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Paradises Lost? The Constitutional Politics of “Indian” Enfranchisement in Canada, 1857–1900

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Abstract

Enfranchisement was the legal process for an individual or community to end their legal status as “Indians” under the Indian Act. The Canadian government hoped it would break up bands before assimilating them into settler society. This article aims to excavate the untold story of this attempt to extinguish special “Indian” status in the nineteenth century. It first traces enfranchisement as part of a Victorian discourse of civilization and as a specific Canadian legal process for the assimilation of “Indian” subjects. It then uses new archival sources to tell the untold story of the politics of enfranchisement over the second half of the nineteenth century. The article concludes with the strange case of Doctor Oronhyatekha (aka Mr. Martin). His story is of one exceptional individual’s attempt to pursue an alter“Indian” enfranchisement can help us better appreciate what is at stake in contemporary questions of belonging within the agonistic relationships of the Canadian and Indigenous constitutional orders.

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Paradises Lost? The Constitutional Politics of “Indian” Enfranchisement in Canada, 1857–1900

COEL KIRKBY*

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Enfranchisement was the legal process for an individual or community to end their legal status as “Indians” under the *Indian Act*. The Canadian government hoped it would break up bands before assimilating them into settler society. This article aims to excavate the untold story of this attempt to extinguish special “Indian” status in the nineteenth century. It first traces enfranchisement as part of a Victorian discourse of civilization and as a specific Canadian legal process for the assimilation of “Indian” subjects. It then uses new archival sources to tell the untold story of the politics of enfranchisement over the second half of the nineteenth century. The article concludes with the strange case of Doctor Oronhyatekha (aka Mr. Martin). His story is of one exceptional individual’s attempt to pursue an alter “Indian” enfranchisement can help us better appreciate what is at stake in contemporary questions of belonging within the agonistic relationships of the Canadian and Indigenous constitutional orders.

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“ALL PARADISES, ALL UTOPIAS[,]” said Toni Morrison, “are designed by who is not there, by the people who are not allowed in.”¹ Canada is one sort of paradise, constituted as much by those left out as those let in. So too, in a different way, are the First Nations subsisting within and beyond the Canadian state as both bands constituted by the *Indian Act* (and related state law) and nations governed by their own laws. The problems of membership and citizenship correspond to these two competing sources of sovereignty. On the one hand, membership as an “Indian” in a “band” allocates certain legal rights and restrictions enforced by the Canadian state.² Membership is also complicated by the difference between registration on a band list and the federal “Indian register”: An individual may be on one but not the other. On the other hand, citizenship in an Anishinaabe, Haudenosaunee, or other Indigenous nation entails a different, and at times competing, set of legal rights and duties. Citizenship in this sense is also complicated by the fact that the laws of belonging are themselves contested within nations, which can create a class of individuals accepted by some, but not all, as fellow citizens.

This article responds to contemporary questions of membership and citizenship by returning to the origins of enfranchisement in the nineteenth century.³ The question of membership and citizenship cuts to the core of First Nations’ claims for and assertions of sovereignty against the Canadian state. Self-rule as a nation demands control over citizenship: These laws create the

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1. Toni Morrison, *Conversations*, ed by Carolyn C Denard (University Press of Mississippi, 2008) at 156.
 2. In this article I use the terms “Indian,” “band,” “council,” “chief,” and “reserve” only when referring to the legal class of individuals (as well as related institutions and territories) created by the Canadian government through the *Indian Act* and related Canadian legislation.
 3. The question of citizenship is central to the recent scholarly discourse of “reconciliation” and “resurgence” of Indigenous legal orders. See e.g. Aaron James (Waabishki Ma’ingan) Mills, “Miinigowiziwin: All That Has Been Given for Living Well Together One Vision of Anishinaabe Constitutionalism” (PhD Dissertation, University of Victoria, 2019) [unpublished]; Damien Lee, “‘Because Our Law Is Our Law’: Considering Anishinaabe Citizenship Orders Through Adoption Narratives at Fort William First Nation” (PhD Dissertation, University of Manitoba, 2017) [unpublished]; Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (University of Minnesota Press, 2014) at ch 3; Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Duke University Press, 2014); Pamela D Palmater, *Beyond Blood: Rethinking Indigenous Identity* (Purich, 2011); Bonita Lawrence, *“Real” Indians and Others: Mixed-Blood Urban Native Peoples and Indigenous Nationhood* (University of Nebraska Press, 2004) at 31-32; John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (University of Toronto Press, 2002) at ch 6; Val Napoleon, “Extinction by Number: Colonialism Made Easy” (2001) 16 CJLS 113. Michael Asch, John Borrows & James Tully, eds, *Resurgence and Reconciliation: Indigenous: Settler Relations and Earth Teachings* (University of Toronto Press, 2018).

paradisaal community by exclusion as much as inclusion. Modern inter-national treaties, like the *Nisga'a Final Agreement* (1999) and the draft *Anishinabek Nation Governance Agreement*, recognize and enable this power to a limited degree.⁴ First Nations under the *Indian Act* may also choose to enact their own membership code instead of relying on a band list maintained by the Department of Crown-Indigenous Relations and Northern Affairs Canada.⁵ The Department also maintains an "Indian Register" that lists every individual with the legal status of "Indian." These overlapping, and often conflicting, rules include or exclude individuals from membership in an Indian band or citizenship in a First Nation. The Canadian government also calculates most funding based on Indian status. It has historically resisted—and continues to resist—funding First Nations with per capita grants calculated from their own, often more expansive, membership rules. First Nations are left with a state-enforced dilemma of expanding membership at the cost of diluting the individual allocation of fixed and scarce financial and land resources. It is also important to remember that this scarcity was itself historically created by the Canadian government's contested dispossession of First Nations' lands.

First Nations also face a related question with a deep colonial history: the fate of men, women, and children who lost their official Indian status under the enfranchisement processes in the *Indian Act*. This question was among those considered during the year-long Collaborative Process on Indian Registration, Band Membership, and First Nation Citizenship ("Collaborative Process") completed in June 2019.⁶ This was the second part of the Canadian federal government's response to the *Descheneaux c. Canada (Procureur Général)* decision by the Superior Court of Quebec.⁷ Here the Court considered claims of gender discrimination in band membership under the *Indian Act* that remained after the first serious attempt to address the historical exclusion of many women and

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4. Compare *Nisga'a Final Agreement Act*, SBC 1999, ch 2, s 33 & 39-40; *Draft Anishinabek Nation Governance Agreement: Plain Language Version*, 25 June 2019, ch 4, online: <www.mississauga.com/uploads/1/0/2/6/102634872/plain-language-governance-agreement-amended-june-25-2019.pdf> [perma.cc/7E4M-5GQR].
 5. *Indian Act*, RSC 1985, c I-5, s 10 [*Indian Act*, 1985].
 6. Canada, *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship: Consultation Plan* (June 2018), online: <www.rcaanc-cirnac.gc.ca/eng/1522949271019/1568896763719> [perma.cc/E8TE-NKHM] [*Collaborative Process*].
 7. 2015 QCCS 3555.

their children with Bill C-31 in 1985.⁸ In its legislative response, the Canadian government raised four further forms of discrimination that required consultation with First Nations to address.⁹ These included the four historic membership “inequities”: adoption, the second-generation cut-off rule, unknown or unstated paternity, and enfranchisement.

Critics of the Collaborative Process raise two main concerns about the process. The first concern is that expanding the definition of official Indian status would allow many more newly eligible individuals to register “in order to take advantage of services and benefits without seeking a connection to the community or culture.”¹⁰ Again, this highlights the dilemma facing many First Nations about if and how to let in those individuals whose parents were separated from the community in the past through the Canadian state’s unilateral imposition of *Indian Act* band membership rules. The second related concern is whether a membership model premised on “reconciliation and a renewed nation-to-nation relationship”¹¹ could allow more radical demands by the Anishinaabe, Haudenosaunee, and other nations to control their membership as self-governing sovereigns exercising their own national laws, rather than regulated “bands” constrained by the *Indian Act* or acknowledged “First Nations” restricted by modern treaty regimes.¹² A crucial corollary is whether the Canadian

8. The Canadian government amended the *Indian Act* in 1985 to bring it in line with the right to equality in section 15 of the *Canadian Charter*—in particular, the discrimination against women in the definition of Indian status in the *Indian Act*. See *Canadian Charter of Rights and Freedoms*, s 15, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11. Bill C-31 abolished the enfranchisement process and granted a limited scope for First Nations women to regain their Indian status denied by the 1951 amendment: see Bill C-31, *An Act to amend the Indian Act*, 1st Sess, 33rd Parl, 1985 (assented to 28 June 1985), c 27.
9. *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c Canada (Procureur general)*, SC 2017, c 25, s 11(1) [*Act to amend Indian Act*, 2017].
10. Canada, Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship: Report to Parliament (June 2019), online: <www.rcaanc-cirnac.gc.ca/eng/1560878580290/1568897675238> [perma.cc/6E4U-FLS5].
11. *Collaborative Process*, *supra* note 6.
12. The Mohawk council of Kahnawake, for instance, controversially tightened its band membership rules in a reaction to Bill S-3 of 2017. “We understand there was discrimination against women that occurred for generations going back to 1869,” said Kahsennenhawe Sky-Deer, an elected council member, “but Canada should not be dictating belonging and identity.” See Jessica Deer, “Some First Nations Tighten Membership Criteria in Response to Bill S-3’s Extension of Indian Status,” *CBC News* (30 August 2019), online: <www.cbc.ca/news/indigenous/kahnawake-six-nations-membership-bill-s3-1.5264898> [perma.cc/LJV4-P84L]. See also Damien Lee, “A Brief Assessment of Canada’s Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship,” *Yellowhead Institute* (23 July 2018), online: <yellowheadinstitute.org/2018/07/23/canadas-collective-

government would increase funding or return more dispossessed land to recognize the potentially much larger number of citizens—as opposed to registered band members under the *Indian Act*—of a First Nation if it changed its citizenship rules to introduce a broader definition of membership.

In this article, I aim to recover the origins of enfranchisement in the nineteenth century to better understand the problem of membership today. From 1857 onwards, the Canadian government administered the enfranchisement process under the *Indian Act* for an individual or collective to terminate their official Indian status—voluntarily or involuntarily.¹³ The process pursued a paradisaical vision of the single Canadian nation that demanded both the end of First Nations as autonomous polities, and the assimilation of status Indian men and women as “civilized” subjects. The complete history of enfranchisement in its first four decades remains unknown in part because it seems there is not much to tell. The few historians that consider enfranchisement limit themselves to a few prominent enfranchisement cases.¹⁴ However, a closer look at the archives reveals how the Anishinaabe, Haudenosaunee, Lenape, and other nations successfully resisted the enfranchisement of all but a handful of their citizens by asserting their own laws of citizenship against the *Indian Act* and its ultimate end of assimilation. Recovering these histories shows us their distinct discourses of self-rule as nations under their own laws—including rules of belonging. It also reveals the epistemic damage done by the Canadian state’s imposition of its own rules of membership over First Nations.

Part I traces why and how the Canadian government created and administered the enfranchisement process in the nineteenth century. The process was justified as the primary legal means to solve what officials described as the “Indian problem” by dismembering and ultimately assimilating First Nations. Parts II to IV recover the seventy or so cases of successful enfranchisement in the Wendat and Lenape, Anishinaabe and Haudenosaunee nations, respectively. The Six Nations story is especially important since there are extensive written, and some oral, sources for one exceptional enfranchisement applicant: Doctor Oronhyatekha (Peter Martin). His strange case illuminates not only one man’s lived experiment in imagining and building his radical vision of a Mohawk paradise on earth, but also

process-on-indian-registration> [perma.cc/Y34V-V2GS]; *Act to amend the Indian Act*, 2017, *supra* note 9.

13. Enfranchisement was one of two processes for terminating one’s status as an “Indian” defined in the *Indian Act*. The second process was the rule that a status Indian woman (and her children in certain circumstances) lost her status upon marrying a non-status man.
14. See *e.g.* Report of the Royal Commission on Aboriginal Peoples: Looking Forward, Looking Back, vol 1 (Supply and Services Canada, 1999) at 263-65.

the Six Nations' complicated and contested constitutional discourse. Recovering these forgotten visions of different paradises also helps us appreciate the epistemic damage wrought by the *Indian Act* in its denial of other visions of how to live together, within and beyond the Canadian state.

I. THE IDEA AND PROCESS OF ENFRANCHISEMENT

Enfranchisement was central to establishing the rules of inclusion and exclusion for the “empire of uniformity,” which James Tully describes as “the construction of centralised and uniform constitutional systems [and] the extension of these by post-colonial states over Indigenous populations and customary law.”¹⁵ But there was not a uniform process of assimilation—what Patrick Wolfe calls the “logic of elimination.”¹⁶ Instead, the *Indian Act* enfranchisement process changed according to the evolving ideology of Canadian officials and their (re) framing of the “Indian problem.” Despite its ultimate end of assimilation, the legal process was only available to those deemed worthy by the Department of Indian Affairs (“the Department”). This test evaluated applicants on the sole criterion of civilization. At first, this was measured by a mid-Victorian ideal of character as a sober, industrious, and Christian man. Later the test hardened into a sharper division into what Department officials came to call the “civilized” and “uncivilized” Indian bands. The “civilized” category was racial as well since it always included the so-called “half-breed” bands. Only this category was granted the legal right to apply for enfranchisement that would admit them into the settler state as equal citizens in law.

At the start of the nineteenth century, the Haudenosaunee and other nations were no longer crucial military allies of the British against American enemies, nor major economic partners exploiting natural resources, like furs.¹⁷ Once the southern threat had receded after the War of 1812, British officials began a series of half-hearted attempts—usually left to Christian missionaries—to civilize and

15. James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge University Press, 1995) at 82-83.

16. Patrick Wolfe, “Settler Colonialism and the Elimination of the Native” (2006) 8 J Genocide Res 387.

17. On the evolution of colonial legislation relating to First Nations in British North America during this period, compare Sidney L Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence* (University of Toronto Press, 1998) at 41; John S Milloy, “The Early Indian Acts: Developmental Strategy and Constitutional Change” in Ian AL Getty & Antoine S Lussier, eds, *As Long As the Sun Shines and Water Flows: A Reader in Canadian Native Studies* (UBC Press, 1983) 56.

then assimilate “Indian” subjects.¹⁸ The failure of these laissez-faire policies led the Canadian government to devise a new solution to terminate persistent First Nations as autonomous polities.¹⁹ In this new paradigm, the central question became how to govern First Nations who were both within and outside of the colonial legal order. Enfranchisement provided the ultimate legal solution to this problem of difference. The enfranchisement process allowed “civilized” individuals to apply for the removal of their legal “disabilities” while under official Indian status, and thus enjoy what the British saw as the full fruits of British liberty, exemplified by the institutions of private property and the franchise.²⁰ Enfranchisement was thus the ultimate solution to the problem of Indigenous difference that provided a means to the end of dismembering and assimilating the Anishinaabe, Haudenosaunee, and others as autonomous nations.

The Union government created the enfranchisement process in the *Gradual Civilization Act* of 1857. The Act aimed “to encourage the progress of Civilization among the Indian Tribes” leading to the “gradual removal of all legal distinctions between them and Her Majesty’s other Canadian Subjects, and to facilitate the acquisition of property.”²¹ The enfranchisement process was open to any status Indian man over twenty-one years of age. The Superintendent-General of Indians Affairs (or his delegate), a local missionary, and a third person would be appointed as commissioners to examine the applicant against two criteria.²²

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18. On this period of Canadian government policy, see John L Tobias, “Protection, Civilization, Assimilation: An Outline History of Canada’s Indian Policy” in JR Miller, ed, *Sweet Promises: A Reader on Indian-White Relations in Canada* (University of Toronto Press, 1991) 127; Haring, *supra* note 17.
19. See *Act for the Better Protection of the Lands and Property of the Indians in Lower Canada*, S Prov C 1850 (13-14 Vic), c 42; *Act for the Protection of the Indians in Upper Canada*, S Prov C 1850 (13-14 Vict), c 74. John Tobias reminds us that the Province of Canada first defined the legal status of “Indian” in 1850 to include “all persons of Indian ancestry and all persons married to such persons, belonging to or recognized as belonging to a band, and living with that band.” See John L Tobias, “Protection, Civilization, Assimilation: An Outline History of Canada’s Indian Policy” in JR Miller, ed, *Sweet Promises: A Reader on Indian-White Relations in Canada* (University of Toronto Press, 1991) 127 at 129. This imagined population was thus defined by two (then) incommensurable criteria: a biological test tracking race and a citizenship test tracking First Nations’ laws.
20. On the history of the “Indian” franchise in the nineteenth century, see Coel Kirkby, “Reconstituting Canada: The Enfranchisement and Disenfranchisement of ‘Indians,’ circa 1837–1900” (2019) 69 UTLJ 497.
21. *An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Laws respecting Indians*, S Prov C 1857 (20 Vict), c 26, preamble [*Gradual Civilization Act*].
22. *Ibid*, s 3.

