

# Canada's Arctic sector claim in historical perspective: a response to Alan MacEachern

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**ABSTRACT.** Explorer Joseph Elzéar Bernier's famous 1909 sector claim on Melville Island is often described as a key moment in the evolution of Canada's sovereignty over the Arctic archipelago. Writers such as Yolande Dorion-Robitaille and Marjolaine Saint-Pierre have argued that Bernier was unfairly deprived of the credit he deserved for his sovereignty contributions. Alan MacEachern has recently stated in *Polar Record* that civil servants in the 1920s were to blame for this supposed unfair treatment. In particular, he sees Oswald Finnie of the Department of the Interior as a man who was determined at all costs to rewrite the historical record. This article contests MacEachern's depiction of Finnie and his colleagues, based on a range of primary source documents. It also emphasises the little-known but very significant role played by James White, who first placed the sector lines on an official map five years before Bernier's 1909 proclamation. The article thus clarifies the complicated relationship between White's 1904 map, Bernier's 1909 claim, an earlier sector claim made by Bernier in 1907, and the views on the sector theory held by influential members of the Canadian civil service at the time when an official sector claim was made by Ottawa in 1925.

## Introduction

In his response (MacEachern 2016) to my note 'Further evidence and reflections on Joseph Elzéar Bernier's 1907 and 1909 sovereignty claims' (Cavell 2013), Alan MacEachern neglects primary evidence cited in my other publications on Bernier (Cavell 2010; Cavell 2011; Cavell 2014; Cavell and Noakes 2010), misrepresents some underlying arguments in these publications, and puts forward an alternative interpretation that deserves further critical scrutiny. Bernier led official Canadian expeditions to the Arctic archipelago in 1906–1907, 1908–1909, and 1910–1911. The central point at issue is whether the proclamations he made during these voyages helped or hindered Canada's claim to the northern islands. I have not, as MacEachern suggests, ever argued that Bernier's influence was wholly negative (MacEachern 2016: 1). Instead, I have given Bernier credit for his diligence when, in his capacity as a fisheries officer, he enforced Canadian whaling regulations in the Arctic between 1906 and 1911; I have also noted that between 1922 and 1925 he was a valued colleague to the civil servants who worked to perfect Canada's claim (Cavell 2011: 304, 305; Cavell 2013: 407).

What I contest is the premise that Bernier's flag-raising and speeches on various islands, including his famous sector proclamation of 1 July 1909, were of any significance from the strictly legal point of view. Indeed, it was argued by the Conservative opposition at the time that the flag-raising merely cast unwarranted doubt on the validity of the 1880 transfer of Arctic territory from Britain to Canada (Cavell 2011: 304). Although the Liberal prime minister, Sir Wilfrid Laurier, had not ordered Bernier to make the 1909 sector proclamation (and it had earlier been indicated to the explorer that such proclamations were unwelcome), the publicity surrounding Robert Peary's claim to the North Pole and surrounding area for the

United States forced Laurier to sanction Bernier's act. The sector idea, as it was understood by Bernier, was later dropped by Laurier's government. However, since it was never publicly repudiated, the impression was given that Bernier's 1909 proclamation was indeed the foundation of Canada's case (Cavell and Noakes 2010: 79; Cavell 2010: 373; Cavell 2011: 305; Cavell 2014: 301).

MacEachern's own arguments on this subject are somewhat inconsistent. On the one hand, he states that Bernier's actions had at least a symbolic and sentimental value, which I have allegedly ignored. On the other hand, he insists that at the behest of the Laurier government, Bernier did in fact take officially sanctioned action to provide a legal foundation for Canada's northern sovereignty, and he accuses Finnie and others of having deliberately obscured the significance of this work for their own purposes. MacEachern then partially retracts his claim about the legal importance of Bernier's acts in his conclusion (MacEachern 2016: 1, 3). He offers no clear primary source evidence to support his allegations of misconduct by Finnie, and I have seen none in the archival files. However, there is considerable evidence to the contrary.

