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Confederation and the West

Chester Martin

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HISTORICAL PAPERS

CONFEDERATION AND THE WEST

BY PROFESSOR CHESTER MARTIN

When the Select Committee of the British House of Commons brought in their famous *Report* in 1857, the Hudson's Bay Company controlled nominally the largest area ever administered under one government in America. It included more than a quarter of the North American continent. Within five years, this vast area had been broken into fragments. Two of them, west of the Rocky mountains, had been organized to form eventually the province of British Columbia. Two others—Rupert's Land, the original chartered territory of the company, and the North-Western Territory which lay between Rupert's Land and the Rocky mountains—still awaited the outcome of British policy in the eastern provinces. Within ten years more the whole of the original Hudson's Bay Territories of 1857 had found their way piecemeal into the Canadian Confederation.

This disintegration of Hudson's Bay rule, therefore, is a very rapid, and I think, a very remarkable process. It followed upon the profoundest change in British colonial policy—the concession of responsible government—and it culminated in a transcontinental British Dominion. In truth it was a turning-point in Imperial as well as in Canadian policy. It marked a definite project of devolving responsibility for British interests in North America upon the shoulders of the young Dominion; and in accepting that responsibility Canada was transformed, as we shall see, from a Confederation of equal provinces into a miniature Empire, with a vast domain of subordinate colonial territory under its control. The spirit in which Canada then proceeded to deal with this new subordinate territory affords a curious parallel to British colonial policy at that time, and the repercussion of this first phase of Canadian colonial policy—if so it may be called—is still with us. It is largely the age-long story of the frontier.

There were four distinct areas involved—two on either side of the Rocky mountains—and the failure to correlate these, it seems to me, has been responsible for much mischief. Rupert's Land on the extreme east and Vancouver Island on the extreme west were both proprietary areas held by the Company in fee simple, the first by the Charter of 1670,¹ the second by Letters Patent of 1849. Between these lay a vast area of "licensed" territory held since 1821 by twenty-one-year licenses and divided by the watershed of the Rocky mountains into New Caledonia on the west and the North-Western Territory on the east. These four districts were to go into Confederation as the living creatures went in two and two unto Noah into the ark. The two areas—one "chartered" and one "licensed"—west of the Rockies, came in as the Province of British Colum-

¹ Without discussing here the validity of the rights claimed by the Company under the Charter of 1670, it will be sufficient to state that the *Rupert's Land Act* which finally provided for the transfer to Canada in 1868 was based upon a recognition of the Company's proprietary rights and government. "Eminent law officers, consulted in succession," wrote the Colonial Secretary, "have all declared that the validity of the Charter cannot justly be disputed by the Crown." Duke of Buckingham and Chandos to Viscount Monck, Apr. 23, 1868. *Correspondence Relating to the Surrender of Rupert's Land*, 1869, p. 12.

bia. The other pair, Rupert's Land and the North-Western Territory, passed through a vastly different experience. The legal and constitutional preliminaries were the same and might have been expected to lead to the same result. The "licensed" areas in both pairs reverted to the Crown in 1858-9 at the expiration of the twenty-one-year license of 1838. There was no difficulty here. In both "chartered" districts too, east and west, the process of quenching the Hudson's Bay title was the same—by compensation to the Company for the surrender of proprietary rights to the Crown.

