Legal Ideology in the Aftermath of Rebellion: The Convicted First Nations Participants, 1885

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First Nations people were among those convicted in the aftermath of the 1885 North-West Rebellion. Examining the punishments of these convicted offenders contributes to a better understanding of how legal ideologies — such as majesty, justice, and mercy — could be compromised when translated into a colonial and cross-cultural context in the specific conditions of the North-West in the late nineteenth century. The author also recovers a misinterpreted and important element of the North-West Rebellion by giving consideration to the experience of participants caught in its legal aftermath.

Des membres des Premières nations faisaient partie des membres de la Rébellion du Nord-Ouest de 1885 qui ont été déclarés coupables. L'examen des peines qui ont été infligées à ces condamnés nous éclaire sur la compromission dont les idéologies juridiques — comme la majesté, la justice et la clémence — étaient susceptibles de faire l'objet une fois transposées dans le contexte colonial et transculturel spécifique à la conjoncture du Nord-Ouest de la fin du XIXe siècle. L'auteur révèle également un élément mal interprété et important de la Rébellion du Nord-Ouest en tenant compte de l'expérience des participants subissant les démêlés juridiques de celle-ci.

IN EARLY OCTOBER 1885, Winnipeg’s train depot played host to an unusual arrival. Hundreds of curious onlookers crowded the platform and surged forward as the train pulled in. Excitement peaked as a large group of First Nations men disembarked in shackles. Among them were the famous Cree chiefs Big Bear, Poundmaker, and One Arrow. Many of the men still wore traditional dress, including blankets drawn closely around their bodies. A newspaper reporter suggested that their

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appearance did not disappoint the thrill-seeking crowd: “a more lawless looking set can hardly be imagined.” The men were taken to a local provincial jail before being transported by wagon to Manitoba Penitentiary the next day.

These men were Cree, Assiniboine, Dakota, and Blood individuals who had been tried and convicted for their participation in the 1885 North-West Rebellion. The legal aftermath of the Rebellion played out in three primary settings: in the courtroom, on the gallows at Fort Battleford, and inside the walls of Manitoba Penitentiary (also known as Stony Mountain). The events in each of these settings demonstrate a response to First Nations defendants that was informed by British legal ideology and transformed by the unique colonial setting of the Canadian North-West, and they reveal sites of struggle between First Nations people and the Canadian state that enhance our understanding of the early legal history of Western Canada. At these sites of trial and punishment, First Nations defendants and their kin negotiated the legal ideologies of majesty, justice, and mercy in a setting in which these elements of the Canadian law were far from established or understood. Judicial and religious rhetoric and ritual invoked the majesty and mercy of the law, while capital punishment and penitentiary sentences revealed these ideologies in practice.

I engage with literature addressing the ideological functions of law in the European context and its application in colonial settings and consider how these interpretive strains can illuminate the function of law in the aftermath of the North-West Rebellion. Events demonstrate that legal ideology must be understood in specific historical, colonial, and geographic contexts. It will come as no surprise to Canadian historians that justice in Regina and Battleford required unique adaptations of the British legal customs and traditions on which Canadian law was based. However, interrogating the legal proceedings and punishment that followed the North-West Rebellion reveals a unique social context in which the law unfolded. The aftermath of the Rebellion, as experienced by First Nations defendants, is a chapter of legal and social history often obscured by the more spectacular occurrences of violence during the spring of 1885 and the trial and execution of Métis leader Louis Riel.

1 Prince Albert Times, October 9, 1885.
2 Wherever possible, I refer to the specific cultural names (Cree or Assiniboine, for example). In passages pertaining to more than one group, I use the term First Nations to describe people referred to in historical records as “Indians.” I use “Métis” to describe mixed-ancestry people, and less frequently “Aboriginal” to refer to both groups. This article makes no further sustained study of the Métis participants in the Rebellion. Several texts cover their involvement in the events of 1885, including G. F. G. Stanley, The Birth of Western Canada: A History of the Riel Rebellions (Toronto: University of Toronto Press, 1963 [1936]); Desmond Morton, The Last War Drum: The North-West Campaign of 1885 (Toronto: Hakkert, 1972); Bob Beal and Rod Macleod, Prairie Fire:
In many ways, discussion of the Rebellion’s aftermath reveals an emergent hegemony in Western Canada. Though the post-Rebellion period is but one small part of this wider history, we must also uncover the instances in which this early domination was challenged and resisted by First Nations people. To do so, we must see more than pure terror, look beyond the majesty, justice, and mercy of the Canadian courts, and understand the social relations between the Canadian state and the First Nations as something more complex than an ever-expanding “subjugation.” As E. P. Thompson suggests, hegemony does not impose an “all embracing domination upon the ruled,” eclipsing the possibility of resistance or correction. The experience of the convicted First Nations participants in 1885 is one example of how this hegemony played out on the stage of the criminal law. Uncovering examples of this experience, even in the darkest days of the post-Rebellion North-West, suggests the possibility of resistance in all areas of the relationship between First Nations people and colonial authorities.

If we are to understand why law and punishment operated as they did in the aftermath of the Rebellion, it is useful to look back to the Bloody Code of eighteenth-century England. Though separated by a century from the establishment of Canadian law in the North-West, the legal ritual and ideology underlying Canadian law can be found in this history. Douglas Hay proposes that majesty, justice, and mercy were at the centre of the law’s power in eighteenth-century England. Enforced by the Bloody Code, which featured the death penalty as its moral centre, the division of property by terror was effective and resonated with the population because it was complemented by ideologies of majesty, justice, and mercy. These ideologies were expressed in rituals that enriched and mystified the law and gave it emotional and psychic grounding. These rituals helped define contemporary social and class relations to help ensure a broader political conformity in England. It would be obvious to state that the same ideological constructs resonated differently as they were translated into the colonial setting of British North America, but the historical facts demonstrate that British legal authorities attempted such a
Theorists in the eighteenth century argued that the law must be structured in certain ways to establish its legitimacy. It should be “known and determinate, instead of capricious and obscure.” This permanence and impartiality supported the fiction that social class played no role in the operation of the law. This gave the law an important ideological weapon even when it did not operate uniformly. In nineteenth-century Canada, particularly in colonial settings, the concept of justice was adapted to the purpose of introducing the Queen’s law to First Nations people in an even-handed and non-biased way. The very idea of justice thus became an important colonial tool. However, historians of colonial contexts argue that the law takes on different forms to maintain the legitimacy of its underlying ideology. Peter Moogk’s recent research demonstrates the wider social context of capital punishment in eighteenth-century New France. He identifies legal practices that combined both social and political aims into rituals with broad cultural importance such as the _amende honorable_. Though the period and legal regime is different, Moogk illustrates how the state used execution to enforce morality by terrifying onlookers. He then complicates the notion of legal terror by revealing that these rituals could not always bear the weight of their intent and were often compromised by legal authorities unwilling to practise them in their intended brutality. Tracking the contradictory and unusual applications of the law in this way has allowed historians to examine justice as a legal ideology. Closely related and central to the experience of First Nations people meeting British law was the ideology of mercy.

In eighteenth-century England, mercy gave legal authorities the power of discretion to take into consideration, for instance, poverty or other extenuating circumstances. Rather than diminishing the terror and authority invested in capital punishment, legal discretion gave authorities an extra measure of power over the letter of the law by “creating the mental structure of paternalism” towards the condemned. Incidences of mercy helped to validate capital punishment to the poor by demonstrating the supposed sensitivity of the law to mitigating circumstances. Tina Loo examines colonial law in British Columbia to reveal similar conclusions regarding the exercise of executive mercy in capital punishment cases. Loo’s exploration of this topic is especially valuable because it adopts a complex view of the exercise of mercy and explains how

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5 _Ibid._, p. 33.
7 _Ibid._, p. 42.
legal authorities negotiated differences in culture when First Nations people came before colonial courts for murder. A focus on culture and race as determining factors in how early Canadian criminal courts responded to First Nations defendants also informs Jonathan Swainger’s analysis of the prerogative of mercy in British Columbia. Swainger suggests that courts opted for a “functional paternalism” that served to educate the First Nations about the terror and mercy of the law and the need to distance themselves from “traditional superstitious ways.”

