

# Canada, Sovereignty and the Alaska Boundary Dispute<sup>1</sup>

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<sup>1</sup> This is a chapter of a book on the evolution of Canadian sovereignty vis-à-vis the United States in the Arctic/North. The Alaska Boundary Dispute is first case study (in the book and chronologically) as Canada moves from its first phase of “domestic sovereignty” toward gaining full “Westphalian” and “international legal sovereignty”. The book’s core purpose is to broaden the definition of “interdependence sovereignty” to include geographic realities in North America, requiring institutionalized structures between the US and Canada to deal with the growing role of the Arctic/North. This typology is from Krasner (1999).

## I. The Evolution of Canada's Sovereignty

Canada's sovereignty in the North has been, and remains, a particularly sensitive topic that is intertwined with Canadian identity overall.<sup>2</sup> However, sovereignty as a concept in the study of international relations and foreign policymaking does not have a single, clear definition. Krasner offers a typology of sovereignty, which proposes four categories: domestic, Westphalian, international legal, and interdependent (Krasner 1999). This chapter begins the illustration of Canada's sovereignty evolution with the 1903 Alaska Boundary Dispute.<sup>3</sup> The Alaska Boundary Dispute also is a watershed event in Canadian-US relations and sets the stage for a better understanding of interdependence sovereignty in the 21<sup>st</sup> century.

A background to the Alaska Boundary Dispute is complicated because it occurred during a time when Canada did not have control over its own external affairs. Great Britain did, and had many other concerns over and above Canada. From a foreign policy point of view, historical accounts need to be cross-checked, as many concentrate on various aspects, such as the view from British Columbia, versus a broader narrative that ties together events that do not appear on the surface to be related, yet actually are inextricably linked. Of primary concern to the Dominion of Canada and the province of British Columbia was the possibility that a strip of the Alaskan panhandle would give British Columbia no saltwater coastline at all. However, as Canada had little say in its foreign policy at that time, it was forced to be a virtual bystander as the dispute was resolved primarily between the interests of Great Britain and the United States. It is a chapter of Canadian history that is not remembered fondly, but leadership at the time was moving toward gaining more autonomy, or sovereignty, in own external its affairs.

The chapter begins with a brief overview of Krasner's (1999) definitions of sovereignty (see chapter 1). Next the background to the 1903 Alaska Boundary Dispute is presented. This is followed by a description of another border dispute between Venezuela and British Guiana,

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<sup>2</sup> The Arctic Boundary Dispute took place below the Arctic Circle, but is relevant as it is in the psychological "North" in the minds of Canadians, as well as many in the US. Cavell (2011) writes that while the Laurier Government was concerned about Canadian sovereignty in the Arctic from the onset, it was the Alaska Boundary Dispute that "made Canadian officials aware for the first time of the importance of effective occupation" (290). Its impact on the scholarship of the Arctic is significant. Recent publications that focus on Canadian sovereignty in the Arctic include Griffiths, Franklyn, Rob Huebert and P. Whitney Lackenbauer. 2012. *Canada and the Changing Arctic: Sovereignty, Security, and Stewardship* (Waterloo, ON: Wilfrid Laurier University Press); Lackenbauer, P. Whitney. 2011. *Canadian Arctic Sovereignty and Security Historical Perspectives* (Calgary, AB: Center for Military and Strategic Studies); Lajeunesse, Adam. 2016. *Lock, Stock and Icebergs: A History of Canada's Arctic Maritime Sovereignty* (Vancouver: UBC Press); Jones, Halbert, Dawn Alexandria Berry, and Nigel Bowles, eds. 2016. *Governing the North American Arctic: Sovereignty, Security, and Institutions* (Palgrave Macmillan, 2016); and Elliot-Dixon, Elizabeth. 2017. *Breaking the Ice: Canada, Sovereignty, and the Arctic Extended Continental Shelf* (Toronto: Dundurn).

<sup>3</sup> The bulk of this is chapter a case study that applies the concept of sovereignty; the book introduces a broadening of Krasner's "interdependence sovereignty" that includes the concept of a geopolitical necessity between Canada and US for institutionalized cooperation in the North, most of which applies to the Arctic.

including its impact on the Alaska Boundary Dispute. The next section explains how the Alaska Boundary Dispute was resolved, followed by an analysis of Canada's sovereignty evolution during this period with reference to Krasner's sovereignty typology. The conclusion describes how the book will proceed.

## II. Sovereignty

As presented in a previous chapter on the applications of sovereignty as a concept, sovereignty has been approached in multiple ways. For example, popular sovereignty is the subject of many studies on Canadian democracy, defined as "...the liberal principle that government must be based on the consent of the governed" (Atkinson 1994: 718-719). Sovereignty in the study of international relations usually concentrates on issues of independence and authority, in particular with reference to domestic authority and self-governance without interference from another state. What Krasner refers to as Sovereignty: Organized Hypocrisy in his *magnum opus* (1999), pure sovereignty is a principle in international relations that, in the real world, is constantly violated.<sup>4</sup>

The first is domestic sovereignty, which refers to authority and control by a government within its own borders, whether or not it is formally organized, as well as its effectiveness (Krasner 1999:4). Canada enjoyed domestic sovereignty beginning with the 1867 Confederation (see Figure 1).<sup>5</sup> However, Canada, as a Dominion of the British Empire, had constitutional and legal oversight from Great Britain, and had no "ability to conduct external relations" (Krasner 1999:11).

A second category of sovereignty, Westphalian, reflects facts on the ground, as opposed to strict definitions of international law. A form of *de facto* authority, a given state rules supreme and alone on its own territory without external interference into its decision-making institutions and authority structures. This contrasts with the third form, international legal sovereignty, which concentrates on the *de jure* status of a state, often indicated by official recognition and centering on the existence of authority rather than control. Related to the act of state doctrine in international law, also known as juridical independence, authority means that an act within one country cannot be judged in the courts of another country.

Canada began to evolve toward *de facto*, or Westphalian sovereignty, after World War I when it signed the Treaty of Versailles and joined the League of Nations. It evolved further with the 1923 Halibut treaty with the United States, which was negotiated without representatives of Great Britain (see Figure 1). States that have full international legal sovereignty can join international governmental organizations, sign treaties and enjoy diplomatic immunity for official government representatives. Confusion arises when states act as though they enjoy these characteristics, or have been treated as though they do, yet lack full recognition. With reference to Canada, it practiced full international legal sovereignty in its external affairs after Parliament in

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<sup>4</sup> The order of these four types of sovereignty is essentially arbitrary. "These four meanings of sovereignty are not logically coupled, nor have they covaried in practice" Krasner 1999:9). For Canada, it makes chronological sense to present the meanings in the order as presented.

