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## 'A Strange Revolution in the Manners of the Country': Aboriginal-Settler Intermarriage in Nineteenth-Century British Columbia

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For a fleeting window of time in the early nineteenth century, Aboriginal-settler intermarriage was a vibrant and respected institution across the Pacific Northwest.<sup>1</sup> The prevalence of this institution – as well as its animating principles and widespread acceptance – derived primarily from the unique social, economic, and political fabric within which it was intricately enmeshed. From the moment the Northwest Company (NWC) established a land-based fur trade west of the Rockies in the 1810s, Aboriginal cooperation was essential to the success of the venture and the very survival of its participants. Contrary to conventional histories of the fur trade, which tend to portray Aboriginal populations as passive victims of European mercantilism, it is clear that Aboriginal communities actively elicited and often dictated the terms of trade with European arrivals. Even before contact, marriage was well established in the geopolitical world of the Pacific Northwest as a means of securing peaceful relations between communities, fostering trade, and entangling strangers in a series of kinship obligations. Aboriginal communities naturally extended this institution to European traders, who were well aware of its economic significance (and personal advantages) from the experience of the Hudson's Bay Company fur trade.

Thus, from the 'mutually beneficial economic symbiosis'<sup>2</sup> of the early Pacific coast fur trade, a unique and relatively egalitarian institution of marriage, largely mirroring Aboriginal marriage rites and customs, emerged as the primary economic and social foundation of Aboriginal-settler interaction. The insulated social and economic world of the fur trade, which encouraged and required both Aboriginal and female autonomy, provided an environment in which individual traders were able to transcend racist sentiments prevailing in their home countries.

However, by the close of this same century, the validity under Canadian law of marriage according to the 'custom of the country' was precarious, and intermarriage of any sort – even in accordance with Canadian law – was widely considered not only immoral, but also a significant threat to the

integrity of the new province. This chapter represents an attempt to chart the tumultuous journey of intermarriage across the nineteenth century as it wavered along the fluid boundaries separating morality from sin, legality from lawless custom. Thus, this historical account is largely a story about borders – geographical, legal, moral, racial, and sexual – and the way these borders were reproduced and renegotiated in the face of rapid and profound social and economic changes. It suggests the geographical frontier also existed as a moral frontier.

The shifting social status of Aboriginal women lies at the heart of this story, as this status was inevitably implicated in the intersecting constructions of race and gender that defined nineteenth-century Aboriginal-settler relations and the institution of intermarriage. Indeed, the most obvious transformation in intermarriage during the nineteenth century was the variable constellation of racial and cultural attributes that constituted a desirable wife. In 1840, on the occasion of Chief Trader James Hargrave's marriage to a woman of Scottish descent, James Douglas mused on this shifting construction of desire: "There is a strange revolution in the manners of the country; Indian wives were at one time the vogue, the half-breed supplanted these, and now we have the lovely tender exotic torn from its parent bed."<sup>3</sup> While this comment captures the symptoms of change, it leaves the causes (to the extent they can be discerned) unexplored. This chapter attempts to chart the 'strange revolution' in Aboriginal-settler unions – from foundational social institution to moral crime – against a turbulent backdrop of changing demographic, economic, and ideological influences. It also attempts to bridge the gulf between personal and political worlds, arguing that each defined the other during the nineteenth century. The institution of intermarriage was inevitably undermined by emerging discourses of 'civilization' that characterized Aboriginal peoples, polities, and laws as inferior; at the same time, the social and geographical segregation of Aboriginal and settler societies encouraged the flourishing of these self-serving discourses. In this light, the decline of intermarriage in legal force and moral stature can be understood only by reference to the changing constructions of race, gender, morality, and law that marked the gradual ascendancy of Euro-Canadian 'civilization' in Indian Country.

The geographical and temporal boundaries of this chapter are somewhat artificial, as neither boundary was conveniently respected by the forces shaping the practice and status of intermarriage. The nature and the moral and legal standing of this institution were significantly influenced over a period of centuries by structural and ideological forces emanating from Britain (and its colonies), France, eastern Canada, and the United States. In particular, the first three sections of this chapter – spanning the first half of the nineteenth century – liberally traverse between the fur trade societies of the Pacific Northwest and Rupert's Land, since developments in the latter inevitably

influenced the former. This comparison also illuminates by contrast: while the status of intermarriage followed a similar trajectory in both regions, the timing and rate of change in each territory was shaped by local economic and social variables. The latter half of the chapter focuses more exclusively on developments along the Pacific coast, which by this point more or less mirrored Aboriginal-settler relations to the east.

It is important to note that this chapter attempts only to chart the broadest contours of change across a vast expanse of time and territory. It tends to focus on the primary areas of settlement that were the hub of Aboriginal-settler interaction and usually the epicentres of structural and ideological transformation. The rate and nature of change varied extensively from region to region based on a complex network of variables, not least being the precontact social and political relations of indigenous populations. Change tended to occur more slowly, if at all, in areas insulated by distance from the major centres; indeed, as the tide of social opinion turned against intermarriage, many interracial couples relocated to remote areas as a survival strategy.<sup>4</sup> Mapping an accurate picture of change across nineteenth-century Aboriginal-settler societies in the Pacific Northwest requires extensive, localized histories that are only beginning to emerge in non-Aboriginal scholarship. However, the broad view presented by this chapter is valuable, at the very least, in identifying the overarching matrix of economic, social, and political currents in which local histories were embedded. It also identifies social responses to cultural difference, rather than radical difference in itself, as the primary engine of racial ideologies.

### **The Custom of the Country, 1810-20**

Almost from the moment posts were established in the Hudson's Bay region, Hudson's Bay Company (HBC) employees formed relationships with local Aboriginal women, a practice deemed reprehensible by the distant London Committee<sup>5</sup> directing the HBC's affairs. Concerned that such relationships could only corrupt its men, deplete provisions, and promote illicit trade, the London Committee ordered its governor in 1683: 'We are very sensibly that the Indian Women resorting to our Factories are very prejudicial to the Companies affaires ... It is therefore our positive order that you lay your strict Commands on every Cheife of each Factory upon forfeiture of Wages not to Suffer any woman to come within any of our Factories.'<sup>6</sup> Such a proscription, issued from the remote London headquarters, was profoundly out of step with the realities of fur trade life and economics, and consequently carried little force. Indeed, governors and chief factors were among the first to enter into marriages with Aboriginal women, several adopting polygamy as practised by some Aboriginal nations. Attempts by the officers to enforce strict HBC policy on subordinates, while flouting the rules themselves, gave rise to considerable ill feeling between the ranks,

and soon the policy was conveniently overlooked.<sup>7</sup> By 1739, the London Committee reluctantly accepted the necessity of intermarriage, and thereafter focused on mitigating the costs to the company of this practice, rather than on eliminating it altogether.<sup>8</sup>

Unlike the HBC, the Montreal-based NWC actively encouraged unions between its employees and Aboriginal women, recognizing the value of such unions in securing trade ties and acculturating traders to Aboriginal language and customs.<sup>9</sup> All ranks of employees were allowed to take Aboriginal wives, and the NWC accepted responsibility for maintaining these wives and families.<sup>10</sup> In fact, the NWC was linked to Aboriginal communities along every strata of the trade hierarchy.<sup>11</sup> It was this sanctioned interaction between NWC employees and Aboriginal women that first shaped the development and widespread acceptance of a customary form of intermarriage that would soon prove fundamental to fur trade society.

Several commentators attribute the prevalence of intermarriage primarily to the complete absence of white women on the fur trade frontier,<sup>12</sup> but such an account undervalues the impact of the unique socioeconomic landscape of the early fur trade. Intermarriage operated not only as a social institution, alleviating the harshness of frontier life with 'the many tender ties'<sup>13</sup> of domestic life, but also as a political and economic linchpin, securing vital – and mutually beneficial – trading alliances between Aboriginal and European communities.<sup>14</sup>

Long before contact with European powers, intertribal marriage was deeply entrenched in the geopolitical relations of precontact Aboriginal societies as a mechanism for fostering trade and peaceful relations between nations through the extension of kinship ties.<sup>15</sup> In this light, intermarriage with incoming European traders simply constituted an extension of prevailing practices, an effective means of entangling strangers in a series of kinship obligations. Relatives by marriage were expected not only to deal fairly, but also to provide hospitality and support in times of famine. From the perspective of Aboriginal communities, intermarriage with fur traders ensured a steady supply of European goods, favourable exchange rates, and even trade monopolies, all of which provided considerable political leverage in an increasingly uncertain postcontact world.<sup>16</sup>

From the perspective of the major fur trade companies, marriage alliances with Aboriginal communities were critical to not only their economic success, but often their very survival.<sup>17</sup> Leading traders often married the daughters of prominent Aboriginal leaders, thus gaining powerful allies and securing extended trade networks through kinship: 'The father-in-law could become, in a sense, an economic agent for the trader.'<sup>18</sup> William Connolly, a young trader who would become an HBC chief factor, acknowledged to relatives that his trading career had floundered until he married Susanne 'Pas-de-nom,' the daughter of a Cree chief.<sup>19</sup> By the mid-eighteenth century

it was established practice for a governor to have an Aboriginal wife and by the 1820s nearly all HBC officers, and many of the lower ranks, had entered into Native marriage alliances.<sup>20</sup>

The demands of the environment in which these unions occurred shaped a truly indigenous institution of customary marriage (or marriage *à la façon du pays*), an institution that was neither Aboriginal or European in nature, but rather a complex blend of Aboriginal, French, and British attitudes and customs. These unions were initially more Aboriginal than European in form, reflecting the dependence of fur trade economies on Aboriginal goodwill and cooperation. Europeans were required to conform to Aboriginal custom. The trader presented the bride's family with a gift before the marriage could occur, and the marriages themselves were often accompanied by traditional Aboriginal rituals such as feasting, gift-giving, smoking of a symbolic pipe, and other usages that varied from nation to nation.<sup>21</sup> Aboriginal women retained much of the autonomy accorded to them in their Native cultures, buttressed by their role as cultural intermediaries and their domestic and economic support of the trade.<sup>22</sup>

However, marriage *à la façon du pays* represented a unique adaptation – rather than a pure adoption – of Aboriginal custom. This adaptation was evident in the celebration itself, which required additional steps to reflect the heritage of the groom. After the completion of the Aboriginal ceremony, the couple was generally escorted back to the fort, where the bride's Native garments and other traditional markings were replaced with European clothing. Upon retiring to the groom's quarters, the couple would thereafter be considered husband and wife.<sup>23</sup> On a more substantive level, the transient nature of early fur trade life altered Aboriginal conceptions of marriage. Initially, marriage was not regarded as a binding contract, in accordance with Aboriginal custom, and either side could separate if unsatisfied.<sup>24</sup> However, rather than as a result of marital dissatisfaction, most unions dissolved when the husband was transferred or left the country at the end of his employ.<sup>25</sup> His wife and children were then generally accepted back into their home community without any difficulty,<sup>26</sup> often with enhanced prestige and status.<sup>27</sup> Aboriginal customs of polygamy, adopted by some HBC officials but condemned by the NWC,<sup>28</sup> were not generally incorporated into the practice of marriage *à la façon du pays*.

Thus, despite its complexities, regional variations, and a flexibility that was open to self-serving exploitation by individual traders, marriage according to 'the custom of the country' came to attain the same recognition as European marriages.<sup>29</sup> The manner in which fur trade society regarded Susanne 'Pas-de-nom,' the Cree wife of William Connolly, reflects the recognition of a marital bond: 'She passed and was universally acknowledged as his wife at different posts ... her children by William Connolly were always acknowledged in public as the lawful issue of their marriage.'<sup>30</sup> These

unions were actively promoted and pursued not only by European traders, but also by Aboriginal women and their communities, and they held the potential to benefit all parties involved.<sup>31</sup>

Such was certainly the case along the Pacific coast, which inherited the legacy of marriage *à la façon du pays* as land-based trading involving coastal and interior tribes supplanted the maritime fur trade in the 1810s.<sup>32</sup> The NWC initiated the land-based fur trade, centred around the upper Fraser and lower Columbia and employing some 230 employees at ten posts.<sup>33</sup> Relations between NWC traders and Aboriginal peoples largely mirrored the earlier fur trade experience: intermarriage represented the primary mechanism for promoting harmonious relations, cementing commercial alliances, and expanding trade networks. For example, marriage alliances were a pivotal factor in trade relations with the powerful and influential Chinook and Carrier nations.<sup>34</sup> One commentator speculates that virtually every NWC trader lived at their posts with a country wife.<sup>35</sup> The dominance of Aboriginal nations in the region ensured their interests and values were reflected in both trade and marriage. Indeed, Aboriginal nations determined to a large extent how – even *if* – trade would be conducted, and some countenanced intermarriage only with men they highly esteemed.<sup>36</sup>

The use of trade Chinook as the language of commerce reflected the dominance of Aboriginal interests along the Pacific coast. The widespread use of this common trading language facilitated more than commerce: ‘People could talk to each other on an ongoing basis, and sometimes they did more than talk.’<sup>37</sup> As elsewhere, Aboriginal women offered far more to traders than companionship: ‘Women prepared food and clothing, taught traders the methods of survival in a sometimes harsh climate, provided a modicum of personal life and acted as links with the local bands in the actual trading of furs.’<sup>38</sup> Further, the lives of traders were saved on more than one occasion by the intervention of their wives as both cultural and linguistic intermediaries.<sup>39</sup> As in Rupert’s Land, marriages tended to last until a trader left for another post or for home, although unions became more sustained as increased settlement made establishment of permanent families possible.

The institution of marriage *à la façon du pays* emerged on both sides of the Rockies from a unique political and economic equilibrium. The values and interests of no one culture – whether Aboriginal, British, or French – could predominate, and the boundaries of acceptable social behaviour were negotiated in an atmosphere of rough parity. The consequent ‘custom of the country’ fostered relationships in which individual traders often transcended the racism of their home countries. However, these moral boundaries proved both temporary and fragile: as the balance of power shifted during the nineteenth century, the im/moral border was reconstituted (and eventually imposed) in a world of changing economic and political realities.

