

CANADA: ONE COUNTRY OR NINE PROVINCES?

R. O. MACFARLANE

WHY should anyone want to be distinctively Canadian? Why should anyone desire to foster a national spirit in this period when internationalism is all the rage? Is there any case for nationalism in this country to-day? If so, what is it?

A good argument for nationalism in Canada might be advanced from several different points of view. The geographic, economic, racial, and cultural all offer possibilities. All these have been competently discussed from time to time. The physical barriers of the Rockies, the Laurentian Plateau, and the Appalachians are well known. So are the attempts that have been made to overcome them.

The economic sectionalism of East *vs.* West, of an export *vs.* a home market, is equally familiar. So too the diversity of the racial stocks from which we seek to mould a nation. Even the cultural aspect is now winning serious attention. That is the problem of being ourselves in a young country, in the face of a strong European heritage and in proximity to a populous and powerful state.

Apart from all these problems of Canadian nationalism, there is another which is all too frequently neglected. That is the nature of our Confederation, the relationship of the Provinces to the Dominion.

The typical Canadian history text-book reveals some amazing things. But none is more amazing than the absence of national history. All of us who have passed through the primary and secondary stages of our educational mill have some hazy, albeit curious, ideas of isolated events which have taken place in our country since Confederation. But have these isolated events any meaning? Have they any relation to each other? Do they help us to understand how this country that we now know came to be the way it is? In general, the national period of our history is shunned as a desert.

Prior to the formation of the Dominion, our history is relatively simple. In the early years it has some unity, whether it be in the establishment of the British regime, the conquest of the wilderness by the pioneers, the struggle for responsible government, or the achievement of Confederation. But once our history text-books

have the Dominion in existence on paper, they promptly forget about it.

The last sixty years are covered by a glance at economic growth. This is so patchy that only the most wary will discover the growth of a national economy therein. The railways appear as national factors, it is true, but then that is only because it is so difficult to find economic justification for them. Next comes a narrative of in and out politics, followed by a summary of our relations with the Empire and the United States. The climax is a detailed account of the development of each Province. The most useful purpose of this seems to be the proof that education falls under provincial rather than federal jurisdiction. Is there any other country in the world that pays so little attention to its national history in its schools? Or is there any country that needs to do so more than Canada, with its imperial and provincial loyalties, which must be balanced if we are really to be ourselves?

Our difficulty is not, as some might suggest, that we have no national history. The forces that have been constructing a nation within the framework of Confederation are just as interesting and just as important, even if not so well defined, as those which brought about the federation. But we have taken a narrow view of our history in Canada. Responsible government and Confederation have been the big things. The result has been our neglect of the national period.

The *British North America Act* did not make Canada a nation. It merely made it a geographic expression, a customs union, and a political shell. This was the foundation, and as such it is well worth serious study. But the remainder of the building must not be neglected. Nor must it be studied in sections isolated from one another. Rather each section must be regarded as an integral part of the whole. We must consider the growth of the nation as well as the growth of the constitution.

Since 1867 the development of the constitution of Canada has been the reflection of the development of a nationality. In terms of Imperial relations, this story is well known. In terms of the relations of the Provinces with the Dominion, however, the same cannot be said. The nature of the Canadian federation and its influence on the growth of the nation is a closed book to most Canadians. Yet this is one of the main themes of our national history.

Federations are of many types, no two being exactly alike. In some the central Government is given the most important spheres of jurisdiction. In these the provincial or state Govern-

ments are little more than glorified county councils, as for example in the legislative Union of South Africa. In others the major powers are vested in the component parts. Here the central Government is little more than a clearing house for common interests, as was the case in the Confederate States of America. Between these two extremes there can be every shade of modification. As the central power increases, the local power decreases, and *vice versa*.

The purpose of a federation is to effect a division of authority between national and local Governments. In a sense it is an attempt to have the best of both worlds, so it must always be a compromise. It seeks to achieve some of the advantages of a unitary national state. At the same time it seeks to preserve some measure of local self-government. In Canada, the line of demarkation between these interests is determined by the British North America Act, as interpreted by the Courts. In the last analysis this is usually the Judicial Committee of the Privy Council.

The exact nature of the Canadian federation is still a subject of controversy after nearly seventy years. Very different opinions have been set forth by eminent jurists. They have not always agreed as to whether Canada is, or is not, a federation. In 1892 Lord Watson stated the principle "that Canada is a federation in which sovereign power is divided among coordinate Governments. . . . and among which the provincial Governments are not new creations, but retain their independence and autonomy." At the other extreme, Lord Haldane stated in 1914: "In Canada there is no federal system. What happened was this: An Act was passed in 1867 which made a new start and divided certain powers of government, some being given to the Parliament of Canada, and some to the Parliaments of the Provinces. The Provinces were created *de novo*." Between these views is that of Judge Clement, in which the outstanding Canadian constitutional historian, W. P. M. Kennedy, concurs; "The true federal idea is clearly manifest, to recognize national unity with the right of local self-government."

