



## A Company with Sovereignty and Subjects of Its Own? The Case of the Hudson's Bay Company, 1670–1763

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Deciphering the nature of the sovereign claims to Rupert's Land has been, and still is, a perplexing task. At different times in the nineteenth century, it was an issue that variously affected settlers, natives and Métis, lawyers, colonial administrators, British parliamentarians, US politicians, and a number of competing trading companies, railway magnates, and speculators.<sup>1</sup> Nowadays, the issue is made pertinent by ongoing concerns around Aboriginal rights to resources, lands, and self-determination—and yet it is still a point of uncertainty among historians, lawyers, and the champions of Aboriginal Canada who fall in between how sovereignty worked in Rupert's Land.

Outside of Europe, sovereignty—the ability to operate independently of other legal systems, and to acquire and rule over subjects—took a number of surprising forms, irrespective of any divisions between state and non-state, Crown and Company, colonizer and colonized. Whereas, in the sixteenth, seventeenth, and eighteenth centuries, European monarchs became undeniably skilful at expressing their sovereign claims to other

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<sup>1</sup> See, e.g., H. Robert Baker, "Creating Order in the Wilderness: Transplanting the English Law to Rupert's Land, 1835–51," *Law and History Review* 17 (1999): 209–46; Hamar Foster, "Long Distance Justice: The Criminal Jurisdiction of Canadian Courts West of the Canadas," *American Journal of Legal History* 34 (1990): 1–48; John S. Galbraith, "The Hudson's Bay Land Controversy, 1863–1869," *Mississippi Valley Historical Review* 36 (1949): 457–78; John S. Galbraith, *The Hudson's Bay Company as an Imperial Factor, 1821–1869* (Berkeley: University of California Press, 1957); Dale Gibson, "Company Justice: Origins of Legal Institutions in Pre-Confederation Manitoba," *Manitoba Law Journal* 23 (1995): 247–92; Harold A. Innis, "Interrelations between the Fur Trade of Canada and the United States," *Mississippi Valley Historical Review* 20 (1933): 321–32; Doug Owsram, *Promise of Eden: The Canadian Expansionist Movement and the Idea of the West, 1856–1900* (Toronto: University of Toronto Press, 1980); D.N. Sprague, *Canada and the Métis, 1869–1885* (Waterloo, ON: Wilfrid Laurier University Press, 1988); Frank J. Tough, "Aboriginal Rights versus the Deed of Surrender: The Legal Rights of Native Peoples and Canada's Acquisition of the Hudson's Bay Company Territory," *Prairie Forum* 17 (1992): 225–50.

European monarchs, away from their realms and across the seas these glorious expressions quite commonly amounted to little more than mere words. Practice was always more vital than theory in the colonial world. And so it certainly was in North America—a region where sovereignty appeared, most originally and foundationally, in the practices of First Nations blocs, their affiliated bands, and even some unaffiliated political units; but eventually, and more critically, where sovereignty came to appear in the practices of imperial-sponsored governments, private companies, and a growing number of small, self-governed white settlements (some of these tied strongly to a European state, some tenuously, and some not at all). In such a context, multiple sovereignties came to be “layered” on top of one another; or so they did, at least, until the settler states moved to acquire a monopoly over sovereignty in the nineteenth century.<sup>2</sup>

The dilemmas associated with weighing up the power of Crowns, companies, and colonists—dilemmas all too apparent to eighteenth- and nineteenth-century critics of Empire—have captured the attention of several recent writers of a new style of comparative legal-historical scholarship.<sup>3</sup> A straightforward way to make sense of the legal ramifications of European overseas conflict and expansion is to divide the world-historical stage in two, with “state” actors on one side and “non-state realms of authority” on the other (as Janice E. Thompson has most ably done)—and then proceed to wade through the mess.<sup>4</sup> But this approach is not without its problems. When we consider the ways in which many companies organized themselves overseas and partook in diplomacy quite independently—rather than focusing on their relationship to European sovereigns who might have sanctioned or opposed their activity—their place in a “non-state realm,” beside the likes of pirates and freelance soldiers, must surely be a disputable one. Surely, if certain companies of the extra-European world appeared to be embodying a sovereignty of their own, then might we not consider those companies, as imperial actors, *bona fide* states themselves?

<sup>2</sup> For “layered” sovereignty see Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2010), esp. 30–32, in particular n. 88. For an elegant account of how settler governments eradicated the sovereignties of indigenous competitors see Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788–1836* (Cambridge, MA: Harvard University Press, 2010). See also the sources cited in note 111 below.

<sup>3</sup> See Benton, *A Search for Sovereignty*, and Ford, *Settler Sovereignty*. See also Janice E. Thomson, *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe* (Princeton, NJ: Princeton University Press, 1994); Lauren A. Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge University Press, 2002). For the British Empire in particular see David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000); Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576–1640* (Cambridge: Cambridge University Press, 2006).

<sup>4</sup> Thomson, *Mercenaries, Pirates, and Sovereigns*. In Thomson’s analysis of extraterritorial violence, mercenaries, privateers, and mercantile companies were the handmaidens of parliaments and monarchs (the true “state-builders”).

I am not the first to make this suggestion. It emanates most strongly from the insightful scholarship of Philip J. Stern, for whom this was a period “in which something like a Company-State made sense: a world in which national territorial states did not have a monopoly on political power and in which sovereignty was composite, incomplete, hybrid, layered, and overlapping.” With an understanding of the English East India Company (EIC) as a state in and of itself, Stern proceeds to investigate how “the particular form of *Company sovereignty* was constituted, notably through a balance of English charters, Asian grants, and the Company’s own political behavior.”<sup>5</sup> As for the Atlantic companies, he writes, “they came from the same stock; they were corporate bodies politic, founded in charters, letters, patents, and instruments of incorporation but functioning as political authorities and communities in their own right.”<sup>6</sup> I cannot disagree, and I offer some important parallels between colonial India and colonial Rupert’s Land in the era before the two diverged to take radically different courses from the mid-eighteenth century onward.

Although historians of “fur-trade society” have proved willing to align the Hudson’s Bay Company (HBC) with a number of social models—from the ship decks of the eighteenth-century merchant marine to the gendered order of pre-industrial households and even to the occupational categories of modern Japanese companies<sup>7</sup>—most have distanced themselves from the idea that it was an independent political entity with its own legal regime and institutions (that is, a “state”). E.E. Rich, in his epic *History of the Hudson’s Bay Company*, comes close, suggesting that it “resembl[ed] something of a great, and rather pompous, government department,” but that is

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<sup>5</sup> Philip J. Stern, “‘A Politie of Civill & Military Power’: Political Thought and the Late Seventeenth-Century Foundations of the East India Company-State,” *Journal of British Studies* 47 (2008): 253–83, 257 [emphasis added]. See also Philip J. Stern, “Politics and Ideology in the Early East India Company-State: The Case of St Helena, 1673–1709,” *Journal of Imperial and Commonwealth History* 35, 1 (2007): 1–23; Sudipta Sen, *Distant Sovereignty: National Imperialism and the Origins of British India* (New York: Routledge, 2002), esp. 7–11.

<sup>6</sup> Philip J. Stern, “British Asia and British Atlantic: Comparisons and Connections,” *William and Mary Quarterly* 63 (2006), 702.

<sup>7</sup> Jennifer S.H. Brown, *Strangers in Blood: Fur Trade Company Families in Indian Country* (Vancouver: UBC Press, 1980), xvi–xxii, 32–35; Russell Smandych and Rick Linden, “Administering Justice without the State: A Study of the Private Justice System of the Hudson’s Bay Company to 1800,” *Canadian Journal of Law and Society* 11 (1996): 29–33; Edith Burley, *Servants of the Honourable Company: Work, Discipline, and Conflict in the Hudson’s Bay Company* (Toronto: Oxford University Press, 1997), 1–2; Heather Rollason Driscoll, “A Most Important Chain of Connection: Marriage in the HBC,” in *From Rupert’s Land to Canada*, ed. Theodore Binemma et al. (Edmonton: University of Alberta Press, 2001), 83; Paul Nigol, “Discipline and Discretion in the Mid-Eighteenth-Century Hudson’s Bay Company Private Justice System,” in *Law and Societies in the Canadian Prairie West, 1670–1840*, ed. Louis Knafla and Jonathan Swainger (Vancouver: UBC Press, 2005), 154–5; H. Robert Baker, “Law Transplanted, Justice Invented: Sources of Law for the Hudson’s Bay Company in Rupert’s Land, 1670–1870” (master’s thesis, University of Manitoba, 1996), 46, 59; Edward Cavanagh, “Fur Trade Colonialism: Traders and Cree at Hudson Bay,” *Australasian Canadian Studies* 27, 1/2 (2009): 85–95.

as far as he goes.<sup>8</sup> More recently and comprehensively, Russell Smandych and Rick Linden, influenced by the Foucaultian understanding of non-state governmentality, use the HBC to “unrav[el] the complex and varied ways in which legal ordering and social control occur outside the state.” This was a period, the authors unequivocally write, in which a “system of ‘non-state’ governance was put into effect by the officers of the Hudson’s Bay Company.”<sup>9</sup>

I profess a different interpretative agenda. The nineteenth-century pandemic of confusion surrounding the jurisdiction, lands, and subjects of the HBC seems (if anything) to encourage an adjustment of the way we conceptualize the company’s historical presence in Rupert’s Land. Inspired by Stern’s innovative take on the EIC, I submit that the HBC was, in fact, a company-state, whose “settlements” were managed by its Committee of Ad-venturers in London as well as by the (often conflicting) orders and individual discretion of its Bayside Governors.<sup>10</sup> The Crown, by contrast, beyond granting and extending the company’s charter at home, had barely a part to play in the operation. As outlined in the first section below, it was up to the HBC to establish itself in Rupert’s Land, defend its establishments, make alliances with locals, and challenge any intruder that entered its jurisdiction. Next I argue that company rule, though at times confusing and never clear-cut, was applicable not only to the HBC’s subjects—indentured labourers—but, eventually, to the nearby population of “home guard Indians.” This is crucial: by exercising jurisdiction over nearby First Nations, the HBC took steps toward ensuring that its own sovereignty was more formidable than indigenous forms of sovereignty in Rupert’s Land. Finally, I suggest that the company’s sovereign grip on the region was strengthened by the success of its welfare regime, which allowed it to attract and maintain a loyal subject base in and around the settlements.

