

Dep. Col,
Thesis

R811

DEPOSITORY
COLLECTION
NOT TO BE
TAKEN

U N I V E R S I T I Y _ O F _ M A N I T O B A

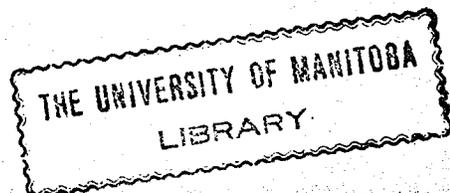
A DISSERTATION ON
THE DEVELOPMENT OF SELF - GOVERNMENT IN
THE TERRITORIES

WRITTEN, SEPTEMBER, 1924,

BY

JAMES M. ROXBURGH,

EDMONTON, ALBERTA.



The Development of Self-Government in the Territories.

I.

Almost two centuries have passed since the region now known as the Provinces of Alberta and Saskatchewan was first visited by white men. About the year ¹⁷⁴⁰~~1838~~ Verendrye and his party proceeded, it is supposed, up the Saskatchewan as far as the Forks and traced also the Assiniboine and Souris as far as navigation with canoes would permit. It is only however within the lifetime of the present generation that this region known as the Territories has been developed by settlement and has received the benefits of the institutions of law and order and of constitutional government.

The history of the Territories falls naturally into two main divisions, Company Rule and Dominion Rule. The Rule of the Hudson's Bay Company insofar as the region in question is concerned was never other than a control exercised as a commercial organization over its employees. The so-called rule of the Company in this district was rather the absence of rule, and its main reliance for maintenance of its authority was upon the self-interest and good-will of the natives. It is proposed in this paper to deal with this earlier period of our history in some detail since from the point of view of a resident of Alberta or Saskatchewan it forms the background of their political history and it is deemed desirable to discover whether there is anything in the

experience and practice of the administration of those days which may be claimed as a contribution to ~~our~~^{their} present political system.

It is also desired to controvert a prevailing impression that ~~our~~^{their} history is in some way intimately related to that of the Red River settlement.

In dealing with self-government we must take a broad view of the signification of the term. Under our federal system it is essential to self-government that a given geographical area with a settled population should have representatives in parliament as well as a local government exercising powers on an equality with the other provinces. From this point of view self-government in the Prairie Provinces is ^{in this latter respect} at present incomplete. The subject being a very extensive one, the aim in this paper will be to deal with political movements, motives of parties, ^{and} the influences which moulded opinion, rather than ^{with} a detailed account of legal enactments.

The term "Territories" itself requires a word or two of explanation since in relation to Canada it has had at different times various different applications, and even so to-day, when it is applied specifically to the region north of the 60th parallel and between Yukon Territory and Hudson's Bay and in a more general way ^{to} of the Prairie provinces and the hinterland. The southern portion of this area, namely, that portion south of the 55th parallel possessed political institutions previous to 1905 and it is this area in particular whose political history will be reviewed in this paper.

Hudson Bay Rule in the Territories

1. The Charter of 1670. The Hudson's Bay Company derived its authority from the Charter granted by Charles II in 1670. The political significance of the grant of the Charter was two-fold. In the first place it represented the formal taking possession of the territory contiguous to Hudson's Bay by the English king, and in the second place it provided that the government of the region and the control of the fur-trade and fisheries should be in the hands of the company. Title was given to the Company "in free and common soccage", making the Governor and Company "the true and absolute lords and proprietors of the same territory". A reservation was made with reference to the laws to be administered, provision being made "that the said laws be reasonable and not contrary or repugnant to the laws, statutes, and customs of this our realm". As to the limits of the Territory over which the Company might hold sway, the Charter stated:

We have given unto the said Governor and Company the sole trade of all these seas, straits, bays and rivers that be within the entrance of Hudson's straits with all the lands and territories upon the confines of the seas, straits, bays and rivers that are not actually granted to or possessed by any of our subjects or possessed by any other Christian Prince or State.

Administrative control within the territory could be vested in "governors", "who may have power to judge all persons belonging to the said Governor and Company or that shall live under them in all cases whether civil or criminal according to the laws of this kingdom and to execute justice accordingly" or accused persons might be sent to England for trial. Power was given

to use armed force for the protection of the Company's trade and territory. (1)

2. The extension of the Company's Trade. For over a century after their Charter was received the Hudson's Bay Company had been content to operate in the region about Hudson's Bay. Their first inland Fort was established at Cumberland in 1774. Brandon House on the site of the present city of Brandon was built in 1794 and the Red River was occupied in 1799. (1) The Selkirk settlement, the only effort at colonization made under the patronage of the Company, was established in the Red River during the years 1812 - 1815. At a later date trading posts were located in the prairie region along the North Saskatchewan, and in the region to the northward, but most of those south and on the North Saskatchewan were soon abandoned. So far as the commercial activities of the Company were concerned, a large portion of what now constitutes the settled portions of Alberta and Saskatchewan were not held by the Company at the time of the transfer. Captain Palliser who visited the ruins of Old Bow Fort in 1860 states that "the Hudson's Bay Company have long since abandoned the post many of their servants having lost their lives in its defence (1)". Again in his report of 1857 (2) he says:

On Sunday, September 13, we remained at Qu'Appelle Lakes. Here the H. B. Co. have a small trading post, the most western fort in the territory east of the Rocky Mountains to which the H. B. Co. trade; westward of this I may say in unknown and the whole country in this latitude is untravelled by the white man."

(1) H. B. Co. Charter (Oliver N.W.).

(2) Beckles Wilson: "The Great Company". Chap. 2 + also Bryce H.B. Co. Chap. 13.

(3) Report of Capt. Palliser 1860.

3. The Nature of Company Rule in the Territories.

(a) Absence of Organization. Butler in his report to Lieutenant-Governor Archibald (1870) says: (5)

The institutions of law and order as understood in civilized communities is wholly unknown in the region of the Saskatchewan insomuch as the country is without any executive organization and destitute of any means to enforce the authority of the law.

Elsewhere in his report he says:

As matters stand at present the region of the Saskatchewan is without law, order, or security for life or property; robbery and murder for years have gone on unpunished; Indian massacres are unchecked even in the vicinity of the Hudson Bay Company's posts and all civil and legal institutions are entirely unknown.

A similar lack of organization in the government is reported from the eastern portion of the territories, namely, the Portage la Prairie settlement. One may take Thomas Spence too seriously for, according to a contemporary writer, he was something of a busybody, (6), but a letter of his to a member of the Canadian parliament in January, 1868, will show with a fair degree of accuracy the state of public affairs in that district. The letter states:

This settlement has been totally unprovided for with law or protection either by the Imperial government or the Hudson's Bay Company, without even a flag of acknowledgement anomalous to any British settlement in the Empire.....Meanwhile in view of the increase of crime and the overbearing tone of the Indians towards the settlers--some of them immigrants of recent date from Canada--plunder and robbery are daily going on. (7)

4. Sources: Two important sources of information are available for a study of the Company's administration. These are "The Report of the Select Committee of the House of Commons, 1857" and the other is "Minutes of the Council of the Northern

(5) Butler: The Great Lone Land. (6) Hargrave: The Red River
(7) Oliver: North-West.

Department of Rupert's Land; Extracts from the evidence of Sir George Simpson are here given for the purpose of throwing light on the nature of the Company's rule (8).

(b) Government under Hudson's Bay Regime--

Question 1153: As regards the government of the Territory, how is it governed? I am now speaking not of trade but of the general government of the Territory.--

In the Red River settlement in the district of Assiniboia the present recorder is the governor of the district.

Q. 1154: He has the executive power as well as the judicial?--

Yes.

Q. 1155: What extent of territory is that over?--

The district of Assiniboia takes 50 miles by the compass round the Red River Settlement.

Q. 1158: As to the rest of the territory how is that governed?--

By myself and council.

Q. 1159: Have you any legislative power?--

No.

Q. 1160: You cannot make laws in that territory?--

We can make laws as far as regards the management of our own affairs, which is the only case in which we have occasion to make laws.

Q. 1161: As to the tenure of land how is it regulated? What law is in force in the territory?

The law of England, I imagine.

Q. 1163: You spoke of a lease of 999 years: Why is the land not given in freehold?

Our counsel in this country recommended that lease.

Q. 1164: Do you know why?

No.

Q. 1168: Has the Company in London any legislative power?

It gives instructions with regard to the mode of conducting the business.

Q. 1174: You do not make Statutes at all?

No.

Q. 1175: Do you make Ordinances?

No, we have never had occasion to make ordinances. We have passed certain resolutions of Council.

Q. 1176: Are they considered binding in the nature of laws on the inhabitants?

They are principally in reference to our own trade. The laws are administered as nearly as possible in accordance with the laws of England by the recorder of the country.

(c) Administration of Justice. This was a matter about which some of the members of the investigating Committee of the British House of Commons in 1857 were inclined to be critical. Part of Sir George Simpson's evidence before this committee is given as follows:

Q. 1191: Have you any magistrates, justices of the peace?

We consider all our factors as magistrates.

Q. 1192: Do they hold any commission from the Crown or from the Governor?

Their commission as factor is understood to answer the purpose of a commission as magistrates.

Q. 1630: Was there not some agreement or some bond entered into by the Hudson's Bay Company that they should send the criminals to be tried in Canada?

There is concurrent jurisdiction in Canada.

Q. 1633-4: In your long experience in the country are you aware of any criminals ever having been sent to be tried in Canada?

On one occasion there were three men sent for trial for murder.

Q. 1393: How many criminals do you suppose are annually tried at Assiniboia?

I think the whole of the criminal cases within my recollection are but 19 in the 37 years.

Q. 1394: And you call that administering justice in that country?

Yes.

(d) Government. Simpson's evidence as to his own powers was to the effect that he received his appointment by the Governor and Committee at home in London, and that it was revokable at any time. There was no fixed seat of government although administration buildings for purposes of trade were located at Norway House. He himself had no headquarters (10).

(e) Relations with the Indians. The evidence under this head is almost unanimously favorable to Company rule. The population of the territories in 1857 is given by Sir George Simpson as 3000. This he admits is only an estimate (11). The number of whites and half-breeds was negligible, and therefore on the principle of "the greatest good to the greatest number", ^{the Company} is entitled to credit for the happy results of ^{its} policies. Sir John Lefroy stated to the committee of Enquiry, 1857;

The traders almost without exception so far as my observation went, treated the Indians with signal kindness and humanity. Many instances of their relieving them in their distress and taking great pains to do so came to my knowledge.

It was the boast of Sir George Simpson on the same occasion (Q. 1012 - 1017) that there had been constant peace in the territory between the Whites and the Indians for 37 years whereas on the American frontier a continual war had been

(9) Report of Sel. Com. on Hudson's Bay, 1857.

(10) Questions 1376, 1381, 1382, *ibid.*

(11) Sir George Simpson, Sel. Com. 1857.

going on. With reference to the nature of the Company's control over the natives the following evidence is given by Sir George Simpson:

Q. 1754: What privileges or rights do the native Indians possess strictly applicable to themselves?

They are perfectly at liberty to do what they please. We never restrain Indians.

Q. 1752: Then is it the case that you do not consider the Indians are under your jurisdiction when any crimes are committed by the Indians upon the whites?

They are under our jurisdiction when crimes are committed upon the whites but not when committed upon each other. We do not meddle with their wars (12).

The Governor was able to refute successfully the charges made from various sources that the Company made a practice of selling intoxicants to the Indians, of charging high prices for goods and of lack of concern for the natives in time of famine.

A reading of the "Minutes of Council of the Northern Department" shows a multitude of detail in the management of the Company's trade (15), but an almost complete absence of reference to questions concerning order, justice, civil and political, rights. This is corroborated by the evidence adduced above in the words of the Governor, namely:

We can make laws as far as regards the management of our own affairs which is the only case in which we have occasion to make laws.

4. What we owe to Company Rule. In the Council of Assiniboia, the Red River Settlement had the germs of what later became self-governing institutions. The administration of law was kept distinct from the Company's commercial interests

(12) Ibid. (13) Oliver: North-West.

to a large extent. In the region to the West and north the case was quite different and we must look for the foundation of the self-governing institutions there to a period subsequent to the transfer of the territory to the Dominion. One debt to the Company's rule we must acknowledge however and that is the tradition of fair dealing with the native races. Viscount Milton testifies to this:

The Hudson's Bay Company we believe exercise this almost absolute power well and justly so far as they have administered with impartiality the laws they have made. They have gained the affection and respect of the Indians by kindly intercourse and just dealing (14).

