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Thomas Flanagan on the Stand: Revisiting Métis Land Claims and the *Lists of Rights* in Manitoba

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Résumé de l'article

Plus d'un siècle après la promulgation de l'art. 31 de la *Loi de 1870 sur le Manitoba*, qui accordait une concession de 1,4 million d'acres aux Métis du Manitoba, les descendants de ces derniers n'ont pas réussi à convaincre le juge MacInnes de reconnaître l'inconstitutionnalité de la manière que cet acte a été mis en oeuvre. Dans sa décision, le juge MacInnes semble s'être largement appuyé sur l'interprétation historique du témoin expert pour la Couronne, le politologue Thomas Flanagan. Dans cet article, l'auteur réexamine la preuve historique en ce qui concerne la genèse plutôt que la mise en oeuvre de l'art. 31 et démontre que, contrairement à ce qu'a affirmé Flanagan, les Métis ont bel et bien revendiqué des terres pendant la Résistance de 1869-70 et ont mandaté leur représentant, l'abbé Noël-Joseph Ritchot, de négocier une enclave territoriale en guise d'échange de l'extinction de leur titre d'indien dérivé.

Darren O'Toole

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Abstract

More than a century after the adoption of section 31 of the Manitoba Act*, 1870, which granted 1.4 million acres to the Métis of Manitoba, the descendants were unable to convince a trial judge that the federal and provincial governments improperly implemented this section. In his decision, Judge MacInnes seems to have relied heavily on the historical interpretation of the Crown's expert witness, political scientist Thomas Flanagan. In this article, the author re-examines the historical evidence concerning the genesis rather than the implementation of s. 31 and finds that, contrary to what Flanagan has asserted, the Métis did indeed make land claims during the Resistance of 1869-70 and mandated their delegate, the abbot Noël-Joseph Ritchot, to negotiate a territorial enclave as consideration for the surrender of their derivative Indian title.*

Résumé

Plus d'un siècle après la promulgation de l'art. 31 de la Loi de 1870 sur le Manitoba*, qui accordait une concession de 1,4 million d'acres aux Métis du Manitoba, les descendants de ces derniers n'ont pas réussi à convaincre le juge MacInnes de reconnaître l'inconstitutionnalité de la manière que cet acte a été mis en œuvre. Dans sa décision, le juge MacInnes semble s'être largement appuyé sur l'interprétation historique du témoin expert pour la Couronne, le politologue Thomas Flanagan. Dans cet article, l'auteur réexamine la preuve historique en ce qui concerne la genèse plutôt que la mise en œuvre de l'art. 31 et démontre que, contrairement à ce qu'a affirmé Flanagan, les Métis ont bel et bien revendiqué des terres pendant la Résistance de 1869-70 et ont mandaté leur représentant, l'abbé Noël-Joseph Ritchot, de négocier une enclave territoriale en guise d'échange de l'extinction de leur titre d'indien dérivé.*

Money can't replace it
No memory can erase it
And I know I'm never gonna find
Another one to compare

I Lost It – *Lucinda Williams*

Introduction

On 7 December 2007, the trial judge of the Queen's Bench of Manitoba dismissed the plaintiff's action in the case *Manitoba Métis Federation v. Canada* (*MMF,* paras. 6, 1216). This historical decision involved, *inter alia*, the implementation of s. 31 of the *Manitoba Act, 1870*, which compensated 'the extinguishment of the Indian Title' by setting aside 1.4 million acres of federal Crown lands for 'the benefit of Half-Breed families' (see Appendix). As the political scientist, Thomas Flanagan, aptly put it, what happened to all this land "is one of the most enduring questions of Métis history" (*Market* 1). Almost immediately, the Métis began to complain about delays in, and the method of, implementation of this section (Ens, *Métis Lands* 2). Historians agree that, "the lands distributed to the Métis under the Act did not remain with them for long" (Flanagan, *Métis Lands* 1), if they ever even received them at all. What was at stake in the *MMF* case was not immediate compensation, whether in the form of damages or *in rem*, for the alleged maladministration of s. 31 lands, but a simple declaration that several statutes and orders-in-council were unconstitutional and that the method of implementation did not fulfil the Crown's fiduciary obligations toward the Métis as an Aboriginal people (par. 1).

As the Supreme Court of Canada stated in *Sparrow*, it is "crucial to be sensitive to the aboriginal perspective itself on the meaning of the rights at stake" (1112; *Van der Peet* par. 49). It is therefore necessary to understand the genesis of s. 31, which is deeply intertwined with the Métis Resistance in the District of Assiniboia[1] in 1869-1870. In 1869, the Hudson's Bay Company (HBC) finally sold its rights in the territory of Rupert's Land to the Dominion of Canada. However, the Métis felt that they had not been consulted on the terms of the transfer and that the HBC government in the District, the Governor and Council of Assiniboia, had abandoned them (Riel, *1st Vol.* 19, 25, 37). They consequently formed a provisional government to resist what they saw as unilateral annexation by Canada and to negotiate their own terms of entry into Confederation. In November 1869, a convention of twenty-four delegates representing

the Catholic and Protestant parishes adopted a first *List of Rights* (see Appendix). When the representatives of the Protestant parishes refused to form a provisional government to negotiate with Canada (Riel, *1st Vol.* 29), the Métis National Committee decided to go it alone and issued the *Declaration of the People of Rupert's Land and the North-West* on 8 December 1869. In February 1870, a second convention of forty representatives adopted a second, more elaborate *List of Rights* (See Appendix). While both of these *Lists* demanded entry as a Territory and a homestead act and pre-emption rights, the second called for local control of Crown lands in an area that roughly corresponded to the District of Assiniboia.

At the end of the second convention, the Half-Breeds agreed to join the Métis to form a second Provisional Government and consequently elected an executive. Exercising its common law prerogative to negotiate treaties (Hogg 16), the executive drew up a third *List of Rights*. This *List* requested entry of the entire North-West into the Canadian Federation as a Province rather than as a Territory, and again demanded local control of public lands. Upon invitation from Canada to send at least two delegates to negotiate the terms of entry, the President of the Provisional Government, in conformity with his common law prerogative, appointed three delegates, Noël-Joseph Ritchot,[2] Judge John Black[3] and Alfred Scott.[4] However, during the negotiations, the federal Crown's ministers, John A. Macdonald and George-Étienne Cartier, insisted on federal jurisdiction over public lands. The delegate Noël-Joseph Ritchot would only agree to these terms on the condition that the ministers recognise the derivative Indian title of the Métis and compensate its extinguishment with a land grant. Despite misgivings, the ministers eventually acquiesced and included a land grant in the *Manitoba Act*.

When MacInnes J. rendered his decision, he drew the conclusion that the Métis had no Aboriginal title to surrender (paras. 631, 1205), and therefore the ostensible objective of s. 31, the 'extinguishment of Indian title', was really nothing more than "a political expedient" to justify the grant to parliamentary opposition and thereby to "ensure passage of the *Act*" (par. 656).[5] Ultimately, the effect of his decision is not only to deny the Métis of Manitoba any legal leverage to force governments to negotiate a land base,[6] but to deny that they have any Aboriginal rights at all.[7]

In this regard, MacInnes's reasoning closely follows that of political scientist, Thomas Flanagan. While MacInnes does not explicitly cite

Flanagan in his analysis of s. 31, the latter was the Federal Department of Justice's primary expert witness for the *MMF* case. In 1986, he became historical consultant for the Federal Department of Justice in the *MMF* case (Flanagan, *Métis Lands* vii). He had previously published research criticising the recognition of the Indian title of the Métis (*1885 Reconsidered*) and of the Métis as an Aboriginal people in the *Constitution Act, 1982* (*Case Against*; *Métis Rights*) and traced the official evolution of what can be called the 'doctrine of derivative aboriginal rights' (*History*).[8] Among other things, the 'Calgary School' political scientist has asserted that, during the Resistance in 1869-70, not only did the Métis never "describe themselves as an aboriginal people with special land rights" (*Blais* 160) or demand "special treatment as an Aboriginal people" (*History* 73), but that there "was never a demand for special treatment of the Métis as a group" (*Case Against* 316; *Métis Rights* 231), nor for "a land grant or anything like it" (*Reconsidered 2nd ed.* 65).

In a previous article (*Métis Claims*), I endeavoured to establish that the Métis did indeed 'describe themselves as an aboriginal people with special land rights' and demanded 'special treatment as an Aboriginal people' during the Resistance.[9] This article essentially picks up where the previous one left off.[10] Here, I will be more concerned with Flanagan's claim that there was 'never a demand for special treatment of the Métis as a group' and that the Métis 'never demanded a land grant or anything like it'. In other words, I am less interested in what the Métis surrendered to the federal government—derivative Indian title—than in the consideration they demanded as compensation for such surrender—a collective land grant or a territorial enclave.

According to Flanagan, Ritchot "was not officially instructed to negotiate the extinguishment of Métis aboriginal title, to request a land grant or anything of that sort" (*Case Against* 317; *Métis Rights* 231), especially since the "insurgents at Red River had never demanded a land grant or anything like it" (*Reconsidered 1st ed.* 59; *2nd ed.* 65). In fact, a land grant was not "originally desired by anyone, either the Métis or the Canadian government," but simply "emerged as a hastily contrived compromise" (ibid.). According to Flanagan, it was only when the ministers refused to cede control over public lands that Ritchot brought up the idea of a land grant (*Reconsidered 1st ed.* 59-60; *Case Against* 317; *Métis Rights* 232; *Métis Lands* 1991: 33; *Reconsidered 2nd ed.* 65-66). Likewise, MacInnes claimed that neither "the Red River delegates nor their principals had contemplated a land grant for the children, Métis or others." Again, it is claimed that it "was only when it became clear to the

delegates that Canada would not agree to transfer ownership of the public land to the Province that the concept of a children's grant first arose" (*MMF* paras. 649 and 928). Flanagan has further suggested that Ritchot overstepped his mandate by insisting that, "Ritchot was only one of the three delegates from Red River" and pointing out that, "Ritchot's diary refers several times to differences of opinion between John Black and himself" (*Métis Lands* 47). Again, MacInnes followed Flanagan closely when he asserted that the delegates did not "represent the Métis *per se*, but rather all residents of the Settlement" (*MMF* par. 468).