### The Martial and Diplomatic Functions of the HBC-State

Before the thorough application of settler law (whose components included white magistracies and their patchwork jurisdictions, and a few totalizing proclamations and treaties, among other things) from the late eighteenth century onward, sovereignty in the English New World was impermanent, shiftable, and highly contested. During this period, the nature of both *imperium* (legitimacy of rule) and *dominium* (security over property) remained largely contingent upon the effective armament of establishments and their defence

<sup>8</sup> E.E. Rich, *Hudson’s Bay Company, 1670–1870*, vol. 1, 1670–1763 (New York: Macmillan, 1961), 147.

<sup>9</sup> Smandych and Linden, “Administering Justice without the State,” 26. See also Russell Smandych and Karina Sacca, “The Development of Criminal Law Courts in Pre-1870 Manitoba,” *Manitoba Law Journal* 24 (1996): 201–57. That Foucault was a philosopher concerned above all with a European modernity has not stopped many colonial/postcolonial historians from experimenting with his theories. See also note 107 below.

<sup>10</sup> “Governor” in this article refers to the position variously known as “post factor,” “chief factor,” and “Governor” in HBC discourse, to avoid any confusion. Similarly, “settlement” is used here for the immediate acreage surrounding the posts, a term used interchangeably with “plantation” in HBC discourse. It should not be taken to signify a settler colonial situation, which was properly introduced into Rupert’s Land by Lord Selkirk in 1811.

from challenges by other Europeans and natives.<sup>11</sup> To achieve any kind of foothold, English colonizing companies were given special powers from their own sovereign, in the form of royal charters and letters patent, to muscle into a region that had never belonged to the sovereign in the first place. Although we should not forget that these were, in essence, national legal devices that functioned to confer special rights on subjects of the Crown, among their terms could usually be found some very international implications, not least of which was the capacity to participate, and potentially engage, in conflict on their own terms.<sup>12</sup>

Martial law, or at least some form of it, was available for the HBC to impose whenever it needed. The HBC was expected “to erect and build such Castles, Fortifications, Forts, Garrisons, Colonies or Plantations, Towns or Villages, in any Parts or Places... as they in their Discretion shall think fit and requisite.”<sup>13</sup> They were also allowed

to right and recompense themselves upon the Goods, Estates or People of those Parts, by whom the said Governor and Company shall sustain any Injury, Loss, or Damage, or upon any other People whatsoever that shall any Way, contrary to the Intent of these Presents, interrupt, wrong or injure them in their said Trade ...<sup>14</sup>

On top of this, the company was given

free Liberty and Licence, in Case they conceive it necessary, to send either Ships of War, Men or Ammunition, unto any their Plantations, Forts, Factories, or Places of Trade aforesaid, for the Security and Defence of the same, and to choose Commanders and Officers over them, and to give them Power and Authority, by Commission under their Common Seal, or otherwise, to continue or make Peace or War with any Prince or People whatsoever, that are not Christians, in any Places where the said Company shall have any Plantations, Forts or Factories, or adjacent thereunto ...<sup>15</sup>

Considering the number of occasions when England's overseas colonial projects had used force to ward off European enemies before 1670, the charter's restriction to enemies “that are not Christians” might be said to reflect a

<sup>11</sup> This was equally the case in North America as in South Asia. MacMillan, *Sovereignty and Possession*, ch. 3 and 4; K.N. Chaudhuri, *The Trading World of Asia in the English East India Company, 1660–1760* (Cambridge: Cambridge University Press, 1978), 109–20, 125–29; I. Bruce Watson, “Fortifications and the ‘Idea’ of Force in Early English East India Company Relations with India,” *Past and Present* 88 (1980): 70–87.

<sup>12</sup> While very similar in content, the HBC's charter did not have the same footing in English law as the EIC's charter did: the HBC Charter was null and void from 1697, and was lucky to escape scrutiny in a London courtroom, whereas the EIC Charter was renewed in 1708, 1712, 1730, 1744, 1766, 1780, and 1793. Rich, *Hudson's Bay Company*, vol. 1, 659; H.V. Bowen, “No Longer Mere Traders: Continuities and Change in the Metropolitan Development of the East India Company, 1600–1834,” in *The Worlds of the East India Company*, ed. H.V. Bowen et al. (Woodbridge, UK: Boydell Press, 2002), 26.

<sup>13</sup> *The Royal Charter for Incorporating the Hudson's Bay Company Granted by His Majesty King Charles the Second, in the twenty-second year of his reign, A.D. 1670* (London: R. Causton & Son, 1816), 17.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*, 16–17.

touch of royal naïveté, or simple face-saving.<sup>16</sup> As Francis Bacon warned at the end of the sixteenth century, and as most had come to expect in the seventeenth, plantations could not succeed in contested territories without strong government “in the hands of one assisted with some Counsel,” and “the ability to exercise Martial Laws.”<sup>17</sup> On the other hand, as some historians have shown, exactly this dual capability—to behave as a “body Politic” and to pick fights with other Europeans—had begun to embarrass the Privy Council by the end of the seventeenth century. Starting with the addition of “non-Christian” criteria such as this one in the HBC Charter, the Privy Council attempted to curtail the military capacity of Atlantic companies.<sup>18</sup> But, as Elizabeth Mancke has shown, such efforts were largely in vain, since often “the metropolitan government needed colonists to fight in the wars of the long eighteenth century (1689–1815), [and] each of [their] significant overseas theatres.”<sup>19</sup>

From the moment the HBC set up at Hudson Bay, an almost constant state of Anglo–French conflict had engendered a violent cycle of capturing and recapturing each other’s forts, until eventually the French were evicted by the terms of the Treaty of Utrecht in 1713.<sup>20</sup> Over this period, regardless of any of the HBC Charter’s niceties, the company-state was expected to engage in violence with French Christians as it saw fit, as the instructions sent from the London Committee reveal. If neighbouring French traders sought furs nearby, their loot was to be plundered: “Wee Doe not question your Vigarous attacking and Seizeing of them their Shippes and Goods,” which were to be considered “Lawfull prize.”<sup>21</sup> When the French disobeyed truce conditions, “you have free liberty to repell force with force,” and whenever war was declared in Europe, local Governors were told to “Strengthen your Fortifications” and to “keepe the men of the Factory in exercise of their Armes and in the Skill of military Discipline as much as you Can.”<sup>22</sup> With HBC establishments situated in such close vicinity to French ones, tensions were always at a peak in these early decades.

After Utrecht, things were a little different. The bay itself became a much quieter place, but the greater Rupert’s Land region was still potentially volatile. The French began to focus on the interior, expanding their threatening presence with the establishment of their *postes du nord*, which required the

<sup>16</sup> MacMillan, *Sovereignty and Possession*, ch. 4.

<sup>17</sup> Francis Bacon, “Of Plantations,” in *The Essays* (1601; reprint, London: E. Holt, 1701), 93–94.

<sup>18</sup> Elizabeth Mancke, “Chartered Enterprises and the Evolution of the British Atlantic World,” in *The Creation of the British Atlantic World*, ed. Elizabeth Mancke and Carole Shammas (Baltimore: Johns Hopkins University Press, 2005), 244–46, 250, 254–57. See also Philip S. Haffenden, “The Crown and the Colonial Charters, 1675–1688,” *William and Mary Quarterly* 15 (1958): 297–311, 452–66.

<sup>19</sup> Mancke, “Chartered Enterprises,” 257.

<sup>20</sup> Rich, *Hudson’s Bay Company*, vol. 1, 116–68, 175–249, 301–6, 327–92, 402–26.

<sup>21</sup> E.E. Rich, ed., *Copy-Book of Letters Outward &c: begins 29th May, 1680 ends 5 July, 1687* (Toronto: Champlain Society, 1948), 36; E.E. Rich, ed., *Hudson’s Bay Copy Booke of Letters Commissions Instructions Outward, 1688–1696* (London: Hudson Bay Record Society, 1957), 15, 51, 63.

<sup>22</sup> Rich, *Hudson’s Bay Copy Booke*, 7, 19, 62.

HBC to prepare itself equally on the declaration of every campaign right up to the American Revolution. But it seems quite significant that Rupert's Land never automatically transformed into an "overseas theatre" in this period, as it had done earlier, in the late seventeenth century.<sup>23</sup> For all the anti-French bravado that was typical of official HBC discourse, it was decided that HBC territory was to remain effectively neutral. Of course, this was in line with their interests: unlike in India, where participation in European and inter-princely conflict often yielded higher returns and strengthened the EIC's stronghold in India (particularly in the post-1707 period, when the Mughal regime began to fall apart), conflict in Rupert's Land was utterly detrimental to the fur trade and was never worth its expense or risk for the HBC.<sup>24</sup> Thus the French were allowed to establish more than a dozen posts across the Northwest, even "within a day's [canoe] paddle" of one of the HBC's settlements, and were never attacked.<sup>25</sup> This surely proves that the Governors of the company-state, who consistently effected a policy of avoiding armed conflict with the French, were unafraid to profess a very different diplomatic agenda from the Crown's for much of the eighteenth century.