The most serious differences of opinion arise between the advocates of the "compact" and the "organic" theories of the state. The former are inevitably defenders of provincial rights. The latter are nationalists. During the discussion that preceded the passing of the Statute of Westminster, which gave the Dominions equality of status in the Empire in 1931, the significance of this difference of opinion became apparent in practical politics.

One of the most vigorous advocates of the compact theory was the Hon. Howard Ferguson. In a memorandum submitted to the then Prime Minister he said,

It is respectfully submitted that the right of the various provinces to an equal voice concerning any contemplated changes in the law or convention of the constitution of the Dominion rests upon fundamental considerations and historic facts. . . . The British North America Act, 1867, is usually referred to as the Compact of Confederation. This expression has its sanction in the fact that the Quebec Resolutions, of which the Act is a transcript, were in the nature of a treaty between the provinces which originated the Dominion.

This compact theory is based on the contractual nature of the agreement entered into by Canada, New Brunswick and Nova Scotia at Confederation. It is supported by the fact that the Dominion has no power to amend the constitution. But this is by no means the whole story, although it might have been true between the Quebec Conference, where the proposed terms of Union were agreed on, and the passing of the British North America Act over two years later.

Confederation could not be a treaty, because the Provinces which entered into it were not sovereign states. It could not be a compact because at least two of the Provinces, Saskatchewan and Alberta, are not only younger than the Dominion, but were actually created out of it. The constitution of Canada is definitely a statute of the British Parliament, and so could not be either a treaty or a compact. What happened in 1867 was not a union of independent states, but a rearrangement of the institutions of government by the power that was supreme, the Parliament at Westminster.

The organic theory, on the other hand, maintains that, from a legal standpoint, a new state was created in 1867 by the sovereign power of the British Parliament. In the *British North America Act* there was no bargain, and no delegation of powers. There was no redress for those who did not like the statute, as the members of the Anti-confederation League found to their sorrow.

In creating the new state, the Dominion of Canada, sovereignty was divided among three legislative bodies, the Imperial Parliament, the Dominion Parliament, and the Legislative Assemblies of the various Provinces. The power of amending the constitution, along with a few other subjects, such as merchant shipping and foreign affairs, was retained by the British Parliament. All matters of national concern were vested in the Dominion Parliament, and all those of purely local concern in the provincial legislatures.

The residual power, in so far as it was allotted to any definite sphere, went to the Dominion.

The compact theory is untenable for several reasons. If Confederation is a treaty, then it is terminable at the will of any of the contracting parties, after notice and consent of the other parties. This would mean that the provinces, by agreement among themselves, could dissolve the union, because the Dominion could not have been a party to the contract that brought it into existence. Such an admission would be equivalent to granting a right of secession, a preposterous idea in any national state, as the United States discovered when the Civil War broke out.

A Province of Canada could not secede from the Dominion and retain its original identity. If one severs a hand from a body, it loses its being. It would still look the same, but separated from the rest of the body it would have no life. Similarly a Province of Canada, cut off from the rest of the Dominion, would still be the same geographic area, possibly inhabited by the same people; but separated from the rest of the Dominion it would be as dead as the severed hand, as far as national existence is concerned.

A nation has been built since 1867 within the framework of the British North America Act. To attempt to cut off any section would be to destroy, or at least to maim, the whole. Canada has become something more than merely the sum of nine Provinces. Since the first prerequisite of a state is the right to maintain its identity, any attempt to withdraw from Confederation on the part of any section or Province, could be regarded only as treason. It should be met as the United States met such a threat in 1860, uncompromisingly, and by force if necessary.

The whole history of the Dominion tends to support the organic rather than the compact theory. The early advocates of some form of union, in the half century from Chief Justice Smith to Lord Durham, all sought the strongest possible central government. Throughout the Confederation discussions, the advocates of union likewise strove for this end. Sir John Macdonald personally desired a legislative union. But he feared that such a plan would not win as wide popular support as a federal union.

On the other hand, the men who sought to preserve wide powers for the Provinces were mostly opponents of the whole scheme of Confederation. Men like Dunkin, Dorion, and Howe took this position as a second line of defence when they saw that some form of union was inevitable. If they could not prevent the formation of the Dominion, they would endeavour to make it as impotent as possible. The outstanding exception to this generaliza-

tion was Sir Oliver Mowat, later premier of Ontario. Mowat was always a defender of the union even when he was championing provincial rights.

