

Studies of the
Royal Commission on
Bilingualism and
Biculturalism

4

Provincial
Autonomy,
Minority Rights
and the
Compact Theory,
1867-1921

Ramsay Cook



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the Compact Theory,
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"The enactment of the British North America Act," the Report of the Royal Commission on Dominion-Provincial Relations noted in 1940, "did not of itself assure the balance between national loyalties and interests and provincial loyalties and interests which an effective federal system requires."¹ In the course of the years immediately following 1867, particularly during the first two decades, there was an almost constant clash of loyalties and interests between the federal and provincial governments. That clash took the form of a great constitutional debate in which the nature and objectives of the new constitution were the subjects of discussion. In that debate certain intellectual weapons were forged which gradually became the clichés of Canadian constitutional discussion. "Centralization" and "decentralization," the "national interest" and "provincial rights": these were the great issues of the first 20 years of the constitutional and political history of the new nation. It was from this debate that one of the most controversial theories of the Canadian constitution emerged: the theory that the constitution was founded upon a compact entered into by the provinces which agreed to establish a federal union.

Perhaps the greatest value of the compact theory was its imprecision. The questions which it raised were more numerous than those which it answered. Did the compact include only the original three provinces, or were the later joiners also parties? Did both Quebec and Ontario agree to the compact or had they participated as a single unit, since that was their constitutional status under the 1841 Act of Union? Was it a legal contract sanctioned by the Parliament of Great Britain (no one ever dared suggest that it was sanctioned by the people or even their representatives), or was it rather a moral compact sanctioned by natural and divine law? These and many other questions have been raised about the concept of compact. They have never been answered finally, at least in the sense that the theory has been proven or exploded to the satisfaction of all. And it would seem that the very durability of the term is at least partly explained by its imprecision.

That the compact theory became a doctrine for all seasons may be illustrated in a number of ways. For example, the term "compact" was used not merely by Mowat, Mercier and Ferguson, but also by Tupper, Laurier, Borden, Meighen and King. Moreover

the concept was extremely malleable. After the war for provincial autonomy—or at least one engagement in the war—was concluded about 1890, a new struggle opened. That was the conflict over the rights of the Roman Catholic and Francophone minorities in the provinces where the majority was Anglophone and Protestant. Out of this struggle a new concept of compact was born: the concept of Confederation as a compact between two cultures, French and English. But even in the discussion of the relations between these two cultures the compact theory could be made to serve different masters. Henri Bourassa believed that the cultural compact of Confederation guaranteed the equality of the two cultures throughout the Dominion. D'Alton McCarthy insisted that the compact of Confederation explicitly limited the use of the French language to the federal Parliament and the province of Quebec.

As is often the case in constitutional debate it was possible for both sides, or rather all sides, to cite scripture in supporting their various cases. A careful search of the utterances of the Fathers of Confederation and the British North America Act could produce scraps of evidence to give some credence to nearly every argument. The Fathers of Confederation, like their successors in the debate over the nature of the constitution, were, as has so often been remarked, practical lawyers and politicians rather than political philosophers or professors of constitutional law. The result was that in discussing the structure that they had built they were more interested in its practicability and acceptability than in the exact philosophical or theoretical meaning of the terms they had used in the political debate which preceded its acceptance. Their speeches have therefore become a kind of scriptural grab-bag of proof-texts for subsequent sectarian squabbles.

A further complication worth noting at the outset is that the party labels and sides in the debate over the compact theory alter and change with time and circumstance. If one had to select a father for the theory of compact in its provincialist version, the title would doubtless be awarded to Oliver Mowat, Liberal premier of Ontario, 1872 to 1896. The leading opponent of the Mowat viewpoint was of course Sir John A. Macdonald, the Conservative prime minister of Canada during much of the same period. Yet in the 1930's when the same debate raged again, the most thorough exposition of the compact theory was issued under the name of G. Howard Ferguson, Conservative premier of Ontario. Norman McLeod Rogers, political scientist and later Liberal cabinet minister, replied to the Ferguson thesis, providing what has become the standard refutation of the compact theory.²

There is yet another complication. Professor Rogers, while totally rejecting the theory of the compact of provinces, appears nevertheless to have accepted some of the implications of the theory of the compact of cultures. In an article which is less well known than his famous assault on the provincial compact theory, Rogers wrote:

The theory which regards the constitution as in the nature of a treaty or compact is equally untenable unless an entirely fictitious character is given to those provinces which have been created by an Act of the Dominion Parliament out of the Northwest Territories. There is, however, one aspect of treaty engagements which must be given serious consideration in any procedure which may later be adopted for the amendment of the Canadian constitution. The racial and religious minority, which has shared with pioneers of Anglo-Saxon stock the task of building a Canadian nation, holds a position within the Dominion which is not derived from

the grace or discretion of the majority, but rests upon the capitulations of Montreal and Quebec and upon the terms and implications of the Treaty of Paris. Great Britain having been a party to this treaty, the rights and privileges granted have been confirmed by the several Constitutional Acts which the British Parliament has enacted for the Government of its British North American Provinces. In the protection of these rights, which are capable of specific designation as clauses of the British North America Act, there is every reason for a requirement of unanimous provincial consent as a condition of alteration.³

Finally, it may be remarked that while the debate over the nature of the constitution has never been a simple French-versus-English, Quebec-versus-Ottawa dispute, Francophone Canadians have doubtless been the most consistent exponents of the compact theory in both its provincial and cultural variations. As one writer has remarked in speaking of the French Canadian's attitude to "*la loi de 1867*": "He regards it mainly as a 'pact' between each of the Canadian provinces, and more particularly as a pact between the 'English' and the 'French' in Canada. Going even further he considers it a pact between Protestants and Catholics, by the terms of which all political rights granted to the French Canadian Catholics in Quebec would be automatically guaranteed to all Catholics throughout the country."⁴ Indeed the view of Confederation as a compact of provinces has achieved something of an official status in Quebec because it has been enacted as the preamble of a provincial statute.⁵ The report of the Tremblay Commission, in 1956, represents a detailed exposition of the compact theory in both its variations.⁶

Nevertheless, it was also a French Canadian prime minister, Mr. St. Laurent, who rejected most forcefully the implications of the compact theory when he told the House of Commons in 1949 that the Canadian constitution could be modified without the consent of the provinces. He noted:

The leader of the Opposition [Mr. Drew] says that whenever there has to be any kind of amendment whatsoever to any part of the constitution there should be consultation with the provinces. That is an opinion that is very frequently voiced, but it is one which we cannot accept. It would imply that the British North America Act was a contract, and that every clause thereof has the effect of a contract between the Canada that did not then exist and the provinces that did not then exist, but which would affect Canada as it now exists and as it came into being when the act was proclaimed, and the provinces which came into being at that time.

With that theory we are in diametric disagreement. We think the British North America Act is a statute which had the effect of distributing the sovereign powers of this young and growing nation between the central authority as to one part of them and the provincial authorities as to the other. We think that the central authority has no right whatsoever to deal with anything which was allocated to the provincial authorities; and on the other hand, that the provincial authorities, legislatures and governments, in respect of matters which by the constitution were allocated to the federal parliament and the federal government, do not represent the people who inhabit their provinces. With respect to those matters allocated to the federal parliament and the federal government, the people inhabiting the provinces are represented by the members they elect to sit and vote for them in this House of Commons.

That is not only our theory. That has been the theory followed in practice since the earliest days of Confederation. Not less than ten times from 1871 to 1949, amendments to the constitution have been proposed and made without

consultation with the provincial governments or the members of the provincial legislatures. That has been the practice, and in the responsible position we occupy we feel that we have no right to recognize that the provincial legislatures or provincial governments have any control whatsoever over those matters of public interest and national sovereignty allocated to the federal authority.⁷

It was also Mr. St. Laurent who was reported to have expressed the view that "It matters very little whether the British North America Act is a contract or simply a law, provided that the federal government respects the powers and the rights of the provinces, and the provinces respect the rights and powers of the federal government."⁸ From these remarks it would obviously be dangerous to attempt to suggest that the theory of compact is the product of any particular ethnic group or political party. The history of the idea clearly confirms this conclusion.

The fact is that the doctrine of "compact" is as complex and elastic as any individual proponent chooses to make it. Therefore, while the theory could be analysed as an abstract legal concept or as a postulate of moral philosophy, I have concluded it would be more fruitful to examine it as an evolving term of political controversy. I have chosen this approach in the belief that "legal argument is of little avail in changing opinions, and proofs that the B.N.A. Act is or is not founded on a compact or treaty do not go to the real issue, which is one of power rather than of law."⁹ In other words the object of this study has not been to prove or to disprove the validity of the compact theory so much as it has been to indicate and explain what men and governments have believed about it and to suggest, as far as possible, why they believed what they did.

An American scholar, discussing the "state rights" question in the history of the United States, concluded many years ago that:

There can be no doubt that state rights agitation has played a large part in American history; but it is equally clear that the controversy must always be studied in its relation to time and circumstances. The state rights doctrine has never had any real vitality independent of underlying conditions of vast social, economic or political significance. The group advocating state rights at any period have sought its shelter in much the same spirit that a western pioneer seeks his storm cellar when a tornado is raging. The doctrine has served as a species of protective coloration against the threatening onslaughts of a powerful foe. As a well-known American historian has tersely said, "Scratch a Wisconsin farmer and you find a Georgia planter."¹⁰

This contention, with necessary Canadian emendations, could very well be taken as the conclusion reached in this study, with one major exception. It is true that a Mowat, a Pattullo, a Ferguson or an Aberhart could defend provincial rights as loudly as a Mercier, a Taschereau or a Duplessis. It is even true that a Nova Scotia politician in 1886 or a Manitoba agrarian politician in 1925 could express separatist sentiments similar to those voiced by some French Canadians in the 1930's or the 1960's. But a question still remains to be answered: "If you scratch a French Canadian farmer or journalist, do you find an English Canadian lumberjack or businessman?" The answer to that question may be found in the fact that the study of the "compact" theory in Canada cannot be limited to our variation of the "state rights" controversy. It has also necessitated an examination of

the difficult question of "minority rights," which is not only different from "provincial rights" but is often in conflict with it.

Since the study of the compact theory is a subject of venerable age, it has not appeared necessary to enter into and repeat again all its well-known aspects. The arguments for and against the theory have been explored many times, most notably by Professor Rogers and Father Arès.¹¹ The crucial question of disallowance and reservation has been extensively treated by G. V. La Forest,¹² while J. T. Saywell's *The Office of Lieutenant-Governor*¹³ carefully examines the role that this office has played in dominion-provincial relations. J. A. Maxwell in his *Federal Subsidies to Provincial Governments in Canada*¹⁴ naturally is concerned with the most material and important aspect of the problem of Canadian federalism. In his *Constitutional Amendment in Canada*¹⁵ Paul Gérin-Lajoie has presented a detailed account of the highly technical question of changing the constitution. Many, though not all, of the politicians in the 1867-1921 period have been subjected to detailed consideration in published works. Finally, a general outline of the whole question may be found in two Royal Commissions' findings: *Report of the Royal Commission on Dominion-Provincial Relations* and *Report of the Royal Commission of Inquiry on Constitutional Problems*. Valuable documentation is published in the *O'Connor Report** and in W. E. Hodgins' volumes, *Correspondence, Reports of the Minister of Justice and Orders in Council on the Subject of Provincial Legislation, 1867-1895*.¹⁶ What I have attempted to do, therefore, in addition to summarizing much familiar information, is to add some new documentation and particularly to relate the questions of provincial autonomy, minority rights and the compact theory to political thought and action. It is hoped that through this approach a familiar theme may be viewed in a slightly new fashion.

* See Note 2, Chapter I.

Though it was not always so, it now seems unnecessary to offer an elaborate proof of the contention that the Fathers of Confederation intended to establish a highly centralized federal system in which the central government would exercise a well-understood predominance. For more than a generation scholars and publicists have devoted themselves to the task of examining every available document, public and private, in an effort to establish beyond all doubt the views of the Fathers of Confederation.¹ Today, both Francophone and Anglophone scholars appear to agree that the spirit of 1867 was the spirit of centralization.² Therefore it is unnecessary to rehearse the arguments in detail.

The objective of the Confederation scheme was clearly defined by its chief architect as early as 1861. Macdonald told the Canadian Assembly:

In speaking of a confederation, I must not be understood as alluding to it in the sense of the one on the other side of the line, for that has not been successful. When I say this, I do not say so from any feeling of satisfaction at such a result. . . . But while I thus sympathize with them I must say let it be a warning to ourselves that we do not split on the same rock on which they have split. The fatal error which they have committed—it was, perhaps, unavoidable from the state of the colonies at the time of the revolution—was in making each State a distinct sovereignty, in giving to each a distinct sovereign power except in those instances where they were specially reserved by the constitution and conferred upon the general Government. The true principle of a confederation lies in giving to the general Government all the principles and powers of sovereignty, and in the provision that the subordinate or individual States should have no powers but those expressly bestowed upon them.³

The debate on the Confederation proposals in the Canadian Assembly in 1865 is full of similar expressions by both French and English Canadian speakers. For the supporters of the scheme, its great strength lay in its claim to have solved the problem of “state rights,” which was believed to have been the downfall of the American constitutional system. For the critics of the scheme the greatest fault in the plan was that it gave too much power to

the central authority, thus offering a legislative union in disguise. J. B. E. Dorion who worked from a theory of federalism contrary to Macdonald's, put the critic's case this way:

I am opposed to the scheme of Confederation because the first resolution is nonsense and repugnant to truth; it is not a Federal union which is offered to us, but a Legislative union in disguise. Federalism is completely eliminated from this scheme, which centres everything in the General Government. Federalism means the union of certain states, which retain their full sovereignty in everything that immediately concerns them, but submitting to the General Government questions of peace, of war, of foreign relations, foreign trade, customs and postal service. Is that what is proposed to us? Not at all. In the scheme we are now examining, all is strength and power in the Federal Government; all is weakness, insignificance, annihilation in the Local Government! ⁴

What was stated in the Assembly was repeated by the publicists in their examinations of the union proposals. The *Bleu* journalist, Joseph Cauchon, could argue that security for all lay in a union as close to a legislative one as possible. "To admit State Sovereignty and the privilege of delegating power as the basis of a general Constitution," he wrote, "would be to assert the right of secession; it would be to introduce into the system a germ of dissolution which would, sooner or later, produce fatal consequences."⁵ To this claim an anonymous *Rouge* pamphleteer replied, "Is not the so-called Confederation they have just imposed upon us identical with Lord Durham's plan—a legislative union?"⁶ Obviously no one was in doubt about the nature of the new government, though there were sharp differences about the virtues of the scheme.

Still, the new union was not, however much Macdonald may have wished it, a legislative union. It could not be. As Cartier reportedly informed the Quebec Conference: "We thought that a federation scheme was the best because these provinces are peopled by different nations and by peoples of different religions."⁷ Therefore, while the paramountcy of the central government was to be recognized in matters touching the affairs of the entire country, local control over local concerns was also affirmed. Canada East and Canada West were to have their local governments restored to them, while the Maritime Provinces were not asked to integrate themselves completely into the new union.

Again, it need hardly be emphasized, the local governments were to be strictly limited to matters of local concern. Their powers and, perhaps more important, their financial resources were to be closely defined, and the residual powers left to the federal government. Perhaps nothing more obviously underlined the subordinate role of the provinces than those sections of the constitution which defined the appointment and position of the federal officer who was to act as lieutenant-governor of each province, and the sections which gave the federal government the authority to disallow provincial legislation. As has been frequently pointed out, the constitution-makers of 1867 took as their pattern not the American federal system, but rather the British Empire in which Ottawa replaced London and the provinces assumed the role of colonies.

But despite every effort to ensure the predominance of the federal authority, the fact remained that the system was federal and where there is a division of powers, there can be a dispute about the nature of the division. Indeed the Fathers themselves did not manage

to conclude their pleas in favour of the new system without the use of some language that was later to be employed by the proponents of provincial rights. In attempting to convince the Canadian Assembly of the need to accept the Quebec Resolutions in their entirety and unchanged, Macdonald himself described the agreement as a "treaty." "If any important changes are made," he maintained, "every one of the colonies will feel itself absolved from the implied obligations to deal with it as a Treaty, each province will feel at liberty to amend it *ad libitum* so as to suit its own views and interests."⁸ Cartier, in turn, spoke of the "treaty" and of the "sworn engagement" of the parties.⁹ These arguments were again repeated, and made even more explicit in the debates which took place in the British Parliament at the time of the passage of the British North America Act. In the upper house the colonial secretary, Lord Carnarvon, remarked: "The Quebec Resolutions, with some slight changes, form the basis of the measure that I now have the honour to submit to Parliament. To those resolutions all the British Provinces in North America were, as I have said, *consenting parties*, and the measure founded upon them must be accepted as a *treaty of Union*." In the House of Commons, Mr. Adderley, the under-secretary of State, expressed similar sentiments, though with an important variation of language. He said:

The House may ask what occasion there may be for our interfering in a question of this description. It will, however, I think be manifest, upon reflection, that, as the arrangement is a matter of mutual concession on the part of the Provinces, there must be some *external authority* to give a sanction to the compact into which they have entered. . . . If, again, federation has in this case specially been a matter of most delicate *treaty and compact between the provinces*—if it has been a matter of mutual concession and compromise—it is clearly necessary that there should be a *third party ab extra* to give sanction to the *treaty made between them*. Such seems to me to be the office we have to perform in regard to *this Bill*.¹⁰

Thus, whatever arguments could be brought against the "compact" theory in later years, the supporters of that doctrine were always able to find some evidence for their position in the words of the very people most responsible for the drawing up of the British North America Act.

Even without this language, of course, there would undoubtedly have been a dispute about the nature of the division of powers in the new constitution. As the report of the Rowell-Sirois Commission observed, "No amount of care in phrasing the division of powers in a federal scheme will prevent difficulty when the division comes to be applied to the variety and complexity of social relationships."¹¹ The Canadian federal system is a stellar example of this rule. Its unique structure, and peculiar division of powers, has continued to baffle students of federalism, as Professor Wheare's often-cited remark illustrates: ". . . it is hard to know whether we should call it a federal constitution with considerable unitary modifications, or a unitary constitution with considerable federal modifications."¹² For the political scientist, with his desire to tidy up history by applying neat definitions, Canada is a "quasi-federal state." But to the public men involved in making the new system work in the years immediately after 1867, it was not so much a question of abstract definition as of real political power.

Much has been said about the machinery of centralization established by the British North America Act. Less attention has been paid to the energy that determined the

direction in which the machinery would move: the political parties. It is possible, though unlikely, that the new constitution would have operated to the complete satisfaction of everyone, if the same political party had held office at Ottawa and in each of the provinces. But that is speculation. What is a fact is that Macdonald believed that, in the working out of the new system, politics was nearly as important as the constitution itself, and that the policies of the central government would be more readily adopted if his friends held power in the provinces. For that reason he sought to maintain a close relationship between federal and provincial parties through the use of the dual mandate, which permitted politicians to sit in both federal and local legislatures, through the establishment of a federally determined franchise, and through the enactment of legislation and the exercise of federal powers in a manner which would assist his political supporters. Macdonald was certainly not misled in his belief, for the new confederation was still very young when its political opponents began to attack it, or at least to attack Macdonald's interpretation of it. So too, they attacked the basis of Macdonald's political influence: the dual mandate, the federal franchise, and the various acts and policies of the federal government which were damaging to their political prospects. Before long, Macdonald's opponents were entrenched in the provincial capitals, developing a theory of the constitution contrary to that held by the federal Conservative party, and expressed in terms of "provincial rights" and the compact of Confederation. In the first decade after 1867 political lines became clearly drawn, and much of the debate centred on questions of federal supremacy and provincial rights.

Macdonald never disguised his attitude toward the provinces: they were to be treated not as independent sovereignties, but rather as administrative bodies similar in status to municipal councils. Nor was Macdonald unaware that the provinces might find this minor status unacceptable; but he was prepared to fight for his viewpoint. As he told a member of Parliament in 1868: "I fully concur with you as to the apprehension that a conflict may, ere long, arise between the Dominion and the 'States Rights' people. We must meet it, however, as best we may. By a firm patient course, I think the Dominion must win in the long run. The powers of the General Government are so much greater than those of the United States, that the central power must win in the long run. My own opinion is that the General Government or Parliament should pay no more regard to the status or position of the Local Governments than they would to the prospects of the ruling party in the corporation of Quebec or Montreal."¹³

By this date Macdonald had already faced and surmounted one serious provincial revolt. The first post-Confederation election in Nova Scotia had returned a local assembly dominated by the anti-Confederation party, and all but one of the federal members of Parliament from Nova Scotia shared the same view. In February 1868 the Nova Scotia Assembly unanimously accepted a resolution stating the province's grievances and calling for the repeal of the union. In effect this resolution was based on the assumption that what was wrong with Confederation was that it was not and never had been a "compact" so far as Nova Scotia was concerned, for the union had been imposed upon the province. The most important section of the resolution declared: "That there being no Statute of the Provincial Legislature confirming or ratifying the British North America Act, and it never having been consented to nor authorized by the people, nor the consent of the

Province in any other manner testified, the preamble of the Act, reciting that this Province has expressed a desire to be Confederated with Canada and New Brunswick is untrue, and when Your Majesty was led to believe that this Province had expressed such a desire, a fraud and imposition were practised on Your Majesty." The resolution continued by noting that an election had now been held, that an anti-Confederation majority had been returned, and that therefore the British North America Act was declared to be "*unconstitutional* and in no manner binding on" the people of Nova Scotia.¹⁴

The resolution, accompanied by a petition, was sent to the Colonial Office in due course. It received a cold reception in London for the issue was judged to be a question of purely local concern. The solution to the problem was reached through direct negotiations between the Macdonald Government and the leaders of the separatist party in Nova Scotia. In brief, the outcome provided better financial terms for Nova Scotia and a position in the federal cabinet for Joseph Howe, the anti-Confederation leader.¹⁵

The interesting point, however, in the context of the discussion of the nature of the constitution is not the fact that Macdonald could rather easily restore Nova Scotia's loyalty, at least temporarily, but rather the light that the incident casts upon the compact theory. Nova Scotia, in effect, had denied that it had ever been party to a compact, a view which the events leading up to Confederation in Nova Scotia support. By denying that it had been consulted, Nova Scotia was able to claim, and obtain, better financial terms. But that very action brought a response from another province, Ontario, which was perhaps the first statement of the provincial rights case with its underpinnings in the compact theory. Contending that the federal government had overstepped its powers in unilaterally altering the financial terms agreed upon in 1867, the Ontario Legislature passed a resolution praying that legislation be passed by the Imperial Parliament "for the purpose of removing any colour for the assumption by the Parliament of Canada of the power to disturb the financial relations established by the British North America Act (1867), as between Canada and the several provinces."¹⁶ A similar view was expressed by the Liberal Opposition in the federal Parliament, and in fact the view was accepted in a parliamentary resolution which passed in 1870.¹⁷

The implications of this debate are clear. The federal government had unilaterally amended the constitution in the matter of financial terms. Ontario, governed in 1869 by a Liberal-Conservative Government, had protested the action on the grounds that such an alteration required the sanction of the provinces. In 1870 Macdonald allowed a similar resolution to pass the federal House of Commons because he wished to forestall further provincial claims on the federal treasury. In fact, of course, like every subsequent statement on the finality of financial terms, this was only final until new political pressures appeared to force another round of better terms.¹⁸

The main conclusion to be drawn from this affair is that "provincial rights," as Macdonald had anticipated, had been born with the new constitution. The division of powers in the British North America Act was a recognition that there was a division of loyalties among the people federated. As long as that division of loyalties remained, there would be appeals to local loyalties as well as to national loyalties, and these appeals would often take the form of disputes over the precise meaning of the constitution.

The continuing division of loyalties was evident not only in Nova Scotia, where it took a radical if short-lived form. It was evident also in Ontario and Quebec though it was expressed in a more conventional manner and, at least during the first decade of Confederation, was never as strongly expressed as in Nova Scotia. There can be no doubt that for both Ontario and Quebec, Confederation was important as much for what it divided as for what it united. Unfortunately, while the reasons for Quebec's anxiety to achieve a large measure of control over matters connected with French Canadian survival are always noted, it is often forgotten that Canada West also expressed a powerful desire for control over her own affairs. Indeed, it is too often forgotten that Canada West was much more anxious to end the unitary regime of 1841 than was the eastern section of the United Canadas. There is no need to repeat again the story of the bitter complaints of George Brown, the *Toronto Globe* and the Reform party about the fashion in which Canada West's ambitions were constantly frustrated in the union. Whether it was expressed in terms of the injustice of equal representation for each section at a time when Canada West was rapidly outnumbering its partner, or whether it was the loud outcry against "French domination," the demand of large sections of opinion in Canada West for a new form of government which would provide local self-government was irresistible by 1865. There was also, of course, a section of opinion in Canada West that was anxious for a completely organic, legislative union; Macdonald represented that view. But it would be a serious error to ignore the Ontario "rights" sentiment even at the time of the Confederation debates. After the enactment of the union, it is impossible to ignore this sentiment since it rapidly becomes the dominant theme in Ontario politics.