### Regulating Inter-marriage, 1821-36

Even before the practice of inter-marriage was established with any regularity along the Pacific coast, it was undergoing profound changes in Rupert's Land. By the early 1800s, traders in Rupert's Land were increasingly drawing their marriage partners from the growing ranks of mixed-blood women, rather than selecting Aboriginal wives.<sup>40</sup> A number of factors influenced this shift, which would recur three decades later on the Pacific coast. First, the daughter of a fur trader possessed the ideal qualities of a fur trader's wife: she had acquired the localized skills, knowledge, and language of her mother and was acculturated to the fur trade lifestyle. These practical considerations meshed with an element of racial superiority: contemporary commentary suggests traders found the lighter skin and European features of mixed-blood wives more attractive. As settlement increased, officers were increasingly drawn to mixed-blood wives by the prevailing belief that they were more susceptible to 'civilizing' influences.<sup>41</sup> Finally, fur traders felt a collective responsibility for the fortunes of their daughters, who fell between 'white' and 'Aboriginal' cultures. An 1806 NWC policy prohibiting inter-marriage to pure-blood Aboriginal wives reflected this concern. While this ruling was motivated primarily by the rising costs of maintaining families in an era of intense competition, it served the intended dual purpose of encouraging NWC employees to marry the daughters of fur traders.<sup>42</sup> In anticipation of the Red River settlement, the HBC instigated a similar policy in 1811.<sup>43</sup>

The founding of Red River in 1812 enabled many fur traders to finally settle with their families, but it also provided greater opportunity for marriage with mixed-blood women, and thus served as a final discouragement to marriage with pure-blood Aboriginal women.<sup>44</sup> As inter-marriage with mixed-blood wives became prominent, the institution increasingly reflected European conceptions of marriage. Fur trade fathers insisted that potential husbands enter into a lasting commitment to their daughters, and marriage *à la façon du pays* was soon considered a permanent union.<sup>45</sup> The last remnants of polygamy amongst fur trade officers declined and vanished.<sup>46</sup> As marriage *à la façon du pays* came to approximate European marriage, at least in its general contours, it increasingly came to be regarded as its equivalent. John Harriot, an HBC officer married to the mixed-blood daughter of Chief Trader John Pruden, contended: 'It was not customary for an European to take one wife and discard her, and then take another. The marriage according to the custom was considered a marriage for life ... I know of hundreds of people living and dying with the woman they took in this way without any other formalities.'<sup>47</sup>

Country marriages attracted more stringent regulation after the amalgamation of the HBC and NWC in 1821. The new HBC immediately took

steps to standardize the 'custom of the country,' motivated primarily by the cost of maintaining families left by traders across the Northwest. An 1821 resolution stipulated that all officers and men leaving family behind upon retirement were required to 'make such provision for their future maintenance ... as circumstances may reasonably warrant and the means of the individual permit.'<sup>48</sup> While this policy was generally unenforceable, by 1824 the HBC introduced marriage contracts as a means of formalizing intermarriage. The contracts emphasized the husband's economic responsibilities to his wife and children, and many entitled the wife to financial compensation should her husband fail to meet his marital obligations.<sup>49</sup> Both parties signed a declaration before the chief factor that granted the woman the status of legal wife.<sup>50</sup>

This growing sense of social responsibility for the 'daughters of the country' provided marriage *à la façon du pays* with a brief period of stability.<sup>51</sup> The institution remained fundamentally indigenous to fur trade society, although it was now markedly inclining towards European norms. However, the increasing confidence – and effectiveness – of the HBC in defining the nature, terms, and conditions of intermarriage reflected the ascendancy of British authority in the region, the marginalization of full-blood Aboriginal women, and the dwindling political leverage of Native trading allies in an era of almost no competition.

The elimination of the Montreal-based fur trade did not have the same impact west of the Rockies, where the HBC did not possess a single post prior to the amalgamation.<sup>52</sup> Although the HBC inherited complete control of the Columbia River fur trade from the NWC, competition from both the north (Russia) and the south (US) ensured Aboriginal trading allies substantial political leverage.<sup>53</sup> This fact, coupled with the general unavailability of mixed-blood wives until the late 1820s and 1830s, guaranteed the acceptance of marriage *à la façon du pays* with Aboriginal women. As the HBC planned to move into the interior ('New Caledonia'), Governor Simpson recommended 'Connubial alliances' with principal families as 'the best security we can have of the goodwill of the Natives,'<sup>54</sup> even as marriage to full-blood Aboriginal women had fallen out of favour in Rupert's Land.

Although the social and economic context along the Pacific was distinct from that in Rupert's Land, the new territory did feel the impact of post-amalgamation HBC policy. The HBC did not provision wives and children, but expected employees to maintain their families, even after retirement, and implemented this policy through marriage contracts.<sup>55</sup> At Fort Vancouver, the headquarters of the Columbia district, a husband deserting his family could be arrested and forced to provide security that he would not make another such attempt.<sup>56</sup> As elsewhere, the formalization of customary marriages provided the institution with increased stability: customary marriages were not only recognized, but also enforced.

By the 1830s, HBC officers in the Pacific region were able to marry mixed-blood women. As in Rupert's Land, a combination of practical skills, lighter complexion, and the concern of fur trade fathers resulted in the privileging of mixed-blood women as marriage partners. According to family legend, James Douglas was very proud of the light complexion of his mixed-blood wife, and was disappointed when his 'Little Snowbird' returned from a vacation in New Caledonia with a deep tan.<sup>57</sup> As racial distinctions emerged, class distinctions were not far behind. David Peterson del Mar describes how Celiast Smith, a Chinookan woman married to a French Canadian trader, suffered a sudden decline in status in Fort Vancouver society as the shifting constructions of desire now labelled her as the 'flower of the lower Columbia Women' who married 'the companys labouring men.'<sup>58</sup> By the late 1830s, full-blood Aboriginal women were increasingly unlikely to marry officers of the HBC. As in Rupert's Land, settlement undermined the status of Aboriginal women even as it brought greater recognition and stability to intermarriage.

### **Shifting Settler Attitudes towards Inter-marriage, 1836-49**

West of the Rockies, marriage *à la façon du pays* remained a pervasive and respected social institution well into the 1830s. The first significant threat to the legality of these customary marriages – and the moral legitimacy of intermarriage – appeared in 1836, with the appointment of Reverend Herbert Beaver as the HBC's first Pacific coast chaplain. Beaver's vitriolic sermonizing, a blend of early Victorian values and Protestant morality, would prove more of an irritant to Fort Vancouver society than a spur for social change, but it nonetheless cast intermarriage in a new, and unflattering, light.

In many ways, Reverend Beaver personified the profound changes that had been transforming fur trade society in Rupert's Land for over a decade. Before amalgamation, the relative insulation of Rupert's Land from 'civilization' fostered the development of localized customs and social norms. With the collapse of a competing French influence, Red River society was increasingly exposed to the influence of British culture emanating from both Britain and eastern Canada.<sup>59</sup> Newly arrived Roman Catholic and Protestant missionaries in Rupert's Land denigrated intermarriage as sinful and immoral, and insisted church sanctification was the hallmark of a valid marriage.<sup>60</sup> While many prominent traders defended and continued the institution of marriage *à la façon du pays*, they did so in an environment of growing 'self-consciousness ... that now they were choosing among alternatives rather than following (as formerly) the main or only course open to traders in Indian Country.'<sup>61</sup>

The arrival of white women – the 'lovely exotic torn from its parent bed' – further reinforced British attitudes and values, and devalued Aboriginal and mixed-blood wives in the eyes of status-conscious men.<sup>62</sup> This was

especially true in settled areas, where a polished and graceful wife was supplanting Native skills and connections as a precondition of social mobility.<sup>63</sup> As James Hargrave observed in 1830, 'This influx of white faces has cast a still deeper shade over the faces of our Brunettes in the eyes of many.'<sup>64</sup>

Governor Simpson, the most important personage in the nineteenth-century fur trade, led the charge in transforming fur trade society and marriage practices. Never having served a real apprenticeship in the country, Simpson was ill conditioned to its customs and institutions. He readily exploited these institutions, taking a series of Aboriginal partners whom he quickly discarded, and he shocked fur trade society by abandoning his mixed-blood wife upon marrying his British cousin.<sup>65</sup> Simpson's status magnified the force of his actions: 'His sex-object attitude to women was largely responsible for the breakdown of marriage à la façon du pays.'<sup>66</sup> His return from England with Frances Simpson as his wife sparked 'the stampede among the active and retired officers for a European marriage with a British born wife.'<sup>67</sup>

The missionary message dovetailed well with emerging distinctions of class and parentage: many chief factors and traders relied on the missionaries' insistence that customary marriages were invalid to abandon their country wives and wed British brides.<sup>68</sup> Connolly's repudiation of Susanne in 1832 and subsequent marriage to his second cousin reflected this trend.<sup>69</sup> By the mid-1830s, fur trade officers acknowledged that church rites were a prerequisite of marriage, and even long-time hold-outs submitted to church confirmation.<sup>70</sup> The HBC modified its marriage contracts to require church sanction at the earliest opportunity.<sup>71</sup>

However, Fort Vancouver was not Red River: the fur trade remained relatively shielded from external influences into the late 1830s (and much later in outlying districts). The arrival of white women in any great numbers was delayed until the 1860s, and marriage à la façon du pays remained crucial to the success of the fur trade.<sup>72</sup> Governor Simpson was well aware of the differences when he advocated caution in the selection of a missionary for Pacific region: 'He ought to understand in the outset that nearly all the Gentlemen and Servants have families altho' Marriage ceremonies are unknown in the Country and that it would be in vain to attempt breaking through this uncivilized custom.'<sup>73</sup> Reverend Herbert Beaver, ultimately selected to lead the Columbia mission, demonstrated very little of this understanding. Consequently, just as Red River was becoming resigned to European marriage practices, the same issue exploded in Fort Vancouver.

From the moment Beaver arrived in Fort Vancouver, he railed against customary marriages and condemned the Fort as a 'deplorable scene of vice and ignorance.'<sup>74</sup> Beaver's presentation was apparently as unpalatable as his message: 'His sermons, delivered in a high-pitched whine, disparaged women partners in country marriages as little better than concubines and condemned

their men as fornicators.<sup>775</sup> This insulting appraisal of the 'well-regulated domestic situation'<sup>776</sup> at the fort quickly led to conflict with prominent members of the community, most notably Chief Factor John McLoughlin, who was known for his fiery temper. McLoughlin remained highly devoted to his mixed-blood wife of twenty-five years, Marguerite, whom he had wed *à la façon du pays* as a young NWC employee. The remarks of her contemporaries suggest she was held in high regard as the first lady of Fort Vancouver, but Beaver denounced her as a 'kept mistress of the highest personage at this station,' refusing to allow her to associate with his own wife.<sup>777</sup> McLoughlin rebuffed Beaver's demands that he set an example by entering into a legal union with Marguerite, but submitted to a civil ceremony performed by Chief Trader James Douglas in his capacity as Justice of the Peace.<sup>778</sup> When Beaver continued to publicly denigrate his wife, McLoughlin attacked the minister with his cane in an outburst of rage.<sup>779</sup>

Douglas was also subject to Beaver's invectives, as he had married Amelia, the daughter of William Connolly and Susanne 'Pas-de-nom', in 1828 according to the 'custom of the country.'<sup>780</sup> Douglas, however, appeared more anxious than McLoughlin to have his marriage recognized by the church, and had Beaver perform the ceremony in 1837.<sup>781</sup> It soon became clear that racist sentiment tainted Beaver's assessment of mixed-blood wives, as he continued to denigrate Amelia even after the marriage, prompting Douglas to rise to the defence of country wives: 'The woman who is not sensible of violating and [sic] law, who lives chastely with her husband of her choice, in a state approved by friends and sanctioned by immemorial custom, which she believes strictly honourable, forms a perfect contrast to the degraded creature who has sacrificed the great principle which from infancy she is taught to revere as the ground work of female virtue; who lives a disgrace to friends and an outcast from society.'<sup>782</sup>

Beaver left Fort Vancouver in 1838 – with an extra £110 for his mistreatment at the hands of McLoughlin – without fundamentally altering the institution of inter-marriage in the same fashion as his counterparts in Red River. His efforts were, however, a portent of things to come. The general resistance to Beaver's message, as Governor Simpson predicted, stemmed largely from the integrity of inter-marriage to the smooth economic, social, and political functioning of the Columbia district fur trade world. Further, unlike in Red River, the most influential members of the community were steeped in the customs of the country (Douglas spent most of his adult life in New Caledonia), and actively defended the validity of these customs. Beaver's depiction of country wives as concubines and prostitutes was irreconcilable with the long-held and unquestioned community acceptance of inter-marriage, as demonstrated by the respect and admiration accorded to Marguerite McLoughlin and Amelia Connolly Douglas. The status of inter-marriage – and its institutions – was further bolstered by Governor Simpson's

continued advocacy of its benefits in New Caledonia,<sup>83</sup> and by the demonstrated inability of European women to adapt to the harsh fur trade life in Rupert's Land.<sup>84</sup>

However, the next wave of missionaries, following on Beaver's heels, enjoyed considerably more success. Catholic missionaries, working inland from their Pacific mission, were successful not only because the majority of Fort Vancouver's population was Catholic, but also because they recognized the general legitimacy of marriage *à la façon du pays*. They structured ceremonies to respect the 'natural marriage' of couples joined by customary means, insisting the Catholic rite simply renewed and ratified the original union. In 1842, McLoughlin and Marguerite 'renewed' their marriage in a Catholic ceremony,<sup>85</sup> illustrating the slow infusion of religious values into the practice of intermarriage. Indeed, religious discourse would increasingly inform the construction of race, gender, and morality over the following half-century in present-day British Columbia. 'Civilization' was coming to Indian Country.

