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THE BACKGROUND OF THE FREE LAND HOMESTEAD LAW OF 1872

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The genesis of the Free Land Homestead Law of 1872, officially termed the Dominion Lands Act, resulted from the conditions arising out of the competition of Canada with the United States for immigration. This competition, however, was not a basic thing in itself; it arose directly from the geographical set-up of the North American continent together with the economic conditions produced by these geographical factors.

This paper, then, will deal not only with the direct steps that led up to the Homestead Act, but will also treat the conditions which made these steps inevitable. This will necessitate taking wide sweeps back into earlier Canadian land policies. When one considers that the granting of some free land was forced against its principles upon the government of the Province of Canada, the desirability of this examination becomes apparent.

A loosely administered free grant system of land disposal was the vogue in the colonies of Upper and Lower Canada until 1826 and 1827.¹ Then sales policies, with long-term credit periods, were instituted.² They were, however, not successful, because the settler was inclined to speculate on his purchase, or was tempted to denude the land of its timber after payment of the first instalment.³ Furthermore, the governments were in need of increased Crown revenues in order to keep clear of their aggressive Assemblies. As a result, strict "cash-in-hand" policies were ordered.⁴ Indeed, as settlement policies, the free grant and credit systems had failed lamentably, for it was recorded in Appendix B of the Durham Report that in Upper Canada scarcely one-tenth of the alienated lands were occupied by settlers, and that in Lower Canada, save for American squatting north of the border, there were nineteen-twentieths of the grants unsettled.⁵

Until the achievement of responsible government, the British government held supreme power over the land policies in Canada. This control was formally annulled in 1854 by an Imperial statute which removed the British right of reservation of Canadian land bills.⁶ Throughout the thirties and forties the influence in the old land of Wakefield land and emigration

¹For suggestive glimpses of early Canadian land policies prior to 1841, see Sir C. P. Lucas (ed.), *Lord Durham's Report on the Affairs of British North America* (Oxford, 1912, vol. III); Norman Macdonald "English Land Tenure on the North American Continent" (*Contributions to Canadian Economics*, vol. VII, 1934); G. C. Paterson, *Land Settlement in Upper Canada* (Ontario Archives Report, 1920); and H. M. Morrison, "The Crown Land Policies of the Canadian Government, 1838-1873" (unpublished doctoral dissertation in Clark University Library).

²Lucas (ed.), *Lord Durham's Report*, vol. II, pp. 229-30; Paterson, *Land Settlement in Upper Canada*, pp. 143-5.

³*Journals of the Legislative Assembly of the Province of Canada* (hereafter cited as *J.A.*), 1852-3, appendix U.U.

⁴*Ibid.*

⁵Lucas (ed.), *Lord Durham's Report*, vol. III, p. 35; vol. II, p. 223.

⁶17 and 18 Vict., c. 118, s. 6.

policies was pre-eminent. To be sure these policies aimed at settlement, but it was to be orderly settlement, which could be attained only through the application of "a sufficient price". Hence, there was to be no return to the free grant system. The opening clause of the Land Act of 1841 decisively stated that "no free grants shall be made of any of the Public Lands of this Province".⁷

Emphasis here must be laid on the fact that from the Durham Report onward all Canadian land policies were aimed primarily at the accomplishment of effective settlement. The disclosures of Appendix B proved the desirability of this. Thus in 1841 Lord Sydenham wrote to Lord Russell: "The settlement of the country in the most advantageous manner is so much more important for the public interest than the present amount of revenue."⁸ Now it will be shown that because of this desideratum, even a modified form of the Wakefield system broke down, and the pressure for free land forced without question the Free Land Homestead Act of 1872. This pressure was largely due to geographical and economic competition with the United States.

Throughout the nineteenth century both Canada and the United States in their economic exploitation of a continent demanded immigration from Europe, and as a result a keen competition arose between both countries. The United States, however, especially between 1841 and 1872 had great geographical and economic advantages. It was geographically better situated than its northern neighbour, for once having expanded across the Appalachian highlands, it burst out upon one of the most highly agricultural productive physiographic provinces on this earth. And in the development of this province it discovered that the Appalachians, once a handicap, now with its mineral deposits was a distinct asset, for they tended to round out complementary expanding economic activities as between production of food-stuffs and manufactures. Hence, the United States was a growing economic entity.

