

Construction of a Keystone: How Local Concerns and International Geopolitics Created the First Water Management Mechanisms on the Canada-US Border

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In 1909, the United States and Britain (on behalf of Canada) signed the Boundary Waters Treaty into existence. Part of the treaty established the International Joint Commission, the very first permanent, joint institution for managing fresh water along the Canada-US border. The treaty also resolved several urgent water disputes affecting the Great Lakes and laid out an order of priorities for water usage along the boundary. The Boundary Waters Treaty and the International Joint Commission have been central to all subsequent attempts to control the quality, quantity, and flow of water along the US-Canada border.

The overarching theme of this chapter is to analyze the historical context in which these unique water management mechanisms came into existence. Why were this foundational treaty and this influential commission created in 1909, rather than earlier or later? Why did they take the forms that they did? The answers lie in two very different sets of events: rapid transformations in water use around the Great Lakes and shifts in global geopolitics.

At the turn of the twentieth century, rapid industrialization, urbanization, and intensification of resource extraction around the Great Lakes provoked disputes over transboundary water use between Canada and the United States. The existing methods for resolving these disputes were extremely inefficient and, in Canada, had little legitimacy. The general public and elected officials at all levels saw the need for a better way to manage the disputes that mushroomed as more people tried to generate hydroelectricity, expand canals and harbours, and divert water to growing cities and farms. At the same time, global shifts in military and economic power were changing relations between Canada, Britain, and the United States, bringing American and Canadian policy-makers into closer conversation. Once officials from the two North American countries began to communicate more directly, they were able to produce a durable solution to the boundary waters disputes fairly rapidly: the Boundary Waters Treaty to settle the existing disputes, and the International Joint Commission to address future problems amicably.

First, a brief overview of the economic development of the Great Lakes region will demonstrate how quickly and completely land use and water use changed there during the last decades of the nineteenth century. Second, an examination of the water disputes of the later nineteenth century shows how they were closely related to this intensification of human activity and how businessmen, investors, and local officials in the Great Lakes region pressed their governments to resolve these problems, raising their concerns at the highest levels.

Then, a brief excursion into the geopolitics of the British Empire will examine the diplomatic roadblocks that prevented the proliferating water disputes in the Great Lakes from being addressed as they arose. It took time and changes in personnel before British officials in North America decided that helping the Canadians deal directly with the United States would serve their interests, but once that occurred, the negotiations for the Boundary Waters Treaty proceeded more rapidly. Direct Canadian-American communication was crucial to the process, even though most of the negotiators were motivated by a desire to prevent boundary waters issues from impinging on British-American relations.

Finally, a close analysis of the treaty-making process demonstrates that the coalescence of these two trends—local pressure for clear solutions

to the new water disputes and diplomatic pressure to facilitate Anglo-American rapprochement—produced an unusually equitable treaty and a practical joint institution.

The Great Lakes Region Becoming a “Hearth of Industry”

A brief survey of the region’s economic history clarifies why a set of high-profile disputes arose around the Great Lakes in the last years of the nineteenth century, in places that had been farming communities and deep wilderness only decades before. The expansion and intensification of human activity in the Great Lakes at the end of the nineteenth century was part of a global transition from a coal-and-steam energy regime to the even more energetic petroleum and natural gas regime.¹ Many areas of economic activity grew rapidly, including but not limited to: mining, logging, agriculture, fishing, petroleum refining, and the production of iron, steel, pulp and paper, electrical equipment, and chemicals. As resource extraction and industrialization accelerated throughout the region, transportation networks expanded to move raw materials to workshops and to market, spurring construction of railroads, roads, ships, harbour facilities, and communications infrastructure. This also drew regions producing raw materials into closer contact with population centres around the Great Lakes.

This wide-ranging economic development was accompanied by demographic change and urbanization; the growth of cities and towns relative to rural areas was as impressive as the rapid overall population growth. The following graphs are intended to give a quantitative sample of the changes the region underwent during this formative period. The first two graphs depict population growth in the Lake Erie and Lake Ontario watersheds, the third and fourth graphs show the extremely rapid growth of industry in a very short time. The fourth graph, showing deliveries of ore mined north of Lake Huron and Lake Superior more than doubling in ten years, hints at the massive increases in demand for raw materials and in shipping capacity around the Great Lakes.

FIGURE 2.1. American population of lower Great Lakes watershed, 1840–1920.

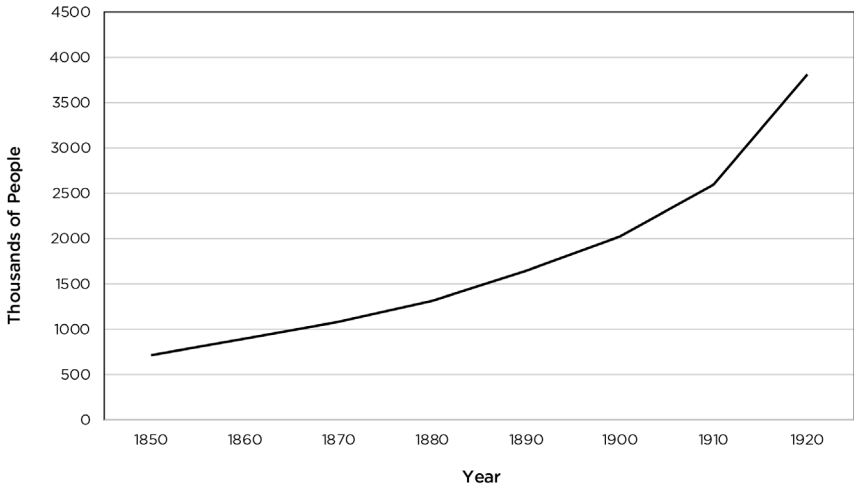


FIGURE 2.2. Demographic change in Southern Ontario, 1871–1921.

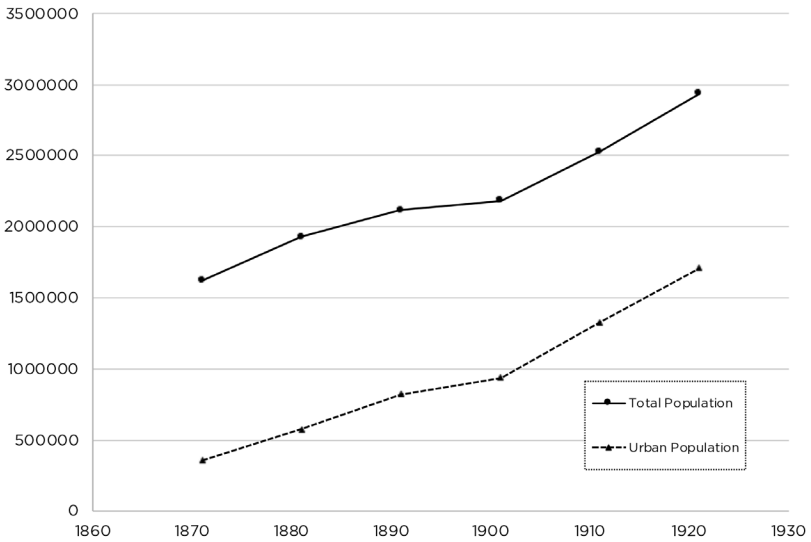


FIGURE 2.3. Value added in manufacturing, US side of Lake Erie, 1899–1914.

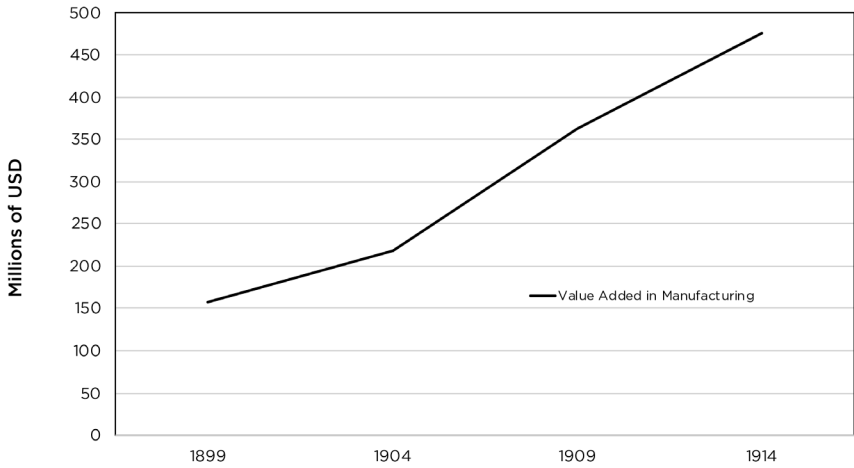
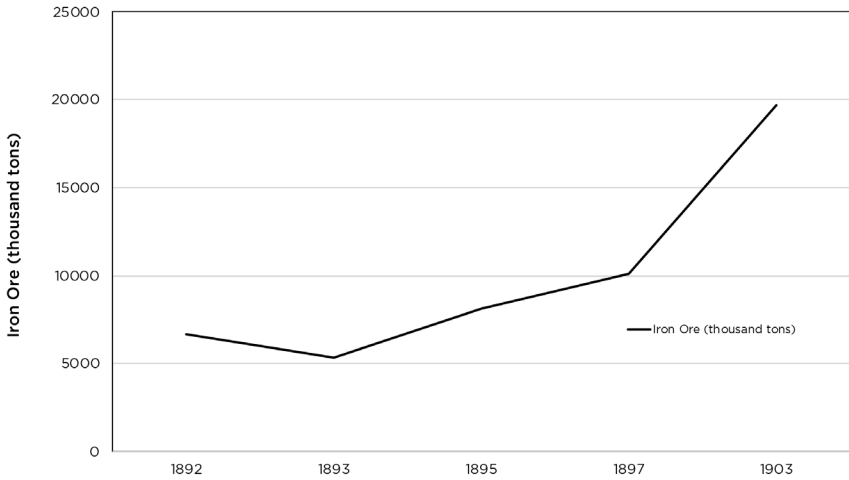


FIGURE 2.4. Iron ore received at US ports on Lake Erie, 1892–1903.



After the US Civil War ended in 1865, the most quickly growing parts of American industry slowly shifted from the Eastern Seaboard to Pennsylvania and the Midwest, and steel production became more valuable than iron production.² Investors from the Eastern Seaboard, including well-known Progressive-Era captains of industry like J. P. Morgan, expanded their holdings westward.³ Oil and gas were quickly becoming the industrial fuels of choice, making the coalfields of eastern Pennsylvania less important to manufacturers.⁴ Cleveland and Pittsburgh were the first western hubs of the rapidly expanding iron and steel industries, followed quickly by Chicago, Detroit, Buffalo, and a host of smaller cities.

