

**The Answer to the 'Natural Resources Question':  
A Historical Analysis of the *Natural Resources Transfer Agreements***

A Thesis

Submitted to McGill University

in Partial Fulfilment of the Requirements

for the Degree of

Master of Laws

by

Nicole Colleen O'Byrne

Faculty of Law

McGill University, Montreal

August, 2005

© Nicole Colleen O'Byrne, 2005



Library and  
Archives Canada

Bibliothèque et  
Archives Canada

Published Heritage  
Branch

Direction du  
Patrimoine de l'édition

395 Wellington Street  
Ottawa ON K1A 0N4  
Canada

395, rue Wellington  
Ottawa ON K1A 0N4  
Canada

*Your file    Votre référence*

*ISBN: 978-0-494-25049-5*

*Our file    Notre référence*

*ISBN: 978-0-494-25049-5*

#### NOTICE:

The author has granted a non-exclusive license allowing Library and Archives Canada to reproduce, publish, archive, preserve, conserve, communicate to the public by telecommunication or on the Internet, loan, distribute and sell theses worldwide, for commercial or non-commercial purposes, in microform, paper, electronic and/or any other formats.

The author retains copyright ownership and moral rights in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

#### AVIS:

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque et Archives Canada de reproduire, publier, archiver, sauvegarder, conserver, transmettre au public par télécommunication ou par l'Internet, prêter, distribuer et vendre des thèses partout dans le monde, à des fins commerciales ou autres, sur support microforme, papier, électronique et/ou autres formats.

L'auteur conserve la propriété du droit d'auteur et des droits moraux qui protègent cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

---

In compliance with the Canadian Privacy Act some supporting forms may have been removed from this thesis.

Conformément à la loi canadienne sur la protection de la vie privée, quelques formulaires secondaires ont été enlevés de cette thèse.

While these forms may be included in the document page count, their removal does not represent any loss of content from the thesis.

Bien que ces formulaires aient inclus dans la pagination, il n'y aura aucun contenu manquant.

  
**Canada**

## ABSTRACT

Seventy-five years ago the provincial governments of Manitoba, Saskatchewan, and Alberta signed a series of *Natural Resources Transfer Agreements (NRTAs)* with the federal government. These agreements provided the answer to a contentious debate known as the 'Natural Resources Question'. Before the *NRTAs*, the three prairie provinces did not have control over their public domain lands and did not share equal constitutional status with the other Canadian provinces. In the early 1920s, Prime Minister King recognized the validity of the provincial arguments for constitutional equality and no longer wanted the federal government to be responsible for the administration of provincial natural resources. By this time, the policy ambitions which had previously justified the retention of the natural resources had been fulfilled. Thus, the constitutional rights arguments presented by the prairie provinces found a receptive audience when the control of the lands and resources were no longer a federal priority.

## ACKNOWLEDGMENTS

There are a number of people who have helped me during the research and writing of this thesis. I would like to thank Dr. Bill Brennan of the History Department at the University of Regina for introducing me to this topic. I would like to express my gratitude to Professor Allan E. Blakeney (a former Premier of Saskatchewan) and Chief Justice Frank Gerein (of the Court of Queen's Bench for Saskatchewan) for graciously granting me an interview. I would like to thank Dr. James Youngblood (Sákéj) Henderson, Research Director of the Native Law Centre of Canada, who challenged me to find the answers myself. Thanks also go to Dr. Greg Marchildon, Dr. Howard McConnell, and Professor G. Blaine Baker for their guidance and suggestions. I would like to mention Mitch McAdam, a constitutional lawyer at Saskatchewan Justice, without whom I would not have been able to complete the primary research for this thesis. I would like to extend my appreciation to my supervisor, Professor Roderick A. Macdonald. He has been patient beyond all expectations. I would also like to acknowledge gratefully the Greenshields thesis scholarship that I received. Finally, I would like to thank my mother for her support and encouragement.

This thesis is dedicated to my father who believed in me completely.

---

**TABLE OF CONTENTS**

---

<b>INTRODUCTION</b>	<b>6</b>
<b>CHAPTER I:</b>	
<b>The Constitutional Origins of the 'Natural Resources Question'</b>	<b>11</b>
<b>CHAPTER II:</b>	
<b>The Creation of Saskatchewan and Alberta in 1905</b>	<b>30</b>
<b>CHAPTER III:</b>	
<b>The Natural Resources Campaign Begins</b>	<b>54</b>
<b>CHAPTER IV:</b>	
<b>The 1918 Dominion-Provincial Conference</b>	<b>72</b>
<b>CHAPTER V:</b>	
<b>The 'Equality Principle' and the 1926 Alberta <i>NRTA</i></b>	<b>94</b>
<b>CHAPTER VI:</b>	
<b>The 1927 Dominion-Provincial Conference and Brokerage Politics</b>	<b>112</b>
<b>CHAPTER VII:</b>	
<b>Judicial References and the Royal Commission on the Natural Resources of Saskatchewan</b>	<b>138</b>

**CONCLUSION****155****WORKS CITED****160**

## INTRODUCTION

Seventy-five years ago the provincial governments of Manitoba, Saskatchewan, and Alberta signed a series of *Natural Resources Transfer Agreements (NRTAs)* with the federal government of Canada.<sup>1</sup> *The British North America Act, 1930*<sup>2</sup>, in which these agreements were made part of the Canadian constitution, provided the answer to a lengthy and contentious debate known as the 'Natural Resources Question'.<sup>3</sup> Before the *NRTAs*, the three prairie provinces did not have control over their public domain lands and did not receive revenue from their natural resources. Most significantly, these provinces did not share equal constitutional status with the other provinces in Canada.

---

<sup>1</sup> All three provincial agreements are Schedules to the *British North America Act, 1930*, (U.K.), c.26, [*BNA Act*], renamed the *Constitution Act, 1930*, (U.K.), 20 & 21 Geo. V. c. 26 [*Constitution Act, 1930*], reprinted in R.S.C. 1985, App. II, No. 26. Provincial legislation also incorporates the agreements. See: *The Manitoba Natural Resources Act, 20 & 21 Geo. V., c.29* (Man.); *The Alberta Natural Resources Act, 20 & 21 Geo. V., c.3* (Alta.); *The Saskatchewan Natural Resources Act, 20 & 21 Geo. V., c.41* (Sask.). By convention, the confirmed agreements are referred to as the *Natural Resources Transfer Agreements, 1930* [*NRTAs*]. Until recently, the *NRTAs* have been largely ignored by historians and legal academicians. The *NRTAs* have been examined in a series of historical works, i.e. James Mochoruk, *Formidable Heritage: Manitoba's North and the Cost of Development 1870 to 1930* (Winnipeg: University of Manitoba Press, 2004); Robert Wardhaugh, *Mackenzie King and the Prairie West* (Toronto: University of Toronto Press, 2000); Gordon Barnhart (ed.), *Saskatchewan Premiers of the Twentieth Century* (Regina: Canadian Plains Research Centre, 2004); Bradford Rennie (ed.), *Alberta Premiers of the Twentieth Century* (Regina: Canadian Plains Research Centre, 2004); Frank Tough, *As Their Natural Resources Fail: Native People and the Economic History of Northern Manitoba, 1870-1930* (Vancouver: UBC Press, 1996); John Kendle, *John Bracken: A Political Biography* (Toronto: University of Toronto Press, 1979). There are a couple of relevant unpublished theses and dissertations: George G. James, *Constitutional and Political Aspects of Federal Control of Natural Resources in the Prairie Provinces, 1870-1930* (Saskatoon: University of Saskatchewan, 1975); Anthony Gulig, *In Whose Interest?: Government-Indian Relations in Northern Saskatchewan and Wisconsin, 1900-1940* (Saskatoon: University of Saskatchewan, 1997). Gerard LaForest has written the only legal treatise that deals specifically with the *NRTA*: *Natural Resources and Public Property under the Canadian Constitution* (Toronto: University of Toronto Press, 1969). Nigel Banks has written an article on the interpretation of agreements such as the *NRTA*: "Constitutionalized Intergovernmental Agreements and Third Parties: Canada and Australia," *Alberta Law Review* 30(1992): 524-554. The *NRTAs* are mentioned in passing in a variety of other works such as: Bill Waiser, *Saskatchewan – A New History* (Calgary: Fifth House, 2005); Howard McConnell's *Commentary on the BNA Act* (Toronto: Macmillan, 1977); John Archer's *Saskatchewan – A History* (Saskatoon: Western Producer Prairie Books, 1980); J.Y. Henderson et al., *Aboriginal Tenure in the Constitution of Canada* (Toronto: Carswell, 2000); H. Palmer, *Alberta: A New History*. (Edmonton: Hurtig Publishers, 1990).

<sup>2</sup> 20 & 21 Geo. V, c.26 (U.K.)

<sup>3</sup> Historian Chester Martin has written the seminal work on the issue: *The Natural Resources Question – The Historical Basis of Provincial Claims* (Winnipeg: Purcell, 1920).

The lack of constitutional equality and the inability to use the revenues generated by provincial lands and resources generated resentment towards the federal government. In order to convince the federal government that it should relinquish its control and administration of the natural resources, the prairie governments employed a variety of arguments. The foremost being a constitutional rights-based argument in which they asserted that each province had the right, under British constitutional practice, to the revenues from their own lands and resources. In the early 1920s, Prime Minister Mackenzie King recognized the validity of the provincial arguments for constitutional equality. This recognition coincided with the fact that the federal government no longer wanted to administer the natural resources. By this time, the policy ambitions which had previously justified the retention of the natural resources, namely immigration and settlement in the West, had been fulfilled. Thus, the constitutional rights arguments presented by the prairie provinces found a receptive audience in Ottawa only when the control of the lands and resources were no longer a federal priority.

As important as the *NRTAs* are to the constitutional history Canada, there has been little analysis of the intergovernmental negotiations behind the agreements. This thesis is an attempt to redress this oversight. A study of the *NRTAs* is important for two reasons. Firstly, the unequal constitutional position of the three prairie provinces until 1930 undergirds the residual resentment in the minds of Westerners towards the federal government.<sup>4</sup> Thus, a study of the lengthy and intricate negotiations leading up to the *NRTAs* provides the historical context for the origins of 'western alienation'. Secondly,

---

<sup>4</sup> Former Saskatchewan Premier Allan E. Blakeney, interview with the author April 6, 2005. Blakeney has suggested that the protracted negotiations surrounding the transfer of Saskatchewan's natural resources provided the context for the federal-provincial conflicts over natural resources policy in the 1970s. For example, people in Alberta and Saskatchewan regarded the Trudeau government's National Energy Program as another attempt by Ottawa to assert its control over the natural resources of the west.

the *NRTAs* have become a key issue in current Aboriginal rights litigation because certain treaty rights were incorporated into the text of the agreements. These paragraphs have been the subject of numerous recent cases in which treaty and Aboriginal rights have been interpreted by the courts.<sup>5</sup> Dr. Frank Tough has argued that the lack of historical analysis of the negotiations leading up to the *NRTAs* has led to inaccurate conjectures by the courts because the scope of Aboriginal treaty rights protected in the agreements. Tough has challenged scholars to study the *NRTAs* in order to aid the constitutional interpretations being made in current litigation about the meaning of the agreements.<sup>6</sup> The following study will provide an analysis of the historical context of the agreements in order to aid in their interpretation. There is no specific analysis of the paragraphs in which treaty rights were incorporated into the *NRTAs*. This has been extensively studied elsewhere.<sup>7</sup> However, the general political and historical context of the negotiations will illuminate the purpose of the *NRTAs* and aid in their interpretation.

The historical context of the 'Natural Resources Question' spans more than sixty years and involves a myriad of historical actors.<sup>8</sup> In an effort to present this multi-faceted topic in an organized manner, this thesis has been divided into a series of chronological chapters. In Chapter One, the constitutional and historical underpinnings of the control and administration of natural resources is presented. The natural resources issue first

<sup>5</sup> For example, *R. v. Blais*, [2003] 2 S.C.R. 236; *Lac La Ronge Indian Band v. Canada*, [2002] W.W.R. 673; (2001), 213 Sask.R. 1; *R. v. Badger*, [1996] 1 S.C.R. 771; *R. v. Horseman*, [1990] 1 S.C.R. 901.

<sup>6</sup> Frank Tough, "Introduction to Documents: Indian Hunting Rights, *Natural Resources Transfer Agreements* and Legal Opinions from the Department of Justice," *Native Studies Review* 10(1995): 121-126.

<sup>7</sup> See: Frank Tough, "The Forgotten Constitution: The *Natural Resources Transfer Agreements* and Indian Livelihood, ca. 1925-1933," *Alberta Law Review* 41(2004): 999-1048.

<sup>8</sup> A comment on the research methodology is needed here. While this thesis purports to present the negotiations leading up the *NRTAs* negotiated with each of the three prairie provinces, there is a focus on Saskatchewan. There are a number of reasons for this: the Provincial Archives of Alberta has few records from this period in its collection, the Saskatchewan negotiations involved the longest time span, and the author had more time to explore the collections held at the Saskatchewan Archives Board. For an excellent overview of the Manitoba negotiations see: Jim Mochoruk's book mentioned in f.n. 1.

appears in the negotiations between the Provisional Government of Louis Riel and the government of Canada in the aftermath of the Red River Rebellion. Riel wanted the constitution of the new province of Manitoba to include control of the public domain. Instead, for reasons best explained by the demands of the National Policy, the federal government retained control of the public domain. The federal government continued this practice with respect to the creation of Alberta and Saskatchewan in 1905. This is the subject of Chapter Two. Soon after their creation as provinces, the governments of Saskatchewan and Alberta mounted political campaigns to secure control and administration of their respective public domains. In Chapter Three, the federal-provincial negotiations surrounding these efforts are presented. At the 1918 Dominion-Provincial Conference, the Maritime provinces opposed the efforts made by the prairie provinces to secure control of their natural resources. This opposition led to the complete breakdown in negotiations between the federal government and the governments of Manitoba, Saskatchewan, and Alberta. The aftermath of this collapse is the subject of Chapter Four. The election of minority federal governments in 1921 and 1925 re-opened the issue because Mackenzie King needed to secure support from the Progressive Members of Parliament. Based in the west, one of the major issues for the Progressive Party was the return of the natural resources to the prairie provinces. Mackenzie King's efforts to negotiate agreements with Saskatchewan, Manitoba, and Alberta are the subject of Chapter Five. At the 1927 Dominion-Provincial Conference, the Maritime provinces agreed to support the prairie efforts. Chapter Six examines the array of political trade-offs that resulted in the signing of the *NRTAs*. After their signing, the *NRTAs* were the subject of a judicial reference case and two royal commissions. The final chapter

explores the court decisions, the recommendations of the Dysart Commission, and the final resolution of the 'Natural Resources Question'.

## CHAPTER I: The Constitutional Origins of the 'Natural Resources Question'

The evolution of responsible self-government in Canada is inextricably linked with the control and ownership of the public domain. As responsible self-government developed over the course of the nineteenth century, local governments were imbued with the authority to tax and control their own lands for the benefit of the local population. Lord Durham emphasized the importance of the public domain in his report on the political situation in the Canadas. He noted that the disposal of public lands is “an operation of Government, which has a paramount influence over the happiness of individuals, and the progress of society towards wealth and greatness...upon the manner in which this business is conducted, it may almost be said that everything else depends.”<sup>9</sup> Durham recognized that control of the public domain lands was key to the establishment of responsible self-government. This has not changed in subsequent decades and debates over the control and administration remain fundamentally important. Lord Durham also wrote that “the disposal of public lands in a new country has more influence on the prosperity of the people than any other branch of Government.”<sup>10</sup> Durham’s recognition of the importance of the public domain to the functioning of governance prompted him to recommend that the Imperial Parliament retain control of the natural resources in the colonies of British North America. This would ensure that policies in accordance with the aims of the Imperial Parliament would be implemented in a uniform fashion without interference by local governments. The Imperial government, however, rejected this recommendation and the provinces of Upper and Lower Canada were granted control of

---

<sup>9</sup> Gerald M. Craig (ed.), *Lord Durham’s Report – An Abridgement of Report on the Affairs of British North America* (Toronto: McClelland and Stewart Ltd., 1963), p. 110.

<sup>10</sup> Craig, *Durham’s*, p. 121.

their natural resources.<sup>11</sup> The development of responsible government and the local administration of the public domain by ministers who were directly responsible to an elected assembly was an integral part of British colonial policy in the nineteenth century.<sup>12</sup> The *British North America Act, 1867*<sup>13</sup> incorporated the principle of local ownership of the public domain into the Canadian constitution. Section 109 reads:

All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all sums then due payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the [same] are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.<sup>14</sup>

The only notable exceptions to this constitutional practice would be the three provinces of western Canada created by the Dominion Parliament of Canada: Manitoba in 1870, and Saskatchewan and Alberta in 1905.

The background to the anomalous constitutional position of the three prairie provinces begins with the actions of a Stuart monarch. In 1670, Charles II incorporated Prince Rupert and a group of investors as the “Governor and Company of Adventurers of England tradeing into Hudsons Bay.”<sup>15</sup> The *Charter of the Hudson’s Bay Company, 1670*, transferred proprietary interest and governmental authority in the Hudson’s Bay watershed, better known as Rupert’s Land, to the Hudson’s Bay Company (HBC). The HBC maintained its monopoly over the region for two centuries. However, by the mid-

---

<sup>11</sup> C. Cecil Lingard, *Territorial Government in Canada – The Autonomy Question in the Old North-West Territories* (Toronto: University of Toronto Press, 1946), p. 22.

<sup>12</sup> Arthur Berriedale Keith, *Responsible Government in the Dominions, Volume II* (Oxford: Clarendon Press, 1912), p. 1048. George G. James, *Constitutional and Political Aspects of Federal Control of Natural Resources in the Prairie Provinces, 1870-1930*, M.A. Thesis (Saskatoon: University of Saskatchewan, 1975), p. 7.

<sup>13</sup> 30 & 31 Vict., c.3.

<sup>14</sup> Bernard W. Funston and Eugene Meehan (eds.), *Canadian Constitutional Documents Consolidated* (Toronto: Carswell, 1994), pp. 163-164.

<sup>15</sup> *Ibid.*, p.63.

nineteenth century, Upper Canadians began looking towards Rupert's Land and the North-western Territory in terms of potential expansion.<sup>16</sup> As the nineteenth century progressed, land shortages were becoming an increasing problem and people were beginning to recognize the need for an economic hinterland. R.G. Riddell has described the expansionist movement that developed in Upper Canada in the following terms: "It was as though Canadians confined within a political and economic prison, saw suddenly opened before their eyes an avenue of escape to the West."<sup>17</sup> Confederation became the instrument of this movement towards western expansion.

In the mid-nineteenth century, George Brown, editor of the Globe newspaper, advocated vociferously for western expansion. He claimed that "[Canada] is fully entitled to possess whatever parts of the Great British American territory she can safely occupy."<sup>18</sup> In this period, the Toronto Board of Trade advocated expansion into the western territories and politicians debated the idea.<sup>19</sup> In 1856, an anonymous author, 'Huron', directly challenged the HBC's rights to the region: "I desire to see Canada for the Canadians and not exclusively for a selfish community of traders, utter strangers of our country; whose only anxiety is to draw all the wealth they can from it, without contributing to its advantage even one farthing."<sup>20</sup> In another article, 'Huron' declared that the HBC Charter was null and void and that it was in "the interests of Canada require

---

<sup>16</sup> North-western Territory refers to the lands licensed to the HBC by the crown prior to 1870. The North-West Territories refers to the lands outside the boundaries of the province of Manitoba created in 1870. North-West is a generic term used to refer to the entire region.

<sup>17</sup> R.G. Riddell, "A Cycle in the Development of the Canadian West," *Canadian Historical Review* 21(1940): 268.

<sup>18</sup> *Globe*, 10 December 1856.

<sup>19</sup> Donald Swainson, "Canada Annexes the West: Colonial Status Confirmed," in R. Douglas Francis and Howard Palmer (eds.), *The Prairie West – Historical Readings* (Edmonton: Pica Pica Press, 1985), p. 125.

<sup>20</sup> *Globe*, 18 October 1856.

that this giant monopoly be swept out of existence..."<sup>21</sup> In subsequent years, western expansionism became a *cause célèbre* as the Globe, the Toronto Board of Trade, the Reform Party, the Conservative Party, and business interests all made continuous pleas for a Canadian takeover of the North-West.<sup>22</sup> Part of this effort included a boosterism campaign designed to change attitudes towards the North-West. Prior to this period, the North-West had a reputation as an impenetrable semi-Arctic wilderness. These attitudes gradually shifted in response to continuous reports of the region's vast agricultural potential.<sup>23</sup>

The expansionist movement active in the 1850s and 1860s helped persuade the government of the United Canadas to pursue a policy of annexation of other territories in British North America.<sup>24</sup> In the negotiations leading up to Confederation, the drafters included a provision specifically dealing with the admission of new colonies or provinces from the lands of the North-West. Section 146 reads:

It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of Parliament of Canada to admit Rupert's Land and the North-western Territory, or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act; and the Provisions of any Order in Council in that Behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.<sup>25</sup>

---

<sup>21</sup> *Globe*, 31 October 1856.

<sup>22</sup> Jim Mochoruk, *Formidable Heritage: Manitoba's North and the Cost of Development, 1870 to 1930* (Winnipeg: University of Manitoba, 2004), p. 12.

<sup>23</sup> Doug Owsram, *Promise of Eden: The Canadian Expansionist Movement and the Idea of the West, 1856-1900* (Toronto: University of Toronto Press, 1980), p. 3.

<sup>24</sup> Owsram, *Eden*, p. 26.

<sup>25</sup> Funston and Meehan, *Documents*, p. 169.

Thus, the acquisition of the North-western Territory and Rupert's Lands took place within the context of the creation Canadian federation as contemplated by the *British North America Act, 1867*.<sup>26</sup> The western lands were intended to become an integral part of Canada. With this purpose in mind, delegates from the Canadian government, William McDougall and George-Etienne Cartier, went to London in 1868 in order to negotiate the terms for transfer of Rupert's Land and the North-western Territory.<sup>27</sup>

The Canadian delegates arrived to find Colonial Secretary, Lord Granville, anxious to broker a deal between the HBC and Canada whereby Britain would be divested of all interests in Rupert's Land and the North-Western Territory.<sup>28</sup> In this period, referred to as 'Little England', the Imperial government considered the colonies to be a financial liability and sought out ways to decrease its colonial holdings. The only obstacle to the transfer was HBC's claim to financial compensation for the surrender of its charter rights.<sup>29</sup> The Imperial government had been advised by its Law Officers that the HBC could not be compelled to relinquish its rights without compensation.<sup>30</sup> The HBC was not adverse to the settlement policy advocated by the Canadian government; however, the company was determined to receive an adequate return for its shareholders of the loss of its monopoly in British North America.<sup>31</sup> The Canadian delegates were reluctant to commit the Canadian government to paying for the relinquishment of Charter rights when the Imperial government had relinquished the charters of other corporations,

---

<sup>26</sup> Swainson, "Colonial," p. 129.

<sup>27</sup> R.S. Longley, "Cartier and McDougall, Canadian Emissaries to London, 1868-9," *Canadian Historical Review* 26(1945): 25.

<sup>28</sup> Harold A. Kevin McQuinn, *Great Britain and the Red River: An Examination of Imperial Involvement in the Transfer of the North-West Territory to Canada, and in the Red River Rebellion*, M.A. Thesis (Fredericton: University of New Brunswick, 1975), p. 45.

<sup>29</sup> David M.L. Farr, *The Colonial Office and Canada* (Toronto: University of Toronto Press, 1955), p. 75.

<sup>30</sup> Longley, "Emissaries," p. 34.

<sup>31</sup> McQuinn, *Imperial*, p. 30.

such as the East India Company, without compensation.<sup>32</sup> The negotiations ground to a halt until Lord Granville threatened to turn the whole matter over to deliberation by the Judicial Committee of the Privy Council. Neither the HBC nor the Canadian government wanted to become involved in a costly and time consuming judicial reference.<sup>33</sup> A deal was eventually struck and the transfer of sovereignty was accomplished by the passage of the *Rupert's Land Act, 1868*,<sup>34</sup> which authorized the Imperial Crown to accept the surrender of the HBC's charter rights. The agreement also provided that a deed of surrender would be drawn up when the HBC received £300,000 from the Canadian government and provision for a one-twentieth part of the land in any future township settled within the fertile belt. In order to facilitate this arrangement, the Gladstone government promised to extend the Canadian government a loan guarantee for the £300,000.<sup>35</sup> The Canadian Parliament then passed *An Act for the Temporary Government of Rupert's Land and the North-western Territory when United with Canada*<sup>36</sup> to provide for temporary governance of the region.<sup>37</sup>

There has been much debate over whether the payment made by the Canadian government to the HBC constituted a purchase of territory. In ensuing decades, the Canadian government used this 'purchase theory' in order to justify unilateral actions taken with respect to the governance of regions that once had been part of Rupert's Land and the North-western Territory. The Canadian government claimed that it had bought the lands from the HBC and, therefore, was entitled to use them 'for the purposes of the

---

<sup>32</sup> Rudolph Robert, *Chartered Companies – Their Role in the Development of Overseas Trade* (London: G. Bell and Sons, 1969), p. 115.

<sup>33</sup> McQuinn, *Imperial*, p. 48.

<sup>34</sup> 31 & 32 Vict., c. 105 (Imp.)

<sup>35</sup> Farr, *Colonial*, p. 76.

<sup>36</sup> S.C. 1869, c. 3.

<sup>37</sup> Funston and Meehan, *Documents*, p. 178.

Dominion'.<sup>38</sup> The 'purchase theory' is a recurring theme in the negotiations of the *NRTAs* and deserves analysis. It is important to examine the nature of the transaction itself in order to determine if the parties contemplated a purchase of territory.

Several prominent scholars have examined the 'purchase theory'. In his Commentary on the BNA Act, Howard McConnell claimed that the procedure involved in the transfer of Rupert's Land and the North-western Territory was more complex than a real estate transaction or a contract for sale. The transfer required the surrender of HBC's charter rights to the Imperial government and a subsequent transfer of administrative control to the crown in the right of Canada. This occurred by legislation and Orders-in-Council. First, the Imperial Parliament passed the *Rupert's Land Act, 1868*, which provided for the surrender of HBC's charter rights. Second, in December 1867 the Canadian House of Commons and the Senate sent a joint address to the Queen requesting the admission of Rupert's Land and the North-western Territory into the Dominion as provided for in s. 146 of the *British North America Act, 1867*.<sup>39</sup> Third, the actual transfer of the territories was completed by an Imperial Order-in-Council contained in *Rupert's Land and North-Western Territory Order, June 23, 1870*.<sup>40</sup> McConnell argues that "rather than being a contract of sale, the transaction was really a surrender of rights by the Company to the British Crown followed by a transfer of

---

<sup>38</sup> Throughout the negotiations leading up the *NRTAs*, the Maritime provinces claimed that the federal government's purchase of Rupert's Land and the North-western Territory meant that they had a beneficial interest in the public domain lands in the provinces later created from this territory. They claimed that this right arose from the fact that they had contributed towards the £300,000 purchase price. This misconception plagued the *NTRA* negotiations from 1911 until the 1927 Dominion-Provincial Conference. The Maritime provinces refused to countenance the transfer of the natural resources to the prairie provinces unless they received compensation for their lost interest in the beneficial interest in the natural resources. The prairie provinces refused to admit that the Maritime provinces had any proprietary interest in their public domains.

<sup>39</sup> See Schedule A of the *Rupert's Land and North-Western Territory Order* in Funston and Meehan, *Documents*, pp. 139-140.

<sup>40</sup> W. H. McConnell, *Commentary on the BNA Act* (Toronto: Macmillan, 1977), p. 410; Funston and Meehan, *Documents*, pp. 189-209.

governing rights over the area to Canada pursuant to s.146 of the *British North America Act*. It partook of the nature of the acquisition of territorial sovereignty through an act of state.” Thus, the ‘purchase theory’ is an incorrect description of the actual transaction.<sup>41</sup>

Other scholars have also challenged the ‘purchase theory’. George James argues that the £300,000 promised by the Canadian government was an indemnity to the HBC for the surrender of its Charter rights. The money was raised by public bond issue in Canada and represented the amount paid for rights to administer the land. The £300,000 was not a purchase price; rather, it represented a species of out of court settlement paid in order to facilitate the transfer.<sup>42</sup> The Canadian government was compelled to pay the indemnity because it wanted the transfer to occur as quickly as possible, and by the fact that British House of Commons had stipulated in the *Rupert’s Land Act, 1868* that the terms of surrender would impose “no charge upon the Consolidated Fund of the United Kingdom.”<sup>43</sup> Thus, despite the fact that it wanted to facilitate a transfer in order to decrease its financial expenditures in the colonies, the Imperial government passed the financial obligations to pay the HBC to the Canadian government. Because the Canadian government wanted the land transfer it had to assume the financial burden and pay the HBC in order to relinquish the company’s charter rights.

In The Natural Resources Question – The Historical Basis of Provincial Claims, historian Chester Martin refutes the idea that Rupert’s Land and the North-western Territory had been purchased by the Canadian government.<sup>44</sup> Martin reconstructs the circumstances surrounding the transfer and concluded that the transaction was not a sale.

---

<sup>41</sup> McConnell, *Commentary*, p. 411.

<sup>42</sup> James, *Constitutional*, p. 13.

<sup>43</sup> 31 & 32 Vict., c. 105 (Imp.) section 3.

<sup>44</sup> Chester Martin, *The Natural Resources Question – The Historical Basis of Provincial Claims* (Winnipeg: Purcell, 1920), pp. 36-37.

Rather, it was a transfer of administration control over the natural resources from one government to another by an Order-in-Council. The actual ownership of the public domain remained in the Crown. Gerard Laforest's arguments, in Natural Resources and Public Property under the Canadian Constitution, confirm Martin's conclusions.

LaForest contends that Rupert's Land and the North-western Territory were transferred from the Imperial government to the Canadian government by Order-in-Council, which is the regular mechanism used to convey property between governments. LaForest points out that crown sovereignty, by its very definition indivisible, allows only the administrative control to transfer between levels of government. The ownership of the land itself remains in the Crown.<sup>45</sup> Gérin-Lajoie, in Constitutional Amendment in Canada, classifies the *Rupert's Land Act, 1868* as an Order-in-Council since it performed a service contemplated by s.146 of the *British North America Act, 1867*.<sup>46</sup> Thus, it appears that the *Rupert's Land and North-Western Territory Order, June 23, 1870* was the Order-in-Council which authorized the transfer of the territory. The conveyance could have been made with or without the indemnity paid by the Canadian government. The £300,000 payment was not a condition precedent for the transfer. Rather, it represented the amount the Canadian government was willing to pay to avoid litigation on the issue.

The preceding analysis illustrates that the land transfer was not a simple purchase of territory. This myth, however, colours the debate over the return of the natural resources from its inception to the settlement of the question in 1930. How did this myth become so pervasive? The answer lies in an examination of John A. Macdonald's

---

<sup>45</sup> Gerard V. LaForest, *Natural Resources and Public Property under the Canadian Constitution* (Toronto: University of Toronto Press, 1969), p. 25.

<sup>46</sup> Paul Gérin-Lajoie, *Constitutional Amendment in Canada* (Toronto: University of Toronto Press, 1950), p. 1950.

conception of the National Policy.<sup>47</sup> Macdonald wanted to acquire Rupert's Land and the North-Western Territory on one stated condition: "The land could not be handed over to them [the inhabitants], it was of the greatest importance to the Dominion to have possession of it, for the Pacific Railway must be built by means of the land through which it had to pass."<sup>48</sup> The lands were to be used to finance railway development and subsequent immigration schemes in order to create a transcontinental Dominion of Canada. It was for these purposes that the lands were held and administered by the Dominion government from 1870 to 1930.<sup>49</sup> Canadian administration of these lands solved a number of problems: it opened up new trade possibilities for eastern Canada, it eased the land crisis, it secured a route for the Pacific railway, and it countered American expansionism.<sup>50</sup> The retention of the public domain allowed the Dominion to set unified policies over the entire area. The absence of local or provincial governments allowed the federal government to administer the lands to suit its commercial and economic interests.<sup>51</sup> The federal government wanted to develop the North-West as an economic hinterland for the more densely populated parts of the Dominion. The resources were retained by the central government and revenue from fees, land sales, rentals, leases, and royalties was directed to the government in Ottawa. If Canada were a unitary state this would have been unremarkable as every province or territory would be little more than a

---

<sup>47</sup> The 'purchase theory' sustained not only the federal case that more than a mere transfer of administration was involved. It also supported the continuing claim of the Maritime provinces that they had an interest in the land and resources of the West since they had notionally paid for the HCB territory.

<sup>48</sup> Great Britain, Colonial Office, *Correspondence Relative to the Recent Disturbances in the Red River Settlement* (London: Printed by W. Clowes for H.M.S.O., 1870), p. 143. See: Enclosure #2, Ottawa Times Report of the Canadian House of Commons Debates, May 2, 1870.

<sup>49</sup> See: Donald V. Smiley, "Canada and the Quest for a National Policy," *Canadian Journal of Political Science* 8(1975): 40-62.

<sup>50</sup> Mochoruk, *Formidable*, p. 12.

<sup>51</sup> Vernon C. Fowke, *Canadian Agricultural Policy – The Historical Pattern* (Toronto: University of Toronto Press, 1947), p. 157.

municipal corporation.<sup>52</sup> Macdonald may have preferred a unitary state for the administrative purposes of implementing the National Policy; however, the residents of the North-West had other ideas.

The Red River Resistance<sup>53</sup> was an unexpected and unforeseen complication for the Macdonald government. The preoccupation with the economic aspects of the National Policy caused the Canadian government to be careless about the actual transfer of the territory.<sup>54</sup> The details of the transfer were arranged by Imperial authorities, the Canadian government, and the HBC as if the territory were *terra nullius*. The negotiations for the land transfer proceeded as if the transaction concerned only real estate and not the rights of the people who lived in the area.<sup>55</sup> The settlers of the North-West were not consulted about the impending transfer. This arrogance, or neglect, fostered a climate of anxiety and ill-feelings toward the Canadian government.<sup>56</sup> Blinded by the desire to acquire territory, the Canadian government ignored the degree of political autonomy that existed in the settled areas of the North-West – the most prominent being the settlement at Red River. The settlers in this area owned the land by occupancy and were worried that they would lose their land rights in the transfer.<sup>57</sup> Alexander Begg, an observer of the events at Red River, recorded: “Madame rumour has full sway for she has it all her own way – nothing official has transpired to enlighten us – everything is

---

<sup>52</sup> Mochoruk, *Formidable*, p. 105; See: Donald G. Creighton, *John A. Macdonald* (Toronto: Macmillan, 1966).

<sup>53</sup> In recent literature, Red River Resistance has replaced Red River Rebellion as the proper name of the 1869 uprising.

<sup>54</sup> Riddell, “Cycle,” p. 270.

<sup>55</sup> Lewis Herbert Thomas, *The Struggle for Responsible Government in the North-West Territories 1870-97* (Toronto: University of Toronto Press, 1956), p. 27.

<sup>56</sup> Michael Dorland and Maurice Charland, *Law, Rhetoric, and Irony in the Formation of Canadian Civil Culture* (Toronto: University of Toronto Press, 2002), p. 159.

<sup>57</sup> W.L. Morton, *Manitoba – The Birth of a Province* (Altona, Manitoba: D.W. Friesen & Sons, Ltd., 1965), p. xv.

conjecture and conjecture is the worst thing to be abroad in a country like this.”<sup>58</sup> Wild rumours spread throughout the settlement in 1869, and the settlers were not certain what would happen.

Led by the charismatic Louis Riel, the Métis and other settlers expressed their discontent about what they considered to be a complete disregard of their rights as British subjects.<sup>59</sup> In a series of events too involved to be dealt with here, the Provisional Government set up by the residents of Red River forced the federal government to negotiate terms of entry for the province of Manitoba into Confederation.<sup>60</sup> At a constitutional convention, held at Fort Garry from January 25 to February 10, 1870, a List of Rights was drawn up as a basis for negotiations with the government at Ottawa. The List of Rights contained a variety of demands: no liability for the £300,000 paid to the HBC, no direct taxation except for municipal purposes, confirmation of land ownership, representation in Parliament, and local control of the public domain within a circle whose radius was to be the distance between Fort Garry and the international boundary.<sup>61</sup> The members of the Convention spent several days debating whether they should be admitted to the Union as a territory or a province. In the notes of the Convention published in the February 11, 1870 edition of the New Nation, Louis Riel made his position clear:

One important consideration which we must bear in mind, is, that as a Territory we escape a great deal of the heavy responsibility that may weigh on us as a Province. Of course it would be very flattering to our

---

<sup>58</sup> W.L.Morton (ed.), *Alexander Begg's Red River Journal and Other Papers Relative to the Red River Resistance of 1869-1870* (Toronto: Champlain Society, 1956), p. 152.

<sup>59</sup> McQuinn, *Imperial*, p. 50.

<sup>60</sup> See: Thomas Flanagan, *Riel and the Rebellion: 1885 Reconsidered* (2<sup>nd</sup> ed.) (Toronto: University of Toronto Press, 2000); Stanley A. Puchniak, *Riel's Red River Government: A Legitimate Government 1869-70*, M.A. Thesis (Ottawa: University of Ottawa, 1931); Alexander Begg, *The Creation of Manitoba or, a History of the Red River Troubles* (Toronto: A.H. Hovey, 1871).

<sup>61</sup> Thomas, *Struggle*, p. 39.

feelings to have all the standing and dignity of a Province. The exclusive powers to Provinces are considerable, and in themselves satisfactory, if we found them applicable to our case. (Mr. Riel then read the Confederation Act to show the powers conferred on Provinces.) He alluded specifically to article 5 [s.92(5) of the British North America Act, 1867] which provides that the management and sale of the public lands belonging to the Provinces and of the timber and wood thereon, is vested in the Province. This, he alluded to, as one of the most important as far as we are concerned. In looking at the advantages and disadvantages of the provincial and territorial systems, we have to consider fully the responsibility of our undertaking. I do not say positively that it is for our own good to go in as a province; but I think that the position of the Province might suit us better than that of a Territory...<sup>62</sup>

Thus, the Convention was made aware of the constitutional differences between provinces and territories under the *British North America Act, 1867*.