Flanagan (*Métis Lands* 30) pointed to the second *List of Rights* as proof that the "dominant themes were local control of public lands and respect for local customs" and to the third *List*, which went further by demanding that Assiniboia enter Confederation as a province (ibid.). He also asserted that the consistent demand of the Métis "was not for a land grant to extinguish their aboriginal title but for local control of public lands" (*Case Against* 316; *Métis Rights* 231) or invariably that their "consistent demand was for control of public land by the local government" (*Reconsidered 1st ed.* 59; *2nd ed.* 65). Likewise, when MacInnes J. reviewed the material facts relative to s. 31, he remarked that the first *List of Rights* "made no provision […] for a land grant to the children, including the children of the Métis" (*MMF* par. 83). The second *List* also contained "no provision […] for a land grant to the children" (par. 91). In the third *List*, "there still was no provision […] for a land grant for the children" (par. 96). Finally, in the fourth *List*, there was still "no provision for a children's land grant" (par. 98). MacInnes concluded that the "four lists of rights make clear that [the Métis] expected the land rights then enjoyed by title or otherwise by all in the community at the time to be confirmed for the future, and that they intended and expected that the public lands would be owned by the Province so that the Provincial Legislature would then be entitled to do with those lands as it chose" (par. 649).[11]

Being given its evident influence on juridical discourse, it is timely to take another look at Flanagan's research. To this end, this article suggests that we should have second thoughts about MacInnes' and Flanagan's claims: 1) that the various *Lists of Rights* and *Declarations* contain no reference to a land grant or the group rights of the Métis; and 2) that father Ritchot: i) had no mandate to negotiate the extinguishment of Métis aboriginal rights and a land grant; ii) was but one of three delegates. My objective here is not to explain *why* the Métis did not make their claims more explicit, but to show that one of their goals was to obtain a territorial

enclave and that this demand was effectively included in the assorted *Lists of Rights*.

Métis Land Claims in the *Lists of Rights*

There is certainly nothing new in the assertion that the various *Lists of Rights* contain no reference to a land grant. In a letter of 17 December 1869, local historian Alexander Begg referred to the first *List of Rights* as proof that land was not the issue (Bumsted, *Reporting* 177). Although Begg would retrospectively assert that there was "every reason to suppose that [a land grant] was being held as a point in reserve for a future day," he maintained that there was no word in the first *List* "on the part of the French with regard to a land grant to the natives of the country" (113). In much the same way, William Morton "suspected that Ritchot strongly urged a claim […] which lurks in the background of the Resistance,"[12] but that a land grant was "not in the list" as such and that in this regard, "the outcome of the negotiations with respect to land titles was markedly different from what had been demanded" in the *List of Rights* (*Begg's Journal* 136). While Sprague (16, note 21) is quick to make rhetorical use of Flanagan's admission that his book, *Riel and the Rebellion*, was "something of a return to the views of the Conservative government of 1885" (*Review Essay* 158), the latter's position on s. 31 is rather 'something of a return to the views' of the Liberal opposition of 1870. Like Flanagan, Liberal leader Alexander Mackenzie claimed the "*restrictive policy* embraced in the 27th clause *was entirely unasked for by the people*" and was unable to "ascertain where the demand for that came from" (Canada, *Debates* 1459-60).[13] However, unlike Begg, Mackenzie astutely observed that the first two *Lists* did mention pre-emption rights and a homestead act, which implied a land grant (1459-60). Far from being opposed to a land grant, both Mackenzie (1449, 1459) and William McDougall[14] (1448, 1454) tried to modify s. 31 with a homestead law or grants of 200 acres to *all* settlers. What the opposition took issue with then was not a land grant as such, but both to the reference to Indian title (1306, 1436, 1447, 1449, 1450-1, 1501) and to the 'restrictive policy' of a 'reserve' that would create a land-lock by removing it indefinitely from the market (1307, 1329, 1387, 1420, 1426, 1438, 1449, 1459-60).[15] Likewise, Flanagan does not think that a "land grant itself was necessarily a bad idea" because it created "a market in land which helped to compensate for the rigidity of the homestead regulations" (*Comment on Hatt* 207). In other words, what Flanagan is opposed to is not only the 'gratuitous mistake' of referring to Indian title, but the 'restrictive policy'

of a collective land base for the Métis as it would be an obstacle to their assimilation (*Second Thoughts* 196).

Mackenzie's remarks concerning a 'free homestead and pre-emption land law' alone make it difficult to claim that there is no reference to a land grant in the *Lists of Rights*. The question is whether "the outcome of the negotiations with respect to land titles was markedly different from what had been demanded" in the *List of Rights*, as W.L. Morton claimed (*Begg's Journal* 136-7), or whether sections 31 and 32 closely parallel the demands for a homestead act and pre-emption rights. While it is generally acknowledged that the quieting of titles was a central concern of the Métis, rarely, if ever, is any connexion made between the demand for pre-emption rights and s. 32. Insofar as the first *List* is concerned, this was an obvious "Americanism" (Begg 112), likely inspired by the U.S. *Preemption Act, 1841*,[16] the objective of which was to quiet the titles of the staked claims of squatters who had preceded surveys and settlement (Martin 120). Moreover, the Council of Assiniboia passed a law on 27 February 1860 concerning "pre-emption rights arising from occupation" (Oliver 455). This is precisely the purpose of par. 32(4) of the *Manitoba Act*. Macdonald explicitly stated in the House of Commons that this class of settlers were "merely squatters; but they ought to have the right of pre-emption" (Canada *Debates* 1360). In terms of the rights of common and rights of cutting hay, James Ross insisted that, "[w]e must get it, whether we ask for it absolutely [quieting of title in fee simple] as a free gift [grant], or claim the first right by purchase [pre-emption right]" (*New Nation* 11 February 1870 1). While it was commuted into a free grant in fee simple in par. 32(5) of the *Manitoba Act*, the Laws of Assiniboia and Ross's statement nevertheless show that people of the Settlement were well aware of pre-emption rights.

Métis jurist Paul Chartrand is the only scholar, so far as I am aware, who has noticed a connexion between s. 31 and homestead regulations. According to Chartrand, the "distinct modes provided [in s. 31] for implementing the two aspects of the settlement scheme (selection and division on the one hand, and grants on the other) reveal a mechanism that is characteristic of *both* the Indian settlement or 'enfranchisement' legislation *and the homestead legislation*" (93).[17] Since the children of the Métis obviously did not yet occupy land of their own, a land grant to them would be in the form of a homestead rather than pre-emption rights.[18] A homestead act implied restrictions on alienation, as is explicit in the French translation at the time: "loi déclarant certains biens insaisissables" (Canada, 1970b: 82). This also corresponds to Ritchot's demand that the

children's land grant be subject to restrictions on alienation (549). On 2 May 1870, John A. Macdonald stated before the House of Commons that, "land is to be appropriated as a reservation *for the purpose of settlement* by the half-breeds and their children" (Canada *Debates* 1302).[19] Two days later, Macdonald repeated that the land was *only* being "given for the *actual* purpose of settlement. The *conditions had to be made* in that Parliament who would show that care and anxiety for the interest of those tribes[20] which would prevent that liberal and just appropriation from being abused" (1359). On 2 May 1870, Cartier agreed that the lands "were to be given to the heads of families *to settle* their children" (1309). On 9 May, he asked rhetorically: "Was it not just and liberal *to provide for the settlement* of those who had done so much for the advancement of the Red River country—the Indian half-breeds?" (1446). Cartier further specified that, if "the children of half-breeds should fail to avail themselves of the liberal offers made them *to settle* on the reserves, the land would be forfeited to the Crown" (1458), which confirms Chartrand's contention that title was to remain with the Crown until the land was effectively settled (90).[21]

During the negotiations, Ritchot did not initially demand a fixed quantity of acreage, but 200 acres for each child (548; W.L. Morton, *Manitoba* 142). Far from being 'hastily contrived', his demand corresponds exactly to one of the demands in a list written up by MP John Bown[22] (Flanagan, *Case Against* 316) and that of Pierre Delorme[23] (Pannekoek 192). At first glance, these repeated demands for 200 acres might seem to have little or nothing to do with the 160 acre quarter sections of the U.S. *Homestead Act, 1862*. However, on 10 July 1869, Lieutenant-Governor designate, William McDougall, suggested to Dennis "to make the section 800 acres instead of 640" as is the case in the "American system of survey" since the "first emigrants, and the most desirable, will probably come from Canada, and it will therefore, be advisable to offer them lots of a size to which they have been accustomed" (Canada, *Correspondence* 2). In effect, the land grants to United Empire Loyalists and the Simcoe grants in Upper Canada were both 200 acres (Martin 132-3). Consequently, the initial plan under the system of survey adopted in the Order-in-Council of 23 September 1869 effectively included homesteads of 200 instead of 160 acres (139). From this perspective alone, it is clear that there was an explicit land claim in the first two *Lists* that was 'entirely asked for by the population'.

Rationale for a Territorial Enclave: Indian Title and the Doctrine of Conquest

There remains the question of what role Indian title had to play in all this. There is no necessary connexion between a claim for a land grant in the form of pre-emption rights and homesteads and derivative Indian title. However, as Flanagan points out, a pre-emption right does not imply a free grant (*Métis Lands* 161). For example, the price under the U.S. *Pre-emption Act, 1841* was set at a minimum of $1.25 per acre. From the Métis point of view, the recognition of their derivative Indian title may have been seen as having the effect of exempting them from paying any fees that pre-emption rights normally required. This would certainly be in keeping with the Métis tradition of refusing to pay the HBC for their lots and claiming ownership by virtue of their derivative Indian title (*Nor'Wester* 15 June 1861 2). Aside from cost, there was the power of precedent. Certain treaties in the United States often compensated the extinguishment of the Indian title of the Métis with pre-emption rights (Thorne 95). On other occasions, the U.S. federal government compensated the Métis with homesteads, such as in s. 8 of the Red Lake and Pembina treaties of 1863 (Flanagan, *Métis Lands* 24; Ens, *Scrip* 48).

Although Flanagan asserted that the question of derivative Indian title was not raised in the public debates during the Resistance (*Political Thought* 150), he nevertheless recognised that Riel believed the Métis "had both a legal and moral right *to compensation* from the state *in return for extinguishment* of that title" (148-9). While he observed that the "practical question concerns *the form which compensation will take*" (149), he conflated Indian title *per se* and an enclave as a form of compensation for its extinguishment when it came to Riel's instructions of 19 April 1870. If he admitted the latter implied "other aspects of the land question" than local control of public lands, he downplayed any reference to Indian title by suggesting that they "seem to involve French-English ethnicity rather than specific Métis rights" (*Case Against* 317; *Métis Rights* 231). While this is not entirely false, neither is it entirely true. Strictly speaking, the "bundle of rights" that the Métis would have in an enclave *as an end* (compensation) would not necessarily be Indian title;[24] the latter may nevertheless be implied *as the means* (surrendered as consideration) to such an end.

