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THE NEW BRUNSWICK BACKGROUND OF SIR EDMUND HEAD'S VIEWS ON CONFEDERATION

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THE subject of confederation is of special interest this year, particularly in the Maritime Provinces, because of the entry of Newfoundland into the Dominion. Certain other remarkable developments have taken place this year, outside Canada, in the field of federal practice and theory. There has been a modification of the federal structure of the British Commonwealth, for instance, to allow India to remain a member even after becoming a republic. A federal constitution has been approved for Western Germany, and a federation of the whole of Western Europe has been seriously considered. The North Atlantic Pact has been signed, an interesting example of a federation in the original sense of that word, that is, a league of states banded together for a common object. The Cominform confederation in the other half of the world is a somewhat less pleasing example for us to contemplate.

These wider applications of the federal principle are mentioned by way of introduction to this paper on local history for two reasons. In the first place, what was happening in Canada and New Brunswick a hundred years ago can only be properly understood in the light of broad world developments. Responsible government and confederation were, in one sense at least, local aspects of the larger nineteenth-century struggle for national self-determination on the one hand, and collective security and world order on the other. Secondly, Sir Edmund Head never confined himself entirely to the local features of any problem, and it would give a distorted impression of his views if general principles were not emphasized, even in a paper dealing mainly with the New Brunswick background of his ideas about confederation.

It has been remarked by almost everyone who has written on Head that he was a man of complex character. Before he became lieutenant-governor of New Brunswick in his early forties, he had been a student and don at Oxford, had travelled widely and had lived for some time on the continent. He had then joined the poor-law administration and for a number of years had held one of the three chief-commissionerships—probably the most perplexing and unpopular posts in the government service in the eighteen-forties. His publications included poetry and articles on such diverse topics as philology, the law of settlement, and the Bodleian Library. He was a recognized expert on painting, and on translation from numerous foreign languages, ancient and modern, including Icelandic.

Head has been called a shrewd, hard empiricist.¹ He was; and it is my intention to show that it was his practical analysis of the problems with which he was faced in New Brunswick that gave him his first real interest in confederation. No man could emerge from eleven years of poor-law administration without a firm respect for facts, and without having learned to be most cautious about theories and generalizations. On the other hand, however, no man in British North America at that

¹Chester Martin, "Sir Edmund Head's First Project of Federation, 1851" (*Annual Report of the Canadian Historical Association*, 1928, 14-26).

time was more inclined than Head to go beyond the immediate circumstances and use, with the skill and sensitivity of an artist, all the resources of scholarship and experience to reach general conclusions. His public and private correspondence of this period make it clear that, having had his attention focused on confederation by the New Brunswick situation, he read widely on the subject in order to become familiar with all its ramifications. His reading in these years included such works as Aristotle's *Politics*, Mill's *Logic*, Lewis's *Essay on Authority*, and Story's *Commentaries on the Conflict of Laws*.²

Turning from books to the world around him, Head wrote in 1851, "The German States seem more hopeless than ever. Will they ever see what the difficulty of federation really is?"³ The difficulties of the United States in this connection were naturally of particular interest to him and he commented on them frequently and with clear understanding. Soon after the passage of the Fugitive Slave Law, for example, he wrote, "Its enactment shows that the intimate federal union of States with such different institutions is fraught with danger and difficulty. Any accident may cause an explosion."⁴ One more quotation is worth including to show his careful study of the theory of American federalism. In 1851, he pointed out that

the doubt whether the constitution of the United States is or is not strictly speaking in the nature of [a] "Federal" league or compact is yet a grave practical question and one at this moment especially pregnant with important consequences. It has been argued that if the Union be in its essence a league of independent States, Alabama or S. Carolina may or will withdraw from the compact and release the other parties. Accordingly Story lays great stress on the enacting words of the Constitution "We the people of the United States do ordain and establish this Constitution" (not "We the people of each state concurring in a league or treaty") as if the Union was "de facto" existing before the Constitution and the power of the people as exerted in its establishment was exercised in this collective capacity.⁵

Head's views on confederation were thus based partly on his wide scholarship and partly on his varied experience in a society more complex than that of the New Brunswick to which he went in 1848.

During his first years in New Brunswick, Head made some direct and a number of oblique references to the subject of British North American confederation. It is evident that he considered a union of all the provinces desirable and that he favoured, as a preliminary to it, a customs union similar to the Prussian Zollverein, common postal and

²Harpton Court, Herefordshire, Lewis Papers, Head to G. C. Lewis, letters of various dates, 1849-51. Remarks in his letters show that his choice was not altogether haphazard. Referring to Story, for instance, he wrote, "It illustrates well the difficulties occurring in a Federal Country with Laws of different characters prevailing in neighbouring states" (*ibid.*, Mar. 2, 1850). He explained his tentative plan to translate Aristotle's *Politics* by saying that "almost all the topics of the day such as slavery, federal governments, etc. etc., could be touched on in notes" (*ibid.*, Mar. 31, 1850).