After much debate, the Convention decided to pursue provincial status. In April, 1870, a three person delegation appointed by Riel was sent to Ottawa to discuss the entry of Manitoba into Confederation. Abbé Noël-Joseph Ritchot, Judge John Black, and Alfred Scott arrived with a List of Rights which demanded protection for the cultural and linguistic rights of the people of the Red River Settlement. The eleventh item in the List of Rights demanded “[t]hat the Local Legislature of this province have full control over all the lands of the North-West.”<sup>63</sup> According to W.L. Morton, “[Riel’s] aim was to make such terms with Canada as would enable the people of the North West to control its local government in the early days of settlement, and as would allow them to possess themselves, as individuals and as a people, enough of the lands of the North West to survive as a people, and to benefit by the enhancement of the wealth of the North West that settlement would cause.”<sup>64</sup> In response to these demands, Cartier and Macdonald insisted that Canada had spent £300,000 in order to secure the charter rights from the

---

<sup>62</sup> *New Nation*, 11 February 1870.

<sup>63</sup> Begg, *Creation*, p. 327.

<sup>64</sup> Morton, *Birth*, p. xvi.

HBC and that they anticipated that more money would have to be spent in order to extinguish Indian title in the North-West by the negotiation of treaties. These expenses were presented to the delegates from Red River as justification for the Dominion government's continued retention of the natural resources.<sup>65</sup> The List of Rights, especially the demand for the public domain, did not please Macdonald and Cartier, who had planned to use the land to pay the indemnity to the HBC, railway grants, and provide for a free homestead policy.<sup>66</sup>

There has been much scholarly debate as to what occurred during the negotiations between the delegates from the Red River Settlement and representatives from the federal government. It has been speculated that Abbé Ritchot believed that the cultural and linguistic interests of the Métis would be well protected by land grants secured for the children of Métis, protection for denominational schools, guarantee of land titles, and official bilingual status.<sup>67</sup> Abbé Ritchot records the following in his journal about the negotiations:

Mr. Black finds it just that the Dominion should have control of the lands, he finds extravagant the pretensions of the inhabitants of the North West to claim the lands as theirs. I reply and prove that not only is it not extravagant but just and reasonable. Sir George supports me, Sir John is of the same opinion, but they reply that to reach a settlement it is necessary to make some concessions....Then the ministers asked us what we wished to do in the matter of lands. Reply, the control of those lands as requested in our instructions. Impossible, said the ministers. We could by no means let go control of the lands at least unless we had compensation or conditions which for the populations actually there would be the equivalent of the control of the lands of their province.<sup>68</sup>

---

<sup>65</sup> Douglas N. Sprague, *Canada and the Métis, 1869-1885* (Waterloo, Ont.: Wilfrid Laurier Press, 1988), p. 57.

<sup>66</sup> Mochoruk, *Formidable*, p. 107.

<sup>67</sup> *Ibid.*, p. 108.

<sup>68</sup> Abbé Ritchot's April 17, 1870 journal entry is quoted in Morton, *Birth*, p. 140.

Abbé Ritchot conceded his demand that the natural resources be transferred to the province.

According to James A. Maxwell, the major problem was that the goal of the negotiations was to reach an amicable settlement. The representatives of both sides were only vaguely aware of the importance of the financial settlement provisions. There was no guide for the new province's fiscal needs. There was no existing government framework or provincial budget that could be used as a guideline for the actual financial needs of the new province. Maxwell places the blame squarely on the Dominion representatives who should have thought it necessary to formulate a comprehensive financial arrangement instead of giving merely what Manitoba was willing to accept.<sup>69</sup>

Maxwell sums up the situation:

The fault was not that the public domain was retained in federal control or that no subsidy was allowed in lieu of it; nor was it that Manitoba received inadequate grants from the Dominion...there was no provision for future alteration of the terms of union, and the actual alterations made later were made badly and at the cost of much ill-feeling. In short, the Manitoba Act bears on its face evidence both of the inexperience of the delegates from the Red River Settlement and of the lack of mature consideration given to the measure by the federal government. The former circumstance was unavoidable; the latter can hardly be condoned.<sup>70</sup>

No one looked beyond the exigencies of the immediate situation. No provisions were made to ensure the province had enough revenue to deal with the expenses that would inevitably rise due to immigration and settlement as the result of the National Policy. The federal government granted provincial status to Manitoba and based the subsidy schedule on the needs of the older, more established, provinces.<sup>71</sup>

---

<sup>69</sup> James A. Maxwell, *Federal Subsidies to the Provincial Governments in Canada* (Cambridge: Harvard University Press, 1937), p. 35.

<sup>70</sup> *Ibid.*, p. 37.

<sup>71</sup> *Ibid.*, p. 37.

The lack of financial far-sightedness by all parties involved in the negotiations led to a situation whereby provincial status was granted in the *Manitoba Act* with no provision for control over its public domain by the province.<sup>72</sup> Section 30 of the *Manitoba Act, 1870* provides:

All ungranted or waste lands in the Province shall be, from and after the date of the said transfer, vested in the Crown, and administered by the Government of Canada *for the purposes of the Dominion*, subject to, and except and so far as the same may be affected by, the conditions and stipulations contained in the agreement for the surrender of Rupert's Land by the Hudson's Bay Company to Her Majesty. [italics added]

The phrase 'for the purposes of the Dominion' incorporated the National Policy directly into the constitution of Manitoba. Chester Martin has described the position of Manitoba at its inception as: "A premature province – a scattered population of 11,000 people caught in the eddy of a premature by imperative national policy – was thrust, by the operation of a single statute, from primitive Hudson's Bay paternalism into the full responsibilities of self-government."<sup>73</sup> Manitoba's financial and constitutional position stood in marked contrast to the position of British Columbia and Prince Edward Island on their entry into Confederation. In 1871, British Columbia entered Confederation with full control over its public domain. Prince Edward Island entered Confederation with no public lands left because they had been nearly entirely alienated by the crown a century earlier. In the absence of this source of revenue, the federal government granted a subsidy in lieu in the amount of \$45,000 per annum. Additionally, the federal government made a loan of \$800,000 available to the province in order to repurchase land. On repurchase, this land became part of the public domain of Prince Edward Island

---

<sup>72</sup> S.C. 1870, c.3.

<sup>73</sup> Chester Martin, "*Dominion Lands*" Policy (Toronto: McClelland & Stewart, 1973), p. 206.

over which the province had full control.<sup>74</sup> The constitutional position of Manitoba was, therefore, an anomaly.

The Official Opposition sharply criticized the Manitoba Bill during debate in the House of Commons. Alexander Mackenzie, Leader of the Opposition, characterized the bill as so “ludicrous....that it only put one in mind of some of the incidents in Gulliver’s Travels.”<sup>75</sup> In defense of the bill, John A. Macdonald pointed out that it represented a pragmatic solution to the realities facing the Dominion government. He pointed out that the demands for provincial status by the people of Red River had been acceded to and that the region would be granted self-government through the adoption of the *Manitoba Act, 1870*.<sup>76</sup> However, John A. Macdonald had doubts about the constitutionality of s.30 of the *Manitoba Act*. He recognized that it represented a departure from British constitutional practice with respect to the control of the public domain. The Macdonald papers contain a legal opinion on the validity of both s.30 of the *Manitoba Act, 1870* and *An Act for the Temporary Government of Rupert’s Land and the North-Western Territory, 1869*.<sup>77</sup> The authors considered the *Temporary Act* to be constitutional because it did not provide for the creation of a province in the region. They did, however, express doubts with regard to the *Manitoba Act* because the retention of crown lands was contrary to section 92(5) of the *British North America Act, 1867*. They recommended that the federal government request confirmation of the section in an Imperial statute. The Imperial Parliament, upon receiving the request from the Canadian government, passed

---

<sup>74</sup> Martin, *Question*, pp. 65-70.

<sup>75</sup> Canada, *House of Commons Debates* [hereafter *House of Commons Debates*], 2 May 1870, pp. 1305-1306.

<sup>76</sup> Morton, *Birth*, p. xxvi.

<sup>77</sup> Macdonald Papers, Granville to Lisgar, Dec. 23, 1869, p. 40372.

The *British North America Act, 1871*.<sup>78</sup> The *Act* empowered the Canadian Parliament to establish new provinces and to formulate the terms of their constitutions.<sup>79</sup> The Canadian Parliament could create provinces that had different constitutional powers than the original four provinces of Confederation; however, it could not unilaterally alter the constitutions of the new provinces once they had been created.<sup>80</sup> Thus, the constitutional inequality with respect to natural resources imbued in section 30 of the *Manitoba Act* was confirmed by Imperial statute and became part of the Canadian constitution.

The constitutional inequality and lack of revenue from control of the natural resources caused much unrest in Manitoba. As early as 1872, Manitoba premiers began making annual pilgrimages to Ottawa to request 'better terms'. The annual subsidy provided by the federal government in the *Manitoba Act* fell far short of the amount of money needed by the new provincial government.<sup>81</sup> The province requested more money in order to deal with rising costs associated with the flow of immigration into the region. The lack of revenue from public domain meant that the province had no means of raising revenue except that which it was granted from the federal government. The province had little money to spend on the schools, bridges, and roads needed due to increased immigration into the area.<sup>82</sup> The federal government had retained the natural resources in order to co-ordinate the building of railways and homestead lands. However, little thought was given to the increased costs incurred by the province due to the increased

---

<sup>78</sup> *An Act respecting the Establishment of Provinces in the Dominion of Canada [The British North America Act, 1871]* 34 & 35 Vict., c.28 (U.K.)

<sup>79</sup> Gérin-Lajoie, *Amendment*, p. 53.

<sup>80</sup> LaForest, *Public*, p. 29.

<sup>81</sup> Maxwell, *Subsidies*, p. 77.

<sup>82</sup> See Mochoruk, *Formidable*, pp. 110-135 for a detailed analysis of Manitoba's fight for 'better terms'.

immigration.<sup>83</sup> Until the signing of the *NRTA*, every subsequent Manitoba premier would echo Riel's demands for the control of the lands as a means of boosting provincial revenues in order to provide for the needs of the people living in Manitoba.

---

<sup>83</sup> Maxwell, *Subsidies*, p. 37.

## CHAPTER II: The Creation of Saskatchewan and Alberta in 1905

The *Manitoba Act, 1870* left the rest of the North-West in a unique constitutional position. Manitoba enjoyed at least the semblance of responsible government; however, the North-West Territory was a totally dependent colony ruled solely 'for the purposes of the Dominion' by a Lieutenant-Governor and a Council appointed by the Dominion. The government of the territory, which included all lands in the North-West outside the boundaries of the province of Manitoba, was highly centralized and non-democratic.<sup>84</sup> Instead of creating new legislation for the governance of the region, the federal government simply renewed *An Act for the Temporary Government of Rupert's Land and the North-Western Territory, 1869* until 1875 when it passed the *North-West Territories Act*.<sup>85</sup> The federal government, preoccupied with the administrative problems of the vast region, did not experiment by creating representative political institutions. Pragmatism and efficiency ruled in the North-West and any deference to the principles of self-government was a mere afterthought.

The *North-West Territories Act* provided for an appointed council and Lieutenant-Governor. Soon after its implementation, the defects of the *Act* became apparent. There were no provisions in the legislation for direct taxation, borrowing capital, management and sale of public lands, the establishment of hospitals, incorporation of companies, or the creation of municipalities. Revenue was limited to an annual parliamentary grant administered directly by the Department of the Interior. As a consequence, there was

---

<sup>84</sup> Mochoruk, *Formidable*, p. 15.

<sup>85</sup> *An Act for the Temporary Government of Rupert's Land and the North-Western Territory when United with Canada*, S.C. 1869, c.3; *North-West Territories Act*, S.C. 1875., c.49.

little money for schools or public works.<sup>86</sup> Bradford Rennie has commented on the status of the North-west Territory: "Initially there was no Premier of the Territories, nor even any democracy; the region was a veritable colony of Ottawa, ruled by a federally appointed governor and council."<sup>87</sup> Lewis H. Thomas has described the governance of the North-West Territories in the following terms:

The grant of power was an equivocal measure; indeed almost grotesque; for on the one hand the territorial legislature was placed on the same footing as a provincial legislature in terms of the subject matters with which it could deal (with the exception of public lands and the power to tax) while on the other hand any legislation it might enact was to remain in a state of suspended animation (except in emergencies) until the federal cabinet got around to approving it! It would be hard to find a more striking example of distrust of local self-government – all the more striking because the local body was the creature of the federal government.<sup>88</sup>

The federal government disallowed the vast majority of legislation passed by the Legislative Council. As a result, the local government was little able to deal with local concerns.<sup>89</sup>

Throughout the latter decades of the nineteenth century, the residents of the North-West Territories increasingly resented federal interference and control. A territorial autonomy movement started during this period and gained a wide level of popular support. Many of the immigrants to the area in the 1880s and 1890s were from Ontario and were used to a certain level of responsible self-government. The press

---

<sup>86</sup> Thomas, *Struggle*, p. 73.

<sup>87</sup> Bradford J. Rennie, "Introduction," to *Alberta Premiers of the Twentieth Century* (Regina: Canadian Plains Research Centre, 2004), p. vii.

<sup>88</sup> Thomas, *Struggle*, p. 57.

<sup>89</sup> *Ibid.*, p. 62.

reflected their growing discontent with the federal government.<sup>90</sup> The editor of the Edmonton Bulletin, Frank Oliver,<sup>91</sup> vigorously championed territorial autonomy in a series of fiery editorials. On August 22, 1885, Oliver wrote:

The Northwest Territories of Canada have sometimes been termed in derision, British Siberia, on account of the northern latitude which they occupy. But the resemblance in political institutions is even more striking than in soil and climate. While Canada as a whole, and the different provinces of which it is comprised are united under a system of responsible government, the Northwest is under a despotism as absolute, or more so, than that which curses Russia. Without representation in either parliament or cabinet, without responsible local government, the people of the Northwest are allowed but a degree more control of their affairs than the serfs of Siberia.<sup>92</sup>

Throughout this period, residents of the North-West Territories elected members to the Legislative Council and the House of Commons who shared these sentiments and who strongly advocated a greater degree of autonomy for the region. This movement for territorial autonomy crossed party lines and the overwhelming majority of territorial politicians supported territorial autonomy. The leader of this movement was Frederick W.G. Haultain.<sup>93</sup>

By 1897, agitation for territorial autonomy compelled the federal government to grant a measure of responsible self-government and it passed the *North-west Territories*

---

<sup>90</sup> See: Doug Owram, "Disillusionment: Regional Discontent in the 1880's," in George Melnyk (ed.) *Riel to Reform: A History of Protest in Western Canada* (Saskatoon: Fifth House, 1992), pp. 86-105; Paul Rutherford, "The Western Press and Regionalism, 1870-96," *Canadian Historical Review* 12(1971): 287-305.

<sup>91</sup> After Clifford Sifton's resignation, Wilfrid Laurier appointed Frank Oliver Minister of the Interior in 1905.

<sup>92</sup> *Edmonton Bulletin*, 22 August 1885; It should be noted that Riel was tried and convicted for treason during the summer of 1885.

<sup>93</sup> Gordon L. Barnhart, "Frederick Haultain" in Gordon L. Barnhart (ed.) *Saskatchewan Premiers of the Twentieth Century* (Regina: Canadian Plains Research Centre, 2004), pp. xii-xiv; See: Grant MacEwan, *Frederick Haultain – Frontier Statesman of the Canadian Northwest* (Saskatoon: Western Producer Prairie Books, 1985).

*Act, 1897.*<sup>94</sup> Laurier appointed Frederick W.G. Haultain premier and head of the Legislative Assembly.<sup>95</sup> Even under this legislation, the Territorial Government experienced several constitutional limitations. For example, it could not borrow money, and it still lacked control of its public domain.<sup>96</sup> In late 1897, Haultain commented on the situation and declared his intention to press for provincial status for the region:

“Constitutionally, we have approached close to provincial status, but financially we are a long distance from that basis....If the arbitrary amounts voted by Parliament are to be based not upon present requirements but upon the worn out estimates of earlier requirements, then [we]....will go in for full provincial establishment in order to get financial recognition.”<sup>97</sup> The territorial cabinet was not responsible as the bulk of its revenues came from a grant from the federal government, which was usually significantly lower than what had been requested. For example, in 1899, the territorial government requested \$535,000 to cover expenditures; it received only \$282,979.<sup>98</sup>

The annual grant was the most important and most debated issue in the Territorial Assembly in the later 1890s and early 1900s.<sup>99</sup> The main reason for this was that federal immigration policy, administered by the Department of the Interior headed by Minister

---

<sup>94</sup> S.C. 1897, c.28.

<sup>95</sup> Keith, *Responsible*, p. 764; Frederick William Alpin George Haultain was born in England on November 25, 1857. He graduated from the University of Toronto with a B.A. in 1879. He was admitted to the Ontario bar in 1882 and moved west to practice law in Fort McLeod in 1884. He served as Territorial premier until 1905. Haultain was appointed chief justice of the Superior Court of Saskatchewan in 1912 and chief justice of the Saskatchewan Court of Appeal in 1917. He died on January 30, 1942. (Rennie, “Introduction,” p. vii-x).

<sup>96</sup> Rennie, “Introduction,” p. viii.

<sup>97</sup> *Regina Leader*, 9 December, 1897.

<sup>98</sup> C.E.S. Franks, “The Legislative and Responsible Government,” in Norman Ward and Duff Spafford (eds.) *Politics in Saskatchewan* (Don Mills: Longmans Canada, 1968), p. 22.

<sup>99</sup> Franks, “Legislative,” p. 23.

Clifford Sifton, was wildly successful at attracting immigrants to the North-West.<sup>100</sup> The census figures for the period mark a remarkable influx of immigrants into the region. According to the 1901 census, there were 165,555 people in the North-West Territories. By 1905, the estimated population was 417,956.<sup>101</sup> The federal government had successfully attracted a flood of immigration into the area; however, it was the territorial government that was faced the task of building the infrastructure needed to deal with the homesteaders. Haultain summed up the situation: "The immigrant was a distinct asset to the Dominion and, at that time, a distinct liability to the Territories, with their increased need for local improvements." The federal government's enthusiasm for immigration did not include provision for actual costs that such rapid immigration entailed. These financial pressures were the primary cause of the territorial government's agitation for provincial status.<sup>102</sup> All the parties supported this effort led by Haultain.<sup>103</sup> Territorial politicians of all political stripes recognized that the root of the financial problem lay in the constitutional position of the North-West Territories. It was widely thought that increases to the annual grant would only provide temporary amelioration to the more fundamental problems caused by territorial status.<sup>104</sup>

On May 2, 1900, the Legislative Assembly approved a memorial to the federal government, which began by reciting the constitutional progress of the North-West

<sup>100</sup> See: David Hall, "Clifford Sifton: Immigration and Settlement Policy 1896-1905," in R. Douglas Francis and Howard Palmer (eds.), *The Prairie West – Historical Readings* (Edmonton: Pica Pica Press, 1985).

<sup>101</sup> C. Cecil Lingard, "Economic Forces behind the Demand for Provincial Status in the Old North West Territories," *Canadian Historical Review* 21(1940): 254.

<sup>102</sup> Evelyn Eager, "The Conservatism of the Saskatchewan Electorate," in Norman Ward and Duff Spafford (eds.) *Politics in Saskatchewan* (Don Mills: Longmans Canada, 1968), p. 5.

<sup>103</sup> Lewis G. Thomas, *The Liberal Party in Alberta – A History of Politics in the Province of Alberta 1905-1921* (Toronto: University of Toronto Press, 1959), p. 4.

<sup>104</sup> Lingard, "Economic," p. 266.

Territories and lamenting the “intermittent and insufficient addition to the annual grant, the provision so made by the Parliament of Canada never bearing any adequate provision to the financial obligations” that the Territorial Government incurred. The memorial requested that inquiries “be made and accounts taken with a view to the settlement of the terms and conditions upon which the Territories or any part thereof shall be established as a Province...”<sup>105</sup> Over a year later, in October 1901, a territorial delegation led by Haultain met with Wilfrid Laurier and members of his cabinet in order to discuss terms for the granting of provincial status. Haultain presented a detailed overview of the untenable economic situation faced by his government. Laurier told the territorial delegation that the grant of provincial status was premature and that they should submit their position in writing for further consideration.<sup>106</sup>

In December 1901, Haultain submitted a lengthy memorandum and a draft autonomy bill to the federal cabinet.<sup>107</sup> Haultain summarized his argument as follows:

Put in the briefest possible form, the position is simply this: The population of the Territories has been and is increasing so rapidly as a result of the efforts put forth by the Immigration Branch of the Interior Department, that the means at the command of the Territorial Government are far from being sufficient to enable it to properly administer the affairs of the country. The increase in the population has increased our work and expenditures by a rate far greater than can be measured by the mere increase in the number of people. Immigration in other parts of the Dominion has resulted largely in adding only to the population in settlements and towns previously in existence; in the Territories it is not

<sup>105</sup> E.H. Oliver (ed.), *The Canadian Northwest: Its Early Development and Legislative Records, Volume Two* (Ottawa: Secretary of State, Archivist, Government Printing Bureau), p. 1157; Both Conservative and Liberal members sat in the Legislative Assembly. Premier Haultain encouraged non-partisanship and picked members from both parties to form his cabinet. Haultain believed that the Territories’ political problems stemmed from Ottawa and that partisanship would only weaken the Territories’ efforts to bring about provincial status. (Rennie, “Introduction,” p. ix).

<sup>106</sup> J. William Brennan, “The ‘Autonomy Question’ and the Creation of Alberta and Saskatchewan, 1905,” in R. Douglas Francis and Howard Palmer (eds.), *The Prairie West – Historical Readings* (Edmonton: Pica Pica Press, 1985), p. 365.

<sup>107</sup> Canada, Sessional Paper 116, 1903, in Doug Owsram (ed.), *The Formation of Alberta: A Documentary History* (Calgary: Historical Society of Alberta, 1979), pp. 140-176.

so. New settlers in the North-West seem desirous to pass by the settlement already opened up, and to become pioneers in districts removed as far away as practicable therefrom. The new settlements are too small and the settlers are too widely scattered to bear the burdens which necessarily go with the opening up of a new country, and the fact cannot be disguised that they must be assisted to do so if the people are to become contented and prosperous, or even retained in the country.<sup>108</sup>

In his memorandum, Haultain argued that the solution to this set of problems would be the creation of a new provincial constitution which incorporated the equivalent to s.109 of the *British North America Act, 1867*. This meant the transfer of full beneficial control of the public domain to the province. This transfer would alleviate the financial situation in the region and place it in a position of constitutional equality with the other provinces of Canada. Haultain argued that a constitutional solution would provide the only permanent solution and that a simple solution like raising of taxes in the territories would deter immigration to the region. This was the very thing the federal government wanted to promote. Haultain warned the federal government that “[n]eglect to furnish prompt relief cannot but have the effect of neutralising the efforts of the Dominion to people the Territories, and it does not seem to us to be probable that Parliament, after making generous provision for carrying on the work of inducing immigration to the Territories, will be niggardly in providing for assisting to retain the people so brought here.”<sup>109</sup> He concluded that it was in the federal government’s interest to grant provincial status to the North-West Territories. This would allow the local government to provide adequate infrastructure for the burgeoning immigrant population. This, in turn, would support the goals of the federal government’s immigration policy.<sup>110</sup>

---

<sup>108</sup> *Ibid.*, p. 141.

<sup>109</sup> *Ibid.*, p. 148.

<sup>110</sup> *Ibid.*, p. 145.

At the end of his lengthy memorandum, Haultain appended a draft bill. Three sections specifically provide for the transfer of the public domain to a new, unnamed province that would be established out of the North-West Territories.<sup>111</sup> These sections read as follows:

18. All lands belonging to the Crown situate in the province of....., other than lands reserved by statute or Order in Council for the use of Indians or for and earned by any person or corporation, and lands entered for homestead or pre-emption but not granted, and all sums due and payable on the first day of January, 1903, for such lands shall belong to the province.

19. All mines, minerals, timber and royalties belonging to the Crown situate, being or arising in the Province of..., and all sums due and payable on the first day of January, 1903, for such mines, minerals, timber or royalties shall belong to the province.

20. The province shall receive and retain all the public property of the North-west Territories not otherwise disposed of in this Act.<sup>112</sup>

Haultain included a separate memo at the end of this section in which he reiterated the British constitutional principles with respect to the public domain found in Lord Durham's report. He wrote: "The right and title to public domain is in the Crown, but in Colonies directly established by Great Britain the beneficiary interest in the revenues from sale or other disposal of the public domain has been surrendered by the Crown for the benefit of the people residing in such Colonies."<sup>113</sup> Haultain added that the *Union Act, 1840* specifically provided that Territorial revenues, and other revenues at the disposal of the Crown, would be placed in future at the disposal of the province of Canada then being formed.<sup>114</sup> Haultain pointed out that s.109 of the *British North America Act, 1867* provided for a similar arrangement in the four original provinces of

<sup>111</sup> *Ibid.*, pp. 149-171.

<sup>112</sup> *Ibid.*, pp. 158-159.

<sup>113</sup> *Ibid.*, p. 159.

<sup>114</sup> 3 & 4 Vict., c.35 (U.K.)

Confederation.<sup>115</sup> Thus, Haultain argued that the new province should enjoy the same constitutional position as the original provinces of Confederation. He also contended that no legislative enactment or exercise of royal prerogative had ever transferred to Canada any right to enjoy the beneficiary interest in the territorial revenues of the North-West Territories. Section 5 of the *Rupert's Land Act, 1868* and the subsequent Order-in-Council of June 23, 1870 provided only that upon admission of Rupert's Land into the Dominion "it shall be lawful for the Parliament of Canada to make, ordain and establish within the land and territory so admitted all such laws, institutions, and ordinances, and to constitute such courts and officers, as may be necessary for the peace, order and good government of Her Majesty's subject and others therein."<sup>116</sup> Haultain admitted that the appropriation of the revenues from the natural resources of the territories may have been necessary to defray administration costs in the past. However, as Great Britain had divested itself of all its proprietary rights in the public domain of its colonies when it granted responsible self-government, Canada should do the same with respect to the beneficial interest it claimed to have in the public domain of the North-West Territories.<sup>117</sup> For Haultain, the grant of provincial autonomy for the territories paralleled the evolution of responsible self-government in the colonies of British North America.

In a letter dated March 27, 1902, the Minister of the Interior, Clifford Sifton, bluntly rejected Haultain's draft autonomy bill. He wrote that it was premature to pass legislation creating a province in the North-West Territories. Sifton gave two main reasons for his position. Firstly, the population of the region was still sparse; however, the immigration influx would considerably change the situation within a few years.

---

<sup>115</sup> Owram, *Formation*, p. 159.

<sup>116</sup> *Ibid.*, p. 160.

<sup>117</sup> *Ibid.*, p. 161.

Secondly, there was considerable difference of opinion on whether one or two provinces should be created.<sup>118</sup> When Members of Parliament from the North-West Territories challenged Sifton on the issue of provincial autonomy, he replied that westerners were being impetuous and impatient with their demands.<sup>119</sup> In direct reference to the request for autonomy, Sifton referred to the importance of the constitutional issue: "...we are discussing the questions of the financial and constitutional status of a territory which has almost as much fertile land as the continent of Europe..."<sup>120</sup> Sifton pointed out that the complexities of governing such a vast region demanded more than the ad hocery and unpredictability that a series of newly created provincial governments could provide. Sifton believed that the policies of the Department of the Interior could more easily be implemented if it did not have to share jurisdiction with provincial governments. Thus, Sifton was very reluctant to see provincial status granted to any part of the North-West Territories because it would interfere with the functioning of the Department of the Interior.<sup>121</sup>

In response to Sifton's rejection of Haultain's proposals for provincial autonomy, the Legislative Assembly passed the following resolution:

Whereas the larger powers and income incidental to the Provincial status are urgently and imperatively required to aid the development of the *Territories* and to meet the pressing necessities of a large and rapidly increasing population:

Be It Resolved, That this House regrets that the Federal Government has decided not to introduce legislation of the present Session of Parliament with a view to granting provincial institutions to the Territories.<sup>122</sup>

<sup>118</sup> Lewis G. Thomas and Lewis H. Thomas, "Introduction," to Doug O'ram (ed.), *The Formation of Alberta: A Documentary History* (Calgary: Historical Society of Alberta, 1979), p. xxviii.

<sup>119</sup> David Hall, *Clifford Sifton, Volume II - A Lonely Eminence, 1901-1929* (Vancouver: University of British Columbia Press, 1985), p. 164.

<sup>120</sup> Thomas and Thomas, "Intro," p. xxxii.

<sup>121</sup> Hall, *Sifton*, p. 164.

<sup>122</sup> *Regina Leader*, 17 April 1902.

Haultain reacted strongly to Sifton's rejection of his proposed autonomy bill: "I must say quite frankly that the decision of the Government has come not only as a surprise, but as a deep disappointment as well."<sup>123</sup> He countered Sifton's main arguments by pointing out that the North-West Territories had at least ten times the population of Manitoba and Prince Edward Island when they were admitted as provinces into Confederation. With respect to the rapid increase of population, Haultain argued it was the principal reason behind the request for provincial autonomy. A further the delay in granting provincial status would only aggravate the present economic difficulties caused by the increases in population.<sup>124</sup> In conclusion, Haultain appealed to Sifton to consider the strained economic situation of the North-West Territories:

While we may, in your opinion without inconvenience, mark time constitutionally, we cannot do without the transportation facilities, the roads, the bridges, the schools and the other improvements which our rapidly growing population imperatively required, and at once. Whether we are made into a province or not, our financial necessities are just as real, and in conclusion I can only trust that when the question of an increase to our subsidy is receiving consideration, more weight will be given to our representatives in that respect than has been given to our requests for constitutional changes.<sup>125</sup>

If a constitutional solution had to be delayed indefinitely, then Haultain argued that the problems caused by constitutional inequality needed to be addressed by the granting of sufficient funds.

In order to test the support for his position on autonomy, Haultain called a territorial election in May 1902. The election program focussed solely on the negotiations held with the Dominion government for provincial status as a means of

---

<sup>123</sup> Haultain to Sifton, 2 April 1902. Canada, Sessional Paper 116, 1903, in Doug Owram (ed.), *The Formation of Alberta: A Documentary History* (Calgary: Historical Society of Alberta, 1979), p. 190.

<sup>124</sup> *Ibid.*, p. 190.

<sup>125</sup> *Ibid.*, p. 191.

solving the economic difficulties caused by the rapid increase in population. Haultain's platform contained three main points:

- (1) Equal rights with all the other Provinces of the Dominion and the same financial consideration that has been given to those Provinces;
- (2) Control of the public domain in the West, by the West and for the West;
- (3) Compensation for the alienation of any part of the public domain for purely federal purposes.<sup>126</sup>

Haultain and like-minded candidates won the election with a large majority of seats. The platform became the basis of future negotiations with the federal government over the next three decades. With the support of the electorate secured, Haultain launched a national campaign in order to convince the rest of Canada that the North-West Territories had the right to constitutional equality with the other provinces and that compensation should be granted for the lands already alienated by the federal government for 'the purposes of the Dominion.'<sup>127</sup>

In response to Haultain's national campaign, federal Conservatives began to take up the autonomy issue. On a tour of the west in 1902, Robert Laird Borden, the Conservative Leader of the Opposition, declared his support for the grant of provincial status and the transfer of the public domain.<sup>128</sup> The Liberals accused Borden of political opportunism because the Conservatives were not popular in the west due to their support tariff protection.<sup>129</sup> Conservative advocacy for provincial autonomy diminished the federal Liberals' enthusiasm for the project.<sup>130</sup> Throughout 1903, the autonomy issue

<sup>126</sup> Oliver, *Northwest*, pp. 1208-1209.

<sup>127</sup> According to the *Canadian Annual Review*, Haultain gave an interview on the subject in Montreal in March 1903. J. Castell Hopkins (ed.), *Canadian Annual Review of Public Affairs, 1903* (Toronto: The Annual Review Publishing Company, 1903), p. 200. [hereafter *C.A.R.*]

<sup>128</sup> H. Borden (ed.), *Robert Laird Borden: His Memoirs, Volume I, 1854-1915* (Toronto: Macmillan Co., 1938), pp. 91-92.

<sup>129</sup> *C.A.R. 1903*, p. 206.

<sup>130</sup> Borden, *Robert*, p. 76.

emerged as a major issue in Parliamentary debates as the Conservatives pushed the Liberal government on the issue. As Minister of the Interior, Sifton repeatedly defended his government's position. In one notable exchange, Sifton succinctly and forcefully clarified the policy followed by his department with respect to the lands of the North-West Territories: "...I want the House to understand the policy which this government is following. It is endeavouring to build up a consuming and producing population in our vast western country for the purpose of giving legitimate occupation, without excessive duties, on a legitimate business basis, to the mechanics in eastern Canada..."<sup>131</sup>

Statements such as these inflamed the debate because western Members of Parliament, of both parties, resented the federal government's use of the North-West Territories' resources to promote eastern business interests. As 1903 progressed, the political rhetoric intensified. For example, in a Senate debate on the issue "Honourable J.A. Lougheed declared that if neither self-government nor increased grants were given them there was nothing to do for the Territorial Government but to throw up their hands and refuse to govern."<sup>132</sup> Even Liberals, such as the Member of Parliament from West Assiniboia Walter Scott, challenged the federal government's policy.

As the debate over provincial autonomy intensified throughout 1903, Laurier sent a letter to Haultain in an attempt to provide an explanation for the delay. He claimed that it had been caused by the debate over a redistribution measure being introduced to give the North-West Territories more representation in Parliament. In response to Laurier's letter, Haultain wrote that such federal legislation with respect to western representation in Parliament would not be affected by the passage of a concurrent provincial autonomy

---

<sup>131</sup> *House of Commons Debates*, 15 July 1903, p. 6704.

<sup>132</sup> *C.A.R. 1903*, p. 206.

bill.<sup>133</sup> Speculation as to the real cause of the delay increased during this period. In July the Toronto News published an interview with a former Superintendent of Education in the North-West Territories, D.J. Goggin. In the article, Goggin speculated that:

The delay is owing to difficulties anticipated in connection with separate schools and the use of the French language. It is said that the Legislature will insist upon being left perfectly free to deal with these as with all other questions of internal administration, though I have not seen any declaration to that effect by the Premier or the Legislature. It is hinted that certain powerful political influences, operating the Territories, have made it clear to our rulers at Ottawa that guarantee of separate schools and dual language must be an integral part of any autonomy measure.<sup>134</sup>

This assessment seems plausible because the Liberal government was still feeling the impact of the contentious Manitoba 'Schools Question'.

During the 1903 session, several western Members of Parliament, who had formerly supported the immediate grant of autonomy, reversed their position on the issue. Laurier convinced the western members of his caucus to silence their calls for provincial autonomy. Laurier did not want to spark controversy over the education provisions of the proposed autonomy bill prior to the 1904 election. Many Liberal Members of Parliament from Quebec, including Laurier himself, wanted provisions included that would have guaranteed French language education rights in the new provinces. However, many Liberals from the west regarded this as an incursion into a province's rights to control its own education policy.<sup>135</sup> Laurier requested Liberal Members of Parliament from the west, including Saskatchewan's future premier Walter Scott, to stop raising the issue of provincial autonomy.<sup>136</sup> Having silenced dissent in his own party, Laurier relegated the

---

<sup>133</sup> *C.A.R. 1903*, p. 201.

<sup>134</sup> *Ibid.*, p. 203.

<sup>135</sup> Thomas, *Liberal*, p. 5.

<sup>136</sup> See: Douglas Henry Bocking, *Premier Walter Scott – A Study of his Rise to Political Power*, M.A. Thesis (Saskatoon: University of Saskatchewan, 1959).

provincial autonomy debate to the Opposition benches. Laurier successfully muted the autonomy discussion and the inevitable fractious debate over the educational rights that would be granted to any new provinces. However, the autonomy issue failed to disappear. During the federal campaign, Laurier made a campaign promise that he would grant provincial autonomy to the North-West Territories.<sup>137</sup> On September 30, Laurier sent Haultain a letter promising that “[s]hould my Government be sustained we will be prepared immediately after the election to enter upon negotiations for the purpose of arriving at a settlement of the various questions involved in the granting of provincial autonomy with a view to dealing with the question at the next session of Parliament.”<sup>138</sup> Despite Laurier’s promise, Haultain departed from his traditionally non-partisan stance and campaigned for the federal Conservatives. He had no faith in Laurier’s conversion to the cause and questioned Laurier’s commitment to the implementation of provincial autonomy after the election.<sup>139</sup>

A victorious Laurier kept his campaign promise and soon after the election members of his cabinet began drawing up legislation for two new provinces to be named Saskatchewan and Alberta.<sup>140</sup> In January 1905, Laurier invited Haultain and George H.V. Bulyea, as representatives of the North-West Territories, to attend a month long conference on provincial autonomy. Clifford Sifton was not able to attend as he was convalescing due to a lengthy illness. Laurier, however, wrote Sifton for advice on the public domain issue and about the names for the two new provinces. Not surprisingly,

<sup>137</sup> *Edmonton Bulletin*, 6 October 1904.

<sup>138</sup> Oliver, *Northwest*, p. 1243.

<sup>139</sup> Thomas, *Liberal*, p. 5; Haultain’s support for the federal Conservatives ended his political career. Formerly, he had been considered a logical choice for premier of either of the two new provinces. Laurier refused to appoint a Conservative supporter as premier (Gordon L. Barnhart, “Introduction,” *Saskatchewan Premiers of the Twentieth Century* (Regina: Canadian Plains Research Centre, 2004), p. xiii).

