

A HISTORICAL AND LEGAL STUDY OF SOVEREIGNTY IN THE CANADIAN NORTH: TERRESTRIAL SOVEREIGNTY, 1870-1939

By Gordon W. Smith, Edited by P. Whitney Lackenbauer

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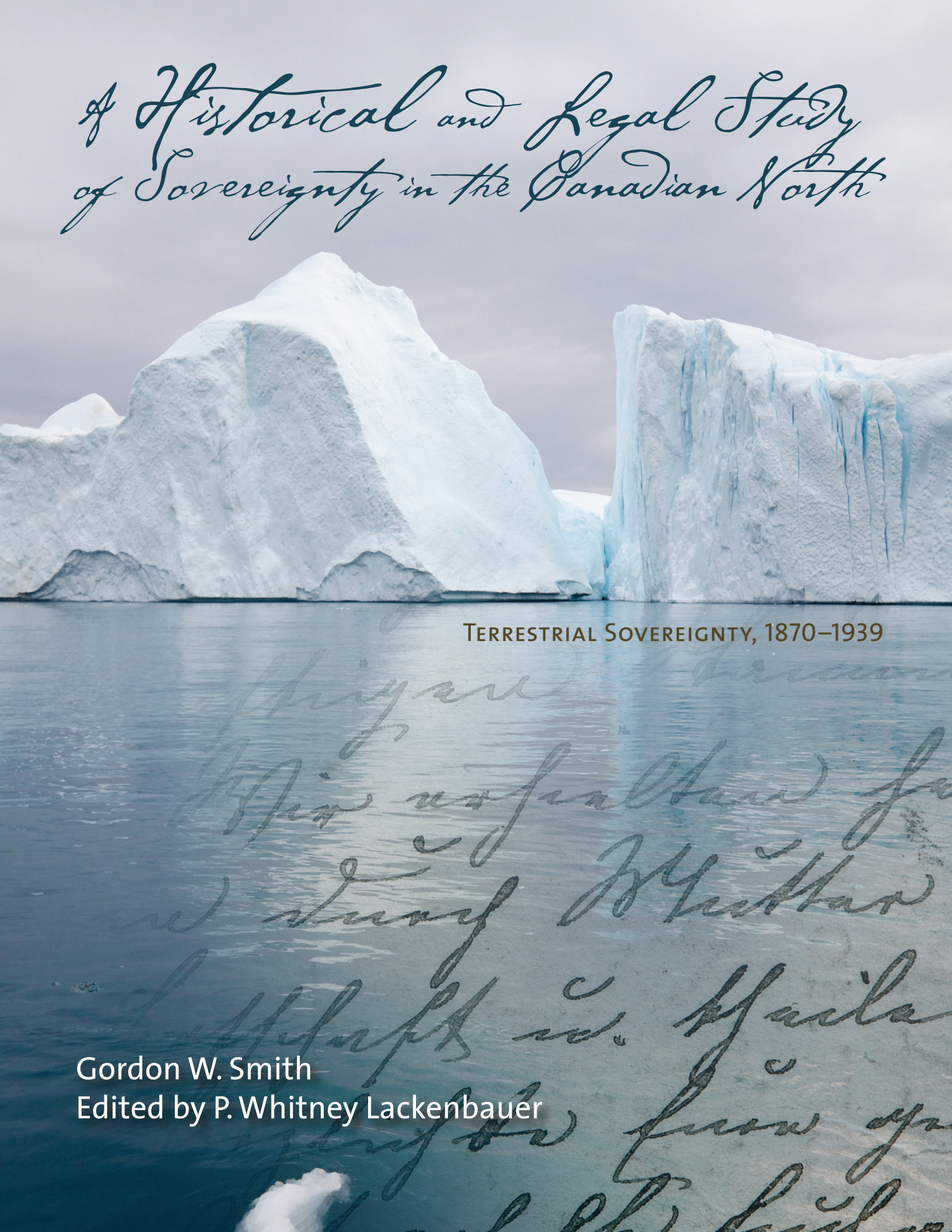
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A Historical and Legal Study of Sovereignty in the Canadian North

TERRESTRIAL SOVEREIGNTY, 1870–1939

Gordon W. Smith

Edited by P. Whitney Lackenbauer

*A Historical and Legal Study
of Sovereignty in the Canadian North*

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Foreword: Gordon W. Smith

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Tom W. Smith and Nell Smith

Gordon Ward Smith is our uncle and we are the trustees of his life's work, *A Historical and Legal Study of Sovereignty in the Canadian North and Related Law of the Sea Problems*.

We, like him, love Canada and wish to act only in Canada's best interest. By making this work available to scholars and policy makers, we honour and acknowledge his legacy, represented by this comprehensive body of scrupulous research and unfailing historical accuracy that only a historian of Gordon's calibre could have produced.

Who was this man who devoted most of his life to his craft, literally until his last breath? What motivated him to work diligently on his own for many years, without compensation?

For answers we need to go back to his birth and early years.

Gordon was the middle child and second son born on 22 June 1918 to Sedalia, Alberta, homesteaders Tom Whiting Smith and Elizabeth Ward Smith. His parents had arrived in Canada from England to homestead and develop a farm in east central Alberta where they raised cattle and grew grain. His father became well known in the district for his skills with steam engines, while his mother supplemented the family income with the meagre earnings of a one-room-school teacher during the 1920s and the Depression of the 1930s. Gordon and his siblings were among the dozen or so children who were educated solely by his mother from Grades 1 through 9. During the week they lived in a small home built by their father next to the school. The children were called upon to help their mother keep the home and school heated and maintained, returning to the farm on weekends to help their father do farm chores. The Smith children lived frugally and worked hard but also had fun with their schoolmates, who were like an extended family. They met the challenge of tough economic times, coming up with their own fun and games, swimming in local sloughs and dams, and wearing homemade costumes in the annual school play that entertained the whole community.