I certainly would not deny that Bernier played a role in drawing the Arctic to public attention in Canada, and indeed I have examined this aspect of his career in other articles (Cavell 2006: 16–22; Cavell 2007: 16–17, 22). However, I am unconvinced by MacEachern's statement that Bernier's symbolic approach to sovereignty was new and modern (MacEachern 2010: 62, 73; MacEachern 2016: 1). Rather, Bernier was like a throwback to an earlier era, before international law began to insist on actual occupation rather than symbolic acts. I also think that in terms of public discourse on the Arctic in Canada, Bernier was far outshone by Vilhjalmur Stefansson, both because Stefansson actually discovered new land in the Arctic and

because of the greater national and international publicity his work garnered. Bernier's exploits did not receive front-page coverage in *The New York Times*; Stefansson's did. Stefansson's book *The friendly Arctic* (1921) was published by a major commercial firm and serialised in the *Toronto Star Weekly*; Bernier's books were not.

### **The 1880 transfer of sovereignty and Laurier's Arctic policy**

Sovereignty over British discoveries in the Arctic archipelago was transferred to Canada by an imperial order-in-council in 1880. MacEachern suggests that the 1880 title was questioned by officials in the Laurier era (1896–1911), making Bernier's ceremonies of re-possession on each Arctic island appear necessary (MacEachern 2016: 1–2). He implies that British documents on the transfer caused this development in some unspecified way. But as Jeff Noakes and I have discussed elsewhere, the British documents show no doubt about any area except Grinnell Land (the central portion of Ellesmere Island, then believed to be a separate land mass), which had been discovered by American explorers (Cavell and Noakes 2010: 70–72). Furthermore, since the documents MacEachern refers to date from 1879, and were not read in Ottawa until 1921 (Holmden 1921), it is difficult to see how they could have influenced decisions about Bernier's early voyages. Officials during the Laurier era, such as the minister of justice, Charles Fitzpatrick, took it for granted that the 1880 transfer was valid. 'Any island complying with the conditions laid down in the Order-in-Council is now, and has been since 1880, incorporated within the Dominion', Fitzpatrick wrote to the prime minister (Fitzpatrick 1905: 202). It was, however, realised by these men that to maintain and perfect its title, Canada must take active steps toward actual occupation (Cavell 2011: 303; Cavell 2014: 294–295). In response to Fitzpatrick's letter, Laurier wrote that the 'best course' was to have 'our jurisdiction quietly extended to every island' (Laurier 1905).

To suggest that Laurier and his advisers believed it was necessary to hoist the flag on each island before occupation could proceed is absurd. Bernier's flag-raising did play a role in making the Canadian public more aware of Arctic sovereignty issues. However, all the evidence indicates that these actions were taken on Bernier's own initiative, with the acquiescence of some officials in the Department of Marine and Fisheries. In the minds of Laurier and his ministers, to enforce the new whaling regulations passed in July 1906, and thus to exercise actual jurisdiction in the far north, was the true purpose of Bernier's three voyages between 1906 and 1911 (Cavell 2011: 302, 303; Cavell 2014: 299). Ironically, then, Bernier's own rhetoric about his proclamations obscured his less dramatic, but more legally significant, work of collecting licence fees from foreign whalers (Cavell and Noakes 2010: 80).

### **James White and the sector theory**

In his 2016 response, MacEachern does not acknowledge that Bernier was not the originator of the sector idea. In

1904 the Department of the Interior's geographer, James White, placed sector lines extending to the pole on an official map (Cavell and Noakes 2010: 75). White never questioned the 1880 title, and in fact he was the one who convinced later officials that Bernier's actions had mistakenly brought its validity into question (White 1923; Finnie 1928). He wanted the recently discovered Sverdrup Islands – which clearly could not have been part of the 1880 transfer, but which had not officially been claimed by their discoverer's nation, Norway – to become part of Canada. This was the motive for the creation of the 1904 map (White 1922). However, White also placed strong emphasis on occupation and administrative acts within the sector (White 1923). It is quite possible that Bernier took the sector idea from White's map, while failing to fully appreciate the central importance of occupation. Bernier's supporter, Senator Pascal Poirier, also gave inadequate weight to occupation when he made his famous statement about the sector theory (Poirier 1907: 271). When the sector principle was officially put forward by Canada in 1925, the government of William Lyon Mackenzie King was affirming the principle as formulated by White. The 1925 declaration was made at a time when the process of occupation, which had begun in 1922, was progressing steadily (see Cavell and Noakes 2010).