<sup>140</sup> Robert Craig Brown and Ramsay Cook, *Canada, 1896-1921: A Nation Transformed* (Toronto: McClelland and Stewart, 1974), p. 76.

the territorial and federal representatives fundamentally disagreed on whether the natural resources should be transferred to the new provinces. They also disagreed on what form of compensation should be paid for lands alienated prior to 1905. There was little debate over education or language rights in the new province.<sup>141</sup>

On February 21, 1905, Laurier introduced the Autonomy Bills into the House of Commons. Based on Haultain's 1901 draft bill, the Autonomy Bills contained three marked departures. One, two provinces instead of one would be created out of the Northwest Territories. Two, the control and administration of the public domain would be retained by the federal government. Three, the provincial government's control over education would be tempered by a clause inserted to ensure that minorities would be able to establish schools and share in public funding.<sup>142</sup> On first reading, Laurier delivered one of the most lengthy and remarkable speeches of his career. He declared that the time had arrived "to complete the passage of the Northwest Territories from what was once necessary tutelage into the fullness of the rights which under our constitution appertain to provinces."<sup>143</sup> However, on the issue of the public domain, Laurier pointed out that provincial control of resources might produce a variety of policies with regard to the disposal of public land and thwart the immigration efforts of the federal government. He admitted that this would deprive the provinces of income; however, Laurier assured the House that generous subsidies in lieu of the public domain would be granted in order to compensate for the lack of revenue. As justification for this position, Laurier distinguished the constitutional position of the new provinces of Saskatchewan and Alberta from the four original provinces, which had entered Confederation as Crown

<sup>141</sup> Evelyn Eager, "The Constitution of Saskatchewan," *Saskatchewan History* XV(1962): 26.

<sup>142</sup> Brennan, "Autonomy," p. 366.

<sup>143</sup> *House of Commons Debates*, 21 February 1905, col. 1422.

colonies with full control of their public domain. By contrast, Laurier stated that the North-West Territories had been property of the federal government since they were purchased in 1870 from the HBC. This meant that the federal government owned the natural resources in the provinces that would be created from the lands of the North-West Territories, and there was no obligation to transfer the natural resources to the provinces. According to Laurier, the control of these lands by the federal government was the best asset possessed by Canada for the promotion of immigration. Laurier stated that the control of the lands of the North-West was invaluable for the future growth of Canada: "The great attraction which the Canadian government now offers, the impression to the mind of man contemplating immigration is that a well-known and recognized government holds unfettered in its own hand the land which it offers free, and that government has its agencies and organizations for directing, receiving, transporting and placing the immigrant upon the homestead which he may select."<sup>144</sup> It is interesting to note that Laurier's defence for his government's retention of the natural resources reflected the same arguments used by John A. Macdonald with respect to Manitoba's natural resources over thirty years earlier.

In his speech, Laurier referred to American precedents in order to justify the retention of the natural resources by the federal government in the new provinces of Saskatchewan and Alberta.

This is a case in which we can go to the United States for precedents. They are situated very much as we are regarding the ownership of lands and the establishment of new states. Whenever a new state has been created in the American Union the Federal Government has always retained the ownership and management of the public lands.<sup>145</sup>

---

<sup>144</sup> *Ibid.*, col. 1423-1459.

<sup>145</sup> *House of Commons Debates*, 21 February 1905, pp. 1432-1433.

Laurier's reliance on American precedents does not provide a solid foundation for his argument concerning the retention of the natural resources. In the nineteenth century, the American government surrendered all proprietary and territorial rights in the land beyond the original thirteen colonies. In legislative states created, such as Kentucky, Vermont, West Virginia, and Tennessee, the states were granted full control over the public lands and resources from their inception.<sup>146</sup> Furthermore, Laurier's reference to American precedents stood in marked contrast to the actual practice in the United States as outlined by the United States Supreme Court in 1899. In *Bolln v. Nebraska*,<sup>147</sup> Justice Brown held: "...this court has held in many cases that, whatever be the limitations upon the power of a territorial government, they cease to have any operative force, except as voluntarily adopted after such Territory has become a State of the Union. Upon the admission of a State it becomes entitled to and possesses all the rights of dominion and sovereignty which belonged to the original States, and...it stands upon an equal footing with the original States in all respects whatsoever."<sup>148</sup> Laurier's reference to the United States stands in marked contrast to Justice Brown's comments later on in the decision where he states: "...the whole Federal system is based upon the fundamental principle of the equality of the States under the Constitution."<sup>149</sup> Clearly, the American experience with the creation of new states does not provide precedent for the retention of the natural resources in Saskatchewan and Alberta in 1905. The federal government's intent to control its immigration and homestead policies, without interference from local governments, is a better explanation for the retention of the control of the public domain.

---

<sup>146</sup> Martin, *Question*, p. 101.

<sup>147</sup> 176 U.S. 83 (1899) [hereafter *Bolln*].

<sup>148</sup> *Ibid.*, p. 88.

<sup>149</sup> *Ibid.*, p. 89.

For the federal government, settlement of the North-West was a national enterprise that would only be hampered by the independent action taken by provincial governments. Earlier in his political career, Clifford Sifton had supported a measure of political autonomy being granted to the North-West Territories and had been in favour of the limited autonomy measures contained in the *North-West Territories Act, 1897*. However, Sifton refused to permit any further devolution of power, especially control over the public domain which would interfere with the priorities of the Department of the Interior.<sup>150</sup> Sifton's influence over Laurier is clear when one examines their correspondence on the issue prior to the introduction of the Autonomy Bills and throughout the lengthy debate on the Autonomy Bills in the House of Commons during the spring of 1905. Throughout the entire period, Sifton forcefully argued for the retention of the public domain and Laurier followed Sifton's advice. In a letter dated January 22, 1905, Sifton informed Laurier that:

giving them [the lands] to the Provinces would be ruinous to our settlement policy and would be disastrous to the whole Dominion. The mere report that the lands had been handed over and that there might be a change in the policy of administering them would cost us tens of thousands of settlers in the next two years to say nothing of the more distant future. The continued progress of Canada for the next five years depends almost entirely on the flow of immigration.<sup>151</sup>

Throughout this period, Laurier deferred completely to Sifton on the issue of control of the public domain in the new provinces.<sup>152</sup> Laurier's lack of knowledge of the complexities involved is readily evident in the correspondence between Sifton and Laurier.<sup>153</sup> Sifton's influence over Laurier is apparent as alternative proposals for the

---

<sup>150</sup> *Ibid.*, p. 162.

<sup>151</sup> Laurier Papers, Sifton to Laurier, 23 December 1869, pp. 93969-93973.

<sup>152</sup> Hall, *Sifton*, p. 171.

<sup>153</sup> Eager, "Saskatchewan," p. 28.

natural resources were rejected by Laurier in favour of Sifton's recommendations. For example, Liberal Senator James H. Ross, a long time champion of western rights, suggested to Laurier that the natural resources should be held in trust. This would allow the federal government to implement its immigration policy and, at the same time, satisfy provincial arguments that the natural resources belonged to the provinces. Laurier favoured this position initially; however, he was swayed by Sifton to not follow this course of action.<sup>154</sup> Sifton persuaded Laurier that the federal government owned the lands of the North-West. He also warned Laurier that once a trust was admitted it would not be possible to refuse the provinces the right to demand an accounting of everything from the beginning of federal administration in the North-West Territories in 1870.

Sifton also persuaded Laurier that it would be impossible to know what ought to go into a provincial trust so that every item would become "a subject of dispute and interminable argument." He also predicted that as soon as the provinces were strong enough they would demand an adjustment of the account and they would get it as of right. Sifton concluded that the only course of action Laurier should consider was that "the facts should be taken as they are – we should say to the provinces – You have no lands and we cannot give them but we shall provide a liberal revenue in lieu of it."<sup>155</sup> Ironically, the problems that Sifton sought to avert by advising this course of action would inform the debate on the issue over the next twenty-five years. Within a few years, the governments of Alberta and Saskatchewan would demand an accounting for the administration of their resources by the federal government. Sifton, however, correctly predicted the difficulties that the issue would cause. The near impossibility of

---

<sup>154</sup> Laurier Papers, Sifton to Laurier, 1 February 1905, pp. 93974-93976.

<sup>155</sup> *Ibid.*, pp.94354-94357.

the calculations would spawn countless federal-provincial negotiations, three royal commissions, and various court references. If Sifton's intention had been to simplify the issues involved then he utterly failed.

Sifton's confidence with respect to federal retention of the natural resources extended to all aspects of administration. Even on the issue of lands needed for grazing and irrigation, Sifton argued that efficient administration required the federal government to maintain control. He argued that "by retaining the plenary power at Ottawa you ensure the fact that a central body which for its own interest is bound to try and do justice to all parties will be able to adjust difficulties as they arise. In the case of the Provinces there would be no way of dissolving a deadlock should one arise."<sup>156</sup> With respect to the financial compensation that would be provided to the provinces in lieu of the revenue from the public domain, Sifton advocated an equally hard stand. In the original bill, the subsidy in lieu had been based on a per acre valuation. Sifton argued that such a basis for remuneration would lead to grievances about the inadequacy of the subsidy in lieu, especially if more land was alienated in the future.<sup>157</sup> In deference to Sifton's argument, the basis of calculation was changed to provide compensation solely according to population without reference to land valuation. This had little impact on opponents, such as Haultain, who continued to advocate that the natural resources were owed to the provinces by constitutional right.<sup>158</sup> This decision, however, would eventually inure to the province's benefit as their populations continued to expand until the negotiation of the *NRTAs*.

---

<sup>156</sup> Ibid., Sifton to Laurier, 22 January 1905, pp. 93969-93973.

<sup>157</sup> David E. Smith (ed.), *Building a Province – A History of Saskatchewan in Documents* (Saskatoon: Fifth House Publishers, 1992), p. 7.

<sup>158</sup> David E. Smith, *Prairie Liberalism: The Liberal Party in Saskatchewan 1905-71* (Toronto: University of Toronto Press, 1975), p. 16.

Laurier deflated the rights-based claims for the natural resources by devising a package of financial compensation that has been called “ingenious and significant.”<sup>159</sup> These financial provisions included a variety of measures: compensation for the right of levying customs duties that older provinces had before confederation, an allowance made in lieu of debts that other provinces had at entry into Confederation, a subsidy in lieu based on population, and a grant for the construction of public buildings.<sup>160</sup> These terms were extremely generous and offset any potential revenues that could possibly be collected by the provincial governments had they control of the natural resources. The generosity of the terms would be a source of irritant in the Maritime provinces in ensuing decades as they argued for a better financial subsidies from the federal government. However, the financial terms suited Liberal supporters who could reasonably argue that the subsidies put Saskatchewan and Alberta in a better financial position than they would be in if they had control over their public domains. The Edmonton Bulletin quoted Liberal George H.V. Bulyea: “The big advantage of the financial terms is that they last forever, and the provinces will have ample revenue placed to their credit, half-yearly in advance, from which to look after the development of this country and meet all demands which are made on their territory... Besides the Dominion Government retaining the lands, it naturally devolves upon them the Dominion to assume the responsibility of opening up and developing the country and railways will have to go to them for

---

<sup>159</sup> Martin, *Dominion*, p. 211.

<sup>160</sup> Thomas, *Liberal*, p. 10; Maxwell 119. The grant for support of government was \$50,000 per year; the grant for public buildings was \$468,750; the subsidy based on population was 80 cents per capita; the debt allowance was \$405,375 per year; the subsidy in lieu provided was based on a valuation of 25,000,000 million acres in each province at \$1.50 per acre from which a capital account of \$37,000,000 would provide 1% (\$375,000) until the population reached 400,000, 1.5% (\$562,500) until the population reached 800,000, 2% (\$750,000) until the population reached 1,200,000, and 3% (1,125,000) when the population reached more than 1,200,000 (Maxwell, *Subsidies*, 119).

assistance.”<sup>161</sup> The benefits were considered to be two-fold. Firstly, the new provinces would have access to a steady source of financial income and not have to rely on the vagaries of resource development. Secondly, the federal government would be charged with the expenses associated with immigration programs and railway construction.

The financial measures and the control of the public domain were an integral part of the debates on the Autonomy Bills. The debates over the education clause, however, nearly brought down the Laurier government. Laurier had deferentially accepted Sifton's position on the control of the public domain because it was not his field of expertise. However, on the issue of education and language rights, Laurier refused to relinquish control. There has been much scholarly debate on the schools question and the Autonomy Bills.<sup>162</sup> Briefly, Laurier wanted to insert a clause into the constitutions of Saskatchewan and Alberta that would protect the rights of minorities to establish publicly funded schools. In the original *North-West Territories Act, 1875*, provision had been made for the creation of separate schools. In subsequent years, however, Territorial Ordinances had whittled this right away to the point that separate French language instruction was very limited.<sup>163</sup> Sifton resigned over the intrusion into provincial autonomy with respect to education. At its most essential, the dispute pitted Laurier's tradition belief in a broad Canadian culture encompassing both French and English against Sifton's Protestant belief in Western Canada as a British, unilingual region. In the end, Laurier was forced to back down and modify the terms of the education clause

<sup>161</sup> *Edmonton Journal*, 5 April 1905.

<sup>162</sup> See for example: Manoly R. Lupul, *The Roman Catholic Church and the North-West School Question: A Study in Church-State Relations in Western Canada 1874-1905* (Toronto: University of Toronto Press, 1974); Ramsay Cook, *Provincial Autonomy, Minority Rights and the Compact Theory, 1867-1921, Studies of the Royal Commission on Bilingualism and Biculturalism* (Ottawa: Information Canada, 1969); Roberto Perin, *Rome in Canada: The Vatican and Canadian Affairs in the Late Victorian Age* (Toronto: University of Toronto Press, 1990).

<sup>163</sup> Brennan, "Autonomy," p. 369.

such that education would not be subject to any special constitutional protect beyond that which existed in section 93 of the *British North America Act, 1867*.<sup>164</sup>

Despite controversy surrounding the Autonomy Bills, Parliament passed the *Alberta Act* and the *Saskatchewan Act* in July 1905.<sup>165</sup> The creation of these provinces, steeped in political tumult and debate, marked the culmination of a battle for autonomy and self-government waged by territorial politicians. The *Alberta* and *Saskatchewan Acts*, modelled directly on the draft bills submitted by Haultain in 1901, represented a new era in governance in the North-West. Haultain probably did not experience much satisfaction because the federal government excised the three sections of his draft bill that would have transferred the natural resources to the control of the provincial governments. Haultain had failed to convince the federal government that its immigration and settlement policies could have continued unabated even without control of the public domain. Sifton's arguments had swayed Laurier as to the expediency that retention of the natural resources could provide. And thus, the federal government followed the example provided in section 30 of the *Manitoba Act* and created two new provinces without control of the lands within their borders. Saskatchewan and Alberta joined Manitoba in its anomalous constitutional position.

---

<sup>164</sup> Hall, *Sifton*, p. 173; See references mentioned in footnote 160.

<sup>165</sup> *The Alberta Act*, 4 & 5 Edw. VII, c.3 and *The Saskatchewan Act*, 4 & 5 Edw. VII, c.42.

### CHAPTER III: The Natural Resources Campaign Begins

The *Saskatchewan Act* and the *Alberta Act* received royal assent in September 1905. The legislation dashed Haultain's hopes for the creation of one large province with control of its public domain. Only the education clause reflected the wishes of the former Territorial Premier. Haultain would suffer further disappointment when he was passed over for premier of either of the two new provinces. Prior to his support of the Conservatives in the 1904 federal election, Haultain had been considered to be an obvious choice for premier. However, Laurier refused to countenance the appointment of someone who had so vociferously challenged the federal government's authority to withhold the resources from the new provinces.<sup>166</sup> Haultain had repeatedly made it clear that as premier he would challenge the constitutionality of the *Saskatchewan* and *Alberta Acts* by submitting them to the courts for judicial review.<sup>167</sup> Seeking to avoid the uncertainty that this would bring about, Laurier appointed George H.V. Bulyea and Amédée Forget, both long time Liberal supporters, to the position of Lieutenant-Governor in Alberta and Saskatchewan respectively.

By his appointment of Liberal Lieutenant-Governors in Alberta and Saskatchewan, Laurier ensured that the first governments of the new provinces would be Liberal.<sup>168</sup> Walter Scott and Alexander Rutherford, the new premiers of Saskatchewan and Alberta respectively, were both hand-picked by Laurier. Scott, however, did not

<sup>166</sup> John T. Saywell, *The Office of the Lieutenant-Governor – A Study in Canadian Government and Politics* (Toronto: University of Toronto Press, 1957), p. 184.

<sup>167</sup> Oliver, E.H. "Saskatchewan and Alberta : General History, 1870-1912," in Adam Shortt and Arthur G. Doughty (eds.), *Canada and its Provinces: A History of the Canadian People and their Institutions, Volume 19* (Toronto: Glasgow, Brook, 1914-1917), p. 271.

<sup>168</sup> John T. Saywell, "Liberal Politics, Federal Policies, and the Lieutenant Governor: Saskatchewan and Alberta, 1905," in Donald Swainson (ed.) *Historical Essays on the Prairie Provinces* (Toronto: McClelland and Stewart, 1970), p. 179.

have a reputation for deference.<sup>169</sup> As the Member of Parliament for Assiniboia West, Scott had spoken in support of Haultain's 1901 draft autonomy bill. He had argued in the House of Commons that the people of the territories "have a right to expect...that they will be dealt with on exactly the same basis as the originally confederated provinces...If absolute equality is observed...the local government...will be put in possession of the public resources, land, timber, and minerals, in the same way as the others were..."<sup>170</sup>

During the debates on the Autonomy Bills, Scott had voiced his objection to a clause which would exempt the Canadian Pacific Railway from paying any taxes to local governments, provincial or municipal, in perpetuity. In a letter to Laurier in May 1905, Scott made his position clear:

The limitation upon provincial autonomy involved in these exemptions is intrinsically a very serious matter...I think...you are depriving the province of an asset almost equal to the amount which at the outset you are proposing to pay the provinces in lieu of the public domain. Were the matter not so serious it would be really laughable to consider the enormous noise which has been made over the education clause which merely asks the provinces to do what they would be pleased to do of their own accord, in contrast with the almost entire lack of any mention of this tax exemption limitation which unquestionably does not leave the provinces free to do as they would do except for this restriction; if the North-West school districts and municipalities and Legislatures were free to tax the C.P.R. I think we may depend upon it that they would exercise the right.<sup>171</sup>

Laurier refused to consider the issue, and Scott's two attempts in the House of Commons to amend the C.P.R. exemption failed. In July 1905, Scott sent his resignation to Laurier on the grounds that he opposed the granting of autonomy until the perpetual tax

---

<sup>169</sup> Thomas Walter Scott was born on Oct. 27, 1867 in Middlesex County, Ontario. In 1886 he moved to Regina in order to work for a Liberal daily newspaper. In 1900, Scott bought the Regina Leader from Nicholas Flood Davin and defeated him as the M.P. in Assiniboia West. Scott was Premier of Saskatchewan from 1905 to 1916. He died in 1938 after a lengthy illness. (Gordon L. Barnhart, "Walter Scott," in Gordon L. Barnhart (ed.) *Saskatchewan Premiers of the Twentieth Century* (Regina: Canadian Plains Research Centre, 2004), pp. 2-5, 36).

<sup>170</sup> *House of Commons Debates*, 25 March 1901, col. 2016.

<sup>171</sup> Scott Papers, Scott to Laurier, 26 May 1905, p. 6051.

exemption was removed.<sup>172</sup> In response, Laurier asked Scott to meet with him to discuss the matter. At this meeting, Scott agreed to withdraw his resignation on the understanding that the federal government would relieve the provinces from the burden of that the tax exemption when it became too onerous.<sup>173</sup> It should be noted that by this time Scott no longer publicly opposed the retention of the public domain by the federal government.<sup>174</sup> Scott's biographer, Gordon Barnhart, has argued that after a couple of terms as a Member of Parliament, Scott was not inclined to "strain on the party leash" and "had learned the benefits of playing with a team."<sup>175</sup> Scott did, however, support the immigration policies of the federal government and believed that they could be best administered by the Department of the Interior.

In August 1905, the Saskatchewan Liberal convention unanimously elected Scott as party leader. Scott resigned his seat in Parliament and became the first premier of Saskatchewan in early September.<sup>176</sup> Soon after, Scott called the first provincial election for December 1905. In the fall, Haultain had created the Provincial Rights party, and he campaigned on the promise that he would challenge the constitutionality of the *Saskatchewan Act* if he were elected. The federal government's retention of Saskatchewan natural resources was the main issue in the election campaign. In his speeches, Scott focused on the practical financial benefits which the land arrangement had brought to the provincial government. Liberal strategists recognized the advantage of emphasizing the matters of a practical nature. The early settlers of Saskatchewan were

---

<sup>172</sup> *Ibid.*, Scott to Laurier, 6 July 1905, p. 6058-6059.

<sup>173</sup> Evelyn Eager, *Saskatchewan Government – Politics and Pragmatism* (Saskatoon: Western Producer Prairie Books, 1980), pp. 36-37.

<sup>174</sup> *House of Commons Debates*, 31 March 1905, p. 3648; 8 May 1905, p. 5549

<sup>175</sup> Gordon L. Barnhart, "'Peace, Progress & Prosperity': A Biography of Saskatchewan's First Premier, T. Walter Scott" (Regina: Canadian Plains Research Centre, 2004), p. 35.

<sup>176</sup> Barnhart, "Scott", p. 8.

much more concerned with financial realities rather than abstract constitutional rights. The Provincial Rights Party failed to capture the imagination of the voters, who were more impressed with building grants, railway construction, and annual subsidies.<sup>177</sup> Scott appealed directly to the electorate during the campaign to approve the *Saskatchewan Act* because it represented a financial solution to the problems facing a new government. He also attacked the Provincial Rights' platform as impractical because subsidies from the federal government made more sense than constitutional principles. In other words, Scott believed that the electorate would vote for the immediate investment in the province that the financial terms of the *Saskatchewan Act* provided.<sup>178</sup>

Scott's gamble was successful and the Liberal party won the election. However, within weeks of the election victory, Scott advised Laurier that he was thinking of asking Premier Rutherford of Alberta to join in submitting a judicial reference to the Privy Council Council with respect to the constitutionality of the *Alberta* and *Saskatchewan Acts*.<sup>179</sup> Publicly, Scott supported the federal government's retention of Saskatchewan's natural resources; however, privately he harboured doubts about the constitutionality of the *Saskatchewan Act*. In January 1906, Scott asked Rutherford to consider a joint reference to the Privy Council. In reply, Rutherford suggested that any doubts could be quelled by Imperial legislation such as has been achieved with respect to the *Manitoba Act* by the *British North America Act, 1871*.<sup>180</sup> Laurier agreed with Rutherford that a

---

<sup>177</sup> Eager, *Pragmatism*, p. 5.

<sup>178</sup> SAB, Walter Scott to Electors of Saskatchewan, Booklet, G7-1905.11.

<sup>179</sup> Scott Papers, Scott to Laurier, 29 December 1905.

<sup>180</sup> Scott Papers, Rutherford to Scott, 12 January 1906, p. 50425; See: Patricia Roome, "Alexander C. Rutherford, 1905-1910," in Bradford J. Rennie (ed.), *Alberta Premiers of the Twentieth Century* (Regina: Canadian Plains Research Centre, 2004).

reference to the courts was not the best option.<sup>181</sup> Haultain and members of the Provincial Rights Party continued to attack Scott's government over the natural resources issue in the Legislative Assembly. Faced with such vociferous opposition, Scott decided to take action. On May 22, 1906, the government passed a resolution addressed to the Governor-General of Canada which read as follows:

And whereas nevertheless doubts have arisen and are expressed by a political party respecting the constitutionality of certain of the provisions of the said Act; And whereas it is desirable that these doubts should be removed and that the constitutionality of the said Act and of the several provisions thereof should be finally determined: We do therefore humbly pray that Your Excellency will be pleased to take steps to have submitted to the Judicial Committee of the Imperial Privy Council the Question of the constitutionality of the The Saskatchewan Act and of the several provisions thereof.<sup>182</sup>

Cognizant of Laurier's preference to avoid a constitutional reference, Scott expected that no action would be taken in Ottawa with respect to the resolution. The real purpose of the resolution was to trap Haultain and the opposition and force them to vote against it. Haultain later commented on the manoeuvre: "We could not have supported the resolution as it was brought in and forced through the House, without stultifying ourselves and there is no doubt it was brought in in that form for that purpose."<sup>183</sup> Outflanked by Scott in this instance, Haultain continued to attack the Liberals in the Legislative Assembly at every opportunity.

Haultain also appealed directly to the public for support. He wrote a series of pamphlets in which he drew attention to the inconsistency of the Liberal position with respect to the public domain. In one pamphlet, in a section entitled "Scott the Apostate", Haultain reproduced Scott's contradictory speeches in the House of Commons on the

---

<sup>181</sup> Laurier Papers, Laurier to Scott, 4 January 1906, p. 104801.

<sup>182</sup> Saskatchewan, *Journals of the Legislative Assembly*, 1906, p. 86.

<sup>183</sup> Haultain to Willison, 5 August 1906, as quoted in Eager, "Saskatchewan," p. 56.

natural resources issue and argued that Scott was a puppet of the Laurier government. Pointing to a variety of economic indicators, Haultain outlined the economic problems caused by the federal government's control of Saskatchewan's natural resources.<sup>184</sup> He also presented a detailed rights-based argument that all provinces in a federal state should enjoy the same constitutional privileges. He submitted that his rights-based argument was consistent with the constitutional position of individual states south of the border. Haultain summarized his arguments as follows:

The policy of the public lands for the Province is the chief feature of the demand for Provincial Rights. There are Federal rights and States rights, that is, rights which are inherent in the federal and provincial systems of government, and which are guaranteed to them by the Constitution, set forth in the British North America Act. Provincial Rights in Canada are practically the same as State Rights in the United States.<sup>185</sup>

He concluded the pamphlet with an assertion that the expedient financial arrangements in the *Saskatchewan Act*, no matter how generous, were not satisfactory because such arrangements were not based on sound constitutional principles. To Haultain, financial subsidies and grants could never provided redress for Saskatchewan's lack of constitutional inequality.<sup>186</sup>

In response to Haultain's repeated attacks, Scott continued to defend publicly the financial provisions of the *Saskatchewan Act*. A government pamphlet on the subject of the public domain quoted Scott: "The Province has no more power to take possession of the lands than it has to obtain the moon."<sup>187</sup> By early 1911, however, Scott began to have serious doubts about the efficacy of federal administration and its impact on the

---

<sup>184</sup> *Sessional Review, Saskatchewan Legislature 1909, and Statement of the Provincial Rights Party Policy*, (Regina: Saskatchewan Publishing Co., 1910).

<sup>185</sup> *Ibid.*, p. 55.

<sup>186</sup> *Ibid.*, p. 57.

<sup>187</sup> SAB, *The Public Domain, Booklet*, G11-1912.2.

provincial economy. In a letter to William Martin, Liberal Member of Parliament for Regina and future premier of Saskatchewan, Scott expressed his concern:

The fact of the matter is that the Federal people themselves have been doing the best they can to make our position on the land question impossible. We have stood on the ground that with the lands we should be under enormous expense for colonisation work. The Immigration authorities for some time past have been doing their utmost to prove that Saskatchewan and Alberta obtain absolutely no advantage over the other Provinces as regards the colonization work done by the Dominion. This can only be viewed as a distinct breach of faith with this Province. The position as presented to us by the Dominion in 1905 was that if we accepted the public lands we should have to be wholly responsible ourselves for colonization the same as the older Provinces which owned their lands. It seems that the position was misrepresented to us.<sup>188</sup>

As a solution to this dilemma, Scott proposed the following to Martin:

It is our intention to propose an amendment in favour of going after the transfer to the Provinces of the northern territory and all such resources within the whole Provinces as are of purely local concern and not required for their colonization work. We shall also have to make it abundantly clear that it is not our intention to relinquish any portion of the cash subsidy, such subsidy being paid on account of the agriculture lands which we are deprived of as a source of revenue. If we had the advantage in respect of colonisation work which we supposed we had there might be some justification in contending that we are entitled to no change without a relinquishment of some of the cash subsidy.<sup>189</sup>

During the spring session, Scott introduced a resolution in the Legislative Assembly asking the Dominion to cede control over all non-agricultural lands and all other natural resources within the province that were not directly related to immigration.<sup>190</sup>

The resolution signals the beginning of the Saskatchewan government's campaign for the transfer of the natural resources. In a letter dated March 29, 1911, Scott informed Laurier that the Saskatchewan government wanted to administer directly the lands not needed for homesteads or other immigration purposes. Scott argued that it was not

<sup>188</sup> Scott to Martin, 6 February 1911, as quoted in Smith, *Building*, p. 387.

<sup>189</sup> *Ibid.*

<sup>190</sup> Mochoruk, *Formidable*, p. 210.

expected that the lands would “ever be profitable to us in a direct revenue sense, but that after all, the water rights, the coal rights, the timber rights, etc., can be better administered by the Provincial authority.”<sup>191</sup> Scott’s letter to Laurier represents a milder view of the request than the resolution passed by Saskatchewan’s Legislative Assembly. The stronger resolution in the Legislative Assembly served to undercut the strident position of Haultain and the Provincial Rights Party. Indeed, this shift in government policy led to the demise of the Provincial Rights Party in 1912 when the Conservative Party replaced it as the opposition.<sup>192</sup> Scott’s letter to Laurier reflected Scott’s belief that Laurier would not be eager to revise the terms of the *Saskatchewan Act*. Indeed, Laurier’s reaction to Scott’s request was guarded because he was concerned that any transfer of administration would alter the financial terms of the constitutions of both Saskatchewan and Alberta.<sup>193</sup>

Alberta’s new premier, Arthur L. Sifton, supported Scott’s position, and he declared his intention to seek the transfer of Alberta’s natural resources. In March 1911, Sifton wrote a lengthy letter to Laurier setting forth Alberta’s claims to its public domain lands. Sifton outlined the constitutional history of the North-West Territories and its evolution towards the responsible government. He also summarized the precarious financial position that the province found itself in due to the strain caused by providing services for the immigrants moving into the province. He reiterated Haultain’s arguments for the return of the resources and provided an overview of the public expenses for infrastructure. For example, in 1910 the *per capita* expenditure for public

---

<sup>191</sup> Scott Papers, Scott to Laurier, 29 March 1911, p. 50508.

<sup>192</sup> Smith, *Liberalism*, 47.

<sup>193</sup> Borden Papers, Laurier to A.L. Sifton, 7 August 1911, pp. 5052-5054.

improvements was \$10.15 in Alberta as compared to \$3.46 in Quebec.<sup>194</sup> Sifton also referred to the fact that the North-West Territories had contributed 100,000,000 acres to the national railway system and, in addition, must use provincial moneys to compensate for the C.P.R. tax exemption. He then requested that the federal government transfer all lands to the province not required for federal purposes such as Indian reserves and homestead lands. Sifton concluded his argument by stressing the efficiency of local administration and the inequity of the state of affairs when a province must bear the expense of supporting local industry while receiving none of the proceeds. He also claimed that total revenue from Dominion lands per year was approximately \$2,866,000 while the costs of administration were only approximately \$600,000. Thus, Sifton argued, even if revenues from sources such as grazing lands, coal lands, mining fees, irrigation fees, and timber dues were transferred to the province, the Dominion would still have sufficient revenue to cover the costs of its immigration policy.<sup>195</sup>

In conclusion to his lengthy argument, Sifton added that the Alberta government has never thought that the *Alberta* and *Saskatchewan Acts* "were the final acts of the Parliament of Canada in legislating for the welfare of the people of the former North-West Territories....It is assumed as the final triumph of the federal principle in Confederation that the several provinces of Canada will be placed on a basis of equality in all respects, and it is respectfully submitted that by the grant of the request herein stated the principle would be complete in its application."<sup>196</sup> Laurier reacted to Sifton's letter in a similarly muted manner as he had responded to Scott's proposals. He worried that any transfer of administration or natural resources would require major alterations to

---

<sup>194</sup> PAM, Premier's Office Correspondence, Natural Resources Papers.

<sup>195</sup> *Ibid.*

<sup>196</sup> *Ibid.*

the constitutions of the provinces. Laurier did not want to stir up the contentious autonomy debates again; however, he agreed that he would discuss the matter further.<sup>197</sup>

The results of the 1911 federal election pre-empted further discussion between Sifton, Scott, and Laurier. The election of Borden's Conservatives encouraged Scott and Sifton to intensify their pressure on the federal government. The two Liberal premiers had not pressed Laurier too hard on the natural resources; however, they had no such qualms with Borden. During the 1911 campaign Borden had announced:

The Liberal-Conservative party since 1902, has firmly asserted and maintained the rights of the three provinces to their public domain. We stand for that right to-day and we will maintain it. The day is not far distant when Manitoba, Saskatchewan and Alberta will receive from the Liberal-Conservative government the just recognition of their undoubted right to their public lands and natural resources.<sup>198</sup>

Scott and Sifton wished to capitalize on Borden's longstanding public support for the return of the natural resources to the provinces. In November the premiers sent Borden a letter in which they reiterated their claims and challenged Borden to fulfill his campaign promise.<sup>199</sup> Borden, however, refused to schedule a meeting on the issue.<sup>200</sup> In response, the Acting Premier of Saskatchewan, James A. Calder, expressed his disappointment to Borden because it had been nearly a year since the Saskatchewan Legislative Assembly had passed a unanimous resolution to pursue the return of its natural resources.<sup>201</sup>

In 1912, the proposed boundary extensions to Quebec, Ontario, and Manitoba provoked heated debate in the House of Commons. On March 8, William Martin, the Member of Parliament for Regina, challenged Borden to return the natural resources to

<sup>197</sup> Borden Papers, Laurier to A.L. Sifton, 7 August 1911, p. 5052-5054.

<sup>198</sup> W. Everard Edmonds, *The Natural Resources Question – A Plea for the Completion of Alberta's Status as a Province of Canada* (Edmonton: Henry Roche, 1922), p. 5; See: Borden, *Robert*, p. 324.

<sup>199</sup> PAM, Premier's Office Correspondence, Natural Resources Papers, Sifton to Borden, 8 November 1911, Scott to Borden, 13 November 1911.

<sup>200</sup> *Ibid.*, Borden to Calder, 9 January 1912.

<sup>201</sup> *Ibid.*, Calder to Borden, 23 January 1912.

the provinces. Martin argued that the boundary extension provided the perfect opportunity to adjust the constitutional position of Manitoba by granting control of the public domain at the same time as it granted as the increase in territory.<sup>202</sup> Borden did not respond to Martin's challenge. In the spring of 1912, the boundaries of Quebec, Ontario, and Manitoba were extended.<sup>203</sup> Section 6 of the *Manitoba Boundaries Extension Act* provided that Manitoba would not receive its natural resources; however, there were no concurrent provisions in the legislation dealing with Quebec or Ontario. The different treatment sparked even more discontent in ensuing years.<sup>204</sup> The enlargements to the boundaries of Quebec and Ontario included land that had been part of the Rupert's Land. If the federal government had pursued a consistent land policy, then one would have expected Ottawa would have retained control of the natural resources in this area.<sup>205</sup> The federal government's 'purchase theory' seemed to apply only to land in Saskatchewan, Manitoba, and Alberta.

As 1912 progressed, Scott's frustration mounted as Borden refused to schedule a meeting on the issue of the transfer of the natural resources. Scott sent repeated letters to Ottawa only to be rebuffed.<sup>206</sup> By the time Scott called the 1912 Saskatchewan general election, the issue had crossed party lines the Liberals had completely usurped the

<sup>202</sup> *House of Commons Debates*, 8 March 1912, col. 4691.

<sup>203</sup> *Quebec Boundaries Extension Act, 1912*, 2 Geo. V, c. 45; *Ontario Boundaries Extension Act, 1912*, 2 Geo. V, c. 40; *Manitoba Boundaries Extension Act, 1912*, 2 Geo. V, c. 26.

<sup>204</sup> Gerald LaForest has pointed out: "It is not surprising that the Prairie provinces should have found this difference in treatment irksome and they protested against it constantly." (LaForest, *Public*, p. 35).

<sup>205</sup> McConnell, *Commentary*, p. 412.

<sup>206</sup> For example: Martin Papers, Scott to Borden, 16 August 1912; 21 December 1912.

Provincial Rights Party's position.<sup>207</sup> Two of Scott's cabinet ministers, James A. Calder and William F.A. Turgeon<sup>208</sup> laid out the party platform:

(1) one of the fundamental principles of the Canadian Confederation is that all the Provinces which form part of the said Confederation should be in a position of absolute equality in respect of legislative jurisdiction and financial and other assistance, grants, and concessions, received from the Federal Government; and that it has been found necessary in the past to make such changes and readjustments as were require from time to time to bring about , preserve, or restore, such equality"; claiming (2) that in respect to the important power of taxation under C.P.R. exemption by Federal law, Saskatchewan was not in this position of equality; alleging (3) that the principle of equality had been again infringed by the Boundaries adjustment between Manitoba, Ontario and Quebec which made it still more imperative that immediate steps should be taken to grant to Saskatchewan the ownership and control of her public domain.<sup>209</sup>

The Saskatchewan Liberals won the election, and they continued to press the Borden government for the return of the natural resources. In January 1913, Borden wrote Scott claiming that the Manitoba boundary extension had been intended to put Manitoba on the same terms as Saskatchewan and Alberta with respect to subsidies and land mass. With respect to the return of the natural resources, Borden suggested that a conference be held with all three prairie provinces because their positions were now identical.<sup>210</sup>

In response to Borden's suggestion that the three prairie provinces coordinate their efforts, Saskatchewan's Acting Premier, James Calder, wrote Premier Sifton and suggested that the three premiers meet before the upcoming Interprovincial Conference to

---

<sup>207</sup> Haultain was appointed to the court in 1912. Upon his departure, the Provincial Rights Party disbanded, and the Saskatchewan Liberals became the party associated with the Provincial Rights movement.

<sup>208</sup> William F.A. Turgeon would later be appointed chair of the Royal Commission on the Natural Resources of Manitoba.

<sup>209</sup> *C.A.R.* 1912, p. 546.

