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Grammars of Critique and Colonial Accusation

> Me you have killed because you wanted to escape the accuser, and not to give an account of your lives. But that will not be as you suppose … For I say that there will be more accusers of you than there are now … if you think that by killing me you can avoid the accuser censuring your lives, you are mistaken; that is not a way of escape which is either possible or honourable; the easiest and noblest way is not to be crushing others, but to be improving yourselves. This is the prophecy which I utter before my departure, to the judges who have condemned me. (Plato 2010: 17a)

There are moments when unsettling encounters disturb the contentedly familiar understandings that shape our worlds. Those occasions may leave us feeling utterly confused, fumbling to repair disrupted meanings, even prompting suspicions that something very wrong has happened which needs to be categorized and remedied. It is then that we may become, as with Socrates' accusers in Plato's words that began this chapter, those that "censure lives." Such censuring may even end up "crushing others" in ways that leave no room to think about "improving" ourselves. Should censures involve agents of state justice, we might find ourselves formally accusing others of committing a criminal offence. For example, on a Monday evening in November 1883, near Calgary in Canada, a man named Thomas Douglas (a "labourer") went about the mundane task of hitching a team of horses, having been asked to do so by an "Indian Department" farm instructor Alexander Doyle.[1] That routine chore completed, he watched with mounting curiosity and

[1] "R. v. Doyle (Embezzlement)," 1883.

then unease as the team rounded a hill heading toward Calgary, instead of Fish Creek where the instructor was stationed. He later reflected: "This aroused my suspicions and I went up the hill and saw him driving towards the … stacks. I saw him throwing sacks of oats over the fence." These unexpected happenings interrupted anticipations that ordinarily helped Douglas make sense of the world. Confused, this "labourer" searched for explanations, settling on vernaculars of mistrust and blame. The latter led Douglas in the direction of censure, and the laying of an information before a Northwest Mounted Police officer, accusing Doyle of criminal wrongdoing. A subsequent arrest hailed the accused to face a preliminary examination overseen by a justice of the peace. At this venue, Douglas orally swore an accusation under oath, now framed as a criminal charge of embezzlement, in the accused's presence. Several witnesses offered verbal evidence, which the accused very briefly questioned ("cross-examined"). The justice wrote down what he took to be legally relevant and entreated a statement under caution from the accused. Doyle's short response averred simply that he went to retrieve some empty sacks. In the end, however, the justice decided that there was sufficient evidence of criminal activity to bind the accused over to trial at a competent court.

Fading transcripts of the legal performances at hand reveal much about officially sanctioned accusatory thresholds that once opened doors to colonial courtrooms. Remaining records indicate that pre-trial practices of accusation were basic to translating local social meanings into argots of criminal law. It is worth emphasizing what is mostly overlooked: despite their deceptively humdrum local appearance, performances of accusation across the prairies and elsewhere did not simply form adjuvant thresholds to colonial criminal law. Rather, they constituted the latter's very foundations. This is an important concept, for without accusations that could initiate legal pathways for punishable offences, colonial criminal justice is unlikely to have emerged as it did. From disruptive phenomenological encounters that momentarily confused accusers, colonial accusations of crime materialized around raised suspicions and inclinations to point fingers. Once it became possible for those pointed fingers to find their way to state justice institutions, certain pre-trial procedures appeared. These ranged from information laying, arrest, preliminary examinations, to grand juries, and so on. As varied as accusatory procedures were across times and places, their point was uniformly to select who to admit to further juridical chambers. Through rituals of accusation, in other words, the intricacies of everyday events were translated into locally inflected categories of law, and selected individuals nominated to face criminal trials.

