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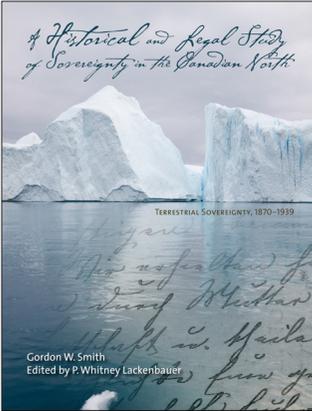
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**A HISTORICAL AND LEGAL STUDY OF SOVEREIGNTY
IN THE CANADIAN NORTH: TERRESTRIAL
SOVEREIGNTY, 1870-1939**

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

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The Sector Principle and the Background of Canada's Sector Claim

The sector principle or theory has been advocated as a simple, convenient, and logical method of apportioning territory in the polar regions. As such, it ranks as one of the most interesting geographical or geopolitical concepts of the twentieth century, and it has been applied in striking fashion in various instances. It has special significance for Canada because there is a greater area of island territory north of the Canadian mainland than there is north of the mainland of any other state bordering on the Arctic Ocean. If the sector principle came to be generally recognized among the nations and won formal acceptance in international law, Canada's sovereignty over almost all the Arctic territories she has claimed would automatically be validated,¹ and all the effort she has lavished upon cementing her title to them by other means would turn out to have been unnecessary.

In plane geometry, a sector of a circle is a portion of the circle plane bounded by two radii and the included arc, the resulting figure having a shape, to use the common illustration, exactly like that of a two-dimensional representation of an ordinary piece of pie. In spherical geometry, with the third dimension added, a sector becomes a corresponding part of the surface of a sphere. Geographically, a polar sector is a region of similar shape, with either the North Pole or the South Pole at the centre of the circle, usually with two meridians of longitude as the two radii, and usually with either an irregular territorial coastline or a parallel of latitude as the arc of the circle.²

The sector principle itself, as put forward by Canadian Senator Pascal Poirier in a Senate speech in 1907,³ is simple and straightforward. It asserts that each state with a continental Arctic coastline automatically inherits all the islands in the sector between this coastline and the North Pole, which are enclosed by lines of longitude drawn from the eastern and western extremities of the same coastline to the pole. It is apparent, however, that if this concept is followed, Arctic sectors will not be drawn with geometrical precision, owing to the above-mentioned irregularity of the southern boundaries and also the need to take account of other irregularities (for example, the curving water passage between Canadian and Danish Arctic territories). In the Antarctic, the theoretical justification for sectors is missing, since there are no adjacent continental coastlines from which sectors might be drawn, and the only coastline is that of the Antarctic continent itself. Sectors in Antarctica, which are usually based upon lines of latitude in the open sea, have in reality been drawn to mark out coveted parts of the southern continent, where presumably limited amounts of national activity have taken place, rather than in consequence of the principle as conceived for the polar



FIGURE 8-1: HON. PASCAL POIRIER, SENATOR, MAY 1892. *TOPLEY STUDIO FONDS / LIBRARY AND ARCHIVES CANADA / PA-033713.*

islands in the northern hemisphere. It should be added, of course, that some of the Antarctic sectors (notably the Australian, New Zealand, Chilean, and Argentinean) are located roughly south of the claimant states, but since the distances in between are approximately 500 or 600 miles at the minimum and several times as much at the maximum, it would appear to be stretching any “principle” based upon the sector concept rather far to assert a claim on that basis.

The sector principle, although generally attributed to Senator Poirier, clearly did

not originate with his speech. Poirier himself remarked that it was “not a novel affair” and mentioned a meeting of the Arctic Club in New York the year before, attended by Captain Bernier, where a sector division had been proposed as a means of settling territorial questions in Arctic regions. There are much older precedents, at least for the notion of marking out territories by drawing meridian lines to one of the poles, and in some cases even from pole to pole. In addition, there is a fairly specific background, of uncertain but obvious relevance, to Poirier’s proposal as put forward in 1907.

An outstanding early example of a territorial demarcation by means of a meridian line is Pope Alexander VI's famous bull *Inter Caetera* of 4 May 1493, which made a sweeping grant of New World territories to the monarchs of Spain in the following terms:

We ... give, grant, and assign to you and your heirs and successors, kings of Castile and Leon, forever, together with all their dominions, cities, camps, places, and villages, and all rights, jurisdictional and appurtenances, all islands and mainlands found and to be found, discovered and to be discovered towards the west and south, by drawing and establishing a line from the Arctic pole, namely the north, to the Antarctic pole, namely the south, no matter whether the said mainlands and islands are found and to be found in the direction of India or towards any other quarter, the said line to be distant one hundred leagues towards the west and south from any or the islands commonly known as the Azores and Cape Verde.⁴

A little further on, the bull in equally categorical language forbade all persons to go without the permission of the Spanish monarchs "for the purpose of trade or any other reason to the islands or mainlands" beyond the same line.

