

Historical Intersections: Africa, Canada and Empire

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The histories of Canada and of other places around the globe can intersect in ways that are as fascinating as they are unexpected. I have found this to be the case in my own research on colonial African legal appeals to the Judicial Committee of the Privy Council (JCPC) in London and the impact of these cases on the colonial enterprise.

In exercising its power of final judicial review in British overseas possessions, the JCPC was the quintessential imperial Supreme Court. It created a centripetal jurisprudence through standardization of legal interpretation and conformity with imperial ideals of justice. A crucial element in this process was the common law tradition to respect the precedents established by prior decisions, allowing for the interpretation of statutes in ways that may be different from their original legislative intent. This made JCPC judgements binding in colonial and dominion courts across the British Empire, from Australia to South Africa, from Canada to Ceylon.

As a historian of Africa working in a Canadian University, the connections between African and Canadian appeals to the JCPC held a particular fascination. The legal and political debates over the imperial role of the JCPC in Africa in the 1950s echoed earlier Canadian trends. In Canada, the role of the JCPC as the court of final appeal often evoked complaints that the English judges on the Board were not sufficiently familiar with local affairs to properly decide difficult questions involving constitutional politics.

One of the principal reasons behind the demands to abolish the JCPC's jurisdiction in Canada was dissatisfaction with the Board's treatment of the distribution of powers between the dominion government and the provinces. In the course of more than quarter of a century of adjudication, the JCPC, by its strict interpretation of the British North America Act, ascribed powers to the provinces at the expense of the dominion government. By the 1920s, attitudes towards the JCPC in Canada ranged from "measured criticism to vehement denunciation." Largely owing to the Canadian debates, the question of colonial appeals to the JCPC became a key issue in British imperial politics. In Africa, challenges to JCPC jurisdiction intensified as colonial rule wound down in the 1950s. To properly understand later African opposition to the JCPC, therefore, it was important for me to explore the Canadian antecedents.

Connections between Canada and British Africa were also evident in judicial debates concerning aboriginal land rights. In 1921, the JCPC passed judgement in a landmark case that was to reverberate across the empire. The appeal was brought by an African chief, Amodu Tijani, against the colonial government in

Nigeria demanding compensation for the expropriation of his land. At the heart of the matter was a Treaty of Cession signed between Britain and Tijani's forebears in 1861. The colonial government claimed that under the terms of that treaty, the British crown acquired ownership of all lands in the colony including that claimed by Amodu Tijani. Tijani countered that he was entitled to compensation under Treaty provisions. At the end of a costly and protracted trial, the JCPC ruled that the colonial government must pay adequate compensation to Tijani for the land.

This judgement had significant ramifications for imperial jurisprudence, setting a legal precedent that extended well beyond the African continent. It was held as authoritative on two particular issues in British colonial administration: the effect of treaties ceding overseas territories to the British Crown, and the nature of customary land tenures. In Canada, both federal and provincial governments became increasingly concerned about the prospects of Indians, inspired by the Tijani case, pressing land claims before the JCPC and made attempts to prevent this. Indeed, it has been suggested that the passage of the Indian Act in 1927 which made it a criminal offence to solicit funds without permission for the purposes of prosecuting Indian land claims was partly intended to discourage Indian land claims before the JCPC following the Tijani judgement.

The case of Amodu Tijani was subsequently cited as applicable judicial precedent in several cases involving aboriginal land claims in Canada and throughout the British empire-commonwealth. One of such cases was *Calder v. Attorney-General of British Columbia* which is credited with having provided the impetus for overhauling aboriginal land claims in Canada.

Canada thus became central to understanding and evaluating the impact of African JCPC appeal cases on British imperial jurisprudence. Like India and Australia, Canada offered an important comparative framework for ascertaining the precedential value of African cases as well as the scope and limits of imperial justice.

Historians of the Empire like to talk about two distinct British Empires; the "first empire" focused on the settler communities of the Americas and the second Empire focused eastward on the conquest of non-British peoples after the loss of the American colonies. Unfortunately, this bifurcated framing of Empire impedes full understanding of Euro-aboriginal imperial encounters.