

## THE "COMPACT" THEORY OF CONFEDERATION

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THE importance of political ideas lies not only in their validity, but in how widely they are believed to be true. Any political idea, no matter how wrong-headed and perverse it may appear to an unbiassed observer, may, if believed in by a sufficient number of men, so influence their actions that it becomes an historical fact having just as much significance as the more concrete historical determinants of physical environment and economic forces. The way in which men interpret, for example, an economic depression may be just as important in determining the subsequent fate of the economy as the forces which had brought about the slump.

The confederation of the British North American colonies in 1867 was a conscious effort to develop a particular social and economic policy for the new Dominion. In the mid-nineteenth century the complete identity between the social well-being of the community as a whole and the prosperity of what may be termed broadly the commercial class was not seriously questioned. When, therefore, the Fathers agreed that a policy of development and expansion was a sound and desirable policy, it seemed to follow that such a policy could not fail to be a good thing for the entire community.

Inevitably, the *laissez-faire* optimism of the nineteenth century was to find contradiction, even in its own time. The prosperity of Manchester was small comfort to the economic misery of Ireland. The distress which existed in the weakest parts of an aggressively competitive system naturally provoked a revolt against a system whose logic urged a complacent acquiescence in survival of the strong and the liquidation of the inefficient. Where it was unlikely that men's minds would evolve a fundamental challenge to their economic environment, the pinch of the economic shoe provided the nerve stimulus for political action. In the Canadian provinces men had come to accept the idea that one of the purposes of government was to aid expansion by public works; it was not difficult to carry the argument one stage further, and to demand government aid in battling against unfavourable circumstances.

In the nineteenth century Ireland, and somewhat later Wales and Scotland, came to interpret reaction to British *laissez-faire* capitalism in terms of an intense nationalism which was clearly founded on economic rather than what might be termed political reasons. For a variety of causes, the confederation of the Canadian provinces never succeeded in eradicating the deep-seated regionalism of the people of those provinces. This regionalism was enhanced by the variable growth of the provincial economies; for whereas the provinces in the centre adapted themselves readily to the later phases of the power age, the Maritime Provinces met the altered needs painfully and slowly. In the last twenty years or so, this dour provincialism has become more and more like the nationalism which had shaken its fist at the resplendent power age in the British Isles.

Nova Scotia and New Brunswick both suffered economically in the period after confederation. Both had a trading and service economy which faltered in the period after 1868. It was all too easy for the public men of the period, the spokesmen of the small traders and the exporters of primary products, to labour the connection between the change which had come over their little world and the new political framework in which they found themselves. Men, particularly public men, seldom have a vested interest in truth, and seldom concern themselves to enquire too far into the reality of a political grievance which aids their cause. To many of the public men of the period, confederation was a political gift horse, and they were not eager to look it in the mouth. The new tariff, in fact little higher than their own, coincided more or less with a noticeable decline in their trade, and the possibility of the intrusion of Upper Canadian goods filled them with the alarm with which the prospect of the competition under which he is supposed to thrive seems to fill the business man. It was too easy to rationalize their discomfort by crying aloud at an external enemy. It is not surprising that men have readily resorted to that comforting device in similar circumstances, until one of the reflexes of our political habits is our provincialism, half-sentimental and half-derived from crude economies.

As early as 1868 there was great agitation against confederation in Nova Scotia, where the decline of the golden age of wood, wind, and water was causing a violent contraction in the hitherto prosperous economy of the Atlantic seaboard. The discontents and fears which arose from economic distress

were readily translated into a condemnation of the new political framework into which they had entered<sup>1</sup>.

The great depression of the seventies struck at the unity of national sentiment which the optimism of the boom period had fostered elsewhere. Discontent made men return to the old loyalties as readily as prosperity had broadened their political vision. Given the comfortable social philosophy of the time and the economic situation of the politically articulate class, they could not explain their plight in terms of any challenge of the economic and social system in which they believed. They could express their dissatisfaction with the political framework of their society only by blaming bad policies which had prevented the proper working out of the forces which must, unless thwarted by external pressure, inevitably bring the hoped-for prosperity. And where those doubts lay forgotten with the return of prosperity, the ideas remained ready to hand to explain the discontents of the next depression.