<sup>210</sup> Martin Papers, Borden to Scott, 9 January 1913; Borden did not refer to the fact that Quebec and Ontario received control of their natural resources in the territory included in the boundary extension.

be held in October in order to develop a united front.<sup>211</sup> Calder sent a similar letter to Manitoba's Conservative Premier Rodmond Roblin. Roblin responded that: "[t]he Province of Manitoba....has not considered the propriety of beginning another agitation for new conditions. From our standpoint we have not at the moment very much to complain of."<sup>212</sup> Calder, however, continued to press Roblin to join forces with Liberal governments of Alberta and Saskatchewan in order to present a joint claim at the upcoming meeting with Borden.<sup>213</sup> Roblin eventually agreed to participate in the joint provincial effort. He was a self-proclaimed champion of provincial rights and did not want Saskatchewan and Alberta to receive more favourable terms.<sup>214</sup>

In May 1913, Borden had started to organize background materials for the upcoming Interprovincial Conference. By September, a memo had been prepared for Borden in which the amount of acres alienated and administrative costs were detailed. In response to this memo, Borden suggested that the data should be used to illustrate the contradictory positions taken by Alberta and Saskatchewan with respect to public land policy since 1903.<sup>215</sup> Various departments of the federal government prepared memos on the natural resources issue during the summer, including one entitled "Memo re Western Conditions – How to Counter the Liberal Governments." In this undated memo, the federal government's position was outlined:

Mr. Borden is pledged to hand over to the Provinces their resources. Those in control of both local governments persistently opposed that idea: yet they soon will come forward and barefacedly ask for them. The Federal Government will be in a difficult position if it does not early take

<sup>211</sup> Martin Papers, Calder to A.L. Sifton, 27 September 1913. Throughout his tenure as premier, Walter Scott suffered from various illnesses. During Scott's many absences, James A. Calder served as acting Premier (Barnhart, "Scott," p. 9).

<sup>212</sup> *Ibid.*, Roblin to Calder, 29 September 1913.

<sup>213</sup> *Ibid.*, Calder to Roblin, 8 October, 1913.

<sup>214</sup> Mochoruk, *Formidable*, p. 211.

<sup>215</sup> Borden Papers, Borden to Rogers, 27 September 1913, p. 10905.

steps to forestall these people. It is suggested that Mr. Borden should at once institute an investigation into the way these Governments have administered their dealings with the railways.<sup>216</sup>

The author of the memo listed other factors that could be used to Borden's advantage.

The federal government's strategy was to discredit provincial Liberal governments to the point that "Mr. Borden will be able to say: 'I am not justified in handing over the natural resources to such men.'" It is clear that it was not in the political interest of a federal Conservative government to transfer the natural resources to Liberal provincial governments in Alberta and Saskatchewan. In another less partisan memo, it is noted that the transfer should only take place on two conditions: one, the elimination of the subsidy in lieu of the public domain; and two, the continuation of the present inflow of immigration.<sup>217</sup>

During the Interprovincial Premiers' Conference held in Ottawa in October 1913, Sifton, Scott, and Roblin jointly approached Borden on the natural resources issue.<sup>218</sup>

Scott reported to Laurier about the informal meeting with Borden:

He [Borden] made absolutely no vital expression beyond putting to us a couple of questions. He wanted to know what we had to say in relation to the monies now paid in lieu of lands, that is, whether these should be continued to the Provinces or relinquished by them. He also wanted to know whether the Provinces were willing to accept a transfer of the lands and give agreement to carry out the policy, now pursued by the Dominion for colonization of lands. It was agreed that the three of us should decide on the answer to these questions and let Mr. Borden know the result...<sup>219</sup>

---

<sup>216</sup> *Ibid.*, *Memo re Western Conditions*, no author, undated, p. 10909.

<sup>217</sup> *Ibid.*, *Memo on Provincial Conference (Confidential)*, no author, undated, p. 10295.

<sup>218</sup> Borden did not attend the official meetings. He was introduced to the Conference and welcomed the delegates on behalf of the Government of Canada (Canadian Intergovernmental Conference Secretariat, *First Ministers' Conferences, 1906-2004* (Ottawa: CICS, 2004, p.2)).

<sup>219</sup> Scott Papers, Scott to Laurier, 24 December 1913, p. 4280; Laurier replied pessimistically: "Let me say at once that, knowing Borden as I do, you have every chance of awaiting final settlement and complete satisfaction for a long time yet." (*Ibid.*, Laurier to Scott, 29 December 1913, p. 42191).

Borden requested that the premiers submit their request in writing for further consideration.<sup>220</sup> On December 22, 1913, the premiers submitted a joint letter to Borden:

After having an interview with you in regard to the questions in respect of which the Prairie Provinces have received different treatment from the other Provinces of Canada, and at your suggestion a meeting of the Premiers of Manitoba, Saskatchewan and Alberta., it has been agreed between us to make to you, on behalf of said Provinces the proposal that the financial terms already arranged between the Provinces and the Dominion as compensation for lands should stand as compensation for lands already alienated for the general benefit of Canada, and that all lands remaining within the boundaries of the respective Provinces, with all natural resources included, be transferred to the said Province, the Provinces accepting respective the responsibility of administering the same.<sup>221</sup>

This letter, later referred to as the 'sporting offer', signifies the first substantive joint offer by the prairie premiers for a settlement of the natural resources question. It also represents the first of many serious misunderstandings between the federal and provincial governments.

In the 'sporting offer', the three premiers suggested that existing financial arrangements could act as compensation for lands already alienated. They also suggested that all remaining unalienated lands and resources should be transferred to the provinces. Soon after the premiers submitted the 'sporting offer', Scott expressed concern that Borden would find its terms unreasonable. However, he thought that the request was legitimate due to the vast amount of land that had already been alienated by the federal government. He also thought that it was vital to establish a bargaining position in which "the Province does not ask for too little."<sup>222</sup> Scott's concerns were well-founded as Borden categorically rejected the 'sporting offer' in the spring of 1914. Borden was

---

<sup>220</sup> Hall, *Sifton*, p. 30.

<sup>221</sup> Martin Papers, Scott, Roblin, A.L. Sifton to Borden, 22 December 1913.

<sup>222</sup> Scott Papers, Scott to Martin, 24 December 1913, p. 42189.

concerned less with the financial consequences of the offer than the political ramifications of such a proposal in the rest of Canada. In 1912, the premiers of Nova Scotia and New Brunswick had adamantly opposed the boundary extension in Quebec, Ontario, and Manitoba. They demanded an increase in political representation and an increase to their federal subsidies in compensation. The premiers based their claim on the fact that the lands granted in the boundary extensions had been purchased by the original four provinces of Confederation in 1870. They argued that this entitled them to a share in the beneficial interest in the lands or, in the alternative, financial compensation in lieu thereof for the lands bought from the Hudson's Bay Company.<sup>223</sup> Even though Borden had previously supported the return of the natural resources to the prairie provinces, he was sensitive to the region as a Maritimer and Member of Parliament for Halifax. Borden was acutely aware that "[t]he Maritime provinces appeared to regard Ottawa as holding the lands in trust for the entire country, with the result that a transfer of them to only part of the country would entail compensation for loss to the remainder."<sup>224</sup> This awareness caused Borden to balk at the 'sporting offer' because he could not easily reconcile the two competing regional economic interests.

It is clear that Maritime interests influenced Borden's response to the 'sporting offer'. On January 8, 1914, Borden referred the joint offer for settlement to the premiers of the Maritime provinces for consideration and comment.<sup>225</sup> Premier George H. Murray of Nova Scotia replied that:

when the two new Provinces were created the Federal Government dealt very liberally with them in respect to financial matters. In comparison with the financial terms given to the Maritime Provinces the financial

---

<sup>223</sup> Mochoruk, *Formidable*, p. 212.

<sup>224</sup> McConnell, *Commentary*, p. 412.

<sup>225</sup> *C.A.R. 1914*, p. 709.

arrangements seemed very generous and I always understood that the large annual grants of money were be reason of the fact that the Western Provinces did not get the lands...if the allowance in lieu of land was, when made, fair and reasonable (as to which there does not seem to have been any question), it certainly cannot be fair and reasonable for these Provinces now to ask for both the lands and the money which was paid them in lieu of lands...if, in the interest of any of the Provinces, it be deemed expedient to make further grants from the Dominion Treasury for Provincial purposes such action should only be taken as part of a general readjustment of financial arrangements in which all the Provinces should have an opportunity to participate.<sup>226</sup>

The Conservative premiers of Prince Edward Island and New Brunswick, John A. Mathieson and James K Flemming respectively, supported Murray's position. They both wrote Borden letters reminding him that the Maritimes had not received compensation for the large additions of territory to Quebec and Ontario. They warned that no further grants of land or natural resources should be made without proportional compensation to the Maritimes. The Maritime premiers refused to accept the main proposition contained in the 'sporting offer'. It did not make sense to them that the prairie provinces wanted the natural resources and a continuation of the subsidy in lieu. They did not accept the prairie premiers' suggestion that the subsidies in lieu should be continued as compensation for lands and resources already alienated.<sup>227</sup>

In the House of Commons, Borden unequivocally rejected the terms of the 'sporting offer'. He stated: "it did not seem to me that the proposal put forward to us in December last by the three Prime Ministers of the prairie provinces was one that they really expected us to entertain."<sup>228</sup> Years later, John W. Dafoe, editor of the Winnipeg Free Press, would attribute the protracted negotiations for the return of the natural resources to the misunderstandings surrounding the 'sporting offer'. In an editorial

<sup>226</sup> Ibid.; George H. Murray was premier of Nova Scotia from July 20, 1896 to January 24, 1923.

<sup>227</sup> Ibid., p. 710.

<sup>228</sup> *House of Commons Debates*, 24 February 1914, col. 1077.

written in July 1928, Dafoe wrote: “No doubt the well-meant proposition of the premiers of the three Prairie Provinces made in 1913 to accept as compensation for alienated lands a continuance of the existing financial arrangement – which was a subsidy in lieu of lands – had much to do with making an early settlement of the natural resources question difficult...[after 1913] it was impossible to make the Dominion Government and the Governments of the other provinces understand that this was not an attempt to get an enlarged subsidy.” Dafoe also claimed that it was the rejection of this pragmatic compromise that fostered the development of constitutional and rights based arguments for the return of the natural resources.<sup>229</sup> Whether or not Dafoe’s analysis is correct, one thing is certain: the pragmatic compromise of a continued subsidy as compensation for previous land alienations was not acceptable to either the federal government or the governments of the Maritime provinces. Over the next fifteen years, the western premiers would try in vain to change the impression that their request for the return of the unalienated resources and continuance of the subsidy in lieu was not a plea for special treatment. Ironically, the basic propositions contained in the ‘sporting offer’ would form the basis of the *NRTAs*.

---

<sup>229</sup> *Free Press*, 13 July 1928.

## CHAPTER IV: The 1918 Dominion-Provincial Conference

*In 1867 the provinces as confederated all got their lands for themselves. But when Manitoba and Saskatchewan and Alberta was joinin the happy family Sir John A. McDonald says, says he, 'Yex can have yer Provinces and welcome, but, divil an acre of land will ye git.'*

*'But,' says Norquay: 'What good is a province with no land? What for do yez not give us the land?' 'Because,' says Sir John, 'we bought all that land from thim Hudson Bay chaps, and it belongs to us. You fellys can have the road allowances and the water and the buffaloes and gophers, but we kape the land and minerals and fish. Sure we paid thim H.B. men 300,000 pounds for it and it belongs to the Dominion Government,' and Laurier said 'Amen'.<sup>230</sup>*

The outbreak of war in 1914 pushed the negotiations for the return of the natural resources to the bottom of the agenda for both provincial and federal governments. Throughout the war years there were only two significant communications on the issue. In November 1915, the prairie premiers sent Borden a joint letter regarding his rejection of the 'sporting offer'. They expressed their disappointment in strong terms: "The proposal contained in the letter was based upon the two fundamental principles which were enunciated by yourself in explaining your policy on this question in Western Canada and which were discussed at the interview, first the rights of the Provinces to the ownership of the public domain, and second their right to compensation for such portions of the same as have been alienated for the general benefit of Canada." The premiers had not considered it necessary "to go into the many collateral matters and incidentals to these principles, realizing that these could be better dealt with at a later step..." They suggested that since Borden had rejected the 1913 proposal "some scheme as a basis of

---

<sup>230</sup> *Morning Leader*, 28 February-1917. This quote is taken from a satirical Letter to the Editor written by Larry Lynch.

negotiation should now be formulated by yourself....”<sup>231</sup> In March 1916, Borden reiterated his earlier position, and the negotiations stalled for the duration of the war.<sup>232</sup>

In 1916, William Martin succeeded Walter Scott as Saskatchewan’s premier. As the Member of Parliament for Regina, Martin had attacked Borden on numerous occasions for his refusal to fulfil his campaign promise to return the natural resources to the provinces.<sup>233</sup> At a political rally leading up to the 1917 provincial election, Martin promised a new ‘Bill of Rights’ for the province and a vigorous defence of provincial rights. The main issues encapsulated in the ‘Bill of Rights’ were the promotion of railway branch line construction, reciprocity, lower tariffs, agriculture reforms, reform of education, and, most importantly, provincial control of the public domain.<sup>234</sup> With the Conservatives in power federally, Martin could afford to push the issue with no negative repercussions to the federal Liberal Party. This platform also allowed Martin to block the inroads that the Progressives had been making in the other western provinces. In fact, it was Martin’s support of these policies that allowed the Liberals to retain power in Saskatchewan throughout the period. Martin distinguished the provincial Liberal Party from its federal counterpart by advocating constitutional and economic change.<sup>235</sup>

---

<sup>231</sup> Borden Papers, Scott to A.L. Sifton, Norris to Borden, 30 November 1915.

<sup>232</sup> *Ibid.*, Borden to Scott, A.L. Sifton, Norris, 16 March 1916, p. 4947.

<sup>233</sup> William Melville Martin was born Aug 23, 1876 in Norwich, Ontario. He represented Regina as a Member of Parliament from 1908 to 1916. He became Premier of Saskatchewan in 1916 and resigned in 1922 to sit as a judge on the Saskatchewan Court of Appeal. He was Chief Justice from 1941 to 1961. He died on June 22, 1970 (Ted Regehr, “William M. Martin,” in Gordon L. Barnhart (ed.), *Saskatchewan Premiers of the Twentieth Century* (Regina: Canadian Plains Research Centre, 2004), p. 40).

<sup>234</sup> Regehr, “Martin,” p. 49; *C.A.R. 1916*, pp. 720-721.

<sup>235</sup> Regehr, “Martin,” p. 58.

Meanwhile, Charles Stewart replaced Arthur L. Sifton as premier of Alberta.<sup>236</sup>

Like Martin, Stewart fully supported the claim for the return of the natural resources. In February 1918, Martin, Stewart, and Thomas Johnson, a representative of the Manitoba government, sent a joint letter to Borden requesting consideration of the natural resources issue over the summer recess so that legislative action could be taken at the next session. Borden acknowledged the letter and replied that the issue could not be considered until after the Imperial War Conference.<sup>237</sup> A lengthy editorial in the Morning Leader in March 1918 illustrates that the issue was considered to be of vital importance to Saskatchewan people.<sup>238</sup> Addressing the arguments advanced against the transfer, the editor William F. Kerr<sup>239</sup> advocated the following:

All these arguments advanced against the transfer of the public resources to these Western provinces are beside the mark. The Western Provinces are not composed of weakling children, but of vigorous, progressive, self-reliant men. They do not need to take a back seat in statesmanship, patriotism and capable administration to the other Provinces of the Dominion, a fact well established by a study of Canadian history during the past ten years, and by a survey of the personnel of the present Union cabinet at Ottawa.

The West is merely asking for the same rights of ownership of its own resources as are enjoyed by other Provinces, nothing more but certainly nothing less. We are capable of governing ourselves, and if mistakes should be made – well, it is our privilege to make them and suffer the consequences just the same as the other Provinces.

---

<sup>236</sup> Charles Stewart was born August 26, 1868 in Strabane, Ontario. He was first elected a Member of the Legislative Assembly in 1909 and was appointed Minister of Municipal Affairs in 1912 and Minister of Public Works in 1913. Premier of Alberta from 1917 to 1921, his Liberal government was defeated by the United Farmers of Alberta. Mackenzie King appointed him Minister of the Interior and Mines in 1921. Stewart signed the *NRTAs* on behalf of the federal government. He died December 6, 1946 (Carrol Jaques, "Charles Stewart, 1917-1921," in Bradford J. Rennie (ed.), *Alberta Premiers of the Twentieth Century* (Regina: Canadian Plains Research Centre, 2004), pp. 44-56).

<sup>237</sup> *Edmonton Bulletin*, 27 February 1918.

<sup>238</sup> The Letter to the Editor quoted at the beginning of this chapter, even though it is a satire, is typical of the sentiment expressed in the Saskatchewan daily papers during this period.

<sup>239</sup> William Franklin Kerr later became Minister of Natural Resources in William Patterson's Liberal government 1935 to 1944.

It is not for Eastern organizations and newspapers and politicians to say whether it is wise for the West to control its own resources or not. We are not a half-civilized dependency held in subjection to the East and incapable of self-government. It is for the West itself to decide whether they consider it wise or not to control their own domain and resources. And the West has decided. That being the case, it is for the East to acquiesce in that decision, and it might as well do it with good grace, for the Western will in this must and shall prevail.<sup>240</sup>

Clearly, the natural resources issue meant more than the adjustment of financial subsidies; it was a focal point for regional discontent.

In the summer of 1918, the prairie premiers sent Borden a joint submission, which outlined their position on the natural resources issue. It contained a history of the negotiations that had already occurred and called attention to two important aspects of the provinces' situation. Firstly, the "ownership and development of the resources within their respective boundaries were treated differently from the older members of Canadian Confederation." Secondly, settlement of the question should be based on "two cardinal principles": the constitutional right of these provinces to their natural resources and their right to compensation for resources that have been alienated for the general benefit of Canada. The premiers emphasized that the rationale for the retention of the natural resources (the Macdonald-Laurier immigration policy) no longer provided adequate justification for the federal government's continued control because immigration had significantly decreased. The provinces asserted that the administrative and pragmatic reasons for the retention no longer existed. The underlying constitutional rights, which had been displaced in favour of administrative practicality, needed to be redressed.<sup>241</sup>

---

<sup>240</sup> *Morning Leader*, 1 March 1918.

<sup>241</sup> PAM, Premier's Office Correspondence, Natural Resources Papers, *Draft Joint Submissions by Representatives of the Prairie Provinces*.

In the fall of 1918, Borden decided hold a Dominion-Provincial Conference “for the purpose of considering the problem of soldiers’ settlement, the general problem of land settlement and the request of the Prairie Provinces for the transfer to them of their natural resources.”<sup>242</sup> Held at the Senate Chamber, from November 19 to November 22, the conference included representatives from all nine provinces. The federal Minister of Finance, Sir William Thomas White, acted for Borden, who was in London attending the Peace Conferences.<sup>243</sup> The first item on the agenda was the submission of the ‘sporting offer’ by the premiers of Manitoba, Saskatchewan, and Alberta for consideration by the Conference participants.<sup>244</sup> At this session, the federal Minister of the Interior, Arthur Meighen, stated that the federal government was generally in favour of the transfer and the continuance of the subsidy so long as this was mutually satisfactory to the other provinces.<sup>245</sup> The chair adjourned the meeting for the rest of the day so that the other provinces could consider the matter. On the morning of November 20, James A. Calder, the federal Minister of Immigration and Colonization, further outlined the federal government’s position and made suggestions for increased co-operation between all of the concerned parties.<sup>246</sup> At the afternoon session, Premier Murray of Nova Scotia presented a report on the issue on behalf of the representatives of Nova Scotia, New Brunswick, Prince Edward Island, Quebec, Ontario, and British Columbia. The report

---

<sup>242</sup> The formal title of the Dominion-Provincial Conference 1918 was the Conference between the Members of the Government of Canada and the Various Provincial Governments (Canadian Intergovernmental Conference Secretariat, *Conferences*, p. 3).

<sup>243</sup> Canadian Intergovernmental Conference Secretariat, *Conferences*, p. 3.

<sup>244</sup> Canada, *Proceedings of the Conference between the Government of Canada and the Provincial Governments at Ottawa, November 1918* (Ottawa: J. de Labroquerie Tache, King’s Printer, 1919), p. 3.

<sup>245</sup> Edmonds, *Plea*, p. 6.

<sup>246</sup> James A. Calder had left the Saskatchewan cabinet in order to become Minister of Immigration and Colonization in the Union Government.

directly challenged the request by the prairie premiers and the federal government's position. Murray put forward a resolution:

That in the event of the special allowance in lieu of lands provided for by the Acts of Parliament 4-5 Ed. VII, cc. 3 and 42 and 2 Geo. V, c. 32 [the Manitoba, Alberta, and Saskatchewan Acts] being maintained in whole or in part, a proportionate allowance calculated on the basis indicated in the said Acts be granted to each of the other provinces of Confederation – reserving, however, any special claim on the part of any province in respect of the proposed transfer or arising out of the Acts of Parliament 35 Vict., c. 23 and 2 Geo. V, cc. 32, 40 and 45 or upon any other ground whatsoever; and the representatives of the Maritime Provinces asserting their right to have their special claims referred to herein adjusted at the same time as the lands and natural resources are transferred to the provinces of Manitoba, Saskatchewan and Alberta.<sup>247</sup>

The other provinces wanted equal treatment. This greatly complicated the process because all of the provinces would have to agree on the terms by which the natural resources could be returned to the prairie provinces.

The next day, the prairie premiers submitted a letter to the conference in which they responded to the position set out by the other premiers:

We were unable to join with the other representatives in what would result in so enlarging the scope of our claim as to virtually establish an admission on our part that the other provinces have a right to share in the beneficial interest from our public domain. Nor could we agree that the subsidy being paid us in lieu of our lands put us in any more favourable position in relation to the Dominion than any of the other provinces. Not one of these provinces has had its natural resources used as ours have been by the Dominion for the general benefit of Canada, and we are of the opinion that the use of our resources in such a manner is in no way compensated for by the subsidies we are receiving on that account...we are of the opinion that, should the Government see fit to favourably consider on its merits any special claim of any one of the provinces, no possible objection could be made by us to such action. At the same time we must state our position upon that part of the resolution under discussion, which is that if general increases in the subsidies asked for by

---

<sup>247</sup> Canada, Proceedings of the Conference between the Government of Canada and the Provincial Governments at Ottawa, November, 1918 (Ottawa: J.de Labroquerie Tache, 1918), p.5. The subjects discussed at the conference were the problem of soldiers' settlement, the general problem of land settlement, and the request of the Prairie Provinces for the transfer of the natural resources.

the other provinces for any reason by taken into serious consideration, we would thereby have a claim to be dealt with in exactly the same manner.<sup>248</sup>

This submission effectively ended the deliberation on the natural resources issue. The Maritime premiers did not want the prairie premiers to have the natural resources unless they were offered commensurate subsidies. The prairie premiers did not think that the Maritime provinces had any direct interest in the issue. Further complicating matters, Premier John Oliver of British Columbia submitted a memorandum to the conference in which he outlined his province's claim to the return of the lands and natural resources that had been appropriated by the federal government during the construction of the Canadian Pacific Railway. Even though the federal government's representatives at the conference, led by James Calder, had tried to facilitate a resolution to the natural resources issue, they allowed the Maritime premiers to veto the arguments put forth by the prairie provinces. Up until this point in the negotiations, the prairie premiers had corresponded exclusively with the federal government. The other premiers were not sufficiently informed on the issue. Their hastily prepared resolution illustrates that their main concern was ensuring that financial subsidies to the provinces would not be altered to prairie advantage. There is no evidence that they considered the prairie provinces' claim to constitutional inequality. The issue of retention of the natural resources by the federal government should have been considered only by the parties directly involved. The concerns of the other provinces only served to paralyze the negotiations.

The Morning Leader reported the results of the Dominion-Provincial Conference with the following headlines: "Verdict is that West Euchered by Allowing East's Interests

---

<sup>248</sup> *Ibid.*, p. 9.

Voice / Eastern Canada Unjustly Trying to Get Subsidy at Expense of West.”<sup>249</sup> The editor commented that the federal government should be held accountable for “allowing the other provinces to enter a discussion in a matter which was no concern of theirs, [this] had resulted in a complete abortion of the negotiations conducted at the conference held in Ottawa...”<sup>250</sup> In the Saskatchewan Legislative Assembly, Premier Martin declared that in the future the issue would be negotiated only in conference with the federal government because the position of the other provinces made a settlement impossible. With respect to the federal government’s support for the return of the natural resources, Martin attributed this to the fact that the federal government believed that it cost more to administer the resources than they gained in revenue. Martin challenged this assertion because no consideration had been given to the fact that in Saskatchewan alone the outstanding payments for pre-emptions and purchased homesteads were approximately ten million dollars. He added that he did not think that it was fair that western lands were charged for the entire cost of railway construction and Métis scrip when the lands had benefited the whole of Canada. Martin claimed that the federal government had alienated a total of 174,232,193 acres in Saskatchewan in support of federal policies. He argued that the province deserved compensation for providing the means by which the federal government had implemented its own policies.<sup>251</sup>

The other prairie premiers were also frustrated by the outcome of the 1918 conference. In Manitoba; Liberal Premier Tobias C. Norris decided that the whole basis of the provincial claims needed to be reviewed. To this end, he commissioned historian Chester Martin to prepare a study of the constitutional position of the province with

---

<sup>249</sup> *Morning Leader*, 29 January 1919.

<sup>250</sup> *Ibid.*

<sup>251</sup> *Ibid.*

respect to the natural resources issue.<sup>252</sup> The result, an exhaustively researched work entitled The Natural Resources Question – The Historical Basis of Provincial Claims, was published in 1920.<sup>253</sup> The book, part constitutional history and part legal brief, provides a comprehensive analysis of the issue. Martin formulated a constitutional rights argument that would be used by a series of prairie premiers over the next decade. Martin illustrated, through the use of extensive historical sources, that the federal government had breached fundamental constitutional principles by retaining control of the natural resources in the prairie provinces. Martin argued that the issue was of primary importance to the evolution of self-government in Canada: "...the 'Natural Resources Question' is a Canadian problem altogether much more fundamental than the nice adjustment of subsidies or the liquidation of all possible provincial 'claims' against the Federal Government. It is nothing less than the consummation of Confederation itself – a process which is necessary within the Dominion before the Dominion can take its place among the autonomous British nations of the Empire."<sup>254</sup> Martin contended that only by a recognition of and adherence to British constitutional practice could the parties ever resolve the situation. Martin claimed that transfer of the North-West Territories from the

---

<sup>252</sup> PAM, Premier's Office Correspondence, Natural Resources Papers.

<sup>253</sup> Martin was born in King's County, Nova Scotia in 1882. He was awarded the first Rhodes Scholarship given in North America in 1904. Martin established the Department of History at the University of Manitoba in 1909 and taught there until 1929 when he moved to the University of Toronto (Carl Berger, *The Writing of Canadian History, 2<sup>nd</sup> edition* (Toronto: University of Toronto Press, 1986), p. 38). According to Berger, Martin was part of a group of historians who viewed the development of self-government in Canada as a slow, inevitable process of organic evolution. With reference to Martin's book on the natural resources issue, Berger states that "[Martin] wrote at a time of great resentment in the West against national policies, and he drew a direct parallel between the prairie provinces in the twenties and the Canadian colonies a century before" (Berger, *History*, p.38).

<sup>254</sup> Martin, *Question*, p. 120; In a later work, Martin drew a parallel between the provincial campaign for control of their natural resources and the federal government's negotiations leading up to the Statute of Westminster. See: Chester Martin, *Foundations of Canadian Nationhood* (Toronto: University of Toronto Press, 1955).

Hudson's Bay Company transformed Canada into an Imperial power with control over a vast subordinate territory.<sup>255</sup>

For Martin, there was only one issue at stake: the right of the prairie provinces to the beneficial control of its resources from the moment they had been granted responsible government. If this principle were accepted, then two things needed to occur: the immediate return of the unalienated resources and compensation for all lands previously alienated on the basis of a 'fiduciary accounting'.<sup>256</sup> By 'fiduciary accounting', Martin meant that fact that the federal government had only retained the natural resources in trust for the benefit of the residents since 1870 when it had acquired the lands from the Imperial Government. Martin disputed the 'purchase theory' and claimed that it was a myth created to serve as an *ex post facto* justification for the retention of the public domain.<sup>257</sup>

In The Natural Resources Question – The Historical Basis of Provincial Claims, Martin provided a historical overview of the issue and formulated a constitutional argument that justified provincial claims. In addition, he analyzed the political negotiations on the question from the first claim by Riel to the failure of the 1918 conference. Martin attributed the failure of the conference to the conflation of the annual subsidy granted to each province and the subsidy granted to the prairie provinces in lieu of the natural resources. He argued:

[T]he 'Natural Resources Question' is not two questions but one. It is not a question of lands and a question of subsidy but a question of public lands

---

<sup>255</sup> Berger, *History*, p. 34.

<sup>256</sup> Mochoruk, *Formidable*, p. 233.

<sup>257</sup> Martin, *Question*, p. 132; At p. 134, Martin wrote that "[b]y the constitutional procedure scrupulously followed in the transfer, therefore, both Rupert's Land and the North-Western Territory came to Canada not from the Hudson's Bay Company by 'purchase' but from the Crown by 'Acts of State, authorised by Imperial Statute' with 'all the force and permanence of fundamental law.'"

and public lands only as from the date of the assumption of the duties and obligations of responsible government...there is not justification for interpreting the compensation for natural resources for a half a century 'by the Government of Canada for the purpose of the Dominion; as a species of cash subsidy like that 'for the support of the Government and Legislature' or the 80 cents per capita grant to the provinces in return for the surrender of customs revenues to the Dominion. In a very real sense the compensation for alienated resources is not a subsidy at all. It is the equity due to this province [Manitoba] from a usurpation which took place fifty years ago.<sup>258</sup>

Martin also argued that the referral of the natural resources issue to a conference of representatives from all of the other provinces was an abrogation of the federal government's fiduciary obligation to the prairie provinces. The federal government's decision to involve the provincial governments "in a purely provincial capacity would seem to leave the fiduciary obligations of the Dominion in administering the public domain of the Prairie Provinces to be determined by the other provinces of Canada on the basis of their own fiscal expediency." Martin fully agreed with the position taken by the prairie premiers at the conference because "[a]cquiescence on the part of the Premiers of the Prairie Provinces would virtually establish an admission on our part that the other Provinces have a right to share in the beneficial interest in our public domain."<sup>259</sup> On the failure of the 1918 conference, Martin wrote pessimistically: "...the 'Natural Resources Question' has now been consigned to the limbo of undetermined causes whence all the supplications of the Prairie Provinces for years to come would be powerless to effect deliverance."<sup>260</sup> Despite his gloomy prediction, Martin continued to act as a consultant to the Manitoba government until the resolution of the issue nearly ten years later.

---

<sup>258</sup> *Ibid.*, p. 119.

<sup>259</sup> *Ibid.*, p. 117.

<sup>260</sup> *Ibid.*, p. 113.

Chester Martin was not the only scholar to take up the natural resources issue in this period. In 1919, a constitutional lawyer in Regina by the name of Bram Thompson, who was also the editor of the *Canadian Law Times*, took up the issue as his own personal *cause célèbre*.<sup>261</sup> In a series of polemical articles, Thompson challenged the federal government's authority under s.146 of the *British North America Act, 1867* to create provinces that were not constitutionally equal to the other provinces of Canada.<sup>262</sup> In colourful language he argued against the 'purchase theory' and for the proposition that the federal government was a trustee of the lands and, accordingly, owed the provinces an accounting since 1870 for its administrative and control of the public domain. His articles, published in the *Canadian Law Times*, reached a wide audience of lawyers and judges throughout the country. Fully convinced of the veracity of his constitutional argument, Thompson hoped that the Canadian legal community would support the prairie position once they were advised of the relevant facts.<sup>263</sup> Thompson also tried to prevail upon various political leaders by sending them frequent letters and copies of his articles. In a letter to Premier Martin dated October 28, 1919, Thompson referred to his articles and assured Martin that they would provide the Saskatchewan government with an

---

<sup>261</sup> Abraham 'Bram' Thompson was born in Ireland in 1865. He earned the gold medal in law at Trinity College, Dublin and worked as a lawyer in Toronto and Vancouver before moving to Regina in 1917 (*Leader-Post* 6 April 1943 "Death Takes Noted Lawyer on Monday").

<sup>262</sup> See: Bram Thompson, "Our Bogus Dominion Land Code," *Canadian Law Times* XXXIX (1919): 494-508; "The Constitution of Canada. Canada's Suzerainty over the West," *Canadian Law Times* XXXIX (1919): 417-437; "The Distortions of Canada's Constitution West and East," *Canadian Law Times* XL (1920): 852-862; "Canada's Distorted Constitution," *Canadian Law Times* XL (1920): 101-121; "Canada's Suzerainty over the West – Privy Council Views on the Usurpation," *Canadian Law Times* XLII (1922): 227-235; "Ownership of Western Lands – The Aftermath of Restitution," *Canadian Law Times* XLII (1922): 397-405.

<sup>263</sup> Thompson also sent copies of his articles to the Lords of the Privy Council. He later claimed that his articles influenced Lord Haldane's decision in *Great West Saddlery v. Saskatchewan*, [1921] 2 A.C. 91; [1921] 1 W.W.R. 1034. During this appeal, Haldane expressed his disbelief that the natural resources of the prairie provinces were administered by the federal government.

unassailable legal argument with respect to the constitutional right of the province to its public domain. He also emphasized the strategic and political value of his arguments:

This argument may be used effectually in forcing the government at Ottawa to relinquish its hold upon the land which it has usurped, not only without compensation to the East, but on terms of requital to the West for deprivations [sic] done there in the time of the Dominion's illegal tenure. Its import and the part it may play at the general election are not hard to discern...The Farmers armed with it would simply be invulnerable.<sup>264</sup>

Thompson believed that he had created an original and irrefutable legal argument.

Furthermore, he believed that it would provide the provincial Liberals, who had split completely from the federal Liberals and had essentially absorbed the Progressives and farmer organizations, with fodder for the upcoming election. In response to Thompson, Premier Martin questioned Thompson's claim to originality because he recalled reading Haultain's 1901 draft autonomy bill. However, Martin applauded the fervour with which Thompson was pursuing the issue: "The publicity you have given to the question, however, should do a great deal to impress upon the minds of the people of this part of the country the importance of the subject and insofar as the Government of Saskatchewan is concerned we intend to continue to press for our rights in this regard."<sup>265</sup> Throughout the 1920s, Thompson would write dozens of letters to federal and provincial politicians asserting his constitutional rights argument.

During the early 1920s, due mainly to the efforts of Chester Martin and Bram Thompson, the constitutional rights arguments gained momentum. Prairie premiers increasingly referred to legal and constitutional rights in their correspondence on the natural resources issue, and the arguments compelled the premiers to request another

---

<sup>264</sup> Martin Papers, Transfer of Natural Resources Correspondence, June 1919-1921, Thompson to Martin, 28 October 1919.

<sup>265</sup> *Ibid.*, Martin to Thompson, 29 October 1919.

round of meetings with the federal government. In early December 1920, Arthur Meighen, who had replaced Robert Borden as prime minister, invited the three prairie premiers to attend a conference to be held in Ottawa on December 15.<sup>266</sup> In response to this announcement, the *Leader-Post*'s editor, William F. Kerr, renewed his campaign for the return of the natural resources. In a spirited editorial, Kerr referred to the Paris Peace Conference in 1919 at which Canada had asserted its claim to full national status within the British Empire. He compared the federal government's position with that of the prairie provinces – both were seeking equal status within a larger political entity. Kerr asserted that the federal government could hardly deny the prairie provinces an equal constitutional position in Canada when they were seeking the same sort of recognition from the Imperial Parliament.<sup>267</sup>

Prior to the conference, Prime Minister Meighen and Premier Norris of Manitoba exchanged correspondence. In a letter dated December 7, Meighen assured Norris that the federal government was anxious to find a solution that was acceptable to all parties. He encouraged the provinces to give up their claim for a continued subsidy because it was the major impediment to a negotiated settlement. Meighen also referred to the precarious financial position the federal government found itself in due to the war effort.. He suggested that “[u]nder the circumstances...it would contribute materially to real progress in the solution of the question if you, as Premier of Manitoba, Mr. Stewart as Premier of Alberta, and Mr. Martin as Premier of Saskatchewan, acting preferably together but if this is not possible, acting separately, would state definitely the best terms

---

<sup>266</sup> PAM, Premier's Office Correspondence, Natural Resources Papers, Meighen to Norris, 7 December 1920.

<sup>267</sup> *Morning Leader*, 9 December 1920.

to which you would be ready to agree.”<sup>268</sup> Norris responded to Meighen’s direction for the provinces to state their terms by sending Meighen a letter based directly on the constitutional principles outlined in Chester Martin’s book. With respect to the provincial position, Norris asserted that “we have come to the conclusion that the only way to dispose permanently of the question of the Natural Resources is to go back to first principles...the same principles as were followed in the case of the other Provinces at the time of and since Confederation.” Norris suggested that no solution had been found because the focus had been on financial adjustments and not on constitutional principles. Norris concluded his letter with a statement of his government’s position:

“These [financial] arrangements have not settled the question, and it can never be settled, we believe, by measure of expediency in violation of first principles. This is a question which can never be settled until it is settled right, and the only way in which it can be settled right is to settle it in conformity with first principles of sound British constitutional procedure.” According to Norris, a financial solution could only be found if it were based on a foundation of British constitutional practice.<sup>269</sup>

The content of the correspondence leading up to the natural resources conference did not augur well for the meetings held on December 15. At the first session, the Attorney-General for Manitoba, Thomas Johnston, presented a brief prepared by Chester Martin.<sup>270</sup> He announced that the Manitoba government formally withdrew from the ‘sporting offer’ of 1913 and that it now wanted compensation upon a fiduciary basis for

---

<sup>268</sup> PAM, Premier’s Office Correspondence, Natural Resources Papers, Meighen to Norris, 7 December 1920.

<sup>269</sup> *Ibid.*, Norris to Meighen, 10 December 1920.

