is also important to establish what are these rights.

To determine these latter facts, it is important to examine how indigenous and national rights of people indigenous to an area were treated in the laws of colonial nations and in International law. It is also important to understand how the rights of Aboriginal peoples related to these concepts and were dealt with legally and historically. It is also important to understand how current concepts regarding aboriginal rights grew from these early concepts. This will give us some insights into modern legal concepts and practices regarding the Aboriginal peoples and their rights.

IV. THE LAWS OF NATIONS AND THE LAWS OF NATURE IN THE 15TH AND 16TH CENTURIES:

a) International Law and Colonial Nations

Throughout history, powerful tribal groups have aggressively acquired territories belonging to other less powerful people. These actions gave the conquerors considerable power over the occupants of the land areas conquered. In such a situation, the recognition that the occupants of a land area, who could not defend themselves against foreign intrusion, had legal rights was dependent upon the whims of the conqueror. Early colonists such as the Romans recognized in their laws no political rights for indigenous peoples.

However, in practice, the Romans allowed conquered peoples to maintain their own languages, religions, civil laws, and cultural practices, and allowed individuals to continue to occupy and use their lands as long as they obeyed Roman laws and paid Roman taxes.

By the 14th and 15th centuries, new colonial powers were emerging in Europe. The most powerful of these were the British, the French, the Portuguese, and the Spanish. Early conquests were directed against Africa, North America and Asia Minor. With improved Technology which made man more mobile, intrusions were made into new areas of North America and South America, and into Australia and the Pacific Islands. In addition, Africa and eastern parts of Asia, long known to Europeans, now became more accessible to them. These areas all became the object of colonial conquest and exploitation.

As colonial conquest and discovery proceeded, colonial nations came into competition with each other for new land areas. A need developed to resolve competing claims to such areas to reduce political conflict and open warfare between the colonial nations. Therefore, they began to seek political accommodations between themselves so they would not compete with each other by way of warfare or trade. These political accommodations and agreements came to be recognized as International Law or the Law of Nations. The attitude and practice of colonial nations toward so-called backward nations is described by Lindley as follows:

> "International Law places no veto on the acquisition of territory merely on account of its relative backwardness or advancement. It does, however, prescribe the mode or modes of acquisition which must be employed according to the condition of the territory if a valid title is to be obtained. The lines of division that are of importance for our purposes are not, therefore, those which might be considered to separate backward from advanced territory. They are rather

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those internal lines which subdivide backward territory from advanced territory according to the method or methods by which it can be validly acquired."[33]

The methods by which a valid acquisition could be made in conventional International Law depended upon the following:

1) No one nation could dispute the right of another to acquire new territory if any of them did not have a prior claim.[34] The method of acquisition was not a relevant consideration vis-a-vis another member of the International family.[35] However, as will be considered later, the powers of the colonizing nation were determined by whether acquisition was made by way of conquest, cession, occupation or settlement, and the laws in the acquired territories.[36]

2) Acquisition of uninhabited territory or territory of individuals whom it was believed did not form a political society could be made by way of occupation.[37]

3) If the inhabitants exhibited collective political activity, which although of a crude and rudimentary form, possessed the elements of permanence, the acquisition can only be made by way of cession or conquest or prescription.[38]

Lindley continued on the subject of the authority of so-called infidels as follows:

"Until comparatively recent times, the acquisition of sovereignty over the territories of backward peoples was discussed as a case of conquest, not one of occupation. The subject formed part of the

wider question, whether it was just to levy war against infidels and pagans as such, which was vigorously debated in the Middle Ages by jurists and theologians over a long period. The general trend of opinion was in the direction of denying sovereign rights to non-Christians, but, even among those who held this view, it was put forward as legitimizing a war of conquest and not as rendering the land of non-Christians territoria nulluis which could be acquired by occupation. But the opinion that sovereignty might be justly exercised by infidels received considerable support and included among its advocates men of high position and authority."[39]

b) International Law and the Status of Non-Christian Peoples

Ancient Writers (13th-15th Centuries)

According to Nassbaum:

> "International relations between 'Christian' and 'non-Christian' or 'infidel' peoples during this time was based on the belief that Christian states had a God-given right to take the lands and possessions of the infidels. It was commonly believed that infidel nations were non-states, that their rulers lacked true jurisdiction and that their lands were appropriable without compensation. It was also believed that war against infidels was inherently just and their conversion by the sword a duty."[40]

Medieval writers had taken the view that the heathens were nothing but the proper object of conquest, conversion and subjugation. (Vitoria, a 16th century thinker, was the first to insist that the heathens had legitimate princes, just as the Christians had, and that a war against them was permissible only for a "just cause").[41]

However, according to Brian Slattery, this isn't an accurate interpretation of the views of all writers. He claims that:

> "Even a limited survey of late medieval doctrine reveals a position substantially different from that suggested by these authors. The question of infidel rights was a controversial one, sparking sharp disagreement among the major canonists and theologians with many of the most respected adopting a stance broadly favourable to the unbeliever."[42]