Under his mother's tutelage, Gordon excelled in school, while she took pains to refrain from showing him any favouritism. As a young boy, Gordon was enthralled with Arctic exploration and read many books about British explorers that had been sent to him by his English relatives. While many of his classmates quit school after Grade 9, Gordon continued his education in Consort, where he boarded with the high school principal, R. Ross Annett, a First World War veteran and prolific short story writer about family life on a Depression-era farm. Annett mentored Gordon

and taught him to write in a simple and direct style. Despite almost dying of a burst appendix in Grade 12 and missing most of the school year, Gordon managed to graduate with first class honours. Following in his mother's and his mentor's footsteps, he went on to become a teacher himself, graduating from the Calgary Normal School with a Teaching Certificate in 1936. He taught in several rural Alberta schools before becoming principal of a two-room school at Esther, Alberta.

At the outbreak of the Second World War, Gordon itched to join the war effort but was disappointed when he was rejected because of poor eyesight. Circumventing the system, Gordon decided to attend the University of Alberta and join the Canadian Officers Training Program instead. Then, in 1944, upon earning his Bachelor of Arts degree with a history major, he was finally able to join the armed forces and was serving as a lieutenant at a prisoner of war camp in Lethbridge, Alberta, when the war ended.

During his student years at the U of A, Gordon had his only experience exploring the North in person when, in 1943, he took a summer job working on the wartime Canol Project in the Northwest Territories.

As a military veteran, Gordon was fortunate to qualify for veterans' education funding. He returned to the U of A and earned his Master's degree in history in 1948. His appetite fully whetted for higher learning, he continued his studies at Columbia University in New York, where John Bartlet Brebner, author of the *North Atlantic Triangle* (1945), was Gordon's thesis supervisor. Through Brebner, he gained access to the Explorers Club, to meet people such as Vilhjalmur Stefansson, and to use Stefansson's own library. In 1952 he obtained his PhD degree in British History with his thesis "The Historical and Legal Background of Canada's

Arctic Claims." This is still considered a definitive work on the subject.

Gordon's passion to study and document the history of Canada's Arctic claims, both terrestrial and maritime, never abated and consumed the remaining years of his life.

His first job upon graduation, however, was at Collège militaire royale de St. Jean (CMR) in the province of Quebec, where he was employed as a history professor from 1953 to 1962. Among his students at CMR were noted historians Jack Granatstein and Desmond Morton and national archivist Ian Wilson. He joined in extra-curricular activities, becoming the boxing team coach, building on a skill he had honed while boxing in the granary with his father and brother. He also indulged in his love of opera, which he had developed while a PhD student in New York, where he frequently attended the Metropolitan Opera.

After leaving CMR, Gordon worked from 1962 to 1964 on contract to the Arctic Institute of North America. Then, not quite done with teaching, he followed his interest in the history and culture of other countries by working on contract with the Canadian International Development Agency as a professor at the University of Trinidad and Tobago (1964–66) and the University of Malawi (1966–68), teaching courses in all areas of world history, an accomplishment that he felt proud to have achieved.

When Gordon returned to Canada in 1968, he also returned to the pioneer work he had done in the study of polar regions, a study that crossed national and disciplinary boundaries.

This began with a surprising event: the 1969 crossing of the Northwest Passage by the American icebreaking tanker SS *Manhattan*. This was done without seeking prior permission from the Canadian government and caused nationwide controversy. It prompted the Department of External Affairs in Ottawa

to contract Gordon to research *Arctic Sovereignty and Related Problems of Maritime Law* and resulted in a nine-volume internal report in 1973.

With this report, Gordon knew that he had barely touched the surface of the massive records that had been produced by the departments of National Defence, External Affairs, Fisheries and Oceans, and Indian Affairs and Northern Development. Also relevant were files from the British Government, the Hudson's Bay Company, the Royal Canadian Mounted Police, the Law Library of the University of Ottawa, the National Library, Library of Parliament, Supreme Court Library, and records in the National Archives, to all of which he gained privileged access over the course of many years.

In addition to his research in Ottawa he did research in New York, Montreal, London, Oxford, Moscow, Oslo, and Washington, DC.

Pleading his case for further funding to complete his initial study, Gordon was granted intermittent contracts by the Department of Indian Affairs and Northern Development until 1981. After that time, Gordon was granted no further contracts. Even then, he knew his work was not yet done.

Driven to complete the manuscript he had started, he soldiered onward on his own, living on Canada Pension Plan funds and his own savings until he died in 2000 at age eighty-two. To facilitate his continued research and writing, he was tenacious in maintaining his privileged access to the records of many government departments and, because of security, had office space in several of them as well as a cubicle in the National Archives of Canada.

Gordon was a man of routine in all areas of his life and lived very frugally. He maintained a five-day work week that started early every morning and extended well into evening each day. He followed a regime of consulting

the paper records in the offices of the varied government departments that he had access to by commuting from his Ottawa apartment on foot or by bus, as he never owned or operated a vehicle. A productive, satisfying day would result in one handwritten page of text and two pages of footnotes, as he was adamant on being 100 percent accurate in his research, fully verifying each entry from all the sources available to him. His day would end close to or after midnight.

In addition to his devotion to work, Gordon had a variety of interests. He enjoyed entertaining friends with dinner parties that he would execute with a great deal of planning and preparation. While he did not own a television, he enjoyed listening to the radio (he was a fan of CBC's Clyde Gilmour) and his collection of opera and music of many kinds. For many years he was a patron of the Ottawa Film Society. Baseball was another huge interest – he followed professional teams, especially the Montreal Expos, and could quote historical statistics that many others had long forgotten. He kept in touch with his roots with a subscription to the weekly *Consort Enterprise* from Alberta. He granted himself two holidays each year: two weeks for rest and relaxation in North Bay, Ontario, and the period between Christmas and New Year's Day, listening to music and reading his extensive collection of Agatha Christie mysteries. On a number of occasions he joined our family for Christmas, to celebrate the holiday with his nephew and niece-in-law and his grand-nieces and nephew.

