

# **The Origins of Metis Customary Law With a Discussion of Metis Legal Traditions**

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## **Abstract/Resume**

The authors review the basis of Metis legal traditions as derived from Plains Indian customary law and social control mechanisms. The underlying values, principles and basic concepts of Metis legal traditions are discussed. First we examine the customary law of the Plains Cree and Plains Ojibwa as it developed in the Old Northwest of North America. Second, there is an examination of Metis customary law as it developed in the same area.

Les auteurs font l'analyse de la fondation des traditions légaux des Métis, tel que dérivée des lois traditionnelles et les mécanismes de contrôles sociaux des autochtones des prairies canadienne. Ceci est suivi d'une discussion des valeurs, principes et notions implicites des traditions légaux des Métis. Premièrement, ils examinent les lois traditionnelles des peuples Cris et Ojibouais qui furent développées dans l'ancien Territoire du nord-ouest de l'Amérique du nord, suivi d'une étude des lois traditionnelles des Métis du même territoire.

## **Introduction:**

*The law is the way a people will live together. It governs the external side to their relations. Law decides how one group of strangers will live together with other strangers. The law is a means of re-civilization of the people. Law is a way of people defining themselves. That law that can bring light where there is darkness is written on the heart(s) of your Elders.*

Browning Pipestem  
Dakota Ojibwa Tribal Council  
Tribal Courts Symposium, 1991

*(Aboriginal) First Nations law originates in the political, economic, spiritual and social values expressed through the teachings and behaviour of knowledgeable and respected individuals and Elders. These principles are enunciated in the rich stories, ceremonies and traditions of First Nations. Such stories articulate the law in First Nations communities, since they represent the accumulated wisdom and experience ...of conflict resolution.*

John Borrows  
McGill Law Journal, 1996

This article will first look at the customary law of the Plains Cree and Plains Ojibwa as it developed in the Old Northwest of North America and then explore Metis customary law as it developed in the same area. The Metis had a close connection with both the Plains Cree and Plains Ojibwa through their maternal ancestors, in addition to their extensive intermarriage into these two groups. This connection is apparent within the Michif language. The Michif language of the Metis is half Plains Cree (an Algonquian language) and half French (an Indo-European language). It is a combined language, drawing its verbs and associated grammar from Plains Cree and its nouns and associated grammar from Michif-French. The Ojibwa/Saulteaux language contributes some verbs, sounds and nouns to the combination. The Michif language is unique in world languages: it is syncretic, in that it is not classified as belonging to a single language family.

### **Plains Indian Customary Law**

In Adamson Hoebel's approach to Indian customary law, a social norm is only legal if it's neglect or infraction is regularly met, in threat or in fact, by the application of physical force, ostracism or shame by an individual or group possessing a socially recognized privilege of doing so (*The Law of Primitive Man*. New York: Atheneum, 1974).

The difficulties of attempting to find legal rules among people with oral traditions are set out by James Zion<sup>1</sup> in the Federation of Saskatchewan Indian Nations' (FSIN) studies of customary law in Saskatchewan:

The finding of some who currently study Indian customary law is that process and procedure are very important in identifying the proper use of Indian customary law. It is very difficult to identify and isolate specific, substantive rules of law in Indian cultures, often because those rules are religious in nature or are part of an unarticulated "gestalt" or system of belief. However, it is possible to identify procedures, methods and ways of problem solving which are used to apply the substantive rules in a community. Llewellyn and Hoebel found that developing a theoretical scheme for Cheyenne common law was

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<sup>1</sup> James W. Zion is the Solicitor to the Courts of the Navaho Nation. He is a Metis from Montana. His family left Saskatchewan after the Metis Resistance of 1885 and moved to the state of Montana.

an “art”...however, specific problem areas for which case will be sought, will be the areas of family law, child custody, divorce and petty community offences.<sup>2</sup>

According to Zion some sources of Indian customary law are ceremonies, child rearing customs, guiding devices and customs for instruction. He also lists four major characteristics of Indian customary law: a) a deep foundation on religious beliefs; b) it is learned from childhood as part of everyday instruction; c) it is not articulated as a set of rules; and d) relationships and community guiding devices are important. The FSIN studies pointed out that Indians are not normally legalistic or litigious. When a wrongdoing is committed it is generally acknowledged by the wrongdoer. The distinction between legal and moral guilt is not a part of the Indian tradition nor is the “adversarial” method regarded as a means of resolving disputes.

The FSIN working group on customary law in Saskatchewan were able to draw out some general principles from their extensive field work:

- With respect to family law matters... the thrust of the Indian common law for children and families is to reinforce relationships and keep harmony.
- Placements with grandparents are custody arrangements that are common and customary adoption is a common practice (to keep the child with the natural family or extended family).
- With respect to the distribution of property after death, the first consideration is taking care of the descendants and the surviving spouse (the exact nature of this custom appears to vary from community to community).
- As for property matters, the perpetual and absolute ownership of property is not a part of Indian customary law.
- There is also a general respect for contracts.