This controversy lasted for centuries, having had its lines of argument developed by three major thinkers of that time--Aquinas, Innocent IV and Hostiensis. The major contributor in this area was Thomas Acquinas, who was born in 1225. His greates work, Summa Theologica, was begun in 1265 but remained unfinished at his death in 1274. Aquinas did not deal to any great extent with the rights of the unbelievers to jurisdiction or sovereignty over their lands. What he did do was deal with the question of the authority which unbelievers may have over the faithful. He made the following claim:

> "Dominion and authority are institutions of human law, while the distinction between faithful and unbelievers arises from the Divine Law. Now, the Divine Law, which is the law of grace, does not

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> do away with human law, which is the law of natural reason. Therefore, the distinction between faithful and unbelievers, considered in itself, does not do away with dominion and authority of unbelievers over the faithful."[43]

This, then, is an authority for the proposition or principal that the legitimacy of Dominion rests on the party exercising it, and so an infidel's authority is as valid as a Christian's. Aquinas does say, however, that the Church has the power to make war against the infidels to liberate the lands of converted peoples. This, however, doesn't go so far as to state that war can be justly waged against infidels because of their lack of faith alone. He claimed:

> "Among believers there are some who have never received the faith, such as the heathens and the Jews. And these are by no means to be compelled to the faith, in order that they may believe because to believe depends on the will; nevertheless, they should be compelled by the faithful, if it is possible to do so, so that they do not hinder the faith by their blasphemies or by their evil persuasions, or even by their open persecutions. It is for this reason that Christ's faithful often wage war with unbelievers, because if they were to conquer them and take them prisoners, they should still leave them free to believe if they will, but in order to prevent them from hindering the faith of Christ."[44]

A second major contributor to this line of thought was Innocent IV (1190-1254), who expressed these views in more detail. These two writers prompted Carlyle and Carlyle to conclude in their History of Medieval Political Theory that:

> "...it is important to observe that (the) principles of the legitimate nature and morality of the state are not limited to Christian states but were represented by the most authoritative writers of the 13th Century as extending to all states, even those of unbelievers."[45]

This, however, didn't take into account the writer Hostiensis (d. 1271), who held the view that the unbelievers didn't have a legitimate dominion over their lands, that the coming of Christ had nullified it.[46]

According to Slattery's research, Hostiensis and his followers weren't representative of the majority of thinkers at that time:

> "Our conclusions with respect to late Medieval European doctrine must, of necessity, be tentative because comprehensive studies of the period have yet to appear and the original texts are not easily accessible. But it appears that, with the outstanding exception of Hostiensis and certain others who followed his views on these matters, a goodly number of distinguished cannonist, jurists and theologians of the period recognized that infidel rulers were capable of holding true dominion over their subjects and territories, subordinate, perhaps to an asserted superior jurisdiction of the Pope of the Holy Roman Emperor--in the same way as

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> Christian rulers were said to be subordinate but legitimate nevertheless. Unbelief did not deprive them of authority not could it, in itself, legitimize wars waged against them by Christians.
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> ...
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> ...still it is a fact of importance to the law of territorial acquisition that in the eyes of many authoritative European thinkers from the 13th Century onwards, that the lands of unbelieving nations were not terrae nullius, appropriable by Christians at will."[47]

c) International Law and Christian Peoples

Important concepts employed by the Europeans dealt with the acquisition of the territory of another power by cession. The practice was that if the inhabitants agreed to place themselves under the soverignty of the acquiring state, it was an act of cession. If their country was taken possession of by superior force against their will, the mode of acquisition was conquest. Both modes of acquisition were a recognition that the territory belonged to the inhabitants. Cession implied the ability of the inhabitants to both make agreements and to refuse to make agreements. This was an essential test of independence.[48]

These understandings, as between various European powers, were known as the Law of Nations or International Law. The Law of Nations contained several important concepts. One is referred to as the doctrine of acquired rights. The acquired rights of the inhabitants are those rights to property, institutions and culture, which the inhabitants have exercised by virtue of their sovereign claim over their territory. International Law was based on the principle that such rights must be respected. Title to land, for example, was not to be affected by a change of sovereignty whether by conquest or cession.[49]

The new sovereign could expropriate rights or cancel them by legislation. However, if such action was taken, there was a recognized entitlement to compensation for such expropriated rights or the grant of some new rights or title of equivalent value.[50] It is also accepted that if the new sovereign did not pass such legislation, then the existing lands and other rights of the new subjects of the sovereign remain intact. The general practice among Europeans was to allow such subjects the right to the continuous use of their land, customs, usages and traditions and to apply European civil and criminal law to govern relationships among the Europeans.[51]

d) The Origins of Theories Regarding the Rights of the Aboriginal Peoples

While the members of the "International Family" thus evolved a set of rules to acquire newly discovered territories, the question is, to what extent International Law was developed to devise rules for protecting the rights of the Aboriginal peoples. The more conventional view is that the International Law is not relevant here.[52] The theory is that International Law regulates the relationship of one nation to another, all nations being equal. The relationship of a nation to its Aboriginal inhabitants is a matter of municipal law and, hence, outside the purview of International Law. How, then, were the Aboriginal peoples to be treated? Did they have sovereignty over their lands?

