

An example for the world? Confederation and French Canadians

A PEACEFUL UNION

While debating the merits of the new constitutional agreement in 1865, supporters in the Canadian Legislative Assembly focused on the difficult challenges involved in creating the larger federation and the various benefits that the new Dominion of Canada supposedly offered to all Canadians. George Brown, who was known for his hostility toward Catholics and minority rights in general, but who was also a strong proponent of Confederation, identified clearly what was at stake and why the Fathers of Confederation ought to be congratulated for resolving their differences through dialogue and negotiations:

Here is a people composed of two distinct races, speaking different languages, with religious and social and municipal and educational institutions totally different, with sectional hostilities of such a character as to render government for many years well-nigh impossible, with a Constitution so unjust in the view of one section as to justify any resort to enforce a remedy. (36)

Although the risks were great, Brown was not modest in assessing the accomplishments of the Fathers of Confederation, as he went out of his way to point out that the final agreement came about through peaceful means while similar tasks in other parts of the world often led to violence and armed conflict:

We are striving to do peacefully and satisfactorily what Holland and Belgium after years of strife were unable to accomplish. We are seeking by calm discussion to settle questions that Austria and Hungary, that Denmark and Germany, that Russia and Poland, could only crush by the iron heel of armed force. We are seeking to do without foreign intervention that which deluged in blood the sunny plains of Italy. We are striving to settle forever issues

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hardly less momentous than those that have rent the neighboring republic and are now exposing it to all the horrors of civil war. (36)

By referring to other countries that had to reconcile minority and majority rights and create political structures that were respectful of various national communities, Brown and others who were inspired by him raised the bar high enough to make it difficult for opponents to ridicule what the Fathers of Confederation accomplished. At the same time, this rhetorical argument took place in the context of parliamentary debates in which proponents had to “sell” the merits of their proposal, highlight its qualities, and minimize the appeal of counterarguments. Although the audience consisted primarily of elected officials in the House, the people of Canada also had to be reassured through the press that the creation of the Dominion of Canada was the best course of action available to them at the time.

PROTECTING FRENCH CANADIAN RIGHTS

French Canadian politicians, led by George-Étienne Cartier, and their allies,

such as John A. Macdonald and Alexander Tilloch Galt in the Assembly but also the Catholic Church in Quebec, insisted upon several key points during the debates over Confederation: the creation of political institutions that, under the new constitutional arrangement, would ensure the protection of French Canadians’ rights, most notably the exercise of their religion; language guarantees (albeit limited); and the preservation of their system of civil law. For Cartier and other members in the assembly, the political package was expected to address pressing issues among both French Canadians, especially those living in Canada East, and English Canadians. The presence of two national communities created tensions that interfered with colonial governance, since it made the formation of “stable” governments that enjoyed the confidence of the House almost impossible, particularly in the 1860s. Confederation also was in many respects a visionary project. French Canadian political and business elites were asked to take part in the creation of a dominion that would soon acquire the Northwest Territories, then under the control of the Hudson’s Bay Company, and open the region up to immigrants and native-born settlers alike.

Opponents made their voices heard, despite the congratulatory tone adopted by those who favoured Confederation. Among the strongest opponents were the Rouges, who were defined as radical liberals because of their views on the relations between the state and the Catholic Church. Their leader, Antoine-Aimé Dorion, questioned the merits of the new constitutional package. He delivered his criticisms in English and justified his conduct by the fact that the majority of elected officials did not understand French. What was the nature of the proposed confederation?

An example, page 8

Was it truly a federal union? Dorion argued that it was not. The power of disallowance that the federal government could exercise over any provincial legislation meant that “laws passed by the local legislatures and demanded by a majority of the people of that locality” would be ignored by federal authorities (66). He reminded everyone that he had been a strong advocate of a true Confederation where “all local questions could be consigned to the deliberations of local legislatures” and the central government would be dealing with issues of “general interest” (61). Also, he warned the Chamber that the union of British colonies would pave the way toward a legislative union that would be detrimental to French Canadians. For his part, Joseph-Xavier Perrault categorically stated that Confederation was “a political organization which is eminently hostile” to French Canadians (97). These criticisms of the dangers that the *British North America Act, 1867* posed for French Canadians re-emerged throughout the 20th century, especially when Quebec went through its Quiet Revolution in the 1960s. These attitudes have often fuelled a call for a reorganization of Canada’s constitutional structure.

A LIMITED CONCEPTION OF MINORITY RIGHTS

The debates in the Canadian Legislative Assembly suggest that the Fathers of Confederation had a limited conception of minority rights. Can we blame them? After all, most of these politicians were part of a legal culture based on the supremacy of Parliament that afforded courts very limited scope for reviewing governmental action. In addition, it must be noted that this was the age of empire building and national affirmation. In these circumstances, the idea that minority rights should enjoy some form of constitutional recognition and protection was often ignored.

