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“Race, Blood, and Belonging: Transnational Blackfoot Bands and Families along the U.S. – Canada Border, 1855-1915”  
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### *Introduction*

This chapter focuses on the Blackfoot Confederacy, which spanned much of the present-day Montana-Alberta borderlands through the late 19<sup>th</sup> century. By the beginning of the 20<sup>th</sup> century, the Niitsitapi faced the rapid colonization of their lands in the form of Anglo settlement, transcontinental railways, the U.S.-Canada Boundary Commission, the military, agents of the state, and the legacy of broken treaties. The hardening of the border that accompanied these developments did not, however, terminate the cross border movement of Blackfoot bands. Families visited each other across the line, band members registered on tribal rolls in the U.S. and Canada, and Indian agents fulminated against Blackfoot manipulation of fluid yet contradictory notions of status, blood, and citizenship.

Looking at the Blackfoot Confederacy contributes to scholarship investigating Indigenous peoples’ negotiation of international boundaries bisecting aboriginal homelands.<sup>1</sup> This growing body of work has emphasized the social and cultural dimensions of these histories, but there remains room to explore the legal implications of overlapping state, territorial and national jurisdictions; and the confusion resulting from Canadian and American treaties made with Native people throughout the borderlands.<sup>2</sup> A critical legal perspective is especially

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<sup>1</sup> Indigenous peoples bisected by borders have contended with racial regimes rooted in different histories; they endured nation-states and their confusing discourse over citizenship, status, recognition; and multiple sets of immigration policies that have labeled them as aliens, foreigners, wards of the state, and refugees. For all of its compelling contributions, borderlands scholarship has not directed enough attention to issues of Indigenous sovereignty and law within borderlands spaces and it tacitly promotes the notion that Native people were separated after the borderlands became a “bordered land.” Conversely, “American Indian history” has largely remained locked into nation-based frameworks.

<sup>2</sup> See among others, Cynthia Radding, *Colonialism, Ethnic Spaces, and Ecological Frontiers in Northwestern Mexico, 1700-1850* (Duke University Press, 1997); Ramon Gutierrez, *When Jesus Came, the Corn*

important for Native peoples straddling the international boundaries and confronting reservation borders. As observed by Dudziak and Volpp, “Law is an important technology in the drawing of dividing lines between American identities and the boundaries (or lack of boundaries) around American global power. Borders are constructed in law, not only through formal legal controls on entry and exit but also through the construction of rights of citizenship and noncitizenship, and the regulation or legitimation of American power in other parts of the world.”<sup>3</sup> Because these boundaries are constructs of law, they are crucial sights of deconstruction.

Borrowing from such insights, this chapter will focus on Blackfoot bands and families that negotiated the legal contradictions and jurisdictional complexities of life as transnational actors in the U.S – Canada borderlands. Between 1855, with the signing of the Blackfoot Treaty in the U.S., the signing of Treaty 7 in Canada in 1877, and the onset of World War One, Blackfoot bands confronted numerous international, national, territorial, provincial, and tribal legal regimes. At the borderlands of two imperial nation-states, Blackfoot bands encountered “legal voids” between competing notions of Indigenous sovereignty, wardship, and national

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*Mothers Went Away: Marriage, Sexuality, and Power in New Mexico, 1500-1846* (Stanford University Press, 1991); Juliana Barr, *Peace Came in the Form of a Woman: Indians and Spaniards in the Texas Borderlands* (University of North Carolina Press, 2007); James Brooks, *Captives and Cousins, Slavery, Kinship, and Community in the Southwest Borderlands* (University of North Carolina Press, 2002); Ned Blackhawk, *Violence Over the Land: Indians and Empires in the Early American West* (Harvard University Press, 2008) ; Pekka Hamalainen, *The Comanche Empire* (Yale University Press, 2009); Brian DeLay, *War of a Thousand Deserts: Indian Raids and the U.S.-Mexican War* (Yale University Press, 2009). For work on the U.S.-Canada border, see among others, Sheila McManus, *The Line Which Separates: Race, Gender, and the Making of the Montana-Alberta Borderlands* (Lincoln: University of Nebraska Press, 2005); David McCready, *Living With Strangers: The Nineteenth-Century Sioux and the Canadian-American Borderlands* (University of Nebraska Press, 2006); Beth LaDow, *The Medicine Line* ; Hana Samek, *Blackfoot Confederacy 1880-1920: A Comparative Study of U.S. and Canadian Indian Policy* (Lincoln: University of Nebraska Press, 2010), Michel Hogue, *Metis and the Medicine Line: Creating a Border and Dividing a People* (University of North Carolina Press, 2015); Andrew Graybill, *The Red and the White: A Family Saga of the American West* (Liveright Publications, 2014); Katrina Jagodinsky, *Legal Codes and Talking Trees: Indigenous Women’s Sovereignty in the Sonoran and Puget Sound Borderlands, 1854-1946* (Yale University Press, 2016). See also collections such as, Sterling Evans (Ed.) *The Borderlands of the American and Canadian Wests: Essays on Regional History of the Forty-ninth Parallel* (University of Nebraska Press, 2006); Benjamin Johnson and Andrew Graybill, *Bridging National Borders in North America: Transnational and Comparative Histories* (Duke University Press, 2010); Clarissa Confer, Andrae Marak, and Laura Tuennerman, (Eds.) *Transnational Indians in the North American West* (Texas A&M University Press, 2015).

<sup>3</sup> Dudziak and Volpp, 594

citizenship. These voids and contradictions stem largely from the colonial nature of “Indian Law” as a combination of erasure and extermination on the one hand, and racial assimilation and transformation on the other.<sup>4</sup> South of the “Medicine Line,” Blackfoot people saw their status deteriorate as courts redefined them as wards of the state that lacked legal personhood and the protections of the Constitution. North of the line, Canada promoted assimilation and tried to extinguish Native land title. These related Indian policies signaled the settler-colonial mindset of Canadian and U.S. officials, but implementation at the edge of the U.S. and Canadian Dominion exposed fractures legal through which Niitsitapi survived a changing world.<sup>5</sup>

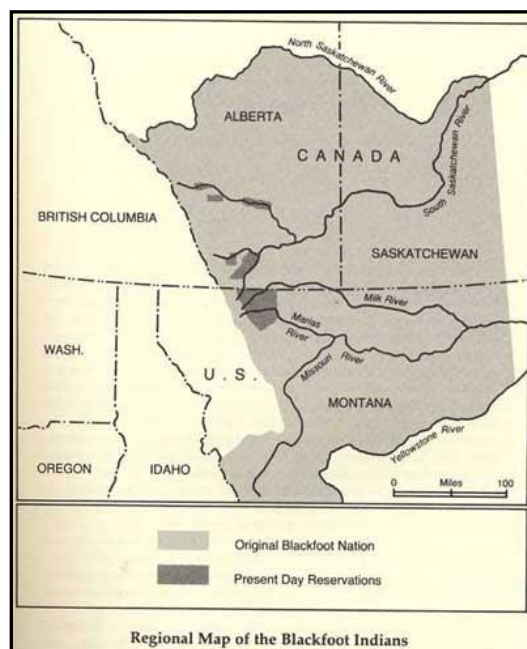
As many scholars have noted, Native people demonstrated great agility when playing two imperial powers against each other or when they maximized the uncertainties of legal regimes in frontier spaces. Native people maintained ties to indigenous landscapes well beyond their bifurcation by international boundaries and reservation borders. The case of Albert Spearson, which entailed a transnational debate over adoption, revealed the vagueness of these borders and the limits of the state to dictate familial norms to the Blackfoot. Alternately, this chapter analyzes the occasional power of nation-states to police those same boundaries in moments of “crisis.” As discussed in the case of Spopee, a “Canadian Indian” who allegedly murdered a white man in Canada and buried the body in the U.S., the American legal system evidenced its carceral technologies and complete disregard for due process and Native rights. The trial and imprisonment of Spopee epitomized the alarming reach of the U.S. legal apparatus to penetrate the legal voids of the northern borderlands. In this exceptional demonstration of power, we see that the settler state will and can integrate peripheral spaces into sites of violent subjugation.