And it was the boast of Sir George Simpson before the Committee of 1857[^] "that there had been peace in the Territories between whites and Indians since the witness had been governor or there there whereas there in the United States territories there had been constant bloody wars for generations past" (15).

II.

1. The Transfer of the Territories to the Dominion. The policies of the Company were antagonistic to the establishment of settlement in the West.^(a) Sir George Simpson in his evidence before the Committee of 1857 said:

I do not think any part of the Hudson's Bay Company territories is well adapted for settlement. The crops are very uncertain.....The climate is even more rigorous and the crops are even less certain on that river (the Saskatchewan). I do not think there will be any immigration into the country for ages to come.

The first stage in the development of settlement and of ordered government in the West was the extinguishing of the

(14) Milton and Cheadle Expedition, 1865 (page 40). *Hudson's Bay Company Papers* Ch. 31
 (15) Report of Sel. Com. on Hudson Bay Co. 1857. *Also before evidence above*
 (a) See C. Martin. *For Sale's work in Canada*. p. 171.

Company's chartered rights. The negotiations for the acquisition of the Territories of the Company were carried on between Canada and the Hudson Bay directors with the British Colonial office acting as intermediary. It was necessary above all for the welfare of the territories that the title of the new owners should be legally sound. Five definite and voluntary transactions on the part of the three parties concerned completed the legal formalities. These were:

- (a) The B.N.A. Act of 1867 granted powers of government in the Territories in the event of their being annexed to Canada.
- (b) The British Government were by the Imperial Parliament given power to accept surrender from the Company.
- (c) Negotiations undertaken by the Imperial authorities led to the execution of a deed of surrender on the part of the Company.
- (d) The Canadian Senate and House of Commons petitioned that the area be transferred to Canada.
- (e) The British Government by Order in Council of the Queen vested the government and ownership of the Territory in the Dominion and issued proclamation to that effect (2).

2. Reasons for the Transfer. It is part of our purpose to notice the motives which actuated each of the parties in bringing about this step, perhaps the most important in the advance of the West towards constitutional government. In the Territories, of course, there could be no expression of opinion in the matter. Canada on her part desired a field for settlement under the British flag and a clear definition of her boundaries on the West. Chief Justice Draper representing the Canadian Government stated before the Committee of 1857 that the matter affected Canada "first, with regard to the true

(1) Ibid, Q. 716. *Report 1857*

(2) Imperial Order in Council, 25th June, 1870, See Statutes of Canada, 1870.

boundary of Canada; secondly, with regard to the deep interest that the people of Canada have that the Territory should be maintained as a British possession; thirdly, because the people of Canada look to it as a country into which they ought to be permitted to extend their settlements." (3). In his report on Crown Lands (1857) Hon. Jos. Cauchon (4) said:

It would be very desirable therefore and quite practicable if the British Government would consent to annex the Indian Territories to Canada, to establish during the summer a monthly communication across the continent. It is of incalculable importance that these measures should be most forcibly pressed upon the Imperial Government at this juncture, for on this solution depends the question of whether this country shall ultimately become a petty state or one of the Powers of the earth.....and a counterpoise to the United States this Continent."

Hon. Alexander Mackenzie said in the debates, 1870, (5):

It affords the greatest inducements to them to take possession of the country and to direct the stream of emigrants, now going to the western States, to that country.

The report of the Committee of 1857 may be taken as a fair indication of the attitude of British public men in the matter of its surrender to Canada. Influenced by the Hudson Bay partisan, Ellice, the anti-imperialist Gladstone, and the radical members, the committee rejected a statement in the first draft of the Report to this effect:

Your committee entertain the strongest opinion that the Crown and people of this country can have no other interest in the Territory now administered by the Company except that it should be dealt with in whatever manner is most conducive to the prosperity and contentment of our North-American fellow-subjects, and especially in the mode which is best calculated to add to the strength of the great colony Canada. It is on these principles alone that the recommendation of your committee will be founded so far as is consistent with equity and good faith. (6)

(3) Report of Select Committee on H.B. 1870, Evidence of Draper.
 (4) Sessional Papers (Dom.) 1857. (5) Debates: Can. House of Commons, 1870; (6) Report of Sel. Com. on H.B. 1857.

The Committee agreed, however, on the necessity of instituting a strong administration in the Territories and of maintaining its connection with the Empire by uniting at least the more habitable portion with Canada.

Events subsequent to 1857 lent additional stress on the necessity for action. Among these events were the Fenian Raids at various points on the border (7), the unrest among the Indians (8), the movement of American traders across the border, especially in an area the Company claimed no responsibility for (9), and the moribund state of the Company's rule in the Red River Colony (10).

3. Red River Rebellion. At a critical period proceedings
connected with the transfer of the Territories a rebellion of the half-breeds occurred in the Red River. To discuss the causes and incidents of this revolt is outside of our purpose since the western part of the prairie region was not particularly involved. The effect of the Rebellion on the Dominion government's policy was to create immediately the province of Manitoba and to start the Territories off as a separate political entity. The legislation provided for this area from its annexation to Canada on to the setting up of provincial institutions in the two provinces of Alberta and Saskatchewan in 1905 is now to be considered, and with it the circumstances connected with each particular change.

(7) Sessional Papers (Dominion) 1860. Papers relating to the Transfer.
 (8) " " "
 (9) " " the area in pink on the map before the Committee of 1857 in the Cypress
 (10) " " This region, also letter from Sir E. Head to Sir B. Rogers concerning the same.

III.

Dominion Rule.

1. Three Legislating Bodies. It was a statement of Sir John Thompson's that the legislatures of Canada, both Dominion and Provincial, can legislate after all only within narrow limits and that self-government is a relative term (1). The legislation affecting the Territories has its origin in three different sources; namely, The Imperial Parliament, the Dominion Parliament, and the Local legislative body. On occasions the Dominion has had to seek for power to legislate from the Imperial government; as, for example, in the N.W.T. Representation Act, 1885, and the B.N.A. Act 1871 (2). After 1872 a legislative body in the Territories had power to pass laws on local matters specified in the Act of Parliament by which it was constituted.

2. "An Act for the Temporary Government of Rupert's Land". The first Dominion legislation affecting the Territories was the Act of 1868 entitled, "An Act for the Temporary Government of Rupert's Land when united with Canada". It provided for the appointment by the Governor-in-Council of a Lieutenant-Governor, and the latter could be empowered under instructions to make provision for the administration of justice in the Territories and to ordain all necessary laws. The Governor-in-Council might appoint a Council of not exceeding fifteen nor less than seven persons, to aid the Lieutenant-Governor in the administration. The act was to come into force as soon as the Order-in-Council of the Imperial parliament was proclaimed uniting the

(1) Debates H.C. 1891. (2) Debates of House of Commons (Dom)

Territories with Canada. All laws in force were to be continued in force and all functionaries under Company rule continue to function except the Governor (3). The act was renewed in 1870 so far as the Territories were concerned (4), Manitoba having been created a province, and it was again renewed for an indefinite period in 1871 (5). By the Manitoba Act of 1870 it was provided that the Lieutenant-Governor of Manitoba should act also as Lieutenant-Governor of the Territories (6). It was not till 1872 (7) that a Council for the Territories was appointed and no legislation was therefore enacted up to that time to supplement or modify that of the Company regime. In 1872 a Council of five was created (8). By 1875 this had been increased to twenty-one (9).

3. Nature of the Government under the Council of Fort Garry, 1870 - 1875. The premier in introducing the Bill in the House in 1869 spoke of the legislation as being temporary in its nature, as the title indicated; and he judged "that the simplest possible government, namely an appointed Governor and Council would be best suited to the circumstances" (10). It followed, indeed, the British precedents in taking over unorganized territories ^{had been done} as in the case of Canada in 1763. It also continued the Hudson Bay system ^{an appointed governor and council.} of trade. In form it was, therefore, a Crown colony of the Dominion.

4. The North-West Council at Fort Garry--Its Organization. The first Lieutenant-Governor was Adams G. Archibald. He chose a council of three, namely, Messrs. Johnson, Smith and Breland (11).

(3) Statutes of Canada, 1868. (8) Orders in Council 1872.
 (4) do. 1870. (9) Minutes of Council of N.W.T.
 (5) do 1871. Fort Garry 1875.
 (6) do 1870. (10) Debates of H.C. 1869.
 (7) do 1872 (11) Sessional papers (Dom.) 1870.
 (Orders in Council) See Oliver N.W. Page 975.

The Governor stated regarding this:

We immediately proceeded to legislate passing some very stringent ordinances on the subject of smallpox and spirituous liquors. We immediately despatched these laws to the West and appointed an officer or two just beyond the border to carry them into effect.Meanwhile about the 5th instant my books arrived.....and I find that I have been all wrong and that I have been exercising functions belonging to the Governor-General.

This was in November 1870 (12). It was not till March 1873 that the Dominion government named Councillors (13). The liquor legislation of 1870 was ^{then} re-enacted (14). The Council concerned itself with such matters as postal facilities, Indian unrest and administration of law (15). It is chiefly in respect to the recommendations forwarded to the Dominion authorities that the Council was of service to the West. At the last session of the Council on November 23, 1875, Lieutenant-Governor Morris addressing that body reviewed their work, crediting them, besides ^{with} useful legislation, with the suggestions which led to the organization of the Mounted Police, the extinguishing of the Indian title by treaties with the Indians at ^{Carlton} ~~Fort~~ Galton, Pitt, and Qu'Appelle, and the appointment of stipendiary magistrates. "The foundation has been laid," he said, "for peace, security and the advancement of the settlement of the vast region." (16)

IV.

The North-West Council.

1. "The North-West Territories Act, 1875". Its importance.

In 1875 the Dominion Parliament passed the North-West Territories

-
- (12) Sessional Papers (Dominion) 1870. See Oliver: N.W. page 975.
 (13) Orders in Council (Dominion) 1873.
 (14) Minutes of Council, N.W.T. Ft. Garry 1873. (15) do. 1873-1875.
 (16) Minutes of Council of N.W.T. Fort Garry, 1875.

Act, and by proclamation it was brought into force on October 7, 1876 (1). Speaking of this Act, Sir Wilfrid Laurier said in 1905:

This measure has been the charter under which the Northwest Territories have come to their present state of manhood. It has never been repealed. Additions have been made to it from time to time but it has remained and is to this time the rock upon which has been reared the structure which we are about to crown with complete and absolute autonomy. (2)

2. Provisions of Act of 1875. The Act provided for the appointment of a Lieutenant-Governor by the Governor-in-Council and a Council "to aid the Lieutenant-Governor in the Administration of the North-West Territories". Ordinances could be made with reference to taxation for local purposes, property and civil rights, administration of justice, public health and generally on all matters of a local or private nature. The Act itself dealt with the descent of real estate, wills, deeds and the administration of justice, and provided for prohibition of the sale of intoxicants. Certain acts of Parliament of Canada were made applicable to the Territories. The most important provision from the point of view of self-government was that enabling any area of 1000 sq. miles on attaining to a population of 1000 adult inhabitants to be created an Electoral District and elect a member to the Council of the Territories. Whenever the number of elected members should become twenty-one the Council should become a Legislative Assembly (3). Clause 11 relating to separate schools was thus alluded to by the Premier, Hon. Alexander Mackenzie, who introduced the measure:

(1) Orders in Council 1876. Statutes of Canada, 1876.
 (2) Debates, Autonomy Bill. First Reading 1905.
 (3) Statutes of Canada, 1875.

As to the subject of public instruction it did not in the first place attract my attention but when I came to the question of local taxation I was reminded of it. Not having had time before to insert a clause on the subject I propose to do so when the bill is in Committee. The clause provided that the Lieutenant-Governor by and with the advice of his Council or Assembly should pass all necessary ordinances in respect to education, but it will be especially provided that the majority of the ratepayers may establish such schools and impose such necessary assessments as they might think fit and that the minority of the ratepayers may establish separate schools and such ratepayers would be liable only to such educational assessment as they may impose upon themselves.