In this scheduled, painstaking way, the written history of Canada's sovereignty in the North continued to grow bit by bit over the next thirty years. Gordon's goal was to complete his study up to the signing of the 1982 Convention on the Law of the Sea, including the historical and legal aspects of Canada's sovereignty claim

over the lands and waters of the Arctic. Sadly, this was never to be completed before he died. There was always more information to consult, verify, and update. He set himself an almost impossible task in the days before computers, electronic databases, the Internet, and search engines became everyday tools that would have facilitated his research. He did this background study of incalculable value completely on his own. The undertaking is equivalent to a Royal Commission, an idea that had been considered and that would have warranted several additional experts plus support staff at a great deal of expense to Canada.

Throughout the arduous task Gordon assigned himself, he gained the respect and friendship of other experts in the field, in particular Dr. Donat Pharand and Léonard Legault. These two valued colleagues have become part of an Advisory Group we created to ensure Gordon's manuscript would be made accessible to government and scholars who would benefit from his meticulous and massive research. Dr. Pharand, aided by Mr. Legault, has been instrumental in examining and providing expert comments on concerns raised by Foreign Affairs on confidential aspects of the manuscript. Another key member of the Advisory

Group was Tom's brother Bill. He undertook the major tasks of arranging and coordinating the archiving of Gordon's material, having the manuscript typed from the thousands of pages of handwritten notes, and extensive liaison with the Department of Foreign Affairs and other government entities. A fourth key member of the Advisory Group is Gordon's long-time friend since her childhood, Jeannette Tramhel. Jeannette was entrusted with managing all of Gordon's collection stored in his apartment during the archiving and typing operation as well as authoring a memorial tribute to Gordon in *The Canadian Yearbook of International Law* 2001. We continue to value her expertise and advice on all aspects of this project.

Professionally, Gordon had an extensive network of contacts, was a member of The Arctic Circle, the American Historical Society, the Canadian Institute of International Affairs, and Friends of the National Archives. Among others, he made presentations to The Arctic Circle in Ottawa and the Royal Commission on Aboriginal Peoples.

In the words of his friend and colleague, Dr. Donat Pharand, "Gordon W. Smith will be remembered as a man of exceptional qualities, both as a person and as a scholar."

Selected Publications by Gordon W. Smith

Governmental Publications

*Territorial Sovereignty in the Canadian North:
A Historical Outline of the Problem.*
Northern Co-ordination and Research
Centre, Department of Northern Affairs
and National Resources, Ottawa, Ontario,
Canada (July 1963), NCRC-63-7.

*The Permanent Joint Board on Defense and the
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Development (undated). Classified as
“secret.”

The Alaska Boundary Dispute. Department
of Indian Affairs and Northern
Development, Ottawa (1970).

Ice Islands in Arctic Waters. Department of Indian
Affairs and Northern Development,
Ottawa (1980). Classified as “secret.”

*Icebreakers and Icebreaking in Canadian Arctic
Waters: The Canadian Coast Guard.*
Ottawa (1990).

Other Publications

“Sovereignty in the North: The Canadian Aspect
of an International Problem,” in R. St.
J. Macdonald (ed.), *The Arctic Frontier*.
University of Toronto Press, 1966.

“A Historical Summary of Maritime Exploration
in the Canadian Arctic and Its Relevance
in Connection with Subsequent and
Recent Sovereignty Issues.” Prepared for
publication in the Proceedings of the
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Thirteenth Congress of the International
Committee for Historical Sciences in
Moscow, August 1970.

“The Transfer of Arctic Territories from Great
Britain to Canada in 1880, and some
Related Matters, as seen in Official
Correspondence,” *Arctic: Journal of the
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“Canada’s Arctic Archipelago: 100 Years of
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1980).

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Canadian Jurisdiction. Part II. Making
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P. Whitney Lackenbauer

"Canada's Arctic is central to our national identity as a northern nation. It is part of our history. And it represents the tremendous potential of our future." Prime Minister Stephen Harper's message, delivered in July 2007, also suggested that "Canada has a choice when it comes to defending our sovereignty in the Arctic; either we use it or we lose it."¹ This statement reflects a context of tremendous uncertainty in the circumpolar world, with the ice cap shrinking in breadth and depth, permafrost melting, and indigenous flora and fauna changing. Questions abound about what these changes will mean for northern peoples, for transportation routes, for international boundaries, and for sovereignty, stability, and security in the circumpolar world. The prime minister, in his campaign speeches and announcements of major initiatives delivered in northern communities, has often repeated the message of "use it or lose it."² The line of argument is predicated on the idea that a more activist approach is necessary to defend Canada's national interests. Is Canada's sovereignty "on thinning ice"? As debate swirls around these questions, due to an allegedly impending "perfect storm" coalescing around climate change, a so-called "race" for arctic resources, and increased militarism in the Arctic,³ Canadians should remember that scholars and policy makers have been grappling with these questions for decades. The Arctic is indeed part of our history, as the prime minister noted, and a robust understanding of sovereignty questions, policy, and practices should inform current scholarship and decision making.

As Gordon W. Smith's literary executors note in the Foreword, this dedicated scholar devoted most of his working life to the study of Arctic sovereignty issues. This massive study, which he completed in 1973, is not a typical narrative history written for a general audience. Rather, it is like a near-definitive sourcebook for its time, based upon decades of exhaustive research carefully accounted in meticulous detail and extensive direct quotations. The fact that he never published the manuscript in his lifetime is more a testament to his perfectionism and his continuous search for new information than evidentiary shortcomings. We hope that publishing Dr. Smith's main research findings, as he wrote them but with extensive editing to redact his material to manageable length, will establish his important place in the historiographical and policy landscape on Arctic sovereignty issues. Furthermore, we anticipate that making his writings available to students, scholars, and policy makers will serve as a strong basis for subsequent research into the development of Canada's sovereignty position through to the late 1940s.