Be that as it may, Riel did not so much "skirt the issue of Métis title," as Flanagan claims (*Aboriginal Rights 251*), as ground it in the doctrine of conquest. In order to understand the linguistic convention of conquest

that Riel used during the debates of the Convention of Forty, it is first necessary to place their "meaning in context" (Skinner). Flanagan has repeatedly argued that Riel based Métis title in the Law of Nations (*Aboriginal Rights* 248; *Reconsidered 1st ed.* 81; *2nd* ed. 91-2). But if Riel perceived Indian title as a right under the Law of Nations, then when he claimed land rights in virtue of the latter, he was necessarily claiming the former. In light of this, while it is true that the *Declaration of the People of Rupert's Land and the North-West* of 8 December 1869 does not explicitly use the term 'aboriginal rights' (Flanagan qtd. in *Blais* 159),[25] it is another thing altogether to claim that it remains "silent about Métis ownership rights" (Flanagan, *Aboriginal Rights* 251). The *Declaration* in fact asserts that the Métis had "always heretofore successfully defended our country in frequent wars with the neighbouring tribes of Indians" (Riel, *1st vol.* 44).[26] During the debates of the Convention of Twenty-Four on 16 November 1869, Riel wrote that the Métis "disent que ça a toujours été leur coutume de prendre les armes pour repousser les partis qui se présentent aux portes de la colonie avec des intentions redoutables. Ainsi les partis de guerre sauvages ont été repoussées" (24).[27] That their military capacity gave the Métis a claim to the country seems apparent when Riel stated that, "nous sommes fidèles à notre patrie. Nous la protégerons contre les dangers qui la menacent. Nous voulons que le peuple de la Rivière Rouge soit un peuple libre" (ibid.).[28] In the *Proclamation to the Inhabitants of the North and the North-West* of 7 April 1870, Riel speaks of, "our aspirations and our existence as a people" and of having rendered "our land natal[29] to our children" with the use of military force (77-8). In the *Circulaire aux habitants du Nord et du Nord-Ouest*, Louis Schmidt[30] and Captain Gay[31] repeat much of the language of the *Declaration*, writing, "notre armée, bien que peu nombreuse, a toujours suffi à tenir haut élevé le noble étendard de la liberté et de la patrie" (W.L. Morton, *Begg's Journal* 597).[32] Further on, they claim that the Provisional Government has "aujourd'hui sans partage presque la moitié d'un continent; l'expulsion ou l'anéantissement des envahisseurs vient de rendre notre terre natale à ses enfants" (598).[33]

It was precisely to the doctrine of conquest under the Law of Nations that Riel was referring when the Convention of Forty began discussing clause 15 of the second *List of Rights* on 1 February 1870.[34] The latter demanded that, "treaties be concluded between the Dominion and the several Indian tribes of the country." Riel immediately raised the issue of Métis territorial claims:

> Had the Indians the *whole* claim to the country? (…) Are Indians the *only* parties in the country *who have to be settled with for land*

> *claims*? If so, all right. But if there is *some section for which the Half-breeds would have to be dealt with*, then the article as it stood was too general. I have heard of Half-breeds having maintained a position of superiority *and conquest against the incursions* of Indians *in some parts* of the country. If so, this might possibly be considered *to establish the rights* of the Half-breeds *as against* the Indians (*New Nation* 4 February 1870 6).[35]

Riel was obviously hinting at modifying this article in order to explicitly include specific Métis claims. But if he did not base such claims on immemorial occupation, his fellow Half-Breed delegates had no doubt as to what he was getting at. George Flett[36] first responded:

> For my part, I am a Half-breed but far be it from me to press any land claim I might have as against the poor Indian of the country (hear, hear). Let the Indian claims be what they may, they will not detract from our just claims. We have taken the position and ask the rights of civilized men (ibid.).

James Ross[37] repeated Flett's inference that Riel's land claims necessarily implied the Métis and Half-Breeds were to be placed "on the same footing as Indians":

> Mr. Ross – As a Halfbreed of this country, I am naturally very anxious to get all the rights that properly belong to Half-breeds. I can easily understand that we can secure a certain kind of right by placing ourselves on the same footing as Indians. But in that case, we must decide on *giving up our rights as civilised men*. The fact is, we must take *one side or the other*—we must either *be Indians* and claim the privileges of Indians—certain reserves of land and annual compensation of blankets, powder and tobacco (laughter)—or else we must take the position of civilized men and claim rights accordingly. We cannot expect to enjoy the rights and privileges of both the Indian and the white man. Considering the progress we have made, and the position we occupy, we must claim the rights and privileges which civilized men *in other countries* claim (ibid.).[38]

There are three points that need to be made here. First of all, while Riel did not explicitly use the expression 'Indian title', indeed he even declared that Métis rights "are not to be confounded with Indian rights" (ibid.), the context in which it is raised is precisely that in which Métis title was invariably raised in the past and closely associates Métis title with the extinguishment of Indian title (O'Toole, *Métis Claims* 249-251). Second, by mentioning the 'rights of civilised men', Flett was clearly

suggesting that the *real* basis of Riel's claim was that of the rights of 'savages'. Like Flett, Ross interpreted Riel's position as placing the Métis and Half-Breeds "on the same footing as Indians" and as claiming "the privileges of Indians." Third, Riel's use of the doctrine of conquest can be seen as a strategic manoeuvre to avoid Ross' reinforcing of the linguistic convention that applies the principle of the excluded middle to Indian rights and the rights of 'white men.'

By doing so, Riel was not rejecting Indian title *per se*, but was attempting to manipulate a convention in order to 'reverse the official view' of it (Flanagan, *Aboriginal Rights* 251; *Reconsidered* 1st ed. 80; *2nd* ed. 91) and thereby turn Flett's and Ross's argument of the 'rights of civilised men' against them. When he reminded Ross of the 'rights of civilised men in other countries' including those of "Great Britain [who] holds most of her possessions by right of conquest," he was putting his claim that the "Half-breeds have certain rights which they claim by conquest" on par with those of Great Britain (ibid.). In other words, by rooting Métis claims in the doctrine of conquest, Riel was asserting that Métis territorial claims to Rupert's Land were no less valid and worthy of recognition under the Law of Nations than those of England.[39]

Provincial Jurisdiction over Crown Lands and the Territorial Enclave

In any event, one thing is certainly undeniable: Riel clearly suggested in public that the Métis had to 'be settled with for land claims' that they had 'in some parts of the country'. Strictly speaking, Flanagan did not deny this. Although he claimed Riel "made no public claims of special protection for the Métis" other than linguistic and religious rights, he nuanced this assertion by adding "except for a land grant" (*Political Thought* 139). Again, he referred several times to Riel's instructions of 19 April 1870 to Ritchot in which the former spoke of 'dividing the country in two' (*Political Thought* 140; *Case Against* 317; *Métis Rights* 251; *Métis Lands* 31). In addition, Flanagan saw in Riel's instructions "an outlook that Ritchot seems to have shared" and admitted that Ritchot's "behaviour in the negotiations makes most sense if it is interpreted as an attempt to secure a French and Catholic territorial enclave in southern Manitoba" (*Métis Lands* 31). Flanagan also acknowledged that the Anglican Bishop of Rupert's Land, Robert Machray, wrote on 11 March 1870 that, "the rights that have hitherto been put forward by the French and debated are not what they really care for, but that they wish for a Section of the

country to be restricted to the French Population" (W.L. Morton, *Begg's Journal* 506).

This would seem to contradict his claim that there 'was never a demand for special treatment of the Métis as a group' and that the Métis 'never demanded a land grant or anything like it'. However, Flanagan did not say *Riel* did not want a land grant, but specified that a land grant was not "originally desired *by* […] *the Métis*" and that the "*insurgents* at Red River had never demanded a land grant or anything like it" (*Reconsidered 1st ed.* 59; *2nd ed.* 65). In other words, he made a distinction between what the Métis *collectively* claimed, as represented in the various *Lists of Rights* and other public documents, and what Riel and Ritchot claimed as private individuals. To do so, he first portrayed Riel's instructions as being merely 'private' (*Political Thought* 140; *Case Against* 317; *Métis Rights* 231) or as simple 'advice to Ritchot' (*Métis Lands* 31). He then discounted their relevance by emphasising that they "did not arrive until 11 May," and therefore too late to "have any effect on the negotiations" (*Métis Lands* 31), once again allowing him to assert that Ritchot 'was not *officially* instructed to negotiate the extinguishment of Métis Aboriginal title, to request a land grant or anything of that sort'. In other words, he essentially suggests that Riel and Ritchot's idea of a land grant or an enclave went "beyond the spontaneous desires of the average Métis" (Flanagan, *Political Thought* 153).

On closer inspection, Flanagan's position is untenable. First of all, Riel's letter is explicitly entitled "Lettre d'instructions" addressed to Ritchot as "Commissaire à Ottawa" and signed by Riel as 'Président' of the Provisional Government (Riel, *1st vol*. 85, 86). Furthermore, when Ritchot mentioned the "réception de lettres de Messieurs Riel et Bruce", he made a clear distinction between Riel's 'lettre d'instruction' and Bruce's 'lettre privée' (556). Second of all, in the above-mentioned debate over the 15th article of the second *List*, it was not Riel who first responded to Flett and Ross's objections, but Pierre Thibert.[40] For the latter, the "rights put forward by Half-breeds need not necessarily be mixed up with those of Indians. It is quite possible that the two classes of rights can be separate and concurrent. My own idea is that *reserves of land should be given to Half-breeds for their rights*" (ibid.).[41] When added to Thibert's land claims, the words of an anonymous Métis who claimed he "would never give up the rights he had in the lands" (Canada, *Recent Occurrences* 61) and Pierre Delorme's aforementioned land claims, are sufficient to falsify the assertion that a land grant was Riel's idea and his alone and therefore went 'beyond the spontaneous desires of the average Métis'.

In terms of demands in the *List of Rights*, Flanagan recognised, as we have seen, that the dominant theme of the Resistance was not only 'local control of public lands', but also 'respect for local customs' (*Métis Lands* 30). In terms of the former, Flanagan speculated that, had the demand for control of public lands "been granted, it would have allowed the new provincial government to deal with the land claims of the Métis. Riel probably intended this, but there is no documentation" (*Political Thought* 150). Curiously, Flanagan has never made any connection between this conjecture and Riel's instructions of 19 April 1870.

Let us now take a closer look at these instructions. Riel wrote to Ritchot: "exigez [que] le pays se divise en deux pour que cette coutume des deux populations vivant séparément soit maintenue pour la sauvegarde de nos droits les plus menacés [et] ayez la bonté d'exiger encore que cette division du pays soit faite par l'autorité de la Législature seulement" (*1st vol.* 86).[42] If these instructions arrived too late, were they entirely new? Is it mere coincidence that the language Riel employed, which emphasised both the 'maintien d'une coutume' and the 'autorité de la Législature seulement', accords perfectly with the 5th clause in the fourth *List of Rights* of which Riel was one of the principal authors and that Ritchot carried with him ("properties, rights, […] customs, usages and privileges […] be left exclusively to the Local Legislature")?