The discoveries of the "new worlds" and new peoples during the 15th and 16th Centuries fueled the debate over the rights of the Aboriginal peoples. The Spaniards, in their search for gold and other riches, used their advanced military equipment, coupled with the class structure of Aboriginal populations first encountered, to completely destroy and conquer the indigenous societies. These intrusions were marked with ruthless brutality and complete disrepect for the rights of the Aboriginal inhabitants. This was so, even though the Aboriginal societies were highly-structured and politically

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developed. Wagley and Harris describe this level of political, social and economic development in the Americas as follows:

> "At the time of the Spanish conquest, the area of the new world, which is now Mexico, was inhabited in the main by American Indians who had achieved the cultural level of a great civilization. Only in the northern part of the country were there simple hunting and gathering tribesmen. In the central and southern parts of the country lived the Aztecs, the Tlaxcaltecans..and other highly civilized peoples. These people were divided into a series of native states often at war with each other, and at least one hundred twenty-five languages were spoken throughout the area. There was considerable cultural diversity from one native state to another but everywhere their complex cultures were based upon a system of hoe agriculture which produced maize, beans, squash and other aboriginal American crops. Trade was highly developed. A system of writing and an efficient numerical system was widely used. These peoples had a calendric system based in part on the solar year. They had an organized government and a priesthood which administered their elaborate religion. They constructed pyramids, temples, fortresses and palaces. Their stone and metal work was marked by a high degree of artistic refinement. Their society

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> was divided into classes of nobility, commoners, and slaves. While the majority of the people in these native states were rural farmers, there existed great cities such as Tenochitlan and Texcoco, both in the valley of Mexico, which, together, had a population of almost a half million. In these cities there were busy markets that rivaled anything in Spain at the time. The central and southern areas of Mexico had an Aboriginal population that numbered at least four million people, and perhaps as many as nine million in 1521."[53]

Many eminent scholars believed that the Aboriginal peoples and infidels in general were capable of possessing true dominion and ownership of their lands and goods. They rejected the idea that lack of European religious outlook, culture, customs or levels of technological achievement took this away.

Thomas de Cajetan (1469-1534), an Italian theologian, adopted the reasoning or viewpoint previously expressed by Aquinas. According to de Cajetan:

> "There are some infidels who are neither in law nor in fact under the temporal jurisdiction of Christian princes, just as there are pagans who were never subjects of the Roman empire and yet who inhabit lands where the name of Christ was never heard. Now their rulers, though heathen, are legitimate rulers, whether the people live under a monarchial or a democratic regime. They are

> not to be deprived of sovereignty over their temporal possessions. Against them, no king, no emperor, not even the Roman Church, can declare war for the purpose of occupying their lands or of subjecting them to temporal sway."[54]

In spite of the evidence that early concepts of International Law did or should have applied to indigenous peoples, this issue remained a very controversial one. The argument against the recognition of rights was often dependent upon whether infidels were perpetual enemies. If they were, upon acquisition of their lands by an enemy, they often lost their lands without compensation.[55]

As we have seen, Hostiensis held that unbelievers didn't have legitimate dominion over their lands, as the coming of Christ nullified it.

With the discovery of North America by Spain in the late 15th Century, the question of the status of the Aboriginal peoples in the new territory became more urgent. The Spanish rulers, because of conflict between commercial interest in the new territories and the missionary orders of the church, were uncertain as to how to deal with the many legal and practical questions which arose regarding sovereignty, land ownership and the personal rights of the Aboriginal peoples. They, therefore, referred the question of the rights of the Aboriginal peoples in the New World to the Pope asking Him to rule on these issues. The Pope in turn gave a commission to study the matter to a Spanish theologian, who taught at the Salamanca University, Francisco de Vitoria. He dealt with the question of the rights of the Indians in a series of lectures in 1532, entitled De Indis and De Jure Bellix. He was the greatest proponent of the rights of the Aboriginal peoples. Because of this, he was mistakenly credited with having developed the concepts of

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"aboriginal rights" and "aboriginal title" which are popular today.

Vitoria asked the question as to whether or not the Aboriginal peoples of the New World:

> "...were true owners in both private and public law before the arrival of the Spaniards, that is, whether they were true owners of private property and possessions and also whether there were among them any who were the true princes and overlords of others."[56]

Vitoria then went on to examine and demolish a number of arguments denying dominion and ownership to the American aborigines because they were so-called sinners, unbelievers, unsound of mind, or slaves by nature:

> "the upshot of all the preceding is, then, that the aborigines undoubtedly had true dominion in both public and private matters, just like the Christians, and that neither their princes nor private persons could be despoiled of their property on the grounds of their not being true owners."[57]

To do so says Vitoria, would be...

> "theft and robbery no less than if it were done to Christians."[58]

Their rights remained intact even though...