### **'Reclaiming' British discoveries**

Until August 1907, when he made a sweeping sovereignty claim on the southern coast of Ellesmere Island that included the discoveries of Otto Sverdrup, Bernier's focus was on the islands discovered by his British predecessors. I have previously described how in July 1906 Bernier managed to get revised instructions from the deputy minister of marine and fisheries, François Gourdeau, that permitted him to raise the flag and make claims on already discovered islands. In doing this, Gourdeau appears to have been accommodating Bernier's own wishes. The original orders, which MacEachern does not discuss, directed Bernier only to claim any new lands he might discover, and thus do not indicate any concerns about the 1880 title (Cavell 2010: 372–373; Cavell 2011: 303). The orders issued to Bernier in 1908 by the new deputy minister, George Desbarats, gave him permission to claim Banks Land and the adjacent islands. However, it is evident that Desbarats later became better informed on issues of international law. In 1914 Stefansson asked him whether he should raise the flag on known islands that had not yet been visited by Canadians. Desbarats replied, accurately, that occupation was what really mattered (Stefansson 1914; Desbarats 1914; see also Cavell 2014: 301).

### **A civil service conspiracy?**

The arguments regarding the 1920s in MacEachern's recent note rest on his reinterpretation of a few documents. These were previously cited in my note (Cavell 2013) and are now available in a printed collection (Cavell 2016). In my note (Cavell 2013: 407), I quoted a memorandum

by Oswald Finnie (O. Finnie 1930b) as evidence that the civil servants of the 20s subscribed to a far more carefully thought out sector concept than the one held by Bernier and Poirier. This concept came from White, who by 1925 was in a position of considerable influence as the minister of justice's adviser on boundary issues and a member of the interdepartmental Northern Advisory Board. For White, Finnie, O.D. Skelton, Lester Pearson, and their colleagues, the sector lines were merely a geographical framework for effective occupation rather than a supposed basis for sovereignty in themselves. This belief was reflected in the official sector claim made by the minister of the interior, Charles Stewart, in June 1925 (Cavell and Noakes 2010: 227–228, 235; Cavell 2014: 305–306). In this scheme of things, the proclamations made by Bernier before any occupation had been established were of little if any significance.

MacEachern, however, states that Finnie 'rewrote history to suit his own purposes' in his 1930 memo (MacEachern 2016: 1). He thus depicts Finnie as a conniving bureaucrat who deliberately deprived Bernier of credit. MacEachern makes much of Finnie's statement that Bernier had never been authorised to make any Arctic claims, when in fact the 1906 and 1908 orders did authorise Bernier's flag-raising on individual islands and the proclamations that went with them (but not his broad sector claims: the 1909 proclamation, of course, purported to annex all the British discoveries to Canada yet again). What MacEachern does not take into consideration is that a few years earlier, Finnie had searched the published narratives and the Department of the Interior's records for Bernier's instructions. He found nothing except the orders issued in 1910 by Desbarats' successor, Alexander Johnston, which did not authorise any claims (in Stumbles 1911: 3). Finnie next took the reasonable step of writing to Desbarats for information about the earlier instructions. Desbarats replied merely that Bernier had 'acted on certain occasions as the accredited agent of the Canadian Government, and as such planted the Flag in several of the northern islands and attested Canada's claim to this land' (Desbarats 1926). This reply gave Finnie the impression that Bernier had possessed only the general authority held by any commander of an official expedition (see also Cavell 2014: 304).

### Bernier and the Sverdrup Islands

In 1930, Bernier insisted that his August 1907 sovereignty proclamation had secured the Sverdrup Islands for Canada (Bernier 1930). Even if he had known the truth about the 1906 and 1908 instructions, Finnie could not have credited Bernier with establishing legal possession of the Sverdrup Islands because without permanent occupation, Canada's title even to the islands discovered by British explorers was not fully perfected during the Laurier years. The only possible exception was Baffin Island, where the Canadian government had granted a few mining permits and Bernier had successfully exercised jurisdiction in the

nearby waters. Bernier was basing his assertions about the Sverdrup Islands on his sweeping 1907 proclamation, which had *not* been authorised. And, like the 1909 sector claim, it would not have been recognised as valid under international law even if it had been made on the government's orders. MacEachern's suggestion that the 1909 claim could be considered at least as a legal 'beachhead' for Canada in the high Arctic (MacEachern 2016: 1) is thus not tenable.

Accordingly, Finnie's analysis was justified: there were important differences between Bernier's flag-raising on islands already discovered by British explorers and his claims to have secured sovereignty over the Sverdrup Islands, which had been discovered by a foreigner, and which lay well beyond any point reached by Bernier's own expeditions. Bernier's spurious sector concept, and particularly his insistence that he had obtained the Sverdrup Islands for Canada simply by making proclamations from afar, was the main concern of Finnie's 1930 memo. What Finnie denied was that a claim such as the 1907 one described by Bernier and, by extension, the 1909 sector claim as well, could ever have any legal validity. His memo is therefore an important document (see also Cavell 2014: 305).