Portuguese dissatisfaction with this arrangement led to the Treaty of Tordesillas on 7 June 1494, in which Spain and Portugal took the liberty of moving the pope's line to the west, so as to establish a dividing line between Spanish and Portuguese colonial territories that was more agreeable to Portugal. Their representatives "covenanted and agreed that a boundary

or straight line be determined and drawn north and south, from pole to pole, on the said ocean sea, from the Arctic to the Antarctic pole."⁵ Thirty-five years afterwards, Spain and Portugal established a similar dividing line on the other side of the globe. On 22 April 1529, by the Treaty of Saragossa, Spanish and Portuguese plenipotentiaries covenanted and agreed that

a line must be determined from pole to pole, that is to say, from north to south, by a semicircle extending northeast by east nineteen degrees from Molucca, to which number of degrees correspond almost seventeen degrees on the equinoctial, amounting to two hundred and ninety-seven and one-half leagues east of the islands of Molucca, allowing seventeen and one-half leagues to an equinoctial degree.⁶

Further examples of the use of meridian lines to demarcate boundaries are to be seen in the British and American treaties with Russia, on the subject of Alaska, during the nineteenth century.⁷ The Anglo-Russian treaty of 28 February 1825 fixed the meridian of 141° as the dividing line between British and Russian possessions in the northwestern part of the continent. In the words of the treaty:

The line of demarcation shall follow the summit of the mountains situated parallel to the Coast, as far as the point of intersection of the 141st degree of West longitude (of the same Meridian); and, finally, from the said point of intersection, the said Meridian Line of the 141st degree, in its prolongation as far as the Frozen Ocean, shall form the

limit between the Russian and British Possessions on the Continent of America to the North-West.⁸

In the French version of the treaty, the expression “in its prolongation as far as the Frozen Ocean” reads “dans son prolongement, jusqu’à la Mer Glaciale,” and much ink has been spilled in the endeavour to find an exact meaning for the two versions. That they were intended to mean the same thing can hardly be doubted but, granting this, several interpretations are at least conceivable:

- (1) “to where land ends and salt water begins,”
- (2) “to where the permanent arctic pack, as distinct from seasonally open coastal water, begins,”
- (3) “to the main body of the Arctic Ocean, as distinct from Beaufort Sea,”
- (4) “as far as the beginning of the Frozen Ocean,” and
- (5) “as far as and including the Frozen Ocean.”⁹

The Russian-American treaty of 30 March 1867, by which the United States purchased Alaska, said that the eastern boundary of the territory was to be the line “established by the convention between Russia and Great Britain, of February 28–16, 1825” and repeated its provisions. The western boundary was also placed on a meridian line, as follows:

The western limit within which the territories and dominion

conveyed, are contained, passes through a point in Behring’s straits on the parallel of sixty-five degrees thirty minutes north latitude, at its intersection by the meridian which passes midway between the islands of Krusenstern, or Ignalook, and the island of Ratmanoff, or Noonarbook, and proceeds due north, without limitation, into the same Frozen Ocean.¹⁰

How far “without limitation” meant is a question that has also been discussed a good deal. It could hardly have been intended to mean “beyond the North Pole,” if indeed any particular construction was put upon it. On the other hand, it could reasonably be interpreted to have meant “as far as the North Pole.” This is the view taken by US lawyer and treaty expert David Hunter Miller, who wrote, “These words ‘without limitation’ are pretty strong words. They come very near to fixing the territorial rights of Russia and the United States, so far as those two countries could then fix them, up to the pole.”¹¹

The foregoing examples show that the practice of marking out territories by drawing boundary lines along meridians of longitude into the polar regions, and in some cases as far as one or both poles, was by no means unknown. Regarding the application of the sector principle to claim all lands between such lines, a number of theoretical explanations, or justifications, or analogies have been offered.

Miller said that Canada’s sector claim was not wholly without foundation or precedent and that it bore some analogy to the “back country” or “hinterland” theory regarding territory stretching away from the coast. More accurately, he said, it rested partly on the notion of “territorial propinquity.” He added that

claims based upon contiguity are not unknown, although there is no well-defined principle to support them, and that Canada's claim in this sense was natural if not logical. He suggested also that the Canadian sector theory was based partly upon the Alaska treaties.¹²

The Soviet jurist W. L. Lakhtine related the sector idea to "regions of attraction," of which he spoke approvingly, saying that "we must disavow the whole triple formula of occupation, i.e., discovery, occupation and notification" and that "the doctrine of occupation of Polar territories must be replaced by the doctrine of region of attraction."¹³

To T.E.M. McKitterick, the sector principle was to be associated with the concept of sovereignty over a hinterland:

The nearest analogy that can be found in temperate or tropical climates is the old "hinterland" theory. Under this doctrine a state possessing settlements on the coast of a continent could claim sovereignty in some cases limited) over the hinterland, until either the middle line of the continent, the watershed or some other suitable and obvious boundary was reached.... The sector theory is the last survivor of the old "hinterland" principle as applied to continents, and it appears to have no stronger basis in international law than that now discredited theory.¹⁴

Gustav Smedal summarized the theoretical justifications which have been put forward for the sector principle, mentioning the concepts of the hinterland and of contiguity or propinquity, the difficulties of genuinely effective appropriation in the polar regions, the practicality of the sector principle, and the propriety of

leaving the polar regions to nearby states with "sufficient experience" to look after them. In his own view all of them lacked validity.¹⁵

Friedrich von der Heydte saw the sector principle as relying upon the doctrine of contiguity, which to him was valid if applied with reason. He admitted, however, that it was not applied with reason in the polar regions but rather was exaggerated and abused.¹⁶ Oscar Svarlien also took the view that the sector principle was based essentially upon the doctrine of contiguity,¹⁷ as did L. M. Gould, who wrote:

The sector principle is apparently derived from the "doctrine of continuity" used in past centuries to justify the extension of colonies into the hinterlands where actual physical control was not possible.... "Contiguity" is a further, more tenuous, extension of the principle of continuity and justifies claim to lands separated even by large areas of oceanic waters, from the claimant state.¹⁸

H. J. Taubenfeld expressed a similar view in rather similar terms:¹⁹

Examples of such bases and precedents for the sector principle are not hard to find. Some of the early colonial grants and charters in North America purported to assign territories stretching far into the interior, and in some cases even from sea to sea. The Second Chapter of Virginia, dated May 23, 1609, granted....