Right down to our own times, those ideas have remained latent in our Canadian political consciousness, and in the bitter dependency of the slump which came in 1929 they emerged again to rationalise the revolt of the bewildered middle-class. In the hearings before the Royal Commission on Dominion-Provincial Relations in 1938, the Province of New Brunswick filled fully one-half of its brief in setting forth the view of the nature of the confederation agreement which is the central part of the "compact" theory. For the authors of the brief, the compact theory is interpreted to mean that there was a specific agreement between the several provinces *inter se* to form a federal union, that that agreement was implemented by the parliament of the United Kingdom in the *British North America Act* (1867), and that the Dominion of Canada which was created by that statute is bound by the agreement. The terms of the agreement are to be found in the resolutions passed by the

1. "But let us see how Confederation has operated upon Nova Scotia already. It has been in existence one year; we have already had our tariff raised and our indirect taxes very highly increased; we have been saddled with vexatious duties, with taxes on newspapers and a tax upon our bank circulation; our railroads have been taken from us and under Confederation can be sold and the price taken into the Canadian chest; we have had all our revenues from customs taken from us, and we have been placed on a trifling allowance which is totally insufficient for our support. Refusal to renew the Reciprocity Treaty, and the subsequent closing up of our coal trade, and the general stagnation of commerce are probably chargeable on Confederation, and its natural effect of excluding the manufactures of United States from the Maritime Provinces by means of a high Canadian tariff.

"The Canadas and the Maritime Colonies, having separate interests, require different systems of trade, and therefore the regulation of trade and commerce being by the Union Act exclusively vested in Canada, our interests will always be liable to be sacrificed. . . . Canada may impose burdensome and ruinous export duties on our fish, coal, gypsum, stone, lumber and other property." Minute of the Executive Council of Nova Scotia, dated 14th August, 1868, as quoted in submission of Nova Scotia to the Duncan Commission, 1926.

representatives of the various provinces meeting in London, and in the act itself. Since several of the resolutions do not appear in the act, it is argued that they are nevertheless warranties, as it were, to the contract, and are as binding as the constitution itself. The province argues that there has been a material breach of several of these conditions, notably those referring to the Atlantic ports and to the Intercolonial Railway, and enters a claim for compensation for these breaches. For example, it is contended that there has been a material breach of Resolution 66<sup>2</sup> which they say was a condition included to gain the consent of the Maritime Provinces to the confederation. Of this resolution the Royal Commission on Dominion Provincial Relations says (Report, Book II, p. 251) "Historians of the Confederation period and researches made on behalf of the Commission are in agreement in giving an Upper Canadian origin to Resolution 66". The antecedents of the Resolution, the circumstances attending its appearance in the Quebec and London Resolutions, every direct reference to it of which there is record, suggest that this resolution was a declaration to proceed, as speedily as possible, with a developmental project of particular concern to Upper Canada, which involved the building of communications with the Great West and extensive "improvements" in the Canadian canal system.

If there was a contract at confederation, there must have been contracting parties, and for them the contracting parties were the several provinces. Since the Dominion could not be said to exist prior to the B. N. A. Act, the contract was between the provinces *inter se*, the British Parliament merely intervening to implement the agreement to create the Dominion. To sustain this view it is necessary to show that the provinces were capable of making agreements on their own hook. A power to make a far-reaching agreement of this kind is a power which is normally associated with states possessing a considerable degree of independence. The framers of the New Brunswick brief set forth their view of the nature of the agreement which took place, in the following passage:<sup>3</sup>

"The provinces, being sovereign and independent nations under the British Crown, jointly and unanimously arranged with the Imperial Government to provide an agency by means of which

2. "The communication with the North-West Territory, and the improvement required for the development of the trade of the Great West with the Seaboard, are regarded by this Conference as subjects of the highest importance to the Confederation, and shall be prosecuted at the earliest possible period that the state of the finances permits." Text of Resolution 66 as given in the New Brunswick Brief, p. 95. Interpretation of the term "Seaboard" seems to have been the basis of the New Brunswick claim.

