CHAPTER I

CONFEDERATION

1. THE FORCES LEADING TO CONFEDERATION

Canadian Confederation was a great political achievement. It was made possible by a remarkable conjuncture of events which brought each of the separate colonies to a crisis in its affairs at the same time and pointed to political union as a common solution of their difficulties. Great Britain, for the time being disillusioned with empire, had reversed the military and commercial policies which had sheltered and nourished the colonies in the past. The loss of the imperial preferences had compelled all the colonies to face drastic readjustments. In the Province of Canada, this disaster coincided with the final failure of the costly St. Lawrence transportation system designed to tap the hinterland of the Province were seriously involved in the failure of this ambitious venture at the very moment when the strife between Upper and Lower Canada had led to a political impasse. In the Maritimes, the nicely balanced economy based on the sea was threatened by the new agents of steel and steam; an onerous public debt had been incurred for railways and the loss of the imperial preferences was a heavy blow. These circumstances provided tribulations enough for colonial statesmen; in addition there was the hostile attitude and aggressive expansion of the United States.

The territorial aggrandizement of the United States impelled a defensive political union of the British colonies in North America. The loss of imperial preferences and probable withdrawal of trading privileges by the United States gave point to arguments for economic union. The railways, lately come to North America, provided for the first time a means of uniting vast continental areas under a single government. In a larger union, there might be not only an escape from present and impending misfortunes but also a brighter future. Out of the failures of the past, the perils of the present and the hopes for the future, there emerged a new purpose and design for British North America. It not only required that there should be union but also decided largely the form it should take. The purpose, the original structure and much of the subsequent history of the Canadian federation find their explanation in the very factors which brought union about.

The American Revolution left half the continent with two tiny pockets of settlement under the British flag. These two pockets had developed into four self-governing colonies, and struggling settlements had gained footholds in the western wilderness and on the Pacific Coast. The older colonies had matured greatly, both politically and economically, but, being essentially dependent on water transportation, they had remained isolated from one another. As British dependencies, their economic development had been shaped by the imperial commercial system. They thought in terms of external rather than British North American trade.

The Maritimes looked to the sea. They concentrated on their timber and fish, their shipbuilding and their carrying trade. Their own hinterland and the vast continent behind them were little in their thoughts. The Canadas had developed a thriving export trade in timber and wheat. The most active spirits, however, took these outlets for granted and faced inward on the continent. For them, the St. Lawrence water system was not so much a political boundary as a great highway leading into the heart of the continent. From the beginning, the Canadians had dreamed of a future when a trade of continental proportions would pour along their highway. The other British colonies had little place in their plans for the St. Lawrence as one of the great trade routes of the world. And the concerns of the Red River and Pacific Coast settlements were entirely foreign to those of Canada and the Maritimes. The separate pre-occupations of the colonies had led them in opposite directions emphasizing, in social terms, their physical isolation from one another.

Thus, in spite of their growth, the British colonies in North America had remained small and isolated pockets of settlement. They had grown up in reliance upon the mercantile privileges supplied by the British navigation laws and trade preferences. This was their world and they would be compelled to find an entirely new scheme of existence if it disappeared. And disappear it did in the two decades before Confederation. By adopting free trade at home, Great Britain swept away the privileges on which the provinces had relied. With the grant of responsible government,
imperial control over colonial fiscal policy was relinquished. The imperial authorities insisted that responsible government carried with it the responsibility for defence and the colonies were notified that the garrisons would be withdrawn. The threatened recall of the legions marked the end of the sheltered world the colonies had known.

Accustomed to shelter, the first reaction of the Province of Canada was to seek a new privileged relationship with the United States. This movement which resulted in the Elgin-Marcy Reciprocity Treaty of 1854 met with some short-lived success but the permanence of any such solution soon became open to the greatest doubt. Unfortunately for the peace of mind of the colonies, the change in British imperial policy coincided with the rise of continental imperialism in the United States. During the fifties and sixties, the far west was rapidly organized into territories under the aegis of the United States. The projection of transcontinental railroads by American promoters aroused deep alarm in the minds of British North American statesmen. Aided by new methods of settlement and transport, settlers were swarming westward and eddying northward towards the domain of the Hudson's Bay Company. This quick advance across the continent was accompanied by hymns to "manifest destiny" and by repeated, though largely irresponsible demands for the annexation of the British colonies to the north. Even if Canada and the Maritimes were not seriously threatened, it became increasingly doubtful whether the United States could be prevented from swallowing the rest of the continent, including the territories of the Hudson's Bay Company and the feeble British settlements on the Pacific Coast.

The American Civil War with its border incidents and its Anglo-American disputes intensified the alarm, and anger at Great Britain ensured that the United States would abrogate the Reciprocity Treaty at the earliest opportunity. The "Alabama claims" were translated into a demand for territorial compensation. Various threatening gestures were made by the American Union which emerged from civil war as one of the great military powers in the world. In the early sixties, the era of peaceful political relations and advantageous commercial arrangements with the United States appeared to be definitely over. The political independence of the colonies was insecure and their material prospects were discouraging in the extreme. They had lost their most valuable commercial privileges in the retreat of one empire and they had no hope of countervailing advantages from the threatening advance of another.

The abrupt reversal of British policy and the rapid expansion of the United States were events of world-wide significance. Either of them taken singly would have been a heavy blow to the provinces. Their coincidence intensified this pressure and gave it an urgency it might otherwise have lacked. Had Britain retained the old commercial system, the provinces might have remained unusually passive in the face of American expansion. If their southern neighbour had shown herself pacific and eager to trade on advantageous terms, they might have permitted themselves to be drawn quietly and separately into its orbit. As it was, these events were loosed upon them in the same period, forcing them to contemplate radical measures. They began to see solid advantages in a political union which had never hitherto been seriously entertained. Through a united front, they might hope to resist the northward expansion of the United States. By organizing trade among themselves, they might compensate for the loss of their valuable commercial privileges.

There were a number of factors in their domestic situations which urged drastic action and also pointed to the same solution. The long efforts to draw the trade of the mid-continent down the St. Lawrence had met with final failure. The public debts incurred for railways and other improvements of the St. Lawrence transportation system had almost destroyed the credit of the Province of Canada in the London money markets. The possibilities of further expansion within the Province were severely limited and vigorous commercial groups in Montreal and Toronto, disappointed over the failure to tap the Middle West, were looking for new fields for enterprise. In these circumstances, attention turned increasingly to the possibilities of the North-West. The imperial authorities were willing for Canada to take over Rupert's Land. As long as everything depended on water transportation, it had not been commercially accessible. But the coming of the railways seemed, for the first time, to open the way for its development. South of the boundary, the United States was showing how railways could be used to organize a continental domain. With the aid of this new technique, Canada might duplicate the impressive

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1 Texas was annexed in 1845, Oregon in 1846, and Alaska purchased in 1867.
2 The Union Pacific was chartered in 1862 and the Northern Pacific in 1864, the latter being frankly planned as an international transcontinental road.
3 In 1862, the Free Homestead Act opened the American West on most advantageous terms to incoming settlers.
4 Minnesota, which lay just south of the tiny Red River settlement, was admitted to the Union in 1858.
expansion of the United States. As an escape from the disappointments of the past and the hampering limitations of the present, the attractions of a national transcontinental system became ever more compelling.

The pressure for expansion to the West came mainly from Upper Canada, seething with the typical urges of frontier America. This fact had a disturbing influence on the unstable political union of Upper and Lower Canada. In spite of the unitary form of the constitution established in 1841, the Province of Canada had taken on the main features of a federal system. The Act of Union had awarded each section an equal number of representatives in the provincial assembly, and the practice of dividing ministerial posts and votes of public money fairly equally between them maintained an uneasy political balance between French-speaking and English-speaking Canadians. The instability of this equilibrium became more marked as the population of Upper Canada outgrew that of Lower Canada and the former demanded increased representation which would reflect its decisive superiority in numbers. The union thus endangered the cultural heritage of Lower Canada. Annexation of the Northwest, leading to further British settlement, would involve a westward transference of the provincial centre of gravity. Lower Canada would be doomed to political subordination, and the threats to its cultural values were intensified.

French Canada would not acquiesce in the swamping of its own way of life and the collapse of the Taché-Macdonald Government in June, 1864, after only three months of office, clearly revealed the impasse to which Canadian politics had been brought. The coalition which succeeded it was frankly formed to explore the possibilities of federal union, either of the Canadas alone or of British North America as a whole. In the Province of Canada, internal political deadlock and financial stringency intensified the pressure for a sweeping adjustment.

At the same time, the vision of transcontinental expansion had begun to have some attraction for the Maritimes. They were suffering from the loss of their protected markets and the new techniques of the industrial revolution were disturbing their habitual pursuits. Steam-driven vessels were overhauling the famous clipper ships and cutting into the carrying trade of the Maritimes. These circumstances led them to consider seriously the possibility of closer relations with Canada. Here again it was the railway which brought this possibility within the realm of the practical. New Brunswick and Nova Scotia had strained their public finances to build railways which were as yet incomplete. But the completion of the Intercolonial would, it was thought by many, bring the commerce of Canada into the ice-free ports of Halifax and Saint John. With a little optimism they could see the trade of a transcontinental British North America canalized in the same way. And for the Maritimes too, the growing belligerence of the United States darkened the horizon, and intensified the Maritimes’ recognition of their own inability to protect the fisheries.

Thus the pressure for union grew out of the circumstances of the colonies. The nature of these circumstances, both economic and political, determined the character of the union. The political conditions are familiar and need no further discussion. The economic conditions influenced greatly much of the framework and detail of the federal scheme. To grasp the design of the architects of Confederation it is therefore important to look more closely at the economic and social conditions of the time.

2. The Economy at Confederation

About three and a half million people lived in the British North American colonies at the time of Confederation, three-quarters of them in the Province of Canada. Four-fifths of the total population was rural. Montreal, much the largest city, had about 100,000 population. Most people were engaged either in cultivating the soil or extracting raw products from the forest and the sea. These principal occupations supported a small group of manufacturing, handicraft and service industries, widely scattered through the settled areas. These industries were sheltered from foreign competition, partly by natural advantages such as local abundance of cheap raw materials and the lack of transportation facilities and partly by the incidental protection of a revenue tariff. The percentage distribution among the various occupations is shown in Table 1 on the following page.

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4 Quebec with 60,000 and Toronto with 50,000 were the only other towns boasting more than 30,000 population. Barely 12 percent of the total population lived in towns exceeding 5,000.
The self-sufficiency of separate families and of small isolated communities—in short, the rural and frontier nature of the economies as a whole—is illustrated by the relative unimportance of the service occupations. A complex, highly specialized, metropolitan society requires a highly developed system of services.\(^7\) In the Canada of today, about forty per cent of the gainfully occupied are engaged in supplying services rather than in producing goods, compared with eighteen per cent at the time of Confederation. The extraction and crude processing of natural products then absorbed the energies of most of the population.

**The Maritimes—dependence on wood, wind and water techniques**

The economy of the Maritimes was based on the forest and the sea. Fishing, lumbering, shipbuilding and the carrying trade were the principal occupations. Table I indicates that farming, lumbering and fishing accounted for over half of those gainfully employed in New Brunswick and Nova Scotia. As the numbers who made farming a full-time occupation were not large, the overwhelming importance of the forest and the sea is clear. The Maritimes had grown up as a part of the old British commercial system which sought to make the Empire a closed trading unit, and they had responded to the demands of that policy. Fish had long been one of the great staples which the colonies were encouraged in various ways to produce. Indeed, the rise of Nova Scotia was, in a measure, due to the protected markets for cod in the West Indies which were partly lost by the New England fishermen after the Revolution. Accustomed to the sea, the Maritime fishermen naturally undertook to carry their fish to their markets and thus "Bluenose" ships first ventured into deep-sea carrying. The markets of the West Indies were many, small and scattered which prompted the Maritime captains to diversify their cargoes to facilitate ready disposal of them. Thus the production of lumber, potatoes and miscellaneous small manufactures was stimulated at home and these articles were added to the cargoes which cleared for the West Indies.