This book brings into focus a largely unnoticed, but pervasive, social and political lineage that cast certain practices of accusation as uniquely legitimate thresholds to colonial criminal law and order. Via a sociology of accusation, it thus spotlights the grounds from which colonial criminal law emerged. The significance of that point should be emphasized: without gatekeeping accusatory powers, colonial criminalization could not apprehend and capture the accused individuals required for its marque of criminal justice to assign culpability, guilt, or punishment. Although now embedded in seasoned pre-trial bureaucracies and state institutions, initiating moments of accusation still form thresholds that translate everyday social lore into sovereignly ratified idioms of criminal law (Pavlich 2018a). In colonial settings, however, distinctive accusatory thresholds were pivotal to the creation of criminal justice seeking to border social orders in support of settler agrarian capitalism. Perhaps it is worth recalling that the etymology of the term "threshold" connotes a beginning, an inception, a verge, a commencement, and is related to "making noise" but also to separating "grains from husks by stamping" (Ayto 2011: 529). As we shall see, accusatory thresholds in Alberta involved politically charged theatres that staged performances as lawful entryways to criminalization. These thresholds involved decisions on whom exactly to "stamp" out as a criminal "husk" as judged by colonial legal agents. Those called upon to perform the violent stamping did so by categorizing accused subjects and acts as potentially criminal.

CRIMINAL ACCUSATION AND ALBERTA CIRCA 1874–1884

Despite their foundational significance for criminalization, social performances of criminal accusation have attracted little scholarly attention. Perhaps it serves dominant legal fields well to obscure their conditions of possibility, thus concealing contingent beginnings in shadowy powers of categorization conducive to their purposes. On this note, discourses that exclusively target state-defined crimes and criminals, or doctrinal legal scholars who emphasize narrow, technical discussions of procedure, all too often reinforce sovereign declarations of criminal justice. For these discourses, the very premise of a sociology of accusation is likely seen as irrelevant. Real research lies in describing the being of crime and criminals, not to worry about their contingent becoming. But the following approach directs its gaze precisely to the latter: to the socio-political rationales and performances of accusation that first categorize certain acts and actors as criminalizable. Criminalization from this vantage depends foundationally on ways of accusing, which serve as the underlying conditions of its possibility.

The plan is to draw on paradigmatic examples to chart a genealogy of the powers and social performances that staged criminal accusations in and around what is now known as the Province of Alberta, circa 1874–84 (see Figure 1.1).[2] Within what First Nations refer to as Turtle Island, these lands were altered by a sovereignty grab through attempts to enforce "law" and manage far-reaching dispossessions for colonial settlement.[3] The decision to focus on the decade following 1874 relates to the Dominion of Canada's explicit call for a mounted paramilitary police force that, under its purview, was to administer law and social order across the North-West Territories, west of Manitoba to the Rocky Mountains.[4] Throughout this decade, the political and social justifications for establishing a Northwest Mounted Police were laid bare, as were its rationales for deploying colonial criminalization to regulate disorder (Wallace 1997). Such deployments were predicated on forming thresholds of accusation by which so-called disorderly actions could be managed through criminal law.

Emphasizing social and political dimensions of criminal accusation, the discussion explores models of power (sovereign, disciplinary, biopolitical) through which the Dominion set about ruling through criminal law to ensconce dispossessing social orders. Comparable socio-political rationales and practices shaped nineteenth-century criminalizing legal fields across the British Empire – South Africa, New Zealand, Australia, India, Caribbean colonies, and so on (Ford 2011; Nettelbeck et al. 2016). However, the Albertan example during a "decisive" decade for crafting colonial criminal law provides an exemplary glimpse into

[2] By genealogy, I refer to Foucault's (1977) use of Nietzsche as a way of approaching past discourses through "lines of descent" that do not settle on fixed origins, but which focus on the "becoming" or emergence of phenomena like criminal accusation (see also Koopman 2013; Shoemaker 2008). The boundaries of Alberta as a district province are not strictly or rigidly used to bind the following examples; rather, the point is to use a shorthand to signal the lands upon which most of the examples referred to occurred. The contingencies of geographical definition, no less than social limits, are here recognized as a manifestation of complex historical decisions.

[3] See Harris 2020; Hunt and Stevenson 2017; Starblanket and Stark 2019.

[4] Creating a Federally funded police force was anomalous, given that the *British North America Act* (1867) legislated policing as a provincial matter (Macleod 1976: 6 and 70).