The federation of the Provinces of British North America was begun rather than completed in 1867. The new constitution provided a political framework within which the new nation might develop. But the serious task of the Unionists, to make Confederation real as well as nominal, was still to be done.

Macdonald played a leading rôle in the creation of the Canadian nation. He has received high praise for the skill with which he guided the federation project to conclusion in 1867. He did Canada, however, a much greater service than that. Under his leadership a new nation was built up within the constitutional framework. He organized a national political party, which was to fight elections on national rather than on local issues. He assisted railways which literally bound the country together. He created a national financial structure, and a national free trade area. Finally he rounded out the boundaries by adding Manitoba, British Columbia, and Prince Edward Island to the union. These are the things that entitle Macdonald to a place in the front rank of Canadian statesmen.

Sir John always fostered a strong centralist tendency in his relations with the Provinces. During his administration, and he was Prime Minister for all but four years from 1867 to his death in 1891, the Lieutenant Governors were definitely agents of the federal government. In addition the Dominion veto on provincial legislation was used frequently.

Sir John could look back at the end of his life with profound satisfaction on his handiwork. In 1867 he brought a group of Provinces under his leadership. When he died, a vigorous young nation was emerging. This was in spite of all that the Privy Council had been able to do in making his task difficult. There had been setbacks, as in the struggle with Mowat in Ontario, and in the Jesuits' Estates Case in Quebec. But these were more than balanced by the extension of the Dominion from the Atlantic to the Pacific, and by the appearance of a national, as opposed to a provincial, loyalty.

This period of national growth, in a constitutional sense, came to an end shortly after Macdonald's death. It is true, however, that with the development of the West, national economic growth continued even more rapidly. From the early nineties until the end of the Great War there was not a single disallowance of a

provincial statute by the federal Government. In the same period provincial rights grew under judicial interpretation.

Many of these decisions were extremely technical. For instance, through the introduction of the doctrine of agency, the gasoline tax was held to be a direct tax. This placed it within provincial jurisdiction, and so substantially widened the field of taxation for the Provinces. If carried to its logical completion, as Manitoba has done with its price fixing on beer manufactured outside the Province, this tendency might easily lead to a but slightly disguised system of interprovincial tariffs. Meanwhile the "peace, order, and good government" clause has been so restricted as to be practically valueless, except in war time, for federal legislation.

The war revived the nationalist tendency. It was not however until the mid-twenties that it became strong. The Privy Council decisions in the Radio and Airway cases were largely in support of federal jurisdiction. This seemed to indicate a departure from the earlier interpretations of the British North America Act, and to usher in an era more generous to the Dominion Government's legislative power. Also, the financial distress of several of the Provinces which followed the expansion of their social services, and the increasing costs of unemployment relief, forced them to lean heavily on Dominion credit in the depression years.

The Statute of Westminster, by giving the Dominions equality of status within the Empire, almost forced us to be a nation in spite of ourselves. The premiers of Ontario and Quebec, however, did their best to throw their governments in the path of national progress, and their efforts were by no means entirely in vain.

Meanwhile an encouraging sign for Canadian nationalism has appeared. Groups have emerged who are evolving a political theory based on national rather than on either imperial or provincial interests. Their ideas are not primarily economic, but rather tend to emphasize social, intellectual, and spiritual factors. They believe that the inhabitants of this country can best fulfil their destiny by identifying themselves with a political concept that transcends economic limits. These groups are not antagonistic to either the Empire or the Provinces. Nevertheless, in the last analysis the interests of Canada must take precedence over those of either an imperial or local character. While as yet these nationalists are not numerous, they are rapidly gaining in strength.

There are still many obstacles in the path of Canadian nationalism. The old provincial loyalties die hard, and there is always evidence of their vitality. Strange rumblings come from the legislative building in Fredericton. Stranger ones have come from

the civic offices in Vancouver, and more alarming ones originate in Quebec and Alberta.

Provincialism was a luxury in which our people could indulge at will in the days when Canada was still definitely a colony. But if the development of Canadian autonomy means anything more than mere words, or constitutional gymnastics, our petty localisms will have to go.

No section of Canada is strong enough, even though it might be large enough, to live unto itself. Geographic, economic and racial considerations, the difficulties of which we all know so well in this country, make it imperative that we foster a national spirit. We must forget trivial differences and emphasize our common interests. If we do not do so, then we must remain a reflection of the ideals of Great Britain blurred by time, distance, environment and mixed race. The only other alternative is that we become more and more a small northern appendix of the United States.

If our national establishment is worth maintaining in Canada, and most of us are thoroughly convinced that it is, we must be one nation, not nine. We cannot be Imperialists, Annexationists, or Provincialists. If we are to survive as a state, we must be Nationalists, in heart and soul, rather than merely on tariff issues. We must be ourselves, Canadians, for better or for worse, but without apologies.