"These observations," said Sir Wilfrid Laurier in 1905, "were received without a word of dissent from any honorable member on either side of the house." (5)

~~3. Reasons for Act of 1875. The Premier on introducing the~~
bill gave some of the reasons for setting up a separate territorial government (6). The previous council had asked "for large sums of money. The Territories required a firm government. The governor should reside several hundred miles west of Fort Garry for the maintenance of peace or overlooking Indian affairs and generally helping the government to establish law and order throughout the Territories." Numerous crimes had occurred there recently between Indians and American traders. Donald A. Smith and Dr. Schultz, members of the Council and also of the House of Commons approved of the Bill and agreed that the Fort Garry Council was not in a position to govern the territories. Sir John A. MacDonald, the Opposition leader, thought the Council was given too much power and that the previous system was preferable.

(4) Debates House of Commons of Canada, 1875.

(5) do. 1905, Autonomy Bill.

(6) do. 1875

4. Amendments to "North-West Territories Act", 1875-1905.

Dominion legislation affecting the constitution of the Territories has been concerned either with the granting of Representation in the Federal parliament or with amendments ^{to} of the Act of 1875. Following is an outline of the legislation:

- (a) In 1877 the Lieutenant-Governor-in-Council was given administrative powers in addition to his legislative functions (8).
- (b) In 1886 by an amendment by the Imperial parliament to the B.N.A. Act and by legislation of the Dominion parliament the Territories were given four representatives in the House and two in the Senate (9).
- (c) In 1886 also the powers of the Council were enlarged in relation to taxation and the incorporation of companies. (10)
- (d) In 1888 the Council was replaced by a Legislative Assembly and an ~~Advisory Council created to advise the Lieutenant-Governor in matters of finance~~ (11).
- (e) In 1892 the Advisory Council was abolished (12).
- (f) In 1894 an Executive Committee was provided for which became virtually the first Cabinet of the Territories (13).
- (g) In 1897 responsible government as it existed in the provinces was granted by Dominion legislation (14).
- (h) In 1905 the provinces of Saskatchewan and Alberta were organized (15).

V.

Consiliar Government in the Territories *under the Act of 1875*

1. Popular representation. The North-west Territories act of 1875 provided for the addition to the Council of elected members as soon as Electoral Districts could be formed having 1000 adults of white extraction in area of 1000 square miles.

-
- (7) Debates: Canadian House of Commons 1875.
 (8) Dominion Statutes 1877.
 (9) do. 1886, Imperial Statutes 1886.
 (10) do. 1886. (13) Dominion Statutes 1894.
 (11) do. 1888. (14) do. 1897.
 (12) do. 1892. (15) do. 1905.

The first election to be held under this arrangement was that of the District of Lorne in which Mr. Lawrence Clarke was elected in 1881 (1). The elected members increased to 6 in 1883 (2), 8 in 1884 (3), 13 in 1885 (4), 14 in 1886 (5). Along with the elected members sat ex-officio members, the Stipendary Magistrates of the Territories at first two and later three, and appointed members, one in 1877, two in 1878 and 3 from 1883 to 1888 (6). The increase in the number of elected representatives is indicative of the expansion of settlement throughout the West in this period.

2. Influence of Elected Members on the Council. The addition of the elected members had an important influence on the character of the council. For the first five years of consiliar rule political affairs do not figure in the proceedings. (7). The Council indeed, when it was a purely non-elective body as it was between 1877 and 1881 would seem to have been desirous of giving ~~honest~~ ^{the best} services if one may judge by the report of its proceedings. By 1888, ~~however~~ ^{the popular element began to feel}, with such men as Oliver and Ross among its members, ~~With~~ ^{With} the prestige of popular choice to support them, it had become such a body as cause autocrats to ~~lose their sleep at nights~~ ^{wary}. Oliver fathered motions for a uniform system of public schools, total prohibition of liquor including permits and breweries and followed Ross' lead in demanding wider powers for the Council including the abolition of the ex-officio and appointed membership on the Council. (8)

(1) Journals N.W.T. 1881. (2) Ibid, 1883. (3) Ibid, 1884.
 (4) Ibid, 1885. (5) Ibid 1886. (6) Journals N.W.T.
 (7) Journals N.W.T. (8) Journals N.W.T. 1884.

A second effect of the enlargement of the Council by election of members was the more complete organization of that body for its legislative functions. In 1883 Standing committees were formed.

5. First Session of N. W. Council. The first session of the Council of the North-West Territories was begun at Livingstone, Swan River, on the 8th of March, 1877. Lieutenant-Governor Laird addressed the Council outlining the measures which would be laid before the Council for consideration. These were ordinances respecting the protection of buffalo, administration of justice, organization of a Board of Health to combat the epidemic of smallpox and measures respecting deeds and other matters relating to property (9).

4. Second Session. The second session, opened at Battleford on 10th of July 1878, dealt with business of a similar nature. A resolution was forwarded to the Dominion Government making recommendations in the matter of issuing scrip to the half-breeds. This was a matter which recurs as an item of business session after session both in the time of the Council and later under the Assembly. A memorial of the same tenor was forwarded from the Council in the session of 1881 also (10).

5. Session of 1883. In 1883 the headquarters of the Territorial government were moved to Regina. An ordinance was passed at this session providing for the incorporation of towns and one in 1884 was passed providing for the organization of rural municipalities and of villages, with councillors either elected at large or by the ward system. The legislation seems

(9) Journals N.W.T. Council 1877, Ordinances N.W.T. 1877.

(10) do. 1878, 1881, do. 1878, 1881.

to have been premature, for of the ten rural municipalities named in the ordinance only four were formed and two of these later disorganized. Standing committees on municipal matters were named in each session from 1883 on (11).

6. The session of 1884 met under the shadow of impending revolt of the half-breed population on the South Saskatchewan. The seriousness of the situation was, however, not realized by the officials of the ^{Province} Government. The Council on motion of MacDowall and Jackson resolved that "in the absence of more definite information this Council desires to record its sense of the justice of the demand of the half-breeds of these Territories for concessions in the matter of land-grants". Messrs. Oliver and Ross later moved for the rescinding of this but their motion was negatived (12).

7. The North-West Rebellion 1885. It is not our purpose to discuss the events of the Rebellion in the Saskatchewan district in 1885. The rebellion was not an incident in the development of self-government in the Territories but was economic and racial in its origin. The disturbance, however, can be used to illustrate the failings of the Federal Government in relation to Territorial matters, and the event had some effect in hastening the grant of representation for the Territories in the Ottawa House. The menace of Indian attack which had been in certain districts cause of retardation of settlement, was now removed, and progress of settlement was very rapid in succeeding years.

(11) Journals N.W.T. Council, 1883. Ordinances N.W.T. 1883.

(12) Journals N.W.T. 1884.

Canada and its Provinces Vol. 19 p. 156.
Report of Public Works Dept. N.W.T. 1901.

8. Government Neglect. The criticism of the Opposition leader, Blake, was most telling when he read a letter from the Secretary of State of the 8th of June, 1885, in which ^{letter} the said:

If the half-breeds had serious complaints against the government the ordinary method of petition was open to them as to every free citizen. They have not availed themselves of it.

Mr. Blake quoted a long line of petitions from individual half-breeds, from settlements, resolutions of public meetings, resolutions of North-West Council, petitions to the Governor-General, the Lieutenant-Governor, the Senate and House of Commons, deputations to the Lieutenant-Governor, ^{as agents of the half-breeds to present their claims} and also warnings of Indian uprisings from Col. Houghton, various officers of the Mounted Police, the newspapers and the clergy (15) ^{to prove negligence on the part of the Government.}

9. Demand for changes in Territorial Constitution. Dissatisfaction was expressed more and more strongly with the limitations on the power of the Council in Executive matters. The session of 1885 appointed a deputation to wait on the Government and secure their reply on 27 different points of their memorial. Thirteen of these were granted by Sir John A. MacDonalld. They related to a number of constitutional and economic matters. Habeas Corpus was made applicable to the Territories. The Council could now incorporate companies subject to Restrictions. All necessary steps would be taken to survey certain trails asked for. Settlement of squatters and half-breed claims was being expedited. Freight rate questions were given consideration. A start was made on improvement of navigation on the Saskatchewan. Towns system of

(15) Debates: Dominion House of Commons 1885.

land registration introduced. Provision was made for representation in Senate and House of Commons (14).

In the session of 1886 a series of twelve resolutions was forwarded to Ottawa. The requests were not of such a sweeping nature as ^{those of} the former year, ^{they} asked for the ballot in Dominion elections, condemned land monopolies, and drew attention to half-breed claims and rebellion losses not yet attended to (15).

10. Early Newspapers-"The Saskatchewan Herald". To gauge the state of political feeling in the period under the rule of the Council is somewhat difficult. The earliest newspaper in the Territories was the Saskatchewan Herald founded in 1878. The first issue of the Edmonton Bulletin was in 1880. The MacLeod Gazette was founded ~~1870~~. The early issues of the Bulletin edited by Frank Oliver make little comment on Federal or Territorial political questions. The Herald located at the seat of Government was independent so far as party politics was concerned. As early as 1879 the paper pointed out the defects of the Territorial constitution. In the issue of Dec. 1, we have the following:

Some of the machinery of self-government has been provided, and while it is productive of good results it falls far short of meeting the requirements of the country, and with the expected increase of the population its insufficiency will be more marked.

Take the matter of schools, for instance. We have neither the means to carry them nor the power to organize them on a satisfactory basis. The law permitting the organization of municipalities and through them of schools is too restricting. It requires a population of 1000 adults within a given area before the right of self-government and self-taxation can be exercised. The standard of population is too high

(14) Journals N.W.T. Council, 1885, 1886.

(15) Journals N.W.T. Council, 1886.

The only money available for local purposes in the Territories is that derived from fines for infraction of the Territorial Ordinances, but the pittance derived from this source is too insignificant to be worth mentioning.

The government spends much money, but it is for Dominion purposes, the Indians, the Lieutenant-Governor, and the postal service. It is only fair to grant 80¢ per head of the population as in the provinces. (16)

11. Conditions in the West, 1885. Lieutenant-Governor Laird had in 1878 taken up the question of power to levy taxation for school and municipal purposes with the Government at Ottawa. It was explained that it was unconstitutional for a non-representative body such as the Council was, to levy taxation (17). "No taxation without representation" the issue in the American Revolutionary War was no doubt in mind. He was told, however, that those wishing school facilities could be formed into corporate bodies. This would make payment of school assessments voluntary and would be a poor substitute for taxation (18).

The shortcomings of the Dominion administration of its affairs in the West received some attention in the columns of the Herald in the years 1879 - 1885. This would be a subject outside of our discussion were it not evidence that representation in the House for the Territories was desirable, to keep the Ministers in touch with conditions there. Regarding appointments to the Indian reserves the paper says:

It is currently reported in Ottawa that the government has appointed three or four farmers to go to the North-West to teach the Indians farming. Had they been selected from farmers in the North-West who understood the language of Indians, it would have saved both the travelling expenses and the salaries of interpreters (19).

(16) Saskatchewan Herald, Dec. 1, 1879.

(17) Debates: Canadian House of Commons 1875 (Hon. David Mills).

(18) Journals of N.W.T. Council of 1877 (Letter Hon. D. Mills).

The years 1879 to 1885 were in the region of Battleford characterized by constant threat from the Indians. The fugitive Sioux from the States had been the cause of the depletion of the buffalo in Canada. The Indians along the Saskatchewan were thankful for the government's benevolence but starving. The Sarcees and Blackfeet have returned from the Battle River and their condition is deplorable in the extreme" (20).

In an article August 11th headed "The Indian Muddle" the Herald has the following: (21)

The time for annual payments here having arrived the Indians of this agency assembled as usual to get their money to pay their debts for supplies, and then set out for a hunt upon the plains. Although it is well known that these people would be in, indeed the requisition for money was made more than six months ago, it has not been sent, nor any advice concerning it.....In February last a number of agents were appointed but up to time of writing--9th August--not one of them has put in appearance.

In further articles on Indian Affairs ^{he} points out the harmful effect in his opinion and the great expense of supplying bacon rather than beef on the reserves, the wastefulness of issuing rations of flour, rather than bread, but above all "the dilatory and expensive mistakes in reference to the forwarding of supplies which cause the Indians and freighters to be kept waiting often for weeks".