A brief overview of the process that led to this book is warranted. In the year that followed Dr. Smith's death, his executors undertook to preserve the original manuscript of *A Historical and Legal Study of Sovereignty in the Canadian North and Related Law of the Sea Problems* in as proximate a manner as Dr. Smith would have ordered himself. It was compiled in accordance with his original outline and typed exactly as it was written. In 2008, the Department of Foreign Affairs and International Trade asked Professor Armand de Mestral, Jean Monnet Chair in the Law of International Economic Integration in the Faculty of Law at McGill University, and myself, an associate professor of Canadian history at St. Jerome's University at the University of Waterloo, to assess the value of Smith's work and the extent to which its sources remained classified, with an eye to the possibility of making it available to the public. We concur with an earlier academic and legal assessment that his source base for his writings on terrestrial sovereignty issues through to the late 1940s is now almost entirely in the public domain.

Dr. Smith's broad research "manuscript" is organized in two parts, with Part A dedicated to terrestrial sovereignty issues. Volume 1 of his work focuses on the early history of Canadian sovereignty in the North. It begins with the transfers of the northern territories to Canada in 1870 and 1880, their early organization and administration, their division into provisional districts by the Order in Council of 1895, and the boundary corrections that were necessary to organize and delimit these territories. The next section documents other activities by the Canadian government during this early period, such as expeditions in the former Hudson Bay Company lands, the early expeditions of Lieutenant Gordon to Hudson Bay and Strait, and other government expeditions to northern

waters such as those by Wakeham, Low, Bernier, and Stefansson. The following six sections examine causes for Canadian concern over the status of the Northern Territories, namely, the Bering Sea fur seals dispute, the Yukon gold rush, the Alaska boundary dispute, foreign whalers, and explorers in the North during the period from about 1870 through 1918. Another section explains the sector principle and the background of Canada's sector claim, followed by the question of Danish sovereignty over Greenland and its relation to Canadian interests. The remaining two sections in the first volume look at Vilhjalmur Stefansson and his various plans for northern enterprises after the First World War, with special emphasis on the reindeer and muskox projects in the north.

Volumes 2 and 3 of Part A are concerned with the period between the First and Second World Wars. Critical events are described, such as the Ellesmere Island affair (1919–21), the Wrangel Island affair in the early 1920s, and the Krüger expedition (1930). Smith documented significant government activities in the North, such as the Eastern Arctic Patrol, the Royal Canadian Mounted Police, and other Canadian Government expeditions, surveys, investigations and patrols in the region. Sections also examine the question of sovereignty over the Sverdrup Islands, the activities of American explorers in the Canadian North from 1918 to 1939, and the Eastern Greenland case as it relates to Canada.

Subsequent volumes on terrestrial and maritime sovereignty deal with the period during and after the Second World War, and may be edited for publication in due course.

Overview of this Book

As Gordon Smith notes in the essay that we have included as the introduction to this book, explorers, fur traders, whalers, and missionaries were the only non-Aboriginal people active in the Arctic prior to the 1870s. The Hudson's Bay Company represented the only formal administration of any kind. In the first chapter, Smith describes and analyzes the two great transfers of 1870 and 1880, which made Canada responsible for half a continent. The territories of the Hudson's Bay Company, comprising Rupert's Land and the Northwest Territory, were surrendered to Great Britain in 1869, and Canada accepted them from Great Britain in 1870. All other British territories or territorial rights in the Arctic, involving approximately or ostensibly the archipelago, were handed over in 1880. In his careful analysis, Smith notes that in each case one form of British sovereignty was substituted for another, thus making the transfers binding upon British subjects, but not necessarily upon foreign states. Fortunately for Canada, no foreign state raised questions about the transfers.

Within a decade, the fledgling dominion had assumed responsibility for the northern half of North America, with the exception of Newfoundland, Alaska, and Greenland. With national attention dedicated to the settlement of the Prairie West, however, little to nothing was done regarding remote northern areas – and particularly the Arctic Archipelago – between 1880 and 1895. With no population or resource development pressures, the extension of “order and good government” to this region could wait for the future. In chapter 2, Smith explains the logic of Canadian inaction – and notes the modest expeditions and activities that did take place during this era.

Chapter 3 describes Canadian provisions for the organization and administration of its northernmost territories from 1895 to 1918. A Dominion order-in-council created the four provisional districts of Ungava, Yukon, Mackenzie, and Franklin – the latter of “indefinite extent” but including the archipelago. Subsequent measures were devised to demonstrate that these regions were under the effective control of the Canadian government, and to set new provincial boundaries that reduced the size of the Northwest Territories – but did not relinquish control over offshore islands to provincial jurisdictions.

The next series of chapters examines the activities of foreign states and nationals which contributed to Canada's growing concern over the status of its northern territories before 1914. Chapter 4 charts whaling disputes and questions related to the Klondike Gold Rush that complicated Canadian-American relations and generated sovereignty questions. The uninhibited and sometimes lawless behaviour of American whalers in Hudson Bay and in the Beaufort Sea provoked only a desultory and indecisive response at first, but eventually it provided one of the main reasons for a measure of carefully planned action calculated to preserve Canadian sovereignty in the North – particularly when news reached Ottawa that accused the whalers of debauching Inuit in both areas. Smith also shows how the rush to the Klondike, beginning in 1896, forced the Canadian government to grapple with the immense problem of maintaining law and order among hordes of foreign gold hunters. The North West Mounted Police and “a few capable and conscientious public servants” played a critical role in ensuring that “the difficult period of chaos and confusion was remarkably short,” Smith explains, “and internally the Yukon was soon quiet and stable.”

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Determining the Yukon-Alaska boundary was less clear-cut. Chapter 5 provides a sober, sharply analytical, and comprehensive interpretation of the Alaska boundary dispute. The settlement of the dispute by arbitration in 1903 in favour of the United States did little to allay Canadian anxiety about American expansionist tendencies and the willingness of Great Britain to place Canadian interests over broader strategic ones. With a careful attentiveness to historical context and the legal arguments at play, Smith concludes that the heart of Canada's grievance actually related to Britain's concessions to Russia in the treaty of 1825, not American activities since 1867.

