

Whose Side Are You On?

Susan Campbell & Thomas Dapp

Douglas N. Sprague, *Canada and the Métis, 1869-85* (Waterloo: Wilfrid Laurier University Press 1988).

Thomas Flanagan, *Metis Lands in Manitoba* (Calgary: University of Calgary Press 1991).

First we acknowledge and confirm ... a sort of title to vast regions. Afterward, we continue, in a strictly legal manner, to do away with both the substance and the shadow of title. Wiser heads than [Nez Percé Chief] Joseph's have been puzzled by this manner of balancing the scales.¹

Although Sprague's *Canada and the Métis, 1869-85* was published five years ago, it is highly appropriate that it be considered together with Flanagan's more recent *Metis Lands in Manitoba*, first in that the latter attempts to rebut the former, second because the work of Sprague and Flanagan represent diametrically opposed positions which academics can adopt concerning the rights of First Nations people. In this regard it ought to be noted that *Metis Lands in Manitoba* has been accorded positive reinforcement; the Manitoba Historical Society recently awarded Flanagan a medal in the Scholarly Book Category of the Margaret McWilliams Medal Competition.

Sprague's perspective on Métis history is suggested by the title of what was his first published work on the subject: "Government Lawlessness in the Administration of Manitoba Land Claims, 1830-85." In 1983 he co-edited *The Genealogy of the First Métis Nation*, in 1991 he wrote *Canada's Treaties with Aboriginal People*, and in 1992 he contributed a chapter on the Métis to *Land Claims in Canada: A Regional Perspective*.²

It is also noteworthy that the foreword to Sprague's *Canada and the Métis* was written by Justice Thomas R. Berger, whose support for aboriginal rights goes back to at least the 1960s when he undertook to represent the Nisga'a nation in the landmark case *Calder v. Attorney General of B.C.* In 1973 the Supreme Court of Canada came to a split decision as to whether, before the territory now known as British Columbia joined Canada in 1871, the aboriginal rights of the Nisga'a nation had or had not been what is euphemistically termed 'extinguished.' Berger, praising Sprague's explanation of how the Métis came to be "strangers in their own land,"

1 Gen. Oliver O. Howard, *Nez Percé Joseph* (Boston 1881), 27.

2 D. Sprague, "Government Lawlessness in the Administration of Manitoba Land Claims, 1830-85," *Manitoba Law Journal*, 10 (1980), 415-41; D. Sprague and R.P. Frye, eds., *The Genealogy of the First Métis Nation: the Development and Dispersal of the Red River Settlement, 1820-1900* (Winnipeg, 1983); D. Sprague, "Métis Claims in Canada," *Land Claims in Canada: A Regional Perspective*, Ken Coates, ed. (Toronto 1992), 195-213.

concludes “It remains, to us ... to see that they get the land-base they were promised.” (viii)

The research behind Sprague’s *Canada and the Métis* was based primarily on the Sir John A. Macdonald papers lodged in the Public Archives of Canada. Sprague comments that a considerable number of the manuscript letters and memoranda he cites have been “less than fully exploited” by ‘Creightonian’ historians, whose work is critiqued in his historiographical first chapter. Sprague attributes this lack to three factors: one, Creighton’s concern with the whole life of his hero rather than ‘merely’ his dealings with the Métis; two, traditional historians’ narrow vision as to the significance of Macdonald’s actions, as Sprague remarks, “another researcher may have seen the same letter or memorandum but, under the presumption of benevolence, [considered it] ... either irrelevant or misleading”; (185) and three, “intimidating ... to say the least,” was the sheer volume of the material. Sprague also notes that although the Macdonald papers have been in the Archives since 1917, they remain far from fully accessible. In 1986, when he requested thirty seven files, only six could be seen in full; eighty three pages of the thirty one remaining files were withheld. (181)

The body of *Canada and the Métis* contains nine chapters including: Acquiring Canada’s First Colony, Asserting Canadian Authority Over Assiniboia, ‘Unlocking’ the Territory for ‘Actual Settlers,’ Completing the Dispersal of the Manitoba Métis, and Confronting Riel and Completing the CPR. Sprague’s conclusion is that the 1885 uprising was the result, not of some “tragic misunderstanding,” but of government manipulation of the Métis. Macdonald *et al* “appeared to tolerate accommodation [of Métis grievances] when conflict was deemed inexpedient for reasons of state, and aggravation of conflict when confrontation was dictated by the same grounds of expediency.” (184)