This attention to culture helps us understand how justice and mercy served to negotiate and manage diversity in an emerging Canadian hegemony. However, the interpretive strains uncovered by writers like Hay, Moogk, Swainger, and Loo are difficult to find in the long historiography of the North-West Rebellion.

G. F. G. Stanley’s classic history of the North-West Rebellion cast First Nations people as opponents of an advancing and superior civilization. Although Stanley’s language is unpalatable to contemporary historians, his characterization essentially describes the array of forces and developments that increasingly oppressed the First Nations and cast them as objects of colonization. Stanley’s interpretation, like many others that followed, fails to consider the complex legal ramifications of the aftermath of the Rebellion. Concluding only that “[t]he rebel Indians were punished


9 Stanley’s treatment is the first history of the Rebellion sympathetic to First Nations and Métis people. His was the first to detail elements of political discontent within First Nations communities over the advancing Canadian hegemony of the North-West Territories. Stanley’s description of the First Nations struggle has caused his work to be derided by contemporary scholarship. For example, in describing the struggle of First Nations people to adapt to European advance, Stanley writes, “The European, conscious of his material superiority, is only too contemptuous of the savage, intolerant of his helplessness, ignorant of his mental processes and impatient at his slow assimilation and civilization. The savage, centuries behind in mental and economic development, cannot readily adapt himself to meet the new conditions” (The Birth of Western Canada, p. 94).

10 Understanding the relationship between (European) Canada and First Nations people as “colonial” is a theoretical model used increasingly after 1970. The idea of “internal colonialism” was initially applied to questions around Black people in America by Blauner, in “Internal Colonialism and Ghetto Revolt,” Social Problems, vol. 16, no. 4 (Spring 1969), pp. 393–408. Blauner’s approach recast colonialism, traditionally understood as a relationship between two or more geographically distinct regions, to suggest that similar patterns of domination and subjugation could be present with a single spatial and political unit. This approach was increasingly used by scholars studying First Nations topics in the 1970s and has become a dominant theoretical model. For criticism of this model and a call for return to a more materialist reading of First Nations peoples in Canada, see Vic Satzewich and Terry Wotherspoon, “Political Economy Versus the Chicago School and Internal Colonialism” in First Nations: Race, Class and Gender Relations (Scarborough: Nelson Canada, 1993), pp. 1–14; Sarah Carter, Aboriginal People and Colonizers of Western Canada to 1900 (Toronto: University of Toronto Press, 1999), pp. 102–103.
but not with vindictive severity,” Stanley overlooks the importance of law in the last stages of the chapter of the western revolt that involved conflict between First Nations and the settler-state. Following Stanley’s history of the Rebellion, other historians have clarified and revised the details of the narrative. Desmond Morton fleshes out the military logistics simplified or obscured in Stanley’s account. Morton avoids the political, social, and economic reasons for the Rebellion and opens his history with the fall of Fort Carlton and the Battle of Duck Lake in March 1885. The Rebellion gained momentum from these early Métis victories, which, according to Morton, drew First Nations groups into the uprising. With little of the social nuance exercised by Stanley, Morton’s work contributes to the more popular understanding that First Nations and the Métis rose in concert with a common goal of toppling government authority in the North-West.

By the 1980s and 1990s, interest in the Rebellion peaked, helped by the 100-year anniversary of Riel’s death in 1885 and the development of new perspectives on the uprising. The growth of First Nations history in the 1980s and its inclusion of oral history produced fresh interpretations about the Rebellion. Here the field entered its first prolonged


12 As testament to the authority and pioneering status of *The Birth of Western Canada*, no significant work of historical reinterpretation was produced on the Rebellion for nearly 30 years following its publication. J. K. Howard’s *Strange Empire* (New York: William Morrow and Company, 1952; St. Paul, MN: Minnesota Historical Society Press, 1994) is a sensational Rebellion history focusing primarily on Louis Riel. Most history about the Rebellion was produced for popular consumption, usually by eye-witnesses or participants telling their side of the story. Stanley’s original text was actually relatively obscure following its publication in 1936 because the warehouse containing the printed copies was destroyed by bombing during World War II. The book was reprinted in 1961 and again in 1963 and sparked a renewed interest in the Rebellion.


14 Two works of First Nations history ushered in this era: John L. Tobias, “Canada’s Subjugation of the Plains Cree, 1879–1885,” *Canadian Historical Review*, vol. 64, no. 4 (1983), pp. 519–548; Hugh Dempsey, *Big Bear: The End of Freedom* (Vancouver: Greystone Books, 1984). Tobias’s work explodes myths about the political positions of the Plains Cree prior to the North-West Rebellion and demonstrates the degree to which the Cree struggled for autonomy. Dempsey’s work contains the same themes, yet details the specific struggles of Plains Cree Chief Big Bear. Big Bear’s political activities throughout the 1870s and 1880s caused him to be marked by Indian Affairs officials as a troublemaker and tempered his relationship with the government and legal authorities. A more recent expression of this viewpoint is Blair Stonechild and Bill Waiser, *Loyal ’till Death: Indians and the North-West Rebellion* (Calgary: Fifth House Ltd., 1997). Stonechild and Waiser use oral histories to supplement, contradict, and clarify the history of First Nations’ participation in the Rebellion. As the title suggests, the book is strongly sympathetic to First Nations groups by emphasizing government and military aggression and the unfortunate series of circumstances that pushed the Plains Cree to the brink of violence by the spring of 1885. Waiser and Stonechild emphasize the failure of government authorities to deliver treaty promises in the years prior to the Rebellion, which combined with Cree political agitation to create an explosive situation through the North-West.
examination of the law’s ideological operation and how it affected First Nations people. Bill Waiser and Blair Stonechild’s *Loyal ‘till Death*, for example, goes further than any other study in exploring the element of terror following the Rebellion through a focus on repressive government measures enacted throughout the North-West.¹⁵ Most importantly, new interpretations identified the agency of First Nations people and their political autonomy from the interests of the Métis up to and during 1885. This point dramatically redraws the narrative of the events of the Rebellion and demonstrates the problematic nature of earlier interpretations, which viewed First Nations groups primarily as military opponents of the Canadian state.

Most accounts of the First Nations’ participation in the North-West Rebellion focus on the role played by Big Bear’s Plains Cree, who had been wintering northeast of Edmonton at Frog Lake. Although Métis leader Louis Riel was in contact with Cree leaders throughout late 1884, the events involving Big Bear’s band were among the first instances of serious conflict involving a First Nations group. Big Bear returned to Frog Lake in early April 1885 to find a horrifying scene.¹⁶ While he had been away on a solitary hunting trip, his war chief Wandering Spirit and other young men, including Miserable Man and Imasees (Big Bear’s son), planned to take hostages from the tiny settlement of Frog Lake and obtain desperately needed food and supplies. The plan was quickly derailed when Indian Agent Thomas Quinn refused to agree to the Cree demands. A standoff ensued between Quinn and Wandering Spirit, which escalated into a bloody mêlée. Big Bear pleaded for peace, but the situation spiraled towards a violent resolution.¹⁷ Nine white men

¹⁵ Stonechild and Waiser, *Loyal ‘till Death*.