<sup>270</sup> *Free Press*, 16 December 1920.

those resources alienated for federal purposes since 1870.<sup>271</sup> The representatives of the federal government at the conference, Arthur Meighen, James Loughheed, James A. Calder, Arthur L. Sifton, and J.D. Reid, were unmoved by Manitoba's argument.<sup>272</sup> At the end of the conference, Meighen suggested that an arbitrary abatement of the present subsidy in lieu be volunteered by the prairie provinces in order to reconcile the eastern provinces to the retention of the remaining land as compensation for resources already alienated.<sup>273</sup> There was no agreement between the parties on either the principles involved or the financial issues. The intractability of the parties led to the cancellation of the evening session, and the western premiers retreated to their hotel in order to discuss the situation.<sup>274</sup> The next day, the Morning Leader published an interview with Premier Martin about his impressions of the conference. Martin unequivocally stated that the federal position and its deference to the Maritime provinces was "unreasonable, unfair and without any constitutional grounds. It should be settled between the Dominion and the Western provinces alone."<sup>275</sup> The conference had ended in a stalemate. The Free Press attributed the failure to one cause: "It is the old question of the east and west, and the wishes of the former apparently must be deferred to."<sup>276</sup> In a more temperate tone, the Tribune reported that the failure was due to two factors. Firstly, the federal government refused to act without consulting the Maritime provinces. Secondly, since Manitoba had withdrawn from the terms of the 'sporting offer', the claims of the three

---

<sup>271</sup> NAC, Records relating to the Royal Commission on the Natural Resources of Saskatchewan and Alberta, RG 15, volume 43, File 25(d), History- Transfer.

<sup>272</sup> Before joining the federal cabinet, James Loughheed, James A. Calder, and Arthur L. Sifton had formerly advocated for the provinces.

<sup>273</sup> NAC, Records relating to the Royal Commission on the Natural Resources of Saskatchewan and Alberta, RG 15, volume 43, File 25(d), History-Transfer.

<sup>274</sup> Morning Leader, 16 December 1920.

<sup>275</sup> *Ibid.*

<sup>276</sup> Free Press, 16 December 1920.

provinces were no longer identical.<sup>277</sup> Manitoba had shifted to a bargaining position based solely on constitutional principle and the claim for a fiduciary accounting from the onset of responsible government.

Manitoba's stance, based squarely on Chester Martin's arguments, greatly decreased the chances that a solution could be formulated by political compromise. In a letter to Norris, Meighen blamed Manitoba's appeal to constitutional right for the fact that a settlement had not yet been reached. He wrote that "the admission or the denial of the principle which you ask to be conceded does not therefore appear to me to be of practical importance in the solution of the present difficulty." Further, Meighen added that the requested fiduciary accounting would be so difficult that "the purposes of public policy would be called in question." Meighen urged Norris to set aside his appeal to constitutional principles and to formulate a bargaining position.<sup>278</sup> Meighen was more interested in finding a practical solution to the issue than he was in debating the constitutional rights of the prairie provinces. However, during this period, the Manitoba government became more convinced that recognition of their constitutional rights was a prerequisite for settlement.

In this period, Manitoba's position on the natural resources issue differed greatly from that of Saskatchewan and Alberta. The extent of this divergence is apparent in lengthy speech about the public domain in Saskatchewan's Legislative Assembly by Provincial Treasurer Charles A. Dunning.<sup>279</sup> At the beginning of his speech, Dunning stated that money was not the motive behind the provincial claim to its natural

---

<sup>277</sup> *Tribune*, 16 December 1920.

<sup>278</sup> PAM, Premier's Office Correspondence, Natural Resources Papers.

<sup>279</sup> Charles A. Dunning succeeded William Martin as premier in 1922.

resources.<sup>280</sup> Dunning explained that the revenues gained by the federal government from its administration of the natural resources from July 1, 1872 to September 30, 1918 were \$46,914,171. This was offset by expenditures over the same period of \$86,441,807.60. Dunning claimed that even the most efficient provincial administration could not make up this gap in expenditure. He then stated that “[t]he most important reason, to myself at any rate, is that after years of dominion handling of our resources in Saskatchewan there is practically no industrial development of them.”<sup>281</sup> Only agriculture and immigration policies had been developed by the federal government during its administration of Saskatchewan’s public domain. Dunning claimed that Saskatchewan people were interested in the development and control of the natural resources for the simple reason that it would enable them to purchase items that they currently had to purchase in the East. The creation of industry in Saskatchewan would develop markets for farm goods in Saskatchewan, which farmers currently had to pay to export out of Saskatchewan to sell. Dunning explained that the federal policy with respect to the natural resources encouraged speculative dealing rather than industrial development. Under federal administration, speculators had acquired lands and natural resources, which they retained with little improvement or development until settlement opened up the area. At this point, the speculators would sell the land to settlers. Dunning strongly condemned this state of affairs:

But it is not in the public interest that the resources of the country should be handled in that manner. A policy should be devised which will make available for the use of the people the resources which the Creator placed here and which will remove the incentive from public use resources which were intended for the use of the people.<sup>282</sup>

---

<sup>280</sup> SAB, Saskatchewan Legislative Assembly, file 3.6, speech given 23 November, 1920, p. 2.

<sup>281</sup> *Ibid.*, p. 3.

<sup>282</sup> *Ibid.*, p. 4

Dunning provided a further example of the impact that federal administration had had on industrial development in Saskatchewan. He claimed that poor forestry practices implemented by the Department of the Interior had “practically denuded [Saskatchewan] of commercial timber within the last ten or fifteen years by the constant recurrence of forest fires.” There were too few forest rangers and invaluable timber was being lost at the same time prairie farmers were paying extremely high prices for timber. Dunning asserted that local administration of these resources would better serve the interests of the Saskatchewan people.<sup>283</sup>

After a further review of the benefits of local administration, Dunning moved on to why the negotiations for the return of the natural resources had failed:

The reason can be briefly stated. It is that eastern Canada labours under the delusion that the older provinces of Canada own the natural resources and public domain in these newer provinces. They say: “You belong to the dominion. The dominion owns you. We have an interest, a financial interest in your natural resources.” ... Instead of the dominion government taking the attitude that this is a question as between the dominion and the Province of Saskatchewan they take the attitude that we must satisfy the eastern provinces that it is alright before we can get control of our resources.”<sup>284</sup>

Dunning continued by explaining that the members of the Saskatchewan government had once believed that “we might find the eastern provinces reasonable enough to reason this thing out, but one experience has been sufficient.”<sup>285</sup> He claimed that both Borden and Meighen used consultation with the Maritime provinces as an excuse to delay the natural resources negotiations. Dunning then proposed that a solution could only be approached through bilateral negotiations with the federal government in its role as administrator of

---

<sup>283</sup> *Ibid.*, p. 12.

<sup>284</sup> *Ibid.*, p. 14.

<sup>285</sup> *Ibid.*, p. 14; Dunning is referring to the 1918 Dominion-Provincial Conference.

the natural resources. With respect to the role of the eastern provinces, Dunning commented on what he termed their paradoxical position: "By and by the eastern provinces by persisting in this dog-in-the-manger policy will have helped to destroy the very thing that might have produced something worth while if properly administered." He explained that while the eastern provinces insist that the federal government retain control, unless they receive compensation, the federal government made no revenue from its control of the natural resources. The eastern provinces were receiving nothing and were likely to receive less as time went by as the federal government made more and more alienations to private interests. Dunning contended that, ironically, the eastern provinces would be better off if Saskatchewan had the natural resources if only to save the federal government the expenditures connected with administration.<sup>286</sup>

Dunning ended his speech with an examination of the legal and constitutional arguments with respect to the rights of the Saskatchewan, Manitoba, and Alberta to their public domain. In particular, Dunning commented on the suggestion that the retention of the natural resources from 1870 was "illegal" and that the provincial governments should seek redress in the courts. He stated:

[T]his government does not intend to get tangled up in the courts for the next two or three years on this question. We believe our claim is a matter of right whether or not it is a matter of law. Law is a queer thing. It is quite possible that legally we may find ourselves in the position that the other provinces of Canada have the right to their resources and we have not the right to our resources...[only] in equity [do]we have a claim to be placed on the same basis as the other provinces of Canada.<sup>287</sup>

Dunning asserted that political negotiations would lead to better results than litigation.

---

<sup>286</sup> *Ibid.*, pp. 14-15.

<sup>287</sup> *Ibid.*, p. 19.

The position of the Alberta government during this period is harder to discern as there are few records available. However, Premier Dunning believed that Alberta's position was markedly different from that of Saskatchewan or Manitoba. "I can well understand that from motives of financial expediency the Alberta Government would be more likely to sacrifice principle because of the immense revenue which would be immediately available from possession by the Province of the coal mining area."<sup>288</sup> Lacking the same available and immediate resource wealth, Dunning had no intention of sacrificing Saskatchewan's subsidy for the uncertainty natural resources revenue.

During this period, the positions of the governments of Alberta, Manitoba, and Saskatchewan diverged from a point of common interest as represented in the 'sporting offer'. Premier Norris of Manitoba decided to press for full 'fiduciary accounting' back to the inception of responsible government of the province in 1870. Premier Martin of Saskatchewan supported Manitoba's constitutional argument; however, Charles Dunning, as Provincial Treasurer and later as premier, did not see any economic benefits to a transfer of administration beyond those that could accrue through better administration. The subsidy that Saskatchewan received in lieu of the resources provided a surer source of income for the province. Alberta was in a different position because it could realize on its resources quickly if given control. The vast coal deposits and rumours of oil reserves prompted the Alberta government to depart completely from the constitutional arguments put forward by the Manitoba government. Indeed, from this point onwards the negotiations for the return of the natural resources proceed individually, if at all. Chester Martin describes this split in bargaining position as "like Cerberus three gentlemen at

---

<sup>288</sup> SAB, Dunning Papers, Natural Resources, General, p. 31716-31718.

once.”<sup>289</sup> It may be argued that it was frustration caused by the stalemate of the 1918 conference that prompted each province to pursue its own direction. Whatever the cause, the fissure was largely to blame for the lack of results during this period. The federal government refused to deal with the provinces separately and each province had significantly different interests in the matter.

---

<sup>289</sup> Martin, *Foundations*, p. 491.

## CHAPTER V: The 'Equality Principle' and the 1926 Alberta *NRTA*

*It is not a hard matter to scramble an egg but it is a very hard matter to unscramble it. It is not a hard matter to retain the resources, but once you have retained them for fifteen to twenty years and adjusted every phase of public policy to the fact that there was retention, then it becomes a matter of very great complexity.... You may get further by one way, and one way only, by presenting some concrete proposal in figures that will appeal to a fair-minded man as a square, bold, rough but honourable solution.*<sup>290</sup>

During his tenure as prime minister, Meighen failed to find an 'honourable solution' to the natural resources issue. The premiers of Alberta, Saskatchewan, and Manitoba did not agree with the terms set out by Meighen, and the negotiations had produced no tangible results by the time his government was defeated in the 1921 federal election. The election of a minority government, led by William Lyon Mackenzie King, signalled a new era in federal-provincial relations. According to Robert Wardhaugh, King had a favourable impression of the west. This attitude created a more conciliatory tone in the federal government towards prairie concerns such as the natural resources transfer and the tariff.<sup>291</sup> King perceived himself as a social and political reformer, and he saw the west as a new land where innovative policies and political movements could flourish.<sup>292</sup> Wardhaugh has argued:

It is difficult to ascertain King's precise perceptions of the Prairies because he was far too cautious to articulate strong regional biases. Instead, what emerges from an understanding of his early thinking, when pieced together with subtle comments from his diaries and letters, is a complex mixture of genuine sympathy, self-deception, and political expediency. King's Western sympathies served a definite pragmatic purpose, but it must be understood that he believed them to exist. They

<sup>290</sup> Prime Minister Arthur Meighen, *House of Commons Debates*, 25 April 1921, pp. 2544-2545.

<sup>291</sup> See: Robert A. Wardhaugh, *Mackenzie King and the Prairie West* (Toronto: University of Toronto Press, 2000); Robert A. Wardhaugh, "The 'Impartial Umpire' Views the West: Mackenzie King and the Search for the New Jerusalem," *Manitoba History* 29(1995): 11-22.

<sup>292</sup> Wardhaugh, *King*, p. 8.

would influence his handling of the region, and in 1919 [when King assumed the leadership of the party] the West was witness to a new Liberal leader who seemed intent on meeting its demands.<sup>293</sup>

Saskatchewan Premier Charles Dunning did not think that King's leadership would have any impact on the natural resources negotiations. In a memo dated November 23, 1920, Dunning quoted the 1919 federal Liberal platform, which outlined the direction that King wanted to take the federal party on a variety of issues. The resolution read: "Resolved that the provinces of Manitoba, Saskatchewan and Alberta should be granted the ownership and control of their natural resources within their respective boundaries on terms that are fair and equitable with reference to all other provinces of the Dominion." Dunning commented in his memo that the "reference to all other provinces of the Dominion" signalled King's intention to maintain the position espoused by Borden and Meighen. He anticipated that the interests of the other provinces would continue to overshadow the negotiations to the extent that no solution could ever be reached on that basis.<sup>294</sup>

Dunning's evaluation of King's leadership may have been correct prior to the 1921 election; however, the election of a minority government drastically changed the political climate in Ottawa. In order to keep his government in power, King needed support from the Progressive members of the House of Commons.<sup>295</sup> One of the main issues in the Progressive Party's platform was the return of the natural resources.<sup>296</sup>

Within two months after the election, King sent a letter to the prairie premiers hoping to

---

<sup>293</sup> *Ibid.*, p. 35.

<sup>294</sup> SAB, Saskatchewan Legislative Assembly, file 3.6, speech given 23 November 1920.

<sup>295</sup> King wrote: "The hope of the future of Liberalism in Canada lies in the West...It is inevitable that we should lose some of our following in Eastern Canada as the years go by and what is lost in the East must be more than overtaken in the West" (NAC King Papers, reel C2250, vol. 86, King to J.R. Boyle, 18 December 1922, pp. 69600-69602).

<sup>296</sup> See: W.L. Morton, *The Progressive Party in Canada* (Toronto: University of Toronto Press, 1950).

settle the long-standing issue of the return of the public domain. In his letter, King admitted that the National Policy, and its preoccupation with settlement and railways, no longer justified the retention of the natural resources by the federal government. However, with respect to Maritime claims, King proffered the same view as his prime ministerial predecessors: "...that any claim on the part of the Eastern Provinces will probably be removed if it be clearly understood that in receiving the lands from the Dominion the Prairie Provinces will surrender the subsidy now paid in lieu of lands... We do not see how the Prairie Provinces could seriously expect to receive the lands and at the same time continue to receive the land subsidy."<sup>297</sup> He did not think that the continuation of the subsidy in lieu should be continued as compensation for the lands and resources already alienated. At the end of the letter, King appealed to the premiers to consider the matter afresh: "The shortest and simplest way of settlement, the one admitting of quick results, would be to ignore the transactions of the past and make a fresh start...and accounting for the transactions of the past would not likely result in any particular advantage on either side." In the alternative, King said that he would not object to an accounting by an independent tribunal. He also suggested that he would be agreeable to bilateral negotiations with each of the prairie provinces.<sup>298</sup> Thus, King's letter represented a departure from the Borden/Meighen approach in two respects: King would consider an accounting by an independent tribunal, and he would negotiate with each province on an individual basis.

Shortly after King wrote to the three prairie premiers, he arranged for a conference to be held in Ottawa. Five days after taking over as premier, Dunning replied

---

<sup>297</sup> PAM, Premier's Office Correspondence, Natural Resources Papers, King to Norris, 20 February 1922.

<sup>298</sup> *Ibid.*

that he would attend the conference and added that King's letter had been up to that point "the most definite offer which has been made on the subject."<sup>299</sup> In reply to King's offer to bargain bilaterally with the province, Dunning responded that "[t]his conclusion marks a distinct advance in as much as when the subject has been approached before the Prairie Provinces have been placed in the position of, in reality, negotiating with the other Provinces of Canada."<sup>300</sup> Dunning, however, disagreed with King's suggestion that the premiers "ignore the transactions of the past" and stated that any settlement must include compensation for lands previously alienated. He added that "[t]he only assumption upon which the Province should be called upon to forego compensation upon a permanent basis is that the whole area as estimated in 1905 could be returned to the Province."<sup>301</sup> He concluded by remarking that a solution had to be gleaned from general principles. Once agreed upon, these principles could be used to create a formula for financial compensation. The *Canadian Annual Review* later reported that Dunning's terms defined the basis for the negotiations at the conference.<sup>302</sup>

---

<sup>299</sup> NAC, King Papers, reel C2299, Dunning to King, 10 April 1922, p. 61639; Shortly after Martin resigned as premier in April 1922, Dunning was unanimously chosen by the Liberal caucus to replace Martin. Charles Avery Dunning had held various positions in cabinet since 1916. He was born July 31, 1885 in Croft, Leicestershire, England and in 1903 he homesteaded near Yorkton. He served as the general manager of the Saskatchewan Co-operative Elevator Company and as vice-president of the Saskatchewan Grain Growers' Association. He maintained close ties to farmer organizations throughout his time as premier and managed to prevent the rise of farmer parties as had occurred in Alberta and Manitoba in the early 1920s. See: George Da Pont, *W.M. Martin and the Farmers' Movement in Saskatchewan 1916-1922*, M.A. Thesis (Saskatoon: University of Saskatchewan, 1976). Martin had formally severed links between the provincial Liberal Party and its federal counterpart in May 1920. Dunning maintained this distance from King and the federal Liberals. Dunning was sworn into the King cabinet as Minister of Railways and Canals in 1926, and he served as Minister of Finance 1929 and 1935-1939. He died on October 2, 1958. (J. William Brennan, "Charles Dunning," in Gordon L. Barnhart (ed.), *Saskatchewan Premiers of the Twentieth Century* (Regina: Canadian Plains Research Centre, 2004), pp. 70-71, 84).

<sup>300</sup> NAC, King Papers, reel C2299, Dunning to King, 10 April 1922, p. 61639.

<sup>301</sup> *Ibid.*

<sup>302</sup> *C.A.R.* 1922, p. 791.

On April 20 and 21, 1922, King, along with members of his cabinet, met with representatives from each of the prairie provinces.<sup>303</sup> In his diary, King recorded his impressions of the first session:

...a preliminary statement of principles & propositions were presented by the deputation to which we assented excepting the phrase "now and always have been entitled" intended to mean that entitled to consideration in case of Sk & Alta to lands alienated before they were created as provinces. I can see a certain moral claim in that lands were given to C.P.R. & tax exempt'n etc. just before provinces came into being, all Canada benefiting thereby at expense of Sask. & Alb., on other hand Alb. & Sask benefited by all previous expenditure of dominion. We cannot well go back of the date of the charter creating the provinces. It was over the meaning of the word "equality" with other provinces that we were unable to come to a final agreement. It was a very satisfactory interview.<sup>304</sup>

With respect to the second session, King diarized that it was the definition of equality with the other Canadian provinces that formed the basis of contention. He wrote:

Could not get Dunning to agree to accept first clause of principle of return of Resources on basis of equality with other provinces, without giving to words meaning of accounting for lands alienated prior to 1905 when Sask. became a province. Alberta held out but not so strongly on same lines. Norris accepted an accounting from 1870, & other clauses.<sup>305</sup>

Dunning wanted an accounting for Saskatchewan's natural resources since 1870.

Presumably, Dunning based this request on the proposition that the majority of land alienations in Saskatchewan had occurred prior to 1905. The representatives at the conference may have disagreed on the precise definition of 'equality'; however, King made an important announcement in the House of Commons on April 21: "That it is desirable and just that such adjustment be made between the Dominion of Canada and

---

<sup>303</sup> The provincial delegations included Premier Tobias Norris and Attorney-General Thomas Johnston of Manitoba; Premier Charles Dunning and Minister of Agriculture and Municipal Affairs Charles McGill Hamilton of Saskatchewan; and Premier Herbert Greenfield and Attorney-General John Brownlee of Alberta. Federal cabinet members at the meetings included Lomer Gouin, Ernest Lapointe, and former Alberta premier Charles Stewart.

<sup>304</sup> King Diary, 20 April 1922.

<sup>305</sup> *Ibid.*, 21 April 1922.

the Prairie Provinces with respect to their natural resources as will give full recognition to the principle that in this respect they are entitled to be placed in a position of equality with the other provinces of Confederation.”<sup>306</sup> King’s admission, that the provinces were ‘entitled to be placed in a position of equality with the other provinces of Confederation’, represented a significant breakthrough. On the basis of the ‘equality’ principle, the Manitoba and federal governments arrived at an agreement in principle. Significantly, this agreement in principle provided that the Department of the Interior had to consult with the Manitoba government before making any further alienations of resources. Unfortunately, Dunning and Greenfield were unable to negotiate similar arrangements for either Saskatchewan or Alberta. In a governmental memo prepared as a summary of the conference, it was reported that negotiations were now suspended because the federal government refused to agree to compensation for alienations made prior to 1905. On the other hand, Manitoba had been able to reach an agreement in principle because so few of its natural resources had been alienated prior to 1870. The memo’s author explained the difference:

The case of Saskatchewan is different because most of the land disposed of for the general benefit of Canada as a whole was taken prior to 1905 when the Province was created. The Premier stated that the Saskatchewan Government could not agree to completely ignore all transactions prior to 1905 and consent to an accounting which would only take in the resources disposed of since then by the Dominion on one side and the annual compensation received by the Provinces on the other.<sup>307</sup>

Dunning refused to accept the natural resources on this basis because it ignored the alienations made by the federal government prior to 1905.

---

<sup>306</sup> *House of Commons Debates, Volume II*, 21 April 1922, p. 1018.

<sup>307</sup> SAB, Dunning Papers, Natural Resources – General, p. 31851.

After the conference, King tried to convince his cabinet that an agreement in principle similar to the Manitoba agreement could be made with Saskatchewan and Alberta. King's cabinet colleagues, many of whom represented Maritime constituencies, refused to agree to a compensation package that included provision for the period prior to 1905. They had the same objections their provincial counterparts had voiced at the 1918 Dominion-Provincial Conference. King recorded the following in his diary:

We took up Natural Resources matter but could get nowhere with Fielding who is like a dog in the manger, when it comes to making any allowance on an equitable basis. You would think that Alberta was out to rob N.S. The whole matter was so rushed as to give no chance for finality & I had to leave it to Stewart to explain situation to Greenfield & Brownlee. I think that we have lost a good chance to do a good piece of work.<sup>308</sup>

King's Minister of Finance, William S. Fielding, was a former premier of Nova Scotia. He adamantly refused to consider Saskatchewan and Alberta's claim to compensation for alienations made before 1905.<sup>309</sup> King did not have sufficient cabinet support to make any concessions to Alberta or Saskatchewan. And so, the negotiations stalled once again.<sup>310</sup>

Premier Norris did not benefit politically from the consultation concession that he had achieved at the April conference. Within a couple of months, his government was defeated by the United Farmers of Manitoba.<sup>311</sup> In November 1922, the new premier, John Bracken, met with King at another conference.<sup>312</sup> Bracken adopted Chester Martin's constitutional arguments and called for compensation on a fiduciary basis for

---

<sup>308</sup> King Diary, April 28, 1922.

<sup>309</sup> William S. Fielding served as Nova Scotia Premier from 1884 to 1896 when Laurier appointed him Minister of Finance. He served as King's Minister of Finance from 1921 to 1925.

<sup>310</sup> Wardhaugh, *King*, p. 62.

<sup>311</sup> Mochoruk, *Formidable*, p. 241.

<sup>312</sup> John Bracken had been a professor at the University of Manitoba's Agriculture College when he was approached by the United Farmers' of Manitoba to be premier after the party won the 1922 election. See: John Kendle, *John Bracken: A Political Biography* (Toronto: University of Toronto Press, 1979).

lands and resources alienated since 1870. At the first session, Bracken presented a memo formal agreement in principle that had been reached at the April conference.<sup>313</sup> The agreement in principle reads as follows:

As between the government of Manitoba and the Dominion government it has been agreed:

- (1) That it is desirable and just that such adjustments be made between the Dominion of Canada and the prairie provinces, with respect to their natural resources, as will give full recognition to the principle that in this respect they are entitled to be placed in a position of equality with the other provinces of confederation;
- (2) That the government of Canada will negotiate an agreement with the prairie provinces with the above object in view, such agreement to be subject to ratification by parliament and the respective legislatures;
- (3) That, failing agreement on any point as between the Dominion and the province of Manitoba, all such items so in dispute shall be referred to arbitration;
- (4) That any awards made by such arbitrators shall be subject to ratification by parliament and the legislature of Manitoba.<sup>314</sup>

The agreement in principle provided hope that a final settlement could be reached in the near future. Unfortunately, the parties could not agree on an implementation process.

Bracken rejected all of the proposals put forward by the federal government for the calculation of a financial settlement, and he continued to press for a fiduciary accounting.<sup>315</sup> At the opening session of the November conference, Premier Dunning made his position clear with respect to claims made by the Maritime premiers. He announced that if any other province made a claim for consideration on grounds of

---

<sup>313</sup> Manitoba's representatives: Premier Bracken, Attorney-General R.W. Craig, Dr. Chester Martin; Saskatchewan representatives: Premier Dunning, Attorney-General James A. Cross; Alberta representatives: Premier Herbert Greenfield and Attorney-General John Brownlee; Federal government representatives: King, Charles Stewart, D.E. McKenzie, and W.R. Motherwell.

<sup>314</sup> *Tribune*, 14 November 1922.

<sup>315</sup> *Ibid.*, 15 November 1922; The federal government proposed several methods of calculation: 1) return of the unalienated natural resources and discontinuation of the subsidy in lieu; 2) return of the unalienated natural resources and a cash subsidy for two to three years; 3) return of the unalienated resources with an accounting of the receipts and expenditures of the federal government; 4) a modification of such an accounting by taking into consideration certain alienations made for purposes outside the province (*Tribune* 20 November 1922).

proprietary or beneficial interest, he would make a similar claim on behalf of Saskatchewan to the lands and natural resources of Alberta. At a subsequent session, Dunning presented figures that he had obtained from the Department of the Interior. According to the department reports, the administrative costs associated with the natural resources far outweighed the revenues derived from resources royalties, leases, and dues. Dunning would not agree to the return of the natural resources if it would result in an unreasonably large expense to the Saskatchewan treasury due to administration costs. In response to Dunning, King offered the return of the unalienated resources and a continuance of the subsidy for three years. Dunning refused to consider this offer because it did not provide a sufficient financial incentive for Saskatchewan to adopt the cost of natural resources administration and development. Dunning suspected that the federal government wanted to transfer the natural resources in order to save itself money.<sup>316</sup>

Privately, King confirmed Dunning's assertion that the federal government's offers to the provincial government were motivated by the high costs of administration: "The Dominion is being taxed in perpetuity, a subsidy which will continue to increase, & has reached the point where it is costing more to administer than to give up control."<sup>317</sup> According to J. William Brennan, it was at this point that the "government at Regina ceased to show any real interest in the subject. With the subsidy in lieu of lands scheduled to increase to \$750,000 when Saskatchewan's population reached 800,000 and to \$1,125,000 in perpetuity when it reached 1,200,000 they took the view that the province would derive greater financial benefit from the subsidy than from the

---

<sup>316</sup> SAB, Sessional Paper No. 32, 1923 session. *Memorandum re Conference between three Prairie Provinces and Dominion Government on Natural Resources*, Ottawa, 14 November, 1922.

<sup>317</sup> King Diary, 17 November 1922.

development of its natural resources.”<sup>318</sup> Once again, a federal-provincial conference on the natural resources issue had resulted in deadlock.<sup>319</sup>

Formal negotiations for the return of the natural resources may have ended in the latter months of 1923, but the issue remained a subject of debate in the legislatures of Saskatchewan, Manitoba, and Alberta. In March 1924, Premier Dunning outlined the current state of affairs. With respect to the latest offer by the federal government (the return of the remaining resources and the continuance of the subsidy for three years), he remarked: “I feel sure that the people of Saskatchewan would not regard very highly a provincial treasurer who surrendered a present revenue of \$750,000 and a prospective revenue of \$1,125,000 in return for the remnant of the natural resources.”<sup>320</sup> Dunning elaborated on his use of the term “remnant” by explaining that there was very little unalienated land in Saskatchewan that was suitable for agriculture. According to Dunning, the federal government had already alienated the vast majority of productive lands and all that would be returned to the province would be sand hills and waste land.<sup>321</sup> With respect to Alberta, Dunning expected that its premier would likely broker a deal with Ottawa in the near future because the transfer of unalienated resources included valuable coal reserves. As for Saskatchewan, Dunning postulated that a time would come when the federal government would be anxious for Saskatchewan to takeover the

---

<sup>318</sup> J. William Brennan, *A Political History of Saskatchewan, 1905-1929*, Ph.D. Dissertation (Edmonton: University of Alberta, 1976), p. 756.

<sup>319</sup> The Alberta delegation, led by Premier Greenfield, stayed in Ottawa for a few extra weeks to further discuss the issue. By February 1923, however, Premier Greenfield had publicly rejected the federal government's offer of a return of the natural resources and a continuance of the subsidy for three years. Premier Greenfield was quoted in the February 7, 1923 edition of the *Free Press*: “[he was] strongly of the opinion [sic] that this province should insist that a question of such magnitude and importance as the resources question should be settled on a basis of principle and not on the basis of barter.”

<sup>320</sup> Throughout his tenure as premier, Dunning served as Provincial Treasurer and the Minister of Railways.

<sup>321</sup> SAB, Saskatchewan Legislative Assembly, file 3.12, 20 March 1924, pp. 1-2.

administration of the natural resources. At this future point in time, Saskatchewan would be able to dictate the terms of settlement. Dunning then referred to a conversation that he had had with Finance Minister Fielding at the November conference. At this meeting, Dunning had reminded Fielding of the subsidy provisions of the *Saskatchewan Act*. In response to this, Dunning reported that “Mr. Fielding was staggered when I showed him [he] had not the authority to change these terms. He repeated several times: ‘\$1,125,000 per annum for ever’ and I echoed ‘for ever’”. Dunning then mentioned that he had informed Fielding that he had no intention of giving up this revenue without “getting good and sufficient compensation for the people of Saskatchewan.”<sup>322</sup> Dunning concluded his speech by declaring that:

In the years that have gone by we have had the worst end of the autonomy bargain. That was my view when we received autonomy and it is my view still, but I believe that from now on unless some great revenue producing resources is discovered in this province, we are beginning to get the best end of the autonomy deal by virtue of the amount of money we receive annually while at the same time the revenue from resources is practically exhausted.<sup>323</sup>

Clifford Sifton’s decision to tie the subsidy in lieu to population instead of land worked to Saskatchewan’s benefit as its population increased. It was not in Saskatchewan’s

---

<sup>322</sup> *Ibid.*, p. 6.

<sup>323</sup> *Ibid.*, p. 4; Section 20 of the *Saskatchewan Act* provides the following: (1) Inasmuch as the said province will not have the public land as a source of revenue, there shall be paid by Canada to the province by half-yearly payments, in advance, an annual sum based upon the population of the province as from time to time ascertained by the quinquennial census thereof, as follows: -The population of the said province being assumed to be at present two hundred and fifty thousand, the sum payable until such population reaches four hundred thousand, shall be three hundred and seventy-five thousand dollars; Thereafter, until such population reaches eight hundred thousand, the sum payable shall be five hundred and sixty-two thousand five hundred dollars; Thereafter, until such population reaches one million two hundred thousand, the sum payable shall be seven hundred and fifty thousand dollars; And thereafter the sum payable shall be one million one hundred and twenty-five thousand dollars.

financial interest to alter this arrangement because it constitutionally guaranteed a subsidy in perpetuity.

As Provincial Treasurer, Dunning focussed mainly on the financial dimensions of the natural resources transfer. However, he also sought advice about the constitutional rights dimension of the issue. In 1924, Dunning floated the idea of commencing a reference case to the courts to test the constitutionality of the *Saskatchewan Act*. The Saskatchewan government retained a prominent Montreal lawyer, Eugene Lafleur, K.C., to produce a legal opinion on the matter. In December 1924, Lafleur delivered a lengthy legal memo in which he argued that Rupert's Land and the North-West Territories had been properly ceded to Canada and were owned by the federal government. In Lafleur's opinion, Canada held title to the public domain of Saskatchewan when it created the province in 1905. Thus, he concluded that Saskatchewan's constitution could not be successfully challenged in the courts.<sup>324</sup> Soon after receiving Lafleur's opinion, Dunning referred it to Bram Thompson. Not surprisingly, Thompson thought that Lafleur's opinion was incorrect, and he refuted the arguments point by point.<sup>325</sup> Faced with stalled negotiations and contradictory legal advice, Dunning turned to other matters.

Premier Greenfield of Alberta, however, was anxious to reach a settlement.<sup>326</sup>

During in the early 1920s, there had been a boom in Alberta's natural gas, coal, and oil

<sup>324</sup> Dunning Papers, Lafleur to J.A. Cross, 26 December 1924, pp. 31785-31794.

<sup>325</sup> *Ibid.*, Thompson memo, May 1925, pp. 31795-31815.

<sup>326</sup> Herbert W. Greenfield was born in Winchester, England on November 25, 1869. He moved to Alberta in 1904 and was elected to the executive of the United Farmers of Alberta in 1919. He became premier when the U.F.A. defeated the Liberal government; however, he was replaced by John Brownlee in 1925 because he lost the confidence of the party (David C. Jones, "Herbert W. Greenfield, 1921-1925," in Bradford J. Rennie (ed.), *Alberta Premiers of the Twentieth Century* (Regina: Canadian Plains Research Centre, 2004), pp. 59-61; On the rise of the Farmer Party in Alberta, see: Carl Betke, "The United Farmers of Alberta, 1921-1935," in George Melnyk (ed.) *Riel to Reform – A History of Protest in Western Canada* (Saskatoon: Fifth House Publishers, 1992).

industries. As each month passed without a settlement, the provincial government lost revenue from royalties and mining dues.<sup>327</sup> Frustrated by these financial losses, Greenfield decided to accept King's original offer of a three year subsidy and the return of the unalienated resources.<sup>328</sup> John W. Dafoe, editor of the Free Press, reacted with a sense of betrayal to Greenfield's acceptance of King's original offer.<sup>329</sup> In an editorial entitled "No Surrender for Manitoba", Dafoe unleashed his frustration: "...the accomplished fact is still an unpleasant reminder of the complete impotence of the provinces in trying to settle this issue by the method of negotiation." He considered the Alberta agreement to be a complete victory for the King government because the federal government had not been forced to make any concessions since its original offer in November 1922. He continued:

Where the other two prairie provinces have failed, the Province of Alberta has succeeded in reaching a settlement by the very simple expedient of accepting any terms that the Dominion was prepared to offer. These terms are so egregiously inadequate in amount and inconsequential from the standpoint of provincial rights that it would be idle to pretend satisfaction with them in this province. This is a surrender at discretion.<sup>330</sup>

Dafoe argued that the Alberta agreement set a poor precedent for the claims of Saskatchewan and Manitoba. Dafoe concluded with an appeal to the government of Manitoba to continue its fight for constitutional equality:

[O]n such terms as these it will never pay this province to contemplate any other procedure than fighting it out. That is as certain as anything human can be. After exhausting the possibilities of negotiation on our own account we have now a demonstration of successful negotiation by others;

<sup>327</sup> James G. MacGregor, *A History of Alberta* (Edmonton: Hurtig Publishers, 1981), p. 42.

<sup>328</sup> King Diary, 18 December 1924. King was pleased with the outcome. Greenfield had agreed "on the terms we laid down & which I have refused under pressure to lesson – another good piece of work."

<sup>329</sup> John W. Dafoe originally moved to Winnipeg to work as an editor for a newspaper owned by Clifford Sifton. He became the most influential newspaper editor in the West. See: Ramsay Cook, *The Politics of John W. Dafoe and the Free Press* (Toronto: University of Toronto Press, 1963); Murray Donnelly, *Dafoe of the Free Press* (Toronto: Macmillan, 1968).

<sup>330</sup> *Free Press*, 5 March 1925.

the sort of success which usually attends negotiations for unconditional surrender.... Completely as the Alberta Settlement may have destroyed hope of a settlement by negotiation, let it be stated with all the emphasis of which we are capable that the constitutional rights of this province still remain unimpaired. There is at least this degree of virtue in the fact that the Alberta settlement has no relation whatsoever to constitutional rights or sound procedure of any kind. It is inconceivable that Manitoba with her potential mineral resources and water powers should remain indefinitely what this province now is, a landless and subordinate colony of the Dominion, a mere geographical expression.<sup>331</sup>

Dafoe concluded that because it had been reached on the basis of political and financial motivations, the Alberta agreement had no impact on Manitoba's constitutionally based arguments for provincial equality.

Even though it had been brought about by pragmatic rather than constitutional considerations, the Alberta agreement represented a significant milestone in the 'Natural Resources Question'. Signed by Herbert Greenfield, the details of the agreement were negotiated by Attorney-General John Brownlee, who later succeeded Greenfield as Alberta premier and leader of the United Farmers of Alberta in 1925.<sup>332</sup> Throughout his tenure as Attorney-General, John Brownlee had been intimately involved with the negotiations with the federal government for the return of the natural resources. In a speech given in Calgary on October 2, 1922, Brownlee outlined his government's position on the issue:

---

<sup>331</sup> *Free Press*, 5 March 1925.

<sup>332</sup> John E. Brownlee was born August 27, 1883 in Port Ryers, Ontario. He received a B.A. from the University of Toronto in 1908, and he articulated with R.B. Bennett in Calgary. As a lawyer, he became involved with the Alberta Farmers' Co-operative Elevator Co. Ltd. and the emergence of United Grain Growers in 1917. In 1921 he was elected as a United Farmers of Alberta M.L.A. and was appointed Attorney-General. He became premier on Nov. 23, 1925. Brownlee resigned in July 1934 after being accused of sexual misconduct. Afterwards, he practised law in Edmonton and worked on sections of Alberta's submission to the Rowell-Sirois Commission. He died July 15, 1961 (Franklin L. Foster, "John E. Brownlee, 1925-1934," in Bradford J. Rennie (ed.), *Alberta Premiers of the Twentieth Century* (Regina: Canadian Plains Research Centre, 2004), pp. 78-83, 101-102). See also: Franklin L. Foster, *John E. Brownlee - A Biography* (Lloydminster, Alberta: Foster Learning Inc., 1996).

