

MANITOBA AND THE (LONG AND WINDING) ROAD TO THE *NATURAL RESOURCES TRANSFER AGREEMENT*

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This article constitutes a case study of Manitoba's struggle to win control over its natural resources. Its central argument is that from a Manitoba perspective, the issues involved were not actually matters of constitutional principle, except in a rhetorical and perhaps a technical sense. For Manitoba, the path to the NRTA of 1930 was paved almost exclusively by political and economic factors. With this path in mind, this article argues that in the case of Manitoba, this agreement should be viewed as an arbitrarily crafted and completely political solution to a series of long-festering economic disputes between Ottawa and the province. Thus, while Manitoba's political elite had rather cynically appealed to high-sounding principles by dressing their claims up in the terminology of inherent British constitutional rights, all they really wanted were "better financial terms."

Cet article représente une étude de cas de la lutte que le Manitoba a menée pour prendre le contrôle de ses richesses naturelles. Le principal argument est le fait que, du point de vue du Manitoba, les questions litigieuses en cause ne concernaient pas vraiment des principes constitutionnels sauf au sens théorique et peut-être technique. Pour le Manitoba, la voie de la CTRN (Convention sur le transfert des ressources naturelles) de 1930 était pavée presque exclusivement de facteurs politiques et économiques. Compte tenu de cela, l'article fait remarquer que dans le cas du Manitoba, cette convention devrait être considérée comme étant une solution façonnée de manière arbitraire et entièrement politique à une longue série de disputes économiques entre Ottawa et la province. Ainsi, alors que l'élite politique du Manitoba a fait appel, de manière plutôt cynique, à des principes grandiloquents en déguisant leurs revendications dans la terminologie des droits constitutionnels britanniques, tout ce qu'elle voulait vraiment était « de meilleures conditions financières ».

Collectively referred to as the *Natural Resources Transfer Agreement (NRTA)* of 1930, the series of inter-related, yet separate, agreements arrived at between the three prairie provinces — Alberta, Saskatchewan, and Manitoba — and Ottawa, have been little studied by either constitutional or political historians.¹ This is rather surprising given that the agreement was heralded at the time as a revolution in the constitutional arrangements of Confederation. Nor was this an idle boast, for the *NRTA* dramatically altered the relationship

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1 *Manitoba Natural Resources Agreement*, S.M. 1930, c. 30, confirmed as S.C. 1930, c. 29; *Alberta Natural Resources Act*, S.A. 1930, c. 21, confirmed as S.C. 1930, c. 3; and *Saskatchewan Natural Resources Act*, S.S. 1930, c. 87, confirmed as S.C. 1930, c. 41. By convention, the confirmed agreements are referred to as the *Natural Resources Transfer Agreement [NRTA]*. All three provincial agreements are in the Schedule to the *British North America Act, in 1930 (U.K.)*, c. 26, renamed the *Constitution Act, 1930, (U.K.)*, 20 & 21 Geo. V., c. 26, reprinted in R.S.C. 1985, App. II, No. 26; the long title of this *Act* is *An Act to Amend the British North America Acts, 1867 to 1916*.

between the prairie provinces, the federal government, and the six other provinces. It ended the anomaly of these three members of Confederation having fewer “rights” of self-determination than the other six, primarily because they had been subject to federal jurisdiction in land and resource matters which, according to the *British North America Act, 1867*,² were purely provincial in nature. With the passage of the concurrent imperial, federal, and provincial legislation that gave effect to the *NRTA* in 1930, the three prairie provinces were supposedly placed in a position of equality with their sister provinces.

In and of itself this is an important moment in Canadian history — certainly deserving of more than the usual one-paragraph mention in the standard reference works.³ But beyond this, there were other, albeit largely unintended, consequences of significance that have flowed from the *NRTA* in the years since 1930, particularly in regard to treaty rights litigation and the “Indian livelihood” rights provisions of the agreement(s).⁴ There were also some fairly dramatic and unforeseen economic results of the *NRTA*. For example, Manitoba’s lengthy struggle to gain beneficial control over its remaining natural resources resulted in a “victory” in 1930 that, in many ways, turned out to be a financial disaster for the province.⁵ The significance of the *NRTA* is also marked by the new wave of provincial “state-building” and bureaucratic expansion within the prairie provinces, largely because the work associated with overseeing the use of natural resources called for the creation of entirely new government departments and sizable increases in several existing departments.⁶

2 (U.K.), c. 3, renamed the *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5 [*BNA Act*].

3 Not a single textbook on Canadian history even cites the *NRTA* in its index; perhaps more surprisingly, even the standard surveys of western Canadian history by Gerald Friesen and John Herd Thompson have no index listing for the topic and only the briefest of mentions in the body of the text. See Friesen, *The Canadian Prairies: A History*. (Toronto: University of Toronto Press, 1984); and Thompson, *Forging the Prairie West* (Toronto: Oxford University Press, 1998). One must delve into either provincial histories such as W.L. Morton’s dated, but classic study of Manitoba to get as much as a paragraph on the question or sources such as the *Canadian Encyclopedia* to find even the most basic description of this agreement: W.L. Morton, ed., *Manitoba: The Birth of a Province* (Winnipeg: Manitoba Record Society Publications, 1965) [Morton, *Manitoba*].

4 For a discussion of these issues see Frank J. Tough, “The Forgotten Constitution: The *Natural Resources Transfer Agreements* and Indian Livelihood Rights, ca. 1925-1933” (2004) 41 *Alberta Law Rev.* 999.

5 Jim Mochoruk, *Formidable Heritage: Manitoba’s North and the Cost of Development, 1870-1930* (Winnipeg: University of Manitoba Press, 2004) at 352-65. (Much of what follows has been derived from the research that went into this book.)

6 This aspect of the *NRTA* is, as of yet, still completely unstudied and it needs to be more closely examined — both because of the impact of the virtual dissolution of the old Federal Department of the Interior on Ottawa’s civil service (a story unto itself) and the rapid growth of new and highly sophisticated bureaucracies and technical agencies in the three prairie provinces.

For all of these reasons concerning the initial significance and long-term impact of the *NRTA*, it is worthwhile revisiting the factors that brought it into existence. However, despite having started out by acknowledging the constitutional importance of this agreement, little attention will be paid to constitutional matters *per se* in this article. The reason for this is simple: as the following case study of Manitoba's struggle to win control over its natural resources demonstrates, the issues involved were not actually matters of constitutional principle, except in a rhetorical and perhaps a technical sense. For Manitoba, the path to the *NRTA* of 1930 was paved almost exclusively by political and economic factors. With this path in mind, this article will argue that in the case of Manitoba, this agreement should be viewed as an arbitrarily crafted and completely political solution to a series of long-festering economic disputes between Ottawa and the province. Thus while Manitoba's political elite had rather cynically appealed to high-sounding principles by dressing their claims up in the terminology of inherent British constitutional rights, all they really wanted was "better financial terms" — a phrase that could easily serve as Manitoba's unofficial provincial motto.

I. THE HISTORICAL BACKGROUND, 1870-1885

Manitoba's involvement with the natural resource issue constitutes a particularly interesting case study, one which was both longer and more politically convoluted than that of its sister prairie provinces. Indeed, for Manitoba the natural resource question had surfaced even before Canada formally annexed the Hudson's Bay Company (HBC) territories.

The actions of Louis Riel and his supporters in Red River during the Resistance of 1869-1870 have typically been portrayed either as a type of rejection of Canada and "modernity," or more properly, as an attempt to protect the linguistic/cultural, land, and political rights of the Métis. However, it is also the case that early in 1870, Riel had the prescience to outline a set of arguments regarding provincial rights and control over natural resources that would be adopted almost *in toto* by later premiers of Manitoba. At that time, the Dominion of Canada was intent upon treating all of Rupert's Land and the North-Western Territory as a simple colonial possession, a territory devoid of any significant level of political independence or constitutional rights.⁷

By contrast, Riel and some of his supporters had set their sights upon win-

7 *An Act for temporary Government of Rupert's Land and the North-Western Territory when united with Canada, 1869, 32 & 33 Vict., c. 3 (Canada)*, reprinted in R.S.C. 1970, App. at 244.

ning provincial status and retaining local control over natural resources for this new jurisdiction by February of 1870.⁸ It was in that month that a broadly representative convention of delegates from the parishes of Red River was convened, a gathering that bore the stamp of considerable political legitimacy, even in Canada, and was created under the watchful eye of Donald Smith, who represented both the HBC and the Canadian government. As is clear from the speeches of the delegates to this convention, most seemed to have assumed that it was inevitable that the whole of the North-West would be joining Canada as a territory. It is also clear that they assumed this would be done largely on the terms laid out by the Canadian government. All that had to be done was to iron out and ratify the specific “list of rights” that would satisfy the immediate concerns of the residents of Red River and the surrounding district, the only heavily populated area of Rupert’s Land at the time.⁹ Riel, however, broached the issue of “provincehood” at the convention and drew that body’s attention to subsection s. 92(5) of the *BNA Act*, which provides that “the management and sale of the public lands . . . and of the timber and wood thereon”¹⁰ are vested in the province.

As the debate on this matter developed, several leading delegates from English-speaking parishes argued that territorial status was the only possible option for so youthful and undeveloped a region — particularly given the high costs associated with providing the infrastructure of roads and public buildings, which were provincial responsibilities. As a result, when the vote on territorial status was finally held, Riel and his supporters were the losers. Still, the convention of 1870 took an interesting position: even as it rejected Riel’s opinion on provincial status, its approved “list of rights” included a demand for local control over the public lands within the small territory that would be roughly co-terminus with the old Red River settlement and its satellites.¹¹

W.L. Morton, that most esteemed of western Canadian historians, argued that Riel’s position on provincial status was tied entirely to “the question of title to the land” and the development of the great new economic endeavour of farming.¹² Morton’s argument was only partially correct. Once established as the president of the provisional government created by the convention, Riel

8 Morton, *Manitoba*, *supra* note 3 at 6-7, 17, reprint of “Proceedings in the Convention, 3-5 February 1870.”

9 *Ibid.* at 242-44, “The Second ‘List of Rights,’” Appendix 1. In this case, the surrounding district was a circle of approximately 100 kilometers, centred on Fort Garry.

10 *Ibid.* at 7.

11 *Ibid.* at 242-44, “The Second ‘List of Rights,’” Appendix 1.

12 *Ibid.* at xv.

demonstrated a fairly sophisticated understanding of natural resources that went well beyond the control of lands that would be valuable for agriculture. Soon after taking office, and unbeknownst to most of Red River's populace, Riel and his advisors added several sections to the list of rights previously agreed upon, including the famous demand for provincial status for the entire region of "Rupert's Land and the North-West," which they called the Province of Assiniboia.¹³ In this proposed super-province, stretching from Lake Superior to the foothills of the Rockies, Riel sought complete local control over all natural resources. Furthering this agenda, article 12 of the new list of rights (the third version of this list) specifically called upon the federal government to "appoint a commission of engineers to explore the various districts of the Province of Assiniboia, and to lay before the Local Legislature a report of the mineral wealth of the province."¹⁴ As these demands and their earlier comments to the convention had indicated, Riel and his supporters were well aware of the potential value of timber and other natural resources in the region.¹⁵ In effect, Riel was anticipating not only a land boom but also the development of lumber and mining industries, all of which he wanted the local government to benefit from and control.¹⁶

Of course, as matters turned out, Riel's vision for the Province of Assiniboia was not well received by the Dominion. While willing to grant some of the demands enumerated in the various lists of rights, including provincial status, the Macdonald administration was unwilling to give in on the issue of the size of the province (hence the tiny square that became known as "the postage stamp province") or control over its natural resources. As he put it to the House of Commons, Prime Minister Macdonald "considered it injudicious to have a large province which would have control over lands, and [which] might interfere with the general policy of the government." This policy included stimulating large-scale immigration to the West, fostering the rapid development of "communications to the Pacific" and the use of the former HBC lands to recoup the purchase price of £300,000.¹⁷

The Prime Minister did not have to fight very hard to persuade the representatives of Red River to give up their more ambitious demands during negotiations. In spite of Riel's insistence that he stand firm on the issues of local control over natural resources and the size of the proposed province of Assiniboia

13 *Ibid.* at 245, "The Third 'List of Rights,'" Appendix 1.

14 *Ibid.* at 246.

15 *Ibid.* at 6-7, 17.

16 Article 11 of this list had called for "full control over all public lands of the province."

17 *House of Commons Debates (HCD)*, (1870) vol. 1 at 1317-18.

during the negotiations of the spring of 1870, Riel's chief negotiator, Abbé Richot, gave in on the issue of natural resources rather quickly. Instead, he settled for other terms he deemed to be more important to the groups he saw himself representing: the French-speaking Métis and the Catholic Church.¹⁸ As a result, Manitoba was created as a constitutional anomaly — a province whose lands were reserved “for the purposes of the Dominion”¹⁹ and therefore without the same rights or financial resources as its (then) four counterparts in Confederation. Although this arrangement certainly flew in the face of typical British practice regarding self-governing colonies and fit poorly with the public land provisions of the *BNA Act*, the doctrine of parliamentary supremacy ensured that the Government of Canada was entirely within its rights to create such a strangely configured “province” once the Imperial parliament passed the *Manitoba Act, 1870*.²⁰

For the better part of sixty years, this anomalous constitutional situation, as well as the economic limitations it created,²¹ remained a bone of contention for Manitoba's political leadership. Somewhat ironically, politicians and other advocates for Manitoba who, in other regards, completely disavowed the legacy of Riel, often found themselves recasting his demands in more contemporary terms.²² Premiers Norquay and Roblin, for example, both sought major territorial expansions that came close to mirroring Riel's ambitions for the huge “Province of Assiniboia.” And every premier from R.A. Davis to John Bracken sought improved financial terms from Ottawa, a large portion of which they claimed was Manitoba's due as subsidies “in lieu of lands.”