Yet, despite their backgrounds and biases, the Fathers of Confederation did address the issue of minority rights to

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some extent. However, power relations between the main linguistic and religious groups in the colonies at the time often shaped their discussions. When the Fathers addressed minority rights, they debated the rights of two groups in particular: French Canadians and Catholics, who formed minority communities in every British colony except Quebec. At the time, there were about one million French-speaking people in the British colonies. The vast majority, more than 85 percent of them, lived in Canada East; about 90,000 Acadians lived in New Brunswick, Nova Scotia, and Prince Edward Island. There were about 40,000 French Canadians living in Canada West (the future province of Ontario) and 6,000 French Métis in the Prairies. There was also another linguistic group whose rights preoccupied the Fathers of Confederation: English speakers in Quebec. While anglophones formed a majority outside Quebec, their

minority status within that province led their representatives to seek a measure of protection in the new constitutional order. As for other minority groups, such as Jews, Indigenous peoples, and ethnicities other than British or French, they were ignored.

The issue of minority rights was divisive. George Brown, for one, rejected any form of constitutional protection for Catholics. We should not be surprised to learn, then, that the issue of minority rights for Catholics and French-speaking people in the British colonies (save Quebec) did not monopolize the attention of politicians. Except in the future province of Quebec, where Catholics formed a majority, they were minorities in the other colonies: about 18 percent in Canada West, 20 percent in New Brunswick, and 25 percent in Nova Scotia. In Prince Edward Island, Catholics comprised about half of the population.¹ The creation of a Senate and a House of Commons and the fiscal arrangements between the federal government and the provinces assumed much greater prominence in the debates than concerns about religious minorities.

QUEBEC-ONLY MINORITY RIGHTS

The debates over Confederation also suggest that the rights of French-speaking people, especially those who lived in the future province of Ontario, did not capture the attention of most MPs. How can we explain this lack of concern for them? According to historian Arthur Silver, the rights of French Canadians were not expected to go beyond the boundaries of the future province of Quebec.² French Canadian Fathers of Confederation were unwilling to sacrifice the autonomy and control that the future province of Quebec would have over its “local affairs” in exchange for stronger constitutional guarantees for minority groups. When Hector-Louis Langevin, one of the Fathers of Confederation, was in London in 1866 to oversee the adoption of the *British North America Act* by the British parliament, he rejected a pro-

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posal to give control over education to the federal government in order to protect the rights of Catholics in the new dominion. For him, this was a dangerous proposal that could jeopardize French Canadians' rights in the future province of Quebec.

In dealing with language and education, proponents of Confederation, especially French-speaking MPs, demonstrated that they understood what this new constitutional package meant, even though their understanding of minority rights was limited. Indeed, the constitutional guarantees apply to language and religion. In the *British North America Act*, section 133 recognizes French and English as official languages only in Quebec and federal institutions. When Acadians took part in the New Brunswick elections in 1865 and 1866, they noticed that the language provision that the Fathers of Confederation had agreed upon excluded them.³ With regard to education, section 93 protects public and separate schools and grants minorities the right to appeal to the governor general in council if a provincial legislature restricted access to these schools or abolished them. In the case of anglophones in Quebec, they received additional protections besides language and education. Quebec's provincial parliament initially included both a Legislative Assembly and a Legislative Council, the latter eventually abolished in 1968, and in 12 ridings, dominated by anglophones, the "boundaries could not be changed without the additional approval of a majority of their own MPPs."⁴ When the Dominion of Canada emerged in 1867, the rights granted to minorities

reflected the balance of power and influence between the dominant political groups of the time: Catholics and Protestants, but also French Canadians and English Canadians.

THE LIMITS OF CONSTITUTIONAL GUARANTEES

Catholics but mostly French Canadians would discover shortly that this balance of power and influence was not favourable to those living outside Quebec. In 1871, the province of New Brunswick decided to fund only non-denominational schools. Despite protests by Acadians and Catholics, the federal government agreed not to intervene. A few years later, the government of Manitoba abolished French as an official language in the province, and cut funding to separate schools in 1890. Despite favourable court decisions, the provincial government ignored them, and the federal government, led by Wilfrid Laurier, agreed to compromise on the issue of separate schools by negotiating an agreement with the Manitoba government, which allowed religious instruction for an hour a day. Finally, in 1912, the government of Ontario limited the use of French as a language of instruction in schools. Al-

though French Canadians in Ontario believed that section 93 protected French as a language of instruction, the courts stated otherwise. These school crises demonstrated the limitations of constitutional guarantees to minority groups and greatly influenced the discussions, started in the 1960s, that led to the patriation of the Constitution in 1982. While George Brown stated that the Fathers of Confederation dealt with delicate issues in 1864 at the Charlottetown and Quebec conferences and the constitutional package should be inspirational, the guarantees to minority groups failed miserably, when tested. However, for French Canadians in Quebec, the substantial powers over key institutions such as education, health, and welfare served to solidify the power and autonomy of French Canadians in Canada, and therefore largely fulfilled Cartier's dream of protecting French Canadians in his home province. 🍁

NOTES

1. P.B. Waite, *The Life and Times of Confederation, 1864-1867: Politics, Newspapers, and the Union of British North America* (Toronto: University of Toronto Press, 1962), at 117, 179, 193, and 229.
2. Arthur I. Silver, *The French-Canadian Idea of Confederation, 1864-1900* (Toronto: University of Toronto Press, 1982).
3. Gaétan Migneault, "Le Canada français et la Confédération : Les Acadiens du Nouveau Brunswick," in Jean-François Caron and Marcel Martel, eds., *Le Canada français et la Confédération : fondements et bilan critique* (Québec : Presses de l'Université Laval, 2016).
4. Silver, *The French-Canadian Idea of Confederation*, at 56.