On the other hand, to use Professor Trotter's phrase, Canada was in a "cul de sac". Blocked on the south by the United States and the Appalachians, and on the north by the great Canadian shield, all her agricultural land was in the St. Lawrence lowlands, which, in actuality, constituted a broad highway to the prairie West of the United States. With the filling up of these lands the attraction to the United States became increasingly greater.

Because Canada's capacity of absorbing immigration was actually decreasing while the capacity of the United States was increasing, the influence of the latter upon the former in the formulation of the land policies became increasingly more powerful. The shadow of the United States loomed large against a physiographic background that included Canada.

Edward Gibbon Wakefield, the actual author of Appendix B, showed an awareness of the situation by not recommending a complete adoption of his theories, but the use of them in as far as practical circumstances would permit. He wrote that "legislation for the North American colonies must necessarily be governed by the course of the United States".⁹ Hence,

⁷*Statutes of Canada*, 4 and 5 Vict., c. 100.

⁸Public Archives of Canada, *Imperial Blue Books*, vol. XXXI, part 1, no. 36, p. 75.

⁹Lucas (ed.), *Lord Durham's Report*, vol. III, p. 109.

he admitted that his "sufficient price" could not be attained. Nevertheless, he advocated the setting of the highest price obtainable. Thus he felt that 10s. per acre in face of the United States price of \$1.25, or 6s. 3d., would hold the British emigrant in Canada.

But as the years passed the effectiveness of this diluted Wakefield system was being gradually undermined by the fact that the St. Lawrence lowlands and Ontario uplands were being filled up. After the settling of Bruce and Grey Counties the settler of Upper Canada came face to face with the formidable Laurentian barrier. In Lower Canada the French Canadian was being forced into the New England factories, or was penetrating, under the banner of the church, in the form of colonization companies, the northern tributary river valleys such as the Saguenay, St. Maurice, Ottawa, and Gatineau. Indeed, in 1857 the Commissioner for Crown Lands wrote the following significant words: "The important fact, therefore, now strongly presents itself that in the great western peninsula of Upper Canada, which has hitherto been the chief receptacle of immigration for this Province, the supply of Crown Lands for settlement is now exhausted, and as the number of vacant Clergy Lands for settlement interspersed throughout is comparatively insignificant, fields for the extension of settlement must be sought in other parts of Canada."¹⁰ Almost a decade before the writing of this epochal statement, the Wakefield strict cash system had crashed. In order to diminish, as far as possible, the French-Canadian emigration to the United States, a land policy featuring long-term credit and nominal prices was instituted in 1849 in Lower Canada and outlying districts.¹¹ Three years later increasing scarcity of good lands forced the adoption of the credit system in Upper Canada,¹² so that by the year 1852 all Canada was disposing of more than 95 per cent. of the Crown lands on a credit basis, and by the sixties was alienating them on terms, ranging from nothing to \$1.00 an acre. Thus, in land sales, Canada was forced to undersell the United States price of \$1.25 per acre.

A glance at a few statistics upholds the contention that the United States was dictating Canadian land policies. The absolute increase of population in Upper Canada from 1839 to 1851 was 755,476, while during the next decade it was only 444,187, and from 1861 to 1871, just 224,760. If one couples this with a few immigration figures one completes the picture. In 1847 the emigration from the British Isles to the North American colonies was 190,680, and to the United States it was 142,154; the following year the respective figures were 31,065 and 188,233. The annual average to British North America until 1857 was approximately 35,000, while that to the United States was around 175,000. Owing to the economic depression of 1857 until 1862 the emigrations to both sections were cut about 50 per cent. In the period between that date and Confederation the annual number of emigrants to British North America never exceeded 18,083 (in 1863), while the emigration to the United States went up as high as 161,000 (in 1866). Is it any wonder that Canada decided to follow the lead of the United States in its Dominion Lands Act of 1872?