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<sup>4</sup> Deborah A. Rosen, *American Indians and State Law: Sovereignty, Race, and Citizenship, 1790-1880* (University of Nebraska Press, 2007), 204.

<sup>5</sup> For comparisons of U.S. Indian history with Canadian Indigenous history, see, for instance, Roger Nichols, *Indians in the United States and Canada: A Comparative History* (University of Nebraska Press, 1998).

The Blackfoot Confederacy originated in the Algonquian speaking cultures of the eastern woodlands before moving westward to the northern plains of present-day Alberta and Saskatchewan. By the nineteenth century, the Sarcee integrated into the Blackfoot Confederacy, which was comprised of the Siksika (aka Blackfoot), Kaina (Blood), and Peigan/Pikuni (Peeagan, Peekanow, in the U.S. Blackfeet, also southern Piegans), the most western and southerly group.<sup>6</sup> As the Blackfoot mastered the horse, they experienced population growth, increased military power, and an expanded economic presence that enabled them to move southward into present-day Montana. Before the geopolitical map changed drastically in the 1840s, Blackfoot bands extended from present day Edmonton to south of present-day Billings; and from the Rocky Mountains to central Saskatchewan.<sup>7</sup>



Source: Hana Samek, *The Blackfoot Confederacy*, 10.

<sup>6</sup> Malcolm McFee, *Modern Blackfeet: Montanans on a Reservation* (University of Nebraska Press, 2013); *Nitsitapiisinni: The Story of the Blackfoot People* (The Glenbow Museum, Firefly Books, 2001); Olive Patricia Dickason, *Canada's First Nations: A History of the Founding People's from Earliest Times* (Oxford University Press, 2001), 194.

<sup>7</sup> McManus, *The Line Which Separates*, 58.

Part and parcel of the tectonic shifts of the 1840s were the transcontinental migrations following the war with Mexico and the discovery of gold in California.<sup>8</sup> In response to this population boom, the U.S. orchestrated the Treaty of 1855 (Lame Bull Treaty) under the leadership of Washington Governor Isaac Stevens, with numerous northern plains tribes, including the Blackfeet Confederacy. The Treaty outlined Blackfoot lands across most of northern Montana. Emerging from the shadow of Manifest Destiny, Indian policy sat at a crossroads between removal and an awkward system of treaty making and reservations. The result was a unique set of treaty stipulations. The 1855 Treaty left aboriginal land title intact, it did not mandate concentration onto reservations, and lacked a system of education or agricultural instruction. As Farr notes, “It was not a so-called land treaty at all; it was a peace treaty.”<sup>9</sup>

The Treaty of “peace and friendship” caused immediate confusion. It facilitated westward migration and the construction of a transcontinental railroad by placing the Blackfeet on a reservation to be shared with Gros Ventre and Assiniboine. The federal government sent a few agents to the “reservation,” but the remoteness, weather, financial difficulties, and other pressures limited their services to the Blackfeet. The reservation boundaries also remained unmapped and the northern border of the reservation was the international boundary as well. Non-Indians crossed into the reservation and poached game, cut timber, colonies grazed cattle and diverted rivers crossing the reservation. Most importantly, Blackfeet peoples paid little attention to the lines that were supposed to limit their movement and separate them from their kin to the north. In short, the reservation was a fiction.<sup>10</sup>

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<sup>8</sup> Samek, *Blackfoot Confederacy 1880-1920*.

<sup>9</sup> *Treaty with the Blackfoot Indians*, October 17, 1855; William E. Farr, "When We Were First Paid" The Blackfoot Treaty, The Western Tribes, And The Creation Of The Common Hunting Ground, 1855," *The Great Plains Quarterly* 21 (2001), 132; Jill St. Germain,

<sup>10</sup> John G. Jackson, *The Piikani Blackfeet: A Culture Under Siege* (Mountain Press Publishing Company, 2000): 171; Dickason, *Canada's First Nations*, 282.

Blackfoot worries increased as events on both sides of the border signaled a new era for the Confederacy. On the U.S. side, the completion of the transcontinental railroad in 1867 accelerated commerce and non-Indian settlement in Montana. In reaction to public outcries about massacres at Sand Creek in 1864 and Washita in 1868, and the growing demands from “Friends of the Indian” to transfer control over Indian affairs to civilian hands, President Grant promoted the “Peace Policy” as an enlightened response to military violence. The Peace Policy, which promoted concentration of Indians onto reservations, merged with in-fighting between the House and the Senate, and led to the end of treaty-making in 1871.

As U.S. policy shifted gears, Canadian Confederation wrought great changes to Blackfoot bands. Confederation signaled the shift from direct British colonialism to Dominion status, which was a form of quasi-national independence.<sup>11</sup> With Confederation came the 1868 creation of the Department of Secretary of State to oversee Natives. Oversight included codifying Indigenous identity in the 1869 passage of the Enfranchisement Act, which defined “Amerindian” as a person with at least one-quarter Indian blood. This Act also categorized Indians as wards, although if they chose detribalization they could become Canadian citizens. In addition, the 1868 Act was highly gendered: it stated that non-Indian women marrying Indian men took Indian status, while Indian women marrying non-status men lost their status.<sup>12</sup>

These broad shifts in policy failed to curtail Blackfoot transnationalism. In 1870 Lieutenant Colonel Alfred Sully, the Superintendent of Indian Affairs for Montana, wrote that the Blackfeet were “one of the largest nations of Indians at present in our country,” but “they do not all properly belong to the United States.” He observed that “they claim in common a section of the country from the British line south some miles to the city of Helena, and north of the line

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<sup>11</sup> Dickason, *Canada's First Nations*, 283.

<sup>12</sup> Dickason, *Canada's First Nations*, 258-9.

to the Saskatchewan River.” Sully added that “they of course do not take into consideration any treaties we have with Great Britain in regard to our boundary line, but look upon the whole of the country both north and south of the line as theirs.”<sup>13</sup> Sully’s successor, J. Armigate noted in 1871 that the Blackfeet were “governed by imaginary boundary-lines and express themselves perfectly willing to remain in what they consider their own country.” Agent William T. Ensign, who replaced Armitage, observed that the northern Piegan came to the agency more frequently than the Blood or Blackfoot bands, which “range north of the British line, from two hundred and fifty to four hundred miles from the agency.”<sup>14</sup>

Blackfoot movement across their homelands sparked renewed efforts to map and reinforce several borders and boundaries. The Treaty of Ghent in 1814 established the boundary between the United States and British possessions in present-day Canada. It set the border at the 49<sup>th</sup> parallel, which ran between the western Great Lakes at the Lake of the Woods to the Rocky Mountains. Echoing the peaceful resolution of the dispute over the Oregon Territory in the 1840s, neither power paid much attention to the border until Native movement throughout the region made its precise location a matter of international significance. In 1870, President Grant proposed a joint commission to map the border between the Lake of the Woods and the Rocky Mountains, and by 1874, the British, Canadian Dominion, and U.S. governments successfully marked the boundary. This was roughly twenty years after the U.S. – Mexico Boundary Commission completed its work along the southern border.<sup>15</sup>

As mapping teams lumbered westward, the U.S. again redrew the lines of the Blackfoot reservation and left them with a fraction of the land base established in the 1855 Lame Bull

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<sup>13</sup> Quoted in McManus, *The Line Which Separates*, 66.