<sup>5</sup> The idea of confederation in Canada began as early as 1839. The provinces party to the Confederation of 1867 were Ontario, Quebec (known pre-Confederation as Upper Canada and Lower Canada, respectively), Nova Scotia and New Brunswick. By 1880, its territory was complete with the exception of Newfoundland and Labrador, which joined in 1949.

London passed the 1931 Statute of Westminster. In constitutional matters, however, Canada remained, technically, under the authority of Great Britain until the latter's parliament passed the Canada Act in 1982.<sup>6</sup>

The final form of sovereignty is interdependence sovereignty, referring to control over what (or who) passes over a state's border, reflecting a modern reality of a more globalized world with modern technologies that support increasing transnational activities (Krasner 1999:4,11). The 1903 Alaska Boundary Dispute sets the stage for a better understanding of interdependence sovereignty in the 21<sup>st</sup> century.<sup>7</sup>

In 1903 Canada did enjoy domestic sovereignty, but neither Westphalian nor international legal sovereignty. As mentioned, Canada at that time had the status of a British Dominion. As a Dominion, Canada controlled much of its domestic policy, but not foreign policy. For example, Canada could not sign treaties independent of Great Britain.

While the Alaska Boundary Dispute did not occur in the Arctic, this episode is very much a part of the story of Canada's North. Canadian identity is heavily invested with the North, even though fewer than 1% of Canadians actually live or travel above the Arctic Circle.<sup>8</sup> On the North American continent, it can be argued that Canada's identity is, consciously or not, considered unique and distinctly separate from US identity due in large part to its far North, especially its Arctic Archipelago and waters. The Alaska Boundary Dispute is viewed by many Canadians as the beginning of a "perennial threat" to its Arctic (Huebert and Lackenbauer 2016:143).<sup>9</sup>

### III. Background to the 1903 Alaska Boundary Dispute Tribunal

Considering what would become the province of British Columbia and the state of Alaska, competition over sovereignty in the northwestern part of North America, in other words authority and control, was not settled at the beginning of the 19<sup>th</sup> century. In 1821, Russia claimed a monopoly over trading, trapping, whaling and fishing on the islands and waters of the northwestern part of the North American continent from the Arctic to as far south as 51° north, which included the northern part of Vancouver Island. In addition, they intended to bar passage of non-Russian ships out to 100 miles from the coast. Neither the British nor the Americans accepted Russia's claim and the controversy was, in part, behind the December 1823 Monroe Doctrine (Smith

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<sup>6</sup> With reference to Canada's constitution, between 1931 and 1982, Great Britain did not exercise its authority, manifested in the Judicial Committee of the Privy Council (JCPC). It was, however, a final court of appeal technically until 1949 (criminal appeals to the JCPC ended in 1933 and civil appeals in 1947). Constitutional controversy, while an important component of Canada's transition from Dominion to a fully 'sovereign' state, is covered in another chapter.

<sup>7</sup> This chapter is part of a book that places emphasis on expanding Krasner's definition of interdependence sovereignty to include geopolitical realities, in particular as it relates to US/Canadian security relations in the North, including the Arctic.

<sup>8</sup> Midpoint in the 20<sup>th</sup> century, Siegfried (1947) wrote that Canada's North "constitutes a factor of great importance to the Canadian personality" as it holds a "mystic appeal" comparable to the US's identity with its Western frontier (25).

<sup>9</sup> Huebert and Lackenbauer go on to write that US has had a "preoccupation with continental security since World War II. In practice, Canada and the United States have long collaborated in the Arctic through bilateral defense..." (143).

2014:73). The US would sign a treaty with Russia in 1824, with Great Britain following in 1825. Russia and the US agreed that their respective zones of influence would meet at 54° 40' (Penlington 1972:8-9). After multiple rounds of negotiation, the 1825 Russia-British treaty stated that Russian claims also ended at 54° 40'. Specifically, "upon the continent and towards the east, this frontier could run along the mountains which follow the sinuosities of the coast as far as Mount Elias" (Chevalier de Pletica, as quoted in Tansill 1964: 125, *spelling in the original*). This allowed Russia a "*lisière*", or continuous narrow strip along the coast to conduct trade, fishing and whaling, while Britain retained control inland. In terms of sovereignty, Russia and Great Britain exercised authority, or international legal sovereignty, in their respective spheres of influence, but did not attempt much in the way of control, such as military installations, policing, or established local governance.

The 1825 treaty would become the primary source of disagreements in the Alaska Boundary Dispute.<sup>10</sup> This was due primarily to the poor and often inaccurate maps available at the time, as well as the reproduction of some of the earliest inaccurate maps in the intervening years. The original maps from Vancouver's initial exploration in 1793 (Vancouver 1798), and well as the maps used for the 1825 Anglo-Russian treaty, contained errors. What exactly the errors were, and how they impacted the 1825 Anglo-Russian treaty, were points of serious contention (Begg 1902:1385-1386).

One issue is sufficient to illustrate the confusion.<sup>11</sup> With reference to the "*lisière*" mentioned above, Article IV of the 1825 treaty puts the limit up to mountains along the coast, not to exceed ten marine leagues. What is a "coast", where land meets ocean? One claim from British Columbia asserted that the meaning of "ocean" refers only to the high seas, as opposed to including salt water in and around the islands of the Alexander Archipelago (Gosnell 1897:99, Hodgins 1903a:6). This point of view would have given most of the channels and inlets to Canada, including the Lynn Canal, the head of which was the primary gateway to the Yukon gold fields. An argument for the US pointed to a discrepancy in the French text versus the English text (French being the language of Russian diplomacy in 1825; the treaty was published in both languages). Davidson (1903:89-90) asserts that the word "*lisière*" was translated in Article IV incorrectly from French to English as the "line of the coast" rather than "strip", which would give the US all saltwater access (which was one result of the arbitration). Add to this the fact that the exact location of mountains near the coast was known not to be complete and accurate.