³*Ibid.*, Mar. 31, 1850.

⁴*Ibid.*, Oct. 17, 1850.

⁵Public Archives of Canada, Head Papers, "Draft of a Mem^m on the Gov^t of the N.A.C. sent privately to Lord Grey, 1851." Printed in Martin, "Head's First Project of Federation."

currency arrangements, and the building of an intercolonial railway linking Halifax and Quebec.⁶ These projects had been studied as early as 1846 by Grey and Elgin, before the latter's departure for Canada to take up his duties as governor-general.⁷ There can be no doubt that for some two years Head simply co-operated with Grey and Elgin in carrying out a policy already laid down by them; and during this period, he always observed the greatest caution to avoid, as he put it, "presuming to discuss a question of Imperial policy which is not new to British Statesmen and is not within the limits of my administrative duties."⁸

The change in the character of Head's remarks on confederation after the fall of 1850 is significant, and indicates that he had acquired a new confidence and a new and distinctive point of view. His feeling of greater confidence came partly as a result of a visit paid to Elgin in Toronto in September of that year. Head and Elgin, and their wives, too, got on extremely well together, although actually their only previous personal contact had been when Head had examined Elgin for a fellowship at Merton.⁹ Head gained confidence also because he learned that he had attracted favourable attention at the Colonial Office. Directly and indirectly he had heard that the colonial secretary thought highly of his work in the difficult circumstances he had encountered in New Brunswick.¹⁰ Compliments from home and the warm welcome from Elgin meant a great deal to Head whose connection with the unfortunate and bitterly-attacked Poor Law Commission had given him good cause to fear initial distrust by the Colonial Office.¹¹ They gave him the encouragement he needed to put forward from now on, as occasion arose, the ideas on confederation which, as a result of his New Brunswick experience, were gradually becoming clarified in his mind as the only solution for New Brunswick's local problems.

There are three major statements of these ideas, each addressed to a different colonial secretary. The first is the well-known memorandum sent to Lord Grey early in 1851 and brought before this Association by Professor Chester Martin in 1928.¹² The second, dated December, 1852, is a separate and confidential despatch to Sir John Pakington,¹³ and the third, a memorandum prepared for Henry Labouchere in 1857.¹⁴ This latter was recently discovered by Miss Alice Stewart and printed in the *Canadian Historical Review*. Although written after Head had become governor-general, it was based very largely on knowledge he had acquired

⁶E.g. Head Papers, Head to Elgin, private, May [?27], 1848; Public Record Office, C.O. 188, vol. 108, Head to Grey, Mar. 31, 1849.

⁷See C.O. 42, vol. 541, Elgin to Grey, Jan. 23, 1847, and Feb. 18, 1847.

⁸C.O. 188, vol. 108, Head to Grey, Mar. 31, 1849.

⁹Lewis Papers, Head to Lewis, Aug. 2, 1850.

¹⁰G. F. Lewis (ed.), *Letters of the Right Hon. G. C. Lewis to Various Friends* (London, 1870), 201, Lewis to Head, Apr. 5, 1849; Lewis Papers, Head to Lewis, Mar. 31, 1851; E. Dowden (ed.), *Correspondence of Henry Taylor* (London, 1888), Taylor to Head, Nov. 16, 1851.

¹¹See Donald C. Masters, *The Reciprocity Treaty of 1854* (London, 1936), 14, note 2.

¹²Martin, "Head's First Project of Federation."

¹³C.O. 188, vol. 117, Head to Pakington, separate and confidential, Dec. 14, 1852.

¹⁴Public Archives of Canada, Series G, Governor's Files, "Memorandum on the Expediency of Uniting under One Government the Three Provinces of Nova Scotia, New Brunswick, and Prince Edward Island." Printed in Alice R. Stewart, "Sir Edmund Head's Memorandum of 1857 on Maritime Union: A Lost Confederation Document" (*Canadian Historical Review*, XXVI, Dec., 1945, 406-19).

in New Brunswick, and showed few indications of the shift of emphasis that later occurred in his views when he became more familiar with Canadian affairs. In addition to these three comprehensive expressions of opinion, there are many scattered references to the subject of British North American confederation throughout his public and private correspondence. The particular concern of this paper is with his reasons for thinking that a union of some or all of the provinces was desirable, and with the extent to which these reasons were based on his New Brunswick experience.