It is quite difficult to find examples of specific rules of law in Indian cultures because the rules of social control are often of a religious nature or are part of an unwritten system of beliefs learned from childhood as part of everyday instruction. The generally identified sources of Indian customary law are: the naming ceremony, the manner of caring for children, ceremonies of thanks, ceremonies to petition and ceremonies to ask that everything goes well.<sup>3</sup> Guiding devices are also considered to be “legal” forms of behaviour and include: living with the parents for instruction, use of sweats, use of Elders and the use of grandparents for instruction.

The researchers working on the FSIN study of customary law obtained two very strong messages from their informants. First was the resentment and anger over the historical suppression of

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<sup>2</sup> Canada, Saskatchewan, FSIN. “Volume I, Working papers prepared by the working group on customary law.” *FSIN Studies of Certain Aspects of the Justice System as they Relate to Indians in Saskatchewan*, 1985, Ottawa: Department of Justice, pp. 11.

<sup>3</sup> John Henry Provine, “The Underlying Sanctions of Plains Indian Culture: An Approach to the Study of Primitive Law. Chicago, Reprinted from *The Social Anthropology of North American Tribes*, University of Chicago, 1937: 341-374 and 445-449.

Indian culture. This revolved around the removal of children from their homes to residential schools at a time precariously important to cultural development. They also documented the resentment and anger of those who attended boarding school regarding the suppression of Indian culture and the conscious destruction of the children's language, religion and cultural values. These feelings present themselves in the high valence the respondents gave to Indian-controlled education. The second message was the evidence of the "persistence of culture". The assumption that the Anglo-European culture had completely suppressed traditional Indian law was completely incorrect.

### **Traditional Plains Social Control**

Provinse<sup>4</sup> outlines the sets of sanctions that were used by Plains Indians to enforce tribal custom or to respond to breaches of tribal regulations and conventions. He divides these into categories of primary and secondary sanctions. Primary sanctions are those that protect the interests of the community or society as a whole. Secondary sanctions protect the interests of individuals or groups of individuals by affording them some sort of satisfaction for wrongs suffered. Secondary sanctions derive their authority from primary sanctions. In general among Indians, the offences covered by primary sanctions are fewer and differ in kind from those that are the source of attention in modern communities. An example of this is that there is less emphasis and concern with property rights.

This primary-secondary differentiation parallels the traditional criminal-civil, punishment-revenge distinctions so frequently found in modern juridical terminology. However, it is more inclusive in scope in that it allows for the treatment, first, under the primary sanctions, of those diffuse social and religious control forces out of which organized legal control has developed and, second, under the secondary sanctions, of a large class of private wrongs which our modern civil-law terminology does not encompass but which are essential to a thorough understanding of the development of that branch of jurisprudence.

Tom Tso, Chief Justice of the Supreme Court of the Navajo Nation outlined some principles that are supported by most Aboriginal people.

For the Navajo, life hinges on the concept of harmony and balance. Harmony between; a person and himself; a person and nature and the environment; a person and other people. The goal is to have a good life, live in peace and have happiness. If an action promotes harmony and balance, then it is proper, right and acceptable.<sup>5</sup>

He noted that Aboriginal people adhere to the idea of conceptual authority and resist coercive authority. Thus, human rights are based upon human dignity. Sanctions then, are based upon the communal spiritual values, not authoritative sanction coming from someone in power.

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<sup>4</sup> *Supra*.

<sup>5</sup> 1991, Dakota Ojibway Tribal Council, Tribal Courts Symposium, Winnipeg, Manitoba.

## Family Relations:

Family obligations and relations are central to Indian concepts of justice. Peacemaking exists within the family. Siblings may correct one another regarding inappropriate behaviour. Within the immediate family a person's parents, aunts, uncles or grandparents may guide and correct them. Grandparents will often correct through teaching, giving guidance or teasing. Outside the level of immediate family other Grandparents (that is, Elders) take over responsibility for correction. This may be a natural or an "adoptive" Grandparent, or a group of Elders acting together. Band Chiefs or others in positions of authority may intervene, even in a situation involving a person of equal age. Finally when all else fails, the community may summon outside forces in the form of police, social workers or probation officers for assistance.