3. Royal Commission on Dominion Provincial Relations. Brief of the Province of New Brunswick. Page 100.

certain matters of common interest were to be dealt with. The agency was created by the provinces, and the provinces were not created by the agency. The provinces remained sovereign nations, and the *British North America Act* did not effect any change in their status. They are still independent sovereignties, and the Dominion is still the agency through which certain matters are to be administered. This has been more particularly demonstrated by the decisions of the Judicial Committee of the Privy Council."

As can be seen, this opinion is not lacking in difficulties from the point of view of historical or legal proof. We are not so much concerned here with the validity of the argument as with the origin of the argument, and as far as possible with the reasons which caused it to take this form. In the above quotation the provinces are referred to as "sovereign states". This idea is important to the theory in that it makes them conscious parties to the confederation agreement, and put them rather in the position of a principal in a contract of agency, which seems to have been the idea in the minds of the framers of the New Brunswick brief. This seems to have been the moral, or legal, basis for the claim of reparation which the province entered. It is interesting that the demand was for reparation, as if the Dominion had been guilty of negligence or lack of good faith in pursuing its policy of development. No effort was made to suggest that Canadian policy had been based on an erroneous view of the nature and effects of the economic system; no attempt to suggest that the process of historical change had made the needs of government in 1938 so vastly different from 1867 that the division of function in ss91-92 was hopelessly inadequate to meet modern requirements. The plea was that the constitution was adequate, the policy right, and merely the interests served had been wrong.

The plea is not based on historical grounds, for the application of the historical method to the intentions of the Fathers suggests that though the quotations cited in the brief referring to the confederation as a compact do exist, there are many others in the opposite sense, and there is a great deal of evidence to suggest that it was the intention of the Fathers that the provinces should perform the more minor and local functions of government, leaving to the Dominion full jurisdiction over all matters of common concern.

The method employed in the brief is in fact one of abstraction, based on principles of evidence valid neither to the historian nor to the lawyer. It is not unnatural, therefore, that they lead

to a rather surprising view of the Dominion of Canada as a remote and external entity entirely dissociated from the people of the constituent provinces.<sup>4</sup>

The economic causes which brought the theory into being throw some light on the form it takes in the brief. It is based mainly on the grievances of the city of Saint John as a seaport; hence the emphasis on the Atlantic ports and the insistence on a particular meaning to the term "seaboard" which makes it possible for Mr. Jones, who presented the brief, to describe Montreal disparagingly as an artificially created port.

The Compact Theory cannot be dismissed as an illogical and unconvincing attempt by a weakened vested interest to save its privileged position in the community. It is not enough to prove, as the Royal Commission on Dominion-Provincial Relations has done so carefully<sup>5</sup>, that the theory is contradictory and bears little relation to the facts. Sectionalism, as Professor Underhill has said<sup>6</sup>, is a depression phenomenon. These periodic regional discontents do not grow up and then die utterly with the return of prosperity. Political events are determined not only by the interplay of economic forces, but also by the manner in which these forces are understood. So the existence of any political idea, no matter how erroneous, may be as effective as any objective fact as an historical determinant.

It is important to remember that these ideas are widely held in Canada, so widely held that it is not too much to say that sectional loyalties are so much a part of our political psychology that they are implicit in much of our Canadian political thinking. Of course, the rather extreme view presented in the New Brunswick brief is not widely accepted; nevertheless most of us, in our thinking about Canadian problems, assume unquestioningly the existence of certain sectional interests or rights. These interests or rights are presumed to arise from the fact of confederation and to be identified with the provinces.