> "...the natives...are timid by nature and in other respects dull and stupid."[59]

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In an additional lecture entitled De Jure Belli, Victoria considered the justice of war against Aboriginal peoples in the New World. Where war was deemed just between the Spanish and the Aboriginal peoples, analogies were made to conflicts between Spain and France, two sovereign nations.[60] In his writings Vitoria never used the term "aboriginal rights" or "aboriginal title". This latter fiction was the invention of modern legal and academic writers. This concept when combined with the judge's decision in the St. Catherines Milling Case, led to the concept in Canadian law that the land rights of the Aboriginal peoples can be terminated because they have only the right of occupancy which is at the pleasure and based on the goodwill of the sovereign. Such termination could take place through a process called extinguishment. These errors have been compounded by modern legal academic writers and Canadian jurists who trace the origins of ~~the~~ extinguishment to Vitoria and the Royal Proclamation of 1763.[61]

The result of Vitoria's work and the ensuing debate saw the issuance of a Papal Bull in 1537, which was to guide the dealings of the Spanish rulers with Aboriginal peoples, but which was subsequently extended to be a guideline for the rulers of all Christian nations. The Bull Sublimis Deus issued by Pope Paul III stated in part:

> "...Indians are truly men...they may and should freely and legitimately enjoy their liberty and the possession of their property, nor should they be in any way enslaved, should the contrary happen, it should be null and of no effect."[62]

e) Observance by the Colonizing Powers of the Rights of Aboriginal Peoples

(1) General Practices

During the 15th and 16th Centuries colonial policy in Great Britain in particular and in Europe in general was

dominated by the laissen-faire theories of Adam Smith and John Locke. In practice there was a good deal of monopoly control exercised by large and powerful financial interests with the support of government. Nowhere was this more true than in the dealings of large companies in and with colonial territories. The concepts of conventional International Law regarding territorial acquisition ensured this monopoly. The nations claiming sovereignty on the basis of discovery obtained monopolistic trade rights. Often Charters were granted to colonizing corporations. This in particular was the practice followed by Britain and to a large degree by France.[63] The Charters of the Company of New France, the Hudson's Bay Company, and the Massachusetts Bay Company are good examples of such trading Charters. In general these Charters concerned themselves with control of trade and commerce and did not make outright land grants. The emphasis was on manufactured goods from European factories being exchanged for the raw materials from the colonies. In some cases the Charters also gave Companies the right to settle immigrants in the new territories. Although England claimed sovereignty it did not necessarily claim ownership of the land.[64]

The general intent of the colonial nations, therefore, was that of claiming new territories for the purpose of establishing and expanding trade and commerce in the first instance and to establish new settlements in the second instance. The first goal would ensure that idle capital which was being accumulated by the new merchant class would be put to work earning still more profit and thus wealth and power for both the wealthy class and for the government of the colonizing nation. The second goal would ensure an outlet for the surplus population being forced from the land by the industrial revolution and to ensure a place to where religious dissidents would migrate. It would also provide an outlet for surplus managerial, entrepreneurial and professional skills which could be employed in the new world. The effect was to help maintain some stability at home both among the poor working class and among the middle class, who might provide the potential leadership for uprisings

and revolutions, should they be unhappy with their lot.

For trade and/or immigration to be successful, certain conditions were necessary. These included the following:

a) unchallenged sovereign claim to the newly discovered territory

b) the ability to devise a system to get clear title to land and resources as needed

c) the existence of law and order and relative peace among and with the aboriginal nations

d) the availability of a cheap supply of labour to produce the raw materials and other goods coveted by the merchants, and

e) a system of trade which would ensure a free exchange of goods among the aboriginal peoples and the merchants, in a way which would generate huge profits for the merchants as well as an outlet for manufactured goods from European factories.

For these reasons the idea that Indians were not owners and the refusal to recognize Indian title in British Courts was developed. However, in practice, the new settler colonies were not strong enough to conquer the Indians. They needed them as allies to survive and also to ensure a prosperous trade. Therefore, for practical reasons, they recognized Indian sovereignty, made treaties of alliance with the Indians, and bought land from them. Some settlers believed that the Indians were the true owners of the land and that their ownership must be recognized based on the settlers religious and moral beliefs.[65]

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(2) Spanish Practice

The Spanish Government attempted to reflect the sentiments of the Papal Bull in their laws, which applied to the West Indies. However, they did not recognize the sovereignty of the Indian nations. Instead they passed laws to discontinue plantations based on forced and slave labour. They allowed instead the establishment of Indian missions to train the Indians in agriculture and in Christianity. When Indians could farm they would be resettled in villages and granted a plot of land to which they were given title. These legal provisions, however, were mostly ignored by the Spanish conquistadors who continued their plantations and continued to enslave Indians. Some practiced excessive cruelty and oppression toward the Indian people, which, along with disease and alcoholism, resulted in their extermination in some areas.[66]

