Regulating Indian* and Chinese Civic Identities In British Columbia's "Colonial Contact Zone,"** 1858–1887

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> If we allow Chinese to infest our country, as is at present being done . . . they will drive out the white population which has gone there and civilized the Indians, who [now] make better citizens than the Chinese.[1]

Introduction

Victorian anthropologists—whom Tina Loo has aptly termed the "intellectual spawn" of nineteenth-century colonialism and "a European ethnographic imagination"[2]—categorized races according to their relative progress in ascending an imaginary ladder of civil development denominated the "scale of civilization."[3] At the bottom of the scale of civilization were ranked "savage races," which were said to lack all civilized qualities because they had no religion, no private property, no fixed place of residence, no government, no law, and "no systematic employment of the collective strength of society to protect individuals against injury from one another."[4] Next were "barbaric races," characterized by the emergence among them of rudimentary civil institutions. Above these were "semi-civilized races," among whom more

* The term "Indian(s)," which appears in the archival sources, is used throughout this article to refer to peoples indigenous to North America.

** The term "colonial contact zone," as used here, describes the "conceptual and material geography" in nineteenth-century British Columbia where "white, Indian, Chinese and mixed-race populations came into frequent contact": Renisa Mawani, *Colonial Proximities: Crossracial Encounters and Juridical Truths in British Columbia, 1871–1921* (Vancouver: UBC Press, 2009), 4–5.

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1 *Debates of the House of Commons of the Dominion of Canada*, 4th Parl., 3d sess., vol. 2 (1881), p. 1012 (*per* Arthur Bunster, MP for Vancouver).

2 Tina Loo, "Savage Mercy: Native Culture and the Modification of Capital Punishment in Nineteenth-Century British Columbia," in *Qualities of Mercy: Justice, Punishment, and Discretion*, ed. Carolyn Strange, 104–29 (Vancouver: UBC Press, 1996), 109.

3 For a critique of this "social evolutionary" discourse by leading Victorian anthropologists Herbert Spencer, E.B. Tylor, and L.H. Morgan see Leslie A. White, "Evolutionary Stages, Progress, and the Evaluation of Cultures," *Southwestern Journal of Anthropology* 3 (1947), 165.

4 John Stuart Mill, "Civilization—Signs of the Times," *London and Westminster Review* 25 (1836): 1–28, 2.

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complex civil institutions had evolved. At the apex of the scale of civilization were "civilized races," whose highly developed civil institutions were the most complex of all.

Victorian anthropologists sought to account for the existence of "contemporary savage peoples" by focusing on "the problem of the origin of human civilization."[5] One widely accepted line of inquiry, derived from the British common-law juridical archive, contended that customary oaths provided the cohesion of civil society and the impetus for social change.[6] My own study titled "The Admissibility of Non-Christian Indian Testimony in the Colonial Municipal Courts of Upper Canada/Canada West"[7] discusses the oft-cited case of *Omychund v Barker* (1744), which formulated and propagated the juridical truth that "[n]o country can subsist a twelvemonth where an oath is not thought binding, for the want of it must necessarily dissolve [civil] society."[8] In their individual reasons for judgment, which laid down the foundations of the rules of the comity of civilized nations that have come to be known as international law, each of the four judges in *Omychund v Barker* referred to civilized nations in the world by all-encompassing terms such as "humanity" and "mankind."[9] However, the context makes clear that they were groping for a term to express the concept of "civilization"—which term had not yet been coined—to distinguish civilized people from savages.[10] Savages were perceived as people who did not adhere to "the Principles of Natural Religion" and who therefore could not be bound by the "Obligation of Oaths" upon which civil society depended.[11]

British writers of treatises on the law of evidence derived three rules of evidence from *Omychund v. Barker*. First, only testimony under oath was admissible in judicial proceedings. Second, a person was deemed religiously competent to swear an oath and testify only if he or she believed in the existence of a God and believed that divine punishment would be the certain consequence of perjury. Third, a person was to be sworn according to the mode that he or she considered most binding on his or her conscience (it was assumed that the mode of oath that would bind the conscience of one

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5 George W. Stocking, Jr., *Victorian Anthropology* (New York: Free Press, 1987), 44–45.

6 E.B. Tylor, "Ordeals and Oaths," *Macmillan's Magazine* 34 (1876): 1–11.

7 Reginald Good, "The Admissibility of Non-Christian Indian Testimony in the Colonial Municipal Courts of Upper Canada / Canada West," *Windsor Yearbook of Access to Justice* 23 (2005): 55–94.

8 Leonard MacNally, *The Rules of Evidence on Pleas of the Crown, Illustrated from Printed and Manuscript Trials and Cases* (London: Butterworth & Cooke, 1802), 76.

9 Counsel for the "infidel" plaintiff, Omychund, framed the issues as "matters of *commerce*" arising from trade among "civilized nations," which had to be determined upon "general" (i.e., Natural Law) principles of "reason, justice, and convenience" that provided a legally acceptable foundation for overturning long-standing common-law rules: MacNally, *The Rules of Evidence*, 69–80. This frame of reference found favour with the four judges in the case, each of whom delivered extensive reasons for judgment grounded in Natural Law reasoning.

10 Franklin le Van Baumer, "The Conception of Christendom in Renaissance England," *Journal of the History of Ideas* 6 (1945): 131, 148.

11 *A General Abridgment of Cases in Equity, Argued and Adjudged in the High Court of Chancery, Etc.*, vol. 2 (London: W. Strahan & M. Woodfall, 1769), 408–9.

person would not necessarily bind the conscience of another). Colonial municipal courts applied these exclusionary rules of evidence to bar the reception of testimony from prospective non-Christian Aboriginal witnesses. In all jurisdictions where this occurred, colonial officials decried the ability of colonial municipal courts to punish crimes because unsworn testimony from non-Christian Aborigines and Indians was deemed inadmissible. They perceived that this failure to punish crimes encouraged atrocities to be committed with impunity, invoked "an absolute contempt of British Law,"[12] and resulted in "a complete bar to the ends of justice."[13]

Britain's imperial Parliament responded to these criticisms by passing, in 1843, the (Colonies) Evidence Act, 1843.[14] The act's preamble noted that "barbarous and uncivilized" people who "had no knowledge of God and of any religious belief" were "incapable of giving evidence on oath in any court of justice" within the British colonies. The act enabled colonial legislatures to remedy this injustice by passing legislation to admit the unsworn testimony of non-Christian Aborigines and Indians.