The company's diplomatic interaction with the natives—those "that are not Christians"—required very different techniques. The gigantic Rupert's Land grant was, after all, quite complex geopolitical terrain when the HBC government became "true and absolute Lords and Proprietors" in 1670; and existing tensions between various bands of Inuit, Chipewyan, Assiniboine, Ojibwa, Blackfoot, and Cree were drastically exacerbated by the dissemination of guns and other European goods throughout the eighteenth century.<sup>26</sup> The HBC, just as it passively anticipated the French, prepared to defend—to "put it not into their power to surprize our Forts or doe us prejudice"—but was never willing to participate directly in the multifaceted conflicts of the vast region.<sup>27</sup> As Rich puts it, "Its main policy remained, as it had been under [the early governments of] Knight and Kelsey, to prevent Indian wars and to direct the Indians to hunting instead."<sup>28</sup>

The HBC could not afford to be so *laissez-faire* with the First Nations groups that resided near or visited the bay. Governors were directed

<sup>23</sup> Rich, *Hudson's Bay Company*, vol. 1, 481–532, 587–647.

<sup>24</sup> Chaudhuri, *Trading World of Asia*, 109–20.

<sup>25</sup> The quoted passage is from Daniel Francis and Toby Morantz, *Partners in Furs: A History of the Fur Trade in Eastern James Bay, 1600–1870* (Montreal & Kingston: McGill-Queen's University Press, 1983), 98.

<sup>26</sup> The quoted passage is from the *Royal Charter*, 10. For an overview of native geopolitics see Gerald Friesen, *The Canadian Prairies: A History* (Toronto: University of Toronto Press, 1984), 22–44. Greater detail can be found in separate studies, including Olive P. Dickason, "A Historical Reconstruction for the Northwest Plains," *Prairie Forum* 5, 1 (1980): 19–37; Arthur J. Ray, *Indians in the Fur Trade: Their Role as Trappers, Hunters, and Middlemen in the Lands Southwest of Hudson Bay, 1660–1870* (Toronto: University of Toronto Press, 1974), 3–26; Oscar Lewis, *The Effects of White Contact upon Blackfoot Culture with Special Reference to the Role of the Fur Trade* (Seattle: University of Washington Press, 1966).

<sup>27</sup> Rich, *Copy-Book of Letters Outward*, 79.

<sup>28</sup> Rich, *Hudson's Bay Company*, vol. 1, 493.

“to make such compacts and Agreements wth. the Capts. and chiefs of the Rivers & Territories” from the moment of their arrival. Treaties of this type had two clear objectives. The first of these was to secure “a right & property” in the land and a monopoly on trade in the surrounding area, effectively legitimizing a key claim of the HBC Charter. More important, perhaps, was the second objective, which had to do with the security and stability of the bay. It was always made explicit by the London Committee that the treaties should attempt to create some sort of diplomatic alliance, to cement “Leagues of friendship & peaceable Cohabitation,” with locals.<sup>29</sup> These alliances were of particular importance in the early decades, when both the HBC and the French were struggling to establish themselves, in fierce competition with each other for the political attentions—and, of course, the furs—of the Bayside Crees.<sup>30</sup> At the height of conflict, back in London, the committee hoped that some of the local Crees might “unite & Joyne with us in any designe against the French,” but this was a fairly optimistic overestimation of Cree loyalty in these years. Instead, the main function of such alliances was to contribute to the overarching military policy of defence at the bay.<sup>31</sup>

The HBC defence system became a well-oiled machine. Allied locals, as well as allied trading bands, were its most valuable components. On several occasions they provided important intelligence to the company-state regarding the plots of “bad inland Indians,” French traders, and, most notorious of all, the “French Indians,” that is, those who “hold in any alliance with or doe assist or trade with the French . . . [and are] looke[d] upon as Enemies.”<sup>32</sup> Good relations with the nearby Crees and with visiting bands also led to growth in the population of those who were called the “home guard Indians”—several local families who lived alongside the company—whose numbers ranged anywhere from two families up to “150 to 200 men, women and children” at each settlement during the mid-eighteenth century.<sup>33</sup> The home guard became a regular feature of HBC posts, and they required a careful type of governance, as outlined further below. For the moment, however, it is important not to overlook that which their symbolic and simple title bespoke: among other important tasks (such as outfitting for traders and hunting for the settlements’ cooks), the home guard provided valuable security. The most spectacular example of this function was their combination into a militia-style home-guard “league,”

<sup>29</sup> Rich, *Copy-Book of Letters Outward*, 36, 46, 79.

<sup>30</sup> Janna Promislow, “One Chief, Two Chiefs, Red Chiefs, Blue Chiefs: Newcomer Perspectives on Indigenous Leadership in Rupert’s Land and the Northwest Territories,” in *The Grand Experiment: Law and Legal Culture in British Settler Societies*, ed. Hamar Foster et al. (Vancouver: UBC Press, 2008), 60–68.

<sup>31</sup> Rich, *Hudson’s Bay Copy Booke*, 142.

<sup>32</sup> *Ibid.*, 53, 63. See also Toby Morantz, “An Ethnohistoric Study of Eastern James Bay Cree Social Organisation, 1700–1850” (Canadian Ethnology Service Paper No. 88, National Museums of Canada, Ottawa, 1983), 41–42.

<sup>33</sup> Glyndwr Williams, ed., *Andrew Graham’s Observations on Hudson’s Bay, 1767–1791* (London: Hudson’s Bay Record Society, 1969), 192. See also Brown, *Strangers in Blood*, 19.



mobilized for the defence of Moose and Albany in 1783 amid the fear of one last destructive raid by the French. Although the “expected attack never materialised,” the sheer possibility of a HBC defence force composed of multiple home-guard squadrons is surely impressive, and testifies also to the loyalty felt by its members toward the company-state.<sup>34</sup> Furthermore, it parallels a development in the policy of the EIC, whose “Indian Army” was established from various European and Indian sources, from the early eighteenth century onward, as a response to growing French competition and intensifying localized conflict.<sup>35</sup>

Violent French competitors were not the only source of concern for the HBC in the early period. Uninvited English interlopers were a threat too. In this respect the terms of the HBC Charter’s monopoly were unequivocal, if a little overstated. The charter promised the HBC that the Crown would never again “grant Liberty, Licence, or Power, to any Person or Persons whatsoever” in Rupert’s Land without the HBC’s consent. All English subjects were therefore prohibited to “visit, haunt, frequent or trade, traffic or adventure, by way of Merchandize, into, or from any the said Territories, Limits or Places, hereby granted, or any, or either of them,” unless they were affiliated with the HBC (unless subjects of the company-state, in other words). Trespassers, once apprehended, would be indebted to the company for “the Sum of One Thousand Pounds at the least,” along with one-half of their ships, “with the Furniture thereof, wherein such Goods, Merchandizes, and other Things, shall be brought and found.” The other half was to be handed over to the Crown, as the charter laid out, upon extradition to England, where they would prepare to “incur our Indignation.”<sup>36</sup>

The London Committee was adamantly reiterative of these rights. When rumours arose about the cunning plans of ex-HBC men to interlope, Governor John Brigdar was quickly warned, upon assuming his post at the bay in 1682, that

You are to use your utmost Endeavors to prevent & detect all private trade, and Whereas here are frequent reports that there are Interloping designs on foot which are to bee carried on by the assistance of some of those who have formerly served us. If any such attempts shall be made you are to shew your Courage & Conduct in endeavouring to defeat them and to seize the Offenders if you can, and send them into England . . .<sup>37</sup>

Similar commands were extended to several Governors before the end of the century, with good reason. Two attempts to interlope, led by former employees, occurred in the 1680s. The first of these was the *Expectation*, promptly destroyed

<sup>34</sup> Morantz, “Ethnohistoric Study,” 41.

<sup>35</sup> Raymond Callahan, *The East India Company and Army Reform, 1783–1798* (Cambridge, MA: Harvard University Press, 1972), 1–15; Arthur N. Gilbert, “Recruitment and Reform in the East India Company Army, 1760–1800,” *Journal of British Studies* 15 (1975): 89–111.

<sup>36</sup> *The Royal Charter*, 13–14.

<sup>37</sup> Rich, *Copy-Book of Letters Outward*, 36.

by the HBC upon reaching the bay, in a display of strength deemed perfectly legal in the hearings that ensued back in London.<sup>38</sup> When the second contingent of ex-employees sailed for Hudson Bay aboard the *Mary* in 1688, treacherous seas, rather than the company's force, were enough to destroy the interlopers' ship; and after their rescue by an HBC ship, the crew was immediately put to work on land at Albany House.<sup>39</sup> Interlopers from England, like these, generally had a hard time on Hudson Bay, but those from colonial New England were considered a greater threat by the HBC right up to the 1760s.<sup>40</sup> The first incursion into Rupert's Land by New Englanders came in 1683. In that instance, relations with the *Batchelors Delight* were conducted somewhat differently, engaging the company in diplomacy of its own with the government of the Massachusetts Bay colony. Independently of the Crown, the two governments met and discussed and resolved their concerns about the trade monopoly.<sup>41</sup>

A variety of methods, therefore, lay at the HBC's disposal to police interloping, an act that was viewed with extreme repugnance by Governors and London Committee alike. Unpoliced, interlopers threatened more than just the profit margin; they threatened to bring the company's rule of law into complete dispute.<sup>42</sup> As Stern relates of the EIC, the "primary problem with interlopers was not that they impinged on the Company's monopoly but that they trespassed on its jurisdiction and resisted and flouted its authority as a government."<sup>43</sup> A similar dynamic was at work at Hudson Bay, where, just as in Bombay, maintaining the company's trade monopoly and patrolling its own territorial borders became activities of the utmost importance.