....all those Lands, Countries, and Territories, situate, lying, and being, in that Part of America called Virginia ... and all that Space and Circuit of Land, lying from the Sea

Coast of the Precinct aforesaid, up into the Land, throughout from Sea to Sea, west, and Northwest....²⁰

Similarly, the First Charter of Massachusetts of 4 March 1629 granted

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all Landes and Hereditaments whatsoever, lyeing within the Lymitts aforesaide, North and South, in latitude and Bredth, and in Length, and Longitude, of and within all the Bredth aforesaide, throughout the mayne Landes there, from the Atlantick and Westernne Sea and Ocean on the Easte Parte, to the South Sea on the West Parte.²¹

Such grants may perhaps be regarded as exaggerated applications of the hinterland concept spoken of by Miller, M. F. Lindley, and McKitterick. In referring to the watershed as a variant of the hinterland, McKitterick cites the Andes as an apparent illustration of its use, saying that “in South America the watershed of the Andes, being in itself a formidable barrier to progress inland, seem to have been the generally accepted division (a fact which would account for the vast size of Portuguese Brazil as compared with the Spanish colonies of Peru and Ecuador).”²²

On 27 April 1670, Louis XIV granted to the Dutchman Laurens Van Heemskerck a concession of “all the lands which have been and shall be discovered by him in all North America entered from above Canada towards the North Pole, and extending to the South Sea as much and as far as he can reach.” Van Heemskerck’s ship was caught in a storm, however, and he did not succeed in his plan to sail into Hudson Bay.²³ King Charles II’s charter of 2 May 1670 to the Hudson’s Bay Company was more modest

with regard to the territories bestowed, but less modest in that its validity was not considered to depend upon the factor of discovery. It granted

the sole Trade and Commerce of all those Seas Streightes Bayes Rivers Lakes Creekes and Soundes in whatsoever Latitude they shall bee that lye within the entrance of the Straightes commonly called Hudsons Streightes together with all the Landes and Territoryes upon the Countryes Coastes and confynes of the Seas Bayes Lakes Rivers Creekes and Soundes aforesaid that are not already actually possessed by or granted to any of our Subjectes or possessed by the Subjectes of any other Christian Prince or State.²⁴

The company put its own interpretation on the extent of this grant and, when asked to inform the Lords Commissioners of Trade and Plantations of the limits of its territory in 1750, it stated that it possessed “all the Lands that lye at the North end or on the North side or Coast of the said [Hudson] Bay and extending from the Bay Northwards to the utmost Limits of the Lands there towards the North Pole.”²⁵ As time went on, the company’s view of its holdings seemed to crystallize around the concept that, under the charter, Rupert’s Land legitimately included all territories draining into Hudson Bay and Strait, and Governor George Simpson firmly stated this claim before the Select Committee of the British House of Commons in 1857.²⁶

It was also not unusual for explorers to claim vast expanses of territory stretching far into a continental interior, and in some cases right across it or across adjacent bodies of water. In 1631–32, Captain Thomas James, in the service of some Bristol merchants, wintered

on Charlton Island in James Bay and claimed all surrounding territory “westward, as farre as Nova Albion, and to the Northward to the Latitude of 80 Degrees” for King Charles I.²⁷ On 14 June 1671, Sieur Simon-François Daumont de Saint-Lusson, dispatched by Intendant Jean Talon, made a formal proclamation at Sault Ste. Marie claiming as French all territories bounded by the seas of the North (Hudson Bay and Strait) and the South (the Pacific Ocean).²⁸ There are many similar cases of sweeping claim by explorers, far too numerous to be recited here.²⁹ Such claims ranged from completely official all the way to completely unofficial, depending upon individual circumstances.

In the dispute between the United States and Spain in 1805 over the western boundary of Louisiana, American commissioners William Pinckney and James Monroe argued that the principles of the watershed and the middle distance were applicable to the case. They enunciated the two principles in the following terms:

The first of these is, that when any European Nation takes possession of any extent of Sea Coast, that possession is understood as extending into the interior Country, to the sources of the Rivers emptying within that Coast, to all their branches, and the Country they cover, and to give it a right in exclusion of all other Nations to the same

The second is, that whenever one European Nation makes a discovery and takes possession of any portion of that Continent, and another afterwards does the same at some distance from it, where the Boundary between them is not determined by the principle above-mentioned, the

middle distance becomes such of course.³⁰

In the 1880s, Portugal claimed territories in Central Africa between its coastal colonies of Mozambique and Angola, which would have given her a solid block of land stretching from the Indian Ocean to the Atlantic Ocean. It was able to get recognition of her claim from France³¹ and Germany³² by means of separate treaties in 1886, but Great Britain, who had designs on those territories herself, registered strong objections.³³ The outcome was the Anglo-Portuguese treaty of 11 June 1891, which left Great Britain with a large portion of the disputed territory, and thus kept the two Portuguese colonies separated.³⁴

Some of the foregoing illustrations have little or nothing to do with polar territories, but collectively they all indicate that it was by no means unusual to make extensive claims, either to continental territories stretching inland or to island territories extending outward from a coastline. A glance at a few Canadian orders in council and maps will show that there was a developing inclination to apply this approach to the demarcation of Canada’s Arctic territories, within sector or other lines, some years before Senator Poirier’s speech in 1907.