For years there were repeated calls to have the area properly surveyed but the cost was deemed too high in relation to possible benefits. In fact, the US did not make a serious attempt at mapping the interior of the state of Alaska until 1895 (Fitzgerald 1951:3). As early as 1863, voices in the then-colony of British Columbia recommended that the British make the Russian holdings official British territory (Tansill 1964:130), calls that would become a Canadian issue once British Columbia became a province in 1871. The US, however, acted first, purchasing Alaska from Russia in 1867 for \$7.2 million. What the media would ridicule as "Seward's Icebox" and "Seward's Folly", matched US policy reflected in the Monroe Doctrine. Alaska would not be Russian, or British, but due to the Canadian Confederation earlier in the year, the US did not want Alaska to be Canadian. At first the population actually declined, as many Russian nationals left

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<sup>10</sup> One of the most complete treatments of the subject is Penlington, Norman. 1972. *The Alaska Boundary Dispute: A Critical Reappraisal* (Toronto: McGraw-Hill Ryerson Limited).

<sup>11</sup> The arbitration addressed seven primary questions (see UN 2006:488).

whereas few Americans came (Smith 2014:79). British interest in the "North" of North America was weak as well, as evidenced by the decision to transfer jurisdiction in 1870 of "Rupert's Land" (the Hudson Bay Company's holdings) and what then was known as the North Western Territory. This was followed in 1880 with the remainder of the Arctic Archipelago. In just 13 years, Ottawa held "sovereignty" over most of what is Canada today.

No states challenged the legality of these moves and, at the time, no borders were contested. One diplomat wrote, "The object in annexing these unexplored territories to Canada is, I apprehend, to prevent the United States from claiming them, and not from the likelihood of their proving of any value to Canada" (as quoted in Smith 1966:203). London felt it more expedient to have these remote lands under the immediate responsibility of Ottawa rather than London, and it was believed that the US would not object, which, initially, it did not (203). Smith (1966) writes, "Whether these were genuine cessions in the international sense is doubtful, since in each case one form of British sovereignty was substituted for another" (201). In other words, as part of domestic sovereignty, Canada had authority over vast lands, but did not exercise much in the way of control in the far North. It should be noted that maps in the Arctic also were incomplete at the time of these transfers. Canada did not have relatively sound information about its Arctic possessions until the Low expedition of 1903-1904 (Grant 2010:202).<sup>12</sup> Due to the Alaska Boundary Dispute, Arctic explorations conducted by the US as well as Sweden and Norway (one single state until 1905), Canada was prompted to exercise "greater activity regarding the Far North" (Cavell and Noakes 2010:73). This would move towards *de facto* control, or Westphalian sovereignty, through the establishment of, for example, permanent Royal Canadian Mounty posts that would send and receive mail, register births, marriages and deaths, and maintain law and order.

Gold also played a large part in the evolution of sovereignty as related to the parties to the Alaska Boundary Dispute, including clarifying borders. The Fraser Canyon, British Columbia, gold rush of 1858 prompted Great Britain to make British Columbia a formal colony in the same year. In 1871, British Columbia became a province of Canada. A quarter century later, in 1896, gold was discovered in the Yukon Territory (see Figure 2). Thousands of miners poured into this remote region, but to get the gold fields in Canada's Yukon Territory, the vast majority came in from the American-claimed Pacific Coast and then through territory claimed by British Columbia. Quickly the lack of a clear border became a problem, as jurisdictions were disputed. Miners were forced to transit both American and Canadian posts, often paying taxes to both. For example, at the foot of the famed trail to the Chilkoot Pass, miners began in US territory, made the steep 1000 foot climb laden with supplies, only to be greeted at the top by the North-West Mounted Police (see Figure 2).<sup>13</sup> Most of the supplies and provisions the miners acquired came from the Washington state cities of Seattle and Tacoma.<sup>14</sup> The boon of business generated by the Yukon gold rush would be instrumental in the growth of both cities. It is not surprising, therefore, that the events surrounding the Alaska Boundary Dispute would be intensively sensitive to provincial

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<sup>12</sup> See Low, Alfred Peter. 1906. *Report on the Dominion Government Expedition to Hudson Bay and the Arctic Islands on Board the D.G.S. Neptune 1903-1904* (Ottawa: Government Print Bureau).

<sup>13</sup> Other ways to get to the Yukon gold fields proved impractical. An attempt from Edmonton by J. D. Moodie of the Northwest Mounted Police took 14 arduous months, and travelling down the Yukon River from Alaska was very long and costly (Zaslow 1971:107/104).

<sup>14</sup> Washington became a state in 1889.

leaders in British Columbia and state leaders in Washington state, exceeding those in Ottawa and Washington, D.C., much less London.

As mentioned, most of the miners were not Canadian. At one point, Dawson (Yukon Territory) became the largest Canadian city west of Winnipeg, but the majority of inhabitants were American citizens (Berton 1960:325).<sup>15</sup> Canada did move quickly to establish domestic sovereignty in the Yukon, with police and government administration (Zaslow 1971:108-110). However, an international squabble that was near and dear to British Columbia, as well as Washington state, was not a British priority. This is critical, as Canada was not a fully "sovereign" state, rather a Dominion. Though Canada had established domestic sovereignty in many parts of British Columbia with organized and effective authority and control (with a lesser presence in the Yukon Territory), foreign policy decisions were made in London, not Ottawa. This included border disputes with other nation-states. In fact, it would not be until 1928 that Great Britain would have a High Commissioner to Canada (the functioning equivalent of an ambassador). As for British Columbia itself, it exercised domestic sovereignty within the province, as part of a federal system of government based in Ottawa. Still, Canada at that time was a Dominion of the British Empire.

#### IV. The Alaska Boundary Dispute Runs Through... Venezuela

Thousands of miles away, events that on the surface would appear unrelated made the Alaska Boundary Dispute a landmark event in US-British, and ultimately US-Canadian relations. Canada's treatment in the Alaska Boundary Dispute cannot be fully understood in isolation of the US-British relationship relevant to the Venezuela border dispute of 1895-96, described by one historian as "one of the most momentous episodes in the history of Anglo-American relations" (Humphreys 1967:133) and "one of those major shocks which compel the theory of international relations to adjust itself to the new facts" (Burn, as quoted in Humphreys 1967:133). As would be seen later with Canada, interest in British government and public circles was low, while even the American public was invested in the Venezuela dispute. Great Britain's attention was on Europe, in particular Germany.<sup>16</sup> Historians disagree as to how close the US and Great Britain came to war during this time, but clearly the US's position as a global actor rose. As will be seen in the Alaska Boundary Dispute, gold plays a prominent role.