Chapter 6 charts the activities of foreign explorers in the Canadian North from 1878 to the end of the First World War. Their motives varied: searching for clues to the fate of the Franklin expedition, conducting scientific research, discovering unknown coasts and claiming islands for their home country, and completing the first transit of the Northwest Passage. These activities also generated sovereignty concerns. Norwegian explorer Otto Sverdrup discovered his namesake islands (comprising Axel Heiberg and the Ringnes Islands) during his 1898–1902 expedition and claimed them for Norway. His countryman Roald Amundsen took a ship through the Northwest Passage for the first time in 1903–6, exploring the unknown coastline of Victoria Island on the way. In his repeated attempts to reach the North Pole, American explorer Robert Peary used Ellesmere Island as his base. When he planted the American flag at or near the pole in 1909, he claimed “the entire region and adjacent” for the United States. On the whole, Smith leaves the strong impression that the Canadian authorities had some reason for concern over the situation in the Arctic territories over which they had recently assumed responsibility.

Chapter 7 documents Canadian government expeditions into northern waters from 1895 to the end of the First World War. This gradual “program of action,” Smith explains, was “rather limited but nonetheless designed to solidify and consolidate Canadian sovereignty over the territories in question.” The North West Mounted Police were sent to the Yukon, the Beaufort Sea region, and Hudson Bay, to “show the flag” and maintain law and order as an expression of sovereignty. Government expeditions commanded by William Wakeham in 1897, Albert Peter Low in 1903–4, Major John D. Moodie of the Mounted Police in 1904–5, and Joseph-Elzéar Bernier in 1906–7, 1908–9, and 1910–11, patrolled the waters of Hudson Bay and the eastern Arctic islands. Under government instructions they took note of all activities at the places visited, imposed licences upon Scottish and American whalers, collected customs duties upon goods brought into the region, conducted scientific research, and generally impressed upon both Inuit and *qallunaat* (non-Inuit) that they were expected to obey Canadian laws.

Wakeham, Low, and Bernier performed ceremonies of possession at various places, culminating with Bernier's proclamation on 1 July 1909 that Canada claimed the entire archipelago: “all islands and territory within the degrees 141 and 60 west longitude.” This proclamation was in line with the sector principle enunciated by Senator Poirier in 1907 – the subject of chapter 8. Although the sector principle was not adopted officially at the time, Smith argues that it later became official in virtually every respect – except that it was never incorporated in a statute. Because Canada did not face outright resistance to these measures, Smith concluded that “during the decade or so before World War I it could fairly be said that the Far North, or at

least the part of it frequented by white men, was being brought under Canadian jurisdiction.”

During the war and immediately afterwards there was a general lapse of activity in the North, no doubt attributable to the exigencies of the war effort. A conspicuous exception was the Canadian Arctic Expedition under Vilhjalmur Stefansson, which operated in the western Arctic from 1913 to 1918. Stefansson took possession of several islands he discovered for Canada, as he was directed to do. After the war, he captivated North American audiences with his proclamations that the Arctic was destined to become a great “polar Mediterranean” because it offered the shortest air routes between the largest cities in the world. He also articulated various plans for northern enterprise, including the introduction of reindeer herds into the North American Arctic and the domestication of muskox. Both projects faced serious criticism at the time and after, and Stefansson’s dreams were never realized – however much appeal they may have held in the 1920s. Smith notes that the principal figures dealing with pressing sovereignty issues were the same people involved in development plans, indirectly linking the two issues.

Government activity in the North resumed on a larger scale after the First World War. The immediate reason for the resumption of activity was Danish explorer Knud Rasmussen’s apparently flat denial of Canadian sovereignty over Ellesmere Island, and the Danish government’s apparent endorsement of his stance. When the Canadian government requested that Danish authorities restrain the killing of muskoxen by Greenland Inuit on Ellesmere Island, Rasmussen wrote that the only authority on the island was that which he exercised from his station at Thule, and that he needed no assistance whatever from the Canadian government. Stefansson, in an early articulation of a “use it or lose it

doctrine,” urged that if Canada did not occupy the northern islands of the archipelago she might lose them. Stefansson sought to organize an expedition for this purpose, but according to his own account the Canadian Cabinet split on the issue of whether he or Shackleton should lead it. In the end, the expedition did not materialize. “Fear about what Denmark might do in the archipelago was gradually replaced by concern over what Canada herself ought to do,” Smith observed, leading the government to institute regular patrol voyages and establish RCMP posts to exercise its sovereignty. The government “made a very big issue out of what had turned out to be a very small one, and then had mishandled it by overreacting to presumed threats posed by Stefansson, Danes, and Americans,” Smith concluded. “Regarding Stefansson in particular, senior officials in the civil service had been determined that they would not follow his lead, yet in some respects they had done so, naïvely if only temporarily, and had, as they saw it afterwards, been led down the garden path.”

Stefansson’s grand plans to colonize Wrangel Island, north of Siberia, reflected a similar pattern. The Canadian government, at first willing to support the initiative (but not willing to pay for it), retracted its support after one expedition met with disaster and the Russians forcibly removed a second. By 1925, the government reversed its initial stance that “Wrangel Island is part of the property of this country” when the Minister of the Interior declared that “we have no interest in Wrangel Island.” Fortunately, the international damage to Canada was minimal. Russia made no attempt to retaliate for Canada’s bad manners in the Wrangel Island affair, staying on her own side of the North Pole after it promulgated its own sector decree in 1926. Stefansson’s reputation, however, was tainted by the disaster.

While the Canadian government took action to solidify its northern claims, other countries were losing interest. Denmark evidently let the issue of Ellesmere Island drop, and, at least tacitly, accepted Canadian sovereignty there. Lingering questions about Norwegian claims to the Sverdrup Islands, stemming from Sverdrup's 1898–1902 expedition, came to the surface after Norway inquired about the basis of Canada's rights to the island in 1924. Although this became tangled up with concerns about American interests in the Canadian Arctic Islands, Norway formally recognized Canadian sovereignty over the Sverdrup Islands in 1930. Later that year the Canadian government paid Sverdrup \$67,000 for all his original maps, notes, diaries, and other documents relating to his expedition.