In the same way, the large-scale exploitation of the forest got its first stimulus from the establishment of colonial timber preferences during the wars with Napoleon. A large trade with Great Britain in square timber grew up and reached its peak about 1850. As the stand of large trees suitable for this trade approached exhaustion, a demand arose for lumber, particularly in the United States. Saw-mills sprang up at the mouths of the rivers in the Maritimes and exports of sawn lumber and deals began to replace square timber. In the sixties, the Bay of Fundy lumber trade was one of the chief world staple trades in terms of volume. The carrying of these bulky timber products always made large demands on shipping and the Maritimes were early drawn into building their own wooden ships for the purpose. Most of the rough ships used in this trade were sold in the same market as the timber and lumber which they carried.

The shipbuilding and carrying trades sprang from the basic Maritime occupations but soon grew beyond them. At the middle of the last century, the Maritimes were one of the world's great commercial maritime powers, holding fourth place in registered tonnage of shipping. They had begun by building ships to carry their own produce and this still provided the backbone of the business. In addition, however, the vessels of Nova Scotia and New Brunswick were engaged in the trade from Europe to the United States, to South America, the East Indies and Australia. They carried coal from England to the East, guano from the Chincha Islands to England and France, petroleum from the Gulf ports to Europe and South America and wool from Australia to Europe. The "Bluenose" vessels were to be seen in every great port in the world.

The principal industries of the Maritime colonies were thus closely allied and in large measure

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Table 1.—Occupations of the People, Percentage Distribution, 1871\(^6\)

<table>
<thead>
<tr>
<th>Occupation</th>
<th>Ontario</th>
<th>Quebec</th>
<th>New Brunswick</th>
<th>Nova Scotia</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Farmers, lumbermen and fisherman</td>
<td>51</td>
<td>52</td>
<td>51</td>
<td>52</td>
<td>51</td>
</tr>
<tr>
<td>Manufacturing and handicrafts</td>
<td>14</td>
<td>11</td>
<td>12</td>
<td>10</td>
<td>13</td>
</tr>
<tr>
<td>Construction and unskilled labourers</td>
<td>18</td>
<td>17</td>
<td>18</td>
<td>15</td>
<td>18</td>
</tr>
<tr>
<td>Miners</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sub-total</td>
<td>83</td>
<td>80</td>
<td>81</td>
<td>79</td>
<td>82</td>
</tr>
<tr>
<td>Services*</td>
<td>17</td>
<td>20</td>
<td>19</td>
<td>21</td>
<td>18</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

* Includes wholesale and retail trade, transportation and communication, government and education, finance, the professions and personal services.

\(^{6}\) These percentages are derived from the census of 1871 and may be taken as approximately correct for 1867.

\(^{7}\) That is, occupations which are not concerned with the direct production of goods, such as wholesale and retail trade, transportation, banking, the professions, etc.
complementary. It was impossible to think of the lumber or fishing industries apart from the shipbuilding and carrying trades and, on the other hand, anything which threatened the carrying trade would compel fundamental and sweeping readjustments in the other occupations. It was a highly unified and integrated economy. In a personal and more intimate sense, several of these occupations were often unified in a single enterprise carried on by one individual or trading group.8

Thus the Maritimes had mastered the techniques of the wood-wind-water era. On the basis of forest products and fish, they had made a place for themselves in world industry and trade. All their minor and subsidiary occupations were nicely geared to support and develop these leading industries. This balance in their economy and the perfection of their skills signified a confident maturity which enabled them to compete on even terms in the deep-sea carrying trade.

Nova Scotia was the most diversified of the Maritime Provinces. Its exports were of a greater variety and spread over a wider range of markets. Nevertheless, in 1866, fish accounted for over 40 per cent of the value of total exports.9 The trade in fish was almost entirely with the West Indies and the United States, the former outlet in 1866 being only slightly more important than the latter. The Reciprocity Treaty, which gave free entrance to the American market, and the Civil War had greatly stimulated the fishing industry in Nova Scotia. Between 1860 and 1866, the value of Nova Scotia fish exports rose by almost one-half and about three-quarters of this increase was absorbed by the expanding market in the United States.

It is difficult to state precisely the relative importance of the principal occupations since so many worked in several industries at the same time. The schooners employed in fishing in the spring participated in the West Indies trade during the fall and winter. Most of the fishermen combined farming and lumbering with their fishing. A highly individualistic and resourceful people used their farming operations to establish a marked degree of self-sufficiency while they secured supplementary cash income from fishing and lumbering. A great many of them were, at one time or another, engaged in the carrying trade. In addition to those who made it a part-time employment, the carrying trade provided full-time occupation for about 13 per cent of the gainfully employed in Nova Scotia in 1866.

Nova Scotia built her ships for her own purposes rather than for export. In the period between 1863 and 1866, the annual value of ships built was as much as one-third of the total value of all exports. The vessels owned by Nova Scotians in 1865 represented an investment of about $9 million compared with a total capital investment in manufacturing of $6 million. The available statistics do not suffice to give a distinct and complete picture but they do indicate that the life of Nova Scotia was dominated by the sea.

The economy of New Brunswick had a much simpler pattern than that of Nova Scotia. It was virtually a vast lumber camp. In 1866, forest products (excluding ships) made up nearly 70 per cent of the total exports of New Brunswick. Apart from subsistence fishing and farming, lumbering with its allied shipbuilding and carrying trade made up practically the entire economy. Great saw-mills were located chiefly at the mouths of the St. John and the Miramichi Rivers giving employment to three or four thousand men while half as many again were occupied in the logging activities which fed the mills. Thousands of farmers derived a substantial part of their income from logging and from growing hay, oats and potatoes for the lumber camps.

The ships built to carry the lumber to foreign markets were the most specialized product of the New Brunswick economy. Between 1862 and 1865 the value of ships built in New Brunswick varied from three-quarters to one-half of the value of all other exports.10 Shipbuilding thus had a major place in the economy. It was the one manufacturing activity (aside from the simple processing of the saw-mill) in which the Province had a differential advantage, providing an alternative to mere extraction and export of raw materials. Most of the towns were greatly dependent on the employment it offered. It brought in a relatively large amount of income from abroad as about half the output of ships was exported. The carrying trade was not nearly as important as it was in Nova

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8 The following account brings this out clearly. "The lumber for these assorted cargoes came from small local mills. Many of these mills would be owned and managed by men who had farms in the neighbourhood and whose interests also extended to the sea and ships. The Bluenose farmer, proclaimed the ablest man in the world, was commonly credited with raising the potatoes for his cargo, felling and sawing the lumber for it, building his own schooner in his spare moments and finally sailing her down to the Islands where he turned merchant and disposed of his wares." A. R. M. Lower, The North American Assault on the Canadian Forest, p. 70.

9 Minerals made up 16 per cent of all exports, forest products 11 per cent, agricultural products about 20 per cent, and a miscellaneous group of products, including all manufactures, accounted for only about 12 per cent.

10 They easily exceeded by one-third the value of ships built in Nova Scotia during the same period.
the importance of the sea to the Maritime Provinces. By the middle sixties, the registered preferences and the navigation laws were gone. The Maritime people believed in the sea. Their free market for fish in the Atlantic passages once the War was over, the full weight of these factors began to be felt and the “Golden Age” soon became a memory. It was the coming of the steamship which most surely foreshadowed the decline of this balanced economy of the Maritimes. By 1860, the holds of steamers already supplied about ten per cent of the ocean tonnage of the world and sailing vessels were being forced into longer and less profitable hails. Steamships were regularly making better Atlantic passages than the fastest sailing ships. The age of steel and steam was ousting the wooden sailing ships and undermining the foundations of the economy of the Maritime Provinces.

The implications of steel and steam were as yet only vaguely realized. Scaremongers might forecast their significance but, as in most human affairs, only a demonstration would carry conviction. The opportunities arising out of the Civil War had carried Maritime prosperity to its highest peak and it was not realized that the assurances given by this bustling activity were superficial, or even false. The Maritime people believed in the sea. They were confident of their power to make any necessary adjustments and maintain their enviable position in the commerce of the world. If they were not alert to the threat of the steamship, they were becoming very much alive to the promise of the railways. It was seen that railways would improve their communications and open up their own hinterland for development. Many were confident that railways would open markets for coal, fish, and manufactures in the Canadas and draw the expanding commerce of the interior to their seaports. The coal interests of Cape Breton, for example, were strong supporters of the Confederation scheme. For almost the first time, the Maritimes began to feel the pull of the continent behind them.

For upwards of twenty years before Confederation, they had tried to secure the building of a railway to connect Canada with the Maritime winter ports. But projects for the Intercolonial had always collapsed. It was not attractive to private capital. The governments in the colonies were never able to agree on the terms on which it should be built as a joint project. The British Government, whose guidance and assistance alone could have surmounted these obstacles, wanted a military and strategic road, hugging the east shore of New Brunswick, while New Brunswick, in particular, disdained a railway which failed to

The Very Substantial Prosperity of the Three Maritime Provinces in the Pre-Confederation Years

The very substantial prosperity of the three Maritime Provinces in the pre-Confederation years rested upon their fish and lumber exports, wooden shipbuilding and their carrying trade. The maintenance of this “Golden Age”, as it has since come to be known, depended on the continued stability and prosperity of each one of this set of closely allied and related industries. By the middle sixties, there were plenty of indications that it rested on a precarious base. The best as well as the most accessible of the timber resources had been cut off. The commercial privileges contained in the colonial preferences and the navigation laws were gone. The provinces had to face the competition of New England in the fish markets of the West Indies, and with the abrogation of the Reciprocity Treaty in 1866, they were compelled to forgo (temporarily, as it turned out) their free market for fish in the United States. The Civil War had stimulated exports and provided new opportunities for the carrying trade. It brought a lush, though temporary prosperity and masked, for the time being, the long-term factors which were operating against the Maritimes. Once the War was over, the full weight of these factors began to be felt and the “Golden Age” soon became a memory.

The Last Phase of the “Golden Age” of the Maritimes—the coming of the steamship and the railway

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11 In the sixties, New Brunswick had only about half the registered tonnage of Nova Scotia.
12 There was some fishing and at times an important shipbuilding industry, but farming was by that time by far the most important occupation.
13 In the present century there has been a considerable shift toward the production of agricultural specialties such as dairy products, potatoes, cattle and foxes.
14 A large proportion of these imports from the United States consisted of wheat and flour, trans-shipped from Upper Canada, via Portland.

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connect Saint John and Fredericton with the Canadas.

An equally ambitious scheme which failed of fruition was the "European & North American Railway", designed to connect Halifax and Saint John with Portland, Boston and New York and to deliver trans-Atlantic passengers, mail and express freight in record time. The hopes of an imperial guarantee were disappointed and New Brunswick and Nova Scotia could not finance either line themselves. They did, however, build pieces of railways, designed to fit into the larger schemes but insufficient to give them the external connections they desired. Thus by the time of Confederation, the two Provinces had built 379 miles of railway which improved their internal communications but harmed their own coasting trade. The most impressive result obtained was the addition of some $10½ million to their public debt.

On the eve of Confederation, then, the Maritimes had a mature and prosperous economy, dependent on a wood-wind-water technique fast becoming obsolete. They were beginning to feel the pressures of the revolution in transportation. Their tentative efforts to apply the new technique of steel and steam to integrate their economies with those of the United States and the St. Lawrence Valley had been unsuccessful, and they were debating the question whether the promise of an intercolonial railway was worth the obligations and the risks of political union with Canada.