As Deputy Editor of the Louis Riel Project which produced *The Collected Writings of Louis Riel*, Thomas Flanagan is undoubtedly an expert on the Métis. However, this iconoclast’s task has been to revise conventional history from the right rather than the left. He began nearly two decades ago with “Louis ‘David’ Riel: Prophet, Priest-King, Infallible Pontiff,” followed by *Louis ‘David’ Riel: ‘Prophet of the New World.’* In 1983, in *Riel and the Rebellion: 1885 Reconsidered*, Flanagan ridiculed the very suggestion that the Métis uprisings of 1869-70 and 1885 had had anything to do with national liberation.³ Flanagan so vilified the Métis leader that, as one reviewer pointed out, *Riel and the Rebellion* was “very nearly ... a diatribe.” Métis historian Ron Bourgeault further termed it “utterly reactionary.”⁴

In 1983, in an article entitled “The Case Against Métis Aboriginal Rights,” Flanagan pontificated that “aboriginal rights are not merely, or even chiefly, a

3 G.F.G. Stanley *et al.*, *The Collected Writings of Louis Riel/Les Ecrits Complets de Louis Riel*, 4 vols. (Edmonton 1985); T. Flanagan, “Louis ‘David’ Riel: Prophet, Priest-King, Infallible Pontiff,” *Journal of Canadian Studies*, 9:3 (1974), 15-25; T. Flanagan, *Louis ‘David’ Riel: ‘Prophet of the New World’* (Toronto 1979); T. Flanagan, *Riel and the Rebellion: 1885 Reconsidered* (Saskatoon 1983).

4 Murray Dobbin, “Thomas Flanagan’s *Riel*: An Unfortunate Obsession,” *Alberta History* 32:2 (1984), 24-26; Ron Bourgeault, review in *Labour/Le Travail* 16 (1985), 282-85.

question of who was there first.” How convenient. He argued that for the Canadian government to have legally recognized the Métis as an aboriginal people had been a grave mistake. Since Section 35 (1) of the Constitution Act of 1982 states that “The existing aboriginal and treaty rights of the aboriginal peoples of Canada [specifically mentioning the Métis alongside ‘Indians’ and Inuit] are hereby recognized and affirmed,” Flanagan advised that the best strategy to “minimize the damage caused by the thoughtless elevation of the Métis to the status of a distinct ‘aboriginal’ people” would be to emphasize the words ‘existing rights’ — that is, only such rights as had been recognized by the government as of 17 April 1982, the day the Act was proclaimed.⁵

In the same article Flanagan claimed that, while according to principles of international law (the question ‘whose law?’ is of course not asked) the “Conquest of agricultural peoples calls for retention of their property rights,” for those living in hunting-gathering societies (Flanagan calls them “nomadic”) the position is quite different. In *A Long and Terrible Shadow* Berger has demonstrated that this is a line of reasoning with, to date, 500 long and bloody years behind it.⁶ It is important to realize that apologists for colonizing land-grabbers have constantly ‘redefined’ the economic bases of aboriginal societies, arguing they did not ‘need’ the bulk of their historic territories and that, in the interests of some supposed ‘greater good,’ they ought to turn them over to the more civilized. In the early nineteenth century, as cotton-cultivation using African-American slave labour expanded across the south-eastern U.S., the Cherokees and the four other ‘civilized’ tribes (the Creeks, Chickasaws, Choctaws, and Seminoles), who had been corn-cultivators for centuries before European arrival, were driven out by the workings of the 1830 Indian Removal Act. Along their deportation route — which the Cherokees call *Nunna daul Tsunyi* (‘the trail where we cried’) — or as a direct result of removal, more than 8,000 people (nearly half of all Cherokees) died.⁷ Throughout the rest of the century, in Canada as in the U.S., Native people were concentrated on ever-smaller reserves/reservations, off land most in demand by settlers, in locations where they could be conveniently subjected to such ‘civilizing’ institutions as the now-notorious residential schools.⁸ Flanagan is not unacquainted with these particularly sordid pages of nineteenth-century history.⁹