First, could he (only men could apply) speak, read, and write English or French “readily and well”? Second, was he both “sufficiently advanced in the elementary branches of education,” and “of good moral character and free from debt”?²³ If the applicant satisfied the commissioners on both counts, then the Governor could declare him enfranchised. The *Gradual Civilization Act* provided that once an Indian man was enfranchised, all laws “making a distinction between the legal rights and habilites [*sic*] of Indians and those of Her Majesty’s other subjects, shall cease to apply” to him.²⁴ There was special consideration for younger men between twenty-one and forty years old. Such men could still be enfranchised after a three-year probation, even if they could not read or write, which reflected a mid-century British faith in the possibility of “civilizing” subjects through the Christian religion and English laws.

Enfranchisement as a faith in the mutability of human nature also reflected Victorian discourses of masculinity as a natural patriarchy.²⁵ Only men could apply to enfranchise, while woman and children could only be enfranchised through an act of their husbands or fathers. When a status Indian man was enfranchised, his wife and children were also deemed enfranchised. There were important distinctions between the rights of an enfranchised man, and the rights of his wife and children. While an enfranchised man received a share of his band’s reserve land in a grant of life estate, his heirs would inherit it in fee simple.²⁶ After enfranchisement, a man would be paid his share of band monies and future treaty annuity payments as a lump sum.²⁷ However, his wife and children retained their right to annuities on a continuing basis, and thus maintained a crucial connection to their band as a nation with a treaty relationship to the Crown.²⁸ Enfranchisement, in short, privileged men as the agents of assimilation while relegating their wives and children to dependents until they had proven themselves “civilized” upon reaching maturity.

Shortly after Confederation, the new Dominion parliament passed the *Gradual Enfranchisement Act*, which reproduced and refined a legal process for

23. *Ibid.*

24. *Gradual Civilization Act*, *supra* note 21, s 3.

25. On the interplay between gender and ethnicity, see e.g. Sarah Carter, *Capturing Women: The Manipulation of Cultural Imagery in Canada’s Prairie West* (McGill-Queen’s University Press, 1997).

26. *Gradual Civilization Act*, *supra* note 21, s 8.

27. *Ibid.*, s 7.

28. *Ibid.*, s 9.

enfranchisement.²⁹ The primary pathway remained the voluntary application of an individual status Indian man who, “from the degree of civilization to which he has attained, and the character for integrity and sobriety which he bears, appears to be a safe and suitable person for becoming a proprietor of land.”³⁰ Under this Act, however, an enfranchised man would hold property by letters patent in life estate—though still encumbered with serious restrictions on its mortgage, lease and sale.³¹ He would continue to receive any annuities and other treaty money paid by the Crown to his tribe. The Act also introduced a new way for a status Indian woman (and possibly her children) to be involuntarily enfranchised. If such a woman married a white man, she and any of her children fathered by that man, would no longer be deemed status Indians under the *Indian Act*.³² In such a case, the woman and her children would not receive any band property in land. Moreover, the law policed women—and their sexuality—by providing that a widow of an enfranchised man would only retain a share in her husband’s land in two circumstances. If the children from the marriage inherited the land, the widow could live on it so long as the Superintendent-General believed that “she lives respectably.”³³ If there were no children, the widow could inherit the land in life estate until her death or remarriage.³⁴ In either case, a woman’s right to access land depended on her character as evidenced by the outward performance of chaste respectability.

The *Indian Act* of 1876 consolidated, revised, and extended the existing laws governing status Indian subjects. It also drew a sharper distinction between what officials described as the “civilized” bands in the old provinces and the “uncivilized” bands in the new western territories. The Governor-General could grant voluntary or compulsory enfranchisement to those individuals and bands he deemed “advanced” or “progressive” through three new pathways. The first allowed the collective enfranchisement of a band. The band had to hold a special council witnessed by the Superintendent-General or a Department agent to decide whether to allow those members who so chose to apply for

29. *An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42, SC 1869 (32-33 Vict), c 6 [Gradual Enfranchisement Act].*

30. *Ibid*, s 13. An applicant had to first provide the Superintendent with his or her Christian names (*ibid*, s 16).

31. *Ibid*, s 20.

32. *Ibid*, s 6.

33. *Ibid*, s 18. The Superintendent-General would also appoint a tutor for each child under twenty-one years old to teach them about their property rights.

34. *Ibid*, s 14.

enfranchisement.³⁵ This process was aimed at the most “progressive” bands based on the belief that some were prepared and willing as a collective to voluntarily disband and assimilate into settler society. The second pathway targeted the vanguard of “civilized” Indian men—the professionals who lived and worked in settler society. The law declared that any such man “shall *ipso facto* become and be enfranchised” if he was a university graduate, doctor, lawyer, or priest.³⁶ This provision assumed that such men wished to end the “disabilities” of Indian status but were held back by recalcitrant band councils that refused to grant the reserve land necessary to complete the process. The third pathway allowed unmarried women to apply for enfranchisement themselves.³⁷

The *Indian Act* also addressed the novel problem of governing many new nations—from the Blackfoot and Cree, to the Haida and Sto:lo—incorporated into Canada as the Dominion expanded westwards.³⁸ The Canadian government responded by applying some of the *Indian Act* to the new provinces and territories, and also drawing new legal distinctions between the “civilized bands” in the old provinces and the “uncivilized tribes” in the new provinces and territories.³⁹ However, the enfranchisement process was explicitly denied to western First Nations as individuals or collectives unless and until the Governor-General extended the process at his discretion to selected “civilized” bands by proclamation—a power that would not be exercised for over two decades.⁴⁰

35. SC 1876 (39 Vict), c 18, s 93 [*Indian Act*, 1876].

36. *Ibid*, s 86(1).

37. *Ibid*, s 86. The law also added the criterion of “morality” to its test of civilization defined as “the character for integrity, morality and sobriety which he or she bears” (*ibid*).

38. The Canadian Dominion’s territorial expansion corresponded to a tripling of the status Indian population. By 1880 this population was equally distributed between (i) British Columbia, (ii) Manitoba and the North-West Territories and (iii) Ontario and the original provinces. See *e.g.* Canada, *Annual Report of the Department of Indian Affairs, 1880* (Maclean, Roger & Co, 1881) [*DIAAR, 1880*]. On the different legal forms of incorporation, cf J.R. Miller, *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada* (University of Toronto Press, 2009) at ch 6; Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (UBC Press, 2002).

39. *Indian Act*, 1876, *supra* note 35, s 94.

40. The provisions were first extended in 1886. See Canada, Privy Council, *Enfranchisement clauses of Indian Act—SGIA [Superintendent general of Indian affairs] 1886/05/14 [recommends] issue proclamation extending to certain bands the Order-in-Council, 20 May 1886*, Ottawa, Library and Archives Canada (no 1886-991); Canada, Privy Council, *Regulations—Enfranchisement of Indians, Manitoba and Northwest Territories—SGIA [Superintendent General of Indian Affairs], 1888/07/14 [recommends] consolidated Order-in-Council, 9 August 1888*, Ottawa, Library and Archives Canada (no 1888-1792) [PC, *Regulations*].

Despite the emphasis on the enfranchisement process as the means and end of assimilation, Prime Minister John A. Macdonald correctly observed in 1882 that Indian subjects had not shown a “much-to-be-desired demand for enfranchisement.”⁴¹ As the Superintendent-General of Indian Affairs, he directed his department to foster “this inclination for further enlightenment” and ensure that all means “should be afforded [to] those anxious for the step.”⁴² His renewed concern to compel enfranchisement was part of a deeper ideological shift among Canadian officials. During this decade, colonial officials reframed the old question of how to govern First Nations as the “Indian problem,” which required different solutions that calibrated the forms of governance more closely to each band’s perceived degree of civilization (which increasingly corresponded to their imagined “racial” composition).⁴³ On the one hand, Macdonald’s government introduced new laws to accelerate the assimilation of so-called “civilized races,” like the Haudenosaunee. The *Indian Advancement Act* of 1884 allowed the imposition of a municipal-style elected government on Indian bands deemed “fit” to progress towards imminent assimilation.⁴⁴ The next year, Macdonald passed the *Electoral Franchise Act*—his self-described “greatest triumph”—which extended the federal franchise to the “civilized” status Indian men.⁴⁵ However, both these laws made an explicit distinction between what department officials described as the “civilized” bands in the old provinces and the “uncivilized” bands in the new western provinces of Manitoba, British Columbia, Keewatin, and the Northwest Territories.⁴⁶

The enfranchisement process was reformed in 1884 as part of the Macdonald government’s intensification of the legal mechanisms to assimilate “civilized” bands. The *Indian Act* was amended to overcome the refusal of band

41. Canada, *Annual Report of the Department of Indian Affairs, 1882* (Maclean, Roger & Co, 1883) at xxvii [*DIAAR 1882*].

42. *Ibid.*

43. The first use of the phrase “Indian problem” was in 1885 and it became the standard colonial problematic for the next three decades: Canada, *Annual Report of the Department of Indian Affairs, 1885* (Maclean, Roger & Co, 1886) at 164, 170 [*DIAAR 1885*]. On this ideological turn, see E Brian Titley, “Hayter Reed and Indian Administration in the West” in RC Macleod, ed, *Swords and Ploughshares: War and Agriculture in Western Canada* (University of Alberta Press, 1993) 109.

44. *An Act for conferring certain privileges on the more advanced Bands of the Indians of Canada, with the view of training them for the exercise of municipal powers*, SC 1884 (47 Vict), c 28 [*Indian Advancement Act*].

45. SC 1886 (48-49 Vict), c 40, s 11(c) [*Electoral Franchise Act*]; see also Gordon T Stewart, “John A. Macdonald’s Greatest Triumph” (1982) 63 *Can Hist Rev* 3; Kirkby, *supra* note 20.

46. *Indian Advancement Act*, *supra* note 44, s 1; *Electoral Franchise Act*, *supra* note 45, s 11.

councils to grant an allotment necessary to complete a “civilized” applicant’s enfranchisement. The revised process granted the Superintendent-General more discretionary powers, especially the discretion to remove band councils’ effective veto over an individual’s application. If the Superintendent-General accepted an applicant’s request for enfranchisement, the Governor-General could order the issue of letters patent granting an allotment of reserve land in fee simple after a new three-year probation period (or longer in the case of “such Indian’s conduct not being satisfactory”).⁴⁷ To further encourage status Indian subjects to enfranchise, the allocated fee simple allotment was not liable for taxation until so declared by the Governor-General.⁴⁸ This revised process promised to accelerate the enfranchisement of “civilized” applicants and more effectively break down collective resistance to assimilation.

The Governor-General first extended the enfranchisement process in the new provinces and territories in 1888. However, the extension only applied to individuals in three bands led by chiefs John Smith, James Seenum (or Chief Pakan), and Gambler in the Northwest Territories. Department officials justified the limited extension of enfranchisement to these bands since only they were deemed to be “sufficiently far advanced.”⁴⁹ “Considering the comparatively short time during which these Indians have been under the influences of civilization,” added Indian Commissioner Edgar Dewdney, “this is [the] most significant of the progress made by them.”⁵⁰ The Canadian government only extended the enfranchisement process to British Columbia in 1892 and Manitoba in

47. *An Act further to amend “The Indian Act, 1880,”* SC, 1884, c 27, s 17.

48. *Ibid.*, s 11; see also *An Act further to amend The Indian Act*, SC 1890 (53 Vict), c 29, s 1. However, the fee simple grant did have the condition that the grantee had no ‘power to sell, lease or otherwise alienate the land’ without approval by the Governor-in-Council (*ibid.*, s 27).

49. Canada, Privy Council, Enfranchisement clauses of Indian Act – SGIA [Superintendent General of Indian Affairs] 1886/05/14 [recommends] issue proclamation extending to certain bands the (Order-in-Council, 20 May 1886), Ottawa, Library and Archives Canada (no 1886-991); PC, Regulations, *supra* note 40. In their annual reports, the Department’s local agents persistently singled out these bands for praise as loyal, Christian, and civilized individuals committed to farming cash crops. See *DIAAR 1885*, *supra* note 43 at xi-xii, 82.

50. Canada, Annual Report of the Department of Indian Affairs, 1886 (Maclean, Roger & Co, 1887) at 111 [*DIAAR 1887*].

1895.⁵¹ In all these cases, it only extended the provisions for the individual enfranchisement process—and just one individual successfully completed the process in the nineteenth century.⁵² Not a single western band was deemed “sufficiently advanced” to warrant an extension of the *Indian Act* provision for collective enfranchisement to together terminate their legal status as a band.

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51. Canada, Privy Council, Enfranchisement Indians, British Columbia–SGIA [Superintendent General of Indian Affairs] 1891/12/09 recd [recommends] provision of Indian Act re enfranchisement except Sec. [Section] 92 be declared applicable (Order-in-Council, 12 January 1892), Ottawa, Library and Archives Canada (no 1892-72) [PC, Enfranchisement Indians, British Columbia]; Canada, Privy Council, North West Assembly Resolution, charter for railway Wolsely [Wolesley] to Qu'Appelle–Lt Gov [Lieutenant Governor] 1892/01/28 [recommends transmits] (Order-in-Council, 5 February 1895), Ottawa, Library and Archives Canada (no 1892-263).
52. Reverend James Settee was an active Anglican missionary and member of the St. Peter's (Peegeasis) band in Manitoba. See Lewis G Thomas, “Settee, James” in *Dictionary of Canadian Biography*, vol 13 (2003), online: >www.biographi.ca/en/bio/settee_james_13E.html< [perma.cc/S7QR-TMUL]. His initial application was denied by the Department since the enfranchisement provisions had not yet been extended to bands in the province. Department officials lamented this oversight that prohibited his application “although he is a Minister of the Gospel and is considered to be in every way qualified to be enfranchised and to hold land in fee simple.” See Canada, Privy Council, *Indians of Manitoba–SGIA [Superintendent General of Indian Affairs] 1895/01/23 [recommends] application enfranchisement clauses Indian Act* (Order-in-Council, 1895), Ottawa, Library and Archives Canada (no 1895-263). Settee successfully applied again soon after the individual enfranchisement provisions were extended to bands in Manitoba. See Canada, Order-in-Council, *Permission Revd. Jas [James] Settee, enfranchised Indian to alienate certain land, St. Peters Reserve, Manitoba–SGIA [Superintendent General of Indian Affairs] 1896/05/02 [recommends]* (Order-in-Council, 12 June 1896), Ottawa, Library and Archives Canada (no 1896-1939). There are also records of several other failed or incomplete enfranchisement applications from western bands. Reverend RB Steinhauer, a Methodist minister, applied to enfranchise in 1895 and was ultimately successful in the new century. See Letter from Steinhauer to Superintendent-General (25 March 1895) in *Enfranchisement of Indians and Reserve Subdivision (Indian Commissioner For Manitoba And Northwest Territories)*, Ottawa, Library and Archives Canada (RG10, vol 3596, file 1336, part A); see also Donald B Smith, *Mississauga Portraits: Ojibwe Voices from Nineteenth-Century Canada* (University of Toronto Press, 2013) at 269. In 1891 two individuals from the Nisga'a (“Kincolith”) and Tsimshian (“Tsimpsean”) nations applied to be enfranchised. See PC, *Enfranchisement Indians, British Columbia*, *supra* note 51. Two years later six individuals from the same nations applied for enfranchisement: Canada, *Annual Report of the Department of Indian Affairs, 1893* (SE Dawson, 1894) at 128 [*DIAAR 1893*]. None of these applicants appeared to have completed the process.

TABLE 1: ENFRANCHISEMENTS BY “BAND” UNDER THE *INDIAN ACT* FROM 1857 TO 1900

Indian Band	Province	Successful Applicants	Failed Applicants
Wyandots of Anderdon	ON	36*	0
Moravians of Thames	ON	3	1
Chippewas and Pottawattamies of Rama	ON	0	1
Chippewas and Pottawattamies of Sarnia	ON	8	0
Chippewa of West Bay	ON	0	6
Mississaugas of Alnwick	ON	8	1
Mississaugas of New Credit	ON	0	1
Six Nations of Grand River	ON	1	6
Mohawks of the Bay of Quinté	ON	0	1
St. Peter's	MA	1	0
Kincolith and Tsimpsean	BC	0	8
Total		57*	25

NOTE: This table uses the contemporary band names used by the Department of Indian Affairs and statistics compiled from the specific sources cited in Parts II-IV. Note that the “Failed Applicants” numbers only includes those applications recorded in the archives. However, there appear to have been many more inquiries and possibly formal applications not recorded in these sources.

* In addition to an unknown number of wives and children.