The Canadas—their concern with transportation: common and conflicting interests

Upper and Lower Canada, although divided by cultural and sectional cleavages, had never been intended by nature to form separate economic systems. The St. Lawrence, with its access to the sea and its ingress to the continent, was bound to unify its drainage basin economically. There are, therefore, better reasons than the political union of 1841 for discussing the pre-Confederation Canada as an economic entity.

The St. Lawrence basin contained a considerable area of fertile land lying south of the Laurentian plateau. This available land had been largely filled with settlers in the years before Confederation. Along with this rapid agricultural development had come a flourishing pioneer industry, laying the foundations for a diversified economy of modest yet substantial proportions. Under the conditions of the time, it was naturally becoming a community of settlements, devoted to internal trade and commercial intercourse with the United States.

At the same time, there was an aggressive and ambitious commercial group in Montreal, supported in the later part of the period by the growing commercial interest in Upper Canada, which thought of the St. Lawrence as primarily a trade route and which had vigorously endeavoured to have the whole political and economic structure accommodated to that conception. From the days of the fur trade, the commercial group in Canada had seen the St. Lawrence as an integral part of the old British commercial system and had striven to make the trade of a continent flow through their hands instead of through New York. Successive colonial governments had been inspired by this dream with the result that government policy and public finance had been harnessed to the grandiose conception of the St. Lawrence as a trade route. In ambitious but always futile efforts to realize this great plan, the Province had accumulated a set of public works and a crushing public debt, both too massive for an economy limited by its own boundaries.

New York had challenged the St. Lawrence trade route, first by the Erie Canal and then by the railways. Canada had countered, first, by the canal system of the St. Lawrence, built as a government project, and second, by the Grand Trunk Railway, undertaken by private capital but relying heavily on government loans. Both Canadian ventures failed to attract the trade of the American Middle West. In 1862, soon after the completion of the road, the Grand Trunk Railway Company was in serious financial difficulty.

The Government of Canada had gambled heavily in railway development through the fifties and early sixties. By 1866, it had loaned $33 million to railway companies while municipalities had contributed $7 million. Virtually the whole of the $40 million, which made up forty per cent of the total provincial and municipal debt, was uncollectible. If canals are included, the government investments in transportation amounted to almost sixty per cent of the provincial and municipal debt. Altogether, about one-third of the current expenditures of the Province and the municipalities were incurred on transportation. The attempt at commercial integration with the interior of the continent had irretrievably failed and left behind it a burden of debt which weighed oppressively on the economy.
The railway development of the preceding decade had opened up the country for settlement and for exploitation of its great timber resources remote from the river valleys. The flow of immigrants had filled up the most promising parts of the Province and almost all the good agricultural land had been occupied. By 1866, forty-one out of the fifty-one million acres surveyed had been disposed of. The pioneer type of community must expand outwards and the substantial limits of that type of expansion in the Province had been reached.

Despite the concentration of public expenditures on the development of the trade route, agriculture had become the most important source of livelihood in Ontario and Quebec and it had displaced the forest as the chief source of exports. The latter, however, retained much of its old importance. Lumber had succeeded fur as the great staple emerging from the St. Lawrence. The industry prospered, first, on the British colonial preference and then on the expanding markets of the United States. Farming communities grew up around and depended on it. The coming of the railways increased the available supplies and general expansion and the American Civil War stimulated demand. The building of wooden ships flourished at and near Quebec and the lumber trade made this city one of the great shipping centres of the world at the time.15

Over half of those gainfully occupied in the Province of Canada were employed in farming and lumbering. In the period, 1860-65, agricultural and forest products provided over four-fifths of the exports. The combined stimulus of the Reciprocity Treaty and the Civil War had greatly increased the exports of both groups of commodities to the United States.16 The abrogation of the Treaty threatened very serious consequences, particularly for agriculture the exports of which were almost double those of the forest industry during the period 1860-65.

The Rise of Manufacturing in the Canadas

The manufacturing industry had grown rapidly and was becoming diversified after 1850. The new industrial methods spreading out from England were attracted by local supplies of raw materials and the natural shelter arising from lack of transportation facilities. The revenue tariff afforded some incidental protection. Under such circumstances, local production of some articles was more economical. Accordingly, most of the manufacturing industry was scattered in small units through the towns and villages of the agricultural settlements. Generally, it was of a kind which required little capital and little highly specialized skill. As the railways spread, there was a tendency toward increase in size of unit and concentration in strategic centres. There had long been a large flour-milling industry in Montreal, catering to the export trade, and industries began to concentrate in Hamilton and Toronto. In general, however, manufacturing enterprise remained small, simple and decentralized. Almost every town produced agricultural implements and the other tools used by a pioneer community. Machinery and tools requiring a high degree of skill for their production were almost entirely imported. Woollen mills, boot and shoe factories, furniture factories, breweries and distilleries thrived on local raw materials and the incidental protection of a revenue tariff. But in such commodities as cotton and linen textiles, dependent on foreign raw materials, no progress was made toward local production.

In spite of the rapid development, the total industrial factory production was small. This was by no means entirely due to the economic advantage of buying cheap foreign manufactures with exports of raw materials. To a degree which we now find hard to realize, individual households were self-sufficient. There was also a large group of craftsmen who lived largely by barter. The blacksmith, carpenter, shoemaker, tailor and dressmaker produced a variety of the basic necessaries, often in return for produce or a share of the raw materials used. In the census of 1871, this group of craftsmen reported an output equal to one-fifth of the total of all manufacturing establishments, excluding saw mills and flour mills.

Cheap and improved transportation had already begun to draw industry from the farm and the village to the city. But the huge concentration of industry into large units in the relatively few great industrial centres of today had to await further developments in transportation, the improvement of old and the invention of new techniques, the extension of markets and the perfection of the joint stock company as an instrument for collecting large pools of capital. At the time of Confederation, small enterprise still ruled the field. In 1870, the average capital invested per establishment was $1,900 compared with $217,000 for 1930. In 1870, the three leading urban centres contributed about
one-quarter of the total net value of manufactures while today they contribute nearly one-half. In 1867, there were not more than 50,000 labourers employed in all the cities of the four provinces.

Self-Sufficiency—the importance of the family as an economic and social unit

Seventy or eighty years ago, material income was, for most, limited to the basic requirements of food, clothing, and shelter. These were chiefly the product of local industries, geared to local consumption, and in which individual enterprise was predominant. To a great extent, they were secured without passing through the money exchange system at all. Thus the sharp and frequent trade fluctuations of the period did not cause profound dislocations. The simplicity and decentralization of factory industry and the ease with which the worker could retreat to the self-sufficient farm gave to the economy a capacity for adjustment which it has largely lost in later years with the shift to large-scale organization and urban concentration.

In Lower Canada, agriculture was on a more nearly self-sufficient basis than in any of the other provinces. Very little was produced for sale and the farmer was absorbed in the manifold activities necessary to make the family a self-sufficient economic unit. In Upper Canada, on the other hand, newer soil and larger holdings yielded considerable surpluses for sale. The surpluses in the early days were mainly wheat; and relentless cropping provided large exports in the days of the colonial wheat preference, and later during the Crimean War. In the sixties, decline in fertility of the soil, the Reciprocity Treaty and the American Civil War resulted in a greater diversity of products. By 1866, exports such as barley, rye, and cattle had become important. Exports of cheese were nearly one-half. In 1870, seven and a half million yards of woollen cloth were produced on farms in Canada. This was nearly equal to the total value of the output of the numerous woollen mills and the imports of woollen cloth combined. In a speech at Halifax in 1865, A. G. Archibald referred with pride to the Maritime agriculturists, "the great body of settlers in the country whose backs are covered with wooleness of their own production, whose feet are shod with the hides of their own cattle, who sleep between blankets of their own wool and their own weaving—on feathers from their own farmyards."

The Economic Outlook of the British North American Colonies—the coincidence of unfavourable developments

The closely inter-related activities of the Maritimes dependent upon the wood-wind-water techniques, and the agricultural, forestry and commercial economy of the Canadas had achieved a considerable prosperity in the decade before Confederation.

27 In 1870, seven and a half million yards of woollen cloth were produced on farms in Canada. This was nearly equal to the total value of the output of the numerous woollen mills and the imports of woollen cloth combined. In a speech at Halifax in 1865, A. G. Archibald referred with pride to the Maritime agriculturists, "the great body of settlers in the country whose backs are covered with wooleness of their own production, whose feet are shod with the hides of their own cattle, who sleep between blankets of their own wool and their own weaving—on feathers from their own farmyards." Evening Express, January 4, 1885.
However, in each of the British North American colonies the basis of that prosperity threatened to disappear as the 1860's drew to a close. The Province of Canada had a transportation system which had been conceived for a continental commerce rather than for its own needs as an economic unit. The commercial dream had evaporated and left a paralyzing burden of public debt. Further industrial expansion depended on expanding markets. Unfortunately, the limits of great agricultural expansion had been reached. The best land was occupied and profitable exploitation of the poorer land depended upon buoyant foreign markets for agricultural exports. The outlook for such export demand was gloomy. Hopes for renewal of the British preferences had been extinguished. Most threatening of all was the loss of American markets for agricultural products, fore-shadowed by abrogation of the Reciprocity Treaty and the agricultural expansion of the Middle Western States. For five months of the year, Canada had no outlet to the sea and there was constant fear that the United States would make good its threat to withdraw the bonding privileges for Canadian trade. The factors which had made for expansion in the past had practically played themselves out.

The full significance of this is clearly revealed by the movements of population. From 1851-61, the British North American colonies are estimated to have held the equivalent of their own natural increase and a net balance of 175,000 immigrants over emigrants. From 1861 to 1871, there was a net emigration of over a quarter of a million, involving the loss of about one-third of the estimated natural increase for the period.\(^{18}\) Canada was failing to attract immigrants and losing her native sons. The prospects indicated decline rather than expansion. And on a declining rather than an expanding prosperity the burden of the large public debt would become intolerable.

The economic outlook compelled the Province of Canada to search for a means of escape from hampering burdens and limitations. Judging from the spectacular progress of the United States, the coming of railways had made practicable the hitherto vague project of acquiring Rupert's Land and of linking up with the colony on the Pacific. They would also furnish winter access to the sea through the Maritimes. By bringing this area, stretching from sea to sea, under a single government, vast new possibilities for expansion would be opened. The trade of the Orient would be tapped and a great internal market, integrating the occupations and resources of all the colonies, would be established. With some reorganization, the transportation system of the Province of Canada could be transformed into an important link of a national transcontinental system. It would cease to be a burden and become a valuable asset which Canada could contribute to the joint capital needed for the new venture. It is significant that the Grand Trunk Railway Company, whose fortunes were as much at stake as those of the people of Canada, reached the same conclusion. The president of the company, Edward Watkin, came to Canada in 1862 to investigate its difficulties. He decided that the only hope of salvage was the launching of a larger venture and thenceforth he was a powerful and effective advocate of union of the British North American colonies.

The opening up of the Northwest had had a romantic appeal in the eastern colonies for two decades. Its possibilities were imagined to be great, but there was little on which to base an estimate of its solid possibilities. The Red River Settlement contained scarcely ten thousand people. Most of these were half-breeds. The manner of their livelihood had been fixed by the activities of the Hudson's Bay Company and they were indifferent to any intensive cultivation of the soil. However, the isolation of the Settlement was over. Hundreds of carts were employed in overland transport between Fort Garry and St. Paul. There were steamboats on the Red River and American settlers and railways were pushing toward the ill-defined lands of the Company. The new methods of transportation were threatening the Hudson Bay route and disposing the governors of the Company to consider the future closely. Inside the settlement, the settlers were dissatisfied with the Company Council's rule.