Below I examine how the debate, passage, and implementation of legislation to admit the unsworn testimony of non-Christian Indians in British Columbia, pursuant to the (Colonies) Evidence Act, 1843, reshaped the "racial configuration of British Columbia's colonial contact zone" while sustaining the "cultural and racial supremacy" of Anglo-Saxons and allied white races in a "shifting and unstable" social order that ranked races in a hierarchy according to their "perceived progress [or retrogress, as the case may be, on the anthropological scale] of civilization."[15] Initially, the colonial regime classified Indians as "savage" and Chinese as "semi-civilized." But over time colonial agents legally civilized Indians by producing and imposing on them substitutes for oaths, which provided a tactic for the colonial regime to manage Indian civil progress upwards. Simultaneously, colonial agents legally de-civilized Chinese by producing and imposing on them racial oaths that were conceived as intrinsically inferior to the newly minted substitutes for oaths imposed on Indians and that provided the colonial regime with a tactic to manage Chinese civil retrogress downwards. By 1887 these combined civilizing and de-civilizing tactics had reversed the positions of Indians and Chinese on the anthropological scale of civilization, the former having been reclassified as "semi-civilized" and the latter as "barbaric."

This evidence supports Renisa Mawani's proposition that "placing aboriginal–European contact and Chinese migration in the same conceptual lens might illuminate the variègated forms, patterns, and rhythms that

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12 British Columbia Archives and Records Services [BCARS], R 45, file 829, Joseph Denman to Arthur Kennedy, November 18, 1864.

13 Ibid.

14 *An Act to authorize the Legislatures of certain of Her Majesty's Colonies to pass Laws for the Admission, in certain Cases, of Unsworn Testimony in Civil and Criminal Proceedings* (UK), 6 & 7 Vict, c 22 [*(Colonies) Evidence Act, 1843*].

15 Mawani, *Colonial Proximities*, 4–5, 11, 127.

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underpinned colonial encounters and the racial epistemologies and modes of regulation that contoured imperial terrains."[16]

Debating Differential Tactics for Civilizing Indians and De-civilizing Chinese

Under the common law, prospective Indian witnesses were *prima facie* deemed "incapable of giving evidence on oath in any court of justice" for two reasons: first, because they were prejudged as savage people without any "knowledge of God and of any religious belief" and, by extrapolation, "utterly ignorant of the nature of an oath";[17] and, second, because it was believed that "Indians in point of fact have no [customary] oaths" that could be administered to them.[18] Thus, when British Columbia was founded in 1858, municipal courts in that colony were legally unable to admit non-Christian Indian testimony. As a result, judicial administrators lobbied the colonial governor in council for statutory authority to admit formally unsworn Indian testimony and to take it down "for *what it is worth*"[19] (i.e., making proper allowance for "the witnesses[']] being savages" when assessing its credibility).[20]

In contrast, prospective Chinese witnesses were *prima facie* admissible in common-law courts throughout Britain and the British colonies because judicial administrators assumed that Chinese were semi-civilized people among whom customary oath-swearing forms were practised. Consequently, in municipal common-law proceedings Chinese typically were required to take racial oaths derived from customary (Han) Chinese "invocation[s] or oath[s]" traditionally performed before "idols" in China.[21] However, there was controversy in the common-law community as to whether such oaths carried "much weight" or obligated swearers to "speak the truth when otherwise [t]he[y] would lie,"[22] because Chinese were said to lack "any proper idea of the sanctity of an oath"[23] as civilized Anglo-Saxons and allied white races understood the term.[24] This ignorance was attributed to the racial inferiority of Chinese, who were characterized as "an untruthful race," as people who

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16 Mawani, *Colonial Proximities*, 7.

17 *Testimony in the Colonies; (Colonies) Evidence Act, 1843*; BCARS, GR-1372, file 54-19, Thomas Wood (Acting Attorney-General of Vancouver Island) to the Acting Colonial Secretary, November 24, 1864.

18 BCARS, GR-1372, file 142f, p. 16, Matthew Begbie (Chief Justice of British Columbia) to Frederick Seymour (Governor of British Columbia), November 9, 1864.

19 Wood to Acting Colonial Secretary, November 24, 1864.

20 "Legislative Council [Proceedings]" (January 18, 1865), *British Columbian*, January 21, 1865, 3.

21 S. Wells Williams, letter to President D.C. Gilman of Johns Hopkins University, June 4, 1877, reprinted in "Chinese Witnesses," *New York Times*, June 8, 1877, 3.

22 Ibid.

23 Canada, HC, "Report of the Select Committee on Chinese Labor and Immigration" in *Sessional Papers*, No 13, App 4 (1879), 12.

24 British Columbians referred to the Teutonic and Latin "races" as natural allies of the Anglo-Saxon race: Canada, HC, *Report of the Royal Commission on Chinese Immigration: Report and Evidence* (Ottawa: Royal Commission on Chinese Immigration, 1885), lxxxiii (*per* John Gray). Gray was a puisne judge of the Supreme Court of British Columbia.

"hesitate not to tell an untruth, and blush not at being detected."[25] For this reason, judicial administrators in British Columbia lobbied for statutory authority to "admit of the evidence of the Chinese being taken if necessary, in the same manner" as that of savage Indians.[26]

On January 16, 1865, attorney-general Henry Crease moved the first reading of a bill in British Columbia's Legislative Council to amend the law of evidence in British Columbia so as to admit unsworn testimony from Indian witnesses in all civil and criminal proceedings pursuant to the (Colonies) Evidence Act, 1843. Clause I of the Native Evidence Bill authorized administrators of justice to admit the unsworn evidence of any "Aboriginal Native, or Native of the half-blood, of the Continent of North America, or the Islands adjacent thereto." The rationale for this amendment to the law of evidence was that "such Aboriginal Native or Native of the half-blood as aforesaid" was "an uncivilized person, destitute of the knowledge of God, and of any fixed and clear belief in religion or in a future state of rewards and punishments," who did not understand the nature and obligations of an oath, which under the common law was "necessary to give validity to their testimony." Further, it was deemed "expedient for the ends of Justice" to remove doubts "as to the competency of the Aborigines to give evidence in Courts of Law in the Colony" and "to enable such testimony to be taken."[27]

When the Native Evidence Bill was read for a third time, on January 25, 1865, George Walkem—a member of the bar who would become premier and attorney-general of British Columbia after it joined the Dominion of Canada in 1871—moved in amendment that the whole of clause I be struck out and that the following clauses be substituted:

> In the construction of this Ordinance the word "Court" shall signify and include any competent legal tribunal, and any person or persons duly authorized to take evidence. In all actions and inquiries, whatsoever, civil or criminal, it shall be lawful for any Court, without administering the usual oath, to receive the evidence of any person destitute of the knowledge of God and of any religious belief, upon the affirmation or declaration of such person to tell the whole truth and nothing but the truth.

Walkem explained that his principal objective in moving this amendment was to extend the operation of clause I so as to admit of the evidence of Chinese being taken by affirmation, in like manner as the evidence of savage Indians was admitted. Otherwise, "no credence whatever" could reasonably be given to Chinese testimony. For it was a "well known fact" that the "farce" of "breaking a saucer" in the presence of Chinese witnesses,

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25 James H. Morris, "Notes of Travel in China," *The Canadian Journal* (n.s.) 9 (1857), 161, 171.

26 "Legislative Council [Proceedings]" (January 25, 1865), *British Columbian*, January 28, 1865, 3; "Fourth Provincial Legislative Assembly: Third Session" (February 16, 1885), *British Colonist*, February 17, 1885, 3.