Head's statements show clearly his belief that the particular value of confederation would be that it might solve two general problems he had come up against in New Brunswick and for which he saw no other satisfactory solution. The first of these was the problem of making a parliamentary type of government function in such a small and scattered community as New Brunswick. The second arose out of the fact that the political and economic ties of empire had been simultaneously loosened by the Mother Country's acceptance of the principles of responsible government and free trade. The problem, therefore, was to find some way of stopping imperial disintegration short of complete colonial independence, or if this were not possible, at least some way of ensuring that independence would not be followed by annexation to the United States.

Difficulties connected with the introduction of parliamentary or responsible government had occupied a large part of Head's attention while in New Brunswick, especially during the first two or three years. One political crisis had followed another, and he became more and more involved personally, until he virtually dictated the programme of his executive council at the beginning of 1851,¹⁵ and from then until he left the province remained its strongest bulwark.¹⁶ Time and again he pointed out that for responsible government really to be effective certain administrative changes were essential, such as the reorganization of the departmental system, the establishment of municipal institutions, and the acceptance of the principle that the initiation of money votes should be restricted to the executive council. But gradually he became convinced that some at least of the obstacles to responsible government were insuperable—that "an exact counterpart of the English System of Parliamentary Government is perhaps scarcely possible in a community of 200,000 people separated by long tracts of wilderness and Forest."¹⁷

He elaborated on this at some length in his memorandum to Labouchere in 1857, writing:

My own experience in New Brunswick . . . seems to support the doctrine that Parliamentary Government on the English system in order to work successfully requires to be applied on a certain scale . . . The public opinion of a very small community, especially if they are scattered over a large surface is neither likely to be sound in itself or regular in its action. . . . Now party action of some kind is in all free Governments a necessary element: an opposition on one side is as essential to the healthy working of a Parliament as a Ministry is

¹⁵C.O. 188, vol. 114, Head to Grey, Feb. 10, 1851, enclosure.

¹⁶Lewis Papers, Head to Lewis, Dec. 16, 1852. "My influence in the Govt. was never greater. It is quite as much now as is expedient in this kind of Colony."

¹⁷C.O. 188, vol. 113, Head to Grey, separate, Nov. 6, 1850.

on the other. But in a small community there is difficulty enough in finding the materials even for a Ministry. . . . To turn to the working of the Houses of Parliament themselves. A ministry is dependent for its existence on the vote of a majority of the Assembly. The number of the New Brunswick House is . . . 39. A single vote . . . becomes of great importance in a house of this size, and if two or three unscrupulous men combine to carry each others' jobs (a process known on this side of the Atlantic by the name of "log-rolling") they can exercise an irresistible pressure on any government. . . . On such a system every local interest is disproportionately strong as compared with the interest of the whole community. . . . If the remedy of increasing the Assemblies be proposed there are two objections:

1. The difficulty of finding fit men to sit.
2. The cost of paid members in a small colony.

In this summing up of the practical obstacles to the functioning of parliamentary government in a small community, Head was simply repeating, in a collected form, observations that he had made in numerous despatches from New Brunswick dealing with the specific instances. He might have added others to his list. For example, one of the most serious crises of his administration had occurred because it had been impossible to get the advice of his executive council at the time it was needed. As there were not enough portfolios available for all the councillors, it was not worth while for many of them to move to Fredericton. Some departments which would have been held on a political tenure in a larger state could not be so held in New Brunswick because, as Head pointed out, "in a small and economical community, the English system of permanent subordinates in all offices well-paid, is hardly admissible;"¹⁸ and without permanent subordinates some technical departments could obviously not be headed by members of the executive council.

The crux of Head's argument linking these problems of responsible government with confederation may be briefly stated as follows: the British system of parliamentary or responsible government could not function satisfactorily in so small a community as New Brunswick. Nevertheless, the British system was essential for the good government of the province and as an aid in preserving its British connection and preventing its absorption into the United States. Head concluded, therefore, that the only solution lay in uniting some or all of the provinces to form a larger federation in which the difficulties experienced in New Brunswick would no longer exist.