Beyond the mountain barrier, on the Pacific Coast, the two colonies of Vancouver Island and British Columbia were united in 1866. Union had been brought about largely by the staggering public debt and repeated budget deficits. These colonies had just experienced a mushroom growth, due almost entirely to the gold rush which began in 1855 and which collapsed suddenly about ten years later. In the first year of the gold boom, it is estimated that some 25,000 people entered the two colonies. The feverish search for gold produced a rapid but precarious expansion. Trade and con-

\(^{18}\)These figures are for all the provinces. But the Province of Canada had three-quarters of the total population and there was little movement of population in the Maritimes, particularly in the latter decade. The figures, therefore, give a substantially correct picture for the Province of Canada.
struction flourished and the subsidiary industries of lumbering and agriculture sprang up. The Government piled-up large debts in promoting developments such as the Cariboo road. Then suddenly the rich gold diggings petered out and population fell sharply. In 1866, the total immigrant population of the new Province of British Columbia was little more than ten thousand. The credit system built up to serve the new mining policy and to brace the scattered provinces against Columbia was little more than ten thousand. The nation to meet the changed conditions of British Government piled-up large debts in promoting enterprises crashed and buoyant optimism was possible American aggression. Economically, it was intended to foster a national economy which would relieve dependence upon a few industries and lessen exposure to the effects of the economic policies pursued by the United States and Great Britain.

Political union was expected to promote strength as against the external world. The triumphant Northern States appeared a threat to territorial integrity. Other interests needed protection too. Nova Scotia felt her deep-sea fishery interests threatened, and the special institutions and culture of Lower Canada would not long have survived absorption of the colonies by the United States. Political union was designed to defend navigation rights on the St. Lawrence and its canals, and fishing rights at sea. A single united authority could use both these and access to its extended internal market as bargaining counters for advantages in international trade. A stable political authority would restore the public credit, so badly damaged by the accumulation of debt and political dissension. In the money markets of the world, the credit of the whole would be greater than that of the parts and would provide a broader base for the government expenditures necessary to attain new and difficult economic objectives.

Federal union was a plan whereby, through mutual concession, cultural and local loyalties could be preserved and reconciled with the political strength and solidarity of the whole. These separate loyalties were strong and their existence was keenly realized. They existed not only in Canada but also in the Maritimes where they had helped to frustrate projects for Maritime legislative union. Mutual concession required the English-speaking elements of Lower Canada to relinquish their integral union with the English-speaking people of Upper Canada while the French-speaking Canadians abandoned their objections to a superior political authority in whose councils they would be in a minority. In compensation, the broad questions of trade and commerce which so intimately concerned the English-speaking people of Lower Canada were to be given to the federal

3. THE NATURE OF CONFERDATION

Principal Objectives

Confederation was conceived as the solution for a number of political and economic difficulties and, therefore, had both political and economic aims. Politically, it was designed to establish a new nation to meet the changed conditions of British policy and to brace the scattered provinces against possible American aggression. Economically, it was intended to foster a national economy which would relieve dependence upon a few industries and lessen exposure to the effects of the economic policies pursued by the United States and Great Britain.

Union—a common means of escape and renewed expansion

Thus, for diverse reasons, the economic outlook of all the British North American colonies on the eve of Confederation had many alarming and depressing features. It was a significant coincidence that all the colonies, travelling their separate and well-nigh independent paths, reached an economic cross-roads at the same time. The Canadas, burdened with the failure of their two great bids for western expansion, and dispirited by the closing of their own frontier, were in need of a new outlet and stimulus. The Maritimes, tied to a dying industry, were in even greater, if less conscious, need. The tiny Red River Settlement was beginning to find its feet, but was toddling into the arms of the United States in the process. The Pacific Coast gold rush had fostered some basically sound development, but its recessions had left a small population stranded with a large debt.

Isolated as were the colonies from one another, the Maritime colonies and the colony of Canada were brought together by certain common characteristics in their external relations and the effects of technological changes on their economies. All had been deeply affected by the radical change in imperial commercial policy; all had turned hopefully to the United States and had established profitable but precarious relations; all were deeply alarmed at the prospect that these might be rudely terminated. The impact of the steamship, the railway and the industrial revolution had affected them all profoundly, if variously. The new means of transportation made possible a union of continental proportions in which all hoped to find escape from existing difficulties and stimulus for renewed expansion and prosperity.
authority, thus securing the benefits of single control in these matters of general interest while French-speaking Canada was to be secured in sole control of the cherished values it so tenaciously held. Equally, this solution offered security for the historic traditions firmly rooted in the Maritimes.

Economically, the first objectives of Confederation were to establish a free-trade area comprising the five old provinces and to develop inter-provincial transportation facilities. The resources and industries of the several provinces, it was thought, would prove complementary to each other, and would increase prosperity and self-sufficiency. To make this a reality, the Intercolonial Railway was to link the Maritime Provinces with the St. Lawrence Valley and to give Canada winter access to the sea.

Another great economic objective of Confederation, to be realized as soon as circumstances permitted, was the opening up of the Northwest and the inclusion of the Pacific province. For the Province of Canada, in particular, this westward expansion was to provide an escape from a cul-de-sac and the threatened economic stagnation. New frontiers and new resources would provide opportunities for settlement and development. It was recognized as an immense undertaking for which no specific detailed plan could be made under the urgencies and limitations of the moment.

This project had to await the acquisition of the lands of the Hudson's Bay Company. It required the building of a transcontinental railway. This, in turn, depended upon attracting new capital and capital, at that time, had become shy of Canadian ventures. Collective effort and resources on a scale which only government could secure were necessary and, at the same time, conditional on the restoration of the public credit.

Although these plans were necessarily vague in 1867, they were nevertheless resolutely held. The new political framework was designed to give the Federal Government ample powers for the prodigious task of opening up the West. The Federal Government was intended to give a vigorous lead in the development of the new national transcontinental economy and in matters relating to that development there was to be no doubt, such as had recently arisen in the United States, about its authority.

There were some among the Fathers of Confederation who favoured a unitary state as an instrument for realizing these plans. As is well known, John A. Macdonald had a strong preference for a unitary state and Galt accepted the federal scheme with reluctance and hoped it might later coalesce into a legislative union. But legislative union was not acceptable to the French-speaking Canadians or to the Maritime Provinces. Furthermore, municipal institutions had not yet been established in the Maritimes, and they were still in the early stages of development in Lower Canada. The centralization of all governmental powers under one government was, therefore, impracticable from an administrative point of view. The distractions of local administration might well have diverted some of the energies of the central government from its larger creative tasks. Thus, for various reasons, the builders of the new nation planned a federation comprised of a central government with authority over matters of general and common interest and provincial governments with authority over matters of local concern.

The Division of Legislative Powers

The British North America Act was the final embodiment of their scheme. The acknowledged necessity of a federal type of union was recognized by the preamble to the Act which recited the desire of the Provinces of Canada, Nova Scotia and New Brunswick "to be federally united into One Dominion". The vital core of a federal constitution is the division of legislative powers between the central authority and the component states or provinces. This division represents the compromise between the forces which make union possible and those which inhibit the formation of a closer union. It marks the limits of what can be done by common agreement and the extent to which the separate states must be permitted to differ and work out their own destinies. In sections 91 to 95 of the British North America Act, the main lines of this division were set forth.

In section 92, certain classes of subjects were enumerated and the provinces were given exclusive power to make laws in relation to matters coming within these classes of subjects. These classes included such things as the administration of justice, municipal institutions, the establishment and maintenance of prisons, hospitals, asylums and charitable institutions and control over the public lands of the province. The provinces were also given control over local works and undertakings. But an exception reserved international and inter-provincial lines of transport and communication to the Dominion and authorized the Dominion to take legislative power over any local work at any time.

19 Speech on the Proposed Union of the British North American Provinces, delivered at Sherbrooke on Nov. 23, 1864, p. 22.
by declaring it to be for the general advantage of Canada or for the advantage of two or more provinces. A power of direct taxation to raise revenue for provincial purposes was given, although it was thought that expanding revenues from the public lands would make it generally unnecessary for the provinces to exercise this power.\(^{20}\)

The classes of subjects in section 92 included two of vague and general reference, viz., “Property and Civil Rights in the Province” and “Generally all Matters of a merely local or private Nature in the Province”. Section 93 gave the provinces control over education, subject to certain clauses designed to protect the rights of Roman Catholic and Protestant religious minorities. By section 95, the Dominion and the provinces were given concurrent powers over agriculture and immigration, federal legislation to prevail in case of conflict.

The opening paragraph of section 91 gave the Dominion power “to make Laws for the Peace, Order and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces”. That is to say, the residue of powers not expressly given to the provinces was reserved to the Dominion. The section then proceeded with a specific enumeration of twenty-nine classes of subjects, illustrating but not restricting the scope of the general words used earlier in the section.

This enumeration included such classes of subjects as defence, criminal law, naturalization and aliens, and the postal system. It also included regulation of trade and commerce, fisheries, banking, currency and coinage, commercial paper, weights and measures, bankruptcy and insolvency and certain other topics of primarily economic reference. It also gave the Dominion unlimited powers of taxation. The concluding paragraph of section 91 provided against these enumerated topics being “deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects” assigned to the provinces by section 92. An exception to section 92 gave the Dominion control over all interprovincial and international transportation and communications.

The Problem of Interpreting the Division of Legislative Powers

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. The different aspects of life in a society are not insulated from one another in such a way as to make possible a mechanical application of the division of powers. There is nothing in human affairs which corresponds to the neat logical divisions found in the constitution. Therefore, attempts to exercise the powers allotted by the constitution frequently raise questions as to its meaning in relation to particular circumstances.

The British North America Act has not escaped this difficulty. Manifestly, it would be difficult for the Dominion to make any law for the “Peace, Order and good Government of Canada” without affecting, in some way, one or other of the specific subjects in relation to which the provinces were given exclusive powers. On the other hand, laws made by the provinces under the heads of jurisdiction given by section 92 would frequently have direct implications for the “Peace, Order and good Government of Canada” or would bear in some unexpected way upon the enumerated classes of subjects in section 91 over which the Dominion was given exclusive power. The implications and sometimes the express provisions of legislation would seem to cross the line which, in theory, divided the spheres of legislation assigned to the provinces and the Dominion. In a variety of circumstances, the problem of what amounted to an invasion of the field of one by the other would raise difficult questions of interpretation.

The task of interpretation was complicated by the existence, in sections 91 and 92, of several general descriptions of the ambit of legislative power given to the Dominion and the provinces which lacked a clear, legal meaning. “Peace, Order and good Government”, “Regulation of Trade and Commerce”, “Property and Civil Rights in the Province” do not convey precise signification. Since 1867, the Privy Council has had the last word on the meaning of the British North America Act and has laid down rules of construction for determining when section 91 was to have primacy over section 92. By a process of textual criticism, it has given some concreteness to the general phrases just mentioned. In this way, it has elucidated the legal meaning of the constitution and imparted greater certainty to the division of powers than could have existed when the Act first came into operation. This legal meaning is binding on all other courts and on the Dominion and provincial legislatures.

The British North America Act was a statute of the British Parliament and the Privy Council

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\(^{20}\) Speech by Galt, Confederation Debates, p. 68.
brought to its task of elucidation an elaborate set of rules binding on the courts in their interpretation of all statutes. These rules required the Privy Council to consider the literal meaning of the words used without any conjectures as to the intentions of those who framed the Quebec and London Resolutions. The Privy Council as a court was not free to consider historical evidence about intentions but was bound to restrict itself to a consideration of what may be called, by contrast, legal evidence—the intention actually expressed by the words used in the Act.21 Much controversy, past and present, has centred on the question whether the intention which the Privy Council has found to be expressed in the Act accords with the actual intention of the Fathers; in short, whether we now have the constitution which they intended to give us.