The enfranchisement process was an almost total failure for the Canadian government in the nineteenth century (see Table 1). In Ontario, only eleven individuals (twenty including their family members), plus most members of the tiny Wyandot band, were enfranchised.⁵³ There was one other man enfranchised

53. The total number of enfranchisements in the nineteenth century looks especially small when compared to the great acceleration in successful enfranchisement applications that peaked in the 1960s: 2,400 (1918–39); 4,005 (1948–58); 7,725 (1955–65); 5,425 (1965–75). These admittedly imperfect figures are derived from various primary and secondary sources: Robin Jarvis Brownlie, “A Better Citizen than Lots of White Men’: First Nations Enfranchisement—An Ontario Case Study, 1918–1940” (2006) 87 *Can Hist Rev* 29 at 34, 51; Indian Affairs Branch, Department of Citizenship and Immigration, *A Review of Activities, 1948–1958* (The Queen’s Printer and Controller of Stationary) at 35–36, online: <www.publications.gc.ca/collections/collection_2017/aanc-inac/R5-330-1959-eng.pdf> [perma.cc/T9TL-YJM4]; Kathleen Jamieson, *Indian Women and the Law in Canada: Citizens Minus* (Supply and Services Canada, 1978) at 63–65; Canada, *Annual Report of the Department of Indian Affairs, 1920* (Thomas Mulvey, 1921) at 13 [*DIAAR 1920*]. Most of

in Manitoba, and none in any other province. In Parts II to IV, below, we will see how this striking failure of the enfranchisement process was due to the overwhelming success of the Anishinaabe, Haudenosaunee, and other nations in asserting and enforcing their national autonomy by resisting enfranchisement attempts by their own citizens and the Canadian government. By recovering the handful of successful enfranchisement applications, as well as Dr. Oronhyatekha's special case, we can better appreciate the divergent national strategies used by these nations to pursue their internally-contested and externally-threatened visions of collective futures within and against the Canadian state. However, their very success provoked harsh new forms of enfranchisement and related legal tools to assimilate Indian subjects and terminate their persistent forms of sovereign rule in the twentieth century.

II. WENDAT AND LANAPE SURVIVAL

The Anishinaabe and Haudenosaunee were the two largest peoples in Ontario, representing two-thirds and a quarter of the total status Indian population in 1880, respectively.⁵⁴ Yet, in the nineteenth century, nearly all the successful enfranchisement applicants came from a single tiny reserve—the lone Wyandot band of about ninety people. This Part juxtaposes their story with that of a similar band, the Moravians of the Thames, to recover two divergent strategies for survival by refugee fragments in the aftermath of their larger nations' breakup in the wars ignited by European invasion. For the Wyandots, the majority chose the ultimate solution of collective assimilation—and so terminated their status as an autonomous nation of a dozen or so families. In contrast, the Moravians, a larger nation of a few dozen families, persisted despite acceding to the wishes of a few individuals to enfranchise. However, they did so only after imposing conditions beyond the *Indian Act* process to protect their collective future.

The Wyandots (Wyandottes) of Anderdon band were refugees from a larger nation, the Wendat (Huron) Confederacy, that had been broken and scattered in earlier wars. According to Chief Joseph White, the Wendat refugees had sought sanctuary with missionaries in Quebec and Kansas and had later moved

the individuals were enfranchised involuntarily as the wives or children of an enfranchised applicant. For example, 5,449 of the 7,725 cases from 1955 to 1965 were involuntary enfranchisements. The practice of involuntary enfranchisement was suspended in 1975.

54. Derived from census figures in *DIAAR 1880*, *supra* note 41.

to the Anderdon reserve near Windsor.⁵⁵ While the Wyandot were once under Jesuit protection, most had converted to Methodism in the early nineteenth century. The reasons for their collective enfranchisement seemed related to their unique place in colonial Ontario. Unlike the much larger Anishinaabe and Haudenosaunee bands, the Wyandots had no larger nation to help sustain their isolated community. Leading Wyandot families were also deeply integrated into the neighbouring settler society. For instance, Solomon White, the son of Chief Joseph, was fluent in English and French. He was called to the bar in 1865 and after his enfranchisement was elected to the Ontario provincial legislature as a long-serving Conservative member (1878–1886 and 1890–1894).⁵⁶

In 1876, the Wyandot band council held a meeting on their reserve to vote on whether or not to allow its members to be enfranchised under the section 93 process of the *Indian Act*. The men at the council voted to permit collective enfranchisement for all those that applied. There is no detailed record of the vote, which makes it difficult to gauge the degree of consent or dissent within the community (at least among the eligible male voters). However, the band's decision to enfranchise seemed foretold a few years earlier when Chief White had sold the band's last wampum belts to Horatio Hale, the pioneering anthropologist.⁵⁷ The wampum belts were the material symbols of the Wyandot's treaty relationship with the Crown, and their sale signalled a wilful decision (at least by Chief White) to end this inter-national relationship—a prelude to enfranchisement.

After the three-year probation period, thirty-six applicants were granted allotments of reserve land in fee simple by letters patent.⁵⁸ The records do not show how many women and children were also *ipso facto* enfranchised with their

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55. See Charles Garrad, *Petun to Wyandot: The Ontario Petun from the Sixteenth Century*, ed by Jean-Luc Pilon & William Fox (Canadian Museum of History and University of Ottawa Press, 2014) at 118–19; Bruce G Trigger, “The Original Iroquoians: Huron, Petun, and Neutral” in Edward S Rogers & Donald B Smith, eds, *Aboriginal Ontario: Historical Perspectives on The First Nations*, (Dundurn Press, 1994) 41 at 59–61.
56. *The Canadian Parliamentary Companion 1885*, ed by JA Gemmill (J Durie, 1885).
57. On Hale's academic interpretation of these wampum belts, see Horatio Hale, “Four Huron Wampum Records: A Study of Aboriginal American History and Mnemonic Symbols” (1897) 26 *J Anthropological Inst Great Britain & Ireland* 231. See Part IV below for the fate of these belts.
58. Canada, Privy Council, *Wyandotte Indians—[Superintendent General of Indian Affairs], 1881/05/17, [recommends] enfranchisement of the—and that they be granted letters patents for lands held by them* (Order-in-Council, 3 June 1881) Ottawa, Library and Archives Canada (no 1881-0792); *DIAR 1882*, *supra* note 41. For more detail on the Wyandot band enfranchisement, see *Anderdon Reserve—Request by Members of the Band for Gradual Enfranchisement* (1873), Ottawa, Library and Archives Canada (RG 10, vol 1911, file 2473).

husbands or fathers. Ebenezer Watson, the government agent, commended the successful applicants as “the farthest advanced”⁵⁹ individuals who would “shortly take their places among their white neighbors [*sic*] as citizens of the Dominion.”⁶⁰ Each enfranchised man and woman eventually received his or her share in the band monies, as well as a fixed sum in lieu of future annuity payments. Solomon White became a relatively wealthy landowner with 217 acres (which included his wife’s allotment).⁶¹ Of the ninety-eight individuals living on the reserve at its peak, there were only ten “stragglers” left by 1893.⁶² By choosing to enfranchise as a group, the majority of Wyandots thus “cease[d] to be Indians in every respect within the meaning of the law” and seemed to disappear into the settler society leaving only the faintest archival trail.⁶³

The other three enfranchised men all came from the Moravians of the Thames band. This Munsee community was a fragment of the larger Delaware or Lunaapeew (Lenape) nation that had arrived as refugees from the Gnadenhutzen massacre by American militias in Pennsylvania during the Revolutionary War.⁶⁴ Their band name derived from the Moravian missionaries who helped them resettle in Upper Canada where they were granted land on the banks of the Thames

59. *DIAAR 1880*, *supra* note 38 at 14.

60. Canada, Annual Report of the Department of the Department of Indian Affairs, 1881 (Maclean, Roger & Co, 1882) at 7 [*DIAAR 1881*].

61. Peter E Paul Dembski, “White, Solomon” in Dictionary of Canadian Biography, vol 14 (2003), online: <www.biographi.ca/en/bio/white_solomon_14E.html> [perma.cc/GG3P-RXX4].

62. Canada, *Annual Report of the Department of Indian Affairs, 1894* (SE Dawson, 1895) at 174. The Wyandot band completed its enfranchisement in 1910. “The wisdom of their enfranchisement has thus been proved,” the Department concluded, “and the well-established policy of the department to keep the reserves intact until members of the hands are individually capable of managing their own affairs has been amply justified.” Canada, *Annual Report of the Department of Indian Affairs, 1914*, Sessional Papers, No 27 (J de L Taché, 1914) at xxvi. *Geo.* 5, no. 15, xxvi.

63. *DIAAR 1880*, *supra* note 38 at 4; *DIAAR 1882*, *supra* note 41. One Wyandot woman, Harriet Lafort, enfranchised later as individual applicant. See Canada, Privy Council, *Patent to Enfranchised Indian, Harriet Lafort of Anderdon, Ontario SGLA [Superintendent General of Indian Affairs]—1892/08/10 [recommends] issue of* (Order-in-Council, 16 August 1892) Ottawa, Library and Archives Canada (no 1892-2272); Canada, Privy Council, *Petition of Harriet Laforet a member of the Wyandot Band of Indians of Anderdon for removal of restrictive clause [respecting] alienation from patent of land to her—Amherstburg 1900/05/15 Joshua Adams Indian Land Agent [transmits]* (Order-in-Council, 12 June 1900) Ottawa, Library and Archives Canada (no 1900-1328) (granting her band land by letters patent).

64. John P Bowes, “The Gnadenhutzen Effect: Moravian Converts and the Search for Safety in the Canadian Borderlands” (2008) 34 *Mich Hist Rev* 101; see generally Robert S Grumet, *The Munsee Indians: A History* (University of Oklahoma Press, 2009).

river. During the War of 1812, Moravian men fought in Tecumseh's Confederacy alongside the British during the Battle of the Thames (also known as the Battle of Moraviantown, since the Americans would burn down their town).⁶⁵ By the 1870s, the now 300-strong Munsee band had rebuilt their village, and many had converted to Methodism like the Wyandots.

The first Moravian applicant, John Henry Norton, was described by his band's agent as "an Indian fully qualified by intelligence and character to become a proprietor of land in fee simple."⁶⁶ Norton had purchased eighty-five acres of land bordering the reserve the month before and desired an adjacent fifty acres of reserve land in fee simple. In 1877 the Moravian band council unanimously approved his application for enfranchisement. Crucially, Norton first took an unprecedented "public pledge" at the meeting in which he renounced his statutory rights under the *Indian Act* to either an ongoing interest in band monies or a one-time payment of his share of the principal.⁶⁷ In effect, he agreed to unilaterally sever his ties to his nation without demanding his legal right to his share of the band's collective wealth. Neither his "(white) wife" nor his children appeared to have had a statutory claim in any band monies since they were not band members.⁶⁸ All this must have made the decision easier for the band council since it would not reduce their limited capital. Five years later, Norton was finally enfranchised with his fifty-acre allotment in fee simple, but without his share in his band's funds.⁶⁹

The other two enfranchised Moravian men followed Norton's precedent. Gottlieb Tobias was enfranchised in 1888 after a three-year probation in which he showed "industry and exemplary good conduct."⁷⁰ His initial certificate of

65. John Sugden, *Tecumseh's Last Stand* (University of Oklahoma Press, 1985) at 182-83.

66. Letter from Mackenzie to Interior Minister (9 February 1878) in *Moravian Reserve Consent by the Council to the Enfranchisement of John Henry Norton and Allotment of 50 Acres of Lot 1, Con 15 Orford Township*, Ottawa, Library and Archives Canada (RG 10, vol 2048, file 9313, item 3).

67. *Ibid.*

68. *Ibid.*

69. Canada, Privy Council, *Indian lands patent to JH Norton, a Moravian of the Thames-SGLA [Superintendent General of Indian Affairs]* (Order-in-Council, 22 February 1883), Ottawa, Library and Archives Canada (no 1883-400).

70. Canada, Privy Council, *Patent of lot 7 in Moravian reserve be granted to Gottlieb Tobias under probationary ticket for enfranchisement—SGLA* (Order-in-Council, 29 March 1888), Ottawa, Library and Archives Canada (no 1888-614) [*Gottlieb Tobias*]; Canada, Privy Council, *Share of capital at credit of Moravians of the Thames granted Gottlieb [sic] [Gottlieb] Tobias and wife, SGLA [Superintendent General of Indian Affairs] 1897/02/03 [recommends]* (Order-in-Council, 12 February 1897), Ottawa, Library and Archives Canada (no 1897-303).

character testified that he led “a sober, honest and industrious life, that he paid all his debts, and owes no one anything, that he cleared and fenced his land, and has now 33 acres under cultivation and in a very complete condition, the same being well fenced, that the land is skilfully tilled by him, and that he raises excellent crops.”⁷¹ The third successful Moravian applicant, David Clingersmith, was enfranchised in 1892 after taking over his deceased father’s successful application.⁷² His father, George, had had his enfranchisement application approved by a large majority of the Moravian men at a general council meeting held at the local school house in a motion seconded by Gottlieb Tobias.⁷³ Again his request had been approved only after he had renounced his claim to a share in the principal of the band funds. As the band agent, John Beattie, observed, George was “in every way qualified to become enfranchised he has made splendid improvements on his lot has a good house and good barns and always pays his debts which in an Indian is the best recommendation he could have.”⁷⁴ He added that George was “one half white and his wife a white woman.”⁷⁵ David was not married, nor did he have any children at the time of his enfranchisement, and thus was likewise not a threat to his band’s limited capital.

The Wyandot and Moravian bands were exceptions—isolated survivors from larger unions broken up by earlier wars. While the Wyandot band choose national termination, the limits of the colonial archive leave its reasons for doing so unclear. We know only two facts. First, the influential White family seemed to have decided to terminate the Wyandot band’s existence as a nation several years before the official vote on collective enfranchisement. The Whites also became relatively rich landowners after enfranchisement. Second, the enfranchisement was not compulsory, but limited to those who desired it. The reference to “stragglers” also suggests that some in the community did not support the band’s termination, but they could not sustain a community by themselves (see Part V, below). The Moravian band did allow three members to enfranchise. But they only did so after insisting on a condition that the applicants renounce

71. Gottlieb Tobias, *supra* note 70.

72. Canada, Privy Council, *Moravian Indian Reserve, Grant land in fee simple to KD Clingersmith, SGIA [Superintendent General of Indian Affairs]—1892/09/16 [recommends]* (Order-in-Council, 24 September 1892) Ottawa, Library and Archives Canada (no 1892-2512).

73. Letter from Beattie to Superintendent-General (15 February 1883), Ottawa, Library and Archives Canada (RG 10, vol 2206, file 41534, items 2-3).

74. *Ibid.*

75. Letter from Beattie to Superintendent-General (10 March 1883), Ottawa, Library and Archives Canada (RG 10, vol 2206, file 41534, item 6).

their statutory rights under the *Indian Act* to their share of band monies. Even while accepting the loss of three citizens, the Moravians managed to protect the precarious financial basis of their national autonomy

III. ANISHINAABE EXCEPTIONS

The Anishinaabe nations were situated rather differently than their tiny Wyandot and Moravian neighbours. By the mid-1800s, the Mississauga were confined to small reserves in the thickly-settled south, while the Odawa and Ojibwe were concentrated on three big reserves on the islands and shores of Lakes Huron and Superior. Despite these serious spatial constraints, the Anishinaabe bands had maintained, and indeed intensified, their inter-national relations—especially through the Grand General Indian Council from the late 1860s onwards. Remarkably, only two of the twenty or so Anishinaabe bands allowed any of their members to enfranchise during the nineteenth century. Most councils refused requests to enfranchise—at least under the *Indian Act* conditions—and instead often asserted their own Anishinaabe citizenship laws. The twelve individual exceptions to this rule are all exceptional in the same way. Recovering their stories illuminates the striking success of the Anishinaabe band councils in asserting their national laws, even if they had been fractured and confined to discrete reserves spread across the vast territory of Ontario.