[W]e have not been able to forget that we are working for the Province of Alberta, that we are facing probably the most difficult financial conditions that will prevail probably for a few years more, and not only have we to consider the exemption of the C.P.R. from taxation, the loss of half the mineral royalties, but also over 6,000,000 acres of our very best land has been taken to build railways that do not concern this Province at all, except perhaps the Transcontinental Railway. We realize the importance of obtaining the resources; we are working hard to get them, and we have made definite propositions to the Dominion Government which in due course will be made public.<sup>333</sup>

Throughout its administration, the U.F.A. government regarded the return of the natural resources as an integral part of its strategy to boost Alberta's economy. In 1922, a keen observer of the natural resources negotiations, Everard Edmonds, predicted that co-operation between the U.F.A. government and the Liberal minority government represented an opportunity for both governments to resolve the natural resources issue.

Edmonds wrote:

The platforms of the two parties are similar in many essentials and the objectives sought are largely on identical lines, the differences being in distance rather than in direction. It would appear, because, that without fusion or coalition the two parties should be able to work in harmony for the attainment of their common purposes....their combined efforts could bring into force much beneficial legislation desired and advocated by the supporters of both parties...<sup>334</sup>

Edmonds also thought that a resolution to the issue could be found because former Alberta premier, Charles Stewart, had been appointed King's Minister of the Interior.<sup>335</sup>

Edmonds' analysis proved correct because King and Greenfield signed an agreement in principle in 1924. Soon afterwards, however, King began to procrastinate about the implementation details for the return of the natural resources. King felt little pressure to bring about a final agreement because talks with both Saskatchewan and

---

<sup>333</sup> PAA, Saskatchewan Natural Resources Commission, speech by Brownlee to U.F.A. Convention, 2 October 1922.

<sup>334</sup> Edmonds, *Plea*, p. 12.

<sup>335</sup> *Ibid.*

Manitoba were stalled once again. King also feared that the negotiation of a final agreement might be controversial and provoke divisive debates over education rights in the province.<sup>336</sup> It was only the election of another minority Liberal government in 1925 that compelled King to act. He needed to promote favourable relations with the Progressive Members of Parliament.<sup>337</sup> In January 1926, Premier Brownlee, along with Justice Minister Ernest Lapointe and Minister of the Interior Charles Stewart, signed a Memorandum of Agreement that provided for the return of natural resources. The agreement became the basis for concurrent legislation in the Alberta legislature and the House of Commons.<sup>338</sup>

The debate in the House of Commons over the contents of the Alberta Natural Resources bill went smoothly until Member of Parliament Henri Bourassa pointed out that the agreement did not guarantee the continuance of separate schools. Bourassa informed the House:

I stand here...[as] the only living witness of one of those conferences in which it was agreed that these natural resources should remain in the hands of the federal government for various reasons, one of which was that they should serve as a guarantee of the maintenance of what remained of the school rights of the Catholic and French minorities of those provinces...I should be remiss in my duty, I should be disregarding the honour of my solemn word pledged at the time, that if any change was ever made in the material terms of the contract, I would stand as a witness to that contract.<sup>339</sup>

---

<sup>336</sup> H. Blair Neatby, *William Lyon Mackenzie King – The Lonely Heights 1924-1932* (Toronto: University of Toronto Press, 1963), p. 101.

<sup>337</sup> Ted Byfield (ed.), *Alberta in the 20<sup>th</sup> Century – A Journalistic History of the Province in Twelve Volumes, Volume 5* (Edmonton: United Western Communications, Ltd., 1996), p. 80.

<sup>338</sup> Lita-Rose Betcherman, *Ernest Lapointe – Mackenzie King's Great Quebec Lieutenant* (Toronto: University of Toronto Press, 2002), p. 100; See Canada, *Agreement made on the Ninth Day of January, 1926 between the Dominion of Canada and the Province of Alberta on the Subject of the Transfer to the Province of its Natural Resources* (Ottawa: F.A. Acland, King's Printer, 1926).

<sup>339</sup> *House of Commons Debates*, 29 January 1926, p. 557.

The introduction of the language issue into the debate on the Alberta Natural Resources bill destroyed the agreement. King had feared that the re-emergence of the school question would imperil the natural resources deal with Alberta.<sup>340</sup> The education clause caused a similar firestorm of controversy in the King cabinet just as similar clauses had caused years before in the Laurier cabinet. Minister Lapointe, along with several Quebec Members of Parliament, wanted to insert a clause into the agreement that would expressly guarantee French Catholics in Alberta their own schools.<sup>341</sup> As a result, the federal government asked for a clause to be inserted into the agreement that would require Alberta to administer the remaining school lands and school lands fund "in accordance with the provisions of Section 17 of the *Alberta Act*."<sup>342</sup>

Brownlee initially agreed to reintroduce the bill into the Alberta legislature with the additional clause. There was a great deal of opposition to the proposed change because it was regarded as a challenge to provincial control over education. An Alberta election loomed on the horizon, so Brownlee reneged on his agreement and refused to reintroduce the bill.<sup>343</sup> In April 1926, Brownlee sent King a telegram in which he expressed his concern at raising "the whole question of provincial rights in relation to

<sup>340</sup> King Diary, 12 February 1926.

<sup>341</sup> Mochoruk, *Formidable*, p. 343.

<sup>342</sup> *C.A.R. 1925-26*, p. 495; Section 17 of the Alberta Act reads as follows: "Section 93 of the *Constitution Act, 1867* shall apply to the said province, with the substitution for paragraph (1) of the said section 93, of the following paragraph:- (1) Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of persons have at the date of the passing of this Act, under the terms of chapters 29 and 30 of the Ordinances of the North-west Territories, passed in the year 1901, or with respect to religious instruction in any public or separate school as provided for in the said ordinances.(2) In the appropriation by the Legislature or distribution by the Government of the province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29, or any Act passed in amendment be no discrimination against schools of any class described in the said chapter 29. (3) Where the expression "by law" is employed in paragraph (3) of the said section 93, it shall be held to mean the law as set out in the said chapters 29 and 30; and where the expression "at the Union" is employed, in the said paragraph (3), it shall be held to mean the date at which this Act comes into force."

<sup>343</sup> Betcherman, *Lapointe*, p. 101.

education.”<sup>344</sup> King worried that the whole matter would refuel the bitter language controversy that had surrounded the creation of Saskatchewan and Alberta in 1905. King wanted to avoid a language dispute developing between his Progressive supporters in the west and his Liberal M.P.’s in Quebec.<sup>345</sup> As a compromise, King and Brownlee agreed to submit the issue to the courts for a determination on the meaning of the schools clause of the *Alberta Act*. The reference would determine whether or not a clause with respect to schools would be a necessary component of the 1926 Alberta *NRTA*.

In April 1927, the Supreme Court of Canada rendered its decision in *Reference re: s.17 of the Alberta Act*.<sup>346</sup> The court held the federal government had a constitutional right to order the province to continue state support for Catholic schools. The ruling, however, proved inconclusive with respect the drafting of the *NRTA*, and the whole issue fell into a political limbo. The 1926 Alberta *NRTA* was never implemented; nevertheless, it left an important legacy. The drafters of the *NRTAs* used its terms as a template for the final agreements signed by the governments of Manitoba, Saskatchewan, and Alberta in 1929 and 1930. In the final series of *NRTAs*, the education clause was modified in order to avoid further controversy.

---

<sup>344</sup> King Papers, Brownlee to King, 7 April 1926, pp. 109356-109357.

<sup>345</sup> King Diary, 12, 21, 26 May 1926.

<sup>346</sup> [1927] S.C.R. 364, [1927] 2 D.L.R. 993.

## CHAPTER VI: The 1927 Dominion-Provincial Conference and Brokerage Politics

The failure of the 1926 Alberta *NRTA* marked a low point in the efforts to solve the natural resources issue. Despite the setback, however, the federal government and its prairie counterparts continued to negotiate. Convinced that the federal government was losing money through its administration of the natural resources, King wanted to find a resolution. The premiers of Alberta, Saskatchewan, and Manitoba were also eager to find a solution because they were convinced that it was their constitutional right to control and administer their public domains. In this period there were several important political developments that served to further the negotiations. One of the most important developments was King's decision to appoint Charles Dunning as his Minister of Railways and Canals.<sup>347</sup> Several of the federal cabinet ministers who had previously opposed a settlement of the natural resources issue, such as William S. Fielding and Lomer Gouin, had passed away or had retired by 1926. With the appointment of Dunning, there were two influential members of the federal cabinet who were sympathetic to, or at least familiar with, the positions taken by the governments of Alberta, Saskatchewan, and Manitoba.<sup>348</sup> The presence of Dunning and Stewart in the federal cabinet helped to diminish the misunderstandings that had plagued earlier rounds of negotiations.

Another important development in 1926 was the succession of James G. Gardiner as Premier of Saskatchewan.<sup>349</sup> Gardiner firmly believed in Saskatchewan's

---

<sup>347</sup> J. William Brennan, "Charles Dunning," in Gordon L. Barnhart (ed.), *Saskatchewan Premiers of the Twentieth Century* (Regina: Canadian Plains Research Centre, 2004), p. 84.

<sup>348</sup> The Minister of the Interior, Charles Stewart, had served as Alberta's premier from 1917 to 1921.

<sup>349</sup> James Garfield Gardiner was born in Farquhar, Ontario in 1883. He completed a B.A. at Manitoba College in 1911. He sat as a Liberal backbencher in the Saskatchewan Legislative Assembly from 1914 to

constitutional right to its public domain. As a student at Manitoba College, Gardiner had been taught history by Chester Martin.<sup>350</sup> Evidence of Martin's influence on his student may be discerned from a speech Gardiner made in the Saskatchewan Legislative Assembly in 1925:

Hon. J.G. Gardiner took an advanced stand on the issue of "Return of the Natural Resources" and the public domain to the Province, when the resolution on this question was before the Legislative Assembly, Jan. 7, 1925. He said in part: "In granting responsible Government to any part of the British Empire it has come to be accepted as a principle to pass over the administration and control of lands and resources to those accepting the duties and rights of self-government." The Western Provinces of Canada, he explained, enjoyed the distinction of being the only part of the British Empire where the practice was reversed. With over 800,000 population Saskatchewan was entitled to an annual Federal subsidy of \$750,000. The Province had provided 7,663,300 acres sold on pre-emptions for \$22,989,900. At 5 per cent., that was worth \$1,149,495 per annum, equal to the maximum subsidy under the existing arrangement of \$1,200,000. He estimated the price paid in land by Saskatchewan for a united Canada at: Railway companies, 15,177,063; Hudson's Bay Company, 3,183,600; homesteads, 27,616,100, and pre-emptions, 7,663,300 – a total of 53,640,063 acres. On the basis of the Prince Edward Island settlement of 1873, Saskatchewan would be entitled to \$2,682,000 per annum in perpetuity, in addition to the return of those lands not yet alienated, Mr. Gardiner argued.<sup>351</sup>

Gardiner held fast to this argument throughout his tenure as Saskatchewan's premier.

Unlike Dunning, who had concentrated on the financial aspects of the proposed transfer, Gardiner emphasized the underlying constitutional principles. He believed that the federal government owed Saskatchewan a perpetual continuance of the subsidy in lieu in addition to the return of the unalienated resources as compensation for the lands and resources alienated 'for the purposes of the Dominion'. Another important aspect of

---

1922 when he entered Dunning's cabinet as Minister of Highways. He was Premier of Saskatchewan from 1926-1929 and again from 1934 to 1935. Gardiner served as the federal Minister of Agriculture from 1935 to 1957. He died in 1962 (David E. Smith, "James G. Gardiner," in Gordon L. Barnhart (ed.), *Saskatchewan Premiers of the Twentieth Century*, 2004), pp. 90-93, 105-106). See also: Norman Ward and David E. Smith, *Jimmy Gardiner – Relentless Liberal* (Toronto: University of Toronto Press, 1990).

<sup>350</sup> Smith, "Gardiner," p. 97.

<sup>351</sup> *C.A.R. 1925-26*, p. 466.

Gardiner's tenure as premier was that it occurred during a remarkably prosperous time in Saskatchewan's history. James Pitsula has noted that the middle to late 1920s was "a period when the economy of Saskatchewan was particularly robust and provincial pride and confidence were at a high point..."<sup>352</sup> In this period, Saskatchewan was third in the country in terms of population, economic activity, and personal income levels. The province's economic prosperity provided Saskatchewan's government with the confidence to demand redress for what was perceived as its unequal constitutional status with the other provinces in Confederation. Given the fact that Saskatchewan's success had been achieved without control of its public domain, many people believed that the return of the natural resources would lead inevitable to even more prosperity.

During this period, members of all political parties supported the government's efforts to secure control over its public domain and its demand for constitutional equality.

In a reply to the Speech from the Throne in 1925, Dr. Charles E. Tran, a Progressive Member of the Legislative Assembly, articulated his view:

I do not think we should feel that we are subsidiary to any other province of Canada. We are the third largest in point of population and we have reached the stage where we have the machinery and men with stability of character, men of soundness of purpose, men who have sufficient faith and consideration to carry out those things in the best interests of our province. I do not believe that this province should be subordinate to any other province and at the present time you must realise the condition the three prairie provinces are in. They are the only provinces in the Dominion who do not own their natural resources and I believe we will never be able to assert ourselves and hold up our heads as a province until we have equal rights with other provinces. There is no use waiting. We have been waiting for twenty years to have the return of our natural resources....Why the delay?...The fact that we are getting the subsidy in lieu of these resources may be some consideration but are we always going to be content for the next twenty or a hundred years to receive a subsidy and let another body take care of our resources which should be developed by

---

<sup>352</sup> James Pitsula, "Muscular Saskatchewan: Provincial Self-Identity in the 1920s," *Saskatchewan History* 54(2002): 6-17.

men in our own country? The time is ripe and has long passed when we should assert our rights as a provincial body and take care of our own natural resources and then and only then will we be able to develop these resources to the full and assert ourselves as a provincial unit.<sup>353</sup>

Dr. Tran's speech typified the political sentiment held in Saskatchewan during this period.

The rhetoric used by Gardiner, Tran, and others, however, masked an economic reality that more closely reflected the assessment Dunning had made years earlier as Premier and Provincial Treasurer of Saskatchewan. The return of the natural resources to Saskatchewan may have represented constitutional equality; however, it did not necessarily mean that the province would experience an economic boom. A memo written in March 1926 by the Saskatchewan Inspection Division to the Director of Forestry of the federal Department of the Interior provides proof for this assertion. With respect to the transfer of the natural resources, the author suggested that "[o]f the three prairie provinces, Saskatchewan would appear to have the least to gain by the return to her of her natural resources." The author reported that the agricultural lands had nearly all been alienated by the federal government and that only 7,000 acres of arable land remained unalienated out of a total 113,000 square miles. The presence of mineral resources in northern Saskatchewan was uncertain. Even if substantial discoveries had been made, no railways had been built between the mining areas in the north and the settled areas in the south. The author also pointed out that Alberta and Manitoba were in a different situation with respect to their natural resources. In Alberta, there was a significant amount of unalienated agricultural lands left, and the province had vast

---

<sup>353</sup> Saskatchewan, *Legislative Assembly of the Province of Saskatchewan, Session 1925-26* (Regina: J.W. Reid, King's Printer, 1926), pp. 53-54; Dr. Charles E. Tran served one term as leader of the Progressive Members of the Saskatchewan Legislative Assembly (*Regina Leader-Post* 24 March 1934).

reserves of coal and oil deposits. In Manitoba, the vast number of lakes and rivers could be used as source of hydroelectric power and as transportation for mines and minerals located in the north.<sup>354</sup> The author ended with a gloomy forecast for Saskatchewan's ownership of its natural resources. He predicted that there would be little or no revenue potential for the next fifty years or so and that tremendous expenditures would have to be made to develop the natural resources. Gardiner probably did not have access to reports such as these because they were written for the federal Department of the Interior. However, Gardiner must have been aware of Saskatchewan's natural resources potential. This knowledge would explain Gardiner's resolute stand to accept nothing less than the full subsidy in lieu as compensation for the resources already alienated.

Despite the interest in solving the natural resources issues, nothing substantial had been achieved by January 1927. Premier Bracken of Manitoba expressed his frustration. He referred to the lack of results in the years that had passed since the agreement in principle had been reached in April 1922. Bracken noted that two formal conferences, five or six less formal meetings, and continuous correspondence had failed to bring about any agreement about the implementation of the transfer. Bracken admitted to King that he had "very reluctantly [come] to the conclusion that the attempt to settle the Natural Resources question by mutual consent has broken down." Bracken added that the terms of the 1926 agreement with Alberta would never be acceptable to the government of Manitoba.<sup>355</sup> The collapse of the 1926 Alberta *NRTA* and the endless rounds of letters,

---

<sup>354</sup> SAB, Anderson Papers, file 3, Memo from Saskatchewan Inspection Division to the Director of Forestry, Ottawa, Department of the Interior, 19 March 1926.

<sup>355</sup> PAM, Bracken Papers, "Status of the Natural Resources Negotiations (1928),"; Bracken to King, 13 January 1927,

meetings, and correspondence did not portend that a major breakthrough would occur in the foreseeable future.

In the summer of 1927, King announced that a Dominion-Provincial Conference would be held in Ottawa in November. In the months leading up to the conference, Gardiner retained Bram Thompson as a government advisor on constitutional issues. Thompson educated Gardiner, and various members of his cabinet, on the intricacies of the constitutional arguments behind the province's claim to its public domain.<sup>356</sup> Familiarity with Chester Martin's work and preparation by Thompson provided Gardiner with strong historical and legal arguments with which to approach Ottawa and the other provinces at the Dominion-Provincial Conference.<sup>357</sup> On the first day of the conference, Gardiner advanced his claim that the "lands and resources of the province belong, by right, to the province."<sup>358</sup> Gardiner outlined his constitutional argument in detail and suggested that Canadian unity depended upon a resolution of this issue. As a solution, he proposed that all lands and resources yet unalienated should be returned immediately and that the federal subsidy in lieu should be continued in perpetuity as compensation for lands already alienated.<sup>359</sup> In reference to the prior Maritime claims to a beneficial interest in Western lands, Saskatchewan's Minister of Municipal Affairs, Thomas C. Davis, bluntly asserted: "We do not think they own us in any way and [we] quite resent the attitude which they take in this connection. We claim they never bought them and wish they would abandon this claim since they already have enough complaints."<sup>360</sup> At

---

<sup>356</sup> Brennan, *Political*, p. 756.

<sup>357</sup> Ward and Smith, *Jimmy*, p. 96.

<sup>358</sup> SAB, Gardiner Papers (Ministerial), Notes on the Conference of November 3, 1927.

<sup>359</sup> *Ibid.*

<sup>360</sup> PAM, the quote is from notes taken by R.M. Pearson, Manitoba's Deputy Provincial Treasurer, Premier's Office Correspondence, 1927-28, file #232; Thomas Clayton Davis earned a law degree from Osgoode Hall in 1909 and practised in Prince Albert until he was appointed Minister of Municipal Affairs

the end of Saskatchewan's presentation, the other premiers responded to Saskatchewan's argument. Premier Louis A. Taschereau of Quebec stated that he was willing to give the western provinces the natural resources on whatever terms the federal government advised. The Maritime premiers reiterated their views that the prairie provinces had always received special treatment from the federal government with respect to the debt allowance and the subsidy in lieu, and they asked for similar consideration if the prairie provinces were granted their natural resources.<sup>361</sup> On behalf of the federal government, Minister of Finance James Alexander Robb, stressed that the conference had been called by the federal government in the "Spirit of Confederation" and that all provincial claims would be given attention.<sup>362</sup>

One of the main purposes of the Dominion-Provincial Conference was to examine federal subsidies, including the recommendations of the Duncan Commission.<sup>363</sup> King had established the Duncan Commission, otherwise known as the Royal Commission on Maritime Claims, in order to study the economic situation in the Maritime provinces and inquire into political discontent caused by national fiscal policies such as subsidies, freight rates, and trade tariffs.<sup>364</sup> Many of the Maritime complaints heard at the Duncan Commission were based on the fact that in 1905 Saskatchewan and Alberta had been granted disproportionately large subsidies in lieu of their natural resources and that vast tracts of land had been given to Manitoba, Ontario, and Quebec in 1912 with no

---

in 1926. Davis was appointed to the Saskatchewan Court of Appeal in 1939. He also served as Deputy Minister of War Services in King government (1940), High Commissioner to Australia (1942-46), and Ambassador to China (1946-49) (W.H. McConnell, *Prairie Justice* (Calgary: Burroughs & Co., 1980), p. 188).

<sup>361</sup> *Ibid.*; This is a summary of comments made by Premier Albert C. Saunders of Prince Edward Island, Premier J.B.M. Baxter of New Brunswick and Nova Scotia's delegate Gordon Sydney Harrington.

<sup>362</sup> *Ibid.*

<sup>363</sup> Canadian Intergovernmental Conference Secretariat, *Conferences*, p. 4.

<sup>364</sup> Wardhaugh, *King*, p. 130.

proportional compensation to the Maritimes.<sup>365</sup> Maritime complaints that the prairie provinces had benefited economically at their expense were debated at length during the commission's hearings. The recommendations, delivered in a 1926 report, included a program for economic rehabilitation for the Maritime economy and provided for a method to alleviate many of the region's grievances.<sup>366</sup> At the Dominion-Provincial Conference the recommendations from the Duncan Commission were discussed and a deal was struck. The prairie premiers agreed to support the recommendations made in the Duncan Commission's report with respect to an increased subsidy to the Maritimes if the Maritime provinces would drop their opposition to the settlement of the natural resources issue.<sup>367</sup> The governments of Ontario and Quebec agreed to support the prairie and Maritime premiers in return for support over the question of control of water power on navigable streams.<sup>368</sup> The agreement between the provinces to support each other's financial claims against the federal government led to progress on the natural resources issue. The provincial governments backed away from the strident positions they had all taken at the 1918 Dominion-Provincial Conference and a series of political trade-offs was made.<sup>369</sup> The Morning Leader editor later commented that the attitudes taken by the premiers at the 1927 Dominion-Provincial Conference were directly responsible for return of the natural resources:

The old spirit which animated the Fathers of Confederation was revived in the year of Canada's diamond jubilee and its influence was felt in the proceedings of the conference. Less sectionalism was in evidence and more of a get-together national spirit....With such better feeling prevailing, all the

---

<sup>365</sup> Hall, "Arthur," p. 40.

<sup>366</sup> Ernest R. Forbes, *Maritime Rights, The Maritime Rights Movement, 1919-1927 - A Study in Canadian Regionalism* (Montreal-Kingston: McGill-Queen's University Press, 1979), p. vii.

<sup>367</sup> Mochoruk, *Formidable*, p. 344.

<sup>368</sup> Neatby, *Lonely*, p. 237.

<sup>369</sup> Martin, *Dominion*, p. 216.

Eastern Provinces abandoned their old hostility to the West being granted their resources unless and until adequate compensation was made to them. For the first time the Federal Government was placed in the position where it could enter into fair and reasonable arrangements with the Western Provinces in confidence that any such arrangements would command the support of a majority of Parliament and acquiescence by all the Provinces.<sup>370</sup>

Whether it was a 'get-together national spirit' or brokerage politics, by the end of the conference King had agreed to reopen the natural resources negotiations on the basis that the resources would be returned in addition to a continuation of the subsidy in lieu in perpetuity.<sup>371</sup>

In January 1928, Premier Bracken wrote King in order to arrange further discussions. He reiterated Manitoba's position *vis-à-vis* the Maritime claims and encouraged King to take immediate action. Bracken reminded King that "[w]ith the other provinces so favourably disposed and the whole Dominion responsive to the spirit of the 60<sup>th</sup> Anniversary of Confederation, the time is singularly opportune for the settlement of this question by arbitration... We cannot conceive any valid objection that can be taken to so fair and just a proposal at this time."<sup>372</sup> In early July, Bracken met with representatives of the King government in Ottawa in order to discuss the details of the proposed transfer.<sup>373</sup> King proposed that the unalienated resources be returned to the province immediately and that the question of additional compensation be referred to arbitration. Over dinner at Laurier House on the evening of July 3<sup>rd</sup>, King and Bracken decided to start working on a draft agreement and to appoint a three person commission that would be responsible for recommending an appropriate amount of financial

---

<sup>370</sup> *Morning Leader*, 18 February 1929; The editors were Burford Hooke, Arthur M. Raymond, and Hamilton Butler.

<sup>371</sup> Wardhaugh, *King*, p. 136.

<sup>372</sup> PAM, Premier's Office Correspondence, 1929, file #319, Bracken to King, 10 January 1928.

<sup>373</sup> James Murray Whalen, *Records of Federal Royal Commissions, Volume I* (Ottawa: National Archives of Canada), p. 120.

compensation.<sup>374</sup> King wanted a royal commission because the question of compensation was not strictly a legal issue. He also wanted to use the commission as an opportunity to educate people about the natural resources issue. More importantly, the commission's recommendations could be reviewed by Parliament, which would give the government more flexibility than a court reference.<sup>375</sup> At the end of the conference, King recorded his impressions:

I felt a little anxious during the night, wondering if [we] had gone too far in negotiations with Manitoba. I have not known the subject as well as I should and have been acting more in accordance with what has seemed to me the right & fair thing in interest of Manitoba in relation to Dominion than with regard to previous misunderstandings or undertakings right or otherwise. I feel impatient with an attitude which seems to me an unreasonable one, and my whole guiding principle in this matter has been to get free of technicalities & right what seems to me a wrong situation existing at present. It is a mistake for Ottawa to be controlling & administering western lands, & it is a losing and costly business as it stands and we should get rid of it all just as soon as we can.<sup>376</sup>

Two days later, King wrote in his diary that Justice Minister Ernest Lapointe wanted to postpone the whole matter. King overruled his minister and proceeded with settlement of the longstanding issue because he believed that it would increase his prospects in the next federal election. Settlement of the issue provided King with an opportunity to secure support of the Progressive vote in the west and win more Liberal seats.<sup>377</sup>

In a lengthy editorial, John W. Dafoe discussed the significance of the settlement:

The most important thing about the settlement of the Natural Resources question is that, by putting an end to the double standard in Canadian provinces, it bears testimony anew to the growing solidarity of the Canadian people. Five or ten years ago it did not strike Canadians living

---

<sup>374</sup> Kendle, *Bracken*, p. 81; King wrote about the meeting in his July 3, 1928 diary entry: "I confess I felt ashamed of our side of the record, the continuous procrastination. Bracken was very nice is speaking of it disclosing great tolerance on each side."

<sup>375</sup> Tough, "Forgotten," p. 1011.

<sup>376</sup> King Diary, 5 July 1928.

<sup>377</sup> *Ibid.*, 7 July 1928.

outside the Western provinces as monstrous that these provinces should be deprived, against their will, of their Crown domain...It seemed to them quite the right thing that they should exercise a suzerainty over the West, which they had bought, as they imagined, and developed, as they dreamed, with their own money. It was perfectly proper in their judgment for the other provinces to intervene when the question of transferring the resources came up for the purpose of asserting a beneficial interest in our public lands, in addition, of course, to complete ownership of their own. It was an impossible situation that was bound to become dangerous in time. The patience of the West would not forever have endured the ignominy of a subordinate rank in what is supposed to be a federation of equal provinces....The result is the terms of agreement published elsewhere. Given good faith on both sides, which is to be taken for granted, it offers what seems to be a satisfactory solution of this problem which has so long baffled the statesmen simply because they wanted to be baffled. The constitutional equity of Manitoba is recognized and affirmed. The material adjuncts of that equality must be conferred upon the province by the Dominion.<sup>378</sup>

On August 1, 1928, an Order-in-Council gave effect to the agreement reached between Manitoba and the federal government. Pursuant to part 1 of the *Inquiries Act*,<sup>379</sup> a Royal Commission, consisting of Justice William F.A. Turgeon of the Saskatchewan Court of Appeal, Thomas A. Crerar, and Charles M. Bowman was appointed to conduct an inquiry into the financial compensation that should be paid to Manitoba for lands alienated since 1870.<sup>380</sup>

<sup>378</sup> *Free Press*, 12 July 1928.

<sup>379</sup> R.S.C. 1927, c. 99.

<sup>380</sup> *Tribune*, 2 August 1928; William Ferdinand Alphonse Turgeon had been Saskatchewan's Attorney-General from 1907 to 1916. In this position, he had been involved in Saskatchewan's first attempts to wrest its natural resources from the federal government. He was born in Bathurst, New Brunswick and was educated at Laval University. He was appointed to the Saskatchewan Court of Appeal in 1920 (See: Ernest J. Chambers (ed.), *The Canadian Parliamentary Guide, 1920* (Ottawa: The Mortimer Company, 1920); As a Progressive Member of Parliament, Thomas Alexander Crerar had advocated the return of the natural resources (See: *House of Commons Debates*, 25 April 1921, p. 2529). Crerar was born on June 17, 1876 in Ontario. He served as Minister of Agriculture in Union Government. Crerar enjoyed a good relationship with King and believed that Progressive causes could be brought to fruition through cooperation with a Liberal government. See: Foster J.K. Griezic, "The Honourable Thomas Alexander Crerar: The Political Career of a Western Liberal Progressive in the 1920's," in S.M. Trofimenkoff (ed.), *The Twenties in Western Canada* (Ottawa: National Museum of Canada, 1972) and James Edgar Rea, *T.A. Crerar: A Political Life* (Montréal-Kingston: McGill Queen's University Press, 1997). --- Charles M. Bowman was a member of the Board of Directors of the Mutual Life Assurance Company. He was born in 1898 in St. Jacobs, Ontario. He was elected to the Ontario Legislature in 1902 (*Free Press*, 12 July 1928).

The Royal Commission on the Natural Resources of Manitoba, also known as the Turgeon Commission, held hearings on October 19, 1928 and from February 12 to April 9, 1929 in Ottawa. The terms of reference were as follows: "To inquire into and report on what financial readjustments must be made so that the Province of Manitoba may be placed in a position of equality with the other provinces of Confederation in the administration and control of its natural resources from its entrance into Confederation in 1870."<sup>381</sup> Bracken retained an impressive group of advocates to present Manitoba's case. Two former Attorneys-General, A.B. Hudson and R.W. Craig, along with Professor Chester Martin argued on behalf of Manitoba. They outlined Manitoba's constitutional history and introduced hundreds of exhibits concerning the financial arrangements between the federal and provincial government since 1870. The Free Press summarized Manitoba's argument:

1. Manitoba, like the provinces of confederation, was entitled to its natural resources from the time it became a self-governing province. 2. It is now entitled to an adjustment upon a fiduciary basis in respect of such of its resources as have been alienated or administered by the Dominion government, since that time. 3. It is likewise entitled not to the return of all its resources as yet unalienated.<sup>382</sup>

Federal counsel, C.P. Plaxton, and A.R. McMaster had argued that the financial adjustments ought to be restricted to payments for benefits that accrued to the benefit of the rest of Canada only. Nearly three hundred exhibits were introduced during the commission hearings and legal counsel wrangled over every detail. The provincial government's advocates sought to prove that the federal government owed the province a vast sum of money for the benefits it had received from its administration of the natural

---

<sup>381</sup> Canada, *Report of the Royal Commission on the Transfer of the Natural Resources of Manitoba* (Ottawa: F.A. Acland, King's Printer, 1929), p. 7.

<sup>382</sup> *Free Press*, 13 February 1929.

resources from 1870 to the present. The federal government's advocates sought to limit and sharply define the federal government's financial obligations. The difference in amounts proffered by both sides was significant. Manitoba's counsel argued that the Dominion government owed the province, as calculated on a fiduciary accounting basis, nearly \$358,000,000. Dominion counsel argued that administration expenses and benefits that accrued to the province from federal administration must be deducted from this amount.<sup>383</sup> During the commission hearings, Manitoba abandoned its claim to a fiduciary accounting in favour of a payment of \$6,000,000 and a continuation of existing subsidies. There is no record in the Bracken papers that accounts for this change in position; however, it has been postulated that Manitoba made this concession because it realized that the federal government would never agree to its original claim.<sup>384</sup>

The Turgeon Commission reported in May 1929. The commissioners recommended that a cash payment of \$4,584,212.49 represented the balance due the province for the losses incurred during the federal government's administration. They further recommended that the unalienated resources should be returned the province and that the subsidy in lieu should be continued in perpetuity.<sup>385</sup> *The Report of the Royal Commission on the Transfer of the Natural Resources of Manitoba* has been criticized as a "study in schizophrenia" due to its logic defying calculations of the financial compensation owed to the province.<sup>386</sup> It has also been described as a politically motivated resolution rather than a final arbitration of the financial relations between the

---

<sup>383</sup> Mochoruk, *Formidable*, p. 353.

<sup>384</sup> *Ibid.*, p. 352; The original sum claimed by Manitoba was larger than the federal government's annual revenue.

<sup>385</sup> Canada, *Manitoba*, pp. 40-46.

<sup>386</sup> Mochoruk, *Formidable*, p. 348.

federal and Manitoba governments.<sup>387</sup> The cash payment, even though it appeared to represent the result of a precise calculation, was based on an arbitrarily determined land mass, land values, and population figures. Basically, the issue of financial readjustment was too complicated to be calculated, so the commissioners formulated an answer that they thought would satisfy both parties. A few weeks before the commissioners issued their report, Turgeon wrote to King emphasizing how complicated the resources question had become over the decades. According to Turgeon, the whole issue is “nearly impossible of clear, unanswerable solution. I mean that enough ammunition can be found in past records to attack any proposed solution from both sides.”<sup>388</sup> Thus, the commissioners side-stepped the financial labyrinth and produced a result that was largely an exercise in fiscal diplomacy.

Despite the twists in logic that the commissioners employed in making their recommendations, the result pleased both the federal and Manitoba governments. The result satisfied King for a number of reasons. More importantly, he thought that a one time payment of \$4,584,212.49 was preferable to paying for the continued administration of the resources. The recommendation also provided the federal government with an escape from a fiduciary accounting for all alienations made since 1870. The continuation of the existing subsidy in lieu would be easier for the federal government to justify than the creation of a new payment scheme. The Turgeon Report could also be used as a template for anticipated future negotiations with Alberta and Saskatchewan.<sup>389</sup> Bracken claimed victory for his government because it had achieved a settlement in such a

---

<sup>387</sup> Tough, “Forgotten,” p. 1012.

<sup>388</sup> King Papers, Turgeon to King, 3 May 1929, pp. 144569-144576; King Diary 17 April 1929.

<sup>389</sup> *Free Press*, 27 June 1929.

longstanding issue.<sup>390</sup> The recommendations passed unanimously through Parliament and the Manitoba Legislature, and the Manitoba *NRTA* came into effect on July 15, 1930, the sixtieth anniversary of Manitoba's entry into Confederation.

While the Turgeon Commission heard evidence and wrote its report, negotiations between the federal government and the governments of Saskatchewan and Alberta had continued on an informal basis. In a series of letters written in response to the inquiries of a constitutional lawyer in 1928, Premier Gardiner made his position clear:

[T]he natural resources are ours by right and that anything which was arranged at the time of the bringing of these two provinces [Alberta and Saskatchewan] into Confederation as provinces, was only in the nature of an agreement which had to do with the placing of immigrants in western Canada. We believe that the terms of that agreement have been fully lived up to by the Province of Saskatchewan and that by living up to them we have earned our subsidy of \$1,125,000 per annum in perpetuity, and that all remaining lands and resources are ours by rights and should be returned to us. In addition to this, we claim that we should have financial consideration in lieu of lands which were sold as pre-emption and in lieu of any other transactions in our lands and resources carried through by the Federal Government in the interests of the whole Dominion of Canada.<sup>391</sup>

Essentially, Gardiner wanted the terms first offered in the 'sporting offer' of 1913 – the return of the unalienated resources and a continuance of the subsidy in lieu as compensation for the lands and resources already alienated. He thought that negotiations with the King government would bring about a better solution than a reference to the courts.<sup>392</sup>

In February 1929, Gardiner and Brownlee went to Ottawa in order to negotiate with King for the transfer of the natural resources.<sup>393</sup> King offered to return "the

<sup>390</sup> Mochoruk, *Formidable*, p. 350.

<sup>391</sup> SAB, Gardiner Papers, Gardiner to Kreutzweiser, 28 April 1928, pp. 5602-5603.

<sup>392</sup> *Ibid.*, Gardiner to Kreutzweiser, 17 May 1928, pp. 5585-5596.

<sup>393</sup> The previous fall, Brownlee had reached an agreement with King on the wording of the schools clause (*Regina Daily Star*, 9 February 1929).

unalienated resources together with a continuance of the existing subsidy..."<sup>394</sup> Gardiner and Brownlee refused this offer because King offered only the current subsidy in perpetuity and not a subsidy calculated on a sliding scale in proportion to population. For Saskatchewan, this meant the difference between the current subsidy of \$750,000 and the \$1,125,000 that would be due when the population reached 800,000 people. Confident that Saskatchewan would pass this population mark within a few years, Gardiner refused to accept King's offer.<sup>395</sup> Brownlee agreed with Gardiner's position, and he also rejected King's offer.<sup>396</sup>

The editors of the Morning Leader supported Gardiner's rejection of King's offer. They wrote: "...Premier Gardiner has stood by his guns, and for what he conceives to be the full rights of this province, and under the circumstances he appears on solid ground. An early settlement of the thorny and long-standing resources question is wanted but not at the expense of Saskatchewan's just claims."<sup>397</sup> The Conservative opposition, however, attacked Gardiner for refusing to settle the question. They accused him of not having enough faith in the future of the province to accept the lower subsidy. The Saskatchewan Conservatives argued if the resources were returned immediately the resulting economic development would more than compensate for the difference in the amount of the subsidy.<sup>398</sup> The Conservatives may have been overly optimistic about the revenues that could be generated from provincial administration of the resources; however, Gardiner's

---

<sup>394</sup> King Papers, Memo re Conference with Saskatchewan re transfer of Natural Resources, 19 and 22 February 1929, C-90402.

<sup>395</sup> *Regina Leader*, 20 February 1929, 23 February 1929, and 4 March 1929.

<sup>396</sup> *Morning Leader*, 7 February 1929.

<sup>397</sup> *Ibid.*, 25 February 1929.

