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# 'Restrain the Lawless Savages': Native Defendants in the Criminal Courts of the North West Territories, 1878–1885[1]

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**Abstract** This article examines the imposition of Canadian criminal Law on the native population of the North West Territories 1878-1885. In spite of severe deprivation as a result of the difficulties of adjusting to an agricultural economy, the crime rate among the native population was strikingly low. With the single exception of livestock theft, native crime rates were less than 20% of those of whites. The authors conclude that the Canadian authorities adopted a cautious and selective approach to introducing criminal sanctions. Native dispute settlement institutions remained viable and individuals were able to choose which system best suited their circumstances.

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Three decades ago the Canadian Corrections Association first drew attention to the fact that native people were seriously over-represented in the prison population.[2] Since that time the situation has become steadily worse and there have been dozens of studies aimed at explaining and rectifying the problem.[3] Depending on how the native population is defined and whether or not provincial prisons are included as well as federal ones, it is estimated that natives are three to six times as likely to be incarcerated as whites.[4] Most studies of native over-representation in the prisons adopt, explicitly or implicitly, a conflict perspective; laws are made and the institutions of criminal justice created and administered by the Canadian government with no participation whatever from the native population. The understandable reaction on the part of the native people to this imposition is resistance reflected in higher prosecution and conviction rates.

The studies rarely pay much attention to the historical dimension of the problem and when they do, they usually extend the approach back in time, often assuming that the situation has been essentially the same since the arrival of the Europeans. Conflict theory would appear to predict that native-white cultural differences would be most obvious and strongly felt at the time when Canadian institutions were first imposed and therefore native crime rates should be correspondingly high.[5] Simply put, our findings indicate that exactly the opposite was the case; natives in the North West Territories were dramatically under-represented in the prisons. It is our opinion that a social control approach best fits the facts. The outstanding feature of life on the Canadian prairies before 1870 was the absence of any central political authority which, on the one hand, made family and


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band the most important controls on individual behavior. On the other hand, the lack of central authority permitted a very high level of violence among native bands. The introduction of Canadian law brought an abrupt end to these external hostilities without immediately altering the effective internal conflict-resolution mechanisms of the bands.[6] Eventually the debilitating environment of the reserves and the unrelenting assault on cultural practices by government agents and missionaries would sap the authority of traditional institutions. But in the short run, freed from external threats the bands appear to have experimented with new modes of conflict resolution to accommodate their rapidly changing circumstances. They remained remarkably law-abiding under conditions of severe economic and cultural stress. This would tend to support Travis Hirschi's theory that these factors operate only indirectly through the family.[7]

It is perhaps not surprising that criminologists and legal scholars studying native prison populations should make the assumptions they do about the past since much of the recent historical literature on native-white relations in Canada paints a similar picture. That the original peoples who occupied North America before the arrival of Europeans had their own systems of law is now axiomatic.[8] The now standard historical interpretation is that the French and British arrived and imposed their laws, displacing those of First Nations. The natives attempted to resist but were eventually compelled to conform to the new legal regime. Something very much along the lines of this model seems to have happened in the case of the French and the Huron.[9] Native peoples in British Columbia in the 19th century put up a less determined and prolonged, but still significant, resistance.[10] In other areas where the Canadian government attempted to stamp out native cultural practices such as the sun dance or the potlatch, resistance was widespread and prolonged. The same is true for the efforts of the church-controlled residential schools to eliminate native languages and religious practices. Our study suggests that the imposition of Canadian criminal law did not provoke the same kind of resistance.

During the mid to late nineteenth century in the Canadian North West, judges, policemen, newspaper editors, and writers of letters to the editor talked constantly in terms of 'restraining the lawless savages,' and teaching them Canadian law. The reality was far from the rhetoric. The government managed to introduce some forms of Canadian law to natives, but not in such a way as to replace all native dispute resolution mechanisms. In fact, the kind of law the Canadian state was most concerned to introduce had no counterpart in native society before 1870. The government attempted to superimpose a new layer of law, which prohibited inter-band warfare and horse raiding, upon the existing structures of native modes of conflict

resolution. Below that level another layer of Canadian law operated to resolve less serious disputes between natives and whites or between natives of different bands. To a large degree natives could choose to make use of the new legal structure or continue to rely on the old.

The significance of this study lies in its ability to demonstrate two points. First, current assumptions about the high frequency of native criminal involvement with the Euro-Canadian legal system do not cohere with the quantitative evidence used in this study. Second, the qualitative evidence suggests that the nature of native interaction with the Euro-Canadian legal system did not occur in the way that prevailing ideas assume. Natives were not simply the passive recipients of a repressive and culturally destructive system; indeed, it appears that natives employed the Euro-Canadian legal system for their own uses, including the resolution of inter-band and familial conflicts. Clearly, during the late nineteenth century in the Canadian North West, natives utilized the Euro-Canadian legal system in different ways than the Canadian government intended.

Upon acquiring the Hudson's Bay Company's (hereafter HBC) territories in 1870, the Canadian government made extending Canadian legal institutions to the region a high priority. Theoretically, some form of English law was assumed to have existed in the North West Territories, as the region was now called, since 1670.[11] In practice, the HBC hardly ever attempted to exercise its paper authority except within the walls of its posts and, after 1815, in the Red River settlement, a small area in what is now southern Manitoba.[12] Prime Minister John A. Macdonald was determined to change this situation because he feared that without firm intervention, native-white conflict would escalate into ruinously expensive warfare. In 1873, therefore, Parliament passed legislation extending most of Canadian criminal law to the North West Territories (or NWT) and made provision for a court system and a police force.[13] These institutions were the centrepiece of Prime Minister Macdonald's strategy for avoiding the kind of conflict going on in the American west.[14] Their introduction meant that Canadian law would be imposed on the native population of the prairies much more quickly and systematically than had been the case anywhere else in the country (or anywhere in North America, for that matter).

After the passage of the 1873 legislation, another four years were necessary to create a fully functioning criminal justice system. By 1877 there were about 300 police, known as the North West Mounted Police (hereafter NWMP), stationed throughout the area. The Commissioner and Assistant Commissioner of the NWMP were *ex officio* stipendiary magistrates, while the six superintendents and twelve inspectors were all appointed justices of the peace.[15] There

were three civilian stipendiary magistrates (although one, James F. Macleod, was a former Commissioner of the Mounted Police). Justices of the Peace, whether they were NWMP officers or one of the growing number of civilian appointments, dealt with minor cases summarily. Stipendiary magistrates could hand out sentences up to seven years; more serious cases required the addition of a Justice of the Peace and a six-man jury.[16] Two of the three judicial districts of the NWT, Bow River and Qu'Appelle, corresponded roughly to the southern parts of what are now Alberta and Saskatchewan respectively. The third district, Saskatchewan, theoretically stretched all the way to the Arctic Ocean. In this period, however, its effective jurisdiction was confined to the North Saskatchewan River valley from Edmonton to Prince Albert.

By the 1870s, the native population of this part of the North West Territories in the 1870s had been engaged in the fur trade for almost a century. The Cree and Assiniboine had the closest ties to the HBC, acting as hunters and food suppliers to the posts as well as trading furs. The Blackfoot speaking peoples – the Siksika, Kainah, Peigan and their allies, the Athapaskan speaking Sarcee – traded on a less regular basis and occasionally even attacked company posts.[17] All the northern plains peoples were band societies, that is the basic social and political unit was the band, not the larger linguistic and cultural tribe. Bands were extended family groupings of from 50 to about 300. Their size and composition varied in response to a number of factors; food supply being the most important. Bands dispersed into smaller groups during winters and other times of scarcity, and coalesced into larger units when food was abundant. Favourable conditions existed during most summers, allowing larger groups, some numbering more than a thousand, to gather for brief periods. As with band size, leadership in band societies was not fixed. Although strong and competent leaders attracted larger numbers of adherents, a leader could not dictate to the band. When band members disagreed on a course of action, dissenting members could leave and try to form their own band, attracting other refugees and wayfarers often through intermarriage.[18] In fact, for plains native groups, the fissioning of bands remained the principal means of settling major internal conflicts until the commencement of the reservation period in the 1870s.

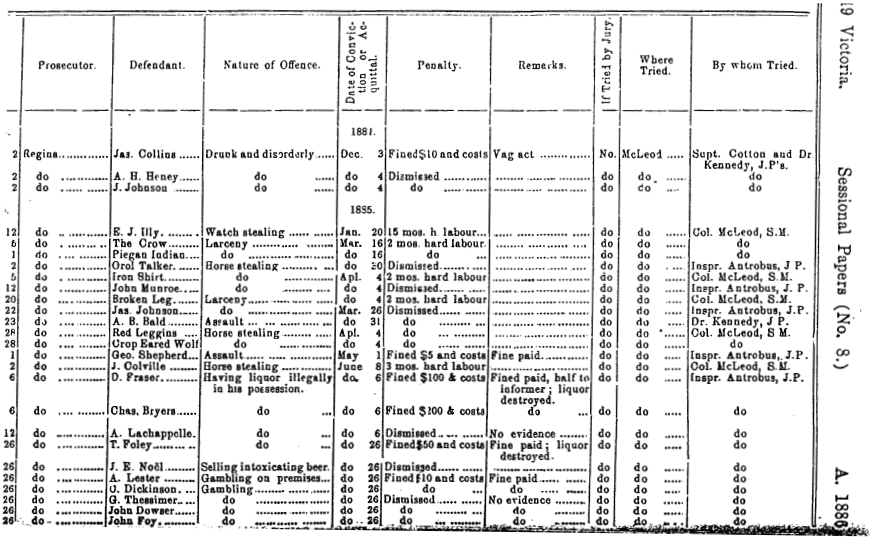
The establishment of legal institutions coincided with the negotiation of treaties and the beginning of the reserve system. All the natives in the study area were included in Treaties 4, 6 and 7, signed between 1874 and 1877. Once the treaties were signed, bands could select their reserves and settle on them. The treaties did not set a timetable for this process but economic forces drove most bands to move onto their reserves in the 1870s, although a few held out until 1885.