### **Reproducing 'Civilization,' 1849-71**

In 1849, Britain granted the HBC proprietorial rights to Vancouver Island for a decade, in return for the colonization of the island. By this time, the fur trade was already waning. As animals were trapped out and the fur trade retreated, the HBC diversified into a general resource company, capitalizing on the limitless supplies consumed by the California gold rush.<sup>86</sup> HBC employees and families, led by Chief Factor James Douglas, began to settle Fort Victoria in the early 1850s, and the fort was rapidly transformed from a wilderness outpost to the hub of the HBC's Pacific trade.<sup>87</sup>

Not surprisingly, the five dominant families in mid-nineteenth century Victoria were headed by men with mixed-blood wives: James Douglas, William McNeill, John Work, John Tod, and Charles Ross.<sup>88</sup> These families, intent on making the transition from fur trade elite to colonial elite, hoped to secure their social and economic status by reproducing British 'civilization' in this distant landscape. This vision of 'civilization,' in true Wakefieldian fashion, included the replication of the British social hierarchy, in which they envisioned themselves as landed gentry.<sup>89</sup>

However, Victoria in the 1850s and 1860s was marked by intensifying racism as the new settler society – equally intent on reproducing 'civilization' – imported British and American discourses that denigrated miscegeny and intermarriage. In this atmosphere of rapidly shifting social norms, Douglas and other old-time fur traders were less inclined to defend the practice of intermarriage, as they had done with confidence only a decade earlier, and instead preserved their social status through the acculturation of their families to British expectations.<sup>90</sup> Official descriptions of Douglas, especially after his appointment as Governor of Vancouver Island in 1851, tend to obscure Amelia's Cree heritage.<sup>91</sup>

The HBC grant stipulated that it would lose jurisdiction to Vancouver Island if it failed to forge a successful colony in five years; nonetheless, the HBC pursued this objective with little enthusiasm, and only seventy men, women, and children had settled the region at the end of this tenure.<sup>92</sup> It was the gold rush, which boomed in the late 1850s in the Cariboo region before dwindling through the rest of the nineteenth century, that provided a sudden deluge of new settlers.<sup>93</sup> In 1858, the year British Columbia was officially proclaimed a Crown colony, an estimated 30,000 miners passed through the streets of Victoria en route to the goldfields.<sup>94</sup> The objectives of these new arrivals collided with the traditions of the fur trade. Whereas Douglas and other fur trade officers had encouraged reciprocal and respectful relations with the Aboriginal population – on whom they relied for their survival and success – gold miners, self-interested settlers, and land speculators rebelled against restraints on their rights to land.<sup>95</sup> Although relationships between Aboriginal women and gold miners occurred, they seem to have been more opportunist and exploitative, and thus more fleeting, than fur trade marriages.<sup>96</sup>

Changing demographics and the shift away from fur trade relations made the direct coercion of Aboriginal societies possible, but it was the infusion of ideologies of European superiority that fuelled and legitimated this coercion. In particular, the rise of scientific racism marked the latter half of the nineteenth century, as pseudo-science bolstered self-serving prejudice with a wash of objective ‘truth’: ‘The concept of survival of the fittest obviated newcomers from any accountability for their attitudes and actions, since the weakest must in any case give way to the strongest, who were – very conveniently – themselves. If anything, persons of mixed race were lower down in the hierarchy than Indians, being denigrated as ‘mongrels’ combining the worst features of each of their biological inheritances.’<sup>97</sup>

Amor de Cosmos, the recently arrived editor of the *British Colonist*, reflected this elision of self-interest, racial superiority, and European notions of development characterizing the attitude of newcomers when he wrote: ‘Shall we allow a few vagrants to prevent forever industrious settlers from settling on the unoccupied lands? Not at all ... Locate reserves for them on which to earn their own living, and if they trespass on white settlers punish them severely. A few lessons should enable them to form a correct estimation of their own inferiority.’<sup>98</sup> The colonial project demanded the dehumanization of Aboriginal peoples and their construction as inferior, a process that inevitably undermined the status of Aboriginal and mixed-blood women, and interracial unions. Frustration with Douglas’ land policies – which respected the Crown policy of acquiring Native land only by treaty – may have underscored complaints voiced by visitors and new settlers in Victoria who openly contended that a man who had lived among the Natives and taken one for a wife was unfit to govern a colony.<sup>99</sup> These prevalent

social pressures prompted renewed efforts by prominent families to negate their Aboriginal heritage, their wives and daughters adopting Victorian manners and styles of dress.<sup>100</sup>

Douglas' succession by Joseph Trutch as the Governor of British Columbia in 1864 symbolized the sea change in colonial attitudes towards Aboriginal peoples and their land rights: 'Douglas had treated Indians as immigrants in their own land but also as British subjects with equal rights, and he had favoured mixing of the two races and assimilation of the Indians. Under the Trutch regime, Indians became a residual category with fewer rights than aliens. Segregation and inequality would now be the hallmarks of British Columbia provincial Indian policy.'<sup>101</sup>

Trutch embodied the interests and racist sentiments of the emerging settler society, possessing little knowledge of Aboriginal peoples, but openly condemning them 'as bestial rather than human,' 'as uncivilized savages,' and as 'lawless and violent.'<sup>102</sup> As chief commissioner of lands and works, Trutch denied any Aboriginal right to land in British Columbia, contending that Aboriginal peoples were 'primitive savages who were incapable of concepts of land title.'<sup>103</sup> Similar claims that Aboriginal peoples were simply incapable of grasping 'civilized' social institutions would soon underscore legal claims that customary marriages held no force in law.

The 1862 smallpox epidemic, which decimated over a third of British Columbia's Aboriginal population, confirmed the characterization of Aboriginal peoples as a 'doomed race' in the mind of settler society.<sup>104</sup> Social Darwinism fuelled the prevailing belief that Aboriginal societies were naturally destined to give way to the 'superior' forces of Christianity, civilization, and industry. One visitor to the region conjectured that 'a succession of races, like a rotation of crops, may be necessary to turn the earth to the best possible account, and consequently the Indians must be removed to make room for others.'<sup>105</sup>

A sharp rise in racist sentiment accompanied the arrival of white women in the Columbia District<sup>106</sup> just as the gold rush boom subsided. In the preceding years, the absence of white women was promulgated from various quarters as a political and moral disaster of the first order. White women came to represent the foundation of 'civilized' society, and were increasingly 'constructed as civilizing agents who could quell the disorderly behaviour associated with the frontier.'<sup>107</sup> The foremost manifestation of disorderly behaviour was, of course, interracial unions and their progeny. Colonial promoters argued that the presence of white women would discourage settlers from marrying indigenous women. In 1860, the Bishop of Oxford contended that 'the mixture of those different bloods is all against the colony,' cautioning that 'very small a portion of an evil influence will weaken down a vast volume of good influence.'<sup>108</sup> Wakefield, the architect of the colonization policies adopted by the HBC in 1849, integrated white

women into this plan as essential to the moral, religious, and economic health of the community: 'All the evils which have so often sprung from disproportion between the sexes, and which are still very serious in several colonies, would be completely averted.'<sup>109</sup> As Adele Perry observes, colonial promoters 'implied that disorderly behaviour and miscegenation were the natural state of white men ... In calling for the importation of white women, they were calling for direct political intervention.'<sup>110</sup> Thus, in a blend of colonial fervour, Social Darwinism, and religious discourse, Aboriginal and mixed-blood women were denigrated as racial (and national) contaminants, and white women valorized as the antidote.

The Anglican Columbia Mission Society, concerned that intermarriage would continue until white women populated the region, sponsored two bride ships. Sixty-two women arrived in Victoria in September 1862, followed by thirty-six more the following January. While these women were ostensibly to serve as governesses and servants, there was little doubt in anybody's mind that they were destined to become wives. Several were married or engaged within the first few months.<sup>111</sup>

As in Rupert's Land, the arrival of white women revived racism against Aboriginal and mixed-blood women that the cultural interdependence of fur trade life had largely dissipated. The increasing stability of settlement, combined with the declining economic utility of Aboriginal women and the colonial hunger for Aboriginal territories, provided an ample breeding ground for racist discourse. White women, 'trapped by a social structure in which a woman's lot is largely determined by her success in marriage,'<sup>112</sup> often led the charge. Unlike many other parts of the British Empire, fur trade society had sanctioned and actively promoted marriage to indigenous women. White women were acutely aware of their precarious status, and were inclined to actively denigrate the Aboriginal 'squaws' they feared as competition. The Foss-Pelly scandal that shook fur trade society and split the Red River community along racial lines in 1850 was only the most visible example of white wives condemning mixed-blood women as inherently immoral and corrupting.<sup>113</sup> However, as Van Kirk comments, 'the racism by white women, while inexcusable, was aggravated by a concrete threat to their own welfare.'<sup>114</sup>

These events suggest another current of social change that warrants more direct exploration: the rising influence (and eventual hegemony) of Victorian conceptions of female sexuality. As Jo-Anne Fiske observes, 'Images of women's bodies and presumptions about female morality were central signifiers of relative stages of "civilization."<sup>115</sup> By Queen Victoria's enthronement in 1837, 'the basic structure of taboos was already defined: the renunciation of all sexual activity save pro-creative intercourse in a Christian marriage.'<sup>116</sup> These Victorian attitudes were imported with the new wave of settlers. Another characteristic of Victorian society was a middle-class,

male-inspired thirst for social status and success: marriage was considered a strategic institution, entered into for social elevation, and generally delayed until a sizeable financial competence was acquired. Once secure, a 'spotless' wife could be acquired; until then, men were expected by many members of the male elite to discreetly satisfy sexual desires with a 'lesser' class of women.<sup>117</sup> A double standard arose from this male Victorian social code: men were entitled to indulge their desires without obligation (with 'fallen' women), while women were held to extremely rigid standards of propriety.

The ascendancy of these oft-conflicting Victorian values particularly impacted Aboriginal women. By the mid-nineteenth century, settlers generally considered all female sexual autonomy illicit, especially if it occurred in the public sphere, the privileged and exclusive domain of men. Female agency was easily conflated with illicit sexuality. The traditional autonomy exercised by Aboriginal women, both sexually and in public affairs, struck at the very heart of this European moral code: 'Aboriginal women in British Columbia not only dared to exercise agency, but often did so publicly, convincing men in power that their sexuality was out of control. To the extent that women persisted in managing their own sexual behaviour, they were wilded into the "savages" that many newcomers, in any case, considered all Indigenous peoples to be. That is, until Aboriginal women acceded to men in power by having their sexuality tamed according to their precepts, they were for the taking.'<sup>118</sup>

Notions of racial and gender superiority merged in the treatment of Aboriginal women. In well-settled areas, Aboriginal women – in the minds of colonists – were increasingly conflated with prostitutes, a status conveniently blamed on the inherent immorality of their race.<sup>119</sup> Thus, settlers were able to condemn Aboriginal women as 'fallen,' a status that they could then exploit for their own sexual gratification, without obligation, until (and after) a suitable, white marital partner was secured.<sup>120</sup> As Fiske notes, 'Female sexuality was ... appropriated by colonizers in myriad conflicting images that reflected back to the colonizers their assumed moral superiority even while they violated the principles of their morality in the treatment of colonized women.'<sup>121</sup> Such a dynamic was evident as early as 1839, in Reverend Beaver's equation of Aboriginal and mixed-blood wives with prostitutes, and his argument that Aboriginal women should be housed outside Fort Vancouver, where men could visit them discreetly.<sup>122</sup> While this moral vision had not swayed social norms at the height of the fur trade, it held far greater influence in the latter half of the century.

These racial and patriarchal attitudes animated individual, legislative, and judicial action that directly affected the nature and moral stature of intermarriage. South of the border, Washington Territory prohibited marriage between whites and persons 'of more than one-half Indian blood' in 1855 and Oregon followed suit in 1866 (a statute that remained on the

books until 1961).<sup>123</sup> These outright bans on intermarriage were motivated by a massive influx of settlers to the region who brought with them a system of values grounded in 'manifest destiny, a zealous Protestantism, and sometimes rabid racism against Indians.'<sup>124</sup> Although Methodist Church officials appealed to the federal Department of Indian Affairs to replicate this legislation in British Columbia, the proposal was ultimately rejected on the grounds that the American statutes were 'very little guide to us in Canada, [for] here we do not object to such marriages.'<sup>125</sup> This response, profoundly removed from the widespread prejudice against such unions, reflects the rhetoric of paternalistic humanitarianism that guided federal Aboriginal policy, that purported to be 'improving' Aboriginal peoples even as it dispossessed them of their lands and cultures.<sup>126</sup>

Over the last three decades of the nineteenth century, the courts and both levels of government would erect barriers to intermarriage equally as effective – if not as blatant – as the American statutory prohibitions.<sup>127</sup> On Vancouver Island and in British Columbia the starting point in law was the enactment of legislation designed to protect Aboriginals from the dangers of prostitution, alcohol, and non-native trespassers. Fines or imprisonment were penalties available for supplying Indians with alcohol or trespassing on their land.<sup>128</sup> In practice, lack of resources and a bureaucracy probably meant ineffective enforcement. Legislation was also passed that made it clear that the imported legal system was to provide the basis for what was and what was not a legitimate marriage. A Vancouver Island ordinance in 1859 seemed to have left the door open to the recognition of marriages other than those solemnized by a minister of religion.<sup>129</sup> However, later acts in British Columbia and the United Colony made it clear that there were only two legitimate forms of marriage: a religious form celebrated by a minister or priest of a Christian denomination (or by the Quaker or Jewish community), or a civil form administered by a registrar.<sup>130</sup>

Before documenting the darkest phase in the nineteenth-century treatment of intermarriage, an interesting counterpoint is provided by the case of *Connolly v. Woolrich*,<sup>131</sup> decided in Quebec only days after the confederation of the Dominion of Canada in 1867. By the time of his death, William Connolly had amassed considerable wealth. His son by Susanne 'Pas-denom' decided to contest the will, claiming entitlement to his father's estate. The case attracted considerable – even international – attention, not only because of the unprecedented size of the estate at issue, but also because, as the Montreal *Herald* would proclaim, 'the questions involved strike at the very root of our social system.'<sup>132</sup> At issue was the legal validity of marriage *à la façon du pays* in particular, and Aboriginal law in general, at a pivotal time in Aboriginal-settler relations.