Orders are obeyed through customary obedience and enforcement through community pressure. Obedience is taught from childhood. Even where there might be temptation to disobey an Elder or a leader, there are other devices to compel obedience. These include:

- General community pressure: One simply obeys or there will be shame. The shame may be individual or it may be shame to the entire family.
- Humiliation: Humiliation is a more affirmative form of shaming in which the community will do something to let the individual know its displeasure. These include: Joking, which consists of teasing an individual to his or her face about doing something. Humiliation is a common and effective punishment because when it is known in the community that someone is humiliated, the people say, "if you do that thing, look what happens to that person."
- Stories: Stories about an individual are not only an effective means of punishment, but they provide case examples and a means of teaching others not to do the same thing.
- Ridicule: Is mentioned as another diffuse sanction.<sup>6</sup> Among Plains Indians ridicule played an important function. Breaches of marriage, residence rules of avoidance and respect and taboos were often condemned by words or acts designed to bring shame upon the wrongdoer.
- Shunning: Is also regarded as a sanction. It is the act of people refusing to speak to, or deal with an offender. Exclusion from religious ceremonies is the most severe form of shunning.
- Satirical sanctions: Humour is often used for instruction. In an example from the Cowesses band, "Humour and non-direct ways are often used to instruct, discipline and so on. Indian humour is often sharp when used for punishment or disagreement. It will seem someone is not saying anything when in the context of what is said they are really saying something."<sup>7</sup> Privilege familiarity or some form of joking relationship exists

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<sup>6</sup> Provinse, *op. cit.*: 355

<sup>7</sup> Canada, 1985, Vol II: 14

among many Aboriginal groups. This relationship normally existed between individuals whose fathers belonged to the same clan.<sup>8</sup> The joking privilege was much more than just liberty to play practical jokes upon, or make obscene remarks to your joking partner. Lorie says:

The basic notion of this relationship in its more serious aspects seems to be that of licensed and unrestricted criticism for an infraction of tribal custom. When a man has committed some reprehensible deed (i.e. married a clan mate, or shown jealousy) it was not the function of his fellow clansmen but of his '*makutsati*' (joking relative) to reprove him or make fun of him. They would spread the news of the wrongdoing and throw it in the offender's teeth and he was obliged to take all this in good part as the prerogative of '*makutsati*'.<sup>9</sup>

- Banishment: Is a very severe punishment under Indian common law. It is usually imposed only in the most extreme cases. Many Indians are tied spiritually to their lands and homes, and most Indian societies stress the family and the importance of ceremonies in the community. Thus exclusion from the family, home, ceremonies and one's land has a great impact on individuals, just as removal to prison has a severe effect.

James Zion has pointed out that most Aboriginal justice methods address cognitive dissonance and shame. This is done through the involvement of relatives. "They do not make a sharp distinction between 'victim' and 'offender.' They use a talking out process among relatives (by both blood and clan) to reach practical consensus about what to do about a problem. They use ceremony and prayer to bond people to the process and to involve the Spirits in both the path to a solution and a binding decision. It is a process which gets to the bottom of things."<sup>10</sup>

### **Community Expression:**

One of the primary instruments of enforcing tribal law was of course, the tribal police. These police were public officials acting impersonally and openly for the public good and were backed up by other tribal authorities. Their duties included restraining people for the sake of public order, settling disputes and punishing offenders. They were expected to succeed in these functions without resorting to violence, although clubbing and whipping were the uniform response if mediation did not work. More serious cases would lead to the destruction of the offender's personal property.

A primary characteristic of Plains justice was the order preserving nature of police activity as opposed to the idea of punishment for the sake of social vengeance. Conformity to social custom was what was sought rather than revenge. Immediately after a promise to conform was secured from the offender, steps were taken to reincorporate him into the community. Property that had been destroyed was replaced and the offender, who was amenable to reform, was given another chance and was provided with those necessities of life that would enable him to make a new start. "Plains justice was organized, in so far as societal intervention did occur, not to inflict

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<sup>8</sup> Provinse, *op cit.* 357

<sup>9</sup> Provinse, *ibid.*, p. 357

<sup>10</sup> James Zion, "Punishment versus Healing: How does Traditional Indian Law Work? Native Law Centre of Canada.

punishment for its own sake but to secure conformity to tribal regulations in order to preserve the integrity of the group.”<sup>11</sup>

David Mandelbaum,<sup>12</sup> reports that among the Plains Cree policing functions were one of the duties of the ‘*okihiticitawak*’ (Warrior) societies. The Warrior Chief (distinct from the Chief proper) was selected by the Warriors and directed policing operations. As with the Ojibwa and the Metis, individual hunting in advance of the main party was one of the more serious offences. Offenders were subject to immediate slashing of their tipi and destruction of their other possessions. If the offender took his punishment in a composed manner, the Warriors would gather four days later and each would contribute an article until there was ample restitution for the guilty man’s losses. However, if he remained defiant, this restitution was not made. For a second offence the offender could be banished from camp, for a third offence he might be shot.<sup>13</sup>

Mandelbaum reports that offences such as theft were rare among the Plains Cree, and were usually the consequences of a thoughtless act by a young man. The custom was that when the boy’s father learned of the theft he would immediately return the stolen article to the owner.<sup>14</sup>

James Howard<sup>15</sup>, reports that the Plains Ojibwa generally conducted their great hunts in the summer and late fall. The Chief and council would meet and select one member of the band to act as police (‘*okitsita*’, literally “a person who does honourable things”). Their duties were to keep order during the march, watch for enemies, and most importantly, to prevent the younger men from rushing ahead and frightening the herd by firing in advance of the main party and thus spoiling the hunt for the whole band.