Some are satisfied that the Privy Council has merely made explicit what the Fathers intended. Others dismiss the controversy on the ground that we cannot now know what they intended. Others, again, hold that the constitution today is vastly different from what its framers meant it to be and seek to support their contentions from certain historical evidence. The interpretation given by the Privy Council will be considered in later chapters. In an account of the forces behind Confederation and of the nature of the constitution established in 1867, it is important to note the historical arguments which form the basis of many current criticisms of the Privy Council.22 For purposes of record, we summarize these arguments here but, as we shall indicate later, we do not accept them as conclusive upon certain points, some of them of considerable importance. The critics of the Privy Council do not appear to have fully substantiated their case but, at the same time, they do marshall an impressive mass of historical evidence in support of their general conclusions and their arguments cannot be dismissed as mere hypotheses. Confederation being relatively close to us in time, and the records of its achievement being relatively ample, it is argued we have no reason to assume that it is inherently impossible to determine now the intentions of the Fathers, although it may well be admitted that it is difficult to establish with conclusive finality the meaning of some of the phrases which they employed. The historical case presented by the critics of the Privy Council has not been accepted by all authorities but it merits the attention and consideration of serious students of the problem.

**Historical Interpretation of the Intentions of the Fathers—arguments supporting a broad view of Dominion powers**

Some historians urge that the Fathers intended to give wide, sweeping powers to the Dominion and to restrict the provinces to a narrow range of functions, in the exercise of which they were to be subject to the control and supervision of the Dominion.24 They claim that the general phrases in section 91, “Peace, Order and good Government” and “Regulation of Trade and Commerce”, to which the Privy Council has given a restricted meaning were intended to have a broad interpretation and that the general phrase, “Property and Civil Rights in the Province”, in section 92, to which the Privy Council has given an extended meaning, was intended by the framers to have a much more limited interpretation.

Some of the leading figures among the framers of the federal scheme evidently intended the general government, as it was called, to have broad and far-reaching powers. John A. Macdonald explained that “all the great questions which affect the general interests of the Confederacy as a whole, are confided to the Federal Parliament”.25 Galt declared that among the subjects given to the general government would be found “all that could in any way be considered of a public and general character”.26 Lord Carnarvon, the Colonial Secretary, introducing the scheme to the House of Lords said it proposed to give to the central authority “those high functions and almost sovereign powers by which general principles and uniformity of legislation may be secured in those questions that are of common import to all the provinces”.

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21 In interpreting the British North America Act, “the question is not what may be supposed to have been intended but what has been said.” Lord Bankey in Edwards v. Attorney General of Canada, [1930] A.C. 124 at p. 127.


24 Confederation Debates, p. 40. See also pp. 30, 33, 41.

25 Speech on the Proposed Union, p. 10.

Some of the opponents of the scheme criticized it on much the same grounds. A. A. Dorion claimed that it "gives all the powers to the Central Government, and reserves for the local governments the smallest possible amount of freedom of action," and J. B. E. Dorion opposed the scheme "because we are offered local parliaments which will be simply nonentities, with a mere semblance of power on questions of minor importance".

Supporters of this historical interpretation urge that this view of the relative importance of the Dominion and provincial governments in the new scheme is borne out by various sections of the constitution. They point to the power of the Dominion to appoint the Lieutenant-Governors of the provinces and emphasize the fact that while the provinces were given power to amend the provincial constitutions, they were forbidden to alter in any way the office of Lieutenant-Governor. They contend that the intention to give the Dominion a dominating position is confirmed by the power to reserve and disallow provincial legislation which was given to the Dominion.

In support of this general position, they place great importance on the opening paragraph of section 91 which gave the Dominion power to make laws for the "Peace, Order and good Government of Canada" in relation to all matters not exclusively assigned to the provincial legislatures. This phrase had acquired a wide, though not very precise, significance in the legislative history of Canada in its bid for the trade of the mid-continent. A. A. Dorion claimed that it "gives all the powers to the Central Government, and reserves for the local governments the smallest possible amount of freedom of action," and J. B. E. Dorion opposed the scheme "because we are offered local parliaments which will be simply nonentities, with a mere semblance of power on questions of minor importance".

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In support of this general position, they place great importance on the opening paragraph of section 91 which gave the Dominion power to make laws for the "Peace, Order and good Government of Canada" in relation to all matters not exclusively assigned to the provincial legislatures. This phrase had acquired a wide, though not very precise, significance in the legislative history of the British Empire before 1867. "Peace, order and good government", and the variation, "peace, welfare and good government" were the phrases habitually used by the British colonial authorities in vesting colonial legislatures with the full range of their legislative powers.

In conferring these powers on colonial legislatures, it was not customary to enumerate specific powers; it was customary merely to grant, in one or other of these well-worn phrases, the entire measure of jurisdiction deemed compatible with imperial control. As imperial control in the internal affairs of the colonies was mainly exercised through the power of disallowance, these phrases carried complete internal legislative competence. In fact, they are the title-deeds of the legislatures of the self-governing Dominions, not again added to by imperial legislation until the Statute of Westminster. The exponents of this historical interpretation, emphasizing the breadth
The frustrations engendered by divided authority formed part of the living memory of public men at the time of Confederation and this appeal to history for a broad interpretation of Dominion powers argues that the Fathers, who wanted to create a robust national economy, must have intended the control of such matters to be placed in the hands of a single government.

In support of this thesis, they draw attention to the reluctance among the commercial element in Montreal to give up the Union of 1841 which had established a common government to deal with these economic matters. The confederation plan asked them to abandon this union and one of the tasks of the advocates of a wider union was to convince them that the establishment again of two provinces in the St. Lawrence Valley would not mean a return to the old confusions. John Rose assured them that they had nothing to fear because the general legislature would have control over the post office, trade, commerce, navigation:—"all the great and important interests ... that affect the minority in Lower Canada ...".32 Galt reiterated that "the interests of trade and commerce ... would be taken out of the category of local questions ...".33 Cartier, stating that he could understand the concern of the commercial minority of Lower Canada lest there should be a return of the old difficulties, said these fears were groundless because "it would be for the General Government to deal with our commercial matters".34 On the basis of these statements, supporters of this historical interpretation argue that the words "Regulation of Trade and Commerce", were intended to transfer a wide range of economic matters to the control of the central authority.35

A historical interpretation which would magnify the scope of Dominion powers by attaching a limited special meaning to the phrase, "Property and Civil Rights in the Province" has also been urged. This phrase has had a long history in British North America, rising out of the relationships of French and English in the valley of the St. Lawrence. British statesmanship sought a solution of this racial problem which would preserve to French Canada the institutions which were vital to its way of life. The Quebec Act of 1774 secured "His Majesty's Canadian subjects within the Province of Quebec" in the enjoyment of their property and civil rights and provided that "in all matters of controversy relative to property and civil rights, resort shall be had to the laws of Canada as the rule for the decision of the same".

In the constitutional and legislative enactments of both Upper and Lower Canada, there were a number of references to the law "relating to property and civil rights". In these references, the phrase was used to signify either the common law of England or the French customary law. That is to say, it denoted the set of laws and customs which were at once the expression and support of the distinctive ways of life of the French-speaking and English-speaking Canadians. The phrase found its way into sections 92 and 94 of the British North America Act.

Supporters of a broad view of federal power argue that the sole purpose of introducing the phrase "Property and Civil Rights in the Province" into section 92 was to protect the unique institutions and ways of life of the Province of Quebec. They lay strong emphasis on section 94 which contemplates certain conditions under which the federal authority may secure unrestricted power to make uniform laws "relative to Property and Civil Rights in Ontario, Nova Scotia and New Brunswick". To them, this section suggests that the phrase had reference only to matters on which these three provinces were in fundamental agreement and that regional differences of interest were not involved. Ontario, Nova Scotia and New Brunswick, with their acceptance of the English common law, were in agreement on precisely those matters in which each differed so completely from Quebec. Thus it is argued that the inclusion of this phrase in section 92 was not designed to express genuinely local as against national interests nor to fix the spheres of the different levels of government but rather to protect regional interests only in so far as they were specifically cultural in character.

This historical interpretation, therefore, maintains that the phrase, "Property and Civil Rights in the Province", as used in section 92, was intended to cover only what was necessary for this limited but important purpose of safeguarding the cultural autonomy of Quebec. It appeals to statements of British officials prior to the passing of the Quebec Act of 1774 and to the instructions of the British Government to the Governors of Quebec after 1774 as showing what were long understood to be the essential laws for safeguarding the fundamental institutions and ways of life of Quebec. These instructions to the Governors repeatedly

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32 Confederation Debates, p. 400.
33 Speech on the Proposed Union, p. 20.
34 Confederation Debates, p. 61.
35 See Appendix 2—D. G. Creighton, British North America at Confederation, pp. 50-52.
commanded that the Canadians were to enjoy the "benefit and use of their own Laws, Usages and Customs in all Controversies respecting Titles of Land, and the Tenure, Descent . . . of Real Estates, and the distribution of the personal property of Persons dying intestate . . . ". Accordingly, the phrase in question would include matters of civil law concerning the relations of citizen and citizen, such as ownership, transfer and various dealings in property, inheritance and succession by will, rights arising from personal status, such as minority and capacity to make contracts, and from the intimate domestic relations of the family. It would include a variety of other matters of private law but it would not include a number of matters inextricably bound up with the public law such as nation-wide regulation of industry and trade. Still less could it include social insurance which had formed no part of either French or English law and the idea of which was unknown to those who framed the British North America Act. In this way, it is sought to infer from historical evidence an intention to give the phrase "Property and Civil Rights in the Province" a much more restricted meaning than that given to it by the Privy Council.

Historical Interpretation of the Intentions of the Fathers—arguments supporting a broad view of provincial powers

These historical arguments as to the intentions of the Fathers of Confederation and the meaning assigned by them to general phrases such as "Peace, Order and good Government", "Regulation of Trade and Commerce" and "Property and Civil Rights in the Province" have not gone without challenge on historical grounds. For example, it is urged that the expression "property and civil rights" has always had a very wide meaning in our constitutional history.

By Royal Edict in 1663, Louis XIV of France created a Sovereign Council at Quebec giving it the power "de connaître de toutes causes civiles et criminelles, pour juger souverainement et en dernier ressort selon les lois et ordonnances de notre royaume"; thus, it is claimed, establishing in Quebec the entire French law which ruled New France at the time of the conquest.

The Royal Proclamation of George III of England in October, 1763, which proposed to introduce the English common law into the conquered territory in North America was naturally resented as a grave injustice by the people of Quebec. The Quebec Act of 1774 which was passed to meet this grievance, repealed the proclamation of October, 1763. Section 8 of the Act declared that "His Majesty's Canadian Subjects, within the province of Quebec . . . may also hold and enjoy their Property and Possessions, together with all Customs and Usages relative thereto, and all other their Civil Rights, in as large, ample, and beneficial Manner, as if the said Proclamation . . . had not been made" and then continued to provide, as quoted above, that the laws of Canada should provide the rule of decision in controversies "relative to Property and Civil Rights". This section of the Quebec Act has never been repealed.

The French law in its entirety was in force in New France at the time of the conquest and the people of Quebec desired to retain it. This was the ground of their objection to the Proclamation of 1763 and the Quebec Act was passed to meet this grievance. On the basis of these facts, it is argued that the Quebec Act was intended to meet the grievance fully and that the expression, "Property and Civil Rights", as used in the Act, was intended to comprise the entire French civil law and not merely certain selected portions of it. The only thing which is important for understanding the scope of the Act is the purpose for which it was passed. The statements of British officials and the instructions of the British Government to colonial governors merely reveal their opinions. They do not give clues to the meaning of phrases used in the Quebec Act.