The vehicle of the Ontario rights movement after Confederation, as before, was the Reform party of George Brown, Edward Blake and Oliver Mowat. The first resolution agreed upon by the Reform party of Ontario in June 1867 made plain that group's interpretation of the union that was about to be officially proclaimed: "*Resolved—That this Convention records its high gratification that the long and earnest contest of the Reform Party for the great principles of Representation by Population, and local control over local affairs, has at last been crowned with triumphant success.*"¹⁹ And from that date onward the Ontario Reform party took as its rallying cry the defence of Ontario's right to "local control over local affairs," a phrase of enough vagueness to ensure a bitter battle once it became mixed with party politics.

That it should become mixed with party politics was perhaps inevitable, given the facts of political life in Canada at Confederation. In the first place, though it travelled under the name of coalition, the Government of John Sandfield Macdonald, which held office in Ontario from 1867 to 1871, was in reality the political ally of the federal Liberal-Conservative administration. This was fully in keeping with Sir John A. Macdonald's view that regimes of a similar political stripe at the federal and provincial levels would be useful at least "until the new constitution shall have *stiffened in the mould.*"²⁰ But this also meant that the local government was constantly open to the charge of being nothing more than the tool of Ottawa. Secondly, as long as the dual representation system existed, some members took the opportunity to sit in both houses. The natural result of this situation was that the political struggles of Ottawa were reproduced in the local legislatures and vice versa. Thus the criticisms that Blake and

Mackenzie directed at the federal administration in Ottawa were repeated on the floor of the Ontario Legislature in Toronto. While the attack was readily repulsed in Ottawa, it quickly gathered momentum at Toronto.

At the end of 1871 Edward Blake was called upon to form the first Reform Government in Ontario. His opening statement of policy was both a summary of his party's attitude during the preceding years and a set of guidelines for the future. He declared:

The first point upon which I desire to state the policy of this administration is with reference to what may be called the external relations of the Province. My friends and myself have for the past four years complained that the late administration was formed upon the principle and the understanding that it and the Government of the Dominion should work together—play into one another's hands—that they should be allies. My friends and myself thought, and my administration now thinks, that such an arrangement is injurious to the well-being of Confederation, calculated to create difficulties which might otherwise be avoided; and that there should exist no other attitude, on the part of the Provincial Government towards the Government of the Dominion, than one of neutrality; that each Government should be absolutely independent of the other in the management of its own affairs. As citizens of the Province of Ontario we are called upon to frame our own policy with reference to our Provincial rights and interests, and to conduct our own affairs; and we deprecate, nay more, we protest most strongly against any interference, we equally protest against the proposition that the Provincial Government ought to interfere as a Government with the affairs of Canada or any of the other provinces.²¹

Blake here laid down the principle which was to guide the Reform party's battles with Macdonald, the Ontario government's battles with Ottawa, over the next 25 years. While the abolition of the dual mandate in 1872 forced Blake to give up the Ontario premiership in favour of his federal seat, his views as well as his position were soon taken over by Oliver Mowat. Indeed Mowat more than took over Blake's views; he extended them on all fronts. It is clear from these early years, as it was to become increasingly obvious in subsequent ones, that the political fortunes and ambitions of individuals and parties can never be successfully separated from abstract arguments about provincial rights.

Quebec politicians had been deeply attached to the Union of 1841 in its later years, largely because the principle of equal representation had given them a certain sense of security. But by the mid-1860's it was recognized that the union could not long be preserved unchanged in the face of political instability, economic difficulties, and external pressures. The quest therefore was to devise a new system which would remove the difficulties while at the same time offering continued security for the French Canadian way of life. Confederation, in the view of its supporters, provided exactly that. The defenders of the scheme emphasized that French Canadians were once more being given a government of their own, that Quebec would again be the capital of French Canada. The theme of division was underlined. But in Quebec there was also a powerful group that opposed Confederation outright because, it was believed, the division was more apparent than real. After the scheme had been adopted it fell to this group to take up the cry of provincial rights. It was, then, the former opponents of Confederation, the

Rouges, that formed the core of the provincial rights party in Quebec. In giving up their total opposition to Confederation, the *Rouges* did not forego their belief that unless the autonomy of the provinces became the fundamental principle of French Canadians, the worst fears about the future would be fulfilled. *Le Canadien* put the case very frankly in 1868 when it stated: "More than ever we see that the current régime is nothing but a legislative union in disguise. Local power lacks strength and means. Every day the federal government removes a stone from the building which it has temporarily constructed. If Nova Scotia is right in fearing for its autonomy, for what must Lower Canada hope?"²² It was not, however, only the *Rouges* in Quebec who had opposed Confederation. There was a second group, many of whom had Conservative origins, who had united to publish the newspaper *Union nationale* as an organ of opposition to Confederation. This group was made up of young men who were *nationalistes* before they were party members, but at the same time they were unwilling to associate themselves too closely with the *Rouges* who were suspected of anticlericalism and annexationism.²³ In the years after Confederation had been adopted, many members of this group retained their earlier suspicions of the Confederation scheme, and therefore took up the cause of provincial rights. What is most interesting about this group's viewpoint is that it tended to identify French Canadian "national" rights with provincial rights. This was an opinion later expressed by numerous writers in the influential journal *L'Opinion publique* to which several of the earlier *Union nationale* writers contributed. One of the clearest statements of this viewpoint came from the journalist Oscar Dunn, who in the 1870's never tired of advocating the formation of a "*parti national*" to defend French Canada's interests in Confederation. In 1871 he wrote: "However it is mainly in Quebec that solid minds are needed, for it is there that the future of French Canadians is being prepared. The failure of the attempts which doubtless will be made later to transform Confederation into a legislative union depends upon the wise administration of our local affairs and the perfect functioning of the provincial government."²⁴ And it was a future Conservative premier of Quebec, J. A. Mousseau, who had declared in the pages of the same journal that "It is in Quebec, especially in Quebec, that the maintenance, the strength and the future of national autonomy can be assured."²⁵

In the election of 1871, one of the opponents of Confederation, Louis Jetté, defeated Sir Georges-Étienne Cartier. While that defeat was only a straw in the wind, it was an important indication of future developments. For the next 15 years the cry of provincial autonomy was evidently not a particularly effective one in Quebec. Indeed the condition of *Bleu à Ottawa*, *Bleu à Québec* was apparently far less dangerous politically in Quebec than in Ontario. The *Bleus* held power in Quebec continuously from 1867 to 1886 with the brief exception of the Letellier ministry in 1878-1879. And that tumultuous year, as we shall see, is perhaps the exception that proves the rule. There were, of course, a multiplicity of reasons for Conservative strength in Quebec: the bad reputation of the *Rouges* in clerical circles, the effectiveness of Conservative organization, the divisions of the opposition groups, and so on. But the fact remains that until an issue arose that could unite sentiments of "national" rights with those of provincial rights, the close alliance of Quebec and Ottawa apparently worked to the satisfaction of French Canadians. And it is no accident that Honoré Mercier, the politician who succeeded in moulding "nationalists"

and "provincialists" into a single movement, was a Conservative who had left his party over the Confederation issue.

The development of the provincial rights parties in the provinces paralleled similar developments at the federal level. Once again, not unnaturally, the party of provincial rights was the Liberal party. On every possible occasion the Liberal leaders advanced a theory of the constitution which emphasized the role of the provinces. When Macdonald altered the financial terms with Nova Scotia, Luther Holton moved: "That in the opinion of this House any disturbance of the financial arrangements respecting the several provinces provided for in the *British North America Act* unless assented to by all the provinces, would be subversive of the system of Government under which the Dominion was constituted" ²⁶ This statement of the unanimous consent doctrine of constitutional amendment, though rejected by Parliament in 1869, became standard Liberal constitutional argument. In 1871 when the *British North America Act* was amended to give undoubted authority for the admission of new provinces, David Mills moved: "That the respective Legislatures of the Provinces now embraced by the Union have agreed to the same on a Federal basis, which has been sanctioned by the Imperial Parliament, this House is of opinion that any alteration by Imperial Legislation of the principle of representation in the House of Commons, recognized and fixed by the 51st and 52nd Sections of the *British North America Act*, 1867, without the consent of the several Provinces that were parties to the compact, would be a violation of the federal principle in our constitution, and destructive of the independence and security of the Provincial Governments and Legislatures. . . ." ²⁷ Again this explicit statement of the compact theory was rejected by the House of Commons.

In the same year the Liberals launched an attack on what they considered the vicious system of the dual mandate. Again, it seems hardly necessary to point out that whatever principle was at stake, the system was operating to the disadvantage of its opponents and to the advantage of its supporters. David Mills, who presented the motion for abolition, insisted that, "until there was a complete separation of the Legislative functions of the local Legislatures and those of the Parliament of Canada, they would never be enabled to fairly carry out the principle of Confederation." Masson, a French-speaking Conservative, replied that the existing system was entirely satisfactory to the province of Quebec, and that Mills' motion was nothing short of an attempt to force Ontario views down Quebec throats. ²⁸ Masson was at least partly justified in his view that Quebec was satisfied with the system, for a similar bill had been defeated in two successive years in the Quebec Legislature.

The 1871 debate on the dual mandate in the Quebec Legislature provided an occasion for the local Liberals to define their doctrine of provincial rights and explain their conception of the Canadian federal system. No one was more forthright than Wilfrid Laurier. He began by declaring that the dual mandate was incompatible with Confederation, which he defined as "a cluster of states which together have common interests, but which nevertheless vis-à-vis each other have distinct and separate local interests." He continued: "The states have a common legislature, the federal legislature, for all their common interests and needs. They each have a separate local legislature for all their local interests. Both the local and federal legislatures, within the respective scope

of their own powers, are sovereign and independent of each other." He concluded with the Quebec version of the provincial rights rallying cry: "With the ordinary mandate, Quebec is Quebec; with the dual mandate, it is only an adjunct of Ottawa."²⁹

It is not, of course, the specific question of the dual mandate that is interesting here—it was soon to be abolished—but rather the arguments that developed around it relative to the nature of the constitution. In contrast to Macdonald's "municipal corporations," the Liberals looked upon the provinces as "independent sovereignties" within the spheres allocated to them by the constitution. The overall implication of the Liberal view, as it emerges from these debates on financial terms, amendment and dual representation, was that of Confederation as the child of a compact entered into by the provinces. These provinces, while retaining certain clear and sovereign powers, had delegated matters of national concern to the federal government.

Yet despite the emerging differences between the Liberal and Conservative parties on the subject of dominion-provincial relations, the matter was never explicable simply in party terms in the years immediately after Confederation. Before the constitution had celebrated its fifth birthday, the question of federal ascendancy and provincial rights had already been complicated by the problem of minority rights. An examination of this problem suggests that the simple dichotomy of Liberal versus Conservative must to some extent at least be modified by a second pair of political tags, the "ins" and the "outs."

The problem of minority rights is related to the matter of the federal power of disallowance, which will be examined more closely in the next chapter. For the moment, two points may be established. First, this power was, in Macdonald's view of the constitution, absolutely vital to the preservation of the new nation's integrity and the predominance of the federal government. As Minister of Justice in 1868 he set down the broad principles which he believed should govern the exercise of the federal veto. He listed four types of legislation: (1) as being altogether illegal or unconstitutional; (2) as illegal or unconstitutional in part; (3) in cases of concurrent jurisdiction, as clashing with the legislation of the General Parliament; (4) as affecting the interests of the Dominion generally.³⁰ It is perhaps worth noting in passing that in addition to the broad character of these principles, the important fact is that the judgement was to be made not by a court but by the federal Minister of Justice.

A second point that deserves to be noticed at this stage is that the opponents of Confederation, and later the critics of the Macdonald Government, focussed a great deal of attention on the question of disallowance. Both A.-A. Dorion³¹ and Oliver Mowat, who, ironically, sponsored the resolutions on disallowance at the Quebec Conference,³² attacked this power as the chief threat to provincial autonomy. It might therefore be assumed that attitudes toward the exercise of this power could be distinguished on the party lines. But that assumption is only partly correct as the cases of the New Brunswick and Prince Edward Island school questions illustrate.

In 1871 the Legislature of New Brunswick enacted a statute dealing with the school system which brought protests from the Roman Catholics of that province and demands that the legislation be disallowed. Macdonald refused to accede to his petitioners' request, indicating his reasoning as follows: "Now the provincial legislatures have exclusive powers to make laws in relation to education, subject to the provisions of the 93rd clause of the

British North America Act. Those provisions apply exclusively to the denominational, separate or dissentient schools, they do not, in any way, affect or lessen the power of such provincial legislatures to pass laws respecting the general educational system of the province. . . It may be that the Act in question may operate unfavourably on the Catholics or on other religious denominations, and if so, it is for such religious bodies to appeal to the provincial legislature, which has the sole power to grant redress. As, therefore, the Act applies to the whole school system of New Brunswick, and is not specially applicable to denominational schools, the Governor General has, in the opinion of the undersigned, no right to interfere.”³³

When a motion calling for the disallowance of the Act was introduced into the House of Commons, both Macdonald and Cartier defended the Government’s refusal to exercise the power of disallowance. Both of them argued that if education had not been placed under the jurisdiction of the provinces in 1867, Quebec would never have joined the union. Cartier further warned that to countenance interference in this case would create a precedent dangerous to Quebec. Speaking for the Opposition, A.-A. Dorion insisted that the Government “ought to interfere, for a third of the people of New Brunswick have been treated unfairly .”³⁴

The following year, however, the House passed a resolution strongly regretting the action of the New Brunswick Legislature. The resolution expressed the hope that the minority’s grievance would be redressed, and suggested that the opinion of the Judicial Committee of the Privy Council be sought on the subject of the legal position of Roman Catholic schools in New Brunswick. This resolution brought a loud protest from the government of New Brunswick. The protest pointed to the dire consequences which the passage of the resolution in Ottawa would produce, for its intention was to alter the very basis of Confederation and lead to the “centralization of power in the Parliament of Canada.”³⁵

The assumption of office by Alexander Mackenzie’s Liberals allowed the friends of the minority in New Brunswick (and also the enemies of the Liberal party) to test the sincerity of the Liberals’ earlier demand for federal intervention in the New Brunswick school case. John Costigan moved that the British North America Act be amended to empower the federal authorities to alter the school legislation in New Brunswick. Naturally this proposition was strongly opposed by the Mackenzie government, David Mills remarking that the resolution represented a “very serious violation of the federal compact.”³⁶

Of course, the extraordinary Costigan proposal was hardly comparable to the earlier demand for disallowance. In 1877, however, there was a case offering a closer parallel. In that year a demand arose for the disallowance of an Act passed in Prince Edward Island which the Roman Catholic minority felt infringed upon their rights. In his report explaining his refusal to exercise the federal power of disallowance Rodolphe Laflamme stated: “. . . however arbitrary or unjust the mode of enforcing it may appear, it would not seem proper for the federal authority to attempt to interfere with the details, or with the accessories of a measure of the local legislature the principles and objects of which are entirely within their province.”³⁷

Thus, by 1877, both parties had been faced with the thorny question of the relation between minority rights and provincial rights and their answer had been the same: provincial rights have precedence over minority rights. Another decade was to pass before the question was to be raised again in serious form, and during that decade the struggle between those who upheld the federal ascendancy and those who argued for provincial rights reached a new level of intensity. There were few arguments presented in the later period that had not been at least implied in the discussions of the subject during the first decade of Confederation.

While federal politicians could spar and even exchange the occasional heavy blow over provincial rights, the main match was between the federal and provincial governments. The contestants' colours had not, however, changed, for the 1870's and early 1880's witnessed the birth and growth of a provincial rights movement, composed largely of provincial Liberal parties, which reached its culmination in the Interprovincial Conference of 1887.

There is no easy explanation of the revival of local loyalties in the 1870's and 1880's. There are several partial explanations. In the first place, it is plain that despite the hopes of the Fathers of Confederation that a "new nationality" could be conjured up to replace local loyalties, the development was more easily described than achieved. This is not altogether surprising for each of the provinces had a long history behind it, while the Dominion was a new entity. The brilliant Christopher Dunkin in his speech criticizing the federal scheme in 1865 had prophesied that the "new nationality" would be a fragile flower. He explained:

We have a large class whose national feelings turn towards London, whose very heart is there; another large class whose sympathies centre here at Quebec, or in a sentimental way may have some reference to Paris; another large class whose memories are of the Emerald Isle; and yet another whose comparisons are rather with Washington; but have we any class who are attached, or whose feelings are going to be directed with any earnestness, to the city of Ottawa, the centre of the new nationality that is to be created? In the times to come, when men shall begin to feel strongly on those questions that appeal to national preferences, prejudices and passions, all talk of your new nationality will sound but strangely. Some older nationality will then be found to hold the first place in most people's hearts.¹

Perceptive as these remarks were, what not even the realistic Dunkin perceived was that British North Americans felt even stronger provincial loyalties than the ones to which he pointed.

Doubtless, too, the economic depression which struck Canada in the early 1870's contributed greatly to the stifling of whatever "national" outlook had developed in the

years immediately after Confederation. This factor, and its implications, was noted in the Rowell-Sirois report:

A bald statement of the length of the depression gives little hint of its effect upon the lives of the people. Federal policies had burdened them with debt and failed to bring prosperity. The only large-scale remedy which the Dominion had been able to offer was the National Policy of 1879. In these circumstances communities had to do what they could to help themselves, looking to the provinces for the help which the Dominion failed to give. The provincial governments attempted to promote expansion on their own frontiers by railway building and immigration policies. But most of them quickly discovered the strait jacket in which the financial settlement of Confederation had placed them. The agitation for better terms gathered strength and led to differences with the Dominion. The failure of the Dominion's economic policies, which formed such important elements in the new national interest, discouraged the growth of a strong, national sentiment; and local loyalties and interests began to reassert themselves.²

And finally, as has already been suggested, it would be a mistake to underestimate the significance of the rivalry of the political parties in the growth of provincial rights. It is no accident that the provincial rights standard was first firmly planted in Ontario after the Liberals had gained office, that it was the Liberal party in Quebec that used the same weapon in its quest for power, and that in both Nova Scotia and Manitoba provincial rights became the leading plank in the Liberal party's platform. To say this, of course, is to leave unresolved the chicken-and-egg question of which came first: provincial rights sentiment or the Liberal party? The question is unresolvable. What is quite plain, however, is that once the Liberal party had attained power in several provincial seats of government, the federal Conservative party found itself hard pressed to maintain its concept of the predominance of the federal government. When the onslaughts of the provincial Liberal governments found support in the decisions of the Judicial Committee of the Privy Council, the concept of federal predominance suffered a serious defeat.

It was probably inevitable that the richest province, the province least dependent upon federal financial aid, should become the first and most effective bastion of the provincial rights cause. After 1867 Ontario was the wealthiest, actually and potentially, of all the provinces. It was also the province with the most effectively organized system of local government and public finance. Its concern therefore was not to obtain further financial concessions from Ottawa, but rather to prevent the federal government from granting better terms to other provinces at Ontario's expense. It was also concerned to run its own affairs and, to the extent possible, to direct its own development free from the interference of the federal government. Yet these abstractions explain everything and nothing, unless the political and personal factors are recalled. Only if it is remembered that Macdonald and Mowat belonged to different parties, were men of very different temperaments, and had long been on touchy personal terms, can the bitterness of the quarrel between Ottawa and Toronto be understood. Like most disputes over great political principles, the struggle of federal ascendancy versus provincial rights was characterized by very mixed motives.

The quarrel between Ontario and Ottawa centred on three general questions, two of which had several particular aspects. All related to the exercise of federal powers which

Mowat believed unjustifiably constrained the provincial governments and threatened provincial autonomy. The questions at issue were the position of the lieutenant-governor, the federal power of disallowance, and the Manitoba-Ontario boundary dispute. Each of these questions has received detailed examination in the published study of J. C. Morrison and what follows is in large part an abstract of that author's work, reducing the detail to manageable proportions and concentrating on the provincial rights concept.³

As Morrison has clearly shown, the Manitoba-Ontario boundary dispute concerned no question of provincial rights in a constitutional sense. Nevertheless it provides necessary background, and offers a very material explanation of the bitterness with which the war over other, more abstract, questions was fought. In its barest detail the question related to the undefined northwestern border of Ontario. The initial steps taken by the John Sandfield Macdonald administration to settle the question were repudiated by the Liberals when they came to power in 1872. A settlement reached by an arbitration board established jointly by the Mowat and Mackenzie administrations was in turn repudiated by Conservatives on their return to office at Ottawa. In 1881 Macdonald attempted to settle the issue by enacting legislation extending the eastern boundaries of Manitoba, but this settlement was unacceptable to Ontario. In 1884, after a period of near civil war in the disputed territory, it was agreed to submit the dispute to the Judicial Committee of the Privy Council, which ruled in Ontario's favour. Macdonald, in effect, refused to recognize this decision and it was not until a second Judicial Committee ruling was obtained in 1888 that the matter was finally terminated. It is easy to understand that a dispute of this nature, even stripped of all its details, could do nothing but create the worst atmosphere of suspicion between the Dominion and the province of Ontario. Morrison's balanced conclusion seems fully justified. "The blame for this delay," he writes, "and for the animosities thereby engendered cannot be laid wholly on one side or the other; rather it must be attributed to the mutually antagonistic aims of Ontario and the Dominion, complicated by the personal antagonism between Mowat and Macdonald and by the rivalry, jealousy, and 'fear of domination' which exercised the provinces of Ontario and Quebec."⁴ It was against the background of this quarrel that the constitutional issues relating to the lieutenant-governor and the federal power of disallowance were fought.

The office of the lieutenant-governor, as a leading authority has written, "in theory at least, was an integral part of the scheme which was designed in 1867 to assure the paramountcy of the central government in the federation."⁵ It was Mowat's belief that if the autonomy of the provinces was to be fully established, the status of the lieutenant-governor had to be altered. The object was to make the lieutenant-governor as much the representative of the Queen in the province as the governor general was the representative of the Queen in federal affairs. This, of course, directly contradicted the original view of the lieutenant-governor as an officer of the federal government in the province.

As is so often the case in constitutional disputes, the quarrel about the lieutenant-governor erupted over a question of patronage. This issue was the right of the province to appoint Queen's counsel. Beginning as early as 1872, Ontario and the federal government had disagreed about the right of the lieutenant-governor to make this appointment. The

details of the argument are unimportant, except to say that on the apparent understanding that Dominion approval had been granted, legislation on the subject of Queen's counsel was passed by the Ontario Legislature in 1873. In 1886, however, the federal government determined to ignore provincially appointed Queen's counsel. Mowat's angry protest against this apparent reversal of federal policy was couched in terms designed to express his view of the status of the lieutenant-governor: "The position of my Government is, that the Lieutenant-Governor is entitled *virtute officii*, and without express statutory enactments, to exercise all prerogatives incident to Executive authority in matters over which Provincial Legislatures have jurisdiction; as the Governor-General is entitled *virtute officii* and without any statutory enactment, to exercise all prerogatives incident to Executive authority in matters within the jurisdiction of the Federal Parliament. . . ."6 In short, the lieutenant-governor was seen to hold a status comparable to that of the governor general, rather than that of an officer of the federal government.

Though the battle over the status of the lieutenant-governor did not end here, this passage is enough to illustrate Mowat's concept of the office, and also of the place of the provinces within Confederation. Mowat pursued this question with his usual tenacity through a number of disputes, and then had the matter taken up at the Interprovincial Conference in 1887. While the federal government never accepted Mowat's view of the office of the lieutenant-governor it received a much more sympathetic hearing from the Judicial Committee of the Privy Council, as the 1892 case of *The Liquidators of the Maritime Bank of Canada v. the Receiver General of Canada* indicated.

Again, with respect to the dispute over the federal power of disallowance, detailed examination seems unnecessary since it has been analysed both by Morrison and La Forest.⁷ What remains to be considered is neither the detailed argument nor the legal subtleties, but rather the part that this dispute played in the development of the autonomist argument.