<sup>14</sup> McManus, *The Line Which Separates*, 68.

<sup>15</sup> McManus, *The Line Which Separates*, 8.

Treaty.<sup>16</sup> President Grant issued an Executive Order in 1873 to reduce the reservation by carving off the lands between the Missouri River and the Musselshell River south to the old Common Hunting Grounds, and west to the Rocky Mountains. Another Executive Order in 1874 reduced access to the Teton and Sun Rivers. To make matters worse, there were several thousand Gros Ventres, Assiniboine, and River Crows crowded onto the shrinking reservation.<sup>17</sup> Agent John S. Wood wrote that the new boundaries were a “continual source of complaint” and he added that White Calf, a signatory of the Lame Bull Treaty, vehemently protested the appropriation of hunting grounds on the reservation.<sup>18</sup>

The same year that the Boundary Commission completed its work and President Grant signed a second Executive Order again shrinking the Montana reservation, Indian Agent R. F. May reported that the Blackfeet and Bloods repeatedly crossed the international boundary and preferred to stay in the north. May agreed that the 1874 Executive Order reservation was a failure because it lacked important hunting grounds.<sup>19</sup> In addition, the movement of the Flathead, Blackfeet, Cree, and Assiniboine between reservations was a source of great frustration for Agents across the Plains. Writing to Charles Medary, the Agent for Flathead, Wood said that he was “quite powerless to keep them [the Blackfeet] at home, without any military assistance which is not available here at present.” He encouraged Wood to “keep the Indians within the liberal limits set apart for them by treaty,” as inadequate as those limits may have been.<sup>20</sup>

Canada similarly restricted Blackfoot movement to spaces and status tied to the north. In 1873 the Dominion created the North West Mounted Police, modeled after the Royal Irish

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<sup>16</sup> St. Germain, *Indian Treaty – Making Policy*.

<sup>17</sup> Samek, *The Blackfoot Confederacy*, 13; Farr, *Blackfoot Redemption*, 114.

<sup>18</sup> Farr, *Blackfoot Redemption*, 119.

<sup>19</sup> McManus, *The Line Which Separates*, 69; Farr, *Blackfoot Redemption*, 113.

<sup>20</sup> Letter from Charles Medary, Indian Agent, Flathead Agency, MT, October 25 1875 To John S. Wood, Indian Agent, Blackfeet Agency, Folder 6, Box 1 Entry 2 Blackfeet Agency Letters Received 1873-1909, NARA-Denver.



Constabulary (1820), an imperial paramilitary force developed in India. The Mounties functioned as police, judge, jury, and enforcer of Dominion law in the Canadian West. They also monitored the international border from Forts Walsh and McCleod in Blackfoot country.<sup>21</sup>

As the Mounties oversaw native communities and policed the border, the Dominion placed Indian Affairs under the jurisdiction of the Department of Interior. Shifting control of Indians to the Department of the Interior led to two related changes in policy. First, the declining numbers of buffalo and narrowing of their aboriginal territory created a crisis for Blackfoot peoples that fueled their cross border movement. Second, as these bands moved across the Montana-Alberta borderlands, and as Metis, Assiniboine, Cree, and Sioux peoples similarly exposed the permeability of national boundaries through their transnational migrations, the Department of Interior further scrutinized Native status and restricted their independence. Assuming that the narrowing of racial and citizenship boundaries would help it control the Native population, in 1876 the Dominion passed the Indian Act, which consolidated “and revamped pre-Confederation legislation of the Canadas into a nation-wide framework...”<sup>22</sup> The Act promised to protect, civilize and assimilate First Nations peoples in pursuant of its broad program of paternalism. It retained pre-Confederation policies of quieting aboriginal land tenure, and it revised the definition of Indian, according to Dickason, “as any person registered as an Indian, or entitled to be registered; as well as any person of Indian blood belonging to a band and entitled to use its land.” The Act repeated stipulations based on gender, and added that children of born to white men and Native women would not be considered Indians.<sup>23</sup>

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<sup>21</sup> Andrew R. Graybill, *Policing the Great Plains: Rangers, Mounties, and the North American Frontier, 1875-1910* (University of Nebraska Press, 2007); Dickason, *Canada's First Nations*, 280-1; Samek, *The Blackfoot Confederacy*, 19.

<sup>22</sup> Dickason, *Canada's First Nations*, 283.

<sup>23</sup> Dickason, *Canada's First Nations*, 285.

Rather than the hegemonic codification of a singular identity promulgated by Canada, the U.S. embraced a patch-work of identities rooted in racial supremacy and settler-colonial law. Based on the Doctrine of Discovery—which also structured British policy—the U.S. launched the treaty system after the ratification of the Constitution, which, importantly only noted Indians in two relatively minor ways. The “silence” of the Constitution grounded the view Native nations were outside the governing document of the new United States. These silences transformed into a booming chorus of anti-Indianism by the 1830s epitomized by Indian Removal and the rulings of the Marshall Court. The key component of the “Marshall Trilogy” was the ambiguous view that Indian polities were “domestic-dependent nations” that sat inside the territorial boundaries of the U.S. and somewhat beyond the Constitution.<sup>24</sup>

Although the original inhabitants of the continent were both inside and outside of U.S. law—at the unstable edge of settler colonial assimilation, racist removal from the national body politic, and self-governance—the post-Civil War legal regime sought clarification of the status of Indians. Between 1868 and the passage of the Fourteenth Amendment, and the 1903 Supreme Court ruling in *Lonewolf vs. Hitchcock*, Native peoples saw their status as independent nations recognized through treaties radically transformed. Rulings such as *ex. Parte Crow Dog* (1883), *Elk v. Wilkins* (1884), the Major Crimes Act (1885), and *United States v. Kagama*, (1886) plunged Native people into a legal borderland of subaltern non-citizen wards of the state.<sup>25</sup>

North of the Medicine Line, the conditions of Native peoples were similarly dire. Following the passage of the Indian Act, Canada negotiated Treaty 7 with the Blackfoot Confederacy in 1877 at Blackfoot Crossing in Alberta. With support from the prestigious head chief, Crowfoot, the Confederacy signed Treaty 7, which set aside one reserve on the Bow River

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<sup>24</sup> David E. Wilkins, *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice* (University of Texas Press, 1997).