In his Preface to *Metis Lands in Manitoba* Flanagan relates that in mid-1986 he received a call from the Federal Department of Justice, the upshot of which was his retention as an “historical consultant” in the on-going case of *Dumont et al v. Canada*

5 T. Flanagan, “The Case Against Métis Aboriginal Rights,” *Canadian Public Policy* IX:3 (1983), 314-25.

6 Thomas Berger, *A Long and Terrible Shadow: White Values, Native Rights in the Americas, 1492-1992* (Vancouver 1991).

7 Russell Thornton, *American Indian Holocaust and Survival: A Population History Since 1492* (Norman 1987), 114-18.

8 See Maggie Hodgson, “Impact of Residential Schools and Other Root Causes of Poor Mental Health (Suicide, Family Violence, Alcohol and Drug Abuse),” (Edmonton 1990).

9 See his “From Indian Title to Aboriginal Rights,” in Louis Knafla, ed. *Law and Justice in a New Land: Essays in Western Canadian Legal History* (Toronto 1986), 81-100.

(*Attorney General*) and *Manitoba (Attorney General)*. *Dumont et al.* had been filed by the Manitoba Métis Federation and the Native Council of Canada in Manitoba's Court of Queen's Bench in 1981 on the grounds that federal and provincial governments had not lived up to their commitments as set out in Sections 31 and 32 of the 1870 Manitoba Act. Admitting only that "doing research for one side in a conflict may colour one's thinking in ways that are difficult or impossible to perceive," Flanagan says nothing about his ideology having been within a particular colour-range long before he was offered the contract. He argues that his undertaking government-commissioned research did not "degrade a pristine situation" since work backing *Dumont et al.* was produced by employees and contractees of the Manitoba Métis Federation or others "sympathetic to the Metis political movement." Thus his hoisting of a cudgel on behalf of the State, possibly "help[ing] to restore some balance to the debate," (viii) is for him entirely positive. Shortly after Flanagan accepted this commission the Métis retained Thomas Berger as their legal representative. Berger apparently offended Flanagan by stating that *Dumont et al.* would put "the conventional view of Canadian history on trial."

In 1986 D.J. Bourgeois noted that historians could expect increasing pressure to participate in legal cases, this pressure to come from two main sources — Charter cases, obviously, but also cases involving Native land-rights.¹⁰ An early example was the important Temi-augama Anishinabe case of *Ontario (Attorney General) v. Bear Island Foundation et al.* This involved historian-witnesses for both sides, dragged on in various forms from 1978 until 1991 and ended in a Native defeat.

Now would therefore be a good time for those whose research interests are related to First Nations history to give serious consideration to what they do or do not recognize as their obligations toward Native people. In "Adding Insult to Injury: Her Majesty's Loyal Anthropologist," Dara Culhane analyzed the role of an academic whose opinions helped B.C. Supreme Court Justice Allan McEachern arrive at his outrageous decision in the 1987-91 *Delgamuukw v. British Columbia Gitksan/Wet'suwet'en* case. At the same time, research by scholars such as Hugh Brody was disregarded.¹¹ One might be tempted to tag Flanagan a 'Loyal Historian' were it not for the fact that he is a (University of Calgary) professor of Political Science. To put matters bluntly, Flanagan is very active in the service of class forces opposed to the interests of Native people. Until recently, as its Director of Policy, Strategy and Communications, Flanagan also represented one of the more agile minds to be found toward the top of the Reform Party. Although he has now quit Reform, it remains significant that Flanagan was prime among those who pushed the more faint-hearted Preston Manning, late in the constitutional referendum campaign, to come out openly against aboriginal self-government.

In *Metis Lands in Manitoba* the conclusion Flanagan reaches is that "the federal government generally fulfilled, and in some ways overfulfilled, the land provisions

10 D.J. Bourgeois, "The Role of the Historian in the Litigation Process," *Canadian Historical Review*, LXVII:2 (1986), 195-205.