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- 18 See Riel to Richot, 19 April 1870, cited in W.L. Morton, ed., *Alexander Begg's Journal of the Red River Resistance and Other Documents* (Toronto: Champlain Society, 1957) at 136; and “The Journal of Rev. N.J. Richot,” 24 March - 28 May 1870, reprinted in Morton, *Manitoba*, *supra* note 3 at 140-43.
 - 19 *An Act to amend and continue the Act 32 and 33 Victoria, chapter 3 and to establish and provide for the Government of Manitoba Canada*, 33 Victoria, c. 3 (Canada), reprinted in R.S.C. 1970, App., s. 30 (*Manitoba Act, 1870*).
 - 20 It did so via the passage of the *British North America Act, 1871*, (U.K.), c. 28, renamed *Constitution Act, 1871*, 34-35 Victoria, c. 28 (U.K.), reprinted in R.S.C. 1985, App. II, No. 11, s. 2.
 - 21 Without control over public lands, a very important source of provincial revenue was unavailable to Manitoba. Neighbouring Ontario — the example most commonly cited by Manitoba's politicians from the 1880s onward — benefited handsomely from such control. Premier Norquay's 1883 submission to Ottawa, which called for Manitoba to be granted control over its resources, cited at great length the economic advantages enjoyed by Ontario by virtue of its control over timber, mineral, and grazing lands, as well as arable lands. See, Canada, Parliament, “Copy of a Report of the [Manitoba] Executive Council,” 8 March 1883, in *Sessional Papers*, Vol. 16, No. 12, #108 (1883).
 - 22 Professor Chester Martin, then of the University of Manitoba's Department of History, crafted a case for the T.C. Norris administration regarding Manitoba's desire to gain beneficial control over its natural resources in 1920. He very clearly disavowed Riel, but he followed the logic of Riel's position to a very remarkable degree. See *The Natural Resource Question* (Winnipeg: University of Manitoba/Saults and Pollard Ltd., 1920).

Premier John Norquay was the original master of this formula, linking Manitoba's constitutional handicap with the dire financial circumstances of the province in innumerable submissions to Ottawa. Indeed, as early as 1881 Norquay had crafted an argument designed to win Manitoba's "provincial rights," primarily meaning control over its natural resources or large subsidies in lieu of those resources. He maintained that the *Manitoba Act* of 1870 violated Manitoba's pre-existing "British" right to control its own public lands. Where he came up with this idea is a bit of a mystery, as he was neither a lawyer nor particularly well versed in the history of British colonial administration. Whatever its exact origin though, Norquay's argument concerning these so-called pre-existing rights for all self-governing British colonies was appealing and would be repeated several times in the future. Moreover, whatever its legal merit, it had an unmistakable political cachet in Manitoba. It played particularly well in Winnipeg where Norquay first introduced this argument at a banquet in March 1881. Later, it also came to be well received in rural Manitoba as farmers became more and more disenchanted with the federal government's tariff and railway policies of the 1880s.²³ And although Prime Minister Macdonald did not accept the Premier's argument, it helped to shape the political landscape that made it expedient for his administration to grant Manitoba a \$45,000 per year subsidy "in lieu of lands"²⁴ in March 1882, as part of a larger package of "better terms" for Manitoba. However, Macdonald knew the danger of establishing any sort of precedent in this matter — he was, after all, a lawyer — and was therefore very careful to indicate that this payment did not constitute any agreement concerning Manitoba's inherent "British rights" to its natural resources. In fact, it was merely a sop: a sum of money equivalent to what Prince Edward Island was granted as compensation for its complete lack of public lands when it had entered Confederation in 1873, offered primarily to stop Manitoba's continual whining. Indeed, even as it granted this small sum of money, the Dominion made it clear that it had no legal or moral obligation to compensate Manitoba for its lack of beneficial control over its natural resources, observing that "the whole of Manitoba was acquired by the Dominion by purchase from the Hudson's Bay Company."²⁵ In short, the Dominion position was that Manitoba had absolutely no claim to this Dominion property.

Regardless of this clear enunciation of the federal perspective, Premier

23 Norquay's comments are quoted in Alexander Begg, *History of the North-West* (Toronto: Hunter/Rose, 1894) vol. 2 at 368-70.

24 Canada, Parliament, "Copy of a Report of a Committee of the Honourable the Privy Council for Canada," 7 March 1882, in *Sessional Papers*, Vol. 15, No. 10, #82 (1882) at 1.

25 *Ibid.* at 2.

Norquay was not about to give up his quest to secure what he referred to as Manitoba's "provincial rights." And for good political, if not legal, reason. Not only had the electorate of Manitoba become caught up in the rhetoric of provincial rights, but the leader of the opposition in Manitoba, Thomas Greenway, had also jumped on the bandwagon of provincial rights with a vengeance. Thus, any reluctance on the premier's part to press his case to the maximum would have been to turn control of what had become a popular provincial movement over to his leading rival. As a result, and as part of a larger set of demands for "better terms" within Confederation, Norquay made renewed calls for control over natural resources in the already much enlarged province of Manitoba in both 1883 and 1884.²⁶ In fact, Norquay upped the ante by demanding both beneficial control over all of Manitoba's expanded land mass and compensation for public lands already alienated.²⁷

The Dominion government was willing to consider several of Manitoba's demands, but most emphatically not the issue of local control over natural resources. However, another year of wrangling and, far more importantly, a number of other developments dramatically altered the the Dominion's need for western allies. In effect, a series of crises for Macdonald concerning the financing of the Canadian Pacific Railroad (CPR) and growing discontent among First Nations, Métis, and settlers in the North-West Territories, pushed the Macdonald government to make what it viewed to be a substantive concession on the issue of public lands late in 1884. While never for a moment backing down on its right to use and dispose of Manitoba's lands as it best saw fit, Ottawa grudgingly offered to pay Manitoba \$100,000 per year in lieu of those lands.

It was at this point that Manitoba's position on natural resources became most clear. In 1885, in exchange for this increased subsidy and a number of other concessions that would collectively increase federal payments to Manitoba by approximately \$300,000 per year, the provincial government agreed to accept a "finality clause," which constituted official recognition that this new set of "better terms" would put an end to any future claims by Manitoba. By accepting this settlement and its finality clause, the province agreed to desist

26 As a result of the *Act to provide for the extension of the Boundaries of the Province of Manitoba*, S.C. 1881, c. 14, Manitoba's boundaries were expanded in all directions — save south — increasing the size of the province ten-fold.

27 This was part of a larger package of demands — Manitoba's so-called "Bill of Rights," which Norquay personally presented to the Dominion government early in 1884 as the head of the Manitoba legislative delegation to Ottawa. For details on this package of demands see Library and Archives of Canada (LAC), RG 15, Vol. 323, File #76398, A. Murray, Speaker of the Manitoba House, to the Governor General, 2 June 1884.

from seeking Manitoba's supposed inherent "British right" to beneficial control of its public lands, as well as further boundary extensions and the much-desired right to charter southward-running rail lines — the "holy trinity" of Manitoba's provincial rights movement.²⁸ Thus, while Manitoba's political leadership had cloaked their arguments in the lofty rhetoric of constitutional and political equality, the natural resources question had come down to little more than a matter of dollars and cents.

Premier Norquay was quite blunt about the apparent shift in objectives. When he addressed the Manitoba House in support of accepting the settlement, he argued that since the \$100,000 in lieu of lands was worth as much or more than having beneficial control over natural resources,²⁹ the deal should be accepted.³⁰ For his part, Thomas Greenway, the leader of the provincial opposition, was appalled by the finality clause, particularly as regarded the chartering of railways and the parsimony of the financial settlement. But his disagreement with Norquay had little to do with giving up on the so-called principle of constitutional rights. Instead, he argued that the subsidy in lieu of lands was far too little, believing that Manitoba should have received \$1.1 million per year as compensation for its arable lands. Like Norquay, he apparently did not even consider the broader array of resources that Manitoba had in its now fairly extensive domain.³¹ Greenway did, however, offer one small refinement to the Manitoba case on natural resources. His figure of \$1.1 million had been arrived at by estimating that there were still 22 million acres of arable land available in Manitoba, which, if valued at the very low rate of \$1.00 per acre and capitalized at 5 percent per annum, would yield his "reasonable" figure.³² This was the first, but far from the last, attempt to actually estimate the value of Manitoba's public lands for the purpose of calculating subsidies or later, determining appropriate compensation for lands already alienated. Still, despite this innovation, by 1885 it had become patently clear that on both sides of the political aisle, the natural resource question had become nothing more than part of a bargaining position in a set of negotiations; the ultimate goal was always better financial terms for Manitoba. Indeed, although Norquay fell from power and was replaced by Greenway, this self-

28 *Supra* note 5 at 115-17.

29 *Ibid.* at 117-18. Norquay assumed that even if beneficial control was won, the arable lands would still have to be "given away" as part of a homestead/immigration program, so there was no cash value there. But he was ignoring the other natural resources of the province, which were actually becoming more accessible and hence more valuable as time went on, making his argument a bit dubious.

30 *Manitoba Free Press* (27 March 1885).

31 *Manitoba Free Press* (28, 30 March 1885).

32 *Ibid.*

styled champion of Manitoba's "provincial rights" said very little about the natural resource question for the twelve years that he was premier or for the brief time that he served in the House of Commons.³³

II. ROBLIN VS. LAURIER, 1905-1911

It was well after the turn of the twentieth century before Manitoba's leaders raised the issue of natural resources again. When Premier Rodmond P. Roblin's Conservative administration found itself at loggerheads with the federal Liberal government of Sir Wilfrid Laurier on a whole series of issues, it once again became convenient for Manitoba to resurrect the provincial rights platform of Premier Norquay, including a rather belated demand for beneficial control over natural resources.

The core issue in this renewed set of battles between Ottawa and Manitoba was boundaries, for the Roblin administration desperately wanted substantial territorial additions both to the west and north. Ultimately frustrated by the creation of Saskatchewan in 1905 in its quest to obtain additional western territories (Manitoba had been actively seeking large portions of the territorial districts of Assiniboia and Saskatchewan since 1901-1902), Roblin's government turned its attention to northward extensions to reach the sixtieth parallel and the shoreline of Hudson Bay. Prime Minister Laurier, however, had little incentive to comply with a politically hostile province's requests. In fact, he used Manitoba's demand for territorial enlargement up to the bay to open the way for the potential territorial aggrandizement of Ontario, Québec, and Saskatchewan. As far as Laurier was concerned, "The Province of Manitoba [wa]s not the only one whose territory could be extended to the shores of Hudson Bay."³⁴

Roblin's administration was enraged by what they perceived to be a muddying of the waters by Laurier. It had always been understood in Manitoba that this northern territory they were demanding — primarily the District of Keewatin, which had been administered out of Winnipeg by the lieutenant governor of Manitoba since its creation — would be added to the province at some point. And with the new provinces of Saskatchewan and Alberta hav-

33 In 1890, Greenway put forward a resolution asking Ottawa to reopen negotiations on the level of subsidies in lieu of lands. This, however, is virtually the only public comment that he made on the resource question during his whole term in office. See Manitoba, Legislative Assembly, *Journals of the Legislative Assembly of Manitoba and Sessional Papers* (1890) at 106-7.

34 Manitoba, Legislative Assembly, "Memorial: To the Honourable the Senate (or House of Commons) of Canada" in *Journals of the Legislative Assembly of Manitoba (JLAM)* (1908) at 37.

ing been granted northern boundaries at the 60th parallel, it seemed only fair that Manitoba should now be accorded a similar boundary.³⁵ Bringing three additional parties into any negotiations concerning this extension was the last thing Manitoba wanted. Indeed, this could only serve to hurt Manitoba's interests, as all three provinces had reasons to want their own extensions and to stymie Manitoba's growth.³⁶ Laurier, however, was unmoved by Manitoba's protests on this matter and insisted that any discussion of an enlargement of Manitoba would have to involve Ontario, Québec, and Saskatchewan.

It was only after a fruitless multi-party conference late in 1906 and some exchanges of correspondence on the matter of boundary extensions in 1907 that Premier Roblin rediscovered the issue of natural resources. In a "Memorial to the Senate of Canada" dated 15 January 1908, Manitoba upped its demands by calling for both a boundary extension and improvements in Manitoba's overall subsidies — especially those paid in lieu of lands — to the level enjoyed by Saskatchewan and Alberta, which was then \$375,000 per year.³⁷ Laurier and his Minister of Finance, W.S. Fielding, were horrified by this new financial demand, and they responded a few months later by offering Manitoba most of the northern territory it desired but virtually none of the monies it had requested.³⁸ Roblin rejected this counter-offer out of hand even though it came fairly close to meeting Manitoba's original demand of 1905.

This was where matters stood until early in 1909 when a meeting between Laurier, Fielding, and Manitoba cabinet ministers Colin Campbell and Robert Rogers was convened in Ottawa. Laurier and Fielding again refused to grant Manitoba the same subsidies as Alberta and Saskatchewan and instead offered the boundary extension proposed in 1908 plus an additional \$10,000 to administer any newly acquired territory. Campbell and Rogers scoffed at this offer. More to the point, they tabled an alternative that brought the matter of natural resources to the table in a very direct way. If the federal government had no intention of discussing financial terms seriously and placing Manitoba

35 Manitoba's angry response came in the form of a formal letter from the two Manitoba cabinet ministers who were in Ottawa at the time of Laurier's comments. Reprinted in *ibid.* at 36-37.

36 Saskatchewan and Ontario both wanted access to Hudson's Bay and its potential harbour sites, while Québec did not want to see Manitoba's school legislation extended any further than possible.