Venezuela won its independence from Spain in 1821. Great Britain acquired what would become British Guiana from the Netherlands and consolidated it into a single colony in 1831. However, the border with Venezuela was never fully agreed upon. In 1835, a German naturalist, Robert Schomburgk, began his first exploration of the colony, producing in part a rough map that would be published by the British government in 1840. The 1840 map was known as the "Schomburgk Line", but it contained errors, and often was confused with later maps of the same name. Much more accurate maps were produced for the British Colonial Office by Schomburgk

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<sup>15</sup> Most of the population were not miners, representing occupations from bankers, doctors and lawyers to saloon keepers and prostitutes (Zaslow 1971:116-177). Still, most were Americans.

<sup>16</sup> At this time, in particular, the British public were fixated, and outraged, by the "Kruger telegram" of January 2, 1896, a provocative communication from Germany's Kaiser Wilhelm II to the president of the Transvaal following a failed attempt by the British to create a pro-British uprising (Frederick 1999:329). These events would contribute to the second Boer War of 1899-1902.

in the early 1840s, but were not published until 1886, depicting the actual "Schomburgk Line". The later, and more accurate maps, gave British Guiana more territory at the expense of Venezuela (Humphreys 1967:136-137). As would occur later in the Alaska Border Dispute, there was little motivation to clear up the matter until the discovery of major goldfields made it worthwhile. When the Venezuela border dispute heated up, and due to sloppiness over maps, the British claim appeared not only unduly grandiose, but also "mysterious" and "pitiful" to some, including US President Grover Cleveland (Cleveland 1904:221).

Rumors of gold in the contested territory began as early as 1849, but it would be thirty years before it was found in sufficient quantities to become an issue.<sup>17</sup> In 1876, Venezuela began a series of requests to the US to enforce its Monroe Doctrine, and either take the lead in arbitration with Great Britain or use military force to settle the matter. Again, as would be experienced in the Klondike gold rush when Americans poured into Canada's Yukon Territory, so many outsiders came that by 1884 the gold fields had "more the appearance of an English Colony than a part of the Spanish-speaking Republic of Venezuela", with over 8000 British subjects. This contrasts with the Alaska Boundary Dispute, as many of the British in Venezuela had lived there for multiple generations (Grenville and Young 1966:174, Reddan 1884:145). While Great Britain may not have had *de jure* status in some of the territory (international legal sovereignty), they did exercise *de facto* control (Westphalian sovereignty). In October 1886, Great Britain claimed that the border was along the 'Schomburgk Line', as delineated by its 'new' map (just published, but in fact dating to the 1840s). Four months later Venezuela broke diplomatic ties with London. Again similar to the Alaska Boundary Dispute, "By 1892 rival police or military stations faced each other" in the disputed territory (Humphreys 1967:141). As mentioned, Venezuela sought the intervention of the US, often citing the Monroe Doctrine, but for many years the US showed little interest in the matter (Perkins 1963:171-173).

This would change under the influence of a former US diplomat, William Lindsay Scruggs, with the assistance of José Andrade, Venezuela's Minister to the United States. Playing fast and loose with the facts, Scruggs wrote a pamphlet (1895) that not only brought the issue into the public eye, but portrayed Great Britain in an unfairly villainous light, glossing over a complicated diplomatic history and creating a surge of American nationalism centered on the Monroe Doctrine, manifesting what was termed at that time as 'jingoism'.<sup>18</sup> This pamphlet, "British Aggressions in Venezuela, or the Monroe Doctrine on Trial", was sent far and wide to American newspapers, libraries and politicians. Scruggs even met with President Cleveland twice.<sup>19</sup> Great Britain was

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<sup>17</sup> During the "boom" years that began in the 1860s and extended until 1886, over a million ounces of gold was mined.

<sup>18</sup> Today 'jingoism' might be referred to as a nationalistic 'flag waving' or 'rallying around the flag'.

<sup>19</sup> While successfully putting the Venezuelan affair into the public light, all the way to the desk of the President, Scruggs himself was no fan of Venezuela. During his tenure as ambassador to Caracas (1889-1892), he wrote that "There has not been an honest and clean administration of government in Venezuela for thirty years... The moral sense of the country seems hopelessly debauched" (as quoted in Grenville and Young 1966:128). He never advocated for Venezuela vis-à-vis the boundary while serving the State Department (128). In fact, his dismissal in 1892 occurred when it was brought to the attention of Secretary of State John W. Foster that Scruggs himself had bribed then Venezuelan President Andueza Palacio, a fact that did not come to

portrayed as an aggressive land thief, as the pamphlet repeatedly linked sovereignty with territorial integrity, referring to what is known today as Krasner's (1999) domestic sovereignty. This view was not helped by the fact that, again bearing a strong resemblance to attitudes concerning the Alaska Boundary Dispute, "Neither the Foreign Office nor the Colonial Office had ever bothered itself much about public opinion in the United States" (Humphreys 1967:144). In 1903 there was little concern in London about attitudes in Canada, and the province of British Columbia in particular, relative to the North.<sup>20</sup>

An additional link between the Venezuelan and Alaskan boundary disputes was the involvement of Senator Henry Cabot Lodge of Massachusetts. Encouraged to become involved in the former by Scruggs, Lodge published his own article on the issue in the *North American Review* (1895), stretching the 'truth' even further, whipping up the American public (with a lot of help from the media) even further (Humphreys 1967: 144-147). Contrary to Lodge's claims, while Great Britain was no longer seriously engaged in efforts to increase their territory in the Western Hemisphere, it was becoming more involved in legal issues. Lodge played on this, declaring on March 2, 1895, that "The Monroe Doctrine rests primarily on the great law of self-preservation... We must be the leaders in the Western Hemisphere" (Lodge 1909:235/238). This same politician would be selected for the Alaska Boundary Dispute arbitration, as an "unbiased jurist", even though in this same speech he had already declared "They are attempting to take land on the Alaska boundary" (240). Alternately, even when Canada went from a Dominion with domestic sovereignty at home to full *de facto* and *de jure* control of its foreign policy and constitution (Westphalian sovereignty and international legal sovereignty), it did not follow policies similar to the US Monroe Doctrine in the Western Hemisphere. For example, Canada did not become a member of the Organization of American States (OAS) until 1990, after 28 years of observer status.<sup>21</sup>

It was not until 1895 that a newly appointed Secretary of State, Richard Olney, insisted that Great Britain agree to arbitration. Olney, in public, appeared to be a staunch supporter of the Monroe Doctrine. He wrote, "The rule in question has but a single purpose and object. It is that no European power or combination of European powers shall forcibly deprive an American state of the right and power of self-government and of shaping itself its own political fortunes and destinies... That distance and three thousand miles of intervening ocean make any permanent political union between an European and an American state unnatural and inexpedient will hardly be denied" (Olney 1895:555-556, *spelling in the original*).<sup>22</sup> In the same year, President

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public light until the 1960s (Grenville and Young 1966:132-134). A year after his dismissal as US ambassador, Scruggs was employed by Venezuela for \$127.00 per month to represent their interests concerning the boundary dispute with Great Britain. For a critical discussion of Scruggs' influence, see Hamilton 2010:123-156.