27 *An Ordinance to amend the law of Evidence* (British Columbia) (8 February 1865), London, Public Records Office (Colonial Office, class 61, vol.1, 149).

as was the practice in common-law proceedings in England at the time, was not the Chinese "mode of binding their consciences to tell the truth; it had merely been prescribed for them." Consequently, such a proceeding could not "form the obligation" of an oath and—since no oath could be broken—courts had no grounds for laying "an information for perjury" if statements made by legally unsworn Chinese witnesses "prove[d] to be false." Requiring Chinese witnesses to affirm—pursuant to provisions of the amended Native Evidence Bill—would remedy these defects and, most importantly, succeed in "elicit[ing] the truth" from notoriously untruthful people by hanging over their heads the threat of legal indictments for perjury.[28]

Andrew Elliott—a gold commissioner and stipendiary magistrate for the Lillooet district—seconded Walkem's motion. Elliott argued that if "a Chinaman had a form of oath and wished to be sworn in a manner most binding on his conscience, such an oath if practicable could be administered as stated by the mover; but," he alleged, "no form of [judicial] oath was in vogue with the Chinese, hence the difficulty which the amendment met." For his part, Elliott could not conceive that a Chinese witness should be sworn in the ordinary Anglo-Saxon manner of kissing the Bible. And Elliott went on to expound that "from his experience" he would "sooner ... place the Bible in the hands of a savage [Indian] than a [semi-civilized] Chinaman," presumably because the former were uncorrupted by profane notions of religion and therefore less likely to pollute Christianity's sacred text than were the latter, with their more highly evolved heathen concepts of the divine that were antithetical to Christianity.[29]

At that point Attorney-General Crease replied to the proposed amendment by defending the Native Evidence Bill. Unfortunately, no details of this defence are extant; from comments Crease made elsewhere about Chinese judicial testimony, however, we can deduce what his sentiments were: Although the "classes of persons" who came to British Columbia as "emigrants from China are almost entirely the lowest class of laborers or coolies, with a sprinkling of merchants," they were still more civilized than savage Indians, thanks to the latter's "restless, nomadic propensities, which prevented them settling down to any permanent, industrious avocations." Consequently, prospective Chinese witnesses could hardly be considered "savage," within the meaning of the (Colonies) Evidence Act, 1843, which enabled the proposed bill to be passed. Crease admitted that Chinese witnesses "exhibited a remarkable economy of truth" in their "legal contentions in court," but he attributed this to two things: "our ignorance of the proper mode of binding their conscience by an oath" and "our ignorance of their language which prevents our being able to sift out the truth as we could when white witnesses swear directly opposite to each other with respect to the same facts." In any case, it was not necessary to address this issue by legislation, because the Chinese constituted a sojourning population that "will

[28] "Legislative Council [Proceedings]" (January 25, 1865).
[29] Ibid.

never assimilate with the Anglo-Saxon race, nor is it desirable that they should."[30]

The amendment to extend the Native Evidence Ordinance to Chinese witnesses was then put to a vote, and it lost by the narrowest of margins: "Yeas, 6; Nays, 7." The bill accordingly passed a third reading. It took effect on February 8, 1865, under the title An Ordinance to amend the law of Evidence (cited as the Native Evidence Ordinance, 1865).[31]

Following the unification of British Columbia with Vancouver Island in 1866, governor Frederick Seymour informed the Legislative Council that it would be "desirable that the laws of the two sections of the Colony should be assimilated with as little delay as possible." From the British Columbia ordinances, he selected "for general adoption those enabling Indian evidence to be received in Courts of Justice; the law for the prevention of the sale of spirituous liquors to the aborigines, and that for the protection of their [Indian] graves."[32] On February 1, 1867, Attorney-General Crease moved first reading of a bill "assimilating certain local laws as promised in the Governor's speech,"[33] which was referred to in the press as the "Assimilation of Laws Bill."[34] Attached to this bill was Schedule B, a list of local laws of British Columbia which it was proposed to extend to Vancouver Island. On February 6 the Assimilation of Laws Bill was considered in committee of the whole. It was resolved that a select committee consisting of Henry Crease, Thomas Wood, George Walkem, William Young, and Amor DeCosmos be appointed to revise the local laws mentioned in Schedule B and to report as occasion required.[35] On February 8 the Select Committee presented the Oath and Evidence Bill, which was read for the first time; this bill separated from the Assimilation of Laws Bill consideration of the local law of British Columbia that dealt with the reception of unsworn testimony from Indian witnesses.[36] Three days later, the Oath and Evidence Bill was read a second time and considered in committee.

On this occasion William Cox—County Court judge and gold commissioner for Cariboo Mines—complained that "he could find nothing in the [Oath and Evidence] bill relating to Chinese oaths," and he took the opportunity to make his "maiden speech on the difficulty of extracting truth from Chinamen." Thomas Wood—former acting attorney-general of Vancouver Island—responded that "the form of oath considered to be binding on the conscience [of "Chinamen"] was usually administered [to Chinese witnesses

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30 *Report of the Royal Commission on Chinese Immigration*, 140, 145 (*per* Henry Crease). Crease was a puisne judge of the Supreme Court of British Columbia from 1870 through 1896.

31 See note 27 above.

32 "The Governor's Speech" (January 24, 1867), *British Colonist*, January 25, 1867, 2.

33 "Legislative Council Proceedings" (February 1, 1867), *British Colonist*, February 1, 1867, 2.

34 "Tuesday's Sitting [of the Legislative Council]" (February 5, 1867), *British Colonist*, February 12, 1867, 2.

35 "Wednesday's Sitting [of the Legislative Council]" (February 6, 1867), *British Colonist*, February 12, 1867, 2.

36 "Friday's Sitting [of the Legislative Council]" (February 8, 1867), *British Colonist*, February 13, 1867, 2.

in British Columbian municipal courts], and that generally consisted in burning a piece of paper or breaking a plate while the oath was administered through an interpreter." Cox countered that "he had considerable experience" in swearing Chinese witnesses, "and could never succeed in eliciting the truth" from them. "He had tried every form of oath from a piece of burnt paper to smashing plates, and had even gone so far as to break a dish, but to no purpose." These experiences convinced him that there was only one mode by which truth could be "extracted from a Chinaman," and that was "by breaking a dish on his head instead of on the floor." The speech was reported to have "brought down the house" with laughter. Wood parried that he "remembered a case in which two Chinamen swore exactly the opposite," and therefore "[o]ne of them must have spoken the truth."[37]

Cox apparently had hurled invective at Chinese for the purposes of grandstanding only, because he did not propose any amendments to the Oath and Evidence Bill. The said bill accordingly passed second reading on February 11 and third reading on February 13.[38] It took effect on March 15, 1867, under the title An Ordinance to provide for the taking of Oaths and admission of Evidence in certain cases, (cited as the Evidence Ordinance, 1867).[39] After British Columbia joined the Dominion of Canada, this ordinance, together with other Indian legislation "theretofore in force" in the provinces of British Columbia and Manitoba, was repealed and superseded by the Indian Act (1874).[40] The Indian Act (1874) significantly elevated the credibility to be accorded to Indian testimony in selective judicial proceedings in Canada.