To what 'custom' was Riel referring in his instructions and in the *List*? Shortly after the adoption of the first *List* by the Convention of Twenty-Four on 1 December 1869, of which the 14th clause also demanded that "all privileges, *customs* and usages existing at the time of the transfer be respected" (Begg 158), the Reverend Louis Raymond Giroux[43] wrote a letter to the *Courrier de Saint-Hyacinthe*, dated 15 December 1870, that referred to the very same local custom mentioned by Riel:

> Il y a quelques années la paix était loin de régner dans notre pays, et cela, à cause du mélange des deux populations différentes par la langue, les mœurs et la religion. Alors dans l'intérêt de la paix et d'un commun accord, les Métis canadiens et les anglais firent une convention en vertu de laquelle ceux-ci occuperaient *le bas de la Rivière-Rouge depuis Fort Garry*, et, ceux-là, le haut de cette même rivière. Les métis anglais tenaient tant à cette convention qu'ils ne permirent jamais à aucun Métis canadien de s'établir parmi eux. (qtd. in Martel 62)

That Bishop Machray was aware of the implications of such a custom is evident not only in the above-mentioned letter of 11 March 1870, but

even more so in his testimony in court in 1874, where he confirmed that on 2 or 3 March 1870, Riel had informed him that the Métis "wanted land set apart exclusively" for them and discussed two points: the "desirability of a Province *and of reserves*." Machray concluded that "*the desire for reserves* was the cause of all the trouble; *the French did not wish to be mixed* [up with the English], but to be all together" (Elliot and Brokovski 52).[44]

Moreover, the specific tract of land that Giroux mentioned is corroborated by other sources. Dennis reported that as early as 11 October 1869 the Métis were claiming, "the country on *the south side of the Assiniboine* […] as the property of the French half-breeds" (Canada, *Recent Occurrences* 7). Two weeks later, in an interview on 29 December 1869 with John Ross Robertson of the *Daily Telegraph*, McDougall showed himself to be perfectly aware that the object of the Métis "seemed to be to secure from the Canadian government a large tract of land *between Pembina and Fort Garry* [...] exclusively for the French" (W.L. Morton, *Begg's Journal* 480). It was surely no coincidence that Pierre Delorme "wanted the tract of land *lying south of the Assiniboine River* to be set aside as a self-governing colony free from all taxations" (Pannekoek 193). Is it mere coincidence that Ritchot's "behaviour in the negotiations makes most sense if it is interpreted as an attempt to secure a French and Catholic *territorial enclave in Southern Manitoba*" (Flanagan, *Métis Lands* 31)?

Now, it seems to me entirely preposterous that not only Giroux, but the Anglican Bishop and even McDougall and Dennis were all perfectly aware of 'what the Métis really cared for', but that Ritchot, Riel's confessor and, if Rev. Dugas is to be believed, "the soul of the movement" (W.L. Morton, *Begg's Journal* 50-1, note 2), would have been entirely in the dark on the matter. Futhermore, in the notes that Macdonald took during the negotiations, he used the very expression, "having regard to the *usages and customs* of the country" and specified that the land was to be "placed at the disposal of the local Legislature" in a draft version of s. 31 (Sprague 58).[45] Once again, despite the fact that they were written on 2 May 1870, and therefore more than a week before Ritchot received Riel's instructions, Macdonald's language is remarkably similar to that of Riel's. They obviously came directly from Ritchot, who clearly based the demand for a land grant on the 5th clause of the fourth *List of Rights*.[46] Aside from this, it is difficult to understand how the 'custom' or 'convention' of keeping the two populations apart would act as "a safeguard of our most endangered rights," if these rights simply refer to the *individual* civil and political rights of 'British subjects pure and simple' (Flanagan qtd. in

Blais 155). This only makes sense if one presumes that Riel "wanted the Métis to conserve a separate identity as a people or nation" (Flanagan, *Aboriginal Rights* 260).

If Flanagan mentioned that art. 17 of the second *List of Rights* such as it was adopted by the Convention of Forty demanded local control over public lands (*Case Against* 316; *Métis Lands* 30), he never analysed the genesis of this clause. This article—originally the 18th clause in the draft *List* drawn up by a committee—simply requested that the "two mile hay privilege be converted into fee simple ownership" (*New Nation,* 11 February 1870, 1).[47] During the debate over this clause, Riel proposed an amendment, asking whether "it not be wise in us *to ask for a certain tract of country*? Why not ask for *a certain block of land, to be under the exclusive control of the Local Legislature*? Let the land be disposed of as the people, through their representatives, thought best for their interest" (ibid.).[48] He then came back on the previous day's discussion of Indian title and stated that in "reference to the remark made last night, that we ought not to take the position of Indians, I say it is very true: and I would add further, that *here* is a request which we can make *with perfect consistency as civilised men*" (ibid.).[49] Further on, he again "urged that a large track of land should be applied for, as it would better satisfy all parties in the Settlement. *Being the absolute masters of this tract, it could be disposed of as the people desired*" (ibid.).[50] Here, then, is precisely the documentation that confirms Flanagan's hypothesis concerning Riel's intentions to use control of public lands to settle Métis land claims (*Political Thought* 150). Of course, Riel was careful to downplay the particular interests of the Métis by insisting that his "proposal is not only in the interest of those born in the country, but of all" (*New Nation,* 11 February 1870, 1).

If this was indeed Riel's intention, it would have essentially rendered the question of including an explicit reference to derivative Indian title in the *Lists of Rights* superfluous and explain why he was willing to 'skirt' the issue. Flanagan's hypothesis is further confirmed by Thomas Bunn's intervention.[51] When Riel, seconded by Poitras, finally proposed that the local legislature "have full control of all lands inside a circumference" of a 60 mile radius with Fort Garry as its centre, Bunn, who supported the proposal, nevertheless felt the need to specify that, "we are very strongly opposed to anything like the division between the French and the English people" (ibid.), which indicates that the Half-Breeds suspected that it was Riel's intention to do precisely that. When Riel (*1st vol.* 86) mentioned to Ritchot in his instructions of 19 April that, "[c]ette mesure, je n'en doute

pas, va faire bien des grimaces", he was perfectly aware of the Half-Breed opposition to it,[52] despite Giroux's reassurances to the contrary.

All of this seems to suggest that, if the Métis did not insist on the explicit inclusion of a territorial enclave as compensation for the extinguishment of their derivative Indian title in the *Lists of Rights*, it is surely implicit in the clauses referring to local privileges, customs and usages. Of course, other land-related demands, such as the quieting of titles of the long, narrow river lots that had been staked in the customary way, or of the customary right of common or hay privileges, were equally implicit in this article. In effect, Riel found that this article (again, originally the 18th clause in the draft version), which referred to the hay privilege, was "useless" since the "previous article"—precisely that which referred to the 'properties, rights, local customs, usages and privileges'—"gives us what we ask here [in the 18th clause]" because it "is *general* and I think *covers all the ground*" (*New Nation* 4 February 1870, 6). Such implicit incorporation of land-related demands may explain why the executive of the Provisional Government did not bother to repeat the demands for pre-emption rights and a homestead act in the third and fourth *Lists*.

Ironically, it is perhaps the delegate Judge John Black who provides us with a hint that such rights were implicit. When Black passed through Toronto on his way to Ottawa, he was strangely ambiguous with the local press in regard to the content of the *List of Rights* he carried. He apparently "refused to give further information than that it was not the original Bill of Rights agreed to at the Convention." When the correspondent of the *Globe* inquired "as to a Clergy Reserve principle contained in it"—and here, it is important to recall that McDougall believed the Métis enclave would be "similar to the Canada Clergy Reserve land" (W.L. Morton, *Begg's Journal* 480),[53] Black replied coyly that "there was nothing *direct* on this point" (Bowsfield 156).[54]

Ritchot's Role in the Negotiation of the *Manitoba Act*

If Indian title and a territorial enclave were effectively implicit in the various *Lists of Rights*, it remains to be settled that it was part of Ritchot's mandate and instructions to negotiate the surrender of the former to obtain the latter. Flanagan attempts to minimise the legitimacy of the recognition of the derivative Indian title of the Métis in s. 31 by attacking Ritchot's role during the negotiations. He does this by first portraying s. 31 as "a hastily contrived compromise" (*Reconsidered 1st ed.* 59; *2nd*

ed. 65), second by reducing Ritchot's position on the question to that of a minority of one delegate out of three, and third by suggesting that Ritchot went beyond the limits of his mandate. In what follows, I will seek to demonstrate that these assertions lie for a good part on a truncated interpretation of Richot's diary. When Flanagan mentions that "[l]and matters then came up on 26 April" (*Métis Lands* 32-3), he reduces them to the claims that were incorporated into s. 32 of the *Manitoba Act*. He then passes immediately to the discussions of 27 April and claims that it was only 'then' that Ritchot brought up the idea of compensation for the extinguishment of the derivative Indian title of the Métis. In other words, the issue was only raised during the negotiations because Macdonald and Cartier would not accept provincial control of public lands (33).[55]

In fact, Ritchot's diary does not proceed in a perfectly chronological manner.[56] First of all, it was Macdonald and Cartier who first raised the question of the extinguishment of Indian title as one of the justifications for maintaining federal control over public lands at the very beginning of the entry of 27 April (Ritchot 546). When the ministers steadfastly refused any compromise on this issue, Ritchot insisted that, "nous ne pouvons nullement renoncer au contrôle des terres à moins que nous ayons une compensation ou des conditions qui pour la population actuelle équivaudraient au contrôle des terres de la province" (ibid.). Here, Ritchot abruptly interrupts his narrative of 27 April, writing in the margin that it was "le mardi 26 que nous avons traité cela"[57]—in other words with what 'conditions' Ritchot took to be an 'equivalent' of local control of Crown lands (547). It is here that the 'land matters' to which Flanagan refers are mentioned, but he curiously neglects to mention that Ritchot concluded his recapitulation of 26 April with the remark that there arose "un *long* débat sur les droits des Mitis [*sic*]" (ibid.).[58] That this issue was thoroughly discussed is confirmed by Cartier when he mentioned in Parliament during discussion of s. 31 that this "land question was the most difficult one to decide" of all questions related to the *Manitoba Act* (Canada, *Debates* 1446). Ritchot's narrative then returns to the negotiations of 27 April and immediately reveals what was understood by 'Métis rights': Macdonald and Cartier's replied that the Métis, "ayant obtenu une forme de Gouvernement propre aux hommes civilisés ne devraient pas réclamer les privilèges accordés aux Sauvages" (Ritchot 547).[59] The issue was therefore not simply raised out of the blue on 27 April, as Flanagan (*Case Against* 317; *Métis Rights* 232; *Métis Lands* 33; *Blais* 160) and MacInnes (*MMF* paras. 649 and 928) would have us believe.