While Ontario was prepared to protest the use of the federal power of disallowance even during the regime of John Sandfield Macdonald, it was not until Mowat took office that the question assumed any serious proportions. As always, there was an important material issue at stake.⁸ It arose first over the disallowance of an Ontario Act relating to escheats and forfeitures. In disallowing this Act, which was designed to provide revenues for the provincial treasury, the federal Minister of Justice argued that it represented an unconstitutional infringement on the governor general's prerogatives and on federal jurisdiction over criminal procedure.⁹ Mowat's reply was that since the provinces before Confederation had exercised control over these matters, they retained the power after Confederation. He then outlined his conception of the legal basis of Confederation in this important paragraph: "Either. . . escheated and forfeited property belongs still to the provinces, or the Crown at Confederation resumed all provincial rights which the Confederation Act did not deal with, an alternative which is wholly unsupportable, and which the undersigned trusts the authorities of the Dominion, as well as those of the provinces, will at all times unite in repudiating. The undersigned assumes it to be undeniable that all rights of the provinces as they existed before Confederation have, by the Confederation Act, been divided between the Dominion and the provinces, and that whatever has not been given to the former is retained by the latter."¹⁰ To this claim the

federal Minister of Justice replied, not unexpectedly, that "on the contrary, whatever right has not been given to the provinces, is vested in the Dominion."¹¹ It is noteworthy that at the time of this exchange the federal Minister of Justice, A.-A. Dorion, was a member of a Liberal administration. It is thus clear that while the federal Liberals were prepared to take provincial rights as a rallying cry, they were unwilling to accept Mowat's extreme claim regarding the residual power. Throughout most of the Mackenzie administration, the question of the federal power of disallowance raised no serious disagreements, though Edward Blake was by no means reluctant to threaten its use.¹²

It was only after Macdonald won a sweeping victory in the election of 1878 that the dispute over disallowance became a primary issue in the relations between the Dominion and Ontario. While there were several pieces of legislation at issue, the one which best illustrates the practice and theory of the two disputants related to "An Act for Protecting the Public Interests in Rivers, Streams and Creeks," which was enacted by Ontario in 1881. The bare facts of the case concerned a demand from a logging company owned by one Caldwell, a reputed Mowat supporter, to make use of a river that had been improved for the purpose of floating logs by one McLaren, a reputed Conservative. The Ontario Act of 1881 gave all persons the right to make use of the river in question.

The federal Minister of Justice disallowed the Act on the grounds that it took away "the use of his property from one person and [gave] it to another," an act which represented a "flagrant violation of private right and natural justice."¹³ The Ontario government's reply came quickly and it struck at the crucial question of the federal government's right to judge in such a critical and controversial matter. It then went on to state the province's assumption about the nature of Confederation in a forthright fashion:

The Confederation Act was intended to give practical effect to the exercise of the fullest freedom in administration and control in local matters within each Province, which was the main object of Quebec and Ontario, especially, in seeking such union. This fundamental principle of local self-government runs through the whole of this constitutional Act, and in order that it may be preserved intact, the utmost vigilance on the part of every Province should be constantly alive to every attempt of the Central Government to transfer the control of Local Affairs from the Government having the greatest interest in them, and possessing the fullest knowledge of them, and under a direct responsibility to the people of the Province, to a Government which necessarily has the least knowledge of, and the smallest interest in, such matters.¹⁴

In the two subsequent sessions of the Ontario Legislature, the Act was passed again, only to be disallowed. In 1884 it was re-enacted and finally accepted. In the course of this heated struggle the theory of the sovereignty of an autonomous province had been fully refined. In the session of 1882-1883 Mowat made explicit his view that the federal power of disallowance, as exercised in the Ontario Rivers and Streams case, was wholly destructive of the federal system. He maintained: "The principle involved in this disallowance was of the gravest character. It destroyed the self-government they thought they had secured by the British North America Act. It involved the admission that the functions of the Federal Government are to examine each act of that Legislature, and if they disapproved of it, veto it."¹⁵

Issues such as those involved in the Ontario Rivers and Streams Bill naturally spilled over into federal politics. At Ottawa the division usually took place on strict party lines. In 1882, speaking on this matter, Wilfrid Laurier delivered an eloquent plea for a non-partisan approach to the question, directing his appeal especially to his colleagues from Quebec. "The occasion may arise some day when the rights of our Province may be interfered with, and then if we fail to get the measure of justice which we should expect we shall have only ourselves to blame."¹⁶ Mr. Mousseau, a Quebec Conservative, had no sympathy for such a doctrine; he believed that the safety of the rights of French Canada rested with the federal authorities. "Well, I am glad that there are in our constitution," he said, "two great safeguards which will ensure the success of Confederation: the first is that the Dominion Parliament may dismiss the Lieutenant-Governors, and the second that we may disallow Bills passed by the Local Legislatures."¹⁷ A more unabashed defence of the predominance of the central government in the federal system would be difficult to discover. It is not without interest that the two questions which Mousseau doubtless had in mind related as much to party politics as they did to constitutional theory: the Letellier affair and the Ontario Rivers and Streams Bill.

In the same year that the Rivers and Streams Act was finally allowed to stand, a new dispute broke out which once again united questions of constitutional principle with political patronage. In 1884 the Ontario Legislature passed an "Act Respecting Licensing Duties." It was immediately disallowed. This Act was Mowat's reply to the Dominion Licensing Act of the previous year, which in turn had been an effort to override an Ontario statute of 1875. As Morrison summarizes the subsequent discussion, "it was less a constitutional dispute on the subject of disallowance than a political struggle for control of the patronage involved in supervising the liquor trade."¹⁸

The case was further complicated by the fact that in the case of *Hodge v. the Queen* (1883), the Judicial Committee of the Privy Council found the Ontario legislation of 1875 valid. The federal government intended, apparently, to ignore that decision.¹⁹ In the end this rather squalid quarrel was settled by the courts in Ontario's favour. But the moral Mowat drew from the incident was plainly stated during a speech in the Ontario House in 1884. He declared: "I think the veto power is a bad thing, and stands in the way of the prosperity of this Province, and I think every Province should desire it to end. I think experience shows that it was a mistake to give it to the Dominion authorities. I am sure that Confederation would not be weakened if it were taken away, and I desire it should be taken away. I desire it to be taken away because I wish our Province to improve at its greatest possible pace, so that it may come to the greatest possible strength."²⁰ By this date, 1884, Mowat had won a large part of his battle. But he was prepared to carry the war further, especially since by this time he was finding allies in other provinces, notably Quebec, Nova Scotia and Manitoba. Each of these four provinces had specific grievances but all, by 1887, were prepared to attribute their troubles to the federal government's paternalistic attitude toward the provinces.

In Quebec the origin of the provincial rights doctrine was as closely connected to the political struggles of the day as it was in Ontario. Perhaps even more so, for in Quebec each party, while presenting itself as the defender of autonomy, was prepared to forego principle for power when the occasion necessitated it. What was true of parties was true

of individuals. For example, the independent journal *L'Opinion publique* carried two comments on the New Brunswick school question which are very revealing. In 1872 the Macdonald Government's refusal to disallow the New Brunswick School Act gave L. O. David an opportunity to point out that all his direct warnings of 1867 had proven correct. He noted, without mentioning that his main reason for opposing Confederation in 1867 was because he believed the federal government was too powerful: "Will those who mocked us in 1866 because we said, while opposing Confederation, that the right of veto would work only in favour of the English Protestant majority, permit us to ask in passing who was right?"²¹ In the same journal a few months later, J. A. Mousseau put the case for the defence by pointing out that French Canadians would be placing themselves in a dangerous position in calling on the federal government to intervene in New Brunswick. That would surely create an undesirable precedent whereby the federal government might someday intervene in Quebec's affairs.²²

Nor did these arguments exhaust the possibilities when it came to arguing about the nature of the constitution and the rights of the provinces. In 1874 the journalist Oscar Dunn presented a particularly interesting example of the uses to which the compact theory could be put. The context of the discussion was the difficulty that had arisen between the federal Liberal government and the province of British Columbia over the implications of the agreement to build the Canadian Pacific Railway. The agreement had been part of the terms of British Columbia's entry into Confederation and the Mackenzie administration, facing shrinking financial resources, was anxious to modify the terms. Dunn asked the question of whether this could give British Columbia grounds for secession. He wrote:

It is true that the Constitution makes the building of the Canadian Pacific a special condition for British Columbia's entry into Confederation. However, does it truly make the railway a main, essential condition? Rather, it seems to us that the main idea of the federative pact is the national idea, the idea of founding a country, a great country, a new national entity in the world. . . . If we accept this starting point, if we use this formula as the guiding light for our institutions, the federal pact becomes easy to interpret. The formation of a new country is the fact to which all these clauses are subordinated. . . . The organization of a people is the goal; the construction of the Canadian Pacific is the means of reaching this goal. If this is the case, we can perhaps consider this enterprise as a necessary condition, but not as the basis or as the prime condition of the Confederation contract. Consequently the federal legislature, acting as the representative of the provinces who have similar interests in this contract, can modify the details of the construction of the Canadian Pacific without so giving British Columbia the right to secede.²³

Needless to say this view was more easily defended in Quebec than in British Columbia.

Yet even when events closer to home are considered, it is not easy to find completely consistent arguments about the nature of the constitution, of federal powers and of provincial rights. Nothing illustrates this better than the two controversies over the role of the lieutenant-governor. The first arose in 1874 when the Ouimet government was forced to resign following revelations concerning the so-called Tanneries Scandal. When the question arose as to which set of politicians should be called upon to form a new government the Liberals adopted the line that the lieutenant-governor, as a

federal officer, should follow whatever instructions were given him by Ottawa. The federal government at the time was, of course, in the hands of the Mackenzie administration. The case was put in a series of letters published in *L'Événement* under the signature "*Quelques Députés.*" According to Robert Rumilly, the author was the well-known Liberal, François Langelier. "The lieutenant-governor is the officer, the representative of the federal executive in the local government. He is there to govern the province in the name of the federal government. Thus he must govern it in accordance with the views of that government."²⁴ This was Liberal doctrine which Oliver Mowat would certainly not have recognized.

On the Conservative side, however, there was a view expressed which would have been equally unrecognizable to Sir John A. Macdonald. Oscar Dunn, defending the choice of the Conservative Boucherville rather than the Liberal Joly, insisted that the lieutenant-governor, though appointed by Ottawa, drew his authority from the province and was thus independent of federal directives. He concluded his argument by conjuring up the ogre of legislative union, the favourite demon of every provincial rightist: "It was claimed before 1867 that our Confederation was only a legislative union in disguise. We must admit that if today this doctrine of the subjection of the lieutenant-governors to the federal authority were to triumph, nobody could speak any longer about disguises, for legislative union would be a fact."²⁵ The purpose of the remark was, of course, to pour salt on *Rouge* wounds. The irritation was increased, no doubt, by the warnings issued by the Conservative *La Minerve* on the dangers of the doctrine of *Rouge à Ottawa, Rouge à Québec*. "If Mr. Joly and his friends attained power in Quebec, they would be the humble valets of Messrs Mackenzie and Fournier. The exploitation of our province, begun in Ottawa, would be continued in Quebec City. Actually Messrs Fournier, Geoffrion and Laflamme would be governing this province."²⁶

Five years after the Ouimet controversy a much more violent dispute broke out over the role of the lieutenant-governor, a dispute which gives weight to Rumilly's description of Quebec parties in this period as "churches without dogmas, but not without a mystique."²⁷ The affair began with Lieutenant-Governor Letellier's *coup d'état* of 1878. In brief, the difficulty arose out of the decision of Lieutenant-Governor Luc Letellier St. Just, who had been appointed by the Mackenzie Government, to dismiss his Conservative ministry headed by Charles Boucher de Boucherville. He chose to dismiss his ministry rather than accept its advice on the subject of a railway bill passed by the legislature.²⁸ Henri Joly de Lotbinière, the Liberal who was called upon to form a government, defended the position of his government and the action of the Lieutenant-Governor in the following terms: "The Constitution has granted us autonomy and the right to govern ourselves; within the scope of its powers, our government is not inferior to any other. At the moment Quebec is undergoing a crisis which endangers its autonomy. The attempt made to obtain the removal of the Lieutenant-Governor constitutes a danger to our provincial independence. My honourable friends on the left consider the Lieutenant-Governor as a mere servant of the federal government. I hold an opposite view. . . ."²⁹

At Ottawa the Conservatives fulminated against the action of the Quebec Lieutenant-Governor, moving a motion condemning his action. The Mackenzie Liberals, then in

office, had to fight off the resolution, though they were in an embarrassing position as the defenders of the somewhat arbitrary act of Letellier. The solution to this dilemma was naturally to defend provincial rights. Prime Minister Mackenzie argued that "nothing could be more fatal to provincial autonomy which exists under the Confederation act than such an unwise and unwarranted interference. . . ." ³⁰

Elections soon followed both in Quebec and on the federal level. The contest in Quebec resulted in a stalemate. In the Dominion election the Conservative party was returned. When the Quebec electorate failed to remove Joly, and by implication Letellier, Quebec Conservatives turned to their federal allies for assistance. There were few philosophical or even constitutional arguments in the letters which Macdonald received from Quebec supporters in their appeal for the removal of the erring Lieutenant-Governor. Mousseau wrote: "You see Sir, I am dealing only with the political aspect of the *coup d'état* and removal. I leave to you the constitutional aspect. But I cannot help saying what everybody says: 'If Letellier did not do enough to deserve being *kicked out* what must he do?' " ³¹ Chapleau was perhaps a little more subtle: "It would be ill-timed for Quebec to learn now that the lieutenant-governor periodically imposed upon her by the federal government is certain of impunity as long as he does not absolutely and directly disturb the political operations of the federal cabinet and that the province's political autonomy is at the mercy of the federal officer, who can violate it without fear of censure, provided he *then* succeeds in buying a semblance of a majority in the House of Assembly." ³²

Macdonald wavered; the realism of Quebec politics seemed too much even for the old chieftain. He was convinced enough of the power of the federal government to depose Letellier, but he did not want to burst open the hornet's nest of provincial rights. Finally, however, a method of action was agreed upon. In March 1879 Mousseau introduced a motion in the House of Commons calling for the dismissal of Letellier. The debate which followed allowed all the changes to be rung on the themes of provincial autonomy and federal power, but the resolution passed. After a complicated argument with the Governor General, who was opposed to the deposition, Letellier was finally removed from office. ³³ In the end the matter was carried to London, but the Colonial Office upheld the claim of the federal authorities that Ottawa could dismiss a lieutenant-governor "if he wears a black cravat, and they wish him to wear a blue one." ³⁴ Only the slip in the tie colours makes the instance inexact!

The politics of provincial autonomy, in the Letellier case, presents a perfect illustration of the subordination of constitutional theory to political interest. Subtle constitutional arguments were obviously easily devised to support varying political needs. In the years after 1878, the Letellier affair became the King Charles' head of Quebec politics as the debate on autonomy grew more vigorous and more frequent, as provincial finances became increasingly shaky.

The chronic financial difficulties experienced by provincial governments in Quebec were the result of at least three causes. In the first place the province lacked those municipal institutions which in Ontario were able to bear some of the burden of public expenditure. Secondly, in common with other provinces, Quebec was reluctant to exercise its powers over direct taxation and this became a matter of great political importance in the 1880's. Finally, despite its financial position, the Quebec government

was generous, not to say lavish, in the financial support it gave to railway construction. The combination of these circumstances produced a situation in which Quebec repeatedly found it necessary to press the federal government for modifications of its subsidy, or for special financial arrangements. Throughout the 1880's nearly every budget speech presented by the Quebec provincial treasurer was concerned with the inadequacy of the federal subsidy. The question of autonomy was readily linked with this financial question, for a province obviously was not autonomous unless it could pay its own way.³⁵

An example of the problems that the province's financial difficulties could create is seen in the debate on the Address in Reply to the Speech from the Throne in 1881. The speech itself presented a glowing picture of the province's past achievements and future prospects. Joly, the Opposition leader, was unimpressed. He launched an attack beginning, naturally, with reference to the damage that had been done to provincial autonomy in the Letellier affair, and then turning to the financial problem: "We have reached a critical position. We are faced with a terrible situation after fourteen years of provincial autonomy, and it is more than likely that the province will be able to get out of the financial difficulties in which it finds itself and honour its commitments only by the imposition of a direct tax."³⁶ Mercier, who was much quicker than Joly to grasp the "national" implications of every political situation, moved later in the same session for a special committee to consider the financial question and to propose remedies. For Mercier, there were two alternatives: better terms or the imposition of a direct tax. His explanation of why, in his view, Quebec received less satisfactory treatment than the other provinces is important:

After what has gone on for several years in Ottawa we may say that we shall get nothing from the federal government. Every government in power in Ottawa since the early days of Confederation has scarcely concerned itself with our province. Why? The answer is quite simple. At the federal level the majority is English and in Quebec it is French. We are the minority and we must bend to the rule of the strongest. It is inexorable and its consequences are inevitable. We have entered into a disadvantageous union; now that we have done so, we must suffer in silence and try to improve our lot through our own resources, with intelligence and patriotism and without counting on the others. The day when we finally must count upon the federal government as our only resort in solving our financial difficulties will be the day of our national downfall.³⁷

The Government, of course, rejected these suggestions, but repeatedly in the following years the debates ranged over the same subjects.

By 1884 the situation had reached such a serious stage that the provincial government had to use all its resources and power to win a concession from Ottawa. Interestingly, it would appear that its greatest resource in this particular battle was the one that Cartier, in the Confederation debates, had claimed French Canada would always have: its strong federal delegation.

Neither the details of the Quebec debt nor the reasons advanced by the province for a readjustment of its subsidy are important in this context.³⁸ The point of greatest interest is the method used to obtain a financial concession. Nevertheless, it is worth mentioning that the largest part of Quebec's financial problems arose out of railway construction.

After the subsidy readjustment of 1874 the province had been left nearly free of debt; by 1882 it had established a debt of \$15,000,000 on which the annual charges were about \$885,000. Despite Chapleau's decision in 1882 to sell the North Shore Railway in order to reduce the province's indebtedness, financial difficulties remained nearly insurmountable. Since the imposition of a direct tax was politically unthinkable, the government determined to appeal to Ottawa.

The basis for Quebec's claim in 1884 was that since the federal government was providing financial support for railways running west, it should also subsidize railways in Quebec that were part of the national system. There was also a second claim based on the old problem of the pre-Confederation debt. When the demand was first presented, Ottawa, for all practical purposes, turned a deaf ear. Then in 1883 Chapleau and Mousseau changed places, giving a perfect illustration of the close relations between federal and provincial wings of the party. Mousseau became premier; Chapleau took the vacant seat in the federal cabinet. Early in 1884 Mousseau began pressing with renewed vigour Quebec's claims for better terms. The federal members of Parliament were soon presented with a situation tailored for their purposes. It happened that early in the 1884 session the Government brought forward certain resolutions to provide additional financial assistance for the C.P.R. Apparently, though the details are by no means all firmly established, the Quebec members caucused and decided that unless the demands of their province were met, they would not be able to support the C.P.R. resolutions. In the face of this threat the Macdonald Government relented, and the province of Quebec received a special subsidy. Macdonald denied that his decision was made with a shotgun at his head but the coincidence was too obvious to be wholly accidental.³⁹

The Liberals were, of course, exceedingly self-righteous about these blackmailing tactics. Laurier argued that an act of this type was a threat to the autonomy of the provinces, for it placed every province at the mercy of the federal treasury.⁴⁰ While the charge was valid enough, it left unanswered, and probably unanswerable, the question of the point at which provincial expenditures could no longer be considered legitimate. It was true, of course, that a sound principle of government finance was that the government that spends should also collect. But that was perhaps a less realistic principle than it sounded if the general attitude toward direct taxation is remembered.

At any rate Quebec obtained redress of its financial grievances in 1884. But the question of provincial rights which had been associated with the financial question, was far from dead. Indeed by 1884 it was entering a new, more vigorous phase. In the previous year the first important statement in Quebec of the legal basis of provincial autonomy had been advanced by Judge T. J. J. Loranger in his *Letters upon the Interpretation of the Federal Constitution known as the British North America Act (1867)*. Loranger was a Conservative, a fact which the provincial Liberals revelled in pointing out, for his letters provided them with just the documentation they required for their speeches on autonomy.

Loranger's immediate concern was with the signs of centralization which he detected in such legislation as the Licensing Act of 1883. In his examination of the powers of the federal government he presented the theory that the legal basis of Confederation was a compact among the provinces, a theory very similar to that upon which Mowat was acting

in Ontario. Indeed, it is interesting to note that one of the chief purposes of Loranger's letters was to tell his readers that it was time Quebecers stopped letting Ontario do all the work in the fight to defend provincial autonomy.

The Quebec judge's view of the "federal compact" was based on the following historical observation: "The resolutions of the Quebec conference were founded upon the principle of the strict equality of or equal authority between the Dominion and the provinces, without the subordination of the latter to the former, within the limits of their respective powers. In the sphere of their local powers the authority of the provinces was to remain absolute, as the federal power was to be within the limits of the general powers. It was upon these conditions that the provinces, and especially the province of Quebec, consented to enter the Federal Union."⁴¹

Fundamental to his whole case was Loranger's contention that the federal government was the creation of the provinces which existed before Confederation and were certainly not abolished by it. He wrote: "In constituting themselves into a confederation, the provinces did not intend to renounce their autonomy. This autonomy with their rights, powers and prerogatives they expressly reserved for all that concerns their internal government; by forming themselves into a federal association, under political and legislative aspects, they formed a central government, only for interprovincial objects, and, far from having created the provincial powers, it is from the provincial powers that has arisen the federal government to which the provinces have ceded a portion of their rights, property and revenues."⁴²

Loranger deals briefly with the role of the Imperial government in the making of this "federal compact." Here he states in its most simple form the fundamental contention of those who subscribed to the provincialist version of the compact. "The confederation of the British Provinces," he concluded, "was the result of a compact entered into by the Provinces and the Imperial Parliament, which, in enacting the British North America Act, simply ratified it."⁴³

Much could be said about the historical and legal claims that are made in the Loranger version of the compact theory, but in the context of the developing theory of provincial rights in the 1880's, two points seem especially important. In the first place, Loranger was concerned with, and only with, the compact of the provinces. While he makes reference to Quebec's special interest in provincial autonomy, he nowhere suggests that Quebec's position in the compact is any different from that of any other province. Indeed, what he really was advocating was that Quebec should join Ontario in the campaign against the federal government. There is, in short, not even a hint of the idea of a compact of cultures. Secondly, what is important about Loranger is that his views were almost immediately taken up by Mercier and the Liberals in the Quebec Legislature.

On April 7, 1884, Honoré Mercier moved the following set of resolutions:

That an humble address be presented to His Honor the Lieutenant-Governor, praying His Honor to be pleased to transmit the following Resolutions to His Excellency the Governor General:

1. That the *British North America Act, 1867*, was intended, in the opinion of its authors, to have consecrated the autonomy of the Provinces of the Confederation,

and that the said Act has definitely determined the relative powers of the Federal Parliament and of Provincial Legislatures.

2. That the frequent encroachments of the Federal Parliament upon the prerogatives of the Provinces are a permanent menace to the latter; and that this House, justly alarmed by these encroachments, deems it to be its duty to energetically express its determination to defend all provincial rights and to firmly proclaim its autonomy as established by the Federal Act.⁴⁴

The debate which followed upon this resolution, and upon the resolution later proposed as a substitute by the Government, offers a complete catalogue of the autonomist arguments in Quebec. For the most part they differed very little from those that had been heard in Ontario for many years.

Mercier's opening speech was not much more than an explanation of the views put forward by Loranger the previous year. Indeed Loranger's opinions, which were quoted at length, provided almost the entire basis of the Liberal case. And where Mercier was not repeating Loranger, he was drawing his examples from Ontario. He concluded his appeal by remarking, "In view of the energetic vindication of provincial rights on the part of our sister provinces shall we, the representatives of the people of Quebec, remain silent much longer? . . . May God grant that this time party spirit does not choke off the voice of patriotism and duty."⁴⁵

To this rhetoric, Taillon, the Premier, replied that everyone was agreed on the necessity of maintaining the autonomy of the provinces, but there was marked disagreement on the means of doing so. He did not like the accusatory tone of Mercier's motion and promised that later in the session there would be a better opportunity presented to members who wished to state their views on the autonomy question.⁴⁶

Several other points of interest were made in this first debate. Mr. Irving, a Liberal who supported the Mercier motion, nevertheless presented the most effective refutation of the Loranger-Mercier view of the constitution. He maintained:

I do not agree with the honourable member from St-Hyacinthe [Mr. Mercier] in all the opinions he has expressed. I even reject absolutely some of his claims. He has brought forth a theory of the origin of provincial powers with which I cannot concur. We must not make this type of mistake regarding this part of the question. The one and only basis of our constitution is the Act of 1867. The federal Parliament is the supreme authority in our organization. All the powers belong to the federal government. This is the starting point. For reasons of sound administration and political necessity, this supreme authority is in part delegated to special bodies created in order to exercise these delegated powers. The only exceptions are the rights especially granted to the provinces. In my opinion, this leads to the need to defend both the rights of the federal government and the powers of the provinces.⁴⁷

Unfortunately very little of the debate was devoted to a serious consideration of these two conflicting viewpoints. For the most part the Liberals, who dominated the debate, were satisfied to restate the Loranger thesis, though the occasional speaker introduced the "national" question. M. Lemieux supported the resolution on the ground that it was necessary for "the defence of our provincial prerogatives and, at the same time, of our national prerogatives."⁴⁸ M. Turcotte connected the attacks on provincial autonomy with

"these repeated outrages on our religion and our national status."⁴⁹ On the Conservative side these remarks were answered in a variety of ways. M. Nantel was particularly resourceful. He pointed out that while Mercier's resolution claimed that provincial autonomy was consecrated in the constitution, Mercier had opposed Confederation in 1867 claiming exactly the opposite. He then went on with enthusiastic partisanship to indicate that while the Liberals now posed as the defenders of provincial autonomy, it was those same Liberals who at Ottawa had called upon the federal government to infringe upon New Brunswick's autonomy in the school issue.⁵⁰ And so the debate continued until the resolution was defeated.