37 *Supra* note 34 at 58-59.

38 *HCD* (1908) at 1348-49. According to this resolution Manitoba's boundary would be extended to the 60th parallel from Saskatchewan's eastern boundary, thereby disregarding Saskatchewan's claim. On the other side, Manitoba's eastern boundary with Ontario would be extended along a north-eastern diagonal, running past the eastern tip of Island Lake all the way to Hudson Bay where the 89th meridian intersected the coastline. On the one hand, this ignored Ontario's request for the territory between the proposed boundary and the Churchill River, on the other hand, though, it left the area directly north of Ontario's 1889 boundary free for that province's extension.

in a position of fiscal, as well as territorial, equality with the two other prairie provinces, then there was a very simple remedy available: grant Manitoba “equal treatment with Ontario and Quebec along the line of ownership of lands, timber, ore etc. in the territory to be added, and a like ownership of the undisposed of Crown lands in Manitoba.”³⁹

From the federal perspective, this alternative seemed to come out of a clear blue sky. The Prime Minister and the leading members of his had made it perfectly clear as recently as 1905 — in the debates on the Autonomy Bills creating Saskatchewan and Alberta⁴⁰ — that ongoing Dominion control over Crown lands in the Prairies was just as essential for the current government’s settlement policy as it had been for Sir John A. Macdonald’s administration a generation earlier.⁴¹ Thus, Manitoba’s “new” alternative was a bit of a bombshell. Unwilling to contemplate increasing Manitoba’s subsidies to the same level as those of the two newest provinces, and opposed to the notion of granting local control over natural resources to any of the prairie provinces, Laurier essentially walked away from the bargaining table.

The Prime Minister made a few half-hearted attempts to restart the negotiations, but little was accomplished between the April 1909 meeting and February 1911. Laurier, who was being pressured by prominent Manitoba Liberals to settle the boundary extension to help shore up party support in that province,⁴² finally made an offer that should have been quite enticing to Roblin. While not granting Manitoba control of its natural resources, the boundary extension that had been on the table since 1908 was “sweetened” by the inclusion of an offer of \$200,000 per year in lieu of control over those public lands about to be added to the province. This, when added to the \$100,000 subsidy already being granted for federal retention of public lands in “old” Manitoba, brought the province to within \$75,000 of the subsidies provided to Saskatchewan and Alberta in lieu of their public lands.⁴³ In fact, as I have argued elsewhere, if one considered the value of the swamplands

39 Manitoba, Legislative Assembly, “Report of Messrs. Rogers and Campbell . . . on their Conference with the Federal Government, 14 April 1909” in *Sessional Papers*, No. 5 (1910) at 209-11.

40 *Alberta Act*, 1905, 4 & 5 Edw. VII, c. 3 (Canada), reprinted in R.S.C. 1985, App. II, No. 20, s. 8; and *Saskatchewan Act*, 4 & 5 Edw. VII, 1905, c. 42 (Canada), reprinted in R.S.C. 1985, App. II, No. 21, s. 3 [Autonomy Bills].

41 *HCD* (1905) at 1431.

42 John Dafoe of the *Free Press* had been quite insistent on this point. See Ramsey Cook, “Church, Schools and Politics in Manitoba, 1903-1912” in Donald Grant Creighton, ed., *Minorities, Schools and Politics* (Toronto: University of Toronto Press, 1969) 23 at 31.

43 Canada, Parliament, “Report of Proceedings at Conference Held at Ottawa, 2-3 February 1911” [Canada, “Report of Proceedings Held at Ottawa] and “PC 573: Certified Copy of a Report . . . 17 March 1911” in *Sessional Papers*, Vol. 46, No. 24, #110(a) (1912).

that Manitoba had been granted by the Dominion as part of the “final offer” settlement of 1885, it is entirely possible that by accepting this deal, Manitoba would not only have been placed on roughly equal territorial and financial footing with the other prairie provinces, it might actually have enjoyed an economic advantage. The potential advantage was located in the steadily increasing value of those now drained swamplands, an advantage compounded by the fact that Manitoba’s extended boundaries would include the entire route of the proposed rail line to Hudson Bay and both potential harbour sites on that body of water.⁴⁴

Roblin, however, rejected this offer for reasons that were almost certainly political. Officially, Manitoba was now standing firm on the “principle” that it should be granted either exact financial parity with Saskatchewan and Alberta or absolute control over its natural resources before it would agree to any settlement of the boundary matter.⁴⁵ Unofficially, however, the reason was almost certainly related to the unsettled political situation of the day. With Laurier’s government facing a series of crises that year, Roblin had no intention of allowing him to settle a matter of some contention,⁴⁶ a settlement that just might help the federal Liberals shore up support in western Canada. And while in March 1911 Roblin could not have known that the next federal election was just around the corner, this context of ongoing political crisis for Laurier appears to have prompted Premier Roblin to come to some sort of understanding with R.L. Borden, the leader of the federal Conservative Party. This understanding was that Roblin would refuse any settlement — short of an outright capitulation to Manitoba’s demands (which would have been impossible to reject) — until the next election was held.

Such an agreement is suggested by statements made by Roblin during

44 *Supra* note 5 at 135-37. These “swamplands” were actually not as valueless as the name would suggest. For the most part these lands — scattered throughout the province — were amenable to very basic drainage techniques. Under the terms of the Dominion’s *Swamplands Act of 1885*, once the provincial government had drained these lands, they passed to provincial control. As early as 1902 the province of Manitoba was selling over \$1 million worth of such reclaimed lands per year and leasing thousands of acres for timbering and grazing purposes. See Manitoba, Legislative Assembly, “Report of the Provincial Lands Commissioner’s Department, 1902” in *Sessional Papers*, No. 14 (1903).

45 Canada, Parliament, “PC 673: Copy of a Resolution passed by the Legislative Assembly of Manitoba, on Thursday the Twenty-third day of March, AD 1911” in *Sessional Papers*, Vol. 46, No. 24, #110(a) (1912).

46 These crises were related to the critical reception of the government’s naval policy, the increasing levels of Québec nationalism, the equally rising levels of English-Canadian support for the Empire, the tariff issue, the unexpected American offer of reciprocity and — of particular importance in western Canada — its failure to proceed with the Hudson Bay Railway project.

the February 1911 conference in Ottawa on the boundary extension matter. During the conference Roblin made it clear to Laurier that he had already consulted with Borden on this question, assuring Laurier and Fielding that if they accepted either of Manitoba's two alternatives, they would not have to face any "opposition from the men who sit on the opposition side of the House."⁴⁷ Unfortunately, there is no absolute proof of collusion between Borden and Roblin regarding Manitoba's refusal to accept Laurier's quite reasonable offer later that month, but given the events of 1911-1912, this political explanation makes most sense.⁴⁸

As events transpired, Borden was able to launch a filibuster in the House on the reciprocity issue in the spring of 1911, which led first to a Parliamentary recess and then eventually to a general election. Even before the election was called, Borden headed west on a speaking tour arranged by Premier Roblin. In the speeches Borden delivered during this trip he made it clear that if he came to power, not only would he settle the Manitoba boundary question and the attendant financial issues promptly and in a manner satisfactory to the province, he would, if the prairie provinces so wished, transfer control over natural resources to those jurisdictions.⁴⁹ Ever since the days of the debates on the Autonomy Bills, Borden had indicated a willingness to consider such a transfer. Now he was more emphatic than ever, proclaiming that Dominion control over the natural resources of the prairie provinces was nothing short of "discrimination against the people of those provinces."⁵⁰ For the first time, the leader of a federal party that actually had a chance of forming the government in the near future was on Manitoba's side. Borden believed that the original reasons for maintaining Dominion control over these resources had been fulfilled, that the time had come to place control over the remaining resources in the hands of the provincial governments, and that in certain regards the whole arrangement had indeed been unfair. This was a stunning change of the federal perspective on the natural resource issue — or at least it would be if Borden won power.

And of course he did just that later in 1911. It is no exaggeration to say that when Borden won that election — aided by Roblin's ability to return eight of Manitoba's ten constituencies to the Conservative side of the House — it seemed as if Manitoba's constitutional, political, and fiscal ship had finally come in. No time was wasted in arranging for Manitoba's northward

47 Canada, "Report of Proceedings Held at Ottawa," *supra* note 43 at 31.

48 See *supra* note 5 at 135-40 for a more detailed account of this matter.

49 (1911) *Canadian Annual Review* at 90-92.

50 "Report of Borden's Speech," *Winnipeg Telegram* (20 June 1911).

extension and the financial settlement, which accompanied Manitoba's boundary extension of 1912 was excellent even if it was arguably not substantially better than Laurier's last offer of February 1911. What is most notable, however, is that the financial settlement was scrupulously calculated to be the exact equivalent of what Saskatchewan and Alberta enjoyed in terms of subsidies, for Premier Roblin had turned down Borden's offer to grant beneficial control over natural resources in favour of the increased subsidy payments offered "in lieu of lands." Once again, the issue of beneficial control of natural resources and Manitoba's supposed "constitutional right" was passed over by provincial politicians in favour of better financial terms. The key difference this time was that the province had been dealing with a federal administration that would gladly have given up its control over those resources. Tellingly, Roblin took the money and ran.

At first Premier Roblin's government was well pleased with these new arrangements and equally pleased by the economic boom that was taking place in the new northern addition to the province, appropriately known as New Manitoba. In 1912-1913, the building of the Hudson Bay Railway, the dramatic growth of the northern centre of the Pas, the rapidly developing northern lumber industry, a huge boom in mineral exploration, and all sorts of interest in the water powers of the North (as well as in virtually every other segment of the region's natural resource sector) were like icing on the cake of territorial expansion. Sadly, however, this level of economic development came with a price: providing the infrastructure for this booming new region proved to be more than Manitoba had bargained for. Moreover, because the Dominion still had beneficial control over natural resources, there was no way for Manitoba to either control the use of these resources through provincial regulations or to impose the sorts of royalties and user fees that would have allowed the provincial treasury to benefit from what promised to be the massive development of this region. Of course, if Premier Roblin had taken Borden up on his offer of ceding federal control over natural resources this would not have been an issue. But in reality this had never really been an option for Roblin. No matter what he or his representatives had said in the course of negotiating with Laurier, Manitoba had wanted — even needed — the sure thing of increased federal subsidies, not the less certain "potential" earnings associated with the development of the province's natural resources. Accordingly then, Manitoba had made its own constitutional bed and would now have to sleep in it. Or at least so it would seem, until the other two prairie provinces' ruffling of the sheets provided Manitoba with a new option.

III. TO CYNICISM . . . AND BEYOND: THE BIRTH OF A NEW “PRINCIPLE,” 1911-1921

As Manitoba had been working out its boundary extension and new “better terms” with Ottawa, the Liberal administrations in both Saskatchewan and Alberta had taken their first tentative steps towards opening the natural resource question with the Dominion. Indeed, in 1900, even before those provinces were created, Premier Haultain of the North-West Territories had suggested that any province or provinces created in the West should enjoy full beneficial control of resources.⁵¹ This request, of course, had been ignored at the time of the passage of the Autonomy Bills, but it was not forgotten in the West. Thus, in 1910 Premier Sifton of Alberta indicated that his government was interested in gaining some degree of control over the province’s natural resources.⁵² In the spring of 1911 Premier Scott of Saskatchewan joined him in these pleas, pushing a resolution through the Saskatchewan legislative assembly that called upon the federal government to give up its control over non-arable lands in the northern parts of the province and all other natural resources in the rest of the province not required for colonization and immigration purposes.⁵³ These were far from the hard-edged style of “demands” emanating from Manitoba during the same period; a more civil, even respectful tone, was clearly deemed appropriate for discussions between Liberal governments. However, once Borden and the Tories came to power, and Conservative Manitoba was being treated to boundary extensions and increased subsidy payments, there was no further need for politesse. Premier Scott of Saskatchewan led the charge, briefly seeking to forestall at least a part of Manitoba’s northward expansion by reintroducing Saskatchewan’s 1906 proposal for an extension of his province to the Nelson River on Hudson Bay, a proposal that had clearly become a hopeless cause by the winter of 1911-1912. He also demanded total control over the province’s resources, a claim that Premier Sifton of Alberta echoed on behalf of his province.⁵⁴

Given the new prime minister’s clearly articulated position that the prairie provinces should be granted control of their natural resources if they so desired, Borden was quite willing to discuss the matter at the first possible

51 LAC, RG 33, Vol. 52-8, File #557, “History of the Negotiations re Transfer of the Natural Resources of Manitoba, Saskatchewan and Alberta” at 1 [“History of the Negotiations re Transfer of Natural Resources”].

52 Alberta, Legislative Assembly, *Journals of the Assembly* (1910) at 47.

53 Canada, Parliament, “Copy of a minute of the Executive Council of Saskatchewan . . . 13 April 1911” in *Sessional Papers*, Vol. 46, No. 24, #110(a) (1912) at 10.

54 *Ibid.* at 32-33, 47-55.

opportunity. This opportunity arose at the conclusion of the Fourth Inter-provincial Conference of October 1913,⁵⁵ during which Premier Roblin of Manitoba had an epiphany of sorts. Despite having so recently been granted everything he had supposedly desired via the 1912 *Boundaries Extension Act*,⁵⁶ and despite having clearly rejected the opportunity to take control over Manitoba's natural resources in favour of increased subsidies at that time, Roblin suddenly decided that Manitoba must make common cause with the other prairie provinces in the quest for local control over those self-same resources. Thus he joined his fellow prairie premiers at what became a separate meeting with the Dominion after the other participants left the conference. While certainly cynical, Roblin's political logic in this matter was impeccable. First, if Saskatchewan and Alberta did succeed in getting something more out of the Dominion, and Manitoba did not, he would have lost his "principle" of equality with those two provinces. Second, if the right sort of deal was struck, his government might have found a way out of its conundrum of needing the subsidies "in lieu of lands" and yet wanting to regulate and profit from the provincial ownership of the lands.