¹⁶ Big Bear was a chief of the Battle River Cree. This group hunted in the Fort Pitt area of present-day Saskatchewan. Declining to sign Treaty 6 in 1876, Big Bear instead waged a political campaign against government for the next six years to obtain better terms for the settlement of First Nations people into the colonial relationship. Believing the Cree should speak with a single voice, Big Bear attracted other discontented Cree throughout the 1870s and 1880s. Although he signed Treaty 6 in 1882, he continued to refuse settlement on a reserve until late 1884, when his followers, numbering nearly 500, were reluctantly settled alongside the Wood Cree at Frog Lake, northeast of Edmonton in present-day Alberta (Dempsey, *Big Bear*, chap. 5 and 6). In historical accounts the Wood Cree are usually called the Fort Pitt Cree, although they were mixed with Thickwood Cree and Chipewyan families. Culturally, they were plains people and part-time buffalo hunters. See Glenbow Archives [hereafter GA], William A. Fraser, *Plains Cree, Assiniboine and Saulteaux Bands* (1963), p. 11.

¹⁷ Current interpretations of this event emphasize that, at the time of the Frog Lake uprising, control of Big Bear’s band had transferred to his war chief, Wandering Spirit. Several sources contain a detailed analysis of the events at Frog Lake. Complemented generously by oral history, *Loyal ‘till Death* is the most comprehensive account of what happened. The only published eyewitness account is William B. Cameron, *Blood Red the Sun* (Calgary: Kenway Publishing Company, 1926). Aided by Wood Cree women, Cameron was one of only two white men at Frog Lake to survive the massacre. He was taken prisoner and held by Big Bear’s band for two months, during which time the band
were killed by Cree warriors who then took the survivors prisoner and burned Frog Lake to the ground. This debacle occurred days after the Métis victory against the North West Mounted Police (NWMP) at Duck Lake and sparked fears across the country of a First Nations uprising inspired by Louis Riel. The government responded to news of the Frog Lake uprising with extreme military force. Three militia columns were deployed across the North-West to stamp out the rebellion.

As fear gripped the region, residents of the Fort Pitt and Battleford districts wired for help from inside barricaded forts and waited for the militia to arrive. The hysteria throughout the North-West also drew Cree chiefs Poundmaker and One Arrow into armed conflict. After terrifying the residents of Battleford (barricaded inside Fort Battleford) with the mere presence of his band, Poundmaker found his camp attacked three weeks later by an overzealous militia column under the command of Colonel W. D. Otter. From this point, Poundmaker’s band became more deeply embroiled in the events of the uprising, finding themselves in the middle of a massive confrontation between the Métis and the Canadian militia. While the primary militia column under General Middleton fought Riel’s Métis forces at Batoche, the remaining columns pursued Cree chiefs Big Bear and Poundmaker. After a summer of being pursued by the militia, the majority of the exhausted Cree surrendered or were captured. In the summer and fall of 1885 the Rebellion participants encountered the Canadian legal system in a series of criminal trials.

The government prepared cases against the captured and surrendered First Nations men throughout the summer of 1885 and charged 81 people with various crimes, ranging from arson and murder to treason-felony. The initial trials took place in Regina before the senior court in the North-West Territories, presided over by Stipendiary Magistrate Hugh Richardson. At the centre of the government prosecution were Cree chiefs Poundmaker, Big Bear, and One Arrow, all charged with treason-felony for their roles in the uprising. Following the
treason-felony trials, the venue moved to Battleford, where Stipendiary Magistrate Charles Rouleau presided over murder trials for those men accused of the Frog Lake murders as well as other isolated murder trials. During the trials, the judges invoked majesty through the spectacle of legal ritual and the use of rhetoric by which, as Hay notes about English law, “the powers of light and darkness [were] summoned into the court.”

When First Nations defendants came before the court at Regina, this metaphor stood for the invocation of colonial authority.

Judge Rouleau excelled at lecturing in these tones, admonishing Itka and Man Without Blood at their murder trial: “you were foolish enough to rebel against the government, foolish because the government could send soldiers here until they were numerous as mosquitoes.” At the trial of Bad Arrow and Miserable Man, Rouleau expanded on these themes in an elaborate speech explaining the need for peace between whites and the First Nations. He asked the prisoners, “what object had you in killing the whites? If the whites withdrew from the country you would starve in a year, but the white man could live without the Indians.” Rouleau repeatedly invoked emotional language that gave his courtroom speeches the element of a religious sermon preached in the secular realm. Although the entire community of Battleford felt the events of the Rebellion personally, Rouleau’s emotionalism was likely heightened when he received a telegram in April from Indian Commissioner Edgar Dewdney laconically informing him, “your house burnt by Indians yesterday.”

When Rouleau summoned colonial paternalism at the sentencing of Wandering Spirit, it was clear that he was addressing the multitude of First Nations groups in the North-West as well as whites who badly needed reassurance about the stability of government authority throughout the region. Rouleau lectured:

You were murdering while others were burning houses and committing other crimes. You could not expect any good results to follow your acts. . . . Instead of listening to wise men, you preferred to listen to the advice of bad men who were as poor as yourselves, and who could not help you if they wanted to, and who only got you in trouble. The Government do not want to destroy


20 Hay, “Property, Authority, and the Criminal Law,” p. 27.
21 *Saskatchewan Herald*, October 5, 1885.
22 *Saskatchewan Herald*, October 12, 1885.
23 Library and Archives Canada [hereafter LAC], MG27, IC4 Volume 7, E. Dewdney to C. Rouleau, April 24, 1885.
the Indians, but they wish to help them to live like white men but as far as murderers in cold blood are concerned, the Government has no pity for them. If a white man murders an Indian he must hang, and so must an Indian if he kills a white man.\footnote{Saskatchewan Herald, September 28, 1885.}

Here the eighteenth-century concept of justice, originally intended to inure the ruling class from suggestions of favouritism, was adapted to explain to a First Nations population that culture or race bore no influence on the operation of law. After the Rebellion, this left First Nations people at a distinct disadvantage because many of the defendants, including Poundmaker and Big Bear, defended themselves in court based on their particular circumstances or cultural misunderstandings.\footnote{See Bingaman, “The Trials of Poundmaker and Big Bear”; Waiser and Stonechild, Loyal ’till Death, chap. 10, “Snaring Rabbits,” pp. 214–237.}

This raises a question about how such legal rhetoric was received by the First Nations defendants. Is it possible to gauge the effectiveness of such ideological categories through the limited sources detailing the reaction of those men who came before the court? We can make some assumptions and believe, as E. P. Thompson suggested, that people are not so stupid as to be mystified by the first man to don a wig.\footnote{E. P. Thompson, Whigs and Hunters: The Origins of the Black Act (New York: Pantheon Books, 1975), p. 262.} It is not clear that First Nations defendants were awed by these paternalist messages or the larger majesty of the law. In all likelihood, the messages contained in Rouleau’s courtroom rhetoric were not novel to most of the Cree defendants. For example, some First Nations leaders perceived Rouleau’s allusion to Canadian soldiers swarming the North-West as an empty threat. In a speech to Hudson’s Bay Company factor William McLean prior to his surrender, Wandering Spirit dismissed the suggestion that the Cree could be overpowered militarily: “Why do you want us to believe that the government has plenty of soldiers? Look at the few Red Coats that you are keeping at the fort, is that plenty? Is that all the government can send? He has been trying to send more for two years to frighten us. We are not afraid of them.”\footnote{Hudson’s Bay Company Archives, MS372 (5707), W. J. McLean, “Reminiscences of the Tragic Events at Frog Lake and in the Fort Pitt District With Some Experiences of the Writer and His Family During the North West Rebellion of 1885.”}