North of the border during the same period, British and American citizens, with a few Canadians, invested heavily to get raw and partially finished materials from the Canadian hinterlands to American, Commonwealth, and international markets. In particular, American demand for iron ore drove a remarkably fast set of investments in extraction and transportation infrastructure on Lake Superior and Lake Huron.⁵

At the same time, many industries accompanied the iron and steel mills to the growing cities of the Great Lakes, where proximity to oil fields, ore deposits, and cheap hydroelectricity facilitated metallurgy and chemical refining. A Minneapolis newspaper described a steelworks being built at Sault Ste. Marie in typically glowing terms, referring to the entrepreneur heading the group of Michigan and Ontario financiers there as a “Western Cecil Rhodes.”⁶ Canadian-American joint ventures and “branch plants” in Canada were common ways for American industrial firms to establish themselves in Canada, circumventing the restrictive laws governing transboundary corporations at the time.⁷ Food processing, paper milling, and small manufacturing grew rapidly in Southern Ontario cities like Hamilton, Windsor, and Toronto. Economic historians refer to this period as the “Laurier Boom,” after Prime Minister Wilfrid Laurier (1896–1911).⁸ Historians of the United States chronicle the same trends on a larger scale, though the histories of the Gilded Age and Progressive Era in the United States addressed the period’s social inequities earlier and in greater detail than the Canadian histories.⁹

The aggressive resource extraction, industrialization, and growing population of these years drove massive changes in land use throughout the Great Lakes region. These included urbanization, deforestation, and

the drainage of wetlands as farms expanded, and railroads, canals, harbours, roads, and bridges were installed. While these changes were lauded near-unanimously at the time, they also had drastic environmental implications and created powerful new incentives for people to own and control water resources, which gave rise to new conflicts.

How were these changes linked to politics and international diplomacy? During this period of extremely fast and comprehensive growth, new investment opportunities abounded. Americans, Canadians, and Britons with investments in water infrastructure on the Great Lakes took an understandably avid interest in political decisions affecting the waterscape. Citizens of all three countries promoted ideas for infrastructure by lobbying their governments, by publishing in the popular and professional presses, and by forming civil groups like the St. Lawrence Seaway Association, the Lake Carriers Association, the Deep Waterways Association, and the Lake Erie Fishermen's Association. The enthusiasm for new transportation infrastructure financed several expansions of the Welland Canal around Niagara Falls, enlarged the St. Lawrence River canals, and dredged the channels at Sault Ste Marie. Other well-publicized schemes of the era included pressing for a St. Lawrence seaway, an enlarged Lakes-to-Hudson River canal system, and a Lakes-to-Gulf waterway.¹⁰ Investors were equally pleased to buy stock in companies developing the hydroelectric capacity of the rivers flowing into the lakes, near cities that would use the electricity.¹¹ Around the Great Lakes basin, the governments of cities, counties, states, and provinces spent tax revenue and issued bonds to build harbour facilities and to ensure predictable water levels for the convenience of shipping and hydroelectricity by dredging, damming, and draining marshes. In other parts of Canada and the United States, this was a period of rapid growth and dramatic change, but only on Lake Erie and Lake Ontario were capitalists and citizens constantly obliged to make allowance for the international boundary in order to profit from the new opportunities.

The Canadian, British, and American governments of the day were in favour of development. Occasionally, fishermen and conservationists protested the impact of all these changes on local biota, and occasionally residents complained about the sounds, smells, and dangers associated with new manufacturing and resource extraction.¹² However, by and large

the local, provincial, state, national, and imperial governments in northern North America regarded it as their responsibility to facilitate these changes to foster “progress” that would make their citizens wealthier, healthier, and more numerous. Although environmental historians have begun to analyze the ecological impact of this period of intense growth, most of the existing histories accept it as uncritically as the policy-makers of the time.¹³ This chapter will not detail these many, many exercises in political manoeuvring, but it will show how the quick pace of economic development contributed to water disputes and drew high-level political attention to the countries’ shared hydrology. Never before had North Americans tried to share the boundary waterways while simultaneously building new industries, founding new cities, and tapping new energy sources.

Proliferating Disputes, Escalating Concern

Although no policy-makers of the day explicitly stated it, diplomatic historians recognize a direct link between the proliferation of water disputes in the late nineteenth century and the rapid industrialization and urbanization on both sides of the border at that time.¹⁴ As water disputes began to represent an increasingly large proportion of Canada-US conflicts, the need for a straightforward way to address them became pressing. Examining the four disputes that received the most political attention will demonstrate how little institutional capacity existed to address water conflicts and why citizens of both countries were anxious to settle them.

One of the longest-lasting, most acrimonious disputes in the history of the Great Lakes began in 1900 when the Sanitary District of Chicago opened a canal to move the city’s disease-laden sewage away from its drinking water supply in Lake Michigan by diverting a massive quantity of water out of the Great Lakes and into the Mississippi River watershed.¹⁵ The diversion lowered the upper Great Lakes by approximately six inches, and because many of Lake Michigan’s harbours are very shallow, this was enough to impair navigation. The Chicago Sanitary District did not consult the other jurisdictions bordering the Great Lakes before building the canal, and it refused to change its plans despite vehement private and public protests on both sides of the border.¹⁶ When the diversion began, Canadian shipping interests were extremely upset by the lower water

levels on the lakes and in the St. Lawrence River. For the next two decades, they protested to their federal, provincial, and local governments, via British diplomats in the United States, and in the popular press.¹⁷ South of the border, various American groups protested and then filed lawsuits to shut down the canal or reduce its flow.¹⁸ The federal War Department filed suit because the new canal created a current in Chicago Harbour that prevented ships from safely accessing the docks, which were strategic assets.¹⁹ Only the War Department's lawsuit produced any results: in 1929, the Supreme Court ruled that the sanitary canal had to diminish its diversion.²⁰ However, in the years leading up to the creation of the Boundary Waters Treaty, these legal proceedings were in full swing and everyone with a financial or political interest in the Great Lakes was eager to know what kind of a precedent the Chicago Diversion would set. Would drastic, unilateral changes to the shared hydrology be permitted or prevented?

At the same time, other problems were emerging as Canadians and Americans began to alter the flow of transboundary rivers to build hydroelectric power plants on both the Rainy and Niagara Rivers. In 1904, the Minnesota Canal and Power Company proposed to construct reservoirs on Birch Lake, which was tributary to the boundary waters of the Rainy Lake/Lake of the Woods system.²¹ The state, local, and provincial governments in the watershed were not empowered to decide how a power company could use a boundary tributary, and so they referred the question to the federal governments. Canada objected that the proposed dams would create lower water levels downstream, thus harming navigation and violating the 1842 Webster-Ashburton Treaty.²² The issue remained unresolved while the company's shareholders waited impatiently. In the case of the Niagara River, unresolved questions centred on two issues: first, how to divide the rights to develop hydroelectric power at Niagara Falls, and second, whether or not to try to preserve the Falls as a "natural wonder" while developing their enormous power generation potential.²³ The topic was widely covered because the Falls were a popular tourist destination.²⁴ (See the chapter by Clamen and Macfarlane in this volume for a more detailed discussion of Niagara and other water quantity issues in the Great Lakes–St. Lawrence basin).

A newspaper report on the Lake Carriers Association's lobbying of Congress mentions many of the competing interests involved in these disputes, and shows how closely linked all of the various issues were:

Cleveland, Feb. 10 [1900]. A delegation of twenty of the most prominent vessel owners on the great lakes will start for Washington Monday, accompanied by Harvey D. Goulder, the attorney of the Lake Carriers' association. The object is to induce congress to take steps towards the formation with Canada of an international commission, which shall consider all matters affecting the water outlets of the lakes. The reasons why they are active at this time are the completion of the Chicago drainage canal, the completion of the Soo [Sault Ste. Marie] power canal and the proposed building of a dam in the Niagara river.²⁵

The report also shows that citizens around the lakes were publicly calling on their governments to manage their waters co-operatively.

Finally, farther west, a pressing and intractable dispute emerged over water for irrigation in the St. Mary and Milk River system between Montana and the North-West Territories (in present-day Alberta and Saskatchewan). The location's hydrology is unusual, in that Canada and the United States are both upstream and downstream users of the two rivers.²⁶ When American farmers and land speculators began to lobby their government to build irrigation canals to divert water from the St. Mary River to the Milk River in the 1890s, Canadians protested that such canals would deprive settlers along the St. Mary River of irrigation water.²⁷ When it began to seem likely that Montana would receive federal funds for the project, the Canadian federal government undertook a well-publicized survey of the two watersheds on their side of the border, as Timothy Heinmiller describes in his chapter in this volume. The implication of the survey was that if the Americans diverted the St. Mary water to the Milk River, Canadians would divert it back through another canal on their side of the Milk River. Press coverage from the period indicates that this subtext was widely understood.²⁸ By 1904, this pre-emptive canal, locally known as "the Spite Ditch," was completed but not in use. The American

State Department complained to the British government about it, while local boosters on both sides protested that the other country's developers were trying to ruin their settlements.²⁹ It was all too easy for policy-makers in Ottawa and Washington to envision the tension erupting into violent conflict.

These four disputes over sanitation, hydroelectricity, and irrigation provide ample proof of how much trouble Canadians and Americans were having as they tried, in reasonably good faith, to share the water resources along their boundary. Whether they were investors, farmers, ranchers, sanitary engineers, health officials, or fishermen, the need for co-operative water management was abundantly clear to people living in the Great Lakes region.

There were several attempts to address these emerging water problems before the negotiations for the Boundary Waters Treaty began. In general, they show how little institutional capacity existed to resolve this kind of tension during this period: there were no established procedures, no budget, no technical experts, and not much political momentum. For example, in 1895, an International Irrigation Conference attended by Canadians, Americans, and Mexicans recommended that the United States, Mexico, and Canada form a commission to settle boundary waters questions. A full year later, when the Canadian cabinet finally replied that it was willing to consider the idea, the United States did not even respond.³⁰ The United States and Britain created the Joint High Commission in 1898 to address that idea and a long list of other Canadian-American disputes, but it dissolved after less than two years with no results.³¹

The United States Congress raised the issue of boundary waters disputes again in June of 1902, passing a Rivers and Harbors Act, which requested the president to invite the British government to form a commission to investigate "the conditions and uses" of the Great Lakes, to report on how diversions affected navigation interests there, and to recommend improvements.³² The widespread dissatisfaction with the Chicago Diversion was one of the reasons for this: opponents of the diversion wanted a well-researched case to bolster their lawsuits, and proponents wanted an end to the protests. President Roosevelt made the invitation, and the British Foreign Office conveyed it to Prime Minister Laurier in Ottawa, who consented nearly twelve months later, in April 1903.³³ The

International Waterways Commission (IWC) was created and the United States named its commissioners on 2 October 1903. However, the Canadian government chose to let the IWC remain incomplete that autumn, after a dispute over the Alaska boundary put a damper on its relations with Britain and the United States.

By the turn of the century, interested legislators and jurists were attempting to address the multiplying water disputes, without much success. To understand the solution that did emerge, it is important to understand the relationships between Canada, the United States, and Britain.

Canada, Britain, and the Changing Empire

As the twentieth century began, British and Canadian policy-makers were responding to the geopolitics of the day, trying to manage Canada's budding nationalist movement, the rising power of the United States in global affairs, and the roiling tensions that would ignite the First World War. While these men (for they were, without exception, men) thought little of the environmental consequences of their policies, their decisions produced the negotiations for the Boundary Waters Treaty, which has had a profound impact on some of North America's largest waterways.