<sup>25</sup> Wilkins, *American Indian Sovereignty and the U.S. Supreme Court*.

for the Blackfoot, Blood, and Sarcee; and another reserve west of Ft. Macleod for the North Piegans. Within a few months the Bloods asked for a separate reserve on the Belly River. These reserves constituted the remnant of *Niitsitapi* lands after the Treaty, which, unbeknownst to the Confederacy, quieted title to their territory. Treaty 7 sought to fix bands onto specific reserves with identities tying them to the Dominion of Canada, yet the language about “citizenship” *confirmed and confused* their status as Canadian citizens or Indians vis-a-vis the state.<sup>26</sup>

More broadly, Treaty 7 reflected the perceptual chasm between First Nations bands and the Dominion over foundational issues such as land tenure, rights, status, and self-determination. First, leaders such as White Calf had witnessed the failures of the U.S. to abide by the terms of the Lamé Bull Treaty. Other signatories of Treaty 7 were either were in attendance in 1855 or had extensive knowledge of U.S. policy thereafter, and expressed concern about the Canadian promises of protection, education, and material advancement. Second, language differences prohibited the bands from fully understanding the scope and intent of the Treaty. Translators had limited knowledge of both English and native tongues. The most significant outcome of this confusion was the inability of Canadian policy makers to explain, and of Blackfoot leaders to comprehend, that by signing the Treaty, the band representatives agreed to the quieting of title to their land. As First Nations descendants of Treaty signatories have repeatedly noted, their language contained no equivalent of the words *secede* or *surrender* in reference to land as it was not a commodity or piece of property that one could own.<sup>27</sup>

These changes in policy, combined with an 1879 reduction of the Montana reservation, ignored the material conditions fueling cross-border movement. The destruction of the bison

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<sup>26</sup> Jackson, *The Piikani Blackfeet*, 180; *Nitsitapiisinni: The Story of the Blackfoot People*, 66; Dickason, *Canada's First Nations*, 283; Samek, *The Blackfoot Confederacy*, 15; Hugh Dempsey, *Crowfoot: Chief of the Blackfeet* (University of Oklahoma Press, 1978).

<sup>27</sup> Treaty 7 Elders and Tribal Council, with Walter Hildebrandt, Sarah Carter, and Dorothy First Rider, *The True Spirit and Original Intent of Treaty 7* (McGill – Queen's University Press, 1996), 124.

caused northern Piegans to migrate into the U.S., and a brutally cold winter and the hunting of sources of food by Anglos narrowed Piegan options for survival. In terms of geo-political issues, the growing pressure of U.S. military troops following Sitting Bull pushed some Natives northward, and Canadian policy makers became increasingly nervous that American filibusters threatened national sovereignty. Despite the uncertain situation facing the Confederacy they persevered as unified people. As noted in 1879 by Agent John Young, he believed that the Blackfoot, Bloods, and Piegan on either side of the line were “really one people...known by the general name of Piegan.”<sup>28</sup>

Similarly challenging as the material conditions facing Native communities were the legal regimes that sought to erase the sovereignty of the Niitsitapi peoples north and south of the line. While the Alberta-Montana borderlands was best characterized by legal voids, jurisdictional competition, and border uncertainties that challenged the technologies of surveillance, one case reflected the shocking power of the U.S. carceral state to penetrate those legal borderlands and punish one man: Spopee (Turtle) a Blood Indian born north of the line and convicted of murdering American man in Canada.

During the winter of 1879 and 1880 Blood Indians like Spopee were going south following a migration of buffalo during one of the coldest years on record. According to William Farr, “Some of the Indians went to their newly created reserves, expecting the Canadian government to feed them. Those expectations were out of the question. Canadian authorities at the time of Treaty 7 had disastrously miscalculated the disappearance of the buffalo north of the American border.” Over three thousand Northern Piegan, Blood and Sarcee camped around Fort Macleod in September 1879, waiting for annuities and relief. Edgar B. Dewdney, Commissioner of Indian Affairs for the North-West Territories, told those that were starving to follow the

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<sup>28</sup> McManus, *The Line Which Separates*, 69.

buffalo south into the United States.<sup>29</sup> Spopee and his wife had done so before, going to the Blackfeet Agency to receive rations like other “Canadian Indians.”<sup>30</sup>

Other than a few sparse government reports, little is known of Spopee before he entered the legal borderlands of transnational criminal law. Spopee (Turtle) was a member of the Fisheater band of Bloods, led by Meskato (Red Crow), and born in Canada around 1850. His mother was Awakasiaki, or Antelope Woman, and the Catholic census files for 1874 list her husband as Siapiatow (Comes in the Night). According to Farr, Spopee was related to Red Crow, probably as a cousin, and Spopee’s aunt, Natawista (Holy Snake Woman) was the sister of Seen From Afar. Holy Snake Woman was married to Alexander Culbertson, the fur trader from the American Fur Company and founder of Fort Benton. After the signing of Treaty 7 in 1877 at Blackfoot Crossing, Blood annuity books note that Spopee appeared for a payment in 1878. Band rolls state that he was 29 years old and had a wife and a daughter.<sup>31</sup>

In 1879, during the migration south, events took a turn for the worse when Spopee and his travelling companion Good Runner allegedly killed a white man named Walmesley in Canada. For reasons that were hotly debated in court, they brought him across the international boundary. The body of Walmesley was found on Cut Bank Creek, north of the Montana Agency in November 1879 by a Blackfoot woman who reported it to Agent Young.<sup>32</sup> Agent Young informed Governor Potts, local sheriffs, and Major William Winder at Ft. Macleod in Alberta.<sup>33</sup>

Contradictory stories and jurisdictional uncertainties associated with the location of the crime and the status Spopee quickly muddied the case. News reports added to the confusion.

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<sup>29</sup> William E. Farr, *Blackfoot Redemption: A Blood Indian’s Story of Murder, Confinement, and Imperfect Justice* (University of Oklahoma Press, 2012), 17; David McCready, *Living With Strangers*, 90.

<sup>30</sup> Farr, *Blackfoot Redemption*, 18.

<sup>31</sup> Farr, *Blackfoot Redemption*, 14-16.

<sup>32</sup> Farr, *Blackfoot Redemption*, 26; Blackfoot Agency Monthly Reports, 1 December 1879, Letter Sent, entry 3, Vol. 4B, RBA, RG75, NARA-Denver.

<sup>33</sup> Farr, *Blackfoot Redemption*, 29.

The December 1 edition of the *Saskatchewan Herald* reported that “about two weeks ago the authorities here [Fort Macleod] received a letter from the Blackfoot Agency, to the effect that a white man supposed to hail from this country had been found near that place, with a bullet through his chest and a crushed head.”<sup>34</sup> Agent Young, who initially took charge of the case, eliminated several suspects when Spopee’s travelling companion, Good Rider, admitted that he and Spopee had followed the buffalo south and joined up with Walmesley, who was hunting the wolves that preyed on the bison, before he crossed into the U.S. According to Good Rider, Spopee told him that Walmesley had hit and insulted him, and Spopee promised to kill Walmesley for the insult. Good Rider claimed that Spopee shot Walmesley and crushed his head, and then they carried the body south of the boundary and buried it along Cut Bank Creek.<sup>35</sup>

Considering the transnational character of the crime, the legal jurisdiction for arresting Spopee was dubious. It was not clear that Governor Potts had the authority to dispatch Chouteau County Sheriff Healy and Deputy Sheriff Jefferson Talbert to capture a Blood Indian born and registered in Canada for an alleged crime committed in Canada. Additionally, Deputy U.S. Marshal Basil M. Boyle, who had only recently arrived to Ft. Benton, set out in search of Spopee. Alexander M. Botkin, a veteran U.S. Marshall for Montana, wrote to the office of the U.S. Attorney General suggesting that this matter went beyond the jurisdiction of the Governor’s office and the Sheriffs, suggesting instead that the U.S. Military or the Indian Bureau take control of the case. He also noted that U.S. officials should obtain cooperation of the NWMP.<sup>36</sup>

Under orders from Governor Potts, Sheriff Healy ignored Botkin and went in search of Spopee among the thousands of Indians camped in the Judith Basin. Accompanied by Boyle and

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<sup>34</sup> Farr, *Blackfoot Redemption*, 30.