Fortunately for Roblin, Premiers Sifton and Scott were facing similar dilemmas and took a very similar approach to his own. When they met with the Dominion officials in October 1913, all three clearly believed that their provinces needed the income provided by their federal subsidies and yet all three also wanted beneficial control over the resources for which the subsidies were compensation. This was a difficult matter to negotiate, which explains why the meeting was so inconclusive. But Borden had been quite blunt on at least one point: if the prairie premiers wanted to gain control over their resources, they were going to have to guarantee that they would pass homestead legislation that mirrored the Dominion's and would also have to ensure that no provincial actions would be taken that might hurt Dominion immigration and settlement programmes.⁵⁷ Thus, the Prime Minister had let the premiers know that while he was willing to negotiate on the matter, the "purposes of the Dominion" still had to be protected. Undaunted, the three premiers returned west and ignored Borden's minimum terms in crafting a simple two part proposal that was sent it to Ottawa late in December. The premiers proposed that: first, all unalienated Crown lands should simply be turned over to the control of the appropriate provincial government; and, second, to avoid

55 *Supra* note 51.

56 *Manitoba Boundaries Extension Act*, 1912, S.C. 1912, c. 32.

57 Archives of Manitoba (AM), RG 17 A1, Box 1, Natural Resources Correspondence [Natural Resources Correspondence], Borden to Roblin, Scott, and Sifton, 15 March 1914.

the difficult, time-consuming work of calculating an accurate compensation package for lands already alienated, the provinces would simply continue to receive their existing subsidies in lieu of lands.⁵⁸ It was a perfect solution for all concerned — with the possible exception of the Dominion government and the governments of the other provinces.

Not surprisingly, the prime minister was unhappy with this proposal. While there is no indication that Borden was particularly worried about the financial aspect of this joint request, he was concerned about the political fallout in terms of Dominion-provincial financial relations should he accept or even seriously entertain the prairie premiers' proposal. As a Maritimer and a participant in the debates on the Autonomy Bills (in 1905) and the two rounds of debates concerning boundary extensions (in 1908 and 1912), the prime minister knew only too well that there was already a perception in the region that the multiple boundary extensions of 1912 (Ontario and Québec had both received large northern additions at the same time that Manitoba had been enlarged) had been unfair. The Maritimes perspective was that these extensions had created major economic benefits for two, if not all three of the expanded provinces and had potentially increased their political influence at the expense of the Maritimes.⁵⁹ Indeed, in the parliamentary debates on the boundary extensions in 1908 and again in 1912, MPs from the Maritimes had called for higher subsidies and increased political representation for their provinces as compensation for the Dominion's plan to grant lands to Manitoba, Ontario, and Québec from territory that had been "bought" from the HBC by the original provinces in 1870.⁶⁰ Moreover, in January of 1913 the three maritime premiers had submitted a joint address to the Privy Council, explicitly protesting their exclusion from the boundary extensions and the revenue enhancements embodied in the boundary extensions of 1912.⁶¹

While Manitoba's extension and increased subsidy payments had drawn some negative comment, they had really been minor irritants to the maritime

58 Natural Resources Correspondence, *ibid.*, Scott, Roblin, and Sifton to Borden, 22 December 1913.

59 This position had first been articulated by maritime MPs John Stanfield, A.A. McLean, and George Fowler when Laurier had made his offer of boundary extension to Manitoba, Ontario, and Québec in 1908. See *HCD* (1907-1908) at 12813-19.

60 *HCD* (1911-1912) at 781-89.

61 "Nova Scotia, Prince Edward Island and New Brunswick, Memorial to Privy Council," 29 January 1913"; and "Speech of Mr. Arsenault of Prince Edward Island (address made when the memorial was submitted)," reprinted in AM, MG 13 12 Bracken Papers, Box 2, File #232 [Bracken Papers, Box 2], "Reid Documents, Part 6, Memo 2 — Claims of Maritime Provinces for Compensation" at 4.

leaders. What had been truly troubling were the extensions to Québec and Ontario, for in both those cases additional territory had been granted with the corresponding beneficial control over all natural resources. Thus, the territorial extension of Québec and Ontario had implied serious potential additions to the revenue of those provinces, particularly given the well-known mineral, timber, pulpwood, and hydroelectric resources of the region. Similarly, now that Manitoba, Saskatchewan, and Alberta were asking for control over resources that had been “purchased” in 1870, it was certain that the maritime premiers and MPs would turn their attention in that direction, especially when that request was accompanied by an insistence upon retaining existing subsidies. Given this situation, it is hardly remarkable that when Prime Minister Borden finally got around to responding to the prairie premiers’ proposal in March 1914, he pointedly told them it could not be seriously considered.⁶²

Following this rather curt rejection, discussions around the potential transfer of natural resources were held in abeyance for the next four years, largely because of the Great War.⁶³ Indeed, during the entire course of the war there were only two letters exchanged on the matter. The first was sent late in 1915. In it the three prairie premiers asked Borden to propose a new basis for negotiating the transfer.⁶⁴ The Prime Minister declined this request, telling the premiers that it was up to them to come up with a “reasonable” set of requests and a “definite outline” of a compensation package for lands already alienated, plus a well worked out plan for implementing his previously stated requirement for provincial homestead and immigration policies that would be in harmony with those of the Dominion.⁶⁵ The premiers were obviously none-too-pleased with Borden’s response and made no formal response to his missive. If they had thought about it carefully enough, however, they might have taken some solace from at least one part of this letter, because Borden’s request for an outline of a potential compensation package already-alienated lands could be taken as a tacit acceptance of the prairie provinces’ “right” to at least some compensation for lands previously disposed of “for the purposes of the Dominion.”

In any event, it was not until the dying days of World War I that Borden, now the head of a union government, decided to reopen negotiations with the

62 Natural Resources Correspondence, *supra* note 57, Borden to Roblin, Scott and Sifton, 15 March 1914.

63 *Supra* note 51 at 2.

64 Natural Resources Correspondence, *supra* note 57, Scott, Sifton and Norris to Borden, 30 November 1915.

65 Natural Resources Correspondence, *ibid.*, Borden to Norris, Scott, and Sifton, 10 March 1916.

prairie provinces. This time there was a whole new cast of characters, as none of the prairie premiers who had been involved in the meetings and joint communiques of 1913-1914 remained in office.⁶⁶ More importantly, with the aid and advice of Manitoba MP Arthur Meighen, Borden now took a somewhat different tack. Realizing that any new agreement with the prairie provinces was bound to be a matter of interest — if not jealousy — to the other provinces, he decided that the natural resource question should be placed before a full-blown interprovincial premiers' conference. This was not a strategy that was appealing to the prairie premiers, who rightly feared that the presence of other provinces would make it harder to reach a settlement with Ottawa (as the case of Manitoba in 1906 had proven). The deck was further stacked against the prairie provinces by the design, of the always-shrewd Arthur Meighen. Indeed, Borden's administration greased the skids well, submitting copies of the prairie premiers' original (December 1913) request for control over natural resources plus existing subsidies first to the maritime premiers and then to the entire body of the interprovincial conference so that all interested parties would be ready to state their case(s).⁶⁷

Commencing just days after the Armistice, the conference of 1918 was a disaster for the prairie provinces. As might have been expected, the other six provinces took the position that if Manitoba, Saskatchewan, and Alberta received their resources and still retained the subsidies paid in lieu of those resources, then they, too, wanted subsidies in lieu of the lands they possessed.⁶⁸ And the three maritime provinces, who had an even lengthier list of grievances than the other provinces, wanted not only subsidies but also insisted that their "special claims" would have to be "adjusted at the same time as the lands and natural resources are transferred to the Provinces of Manitoba, Saskatchewan, and Alberta."⁶⁹ In effect, meeting the prairie regions' demands meant renegotiating the financial relationship between Ottawa and *all* of the provinces.

66 Roblin had been defeated in 1915, largely because of a scandal involving his government and the building of the new Legislative Buildings; Scott had resigned from office owing to ill health in October 1916; and Sifton had been induced to join the Union government in October 1917.

67 Bracken Papers, Box 2, *supra* note 61, "Reid Documents, Part 6, Memo 2 — Claims of Maritime Provinces for Compensation" at 9.

68 "Joint Communique — Resolution of Ontario, Quebec, British Columbia, Nova Scotia, New Brunswick and Prince Edward Island" in Canada, "Proceedings of the Conference between the Government of Canada and the Provincial Governments at Ottawa, 18 November 1918" in Canada, *Dominion-Provincial and Inter-Provincial Conferences, 1887-1926* (Ottawa: Edmond Cloutier, King's Printer, 1951).

69 *Ibid.*

This was music to the ears of the federal government, not because Borden or Meighen wanted the wholesale re-opening of Dominion-provincial financial relations, but because they wanted to avoid exactly that. Given the financial condition of the Canadian government at the time — burdened by war debts, by the mounting costs of railway nationalization, and the pending expenses associated with soldier demobilization, re-settlement and veterans' health care⁷⁰ — they reasoned that even the greediest of provincial politicians could see the impossibility of granting more money to the provinces. Having been read a neat little lesson in political reality it was hoped that the prairie premiers would finally realize that they had to be, as Borden had once put it, "reasonable."

It soon became evident, however, that at least for Premier Norris of Manitoba, this was not the lesson he had learned. In fact, Premier Norris was facing a political reality of his own. On the one hand, his administration was in serious financial straits, burdened by the provincial debt load amassed by Roblin during boom times as well as paying for the costs of its own fairly extensive Liberal reform agenda. As a result, his government needed all of its existing revenue, including the subsidies in lieu of lands. On the other hand, the natural resource sector of Manitoba seemed poised for a massive post-war takeoff, especially in the mining sector, rendering it more desirable than ever to win beneficial control over natural resources. But even this outlook had a financial downside, for the experts on mining development in Manitoba, while wildly optimistic, were also convinced that the province would have to spend large sums on infrastructure to help private capital bring such development to fruition.⁷¹

Thus, instead of doing what Borden and Meighen wanted — taking control over Manitoba's natural resources and accepting a "reasonable" (read token) sum as compensation for lands already alienated — Premier Norris worked out an entirely new position. Without advance warning to his erstwhile allies, he cast aside Saskatchewan and Alberta and the entire basis of the prairie premiers' argument of 1913. Norris consciously sought to establish a new "principle" as the basis for Manitoba's claims and its bargaining position. In the

70 The Canadian national debt had grown from \$336 million in 1914 to approximately \$1.5 billion by early 1919. See Robert Craig Brown & Ramsay Cook, *Canada, 1896-1921: A Nation Transformed* (Toronto: McClelland and Stewart, 1974) at 286.

71 See, for example, E.L. Bruce, "Mining in Northern Manitoba" (1918) 21 *Canadian Institute of Mining and Metallurgy*; and R.C. Wallace, "Mining Development in Northern Manitoba" (1919) 22 *Canadian Institute of Mining and Metallurgy*. Wallace was Norris's Commissioner of Northern Manitoba — as well as the Chair of the Geology Department at the University of Manitoba — while Bruce was a member of the Geological Survey of Canada.

process of doing so, Norris turned to Professor Chester Martin, an historian at the University of Manitoba, and had him prepare a detailed study of the natural resource question. Martin, who was already an accomplished scholar who would eventually emerge as one of Canada's leading historians and as *the* expert on Dominion lands policy,⁷² helped the premier develop a position on natural resources which was rooted in two givens, both of which had the advantage of having been at least tacitly accepted by the Dominion government over the previous decade. First, every province had a basic right to control its own natural resources, a point clearly conceded by Prime Minister Borden in 1911. Second, the prairie provinces were entitled to some sort of compensation for lands already alienated, a notion that Borden's government had agreed to in 1914 and on several later occasions.

Martin's report, published in book form in 1920 as *The Natural Resources Question*, left no question where he or the premier stood. For Martin it had been ridiculous to ever link subsidies and resources, for such an approach was arbitrary and rooted in no core principle. As he saw matters, there was but one issue here: Manitoba's unquestionable right to beneficial control over its natural resources from the moment that responsible government had been achieved in 1870. Unlike Norquay in 1881, Martin's notion of "provincial rights" was based on his examination of the important precedents regarding traditional British practise concerning self-governing colonies. Given these so-called "rights," all that needed to be done by the Dominion was to turn over all of Manitoba's remaining natural resources to the provincial government, calculate appropriate compensation for resources already alienated by the Dominion on the basis of a strict "fiduciary accounting," and send Manitoba a cheque.⁷³ Norris accepted this position in its entirety.

As would soon become evident, Manitoba's new position would call for a much greater level of compensation than anything proposed before. Meanwhile, Arthur Meighen (by now Prime Minister) was still pushing for a compensation package that would be far less than the prairie premiers' demands of 1913. Meighen wrote to Norris and the other prairie premiers early in December of 1920, in preparation for a planned conference on the resource question later that month, asking them to be more "reasonable" in their demands. He plainly meant that they should greatly reduce their financial demands and accept a much smaller annual subsidy. He wanted them to make him their best offer, a bottom-line figure for compensation for all lands

72 See Chester Martin, *Dominion Lands Policy* (Toronto: University of Toronto Press, 1973).

73 *Supra* note 22 at 119.

alienated. Closely resembling the tactics of a modern day car salesperson, this approach was coupled with the assurance that if the premiers were reasonable, the Dominion would act swiftly to close the deal and pass control over natural resources to the provinces as expeditiously as possible.⁷⁴ In other words, they could drive the car off the lot *that very day*.