Alexander Cross, the lawyer representing Julia Woolrich's children, mounted an attack on the validity of Cree customs and society that incorporated

much of the racist discourse of the day. He contended that the Cree peoples were 'barbarians' with 'infidel laws,' arguing that 'the useages and customs of marriage observed by uncivilized and pagan nations, such as the Crees' were incapable of validating a legal marriage 'even between the Indians themselves,' let alone 'between a Christian and one of the Natives.'<sup>133</sup> Thus, Cross contested the validity not only of marriage *à la façon du pays*, but also the legality of marriages entirely *within* Aboriginal societies that did not strictly comport with European legal standards.<sup>134</sup>

Monk J., after a lengthy rehearsal of Roman, Irish, English, canon, and Aboriginal law, ultimately rejected these arguments and recognized the validity of marriage according to Cree custom in the Athabasca region at the time: 'It is beyond all question, all controversy, that in the North West among the Crees, among the other Indian tribes or nations, among the Europeans at all stations, posts, and settlements of the Hudson's Bay, this union, contracted under such circumstances, persisted in for such a long period of years, characterized by inviolable fidelity and devotion on both sides, and made more sacred by the birth and education of a numerous family, would have been regarded as a valid marriage.'<sup>135</sup>

Although this decision upheld the validity of marriage *à la façon du pays*, Monk J.'s analysis of the issues remained profoundly eurocentric in its framing. He concluded that 'Indian marriages' lacked 'rites or ceremony,' and equated Cree custom and society with 'barbarism.'<sup>136</sup> His ultimate decision appears motivated less by a respect for Aboriginal customs than by formal legal reasoning and a recognition of both William Connolly's reputation and the exigencies of fur trade life.<sup>137</sup>

Nonetheless, the impact of this decision, upheld on appeal, was felt across the country in British Columbia. Amelia Douglas received not only a legacy of Connolly's estate, but also confirmation of the legitimacy of her own Cree marriage ceremony, 'which had been a source of some gossip in British Columbia circles for years.'<sup>138</sup> James Douglas himself wrote a letter to the lawyers representing his mother-in-law's heirs, thanking them for clearing her name.<sup>139</sup>

However, this brief legal victory was soon submerged beneath events of a grander scale, as Confederation paved the way for rapid political expansion across the Plains to the Pacific coast. Canada's acquisition of Rupert's Land from the HBC in 1869 set the stage for expeditious settlement that demanded the attachment of Aboriginal peoples to (shrinking) reservations,<sup>140</sup> a policy well under way in British Columbia at the hands of Joseph Trutch. Sylvia Van Kirk succinctly describes the transformation of Aboriginal peoples from allies to obstacles in Euro-Canadian consciousness: 'In the post-1870s West, the goal, largely of settlers from Ontario, was to establish a modern, agrarian, British society. In this scheme of things there would be little basis for the continuation of the economic and social exchange between white and

Native peoples which had been the foundation of the fur trade ... The pattern of western society was now not mixed unions, but the transplanting of *white* wives and the raising of *white* families.<sup>141</sup>

In this era of frontier settlement, Aboriginal traditions and laws were increasingly denigrated or ignored, and intermarriage came to be regarded as an illegal or immoral practice, despite the ruling in *Connolly*.<sup>142</sup> When the next major case concerning the validity of intermarriage came before the Quebec Court of Queen's Bench less than two decades later, the political and social world had altered profoundly. One of these alterations was apparent in the composition of the bench: sitting beside Monk J. was Alexander Cross, the same lawyer who had failed to convince Monk J. in *Connolly* that customary marriage, even within Aboriginal societies, was invalid under British law.

### **Intermarriage in the Province of British Columbia, 1871-1900**

The three decades that followed the entry of British Columbia into Confederation in 1871 were characterized by the further entrenchment, and amplification, of colonial attitudes surrounding race and gender. During this period, the obvious differences between Euro-Canadian and Aboriginal cultures were increasingly constructed as differences between 'civilization' and 'savagery'.<sup>143</sup> These differences, in the eyes of settler society, justified the growing coercion of Aboriginal societies, as government officials and missionaries imposed Euro-Canadian values while denouncing Aboriginal customs and social institutions.<sup>144</sup> Three interrelated trends, in particular, further undermined the legality and moral legitimacy of intermarriage: the intensification of racist attitudes, the imposition of European gender norms on Aboriginal societies, and the devaluation of customary law (and its corollary, the preeminence of British justice). Although these trends were intricately enmeshed, each will be discussed separately before turning to a discussion of their combined impact on judicial decisions in the late nineteenth century.

Three racist assumptions, described in the preceding section, continued to dominate social attitudes and guide government policy in British Columbia: Social Darwinism, 'vanishing race' ideologies, and narratives of 'civilization'.<sup>145</sup> By the 1870s, miscegenation was firmly entrenched in settler consciousness as a social evil that would produce 'a class of half-breed children ... who, under the bond of illegitimacy and deprived of all incentives in every respect, [would] in course of time become dangerous members of the community'.<sup>146</sup> These fears were heightened by the murderous rampage of the mixed-blood 'Wild McLeans' in the late 1870s.<sup>147</sup> They also dovetailed neatly with the increasing sexualization of Aboriginal women after several mixed-blood students were impregnated at the Cache Creek boarding school by their male peers, an event followed closely by the Victoria

press.<sup>148</sup> In 1878, Hubert Bancroft, the American historian, ingratiated himself for a month with the former HBC elite retired in Victoria, and then published this damning appraisal in his *History of the Northwest Coast*:

It has always seemed to me that the heaviest penalty the servants of the Hudson's Bay Company were obliged to pay for the wealth and authority advancement gave them, was the wives they were expected to marry and the progeny they should rear ... I could never understand how such men as John McLoughlin, James Douglas, Ogden, Finlayson, Work and Tolmie and the rest could endure the thought of having their name and honours descend to such degenerate posterity. Surely they were possessed of sufficient intelligence to know that by giving their children Indian or half-breed mothers, their own ... blood would be in them greatly debased, and hence they were doing all concerned a great wrong. Perish all the Hudson's Bay Company thrice over, I would say ... sooner than bring into being offspring subject to such a curse.<sup>149</sup>

Intermarriage, then, while not prohibited (as it was on the American side of the border), was increasingly constructed not only as immoral, but as a 'curse' carrying the potential for biological and social deterioration.<sup>150</sup>

This social imperative to curb female Aboriginal sexuality meshed well with the Victorian values that had 'inexorably asserted themselves' into Canadian society by the 1870s.<sup>151</sup> As settlement advanced, marriage occupied a central role in the Euro-Canadian moral code. To settlers, marriage represented 'the bedrock upon which all other social relationships were constructed and it was universally touted as natural and essential to the smooth functioning of civilization.'<sup>152</sup> Proper Victorian marriage was equated with civilization, and the fundamental purpose of Victorian marriage was 'to control human (and especially female) sexuality, so that there might be "certainty of parentage."<sup>153</sup> The implicit assumption was that men were inherently prone to immoral behaviour and easily tempted into evil by female sexuality. Consequently, Victorian marriage operated as a container of female agency, reinforcing the notion that a woman's role was 'to be docile and subservient so as not to provoke [men].'<sup>154</sup> In this manner, Victorian marriage institutionalized and bolstered the ideological superiority of men in late nineteenth-century Canadian society.<sup>155</sup>

Patriarchal values blended with notions of European superiority to single out Aboriginal women for particularly discriminatory treatment under the first Indian Act, enacted in 1876.<sup>156</sup> The predecessors to the Indian Act, enacted to protect Aboriginal lands from the encroachment of settlers, had evolved by 1876 into the foremost legislative vehicle for assimilation: 'The Indian Act and the Department of Indian Affairs (DIA) were unabashedly

concerned with transforming the character of all Aboriginals, by protecting, civilizing, and assimilating the “savages” to Anglo-Canadian norms.<sup>157</sup> This ‘civilizing’ impulse manifested in the imposition of Victorian social and political norms on Aboriginal communities, a process that inevitably undermined the traditionally central role occupied by Aboriginal women in the economic, political, and social lives of many communities. For example, women were denied the right to vote in band council elections. Positions on band councils – themselves a creation of the federal government – were available only to men. Women were not entitled to enfranchisement; however, they automatically lost their Indian status, along with their children, if their husband was enfranchised, a procedure that institutionalized the prevailing conception of women and children as the husband’s chattel.<sup>158</sup>

The ‘marrying out’ provision represented perhaps the most damaging aspect of this legislation. This provision stripped an Aboriginal woman and her children of their recognized Indian identity the moment she married a non-Indian man. No similar provision applied to Aboriginal men who ‘married out’: their Indian status extended to their wife and children, a fact that signalled the imposition of a European patrilineal descent system on Aboriginal societies. This imposition disrupted the social and political functioning of Aboriginal communities, many of which were structured around matrilineal descent systems,<sup>159</sup> and placed Aboriginal wives of non-Indian men in a precarious position: ‘Since virtually every racially mixed union across the Pacific Northwest, as elsewhere in North America, comprised in the first generation an Aboriginal woman and a non-Aboriginal man, both mothers and their children were prohibited from legally identifying themselves as Indians and thereby living on reserves with extended family.’<sup>160</sup> Since the reservation was more than just a residence for Aboriginal women, but also represented a cultural, linguistic, and familial base, the ‘marrying out’ provision presented a formidable disincentive to intermarriage.<sup>161</sup>

While this legislation issued from the other side of the country, a more coercive force was at work closer to home: missionaries, intent on a complete reordering of Aboriginal life, represented the vanguard of the ‘civilizing’ project in British Columbia. The missionary impulse, which intensified around the world in the late nineteenth century, intersected neatly with enthusiasm for the British empire: ‘The duty of missionaries was to free the “thronging millions” from their state of ignorance and enlighten them to God’s way, which was assumed to be the British way.’<sup>162</sup> The transformation of Aboriginal women, perceived as the repository of Native ‘savagery,’ emerged as the focus of missionary attention.<sup>163</sup> Aboriginal women represented the fulcrum in the recalibration of Aboriginal societies from ‘barbarism’ to ‘civilization.’

By the time British Columbia entered Confederation, the entire province was divided between various religious denominations, resulting in 'little Victorian enclaves over which a Catholic, Anglican, or Methodist missionary or family exercised supreme authority.'<sup>164</sup> While missionaries carried no official status, their program of encouraging or coercing Aboriginal peoples into replicating Euro-Canadian culture – right down to their clothing, Victorian clapboard homes, and even brass bands – converged with provincial objectives. Missionaries consequently enjoyed almost free reign and functioned as the eyes and ears of the government.<sup>165</sup> Missionary activity in many regions verged on absolute control over every aspect of social behaviour, exercised through a Foucauldian network of surveillance: 'A single priest kept control over a large territory through a carefully structured hierarchy of Native chiefs, catechists, and policemen who ensured that traditional practices were not resumed between visits.'<sup>166</sup> Heiltsuk oral tradition states that the clapboard houses touted by missionaries were designed with voluminous windows, so that missionaries could easily detect any 'sinful' behaviours occurring within.<sup>167</sup>

Creating 'civilized' families meant containing Aboriginal women on reserves, and here missionary aspirations dovetailed with the interests of both the government and some groups of Aboriginal men: all three factions agreed that 'the only good Aboriginal woman was the woman who stayed home within the bosom of her family.'<sup>168</sup> Missionaries and government officials imbued only Aboriginal men with individuality (as reflected in the Indian Act) and, if these men were to emulate 'civilization,' they would require suitable wives. Thus, from their perspective, the agency (and sexuality) of Aboriginal women demanded circumscription, an objective attained by segregating women on reserves, where they could be isolated and controlled.<sup>169</sup> Missionaries could then encourage Victorian domesticity, implement a nuclear family model, and tightly control child-rearing. Government officials, for their part, applauded missionaries for having 'taught, above all, the female portion of the community to behave themselves in a modest and virtuous manner.'<sup>170</sup> Jean Barman speculates that Aboriginal men were occasionally motivated into alliances with missionaries and government officials by the shortages of women on reserves, and a desire to please colonial authorities.<sup>171</sup>

Dominion legislation respecting Indians included several provisions designed to penalize Aboriginal women for immorality and to protect them from prostitution. Thus, under the Indian Act of 1876, the annuity might be stopped in the case of a woman who had no children and deserted her husband to live immorally with another man.<sup>172</sup> In 1880 an amending act made it an offence, punishable with a fine between \$10 and \$100 or six months in jail, for anyone who was the actual or apparent 'keeper of any

house' to allow an Indian woman to remain there knowing that she would or was likely to prostitute herself.<sup>173</sup> Four years later the Indian Act was further amended to extend culpability under this provision to others and to other types of premises. The provision was extended to 'any Indian man or woman who keeps, frequents or is found in a disorderly house, tent or wigwam used for such a purpose [as prostitution].'<sup>174</sup>

Catholic and Protestant missionaries, often with the support of local Aboriginal men, attempted to confine Aboriginal women to reservations by regulating every aspect of social life<sup>175</sup> – especially female mobility – and called on government officials for legislation to assist in this endeavour. This trend was evident in numerous petitions, orchestrated by missionaries and signed by Aboriginal men, dispatched to government agents in the 1880s and 1890s. Two identical 1885 petitions decried the 'great evil' of Aboriginal women leaving reserves to cohabit with 'a bad white man, China man, or other Indian ... in an unlawful state' and requested permission to 'bring back the erring ones by force if necessary.'<sup>176</sup> Interestingly, Parliament amended the Indian Act further in 1887 to make it an offence for an Indian woman specifically to prostitute herself in a house, tent, or wigwam, subjecting her to the identical range of penalties applicable to keepers of such premises.<sup>177</sup> An even broader regulation drafted in response by the Ministry of Justice, authorizing the retrieval of any Aboriginal woman living 'immorally' off-reserve, was jettisoned only when several Indian agents warned it would spark riots between Aboriginal peoples and the white men with whom the women were residing.<sup>178</sup> An 1890 petition to the Governor General requested legislation criminalizing sexual intercourse between white men and Aboriginal women outside of a Christian marriage, but the Ministry of Justice again refused, contending that the prevailing seduction laws were sufficient to protect Aboriginal women.<sup>179</sup>

In the same year, the Indian agent at Alert Bay, with local Protestant missionaries, sought federal legislation to keep at home, by force if necessary, 'Indian women from the West Coast of British Columbia, who are in the habit of leaving their Villages and Reserves ... with the object of visiting the Cities and Towns of the Province for immoral purposes.'<sup>180</sup> This request and a similar petition circulated by Aboriginal men on central Vancouver Island to a British Columbia senator in 1895 were ultimately denied by the federal government. The response from the Department of Indian Affairs suggests, perhaps unintentionally, that this refusal was not motivated entirely by altruism: the department merely concluded such legislation was unnecessary, since 'when requested by the husband or brother or anyone having the proper authority, [local Indian agents] stop a woman from going away, and so the men have the prevention of that of which they complain almost entirely in their own hands.'<sup>181</sup> Despite the absence of prohibitive laws,

Aboriginal women were increasingly deterred from relationships with white men by policies implemented by a shifting alliance of missionaries, local Aboriginal men, and Indian agents.