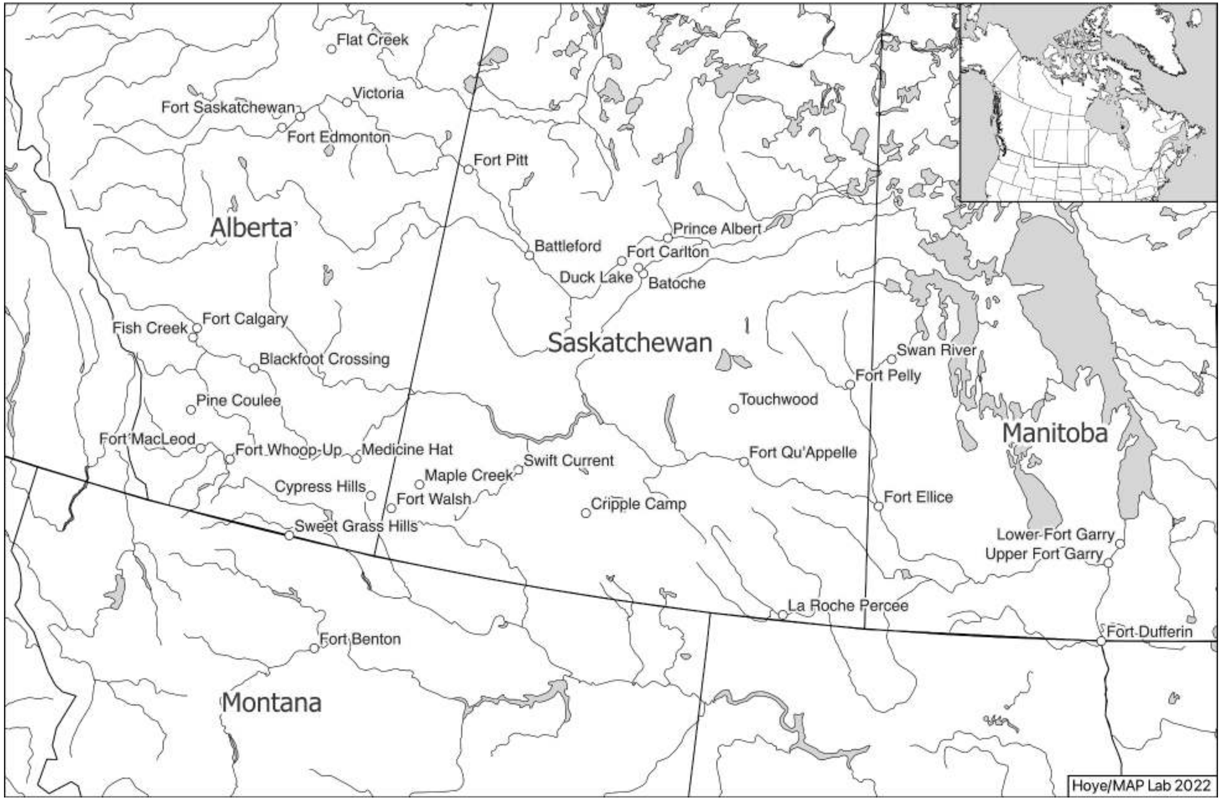

FIGURE 1.1 Overview map: provincial boundaries of Canada.

This map and that of Figure 1.2 were drawn up by Sandy Hoye (Métis Archival Project, University of Alberta) with reference to Kelly and Kelly (1973: inside cover) and Wilkins (2012: opening page), acknowledging the helpful advice of Frank Tough. Reprinted with permission.

how accusatory thresholds were deployed by a newly formed Northwest Mounted Police. An enduring link between colonial sovereignty and accusatory thresholds of criminalization is reflected by a quest to order societies in favour of dispossessive settlements (Ford 2011). That is, these thresholds aimed at realizing the Dominion's sovereign jurisdiction over "criminal" matters for an envisaged settler-colonial society; thereby forging gateways to state criminalizing arenas where limits for a colonially imagined, if divesting, social order could be regulated. The map in Figure 1.1 provides a sense of the sheer geographic scale of the lands the Dominion set about policing.