It is difficult to fully appreciate how successfully Anishinaabe bands resisted the enfranchisement of their members since only a few written records of informal inquiries or formal applications for enfranchisement survive in the colonial archive. However, these records help illuminate the wider reasons and practices of refusal by such bands in the nineteenth century.⁷⁶ Jason Phipps, a visiting superintendent in northern Ontario, recorded two such cases in the early 1880s. An Ojibwe man from the Beausoleil band on Georgian Bay asked his band council to support his application for enfranchisement in 1883. But the band council refused to allot him a portion of the reserve land on the grounds that when the applicant “becomes enfranchised he will become a white man and

76. See e.g. Canada, Department of the Interior, *RAMA Reserve*—Request for enfranchisement by John McCosh and that Lot 24 Con. 2 RAMA may be settled on him in fee simple (1875), Ottawa, Library and Archives Canada (RG 10, vol 1965, file 5063) [Josh McCosh]; Canada, Department of the Interior, *RAMA Agency*—Petition from Reverend John Jacobs of the Chippewa of RAMA to be enfranchised (1888), Ottawa, Library and Archives Canada (RG 10, vol 2401, file 83401, item 5) [John Jacobs].

we dont [*sic*] want any white man living on the Reserve.”⁷⁷ Phipps described their decision as “jealousy at the advancement of one Indian” over the rest of the band.⁷⁸ The next year, six members of the West Bay reserve on Manitoulin Island inquired into the enfranchisement process under the *Indian Act*. When Macdonald, then also the Superintendent-General of Indian Affairs, questioned the “expediency” of enfranchising these men, Phipps reassured him that the applicants were “intelligent men,” sober and some English-speakers, who were “gradually advancing in civilization” such that “their present day condition of pupilage [*sic*] must one day come to an end.”⁷⁹ But the chief and council were opposed on the grounds that the applicants risked, in Phipps words, “becoming white men” and would drain the band’s scarce reserve land and collective wealth.⁸⁰

Recent studies have recovered a second, complementary explanation of Anishinaabe bands’ refusal to enfranchise their members: The continued application of their citizenship laws against the membership rules of the *Indian Act*. In his study of Anishinaabe citizenship orders, Damien Lee shows how E.B. Borron, an Ontario civil servant, aimed to reduce the provincial government’s financial liabilities by targeting these laws.⁸¹ In an 1894 report, he noted that adoption had “long been and still continues to be a general custom among the Indians.”⁸² He argued that the provincial government should stop allowing Anishinaabe bands to determine their members and instead impose the more restrictive patriarchal definitions in the federal *Indian Act*.⁸³ Doing so would drastically reduce the status Indian population, and thus the province’s financial liabilities. These traces of Anishinaabe citizenship in the colonial archives suggest that Mississauga, Ojibwe, and other bands not only practiced their citizenship laws, but did so effectively enough for the Canadian federal and provincial governments to respond aggressively to suppress these laws. The dozen cases of enfranchisement that follow are thus an exception to this dominant story of

77. Letter from Phipps to Department of Indian Affairs (14 December 1883), Ottawa, Library and Archives Canada (RG 10, vol 6809, file 470-2-3, pt 1).

78. *Ibid.*

79. Letter from Macdonald to Vankoughnet (29 February 1884), Ottawa, Library and Archives Canada (RG 10, vol 2248, file 48307); Phipps to Macdonald (15 April 1884), Ottawa, Library and Archives Canada (RG 10, vol 2248, file 48307, items 8-9).

80. Letter from Phipps to Superintendent-General (10 January 1884), Ottawa, Library and Archives Canada (RG 10, vol 2248, file 48307, item 2).

81. See Lee, *supra* note 3 at 251-62. See also James Morrison, *The Robinson Treaties of 1850: A Case Study* (Royal Commission on Aboriginal Peoples, Treaty and Land Research Section, 1996) at 171-82.

82. Lee, *supra* note 3 at 260.

83. *Ibid* at 256.

Anishinaabe refusal of the *Indian Act* enfranchisement process and membership rules, and their persistent assertion of national citizenship laws.

The Anishinaabe exceptions were all from three families in just two of the twenty or so Anishinaabe bands in Ontario. The Chippewas of Sarnia and the Mississaugas of Alnwick bands were exceptional in two important senses. The first exception was religious. All applicants were Methodist ministers (or their husbands or fathers were) and their two reserves were epicentres of missionary activity in Ontario. The Methodists were exceptional even among Christian missionaries in the nineteenth century British Empire.⁸⁴ Kahkewaquonaby (Peter Jones), the famous Mississauga-Ojibway missionary, boasted that “the Wesleyan Missionaries, aided by native teachers, have never yet failed to introduce Christianity among a body of Indians.”⁸⁵ In Upper Canada, and later Ontario, Methodist missionaries were well-funded, well-organized, and well-motivated to “transform the country into God’s kingdom on earth” and “mould Canadians into a holy people.”⁸⁶ Their evangelical mission to bring the word of God to “heathens” was always complemented by their practice of educating their charges in the practical arts seen as the necessary material condition for effective conversion. To take one prominent example, Reverend William Case, who served as the Superintendent of the Episcopal Methodist Indian Missions and Schools in Upper Canada, insisted that “the Indian character...has been but little understood.”⁸⁷ “Let these people possess the advantages of Christian example and instruction”, he continued, “and they are as capable of instruction and good impressions as any nation.”⁸⁸ Case put his convictions into practice by founding his own utopian communities, first on an island in the Bay of Quinte and then at Alderville (later known as the Mississaugas of Alnwick band). Case founded a boarding school at Alderville in 1848 that aimed to separate and educate

84. On the Methodists in the context of the Victorian empire more broadly, see Andrew Porter, “Religion, Missionary Enthusiasm, and Empire” in Andrew Porter, ed, *Oxford History of the British Empire: The Nineteenth Century*, vol 3 (Oxford University Press, 1999), 222.

85. Peter Jones, *History of the Ojebway Indians: With Especial Reference to Their Conversion to Christianity; with a Brief Memoir of the Writer by Jones, Peter, 1802-1856* (Houlston & Wright, 1861) at 238. See also Donald B Smith, “Jones, Peter (Kahkewaquonaby)” in *Dictionary of Canadian Biography*, vol 8 (2003), online: <www.biographi.ca/en/bio/jones_peter_8E.html> [perma.cc/TNX9-NK22].

86. Neil Semple, *The Lord’s Dominion: The History of Canadian Methodism* (McGill-Queen’s University Press, 1996) at 276.

87. GS French, “Case, William” in *Dictionary of Canadian Biography*, vol 8 (2003), online: <www.biographi.ca/en/bio/case_william_8E.html> [perma.cc/6A59-UZMR].

88. *Ibid.*

children to transform them, as he put it, into “emphatically new creatures.”⁸⁹ Case also preached and taught with prominent Anishinaabe missionaries, including Kahkewaquonaby and Pahtahsega (Peter Jacobs), in reserves across Ontario. Case and his collaborators believed that their missionary work would within a generation bring about a New Jerusalem in the wild woods and lakes of British North America.

All successful enfranchisement applicants in the nineteenth century were Methodists. Yet the Methodist faith was not sufficient to explain why those men and women chose to enfranchise, nor why their band councils agreed. Most leading Anishinaabe men in southern reserves advocated some choice to enfranchise—or at least end their “disabilities” under the *Indian Act*. But they always insisted on retaining a real connection to their nation and its governance, and almost all of them refused to enfranchise under the *Indian Act* process. The most prominent case was Doctor Peter Edmund Jones, the son of Kahkewaquonaby. He was a Methodist minister and served as the elected chief of the Mississaugas of New Credit band. He was also the first status Indian man appointed as a Department agent for his band, the first status Indian man to graduate university (in medicine), and a leading political actor in the Grand Council.⁹⁰ Yet Kahkequonaby refused to apply to enfranchise since the process, according to Shields, “threatened his desire to raise his children as Ojibwa.”⁹¹ If a Methodist faith seemed a prerequisite for enfranchisement, something more seemed necessary to compel a man or woman to sever their belonging to their nation.

The second exceptional feature of the two bands was their leading roles in the Grand General Indian Council of Ontario (“Grand Council”). The Grand Council began at the invitation of the Confederacy Council of the Six Nations for other Haudenosaunee, Anishinaabe, and smaller nations to join them in building a single body of delegates to debate and advocate for their collective interests as “Indians” after the *Gradual Enfranchisement Act* of 1869.⁹² Over

89. Helen May, Baljit Kaur & Larry Prochner, *Empire, Education, and Indigenous Childhoods: Nineteenth-Century Missionary Infant Schools in Three British Colonies* (Ashgate, 2014) at 178.

90. Donald B Smith, “Jones, Peter Edmund (Kahkewaquonaby)” in *Dictionary of Canadian Biography*, vol 13 (2003), online: <www.biographi.ca/en/bio/jones_peter_edmund_13E.html> [perma.cc/E6FY-D6BX].

91. Norman D Shields, *Anishinabek Political Alliance in the Post-Confederation Period: The Grand General Indian Council of Ontario, 1870–1936* (MA Thesis, Queen’s University, Department of History, 2001) at 53.

92. On the history of the Grand General Council, see Norman D Shields, “The Grand General Indian Council of Ontario and Indian Status Legislation” in Karl S Hele, ed, *Lines Drawn Upon the Water: First Nations and the Great Lakes Borders and Borderlands* (Wilfred Laurier University Press, 2008), 205; Shields, *supra* note 91.

the coming decades, the Haudenosaunee delegates consistently rejected the enfranchisement process. In contrast, William Wawanosh Wells (Chippewas of Sarnia band), Henry P. Chase, and Allan Salt (both Mississaugas of Alnwick band) were all leading advocates of some form of enfranchisement for “civilized” men and women. But at the Grand Council of 1874, each insisted on some national control over the process and made corresponding recommendations to the Department of Indian Affairs.⁹³ Wawanosh Wells, the first vice-president, argued that “competent” Indigenous men be placed “on a level” with white men through the enfranchisement process.⁹⁴ But he added a crucial condition that the band council, and not the Department, should evaluate an applicant’s readiness for enfranchisement using the criteria of “a fair education and general knowledge, industriousness, and bearing a good moral character.”⁹⁵ A successful applicant would receive their share of band monies and reserve land in unalienable life estate, but lose their right to the national “privileges,” namely a voice in the band council and annuity payments.⁹⁶ Allan Salt also supported enfranchisement, since to reject it would let the Canadian government see them as “children.”⁹⁷ He also used the story of Saint Paul to liken the “privileges” of British citizenship for Indigenous men to that of Roman citizenship for Jewish people.⁹⁸ Chase, who had been elected president, took up this line to argue that enfranchisement would lead to new privileges like property rights and government charity for rich and poor men, respectively.⁹⁹ The Grand Council rejected Salt’s proposal on enfranchisement in favour of an alternative that would grant an enfranchised applicant their land in fee simple, but allow them to continue as a member of their band, including key rights to participate in the council as well as receive annuity and interest payments.

Despite all the heated enfranchisement talk in the Grand Councils, only seven Anishinaabe men and women from just two bands successfully applied for enfranchisement in the nineteenth century. The Chippewas of the Sarnia applicants were all from one family. William Wawanosh Wells was appointed the band’s government interpreter in 1870 and elected its chief from 1874 to

93. *The Grand General Council of the Chippewas, Munsees, Six Nations, Etc., Held on the Sarnia Reserve, June 25th to July 3rd, 1874* (Sarnia, 1874), Ottawa, Library and Archives Canada (RG 10, vol 1942, file 4103, items 24-26).

94. *Ibid* at 9.

95. *Ibid* at 9.

96. *Ibid* at 22.

97. *Ibid* at 18.

98. *Ibid* at 19.

99. *Ibid* at 19-20.

1877.¹⁰⁰ His American wife, Mary Helen Waldron, was the daughter of another Methodist missionary, Solomon Waldron. Waldron had worked with William as well as Henry P. Chase on missions to several Ontario reserves.¹⁰¹ All three of William's children successfully applied for enfranchisement: Edward Wawanosh Wells, with his wife and two children, in 1891; Reverend Charles P. Wawanosh Wells, with his wife and child, in 1893; and Augusta Wawanosh Wells in 1898.¹⁰² William continued his leading role in band and Anishinaabe politics with his re-election as band chief and then first vice-president of the Grand Council of 1900. He later chose to enfranchise with his wife in the early 1900s.¹⁰³

The four other successful Anishinaabe applicants came from two families of the Mississaugas of Alnwick.¹⁰⁴ Allan and Wellington Salt (seemingly biological or adopted brothers) were enfranchised with their wives and children in 1889 and

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100. Wawanosh later added "Wells" to his surname in honour of a Methodist missionary. See *Wawanosh, Sands, Mern Family Fonds*, London, Western Archives (AFC 405) at 3, online (pdf): <www.lib.uwo.ca/files/archives/archives_finding_aids/AFC%20405%20-%20Wawanosh%20Sands%20Mern.pdf> [perma.cc/3J52-SNGQ].
101. See generally *A Sketch of the Life Travels and Labours of Solomon Waldron a Wesleyan Methodist Preacher* (1849), Toronto, United Church of Canada Archives (1986.180C/TR).
102. Canada, Privy Council, *Indian enfranchisement—SGIA 1891/07/03 [recommends] granting to Edward W Wells, a Chippewa Indian, Sarnia, certain location ticket* (Order-in-Council, 17 August 1891), Ottawa, Library and Archives Canada (no 1891-1544); Canada, Privy Council, *Payment to Edward W. Wells an enfranchised Indian Chippewas of Sarnia of his share of capital—SGIA* (Order-in-Council, 28 September 1895); Canada, Privy Council, *Payment to the Revd. C.P. Wawanosh Wells, B.A. an enfranchised Indian, his own, his wife's and child's shares of capital at credit of Chippewas of Sarnia, \$1341—SGIA* (Order-in-Council, 15 January 1902), Ottawa, Library and Archives Canada (no 1902-0061); *Miss Henrietta Augusta Wells to be paid her share of capital at credit of the Sarnia Band of Indians \$426.24—SGIA* (Order-in-Council, 8 April 1901), Ottawa, Library and Archives Canada (no 1901-0613); Letter from Peadley to Newcombe (28 December 1909), Ottawa, Library and Archives Canada (RG 10, vol 6809, file 470-2-3, part 5).
103. While there is no order-in-council confirming his enfranchisement, two restricted records suggest William and his wife were enfranchised. See *Sarnia Agency—Enfranchisement—Wawanosh, William and Wells, Amelia Wawanosh [includes location ticket]* (1891–1920), Ottawa, Library and Archives Canada (RG 216-249-5-E, vol 7236, file 8029-4); *Claims of heirs of William Wawanosh Wells enfranchised Indian* (21-25 February 1908), Ottawa, Library and Archives Canada (RG 188-39-8-E, vol 2340, file 1908-313).
104. In 1876 Mitchell Chubb had applied and been approved for enfranchisement. See Superintendent-General to Minister of the Interior (5 April 1878), Ottawa, Library and Archives Canada (RG 10, vol 2055, file 9502). The Superintendent-General remarked "that [Mitchell] was entitled, by his intelligence and good conduct, to enjoy the Franchise, but when he found he would likely have to give up part of the land he is occupying he seemed inclined to draw back" (*ibid*). Chubb subsequently withdrew his application and was elected as chief three years later.

1892, respectively.¹⁰⁵ Allan Salt (1818-1911) was born to an Ojibway mother and white father, but was later adopted and raised by Reverend William Case.¹⁰⁶ Allan Salt and his “brother,” Wellington, appeared to be both prototype and promise of Case’s dream of creating “emphatically new creatures” through the application of education and religion. In a sense, their enfranchisement was the apotheosis of an evangelical faith in the conversion to a Christian life. The other two enfranchised Mississaugas were the Chase sisters, Mary Margaret Ann (“Minnie Armour”) and Elma Eliza. Their mother was Annie Armour, a Scottish settler, and their father was Reverend Henry P. Chase (Pahtahquahong). Chase was a long-serving Methodist (and later Anglican) missionary and, as we have seen, a prominent figure in the Grand Council who was elected its president at least four times.¹⁰⁷ Minnie and Elma were also the first women to apply for enfranchisement on their own behalf in the nineteenth century. In his recommendation for their enfranchisement in 1897, the Department agent described Minnie and Eliza with the identical phrase: A “young lady of education, refinement, of the very best character, and to

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105. Canada, Privy Council, *[Payment] to Revd Allan Salt and family and Wellington Salt and family shares of capital accrued since their enfranchisement SGIA* (Order-in-Council, 17 December 1904), Ottawa, Library and Archives Canada (no 1904-2156); Canada, Privy Council, *Enfranchisement of Wellington Salt, an Indian of the Alnwick Reserve, SGIA* (Order-in-Council, 7 December 1892), Ottawa, Library and Archives Canada (no 1892-3099). Allan and Wellington Salt’s enfranchisement files are currently restricted. See *Alnwick Agency—Enfranchisement—Salt, Allan* (1887-1959) Ottawa, Library and Archives Canada (RG 216-249-5-E, vol 7195, files 8002-13); *Alnwick Agency—Enfranchisement—Salt, Wellington* (1887–1906) Ottawa, Library and Archives Canada (RG 216-249-5-E, vol 7195, 8002-16); *Alnwick Agency—Enfranchisement—Salt, Reverend Allan* (1889-1902) Ottawa, Library and Archives Canada (RG 216-249-5-E, vol 7196, file 8002-19).
106. Allen Salt’s biography is well-known in part because he wrote his own. See “Biography” in *Allen Salt Fonds*, Toronto, United Church of Canada Archives (F3483); *Allen Salt Fonds* (1854-1912), Ottawa, Library and Archives Canada (R4261-0-5-E, vol 1). There are few biographical facts about Wellington Salt, though he did once describe his race as “Canadian” or “English [and] Indian.” See DIAAR 1885, *supra* note 43 at 15, 111; *DIAAR 1887, supra* note 50 at 14, 210; Alnwick Agency - Request, From Allan and Wellington Salt, For Permission to Reside in the United States (1893), Ottawa, Library and Archives Canada (RG 10, vol 2676, files 135, 883). See also Cathleen D Cahill, *Federal Fathers & Mothers: A Social History of the United States Indian Service, 1869–1933* (University of North Carolina Press, 2011) at 155-56, 301.
107. Donald B Smith, “Chase, Henry Pahtahquahong” in *Dictionary of Canadian Biography*, vol 12 (2003), online: <www.biographi.ca/en/bio/chase_henry_pahtahquahong_12E.html> [perma.cc/4BZB-EX9U].

have proved herself well worthy of being enfranchised.”¹⁰⁸ Yet neither their father nor their two brothers appear to have applied for enfranchisement.