For Vancouver Island the compensation of £57,500 was paid by the British Government; the old "licensed" and "chartered" areas were united under the name of British Columbia, and British Columbia could thus make its own terms with the Dominion. Those terms were so magnanimous that a Nova Scotian or a Manitoban can only contemplate them with wonder and admiration like the Gargantuan prodigies of nature that abound in that happy province. The spirit in which they were offered seems almost as exotic in Canadian politics as the tales of gold-rushes and sea-otters and the China trade and totem-poles and gigantic timbers in the more sombre background of Canadian pioneering. In truth the contrast between the two western districts under British tutelage and the two corresponding eastern districts under Canadian, is very striking. With a white and mixed population half as large again as that of British Columbia, Rupert's Land found itself between the upper and the nether millstone. For reasons which are not far to seek the attempt was made to acquire this whole area from the Great Lakes to the Rockies not as a province but as a territory; and even when the Riel Insurrection played havoc with that calculation and made it necessary at the outset to create the Province of Manitoba, the same reasons prevailed to restrict its status. "The land could not be handed over to them," said Sir John A. Macdonald in discussing the *Manitoba Act*, "it was of the greatest importance to the Dominion to have possession of it, for the Pacific Railway must be built by means of the land through which it had to pass."² One is not disposed at such a time as this to dwell upon the origins of the "Natural Resources Question" of the Prairie Provinces. But there were other issues of equally vital concern to the primitive population of that day. What were the rights of the little Quebec which men of French race had founded and a devoted clergy had cherished upon the banks of the Red river? The Riel Insurrection in its immediate results was one of the most successful in British history; but its ultimate results have not been so clear. The most poignant reflections upon this sixtieth anniversary of Confederation will be those, I think, which arose from the creation of the Province of Manitoba.

THE FOUR ALTERNATIVES

There were four alternatives before the Red River district during the decade before Confederation.

The first of these was the recommendation of the Select Committee of 1857. It is clear that British policy had not as yet risen to the conception of a transcontinental Dominion, but there are clear forecasts of three tentative regional unions for British North America. British support for a union of the Maritime Provinces during the 'fifties was so violently reversed in favour of the larger federation during the 'sixties that the earlier preference has been almost forgotten. A second regional union was projected for the Pacific coast. The Committee of 1857 recommended

² *Recent Disturbances in the Red River Settlement, 1870*, p. 143.

'the ultimate extension' of government from Vancouver Island over "any portion of the adjoining continent, to the west of the Rocky Mountains, on which permanent settlement may be found practicable." This western regional project was the only one of the three which materialized without disintegrating piecemeal into the Canadian Confederation. For the central areas of the continent the existing union of the Canadas formed the obvious nucleus, and it is significant, it seems to me, that the year before Galt's first project of confederation was snuffed out without compunction at the Colonial Office, the Select Committee had advised that the "districts on the Red River and the Saskatchewan" should be "ceded to Canada on equitable principles." Had this taken place in the 'fifties, the whole story of the West might have been different. A decade of settlement before 1867, like that from 1870 to 1880, might have resulted in a western province at Confederation upon a basis of full equality with the other provinces of the Dominion.

A second alternative—annexation to the United States—was long regarded as the "manifest destiny" of the Red River district. In one single decade the population of Iowa, Illinois, Wisconsin and Minnesota had increased by nearly two millions of people, and the deluge was already moving down the Red River valley when Canadian opinion in 1856 suddenly awoke to the danger. Outside the Hudson's Bay route the only access from Red River to the outside world lay through the United States. Over 1,500 Red River carts plied annually to St. Paul. Steam navigation began in 1861. A resolution of the Minnesota Legislature framed in language which would create an international crisis to-day demanded the annexation of Assiniboia; and it was interpreted at the Settlement as "the highest tribute yet paid to this country. An American agent of the Treasury—afterwards Consul Taylor—reported in 1865 that without prompt action on the part of Great Britain "the speedy Americanization of the fertile district is inevitable." As late as 1869 Governor McTavish of the Hudson's Bay Company wrote that the annexation of Assiniboia to the United States would be "its ultimate destiny." It is not easy even to-day to convince some American investigators that annexation was not a major issue of the Riel Insurrection. But the truth was that American opinion at the Settlement was more sanguine than influential. O'Donoghue whom Riel used throughout the Insurrection—in the end, I think, to his own undoing—was of course an incorrigible Fenian, and this fact lent an altogether fictitious tinge to the movement. Major Robinson, too, who edited the *New Nation* for a time during the Insurrection ventured to print one issue which was called an annexation number; but it proved to be the last, for of all the possibilities of that time, annexation to the United States must have been the least attractive to Louis Riel. For the little Quebec at Red River, even the Canadian Confederation, with Quebec as a powerful partner, seemed a precarious venture in 1869. Annexation to the United States would have exterminated everything which the Riel Insurrection was designed to safeguard. The whole traditional attitude of Quebec in Canadian history is a commentary upon this theme.