Theft was uncommon, but neighbours would usually identify the thief to the complainant who would then retrieve his belongings from the thief. “Public ridicule constituted the thief’s only punishment.”<sup>16</sup> Quarrels were usually settled by the ‘*okisita*’ forcing the disputing parties to smoke a pipe and accept arbitration, or alternately the lance bearers would thrust their lances in the ground between disputants and force mediation of the issue.

The two underlying principles of Plains Ojibwa justice seem to have been the conformation to tribal mores for the general good and restitution to the injured party. Even murder could be redressed with gifts or by the murderer taking the dead man’s place... Secondary sanctions included ridicule (in the case of theft or stinginess) and the use of magic. Members of the *Midewiwin* and *Wabano* societies were particularly feared for their magical prowess, and fear of this power was often an active deterrent to theft and violence.<sup>17</sup>

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<sup>11</sup> Provinse, *ibid*: 350.

<sup>12</sup> David Mandelbaum, *The Plains Cree*. Regina: Canadian Plains Research Centre, 1979, p. 115.

<sup>13</sup> James Howard, *The Plains-Ojibwa or Bungi*. Lincoln, Nebraska: J & L. Reprint Co., 1977, p. 24-25.

<sup>14</sup> David Mandelbaum, *ibid*, p.115.

<sup>15</sup> Howard, *op. cit.*

<sup>16</sup> Howard, *ibid*. p. 83.

<sup>17</sup> Howard, *op. cit.* p. 83. For a detailed account of the practice of having an offender take the place (within the family) of a murder victim see Alexander Ross, *op. cit.* at pages 324-330. Ross detailed a set of treaty negotiations between the Metis (represented by Cuthbert Grant) and the Sioux in November and December of 1844 to compensate for the deaths of a number of Sisseton and Yankton Indians at the hand of some Metis.

Traditional Indian law in the form of community controls (e.g. shaming, shunning, banishment and other social controls), peacemaking and the application of traditional rules to normal legal problems (offences, probate, child custody, etc.) exists and is strong. It not only exists in spite of non-Indian municipal law, but because of it. In other words, both the traditional system and hybrids of them exist in order to avoid municipal legal mechanisms (police, courts, social workers, etc.). They exist both as continuations of the old systems and as avoidance mechanisms to protect individual Indians from the general society.

## Basic Concepts in Metis Legal Tradition

### Introduction:

The law and social control mechanisms practiced by the Metis were determined by their culture and worldview. By the time the Metis Nation entered into Confederation with the Dominion of Canada in 1870, their laws and means of social control were already over a century old.<sup>18</sup>

It was not until 1835, that Sir George Simpson established a judicial system and police force in Assiniboia. Up to that date the Red River Settlement had developed without any of the accompaniments of British legal tradition. Historian A.S. Morton commented that the functioning of the settlement as of 1857 still baffled the statesmen in England: “Possessed with the idea that the Company was the government of a continental domain, they found it hard to grasp the fact that it did not govern. No taxes, no definite postal service, other than the Company’s expresses, and none to the United States, empty jails, and no school system; yet there were magistrates and the young were being educated.”<sup>19</sup> During the first 150 years of HBC presence the Company had in fact only held three formal trials. Subsequent to 1835, the settlement still operated under what was called a “smoothing system” for justice that ignored legal action in favor of equitable solutions and flexibility. Alexander Ross, writing in 1856 noted:

*We ought, however, to repeat, what we have already noticed, that for several years past a few councilors, to assist the Governor, some few constables too, had been nominally appointed; and this little machinery of government had dragged along under what has been very properly called the smoothing system, or rather no system at all; yet for several years it worked more or less to the satisfaction of the people, which is the great end of all legislation and law.*<sup>20</sup>

Donald Gunn records that the general consensus was that the Red River Quarterly General Courts typically had “no justice to administer; there was no crime.”<sup>21</sup> The people would discuss their grievances prior to court and reach a resolution, to avoid the expenses of court and any bad feelings that might arise. According to Alexander Begg, “not one-half of the cases on the docket ever found their way into Court, the parties, through the instrumentality of their friends, agreeing

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<sup>18</sup> Fred Shore and Lawrence Barkwell, *The Past Reflects the Present: The Metis Elders’ Conference*. Winnipeg, MB: Manitoba Metis Federation, 1997, p.

<sup>19</sup> Arthur S. Morton, *A History of the Canadian West to 1870-71*. London: Thomas Nelson and Sons, 1939: 820.

<sup>20</sup> Alexander Ross, *Red River Settlement*, 1856 reprint, Minneapolis: Ross and Haines, 1957: 173.

<sup>21</sup> Donald Gunn Appendix 1, in *Report from the Select Committee*, 364.

between themselves before hand.”<sup>22</sup> In other words they worked it out through discussion and community mediation. The Metis had a highly effective system for settling differences among each other, by themselves.