The general devaluation of Aboriginal law that marked the end of the nineteenth century also undermined the legal status of customary marriage. For settlers in the new province, British law represented an integral aspect of their identity and the perfect instrument for realizing 'civilization' on the 'lawless frontier.'<sup>182</sup> While Indian agents and missionaries often drew upon both Aboriginal and British law to secure harmonious relations, colonial officials constructed adherence to the former as defiance of the latter. The growing friction between Aboriginal peoples and settlers from 1869 onward – in no small part a result of Joseph Trutch's land policies – prompted lawmakers to insist that the strict application of British justice was necessary to control Aboriginal discontent. When Aboriginal leaders identified appropriation of their lands as breaches of Aboriginal law they were met with official declarations that British law, and not Aboriginal custom, must prevail: 'By 1880 First Nations who upheld ancestral laws were perceived as more than a problem of frontier disorder. They had emerged as a threat to the provincial economy, a threat to be suppressed by the clear, consistent application of a solitary legal system.'<sup>183</sup>

The struggle for control over salmon resources for coastal commercial fisheries cemented the demise of Aboriginal law in the eyes of the courts, as appropriation of Aboriginal resources became essential to the economic expansion of the province, and 'the discourse of British justice, replete with myths of fair play and impartiality, became entangled with discourses of capitalism.'<sup>184</sup> The self-serving doctrine of allodial Crown title dominated, and the issue of Aboriginal title, while continuously raised by Aboriginal communities, vanished from public debate.<sup>185</sup> Justifying this process demanded the reconstruction of Aboriginal law – which at one time had regulated both whites and Natives outside established European settlements – as a primordial state of 'lawlessness,' cured by the arrival of British justice.

This same discourse would inevitably colour the treatment of customary marriages in colonial courts. Sir Matthew Begbie, the Chief Justice of the Supreme Court of British Columbia, marked the transition from fading fur trade values to the new era of province-building. His long involvement with – and relative sensitivity to – Aboriginal communities fostered an atypical understanding and respect of Aboriginal custom. In 1872 he appealed to the federal government to enact legislation providing support for country wives and their children upon the death or desertion of their white husbands, arguing that these wives were 'in many respects "help" more "meet" for [settlers] than most women of European descent or education could be,' and that they 'consider themselves to be *and are according to Native customs,*

lawful wives generally.<sup>186</sup> This plea by the chief justice was in support of a bill passed by the British Columbia legislature that would have afforded some protection to the Aboriginal women and their offspring when the women were living 'common law' with white men.<sup>187</sup> Begbie regretted Ottawa's disallowance of the legislation because it left the women and children without support when husbands died intestate, as they normally did. The result was that any money left went to estranged blood relatives in Europe.<sup>188</sup>

However, Begbie's recognition of customary marriage, while progressive in comparison to subsequent decisions, fell squarely within a paradigm that recognized the ascendancy of British justice. Thus, Begbie's acquittal of an Aboriginal man accused of murdering a settler, on the grounds that the accused's Aboriginal wife by customary marriage was incompetent to testify, tentatively recognized Aboriginal custom while entrenching the dominance of British law: 'This woman was without a doubt his wife in their eyes, both of them. We must apply the whole law of English courts or else the whole Indian law. According to our view, this is a most heinous felony for which all life is forfeit ... [The accused] must be convicted strictly according to the methods of our law, and I think if this were a white man, this woman would not be admitted. This being all the evidence ... I must direct an acquittal.'<sup>189</sup>

Nonetheless, Begbie's appreciation of Aboriginal custom contrasts sharply with the Quebec Court of Queen's Bench's retreat from the *Connolly* decision in the 1886 case of *Jones v. Fraser*.<sup>190</sup> The facts of this case were similar to the scenario in *Connolly*: Alexander Fraser married Angélique Meadows, an 'Indian woman,' in 1788 'according to the useages and customs of the Northwest Territory, where they so lived and cohabited together' and produced four or five children.<sup>191</sup> Fraser subsequently built a separate house for Angélique, where he financially supported her until her death in 1833, during which time he entered, in succession, relationships with two house servants. Upon his death, his considerable estate became the subject of prolonged litigation between grandchildren of all three relationships.

Monk J. ruled consistently with his decision in *Connolly*, holding that the marriage to Angélique was legally valid. He was strengthened in this conviction by the fact that, unlike William Connolly, Fraser had neither repudiated his relationship with Angélique nor married either of the two subsequent women.<sup>192</sup> However, *Fraser* was decided in a climate that had changed greatly from when Monk J. penned the *Connolly* decision. In 1884, Louis Riel had returned from exile to assist in a second rebellion in the spring of 1885, forcing several military confrontations and the expenditure of five million dollars to bring the situation under control.<sup>193</sup> The rebellion exacerbated fears of miscegenation and led to demands for assertive British justice, claims of racial superiority, and the coercive assimilationist policy

of the federal government. In this environment, Monk J. wrote the dissenting decision in *Fraser*, and Alexander Cross wrote for the majority of the bench.<sup>194</sup>

Ramsay C.J., in his concurring opinion, states that the Court is unwilling to 'accept the proposition that the co-habitation of a civilized man and a savage woman, even for a long period of time, gives rise to the presumption that they had consented to be married in our sense of marriage.'<sup>195</sup> Cross J. proceeded even further *in obiter*, pronouncing marital customs even *within* Aboriginal societies invalid under British law, on the basis that 'Christian' principles formed the foundation of a legal marriage. His decision extensively canvasses the perceived contrast between Aboriginal customs and Christian marriage:

In countries inhabited by savage tribes, there is generally little consistency, or uniformity, in the regulation of that intercourse, and it is, for the most part, very unceremonious. Civilization introduces artificial regulations affecting property rights and defines obligatory duties ... forming a striking contrast to the relations of male and female, in savage life, where perpetuity of union and exclusiveness is not a rule, at least, not a strict rule.

Marriage, as understood by Christians, is the union for life of one man with one woman, to the exclusion of all others; any intercourse without these distinctive qualities cannot amount to a Christian marriage.<sup>196</sup>

While acknowledging that the parties to a marriage need not necessarily be Christians, Cross J. held that they were required to contract their marital obligations in 'the christian sense of its obligations.'<sup>197</sup> Unless the union amounted to a 'submission to and adoption of civilized law,'<sup>198</sup> it was nothing more than an arrangement of 'savages in a state of nature.'<sup>199</sup> If Fraser had truly intended to marry Angélique, Cross J. concludes, he should 'have made a voyage to civilization, – or imported an ordained clergymen';<sup>200</sup> otherwise, the relationship amounted to concubinage, not marriage.<sup>201</sup>

The *Fraser* decision cast a pall over the legality of customary marriage that would last through the turn of the century. Three years after *Fraser*, the Court of Appeal of the Northwest Territories upheld the legality of a marriage between First Nations partners in accordance with customary law,<sup>202</sup> ending the doubt raised by Cross J.'s *obiter dicta*, but the legitimacy of marriage *à la façon du pays* remained tenuous. In 1891, the Ontario Court of Common Pleas upheld the validity of a mixed marriage entered into in British Columbia in 1869, according to 'Indian custom.'<sup>203</sup> However, the Court expressly refused to rely on the customary marriage, finding instead that a Christian ceremony may have occurred, based on the husband's declarations that 'he was married in British Columbia in the same way that he would have been married, had the ceremony taken place in Ontario.'<sup>204</sup>

Finally, just before the turn of the century, the Supreme Court of the North-West Territories invalidated a mixed marriage according to the customs of the Peigan Nation, on the grounds that – while the marriage may have been valid in ‘a strictly barbarous country’ – the Territories did not qualify as ‘sufficiently barbarous’ by the time of the marriage in 1878.<sup>205</sup>

In 1898, the boom in marriages *à la façon du pays* in British Columbia dropped in dramatic style. Mary, a Cowichan woman, and John Schmidt, a German immigrant, were married in 1868 according to the custom of her people, pledging their commitment to each other. John made gifts to Mary’s family and a large feast was thrown. John died in 1890, leaving all his property to their only son. The latter died unmarried and intestate in 1892. Once all the son’s debts were discharged, Mary claimed against the official administrator of the Nanaimo district to secure the residue. Justice Bole denied the claim on the grounds that at the time of the marriage both parties were at least nominally Christian. Moreover, they had an abundance of facilities for being married in accordance with the laws of the United Colony of British Columbia and Vancouver’s Island, thus the Indian marriage was invalid.<sup>206</sup> Mary left court empty-handed, the residue of her late husband’s estate going to the province. In this case, the formality and implied moral strictures of the imported legal system ruled out any possibility of recognizing a relationship that was stable, loving, and respectful. A year before their wedding the United Colony had limited legitimate marriage to that involving a ceremony according to Christian, Quaker, or Jewish rites, or a civil ceremony conducted by the registrar. As far as the dominant system of law was concerned, the marriage forms of Aboriginal communities no longer counted.

Thus, the institution of marriage *à la façon du pays*, a pervasive and respected social institution forged from the interdependence of Aboriginal societies and NWC traders at the dawn of the nineteenth century, was transformed by the century’s close into a ‘barbarous’ custom with no claim to legality. Interracial relations of any sort – even marriage according to ‘civilized’ law – were increasingly construed as an immoral venture that undermined the integrity of the province, the nation, and the British race. The gradual eclipse of Indian Country by the forces of Euro-Canadian ‘civilization’ led to the erosion of marriage *à la façon du pays*, an institution that had embodied one of the most truly civilized interactions between colonial and indigenous societies.<sup>207</sup>

## Conclusion

The history of inter-marriage in the Pacific Northwest revolves around the relentless renegotiation of moral and legal boundaries, boundaries of race and gender, boundaries presented as timeless, objective, and true, even as they mutated across time and space. The social construction of these boundaries

is evident in the physical border that suddenly separated the United States from present-day British Columbia in 1846. South of this border, intermarriage would be rendered illegal, and the children of mixed marriages were deemed (and denigrated as) Aboriginal. To the north of the international border, intermarriage remained legal (if morally questionable), and Aboriginal status was eventually denied to the mixed-race children of non-Aboriginal men. Since the ultimate location of the border was by no means self-evident and bisected numerous Aboriginal territories, the legality of a mixed marriage, and the very racial identity of its progeny, were often a chance consequence of where a family had chosen to settle long before a border was drawn on a map.

The fluid nature of social boundaries is also reflected in the malleable status of Aboriginal and mixed-blood women throughout the nineteenth century. In the early years of the land-based fur trade, Aboriginal women possessed knowledge, skills, and cultural ties that ensured their desirability as marriage partners. These same attributes, coupled with the dependence of fur trade societies on First Nations cooperation, warranted Aboriginal women the same – or greater – level of autonomy enjoyed in their traditional cultures, forging an institution of marriage that created the possibility, within the social and economic context, of relative cultural and gender egalitarianism. The early forms of marriage *à la façon du pays* represented an institution of cultural dialogue.

However, with the decline of the fur trade (and thus the utility of fur trade knowledge, skills, and connections) and the ascendancy of settlement, the perceived moral stature of both Aboriginal women and intermarriage collapsed. By the 1850s in what is now British Columbia, abandoning a full-blood Aboriginal wife drew little or no community censure.<sup>208</sup> The status of mixed-blood women proved even more fluid: initially considered ‘ideal’ wives (especially as fur traders sought security for their mixed-blood daughters), they eventually fell under the shadow of white women (as settlement displaced the fur trade), enjoyed a precarious revival of status as white women were perceived to be ill suited for frontier life, and then were ultimately relegated by scientific racism to the role of racial inferiors and moral contaminants. As the economic and social foundations of early forms of intermarriage eroded, previously submerged distinctions of class and parentage resurfaced and flourished.

However, it may be misleading to chart the decline of intermarriage solely in relation to the diminishing economic utility of Aboriginal women. It is perhaps more illuminating to situate this institution in the broader dynamic of nineteenth-century Aboriginal-settler relations, as the original dialogue between cultures rapidly transformed into a Euro-Canadian monologue. Miller characterizes this transformation as a shift from nondirected to

directed change of Aboriginal societies, from conversation to coercion.<sup>209</sup> 'Civilization' and settlement, in the widespread and agrarian manner envisioned, mandated the dispossession of Aboriginal peoples from their lands and the subordination of their laws and political bodies. Justifying this process required the ideological dehumanization of Aboriginal peoples and delegitimization of their social structures, a process fostered by Social Darwinism and the growing demographic, economic, and political dominance of the settler society. Aboriginal peoples, and particularly Aboriginal women, were captured in a web of increasingly powerful Western dualisms. These dualisms constructed the 'superiority of settlement over wilderness, of British justice over lawless custom, of civilized settler over nomadic "savage," of Christianity over animism,'<sup>210</sup> of man over woman. Inter-marriage, especially according to indigenous custom, was implicated in each of these dualisms: the majority decision in *Fraser* represents a collision – and judicial sanction – of these dualisms at their zenith. In this light it is interesting to note the recent resurgence in the legal force of Aboriginal custom amid growing recognition of inherent Aboriginal rights to self-government.<sup>211</sup>

This chapter has attempted to chart very broad social and economic transformations to explicate the connection between material conditions and prevailing social thought. However, although this connection clearly exists, it is far from determinative: at every stage of the way, the various constructions of inter-marriage and its participants were forcefully contested. Material conditions shaped the course of least resistance, discouraging certain moral stances while facilitating others, constraining or suggesting opportunities for change. Thus, while Reverend Beaver railed against inter-marriage at the height of the fur trade, and Douglas continued to defend inter-marriage in the twilight of the fur trade, neither was able to shift the momentum of prevailing social values. By contrast, Governor Simpson's actions personified a path of least resistance, advocating or denigrating inter-marriage as it served his interests (and that of the HBC). His path was the one more readily followed by fur trade society.