There are, of course, many historical analyses of the Alberta and Dominion context during the decade under review here, but one might at least point to certain key events.[5] Following 1867, an unsteady federation of four initial eastern Dominion of Canada provinces had elected a conservative prime minister (John A. Macdonald) with visions of a "national policy." That policy was to extend "Canada westward through settlement and development," building a railway to aid a proposed expansion (Beahen and Horrall 1998: 14; see also Macleod 1976: 51). Such a dispossessing socio-political agenda was silhouetted against British Imperial and Dominion claims to legal sovereignty over territories to which Indigenous Peoples had developed eons old, storied, relations.[6] The quest to enforce colonial law was aimed at appeasing Indigenous peoples and regulating "intending settlers" (Smith 2009: 59).[7] In 1870, under the guise of "purchasing" Rupert's Land for the sum of $1.5 million from the Hudson's Bay Company, the Dominion proclaimed sovereign ownership over all the North-West Territories

[5] See, for instance, Andersen 2015: 201; Andersen and Hokowhitu 2007; Carter 1997, 1999, 2016; Dempsey 1996, 2014, 2018; King et al. 2005; McNeil 2019; Teillet 2013, 2019.

[6] See Borrows 2019; Miller 1996; Teillet 2013, 2019. The politics of naming is always historically located, and harbours different potentials and dangers. I will use the term "Indigenous" to refer to First Peoples of Turtle Island, part of which is today commonly signalled as Canada. When quoting from archival documents, and when relevant to the discussion, I have cited then contemporary uses of terms like "Indian," or categories of miscegenation. I recognize here a politics of naming that made use of, and so gave meaning to, words in historical languages. The references to gender in documents remain, but with the proviso that we again recall the fluid performativity of identities. In all such naming, the aim is not to reify categories, but to imply a use of referents borne to the socio-political rationales that this book seeks to chart.

[7] Peter Russell's (2019: 125) chapter title summarizes the net effect of confederation in a rather flippant way, but with some poignancy: "English Canada Gets a Dominion, French Canada Gets a Province, and Aboriginal Canada Gets Left Out."

(see Russell 2019: 168 ff; Tough 1997: 8–13). Thereafter, it declared an intent to promote settler agriculture and commerce across this claimed "possession" by enforcing a sovereign law that would stifle rival bids, such as from Indigenous law or the United States. At the same time, its settlement ambitions required that anticipated Indigenous resistance and challenge be managed (Simpson 2011).

In this political climate, the Dominion's approach to policing took form around Métis and Indigenous contestations, such as in July 1869 at the Red River Colony (Teillet 2019: 37 ff, 174).[8] Unheeded appeals to the Dominion expressed clear anxieties that locally distinctive cultures and land arrangements were at risk.[9] Such apprehensions were exacerbated by political positions adopted by Dominion surveyors who reviewed the colony's seigneurial system of land organization (that granted each plot access to water). As Teillet (2019: 177) puts it: "The surveyors, led by Colonel John Stoughton Dennis, arrived in Red River in August 1869 and, like the road relief crew before them, immediately took up with the Canadian Party. This made the Métis suspicious of their survey objectives." With the leading figure of Louis Riel,[10] a concerted opposition resisted the Dominion's annexation attempts, declaring the provisional sovereignty of a Red River Government, locally authorized to negotiate terms under which the Colony might enter the Confederation (Stegner 2000; Teillet 2019: 207 ff). That government assumed control of Fort Garry (Winnipeg) and within months had established a distinctive code of law (Teillet 2019: 186). Some dissenters were imprisoned, but one – a fractious Orangeman and Métis antagonist (Thomas Scott) – was sentenced by a tribunal to death, stirring a significant military response from the Dominion (Reid 2012). This took form as an Expeditionary Force of 1,000 troops under the command of Colonel Garnet Worsley, with a young William Butler (who we encounter in the next chapter) as

[8] Two noted challenges to Dominion sovereignty were led by Louis Riel. They have sometimes been cast as "rebellions" (implicitly assuming established sovereignty), and later "resistances" (see Hamon 2021: s1). For our discussion, it is important to recognize the fundamentally contested sovereignty politics that initiated military warfare in 1869–70 and again in 1885.

[9] The Dominion's prime minister, John A. Macdonald, stated his intent to annex the Red River Colony (set up in 1811–12 by Thomas Douglas, an earl of Selkirk), but encountered, "a fiery twenty-five-year-old, a St. Boniface mystic named Louis Riel, whose resistance to Confederation, at least in Red River, was as vehement as Macdonald's determination to see it succeed" (Wilkins 2012: 2).