Although it has been stated that the Wakefield system broke down, it would be fairer to affirm that it had started with very heavy handicaps.

¹⁰*J.A.*, 1857, appendix 25.

¹¹Public Archives of Canada, *Land Book E*, p. 160.

¹²*Land Book F*, p. 523; *Canada Gazette*, Aug. 7, 1852.

Even before Wakefield's suggestions were implemented in the Land Act of 1841, his most cherished principle, a sales policy, was unconstitutionally violated by the granting gratuitously to settlers of fifty-acre lots of land along a colonization road which was projected from Garrafraxa to Owen Sound, and along two other roads in Lower Canada. This was the thin edge of the wedge which was eventually to lead to the Ontario Free Grant and Homestead Act of 1868. The present writer has shown in an article in the *Canadian Historical Review* (Dec., 1933) that this unconstitutional step was forced upon Lord Sydenham, accepted by the government, and put into the Land Act of 1841, because of the immigration competition with the United States.

Throughout the forties and fifties, as the supply of good lands decreased, this free grant system was expanded. In instituting it, Sydenham's main purpose was to alleviate the pressure of immigration by providing lands in the backwoods for experienced pioneers, thus leaving room for the green immigrant to accustom himself to the country. Hence in a general and practical sense he was a true disciple of Wakefield. This might have worked if Canada had been the economic entity that the United States was. But Canada was not. By the end of the forties such thinkers as William Cayley and Robert Baldwin Sullivan of Canada, and Sir William Molesworth of Great Britain, realized this. Cayley, one of Canada's earliest protectionists, advocated as a solution protective tariffs for Canadian industry so that this country could create an economic balance.¹³ To Sir William Molesworth the problem lay in bridging the Atlantic. Thus, he stated in the British House of Commons: "Is there any mode of bridging over the intervening ocean so that our Colonies may be to the United Kingdom, what the backwoods are to the United States?"¹⁴ Cayley started his high-tariff crusade, and also with Sullivan advocated a greater granting of free land. The United States, owing to its geographical and economic advantages, was indeed setting the pace. In 1847 Lord Elgin wrote to Lord Grey that "a large proportion of the healthy and prosperous who have availed themselves of the cheap route of the St. Lawrence will, I fear, find their way to the United States whence land is procurable on more advantageous terms than in Canada".¹⁵

Such sentiments as expressed here were widely held in Canada, and led to the more liberal policies which have already been referred to in this paper, and to an expansion of the free grant system. In the forties an attempt was made to open up the backwoods north of Lake Ontario by a network of colonization roads with free grants. Then in the latter half of the fifties, to use Professor Lower's suggestive expression, "the assault on the Laurentian Barrier"¹⁶ began in earnest. A similar drive had been under way for almost a decade in Lower Canada.

By this time, desperate for immigration, the government deserted its earlier policy of endeavouring to move the pioneer into these areas and

¹³*Imperial Blue Books*, vol. XXXIII, part 5, enclosure 2 in no. 11: Elgin to Grey, Dec. 20, 1848.

¹⁴Cited in William Bridges, *The Colonization of British America* (New York and London, 1848), p. 3.

¹⁵Public Archives of Canada, *Letters of Lord Elgin*: Elgin to Grey (confidential), Aug. 13, 1847.

¹⁶A. R. M. Lower, "The Assault on the Laurentian Barrier, 1850-1870" (*Canadian Historical Review*, Dec., 1929).

recklessly went ahead and advertised to the world that free grants of land could be obtained by the immigrant in Canada. For example, in 1856 the Executive Council voted £1,000 currency to the Minister of Agriculture for the purpose of disseminating "by means of advertisements in the public press, handbills, etc.", information respecting free grants.¹⁷ Dr. Paul W. Gates in an article in the *Canadian Historical Review* (March, 1934) has touched upon certain aspects of this question.