<sup>35</sup> Agent John Young, Blackfoot Agency Monthly Reports, 2 January 1880, Letters Sent, RBA, RG75, NARA-Denver; Farr, *Blackfoot Redemption*, 38.

<sup>36</sup> A. C. Botkin, Marshall, to Devens, Att. General, 23 November 1879, Montana Historical Society, Vertical Files, copies from the U.S. Department of Justice.

Talbert, Healy reached the camp of Running Rabbit, the Blood chief overseeing the lodge in which Spopee hid out. Running Rabbit called Spopee to meet Healy, and before Spopee could run, Healy had him in handcuffs. Healy stared down the Blood band members, most of whom knew Healy because he was once married to a daughter of Many Spotted Horses, leader of the Many Fat Horses band of the Bloods. Healy even spoke Blackfoot. Apparently the Blackfeet had adopted Healy after a tense encounter with The Weasel Head, another band leader, years ago. The Weasel Head sought revenge against Healy for a previous insult, but Healy defended himself and spared the life of The Weasel Head in public. Healy and The Weasel Head became friends and he adopted Healy into the band. Healy was thus acting on the fringes and borderlands of American law as well as the law of the Blackfoot, both of which he claimed familiarity with.<sup>37</sup>

The trial lurched forward in unusual and suspicious ways. Healy brought Spopee to Ft. Benton, where Probate Judge John J. Donnelly conducted an examination and received a “confession” to the crime by Spopee. Spopee’s contradicted Good Rider’s statement, claiming that Good Rider had actually urged him to kill Walmesley. Regardless, Healy took them to prison in Helena, but the case did not go to trial for nearly a year due to lack of appropriations from Congress.<sup>38</sup> Despite the questionable jurisdiction of a U.S. court convicting a Native man from Canada for a crime committed in Canada, it was unclear whether Indians in Montana Territory were legally persons, despite the affirmative ruling in *Standing Bear v. Crook*. Spopee was also “indigent” in the eyes of Canadian law and this underscored his liminal status. Natives could not vote or serve on a jury in the U.S., but Indians in Montana and Dakota territories could in some instances serve as witnesses and give testimony in court. This was unusual, but it was nonetheless irrelevant because Spopee was from Canada and the 1876 Indian Act categorized

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<sup>37</sup> Farr, *Blackfoot Redemption*, 58.

<sup>38</sup> Farr, *Blackfoot Redemption*, 67.

Indians of the plains as “wards of the state” lacking legal standing in court. According to William Farr, “there was no definition of his rights as an Indian alien by the Americans, who were concerned only with the location of the murder, and neither the NWMP nor Canadian authorities demanded, or perhaps wanted, legal extradition.”<sup>39</sup> Representatives from Canada made no such request. Thus, Spopee’s was in a triple legal bind: he was a ward of the state as a Blackfoot south of the line, as an alien non-American and non-citizen of Canada who allegedly killed an Anglo north of the line, and he was a person of color in a U.S. territorial court.

His counsel sought humane representation of Spopee, but racial prejudice and the colonial nature of the legal system compromised the procedures. His court case began on November 29, 1880 in the federal grand jury of the Third Judicial District of Montana Territory, which charged that Spopee had “feloniously, unlawfully, and of his malice aforethought, did make an assault...in and upon the body of one Charles Walmesley in the peace of god and of the United States.” Associate Judge Everton J. Conger presided over the case. Good Rider was a witness against Spopee *and* he was on trial with Spopee until the Judge dropped the charges against Good Rider, but kept him as a witness against Spopee.<sup>40</sup> During the brief testimony by Spopee, he said that he killed Walmesley in self-defense, after Walmesley threatened to kill him. Spopee admitted that the murder occurred north of the boundary and he confessed that he and Good Rider dragged the body south of the line to avoid capture by the NWMP. In contrast to the willingness of the U.S. legal system to seemingly violate Canadian sovereignty and legal jurisdiction by ruling on a crime committed outside of the country, Spopee was cognizant of those legal boundaries. Addressing the judge, Spopee asked, “If it is good to hang me, why

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<sup>39</sup> Farr, *Blackfoot Redemption*, 71

<sup>40</sup> *Helena Daily Herald*, 27 December 1880, p3.



don't you let Macleod do it? I killed the man in his country.”<sup>41</sup> Spopee asked for witnesses, including White Calf, but the judge denied his requests on the basis that a “citizen” of another country lacked standing in U.S. Courts. Upon sentencing, Spopee said, “When I saw the Sioux I killed them; I stole their horses; my heart is brave. You are a great chief and can hang me, but you have no right to do so. I have spoken straight, and am done.” Unmoved, the Judge ordered Spopee’s execution.<sup>42</sup>

These peculiarities continued after conviction and sentencing. The judge rejected the defense team’s request for an appeal, but both Judge Conger and Governor Potts agreed to the commutation of the death penalty. President Hayes also approved postponement of the execution and Spopee was instead imprisoned for life.<sup>43</sup> Spopee was held in Detroit and later transferred to Washington DC for nearly thirty years. President Woodrow Wilson issued a pardon in 1914 and ordered the immediate release of Spopee and his return to Montana. He briefly gained notoriety for his travails, but he died within a few years of old age.<sup>44</sup> His story reveals on the one hand, the common practice of Niitsitapi people of crossing the international boundary, but on the other hand it exemplifies how the U.S. legal system would also violate Canadian sovereignty by extending its jurisdiction onto a crime committed beyond its own territorial space. The demand for justice in the killing of a white man by a person of color overrode the formal legal boundaries of the carceral state. The use of the legal apparatus to exact revenge for a white male American killed in another country, through the punishment of a Native person not enrolled in the U.S., demonstrated the power of U.S. imperialism to erase international boundaries and violate the rights of citizens and non-citizens at will.

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<sup>41</sup> Hugh A. Dempsey, ed. *A Blackfoot Winter Count*, 16.

<sup>42</sup> *Helena Daily Herald*, 27 December 1880, p3.

<sup>43</sup> *Benton Weekly Herald*, 16 June 1881, p.5.

<sup>44</sup> Farr, *Blackfoot Redemption*, 170.

Although the case against Spopee evidenced the closure of legal voids in the U.S. – Canada borderlands, there were other troubling trends facing Blackfeet that revealed their unlikely evasion of nation-state boundaries. As part of the effort to confine Blackfeet to the reservation and police their movement, in 1880 the U.S. Military rounded up Southern Piegan and “U.S. Blackfeet” and forced them onto the reservation. The Indian Bureau, bolstered by the remaining U.S. military forces, required Blackfeet to request permission to leave the reservation. In effect, the superintendents overseeing the reservation ignored the sovereignty of the Southern Piegan as noted in the Lame Bull Treaty of 1855. These actions mirrored the denial of agency and self-determination to Native people that characterized the court decisions of the 1880s.<sup>45</sup>

Blackfoot bands nonetheless crossed the international boundary and reservation borders as they tried coping with the decline in buffalo, the dangers of whiskey traffickers, and the attempts by Canada and the U.S. to assimilate them. The Indian Agent at Ft. MacLeod, Alberta, wrote to Agent John Young at the Blackfeet Agency in Montana, about several Nez Perce who had recently ridden with Blackfoot bands across the border. Young told him that six horses were stolen from the Flathead Reservation and that they had reliable information from Crane Bull, a “Piegan from Canada,” that those horses were taken to the Blackfoot Reservation in Montana.<sup>46</sup> An 1881 series of letters between US Commissioner of Indian Affairs Hiram Price to the Indian Agent in Browning acknowledged complaints from Montana residents that Blackfoot bands crossed the border with impunity. Young was especially cowed by territorial representative Maginnis, who observed that “Indians from the British Possessions and from our own reservations are roaming over the country hunting and...depredating upon the cattle of the

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<sup>45</sup> Farr, *Blackfoot Redemption*, 7.