[10] There is a considerable literature on, and biographies of Lous Riel, but see, for example, Doyle 2017; Hamon 2021; Reid 2012; Teillet 2019.

an intelligence officer (Doyle 2017: 25 ff; Teillet 2019: 215 ff). Following several noted military encounters with Indigenous forces, the overwhelming British force prevailed, yielding Manitoba as a province of the Confederation in July 1870, and an arrest warrant was issued for Louis Riel who fled to Montana. Interestingly, he was in 1873 elected to the Dominion parliament, took an oath of office in disguise, but never sat as a member in Ottawa (Teillet 2019: 264).

In the wake of the Red River events and on the strength of dubious intelligence reports (see Chapter 2), the Dominion government under MacDonald looked to experiences from the Royal Irish Constabulary to establish a Northwest Mounted Police. The latter was to enforce Dominion law over the North-West Territories to curb resistance to planned "European" settlement across them. If criminalization was elemental to creating colonial law and order here, accusation lay at the inaugurating heart of what emerged as criminal matters. Several accounts detail the Dominion's founding of that Northwest Mounted Police of some 330 men and its gruelling march in the latter part of 1874 along varied westward routes across the prairies (see Figure 1.2).[11] Much less, if anything, has been written about a key dimension to that force's mission soon after arriving. It was to create theatres of criminal accusation through which social disorder could be categorized – despite existing Indigenous legal fields – as crimes, and so funnelled into chambers of Dominion criminal justice. The oversight is consequential, because accusation created on-the-ground conditions for police officers to enforce criminal law and thereby to pursue social infrastructures for colonial settlement ambitions (Nettelbeck 2014; Simpson 2011). Accusation was foundational to a colonial rule by law, the upshot of which Geonpul scholar Moreton-Robinson in another context boils down to this: "The lives of Indigenous people were controlled by white people sanctioned by the same system of law that enabled dispossession" (Moreton-Robinson 2015: 5).

Ongoing Indigenous contestations, or innovative uses, of Dominion law happened in the face of settler dispossession, imported diseases (e.g., smallpox), ransacked buffalo herds (see Figure 7.1), and the consequent onset of pervasive starvation across Alberta.[12] Such devastating effects

[11] For instance, see Beahen and Horrall 1998; Birchard 2009; Dempsey 1974; Denny 1972; Horrall 1973, 1972; Macleod 1976; Morgan 1970; Nettelbeck et al. 2016; Wilkins 2012.
[12] See Niemi-Bohun 2016; L. Simpson 2020; Smith 2011; Stegner 2000.

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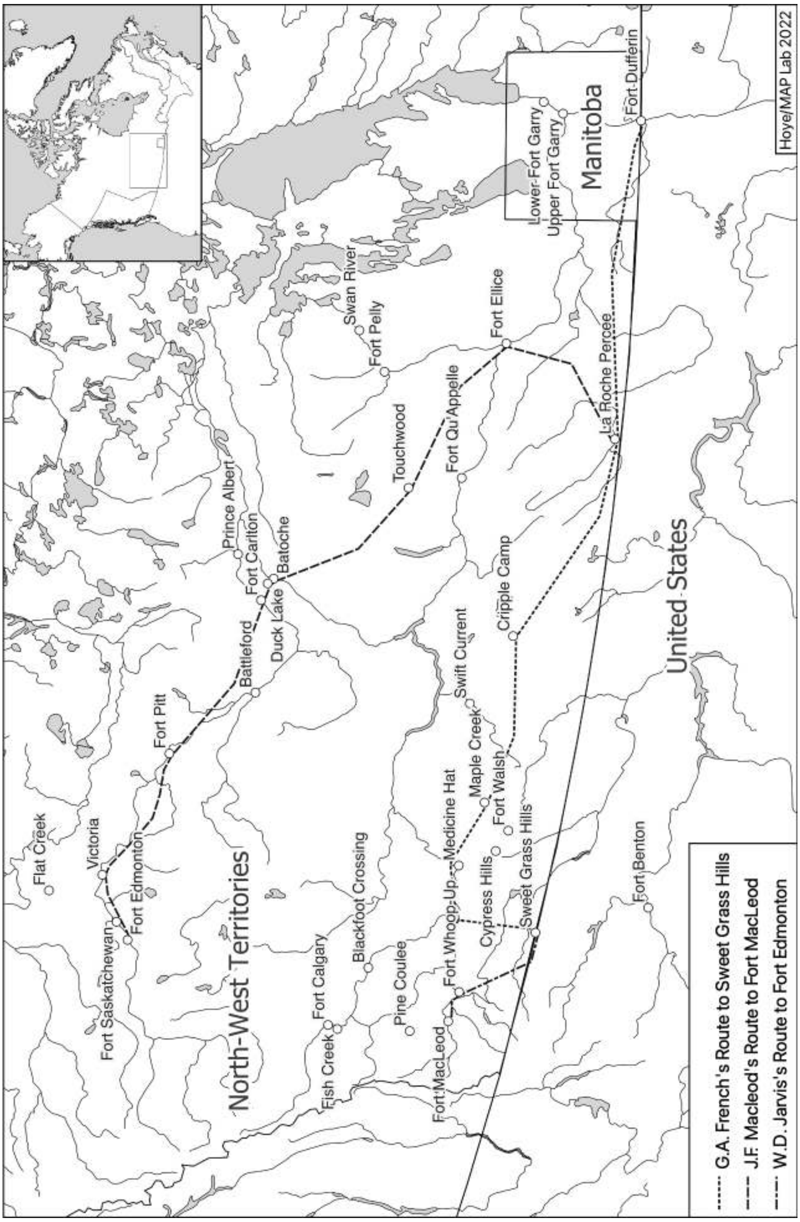