With regard to Bernier's 1930 letter to Sir George Perley (Bernier 1930), MacEachern questions my conclusion that Bernier hoped for a formal letter of thanks, which he could then make public in order to depict himself as the hero of northern sovereignty. Instead, he thinks that Bernier wanted a cash payment similar to the \$67,000 received by Otto Sverdrup (MacEachern 2016: 2). But when Bernier wanted money, he was never shy about saying so, as his numerous demands for a higher pension indicate (see Cavell 2014: 306). Moreover, the payment to Sverdrup was a compensation for the cost of his privately funded expedition in 1898–1902: the Canadian government was, in effect, retroactively becoming the sponsor of Sverdrup's work. Bernier's expeditions had already been paid for by the government, and therefore he had no grounds for demanding similar compensation.

### The 1925 sector principle

MacEachern claims that Finnie's posture during the 1920s and early 1930s was basically a defensive one, and that he harboured lasting fears based on Norway's refusal to sanction the sector theory when acknowledging Canada's title to the Sverdrup Islands. MacEachern does not take into account the numerous records showing that Canadian officials were well satisfied by the outcome of the negotiations with Norway. For example, Finnie's own response to the settlement is highly instructive: he wrote that,

While Canada has stood for the sector principle[,] the application of that principle, it is thought, is not now of paramount importance ... for, with the single exception of the Sverdrup Islands, all the other land area[s] in the sector north of Canada can reasonably be claimed to be ours by right of discovery, or by the

terms of the Imperial Order in Council of 1880. The recognition by Norway of our sovereignty over the Sverdrup Islands removes the one cloud to our title. Continued occupation ... [is], of course, essential to the maintenance of our sovereign rights in that area. (O. Finnie 1930c; see also O. Finnie 1930a)

This passage, written on the very same day as Finnie's memo about Bernier, illustrates quite clearly that the 1925 sector claim was intended to make the United States, Norway, and other nations aware of Canada's intention to occupy the entire archipelago, including Grinnell Land and the Sverdrup Islands. Once these nations had acquiesced, either by explicit statements or by failure to make a protest, the sector lines in themselves were no longer of critical importance. Bernier, however, continued until his death to characterise his own 1909 sector claim as the basis for Canada's sovereignty over the entire archipelago (for example, see Bernier 1933; see also Cavell 2013: 407).

### The evidence of Richard Finnie

In his conclusion, MacEachern cites a 1942 book by Richard Finnie, Oswald Finnie's son, which gives Bernier credit for affirming – but not for establishing – Canada's claim (MacEachern 2016: 3). I would not consider Finnie's assessment to be entirely wrong, at least with reference to the islands transferred in 1880. However, before giving the statement too much weight, it should be noted that whatever Finnie the journalist might write for public consumption, in private he often cast mild ridicule on Bernier's habit of 'planting flags everywhere he went in the Arctic and claiming the land for Canada – despite the fact that it was already Canadian' (R. Finnie 1972; see also Cavell and Noakes 2010: 75). Indeed, the wording of the passage quoted by MacEachern ('His critics laughed at [Bernier's flag-raising] ... but at least it was a Canadian who was now affirming Canada's ownership'; MacEachern 2016: 3) suggests that it originally ridiculed Bernier, but was later modified on an editor's suggestion.

### The 1907 claim

Finally, there is the matter of the 12 August 1907 sector claim. In Bernier's published narrative, he simply listed the islands claimed on that day, including the Sverdrup Islands. In his initial report to the Department of Marine and Fisheries, however, he stated that he had claimed all lands from southern Ellesmere Island to 'as far as ninety degrees north' (Bernier 1907: 260). Official disapproval of his action was indicated by an 'x' in the margin beside this passage, and there was no public announcement regarding it.

MacEachern maintains that we discovered the 1907 document quite independently of one another (MacEachern 2016: 1). The root of the disagreement on this point appears to be our different ideas about what constitutes an 'independent discovery' – sadly, a recurring tradition in polar history. To judge from the comments in his recent note, MacEachern appears to have received the impression

that I claim to have given him either a copy of the document or the precise archival reference for finding it. This is not the case. We merely discussed the existence, the contents, and the possible interpretation of the document by e-mail and telephone.