Buffalo stocks had been declining steadily since the 1850s and by the time the treaties were signed, most native leaders saw agriculture as the only realistic alternative to starvation. As Sarah Carter has shown, in this period Cree chiefs in the Treaty 4 and Treaty 6 areas were putting pressure on the government to provide them with assistance in learning how to farm.[19] There were successes but for many bands the late 1870s and early 1880s were years of severe deprivation and occasional starvation.

The Canadian government's plan to populate the prairies with settlers failed to generate much momentum before 1885, mainly because of delays in the construction of the Canadian Pacific Railway. Most of the settlement in the 1870s was in the North Saskatchewan River valley, an area that had been identified as having the best agricultural potential as well as being the planned route for the pacific railway. Once railway construction began in 1881 and the route was moved to the south, some sizable communities began to appear in that part of the region. Up to 1885, however, only thousands of settlers had made their way west where the government had expected tens, perhaps even hundreds of thousands.

The prospects for studying the integration of the native peoples into the criminal justice system are unusually good because of the nature of the records available for the NWT in the late nineteenth century. The primary research material consists of three categories of historical documents: NWMP returns of criminal court cases, articles on criminal activities in four regional newspapers, and the yearly summaries of activities submitted by Indian agents to the Canadian government. Starting in 1878 the NWMP began publishing returns of cases tried in the North West Territories as appendices to their annual reports. The form of the returns provides a lot of information about each case, including, most critically, the ability to distinguish native from non-native defendants. (See Appendix I for a sample of the returns.) Using the returns we created a data base with a minimum of nine items of information for each case.[20] The regular decennial census of 1881 provided population figures for the region near the start of our period while a special census of the North West Territories carried out in late 1884 and early 1885 did the same for the end. Thus we have a very accurate baseline for comparing crime rates among natives and non-natives for the period 1878 to early 1885. The non-native population was growing steadily during these years. At the start of the study period there were three times as many natives; by the time of the 1885 special census non-natives made up 58.3% of the population, natives 41.7%.[21] On the average for the period the numbers of each group are equal.

The Mounted Police returns include about 1400 cases between 1878 and early 1885 (February 28, 1885, was chosen as the cut-off



| | Prosecutor. | Defendant. | Nature of Offence. | Date of Conviction or Acquittal. | | Penalty. | Remarks. | If Tried by Jury. | Where Tried. | By whom Tried. |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | 1884. | | | | | | |
| 2 | Regina | Jas. Collins | Drunk and disorderly | Dec. | 3 | Fined $10 and costs | Vag act | No. | McLeod | Supt. Cotton and Dr Kennedy, J.P's. |
| 2 | do | A. H. Heney | do | do | 4 | Dismissed | | do | do | do |
| 2 | do | J. Johnson | do | do | 4 | do | | do | do | do |
| | | | | 1885. | | | | | | |
| 12 | do | E. J. Illy. | Watch stealing | Jan. | 20 | 15 mos. h labour | | do | do | Col. McLeod, S.M. |
| 6 | do | The Crow | Larceny | Mar. | 16 | 2 mos. hard labour | | do | do | do |
| 1 | do | Piegan Indian | do | do | 16 | do | | do | do | do |
| 2 | do | Orol Talker. | Horse stealing | do | 20 | Dismissed | | do | do | Inspr. Antrobus, J P. |
| 5 | do | Iron Shirt | do | Apl. | 4 | 2 mos. hard labour | | do | do | Col. McLeod, S.M. |
| 12 | do | John Munroe | do | do | 4 | Dismissed | | do | do | Inspr. Antrobus, J. P. |
| 20 | do | Broken Leg | Larceny | do | 4 | 2 mos. hard labour | | do | do | Col. McLeod, S.M. |
| 22 | do | Jas. Johnson | do | Mar. | 26 | Dismissed | | do | do | Inspr. Antrobus, J.P. |
| 23 | do | A. B. Bald | Assault | do | 31 | do | | do | do | Dr. Kennedy, J P. |
| 28 | do | Red Leggins | Horse stealing | Apl. | 4 | do | | do | do | Col. McLeod, S M. |
| 28 | do | Crop Eared Wolf | do | do | 4 | do | | do | do | do |
| 1 | do | Geo. Shepherd | Assault | May | 1 | Fined $5 and costs | Fine paid | do | do | Inspr. Antrobus, J.P. |
| 2 | do | J. Colville | Horse stealing | June | 8 | 3 mos. hard labour | | do | do | Col. McLeod, S.M. |
| 6 | do | D. Fraser. | Having liquor illegally in his possession. | do. | 6 | Fined $100 & costs | Fined paid, half to informer; liquor destroyed. | do | do | Inspr. Antrobus, J.P. |
| 6 | do | Chas, Bryers | do | do | 6 | Fined $100 & costs | do | do | do | do |
| 12 | do | A. Lachappelle. | do | do | 6 | Dismissed | No evidence | do | do | do |
| 26 | do | T. Foley | do | do | 26 | Fined $50 and costs | Fine paid; liquor destroyed. | do | do | do |
| 26 | do | J. E. Noël | Selling intoxicating beer. | do | 26 | Dismissed | | do | do | do |
| 26 | do | A. Lester | Gambling on premises | do | 26 | Fined $10 and costs | Fine paid | do | do | do |
| 26 | do | O. Dickinson | Gambling | do | 26 | do | do | do | do | do |
| 26 | do | G. Thessimer | do | do | 26 | Dismissed | No evidence | do | do | do |
| 26 | do | John Dowser | do | do | 26 | do | do | do | do | do |
| 26 | do | John Foy | do | do | 26 | do | do | do | do | do |



*Appendix I. Sample of NWMP Returns.*

date to avoid contaminating the data with the quasi-political prosecutions that resulted from the North West Rebellion). As well, in order to limit the type of native involvement with the courts to criminal cases, we deleted the 188 civil cases that were mixed in with the returns. To check the completeness of the reporting of criminal cases in the Mounted Police returns, we searched through the local newspapers for references to criminal activity.

Four newspapers were published in the North West Territories before 1885; the *Saskatchewan Herald* (Battleford), the *Edmonton Bulletin*, the *Calgary Herald*, and the *Ft. Macleod Gazette*. All the papers reported every sitting of the courts, often printing verbatim transcripts of trials for quite minor offenses. Our comparison revealed that the police returns were reasonably complete; only 83 cases appeared in the newspaper that were not listed in the NWMP reports. We added these to the data base, giving a final total of 1355 cases. We are confident that this number is close to the total of all criminal cases tried in the NWT in this period. The North West Territories was a small society with an active and independent press. Had the police and the courts ignored native crime, it surely would have caused comment. The only serious possibility of a sizable number of unreported crimes is if they took place on the reserves and were either handled by traditional native practices or by the agents. The Indian Affairs department's *Annual Reports* show little evidence of either, but future research will involve examining the more detailed agency reports to see if they contain references to crimes that were deleted from the published documents.

While the newspapers provided a method to check the reliability of the NWMP recording of criminal cases, their usefulness as sources manifested itself in other significant ways. A qualitative analysis of the newspaper reports helped to gauge local perspectives on native-white relations and to obtain detailed descriptions of criminal cases. The newspaper articles provided the context for cases that was necessarily missing from the data in the NWMP returns. We conducted a qualitative analysis of newspaper reports on crime which clearly demonstrated the difference between popular perceptions of crime rates as reported in the newspapers, and the reality of crime rates as reported in the NWMP data (and for that matter in the papers themselves). For example, readers of the Macleod *Gazette* would undoubtedly conclude that natives figured prominently in criminal activity. Between 1 July, 1882 and 7 February, 1885, the paper contained a total of 91 references to criminal activities (46 white, 41 Native, four other or unknown). A more startling picture is created when the articles are separated into two categories, court case proceedings (generally two to four lines per case) and general interest articles (ranging from one paragraph to a few pages). There were eight court case proceedings referring to natives and 27 for whites, whereas natives figured in 33 general interest articles compared to only 19 for whites. Clearly, natives would have appeared to be a major source of criminal activity, if not the major source, when, as will be described below, their crime rate was much lower than that of whites.

The third set of primary sources we examined were the Department of Indian Affairs *Annual Reports*. Here we hoped to find additional context and explanations for the NWMP data. While it is wise to be aware of the partisan nature of the *Annual Reports*, they can still be valuable sources of information about the situation in the Northwest. For example, Indian agents link unfavourable climatic conditions with the poor crop production on reserves.[22] In addition to chronicling the decline of the buffalo herds, the *Reports* are also full of agents' statements attesting to the disappearance of fish and game.[23] As well, the *Reports* indicate the importance of cooperation amongst the NWMP, the HBC and the Indian agents in maintaining order and peace between natives and incoming white settlers in these early years of official government intrusion into the Northwest. Though the role of the fur trade as a primary occupation for native peoples was in decline, the HBC continued to play an important role in the lives of Native peoples by aiding the various Indian agencies with the supply of provisions, shelter and medical assistance. Furthermore, both the police and the Indian agents still turned to their predecessor in the region, the HBC, for guidance as to how to gain the cooperation of local bands.[24]

Aside from providing an important part of the context in which natives encountered the Canadian legal system, there are examples in the reports illustrating conflicts between native cultural groups, natives and white residents, natives and Indian agents, and natives and the NWMP, as well as descriptions of the process of accommodation between all these groups. Indeed, the agents' ability to maintain peace and order was directly related to their employment of a continual process of accommodation. For example, in 1882, agent C.E. Denny, stationed at Ft. Macleod, organized a small group of Blood police on the their reserve to help defuse the feelings of injustice associated with the enforcement of Canadian property laws: 'I found them very useful in bringing in stolen horses, assisting at the rationing, and many other ways. I gave them the extra rations for their work – might be a regular force as with the South Piegans [the American Blackfeet in Montana] who also have uniforms.' He noted that finding stolen horses 'without the help of the Indians is nearly impossible....'[25] Indeed, by 1884, Commissioner Dewdney supported the suggestion to employ native men to help patrol and track horse thieves.[26]

The general conditions of the 1870s and 1880s pulled the native population in two directions. On the one hand starvation and the rapid imposition of alien institutions cannot have disposed natives favourably to the new regime. On the other hand there were powerful and well-coordinated institutions working to introduce and enforce the new rules. We did not expect that the numbers of natives and non-natives charged with crimes would be equal. Had there been no cultural differences between the two groups, we would have predicted a higher crime rate among the settlers because of the larger percentage of young males in the population. That said, we were quite unprepared for the size of the disparity that did emerge. Of the 1,355 defendants in our data base, only 242 were native or just over 18%. (Figure 1) Put another way, whites living in the North West Territories between 1878 and 1885 were five times as likely to be tried for a criminal offense than natives. The conviction rate for native defendants was somewhat lower as well; 55% as opposed to 62%. Clearly, these figures make it immediately obvious that no simple model that describes the imposition of Canadian law as being forced upon a reluctant native population is likely to provide a satisfactory explanation.