<sup>20</sup> Hamilton (2010:197) points out that there were no modern-style, scientific "polls or surveys" of the American public at that time to truly measure the views of the general public.

<sup>21</sup> The OAS formally dates from 1948, but has its origins in the 1889 International Conference of American States, organized by the US.

<sup>22</sup> Not all US diplomats agreed with an absolute support for the Monroe Doctrine and a concomitant harsh stance against Great Britain, including Olney's predecessor, Walter T. Gresham, Secretary of State from 1893 until his death in 1895, as well as Bayard, former Secretary of State (1885-1889) and US ambassador to Great Britain from 1893 until 1897 (Tansill 1969:650-781). In

Cleveland inflamed the situation further by requesting, and receiving unanimous support, for Congressional approval to create an arbitration commission whose decision would be implemented "by every means". Fueled by 'jingoism' and an enthusiastic media, rumors of war between the US and Great Britain were broadly disseminated among the American public.<sup>23</sup> "Shocked" (Humphreys 1967:156), and facing conflict in South Africa, a belligerent Germany, and with no major allies at hand, Great Britain did not want to antagonize the United States.<sup>24</sup> The Prime Minister, Salisbury, reluctantly but with the full support of the Cabinet, agreed to arbitration between Great Britain and the US. The resulting high hopes in Venezuela would be dashed, however, when the decision on October 2, 1899, confirmed most of the British claims based on the Schomburgk Line, as depicted in the later, more accurate maps. In fact, the Venezuelans were barely consulted throughout the arbitration process (Young 1942:275-276). Venezuela had little choice but to ratify the decision.

Two points in the process have strong relevance to the Alaska Boundary Dispute. First was the way the members of the arbitration tribunal would be chosen. Initially it was decided that there would be two representatives for Venezuela, both chosen by the US Supreme Court. Following strong objections by Venezuelan President Joaquín Crespo, he was allowed to nominate one of them. After winning this compromise, Crespo ended up selecting the Chief Justice of the US Supreme Court (Humphreys 1967: 160-162). In the Alaska Boundary Dispute, Canada was not allowed to select any of the arbiters (see below).

Second, British Secretary of State for the Colonies Arthur Chamberlain insisted territorial claims be based on both settlement and "effective occupation", defined as "trading posts at strategic points, general administration and use of the territory between these points, and permanent connection with the native tribes covering the area so administered" (Wingfield, as

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addition, one historian describes Olney as "simply pro-American" rather than "anti-English" or "pro-Venezuelan" (Humphreys 1967: 151).

<sup>23</sup> Presidential address to Congress, December 17, 1895, <http://millercenter.org/president/cleveland/speeches/message-regarding-venezuelan-british-dispute>, accessed August 20, 2016. The weight of evidence indicates that the US government never seriously contemplated war or took seriously even threatening war (Young 1942:259). In addition, the business community was critical of the president's speech due to negative market reactions, such as the December 20<sup>th</sup> New York Stock Exchange panic. Criticism also was found in academic circles (Tansill 1969:727-728).

<sup>24</sup> In terms of economic trade, in the 1890s trade between Great Britain and Latin America was much more significant than Great Britain with the United States. However, the US was recognized as a significant rising power and a better choice for future economic growth (Humphreys 1967: 146-147). Debate exists as to the economic reasons for the US decision related to Venezuela. See LaFeber 1963:242 and Hamilton 2010:125. Both historians believe this chapter in US history is "crucial". Hamilton also points out at this point, Canada was the US's greatest recipient of American exports (197). Burpee's numbers are different, asserting that in the 1903-1904 fiscal year, the US exported to Canada between \$131,000,000 (the US estimate) and \$143,000,000 (the Canadian estimate), the most to any nation after Great Britain and Germany. Canadian exports at that time were \$66,800,000 to the US and \$110,000,000 to Great Britain (Burpee 1905:565-566). It would be the extensive destruction suffered in Great Britain during World War II that would result in a permanent shift by Canada of international trade from Great Britain to the United States.

quoted in Humphreys 1967:160).<sup>25</sup> In other words, "... the arbitrators must take into account not only long-occupied occupation in the sense of settlement, but also long-continued political control of territory neither actually used nor occupied" (Humphreys 1967:160). The matter of settlements would differ in the resolution of the Alaska Boundary Dispute, which lacked generations of British subjects in long established settlements. In the language of Krasner's sovereignty, Great Britain was demanding that decisions concerning the boundary dispute with Venezuela take into account both international legal sovereignty (*de jure* authority) as well as Westphalian sovereignty (*de facto* authority and control, including domestic sovereignty organized and effective governance).<sup>26</sup> This standard would weaken Britain's claims in the Alaska Boundary Dispute.

The causes and resolutions of the Venezuela border dispute are relatively unknown to most Americans today, but many historians consider this a watershed event. "For the first time, Britain unwillingly bowed to US diplomatic pressure in a dispute in which the USA was not directly involved" (Gibb 2005:24). The United States not only reinforced a foreign policy with a foundation in the Monroe Doctrine, it also showed its willingness to project power abroad. In addition, the US asserted itself in the form of an ultimatum to a long-standing world power -- Great Britain -- even though in 1895 the US had only one "modern" battleship (Perkins 1963:154/185).<sup>27</sup> In other words, the US was starting to think and act like a world power to be taken seriously. The view from Great Britain confirmed the US's rise; "With this decision Britain in effect recognized the right of the United States to intervene in the Anglo-Venezuela dispute" (Humphreys 1967:157).<sup>28</sup>

Britain's collaboration with Germany in 1902 also was intensely unpopular with the British public and members of the government in London. Germany was viewed as "faithless", while "cordial relations with the United States the one principle of foreign policy" on which the British Prime Minister Balfour, Secretary of State for the Colonies Joseph Chamberlain and Secretary of

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<sup>25</sup> Citation from Humphreys: "Wingfield to Sanderson, 5 Aug 1896, F.O. 80/373", p. 106, fn2.