The disturbances among the half-breeds in 1885 are dealt with by the Herald in its news columns but very little is given by way of comment. The accepted notion in Eastern Canada and elsewhere outside of the Territories was and is still that the revolt was due to the well-founded grievances of the half-breeds in the matter of the surveys and title to their lands, and partly also to their objection to the necessity of changing their mode of life from that of hunters to that of agriculturalists.

(20) Saskatchewan Herald, June 21, 1879.

(21) Saskatchewan Herald, August 11, 1879.

These may have been causes of unrest but there was a general feeling among the residents in the vicinity of Batoche and Prince Albert that certain interests instigated the resort to arms. This feeling is voiced in the Herald by the Editor who himself volunteered for service in the Canadian forces:

The revolt of today had its origin at the hands of men who had neither grievances to redress nor sympathy with the men whom they sought to use as the instruments of furthering their ends, the principal of which was their enrichment through the expenditure of money in the work of quelling the revolt (22).

The necessity of representation at Ottawa at this stage is thus dealt with by the Herald at an early period in the discussions on these matters:

One of the greatest drawbacks suffered in the North-West is the difficulty of pressing upon the Dominion Government the consideration of questions affecting the prosperity of the Territories. The tide of immigration is setting in so fast and promises speedily to assume such proportions that changes so great as to seem almost of a revolutionary character must soon come about.....

The time has come when the Territories may fairly claim one or more representatives on the floor of the House of Commons. Much of the legislation of coming years will have reference to the North-West.....As it is there is no one on the floor of the house to whom an appeal can be made as to a question of fact or for information on any particular point. (25)

Reports of public meetings in various parts of the Territories in reference to the needs of the country are given in the Herald.

The following is its comment:

A series of public meetings is being held in Assiniboia and at other parts of the south to discuss the political situation of the country and to devise means to secure a change in respect of things that are needed to the due development of the Territories. Representation in Parliament is one necessity in which we nearly all agree and forms one of the principal points urged. As it can only be granted after Imperial Legislation has been had in amendment to the

B.N.A. Act every effort should be made to insure immediate action on the part of the Dominion Government to bring it about. The other point most urgently advocated is the Hudson's Bay Railway.....

The Meeting (at Moosomin) was unanimously in favor of getting parliamentary representation at the earliest possible date.....

In this district (Battleford) there are not at present any special local grievances agitating the public mind, but in the matter of the vital public questions being discussed elsewhere in the Territories there is the fullest sympathy (24).

This was ^{the} Editor's view on December 12, 1884, but in the issue of December 26 he condemned starting of unfounded rumors regarding rebellion, and assured his readers that parliamentary representation would be accorded by Sir John A. MacDonald, and also an amendment of the Territorial Act. On January 15, 1885, we have this statement:

The agitation in the South in favor of securing greater privileges in the Territories has in some places assumed so much the style of the demagogue that many who first took part in it have withdrawn from connection with it.

^{information} This is in line with a letter from the headquarters of the Manitoba Farmers' Union which fell into the hands of the Government to the following effect: (26)

Dear Sir: I think that there has not been since the commencement of the agitation a better time to strike than the present. Everything seems ripe for it. I am certain seven-eighths of the people of Winnipeg are in our favor and I am certain four or five hundred good men will accomplish our object without any difficulty whatever. The fact of the matter is this, that we have nothing to resist us, the military here is nothing more than a pack of boys and we have easy access to the store rooms. We had a small meeting tonight and the parties present were unanimous in favor of making a strike at once. Now I think that if we delay we will not only be losing ground and the thing will never be accomplished.

(24) Saskatchewan Herald, Dec. 12, 1884.

(26) Sessional Papers: North West Rebellion 1888 (No. 52, page 28)

The above facts show that there was a disposition in some quarters to create a situation in the west similar to that of 1837 - 38 in Upper and Lower Canada. Happily the progress towards self-government developed along safe constitutional lines, and among the influences in this direction were the newspapers of the Territories.

11. "The Bulletin". Frank Oliver, the proprietor of the Bulletin stood for election again in the Electoral District of Edmonton in 1885. In his election manifesto he concluded (25):

I shall press for such changes in the North-West Council as shall make every member directly responsible to the people.....for the extension of the powers of the Council to the limits allowed the Legislatures of the Provinces, for a revenue from the Federal treasury on the same terms and in the same proportionate amount as is allowed the several provinces, and for representation of the people of the Territories in the Federal Parliament.

In the absence of representatives for the Territories at Ottawa, he was prepared to speak for them in regard to the claims on the Federal Government of the early settlers who had occupied their lands before the establishment of a land office and of Half-breeds entitled to consideration the same as those of Manitoba. Mr. Oliver was defeated at this election ^{probably} owing to his stand along with Ross on the resolution of the Council in 1884 re half-breed claims which he regarded as excitement to revolt (26).

12. The reforms of 1885. The disturbances of 1885 lowered the prestige of the government of Sir John A. MacDonald and it was in a mood for concession towards Western feeling. Of the 27 demands made by the Council in 1884 seventeen were granted. Among these were the creation of a Territorial Court of Appeals,

(25) Bulletin, Edmonton, June 22, 1885.

(26) See note 12, above. Oliver's stand on schools, the liquor question and this resolution was always used against him among the 3 ranch voters. See "Bulletins" Oct. 1904.

the application of Habeas Corpus Act to the Territories, Representation in both Houses of Parliament, and other matters relating to the administration of Dominion Affairs in the territories (27).

13. F. W. G. Haultain. In the Council of 1887 Mr. F.W.G. Haultain took his seat in Council as representative for MacLeod. This may be said to mark an epoch in the affairs of the Territories, for it was largely under Haultain's leadership that later reforms were demanded and secured (28).

VI.

The Legislative Assembly.

~~1. Provisions. In 1888 a Bill was introduced in the House~~
of Commons by Sir John A. MacDonald making radical changes in the constitution of the territories. The purport of the legislation is thus stated in the words of the prime minister:

It provides that the North-West Council shall have the character of an Assembly having not less than 21 nor more than 25 members. A schedule of constituenciesis attached to the bill. It is proposed that the nominated members of the council shall cease but as at present there are no legal men in the council, nor is there much change of there being many legal men in the first assembly. It is proposed that the government may have power to appoint certain legal experts not exceeding three who shall sit and assist in the drafting of bills and have power of discussion but not of voting, something like the representative delegates of the Territories in the United States Congress. This provision is only intended to apply to the present term of the legislative assembly: it is hoped that in the second term some legal gentlemen may find their way into the Assembly and enable us to do away with that provision. It is proposed to extend the term of the legislature from two to three years. The qualification will remain the same, household suffrage with the addition of an income suffrage. The Lieutenant-Governor shall no

(27) See 14, above. (28) Journals of Legislative Council of N.W.T. 1887.

longer sit with the council or assembly but shall as in the provinces be a separate estate and the assembly will be presided over as this assembly by a speaker. (1)

2. Opinion on the Bill. This bill was duly passed by the Houses of Parliament. It fell short of the demands of the N. W. Council deputation in three particulars. There was no provision made for a responsible executive. There were still nominated members, and the suffrage was more restricted than in the provinces (2). The criticism of the opposition in the House was along those lines. In reply Sir John A. MacDonald stated:

I must tell the hon. gentleman that in the North-West they have a most holy horror of responsible government. The representations are, I may say, without exception against the premature introduction of responsible government. If the hon. gentleman were in the position of the minister of the interior he would find the one cry is: Do not give us at all at present a government of that kind. (3)

Again:

From time to time we have had a series of resolutions passed by the mingled council in which parties were nominated and partly elected. These are contradictory in themselves and cannot be supposed really to represent the feelings of the people. (4)

3. The Advisory Committee. Later the premier introduced by way of amendment an additional clause providing "that the Lieutenant-Governor shall select from among the elected members three persons to be an advisory committee in matters of finance. When they have settled upon the appropriation of the fund to the territory the statement will go down by message from the Lieutenant-Governor; but it cannot go down unless it is carried by the assistance of the advisory committee". (5)

(1) Debates, Can. H. C. 1888. (2) Statutes of Canada 1888.

(3) Debates, Can. H.C. 1888, pages 454, 1174.

(4) Debates, Can. H.C. 1888. (5) Debates, Can. H.C. 1888.

Questioned regarding legal experts Sir John stated:

It was suggested that there might perhaps be a law clerk appointed to assist the new Assembly, but the objection to that is that it would be very difficult to get a man fit to hold that office who would be of any real value to the Legislative Assembly. The fact that a man is a lawyer and perhaps a good lawyer gives no assurance that he is an adept at legal phraseology as a parliamentary draughtsman. Judge Richardson is one and I may say Judge MacLeod is another.....These two judges would be sufficient, but it has been thought well to appoint a third.....It is the intention to ask the Governor-in-Council that Judge Ruleau should also be appointed. The appointment of these gentlemen is only to last during the term of the legislature for which they are appointed. (6)

4. Sir John A. MacDonald and Responsible Government. The discussion on the bill was largely centred on the question of the premier's statement that the West had "a holy horror of responsible government" and as to this petitions were quoted pro and con; and also in the matter of the provisions of the bill relating to the liquor traffic. Incidentally a bitter debate arose over the provision for open balloting in Dominion elections in the Territories in the Representation Act, 1886, and the delayed elections, both of which had been used to a scandalous extent, so it was alleged, to favor the government candidates. (7)

5. First Session of Assembly. The first session of the first Legislative Assembly of the Territories opened on 31st of October, 1888. (8) The proceedings for the first time in a Territorial legislature observed the formalities of a parliament. A speaker being elected the Lieutenant-Governor Hon. Joseph Royal made his address. On the second day of the session His Honor gave the names of the members he had chosen

(6) Debates, Can. H. C. 1888. (7) Debates, Can.H.C. 1888.
 (8) Journals of Leg. Assembly 1888.

for his advisory Council. These were Messrs. ^{Haultain} ~~Haultain~~, Jelly, Sutherland and Mitchell. An address in reply to the Governor's speech was adopted and Standing Committees were appointed. The constitutional matters which came up before the Assembly were not in this session controversial. The Assembly drew up a memorial to the Dominion government laying before that body its opinion of the insufficiency of the powers of the Assembly. It pointed out "that there is no permanent responsible body whose business it is to prepare legislation for the consideration of this assembly and in consequence its legislative functions cannot be satisfactorily performed" (9). The assembly asked therefore for the grant of full responsible government. The assembly included other recommendations in their memorial relating to half-breed claims, the cutting of timber and fuel, etc. In a further memorial the Assembly asked "that the amount usually voted by the Dominion Parliament for the expenses of government, etc., in the Territories should be given in the form of a definite grant instead of a rate which lapses at the end of the fiscal year". They considered that they were entitled to a sum each year proportionate to that of the provinces, the more so because the requirements of a developing country were great and the fact that they contributed more largely than other parts of Canada to the revenue (10).

6. The Second Session of the Assembly. The second session of the first assembly met in October 1889 and its proceedings were marked by stormy debate and an acute

(9) Journals of Leg. Assembly 1888. (10) Journals of Leg. Assembly 1888.

political crisis. It was in fact the first of series of such sessions. Symptoms of a difference of opinion between Lieutenant-Governor Royal and his Advisory Committee were shown when on October 31st on motion of Mr. Haultain, seconded by Mr. Sutherland it was resolved that a committee report on (1) The Position of the Advisory Council and the Assembly with regard to the Dominion Grant, (2) The mode in which the said grant is made, (3) what recommendations (if any) should be made by the Assembly to the Lieutenant-Governors as to the North-West vote for next session (10). On November 5 the Lieutenant-Governor informed the Legislature that "the previously selected members of his Advisory Council having resigned, he had selected an Advisory Council in finance, namely: Messrs. Brett, Betts, Jelly, Richardson" (11).

7. A Crisis. Mr. Haultain in his letter of resignation explained his reasons, namely, that the Lieutenant-Governor had not acknowledged the right of his Council to claim responsibility for all acts of the administration. During the first session his Honor had allowed this as a concession, but in the present session the Council found they would be "open to censure for at least grave faults of administration". They would be assuming responsibility without exercising control (12).