<sup>398</sup> *Regina Daily Star*, 15 April 1929, 4 June 1929.

failure to secure a final settlement was a major factor in the Liberal government's defeat in the summer election.<sup>399</sup>

James Thomas Milton Anderson, as head of a coalition of Progressives, Independents, and Conservatives, became premier on September 9, 1929.<sup>400</sup> In October, Anderson appointed a committee of three cabinet ministers, including himself, Attorney-General Murdoch A. McPherson and Minister of Public Works J.F. Bryant, to prepare a case to take to Ottawa for a conference that would be held in December 1929.<sup>401</sup> At the conference, King scheduled separate meetings with each of the prairie delegations. On December 9, King met with Premier Bracken of Manitoba. They reviewed the terms of a draft *NRTA*, in which the financial recommendations of the Turgeon Commission were incorporated.<sup>402</sup> While King and Bracken discussed the draft *NRTA*, Premiers Brownlee and Anderson met in order to discuss whether or not their respective governments could agree on a common position. Premier Anderson informed Brownlee that he intended to make a claim for the balance of the resources as well as a sum estimated between \$140,000,000 and \$160,000,000 as compensation for resources alienated since 1870. During the meeting, Brownlee and Anderson failed to agree on a common bargaining

---

<sup>399</sup> In the 1929 election, a combination of opposition groups, including the Ku Klux Klan, defeated the Liberal government for the first time since 1905. See: Patrick Kyba, "Ballots and Burning Crosses – The Election of 1929," in Norman Ward and Duff Spafford (eds.), *Politics in Saskatchewan* (Don Mills: Longmans Canada, 1968). The results of the election were 26 Liberals, 24 Conservatives, 6 Independents and 5 Progressives. Gardiner held on to power but lost a confidence vote on an amendment to the Speech from the Throne (Patrick Kyba, "J.T.M. Anderson," in Gordon L. Barnhart (ed.), *Saskatchewan Premiers of the Twentieth Century* (Regina: Canadian Plains Research Centre, 2004), pp. 119.)

<sup>400</sup> James Thomas Milton Anderson was born on July 23, 1878 in Ontario. A teacher by profession, he had been appointed Director of Education among New Canadians by Premier William Martin in 1918. The Anderson government was defeated in the 1934 provincial election by Gardiner. He continued as leader of the Saskatchewan Conservatives until he stepped down in favour of John Diefenbaker in 1936. He died in December 1946 (Kyba, "Anderson," pp. 110, 134).

<sup>401</sup> *Morning Leader*, 2 October 1929; *Free Press* 3 December 1929.

<sup>402</sup> *Morning Leader*, 10 December 1929.

position. Brownlee did not think that King would consider compensation dating to a period before the provinces had been created.<sup>403</sup>

When King and Anderson met on December 10<sup>th</sup>, Anderson presented a lengthy memorial which outlined Saskatchewan's position. If the federal government was only prepared to admit responsibility after 1905, Anderson suggested that a commission, composed of judges from the Saskatchewan Court of Appeal, the Supreme Court of Canada, and the Privy Council, be struck in order to determine the date accounting should begin. In the alternative, Anderson proposed that all questions regarding financial compensation be referred to a commission and that all constitutional questions be referred to the courts.<sup>404</sup>

King recorded his impressions of his meeting with Anderson and the Saskatchewan delegation in his diary:

He is a rough diamond & the men with him [are] of a type of low cunning in a way. He had a representative of the U.F. of Sask as well as his Atty Genl. & Minister of Public Works. He read a long memorial, craftily drafted & designed to draw from us a refusal. I said I wd give an answer in writing after return of Minister of Justice & wd commit us to nothing in the interval. I outlined the discussions on Resources to date & stressed need of carrying with us the members of H. of C. from other provinces on whatever settlement we proposed to house.<sup>405</sup>

In spite of King's negative impression, Anderson believed that the meeting had led to positive developments.<sup>406</sup> Anderson did not think that his proposals marked a radical

---

<sup>403</sup> *Morning Leader*, 11 December 1929; *Tribune*, 3 December 1929; Anderson Papers, file 2, item #11, Memorial of the Government of Saskatchewan to the Government of Canada, 10 December 1929.

<sup>404</sup> Anderson Papers, file 2, item #11, Memorial of the Government of Saskatchewan to the Government of Canada, 10 December 1929.

<sup>405</sup> King Diary, 10 December 1929.

<sup>406</sup> King was suspicious of Anderson's motives: "The new premier of Sask. is here to make trouble, not to make an agreement. I feel annoyed at Gardiner letting his province get into such hands (King Diary, 9 December 1929). He also held Anderson's abilities in low regard: "I then went to Can. Club & listened to a

departure from Saskatchewan's traditional position. In a memo about the meeting, Anderson expressed optimism due to the fact that several of the federal ministers in attendance, Dunning and Stewart in particular had at one time advocated a similar position. In his memo, Anderson referred to a letter written in April 1922 when Dunning had been premier of Saskatchewan: "The stand taken by Mr. Dunning at that time is virtually the same stand as is being taken by the present Government and it is only reasonable to expect that now that he is a Federal Minister he will press for the same claims for this Province as he pressed for at that time. With the additional fact that the Hon. Mr. King and the Hon. Mr. Motherwell both represent Saskatchewan constituencies, we should be in a better position today than ever before to secure our provincial rights."<sup>407</sup> Anderson noted that his delegation had proceeded "with a firm determination to advise the Federal Government that we were prepared to insist upon our rights...." Anderson added that he was certain that the memorial he had presented to the federal position represented the popular viewpoint held by the people of Saskatchewan.<sup>408</sup>

On December 11, 1929, King met with Premier Brownlee and the Alberta delegation. King was disappointed when Brownlee refused to accept a subsidy in lieu in perpetuity as full compensation for the lands and resources alienated since 1905. Like Anderson, Brownlee wanted a royal commission to decide the full measure of financial compensation owed to the province.<sup>409</sup> Brownlee wanted a similar settlement to the one

---

very poor not even mediocre address by Anderson P.M. of Sask. a kindergarten affair delivered as to an audience in a field, a very ordinary man" (King Diary, 11 December 1929).

<sup>407</sup> SAB, Premier's Office, Reports and Agreements, 1913-1943, file 7, Memorandum and agreement on the subject of the transfer of natural resources to the Province, 1919-30; During this period, King represented a western constituency. See: Robert A. Wardhaugh, "Mackenzie King and Prince Albert Constituency," *Prairie Forum* 21(1996): 177-199. William Richard Motherwell had served as a cabinet minister in the Saskatchewan governments of Scott and Martin. In the 1920s, he was King's Minister of Agriculture.

<sup>408</sup> *Ibid.*

<sup>409</sup> Wardhaugh, *King*, p. 151.

that which Manitoba had received in the Turgeon Report, including a lump sum payment of over four million dollars. King described the meeting with Brownlee in his diary:

We tried to explain this was to put Manitoba on a par with Alberta and Sask. at time of their entering Confed'n, there had been a period in which Manitoba had rec'd no subsidies etc. Brownlee argued that since Confed. much more of Alberta's lands had been alienated than Manitoba's for Fed'l uses 13 millions for railways in their provinces. He would not say whether they asked for considerat'n prior to 1905...I got a little hot & told Brownlee to put his proposition into writing & we would give an answer after Christmas...<sup>410</sup>

During the meeting, King had left the room to cool his temper. Later in the day, however, Brownlee and King met for dinner at Laurier House and they agreed to sign a *NRTA* by the end of the week.<sup>411</sup> King recorded his pleasure at reaching an agreement with Brownlee:

This has been a good day and a far-reaching one so far as Canada is concerned. I believe we have succeeded in settling the long standing question of the return of the Natural Resources to the Provinces of Manitoba and Alberta, and possibly also to Saskatchewan. We have at least put that province in a position where the present Govt. can do us no harm and only bring reaction upon itself.<sup>412</sup>

He added that the agreements with Alberta and Manitoba would force Saskatchewan to come to terms shortly.<sup>413</sup>

On December 14, 1929, representatives from the federal government and provincial governments of Alberta and Manitoba met at the Privy Council chamber in the East Block in order to sign *NRTAs*. Again, King recorded his satisfaction at reaching a settlement with two of the three prairie provinces:

This will be a memorable day in the history of Canada...This completes the real autonomy of these two Western provinces and gives them a fresh

<sup>410</sup> King Diary, 11 December 1929.

<sup>411</sup> Foster, "Brownlee," p. 90; Byfield, *Alberta*, p. 92.

<sup>412</sup> King Diary, 11 December, 1929.

<sup>413</sup> *Ibid.*

start, with additional assured financial assistance. Had Gardiner been in office, or Anderson come with a desire to get the resources of his Provinces rather than go back...the Sask. resources would also have been transferred. It is interesting that these agreements shld have been made with Progressive governments. It should help to bring closer together Lib & Prog forces<sup>414</sup>

King believed that the *NRTAs* would boost his political support in the west.<sup>415</sup> King did gain political points in Alberta and Manitoba; however, it was a greater political triumph for the provincial premiers who had been involved in the prolonged negotiations. For example, a crowd of over three thousand people met Brownlee at the train station in Edmonton upon his return from Ottawa. A marching band played and the mayor welcomed the triumphant premier home. Brownlee announced that the return of the natural resources heralded a new era of economic prosperity for the province.<sup>416</sup>

A couple of weeks later, King responded to Saskatchewan's proposals. With respect to the claim for compensation back to 1870, King wrote that "we find it difficult to appreciate the nature of the legal arguments upon which this claim is founded, but these are obviously, in any event, a matter for the consideration of the courts." King agreed to submit a joint reference to the courts and to appoint a royal commission that would determine financial compensation once the court had ruled. King also suggested that another meeting be held in March to incorporate these changes into a formal agreement.<sup>417</sup> In a letter to King dated January 17, 1930, Anderson outlined the constitutional arguments as to why compensation should be granted back to 1870:

---

<sup>414</sup> King Diary, 14 December 1929. It has been rumoured that King would not allow the signing to take place on Friday the 13<sup>th</sup> of December.

<sup>415</sup> King Diary, 16 December 1929.

<sup>416</sup> Foster, "Brownlee," p. 91.

<sup>417</sup> Canada, *Correspondence between the Government of Canada and the Government of the Province of Saskatchewan* (Ottawa: F.A. Acland, King's Printer, 1930), p. 8.

I am of the opinion that these two territories [Rupert's Land and the North-West Territories] at that time became parts of Canada and distinct entities of the Federal Union of Canada. They were brought into the Union for the express purpose of extending westward the Dominion of Canada as constituted by the B.N.A. Act, 1867. Under the B.N.A. Act the Parliament of Canada had no control over these lands any more than it had over the lands of Ontario. The powers granted to the Canadian Parliament were administrative powers for the structural development of new entities along government lines and did not extend to or touch the territorial right or sovereign ownership of the land itself.<sup>418</sup>

Anderson argued that under section 146 of the *British North America Act*, the federal government had the authority only to create provinces that were equal in constitutional rights to the original four provinces. Despite presenting a rights-based argument, Anderson suggested that a non-judicial solution could be reached: "In a great matter of national importance, such as this is, the rectification of Canada's constitution, it would be more commendable if the issues could be decided or adjusted among ourselves by compact or agreement rather than by a judicial tribunal. It is not desirable that the Canadians should figure before the world as litigants over adjustable difficulties."<sup>419</sup> As an alternative to the courts, Anderson suggested that a commission should be appointed in order to recommend the financial adjustments that should be made in order to place the province in a position of constitutional equality since 1870. As support for this proposition, Anderson argued that the Turgeon Commission had based its recommendations for compensation from 1870. This was in spite of the fact that section 30 of the *Manitoba Act* had been sanctioned by the Imperial Parliament in the *British North America Act, 1871*. In Saskatchewan's case the public domain had been converted to federal property in the *Dominion Lands Act, 1872*, and the natural resources had been retained by the federal government in the *Saskatchewan Act, 1905*. Neither the *Dominion*

---

<sup>418</sup> *Ibid.*, p. 10.

<sup>419</sup> *Ibid.*, p. 12.

*Lands Act, 1872* nor the *Saskatchewan Act, 1905* had received Imperial sanction.

Therefore, Anderson argued, the federal government administration of the natural resources had never become part of the constitution of Canada. Thus, if the Turgeon Commission could ignore the *British North America Act, 1871* and make an award for the administration back to 1870 then a royal commission on Saskatchewan's resources could surely bypass pieces of federal legislation that had never been constitutionalized.<sup>420</sup>

He concluded by stating that the government of Saskatchewan would be prepared to sign a *NRTA* if a series of qualifications could be met. Firstly, the unalienated resources would be transferred immediately and the subsidy in lieu continued in perpetuity. Secondly, a royal commission would be struck in order to decide the financial compensation owed to the province. W.F.A. Turgeon and Charles Bowman would be replaced as commissioners by mutually agreed to candidates. Thirdly, a reference to the courts on the constitutional status of Saskatchewan's claim between 1870 and 1905 would be initiated by both governments. Lastly, if Saskatchewan was successful in court then the accounting issue would be submitted to the same commission charged with deciding the financial compensation owed to the province.<sup>421</sup>

King dismissed Anderson's proposals and complained to Gardiner about the Saskatchewan premier: "it was evident that he [Anderson] came to the East to play the party game and to make trouble politically, not to settle the resources question...if the province has been saved from losing everything, it has been due to the moderate attitude

---

<sup>420</sup> *Ibid.*, p. 12.

<sup>421</sup> *Ibid.*, p. 13.

of our Administration here and the ground laid by your own Administration, in previous discussions.”<sup>422</sup> In a letter written in early February, King informed Anderson that:

“Our government does not find itself in agreement with the views the letter expresses on a number of historical and legal points...we cannot admit that the constitutional position of Saskatchewan as one of the provinces of Canada, or that of the North-West Territories prior to the erection of the province, should be treated for the present purpose as having been the subject of general misconception of more than half a century.”<sup>423</sup> King refused to admit that Saskatchewan had any claim to redress for the period before it became a province in 1905. In contrast, Anderson argued that the federal government had acted as a trustee of the natural resources for the period before 1905 and was accountable for all alienations made during that period. King and Anderson held diametrically opposed ideas about the constitutional rights of Saskatchewan to its natural resources; however, King suggested that such constitutional disagreements were of little or no consequence to a political settlement. He suggested that the constitutional questions be referred to the courts and upon such a determination that a royal commission be struck to decide the financial arrangements.<sup>424</sup>

Anderson agreed to the process King had suggested. However, he pointed out that the constitution of the province should not be amended as a matter of public policy. He submitted that “it should be [amended] as a constitutional right of the province, as we are of the opinion that certain provisions in the Saskatchewan Act are not within the legislative competence of the Parliament of Canada. We are prepared to reserve our constitutional rights for consideration at a later date and to immediately proceed to an

---

<sup>422</sup> King Papers, reel C2299, King to Gardiner, 30 January 1930.

<sup>423</sup> Canada, *Correspondence*, p. 14.

<sup>424</sup> *Ibid.*

amicable settlement of all our other rights.”<sup>425</sup> In early March, Anderson met with King in Ottawa in order to negotiate a final settlement. Section 24 the Saskatchewan *NRTA* allowed for a judicial reference for the constitutional question concerning the date at which calculations for compensation should begin. It also provided that a royal commission would decide the amount of financial compensation owed to the province.<sup>426</sup> In every other aspect, the Saskatchewan *NRTA*, signed on March 20, 1930, resembled the *NRTAs* signed by Alberta and Manitoba. The Saskatchewan *NRTA* represented a victory for King. Anderson agreed to accept the lower \$750,000 subsidy in lieu in perpetuity instead of the \$1,125,000 demanded by Gardiner in February. King was fairly certain that Saskatchewan would lose the reference case and the matter would be settled along the terms set out by the Turgeon Commission.<sup>427</sup>

For King, the Saskatchewan *NRTA* marked the completion of a difficult series of constitutional negotiations. However, for the people of Saskatchewan it marked their entrance into Canada as an equal partner in Confederation. More than one-half of the total land mass in Saskatchewan shifted from federal to provincial jurisdiction. The editor of the Regina Daily Star was effusive in his praise of the agreement:

It was a historic occasion. In a sense it was even more important an occasion than the entry of the province into Confederation. The so-called entry into Confederation was not actually an entry into Confederation. It was only a partial entry into Confederation. Full entry only took place around 11:00 o'clock on Thursday night last, when the House without a dissentient vote accepted the agreement which gives Saskatchewan her lands and makes her confederate with the other provinces.<sup>428</sup>

---

<sup>425</sup> *Ibid.*, p. 16.

<sup>426</sup> See paragraph 24 of the *Saskatchewan Natural Resources Act*, 20 & 21 Geo. V., c. 41.

<sup>427</sup> King Diary, 6 March 1930.

<sup>428</sup> *Regina Daily Star*, 5 April 1930.

In a speech delivered in the Saskatchewan Legislative Assembly, Anderson announced his pleasure in reaching an agreement with the federal government and declared that the economic future of the province lay in its administration and development of its natural resources.<sup>429</sup>

---

<sup>429</sup> Saskatchewan Sessional Papers, 1930, Speech by J.T.M. Anderson, 2 April 1930, p. 452; In order to provide for the administration of its natural resources, the Saskatchewan Legislative Assembly passed the *Passage of the Administration of Natural Resources (Temporary Act)*, 1930, c. 12, 87, 1929-30.

## CHAPTER VII: Judicial References and the Royal Commission on the Natural Resources of Saskatchewan

*It is characteristic of lawyers that as soon as they conclude an agreement, they begin to find the need of discovering what its terms mean.*<sup>430</sup>

In May 1930, the Alberta and Saskatchewan *NRTAs* received second and third readings in the House of Commons. Subsequently, the Senate and House of Commons adopted an address praying for the enactment of an Imperial statute confirming all of the *NRTAs*.<sup>431</sup> The Manitoba agreement came into effect on July 15, 1930 and the Saskatchewan and Alberta agreements came into effect on October 1, 1930.<sup>432</sup> The *British North America Act, 1871* had empowered the Parliament of Canada to create new provinces out of the territories; however, it did not authorize Parliament to alter the provincial constitutions. Because the *NRTAs* substantially altered the terms of the provincial constitutions, an act of the Parliament of the United Kingdom was needed to implement the terms of the agreements. The Imperial legislation, the *British North America Act, 1930*, provided that future amendments of the *NRTAs* could be made through concurrent legislation of the federal Parliament and the legislature of the province concerned without the need for legislation to be passed at Westminster.<sup>433</sup> This

<sup>430</sup> King is referring to the Manitoba *NRTA* negotiations (King Diary, 2 November 1928).

<sup>431</sup> The British Columbia *NRTA* was signed in February 1930 and was included in the request for confirmation by Imperial legislation. It reconveyed lands that had been transferred to the federal government for railway construction (*C.A.R. 1929-30*, p. 50).

<sup>432</sup> (1930), 20 & 21 Geo. V (1<sup>st</sup> session), cc.3, 29, 41 (Can.); (1930), 20 Geo. V., c.30 (Man.); (1930), 20 Geo V.c.87 (Sk.); (1930), 20 Geo. V., c.21 (Alta.); (1930), 20 Geo. V., c.60 (B.C.); (1930), 21 Geo.V., c.26 (Imp.).

<sup>433</sup> Gérin-Lajoie, *Amendment*, p. 22.

prevented either level of government from unilaterally changing the terms of the agreement and secured the permanence of the *NRTAs*.<sup>434</sup>

The terms of each *NRTA* varied slightly from one another. Generally, however, the agreements provided for the transfer of the administration and control of the natural resources from the federal government to the individual provincial governments. Specific provisions retained land for federal purposes such as national parks, soldier settlement lands, historic sites, Indian reserve lands, and school lands. Protection for Indian hunting and fishing rights was also included in the *NRTAs*.<sup>435</sup> The agreements stipulated that the provincial governments must assume many of the responsibilities previously held by the federal government. These responsibilities included obligations to convey lands to private persons or corporations who had contractual rights to the transferred land, including the conditions of the Deed of Surrender of Rupert's Land from the Hudson's Bay Company and Métis scrip entitlements. Significantly, paragraph 1 of the *NRTAs* provided that the provincial governments accepted the transfer of the natural resources "subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same."<sup>436</sup> This language mirrored that found in section 109 of the *British North America Act*, 1867, which allowed the original four provinces to retain their natural resources.<sup>437</sup> Thus, the western provinces became the constitutional equals of the other Canadian provinces.

---

<sup>434</sup> See: Nigel Bankes, "Constitutionalized Intergovernmental Agreements and Third Parties: Canada and Australia," *Alberta Law Review* XXX(1992): 525.

<sup>435</sup> J.M. Powell, *Soldier Settlement in Canada 1915-1930*, Working Paper No. 7, Department of Geography, Monash University (Edmonton: Koala Books of Canada, 1979).

<sup>436</sup> *The Saskatchewan Natural Resources Act*, 20 & 21 Geo. V., c. 41, at para. 1.

<sup>437</sup> Within a few years, questions were raised regarding whether Paragraph 1 had transferred all water rights to the province. In 1938, paragraph 1 was amended to specifically provide for the transfer of Crown interest in water and water power to the provinces (1938), 2 Geo VI, c.36 (Can.); (1937-38), 1 & 2 Geo.

As noted in a previous chapter, the Saskatchewan *NRTA* provided that the results of a constitutional reference and a royal commission would be retroactively incorporated into the agreement.<sup>438</sup> Paragraph 27 stipulated the *NRTA* shall not “affect or prejudice any right the Province may now have to call into question the legislative competence of the Parliament of Canada to enact certain sections of the *Saskatchewan Act* and the *Dominion Lands Acts*.”<sup>439</sup> This paragraph refers directly to the preamble of the Saskatchewan agreement, which clearly outlined Saskatchewan’s challenge to the federal government’s assertion of control over the administration of its resources since 1870.

The preamble reads as follows:

The Government of the Province contends that, before the Province was constituted and entered into Confederation as aforesaid, the Parliament of Canada was not competent to enact that the natural resources within the area now included within the boundaries of the Province should vest in the Crown and be administered by the Government of Canada for the purposes of Canada and was not entitled to administer the said natural resources otherwise than for the benefit of the residents within the said area, and moreover that the Province is entitled to be and should be placed in a position of equality with the other Provinces of Confederation with respect to its natural resources as from the fifteenth day of July, 1870, when Rupert’s Land and the North-Western Territory were admitted into and became part of the Dominion of Canada.<sup>440</sup>

The preamble formed the basis of the stated case submitted as a reference to the Supreme Court of Canada.

The oral argument took place on October 14, 1930. Counsel for Saskatchewan, George Herbert Barr and A.E. Bence, based their submissions squarely upon the constitutional arguments that had been developed by Professor Chester Martin and Bram

---

VI, c. 27 (Man.); (1938), 2 Geo. VI, c. 14, (Sk.): (1938), 2 Geo. VI (1<sup>st</sup> sess.), c.14 (Alta.) (LaForest, *Public*, p. 38).

<sup>438</sup> *The Saskatchewan Natural Resources Act*, 20 & 21 Geo., V., c. 41, at para. 23, 24.

<sup>439</sup> *Ibid.*, at para. 27.

<sup>440</sup> As quoted in *C.A.R. 1929-30*, p. 49.

Thompson.<sup>441</sup> They argued that the federal crown held the natural resources in trust and should be held accountable for its use of the resources since 1870. In his decision, Justice Newcombe summarized Saskatchewan's argument as follows:

It is objected that, although the Territories were made part of the Dominion and became subject to its legislative control, there was no grant or conveyance of the lands by the Imperial Crown to the Dominion; but that was not requisite nor was it the proper method of effecting the transaction. It is not by grant inter partes that Crown lands are passed from one branch to another of the King's government; the transfer takes effect, in the absence of special provision, sometimes by Order in Council, sometimes by despatch. There is only one Crown, and the lands belonging to the Crown are and remain vested in it, notwithstanding that the administration of them and the exercise of their beneficial use may, from time to time, as competently authorized, be regulated upon the advice of different Ministers charged with the appropriate service.<sup>442</sup>

This argument did not, however, persuade Justice Newcombe. He held that the *Saskatchewan Act, 1905* clearly provided that a subsidy in lieu would act as compensation for the retention of the natural resources by the federal government. He also ruled that the federal government had the legislative authority to enact these provisions. Newcombe added that he did not believe that there was "some occult principle of law...whereby a province or territory of Canada or its inhabitants must have and enjoy, for its or their exclusive benefit, the waste lands of the Crown which lie within its borders."<sup>443</sup> Saskatchewan lost the reference case mainly because the court refused to agree with the province's contention that all federal legislation passed over the past six decades rested on a faulty constitutional foundation. If the court had ruled in Saskatchewan's favour, then every piece of federal legislation concerning the lands in the

---

<sup>441</sup> SAB, Natural Resources, Appeal Book.

<sup>442</sup> *In the Matter of a Reference Arising out of the Transfer of the Natural Resources to the Province of Saskatchewan*, [1931] S.C.R. 263 at 275.

<sup>443</sup> *Ibid.*, p. 271.

North-western Territory and Rupert's Land, from the *Dominion Lands Act, 1872*<sup>444</sup> onwards, would have been *ultra vires*.<sup>445</sup> Thus, even if Chester Martin's theories were historically correct, six decades of legislation and policy had been predicated on the assumption that the federal government had the constitutional authority to administer and control the natural resources of Saskatchewan.

Not satisfied with the Supreme Court's decision, the Saskatchewan government decided to appeal the reference decision to the Judicial Committee of the Privy Council.<sup>446</sup> Again, Saskatchewan's argument was based upon the presumption that the 'purchase theory' was incorrect and that the federal government had acted unconstitutionally with respect to the administration and control of the natural resources since 1870. Once again, the court rejected Saskatchewan's constitutional argument. *In re Transfer of Natural Resources to the Province of Saskatchewan*,<sup>447</sup> Lord Atkin, writing for the majority, found it difficult to understand how Saskatchewan could lay claim to resources that had been alienated before its creation as a separate political entity in 1905.<sup>448</sup> Atkin doubted the existence of an invariable rule that a province enjoyed its own land revenue. He ruled that "[i]t would appear to be a question of fact in each case whether the Crown had placed its beneficial interest in land at the disposal of the particular colony."<sup>449</sup> He added that it was difficult to imagine that the territory, in the period prior to 1905, had been administered for the benefit of so few settlers over such a large territory. Atkin held that section 146 of the *British North America Act, 1867*

---

<sup>444</sup> 1872, 35 Vict., c.23.

<sup>445</sup> See: Kirk N. Lambrecht, *The Administration of Dominion Lands, 1870-1930* (Winnipeg: Hignell Printing, Ltd., 1991).

<sup>446</sup> The Alberta government joined in the appeal to the Privy Council.

<sup>447</sup> *In re Transfer of Natural Resources to the Province of Saskatchewan*, [1932] A.C. 28.

<sup>448</sup> *Ibid.*, p. 37.

<sup>449</sup> *Ibid.*, p. 38.

permitted the Canadian parliament to create provinces with unequal constitutional status. Section 109 guaranteed the administration and control of the public domain only to the original four provinces of Confederation.<sup>450</sup> Even if Saskatchewan's constitutional arguments were correct, their Lordships decided that it was clear that the *Rupert's Land Act, 1868*, the Order-in-Council, and the addresses from the House of Commons and the Senate clearly envisaged that the natural resources of the territory would be administered for the benefit of Canada. Upon the transfer of the North-Western Territories and Rupert's Land, Canada had acquired full beneficial rights over the resources of the area except such lands and property retained by the Hudson's Bay Company.<sup>451</sup> The legislation passed by the Imperial Parliament and the Canadian Parliament trumped any common law presumptions that the beneficial interest in lands in a province should be administered in trust for the future inhabitants.

After Saskatchewan's loss at both levels of court, the Royal Commission on the Natural Resources of Saskatchewan (the Dysart Commission) was appointed on December 29, 1933 under Part 1 of the *Inquiries Act*.<sup>452</sup> The commissioners, chosen through mutual agreement between the federal government and the government of Saskatchewan, were Justice Andrew Knox Dysart of the Manitoba Court of King's Bench, Justice Henry V. Bigelow of the Court of King's Bench of Saskatchewan and George C. McDonald. The Dysart Commission's terms of reference mandated the commission to examine factual evidence respecting the financial compensation that would put Saskatchewan in an equal position had it retained control of its natural

---

<sup>450</sup> *Ibid.*, pp. 38-39.

<sup>451</sup> *Ibid.*, pp. 40-41.

<sup>452</sup> R.S.C., 1927, c. 99; P.C. 2722; The Royal Commission on the Natural Resources of Alberta was appointed on July 19, 1934 under Order-in-Council P.C. 1588 under Part 1 of the *Inquiries Act*. The commission hearings were held in Ottawa from October 2, 1934 to December 11, 1934.

resources since its creation in 1905.<sup>453</sup> Nearly three hundred exhibits were submitted as evidence at the commission hearings held at Regina and Ottawa from February 7, 1934 to May 26, 1934. Weighing nearly half a ton, the exhibits represented an exhaustive record of natural resources policy in the North-West Territories and the province of Saskatchewan.

Nearly a year before the commission was appointed, Saskatchewan's Deputy Minister of Natural Resources, John Barnett, prepared a detailed statement regarding the province's claim for compensation.<sup>454</sup> This document served as the basis of Saskatchewan's case. At the beginning of his report, Barnett noted that the issue of compensation was extremely difficult because it involved argument of a "conjectural or speculative nature".<sup>455</sup> Essentially, Saskatchewan would have to establish what its natural resources policy would have been had it been in administrative control since 1905. The difference between the revenues generated by this hypothetical administration and those realized by the federal Department of the Interior would represent Saskatchewan's financial loss and its claim to compensation. A hypothetical administration did not lend itself to an economic analysis, so Barnett concentrated his efforts on identifying inefficiencies and poor management practices used by the Department of the Interior.

---

<sup>453</sup> The Dysart Commission had no mandate to consider questions of law because the constitutional and legal issues had been settled by the judicial references. The secretary for the commission, Oliver Master, had formerly been chief of the Economic Division of the federal Department of Trade and Commerce and had acted as secretary for the Turgeon Commission.

<sup>454</sup> John Barnett was born on April 1, 1880 in Hartland, New Brunswick. He practised law in Alberta from 1908 until 1916. He served as Head of Soldier Settlement Board, 1920-27. Anderson appointed Barnett Deputy Minister of Natural Resources of Saskatchewan on August 1, 1930 (SAB, Biographical clippings). Anderson served as Saskatchewan's first Minister of Natural Resources.

<sup>455</sup> SAB, Department of Natural Resources, file 17, item #5, Statement of Provincial Case for Compensation in Lieu of Natural Resources, 10 January 1933, p. 2.

Barnett analysed documents and reports of the Department of the Interior that had been transferred to the province as per the directions contained in the *NRTA*.<sup>456</sup> He concluded that the federal government's administration had been inefficient in many instances. Barnett blamed centralized policy directives issued from the Department of the Interior's headquarters in Ottawa. Federal officials had frequently made decisions with little regard for, or knowledge of, local conditions. As proof of his assertions, Barnett adduced evidence that the federal government had sold crown timber at fifty percent of the prescribed rates, rented land at one-fifth to one-twentieth of the rates charged by adjacent private landowners, and failed to collect rents on school lands. Barnett also found that the Department of the Interior lost vast amounts of revenue from the failure to collect grazing rents, timber dues, and mining royalties. Barnett argued that a provincial department would have managed the resources with a greater focus on revenue generation and would not have incurred such heavy financial losses. He noted that travel expenses and higher salaries for federal employees would have been significantly less had local people been hired.<sup>457</sup>

Barnett also provided an extensive analysis of the resources that had been alienated by the federal government for the purposes of Canada. He argued that Saskatchewan could make claims for the resources Saskatchewan had provided for the implementation of federal policies such as railway grants, homestead lands, Métis scrip, soldier settlement lands, and the C.P.R. tax exemption. Barnett's final calculation of Saskatchewan's claim, based on a per acre valuation of land alienated and loss of revenue

---

<sup>456</sup> *The Saskatchewan Natural Resources Act*, 20 & 21, Geo. V., c.41, at para. 25.

<sup>457</sup> SAB, Department of Natural Resources, file 17, item #5, Statement of Provincial Case for Compensation in Lieu of Natural Resources, 10 January 1933, pp. 3-6.

due to poor administration, added up to approximately fifty million dollars. In conclusion, Barnett commented that this amount was much greater than a commission would likely find, but he believed that a compelling argument could be made for Saskatchewan's claim.<sup>458</sup>

In March 1934, Barnett submitted another detailed memo to Premier Anderson and Attorney-General Murdoch A. McPherson in preparation for Saskatchewan's case at the Dysart Commission. Barnett divided Saskatchewan's claims into two categories: land alienations for federal purposes and losses due to poor federal administration. Barnett calculated that a total of 27,649,694 acres had been alienated by the federal government for federal purposes such as homesteads, Métis scrip, and soldier settlement lands. A further 30,208,148 acres had been granted to railways. He suggested that land values at the time the alienations had been made could be used to calculate the financial loss due to these alienations. Barnett calculated that compensation for the loss of use of grazing rentals, school lands, timber dues, mineral royalties and administrative inefficiencies amounted over forty million dollars. He suggested that this should be set-off by the twenty-five million dollars needed to produce the annual subsidy in lieu and the costs of provincial administration. Barnett suggested that Saskatchewan's counsel at the commission use either of two formulas to compute the losses to Saskatchewan: a per acre valuation for lands alienated for federal purposes or a direct comparison to the amount awarded by the Turgeon Commission. Using either formula, Barnett calculated that Saskatchewan's total claim amounted to approximately one hundred million dollars.<sup>459</sup>

---

<sup>458</sup> *Ibid.*, p. 7.

<sup>459</sup> SAB, Department of Natural Resources Collection, file 17, # 7.

Barnett concluded his memo by suggesting that a request for this large a settlement would likely lead to one of three outcomes: it would “stagger Canada”, be refused by Parliament, or seriously disrupt Confederation. He offered some strategic advice to avoid these potential outcomes: “For these reasons it is urged that the whole claim should, in the interest of Confederation and of mutual understanding between East and West, be approached by Saskatchewan in a spirit of drastic compromise.” He added that any figure with respect to compensation would shock the rest of Canada because the alienation and administrative claims were so large. Barnett suggested that “[t]he problem which confronts the Provincial Government is to determine how much of the rights of Provincial Government it should be prepared to sacrifice in the interests of Confederation as a whole... Whether this issue is to remain a festering sore and a threat to Confederation or not depends on how far the minimum of the Province is from the maximum of the Dominion.” In order to resolve the issue and decrease the ‘shock’ experienced by the federal government and the rest of Canada, Barnett advised that Saskatchewan put forward a claim of thirty million dollars.<sup>460</sup>

Barnett’s advice that the arguments before the commission be approached “in a spirit of drastic compromise” was not heeded by either the provincial or federal governments at the Dysart Commission. Saskatchewan’s lead counsel, Percival H. Gordon, claimed a total of \$161,629,751 from the federal government for compensation arising from its administration of the natural resources from 1905 to 1930.<sup>461</sup> In response, counsel for the federal government, James McGregor Stewart, counterclaimed

---

<sup>460</sup> *Ibid.*

<sup>461</sup> Percival H. Gordon was born in Qu’appelle, Saskatchewan on January 27, 1884. He received an M.A. from University of Toronto in 1906. He served as Justice at the Saskatchewan Court of Appeal from 1935 to 1961. He died in April 1975. He charged the provincial government \$20,000 for his work at the Dysart Commission (McConnell, *Prairie Justice*, p. 191-194).

for approximately \$170,000,000.<sup>462</sup> Even though Saskatchewan's claim was higher than what had been tabulated by Saskatchewan's Deputy Minister of Natural Resources, Gordon structured his argument around the memos that Barnett had written on the subject.<sup>463</sup> Stewart countered every claim brought forth by Saskatchewan. In his brief submitted to the commission, Stewart outlined the federal government's position:

The attitude of the Province throughout has been that the Dominion is being called to account for what it has done with Saskatchewan's resources. Nothing could be further from the actual state of affairs...neither the Province nor its inhabitants have ever had the most remote legal or equitable title. When this or that policy was adopted, or act done, such was adopted or done in respect of the Dominion's own property...It is only by virtue of the Resources Agreement of 1930 that the Province has any claim whatever, and it is confidently submitted that that Agreement affords no basis for an administration of claim except in so far as the Dominion was pursuing a Dominion object which was not at the same time a legitimate Provincial object and beneficial to the Province or its people. The administration throughout has been farsighted, capable, economical and sane...It is a record of Governmental and Civil Service administration of which Canada as a whole, and particularly the Department of the Interior, may be unjustly proud; and given as good administration, it is sincerely to be hoped that the public of the Province will show their satisfaction and pride.<sup>464</sup>

The federal government's position, based squarely on the decision by the Privy Council, was that it owned the resources of Saskatchewan outright and had administered them prudently throughout its tenure of ownership. Stewart argued that the province had not established even one of its claims for compensation. He claimed that Saskatchewan was not entitled to a standard of perfect administration and could not recoup for ordinary

---

<sup>462</sup> Montreal Gazette 17 May 1934; See: Barry Cahill, *The Thousandth Man: A Biography of James McGregor Stewart* (Toronto: Published for the Osgoode Society by the University of Toronto Press, 2000). James M. Stewart was a pre-eminent business lawyer in Halifax. He represented the federal government at the Rowell-Sirois Commission, and he later lectured on the subject of royal commissions at Dalhousie Law School.

<sup>463</sup> PAA, Saskatchewan Natural Resources Commission, Gordon's Brief on Behalf of the Government of Saskatchewan, 75.9, Box 4, item 23.

<sup>464</sup> PAA, Saskatchewan Natural Resources Commission, Stewart's Brief on Behalf of the Dominion of Canada, 75.9, Box 4, item 23, pp. 58-59.

mistakes made by the federal government in its administration of the natural resources.