The first of the nine categories we used for our detailed analysis was assault. Of the 140 assault cases, 22 involved native defendants, 118 non-native. (Figure 2) This breakdown is very close to the ratio for the total number of crimes; roughly one native defendant for every five non-natives. Although the returns sometimes gave the ethnicity of the victim of the assault, they did not do so in all cases; thus, there is no reliable way of determining those figures. Assaults were the only

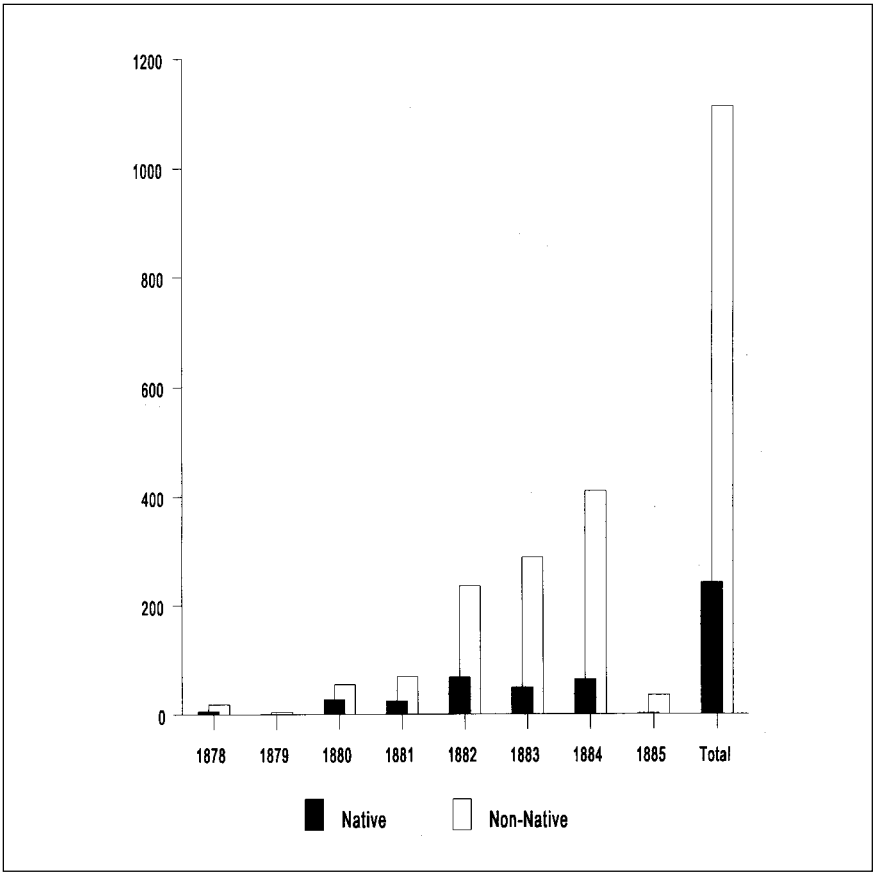



*Figure 1: Criminal Cases 1878-1885.*

category of cases that had substantial numbers of private prosecutions, 69 out of 140. In those cases it is possible to determine the ethnicity of the complainant and the interesting figures here are that in only three cases did natives accuse non-natives of assault while whites accused natives just seven times. It is apparent that the level of inter-ethnic violence in this period was strikingly low. Whites were slightly more likely to be acquitted on assault charges, getting off 36% of the time as compared to 32% for natives, but the variation is not significant. (Figure 3) The big differences came in the kind of sentences handed down for each group. Nearly 60% of the non-natives convicted of assault got small fines. None of the natives were fined. Very few natives before 1885 were fully integrated into the money economy. It would have made little sense to try to use fines as a punishment and the courts generally refrained from doing so. If the small number of non-natives who received prison sentences for assault are compared with the natives, there is some indication that

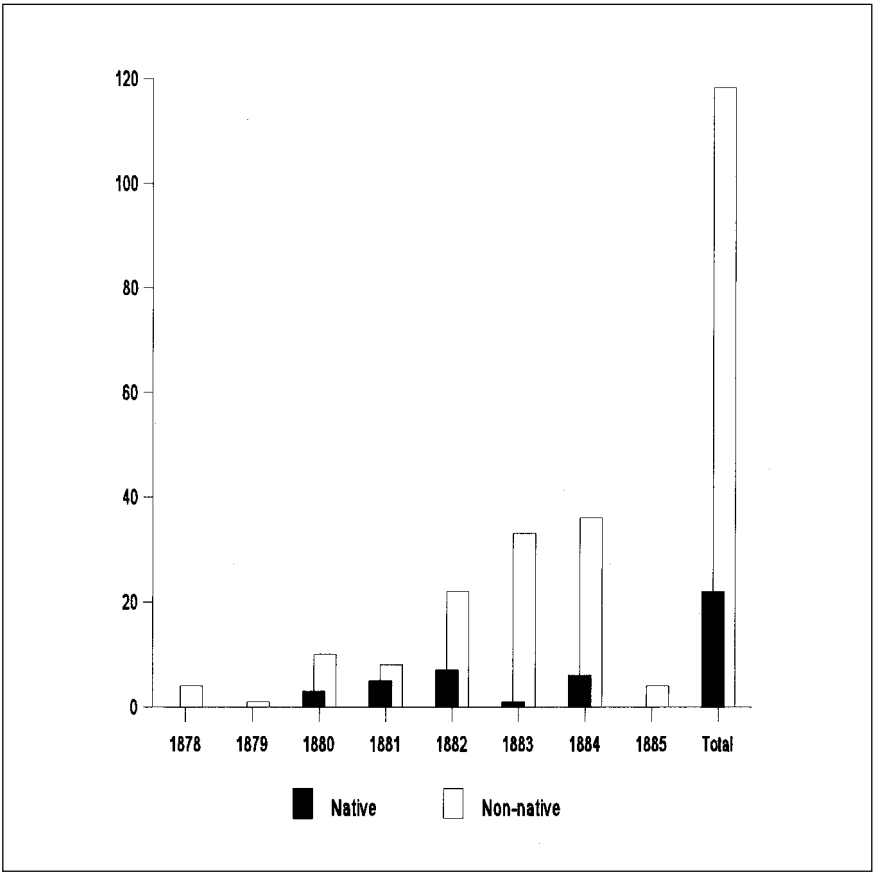



*Figure 2: Assaults 1878-1885.*

the courts were harder on the latter. Whites were equally likely to get short sentences of one to fifteen days or longer ones of one to three months. Natives were almost twice as likely to receive the longer sentence.

Our second category consisted of all violent offenses other than assault. Most of these were firearms offenses of some sort, essentially threatening others with guns. The total number, 45, was very low, averaging just less than half a dozen cases a year for the whole of the North West Territories. (Figure 4) There were just five homicide cases in the period, four murders and one case of manslaughter. The manslaughter conviction and one of the murders involved native defendants, although the murder case was certainly the most spectacular homicide of the period. A Cree named Swift Runner killed and ate several members of his family near Edmonton in 1879.[27] Natives are still considerably under-represented in this category, although the relative numbers are closer than for assaults or for all

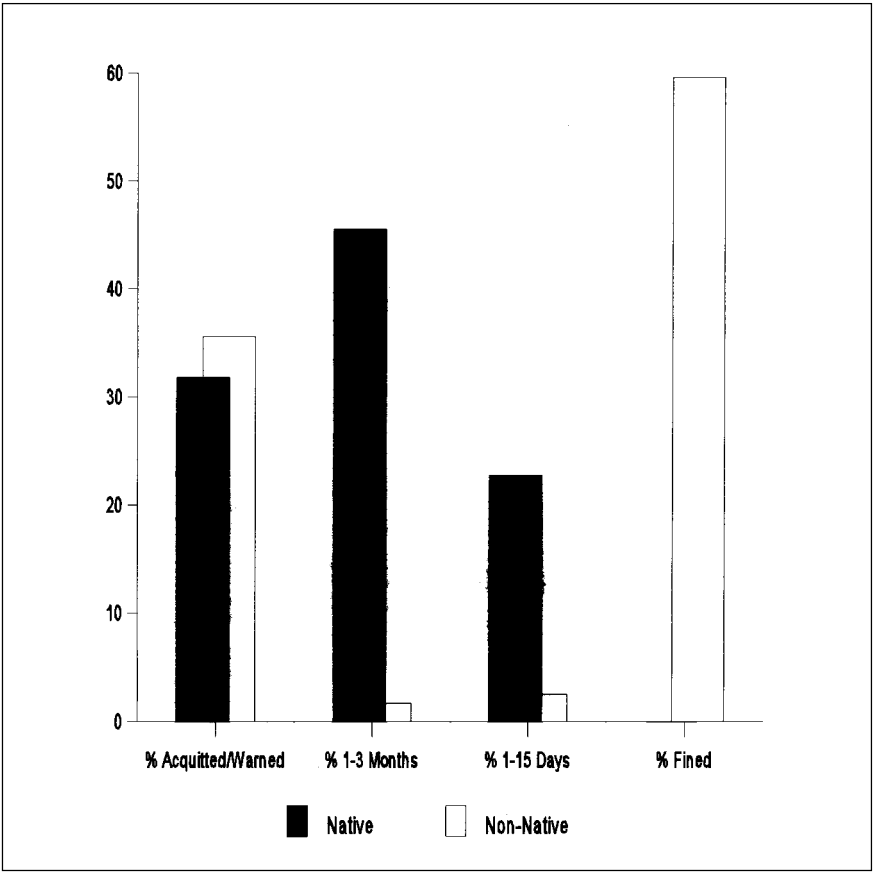



*Figure 3: Assault Sentences 1878-1885.*

criminal offenses. The ratio of native to non-natives in this category was 2:3 as compared to 1:5 overall. Apart from the usual absence of fines for natives the patterns of sentencing seem very similar for both groups, although natives were somewhat more likely to be acquitted.