Some of the convicted men were despondent when sentenced. When Little Runner was sentenced to four years for horse-stealing, he replied, “I am glad to hear that. I have been longing to know what was to be done with me.”\footnote{Saskatchewan Herald, September 28, 1885.} Though his execution was later commuted, Louison Mongrain responded to his death sentence, “I am not guilty of the
charge, and hope God will receive me, as the charges against me are not true; I prepare myself to be resigned to my fate. After I am sentenced I would like to write to my mother and wife; I have no children, for which I am thankful. I pity the old man who was sentenced today."29 Other defendants were belligerent or offhanded. Big Bear addressed the court for nearly an hour at his sentencing, ending with a plea for the welfare of his people.30 Clearly aware that he was responding to a legal official vested with the full power of the Canadian state, Big Bear used the opportunity to deliver the last serious speech of his political career. Poundmaker responded to his accusers with a poignant majesty of his own. “I am a man,” he said. “Do as you like. I am in your power. You did not catch me.”31 As he was sentenced to three years in the penitentiary, his offhandedness boiled over, and while being dragged from the court he shouted, “I would rather be hung than put in that place.”32 These responses, particularly Big Bear’s, exemplified their defiance, despite their position of subjugation to the Canadian courts. Others would speak as forcefully or eloquently as their political leaders, but the limited number of recorded responses demonstrates that the defendants understood with some subtlety the court’s majesty and were not merely overwhelmed by it, placing their experience beyond the realm of “awe.”

Several other elements contributed to the haphazard nature of the trials and compromised the sense of majesty and justice surrounding them. At Regina, most of the men had no legal representation before the court and could not understand the proceedings in English. One Arrow famously responded to the translation of his treason-felony charge by asking, “are you drunk?”33 Catholic priest Louis Cochin was disgusted by the impossible position of the defendants. After One Arrow’s trial he complained, “The poor old man didn’t understand a word of it.”34 Cochin was further distressed at reports that the prosecutors and the judge were determining the sentences between themselves beforehand and then applying them to each defendant at trial. Missionaries on the scene counselled the men to plead guilty to all charges, effectively forfeiting any claim to a fair trial. “Does the government know of this?” Louis Cochin demanded in a letter to the Archbishop. “Or if it does know of

29 Ibid.
30 Cameron, Blood Red the Sun, p. 199.
31 Saskatchewan Herald, September 7, 1885.
32 Quoted in Bingaman, “The Trials of Poundmaker and Big Bear,” p. 86.
33 Quoted in Stonechild and Waiser, Loyal ’til Death, p. 200.
34 Saskatchewan Archives Board [hereafter SAB], Taché Papers, R–E3641, L. Cochin to A. Taché, August 14, 1885, Regina. Some accounts of One Arrow’s courtroom experience expand on his difficulty with English. According to Waiser and Stonechild, when the charge for treason was translated to the chief, he understood he was accused of “knocking off the Queen’s bonnet and stabbing her in the behind with a sword” (Loyal ’til Death p. 200).
it, how can it put up with such things?" 35 As the trials concluded, the government made plans to execute eight First Nations men at Fort Battleford. In the aftermath of the North-West Rebellion, the death penalty was intended not only to punish, but to reassert government authority throughout the region. It is not clear that the one-time event of mass execution at Battleford terrorized First Nations people as Canadian legal and government authorities had intended. Evidence from the courtrooms and the scene of execution indicates that the hangings, carried out as public spectacle, were met with a mix of ambivalence, sadness, and outrage by First Nations defendants and their kin. 36 Peter Linebaugh notes that public hanging in Britain represented a rare meeting of many levels of government united with church and legal authorities for a common purpose. 37 The Battleford hanging signified an important moment of this convergence in Western Canada. Although it was the first execution under Canadian authority in the North-West, the common elements shared with hangings in other British and American jurisdictions indicate that the Canadian authorities were familiar with the script of the execution pageantry. In the weeks leading up to the execution, the original plan to hang the men two at a time was altered so that all eight men would die at once.

The hanging was carefully planned as a public spectacle at Fort Battleford to demonstrate visibly the government’s power over First Nations people. Prime Minister John A. Macdonald, also Minister of Indian Affairs, informed Dewdney, “the executions ... ought to convince the Red Man that the White Man governs.” 38 Assistant Indian Commissioner Hayter Reed agreed with the Prime Minister and suggested to Dewdney that First Nations people must witness the hanging as confirmation of their “sound thrashing.” The hanging would “cause them to meditate for many a day and besides have ocular demonstration of the fact.” 39 Curiously, government officials drew the line at what constituted too much intimidation. Indian Commissioner Edgar Dewdney stipulated that the execution could not occur on Cree reserves near the site of the crimes for fear that superstition would overtake the people and cause

35 SAB, Taché Papers, R–E3641, Louis Cochin to A. Taché, August 14, 1885.
38 GA, Dewdney Papers, box 2, f.38, 587–88, J. A. Macdonald to E. Dewdney, November 20, 1885.
39 GA, Dewdney Papers, box 2, f.57, H. Reed to E. Dewdney, September 6, 1885.
them to abandon their settlements.40 The government’s plan to intimidate and demoralize the Cree was not simply a response to the Rebellion but part of a longer pattern of Cree “subjugation” stretching back to the signing of the numbered treaties. In the year before the Rebellion, Cree efforts at organization and political solidarity had alarmed Indian Affairs officials so much that they quietly planned the arrest and immobilization of dissident Cree leaders like Big Bear and Poundmaker in the fall of 1884.41 If it is generally accepted that in 1883 and 1884 the government executed a campaign of intimidation and subordination of the Plains Cree, the execution appears as a final and decisive blow to Cree political efforts.

North-West newspapers followed the detail of the legal proceedings with a feverish attention that provides some indication of public opinion regarding the impending execution. For example, the only high-profile defendant to be acquitted at trial was Dakota Chief Whitecap, who was in Riel’s camp after April but held there against his will. Though the testimony of a white witness exonerated him, the Winnipeg Free Press gruesomely suggested that the Chief should have been hanged and the body sent to Toronto for Hallowe’en, where “the cheerful and gentlemanly medical students of that city might have had heaps of fun with it.”42 This aggression was typical of North-West newspapers in the aftermath of the trials. The Saskatchewan Herald’s P. G. Laurie regarded the sentences of Big Bear and Poundmaker as farcical in their leniency, referring to Big Bear’s sentence as, “three years board at Stony Mountain, unless his admirers can induce the government in the meantime to transfer him to a first class hotel in Winnipeg.”43 Several other newspapers reported with similar vindictiveness, particularly in the case of the condemned Cree and Assiniboine men prior to their execution. In the days before the hanging, a debate erupted between Liberal and Conservative newspapers over the issue of the execution. The Winnipeg Free Press was the most incendiary, arguing that more of the defendants should have received the death sentence and be “sent to the happy hunting grounds at the end of a rope.”44

Still, in the early 1880s some Liberal papers had heavily criticized the Conservative government for its handling of the First Nations situation in the North-West. In 1881 the Edmonton Bulletin warned that, should an uprising of the First Nations ever come to pass, it would be the fault of Commissioner Dewdney and the widespread starvation suffered by

40 SAB, Macdonald-Dewdney Correspondence, R–70, E. Dewdney to J. A. Macdonald, September 3, 1885.
41 This argument is found in Tobias, “Canada’s Subjugation of the Plains Cree, 1879–1885,” and echoed in Stonechild and Waiser, Loyal ‘till Death.
42 Winnipeg Free Press, November 21, 1885.
43 Ibid.
44 Winnipeg Free Press, November 24, 1885.
reserves in the Treaty 6 area. After the Rebellion, only the Toronto Globe continued to argue that government mismanagement had caused the Rebellion and that the country was tired of bloodshed and violence. The Globe suggested that poor treatment of First Nations people in the North-West had incited “savage and murderous instincts.” Calling for clemency before the Battleford hanging, the Globe argued that “the acts of Indians are not always to be judged as the acts of white men, members of a civilized community.” In contrast, the Toronto Daily Mail took particular umbrage with the Globe position by arguing that race had no bearing on the cases of the Frog Lake murderers. Echoing the language of liberal legal equality used by Judge Rouleau in the murder trial sentences, the Daily Mail stated that similar crimes by whites would be punishable by execution. The Daily Mail concluded by suggesting that the Globe was playing politics and correctly stated that there was no popular will among the white population for clemency for the condemned First Nations men. For most newspapers, the convicted First Nations participants compared unfavourably against even the Métis in the aftermath of the Rebellion. The Montreal Daily Star thundered, “the Rebellious half-breeds sinned only against Canada. These Indians sinned against humanity. For the former there is a feeling of pity throughout Canada; for the latter there should be only a unanimous demand for punishment.”