Vattel (1714-1767), a leading authority on International Law, commented on these Spanish practices. Vattel was of the belief that "nature had established a perfect equality of rights among independent nations." In consequence, no one of them could justly claim to be superior to the others.[67] As no nation can take upon itself the right to judge the manner in which another sovereign governs his country:

> "...the Spaniards acted contrary to all rules when they set themselves up as judges of Inca Atahualpa. If that Prince had violated the Law of Nations in their regard, they would have been right in punishing him. But they accused him of having put to death certain of his own subjects, of having had several wives, etc., things for which he was not responsible to them; and, as the crowning point of their injustice, they condemned him by the laws of Spain."[68]

For Vattel "the conquest of the civilized Empires of Peru and Mexico was a notorious usurpation..." for it is unlawful to reduce another nation to subjugation.[69] But the same considerations apply to societies composed of several independent families, such as "the savage tribes of North America".[70] Of these, Vattel writes:

> "...when several independent families are settled in a country they have the free ownership of their individual possessions, but without the rights of sovereignty over the whole, because they do not form a political society. No one may lay claim to sovereignty over that country, for this would be to subject those families against their will, and no man has the right to rule over persons born free unless they subject voluntarily to him."[71]

In essence, Vattel was of the view that the civilizations of Mexico and Peru constituted sovereign nations but that groups of independent families which did not form political societies did not possess sovereignty, but nevertheless would have had ownership of their possessions. Even though this last group was not sovereign, they could not be deprived of their lands nor could they be subjected to the sovereignty of another nation without their consent. Vattel further made a distinction between settled agricultural peoples and pastoral or hunting peoples. The former own the property they actually occupy. The latter own lands of which they are making "present and continuous use", but they couldn't claim more land than they actually needed, and certainly not large tracts of territory over which they merely wandered. Vattel was concerned with

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restricting the geographical extent of these rights, not with asserting their temporary or inferior character.[72]

In 1830 the Committee on Indian Affairs of the United States House of Representatives noted that:

> "In the Spanish provinces, the Indians became the property of the grantee of the district of the country which they inhabited and this oppression was continued for a considerable period."[73]

The Spanish established themselves as dictators and rulers, with all the privileges and prerogatives which go with such power. The results of this blatant disregard of the rights of the Aboriginal peoples is still evident in the social and economic conditions in Latin America today.

(3) French America

The French followed the Spanish policy and took a direct position of dominance over the Aboriginal peoples in those areas which they settled. In areas in which they only carried on trade, their policies were not dissimilar to those of the British. Friendship and peace were cultivated for the purpose of trade, and alliances were entered into with Indian nations to fight the British. France also considered that it was acting legally by claiming sovereignty to new land areas it discovered. The French practice was based on two overriding policies. These are best expressed in the following excerpts from the Charter of the Company of New France:

> "To establish, extend and make known the name, power and authority of His Majesty and to the latter to subject, subdue and make obey all the peoples of the said lands."

> "Have them instructed, provoked and move them to the knowledge and service of God and by the light of the Catholic faith and religion, apostilic and Roman, there to establish in the exercise and profession of it..."[74]

French writers such as Pradier-Fodere, Salomon, Bonfils, Jeze and Depagnet, however, held a different view and recognized the full rights of the Aboriginal peoples to their territories.[75] To summarize the foregoing, there is a uniformity of view:

> "...that wherever a country is inhabited by people who are connected by some political organization, however primitive and crude, such a country is not to be regarded as territorium nulluis and open to acquisition by occupation."[76]

Since the French believed that the Indians were fit subjects to be christianized and frenchified, the missionaries were employed to assist in this regard. Once having accomplished these two goals the Indians were treated as French subjects.[77] In settled areas there was no recognition of the Indians having any rights in law until they became French citizens. Outside the settlements the French traders and merchants were only interested in the Indians for economic reasons. They were vital to the fur trade and it was believed that if they acquired Christian ideas and habits, they would be spurred by self-interest to participate in the fur trade.[78]

As a result of this policy, the French simply took the lands they needed for settlement, either driving out the Indians or assimilating them. The taking of land for actual settlement, however, was limited to the St. Lawrence River Valley. The great interior of North America was granted to

the French trading Companies as areas where it could carry on trade and commerce and make laws to govern the trade. In these areas Indian rights were not interferred with because the land was not required for settlement and because it was necessary to allow the land to remain in an "untamed state", with the Indians having the right to move freely on the land. They were encouraged to give up agriculture and to follow a hunting and gathering lifestyle.[79] This lifestyle was necessary to the success of the fur trade and it was encouraged by the use of credit and other incentives. Indeed, the French traders and explorers adjusted their activities and their own life-style to the frontier conditions.

(4) Practices of Other Colonial Powers

Other European powers such as the Dutch and the Swedes gave some recognition to the concept that Indian nations were sovereign and that they owned their land. The Dutch introduced land purchase arrangements in North America and incorporated this policy into their colonial statute law. The first actual purchase of land by the Dutch from the Indians, was the Manhatten Island purchase, which according to MacLeod was bought on the basis of fair market value at the time.[80]

(5) British Practice

The British were the most active colonizers on a global basis. They were the most influential in shaping policy and law regarding Indian sovereignty, trade and settlement. The object of trade and commercial activities was to make profits, and nowhere was the art of making money better developed or more cultivated than it was by British companies. The merchant class had gained control of the government and used the power of government to enhance their own interests. These companies were most concerned with trade. However, in the early 16th Century, settler colonies were also established.