Liquor offenses were the largest single category of prosecutions; 492 of 1,355 cases. Liquor laws in the North West Territories in this period were draconian. Convictions for illegally selling liquor resulted in confiscation of property and huge fines. In four cases individuals were fined $400.00 which was more than a NWMP constable earned in a year. The enforcement of the liquor laws was heavily discretionary. Only 14, or just under 4%, of the defendants were native. The numbers could just as easily have been reversed since the majority of cases were for selling liquor to Indians. However, the government's policy was to prosecute the suppliers.

We put gambling offenses into a separate category because some forms of gambling were a well-known native cultural preference.[28]

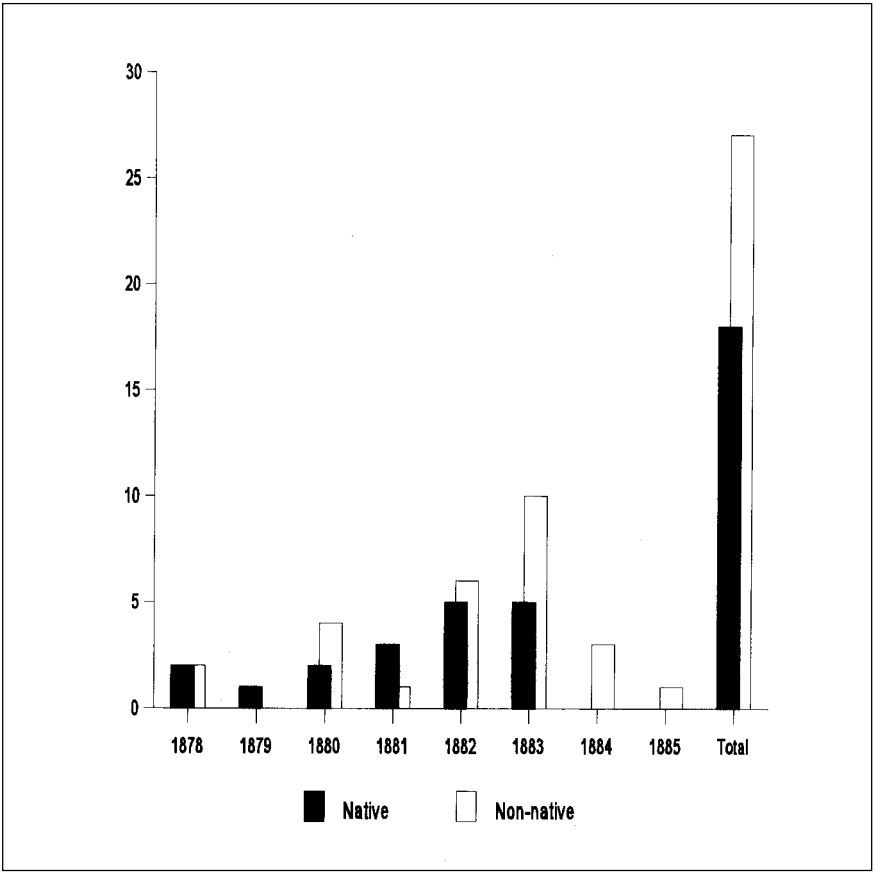



*Figure 4: Other Violent Offences 1878-1885.*

Our anticipation that the authorities might come down heavily on it as they did with the sun dance and the potlatch turned out to be wrong; they ignored it almost entirely. There were 125 prosecutions for gambling of which only three were natives and those were all acquitted. Whites convicted of gambling offenses received quite heavy fines. We also had a separate category for prostitution but the number of cases (19) turned out to be insignificant. All defendants in prostitution cases were white.

In the category of mischief, which comprised four percent of all cases, it was again anticipated that native defendants might be over-represented. The reason for this expectation derived from the belief that if natives were going to defy the imposition of Canadian laws, criminal mischief would be an area where such resistance would materialize. This hypothesis turned out to be incorrect as natives represented only 16% of all mischief cases. (Figure 5) Furthermore, the courts appeared to treat native defendants more leniently than

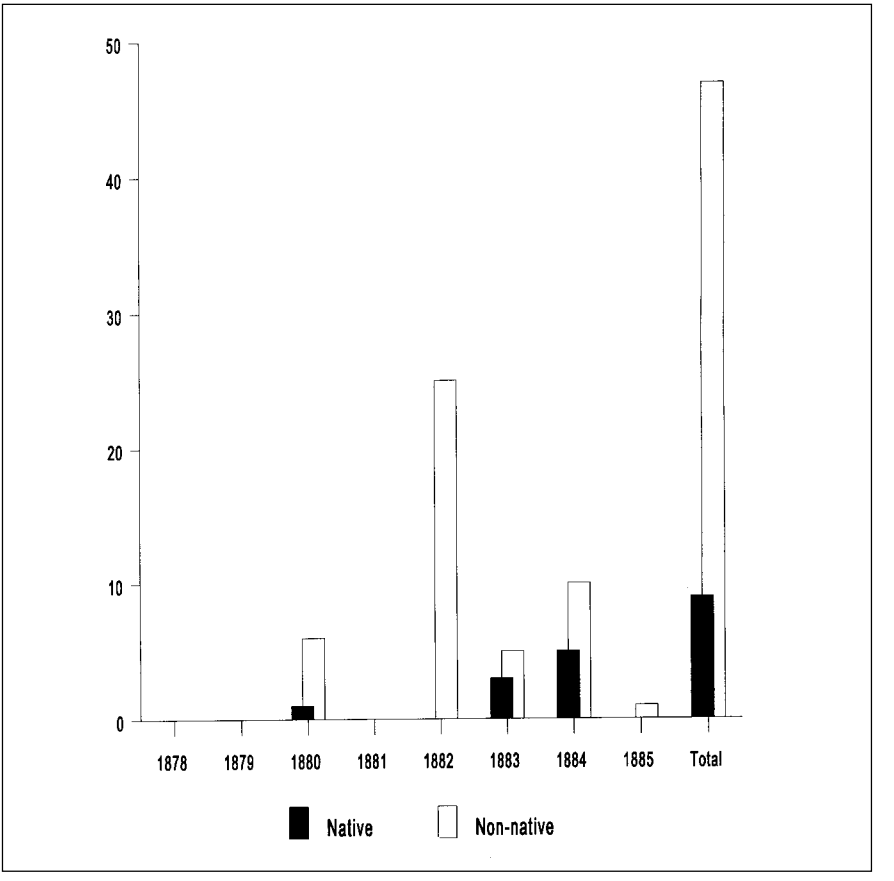



*Figure 5: Mischief 1878-1885.*

white ones. This pattern could be interpreted to suggest that judges did not construe native actions as acts of defiance against the imposition of the Canadian system of law and order.[29] The most probable explanation of the courts' actions was that they did not perceive this kind of behaviour by natives as a threat.

Our miscellaneous category (designated 'other') proved to have one interesting sub-group consisting of obstruction of justice cases. These cases involved such things as resisting arrest, escaping jail or interfering with police officers in the performance of their duties. Unlike the case with mischief, there does seem to be some evidence of resistance here on the part of natives. Native defendants were slightly over-represented and when convicted got much more severe sentences. The very small number of cases (19), makes it difficult to draw any firm conclusions.