Of course, one might respond to this that, regardless of when exactly the question was first raised, Ritchot had nevertheless pulled it out of the proverbial hat. However, as has been shown here, and in more detail elsewhere (O'Toole, *Métis Claims*), it was not Ritchot who gave "birth to the idea that the Métis had inherited a share of Indian title", as Flanagan claims (*Métis Lands* 34). Even more importantly, Macdonald had been informed of such demands some five months before he met Ritchot. A letter dated 18 November 1869 informed him that the Métis were demanding *inter alia*: 1) That the Indian title to the whole territory shall at once be paid for; 2) That on account of their relationship with the Indians a certain portion of this money shall be paid over to them [the Métis]; 3) That all their claims to land shall be at once conceded; 4) That [2]00 acres shall be granted to each of their children (A.S. Morton 877).[60] As Macdonald knew perfectly well that the Métis were claiming both compensation for their share of Indian title and 200-acre grants for each child, he would have neither accredited Ritchot with the paternity of such ideas nor perceived it as an improvisation on his part.[61] Far from being 'a hastily contrived compromise', s. 31 was the question that 'was the most difficult one to decide' and the result of 'a long debate', not only between the delegates and ministers, but most certainly among the Métis themselves (O'Toole, *Métis Claims*; Ens, *Prologue*).

Be that as it may, none of this proves that Ritchot alone had a specific mandate to negotiate the surrender of Métis title for a land grant. Indeed, Flanagan claims that Ritchot had no instructions to negotiate "a land grant or anything like it" and further insists, not only was he but one of three delegates, but that John Black was often in disagreement with him (*Métis Lands* 47). If this latter statement is true, it is nevertheless misleading. Flanagan asserts that, when Ritchot demanded control of public lands, "not receiving support from John Black, he finally retreated" (33). In fact, when Black accepted without hesitation to cede control over public lands to the federal Parliament, Ritchot replied that "si ce monsieur [Black] voulait et pouvait les faire accepter par le peuple, je les accepterais volontiers" (546).[62] At this point, it was Black who, receiving neither the support of Ritchot nor that of Scott, finally retreated. According to Ritchot, "Monsieur Black dit naïvement qu'il ne pourrait pas faire accepter ces arrangements" (ibid.).[63] Furthermore, as Flanagan himself recognised (*Reconsidered 1st ed.* 59; *2nd ed.* 65), in the delegates' instructions, the article in the *List of Rights* concerning provincial control of public land was peremptory (Begg 323). It was therefore Black who overstepped his mandate when he so casually accepted federal control of public land.

Black's overly conciliating position is hardly astonishing when one considers that James Ross recorded first on 3 December 1869 that, in regards to the first *List*, Black "disapproved the French programme entirely" and then on the following day that Black "was going to see Riel and Co. about the resolutions or articles of rights set forth in print yesterday. He seemed to think them absurd" (W.L. Morton, *Begg's Journal* 440).[64] Furthermore, James W. Taylor,[65] a special secret agent of the United States sent to Red River who followed the delegates of the Provisional Government to Ottawa, reported to the Secretary of State, Hamilton Fish on 19 April 1870 that he suspected that there "will be a great effort to separate Judge Black from the other members of the delegation" (W.L. Morton, *Manitoba* 49) and that "there is a determined purpose to single out Judge Black in the party to be flattered and influenced—inducing him to stand firmly on the original *Bill of Rights*, in opposition to any new demands borne by Ritchot and Scott" (50). For Taylor, then, it was Black's, not Ritchot's position, that was that of a minority of the delegates. In effect, in his deposition to the Select Committee, Macdonald stated that when Black told him that his instructions were from the Provisional Government and that he carried a new *List of Rights* prepared by the latter, Macdonald "told him they had better not be produced", but "that the claims asserted in the last mentioned [second] Bill of Rights could be pressed by the delegates" (Canada, *Causes and Difficulties* 103). Subsequently, while Ritchot "was continually anxious to obtain some such recognition" of the Provisional Government, "Black desired to be spoken of as coming from the Convention [of Forty], and not from the Provisional Government" (ibid.).[66]

Furthermore, according to Sir Stafford Northcote, Governor of the HBC, Sir John Young, the Governor General of Canada, was of the opinion that Scott was "a mere creature of Riel's" (W.L. Morton, *Manitoba* 81). If Scott was nominally appointed to represent the United States' element in the Settlement,[67] Begg wrote in his diary that "it is quite certain [Scott] will side with [Ritchot] in all matters of dispute" (W.L. Morton, Begg's Journal 345). Later, Begg wrote that "there were, in reality, two delegates from the French and one from the English, as Mr. Scott professed, openly, to be in the confidence and on the side of the former party" (274). Although Ritchot's diary does not make it easy to know when Scott in fact took part in the negotiations, his deposition to the Select Committee states that Scott was present on the key dates of 26, 27, 28 and 30 April, on 2, 5 and 6 May as well as the 3 May meeting with the Governor General (Canada, *Causes and Difficulties* 71-2). He was therefore present when land matters came up, most notably on 26,

27 and 29 April, 2, 5 and 6 May and undoubtedly supported Ritchot on these matters. Consequently, it can be safely concluded that "Ritchot was the principal negotiator, with Scott as his seconder" (W.L. Morton, *Begg's Journal* 135).

Apart from confirming that Ritchot was not simply one delegate among three, Begg's comment reveals that he was specifically appointed to represent the "French". It is important to understand what exactly the signifier 'French' signified in the context of Assiniboia in 1870. According to contemporary, Rev. MacBeth, "the French half-breeds" were "commonly called 'the French' in the Red River Colony" (30). Ten years later, Dr. Valéry Havard also remarked that the "designation of French is often indifferently applied to [French] Canadians, métis of all grades [of French blood] and even pure Indians who associate with métis and speak their *patois*" (314). In his introduction to a translation of Ritchot's diary, states that Ritchot alone had "the burden of the negotiations of all that was of peculiar concern to the French," including "the land grants to the Métis" (*Manitoba* 131). This is probably why Chartrand mentions that Ritchot was the special negotiator for the Métis (4, 28).

This is effectively confirmed in Ritchot's diary. On 17 May 1870, when Ritchot saw Black off to Montréal after the negotiations, the latter, far from admonishing Ritchot for overstepping his mandate, apparently told him that "l'amnistie, *les affaires des terres*, ne sont pas de ses [Black] affaires" (Ritchot 557). When Black recognised that the "convention l'a surtout chargé des affaires des Métis Anglais et moi [Ritchot] des [Métis] Canadiens français" (ibid.),[68] he made it perfectly clear that he was fully aware that Ritchot, and Ritchot alone, had indeed received particular instructions to negotiate the land question specifically on behalf of the Métis. Four years later, Ritchot swore under oath in his testimony in *R. v. Lépine* that he had been appointed to represent 'the French' (Eliott and Brokovski 78). This also explains why Ritchot reportedly requested 150,000 acres[69] *uniquely* for the Métis and that he allegedly replied to Cartier, when the latter offered 100,000 acres for *each* linguistic group, that he "didn't care for" the Half-Breeds (W.L. Morton, *Manitoba* 91).[70] If Ritchot overstepped his mandate, it was by representing the Half-Breeds and including them in the land grant, not by negotiating it for the Métis.[71]

Conclusion

Flanagan's claims that the various *Lists of Rights* contain no reference to a land grant, that Rev. Ritchot was not a delegate of the Métis *per se*, that he had no mandate to negotiate a land grant and that the idea of a land grant only arose during the negotiations do not satisfy the standard social science criteria of verification. Such assertions do not account for numerous facts and are either unsupported by the historical evidence or are even contradicted by it.

That being said, I agree with Flanagan that, "Riel wanted the Colony to enter Confederation as a province with institutions modelled on those of Québec" (*Political Thought* 139). Riel indeed hoped right up until the end of his life that the Métis, reinforced by French and *Canadiens* migrants who would pursue the process of miscegenation with Amerindians, would one day once again form the majority within the Province of Manitoba (*3rd vol.* 312, 315, 490), and even that he would one day be premier (130). But it is precisely this comparison with Québec that makes it clear that the Métis did not view themselves as "British subjects pure and simple" (Flanagan qtd. in *Blais* 155), but as a 'distinct society'. During the debates of the Convention of Forty, Riel stated that "we must primarily do what is right and proper for our interest" and for this reason, "not merely Americans, but Canadians, English, Irish and Scots"—in other words even other British subjects—"are to be looked upon as strangers." If the Métis and Half-Breeds were "in a sense British subjects," they were nevertheless "a peculiar people in exceptional circumstances" (*New Nation,* 11 February 1870, 1).[72]

It was also apparent that Riel feared that the Métis might *not* "be sufficiently protected in a province which was a Western replica of Québec" (Flanagan, *Political Thought* 140). At the beginning of the Resistance, Riel told the Council of Assiniboia on 25 October 1869 that the Métis "felt that if a large immigration were to take place they would probably be crowded out of a country which they claimed as their own" (Canada, *Causes and Difficulties* 98). Riel was clear about his objective: "we must seek to preserve the existence of our own people. We must not, *by our own act*, allow ourselves to be swamped. If the day comes when that is done, it must be *by no act of ours*" (*New Nation,* 11 February 1870, 1). Flanagan recognised that behind s. 31, "was the fear that aggressive newcomers might purchase all the good land in Manitoba, leaving the younger generation of Métis a landless minority in their own province" (*Métis Claims* 113).

This would explain why Riel spoke of the 'desirability of a Province *and* of reserves'. Indeed, as Flanagan astutely observed, the former was a means to the latter. The objective was to enter Confederation as a province and then not only use jurisdiction over public lands to create a territorial enclave, but to "make regulations for outsiders with reference to the sale and disposition of our lands" (*New Nation,* 11 February 1870, 2). In light of this, Ritchot's reference to 'conditions which for the population actually there would be equivalent to the control of the lands of their province' essentially meant getting federal Parliament to do what the Métis would have done had they obtained jurisdiction over Crown lands. This included the commutation of the right of common into fee simple, pre-emptive rights to quiet the titles of all settlers who were in peaceful possession and homesteads for future generations, all of which were in the first two *Lists of Rights*. That all of these were to be within the boundaries of a territorial enclave is confirmed by the references to 'joint lots' in Macdonald's notes (Sprague 58), to "un seul morceau" in Ritchot's diary (548) and to 'local customs' in the *Lists of Rights*, notably that of a division of the territory and of the specific area reserved for the Métis. While Flanagan believed that "nothing came of this idea" (*Political Thought* 140), James W. Taylor "regarded [s. 31] as an equivalent" of art. 17 of the second *List of Rights* (Bowsfield 171), the very article that Riel had amended so "the land [could] be disposed of as the people, through their representatives, thought best for their interest."