<sup>26</sup> A settlement and "effective occupation" was set at about two generations, specifically 50 years.

<sup>27</sup> In the 1895-1896 54<sup>th</sup> Congressional funding was approved for three more "first class" battleships and ten torpedo boats, reflecting the geopolitical ideas of Alfred Thayer Mahan that sea power was critical to international power (Perkins 1963:185-186). That capability, however, had yet to materialize (Brebner 1945:251).

<sup>28</sup> Settling the boundary between Venezuela and British Guiana did not end the troubles. As the Alaska Boundary Dispute was lurching forward, and following years of Venezuelan attacks against shipping as well as a failure to pay debts, Great Britain and Germany began a blockade against Venezuela on December 10, 1902 (Monger 1976: 104-107). This quickly was followed by the seizure of some Venezuelan ships and a German naval bombardment on the port city of Maracaybo. The US was very unhappy about Britain's relationship with Germany in the matter. Of import to this study were the effects this would have on the creation of a tribunal to settle the Alaska Boundary Dispute. An agreement between the US and Britain had been reached on December 6, 1902, to forego arbitration for a tribunal to produce a binding resolution on the Alaska-British Columbia border. However, the US was not comfortable with the agreement, and before the members of the tribunal were selected, the actions in Venezuela had begun. As will be explained in the next section, a core of Canada's grievance with the Alaska Boundary Tribunal related to the individuals selected as arbiters. The US also flexed its foreign policy muscles in other parts of Latin America during this period, including Panama and British Honduras.

State for Foreign Affairs Henry Lansdowne all approved (G. Hamilton, as quoted in Monger 1976: 105).<sup>29</sup> The crisis seemed to be averted on December 17<sup>th</sup>, 1902, when the Venezuelans agreed to arbitration and the matter was settled by February 13<sup>th</sup>, 1903. Of significance was the fact that Great Britain had shown that it placed good relations with the United States as a foreign policy priority. The timing of all these events could not have been worse for Canada.

#### V. Meanwhile, back in the Great North...

In brief, the US was claiming all the coastline, including inlets, which would leave that part of British Columbia without coastal access to the sea. In addition, some islands were included in the dispute (see Figure 2). The Joint High Commission of 1898-1899 originally was formed to settle a dispute about pelagic sealing in the area of the Bering Sea's Pribilof Islands, but quickly tackled the more pressing matter of the Alaska Boundary Dispute (Burpee 1905:558). There were representatives from both the US and Great Britain, with three of the latter Canadian, including Prime Minister Wilfrid Laurier.<sup>30</sup> The Commission, however, never reached an agreement on any subject and did not meet again after 1899. One powerful individual in particular was against making any concessions to the US. Clifford Sifton, as Minister of the Interior, had a vested interest in the border situation. He was intensely anti-American, and perhaps the most nationalistic member of Laurier's cabinet. One historian wrote, "But when the prime minister appeared cowed by American bluster and threats, Sifton stood firm for asserting Canadian rights... It is probable that Laurier would have reached an accommodation with the Americans in 1898-1899 had it not been for Sifton, who organized the cabinet resistance" (Hall 1985:124, see also Cavell 2011:291-292).

With this avenue of settlement a failure, the US and Great Britain signed the Hay-Herbert treaty in January 1903, which set up the parameters of the Alaska Boundary Tribunal (which took place in September and October). Many in the Canadian government were unhappy with the treaty. One point of grievance surrounded the word "arbitral", included in the treaty to give "Canada the illusion of arbitration". The word was removed between the date the treaty was signed and before it went to the US Senate for ratification. This was done at the insistence of the United States, deemed necessary for ratification, as the Senate probably would not have agreed to leave a matter of national borders to non-US entities. The Canadians were not informed of the change, and "the corrected version of the Hay-Herbert Treaty transformed from a body suggestive of arbitration into one purely diplomatic" (Penlington 1972:70-71). Another Canadian grievance related to the delegates. In the Venezuela dispute, the US demanded that there be an odd number

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<sup>29</sup> Letter from George Hamilton (Secretary of State for India) to George Curzon (Viceroy and Governor General of India), December 19, 1902. Hamilton MSS, Letterson Curzon, vol. iv., as quoted in Monger 1976, p. 105. Monger wrote of Hamilton's private papers, "An unexpectedly valuable collection. The letters to Curzon from Hamilton while he was Secretary of State for India are the most consistently valuable account we have of the way the Cabinet's mind was working, not only on Indian policy but also on foreign policy in general.", p. 336, from Hamilton, India Office Library (India Office Library is housed at the British Library, London).

<sup>30</sup> The other Canadians were Richard Cartwright, Louis Davies and John Charlton. James S. Winter also was on the Commission representing Newfoundland, not yet part of Canada. Newfoundland and Labrador officially became part of Canada in 1949.

of representatives with a “neutral umpire” (Penlington 1972:40-41). This time, the US demanded an even number of delegates, with three representing the US. This left the door open for Great Britain to ‘stack the deck’ against Canada, in that only one person, chosen by Great Britain, could sway the findings to the benefit of the US. That would be exactly what happened.

The final agreement was that this commission, whose decision *would* be political and binding, with or without the word “arbitral”,<sup>31</sup> was comprised of three representatives for Great Britain and three for the United States. These individuals were to have been “impartial jurists of repute, who shall consider judicially the questions submitted to them, each of whom shall first subscribe an oath that he will impartially consider the arguments and evidence presented to the tribunal, and will decide thereupon according to his true judgment” (UN 2006:6). The members selected for the tribunal became a critical component of Canada’s anger, as “... the process reflected the lack of control Canada had over the situation and its foreign affairs” (Grant 2010:188). Great Britain selected Alverstone (Richard Everard Webster), the Chief Justice of England and Wales, Louis Amable-Jetté, the lieutenant governor of Quebec and former member of Canada’s Supreme Court, and Allen B. Aylesworth from Toronto, a then-current member of the Canadian Supreme Court. On the other hand, the US selected three individuals that hardly seemed “impartial” (Hodgins 1903b:171-175). Elihu Root, although a respected attorney, in 1903 served on the Cabinet as Secretary of War for an administration that had taken a clear stand on the dispute. The second US representative was Senator George Turner of Washington state, although also having been an attorney and judge, could hardly be considered impartial considering the interests of his home state as a center for trade relative to the Yukon. Third, and perhaps the most “partial”, was the same Henry Cabot Lodge of Venezuela fame who had already stated publically his very biased opinion on the Alaska Boundary Dispute.