In the end, it appears clear that 'attitudes toward racial intermixture had far less to do with the families themselves than with the images that newcomers to the Pacific Northwest projected onto them.'<sup>212</sup> Early Aboriginal-settler relations in British Columbia were marked by cooperation and intercultural negotiation of moral and legal boundaries. Rather than a collision of radical and irreconcilable 'Others,' the meeting of European and Aboriginal cultures, in an environment of interdependence, fostered the creation of a unique multicultural institution at the very heart of the economic, social, and personal lives of both cultures. If there is a lesson to be learned from this history, it is that genuine differences are often far less important than how these differences are manipulated, exploited, or bridged.

**Notes**

- 1 Jean Barman, 'What a Difference a Border Makes: Aboriginal Racial Intermixture in the Pacific Northwest,' *Journal of the West* 38 (1999): 14-20, 14.
- 2 Robin Fisher, *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890* (Vancouver: UBC Press, 1977), 47-48.
- 3 George Parkin de Twenebroker Glazebrook, ed., *The Hargrave Correspondence, 1821-1843* (Toronto: Champlain Society, XXIV, 1938), 310-11.
- 4 Barman, 'What a Difference a Border Makes,' 17.
- 5 The London Committee was a group of well-connected entrepreneurs directing the HBC from its headquarters in London. With very few exceptions, no committee members actually visited Rupert's Land, a fact that largely explains the disjuncture between HBC policy and practice: Sylvia Van Kirk, *Many Tender Ties: Women in Fur Trade Society in Western Canada, 1670-1870* (Winnipeg: Watson and Dwyer Publishing, 1980), 10.
- 6 Edwin Rich, ed., *Copy-book of Letters Outward, 1680-1687* (Toronto: Champlain Society, 1948) 11: 40-41.
- 7 James R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1989), 125.
- 8 While the London Committee eventually recognized the impossibility of preventing intermarriage, it remained determined that 'the Company ought not to be put to any Charge, or their affairs be Damaged thereby.' While the HBC did provision families of active traders at company expense, it contended that this responsibility ceased upon the retirement or death of the trader. During this period, many traders left wills to provide for their Native families: Van Kirk, *Many Tender Ties*, 39.
- 9 The polarized approaches of the HBC and NWC to intermarriage are largely attributable to their respective organizational structures and experience. The Nor'Westers, trained on-the-spot, quickly recognized the benefits of continuing the French approach of social engagement with Aboriginal peoples, respecting Aboriginal customs of feasting, gift-giving, and ceremony. This approach led naturally to the institutionalization of intermarriage as company policy. By contrast, HBC policy was dictated from afar and reflected English paternalism: it encouraged civil interaction and trade, but not intimate social relations. See Van Kirk, *Many Tender Ties*, 13-14.
- 10 William S. Wallace, ed., *Documents Relating to the North West Company* (Toronto: Champlain Society, 1934) 20: 211.
- 11 Bruce M. White, 'The Woman Who Married a Beaver: Trade Patterns and Gender Roles in the Ojibwa Fur Trade,' *Ethnohistory* 46 (1999): 109-57, 131.
- 12 For example, see Barman, 'What a Difference a Border Makes'; Sylvia Van Kirk, 'The Custom of the Country: An Examination of Fur Trade Marriage Practices,' in *Canadian Family History: Selected Readings*, ed. Bettina Bradbury (Toronto: Copp Clark Pitman, 1992), 67-92; Jean Barman, 'Taming Aboriginal Sexuality: Gender, Power, and Race in British Columbia, 1850-1900,' *BC Studies* 115/116 (1997-98): 237-66.
- 13 James Douglas, writing in Fort Vancouver in 1842, eloquently described the comfort offered by marriage to geographically and socially isolated traders (quoted in Van Kirk, 'The Custom of the Country,' 77): 'There is indeed no living with comfort in this country until a person has forgot the great world and his tastes and character formed on the current standard of the stage ... To any other being ... the vapid monotony of an inland trading post would be perfectly insufferable, while habit makes it familiar to us, softened as it is by the many tender ties, which find a way to the heart.'
- 14 See generally, White, 'The Woman Who Married a Beaver.'
- 15 Susan Marsden and Robert Galois, 'The Tsimshian, the Hudson's Bay Company, and the Geopolitics of the Northwest Coast Fur Trade, 1787-1840,' *Canadian Geographer* 39 (1995): 169-83.
- 16 White, 'The Woman Who Married a Beaver,' 128.
- 17 Women associated with trading posts often ensured a steady food supply; in fact, when food was scarce at trading posts, traders often survived on food provided by the families of Aboriginal wives: *ibid.*, 131.
- 18 *Ibid.*, 130.

- 19 *Johnstone et al. v. Connolly* (1869) 17 R.J.R.Q. 266, 310-11. This marriage in 1803 would result, over a half-century later, in a *cause célèbre* legal case involving a challenge to the very legitimacy of such customary marriages, as discussed below.
- 20 Ronald Hyam, *Empire and Sexuality: The British Experience* (Manchester: Manchester University Press, 1990), 96.
- 21 Miller, *Skyscrapers Hide the Heavens*, 126. Constance Backhouse provides a speculative account of the marriage between William Connolly and Susanne 'Pas-de-nom' in *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Canada: Women's Press, 1991), 10: 'The daylong ceremony would have begun with the elders preparing the groom for marriage. William Connolly would have been ritually cleansed with the smoke of burning sweet grass. He would then have offered a special marriage pipe to one of the new relatives or to an elder, and all present would have smoked the pipe to purify their minds and bodies. The chief, Susanne Connolly's father, would have draped a marriage blanket around the couple's shoulders, and they would have eaten food from a single plate to mark their willingness to share everything in the future. A wedding feast would have followed, completed by a ceremonial circle symbolizing friendship and the cycle of existence.'

This description underscores the ethnocentrism of Monk J.'s decision in *Johnstone v. Connolly*, which concerned the legal validity of this marriage, especially his conclusion that Cree marriages lacked 'rites or ceremony': infra footnote 136 and accompanying text. Ironically, the same could have been said about marriage practices in Scotland from which most traders had come. These informal modes of contracting marriage continued well into the twentieth century.

- 22 Van Kirk argues that Aboriginal women frequently used their status as cultural intermediaries to their own advantage, increasing their influence in both societies: *Many Tender Ties*, 75-77, 80. This observation is supported by David Peterson del Mar's case study of Chinook-trader relations, which suggests Chinook wives of traders enjoyed enhanced authority in their own communities and trading posts as a result of their link to trade: 'Inter-marriage and Agency: A Chinookan Case Study,' *Ethnohistory* 42 (1995): 1-30.
- 23 Backhouse, *Petticoats and Prejudice*, 10.
- 24 Van Kirk, 'The Custom of the Country,' 70.
- 25 HBC rules prohibited employees from relocating their Native families to Britain upon retirement, and forbade them from settling in Rupert's Land until the founding of the Red River settlement in the early nineteenth century. NWC employees faced no such restriction on returning home with their families, but few were willing to take such a step because of the racism their families would face and, perhaps more importantly, because it did not fit in with their plans for retirement in the 'civilized' world. See Van Kirk, *Many Tender Ties*, 48-49.
- 26 Miller, *Skyscrapers Hide the Heavens*, 125.
- 27 Van Kirk, *Many Tender Ties*, 77. However, longer unions often removed Aboriginal women far from their home community, making it more difficult to return. A process of 'turning off' developed to address this situation, whereby a retiring trader would leave his wife and family in the protection of a fellow trader. See Van Kirk, *ibid.*, 50.
- 28 The NWC rejected polygamy for both moral and economic reasons. The NWC policy of provisioning the Native families of traders militated against the official recognition of multiple wives: Van Kirk, 'The Custom of the Country,' 71.
- 29 Van Kirk, *Many Tender Ties*, 116.
- 30 *Connolly v. Woolrich and Johnson et al.* (1867) 11 L.C. Jur. 197, 231. Fur traders who remained with their families, or brought them back home, often refused church solemnization of their marriage, contending that marriages according to Aboriginal custom were valid in their own right: Van Kirk, *Many Tender Ties*, 52.
- 31 Recent scholarship, by incorporating the experience and actions of Aboriginal women into historical accounts, rebuts the traditional portrayal of fur trade marriages as the sexual commodification of women. Rather, it indicates that Aboriginal women from a variety of cultures perceived inter-marriage positively, actively pursued such unions, and used this institution to the advantage of themselves and their communities. Moreover, the decision to enter into marriage with white traders often represented an extension – rather than a

- rejection – of their cultural traditions in a new socioeconomic context, transcending the traditional dichotomy of assimilation or conservatism. See Peterson del Mar, 'Intermarriage and Agency'; White, 'The Woman Who Married a Beaver'; Carol Cooper, 'Native Women of the Northern Pacific Coast: An Historical Perspective, 1830-1900,' *Journal of Canadian Studies* 27 (1992-93): 44-75.
- 32 The Pacific coast was first incorporated into commercial trade by Spain, but Spanish traders were soon joined – and largely displaced – by English and American traders. By the 1790s, the United States, Britain, and Spain were engaged in a well-established maritime fur trade. For obvious reasons, however, maritime trading did not encourage enduring relationships, and it was not until inroads were made into land-based trade that intermarriage emerged as a recognizable institution. See Miller, *Skyscrapers Hide the Heavens*, 143.
- 33 Richard S. Mackie, *Trading Beyond the Mountains: The British Fur Trade on the Pacific, 1793-1843* (Vancouver: UBC Press, 1997), 27.
- 34 Van Kirk, *Many Tender Ties*, 30.
- 35 Mackie, *Trading Beyond the Mountains*, 30.
- 36 Van Kirk, *Many Tender Ties*, 30; Miller, *Skyscrapers Hide the Heavens*, 144. Miller notes that the interior Chilcotin nation repeatedly refused to enter into the emerging commercial networks.
- 37 Barman, 'Taming Aboriginal Sexuality,' 247. Chinook originated in the 1780s and 1790s in the maritime fur trade off the west coast of Vancouver Island, and was in use at the mouth of the Columbia by 1810: Mackie, *Trading Beyond the Mountains*, 295. Jean Barman conjectures that Chinook for a time was possibly spoken and understood by more people than any other language, including English: *The West Beyond the West: A History of British Columbia* (Toronto: University of Toronto Press, 1996), 169.
- 38 Barman, *ibid.*, 45.
- 39 As a young clerk in New Caledonia, James Douglas was involved in the hanging of two Carrier men who had killed two HBC employees at Fort George. When the local Carrier chief and a party of Carrier men subsequently marched on Fort St. James and overpowered Douglas, his life was saved only by the intervention of his mixed-blood wife Amelia. She threw tobacco, blankets, and other goods at the feet of the Carrier men, in customary compensation for the death of an Aboriginal man. See Peter C. Newman, *Caesars of the Wilderness: Company of Adventurers*, vol. 2 (Markham: Penguin Books Canada, 1987), 304-5. Peterson del Mar ('Intermarriage and Agency,' 16) provides similar examples of Chinook women protecting white settlers.
- 40 A similar process was evident in India in the preceding century, as British colonists shifted from taking indigenous wives to taking bi-racial partners descended from earlier generations: Hyam, *Empire and Sexuality*, 96.
- 41 Van Kirk quotes Alexander Ross' observation that the 'natural acuteness and singular talent for imitation' possessed by mixed-blood women meant they could acquire considerable grace and polish: 'The Custom of the Country,' 75.
- 42 Newman, *Caesars of the Wilderness*, 23.
- 43 Van Kirk quotes from a letter from W.H. Cook to J. Swain in 1811: 'As the Colony is at length set on foot and there is prospect of Civilization diffusing itself among Us in a few years I would not advise you for the sake of the rising Generation to consent to either Officers or Men contracting Matrimonial Connections unless with the Daughters of the Englishmen' ('The Custom of the Country,' 75).
- 44 Hyam, *Empire and Sexuality*, 96. By the end of the 1830s, James Hargrave bluntly observed that 'a different tone of feeling on these matters has gradually come around. – and a young Gentleman from Britain would as soon think of matching himself with the contemporary of his grandmother as with a pure squaw' [quoted in Jennifer S.H. Brown, 'Changing Views of Fur Trade Marriage and Domesticity: James Hargrave, His Colleagues, and "The Sex,"' *Western Canadian Journal of Anthropology* 6 (1976): 92-105, 95]. It is unfortunate to have to employ the terms 'full-blood' and 'mixed-blood' to describe Aboriginal women, as if their cultural identity was somehow related to blood quantum, but since contemporary actors made this distinction, with profound implications, it is necessary to replicate it here.
- 45 Van Kirk, *Many Tender Ties*, 115.