Nevertheless it is clear that the autonomy question was one of political significance in Quebec in 1884. This is underlined by the fact that within two weeks after the defeat of the Mercier resolution, a second debate took place. The occasion was a resolution on the same subject, more mildly worded than the Mercier motion, and moved by two Government supporters. The resolutions declared:

Resolved; That an humble Address be presented to His Honor the Lieutenant-Governor praying His Honor to be pleased to transmit to His Excellency the Governor General the following Resolutions:

1. That the success of the Confederation and the prosperity of the Provinces of *Canada* depend in a great measure upon the care which the Parliament of *Canada* and the Provincial Legislatures take to confine themselves within the limits of their respective powers.

2. That it is the duty of the Legislature of this Province to resist energetically any attempt tending to attack the rights of the Province of *Quebec* or its autonomy.

3. That this House while desirous of maintaining the harmony which should exist between the Parliament of *Canada* and the Legislature of this Province, will be prepared to give a cordial and energetic support to the Government of the Province of *Quebec* whenever it is necessary to assert the rights of the Province as guaranteed by the Confederation Act.⁵¹

This resolution differed from the earlier one in that it made no assertions about past infringements upon the autonomy of the province, but simply called for a confession of faith in the idea of autonomy.

The debate which followed the introduction of this second resolution was, in most respects, a repeat performance. Its main difference was that since it was a government-approved resolution, it gave the Conservatives an opportunity to express their view more freely. M. Duhamel, the sponsor of the resolutions, set the tone of the discussion with his remark that "the autonomy of the province of Quebec is essential to its existence as a nation." But he indicated that Quebec did not have to depend only upon the provincial Legislature for the defence of its rights. "There is sufficient patriotism among the Quebec members of the federal Parliament and among the members of the Quebec provincial government," to defend the province's autonomy.⁵² This, of course, had been the view of the Quebec Conservatives at Confederation, and it was still apparently an acceptable argument in 1884.

A backbencher, M. St. Hilaire, made the closest identification of the interests of the province and the interests of the "nation," arguing, in effect, that "*Québec n'est pas une*

province comme les autres." He summed up his position as follows: "As a result of the differences which exist in our language, our laws and our religion, our province's exceptional position in Confederation requires that we enjoy this absolute and independent authority in order that we may maintain intact and enduring within a heterogenous population our treasured French Canadian nationality. This is the reason for the establishment of Confederation; if autonomy for the province of Quebec had not been necessary, we would have had a legislative union since 1867."⁵³

The position of the Government in this debate was simple. It would support the resolution because it recognized that provincial autonomy was guaranteed by the British North America Act. Moreover, Government speakers insisted that the Opposition had failed to prove any infringements upon the province's rights had taken place, and that, in any case, the place to prove the existence of infringements was not in the Legislature but in the courts.⁵⁴

The two debates in 1884 provide the basis for some general remarks on the subject of the idea of provincial rights as it had developed in Quebec in the years since Confederation. In the first place it is worth noting again that the doctrine of provincial rights was a weapon which the Liberal opposition was attempting to use to undermine the Conservative ascendancy in local politics. Secondly, the very general nature of the debate is significant. Unlike the controversy in Ontario, and also in Nova Scotia and Manitoba, where specific issues were in question, the debate in Quebec related to an abstract proposition. When the proposition was made more concrete, as it was the following year, then the debate assumed an air of greater reality. Thirdly, it seems apparent that while provincial autonomy was something no politician in Quebec could afford to oppose outright, it was nevertheless quite possible to defend the *status quo*, for the resolutions passed in 1884 were really nothing more than that. Finally, it is perhaps most significant to note that while the debate contains many references to provincial autonomy as the first line of defence for the French Canadian nationality, there was never any suggestion that a conflict might exist between provincial autonomy and the rights of the minorities outside Quebec. Nor was there any suggestion that Confederation had been a cultural compact guaranteeing the rights of French Canadians and Roman Catholics in all parts of the country. It is in the light of these general remarks that the debate over the fate of Louis Riel becomes more significant and its outcome more understandable.

As is well known, the Northwest Rebellion, the trial, and particularly the hanging of Louis Riel caused an explosion of sentiment in Quebec. The importance of these events is so great that they are usually taken as a turning point in the history of the two political parties in Canada, and in Confederation itself. A reading of the debates on the Riel question in the Legislature of Quebec suggests two important observations on the subject of provincial autonomy. First, the very fact that the Riel question was debated in a provincial legislature illustrates the way that provincial autonomists were willing to "infringe" upon questions that were essentially federal. Moreover, it is important to note that the moral which French Canadian politicians seem to draw from the Riel affair is not that provincial autonomy is a poor defence of French Canada's position in Confederation, but rather that Quebec is the only place where French Canadian rights are secure. The tendency already apparent in the 1884 debates to identify French Canada with Quebec is

now exploited to the full. Mercier, who had kept this theme muted in his 1884 speeches, was now prepared to advance it to the head of his list of arguments for autonomy. His theme was now that Riel's death represented the death of French Canada's influence in Confederation outside Quebec; and that, therefore, French Canadians had a duty to cease their fratricidal quarrels and unite in a crusade to preserve the nation in Quebec from encroaching federal power. "We felt," he declared, "that the murder of Riel was a declaration of war against French Canadian influence in Confederation, an abandonment of right and justice. This is a national question because Riel was hanged in Regina because he was one of us."⁵⁵ Speaking of the promises of Confederation in the Legislature, he declared, "We have been deceived; we have been betrayed!"⁵⁶

For the purposes of this study the politics of Mercier's *Parti national*, his alliance of Liberals and dissident Conservatives, is unimportant. But nothing is more revealing of the interpretation which he now placed on provincial autonomy than the electoral program he issued at the end of June 1886, in preparation for the coming election. Its essentials were twofold. The first theme was an attack on the unholy alliance which existed between the provincial Conservatives at Quebec City and the federal Conservatives at Ottawa which "is preparing the downfall of our provincial independence." The second point of emphasis was that party division in Quebec made the defence of the province's rights impossible and that, therefore, patriotism required a national party. "Division, born of party spirit, has done great damage; union, born of patriotism, will repair this damage." While the program called for a variety of reforms, it was nevertheless the autonomist issue that was the key to the "national" program.⁵⁷

While the nationalist aspects of Mercier's attitude were clearly underlined in 1885-1886, it would be wrong to place all the emphasis on this aspect of his doctrine of provincial autonomy. It is important to keep in mind that Mercier never suggested French Canadians alone were the defenders of autonomy; they would find allies both in Quebec and in the English-speaking provinces.⁵⁸

Indeed to see Mercier simply as a nationalist would be to mistake a politician for an ideologue. His nationalism was doubtless sincerely felt; doubtless also he recognized it as a potent political weapon. But in this battle for power and provincial rights, he was prepared to give assistance to his federal Liberal friends, and also to call upon the leaders of other provinces to form a united front against federal centralization. Certainly this latter intention lay behind the announcement in the 1887 Speech from the Throne that the Quebec government had taken the initiative in calling a conference of provincial premiers. And even here, Mercier's pragmatism may be discerned. Despite all the earlier discussion of the abstract question of provincial autonomy, there is not one suggestion in the Speech from the Throne in 1887 of constitutional reform.⁵⁹ The whole basis of Quebec's grievance is represented in a return to an earlier theme: the need for better financial terms. Mercier thus appears much more a man of his times than as a prophet of some new constitutional order.

Before turning to the 1887 Interprovincial Conference, some notice must be taken of the developing provincial rights sentiment in Nova Scotia and Manitoba.

In at least one important respect the sources of grievance against the federal government and against Confederation itself in the two outlying provinces of Nova Scotia

and Manitoba were more serious than those of the two powerful central provinces. The grievances of these provinces grew out of a belief that certain aspects of national economic policies worked to their detriment. In Nova Scotia's case it was the tariff; Manitoba objected to federal railway policy. Since these two small provinces were much weaker in their numerical representation at Ottawa than the populous central provinces, their capacity to bring political pressure on the federal authorities was much more limited. That fact perhaps helps explain the extreme lengths to which they were prepared to go in attempting to win redress for their grievances. It is characteristic of the provincial rights struggle that, while both provinces had complaints which were basically economic, these complaints were translated into constitutional terms.

The case of Nova Scotia is well known. The roots of the problem lay partly in the fact that even at Confederation the economy of Nova Scotia was moving into a time of crisis with the passing of the great age of the sailing ship. This initial difficulty was greatly intensified by the depression of the 1880's. In the face of apparently desperate economic conditions, Nova Scotians turned their wrath once more against the nation which they could always say had been foisted upon them. In 1886 the Liberal Government of W. S. Fielding, in preparation for a coming election, presented the Legislature of the province with a lengthy resolution calling for a repeal of the union, and inviting the other Maritime Provinces to join it in a Maritime union. The heart of the resolution, which passed by a vote of 24 to 8 read as follows:

That after nineteen years under the Union, successive governments have found that the objections which were urged against the terms of Union at the first apply with still greater force now than in the first year of the Union, and the feeling of discontent with regard to the financial arrangements is now believed by this House to be more general and more deeply fixed than ever before;

That Nova Scotia, previous to the Union, had the lowest tariff, and was, notwithstanding, in the best financial condition of any of the Provinces entering the Union;

That the commercial as well as the financial condition of Nova Scotia is in an unsatisfactory and depressed condition;

That it seems evident that the terms of the "British North America Act," combined with the high tariff and fiscal laws of the Dominion, are largely the cause of this unsatisfactory state of the finances and trade of Nova Scotia;

That there is at present no prospect that while the Province remains upon the existing terms of Union a member of the Canadian federation, any satisfactory improvement in the foregoing respects is at all probable.⁶⁰

With this bill of particulars as ammunition, Fielding faced his electors and won 35 of 38 seats. Nevertheless his reluctance to act immediately on the resolutions was widely interpreted as a willingness to accept much less than secession. Indeed more than one Nova Scotia newspaper argued that not secession, but rather reciprocity with the United States was what was really on Fielding's mind. "Repeal," the *Nova Scotian* argued, "means reciprocity, and reciprocity means two dollars per barrel more for mackerel, one dollar per barrel more for herring, fifty cents per quintel more for cod fish. . . ."⁶¹

Whether the repeal cry was merely an election slogan or a lever to force the federal government to alter its tariff policy, or more likely both, one thing is clear: there was no

rush to act upon it. Fielding explained his delay on the grounds that a federal election was in progress and that a new government at Ottawa might put an entirely new colour on the matter. But that election saw the electors of Nova Scotia, who had earlier been hot on the path of repeal, return 13 Conservatives and only eight Liberals. The voice of Nova Scotia was obviously less than clear. What saved Fielding from taking any further definite steps was Mercier's invitation to participate in a conference of the provinces late in 1887.

Like Nova Scotia, Manitoba found by the 1880's that federal developmental policies were not tailored to the province's needs. Specifically Manitoba objected to federal railway policy. The charter granted by the federal government to the syndicate which agreed to construct the transcontinental railway contained a clause giving the company an effective monopoly in western Canada. The purpose of the clause was to guarantee that no railway lines would be built running from points in Canada, west of the Great Lakes, to the United States. From one viewpoint the policy was obviously sensible: traffic was likely to be so small in the West that the C.P.R. would need to have the right to carry it all if even a small profit was to be made. On the other hand, Manitoba farmers, anxious for the cheapest modes of transportation, felt no strong reasons for making the C.P.R. economically viable. It is not clear whether the monopoly clause was to prohibit all railway building in the west, or merely those lines which would siphon off traffic to the United States. However, when in 1882 the federal government disallowed certain railway charters passed by the Manitoba Legislature, it became obvious that it would be impossible for Manitoba to have an independent railway policy. From this point onward, throughout the 1880's there was an almost constant conflict between Winnipeg and Ottawa over the federal power of disallowance.⁶²

In the first years of the struggle the Norquay Government, nominally a non-partisan administration, attempted to ride out the storm of protest over disallowance by working to obtain better financial terms for the province. However, the provincial rights issue involved in the disallowance question soon became the chief political issue in the province. Indeed provincial rights was the principle on which the first party division in the history of Manitoba took place. Thomas Greenway, an Ontario Liberal who had moved to Manitoba, quickly took up the provincial rights issue and by the end of the 1880's had succeeded first in driving a wedge between Norquay and the federal Conservatives, and then in defeating him. Though Norquay carried on a valiant battle against the monopoly clause, it was Greenway who in the end benefited from its repeal. It was also Greenway who then went on to use the provincial rights cry to defend his province's decision to abolish separate schools in 1890.

Ottawa's view, in the dispute over railway disallowance, was that the federal government had the right to use its veto power in order to ensure that national policies were in no way hampered by provincial policies. Sir Charles Tupper put the case bluntly, and in a way that was certain to annoy Manitobans, when he stated in 1883: "I say that the interests of this country demand that the Canadian Pacific Railway should be made a success, and the man who does any act by which that success is imperilled takes a course which is hostile to the interests of Canada. But somebody may ask what about the interests of Manitoba? Are the interests of Manitoba and the Northwest to be sacrificed to the policy of Canada? I say, if it is necessary—yes."⁶³ The result of this policy, not

unnaturally, was the development of a sectional discontent based on the suspicion that the east acted upon the assumption "that they had bought us and that in some respects we were their colony."⁶⁴ By 1886 Norquay found that with the Liberals cutting support from under him with the provincial rights cry, it was politically necessary for him to break his ties with the federal Conservative party and take up an autonomist stance himself. It was a dangerous course which he chose. It was to bring his eventual downfall, for it meant that he made enemies of his former friends at Ottawa, without winning the support of the Liberals in Manitoba. But before his defeat, he gave clear evidence of his revolt against the federal government and its policies by accepting Mercier's invitation to attend the Interprovincial Conference. He was the only non-Liberal premier there.

Thus, by the end of the 1880's the majority of the provinces were in full revolt against the paternalism of the federal government. Each had its own reason, though in every case, except that of Ontario, these were directly connected with financial problems. Each of the discontented provinces, with the exception of Manitoba, expressed its dissatisfaction by electing the Liberal party to office; and in their battle they allied themselves with the federal Liberal party, which made provincial rights one of its leading policy positions. The climax of the revolt came with the meeting of the Interprovincial Conference in the autumn of 1887.

Two provinces, British Columbia and Prince Edward Island, rejected the invitation to attend the Interprovincial Conference. The attitude of these two provinces is explained partly by the Conservative complexion of the ruling politicians, but more by the fact that both had recently received special treatment from the central government. What is particularly interesting here is that, since each of these provinces had entered Confederation late, their terms of union had been somewhat unusual. They were, in effect, provinces "*pas comme les autres*."

British Columbia's entry into the union of 1871 was arranged through the granting of special terms including an especially generous federal subsidy rate, and the promise that a transcontinental railway would be constructed. On this latter point, clause 11 of the Act of Union guaranteed that the railway would be started within two years and be completed in ten. While the federal government insisted that the ten-year guarantee really meant "as soon as possible," and that the whole agreement was based on the understanding that taxes would not have to be increased, British Columbians were inclined to place a more fundamentalist interpretation on the terms of the agreement.⁶⁵

When the Mackenzie Government took office in 1873, the first part of the agreement had already been broken, for railway construction had not yet been started. One of the primary objectives of the Liberal Government, whose members had previously been highly critical of the terms of union, was to have clause 11 altered. It was British Columbia's intention that the terms should be fulfilled to the last letter. Mackenzie's first move was to dispatch a representative to Victoria to negotiate with the Walkem Government. The mission was fruitless, though it confirmed Walkem in his belief that the Liberals were untrustworthy and intent upon breaking the agreement with British Columbia. In an attempt to check the federal government, Premier Walkem appealed to the Imperial authorities. British Columbia's appeal was received with some sympathy in London: Lord Carnarvon, the Colonial Secretary, offered to mediate the dispute.

Mackenzie was extremely irritated at the Imperial government's failure to support completely the federal government's position. Nevertheless after the Governor General, Lord Dufferin, pressed Mackenzie to accept the Colonial Secretary's offer, the federal government agreed.

The details of the Carnarvon terms are unimportant. What is important is that they represented a modification of the original term of union. But even that proved unacceptable to a powerful wing of the Liberal party. By 1875 Mackenzie was finding it more necessary to come to terms with Edward Blake than with British Columbia. Blake returned to the cabinet as Minister of Justice, but he insisted that Carnarvon's terms were unacceptable because of the expenditures involved, and also because he resented the interference of the Imperial authorities. The result was a long, complicated struggle with the Governor General, and a failure to satisfy British Columbia, where secessionist sentiment began to reach serious proportions.⁶⁶

The return of the Conservatives to office in the general election of 1878 prepared the way for the appeasement of British Columbia. Macdonald was, of course, clearly committed to the construction of the C.P.R. with all due haste. The Conservative Prime Minister was also willing to adopt other methods of quieting British Columbia's discontents. In 1880 the province was given an outright grant of \$250,000 for the construction of the dock at Esquimalt. Four years later, after the provincial government had bungled the construction of the dock, Ottawa assumed responsibility for its operation and also granted a subsidy for the construction of a railway from Esquimalt to Nanaimo. Since the C.P.R. was brought to completion in these years, British Columbia became, temporarily, a satisfied province.⁶⁷ "The spoilt child of Confederation"⁶⁸ thus had no reason to attend Mercier's conference.

Prince Edward Island's position was similar. In 1873, after six years of intermittent negotiations, political crises and mounting financial difficulties, Prince Edward Island succumbed to the temptations of Canada. Like British Columbia, the late entrance allowed Prince Edward Island to bargain for and to receive special terms. The financial arrangements were generous, designed to permit the province to solve its chief difficulties: absentee landownership and debt-burdened railways.⁶⁹

Again like British Columbia, Prince Edward Island's peculiar geographical position presented a special problem and not one that could be solved by a railway. Therefore the Dominion agreed to establish "efficient steam service for the conveyance of mails and passengers, to be established and maintained between the Island and the mainland of the Dominion Winter and Summer, thus placing the Island in continuous communication with the Intercolonial Railway and the railway system of the Dominion."⁷⁰ This unusual clause naturally became the source of much subsequent disagreement for, literally interpreted, the phrase "continuous communication" could cause the federal government serious embarrassment. By the 1880's Prince Edward Island politicians had discovered that strict interpretation was a useful way of obtaining further special treatment from Ottawa.

In 1881 the provincial Legislature protested that the screw steamer which maintained service between the Island and the mainland for all but about two months of the year was inadequate. The Sullivan Government demanded not only better "continuous com-

munication,” but also compensation for past inadequacies. At first Ottawa chose to ignore the demand. A direct appeal to London from Charlottetown brought no results. Within a few years, however, Ottawa made a series of minor financial concessions to the province. But even these failed to shore up the province’s sinking finances. In 1887 Sullivan appealed again to Ottawa, this time emphasizing his political friendship with the federal Conservatives. The plea met with sympathy; \$20,000 was added to Prince Edward Island’s annual subsidy. Two years later Sullivan went to the bench.⁷¹ The chair provided for Prince Edward Island at the Interprovincial Conference remained empty.

Thus, though special “compacts” had been devised to bring British Columbia and Prince Edward Island into Confederation, the federal government subsequently managed to undermine the contractual principle by timely concessions to provincial demands. It is, then, especially interesting, indeed ironical, that the two provinces that had made specific agreements before entering the federal union cast a cold eye on the proceedings of the Interprovincial Conference called in 1887 to re-examine the terms of the “federal compact.”

Nothing better indicates the assumption that underlay the thinking of the premiers who met at Quebec City on October 20, 1887, than a passage from the welcoming address by the representative of the province of Quebec. The address noted: "The kind manner in which you have accepted the invitation tendered you shows conclusively that you appreciate all the importance of this Interprovincial Conference, *the first which has been held since 1864*, which was attended by distinguished statesmen from Upper and Lower Canada, New Brunswick and Nova Scotia and *whose resolutions served, in some respects, as the basis of the Union Act of 1867.*"¹ In short, it was to be a new conference on the terms of union, in direct succession to the Charlottetown and Quebec conferences, called to reassess the decision of the earlier gathering. But, plainly, it was a little difficult to extend this façade too far. In the first place only five of the seven provinces had agreed to attend. British Columbia and Prince Edward Island, ruled by Conservative administrations, had refused to attend. All those attending, except Norquay, were Liberals, and even Norquay could hardly be classed an orthodox Conservative by 1887. The federal government, which had been invited to the conference, chose to ignore it. Therefore from the outset the conference had large difficulties in representing itself as a "second Quebec Conference," and after it was over Macdonald had little difficulty in branding it as a parley of Liberal chieftains.²

Despite these limitations, the conference was an extremely important event in the evolution of provincial rights theory and practice. For the first time, it brought together all the leaders of provincial discontent. But since each province had a peculiar grievance, the problem which the conference faced was the construction of a platform upon which they could stand united. Even a quick glance at the 22 resolutions accepted by the five premiers indicates the method by which this unity was achieved. The resolutions fall nicely into two general categories: claims for better financial terms and wider revenue resources for all the provinces, and demands for constitutional changes aimed at limiting the powers of the federal government. There can be little doubt that most of the demands for constitutional reform were designed to meet the views of Mowat and Ontario, the one province that was satisfied with its financial position. Equally it cannot be doubted that

most of the suggestions in the field of finances came from Quebec. Of course Manitoba, too, was interested in both constitutional reform and better terms, while the two Maritime Provinces were chiefly concerned about the subsidy question and, probably, trade policy.

The resolutions which the conference accepted after a week of discussions reflected clearly the various provincial discontents which had emerged over the two previous decades. In addition to demanding an upward revision of federal subsidies, the resolutions called for the abolition of the federal power of disallowance; a better, but unspecified, method of determining the constitutionality of federal and provincial legislation; Senate reform giving the provinces the right to appoint half the senators and reducing the term of office to four years; abolition of the federal power to place local works under federal jurisdiction; provincial control of the franchise; and the recognition that all public lands belonged to the provinces. In keeping with the constitutional theory of the conferring premiers, these resolutions were to be presented to the provincial legislatures for approval.³

Three special resolutions of the conference deserve particular attention. First, Nova Scotia, doubtless still worried about its embarrassing repeal resolution, asked that the minutes record that Nova Scotia did not want any misunderstanding of its position: the acts and resolutions of the conference were not to be considered as an obstacle to Nova Scotia's right, if necessary, to find a method of achieving "the separation of the Province from the Dominion."⁴ Manitoba too, received special recognition. The conference declared its "sympathy with the people and Legislature of Manitoba in their struggle for the constitutional rights of their Province."⁵ This resolution, of course, referred to Manitoba's demand to be permitted to charter local railway lines. Finally, despite its professions to the effect that it had no intention of expressing hostility to the federal government or of interfering in federal affairs, the conference called for the establishment of unrestricted reciprocity between Canada and the United States.⁶ There was no mention of the fact that trade and commerce fell within the federal jurisdiction, or that unrestricted reciprocity was becoming a major plank in the platform of the federal Liberal party.

In terms of immediate results the conference was a failure. Macdonald refused to have the federal government represented, and he later rejected a suggestion that he should meet the premiers to receive their resolutions officially.⁷ For the immediate future Macdonald's tactics proved successful. Indeed, in pressing the unrestricted reciprocity resolution issue, the provincial premiers provided Macdonald with a powerful weapon with which to strike the Liberal party in the election of 1891: the charge of annexationism.

Nevertheless the conference cannot be written off as a total failure. It had brought together a group of Liberal leaders, three of whom later became federal cabinet ministers, and the ground was thus prepared for the last assault in 1896 upon the Conservatives' federal ascendancy. Moreover, the conference provided a practical expression of the provincial rights theory of the constitution. This theory was presented in its full-blown form by the *Toronto Globe*, the organ of the Ontario Liberal party, in its comment on debate on the resolutions of the conference in the Ontario Legislature:

The Confederation has its origin in a bargain between certain Provinces, in which bargain the Provinces agree to unite for certain purposes and to separate or continue separated for others. The Provinces party to the bargain were at the time of the compact independent nations in the sense that they enjoyed self-government subject to the Imperial veto upon their legislation, to the Imperial appointment of their Governor-General, and to the Queen's command of the Forces. The Dominion was the creation of these Provinces; or, in other words, was created by the British Parliament at the request of the Provinces. The Dominion being non-existent at the time the bargain was made, was plainly not a party to the bargain. It cannot, then, be a party to a revision of the bargain. The power to revise the created body must lie in the hands of those who created that body. The overwhelming majority of those who created the Dominion being in favour of the revision of the Confederation compact, the British Parliament is not entitled to look any further or to consult the wishes of the Dominion Government in the matter. The resolutions of the Quebec Conference, after they have been approved by the Legislatures representing the Provinces party to the Conference, will therefore furnish the British Parliament exactly the reasons and the authority for a revision of the Confederation pact as was furnished to and acted upon by the same body twenty-two years ago and resulted in the British North America Act being passed.⁸

It would be difficult to find a more complete expression of the provincial rights viewpoint than this one stated by the anointed organ of Ontario Liberalism. It is, however, worth pointing out that despite the consistency with which the editor pursued the implications of the compact theory, his very consistency landed him in almost immediate difficulties. Nothing could change the fact that the 1887 conference was not a conference of all the provinces. The editor was therefore forced to give up the unanimous consent implications of the compact theory in favour of an "overwhelming majority" theory. But that must raise the question: when is a compact a compact and when is it majority rule? That such a question can even be raised once more indicates the ambiguity of the compact theory and the undefined nature of the principles of provincial rights.