Between Canada's Confederation in 1867 and the start of the First World War in 1914, most of its external affairs were disputes or trade arrangements with the United States, the messy business of sharing a huge border. Boundary disputes ranged from housekeeping details like salvage fees for shipwrecks on the Great Lakes, to much more politically and commercially important differences over the Alaskan boundary, North Atlantic fishing rights, use and delineation of boundary waters, and pelagic sealing. Prime Minister Wilfrid Laurier's governments (1896–1911), like every one of their successors and predecessors, monitored Canada's interests vis-à-vis the United States closely. Canada was a small, new, relatively poor nation with deep internal divisions, and it wanted to conduct trade and settle disputes as favourably as possible, without loss of sovereignty or national unity. Canadians during this period wanted a strong economy and they elected Laurier's Liberals repeatedly to further that agenda. Laurier famously declared that if the nineteenth century had been America's century, the twentieth century belonged to Canada. His

government tried to foster domestic industry, settle the northern and western parts of the country, and promote economic development. The Great Lakes region was the centre of these development policies, and the disputes with the United States over dams and diversions were preventing them from being fully realized.

Unfortunately, these Canadian priorities were represented in London and Washington by Britons with very British goals.³⁴ The Dominion of Canada had become formally independent from Britain with an Act of Parliament in 1867, but its independence had some limits. In the last decades of the nineteenth century, the Dominion of Canada was internally self-governing, and was slowly becoming responsible for some aspects of its trade and defence. However, all international diplomacy was conducted by the British Foreign Service on Canada's behalf. The Foreign and Colonial Offices corresponded with the governor general of Canada, a titled British subject who communicated with the Canadian prime minister and other politicians and civil servants. Officially, Canadians did not even speak for themselves to the British government. Furthermore, the British government refused to allow its embassy in Washington to keep Canadian attachés or spokesmen.

The Foreign Office valued smooth Anglo-American relations over good deals for Canadians and its position became more and more clear as the European security environment degraded in the decades preceding the First World War. As economic and military competition intensified between Britain, the United States, and Wilhelmine Germany in the later decades of the nineteenth century, the British government felt less and less secure. During this period, Britain's foreign policy vis-à-vis the United States shifted toward determined rapprochement. The British government saw alliances as a cheap way to protect its increasingly expensive empire and the increasingly vulnerable British Isles, and hoped that a sturdy Anglo-American friendship would remove the need to provide for defence against the United States and perhaps ensure help in the case of a Continental war or German invasion. In the interests of warmer relations, the British government made a number of conciliatory gestures toward the United States between 1870 and 1905. These included settling naval claims from the American Civil War, yielding to US preferences in a South American border dispute, supporting the Americans in the

Spanish-American War (1898), and giving the United States sole control over the Panama Canal in 1901 (instead of sharing control with Britain as agreed in an earlier treaty). None of these gestures impinged heavily on Canada.

However, the same considerations of imperial and domestic defence that drove the British to cultivate the United States also influenced intra-imperial relations. As the cost of maintaining the British Empire grew and the European security environment became more volatile, British and Canadian imperialists argued for a more centralized empire and more Canadian military spending. Some argued that centralization and joint defence would give the Dominions more influence in British foreign policy, while others simply hoped that they would make the empire safer. Prime Minister Lord Salisbury's governments (1885–6, 1886–92, 1895–1902) pressed for centralization and for Canada and the other Dominions to develop the military capacity to support Britain and defend themselves. The Canadian militia system was somewhat revised between the Boer War and the First World War, and British naval commitments on the Pacific and Atlantic coasts of Canada were greatly reduced during this period.

The official Canadian response to British requests for help with imperial defence was wary because Prime Minister Wilfrid Laurier knew that most French Canadians and some English Canadians were nationalists, opposed to greater imperial unity. After an intense debate, Canada sent a small number of volunteers to the second Boer War (1899–1902) in South Africa. The same politically risky balancing act was required when the colonial secretary asked Laurier to form a navy. Canada had no use for a navy and had many more pressing expenses, but the question was hotly contested. For the most part, Prime Minister Laurier resisted London's ongoing pressure, maintaining what one journalist of the time called "the policy of the 'everlasting no.'"³⁵ The impracticality of having one diplomatic service represent two diverging sets of interests became increasingly obvious, colouring Canadian and British attitudes throughout the negotiation of the Boundary Waters Treaty.

The Young American Empire

American foreign policy in the late nineteenth century was much less conflicted. After the American Civil War (1861–5), the United States conducted its international affairs with increasing confidence. The Monroe Doctrine became a central tenet of American foreign policy, asserting the supremacy of American over European interests in the Western Hemisphere. As the nineteenth century ended, the United States was in fine fettle, with a trade surplus, growing GDP, and more activist foreign policies.³⁶ Under Presidents Harrison (1889–93) and Cleveland (1885–9, 1894–7), the United States took a proprietary interest in Nicaragua, Hawaii, Brazil, Venezuela, and Cuba. In 1898, President McKinley fought and won the Spanish-American War, which was a relatively uncomplicated victory for the country, compared to the divisions engendered by the American Civil War.

With victory over Spain came responsibility for the spoils of war: the United States took over the Spanish overseas colonies of Puerto Rico, Guam, Cuba, and the Philippines. These colonial acquisitions were politically incongruous for the United States, which prided itself on its rebellious origin and pointedly eschewed overseas commitments.³⁷ President McKinley and his vice-president, Theodore Roosevelt, were determined to be enlightened imperialists, bringing civilization and liberty to the Caribbean and Pacific islands and independence to Cuba. In 1899, President McKinley asked Elihu Root, a prominent New York lawyer and Republican with no military experience, to administer the new conquests.³⁸ Serving as secretary of war from 1899 until 1904, and as secretary of state from 1904 to 1909, Root was a key figure in all negotiations with Canada and Britain.

The Crucial Lessons of the Alaska Boundary Dispute

One short answer to the question, “Why were the Boundary Waters Treaty and the International Joint Commission created in 1909?” could be, “Because the Alaska Boundary Award occurred in 1903.” The political fallout from the award produced important changes in British policy, which

in turn dictated the conditions for the negotiation of the Boundary Waters Treaty three years later. Many of the same people played important roles in both processes. Having outlined the broad strokes of American, British, and Canadian relations at the turn of the twentieth century, a close look at the Alaska Boundary Award illustrates how these relationships interacted to obstruct conflict resolution in North America.

The Alaska boundary dispute was longstanding: the exact Canadian-American border had never been satisfactorily delineated after the American purchase of Alaska from the Russian government in 1867. (Alaska became an official territory in 1912 and a state in 1959.) This ambiguity did not matter to either country until a gold rush erupted near the border between the purchased land of Alaska and the Canadian Yukon Territory in the 1890s. Suddenly, access to the ports in the Alaska Panhandle became valuable and both Prime Minister Laurier and the new American president, Theodore Roosevelt, claimed them. Since the American interpretation of the boundary had “a strong case arising out of use and occupation,” Roosevelt saw no reason to be tactful.³⁹ Encouraged by prosperity and conscious of anti-American sentiment among Canadians, Laurier also refused to compromise.⁴⁰ There are useful parallels between the gold rush and the rapid growth of the Great Lakes region that explain this dispute’s political significance. The United States and Canada associated national interest with their citizens’ gold mining ventures, and they tried to protect them in the same way that they championed their people over questions of power generation and water diversion along the border.

Attempts to negotiate failed, and in 1903 the United States, Britain, and Canada agreed to refer the Alaska boundary dispute to a six-member panel of arbitration with three Americans, two Canadians, and one Briton. The British assured Laurier that the American panelists would be impartial, but in fact they were all personally loyal to Roosevelt, and two were well known for their anti-British rhetoric.⁴¹ The third appointee was Elihu Root, who was a well-respected jurist but also the serving secretary of war. Laurier believed that the Americans and the British were both pushing him to agree to an unfair arbitration, while the British accepted the biased American appointments because they were more interested in maintaining good Anglo-American relations than in the outcome of the dispute.⁴²

On 20 October 1903, the British panelist, Lord Alverstone, sided with the three American panelists against the Canadians, and the Alaska Boundary Tribunal ruled in favour of the United States. The British government approved the verdict and exchanged ratifications with the United States, not bothering to formally notify Laurier about the decision until after the fact.⁴³ This cavalier treatment did at least as much damage to British-Canadian relations as the actual decision. The detrimental effect of the Alaska boundary dispute on Canadian-American and Canadian-British relations should not be underestimated. The Canadian members of the tribunal refused to sign the decision and wrote a scathing public letter explaining their dissent. The Canadian Parliament, press, and general public were incensed by what they saw as Britain's betrayal, and Prime Minister Laurier was as angry as the rest.⁴⁴ British indifference deprived Canadians of their only way to defend their interests with respect to the United States, and the Alaska award convinced Laurier that he needed to change the way Canadian-American relations were conducted.⁴⁵ However, rather than start an immediate foreign policy revolution, with all its attendant political risks, he awaited developments. His first biographer noted,

Nothing was more foreign to Sir Wilfrid's ruling bias than to urge any policy on general and theoretical grounds; not until a concrete issue arose would the demand for wider powers be renewed. When the occasion did arise, in the Waterways treaty with the United States . . . Canada's control over foreign relations was to be quietly, un-dogmatically but surely and steadily advanced.⁴⁶

Given Canada's relative weakness and the political difficulties inherent in any change of the diplomatic status quo, this was a practical choice.

The Alaska boundary dispute forced the British to choose between Canada and the United States, and although the choice was not difficult, the cost was high: the overwhelming Canadian recriminations seemed likely to impede imperial defence planning. The following year, determined not to repeat the episode, the Colonial Office refused to consider addressing a Canadian-American dispute directly, "[because] we should

get no thanks for taking the initiative.⁴⁷ More constructively, the Colonial and Foreign Offices also decided to consult Canada before taking any action in matters involving Canadian interests in the future.⁴⁸ After the debacle of 1903, Canada and Britain came to the same conclusion: the next North American dispute had to be handled very differently. This evolution was not immediately apparent, but during the negotiation of the Boundary Waters Treaty, it gradually became clear that Britain was giving Canada much more control over its relationships.

The Alaska boundary dispute did not have nearly as much of an effect on the United States. The United States government was appreciative of Britain's sustained interest in good relations, while their view of Canada as a weak if vocal neighbour was left unchanged.⁴⁹

Exploratory Discussions and the Decision to Focus on Boundary Waters

Between 1905 and 1910, policy-makers established a new Canada-Britain-US working relationship, concluded a set of treaties based on North American collaboration, and created the International Joint Commission, an institution based on direct Canada-US communication. Given the furor over Alaska, this rather abrupt reversal demands explanation. What changed, and why?