The joint address of the Canadian Senate and House of Commons on 3 May 1878, asking for the transfer of the Arctic territories, suggested that they should be bounded as follows:

On the East by the Atlantic Ocean, which boundary shall extend towards the North by Davis Straits, Baffin’s Bay, Smith’s Straits and Kennedy Channel, including all the islands in, and, adjacent thereto, which belong to Great Britain by right of discovery or otherwise;

on the North the Boundary shall be so extended as to include the entire continent to the Arctic Ocean, and all the islands in the same westward to the one hundred and forty-first meridian west of Greenwich; and on the North-West by the United States Territory of Alaska.³⁵

The order in council of 18 December 1897, re-defining the provisional districts, made some use of sector lines, although the earlier order in council of 2 October 1895 had not done so. It stated that the District of Franklin would include “all those lands and islands comprised between the one hundred and forty-first meridian of longitude west of Greenwich on the west and Davis Strait, Baffin Bay, Smith Sound, Kennedy Channel and Robeson Channel on the east which are not included in any other Provisional District.” The map accompanying the order showed clearly the sector lines running down the 141st meridian to the mainland coast and down the 60th meridian to the channel separating Greenland from the archipelago, then through the middle of this channel to a point in Davis Strait, and then rather vaguely to the northernmost extremity of Labrador at the eastern entrance of Hudson Strait.³⁶

An official Department of the Interior map made by departmental geographer James White in 1904 to accompany Dr. W. F. King’s memorandum dated 7 May of the same year and titled “Explorations in Northern Canada and Adjacent Portions of Greenland and Alaska” similarly shows both western and eastern sector lines. However, the eastern line extends south only to the approximate point where it reaches the channel between Greenland and Ellesmere Island.³⁷ Another version of the same map, but with different detail, shows the sector lines in exactly the same way.

Captain Bernier had been expounding the sector concept for several years before 1907, and he may have planted the germ of the idea in Poirier’s mind. La Société de géographie du Québec, which had heard Bernier speak and had evidently fallen under his influence, sent Prime Minister Laurier a report dated 23 May 1899, which strongly endorsed Bernier’s plan for a polar drift and also observed, “le Canada doit nécessairement, tout en se terminant à l’Ouest au méridien d’Alaska, voir prolonger ce méridien le 140ème [sic], jusque’ au Pôle. Vers l’Est ce serait le 60 ème méridien séparant le Canada du Greenland.”³⁸

On 9 February 1901, the *Montreal Witness*, after an interview with Bernier, quoted him as saying:

If the boundary between Canada and Alaska were continued northward it would strike the North Pole. A similar line through Baffin Bay prolonged to the pole should be Canada’s northeasterly frontier, and if our expedition reached the pole and we planted the flag there we could claim the whole country to the north of us by right of discovery.³⁹

Similar statements were made from time to time in Parliament, usually in connection with Bernier and his projects. For example, on 1 May 1902, when Liberal John Charlton was trying to enlist support for Bernier’s proposed drift across the Arctic Ocean, he remarked that one of the benefits of the voyage would be that “we would establish our right to all the territories and islands and seas that might lie between our present northern boundary and the north pole itself – all that vast region between the 141st parallel of longitude on the west, and Baffin’s Bay and Grant land on the east.”⁴⁰ In the course

of the same debate, Liberal Thomas Barnard Flint of Yarmouth, who also supported Bernier's plan, made a similar comment:

There can be no doubt, from a fair understanding of our position as the controller of the northern half of this North American continent, that the jurisdiction of Canada extends to the pole. At any rate, if we are the first to circumnavigate the sea and establish the British flag on any point of land discovered there prior discovery and prior occupation will give Great Britain through Canada absolute jurisdiction for all time forward over those regions.⁴¹

Charlton returned to the subject on 30 September 1903 and spoke in similar vein, saying that "the discovery of the Pole would give us a standing with regard to territorial acquisition in the north between the Pole and the northern coast of the continent, which we would not otherwise have."⁴² Conservative Adam Carr Bell remarked:

Our cousins in the United States have made repeated efforts to discover the Pole, and I think if any people in the world should look upon it as their peculiar business, and finally succeed in making that discovery, it is the people of Canada, because the North Pole when discovered will unquestionably form part of this country....