Competing traders, colonial governments, and First Nations were not the only entities with whom the HBC had to interact diplomatically. On one occasion, in fact, the HBC came into confrontation with the Royal Navy. In the 1740s, amid Arthur Dobbs's vicious campaign against the company, a heightened awareness about the possibility of the Northwest Passage led to two Crown-sanctioned expeditions of discovery into the company's jurisdictional waters.<sup>44</sup> This required the company to tread with greater care, at a time when tensions were already high as a result of the War of the Austrian Succession. Initially, and with some stubbornness, the HBC refused to allow the navy's ships to winter at the bay; and to remind their guests that they lacked an invitation, the temporary Governor at Churchill, Robert Pilgrim, ordered several shots to be fired across the Royal Navy's *Furnace* as it pulled into Hudson Bay in 1741.<sup>45</sup>

<sup>38</sup> Rich, *Hudson's Bay Company*, vol. 1, 104, 149–50, 261–62.

<sup>39</sup> *Ibid.*, 236–38, 241.

<sup>40</sup> Rich, *Hudson's Bay Company*, vol. 1, 648.

<sup>41</sup> *Ibid.*, 146–47; Rich, *Copy-Book of Letters Outward*, 93–95, 99–102.

<sup>42</sup> This is precisely what the "non-official" English population of India was doing in the same period. See Elizabeth Klosky, *Colonial Justice in British India: White Violence and the Rule of Law* (Cambridge: Cambridge University Press, 2010), 27–68.

<sup>43</sup> Stern, "A Politie of Civill & Military Power," 268.

<sup>44</sup> Glyndwr Williams, *The British Search for the Northwest Passage in the Eighteenth Century* (London: Longmans, 1962), 31–121. See also Arthur Dobbs, *An Account of the Countries Adjoining to Hudson's Bay, in the North-west Part of America* (London: J. Robinson, 1744).

<sup>45</sup> Rich, *Hudson's Bay Company*, vol. 1, 564–66. See also Thomson, *Mercenaries, Pirates, and Sovereigns*, 66.

This blatant, though in the end harmless, intimidation of a member of the official fleet is revealing of the HBC's muscle-power in the region. After some tense interchange, the company soon changed its position and allowed all the ships access to the posts, first in 1741 and again in 1746; but their captains and crew were offered little assistance during these times.

Trading companies needed to generate their own, organic sovereignty if they wanted to operate in highly contested regions. To do so, they had to make use of their own martial institutions; to work out who their allies and enemies were; and, decisively, to launch their own military campaigns, their own investigations, and their own treaty programs. Complete independence in all matters relating to military involvement and diplomatic engagement with other European and non-European entities was therefore fundamental to the success of the HBC in Rupert's Land, just as it was for the EIC in India.

### **The Juridical Function and Jurisdictions of the HBC-State**

The establishment of law and the maintenance of order by the HBC in this period have attracted considerable attention from Canadian scholars, to whom I am indebted for their various interpretations. In general, the HBC Charter's prescriptions have led them all to agree, in one way or another, that the company really had two separate jurisdictions: a "disciplinary jurisdiction" directly over its employees, and a predominately criminal jurisdiction, which was potentially wider reaching.<sup>46</sup> It is the latter that should be of greater concern for an article like this one, though we should not completely disregard the proper management of a disciplinary jurisdiction, which helped to legitimize the company-state in its own ways. After all, the ability "to make, ordain, and constitute, such, and so many reasonable Laws, Constitutions, Orders and Ordinances, as . . . shall seem necessary and convenient for the good Government of the said Company" went much further than facilitating a business strategy to make the most of a trade monopoly; it catered for a company that needed to feed, house, and regulate the behaviour of its workforce of indentured Orkneymen and dissolute apprentice boys from the ranks of London's poor.<sup>47</sup> And this the HBC did, making use of its substantial legislative powers, mixing up for itself a paternalistic combination of "Company regulations and the common law of master and servant."<sup>48</sup>

Upon their arrival at Hudson Bay, employees were made to swear an oath of allegiance to the HBC, "to be good & true to our Sovereign Lord the King his Heires and Successors and to be true & faithfull to the Governour &

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<sup>46</sup> Hamar Foster, "Law and Necessity in Western Rupert's Land and Beyond, 1670–1870," in *Law and Societies in the Prairie West*, ed. Louis Knafla and Jonathan Swainger, 57–91 (Vancouver: UBC Press, 2005); Foster, "Long Distance Justice"; Smandych and Linden, "Administering Justice without the State"; Baker, "Law Transplanted"; Nigol, "Discipline and Discretion."

<sup>47</sup> *The Royal Charter*, 11.

<sup>48</sup> Baker, "Law Transplanted," 43–52, 44. Eventually, these substantial legislative powers led to the framing of the HBC's *Standing Orders and Regulations*, along with a number of smaller legislative safety checks, which were intended to shape intra-company operations. These typically concerned master/servant relationships and labour regulations. For a good study of the HBC's labour system in a later period see Burley, *Servants of the Honourable Company*.

Compa. of Adventures of England tradeing into Hudsons Bay”—a ritual that served to reposition their sense of loyalty to the company-state alongside their loyalty to the Crown.<sup>49</sup> Once put to work, they were closely policed by officials.<sup>50</sup> To “Encourage Virtue,” Bayside Governors were told “to have prayers daily read in the Factorie and that the Lords day bee duely Observed.”<sup>51</sup> They were also instructed to “punish & discourage all dessolute and prophane persons.”<sup>52</sup> Such discouragement occurred summarily, with punishments ranging anywhere from violent blows to the offender’s complete removal to England, depending on the severity of the moral misdemeanour and the particular Governor in charge.<sup>53</sup> Disciplinary problems related to “the internal threat of sloth and drunkenness” were of high importance but variously policed over this period, whereas others associated with an illicit trade, tantamount to stealing from the company, were considered especially treacherous and treated with contempt.<sup>54</sup> “To converse with an Indian is a great crime,” as Joseph Robson recalled of his time at Hudson Bay, “but to trade with him for a skin is capital, and punished by a forfeiture of all wages.”<sup>55</sup>

Native women were viewed with even greater suspicion than their male counterparts, because of their skilful tendency to manipulate and embezzle. “Indian Woemen resorting to our Factories are very prejudicial to the Company affaires,” wrote the London Committee, which banned them altogether from coming within the general vicinity of the settlements.<sup>56</sup> The committee, concerned with smuggling perhaps more than debauchery, declared to all Governors that sexual interaction was to be strictly avoided; yet for all their wish to “hinder as much as Possible the detestable sin,” celibacy was, in practice, impossible to enforce consistently on the official class, many of whom saw native women as a privilege afforded of their rank.<sup>57</sup> Only the labourers were policed with any effect, and the most desperate of them were led, perhaps as a result, to commit sins considered far more detestable. As Paul Nigol reveals, at least one incident of sodomy and two incidents of “sexual impropriety with animals”—crimes punishable by imprisonment,

<sup>49</sup> Rich, *Copy-Book of Letters Outward*, 80; different versions of this oath appear in E.E. Rich, ed., *Minutes of the Hudson’s Bay Company, 1679–1684*, pts. 1 and 2 (Toronto: Champlain Society, 1945, 1946). See also Smandych and Linden, “Administering Justice without the State,” 33–34.

<sup>50</sup> Nigol, “Discipline and Discretion,” 158. For the EIC’s maintenance of “moral order” on St. Helena, see Stern, “Politics and Ideology,” 10–14.

<sup>51</sup> Rich, *Copy-Book of Letters Outward*, 36–37.

<sup>52</sup> *Ibid.*, 80.

<sup>53</sup> Nigol, “Discipline and Discretion”; Smandych and Linden, “Administering Justice without the State”; Rich, *Hudson’s Bay Company*, vol. 1, 496–97. See also Joseph Robson, *An Account of Six Years Residence in Hudson’s Bay from 1733 to 1736 and 1744 to 1747* (London: J. Payne & J. Bouquet, 1752), 17.

<sup>54</sup> Nigol, “Discipline and Discretion,” 158–64.

<sup>55</sup> Robson, *Account*, 17.

<sup>56</sup> Rich, *Copy-Book of Letters Outward*, 40–41.

<sup>57</sup> Rich, *Hudson’s Bay Company*, vol. 1, 496; Brown, *Strangers in Blood*, 13; Sylvia Van Kirk, “Many Tender Ties”: *Women in Fur Trade Society, 1670–1870* (Winnipeg: Watson & Dwyer, 1980), 85.

transportation, or death in England, depending on their severity—were punished by the HBC, before 1763, with only as much as a silent dismissal and a clean slate.<sup>58</sup> Thus, although it appears that the company-state was never much good at consistently enforcing a moral code for its employees in Rupert's Land, the very fact that it nevertheless tried, and needed, to do so more than most contemporary enterprises of mainland England is suggestive of the seriousness with which the HBC viewed its reputation as a formidable authority in the region.

Such moral police work, it should be added, was never deployed on the native population, who were treated with a kind of “benign neglect.”<sup>59</sup> There would be no civilizing mission at Hudson Bay, which meant no preaching and an outright refusal “to teach [the First Nations] to read or write.”<sup>60</sup> As the surgeon Richard White testified to a Select Committee into the company's affairs in 1749, “he had never heard of any Attempts made by the Factors to civilize these People; nor it an easy Matter to be attained, since it would be necessary in that case to bring them up to Labour from their Youth.”<sup>61</sup> Not all in England seemed to agree with this strategy. Take, for example, Robson's hysterical lament that

The Company . . . as traders, have violated their indispensable duty as men and Christians; have even sacrificed their own servants to their fear, and lest the natives should be instructed and reformed, have hitherto neglected the sending over a clergy-man to keep up a sense of religion at any of their factories.<sup>62</sup>

Robson was forgetting why the HBC had gone to Rupert's Land in the first place: to dominate the fur trade. The reality was that intrusive and comprehensive Europeanization was an agenda best postponed in the interests of sustaining revenue and maintaining good governance, just as it was in India before the late eighteenth century.<sup>63</sup> A “sense of religion” was really helpful only when it lent support to the strict policing of morals among its indentured servants. There seemed little point—let alone profit—in directing clergymen saviours to First Nations souls: it was not the company's business.