First, as key personnel in British government posts in North America changed, the new appointees approached Canada-US issues differently than their predecessors had done, reflecting the changing balance of their empire's interests in North America and the growing urgency of Britain's need for allies in a possible war with Germany. The first prominent British official to employ the new, hands-off approach was Earl Grey, who arrived in Ottawa in 1904 to replace his brother-in-law as the governor general of Canada.⁵⁰ As governor general, Albert Grey handled all of Canada's communications with the United States and Britain. Letters and telegrams came directly to his office, and he either answered them or forwarded them to Prime Minister Laurier, who acted as his own foreign minister. Many governors general simply passed their correspondence along, but Earl Grey took a more involved attitude. One historian characterized him

as “constitutionally incapable of playing the role of figurehead.”⁵¹ Grey was an ardent imperialist with little interest in defending Canadian interests for their own sake. However, he was creative enough to realize that British-American harmony required sound British-Canadian and Canadian-American relationships, and he used his post to improve them.⁵²

As soon as he arrived, Grey began to lobby Prime Minister Laurier to improve Canadian-American relations. First, he asked the prime minister to appoint commissioners to the International Waterways Commission, which had been formally set up two years previously and then left in abeyance after the Alaskan controversy. After a few months, Laurier did as Grey asked, and for the first time, the political and economic concerns of the Great Lakes region and the global anxieties of the British Empire began to interact vis-à-vis boundary waters. The commission had a very limited mandate, but its reports laid the groundwork for the actual Boundary Waters Treaty.

Although not empowered to take concrete action, the IWC’s meetings were the first mechanism by which the concerns of interest groups from the Great Lakes reached the briefing books and memos of the people who handled foreign policy for the United States, Britain, and Canada. Their ideas reached a rarified audience of cabinet-level officials and their staffs, and many later became policy. (For a detailed description of the IWC’s work and an analysis of how it exemplified cultural trends such as progressivism and conservationism, see David Whorley’s chapter in this volume.)

The career of the IWC’s Canadian chairman, George Gibbons, is an excellent example of the pressure that Canadians living around the Great Lakes brought to bear on their prime minister and Parliament during the late nineteenth and early twentieth centuries. Gibbons was a commercial lawyer and businessman from the agricultural town of London, Ontario. In addition to his legal practice, he was founder and president of the London and Western Trusts Company, the president of the City Gas Company of London, and director of the London Life Insurance Company. Though never elected, he was a well-known Liberal organizer and fundraiser, recognized in his day as a privileged and capable professional man.⁵³ Gibbons and his peers used their political connections and business “pull” to raise their concerns about the Chicago Diversion, the

need for a good power-sharing deal at Niagara, and the federal government's duty to safeguard Canadian interests. (Frank Ettawageshik and Emma Norman's chapter in this volume analyzes the evolution of First Nations and Native American involvement with the International Joint Commission, and illuminates how some Great Lakes residents have been able to influence transboundary water policy over the course of the twentieth century while others have not.)

After activating the IWC, governor general Grey began to make encouraging official gestures to the United States. He visited New York in March 1906 and invited the secretary of state, Elihu Root, to Ottawa—events generally cited by diplomatic historians as the first public signs of a more positive tone in Canadian-American relations after the Alaskan controversy. They were certainly symbolic, but the launch of the IWC was just as public and much more significant in the long run.

While diplomatic historians have described the origins of the Boundary Waters Treaty and the actual treaty-making process in great detail, they have rarely devoted much time to examining the domestic or local factors that influenced the leaders of the United States or Canada. Much of the admirably detailed secondary literature was written by Canadian historians and ex-diplomats who placed the treaty in the context of that industrious period of British/Canadian-American relations.⁵⁴ This is unsurprising, given its importance to Canadian foreign policy and the fact that the treaties made in the first decade of the twentieth century between the United States and Britain regarding Canada were catalysts for reorganization in Ottawa. Though the period was far from uneventful for American diplomats, it has not drawn the same scholarly attention because the treaty did not reshape the State Department in any fundamental way. This chapter attempts to connect those carefully drawn accounts of treaty drafts and negotiations to their larger motivations. In particular, it asks, Why did President Roosevelt and Prime Minister Laurier regard the boundary waters disputes as important? It also aims to ground analysis of the policies in the material reality of the history of the Great Lakes, to connect the reader to the rapidly industrializing, densely settled places where residents were simultaneously creating and reacting to massive environmental changes, and discussing how best to cope with them together.

The Beginnings of Direct Communication

Governor General Grey also began to correspond directly with Secretary Root about “cleaning the slate,” as he phrased it. Their exchange produced a list of Canadian-American disputes that the secretary of state presented to the British ambassador in Washington on 3 May 1906. It was the first comprehensive catalogue of disagreements since the Joint High Commission had adjourned in 1898.⁵⁵ The list had sixteen items, of which half were related to marine and freshwater management, and four to the Great Lakes.⁵⁶ The ambassador sent Root’s list to Canada for comment through official diplomatic channels. The fate of that list, “[an] important document, which was destined to be the touchstone of Canadian-American diplomacy for the next five years,” was a perfect illustration of the impractical arrangements that hindered the Canadian-American working relationship.⁵⁷ It took *seven months* for the list to go from Washington to the Foreign Office, and thence to the Colonial Office, Governor General Grey, Prime Minister Laurier, and for Laurier’s unencouraging reply to reach Secretary Root. (At this time, a privately posted letter took less than a week to go between the capitals.) After seeing the need for direct communication so vividly demonstrated, Governor General Grey asked the Foreign Office to add a Canadian attaché to Britain’s Washington embassy.⁵⁸ The idea was rejected, but Grey began to write directly to the State Department, and Britain’s government seems to have been pragmatic enough to wink at this bending of the rules.

Communication was also hindered by the British ambassador to Washington, Sir Mortimer Durand, who either did not see or did not choose to act upon the coalescence of Canadian and British interests that Grey perceived. In April 1906, President Roosevelt wrote to his own ambassador in London that “[Durand] seems to have a brain of about eight-guinea-pig power. Why, under Heaven the English keep him here I do not know.”⁵⁹ Roosevelt and his cabinet took no interest in Durand, and the Boundary Waters Treaty did not become possible until his more sympathetic successor arrived the following year. In January 1907, Lord James Bryce took over as the British ambassador. He was unusually well qualified for his post because he had travelled widely in the United States, had published a book about the country, and had a personal network in Washington

that included Elihu Root and other members of the foreign-policy elite.⁶⁰ As he became more familiar with his embassy, Bryce realized that much of its business was focused purely on Canadian-American interaction. He held the same view of Canadian-American relations as Grey: that the resolution of their local, “parochial” differences would be an indirect way to improve British-American relations and, like Grey, corresponded directly with Ottawa and received no complaints from London about it. Their pragmatic attitude was legitimated by, and is indicative of, larger changes of opinion within the British press, policy elite, and electorate.

In 1907, there came a particularly concrete example of these shifting British policies: Root and Bryce both visited Ottawa at Earl Grey’s invitation, to meet Prime Minister Laurier and to talk informally about US-Canada disputes. The Foreign Office’s instructions to the governor general demonstrate its new wish to facilitate, rather than direct, Canadian-American dialogue: Grey was ordered to avoid saying or doing anything “which would imply the intervention of His Majesty’s government in the discussion.”⁶¹ It was very rare for cabinet-level American officials to go to Ottawa, and the press credited Bryce with being the first British ambassador to visit Ottawa in an official capacity.⁶² These exchanges were also a clear demonstration of the pressures that Canadians and Americans had brought to bear upon Roosevelt and Laurier. Without significant domestic incentive, it is unlikely that their governments or the British government would have made these unusual efforts. By 1907, then, the bitterness of the Alaskan controversy had dissipated, the list of North American disputes was clear, and all three parties knew each other’s positions.

Setting an Agenda

Both the form and substance of the Boundary Waters Treaty are the product of an extended period of negotiations in which Canadian, British, and American officials all had vital roles. The speed of the negotiations and the detailed attention paid to them by the secretary of state and the Canadian prime minister show how seriously both countries regarded the boundary waters issues. To appreciate Canada’s effort in achieving this efficient result, it is essential to understand just how little bureaucratic capacity the Dominion had. Although official correspondence moved more quickly

under Bryce and Grey, no one in Canada kept a precise record of the dialogue because there was no filing system. Prime Minister Laurier acted as his own foreign minister, but the additional work was onerous, and when he did not respond promptly to letters or cables, negotiations had to wait. Canadian public servants noticed this deficiency and a senior bureaucrat, Joseph Pope, had been arguing for the creation of a department of external affairs since 1900.

After visiting Ottawa in 1907, Ambassador Bryce argued that it would be best to start with the most easily resolved items. He hoped that removing the “lesser irritants” would “sweeten and soften the feeling between the two countries” before tackling the more controversial problems.⁶³ With that plan in mind, Bryce and Grey tried to decide which of the most pressing disputes would be the easiest to resolve: the North Atlantic fisheries, boundary waters, or pelagic sealing disputes? Of the three, boundary waters seemed to offer the best chance of success. The North Atlantic fisheries dispute was very old and convoluted, and it involved Britain and the colony of Newfoundland as well as the United States. The pelagic sealing dispute was complicated by intricate questions of compensation for Canadian sealers. Conversely, the boundary waters disputes were relatively new and bilateral rather than tri- or quadrilateral. Boundary waters also seemed attractive because the IWC’s recommendations on the subject were recent and practical.

In May 1907, the Canadian, British, and American governments asked the heads of the International Waterways Commission’s two sections, Canadian George Gibbons and American George Clinton, to draw up a draft boundary waters treaty (see Appendix 2). The normal procedure for the period would have been for the British Embassy in Washington to draft it, but Gibbons and Clinton were a safe bet to test a new approach. They had been working together as co-chairs of the IWC for three years, they were intimately familiar with the relevant disputes, and both had legal training. In addition, George Gibbons was devoted to the topic as a resident of the region most affected, as a member of Laurier’s Liberal Party, and as a Canadian nationalist. Given the public pressure that Laurier faced to get a good deal after the Alaska award, those loyalties made Gibbons a better representative than any Englishman. The fact that a Canadian and

an American produced the first blueprint of a treaty for settling boundary waters issues is a testament to the change in official thinking after 1903.

Comparing Drafts, Comparing Objections

With the presentation of the first Clinton-Gibbons draft in September 1908, the negotiation of the Boundary Waters Treaty began in earnest. Bryce kept the British government apprised, but the dealings were essentially American-Canadian, rather than trilateral. The Clinton-Gibbons draft stipulated freedom of navigation for all citizens throughout the Great Lakes and St. Lawrence system, specifically prohibited the diversion of boundary waters except for domestic sanitation or navigation canals, and prohibited diversions or obstructions of boundary waters that would cause injury to public or private interests in the other country. This last provision was a direct response to the furor over whether or not the Sanitary District of Chicago could legally divert so much water that it affected shipping. It aimed to reassure people around the Great Lakes that their livelihoods and investments would be insulated from such drastic, unilateral changes in the future. According to Gibbons and Clinton's draft, where diversion would not injure navigation, public interests, or private interests, each country was entitled to half of the water in streams crossing the boundary.⁶⁴ This clause was a crucial clarification for hydro-electric power companies and for the municipalities and industries that wanted to buy electricity.