As newspapers across Canada justified the impending execution scheduled for November 24, at Fort Battleford the dialogue between the clergy and the prisoners centred on more personal and religious matters. In the days before the hanging, Catholic priests A. H. Bigonesse and Louis Cochin attempted to convert the condemned men to Christianity. Their ministry is chronicled in The Reminiscences of Louis Cochin, published more than 40 years after the events. Though clearly embellished, the narratives of the priests portray a conversion experience that demonstrates the role of religion in the pageantry of death frequently seen before the execution of First Nations people under British law. In their accounts, the priests strove to infuse the experience of the Cree and Assiniboine men with religious meaning. Christianity was depicted as the force bridging civilization and savagery in the face of the awesome power of capital punishment. Tina Loo identifies similar dichotomies at work in the aftermath of the Bute Inlet massacre in colonial British

45 Edmonton Bulletin, January 10, 1881.
46 Toronto Globe, November 17, 1885.
47 Ibid.
48 Toronto Daily Mail, November 24, 1885.
49 Montreal Daily Star, November 24, 1885.
Religious writers in both 1860s British Columbia and the post-Rebellion North-West employed religious solemnity as a powerful narrative tool to demonstrate the centrality of capital punishment in the developing relationship between the state and First Nations people. In Cochin’s narrative, Wandering Spirit filled the role of the terrible savage against which Christianity’s redemptive power was pitted. The War Chief was well suited to the part, as the press and government recognized him as the murderous leader of the Frog Lake Massacre. At his sentencing, Judge Charles Rouleau called Wandering Spirit “the greatest killer ever to walk on two legs in America.” A popular account of the final days of the prisoners, written by eye-witness William Cameron, repeated many of the savage portrayals of Wandering Spirit. Cameron’s account frequently described the War Chief as “cruel” and “evil” in an attempt to sensationalize his role in the events of 1885. According to Bigonesse, Wandering Spirit refused to acknowledge the priests until the day before execution when he experienced a spiritual awakening. Wandering Spirit finally accepted Christianity, thus shedding the savagery that had characterized his path to condemnation.

However, other evidence suggests that Wandering Spirit was deeply remorseful over the events at Frog Lake, and his interest in Christianity may have sprung from the grief that overtook him during the summer of 1885. Elizabeth McLean, taken prisoner by Big Bear’s Cree at Fort Pitt, described Wandering Spirit as a deeply dejected and depressed individual who morosely asked them, “what would your God do to a man who had done what I did?” McLean described the sight of a solitary and sad Wandering Spirit walking slowly into the camp of the Wood Cree prior to his capture, his hair turned from deep black to almost totally white. He attempted to kill himself shortly after his capture and spent his final days dejectedly protesting his minor role in the uprising, telling Cameron, “I fought against it, Imasees nor the others would not let me go... it seemed it was to be — I was singled out to do it.” Unsurprisingly, this regret is never noted by the priests’ narratives.

52 Saskatchewan Herald, October 26, 1885.
53 There are at least two other accounts recording the spiritual conversion of Wandering Spirit. According to prison records, he was baptized by Catholic priest G. Cloutier of Stony Mountain Penitentiary while serving a sentence for horse-stealing in 1884 (Sessional Papers, 1885, No. 15, S. L. Warden Samuel Bedson, Annual Report of the Warden, “Report of the Roman Catholic Chaplain [translation],” p. 80). Cameron’s book also notes that Wandering Spirit was baptized in captivity after the Rebellion three weeks prior to his execution.
55 Stonechild and Waiser, Loyal ’til Death, p. 211.
56 Cameron, Blood Red the Sun, p. 207.
Instead, their account emphasizes the power of conversion to effect change by highlighting the contrition of the Cree and Assiniboine prisoners.

In fact, although some of the men made conciliatory remarks from the gallows before their deaths, Little Bear and Itka both shouted menacing last words. They urged the people gathered in the square at Fort Battleford to remember how the whites had treated them and to make no peace. Further, they urged the spectators to show their contempt for the punishment they were about to witness. This scene certainly did not fit the script of conversion and contrition offered in the priests’ version of the execution.

As the eight men ascended the scaffolding to be hanged, one of them allegedly said to Cochin, “Father, we do not know any Christian hymns, but we are anxious, however, to die singing. I pray you, allow us to sing in our own fashion.” Cochin stated that he allowed them to do this “with good heart.” Cochin thus constructed another important element of the execution pageantry in his narrative — the confession. What other writers identified only as Cree and Assiniboine death chants and songs, Cochin transformed into improvised Christian prayers. When the trap dropped, Cochin saw it not as sending the men to their death, but sending them “together into eternity, where we have the sweet confidence they rejoiced in the favour of the infinite mercy of God.” The punitive elements of the execution that characterized government rhetoric fell away in these descriptions as the priests suggested a majesty rooted in Christian solemnity.

However, there are strong indications that this majesty and the terror it accompanied were not as immediately apparent to either the condemned men or the First Nations people who witnessed the hanging. While the government may have wanted the Cree to witness the execution, it is likely the Cree people from surrounding reserves would have been at the event for their own personal reasons. The singing of traditional death songs from the gallows is another strong indication of the specific First Nations understanding of these events. At the hanging of 38 Dakota men following the Minnesota Uprising in December 1862, the St. Paul Pioneer noted that upon the scaffold the hooded and bound men grasped for each other’s hands and sang out their own names and the names of their friends as if to say “I’m here! I’m here!” At Battleford many of the condemned men sang to assembled family members and friends present at the execution. One newspaper claimed the predominating sound was the “wails of the wives of the condemned

57 Cochin and Bigonesse, The Reminiscences of Louis Cochin, p. 42.
58 Ibid., p. 40.
60 Cameron, Blood Red the Sun, p. 80.
braves.”61 These reports complicated the notion of the terror created by the Battleford hanging by demonstrating that First Nations people attended the execution for their own personal reasons. The spectators may well have been terrorized by the traumatic scene, but their role in the event was more than a passive one. A similar perspective should be employed for the actions of the condemned men. In a position of ultimate subordination and helplessness, they remained more than either characters in a spiritual passion play or signifiers of government power and authority.