Establishing a moral framework for servants was one thing. Exercising a criminal and civil jurisdiction of its own crafting, over subjects of its choosing,

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<sup>58</sup> Nigol, “Discipline and Discretion,” 165–67, 168–71.

<sup>59</sup> Francis and Morantz, *Partners in Furs*, 91; see also Rich, *Hudson's Bay Company*, vol. 1, 492–96.

<sup>60</sup> K.G. Davies, ed., *Letters from Hudson's Bay, 1703–40* (London: Hudson's Bay Record Society, 1965), 98. See also Robson, *Account*, 76. On the idea of a “civilizing mission,” compare Rich, *Hudson's Bay Company*, vol. 1, 493.

<sup>61</sup> *Report from the Select Committee into the Hudson's Bay and of the Trade carried on there* (London, 1749), 219.

<sup>62</sup> Robson, *Account*, 76, 82–83. See also Dobbs, *Account of the Countries*; Edward Umfreville, *The Present State of Hudson's Bay* (1790; reprint, Toronto: Ryerson Press, 1954), 33–36, 108.

<sup>63</sup> On this topic, refer to the essays in Harald Fischer-Tiné and Michael Mann, eds., *Colonialism as Civilizing Mission: Cultural Ideology in British India* (London: Anthem Press, 2004).

was another altogether—more properly the job of a sovereign than that of a merchant. By the terms of its charter, the HBC was allowed to assemble makeshift courts convened by their Governors and Council, with the

Power to judge all Persons belonging to the said Governor and Company, or that shall live under them, in all Causes, whether Civil or Criminal, according to the Laws of this Kingdom, and to execute Justice accordingly. And, in Case . . . where Judicature cannot be executed for want of a Governor and Council there, then in such Case it shall and may be lawful for the chief Factor of that Place and his Council, to transmit the Party, together with the Offence, to such other Plantation, Factory, or Fort, where there shall be a Governor and Council, where Justice may be executed . . .<sup>64</sup>

Herein lay the ability to create and enforce only such laws as were deemed necessary, and, furthermore, the right to determine appropriate punishments for serious criminal offences, without fear of reprimand from the Crown.

As these rights were just about identical to those granted to the EIC—and exploited to the fullest—in India, a brief overview of early EIC law will be valuable for contrastive purposes. As the EIC's trading presence grew from the seventeenth century onward, so too did its dynamic and pluralistic judicial administration, both within the company's main trading settlements and across numerous districts of the interior. The EIC held regular tribunals in a variety of company courts, administered by both Europeans and Indians (with both Hindus and Muslims represented), which were basically in correspondence with two systems of law: one based on a selective reading of English law, applying mostly to company men, and the other based on its own reading of native traditions and conventions (gradually codified after the 1760s), covering everything from petty disputes to violent crimes.<sup>65</sup> EIC courts turned out to be a boon for company sovereignty, as many Indians had cause to make use of them, and accordingly "flocked to them in large numbers, larger than it was sometimes able to cope with."<sup>66</sup>

The legal regime of the company-state in Rupert's Land was slightly more discreet than this. Quite revealingly, from the records and scholarship available, it seems Governors established some form of legal proceeding and got serious about law only when the HBC was itself offended against—cases that were typically limited to misbehaving company servants. In the early period, when the French threat was at its peak, mutiny among employees

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<sup>64</sup> *The Royal Charter*, 16.

<sup>65</sup> For early EIC law see Sir Charles Fawcett, *The First Century of British Justice in India* (Oxford: Clarendon Press, 1934); J.K. Mittal, *Indian Legal History*, 5th ed. (Allahabad: Central Law Agency, 1974), 14–38; Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Delhi: Oxford University Press, 1998), 1–35.

<sup>66</sup> H.J. Leue, "Legal Expansion in the Age of Companies: Aspects of the Administration of Justice in the English and Dutch Settlements of Maritime Asia, c. 1600–1750," in *European Expansion and Law: The Encounter of European and Indigenous Law in 19th- and 20th-Century Africa and Asia*, ed. W.J. Mommsen and J.A. de Moor (Oxford: Berg, 1992), 148.

became a major concern for the HBC; three such accusations were tried in the period 1694–1696.<sup>67</sup> These trials took place in what H. Robert Baker calls “conciliar court[s], with the Governor and council presiding as judges of both fact and law,” established by HBC Governor James Knight.<sup>68</sup> To take just one of these cases, that of John Cartwright in 1696, the allegations reveal a great deal about the light in which the HBC viewed such offences. Cartwright’s charge, “stirring up Mutiny and Rebellion in the Factory, Endeavouring the utter destruction of the Government and the Country,” reflects crimes committed not against the Crown but against the company-state and its “Government” and “Country” in Rupert’s Land.<sup>69</sup> A more serious offence by an employee occurred a little later, just after York Factory was restored to the company in 1715.<sup>70</sup> From its pledge of obedience at the outset to “our Sovereign, Lady Queen Ann,” the trial of Thomas Butler proceeded much as it would have in England: it was heard in one of Knight’s courts; evidence was provided orally, from the testimonies of twelve witnesses under oath, as well as physically; and Butler was given the right to have someone speak in his defence. Yet this was not the Old Bailey but a fur-trade court, where different laws applied, as the catalogue of Butler’s crimes remind us:

Feloniously Stealing at Sundry times as likewise threatening Mens Lives and allso most Seuriously in very Unbecoming Language abusing his worthy Governor and most Slanderously Scandelizeing his Honorable Masters the Company in England which lended to the Subverting of this Government [. . . and] Abuseing the Natives here by lyeing with a Woman of this Country which is to the Endangering of all our Lives and wee may be cutt of by them as a result.

Thus, Butler’s crimes—drunken abuse, conspiracy to mutiny, larceny, and sex with a local woman—were among the worst of any kind committable by an employee of the HBC. He was found guilty, but we do not know what punishment was imposed.<sup>72</sup>

The HBC’s indentured servants were its most obvious subjects. But what about the non-English subjects of Rupert’s Land? Straight away we can rule out the French, who were never brought to company justice. According to Baker, this was simply because the HBC lacked “the legal apparatus to carry out its jurisdictional claims against [non-English] rivals.”<sup>73</sup> But the charter’s provision against any who “injured” the trade was always there, and Knight’s mobile conciliar courts suggest that the company-state may

<sup>67</sup> Baker, “Law Transplanted,” 52–55; Smandych and Linden, “Administering Justice without the State,” 39–44.

<sup>68</sup> Baker, “Law Transplanted,” 52.

<sup>69</sup> HBC Archives, B.3/z/2, cited in Baker, “Law Transplanted,” 52.

<sup>70</sup> Baker, “Law Transplanted,” 55–57; Smandych and Linden, “Administering Justice without the State,” 44–46.

<sup>71</sup> HBC Archives, B.239/a/2, qtd. in Baker, “Law Transplanted,” 55–56.

<sup>72</sup> Smandych and Linden, “Administering Justice without the State,” 45.

<sup>73</sup> Baker, “Law Transplanted,” 65.

have been quite logistically able, too. A lack of will and force seems to have played a bigger part. On top of this, the company did not want to draw attention to itself, as it surely would have done had it conquered and subjugated French traders in times of peace, flying in the face of international convention and, at the same time, setting a very radical precedent for other companies and colonial governments (not to mention the English Crown). There was also no necessity to do anything of the kind. In the early decades, because a kind of martial law prevailed whenever French attacks came, there was never any need to try French aggressors in Governors' courts; afterwards, in the comparably peaceful period from 1713 up to the Montreal challenge in the 1770s, the HBC remained devoted to commercial, rather than hostile, competition in the region. Thus, in line with the company's overall policy of pacifism, to repel a few pedlars and the last of the French traders "within the limits of the Company's charter," Governor Andrew Graham speculated in the 1770s that "a legal authority would do," but, failing that, the best strategy was to "drive them away by making settlements inland."<sup>74</sup> Herein lay a key component of HBC diplomacy: the French were to be traded out of the company's jurisdiction, not prosecuted within it.

The next people we need to address are the native peoples of Rupert's Land. Might they have fallen into the company's criminal jurisdiction under the provision of the HBC Charter that extended their rule to all "that shall live under them," as so many across India did at the same time? Scholars of the early HBC have been reluctant to see it as owner or overlord of native subjects. "In the fur trade period," writes Hamar Foster, "a unique legal regime that was predominantly but not exclusively Aboriginal governed international relations."<sup>75</sup> Those "that shall live under them," writes Brian Slattery, "exclud[ed] local peoples living under their own rulers and laws."<sup>76</sup> I think, however, that a distinction needs to be made here between the autonomous First Nations polities of Rupert's Land and the several hundred indigenous individuals who were settled around the HBC posts and collectively known as the "home guard Indians." Of the former we can remark, with as much certainty as we can about the French, that the HBC had neither the might nor the need to extend company law into the interior, because the systematic exploitation of middlemen, trappers, and hunters occurred effectively without any such intrusion. But as for the home guard, we cannot be so certain, as brief investigations into the captaincy system and the company-state's approach to criminal behaviour within the settlements suggest.

As the home-guard population grew more complex, HBC Governors delegated authority to home-guard "captaincies" at each settlement. Although this was also a tactic for dealing with visiting trading bands,

<sup>74</sup> Williams, *Graham's Observations*, 261.

<sup>75</sup> Foster, "Law and Necessity," 71.