Analyzing the two sides' initial objections to the draft treaty provides a picture of how lawmakers regarded environmental management and reflects the concerns of local stakeholder groups around the Great Lakes. For the American State Department, the central problem was whether and how much Americans' freedom of action should be constrained, while the Canadians sought clear guidelines for management, to offset their comparative poverty and military weakness.

The State Department's lawyers argued that the transboundary commission outlined in the treaty would compromise private citizens' control of their property, states' control of their territory vis-à-vis the federal government and foreign countries, and the nation's autonomy.⁶⁵ The lingering rancour and domestic lawsuits over the Chicago Diversion figured

prominently in their analysis. They also objected that the guidelines for commissioners were inadequate, while Secretary Root was apparently reluctant to commit to a definite course of action in the relatively young policy area of hydroelectricity.⁶⁶ Finally, Root did not want to have a single set of water management principles for every case, which was precisely what George Gibbons and the Canadian government did want.

The Canadians believed that their citizens would only be treated equitably in disputes with Americans if the treaty laid out such clear rules that the imbalance of power would not be a factor. George Gibbons and Prime Minister Laurier agreed that “there is only one way in which we will get fair play . . . that is by a permanent joint Commission.”⁶⁷ Laurier was concerned that he would be accused of selling his country to the Americans if the final treaty was not clearly beneficial to Canada. In addition, Laurier wanted the new treaty to address the detrimental effect of the Chicago canal on water levels in the Great Lakes, as well as the other site-specific disputes. Finessing Canada’s determination to secure equal treatment despite the power imbalance was a consistently difficult part of the negotiations.

In late winter 1908, the Americans proposed creating a Joint Commission of Inquiry that would do nothing more than provide reports and recommendations.⁶⁸ Without the judicial and arbitral functions that the Clinton-Gibbons draft envisioned, the Commission of Inquiry posed no threats to sovereignty, and Anderson and Root thought it would be relatively simple to get it through the Senate. Laurier rejected the proposal and sent Gibbons to Washington to negotiate. The Canadian lawyer convinced Secretary Root to agree that management principles were a good idea, though Root insisted that the Senate would never accept them. In return for this concession, Gibbons reported to Laurier that he “urged the view that . . . we were not very particular what the principles were as long as they were uniformly applied.”⁶⁹ Judging from his correspondence with Laurier, Gibbons was quite ready to accommodate the American preference for territorial sovereignty, best exemplified by the extreme Harmon Doctrine applied to the US-Mexican border. (Attorney General Harmon had argued in 1906 that because the United States had sovereignty over the Rio Grande within its own territory, no international law could impose an obligation upon the United States to share the water with Mexico.⁷⁰) The

geography of the Canada-US border, where the two countries are both upstream and downstream water users, as well as joint tenants of watersheds bisected by the boundary, may have made it easier to contemplate this solution. The chapter in this volume by Hall, Tarlock, and Valiante explores whether the Boundary Waters Treaty can be presented as a compromise between two different self-interested legal views—absolute territorial integrity (Canada) as opposed to absolute territorial sovereignty (US)—but the Canadian negotiators do not appear to have been committed to either. Instead, Gibbons and Laurier were determined to achieve a treaty that would protect Canadian interests in the same way and to the same extent as it did American interests. During their meetings early in 1908, Root and Gibbons did not come to any conclusions, and the treaty project seemed stalled. Policy-makers in both countries regarded future water disputes as a near-certainty, but disagreed about the best way to plan for them.

Persistence and Progress

Some of the disputes could not wait. In the spring of 1908, rather than abandon their negotiations, as they had done in earlier years, the Canadian and US governments demonstrated their new commitment to dispute resolution and the urgency of the situation by moving forward on several other fronts. After two weeks of intensive consultation in February, they agreed to assign two people to confer on the St. Mary and Milk River irrigation dispute.⁷¹ They also made progress on the North Atlantic fisheries dispute, concluded two minor boundary-delineation treaties, and signed the Inland Fisheries Treaty, hoping to prevent a repetition of the bitter disputes that had troubled the North Atlantic by creating a common understanding about freshwater fishing. Under the Inland Fisheries Treaty, the United States and Canada agreed to set up an International Fisheries Commission to draft a set of “uniform and common regulations for the protection and preservation of the food fishes of the boundary waters” within six months. The broad scope and short duration of the commissioners’ assignment prevented them from accomplishing much, and the treaty was abandoned, unratified, in 1914, but it did contribute to better Canadian-American and Anglo-American relations in 1908.

Encouraged by the signature of the new treaties and spurred by the pressing disputes, George Gibbons joined Ambassador Bryce in Washington in late spring 1908 to urge Root to settle all remaining boundary waters issues with a single treaty. Given the British government's repeated refusals to hire an actual Canadian attaché, Gibbons's recurring presence there is striking. Bryce valued his work and the Foreign Office in London either tolerated or ignored the innovation.⁷² Ambassador Bryce's chargé d'affaires also felt that American prejudices favoured Canada, writing that, "there is ever yet a hereditary and traditional desire to give the [British] lion's ear a tweak or his tail a little twist."⁷³ The perceived willingness of the Americans to deal more generously with a weak neighbour than with a strong empire may seem odd, but it appears in the archival record regularly. The attitude may be related to how boundary waters negotiations fit into Elihu Root's larger policy of strengthening the United States' relations with countries in the Western Hemisphere. During his tenure, he cultivated relationships in Central and South America and promoted the Pan-American Union as a tool for good relations in the Western Hemisphere. The Roosevelt administration seems to have regarded Canada more warmly as a neighbour in the New World rather than as a part of a European empire.

In any case, the British Embassy believed that the water disputes and the need for an Anglo-American alliance were pressing enough to disregard protocol, and George Gibbons went back to Washington.⁷⁴ Over the course of three days, he convinced the State Department to accept a treaty with explicitly stated principles for water use and a permanent commission to enforce them. Furthermore, Root agreed that one of his most valued assistants, Chandler Anderson, would work with Gibbons to write another draft treaty. These coups made Gibbons's reputation as a negotiator.⁷⁵ The assignment of Anderson elevated the treaty to a higher level of official attention, and the June discussions started a definitive new set of talks.

The Final Draft and Informal Arrangements

Gibbons and Anderson achieved a draft by mid-autumn.⁷⁶ It was, in general terms and in most details, the Boundary Waters Treaty. It bore a

much closer resemblance to the Clinton-Gibbons draft treaty than to the Root-Anderson proposal, with clearly defined management precepts, and a decisive role for a permanent international institution, the International Joint Commission.

In their draft, transboundary waters (which flowed across the boundary or were tributary to boundary waters) stayed under national jurisdiction, but in article ii, citizens of the United States and Canada were granted the right to claim damages for injury caused by water use in the other country.⁷⁷ The negotiators fully expected that companies and individuals would manage their conflicts by suing each other under this clause, sparing the United States, Britain, and Canada from having to adjudicate between them. The draft treaty also set out an order of precedence for the use of boundary waters: domestic and sanitary uses were listed as the first, most important use, for the benefit of waterside communities. Navigation was the second priority because it seemed, “more important to the general welfare of the country” than hydroelectric power and irrigation. Hydroelectricity and irrigation came last because, Anderson explained, “[they] benefit only a very limited number.”⁷⁸ The order of precedence was intended to benefit the greatest possible number of people, so as to secure maximum political support for the treaty.

Gibbons and Anderson also included a general arbitration clause, which empowers the International Joint Commission to act as an arbitrator between Canada and the United States on any topic, if both countries request it. The United States and Britain had concluded an arbitration agreement in 1908 that applied to Canada through Britain, but this arbitration mechanism was exclusive to Canada and the United States. From a British standpoint, this reduced the chances of another acrimonious tribunal like Alaska, and for North Americans, it provided a more direct way to address grievances and conflicts. Altogether, these clauses and tools represent a serious effort to address the institutional gap that had become so apparent as Americans and Canadians intensified their impact on the Great Lakes basin and other boundary waters.

Since they had successfully negotiated a broad treaty structure, Laurier and Root told Gibbons and Anderson to move on to the more difficult task of settling the existing water disputes. In the end, the disputes about the Chicago Diversion and the Rainy River were addressed

informally and are not mentioned in the final Boundary Waters Treaty. Because the American government was suing the Chicago Sanitary District, and because the State Department believed that putting a clause about the Chicago Diversion into the treaty would prevent its ratification and further politicize the contentious lawsuit, the Canadians agreed to leave diversions from Lake Michigan out of the treaty.⁷⁹ In return for this concession, Secretary Root proposed to accept a smaller share of the water at the Niagara River, which was carefully allocated under article v of the Boundary Waters Treaty, thus disposing of another site-specific dispute.⁸⁰

Anderson and Gibbons also made a quiet deal to solve the Rainy River dispute. The central question was whether the United States could legally grant the Minnesota Power Company's request to divert water from the tributary of a boundary river. Under the Webster-Ashburton Treaty of 1842, the river was to be "free and open" to all citizens of both countries for navigation, and the proposed power dam would interfere with that navigation. In return for Canada giving up its objections to the dam, Gibbons got article ii, the reciprocal damages clause.⁸¹ He apparently decided that the Rainy River was an acceptable loss, arguing that the new treaty would do a better job of protecting Canadian interests in diversion disagreements than Webster-Ashburton.

The last point to settle was the St. Mary and Milk Rivers, where rival canal-builders had nearly come to blows over scarce irrigation water. Article vi of the Boundary Waters Treaty sets out a highly technical management system for the St. Mary and Milk Rivers and their tributaries in Montana, Alberta, and Saskatchewan. The clause stipulated that the two rivers "were to be treated as one and the total available water was to be divided equally over all but not in respect to each stream."⁸² A Canadian and an American were to be assigned to measure and apportion the available water for each growing season. The accredited officers, as they are known, have been a linchpin of the region's agriculture ever since. The annual determinations are often contentious, and may be expected to become more volatile as climate change proceeds, but a century of painstaking calculations kept these two watersheds from being a worse problem. Anderson and Gibbons submitted their final draft to Secretary Root and Prime Minister Laurier on 3 December 1908.

The Home Stretch: Formal Acceptance and Ratification

With the treaty drafted and all of the site-specific disputes resolved, the formal acceptance processes could begin in each country. Laurier approved the treaty draft in January 1909 before sending it to the British Foreign Office, where administrative staff changed the language of the treaty to reflect Canada's formal, subordinate diplomatic relationship with Britain.⁸³ For example, every reference to "the Government of Canada," was replaced with "the High Contracting Party" (i.e., Great Britain).⁸⁴ The British government had no interest in altering the terms of the treaty, but neither did it have any intention of ceding its imperial prerogatives. The new Canada-US co-operation that had grown so quickly between 1906 and 1909 was strictly operational, not official, but it was just as crucial to transboundary environmental management as the treaty itself. That collaboration, coupled with local pressure for a reliable regulatory environment around the rapidly developing Great Lakes and British anxiety for an American rapprochement, were the driving forces behind the Boundary Waters Treaty.