There can be equally no doubt that it may be of great material advantage to Canada to establish finally and indisputably her claim and title

to all the lands lying on the north part of this continent.⁴³

He was followed by Conservative David Henderson, who said:

Now, if Captain Bernier succeeds in locating the pole and planting thereon the British flag, taking possession of whatever there is in land or sea, we will certainly have a right to claim possession in the name of the King of England of everything that lies between the north pole and the now known Dominion of Canada. We will then not be troubled in the future with any Alaska boundary disputes in that direction, but will have the first claim to everything lying between what we now know as the Dominion of Canada and the North Pole.⁴⁴

Conservative Seymour Gourley, in the course of a characteristically dogmatic and chauvinistic speech, contributed that "so far as I am concerned, I will support this proposal because I do not think there is the slightest doubt about Canada owning every foot of territory from here to the North Pole. It is contiguous to Canada, and we own every foot of it by right of discovery and exploration."⁴⁵

Less was said on the subject in the Senate prior to Poirier's famous speech, although on 18 July 1905 the following exchange occurred in that body:

Hon. Auguste-Charles-Philippe Robert Landry: How far north does Rupert's Land go?

Hon. William Templeman: To the North Pole.

Hon. Richard William Scott: This would include through the Arctic oceans.⁴⁶

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Senator Poirier himself was one of those who had already spoken of the need to find ways and means of securing Canada's northern territories and her northern frontier. Speaking of the Alaska Boundary Award on 20 October 1903, he made these remarks:

I think it is time we called a halt and looked forward to see how many other slices we may be called upon to part with.... The next possible arbitration may be concerning Hudson Bay.... Just consider what our position will be if the Americans discover the North Pole and take possession of it.⁴⁷

From all this evidence, and contrary to both the general impression and various particular statements which have been made on the subject, it is clear that the sector principle did not really originate with Senator Poirier's speech on 20 February 1907, or even with Poirier himself.⁴⁸ There was actually a long historical background of thought and action, including specific conventions, decrees, and claims, which were probably of genuine though indeterminable significance in providing precedents. In addition there was, as indicated, a specifically Canadian background, which shows that the sector concept had been developing for several years. Nonetheless, Poirier made a more deliberate, precise, and comprehensive exposition of the sector principle than any of his predecessors had done, and as time has passed, it has certainly attracted more attention. It is therefore

appropriate, no doubt, that the principle should be generally associated with his name.

Poirier began his speech with the motion that "it be resolved that the Senate is of opinion that the time has come for Canada to make a formal declaration of possession of the lands and islands situated in the north of the Dominion, and extending to the north pole."⁴⁹ He referred to various alleged American acts of possession, and he expressed the belief that Canada should take action and assert as publicly as possible her dominion over these lands. Then, recounting at some length the background of exploration and other activity in the region, he proceeded to enumerate the various grounds upon which Canada could claim ownership. The first three of these were discovery, which was almost exclusively British; occupancy, "as much as occupancy can take place"; and Canada's inheritance of all the rights of the Hudson's Bay Company. He then went on:

We have a fourth claim, we can establish a fourth ground for ownership for all the lands and islands that extend from the arctic circle up to the north pole. Last year, I think it was, when our Capt. Bernier was in New York, a guest of the Arctic club, the question being mooted as to the ownership of Arctic lands, it was proposed and agreed – and this is not a novel affair – that in future partition, of northern lands, a country whose possession to-day goes up to the Arctic regions, will have a right, or should have a right, or has a right to all the lands that are to be found in the waters between a line extending from its eastern extremity north, and another line extending from the western extremity north.

All the lands between the two lines up to the north pole should belong and do belong to the country whose territory abuts up there. Now if we take our geography, it is a simple matter. We find that going around the earth, at the latitude of say between 70 and 80 degrees parallel, all the lands and islands up towards the pole from the 5th to the 32nd degree of longitude east, belong to Norway and Sweden. From the western extremity of the Muskovite empire to its eastern extremity, across Lapland, Archangel and Siberia, that is from about the 32nd to the 190th east, and then overlapping the western hemisphere by ten degrees or 170 degrees west, coinciding with the Behring strait, all north of that tract which is equal to two-fifths of the whole world, is claimed by Russia, Franz Joseph Land excepted. The distance east and west of Franz Joseph Land is about ten degrees. Now, continuing easterly from the Behring strait 170 degrees west to 141 degrees west, we cross the territory of Alaska. That is claimed by the United States, and no one will venture to go up north between those two lines and take possession of any land, or any island that may be discovered between its borders and the north pole. From 141 to 60 degrees west we are on Canadian territory. That is the territory that has been discovered by the seamen of England, that has been traversed by McClure and by Franklin. It is the territory that has been taken possession of by the Hudson Bay Company, and it is the territory that we claim,

and I hold that no foreigner has a right to go and hoist a flag on it up to the north pole, because it is not only within the sphere of possession of England, but it is in the actual possession of England. This partition of the polar regions seems to be the most natural, because it is simply a geographical one. By that means difficulties would be avoided, and there would be no cause for trouble between interested countries. Every country bordering on the Arctic regions would simply extend its possessions up to the north pole.⁵⁰

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Poirier did not grant a sector to Denmark, and in fact he left the portion from 60° W to 5° E unassigned, even though it contains Danish Greenland. Smedal has suggested that the reason for the omission may have been that Denmark, although possessing Arctic territory, does not itself extend to Arctic regions.⁵¹ It is also noticeable that, except in Canada's case, Poirier was content with approximations – for example, 17° W for the dividing line between the Russian and American sectors. He also overlooked or ignored the fact that once Norway and Sweden separated in 1905, Sweden was shut off from the Arctic Ocean and thus, presumably, would not be entitled to share a sector.