The Metis adhered to their own rules. However, they did accept certain rules from the Hudson’s Bay Company and First Nations Groups, provided that these rules did not interfere with their own law. Having said this, one exception was economic law. The Metis refused to acknowledge the hegemony of the Hudson’s Bay Company.<sup>23</sup>

In his studies of the Turtle Mountain band and Metis community, Howard<sup>24</sup> notes that the government of the Metis was similar to the full blood Plains Ojibwa. In fact, they often shared the same main chief (*‘le chef’*) and had several secondary chiefs (*‘le premier’*). The Metis had a general council and an *‘okisita’* policing organization called *‘la garde’*. Unlike the Indians, *‘le chef’* was not a hereditary position but was elected.<sup>25</sup>

Metis government was based in consensus democracy.<sup>26</sup> The authority of Metis leaders was based in the consent of the followers. In order for authority to be effective, it had to be democratic. Everyone had a part in making the laws. Metis leaders were commissioned to carry out only the agreed-upon laws and nothing more. Authority was given to others only for a specific purpose and was revocable.

Metis culture is an oral culture just as the Michif language is an oral language. One must be aware of the oral traditions. The distinction between oral and written form is important, since both traditions are part of the Metis experience. Family and community rules were usually transmitted and recorded in the oral tradition, however some rules have been written down over the last 150 years. Nevertheless, no complete written set of all Metis rules exists.

## **Traditional Metis Social Control**

### **Social Control is Family Based:**

In Metis culture, discipline is based on respect for those older than you. One never walks between an Elder and the person(s) they are talking with. Children do not interrupt Elders. If a child is unable to listen or be quiet in the presence of Elders, then the child is sent elsewhere. Physical discipline is used on children but in a controlled manner. Excess has always been considered to be abuse. Children who steal or who cause problems with other families have to apologize to those they have offended. Restitution in some form is also an acceptable means of control. Scolding is used for less serious childhood offenses. Patience is an esteemed virtue for all who are involved with children.

The Metis family’s reputation is very important and bringing shame on the family is a serious matter. Public opinion and the desire to maintain the family’s good name have always been

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<sup>22</sup> Alexander Begg, *Dot It Down*, 215.

<sup>23</sup> Shore and Barkwell, *ibid*, p.

<sup>24</sup> Howard, *supra*.

<sup>25</sup> Howard, *ibid*, p. 78.

<sup>26</sup> *Op. cit.*

central to the social order in Metis communities. The closeness of the ties within the community also meant that tensions and conflicts were usually dealt with as they arose.

### **Storytelling:**

Social control begins at the family level, and is then transferred to the community or national level. The Metis family constitutes the basic unit of governance. Metis children are taught about the consequences of behaviour through the teachings of their Grandmothers and traditional stories. The interpretation of these stories reinforces adherence to the values and principles elucidated by the story. These stories are instructive as to accepted community standards as well as the natural, supernatural and cultural sanctions that flow from breaches of the standards and principles.

Storytelling is important among the Metis as an educational tool. Stories and legends are meant to encourage people to keep their obligations to the Creator, transmit beliefs and values to children and to teach valuable life lessons on how we are to live with one another. Stories can be sacred, profane, or humorous. They may have “*Wisahkêcâhk*” (from the Cree) or “*Nanabush*” (from the Ojibwa) or “*Ti-Jean*” or “*Chi-zaw*” (from the French Canadians) as their hero. Many similar legends are told of each of these heroes or trickster figures. Many of these stories attempt to explain the inexplicable.

### **Mythology:**

Trickster figures and the stories and myths surrounding them are a way of learning the truth about ourselves as human beings. The Trickster is an imperfect hero. Trickster tells us truths about ourselves and reveals sides of our nature that we might be more comfortable not to acknowledge. It is through Trickster’s actions that all values come into being. The trickster is a paradox. As a shapeshifter, Trickster is all things to all people. The Trickster, by instructive example, allows us to break out of our stereotypes, whether imposed by our culture, our families or ourselves. He demonstrates the dangers that lie in wait for those with voracious appetites.

The “*Rougarou*” is the werewolf of Metis mythology. The Metis *Rougarou* is a syncretistic variation of the French-Canadian *loup garou* and the Cree shapeshifter figures. The *Rougarou* is usually a person whom in some way has offended the Creator or has been possessed by evil spirits. Some also view the *Rougarou* as a variation of the Indian Bearwalk mythology. The Metis of Turtle Mountain had the belief that a person who is a *Rougarou* changes into either a dog or a black mare rather than into a wolf. Another variation is that the *Rougarou* is half man and half horse. Some say that if one ever meets a *Rougarou* they must throw a skeleton key and hit him between the eyes and he will then be turned back into a man. You had to keep his identity secret or you too would become a *Rougarou*.

