

# 1885

AND AFTER

NATIVE SOCIETY IN TRANSITION

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## Comment on Ken Hatt, “The North–West Rebellion Scrip Commissions, 1885–1889”

Thomas Flanagan

Professor Hatt has chosen to refer to me about a score of times while ignoring other secondary literature on the later Scrip Commissions,<sup>1</sup> so his paper reads in part like a review of my book *Riel and the Rebellion: 1885 Reconsidered*. I would accordingly like to correct several errors in his treatment of the views expressed in that book as well as to discuss some new interpretations of fact which he proposes.

It is regrettable that Hatt slips into the accusatory rhetoric which so often mars discussion of Native affairs. He characterizes my book as a “polemic” whose “narrowness ... makes the work closer to propaganda than social sciences and would appear to encourage racist expressions.” Rather than responding to such epithets, I wish to deal with questions of fact.

Hatt has challenged my “specious” interpretation of the order-in-council of 28 January 1885, which first established the Commission of 1885. I have argued that this order-in-council was a conciliatory gesture, a first step toward treating the North–West Métis like their Manitoba cousins. Hatt thinks this is wrong, although he does not propose any alternate interpretation of the purpose of the order-in-council. His arguments are that (1) “there was no commitment to extinguish claims of the Métis,” there was only to be an enumeration, and that (2) the order referred to the Manitoba Act rather than to the Dominion Lands Act, “which was the operative piece of legislation for extinguishing Métis claims in the North–West.”

To judge these arguments, one must quote the order-in-council more fully than Hatt has done:

On a Memorandum dated 26th January, 1885, from the Minister of the Interior, submitting that it is desirable with a view of settling equitably the claims of Half–Breeds in Manitoba and the North–West Territories who would have been entitled to land had they resided in Manitoba at the time of the transfer and filed their claims in due course under the Manitoba Act, and also of those who though residing in Manitoba and equitably entitled to participate in the grant, did not do so, — to ascertain the number of such Half–Breeds, and recommending that he be authorized to obtain an enumeration of them, and to employ three persons to make such enumeration.

The Committee concur in the foregoing recommendation and they advise that the requisite authority be granted.<sup>2</sup>

Hatt’s citation omits the words “with a view to settling equitably the

claims of Half-Breeds....” The government apparently intended to follow the procedure used in Manitoba, in which enumeration and distribution of land or scrip had been done in distinct stages. There is no reason to think the government planned to send three men to count the Métis for no further purpose. It is true that the Dominion Lands Act is not mentioned, but the wording leaves little doubt about who would be the subjects of the enumeration. Two groups of Métis are mentioned: those “who would have been entitled to land had they resided in Manitoba at the time of the transfer” and “those who though residing in Manitoba and equally entitled to participate in the grant, did not do so.” The second group are those missed in Manitoba, but the first group can only be the Métis of the North-West whose Indian title had not yet been extinguished.

Hatt’s quibbles about the wording create the impression that the government really did nothing about Métis land claims until the order-in-council of 30 March 1885, four days after the battle of Duck Lake. The implication is that nothing would have happened if the Métis had not taken up arms. “Further evidence of the hasty response of the Government,” writes Hatt, is seen from the fact that Street was officially appointed on 30 March.<sup>3</sup> But we know from his memoirs that W.P.R. Street, chairman of the Commission, was approached by the government in the second week of March.<sup>4</sup> We also know that the other members were approached on 18 and 19 March.<sup>5</sup> Further, the major change in instructions, embodied in the order-in-council of 30 March 1885, authorizing the Commission to settle claims as well as enumerate the Métis, was made on Street’s advice after news of Duck Lake reached Ottawa.<sup>6</sup> The most plausible interpretation is that the armed rising caused Ottawa to accelerate the Commission’s work and to settle Métis claims immediately, but this was a logical extension of what had been leisurely unfolding since 28 January. It was not a new departure.

Moving forward to the actual work of the Commission, Hatt writes:

Flanagan also states that the order-in-council of 30 March was never amended and that the distribution of lands based on it may have been of dubious legality. Both assertions are false, as can be seen by consulting the correspondence and the order-in-council of 18 April 1885, which he does not mention.<sup>7</sup>

Hatt has quoted me correctly but has lifted my point out of context. It comes from the middle of a paragraph on the question of whether the Commission would give scrip *in addition* to land already occupied by the Métis, or whether scrip would be applied toward gaining patent for land already occupied. Although I was aware of the order-in-council of 18 April 1885, cited by Hatt, I did not mention it in this context because it did not seem to me to deal with this particular issue. The whole question is extraordinarily complex, and I may well be wrong on technical points of this type, but Hatt’s bare assertion does not prove anything because it misses the point I was making.

Hatt goes on to write: “Flanagan argues that recognition of Métis claims was a mistake and that the concept of land is little more than a mystical notion.”<sup>8</sup> His note refers to my book. What I actually wrote on that page is:

It is a serious error to think of this whole episode as having much to do with a desire for land on the part of the Métis. They already lived on land, and their children by homesteading, could get as much land as they could use. The Métis wanted money and successfully exerted political pressure to get it. This point must be emphasized because the almost mystical character which land has assumed in contemporary native politics tends to throw an anachronistic haze of distortion over the motives of the Métis in 1884–85.<sup>9</sup>

This passage expresses no opinions about the desirability of recognizing Métis claims. I have argued elsewhere that it was a gratuitous mistake on the government’s part to justify the Métis land grant with the phrase “towards the extinguishment of the Indian title.”<sup>10</sup> However, I do not think the land grant itself was necessarily a bad idea. The Métis’ willingness to sell their grants created a market in land which helped to compensate for the rigidity of the homestead regulations enforced by the Department of the Interior. The Métis themselves received moderate amounts of money.