Premier Norris was unimpressed. He coolly noted that if the Dominion did not accept Manitoba's new "principle of compensation," there was no point in discussing any financial details. From Manitoba's perspective, even considering any reduction in monies presently being paid "in lieu of lands" would be pointless and completely unjustified unless a detailed study on the value of alienated resources had been completed.⁷⁵

Given the widening gap in the two positions it is not surprising that the conference of 1920 yielded no results. Manitoba made a formal presentation of its new "principle" but got little in the way of an immediate response. Instead, Meighen essentially reiterated his earlier position, calling for a voluntary reduction in existing subsidies by the prairie provinces "in order to reconcile the Eastern provinces to the retention of the remainder [of the subsidies] as compensation for resources already alienated."⁷⁶ Shortly after the conference ended, however, Meighen wrote to Norris addressing Manitoba's new proposal directly, pointing out what he saw as the difficulties inherent in the province's position. As his starting point, Meighen claimed that Manitoba's own submission had conceded that the Dominion had spent monies on administering the province's public lands that would have to be taken into account and had already paid large sums in "lieu of lands," all of which would have to be deducted from the overall compensation package. Next he argued that since 1870, the Dominion had expended considerable sums on various services in the West as an indirect result of retaining control over natural resources (immigration, railways, etc.) that had greatly benefited the people of the region. This being the case, this huge yet virtually incalculable amount would, in all justice, also have to be deducted from the total amount of compensation for lands alienated. Because of the difficulty — if not impossibility — of arriving at precise figures for these expenditures, the Prime Minister saw no point in proceeding down the path suggested by Manitoba. The province's "principle" was, quite simply, unworkable.⁷⁷ He suggested that Manitoba and the other prairie provinces take his advice and stipulate what they viewed as

74 Natural Resources Correspondence, *supra* note 57, Meighen to Norris, 7 December 1920.

75 Natural Resources Correspondence, *ibid.*, Norris to Meighen, 10 December 1920.

76 *Supra* note 51 at 2.

77 Natural Resources Correspondence, *supra* note 57, Meighen to Norris, 24 December 1920.

an acceptable *reduction* in their existing land subsidy payments, with negotiations to proceed from that point. In his opinion, it was only by working downward from existing subsidies that a settlement could be reached that might, in the real world of Canadian politics, be acceptable “or fairly acceptable to the Prairie Provinces on the one hand and to the remainder of the Dominion on the other.”⁷⁸

Premier Norris clearly did not care to master Meighan’s lesson in political reality. Manitoba had never conceded that any other portion of the Dominion had a legitimate say in matters relating to Manitoba’s natural resources and Norris intended to stick to his new found set of principles come what may. In a March 1921 letter to Meighen he made this point rather forcibly and again distanced himself from the old proposal of 1913 because of its completely “arbitrary method of settlement.” He was now standing firm on what he called a “sound constitutional principle”: “the right of the Prairie Provinces to their Natural Resources as from the date of Provincial organization or responsibility.”⁷⁹ Moreover, as Norris saw it, there was no point in Meighen compiling an elaborate ledger of costs associated with Dominion control over Manitoba’s resources. All that needed to be done was to calculate the exact amount of land alienated in Manitoba by the Dominion — a simple enough matter given the extensive land records maintained by the Dominion. Then, because the Dominion had been acting as *de facto* trustee of Manitoba’s resources (this is what Professor Martin had meant by fiduciary), the Dominion would be responsible, as would any trustee, for “the full value of any property which he converted to his own use and for full value of any property which he alienated for less than the full value thereof.”⁸⁰ By utilizing the notion of a fiduciary trust and employing “full value” (market value) valuation, Norris had effectively told the Prime Minister that the Dominion owed Manitoba and the two other prairie provinces a sum that would reach into the hundreds of millions of dollars.

There is no record of Meighen laughing out loud — or choking — when he read this latest epistle from the Manitobans, but he must have been tempted. He satisfied himself by sending a fairly harsh reply to the premier, essentially dismissing Manitoba’s proposal as indefinite and useless. What was needed, he said, was an effort on the part of Manitoba to “arrive at some practical final basis” clearly expressed in “dollars and cents.” Only then could progress be

78 *Ibid.*

79 Natural Resources Correspondence, *ibid.*, Norris to Meighen, 10 March 1921.

80 *Ibid.*

made on the natural resource and compensation issues.⁸¹ Still, Meighen did take Manitoba's position seriously enough to have his minister of railways, John Reid, compile a series of memoranda on several aspects of the natural resource question. The most remarkable of these memos was a fairly fulsome accounting of lands alienated and the costs associated with administering public lands in the West. Thus, Manitoba was getting its wish for a more accurate accounting of land matters, but as the Reid documents indicate, the Dominion was certainly not moving towards any attempt to provide "actual" or market valuations for those lands; a simple \$1.50 per acre figure was used in all calculations.⁸² More to the point, Reid put much effort into calculating Dominion costs so that they could be deducted from the overall value of the lands alienated — not exactly what Manitoba was hoping for.⁸³ Even less pleasing was Reid's contention that when all was said and done the Dominion had *lost* \$39,243,932.75 as a result of its control over the resources of the West.⁸⁴ Reid did concede that there were some costs that had to be deducted from the loss account because they had been incurred in the national interest rather than in the interests of the West *per se*. Beyond this, there were also a few other "credits" owing to the West, all of which meant that the Dominion did in fact "owe" the prairie provinces some compensation.

Using Reid's calculations of lands alienated and chargeable to the Dominion, and after all deductions had been made, the bottom line for Manitoba was as follows. Capitalized in a special debt account at an interest rate of 1.5 percent, Manitoba would be owed \$113,970.18 per year as compensation for lands already alienated, which was \$295,037.08 *less* than the current subsidy in lieu of lands. A transfer of natural resources to Manitoba on these terms would thus serve two purposes: the Dominion would not only save almost \$300,000 per year, but given Reid's various calculations on the cost of administering public lands in Manitoba and the West, transferring the remaining resources would also save the Dominion treasury from the annual losses associated with such administration.⁸⁵

There were, of course, many dubious assumptions in the Reid documents. Land valuations were set at \$1.50 per acre when similar lands had realized

81 Natural Resources Correspondence, *ibid.*, Meighen to Norris, 27 April 1921.

82 This was consistent with the figures used in calculating Saskatchewan and Alberta's "in lieu of land" subsidies in 1905 and Manitoba's at the time of the boundary extension of 1912.

83 AM, MG 13 I2, Bracken Papers, Box 20, File #323 [Bracken Papers, Box 20], "Reid Documents" Memo 1 (Main Report); and *ibid.*, "Reid Documents" Part III, Memo 1B, "For the Prime Minister" at 4

84 Bracken Papers, Box 20, *ibid.*, Memo 1 at 2.

85 Bracken Papers, Box 20, *ibid.*, Memo 1B at 4, 6.

\$8.00; interest rates were pegged at 1.5 percent rather than the 3-5 percent that was then the norm; and, Reid's choice of lands the prairie provinces deserved to be compensated for and those that had to be excluded was questionable. In any event, Reid anticipated that the prairie provinces in general, and Manitoba in particular, would probably never accept the package as proposed. Thus, he suggested modifying the prairie premiers' 1913 proposal by offering a lesser reduction of subsidies; in the case of Manitoba, a loss of \$100,000 per year. Reid felt that this level of reduction would be far more acceptable to the provinces. Indeed, despite his comments about control over natural resources being a money-losing proposition for the Dominion, he believed that the prairie provinces would soon be in a position to make up the shortfall in their revenues because of certain very promising developments in the natural resource sectors of all three. For example, he noted that, "The present development of water power in the eastern part of Manitoba, with recently reported discoveries of precious metals in that province, offers a prospect of revenue to an undeterminable extent in the near future."⁸⁶

If Meighen and Reid had hoped that this exercise in creative accounting would induce Norris and the other prairie premiers to agree to Reid's "plan B," they were gravely disappointed. The Premier of Manitoba would accept nothing less than the implementation of his principle of 1920, which implied compensation based upon a simple fiduciary accounting. Arguably the Dominion had made some movement on the issue, for Reid's "plan B" offered more money than Meighen had previously intimated would be appropriate, but Manitoba, and now the other two prairie provinces, had become, if anything, even more adamant about their "principles." Given this polarization of positions, immediate settlement of the natural resource question was highly unlikely. Clearly, it would take some sort of drastic political change for a meeting of the minds to occur. Fortunately for the prairie provinces, but much less so for Meighen, just such a change was in the offing, as Meighen's wildly unpopular Conservative Party was badly defeated in the federal election of December 1921.

IV. FROM PRINCIPLE TO EXPEDIENCY, 1922-1930

The defeat of Meighen and the ascendancy of William Lyon Mackenzie King would open yet another chapter in the history of the natural resource

86 Bracken Papers, Box 20, *ibid.*, Memo 1D, "Supplementary Memo for the Prime Minister" at 3.

issue. And without question the changes wrought between 1922 and 1930 in this regard would be significant, but once again they would be related to political and economic factors rather than any profound constitutional convictions on either side of the negotiating table. Indeed, to understand the “progress” made towards settling the natural resource question during this eight-year period one needs to appreciate one central fact: Mackenzie King needed the prairie West’s political support.

Although Meighen’s Tories had been trounced at the polls, this had not translated into a massive Liberal victory. Indeed, without some support from the new western-based Progressive Party or western labourites, King’s Liberals would have been unable to govern. Given that the natural resource question was a prominent, even a “hot,” western issue, King knew that he would have to be fairly magnanimous in his handling of it if he hoped to enjoy Progressive support. Not surprisingly then, King contacted the prairie premiers soon after taking office, to indicate his willingness to settle the matter quickly and in a manner satisfactory to the Prairies.

Writing to Norris in February 1922, King, much like Meighen and Borden before him, conceded there was no longer any reason for the Dominion to control the Prairies’ resources.⁸⁷ Unlike his two immediate predecessors, however, he saw Manitoba’s move away from the prairie premiers’ 1913 position as a positive development. Without the demand that the return of natural resources be accompanied by the continuation of subsidies paid in lieu of those lands, the other members of Confederation could hardly insert themselves into the question of compensation for lands already alienated. As the prime minister put it, with the land subsidy question off the table, the maritime provinces would have to state any lingering claim “on its [own] merits, and it should not be an obstacle to the settlement of matters between the Dominion and the Prairie Provinces.”⁸⁸

This was a positive development for Manitoba, Saskatchewan, and Alberta, because it put all negotiations back on a bilateral basis — no more interprovincial conference debacles such as the one of 1918 would have to be endured. Less promising, however, was King’s preferred method of settlement. He wanted to avoid what he saw as a time-consuming and counterproductive accounting procedure and simply set a reasonable sum as compensation.⁸⁹ However, King was also a realist, and so readily conceded that if this simple approach

87 Natural Resources Correspondence, *supra* note 57, King to Norris, 20 February 1922.

88 *Ibid.*

89 *Ibid.*

was unacceptable he would agree to submit “to an accounting between the Dominion and the Provinces from the beginning, by an independent tribunal.” This tribunal’s findings on appropriate compensation for alienated lands would be binding on both sides and the total value of these lands would be capitalized, with the annual interest on that amount paid to the provinces in perpetuity.⁹⁰

Norris agreed with the idea of arbitration by independent tribunal but he could never agree to the Prime Minister’s preferred method of settlement. He had too much political capital invested in the notion of a “proper fiduciary accounting” to ever accept this. He was also disturbed by King’s understanding of how the proposed tribunal should arrive at its bottom-line figure for compensation. Following in the footsteps of Arthur Meighen and John Reid, the Prime Minister had noted that in the course of arriving at a final figure for the value of lands alienated, “provision [would have to] be made for crediting the Provinces with all moneys received by the Dominion and charging to the Provinces all outlay by the Dominion directly or indirectly, in relation to the management of the resources.”⁹¹ From Norris’s perspective it was clear that the new prime minister had not really understood Manitoba’s position that no such accounting of Dominion expenditures — or more precisely, that no deduction of such expenditures from the amount owing to Manitoba — would be acceptable, a point he made quite explicit in a lengthy letter to King in March 1922.⁹²

Thus, Norris would not even contemplate any solution other than the strict fiduciary accounting of his 1920 proposal. King was certainly not ready to go quite this far, but he was willing to call yet another conference on the matter and enter into a preliminary agreement that would set some of the parameters

90 *Ibid.*

91 Natural Resources Correspondence, *ibid.*, Norris to King, 10 March 1922.

92 *Ibid.* As Norris put it in this letter:

[P]ractically all our lands were alienated free for Dominion purposes while their normal function for Provincial purposes has always been and ought to be fiscal. The Dominion moreover obtained indirectly abundant fiscal returns from its immigration and free homestead policy in the form of customs revenues from new immigration which has always made the highest per capita contribution to customs revenues in the Dominion. Thus, the chief fiscal returns to the Dominion from alienating our natural resources do not appear upon the books at all, while the obligations of the Province for local improvements have always been strained to the utmost; with no lands — and for twelve years in Manitoba with no subsidy in lieu of lands — to offset this expenditure. The system thus worked decidedly to the immediate fiscal advantage of Canada, while the Province of Manitoba was literally impoverished by the use which was made of its resources.

for future negotiations. Following a brief meeting in Ottawa on 20 April 1922, with representatives of all three prairie provinces, the Dominion entered into a special agreement with Manitoba.⁹³ This agreement stipulated that, because it was “desirable and just” that the prairie provinces should be placed in a situation of equality with the other provinces of Canada in regard to their natural resources, the Dominion would guarantee to negotiate an agreement which would create just such a situation of equality. It was also agreed that if negotiations failed to settle all outstanding matters, an impartial board of arbitration would be constituted to rule on those issues. Finally, it was agreed that any awards made by the arbitrators would have to be ratified by both Parliament and Manitoba’s legislature.⁹⁴

This seemed to constitute an important breakthrough in the negotiation process, as did King’s separate undertaking that the Dominion’s Department of the Interior would consult with Manitoba’s government before granting any new concessions or devising new policies related to the province’s natural resources.⁹⁵ However, before matters could progress any further Premier Norris’s administration lost the 1922 election and was replaced by a shaky new United Farmers of Manitoba (UFM) government, headed by Premier John Bracken.