Livestock theft constituted 11% of the criminal cases in the database of NWMP returns. Significantly, out of all the categories of

unlawful behaviour, livestock theft was the only one where native defendants outnumbered white defendants; 57% as opposed to 43% whites. (Figure 6) Cultural factors explain why this category differed

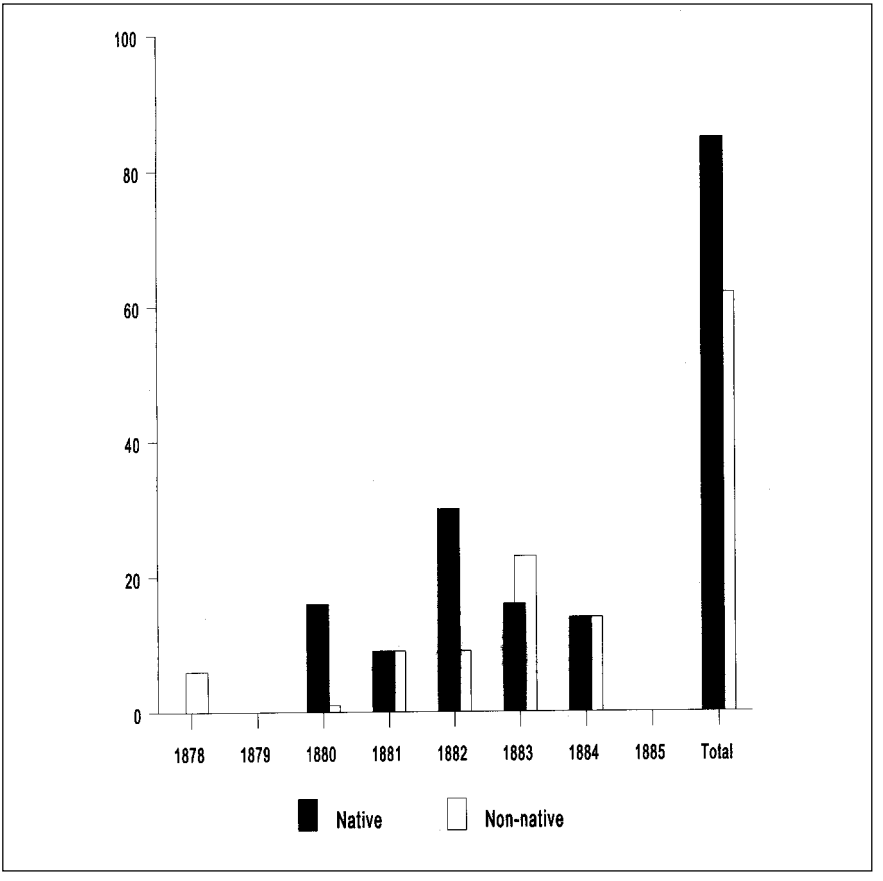



*Figure 6: Livestock Offences 1878-1885.*

from the others. For this study, livestock theft included both horse stealing and the killing of cattle; activities which in Plains cultures did not resonate as criminal. Up to the 1870s, the act of raiding to acquire horses from other bands was associated with increasing and maintaining the status of one's own band at the expense of others.[30] Symbolically and literally horse raids were becoming more important than the buffalo hunt as a means of asserting status and as the primary cause of inter-tribal warfare.[31] For the Canadian government to transform the meaning of horse raids into a criminal act required a fundamental alteration of native attitudes, values, and perhaps even social and political structures. The difference between livestock theft and other property crimes is exactly what social control theory

would predict since family sanctions would presumably operate more strongly against the theft of those items not considered 'legitimate' in the traditional culture.

To add to the difficulties of criminalizing such a culturally significant activity, the Canadian government had the problem of developing and implementing a policy for dealing with cattle and horse raids by natives across the international border because of the near impossibility of preventing the movement of natives across it.[32] The border represented a troublesome area for successfully imposing law and Indian Department policy on those natives supposedly under Canadian jurisdiction. According to a Privy Council Report of 1882, the Canadian government suggested 'the international boundary might be considered as unknown to the aborigines' and 'That it is believed that no military force, however strong, will prevent occasional raids from either side, as is shown by the repeated horse and cattle stealing expeditions from the United States to Canadian territory.'[33] The Department of Indian Affairs sought constantly to find ways to convince natives that horse-stealing was now a criminal matter as in the case of Agent Denny's attempt to create a native police force on the Blood reserve.

The natives' attitude toward cattle killing was reinforced by a more practical set of considerations. In the late 1870s and into the 1880s, many Plains native groups found it difficult to obtain traditional sources of food; fur traders, travellers and missionaries had been noting the decline of the buffalo since the 1850s.[34] By the 1870s some groups, such as the Plains Cree, realized the necessity of seeking an alternative means of existence and were receptive to the idea of introducing agriculture into their bands. Natives did not contemplate incorporating farming because they had adopted European ideas about the superiority of agriculture over hunting and gathering; rather, they hoped to employ farming as a supplement to other means of procuring food. However, as Sarah Carter has demonstrated, throughout the 1870s and 1880s Plains natives' attempts to produce food through farming met with mixed success due to a complex set of factors: the application of farming techniques not suited to a dryland climate; the nature of reserve lands' soils; and, most importantly, the shifting Canadian governmental attitude toward native agriculture.[35]

Part of the Canadian government's plan to teach farming to natives included learning how to profit from stock raising and how to employ oxen as draft animals. Unfortunately for both the government and natives, the government sent many of the bands unbroken wild Montana cattle, unsuitable for immediate use as beasts of burden.[36] In spite of agents' warnings to natives that the government officially owned the cattle and that the cattle still had value as breeding stock, natives viewed these animals as having more usefulness as a readily available food source, particularly in times of scarcity. Indian agent

L.W. Herchmer reported in 1884 that for the third time Kee-see-konse's band had killed their cattle because of hunger. He explained that inclement weather had killed their crops and mill owners had dammed the creek upstream preventing their access to fish.[37]

Differences in the patterns of sentencing for native and white defendants occurred in cases of livestock theft as for the other categories. (Figure 7) Once again, no natives were fined, reflecting their lack of access to hard cash. However, an examination of the rate of acquittals suggests that natives had a higher rate of convictions for

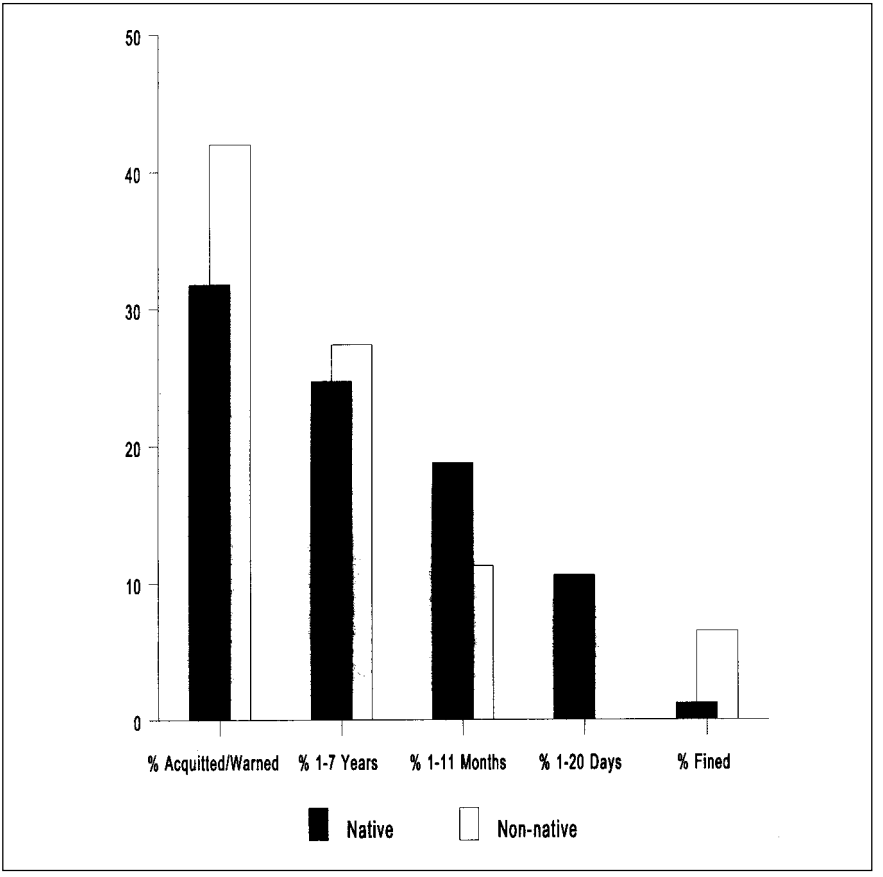



*Figure 7: Livestock Theft Sentences 1878-1885.*

these crimes than whites. Of the native defendants, only 29% were acquitted, compared to 38% of the white defendants. This pattern suggests that for livestock offences, a popular bias against natives influenced the courts. Some kinds of criminal behaviour were more threatening than others and provoked a stronger response from the courts.

The differential perception of the various kinds of crime can be seen by comparing the results of the analysis of the NWMP returns to the information in the newspapers and the *Annual Reports*. Ranchers in the Fort Macleod area constantly complained of Natives plundering their animals. They felt that the Indian Agents and the NWMP treated native cattle-killers too leniently; they threatened to take matters into their own hands if the government did not address their needs.[38] While Indian agents also reported the killing of government cattle, they tended to downplay native involvement in horse raids on ranchers' stock. Rarely do ranchers, or local white residents, first attribute the criminal act to one of their own.[39] While it is clear that natives were involved in this area of criminal activity more intensively than any other, it is worth pointing out that even here they did not overwhelmingly dominate the category of crime. Natives were the accused in 57 percent of the cases, not 80 or 90 percent. Newspaper accounts, reflecting public opinion, tended to exaggerate the amount of native crime.[40] Significantly, ranchers were not an isolated social group; at some point in their lives many NWMP, Indian Agents and newspaper reporters participated in ranching.

Property offenses other than those involving livestock, such as theft or destruction of personal property, made up 19% of all criminal cases in the NWMP returns. (Figure 8) The pattern of native and white criminal behaviour for this type of offense was similar to other areas, with the exception as noted above of livestock offenses. Compared to the demographic makeup of the population, native defendants were under-represented (31%) and whites over-represented (69%). Natives accused of property offenses appeared to receive more lenient treatment in certain areas; for example, they were more likely to leave the court with only a warning.[41] (Figure 9) The differential in favour of natives in the number of suspended sentences was even greater.[42] However, white defendants were acquitted more frequently. Out of the total number of defendants brought to trial and not punished (109 cases), 36% of native defendants and 41.5% of white defendants were pardoned in some form. Overall, whites had only a slightly greater chance of not being formally punished than natives for property offenses.

Several points stand out from the results of our analysis. The Canadian authorities clearly approached the imposition of Canadian criminal law on the native population of the prairies very cautiously. With the notable exception of livestock offenses, natives were very much under-represented in criminal prosecutions and were generally treated more leniently when convicted.