Even our economies, which as a whole is remarkably free from any consideration of human values unless they can be twisted into economic terms, has not escaped the intrusion of the sectional idea. An article by Professor Bladen in *The*

4. Hon. Mr. Jones: "At the present the Dominion Government does not know what is going on in Canada, or rather, perhaps I should say, in the provinces . . ." Royal Commission on Dominion-Provincial Relations. Report of Proceedings, November 24, 1938, at page 10121.

5. Report, Book II, page 247 et seq.

6. *The Canadian Forum*, November, 1940, p. 234.

*Canadian Journal of Economics and Political Science*<sup>7</sup> is an illustration of how an over-emphasis of the regional aspects of a problem may give a distinct and somewhat surprising warp to the interpretation of a set of economic facts. After saying that "The current economic problem of federalism is a problem of depressed areas"<sup>8</sup> he goes on to argue that in a federal system a province has of right a special claim not to be exploited by the depressing incidence of a national policy which is to the advantage of other parts of the federal system, and perhaps to the federal state as a whole.

Prof. Bladen points out that there are certain human values in a political region which have a claim to be maintained when the necessities of national policy might dictate a liquidation of the area by population transfer, or by some other means. He refers particularly to South Wales, which has suffered severely from the development of British industrial policy since the last war. Wales has some claim of right in asking that its culture and its political existence should be retained even at the expense of the rest of the British economy. He then goes on to argue that Nova Scotia has not only a similar claim, but also a sort of legal claim, not possessed by South Wales, on the ground that Nova Scotia was a consenting party to confederation and that the basis of its consent was that it should receive equal treatment with other provinces in the Dominion. Here again we meet the Compact Theory. In effect, the argument is that the federal state is composed of several distinct entities which are presumed to have distinct and ascertainable interests which the federal state is bound to maintain.

Is this argument valid? Do economic forces operate so carefully within the bounds of political regions? Can it be validly argued that South Wales is being exploited by the rest of the United Kingdom? Who, after all, is exploiting the heirs of Lord Rhondda? Who, in Scotland, is exploiting the Duke of Buccleuch? You cannot say that South Wales is being exploited and mean the same thing as if you had said that David Jones, unemployed miner of Cardiff, is being exploited by an economic system which does not want Welsh coal and is unwilling to find alternative employment for the Welsh miner. The truth of the matter is that David Jones is being exploited

7. Bladen, "The Economics of Federalism", *Canadian Journal of Economics and Political Science*, August, 1935, p. 345. A similar argument was ably presented by the late Norman McL. Rogers in the brief of Nova Scotia to the Jones Commission, *Nova Scotia. A Submission on Dominion-Provincial Relations and the Fiscal Disabilities within Federation*.

8. Page 349.

in the manner referred to above; but if you want to generalise from that, you cannot say that Wales is being exploited, but that the Welsh miners, and the shopkeepers and publicans who furnish them with goods and services, are being exploited. If you put it that way, you can also see that the miners and shopkeepers and publicans of Durham are also being exploited in exactly the same way that David Jones and his fellows are being exploited. Thus you have not, as Professor Bladen would have us believe, a Welsh problem, but rather a problem which affects coal miners as a class, and a problem which depends not on whether they live in Wales or Lanarkshire, but on whether they are working in a mine which can still produce coal cheaply and efficiently. The problem of the depressed areas is not so much that they contain a high concentration of dead and dying industry, but rather that the existence of many dead and dying industries together means that the places where the concentration is highest are for convenience grouped together into an area which is called depressed. In other words, the boundaries of a depressed area are determined by the extent of a group of dead and dying industries, and not by the fact that a certain area (so defined for other purposes) contains depressed industries. When the problem is viewed in that light, the economist can proceed to work out a solution appropriate to it. If, on the other hand, he proceeds on the assumption that Wales, *qua* Wales, is depressed, his purpose is no longer to salvage the frustrated life of David Jones, but to compensate Wales for the plight of the Welsh mines. And on that assumption the Rhondda estates are entitled to compensation equally with David Jones.