The delegates and the representatives of the Crown initially agreed to local control of Métis lands (Flanagan, *Métis Lands* 36). A remnant of this agreement found its way into s. 31, which empowered the Lieutenant-Governor to "select such lots or tracts […] as he may deem expedient" and to "divide the same among the children." While it is true from a strictly legal point of view that in the final version of s. 31 "nothing was left to the legislature of Manitoba" (Flanagan, *Reconsidered 1st ed.* 61; *2nd ed.* 67), the constitutional conventions surrounding executive power, notably that of responsible government, according to which the Crown never acts without the advice of her ministers and that these be members of a democratically elected legislative assembly to which they are accountable, would normally have required it. But Macdonald thought it best that the Lieutenant-Governor of Manitoba "be for the time a paternal despot" (Thomas 14). In reality, the Métis were never treated like equals of British subjects in other provinces,[73] but were denied responsible government[74] and control of public lands.

Ironically, had the Métis obtained control over public lands, this would have rendered any mention of derivative Indian title in a land grant not only superfluous, but unconstitutional. If such power had enabled the Métis to make a *provincial* land grant, it could not have been done under the pretence of extinguishing their Indian title as the latter can only be surrendered to the federal Crown under ss. 91(24) of the *Constitution Act, 1867*. Furthermore, there would be no legal wrangling in the courts today, as the Métis would be in no position to claim their land was lost 'by no act of ours'. Again, this would have meant putting the Métis on a truly equal footing with British subjects in other provinces who not only enjoyed individual property rights, but *collectively* controlled Crown lands and natural resources, something the ministers of the federal Crown refused to do. If there are "subsequent anomalies in Métis history [that] have arisen from [a] hasty and ill-considered decision" (Flanagan, *Aboriginal Rights* 251), this was surely one of them.

Appendix

First List of Rights[75]

1. The people have the right to elect their own Legislature.

2. The Legislature to have power to pass all laws, local to the Territory, over the veto of the Executive, by a two-third vote.

3. No act of the Dominion Parliament local to this Territory to be binding on the people until sanctioned by their representatives.

4. All sheriffs, magistrates, constables, etc., to be elected by the people.

5. A free homestead pre-emption law.

6. A portion of the public lands to be appropriated to the benefit of schools, the building of roads, bridges and public buildings.

7. A guarantee to connect Winnipeg by rail with the nearest line of railroad within a term of five years; the land grant for such road or roads to be subject to the Legislature of the Territory.

8. For four years the public expenses of the Territory, civil, military and municipal, to be paid out of the Dominion funds.

9. The military to be composed of the people now existing in the Territory.

10. The French and English language to be common in the Legislature and Council, and all public documents and acts of Legislature to be published in both languages.

11. That the Judge of the Superior speak French and English.

12. Treaties be concluded and ratified between the Government and several of Indians of this Territory, to insure peace on the frontier.

13. That we have a full and fair representation in the Canadian Parliament.

14. That all privileges, customs and usages existing at the time of the transfer be respected.

Second List of Rights[76]

1. That in view of the present exceptional position of the Northwest, duties upon goods imported into the country shall continue as at present (except in the case of spirituous liquors) for three years, and for such further time as may elapse, until there be uninterrupted railroad communication between Red River settlement and St. Paul, and also steam communication between Red River settlement and Lake Superior.
2. As long as this country remains a territory in the Dominion of Canada, there shall be no direct taxation, except such as may be imposed by the local legislature, for municipal or other local purposes.
3. That during the time this country shall remain in the position of a territory, in the Dominion of Canada, all military, civil, and other public expenses, in connection with the general government of the country, or that have hitherto been borne by the public fluid, of the settlement, beyond the receipt of the above mentioned duties, shall be met by the Dominion of Canada.
4. That while the burden of public expense in this territory is borne by Canada, the country be governed by a Lieutenant-Governor from Canada, and a Legislature, three members of whom being heads of departments of the Government, shall be nominated by the Governor General of Canada.
5. That after the expiration of this exceptional period, the country shall be governed, as regards its local affairs, as the Provinces of Ontario and Quebec are now governed, by a Legislature by the people, and a Ministry responsible to it, under a Lieutenant-Governor, appointed by the Governor General of Canada.
6. That there shall be no interference by the Dominion Parliament in the local affairs of this territory, other than is allowed in the provinces, and that this territory shall have and enjoy in all respects, the same privileges, advantages and aids in meeting the public expenses of this, territory as the provinces have and enjoy.
7. That, while the Northwest remains a territory, the Legislature [sic] have a right to pass all laws local to the territory, over the veto of the Lieutenant-Governor by a two-third vote.
8. A homestead and pre-emption law.
9. That, while the Northwest remains a territory, the sum of $25,000 a year be appropriated for schools, roads and bridges.
10. That all the public buildings be at the expense of the Dominion treasury.

11. That there shall he guaranteed uninterrupted steam communication to Lake Superior, within five years; and also the establishment, by rail, of a connection with the American railway as soon as it reaches the international line.

12 [Ø]. That the military force required in this country be composed of natives of the country during four years. [Lost by a vote of 16 yeas to 28 nays, and consequently struck out of the list.]

13 [12]. That the English and French languages be common in the Legislature and Courts, and that all public documents and acts of the Legislature be published in both languages.

14 [13]. That the Judge of the Supreme Court speak the French and English languages.

15 [14]. That treaties be concluded between the Dominion and the several Indian tribes of the country as soon as possible.

16 [15]. That, until the population of the country entitles us to more, we have three representatives in the Canadian Parliament, one in the Senate, and two in the Legislative Assembly.

17 [16]. That all the properties, rights and privileges as hitherto enjoyed by us be respected, and that the recognition and arrangement of local customs, usages and privileges be made under the control of the Local Legislature.

18 [17]. That the Local Legislature of this territory have full control of all the lands inside a circumference having upper Fort Garry as a centre and that the radius of this circumference be the number of miles that the American line is distant from Fort Garry.

19 [18]. That every man in the country (except uncivilized and unsettled Indians) who has attained the age of 21 years, and every British subject, a stranger to this country who has resided three years in this country and is a householder, shall have a right to vote at the election of a member to serve in the Legislature of the country, and in the Dominion Parliament; and every foreign subject, other than a British subject, who has resided the same length of time in the country, and is a householder, shall have the same right to vote on condition of his taking the oath of allegiance, it being understood that this article be subject to amendment exclusively by the Local Legislature.

20 [19]. That the Northwest territory shall never be held liable for any portion of the 300,000 paid to the Hudson's Bay Company or for any portion of the public debt of Canada, as it stands at the time of our entering the confederation; and if, thereafter, we be called upon to assume our share of said public debt, we consent only, on condition that we first be allowed the amount for which we shall be held liable.

Third List of Rights[77]

1. That the territories heretofore known as Rupert's Land and Northwest, shall not enter into the confederation of the Dominion, except as a province, to be styled and known as the Province of Assiniboia, and with all the rights and privileges common to the different Provinces of the Dominion.
2. That we have two representatives in the Senate and four in the House of Common of Canada, until such time as an increase of population entitles the Province to a greater representation.
3. That the Province of Assiniboia shall not be held liable at any time for any portion of the public debt of the Dominion contracted before the (late the said province shall have entered the confederation, unless the said province, shall have first received from the Dominion the full amount for which the said province is to be held liable.
4. That the sum of eighty thousand dollars be paid annually by the Dominion Government to the Local Legislature of the Province.
5. That all properties, rights and privileges enjoyed by the people of this Province up to the date of our entering into the confederation be respected, and that the arrangement and confirmation of all customs, usages and privileges be left exclusively to the Local Legislature.
6. That during the term of five years, the Province of Assiniboia shall not be subjected to any direct taxation, except such as may be imposed by the Local Legislature for municipal or local purposes.
7. That a sum of money equal to eighty cents per head of the population of this Province be paid annually by the Canadian Government to the Local Legislature of the said Province, until such time as the said population shall have increased to six hundred thousand.
8. That the Local Legislature shall have the right to determine the qualifications of members to represent this Province in the Parliament of Canada, and in the Local Legislature.
9. That in this Province, with the exception of uncivilized and unsettled Indians, every male native citizen who has attained the age of twenty-one years; and every foreigner, being a British subject, who has attained the same, and has resided three years in the Province, and is a householder; and every foreigner, other than a British subject, who has resided here during the same period, being a householder and having taken the oath of allegiance, shall be entitled to vote at the election of members for the Local Legislature and for the Canadian Parliament. It being understood that this article be subject to amendment exclusively by the Local Legislature.

10. That the bargain of the Hudson's Bay Company in the respect to the transfer of the government of this country to the Dominion of Canada be annulled so far as it interferes with the rights of the people of Assiniboia, and so far as it would affect our future relations with Canada.
11. That the Local Legislature of the Province of Assiniboia shall have full control over all the public lands of the Province, and the right to annul all acts or arrangements made or entered into with reference to the public lands of Rupert's Land and the Northwest, now called the Province of Assiniboia.
12. That the Government of Canada appoint a commissioner of engineers to explore the various districts of the Province of Assiniboia, and to lay before the Local Legislature a report of the mineral wealth of the province within five years from the date of our entering into confederation.
13. That treaties be concluded between Canada and the different Indian tribes of the Province of Assiniboia by and with the advice and co-operation of the Local Legislature of this Province.
14. That an uninterrupted steam communication from Lake Superior to Fort Garry be guaranteed to be completed within the space of five years.
15. That all public buildings, bridges, roads, and other public works be at the cost of the Dominion treasury.
16. That the English and French languages be common in the Legislature and in the Courts, and that all public documents, as well as all acts of the Legislature, be published in both languages.
17. That whereas the French and English speaking people of Assiniboia are so equally divided as to numbers, yet so united in their interests, and so connected by commerce, family connections, and other political and social relations, that it has happily been found impossible to bring them into hostile collision, although repeated attempts have been made by designing strangers, for reasons known to themselves, to bring about so ruinous and disastrous an event.

    And whereas after all the trouble and apparent dissensions of the past, the result of misunderstanding among themselves, they have, as soon as the evil agencies referred to above were removed, become as united and friendly as ever; therefore as a means to strengthen this union and friendly feeling among all classes, we deem it expedient and advisable,

    That the Lieutenant-Governor, who may be appointed for the Province of Assiniboia, should be familiar with both the English and French languages.
18. That the judge of the Superior the English and French Court speak languages.