After the treaty text was approved, British officials settled down to await the outcome of the North American ratification processes. In the United States, the Senate Foreign Affairs Committee and then the rest of the chamber had to vote in favour of the treaty, and in the Canadian-British case, it meant convincing Prime Minister Laurier to recommend ratification to Westminster.

Elihu Root was correct when he predicted that the Senate would oppose the Boundary Waters Treaty. Powerful constituents were paying close attention and the Senate Foreign Relations Committee raised a number of objections to the treaty that echoed the complaints of the executive branch: basically, they saw the treaty as a threat to states' rights and national sovereignty.⁸⁵ However, the most inconvenient objection was raised by Senator Smith of Michigan, whose constituency included several companies invested in hydroelectric power generation along the boundary. He argued that the principle of equal division of boundary waters interfered with the proprietary rights of Michigan citizens in the St. Mary's River at Sault Ste. Marie, where the river's flow was greater on the American

side than the Canadian side. On February 15, Smith proposed a “rider,” or amendment to the treaty, stating that,

Nothing in this treaty shall be construed as affecting, or changing, any existing territorial or riparian rights in the water, or right of the owners of the lands under, on either side of the international boundary . . . [and] that nothing in the treaty shall be construed to interfere with the drainage of wet swamp and overflowed lands into streams flowing into boundary waters.⁸⁶

This amendment was a blatant effort to safeguard local interests. Part of the land along the St. Mary’s River at Sault Ste. Marie was shortly to be expropriated by the US government for a shipping channel, and the owners of the plot hoped that they would get a better price for it if their riparian rights were unchanged.⁸⁷ Smith’s rider is an excellent example of how much the advancing development of hydroelectricity, the accelerating transformation of shorelines and wetlands, and expectation of greater development around the Great Lakes was changing transboundary management at this time. As steam-, coal-, and gas-powered engineering equipment made it possible to harness rivers more cheaply and easily, the boundary streams in the already industrialized Great Lakes were becoming even more valuable.

As the committee discussed the treaty and proposed amendment, it attracted a lot of media interest. Under the headline “Two Senators Almost Come to Blows,” one newspaper noted that the debate “was the liveliest tilt seen in the Senate in many days.”⁸⁸ Debate over Smith’s amendment was as heated in Ottawa as in Washington.⁸⁹ The Senate leaked the text of the Boundary Waters Treaty, and Canadian newspapers picked it up. Laurier faced loud demands for a debate in the House of Parliament, but, as the Colonial Office unhelpfully reminded him, the Canadian legislators were prohibited from debating the treaty until it was officially released.

Wealthy, well-connected people expected to make money by altering the hydrology of the boundary waters, and the public debate around the treaty was largely about whose interests would be helped or hurt. In this context, the principles of usage as set out in the treaty (domestic and

sanitary use, then navigation, then hydroelectricity and irrigation) had unprecedented weight. Secretary Root wrote to Laurier and Gibbons several times during the debate to reassure them, explaining that despite the amendment, “I am perfectly satisfied that the rights of Canada will be exactly the same. . . . The very large private interests involved are apparently afraid of some occult meaning and effect of any words they don’t devise themselves.”⁹⁰ However, Canadians were concerned about being bullied out of their share of the water by British indifference or American strength.⁹¹

Despite Root’s best efforts to prevent it, the Senate Foreign Relations Committee approved the treaty with Smith’s amendment. It passed the Senate in late February 1909. After this ratification, the treaty could not be substantially altered. The British government waited to submit the treaty to Parliament until Laurier gave his approval. To convince the Canadian prime minister that the Smith rider did not hurt his country’s interests, proponents of the treaty presented him with favourable opinions from a variety of policy-makers, including the US attorney general, the Canadian justice minister and the minister of public works, Gibbons, Bryce, Grey, the chief astronomer, and all six IWC commissioners.

Despite this litany of affirmation, Laurier studied the treaty for a full year. He engaged a private engineer for an outside opinion and corresponded with Canadian companies that expected to profit from the boundary waters.⁹² While the Boundary Waters Treaty awaited ratification, the disputes it was designed to settle remained unresolved.⁹³ The urgency of the existing problems and the likelihood of their multiplication may have helped push Laurier to a decision. He finally approved the Boundary Waters Treaty, which was ratified in London and then signed into action on 13 May 1910 in Washington, DC.

Conclusion

The old saying that “an ounce of prevention is worth a pound of cure” seems particularly apt in the context of the Boundary Waters Treaty. After thirty years of failed attempts to cure Canadian-American disputes, the treaty was a labouriously built remedy that finally included a measure of prevention in the International Joint Commission. Under its terms, the St.

Mary–Milk and Niagara disputes were resolved, while the tensions over development on the Rainy River and the Chicago Diversion were defused informally during the negotiation process.

In the aftermath of the Alaska Boundary Award of 1903, British policy-makers and the Canadian government recognized that Britain could no longer conduct Canada's political relations with the United States without encountering serious conflicts of interest. While the governments of the United States, Britain, and Canada began to realize the need to change their style of diplomacy, North Americans were looking for ways to resolve their proliferating boundary waters disputes.

Between 1906 and 1910, the direct Canada-US negotiation process and the practically bilateral treaty that it produced improved relations between Canada and Britain, Canada and the United States, and Britain and the United States. All three governments were encouraged by the creation of the International Joint Commission to look after a policy area that was prone to disputes. Referring to the International Joint Commission's potential role as an arbitration mechanism, Elihu Root, writing to George Gibbons in 1910, remarked that "the public has no adequate conception of the tremendous scope and importance of the thing which has been done as a preventative of controversy in the future."⁹⁴

In retrospect, it is ironic that policy-makers in all three countries were so excited by the possibilities inherent in the International Joint Commission's expandable mandate. Politicians and early historians of Canadian-American affairs hoped that the article x arbitration clause would make the new commission into a "miniature Hague Tribunal," where Canada-US disputes could be solved judicially.⁹⁵ In fact, the arbitration clause has never been used. Legal and institutional historians of the Boundary Waters Treaty have tended to evaluate the performance of the International Joint Commission and its potential role in contemporary Canada-US relations rather than focusing on the Boundary Waters Treaty in its historical context, and this literature has been, on balance, more critical of the commission than the diplomatic historiography. For example, early legal scholars noted the "fairly obvious tendency to treat membership in the commission as a suitable reward for political services, a criterion of selection not entirely calculated to guarantee that impartiality, training, and knowledge required for the objective adjudication of

burning issues,” as well as the disinclination to use the Boundary Waters Treaty’s arbitration clause.⁹⁶ However, legal experts also valued the treaty and the International Joint Commission for the precedents they set and for their inclusion of universally applicable principles for water management.

In September 1907, George Gibbons predicted that if the Boundary Waters Treaty got through the Senate, it would be “the best thing that ever happened to this country and . . . the only way of preventing friction between ourselves and the Mother Country as well as between Great Britain and the United States.”⁹⁷ His prediction turned out to be reasonably accurate: the treaty improved all three relationships, and the process of making it indirectly encouraged the development of Canadian foreign policy mechanisms, which filled a gap that had impeded the three countries’ smooth relations. In 1909, a bill to form the Department of External Affairs was introduced and passed Ottawa’s Parliament with very little fanfare, making Canadian external communications faster and better organized. Governor General Grey was upset by the bill because he did not want his post to be superseded by a purely Canadian unit.⁹⁸ His worries were fully justified—Canadian historians regard the creation of the Department of External Affairs as an important step toward foreign policy autonomy.

Despite its undeniably positive influences, it is equally true that the International Joint Commission’s work during the twentieth century would please someone with Chandler Anderson’s objections about sovereignty and jurisdiction. Because the US and Canadian governments hold the organization’s purse strings and appoint the commissioners, the International Joint Commission’s independence only goes so far. The powerful interests at stake have made it impossible for politicians to hand over as much control to the commission as its creators envisioned. The tension between its broad mandate and its actual activities has perhaps contributed to the perception of the International Joint Commission as a deceptive creation—an unreliable “myth” as described by Clamen and Macfarlane in the introduction to this volume—but it has also enabled the institution to change and grow as goals for water management have evolved on both sides of the border.

The dramatic changes that humans made to the Great Lakes watershed in the early twentieth century—industrialization, urbanization,

hydroelectric development, and transportation infrastructure, to name a few—interacted with shifting calculations of national and imperial self-interest on the global stage, and one result of this concatenation was the Boundary Waters Treaty of 1909 and the creation of the International Joint Commission. These uniquely North American tools brought the people living around the Great Lakes closer to control over the treaties that governed their boundary waters.

Notes

- 1 For a global overview of this process, see John R. McNeill, *Something New Under the Sun* (London: Allen Lane, 2000). For a description of how this process played out on Lake Erie, see Jon Wlasiuk, *Refining Nature: Standard Oil and the Limits of Efficiency* (Pittsburgh: University of Pittsburgh Press, 2017), intro. and ch. 1, esp. 40–9.
- 2 Kenneth Warren, *The American Steel Industry, 1850–1970: A Geographical Interpretation* (Pittsburgh, PA: University of Pittsburgh Press, 1988), 109–32.
- 3 “Mr. Morgan Wants It: Definite Offer Made for Stock of American Shipbuilding Company, Control of the Great Lakes Would Thus be Assured,” *Minneapolis Journal*, 16 August 1902, 1.
- 4 William T. Hogan, *Economic History of the Iron and Steel Industry in the United States* (Lexington, MA: Heath, 1971), 328.
- 5 Warren, *The American Steel Industry*, 116, and William R. Wightman, *The Land Between: Northwestern Ontario Resource Development, 1800 to the 1990s* (Toronto: University of Toronto Press, 1997), 118–23.
- 6 “Two Big Furnaces: Clergue, the Western Cecil Rhodes, to Outdo Previous Effort,” *Minneapolis Journal*, 18 February 1901, 1, and “What Clergue is Doing at the Soo: Modern Steel Worlds with Electrical Power Furnished by New Canals—Associate Industries of Wonderful Character,” *Minneapolis Journal*, 31 August 1901, 18.
- 7 Michael Bliss, *Northern Enterprise: Five Centuries of Canadian Business* (Toronto: McClelland and Stewart, 1987), 285–8.
- 8 “Starting in 1896, the beginning of an inflationary cycle for most of the advanced industrial world, the boom reached its apogee during the first Canadian merger wave that began in 1909, only to die out with the world-wide recession of 1913.” Gregory Marchildon, *Profits and Politics: Beaverbrook and the Gilded Age of Canadian Finance* (Toronto: University of Toronto Press, 1996), 7.
- 9 Two excellent monographs dealing with the environment of the Great Lakes during this period are William Cronon’s *Nature’s Metropolis* (New York: W. W. Norton, 1991) and Harold Platt’s *Shock Cities* (Chicago: University of Chicago Press, 2005). For the broader history of this period, see also Elizabeth Sanders, *Roots of Reform* (Chicago: University of Chicago Press, 1999), Alan Trachtenberg, *The Incorporation of*