<sup>76</sup> Brian Slattery, *The Land Rights of Indigenous Canadian Peoples as Affected by the Crown's Acquisition of their Territories* (DPhil diss., Oxford University, 1979; repr., Saskatoon: University of Saskatchewan, 1979), 159; see also Gibson, "Company Justice," 253 n. 15.



whose “inland captains” were key to the coordination of the trading ceremonies, post captains fulfilled a rather different purpose among the home guard.<sup>77</sup> They were rewarded much less than inland captains, they received different tasks, and their authority depended much more on their election and recognition by HBC Governors than on their own influence.<sup>78</sup> One instance of the conferring of captaincy came at Moose House in the spring of 1742, when Governor Duffield recorded the event for the post journal. After courting the respect of a local, Sakie, for some weeks, Duffield gave him a captain’s coat, asking him to “appear like a captain in his own jurisdiction and use his utmost interest with all his Indians for my benefit.”<sup>79</sup> Duffield’s words seem to evoke a system of indirect rule, with captains bridging the gap between HBC Governors and the rest of home-guard society. Sakie’s “own jurisdiction” was, at the same time, the HBC’s.

Both the HBC and the EIC preferred to rule through the intimate political structures of native society that lay available to them (and were not too difficult to manipulate), but the situation was quite a bit more intense in India, where the EIC injected itself deep into the channels of power. This they did first by filling key holes in the Mughal regime in the late seventeenth century,<sup>80</sup> and then, in the highly competitive atmosphere after the Mughal dissolution in the early and mid-eighteenth century, by “play[ing] off one [successor] state against another” for the company’s own political benefit.<sup>81</sup> In Rupert’s Land, political authority could be acquired far less intrusively, by modifying Cree political institutions in such a way as seemed to benefit both parties: home-guard captains acquired a special status, wore special clothes, and were given gifts to disperse among the other home guards; the HBC managed and monitored their home-guard populations without heavy-handed intrusion.<sup>82</sup>

In the 1750s, however, the HBC resorted to heavy hands within its home-guard jurisdiction on at least two occasions. The first of these was the notorious Henley House incident of 1754. Henley House was, in fact, a mere house at the time, established in 1743 about 100 miles inland from Albany and without any home-guard population of its own. Three men from the Albany home guard—Woudbee and his two sons, Shanap and Snuff the

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<sup>77</sup> For two complementary and detailed studies of the captaincy systems and home-guard society see Morantz, “Ethnohistoric Study,” and Promislow, “One Chief, Two Chiefs, Red Chiefs, Blue Chiefs,” 68–77.

<sup>78</sup> Morantz, “Ethnohistoric Study,” 40–42, 52–54, 85.

<sup>79</sup> HBC Archives, B.135/a/11, qtd. in Carol M. Judd, “Sakie, Esquawenoe, and the Foundation of a Dual-Native Tradition at Moose Factory,” in *The Subarctic Fur Trade: Native Social and Economic Adaptations*, ed. Shepard Krech III (Vancouver: UBC Press, 1984), 87.

<sup>80</sup> Philip J. Stern, “From the Fringes of History: Tracing the Roots of the English East India Company-State,” in *Fringes of Empire*, ed. Sameetah Agha and Elizabeth Klosky (New Delhi: Oxford University Press, 2009), 25.

<sup>81</sup> C.A. Bayly, *Indian Society and the Making of the British Empire* (Cambridge: Cambridge University Press, 1987), 7–79 (the quoted passage is on p. 48).

<sup>82</sup> For the argument that this system did not damage “the political institutions of [the Bayside Cree],” see Promislow, “One Chief, Two Chiefs, Red Chiefs, Blue Chiefs,” 77. Both this claim and the elucidative contrast Promislow draws out between HBC diplomacy and later Canadian diplomacy appear compatible with the argument presented here.

Blanket (the younger)—made the voyage south to request provisions from the post during the bitter winter of 1754–1755. Governor William Lamb, whose two “bedfellows” (kept inside Henley House) happened to be Woudbee’s daughter and Shanap’s wife, turned the men away upon their arrival. The men left disappointed, but soon returned to kill Lamb and his four servants.<sup>83</sup> A nearby HBC Governor quickly apprehended the outlaws and proceeded to coerce a confession from them, which then became the grounds upon which they were tried and convicted by a makeshift court. They were publicly hanged for their crime in the summer of 1755.<sup>84</sup> This execution seems more important than legal scholars have hitherto considered it. Although Lamb’s refusal to share provisions was at variance with the settlement system of shared resources, company justice—in hasty and brutal form—got the last word.

Another significant incident occurred in 1759, involving not a home guard but an experienced and well-known trading captain, Esquawenoe, who had acted as liaison with both the French and the English at the height of America’s Seven Years’ War. In the midst of a provision shortage, when morale at the home-guard settlements had slumped, Esquawenoe encouraged various home guards to join him in capturing HBC forts. Upon hearing of the plot, the Governor of Moose acted decisively: “I called the factory, acquainted them with the information I had received, and in order to quash so villainous an attempt it was unanimously agreed to take him into custody and to effect it in as peaceable manner as possible.”<sup>85</sup> Despite Esquawenoe’s independence from home-guard society, he had threatened mutiny within the criminal jurisdiction of the company-state, which was enough to allow the company to apprehend and imprison him on just grounds. “Four days later,” writes Carol M. Judd in her helpful account of the event, “the old captain hanged himself in his cell. The anticipated attack never took place.”<sup>86</sup> One can only speculate about the sort of justice that the company was preparing to deliver in Esquawenoe’s case.

That the HBC managed its employees with a firm hand is not too astonishing; many companies in this period did. What is astonishing is that the HBC, with extreme boldness, extended a criminal jurisdiction of its own crafting to incorporate the home guard, making use of its charter’s provision to rule over all “that shall live under them.” Of course, the EIC had been doing the same for decades, as it gradually transformed itself into the default legal authority for much of native India—as the rich archive of case law it left behind testifies. Whether the absence of similar evidence in the HBC records suggests something of an idyllic, peaceful coexistence in Rupert’s Land or something far more sinister, is impossible to know. Either way, it seems necessary to regard the execution of Woudbee, Shanap, and

<sup>83</sup> Charles A. Bishop, “The Henley House Massacres,” *The Beaver* (Autumn 1976): 36–41.

<sup>84</sup> Paul Nigol, “Discipline and Discretion,” 176–78.

<sup>85</sup> HBC Archives, B.135/a/31, qtd. in Judd, “Sakie, Esquawenoe,” 93–94.

<sup>86</sup> *Ibid.*, 94.

Snuff the Blanket in 1755 as a legal event of incredible significance—perhaps the first time on record when indigenous sovereignty shirked and retracted in the face of company rule, and the foreign type of sovereignty it embodied, in Rupert's Land.

### **The Welfare Function of the HBC-State**

In one of his many important contributions to the field of fur-trade history, Arthur J. Ray—pointing to patterns of resource exploitation, the HBC's system of credit, and changing social roles in native bands (among other things)—argues that “the modern welfare society of [Canada's] north is not a post-World War II phenomenon. It is deeply rooted in the fur trade.”<sup>87</sup> I cannot dispute his claim, but I do wish to suggest a new reference point, so that we view “welfare society” in the context of the HBC-state rather than—or as well as—in that of the Canadian state. When we look at the system of welfare provision, particularly in the early era of the fur trade, a striking connection between welfare and sovereignty seems to present itself, suggesting that we may need to rethink subjecthood in Rupert's Land.

It is necessary, first of all, to distinguish between two portions of home-guard society. The first comprised the young and healthy, to whom the posts were bases from which they could embark on seasonal hunting expeditions for the HBC economy and to which they could return and settle for the winter. Historians describe the relationship as “symbiotic,”<sup>88</sup> or as one of “mutual dependency”<sup>89</sup>—terminology validated by the words of former Governor James Isham in 1743: “it's to be observ'd that those Indians that hunts at Seasons for the forts, can not do without the assistance of the English, any more than the English without them.”<sup>90</sup> The concept of “mutual dependency,” however, cannot extend across the entire home-guard establishment, because of the presence of the growing community of redundants who made up the second portion. These individuals, whether “young, weak, sick or elderly,” stayed at the posts all year round and contributed little to their upkeep.<sup>91</sup> Toward some of these dependents the Governors must have felt a sense of obligation, such as the elderly loyalists of the guard, or the “pretty Numerous” children of mixed descent;<sup>92</sup> but toward others they must have felt less, including the individuals regularly deposited at the posts by families of nearby Cree and allied traders who, facing “a number

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<sup>87</sup> Arthur J. Ray, “Periodic Shortages, Native Welfare, and the Hudson's Bay Company, 1670–1930,” in *The Subarctic Fur Trade: Native Social and Economic Adaptations*, ed. Shepard Krech III (Vancouver: UBC Press, 1984), 16. I am also indebted to James Muir for his suggestions relating to this idea.

<sup>88</sup> Ray, “Periodic Shortages,” 7–8.

<sup>89</sup> Van Kirk, “Many Tender Ties,” 3; Francis and Morantz, *Partners in Furs*, 25.

<sup>90</sup> E.E. Rich, ed., *James Isham's Observations on Hudson's Bay, 1743, and Notes and Observations on a Book entitled A Voyage to Hudson Bay in the Dobbs Galley, 1749* (London: Hudson's Bay Record Society, 1949), 78.

<sup>91</sup> Rich, *Hudson's Bay Company*, vol. 1, 496; Brown, *Strangers in Blood*, 19; Williams, *Graham's Observations*, 191–92.