This argument attributes a very wide meaning to the expression "Property and Civil Rights" as used in the Quebec Act, and holds that when used in later statutes, the expression bears the same extended meaning unless an express limitation is introduced. No express limitation on the meaning of the phrase occurs in the British North America Act and therefore it is concluded that the broad meaning given to it by the Privy Council is in accordance with its original historical meaning.41

41 For this argument, see P. B. Mignault, op. cit.
The Limitations of the Historical Arguments

All the historical interpretations go far afield for their arguments. There is no final certainty as to what the framers meant by the use of these phrases. The records of the time have not preserved all their opinions on all points. Clear statements of the views of some on particular points have come down to us; of the views of others, nothing is known.42

All that is certainly known is that the framers had large plans for the new Dominion and they proposed a strong central government with ample financial powers to carry the program through. The financial settlement which gave the Dominion the unrestricted taxing power, and the exclusive use of the most important revenue sources of the time (nearly four-fifths of the former provincial revenues were given to the new Dominion Government) is the most significant evidence of the leading role cast for the new Federal Government and of the responsibilities which it was expected to assume. In the provisions for reservation and disallowance of provincial legislation, the Fathers gave the Dominion legal power to supervise and control the legislatures of the provinces. At the same time, it was agreed that the state should be federal with exclusive spheres of power reserved to both the provinces and the Dominion. But the exact meanings intended to be given to the general words used in outlining these exclusive spheres of legislative power remain a matter for speculation.

There is no doubt that some of the framers had wanted a legislative union. Those who expected to be members of the new Federal Government naturally wanted a large stage on which to exhibit their capacity as statesmen.43 But whatever their intentions, they could not overcome the limitations imposed by physical conditions. They could not ignore the social forces rooted in the history of the colonies any more than they could presume to bind the future indefinitely to the past.

There is a further limitation inherent in all historical interpretation of political constitutions which are to govern the distant future. The framers of the constitution could not foresee the revolutionary economic and social changes that have since taken place and therefore could have no intention at all concerning them. Whatever powers Confederation was intended to confer on the Dominion, these intentions cannot provide answers for many of the questions which agitate us now for the simple reason that the conditions out of which present difficulties arise were not even remotely considered as possibilities. The intentions of the founders cannot, except by chance, provide solutions for problems of which they never dreamed.

4. Public Finance at Confederation

The Sphere of Government in 1867

The character of a public finance system depends on what governments are expected to do. What governments are expected to do depends on the prevalent political opinion and stage of development of the economy of the time. The statesmen of Confederation did not anticipate any radical change in the functions of government, but the adoption of a federal union required an allocation of responsibilities and sources of revenue between the Dominion and the provinces. In making a financial settlement and in fixing the future financial relationships of the provinces with the new Federal Government, they assumed that the sphere of governmental action would remain essentially what it had been in the past. Therefore, they were primarily concerned to transfer to the Federal Government the responsibilities and the financial resources which would enable it to carry out the political and economic objectives of the union.

Since 1867, there have been sweeping economic and social changes and no less important changes in opinion as to the appropriate functions of government, none of which could have been anticipated at the time. It is necessary to recall the social conditions of the day and the limited scope of government activities in order to appreciate the financial arrangements with which the federation was equipped and to realize that the division of responsibilities and revenue sources which was made at Confederation contemplated a much smaller sphere of government activities than exists today. The manner of life in British North America has already been briefly outlined. It will suffice to recall here the scattered rural character of the population, the decentralization of industry in small towns and villages, the self-sufficiency of families and communities, the impressive solidarity of the family, and the open frontier...
of the continent which afforded individuals a variety of means of adjustment to economic crises. While economic conditions did not offer great material prosperity to the many, they provided a modest security for the frugal and industrious and an almost frictionless adjustment to business fluctuations without any intervention by governments.

The role which governments were called upon to play was one peculiar to the conditions of the time. An individualistic outlook, which relies on the family as the unit of mutual welfare, is nourished in a pioneer society and people readily agree that governmental action should be confined to the narrowest possible limits. Accordingly, the principal functions of the state followed the prescription of Adam Smith. Government was thought to have met its purpose when it provided for adequate defence, the enforcement of the general law through the equal administration of justice and the maintenance of a few essential public works. Within this framework of order provided by public authority, individuals were expected to work out their own destiny unrestrained and unassisted by governments. There was a general conviction, widely confirmed by contemporary example, that Providence helps those who help themselves.

British North American governments did not concern themselves with regulation of the daily pursuits of the people. Nor did they assume any significant responsibility for social welfare. They took seriously their responsibilities for maintaining defence and internal order but they carried them out with frugal care. Thus far their interpretation of the doctrine of laissez faire was in harmony with current British precept and example.

But the application of the doctrine was modified by certain conditions peculiar to the colonies. The United States and all European countries at the time had incurred huge burdens for defence. European governments were spending as much as half of their current revenues on military purposes, and the United States had just emerged from a costly civil war. The colonies, relying on Great Britain, escaped most of the costs of military and naval defence. Had they been able to stop at this point, their burden of public expenditures would have been extremely low. However, release from expenditures on defence gave them resources for other tasks and all the colonies took on heavy commitments in aiding economic development.

Pioneer communities in North America were always hampered in realizing their dreams of progress by the tremendous difficulties of transport and communications. The scarcity of capital and the scattered nature of settlement added to the difficulties. As a result, the task of securing the provision of community equipment such as canals, harbours, roads, bridges and railways was saddled on government. Of all the agencies of the community, it had the broadest command of means. Until this equipment was provided, development was slow and individuals could not reap the rich promise of a new country. The colonial interpretation of laissez faire did not forbid strenuous government activity for developmental purposes. The state was required, by general consensus, to help people to help themselves.

The Burden of Debts incurred for Development—the necessity for centralization of finance

The urgent demand for transportation facilities had played havoc with the otherwise careful public finances of the colonies. In particular, the Province of Canada had gambled heavily in developing the St. Lawrence route as a means of tapping the trade of the Middle West. The coming of the railways, with their fabulous promise, intensified this concentration of public finance on development. Canada put in another expensive bid for commercial greatness by extensive railway loans. The Maritimes were stirred to link themselves to the continent behind them and the governments undertook ambitious railway programs as public works. By the eve of Confederation, transportation had overshadowed everything else in the budgets of the colonies and had seriously strained the public finance systems of Canada, New Brunswick and Nova Scotia.

45 In the sixties of the last century, the philosophy of laissez faire was at the height of its influence upon public policy throughout the world.

46 Appendix 2—D. G. Creighton, British North America at Confederation, pp. 67-70.
Fully three-fourths of the total debt of the British North American Provinces had been incurred for transportation.47 Most of it had been piled up rapidly after 1850 and while it was represented by much new and valuable community equipment, it was not directly productive from the point of view of public finance. The Canadian canals had failed dismally as an attempt to tap the Middle West and most of the Canadian railways were in financial trouble soon after they were completed. The Government of Canada had assisted them with large loans which quickly fell into default.48 In the Maritimes, practically the entire provincial debts had been incurred on publicly-owned railways, the interest charges on which had to be met by the governments out of general taxation. In 1866, the service of the provincial debt absorbed 21 per cent of the current revenues of Nova Scotia, 28 per cent of those of New Brunswick and 30 per cent of those of Canada. These dead-weight debts, which had accumulated so rapidly, seriously endangered the credit of the provinces in the London money market. They resulted in repeated budget deficits and it became increasingly difficult to secure loans at rates the provinces could hope to bear. Deficits had driven home the necessity for the union of Vancouver Island with the mainland and the infant Province of British Columbia was struggling with a public debt which amounted to over $100 per white inhabitant.49 The situation was only less severe in the other provinces. They were being obliged to fall back on temporary loans from local banks and from English banking houses.50 All the

47 Of the Province of Canada's net debt of $74 million, over $18 million had gone into the canal system and $33 million into loans to railways. In addition, the Province had shouldered municipal obligations (which, with arrears of interest, amounted to $14 million) arising mainly out of cash municipal support of railway development. The Maritime Provinces had a direct investment in publicly owned railways of $11 million. With the exception of a small amount in Nova Scotia, the capital commitments of the Maritime Governments consisted exclusively of obligations contracted for roads and railways.

48 $13 million out of the total loans to railways of $33 million consisted of unpaid interest.


50 In 1866, Canada was paying 8 per cent interest on one of these temporary advances.
provincial governments had overplayed their roles of promoting development.\footnote{51} They were seriously embarrassed in carrying their existing obligations and their separate public finance systems could not hope to undertake new burdens. Yet there was a powerful demand for new and greater developmental projects. These could not be achieved without the centralization of finance.

**Public Expenditures before Confederation—the importance of development**

The restricted role of governments and the nature of public functions in the society of British North America are most clearly demonstrated by the magnitude and distribution of the government expenditures. The figures are relatively insignificant when compared with those of today. In 1866 less than one-twentieth of the income of the population flowed through government channels and the total public expenditures amounted to less than $6 per capita.\footnote{52} The major factor in this striking contrast with the present time was the relative unimportance of the cost of education and public welfare; less than 14 per cent of the total expenditures were devoted to these services in 1866. The elemental responsibilities of government (i.e., the administration of justice, legislation and general administration), were conducted with frugality. The cost of defence which had been assumed by the Imperial authorities left no heavy burden on the colonies. All the traditional functions of government absorbed less than 40 per cent of the total outlay. The remainder of the expenditures (including debt charges), which comprised nearly one-half of the total were devoted to development. This purpose dominated the public finance of the provinces.

<table>
<thead>
<tr>
<th>Province of Canada</th>
<th>Nova Scotia</th>
<th>New Brunswick</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provincial</td>
<td>Municipal ($)</td>
<td>Provincial</td>
<td>Municipal ($)</td>
</tr>
<tr>
<td>Development:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not Debt Charges (a)</td>
<td>3,214</td>
<td>1,400</td>
<td>306</td>
</tr>
<tr>
<td>Transportation, including roads and bridges</td>
<td>962</td>
<td>950(a)</td>
<td>490</td>
</tr>
<tr>
<td>Public Domain and Agriculture</td>
<td>265</td>
<td>—</td>
<td>85</td>
</tr>
<tr>
<td>Sub-total</td>
<td>4,422</td>
<td>2,350</td>
<td>881</td>
</tr>
<tr>
<td>Traditional Functions:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Justice, legislation and general government</td>
<td>3,235</td>
<td>1,850</td>
<td>351</td>
</tr>
<tr>
<td>National Defence</td>
<td>1,641</td>
<td>—</td>
<td>145</td>
</tr>
<tr>
<td>Sub-total</td>
<td>4,876</td>
<td>1,850</td>
<td>496</td>
</tr>
<tr>
<td>Welfare and Education:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Welfare</td>
<td>340</td>
<td>300</td>
<td>101</td>
</tr>
<tr>
<td>Education</td>
<td>583</td>
<td>900</td>
<td>156</td>
</tr>
<tr>
<td>Sub-total</td>
<td>923</td>
<td>1,200</td>
<td>257</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>350</td>
<td>—</td>
<td>36</td>
</tr>
<tr>
<td>Total</td>
<td>10,571</td>
<td>5,400</td>
<td>1,070</td>
</tr>
</tbody>
</table>

(a) Compiled from the Public Accounts of the B.N.A. Provinces.


(c) Estimated.

(d) Gross interest charges less interest received.

(e) Excluding value of statute labour.

\footnote{51} This was not true of Prince Edward Island in 1866, but by 1873, that Province had also incurred paralyzing debts in aid of railway construction.

\footnote{52} In 1937, total government expenditures in Canada amounted to $90 per capita and were equal to one-fourth of the national income.
There were no marked differences in the total government expenditures of the three provinces. The current expenditures of the provincial governments in the Maritime Provinces on roads, education and public welfare were significantly higher than those of Canada. This was mainly due to the fact, that in the Maritimes, municipal institutions did not exist outside the principal cities and public expenditures on roads and bridges, education and public welfare became items in the current expenditures of the provincial governments. On the other hand, the existence of more fully developed municipal institutions in Canada, particularly in Upper Canada, upon which a great part of the burden of maintaining roads and supporting education and public welfare had been placed, resulted in a corresponding reduction of provincial expenditures on these items.