These colonies were made up of dissident religious groups such as the Puritans and the Quakers.[81] The trade was in hand-crafted and manufactured goods which were exchanged for raw materials and exotic products such as jewels, spices and perfumes. In some areas of the world such as Africa, India and in parts of North America, the settlement activities tended to be limited to the settling of a managerial, professional and an entrepreneurial class. The entrepreneurs were to establish and run the plantations on which some of the trade depended. The managers looked after business and related administrative activities. The professional class served the settlers and concentrated some attention on civilizing the Aboriginal inhabitants.

To maintain maximum profits it was necessary to keep down the costs of colonial government, policing and other services, and to appease the Aboriginal population. A reasonably satisfied Aboriginal populace could be called on as producers of raw products, workers in trading activities, as customers for the goods of English factories and as allies in war.[82] As the industrial revolution created a large class of landless workers in Great Britain, which was threatening the political stability of that country. At this point it became important for the new colonies to be used as an outlet for the surplus population and the policy of encouraging settlement developed. However, settlement was encouraged in ways which enhanced trade and commerce. Settlement also brought the British settlers into conflict with local Indian peoples in North America and it was necessary to find new ways to appease them.[83]

The British became masters of the art of expediency. This practice was based on the belief that one must avoid conflict by granting the Aboriginal inhabitants enough to satisfy their demands while doing that in a way which would ensure that the British would achieve their economic, political and settlement goals. For the settler colonies themselves,

good relations with the Indians and Indian allies ensured their survival.[84] As a result, the trading Charters and land grants which the government gave were based on the idea that Aboriginal peoples must not be disturbed in the possession of their lands. Although the British Government on the one hand refused to recognize the Indians as legal owners of their land, for the sake of expediency, they encouraged private purchase of Indian lands.[85]

Provisions regarding the rights of the Aboriginal peoples included in the Charter of the Massachusetts Bay Company were typical of the provisions made in other Charters and given in letters of instruction to local colonial governors and to the proprietors of trading companies. These provisions were also later incorporated into constitutional documents such as the Royal Proclamation of 1763. One of the provisions in the Charter of the Massachusetts Bay Company reads as follows:

> "Above all we pray you to be careful that there be none in our precincts permitted to do injury in the least kind to the heathen people...if any of the savages pretend right of inheritance to all or any of the lands granted in our Patent we pray you endeavor to purchase their title..."[86]

Similar instructions were given by the Hudson's Bay Company in letters of instruction to traders, who were told not to disturb the Indians in possession of their lands.[87] The purchase of title was often accomplished by having the Indians sign deeds which indicated they were selling the land for a given price to the settlers. This was a new concept for the Indians who had not developed a formal concept of land ownership by registered title.

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V. CONCLUSION

In conclusion, there is a distinct school of International Law which recognizes the sovereignty of the Aboriginal peoples and their right to their lands and their territorial integrity.[88] However, in the case of the Metis, they would be barred from arguing violations of International Law in municipal (i.e.-domestic) courts to challenge the authority of the British Crown in asserting its sovereignty over Aboriginal lands. The principal problem can be stated as follows:

(1) The Sovereign, who has "broad powers of conducting international affairs" is subject to International Law.[89]

(2) However, a municipal court is not competent to deny the Crown's claim to acquired territories.[90]

> "In British law the dominions of the Crown comprise all those territories and no more, which are authoritatively claimed by the soveeign at that time."[91]

> "The question of whether International legal criteria had been satisfied would not entitle a municipal court to decline to give effect to an authoritative Crown claim."[92]

Therefore, a fundamental problem persists in Western Canada where Britian asserted its sovereignty. Legal authorities clearly rule out a challenge by the Metis to original assertions of British sovereignty over Aboriginal lands, no matter how unjust.

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The second conclusion deals with certain conventional schools of thought regarding the denial of rights to non-Christians. Such an argument, when applied to the Metis, if accepted as valid, cannot stand and must fall to the ground. The devout Christianity of the Metis is undeniable.

The third conclusion deals with the denial of peoples to be sovereign entities if there was no settled political order (lex loci). Again, such an argument, if accepted a valid, must fall to the ground. The Metis had a highly developed system of law, land-holding and local self-government. There was clearly a settled political order.