On one important point the Senator's speech was not entirely clear. At the beginning he referred to "the Canadian Arctic waters," and the passage quoted above contains the words: "From 141 to 60 degrees west we are on Canadian territory ... and I hold that no foreigner has a right to go and hoist a flag on it up to the north pole." This could conceivably have been intended to mean that Canada was entitled to everything within the specified boundaries

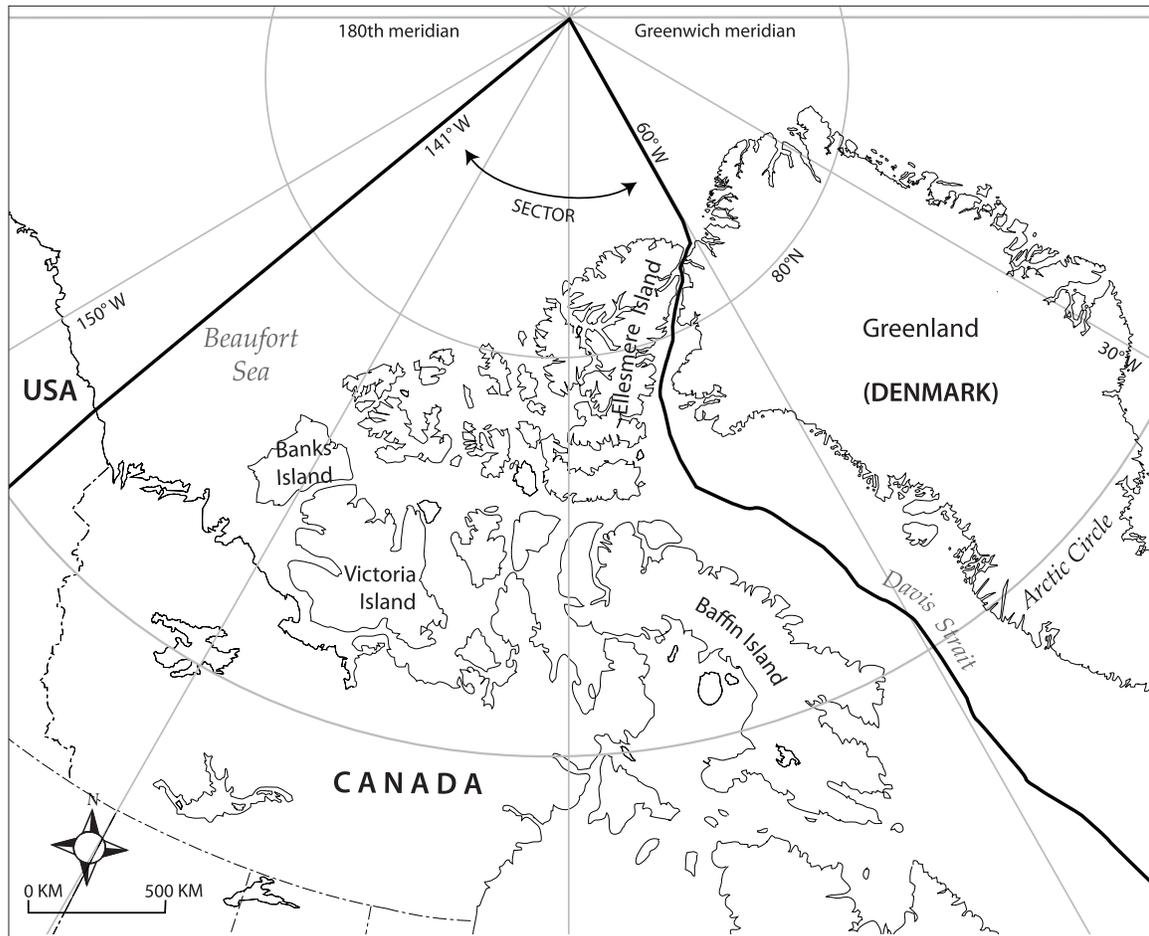


FIGURE 8-2: MAP OF CANADIAN SECTOR. JENNIFER ARTHUR-LACKENBAUER.

– in other words, not only land but water and ice as well. In his motion, however, he spoke of “a formal declaration of possession of the lands and islands,” and he referred repeatedly to “all the lands” and “all the lands and islands,” thus apparently excluding water and ice from what should be subject to Canadian sovereignty. Consequently, it is debatable whether he looked upon the entire sector as Canadian territory or whether he intended to include only the land areas within that sector. It is possible that he had not given much consideration to this distinction, but one might conclude from the general import of his speech that he was primarily

concerned with the “lands and islands” that he mentioned so frequently.

This may be a doubtful point, but with regard to another feature of his plan, there would seem to have been no ambiguity. He held that no foreigner had a right to hoist a flag in the Canadian sector between 60° W and 141° W, and, speaking generally of sector states, he asserted, “All the lands between the two lines up to the north pole should belong and do belong to the country whose territory abuts up there.” From these and other remarks, it is apparent that he saw Canada, in common with other sector states under the sector principle, as

possessor not only of all known islands within the prescribed limits but also of any others, unknown at the time, which it discovered in the future. This aspect of his speech is of particular interest in view of such events as Sverdrup's claim to several islands in the Canadian sector on behalf of Norway several years earlier and Peary's claim to the regions around the North Pole for the United States two years later.