Legislating the Credibility of Indian Testimony

When Attorney-General Crease moved the second reading of the Native Evidence Bill in British Columbia's Legislative Council on January 18, 1865, he explained that the object of the bill was to "give the evidence of natives whatever weight it was entitled to, and to present it properly to a court or

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37 "Legislative Proceedings" (February 11, 1867), *British Colonist*, February 12, 1867, 2; "Legislative Council Proceedings" (February 11, 1867), *British Colonist*, February 18, 1867, 2. Interestingly, Cox did not mention having administered the customary English Bible-kissing to a Chinese witness on August 30, 1865, in the case of *Wm Stewart v John Collins, Mary Boyle and Sam (a Chinaman)* (unreported): "Cariboo Police Court." *The Cariboo Sentinel*, September 2, 1865, 1. Presumably he was shamed into keeping this information secret because of criticisms raised in debates on the *Native Evidence Ordinance, 1865*, that such a procedure was blasphemous.

38 "Legislative Council Proceedings" (February 11, 1867); "Wednesday's Sitting [of the Legislative Council]" (February 13, 1867), *British Colonist*, February 18, 1867, 2.

39 *An Ordinance to provide for the taking of Oaths and admission of Evidence in certain cases* (British Columbia) (15 March 1865), London, Public Records Office (Colonial Office, class 61, vol.1, 245).

40 *An Act to amend certain Laws respecting Indians, and to extend certain Laws relating to matters connected with Indians to the Provinces of Manitoba and British Columbia*, SC 1874, c 21. This act was sometimes referred to as the "Indian Liquor Act" because section 1, which contained six subsections, dealt with preventing and punishing the sale of any kind of intoxicating liquor to Indians: Library and Archives Canada (LAC), RG13, vol. 1874, file 1418, J.W. Powell to Hewitt Bernard, July 31, 1874.

jury." In his view, the "judge on the bench should be the judge of the amount of credibility to be attached to the [said] evidence," because "[j]uries were variable tribunals. They were often composed of aliens, and if left entirely to their own ideas the decision of one jury might be practically contradicted by the decision of another." Therefore, he had included as clause V of the bill that

> The degree of weight or credibility to be attached to any such evidence, whether oral or verbal, shall be in the discretion of the court, judge, gold (or other) commissioner, coroner or justice, respectively; or of the jury, under the direction of the court, judge, gold (or other) commissioner or justice, according to the tribunal before which such evidence shall be offered, as being evidence given without the sanction of an oath.

This clause raised considerable debate. It was eventually struck out, presumably as a result of doubts raised by councillor Wymond Hamley as to its necessity, effectiveness, and propriety. Hamley contended that under the common law it was for the jury alone to decide upon the credibility of evidence; consequently, "the House should be extremely careful how they meddle with the duty of the judge or the conscience of the jury."[41]

Without benefit of legislative direction, courts and juries uniformly treated Indian evidence admitted under the Native Evidence Ordinance as corroborative only. The rationale was that Indians were not "rational, discriminating beings" but, rather, deceitful, vengeful "savages" who should not

> be allowed on all occasions when their hatred of the white race, whom they look upon as their enemy, incites them to anger, to run into Court and prefer a charge against some member of the obnoxious [white] race, based on nothing more substantial than their own testimony ... when not supported by anything more reliable.[42]

This situation made British Columbia's Proclamation respecting Sale or Gift of Intoxicating Liquor to Indians (1858)[43] and its successor, the Indian Liquor Ordinance (1867)[44] —which proscribed the sale or gift of intoxicating drinks to Indians—particularly difficult to enforce. White "Liquor sellers" could not "be convicted on Indian Evidence alone, and hence they enjoy[ed] a comparative impunity for their *crimes*" of purveying "poisonous and maddening alcohol to excitable savages."[45]

The purpose of "preventing the Indian from obtaining liquor" through the enactment of liquor laws was twofold: ameliorating "the welfare of the red man" (by protecting Indians from "rushing headlong into vice of every

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41 "Legislative Council [Proceedings]" (January 18, 1865).
42 Editorial, *British Colonist*, March 26, 1859, 2.
43 Proclamation respecting Sale or Gift of Intoxicating Liquor to Indians (1858), reprinted in List of Proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864 [and 1865] (British Columbia, ca. 1866), n.p.
44 *An Ordinance to assimilate and amend the Law prohibiting the sale or gift of Intoxicating Liquor to Indians*, SBC 1867 (30 Vict), c 67.
45 London, Public Records Office (Colonial Office, class 305, vol. 26, 21–31), Arthur Kennedy to Edward Cardwell, July 4, 1865.

description") and facilitating "the settlement of the country" (by protecting white colonists in the outlying districts from acts of violence perpetrated by inebriated Indians).[46] Consequently, the "inefficiency" of enforcing these liquor laws was perceived as "an injury rather than a benefit to the class[es] it was intended to protect" and as an injury to the colony as a whole.[47] The situation remained at a standstill until the passage of Canada's Indian Act in 1874, which repealed and replaced, *inter alia*, British Columbia's existing Indian liquor and evidence laws.

The Indian Act (1874) provided, in subsection 1(1), that

> Whoever sells, exchanges with, barters, supplies, or gives to any Indian man, woman or child in Canada, any kind of intoxicating liquor, or causes or procures the same to be done, or connives or attempts thereat ... shall, on conviction thereof before any Justice of the Peace upon the evidence of one credible witness other than the informer or prosecutor, be liable to imprisonment for a period not exceeding two years, and be fined not more than five hundred dollars, one moiety to go to the informer or prosecutor, and the other moiety to Her Majesty, to form part of the fund for the benefit of that tribe or body of Indians with respect to one or more members of which the offence was committed.

It also declared that "in all cases arising under this section, *Indians shall be competent witnesses.*"[48] Subsection 1(4) criminalized Indian intoxication. It provided for the arrest of Indians found in a state of intoxication and authorized their confinement until they became sober; it also provided for the conviction of Indians found in a state of intoxication and made them liable to a sentence of imprisonment for any period not exceeding one month. Subsection 1(4) also criminalized refusal on the part of any Indian convicted of intoxication to reveal how, where, and from whom the liquor was obtained that had intoxicated him or her. Sections 3–7 incorporated and revised the provisions of British Columbia's repealed Native Evidence Ordinance regarding the normative process for admitting evidence from Indians in all other judicial and quasi-judicial proceedings. No mention was made in these sections of the credit that ought to be accorded to Indian evidence. This omission was interpreted as preserving the *status quo* that, in non-liquor-related cases, Indian evidence was to be weighted as corroborative only.[49]

The Indian Act (1874) appears to have spurred justices of the peace in British Columbia to begin convicting white sellers of liquor to Indians exclusively on the basis of Indian evidence. For example, the author of an undated letter to the editor of the newspaper *The British Colonist*, printed on January 31, 1875, commented on the recently decided case of *R v Rowland* (not

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46 "To the Editor of the British Colonist," *British Colonist*, February 23, 1866, 3; "House of Assembly" (April 6, 1866), *British Colonist*, April 7, 1866, 3; "House of Assembly" (May 21, 1866), *British Colonist*, May 22, 1866, 3.