The assault, at least, in Upper Canada was not very successful because mountainous rocky land cannot compete with flood plain lands. In 1859 the *Scotsman* summed up the situation in the following words: "There is not a little heartlessness in the Canadian Government advertising 'Free Grants of Land' in one of the most inaccessible and poorest regions (*sic*) in America. The fact is the land offered is not worth the having, and it would be folly in anyone to settle there who could labour with his hands in any of the western districts of Canada West or the United States."¹⁸ By the way of statistics, from 1857 to 1866 the percentage of free grants of the total amount of Crown lands in United Canada was approximately 9 per cent. In Canada East it was 6 per cent., and in Canada West 12 per cent. Much of this, especially in Canada West, had been deserted. Indeed, these regions constituted nothing more than "rural slums".

The restricted free grant system, then, had failed. What was to be the next step? In face of the vortex of the United States prairie West, together with the fact that in 1862 came the United States free land Homestead Law, the only reasonable solution appeared to many to be an adoption of a general free grant system. As a result, the sentiment for free land was greatly augmented by the Upper Canadian radicals of the late fifties and sixties. There were, however, other factors temporary and permanent, which created support for, and opposition to, this movement.

A desire for free land existed in Canada, as in any frontier community, long before 1860. J. R. Godby, a traveller, wrote in 1845 that in Upper Canada there was a general discontent with the government's land policy, and that it was felt that a general system of free grants upon condition of actual settlement should be adopted.¹⁹ As the line of settlement advanced on the Canadian shield, as the lands grew less and less adapted to cultivation, entailing harder work on the settler, the feeling increased that the labour involved in clearing the land was more than sufficient payment for it. This sentiment was accelerated by the inflation and deflation of the fifties. Owing to the Reciprocity Treaty with the United States, bad crops in Europe, and the Crimean War, the years 1855 to 1857 were ones of great prosperity in Canada. The farmer and settler bought his lands at inflated prices. Then the economic depression following 1857 reduced the means of paying for this land. The settler clamoured for relief, demanded the prices they had contracted to pay cut in half, and the establishment of a general free grant system. This sentiment was echoed by George Brown's *Toronto Globe*, and by the sixties was in full swing. The French Canadians were now, also, pressing for more colonization roads: "Des chemins! des chemins aux nouvelles terres! Voila le cri qu'il faut faire resonner aux oreilles du gouvernement,

¹⁷Public Archives of Canada, *State Book R*, p. 13.

¹⁸Cited in the *New York Albion*, Feb. 5, 1859.

¹⁹*Letters from America* (London, John Murray, 1844), vol. I, p. 683.

si nous ne voulons voir notre jeuneuse gagner en foule les prairies de l'ouest."²⁰ In 1852 the newspaper *Le Canadien* drew attention to the efforts being made in the United States Congress to pass a Homestead Law. If that country with its huge annual immigration was considering this, what was Canada doing? This was the tenor of its article.²¹

Immigration committee after immigration committee of both Legislative Council and Assembly reported the advisability of liberalizing the land system, while also they advocated free land for genuine settlers.

Realizing that the free grant road policy was not a success the aggressive debtor portion, the rural frontier population of Canada West, found an organ and a political party to give vent to their land hunger. The organ was the *Toronto Globe*, and the party was the "Clear Grits", probably the closest approximation in Canadian history to a representation of frontier democracy. The *Globe*, narrow and provincial, dogmatic and bellicose—characteristics of the frontier—had an optimistic faith in the future, a spirit of Canadian "Manifest Destiny". It demanded occupation of the prairie West and "grants of land for actual settlers".

In 1860 it blasted forth: "Liberalize the land system, and one great cause of the falling off in immigration will be removed. Throw open the public domain to actual settlers, free of cash and you offer inducement which will place Canada on a par with the most favoured emigration fields of the States. . . ." ²² Hence by 1860 there was a powerful sentiment in Upper Canada for a more liberal land policy, entailing a general free grant system. This, allied with the needs of Lower Canada, plus the immigration competition with the United States, constituted powerful influences, which bore down upon the government. Nevertheless, the government still clung to its policy of land almost at nominal prices, and the free grant road principle. It feared, so their spokesman, William McDougall, professed, if Canada threw the public domain open it would receive only pauper immigration.²³