While it is quite clear that in general the courts did not employ the legal system more harshly against natives than whites, this pattern does not mean that natives themselves perceived the courts as other

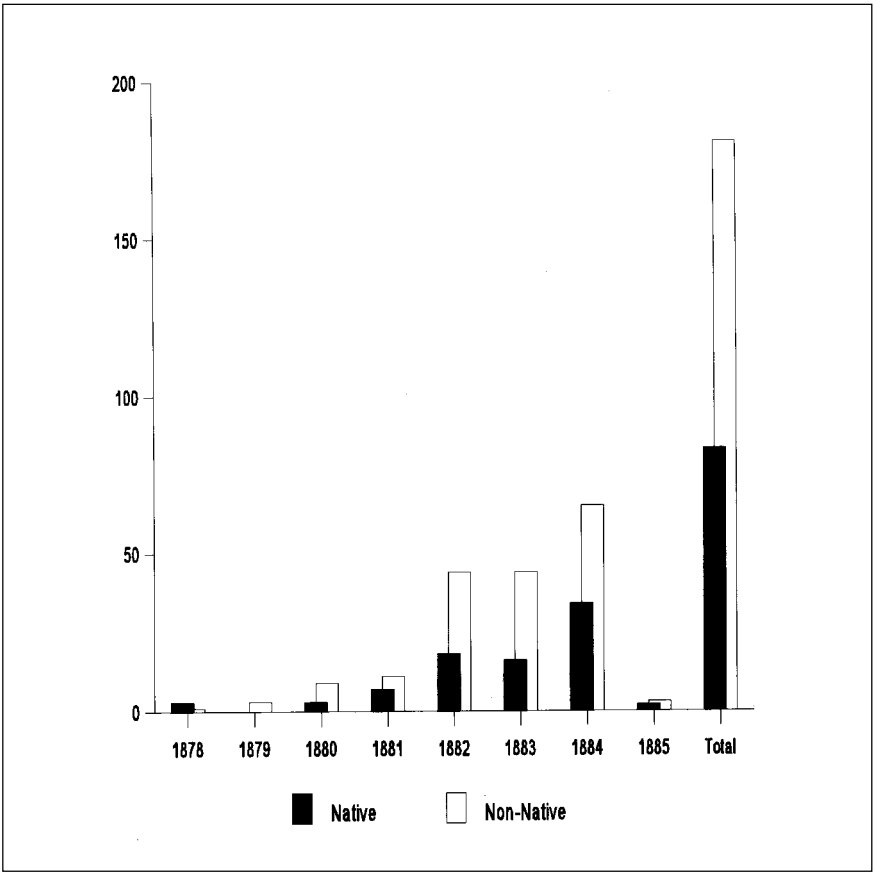



*Figure 8: Other Property Offences 1878-1885.*

than a repressive institution. Indeed, the Canadian authorities made no pretence of trying to accommodate Canadian law to native methods of dispute resolution. Their attitude was that all accommodation must be on the part of the natives. Trying to find evidence, other than crime rates, of native reactions to the imposition of the Euro-Canadian legal system proved difficult; however, some indications of native attitudes surfaced in the newspapers. Interestingly, natives also used the newspapers to put forward their understanding of the legal process and their objections to it. On 7 January 1883, nine representatives from bands in the Edmonton agency wrote a letter to the Edmonton *Bulletin*.

> When the government representatives came to make a treaty with us, they said it was in the name of the great mother. The white man had it all his own way. He made the conditions both for himself and us. We were treated as so many children, unable to judge for ourselves, although we claim a certain amount of the faculty of reasoning in our own interest, and especially when there is a

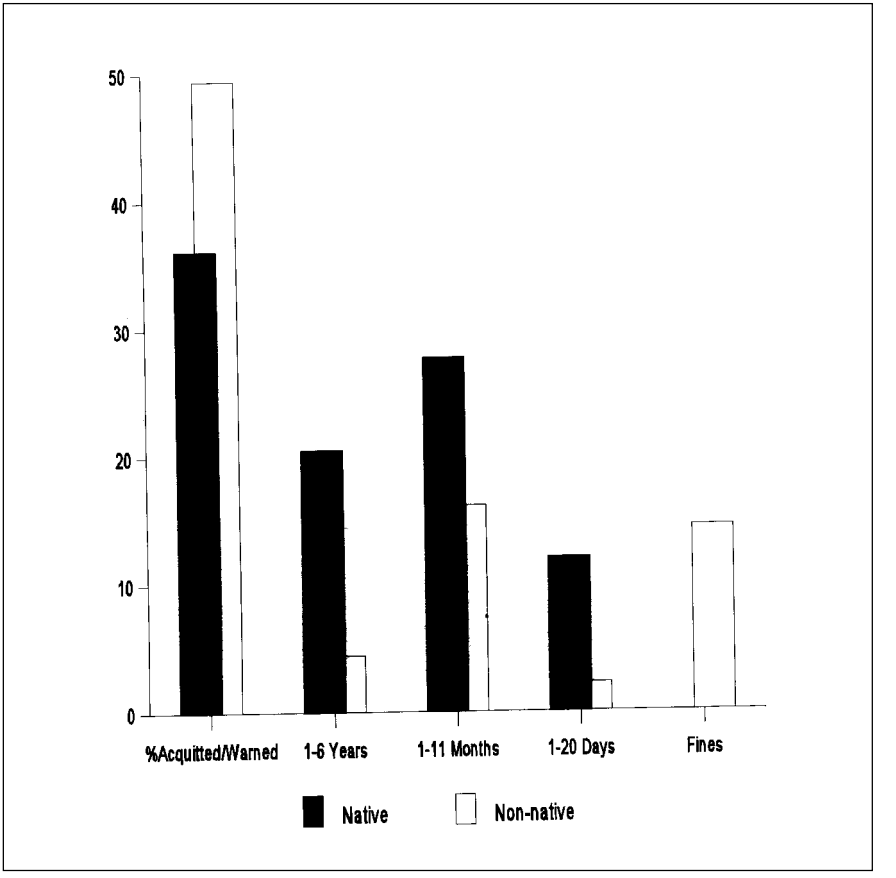



*Figure 9: Other Property Sentences 1878-1885.*

> question of the very first law of nature, self-preservation. The conditions were mutually agreed to. We understood them to be inviolable and in presence of the Great Spirit reciprocally binding; that neither party could be guilty of a breach with impunity. But alas! how simple we were! we have found to our cost that the binding exists all on one side, and the impunity all on the other. For instance a condition on our part is to respect all property belonging to white men. If any of our tribes pushed by hunger, kill an animal belonging to a white man, they are taken and punished according to law.[43]

In the letter, the chiefs' and headmen's description of the two sets of law suggests an important consideration; namely, they saw the two legal systems as being equal in principle, but in practice they perceived that Canadian law had taken precedence. Furthermore, it is clear that they were aware of how Canadian law worked, where they could appeal in cases of injustice, and what sorts of tools they had at their disposal to argue their case. In other words, the chiefs and headmen knew that for Canadian law to be effective it had to have the

support of the general population. Therefore, if they could convincingly argue their case in a public venue, such as a newspaper, they might be able to gain popular support for their idea of a more just meshing of the two systems of law.

The chiefs and headmen chose to compare their law of self-preservation to Canadian property laws. Their decision to isolate Canadian property laws as an example of conflict was not accidental. All the evidence we have suggests that Canadian property law provided the primary reason for strife and confrontations between native peoples and others. Indeed, out of all the areas of Canadian law which affected native peoples, they were major offenders only in respect to property violations. Thus, it is important to view the letter from the chiefs and headmen as an attempt on their part to argue for a more pluralistic justice system. Native and white legal systems in the North West should coexist because, as the article from the Edmonton *Bulletin* suggests, no one system was capable of resolving all the issues confronting the rapidly growing population.

There is quite a lot of evidence that the Natives adopted an instrumental approach to the law; experimenting with it and using it where it seemed useful. In early June of 1879 a Blackfoot named Sta-mi-sco-to-car had been camping near Battleford with his wife and their band of eighteen horses for two weeks. On the morning of Tuesday 3 June, he noticed that his favorite horse, a roan, was missing. He mentioned the loss to his acquaintances among the local Crees. Ermine Skin told him that a Métis named Joseph Gouin had said that he was going to take the horse. Another Cree, Kee-ap-an-es-ka-na-yo (Crooked Horns), saw Gouin heading for Edmonton with the horse and questioned him about it. Gouin claimed to have bought the horse but Crooked Horns doubted that because he knew how much Sta-mi-sco-to-car valued it. Sta-mi-sco-to-car asked a man named Dickieson to write him a letter to the NWMP, but Dickieson told him he should go after Gouin himself and, in the words of the report of the trial in the *Saskatchewan Herald*, 'endeavour to get the horse quietly.'[44]

The Blackfoot man went upriver to the last place Gouin had been reported but failing to find him, returned to Battleford and approached the Mounted Police himself. They reacted quickly. At 1 a.m. Thursday, June 5, two constables left Battleford. Just over 24 hours later, 160 kilometres west on the Saskatchewan near Ft. Pitt, they caught up with Gouin, arrested him and brought him back, arriving in Battleford Saturday afternoon. On Monday morning, the police brought Gouin before NWMP Inspector James Walker who, in his capacity as Justice of the Peace, held a preliminary examination and committed Gouin for trial. The trial began the following morning before Stipendiary Magistrate Hugh Richardson, Inspector Walker, a civilian Justice of

the Peace, W.J. Scott and a six-man jury. Donald McIvor acted as English-Cree interpreter, Poundmaker as Cree-Blackfoot interpreter.

In addition to the two principals and the arresting police officer, several of Gouin's friends testified, as did Sta-mi-sco-to-car's wife, A-wa-ka-sa-pe. All witnesses agreed that a few days before taking the horse, Gouin had given Sta-mi-sco-to-car a knife, a piece of cloth and a shirt. Gouin claimed that these items were payment for the horse. Sta-mi-sco-to-car denied that the horse had been mentioned. His version of events was that Gouin had asked him to be a namesake and that the items were gifts. The jury took only a few moments to decide that Gouin's story was not credible. He was convicted of theft and sentenced to three months in prison.