47 "Indian Liquor Law," *British Colonist*, February 15, 1867, 2.

48 [emphasis added].

49 LAC, RG13, vol. 1416, file 135, Mr Justice John Gray to Sir John A. Macdonald, August 9, 1879.

reported), in which the accused was said to have been convicted on the testimony of two Indians who swore that "they paid 25 cents" to the accused "and each had a drink of rum." The writer alleged that no liquor was found in the Indians' possession, nor were they intoxicated;

> yet on their evidence alone was the defendant convicted. Now, sir, does not this establish a very dangerous precedent? Might not an Indian be induced by means of the *almighty dollar* to swear falsely that some man had supplied him with liquor, just to gratify some personal spite? Nothing would be more easy. The very fact of a man refusing to supply liquor to an Indian is quite sufficient to make the Indian spiteful enough to swear that the person to whom he had applied had supplied him.[50]

In the same issue a writer with the pen name "One Who Knows the Value of Indian Evidence" commented on the recent case of *R v Lush* (not reported), in which a white man named William Lush was said to have been convicted of selling liquor to Indians on the basis of uncorroborated evidence from Indian witnesses. Lush subsequently committed suicide, which the writer attributed to a deteriorated mental condition brought about by his unjust conviction.[51] Several days later another letter to the editor, signed "Snake in the Grass," endorsed these two letters on the basis that Indians in British Columbia looked upon money "far ahead of an oath." Consequently, a "selfish trickster with the aid of a few dollars can [wrongfully] convict any man in the country of the same offence as Lush was convicted the other day."[52]

Strident as were these sentiments against treating Indian testimony as credible in liquor cases, they do not appear to have given rise to a groundswell of popular opposition to legislating the competency of Indians witnesses. Presumably most readers' sympathies resonated more closely with the following sentiments recorded as expressed by James Cunningham, Liberal MPP for New Westminster:

> The Liquor Law relating to British Columbia, which was passed last session, was doing good work. He was glad to see that those who had been engaged in selling liquor to the Indians had been caught and punished. No greater boon could be conferred on British Columbia than that law. He hoped the day would never come when the Indians of British Columbia could purchase liquors and become intoxicated, for the lives of the whites would then never be safe.[53]

Such complacency about the effect of the Indian Act (1874) in British Columbia was somewhat premature, however. After another year's trial, it was found that "the decisions of magistrates in cases of selling liquor to Indians had been successfully appealed from, and this success it was

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50 "Indian Liquor Law," *British Colonist*, January 31, 1875, 3
51 "Indian Liquor," *British Colonist*, January 31, 1875, 3.
52 "The Indian Liquor Law," *British Colonist*, February 3, 1875, 3.
53 *Debates of the House of Commons of the Dominion of Canada*, 2d Parl., 1st Sess., vol. 1 (1875), p. 238 (*per* James Cunningham).

thought was owing to the sympathy [white] juries had with [white] liquor sellers. The Government thought these appeal cases might safely be left to the judges, and therefore a clause making this provision had been inserted" in a Dominion bill entitled An Act to amend and consolidate the Laws respecting Indians.[54] This bill subsequently passed and received royal assent on April 12, 1876. Section 81 provided that "[n]o appeal shall lie from any conviction" of selling liquor to Indians "except to a Judge of any superior court of law, country, or circuit, or district court, or to the Chairman or Judge of the Court of the Sessions of the Peace, having jurisdiction where the conviction was had, and such appeal shall be heard, tried, and adjudicated upon by such judge without the intervention of a jury."[55]

Coincidentally with closing this last loophole impeding the conviction of white sellers of liquor to Indians, Chinese were said to have begun "taking the place of the white man in this illicit liquor traffic." At least, that information was articulated as a "notable [legal] fact" by a police magistrate, H.C. Courtney, in the case of *R v Ah Fon*, tried in the City of Victoria Police Court on June 13, 1876.[56] Three years later, on May 27, 1879, in the case of *R v Jim* (an Indian charged with being in possession of an intoxicant), one Sergeant Bloomfield informed police magistrate A.F. Pemberton that "the trade of supplying whiskey to Indians was now in the hands of the Chinese." Bloomfield alleged that "nearly all of them [Chinese] are in the habit of supplying whisky to the Indians," and since there were so many potential Chinese suspects, he "did not think it would be possible to discover which of them supplied this Indian" with whisky. However, neither Bloomfield nor Police Magistrate Pemberton was anxious to convict Jim "for having the whisky in his possession." Pemberton's rationale for this hesitancy was that in "rural districts" the liquor provisions of the Indian Act (1876) "might do very well; but in cities like this [Victoria], where there is a police force and where Indians have resided for many years and have behaved themselves very well, it seemed to be an injustice to deprive them of the pleasure of taking a glass of beer or whisky." The law as it stood had a tendency to "undervalue the blessings of British justice and encourage the trade of selling whisky to Indians, which is carried on by the very worst classes of the population." Therefore, Pemberton adjourned the case and ordered the police to look for the "Chinaman" who allegedly had provided the whisky to Jim. There is no record that the case was ever reopened.[57]

Given that Sergeant Bloomfield was unwilling to pursue a conviction against Jim for possessing whisky and did not think it would be possible to ascertain who had illegally supplied Jim with the illicit libation in the first place, one is left wondering why he pressed charges against Jim at all. And, on a superficial level, Magistrate Pemberton's dogged determination to

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54 *Debates of the House of Commons of the Dominion of Canada*, 3d Parl., 3d Sess., vol. 1 (1876), p. 749 (*per* David Laird).
55 SC 1876, c 18 [*Indian Act (1876)*].
56 "City Police Court," *British Colonist*, June 14, 1876, 3.
57 "Municipal Police Court," *British Colonist*, May 28, 1879, 3.

locate and convict Jim's unidentified liquor supplier appears misplaced as well. If the existing law prohibiting Indians from consuming liquor in Victoria was outdated and should not be enforced, as Pemberton suggested, then why did he think it a reasonable exercise of his judicial discretion to order police to prosecute the bootlegger who enabled Jim to drink?

Renisa Mawani's studies of cross-racial encounters in British Columbia's colonial contact zone track a plurality of racial knowledges that partially elucidate Pemberton's behaviour. First, both Indians and Chinese were assumed to exhibit "moral and mental traits that rendered them socially and affectively incompatible and, thus, in need of segregation and racial management."[58] Second, Chinese constituted a racial threat because of their "potentially degenerating effects" on Indians—"influences that many argued would not only hinder colonial efforts to civilize the Native populace residing along the West Coast but would ultimately jeopardize colonial triumph."[59] Third, juridical strategies that centred on the governance of liquor were concerned primarily with punishing putatively cunning Chinese traffickers and, conversely, protecting putatively vulnerable Indian victims.