While it is easy enough to point out the vagueness of the compact theory and its twin, provincial rights, it is impossible to deny that after 1887 it apparently became an increasingly acceptable doctrine. There are several ways in which this conclusion may be illustrated. One may note the agreement by the Macdonald Government in 1888 to revoke the monopoly clause in the C.P.R. charter, and to revise its position on the question of disallowance. As Jackson argues, "the policy of disallowing solely on the grounds of public policy was abandoned in 1888."⁹ This may be a slight over-simplification, but as La Forest's study shows, the period of widespread disallowance for what were essentially policy rather than strict constitutional purposes was certainly over.¹⁰ While it is dangerous to generalize from a specific issue, especially when the issue is as unusual as the Jesuit Estates Act, it is nevertheless clear from the position taken by both the Government and the Opposition in that debate that the federal power of disallowance was likely to be used only with extreme caution in future. "No Government can be formed in Canada," Macdonald said during that debate in 1889, "either by myself, or by the Hon. Member who moves this resolution [Mr. O'Brien] or by my Hon. friend who sits opposite [Mr. Laurier] having in view the disallowance of such a measure."¹¹ This, of course, does not suggest that the power of disallowance was never to be used again, or that it had ceased to exist. It does suggest, however, that the Macdonald who looked

upon the provinces as municipal corporations in 1868 had come to realize that the political power of the provinces was much greater than he had either intended or expected.

The growing recognition of the power of the provinces can be further illustrated in a number of other matters. While it will be necessary to return to the Manitoba School Question in the later discussion of the compact of cultures, several observations are relevant here. From the beginning of that controversy in 1890 to its settlement in 1897, there was, to say the least, a marked reluctance on the part of federal politicians, Conservative and Liberal, to take any action which might be represented as an interference with provincial rights. It is true that the Conservative Government passed a remedial order, which was defied by Manitoba, and then attempted to pass remedial legislation. But the reluctance with which this action was finally taken, and the party's defeat at the polls in 1896 may be taken, in part at least, as an indication of the strength of provincial rights sentiment. It must, however, be emphasized that the Manitoba School Question was much more than a simple question of provincial versus federal jurisdiction. It was complicated by cultural and religious factors which were probably much more important—though it is typical that much of the argument was couched in terms of constitutional rights and wrongs.¹² The Liberal position throughout the debate was never clearly or simply a defence of provincial rights, but the party's victory in 1896 brought to power the party which had made the rights of the provinces one of its chief policies. Laurier himself was certainly never wholly committed to the view that provincial rights took precedence over minority rights, but in practice this was what his victory in 1896 and the subsequent Laurier-Greenway settlement represented.¹³

After 1896 provincial rights and the compact theory attained a position close to motherhood in the scale of Canadian political values. It would be difficult to find a prominent politician who was not willing to pay at least lip-service to the principle of provincial rights and its theoretical underpinning, the compact theory. A few of the more interesting examples may be worth citing.

There is, for example, the view of Sir Charles Tupper, Macdonald's alter ego for so many years and the sponsor of the remedial bill in 1896. In 1899 when Laurier attempted to reform the Senate by having reform resolutions passed through the provincial legislatures, Tupper appealed to the compact theory to block the move. Writing to the leader of the Conservative party in the Ontario Legislature he noted: "The Imperial Parliament will never be a party to the breaking up of a compact upon which Confederation was formed unless the House of Commons and Senate both agree to the resolution and that resolution has been before the people and the Legislatures subsequently elected have endorsed that proposal."¹⁴ The remark causes one to wonder just a little about Sir Charles's memory of the sanction which the people of Nova Scotia gave to the original "compact." At any rate the plebiscitary implications of Tupper's concept of compact add yet another complication to the apparently endless variations of the theory.

On the views of the Imperial Government, however, Tupper was apparently very close to the mark. When Laurier informed the Colonial Secretary of the Canadian Government's desire to modify the composition of the Senate, Joseph Chamberlain replied

in words that could have been written by Oliver Mowat or Judge Loranger. "Any change in such a Constitution as that of Canada," he remarked, "is of course a matter of gravest importance, involving great [*sic*] responsibility on the Imperial Parliament—the greater in that the present constitution is the result of a pact or treaty between the self-governing Colonies which now constitute the different provinces of the Dominion, the terms of the compact being placed under the guarantee of an Imperial Act."¹⁵ To Chamberlain's reputation as an Imperial "centralizer," it might be well to add a footnote on his views as a Canadian "decentralizer." That the same views triumphed in the Judicial Committee of the Privy Council is a conclusion that hardly needs documentation at this late date.¹⁶

The viewpoints of the two political leaders in the first decade of the new century differed very little on the subject of provincial rights. It could hardly be expected that Laurier would hold any other position, given his past and given the composition of his cabinet. His first cabinet contained three premiers who had attended the Interprovincial Conference: Fielding of Nova Scotia, Blair of New Brunswick and Mowat, whom Laurier described as "... the most correct interpreter of our constitution that Canada has produced."¹⁷ In a debate in 1907 on the subject of the representation of the provinces, Laurier expressed his view of the constitution in these terms: "Confederation is a compact, made originally by four provinces, but adhered to by all the nine provinces who have entered it, and I submit to the judgement of this House and to the best consideration of its Members, that this compact should not be lightly altered. It should be altered only for adequate cause and after the provinces themselves have had an opportunity to pass judgement on the same."¹⁸

Near the end of his life Laurier wrote an extensive account of his view of the federal system in response to an article criticizing Confederation for its centralizing characteristics. Laurier made two points which are of particular interest. First he indicated that he disagreed completely with those who held that in a federal system the residual power should rest with the provinces. He wrote:

I believe our system is superior because it gives the residual powers to the federal government. The aim of the federative system is to make a solid whole out of diverse elements while still permitting each element to conserve its own existence; that is to say, union without fusion. The new state cannot help but be more solid and stronger if the final authority is entrusted to the power uniting all these elements. This idea is even more evident if the aim of the federation is the creation of a new nation from diverse and previously separate elements.

But he admitted that in his estimation the Confederation scheme had erred in the direction of centralization in one important respect—disallowance. His words are again worthy of quotation:

On the other hand, provincial authority must be sovereign in the areas granted to the provinces by the constitution; this principle cannot be too strongly emphasized. When dealing with this topic, you could have dwelt more upon the danger of disallowance. That is the weak point of the Canadian Confederation. I can hardly understand how such a sharp, alert person as Cartier could have found a guarantee for the minorities in disallowance. There are only two kinds of minorities in the Canadian Confederation—a minority of race and a minority of religion. Giving the central authority where the racial and religious majorities are found, the right

to infringe arbitrarily in provincial fields is to destroy and make a mockery of the legislative independence of the provinces. All the disturbances which at different times have shaken the young Confederation have one root cause—the constant attempts of the central government to encroach upon provincial prerogatives. The Liberals have unbendingly resisted these attempts and have been the champions of provincial autonomy from the outset.¹⁹

In practice Laurier was not quite so consistent as his theory suggests. He contravened his principles most obviously, it may be argued, in the case of the legislation establishing the new provinces of Saskatchewan and Alberta. Here two points may be made. In the first place, in the matter of the federal government's retention of control over public lands in the new provinces, the Liberals followed the pattern of paternalism set down by the Conservatives in the Manitoba Act of 1870. In 1905 the Conservatives, now in Opposition, attacked the Government for this policy.²⁰

Secondly, it was argued in 1905 that by including in the Autonomy Bills a section relating to education in the new provinces, the Liberals were once again contravening established principles. But Laurier maintained that in this case the constitution made it quite clear that provincial rights did not take precedence over minority rights. The Conservatives, who in 1896 had upheld Section 93, now attacked Laurier's interpretation of that clause.²¹

In the matter of the position of the lieutenant-governor, the Laurier Government found itself in an embarrassing and somewhat contradictory position when it became necessary to remove Lieutenant-Governor McInnes in 1900. Though McInnes' supporters in British Columbia shouted loudly about provincial rights, there was hardly any alternative to the dismissal. The case differed from that of Letellier: McInnes and his main supporters were at least nominally Liberals, and in the election preceding the dismissal, the people of the province returned a Legislature markedly unfavourable to this group. Professor Saywell writes of this case: "That Laurier found the principle of dismissal distasteful is undoubted, and only when McInnes left him no alternative did he exercise the power lawfully possessed by the federal government. In 1878 and 1879 Laurier had argued that dismissal was virtually a delegated power, held in trust by the federal government and exercised only upon request, and in 1900 he exercised the power only when he became convinced that the province of British Columbia overwhelmingly demanded it."²² The fact remains, however, that distasteful or not, in office Laurier found it necessary to exercise a power that was difficult to justify within the strict interpretation of provincial rights.

Nor, of course, did the Liberals in office allow the federal power of disallowance to fall into total disuse. Its use was limited, however, its main application being to attempts by British Columbia to restrict Oriental immigration. The legislation was repeatedly disallowed on the argument that it interfered with Dominion and Imperial interests.²³ When disallowance of a railway charter granted in British Columbia was threatened, the Attorney General of that province responded with a statement on the constitution which might very well be taken as a summary of the Liberal view, since the legislation was not disallowed. He wrote:

In the early days of Confederation the Dominion executive appear to have been imbued with the notion that the relation between the Dominion and the provinces was analogous to that existing between parent and child, and have acted accordingly. That view of the status of the provinces has been overthrown by a series of Imperial Privy Council decisions which have clearly established that the provinces acting within the scope of their powers are almost sovereign states, and that they are entitled to exercise all the prerogatives of the Crown not conferred upon the Dominion.²⁴

Robert Borden, the Conservative leader during the first two decades of the twentieth century, was not prepared to defend all the doctrines of past Conservative administrations. If anything, he was more vocal in his claim to the title of defender of the provinces than Laurier. In 1907, in a debate already referred to, he joined Laurier in affirming the compact theory. He said: "I agree with what has been said by the right hon. gentleman regarding the undesirability of lightly amending the terms of our constitution and am inclined to agree with him on the necessity of some consultation with the provinces, although of course all the provinces are represented here. But inasmuch as this is a federal compact which we are asked to vary, it is only right that each province should be consulted and its decision given, in the right of its separate entity."²⁵ And, as has already been noted, in the debates on the Autonomy Bills, Borden insisted that Laurier and the Liberals were undermining provincial autonomy in both the lands question and the educational question. In 1907 in his "Halifax Platform," Borden again returned to the charge, contending that the constitution was being twisted out of shape by the Liberals. His platform promised "the unimpaired maintenance of all powers of self-government which have been conferred upon the Provinces of Canada under the Constitution."²⁶ It may be added that when Borden attained office in 1911, he did not rush to fulfil his promise to restore control of public lands to the western provinces.

Yet the fact is that during the years after 1896 the relations between Ottawa and the provinces entered an extremely amicable phase. This was doubtless due partly to the fact that the major battles had been won before 1896, and also to the return of prosperity, which eased tempers and raised the level of public revenues. On this point the meeting of the Interprovincial Conference of 1902 is instructive. The conference won the approval of all the provinces, though Ontario and British Columbia were unable to attend. Its objects and discussions were devoted almost exclusively to the subsidy question. Indeed its resolutions were largely a repetition of the financial claims set forth in 1887. But perhaps its greatest significance is that the demands for constitutional reform which had been so large a part of the 1887 resolutions were completely ignored.²⁷

While the Laurier Government did not respond to the premiers' demands immediately, by 1905 the stage was set for a new round of better terms based on the 1902 resolutions. It has been suggested that the strongest impetus to this new subsidy arrangement was the internal political revolution that took place in Quebec in 1905 when Lomer Gouin replaced S.-N. Parent as Premier. Perhaps in order to stabilize Gouin's position, Laurier agreed that new financial terms should be worked out. This was achieved at a Dominion-Provincial Conference in 1906. Everyone except Premier McBride was satisfied by the 1906 offerings, but the British Columbia leader insisted that "geographic

consideration" necessitated even better "better terms" for his province. The other provinces, however, turned down McBride's demand for a special commission to investigate British Columbia's claims. In the end the province carried its protest to Britain where it succeeded in convincing the Imperial Government that the "finality clause" should be removed from the amendment to the constitution in which the new financial terms were embodied.²⁸

The outbreak of war in 1914 created a unique situation in the history of Canadian federalism. The implementation of the War Measures Act gave the federal government such sweeping powers that the Rowell-Sirois Commission felt justified in remarking that "for a time, Canada exhibited the essential features of a unitary state."²⁹ Yet, as the Rowell-Sirois Report also noted, this condition was due as much to the common will of the people of the country to see the war successfully completed, as to any especially draconian legislation.

War necessities encouraged, even forced, the federal government to expand its activities. Government finance, the threat of inflation and military requirements all combined to make it necessary for the federal government to assume a far more positive role in the economic activities of the nation than at any time in the past. Most notable, perhaps, was the decision taken after much hesitation in 1917 to move into the field of direct taxation through the enactment of a personal income tax law. These measures all found their constitutional justification in the character of the emergency, an argument put forward during the war, and accepted in large measure by the courts.³⁰

Of course, the most controversial measure enacted by the federal parliament during the war was not one to which constitutional objections could be raised. That was the Military Service Act of 1917. The bitterness of the debate which centered on the conscription policy was not constitutional, but political and cultural in origin. The passage of this Act, the formation of the Union Government, and the violently fought general election of December 1917 produced a deep resentment in Quebec. This feeling was given opportunity for expression in the debate on the peculiar motion presented to the Quebec Legislature by J.-N. Francoeur in January 1918. It read: "That this House is of opinion that the Province of Quebec would be disposed to accept the breaking of the Confederation Pact of 1867 if, in the other provinces, it is believed that she is an obstacle to the union, progress and development of Canada."³¹ It is difficult to know how to characterize this resolution, since it fell short of calling for the repeal of the union, leaving the decision to the other provinces. The debate which followed had a curiously unreal tone for, since no one called for secession, there was really no question at issue. Each speaker noted the various problems created by the limitation of minority rights in the other provinces, and the abusive political campaign through which the country had just passed, but none expressed a preference for an alternative system of government. The resolutions were withdrawn without a vote, following a paean of praise for Confederation sung by the Premier of the province, Sir Lomer Gouin.³²

The importance of the war period for the present discussion should not be overemphasized. It is true that, in a sense, it reversed the trend of previous years and restored the federal government to a position of undoubted ascendancy. But it was a temporary development, due entirely to the emergency. In the long run the war had the

effect, from a political viewpoint, of "calamitously damaging the federal initiative in internal affairs."³³ The immediate post-war years thus became, in the phrase of the Tremblay Commission, a period marked by "the preponderance of provincial activity."³⁴

The conclusions that may be drawn about the post-1896 period are thus fairly obvious. In these years both the compact theory and provincial rights were widely accepted. Every leading politician seems to have plighted his faith in these verities. Yet that fact alone is perhaps cause for wondering if the concepts really had any serious meaning or if they had merely become the clichés of political discussion bereft of any definition. Since they were no longer ideas that aroused passionate debate, every politician apparently found it both wise and safe to express his support of them.³⁵

The same conclusion cannot be drawn about the doctrine of cultural compact. It was the provincial rights controversy which sparked the most heated discussion in the first 25 years of Confederation; the second 25 witnessed a debate over minority rights. In the first period the concept of compact served its provincialists well. While the compact was adapted for use in the struggle for minority rights, it proved much less effective.

By the 1890's the combination of the strenuous battle waged by the provinces, the decisions of the Judicial Committee of the Privy Council, and, not least of all, the declining strength of the federal Conservative party ensured at least a partial victory for the proponents of provincial rights. But if the provincial rights struggle was nearing at least a temporary conclusion, an equally serious conflict was just reaching a new stage of intensity. That was the conflict over minority school and language rights.

There had been high hope at the time of Confederation that the old racial and religious quarrels which had racked the union would be ended forever, but the hope proved too optimistic. In 1865, Hector Langevin had predicted that "in Parliament there will be no question of race, nationality, religion or locality, as this Legislature will only be charged with the settlement of the great general questions which will interest alike the whole Confederacy and not one locality only."¹ Nothing could better illustrate the foolishness of prediction. In the 1870's there was legislation in two provinces, New Brunswick and Prince Edward Island, which Roman Catholics felt destroyed their guaranteed minority rights. By the 1890's the scene of the conflict shifted to the developing West, and it was fought there with a bitterness which shook the very foundations of Confederation. The growing fear that Francophone and Roman Catholic minority rights were in danger of being wiped out by provincial legislatures dominated by Anglophone Protestant majorities stimulated the development of a new theory of the Confederation compact. This was the theory of the compact of cultures.

The theory of the compact of cultures is less easily defined in detail than the theory of the compact of the provinces. In general it is based on the contention that Canada was established through an agreement of two founding peoples, the Francophones and the Anglophones. By the compact that was ratified in 1867, these two peoples agreed that Canada should be a country inhabited by two nationalities and that the new nation, Canada, should recognize its bicultural nature. But to move beyond these generalities to the specific application of them is to walk a path cluttered with conflicting claims. The fact seems to be that the compact of cultures, like the compact of provinces, was a

weapon developed in the heat of battle, rather than a well-defined doctrine which had been carefully worked out in 1867.

There are several obvious points that can be made about the attitude of the Fathers of Confederation to this question of cultural duality. In the first place, there can be no doubt that the Fathers, French and English, were intent upon the establishment of a "new nationality." Speaker after speaker in the Confederation debates emphasized this point. But it seems equally true that none of the Fathers intended or expected that the new nation would be culturally and linguistically homogeneous. It was to be a political nation in which cultural differences were accepted as *une chose donnée*. The French Canadian speakers in particular were concerned to establish the point that Confederation was a guarantee of the survival of the French Canadian culture. "The idea of unity of races," Cartier said, "was utopian—it was impossible."²

If cultural duality was recognized, then, what guarantees were given to protect the minority? Again, speaker after speaker emphasized that the proposed federal system gave Quebec a local government that would exercise control over those subjects that in 1867 seemed necessary to her survival. Moreover, the British North America Act provided that French should be recognized as an official language in Parliament and the courts, and that Quebec should be an officially bilingual province. Finally, it was agreed that in certain circumstances the federal government would have the power to redress the grievances complained of by religious minorities in educational matters. But here it should be underlined that this power related to religious, not national minorities.³ These then in outline were the statements of intent and legal actions of the Fathers of Confederation when they were faced with the facts of Canadian duality. Probably no one stated the Fathers' assumptions more clearly than Cartier, who declared: "Now, when we were united together, if union were attained, we would form a political nationality with which neither the national origin, nor the religion of any individual, would interfere. . . . In our Federation we should have Catholic and Protestant, English, French, Irish and Scotch, and each by his efforts and his success would increase the prosperity and glory of the new Confederacy."⁴

What is especially striking about such a statement is the lack of anything that might be called "racial" thinking in the statements of the Fathers. That Cartier spoke of Irish and Scottish, as well as English and French, suggests how little weight can be given to the idea of "national" blocks in the new Confederation. As Donald Creighton has written, the Fathers of Confederation "were as far away from the dogmas of the eighteenth-century Enlightenment as they were from twentieth-century obsessions with race, and with racial and cultural separatism."⁵

There were, of course, some speakers in the Confederation debates who found the government's statements, or the relevant sections of the Quebec Resolutions, unsatisfactory guarantees of the rights of the minority. A.-A. Dorion, for example, felt that the worst failing of the proposals was that they left the minority open to majority pressures. He noted: "I know that majorities are naturally aggressive and how the possession of power engenders despotism, and I can understand how a majority, animated this moment by the best feelings, might in six or nine months be willing to abuse its

power and trample on the rights of the minority, while acting in good faith, and on what is considered to be its right.”⁶

Another speaker, this time a Conservative who apparently had some doubts about the plan, spoke specifically about a contract. François Evanturel remarked: “I am in favour of the principle of Confederation, and am one of those who maintain that by means of that principle the rights and liberties of each of the contracting parties may be preserved; but on the other hand, I am of opinion . . . that it may be so applied as to endanger and even destroy, or nearly so, the rights and privileges of a state which is party to this Confederation. Everything, therefore, depends upon the conditions of the contract.”⁷ Yet even here one must be wary of reading too much into such a statement, for the speaker never made clear in speaking of the “parties” to the contract whether he meant the provinces or the two particular nationalities. And what is equally important, he did not continue his speech by suggesting that there either was, or should have been, a specific contract of any kind.

It would therefore seem that the most that can be said about Confederation is that, while it was clearly intended to meet the needs of both French and English Canadians, there was no detailed contract stating the conditions of the agreement. Nor was there any attempt to sketch out guidelines that might be followed when the country expanded into new areas. It may be worth adding that a reading of the Confederation debates gives the very strong impression that all the supporters of the scheme were far more concerned about the survival of British North America against outside pressures than about internal threats to the survival of either French or English Canadians. Likewise, those who opposed Confederation seemed, on the whole, to discount the external threat to survival and to emphasize internal dangers. But neither group, it can definitely be said, suggested anything like what in the next 50 years became the theory of cultural compact.

It may, of course, be suggested that the true intentions of the Fathers were expressed in the years immediately following Confederation in the legislation establishing Manitoba, and the Act of 1875 which made French an official language in the Northwest Territories. In one sense, at least, that contention would be valid. Macdonald and Cartier, who were responsible for the Manitoba Act, and the Liberals who sponsored the 1875 legislation all recognized facts when they saw them. Or to put it another way, they recognized that there was a large Francophone community in the newly acquired territories and that therefore it was both just and necessary to give the group’s language and schools recognition.⁸ But to take the next step, and to argue from these actions that the Fathers of Confederation worked from a theory that Canada was bilingual and bicultural from coast to coast, would be to step beyond the evidence into the realm of speculation. It would ignore also the cases of Prince Edward Island and British Columbia, which entered Confederation without the “bicultural” question being raised. What seems to be true is that the Fathers of Confederation were tolerant realists rather than theorists; where the minority existed in large enough numbers to make its presence felt, it was given recognition.

It was not until 1890 that serious discussion of the relations of French and English in the new western settlements was reopened. Just as the depression seemed to heighten the struggle between Ottawa and the provinces, so also it appeared to contribute to the

renewed friction between French and English. Moreover, the late 1880's witnessed two events that were tailor-made to revive the old cultural conflict. The first was the hanging of Louis Riel, and the second the passage of the Jesuit Estates Act. Riel was probably first and foremost a westerner, but the fact that he was partly French Canadian and a Roman Catholic ensured that the sympathies of many Quebeckers would be with him. These same facts, and the earlier execution of the Ontario Orangeman, Thomas Scott, likewise ensured that many English Canadians would be hostile to him. When he was hanged, most French Canadians appear to have believed that an injustice was done; many believed that the hanging was a direct attack on French Canada itself. When in 1888, Honoré Mercier, who as a defender of Riel already had a dubious reputation in English Canada, sponsored the Jesuit Estates Act, strong religious and cultural prejudices were stimulated in English Canada.

Writing of this period Professor Saywell has perceptively remarked:

The growth of a strident and belligerent nationalism, which elsewhere found expression in the so-called new imperialism in the last decades of Victoria's century, was not absent in Canada, although it took a devious form which served to obscure its connection with the racist implications of social Darwinism. Two threads are reasonably observable in English Canada: American Protestant nativism and imperial Pan Anglo-Saxonism, the former finding its outlet in attacks on the menace of Catholicism and the latter echoing Lord Durham's cry that the nation could not survive half French and half English. The two schools of thought were closely connected, indeed almost inseparable, and to the extent that they were the foundation of much English-Canadian nationalism that nationalism was divisive rather than unifying.⁹

In these same years French Canada also experienced a heightening of national consciousness, represented in politics by Mercier's *Parti national*, in ecclesiastical affairs and politics by the ultramontane Castors, and in journalism by the separatist views of Jules-Paul Tardivel. Which was cause and which effect is a question so complicated that not even a suggestion can be hazarded here.