<sup>46</sup> Letter from Macleod, Indian Agency Treaty No. 7, Ft. MacLeod, N.W. Territories, 3 July 1880 to Agent John Young, Blackfeet Agency; Folder 36, Box 5, Entry 5, Blackfeet Agency Letters Received 1873-1909.

stockmen.”<sup>47</sup> Tensions were similarly brewing north of the international boundary. Crowfoot told the Methodist missionary, John McDougal, “If left to ourselves, we are gone. The whiskey brought among us by the traders is fast killing us all off and we are powerless before the evil. We are unable to pitch (camps and lodges) anywhere that the trader cannot follow us. Our horses, buffalo robes, and other articles of trade go for whiskey, a large number of our people have killed one another and perished in various ways under the influence.”<sup>48</sup>

Such comments highlighted the changing nature of Blackfoot life throughout the Montana – Alberta Borderlands, where regimes of boundary maintenance had replaced the open grasslands. Rather than free movement across their homelands, *Niitsitapi* encountered myriad systems regulating where they lived and with whom they associated on both sides of the international border and throughout their reservations and reserves. Agent Keller from the Crow Reservation told the Commissioner of Indian Affairs that he wanted members of the fourteen lodges of Piegans, some of whom hailed from Canada, to leave the Crow reservation and relocate to the Blackfeet reservation. In response, the Commissioner chastised Agent Young on the Blackfeet Reservation to keep the Indians on their “proper” reservation and to stop them from trafficking horses across the reservation and international borders.<sup>49</sup>

Concerns about cross-boundary movement dominated correspondence between officials in both nation-states. Colonel Ruger, from the 18<sup>th</sup> Infantry out of Helena, contacted Agent Young about Blackfeet from the Judith Basin crossing the international boundary with stolen

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<sup>47</sup> Letter from Commissioner of Indian Affairs Hiram Price to Agent Young, 19 September 1881, Box 6, Entry 5, Blackfeet Agency Letters Received 1873-1909.

<sup>48</sup> Farr, *Blackfoot Redemption*, 23.

<sup>49</sup> Acting Commissioner of Indian Affairs to Agent Young, 4 April 1881, Box 6; Entry 5, Blackfeet Agency Letters Received 1873-1909.

cattle and horses. Ruger wanted to know how Young planned keep the Piegans on the reservation, how much rations they received, and whether there was game to hunt.<sup>50</sup> He added,

“Will you please give me any information you have or obtainable at the agency, as to The present whereabouts of the Blood Indians, Canadian, who were last winter in the same vicinity in the Musselshell Country with Indians belonging to your agency, particularly the Bloods of Running Rabbit’s band and those with him. I would also like to have any information you can give of bands, with names of chiefs, and numbers of lodges of all Canadian Bloods and Blackfeet that were this side of the boundary line last winter, where and when they crossed the line to this side, their routes and movements thereafter. I would be glad, also, for any information bearing on the general question of the presence this side the line of the Canadian Indians, their numbers, conduct, etc.”<sup>51</sup>

Numerous incidents highlighted the permeability of the border. During the spring of 1881 a party of Kainah left Montana into Alberta after a winter of hunting buffalo. U.S. troops encountered the group and told them that they could not offer rations because they were Canadian Indians. One of the soldiers noticed that Medicine Calf, who lived mainly in Canada, was wearing a medal from the U.S., which he received for signing the Lane Bull Treaty of 1855. Admitting that they were “American Indians,” due to the medal worn by Medicine Calf, the soldiers gave them food, but they must have been surprised as the group immediately returned north to Canada. In short, Medicine Calf crossed the border in an apparent rejection of the settler-colonial divisions across his homelands.<sup>52</sup> Like Medicine Calf, young Blackfoot men similarly crossed the line. One Kainah man named Both Sides recalled that he and other men “went [south] across the line to raid the Gros Ventres” during the 1880s. “It took us four days on horseback to reach their camps. During the night we went through the brush in the valley and stole the horses from the camp. After each of us had taken two horses, we rode northeast, and it

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<sup>50</sup> Letter from Ruger to Young 26 May 1881, Folder 39, Box 6; Entry 5, Blackfeet Agency Letters Received 1873-1909.

<sup>51</sup> Ruger to Young 27 May 1881; Folder 39, Box 6, Entry 5, Blackfeet Agency Letters Received 1873-1909.

<sup>52</sup> McManus, *The Line Which Separates*, 67.

took two days and nights of steady travelling before we reached home.” In 1886 and 1887 the deaths of members of the Blood band from Alberta brought extended relatives to the north, in blatant disregard for the prohibitions against crossing both the reservation boundaries and the international border. In 1889, “the Last War Party” of Kainah men from Canada went south against the Crows in Montana. Prairie Chicken Old Man, a leader of the incursion, recalled that they “crossed the invisible line into Montana Territory” and took revenge upon the Crow.<sup>53</sup>

Considering this cross border movement, officials in Canada and US accelerated their surveillance of reservation and international borders. US agents worked with the North West Mounted Police, churches, and boarding/residential schools to monitor Native people crossing the border. In 1894 the Agent in Browning wrote confidently to the Commissioner of Indian Affairs, “by an arrangement entered into between myself and those in charge of the Indians north of the 49<sup>th</sup> parallel the visiting of Indians of both countries is under complete control and the names of all those who were on the Agency and Canada rolls too and drawing rations at both places have been adjusted.” The Agent claimed that “Any Indians coming from the north without passes are arrested and returned; if they offence is repeated they are put to hard labor and then under police escort and made to return home.”<sup>54</sup> In 1895 an Agent at Macleod, Canada, wrote to George Steel at the Blackfeet Agency about “a number of Blood Indians...making a practice of running over to your reserve without passes and coming back with presents of blankets and clothing.” Wilson said he was most “anxious to keep these Indians as much as

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<sup>53</sup> McManus, *The Line Which Separates*, 68.

<sup>54</sup> Agent from, Montana, Blackfeet Reservation, August 15, 1894, to Commissioner of Indian Affairs, Box 7, Entry 5, Blackfeet Agency Letters Received 1873-1909 NARA-Denver.

possible upon the Reserve” and he thanked the U.S. officials for capturing “all Bloods on the Piegan Reserve without passes,” telling them to “act strictly by them.”<sup>55</sup>

Correspondence between agents revealed ongoing cross-border movement of the Confederacy. Agent Wilson on the Blood Reserve responded to a May 1895 letter from Steel in Montana, stating, “I shall be pleased to cooperate with you in keeping the Indians on their respective reserves, and shall give instructions to the Scouts to keep a good look out for strange Indians.” The concerns about keeping Indians on their reserves and watching out for “strange Indians” was indicative of the alarm over Natives’ refusal to remain fixed in one location. Wilson continued, “I am informed that one of *my Indians* [emphasis added] and his wife are at present on your reserve, and have been for a few weeks. The Indian is said to be building some houses and stables for *your Indians* [emphasis added], but as he is away without a pass I would be obliged if you could order him to return. His name is “Died Before” or “Snake Eater” and rumor says he is trying to get cattle from you as a South Piegan.” The use of the language such as “my Indians” and “your Indians” illustrates the power of the nation-state and its colonial functionaries to take literal and figurative possession of Native peoples without rights beyond what has been conferred upon them by the settler-colonial legal system and its matrix of categories and constructs. Wilson thought that the individual’s father and mother were also Blood Indians and that he did not see how the individual could be counted on the Montana reservation, because “he is registered with me and is in receipt of treaty.”<sup>56</sup> Wilson wanted Steel to return Blood members to Canada because they were “drawing treaty presents from the United

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<sup>55</sup> Letter from the Blood Reserve Agent at Macleod, Alta, CANADA, 5 April 1895 to Agent George Steel, Blackfeet Agency, Folder 115, Box 7; Entry 5, Blackfeet Agency Letters Received 1873-1909 NARA-Denver.