- 46 Ibid.
- 47 *Johnstone v. Connelly*, 286-87.
- 48 Newman, *Caesars of the Wilderness*, 262.
- 49 Van Kirk, *Many Tender Ties*, 119.
- 50 Ibid.
- 51 While some traders continued to flout these social conventions, they were generally the exceptions that proved the rule. 'In the final analysis, the cases in which traders endeavoured to do their best by their wives outnumbered those in which mixed-blood women were maltreated. With the emergence of the mixed-blood wife, the trend was the formation of long and devoted marital relationships': Van Kirk, *ibid.*, at 122.
- 52 Mackie, *Trading Beyond the Mountains*, 30.
- 53 Miller, *Skyscrapers Hide the Heavens*, 143.
- 54 Newman, *Caesars of the Wilderness*, 262.
- 55 Peterson del Mar, 'Inter-marriage and Agency,' 10.
- 56 Van Kirk, *Many Tender Ties*, 119.
- 57 *Ibid.*, 114.
- 58 These were the comments of a trader acquaintance of Celiast in 1821, quoted in Peterson del Mar, 'Inter-marriage and Agency,' 10.
- 59 See Brown, 'Changing Views of Fur Trade Marriage and Domesticity,' 99.
- 60 Backhouse, *Petticoats and Prejudice*, 17; Van Kirk, 'The Custom of the Country,' 78-79.
- 61 Hyam, *Empire and Sexuality*, 98.
- 62 Van Kirk, 'The Custom of the Country,' 83.
- 63 Newman, *Caesars of the Wilderness*, 263.
- 64 National Archives of Canada [hereinafter NAC], James Hargrave to Charles Ross, 1 December 1830, MG 19, A21(1), vol. 21 [quoted in Van Kirk, 'The Custom of the Country,' 83].
- 65 Van Kirk, *Many Tender Ties*, 187.
- 66 Newman, *Caesars of the Wilderness*, 261.
- 67 *Ibid.*, 262. Interestingly, these changes occurred at approximately the same time as the contracting of marriages in England was being purposely formalized and systematized – Births and Deaths Registration Act [1836] 6 and 7 William IV, c. 86. This occurred after centuries of diversity in marriage forms and was only a partially successful attempt in the mid-eighteenth century to make a wedding in a Church of England ceremony the almost exclusively legitimate form of marriage (Clandestine Marriages Act (1753) 26 Geo. II, c. 33 – Lord Hardwicke's Act). Ironically, given what was happening in fur country, the 1836 Act, which was impelled by utilitarian thinking, provided an alternative to a church marriage in a civil ceremony performed by a registrar. See Lawrence Stone, *Uncertain Unions: Marriage in England 1660-1753* (Oxford: Oxford University Press, 1992), 3-32; William R. Cornish and George de N. Clark, *Law and Society in England 1750-1950* (London: Sweet and Maxwell, 1989), 360-65.
- 68 Van Kirk, *Many Tender Ties*, 159.
- 69 *Johnstone v. Connolly*, 258-59. Connolly's bride, Julia Woolrich, was aware of Susanne's claims to Connolly, but was apparently reassured by a dispensation Connolly had received from a Catholic bishop on the grounds that the Cree marriage was invalid: Backhouse, *Petticoats and Prejudice*, 13-14.
- 70 Van Kirk, 'The Custom of the Country,' 79, relates the story of a guest at one such wedding who observed that the groom had 'stood manfully forth ... bringing his 35 years courtship to an early close.'
- 71 *Ibid.*, 82.
- 72 Barman, *The West Beyond the West*, 44, notes that Native cooperation was essential to secure the 30,000 to 40,000 salmon required annually simply to feed the men stationed across New Caledonia.
- 73 Quoted in Van Kirk, 'The Custom of the Country,' 80.
- 74 Thomas Jesset, ed., *Reports and Letters of Herbert Beaver 1836-58: Chaplain to the Hudson's Bay Company and Missionary to the Indians at Fort Vancouver* (Portland: Champog Press, 1959), 2.
- 75 Newman, *Caesars of the Wilderness*, 325.

- 76 Van Kirk, 'The Custom of the Country,' 80.
- 77 Newman, *Caesars of the Wilderness*, 325.
- 78 Van Kirk, 'The Custom of the Country,' 80.
- 79 Newman, *Caesars of the Wilderness*, 325, provides a vivid account of this confrontation.
- 80 Van Kirk, *Many Tender Ties*, 111.
- 81 Van Kirk, 'The Custom of the Country,' 81. The majority of commentators attribute Douglas' desire for church recognition to a characteristic desire to secure his social status and prestige in an era of shifting social mores. However, Constance Backhouse, *Petticoats and Prejudice*, 20, speculates that Amelia Connolly was actually responsible for this event because of growing insecurity about her own future after the abandonment of her mother by Connolly five years previously.
- 82 Van Kirk, *Many Tender Ties*, 156.
- 83 In 1841, Simpson gave permission to more than a dozen men stationed at Fort Stikine to take Aboriginal wives, reasoning that the trade benefits of such unions outweighed the increased costs of provisions: *ibid.*, 31.
- 84 Van Kirk, *ibid.*, 210, 216, notes that in Red River society, 'when it became apparent that white women could not adapt to fur trade life, the prospect of marrying an acculturated mixed-blood girl was again looked upon with favour.' Governor Simpson began to doubt the wisdom of bringing European wives to Rupert's Land after an outpouring of complaints about the behaviour of clergymen's wives: 'European ladies can seldom accommodate themselves to the want of society in Hudson's Bay and affect a supercilious air of superiority over the Native wives and daughters of gentlemen in the country.'
- 85 Van Kirk, 'The Custom of the Country,' 82.
- 86 Barman, *The West Beyond the West*, 54.
- 87 *Ibid.*, 58.
- 88 Sylvia Van Kirk, 'Tracing the Fortunes of Five Founding Families of Victoria,' *BC Studies* 115/116 (1997-98): 149-80.
- 89 On the application of the colonization theories of Edward Gibbon Wakefield on Vancouver's Island, see Richard Mackie, 'The Colonization of Vancouver Island, 1849-58,' *BC Studies* 96 (1992-93): 3-40; Hamar Foster, 'British Columbia: Legal Institutions in the Far West from Contact to 1871,' *Manitoba Law Journal* 23 (1996), 293-340, 295; Tina Loo, *Making Law, Order and Authority in Colonial British Columbia 1821-1871* (Toronto: University of Toronto, 1994), 38-40.
- 90 Van Kirk, 'Tracing the Fortunes,' 150.
- 91 Barman, *The West Beyond the West*, 46.
- 92 Newman, *Caesars of the Wilderness*, 306.
- 93 Barman, 'What a Difference a Border Makes,' 15.
- 94 Newman, *Caesars of the Wilderness*, 309.
- 95 Barman, *The West Beyond the West*, 153.
- 96 Barman, 'Taming Aboriginal Sexuality,' 248.
- 97 Barman, 'What a Difference a Border Makes,' 16. See also Miller, *Skyscrapers Hide the Heavens*, 96-97; Robert Bieder, 'Scientific Attitudes toward Indian Mixed-Bloods in Early Nineteenth Century America,' *Journal of Ethnic Studies* 8 (1980): 17-30; Robert Young, *Colonial Desire: Hybridity in Theory, Culture and Race* (New York: Routledge, 1995).
- 98 Quoted in Barman, *The West Beyond the West*, 153.
- 99 Van Kirk, 'Tracing the Fortunes,' 582. Miller, *Skyscrapers Hide the Heavens*, 146, contends that 'while Douglas was not without his prejudices ... his administration stands out as singularly intelligent in comparison with others ... and those that came after him. The fact that he was a former trader and had a mixed-blood wife explained much of his sensible approach to dealing with Indians; the same fact went far to explain settlers' increasing hostility toward him in the 1860s.'
- 100 Van Kirk, *ibid.*, 582-83, 597. The same author also suggests that these interracial families tended to be very patriarchal as British fathers sought to give their children British cultural identity, controlling their educations and limiting their access to the mother's culture. In this way they conformed to the expectations of the dominant society: see Sylvia Van Kirk, 'What if Mamma is an Indian? The Cultural Ambivalence of the Alexander Ross Family,' in

- The New Peoples: Being and Becoming Metis in North America*, eds. Jacqueline Peterson and Jennifer S.H. Brown (Winnipeg: University of Manitoba Press, 1985).
- 101 Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989* (Vancouver: UBC Press, 1990), 42. Some commentators suggest Douglas' relatively progressive Aboriginal policies stemmed from his own marriage to a mixed-blood woman, and the fact he himself was the product of an interracial union (he was born out of wedlock to a Glasgow merchant and a native of the British West Indies). See Keith Carlson, *You Are Asked to Witness: The Stó:lō in Canada's Pacific Coast History* (Chilliwack: Stó:lō Heritage Trust 1997).
- 102 Quoted in Tennant, *ibid.*, 39.
- 103 *Ibid.*, 40.
- 104 Carlson, *You Are Asked to Witness*, 73.
- 105 Quoted in Barman, *The West Beyond the West*, 156.
- 106 Van Kirk, *Many Tender Ties*, 201, contends that this phenomenon is evident in the meeting of races around the world: 'In various parts of the British Empire, a direct relationship can be traced between the growth of racial prejudice and the arrival of white women. With the appearance of white women, fur traders began to exhibit prejudices towards Native females that had previously been dormant. In fact, the question of colour became an issue for the first time.'
- 107 Adele Perry, "'Oh I'm Just Sick of the Faces of Men": Gender Imbalance, Race, Sexuality, and Sociability in Nineteenth Century British Columbia,' *BC Studies* 105/106 (1995): 27-43, 32. Jean Barman, *The West Beyond the West*, 89, quotes from one of numerous *Times* columns decrying the lack of white women: 'There is probably no country where the paucity of women in comparison with men is so injuriously felt ... Oh! if 50 or 100 should arrive from England every month until the supply equalled the demand, what a blessing it would be to us and the colony at large! Without them, the men will never settle in the country.'
- 108 *Report of the Columbia Mission, 1860* (London n.d.) 24. The Bishop of Oxford's views were shared by the local bishop, George Hills: see diary entry, 4 June 1860, in Roberta L. Bagshaw, *No Better Land: The 1860 Diaries of the Anglican Colonial Bishop: George Hills* (Victoria: Sono Nis, 1996), 122.
- 109 Edward Gibbon Wakefield, *The Collected Works of Edward Gibbon Wakefield*, ed., Muriel F. Pritchard (Auckland: Collins, 1968), 972.
- 110 Perry, 'Oh I'm Just Sick of the Faces of Men,' 34.
- 111 *Ibid.*
- 112 Van Kirk, *Many Tender Ties*, 202.
- 113 The Foss-Pelly scandal revolved around Sarah Ballendeen, the popular mixed-blood wife of Chief Factor John Ballendeen. Sarah Ballendeen's status at the top of the fur trade hierarchy frustrated many white women, particularly Anne Pelly, the wife of Sir John Pelly, the London Governor of the Company. Mrs. Pelly was apparently angered that her status ranked below that of Sarah Ballendeen, whom she considered her racial and social inferior, and was consequently pivotal in fuelling rumours of an illicit relationship between Mrs. Ballendeen and a Captain Christopher Foss. Foss was so outraged by these accusations that he brought a suit of defamatory conspiracy against several officials and their white wives, including Mrs. Pelly. The resulting trial, in which Foss ultimately prevailed, was a forum for undisguised racial prejudice and divided the entire community along racial lines. Mrs. Pelly and her supporters argued the inherent immorality of Aboriginal and mixed-blood women, while the supporters of Sarah Ballendeen were either mixed-bloods or married to Native women. See Van Kirk, *Many Tender Ties*, 220-30.
- 114 *Ibid.*, 229.
- 115 Jo-Anne Fiske, 'Pocahontas's Granddaughters: Spiritual Transition and Tradition of Carrier Women of British Columbia,' *Ethnohistory* 43 (1996): 663-81.
- 116 Van Kirk, *Many Tender Ties*, 145.
- 117 *Ibid.*, 159. See also John McLaren, 'Chasing the Social Evil: Moral Fervour and the Evolution of Canada's Prostitution Laws, 1867-1917,' *Canadian Journal of Law and Society* 1 (1986): 125-65, 126-30.
- 118 Barman, 'Taming Aboriginal Sexuality,' 241.

- 119 Barman, *ibid.*, contends that Victorian sexual norms (which implicitly condoned the exploitation of 'fallen' women) and the gold rush resulted in an actual increase in Aboriginal prostitution, but that even when the gold rush and the attendant prostitution waned, Aboriginal female agency and prostitution were intractably linked in settler consciousness. Prostitution discourse provided a means for colonial actors (missionaries and government officials) to address issues of sexuality that would otherwise remain unspoken in Victorian society, and to actively reorder Aboriginal society to circumscribe female autonomy.
- 120 *Ibid.*, 240.
- 121 Fiske, 'Pocahontas's Granddaughters,' 114.
- 122 Van Kirk, 'The Customs of the Country,' 84.
- 123 Barman, 'What a Difference a Border Makes,' 18.
- 124 *Ibid.*, 16.
- 125 *Ibid.*, 18.
- 126 Miller, *Skyscrapers Hide the Heavens*, 130.
- 127 Peterson del Mar, 'Intermarriage and Agency,' 15, observes that, while the American legislation reflected popular prejudices, it was never rigorously enforced.
- 128 For an example, see An Ordinance Respecting Indian Reserves (1869) 32 Vict., No. 125.
- 129 An Act Respecting Marriages in the Colony of Vancouver Island and Its Dependencies, Ordinances of Vancouver Island 1859, No. 2. See sections 1 and 3. Section 1 speaks in permissive terms about church marriage and s. 3 seems to contemplate marriages outside consecrated places.
- 130 See An Ordinance Respecting Marriage in British Columbia, Ordinances of BC, 1865 No. 21; An Ordinance to Regulate the Solemnization of Marriage, Ordinances of the United Colony of BC, 1867, No. 33. Both statutes talk in terms of priests, ministers, and the registrar as being the only persons who are permitted to solemnize marriages. The exceptions made for Quaker and Jewish rites were dependent on the parties satisfying the requirements of registration.
- 131 *Connolly v. Woolrich and Johnson et al.* (1867) 11 L.C. Jur. 197.
- 132 Quoted in Backhouse, *Petticoats and Prejudice*, 16.
- 133 *Connolly v. Woolrich*, 200-1. The account of arguments before the court presented here is drawn from Constance Backhouse's excellent rendition of the trial in *Petticoats and Prejudice*, 16-21.
- 134 Backhouse, *ibid.*, 17, suggests that the latter position was contrary to prevailing English law, which tended to respect indigenous marital customs in colonial jurisdictions, but that Cross was on firmer ground with respect to intermarriage, the legality of which was contentious at that time across the empire. See also William Eversley and William Craies, *The Marriage Laws of the British Empire* (London 1910), 200-3, 290.
- 135 *Connolly v. Woolrich*, 257. Monk J., in his analysis, relied on the US Supreme Court decision in *Worcester v. Georgia* (1832), 6 Peters 515, to argue (205-7) that Aboriginal political and proprietary rights in unceded territories also continued unabated after the arrival of European powers: 'Will it be contended that the territorial rights, political organization such as it was, or the laws and usages of the Indian tribes, were abrogated – that they ceased to exist when these two European nations began to trade with the Aboriginal occupants? In my opinion it is beyond controversy that they did not – that so far from being abolished, they were left in full force, and were not even modified in the slightest degree in regard to the civil rights of the Native.'