- America* (New York: Hill and Wang, 1982) and Richard Bense, *The Political Economy of American Industrialization, 1877–1900* (Cambridge: Cambridge University Press, 2000).
- 10 For a comprehensive history of the development of the St. Lawrence River for shipping, see William Willoughby, *The St. Lawrence Waterway* (Madison: University of Wisconsin Press, 1961) and Daniel Macfarlane, *Negotiating a River* (Vancouver: UBC Press, 2014). For an example of contemporary coverage of the Lakes-to-Gulf waterway, see “Oppose Lake to Gulf Waterway,” *New York Daily Tribune*, 17 January 1908, 2, and “Shall Chicago be a Seaport? Plans for a Ship Canal from Gulf to Great Lakes” *The Sun* (New York), 2 September 1907, 7.
 - 11 For example, the Niagara River, the Rainy River, and the St. Lawrence River.
 - 12 Archives Canada, RG 23, box 436, file 702-4-2(1), 702-4-3 through 9, 11-13 (2) covering complaints from residents of Southern Ontario to the federal Department of Fisheries, 1914–53. See also Margaret Beattie Bogue, *Fishing the Great Lakes: An Environmental History, 1783–1933* (Madison: University of Wisconsin Press, 2000), 279–96.
 - 13 Recent studies of environmental change around the Great Lakes during this period include Jonathan Wlasiuk, “A Company Town on Common Waters: Standard Oil in the Calumet,” *Environmental History*, 19 (October 2014): 687–713; Bogue, *Fishing the Great Lakes*; and Harold Platt, “Chicago, the Great Lakes, and the Origins of Federal Urban Environmental Policy,” *Journal of the Gilded Age and Progressive Era* 1, no. 2 (April 2002): 122–53.
 - 14 For example, Peter Neary noted that the question of boundary water use “had been brought to the fore by rapid industrialization at the turn of the century on both sides of the border.” See Neary, “Grey, Bryce and the Settlement of Canadian-American Differences, 1905–1911,” *Canadian Historical Review* 49, no. 4 (December 1968): 359.
 - 15 When it opened, the canal removed ten thousand cubic feet per second, lowering Lakes Huron, Erie, Ontario, and Michigan by approximately six inches and hindering navigation. See Maurice O. Graff, “The Lake Michigan Water Diversion Controversy: A Summary Statement,” *Journal of the Illinois State Historical Society* 34, no. 4 (December 1941): 453–71, and Jacob Austin “Canadian-United States Practice and Theory Respecting the International Law of International Rivers: A Study of the History and Influence of the Harmon Doctrine,” *Canadian Bar Review* 37, no. 3 (1959): 416.
 - 16 The downstream city of St. Louis even filed a lawsuit while the canal was still under construction, to no avail. For contemporary coverage, see “Chicago Drainage Canal Open,” *New York Tribune*, 3 January 1900, 1. See also “What Chicago Talks Of: Drainage Canal Not an Entire Success—How Taxpayers Were Deluded,” *New York Daily Tribune*, 22 January 1900, 3.
 - 17 Austin, “Canadian-United States Practice and Theory,” 416–17. See also Hildegard Willman, “The Chicago Diversion from Lake Michigan,” *Canadian Bar Review* 10, no. 9 (1932): 575–83. For contemporary coverage, see “Canada’s Waterways Must Not Be Sacrificed for Chicago Drainage,” *The Globe* (Toronto), 27 June 1906. See also “The Chicago Canal: Canada’s Case Has Not Been Fairly Stated,” *The Globe* (Toronto), 24 October 1906, and “Chicago Scheme Stoutly Opposed,” *The Globe* (Toronto), 28 March 1912.

- 18 Graff, "The Lake Michigan Water Diversion Controversy," 453–71. For contemporary coverage, see "Decision Hits the Canal: Supreme Court of United States Rules Against Sanitary Board and State of Illinois" *True Republican* (Sycamore, IL), 2 February 1901.
- 19 Cornelius Lynde, "The Controversy Concerning the Diversion of Water from Lake Michigan by the Sanitary District of Chicago," *Illinois Law Review* 25, no. 3 (1930): 243–60. See also Austin, "Canadian-United States Practice and Theory," 416.
- 20 "Chicago Victor over St. Louis: Supreme Court Decide Illinois Drainage Canal Does Not Harm Missouri," *Minneapolis Journal*, 19 February 1906, 1. See also, J. Q. Dealey, "The Chicago Drainage Canal and St. Lawrence Development," *American Journal of International Law* 23, no. 2 (April 1929): 307–28.
- 21 "Power Scheme Gives Offense: Watershed of the Rainy River Would Be Tapped," *Minneapolis Journal*, 17 March 1904, 1. See also "Rainy River is to Have Power Plant: This is One of the Chief Items of Development in Canadian Northwest," *St. Paul Globe*, 25 June 1904. See also "Great Developments at Koochiching Falls," *The Appeal* (Saint Paul, MN), 29 April 1905. For legal history, see Patricia K. Wouters, "Allocation of the Non-Navigational Uses of International Watercourses: Efforts at Codification and the Experience of Canada and the United States," *Canadian Yearbook of International Law* (1992): 56.
- 22 Wouters, "Allocation of the Non-Navigational Uses of International Watercourses," 313. The Webster-Ashburton Treaty required the river system to be "free and open" to navigation.
- 23 William Griffin, "A History of the Canadian-United States Boundary Waters treaty of 1909," *University of Detroit Law Journal* 37, no. 1 (1959): 78. See also Daniel Macfarlane, "'A Completely Man-Made and Artificial Cataract': The Transnational Manipulation of Niagara Falls," *Environmental History* 18, no. 4 (October 2013): 859–84.
- 24 For contemporary press coverage, see "Almost Ready to Harness Niagara: Contract Let to Furnish Buffalonians with Motive Power," *Scranton Tribune* (PA), 29 August 1896, 5. See also "To Harness Up Niagara: The Gigantic Scheme Soon to Be Put In Effect at a Cost of Three Million Dollars," *Democratic Press* (Ravenna, OH), 14 June 1888, 1; "Niagara Falls in Danger: Time Coming When Commercialism May Destroy Great Cataract," *Hocking Sentinel* (Logan, OH), 27 April 1905; "Utilizing Niagara: Capitalists Who Propose to Divert Water from the Mighty Falls," *The News-Herald* (Hillsboro, OH), 22 September 1886; "Niagara River Power: How it is Proposed to Utilize it at Buffalo," *Springfield Daily Republic* (OH), 11 February 1888, 2; "Curbing the Falls: The Tunnel for Turbine Wheels at Niagara Nearly Finished," *Pittsburgh Dispatch*, 17 January 1892, 3; "To Preserve Niagara Falls: Report of American Side of International Commission," *The Sun* (New York), 25 March 1906, 6; "Preserve Niagara Falls: Secretary Taft urged to Save its Scenic Beauty," *The Sun* (New York), 27 November 1906, 7; "Niagara Falls Bill: Measure Likely to Pass, House Commits Reports One to Restrict Diversion of Water," *New York Daily Tribune*, 3 June 1906, 12; and "Another Raid on Niagara Falls," *The Globe* (Toronto), 29 May 1911.
- 25 "Lake Carriers Active: Will Send a Delegation to Washington Monday," *St. Paul Globe*, 11 February 1900, 9.

- 26 The Milk River flows northward across the border before looping back into Montana, while the St. Mary River begins in Montana and flows north into Alberta.
- 27 M. E. Wolfe, "The Milk River: Deferred Water Policy Transitions in an International Waterway," *Natural Resources Journal* 32, no. 1 (Winter 1992): 66. For contemporary coverage, see "Reclaim Arid Lands: This the Subject of Secretary Maxwell's Address to Commercial Bodies," *St. Paul Globe*, 11 March 1900, 8; "Funds for Irrigation: Eight Million Dollars Available for Reclaiming Arid Lands," *Minneapolis Journal*, 16 August 1902, 1; "Montana's Reclamation: The St. Mary Irrigation Project—An Ingenious Method of Changing a River's Course," *St. Paul Globe*, 1 July 1902; "Big Irrigation Project: Explanation of the Proposed St. Mary Division Canal," *Scranton Tribune* (PA), 19 April 1902, 5; "Irrigation by the Great Milk," *Minneapolis Journal*, 24 March 1903, 1.
- 28 "Water Scheme Miffs Canada: How It May Retaliate on the United States," *Minneapolis Journal*, 10 May 1905. See also "Supply Water for Canadian Users: Plan is Devised to Remove International Difficulty over Irrigation," *St. Paul Globe*, 29 April 1905, 1 and 5.
- 29 Wolfe, "The Milk River," 67; see also N. F. Dreisziger, "Wrangling over the St. Mary and Milk," *Alberta History* 28, no 2 (1980): 6–15.
- 30 Privy Council Order 3465, 8 January 1896, Canadian government. Quoted in F. J. E. Jordan, *An Annotated Digest of Materials Relating to the Establishment and Development of the International Joint Commission* (Prepared for internal use of the Canadian Section of the International Joint Commission, Ottawa, ON, 1967), 1.
- 31 O. D. Skelton, *The Life and Letters of Sir Wilfrid Laurier* (Toronto: McClelland and Stewart, 1965), 2: 360. See also Alvin Gluek, "Pilgrimages to Ottawa: Canadian-American Diplomacy, 1903–1913," in *Canadian Historical Association Papers* (Ottawa: Canadian Historical Association, 1969), 65–83.
- 32 Quoted in Gluek, "Pilgrimages to Ottawa," 1–2.
- 33 Privy Council Minutes, 27 April 1903, Canadian government. Quoted in Jordan, *Annotated Digest*, 3.
- 34 See John Hilliker, *Canada's Department of External Affairs, Volume 1: The Early Years, 1909–1946* (Montreal: McGill-Queen's University Press, 1990).
- 35 Norman Hillmer and John Granatstein, *Empire to Umpire* (Toronto: Irwin, 2000), 17.
- 36 For a good overview of the period, see George C. Herring, *From Colony to Superpower: US Foreign Relations Since 1776* (New York: Oxford University Press, 2008), 303–24.
- 37 *Ibid.*, 691.
- 38 Account of the conversation, given by Elihu Root in a speech to the New York County Lawyers' Association on 13 March 1915. Quoted in Phillip Jessup, *Elihu Root* (Hamden, CT: Archon Books, 1968), 1: 215.
- 39 Norman Hillmer and John Granatstein, *For Better or For Worse: Canada and the United States into the Twenty-first Century* (Toronto: Nelson, 2005), 31–2.
- 40 Hillmer and Granatstein, *Empire to Umpire*, 25.
- 41 Gluek, "Pilgrimages to Ottawa," 66.