Stewart argued that had a provincial department been in control of the resources mistakes would have inevitably been made.<sup>465</sup> He summarized the federal government's position:

The line of attack by the Province has been that of a detailed accounting involving such a mass of figures and files that we are apt to miss the broader features of the case, and overlook the Magnificent results achieved by the Dominion in its task of Empire Building, Nation Building and Province Building...the credit [for Saskatchewan's success] belongs primarily and mainly to the Dominion, though of course the Provincial Governments have contributed as well, and the people who form the electorate and who were brought there by the Dominion or as a result of its farsighted policies...it is necessary to adjust our microscopes in order to consider the flaws in a record of twenty-five years of intelligent and statesmanlike administration, and flaw too that were so slight, even in the eyes of the successive provincial administrations, that no criticism was levelled against the administration until after the Agreement of 1930 had been implemented by transfer of the resources.<sup>466</sup>

Stewart's argument, although steeped in patriotic rhetoric, ignored the wave of successive complaints about the federal government's natural resources administration that had been put forward by a succession of Saskatchewan premiers. His speech, however, illustrates that the two parties heard at the commission presented diametrically opposed arguments. At its most essential, the debate centred on whether federal control had benefited or impaired Saskatchewan's economic development.

As the commission hearings ended, John W. Dafoe predicted that "Saskatchewan May Only Get \$4,000,000 on Resources Claims." He suggested that the Dysart commissioners would likely follow the precedent set by the Turgeon Commission and make its recommendations on the basis of general principles rather than a detailed accounting. He suggested that if the compensation recommended was too large it might provide an opening for further claims by Alberta or Manitoba. Dafoe contended that the

---

<sup>465</sup> *Ibid.*, pp. 5-6.

<sup>466</sup> *Ibid.*, p. 1.

compensation would be “a question of how much Saskatchewan will be satisfied with and how much can be awarded without bringing claims from other provinces.”<sup>467</sup>

Dafoe’s opinion proved to be correct. In their majority report submitted March 12, 1935, Commissioners Dysart and McDonald recommended that the federal government should pay \$5,000,000 plus interest at a rate of five per cent from October 1, 1930 to March 31, 1935.<sup>468</sup> They concluded that the provincial administration of the natural resources would not have generated a significantly greater amount of revenue for Saskatchewan during the years 1905 to 1930. They added:

That the Dominion administration of those resources, while inspired primarily by the needs and purposes of national development, did serve effectively to promote many of the major objectives which would have been sought by a provincial administration...the exact amount of any such excess cannot possibly be ascertained by any conceivable method of treatment...The amount, if any, must remain a matter on which opinions widely differ. In order to reach common ground, we must proceed upon the principle of compromise.<sup>469</sup>

This principle of compromise, however, was not followed by the commissioners themselves. Justice Henry V. Bigelow submitted a minority report in which he challenged the findings presented by the majority. Bigelow recommended that Saskatchewan receive \$58, 242,691 in compensation plus interest. He based his calculation on the formula that had been used in the Turgeon Commission. He found that the federal government had poorly administered the natural resources of Saskatchewan

---

<sup>467</sup> *Free Press*, 23 May 1934.

<sup>468</sup> Canada, *Report of the Royal Commission on the Natural Resources of Saskatchewan* (Ottawa: King’s Printer, 1935), p. 36; The Alberta commission delivered its report at the same time as the Saskatchewan commission. The commissioners recommended that the government of Alberta also receive \$5,000,000 plus interest (Canada, *The Report of the Royal Commission the Natural Resources of Alberta* (Ottawa: J.O. Patenaude, King’s Printer, 1935). The Alberta government accepted the award with the proviso that they would receive any additional funds awarded to Saskatchewan in the future (*House of Commons Debates*, 11 July 1847, p. 5438).

<sup>469</sup> Canada, *Saskatchewan*, p. 35.

and had lost millions in potential revenue.<sup>470</sup> The divided opinion of the commissioners led to the Saskatchewan government refusing to accept the recommendations of the majority report. In the 1934 Saskatchewan provincial election, the Liberals defeated Anderson's Co-operative government. Gardiner became premier for the second time and he re-appointed many of his former cabinet ministers, including Thomas C. Davis<sup>471</sup> as Attorney-General. In December 1935, Attorney-General Davis wrote King about the failure of the Dysart Commission and suggested that W.F.A. Turgeon could be appointed to negotiate a settlement in connection with natural resources compensation.<sup>472</sup> King did not act upon this request, and the entire matter came to a standstill.

The natural resources issue remained in abeyance until the King government created the Royal Commission on Dominion-Provincial Relations (the Rowell-Sirois Commission) in August of 1937. The mandate of the Rowell-Sirois Commission was to examine the financial relationship between the federal and provincial levels of government.<sup>473</sup> Saskatchewan's Attorney-General Davis commissioned the Dean of the University of Saskatchewan College of Law, Frederick C. Cronkite, and economics professor, George E. Britnell, to research and write Saskatchewan's submission.<sup>474</sup> A significant portion of Saskatchewan's submission dealt with the failure of the Dysart

<sup>470</sup> Canada, *Saskatchewan*, pp. 60-65.

<sup>471</sup> Thomas Clayton Davis received an LL.B. from Osgoode Hall in 1909. He practised law in Prince Albert and served as mayor from 1921 to 1924. Gardiner appointed Davis Minister of Municipal Affairs in 1926 and Attorney-General in 1927 and again in 1934. He organized Saskatchewan's submission to the Rowell-Sirois Commission. In 1939 he was appointed to the Saskatchewan Court of Appeal. King appointed him Deputy Minister of War Services in 1940. He served as High Commissioner to Australia, 1946-49; Ambassador to China, 1946-49; and Ambassador to West Germany, 1949 (McConnell, *Prairie*, pp. 185-91).

<sup>472</sup> King Papers, reel C2299, Davis to King, 23 December 1935; Davis gave a reason for the commission's failure: "The Reports of the Commissions were not unanimous and it is virtually necessary to start over again to try and reach an amicable settlement."

<sup>473</sup> Canada, *The Royal Commission on Dominion-Provincial Relations (Rowell-Sirois)*, Volumes I (Ottawa: King's Printer, 1940).

<sup>474</sup> McConnell, *Prairie*, p. 33.

Commission's report. The authors argued that the majority report's recommendation, based on an admitted compromise, disclosed no legal basis for the award of \$5,000,000 plus interest. They argued that the minority report, however, provided a concrete basis for an award because it was based on the compensation formula developed in the Turgeon Commission's report.<sup>475</sup> In their submission, Cronkite and Britnell reiterated Saskatchewan's argument at the Dysart Commission, especially with regard to the amount of land alienations and inefficient federal administration. They added that, by 1930:

[a]ll the agricultural lands in Saskatchewan were alienated by the Dominion Government, and what the province got back in 1930 was great areas of undeveloped, non-agricultural lands; or in any event, lands not to be compared in value with the agricultural lands alienated by the Dominion Government; and the resources so turned back to the province have unquestionably been, and will be for some time, nothing but a bill of expense to the province.<sup>476</sup>

Cronkite and Britnell submitted that "it is a difficult task to make an award on a comparison between known administration of the resources, and assumed administration, but it is respectfully submitted that the suggested award in the majority report of the Saskatchewan Commission is purely a guess, with all doubts resolved against the Province." In conclusion, Cronkite and Britnell wrote that in order to examine fully the financial relations that existed between the federal government and Saskatchewan, as per the mandate of the Rowell-Sirois Commission, the commissioners would have to re-examine the two different awards recommended by the majority and the minority reports of the Dysart Commission.<sup>477</sup> During the Rowell-Sirois Commission hearings held in Regina, the chair pointed out that they could not sit in review of the Dysart Commission's

---

<sup>475</sup> SAB, Saskatchewan Submission to Rowell-Sirois, file 5, p. 266.

<sup>476</sup> *Ibid.*, p. 268.

<sup>477</sup> *Ibid.*

findings. However, in the final report, the Rowell-Sirois commissioners included a recommendation on the natural resources issue:

We strongly recommend, however, that this claim should be settled before, or as part of it, any general readjustment of the financial relations between the Province and the Dominion. If our financial proposals for assumption of provincial debts by the Dominion and for the replacement of existing subsidies by adjustment grants based on fiscal need are adopted, we think it would not be unreasonable that the Province should relinquish all outstanding claims arising under the settlement of the question of natural resources especially since payments under the Natural Resources Award would automatically reduce the payments on the ground of fiscal need which we have recommended.<sup>478</sup>

This recommendation would have rolled the compensation for the natural resources into the larger restructuring of the financial arrangements between the federal and provincial governments.

The federal government did not follow this recommendation of the Rowell-Sirois Commission's Report. It would take another several years before the province of Saskatchewan and the federal government came to a final settlement about compensation. In the summer of 1946, the Provincial Treasurer of Saskatchewan, Clarence Melvin Fines, reached a settlement with his federal counterpart, Douglas Abbott.<sup>479</sup> During the Great Depression, the federal government had loaned Saskatchewan \$80,361,852.44 for agricultural and direct relief. Saskatchewan's C.C.F. government agreed that the amount recommended in the majority report of the Dysart Commission would offset Saskatchewan's debt repayment to the federal treasury. The \$5,000,000 plus interest equalled nearly ten per cent of the amount owed. It was a far cry from Saskatchewan's

---

<sup>478</sup> Canada, *The Royal Commission on Dominion-Provincial Relations (Rowell-Sirois)*, Volume II (Ottawa, King's Printer, 1940), p. 246; John W. Dafoe served as a commissioner at the Rowell-Sirois Commission.

<sup>479</sup> Clarence Melvin Fines was the Provincial Treasurer in Saskatchewan's first Co-operative Commonwealth Federation government led by Thomas C. Douglas. See: A.W. Johnson, *Dream No Little Dreams – A Biography of the Douglas Government of Saskatchewan, 1944-1961* (Toronto: University of Toronto Press, 2004).

original claim of over \$160,000,000. However, at long last a final resolution to the natural resources issue had been reached and the 'Natural Resources Question' had been answered.<sup>480</sup>

---

<sup>480</sup> *House of Commons Debates*, 11 July 1947, p. 5437. The *NRTAs* transferred the school lands and the school lands trust to the provinces under some administrative restrictions. These were later eliminated by concurrent legislation. See for example: *Saskatchewan Natural Resources Transfer Act (1951)* 15 Geo. VI, c.18 (Sk.); *Saskatchewan Natural Resources Transfer Act (1962)*, 11 Eliz. II, c.33 (Sk.).

## CONCLUSION

In a hand-written margin note in his appeal book, Saskatchewan's counsel at the Supreme Court and the Privy Council references, George Herbert Barr, wrote a response to Justice Newcombe's negative comment about the 'occult principle' that it was British constitutional practice to administer the public domain in trust for the citizens of a province:

This is absurd for our case is founded upon the law (properly interpreted), the only difference is one of interpretation – ours in harmony with and his in conflict with British colonial usage. This only shows the absurd position to which one is driven with this interpretation. How could you have a province without the power to hold land? – a contradiction in terms.<sup>481</sup>

In his note, Barr identified the essential question that drove the natural resources controversy for several decades. In the mid-nineteenth century Lord Durham had recognized that control of the public domain constituted a fundamental aspect of responsible government. Political leaders such as Louis Riel and Frederick Haultain had asserted that the administration and control of natural resources was an integral part of governance. The federal government's decision to retain the natural resources in order to implement its own policies in the west ran contrary to British constitutional practice. The federal government may have had the constitutional authority to create unequal provinces under the *British North America Act, 1871*. This, however, did not stop generations of provincial leaders from challenging the federal government's moral and equitable claim to control of the public domain. It seemed nonsensical that certain components of a

---

<sup>481</sup> SAB, George H. Barr Papers, Natural Resources – Factum of Argument at the Privy Council; George Herbert Barr was born in Norwich, Ontario on July 29, 1878. He graduated from Osgoode Hall in 1907 and was the first lawyer to be called to the bar in Saskatchewan. He died in February 1960 (*Leader-Post*, 6 February 1960).

confederation could have such disparate powers. Politically, however, the aspirations of a series of federal governments, fuelled by the demands of the National Policy, trumped British constitutional practice. Only the passing of the rationale that lay behind the National Policy provided the federal government with the motivation to come to an agreement with the provinces. As the 1920s passed, it had become increasingly apparent to federal politicians that the costs of administration outweighed the benefits and that the best way to offload this expense was to grant the remainder of the natural resources to the prairie provinces. King also believed that a final settlement of the longstanding natural resources issue would enhance his ties to the Progressive movement and increase his political support in the west.

The prairie provinces, regardless of the federal government's motivation, were eager to accept the transfer of their natural resources. The federal government may have had the constitutional authority to retain the natural resources; however, this constitutional legitimacy did nothing to alleviate the feelings of injustice and inequality caused by this. Direct economic control and policy direction from Ottawa created feelings of resentment and alienation in Manitoba, Saskatchewan, and Alberta. As Premier of Saskatchewan, Charles Dunning had made a compelling case that the return of the natural resources would be more costly to the province than a continuance of the subsidy. However, pragmatic arguments such as these did little to quell the collective sense that the prairie provinces were not equal to the other provinces in the rest of Canada. Principled arguments, based on moral claims to constitutional equality, recurred throughout the entire controversy over the natural resources.

There was, however, more to the claim to constitutional equality behind provincial demands for the natural resources. It was widely believed that the control of natural resources would lead the region to greater economic prosperity. Even Charles Dunning, who had argued for the retention of the subsidy, believed that local administration would lead to more industrial development. The federal government's National Policy had encouraged agricultural settlement at the expense of any other kind of economic development. Many politicians believed that investment in the natural resources sectors would reverse this trend and create a more diversified and stable economy.<sup>482</sup> The transfer of the natural resources in 1930 was heralded by many to mark a new era of prosperity. In a special Natural Resources Edition, the Saskatoon Star-Phoenix reported that the *NRTA* marked "a new and most important era in provincial development, and places Saskatchewan in possession of an asset of tremendous value. Land is really the basis of all wealth and it is a remarkable tribute to the country that the progress and development which occurred during the first quarter of the century has been achieved without a proprietary interest on the part of the province in the public domain and the natural resources which go with it."<sup>483</sup> The contents of the first Annual Report of Saskatchewan's Department of Natural Resources confirmed that there were advantages to provincial control. In the first seven months, administration costs had been decreased by sixty percent and there had been a significant surplus from revenues accrued from the

---

<sup>482</sup> SAB, John Barnett, Biographical Clippings File. A retired Barnett wrote Saskatchewan's Deputy Minister of the Natural Resources, A.G. Kuziak, in September 1958 about the organization and history of the department. Barnett outlined the purposes of the Natural Resources Department: "In my work it was always a great objective to make the Saskatchewan public, and that of Canada as well, see that there was another side to the resources of the Province than the disaster-smitten grain fields of southern Saskatchewan."

<sup>483</sup> *Saskatoon Star-Phoenix*, 31 January 1931.

natural resources.<sup>484</sup> Unfortunately, however, the return of the resources to the provinces occurred concomitantly with the onset of the Great Depression. Throughout the 1930s there was little money available to develop resource industries in the prairie provinces. The administration costs associated with the natural resources created an even greater economic burden on provincial governments at the worst possible time. Thus, the long campaign for control of the natural resources had ended in a pyrrhic victory for the prairie provinces. Ironically, if the provinces had received the natural resources at an earlier period, they may have had the opportunity to develop non-agriculturally based industries and ameliorate the impact of the Great Depression.

A further irony surrounds the legacy of the *NRTAs*. After the implementation of the agreements, they became a largely forgotten and underappreciated part of the Canadian constitution. Few historians studied the agreements, and they became a footnote in provincial histories. Recently, however, there has been renewed interest in the *NRTAs*. There are three paragraphs in the agreements that deal with the treaty rights of aboriginal people. The federal government, under the constitutional authority of section 91(24) of the *British North America Act, 1867*, retained its jurisdictional authority in the *NRTAs*. However, as many of its obligations had to do with land and natural resources, provisions had to be made to ensure that these interests would be protected after the transfer of the administration of the natural resources.<sup>485</sup> Not surprisingly, treaty Indians were not directly consulted about their rights under the agreement during the negotiations leading up to the *NRTAs*. They did not participate in the negotiations that

---

<sup>484</sup> *C.A.R. 1932*, p. 279; The report covered the period from the transfer of the natural resources on October 1, 1930 to April 30, 1931. Revenues were \$284,981 and expenditures \$267,692 creating a surplus of \$17,289.

<sup>485</sup> The Deputy Superintendent of the Department of Indian Affairs, Duncan Campbell Scott, was directly involved in the drafting of the paragraphs protecting Indian hunting rights and rights to reserve land.

led to the agreements; however, as third parties to the *NRTAs* they are bringing litigation forth to enforce the provisions in which their treaty rights are protected. Much of the controversy in this litigation focuses on the administration of natural resources. The lack of knowledge about the original purposes and context behind the *NRTAs* has contributed to the contemporary debate over the present meaning of the agreement. Hopefully, this thesis will contribute to a better understanding of the historical context and purposes behind the agreements.

## WORKS CITED

### Government Publications

- Canada. Agreement Made on the Ninth Day of January, 1926 between the Dominion of Canada and the Province of Alberta. Ottawa: F.A. Acland, King's Printer, 1926.
- Canada. Dominion – Provincial Conferences – Precis of Discussions, November 3 to 10, 1927. Ottawa: Edmond Cloutier, King's Printer, 1951.
- Canada. Correspondence between the Government of Canada and the Government of the Province of Saskatchewan. Ottawa: F.A. Acland, King's Printer, 1930.
- Canada. House of Commons Debates. Ottawa: King's Printer.
- Canada. Report of the Royal Commission on the Natural Resources of Alberta. Ottawa: J.O. Patenaude, King's Printer, 1935.
- Canada. Report of the Royal Commission on the Transfer of the Natural Resources of Manitoba. Ottawa: F.A. Acland, King's Printer, 1929.
- Canada. Report of the Royal Commission on the Natural Resources of Saskatchewan. Ottawa: King's Printer, 1935.
- Canada. The Royal Commission on Dominion-Provincial Relations (Rowell-Sirois). Volume I-III. Ottawa: King's Printer, 1940.
- Canada. Proceedings of the Conference between the Government of Canada and the Provincial Governments at Ottawa, November, 1918. Ottawa: J. Labroquerie Tache, King's Printer, 1919.
- Great Britain. Colonial Office. Correspondence Relative to the Recent Disturbances in the Red River Settlement: Presented to both Houses of Parliament by Command of Her Majesty. London: Printed by W. Clowes for H.M.S.O., 1870.
- Saskatchewan. Sessional Papers - Legislative Assembly of the Province of Saskatchewan. Session 1925-26. Regina: J.W. Reid, King's Printer, 1926.

### Newspapers

Edmonton Bulletin  
Edmonton Journal

Montreal Gazette  
New Nation  
Regina Daily Star  
Regina Leader-Post  
Regina Morning Leader  
Toronto Globe  
Winnipeg Free Press  
Winnipeg Tribune

### **Archival Collections**

#### **National Archives of Canada (NAC)**

Robert Laird Borden Papers  
William Lyon Mackenzie King Papers  
Wilfrid Laurier Papers  
John A. Macdonald Papers  
Records relating to the Royal Commissions on the Natural Resources of Saskatchewan and Alberta

Diaries of William Lyon Mackenzie King online:  
<http://king.collectionscanada.ca/EN/default.asp>

#### **Saskatchewan Archives Board (SAB)**

James Thomas Milton Anderson Papers  
George Herbert Barr Papers  
Charles Avery Dunning Papers  
James Garfield Gardiner Papers (Ministerial)  
William Melville Martin Papers

T. Walter Scott Papers  
 Department of Natural Resources collection  
 Natural Resources Collection  
 Premier's Office Papers  
 Saskatchewan Legislative Assembly

### **Provincial Archives of Alberta (PAA)**

Proceedings of the Saskatchewan Natural Resources Commission, 1934

### **Provincial Archives of Manitoba (PAM)**

Bracken Papers  
 Premier's Office Correspondence 1927-29  
 Premier's Office Correspondence, Natural Resources Papers

### **Cases Considered**

*In re Transfer of Natural Resources to the Province of Saskatchewan*, [1932] A.C. 28.

*Reference re: Saskatchewan Natural Resources*, [1931] S.C.R. 263.

*Reference re: s.17 of the Alberta Act*, [1927] S.C.R. 364; [1927] 2 D.L.R. 993.

### **Unpublished Theses and Dissertations**

Bocking, Douglas Henry. Premier Walter Scott – A Study of His Rise to Political Power. M.A. Thesis. Saskatoon: University of Saskatchewan, 1959.

Brennan, J. William. A Political History of Saskatchewan, 1905-1929. Ph.D. Dissertation. Edmonton: University of Alberta, 1976.

Da Pont, George. W.M. Martin and the Farmers' Movement in Saskatchewan 1916-1922. M.A. Thesis. Saskatoon: University of Saskatchewan, 1976.

Gulig, Anthony. In Whose Interest?: Government-Indian Relations in Northern Saskatchewan and Wisconsin, 1900-1940. Saskatoon: University of Saskatchewan Press, 1997.

James, George G. Constitutional and Political Aspects of Federal Control of Natural Resources in the Prairie Provinces, 1870-1930. M.A. Thesis. University of Saskatchewan, 1975.

McQuinn, Harold A. Kevin. Great Britain and the Red River: An Examination of Imperial Involvement in the Transfer of the North-West Territory to Canada, and in the Red River Rebellion. M.A. Thesis. Fredericton: University of New Brunswick, 1973.

Puchniak, Stanley A. Riel's Red River Government: A Legitimate Government 1869-70. M.A. Thesis. Ottawa: University of Ottawa, 1931.

### **Books and Articles**

Archer, John H. Saskatchewan – A History. Saskatoon: Western Producer Prairie Books, 1980.

Banks, Nigel. "Constitutionalized Intergovernmental Agreements and Third Parties: Canada and Australia." *Alberta Law Review* XXX(1992): 524-554.

Barnhart, Gordon L. "Introduction." Saskatchewan Premiers of the Twentieth Century. Regina: Canadian Plains Research Centre, 2004.

Barnhart, Gordon L. "Frederick Haultain." In Gordon L. Barnhart (ed.) Saskatchewan Premiers of the Twentieth Century. Regina: Canadian Plains Research Centre, 2004.

Barnhart, Gordon L. 'Peace, Progress & Prosperity': A Biography of Saskatchewan's First Premier, T. Walter Scott. Regina: Canadian Plains Research Centre, 2000.

Barnhart, Gordon L. "Walter Scott." In Gordon L. Barnhart (ed.) Saskatchewan Premiers of the Twentieth Century. Regina: Canadian Plains Research Centre, 2004.

Begg, Alexander. The Creation of Manitoba or, a History of the Red River Troubles. Toronto: A.H. Hovey, 1871.

Berger, Carl. The Writing of Canadian History. 2<sup>nd</sup> ed. Toronto: University of Toronto Press, 1986.

Betcherman, Lita-Rose. Ernest Lapointe – Mackenzie King's Great Quebec Lieutenant. Toronto: University of Toronto Press, 2002.

- Betke, Carl. "The United Farmers of Alberta, 1921-1935." In George Melnyk (ed.) Riel to Reform – A History of Protest in Western Canada. Saskatoon: Fifth House Publishers, 1992.
- Borden, H. (ed.) Robert Laird Borden: His Memoirs. Vol. I 1854-1915. Toronto: Macmillan Co., 1938.
- Brennan, J. William. "The 'Autonomy Question' and the Creation of Alberta and Saskatchewan, 1905." In R. Douglas Francis and Howard Palmer (eds.) The Prairie West – Historical Readings. Edmonton: Pica Pica Press, 1985.
- Brennan, J. William. "Charles Dunning." In Gordon L. Barnhart (ed.) Saskatchewan Premiers of the Twentieth Century. Regina: Canadian Plains Research Centre, 2004.
- Brown, Robert Craig and Ramsay Cook. Canada, 1896-1921: A Nation Transformed. Toronto: McClelland and Stewart, 1974.
- Byfield, Ted (ed.) Alberta in the 20<sup>th</sup> Century – A Journalistic History of the Province in Twelve Volumes. Volume 5. Edmonton: United Western Communications, Ltd. 1996.
- Cahill, Barry. The Thousandth Man: A Biography of James McGregor Stewart. Toronto: Published for the Osgoode Society by the University of Toronto Press, 2000.
- Canadian Intergovernmental Conference Secretariat. First Ministers' Conferences, 1906-2004. Ottawa: CICS, 2004.
- Chambers, Ernest J. (ed.) The Canadian Parliamentary Guide 1920. Ottawa: The Mortimer Company, 1920.
- Cook, Ramsay. The Politics of John W. Dafoe and the Free Press. Toronto: University of Toronto Press, 1963.
- Craig, Gerald M. (ed.) Lord Durham's Report – An Abridgement of Report on the Affairs of British North America. Toronto: McClelland and Stewart Ltd., 1963.
- Donnelly, Murray. Dafoe of the Free Press. Toronto: Macmillan, 1968.
- Dorland, Michael and Maurice Charland. Law, Rhetoric, and Irony in the Formation of Canadian Civil Culture. Toronto: University of Toronto Press, 2002.
- Eager, Evelyn. "The Conservatism of the Saskatchewan Electorate." In Norman Ward and Duff Spafford (eds.) Politics in Saskatchewan. Don Mills: Longmans Canada, 1968.

- Eager, Evelyn. "The Constitution of Saskatchewan." *Saskatchewan History* XV(1962): 41-57.
- Eager, Evelyn. Saskatchewan Government – Politics and Pragmatism. Saskatoon: Western Producer Prairie Books, 1980.
- Edmonds, W. Everard. The Natural Resources Question – A Plea for the Completion of Alberta's Status as a Province of Canada. Edmonton: Henry Roche, 1922.
- Farr, David M.L. The Colonial Office and Canada. Toronto: University of Toronto Press, 1955.
- Foster, Franklin L. John E. Brownlee – A Biography. Lloydminster, Alberta: Foster Learning Inc., 1996.
- Foster, Franklin L. "John E. Brownlee, 1925-1934." In Bradford J. Rennie (ed.) Alberta Premiers of the Twentieth Century. Regina: Canadian Plains Research Centre, 2004.
- Forbes, Ernest R. Maritime Rights, The Maritime Rights Movement, 1919-1927 – A Study in Canadian Regionalism. Montreal-Kingston: McGill-Queen's University Press, 1979.
- Franks, C.E.S. "The Legislative and Responsible Government." In Norman Ward and Duff Spafford (eds.) Politics in Saskatchewan. Don Mills: Longmans Canada, 1968.
- Funston, Bernard W. and Eugene Meehan (eds.). Canadian Constitutional Documents Consolidated. Toronto: Carswell, 1994.
- Gérin-Lajoie, Paul. Constitutional Amendment in Canada. Toronto: University of Toronto Press, 1950.
- Griezic, Foster J.K. "The Honourable Thomas Alexander Crerar: The Political Career of a Western Liberal Progressive in the 1920's." In S.M. Trofimenkoff (ed.) The Twenties in Western Canada. Ottawa: National Museum of Canada, 1972.
- Hall, David. "Arthur L. Sifton, 1910-1917." In Bradford J. Rennie (ed.) Alberta Premiers of the Twentieth Century. Regina: Canadian Plains Research Centre, 2004.
- Hall, David. Clifford Sifton, Volume II – A Lonely Eminence, 1901-1929. Vancouver: University of British Columbia Press, 1985.

- Hall, David. "Clifford Sifton: Immigration and Settlement Policy 1896-1905." In R. Douglas Francis and Howard Palmer (eds.) The Prairie West – Historical Readings. Edmonton: Pica Pica Press, 1985.
- Henderson, James Youngblood et al. (eds.). Aboriginal Tenure in the Constitution of Canada. Toronto: Carswell, 2000.
- Hopkins, J. Castell (ed.). Canadian Annual Review of Public Affairs, 1903-1932. Toronto: The Annual Review Publishing Co., 1904-1933.
- Jaques, Carrol. "Charles Stewart, 1917-1921." In Bradford J. Rennie (ed.) Alberta Premiers of the Twentieth Century. Regina: Canadian Plains Research Centre, 2004.
- Johnson, A.W. Dream No Little Dreams – A Biography of the Douglas Government of Saskatchewan, 1944-1961. Toronto: University of Toronto Press, 2004.
- Jones, David C. "Herbert W. Greenfield, 1921-1925." In Bradford J. Rennie (ed.) Alberta Premiers of the Twentieth Century. Regina: Canadian Plains Research Centre, 2004.
- Keith, Arthur Berridale. Responsible Government in the Dominions. Volume II. Oxford: Clarendon Press, 1912.
- Kendle, John. John Bracken: A Political Biography. Toronto: University of Toronto Press, 1979.
- Kyba, Patrick. "Ballots and Burning Crosses – The Election of 1929." In Norman Ward and Duff Spafford (eds.) Politics in Saskatchewan. Don Mills: Longmans Canada, 1968.
- Kyba, Patrick. "J.T.M. Anderson." In Gordon L. Barnhart (ed.) Saskatchewan Premiers of the Twentieth Century. Regina: Canadian Plains Research Centre, 2004.
- LaForest, Gerard V. Natural Resources and Public Property Under the Canadian Constitution. Toronto: University of Toronto Press, 1969.
- Lambrecht, Kirk N. The Administration of Dominion Lands, 1870-1930. Winnipeg: Hignell Printing Ltd., 1991.
- Lingard, C. Cecil. "Economic Forces behind the Demand for Provincial Status in the Old North West Territories." *Canadian Historical Review* 21(1940): 254-267.
- Lingard, C. Cecil. Territorial Government in Canada – The Autonomy Question in the Old North-West Territories. Toronto: University of Toronto Press, 1946.

- Longley, R.S. "Cartier and McDougall, Canadian Emissaries to London, 1868-9." *Canadian Historical Review* 26(1945): 25-41.
- Lupul, Manoly R. The Roman Catholic Church and the North-West School Question: A Study in Church-State Relations in Western Canada 1874-1905. Toronto: University of Toronto Press, 1974.
- McConnell, W.H. Commentary on the BNA Act. Toronto: Macmillan, 1977.
- McConnell, W.H. Prairie Justice. Calgary: Burroughs & Co., 1980.
- MacEwan, Grant. Frederick Haultain – Frontier Statesman of the Canadian Northwest. Saskatoon: Western Producer Prairie Books, 1985.
- MacGregor, James G. A History of Alberta. Edmonton: Hurtig Publishers, 1981.
- Martin, Chester. "Dominion Lands" Policy. Toronto: McClelland & Stewart, 1973.
- Martin, Chester. The Natural Resources Question – The Historical Basis of Provincial Claims. Winnipeg: Purcell, 1920.
- Martin, Chester. Foundations of Canadian Nationhood. Toronto: University of Toronto Press, 1955.
- Maxwell, James A. "A Flexible Portion of the British North America Act." *Canadian Bar Review* IX(1933): 149-157.
- Maxwell, James A. Federal Subsidies to the Provincial Governments in Canada. Cambridge: Harvard University Press, 1937.
- Mochoruk, Jim. Formidable Heritage: Manitoba's North and the Cost of Development, 1870 to 1930. Winnipeg: University of Manitoba Press, 2004.
- Morton, W.L. (ed.). Alexander Begg's Red River Journal and Other Papers Relative to the Red River Resistance of 1869-1870. Toronto: Champlain Society, 1956.
- Morton, W.L. Manitoba – The Birth of a Province. Altona, Mb.: D.W. Friesen & Sons, Ltd., 1965.
- Morton, W.L. The Progressive Party in Canada. Toronto: University of Toronto Press, 1950.
- Neatby, H. Blair. William Lyon Mackenzie King – The Lonely Heights 1924-1932. Toronto: University of Toronto Press, 1963.

- Oliver, E.H. (ed.) The Canadian Northwest: Its Early Development and Legislative Records. 2 vols. Ottawa: Secretary of State, Archivist, Government Printing Bureau, 1914.
- Oliver, E.H. "Saskatchewan and Alberta: General History, 1870-1912." In Shortt, Adam and Arthur G. Doughty (eds.) Canada and its Provinces. Volume 19. Toronto: Glasgow, Brook & Co., 1914.
- Owram, Douglas (ed.). The Formation of Alberta: A Documentary History. Calgary: Historical Society of Alberta, 1979.
- Owram, Douglas. Promise of Eden: The Canadian Expansionist Movement and the Idea of the West, 1856-1900. Toronto: University of Toronto Press, 1980.
- Owram, Doug. "Disillusionment: Regional Discontent in the 1880's." In George Melnyk (ed.) Riel to Reform: A History of Protest in Western Canada. Saskatoon: Fifth House, 1992, pp. 86-105.
- Palmer H. Alberta, A New History. Edmonton: Hurtig, 1990.
- Perin, Roberto. Rome in Canada: The Vatican and Canadian Affairs in the Late Victorian Age. Toronto: University of Toronto Press, 1990.
- Pitsula, James. "Muscular Saskatchewan: Provincial Self-Identity in the 1920s." *Saskatchewan History* 54(2002): 6-17.
- Powell, J.M. Soldier Settlement in Canada 1915-1930. Working Paper No. 7 Dept. of Geography, Monash University. March 1979. Edmonton: Koala Books of Canada, 1979.
- Rea, James Edgar. T.A. Crerar: A Political Life. Montréal: McGill-Queen's University Press, 1997.
- Regehr, Ted. "William Martin." In Gordon L. Barnhart (ed.) Saskatchewan Premiers of the Twentieth Century. Regina: Canadian Plains Research Centre, 2004.
- Rennie, Bradford J. "Introduction." Alberta Premiers of the Twentieth Century. Regina: Canadian Plains Research Centre, 2004.
- Riddell, R.G. "A Cycle in the Development of the Canadian West." *Canadian Historical Review* 21(1940): 268-284.
- Robert, Rudolph. Chartered Companies – Their Role in the Development of Overseas Trade. London: G. Bell and Sons, 1969.

- Roome, Patricia. "Alexander C. Rutherford, 1905-1910." In Bradford J. Rennie (ed.) Alberta Premiers of the Twentieth Century. Regina: Canadian Plains Research Centre, 2004.
- Rutherford, Paul. "The Western Press and Regionalism, 1870-96." *Canadian Historical Review* 12(1971): 287-305.
- Saywell, John T. "Liberal Politics, Federal Policies, and the Lieutenant Governor: Saskatchewan and Alberta, 1905." In Donald Swainson (ed.) Historical Essays on the Prairie Provinces. Toronto: McClelland and Stewart, 1970.
- Saywell, John T. The Office of the Lieutenant-Governor – A Study in Canadian Government and Politics. Toronto: University of Toronto Press, 1957.
- Shortt, Adam and Arthur G. Doughty (eds.). Canada and its Provinces: A History of the Canadian People and their Institutions. Toronto: Glasgow, Brook, 1914-1917.
- Smiley, Donald V. "Canada and the Quest for a National Policy." *Canadian Journal of Political Science* 8(1975): 40-62.
- Smith, David E. (ed.) Building a Province - A History of Saskatchewan in Documents. Saskatoon: Fifth House Publishers, 1992.
- Smith, David E. "James G. Gardiner." In Gordon L. Barnhart (ed.) Saskatchewan Premiers of the Twentieth Century. Regina: Canadian Plains Research Centre, 2004.
- Smith, David E. Prairie Liberalism: The Liberal Party in Saskatchewan 1905-71. Toronto: University of Toronto Press, 1975.
- Smith, David E. "Western Politics and National Unity." In George Melnyk (ed.) Riel to Reform – A History of Protest in Western Canada. Saskatoon: Fifth House Publishers, 1992, pp. 43-59.
- Sprague, Douglas N. Canada and the Métis, 1869-1885. Waterloo, Ont.: Wilfrid Laurier Press, 1988.
- Stanley, George F.G. The Birth of Western Canada – A History of the Riel Rebellions. Toronto: University of Toronto Press, 1963.
- Swainson, Donald. "Canada Annexes the West: Colonial Status Confirmed." In The Prairie West – Historical Readings. R. Douglas Francis and Howard Palmer (eds.) Edmonton: Pica Pica Press, 1985.
- Thomas, Lewis G. The Liberal Party in Alberta – A History of Politics in the Province of Alberta 1905-1921. Toronto: University of Toronto Press, 1959.

- Thomas, Lewis Herbert. The Struggle for Responsible Government in the North-West Territories 1870-97. Toronto: University of Toronto Press, 1956.
- Thomas, Lewis G. and Lewis H. Thomas. "Introduction." The Formation of Alberta: A Documentary History. Douglas R. Owsram (ed.) Calgary: Historical Society of Alberta, 1979.
- Thompson, Bram. "Canada's Distorted Constitution." *Canadian Law Times* XL (1920): 101-121.
- Thompson, Bram. "Canada's Suzerainty over the West – Privy Council Views on the Usurpation." *Canadian Law Times* XLII(1922): 227-235.
- Thompson, Bram. "The Constitution of Canada. Canada's Suzerainty over the West." *Canadian Law Times* XXXIX(1919):417-437.
- Thompson, Bram. "The Distortions of Canada's Constitution West and East." *Canadian Law Times* XL(1920): 852-862.
- Thompson, Bram. "Our Bogus Dominion Land Code." *Canadian Law Times* XXXIX(1919): 494-508.
- Thompson, Bram. "Ownership of Western Lands – The Aftermath of Restitution." *Canadian Law Times* XLII(1922): 397-405.
- Tough, Frank. As Their Natural Resources Fail: Native People and the Economic History of Northern Manitoba, 1870-1930. Vancouver: University of British Columbia Press, 1996.
- Tough, Frank. "The Forgotten Constitution: The Natural Resources Transfer Agreements and Indian Livelihood, ca. 1925-1933." *Alberta Law Review* 41(2004): 999-1048.
- Tough, Frank. "Introduction to Documents, Indian Hunting Rights, Natural Resources Transfer Agreements and Legal Opinions from the Department of Justice." *Native Studies Review* 10(1995): 121.
- Waiser, Bill. Saskatchewan – A New History. Calgary: Fifth House, 2005.
- Ward, Norman and David Smith. Jimmy Gardiner – Relentless Liberal. Toronto: University of Toronto Press, 1990.
- Wardhaugh, Robert A. "The 'Impartial Umpire' Views the West: Mackenzie King and the Search for the New Jerusalem." *Manitoba History* 29(1995): 11-22.

Wardhaugh, Robert A. Mackenzie King and the Prairie West. Toronto: University of Toronto Press, 2000.

Wardhaugh, Robert A. "Mackenzie King and Prince Albert Constituency." *Prairie Forum* 21(1996): 177-199.

Whalen, James Murray. Records of Federal Royal Commissions. Volume I. Series 33/1 to 33/75. Ottawa: National Archives of Canada, 1990.