As mentioned, with reference to the issue of settlements, in the Venezuela border dispute Great Britain demanded that enormous emphasis be placed on the existence of settlements by British citizens. In territory claimed by Venezuela, Great Britain had registered protests from the beginning of the settlement period. In the Alaska Boundary Dispute, the US argued that American waterfront settlements were on land claimed by the US all along, and neither Canada, or more importantly Great Britain, had made over the years any territorial claims or protests. As opposed to Great Britain’s “advancing encroachments” that received “constant protest” from Venezuela, claims against US settlements in the contested area of the Alaska-British Columbia boundary were not made until after the commencement of Joint High Commission on May 30<sup>th</sup>, 1898 (Tansill 1964:210).

This essentially ‘you snooze you lose’ attitude of the United States was not well-received by Canadians. In the language of sovereignty, the British Dominion of Canada did not exercise domestic sovereignty in the form of authority and control with organized and effective government structures. Therefore, its case was weakened by the inability to provide sufficient proof of *de facto* Westphalian sovereignty or *de jure* international legal sovereignty. For many in Canada, the legal nuances would be overshadowed by resentment of yet another US territorial claim at the expense of Canada. Lost in the furor was the fact that under President Roosevelt the US did concede

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<sup>31</sup> Why President Teddy Roosevelt agreed to the binding nature of the tribunal is not known. It is suspected that he was influenced by the Republican party’s success in the November 1902 election (Penlington 1972:67). This was his first midterm election, in which the Republicans maintain control of both houses of Congress.

territory to Canada, the first time this had occurred since US independence. However, this was from a “desire to help the British conserve face” (and to a lesser extent Canada) as the president at this time had yet to develop “any inordinate fondness for Canada” (Haglund 2007:37, Hagland and Onea 2008: 32-33).<sup>32</sup>

Lengthy and impassioned reports were written on the subject, but Laurier knew early on that Canada’s case was likely not to be successful. In the end, Alverstone decided for the US, and his name lives on in Canada as a sellout. Anticipating the outcome, Laurier actively sought to have the blame shifted from his government to the British judge. The decision of 20 October 1903 was followed the next day by a statement from Jetté and Aylesworth in *The Times*. Reflecting both the intricacies of the case as well as the vested interest of all parties involved, an embittered exchange began that same day between the two Canadian commissions with Alverstone, disagreeing on what was said and meant during the arbitration (Alverstone et al 1903). Over time, many scholars have moderated the belief in Alverstone’s culpability (Penlington 1972:94), yet in 1904 Laurier told the Canadian parliament, “We are only a small colony, a growing colony, but still a colony... we have not in our own hands the treaty-making power which would enable us to dispose of our own affairs... So long as Canada remains a dependency of the British Crown the present powers that we have are not sufficient for the maintenance of our rights” (as quoted in Schull 1965:432). Canada’s domestic sovereignty no longer would be enough for a country with a growing population, economy and nationalist sentiments.

## VI. The Lessons of Sovereignty and the Alaska Boundary Dispute

As depicted in Figure 1, Canada has had domestic sovereignty since Confederation in 1867. It established the governmental structures required to exert political authority within its own borders, at least in the areas containing the bulk of the population. With Dominion status within British Empire, Canada began to have representatives at treaty negotiations as early as 1884 (Hall 1971:50), but they remained subject to the decisions and whims of the British government.

By 1903, Canada was chafing under its Dominion status. Prime Minister Laurier was ready and willing to demand more autonomy for Canada, in particular in its dealings with the US. As the Venezuela boundary dispute of the 1890s had shown, Great Britain needed good relations with US, as the European balance of power was shifting, leaving the British with a growing sense of insecurity. As one historian put it, the British wanted to rid themselves of “as many irritations as they could find”, specifically including the Alaska Boundary Dispute (Rothwell 2006: 271). Another Canadian historian wrote in 1905 with reference to the possibility of resurrecting the Joint High Commission, “... at the negotiation of every British-American treaty from 1783 down, Canadian territorial or other interests [have been] time and again sacrificed by well-meaning British diplomats upon the alter of American friendship” (Burpee 1905:560). The Alaska Boundary Dispute was the tipping point for Canadian demands for Westphalian sovereignty (*de facto*) and ultimately international legal sovereignty (*de jure*) in its foreign policy. The crisis that became World War I with its concomitant reduction in Great Britain’s global power allowed Canada, along with the other English speaking Dominions, to reach some of their goals. Canada was present at the Versailles negotiations, signed the Treaty of Versailles, and joined the League

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<sup>32</sup> Personal thanks to David Haglund for providing nuances of President Teddy Roosevelt’s role (personal correspondence).

of Nations. In 1923, Canada negotiated the Halibut Treaty with the US. This was the first time Canada negotiated a treaty without the participation of Great Britain. In addition, Canada's strong desire that the treaty would remain strictly bilateral was respected. In other words, Great Britain did not sign the Halibut Treaty. This 'evolving' Westphalian sovereignty would in 1931, with the passage of the Treaty of Westminster in London, lead to full Westphalian sovereignty. While Canada did not *technically* have international legal sovereignty until it gained full control of its constitution with the Canada Act of 1982, it conducted itself as if it did, with the complicity of Great Britain.<sup>33</sup>

Today, the only external nation-states physically institutionalized into Canadian domestic authority structures exist through voluntary agreement. An example is the International Joint Commission (IJC), established by the 1909 Boundary Waters Treaty between Canada and the US to manage cross-border water issues.<sup>34</sup> The IJC has functioned very effectively while remaining essentially non-controversial, and non-political, for over a century, described by a former ambassador as of "mutual advantage of both nations" (Heeney 1972:187).<sup>35</sup> This kind of international institution works best if the commissioners or arbiters are in place, rather than trying to select them when a dispute arises, in order to avoid the political complications that plagued the Alaska Boundary Dispute arbitration (Corbett 1937:125-126,130).<sup>36</sup> Ironically, the 1903 Alaska Boundary Dispute was the last piece to be settled in what is now the longest peaceful border in the world, setting the stage for a "non-belligerent" relationship between Canada and the United States (Doran 1984: 64-65) and "one of the most trusting and effective alliances in the world" (James P., 2012: 69).