- 42 Laurier cable, quoted in Joseph Schull, *Laurier: The First Canadian* (Toronto: MacMillan, 1965), 431. The British government named the Lord Chief Justice Alverstone and two Canadian Supreme Court judges, Sir Louis Jette and Douglas Armour, as their panelists. Mr. Armour died before the tribunal convened, and was replaced by A. B. Aylesworth, a Toronto lawyer who later became Wilfrid Laurier's minister for justice and his advisor during the negotiation of the Boundary Waters Treaty.
- 43 Gluek, "Pilgrimages to Ottawa," 66–7.
- 44 Hillmer and Granatstein, *Empire to Umpire*, 26.
- 45 Gluek, "Pilgrimages to Ottawa," 68.
- 46 Skelton, *Sir Wilfrid Laurier*, 2: 159–60, and Hilliker, *Canada's Department of External Affairs*, 26.
- 47 Gluek, "Pilgrimages to Ottawa," p 68–9.
- 48 Mary E. Hallett, "The 4th Earl Grey as Governor General of Canada, 1904–1911," (PhD diss., University of London, King's College, 1970), 215. See also Neary, "Grey, Bryce and the Settlement of Canadian-American Differences," 380.
- 49 Hillmer and Granatstein, *For Better or For Worse*, 35–6.
- 50 The governor general of Canada acts as Canada's head of state on behalf of the British king or queen. Before the First World War, this job included handling political relationships in addition to the ceremonial duties that continue to the present day, such as signing bills into laws and opening Parliament in Ottawa.
- 51 Neary, "Grey, Bryce and the Settlement of Canadian-American Differences," 358, and Hallett, "The 4th Earl Grey," 215.
- 52 Neary, "Grey, Bryce and the Settlement of Canadian-American Differences," 358, and Hallett, "The 4th Earl Grey," 215.
- 53 Peter Neary, "Gibbons, Sir George Christie," *Dictionary of Canadian Biography*, vol. 14 (University of Toronto/Université Laval, 2003), http://www.biographi.ca/en/bio/gibbons_george_christie_14E.html.
- 54 Including, but not limited to L. M. Bloomfield and Gerald Fitzgerald, *Boundary Waters Problems of Canada and the United States: The International Joint Commission 1912–1958* (Toronto: Carswell, 1958); Robert Bothwell, *Canada and the United States: The Politics of Partnership* (New York: Twayne Publishers, 1992); John Bartlett Rebner, *North Atlantic Triangle: The Interplay of Canada, the United States and Great Britain* (Toronto: Ryerson Press, 1945); Gerald Craig, *The United States and Canada* (Cambridge, MA: Harvard University Press, 1968); G. Glazebrook, *A History of Canadian External Relations* (Toronto: Oxford University Press, 1950); Alan O. Gibbons, "Sir George Gibbons and the Boundary Waters Treaty of 1909," *Canadian Historical Review* 34, no. 2 (June 1953): 124–38; Gluek, "Pilgrimages to Ottawa," 65–83; A. D. P. Heeney, "Along the Common Frontier: The International Joint Commission," *Behind the Headlines* 26, no. 5 (July 1967); Hugh L. Keenleyside, *Canada and the United States: Some Aspects of the History of the Republic and the Dominion* (New York:

- Alfred A. Knopf, 1929); Neary, "Grey, Bryce and the Settlement of Canadian-American Differences."
- 55 Neary, "Grey, Bryce and the Settlement of Canadian-American Differences," 358.
- 56 Durand to Grey, enclosure. 3 May 1906. Governor General Grey Correspondence. Governor General's Office. Vol. 93, File 192A, 294-316, Library and Archives Canada (LAC).
- 57 Neary, "Grey, Bryce and the Settlement of Canadian-American Differences," 358.
- 58 Ibid., and Hallett, "The 4th Earl Grey," 242.
- 59 T. R. Roosevelt to Whitelaw Reid, 28 April 1906. Quoted in Gluek, "Pilgrimages to Ottawa," 2.
- 60 Neary, "Grey, Bryce and the Settlement of Canadian-American Differences," 363.
- 61 Lord Elgin to Earl Grey, 14 January 1907. Quoted in Hallett, "The 4th Earl Grey," 222-3.
- 62 Ibid., 226.
- 63 Foreign Office Memo 414/199, Bryce to Sir Edward Grey, 9 April 1907. Quoted in Neary, "Grey, Bryce and the Settlement of Canadian-American Differences," 364.
- 64 Draft Treaty, 1907. Pp. 129636-129644, Vol. 480, Laurier Papers, 1907, Ottawa, Ontario. Quoted in Jordan, *Annotated Digest*, 27.
- 65 Article ii of Clinton-Gibbons draft treaty, 1907, quoted in Jordan, *Annotated Digest*, 27; Anderson memo, December 1907, quoted in Jordan, *Annotated Digest*, 42-3.
- 66 Anderson memo, December 1907. Quoted in Jordan, *Annotated Digest*, 42-3.
- 67 Gibbons to Laurier, 15 February 1907. Quoted in William Harbaugh, *The Life and Times of Theodore Roosevelt* (New York: Collier, 1963), 127; also quoted in Neary, "Grey, Bryce and the Settlement of Canadian-American Differences," 368-9.
- 68 Dispatch from Bryce to Earl Grey, 3 February 1908. Quoted in Jordan, *Annotated Digest*, 53.
- 69 Gibbons to Laurier, 8 January 1908, quoted in Jordan, *Annotated Digest*, 51; Gibbons to Laurier, 11 February 1908, quoted in Gibbons, "Sir George Gibbons and the Boundary Waters Treaty of 1909," 131-2.
- 70 William Griffin, "A History of the Canadian-United States Boundary Waters treaty of 1909," *University of Detroit Law Journal* 37, no. 1 (October 1959): 77.
- 71 Laurier's cabinet chose the chief astronomer, Dr. W. F. King, who had extensive experience with surveying and border delineation, and the Americans appointed Mr. Newell, from the Bureau of Reclamation. See Jordan, *Annotated Digest*, 60.
- 72 Dispatch, Bryce to Lord Grey, 8 June 1908. Quoted in Jordan, *Annotated Digest*, 65.
- 73 Howard to Earl Grey, 13 August 1908. Quoted in Jordan, *Annotated Digest*, 74.
- 74 Memoranda for Mr. Root, 13 June 1908. Quoted in Jordan, *Annotated Digest*, 67.
- 75 Grey to Crewe. Quoted in Hallett, "The 4th Earl Grey," 233-4.

- 76 Jordan, *Annotated Digest*, 69–71. The points they decided to include were described as follows: “freedom of navigation on the Great Lakes system, principles of international law governing the obstruction and diversion of boundary and transboundary waters, appointment of a permanent commission to consider and decide cases involving application of the principles, provision for the same body to act as an advisory board in respect to any matters in dispute arising with regard to property rights of any kind between the two countries, and creation of the same body as a permanent board of arbitration to which by consent of both countries any matter of dispute might be referred for final decision.”
- 77 Letter from Anderson to Root, 2 June 1908. Quoted in Jordan, *Annotated Digest*, 77n115.
- 78 Letter from Anderson to Root, 26 August 1908. Quoted in Jordan, *Annotated Digest*, 76.
- 79 Austin, “Canadian-United States Practice and Theory,” 416.
- 80 Graff, “The Lake Michigan Water Diversion Controversy,” 457.
- 81 Jordan, *Annotated Digest*, 92, and Gibbons to Laurier, 16 December 1908. Paraphrased and quoted in Jordan, *Annotated Digest*, 89–90.
- 82 Jordan, *Annotated Digest*, 93–4.
- 83 *Ibid.*, 96.
- 84 *Ibid.*
- 85 *Ibid.*, 100.
- 86 Text of treaty, *The International Joint Commission and the Boundary Waters Treaty of 1909* [pamphlet] (Ottawa: International Joint Commission, 1997), 14.
- 87 Neary, “Grey, Bryce and the Settlement of Canadian-American Differences,” 375.
- 88 Anonymous clipping, 1909. Chandler Anderson Papers, Manuscript Room, Library of Congress, Washington, DC.
- 89 “Canada Humiliated Over Treaty: Laurier Irritates at Publicity of Waterway Convention Before He Had Copy,” *New York Daily Tribune*, 27 January 1909, 4.
- 90 Letter, Root to Gibbons, 2 March 1909. Laurier Papers, CA 153654, LAC.
- 91 Neary, “Grey, Bryce and the Settlement of Canadian-American Differences,” 376.
- 92 Shaugnessy to Pugsley, 4 March 1910. Quoted in Gibbons, “Sir George Gibbons and the Boundary Waters Treaty,” 134.
- 93 In the spring of 1910, Gibbons and the other Canadian members of the International Waterways Commission observed irritably to Laurier that the issue of power development on the St. Lawrence River at Cornwall, Ontario, would be much easier to settle if the Boundary Waters Treaty were in force. See Gibbons to Laurier, 2 March 1910. Quoted in Gibbons, “Sir George Gibbons and the Boundary Waters Treaty,” 133.
- 94 Root to Gibbons, 16 May 1910. Quoted in Gibbons, “Sir George Gibbons and the Boundary Waters Treaty,” 138.
- 95 Jordan, *Annotated Digest*, 127.

- 96 Including but not limited to Philip Anisman, "Water Pollution Control in Canada," *Ottawa Law Review* 5, no. 2 (1972): 342–410; Jacob Austin, "Canadian-United States Practice and Theory Respecting the International Law of International Rivers: A Study of the History and Influence of the Harmon Doctrine," *Canadian Bar Review* 37, no. 3 (September 1959): 391–443; Richard Bilder, "Controlling Great Lakes Pollution: A Study in United States-Canadian Environmental Cooperation," *Michigan Law Review* 70, no. 3 (January 1972): 469–556; P. E. Corbett, *The Settlement of Canadian-American Disputes: A Critical Study of Methods and Results* (Toronto: Ryerson Press, 1937); Stephane Rousell, *The North American Democratic Peace: Absence of War and Security Institution-Building in Canada-US Relations, 1867–1958* (Montreal and Kingston: McGill-Queen's University Press, 2004); William Griffin, "A History of the Canadian-United States Boundary Waters treaty of 1909," *University of Detroit Law Journal* 37, no. 1 (October 1959): 76–95; Macdonald, Gerald L. Morris, and Douglas M. Johnston, eds., *Canadian Perspectives on International Law and Organization* (Toronto: University of Toronto Press, 1974), 522–43; G. V. La Forest, "Boundary Problems in the East," in *Canada-United States Treaty Relations*, ed. David R. Deener (Durham, NC: Duke University Press, 1963), 28–50; Don Courtney Piper, *The International Law of the Great Lakes: A study of Canadian-United States Co-operation* (Durham, NC: Duke University Press, 1967); Robert Spencer, John Kirton, and Kim Richard Nossal, eds., *The International Joint Commission Seventy Years On* (Toronto: Centre for International Studies, 1981); M. H. Wershof, "Notes on the Jurisprudence of the International Joint Commission" (Prepared for the International Joint Commission, 1975).
- 97 Gibbons to Laurier, 24 September 1907. Laurier Papers. CA 129648-129649, LAC.
- 98 Quoted in Hallett, "The 4th Earl Grey," 252.