The third alternative was the creation, as in British Columbia, of a Crown Colony capable of making its own terms with the Canadian Confederation. When the control of the Hudson's Bay Company passed to the International Financial Company in 1863, this became the official policy of the new directorate, but it came to grief upon the proposal that the Company should retain a proprietary interest in the land. "Colonists of the

Anglo-Saxon race", the Colonial Office maintained, "look upon the land revenue as legitimately belonging to the community."³

The fourth alternative was that which eventually came to pass. If Rupert's Land was to enter Confederation, two steps were obviously necessary. The Company must be compensated for surrendering its proprietary rights to the Crown, and this taxed the ingenuity of the Colonial Office to its last resource. The other was still more serious. In what capacity was the new district to enter the Dominion? It was this second problem which led to the Riel Insurrection, raising issues which have never yet been solved in Western Canada, and in a very real sense changing not only the scope and amplitude but the very nature of the Canadian Confederation.

THE TWO PROBLEMS

The statute which finally dealt with both these problems was the *Rupert's Land Act* of 1868—in its ultimate results one of the most important, I am inclined to think, of all the Imperial Acts of the nineteenth century relating to Canada.

The first problem—the surrender of Rupert's Land to the Crown and the compensation to the Company—must be passed over very briefly but its implications were very far-reaching. The terms, as in Vancouver Island, were to be "agreed upon by and between Her Majesty and the said Governor and Company." These were drawn up in the end by the Colonial Office and forced upon the Company under considerable pressure. Since by the Act Canada was not concerned in this stage of the proceedings, her delegates disclaimed all responsibility both for the terms of surrender to the Crown and for the payment of the compensation to the Company. "In the hands of Her Majesty's Government (they wrote) we are of opinion it must remain." From beginning to end they refused to negotiate with Hudson's Bay House. It was assumed that for Rupert's Land, as for Vancouver Island in the previous year, the compensation to the company was to be paid by the British Government. But when the *Rupert's Land Act* came from the House of Commons it was found to contain an amendment "that no Charge shall be imposed by such Terms upon the Consolidated Fund of the United Kingdom." When the British Government therefore fixed the terms at £300,000 and one-twentieth of the fertile belt, it became necessary for Canada either to compensate the Company for its surrender to the Crown or to forego the subsequent transfer from the Crown to Canada. And thus it came to pass that the process by which the British government had emancipated British Columbia from the proprietary rights of the Company was interpreted by Canada, when the occasion arose in the 'eighties, as a warrant to appropriate to herself those proprietary rights in Rupert's Land as having been "purchased," "owned," "possessed" and therefore "administered (as the *Manitoba Act* states) by the Government of Canada for the purposes of the Dominion." But this is trenching again upon the "Natural Resources Question," and at such a time as this even a good Samaritan must be content to pass it by on the other side: with this remark however that though it still lies upon the road to Jericho it is no longer, let us hope, half-dead.

But the second provision of the *Rupert's Land Act* warranted a change in the very nature of Confederation. The original Dominion was of

³ *Correspondence Relating to the Surrender of Rupert's Land, 1869, Appendix III, p. 68.*

course a federation of equal provinces, and section 146 of the Act authorized the admission of Rupert's Land and the North-Western Territory (as of British Columbia and of Prince Edward Island) as a full province of the Dominion, "subject to the provisions of this Act." Now in that part of the *Rupert's Land Act* confirming the transfer to Canada, the words "subject to the provisions of" the *B.N.A. Act* of 1867 were significantly omitted. The whole area from the Ontario boundary to the Rocky mountains was now to enter the Dominion not as a province but as a subordinate territory.