## VII. Conclusion

In the Alaska Boundary Dispute, Canada really never had a chance. In 1903 it was a Dominion with only domestic sovereignty, not Westphalian sovereignty or international legal sovereignty. It really is a story of British foreign policy and a healthy dose of American 'scoundrels', with gold fever and 'jingoism' playing a significant role. While much has been written recently asserting that the Canadian claims were flawed, stronger Canadian indignation would have been justified. However, the Laurier government did realize that Canada needed to solidify its domestic sovereignty, particular in the far North and Arctic, through exploration and a permanent government presence. For many in Great Britain and the US, the Alaska Boundary

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<sup>33</sup> For an argument against Canada's independence from Great Britain as a result of the 1931 Treaty of Westminster, see McKenzie 1902. For example, Great Britain was able to rescind the Dominion status of Newfoundland in 1934 (3).

<sup>34</sup> As Canada was a Dominion in 1909, the treaty was technically between the US and Great Britain.

<sup>35</sup> The literature on collective action, based on Mancur Olson's 1965 revolutionary *The Logic of Collective Action*, supports the premise that pre-existing international institutions can avert the anticipated Prisoners Dilemma in which neither 'player' (state) cooperates with the other. Rather, the 'rules' of the 'game' are altered, moving toward successful collective action (Sandler 2004:30).

<sup>36</sup> Related to Canada's internal politics, shortly after the Alaska Boundary Commission decision, Aylesworth would write to his friend, future Secretary of State for External Affairs Charles Murphy, expressing his disapproval of the Tories "political game" with reference to their support for the "British connection" (Aylesworth 1903).

Dispute has become little more than a footnote. It was the Venezuela boundary dispute that moved the US into a more major role in the politics of the western hemisphere; the Alaska Boundary Dispute helped put the US further onto the world stage.

As the book moves forward, the argument will be made that approaches to understanding and improving Canadian-US relations must remain aware of history from the Canadian view, which is defined in large part by sovereignty concerns. These concerns began a process in which sovereignty evolved for Canada, from colony to domestic sovereignty as a Dominion, and from Dominion to a fully independent nation-state with Westphalian and international legal sovereignty. The emphasis on sovereignty will continue, applying the concept of interdependence sovereignty based on geopolitical realities and challenges of the North American continent. For example, one of the primary challenges is the region itself, as the US and Canadian North, including the Arctic, in that “the unique physical, climatic and demographic characteristics of the polar regions seem to forbid the application of normal rules of international law and to defy the creation of others” (Smith 1966: 194). Additional case studies include the joint task force formed for the invasion of Kiska Island in World War II, international law concerning the transit of the Northwest Passage by the SS Manhattan (1969) and the USCGC Polar Sea (1985), as well as an update on current events. The argument will be made that the creation of bilateral institutions will best serve both Canada and the US in the North.

Figure 1

## Canada and Sovereignty

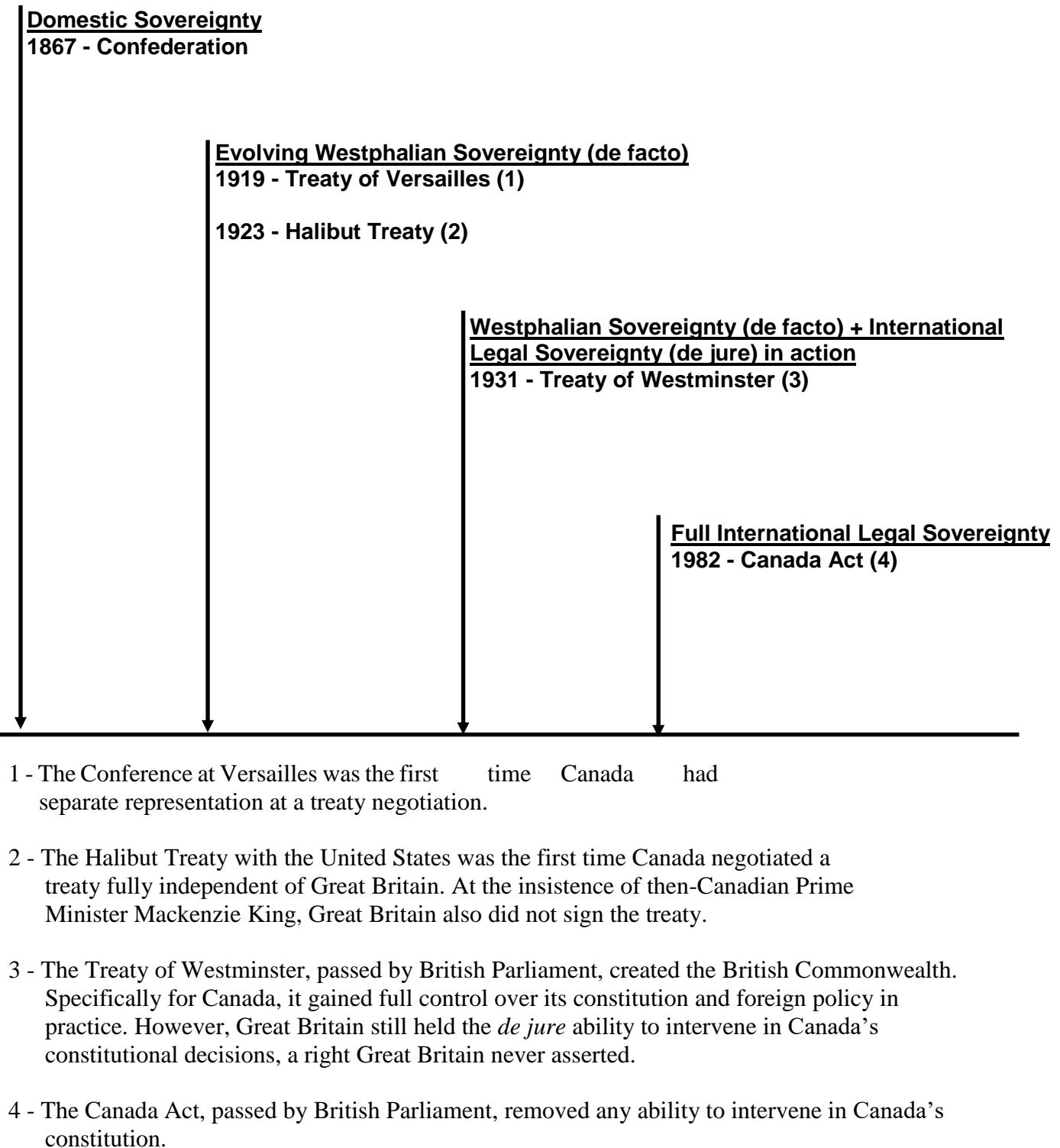


Figure 2



The Yukon Gold Rush



The Alaska Boundary Dispute

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