### **Social and Supernatural Consequences:**

Community people have a positive obligation to intervene when they observe misbehaviour. The front line of responsibility rests with those who named the individual or those who were present at the naming ceremony. In Christian practice, it rests with an individual’s Godparents or those who were present at the baptism. Other lines of responsibility include Grandparents and uncles. Male youth who exhibit behaviour problems are often sent to live with their uncles on the paternal side of the family.

Respect and honesty are the underpinnings of Metis social control. Honesty is equal to honour, and is required at all times and in all circumstances. Public opinion and family reputation are directly related to honesty.<sup>27</sup>

Similar to the Plains Cree and Plains Ojibwa, the Metis apply social consequences to misbehaviour:

- Shaming: receiving a lousy nickname, or becoming the subject of a community joke can shame a person.
- Dishonour to family: Shaming can also occur by bringing dishonour to the family. One Metis saying is: “I will think less of your mother who raised you.” A Cree-Metis saying is: “He acts like he was raised in the wilderness.”
- Humiliation: Public embarrassment is a powerful tool.
- Chiding: Males can be chided or receive instruction from cousins who have a “joking relationship.”
- Compensation to the victim: Restitution can be required of an offender in certain cases. It is usually the Elders who determine the type and amount of compensation required.
- Exile: This was traditionally used for more serious offences such as murder, assault and sexual assault. Generally, an offender could return only if the community allowed it.
- Retribution: This was not used a consequence. Traditionally, thieves would have their horse equipment and clothing cut up. However, if they showed appropriate remorse and were truly sorry, the men would replace the equipment and clothing from their own supplies.
- Healing: The disruption to community relationships must be repaired and harmony must be restored. It is in the interest of all to cultivate and preserve peace.

It should be noted that the Metis also believe that there are supernatural consequences that result from behaviour. For many Metis, laws formulated by man are viewed as a secondary way of achieving justice. Examples of supernatural consequences include:

- Good luck: Sharing with others and caring for others are the ways in which one ensures good luck and a good life.
- Bad luck: Hateful thoughts and anger towards others are to be avoided because they “will come back on you.”

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<sup>27</sup> Shore and Barkwell, *ibid*, p. 219

- Bad luck: There is a prohibition against retribution. People instruct, “*ah-ki-ap*,” “leave it alone.” There is usually a supernatural consequence arising from a bad act.
- Natural order: Pride and disobedience of accepted norms are considered to be the work of the Devil. This results in changes to the natural order and personal consequences. Similarly, this holds true for biblical teachings.
- *Rougarou*: If certain religious prohibitions are ignored one could be turned into a *Rougarou*.

### **The Role of Metis Women in Peacekeeping:**

- Women are the child’s first teachers of the work ethic. The first requirement to be counted as a family member is the ability to contribute from one’s talents to the good of the whole family unit, clan, or the community at large.
- Women are counsellors and mediators and are expected to know how to stop feuds. Each female member is to know what is negotiable in the name of family honour. *Kani tha--ka-wayus-ki--mhowin*.
- Women are ethics counselors; they do not allow individuals in the community to take advantage of others, including strangers.
- Women have a positive obligation to work for initiatives that will strengthen the community. They teach that one must never espouse an initiative that will bring personal gain but weaken the community.
- Women are expected to look after the girl children of the community. This means shunning and naming men-folk who act as marauders of children's innocence. They teach that if one does not protect the children, no one is safe.

### **Community and National Expression:**

Social control begins at the family level, and is then transferred to the community or national level. Traditionally, the Metis family was responsible for determining who belonged to the group, providing for the needs of the members, regulating internal relations, dealing with offenders and regulating the use of lands and resources.<sup>28</sup> The same methods used to regulate family affairs were generally applied to the larger community and national scales.

Traditionally, the Metis were an individualistic people who could act in concert whenever they so desired.<sup>29</sup> The buffalo hunt was one of the first national institutions that the Metis developed.

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<sup>28</sup> Canada, *Report of the Royal Commission on Aboriginal Peoples*. Ottawa, ON: Minister of Supply and Services Canada, 1996, vol. 2, p. 128.

<sup>29</sup> Shore and Barkwell, *ibid*, p. 213

Buffalo hunts could involve more than two to three thousand people, therefore the Metis needed to develop a system to manage such a large group.

The Metis usually formed themselves into groups of individuals and then chose a 'Captain' to represent them. The 'Captains' of the 'Dizaines' would meet as a group every morning to receive their instructions from the 'Chief of the Hunt'. The following are the structures developed by the Metis to govern themselves during the hunt of 1840:

1. No buffalo to be run on the Sabbath-day;
2. No party to fork off, lag behind or go before without permission;
3. No person or party to run buffalo before the general order;
4. Every Captain with his men, in turn, to patrol the camp, and keep guard;
5. For the first trespass against these laws, the offender to have his saddle and bridle cut up;
6. For the second offence, the coat to be taken off the offender's back, and be cut up;
7. For the third offence, the offender to be flogged; and
8. Any person convicted of theft, even to the value of a sinew, to be brought to the middle of the camp, and the crier to call out his or her name three times, adding the word "thief", at each time.<sup>30</sup>

Most writers have traced the institutional structures of Metis democratic law to the traditions of the buffalo hunt and have concentrated on the French Metis to the exclusion of the Orkney Metis. However, the Scots Metis are another source of the popular justice of the Metis.