This passage reflects the connection between Aboriginal marital customs and political rights, which suggests why the increasingly frequent denial of the latter by colonial powers inevitably undermined the legal status of the former. If Aboriginal peoples were 'civilized' enough to develop respectable marital institutions, their systems of governance and land ownership might also have to be recognized as legally valid.

The Quebec Queen's Bench in *Johnstone v. Connolly* distinguished (356) between the *political* status and *personal* relations of Aboriginal peoples, holding that only the latter survived Crown sovereignty: 'Therefore the relations of the people to their ancient sovereign or government are dissolved but their relations to each other, and their customs and usages remain undisturbed.'

- 136 *Connolly v. Woolrich*, 225-28.
- 137 For example, Monk J. states (*ibid.*, 225): 'A mixture of barbarism and peculiar civilization ... prevailed in the Athabaska country in 1803 ... Mr. Connolly, whose moral character seems to have been without reproach ... had one of three courses to pursue; that was, to marry [Susanne] according to the customs and usages of the Cree Indians – to travel with her between three and four thousand miles, in canoe and on foot, to have his marriage solemnized by a priest or magistrate – or to make her his concubine. I think the evidence in this case will clearly show which of the three courses he did adopt, and which of them, during a period of twenty-eight years, he honourably and religiously followed.'
- 138 Backhouse, *Petticoats and Prejudice*, 20.
- 139 *Ibid.*
- 140 See Miller, *Skyscrapers Hide the Heavens*, 152-69.
- 141 Van Kirk, *Many Tender Ties*, 240 (emphasis in original).
- 142 *Ibid.*
- 143 Ron Bourgeault, 'Race Class and Gender: Colonial Domination of Indian Women' in *Race, Class, Gender: Bonds and Barriers*, ed. Jesse Vorst (Toronto: Garamond Press, 1991): 88-117, 101.
- 144 Peterson del Mar, 'Inter-marriage and Agency,' 7-8.
- 145 Barman, *The West Beyond the West*, 156. See also Carolyn Strange and Tina Loo, 'Making Good': *Law and Moral Regulation in Canada, 1867-1939* (Toronto: University of Toronto Press, 1997), 25.
- 146 Anderson to John Ash, Provincial Secretary of BC, 16 April 1873, excerpted in updated memorandum of Anderson, in NAC, Department of Indian Affairs, RG 10, vol. 3658, file 9404, C-101115 [quoted in Barman, 'Taming Aboriginal Sexuality,' 252].
- 147 On the legal implications of this story, see Hamar Foster, 'The Kamloops Outlaws and Commissions of Assize in Nineteenth Century British Columbia,' in *Essays in the History of Canadian Law*, vol. 2, ed. David H. Flaherty, 308-64 (Toronto: Osgoode Society, 1983). The animus towards half-breeds in British Columbia at the time is well evoked in George Bowering's powerful novel, *Shoot* (Toronto: Key Porter Books, 1994).
- 148 Barman, 'Taming Aboriginal Sexuality,' 252-53.
- 149 Hubert Bancroft, *History of the Northwest Coast*, vol. 2, (San Francisco: History Co., 1886), 650-51.
- 150 For a contemporaneous example of the obsession with mixed-race relationships, see Matthew MacFie, *Vancouver Island and British Columbia: Their Histories, Resources and Peoples* (London: Longmans, 1865).
- 151 Hyam, *Empire and Sexuality*, 98.
- 152 Constance Backhouse, "'Pure Patriarchy": Nineteenth-Century Canadian Marriage,' *McGill Law Journal* 31 (1986): 264-312, 312.
- 153 Barman, 'Taming Aboriginal Sexuality,' 251.
- 154 *Ibid.*, 249.
- 155 Backhouse, 'Pure Patriarchy,' 264.
- 156 Indian Act, 1876, S.C., c. 18, s. 3(3)(c). At Confederation in 1867, legislative jurisdiction over 'Indians and lands reserved for Indians' passed to the federal government pursuant to s. 91(24) of the Constitution Act, 1867.
- 157 Strange and Loo, *Making Good*, 25. The Royal Commission on Aboriginal Peoples (RCAP) documents the manner in which the evolution of the predecessors to the Indian Act, starting in 1850 in Lower Canada, gradually operated to impose European social institutions (particularly Victorian gender roles) on Aboriginal communities. The consequence was the increasing disempowerment of Aboriginal women: *Report of the Aboriginal Commission on Aboriginal Peoples*, vol. 4 (Ottawa: Canada Communication Group, 1996), 24-28.
- 158 RCAP, *ibid.* Enfranchisement was introduced as a mechanism for absorbing Aboriginal peoples into Canadian society by removing their Indian status once certain preconditions were met. Initially, enfranchisement was a voluntary process, but the process was amended over time to allow the unilateral enfranchisement of Aboriginal men (and by extension their families) considered ready for 'civilization' by government officials: RCAP, *ibid.*, 26. The legislation that introduced the marrying-out provision was An Act for the gradual

enfranchisement of Indians, the better management of Indian Affairs and to extend the provisions of the 1860 Act 1869 S.C., c. 6, s. 6.

- 159 Miller, *Skyscrapers Hide the Heavens*, 194-95, comments: 'The Indian Act's tracing of Indian descent and identity through the father was the unthinking application of European patrilineal assumptions by a patriarchal society; but it accorded ill with the Indian societies ... in which identity and authority flowed through the female side of the family. All these attempts at cultural remodelling ... illustrated how the first step on the path of protection seemed always to lead to the depths of coercion.'
- There was some sentiment in Parliament that intermarriage between Europeans and Aboriginals was a good thing, producing a strong and handsome race, see exchange between Hon. Mr. Dorion and the Hon. Hector Langevin, H.C. *Debates* 1869, 27 April, 83. For a later evocation of the same thought, see British Columbia Archives and Records Service [hereinafter BCA], NW 906, 'John Reade on the Half-Breed' (Royal Society of Canada, 1885), 21.
- 160 Barman, 'What a Difference a Border Makes,' 18.
- 161 For a discussion of the differing conceptions of 'home' in Euro-Canadian and Aboriginal societies, and the significance of reservation communities to the latter, see Mary Ellen Turpel, 'Home/Land,' *Canadian Journal of Family Law* 10 (1991): 17-40.
- 162 Myra Rutherdale, 'Revisiting Colonization Through Gender: Anglican Missionary Women on the Pacific Northwest and the Arctic, 1860-1945,' *BC Studies* 104 (1994): 3-23.
- 163 Michael Harkin comments that 'along with the idea of racial "savagery," the "Indian girl" was a potent symbol of the task at hand. Both victim and sinner, she was the first priority of the missionary enterprise ... Female sexuality and related habits were much harder to eradicate and called for extreme measures': 'Engendering Discipline: Discourse and Counterdiscourse in the Methodist-Heiltsuk Dialogue,' *Ethnohistory* 43 (1996): 643-61, 648.
- 164 Barman, *The West Beyond the West*, 158.
- 165 Miller, *Skyscrapers Hide the Heavens*, 159; Barman, 'Taming Aboriginal Sexuality,' 249.
- 166 Barman, *The West Beyond the West*, 158.
- 167 Harkin, 'Engendering Discipline,' 648.
- 168 Barman, 'Taming Aboriginal Sexuality,' 249.
- 169 By altering family structures, missionaries believed they could not only 'improve the moral tenor of the community, but eventually rectify the unnatural position of the woman at the head of the household': Harkin, 'Engendering Discipline,' 649.
- 170 Remarks enclosed with George Blenkinsop, secretary and census-taker to Indian Reserve Commission, to Sproat, Douglas Lake, 20 September 1878, in NAC, DIA, RG 10, vol. 3677, file 10330 [quoted in Barman, 'Taming Aboriginal Sexuality,' 250].
- 171 Barman, *ibid.*, 250. This dynamic is reflected in the comments of a missionary among the Heiltsuk at the turn of the century, who observed that the women in the community were 'less ambitious and quite satisfied to live in the old untidy ways of the past [whereas] in many cases we find the men building good houses and anxious to have things ... more like white people' [quoted in Harkin, 'Engendering Discipline,' at 648]. Foucault's work on discourse theory raises interesting questions about the extent to which some Aboriginal men internalized European notions of male supremacy.
- 172 Indian Act, 1876 S.C., c. 18, s. 72. This provision was carried through in the Act to Amend and Consolidate the Indian Act, 1880 S.C., c. 28, s. 83.
- 173 Indian Act Amendment Act, 1880 S.C., c. 28, ss. 95, 96.
- 174 Indian Act Amendment Act, 1884 S.C., c. 27, s. 14, amending s. 95. See also RSC 1886, c. 43, ss. 106, 107 for the revised numbering of the sections.
- 175 The practice of flogging Aboriginal women (for 'unspecified sexual activities') was still alive among Oblates missionaries into the 1890s: Barman, 'Taming Aboriginal Sexuality,' 255.
- 176 Petitions of the Lillooet tribe of Indians and from Lower Fraser Indians, s.d. [summer and late fall 1885], and s.d. [summer in 1885] in NAC, DIA, RG 10, vol. 3842, file 71799, C-10148 [quoted in Barman, *ibid.*, at 253].
- 177 Indian Act Amendment Act, 1887 S.C., c. 33, s. 11. These earlier provisions were translated to the Criminal Code, see 1892 S.C., c. 29, s. 190. The offence of keeping, frequenting, or

- being found 'in a disorderly house, tent or wigwam used for any such purpose' was now limited to unenfranchised Indian women.
- 178 Barman, 'Taming Aboriginal Sexuality,' 254.
- 179 Ibid.
- 180 Memorandum of Superintendent General of Indian Affairs to Privy Council of Canada, Ottawa, 20 February 1890, in NAC, DIA RG 10, vol. 3816, file 57045-1, C-10193 [quoted in Barman, *ibid.*, 256].
- 181 Deputy Superintendent of Indian Affairs to A.T. Vowell, Ottawa, 20 May 1895, in NAC, DIA, RG 10, vol. 3816, file 57045-1, C-10193 [quoted in Barman, *ibid.*, 258].
- 182 For a more extended discussion of the tension between Aboriginal and Euro-Canadian law, see Jo-Anne Fiske, 'From Customary Law to Oral Traditions: Discursive Formation of Plural Legalisms in Northern British Columbia, 1857-1993,' *BC Studies* 115/116 (1997-98): 267-88.
- 183 *Ibid.*, 281.
- 184 *Ibid.*, 283.
- 185 Tennant, *Aboriginal Peoples and Politics*, 41.
- 186 BCA, Chief Justice Begbie, correspondence outward, memorandum, 6 March 1873 (emphasis added). An 1872 survey suggested that roughly one in ten Aboriginal women cohabited at some point with a non-Aboriginal men in gold-rush areas: Barman, 'Taming Aboriginal Sexuality,' 248.
- 187 See An Act to render legitimate children born out of wedlock, whose parents are now or may hereafter under certain restrictions be married (1872).
- 188 BCA, Chief Justice Begbie, 'Memo for Secretary of State for the Province on Indian concubines and Infant Half-Breed Children' in Superintendent of Indian Affairs for British Columbia, *Report*, 1872-73.
- 189 BCA, Matthew Begbie, *Ah Jack*, Bench Books Vol. VIII, 23 September 1878.
- 190 (1886), 12 Q.L.R. 327 (Que. Q.B.).
- 191 *Ibid.*
- 192 *Ibid.*, 339-41.
- 193 Backhouse, *Petticoats and Prejudice*, 23-24. However, Miller, *Skyscrapers Hide the Heavens*, 170-88, contends that what has been historically constructed as a rebellion in Saskatchewan in 1885 was in fact 'scattered and isolated acts of violence by angry young men who could no longer be restrained by cooler heads.'
- 194 Cross expressly rejected the reasoning in *Connolly*, opening his opinion with the assertion (at 355) that the *Connolly* decision was 'unsatisfactory, and I think it is well the subject should be further ventilated, to satisfy the doubts that have been entertained, as to the soundness of the decision.'
- 195 *Ibid.*, 350.
- 196 *Ibid.*, 355-56.
- 197 *Ibid.*, 357.
- 198 *Ibid.*, 357.
- 199 *Ibid.*, 358.
- 200 *Ibid.*, at 358.
- 201 *Ibid.*, at 360.
- 202 *The Queen v. Nan-e-quis-a-ka*, [1889] 1 Terr. L.R. 211 (N.W.T.C.A.). It should be noted, however, that the court's upholding of the customary marriage was premised on the unavailability of English institutions in the region at the relevant time, thus perpetuating the vision of a 'lawless frontier' eventually 'civilized' with the arrival of British justice.
- 203 *Robb v. Robb* (1891), O.R. 591 (C.P.).
- 204 *Ibid.*, 593.
- 205 *Re Sheran* (1899), 4 Terr. L.R. 83 (N.W.T.S.C.).
- 206 *Smith v. Young*, *Canada Law Journal* 34 (1898): 581 (Reports and Notes of Cases).
- 207 The words of Robert Williams, Jr. are particularly apt: 'There is no document of civilization which is not at the same time a document of barbarism.' See Robert Williams, Jr., 'Documents of Barbarism: The Contemporary Legacy of European Racism and Colonialism in the Narrative Traditions of Federal Indian Law,' in *Critical Race Theory: The Cutting Edge*, ed. Richard Delgado (Philadelphia: Temple University Press, 1995): 98, 99.

- 208 Peterson del Mar, 'Intermarriage and Agency,' 16.
- 209 Miller, *Skyscrapers Hide the Heavens*, 96.
- 210 Fiske, 'From Customary Law to Oral Tradition,' 269.
- 211 See Norman Zlotkin, 'Judicial Recognition of Aboriginal Customary Law in Canada: Selected Marriage and Adoption Cases,' *Canadian Native Law Reporter* 4 (1984) 1-17, 1; 'Casimel v. I.C.B.C.,' *Canadian Native Law Reporter* 2 (1994) 22 (B.C.C.A.). [Subject to express extinguishment by parliament, Aboriginal customary laws of self-government and self-regulation have continued to the present day and are now constitutionally protected by s. 35 of the Constitution Act, 1982.]
- 212 Barman, 'What a Difference a Border Makes,' 16.