<sup>56</sup> Wilson, Blood Reserve Agent, Macleod, 3 May 1895 to Agent George Steel Blackfeet Agency, Folder 116, Box 7, Entry 5, Blackfeet Agency Letters Received 1873-1909 NARA-Denver NARA-Denver.

States Government” when they were on the Blood rolls.<sup>57</sup> In June of 1895 the North West Mounted Police captured a Blood man crossing the boundary. Writing to Agent Steel, the Mounted Police said of Walks Long Time Rattling, “I have the honor to acknowledge the receipt of your favour of the 11th instant, on this subject. The Indian in question . . . was arrested by our patrol, at the boundary line, as soon as he entered Canadian territory, and brought to this fort, where he remains in the guard room, pending being handed over to his agent.”<sup>58</sup> Traversing the international boundary which bisected the homelands of the Blackfoot Confederacy now constituted a criminal act that threatened the legitimacy of the nation-state.

The continued movement caused Indian Agents to request a military presence in Montana, although the Blackfoot posed no physical threat to the territory. Agent Thomas P. Fuller wanted the troops stationed at Ft. Assiniboine to simultaneously guard the reservation and international borders. Writing to the Commissioner in 1895, Fuller cautioned “. . . I think it is unwise to withdraw every soldier from this entire section of the country.” He pointed to “8,000 Blood, Blackfeet, North Piegan, all British Indians, who are constantly passing on and off” the reservation in Montana, when there were only a few thousand registered there. He claimed that the band members were all “related with the Piegan Blackfeet, and are of one Nation.” Thus, the military apparatus was now aimed at the incarceration of Blackfeet on the reservation and the enforcement of strict controls over trans-border movement.<sup>59</sup>

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<sup>57</sup> Letter from Wilson to Steel, 20 May 1895, Folder 116; Box 7, Entry 5, Blackfeet Agency Letters Received 1873-1909 NARA-Denver.

<sup>58</sup> Letter from District Office North West Mounted Police, Fort Macleod, NWT 14 June 1895 to Agent George Steel; Folder 117, Box 8, Entry 5, Blackfeet Agency Letters Received 1873-1909 NARA-Denver.

<sup>59</sup> Indian Agent Thomas P. Fuller to Commissioner of Indian Affairs, 10 May 1898, Volume 4b, Box 3, Blackfeet Agency, General Letters Sent, 1875-1915, Entry 3, NARA-Denver.

Agent Fuller's observation that the Piegan were "all of one Nation" was fairly accurate. Several decades of boundary maintenance and border enforcement as expressed through military force and judicial rulings failed to sever ties between bands and families moving across the Medicine Line. This transnational mobility saw an occasional display of state power, such as the Spopee case, in which the Montana legal system exercised its surprising reach in the arrest, trial and conviction of a Blood born in Canada for a crime committed in Canada against an American citizen. Beyond such flashes of exceptional state power, Blackfoot peoples quietly navigated a borderlands marked by legal voids and the jurisdictional cracks and fissures of a region that was not fully incorporated into the settler-colonial juridical regime.

In matters of kinship and custody, *Niitsitapi* families retained a degree of agency across reservation and international boundaries. The Albert Spearson case, which highlights this successful evasion of state interference in family matters, involved the custody of a Blood boy named Albert Spearson. The first mention of Albert Spearson appears in October 1906, in a letter from a "Canadian Blood" man named Bobtail, who wrote to the Agency in Browning about Albert Spearson, his nephew. Albert's father, Frank, died on the Blood Reserve in Alberta when he took Albert to see his family north of the line. Frank was enrolled on the Blackfoot Reservation in Montana, but his location of birth was unclear. In his letter to the Agent in Browning, Bobtail wrote, "Sir-I am very sorry to tell you that my brother Frank Spearson died a few weeks ago in this Reserve. His son, Albert, is staying here with me." Bobtail told the agent he was not sure when he could go to Browning since he was "very busy at this time of the year," but he hoped that the nephew could remain on the Blood Reserve.<sup>60</sup> The Agent from Browning

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<sup>60</sup> Letter from Bobtail Chief, Blood Reserve, Stand Off, Alta., CA., to Blackfeet Agent, 7 October 1906, pg. 53, Volume/book 34 31 October 1906 to 28 January 1907; Box 18, Blackfeet Agency, General Letters Sent, 1875-1915, Entry 3, NARA-Denver.



wrote back to Agent J. L. Levern, who oversaw the Blood Reserve, and asked him to tell Bobtail that the Commissioner of Indian Affairs was looking into the request.<sup>61</sup>

Responding to the Agent for the Blood Reserve in February of 1907, the Agent from Browning relayed the concerns of the Commissioner. “Sir- Bobtail, a half-blood [Blood] Indian belonging to your reservation, claiming to be the uncle of a boy named Albert Spearson, whose father, Frank Spearson, a half-blood Blackfeet Indian enrolled on this reservation, died during September last at Stand Off, Alta., desires that the boy, Albert Spearson, be transferred to the Blood Agency [Alberta].” The Agent said that the Secretary of the Interior wanted to know what the Blood Agent thought about Bobtail. According to the Agent in Browning, “The boy’s mother was, it is understood, a half-blood Blood Indian, but at the time of her death she was not a member of the Canadian Tribe of Indians, but was enrolled as a member of the Blackfeet tribe and was recognized as such.” This single statement revealed the interconnections between band members living on different sides of the border. Mrs. Spearson was mixed-race Blood Indian born in Canada and lacked “status”—probably because her Blood mother married a white man—but was registered on the rolls as a Blackfeet Indian in Montana. The Agent continued, “The boy has a half-sister married to Henry Potts, who lives on the North Piegan Reserve about fifteen miles west of MacLeod on the Old Man’s River. This sister was a child of [Frank] Spearson’s first wife and belonged to and was enrolled on this reservation [Montana].” The Agent in Browning concluded, “I would thank you to inform me of the character and habits of Bobtail Chief, and to know if in your opinion he is a proper person to have charge of the boy.”<sup>62</sup>

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<sup>61</sup> Letter from Blackfeet Agent to Agent J. L. Levern, Stand Off, Alta., 12 December 1906, pg. 288, Book/Volume 34 October 1906 to 28 January 1907, Box 18, Blackfeet Agency, General Letters Sent, 1875-1915, Entry 3, NARA-Denver.

<sup>62</sup> Letter from Agent, Browning to Indian Agent, Blood Reserve, Stand Off, Alta., Canada, 7 February 1907, Volume/book 34 31 October 1906 to 28 January 1907; Box 18, Blackfeet Agency, General Letters Sent, 1875-1915, Entry 3, NARA-Denver.