<sup>92</sup> Rich, *Isham's Observations*, 79.

of variables relating to the fur trade, operating in conjunction with environmental ones,” found themselves under pressure to purge non-productive members from the unit.<sup>93</sup>

The London Committee had always regretted the practice of sharing provisions with locals, which it accepted on the proviso that “you do not suffer our Factories to want by so doing.”<sup>94</sup> But a lack of effective stocktaking procedures meant that the committee was generally kept in the dark about the full extent of resource sharing at Hudson Bay, notwithstanding their “workmanlike efforts” to establish inventories at the turn of the century.<sup>95</sup> Although later, according to Rich, the London Committee’s problem with home-guard dependency expressed itself in “endless complaints of the consumption of European provisions,” there was little they could do to curtail what had come to be expected at the bay, by officials and home guard alike.<sup>96</sup> From the moment they assumed their posts, HBC Governors had to deal with a significant responsibility: they were the only men with power to provide for the subsistence of several—sometimes more than a hundred—home-guard dependents each. “Miscamot & his Family hath lain here ever Since my Arrival,” wrote Thomas McCleish in 1716, to take one example. “He is Decripled & Ancient y he cannot hunt, for if I did not maintain him and his family, which are 4 in number: they would perish.”<sup>97</sup> In the following year, McCleish reportedly cared for as many as “ten families of home Indians in a miserable condition” at Eastmain House.<sup>98</sup> Although the London Committee expected McCleish and his colleagues to ignore the plight of these and other “burdensome natives that are lying on the factory,” such an approach was out of the question, as it would likely have had a detrimental impact on trading relations, not to mention causing considerable distress to the Governors in control. More importantly, however, it may be argued that welfare provision came to serve an important political function for the company-state—something the London Committee may not have properly understood. By providing for its dependents, the HBC cemented its power as an overarching authority and attained the allegiance of both able and disabled home guards, and perhaps even of those traders for whom the HBC post became something of a retirement community.

The connection between (providing) welfare and (exercising) sovereignty was a politically pragmatic one to make in Rupert’s Land. But so it was for many regimes in world history. As Leonard Krieger reminds us in his history of the idea of the welfare state, “The very process of building the

<sup>93</sup> Charles A. Bishop, “The First Century: Adaptive Changes among the Western James Bay Cree between the Early Seventeenth and Early Eighteenth Centuries,” in *The Subarctic Fur Trade: Native Social and Economic Adaptations*, ed. Shepard Krech III, 21–54 (Vancouver: UBC Press, 1984), 41.

<sup>94</sup> Rich, *Copy-Book of Letters Outward*, 124.

<sup>95</sup> Rich, *Hudson’s Bay Company*, vol. 1, 153.

<sup>96</sup> *Ibid.*, 494.

<sup>97</sup> HBC Archives, B.3/a/9, qtd. in Bishop, “First Century,” 45.

<sup>98</sup> Davies, *Letters from Hudson’s Bay, 1703–40*, 72. By the 1730s, Eastmain was said to be accommodating about sixty “either Starved or lazy Indians”: 276 n. 2.

modern state between the 15th and the 18th centuries was a process in which regional rulers utilized provisions for welfare as well as force to extend their control over all the inhabitants of their realms.”<sup>99</sup> This was especially the case during the period of state formation in the Middle East, as Biersteker and Weber point out in their watershed analysis of sovereignty as a social construct. There, they argue, the prevalence of “dependent economies” was convenient for a handful of Arab leaders, who began “the promotion of a welfare state [to link] the citizens’ material interests and political loyalties and identities to the state.”<sup>100</sup> This “link” may have been just as expedient in the twentieth-century United States: as Frances Fox Piven and Richard A. Cloward influentially argue, a key function of public welfare lies in its ability to pacify the masses and prevent revolution from taking root among the subject population.<sup>101</sup> Indigenous populations, others remind us, seem extra-special targets for a pacification of this type in settler nation-states. Robert Paine calls this “welfare colonialism,” a term he extends to Ottawa’s band-aid strategy for the Arctic North in the second half of the twentieth century, right up to the recognition of Nunavut—a program that led to the significant erosion of what precious autonomy was left to the Inuit after centuries of imperial ignorance.<sup>102</sup>

Returning to eighteenth-century Rupert’s Land: How do we know whether welfare provision made any difference to HBC subjecthood? Combing through official discourse for curiosities is one way to find out. What becomes noticeable, as the home guard became accepted appendages of the company-state and the responsibility of managing welfare systems at the posts became the norm more than the exception, are changes in the ways home-guard dependents were accounted for by HBC Governors. When enumerating the local population in 1743, Isham made a distinction between First Nations “*belonging to the Hudson’s Bay company*” and those that “*comes Yearly*”—that is, he considered home-guard dependents as possessions of the HBC, and all others as visitors.<sup>103</sup> Likewise, reflecting on his time at Hudson Bay a little later on, Graham offered a telling definition of the home guard as those “*who are become dependent on the English, and retained by them to procure provisions, and perform other services*” (which

<sup>99</sup> Leonard Krieger, “The Idea of the Welfare State in Europe and the United States,” *Journal of the History of Ideas* 24 (1963), 557.

<sup>100</sup> Thomas J. Biersteker and Cynthia Weber, eds., *State Sovereignty as Social Construct* (Cambridge: Cambridge University Press, 1996), 164.

<sup>101</sup> Frances Fox Piven and Richard A. Cloward, *Regulating the Poor: The Functions of Public Welfare* (New York: Pantheon, 1971).

<sup>102</sup> Robert Paine, *The White Arctic: Anthropological Essays on Tutelage and Ethnicity* (Toronto: University of Toronto Press, 1977), 7–28. See also Kenneth S. Coates and William R. Morrison, “In Whose Best Interest? The Federal Government and the Native People of Yukon, 1964–1991,” in *Rebirth: Political, Economic, and Social Development in First Nations*, ed. Anne-Marie Mawhiney, 19–33 (Toronto: Dundurn Press, 1993); Jeremy Beckett, “Aboriginality, Citizenship and Nation State,” *Social Analysis* 24 (1988): 3–18; Darryl Cronin, “Welfare Dependency and Mutual Obligation: Negating Indigenous Sovereignty,” in *Sovereign Subjects: Indigenous Sovereignty Matters*, ed. Aileen Moreton-Robinson, (Sydney: Allen & Unwin) 179–200.

<sup>103</sup> Rich, *Isham’s Observations*, 91–92 [emphasis added].

he separated into “families of home-guards” and “widows, orphans and help-less people”).<sup>104</sup> Though possibly a coincidence, this recurrence of the idea that home-guard dependencies were owned by the HBC seems to me a significant one. By no means was ownership meant to convey, in such a context, the state of enslavement whereby people came to own other people as chattel property in the early modern period (the HBC traded in furs, not in human beings); rather, it seems to me that phrases such as “belonging to” and “retained by” here relay the key tenet of *imperium*, whereby people came to be acquired and maintained as subjects of the HBC government.

In the history of Empire, this was not unique. Right across the colonial world, and particularly in the settler-colonial world, as a result of from irreversible European interference in native resource bases, relationships of dependency arose that required institutional systems of provision that were variously deployed (and withheld) by colonizers as part of their particular regimes. And when companies (and other state-like units) found themselves in regions where only they had the power to offset the damage sustained by native economies, welfare systems, however patchy in approach, were often created—just as they were by other colonial governments in the period, as well as by Western nation-states in a later one.

In many respects, however, the HBC welfare state in Rupert’s Land was unique. The EIC, for instance, could never erect a system anything like it. This was partly because of the sheer size of colonized India: logistically and financially, it would have been difficult to provide welfare to the enormous native populations of EIC territory (many of which were enduring occasional famines and adapting to epic changes in their economic and ecological systems over this period). Political uncertainty in India about whose responsibility welfare had actually become also played a part in the EIC’s reasons for avoiding welfare. Amid widespread political upheaval, the EIC administration after the Mughal collapse—and particularly in the Bengal region after it acquired the *diwani* in 1765<sup>105</sup>—quite remarkably managed to disconnect its *right* to raise revenue from its *responsibility* to provide for its subject base.<sup>106</sup> Thus, unlike the HBC, which saw welfare as complementary to good government and good trading relations, the EIC had become a sovereign, and would remain a sovereign, regardless of whether its subjects received relief or not.

Another reason that the HBC’s welfare system seems different from other colonial regimes in the eighteenth and nineteenth centuries extends from a

<sup>104</sup> Williams, *Graham’s Observations*, 191–92 [emphasis added].

<sup>105</sup> At the completion of its successful military campaigns in the greater Oudh and Bengal regions in the early 1760s, the EIC was granted the right to *diwani*—a comprehensive sovereign right to collect territorial and customs revenue. For wider legal and political ramifications of *diwani* see Huw V. Bowen, “A Question of Sovereignty? The Bengal Land Revenue Issue, 1765–67,” *Journal of Imperial and Commonwealth History* 16 (1988): 155–76.

<sup>106</sup> Nandalal Chatterji, *Bengal under the Diwani Administration, 1765–1772* (Allahabad: Indian Press, 1956); Nikhil Sur, “The Bihar Famine of 1770,” *Indian Economic Social History Review* 13 (1976): 525–31.

theme covered earlier in this article, relating to the purpose served by Christianity on Hudson Bay. Since the HBC professed a complete lack of interest in the salvation of souls—and, reciprocally, their dependents seemed disinclined to offer them up in the first place—a situation like that which occurred commonly across the nineteenth-century Empire, in which food and the Bible were part of the same colonial transaction, did not occur at Hudson Bay.<sup>107</sup> Ensuring the material welfare of “those hungry Dogges that are never from the factory”<sup>108</sup> was an entirely secular objective—a feature that brings the HBC into closer relation to the institutionalized welfare of modern states than to the churches, feudalities, private conglomerates, or missionary societies of a bygone era.

The phenomenon of welfare provision seems to problematize the way we perceive subjecthood—and, by consequence, sovereignty—in the colonial world. “Until the mid eighteenth century,” writes Mancke in her essay on the Atlantic chartered companies, “native peoples were generally assumed either to be friendly aliens or enemy aliens, rather than some new form of subject.”<sup>109</sup> On the contrary, I argue that the home guard were seen in a different light by HBC Governors—as friendly subjects of their welfare system—and as for “aliens,” they were anything but. Whether one accepts that this reveals anything about the ways in which sovereignty (whether indigenous, company, or otherwise) actually worked on the ground will depend on how one perceives the relationship between economic autonomy and political autonomy and on how certain one can be, from the present, about the multiplicity of loyalties embodied in individual agents of the past. It also depends on how malleable we can make historic concepts such as “welfare state,” “subject,” and “sovereignty” before they start to lose their meaning.