Another significant racial knowledge, unexplored by Mawani, may be seen to round out the racial knowledges that inspired Magistrate Pemberton's behaviour. From the mid-1870s through the mid-1880s, colonial agents in British Columbia knew Indians as primitive versions of Anglo-Saxons who had successfully been raised to a "higher level of civilization" by European colonizers and therefore were to be regarded as inferior "fellow-subjects," entitled to virtually "the same civil rights under the law as are possessed by the white population."[60] Chinese, on the other hand, were known as racial opposites of Anglo-Saxons: "a different creature from other members of the human family,"[61] without "any capabilities for citizenship,"[62] and therefore unimprovable. For this reason, they were not seen as entitled to basic civil rights and were "practically prohibited from becoming attached to the country." They were made, "so far as provincial legislation can go, perpetual aliens,"[63] declared ineligible for naturalization and ultimately segregated geographically "so as to bring them under proper police and sanitary control."[64]

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58 Renisa Mawani, "Cross-Racial Encounters and Juridical Truths: (Dis)Aggregating Race in British Columbia's Contact Zone," *BC Studies* 156/157 (2007/2008): 141–71, 165.

59 Mawani, *Colonial Proximities*, 13.

60 Lord Dufferin, public address delivered in Victoria, BC, September 20, 1876, extracted and printed in George Stewart, Jr., *Canada under the Administration of the Earl of Dufferin*, 491–95 (Toronto: Rose-Belford, 1878).

61 "British Law vs. Chinamen," *Victoria Times*, August 9, 1884, 2.

62 Report of the Royal Commission on Chinese Immigration, 166.

63 Report of the Royal Commission on Chinese Immigration, xi, *per* John Gray.

64 "British Fair Play," Nanaimo Free Press, January 23, 1885, 2.

Reclassifying Indians and Chinese on the Anthropological Scale of Civilization

On August 17, 1875, George Walkem, who had been actively involved in the debate and passage of legislation to admit the unsworn testimony of non-Christian Indians in British Columbia pursuant to the (Colonies) Evidence Act, 1843, prepared a memorandum on the Indian civilization policy that had been pursued by the colony of British Columbia from its founding in 1858 until it joined the Dominion of Canada in 1871, for the consideration of the lieutenant-governor in council. At the time of writing, Walkem was premier and attorney-general of the province of British Columbia. He was responding to a report dated November 2, 1874, by David Laird, dominion minister of the interior and ex officio superintendent-general of Indian Affairs, harshly condemning British Columbia's Indian policy, in part because, allegedly, no efforts had been made by the colony to civilize its Indian wards prior to handing them over to the trusteeship of the Dominion of Canada in 1871.

Walkem pointed out in his memorandum that British Columbia had passed legislation in 1865 providing that "when 'any Aboriginal Native' was 'destitute of the knowledge of God,' or was an unbeliever 'in religion or in a future state of rewards and punishments,' the evidence of such Native might be received in any civil or criminal cause upon his making a 'solemn affirmation,' or a simple 'declaration to tell the truth' in lieu of an oath." This legislation had enabled courts and district magistrates—who were authorized to function as Indian agents—to mete out justice "with even hand to all classes and races," and by this means to teach Indians to "appreciate and respect the laws of the country." The enforcement of these laws, in turn, had "reclaim[ed]" Indians "from their savage state" and taught them "the practical and rudimentary lessons of civilized life." This strategy was "based on the broad and experimental principle of treating the Indian as a fellow subject"; through its implementation, savage Indians had been "successfully controlled and governed by, comparatively speaking, a mere handful of people of a European race" and transformed into semi-civilized, "loyal, peaceable, contented, and in many cases honest and industrious" wards of the Crown.[65] Although Walkem could be faulted for not adverting to the civil disabilities that Indians continued to experience in British Columbia society ("denial of the vote; the denial, virtually, of land; [and] sharp pressure ... to enter the wage labour force"[66]), it also could be pointed out, in Walkem's defence, that Indians were at liberty to overcome these remaining civil disabilities by individually applying to enfranchise under the Act for the gradual enfranchisement of Indians, the better management of Indian

[65] George Walkem, "Memorandum on Indian Affairs" (August 17, 1875), in *British Columbia: Papers Connected with the Indian Land Question, 1850–1875* (Victoria: Richard Wolfenden, 1875), 1–9.

[66] Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: UBC Press, 2002), 90.

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affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42,[67] which had been extended to British Columbia by virtue of s. 10 of Canada's Indian Act (1874).

Cole Harris dismisses Walkem's memorandum as "a self-serving, business-oriented version of the civilizing mission," out of step with views held by "[m]any in the British Columbia government [who] did not think Native people could be civilized," albeit "with long pedigrees in [imperial] political thought."[68] But Harris adduces no empirical evidence in support of these propositions. And the fact that the lieutenant-governor in council passed an order in council on August 18, 1875—the day after Walkem's memorandum was dated—"concur[ring] with the statements and recommendations" expressed therein and adopting them as "the expression of the views of this Government" suggests that Walkem's views found overwhelming, if not unanimous, support among members of the provincial government.[69] Even Walkem's Dominion detractors found it difficult to argue with the historical narrative postulated in his memorandum. For example, Dominion Indian commissioner I.W. Powell admitted that "[t]he Government of the former Colony of BC in their mode of dealing with the Indians—with the exception of enacting a stringent law against the sale of Spirits and malt liquor to them [—...] treated them, in most other respects as British subjects." Powell's primary objection to British Columbia's colonial Indian civilization policy was that it justified the colony in "never even acknowledging by any treaty" Indians' "prior right and claim to all lands."[70] However, as Stuart Banner has recently argued, the doctrine of *terra nullius* as implemented in colonial British Columbia was motivated by humanitarian impulses designed to protect Indians from white colonists, to justify the creation of reserves as places to civilize Indians, and, ultimately, to amalgamate Indians into British Columbian civil society after those reserves had outlived their usefulness.[71] And Walkem's memorandum is compatible with Banner's argument. Although Walkem does not say so explicitly, it is clear that he believed that Indian reserves in British Columbia were no longer necessary.

I submit that the basis of the difference between Walkem and Laird was a clash of differing Indian civilization policies rather than provincial resistance to Indian civilization per se. Discussion of Dominion Indian civilization policy is beyond the scope of this article. However, Chief Justice Begbie

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67 *An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42*, SC 1869, c 6. This legislation received royal assent on June 22, 1869.