It was soon apparent that the stand of Dr. Brett and his council was not supported by the majority of the members. On November 9th the Assembly passed a vote of non-confidence (13). Dr. Brett and his colleagues then tendered their resignations to the Lieutenant-Governor. This the latter would not accept

(10), (11), (12), (13) Journals of Assembly N.W.T. 1889.

and his reasons are stated at some length in a letter in reply to that of Dr. Brett. The Lieutenant-Governor said:

His very liberal concessions had failed to satisfy the Assembly and impossibilities had been imperatively insisted on both by the House and the first Advisory Council.....Under these circumstances there was no other recourse left open.....but to enter within the safe lines of the law. For that reason he would not accept the resignations tendered (14).

The minority party supporting the Council now sponsored a motion:

That the Assembly recommend to his Excellency the Governor-General-in-Council that full responsible government should be given to the Territories with the other powers in addition to those already possessed by the Assembly, granted by the British North America Act to the Province of Canada with the exception of the power to raise money on the public credit. (15)

This did not come to a vote. On the following day the house voted "that the house do not consider of any further supply to be granted to Her Majesty until the supply voted last year has been properly accounted for" (16). On November 15th a resolution was carried "that an humble address be presented to his Honor the Lieutenant-Governor praying that he will be pleased to accept the resignation of the present Advisory Council and to select an Advisory Council which will possess the confidence of the Assembly" (17).

On November 11th R. G. Brett tendered the resignation of the Council stating that as a Council they did not possess the confidence of the Assembly (18).

9. Continuation of the political crisis, 1890. It will not be possible to enter fully into the details of the political strife which was carried over into the session of 1890. The

Lieutenant-Governor had formed a new Advisory Committee headed by Dr. Brett during the recess. On the meeting of the Assembly in October 1890 any proposals of the members of the Committee were promptly voted down. They were not permitted to introduce any legislation, and their names were left off all the standing committees. The Lieutenant-Governor conveyed a message to the Assembly explaining his stand, namely that he was following out a recent ruling of the Minister of Justice. The Assembly in an address in reply pointed out that the minister had not referred to the matter of maintaining in office an Advisory Council which had not the confidence of the Assembly. Resolutions were passed at this session for a revision of the Act governing the Territories, and for a larger allowance from the Federal treasury (19).

10. The Lieutenant-Governor's Position. On proroguing the Assembly on 29th of November, Hon. Joseph Royal said:

I cannot but regret the unfortunate difference of opinion which has arisen respecting the interpretation to be placed upon the portion of our constitution which relates to the powers of the Advisory Council, and I desire to again convey to you the assurance that while I cannot for reasons already communicated to you accede to your claim to control the expenditure of the moneys voted by the parliament of Canada for the government of the North-West Territories I have always been thoroughly in accord with you in your contention that you are entitled to control through an Advisory Council possessing your confidence the Expenditure of the Territorial Revenues. I also regret that owing to a majority of you withholding your confidence from any council which does not claim for you the control of Dominion funds I have had to retain the services of a council whose views on this question were not those of the majority (20).

(19) Journals of Leg. Assembly N.W.T. Vol 2, 1886.

(20) Journals of N.W.T. Assembly 1886.

VII.

The Executive Committee.

1. Amendment to N.W.T. Act. In the session of the Ottawa House in 1891 in response to the representations of Dr. Brett at Ottawa, the Minister of the Interior introduced amendments to the North-West Territories Act. In explanation of its terms the Minister said:

It provides for the election of members of the Legislative Assembly for three years making clear a doubt that existed about the provision of the bill of last session on that point. It proposes to abolish the advisory council and the legal experts. It gives the Assembly all the powers it had previously by Order-in-Council, in addition to the disposition of the liquor question. There is a clause providing that a lump sum shall be placed at the disposal of the Legislative Assembly. (1)

2. Explanations of the Changes. Speaking on Section 3 of the Bill Sir John Thompson said:

The power of dissolution ought to be given. It is proposed that that power should be vested in the Lieutenant-Governor of the Territories. Honorable gentlemen opposite are of opinion that that will make him a despot. I have only to say that if the Lieutenant-Governor is a man of that disposition.... ..he should be dissolved himself.....While the powers of the North-West Territories and the functions of their government are limited this government is the Executive of the North-West Territories. There must be an executive somewhere. We do not propose that there should be an executive in the North-West Territories itself. (2)

3. Opinions of the Bill. Mr. Dövin (Assiniboia) said "The Bill as it goes is a good bill." He asked, however, for grants of land in aid of railways and schools under Territorial control. Mr. MacDowall of Prince Albert said:

As representing a constituency in the Territories the people will be willing to accept this as a temporary measure.

(1) House of Commons Debates 1891. Statutes of Canada 1891.

(2) Debates: House of Commons 1891, page 3926.

Mr. Davis (Alberta) said:

I am satisfied that this bill meets with general approbation in the North-West Territories.

These members had been elected as supporters of the Government.

4. Confusion in the Interpretation of the Legislation.

The confusion in relation to the interpretation to be placed on the amending Act of 1891 was greater than that of the preceding Act. This confusion seems to have extended even to the ideas of the Ottawa authorities. Mr. Dewdney said in the debates that the Advisory Council was to be abolished. The Deputy Minister of Justice in a lengthy opinion on the subject advised the Interior Department that that provision of the act of 1891 had not been repealed (3). The Lieutenant-Governor on opening the session of 1891 stated that it was not his intention to appoint an Advisory Council unless the Assembly by resolution requested him to do so. The Assembly were not, however, satisfied to be without an executive committee of some sort. They proceeded by Ordinance of the Assembly to constitute such a body and assign to it certain duties.^(a) This ordinance was reviewed by the Minister of Justice in a letter dated 29th September, 1892. The clause he held in question was worded thus:

There shall be a Committee to aid and advise in the Government of the Territories so far as the same is vested in the Lieutenant-Governor and the Legislative Assembly.

The functions he considered should have been "limited to matters of finance and expenditure. He admitted in his report that it was intended to abolish the Advisory Council by the legislation of 1891 and "to leave matters of expenditure to be regulated by the Assembly or by a Committee thereof". He advised that

(3) Oliver N.W. p. 1157, Journals Leg. Assembly N.W.T. 1891.

(a) Journals N. W. T. 1891

His Honor might constitute that committee his Advisory Council under the Act of 1888.....In the opinion of the undersigned (Minister of Justice) this Ordinance is ultra vires of the Legislature of the Territories, excepting.....in relation to the expenditure of Territorial funds and such portion of any moneys appropriated by Parliament for the Territories as the Lieutenant-Governor is authorized to expend by and with the advice of the Legislative Assembly or of any Committee thereof.

The letter moreover conveyed a sharp reprimand from the Ottawa ministers directed to Lieutenant-Governor Royal. It stated that at the time the Legislature was considering the Ordinance he was informed it was beyond its powers, and that he was "expected to conform to the Statutes of Canada and could not be relieved from responsibility by the circumstances of his having advisers", "but that his Honor was pleased to give the Ordinance his assent, nevertheless, it has not been considered necessary to advise your Excellency to disallow the Ordinance" was the final decision of the Minister, in a letter which is a strange mixture of admissions of legal blundering, warnings to obey the statutes of which he himself did not know the meaning, and of final resolve to leave Governor and Assembly to their own devices (4).

A Territorial Cabinet.
5. The Session of 1891. A general election for the Assembly took place in the Territories in the autumn of 1891 (5). The composition of the new House showed few changes from the previous Assembly (6). Important events in the political evolution of the Territories took place at the session which commenced in December.

1. An executive committee was appointed composed of Haultain, Tweed, Neff and Clinkshill.
2. A precedent seems to have been made that each district should be represented on this committee; namely, Alberta, Saskatchewan, East and West Assiniboia.

(4) Letter from Dept. of Justice to Dept. of Interior, Dec. 7, 1891. (Journals of N.W.T. Assembly 1892, Oliver N.W. p.1150).

3. One member took up his permanent residence at the seat of Government. He was in fact the premier. The first resident committeeman or premier of the territories was Haultain.
4. A memorial was forwarded to the Prime Minister and Minister of the Interior relating to changes deemed necessary in the method and amount of the Dominion appropriations. The chief demands were for a fixed subsidy, for the amounts to be increased according to census taken every four years. A calculation on the basis of population and grants to Manitoba would show \$368,723.75 as the annual subsidy for the current year, in place of \$232,410 which was granted. They pointed out the necessities of the matter of education and the unfortunate result of the lessening of the school grants of the previous year (7).

In the recess Haultain visited Ottawa to press the claims of the Territories. He succeeded in securing a lump sum in the way of a Dominion grant although not a subsidy as he had requested. The items were subject to the approval of the Dominion government but the expenditures otherwise under the control of the Assembly (8).

6. The Session of 1892. The second session of the Assembly was called for August 1892. A revolt against the leadership of Haultain was led by Cayley, member for Calgary. The ostensible cause of their attacks was that for four months there had been no member on the Executive appointed for Saskatchewan (after the resignation of Clinkskill) (9). Betts of Prince Albert moved a vote of non-confidence in the Executive which was carried by a vote of 13 to 12 (10). Much to the surprise of the majority Ross now resigned the speakership in order to support Haultain (11). A deadlock occurred over the election of a new speaker, and the Lieutenant-Governor prorogued the Assembly by proclamation (12).

(9) See newspaper reports below.

(10) Journals N.W.T. 1892.

(11) do.

(12) do.

7. The Crisis of 1892. Several points of a Constitutional nature were much discussed in relation to these events. In the first place Ross was much criticized for taking a partisan stand after he had been elected speaker (13). In the second place the Lieutenant-Governor's action in closing the session was in certain quarters condemned (14). In the third place the appropriations were by law now entirely under control of either the Governor-in-Council or the Lieutenant-Governor under the advice of Cayley and three colleagues (15).

8. Opinions on the Crisis. The comment of the press of the Territories was, on the whole, favorable to Haultain. Cayley was supported by his own organ "The Calgary Herald" (16). The Calgary Tribune said:

In Alberta the feeling is strong that the session has been simply wasted owing to the inconsiderate ambition of three or four members. (17)

The Bulletin, Oliver's organ, spoke in the same strain. The Qu'Appelle Vidette explained some of the underlying motives of Haultain's opponents:

The vote seems to have been on general principles. The only attempt at justification for it was that the District of Saskatchewan was not represented on the Executive during a period of about a couple of months. We think, however, the solution would be found if it were possible to divine the secrets of the minds of the "ignoble thirteen" in the presumption that the late advisory council, the separate school supporters, and two or three other minor lights who are ambitious to shine as members of the executive Committee entered into a conspiracy to accomplish their various little objects. (18)

The Regina Leader, which spoke for Mr. N. F. Davin spoke of it

(13) Explanation of Ross in House Journals, 1892.

(14) See below.

(15) See below.

(16) Herald, September 1892.

(17) Tribune, September 5, 1892.

(18) Vidette quoted in Bulletin, Sept. 12.

as a lesson which Mr. Haultain should heed in the matter of tact, and spoke of the ill effect of the incident on public business and on the eastern mine (19).

9. Haultain's Position. Another session of the Assembly was called for December 7th, 1892. Cayley and the colleagues resigned previous to the session, a candidate of their party having been defeated in ^{the} a bye-election ^{the election of Wallace} of A new executive appointed on the floor of the House consisted of Haultain, Neff, Tweed and Mitchell (20). An Amendment by Clinkskill that the Executive be chosen so as to include representatives from both parties was defeated 14 to 11. This vote made Haultain's supreme in political affairs in the Territories, a supremacy he maintained for the next thirteen years (21).

The comment of the "Edmonton Bulletin" on the crisis would go to show that a belief prevailed in the minds of many that the Lieutenant-Governor gave aid to the opponents of Haultain. It says:

While the expense of the extra session is very considerable and is clearly a waste of public money, it would be unjust to saddle the blame of this waste on the whole of the members of the Assembly. It is the result of the efforts of certain members to grasp power to which they were not entitled either by numbers or ability and of the assistance improperly given them by the Lieutenant-Governor in proroguing the House before the completion of the Session. (22)

The opinion of the "Bulletin" and supposedly that of Frank Oliver, a supporter of Haultain's in the Assembly is thus stated in referring to Haultain's capability: (23)

Should a man who had been successful to the highest degree in the conduct of public affairs, against whose honor, personal or political, nothing was or could be

(19) Regina Leader, Aug. 25. (21) Journals N.W.T. 1892.
 (20) Journals N.W.T. 1892. (22) Bulletin, Dec. 21, 1892.
 (23) Bulletin, Nov. 24, 1892.

said, be turned out of power simply because he would not and could not favor, flatter, and deceive. And on the other hand should another man be elevated to power who had shown himself to be capable of the blackest ingratitude (Cayley) and the most atrocious double-dealing simply because he had a smoother tongue and a more oily manner, In these days of degenerate politics what the country needs first is honor and honesty. The man who would not swerve from the straight course to retain office is the man the country needs in office.