It was in this atmosphere that the language and religious questions in western Canada became issues of debate. That the debate ended in the virtual abolition of minority language and religious rights in Manitoba and language rights in the Northwest Territories, is at least partly explained by the fact that in the waves of new immigrants moving into the Territories, very few spoke French. From the time Manitoba was founded, appeals were made, especially by the Roman Catholic Church, for settlers to move West.¹⁰ In 1887 Archbishop Taché of St. Boniface issued an appeal which revealed the nature of the problem:

I have, many times in the past, either in conjunction with the Canadian Episcopate or in my own role as Bishop of Saint-Boniface, tried to encourage our friends in the mother province to send us a strong wave of French Canadian immigration. I now must admit that I have discovered with deep sadness the secret cause of the almost complete lack of success of my efforts. Having a foothold in the main areas of Manitoba, we were equal in number and situation to the other groups there. Although we have succeeded in maintaining our situation, today the others have numerically surpassed us. They have understood the importance of the location and have taken such advantage of the opportunities that our beautiful prairies offer to

the settler's plough that their numbers have grown to the point that our numerical proportion has been reduced. I shall say also that not only have England and Scotland supplied Manitoba with more settlers than has Quebec, but even Russia has supplied as many.¹¹

Taché's appeal went largely unheard as French Canadians chose rather to follow Curé Labelle into the north or, more often, to follow the lure of quick success in the mill towns of the neighbouring United States. The stage was thus set for the fulfilment of Taché's worst fears.

By 1890 many of the same people who had been caught up in the Riel and Jesuit Estates Act agitations were drawn into the campaign to abolish the official use of the French language wherever it was not specifically guaranteed by the British North America Act. In January 1890, D'Alton McCarthy introduced the following resolution into the House of Commons: "Whereas it is expedient in the interest of the national unity of the Dominion that there should be community of language among the people of Canada, and that the enactment in 'The North-West Territories Act' allowing the use of the French language should be expunged therefrom."¹² McCarthy's speech on the resolution was largely devoted to supporting the first part of his proposition—that national unity required a single language. Not unnaturally French Canadians looked upon the motion as being directed as much against Quebec as against the small Francophone settlements of the West.

Like most parliamentary debates, this one produced much consideration of specific legal points and very little of a philosophical nature. A good deal was said on all sides about "French aggression" and "English bigotry," but nothing was said about the cultural compact of Confederation. The nearest anyone came to that idea was the Prime Minister, Sir John A. Macdonald, who uttered the frequently quoted sentences:

I have no accord with the desire expressed in some quarters that by any mode whatever there should be an attempt made to oppress the one language or to render it inferior to the other; I believe that would be impossible if it were tried, and it would be foolish and wicked if it were possible. The statement that has been made so often that this is a conquered country is *à propos de rien*. Whether it was conquered or ceded, we have a constitution now under which all British subjects are in a position of absolute equality, having equal rights of every kind—of language, of religion, of property and of person. There is no paramount race in this country, there is no conquered race in this country; we are all British subjects, and those who are not English are none the less British subjects on that account.¹³

Macdonald's statement is a fine one; but when examined closely its meaning is less than clear. Did he mean that all British subjects, whatever their nationality, had an equal right to the official recognition of their language in the political and educational institutions of the country? Though Macdonald's statement was later interpreted to mean that French and English Canadians, as groups, had absolutely equal rights throughout the country, it is difficult to believe that this was Macdonald's understanding, or even that anyone else in 1890 believed that it was. This conclusion seems to follow the fact that in the debate on the McCarthy resolution Macdonald was not supporting absolute rejection but rather an amendment which left the question to the determination of the local legislature. That step was, for all practical purposes, an acceptance of abolition. It was also a further

acceptance of the idea, implicit in the New Brunswick and Prince Edward Island school cases, that minority rights were provincial rather than national responsibilities.

In the debate on the McCarthy motion only one speaker seems to have held the view that 1867 represented an agreement which foresaw the eventual extension of French Canadian language and Roman Catholic religious rights across the entire country. This appears to be the implication in the remark of M. Amyot: "If we diminish the strength of the French language in any part of Confederation, we reduce the strength of the language as a whole. That is unjust, because when we entered Confederation it was promised that we would receive full justice and never lose any of our rights."¹⁴

In most respects the 1890 debate on the French language in the Northwest is more revealing than the subsequent years of debate over the Manitoba School Question. The Manitoba debate related so closely to a specific federal power that few speakers ventured into the realm of general principles. Throughout the debate the deteriorating Government held the view that it was its responsibility to protect the rights of the Roman Catholic minority in Manitoba. The filibustering Opposition, on the other hand, admitted that the power existed but argued that it could not be enforced, and that conciliation was preferable to coercion. As a sidelight on the provincial rights aspect of the question, it may be noted the Liberal majority in the Ontario Legislature in January 1896 passed a resolution which, in effect, upheld the position of Laurier and his friends in Ottawa. Not even so strict a provincialist as Oliver Mowat, who moved the resolution, could resist the temptation to reach out beyond the province when party advantage was to be gained.¹⁵

A great deal was said in the debate over the Manitoba School Question about provincial rights and federal duties, perhaps even more than about minority rights, which was the essential issue. But there was no great debate about the cultural compact of Confederation. The same M. Amyot who in 1890 had come close to espousing this doctrine, opposed disallowance of the Manitoba School Act in 1893 with the following argument: "To disallow a law is to go against the principle of autonomy. We are all in favour of autonomy. Some years ago we members from the Province of Quebec were glad that the principle of autonomy was applied in the question of the Jesuits' estates. We were glad to be protected by that rampart. . . . Shall we for a single exception risk the whole system of autonomy?"¹⁶ M. Amyot's position in these two instances is indicative of the difficulty faced by those who wanted to defend both the rights of minorities and the autonomy of the provinces.

The fact is that a reading of the almost endless debate on the Manitoba School Question reveals little on the subject of the "cultural compact" of Confederation. It may be argued that this was so because it was simply taken for granted. Charles Hibbert Tupper, for example, told his father that the passage of remedial legislation was necessary to prove "good faith—keeping the bargain of the Federation pact."¹⁷ But he failed to spell out the nature of the bargain. On the other hand it was possible for those who opposed the spread of the French language beyond Quebec to appeal to the compact to support their views. Speaking to his electors in 1896 D'Alton McCarthy is reported to have said, "I am still of the opinion, which I have hitherto with your approval contended for, that, except where permitted by the terms of the Confederation Compact, there should be but one official language in Canada. To me it seems as unstatesmanlike as it is

unpatriotic for the sake of a temporary peace with our French Canadian fellow subjects to foster a spirit of French nationalism which can never be permitted to attain fruition so long as Canada remains a part of the British Empire."¹⁸

The fact seems to be that it was only after the Manitoba School Question, and more particularly after the great movement of new settlers into the Northwest following the turn of the century, that much thought was given by anyone to the problem of the rights of French Canadians in a nation that was now being peopled from coast to coast. No one gave this question more consideration than Henri Bourassa. Indeed he would appear to be the father of the doctrine of the cultural compact of Confederation.

It is much simpler to state the Bourassa thesis on the nature of Confederation than to provide a consistently argued case to support it. It was a theory which evolved, and its applications only became apparent as the conflict over religious and linguistic rights outside Quebec was manifested in specific issues. It is, however, perhaps best to begin with a statement of the doctrine in its complete form, before examining its development. In 1916, when the struggle against Regulation XVII of the Ontario Department of Education was at its height, Bourassa wrote:

In the minds of the Fathers of Confederation, the federal pact and the constitution which defines the terms of its approval were to end racial and religious conflict and to assure all, Catholics and Protestants, French and English, complete equality of rights throughout the whole of the Canadian Confederation. The Manitoba Act, passed by the Imperial Parliament in 1870, and the Northwest Territories Act, passed by the Ottawa government in 1875, bear the fleeting imprint of the same intelligent and generous thought. Those were our last victories.¹⁹

What was the evidence that Bourassa adduced to support this proposition?

The answer to that question is both simple and complex. The simple answer is that he arrived at that conclusion in the heat of battle when every intellectual weapon was necessary to assist the cause of the beleaguered minority. It should never be forgotten that Henri Bourassa was primarily a journalist and a politician involved in the great issues of his time, rather than a secluded constitutional scholar. The earliest statement of Bourassa's view of the compact appears to have been in 1902. At that point he spoke of a dual compact, the one provincial, the second national. He wrote: "The imperial statute which the current government has given us is only the force of a double contract. One was concluded between the French and the English of the old province of Canada, while the aim of the other was to bring together the scattered colonies of British North America. We are thus party to two contracts—one national and one political. We must keep a careful eye on the integrity of these treaties."²⁰ At this stage Bourassa made no effort to explain the nature of the "national" contract, though it is interesting to note that he spoke of the contract as one between the two Canadas and to which apparently the other provinces were not party. The second contract, which, in the years following the Boer War, was Bourassa's main preoccupation, was the contract that ensured Canada was not required to assume any new Imperial responsibilities. Indeed, in these years it was the relations of Canada with the outside world that concerned Bourassa most consistently. He appears to have believed that the partnership which had been contracted "on equal and well defined bases" was one that guaranteed English Canadians would not impose Imperial obligation on French Canadians.²¹

Bourassa's association with the *Ligue nationaliste canadienne* illustrates his early concern with the internal question of the relations of French and English Canadians. The *Ligue's* program was devoted to three main subjects: the autonomy of Canada within the Empire, the intellectual and material development of the Canadian nation, and, thirdly, "Absolute maintenance of the rights guaranteed to the provinces by the Constitution of 1867 within the intention of its authors. Respect for the principle of the duality of languages and the right of the minorities to separate schools."²² The following year, 1904, in the *Ligue's* newly founded newspaper, *Le Nationaliste*, Bourassa set down the general principles of his view of Canada—views which never seriously changed.²³

For us the mother country is Canada as a whole; that is to say, a federation of distinct races and autonomous provinces. The nation we wish to see develop is the Canadian nation, composed of French and English Canadians; that is to say, of two elements separated by language and religion and the legal arrangements necessary for the conservation of their respective traditions, but united by brotherhood and a common attachment to a common motherland.²⁴

Until 1905 Bourassa's concept of the cultural compact remained largely a theory. But in 1905 he faced the necessity of drawing out its implications when the bills were brought forward establishing the new provinces of Saskatchewan and Alberta. At this point, it is possible to return to the debate and place Bourassa alongside others who were participating in it.

In the debate on the Autonomy Bills in 1905 the Laurier Government found itself under attack from two directions. In the first place, since the legislation contained the clauses designed to guarantee the continuation of minority schools as they existed in the Territories, it was criticized by those who believed the new provinces should be left absolutely free in educational matters. On the other side the attack came from those few members who believed the bills did not go far enough in providing guarantees for the minority in the new provinces. Laurier's position with respect to both these attacks was, in effect, to defend what he considered to be the status quo though he did present a theory of Confederation which went part way in meeting Bourassa's claims. He stated his position as follows, referring to the intention of Section 93 of the British North America Act:

But I shall be told that this exception applies to Ontario and Quebec alone, and not to the other provinces. Sir, that is true. Amongst the four provinces then united, Ontario and Quebec alone had a system of separate schools. But I reminded the House a moment ago, that it was not the intention of the fathers of Confederation, it was not the intention of Sir John Macdonald or Mr. Brown, to limit Confederation to the narrow bounds it had in 1867.... Is it reasonable to suppose, if the Confederation act recognised that other provinces were to come into Confederation similarly situated to Ontario and Quebec, that the same privileges should not be given to the minority as were given to the minority in Ontario and Quebec? ²⁵

He concluded by saying that if separate schools existed in a territory at the time of application for provincial status, then those schools should be brought under the protection of Section 93. It is important to note here that Laurier was not advancing a

general theory of Confederation; rather he was interpreting the legal intention of the constitution in a specific instance. Moreover, he was speaking specifically of separate schools as religious institutions. At a later stage in the debate, Laurier expressed his opposition to an amendment which sought to make French an official language in the new provinces, by pointing out that while the constitution contained specific guarantees of religious rights, it was silent on the subject of language.²⁶ Finally, to the claim of the Opposition that the educational clauses infringed upon provincial rights, Laurier insisted that the constitution plainly provided that minority rights should take precedence over provincial rights in the matter of separate schools.²⁷

It fell to Bourassa to defend the view that the intentions of the Fathers of Confederation went much further than the Government or the Opposition recognized. He argued that Section 93 was intended to guarantee that "a man, in whatever province of Canada he may choose his abode, can rest assured that justice and equality will reign and that no matter what the majority may attempt they cannot persecute the minority." The contract, he continued, which guaranteed this situation, was not a written one. It was rather an unwritten, but well-understood, contract based on the entire history of the country beginning with the decision of the British, after the Conquest, to guarantee the rights and privileges of the French Canadian Roman Catholics. When his speech was interrupted by a question about the place of the Maritime Provinces in this contract, Bourassa responded saying that "the great difference is that they were already self-governing provinces when they entered the Confederation compact in 1867. They had a school system as well as a judicial system under which they had lived for years. But the Northwest Territories were purchased by the people of Canada. The money which has been spent for the settlement of that country has been the money of Catholics as well as of Protestants, the money of French Canadians as well as of English Canadians."²⁸ At this point, the argument had obviously moved from constitutional to historical, legal, and even economic grounds. It should be added that in reading Bourassa it is never entirely clear whether he was speaking about the kind of country he wished to see develop, or whether he meant the country he believed the Fathers of Confederation had intended to establish. It was, perhaps, a case of the wish being father of the thought.

The next occasion on which the question of minority rights arose was in 1912 when the Keewatin Territory was transferred to Manitoba. While this action raised again the whole question of the rights of minority schools, no speaker in the debate subscribed to the theory of cultural compact, though many defended the rights of the minority on more narrow legal grounds. Outside the House of Commons, however, Bourassa once more advanced his view of the constitution with his usual vigour and resourcefulness.²⁹

The most important debate on the status of the French language, outside the province of Quebec, as opposed to that of separate schools, took place during the controversy over Regulation XVII. As in most debates of this kind, all sides presented statements and counter-statements, finding some evidence to support their respective cases.

As usual, it is possible to discover real and apparent contradictions in the positions of most of the disputants. The debate raged with increasing fury from 1912 to 1916. It first became a matter of open political controversy in January of 1915 when two Anglophone Protestant members of the Quebec Legislature moved the following resolution:

That this House, without derogating from the principles of provincial autonomy, and without any intention of interfering with any of the provinces of Confederation, in any manner whatsoever, views with regret the divisions which seem to exist among the people of the Province of Ontario over the bilingual school question, and believes it is in the interest of the Dominion at large that all such questions should be considered on broad, generous and patriotic lines, always remembering that one of the cardinal principles of British liberty throughout the Empire is regard for the rights and privileges of minorities.³⁰

In supporting this resolution, which, regardless of protestations to the contrary, did touch the affairs of another province's jurisdiction, Premier Gouin appealed to an argument which Bourassa had been advancing for years. "Who will pretend," he asked rhetorically, "that it was not in the minds of the framers of the constitution to give equal rights in matters of language, of religion, of property and of person to both races as avowed by Sir John Macdonald in 1890; and who will pretend that the British North America Act was not inspired by the same sentiments?"³¹

Gouin was nevertheless very uneasy about the action of his Legislature in passing this resolution. He wrote to Premier Hearst several weeks after the debate, explaining that no official copy of the resolution had been transmitted to the government of Ontario because he did not wish to "dictate to a sister province." Hearst replied coldly that "it appears to me a somewhat dangerous practice for one Legislature to attempt to criticize the Act of another, naturally inviting similar criticisms in return."³² A year later the matter was further complicated when the Quebec Legislature passed an act which gave Quebec school commissions the right to contribute directly to the support of Franco-Ontarian schools.³³ It would be impossible to justify this action on the basis of any strict theory of provincial autonomy.

By this time, the matter had spilled over into federal politics. In March 1915 a resolution was presented to the Senate by Senator L.-O. David which stated:

This House, without derogating from the principal [*sic*] of provincial autonomy, deems it proper and within the limits of its powers and jurisdiction and in pursuance of the object for which it was established, to regret the divisions which seem to exist among the people of the province of Ontario in connection with the bilingual school question and believes that it is in the interest of the Dominion at large that all such questions should be considered on fair and patriotic lines and settled in such a way as to preserve peace and harmony between the different national and religious sections of the country, in accordance with the views of the Fathers of Confederation and with the spirit of our Constitution.³⁴

An inconclusive debate raged around the proposition that the passage of any such resolution would be a grave injustice to Ontario, and an infringement upon provincial autonomy.

In the meantime pressure was being brought to bear on Prime Minister Borden to take some action which would at least quiet the situation. Borden refused on the ground that the matter at issue was essentially a provincial question.³⁵ Laurier found it much less easy, or desirable, to resist the pressure in his own party to take a public stand on the Ontario bilingual school question. He therefore gave his support to a plan to raise the question, in the form of a resolution, in the House of Commons.

On May 9, 1916, Ernest Lapointe moved the following resolution:

It has long been the settled policy of Great Britain whenever a country passed under the sovereignty of the Crown by treaty or otherwise, to respect the religion, usages and language of the inhabitants who thus become British subjects.

That his Majesty's subjects of French origin in the Province of Ontario complain that by recent legislation they have been to a large extent deprived of the privilege which they and their fathers have always enjoyed since Canada passed under the sovereignty of the British Crown, of having their children taught in French.

That this House, especially at this time of universal sacrifice and anxiety, when all energies should be concentrated on the winning of the war, while fully recognizing the principle of provincial rights and the necessity of every child being given a thorough English education, respectfully suggest to the Legislative Assembly the wisdom of making it clear that the privilege of the children of French parentage of being taught in their mother tongue be not interfered with.³⁶

It is a little curious that this resolution dealt only with Ontario, since a similar situation existed in less critical form in the province of Manitoba. It was charged that the federal Liberals were prepared to condemn a provincial Conservative administration in Ontario, but ignore the sins of a provincial Liberal administration in Manitoba. Doubtless there was something in this charge, though it may also be noted that some members of the Franco-Manitoban community had appealed to Laurier to let them settle their own difficulties quietly in Manitoba.³⁷

What is interesting about the debate on the Lapointe Resolution, apart from its relatively mild character, is that the appeal of the supporters of the resolution was almost exclusively to the good will of English Canadians. While much was said about the history of Canada, and about its constitution, no speaker made any attempt to advance a general theory of Confederation as a bicultural compact. Again as in earlier debates on similar questions, the members' attention was focussed on the specific situation under discussion rather than on any general theory of the relations of French and English Canadians in Confederation. Of course, the resolution itself presented a general theory, but it was hardly a theory of cultural compact; it was rather a statement of "British fair play."

The very limited claims of the supporters of the resolution may be illustrated best by the speech of Paul-Émile Lamarche, a close follower of Henri Bourassa, who in 1916 sat as an Independent in Parliament. He put his case briefly and untheoretically:

Let me in a few words state our position in regard to the English and French languages. We consider a French education as a duty, and the acquisition of the English language as a necessity. We will not budge from our duty; we will remain Frenchmen. But we realize the necessity of a knowledge of English in all walks of life. The lack of it would be a serious handicap in the race for material success in life, not only in this country but on the whole continent of America.³⁸

Outside the House the exposition of a more general theory was left to Bourassa. On this occasion, as so often before, he plighted his faith in a thoroughly bicultural Canada. To support his view that such a vision had moved the Fathers of Confederation, he quoted, as he had done previously, the remarks made by Macdonald in the debate on the French language question in the Territories in 1890.³⁹

The Lapointe Resolution of course failed to pass. Its opponents adopted, for the most part, the argument that the subject should not even have been raised in the federal Parliament. As that paragon of provincial-rights virtue, the *Toronto Globe*, put it: "Canada is a Confederation. The Federal Parliament seems to forget that fact occasionally, when it gives advice to the provinces."⁴⁰

It is difficult to assess, in any final way, the importance of the theory of cultural compact. It can certainly be stated that however much it may have reflected the spirit of Confederation, it was nevertheless a theory advanced by only a minority even in the Francophone community. It would be difficult to find a single English Canadian who supported the idea in the years before 1921—unless Macdonald's candidacy is accepted. Bourassa himself was aware of the difficulties of the theory, for he recognized that it was based more on an historical and moral claim than on any constitutional document which could be made to stand up in court. In 1913 he wrote:

The magistrate or the lawyer who believes he knows the constitution of Canada because he has a detailed knowledge of the text of *The British North America Act* and because he has minutely examined each of its sections is an ass if he does not know the origin of the public power modelled on the British constitution and the peculiar circumstances preceding and surrounding the signing of the federal pact. In other words, he must have a deep knowledge of British and Canadian history.⁴¹

But, as Bourassa knew, interpretations of history differ, and law courts demand specific legal texts rather than discourses on the spirit of the constitution or the intentions of the Fathers of Confederation. In 1914 Bourassa told a correspondent:

... according to the opinion of every jurist, these guarantees only cover the rights of the Catholic and Protestant minorities to separate schools. They do not refer at all to the teaching of language. On this matter we can only appeal to an indirect guarantee, which I feel is formal, if we appeal to the spirit of the constitution. However, as you know, jurists always go by the letter rather than the spirit of the law.⁴²

Bourassa's cultural compact was, in the last analysis, a moral compact. But in the politics of a constitution, claims based on moral principles are often less successful than those based on specific legal guarantees, or on power. The idea of provincial compact was successful to the extent that it won the support of a number of provinces. The failure of the idea of cultural compact was that it had no similar appeal.

Perhaps it was for this reason that the practical politicians who in 1918 debated a resolution in the Quebec Legislature suggesting that Quebec might withdraw from the pact of Confederation, if the other provinces believed her an obstacle to Confederation's progress, made no claims about cultural compact. In this debate, which had a tenor more of sorrow than of anger, it was Sir Lomer Gouin who expressed the characteristic viewpoint. He declared:

I wish to make my position on the subject very clear, Mr. Speaker. I believe in the Canadian Confederation. Federal Government appears to me to be the only possible one in Canada because of our differences of race and creed, and also because of the variety and multiplicity of local needs in our immense territory.

To make myself more clear I declare that if I had been a party to the negotiations of 1864, I would certainly have tried, had I authority to do so, to obtain for the French Canadian minority in the sister provinces the same protection that was obtained for the English minority in the Province of Quebec. I would have asked that not as a concession, but as a matter of justice. And even if it had not been accorded to me, I would have voted in favour of the resolutions of 1864.

At the time of the debate of 1865, I would have renewed my demand for this measure of prudence and justice. And if I had not succeeded, I would still have declared myself in favour of the system as it was voted March 13, 1865. And even at this moment, Sir, in spite of the troubles that have arisen in the administration of our country since 1867, in spite of the trouble caused those people from Quebec who constitute the minority in the other provinces, if I had to choose between Confederation and the Act of 1791, or the Act of 1840-1841, I would vote for Confederation still.⁴³

Gouin's statement may be taken as a suitable summing up of the views of Confederation held by the vast majority of Canadians before 1921.

The concept of the compact of cultures had on its side none of the powerful influences which had played so large a part in gaining wide acceptance for the theory of the compact of provinces. No political party adopted it as part of its platform—that would appear to be true even of the Nationalistes or Autonomists who took a general lead from Bourassa in the 1911 election. Nor did the theory win the whole-hearted approval of powerful provincial governments; indeed to the extent that it implied a limitation on provincial powers, it went against the views of most of the provinces. Not even the province of Quebec, despite Premier Gouin's statements and actions to the contrary during the Ontario school crisis, adopted the theory in any consistent fashion. Finally, the compact of cultures, unlike the theory of the compact of provinces, won no support from the Judicial Committee of the Privy Council. In fact, minority rights fared less well in this court than in Canadian courts.⁴⁴ In the light of these observations, it is not surprising that the concept of the cultural compact of Confederation remained the possession of only a small minority of Canadians.

Two of the main themes which dominated Canadian political and constitutional history in the years between 1867 and 1921 were the conflict of federal and provincial powers, and the conflict which arose over the rights of the religious and linguistic minorities. It is obvious that if provincial rights and minority rights had coincided within the same geographic or constitutional boundaries, the problem would have been a relatively simple one. But the complexity of the problem, in part, arises out of the fact that this coincidence did not exist, and that provincial rights and minority rights often were in conflict. For obvious political reasons the minorities could usually expect to win a more sympathetic hearing at Ottawa than in provincial capitals. On the other hand, the defenders of provincial rights often looked on Ottawa as the enemy.

In each of the conflicts a theory of compact was developed. In their attempt to break free from what has been called the paternalism of the federal government, the provinces fell back on the theory that the constitution was based on a compact or agreement among the provinces which had created Confederation. The federal government was thus seen as *primus inter pares*, at best, or in the extreme, as the servant of the provinces. In the attempt to protect and extend the rights of the religious and linguistic minorities, the theory of Confederation as a compact between cultures, an Anglo-French entente, was developed. According to this theory, Confederation was a partnership of equal cultures whose rights were guaranteed mutually throughout the whole Confederation. It can be said that by 1921 the doctrine of provincial rights and its compact underpinnings had gained the ascendant among Canadian politicians, and was at least partly accepted by legal scholars. The second theory of compact, that of cultures, had won no such following.