FIGURE 1.2 Routes taken by different divisions of the North-West Mounted Police, 1874.
See acknowledgment for Figure 1.1.

on Indigenous forms of life surrounded a politics of treaty making.[13] With encouragement by missionaries and Northwest Mounted Police officers, the Dominion tried to kindle conditions favourable to signing treaties that affected First Nations' age-old, storied associations to lands. It also sought promises to keep peace in exchange for reserves of land, annuities, agricultural assistance, hunting and fishing rights, and so on (see Morris 1890; Price 1999; Talbot 2009). Treaty Six was signed in 1876 with Cree leaders across central Alberta and Saskatchewan, even as notable leaders like Chief Big Bear (Mistahimaskwa)[14] held out on signing the terms of what he took as destructive to existing forms of life (Miller 2009; Talbot 2009). Treaty Seven was signed in September 1877 and included some 10,000 Blackfoot Nation members of southern Alberta.[15]

In 1876 too, the infamous Indian Act was ratified without Indigenous approval or consultation. Joshua Nichols' (2020: 107) discursive genealogy of this Act points to eradicating ideas of "civilizing, extinction, and culturalism." The purported aim was to eliminate "savagery" and "barbarism" through civilizing processes. However, as Nichols points out, the inherent contradictions of this racist undertaking proved impossible, and "when this project lost steam," white possessive governance turned to "indirect rule" via an administrative autocracy that appealed to notions of culture and self-governance subservient to colonial ambitions (Nichols 2020: 107–9). Indeed, under this Act, "Indian agents" aided by the Northwest Mounted Police (Kelm and Smith 2018; Titley 2009), assumed "dictatorial control" over Indigenous Peoples on reserves (Palmer and Palmer 1990: 43; Swiffen and Paget 2022). A version of indirect rule was, as we shall see in Chapter 5, adopted by the Northwest Mounted Police's approach to "disorder."[16]

[13] See Borrows and Coyle 2017; Dempsey 2015; Hubbard 2016; Price 1999.

[14] Interpreting colonial archives, one confronts the complex matter of nomenclature. Since this book's story is directed to a socio-political logic permeating the grounds of colonial criminalization, one encounters a colonial legal insistence that all participants somehow be named – even sometimes as absent-presence. Indigenous names are not always noted in the archives, and often with appropriation. With respect, when referring to cases, I will mostly refer to archived names, and where possible indicate Indigenous naming in parentheses when first referring to specific people. However, it is important to keep in mind the roles played by translation and a politics of naming in performances at accusatory theatres.

[15] See generally Dempsey 2015; Pillai and Velez 2014; Price 1999; Palmer 1990: 2.

[16] The net effect of this was, as Nichols (2020: 182) puts it, "The Indian Act continues to unilaterally determine the identity of its subjects and govern every aspect of their lives without their consent, but this blatant despotism somehow escapes us."