Commenting on the significance of the Wallace election in which the Haultain candidate was elected, the "Bulletin" interprets it as a rebuff for Lieutenant-Governor Royal.

There was the question of the privileges of the Assembly against the prerogative of the Lieutenant-Governor. The electors of Wallace declare by an unmistakable majority that the thirteen members of the Assembly who asserted that its rights had been infringed by the Lieutenant-Governor's ill-timed prorogation was right and that His Honor was wrong and they have sent Mr. Grainger to the Assembly to say so for them. (24) *Grainger*

We have here a significant parallel pointed out between this period of the Territory's struggle for self-government and that of parliament against the Stuarts before 1640 or that of the Reformers of Upper Canada previous to 1838.

Regarding the effects on ^{*the finances of the Territory*} financial of the deadlock and prorogation the following newspaper quotation makes plain the situation:

The Dominion Government acting on the initiative of the Auditor-General refused to recognize the Cayley Executive and stopped credit to them as regards Federal funds which had been placed at the disposal of the Assembly by Order-in-Council passed in July last. The immediate result of this was to transfer the Federal funds back to the Department of the Interior to be expended as in the ante-responsible days through the Lieutenant-Governor, and a minor officer of the Interior Department and neither representative nor responsible to the people of the country.....Cheques issued from Regina on the Federal

fund have been signed, not by the Governor and member of the Executive committee as under the Haultain administration but by the Governor and his secretary. (25)

10. Session of 1892. The Assembly was convened again in the autumn of 1892. The ordinance relating to the Executive Committee with which Sir John found fault was rescinded at this session (26). The House, however, passed the following resolution to be transmitted by telegram to the Minister of the Interior:

That this House claims the right of the House through the Committee to advise the Lieutenant-Governor in relation to all executive acts and appointments made necessary by Territorial Ordinances. (27)

11. Session of 1893. In the session of 1893 Haultain explained his position in moving his vote on supply, with regard to the estimates placed before the House. These were not the work of the committee but had been formed by His Honor the Lieutenant-Governor who had submitted them to Ottawa for approval. These estimates were not in all respects approved by the Executive Committee. Haultain voiced a strong protest against the Lieutenant-Governor's action in this matter (28).

12. Concessions. That Haultain and his friends had won in the contest with the Lieutenant-Governor and his superiors at Ottawa was apparent at the close of the last session of 1892 when the Lieutenant-Governor used the constitutional formula which had not been used since 1888:

His Honor the Lieutenant-Governor doth thank Her Majesty's dutiful and loyal subjects, accepts their benevolence and assents to this bill in her Majesty's name.

Lieutenant-Governor in his farewell address to the Assembly said in part: (29)

(25) "Moosomin Courier": Quoted "Bulletin" Dec. 21, 1892.
 (26), (27), (28), (29) Journals of Legislative Assembly 1893.

When on the 4th of July 1888 I was sworn in as Lieutenant-Governor of the North-West Territories the functions of that office were as totally different from those of the Lieutenant-Governors of the provinces as they will be from those to be performed by my successor. I was responsible to the Privy Council alone for all my executive acts done in the Territories. The Assembly had hardly a voice in the government of the country and the Lieutenant-Governor was practically a political Commissioner under whose direct supervision and authority the affairs of the Territories were conducted and administered.

Now all this has been materially changed and hence my satisfaction.

The Legislature today practically enjoys the rights and privileges of self-government. (30)

13. Amendment to the Territorial Act. The Lieutenant-Governor's remarks were the forecast of an amendment that was made in the North-West Territories Act in 1894 by the Dominion parliament to make it conform more closely to the sentiment of the Assembly. It was as follows: (31)

The legislative assembly may from time to time appoint a committee of four persons from among the elected members thereof to advise the lieutenant-governor in relation to the expenditure of territorial funds and of such portion of any moneys appropriated by Parliament for the Territories as the Lieutenant-Governor is authorized to expend by and with the advice of the Legislative Assembly or of any committee thereof.

The said committee shall be styled the Executive Committee of the Territories and the members thereof shall severally hold office until their successors are appointed.

14. ^{Amendments on} Explanations of the Bill. The Hon. Thos. Daly, the Minister of the Interior in supporting the amendment said in part:

It seems to me the feeling on the part of the present Council as well as of the Legislature is that the present system is preferable, that they do not want responsible government. (32)

(30) N.W.T. Assembly Journals 1893.

(31) Statutes: Dominion of Canada, 1894.

(32) Debates: Dominion House of Commons, 1894.

Mr. Mills (Bothwell) said:

It seems to me that what we ought to do with regard to public moneys expended in the Territories under the supervision of the Territorial Government is to give them a lump sum and let them decide how these moneys shall be distributed and for what purposes they shall be employed. I am quite sure that any member of the House who will take the trouble to look over the appropriations for schools will see that it is out of all proportion to similar expenditures in any other province in the Dominion. There cannot be the same interest in the use of money that there would be if a larger sum were appropriated by direct taxation or in some other way by the people themselves. We are practically keeping.....the legislature in leading strings and preventing responsible government from developing (33).

15. "Keeping the Legislature in Leading Strings". This statement of Hon. David Mills is quoted here both to exemplify the attitude of many of his party and to draw attention to the fact frequently commented on at the present day that westerners are more in the habit of looking to the government for grants than people of the other provinces. On that account possibly, municipal institutions have not been so distinct a feature of rural organization as in the Eastern provinces. It can be fairly argued that "holding the legislature in leading strings" for so many years is accountable for the absence of the spirit self-help in Western rural municipalities in contrast with the spirit of American ^{and} others ^{who are accustomed to regard municipalities} ~~as self-supporting~~.

16. Opinions of the Amendments. Sir Wilfrid Laurier, speaking of this amendment at a later date, argued that its spirit was un-British. His words were as follows:

In 1894 another departure, another change was made-- I call it a departure. The change which was then made was not in my estimation quite in accordance with the spirit of our constitution. It was that the Legislative Assembly could select four members of its

own body to be called an Executive Committee to advise the Lieutenant-Governor. This is not, as I say, in accordance with the principles of the British Constitution. It is not in accordance with the principles of the British Constitution that parliament itself should elect the members to advise the Crown. The principle of the British Constitution is that the Crown or the Representative of the Crown, selects, himself, his own advisers, and under our own well-known practice in these modern days, the only restriction put upon the Executive, the Crown, or the Sovereign is that he must select advisers who have the support of the majority of the elected body. This new departure introduced in the statute of 1894 did not last long and at this I am not surprised. (34)

Likewise Clifford Sifton in introducing the amendment of 1897 remarked:

The Committee was entirely a statutory body and entirely without precedent in our Constitution. (35)

17. Memorials of the Assembly. In the session of 1896 a long memorial was drafted by the assembly and forwarded to the Minister of the Interior with relation to the constitution of the Territories. The Assembly did not ask for Autonomy, it stated, "nor for some rights inherent to provinces, notably the right to raise money on the public credit, the chartering of railways, and the administration of justice in criminal matters", but they could "see no good reason why other privileges of a territorial or provincial nature should be withheld from their administration". They pointed out "that they had exercised most of these privileges during the last five years and had proven themselves equal to the task". They were of opinion "that the Executive government should be put on a firmer basis by substituting for the Executive Committee an Executive Council". Strong arguments were advanced for larger subsidies owing to the unprecedented expansion of the recent years and the needs for schools and roads. (36)

(34) Debates: First reading of Autonomy Bill, 1905. (35) Debates: House of Commons, 1897. (36) Journals N.W.T. 1896. (37) Debates of Jan. 1897

18. Responsible Government. The Dominion Parliament in the session of 1897 introduced changes in the constitution of the Territories. The Executive Council was created and the same system of Responsible government set up as existed in the provinces. The offices of the Territorial Government could now be organized into departments each with a commissioner at its head who held a seat in the Assembly. (37).

19. Summary of Legislation 1888 - 1897. The provisions of the Dominion legislation of 1897 relating to the constitution of the Territorial Assembly brought to an end a long period of agitation for greater powers. Now the Territories were insofar as the control of the executive was concerned in the same position as the provinces. It is surprising that these powers had not been granted long before, for the position of the Lieutenant-Governors and of the Ottawa ministers concerned with western affairs was made at times exceedingly difficult by the unremitting attacks and skilful political ^{maneuvering} of Mr. Haultain and his supporters. Moreover the requirements of the constitution under Responsible government are well understood though unwritten, but under such artificial expedients as the advisory Council of 1888 and the Executive Committee 1894 precedent could offer no guide and consequently these laws proved to be unworkable.

20. The Territorial Status. Although in 1897 full Responsible Government was attained there were lacking many powers of the Assembly which the Legislative bodies of the Provinces possessed. The chief of these were:

1. They were deprived of the control of their public lands, of their minerals, of their timber.

2. They had no power to borrow money on their own credit.
3. They had no fixed subsidy. They were dependent on annual doles from the Dominion Government.
4. They had no power to incorporate railway, steamboat, canal, transportation and telegraph companies. (Street railway incorporation was, however, granted.)
5. They had no power to amend their constitution as the provinces had.
6. They had no power to establish hospitals, asylums, charities and those other eleemosynary institutions which the B.N.A. Act assigned to the provinces.
7. They were not allowed to administer the criminal law. (38).

21. The Autonomy Agitation. A brief consideration of these will show that they involved, if granted, chiefly an obligation and expenditure, and it was therefore difficult for Haultain in his campaign for Provincial autonomy to rouse much enthusiasm, especially since the Dominion grants of the last years of Territorial rule were on a generous scale. (a) The battle of the years 1897 - 1905 was waged chiefly therefore not so much on the necessity of Provincial Autonomy, for by 1903 that was conceded on all sides, as on the terms under which they would be admitted as provinces. The whole subject was obscured so much by sectarian and party prejudice, and by political manoeuvres that it is difficult to outline the constitutional aspects of the question. It is proposed to sketch briefly here the history of the movement, to point out some of the main influences which were brought to bear in connection with the legislation granting autonomy, and to discuss the contentious clauses.

VIII.

Provincial Autonomy.

1. Early Discussions. That a province or provinces should

(38) Montreal Star, April 8, 1904. *also Can. Ann. Review. p. 202.*
 (a) Speech of T. O. Davis, M.P. Dec. 1903 on motion of Mr. Borden re: autonomy

ultimately be formed out of the Territories was recognized at an early date both in the Territories and in Eastern Canada. In 1885 at a public meeting held in Prince Albert a petition was presented to the Minister of the Interior, Hon. Thomas White, asking that the North-west Council be abolished and that Provincial institutions be established. ^{It} They requested that Prince Albert be made the capital of a Northern Province which should have full possession of its own Crown Lands (1). This resolution was the beginning of an agitation for a northern Province, which developed considerable strength about 1900 (2). It was due to a certain jealousy between the North and South owing to the fact that the South controlled the government and the patronage (3).

A public meeting at Moosomin in the same year resolved "that in the meantime they were not favorable of the division of the Territories into Provinces". This probably represented feeling on the matter in Assiniboia (4).

In the discussion in the House of Commons in 1891 on Territorial affairs, Sir John Thompson said,

When the time comes to give you provincial powers you shall have them in toto and you shall stand on the same footing as any other province.

This was at least an acknowledgement that in his opinion the Provincial status was a matter for consideration in the near future (5).

2. The Genesis of the Movement. It seems to have been definitely decided by Haultain about 1900 that the next issue to be fought out with the Dominion Government was the attainment

(1) Battleford Herald, June 29.

(2) Prince Albert Advocate, 1901-1902. *Attributed Judge McQuire "The Globe" Can. Ann. Rev.* 1905

(3) Battleford Herald, Jan. 23, 1885: "The interests of the different sections are too diverse to be directed from one central point for any length of time."