There were obviously a number of points in this episode where Sta-mi-sco-to-car had choices about how to proceed that would have made quite dramatic differences to the outcome. He could have written off the loss of his horse. Since he and Gouin had a number of mutual acquaintances, he might have asked one of them to mediate the dispute. He might have followed Dickieson's suggestion and tried to steal the horse back. If sufficient numbers of friends or relatives had been present, the horse might have been retrieved by threats or force. The police and the courts would have been powerless to intervene in any of these alternative situations, except if the last one had resulted in open violence. In spite of all the rhetoric about the Queen's justice, they would probably have been just as happy to do so.

Studies of the emergence of modern European legal systems frequently point out that the criminal courts at no time attempted to resolve all conflicts. The demand for the courts to adjudicate quarrels typically far exceeded the supply. No state could afford to allow unrestricted access to the criminal process and various mechanisms had to be found to discourage overuse. The criminal law was maintained as a backup to the considerable variety of informal dispute settlement institutions that functioned at the community level.[45] Friedman and Percival, in their study of the criminal process in Alameda County, California between 1870 and 1910, came to much the same conclusion:

> One obvious, striking fact about criminal justice in Alameda County, in our period, was how many faces it had. We can hardly talk about a system of criminal justice at all. There were many systems, different in form, function and method, arranged in layers on top of one another.[46]

Even in its earliest years, the criminal justice system in the North West Territories was emerging as layered and complex. Natives actively negotiated their place within the legal system; a fact that natives seem to have understood more clearly than whites, who took

the native position within the system very much for granted. In the period before 1885 natives negotiated from a position of considerable strength. Political, demographic and economic changes after 1885 seriously diminished native bargaining power.[47] How this development affected native crime rates into the twentieth century remains to be documented.

**Notes**

[1] The quote is from a poem entitled, 'The Riders of the Plains,' published by an anonymous member of the NWMP in the *Saskatchewan Herald*, 23 September 1878.

[2] Canadian Corrections Association, *Indians and the Law* (Ottawa: Canadian Corrections Association, 1967).

[3] These include a number of major government investigations such as, C. Murray Sinclair and A.C. Hamilton, *Report of the Aboriginal Justice Inquiry of Manitoba* (Winnipeg: The Inquiry, 1991); Task Force on the Criminal Justice System and Its Impact on the Indian and Metis People of Alberta, *Justice on Trial* 3 Volumes (Edmonton: The Task Force, 1991. The native prison population has also been a major preoccupation of the massive Royal Commission on Aboriginal Peoples expected to make its final report soon. For examples of academic studies see, Bradford W. Morse, *Aboriginal Peoples and the Law: Indian, Metis and Inuit Rights in Canada* (Ottawa: Carleton University Press, 1985); Michael Jackson, 'Locking Up Natives in Canada,' *University of British Columbia Law Review* 23, 2, (1989): 215-300.

[4] Robert A. Silverman and Marianne O. Nielsen, eds, *Aboriginal Peoples and Canadian Criminal Justice* (Toronto: Butterworth's 1992), 3-4.

[5] For a more detailed account of classic conflict theory see Marc H. Ross, *The Culture of Conflict: Interpretations and Interests in Comparative Perspective* (New Haven: Yale University Press, 1993), 11.

[6] It seems likely that European contact, by increasing competition for resources and providing supplies of more deadly weapons, increased levels of inter-band conflict in the half-century before 1870. All the historical accounts of Plains Indian life in the early nineteenth century suggest that it was unusual for a man to grow to adulthood without having killed at least one or two enemies. Those who aspired to leadership usually had much longer records of homicide. See, for example, Hugh A. Dempsey, *Crowfoot, Chief of the Blackfoot* (Edmonton: Hurtig, 1972) and *Big Bear: The End of Freedom* (Vancouver: Douglas and McIntyre, 1984; Edward Ahenakew, *Voices of the Plains Cree* (Toronto: McClelland and Stewart, 1973).

[7] Travis Hirschi, 'Crime and the Family,' in James Q. Wilson, ed., *Crime and Public Policy* (San Francisco: ICS Press, 1983).

[8] The nineteenth century idea that it was possible to make a firm distinction between custom (primitive) and law (civilized) was under serious challenge by the 1950s in the work of legal anthropologists such as E. Adamson Hoebel, *The Law of Primitive Man: A Study in Comparative Legal Dynamics* (Harvard University Press, 1954). Legal theorists were not far behind. See Dennis Lloyd, *The Idea of Law* (Penguin, 1964), especially Chapter 10, 'Law and Custom.'

[9] John A. Dickinson, 'Native Sovereignty and French Justice in Early Canada,' in Jim Phillips, Tina Loo and Susan Lewthwaite, eds., *Essays in the History of Canadian Law, V, Crime and Criminal Justice* (Toronto: The Osgoode Society, 1994); E.J. Dickson-Gillmore, 'Resurrecting the Peace:

Traditionalist Approaches to Separate Justice in the Kahnawake Mohawk Nation,' in Robert A. Silverman and Marianne O. Nielsen, eds, *Aboriginal Peoples and Canadian Criminal Justice* (Toronto, Butterworth's 1992), 259.

[10] Hamar Foster, " 'The Queen's Law is Better Than Yours': International Homicide in Early British Columbia," in Loo, Phillips and Lewthwaite, *Essays in the History of Canadian Law*, V; Tina Loo, *Making Law, Order and Authority in British Columbia, 1821-1871* (Toronto: University of Toronto Press, 1994).

[11] There was an extremely complex jurisdictional tangle created by uncertainties concerning the Hudson's Bay Company charter and contradictions in the Imperial legislation of 1803 and 1821 affecting the region. The best discussion of this situation is Desmond H. Brown, 'Unpredictable and Uncertain: Criminal Law in the Canadian North West Before 1886,' *Alberta Law Review* XVII, 3 (1979): 497-512.

[12] For the former see Hamar Foster, 'Long Distance Justice: The Criminal Jurisdiction of Canadian Courts West of the Canadas, 1763-1859,' *American Journal of Legal History* 34 (1990); 'Sins Against the Great Spirit: The Law, The Hudson's Bay Company, and the Mackenzie's River Murders, 1835-1939,' *Criminal Justice History: An International Annual* 10 (1989); 'Killing Mr. John: Law and Jurisdiction at Fort Stikine, 1842-1846,' in John McLaren, Hamar Foster and Chet Orloff, eds., *Law for the Elephant, Law for the Beaver; Essays in the Legal History of the North American West* (Regina: Canadian Plains Research Center, 1992).

[13] Desmond Brown, 'Unpredictable and Uncertain,' 511. Canadian criminal law in 1873 was a rather hastily thrown together adaptation of the English statutes known as the Greaves Criminal Consolidation Acts of 1861 with some procedural law from the pre-Confederation colonies. See also Brown, *The Genesis of the Canadian Criminal Code of 1892* (Toronto: The Osgoode Society, 1989), Chapter 5.

[14] Richard White, 'The Winning of the West: The Expansion of the Western Sioux in the Eighteenth and Nineteenth Centuries,' *Journal of American History* 65 (1978): 319-343.

[15] R.C. Macleod, *The North-West Mounted Police and Law Enforcement 1873-1905* (University of Toronto Press, 1976), Chapter 2.

[16] Peter Ward, 'The Administration of Justice in the North West Territories, 1870-1887,' (unpublished MA Thesis, University of Alberta, 1966), 49.

[17] Theodore Binnema, 'Old Swan, Big Man and the Siksika Bands, 1794-1815,' *Canadian Historical Review* 77, I (1996): 16-17.

[18] Elizabeth Cashdan, 'Hunters and Gatherers: Economic Behaviour in Bands,' *Economic Anthropology*, Stuart Plattner, ed. (Stanford: Stanford University Press, 1989); Hugh Dempsey, 'The Blackfoot Indians,' in R. Bruce Morrison and C. Roderick Wilson, eds., *Native Peoples: The Canadian Experience* (Toronto: McClelland and Stewart, 1986); Ross, *The Culture of Conflict*; Joel Savishinsky, 'Mobility as an Aspect of Stress in an Arctic Community,' *American Anthropologist* 73 (1971): 604-18.

[19] Sarah Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy* (McGill-Queen's University Press, 1990).

[20] Defendant's name; defendant's ethnicity (Native or non-native) [In most cases ethnicity is obvious from the names. There were, however, some European surnames such as Cook, Bird and Munro in common use among Natives, especially the Cree. These are usually identified in the returns and can be cross-checked in the newspaper reports. Métis defendants were categorized as non-native on the grounds that this was their self-identification at the time and that they had been accustomed to European-style law codes

for at least fifty years by the 1870s. See Roy St. George Stubbs, *Four Recorders of Rupert's Land* (Winnipeg, 1967)]; defendant's sex; crown or private prosecution; category of offence (assault, other violent offenses, livestock theft, other property offenses, liquor offenses, mischief, gambling, other); by whom tried (stipendiary magistrate, with or without a jury; mounted police officer; civilian justice of the peace); disposition (fine, prison term, acquittal or other); location of trial; year of trial.

[21] Canada, *Census of the Three Provision Districts of the North West Territories, 1884-5* (Ottawa, 1886), 10-11.