11 Dara Culhane, "Adding Insult to Injury: Her Majesty's Loyal Anthropologist," *B.C. Studies*, 95 (1992), 66-92.

of the Manitoba Act.” (225) “In view of this generosity towards the Metis,” he continues, “one must ask why the Manitoba Act left such a legacy of bitterness that litigation would arise a century after its implementation.” (228) For him the answer “lies in the perception of the Manitoba Act,” the culprit was Abbé Joseph-Nöel Richot (1825-1905), who envisioned “a large French Metis enclave in southern Manitoba ... containing entailed lands for future generations.” (229) Flanagan’s complaint that “contemporary spokesmen,” in “portraying the Metis as hapless victims of others’ evil plans ... degrade the dignity of individual Metis human beings,” (232) accords rather badly with his own explanation that “Richot imprinted his version on the minds of the Metis.” (229) Flanagan argues that “The real issue is whether the Metis should have been treated ... paternalistically, as *our law* [emphasis added] has treated the Indians.” For Flanagan, the concentration of Native people on reserves was not a mechanism for their dispossession and eventual obliteration, but rather too-soft liberalism. “The recurrent theme in Flanagan’s analysis is the inherent justness of the growing dominance of European peoples over the native population in what is now Canada.”¹²

Important to Flanagan’s argument is the contention that, in the case of the Métis, private land-allotment respected the status of individuals as “British subjects with full civil and political rights, and all the attendant responsibilities” (so long, of course, as these individuals were male). This sounds reasonably equitable unless one is aware that allotment of land ‘in severalty’ has been, since the early colonial era, intrinsic to Native reservization and dispossession. For example, in the U.S. the Dawes General Allotment Act devastated the Native land base, reducing it (1887-1934) from some 139 million to 48 million acres.¹³

To return briefly to Sprague’s *Canada and the Métis*, it ought to surprise no one that Métis interests were subordinated to those of ‘what is now Canada.’ While his evaluation was lacking in regard to differing class interests within the dominant colonizing population, Raymond Huel was correct to write that “responsibility should not be attributed uniquely to Macdonald but on [sic] Canadians in general, whose political culture he reflected and interpreted only too well.”¹⁴ It seems to these reviewers that a few ethno- and legal historians working on U.S. Native history have generally been more conscious than their colleagues north of ‘the medicine line’ that, in the dispossession of Native nations, conspiracy and corruption have been much less important than the ordinary workings of the market.¹⁵ Thus General Howard’s observation quoted earlier.

12 Bourgeault, 283.

13 Paul W. Gates, “Indian Allotments Preceding the Dawes Act,” in John G. Clark, ed., *The Frontier Challenge: Responses to the Trans-Mississippi West* (Lawrence 1971), 141-70. Although no single source is entirely satisfactory as to the reasons for the passage and the workings of the Dawes Act, see William T. Hagan, “Private Property, the Indian’s Door to Civilization,” *Ethnohistory*, 3 (1956), 126-37; Wilcomb Washburn, *The Assault on Indian Tribalism: the General Allotment Law (Dawes Act) of 1887* (Philadelphia 1975); David M. Holford, “The Subversion of the Indian Land Allotment System, 1887-1934,” *Indian Historian*, 8:1 (1975), 11-21, and Leonard A. Carlson, *Indians, Bureaucrats and the Land: the Dawes Act and the Decline of Indian Farming* (Westport 1981).

14 Raymond Huel, review in *Canadian Ethnic Studies*, 21 (1989), 125.

Although it of course does matter exactly how the Métis were deprived of a land base, those whose 'hearts are in the right place' should strive to explain the workings of the over-arching economic process, which now knows no borders. This is vitally important because the destruction of Native people, in Howard's "strictly legal manner," is not yet 'history.' To help Natives defend themselves is not paternalistic, for it is aboriginal peoples who are helping members of the dominant society realize that — as is argued in Jerry Mander's *In the Absence of the Sacred: the Failure of Technology and the Survival of the Indian Nations*¹⁶ — the lives of humanity's coming generations depend on our stopping 'the machine.'

- 15 For example Richard White, *Roots of Dependency: Subsistence, Environment, and Social Change Among the Choctaws, Pawnees, and Navajos* (Lincoln 1983) and Stephen Cornell, *The Return of the Native: American Indian Political Resurgence* (New York 1988). Note also the work of such Native historians as Ward Churchill, *Struggle for the Land: A Land Rights Reader* (Toronto 1992).
- 16 Jerry Mander, *In the Absence of the Sacred: the Failure of Technology and the Survival of the Indian Nations* (San Francisco 1991). See also Worldwatch Paper No. 112 by Alan Thein Durning, *Guardians of the Land: Indigenous Peoples and the Health of the Earth* (Washington D.C. 1992).