Historians have examined the process of mercy following the Rebellion less frequently than they have commented on the terror of the executions, but it formed an important feature of the legal landscape in the case of capital convictions. Three of the eleven men sentenced to death by Judge Rouleau did not hang in 1885. The practical application of state terror was sometimes mediated in subtle ways. In the aftermath of the Rebellion, a sensitivity to Cree culture determined the process of mercy for the defendants Dressy Man and Charlebois. The two men were in Big Bear’s camp following the uprising, during which time a woman named She-wins turned into a Windigo.62 When the woman warned the camp that she was “bent on eating human flesh before the sun went down,” Dressy Man, Charlebois, and a man named Bright Eyes agreed to murder She-wins, and the act was witnessed by 40 or 50 of Big Bear’s men as well as Hudson’s Bay Company factor William McLean. At the murder trials, Judge Rouleau attempted to instruct the jury on the differences between the charges of murder and manslaughter in an effort to accommodate some consideration of the Cree spiritual beliefs that had motivated the crime. He cautioned jury members that they could only convict for murder if they decided the crimes surrounding the Cree spiritual beliefs had been committed with malice. The jury deliberated for 20 minutes and brought back murder verdicts for Dressy Man and Charlebois and manslaughter for Bright Eyes. Dressy Man and Charlebois were sentenced to death and Bright Eyes to 20 years at Manitoba Penitentiary.63 Two weeks before the Battleford hanging, the Governor General commuted the death sentences for the Windigo killers to life imprisonment in Manitoba Penitentiary.64

61 *New York Times*, November 28, 1885.
62 Among a variety of First Nations groups, including Cree and Ojibwa, the Windigo is thought to be an anthropomorphic monster that feeds on human flesh. The Windigo is traditionally destroyed by a spiritually powerful individual. In the late nineteenth and early twentieth century, Canadian courts heard a number of cases involving the murder of Windigos. See Sidney Harring, *White Man’s Law: Native People in Nineteenth Century Jurisprudence* (Toronto: University of Toronto Press, 1998), chap. 8.
64 LAC, RG13, Series B–1, Volume 1423, File 206A, “Charlesbois, Charles (alias: Ducharme) (also: Dressy Man).”
This sensitivity to First Nations cultural considerations suggests a number of questions surrounding the operation of mercy. When Judge Rouleau instructed the Frog Lake Massacre suspects that they would be treated without bias, he invoked a concept of justice based on equality before the law for First Nations people. To create a perception of impartiality to racial differences, it was essential that the court be seen to treat First Nations offenders with the same severity as whites. This was one example of how justice was regarded as “the great equalizer.” For both ideological and practical reasons, Canadian law was concerned with not only the appearance of impartiality, but also the transmission of British values throughout the North-West. The magisterial rhetoric from the bench was premised on this notion, and it precluded sensitive consideration of the meaning of murder based on racial factors.

However, there are also numerous historical examples in which considerations of cultural differences played an important role in the exercise of mercy in capital trials of First Nations people. This occurred not at the trial stage but at the executive level. As Loo argues, cultural considerations were not given formal weight in reaching verdicts, but were used in recommendations of mercy and addressed in post-trial reports written by magistrates. Although he had lectured on the impartiality and justice of the law, in the case of Dressy Man and Charlebois, Rouleau was able to see the need for both impartial justice and mercy based on mitigating cultural circumstances. The judge’s and politicians’ cultural sensitivity in the Rebellion aftermath resembled what Loo dubbed “savage mercy,” confirming racial differences between whites and the First Nations by granting judges and the executive the power to decide which cultural elements to consider, a process heavily dependent upon stereotypes. Further, the murder of a Cree woman by Cree offenders was easier to pardon than the murder of settlers or government officials because it did not threaten the emerging Canadian order in the North-West. The Windigo murder remained in the realm of the “savage,” and this helps to explain the unique instances of government mercy. Making similar conclusions on the pardon of the Windigo killers, Carolyn Strange argues, “capital punishment could be an instrument of racist terror, yet selective mercy toward First Nations capital offenders was no less racially informed or politically

68 Ibid., p. 110.
When mercy appeared in this way, it could only help to reinforce the “mental structure of paternalism” towards First Nations people, ironically aided by attention to their specific cultural circumstances. Although the Windigo killers were spared by the prerogative of mercy, their commutation sent them to Stony Mountain Penitentiary and placed the men into the grip of a different form of legal punishment.

Spared from the gallows in 1885, the Windigo killers found mercy enacted again two years into their life sentences at Stony Mountain Penitentiary. Cree chiefs from the Onion Lake Agency in the Treaty 6 areas employed the same consideration for the cultural motivation of the crime when they petitioned the government for the release of the two men. The petition read in part:

Way-Way-See-Too-Win [Dressy Man] and Charles-bois these two old men were sentenced for killing a witch at the time of the Rebellion, they were agreed to do so by the other Indians also Mr. McLean and other whites. As the old woman was dangerous and wanted to kill some children to eat, it was considered advisable to kill her and it always has been the custom to kill them with us we did not consider we were doing wrong in doing so.

In response, Hayter Reed admitted that special circumstances of the Windigo incident mitigated the crime of murder and that the men should be released. The process of mercy moved painfully slowly, however, and it took 18 months before the men were pardoned. Clemency ultimately came too late for Charlebois, who died at Stony Mountain at the age of 90 just prior to his release. Charlebois and Dressy Man were among nearly four dozen First Nations men who made their way to Stony Mountain Penitentiary in late 1885 to serve prison sentences ranging from two years to life.

In the late 1870s and 1880s, an increasing number of First Nations men in the North-West were sentenced to federal penitentiaries. Two articles detail the increasing use of criminal law to restrict the autonomy of First Nations people on the Canadian prairies. They establish an historical precedent for the Rebellion trials in 1885, but also make the important assertion that, with the exception of horse-stealing, First Nations groups were not initially subject to greater instances of prosecution than other groups in North-West society and in fact were far less likely to be charged than non-Aboriginal persons. See Brian Hubner, “Horse Stealing and the Borderline: The NWMP and the Control of Indian Movement, 1874–1900” in William M. Baker, ed., The Mounted Police in Prairie Society (Regina: Canadian Plains Research Center, 1998), pp. 53–70; Rod Macleod and Heather Rollason, “Restrain the
the Rebellion prisoners arrived in late 1885, the prison administration at Manitoba Penitentiary had experience with First Nations inmates and offered a programme of instruction not dissimilar to government industrial schools for younger First Nations boys. In the late 1870s, Warden Samuel Bedson adopted the view that the penitentiary could be used as an instrument of “civilization” and instituted a special education programme for First Nations prisoners. Some of the programmes reveal how the “civilizing” nature of the penitentiary, more than any other post-Rebellion punishment, attempted to integrate First Nations people into the hegemonic landscape of white settlement in the North-West. If First Nations people crudely understood the subtleties of majesty, justice, and mercy in other forms of legal ritual and terror, the officials at Manitoba Penitentiary possessed the means to make these messages more direct.

Most of the early First Nations prisoners understood no English and, according to Bedson, benefited greatly from the language instruction they received. In addition to language training, the prison provided these prisoners with practical vocational training, as Bedson was determined that their incarceration should have some positive outcome. The men would return to their reserves as well-trained blacksmiths, tailors, carpenters, and farmers and teach these skills to their own people.73 Bedson’s campaign was aided by the penitentiary Catholic chaplain who instructed the First Nations prisoners at Stony Mountain in matters of religion, law, the economy, and their new relationship with the Canadian state. Father Cloutier described the thrust of his lessons: “They understand that the soil, when cultivated, is capable of giving a crop; that iron, when wrought, makes most useful implements, and that with certain plants they can make cloth wherewith to clothe themselves.”74 Above all, he stressed that the Rebellion prisoners finally understood “that in every society there are men who rule and others who are ruled.”75 While Cloutier failed to realize that the Plains Cree had understood both agriculture and the use of iron for centuries, the overarching message of punishment aimed at Rebellion prisoners was clear. The penitentiary helped the government demonstrate to the Cree that their people had become “the ruled.”