[22] For example, agent Hayter Reed at Battleford, noted that Thunderchild's Band lost most of their crops due to frost. Everyone else in the agency also suffered from the bad weather, with heavy rains in early October followed by cold freeze, the followed by a thaw, which resulted in the destruction of most of root crops. See *Annual Report of the Department of Indian Affairs for the year ended 31 December 1881*, Sessional Papers, no. 6 (Ottawa: Maclean, Rogers and Co., 1882), 77, 80. Agent Lieutenant-Colonel A. McDonald, Ft. Qu'Appelle, reported that an exceptionally long and cold winter had been made worse by the freezing of a large part of the potato crop which had occurred when the winter had set in early. As well, the Sioux band's wheat and barley was poor this past year due to dry summer. See *Annual Report of the Department of Indian Affairs for the year ended 31 December 1883* (Ottawa: Maclean, Rogers and Co., 1884), 70, 72. Agent C.E. Denny, Ft. Macleod, claimed that frost had hurt most of the Stony's crops (*Annual Report 1883*, 80). Agent W. Anderson of Edmonton reported that frost and hail had destroyed Alexis' band's crops. He also noted that most of the other bands in his jurisdiction had produced good crops (*Annual Report 1883*, 77). Indian Commissioner E. Dewdney, reported that the unusually late arrival of rains in the fall resulted in most of the crops in the Ft Pitt district being destroyed by frost. Indians ended up having to eat their seeds for next year's crops in order to survive the winter. See *Annual Report of the Department of Indian Affairs for the year ended 31 December 1884*. Sessional Papers, no. 3 (Ottawa: Maclean, Rogers and Co., 1885), 156, 157. Agent J.M. Rae, Battleford, reported the complete absence of rain until July, which resulted in miserable crops (*Annual Report 1884*, 84). Agent A. MacDonald, stationed at Indian Head, noted that frost killed the crops (*Annual Report 1884*, 66). Agent L.W. Herchmer of Birtle Agency, described how the extremely dry weather in spring caused the wheat to come up irregularly and then how unusually early frosts in July killed the crops. The failure of the crops was all the more problematic because of the disappearance of fish due to the mill owners having dammed the creek. Furthermore, Herchmer noted the almost complete disappearance of game (*Annual Report 1884*, 67, 68, 71). It is important to note that the weather was not uniformly unsuitable for agriculture during the early 1880s. For example Denny mentioned in his report for both 1882 and 1883 that some bands produced large crops due to good weather (*Annual Report of the Department of Indian Affairs for the year ended 31 December 1882* (Ottawa: Maclean, Rogers and Co., 1883), 172; 1883, 79). Anderson also described 1883 as mostly a good year for crops (*Annual Report 1883*, 77).

[23]. James G. Stewart, stationed at the Edmonton Agency, described Native peoples' destitution: 'I may well call them sufferers, for I have never seen anything like it since my long residence in this country,' He claimed that he had not seen any buffalo, fish, or fur-bearing animals. The serious food shortage had led Native peoples in his area to eat many of their horses and

all of their dogs. He also used bad weather as an explanation for part of the problem, and threatened that unless the Department provided his agency with more food, Natives would kill the government's and rancher's cattle. See *Annual Report of the Department of Indian Affairs for the year ended 31 December 1880*, sessional papers no. 14 (Ottawa: Maclean, Roger and Co., 1881), 102. Agent W. Anderson, Edmonton Agency, noted a scarcity of game, except in the case of rabbits (Annual Report 1881, 85). Agent L.W. Herchmer of the Birtle Agency described the weather as having been extremely dry in the spring, which in turn caused the wheat to come up irregularly, and then unusually early frosts in July killed the crops. He reported that his Agency had no fish because mill owners downstream had dammed up the creek. According to Herchmer, '[the almost total disappearance of game necessitates the speedy introduction of sheep and pigs among the Indians' (Annual Report 1884, 67, 68, 71). Both Agent J. Ansdell Macrae of the Carlton Agency and Acting Sub-Agent Thomas T. Quinn of Ft. Pitt claimed that the fisheries in their respective areas were almost exhausted (Annual Report 1884, 83, 86).

[24] Agent W. Anderson, of the Edmonton Agency, noted that even though the HBC did not profit from the fur trade in his area any longer, the Company still helped him feed sick and destitute Natives. With the support and aid of the HBC, Anderson set up soup kitchens at a number of forts including Edmonton, Victoria and Lac La Biche. See *Annual Report 1881*, 84. Similar cases occurred outside the defined study area as well; for example, Agent A. Mackay, reported that Native peoples inhabiting areas around the lower Saskatchewan, the Pas, and Grand Rapids had suffered greatly from the combined destruction of their crops from heavy rains and severe frosts and their fisheries from flooding. He also claimed that all the fur-bearing animals and game had disappeared from these areas. MacKay stated that it was the HBC which stepped in to prevent many of the Indians in his area from starving. See *Annual Report 1881*, 73.

[25] C.E. Denny, *Annual Report* 1882, 172.

[26] Dewdney, *Annual Report 1884*, 163.

[27] *Saskatchewan Herald*, 29 December 1879.

[28] Diamond Jenness, *The Indians of Canada* National Museum of Canada, Bulletin 65, Anthropological Series No. 15 (Ottawa: Queen's Printer, 1963) 158-9.

[29] With such a small number of cases involving native defendants it would be misleading to read too much into this pattern.

[30] John S. Milloy, *The Plains Cree: Trade, Diplomacy and War, 1790 to 1870* (Winnipeg: University of Manitoba Press, 1988), Chapters 7 and 8. For an interesting parallel, see Theda Perdue, 'Women, Men and American Indian Policy: The Cherokee Response to 'Civilization',' *Negotiators of Change: Historical Perspectives on Native American Women*, ed. Nancy Shoemaker (New York and London: Routledge, 1995), 91-114. Perdue examines late eighteenth and nineteenth century Cherokee attitudes to raising cattle and horse-stealing. She claims that with the disappearance of wars against other tribes and settlers, horse-stealing became the method of demonstrating the achievement of manhood. Perdue comments on the confusion over jurisdiction, the readiness of the American federal government to settle claims of horse theft, and the mountainous geography of the region 'made the frontier ideal territory for the illicit traffic in horses.' (100) The context in which the Cherokee transformed horse-stealing into a cultural expression has remarkable similarities to the late nineteenth situation along with the Western Canadian-American border.

[31] Milloy, 75-82.

[32] Brian Hubner, 'Horse Stealing and the Borderline: The NWMP and the Control of Indian Movement, 1874-1900,' *Prairie Forum* 20, 2 (1995): 281.

[33] Copy of the Privy Council Report in *Annual Report 1882*, 211. See also Indian Commissioner Edgar Dewdney's perspective on the international boundary in *Annual Report 1883*, 98. He describes the area, particularly around Cypress Hills as one of the primary sites of origin for horse-thieving expeditions. At this point, Cypress Hills was populated by natives under both American and Canadian jurisdiction, making the onus of governmental responsibility for native livestock offenses a complex and highly politicized issue.

[34] Milloy, 104.

[35] Carter, *Lost Harvests*, ix, 3, 12, 37, 41, 49, 94. She notes that while the government's change in attitude toward native farming is gradual, there was a marked shift in its commitment to the success of native farming after 1885, signalling a change in the methods used to achieve its Indian Policy goals (107, 137, 141). See also commentary on *Annual Report 1883* in *Edmonton Bulletin*, 15 March 1884.

[36] Carter, 96.

[37] *Annual Report 1884*, 67-69. Other cases can be found in the local newspapers. See, for example, 'South Piegans on the War-path – Starving on their Reserve: They Start-out on a Robbing and Killing Expedition,' *Macleod Gazette*, 4 May 1883; 'An Appeal to Montana,' *Macleod Gazette*, 14 September 1883; 'The Indian Money,' *Saskatchewan Herald*, 15 December 1879.

[38] For an example of rancher rhetoric see 'Indian Offenders,' *Macleod Gazette*, 14 July 1883.

[39] Agent A. Mackay conceded that Natives would kill government cattle on their reserve if they were hungry enough, but he qualified this observation with the following: 'although suffering for want of food and other privations, a case of stealing or robbery is rarely ever heard of.' *Annual Report 1881*, 73. C.E. Denny suggested that the reports from Montana about Natives from Canada stealing stock are 'totally without foundation.' *Annual Report 1882*, 171. Most revealing is W. Pocklington' comments about the perceptions of Calgarian ranchers, 'I understand there were some known cases of cattle killings but I do not credit these Indians [Blood] with killing all the cattle, an offence with which owners are too prone to charge them.' *Annual Report 1884*, 89.

[40] By conducting a quantitative analysis of both the frequency and type of reference to native and white crime, it is clear that, with the exception of the *Edmonton Bulletin*, local newspapers over-represented native crime, as compared to the database of the NWMP returns.

[41] Native defendants received fifty percent of the total number of warnings (3 out of 6), but represent only 31 percent of the cases. Another way of looking at the disproportionate number of warnings natives received is to assess the number of warnings within each group which worked out to be 3.6% of cases defended by natives and only 1.6% for whites.

[42] Natives received 80 percent of the total number of suspended sentences in this category of crime (4 out of 5 suspended sentences). The differential also existed within each group; five percent of native cases ended in suspensions compared to less than one percent of white cases.

[43] 'To the Minister of the Interior,' *Edmonton Bulletin*, 3 February 1883. The nine native leaders sent the letter to the newspaper on 7 January.

[44] 'Magistrate's Court. Three Months in Gaol for Hose Stealing,' *Saskatchewan Herald*, 16 June 1879.

[45] See, for example, Iain A. Cameron, *Crime and Repression in the Auvergne and Guyenne* (Cambridge University Press, 1982); Nicole Castan, 'Crime and Justice in Languedoc: The Critical Years (1750-1790),' *Criminal Justice History* 1 (1980): 175-184; Julius R. Ruff, *Crime, Justice and Public Order in Old Regime France: The Sénéchausées of Libourne and Bazas, 1696-1789* (London: Croom Helm, 1984); Clive Emsley, *Policing and its Context 1750-1870* (London, 1983).

[46] Lawrence M. Friedman and Robert V. Percival, *The Roots of Justice: Crime and Punishment in Alameda County, California, 1870-1910* (1981), 311.

[47] We plan to extend the study into the decade of the 1890s. If we are correct in our explanation of the pre-1885 data, we would expect to find an increase in the native crime rate for the later period.