Which brings us to the question of speculation. Hatt calls my analysis of this question a “tribute to the speculator” and judges it to be “misleading at best.” I did not write a “celebration” of those who speculated in Métis lands; I tried to show why the Métis desired to sell their scrip. My conclusion is the same as that expressed by Hatt: “The Métis sold their scrip because that was their only reasonable option.” The difference between us revolves around the question of whether there was something unfair about the transactions in which the Métis sold their scrip. Granting that the Métis were in general “shrewd bargainers,” Hatt asserts: “Shrewd bargainers can only operate well in situations of relatively equal power.”<sup>11</sup> Behind this statement lies one of the most common misconceptions about the market system, that transactions are fair only if the parties are of comparable size, power, or ability to wait. But these conditions are rarely met. Most of us are hired to work for organizations which are much larger and more powerful than ourselves; we also buy many of our consumer goods from large corporations. Hatt’s logic would lead to a socialist denunciation of the entire market system.

In reality, what preserves the vitality of competition, even when the parties to a transaction are unequal in resources, is the presence of alternatives. Individually, a customer is no match for, say, Woodward’s; but if she can also shop at The Bay, K-Mart, or Eaton’s, she has reasonable assurance that the market price is not simply dictated by the seller. Similar considerations apply in labour markets. Even though employers are usually much bigger and more powerful than employees, competition among them leads to wages which reflect the marginal product of various types of labour.

An exception to this elementary economic reasoning occurs when a group of buyers or sellers is able to collude and thereby attempt to fix prices. A monopoly price established in such circumstances will be disadvantageous to the other side. Hatt cites the memoirs of one scrip buyer who recalled that, at Ile-à-la-Crosse in 1906, “right at the start the scrip buyers got together and decided that it would be foolish to indulge in any

competitive bidding.”<sup>12</sup> However, another author, whom Hatt does not cite, describes the scrip-buying experience of Charlie Alloway, a Winnipeg banker:

While some of the early writers claim that scrip was sold for as little as a bottle of whiskey, he related to me that money and his own food were the only commodities he carried. Thousands of dollars were concealed in his clothing, and what could not be taken care of in this way, was carried in a bundle and used at night as a pillow. He recounted that it was only on a very rare occasion, that other purchasers did not attempt to intervene between himself and the seller, and although it was possible for the purchasers to get together and agree on the prices to be paid, this was not always the case, and there was considerable competition among the purchasers.<sup>13</sup>

*Riel and the Rebellion*, can be justly faulted for not having mentioned the possibility of collusion among scrip buyers. The question deserves further investigation because it is an empirical question that cannot be answered *a priori*. It may well be that there was a lively, competitive market in scrip in some instances and collusive restraint of trade by the purchasers in others. It would be a great contribution to scholarship if a researcher would make an impartial study of the Métis scrip market. Comparison with markets for other forms of scrip — Selkirk settlers, members of Wolseley’s expedition, recipients of other military bounties — would show whether the Métis were exploited by sharp operators or whether they got their money’s worth in rational transactions beneficial to both buyers and sellers.

#### NOTES

- 1 Joe Sawchuk et al., *Metis Land Rights in Alberta: A Political History* (Edmonton: Metis Association of Alberta, 1981); D.J. Hall, “The Half-Breed Claims Commission,” *Alberta History* 25 (1977): 1-8; Marcel Giraud, “The Western Metis after the Insurrection,” *Saskatchewan History* 9 (1956): 1-15; H.H. Langton, “The Commission of 1885 to the North-West Territories,” *Canadian Historical Review* 25 (1944): 38-53.
- 2 Public Archives of Canada, Record Group 2, 28 January 1885, P.C. no. 135.
- 3 Ken Hatt, “The North-West Rebellion Scrip Commissions, 1885-1889,” *1885 and After: Native Society in Transition* (Regina: Canadian Plains Research Center, 1986), 192.
- 4 Langton, “The Commission of 1885,” 41.
- 5 *Ibid.*, 39.
- 6 *Ibid.*, 45.
- 7 Hatt, “Scrip Commissions,” 192.
- 8 *Ibid.*, 193.
- 9 Thomas Flanagan, *Riel and the Rebellion: 1885 Reconsidered* (Saskatoon: Western Producer Prairie Books, 1982).

- 10 Flanagan, *Riel*, 61-62; Thomas Flanagan, “The Case Against Métis Aboriginal Rights,” *Canadian Public Policy* 9 (1983): 314-25.
- 11 Hatt, “Scrip Commissions,” 199.
- 12 W.P. Fillmore, “Half-Breed Scrip,” in Antoine S. Lussier and D. Bruce Sealey, eds., *The Other Natives: the-les Métis* (Winnipeg: Manitoba Métis Federation Press, 1978), Vol. II: 34. Lussier and Sealey state this text is reprinted from *Manitoba Bar News*, 1968. Hatt gives the correct citation as follows: W.P. Fillmore, “Half-Breed Scrip,” *Manitoba Bar News* 39, no. 2 (1973): 124.
- 13 Peter Lowe, “All Western Dollars,” in Lussier and Sealey, *The Other Natives*, 40.