Poirier's motion was not adopted by the Senate on this occasion.⁵² He was answered by Senator Sir Richard Cartwright,⁵³ who, as a senior Liberal and Minister of Trade and Commerce in the Laurier Cabinet, could presumably be regarded as an official spokesman for the administration. Cartwright said in part:

There is no doubt, I think, that Canada has a very reasonably good ground to regard Hudson Bay as a *mare clausum* and as belonging to it, that everything there may be considered its pertaining thereto. Touching the other point my hon. friend has raised, whether we, or whether any other nation is entitled to extend its territory to the north pole, I would like to reserve my opinion. I am not aware that there have been any original discoverers as yet who can assert a claim to the north pole, and I do not know that it would be of any great practical advantage to us, or to any other country, to assert jurisdiction quite as far north as that. However, I may state to my hon. friend that the importance of having the boundary of Canada defined to the northward has not at all escaped the attention of the government. They have, as the hon. gentleman knows, sent out an expedition

very recently to that region, and have established certain posts, and they have likewise exercised various acts of dominion. They have, besides establishing the posts I have referred to, levied customs duties and have exercised our authority over the various whaling vessels they have come across, which, I think, will be found sufficient to maintain our just rights in that quarter. I would think, however, that it was scarcely expedient, for us, bearing in mind that a conference is now going on, to enter into any formal declaration, either on the part of this body or the House of Commons as to the exact limits that we possess thereabouts. I think my hon. friend may rely upon it that the government will take all reasonable precaution to guard against any territory being wrested from us, even if it does appear at present to be of a rather unproductive character... It is quite within the limits of possibility that further exploration in the Hudson bay, and northward of that, may reveal mineral deposits of very considerable value and importance. The only point to which I would direct his attention is this: That, while negotiations are going on, and while the government are exerting themselves, it may not be the part of policy to formally proclaim any special limitation, or attempt to make any delimitation of our rights there; and therefore, although I can assure the hon. gentleman that due attention will be paid to the matters he has brought before the Senate, and that due precautions will be taken

to protect and enforce our rights, I think he will do well not to press this motion.⁵⁴

Cartwright got his wish: the motion did not come to a vote. He gave no further details about the “conference” and the “negotiations” which he said were in progress, and it would be interesting to know to what he was referring.⁵⁵

Although Poirier’s proposal was thus rejected when it was made, it obviously was not forgotten. Less than two and a half years later, Captain Bernier placed his tablet on Parry’s Rock at Winter Harbour, Melville Island, claiming all islands and territory within the Canadian sector for Canada. One cannot help but wonder to what extent there was a direct connection between the two.⁵⁶ Bernier commanded an official Canadian government expedition and, at least according to his own statement,⁵⁷ had been given a royal commission to annex lands and precise instructions as to what lands to annex. Even though this authority is apparently not to be seen in the documents themselves, it seems unlikely that he would have taken so important a step without some authorization, verbal or other, from the Canadian government, or at least from Canadian government officials.⁵⁸

Another question that provokes curiosity is whether there was any close personal association between Bernier and Poirier, and what the influence of one upon the other may have been. Such an association would be likely, since both were French Canadians (although Bernier was from Quebec and Poirier from New Brunswick), both were keenly interested in Canada’s northern regions, and both had had connections with Ottawa for many years. It is tempting to conclude, in spite of the apparent lack of evidence that this was the case,⁵⁹ that Poirier (like many others) had become fascinated with

Bernier’s plans and that Bernier’s remarkable energy, enthusiasm, and determination to carry out his northern projects had made Poirier an eager spokesman for his views.

Bernier’s enthusiasm, or rather his excess of it, got him into trouble not long afterwards, when he chose the annual dinner of the Arctic Club in New York as the time and place to advance his own idea as to how the sector principle should be put into operation. On 31 January 1910, Conservative member Sam Hughes raised the published reports of this affair in the House of Commons:

Sam Hughes: I desire to call the attention of the right hon. the Prime Minister to the following despatch which appeared in the ‘Citizen’ and other newspapers on Saturday morning last:

(*Citizen*, Saturday, 29th January, 1910).

New York, Jan. 28 – The question of who has territorial possession of the North Pole has been revived again by Capt. J. Bernier of Canada, who is here to attend the annual dinner of the Arctic club of America to-morrow night. Captain Bernier, will ask Sir Wilfrid Laurier, the Prime Minister of Canada, to request Britain, the United States, Russia, Sweden and Norway and Denmark, all maritime nations bordering on the Arctic sea – to designate official representatives to accompany him on his forthcoming Polar expedition which is to leave Quebec on July 15th next. The principal object of the expedition, he said, will be for a division of the Polar sea in order that Canada and

the other six nations may have their fishery rights properly defined. Captain Bernier will visit both Croker Land, discovered by Peary in 1905, and Bradley Land, which Dr. Cook reported that he sighted, and, after raising the British flag, will proclaim them formally annexed to the Dominion of Canada. Great Britain, he said, formerly ceded to the Dominion all islands in the Arctic sea lying within its lateral boundaries.

I desire to ask the government, whether they have received any such request from Captain Bernier; and if so, is it the intention of the government to remind Captain Bernier that Canada is not yet a nation but part of the British Dominions and intends remaining so, and the expression that Canada is another nation or that Britain is another nation separate from Canada is not applicable to actual conditions.