In March 1933, V. Kenneth Johnston argued in an article published in the *Canadian Historical Review* that foreign claims in the archipelago had disappeared and that Canada's own claim had been established. If any doubts remained, Gordon Smith argues in chapter 13, they were removed the following month by the Permanent Court of International Justice decision in the *Eastern Greenland Case* between Norway and Denmark. International law already indicated lessened requirements for sovereignty over remote, inaccessible, thinly settled or even uninhabited territories, and the *East Greenland* decision reinforced the trend. Smith noted that the analogy between Denmark's and Canada's Arctic territories was imperfect but strong, and he found it difficult to imagine how any international adjudication after 1933 could have denied recognition to Canada's title to the archipelago if it had been formally challenged in law.

Canada remained wary about the United States' interests in the North American Arctic, given the power asymmetry between the two

countries. American newspapermen and international lawyers persisted in asking embarrassing questions about various aspects of Canada's Arctic sovereignty in the North. Although there was little official appetite in Washington to challenge Canadian claims to land territory, Smith notes that Ottawa officials still perceived "vague and ill-defined" possibilities of conflict with the United States. In the interwar years, the key controversies surrounded the American explorer Donald B. MacMillan. When he failed to secure the necessary permits before entering the archipelago to conduct scientific experiments in 1925, Canadian authorities submitted an official protest to the American government. MacMillan acquiesced and complied with licensing requirements during his expeditions of 1926, 1927, and 1928. "In sum, it would appear that during the 1920s and early 1930s the Canadian Government gradually succeeded in imposing its wishes and its regulations upon American explorers who wanted to conduct their operations on and among the Canadian arctic islands," Smith concluded. The tempo of American Arctic exploration activity declined in the 1930s, pushing to the back burner any lingering suspicions about whether the United States accepted all of Canada's Arctic claims. It would take the Second World War to "put Canadian-American relations respecting the North, and accompanying problems, on a completely different footing."

The final chapter documents how Canada reconstituted ship patrols of the eastern Arctic in the old tradition of Low and Bernier, now on an annual basis, in 1922. Smith provides an invaluable summary of the Eastern Arctic Patrol expeditions through the interwar years, as well as Royal Canadian Mounted Police's legal activities during this era. The government expanded the Mounted Police permanent presence along the Arctic coast and on the Arctic islands,

although in many situations they had no one but themselves to police. As Smith documents, their main activity was mounting long patrols around the islands of the high Arctic, showing the flag to demonstrate a Canadian presence.

From a strict international legal reading, Smith's verdict that Canada's terrestrial sovereignty position was secure by the end of the 1930s is reassuring. During and after the Second World War, however, Canadian officials again grappled with perceived sovereignty concerns when the Americans renewed their interests in the Canadian North for continental security reasons. While Canada's sovereignty over the islands of the Arctic Archipelago remained unchallenged, the status of the waters between the islands (the Northwest Passage) and within the Canadian "sector" more generally remained more contentious.

Research on the periods covered by Dr. Smith has grown substantially since he compiled his research. Rather than trying to integrate additional secondary sources into references throughout the text, I have appended a list of further readings that provides readers with a sampling of scholarship on subjects covered in this book that has appeared in the past three decades. Furthermore, careful readers will note that Dr. Smith gleaned most of his material from Canadian and British sources. As historians Janice Cavell and Jeff Noakes (both of whom had access to Smith's work as government researchers) demonstrate in their book *Acts of Occupation*, supplementing his research with evidence from other archives yields rich results. Accordingly, I hope that researchers view Dr. Smith's valuable work as a foundation for future study rather than a "definitive" account of the themes and events that he narrated and analyzed.

In general, I have retained the original language that Dr. Smith used in his writings.

Nevertheless, the text has been extensively edited for spelling, grammar, and style (although I have left much of the passive voice that marked Smith's writings), and I have cut and removed sections to improve flow and to reduce repetition across chapters. Furthermore, I have updated his 1973 discussion of the 1895 Colonial Boundaries Act in light of his subsequent article in the magazine *Nord* (which historian Shelagh Grant kindly brought to my attention), and substantively reworked his draft sections on the Royal Canadian Mounted Police and miscellaneous scientific expeditions in chapter 15. Dr. Smith generally referenced individuals by their last name (sometimes with initials), and I have endeavoured to include full names where possible.

The author's writing style and turns of phrase reflect the era in which he researched and wrote. For example, his original manuscripts included the terms "Indian" and "Es-kimo," which were still in common usage when he drafted the chapters. I have replaced these with "First Nations," "Inuit," and "Aboriginal peoples" in light of current norms. Some readers may be surprised that the manuscript does not examine Inuit use/governance as it relates to Canada's "international" sovereignty position. This is also a reflection of the time period in which Dr. Smith conducted his research, and readers are encouraged to engage other scholarly literature to learn more about this issue.

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Introduction: Terrestrial Sovereignty before 1870

1

The question of sovereignty in the polar regions has fascinated international lawyers and bedevilled statesmen for years. The main reason is obvious enough: the unique physical, climatic, and demographic characteristics of the polar regions seem to forbid the application of normal rules of international law and to defy the creation of others. The issues involved are thus basically legal, but they are also political and diplomatic. Some are now of only historic and academic interest, while others are still significant. Until fairly recent times the major concern was with sovereignty over land territory, but, in the Arctic at least, this matter appears now to be essentially settled, and other questions involving territorial waters, ice islands, undersurface navigation of submarines, and air-space have come to the fore. In the Antarctic, the land issue has not been permanently resolved, but the interested states have by treaty put this and other problems “on ice” for a period of at least thirty-four years. The following pages attempt to summarize the Canadian aspect of the historic issues.