In spite of the intentions of penitentiary authorities, the structural deficiencies and sanitary conditions at Stony Mountain undercut positive efforts at education and reform. Manitoba Penitentiary was a ramshackle
The building barely completed by the Department of Public Works before the first federal inmates moved to the site in 1877. The Inspector of Penitentiaries visited Manitoba two years after it opened and reported, “anything more unsuited to the purpose of a penitentiary it were difficult to conceive.” The worst shortcomings found by the inspector involved matters of cleanliness and hygiene. The bathrooms and water closets did not connect to any formal sewers, and all waste matter was kept in special tubs emptied several times a day by prisoners. On Sundays, the tubs were kept indoors until the following day. Faulty drainage caused astonishing hygienic hazards. In 1882 the floor of the prison basement (where female prisoners lived) was removed to reveal several inches of accumulated waste and fecal matter. Decrying the wretchedness of the situation in 1880, the penitentiary surgeon warned that the sanitary conditions could have serious consequences for the health of prisoners and officers alike. Although the building improved slowly throughout the 1880s, it remained a dank, miserable, and uncomfortable residence for both prisoners and staff.

The 44 First Nations prisoners who arrived at Manitoba Penitentiary in October 1885 along with 36 Métis prisoners caused an immediate problem of overcrowding. Respiratory disease infected the Rebellion prisoners soon after their arrival. Overcrowding forced the men to share tiny cells or to sleep in hallways, which made segregation of the sick impossible. In any case, the penitentiary had no formal hospital facilities, and sick prisoners were confined to “hospital” within their cells mixed with the general population. The Rebellion prisoners succumbed to disease in far greater numbers than the white prisoners for a number of possible reasons. The men likely entered the penitentiary in depleted health after a year of hardship, starvation, and military confrontation. A pattern of vulnerability among First Nations prisoners was noted in prison records throughout the 1880s. The prison recorded the first death of a First Nations inmate in 1882, when a 19-year-old man named Ka-Ka-wink died of debility.

77 Ibid.
78 “Surgeon’s Report, Manitoba Penitentiary,” Sessional Papers, 1880, No. 17, Roderick Macdonald, Surgeon’s Report, p. 164. In fact, three penitentiary officers died of typhoid fever in 1878. Warden Bedson nearly died of the disease after several months of illness. The warden and surgeon both agreed that the typhoid was likely the result of faulty drainage from the building.
79 The approximate inmate population of Manitoba Penitentiary before the arrival of the Rebellion prisoners was 100.
80 Additionally, most of the Plains Cree were unable to obtain much-needed buffalo resources throughout the 1880s and particularly in the era after their settlement on reserves. Several accounts note that the winter of 1884–1885 had been particularly difficult for the Cree, as they tried to obtain what wild game they could in the midst of widespread cutbacks in government rations throughout the North-West.
caused by scrofula. Within the next two years, three more First Nations men, all under the age of 30, died in the Manitoba Penitentiary. The Catholic chaplain lamented the shocking mortality rates of these prisoners: “They were young, healthy, strong; but these advantages were useless preventative against death. The idea of their detention was for them something very heavy and hard. I often heard them saying: ‘Wayo otatchi ayayan; Estitotemak ayayayan, gakekon — If I were not here, if I were with my people, I would surely recover.’”

Cloutier’s remarks echoed a widely held belief that confinement in prison caused disease and degeneration in First Nations people. Despite intimate knowledge of the dreadful sanitary condition within peniteneries, officials relied on stock Victorian ideologies regarding the degenerated health of the First Nations to explain higher than normal incidences of disease and mortality. Transmittable (and preventable) respiratory disease re-imagined as racial defect became the standard response to First Nations’ sickness within the penitentiary and formed the basis of a powerful stereotype about the way they reacted to imprisonment. For example, Manitoba Penitentiary surgeon W. D. R. Sutherland examined a group of Cree prisoners in 1884 and dismissed their worsening illness as “hereditary disease, quite incurable, and clearly aggravated by the confinement of prison life.”

Mercy played a role again as the government began to consider pardons for the Rebellion prisoners in 1886, largely as a result of their failing health. Anger surrounding the Rebellion had subsided considerably by 1886, and the majority of prisoners ceased to be perceived as threatening or politically relevant. In these cases, political pragmatism carried the day over cultural considerations, particularly as officials realized throughout 1886 that many of the prisoners were terminally ill. The first 11 Rebellion prisoners, including Chief Poundmaker, were released in

81 “Return of Deaths In Manitoba Penitentiary Hospital,” Sessional Papers, 1883, No. 29, p. 133.
83 Anne McClintock explores the discourse of degeneration in an imperial context. She argues that social crisis in Britain in the 1870s and 1880s caused a eugenic discourse of degeneration predicated upon the fear of disease and contagion. Ruling elites classified threatening social groups (working-class and racialized people) in biological terms that pathologized their perceived shortcomings and potential to threaten the riches, health, and power of the “imperial race.” Anne McClintock, Imperial Leather: Race, Gender and Sexuality in the Colonial Contest (New York: Routledge, 1995), pp. 46–51.
March of 1886. Catholic priest Albert Lacombe broke the news to the pardoned prisoners at Stony Mountain and recalled later, “they were so happy, like little children.” For the most part, the fear of political scandal over prisoners’ deaths motivated these pardons. The press noted that the released men were very weak and sickly, and some were even unable to walk. Among the men released that spring was Chief One Arrow, who made it only as far as St. Boniface before dying four days later.

The inclusion of Poundmaker in the first group of pardoned prisoners also reveals the influence of political considerations. A comparison of the pardons of Chiefs Poundmaker and Big Bear illustrates this pragmatic mercy in action. From their arrival at the penitentiary, the treatment of the two Cree chiefs was in striking contrast, initially revolving around the response of penitentiary officials to cutting their hair. Correspondence from the Indian Commissioner to the Prime Minister warned that Poundmaker’s hair must not be cut as was customary upon admittance to the Penitentiary. The Prime Minister accepted Dewdney’s recommendation and wired the penitentiary in advance of Poundmaker’s arrival to warn that, as there was a strong feeling among the Blackfoot in Poundmaker’s favour, his hair must be saved if at all possible. Warden Bedson was only too happy to comply with the request. In contrast, Big Bear’s hair was cropped into a short European style soon after his capture. As Chief Crowfoot’s adopted son, Poundmaker represented a bond between the traditionally warring Blackfoot and Cree and was therefore more politically important than Big Bear.

The fear of a future insurgency among the Blackfoot caused government officials to treat Poundmaker with unusual deference. Dewdney wrote to the Prime Minister just after Poundmaker’s trial expressing the anxiety that something more might come of the personal relationship: “I hope no understanding will be come to between the Crees & Blackfeet through Poundmaker — that is what I have been afraid of, but I think the light sentence will prevent that & if his hair is saved I am sure it will.” The politics surrounding Poundmaker’s hair foretold the treatment he would receive from prison and government officials throughout his incarceration. Indeed, some newspapers interpreted Poundmaker’s