Sir Wilfrid Laurier: I have seen the despatch mentioned by my hon. friend. I do not know of any such intention on the part of Capt. Bernier as that attributed to him. I do not think that he has any intention of going into international complications. But, if Capt. Bernier spoke as he is reported to have spoken, all I can say is that I think he had better keep to his own deck.

Sir George Eulas Foster: That seems to imply that there is a project on to send Capt. Bernier to the North Pole under sanction of the Dominion government. Is that so?

Laurier: No. Capt. Bernier will go north again this summer to patrol

the waters of the north and assert Canadian jurisdiction.

Foster: I think somebody ought to take charge of this gentleman. He seems to be running loose.⁶⁰

Back in Ottawa a few days later, an apparently worried Captain Bernier wrote an explanatory "Memo for the Deputy Minister." The document, dated 8 February 1910, makes rather amusing reading because it indicates that, in spite of his protests and explanations, Bernier had said substantially what he was reported to have said. In part it went as follows:

I beg to enclose you herewith some cutting, which I took from the New York Newspapers, after the annual dinner of the "Arctic Club", and each paper published its views and comments, on what I have said before the members of the "Arctic Club". This will give you a substantial statement of what I have said which did not compromise neither Sir Wilfrid Laurier, nor the Government.

I mentioned that if an expedition composed of an American, a Canadian, a Dane, a Norwegian, a Swede, & a Russian went to the Pole and filed their separate claim there would be no more fishing dispute in future....

I mentioned also that probably the "Arctic" would sail again for the North and that if I passed close to Bradley land and Crocker land, I would hoist the Canadian Flag on them....

I have never said that I would ask Sir Wilfrid Laurier to ask England, the United States, Russia, Sweden,

Denmark and Norway to send a representative to come with me, for I do not know the intentions of the Government, only that I am to patrol the Northern Waters....⁶¹

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On 11 February, Bernier wrote an almost identical letter to Laurier himself.⁶² He followed this up with another letter on 13 April, enclosing an article from the *New York Times-Democrat* of 28 March on "Ownership of the Poles," which *inter alia* made the significant observation that the United States "cannot afford to have any foreign power taking possession of islands of the Arctic coast of Alaska, even if beyond the three-mile limit."⁶³

In spite of the Canadian government's rather negative reaction to Poirier's proposals, and their understandable reluctance to give Bernier complete freedom of voice and action, it is apparent that they had already committed themselves, if not precisely to the sector principle, at least to virtually the same thing. Evidence that this was so is almost conclusive.

On 8 September 1909, the following exchange took place in the British House of Commons:

Sir Gilbert Parker asked the Prime Minister whether the land at the North Pole is considered to belong to the Dominion of Canada; and, if so, providing it is established that Dr. Cook has reached the North Pole and has planted there the American flag, whether that act would, in any way, give the United States any right of possession over that region. [The Hon. Member added, I assume the Prime Minister will understand "land at or adjacent to."]

The Prime Minister: I did not understand that. In answer to the first part of the hon. Member's question I do not understand that there is any land at the North Pole.

Parker: Adjacent to the Pole.

The Prime Minister: Perhaps the hon. Member will put down another question. The second part of the question involves too much hypothetical matter for me to give any definite answer.⁶⁴

Two days afterwards, the following cable was sent in code by Colonial Secretary Lord Eyre Crow to Governor General Earl Grey:

Following question is to be asked in the House of Commons on Monday next. Begins: Whether Canada makes claim upon all land intervening between the American border and the North Pole and if that claim is made in any treaty or constitutional article or documents, ends. If your Government agrees it is proposed to reply that the Secretary of State for the Colonies understands that the Government of Canada has not made a formal declaration of the exact limits of its possessions northward. See your despatch of 22nd April 1907, No. 188.⁶⁵

There was some discussion in Ottawa, and the next day, 11 September, the Department of External Affairs sent a message to the Governor General advising that "a telegram be sent to the Secretary of State for the Colonies in the following words: – It is understood that Canada claims all lands intervening between the American border and the North Pole."⁶⁶ On the

same day, Under Secretary of State for External Affairs Joseph Pope wrote a brief memo saying that this answer had been sent.⁶⁷ When the question was raised again in the British House of Commons on Monday, 15 September, the answer showed that the wishes of the Canadian government had been taken into consideration:

Lord Balcarres (for Sir Gilbert Parker) asked whether Canada makes a claim upon all land intervening between the American border and the North Pole; and if that claim is made in any treaty or constitutional article or document?

Colonel Charles Seely: The Secretary of State understands that the Canada Government have not made a formal declaration of the exact

limits of their possessions northwards, but it is believed that they consider themselves entitled to claim all the land referred to by the hon. Gentleman.⁶⁸

Thus, if the activities of Captain Bernier, and especially his claim to all lands and islands in the Canadian sector on 1 July 1909, left any doubt as to the official view of the Canadian government in the matter, the events recounted above would appear to have removed any reasons for such doubt. This authoritative indication of the attitude of the Canadian government is important because it came sixteen years before Minister of the Interior Stewart's remarks in the House of Commons in 1925,⁶⁹ which have sometimes been taken as the first official Canadian statements on the subject.

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