The second major problem which Head believed could be solved by confederation was that caused by the recent reversal of imperial political and economic policies with the acceptance of the principles of responsible government and free trade. Both of these new policies tended to weaken the ties with the Mother Country. Responsible government did so directly by giving the colonial governments a greater degree of independence. The change to free trade broke down the system of imperial preferences that had bound the Empire together. As Head put it: "The cessation of differential duties in favour of the Colonies & the abandonment of what is now called the 'Old Colonial System', however unavoidable & however beneficial . . . necessarily produced one effect—

¹⁸*Ibid.*, vol. 114, Head to Grey, Feb. 10, 1851, enclosure.

that is to say, a diminished sense of unity with the Mother Country."¹⁹

Head did not propose to try to go back and restore that old sense of unity. On the contrary, he stated his firm belief "that the welfare of the Colonies themselves will be much more certainly secured by the abolition of the differential duties & by the sort of self-government they now enjoy than it could have been by a continuance of the former system."²⁰ He did not close his eyes, however, to the danger that the weakening of imperial ties might lead to independence or possibly to annexation. Even in Loyalist New Brunswick these dangers were all too evident during the commercial depression of the late eighteen-forties. Head, although he tried to minimize them, was greatly concerned with these matters, not so much on account of the immediate danger as of the ultimate results of the diminishing sense of imperial unity. He did not think the severance of the colonies' legal tie with Britain inevitable, but it was clearly becoming a possibility that would have to be taken into account. It was for this reason that he again turned to confederation as a step of vital significance. Referring to the British North American colonies, he wrote in 1851: "If they cease to bear allegiance to England then they must be merged in the American Union or they must become independent. That they should maintain their independence singly is hardly conceivable; that they should do so if formed into one compact and United body does not seem absurd especially when the natural and internal sources of division between the north and south of the U.S. are taken into account."²¹ In a private letter written to Lewis shortly before leaving New Brunswick, Head summed up his ideas in this regard as follows:

My views are simple. I believe that Canada will never be annexed to the U.S. if we give her freedom enough, as we now do & foster her own sense of self-importance. The Canadians are beginning to say "We are too great a people to be tied to any body's tail & we are not going to be slave catchers to the United States."

This temper of mind is in my opinion the right one for us to encourage, especially if any sense of *united interest* in all of the British Provinces can be created. Whether Canada belong nominally or not to England is comparatively immaterial.²²

Later in Canada, Head was to become interested in other grounds for advocating confederation as well—such as, for example, the approaching deadlock in internal Canadian politics, the provision of a government for the Hudson's Bay Territory, and the defence of British North America against the growing danger of actual military aggression on the part of the United States. While in New Brunswick, however, he laid major stress on two topics, the difficulty of setting up a parliamentary government in a small community, and the need of finding some colonial source of unity and self-importance to take the place of the dissolving economic and political ties with the Mother Country. These were the issues which caught his attention in local affairs and which gave direction to his views on federal governments generally, and on the confederation of British North America in particular.

¹⁹*Ibid.*, vol. 117, Head to Pakington, Dec. 14, 1852.

²⁰*Ibid.*

²¹Head's memorandum of 1851.

²²Lewis Papers, Head to Lewis, Dec. 29, 1853.

DISCUSSION

Mr. Gibson said that during the early part of the nineteenth century the Colonial Office took the stand that there should be one single executive authority for the whole Empire, although the colonial secretary never made any attempt to define the limits of such executive authority. Head was well aware of this. He was also aware of the fact that there were certain practical limitations to the carrying into effect of the Colonial Office ideas. His experience in New Brunswick, which served to guide him later in Canada, gave Head a real appreciation of how far a central imperial executive authority could go. *Mr. Gibson* agreed with *Mr. Kerr* that Head carried from New Brunswick to Canada the idea of a federation of the British North American colonies.

Mr. Kerr said that Head kept in close touch with men like Grey and Merivale, and despite the prevailing idea of a centralized executive, he was anxious to bring about a situation in which the people in the colonies could successfully carry on their own internal government. He was greatly concerned with the problem of establishing a parliamentary system in a province unaccustomed to it and not ready for it.

Mr. Sage directed attention to what he considered to be a curious parallel between the story of Head and that of Anthony Musgrave. Musgrave was firmly convinced that British Columbia, as a separate colony, was not ready for responsible government, but considered that the larger union would offer those opportunities for political experience which would make responsible administration in British Columbia possible. Thus Head and Musgrave both looked upon federation as the best, if not the only way, to secure responsible government in the provincial field.

Mr. Wright said that it was odd that Head should feel that New Brunswick politicians, by entering a larger field of political opportunity, should thereby automatically adopt a larger point of view. It did not follow that the national would replace the provincial point of view: certainly the history of Canada has not borne out this blind optimism. Moreover, if Head had experienced difficulty in finding suitable political leaders while he was lieutenant-governor of New Brunswick, how could he hope to find suitable political leaders both for the federal as well as the provincial field merely as a result of the process of federation? *Mr. Wright* felt that there were several blind spots in Head's thinking.

Abbé Maheux, the chairman, referring to *Mr. Gibson's* remark about the absence of any definition of Colonial Office theories, said that he had observed that, in contrast with the French, the English do not define their words and terms of reference.