*Many of the initial Hudson Bay traders had been recruited from the Outer Hebridean island of St. Kilda.<sup>31</sup> St. Kildan society practiced forms of communal justice described by one commentator: "Their government is strictly a republic..." with an emphasis upon the sharing of goods, services, and responsibilities. A daily communal meeting aimed to resolve infractions of the informal rules. All St. Kildans, male and female, had equal rights to speak and to vote.<sup>32</sup> At Red River it is possible that this particular Scots tradition converged with the Native traditions of the buffalo hunt.*

*The continuity of the latter was apparent. In the 1840s "committees of the people" had been instituted including both Indian and Metis members. Their ideal would have been a purely elective government, where the magistrates as well as the councilors would have been designated by popular suffrage. These developments had given rise in the late 1860s*

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<sup>30</sup> Shore and Barkwell, *ibid*, p. 222.

<sup>31</sup> Ron Bourgeault, "Race and Class Under Mercantilism". In B. Bolaria and P. Li (Eds.) *Racial Oppression in Canada*, 2<sup>nd</sup> edition. Toronto: Garamond Press, 1988.

<sup>32</sup> T. Steel, *The Life and Death of St. Kilda*. Glasgow: Fontana, 1975.

*to democratic legal and political processes. Following from prairie tradition, groups of families formed local communities, each electing a captain. The captains chose a principal leader and he presided over the council of captains, the body that set the regulations and met each day to handle offenders against the community's laws.*<sup>33</sup>

Similar political and legal traditions survived after the dispersal of so many of the Metis across the western plains. In several prairie townships like Willow Bunch, Wood Mountain, Cypress Hills—originally wintering quarters for the buffalo hunting families—legal constitutions were fashioned according to the traditional rules of the hunt. In Qu'Appelle, the Metis constructed their own community constitution and criminal laws. Similar developments were apparent over the border on the Milk River, Judith Basin and Spring Creek (Lewistown).

The Metis further structured their customary rules of behaviour during the 1870's. The Metis people who lived in the Saskatchewan Territory updated and formalized the old laws of the prairies and developed the *Laws of St. Laurent*. These laws established the civil rule for the community. The following are some examples of the laws created on December 10, 1873:

- Article I:           On the first Monday of the month, the President and members of his Council shall be obliged to assemble in a house indicated before hand by the President in order to judge the cases that may be submitted to their arbitration.
- Article XIII:       Any person judged by the Council shall be allowed ten days to make arrangements with the person with whom they are quarrelling. At the expiration of that term, the Council shall cause its order to be forcibly executed.
- Article XV:         Any person, who shall be known to have taken another person's horse without permission, shall pay a fine of two Louis.
- Article XVIII:     Any bargain, contract, or sale shall be valid if it is written in French, English or Indian characters, even if made without witnesses if the plaintiff testifies on oath to the correctness of his account or contract.
- Article XIX:        Any affair decided by the Council of St. Laurent shall never be appealed by any of the parties before any other tribunal when the government of Canada shall have placed its regular magistrates in the country. All persons pleading, do it with the knowledge that they promise never to appeal against the decisions given by the Council and no one is permitted to enjoy the privileges of this community, except on the express condition of submitting to this law.

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<sup>33</sup> Mike Brogdan, "The Metis as Economic Criminals: The Struggle with the Hudson's Bay Company", *Struggle for Recognition* (S. Corrigan and L. Barkwell (Eds.), Winnipeg: Pemmican Publications, 1991:44.

Article XXIII: Any person, who shall set fire to the prairies from The 1<sup>st</sup> of August and causes damage, shall pay a fine of four Louis.<sup>34</sup>

Article XXIV: On Sundays and obligatory festivals the river ferries shall be free for people riding or driving to church but any person who shall cross without going to church, shall pay as on ordinary days.

### **Nation to Nation Protocols**

Ceremonies have always been part of the Metis legal tradition. Ceremonies demarcate the establishment of legal relations as well as the renewal of such relationships. Gift giving has always been an integral part of these Metis ceremonies.

### **Justice Principles:**

For the Metis, justice is a rights-based system that considers both individual and communal rights. The Metis guard their individual rights, however collective regulation is formulated under the stimulus of crisis or the need to act in a concerted manner.<sup>35</sup> Traditionally, justice was brought about when the actions of individuals threatened the balance of society and the fulfillment of collective responsibilities.<sup>36</sup> In Metis tradition military organizations are always subject to civilian control and authority.

The Metis recognize that justice is dynamic. Law and social control mechanisms are not static, rather they adapt to changes in society. Having said this, continuity is also a factor in Metis justice. The format and content of Metis law may change, however the principles and values underpinning Metis law remain the same.