The crux of the difference of opinion on land policy lay in geographical conditions. Canada was a forest land, and because its surface had to be cleared by artificial means, it differed to that extent from the prairie lands of the United States. In principle, land policy had been fashioned so as to induce experienced settlers to move into the woods and make room for the immigrants, for the latter, as it had been found, were green in the bush. When the Commissioner of Crown Lands, William McDougall, wrote in his report of 1860 about "the adventurous pioneer", "the rising generation" seeking their future homes on a frontier line from Saint John to Lake Nipissing, armed with experience,²⁴ he had this idea in mind. The wish was father to the thought. But this movement of conquering the Canadian wilderness could not be carried on quickly. As the same official stated, Canada had some disadvantages. Canadians occupied a certain latitude and climate which they could not change, and

²⁰Public Archives of Canada, *Le Saguenay en 1851*, p. 111: Address of Etienne Parent.

²¹Cited in *ibid.*, pp. 109-10.

²²*Toronto Globe*, Jan. 12, 1860.

²³Parliamentary Library, *Scrap Book of Newspaper Extracts of the Debates in the Legislature*, 1863, pp. 23-4: Speech of William McDougall, Aug. 21 (*Quebec Chronicle*).

²⁴*Canada Sessional Papers*, 1861, no. 15.

the country had certain physiographic features which demanded different treatment from those of the Middle West of the United States. By offering lands at nominal prices, by offering them on easy terms, and by building necessary roads, the government felt that it had done all within reason for the settler.

This fiat of the government was reinforced by the fact that the lumber interests were utterly opposed to the unrestricted throwing open of the public domain. Canada was becoming increasingly more a forest land, and the proportion of timber revenues was growing year by year.²⁵ Hence both government and lumberer had revenues to protect. Furthermore, the government reasoned, quite justly, that by giving way to the "free granters", it would stand to lose huge timber revenues and gain little genuine settlement in return. As for the timber interests, only when they felt satisfied that they would be protected did they consent to the Ontario Free Grant and Homestead Act in 1868.

This, then, was the eventual solution—the granting of free lands in the new districts with provision for protection of the timber revenues. The issue was fought out, and the solution arrived at, in the dying years of the Parliament of United Canada. The year of 1865 witnessed a thorough airing of the problem in both Legislative Assembly and Council. On August 31 David L. McPherson, with a copy of the United States Homestead Act in his hand, moved a set of resolutions, which virtually demanded an adoption of the homestead system in the United States, "lock, stock and barrel". Ten dollars, as in the United States, would be the fee; 200 acres, bettering the United States, would be the grant; and five years' continuous residence would constitute the settlement duties.²⁶ Similar resolutions were moved, two days later in the Legislative Assembly.²⁷ Alexander Campbell in the Council,²⁸ and McDougall in the Assembly,²⁹ outlined the government's stand against them. The resolutions made little concrete headway because Confederation was in the air, and the general feeling was that the question should be left to the provinces, which would come into possession of the Crown lands. In 1866 a resolution was passed giving expression to this sentiment.³⁰

The old province of Canada, then, handed down to the two new provinces, Ontario and Quebec, the problem. Nevertheless, the whole issue had been well ventilated in the old legislature. It had been clearly shown that the only obstacle to the adoption of a general free grant system as in the United States was that Canada was a forest land. Before the policy could be adopted in Ontario, a compromise would have to be effected between the settler and the lumberer, and the timber and mineral revenues of the government would have to be protected. Compromise legislation had, undoubtedly, been delayed by the shadow of Confederation. After that it immediately took place in the shape of the Ontario Free Grant and Homestead Act of 1868.³¹ Hence, when the Dominion was not yet three days old, it was not surprising to read in the *Globe* that

²⁵*Ibid.*, 1866, vol. I, no. 3: Report of the Commissioner of Crown Lands, p. 21.

²⁶*Journals of the Legislative Council*, 1865, p. 112.

²⁷*J.A.*, 1865, p. 157.

²⁸*Scrap Book of Newspaper Extracts*, 1865, p. 58 (*Quebec Mercury*).

²⁹*Ibid.*, p. 88 (*Quebec Chronicle*).

³⁰*J.A.*, 1866, pp. 36-7. For debate see *Toronto Globe*, June 19, 1866.