Bracken was an utter political novice. He had been drafted into the leadership of the UFM and thus the premiership *after* the UFM had won the election of July 1922, which really did not leave him much of an opportunity to get up to speed on the natural resource issue before he first met Prime Minister King in November of that year to discuss the transfer. Not surprisingly then, Bracken simply adopted the position taken by Professor Martin and Premier Norris that the only solution acceptable to Manitoba would be a fiduciary accounting of, and payment for, all lands alienated since 1870.⁹⁶ King clearly felt that this was an unrealistic position and told the new premier in no uncertain terms that Parliament would never agree to ratify a settlement worked out on such a basis.⁹⁷

93 Manitoba’s representatives, Norris and T.H. Johnston, had to leave after only one day, while representatives of the other two provinces continued meeting for several more days, trying to work out the question of when calculations for lands to be compensated should begin — *i.e.*, from 1905 or some earlier date. Hence the need for a hurried, separate agreement.

94 “History of the Negotiations re Transfer of Natural Resources,” *supra* note 51 at 2-3; and *HCD*, Vol. 2 (1922) at 1018.

95 “History of the Negotiations re Transfer of Natural Resources,” *ibid.*

96 See *Winnipeg Tribune* (15, 20 November 1922).

97 Bracken Papers, Box 20, *supra* note 83, “Status of the Natural Resources Negotiations (1928),” King to Bracken, 9 February 1924.

Fortunately for Bracken, from 1922 until the middle of the decade there was actually very little pressure on him to bring the natural resource question to a conclusion. Developmental activity along Manitoba's resource frontier had slowed considerably, so there was little in the way of immediate financial benefit associated with a rapid transfer of those resources to provincial control. The Dominion, however, did want to move forward on this matter. First of all, as John Reid had indicated several years earlier, Dominion control over these resources was a money-losing proposition. Thus, in the face of the escalating expenses associated with administering western resources, it was to the Dominion's financial advantage to transfer control of those resources to the provincial level. More to the point, the Progressive Party's strong support for an immediate return of natural resources to the prairie provinces, in combination with King's need for that group's support, meant that the Prime Minister wanted to please them by effecting a transfer of control over resources to the West as soon as possible.

For these reasons it was King far more than Bracken who was looking for a quick settlement. To that end, early in 1924 the Prime Minister attempted to force the issue by preventing the transfer of school lands and making adjustments to the Manitoba school-lands fund, so that all land matters, including the transfer of public lands back to provincial control, "should be dealt with as one."⁹⁸ By lumping these issues together, King hoped to more or less force Bracken to accept arbitration of the resource question as outlined in the 1922 agreement. The Prime Minister was confident that arbitration would result in a compromise settlement that would be neither too expensive for Ottawa nor too upsetting to other regions of the country.⁹⁹ Bracken, a fairly quick study in such matters, resisted this pressure, fearing that arbitration would not yield the results Manitoba wanted. Instead, he opted to continue on with direct negotiations until early 1927, by which time he and King had participated in "two conferences, five or six less formal interviews and almost continuous correspondence" on the issue. After more than four years of such negotiations, Bracken was forced "very reluctantly to the conclusion that the attempt to settle the Natural Resource question by mutual consent [had] broken down."¹⁰⁰ By January 1927 the shoe was on the other foot and it was Manitoba that was calling for arbitration — in fact, by 1927 Manitoba was desperate for it.

There are really two factors explaining Premier Bracken's change of heart.

98 "Status of the Natrual Resources Negotiations (1928)," *ibid.*, King to Bracken, 9 January 1924.

99 "Status of the Natrual Resources Negotiations (1928)," *ibid.*, King to Bracken, 9 February 1924.

100 "Status of the Natural Resources Negotiations (1928)," *ibid.*, Bracken to King, 13 January 1927.

First of all, the long awaited boom in almost every sector of Manitoba's natural resource sector was finally occurring. Definite plans had been made for development work that would see tens of millions of dollars worth of foreign and domestic capital being pumped into mining, milling, pulp and paper projects, hydroelectric ventures, railway branch line construction, and other such megaprojects over the next few years. This meant that there were real — not just potential — financial and political advantages for Bracken's government in controlling these resources. The second factor pushing Premier Bracken towards a rapid settlement was what had just happened in Alberta. In 1926 Ottawa and Alberta had worked out a tentative agreement regarding the return of Alberta's remaining natural resources. For Bracken, the most stunning (and frightening) aspect of this settlement was that Alberta was willing to accept a simple three year continuation of its existing "in lieu of land" subsidy as compensation for all lands already alienated by the Dominion.¹⁰¹

The potential precedent involved in this Dominion-Alberta agreement — a precedent that could deliver a death blow to Manitoba's much vaunted "principle" of 1920 — was what really induced Bracken to look for an immediate settlement via arbitration. His concern about the potential impact of the Dominion-Alberta deal was very much in evidence when he wrote to King asking for arbitration by an impartial body such as the Judicial Committee of the Privy Council. As he put it, "the terms which have been made with the Province of Alberta are not, and in our opinion never can be, acceptable to the Province of Manitoba." Not only had Manitoba been a province for thirty-five years longer than Alberta, and was therefore obviously entitled to far more compensation, but Bracken also felt that Manitoba had a tentative agreement with the Dominion accepting its particular approach to the compensation question through the "the Agreement of April 21, 1922 [that] was made exclusively with the Province of Manitoba."¹⁰²

Perhaps not surprisingly, the pending Dominion-Alberta agreement that made Bracken anxious to pursue arbitration also seemed to resurrect the prime minister's belief in the efficacy of direct negotiations. With a reasonably inexpensive settlement with Alberta pending, King saw no reason why he shouldn't press a similar approach upon Manitoba, and he spent the next year and a half trying to convince Bracken that bilateral negotiation — not arbitration — was the way to go.¹⁰³ It is at this point in the story of the *NRTA*

101 (1925-1926) *Canadian Annual Review* at 494-96.

102 "Status of the Natural Resources Negotiations (1928)," *supra* note 97, Bracken to King, 13 January 1927.

103 *Ibid.*, Bracken to King, 10 January 1928; and *ibid.*, King to Bracken, 28 February 1928.

that one is again reminded of just how infinitesimal a role the constitutional considerations that were supposedly at stake actually played in this drama, particularly in contrast to the centrality of political and economic considerations. To prove this point one need look no further than two seemingly unrelated events of 1927.

First, in 1927 the tentative Dominion-Alberta agreement on the transfer of resources fell through when several Québec MPs attempted to attach a proviso to the enabling legislation, which would have provided greater educational rights for Catholics in Alberta.¹⁰⁴ As neither the Dominion nor Alberta governments wanted this matter dredged up again, the agreement was “temporarily” withdrawn. A constitutional issue was being raised by the Québec MPs here, and was even referred to the courts, but it was not a constitutional issue related to natural resources or even to the principle of equality of the provinces within Confederation. In any event, for what were essentially political considerations, the Dominion had lost what King had clearly hoped (and Bracken had feared) would be an important precedent. The Dominion-Alberta agreement was seemingly completely scrapped without any advances made toward the transfer of natural resources to the prairie provinces. However, as Frank Tough has recently demonstrated, the work of legislative draftsmen can always be re-used, and certain parts of this tentative agreement were indeed resurrected in the later *NRTA*, with some very long-lasting consequences in regard to treaty rights litigation and the “Indian livelihood” rights provisions of the agreement.¹⁰⁵

In yet another instance of political issues altering the detour-filled course of negotiations, one must also take into account the troubled relationship between the Maritimes and Ottawa. There were, of course, several issues involved in the region’s growing sense of discontent. Many of the issues were deeply rooted in the structural changes that Confederation had imposed upon, while others were more closely related to economic and technological changes that were global in nature. But it was also the case that unfair treatment by Ottawa in certain matters, including the multiple boundary extensions of 1912, contributed to the discontent about which maritime politicians complained. As noted earlier, these complaints had been developing ever since Laurier first proposed boundary extensions for Manitoba, Ontario, and Québec in 1908. The Maritimes had received absolutely no satisfaction from Ottawa on this matter while Laurier, Borden, and Meighen occupied the Prime Minister’s office;

104 *Supra* note 101.

105 *Supra* note 4 at 188 and *passim*.

indeed, during Meighen's brief tenure the case being made by the Maritimes was dealt a major blow when the "Reid Memoranda" of 1921 dismissed those claims as having no basis. Partly because of this sort of treatment, maritime voters had abandoned the Tories and in 1921 had provided the Liberals with one of their most important sources of political support. Not surprisingly then, from the moment it first came to power in 1921, King's Liberals had been under pressure from the maritime provinces to redress long-standing grievances regarding their treatment within Confederation and, in particular, how poorly they were treated in comparison to Ontario and Québec.¹⁰⁶

In spite of this pressure from the Maritimes, the Prime Minister had focused much of his attention on regaining western support and took the solidly Liberal Maritimes for granted during his first term in office. His party paid a steep price for this inattention in 1925, when Liberal Party candidates were badly mauled in the maritime region during a federal election.¹⁰⁷ Facing political crises on virtually every front in 1925-1926, King needed to shore up eastern support, so he convened a Royal Commission to study Maritimes grievances. The Duncan Commission did its work exceedingly well. Its findings and recommendations, issued in December 1926, presented a powerful case for higher subsidies, freight-rate subventions, economic aid to struggling industries, and a host of lesser remedies, all aimed at bringing the Maritimes to a level of economic equality with the rest of Canada.¹⁰⁸

This was good news for the Maritimes, but it was obvious that any attempt to implement these recommendations would bring demands for "better terms" from other regions, a point Winnipeg's *Free Press* made as soon as the Commission's report was issued.¹⁰⁹ Mackenzie King was well aware of this, but he also knew that he had to take some positive steps in order to pacify the Maritimes. He seemed to believe that it was, quite simply, the right thing to do. But while he personally supported granting the Maritimes all of the concessions recommended by the Duncan Commission — and probably could

106 When King first came to power it was hoped that he would be much more understanding, but from 1921 to 1925 King pursued his tight-fisted economic policies and refused to give any substantive relief to the region. In fact, he continually disparaged the so-called Maritime Rights movement. See, e.g., Ernest R. Forbes, *The Maritime Rights Movement, 1919-1927: A Study in Canadian Regionalism* (Montreal: McGill-Queen's University Press, 1979) at 88-89.

107 In 1921, twenty-five of thirty-one constituencies in the Maritimes returned Liberals, while in October 1925 that ratio fell to six of twenty-nine. See M.C. Urquhart & K.A.H. Buckley, *Historical Statistics of Canada* (Cambridge: Cambridge University Press, 1965) at 619-20.

108 Canada, *Report of the Royal Commission on Maritime Claims* (Ottawa: King's Printer, 1926). See especially "Recommendations."

109 *Manitoba Free Press* (13 December 1926).

have pushed acceptance of a compensation package through Parliament — he still felt it necessary to submit the “better terms” that were to be offered to the Maritimes to the Dominion-provincial conference of November 1927 for approval.¹¹⁰ Canadian politics being what they are, this move gave every other province the perfect opportunity to either make their own claims for better terms or engage in a little vote-swapping on a variety of issues that served their interests. As it turned out, Québec and Ontario agreed to support better terms for the Maritimes so long as those provinces supported them in their attack on the Dominion’s proposed amending formula for the *BNA Act*.¹¹¹ Meanwhile, in exchange for their support on the Maritimes’ claims, the prairie provinces received a promise from the maritime premiers that they would drop their opposition to the settlement of the natural resource/compensation question in the West, while the other provincial premiers indicated that, in the name of interprovincial harmony, they too would view the return of those resources in a more favourable light.¹¹² Thus, everyone got what they wanted: Québec and Ontario had prevented the adoption of an amending formula they feared would strengthen the central government at their expense; the Maritimes secured approval for their better terms; and Manitoba and the other prairie provinces had seen the regional opposition to their demand for compensation on the resource question disappear. Even the Dominion was not displeased. When the conference wound up on November 10, King confided to his diary, “I believe it has been the greatest possible success,” an amazing sentiment given that his own minister of finance had estimated earlier that day that the proposed concessions to the provinces would probably cost Ottawa \$100 million.¹¹³

Given the results of this conference, Premier Bracken believed he could safely press for an immediate settlement of the resource question. On 10 January 1928 he wrote to King indicating that he wanted the Judicial Committee of the Privy Council to arbitrate Manitoba’s case.¹¹⁴ In February King agreed to arbitration, but not the use of this body. Instead, he called for another conference in July to determine who would sit as arbitrators and what their terms of reference would be. The Prime Minister, however, still entertained some hope that at this meeting Manitoba and the Dominion might negoti-

110 LAC, (m.f.) Mackenzie King Diaries, 15 March 1927 [King Diaries].

111 Canada, *Dominion Provincial Conferences, 1927, 1935 and 1941* (Ottawa: King’s Printer, 1942) at 25-27 and *passim*.

112 *Ibid.*

113 King Diaries, *supra* note 110, 10 November 1927.

114 “Status of the Natural Resources Negotiations (1928),” *supra* note 97, King to Bracken, 10 January 1928.

ate a settlement and do away with the need for arbitration.¹¹⁵ For his part, Bracken had no intention of making any new proposals, but indicated that he would listen to anything the Dominion might have to say. As he put it, “to go to Ottawa with any new proposal of our own would be to put the clock again to 1922 and to the situation that then obtained.”¹¹⁶ Thus, the onus was upon the Dominion.