68 Harris, *Making Native Space*, 89–91.

69 Order in Council, 18 August 1875. in *British Columbia: Papers Connected with the Indian Land Question, 1850–1875* (Victoria: Richard Wolfenden, 1875), 1

70 LAC, RG10, vol. 3604, file 2521, I.W. Powell to the Minister of the Interior, December 3, 1873.

71 Stuart Banner, "British Columbia: Terra Nullius as Kindness." in *Possessing the Pacific: Land, Settlers, and Indigenous People from Australia to Alaska*, 195–230 (Cambridge, MA: Harvard University Press, 2007).

effectively capsulated the dominant provincial perspective of such policy in the case of *Caskane (Kaskane) and Others v Findlay & McLellan* (1885) as follows:

> In the course of a generation our [British Columbian] Indians have acquired habits of life and a turn of thought exactly the reverse of what is found in the [Indian population] east of the Rocky Mountains: and which may shortly be stated and accounted for by this one matter: there every Indian man, woman & child & chief is fed by the eleemosynary daily bounty of the state; here not one Indian or one Indian's father or [mother] is, or has ever been[,] so fed. All Indians in B.C. are entirely self-supported & self-supporting; clearly, a code of laws w[hi]ch may suit a [savage] mass of state-fed hereditary paupers educated to habitual idleness, is not necessarily adapted for a race of [semi-civilized] laborious independent workers.[72]

Although British Columbia's colonial regime perceived Chinese to be of the same Mongolian racial lineage as Indians, during the late 1870s and early 1880s it reclassified Chinese as an inassimilable, barbarian racial type whose immigration to the Pacific coast in ever-increasing numbers threatened to "overrun Canadian territories," beginning with British Columbia, and "supplant western civilization, as the northern hordes [had] overturned that of the Roman Empire."[73] One racial characteristic that was said to distinguish Chinese from Indians, and to account for the former's unimprovability, was their perceived differential amenability to the government of British criminal law. According to British Columbia's chief justice, Matthew Begbie, for example, "one of the matters distinctly placed before the Indians ... ever since the creation of British Columbia into a colony" has been that "all men are on a level before the Courts of criminal justice ... and they have acquiesced, & seen the logic of the proposition." This course "has always been recommended as a principal means of civilising them, & I venture to think, not unsuccessfully."[74] Chinese, on the other hand, were said to "commit crime with impunity" because "[i]n nine cases out of every ten" they were able to elude their pursuers by mingling with their own identical-looking countrymen and thereby obfuscating identification.[75] Even on the rare occasions when Chinese criminals were identified and prosecuted, it was said, they were "so *cunning*" that it was "almost an impossibility to prove them guilty."[76] Chinese allegedly used "the hidden mystery of their language and customs · · · laws and systems" to "prevent and defeat the enforcement" of the criminal code among them.[77] Therefore, the civilizing

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72 BCARS, GR 1727, volume 735, (Matthew Begbie Bench Book, Vol.XIII), pp.127-29, Indian Reserve Case, 17 November 1885.

73 *Debates of the House of Commons of the Dominion of Canada*, 4th Parl., 1st Sess. (1879), p. 1261 (*per* J.S. Thompson, MP for Cariboo, BC).

74 LAC, RG10, vol. 3638, file 7251, Matthew Begbie, "Memorandum," September 11, 1876.

75 "British Law vs. Chinamen," 2.

76 BCARS, GR-0429, Box 1, file 9, Caspar Phair to George Walkem, October 22, 1880, qtd. in Manawi, *Colonial Proximities*, 123.

77 "The Chinese Element," Nanaimo Free Press, 24 January 1885, p.2.

influence of British criminal law had never been able to take root in barbarian Chinese communities, and, as a result, Chinese remained slaves to brutish vices which soothed their "animal spirits," fed their "animal passions," and "degrade[d]" all with whom they came in contact. Their most insidious vices were enumerated as the "dice-box, the opium-pipe and the brothel."[78]

This racial knowledge motivated George Walkem, then attorney-general, to introduce a motion in British Columbia's Legislative Assembly on February 19, 1879, to appoint a select committee "to inquire into the Chinese question and to recommend the passing of such a law that will exclude them from the Province," because otherwise "this land will [soon] belong to the Chinese and the white people must leave."[79] The Legislative Assembly passed the resolution by appointing a Select Committee on Chinese Immigration. The committee presented its report on March 28, 1879, pointing out that since the British North America Act (1867)[80] placed immigration policy within exclusively federal jurisdiction, "a petition [should] be sent to the Dominion Government laying before them the circumstances of the case."[81] Accordingly, on April 7, 1879, the Legislative Assembly passed another resolution that "an address to the Dominion Government be passed by this House, setting forth the baneful effect of the presence of Chinese in our midst, and the necessity of such measures being adopted [in the House of Commons] as will effectually prevent their future immigration to this Province."[82] A draft petition was penned by Walkem that portrayed the Chinese as so barbaric that even the institution of marriage was not recognized by them. Walkem read this petition in the Legislative Assembly on April 22, 1879, but a final version was never approved or forwarded to Ottawa.[83]

Lobbying efforts to restrict Chinese immigration to British Columbia intensified as the demand for Chinese labour declined with the pending completion of Canadian Pacific Railway construction in the mid-1880s. A draft resolution for transmission to the Dominion government, declaring that "this house urgently demands that some restrictive legislation be passed to prevent our province from becoming a portion of the Chinese empire," was presented in British Columbia's Legislative Assembly on February 9, 1885, and a revised version was presented on February 23. It cast the Chinese as barbarian "slaves or coolies" whose "immoral practices, debasing habits and contagious diseases" tended to "the degradation of the white labouring classes," the "demoralization of the native races," and the corruption of

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78 George H. Cowan, "Canadian Industry and the Chinese Question," in J. Castell Hopkins, *Canada: An Encyclopaedia of the Country*, ed. J. Castell Hopkins, 5:499–507 (Toronto: Linscott Publishing Company, 1899), 500, 506; LAC, RG17, vol. 395, file 42579, J.A. Mara (Speaker) to the Governor-General in Council, January 29, 1884.

79 "Legislative Assembly [Proceedings]" (February 19, 1879). *British Colonist*, February 20, 1879, 3.

80 *British North America Act*, 1867 (UK), 30 &31 Vict, c 3.

81 "Legislative Assembly [Proceedings]" (March 28, 1879), *British Colonist*, March 29, 1879, 3.

82 "Legislative Assembly [Proceedings]" (April 7, 1879), *British Colonist*, April 8, 1879, 3.

83 "Legislative Assembly [Proceedings]" (April 22, 1879), *British Colonist*, April 23, 1879, 3.