The fourth conclusion deals with those writers such as Vattel, who argued for limited recognition of the sovereignty of the Aboriginal peoples. Such an argument is predicated upon "classifying lands as owned only if they were permanently used for living site or areas of culitvation."[93] There is support for such an approach in British colonial experience.[94] However, this argument must fail, as it is contrary not only to more widely recognized scholars in International Law, as outlined above, but to the terms of the Royal Proclamation of 1763:

> "And whereas it is just and reasonable and essential to our interest, and the security of our colonies, that the several nations or tribes of Indians with whom we are connected, and who live under our protection, should not be disturbed in the possession of such parts of our domains and territories as not having been ceded to or purchased by us, are reserved to them or any of them, as their hunting grounds..."[95]

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The fifth conclusion relates to the notion that title can be set up by right of "discovery". This was considered in the case of the Aboriginal peoples of North, Central and South America and rejected by Victoria, who stated:

> "...because, as proved above, the barbarians were true owners, both from the public and from the private standpoint. Now the rule of the Law of Nations is that what belongs to nobody is granted to the first occupant, as is expressly laid down in the aforementioned passage of the Institutes. And so, as the object in question was not without an owner, it does not fall under the title which we are discussing...this title...in and by itself gives no support to a seizure of the aborigines lands any more than if it had been they who discovered us."[96]

Coupled with the notion of "discovery", the sixth conclusion deals with the theory of acquisition by "conquest". No less an authority than Dr. Lloyd Barber, the former Commissioner on Indian Claims, put it this way in 1974:

> "For us to accept their generosity and their assistance, to have accepted their basic concept of sharing and then to later claim that we were in fact conquerors in disguise and that they really have no rights, seems to me immense hypocrisy."[97]

[1]See revised Standard Statutes of Canada.

- Manitoba Act, 33 Victoria(Cap. 3-1870)
- Dominion Lands Act, 42 Victoria(Cap. 31-1879)
- Dominion Lands Act, 46 Victoria(Cap. 17-1883)

[2]Report of N.O. Cote, Esq. of the Department of the Interior, dated 3rd December, 1929. Public Archives of Canada.

[3]St. Catherines Milling Case and Lumber Company v. The Queen (1889), 14 A.C. 46 (P.C.)

[4]Calder v. Attorney General of B.C., (1973, S.C.R. 313)

[5]Paulette v. R. (1976) 72 D.L.R. (3d) 161.

[6]Archer, Martin, The Hudson's Bay Company's Land Tenures, London, William Clowes and Sons Limited, 1898.

[7]Noonan and Hodges (Unpublished). Public Archives of Saskatchewan, University of Regina.

[8]Cumming , Peter A. and Mickenberg, Neil H., Ed., Native Rights In Canada, The Indian and Eskimo Association of Canada (1972). Part II: The Law of Aboriginal Rights, pp. 13-52.

[9]Ibid.

[10]Neil H. Mickenberg, Aboriginal Rights In Canada. Osgoode Hall Law School (1971) p. 150.

[11]Re: Eskimos (1939) S.C.R. 104.

[12]William Christie MacLeod The American Indian Frontier, London, Kegan Paul, Trench, Trubner Co. Ltd., New York: Alfred A. Knoph, 1928, p. 195

[13]An Unpublished Thesis by Sharon O'Brien, From International Sovereign to Domestic Dependent Nation: Non-recognition of International Indian Sovereignty by American Courts, p. 22

[14]MacLeod, Supra, pp. 205-206.

[15] Johnson v. McIntosh, 21 U.S. (8 Wheat) 240 (1823).

[16] Cherokee v. Georgia, 5 Peters 1.

[17] Sharon O'Brien, Supra, pp. 53-54.

[18] Cummings and Mickenberg, Supra, pp. 94-100.

[19] The Honorable Alexander Morris, The Treaties of Canada with The Indians, Facsimile Edition reprinted by Coles Publishing Company, Toronto (1979).

[20] Ibid.

[21] Ibid.

[22] This is the first and only case in which the Government of Canada argued that the Indians had a full proprietary interest in their lands.

[23] St. Catherines Milling, Supra, p. 54.

[24] Kenneth, Lysyk, The Indian Title Question In Canada: An Appraisal In The Light Of Calder. (1973), 51 Canadian Bar Review, p. 450.

[25] A history of the Royal Proclamation can be found in: Brian Slattery: The Land Rights of Indigenous Canadian Peoples, As Affected by the Crown's Acquisition of Their Territories, (Unpublished), 1979. See also: Kenneth Narvey: The Royal Proclamation of 1763, The Common Law and Native Right to Land Within the Territory Occupied By The Hudson's Bay Company, (1973), 38 Sask. Law Review, p. 12.

[26] Regina v. White and Bob (1965), 50 D.L.R. (2d) 613, 52 W.W.R. 193 (B.C.C.A.), aff'd (1966), 52 D.L.R. (2d) 481 S.C.C.

[27] Attorney General For Canada v. Attorney General For Ontario (1879) A.C. 199 (P.C.). Rex v. Wesley (1932) 4 D.L.R. 774, 2 W.W.R. 337 (S. Ct. Alta., App. Div.).

[28] R. v Syliboy (1928), 50 C.C.C. 389 (N.S. Cty Ct.) The Queen v. Francis (1970), 10 D.L.R. (3d) 189, 9 C.R.N.S. 249 (N.B.C.A.). R. v. Simon 124 C.C.C. 110 (N.B.S. Ct. App. Div.).