Almost all Anishinaabe nations refused to enfranchise their members and continued to assert their citizenship laws where possible. The relative silence of the colonial archive on enfranchisement applications attests to their success in the nineteenth century. Even the Grand Council leaders from the southern Ontario reserves refused to enfranchise under an *Indian Act* process that did not permit their demand to maintain a real connection to their nations. The exceptions to this rule were all agents of assimilation themselves: Prominent evangelical ministers and their families. The Wawanosh-Wellses, the Salts, and the Chases had all pursued an evangelical dream of the civilizing process as a road to a New Jerusalem, where all nations of the earth would live as one. Only after this utopia failed to materialize did these men and their families chose to pursue a more pragmatic paradise promised in the *Indian Act* process of enfranchisement as assimilation. This path was uniquely available to them on the two reserves founded as utopian projects. Yet these exceptions proved the rule of enfranchisement in nineteenth century that Anishinaabe in general insisted on their national autonomy and succeeded in defending it from the existential threat of enfranchisement.

IV. HAUDENOSAUNEE REFUSAL

The Haudenosaunee (or Iroquois) people constituted the Six Nations confederation of Mohawk, Cayuga, Onondaga, Oneida, Seneca, and Tuscarora. They resettled on their old hunting grounds in British North America as early immigrants or later refugees after the American Revolutionary War. In the story of enfranchisement, the key reserve is the largest: The Six Nations at Grand River, then and now the most populous reserve in Canada.¹⁰⁹ The Six Nations

108. Canada, Privy Council, *Enfranchisement of Miss Mary M. Ann Chase, Minnie Armour Chase—SGIA* (Order-in-Council, 15 December 1897), Ottawa, Library and Archives Canada (no 1897-3334); Canada, Privy Council, *Enfranchisement of Elma Eliza Chase—SGIA* (Order-in-Council, 15 December 1897), Ottawa, Library and Archives Canada (no 1897-3335).

109. See generally Sally M Weaver, “The Iroquois: The Consolidation of the Grand River Reserve in the Mid-Nineteenth Century, 1847–1875” in Edward S Rogers & Donald M Smith, eds, *Aboriginal Ontario: Historical Perspectives on The First Nations* (Dundurn Press, 1994) at 182 [Weaver, “Consolidation of the Grand River Reserve”]; Sally M Weaver, “The Iroquois: The Grand River Reserve in the Late Nineteenth and Early Twentieth Centuries, 1875–1945” in Edward S Rogers & Donald M Smith, eds, *Aboriginal Ontario: Historical Perspectives on The First Nations* (Dundurn Press, 1994) at 213 [Weaver, “Grand River Reserve”].

settled along the Grand River as British allies and refugees from their homelands in upstate New York after the American War of Independence. The British had granted them a large tract (ceded earlier by treaty with the Mississauga) by a proclamation of Frederick Haldimand, then Governor of the Province of Quebec.¹¹⁰ Thayendanegea (Joseph Brant), the Mohawk statesman and war leader, again led Six Nations soldiers against American invaders in the War of 1812. Yet this military alliance degraded over the coming decades as the Mohawk and other Haudenosaunee villages were pushed by settler mobs and pulled by government agents onto a smaller reserve enclosing just five per cent of the land that Governor Haldimand had granted them in 1784.¹¹¹ Thus the introduction of the enfranchisement process in the *Gradual Civilization Act* of 1857 coincided with the violent concentration of the Six Nations on a greatly reduced reserve.

Against this devastating history, the Six Nations Confederacy Council refused any and all applications for enfranchisement in the nineteenth century. The single exception, for Elias Hill, was made under duress after three decades of resistance. Even then, the Council refused to grant a reserve allotment and would only concede a cash payment in lieu of land. In retelling this history, I will foreground one individual: Dr. Oronhyatekha (Peter Martin). He was a prominent Mohawk figure, though a controversial and complicated one. Like the other individuals discussed in this article, Oronhyatekha applied for enfranchisement. Unlike them, we have detailed written records (and one oral record) of his actions and words. Oronhyatekha's biographers frame his story as that of a man living in "two worlds."¹¹² His settler contemporaries lauded him as the ideal of enfranchisement: An archetypical English gentleman temperate in habits, enterprising in commerce, and sentimental in outlook.¹¹³ However, I want to stress his insistence on the right of Mohawks and others to determine their own future—especially the right to imagine how they would constitute themselves in an ideal world. Oronhyatekha's strange case would test the

110. See Charles Murray Johnston, *The Valley of the Six Nations: A Collection of Documents on the Indian Lands of the Grand River* (Champlain Society, 1964) at 67-69.

111. See generally Weaver, *supra* note 109.

112. Michelle A Hamilton & Keith Jamieson, *Dr. Oronhyatekha: Security, Justice, and Equality* (Dundurn Press, 2016) at 44, 54.

113. *Ibid.* See also Gayle M Comeau-Vasilopoulos, "Oronhyatekha" in *Dictionary of Canadian Biography*, vol 13 (2003), online: <www.biographi.ca/en/bio/oronhyatekha_13E.html> [perma.cc/7WG5-XEW9]; Keith Jamieson, "Oronhyatekha," *Rotunda* (Fall 2002) 32. While this article relies on this important recent biography, it also includes new archival sources not cited by Hamilton and Jamieson.

possibilities and limitations of Haudenosaunee visions of an alternative future within a constitutional order committed to their extinction as a nation.

A. CONSTITUTIONAL CRISIS IN THE CONFEDERACY COUNCIL

After their forced removal to a concentrated reserve along Grand River, the Six Nations continued to govern themselves through the Confederacy Council according to the Great Law of Peace and related laws (see Part IV(B), below). The Council was composed of fifty or so royaner (hereditary chiefs), plus an equal number of deputy chiefs, appointed by the yakoyaner (clan mothers).¹¹⁴ There were also a handful of “pine-tree” chiefs appointed in recognition of their exceptional qualities. The “condolence ceremony” provided for the orderly succession of royaner who passed away or were otherwise removed from the Council. The royaner of the five constituent nations were seated according to a tricameral division. The senior Mohawk and Seneca royaner sat across from the junior Cayuga and Oneida royaner, with the Onondaga royaner between them. Debate passed from the senior side to the junior until a consensus was reached, and then the Onondaga decided whether to accept the decision by considering the interests of the Confederacy as a whole. It was this classical Council constitution that became the focus of Six Nations’ constitutional politics in the later nineteenth century.

In the 1850s, two catastrophes set off a constitutional crisis in the Confederacy Council.¹¹⁵ The first, as we have seen, was the forced removal to a much smaller reserve. The move exacerbated social and economic tensions by putting once-dispersed villages in much closer proximity with far fewer natural resources. The second catastrophe was the bankruptcy of the Grand River Navigation Company. The Six Nations had been its unwilling and unwitting major stockholders after the Department of Indian Affairs invested their band funds in the business. The collapse of the Company devastated the Six Nations’ finances and raised new challenges to its competency to deal with a department that showed little respect for its autonomy.¹¹⁶ Outside the Confederacy Council, a faction of English-educated, non-chiefly, and mainly Mohawk young men challenged its legitimacy by evoking both long-standing Haudenosaunee ideals of good government and the contemporary British colonial language of responsible, elected government. Inside the Council, the royaner of the constituent nations

114. In this article, I use the Mohawk language name for these titles.

115. See generally Susan M Hill, *The Clay We Are Made Of: Haudenosaunee Land Tenure of the Grand River* (University of Manitoba Press, 2017); Weaver, *supra* note 109.

116. Hill, *supra* note 117.

looked inwards at their constitutional order. The Onondaga royaner often defended the Council's consensual ideal, while some Mohawk royaner argued for reforms modelled on the more efficient neighbouring municipal councils.

The *Gradual Civilization Act* of 1857 intensified the constitutional crisis at Grand River. Three Mohawk men soon after applied to enfranchise under the new provisions, which threatened the Six Nations' political integrity and legal jurisdiction regarding membership.¹¹⁷ The commissioners appointed to evaluate the applicants were David Thorburn, the Department's visiting superintendent; a local businessman named Morgan; and Reverend Adam Nelles, a New England Company missionary. The commissioners rejected the first two applicants, Walter and James Kerr, brothers and successful businessmen, as "unfit" due to their debts and residence off the reserve.¹¹⁸ But the third applicant was different. Elias Hill was a 21-year-old shoemaker and a graduate of the Mohawk Institute, which was run by Nelles and the New England Company. He passed the civilization test, which the commissioners invented on the spot by asking him to recite the catechism and name the continents of the world.¹¹⁹ Hill's enfranchisement could not be completed without a grant of his share of thirty or so acres of reserve land in life estate. But the Confederacy Council unanimously asserted its autonomy over membership by refusing to approve a grant of the necessary allotment of reserve land.¹²⁰

In 1860, the Confederacy Council seized upon the Prince of Wales' tour of the Dominion to heal internal dissent and quiet its external critics. The Council hoped to harness the popular sentiment of imperial loyalty to reassert its autonomy and legitimacy as a loyal ally and formal equal to the British Crown.¹²¹ In this interpretation, their treaty alliance, symbolized by the covenant

117. Weaver, "Consolidation of the Grand River Reserve," *supra* note 109 at 199-200.

118. *Ibid.*

119. *Ibid.*

120. Letter from Johnson et al to Thorburn (23 July 1861) in *Six Nations Reserve—Petition of Elias Hill For an Allotment of Land and Balance of Principal Money With Interest Since 1859 and Compensation for the Loss of the Use of His Land Since Enfranchisement*, Ottawa, Library and Archives Canada (RG 10, vol 1930, file 3349, item 41-42) [Letter from Johnson et al to Thorburn].

121. Hamilton & Jamieson, *supra* note 112 at 72-73.

chain, was a long-standing and sacred bond of autonomous interdependence.¹²² While each nation travelled in its own distinct and different vessel, their parallel paths were bound together. The Council insisted that it was the ancient seat of Haudenosaunee sovereignty, and thus a peer of the British Crown. Any internal or external calls to reform or abolish the Council threatened to break the covenant chain and rupture the sacred alliance with the Crown. The immediate question for the Council was how to press this revived idea of the covenant chain upon the Prince of Wales to resist the Canadian government increasing intrusions into its jurisdiction.

The choice of representative to press the Six Nations' claim on the Prince of Wales was complicated by the constitutional crisis that threatened the unity and indeed the very existence of the Confederacy Council. The two leading candidates—John Smoke Johnson and Isaac Powless—represented starkly different visions for the future of the Six Nations Council and constitution. Johnson, a Mohawk pine-tree chief, pressed for the Council to reassert and reform itself as a distinct Haudenosaunee parliament in order to preserve its autonomy against Canadian jurisdictional encroachments. In contrast, Isaac Powless, a young, non-chiefly Mohawk man educated at the Mohawk Institute, pushed to reform the Council by adopting “efficient” majoritarian processes adapted from neighbouring municipalities, as well as including more English-educated men like himself. The Council's choice was complicated by inter-family politics. In 1859, Helen “Nellie” Martin Johnson, the powerful Mohawk yakoyaner, appointed her son George as royaner instead of his rival, Powless.¹²³ Her choice was controversial, since George was the interpreter for the government (and thus distrusted by some), and his father, John Smoke Johnson, already sat on the Council (some argued that there was a constitutional norm that father and son would not both sit as chiefs). In the context of this controversy and the larger

122. On the complicated Haudenosaunee treaty discourse of the “wampum belt” and older “covenant chain” in the nineteenth century, *cf* Hill, *supra* note 115; Mark Walters, “Rights and Remedies within Common Law and Indigenous Legal Traditions: Can the Covenant Chain Be Judicially Enforced Today?” in John Borrows and Michael Coyle, eds, *The Right(s) Relationship: Reimagining the Implementation of Historical Treaties*, (University of Toronto Press, 2017), 187; Kathryn V Muller, “Holding Hands With Wampum: Haudenosaunee Council Fires from the Great Law of Peace to Contemporary Relationships with the Canadian State” (PhD Dissertation, Queen's University, 2008) [unpublished], online (pdf): <www.collectionscanada.gc.ca/obj/thesescanada/vol2/002/NR46200.PDF> [perma.cc/EY9Q-V59U].

123. Hamilton & Jamieson, *supra* note 112 at 71.

crisis, the Confederacy Council instead chose a compromise candidate to make a conciliatory speech.

Oronhyatekha was an inspired choice and would represent the Six Nations in splendid style. He was only nineteen years old, the son of a well-connected but non-chiefly Mohawk family, baptised as Peter Martin, and educated by the Anglican church.¹²⁴ Oronhyatekha had already made a name for himself as an eloquent English speaker with a commanding presence at six foot, three inches. As the Council's representative, his natural presence was further enhanced by a special suit of buckskin embroidered by his sisters and topped off with a headdress of white feathers in the style of the Plains nations (since he believed that this was what his settler audience would expect). Oronhyatekha stood among the guests of honour as the Prince of Wales alighted from the train to great twenty thousand cheering well-wishers at Brantford. The royal party proceeded under several ceremonial arches, including one by the Six Nations consisting of a painted chief and six warriors poised with bow and arrow. Oronhyatekha's speech stressed the special relationship between the Haudenosaunee and the Crown:¹²⁵

Although we have been separated from our Sovereign by the "Great Water," yet have we ever kept the chain of friendship bright, and it gives us joy to meet with the Heir Apparent to the Throne, that we may renew and strengthen that chain, which has existed between the Crown of England and the Six Nations for more than two hundred years.

The Prince also signed a bible gifted to the Six Nations by Queen Anne three centuries earlier. For the Confederacy Council, Oronhyatekha's speech and the bible signing reaffirmed the covenant chain, and thus revitalized the sacred and binding relationship between the British and Six Nations as autonomous nations.

Neither the Royal visit nor Oronhyatekha's performance could quell the constitutional crisis. In 1862, Isaac Powless and 166 other men signed a petition calling for the dissolution of the Council and its replacement with a municipal-style elected government.¹²⁶ The Department rejected their petition on the grounds that no law allowed the dissolution of band councils. Even if there had been such a law, its officials privately concluded that the Six Nations

124. Oronhyatekha ("Burning Sky" in the Mohawk dialect) was born in 1841. Through his mother, he was related to Odeserundiye (Captain John Deseronto), the famous war leader and founder of the Mohawk community at Tyendinaga, while his father was a veteran of the War of 1812 and related to several important Mohawk *royaner* and *yakoyaner*. See generally *ibid* at ch 1.

125. *Ibid* at 79-80. In the end Oronhyatekha did not have a chance to read his speech, so he handed a copy written in the Mohawk language to Prince Edward.

126. Weaver, "Consolidation of the Grand River Reserve," *supra* note 109 at 201-202.

were not yet sufficiently civilized for an elected council. Oronhyatekha was embroiled in the failed coup against the Council. He was in a difficult position, as Helen Johnson was his paternal aunt and Powless was his childhood friend. Despite his familial loyalties, he was rumoured to have signed the controversial petition. Oronhyatekha had also crossed the Confederacy Council by acting for Elias Hill, who had granted him power of attorney to act on his behalf to overcome the Council's refusal to grant land to complete the enfranchisement process. In 1861, the Council declined to grant the land in part because they claimed that Hill and Oronhyatekha were planning to sell it to a neighbouring settler.¹²⁷ Whatever the truth of this claim, Oronhyatekha soon left the reserve first to study at the University of Oxford and then to complete a medical degree at the University of Toronto.¹²⁸

The Confederacy Council managed to quieten its opposition over the next decade. But two years after Canadian confederation, the new colonial Parliament enacted the *Gradual Enfranchisement Act*, which deepened the attack on the Six Nations as an autonomous nation. This time the Council responded in part by forming a broader inter-national alliance with their Anishinaabe and smaller neighbour nations against the Canadian government. It hosted the first Grand General Indian Council at the Six Nations reserve in 1870. The Six Nations hosts welcomed their guests with a lengthy “condolence ceremony,” which established the grounds for an expanded political community. Next, the delegates debated whether or not to endorse each section of the Act.¹²⁹ They agreed on all provisions except for the enfranchisement process. The Six Nations hosts rejected the process outright, while most Anishinaabe delegates did not object to the principle of individuals enfranchising if they wished.¹³⁰

127. This was a strange claim since the Council knew that enfranchised land could not be sold because it was granted as an unalienable form of life estate. See Letter from Clough to Meredith (15 May 1874) in *Six Nations Reserve – Petition of Elias Hill For an Allotment of Land and Balance of Principal Money With Interest Since 1859 and Compensation for the Loss of the Use of His Land Since Enfranchisement*, Ottawa, Library and Archives Canada (RG 10, vol 1930, file 3349, item 56); Letter from Johnson et al to Thorburn, *supra* note 120.