The Maritime Provinces relied almost entirely on a simple customs tariff of a revenue nature and made practically no attempt to levy excise at all. As Table 4 indicates, each of them derived 80 per cent or more of its revenues from this source in 1866. The taxation system in Canada was somewhat more advanced. In 1866, customs duties provided 66 per cent of the provincial revenue while 17 per cent was derived from excise. With a more diversified economy, Canada did not import so wide a range of articles of general consumption. Local production had developed in many lines and there were considerable elements of protection in a tariff which ranged around 20 per cent on articles of general consumption.

In both Canada and the Maritimes, the customs rates were considerably higher on luxury items.

The Principal Sources of Public Revenue—the dependence upon customs duties

The revenue systems of the three provinces were markedly similar and chiefly notable for their simplicity. The provinces relied almost entirely on indirect taxation with scarcely any effort to impose direct taxation. They did not have any elaborate tax machinery for the nature of the economy and its modes of distributing income made it useless to attempt a more complex system of taxation. Hence their principal revenues were derived from customs duties and excise which lent themselves easily to assessment, collection and enforcement.

However, the simple, frugal society of the time did not consume any great quantity of the heavily taxed luxuries and the gradations of the tariff rates did not provide any significant measure of progressive taxation. The duties on articles of general consumption produced the great bulk of the revenues of the provincial governments. Table 5 shows the per capita burden of the principal taxes in the three provinces and reveals the complete dependence on these indirect taxes.

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The import duties on commodities of general consumption ranged around 10 per cent in Nova Scotia and 15 per cent in New Brunswick.
<table>
<thead>
<tr>
<th></th>
<th>Province of Canada</th>
<th>Nova Scotia</th>
<th>New Brunswick</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Provincial</td>
<td>Municipal</td>
<td>Provincial</td>
</tr>
<tr>
<td>Customs</td>
<td>2.77</td>
<td>3.37</td>
<td>3.83</td>
</tr>
<tr>
<td>Excise</td>
<td>0.71</td>
<td>0.02</td>
<td>0.33</td>
</tr>
<tr>
<td>Realty</td>
<td></td>
<td>1.44</td>
<td>0.33</td>
</tr>
<tr>
<td>Licences, Permits,</td>
<td>0.11</td>
<td>0.02</td>
<td>0.03</td>
</tr>
<tr>
<td>Fees, etc.</td>
<td>0.34</td>
<td>0.35</td>
<td>0.40</td>
</tr>
<tr>
<td>Public Domain</td>
<td>0.25</td>
<td>0.25</td>
<td>0.37</td>
</tr>
<tr>
<td>Total</td>
<td>4.17</td>
<td>2.04</td>
<td>4.63</td>
</tr>
<tr>
<td>Combined Provinces</td>
<td>6.21</td>
<td>4.51</td>
<td>5.27</td>
</tr>
</tbody>
</table>

Except for two or three leading cities, municipal organization was virtually non-existent in the Maritimes. Thus the income from import duties carried the burden of practically all local expenditures as well. In Canada East, municipal development was well under way but it was still considerably behind that of Canada West. In the Province of Canada the revenues of the fully organized municipal system were nearly equal to half the total revenues of the provincial government. Municipal institutions had enabled the provincial government to transfer very substantial responsibilities from its own shoulders without materially cutting down its own sources of revenue. Thus Canada could face the difficult and rather unpredictable adjustments of a major change with more equanimity than could the Maritimes.

This was the public finance structure which the architects of Confederation had to remodel to suit their new purposes. It included large debts incurred almost entirely for public works such as canals, harbours and railways as well as heavy current expenditures for developmental purposes. The traditional functions of government absorbed a substantial part of the revenues but only very modest sums were allotted to education and public welfare. Apart from the direct taxes levied by the municipalities of Canada, these various burdens were almost entirely supported by indirect taxation consisting of customs duties and excise. These debts and functions of government and these sources of revenue were now to be allotted between the provinces and the new Dominion.

The Division of Responsibilities and Revenues under the British North America Act

The new financial settlement was in part determined by the legacy of debts and the character of the economy. It was guided by the prevailing philosophy of the functions of government and the fiscal experience of the past. But within these conditions, the actual shape of the revised system of public finance was dictated by the purposes which the new political structure was designed to serve. In the future, the Federal Government was to provide for defence and have jurisdiction over interprovincial communications. It was required to build the Intercolonial railway; expected to deepen and improve the canal system of the St. Lawrence; pledged to open up communication with the West; in short, it was to take the major responsibility for national security and national development. The transfer of these costly functions would greatly reduce the burdens on the provincial governments.

Because the Dominion was to assume the responsibility for development, the massive community equipment and assets of the provinces, which could be adapted to its purpose, were to come under Dominion control and it was to assume the debts which the provinces had incurred in acquiring them. Harbours, lighthouses, steamboats, canals and railways were to be brought within its jurisdiction and where owned by the provinces, to become the common property of the Dominion. With minor exceptions, the public debts of the provinces were completely assumed by the Dominion. This is indicated in detail in Table 5A on the following page.
TABLE 5A.—PROVINCIAL ASSETS AND LIABILITIES ASSUMED BY DOMINION AT CONFEDERATION

(Thousands of Dollars)

<table>
<thead>
<tr>
<th>Province of Canada</th>
<th>New Brunswick</th>
<th>Nova Scotia</th>
<th>Total Assets and Liabilities assumed by Dominion July 1, 1867</th>
<th>British Columbia July 20, 1871</th>
<th>Prince Edward Island July 1, 1873</th>
<th>Total Assets and Liabilities assumed by Dominion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt assumed by Dominion:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Direct Debt</td>
<td>59,021</td>
<td>5,146</td>
<td>6,062</td>
<td>70,829</td>
<td>1,168</td>
<td>1,688</td>
</tr>
<tr>
<td>Guaranteed Debt</td>
<td>150</td>
<td></td>
<td></td>
<td>150</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Savings Bank Deposits</td>
<td>3,114</td>
<td></td>
<td></td>
<td>606</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Treasury Notes in Circulation</td>
<td>3,067</td>
<td></td>
<td></td>
<td>342</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Temporary Loans</td>
<td>3,212</td>
<td>1,189(a)</td>
<td>330(b)</td>
<td>11,036</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital Liabilities</td>
<td>21</td>
<td></td>
<td></td>
<td>304</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current Liabilities</td>
<td>1,945</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gross Debt assumed by Dominion</td>
<td>70,169</td>
<td>7,900</td>
<td>9,034</td>
<td>93,094</td>
<td>1,488</td>
<td>4,099</td>
</tr>
</tbody>
</table>

Assets taken by Dominion as Offsets to Debt:

| Cash | 1,461 | 39 | 305 | 1,784 | 42 | | 1,626 |
| Assets re Guaranteed Debt | 1,899 | | | 739 | | | 2,638 |
| Investments | 37 | | | | | | 37 |
| Current Liabilities | 399 | 87 | | 477 | 4 | | 477 |
| Total Assets taken by Dominion as Offsets to Debt | 4,098 | 107 | 305 | 4,508 | 488 | | 4,998 |

Net Debt Assumed by the Dominion:

| | 72,062(a) | 7,793 | 8,731 | 88,586 | 1,000 | 4,099 | 93,685 |

Debt Allowance as per B.N.A. Act:

| | 62,500 | 7,000 | 8,000 | 77,500 | 1,666 | 4,701 | 83,867 |

Assets transferred to Dominion:

| Investments | 607 | | | 607 | | | 607 |
| Loans, Advances, etc., excluding railways, on which partial or no interest was paid | 1,150 | 249 | | 1,399 | | | 1,399 |
| Public Works and Loans to Railways: Railways—Direct Investments and Loans | 33,256(a) | 4,514 | 6,123 | 43,893 | 1,213 | 45,106 |
| Canals and Harbour Improvements | 21,296 | | | 21,296 | | | 21,296 |
| Roads and Bridges | 1,703 | | | 1,703 | | | 1,703 |
| Public Buildings and Miscellaneous Works | 4,907 | | | 4,907 | | | 4,907 |
| Total Public Works and Loans to Railways | 60,862 | 4,514 | 6,123 | 71,499 | 1,213 | 72,712 |
| Current Assets | 144 | | | 144 | | | 144 |
| Total Assets transferred to Dominion | 62,765 | 4,745 | 6,123 | 73,640 | 1,213 | 74,853 |

(a) Subsequent adjustments, due largely to capitalization of annuities, increased the net debt of the Province of Canada to $73,000,688.84 at June 30, 1872.
(b) Commitments for subsidies to railways in the course of construction. At June 30, 1868, $465,764.57 had been paid on this account.
(c) Light Houses, Harbour Improvements, Roads and Bridges and other public works were transferred to the Dominion but as they were charged originally to current revenue, they do not appear in the statement of assets.
(d) Except for $31,437.47 for provincial pensions capitalized, this comprises commitments for subsidies to the Windsor and Annapolis Railway.
(e) Treasury Notes in circulation on June 30, 1873, amounting to $37,311.10, were called for cancellation by the Province.
(f) Balance due on commitments for construction of the Prince Edward Island Railway.
(g) Loans and unpaid interest, Grand Trunk Railway, Great Western Railway and the Northern Railway. Unpaid interest amounted to $15,000,000.

Debt allowances, in round sums but calculated roughly on an equal per capita basis, were allotted to all provinces; it was provided that provinces whose actual debt fell below the allowance should receive interest at 5 per cent per annum from the Dominion on the difference, and the provinces whose debts exceeded the debt allowance should pay interest on the excess at the same rate.

The magnitude of the burdens, actual and prospective, which were being transferred to the Dominion, called for commensurate fiscal resources and powers. Therefore, it is not surprising that many of the Fathers spoke as if all the significant powers of taxation were to be given to the Dominion. At Sherbrooke, Galt declared, as if speaking of an undivided power, that “the power of taxation had been confided to the General Legislature”.

Both the Quebec and London Resolutions stated that subsidies were to be paid to the provincial governments “in consideration of the transfer to the General Parliament of the powers of taxation”.

Although it was expected at the

55 Speech on the Proposed Union, p. 11.
56 Quebec Resolutions No. 64; London Resolutions No. 62.
time that the Federal Government would rely upon the accepted and well-tried devices of indirect taxation, such as customs and excise, for raising the necessary revenues, the possibility that unforeseen circumstances might compel it to extend its levies to direct taxation as well persuaded the framers to give the Dominion unlimited powers of taxation.

National security, national development and the fostering of trade and commerce by appropriate regulation were regarded by the Fathers as the great functions of government. They were also the functions which they thought likely to expand in the future. When these had been transferred to the Federal Government, the provinces were left with functions, the burden of which was not expected to grow. They would be required to support a civil government establishment; to maintain a number of local public works and to undertake the administration of justice. But the heaviest duties of civil government and the onerous burden of the great public works would be lifted from their shoulders. The support of education was to come within their sphere and their control over “generally all Matters of merely local or private Nature in the Province” and over “the Establishment, Maintenance and Management of Hospitals, Asylums, Charities and Eleemosynary Institutions in and for the Province” implied responsibility for social welfare problems which got beyond the resources of charitable and municipal organization.

Of the functions remaining to the provinces, the support of education bulked the largest financially. It took the form of financial assistance and did not require extensive administrative machinery. Moreover, the assistance was of a modest character. The nature of the economy explains the small per capita expenditure on education. In the self-sufficient rural or village society of the time, education in a broad sense was obtained without much benefit of formal schooling. There was a farm and fishing apprenticeship in fact as well as a craft apprenticeship, none of which involved the expenditure of public funds. Schooling was not compulsory. The professions afforded few openings and parents wishing to prepare their children for such opportunities were expected to pay for their education at private schools. The technical complexity of our society in more recent times, which has revolutionized educational methods and costs lay far ahead and unforeseen.