Canada thus ceased to be a confederation of equal provinces and became a veritable Empire, entrusted with the direct government and administration of the widest range of unappropriated public lands to be found at that time in the British Empire. The various stages through which the central provinces had passed in the old colonial system from the *Quebec Act* to Confederation were now prescribed for these Canadian colonies in the West, and in one respect at least Manitoba, Saskatchewan and Alberta still remain colonies rather than provinces of the Dominion.

Canada therefore proceeded to legislate for the future government of the North-West. The Act of 1869⁴ provided for a governor and council both to be appointed from Ottawa. There were no representative institutions and no statutory safeguards whatever for those whose compatriots in Quebec still contemplated the safeguards of Confederation itself with suspicion and uneasiness. Here was colonial governance with a vengeance, and it became apparent that the primitive population at Red River had been too casually overlooked in these calculations. One group of them, for reasons we must now examine, objected to being "bought like the buffalo."

THE RED RIVER SETTLEMENT

The little community at Red River contained at this time a white and mixed population of about eleven thousand, exclusive of the native Indian. All but a few hundred of these represented the second or third generation in Rupert's Land. It will be possible, I think, to narrow the responsibility for the Insurrection of 1869 by a simple process of elimination.

The American element though exploited by Riel wherever it could fortify his cause, never comprehended, it would seem, the dominant motives of the French Métis. Stutsman at the boundary, O'Donoghue, Riel's Fenian supporter at the Settlement, Major Robinson and others were not averse from making trouble between the Settlement and the Canadian or British authorities. The shamrock appeared upon the flag of the provisional government. One of the three delegates to discuss terms at Ottawa was Alfred Scott an American citizen; but Scott's influence was negligible, and O'Donoghue discovered in good time that his Fenian projects were not to be served by the French Métis at Red River. In the end O'Donoghue's Fenian raid of 1871 was scattered by Captain Wheaton of the United States army, and O'Donoghue's attempts to involve Riel and the French cause were easily frustrated. "I perceived at once," wrote Archbishop Taché at a later date, "that he was endeavouring to deceive me."⁵

⁴ *Act for the Temporary Government of Rupert's Land and the North-Western Territory when United with Canada*, 32 and 33 Vic., c. 3.

⁵ *Winnipeg Free Press*, Nov. 7, 1888.

The Hudson's Bay interests may be more easily absolved from any direct share in the Insurrection. None, it is true, had more to lose by the transfer to Canada. Men like Governor McTavish and Dr. Cowan, Chief Factor at Fort Garry, were to be transformed by it from veritable "nabobs" to local shopkeepers. For generations the staid officials of the Company at Fort Garry had set the standards of social intercourse and of private integrity at Red River. Now they were ignored alike by the directors of the Company in London and by the Canadian Government at Ottawa. They never succeeded in establishing their claims to a share in the compensation for the surrender to the Crown; and when Governor McTavish stopped off at Ottawa on his way to the Settlement, he reported that "these gentlemen are of opinion that they know a great deal more about the country than we do." Had the Canadian Government appointed McTavish as the first governor of the Territory, much might have been done to smooth the transfer. But this, it may be stated with certainty, would not have removed the causes of the Insurrection. Meanwhile the aspersions showered upon the Hudson's Bay officials by McDougall and the Canadian party at the Settlement were singularly gratuitous. No man perhaps was better informed than Archbishop Machray with regard to the temper and opinion of the old settlers at Red River. In a confidential memorandum for Sir John A. Macdonald—one of the most judicious and convincing records, I am inclined to think, of that day—Archbishop Machray deplored the "most undeserved suspicion...thrown out upon Gentlemen whose reports could have been thoroughly relied upon...I am perfectly sure that no dissatisfaction of the employees of the Hudson's Bay Company had anything to do with these troubles."