128. Oronhyatekha became the second status Indian man to earn a medical degree—one year after Kahkeqaquonnaby. His remarkable professional achievements were interrupted by his marriage, as well as active service with the Canadian militia in the Fenian War.

129. *The General Council of the Six Nations and Delegates from Different Bands in Western and Eastern Canada, June 10, 1870* (Spectator Office Press, 1870) at 17-19.

130. Shields, *supra* note 91 at 36-37.

At the second Grand Council two years later, the delegates elected Oronhyatekha as chairman.¹³¹ He wrote to the Superintendent-General to press the Council's resolution to amend sections 1 and 2 of the *Gradual Enfranchisement Act*. The new system of location tickets, he wrote, was still burdened with unacceptable conditions on the alienation, inheritance, and mortgaging of real property. Instead, most Grand Council delegates wanted to possess their reserve land by registered titles "approaching as near as the circumstances will permit the deal now in vogue among the whites."¹³² Oronhyatekha added that this would achieve the Canadian government's ultimate aim of enfranchisement since it would "educate the Indian to the [way] of doing business among the whites and thus prepare him for times when he will hold his real estate as other Citizens of the State."¹³³ However, this letter was silent on the question of enfranchisement and the Six Nations delegates had not deviated from their absolute refusal of the process.

A few months after the Grand Council, Oronhyatekha wrote to the Superintendent-General to himself apply for enfranchisement under the *Gradual Enfranchisement Act*. However, his application was conditional. The law required an applicant's band council to grant him a life estate out of the Six Nations' reserve land. Instead, Oronhyatekha made an unprecedented alternative proposal for a "just and equitable" cash payment of four hundred dollars.¹³⁴ He had calculated this figure as the equivalent of the value of his legal right to fifty or so acres of reserve land. In addition, he insisted that this money be held in trust for the benefit of the Six Nations. Oronhyatekha only requested that all future annuities be paid in a lump sum to him, his wife, and his children. He intended to invest these in a mill on the Tyendingaga reserve to encourage Mohawk farmers to grow cash crops. It remains unclear why Oronhyatekha asked to be enfranchised, why he

131. At least it appears that Oronhyatekha was elected chairman. The records of the 1872 Grand Council are lost and there is only indirect evidence of Oronhyatekha's election in a letter to the Canadian government in which he claims to speak on the Council's behalf as its chairman.

132. Letter from Oronhyatekha to Minister of the Interior (6 June 1872) in *Tyendingaga Reserve—Doctor Oronhyatekha Chairman of the Grand Indian Council Requesting Amendments to Act 32-33*, Ottawa, Library and Archives Canada (RG 10, vol 1934, file 3541).

133. *Ibid.*

134. Letter from Oronhyatekha to Howe (16 October 1872) in *Six Nations Reserve—Request from Dr Oronhyatekha to Enfranchise and to Get the Equivalent in Land for the Money Received*, Ottawa, Library and Archives Canada (RG 10, vol 1875, file 849, item 6) *et seq.*

did not follow through on his application, and whether the Council refused it.¹³⁵ But his refusal to accept his share of reserve land or its cash equivalent reflected his continued commitment to protect the autonomy of the Six Nations—even if he chose to leave it. In that same year, Elias Hill made a similar proposal to that of Oronhyatekha (who still acted for him under power of attorney). The Council again declined and re-stated its aim “to induce him to return to the Six Nations.”¹³⁶ Two years later, however, the Department of Indian Affairs finally coerced the Council into agreeing to enfranchise Hill by paying him a lump sum in lieu of his share of reserve land.¹³⁷

At the next Grand Council in 1874, the Six Nations delegates again nominated Oronhyatekha for the office of president. He lost in the final round of voting to Henry P. Chase. The Six Nations delegates soon withdrew altogether, ostensibly in protest against the difficulties of translation since most delegates spoke in their mother tongues (though some seemed to resent the slight of an Anishinaabe president).¹³⁸ It appears that Oronhyatekha joined them since his name did not appear on the printed records after that point. Later that year, Oronhyatekha helped prepare the Confederacy Council’s letter to the Superintendent-General that rejected the Grand Council’s resolutions on enfranchisement (and seemingly renounced his own earlier attempt to enfranchise). In the letter, the Council repeated the Six Nations’ continued rejection of the entire process on the grounds that “we do not desire to lose the services of our educated young men

135. No archival record of the Superintendent-General’s decision survives. But Oronhyatekha was not enfranchised since there was no order-in-council affirming the grant of reserve land (or cash in lieu of this land) necessary to complete the process. In 1891, Lawrence Vankoughnet, the Deputy Superintendent General of Indian Affairs, claimed (incorrectly) that Oronhyatekha was “ipso facto” enfranchised as a “professional man.” See Letter from Vankoughnet to Dewdney (26 September 1891) in *Tyendinaga Reserve—Transfer of Oronhyatekha (Peter Martin) From Six Nations to Tyendinaga*, Ottawa, Library and Archives Canada (RG 10, vol 1956, file 4618, item 109).

136. Paraphrased in Letter from Gilkinson to Superintendent-General (20 July 1876) in *Six Nations Reserve—Petition of Elias Hill for an Allotment of Land and Balance of Principal Money With Interest Since 1859 and Compensation for the Loss of the Use of His Land Since Enfranchisement*, Ottawa, Library and Archives Canada (RG 10, vol 1930, file 3349, item 5).

137. Memorandum re Ellias Hill by Vankoughnet (22 August 1976) in *Six Nations Reserve—Petition of Elias Hill for an Allotment of Land and Balance of Principal Money with Interest Since 1859 and Compensation for the Loss of the Use of his Land since Enfranchisement*, Ottawa, Library and Archives Canada (RG 10, vol 1930, file 3349, item 4).

138. Shields, *supra* note 91 at 41–43.

by enfranchisement, but we wish them to remain with our people and giver [*sic*] them the benefit of their services.”¹³⁹

The Six Nations delegates returned to the Grand General Indian Council in 1876. It appears that Oronhyatekha was elected president, since later that year he again wrote to the Department of Indian Affairs in that capacity to state the Council’s four resolutions against certain sections of the *Gradual Enfranchisement Act*. He first objected to sections that permitted “depraved and abandoned white women” to marry a status Indian man and so gain that status, while the converse for a “respectable” status Indian woman did not hold.¹⁴⁰ This was a deeply personal question for Oronhyatekha since his own sister, Hoiweatsiyonk (Margaret “Maggies” Martin Flanders), had been struck off the Six Nations band roll, apparently for marrying a white man while touring the United States as “Princess Viroqua,” a healer and singer. She insisted that Six Nations’ membership was a “birth right” that she could not be deprived of by the Department.¹⁴¹ But the Department’s visiting superintendent replied that she needed to reside on the reserve to retain her membership—even though this condition had not been imposed on her brother.¹⁴² For Oronhyatekha, here was an egregious case of a “respectable” Mohawk woman denied her membership in the Six Nations against her will (and, as we shall see below, contrary to the Great Law of Peace).

Oronhyatekha raised three more Grand Council resolutions against the enfranchisement provisions of the *Gradual Enfranchisement Act*. He asked for band councils, rather than Department agents, to have the authority to decide on their membership—though subject to the approval of the Superintendent-General. Oronhyatekha also requested an exception for the forced enfranchisement

139. Letter from Smith and Hill to Laird (25 January 1875) in *Six Nations Reserve—Protest by the Chiefs, Against Action Taken by the Grand Indian Council in Sarina*, Ottawa, Library and Archives Canada (RG 10, vol 1949, file 4324, item 2).

140. Letter from Oronhyatekha to Super-Intendent-General (15 March 1876) in *Indian Act—Amendments*, Ottawa, Library and Archives Canada (RG 10, vol 6809, file 470-2-3). Unfortunately, this article cannot provide a history of the forced enfranchisement of status Indian women but see *Report of the Royal Commission on Aboriginal Peoples: Looking Forward, Looking Back*, vol 1 (Canada Communication Group, 1991).

141. Letter from Hoiweatsiyonk to Howe (11 March 1873) in *Six Nations Reserve—Mrs. Hoiweatsiyonk (Maggie Flanders), Sister of Dr. Oronhyatekha Applying to Have Her Name Restored to the Paylist*, Ottawa, Library and Archives Canada (RG 10, vol 1888, file 1436, item 4).

142. Letter from Gilkinson to Superintendent-General (25 March 1873) in *Six Nations Reserve—Mrs. Hoiweatsiyonk (Maggie Flanders), Sister of Dr. Oronhyatekha Applying to Have Her Name Restored to the Paylist*, Ottawa, Library and Archives Canada (RG 10, vol 1888, file 1436, item 2).

of professional men residing in a foreign country in the performance of their work.¹⁴³ “In my own case,” he added, “I think I am doing as much to advance the general welfare of my people” by working and living off the reserve.¹⁴⁴ Finally, always sensitive to racial prejudice, Oronhyatekha asked to replace the term “heathen” with the awkward but non-discriminatory phrase: “[W]ho is destitute of the knowledge of God and of a fixed and clear belief in religion or in a future state of rewards and punishments.”¹⁴⁵ Oronhyatekha concluded by expressing his hope that a reformed enfranchisement process would place Mohawks and others on “an equal footing with others of Her Majesty’s loyal subjects.”¹⁴⁶

The Grand Council of 1876 near-unanimously approved the new *Indian Act*, but no Six Nations delegates attended—including Oronhyatekha.¹⁴⁷ Over the next few years, the Confederacy Council turned away from the Anishinaabe-dominated body and instead asserted its claim to national autonomy by passing over the Canadian government to appeal directly to the British imperial government. The Council wrote directly to the Governor-General, the Earl of Dufferin, to protest the enfranchisement provisions shortly before the passing of the *Indian Act*.¹⁴⁸ The royaner believed the process targeted them as a band having “made the greatest progress in civilization.”¹⁴⁹ They made three arguments against enfranchisement on the grounds of inadequate consultation, violation of treaty rights, and infringement of the Council’s constitutional jurisdiction. First, “the Six Nations have not been consulted with in a proper way” since the Canadian government had not asked for their view on the legislation.¹⁵⁰ Second, “the Enfranchisement of our people would be impracticable if the principles of justice and common ownership were acted upon.”¹⁵¹ It would violate the Haldimand Proclamation, which secured their corporate ownership of the Grand River tract. Third, the Canadian Parliament had no authority to pass legislation affecting the Six Nations “without the consent of our Chiefs.” To do so would be “a direct breach of faith and a violation of the principles embodied in the pledges

143. This request was granted. See *Indian Act*, *supra* note 5, s 3(3)(b).

144. Letter from Oronhyatekha to Superintendent-General, *supra* note 140.

145. This request was granted. See *Indian Act*, *supra* note 5, s 74.

146. Letter from Oronhyatekha to Superintendent-General, *supra* note 140.

147. See Shields, *supra* note 91 at 57-58.

148. [citation withheld.]

149. Letter from Smith et al to Dufferin (16 March 1876) in *Indian Act—Amendments*, Ottawa, Library and Archives Canada (RG 10, vol 6809, file 470-2-3).

150. *Ibid.*

151. *Ibid.*

given by Britain on the part of the Canadian government.”¹⁵² Several Onondaga royaner wrote Dufferin separately to ask for their rejection of the *Indian Act* “to be heard in Parliament through you.”¹⁵³ They reminded the Governor-General that “a treaty was made by the six nation Indians with the King George the III that *we shall never be controlled by the laws of the British Government.*”¹⁵⁴ Like the Council, they invoked past treaties with the British Crown—here referring to the Royal Proclamation of 1763 and, possibly, the Treaty of Niagara—which recognized and protected the Six Nations’ national autonomy.¹⁵⁵

Despite their important differences, Mohawk and Onondaga royaner insisted that the Six Nations were not subject to the legislative authority of the Canadian state. In 1882, they continued to put forward a common front at the last Grand Council attended by Six Nations delegates. They again rejected the enfranchisement provisions as threatening to “[break] up the reserve.”¹⁵⁶ But they soon faced another onslaught on their precarious autonomy when the Canadian government passed the *Indian Advancement Act* of 1884 and the *Electoral Franchise Act* of 1885, which aimed to dismember and ultimately assimilate all Indian bands (see Part I, above).¹⁵⁷ The Confederacy Council also had to deal with several new applications for enfranchisement. Yet the Canadian government was still reluctant to enfranchise certain applicants deemed unsuitable for the privilege of citizenship. In 1881, for example, the Department of Indian Affairs refused a request by Kezhegowinninne (David Sawyer) of the Mississaugas of New Credit band on the formal grounds that the Six Nations Confederacy Council would refuse to grant him the necessary allotment (since the Mississauga band lived on the Six Nations’ reserve land).¹⁵⁸ But internal Department communications also revealed a worry that Sawyer, a 70-year old local preacher

152. *Ibid.*

153. Letter from Onondaga Chiefs to Dufferin (1 April 1876) in *Indian Act—Amendments*, Ottawa, Library and Archives Canada (RG 10, vol 6809, file 470-2-3).

154. *Ibid* [emphasis in original].

155. On the historical relationship between these two legal texts, see John Borrows, “Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government” in Michael Asch, ed, *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference* (UBC Press, 1997) 155.

156. Quoted in Shields, *supra* note 91 at 65.

157. *Indian Advancement Act*, *supra* note 44; *Electoral Franchise Act*, *supra* note 45.

158. Letter from Minister of the Interior to Sawyer (30 April 1881) in *New Credit Reserve—Application by David Sawyer for Enfranchisement and Requesting a Patent for S ½ Lot 2, Con 1, Oneida Township*, Ottawa, Library and Archives Canada (RG 10, vol 2137, file 27608, items 11-14).

married to a white woman, would soon sell his fee simple allotment, and require governmental support.

The Confederacy Council also had to deal with four applications from their own citizens. Their stories shared a common thread with earlier unsuccessful applications. On the one hand, the Department was reluctant to enfranchise any applicant they did not deem civilized and economically self-supporting. For instance, the enfranchisement applications of Jacob Hill and Harry Martin were denied on the grounds that both were unsuitable candidates in a similar way to Sawyer.¹⁵⁹ On the other hand, those applicants the Department deemed suitably civilized were unwilling to enfranchise on the terms provided in the *Indian Act*. Clabren Russell applied to enfranchise with the support of Peter Cox, the Conservative Party candidate in the 1891 federal election, who wrote that Russell was a “good supporter” of the Conservatives and had assisted them in the election.¹⁶⁰ But Russell appears to have withdrawn his request when he realized that he would not receive a share of the band’s capital. Similarly, the Department rejected the application of Samuel P. Brant despite the precedent of Elias Hill.¹⁶¹ While officials noted approvingly that he was Anglican, temperate, and married to a white woman, Brant had insisted that his land grant be commuted to money.

The enfranchisement process failed its stated object to assimilate the Six Nations’ members into the settler polity over the nineteenth century. The Canadian government itself refused to enfranchise those it did not deem civilized, and thus suitable for assimilation into settler society. It also refused (with the exception of Elias Hill) to compromise its rigid criteria and formal requirements for enfranchisement. For the Confederacy Council, its refusal to allow its citizens to enfranchise came at a great cost. Earlier politics had been mediated by the Council’s federated constitutional structure built on its constituent nations, as well as the intimate network of relationships between chiefly families. But this

159. Letter from Hill to Vankoughnet (16 December 1891) in *Six Nations Reserve—Application for Enfranchisement by Jacob Hill*, Ottawa, Library and Archives Canada (RG 10, vol 2606, file 122180, item 3); Letter from Martin to Montague (18 April 1890) in *Grand River Superintendancy, Six Nations—Application of Harry Martin for Enfranchisement*, Ottawa, Library and Archives Canada (RG 10, vol 2511, file 105672, items 3–4).

160. Letter from Russell to Superintendent-General (1890) in *Six Nations Reserve—Application of Clabren Russell for Enfranchisement*, Ottawa, Library and Archives Canada (RG 10, vol 2561, 114425, items 2, 8).