(4) Regina Leader, Dec. 1, 1884. (5) Hansard, Aug. 4, 1891, p. 3926.

of the full status of a Province for the Territories. If the issue were not raised by him some one else would, as ambitious men were not wanting in the Assembly. Furthermore, the financial arrangements between the Dominion and Territorial governments were not yet satisfactory to the Territorial premier.

The first demand for the granting of Provincial standing was made by the Assembly in a resolution of July 20, 1900, to be forwarded to the Dominion government. This resolution made the financial side of the question its chief argument for the granting of the added powers. It said:

That repeated representations have been made in various ways to the Government of Canada with a view of obtaining just and equitable financial assistance toward providing for the proper and effective administration of local affairs in the Territories and for the public necessities of their rapidly increasing population; That such representations have been met by intermittent and insufficient additions to the annual grant, the provision so made by the parliament of Canada never bearing any adequate proportion to the financial obligations imposed by the enlargement and development of the political institutions created by itself. (6)

Haultain had conversation in Ottawa with members of the government during 1900 and 1901 (7). In a letter of January 30, 1901, to Hon. Clifford Sifton he states practically that the urgency is owing to financial causes. He said:

While financial embarrassments rather than constitutional aspirations have led the North-West Government and Legislature to discuss the provincial status, I think that sufficient practical reasons can be given for the early establishment of provincial institutions in the west. (8)

3. The Early Negotiations. In a letter of March 21, 1901, Mr. Sifton replied to Haultain's letter of January 30th. He

(6) Journals of Legislative Assembly, 1900.

(7) Vide letter, Jan. 30.

(8) Journals of Legislative Assembly N.W.T. 1901 (Oliver N.W. p.1159)

granted that the time had come for the full consideration of the question and suggested a conference (9). By October the Government at Ottawa was ready for a conference with Mr. Haultain. In December the latter presented to a committee of the Privy Council a lengthy statement giving a review of the status of the Territories and of the financial position and presenting a draft bill which embodied the views of the Territorial Executive as to the terms under which the new Province should be organized (10). An adequate discussion of these would be too long for this paper. It is desirable, however, to note what Haultain's demands were in order that they may be compared with the terms of the Autonomy Bill of 1905.

4. Terms proposed by Haultain. He requested ten members in the Commons on the commencement and four in the Senate, all Crown lands to be the property of the province as well as mines and minerals, a subsidy of \$50,000 and 80¢ per head of the population, an allowance for debt of the Dominion assumed by the Territories, a payment on lands alienated for Dominion purposes of \$1 per acre, a single province. He made no reference to separate schools. Exemption from taxation of C.P.R. was to be removed by separate legislation.

The Minister of the Interior wrote to Haultain under date of March 27, 1902, stating that in government's view "it will not be wise at the present time to pass legislation forming the North-West Territories into a Province or Provinces" (11) and in the House he declared that it was desirable to postpone the

(9) Journals of Legislative Assembly N.W.T. 1901. (Oliver:N.W.p.1159)
 (10) do. (Oliver N.W. p. 1160)
 (11) do. 1902.

matter for three or four years (12). Haultain in reply pressed for immediate action, and after reviewing the negotiations thus far stated that:

Financial necessities have developed constitutional aspirations, but apart from the purely financial aspect of the case we demand that system of government under which we shall have as full opportunities for the exercise of our citizenship as our fellow citizens in the provinces. (13)

5. First Stages of the Negotiations ended. The postponement of further negotiations in March 1902 marks the end of the first stage of the campaign to secure Provincial Autonomy. On the eve of the Dominion elections which took place in November, 1904, Sir Wilfrid Laurier in a communication with Mr. Haultain justified the delay of the last two years from the government's point of view. He promised that negotiations should be entered into immediately after the elections if his government should be sustained (14).

6. Haultain's efforts to renew them. Haultain had meanwhile at various times during these three years made representations to the Dominion government as to the necessity of an early settlement. In a letter of April 2, 1903, to the Minister of the Interior, he endeavored to show that the Minister's reasons for delay were not well founded (15). In a letter of January 31, 1903, he reviewed the negotiations up to this point stating his hope that their consideration of it "will result in the introduction of legislation dealing with these matters at the coming session of Parliament" (16). In a letter to Sir Wilfrid Laurier Feb. 3, 1903, Haultain made amendments in his original demands

(12) Debates, Canadian House of Commons, 1902.

(13) Journals, Legislative Assembly N.W.T. 1903 (Oliver N.W.p.1211)

(14) do. 1912 (Oliver N.W.p.1243)

(15) Oliver N.W. p. 1202, Journals N.W.T. 1903.

(16) do.p. 1205, do 1903.

of December 1901 in the way of larger initial grants from the Dominion (17). In a letter of April 15, 1903, Haultain addressed Sir Wilfrid Laurier asking:

First, for the grant of Provincial Institutions to the Territories. Secondly, for a vote supplementary to the North-West grant for the current year; and Thirdly, for a largely increased Vote for the year 1903-1904. (18)

On April 16 the Minister of Finance telegraphed regarding provision for granting certain of these increases, some of which Haultain declared were "absolutely unsatisfactory in method and amount" (19). On April 20, 1903, a memorial unanimously agreed to in the Assembly, was by resolution forwarded to the Governor-General requesting provision "for immediate financial necessities of the Territories" and for the establishment of provincial institutions (20). On June 8, 1903, it was explained by the Dominion premier in a letter to Haultain that the provision for ten members to the representation of the Territories in the House of Commons would at the present session be provided for and that in his opinion this would be more than they would be entitled to as a province (21). Haultain replied to the effect that this could not be taken as an offset to the grant of Provincial rights and suggested that Sir Wilfrid's advisers among the Western members of the House of Commons did not represent the wishes of the people of the West (22). On May 19, 1904, Haultain addressed a letter to Sir Wilfrid Laurier directing the attention of the Government to the memorial of the Assembly and requesting in drafting the proposed bill "that whatever else

(17) Oliver N.W. p.1212, Journals N.W.T. 1903.

(18) do. p.1213 do.

(19) do. p.1213 do.

(20) do. p.1221 do.

(21) do. p.1224 do.

(22) do. p.1225 do.

it includes the legislation introduced shall contain provision for:"

1. The application of the British North America Act as far as possible to the area dealt with;
2. Adequate representation in both Houses of Parliament, bearing in mind the difference in the ratio of increase in the population in the Territories from that of the longer settled parts of the Dominion;
3. Government, Legislature, and the administration of Justice;
4. The preservation of vested rights;
5. The transfer of the public domain with all Territorial rights and the beneficial interest therein involved;
6. A subsidy based as nearly as may be upon those given to the provinces;
7. Remuneration for that part of the public domain alienated by the Dominion for purely Federal purposes; and
8. The placing of the burden of the Canadian Pacific exemption upon the Dominion, where it properly belongs. (23)

On May 19 of the same year Haultain addressed the Minister of the Interior with reference to the finances of the Territories, asking for an increase of \$400,000 from the Dominion as a "very modest request" (24). On Sept. 30 came the announcement from Sir Wilfrid Laurier promising a bill for the next session "should my government be sustained" (25).

7. Autonomy becomes a Party Question. It would scarcely be an adequate treatment of the question at this stage to notice only the negotiations between the Dominion and Territorial Governments. The question of Autonomy for the Territories had become an issue in Dominion politics.

In the House of Commons on October 13, 1903, Hon. Robert Borden the Conservative leader moved a resolution supporting the

(23) Oliver, N.W. p. 1226, Journals of Assembly N.W.T. 1903.

(24) Oliver, N.W. p. 1237 do.

(25) do. p. 1243.

petition of the Legislative Assembly of April of that year (26). He favored the immediate creation of a Province with control of its own Crown Lands and minerals. Mr. Oliver claimed that the Territories were not badly off as they were, and financially they were better provided for than the provinces (27). Lands were not easily convertible into cash. He stood on the terms asked for by the Assembly or nothing. He said:

The Territories are not in the state of excitement in regard to Provincial organization that members seem to imagine.

Mr. T. O. Davis of Prince Albert did not think the people were "thirsting for autonomy". He supported however Haultain's full demands. He estimated the Territories were better off financially as Territories.

The people whom I represent are opposed to provincial autonomy at present,

he said. He quoted the Prince Albert "Advocate"--"Territorial government has been a godsend".

In March 1903 a convention of the Conservative party in the Territories was held in Moose Jaw at which a resolution was passed censuring the Government for delay, neglect, niggardliness, etc. in relation to Territorial affairs and declaring for immediate grant of full Provincial Autonomy, including lands, mines, and minerals, and compensation for resources already alienated (29). The Convention was keen for party-politics in the Assembly. This was strongly deprecated by Haultain and his Associates. (30).

(26) Debates, Canadian House of Commons, 1903.

(27) do.

(28) do.

(29) Canadian Annual Review 1903, Calgary Herald, Mar. 28.

(30) do do

7. The Separate School Issue. A new interest was given to the discussions when the Toronto News on May 26 charged the Catholic clergy with being the cause of delay. It said:

The guiding spirits of the Roman Catholic church in Canada are insisting on Federal interference to hasten Separate Schools upon the North-West. (31)

Also that,

Terms of agreement had been come to between Sir Wilfrid Laurier and the ecclesiastical authorities, as to Separate schools in the Territories but that nothing would be done until the elections were over. (32)

8. The Autonomy Bill, 1905. On Feb. 21st, 1905, Sir Wilfrid Laurier introduced in the House of Commons a measure for granting Provincial Government to the Territories. The debate was prolonged until July 19th and the bill was assented to on July 20th. The Bill was carried in the House by a vote of 140 to 59. Thirteen Conservatives supported the Bill (33).

The contentious provisions of the bill were chiefly:

1. The Educational clauses providing for Separate Schools.
2. The retention of the Crown Lands by the Dominion.
3. The express continuation of exemption of C.P.R. lands from taxation.
4. The division of the Territories into two provinces.
5. The financial terms.

9. The Contentious Clauses. The major part of the discussion centred on the Educational clauses and in this matter Sir Wilfrid Laurier to hold the support of his followers substituted an amended clause for the original. The original clauses would have left separate schools outside of Government control, the substituted clauses brought the provisions in line with those

(31) Canadian Annual Review (1904).

(32) Canadian Annual Review (1904).

(33) Journals: House of Commons, 1905. Debates, Autonomy Bill, 1905.

at the time in force in the Territories, namely the system provided by the Ordinances of 1901 (34).

Regarding the exemption of C.P.R. Lands, the West had few friends in the House. An amendment by Walter Scott striking out the exemption from the Bill was lost by a vote of 126 to 11 (35).

Mr. Lake proposed handing the lands, mines and minerals to the provinces. His amendment was defeated 97 to 42 (36).

The proposed division into two provinces by a North and South line was not criticized generally but a motion of M. L. McCarthy of Calgary that the line be moved farther east was supported by the Conservatives (37).

10. Importance of the Legislation. It was not the purpose of Sir Wilfrid Laurier to magnify the importance of the legislation he was introducing with relation to the creation of new provinces. His words in this regard were:

So, sir, it is manifest that at this moment the people of the North-West Territories are in the enjoyment and have been for several years, not only of full ministerial responsibility, not only of full constitutional government but also of a large measure of local autonomy. A great deal has been done, in fact, more has been done than we have to do today. We have to take the last step but it is easy and comparatively unimportant in view of and in comparison with what has already been accomplished. The metal has been put in the crucible and all we have to do now is to put the stamp of Canadian nationality upon it. (38)

IX.

A Comparison with the Territorial Experience of Other Countries.

1. We have been reviewing the Colonial Policy of the Dominion in relation to the Territories. We have shown that the tutelage of the Dominion still continues to some degree in

(34) Journals, House of Commons, 1905, Debates Autonomy Bill, 1905.
 (35) do. (36) do.
 (37) Journals, House of Commons, 1905. (38) Debates, Autonomy Bills, 1905.

respect to the public domain. The final removal of this disability has been a matter for further negotiation, but the methods of the Western political leaders are not those of Haultain.

It will be interesting to ascertain in view of what has been said of "agitation" and "struggles" against Dominion ~~territorial~~ ^{policy} ~~affairs~~, how other nations have handled their Territorial problems.