Procedural fairness is important to the Metis. For example, the Metis Settlements Appeal Tribunal (MSAT) in Alberta, Canada complies with the following rules when resolving disputes:

- Individuals must know the case made against them;
- They must have the opportunity to dispute or correct anything presented that may be prejudicial to their position;
- They must be allowed to put forward evidence and arguments supporting their case; and
- The law is applied as a tool, not an ultimate objective.

The Metis also believe that law must not be applied too strictly. Absolute adherence to legislation may result in individual or community injustice. As noted by the MSAT, “the eyes

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<sup>34</sup> Shore and Barkwell, *ibid*, p. 225-228.

<sup>35</sup> Shore and Barkwell, *ibid*, p. 213

<sup>36</sup> Canada, *Report of the Royal Commission on Aboriginal Peoples*. Ottawa, ON: Minister of Supply and Services Canada, 1996, vol. 2, p. 119.

and ears of justice must look and listen for the effects of a harsh application of the law on the individual and the life in the [community].”<sup>37</sup>

An objective of Metis justice is the revival and recognition of traditional non-adversarial dispute resolution. This includes the use of Elders as advisors and mediators. Elders are highly respected in the Metis community, as they are the keepers of the traditions, and possess the knowledge, wisdom and experience that come from a lifetime of learning.

It should be noted that Metis women have also traditionally played a role in non-adversarial dispute resolution. For example, women were traditionally responsible for welcoming newcomers into the community and protecting them from those who might take advantage of them. In addition, Women’s Committees were formed within the community and were responsible for dealing with occurrences of domestic violence.

The involvement of Metis Elders and women in non-adversarial dispute resolution holds many implications. In addition to forming more fair and culturally appropriate resolutions, these processes also avoid the delays, costs and formalities associated with the Canadian Justice System.

As noted by the *Royal Commission on Aboriginal Peoples* (RCAP), all Aboriginal people emphasize the integrated nature of the spiritual, familial, economic and political spheres.<sup>38</sup> They view government in a more holistic way, and regard it as inseparable from the totality of communal practices that make up a way of life.

## Conclusions

Metis traditional justice is based on communal living and dependence upon the natural resource base. Thus community harmony, sharing and cooperation are primary values. In yesteryear the dependence of the individual on family and community was essential. These were the days before the institutions of day care, old age pensions, Medicare and social assistance. In times of disaster or misfortune the individual had to rely on family and community. Respect and honesty were the prime factors in achieving community harmony and prosperity.

Metis law was established at community assemblies. Metis law is flexible and dynamic. Flexibility means that application of law is not rote. If rigid application would result in an injustice an exception is allowed if it meets with group consensus. Metis law is dynamic in that it allows for traditional practice to be modified by contemporary needs.

In the application of Metis law the Elders have a role as advisors and mediators. Amendments require the consensus of those affected by the change. Judicial decisions must be made in the context of a relationship of trust and respect.

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<sup>37</sup> Catherine Bell, *Contemporary Metis Justice, The Settlement Way*. Saskatoon, SK: Houghton Boston Printers, 1999, p. 100

<sup>38</sup> Canada, *Report of the Royal Commission on Aboriginal Peoples*. Ottawa, ON: Minister of Supply and Services Canada, 1996.

A person's reputation was important to their quality of life therefore individuals were always conscious to never perform acts that would dishonour the family name. If a person misbehaved they were expected to repair the harm and to perform service for the community that would redeem their reputation and family name. Illegal acts affected the whole family not just the individual offender.

Religious and spiritual teachings had a greater influence on behaviour than is the case today. This was not only due to the expectations and lifestyle teachings but also due to a fear of supernatural consequences that would flow from both good works and from misbehavior.

Elder Anne Carrière Acco gives the following summary of the teachings of the Metis-Cree community of Cumberland House, Saskatchewan:

- The law is to be understood by means of education at the community level. This is the means by which all community members stay within the circle of well-being. **Minoh nani mohwin.**
- The law must have the human resources and materials to maintain the state of well-being. A community cannot just speak about what it can do to maintain order; it must have the will, the means and the support of the human resources within the community. **Ekota pohko ka isi ka pohieyan.**
- The law must have the mechanisms in place for those who seek justice, retribution for lost or stolen articles, or restitution of the same articles. A forum must have the protocols in place to call on the learned, the keepers of the wisdom concerning every aspect of life. This provides the civil order that has to be maintained. The knowledgeable people, "Ahneegay-kaashigakick" come to give of their expertise. Then within the community forum the people agree by consensus what the advice means in terms of community and family action. **Kawaskimohn** is followed by **Kawaskimohin.**
- Violence will happen in communities. However, each incident has to be dealt with immediately. The level of violence escalates or disappears according to what is tolerated in the community. Hence violence is not an autonomous act, it can hurt the entire community if they lose their collective sense of well-being. **Ehkota kani mohnaniwan.**

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