[29]R. V. McCormick (1859) 18 V.C.Q.B. 131 at p. 136.

[30]Revised Standard Statutes of Canada (1926-27), Chapter 33, Section 6.

[31]Ibid.

[32]Cummings and Mickenberg, Supra, p. 13

[32a]William Christie MacLeod, Supra, p. 195.

[33]M.F. Lindley, The Acquisition and Government of Backward Territory in International Law, Reprinted 1969, Negro Universities Press, p. 1.

[34]Ibid. p. 45.

[35]Ibid.

[36]Brian Slattery: The Land Rights of Indigenous Canadian Peoples, As Affected by the Crown's Acquisition of Their Territories. (Unpublished) (1979), p. 1.

Douglas Sanders: The Legal Origins of Aboriginal Rights and the Resolution of Claims Based on Aboriginal Title. Dene Rights, Supporting Documents and Research, Volume 1, Paper 7, pp. 144-156.

[37]Ibid.

[38]Ibid.

[39]Lindley, Supra.

[40]Nassbaum: A Concise History, p. 84.

[41]Francisco de Vitoria: De Indis et de Juri Belli Relections, NYS, Ernest, Ed., Carnegie Institute of Washington (1917) p. 120.

[42]Brian Slattery, Supra.

[43]Thomas Aquinas, Summa Theoligica, Quoted in Slattery, The Indigenous Peoples of Canade in Internal Law, p. 10.

[44] Ibid.

[45] R.W. Carlyle and A.J. Carlyle, A History of Medieval Political Theory in the West. London, Blackwood and Sons, Volume 3, p. 33.

[46] Michel Villey, La Croisade. Paris, Librarie Philosophique, J. Vren (1942) pp.30-31.

[47] Slattery (Unpublished Paper), Supra , p. 10.

[48] M.F. Lindley, Supra, p. 77 and following.

[49] Ibid.

[50] Ibid.

[51] Ibid.

[52] Slattery (Unpublished Paper), Supra, pp. 13-21.

[53] Wagley and Harris, Six Case Studies: Minorities In The New World. Columbia University Press, New York (1958), pp. 49-50.

[54] Hugo Grotius, The Freedom Of The Seas; J.B. Scott, Ed., New York, Oxford University Press (1916), pp. 19-20.

[55] See Calvins Case (1688), 7 Co. Rep. La., 77 E.R. 377.

[56] Francisco de Vitoria, Supra, p. 120.

[57] Ibid. p. 128.

[58] Ibid. p. 123.

[59] Ibid. p. 128.

[60] Ibid. pp. 163-187.

[61] Cummings and Mickenberg, Supra, Part II.

[62] Ibid.

[63]W. C. MacLeod, Supra. pp. 138-139.

[64]Ibid.

[65]Ibid. p. 199.

[66]Ibid. See Also Cohen, The Spanish Origins of Indian Rights In United States Law (1942), 31 GEO, Law JR. 1 at p. 109.

[67]Vattel, Le Droit des Gems, translated Washington, Carnegie Institute (1916), Vol. III, p. 126.

[68]Ibid. p. 131.

[69]Ibid. pp. 38 and 141.

[70]Ibid. p. 143.

[71]Ibid.pp. 142-143.

[72]The character of Vattel's work is therefore distinguishable from the preceeding authors who recognize sovereignty. Vattel is of the school of thought which gave a conditional or limited recognition of sovereignty to Aboriginal peoples. See also Lindley, Supra, p. 17.

[73]Lindley, Supra, 21st Cong., 1st Sess., H.R. Rep. No. 227, February 24, 1839, p. 328.

[74]J.H. Kennedy, Jesuit and Savage In New France, Yale University Press, New Haven (1950).

[75]Ibid. pp. 15-16.

[76]Ibid. p. 17.

[77]Cumming and Mickenberg, Supra, p. 81. See also Stanley, The First Indian Reserves in Canada (1950) Revue d' Histoire de l'Amerique Francaise, pp. 209-210

[78]Ibid.

[79]W.C. MacLeod, Supra, pp. 148-149.

[80]Ibid. pp. 197-198.

[81]Ibid. pp. 131-137.

[82]Ibid. pp. 193-207.

[83]Ibid.

[84]Ibid.

[85]Ibid.

[86]Chronicles of The First Planters of Massachusetts Bay (1623-1639).

[87]Letters Outward, Hudson's Bay Company Records, Vol. 12, p. 15.

[88]Slattery, Supra, p. 46.

[89]Ibid.

[90]Ibid. pp. 46-63

[91]Ibid. p. 63.

[92]Ibid. p. 46

[93]Sanders, Supra, p 152.

[94]See Snow, Supra, p. 80.

[95]Royal Proclamation of 1763. Cumming and Mickenberg, Supra,

[96]Francisco de Vitoria, Supra, pp. 138-139.

[97]Commissioner On Indian Affairs, A Report: Statements and Submissions. Minister of Supply and Services Canada (1977), p. 7.