³¹*Statutes of Ontario*, 31 Vict., c. 8.

the "system of free grants to settlers will shortly be adopted".³² The point is that the battle had been fought and decided in the old legislature of Canada.

With the opening of the Canadian prairie West, the Dominion government now gained control of lands that were primarily agricultural and not forest. No longer were the old arguments tenable, and not a shadow of objection was raised against free land. The principles of a general free grant system were accepted as a matter of course. It could not logically have been otherwise. Indeed, in order to be able to compete in the immigration race with the United States, the Dominion government acted adversely to usual British constitutional practice in retaining control of the public lands in the Province of Manitoba.³³ Furthermore, the system of survey was remodelled according to the 640-acre and 160-acre system of the United States. This change in survey at first was opposed by McDougall³⁴ but, finally, Lieutenant-Governor Archibald of Manitoba convinced the Dominion government that, for the purpose of immigration competition with the United States, the United States system should be adopted. It "was known all over the world to the Emigrant classes", he wrote in a confidential despatch.³⁵

An Order-in-Council dated March 1, 1871, constituted the first declaration of a federal land policy, but this was soon superseded by an Order-in-Council of April 25.³⁶ The regulations, resulting, provided a restrictive purchase right to one person of 160 acres at a cash price of \$1.00 per acre, together with the pre-emptive right to the squatter to purchase a similar amount at \$1.00 per acre, provided he was a British subject at time of issuing of patent. Furthermore, upon the payment of a fee of \$10.00 a homestead right of entry would be given to any person to enter on a quarter-section of land, and patent could be issued, after settlement duties of at least six months' residence in one year for a period of three years had been performed, provided that the homesteader was by that time a British subject. The easier settlement duties were undoubtedly designed to give Canada an advantage over the United States. Finally, the settler might commute his land, provided that he had faithfully performed the settlement requirements in the past, at \$1.00 per acre.

These regulations formed the basis of the Dominion Lands Act of the following year, which applied to all the North West Territories as well as to Manitoba. According to Alexander Morris, in a speech in the Dominion Parliament, the statute was also founded upon the experiences gained in the older Provinces of Ontario and Quebec.³⁷ Thus, the new federal land system was built upon the lessons learned from the past,

³²Toronto *Globe*, July 3, 1867.

³³Cf. Chester Martin, *The Natural Resources Question* (Winnipeg, 1920).

³⁴Canada *Sessional Papers*, 1870, vol. V, no. 12, p. 9. Also *Dominion Parliamentary Debates*, 1871, pp. 959-67.

³⁵Department of the Interior, Dominion Lands Office, File no. 1.

³⁶Department of the Interior, *Orders-in-Council*, no. 1, pp. 59, 73. In 1872, when Cartier was piloting the Dominion Lands Bill through the House of Commons, he stated that the government had adopted the six-mile township land *advisedly*; as emigrants from Europe were acquainted with the system practised in the United States (*Dominion Parliamentary Debates*, 1872, pp. 915-6). There is also an important memorandum to this effect of the Surveyor-General, J. S. Dennis, in the Head Office files of the Dominion Lands Office, vol. 1-229, no. 6.

³⁷*Dominion Parliamentary Debates*, 1872, p. 1046.

and shaped so as to meet the competition of the United States. And if this rivalry dictated the necessity of adopting several of the United States forms, it was done without the slightest hesitation. The Statute went through both Houses of Parliament without a shadow of objection being heard against the free grant system. The statements in Appendix B, that no land policy could be formed in Canada without taking into account those in the United States, held just as true in 1872 as in 1838. Great hopes were held out that the new policy would "attract a share of the emigration from northern and central Europe [to] . . . the future great grain growing region of the Dominion".³⁸ It was hoped that the immigrant would no longer pass through the doors of Canada, or if he did, would re-enter *via* Pembina.

It has been the purpose of this paper to indicate that the background to the Free Land Homestead Law of 1872 is to be found in the experiences with land policies of the Province of Canada, and that this background is the soil in which the law found root.

³⁸*Canada Sessional Papers*, 1872, vol. VII, no. 22: Report of the Secretary of State, p. 5.