This conclusion is well supported by the evidence that has been briefly examined in preceding chapters. It can be further illustrated by a random sampling of opinions drawn from the writings of influential publicists and scholars. This examination is not intended to be exhaustive, partly because there is no complete bibliography on the subject, and partly because such an examination would prove extremely repetitive.

It is not perhaps surprising that one of the earliest statements of the compact theory by a constitutionalist came from Ontario. In a volume published in 1880 and dedicated to Edward Blake, Samuel James Watson, the librarian of the Legislative Assembly of Ontario, argued that the provinces had preceded the federal government and had indeed created it by "federal compact." "It must be borne in mind," he wrote, "that the federal parliament is the off-spring of the provincial legislatures; it is not their progenitor; and that in confiding to it such of their powers as were necessary to establish it as a greater Representative Institution than themselves, there were yet certain powers which they reserved for their own behoof."¹ It was a sign of the times in Ontario that Watson should be deeply concerned with the problem of provincial rights. Indeed it is hard to avoid the impression that his volume was little more than a reflection of the opinion of the Ontario government, that it was an attempt to provide some scholarly veneer to the case which Mowat was presenting against the federal government.

Indeed, Watson's study may well have been written in answer to the work of another Ontario scholar, D. A. O'Sullivan, who in 1879 had vigorously presented the case for the precedence of the federal powers. This writer maintained that "in 1867 the three existing provinces desired to be federally united into one Dominion; and they were so united and formed thereafter Canada. The three provinces were then lost sight of, and in their stead Canada appeared; and Canada was immediately thereafter divided up into four provinces."² Again it may be a sign of the times, or the superior logic of Watson, that in a prefatory statement to a second edition of his text in 1887, O'Sullivan was at least prepared to admit that a case could be, and indeed had been, made for the provincialist version of the constitution.³

A similar division of opinion may be found among Quebec writers. In 1878 in a popular volume on the constitution, B.-A.-T. de Montigny described and justified the highly centralized nature of the Canadian federal system, comparing it favourably with the American system which left the residual power with the states. "Confederation," he wrote, "has the dual advantage of giving us the power of a legislative union and the freedom of a federal union, with protection for local interests." And, in Montigny's judgement, it was this combination, plus the willingness with which the Fathers had put aside their national and political differences which had resulted in "the composition of one of the finest constitutions the world has ever known."⁴

As has already been noted Judge Loranger expressed the provincialist viewpoint in his famous *Letters on the Constitution* in 1883. A more complete exposition of this position was published in 1889 by P.-B. Mignault. In this writer's judgement the Canadian constitution was closely modelled on that of the United States. In the Canadian federal system, he argued, the federal and provincial governments were separate but equal. He wrote:

We said that the contracting parties divide their sovereignty and create through common and reciprocal concessions a new power which contains them without absorbing them. We must draw one essential result from this. Each state or province maintains its own existence and the powers it has not yielded to the central government. The province is not subordinate to the central government nor is the latter subordinate to the province. There is absolute equality and a common

sovereignty; each government is supreme within its own jurisdiction and within the scope of its powers.

But in his concluding section, Mignault went even a step further, indicating that since the federation had been created for the express purpose of protecting the rights of the provinces "their interests are sacred," thus suggesting that the provinces were "more equal" than the federal government.⁵

Two other English-Canadian constitutionalists of some stature may also be noted. Alpheus Todd, in his influential *Parliamentary Government in the Colonies*, committed himself completely to the theory of "provincial compact."⁶ A. H. F. Lefroy, another well-known scholar, writing in 1913, favoured the legalist's view that whatever political process had preceded the passage of the British North America Act, the fact remained that the Act was purely and simply a statute of the British Parliament.⁷

From this brief survey, it is obvious that legal and historical considerations were inconclusive on the nature of the constitution. By combining the two approaches, W. P. M. Kennedy arrived at what was perhaps the most acceptable conclusion presented in the period. In 1921 Kennedy argued that in its origins Confederation was a "thinly veiled legislative union," and that this was clearly the intention of the Fathers of Confederation. Kennedy, it may be noted, was one of the very first writers to examine the stated views of the Fathers with any great care. The writer admitted, however, that the political struggles of the half-century after Confederation, and the legal decisions of the Judicial Committee, had transformed the constitution into a truly federal one. These developments, he believed, served the needs of the country. A powerful central government was necessary during the early years of development, but decentralization suited the country better once these plans had been completed. "The second period is the period of provincial rights," he wrote, "which have increased under judicial interpretations. These, however, have not violated the framework. Indeed it may be said that they have humanized the British North America Act. They have given it the elasticity of life. They have rescued it from the uncritical worship due to an imperishable and immutable relic of rigid antiquarianism."⁸ Kennedy's praise of the decentralization that had taken place in the second period of Confederation may be considered, perhaps, as a characteristic opinion of the times.

Turning from the provincialist version of the compact to the cultural version, one is immediately struck by the lack of illustrative material. None of the writers cited above gave the matter any serious attention, either affirming or refuting it. Indeed they seem not even to have heard of it. Naturally they mention the clauses of the constitution relating to bilingualism and separate schools, but that is the long and the short of it. Nor do the historians provide any contrary examples. From the English Canadian side what was probably a typical view was expressed by G. M. Wrong, an historian whose leading interest was French Canada. He noted: "The federation Act made Canada a bilingual country in federal affairs. French was placed on a complete equality with English in the Federal Parliament. It is equally with English the language of the federal laws and of the federal courts. But while the federation Act expanded, it also limited the official use of the French tongue. It makes the Province of Quebec, and only the Province of Quebec, bilingual."⁹

In the years of struggle over bilingual schools in Ontario, the views of Professor Wrong were not easily accepted by French Canadians. In 1916, a French Canadian constitutionalist assessed the successes and failures of Confederation in these terms:

Has the Constitution of 1867 kept all its promises? I do not hesitate to say yes if we speak about general progress. Our country has sprung into life; its commercial, industrial and material development has been extensive. The whole world has marvelled at our progress. However can we say the same thing with regard to other matters? In many cases the solemn guarantees given to the minorities have been ignored, repudiated and trampled upon like a dirty scrap of paper.¹⁰

Nevertheless conflicting opinions could be found even in the embattled Franco-Ontarian community. Senator N. A. Belcourt, one of the Ontario minority's main leaders, asserted that "the constitution, natural law and justice, every rule of pedagogy, rights acquired by the minority, British fair play, sound policy, and last but not least, common sense, all stand out against it [*Regulation XVII*]."¹¹

But J.-U. Vincent, a founder of the Association canadienne-française d'éducation d'Ontario, argued at length, and with extensive documentation, that: "Regrettable as it may be, the truth is that the constitution has decreed the equality of both languages only in matters under the control of the federal government and in the province of Quebec."¹²

French Canadian historians, in the years before 1921, provided little evidence to aid the supporters of the compact theory in either its provincialist or its cultural variation. I.-G. Turcotte's study of the union period and Confederation is a remarkably impartial, factual account. It makes no mention of the compact idea.¹³ L.-O. David, who had been an opponent of Confederation in 1865, remained convinced in 1898 that his earlier criticisms had been just, that rather than providing specific guarantees of provincial rights and minority rights, Confederation had been "*une grande victoire anglaise*."¹⁴ Ludovic Brunet, writing about the same period in 1899, reached the same conclusions: the highly centralized federal system was really a step toward the achievements of Lord Durham's recommendations. "Unfortunately," he concluded, "time and events have proved that the opinions of Mr. Dorion and the Liberal party were correct."¹⁵

The major French Canadian historians of the first part of the twentieth century have expressed similar views on the nature of Confederation, though their assessment of its benefits have differed. For example, the lectures delivered by Abbé Lionel Groulx and published in 1918 contain no attempt to prove that Confederation was a compact either of provinces or of cultures. Speaking of the division of powers, he concluded: "The federal government retained sufficient power to exercise national sovereignty while letting the states (provinces) evolve freely within the scope of their prerogatives. The practice of our institutions has confirmed this theory. Despite several attempts at encroachment, the central government has not been able to prevent the provinces from increasing their autonomy."¹⁶ Groulx's chief criticism of Confederation, which in 1918 he thought was breaking up because of western discontent, was that it had failed to provide adequate protection for the minorities. The English Protestant minority in Quebec had received full security, but the French and Roman Catholic minorities had not received equal guarantees. He wrote: "We must never tire of saying that this and only this

is the basic fault of our constitution and the greatest mistake made by Lower Canada's statesmen. By exclusively giving privileges and exceptions to one group and by permitting the creation of a privileged situation favouring the strongest, they admitted in principle that there would be two standards in this country."¹⁷ In other words, the greatest failure of 1867 was precisely that it had not been based on a cultural compact which guaranteed French Canadians and Roman Catholics outside Quebec the same rights as those given English-speaking Protestants in Quebec. In his view of the nature of Confederation, Groulx was closer to the conclusions of English Canadian writers than to Henri Bourassa and his supporters. It may be added that in this, though on few other matters, Groulx was also in essential agreement with the other great French Canadian historian of that generation, Thomas Chapais.¹⁸

But whatever historians may have concluded about the nature of Confederation in the matter of minority rights, there was by 1921 little dispute on the subject of provincial rights. The legal theoreticians still found it worthwhile to repeat the now well-worn arguments for provincial autonomy. Writing in the spring of 1918, Léon-Mercier Gouin used the old arguments for the compact theory, but he gave them a new twist. He wrote:

We cannot insist enough on the relative independence of the provinces. It is essential in a federation that the local assemblies enjoy complete freedom in the legislative sphere granted to them. In this way the federal pact was to permit the province of Quebec to remain officially French and Catholic. *Our* Parliament meets in our old capital—the court of New France. This is a true national assembly for our people. We have entrusted to it our most treasured institutions. Weary of the hateful régime of 1840, we were finally to be “at home.” The federal system promised to insure our survival. We freely entered the “Dominion.” The imperial law forming the base of our constitution is but the legal and official expression of the will of the contracting parties. It is the solemn wording of “the desire expressed by the provinces.” We find in it the elements of a true social contract, bearing royal approval.¹⁹

Most of the argument was venerable, but it contained the seeds of a later view of Confederation that was to identify fully and clearly nation and province.²⁰ The implications of that identification were hardly hinted at before 1921, though the quasi-separatist views of some of the contributors to *Notre Avenir politique: enquête de l'action française* of 1922 were based on that identification.²¹

The termination of the war in 1918 and the subsequent political instability of the years of reconstruction marked the beginning of a decade of firmly entrenched provincial power. Provincial governments found little difficulty in fending off intermittent efforts to restore the federal ascendancy. It is perhaps fitting that at the end of that decade it was the Premier of Ontario, Howard Ferguson, who issued a new provincial rights manifesto, giving a full exposition of the compact theory. Though a Conservative, Ontario had found in Premier Ferguson an heir for the mantle of Mowat. Premiers Taschereau and Duplessis left no doubt that Mercier's vision was still alive in Quebec. The old weapons were once again brought out to fight new battles. It seems hardly necessary to add that in the campaigns that followed, it was only on rare occasions that the voices of those who spoke of the compact of cultures could be heard over the din.

Chapter I

1. Royal Commission on Dominion-Provincial Relations, *Report* (Ottawa, 1940), Bk I, 47.
2. Canada, Senate, *Report Pursuant to the Resolution of the Senate to the Honourable the Speaker by the Parliamentary Counsel Relating to the Enactment of the British North America Act* (Ottawa, 1939; repr. 1961), Annex 4, 134-8 (hereafter *O'Connor Report*).
3. Norman McL. Rogers, "Mr. Ferguson and the Constitution," *Canadian Forum*, XI (November, 1930), 49.
4. Jean-C. Falardeau, "Les Canadiens français et leur idéologie," in Mason Wade, ed., *Canadian Dualism* (Toronto and Quebec, 1960), 25.

"Il la considère surtout comme un 'pacte' entre chacune des provinces canadiennes. Plus particulièrement, comme un pacte entre les 'Anglais' et les 'Français' du Canada. Plus encore, comme un pacte entre Protestants et Catholiques, aux termes duquel tous les droits politiques accordés aux Canadiens français et catholiques du Québec seraient automatiquement garantis à tous les Catholiques dans l'ensemble du pays."
5. S.Q. 1953-4, 2-3 Eliz. II, c.17.
6. Royal Commission of Inquiry on Constitutional Problems, *Report* (Quebec, 1956), I.
7. Canada, House of Commons, *Debates*, 1949, 2nd session, I, 196.
8. *La Presse*, 15 octobre 1949.

"Il importe très peu que l'Acte de l'Amérique britannique du Nord soit un contrat ou simple loi, pourvu que le gouvernement fédéral respecte les pouvoirs et les droits des provinces, et que les provinces respectent les droits et les pouvoirs fédéraux."
9. F. R. Scott, "Areas of Conflict in the Field of Public Law and Policy," in Wade, *Canadian Dualism*, 89.
10. A. N. Schlesinger, "The State Rights Fetish," in *New Viewpoints in American History* (New York, 1922), 243.
11. Norman McL. Rogers, "The Compact Theory of Confederation," *Proceedings of the Canadian Political Science Association* (1931), 205-30; Richard Arès, *La Confédération: pacte ou loi?* (Montreal, n.d.).
12. *Disallowance and Reservation of Provincial Legislation* (Ottawa, 1955).
13. Toronto, 1957.
14. Cambridge, Mass., 1937.
15. Toronto, 1950.
16. Ottawa, 1896.

Chapter II

1. See F. R. Scott, "Centralization and Decentralization in Canadian Federalism," *Canadian Bar Review*, XXIX (December, 1951), especially n. 44, 1108-9.
2. Jean-Charles Bonenfant, "L'Esprit de 1867," *Revue d'histoire de l'Amérique française*, XVII (juin 1963).
3. Sir Joseph Pope, *Memoirs of the Right Honourable Sir John Macdonald, G.C.B., First Prime Minister of the Dominion of Canada* (rev. ed., Toronto, 1930), 242-3.
4. *Parliamentary Debates on the Subject of the Confederation of the British North American Provinces* (Quebec, 1865), 858 (hereafter *Confederation Debates*).
5. Joseph Cauchon, *The Union of the Provinces of British North America*, trans. G. H. Macauley (Quebec, 1865), 49.
6. *La Confédération couronnement de dix ans de mauvaise administration* (Montreal, 1867), 8.
"La prétendue Confédération que l'on vient de nous imposer n'est-elle pas identiquement le projet de lord Durham: une union législative?"
7. A. G. Doughty, "Notes on the Quebec Conference, 1864," *Canadian Historical Review*, I (March, 1920), 28.
8. *Confederation Debates*, 31.
9. *Ibid.*, 714.
10. The Carnarvon and Adderley statements may be found in the *O'Connor Report*, Annex 4, 149.
11. Royal Commission on Dominion-Provincial Relations, *Report*, Bk. I, 31.
12. K. C. Wheare, *Federal Government* (4th ed., London, 1963), 19.
13. Macdonald to Brown Chamberlin, October 26, 1868, in Sir Joseph Pope, *The Correspondence of Sir John A. Macdonald* (Toronto, 1921), 75.
14. Canada, *Sessional Papers*, 1867-68, VIII, no. 66, 3.
15. D. G. Creighton, *John A. Macdonald: The Old Chieftain* (Toronto, 1955), 1-33.
16. Ontario Legislative Assembly, *Journals*, 1869, 54-6.
17. Canada, House of Commons, *Journals*, 1870, 126-7.
18. J. A. Maxwell, *Federal Subsidies to Provincial Governments in Canada* (Cambridge, Mass., 1937), *passim*.
19. *Proceedings of the Reform Convention Held at Toronto on the 27 and 28 of June, 1867* (Toronto, 1867), 20.
20. Macdonald to Brown Chamberlin, October 26, 1868, in Pope, *Correspondence of Macdonald*, 75.
21. *The Globe*, December 23, 1871.
22. *Le Canadien*, 11 août 1868.
"Plus que jamais nous voyons que le régime actuel n'est rien d'autre chose qu'une union législative déguisée. Le pouvoir local est sans force, sans moyens, et tous les jours le pouvoir fédéral enlève une pierre de l'édifice qu'il a construit temporairement. Si la Nouvelle-Écosse a raison de craindre pour son autonomie, que doit espérer le bas-Canada?"
23. L.-O. David, *L'Union des deux Canadas* (Montreal, 1898), 212.
24. *L'Opinion publique*, II (27 juillet 1871).
"C'est pourtant à Québec surtout que nous avons besoin de talents et d'esprits solides, car c'est là que se prépare l'avenir des Canadiens-français. De la sage administration de nos affaires locales et du fonctionnement parfait du gouvernement provincial dépend l'échec des tentatives qui se feront sans doute plus tard dans le but de transformer la confédération en une union législative."
25. *Ibid.*, II (13 avril 1871).
"C'est à Québec, à Québec surtout, que se peuvent assurer le maintien, la force et l'avenir de l'autonomie nationale."
26. Canada, House of Commons, *Journals*, 1869, II, 260.
27. *Ibid.*, 1871, IV, 253-4.
28. Canada, House of Commons, *Debates*, 1871, 200, 202.

29. *Le Pays*, 28 novembre 1871. See also Ulric Barthe, *Sir Wilfrid Laurier on the Platform* (Quebec, 1890).

“... un faisceau d'états qui ont ensemble des intérêts communs, mais qui néanmoins vis-à-vis les uns des autres, ont des intérêts locaux, distincts et séparés... Pour tous leurs intérêts et leurs besoins communs, les états ont une législature commune: la législature fédérale; pour tous leurs intérêts locaux, ils ont chacun une législature locale et séparée. Dans le domaine respectif de leurs attributions, les législatures, tant locales que fédérales, sont souveraines et indépendantes les unes des autres... Avec le simple mandat, Québec est Québec; avec le double mandat ce n'est que l'appendice d'Ottawa.”

30. W. E. Hodgins, *Correspondence, Reports of the Ministers of Justice, and Orders in Council upon the Subject of Dominion and Provincial Legislation* (Ottawa, 1896), 5-6 (hereafter *Dominion and Provincial Legislation*).

31. *Confederation Debates*, 258.

32. Sir Joseph Pope, *Confederation Documents* (Toronto, 1895), 30.

33. *Dominion and Provincial Legislation*, 662-3.

34. Canada, House of Commons, *Debates*, 1872, 197, 706, 709.

35. *Dominion and Provincial Legislation*, 453-79.

36. Canada, House of Commons, *Debates*, 1875, 576.

37. *Dominion and Provincial Legislation*, 1197.

Chapter III

1. *Confederation Debates*, 511.

2. Royal Commission on Dominion-Provincial Relations, *Report* (Ottawa, 1940), Bk. I, 54.

3. J. C. Morrison, *Oliver Mowat and the Development of Provincial Rights in Ontario, 1867-96: A Study in Dominion-Provincial Relations 1867-96* (published under the auspices of the Ontario Department of Public Records and Archives, n.d.).

4. *Ibid.*, 99.

5. John T. Saywell, *The Office of Lieutenant-Governor* (Toronto, 1957), 162.

6. Ontario, *Sessional Papers*, XX, Part IV, 1888, Lieutenant-Governor to Secretary of State (no. 37), January 9, 1886.

7. G. V. La Forest, *Disallowance and Reservation of Provincial Legislation* (Ottawa, 1955).

8. *Dominion and Provincial Legislation*, 87.

9. *Ibid.*, 110.

10. *Ibid.*, 113.

11. *Ibid.*, 119.

12. Morrison, *Oliver Mowat and Provincial Rights*, 198-9.

13. *Dominion and Provincial Legislation*, 178.

14. *Ibid.*, 179.

15. Morrison, *Oliver Mowat and Provincial Rights*, 221.

16. Canada, House of Commons, *Debates*, 1882, 907.

17. *Ibid.*

18. Morrison, *Oliver Mowat and Provincial Rights*, 224.

19. Canada, House of Commons, *Debates*, 1884, 942 et seq.

20. Morrison, *Oliver Mowat and Provincial Rights*, 229-30.

21. *L'Opinion publique*, III (13 juin 1872).

“Ceux qui se moquaient de nous en 1866, parce que nous disions, en combattant la Confédération, que le droit de veto ne fonctionnerait qu'en faveur de la majorité anglaise et protestante, nous permettraient-ils de leur demander en passant qui avait raison.”

22. *Ibid.*, III (24 octobre 1872).

23. *Ibid.*, V (5 février 1874).

"La constitution, il est vrai, fait du Pacifique une condition spéciale de l'entrée de la Colombie; mais en fait-elle vraiment une condition principale, essentielle? Il nous semble plutôt que l'idée principale du pacte fédératif est l'idée nationale, l'idée de fonder un pays, une grande patrie, une nouvelle nationalité dans le monde. . . Si l'on admet ce point de départ, si on laisse cette formule première au frontispice de nos institutions, le pacte fédéral devient facile à interpréter. Constituer un pays nouveau, en est le terme auquel toutes ces clauses sont subordonnées. . . Organiser un peuple, voilà le but; construire le Pacifique, voilà le moyen d'y arriver. Et si tel est le cas, cette entreprise peut être considérée comme un état nécessaire, mais non comme une fondation première, comme la condition primordiale du contrat de confédération, et, par conséquent, la législature fédérale, en tant que représentante des provinces intéressées au même degré dans ce contrat, pourrait modifier les détails de la construction du Pacifique sans donner par là à la Colombie le droit de sortir de l'union."

24. Robert Rumilly, *Histoire de la province de Québec* (Montreal, n.d.), I, 284.

"Le lieutenant-gouverneur est l'officier, le représentant de l'Exécutif fédéral dans le gouvernement local. Il est là pour gouverner la province au nom du gouvernement fédéral. Il doit donc la gouverner suivant les vues de ce gouvernement."

25. *L'Opinion publique*, V (8 octobre 1874).

"Avant 1867, on a prétendu que notre confédération n'était qu'une union législative déguisée; il faut avouer que si aujourd'hui l'on parvient à faire triompher cette doctrine de la sujétion des lieutenants-gouverneurs, personne ne parlera davantage de déguisement, l'union législative sera fait accompli."

26. *La Minerve*, 1 juin 1875, in Rumilly, *Histoire*, I, 323.

"Si M. Joly et ses amis montaient au pouvoir à Québec, ce serait pour se constituer les humbles valets de MM. Mackenzie et Fournier. L'exploitation de notre province, commencée à Ottawa, se continuerait à Québec. En réalité, se seraient MM. Fournier, Geoffrion et Laflamme qui gouverneraient."

27. Rumilly, *Histoire*, III, 58.

"... les églises sans dogmes, mais non sans mystique."

28. Saywell, *The Lieutenant-Governor*, 113-119.

29. Québec, Législature, *Débats*, 1879, 72.

"En vertu de la constitution nous jouissons de l'autonomie, du droit de nous gouverner nous-mêmes; et dans la sphère de nos attributions nous ne sommes, comme gouvernement, inférieurs à aucun gouvernement. La Province de Québec traverse en ce moment une crise qui met son autonomie en danger. La tentative que l'on a faite pour obtenir la destitution du lieutenant-gouverneur constitue un danger pour notre indépendance provinciale. Mes honorables amis de la gauche considèrent le lieutenant-gouverneur comme un simple serviteur du pouvoir fédéral. Je suis d'un avis contraire. . ."

30. Canada, House of Commons, *Debates*, 1878, II, 1903.

31. Public Archives of Canada (hereafter P.A.C.), Macdonald Papers, 95, Mousseau to Macdonald, November 15, 1878.

32. *Ibid.*, Chapleau to Macdonald, December 2, 1878.

"Le temps serait mal choisi pour apprendre à la province de Québec que le Lieutenant-Governor [*sic*], qui lui est périodiquement imposé par les autorités fédérales, est sûr de l'impunité tant qu'il ne dérange pas, d'une manière absolue et directe, les opérations politiques du cabinet fédéral, et que l'autonomie politique de la Province est à la [sa] merci, sans crainte de censure pour l'acte qui la viole, pourvu que l'officier fédéral réussisse *ensuite* à s'acheter un semblant de la majorité dans la Chambre d'Assemblée."

33. Saywell, *The Lieutenant-Governor*, 234-48.

34. A. Joly de Lotbinière, "Mr. Joly's Mission to London in the case of Lieutenant-Governor Letellier St. Just," *Canadian Historical Review*, XXXI (December, 1950), 403.

35. J. A. Maxwell, *Federal Subsidies to Provincial Governments in Canada* (Cambridge, Mass., 1937), 56-63. *See also* Robertson's speech in Québec, Législature, *Débats*, 1880, 475-7.

36. Québec, Législature, *Débats*, 1881, 363.

"Nous sommes arrivés à une position critique. Après quatorze années d'autonomie provinciale,

nous avons en face de nous un état de choses terrible et il est plus que probable que la province ne pourra sortir des embarras financiers où elle se trouve et faire honneur à ses engagements qu'en ayant recours à la taxe directe."