85 Saskatchewan Herald, March 8, 1886.
87 Saskatchewan Herald, August 30, 1886.
88 SAB, R70, Macdonald-Dewdney Correspondence, E. Dewdney to J. A. Macdonald, August 23, 1885.
89 LAC, MG27, S. L. Bedson to E. Dewdney, October 11, 1885.
90 SAB, R70, Macdonald-Dewdney Correspondence, E. Dewdney to J. A. Macdonald, August 23, 1885.
91 Chief Crowfoot had adopted Poundmaker for a time in his youth to replace a son lost in battle. This was a customary reciprocity between warring tribes. After the last hostilities between the Cree and
treatment on his release in March 1886 as adulation. Once again, Poundmaker’s relationship with Crowfoot served him well. Dewdney received a telegram from the Prime Minister in late February 1886 informing him that Poundmaker was to be released “at Crowfoot’s intercession.”92 The penitentiary organized a banquet to celebrate the first release of the Rebellion prisoners, and Warden Bedson presented Poundmaker with a gold watch. The unusual fêting of the pardoned prisoners made the event seem more like a graduation ceremony than a release from a federal penitentiary. Poundmaker was granted a meeting with Indian Commissioner Edgar Dewdney the day of his release, and, after leaving the prison, the men slept at the mansion of Archbishop Taché before beginning the trip back to the Treaty 6 area.93 The Saskatchewan Herald’s P. G. Laurie was outraged that the sentences he had viewed as too lenient would end so soon and ceremoniously. He decried the treatment of Poundmaker “as an equal rather than as a savage just off the warpath” and complained that in former times he had been a chief but was treated as a king after his release.94 However, Poundmaker did not escape the disease endemic to Stony Mountain. He died at the age of 45, three months after his pardon. For Laurie, the sentences of the Rebellion prisoners appeared as useless political theatre, and it is clear that political considerations played a major role in Poundmaker’s release.95

In striking contrast, First Nations politics in the North-West worked against Big Bear during his time at Stony Mountain. Big Bear languished at Manitoba Penitentiary throughout 1886 with several other Cree prisoners. Although about two dozen additional Rebellion prisoners were quietly released from prison in the summer of 1886, Big Bear was not among them. In early 1887, Cree chiefs including Mistiwaswi, Ahtakakoop, James Twatt, and John Smith petitioned the government for Big Bear’s release. The petition paid tribute to the government and gave assurances that the chiefs considered that the prison sentences would have “the happy effect of deterring other evil disposed persons

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92 SAB, R70, Macdonald-Dewdney Correspondence, J. A. Macdonald to E. Dewdney, February 24, 1886.
93 Saskatchewan Herald, March 8, 1886.
94 Ibid.
95 It is not certain that Poundmaker died of tuberculosis, though there are indications that he had suffered from the disease in years prior to his prison sentence. The Saskatchewan Herald noted that Poundmaker had suffered an attack of “bleeding lungs” that nearly killed him three years previously, and various reports stated that he coughed blood when he died (Saskatchewan Herald, July 29, 1886).
from attempting to disturb the peace of the country in the future." The petition continued by addressing Big Bear’s status relative to the other released prisoners:

We would also express our admiration for the mercy shown to the prisoners by releasing them from prison after serving a short period of their sentence. We believe that “Big Bear” is the only Indian of those concerned in the rebellion remaining in prison, and although we have no sympathy with the heinous crimes laid to his charge, we humbly submit that it would be very gratifying to the Cree Nation if her Majesty’s Government would extend to this criminal the clemency shown from time to time to the other prisoners and grant him pardon...

Playing a deft political card, the chiefs emphasized the “loyal” status bestowed upon them by Hayter Reed following the Rebellion. Significantly, the language of the petition also marginalized Big Bear’s standing among Cree leaders in the North-West by emphasizing their disapproval of his crimes.

However, Dewdney and Reed showed little interest in a pardon for Big Bear. Following the Rebellion his band was scattered, and several of his followers sought sanctuary from the law in Montana. Writing to the Superintendent of Indian Affairs, Reed initially rejected the petition based on the fear that the former members of Big Bear’s band would leave their present settlements to join him. Evidently, the government still feared the political viability of Big Bear and opted to keep him imprisoned. Reed also considered that Big Bear would need to be released eventually and suggested to the Superintendent, “[If] the Authorities decide to release him, I beg to suggest that the release should be made prominently to appear as having been obtained through the exertions of the loyal chiefs, since that tends to give them more influence with Big Bear.”

Vankoughnet agreed that the release of Big Bear in 1887

97 Ibid.
98 Following the Rebellion, Hayter Reed compiled a list of “band behavior” in which he detailed the activities of each First Nation group and branded them as either “loyal” or “disloyal.” The designations had wide-ranging implications and determined levels of assistance, government monitoring, and permission to possess firearms.
99 A large number of Big Bear’s followers, including his son Imasees, fled the North-West for Montana following the Rebellion. Imasees stood trial in the 1890s for his role in the Frog Lake Massacre, but was not convicted. Despite American military attempts to dislodge them from Montana, the Cree under Imasees never returned permanently to Canada. Michel Hogue, “Disputing the Medicine Line,” *Montana*, vol. 52, no. 4 (2002), pp. 2–17.
100 LAC, RG10, Vol. 3774, File 36846, H. Reed to Superintendent of Indian Affairs, January 29, 1887.
101 Ibid.
would be premature and that a pardon should be deferred. Authorities were left with little choice only a month later when Big Bear’s failing health caused the penitentiary surgeon to urge his release as soon as possible. Big Bear was released in February 1887 and died less than a year later on the Little Pine reserve.

Big Bear’s release put a symbolic bookend on the entire legal aftermath of the North-West Rebellion. The thunderous rhetoric of law and order, punishment and revenge that characterized the legal response to the Rebellion ended in this way, with the slow degeneration of an elderly former chief waiting for government mercy. What transpired in between is a demonstration of the mutability of these ideological categories. Although government and legal authorities grounded their actions and responses in the ideological tenets of English law, the process revealed something quite different: a paternalist regime willing to resort to striking brutality in its response to opposition. This reaction was not unique in the history of encounters between First Nations people and British law. Hamar Foster reveals how the Hudson’s Bay Company exercised a long tradition of violent intimidation of coastal nations in an abandonment of the Queen’s law in favour of “blood for blood” retaliation. The pattern established by the HBC continued under British authority in the 1850s and 1860s. Governor James Douglas reminded the Cowichans in 1852 that resistance to the civil power “would expose them to be considered as enemies.” There is considerable evidence in the aftermath of the North-West Rebellion to suggest that government officials regarded the rebellious bands in the North-West on similar terms. Hayter Reed’s infamous list of band behaviour, including the all-important “loyal” and “disloyal” designations for entire bands, serves as stark evidence of how the government viewed any challenge to its authority. These examples of HBC and later colonial government responses to “international homicide” bear some resemblance to the Canadian response to the Cree in the 1880s.

While the legal response to the North-West Rebellion does not fall into the history of international homicide described by Foster, it certainly bears its antecedents. Although the North-West Rebellion violence ended in the early spring of 1885, the government did not hesitate to open a new front against First Nations people in the legal realm. In this way the government used punishment to decapitate politically the most oppositional First Nations bands in the North-West.

102 Quoted in Dempsey, Big Bear, p. 195.
104 Ibid., p. 62.
Canada’s legal response to the convicted First Nations participants suggests that, beneath an overarching colonial agenda, the law operated in complex and contradictory ways. The Rebellion court cases, capital punishment, and penitentiary sentences reveal a process of colonization in which the majesty, justice, and mercy of the law unfolded, although seldom in the manner legal authorities intended. Elements of punishment, including executions and incarceration, demonstrate the different ways law and punishment were used to subordinate First Nations people. However, this subordination did not occur as directly as some writers have suggested. Domination was far from absolute in the shattering days after the North-West Rebellion. Productive and colonial relations were badly shaken by the uprising. In the aftermath, we see these relations reconstituted not only by brute state force but through the mediating effect of the ideological tenets of law. This legal response and the complex ways in which it unfolded tell us much about the emerging colonial relationship that figured forcefully in precipitating the Rebellion and even more about an emergent Canadian hegemony afterward. The experience of the convicted First Nations participants of the North-West Rebellion is found in the midst of this history. Revealing their participation in these sites of struggle provides an essential contribution to our understanding of how Canadian hegemony in the North-West was challenged.