19. That all debts contracted by the Provisional government of the territory of the Northwest, now called Assiniboia, in consequence of the illegal and inconsiderate measures adopted by Canadian officials to bring about a civil war in our midst, be paid out of the Dominion treasury, and that none of the members of the Provisional government, or any of those acting under them, be in any way held liable or responsible with regard to the movement or any of the actions which led to the present negotiations.
20. That in view of the present exceptional position of Assiniboia, duties upon goods imported into the Province shall, except in the case of spirituous liquors, continue as at present for at least three years from the date of our entering the confederation, and for such further time as may elapse until there be uninterrupted railroad communication between Winnipeg and St. Paul, and also steam communication between Winnipeg and Lake Superior.

Executive Instructions to Delegates

March 22nd 1870

SIR, - Enclosed with this letter you will receive your commission, and also a copy of the conditions and terms upon which the people of this country will consent to enter into the confederation of Canada. You will please proceed with convenient speed to the city of Ottawa, Canada, and, on arriving there, you will, in the company with (the other delegates), put yourself immediately in communication with the Dominion Government, on the subject of your commission. You will please observe that with regard to the articles numbered 1, 2, 3, 4, 6, 7, 15, 17, 19 and 20, you are left at liberty, in concert with your fellow commissioners, to exercise your discretion; but bear in mind that, as you carry with you the full confidence of this people, it is expected that in the exercise of this liberty, you will do your utmost to secure their rights and privileges, which have hitherto been ignored.

With reference to the remaining articles, I am directed to inform you that they are peremptory I have further to inform you that you are not empowered to conclude finally any arrangements with the Canadian Government; but that any negotiations, entered into between you and the said Government, must first have the approval of, and be ratified by, the Provisional Government, before Assinniboia will become a province of the Confederation.

I have the honour to be, Sir, Your obedient Servant,

Thomas Bunn

Secretary of State

Manitoba Act, 1870

30. All ungranted or waste lands in the Province shall be, from and after the date of the said transfer, vested in the Crown, and administered by the Government of Canada for the purposes of the Dominion, subject to, and except and so far as the same may be affected by, the conditions and stipulations contained in the agreement for the surrender of Rupert's Land by the Hudson's Bay Company to Her Majesty.
31. And whereas, it is expedient, towards the extinguishment of the Indian Title to the lands in the Province, to appropriate a portion of such ungranted lands, to the extent of one million four hundred thousand acres thereof, for the benefit of the families of the half-breed residents, it is hereby enacted, that, under regulations to be from time to time made by the Governor General in Council, the Lieutenant-Governor shall select such lots or tracts in such parts of the Province as he may deem expedient, to the extent aforesaid, and divide the same among the children of the half-breed heads of families residing in the Province at the time of the said transfer to Canada, and the same shall be granted to the said children respectively, in such mode and on such conditions as to settlement and otherwise, as the Governor General in Council may from time to time determine.
32. For the quieting of titles, and assuring to the settlers in the Province the peaceable possession of the lands now held by them, it is enacted as follows:

    (1) All grants of land in freehold made by the Hudson's Bay Company up to the eighth day of March, in the year 1869, shall, if required by the owner, be confirmed by grant from the Crown.

    (2) All grants of estates less than freehold in land made by the Hudson's Bay Company up to the eighth day of March aforesaid, shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.

    (3) All titles by occupancy with the sanction and under the license and authority of the Hudson's Bay Company up to the eighth day of March aforesaid, of land in that part of the Province in which the Indian Title has been extinguished, shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.

    (4) All persons in peaceable possession of tracts of land at the time of the transfer to Canada, in those parts of the Province in which the Indian Title has not been extinguished, shall have the right of pre-emption of the same, on such terms and conditions as may be determined by the Governor in Council.

(5) The Lieutenant-Governor is hereby authorized, under regulations to be made from time to time by the Governor General in Council, to make all such provisions for ascertaining and adjusting, on fair and equitable terms, the rights of Common, and rights of cutting Hay held and enjoyed by the settlers in the Province, and for the commutation of the same by grants of land from the Crown.

33. The Governor General in Council shall from time to time settle and appoint the mode and form of Grants of Land from the Crown, and any Order in Council for that purpose when published in the *Canada Gazette*, shall have the same force and effect as if it were a portion of this Act.

Acknowledgements

This article is dedicated to my great-great-grand-mother, Marie-Rose Larocque, born on 10 June 1865 in Saint-François-Xavier, and whose s. 31 grant N° 5378 was sold to speculators (Pelletier 285).

I would like to thank the anonymous reviewers for their constructive criticism and suggestions, including the title.

Notes

1. Regulations adopted on 25 June 1841 specified that the Laws of Assiniboia applied to an area that "extended in all directions fifty miles from the forks of the Red River and the Assiniboine" (Oliver 296). In 1869, the population of this District was composed of roughly 12000 souls, of which approximately 5500 where Métis and 4500 were Half-Breeds (Canada, *Instructions* 91).
2. Reverend Noël-Joseph Ritchot (1825-1905): Born in L'Assomption, Lower Canada, he came to Red River in 1862 and became priest at the Métis parish of St. Norbert (Bumsted, *Rebellion* 318).
3. Judge John Black (1817-1879): Arrived in Red River in 1839, entered the service of the HBC, and rose to the post of chief trader. He became recorder and president of the General Quarterly Court in 1861 and member of the Council of Assiniboia in 1862 (Bumsted, *Rebellion* 259).
4. Alfred H. Scott (1840-1872): Worked as barkeeper in the saloon of Hugh F. O'Lone, later working as clerk in a store (Bumsted, *Rebellion* 323).
5. It is true that in a speech to the Provisional Government, Ritchot claimed the delegates "were told by the Ministry that […] the only ground on which the land could be given was for the extinguishment of the Indian title" (*New Nation,* 1 July 1870 2). But he contradicted himself further on in the same speech, saying the ministers "at first fought very hard against us in this matter" (3). This latter interpretation is corroborated by his journal (Ritchot 547) while the former is contradicted by what occurred during debates in the House of Commons. In fact, the reference to Indian title was precisely what made s. 31 difficult to get the bill through the House (Canada, *Debates,* 1306, 1436, 1447, 1449, 1450-1, 1501). Besides, Macdonald and Cartier did not insist on Indian title to get the bill through the House, but on federal, instead of provincial, jurisdiction over s. 31 lands (Ritchot 552-3).

6. MacInnes stated that the plaintiffs may nevertheless "be able to negotiate a land claim agreement with Canada and Manitoba and thereby achieve their expressed goal of obtaining a land base for the Métis of Manitoba" (*MMF* par. 1194). This seems somewhat insincere when one considers that the reason it took so long for the case to finally go to trial was that the MMF suspended legal proceedings several times in order to find a political solution through negotiation with the federal government.
7. In *R. v. Goodon* (2008), Judge Combs' decision contradicts MacInnes' findings on several points of law, notably in regards to the cut-off date for recognising Aboriginal rights, which Combs placed some two hundred years later than MacInnes—1870 as opposed to 1670.
8. This doctrine essentially "traces Métis rights to the ancient rights of the peoples form whom Métis people derive their Aboriginal ancestry" (Canada, *RCAP* 280). It was explicitly rejected as a basis for Métis Aboriginal rights in *Powley* (par. 38), although the Court did state that the purpose of s. 35 is to "recognize and affirm the rights of the Métis held *by virtue of their direct relationship to this country's original inhabitants* and by virtue of the continuity between their customs and traditions and those of their Métis predecessors" (par. 29. Italics are mine).
9. See also Ens, *Prologue*. The question of Métis *claims* of Aboriginal title or rights is, of course, irrelevant as a matter of law. Since s. 35 recognises the Métis as an Aboriginal people, there is no need for them to prove that they ever claimed Aboriginal status. The burden of proof involves demonstrating that the effective *occupation* or *practices* of a Métis community existed before the cut-off date of 'effective control'. See *Powley*.
10. Both these articles initially began as a simple translation of an article that originally appeared in French (O'Toole, *Revendications*). However, further research forced me to extend both the material facts and my interpretation of them, which resulted in two articles that build on, rather than simply translate, the original.
11. In fact, the first *List* does not mention local control of public lands. It does mention however that no "act of the Dominion Parliament (local to this territory) to be binding on the people until sanctioned by their representatives", which would have allowed the local legislature to veto any federal legislation concerning local Crown land.
12. Italics are mine.
13. Italics are mine. S. 31 was originally s. 27 in the bill before it passed through Parliament.
14. William McDougall (1822-1905): An advocate of westward expansion. He and Sir George-Étienne Cartier went to London in 1868 to negotiate the transfer of Rupert's Land from the HBC to Canada, and as minister of public works he began road construction in the West under John Snow (Bumsted, *Rebellion* 298). He was Lieutenant- Governor designate when the Resistance broke out.
15. The opposition was entirely correct in this regard. Ritchot specified that the demand of 200 acres was not only for the "enfants nés" (548), but for the "enfants à naître" during a period of "pas moins de 50 ou 75 ans" (549) as well as "chacun de leurs descendants à partir de cette époque" with "une loi de protection pour la conservation de ces terres dans la famille" (548). Macdonald's notes also mention that that the land was to be distributed "under such legislative enactments which may be found advisable to secure the transmission and holding of the said lands amongst the half breed families" (Sprague 58).
16. The *List* in fact incorporated four clauses from a Dakota *Bill of Rights* that was penned by Enos Stutsman and published in the St. Paul *Daily Press* a month earlier (Bumsted, *Rebellion* 93-4). Colonel Enos Stutsman (1826-1874): In 1858, he went to the Dakota Territory and served as a member of the territorial legislature. In 1869, he was promoting American annexation of Red River from Pembina and was often consulted by Riel and the Métis leadership (328).
17. Italics are mine.
18. The two are not mutually exclusive. A pre-emptive right would recognise the Métis children's priority in the selection of homestead lots.