The meeting between Manitoba and Dominion officials on 3-4 July 1928 was actually not much of a negotiating session. King realized that his record on the resource matter had been one of “continuous procrastination” that had done his party little good in the Prairies, and for this reason was quite willing to give in to Manitoba’s wish for immediate arbitration.¹¹⁷ Bracken expressed some surprise at this, indicating to King that he had expected the Dominion to put forward a “concrete proposition,” probably one which would have linked the transfer of resources to a simple continuation of existing subsidies. Tellingly, Bracken confided to the Prime Minister that he would not advise accepting such a proposal to his government, but as King noted in his diary, “he did not deny he wd advise acceptance of existing financial arrangements, which would contemplate an increase.”¹¹⁸ This, at least to the Prime Minister, seemed to be a crack in Manitoba’s position concerning a strict fiduciary accounting. If the level of subsidies offered to Manitoba struck the Premier as being high enough, he might just forget about his “principle.” As later events proved, King’s instincts on this were quite accurate.

The rest of the July conference was concerned primarily with what form the arbitration “tribunal” would take, who would sit upon it, and its terms of reference. Again, the Prime Minister’s diary is a useful record, and it is clear from his comments there that Manitoba’s representatives were so happy with the arrangements that King felt he may have given away the farm. As he put it, “The Manitoba men were very pleased with the outcome, so much so that I felt as if we had gone too far and conceded points that others may seek to maintain.”¹¹⁹ The Prime Minister may have had a point here. It is clear from a flurry of telegrams and letters exchanged between King and Bracken in the days following the conference that some of the members of the Prime Minister’s cabinet and

115 *Ibid.*, King to Bracken, 28 February 1928 at 4-5.

116 *Ibid.* at 5.

117 King Diaries, *supra* note 110, 3 July 1928. King had come to this conclusion after a very lengthy correspondence with the leader of the Provincial Liberal Party in Manitoba, H.A. Robson. See LAC, MG 26, J1, Mackenzie King Papers, #133125-167 [King Papers].

118 King Diaries, *ibid.*, 3 July 1928.

119 King Diaries, *ibid.*, 4 July 1928.

senior civil servants were trying to limit the possible impact of the terms of reference by tightening up its language. Bracken, however, would have none of this, and the draft of the conference report that was released to the public was clearly the one he favoured rather than the one that powerful federal ministers like Charles Stewart (Interior), Charles Dunning (Railways and Canals), and Earnest La Pointe (Justice) might have wished for.¹²⁰

The Dominion had agreed to have the terms of the transfer determined by a Royal Commission composed of Mr. Justice Turgeon of the Saskatchewan Court of Appeals and former attorney general of Saskatchewan; Thomas Crerar, a former cabinet minister in the Union Government and past leader of the Progressives; and Charles Bowman, a recognized financial expert who was chairman of the board of the Mutual Life Assurance Company of Canada.¹²¹ Manitoba could not have hoped for a more sympathetic tribunal than this. Turgeon had long advocated for Saskatchewan's claims to compensation for lands alienated by the Dominion, and it was fairly clear that Manitoba's settlement with the Dominion would serve as an important precedent for that province.¹²² For his part, Crerar was not only a Manitoban, but had been a key figure in the western Liberal and Progressive groups that had favoured a generous settlement of the resource issue for the prairie provinces. Even Bowman's appointment boded well for Manitoba. He was a close friend of Crerar and a man who would understand the fiduciary accounting procedure Manitoba desired.¹²³

Better yet for Manitoba were the Commission's terms of reference. First and foremost, Manitoba was "to be placed in a position of equality with the other provinces . . . as from its entrance into Confederation in 1870"¹²⁴ — a direct acknowledgement of Manitoba's "principle" of 1920. The commissioners were granted the right to decide what sort of "financial or other considerations" were relevant to the inquiry and to work out a proper accounting procedure for calculating compensation.¹²⁵ With the three men who were sitting as commis-

120 In this regard see King Papers, *supra* note 117, #128358-385. This series of highly detailed telegrams, dated 5-11 July 1928, passing between King and Bracken "ironed out" the final language of the terms of reference. In every case Bracken's objections were reflected in the final draft.

121 *Free Press* (12 July 1928); and PC 1258, 1 August 1928, cited in Canada, *Report of the Royal Commission on the Transfer of Natural Resources of Manitoba* (Ottawa: F.A. Acland, King's Printer, 1929) at 5 [Turgeon Report].

122 It was generally accepted that Manitoba's settlement would, with some modifications, be the model for Saskatchewan and Alberta's.

123 See King Papers, *supra* note 117, #128313, "Telegram, Charles Bowman to Mackenzie King," 16 July 1928.

124 Turgeon Report, *supra* note 121 at 5.

125 *Ibid.*

sioners, Manitoba knew that its views on a proper fiduciary accounting would certainly be taken seriously. Even if this proved not to be the case, Manitoba was still protected from any arbitrary settlement of its compensation claims being foisted upon it, since the commissioners' findings and recommendations were not binding and would have to be ratified by both the Dominion and Manitoba's legislature.¹²⁶ Finally, and perhaps of the greatest immediate importance to Premier Bracken, the sixth and final clause of the terms of reference stipulated that pending the transfer the Dominion had to administer Manitoba's resources "in accord with the wishes of the Government of the Province."¹²⁷ This was of crucial importance to Bracken because of the sensitive — and politically charged — negotiations that had been going on all spring and summer between Bracken, the minister of the federal Department of the Interior, and the Winnipeg Electric Company concerning the development of the Seven Sisters hydroelectric power generating site on the Winnipeg River in eastern Manitoba.¹²⁸ If Bracken hoped for this controversial project to go ahead over the objections of the public power advocates in his own province and those in the House of Commons, he could not risk any interference from the Department of the Interior.¹²⁹

With all of these mechanisms for the Royal Commission firmly in place by 1 August 1928, Manitoba now seemed poised to secure both beneficial control of her resources, a significant compensation package for resources already alienated, and complete equality with the other members of Confederation; in short, a complete vindication of its much vaunted principles of 1920. No wonder the prime minister had second-guessed some of the concessions he had made during the July conference. And yet, as a raft of correspondence between himself and the leader of the Liberal Party in Manitoba, H.A. Robson, indicates, the prize at stake had the potential to make such concessions worthwhile. That prize was not an important constitutional adjustment, but rather the unification of Liberal and Progressive forces in Manitoba and perhaps the

126 *Ibid.*

127 *Ibid.* at 6.

128 For a fulsome discussion of this matter see John Kendle, *John Bracken: A Political Biography* (Toronto: University of Toronto Press, 1979) at 79-84.

129 See *ibid.* at 81. Charles Stewart, the Minister of the Interior, had been postponing the issuance of the necessary licenses for this development for several months, and Bracken would be adamant that Clause Six of the terms of reference would cover the Seven Sisters waterpower site. As early as June of 1928 he had intimated to Prime Minister King that any federal action which might delay or hinder this project would dash all of the Prime Minister's hopes for any unification of Liberals and Progressives in Manitoba. See also King Papers, *supra* note 117, #128340-42, Bracken to King, 15 June 1928.

rest of the West.¹³⁰

Despite his victories at the July conference and in the subsequent negotiations setting the final terms of reference for the Royal Commission, Premier Bracken was taking nothing for granted. He spared no effort or expense to present the best possible case before the Royal Commission.¹³¹ To this end, he sought to appoint the most qualified (and politically well-connected) advocates to represent Manitoba. His first choice as advocate was the famed Winnipeg-based CNR lawyer, H.J. Symington (a man whom Bracken and others had suggested as a potential member of the Royal Commission). However, Symington was forced to move to Montreal shortly after the preliminary meeting of the Royal Commission and he was replaced by a member of his Winnipeg law firm, A.B. Hudson.¹³² Hudson was arguably an even better choice, for his resumé was truly impressive: he had served as attorney general in the Norris Government; he was a former Liberal MP and an expert on the legal aspects of resource policy by dint of his work on behalf of the largest mining concern in Manitoba, the Hudson Bay Mining and Smelting Company; and, he was also a close friend of Commissioner Crerar. Joining him was Manitoba's *de facto* lead counsel, R.W. Craig, Bracken's first attorney general and one of his most trusted advisors on political and legal matters. And last, but not least, Bracken appointed Chester Martin, the author of Manitoba's 1920 case, one of the "Manitoba men" who had drafted the memos and shaped the outcome of the July conference, and a Canadian historian of considerable note.

The position taken by these men when they met with the commissioners in October 1928 and, more substantively, in February and March 1929 was an interesting blend of principle and pragmatism. To begin with, Craig and Martin occupied most of the February sittings of the Royal Commission with their detailed accounts of the constitutional and historical reasons why Manitoba was entitled to compensation for lands from the moment of its admission to Confederation; in other words, the principle portion of the argument.¹³³ It was not until Hudson addressed the commissioners on 15 February that the

130 See *ibid.* for Bracken dangling the carrot of unification before King's eyes in June of 1928; and King Papers, *ibid.*, #133125-167, for Judge Robson's comments on this matter (and King's responses) in the spring of 1928.

131 Bracken's government paid its three primary advocates \$72,500.00 in fees for their work in presenting Manitoba's case. This sum is exclusive of any monies paid to Symington, expenses incurred by other Manitoba politicians and civil servants while in Ottawa, and all other costs. See AM, G1060, File #13, "Inter-Departmental Memo Re: Return to an Order of the House (No. 38)," Smith to Attwood, Deputy Minister, 26 February 1931.

132 LAC, RG 33, Vol. 52-1, File #9, Craig to Mr. Justice Turgeon, 1 December 1928.

133 LAC, RG 33, Vol. 52-10, "Transcripts of the Proceedings, Vol. I," 12-15 February 1929.

pragmatic matter of compensation was raised directly. And even then, as Mr. Turgeon pointedly noted, "Counsel for Manitoba . . . are not prepared now, without further consultation with their government, to put their claim into figures."¹³⁴ This reticence only began to dissolve late in March 1929, when Hudson, having consulted with his political masters in the interim, suggested that Manitoba should receive "subsidies" for the lands alienated based on the sliding per capita scale used in Saskatchewan and Alberta, but back-dated to 1870.¹³⁵ A bit later in his presentation Hudson also intimated that there should be some sort of lump-sum payment for lands already alienated plus a continuation of subsidies paid on the Saskatchewan and Alberta per capita basis.¹³⁶ His vagueness on this point caused some questions to be raised by both Dominion counsel and the chair of the Commission, but it would seem that Hudson's suggested lump-sum payment derived from a calculation of the subsidies that should have been paid to Manitoba in lieu of lands from 1870 onward, less the actual subsidies paid during that period. As he continually told the commissioners, this would be a much simpler method of arriving at a final figure for compensation than any full accounting of lands alienated¹³⁷ — truly a pragmatic approach.

When all was said and done, Manitoba's case consisted of the following: first, all unalienated resources within Manitoba were to be turned over to the province; second, Manitoba wanted a lump-sum payment amounting to \$6 million for lands already alienated; and finally, the existing subsidy in lieu of lands, including provision for future increases (based on population), was to be retained as an additional and perpetual form of compensation for alienated resources.¹³⁸ This new proposal was stunningly inconsistent with past proposals in at least one major regard. While supposedly standing firmly on the constitutional principle of 1920, which had called for a strict fiduciary accounting of alienated resources, the province's representatives were suggesting a financial settlement that was based upon an arbitrary lump-sum payment and the continuation of land subsidies that Premier Norris had quite correctly seen as being purely arbitrary in nature. Perhaps the only thing more striking than Manitoba's inconsistency was the Commission's, and eventually the Dominion's, willingness to accept Manitoba's "logic" as the basis for settlement of the natural resource question.

134 *Ibid.* at G-7.

135 LAC, RG 33, Vol. 52-10, "Transcripts of the Proceedings, Vol. II," 27 March 1929 at 5-6.

136 *Ibid.* at 9.

137 *Ibid.*

138 *Free Press* (10 April 1929).

Even though they knew they were facing a tribunal that was, to say the least, stacked against them, the Dominion's representatives at the Commission hearing¹³⁹ did their best to mitigate the impact of Manitoba's demands. C.P. Plaxton ably challenged Manitoba's legal and constitutional case, while A.R. McMaster argued that even if Manitoba had enjoyed beneficial control over its natural resources since 1870, "they would have dealt with those natural resources precisely in the same way as the Dominion dealt with them."¹⁴⁰ From such a perspective, there was really very little need for any compensation. Indeed, McMaster made the point that it was perhaps Manitoba who owed the Dominion compensation, for according to figures provided by the Department of the Interior, the Dominion had lost \$6 million by virtue of its work administering Manitoba's resources since 1870. McMaster magnanimously offered not to advocate that the federal government seek to collect that amount from Manitoba.¹⁴¹ The other arguments presented by the Dominion's representatives were a bit less grandiose and were focussed upon having certain alienated lands removed from any accounting of the Dominion's liability, or at least having those lands valued at a rate that was not too crippling to the Dominion.¹⁴² The most contentious proposal made by counsel for the Dominion concerned their attempt to have the Dominion's expenditures related to the administration of treaties signed with the First Nations peoples of Manitoba deducted from any award made to Manitoba.¹⁴³

As matters turned out, the arguments concerning what lands should and should not be included in any debt account were listened to very carefully; as the commissioners' comments indicate, they even took many of the Plaxton and McMaster's key points to heart. But at the end of the day, their work, to say nothing of the work of the legions of clerks and other civil servants who were dashing around compiling exact accounts of lands alienated, revenues collected and the like, was an exercise in futility. For while some calculations and deductions were made by the commissioners, they had little bearing on their recommendations.