Some Legal and Historical Background

International law recognizes a number of basic modes of acquiring territory. Oppenheim’s classification, perhaps the best known, includes five: cession, occupation, accretion, subjugation, and prescription.¹ In addition, the supplementary doctrines of continuity, contiguity, the hinterland, and the watershed have sometimes been invoked in support of territorial claims, and under certain circumstances may have weight. Papal grants, important in earlier times, have fallen into disuse; but discovery, although rather unlikely now on this planet, has been considered even by modern authorities to give an “inchoate” or temporary title, which must be perfected subsequently by other means. There is also that curious principle or theory of sectors, which has been put forward

Editor’s Note: This introduction is extracted from Smith’s chapter “Sovereignty in the North: The Canadian Aspect of an International Problem,” in *The Arctic Frontier*, ed. R. St. J. Macdonald (Toronto: University of Toronto Press, 1966), which he completed in fall 1963 based upon a paper delivered at the annual meeting of the Canadian Political Science Association in Quebec City on 8 June 1963.

specifically for the polar regions. Without going into detail, it would appear that of the foregoing, the ones most likely to be invoked in Canada's case, validly or otherwise, are cession, occupation, prescription, contiguity, discovery, and the sector principle.

One well-known authority on the subject says that acquisitions of new territory were based mainly upon papal grants up to the sixteenth century, upon priority of discovery for the next two hundred years, and thereafter upon effective possession. He adds that effective possession was first advocated in theory and later required in fact.² His division may be too categorical. Another authority suggests that effective possession has always been important,³ and, as just noted, discovery may still give at least an inchoate title. Also, although effective possession was laid down as a requirement at the Berlin Conference on Africa in 1884–85 for the acquisition of new territories in that continent,⁴ a series of later legal settlements would seem to have modified the requirement, at least where such modification has been warranted by the circumstances. These observations provide an outline of the legal framework in which the history of the sovereignty problem may be discussed, in relation to Canada's Arctic territories.

Rights of sovereignty in any territory are likely to be based to a large extent upon the record of human activity therein. In the case of the Canadian Northland this record may be broadly divided into three phases, of which only two are of particular relevance here. Up to about 1500 AD, the only peoples to enter the region were First Nations and Inuit, and, to a lesser extent, Norsemen. During the middle period, from approximately 1500 to the third quarter of the nineteenth century, Aboriginal people were joined by white explorers, fur traders, whalers, and missionaries, and a number of territorial

claims were made. With the transfers of 1870 and 1880, Canada assumed full responsibility for these territories, and in the period following undertook to bring them under her jurisdiction. For the purpose of this essay the first period may be disregarded. Although the First Nations and Inuit may have been monarchs of all they surveyed in ancient times, the white man pushed aside their "sovereignty" upon his arrival.⁵ The Norsemen, whose wanderings in what is now Canada are still only vaguely known, established no permanent settlements,⁶ and in modern times neither Norwegian nor Danish claims in the Canadian Arctic attempted to derive any benefit from their voyages.

With the Columbian discovery of America a new phase begins. The first post-Columbian explorer to land on the northeastern coast was evidently John Cabot, in 1497, and the first to land in the archipelago was Martin Frobisher, in 1576. During the three hundred years after Frobisher, the main geographical outlines of the North, both continental and insular, were gradually filled in, except for those of the more remote islands north of Lancaster Sound. For almost the whole period, exploration was concentrated mainly upon the goal of a northwest passage, and proceeded in a series of waves, each stopping before being succeeded by another. During the first years after the initial discoveries, in the time of the Cabots and their contemporaries, a vague familiarity with the coasts of Newfoundland, Labrador, and south Greenland was acquired. Frobisher and his immediate successors Davis, Hudson, Baffin, and others, collectively penetrated into Davis Strait, Baffin Bay, Hudson Strait, and Hudson Bay. After the founding of the Hudson's Bay Company in 1670, fur traders pushed on to the northwestern extremity of Hudson Bay by water and across the northwestern interior overland to the Arctic and Pacific Oceans. After a lapse

following the great expeditions of Alexander Mackenzie, exploration began again in 1818, and during the next thirty years the Rosses, Parry, Franklin, Richardson, Back, Beechey, Simpson, and Rae practically finished tracing the Arctic coast and also became acquainted with the lands adjacent to some of the principal water passages. Later, the search for the lost Franklin expedition and repeated efforts to reach the rumoured open polar sea and the North Pole greatly extended knowledge of the region. By the time of the transfers the larger islands were all known, with the exception of those discovered afterwards by Sverdrup and Stefansson.

It was common practice for explorers to claim the lands they discovered on behalf of their monarchs. Thus, John Cabot was authorized by Henry VII of England to “conquer, occupy, and possess” lands unknown to other Christians,⁷ and Martin Frobisher claimed “Meta Incognita” in Frobisher Bay for Queen Elizabeth at his first arrival, ordering his crew to bring him “whatsoever thing they could first finde, whether it were living or dead, stocke or stone, in token of Christian possession.”⁸ The pattern established by the early explorers was generally followed thereafter, even into the twentieth century, and thus claims to territory were numerous indeed. Attempts were often made to fortify rights of discovery by symbolic acts of appropriation, such as the raising of flags, the erection of crosses or cairns, the reading of proclamations, and the depositing of records. Whether symbolic acts of appropriation helped greatly in establishing title to land has often been questioned by authorities on international law, but the practice was universal. The authors of a detailed study on the subject have concluded that they were by no means without value, and in earlier times were considered to enhance mere rights of discovery.⁹ Obviously

discoveries and annexations were not all of equal force; an official annexation of newly discovered land at the direction and on behalf of a monarch or government would carry more weight than the unauthorized and unsupported claim of a private explorer. Obviously, too, a state would be likely to magnify the value of its own claims and pay as little heed as possible to those of others.