19. Italics are mine.
20. In the context, Macdonald is obviously referring to the Métis and not to First Nations.
21. Curiously, MacInnes J. made no mention of these statements when he considered the intention of Parliament concerning the conditions of settlement (*MMF* paras. 935-943).
22. An Ontario Conservative MP and brother of Walter Robert Bown, who owned the *Nor'Wester* and was a member of the 'Canadian party'.
23. Pierre Delorme (1832-1912): a Métis plains hunter and trader. He served as a French delegate for Pointe-Coupée at the Convention of Forty. He was later elected as MP for Provencher and MLA (Bumsted, *Rebellion* 273).
24. That being said, in *Wewaykum*, the Supreme Court of Canada noted that the federal government created reserves "out of provincial Crown lands *to which these particular bands had no aboriginal or treaty right*" (par. 95. Italics are mine). In *Guerin*, the Court stated that "Indian interest is the same" in both reserve and traditional lands (379). Since s. 35 recognises the Métis as an Aboriginal people, title in an enclave reserved for them, whether on traditional lands or not, would *ipso facto* be Aboriginal or *sui generis* title.
25. Flanagan attributed the *Declaration* to Riel in two articles (*Riel and Rights* 251; *Political Thought* 133). Stanley and Huel agreed that it was Reverend Georges Dugas who, with the help of Ritchot, wrote the *Declaration* and not Riel (Riel *1st vol.* 38, note 1). In *Political Thought* (158, note 3), Flanagan cited an earlier article, *Political Theory*, where he recognised Dugas's role in writing the *Declaration* (157-8). If it is true, as Ens claimed, that Dugas ridiculed Métis claims of derivative Indian title (*Prologue* 117), this may explain why no trace of it is to be found in the *Declaration*, a document written in his hand.
26. The French version reads, "tant de fois défendue [notre patrie], au prix de notre sang." (Riel *1st vol.* 41).
27. "The French say that it has always been their custom to take up arms to repel all who approached the portals of the Colony with adverse intent", then referred to "the Indian war parties [that] have been repulsed" (W.L. Morton, *Begg's Journal* 421).
28. "[…] we are faithful to our native land. We shall protect it against the dangers which menace it. We wish that the people of Red River be a free people" (W.L. Morton, *Begg's Journal* 421).
29. *Terre natale*, that is, "land of birth" or "native land".
30. Louis Schmidt (1844-1935): Métis of German descent who was educated at St. Boniface College and then sent, along with Riel, to Québec, where he attended Collège de Saint-Hyacinthe and returned to Red River in 1861. He was a delegate for St. Boniface to the Convention of Forty, a member of the committee that prepared the second List of Rights and secretary of the Provisional Government (Bumsted, *Rebellion* 322).
31. Captain Norbert Gay: A Frenchman who arrived in Red River in January 1870. He claimed to be a correspondent of a Paris newspaper, but it was rumoured he was a spy. He became a loyal Riel supporter and tried to instil European cavalry tactics into Riel's few remaining horsemen in the spring of 1870 (Bumsted, *Rebellion* 281).
32. "[…] our army, although few in numbers, has always sufficed to hold high the noble standard of liberty and our native land" (W.L. Morton, *Begg's Journal* 522).
33. "[…] an undisputed hold over half a continent; the expulsion or annihilation of the invader has just restored our native land to its children" (W.L. Morton, *Begg's Journal* 523).
34. Relying on Bumsted (*Rebellion* 135; *Riel v. Canada* 72), I previously asserted that the following debate took place during discussion of art. 17 of the third *List* (*Revendications* 539-540). I have since consulted primary sources and discovered that this is incorrect.
35. Italics are mine.

36. If I am not mistaken, this is the same George Flett who was among those who had defended the Indian title of the Métis at a meeting some nine years earlier. The "meeting was addressed by Messrs Urbain Delorme, William Dease, Pierre Falcon, William Hallet, *George Flett*, John Bourke, William M. Gilles and others, *who warmly advocated the rights of the Half-Breeds to the land*" (*Nor'Wester,* 14 March 1860, 2). A vestige of his earlier claims can be found in his reference to "any land claim I *might* have." This may be seen as a confirmation of Pannekoek's hypothesis that "the Halfbreeds had reoriented their identity to Canadian rather than mixed-blood or Métis in 1863-9" (13).
37. James Ross (1835-1871): Born in Red River, he was educated at St. John's College and the University of Toronto. He returned to Red River in 1858 and in 1859 became postmaster and helped start up the *Nor'Wester*. He left Red River in 1864 to study law in Toronto, where he worked for the *Toronto Globe*, the *Hamilton Spectator*. He returned in 1869 and became the spokesman and leader of the English Half-Breeds. He was a delegate to the Convention of Twenty-Four, the Convention of Forty and a member of the committee that produced the draft version of the second List of Rights (Bumsted, *Rebellion* 319).
38. According to Bumsted, Ross wrote a series of articles published in the *Nor'Wester* in 1861 that criticised and rejected the doctrine of derivative Indian title (*Trials and Tribulations* 141).
39. The recent UN *Declaration on Rights of Indigenous Peoples* has vindicated Riel's view.
40. Métis delegate to the Convention of Forty from St. Paul's.
41. Italics are mine.
42. "Demand that the country be continued to be divided into two, so that the custom of the two populations living separately may be maintained for the protection of our most endangered rights [and] be good enough also to demand that this division of the country be made solely under the authority of the local legislature" (Flanagan, *Métis Lands* 31).
43. Giroux was "a college friend of Riel's who came to Red River in 1868, and was a priest at the Cathedral and Ste-Anne-des-Chênes, and chaplain to Riel's forces in Fort Garry" (W.L. Morton, *Begg's Journal* 411, notes 1 and 2).
44. Italics are mine. By "French", Machray is evidently speaking here of the "French Half-Breeds" or Métis.
45. Italics are mine. Macdonald initially informed the House of Commons that the land grant was to be placed "under the control of the Province" (Canada, *Debates* 1330).
46. If Macdonald's notes really are merely a translated record of Ritchot's demands, as Flanagan claims (*Métis Lands* 36), then this would seem to confirm that Ritchot based his demand on art. 5 of the *List of Rights*. That being said, Macdonald's notes reflect the agreement that Ritchot refers to in his journal (548) and in his speech to the Legislative Assembly of the Provisional Government (*New Nation* 1 July 1870 2-3).
47. In the final version of the second *List*, art. 18 became art. 17 as the 12th clause was struck out.
48. Italics are mine.
49. Italics are mine. Note that Riel once again appeals to the Half-Breeds by insisting on 'civilised rights', all the while trying to obtain the means to create a territorial enclave.
50. Italics are mine.
51. Thomas Bunn (1830-1875): Half-Breed born in Red River. He served as clerk of the Council of Assiniboia and the Quarterly Court from 1865-1870. In January 1868, he was appointed to the Council of Assiniboia. He was elected delegate for St.Clement's to the Convention of Twenty-Four, the Convention of Forty and councillor to the Provisional Government, to which he served as Secretary of State (Bumsted, *Rebellion* 263-4).

52. What is strange about Riel's instructions of 19 April is that, had the delegates effectively obtained provincial status and local control of public lands, they would have been entirely superfluous, since the Legislative Assembly would have been in a position to so divide the country. Perhaps Riel wanted the principle of a territorial enclave written into federal legislation so that it would be out of reach of a future session of the Legislative Assembly that the Métis no longer controlled. Or perhaps it was because he doubted that provincial status would be granted. This would explain why he asked for both provincial status and local control of public lands in the third *List*.
53. Section 35 of the Constitution Act, 1791 set aside one seventh of Crown land in Upper Canada as 'Clergy Land Reserves', the profits of which were to go toward the "maintenance and support" of the Protestant Clergy. Interestingly, the size of lots in townships was 200 acres. The lands were seen as an obstacle to economic development and were transferred back to the Crown in 1854.
54. Italics in original.
55. Both Sprague (57) and Chartrand (131) share Flanagan's interpretation on this latter point.
56. "We could by no means let go control of lands at least unless we had compensation or conditions which for the population actually there would be equivalent of the control of the lands of their province" (W.L. Morton, *Manitoba* 140).
57. "It is Tuesday the 26th that we dealt with this" (W.L. Morton, *Manitoba* 140).
58. Italics are mine: "*a long debate* arises on *the rights of the Métis*" (W.L. Morton, *Manitoba* 141).
59. "[…] having obtained a form of government fitting for civilized men, ought not to claim also the privileges granted to Indians" (W.L. Morton, *Manitoba* 141).
60. The amount in A.S. Morton's list is 300 acres, while in Daniels (56), Bumsted (*Rebellion* 79) and Flanagan (*Case Against* 324, note 3) it is 200. While Flanagan cites Daniels, he also refers to the original document in the archives. I therefore presume that the correct amount is 200 and not 300 acres.
61. By this time, Macdonald had also undoubtedly read the *Sessional Papers* that contained the "Correspondence and Papers Connected with Recent Occurrences in the North-West Territories" and in which several references to Métis claims of Indian title can be found.
62. "[…] if Mr. Black wanted and was able to have this accepted by the people, I would gladly accept them" (W.L. Morton *Manitoba* 140). Ritchot was referring to his instructions, which made the deal with Canada subject to the approval of the Legislative Assembly of Assiniboia (See Appendix).
63. "Mr. Black naively said he could not get these arrangements accepted."
64. Given that this is what he thought of the first *List of Rights*, one wonders what Black thought of the fourth *List* and how prepared he was to stand by it.
65. James Wickes Taylor (1820-1893): Born in Starkey, Yates County, New York. In 1856, he moved to St. Paul, Minnesota, where from 1859 to 1869 he served as a special agent to the Treasury Department. In December 1869 he was issued a secret commission appointing him special agent of the State Department to provide full details on the Red River Resistance. Taylor was in Ottawa in 1870 when the delegates from the provisional government were discussing the terms of the settlement's entry into confederation. (see *Manitoba Historical Society* and *Dictionary of Canadian Biography Online*).
66. This would explain why he seemed to constantly ignore the instructions from the Provisional Government.
67. Ritchot testified in *R. v. Lépine* that Black was appointed to represent the Scotch and Scott the English (Eliott, and Brokovski 78).
68. Italics are mine. "The amnesty, *the land question* were *none of his* [Black's] *business.* The convention had charged him with the business of the English Half-Breeds and me with the French Canadian [Métis]" (W.L. Morton, *Manitoba* 153).

69. According to Ritchot, it was Macdonald and Cartier who made this offer (548).
70. Flanagan mistakenly claims that this information came directly from Macdonald, but according to Sir Stafford Northcote's diary, it was Donald Smith who told him this on 28 April. In any case, Smith's source was probably Macdonald. This exchange, as inferred from Ritchot's diary (548), seems to have taken place the day before, on 27 April.
71. That being said, when the English first refused to join the Provisional Government, Riel told them: "retournez-vous paisiblement sur vos fermes. Restez dans les bras de vos femmes, donnez cet exemple à vos enfants. Mais regardez-nous agir. Nous allons travailler et obtenir nos droits et les vôtres. Vous viendrez à la fin [les] partager" (*1st vol.* 31).
72. Italics are mine.
73. Riel spoke explicitly of equality in these terms (*1st vol.* 91).
74. Riel objected to this at the time (*1st vol*. 357-8). He stated that this was one of the objectives of the Métis during the Convention of Twenty-Four (29; W.L. Morton, *Begg's Journal* 425).
75. Begg 157.
76. Begg 255. Article numbers indicate the *List* drafted in committee while article numbers in brackets indicate the final *List* as adopted by the Convention.
77. Begg 325.

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