37. *Ibid.*, 1881, 855.

"Et il est bien permis de dire après ce qui s'est passé depuis quelques années à Ottawa, que nous n'obtiendrons rien de ce côté. Tous les gouvernements qui s'y sont succédé depuis les premiers jours de la Confédération ne se sont guère occupés de notre province. Pourquoi? C'est bien simple. La majorité est anglaise dans la Puissance, et elle est canadienne-française dans la Province de Québec. Nous sommes la minorité et il nous faut subir la loi du plus fort. Elle est inexorable et ses conséquences sont inévitables. Nous avons fait une union désavantageuse, nous l'avons accomplie, nous devons la subir en silence et tout ce que nous avons à faire c'est de tâcher de l'améliorer nous-mêmes par nos propres ressources, avec intelligence et patriotisme, et sans compter sur les autres. Le jour où il faudra compter fatalement et inexorablement avec le gouvernement d'Ottawa comme notre seule ressource pour nous tirer des embarras financiers dans lesquels on se trouve, ce jour-là marquera notre déchéance nationale."

38. Maxwell, *Federal Subsidies*, 56-63.

39. *Ibid.*, 60; Canada, House of Commons, *Debates*, 1884, 1490 *et seq.*

40. *Ibid.*

41. T. J. J. Loranger, *Letters upon the Interpretation of the Federal Constitution known as the British North America Act (1867)* (Quebec, 1884), v.

42. *Ibid.*, 7.

43. *Ibid.*, 61.

44. Quebec, Legislative Assembly, *Journals*, 1884, 56.

45. Québec, Législature, *Débats*, 1884, 410-11.

"En face de l'énergique revendication des droits provinciaux que font nos provinces-soeurs, resterons-nous plus longtemps silencieux, nous les représentants du peuple de la province de Québec? ... Fasse le ciel que, cette fois-ci, l'esprit de parti n'étouffe pas la voix du patriotisme, la voix du devoir."

46. *Ibid.*, 413.

47. *Ibid.*, 414.

"Je ne suis pas d'accord avec l'honorable député de St-Hyacinthe [M. Mercier] dans toutes les opinions qu'il a exprimées. Je repousse même absolument quelques-unes de ses prétentions. Il a exposé une théorie à laquelle je ne puis me rallier au sujet de l'origine des pouvoirs des provinces. Il ne faut pas se méprendre de la sorte sur cette partie de la question. La seule et unique base de notre constitution, c'est l'Acte de 1867. Le parlement fédéral dans notre organisation est l'autorité suprême. Tous les pouvoirs sont au gouvernement fédéral. Voilà le point de départ. Cette autorité suprême, pour des raisons de bonne administration et des nécessités politiques, est déléguée en partie à des corps spéciaux créés en vue de l'exercice de ces pouvoirs délégués. Il n'y a donc d'exceptions que le droit spécialement attribué aux provinces, de là, à mon avis, nécessité de défendre les droits fédéraux comme les prérogatives des provinces."

48. *Ibid.*, 454.

"... la défense de nos prérogatives provinciales et en même temps nos prérogatives nationales."

49. *Ibid.*, 455.

"... ces attentats répétés à notre religion et à notre nationalité."

50. *Ibid.*, 422 *et seq.*

51. Quebec, Legislative Assembly, *Journals*, 1884, 100.

52. Québec, Législature, *Débats*, 1884, 642-3

"L'autonomie de la Province de Québec, c'est l'existence nationale. ... Il y a assez de patriotisme dans la députation québécoise au parlement fédéral et dans celle de Québec et son gouvernement ..."

53. *Ibid.*, 644.

"La position exceptionnelle de notre province dans la confédération, par suite de la différence qui existe dans notre langue, nos lois, notre religion exige que nous jouissions de cette autorité absolue et

indépendante pour maintenir intacte, vivace au milieu d'une population hétérogène notre nationalité canadienne-française qui nous est si chère. C'est pour cela que la confédération a été établie; car sans cette nécessité de l'autonomie pour la Province de Québec, nous aurions depuis 1867 une union législative."

54. *Ibid.*, 779-800.

55. Charles Langelier, *Souvenirs politiques* (Quebec, 1909), I, 245.

"Nous sentions que le meurtre de Riel était une déclaration de guerre à l'influence canadienne-française dans la Confédération, une violation du droit et de la justice. Voilà pourquoi la question est nationale; c'est parce que si Riel a été pendu au gibet de Régina, c'est parce qu'il était un des nôtres."

56. Québec, Législature, *Débats*, 1886, 902.

"Nous avons été bien trompés, nous avons été bien trahis."

57. *La Patrie*, 1 juillet 1886.

"... prépare la ruine de notre indépendance provinciale. ... C'est la division, née de l'esprit de parti qui a fait mal; c'est l'union née de patriotisme qui le réparera."

58. See Mercier's speech in 1886, printed in J.-O. Pelland, *Biographie, discours, conférences etc. de l'hon. Honoré Mercier* (Montreal, 1890), 160 et seq.

59. Québec, Législature, *Débats*, 1877, 10-11.

60. Nova Scotia, House of Assembly, *Journals and Proceedings*, 1887, 102-4, 125.

61. *Nova Scotian*, February 5, 1887.

62. James A. Jackson, "The Disallowance of Manitoba Railway Legislation in the 1880's" (unpublished M.A. thesis, University of Manitoba, 1945).

63. Canada, House of Commons, *Debates*, 1883, II, 971.

64. Cited in Jackson "Disallowance of Manitoba Railway Legislation," 44.

65. Margaret Ormsby, *British Columbia: A History* (Toronto, 1958), 232-58.

66. J. A. Maxwell, "Lord Dufferin and the Difficulties with British Columbia, 1874-7," *Canadian Historical Review*, XII (December, 1931), 346-90; Margaret Ormsby, "Prime Minister Mackenzie, the Liberal Party and the Bargain with British Columbia," *Ibid.*, XXVI (June, 1945), 148-74.

67. Maxwell, *Federal Subsidies*, 90-3.

68. Ormsby, *British Columbia*, 258.

69. F. W. P. Bolger, *Prince Edward Island and Confederation, 1863-73* (Charlottetown, 1964).

70. Maurice Ollivier, ed., *British North America Act and Selected Statutes, 1867-1962* (Ottawa, n.d.), 184.

71. Maxwell, *Federal Subsidies*, 70-6.

Chapter IV

1. *Dominion, Provincial and Interprovincial Conferences from 1887 to 1926* (Ottawa, 1951), 11, italics added.

2. D. G. Creighton, *John A. Macdonald: The Old Chieftain* (Toronto, 1955), 488.

3. *Minutes of the Interprovincial Conference*, 1887, 20-6.

4. *Ibid.*, 19.

5. *Ibid.*, 27.

6. *Ibid.*, 27.

7. Macdonald to Mowat, December 3, 1888, in Sir Joseph Pope, *The Correspondence of Sir John A. Macdonald* (Toronto, 1921), 433.

8. *The Globe*, March 9, 1888.

9. Jackson, "Disallowance of Manitoba Railway Legislation," 135.

10. G. V. La Forest, *Disallowance and Reservation of Provincial Legislation* (Ottawa, 1955), 57-61.

11. Canada, House of Commons, *Debates*, 1889, II, 908.
 12. J. T. Saywell, *The Canadian Journal of Lady Aberdeen* (Toronto, 1960), xxxiii-xxxiii.
 13. See H. Blair Neatby, "Laurier and a Liberal Quebec" (unpublished Ph.D. thesis, University of Toronto, 1956), 87-136.
 14. P.A.C., Tupper Papers, Vol. 11, Tupper to Whitney, March 22, 1899.
 15. P.A.C., Laurier Papers, Vol. 103, Chamberlain to Laurier, March 10, 1899.
 16. Vincent C. MacDonald, "The Privy Council and the Canadian Constitution," *Canadian Bar Review*, XXIX (December, 1951), 1021-37.
 17. Canada, House of Commons, *Debates*, 1903, I, 1578.
 18. *Ibid.*, 1906-7, II, 2199.
 19. Sir Wilfrid Laurier, "Le Fédéralisme," *Revue trimestrielle canadienne* (novembre 1918), 219-21.
- "Je crois bien supérieur notre système qui attribue au pouvoir fédéral tous les pouvoirs non énumérés. Le but du système fédératif est de faire un tout solide d'éléments hétérogènes, tout en conservant à chacun son existence propre, c'est-à-dire, union sans fusion. Le nouvel état sera nécessairement plus solide et plus fort si l'autorité finale est confiée au pouvoir qui unit tous ces éléments. L'idée est encore plus manifeste, si le but de la fédération est de créer une nation nouvelle d'éléments divers et jusque-là séparés en tout. . . .
- "D'un autre côté, dans la sphère attribuée aux provinces par notre constitution, leur autorité doit être souveraine, et ce principe ne saurait être proclamé trop haut. Sur ce point, tu aurais pu appuyer davantage sur le danger du désaveu. Là se trouve le point noir de la confédération canadienne. Je ne m'explique guère qu'un esprit aussi clair et aussi net que Cartier ait pu y trouver une garantie pour les minorités. Il n'y a que deux minorités dans la confédération canadienne: minorité de race et minorité de religion. Donner au pouvoir central où se trouvent la majorité de race, et la majorité de religion, l'autorité de s'ingérer arbitrairement dans la juridiction attribuée aux provinces, c'est détruire l'indépendance législative des provinces et en faire un leurre et une moquerie. De fait, dans toutes les agitations qui à différentes reprises ont bouleversé notre jeune confédération, la cause unique reste toujours la même: c'est toujours les tentatives du pouvoir central d'empiéter sur ces prérogatives provinciales. À toutes ces tentatives les Libéraux opposèrent une résistance inflexible et dès l'origine ils se firent les champions de l'autonomie provinciale."
20. Canada, House of Commons, *Debates*, 1905, 1421.
 21. *Ibid.*, 1421 et seq.
 22. Saywell, *The Lieutenant-Governor*, 256.
 23. La Forest, *Disallowance and Reservation*, 66.
 24. F. H. Gisborne and A. A. Fraser, *Correspondence, Reports of the Minister of Justice and Orders in Council upon the Subject of Provincial Legislation, 1896-1920* (Ottawa, 1922), 616.
 25. Canada, House of Commons, *Debates*, 1907, 2200.
 26. *The Liberal-Conservative Platform as Laid Down by R. L. Borden, M.P., Opposition Leader, at Halifax, August 20th, 1907*, 5.
 27. *Dominion, Provincial and Interprovincial Conferences from 1887 to 1926* (Ottawa, 1951).
 28. J. A. Maxwell, *Federal Subsidies to Provincial Governments in Canada* (Cambridge, Mass., 1937), 109-11.
 29. Royal Commission on Dominion-Provincial Relations, *Report* (Ottawa, 1940), Bk. I, 93.
 30. *Fort Frances Pulp and Paper Co. v. Manitoba Free Press* [1923], A.C. 696.
 31. *Quebec and Confederation: A Record of the Debate of the Legislative Assembly of Quebec on the motion proposed by J.-N. Francoeur* (Quebec, 1918).
 32. *Ibid.*, 117-36.
 33. Royal Commission on Dominion-Provincial Relations, *Report*, Bk. I, 97.
 34. Royal Commission of Inquiry on Constitutional Problems, *Report* (Quebec, 1956), I, 97.
 35. The fullest contemporary statement of the provincialist version of the compact theory is contained in Sir George Ross, *The Senate of Canada* (Toronto, 1914).

Chapter V

1. *Confederation Debates*, 368.
2. *Ibid.*, 60.
3. Eugene Forsey, "The British North America Act and Biculturalism," *Queen's Quarterly*, LXXXI (Summer, 1964), 141-9.
4. *Confederation Debates*, 60.
5. D. G. Creighton, *The Road to Confederation* (Toronto, 1964), 141.
6. *Confederation Debates*, 250.
7. *Ibid.*, 711.
8. W. L. Morton, *Manitoba: A History* (Toronto, 1957), 141-6. Morton writes that in 1871 "a census was taken; the population of Manitoba was found to be 11,963, of whom 558 were Indians, 5,757 Métis, 4,083 English half-breeds, and 1,565 whites. Catholics numbered 6,247 and Protestants 5,716."
9. Saywell, *The Canadian Journal of Lady Aberdeen*, xxiv.
10. "Circulaire privée au clergé de toute la province ecclésiastique de Québec, octobre 23, 1871," *Mandements, Lettres pastorales, circulaires, et autres documents publiés dans le diocèse de Montréal depuis son érection* (Montréal, 1869-1926), Tome 6, 210-12.
11. Arch. Saint-Boniface to T.-A. Bernier, November 23, 1887 in T.-A. Bernier, *Le Manitoba champ d'immigration* (Ottawa, 1887), 4-5.
12. "Bien des fois dans le passé, soit conjointement avec l'Épiscopat canadien, soit en mon nom propre, comme évêque de Saint-Boniface, j'ai tenté d'amener nos amis de la province mère à diriger de notre côté un courant d'immigration canadienne-française. Mais je dois l'avouer, ça n'a pas été sans un sentiment de tristesse profonde que j'ai dû constater la cause secrète de la presque inutilité de mes efforts. Nous marchions d'égal à égal autant par le nombre que par la position, ayant, comme vous le dites si bien, un pied-à-terre sur les points principaux du Manitoba; aujourd'hui, bien que nous ayons réussi à garder notre position, nous ne laissons pas pourtant que d'avoir été dépassés en nombre. D'autres ont compris l'importance de la position et ils ont si bien saisi les avantages qu'offrent nos belles prairies à la charrue du colon, que déjà leurs rangs se sont grossis au point de diminuer notre proportion numérique. Et, le dirai-je, non seulement l'Angleterre et l'Écosse ont fourni chacune plus de colons au Manitoba que la Province de Québec, mais la Russie elle-même en a fourni autant."
12. Canada, House of Commons, *Debates*, 1890, I, 840.
13. *Ibid.*, 745.
14. *Ibid.*, 968.
15. C. R. W. Biggar, *Sir Oliver Mowat* (Toronto, 1906), II, 645.
16. Canada, House of Commons, *Debates*, 1893, 1942. In the 1893 debate one speaker, Joseph-Israel Tarte, did hint at a theory of "cultural compact." Tarte argued that the Fathers of Confederation had intended that separate schools should be extended to all areas of the country where minorities existed. He argued, or rather claimed, further that "Confederation was a compromise between the majority and the minority and the compromise must not be broken without our being consulted." (*Ibid.*, 1174). But Tarte talked so indiscriminately about language and schools, without making any distinction about what the constitution said about them, that it is difficult to find any consistent basis for his claims.
17. P.A.C., Tupper Papers, C. H. Tupper to Sir Charles Tupper, March 26, 1895.
18. Reported by the *Toronto Telegram*, April 28, 1896.
19. H. Bourassa, *Le Devoir et la guerre: le conflit des races* (Montreal, 1916), 3.
20. "Dans la pensée des Pères de la Confédération, le pacte fédéral et la constitution qui en définit les termes de la sanction, devaient mettre fin au conflit des races et des Églises et assurer à tous, catholiques et protestants, Français et Anglais, une parfaite égalité de droits dans toute l'étendue de la Confédération canadienne. L'Acte du Manitoba, voté par le parlement impérial en 1870, et l'Acte des Territoires du Nord-Ouest, voté à Ottawa en 1875 portent l'empreinte fugitive de la même pensée intelligente et généreuse. Ce furent nos dernières victoires."
20. H. Bourassa, *Le Patriotisme canadien-français* (Montreal, 1902), 8.

"Le statut impérial que nous a donné le régime actuel n'est que la sanction d'un double contrat: l'un, conclu entre les Français et les Anglais de l'ancienne province du Canada; et l'autre qui avait pour but de réunir les colonies éparses de l'Amérique britannique du Nord. Nous sommes donc parties contractantes à deux conventions, l'une nationale et l'autre politique; et nous devons veiller d'un oeil jaloux à l'intégrité de ces traités."

21. H. Bourassa, *Grande-Bretagne et Canada* (Montreal, 1901), 39-40.

"... sur des bases équitables et bien définies. ..."

22. *La Ligue nationaliste canadienne: programme* (1903), 6.

"Maintien absolu des droits garantis aux provinces par la Constitution de 1867 dans l'intention des auteurs. Respect du principe de la dualité des langues et du droit des minorités à des écoles séparées."

23. André Laurendeau, "Le Nationalisme de Bourassa," in *La Pensée de Henri Bourassa* (Montreal, 1954), 9-56.

24. *Le Nationaliste*, 3 avril 1904.

"La patrie, pour nous, c'est le Canada tout entier, c'est-à-dire une fédération de races distinctes et de provinces autonomes. La nation que nous voulons voir se développer, c'est la nation canadienne, composée de Canadiens français et de Canadiens anglais, c'est-à-dire de deux éléments séparés par la langue et la religion, et par les dispositions légales nécessaires à la conservation de leurs traditions respectives, mais unie dans un attachement de confraternité, dans un commun attachement à la patrie commune."

25. Canada, House of Commons, *Debates*, 1905, 1451.

26. *Ibid.*, 8572-82.

27. *Ibid.*, 2917.

28. *Ibid.*, 3256, 8305.

29. H. Bourassa, *Pour la justice* (Montreal, 1912).

30. *Quebec Telegraph*, January 12, 1915.

31. *Ibid.*

32. P.A.C., Gouin Papers, Gouin to Hearst, February 3, 1915; and reply, February 19, 1915.

33. Robert Rumilly, *Histoire de la province de Québec* (Montreal, n.d.), XXI, 49-52.

34. Canada, Senate, *Debates*, 1915, 62.

35. P.A.C., Borden Papers, Casgrain, Blondin and Patenaude to Borden, April 20, 1916; and reply, April 24, 1916.

36. Canada, House of Commons, *Debates*, 1916, IV, 3618.

37. P.A.C., Laurier Papers, Albert Dubuc à Laurier, 26 avril 1916.

38. Canada, House of Commons, *Debates*, 1916, 3768.

39. H. Bourassa, *La Conscription* (Montreal, 1917), 20.

40. *The Globe*, May 10, 1916.

41. *Le Devoir*, 3 septembre 1913.

"Le magistrat ou le praticien qui croit connaître la constitution du Canada, parce qu'il possède à fond le texte du statut appelé *l'Acte de l'Amérique britannique du Nord*, et qu'il dissèque à la loupe chacun de ses articles, n'est qu'un âne, s'il ignore l'origine des pouvoirs publics modelés sur la constitution britannique, et les circonstances particulières qui ont précédé et entouré la signature du pacte fédéral. En d'autres termes, il doit connaître à fond l'histoire de l'Angleterre et l'histoire du Canada."

42. P.A.C., Bourassa Papers, Bourassa to Leau, January 9, 1914.

"... selon l'opinion de tous les juristes, ces garanties ne couvrent que les droits des minorités catholiques et protestantes, en matière d'enseignement confessionnel. Elles ne visent nullement l'enseignement de la langue. Sur ce point, nous ne pouvons qu'invoquer une garantie indirecte, formelle selon moi, si l'on invoque l'esprit de la constitution. Mais comme vous le savez, de tout temps, les légistes s'attachent à la lettre plutôt qu'à l'esprit des lois."

43. *Quebec and Confederation: Record of the Debate on the Francoeur Motion*, 125.

44. F. R. Scott, "The Privy Council and Minority Rights," *Queen's Quarterly*, XXXVII (Autumn, 1930), 668-78.

Chapter VI

1. S. J. Watson, *The Powers of Canadian Parliaments* (Toronto, 1880), 51-2.
2. D. A. O'Sullivan, *A Manual of Government in Canada* (Toronto, 1879), 119.
3. D. A. O'Sullivan, *Government in Canada* (Toronto, 1887), 22, 37-8.
4. B.-A.-T. de Montigny, *Cathéchisme politique* (Montreal, 1878), 51-3.

"La Confédération possède le double avantage de nous donner la puissance d'une union législative et la liberté d'une union fédérale, avec la protection pour les intérêts locaux. . . l'édification d'une des plus belles constitutions qu'ait jamais connue le monde."

5. P.-B. Mignault, *Manuel de droit parlementaire* (Montreal, 1889), 224, 333.

"Nous avons dit que les parties contractantes font deux parts de leur souveraineté et qu'au moyen de concessions communes et réciproques, elles créent une nouvelle puissance qui les contient sans les absorber. De là, tirons une conséquence essentielle. Chaque état ou province conserve son existence particulière et les prérogatives qu'il n'a pas cédées au pouvoir central. Il n'y a nulle subordination, soit de la province au gouvernement général, soit de ce dernier à la province. Il y a égalité absolue, souveraineté commune; chaque pouvoir est suprême dans sa juridiction et dans sa sphère d'action. . . leurs intérêts sont sacrés."

6. Alpheus Todd, *Parliamentary Government in the Colonies* (Boston, 1880), 325-6.

7. A. H. F. Lefroy, *Canada's Federal System* (Toronto, 1913).

8. W.P.M. Kennedy, "The Nature of Canadian Federalism" (1921), in *Essays in Constitutional Law* (London, 1934), 60.

9. G. M. Wrong, "The Creation of the Federal System in Canada," in *The Federation of Canada* (Toronto, 1917), 29, 30.

10. Charles Langelier, *La Confédération* (Montreal, 1916), 37.

"Cette nouvelle constitution qui nous fut donnée en 1867 a-t-elle tenu toutes ses promesses? Au point de vue de progrès général, je n'hésite pas à dire oui. Notre pays, en effet, a pris un essor considérable, son développement commercial, industriel et matériel a été énorme; il a fait l'étonnement du monde. Mais sous d'autres rapports, pouvons-nous dire la même chose? Les garanties solennelles données aux minorités sont dans bien des cas ignorées, répudiées et foulées aux pieds comme un vulgaire chiffon de papier."

11. N. A. Belcourt, *French in Ontario*, repr. from *University Magazine* (December, 1912), 4.

12. J.-U. Vincent, *La Question scolaire* (Ottawa, 1915), 58.

"Le fait véridique, tout regrettable qu'il soit, est qu'il n'y a que pour le domaine fédéral et pour la province de Québec que la constitution décrète l'égalité des deux langues."

13. I.-G. Turcotte, *Canada sous l'union, 1841-67* (Montreal, 1882).

14. L.-O. David, *L'Union des deux Canadas, 1841-67* (Montreal, 1898), 277.

15. Ludovic Brunet, *La Province du Canada: histoire politique de 1840 à 1867* (Quebec, 1908), 298.

"Le temps et les événements ont malheureusement donné raison aux sentiments de M. Dorion et du parti libéral."

16. L'Abbé Lionel Groulx, *La Confédération canadienne* (Montreal, 1918), 207.

"L'autorité du centre retenait assez d'attributions pour exercer la souveraineté nationale tout en laissant évoluer les États dans le libre jeu de leurs activités. La pratique de nos institutions a confirmé cette théorie. Malgré quelques tentatives d'empiétements, le pouvoir d'Ottawa n'a pu empêcher les provinces d'accroître leur autonomie."

17. *Ibid.*, 168.

"Car il ne faut point se lasser de le dire: c'est là et pas ailleurs, que se trouvent le vice fondamental de notre constitution et la grande faute des hommes d'État bas-canadiens. En laissant aller les privilèges et les exceptions trop exclusivement d'un côté, en laissant créer une situation de privilège en faveur du plus fort, ils ont admis en principe qu'il y aurait en ce pays deux poids et deux mesures."

18. Thomas Chapais, *Cours d'histoire du Canada*, VIII (Quebec, 1934), 215.

19. Léon-Mercier Gouin, "Esquisse de droit constitutionnel," *Revue trimestrielle canadienne* (mai 1918), 71.

“Nous ne saurions trop insister sur l’indépendance relative de nos provinces. Il est de l’essence d’une fédération que les assemblées locales jouissent d’une pleine liberté dans la sphère législative qui leur a été assignée. C’est ainsi que le pacte fédéral devait permettre à la population du Québec de rester officiellement française et catholique. Notre parlement ‘à nous’ siège en notre vieille capitale, à la cour de la Nouvelle-France. C’est pour toute notre race une véritable assemblée nationale. On lui a confié la garde de nos institutions les plus chères. Fatigués du régime odieux de 1840, nous devions être enfin ‘chez nous.’ Le système fédératif promettait d’assurer notre survivance. Nous entrions librement dans le ‘Dominion.’ La loi impériale qui forme la base de notre constitution n’est que l’expression légale et officielle de la volonté des parties contractantes. C’est la rédaction solennelle du ‘désir exprimé par les provinces.’ On y trouve les éléments d’un véritable contrat de société, revêtu de la sanction royale.

20. Michel Brunet, *Canadians et Canadiens* (Montreal, 1954), 30.

21. *Notre Avenir Politique: enquête de l’action française* (Montreal 1923). Yet even in this volume, concern for the fate of the minorities outside Quebec remained something of an obstacle to that identification.