It is conspicuous that in what is now the Canadian Arctic, practically all the expeditions, discoveries, and claims prior to about the mid-nineteenth century were British. The most important exceptions were French voyages in Hudson Bay prior to the conquest, especially at the time of Pierre Le Moyne d'Iberville. There was also the expedition of the Dane Jens Munk to Hudson Bay in 1619, during which he claimed “New Denmark” for his monarch Christian IV.¹⁰ However, nothing was done to follow up his claim. Some of the British claims were also ineffective, such as Frobisher's to south Greenland in 1578¹¹ and Cook's to the Alaskan territory around Cook Inlet in 1778.¹² Others were invalid, such as Simpson's at Point Barrow in 1837¹³ and Moore's to small islands nearby in 1850.¹⁴ These territories had been placed outside Britain's orbit by the British-Russian treaty of 1825, which established the 141st meridian as the common frontier.¹⁵ After 1850, foreign explorers, mostly American, aided in the Franklin search and undertook independently to reach the supposed open polar sea and the North Pole. Their interests were generally non-political, however, and they made few outright claims to land. An exception, perhaps, was Hall's raising of the American flag in Frobisher Bay in 1861, which, judging from his narrative, may have been intended to show American possession.¹⁶ On the whole, the activities of the predominantly British explorers were of considerable importance,

because they provided the main basis for the assumption by the British government in the 1870s that Britain had certain territorial rights in the archipelago which could be transferred to Canada.

The Hudson's Bay Company was the principal authority in the regions north of Canada for two hundred years following the granting of its charter by Charles II in 1670. There is no doubt that the charter was intended to make the Governor and Company "true and absolute lords and proprietors" of Rupert's Land. It specified their authority over certain matters, such as land, trade, lawmaking, immigration, and settlement, and its wording indicates the Crown's intention that they should be sovereign in all respects whatsoever, excepting only the obligation of allegiance to the Crown itself. Unfortunately, although the charter attempted to define the territories it granted, the state of geographical knowledge at the time did not permit this to be done with precision. This circumstance, along with doubts as to the charter's validity, exposed the company to continual attack, from the French colony to the south until 1763, from other fur interests based on Montreal until 1821, and from the two Canadas, separate or united, until Confederation.

Rivalry with the French colony began with the founding of the company, and continued intermittently for almost a hundred years. During the Wars of the League of Augsburg and the Spanish Succession, the French dominated Hudson Bay and captured the company's posts, but these advantages were lost when France renounced all claims to the Hudson Bay region in the Treaty of Utrecht in 1713.¹⁷ Troubles continued, however, partly because of the still unsettled boundary between Rupert's Land and the French colony, and also because of the French attempt, led by the Verendryes, to move into the region southwest of Hudson Bay. The

surrender of New France in 1763 ended for all time the French threat to Rupert's Land.¹⁸ Almost immediately another challenge appeared, in the form of English-speaking interlopers from Scotland and New England, who established themselves in Montreal and employed experienced French-Canadian voyageurs in an energetic prosecution of the western fur trade. During the first two decades of the nineteenth century the Hudson's Bay Company waged a life-and-death struggle against the Montreal interests, now consolidated into the North-West Company, and triumphed when the strife was ended in 1821 by an amalgamation that really constituted a victory for the older company. A further triumph for the Hudson's Bay Company was the reaffirmation of its rights in Rupert's Land by a statute of the British Parliament in 1821.¹⁹ From 1821 to 1870 the company was at the pinnacle of its power and prestige, but during the same period it came increasingly under attack from the Canadas. Understandably they resented the colossus that claimed dominion over most of the territories into which they might otherwise expect to expand, and they were determined to bring its charter monopoly to an end.

The company defended its position with considerable tenacity. For support it still relied principally upon the Imperial authority which had granted its charter, and it is true that during the long history of controversy over the charter this support was seldom denied. As an eminent Canadian historian has put it:

Few documents have been challenged by such powerful interests or recognized at one time or another for two centuries, by such an array of official evidence – by order-in-council, by act of parliament, by royal commission, by the opinion of law



FIGURE 0-1. B.F. LLOYD & CO *MAP OF CANADA AND ARCTIC REGIONS OF NORTH AMERICA*, c. 1826.

officers of the crown, by treaty, and by select parliamentary committee.²⁰

Finally, however, the Imperial authorities, even though still disposed to uphold the charter's validity, could hardly avoid coming to the conclusion that it was necessary for the company to surrender at least its control of the land. In coming to this decision they were influenced by pressure from Canada, by the evident need to promote settlement in the fertile parts of

the Hudson's Bay Company territories, and by fears that American immigrants might turn these parts into another Oregon. In these circumstances the company's rule was brought to an end.

The claims of explorers, and the long proprietorship of the Hudson's Bay Company, provide the principal elements in any historical consideration of how Canada became heir to these northern territories. Other activities prior to the transfers, principally of whalers

and missionaries, may be more briefly noted. The first whalers in the region appear to have been Dutchmen, who moved into Davis Strait from the waters east of Greenland in the early 1700s, after the Spitsbergen whaling industry had begun to decline. Later in the century they were joined by Englishmen and Scotsmen. They all appear to have gone no further than south Greenland coastal waters and Davis Strait until Ross and Parry showed the way into Baffin Bay and Lancaster Sound in 1818 and 1819. American whalers entered the scene towards the mid-nineteenth century, concentrating their activities on the west side of Davis Strait south of Cumberland Gulf, and in Hudson Strait and the northern part of Hudson Bay. Later

the English whalers retired from the area, and the Americans abandoned Davis Strait to the Scots, devoting their own attention to Hudson Bay. Unlike the Scots, the Americans adopted the habit of wintering in the whaling grounds, and so they provisioned their ships for two years. Later the Scots developed "land stations" on Baffin Island, operated by a few whites with native help. After the 1870s, whaling in both Davis Strait and Hudson Bay went into decline. In the meantime other American whalers were pushing through Bering Strait into the western Arctic, but they did not reach Canadian waters until 1889, when they first arrived at Herschel Island.²¹