One other group also, I think, may be eliminated. From 1821 to 1850 the Selkirk settlers had their own battles to fight with the Company, but the influences which reached the Settlement from without during the 'fifties and the 'sixties served to identify their interests. The instinctive conservatism which they had in common was fortified by deliberate policy—by intermarriage, by the growing numbers of retired officials of the Company at Red River and by a growing tradition enshrined in the classic pages of Ross's *Red River Settlement*. The aggressiveness of the Canadian party aroused much resentment, but the old settlers, wrote Archbishop Machray, "never had any doubt that the matter would soon right itself...They certainly never did anything to give a beginning to the French action." Their attitude however was—and I think is still—gravely misunderstood. The Canadians accused them of "disloyalty", and in addition to that monstrous imputation charged them with cowardice in not taking arms against their French neighbours across the river. The French meanwhile reproached them with a betrayal of that "neighbourliness and good feeling" so long traditional between them. A few of the old settlers acquiesced in Riel's ascendancy in the interests of peace, but the truth is that for reasons we shall see in a moment they could not be expected to share the worst fears of the French clerical interests at Red River.

There remain then the two antagonistic groups of the Insurrection. For ten years the Canadian party, supported by *The Nor'-Wester*, the only newspaper at the Settlement, had advocated union with Canada, but in a manner which antagonized many of the most influential among the old settlers, and filled the clerical guardians of the French Métis with alarm. Improvident, good-natured, credulous, "uneducated and only half civilized," as Riel protested before the Council of Assiniboia, the Métis were easily stirred to the suspicion that "they would probably be crowded out." "The

indolent and careless", proclaimed *The Nor'-Wester*, "like the native tribes of the country, will fall back before the march of a superior intelligence." It would be easy to multiply instances of tactlessness, of blundering mismanagement and worse on the part of the Canadian party. Their most aggressive champion was once committed to jail and forcibly liberated by his friends. A survey party though operating under permission of the Company in London was stopped by a band of Métis under Louis Riel who resented their "intention to ride roughshod over everything and everybody."

THE ROOTS OF THE RIEL INSURRECTION

The roots of the Riel Insurrection, however, go deeper than this, and I cannot help thinking that both the French cause and in the long run Riel himself have suffered through the tactics of his apologists in seeking to justify every act of violence by citing piecemeal the stupidity or folly of his antagonists. No amount of special pleading, it seems to me, can legalize by these methods the exclusion of McDougall, the prospective governor of the territory, while yet a private citizen; the seizure and appropriation of his furniture; the opening of the mails; the seizure of Fort Garry; the opening of the safe; the seizure of arms, ammunition and provisions; the declaration of November 24, a week before Canadian government was even contemplated, that they were "free and exempt from all allegiance" to the Hudson's Bay Company and that they had "on the said 24th of November, 1869, above mentioned, established a Provisional Government and hold it to be the only and lawful authority." The subsequent blunders of McDougall in issuing the spurious proclamation of December 1 and a commission to Col. Dennis to raise a force to overthrow the French party were no less illegal. Reprisals on both sides became inevitable, and the virtual imprisonment of Governor McTavish and Donald Smith, the subsequent capture of the Portage party, and the cold-blooded execution of Thomas Scott mark a steady and rapid descent into Avernus.

But those who find in these surface indications the full story of the Riel Insurrection must be singularly undiscerning. There is method in all this, but its justification surely is not to be found in piecemeal legalization. For Canadians of French origin, at least, there are loftier grounds which might dignify not only the cause but the part which Riel played in it beyond the power of his most costly blunders, his most egregious defects of temper and of character, altogether to destroy. The French population of Assiniboia claimed the rights of their compatriots in the province of Quebec. Their history at Red River for two generations, they believed, justified that claim. A Canadian governor and a council appointed from Ottawa would have jeopardized those claims at every point. Nothing but their admission as a province, with statutory safeguards for separate schools, the French language and a second chamber for the protection of minorities, could supply adequate guarantees. In 1869, with both Imperial and Canadian Acts about to be implemented at Red River, the situation seemed irremediable; and so indeed it was without drastic action to reverse the engines. That drastic action was largely the work of one man. There were others like Father Ritchot who were wiser in counsel, and others like Ambroise Lepine who were equally resolute in the use of force. But none combined the will to use both more successfully at Red River than Louis Riel, and so long as French rights are cherished it will stand to his credit, if I am not mistaken, among his countrymen in Western Canada that he