"our own rising [white middle-class] population."[84] The framers of this resolution claimed to have "a right to defend ourselves and our children" against this barbarian, alien threat.[85] A final revised version of this resolution passed on February 25, 1885.[86] Although the racist rhetoric of the final resolution was toned down, its characterization of Chinese as a barbarian threat to both white and Indian races remained substantially intact. It constituted what Alexander Saxton has described, in a different context, as "a plea for private violence with the implication that the authorities, being themselves hampered, would condone and welcome such assistance."[87] Certainly the idea of taking vigilante action to enforce Chinese exclusion gained popular currency in the years immediately following the passage of this resolution, judging by increasingly violent anti-Chinese rhetoric in the provincial newspapers.[88]

Ultimately, the momentum of the movement to enforce Chinese exclusion by vigilante means led in 1887 to the outbreak of an anti-Chinese riot in Vancouver, aided and abetted by municipal police inaction.[89] At the turn of the twentieth century, George Cowan, KC, implicitly justified the violence as an incident in a racial war between Chinese and Anglo-Saxons over whether or not Canada was to become "a part of the Chinese Empire." Central to this narrative was the idea that Chinese were barbarians who were "disintegrating the forces" of Anglo-Saxon "civilization" by reversing "the drive-wheel of [civil] progress," thereby strangling "the vital parts" of Canadian "national life."[90]

After the anti-Chinese rioting in Vancouver subsided, "the Chinese returned to Vancouver and re-established a highly concentrated pattern of residence" known as Chinatown,[91] which sociologist Kay Anderson has described as "an ostracized colony of the East in the West."[92] Henceforth, "most urban Chinese" elsewhere in British Columbia also congregated in "*de facto*, though not *de jure*, ghettoes of Chinatowns"[93] reminiscent of

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84 "Fourth Provincial Legislative Assembly" (February 9, 1885), *British Colonist*, February 10, 1885, 3; "Fourth Provincial Legislative Assembly" (February 23, 1885), *British Colonist*, February 24, 1885, 2.

85 "Fourth Provincial Legislative Assembly" (February 9, 1885).

86 "Fourth Provincial Legislative Assembly" (February 25, 1885), *British Colonist*, February 26, 1885, 3.

87 Alexander Saxton, *The Indispensable Enemy: Labor and the Anti-Chinese Movement in California* (Berkeley: University of California Press, 1971), 129.

88 See, e.g.: "Public Meeting: The Chinese Question," *British Columbia*, April 30, 1885, 2.

89 "HERE IT IS! The Reply of Hon. John Robson to the City Council," *Vancouver News*, March 15, 1887, 1. According to Premier Robson, the Vancouver "authorities," even though they had "ample powers" to quell the anti-Chinese riot, "strangely and persistently refrained from exercising them in the upholding of law and order."

90 Cowan, "Canadian Industry and the Chinese Question," 503, 506, 499.

91 Kay J. Anderson, "The Idea of Chinatown: The Power of Place and Institutional Practice in the Making of a Racial Category," in *The Challenge of Modernity: A Reader on Post-Confederation Canada*, ed. Ian McKay, 156–86 (Toronto: McGraw-Hill Ryerson, 1992), 159–60.

92 Kay J. Anderson, *Vancouver's Chinatown: Racial Discourse in Canada, 1875–1980* (Montreal: McGill-Queen's University Press, 1991), 19.

93 Patricia E. Roy, *A White Man's Province: British Columbia Politicians and Chinese and Japanese Immigrants, 1858–1914* (Vancouver: UBC Press, 1989), 29.

Indian reserves. The emergence of Chinatowns was encouraged and "legitimized by government agents" who sanctioned geographical boundaries between insiders (white and Indian races) and outsiders (Chinese) as a means of both propagating "a white European hegemony" in British Columbia and policing Chinese criminality.[94]

Conclusion

When British Columbia was founded in 1858, the colonial regime classified Indians as "savage" and Chinese as "semi-civilized" on the anthropological scale of civilization. Over the next three decades, however, colonial agents devised and imposed tactics designed to legally civilize Indians and de-civilize Chinese. By 1887 these combined civilizing and de-civilizing tactics had enabled the colonial regime to reverse the classification of Indians and Chinese on the anthropological scale of civilization, such that Indians were ranked as "semi-civilized" and Chinese as "barbaric." Chinese had been legally reconstructed as barbarians from whom civilized white colonists, as well as semi-civilized Indian wards of the Crown, needed to be protected.

The most effective way of protecting white and Indian races in British Columbia from Chinese barbarians would have been to deport Chinese already resident in British Columbia and to bar any further Chinese from entering the province. However, the BNA Act (1867) effectively withheld from British Columbia the constitutional powers necessary to accomplish this goal. In 1885, therefore, the British Columbia legislature passed a resolution that constituted a plea for private violence to enforce Chinese exclusion.

This resolution fanned the flames of anti-Chinese racial rhetoric, and two years after it was passed mob violence against Chinese residents spontaneously erupted in Vancouver, aided and abetted by municipal police inaction. An indirect result of the Vancouver riot was the emergence in British Columbia of Chinatowns as state-sanctioned ghettos for Chinese people, which on one level resembled Indian reserves. But there was a difference. Colonial agents viewed Indian reserves as (residential) schools, insofar as they were supposed to be training grounds in civilization; Chinatowns more nearly approximated prisons, because, unlike Indians, Chinese barbarians were deemed ineligible for civilization and naturalization. Their racial character was said to be ingrained with "indurated habits of thought and action, alien, beyond the chance of change, to everything Canadian."[95] Since the province of British Columbia had no constitutional authority to deport Chinese barbarians, the most that could be done to protect civilized whites and semi-civilized Indians from their de-civilizing influence was to concentrate Chinese geographically in urban Chinatowns and enforce their civic identity as barbarian aliens by means of police discipline.

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94 Anderson, "The Idea of Chinatown," 163.
95 Cowan, "Canadian Industry and the Chinese Question," 500.

Abstract

When British Columbia was founded in 1858, the colonial regime classified Indians as savage, on the anthropological scale of civilization, and then imposed on them civilizing tactics designed to create semi-civilized British subjects. By the 1860s the colonial regime feared that the growing presence of Chinese immigrants, whom they initially classified as semi-civilized on the anthropological scale of civilization, would subvert this objective. They therefore disempowered Chinese through the imposition of de-civilizing tactics designed to create barbarian aliens. By 1887 these combined civilizing and de-civilizing tactics had resulted in the reclassification of Indians as semi-civilized and of Chinese as barbarian.

Keywords: Chinese, Indian, scale, civilization, British Columbia

Résumé

Au moment de la fondation de la Colombie-Britannique en 1858, le régime colonial classait les Amérindiens en tant que « sauvages » sur l'échelle anthropologique des civilisations, puis leur imposait des mesures prétendues civilisatrices dans le but de créer des sujets britanniques « demi-civilisés ». Dès les années 1860, le régime colonial craignait qu'une présence accrue d'immigrants chinois, qualifiés aussi de « demi-civilisés », vienne renverser ces objectifs. Par conséquent, celui-ci posait des gestes destinés à déconsidérer les Chinois en les assimilant à des « étrangers barbares ». Vers 1887, ces tactiques combinées, visant à assimiler et à abrutir, eurent pour conséquence le réclassement des Amérindiens au rang de « demi-civilisés » et celui des Chinois au rang de barbares.

Mots clés: Chinois, Amérindien, échelle, des civilisations, Colombie-Britannique

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