161. Letter to Vankoughnet (4 April 1887) in *Tyendinaga Agency—Application from Samuel P. Brant of the Mohawks of Tyendinaga, to be Enfranchised*, Ottawa, Library and Archives Canada (RG 10, vol 2364, file 75649, items 2-3); *Tyendinaga Agency—Chit Recommending the Enfranchisement of Samuel P. Brant* (1893), Ottawa, Library and Archives Canada (RG 10, vol 2673, file 134873, item 2).

paradigm broke down under a series of internal and external threats—especially the politics of protest exacerbated by the promise of the enfranchisement process. For a time, the Confederacy Council managed to preserve the Six Nations’ autonomy by reforming itself as a municipal-style body increasingly concerned with policing its citizenship against the existential threat of the *Indian Act*. But the ironic legacy of reform was to undermine the Six Nations’ claim to be a nation distinct from, yet equal to, the Canadian colony.

B. ORONHYATEKHA’S PARADISE ON EARTH

The constitutional crisis of the Confederacy Council would provoke a flowering Haudenosaunee discourse on the nature and future of its constitution as a confederation within a larger imperial order. This discourse drew on, critiqued, contested, and reworked the *Kayaneren’kowa* (or Great Law of Peace), also known as the Iroquois Constitution. The Great Law was spoken, sung, danced, beaded, and only later written. It was composed of a foundational narrative, a set of positive rules and important ceremonies.¹⁶² The constitution told of how Deganawida, the Peace Maker, united five warring nations in a single confederacy under the Great Law. This was followed by the Peace Maker’s statement of the rules and ceremonies that would constitute the once disparate nations into the Haudenosaunee confederacy. My aim in this section is to sketch how Oronhyatekha developed his own unique vision of a Haudenosaunee paradise that had been denied by European invasion yet remained a future possibility. By situating his vision in the contemporary Haudenosaunee constitutional discourse, we can better understand the epistemic violence inflicted on the Six Nations by the Canadian government’s unilateral imposition of the *Indian Act*, including its enfranchisement process.

Oronhyatekha’s imagined future was especially remarkable in that it was no mere dream. He would actually build his singular vision out of brick and mortar on his own Haudenosaunee island paradise. But we must first acknowledge the limits of the intellectual history that follows, which is based in written sources in the Canadian and British colonial archive. Audra Simpson agrees that “recovering” this discourse is important, but reminds us that these Haudenosaunee men’s stories are still “part of an elite discourse, and as such are a dominant history within a history.”¹⁶³ Susan Hill likewise shows that this discourse often excluded the central constitutional role of women in the Great Law of Peace—especially

162. The other central traditions are the Creation Story, *Kayeri Niyorihwa:ke* (or Four Ceremonies) and *Karihwiyo* (or Good Message of Handsome Lake).

163. Simpson, *supra* note 3 at 83.

the role of Tsikonhsaseh, a woman who was the first to accept the Peace Maker's message.¹⁶⁴ A focus on written and usually English language sources exacerbates this problem, since the Victorian men who created the archive largely silenced or marginalized the central role of women to the Great Law and its lived practice in the Confederacy Council over the late nineteenth century.¹⁶⁵ By taking these limitations seriously, however, we can hope to understand something important of Oronhyatekha's story without presuming that by doing so we will completely understand him or the Six Nations.

Oronhyatekha developed his ideas within the contested discourse of Haudenosaunee constitutional thought in the late nineteenth century. Since this history has yet to be written, we can only sketch its outline here.¹⁶⁶ We have seen how Isaac Powless and John Smoke Johnson advocated competing views on the past, present, and future of the Confederacy Council. What we did not see was how each drew on an existing constitutional discourse dominated by the Great Law of Peace. The Powless petition focused on the statutory provisions in the *Gradual Enfranchisement Act* to impose municipal-style elected councils on bands. But it also evoked the rhetoric of good governance in the Great Law to critique the Council's handling of the botched investment of band monies. While the Confederacy Council was unanimously opposed to the Powless proposal, some were sympathetic to his calls for reform. While the upper Mohawk royaner aimed to reform the Council along the British parliamentary model, according to Sally M. Weaver, the lower Onondaga royaner hoped to reassert the constitutional imperative of consensus in all major decisions.¹⁶⁷ However, as Susan Hill reminds us, the reality was both more complicated and always rooted in the discourse of the Great Law of Peace.¹⁶⁸

Over the last three decades of the century, the Six Nations constitutional discourse centred on the Great Law would shift from its narrative emphases in oral retellings to its written form in English-language texts. John Smoke Johnson and John Buck, an Onondaga royaner, instigated the move to a written text as

164. Hill, *supra* note 115 at 59.

165. It also largely silences the voice of Haudenosaunee women, whose nineteenth century lives were mostly recently recovered. See *ibid.*

166. However, see Kayanesenh Paul Williams, *Karanerenkó:Wa: The Great Law of Peace* (University of Manitoba Press, 2018).

167. See Sally M Weaver, "Seth Newhouse and the Grand River Confederacy in the Mid-Nineteenth Century" in Michael K Foster, Jack Campisi, & Marianne Mithun, eds, *Extending the Rafters: Interdisciplinary Approaches to Iroquoian Studies* (State University of New York Press, 1984) 165 [Weaver, "Seth Newhouse"].

168. See *e.g.* Hill, *supra* note 115 at 273, 287.

part of a broader strategy to strengthen the Confederacy Council's legitimacy against its internal and external critics. By translating the Great Law into English, they hoped to provide a constitutional text familiar to their Canadian and British interlocutors. Johnson and Buck enlisted the help of the ethnologist Horatio Hale to translate and print their two different versions of the Great Law.¹⁶⁹ This act of translation and publication complemented the Confederacy Council's acts to reassert their autonomy as a formally equal nation by proving that it possessed a constitution as ancient and recognizable as the old British and new Canadian constitutions. However, the authority of this text was immediately challenged by an Onondaga-led petition that proposed to "draw up a plan or scheme of our ancient Rule [*i.e.* the Great Law] to be passed in the Dominion Parliament."¹⁷⁰

Opening up the Great Law to outsiders in a written form created a new problem: Which version of its text was the most authentic? This was not so much an ethnological puzzle as a political contest. Reducing the oral to the written allowed a single account to claim priority over all other versions. Whoever imposed their version as the most authentic could then claim to retain or reform the Confederacy Council in light of their "authentic" ideal. By the end of the century, two written texts emerged that offered competing versions of the Great Law. The first text was written by Dayodekane (Seth Newhouse), an Onondaga pine-tree chief.¹⁷¹ His final text preserved the hereditary features of the Confederacy Council, but privileged the Mohawk royaner, including a controversial claim that they could veto all decisions.¹⁷² He presented his final constitution to the Confederacy Council in 1899, but the Council instead chose

169. The Johnson and Buck Versions were both written texts recording the accounts of two much older informants in the Mohawk and Onondaga languages, respectively. Hale merged, translated and published them. See Horatio Hale, *The Iroquois Book of Rites* (DG Brinton, 1883) at 39-47.

170. Newhouse had signed a petition led by Onondaga royaner to have the Canadian government affirm the Six Nations' Great Law in legislation. The petitioners laid bare the Council's two factions as those in favour of "the Laws of the whites" (namely the *Gradual Enfranchisement Act*) and those in favour of "our ancient Rule and custom" (namely the Great Law of Peace). See *Six Nations Reserve—Memorandum From the Chiefs Concerning the Rules of Six Nations Indians and the Action of the Grand Indian Council at Sarnia* (18 January 1875), Ottawa, Library and Archives Canada (RG 10, vol 1949, file 4335).

171. Newhouse embodied the complications of Six Nations politics as his father was Mohawk and his mother Onondaga. See Weaver, "Seth Newhouse," *supra* note 167 at 165-82; Scott Trevithick, "Newhouse, Seth (Dayodekane)" in *Dictionary of Canadian Biography*, vol 15 (2003), online: <www.biographi.ca/en/bio/newhouse_seth_15E.html> [perma.cc/XJ9Z-ZKCY].

172. See *Cosmogony of De-Ka-na-wei-das' Government of the Iroquois Confederacy* (1885), Library and Archives Canada (MG19-F26, vol 1, file R7954-0-2-E).

to create a committee to draft their own version. The key drafter was John A. Gibson, a Seneca royaner holding the title Skanyadehehyoh (“Handsome Lake”) and an acknowledged expert in the Six Nations’ oral histories. The Council’s text stressed the consensual process of law-making, as well as more recent Christian elements.¹⁷³ Despite their differences, the competing written texts of the Great Law of Peace agreed on one essential law: Any “such persons who submit to laws of foreign nations shall forfeit all birthrights and claims on the Five Nations Confederacy” and be known, as “[t]hey have alienated themselves.”¹⁷⁴ This was the main constitutional ground for the Confederacy Council’s unanimous and consistent rejection of the enfranchisement process.

Oronhyatekha was an insider and outsider to this elite constitutional discourse centred on the Confederacy Council. While a major figure from prominent families, he was never appointed as a royaner or pine-tree chief. In fact, he never again lived on the Grand River reserve after he left following the Powless affair. However, from a young age, Oronhyatekha was thinking about the constitutional history of the Six Nations and its relationship with the British imperial government and its Canadian colony. In 1865, when only twenty-four years old, he gave a talk on the Mohawk language to the Canadian Institute in Toronto, one of the many Victorian societies created to apply new scientific knowledge to the study of human societies.¹⁷⁵ In one sense, his talk was typical of amateur social science of the time. Oronhyatekha applied the then popular method of comparative philology. It analyzed the different national dialects of the Haudenosaunee confederacy and concluded with some pleasant remarks on the meanings of the words “Niagara” and “Toronto.” But what really mattered in Oronhyatekha’s talk was his own concise constitutional history of the Confederacy of the Five Nations (the sixth nation, the Tuscarora, only joined in 1722).

Oronhyatekha’s account was remarkable in several ways. Earlier written histories of the Great Law of Peace—like *The Iroquois Book of Rites* by Buck, Johnson and Hale, and the more famous *The League of the Ho-De’-No-Sau-Nee*

173. It was reproduced in different versions by Duncan Campbell Scott. See Duncan Campbell Scott, “Traditional History of the Confederacy of the Six Nations” (1911) 5 Proc & Trans Royal Soc’y Can 195; Arthur C Parker, *The Constitution of the Five Nations* (University of the State of New York, 1916).

174. See section 58 of the “Constitution of the Five Nations,” which was compiled by Parker from the Newhouse text. See *ibid* at 45.

175. Oronhyatekha, “The Mohawk Language” (1865) 10 Can J Industry Sci & Art 182 [Oronhyatekha, 1865], reprinted in Oronhyatekha, “The Mohawk Language” (1876) 90 Can J 1.

or *Iroquois* by Lewis Morgan and Ely Parker¹⁷⁶—relied on a European interpreter to translate, transcribe, and so transform the story as told by Haudenosaunee informants. But Oronhyatekha gave his account directly to his audience in English without the distorting translation of an intermediary (other than himself). He also insisted on the scientific validity of his account according to the prevailing Victorian paradigm of social evolutionary thought.¹⁷⁷ His narrative began with the origins of the Mohawks as a “mystery” that only “Indian traditions” could solve—an implicit reference to the Haudenosaunee “Creation Story.”¹⁷⁸ To his empirically-minded audience, Oronhyatekha conceded that any scientific study should be skeptical of this oral evidence. Yet, he argued, “after making all allowances for the legendary character of Indian History,” these traditions could be used as evidence if corroborated by philology as “the science of language.”¹⁷⁹ Here Oronhyatekha insisted on the validity of Haudenosaunee constitutional thought—although only to the extent it conformed with the scientific criteria of philology used by early ethnologists like Morgan and Hale.

Having grounded his study in the social sciences, Oronhyatekha went on to argue that the Mohawk political institutions and practices first took on “a rational and reliable character” at the founding of the Confederacy.¹⁸⁰ He supported this claim with a philological analysis of the Mohawk and Tuscurora dialects. In his interpretation, the deft and durable act of Haudenosaunee political union was “a lasting evidence of their wisdom,” and showed that “they were entitled to the name of statesmen much more than many ‘pale-faces’ of the present day.”¹⁸¹ Here, Oronhyatekha deployed his favourite trick of reversing racial stereotypes for rhetorical effect. He also clothed his history with the language of chauvinistic nationalism familiar to his Canadian and British audience. He lauded the Confederacy as a military power that had “subdued nation after nation till their name was known and dreaded” across the continent, and then reminded his audience that the British owed their present-day colonies in large part to their

176. Lewis Henry Morgan, *The League of the Ho-De'-No-Sau-Nee or Iroquois* (Dodd, Mead, 1922).

177. On Victorian social evolutionary thought and its relation to imperial rule, cf Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism* (Princeton University Press, 2010); John W Burrow, *Evolution and Society: A Study in Victorian Social Theory* (Cambridge University Press, 1966).

178. As Susan Hill reminds us, the Creation Story exists “not only in the retelling of the story but also in elements such as beadwork designs and social dances and songs.” See Hill, *supra* note 115 at 16.

179. Oronhyatekha, 1865, *supra* note 175 at 183.

180. *Ibid.*

181. *Ibid* at 184.

military alliance with the Six Nations.¹⁸² Moreover, the Six Nations made the ultimate national sacrifice by leaving the graves of their forefathers after the American Revolutionary War for the “wilds” of Upper Canada “in order still to preserve their alliance with their great brother, the King.”¹⁸³ Here Oronhyatekha used the term “brother” rather than the more common “father.” His choice of words affirmed his main argument that the two polities were bound together by treaty as civilizational equals based on their ancient constitutions and military might.

Read in the context of the Confederacy Council’s constitutional crisis, Oronhyatekha’s analysis seemed to assert the “civilizational” or “racial”—in the language of the 1860s—equality, or even superiority, of the Six Nations’ constitution to that of the British imperial state. The Confederacy and the United Kingdom were alike and equal: Both political unions of constituent nations whose ancient and exceptional constitutions were the fundamental source of their military success against respective national rivals like the Wendat and the French. The Six Nations thus had authority to govern itself by its own constitutional institutions and practices, which had provided a durable system to manage internal dissent and subdue external threats. As formal equals and allies, the British had no right to interfere in the internal affairs of the Six Nations. In this talk, Oronhyatekha seemed to turn away from his earlier sympathies with Powless and the Mohawk reformers, and instead reasserted the claim for the Six Nations’ autonomy within a greater imperial system.

Over the next two decades, as we have seen, Oronhyatekha would take a leading role in the Grand General Indian Council. In his official office as president, he struggled to reconcile the need to present a united inter-national front against the Canadian government with the Six Nations’ total rejection of the enfranchisement provisions as an existential threat to the Confederacy. This was complicated by Oronhyatekha’s own application for enfranchisement in 1872. We find some sense of his motivation in the evidence he gave to an 1874 parliamentary select committee inquiring into the Six Nations. Here he criticized the enfranchisement process on the grounds that it would “effectually bar any Indian from seeking enfranchisement.”¹⁸⁴ He then continued sarcastically that enfranchisement was¹⁸⁵

182. *Ibid.*

183. *Ibid.* at 185.

184. *Report of the Committee on the Management of the Six Nations Indians* (1874), Ottawa, Library and Archives Canada (RG 10, vol 1935, file 3589, item 12).

185. *Ibid.*

an ingenious provision by which an Indian has the liberty accorded to him of surrendering all his rights and privileges [and those] of his wife and children, for the inestimable boon of *paying taxes*, and being sued for debts; and yet forsooth, statesmen and philanthropists will solemnly enquire why the Indians will not avail themselves of the Act, and so become enfranchised!

Oronhyatekha added that “a very large number” of Six Nations men would enfranchise if they could get their lands in fee simple and a just portion of their band’s capital invested for them. He concluded his testimony by insisting that, if given a fair opportunity, Mohawks and others would prove themselves “fully capable of assuming all the responsibilities of citizenship with advantage to the State, and with credit to themselves.”¹⁸⁶ But when Oronhyatekha applied to enfranchise two years later, he only did so on his own terms and (apparently) withdrew his application once the Department refused to accept them. Despite his evident desire to free himself from the legal “disabilities” of the *Indian Act*, Oronhyatekha’s conditional proposal for enfranchisement would renounce his statutory right to a share of the Six Nations reserve land and band capital and insisted that the Six Nations receive both for its collective use and benefit.

Throughout the 1880s, Oronhyatekha turned away from all politics. He no longer attended the Grand Council and had long since ceased to intervene in the affairs of the Six Nations at Grand River. He also refused repeated invitations to enter Canadian federal politics as a Conservative Party candidate.¹⁸⁷ Oronhyatekha instead pursued the moral mission and profitable business of the Independent Order of Foresters (“IOF”), a fraternal mutual insurance organization.¹⁸⁸ The Foresters admitted him in 1878, but only after he demanded and was granted an exception to its rule restricting membership to white men. Just a few years later he would be elected to its top office as the Supreme Chief

186. *Ibid.*

187. While insisting that the IOF head should be apolitical, he did agree to speak to several band councils to promote the *Electoral Act* of 1885. See Hamilton & Jamieson, *supra* note 112 at 309-10. The request may have been directly by his friend, John A. Macdonald. Oronhyatekha once wrote him that his young girl would have been named “John Alexander” had she been a boy. See Letter from Oronhyatekha to MacDonald (20 January 1875) in [*Correspondence*], Ottawa, Library and Archives Canada (Microfilm reel C-1711, vol 346, page 158737-38).