The commissioners' final report is a fascinating document. After a lengthy recounting of the historical background of the natural resource question in

139 Lucien Canon, Solicitor General of Canada, A.R. McMaster, KC, and C.P. Plaxton, KC were the Dominion's representatives at the hearings of the Royal Commission.

140 LAC, RG 33, Vol. 52-10, "Transcripts of the Proceedings" at 29-32, 86.

141 *Ibid.* at 233.

142 Turgeon Report, *supra* note 121 at 34.

143 *Ibid.* at 38-40. The same argument had been used by Ottawa in the late 1880's when it fought Ontario over control of Crown Lands in the "disputed territory." The argument had been defeated then and several times in the intervening years — as the Commission's Report pointed out.

Manitoba, the Turgeon Report turned to the process of carefully balancing the claims of Manitoba and the Dominion. A list of all lands alienated that could not be considered as charges against the Dominion and the reasons for their exclusion were set out. Lands alienated prior to 15 July 1870, including the HBC's 1/20 of the fertile belt, were excluded on the grounds that these had been alienated before the "life of the Province began."¹⁴⁴ By the same logic, all lands alienated in territories that were subsequently annexed to Manitoba by the boundary extensions of 1881 and 1912 were also excluded. The school lands, which the Dominion had held in trust for Manitoba and sold from time to time to defray the costs of education, were also reserved from any calculation of debt accounts. Finally, approximately 575,000 acres of lands granted in aid of provincial railways were set aside as having been issued in the provincial rather than the national interest.¹⁴⁵

While some of these exclusions may not have been entirely fair to Manitoba, they had the dual virtue of being logical and making sense in legal terms. Turning next to the matter of what alienated lands could properly be charged against the Dominion, Turgeon, Crerar, and Bowman agreed that the only lands that could be seriously considered as part of the Dominion's debt to Manitoba were those granted for national railway projects and homestead lands granted to settlers.¹⁴⁶ Regarding the case of railway lands, the commissioners were clearly on Manitoba's side; "national undertakings" such as the CPR were clearly a federal responsibility. For that reason, the approximately 3 million acres of Manitoba lands used to subsidize such railways were seen as a charge against the Dominion. Homestead lands, however, were more problematic. Here, the Dominion's representatives had made two counter-arguments which apparently impressed the commissioners. First, "the use of these lands redounded, in part, to the interest of the Province, and . . . [therefore] the total claim of the Province should be reduced accordingly." Second, as Mr. McMaster had argued, it was likely that if Manitoba had enjoyed beneficial control over her own resources, it too would have enacted a free homestead policy to attract new settlers. If one accepted this logic there would be no reason to charge the Dominion for the lands so alienated, or at least not for their full value.¹⁴⁷

While the commissioners did not completely accept the arguments of Plaxton and McMaster, they did "think that the claim of the Dominion

144 *Ibid.* at 31.

145 *Ibid.* at 31-38.

146 *Ibid.* at 34-38.

147 *Ibid.*

should be allowed to this extent that we should not tax that Government with an amount equal to the actual value of those lands."¹⁴⁸ Thus, it is at this moment that Manitoba's original demand for a strict fiduciary accounting was removed from consideration by the commissioners. Given that the commissioners' final report estimated that 8 million acres of good agricultural land had been alienated in Manitoba for homestead purposes, this move away from a fiduciary accounting was important. If they had assigned the \$8.00 per acre received for HBC and railway lands (the average price realized between 1870 and 1920, according to the Reid documents)¹⁴⁹ as the "actual value" of these homestead lands, the Dominion would have been liable for \$64 million worth of homestead land plus another \$24 million for railway lands.

In any event, after considering all of these calculations and deductions it would have seemed that the next logical step for the commissioners to take would be a detailed accounting of the values they thought appropriate for the 11 million acres of land for which they deemed Manitoba entitled to some level of compensation. But this was not to be. Instead, they simply followed the suggestion laid out by Manitoba representative A.B. Hudson at the March hearings. They noted the area of Manitoba in 1870, 1881, and 1912, as well as its population between 1871 and 1926.¹⁵⁰ Then, assigning arbitrary figures to the amount of arable lands within Manitoba's three different boundaries — approximately 8 million acres between 1870 and 1881 and 25 million acres thereafter — the commissioners applied the sliding population scale used in determining the Alberta and Saskatchewan land subsidies of 1905, making it retroactive to 1870.¹⁵¹ Accordingly, it was based upon an arbitrarily determined land mass, an arbitrarily set land valuation, and an arbitrarily arrived at population/subsidy interest calculation, that Manitoba was to be credited with \$18,847,500.¹⁵² The more than \$11 million already paid to Manitoba as subsidies in lieu of lands were deducted from this total, leaving aggregate arrears of \$7,654,069.15. Finally, this figure was reduced by an additional

148 *Ibid.* at 36.

149 Bracken Papers, Box 2, *supra* note 61, "Reid Documents, Part 1, Memo 1" at 30.

150 Turgeon Report, *supra* note 121 at 43-44.

151 *Ibid.* at 40, 43. This was based upon a valuation of \$1.50 per acre and capitalized at percentages ranging from 0.5 to 1.5 percent, dependent upon population. Although the report cited 8,913,920 acres of land within Manitoba's 1870 boundaries, it is apparent that the commissioners used the figure of 8 million acres for their calculations. For example, the subsidy for 1870-1882 was judged to be \$60,000 per annum, and that figure represents exactly 8 million acres valued at \$1.50 per acre (\$12 million) capitalized at 0.5 percent.

152 This was derived from the following sums: for 1870 to 1881, \$60,000 per year; for 1882 to 1900, \$187,500 per year; for 1901 to 1907, \$375,000 per year; and finally, for 1908 to 1928, \$562,500 per year.

\$3,069,856.66, the amount Manitoba had received from the sale of swamp and university lands between 1885 and 1912, leaving a total owing to the province of exactly \$4,584,212.49.¹⁵³

This sum was to constitute the final cash payment “as the balance due for past arrears.” However, having taken the view that the whole matter really came down to a question of subsidies — a notion that A.B. Hudson had underlined in his presentation — the commissioners saw nothing inconsistent in recommending that this lump-sum payment be viewed as “the purchase price . . . to be paid to Manitoba for the lands of which it had been deprived from 1870 down to today,” even as they recommended the retention of existing land subsidies. Thus, Manitoba was to receive its remaining resources, as well as over \$4.5 million in cash plus an annual subsidy of \$562,500 until the population reached 800,000. At that time the subsidy would rise to \$750,000, with the possibility of one more increment to \$1,125,000 when the population reached 1.2 million.¹⁵⁴

It was an arbitrary settlement to be sure, but it pleased all the interested parties. When Bracken and King met in Ottawa in June 1929 to consider the Commission's recommendations, both were clearly happy to accept them as the basis for a final settlement. And both men had reason to celebrate. Manitoba now had its resources, a multi-million dollar cash payment, and a subsidy in lieu of lands that was over \$150,000 per year higher than ever before.¹⁵⁵ King, meanwhile, knew there was no point in keeping what was left of Manitoba's resources. And by most standards, \$4.5 million was a fairly low price for the resources that the Dominion had made use of in Manitoba since 1870, particularly given the alternative of a fiduciary accounting of alienations totaling at least 11 million and as much as 26 million acres, to say nothing of an accounting of the timber, mineral, fish, and water-power resources used over the previous fifty-nine years.¹⁵⁶ Such an accounting, using market values, would have produced a Dominion debt account well in excess of \$200 million. The Dominion was thus fortunate to have escaped such a procedure.¹⁵⁷ The matter of continuing subsidies in lieu of lands that had either been returned to

153 Turgeon Report, *supra* note 121 at 45. Total subsidies actually paid to Manitoba between 1882 and 1928, according to these figures, would have been \$11,193,431.

154 *Ibid.* at 42-43.

155 This increase was the result of the commissioners' method of resolving the swamp and university lands issue: having charged the value of those lands against Manitoba's lump-sum payment the Dominion would no longer be deducting 5 percent interest on \$3 million worth of such lands from Manitoba's annual subsidy.

156 Turgeon Report, *supra* note 121 at 44-45.

157 See *supra* note 5 at 353-55 for a detailed accounting.

Manitoba or, in the case of those already alienated, paid for via the lump-sum payment was potentially more problematic for the Dominion, as it might have struck some as being overly generous. However, agreeing to such a settlement made King's government appear magnanimous to a region of considerable importance in Dominion politics. Beyond this, as Manitoba representative A.B. Hudson had pointed out to the commissioners, these subsidies did not constitute a new drain on the federal treasury and the continuation of an existing payment was easier to justify than instituting a new one. Further, given that federal control over Manitoba's resources had become not only a political hot potato, but a money losing proposition to boot, it was clear that the Dominion would actually save a considerable sum by transferring those resources to the province, despite the continuation of existing land subsidies. As the Turgeon Report had noted, the previous ten years had been marked by losses to the Dominion of approximately \$430,000 per annum as a result of retaining control of those resources.¹⁵⁸ Taking this into account, Ottawa would actually be lowering yearly federal payments made on account of Manitoba by \$280,000 when it transferred control of those resources to the province.¹⁵⁹ Beyond these financial considerations, and perhaps most importantly to King, the Prime Minister believed he had solidified his ties with a "Progressive" government in the West, a solidification he hoped might lead to a more formal alliance between Liberals and Progressives in the future.¹⁶⁰ A price tag of \$4.5 million was quite reasonable given these benefits.

All that remained now was for the lawyers and bureaucrats to get together and draft the appropriate final documents and legislation so that this historic agreement could take effect on 15 July 1930, the sixtieth anniversary of Manitoba's entry into Confederation.

V. CONCLUSION

What, then, is the ultimate moral of this tale? "All's well that ends well" might be the platitude of choice from the vantage point of 15 July 1930. However, because we know that some very important — and in some cases negative — consequences would flow from this agreement and the accompanying agreements with Saskatchewan and Alberta, we cannot afford to be so sanguine. Then again, it is not the purpose of this article to document those consequences. Rather, what has been attempted here is an historical reconstruction of the tortuous path followed by the politicians of the day to arrive

158 *Supra* note 124 at 41.

159 This figure is \$430,000 less the \$150,000 arising from the resolution of the swamplands matter.

160 King Diaries, *supra* note 110, 14 December 1929. In the 1932 and 1936 election campaigns, Bracken supporters ran as "Liberal-Progressives."

at the *NRTA* of 1930. This is important, because the *NRTA* actually led to a significant addition to the Canadian constitution. Thus, it is incumbent upon historians and legal scholars to understand that this particular iteration of the *BNA Act* was arrived at largely in order to quell western Canadian discontent, to shore up support for a political party, and to solve a series of economic problems in provinces like Manitoba. As a result, the solutions arrived at had very little to do with constitutional principles. Instead, the solutions embodied in the *NRTA* were hammered out in the real world of Canadian politics, where party considerations, regional jealousies, regional inferiority complexes, and hard-headed deal-making abilities were the truly defining characteristics. The *NRTA*, in this light, emerges as proof of the old adage that politics is the art of the possible.

No one can be truly surprised by this, but as scholars and legal experts are increasingly drawn to examine the *NRTA*, its genesis, and its consequences — as witnessed by the articles in this issue by Kerry Wilkins on the commercial harvesting rights of Treaty Indians¹⁶¹ and Nicole C. O’Byrne on Métis scrip,¹⁶² as well as by Frank Tough’s Alberta Law Review article on the legal issues flowing from the Indian livelihood provisions of the *NRTA*¹⁶³ — they need to consider this background. Indeed, they need to consider one fact above almost all others: at the provincial level virtually no attention was paid to First Nations issues. In the case of Manitoba, one can scour all the files related to the transfer (prior to 1929), all the papers of Premier Bracken, all the transcripts of the Royal Commission hearings, all the writings of Professor Martin, and even the papers of various resource “boosters,” and one is extremely hard-pressed to find any serious consideration of what this transfer might mean for First Nations or mixed-blood peoples, or how the transfer would affect the province’s responsibilities towards them and the resources they had historically owned and used. This lack of attention is all the more amazing because in Manitoba, the natural resources that were most coveted in the late 1920s were those in the non-agricultural areas: the mining, lumbering, fishing, pulp and paper, and hydroelectric frontier of eastern and northern Manitoba. The location of these resources was arguably also the area of greatest importance for sustaining First Nations livelihoods, and the most suitable for fulfilling the treaty promises of on-going access to hunting, trapping, and fishing resources for First Nations’ peoples. Given this, it gives one pause to discover that the first time Manitoba gave serious consideration to this matter was in the late summer of 1929, only after Manitoba and Ottawa

161 “Unseating *Horseman*: Commercial Harvesting Rights and the *Natural Resources Transfer Agreements*” (2007) 12 *Rev. of Constitutional Studies/Rev. d’études constitutionnelles* 135.

162 “A rather vexed question . . .”: The Federal-Provincial Debate over the Constitutional Responsibility for Métis Scrip” (2007) 12 *Rev. of Constitutional Studies/ Rev. d’études constitutionnelles* 173.

163 *Supra* note 4.

had agreed to all the “really” important matters.¹⁶⁴ And in many regards, as Manitoba’s political leaders hammered out the final details of the *NRTA* during the fall and winter, they simply accepted drafts of agreements concerning First Nations peoples that had been written for the “stillborn” Dominion-Alberta agreement of a few years earlier; terms that were modified, but not by provincial leaders, who seemed both uninterested and completely uninformed on such issues.¹⁶⁵ In short, for at least half of the framers of this constitutional addition, there was no intent beyond winning “better terms” and controlling some now seemingly valuable natural resources.

¹⁶⁴ See, e.g., AM G1060, File #1, “Memorandum of an Interview which the Honourable DG Mackenzie . . . had with the Minister of the Interior,” 27 August 1929.

¹⁶⁵ See *supra* note 4 at 1018-23.