MacEachern asked me for research advice in the spring of 2009. In the summer, I came across the 1907 report and, knowing his interest in Bernier, I told MacEachern about it in September. I suggested that we collaborate on an article, which he at first agreed to do, but later changed his mind. He then stated that he had not yet looked at the relevant archival file, but intended to do so, and to use the material in an article. I therefore submitted a research note to *Polar Record* in late November. It was accepted and published online in February 2010 (see Cavell 2010). Shortly afterwards, I informed MacEachern of the publication by e-mail.<sup>1</sup> When MacEachern's own article was subsequently published, I was surprised to find that it described the document as having 'gone completely unnoticed for the past century' (MacEachern 2010: 43, 48, 58).

In his 2010 article, MacEachern initially focuses on the importance of Bernier's 1907 sector claim, but then argues that perhaps no such claim was in fact made (MacEachern 2010: 43, 48, 58–59). He has now transformed his original suggestion that Bernier might have misrepresented his actions when he wrote his report to Ottawa into the statement that there is 'every reason to believe' Bernier did not put forward a sector claim in 1907 (MacEachern 2010: 58–59; MacEachern 2016: 2). The evidence cited in both publications is that the diary of an expedition member does not record any particular ceremony on the date in question, and indeed states that Bernier sent officers ashore to deposit the record instead of going himself. This entry is consistent with Bernier's own account of two officers having been sent (Bernier 1909: 49). As for the sovereignty aspect, my view is that Bernier had good reason for anxiety at that particular juncture, because he had recently discovered a record left by Sverdrup (Bernier 1909: 49). Since it was in Norwegian, he could not be sure what it said, but he might well have feared it was a sovereignty proclamation and felt compelled to take action on short notice. The lack of ceremony can be accounted for by the bad weather and risky ice conditions that prevailed at the time (Cavell 2014: 297).

I believe that the record likely did contain the words 'as far as ninety degrees north' (see Cavell 2014: 309 n.2), but even if it did not, the very large extent of territory covered by Bernier's proclamation made it a sector claim as Bernier and Poirier understood the term – that is, a statement of Canada's supposed innate right to its full geographical hinterland. It is difficult to see on what other basis Bernier could have asserted possession of lands stretching far to the north of the point where he stood, given that these lands had never been visited, let alone occupied, by Canadians. Bernier's report to the Department of Marine and Fisheries is the proof that he himself saw the claim in this way. Because Bernier was

not permitted to publicise the sector aspect, historians (including myself until 2009) failed to see the 1907 proclamation as a forerunner of Bernier's famous 1909 ceremony on Melville Island. But whatever the precise wording of the record, it did foreshadow his subsequent action. Interestingly, when Bernier raised the subject of his 1907 proclamation in 1930, Oswald Finnie seems to have grasped that he was really talking about a sector claim, perhaps as a result of previous conversations with the explorer.

In support of his belief that Bernier lied in his 1907 report, MacEachern cites the apparent lack of official concern about the record of Bernier's unwanted sector claim that had been left on Ellesmere Island (MacEachern 2010: 59; MacEachern 2016: 2). Since the government would not have known he had lied, the significance of this argument is not clear to me. In any case, it ought to be turned around: why would Bernier make a false report in Ottawa, knowing that if the prime minister accepted and publicised it, both he and Laurier might be acutely embarrassed should a foreign expedition retrieve a document that did not match the report? Such an episode would have severely damaged Bernier's credibility with both the government and the public. (On the probable fate of Bernier's record, see Cavell 2014: 303.)

### Conclusion

Despite his admiring view of Bernier, MacEachern ends by characterising him as 'something of a megalomaniac' and by conceding that he 'gave himself too much credit for his role in Canadian Arctic sovereignty' (MacEachern 2016: 3). Why, then, should civil servants working to secure the strongest possible title for Canada be accused of rewriting history because they would not glorify his supposed role? If Bernier's one solid contribution to the Canadian legal case – his successful enforcement of the whaling law – has often been overlooked, the fault is mainly his own. Moreover, Bernier's hyperbolic re-casting of events effectively denied public credit to the true author of Canada's sector claim, James White (see also Cavell and Noakes 2010; Cavell 2014).

### Note

1. My supervisor in the Historical Section has seen the e-mails on this matter and can confirm the accuracy of what I have said

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