188. The IOF declared its aim as “to unite in one true brotherhood all good men, without regard to sectarian creeds, political dogma, or conditions of life ... to foster a spirit of co-operation in all departments of labour and commerce; assist the unfortunate and relieve the distressed.” Quoted in Hamilton and Jamieson, *supra* note 112 at 320-27, 407. Oronhyatekha also held leadership positions in the Orange Order and the International Organization of Good Templars.

Ranger. As the IOF grew and grew, Oronhyatekha would relocate its headquarters to a purpose-built Toronto skyscraper. By his middle age, Oronhyatekha would reign supreme over one of the largest fraternal insurance companies in Canada.

Now a rich man in the material world, Oronhyatekha turned to imagining and building his distinct vision of a paradise on earth. He would host his IOF fellows and other settler grandees on Foresters Island off the Tyendinaga reserve. After travelling many hours by train and carriage, visitors were admitted by ferry to his island paradise. They were immediately immersed in a Mohawk world that suspended the brutal realities of British domination for the length of their stay. Visitors were captive audiences to Mohawk actors, bands, and choirs from the reserve—including Oronhyatekha's own family and relations. The immersion was complete as he also commanded his family and indeed all Mohawks to only speak their own language on the island. Visitors wandered this Haudenosaunee world through a constellation of castles, in ascending order: The Pines, a grand house overlooking his 260 acre beef farm on the mainland; then the Wigwam, a Georgian-mansion; and ultimately Sherwood Forest Castle, a thirty-room monolith topped with a great golden dome.¹⁸⁹ But Oronhyatekha's most cherished construction was an orphanage purpose-built for the children of dead Foresters funded by IOF members—again built on the Tyendinaga reserve. While the forms of architecture and entertainment were familiar to Victorian visitors, Foresters Island was a self-contained Mohawk world—a material testament to Oronhyatekha's vision of a future denied to the Six Nations.

Oronhyatekha's most interesting expression of his paradisiacal vision was his museum of the Haudenosaunee past and future. The IOF opened the Oronhyatekha Historical Rooms and Library ("the Rooms") at their Toronto head office in 1902. The Rooms displayed Oronhyatekha's personal collection and resembled the Victorian museums that he had visited abroad—especially the Ashmolean and the British Museum. The Rooms housed the clichéd curios collected from the distant lands visited by Oronhyatekha in the course of his IOF work, including silk fans from Japan, statues of Hindu gods from India, and, of course, an Egyptian "mummy." His collection also included many artifacts of natural history, including a rare platypus specimen from Australia. But the Rooms focused the visitor's attention on the Indigenous artifacts accumulated through his personal networks in Ontario and beyond. Oronhyatekha hoped that the collection would "stimulate interest in the history of the countries and peoples concerned," especially his fellow Haudenosaunee, by ensuring "that the memory

189. Photographs of these castles and the Islands are reproduced in Hamilton & Jamieson. See *ibid* at 444-50.

of the brave deeds of bygone days may not wholly perish, but may serve as a fresh bond of union between the descendants of the old-time combatants.”¹⁹⁰ This seemed to allude to the Six Nations and the British and Canadian governments, as well as the Grand General Indian Council once led by the Haudenosaunee and their Anishinaabe neighbours.

Oronhyatekha’s biographers rightly note that the Rooms were a testament to his faith that the Haudenosaunee “had and would continue to have an equal place in a world of nations.”¹⁹¹ But we can push this insight further. The Rooms were markedly different from British museums in one crucial way. Under Oronhyatekha’s direction, the Indigenous collection was presented so as to invert and appropriate (though not deny) late Victorian ideas of social evolution. In British museums, artifacts like wampum belts were displayed as material reminders of the extinct (or soon to be) “primitive races.”¹⁹² Consider two examples. First, the Wyandot wampum belts that Chief Joseph White had sold to Horatio Hale ended up on display in the Pitt Rivers Museum in Oxford as an artifact of an (extinct) “primitive” society.¹⁹³ Second, Hayter Reed, the Deputy Superintendent-General of Indians Affairs, would dress up in Cree and Blackfoot ceremonial clothes from his personal collection for formal balls and staged photographs, while at work he prosecuted an aggressive new policy of assimilation that discouraged, if not forbade, wearing such clothing.¹⁹⁴ In this Victorian paradigm of representation, Indigenous artifacts were preserved as memento mori testifying to the natural and inevitable fate of “primitive races” in their losing struggle for survival against the white race.

But Oronhyatekha insisted that the Haudenosaunee and other nations had a different destiny to extinction. His collection set out to prove that conviction by displaying artifacts of alliance—like the pistol and musket of Thayendanagea (Joseph Brant)—as evidence of the status of the Six Nations and other nations as co-founders and constituent nations of British North America. Oronhyatekha

190. *Ibid* at 472.

191. *Ibid* at 486.

192. On Victorian discourses of racial extinction, see Patrick Brantlinger, *Dark Vanishings: Discourse on the Extinction of Primitive Races, 1800-1930* (Cornell University Press, 2003).

193. Hale sold the wampum belts to E. B. Tylor, the first Professor of Anthropology at the University of Oxford. In 1896, Tylor donated them to the Museum where they may be seen today. See Wampum Belt, “The Double Calument Treaty Belt” (1872), Pitt Rivers Museum Object Collections, (1896.7.7); Wampum Belt, “The Peace Path Belt” (1872), Pitt Rivers Museum Object Collections (1896.7.8); Wampum Belt, “The Jesuit Missionary Belt” (1872), Pitt Rivers Museum Object Collections (1896.7.9); Wampum Belt, “The Four Nations Alliance Belt” (1872), Pitt Rivers Museum Object Collections (1896.7.10).

194. See Titley, *supra* note 43 at 109-48.

pressed this claim by curating his material collection of medals and gifts awarded by British officials to Haudenosaunee and other chiefs in recognition of military feats as military allies and treaty promises as equal sovereigns. Oronhyatekha's ultimate expression of his alternate reality was to commission the first replica of the coronation chair used to crown British sovereigns up to King Edward VII. This act recalled his own personal relationship to King Edward, who he had first met as a young prince on the Brantford train station thirty years earlier. Indeed, Oronhyatekha had been invited to Edward's coronation in 1902 but was too unwell to travel. It also reaffirmed the Six Nations' special relationship with the Crown. Visitors would see the chair and the Room's artifacts as material testaments to the long-standing relationship of two equal sovereigns up to and including the present.

Oronhyatekha died on 3 March 1907. The story told so far of his constitutional thought has traced the evolving relationship between his vision of a Haudenosaunee paradise and his reaction to the *Indian Act* enfranchisement process. While he apparently valued the legal rights promised through the process, Oronhyatekha came to insist that it should not threaten the Six Nations as an autonomous equal to the British and Canadian governments. But this story is further complicated by a surviving oral history told by Kawanohnstohn (Alma Greene) in the 1970s.¹⁹⁵ She was a Mohawk yakoyaner and staunch supporter of the Confederacy Council. In response to the federal Liberal government's 1969 *White Paper*, she would say: "We will never become Canadian citizens."¹⁹⁶ Late in her life, Greene recalled a dream told to her by Oronhyatekha on one of his regular visits home to the Six Nations reserve at Grand River.¹⁹⁷ In his dream, Oronhyatekha stood by the river gazing upon six miles of wheat growing up either side. He felt happy knowing it would feed his community. But when he looked again, a great machine worked its way towards him, destroying the wheat and leaving the ground barren behind it. Oronhyatekha sank to his knees and covered his eyes. When he looked again, the machine was gone, and corn grew where the wheat stood. The corn called to him and opened a path for him to walk through. As it folded close behind him, the corn told of a terrible vision: a mother tried to keep her dying baby warm, a wolf howled, and a voice cried: "Another

195. I am indebted to Adele Perry for helping me appreciate the limits of the Canadian colonial archives and the possibilities of oral history.

196. Quoted in Andrea Lucille Catapano, "The Rising of the Ongwehòñwe: Sovereignty, Identity, and Representation on the Six Nations Reserve" (PhD Dissertation, Stony Brook University, 2007) [unpublished] at 394.

197. Alma Greene, *Tales of the Mohawks* (JM Dent & Sons, 1975) at 122-26.

Indian has died.” Oronhyatekha looked up to see his people forced off their land at gunpoint and their homes set alight. He covered his eyes again and when he opened them the river ran with blood and a weeping willow spread its branches to cover the horror. After retelling Oronhyatekha’s nightmare, Kawanoohnstohn recalled how people had said that later events had confirmed his dark vision like pieces of an ominous puzzle that would soon be completed.

Oronhyatekha’s dream fit within the Haudenosaunee tradition of prophetic dreams and had striking resemblances to some of Handsome Lake’s visions in the *Karihwiyo*.¹⁹⁸ An interpretation of his dream is beyond this author and perhaps beyond even the limits of the discipline of history. It is enough to appreciate how Oronhyatekha’s dream unsettles our apparent understanding of his constitutional thought and his vision of paradise on earth. The world he built on Foresters’ Island was something beyond an acculturated reconciliation with the realities of the Canadian state and its hegemony over the Six Nations. Oronhyatekha’s vision seemed more radical than even his biographers propose. It is radical in the sense that it is deep and original, grounded in something foundational, namely the Haudenosaunee constitutional discourses centred on the Great Law of Peace and the *Karihwiyo*. It was also driven by a vision of a paradise denied, where the Haudenosaunee had not suffered the brutal violence of colonial rule exemplified by hunger and forced removal. In this alternate future, the Six Nations had achieved their full promise as one of the great civilized peoples of the world. Only in this imagined world would the Haudenosaunee at last escape from Oronhyatekha’s recurring nightmare of wheat, corn, and blood, and fulfil their collective destiny denied by the brutal intervention of colonial rule.

V. CONCLUSION

The enfranchisement process promised a kind of paradise. It set out the rules governing which status Indian men and later women would be allowed into the settler state, while justifying their indefinite exclusion and compulsory tutelage in the meantime. The ultimate aim of enfranchisement was the dismemberment and assimilation of all First Nations. Canadian officials had a remarkable faith in enfranchisement, which seemed affirmed when the civilized Wyandot band voluntarily enfranchised and so terminated their Indian status. By the end of the century, however, there were only a dozen or so successful applicants and even these were exceptional in one of two ways. The first group were members of two

198. For a brief account of the *Karihwiyo* by Handsome Lake, the Seneca prophet (1735-1815), see Hill, *supra* note 115 at 46-51.

small communities of refugees, fragments of nations destroyed in the apocalyptic war unleashed by European invasion from across the seas. The second group were Christian missionaries, nearly all Methodists, from just two reserves who chose to sever all ties to their nations after lifetimes dedicated to the failed search for a New Jerusalem on earth. The Canadian dream of enfranchisement and its effective rejection by First Nations showed the limits of settler governance and assimilation in the nineteenth century.

Recovering the forgotten cases of successful and unsuccessful enfranchisement applications also shows how Anishinaabe and Haudenosaunee nations asserted their autonomy against the Canadian government. Most band councils exercised (or threatened to exercise) an effective veto over their members' enfranchisement applications by refusing to grant them their share of the reserve lands in fee simple—the necessary prerequisite to complete the legal process. Some Anishinaabe bands—or at least the Grand General Indian Council delegates from southern bands—appeared to accept the principle but not the process of enfranchisement. But the Confederacy Council of the Six Nations simply refused to enfranchise any member—with the coerced exception of Elias Hill. Moreover, every civilized man (in the eyes of Canadian officials) refused enfranchisement for themselves. While many ideal candidates from Kahkewaquonaby to Oronhyatekha wished to free themselves of the legal disabilities under the *Indian Act*, they would not or could not accept the termination of their Anishinaabe or Haudenosaunee citizenship on the terms provided in the *Indian Act*.

The Anishinaabe and Haudenosaunee refusal of enfranchisement was always grounded in national politics contested through distinct constitutional discourses that put forward competing visions of autonomous futures within the enveloping Canadian and imperial constitutional orders. The strange case of Oronhyatekha gives us a unique insight into one particular vision of paradise and its practical pursuit. The crisis in the Confederacy Council provoked a bloom of Haudenosaunee constitutional thought that provided different responses to the Canadian government's increasing assertion of its jurisdiction over First Nations. Oronhyatekha developed his remarkable vision in the context of this heated constitutional discourse. He imagined an alternative Haudenosaunee future in the Rooms and then built this paradise on earth out of brick and mortar on Foresters Island. Yet, Alma Greene's retelling of his dream also warns us of the limits of history as a discipline to fully know Haudenosaunee and other Indigenous constitutional discourses on their own terms. Privileging the colonial archive and written texts, as Audra Simpson and Susan Hill remind us, necessarily marginalizes or silences alternative visions, especially those of women, who were denied access.

The contemporary legacy of enfranchisement is devastating. Over a century and a half, the *Indian Act* led to tens of thousands of status Indian men and women losing this legal status through the enfranchisement process or the “marrying out” rule. Enfranchisement did not provide a solution to the so-called “Indian problem.” Instead, it was central element in the Canadian government’s increasingly drastic measures to coerce the assimilation of First Nations that culminated in the forced assimilation of children through residential schools and the 1969 *White Paper* proposal to terminate Indian status. The damage to individuals and communities is now well-documented.¹⁹⁹ Less well appreciated is the epistemic damage related to what Val Napoleon calls “extinction by number.”²⁰⁰ By imposing its own laws on bands, the Canadian state denied the legitimacy and force of Anishinaabe, Haudenosaunee, and other national laws, including their constitutions and citizenship laws. Before his death in 1912, Arthur Gibson, the Seneca royaner, had foreseen dire consequences of the colonial state’s denial of the Six Nations’ Great Law of Peace. “Another generation and there will be no custom,” he said, and “still another generation and there will be no memory.”²⁰¹ Only a decade later, the Canadian government ordered the Royal Canadian Mounted Police to forcibly close the Confederacy Council and impose an elected band council under the *Indian Act*. Thus, this history of enfranchisement is also a partial accounting of the epistemic damage done by the *Indian Act* in its ultimate aim of assimilating the Anishinaabe, Haudenosaunee, and other constitutional orders into its dominant legal system.

It is against this history of epistemic violence that Anishinaabe, Haudenosaunee, Gitksan, Dene, and other scholars have led a resurgence in national constitutional thought. Despite important differences within this literature, these scholars all address the violence done by past denial of their laws, and the need to strengthen, revise, recover, and assert them today. New experiments attempt to reassert these laws through alternative relationships of membership and citizenship within and beyond the Canadian state, like the draft *Anishinabek Nation Governance Agreement* and the *Fort William First Nation Citizenship Code*, respectively. Yet these legal texts remain severely restricted by the legacy and hegemony of the Canadian legal order. Perhaps the most

199. For an accounting of this damage, see Canada, Truth and Reconciliation Commission of Canada, *Canada’s Residential Schools: The Legacy: The Final Report of the Truth and Reconciliation Commission of Canada*, vol 5 (McGill-Queen’s University Press, 2015).

200. Napoleon, *supra* note 3 at 113–46.

201. Quoted in Alexander Goldenweiser, “The Death of Chief John A Gibson” (1912) 14 *Am Anthropologist* 692.

unexpected experiment aimed to revive a nation that had chosen to terminate itself. In 1997, Ted Warrow asked the Canadian government to recognize his ancestors' nation, the Wyandots of Anderdon, as a band under the *Indian Act*.²⁰² When the government denied his request, Warrow and his relations looked beyond the state to surviving communities of their ancient nation in Kansas, Oklahoma and Lorette, Quebec. Two years later these peoples accepted Warrow and his family in a reunion at Ouendake, their ancient homeland on the shores of the Georgian Bay. Together they chose to reconstitute the once mighty Wendat Confederacy, and so "light the council fire and invite all who come in a spirit of peace and brotherhood to enjoy its warmth."²⁰³

202. Jacqueline Smrke, "Natives bid to restore band status," *Windsor Star* (15 July 1997), online: <cdigs.uwindsor.ca/neighborhood-history/files/original/11/377/Natives_bid_to_restore_band_status.jpg> [perma.cc/AWW3-AJHX].

203. Wyandot Nation of Kansas, "The Wendat Confederacy" (27 August 1999), online: <www.wyandot.org/confederacy.html> [perma.cc/GMZ6-8BVF]. In 2015, the Wyandot Nation of Oklahoma purchased a small tract of land in Michigan to lease to the Wyandots of Anderdon. See Jim Kasuba, "Wyandot of Anderdon Nation acquires land in Gibraltar," *News Herald* (11 September 2015), online: <www.thenewsherald.com/news/wyandot-of-anderdon-nation-acquires-land-in-gibraltar/article_f44c9e69-52dc-514c-84cc-583bd5577480.html> [perma.cc/4DNY-PHJ7].