The principles are the same when one applies them to a federal system. Professor Bladen is concerned with compensating a mystical entity which he calls Nova Scotia, when his real problem is that of the Atlantic fisheries or the Cape Breton mines. It is not the economy of Nova Scotia which has suffered. There are many comfortable and happy people in Nova Scotia who are not one whit affected by the plight of the Atlantic fisheries or the Cape Breton mines. To compensate Nova Scotia is to declare a windfall dividend to comfortable Nova Scotians, probably at the expense of many not so comfortable indirect tax payers all over Canada.

The nature of the ideas implicit in the Compact Theory should itself suggest the direction that political thinking is taking in Canada. The commercial and social group whose ideas are represented in the Compact Theory has read the danger signs



of our highly vulnerable economy, but it has read them wrongly because its approach was conditioned by its ideas of the meaning of social institutions and of the purpose of government and the objectives of economic society.<sup>9</sup>

It is fairly obvious what is wrong with the Canadian economy. It is highly vulnerable to fluctuations in world trade. It expanded too rapidly into highly specialised primary production, in any case on an uneconomic scale. Its economic policy is largely dictated by the financial and manufacturing interests of the centre. The cost structure of the whole community is very rigid, while the price structure of the primary producer is subject to catastrophic declines. The primary producer and the small manufacturer have suffered most in this transitional phase of the economy. The fact that so many of these groups have been located in the West and the Maritimes has made both these areas centres of discontent which has frequently been translated into strong regional sentiment.

Periodic depressions have eroded the national sentiment in Canada which the optimism of boom periods had fostered. These little regional discontents have invariably been reactions of the economically weak against the economically strong. Because they receive their impetus from the small manufacturers and traders and lawyers of the weaker areas, they take a form consistent with middle class conceptions of good government. They miss the fundamental causes of their distress, not because their authors are particularly hare-brained demagogues, but because they are the expression of discontent of a class which accepts the fundamental *mores* of the capitalist system. They do not quarrel so much with the method of government as with the interests which it seems to have been forced to serve.

<sup>9</sup> Sometimes even they are impelled by the very logic of the facts which they are observing to come to conclusions which vary considerably from the society which their own *mores* make not only desirable but inevitable. The following passage occurs at pages 49-50 of the New Brunswick Brief cited earlier. It is worth quoting in full.

"In this connection it is well that the Commission should bear in mind that the Canadian banks have been centralised in Ontario and Quebec. Prior to Confederation and for some years afterwards we had our own banking institutions in this Province, and our people were able to obtain money for the encouragement of industry here.

"The head offices of these banking institutions were removed, after Confederation, to Montreal and Toronto, where they were situated more immediately in touch with the financial interests by which they were controlled.

"The result has been that industries in New Brunswick have not been able to obtain financial assistance in cases where such assistance would enable our local industries to compete with those in the Provinces of Ontario and Quebec.

"Pertinent cases may be cited where local industries in this Province have been destroyed because of difficulty in financing, and we submit that finances have been withheld as local industries might come into competition with similar industries in the last mentioned provinces.

"This is only another example which indicates that New Brunswick has suffered through the operation of the protective tariff and excessive freight rates.

At the hearing, this remarkable passage was struck out of the brief at the request of the Hon. W. P. Jones, who presented the New Brunswick Brief to the Commission.

By attacking the combines and the bankers and the firms which are controlled outside the limits of their own area, they possess enough of a philosophy of revolt to satisfy the more fundamental revolt of the have-nots and obscure the real conflict in the Canadian social system. At the same time these ideas implicitly accept the things in their society which they set out to attack, so that they are in no way the ideological basis for social change. The fact that they lead nowhere has not decreased their following. If anything, it has increased it.

It is common knowledge that the pace of our political thinking is set by the merchant and the small producer and the small lawyer. The pages of Hansard are depressing reaffirmation of the meagreness of our political thought. Where is this babel of narrow and confused ideas leading our political society? Every country has in the political psychology of its people an Achilles heel of prejudice with which the advocates of dishonest causes can arouse popular feeling. Our instinctive sectionalism must be taken into account as a source of political passion in any public issue which is widely discussed. And in each case its effect is usually unexpected and frequently disastrous.