Provincial payments for public welfare were even smaller than those for education ranging in 1866 from 6 per cent of total current expenditures in Nova Scotia to 3 per cent in Canada, the latter percentage indicating that a considerable share of this burden had been unloaded on the municipalities. In fact, most of the provincial expenditures on public welfare took the form of assistance to municipal institutions and private charities.

New Brunswick alone of the provinces had established a permanent board of public health in 1866. When the cholera epidemic startled Canada into establishing a temporary central board of health in 1849, there was considerable objection to assisting private misfortune out of the general public funds. This spirit was still dominant in matters relating to public welfare. All provinces were contributing to the care of the insane but the amounts were small. The poor and the disabled, the aged and the orphans, were left to the care of municipal and private organizations, assisted, if at all, by small government grants.

The self-sufficiency and solidarity of the family carried a great deal of this burden of providing social security for the unfortunate. Periodic unemployment generally meant no more than a temporary retreat to the family homestead. There was nothing in the experience of the Fathers to suggest serious defects in this pattern of social security. Indeed, there was a disposition to speak hopefully of a time when private charity would relieve the governments of their existing commitments for public welfare. Personal responsibility was the ideal of the time and many looked forward to a society where it would be perfectly realized.

The functions which were left to the provinces were important but their cost was not large. The minor financial role which was conceived for the provinces in the federation is emphasized by the frequent equation of them to great municipalities. Galt, in his speech at Sherbrooke declared that the local legislatures would be “municipalities of a larger growth” and members of the Canadian legislature from Upper Canada frequently spoke of them in the Confederation debates as “local municipal deliberative bodies”. Tupper, at the Quebec Conference, said it was proposed “to preserve the Local Governments in the Lower Provinces because

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58 Canadian Public Health Journal, 1929, p. 140.
59 Speech on the Proposed Union, p. 15.
60 Ibid., p. 15.
61 Appendix 2—D. G. Creighton, British North America at Confederation, p. 83. See also p. 70.
we have not municipal institutions".62 In the Prince Edward Island Assembly, George Coles complained that "in this House, scarcely anything should be left for us to do, but to legislate dog taxes, and the running at large of swine".63 There was repeated reference to "how insignificant are the matters, agreed . . . to be left to the Local Governments".64

The calculations of the amounts required for the operation of the provincial governments after Confederation on which the financial settlement was based showed the extent to which functions were to be transferred. Tupper estimated that Nova Scotia, which had had an outlay in 1863 of over a million dollars, would be able to meet her responsibilities after Confederation with $370,000. Similarly, the New Brunswick delegates to the Quebec Conference undertook to perform the local services for $353,000 after Confederation, in comparison with an expenditure of $885,000 in 1863. Canada had spent almost $11 million in 1863 and the new Provinces of Ontario and Quebec were expected to reduce their annual expenditures to a combined total of something over $2 million.65

The Federal Government was to assume virtually all the provincial debts and the large expanding functions of government. With greatly reduced responsibilities, the provinces could have no need for access to the great sources of revenue of the day. Accordingly, section 92 limited the provinces to direct taxation within the province. The provinces were given the "public domain with its incidental revenues and a power to impose a variety of licences and fees. These were the sources from which the provinces were expected to finance their activities. The customs duties and excise taxes which provided the great bulk of the revenues were reserved exclusively to the Federal Government.

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62 Pope, Confederation Documents, p. 85.
64 George Brown, at the Quebec Conference. See Pope, Confederation Documents, p. 77.
65 The figures for the three provinces are those given by Galt in his Sherbrooke address.

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**Table 6.—Percentage Distribution of Combined Provincial and Municipal Revenues—Fiscal Years Ended 1866**

<table>
<thead>
<tr>
<th>Province of Canada</th>
<th>Nova Scotia</th>
<th>New Brunswick</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxes:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customs</td>
<td>45</td>
<td>75</td>
<td>72</td>
</tr>
<tr>
<td>Excise</td>
<td>11</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Realty</td>
<td>23</td>
<td>7</td>
<td>9</td>
</tr>
<tr>
<td>Other</td>
<td>5</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Sub-total</td>
<td>84</td>
<td>83</td>
<td>82</td>
</tr>
<tr>
<td>Licences, Permits, Fees, etc.</td>
<td>5</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Public Domain</td>
<td>8</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>All Other (a)</td>
<td>6</td>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

(a) Revenue from post office and from sales of other commodities and services are excluded. These are offset by corresponding expenditures.

Revenues Left to Provinces Fall Short of Requirements—gulf bridged by federal subsidies

The transfer of customs and excise to the Dominion left the provincial governments with less than one-fifth of their former revenues. Modest as were the responsibilities they retained, these revenues fell considerably short of meeting them. They were given the power to levy direct taxes but the discussions of the Confederation period indicate that the provincial governments were not expected to use it.66 Direct taxes were extremely unpopular; they had never been levied by the provinces, and, as already pointed out, the nature of the economy made the administration of direct taxation except by municipalities very difficult.

In these circumstances, the Fathers felt obliged to seek other means of meeting the prospective deficits of the provinces. The task was complicated by the fact that the deficiencies were much more serious in some provinces than in others. The relatively mature municipal system in the Province of Canada carried a large share of what would otherwise have been provincial responsibilities. Practically all the municipal revenues were raised by a direct property tax. In 1866, the municipalities of Canada collected nearly a third of the total provincial and municipal revenues. The surrender of customs and excise to the Dominion and the provincial power of direct taxation left this municipal revenue system intact. In the
Maritimes, on the other hand, municipal development had scarcely begun and public expenditures in the localities were being financed largely out of general taxation—from customs revenues which yielded considerably more per capita than in the Province of Canada and which would be handed over to the Dominion at Confederation. Thus prospective deficiency of provincial revenues under the settlement varied inversely with the degree of municipal development. While Ontario and Quebec were to retain, between them, almost half of the total provincial-municipal revenues collected in the old Province of Canada, Nova Scotia and New Brunswick were to retain only about one-fourth.

**Table 7.—Deficiency of Provincial Revenues after Confederation as Estimated by Galt**

<table>
<thead>
<tr>
<th>Province</th>
<th>Local Revenues</th>
<th>Local Outlay</th>
<th>Deficit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>$1,297,000</td>
<td>$2,290,000</td>
<td>$903,000 or 38 cents per capita</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>107,000</td>
<td>667,000</td>
<td>$500,000 or $1.70 per capita</td>
</tr>
<tr>
<td>New Brunswick</td>
<td>89,000</td>
<td>424,000</td>
<td>$35,000 or $1.33 per capita</td>
</tr>
</tbody>
</table>

In his speech at Sherbrooke, Galt presented estimates of what the expenditures of the provincial governments on their reduced responsibilities would be and of the income to be anticipated from the revenue sources left in their hands. These estimates were based on the financial position of the provinces in 1864 and as they provided the basis of discussion for the subsidy calculations, they are set out in Table 7. They show prospective deficits ranging from $1.70 per capita in the case of Nova Scotia down to 38 cents per capita for the new Provinces of Ontario and Quebec. The Table shows the extent of the gap which somehow had to be bridged if the main lines of the proposed financial settlement were to be retained intact.

There was a strong desire to avoid the device of annual subsidies from the Dominion to the provinces. However, the framers of the settlement refused to give the provinces a concurrent power of indirect taxation lest it be used to establish interprovincial trade barriers and they did not believe it was politically possible to impose direct taxation. Thus there was no real alternative and subsidies were introduced to bring provincial revenues to a level with minimum estimates of future expenditures.

The Quebec Conference found considerable difficulty in reaching a subsidy formula which would satisfy the demands of equity, and meet the wide variation in the anticipated deficits of the different provinces. The prevailing individualism which enforced representation by population in the political sphere assumed without question that the first principle of equity in the financial settlement was per capita equality. However, a per capita annual payment which would bridge the gap for Nova Scotia or New Brunswick would give Ontario far more additional revenue than appeared necessary. Moreover, it would require total annual subsidies in excess of $5 million a year. This was too large a deduction from the prospective annual revenues of $12 million to be collected by the Dominion which was undertaking such great responsibilities. Accordingly there was pressure to reduce the estimates of provincial needs. Nova Scotia, where the greatest deficit was expected, revised its estimate of expenditures to a figure which would require an 80 cents per capita subsidy to bridge the gap. This standard, which brought the total annual subsidies below $3 million, was adopted as the basis of settlement.

This arrangement was still open to the objection that it gave Ontario more than was necessary while it was a very tight fit for Nova Scotia. New Brunswick, pleading special need, was granted an extra $63,000 for a period of ten years. The 80 cents per capita subsidy was modestly supplemented in the final settlement by lump sum grants for the support of general government, and the provinces were launched with these subsidies as the solvent for their financial weakness.

Although the financial settlement quickly proved to be intolerable for Nova Scotia—a revision being necessary in 1869—its principal features stood for many years and, with minor modifications, it was applied to new provinces as they joined the Dominion. Its terms were written into the British

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68 Thus New Brunswick and Nova Scotia would lose 72 per cent and 78 per cent respectively of their combined provincial-municipal revenues while Canada would lose only 66 per cent. The realty and other miscellaneous taxes collected almost entirely by the municipalities in Canada amounted to nearly a third of the total public revenues (municipal and provincial) in 1866. In the Maritimes, these direct taxes yielded less than 10 per cent of the total revenues. See Table 6. Developed municipal institutions accompanied greater urbanization which was presumably an indication of higher taxable capacity.

69 The position of Ontario was considerably better than that of Quebec where municipal development was still in its early stages. It is impossible to disentangle the municipal revenues attributable to the two separate areas of Canada before Confederation and no accurate statement of the relative position of the two new provinces can be made.

North America Act and the subsidies agreed upon were declared to be “in full Settlement of all future Demands on Canada”. If the provinces chose to increase their expenditures materially, it was intended that they should obtain their additional revenues entirely from the revenue sources allotted to them.

**Summary—the great responsibilities and the dominant financial position of the Federal Government**

The financial settlement underlines the various statements of the Fathers as to the great functions of the new Dominion and relatively minor financial role to be played by the provinces. The important responsibility for national defence was transferred to the Dominion and the provincial treasuries were relieved of the incalculable burdens which it might entail. The largest single item of public expenditure in the colonies had been the promotion of economic development. One of the major purposes of Confederation was to apply still greater energies to this task and to provide still larger financial resources for the purpose. In effect, the Dominion was a great holding company designed to unify the efforts of the colonies in realizing the opportunities of a transcontinental domain. All the provincial assets which could be adapted to that purpose were transferred to the Dominion as were the debts which the provinces had incurred in acquiring them. The burden of the functions left with the provinces was expected, in per capita terms, to grow lighter rather than heavier. In the economic and social conditions of the time, the cost of education and public welfare was not expected to increase disproportionately to the growth of population. It was anticipated that rapid extension of municipal institutions would carry any additional burdens which these services might involve in the future and would reduce the outlay of provincial governments upon them.

The transfer of the dynamic, expanding functions of government to the Dominion while the provinces retained those which were thought to be static or likely to decline explains the lopsided division of the revenue sources of the time. The Dominion was given an unlimited power of taxation to enable it to meet the growing as well as the unpredictable responsibilities of the State. The provinces were left with but fractions of their former revenues. The power of direct taxation had to be given to the provinces in order that they might confer that power on the municipalities which they were expected to create. But all the circumstances of the day seemed to indicate that direct taxation could not be fruitfully employed by

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21 The per capita subsidy was based on the census of 1861. As agreed at Quebec, this basis was not subject to change with rising population. However, at London, a concession was made to Nova Scotia and New Brunswick, allowing a decennial revision in their cases until a population of 400,000 was reached. Other than municipal governments. It was expected that any additional revenues which a province might need would be found in the growing receipts from the public domain rather than in direct taxation. Subsidies were introduced to make it barely possible for the provinces to balance their budgets. These subsidies were conceived to be final and, subject to a minor exception, were not intended to grow with the growth of population.