saw what had to be done and had the courage to do it. When M. Provencher, nephew of the first bishop at St. Boniface, was sent by McDougall in October to reassure the Métis, "they uniformly answered (he reported) that...the insurrectionary movement had taken such precautions as to prevent any peaceful settlement at present." The price of peaceful settlement was the Act which created the Province of Manitoba, and the name of Louis Riel, I am inclined to think, can never be dissociated from that achievement.

SUCCESS AND FAILURE

It must be added too that the results of the movement were jeopardized chiefly by Riel's own infirmities of temper—his "insensate pride", as Archbishop Taché afterwards wrote, his "unquenchable thirst for power", degenerating at last into arrogance and bloodshed. Without this it is conceivable that the immediate success of the Insurrection might never have been reversed by the whirligig of time. Beyond a doubt many of Riel's followers were but imperfectly initiated into the *arcana* of the movement; and in truth it is not hard to trace behind Riel himself a surer touch, a more discerning influence in all that was sustained and well-ordered in the Insurrection. In the hands of Father Ritchot, and above all, of Archbishop Taché himself, the negotiations of 1869-70 transcended the events at Red River and challenged the dictates of Canadian statesmanship.

Archbishop Taché had gone to Ottawa in June, 1869, before the trouble between the Métis and the surveyors had arisen at Red River. He was then prepared to return to the Settlement had the government of that day agreed to grant a "reply which could satisfy the people." When Sir George Cartier failed to respond, Archbishop Taché continued on his way to Rome. "I have always feared", he wrote bitterly, "the entrance of the North-West into Confederation, because I have always believed that the French-Canadian element would be sacrificed; but I tell you frankly it had never occurred to me that our rights would be so quickly and so completely forgotten."⁶

In the absence of the Archbishop, the Insurrection took form under Riel's vainglorious leadership, guided and sustained by the resourceful and subtle intellect of Father Ritchot. It is significant however that the *Manitoba Bill* took form only upon the return of Mgr. Taché to Ottawa in February of 1870. On April 11, 1870, the Governor-General informed the Colonial Office by cable that "Bishop Taché before leaving Ottawa expressed himself quite satisfied with the terms accorded to himself and his church." This cable, let it be noted, is dated more than a month and a half after Mgr. Taché's second visit to Ottawa on his way to the Settlement, and fifteen days before the Dominion Government and the three delegates from Red River opened at Ottawa the negotiations which are usually credited with producing the *Manitoba Act*. Indeed the so-called secret list of rights stipulating for the first time the use of the French language and separate schools "according to the system of the Province of Quebec"—the list which Father Ritchot took to Ottawa and which we now know to have formed the basis of negotiations there—was placed in his hands in Archbishop Taché's own presence in Bishop's Palace at St. Boniface.⁷ The fact remains, however, that while wiser heads than Riel's reaped the harvest, it was the resolute use of force by Riel and the French

⁶ Dom. Benoit, *Vie de Mgr. Taché*, vol. II, p. 7.

⁷ *Letter of Mgr. Taché, Free Press*, Jan. 16, 1890.

Métis which frustrated the original plans of the Canadian Government and planted in Western Canada the seed so sedulously cultivated upon the banks of the St. Lawrence.

I can profess no regret that it would be impossible to trace here either the development of the Territories through the various stages of colonial government to the creation of Alberta and Saskatchewan in 1905, or the more sombre story of the *Manitoba Act* in the older province. In truth one's inclinations at such a time as this carry one no farther. I have tried to leave the embers of that controversy as far as possible unstirred, and I cannot help thinking that if we would recapture the spirit of 1867, it must be sought not among the ashes of the past in Rupert's Land and the North-Western Territory but in a new dedication to better things under the happier auspices of the present day.