There is no documented response from the Agent on the Blood reserve, but the Agent from Browning again broached the subject that summer. Writing to Principal J. L. Lavern at the Catholic Boarding School in Stand Off, Alberta, he initiated a detailed investigation of the boy's lineage and enrollment of his family on various reservations and reserves. In one extremely long and convoluted sentence, the agent posed a series of questions. "It is desired to ascertain whether the boy's father originally came from Canada, and when he was enrolled at this Agency, whether Frank Spearson's parents were enrolled and recognized members of the Blackfoot Tribe in Montana; what relatives he has in Canada, and if he was ever enrolled there; when he left the Blackfoot Reservation and went to Canada, and if he intended to remain there and relinquish his rights as an Indian of this Country; when his wife died; and if the relatives, other than the boy's uncle, wish to have the requested changes made." As if he was answering his own questions, the Agent concluded: "It would appear, therefore that until a report can be had from the Agent at the Blood Agency, that the matter will remain at a standstill."<sup>63</sup>

After hearing nothing from the Blood reserve, the Agent from Browning sent a letter to Bobtail. "Referring to your letter of December 20 1906, relating to the transfer of your nephew, Frank Spearson's son, 11 years old, to the Blood Reservation, and stating that Frank Spearson in his last will . . . offered a strong wish that his son will stay among his relatives belonging to the Blood Reservation, it is requested that you send a copy of the will or such other testimony as you may have to prove the statements made by you." Apparently the Montana Agent was willing to approve the adoption and move north of the border, but the appearance of a close relative in Browning transformed the situation into a trans-border custody battle. Writing to Bobtail, the Agent expressed his concern about an aunt of the boy who "came in to the Agency today and

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<sup>63</sup> Letter from Blackfoot Agent to J. L. Lavern, Omni. Principal, Catholic Boarding School, Stand Off, Alta. Canada, 5 August 1907, pg 12, Book/Volume 36 14 May 1907-3 August 1907, Box 19, Blackfoot Agency, General Letters Sent, 1875-1915, Entry 3, NARA-Denver.

states that the father of the boy, before leaving to Canada, stated to her in the presence of witnesses that he felt he would never get well and that in the event of his death gave the boy to her and her husband and directed the disposition to be made of the property for the care and education of the boy.” The Agent referred back to his previous request for documentation of Frank Spearson’s wishes to leave the boy in Canada, “You are requested to furnish the information desired above, as early as practicable.”<sup>64</sup>

Correspondence about the matter fell silent until January 1908, when Bobtail went to Browning. Bobtail crossed the border because the aunt in the aforementioned letters secretly travelled to the Blood Reserve and, according to Bobtail, “stole” Albert and brought him to the Blackfeet reservation during the autumn of 1907. In addition to discussing the adoption of Albert, Bobtail spoke with Agent Jeremiah Z. Dare about allotment proceedings on the Blackfeet reservation and expressed his concern that Albert, who was due to receive 320 acres of land from Frank Spearson’s allotment, would lose his share. Writing to the Agent on the Blood Reserve, Agent Dare said that Bobtail was “still anxious when he left here to have the boy transferred to your agency.” The Browning agent added that it would be best for the boy to stay on Blackfeet, although he did not mention that to Bobtail, who left the reservation believing that he could to return and take Albert to Canada.<sup>65</sup> Moreover, the Commissioner of Indian Affairs advised that the boy should remain in Montana.

Very little documentation extends into 1909, but the scant letters between the Agents revealed that, in the late winter or early spring, Bobtail returned to Browning and took the boy to Alberta. It appears that the Agent in Montana did not approve—and perhaps was unaware of—

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<sup>64</sup> Blackfeet Agent to Bobtail Chief, Blood Reserve, Stand Off, Alta., Canada 19 August 1907, pg. 146, Book/Volume 36 14 May 1907-3 August 1907, Box 19, Blackfeet Agency, General Letters Sent, 1875-1915, Entry 3, NARA-Denver.

<sup>65</sup> Agent Dare to Indian Agent, Blood Reserve, Stand Off, Alta, Canada, 18 February 1908, Box 19, Blackfeet Agency, General Letters Sent, 1875-1915, Entry 3, NARA-Denver.

Bobtail's actions. Correspondence between the Browning Agency and the US Commissioner of Indian Affairs and the office of the Secretary of the Interior indicate that this flew in the face of their wishes to keep the boy in Montana. More impressively, the fact that the US Secretary of the Interior—or at least his office—weighed in on the fate of a young boy reveals the concern of federal officials about the surveillance of people moving across the international border.

Although the boy posed no threat to either nation, this level of interest revealed an uneasiness about the ability of the state to fix individuals to specific sides of the boundary. And contrary to the trend towards the calcification of the border and the strengthening of the legal regimes on both sides of the line, Blackfoot wishes won the day and Spearson found a home with his extended family in Canada. In effect, Blackfoot traditional laws about adoption and kinship trumped U.S. colonial efforts to keep the boy south of the line.

Between 1855 and 1915 the Blackfoot Confederacy saw their world turned upside down. The succession of broken treaties, military power, decline of the bison, concentration on reservations and reserves, the flood of non-Indians onto their homelands, and the debilitating impact of land allotment wrought undeniable changes to one of the most powerful nations of North America. Canadian and U.S. legal regimes—drawing upon a common well of settler colonial racial and cultural sentiments—categorized the *Niitsitapi* as wards of the state incapable of self-governance and denied equal status as citizens of the nation-state. Surrounded by a dizzying array of spatial and conceptual boundaries that proposed the simultaneous extraction of the Blackfeet from the national body politic and their assimilation into white society, members of the Confederacy undermined the power of the state in surprising ways. They refused to remain fixed to one reservation or reserve, they tried to maintain kinship networks across the Medicine

Line, and they sought whatever advantages they could in a homeland that had been rearranged with colonial maps, a capitalist economy, and a prejudicial legal system.

As the cases of Albert Spearson and Spoepee illustrate, the US-Canada borderlands was marked by the carceral power of the state, legal voids and jurisdictional uncertainty, and the power of the Blackfoot Confederacy to maintain their movement and self-determination.

Although these cases span a thirty-year period, they reveal the contradictory nature of Indigenous status vis a vis the Canadian and U.S. nation states: neither full citizens nor foreign nationals, Indigenous peoples like Spoepee and Spearson sat in the liminal space of colonial law. Lacking standing in either court system as a full legal person, Spearson had the unlucky burden of being a double ward of the state as a child and as a native person. Spoepee was similarly hamstrung as a murder suspect, a non-citizen of Canada, a First Nations man trapped in U.S. courts, and a person of color in the racially charged Montana-Alberta borderlands.

Surprisingly through the early 20<sup>th</sup> century, the nation-states had not fully incorporated the borderlands into legal, economic, or material territoriality. As Indigenous peoples continued to undermine the spatial and symbolic limits of US and Canadian citizenship, national status, and territorial integrity, they spoke to the depths of the relationship with their aboriginal homelands. The clean and clear boundaries demanded by Ottawa and Washington could not encapsulate the longstanding geographies of the *Niitsitapi*. The nationalization of the borderlands that was symbolized by the US-Canada Boundary Commission, customs houses, and the establishment of the Northwest Mounted Police revealed the limits of state building at the fringes of the nation. The boundaries of the reservations and reserves that should have contained the Blackfoot peoples and facilitated their cultural transformation into yeoman farmers were as equally permeable as the international boundaries that sought the segregation of “Canadian” and “American” Indians.”

If, as some scholars have suggested, nations are made at their borders, Indigenous peoples such as the Blackfeet retained their own homelands, and in the process, unmade the borders that sought to separate and divide them.