## Conclusion

There are some fruitful comparisons to be explored between the EIC and the HBC. After the 1760s, however, the parallel experiences of the two companies (and their respective colonial domains) begin to diverge. In India, the sovereign jurisdiction of the EIC-state expanded and grew more formidable with each military campaign, until the Crown entered the scene and began to swallow it up, following Pitt's India Act of 1784. Then, in response to the Mutiny of 1857, the Crown cleaned up the remaining scraps of EIC sovereignty and held them deep in the belly of the Empire until the mid-twentieth century, when decolonization belatedly arrived in the subcontinent. Crucially,

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<sup>107</sup> An interesting parallel might be drawn to Michel Foucault's concept of “pastoral power,” which he considered an extra-sovereign “prelude” to modern governmentality and state formations. For a useful analysis of the concept see Ben Golder, “Foucault and the Genealogy of Pastoral Power,” *Radical Philosophy Review* 10 (2007): 157–76. For its application to a later British Columbia context see Lynn A. Blake, “Pastoral Power, Governmentality and Cultures of Order in Nineteenth-Century British Columbia,” *Transactions of the Institute of British Geographers* 24 (1999): 79–93.

<sup>108</sup> Rich, *Hudson's Bay Company*, vol. 1, 496.

<sup>109</sup> Mancke, “Chartered Enterprises,” 261.

India was never seriously scouted as a field for settler colonialism in this period, whereas North America was.

The Crown made its first all-encompassing statement of intent as to the dominion of North America in the Royal Proclamation of 1763. This document, which reflects a serious overestimation of the Crown's own importance and a grave misreading of the vast territory's complex political configuration, nevertheless seems to mark a key turning point.<sup>110</sup> Gradually thereafter certain "layers" of sovereignty became thicker than others across the continent, and colonial governments began to take new steps to eradicate indigenous forms of sovereignty.<sup>111</sup> The old HBC jurisdiction was caught up in this critical 150-year process: Rupert's Land was never bequeathed to the First Nations, Métis, and Inuit but was instead alienated and sold to Ottawa in 1870, in what must surely be ranked among the most ludicrous transactions in the history of Canadian property law.

Before this, and particularly during the period between 1670 and 1763, the HBC was far more than just a fur-trade syndicate; it was, to borrow Stern's term for the East India Company, a "company-state"—an independent, multi-institutional construction from which a certain type of sovereignty emanated in Rupert's Land. In defence of their chartered rights, the Governors of the HBC evinced military skills, engaged in diplomacy, and intimidated interlopers, all as they saw fit. To maintain order at Hudson Bay, they established their own legal regime and applied it to a heterogeneous group of subjects, all as they saw fit. To incorporate themselves seamlessly alongside complex and pre-existing native populations, they used alliances, captaincies, and an institutionalized system of welfare provision at the posts to curry favour, and they adopted a preservationist policy of "benign neglect" to avoid any damage to the fur-trade network—all, again, as they saw fit. And such were the skills not of the Crown but of an independent company-state, which were more than could be expected of any shopkeeper or merchant gentleman in London.

Conceptualizing trading and settlement companies as pre-Crown-colonial company-states allows us to interpret the historical direction of indigenous peoples' trajectories toward the two giant North American sovereigns—the

<sup>110</sup> Compare E.E. Rich, *The Fur Trade and the Northwest to 1867* (Toronto: McClelland & Stewart, 1967), 107. For the Royal Proclamation of 1763 see Kenneth M. Narvey, "The Royal Proclamation of 7 October 1763: The Common Law, and Native Rights to Land within the Territory Granted to the Hudson's Bay Company," *Saskatchewan Law Review* 38 (1974): 123–233; Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, MA: Harvard University Press, 2007), ch. 3; Slattery, *Land Rights*; Foster, "Long Distance Justice."

<sup>111</sup> This process began with restrictions on native property rights (among them the right to Crown "pre-emption," secured in 1763), followed by the triumph of settler jurisdictions and the extinguishment of indigenous legal systems in the nineteenth century, and finally climaxed with syndicated treaties and policies of land alienation and reservation during the period 1860–1930. A number of works explore this process with their own important insights. See in particular Sidney L. Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence* (Toronto: Osgoode Society for Canadian Legal History, 1998); John C. Weaver, *The Great Land Rush and the Making of the Modern World, 1650–1900* (Montreal: McGill-Queen's University Press, 2003); Banner, *How the Indians Lost Their Land*; Ford, *Settler Sovereignty*.



United States and the Crown (later Canada)—somewhat differently: that is, via private intermediaries. Such an approach potentially clears away some of the jurisprudential fog that lingers in history well after sovereign models transition, but it implicates Crown, companies, and colonizers in unfamiliar ways. Given that the operation of colonial law, the marking of jurisdictional limits, and the acquisition of subjects regularly occurred beyond the Crown's purview, should it not make sense to see native subjects beholden to companies in the extra-European world of the seventeenth and eighteenth centuries?

This question goes to the heart of the matter of the different ways in which historians and lawyers approach the colonial past, and it may not be purely academic, or purely historical, either.<sup>112</sup> When we stand back far enough that we are able to scrutinize the strange conventions that inform the juridical quagmire of indigenous rights in Canada, a difficult question seems to arise out of all of this. If it was a *company* that made subjects of certain indigenous people, and a *company* that altered how property rights worked in certain parts of Rupert's Land, then, for certain Aboriginal communities that seek redress for historic injustice, should it not be the *company* instead of—or as much as—the giant sovereign interface of what is now Canada that is investigated in lawsuits?<sup>113</sup> Finally, when we cast our eyes away from the colonial past to focus instead on an environmentally aware present, with respect to, for instance, the international uncertainty surrounding the recent flurry of capitalist and imperialist activity in a melting Arctic North,<sup>114</sup> or the search for accountability as oil gushes from a breach in the Gulf of Mexico,<sup>115</sup> yet another difficult question arises. Is the era of high seas, in which companies operate beyond the sovereign grasp of nation-states as laws unto themselves, even actually behind us?<sup>116</sup>

## Abstract

Questions about the ways in which colonial subjects were acquired and maintained, and how it was that multiple and often contradictory sovereignties came to overlap in history, may not be purely academic. We raise them today because they spring

<sup>112</sup> For an introduction to this debate see P.G. McHugh, "The Common-Law Status of Colonies and Aboriginal 'Rights': How Lawyers and Historians Treat the Past," *Saskatchewan Law Review* 61 (1998): 393–429.

<sup>113</sup> Intriguingly, elements of pre-1774 EIC legal history recently arose in *Boumediene v Bush*, a case relating to *habeas corpus* in the sovereign black hole of Guantánamo Bay. For a discussion see "Habeas History: GTMO is the British East India Company," *Daily Kos* (27 Feb 2007), <http://www.dailykos.com/story/2007/2/27/17488/5246>; Philip J. Stern, "History and Historiography of the East India Company: Past, Present, and Future!" *History Compass* 7 (2009), 1162 n. 1.

<sup>114</sup> Michael Byers, *Who Owns the Arctic? Understanding Sovereignty Disputes in the North* (Vancouver: Douglas & McIntyre, 2009). Byers' eye-opening account of this drama is one that casts, in his words, "non-state actors rather than other nation-states" (19).

<sup>115</sup> Richard W. Rahn, "Authority, Responsibility and Accountability" (Cato Institute, June 8, 2010), [http://www.cato.org/pub\\_display.php?pub\\_id=11879](http://www.cato.org/pub_display.php?pub_id=11879).

<sup>116</sup> For the current difficulties associated with regulating transnational "non-governmental" entities see Kevin T. Jackson, "Global Corporate Governance: Soft Law and Reputational Accountability," *Brooklyn Journal of International Law* 35, 1 (2010): 41–106.

from issues that remain unresolved, concerning rights to land, resources, and self-determination. Following recent scholarship on the English East India Company, the author redefines the Hudson's Bay Company, during the period before widespread settler colonialism, as a state (or "company-state"), and in this way argues that the HBC-state possessed its own kind of sovereignty. The article makes three main arguments: that it was up to the HBC, not the Crown, to found Rupert's Land, defend its establishments, make alliances with locals, and challenge intruders; that HBC rule extended to cover not only the company's employees but, eventually, an indigenous "home guard" population; and that the HBC welfare regime transformed the relationship between ruler and ruled.

**Keywords:** Hudson's Bay Company, Rupert's Land, colonialism, sovereignty, jurisdiction, land, government, welfare, Aboriginal peoples

### Résumé

Nous nous intéressons aux façons dont les colonies furent acquises et maintenues en sujétion ainsi qu'aux raisons pour lesquelles des souverainetés souvent contradictoires se sont chevauchées au fil du temps. Nous soulevons ces questions, à présent, puisqu'elles abordent des problèmes concrets et irrésolus, à savoir les droits territoriaux, les ressources ainsi que l'autodétermination. Suivant les écrits récents sur la Compagnie anglaise des Indes orientales, je redéfinirai la Compagnie de la Baie d'Hudson (CBH), à l'époque qui précède l'établissement répandu de colonies, comme un état (ou Compagnie-état), c'est-à-dire un régime qui possédait une souveraineté particulière. J'avancerai trois points : 1) que c'était à l'état de la Compagnie de la Baie d'Hudson, plutôt qu'à la couronne, d'établir la Terre de Rupert, de défendre ses établissements, de s'allier avec les locaux et de se défendre contre les intrus ; 2) que les lois de la Compagnie s'appliquaient non seulement aux employés de la CBH mais aussi, éventuellement, à la population autochtone ; et 3) que le régime de bien-être social de la CBH a eu pour conséquence de transformer la relation entre maître et sujets.

**Mots clés:** Compagnie de la Baie d'Hudson, Terre de Rupert, colonialisme, souveraineté, juridiction, territoire, gouvernement, bien-être, peuples autochtones

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