2. The North-West Territory of the United States. United States Territorial constitutions were modelled on that applied to the North-Western Territory by the Act of Congress 1787 (1). Under this Act Wisconsin became a State in 1847. It was necessary to attain a population of 60,000 before statehood was granted. Meanwhile, the governor, his secretary, sheriffs, and judges were appointed officers. A "delegate" to congress was elected by the state who had no vote. This is a characteristic feature of American territorial rule, which was several times mentioned in the House of Commons debates prior to 1885 as worth consideration in the representation of our Territories (2). Happily the instinct of Sir John A. MacDonald was more generous and more British when providing for Territorial representation at Ottawa.

Mr. Cresswell, delegate from Wisconsin, speaking in Congress in 1847, gave the following reasons for demanding statehood for his Territory: "They were continual suppliants for favors".

Their last appropriations were cut down to a niggardly pittance of dollars and cents (Total \$38,000). We

(1) "A History of the American People", Woodrow Wilson.

(2) Hon. Edward Blake: Debates 1888. Also David Mills: Debates, 1888, p. 346. (3) Wisconsin Historical Society: Transactions,

(3) History of Wisconsin, Volume VII.

have abundant proof," he said, speaking of federal patronage in the state," of the profligate nature of the Territorial government. No rigid system of economy can be enforced until all the taxpayers of Wisconsin are interested in every dollar of public expenditure. (4)

It was provided that there should be election of members to an Assembly whenever a given district should attain to a population of 5,000 "free, male, adult inhabitants". For every "500 free male inhabitants" there was one representative (4). The problems ^{to be seen} seem somewhat similar to our own.

3. Alaska. Regarding the "Colonial Policy" of the United States in Alaska, the writer is indebted to a recent book "A History of Alaska under the Rule of the United States" by Dr. Nichols (5). The following are quotations:

For seventeen years 1867 - 1884 Alaska had no form of government. Then Senator Benjamin Harrison put through congress a bill providing for the appointment of a governor and the organization of a District Court. But it lacked a legislative provision. So for forty years Alaska had no delegates in Congress. Then so flagrant became the necessity for representative government in that distant land now moving forward under the quickening impulse of mining and a rapidly growing population that President Roosevelt vigorously espoused the cause of a delegate. In 1906 therefore Congress passed an act granting Alaska the right to elect a delegate (without vote). Yet even this left them without a territorial legislative body and they renewed for five years more their half-century struggle for wider home rule.....The delegate from Alaska introduced a bill for elective Territorial Legislature in Alaska.....It passed the Senate on May 25 (1912)..... By later Congressional Acts the organic laws of Alaska are rendered less effective and in some instances practically repealed. (This was the result of "Concurrent" legislation so much objected to in the case of N.W.T. by Haultain (6)). It is a sad commentary on the patriotism of the American Congress that there actually exists today a congressional government in Alaska more offensively bureaucratic in its basic principles than that which existed here during the seven years of Russian rule under the Czar.....

(4) History of American People, Woodrow Wilson (Appendix)

(5) Cleveland, 1924.

(6) Oliver, N.W. p. 1170.

With the aid of the Mounted Police, Ogilvie gave the Klondike a responsible and flexible government quite ahead of anything in the Alaska diggings.....

In this region given over to the biggest gold boom in our history it was absolutely impossible to conduct legal proceedings. For Alaska yet remained (1897) a single judicial District with one lone judge marooned at Sitka.

In 1887 no titles had been issued for lands except those dating back to Russian rule. In 1900 there still prevailed the "antique and cumbersome method" of maintaining schools and municipalities on a voluntary basis, there being no provision for organization of these by law.

4. Northern Territory - Australia. The Territorial policy of Australia is yet to be developed. It has, however, in relation to the Northern Territory adopted the American system of providing for a "talking" delegate to the Federal Parliament. The Territory is otherwise governed by appointed officers (7).

5. The Yukon. Canada's experience in Territorial Government has been of distinct value in the recent development of one particular district, namely, the Yukon. We are accustomed to look for a parallel to Territorial development in the various constitutions under which Upper and Lower Canada have developed. With them it was first an appointed council (1763), then partial self-government (1791) and later Responsible Government. A still closer parallel is found in the various changes in Yukon administration, and there is here a distinct contrast with the administration of the Americans in Alaska under like conditions. (a)

By the N.W.T. Act of 1875 British Columbia courts had jurisdiction in the region of the Yukon (8). In 1897 the Yukon

(7) Quarterly Review, July 1922.

(8) Statutes, Debates, Dominion House of Commons, 1875.

(a) "Early days in the Yukon" Ogilvie.

was made a Judicial District and a Judge was appointed by Order-in-Council (9). By the Yukon Territory Act, 1898, a chief executive for the District to be named a Commissioner was provided for to be named by Order-in-Council (10). A council not exceeding six in number was to be appointed to aid the Commissioner in the administration. Each judge was to be ex-officio a member of the Council. The powers of the Commissioner were to be those possessed by the Lieutenant-governors of the Territories. The constitution was apparently that of the Territories previous to 1881.

By the amendments of the Yukon Act of 1899 two elected representatives were elected to hold office for two years. Local areas were permitted to tax for municipal purposes as soon as the two elected representatives were chosen (11). The Council was thus a mixed appointed and elected body like that of the Territorial Council from 1881 to 1888.

In 1902 the Yukon Representation Act gave representation in the House of Commons (with voting powers) of one member. Qualified voters were resident British subjects (12).

In 1902 also provision was made for five elected members in the Yukon Council (13).

In 1908 the Territory was by an amendment to the Act divided into ten electoral districts, the boundaries to be fixed by the Commissioner in Council. There were to be yearly sessions of the Council. The members held office for three years unless the Council were previously dissolved. The Council sat separate from the Commissioner and appropriations were not to be adopted without a recommendation by message from the Commissioner in

(11) Dominion Statutes 1899.

(12) do. 1902.

(13) do.

Council. This was an approximation to the legislation of 1888 creating a Legislative Assembly in the Territories. In 1919 the number of councillors was reduced to three, elected by districts. The reduction was owing to the decline of population resulting from the collapse of the "gold boom" (14).

It is evident from the above sketch of Yukon rule that the Government of the Yukon was framed in accordance with the successful experience under like circumstances in the Territories. Grave faults of administration ^{had} appeared under the autocratic rule of the Commissioner and Council in the Yukon but the later provision for popular control resulted in an improvement (15).

X.

Self-Government and Self-Reliance.

We have traced the progress of the Territories toward self-government. It is altogether creditable to Haultain, and to the spirit of the West that the contest was fought out along constitutional lines. It may not be out of place to point out the obligations of self-government, namely, self-reliance, and financial independence. The West has long been accustomed to look to Ottawa for grants. Mills criticized these "doles" in 1891 (1) as keeping the Territories in "leading strings". The rural districts in turn have been dependent on grants from the Territorial governments for schools, roads and bridges, instead of levying taxes and developing, as in Eastern Canada an efficient municipal system for rural areas (2). Municipalities in rural districts have not succeeded well under Territorial rule. The systems laid out in the Ordinances of 1884 and 1885 (3) were

(14) Dominion Statutes, 1919. *Appendix to Early Days in the Yukon* by Dr. Thompson. M.P.
 (15) Canadian Annual Review 1900, Debates, House of Commons 1900.
 (1) Debates House of Commons 1891. (2) High rates of pay criticized by Mills. Debates 1888, House of Commons. (3) Ordinances N.W.T. 1884-5.

too elaborate and proved unpopular owing to their taxing features. The Local Improvement Districts both large and small established 1901 (4) with simple machinery of government proved more satisfactory. Cities, towns and villages have been organized under municipal ordinance of 1884 and 1885 and later ordinances along much the same lines as in the other provinces.

Sir Wilfrid Laurier referred to what is perhaps the greatest weakness of our Federal system in his discussion of the financial terms in connection with the establishment of the new provinces. The burden of subsidizing the provinces with aid from the Dominion Treasury is a matter which has not received much consideration. The words of Sir Wilfrid Laurier are here quoted:

Our constitution which is to be found in the B.N.A. Act contains a very remarkable provision. It contains the provision that out of the Federal Treasury there shall be paid the provinces a large sum of money in the shape of subsidies to assist them in carrying on their business. This is, I say, a very extraordinary provision. It is, I believe, unique. At all events as far as my information goes I do not know that any similar provision is to be found in the constitution of any other Federal government. It is a sound principle of finance and a still sounder principle of government that those who have the duty of expending the revenue of a country should also be saddled with the responsibility of levying and providing it. (5)

This is a principle which the West had little occasion to apply in the Territorial days, and only in recent years are the rural areas learning to be truly self-governing in the matter of financing their public works and schools.

(4) Ordinances N.W.T., 1901, also later system 1904.

(5) Debate on Autonomy Bill, First Reading.

References.Primary Sources:

1. Report of Select Committee on the Hudson's Bay Company, 1857.
2. Statutes of Canada, 1867 - 1919.
3. Minutes of N. W. Council, Fort Garry, 1873 - 1875.
4. Minutes of Council of N. W. T. 1877 - 1888.
5. Journals of Legislative Assembly N.W.T. 1888 - 1905.
6. Ordinances N.W.T. 1888 - 1905.
7. Debates: Canadian House of Commons, 1870 - 1905.
8. Journals: Canadian House of Commons, 1867 - 1905.
9. Sessional Papers: Canadian House of Commons, 1867 - 1905.
10. Ontario Boundary Papers, 1882.
11. Report on Ontario Boundaries: Lindsay, 1873.
12. Report on Boundaries of Ontario, Hon. David Mills.
13. Wisconsin Historical Publications, Vol. II, Quairfe.
14. Woodrow Wilson: History of the American People, Appendix Vol. III, N.W. Territory Act 1787.
15. Edmonton Bulletin (Provincial Library, Edmonton). 1880-1905
16. Saskatchewan Herald, Battleford, 1879 - 1885, (Provincial Library, Edmonton).
17. Calgary Herald (do) 1890 - 1905.
18. MacLeod Gazette.
19. Report on Acquisition of Rupert's Land and North-West Territories, 1870 (Sessional Papers).
20. Recent Disturbances, 1870 (Sessional Papers).
21. North-West Rebellion, 1885 (Sessional Papers).
22. Orders-in-Council, Imperial, 1867 - 1905 (Dom. Statutes).
23. do. Dominion, 1867 - 1905 (do.).
24. Capt. Palliser: Reports, 1857 - 1860, 1863.

25. Sessional papers, British Parliament, 1749, (for attack on H. B. Co. Charter).
26. Statutes (British) 1821.
27. Butler: Great Lone Land.
28. Hinds and Dawson, Report, 1860.
29. Hudson's Bay Charter, 1670 (Oliver: North-West).
30. Reports of Commissioners of Public Works, N.W.T. 1896, 1901.
31. " " " " Education, N.W.T. 1896, 1901.
32. Oliver: The Canadian North-West (2 Volumes).

Secondary Authorities.

These have not been all quoted. Many have been used to correct impressions or errors in facts.

Canada and its Provinces.

Adam: The North West, 1885.

Begg: History of the North-West, 1894 - 5, 3 volumes.

Black: History of Saskatchewan and the Old North-West.

Boulton: Reminiscences of the N. W. Rebellion.

Bryce: Romantic Settlement of Lord Selkirk's Colonists, 1909.
Remarkable History of Hudson Bay Co.

Clement: The Constitution of Canada.

Denny, Capt. Sir Cecil: "The Birth of the North-West Territories" (Manuscript in Provincial Library, Edmonton) (also interviewed on the subject of Territorial conditions).

Gunn and Tuttle: History of Manitoba.

Hargrave: Red River.

Martin: Hudson Bay Land Tenures.

Morris: Treaties of Canada with the Indians.

Canadian Annual Register, 1875 - 1888.

Canadian Annual Review, 1892 - 1919.

Ross: Red River Settlement.

Wickett: Municipal Government in the North-West Territories.

Nichols: Alaska under the Rule of the United States
(Cleveland, 1924).

Cowie: The Great Company.

Ogilvie: Early Days in the Yukon.

Bryce: The Hudson's Bay Company.

Quarterly Review: July 1922.

G. Martin: Lord Selkirk's Work in Canada.
The Colonial Policy of the Dominion.
The First "New Province" of the Dominion.
The Natural Resources Question.